

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re BENJAMIN F. HADDAD TRUST.

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CHRISTINE HADDAD LANGLOIS,

Petitioner-Appellee,

v

ESTATE OF KENNETH M. DIAL,

Respondent-Appellant

and

ELLEN F. STRYKER,

Respondent-Appellee.

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UNPUBLISHED

August 13, 2013

No. 302734

Wayne County Probate Court

LC No. 2001-638919-TV

CHRISTINE HADDAD LANGLOIS,

Petitioner-Appellee,

v

ESTATE OF KENNETH M. DIAL,

Respondent-Appellee

and

ELLEN F. STRYKER,

Respondent-Appellant.

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No. 302813

Wayne County Probate Court

LC No. 2001-638919-TV

Before: GLEICHER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

These consolidated appeals concern the marital trust created by the deceased, Dr. Haddad. The trial court held that his widow, respondent Ellen Stryker, and ex-trustee Kenneth Dial were jointly and severally liable to the marital trust for the amount of \$623,214 which it found had been improperly distributed to Stryker. The court additionally imposed a constructive trust against Stryker in the amount of \$528,000. We reverse because the initial distribution to Stryker was not to be considered when determining whether further principal distributions were necessary, and the trustees did not abuse their discretion in making distributions to Stryker.

## I. FACTS AND PROCEDURAL HISTORY

The Benjamin F. Haddad Amended and Restated Revocable Living Trust Agreement (“Trust Agreement”) created both a marital trust and a family trust upon the death of Dr. Haddad. Dr. Haddad died on March 21, 1997, survived by his wife of 19 years, respondent Ellen Stryker,<sup>1</sup> and six grown children from a previous marriage, including the petitioner. The family trust was fully distributed to Dr. Haddad’s six grown children in April 1998 when a total of \$600,000 was equally divided among them.

The marital trust contained over \$2.8M in 1997. Stryker was one trustee, and she asked Kenneth Dial to serve as her co-trustee.<sup>2</sup> Dial had been the Haddads’ accountant since 1981, and was familiar with their income and spending habits. Article 4 paragraph A of the Trust Agreement called for Stryker to receive all net income from the marital trust. In addition, Article 4 continued:

B. Discretionary Distribution of Principal to Spouse. If, in the sole discretion of the Trustee, other than the Settlor’s spouse, the net income from the MARITAL TRUST, together with such income or other receipts known to the Trustee to be available to the Settlor’s spouse from other sources, is determined by the Trustee to be insufficient for the Settlor’s spouse’s reasonable support, maintenance and comfort, or in the event of any emergency . . . then and in such case the Trustee is authorized to pay to or use and expend for the benefit of the Settlor’s spouse so much of the principal of the MARITAL TRUST, even to the exhaustion thereof, as in the sole and uncontrolled discretion of the Trustee may be deemed necessary for such purposes.

C. Distribution to Spouse. In addition to the provisions contained herein, the Trustee shall, as soon as possible after the death of the Settlor, distribute Six Hundred Thousand (\$600,000) Dollars to the Settlor’s spouse, free and clear of the trusts hereof. The Settlor desires, but does not direct, the spouse to gift . . . said amount equally among the Settlor’s children . . .

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<sup>1</sup> Mrs. Stryker was then known as Ellen Haddad, but has since remarried.

<sup>2</sup> The trust agreement actually nominated National Bank of Detroit as the co-trustee, but the bank refused the appointment because the assets in the trust would not be sufficient for an ongoing trust, given Stryker’s stated income needs.

The Trust Agreement also described the breadth of the independent trustee's discretion in Article 8:

B. Trustee Standards and Guidelines. Subject to the foregoing, in the general administration of any trust established herein, the Trustee shall exercise the best judgment and discretion of the Trustee, for what the Trustee believes to be in the best interests of any trust established herein and the beneficiaries thereof.

C. Trustee's Responsibilities to Beneficiary. In any case, where the applicable provisions of the Internal Revenue Code (including any election available to the Trustee) or any power granted under this Trustee Agreement, or any combination thereof, the exercise or nonexercise of which confers a benefit on one beneficiary or a class of beneficiaries and imposes a detriment upon another beneficiary or a class of beneficiaries, the Settlor directs that the Trustee shall not attempt to restore such interests to the position otherwise contemplated by this Trust Agreement through adjustment between income and principal, or otherwise. The trustee shall not be accountable or responsible to any person interested in any trust established herein for the manner in which the Trustee shall exercise any discretionary authority.

Dial made the \$600,000 distribution to Stryker required by Article 4, paragraph C in June of 2008. Stryker paid approximately \$240,000 in taxes on the distribution. Stryker discussed gifting the \$600,000 to the Haddad children in \$6,000 increments over ten years, and actually made such payments in 1998 and 1999, totaling \$72,000. According to Stryker, she ceased making payments at that time because of the economic downturn and the declining value of the remaining assets in the marital trust.

Prior to Dr. Haddad's death, he and Stryker spent nearly \$20,000 per month. After Dr. Haddad's death, Stryker provided Dial with regular reports showing her income and expenses, and Dial testified that these reports were extensive and contained minute detail. Dial testified that he used these reports along with his prior knowledge of the Haddads' finances to determine whether Stryker's requests for principal distributions were justified under the standards of the marital trust. The reports sent by Stryker included information about her outside income. He testified that her income from other sources was insignificant, but she did have income of \$40,000 in 1998.

Dial made total distributions of \$1,482,606.35 in 1998. This amount included the \$600,000 distributed to Stryker as discussed above, and the \$600,000 distributed directly to Dr. Haddad's children from the family trust. This leaves \$282,606.35 in other distributions to Stryker, of which \$68,031.61 was trust income that was required to be distributed. In 1999, Dial distributed \$128,248.26 to Stryker, including \$37,287.57 in trust income. In 2000, Dial distributed \$200,045.51 to Stryker, including about \$11,833.49 in trust income. In 2001, the various trustees distributed \$129,044.00 to Stryker, with no trust income due, presumably, to market conditions. In 2002, the distributions fell to \$105,116.00, again with no trust income. In 2003, distributions further declined to \$67,612.00 with zero income. Finally, in 2004, Stryker received only \$6,710.00 in distributions, as the trust ran out of funds in January. Stryker

continued to submit requests for funds to the trust, and these requests amounted to \$101,000 by the time Berschback resigned as co-trustee in September 2005.

In sum, the marital trust began with about \$2.2 million. \$600,000 was expended in the initial distribution to Stryker, and Stryker received additional distributions from 1998 to early 2004 totaling \$919,382.12, of which \$112,152.67 was trust income and \$807,229.45 was principal. The trust distributed a total of only \$1.5 million, due to expenses and the downturn in the markets.

By 1998, Stryker had remarried and spent \$276,676.94 for improvements to her new home. Dial testified that some of this amount was paid for by invasions of the marital trust principal, but that the Strykers had also independently financed a substantial portion of the improvements with a \$183,000 construction loan. Some funds from the trust were also expended to run two vacation rental properties. Stryker owned a property called Palm Hill with her brother until 2000. Stryker and her new husband then purchased another property called Canoe Trail. Stryker testified that she shared expenses for Canoe Trail with her husband, and that the property paid for itself before the Strykers sold it.

Dial testified that he did not call third party sources to verify the information that Stryker gave him, but that her numbers were consistent, and each expenditure was itemized, and the income numbers she gave him matched the W-2s for herself and her new husband. Dial testified that he did not try to provide Stryker with a specific level of monthly income, but considered each request for funds individually.

Dial resigned as trustee in 2001. Thomas McGann briefly served as Stryker's co-trustee in 2001 before being replaced by Donald Berschback. Berschback determined that it was reasonable to distribute a total of about \$10,000 per month to Stryker. As the trust assets diminished, Berschback also reduced the distributions to Stryker such that the monthly distributions under Berschback averaged \$7,000. There was approximately \$250,000 to \$300,000 left in the marital trust when Berschback became co-trustee, and he distributed substantially all of the trust assets during his tenure, as noted above.

This litigation began when petitioner, one of Dr. Haddad's children by a previous marriage, filed a petition in August 2001. An amended petition filed January 21, 2003 sought an accounting, removal of Stryker and Berschback as trustees, appointment of an independent successor trustee, return of distributions to Stryker, a constructive trust over the initial \$600,000 distribution to Stryker, and petitioner's attorney fees. The petition did not name Dial as an interested party. After two days of testimony in 2004, the trial court held that Stryker promised to gift the initial \$600,000 to Dr. Haddad's children, and that Dial relied on this promise in determining the amount of principal distributions. The court therefore imposed a constructive trust over that distribution.

The court also found that both Dial and Berschback "abandoned" their obligations to investigate Stryker's need for funds and never verified her receipts or other income. The court found no record that the Haddads had owned a vacation property prior to Dr. Haddad's death, and concluded that the distributions for remodeling the Strykers' Connecticut home and for the vacation properties improperly enriched Stryker's personal estate at the expense of the residual

beneficiaries. The court ordered Stryker and Berschback to file accountings in their capacities as trustees, from which it would determine the amount of the surcharge to be levied against them. The court awarded petitioner her attorney's fees.

The court appointed John Chase as independent trustee in April, 2005, but he resigned two years later after petitioner sought to have him removed for failure to recover any assets for the trust. The court then appointed petitioner trustee over Stryker's objections. After additional hearings, the trial court surcharged Dial and Stryker \$623,214 plus interest from the date of the trial court's previous opinion. This amount equals the amounts spent on the Strykers' Connecticut home and the rental properties. The court also granted a judgment lien of \$400,078 on the home in Connecticut.

A further opinion reiterated that the trial court was granting both the surcharge for \$623,214 against Dial and Stryker, jointly and severally, as well as the \$528,000 constructive trust against Stryker. The total amount awarded was therefore \$1,151,214 plus interest.

## II. STANDARD OF REVIEW

We review de novo the proper interpretation of a trust. *In re Reisman Estate*, 266 Mich App 522, 526; 702 NW2d 658 (2005). "In resolving a dispute concerning the meaning of a trust, a court's sole objective is to ascertain and give effect to the intent of the settlor. . . . This intent is gauged from the trust document itself, unless there is ambiguity." *In re Kostin*, 278 Mich App 47, 53; 748 NW2d 583 (2008). We review the trial court's factual findings for clear error. *Id.*

## III. INITIAL \$600,000 DISTRIBUTION

Respondents Stryker and Dial argue that the trial court erred when it held that Dial should have considered the initial \$600,000 distribution to Stryker when deciding whether subsequent principal distributions were warranted under the terms of the trust. Stryker also argues that, because the initial distribution was not to be considered when weighing further distributions, the trial court erred when it held that promissory estoppel required her to gift the full \$600,000 to the Haddad children.

Article 4 of the Trust Agreement states:

B. Discretionary Distribution of Principal to Spouse. If, in the sole discretion of the Trustee, other than the Settlor's spouse, the net income from the MARITAL TRUST, together with such income or other receipts known to the Trustee to be available to the Settlor's spouse from other sources, is determined by the Trustee to be insufficient for the Settlor's spouse's reasonable support, maintenance and comfort, or in the event of any emergency . . . then and in such case the Trustee is authorized to pay to or use and expend for the benefit of the Settlor's spouse so much of the principal of the MARITAL TRUST, even to the exhaustion thereof, as in the sole and uncontrolled discretion of the Trustee may be deemed necessary for such purposes.

C. Distribution to Spouse. In addition to the provisions contained herein, the Trustee shall, as soon as possible after the death of the Settlor, distribute Six

Hundred Thousand (\$600,000) Dollars to the Settlor's spouse, free and clear of the trusts hereof. The Settlor desires, but does not direct, the spouse to gift . . . said amount equally among the Settlor's children . . . .

These paragraphs follow the paragraph that requires all trust income be paid to Stryker. Paragraph B calls for the trustee to consider "such income or other receipts known to the Trustee to be available" to Stryker. Taken in isolation, this language would require the trustee to consider the initial \$600,000 distribution if, as happened, Stryker kept those funds.

However, paragraph B must be read together with paragraph C. *In re Kostin*, 278 Mich App at 53 ("This Court must attempt to construe the instrument so that each word has meaning."). Paragraph C states that it is "in addition to" the provisions calling for other distributions, and states that the \$600,000 is to be distributed "free and clear of the trusts hereof." Both phrases indicate intent by Dr. Haddad to immediately distribute \$600,000 to Stryker upon his death, and that this distribution not be considered when deliberating over future distributions. If the \$600,000 were considered to be income or other receipts under paragraph B, the initial distribution would not be in addition to any principal distributions, nor free and clear of the rest of the trust provisions.

Indeed, petitioner argues that because Stryker kept the initial distribution, she was not entitled to principal distributions—that the initial distribution could be kept in lieu of principal distributions, rather than in addition to principal distributions. Such a reading renders language in paragraph C meaningless. Respondents' proposed reading, on the other hand, preserves meaning in paragraph B. The trustee was still bound to consider all income and receipts other than the initial distribution.

Petitioner does not address the proper interpretation of paragraphs B and C, instead arguing that the court must focus on Dial's thought process in exercising the discretion granted him by the Trust Agreement. However, the Trust Agreement required Dial not to consider the initial distribution, and petitioner agrees that he did not consider it. Therefore, there was no error to be corrected.

Because the trust called for the initial distribution to be independent of any other distributions, Dial could not properly have relied on Stryker's representation that she would gift the money to Dr. Haddad's children—what Stryker chose to do with the money was irrelevant. Without reliance, there could be no promissory estoppel against Stryker, so the trial court erred in imposing a constructive trust against Stryker for the \$528,000 not paid to Dr. Haddad's children. *Hardaway v Wayne Co*, 298 Mich App 282, 290; 827 NW2d 401 (2012). Further, this error impacted the trial court's consideration of the other distributions received by Stryker.

#### IV. PRINCIPAL DISTRIBUTIONS

Respondents also claim that all of the principal distributions made to Stryker were appropriate exercises of Dial's, and later Berschback's, discretion, such that the trial court erred by imposing a surcharge against Dial and Stryker.

Article 4 of the trust agreement provided that principal distributions could be made if, "in the sole discretion of the Trustee," Stryker's income was insufficient "for [Stryker]'s reasonable

support, maintenance and comfort.” The Trust Agreement thus gave Dial, and later Berschback, the sole authority to determine whether principal distributions were necessary for Stryker’s “support, maintenance and comfort.” Article 8 clarified the independent trustee’s broad authority, stating that the trustee “shall not be accountable or responsible to any person interested in any trust established herein for the manner in which the Trustee shall exercise any discretionary authority.” Further, the trustee was to pursue “what the Trustee believes to be in the best interests” of the trust and its beneficiaries—a subjective, rather than objective standard.

The trial court determined that Dial and Berschback abandoned their fiduciary duty by failing to consider Stryker’s specific financial needs, instead attempting to keep her in the standard of living she enjoyed while Dr. Haddad lived. The factual finding that the trustees attempted to keep Stryker in her accustomed standard of living is not clearly erroneous. However, the trial court was incorrect when it made the legal conclusion that this attempt constituted a violation of the trustees’ duties under the terms of the trust.

The trial court held that the standard set forth by the trust required the trustees to investigate Stryker’s specific financial needs for any particular principal distribution. The court repeatedly stated that Dial and Berschback erred by keeping Stryker in the level of comfort she enjoyed during her marriage to Haddad. The court cited the Restatement of Trusts for the proposition that the term “comfort” in the Trust Agreement “does not include enriching the income beneficiary’s personal estate especially at the expense, potentially, of the residuary beneficiaries.” The court therefore found that it was inappropriate for principal distributions to have been granted for the renovation of the Strykers’ home or for their rental properties.

The Trust Agreement in this case allowed principal distributions for Stryker’s “reasonable support, maintenance and comfort.” Our Supreme Court stated over 100 years ago that “the word ‘comfort’ means more than ‘support,’ and includes ‘whatever is requisite to give security from want, and furnish reasonable physical, mental, and spiritual enjoyment.” *Hull v Hull*, 122 Mich 338; 81 NW 89 (1899). The Restatement of Trusts (Third) states that the term “comfort” “adds nothing to the usual meaning of accustomed support for a beneficiary whose lifestyle is already at least reasonably comfortable.” § 50, p 267. This is because, according to the Restatement, the terms maintenance and/or support themselves are generally taken to allow the beneficiary to maintain the standard of living or station in life to which she was accustomed at the time the trust was created. § 50, p 264-265. If the terms maintenance and support themselves generally allow the beneficiary to maintain their prior standard of living, and the term comfort potentially allows for more than support, it is clear that the trial court erred by holding that Stryker was not entitled to maintain her previous standard of living.

Petitioner argues that the insertion of the term “reasonable” means that Stryker was not entitled to maintain her previous lifestyle, but can provide no authority for this argument beyond cases stating that whether something is “reasonable” should be determined by the facts of each case. See, e.g., *Morris v Clawson Tank Co*, 459 Mich 256, 272; 587 NW2d 253 (1998). Such a standard may easily be combined with the idea that Stryker was entitled to maintain her previous standard of living. It simply requires that the trustees consider Stryker’s personal circumstances at the time of the trust’s creation, i.e., the facts of the case, to determine what her accustomed standard of living was.

The trial court noted repeatedly throughout its several opinions that Dial and Berschback allowed Stryker to maintain her accustomed standard of living. However, this is exactly what the Trust Agreement called for them to do, and did not constitute a violation of the terms of the trust, or abandonment of the trustees' duties.

The trial court also stated that it was improper for principal distributions to be used to enhance Stryker's personal estate, citing the Restatement. With regard to "support" and "maintenance," the Restatement concludes that these terms do not support distributions intended to enlarge the beneficiary's personal estate. § 50, p 266. Respondents do not object to this rule, but rather argue that the expenditures did not gratuitously enhance Stryker's estate. Stryker argues that improvements were necessary to bring the Connecticut home up to the standard she had enjoyed in Grosse Pointe with Dr. Haddad. She further argues that the Haddads owned vacation properties prior to Dr. Haddad's death, and therefore such investments were a continuation of her previous standard of living.

The trial court found no evidence that the Haddads actually owned a vacation property. This was clear error, however, because there was testimony that the Haddads owned vacation properties which is supported by Stryker's financial reports. The reports show that expenses for Palm Hill were already ongoing in 1997, when Dr. Haddad died. Petitioner did not dispute the testimony or the financial report, and in fact relied on the report to establish the amounts spent by Stryker on the vacation properties.

The trial court also found improper \$276,676 spent by Stryker in 1998 on renovations for her home in Connecticut with Mr. Stryker. However, this was financed in part by a construction loan of \$183,795. The trial court clearly erred by including the entire amount spent on renovation in the surcharge, despite the undisputed fact that a significant portion of the funds did not come from the marital trust. In addition, the trial court made no factual findings regarding whether any of the renovations were reasonably necessary to maintain the home. While the terms of the trust would likely not permit distributions to, for example, add a wing onto a home, they certainly would permit expenditures for upkeep and repair. The record does not support a conclusion that these expenditures were improper.

In addition, the trial court erred when it refused to consider how much money Stryker should actually have received up to the time of trial. Stryker received \$919,382.12 in distributions from 1998 through early 2004 (excluding the initial \$600,000 distribution). Accepting the trial court's suggestion that \$120,000 per year would have been reasonable, Stryker would have been entitled to receive \$720,000 by the end of 2003. By the time the trial court determined the amount of the surcharge in May of 2010, it had been over six years since Stryker received any funds from the trust. Accepting the trial court's suggestion of \$120,000 per year as reasonable, Stryker would have received approximately \$720,000 from the trust during those six years.

Thus, even if any of the amounts spent on home improvement or vacation rental properties were inappropriately distributed at the time, those funds would long since have been distributed to Stryker. Therefore, there is no need to remand for the trial court to reconsider the expenditures under the correct framework, because Stryker would be entitled to receive any money paid back into the trust.

Though not necessary to our disposition of the case, we also note that the trial court violated Dial's procedural due process rights. The record demonstrates that the trial court allowed petitioner to seek a surcharge against Dial for the first time during a hearing. Dial was never notified prior to that hearing that petitioner intended to assert any claims against him or that he might need to hire independent counsel, conduct discovery, or otherwise prepare a defense. Further, at that hearing the trial court pressed upon Dial the services of an attorney who arrived at the hearing representing the trust—the very entity that stood to receive any surcharge ordered against Dial. Such procedure was highly improper.

#### V. APPOINTMENT OF SUCCESSOR TRUSTEE

Respondents argue that the trial court should not have appointed petitioner as successor trustee with control over principal distributions to Stryker. The parties agree that the court must follow the terms of a trust regarding trustees unless it would frustrate the purposes of the trust or be detrimental to the interests of the beneficiaries. See *In re Jones Estate*, 334 Mich 392, 399; 54 NW2d 697 (1952) (court may not appoint someone not named in will except in case of failure to qualify or other good cause). In this case, the trial court found that two of the three trustees appointed by Stryker failed to properly carry out their fiduciary duties. This finding was incorrect, as described above. However, even if the trial court was correct on this point, petitioner should not have been appointed trustee.

Petitioner is a residual beneficiary of the marital trust, and has a strong incentive to approve only the minimum possible distributions to Stryker. Appointing a trustee with this type of conflict of interest is inappropriate. See, *Carpenter v Wood*, 131 Mich 314; 91 NW 162 (1902); *In re Humphrey Estate*, 141 Mich App 412, 426; 367 NW2d 873 (1985). Petitioner's argument that Stryker is also a trustee is unavailing because Stryker does not have the power under the Trust Agreement to make principal distributions to herself.

We therefore reverse the order appointing petitioner as a trustee.

#### VI. ATTORNEY FEES

Respondents next argue that the trial court erred by awarding petitioner her attorney fees. Under the American rule, each party generally pays its own attorney's fees. *In re Temple Marital Trust*, 278 Mich App 122, 139; 748 NW2d 265 (2008). There is an exception to the American rule for attorney's fees if litigation is "beneficial to the estate [or trust] as a whole rather than to an individual or group of individuals interested therein." *Id.* Because we hold that the trial court erred in ordering any money be paid back into the trust, this litigation did not benefit the trust as a whole. Therefore, petitioner is not entitled to have her attorney fees paid.

Respondent Dial also argues that he, on the other hand, is entitled to have the trust pay for the costs of defending his actions as trustee, because he did not breach his fiduciary duty to the trust. See *Temple*, 278 Mich App at 136. We agree, though as the trust's assets have been exhausted the point may be moot.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher  
/s/ Jane M. Beckering  
/s/ Douglas B. Shapiro