

SUPREME COURT OF NORTH CAROLINA

In re Estate of Cathleen Bass Skinner

804 S.E.2d 449 (N.C. 2017) · No. No. 277A16 · Decided September 29, 2017

SUMMARY

The North Carolina Supreme Court reviewed the removal of Mark Skinner as guardian of the estate and trustee of a special needs trust. The Court addressed the appropriate standard of appellate review and concluded that the Court of Appeals erred by reversing the removal order. The case involved alleged self-dealing, misuse of trust assets, and breach of fiduciary duties.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Ervin, Justice
JURISDICTION	North Carolina
DECIDED	September 29, 2017
DOCKET	No. 277A16
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal as of right to the Supreme Court of North Carolina under N.C.G.S. § 7A-30(2) from a divided Court of Appeals decision reversing a Superior Court order that affirmed an assistant clerk's removal of Mark Skinner as trustee of a special needs trust and guardian of the estate.
STANDARD OF REVIEW	The superior court reviews an assistant clerk's guardianship or trustee-removal decision on the record and is confined to correcting errors of law. Findings of fact supported by competent evidence are conclusive; legal conclusions are reviewed de novo. The discretionary decision to remove a guardian or trustee is reviewed for abuse of discretion, meaning action manifestly unsupported by reason or so arbitrary that it could not have resulted from a reasoned decision. A misapprehension of law may constitute an abuse of discretion.
PRECEDENTIAL VALUE	Published North Carolina Supreme Court opinion; precedential.
PARTIES	Douglass Bass, Nancy Bass Clark v. Mark L. Skinner, Jr.

TOPICS

trustee duties

guardianship procedure

trust administration

guardianships

standard of review

PRACTICE AREAS

Probate

Trusts and estates

Guardianships

Appellate procedure

QUESTIONS PRESENTED

1. What standard governs appellate review of an assistant clerk's order removing a guardian of an estate and trustee for breach of fiduciary duty?
2. Whether the assistant clerk's findings of fact and conclusions of law supported removal of Skinner as guardian and trustee.
3. Whether a guardian or trustee may be removed for breaching fiduciary duties and mismanaging assets even if the conduct does not violate a specific provision of the written trust instrument.

HOLDINGS

1. Review of an assistant clerk's removal order is limited to errors of law and abuse of discretion. Findings supported by competent evidence are binding, legal conclusions are reviewed de novo, and the discretionary removal decision will be disturbed only when manifestly unsupported by reason or so arbitrary that it could not have resulted from a reasoned decision.
2. The assistant clerk's unchallenged findings supported removal because Skinner wasted and mismanaged the ward's assets, converted trust assets to his own use, violated fiduciary duties, and committed a serious breach of trust. The removal decision was not an abuse of discretion.
3. A guardian or trustee may be removed for breaching fiduciary duties even when the conduct is not shown to violate a specific provision of the written trust instrument. Compliance with the trust's express terms does not insulate a fiduciary from removal for waste, mismanagement, self-dealing, or other conduct contrary to the beneficiary's interests.

KEY QUOTATIONS

"In each instance, the clerk is authorized, but not required, to remove a trustee or guardian in the event that the clerk determines that statutory grounds for removal exist." (804 S.E.2d at 459)

"Thus, the fact that Mr. Skinner's conduct may have been consistent with the terms of the Special Needs Trust did not insulate him from removal." (804 S.E.2d at 460)

"In view of the fact that the Assistant Clerk's findings of fact demonstrate that Mr. Skinner expended over ninety percent of the monies committed to his custody for Ms. Skinner's use and care within a short time after receiving them in ways that either directly or indirectly benefitted himself while leaving insufficient monies in the Trust to either preserve the assets into which he had invested the bulk of the Trust's funds or to take care of Ms. Skinner's long term needs, we cannot say that the Assistant Clerk erred in determining that Mr. Skinner exceeded the scope of the discretion that was admittedly available to him." (804 S.E.2d at 460-61)

FACTUAL BACKGROUND

Cathleen Bass Skinner was adjudicated incompetent and later inherited approximately \$200,000 to \$250,000 from her mother. Her husband, Mark Skinner, was appointed guardian of her estate and trustee of a special needs trust established to receive the inheritance. Within less than two months after \$170,086.67 was deposited into the trust, only \$10,313.66 remained; Skinner had used trust funds for personal attorney-fee reimbursements, a house, furniture, appliances, and prepaid burial insurance, from which he received personal or household benefits. The assistant clerk found that these expenditures constituted self-dealing, waste, mismanagement, conversion, and breaches of fiduciary duty, and removed Skinner from both positions.

PROCEDURAL HISTORY

The assistant clerk removed Skinner as trustee and guardian of the estate after finding that he had engaged in self-dealing, wasted and mismanaged trust assets, converted trust assets to his own use, and breached his fiduciary duties. The Wake County Superior Court affirmed. The Court of Appeals reversed, concluding that the assistant clerk had misapplied the law and the applicable standard of review. Bass and Clark appealed to the Supreme Court based on the dissent in the Court of Appeals, and the Supreme Court reversed the Court of Appeals and affirmed the assistant clerk's removal order.

DISPOSITION

reversed

CASES CITED

- Cartin v. Harrison, 151 N.C. App. 697, 567 S.E.2d 174 (2002)
- Sessler v. Marsh, 144 N.C. App. 623, 551 S.E.2d 160 (2001)
- In re D.H., 177 N.C. App. 700, 629 S.E.2d 920 (2006)
- In re Estate of Newton, 173 N.C. App. 530, 619 S.E.2d 571 (2005)
- In re A.F., 231 N.C. App. 348, 752 S.E.2d 245 (2013)
- Koon v. United States, 518 U.S. 81, 116 S. Ct. 2035, 135 L. Ed. 2d 392 (1996)
- State v. T.D.R., 347 N.C. 489, 495 S.E.2d 700 (1997)
- Everett v. Pitt County Board of Education, 678 F.3d 281 (4th Cir. 2012)
- A Helping Hand LLC v. Baltimore County, 515 F.3d 356 (4th Cir. 2008), rev'd per curiam, 355 F. App'x 773 (4th Cir. 2009)
- In re Simmons, 266 N.C. 702, 147 S.E.2d 231 (1966)
- Bailey v. State, 348 N.C. 130, 500 S.E.2d 54 (1998)
- In re Berman, 245 N.C. 612, 97 S.E.2d 232 (1957)
- Penland v. Bird Coal Co., 246 N.C. 26, 97 S.E.2d 432 (1957)
- Hanford v. McSwain, 230 N.C. 229, 53 S.E.2d 84 (1949)
- In re Greene, 328 N.C. 639, 403 S.E.2d 257 (1991)
- In re Foreclosure of Bass, 366 N.C. 464, 738 S.E.2d 173 (2013)
- In re LaFayette Bank & Trust, 198 N.C. 783, 153 S.E. 452 (1930)

- White v. White, 312 N.C. 770, 324 S.E.2d 829 (1985)
- Clark v. Clark, 301 N.C. 123, 271 S.E.2d 58 (1980)
- Lichtenfels v. North Carolina National Bank, 268 N.C. 467, 151 S.E.2d 78 (1966)
- Carter v. Young, 193 N.C. 678, 137 S.E. 875 (1927)
- Kuykendall v. Proctor, 270 N.C. 510, 155 S.E.2d 293 (1967)
- State ex rel. Roebuck v. National Surety Co., 200 N.C. 196, 156 S.E. 531 (1931)
- Wachovia Bank & Trust Co. v. Johnston, 269 N.C. 701, 153 S.E.2d 449 (1967)
- Meinhard v. Salmon, Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928)

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