DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Daniel G. Siegel, Simon B. Siegel, Beverly Siegel, Randy T. Siegel and Nancy S. Nasto v. JP Morgan Chase Bank, Judith S. Novak, and J.P. Morgan Trust Company, N.A.

Siegel v. JP Morgan Chase Bank, 71 So. 3d 935 (Fla. Dist. Ct. App. 2011) · No. 4D09-699

SUMMARY

The Florida District Court of Appeal held that remainder beneficiaries of a revocable trust have standing after the settlor's death to challenge pre-death trust distributions that were not authorized by the trust's terms, and that the question of whether expenditures were proper is a substantive breach-of-fiduciary-duty issue, not a preliminary standing question. The court further ruled that the trustee lacked authority to make gifts from trust principal because the trust only permitted invasion for the settlor's support and welfare, and that the attorney-in-fact's power to gift did not override the trust's prohibition on partial revocations or withdrawals of principal by the attorney-in-fact. The case was remanded for an evidentiary hearing on the beneficiaries' claims for breach of fiduciary duty against the trustee and the attorney-in-fact.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner; Polen; Levine
JURISDICTION	Florida
DOCKET	4D09-699
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final judgment determining that the beneficiaries of a trust did not have standing to challenge certain pre-death distributions and expenditures from the trust by the trustee and the settlor/decedent's attorney-in-fact, because the expenditures and distributions were within the discretion allowed to the trustee under the terms of the trust.
STANDARD OF REVIEW	De novo review of questions of law, including interpretation of trust instruments and power of attorney.
PRECEDENTIAL VALUE	Published
PARTIES	Daniel G. Siegel, Simon B. Siegel, Beverly Siegel, Randy T. Siegel, Nancy S. Nasto v. JP Morgan Chase Bank, Judith S. Novak, J.P.

Morgan Trust Company, N.A.

TOPICS

trusts · probate · civil procedure · appellate procedure · evidence

PRACTICE AREAS

Trusts and Estates · Fiduciary Duty · Appellate Procedure · Standing

QUESTIONS PRESENTED

1. Whether the trial court erred in treating the question of whether trust distributions were authorized as a preliminary standing issue rather than the merits of the breach of fiduciary duty claim.
2. Whether the trust instrument authorized the trustee to make gifts from trust principal.
3. Whether the attorney-in-fact's gifts and withdrawals of principal were within her authority under the power of attorney and trust.
4. Whether the trial court could determine the propriety of specific expenditures without an evidentiary hearing.

HOLDINGS

1. Under New York law, after the death of the settlor, the beneficiaries of a revocable trust have standing to challenge pre-death withdrawals that are outside the purposes authorized by the trust and not approved by the settlor. The question of whether the withdrawals were authorized is not a preliminary standing question but the substance of the breach of fiduciary duty claim.
2. The trust agreement gave the trustee no power to make gifts; it only allowed invasion of principal for the settlor's support, maintenance, health, comfort, or general welfare. Gifts to others do not constitute payments for the comfort or general welfare of the settlor.
3. The power of attorney limited gifts to those consistent with the settlor's pattern of giving or estate plan, and it prohibited the attorney-in-fact from revoking or withdrawing principal from the trust. Withdrawals of principal that amount to partial revocations are beyond the attorney-in-fact's authority. Whether specific gifts were proper requires factual development.
4. Even where the trustee has sole discretion, a court may review for abuse of discretion or bad faith. The trial court must hold an evidentiary hearing to determine whether the expenditures were authorized and in the settlor's best interest.

KEY QUOTATIONS

> *"Under New York law, after the death of the settlor, the beneficiaries of a revocable trust have standing to challenge pre-death withdrawals from the trust which are outside of the purposes authorized by the trust and which were not approved or ratified by the settlor personally or through a method contemplated through the trust instrument."* (938)

> *“Without this remedy, wrongdoing concealed from a settlor during her lifetime would be rewarded.”* (938)

> *“The issue of whether the withdrawals and expenses were appropriate and authorized was not a preliminary standing question but the entire substance of the proceeding, i.e., whether the trustee and attorney-in-fact breached their fiduciary duties.”* (940)

> *“We can find no legal support which holds that gifts to others can constitute payments for the 'comfort or general welfare' of the beneficiary of a trust.”* (941)

> *“Her 'best interest' must be judged within the framework of the status bestowed upon her by the settlor, the status of a life beneficiary, not of a recipient of the entire trust res.”* (942)

> *“The power of attorney specifically prohibited the attorney-in-fact from exercising the power Mrs. Rautbord reserved to herself to revoke the trust.”* (941)

FACTUAL BACKGROUND

Dorothy H. Rautbord established a revocable trust for her benefit during life, with remainder to her children. She appointed JP Morgan Chase Bank as trustee and gave her daughter Judith Novak a durable power of attorney that allowed gifts but prohibited revoking or amending the trust. During Rautbord's lifetime, Novak made large withdrawals from the trust by signing partial revocation letters, which the trustee approved. The trust also made numerous gifts and expenditures for Rautbord's welfare. After Rautbord's death in 2002, the trustee sought a judicial accounting and discharge. The remainder beneficiaries (the Siegel family) objected, alleging that many pre-death distributions were not for Rautbord's benefit and breached fiduciary duties.

PROCEDURAL HISTORY

This is the second appeal. In Siegel I (Siegel v. Novak, 920 So. 2d 89 (Fla. 4th DCA 2006)), the court held that the beneficiaries had standing to challenge pre-death withdrawals. On remand, the trial court conducted a preliminary hearing and ruled that the challenged distributions were authorized by the trust and power of attorney, thus the beneficiaries lacked standing. The beneficiaries appeal that order.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remanded for an evidentiary hearing on all challenged distributions, including whether the trustee and attorney-in-fact breached their fiduciary duties. The beneficiaries must have the opportunity to present evidence, and the appellees may present affirmative defenses. The cross-appeal is dismissed as untimely.

CASES CITED

- Siegel v. Novak, 920 So. 2d 89 (Fla. 4th DCA 2006)
- Estate of Morse, 177 Misc. 2d 43, 676 N.Y.S.2d 407 (N.Y. Sur. 1998)
- Matter of Davis, 182 N.Y. 468, 75 N.E. 530 (1905)

- Matter of Silverman, 91 Misc. 2d 125, 397 N.Y.S.2d 319 (Sur. Ct. 1977)
- Gitelson v. Du Pont, 17 N.Y.2d 46, 268 N.Y.S.2d 11, 215 N.E.2d 336 (1966)
- Davis v. Rex, 876 So. 2d 609 (Fla. 4th DCA 2004)
- Kemp v. Paterson, 4 A.D.2d 153, 163 N.Y.S.2d 245 (1957)
- In re Shapley's Deed of Trust, 353 Pa. 499, 46 A.2d 227 (1946)
- In re Mueller, 19 Misc. 3d 536, 853 N.Y.S.2d 245 (N.Y. Sur. 2008)
- Matter of Ferrara, 7 N.Y.3d 244, 819 N.Y.S.2d 215, 852 N.E.2d 138 (2006)
- Mantella v. Mantella, 268 A.D.2d 852 (3d Dept. 2000)
- Semmler v. Naples, 166 A.D.2d 751 (3d Dept. 1990)
- In re Estate of Schriver, 441 So. 2d 1105 (Fla. 5th DCA 1983)
- Matter of Chase Manhattan Bank, 6 N.Y.3d 456, 813 N.Y.S.2d 361, 846 N.E.2d 806 (2006)
- In re Lyons' Estate, 13 Misc. 2d 287, 176 N.Y.S.2d 769 (N.Y. Sur. 1958)
- In re Goodman, 7 Misc. 3d 893, 790 N.Y.S.2d 837 (N.Y. Sur. 2005)
- In re Estate of Wallens, 9 N.Y.3d 117, 847 N.Y.S.2d 156, 877 N.E.2d 960 (2007)
- Pearson v. Cobb, 701 So. 2d 649 (Fla. 5th DCA 1997)