

NEBRASKA SUPREME COURT

In re Robert L. McDowell Revocable Trust

296 Neb. 565 (2017) · No. No. S-16-071 · Decided May 5, 2017

SUMMARY

The Nebraska Supreme Court held that Betty Jane McDowell ineffectively exercised a limited power of appointment granted under Robert L. McDowell's revocable trust by appointing the trust assets to her own revocable trust. Because the assets were commingled with her trust assets, the appointment could benefit persons outside the permissible class specified by Robert's trust. The court also held that the trustee's transfer of the assets constituted a breach of trust and affirmed the recovery and redistribution order as modified.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	May 5, 2017
DOCKET	No. S-16-071
DISPOSITION	other
PROCEDURAL POSTURE	Appeal and cross-appeal from a county court judgment concerning the validity of a limited power of appointment and remedies relating to trust assets. The Nebraska Supreme Court granted the appellant's petition to bypass the Court of Appeals and moved the appeal to its docket.
STANDARD OF REVIEW	Interpretation of trust language is a question of law. Absent an equity question, trust-administration matters are reviewed for error appearing on the record; when an equity question is presented, review is de novo on the record. The court may notice plain error at its option.
PRECEDENTIAL VALUE	Published and precedential Nebraska Supreme Court opinion.
PARTIES	Sandra K. Stockall, Trustee of the Betty Jane McDowell Revocable Trust and individually v. Jane O. Hornung, Roger R. Stockall, Trustee of the Robert L. McDowell Revocable Trust

TOPICS

trust administration

trustee duties

trusts

breach of trust

appellate procedure

PRACTICE AREAS

trusts and estates

trust administration

estate litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether Betty effectively exercised the limited power of appointment under Robert's trust by devising the Trust A assets to her own revocable trust.
2. Whether the doctrines of selective allocation or substantial compliance could validate Betty's otherwise ineffective appointment.
3. Whether the trustee of Robert's trust breached the trust by transferring Trust A assets pursuant to the ineffective appointment and whether the county court could order recovery and redistribution of those assets.

HOLDINGS

1. Betty's exercise of the limited power of appointment was ineffective because she appointed the Trust A assets to her own revocable trust, which was not within the permissible class of appointees, and the governing instruments did not segregate those assets from Betty's assets or prevent them from benefiting Betty, her estate, or creditors.
2. The court declined to adopt or apply the doctrine of selective allocation to validate Betty's appointment because the doctrine is a rule of construction and the terms of Robert's trust, Betty's will, and Betty's trust were clear and unambiguous.
3. The doctrine of substantial compliance did not apply because Betty's attempted exercise failed substantively, not merely because she failed to satisfy a formal requirement.
4. The trustee of Robert's trust breached the trust by transferring Trust A assets pursuant to Betty's ineffective appointment, and the county court properly could order recovery, preservation, and redistribution of those assets under Neb. Rev. Stat. § 30-3890.

KEY QUOTATIONS

“By devising the Trust A assets to her trust without expressly providing that the Trust A assets were not to be commingled with her other assets, Betty improperly exercised the power of appointment for her benefit.” (573)

“Here, Betty’s attempted exercise of the power of appointment did not fail to comply with any formal requirement imposed by Robert’s trust. Instead, it substantively failed because by merging the Trust A assets with her own trust assets, Betty attempted to exercise the power of appointment in favor of one who was not in the permissible group.” (577)

“When the trustee of Robert’s trust transferred Trust A assets to Betty’s trust pursuant to an ineffectively exercised power of appointment, he committed a breach of trust.” (579)

FACTUAL BACKGROUND

Robert and Betty McDowell created nearly identical wills and revocable trusts. Robert's trust gave Betty a limited power to appoint Trust A assets by will only to Robert's issue, spouses of his issue, or tax-exempt charitable organizations. Betty's will directed the appointive assets, together with her own property, to the trustee of her revocable trust, where the assets were to be administered as part of that trust; the resulting commingling potentially benefited Betty, her estate, and creditors. After assets passed through Betty's trust to Sandra Stockall, Jane Hornung sought instructions and a declaration that the appointment was invalid.

PROCEDURAL HISTORY

After Robert L. McDowell's death, his wife Betty attempted by will to exercise a limited power of appointment over assets in Robert's Trust A by directing those assets to the trustee of her own revocable trust. The county court found the appointment ineffective because Betty's trust was not a permissible appointee and the assets were commingled with Betty's assets; it ordered the successor trustee of Robert's trust to recover and distribute the Trust A assets under Robert's trust. Sandra Stockall appealed, and the trustee of Robert's trust cross-appealed regarding the recovery order and the finding that he had not breached the trust.

DISPOSITION

other

CASES CITED

- In re Family Trust Created Under Akerlund Trust, 280 Neb. 89, 784 N.W.2d 110 (2010)
- In re Margaret Mastny Revocable Trust, 281 Neb. 188, 794 N.W.2d 700 (2011)
- Applegate v. Brown, 168 Neb. 190, 95 N.W.2d 341 (1959)
- In re Estate of Muchemore, 252 Neb. 119, 560 N.W.2d 477 (1997)
- BMO Harris Bank N.A. v. Towers, 2015 IL App (1st) 133351, 43 N.E.3d 1131, 398 Ill. Dec. 221 (2015)
- In re Estate of Reisman, 266 Mich. App. 522, 702 N.W.2d 658 (2005)
- Connelly v. City of Omaha, 284 Neb. 131, 816 N.W.2d 742 (2012)
- Cesar C. v. Alicia L., 281 Neb. 979, 800 N.W.2d 249 (2011)
- United States Cold Storage v. City of La Vista, 285 Neb. 579, 831 N.W.2d 23 (2013)
- Folgers Architects v. Kerns, 262 Neb. 530, 633 N.W.2d 114 (2001)
- In re Estate of Linch, 136 Neb. 705, 287 N.W. 88 (1939)
- In re Louise V. Steinhofel Trust, 22 Neb. App. 293, 854 N.W.2d 792 (2014)
- Johnson v. Richards, 155 Neb. 552, 52 N.W.2d 737 (1952)
- Massey v. Guaranty Trust Co., 142 Neb. 237, 5 N.W.2d 279 (1942)