

SUPREME COURT OF NEW HAMPSHIRE

David A. Hodges, Jr. & a. v. Alan Johnson & a.

177 A.3d 86 (N.H. 2017) · No. 2016-0130 · Decided December 12, 2017

SUMMARY

The Supreme Court of New Hampshire affirmed the probate court’s order voiding decantings from two irrevocable trusts and removing two co-trustees. The court addressed the trustees’ duties under the New Hampshire Uniform Trust Code, including the duty of impartiality and the limits on discretionary decanting authority. The decantings were held void because the trustees failed to give due regard to the beneficiaries’ respective interests.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Lynn, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	December 12, 2017
DOCKET	2016-0130
DISPOSITION	affirmed
PROCEDURAL POSTURE	Trust beneficiaries appealed a probate-division order following a bench trial that declared three decantings from two irrevocable trusts void ab initio and removed two cotrustees.
STANDARD OF REVIEW	Probate-division factual findings are final unless plainly erroneous; the decree will not be disturbed unless unsupported by the evidence or plainly erroneous as a matter of law. Statutory interpretation is reviewed de novo. Trustee-discretion and trustee-removal decisions are reviewed for abuse or unsustainable exercise of discretion.
PRECEDENTIAL VALUE	Published, precedential New Hampshire Supreme Court opinion
PARTIES	Alan Johnson, Joseph McDonald, William Saturley v. David A. Hodges, Jr., Barry R. Sanborn, Patricia Sanborn Hodges

TOPICS

- trust administration
- trustee duties
- beneficiary litigation
- breach of trust
- statutory interpretation

PRACTICE AREAS

trusts and estates

trust administration

probate

QUESTIONS PRESENTED

1. Whether the trustees' decantings violated the statutory duty of impartiality by eliminating the plaintiffs' nonvested future beneficial interests without treating the beneficiaries equitably in light of the purposes and terms of the trusts.
2. Whether the probate division properly declared the decantings void ab initio.
3. Whether the probate division properly removed Johnson and Saturley as cotrustees for a serious breach of trust and because removal best served the beneficiaries' interests.

HOLDINGS

1. A trustee's authority to make unequal distributions under RSA 564-B:8-814(c) and to decant under RSA 564-B:4-418 does not necessarily violate the statutory duty of impartiality. The trustee violates that duty when the trustee fails to treat beneficiaries equitably in light of the purposes and terms of the trust.
2. The defendants violated the statutory duty of impartiality because they failed to give any consideration to the plaintiffs' future beneficial interests when eliminating those interests through decanting; the decantings were therefore properly declared void ab initio.
3. The probate division sustainably exercised its discretion in removing Johnson and Saturley as cotrustees because their violation of the duty of impartiality could constitute a serious breach of trust and removal served the beneficiaries' interests; bad faith, dishonesty, self-interest, or asset mismanagement were not required.

KEY QUOTATIONS

"Thus, a trustee, who makes unequal distributions among beneficiaries and/or eliminates a beneficiary's non-vested interest in an irrevocable trust through decanting, violates the statutory duty of impartiality only when the trustee fails to treat the beneficiaries "equitably in light of the purposes and terms of the trust." (95-96)

"The statutory duty of impartiality is owed to all beneficiaries, regardless of whether their interests are present or future, vested or contingent." (97)

"The defendants further argue that removal of Johnson and Saturley was not warranted absent a finding that they acted in bad faith, dishonestly, or out of self-interest or that they mismanaged trust assets. However, such findings are not required." (99)

FACTUAL BACKGROUND

David A. Hodges, Sr. created two irrevocable trusts in 2004, holding primarily nonvoting stock in Hodges Development Company, to obtain tax benefits and facilitate continuation of the family business while providing for his children and stepchildren. Johnson and Saturley served as cotrustees, and McDonald later became the decanting trustee. Through decantings in 2010, 2012, and 2013, the trustees eliminated the future beneficial interests of Barry Sanborn, Patricia Sanborn Hodges, David A. Hodges, Jr., and ultimately Joanne Hodges. The

probate court found that the trustees failed to consider the plaintiffs' beneficial interests, including whether alternatives to complete elimination should be used.

PROCEDURAL HISTORY

The plaintiffs petitioned the 7th Circuit Court-Dover Probate Division to invalidate the 2010, 2012, and 2013 decantings and remove Johnson and Saturley as trustees. After a three-day bench trial, the probate division granted relief, finding that the trustees failed to consider the plaintiffs' beneficial interests and that removal served the beneficiaries' interests. The defendants appealed, and the New Hampshire Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Wentworth v. Waldron, 86 N.H. 559, 562, 172 A. 247 (1934)
- In the Matter of Munson & Beal, 169 N.H. 274, 282, 146 A.3d 153 (2016)
- In re Estate of Couture, 166 N.H. 101, 105, 89 A.3d 541 (2014)
- DeLucca v. DeLucca, 152 N.H. 100, 103, 871 A.2d 72 (2005)
- In the Matter of Ball & Ball, 168 N.H. 133, 137, 123 A.3d 719 (2015)
- In re Pack Monadnock, 147 N.H. 419, 423, 790 A.2d 786 (2002)
- Shelton v. Tamposi, 164 N.H. 490, 495, 499-500, 505, 62 A.3d 741 (2013)
- In re Estate of Donovan, 162 N.H. 1, 6, 20 A.3d 989 (2011)
- Bartlett v. Dumaine, 128 N.H. 497, 504-05, 523 A.2d 1 (1986)
- Merrow v. Merrow, 105 N.H. 103, 106, 193 A.2d 19 (1963)
- Devine v. Cote, 109 N.H. 235, 237, 248 A.2d 77 (1968)
- In re Guardianship of E.L., 154 N.H. 292, 296, 911 A.2d 35 (2006)
- State v. Lambert, 147 N.H. 295, 296, 787 A.2d 175 (2001)
- Kilnwood on Kanasatka Condo. Unit Assoc. v. Smith, 163 N.H. 751, 753, 48 A.3d 840 (2012)