SUPREME COURT OF KANSAS

Godley v. Valley View State Bank, 277 Kan. 736

89 P.3d 595 (2004) · No. No. 89,775 · Decided May 14, 2004

SUMMARY

The Kansas Supreme Court reviewed whether an amendment to Mariza V. Toliver's revocable trust validly changed the remainder beneficiaries and complied with the trust's amendment provisions. The court held that the amendment was effective upon execution and delivery by the settlor, despite the successor trustee's failure to sign and subsequent declination of the trusteeship. The judgment affirming summary judgment for Barbara Godley and Lynda Moore was affirmed.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Nuss, J.
JURISDICTION	Kansas
DECIDED	May 14, 2004
DOCKET	No. 89,775
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a district court order granting plaintiffs' motion for summary judgment and denying defendants' motion for summary judgment in a declaratory judgment action concerning the validity of an amendment to a revocable trust. The Kansas Supreme Court transferred the appeal from the Court of Appeals on its own motion.
STANDARD OF REVIEW	De novo review applies because the material facts were undisputed. The construction and legal effect of a trust are questions of law subject to unlimited review.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Kansas
PARTIES	Katherine Bruni, Christina Toliver, Mark Toliver v. Barbara Godley, Lynda Moore, Sigitas Babarskas

TOPICS

trusts · trust administration · beneficiary litigation · estate planning

PRACTICE AREAS

Trusts and estates · Trust administration · Estate planning

QUESTIONS PRESENTED

1. Whether the March 25, 1998, amendment was invalid because Merrill Lynch, the named trustee, did not sign or accept it.
2. Whether the March 25, 1998, amendment complied with the original trust agreement's requirements for amendment, including delivery to the trustee and written consent for amendments increasing the trustee's obligations or changing its rights or duties.

HOLDINGS

1. The March amendment was not an invalid bilateral trust agreement requiring Merrill Lynch's written acceptance. The original trust had already been validly created, and the March document amended and restated that trust rather than creating a new trust.
2. The March amendment was effective when Mariza signed it and delivered it to the trustee. Merrill Lynch's failure to execute the amendment, including its refusal to consent to increased obligations or changed duties, did not give it veto power over Mariza's reserved power to amend the trust; Merrill Lynch's later declination or resignation did not invalidate the amendment.

KEY QUOTATIONS

> *"We agree [with Ameritrust]. Ameritrust's termination of its interest, in our view, would not affect the validity of any properly executed single amendment, nor would it necessarily revoke and/or bring to an end the entire trust."* (748)

> *"We therefore agree with the district court that there was only one condition precedent to the amendment of the Trust; that the settlor file 'a written amendment with the Trustee.'"* (748)

> *"We hold our Article FIFTEENTH does not provide the trustee with power to veto, through its failure to execute the amendment as requested by counsel, the settlor's right to modify her estate plan for the disposition of her property."* (749)

> *"In conclusion, the March Amendment was effective upon the notarized signature of Mariza and delivery to the then trustee, Merrill Lynch."* (752)

FACTUAL BACKGROUND

Mariza V. Toliver created a revocable trust in 1993 and reserved the right to alter, amend, or revoke it by a duly executed instrument delivered to the trustee. In March 1998, after her husband's death, Mariza signed and delivered an amendment that removed her stepchildren as remainder beneficiaries, named Godley, Moore, and Babarskas as beneficiaries, and designated Merrill Lynch as trustee. Merrill Lynch never signed the amendment and later declined to serve, after which Valley View State Bank was appointed successor trustee. Mariza died before Merrill Lynch executed the amendment, and no issue of incapacity or undue influence remained disputed.

PROCEDURAL HISTORY

Godley and Moore filed a declaratory judgment action seeking a determination that the March 25, 1998, amendment to Mariza V. Toliver's revocable trust was valid. The district court granted plaintiffs' summary judgment motion on September 24, 2002, and defendants timely appealed. The Supreme Court of Kansas transferred the case from the Court of Appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Duarte v. DeBruce Grain, Inc., 276 Kan. 598, 602, 78 P.3d 428 (2003)
- State ex rel. Secretary of SRS v. Jackson, 249 Kan. 635, 641, 822 P.2d 1033 (1991)
- In re Estate of Pickrell, 248 Kan. 247, 255, 806 P.2d 1007 (1991)
- Denny v. Guarantee Title & Trust Co., 118 Kan. 286, 234 P. 966 (1925)
- In re Estate of Ingram, 212 Kan. 218, 510 P.2d 597 (1973)
- Shumway v. Shumway, 141 Kan. 835, 44 P.2d 247 (1935)
- First National Bank of Kansas City v. Wheeler, 557 S.W.2d 639 (Mo. App. 1977)
- Woodward v. Ameritrust Co., 751 F.2d 157 (6th Cir. 1984)
- In re Estate of Mueller, 933 S.W.2d 903 (Mo. App. 1996)
- Cole v. Cole, 317 Mont. 197, 75 P.3d 1280 (2003)
- State Bank of Parsons v. First National Bank in Wichita, 210 Kan. 647, 651, 504 P.2d 156 (1972)