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**NO. 45926-4-II
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STANGEL FAMILY TRUST, by)
BEATRICE STANGEL, Trustee)
Appellant,)
vs.)
ELLEN MARIE STANGEL,)
Respondent.)

BRIEF OF RESPONDENT

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(West Publishing, St. Paul, MN 1977)

FACTS

Appellant Beatrice Stangel, trustee of the Stangel Family Trust, filed an eviction complaint against her stepdaughter, Ellen Marie Stangel, also known as Elena Stangel. CP 1-8. The case was tried to the court on October 24, 2013, and on November 4, 2013. A separate verbatim report of proceedings was prepared for each trial day, each report starting on page 1. For ease of reference the Verbatim Reports of Proceedings are herein referred to as RP-10/24/13 and RP-11/4/13.

Ellen Marie Stangel, also known as Elena Stangel, is the daughter of William Stangel, now deceased. RP-10/24/13 at 40, 76. Beatrice Stangel is the stepmother of respondent and the widow of William Stangel. RP-10/24/13 at 22. In 1997 Elena Stangel used a portion of her retirement funds to purchase a home in Tacoma, Washington. RP-10/24/13 at 77-78; RP-11/4/13 at 7. Beatrice Stangel did not recall the details of the purchase. RP-10/24/13 at 33. Elena Stangel made the mortgage payments after the purchase. RP-10/24/13 at 79.

By 1999 Elena Stangel was unable to make monthly payments on the home and her father and stepmother began making the payments. RP-10/24/13 at 32, 67-68, 79, 83. In 2003 William and Beatrice Stangel refinanced the home and secured the loan with a deed of trust, now payable to Bank of America. RP-10/24/13 at 26-27, 80. Title was held by

the inter-vivos trust created by William and Beatrice Stangel. CP 1-8 and 27-82, RP-10/24/13 at 26-27; Trial Exhibits 1, 2 & 3. Elena Stangel continuously lived in the house from the time of its acquisition to present with the full knowledge and acquiescence of William and Beatrice Stangel. RP-10/24/13 at 29, 80. While there was conversation and an exchange of letters in 2008 regarding the sale of the house no sale was ever attempted nor was the property ever listed for sale by the trust. Elena Stangel explained that market conditions were not favorable for a sale at that time. RP-10/24/13 at 119; RP-11/4/13 at 22-23. Elena continued to live in and care for the house. RP-10/24/13 at 70-73, 75, 82, 84; RP-11/4/13 at 12-14.

William and Beatrice created an inter-vivos trust and placed all of their separate and community property into the trust. RP-10/24/13 at 26-27, CP 27-82. William and Beatrice were the trustors, the trustees and lifetime beneficiaries of the trust. The trust provided that, on the death of one of the trustors, the assets would be divided into thirds for the benefit of the survivor, the children of William Stangel and the children of Beatrice Stangel. CP 27-82. All of the beneficiaries were children born before the trustors married. The trust was revised several times. CP 27-82. The trust held the title to property located at 6105 North Park Way in Tacoma, Washington, the subject of this suit and appeal. At the time the

second trust amendment was created this property was treated exceptionally as to other trust property. Later, in the third amendment, a life insurance policy was set aside for specific beneficiaries. CP 27-82; Trial Exhibit 3. William Stangel died in November, 2012. RP 10/24/13 at 16. Beatrice Stangel was the sole remaining trustee. From 1999 until the court ordered Elena Stangel to commence mortgage payment in 2013 the trust and trustees made the mortgage payments on the home. RP-10/24/13 at 29-30, 33-34, 36 & 83, CP 100-105.

Commencing with the purchase of the house Elena Stangel understood and expected that the house was hers and to be hers. She cared for the house as a homeowner would do. Her expectations and understanding regarding this are clearly expressed not only by the terms the trust but also by the witnesses. Mark Clearbrook testified regarding his understanding of the home and her care of the home. RP-10/24/13 at 73-74. Robert Hall, Elena's uncle, testified regarding the intent of his brother-in-law and his understanding regarding the home. RP-10/24/13 at 62. Elena Stangel testified regarding her understanding of the purchase and the history of the home. She had been involved in this since the home was purchased with her funds. RP-10/24/13 at 84, 112, 117; RP-11/4/13 at 8. She also testified that she was willing to have the mortgage balance taken from her share of the inheritance. RP-10/24/13 at 89, 106. This

testimony was corroborated by Beatrice Stangel in her testimony. RP-10/24/13 at 90-93, 101, 107-108.

Following the death of William Stangel Trustee Beatrice Stangel Beatrice did not divide the trust assets into thirds as required by the trust. RP-10/24/14 at 37; RP-11/4/13 at 10, 41, 43. CP 27-82. Beatrice Stangel testified that as a trustee she was acting as a fiduciary. RP-10/24/13 at 28. She also testified that the trust has a separate bank account, separate tax identification number and a separate income tax return. RP-10/24/13 at 37. During her testimony Beatrice Stangel stated that either she did not know or could not recall specifics of the home transaction, the subsequent handling of the property and numerous other facts. In her testimony on October 24, 2103, RP-10/24/13, pages 33 through 44, she either did not know or did not recall facts a total of 33 separate times. The testimony of the respondent clearly lays out the facts. Elena was not provided a document that conformed to the trust provisions applicable after the death of William Stangel. RP-10/24/13 at 86. Beatrice initiated an eviction action against her stepdaughter on June 27, 2013. CP 1-8. Commissioner Mark Gelman required Elena to begin making payments on the underlying mortgage as a condition of remaining in the house. CP 108. Respondent did so.

This case was tried to the court on October 24 and November 4,

2013. The court repeatedly expressed its desire to interpret the trust language. The court also stated that it found the language of the trust ambiguous. RP-10/24/13 at 88, 110 and 121. Beatrice Stangel testified that, if the house was sold, the mortgage would be paid and the balance of proceeds would be given to Elena. RP-11/4/13 at 56. The court entered findings of fact and conclusions of law and a judgment. CP 148-154. The judgment allowed respondent to continue to live in the home but also allowed her to refinance the property in her own name in an effort to implement the wishes of the trustors and the intent of the trust donors. CP 148-154. The court awarded approximately \$15,000 to the trustee for payments made by the trust over a three-year period. CP 148-154. On reconsideration, the court entered an order allocating the property's net equity to respondent when she refinanced the property in her own name. CP 173-175.

Elena Stangel promptly commenced the process of seeking a loan to pay off the underlying mortgage and the weatherization loan held by the City of Tacoma and taken out by William and Beatrice Stangel. CP 159-161; 178-181. The loan was available to her and she sought the assistance of the court in obtaining cooperation from Trustee Beatrice Stangel to obtain a payoff figure and sign necessary documents. CP 182-183. Respondent also sought reconsideration of the court's initial order

allocating the net equity to the trust once the refinance was accomplished. CP 157-158, 164-165, 176-177. In granting Respondent the requested relief the court focused on the intent of the trust donors, the language of the trust and the actual performance of the parties throughout the history of this case. CP 173-175, 159-161. Beatrice Stangel appealed this order.

ISSUES PRESENTED

1. Did the trial court properly interpret conflicting trust language to effectuate the intent of the trust donors in light of the performance of the parties over 16 years, the express purposes of the trust and the Trustee's testimony?
 - a. Reviewing all the circumstances of the trust creation, the trust language and the performance of the parties did the trial court properly allow the refinance of the property by the respondent and allocate the net equity to respondent once the refinance had been accomplished?
 - b. Having failed to properly allocate the trust assets into subaccounts as required by the trust, did the trustee come to court with clean hands entitling her to equitable relief?

ANSWERS

1. The trial court properly interpreted conflicting trust language to effectuate the intent of the trust donors in light of the performance of

the parties over 16 years, the express purposes of the Trustees and the Trustee's testimony.

- a. The Court's review of all the circumstances surrounding the trust creation, acquisition of the property, the trust language and the performance of the parties over the course of 16 years supports the court's reasonable exercise of discretion when it allowed the respondent to refinance the property and allocated the net equity to her once the property had been refinanced.
- b. The trustee did not come to court with clean hands entitling her to equitable relief when she had failed to properly allocate trust assets into subaccounts as required by the trust language.

ARGUMENT

1. The trial court properly interpreted conflicting trust language coupled with the performance of the parties to effectuate the intent of the trust donors.

The Court's decision when interpreting the trust is reviewed under the abuse of discretion standard. Absent manifest of abuse of discretion it will not be overturned. Bale v. Allison, 173 Wn. App. 435, 294 P.3d 789 (2013); In re: Estate of Black, 116 Wn. App. 476, 66 P.3d 670 (2003).

Trust provisions are to be construed to conform to the intent of the trustor.

RCW 11.96A.125. The respondent, an equal beneficiary of the residuary trust after the death of Beatrice Stangel, is entitled to the highest duty of care by the trustee acting in her fiduciary capacity. RCW 11.100.045; In re: Estate of Ehlers, 80 Wn. App. 751, 911 P.2d 1017 (1996); Allard v. Pacific Nat'l Bank, 99 Wn. 2d 394, 663 P.2d 104 (1983). Beatrice Stangel agreed that she acted as trustee in the management of this property. RP 10/24/13 at 28.

As originally drafted, the trust document provided that the trust corpus and income could be used for the lifetime benefit of William F. Stangel and Beatrice F. Stangel, the trust grantors and trustees. When William Stangel died in November, 2012, Beatrice Stangel became the sole trustee but she is not the sole beneficiary. On the death of Mr. Stangel the trust provided she was to allocate the trust into three separate trusts. She has never done so. Those provisions are contained at paragraphs 3.6 and 3.7 of the original trust, pages 7-9. CP 27-82.

The trust contemplates an exemption trust, a survivor's trust and a residuary trust. This allocation has never been done and respondent has never been provided any allocation of any of the assets. The trust appears to contemplate distribution of net income to the surviving spouse and from the survivor's exemption trust as necessary for the health, education, support and maintenance in accord with the survivor's customary standard

of living. Paragraph 3.13 includes the beneficiaries in this support provision. Once the surviving spouse dies the residuary trust is divided into equal shares for the benefit of four beneficiaries. CP 27-82. The trustees are granted all powers necessary to effectuate the terms of the trust but the surviving trustee must abide by the terms of the trust with the death of William Stangel, CP 27-82, Par. 6.1. Beneficiaries are precluded from making distributions to themselves and their acting as trustees CP 27-82, Par. 9.1.

After creating the trust the trustees acquired the subject property at 6105 North Park Way, Tacoma, Washington. The trustees amended the trust in 2003 to specifically deal with this property but left other portions of the trust unchanged. The duty to allocate trust property into three different trusts was not deleted or changed. The 2003 amendment provided that Ellen Marie Stangel would receive this property on the death of the surviving trust Settlor. The home was specifically granted to Defendant Ellen Marie Stangel subject to any outstanding liens or encumbrances at the date of distribution CP 27-82. What was not required was that Ellen Marie Stangel pay the existing mortgage before the death of Mr. Stangel. When the 2003 trust amendments were done the existing mortgage was being paid by the trust. On the death of the surviving trust settlor the existing mortgage would be paid from Ellen Stangel's share of

the residuary trust estate. The residuary trust estate will include the residuary trust plus any remaining assets in the exemption and survivor's trust.

The amendment went on to provide that if William Stangel was the first to die then Ellen Stangel:

“[S]hall have the right to remain in the Tacoma, Washington, residence in the same manner and under the same terms that she currently occupies such residence, provided she signs an agreement with the trustee acknowledging that following the death of the surviving Settlor, the balance outstanding of any mortgage or deed of trust lien on the residential property shall be paid from and charged against her share of the residuary trust estate pursuant to paragraph 4.4 below.” 2003 Amendment, CP 27-82, Paragraph 4.3.

This language is at odds with other language in the trust and appears to be inconsistent with the amendment contained in paragraph 4.4.I, at page 4, of the 2003 amendment. Trial Exhibit 2. The court will consider that this trust was drafted by the trustees and not by Ellen Stangel. The amendment to paragraph 4.3 raises several issues of construction. In 2003 the Defendant occupied the property and the trust paid the mortgage, taxes and insurance. The trust provides that she shall remain in the home in the same manner and on the same terms that she currently occupies such residence, not under such terms and conditions as the trustee may unilaterally, arbitrarily and the capriciously impose at some later, undetermined time. It does not tell the court whether the term

“currently” means 2003 or 2012. Furthermore the trust continued to pay mortgage, taxes and insurance from 2003 through August, 2013. The trust does not say that the trustee may change the manner or terms that existed in 2003 nor in any year succeeding 2003. It is unclear whether this property is properly part of the residuary trust, certainly it would not be part of the survivor’s trust or exemption trust because it produces no income for the surviving spouse, Beatrice Stangel. Therefore, putting this asset into the exemption or survivor’s trust would simply be a vindictive act because it produces no benefit to the surviving spouse. As amended the trust does not require that the Defendant immediately begin paying taxes and insurance and says just the opposite, all it requires is that whatever is left over on the mortgage and lien is paid from Elena’s ultimate distribution from the residuary trust. That occurs after the death of Beatrice Stangel. The trust itself is unclear because it does not tell us whether the “terms and conditions” are determined as of the date the trust as amended, 2003, as of the date Mr. Stangel died or as of the date Beatrice Stangel decides to evict her stepdaughter with no regard to the terms of the trust and the allocation of the assets. Defendant requested a copy of the trust inventory and has never been provided it, even though the Defendant is a beneficiary of that trust.

This problem is further compounded by the language of amended

paragraph 4.4.I, page 4, which appears to directly conflict with the language about Defendants ability to stay in the property on the same terms and conditions she previously occupied the property. That this property was to benefit William's daughter is further evidenced by the restraint on alienation. Suppose Ellen decided to move out or the court granted eviction. There still is a restraint on alienation under the trust. Furthermore, plaintiff has shown no basis in Nevada law, the governing law of this trust, which would allow it to evict the tenant without a clear construction of the trust.

This case really belongs under a Trust and Estates Dispute Resolution Act hearing, RCW 11.96A.010. The trust undertook to grant a lien to Tacoma power in 2009 in the amount of \$4,850.44 for certain improvements. At that point the trustees did not require payment of taxes, mortgage or insurance nor do they require payment of the real estate lien.

Both Beatrice and William Stangel continued the payments of the mortgage, taxes and insurance, just as they had in 2003, in all years subsequent and up to August 2013. The trustee is acting unfairly toward one of the beneficiaries and contrary to her own past behavior. The solution here is to require that the Respondent agree, as she does and as the trust provides, that if and when the estate is distributed any remaining mortgage or lien could be paid from the residuary trust estate and deducted

from Defendant's share of such estate. Alternatively, this court should affirm the decision of the trial court so the property can be refinanced. That is the way they have operated for 10 years since the amendment of the trust, those were the current conditions when the trust was amended and those have remained operative conditions since the death of Mr. Stangel.

RCW 11.100.045 provides:

“A fiduciary shall invest and manage the trust solely in the interests of the trust beneficiaries. If a trust has two or more beneficiaries, the fiduciary shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.”

The trustee must also properly earmark the trust property and administer the trust solely in the interest of the trust beneficiaries. This rule and the statute are very strict and are designed to prevent even the appearance of conflict of interest. K. Kunsch, 1 Washington Practice: Methods of Practice Sec. 30.65, at 707 (West Publishing, St. Paul, MN 1977). While the trustee can exercise discretion it must be done in a manner that advances the purposes of the trust. Matter of Polson, 21 Wn. App. 489, 585 P.2d 840 (1978). Washington law also places restrictions on trustees self-dealing. RCW 11.100.090. Specific authority of the trustee to act in a matter disadvantageously to other beneficiaries must be given in the trust document but no such authority exists here. In re:

Vance's Estate, 11 Wn. App. 375, 522 P.2d 1172 (1974). Although this trust is to be construed under Nevada law the court will note that Washington and Nevada have both adopted the Uniform Prudent Investor Act so Washington law provides proper guidance.

CONCLUSION

Given the evidence before the court, the testimony of the trustee and the Respondent, the obvious purposes of the trust and the need to construe the conflicting trust language, this court should deny the appeal and affirm the trial courts' decision.

RESPECTFULLY SUBMITTED this 23rd day of July, 2014.



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Appellant,)
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ELLEN MARIE STANGEL,)
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Respondent.)

DECLARATION OF SERVICE BY
MAIL

KNOW ALL PERSONS BY THESE PRESENTS: That I, Stacey McKee, the undersigned, of Tacoma, in the County of Pierce and State of Washington, have declared and do hereby declare:

That I am not a party to the above-entitled action, am over the age required and competent to be a witness;

That on the 23rd day of July, 2014, I placed in the United States Mail with first class postage prepaid an envelope containing the following documents:

1. Brief of Respondent,
3. This Declaration of Service by Mail

Properly addressed to the following:

Everett Holum
Attorney at Law
820 A Street, Suite 601
Tacoma, Washington 98402

I declare under penalty of perjury under the laws of the State of Washington and of the United States that the foregoing is true and correct.

Signed at Tacoma, Pierce County, Washington this 23rd day of July, 2014.



Stacey McKee

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