## SUPREME COURT OF GEORGIA

# Ludwig v. Ludwig

281 Ga. 724 (Ga. 2007) · Decided March 19, 2007

### SUMMARY

The Georgia Supreme Court affirmed summary judgment for the trustees of the 1981 Irrevocable Inter Vivos Trust of Ida Thomas Ludwig. The court held that several beneficiary claims were barred by applicable statutes of limitation and that the trustees had not abused their discretion in denying requested distributions. The court also rejected claims concerning trust mismanagement, fiduciary breaches, and disclosure of financial information because the appellants failed to establish unreasonable conduct or damages.

### CASE DETAILS

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| COURT | Supreme Court of Georgia |
| WRITING FOR THE COURT | Hunstein, Presiding Justice; All the Justices |
| JURISDICTION | Georgia |
| DECIDED | March 19, 2007 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Appeal from an order granting the trustees' motion for summary judgment and denying the beneficiaries' cross-motion for summary judgment in claims involving trust administration and alleged breaches of fiduciary duty. |
| STANDARD OF REVIEW | De novo review of the grant or denial of summary judgment; summary judgment was proper where the record showed no genuine issue of material fact and the trustees were entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE | Published Georgia Supreme Court decision; binding precedent in Georgia. |
| PARTIES | Daniel Ludwig, Unnamed co-appellant v. Current trustees of the 1981 Irrevocable Inter Vivos Trust of Ida Thomas Ludwig |

### TOPICS

trusts · trustee duties · breach of trust · statute of limitations · summary judgment

## PRACTICE AREAS

Trusts and estates | Fiduciary litigation | Civil procedure

## QUESTIONS PRESENTED

1. Whether the appellants' trust claims were barred by the limitation periods in OCGA § 53-12-198(a) and (d).
2. Whether the trustees abused their discretion by declining to make the distributions demanded by the appellants.
3. Whether the trustees breached their duties by mismanaging trust assets, including retaining certain stock and other assets.
4. Whether disclosure of appellants' financial information and expenditures on non-trust property supported fiduciary-duty claims absent proof of resulting damages.
5. Whether the trial court properly granted summary judgment to the trustees and denied appellants' cross-motion.

## HOLDINGS

1. Claims arising before July 1, 1991, were barred by OCGA § 53-12-198(d), and claims arising before June 21, 1998, were barred by the six-year limitation period in OCGA § 53-12-198(a), absent evidence supporting tolling.
2. A beneficiary of a discretionary trust must show that the trustees' exercise of discretion was infected by fraud, bad faith, misconduct, arbitrariness, abuse of authority, perversion of the trust, oppression, or want of ordinary skill or judgment; appellants failed to make that showing.
3. Appellants failed to establish a fact issue that the trustees breached their duty to act prudently in managing or retaining trust assets.
4. Alleged breaches of fiduciary or administrative duties do not support recovery without proof of damage proximately caused by the breach.

## KEY QUOTATIONS

> *"'infected with fraud or bad faith, misbehavior, or misconduct, arbitrariness, abuse of authority or perversion of the trust, oppression of the beneficiary, or want of ordinary skill or judgment.'"* (281 Ga. at 725-26)

## FACTUAL BACKGROUND

Ida Thomas Ludwig created an irrevocable inter vivos trust for the benefit of her three sons, their spouses, and their children. The trust gave the trustees discretion to distribute income or principal for beneficiaries' support, maintenance, education, and medical needs. The appellants claimed that the trustees abused that discretion by refusing larger distributions, mismanaged trust assets, disclosed personal financial information, and improperly used trust assets for non-trust property. The record showed that the trustees obtained professional advice, retained certain assets under express trust authority and for tax reasons, and that appellants failed to prove damages from the alleged administrative breaches.

## PROCEDURAL HISTORY

Appellants, two grandchildren and beneficiaries of the trust, filed suit on June 21, 2004, against the current trustees. On cross-motions for summary judgment, the trial court ruled for the trustees. The Supreme Court of Georgia affirmed, holding that the time-barred claims were barred by OCGA § 53-12-198, that the trustees' discretionary decisions were not shown to constitute an abuse of discretion, and that the remaining alleged breaches caused no damages.

## DISPOSITION

affirmed

## CASES CITED

- Swanson v. Swanson, 269 Ga. 674 (1) (501 S.E.2d 491) (1998)
- Cates v. Cates, 217 Ga. 626, 632 (124 S.E.2d 375) (1962)
- C & S Nat. Bank v. Haskins, 254 Ga. 131 (I) (1) (327 S.E.2d 192) (1985)
- SunTrust Bank v. Merritt, 272 Ga. App. 485 (2) (612 S.E.2d 818) (2005)
- Turner v. Trust Co. of Ga., 214 Ga. 339, 346 (105 S.E.2d 22) (1958)

## OPINION

Ludwig v. Ludwig

281 Ga. 724

HUNSTEIN, J.

HUNSTEIN, Presiding Justice. On cross motions for summary judgment, the trial court ruled in favor of appellees, the current trustees of the 1981 Irrevocable Inter Vivos Trust of Ida Thomas Ludwig, against claims brought by appellants, two children of one of the trustees by his ex-wife. Finding no error in the trial court’s rulings, we affirm. *725Ida Thomas Ludwig established the trust for the benefit of her three sons, their spouses and children. The sons were named trustees and the trust was primarily managed by one son until his death in 1997. Appellees, the current trustees, are the grantor’s two surviving sons and her deceased son’s widow.

1. Appellants filed suit on June 21, 2004. Pursuant to OCGA § 53-12-198 (d), their claims relatingto events pre-dating July 1,1991 are barred because they were not brought before July 2, 1997.1 Their claims arising before June 21,1998 are barred because they were not brought within six years of the filing of their complaint. Id. at (a).2 The record contains no evidentiary basis for tolling the statute of limitation. Thus, the trial court did not err by granting summary judgment to appellees as to appellants’ claims barred by OCGA § 53-12-198 (a) and (d). See generally Swanson v. Swanson, 269 Ga. 674 (1) (501 SE2d 491) (1998).

2. The trust language in issue provides that the trustees “shall from time to time, or at any time, pay out of the net income or principal... amounts, whether equal or unequal... as may be needed for the support, maintenance, education and medical needs, consistent with a high standard of living,

of the [beneficiaries]Appellants concede that the language is discretionary but contend appellees have abused their discretion by failing to consider the needs of the beneficiaries, specifically, appellants' need for money in response to debts they have accumulated. The evidence establishes that one appellant, an attorney, has received more sums from the trust than the remaining eight grandchildren; the other appellant, a member of the United States armed forces, has received more sums than two other grandchildren.

Contrary to appellants' argument, our careful review of the record does not reflect that appellees have failed to exercise their discretion when considering the needs of appellants, as beneficiaries of the trust. Rather, the record shows that appellees have simply determined that appellants are not in the sort of "need" that would warrant the disbursement of trust funds in the amounts appellants have demanded. Appellants have failed to demonstrate any question of fact that appellees' exercise of discretion in this regard was *726" 'infected with fraud or bad faith, misbehavior, or misconduct, arbitrariness, abuse of authority or perversion of the trust, oppression of the beneficiary, or want of ordinary skill or judgment.' [Cit.]" Cates v. Cates, 217 Ga. 626, 632 (124 SE2d 375) (1962).

3. Appellants also assert that appellees have mismanaged the trust. Regarding the matters appellants raise that are not time barred, see Division 1, supra, the record establishes that appellees have received professional advice regarding the trust's assets; that the trust expressly provides for the retention of assets contributed by the trust's grantor "without regard to principles of diversification" and that appellees retained certain assets for tax reasons appellants have failed to show were unreasonable; and that appellants adduced no evidence to support appellant Daniel Ludwig's opinion that appellees' retention of certain stock violated their duty under OCGA § 53-12-287 (b) to act in a prudent manner. See C & S Nat. Bank v. Haskins, 254 Ga. 131 (I) (1) (327 SE2d 192) (1985).

4. We find no merit in appellants' remaining arguments. Given the trust provision authorizing appellees to seek professional assistance,3 appellants have failed to support their claim that appellees breached their fiduciary duty by revealing appellants' personal financial information to third persons. While the record reflects that appellees have not perfectly performed all of their administrative obligations under the trust and that they improperly expended trust assets on non-trust property owned by the grantor, the record uncontrovertedly establishes that appellants were not damaged thereby. See generally SunTrust Bank v. Merritt, 272 Ga. App. 485 (2) (612 SE2d 818) (2005) (claim for breach of fiduciary duty requires proof of damage proximately caused by breach).

Accordingly, because appellants failed to show that appellees, as trustees of a discretionary trust, failed to act bona fide in the reasonable exercise of their discretion, see generally Turner v. Trust Co. of Ga., 214 Ga. 339, 346 (105 SE2d 22) (1958), the trial court did not err by granting appellees' motion for summary judgment and denying appellants' cross motion. Judgment affirmed. All the Justices concur. *727Decided March 19, 2007. Daniel D. Ludwig, for appellants.

Albert L. Norton, Jr., for appellees. OCGA § 53-12-198 (d) bars claim that accrued prior to July 1,1991 “unless a proceeding to assert the claim is commenced either prior to the date the claim would have been barred had this Code section not been enacted or within six years from July 1,1991, whichever is sooner.” OCGA § 53-12-198 (a) bars a beneficiary’s claim that is not commenced within six years after the beneficiary’s receipt of a written report that adequately disclosed the existence of a claim or within six years after the beneficiary discovered or should have discovered the subject of the claim. The trust provides that the trustees “may employ agents, custodians, attorneys, accountants, and other experts and pay them reasonable compensation from trust funds for their services.”