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Division III
State of Washington

No. 352706

COURT OF APPEALS, DIVISION 3
OF THE STATE OF WASHINGTON

In Re:
ESTATE OF MABLE MEEKS; and,
L/M MEEKS NO. 1 TRUST

APPELLANT'S REPLY BRIEF

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A. REPLY SUMMARY

The arguments in the Appellant's Brief and the Respondent's Brief can be distilled down to a single issue: How much deference should a court give to the text of wills and trusts, and far should the courts go to to modify estate documents in order to appease parties who were not included in the original estate documents?

B. REPLY ARGUMENT

1. The Trustee has standing to protect against the severe liabilities to which it was exposed by the trial court's myopic order that is the subject of this appeal.

The Respondents argue that the trustee lacks standing to appeal a disputed distribution between beneficiaries. That argument is a red herring.

The Respondents clearly outlined a trustee's obligations, duties and responsibilities in their brief – the "trustee owes beneficiaries 'the highest degree of good faith, diligence, fidelity, loyalty, and integrity'". Reply Brief pg. 19. Naming a beneficiary is a requirement to creating a valid trust, and a beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities RCW 11.98.11. It is a trustee's duty to administer the trust solely in the interest of all actual beneficiaries per the terms of the trust. RCW

11.98.078.

The ruling by the trial court exposes the trustee to great liability as it presumes (wrongly), that the trustee has the power to change the character and title of property; to retroactively create trusts; to defer to a power of appointment that was never exercised; and, to ignore the blatant fact that the trust explicitly states that it was irrevocable. The trial court's order is simply impracticable. And, the Trustee, in carrying out her duties, need to ensure that she is held harmless for any and all determinations by the trial court that may give rise to financial and legal liabilities (especially federal liabilities) under the law.

Respondents further base their argument on the fact that "*None* of the potentially affected Trust beneficiaries (i.e., beneficiaries initially identified in the original Trust, but not in the Second Amendment) objected below, and *none* have joined in the Trustee's Appeal. Response Brief pg. 19. *emphasis added by Respondent.*

This is merely sophistry. The fact is that the actual named beneficiaries in the original trust DID NOT HAVE TO JOIN – their rights and interests are being protected by the Trustee here in this action. The trustee must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. RCW 11.97.010. And she is doing so with respect to the

beneficiaries of the unmodified trust right here, right now.

Because the trustee is advocating to uphold the terms of the trust, and because she could and would be exposed to harmful liabilities by the trial court's order, she has standing to appeal.

2. The courts should not modify the estate to placate parties who are not proper, qualified beneficiaries of the original trust, but who were wrongfully named in improperly created and executed amendments to an irrevocable trust.

A court's paramount duty in construing a testamentary instrument is to give effect to the maker's intent. *In re Estate of Riemcke*, 80 Wn.2d 722, 728 (1972). Here, the trust was drafted and executed to comply with the wishes of two joint grantors, Lloyd M. Meeks and Mabel I. Meeks. That trust expressly stated that it was to become irrevocable and not subject to modification upon the death of the first grantor, presumably to protect the joint grantors' wishes from the possible caprice of, or undue influence on, a surviving grantor.

The court nor the trustee need to be concerned about why the grantors chose that trust would be irrevocable nor unamendable. But, we do need to uphold that term and protect the trust from outside influence like that which is being waged by the three respondents, none of whom were included in the original trust.

Even the trial court agreed that it should be be reluctant to reform a trust or a will because they are drafted for a reason. Then it did so anyway.

RCW 11.96A.125 does grants the courts the ability to reform terms of a will or trust, even if unambiguous, to confirm the terms to the intention of the testator or trustor **IF** it is proved by clear, cogent, and convincing evidence that i) the intent of the testator or trustor was affected by a mistake of fact or law; AND, ii) the terms of the will or trust were affected by a mistake of fact or law. RCW 11.96A.125. But this is a statute for the purpose of correction clear and obvious errors - not to allow a party to insert themselves in as an intended beneficiary to an estate through a legal loophole. There is no evidence at all of a mistake in the original trust as executed by the joint grantors – the only mistake was on behalf of the surviving grantor and her attorney who attempted to modify an irrevocable trust that explicitly stated it could not be modified, and the trial court that upheld that error. Any presumption of fact should be based on the text of the original trust, not on subsequent unilateral acts that breach the terms of the original trust.

Let's be very clear here. A trust can be irrevocable but still subject to amendment so long as the amendment does not accomplish the result of

a revocation. *First Interstate Bank of Washington v. Lindberg*, 49 Wn.App. 788, 793 (Div. 2 1987). BUT, this trust stated, in particular that "Upon the death of the first Grantor, this Agreement shall not be revocable in whole or inpart ***nor subject to amendment.*** CP 4, 8. No amendments are allowed, making all subsequent documents unilaterally executed by a surviving grantor moot.

With regard to any argument about a power of appointment, this trust did allow the surviving grantor a power of appointment, BUT, ONLY with respect to property placed in a bypass trust. No bypass trust was created. No bypass trust – no power of appointment.

Finally, the respondents' attempts to circumvent the trust terms, and the fact that the surviving grantors' did not create or fund a bypass trust,by modifying the will also fails. There is no proof whatsoever of an attempt on behalf of the surviving grantor to change, amend, or revoke her will. The will specifically and explicitly states that 1) all assets no specifically bequeathed under the will were to be placed in the ***original trust***;[1] 2) that her estate was to be administered by the personal representative ***without intervention of any court***[2]; and, 3) that any person challenging the will

1 "that certain Trust Agreement entered into between myself and husband as Grantors and Trustees, dated March 2, 1994" Last Will and Testament of Mable I. Meeks, Section III.B. *See* CP 41 – 42. It is clear that even the will directed assets in to the original trust, and not into any bypass trust over which she would have had a power of appointment.

2 Last Will and Testament of Mable I. Meeks, Section V. *Id.*

who could receive anything shall be limited to receiving "One Dollar ($1.00) and nothing else.[3]

There is no gray area here. In this case, there was no legal basis or jusitification for the trial court to entertain and order a reformation of the original trust, a fictional distribution of assets out of a bypass trust that was never in existence, nor a modification of a will changing where the assets were directed.

While the trial court may have the plenary power to modify an estate under TEDRA, it does not necessarily mean it should do so. Because Mable Meeks never created and funded a bypass trust, nor actually exercised her power of appointment, nor indicated an explicit intent to do so, the terms of the trust purportedly allowing her to do so are moot. The court erred when it modified the distribution to beneficiaries by purportedly creating a power of appointment over a bypass trust that never existed.

3 Last Will and Testament of Mable I. Meeks, Section VI. *Id.*

C. CONCLUSION

No evidence exists of any mistake in the original testamentary documents. The only ascertainable mistake was in the surviving grantor[4] wrongfully attempting to amend an unamendable instrument – amendments that are ultimately irrelevant to the trust that is being administered. It is, admittedly, unfortunate that the improper amendments to an unamendable trust named the respondents (among other non charitable parties that would have violated the trust agreement even if the the amendments were valid). But, these invalid documents do not grant the respondents any right or standing as a beneficiary of the trust, regardless of how frustrating the respondents may find it.

Wishing something does not make it so.

The issue here is a question of how much deference should a court give to the text of wills and trusts, and far should the courts go to to modify estate documents in order to appease parties who were not included in the original estate documents.

This is an important question and issue for anyone who drafts estate documents. Testamentary documents are specifically drafted to include the terms that best ensure the testators' wishes are carried out. Both drafters and testators rely on the jurisdiction and State to uphold the terms

4 And her ignorant counsel who assisted her.

that are in these testamentary documents and not to expose them to the caprice of challengers, regardless of how well-funded they are.

The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. RCW 11.97.020. In construing a will, the court must ascertain the testator's intent from the four corners of the document. *In re Estate of Bergau*, 103 Wn.2d 431, 435(1985). The four corners of this document are unambiguous in their direction and intent and are not subject to modification. The trustee appellant is attempting to protect the terms of the original testamentary documents, and the original beneficiaries – that is her obligation and the duty of her counsel.

Respectfully request that this Court 1) reverse the final order and judgment entered by the trial court; 2) uphold the original trust as the sole governing instrument in for the estate; and, 3)assess the costs and attorney fees incurred as a result of litigating this action against the Respondent.

Respectfully Submitted this 2nd day of November, 2017.

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