

SUPREME COURT OF NEBRASKA

In re Maint. Fund Trust of Sunset Mem. Park Chapel

302 Neb. 954 (2019) · No. S-18-517 · Decided April 19, 2019

SUMMARY

The Nebraska Supreme Court held that the Sunset Memorial Park Cemetery Association had standing to participate in proceedings concerning a perpetual-care mausoleum trust. The court further held that the trustee could not resign without identifying or providing for a successor trustee, and therefore reversed the trustee's discharge and related fee award while affirming the denial of attorney fees and remanding for further proceedings.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 19, 2019
DOCKET	S-18-517
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The trustee petitioned the Scotts Bluff County Court for permission to resign, payment of trustee and litigation expenses, and termination of a perpetual-care mausoleum trust. The county court found the Cemetery Association lacked standing, accepted the trustee's resignation, authorized payment of fees and expenses from the trust, and denied attorney-fee requests. The Cemetery Association and Hughbanks appealed, and the trustee cross-appealed.
STANDARD OF REVIEW	Standing and jurisdictional questions are reviewed as questions of law independently of the trial court. Trust administration matters are reviewed for error appearing on the record absent an equity question; equity questions are reviewed de novo on the record. Removal or discharge of a trustee is an equity question reviewed de novo on the record.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential

PARTIES

Sunset Memorial Park Cemetery Association, Inc., Myrtle Hughbanks
v. Bank of the West, formerly known as The Guardian State Bank and
Trust Co., Trustee

TOPICS

trust administration

trustee duties

trusts

standing

appellate procedure

PRACTICE AREAS

trusts and estates

trust administration

appellate procedure

QUESTIONS PRESENTED

1. Whether the Cemetery Association had standing to object to the trustee's petition and participate in the trust proceedings.
2. Whether the trustee could resign and be discharged without identifying or securing a successor trustee or otherwise providing for future management of the perpetual-care trust.
3. Whether the trustee was entitled to recover litigation costs, fees, and expenses from the inviolate trust principal after seeking discharge in a manner inconsistent with the trust agreement.
4. Whether the county court properly denied the parties' requests for attorney fees.

HOLDINGS

1. The Cemetery Association had standing because the trust agreement gave its officers authority to select the trustee and because the association had legal interests in the selection of a successor trustee, possible termination or reversion, and care of the mausoleum.
2. A trustee of a perpetual-care, special-purpose mausoleum trust may not resign and be discharged without compliance with the trust agreement's requirement to apply for appointment of a successor trustee and without provision for continued trust management.
3. The trustee was not entitled to the litigation costs, fees, and expenses awarded by the county court because it sought discharge in a manner inconsistent with the trust agreement and failed to provide for a successor trustee or future management.
4. The county court did not err in denying the parties' motions for attorney fees.

KEY QUOTATIONS

"We read paragraph 12 to require consideration of an identifiable successor trustee before a current trustee may resign from its duties." (965)

"Allowing a trustee to resign without securing a successor trustee or otherwise providing for future management is contrary to the intent of the settlors of the Trust and § 12-615; such disposition is inconsistent with the notion that reasonable steps must be taken to ensure perpetual care." (966)

FACTUAL BACKGROUND

The trust was created in 1980 as a statutory perpetual-care and maintenance fund for a mausoleum in Scotts Bluff County, Nebraska. The mausoleum company became inactive in 1998, the mausoleum deteriorated, and the trust's income eventually became insufficient to cover the trustee's fees and expenses. Bank of the West sought to resign, terminate the trust, and use the remaining trust assets to pay fees and expenses. The Cemetery Association selected the trustee under the trust agreement and asserted interests relating to selection of a successor trustee, maintenance of the mausoleum, and potential reversion of property.

PROCEDURAL HISTORY

The Scotts Bluff County Court ruled that the Cemetery Association lacked standing but nonetheless considered and rejected its objections. It accepted the trustee's resignation and authorized payment of trustee fees, attorney fees, costs, and expenses from the trust, while denying the parties' requests for attorney fees and declining to provide for future trust management. The Nebraska Supreme Court held that the Cemetery Association had standing, reversed the discharge and related fee awards, affirmed the denial of attorney fees, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration and evaluation of an identifiable successor trustee or other appropriate future management of the perpetual-care trust. The county court's order accepting the trustee's resignation, discharging it, and awarding related fees, costs, and expenses was set aside.

CASES CITED

- Wisner v. Vandelay Investments, 300 Neb. 825, 916 N.W.2d 698 (2018)
- In re Henry B. Wilson, Jr., Revocable Trust, 300 Neb. 455, 915 N.W.2d 50 (2018)
- Eagle Partners v. Rook, 301 Neb. 947, 921 N.W.2d 98 (2018)
- Ponderosa Ridge LLC v. Banner County, 250 Neb. 944, 554 N.W.2d 151 (1996)
- In re Loree, 24 N.J. Super. 604, 95 A.2d 435 (Ch. Div. 1953)
- Town of Cody v. Buffalo Bill Mem., 64 Wyo. 468, 196 P.2d 369 (1948)
- Empire Trust Co. v. Sample, 50 N.Y.S.2d 5 (Sup. 1944)
- Matter of Memory Gardens, 91 A.D.2d 1163, 458 N.Y.S.2d 737 (1983)