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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP - 5 2024

JOHN D. HADDEN
CLERK

CURTIS A. FORD, individually and as)
Beneficiary and Successor Trustee of)
the ALAN AND SHIRLEY FORD)
FAMILY TRUST,)

Plaintiff/Appellant,)

vs.)

CHERYL J. McCORKLE, individually)
and as Trustee of the ALAN AND)
SHIRLEY FORD FAMILY TRUST,)

Defendant/Appellee.)

Case No. 121,835

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APPEAL FROM THE DISTRICT COURT OF
LOGAN COUNTY, OKLAHOMA

HONORABLE LOUIS A. DUEL, TRIAL JUDGE

REVERSED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Curtis A. Ford appeals the district court's June 10, 2023, order sustaining Cheryl J. McCorkle's motion to dismiss and its November 14, 2023, journal entry denying his motion to reconsider and for leave to amend. The issue is whether Curtis had standing to maintain a lawsuit against Cheryl alleging a breach of her duties as trustee of the Alan and Shirley Ford Family Trust. Based on our review of the record and applicable law, we reverse the court's dismissal and remand this matter for further proceedings.

BACKGROUND

Alan Ford and Shirley Ford were married, and each had children from prior relationships. Cheryl McCorkle is a daughter of Shirley Ford, and Curtis Ford is a son of Alan Ford. In November 2020, the elder Fords formed an irrevocable trust. The trust named Cheryl McCorkle as the initial trustee. The trust also provided that after the grantors' deaths, Cheryl McCorkle and Curtis Ford would serve as successor trustees. The trust had five beneficiaries who were children of either Alan or Shirley. The Fords themselves were not named as beneficiaries.

Shirley survived Alan, who died in July 2021. In August 2022, Curtis filed suit alleging that Cheryl, as trustee, had breached her fiduciary duties to him as a beneficiary and was negligent in performing her duties. Curtis also sought an accounting of the trust's assets and expenditures and asked the court to remove Cheryl and appoint him as sole trustee.

After Curtis filed his petition to remove Cheryl, Cheryl's mother Shirley, as surviving grantor, executed an election purporting to remove Curtis as a beneficiary. Cheryl then filed a motion to dismiss, arguing Curtis had lost

standing to contest the management of the trust assets. The district court filed an order sustaining Cheryl's motion to dismiss on July 10, 2023, and filed a journal entry on November 14, 2023, denying Curtis's timely filed motion for new trial and motion for leave to amend, finding any amendment would be futile. Curtis appeals from both the July 2023 order and the November 2023 journal entry.¹

STANDARD OF REVIEW

Standing is a jurisdictional question, reviewed *de novo*. *Bank of America, NA v. Kabba*, 2012 OK 23, ¶ 4, 276 P.3d 1006. The denial of a motion for new trial is reviewed for an abuse of discretion. *Fox v. Mize*, 2018 OK 75, ¶ 6, 428 P.3d 314. However, when examining the correctness of an alleged error of law, “[a]pplication of the appellate abuse-of-discretion standard for reviewing a motion for new trial” we employ *de novo* review. *Independent School District # 52 v. Hofmeister*, 2020 OK 56, ¶ 17, 473 P.3d 475.²

ANALYSIS

Curtis asserts the district court erred by finding that Shirley's post-suit execution of the disputed election caused him to lose standing because he no longer had any interest in the trust. We agree that this was in error. Curtis

¹ Curtis's motion for oral argument is hereby denied.

² We note that Cheryl attached a copy of Shirley's post-suit election removing Curtis as a beneficiary to her motion to dismiss. Facts outside the pleadings presented in a motion to dismiss will not, however, convert the motion to one for summary judgment when the facts are used to show a lack of jurisdiction. *Osage Nation v. Bd. of Commissioners of Osage Cnty.*, 2017 OK 34, ¶ 64, 394 P.3d 1224. This Court has treated standing as jurisdictional. *Id.* Thus, we view the trust election documents as presented as part of a jurisdictional inquiry, which did not convert the matter to one of summary judgment.

maintained standing to sue over trust administration because, even assuming he was properly removed as a general beneficiary, he remained the beneficiary of a specific bequest from the trust, as well as a named successor trustee.

In the present case, the trust instrument unambiguously provides for the creation of a lifetime trust and a residual trust. The language of the trust makes it clear that the lifetime trust is in effect as long as one of the grantors is alive, and the residual trust comes into effect upon the death of both grantors. The lifetime trust is created by article four of the trust, which provides that during the grantors' lifetime, the trustee is required to hold all trust property for the beneficiaries' benefit and to make distributions to the beneficiaries in her sole discretion. Prior to the election, Curtis was a beneficiary of this lifetime trust. If his rights under the trust were mismanaged, this breach of duty remains actionable even if the trustee has no future duty to him.

As for the residual trust, the trust declaration defines the residual beneficiaries as "the individuals or entities entitled to the residuary assets held by the Trustee after payment of all lifetime trust benefits during our life *and* specific bequests after our death." Doc. 1, *Petition-Exhibit 1-Trust Instrument*, § 1.11 (emphasis added). Prior to the disputed election, five beneficiaries, including Curtis, were listed as residual beneficiaries, each receiving a share of twenty percent. Article six of the trust provides for the administration of the remaining trust property upon the death of the last grantor. Article six also

contains a *specific* bequest to Curtis of the proceeds from the sale of the “Ford Farm.”³

As such, it is abundantly clear that Curtis is not a stranger to the trust without standing to sue, even after his alleged ouster as a lifetime and residuary beneficiary. In addition to his status as a present beneficiary of the Ford Farm proceeds under section 6.01, Curtis is also next in line to be trustee under section 3.02, and a possible beneficiary under section 3.08(j) (“Our Trust Advisor shall have the limited power to appoint all or any portion of the principal and undistributed income among our descendants as our Trust Protector determines, in its sole and absolute discretion, is necessary for their health, education, maintenance and support.”) *Id.* § 3.08(j) (emphasis added). He further has standing to sue for any breaches of duty that occurred *before* he was removed as a beneficiary. Curtis’s standing to sue cannot be seriously questioned. *See, e.g., Smith v. Lopp*, 2020 OK CIV APP 24, ¶ 32, 466 P.3d 642, 654 (holding that the term “beneficiary” under 60 O.S. § 175.23(C) includes contingent beneficiaries); *In re Declaration of Tr. Creating the Avery Family Tr.*, 2017 OK CIV APP 44, 8, 402 P.3d 696 (holding that a former co-trustee that was removed as trustee by the defendant was “certainly affected by the administration of the Trust estate” under 60 O.S. § 175.23(C)).

³ The trust originally stated that the proceeds from the “Ford Farm” were to be equally divided between Curtis and his brother. However, the trust was later modified to require the trustee to distribute all of the sales proceeds to Curtis.

The foregoing analysis is sufficient to dispose of this appeal in favor of the appellant. Because the dismissal was based purely on a lack of standing to bring litigation regarding the trust, and we have reversed that decision without need to interpret the validity of Shirley’s attempted election we need not—and should not—opine as to the efficacy of the election at this preliminary stage. *See Prescott v. Oklahoma Capitol Pres. Comm’n*, 2015 OK 54, ¶ 5, 373 P.3d 1032, 1035 (Reif, C.J., concurring specially to the denial of rehearing) (noting that the principle of judicial restraint “dictates that if resolution of an issue effectively disposes of a case, a court should resolve the case on that basis without reaching any other issues that might be presented”) (citing *Manning v. Upjohn Co.*, 862 F.2d 545, 547 (5th Cir. 1984); *Schnedler v. Lee*, 2019 OK 52, ¶ 1, 445 P.3d 238, 245 (Darby, V.C.J., dissenting) (“[T]he Court should use judicial restraint in this matter and base the holding on the narrowest grounds possible.”). The effectiveness of the election is a disputed issue that does not make the case susceptible to dismissal on the basis of a lack of standing.

REVERSED AND REMANDED.

HUBER, P.J., concurs, and HIXON, J., concurs in result.

HIXON, J., concurring in result:

I agree with the Majority’s conclusion that the district court’s decision must be reversed because Curtis has standing. I write separately to provide the analysis supporting the Majority’s finding that Curtis remains a beneficiary of the Ford Farm proceeds despite Shirley’s Election. Also, the Majority does not

resolve the issue of *what* authority the Trust provided Shirley, the surviving Grantor after her husband's death, to remove beneficiaries. I would decide this issue, not due to a lack of judicial restraint, but because the crux of both McCorkle's motion to dismiss and the district court's decision was that Shirley had the authority to completely remove Curtis as a beneficiary and did so by executing the Election, depriving him of standing. Additionally, the determination that Shirley's Election did not remove Curtis as a beneficiary of the Ford Farm proceeds requires an analysis of the scope of Shirley's authority under the Trust to make the Election. For the reasons below, I would find that the Trust provided Shirley the authority to remove Curtis as a lifetime and a residual beneficiary but not as a beneficiary of the Ford Farm proceeds.

As the Majority Opinion explains, the Trust instrument creates a Lifetime Trust and a Residual Trust. The Lifetime Trust is in effect as long as one of the Grantors is alive, and the Residual Trust comes into effect upon both Grantors' deaths. As long as one Grantor is alive, the Trustee (McCorkle) is required to hold all Trust property for the lifetime beneficiaries and to make distributions to them in her sole discretion. Upon the last surviving Grantor's death, the Trust provides for the administration of the remaining Trust property to the "residual beneficiaries" after the specific bequest to Curtis of the "Ford Farm" proceeds is made.⁴

⁴ Section 1.11 of the Trust specifically defines "residuary beneficiaries" as "the individuals or entities entitled to the residuary assets held by the Trustee *after* payment of all lifetime trust benefits during our life *and* specific bequests after our death." (emphasis added).

As the Majority notes, before Shirley's Election, Curtis was a lifetime beneficiary, a residual beneficiary, and a beneficiary of the Ford Farm proceeds. However, after this suit was filed, Shirley made her Election pursuant to Article Four, Section 4.06 of the Trust, which states in pertinent part:

Section 4.06 The Limited Power of Appointment

Notwithstanding any other provision in this Agreement to the contrary, while we are alive, we shall retain the power to change the current or residuary beneficiaries of this Trust and/or the method or manner of distribution by notifying the Trustee in writing with signature acknowledged. . . .

Curtis reads this provision in isolation to mean that both Grantors must have been alive for Shirley to exercise her authority to remove him as a beneficiary.⁵ However, Section 9.13 of the Trust states that "singular and plural number shall each be deemed to include the other when the context so indicates." The language and entire structure of the Trust makes it clear that Article Four, which contains Section 4.06, remains in effect until the death of both Grantors. Moreover, given neither Grantor was a trustee nor entitled to any part of the Lifetime Trust, it is unclear why the Trust would not have simply provided for its distribution after one Grantor's death if the surviving Grantor

⁵ Curtis correctly argues that despite its title, Section 4.06 is not actually a power of appointment. See *Edwards v. Urice*, 2004 OK CIV APP 86, ¶ 13, 99 P.3d 256 (explaining a power of appointment is created when one person (the donor or grantor) grants to another person (the donee or grantee) authority to designate recipients of beneficial interests in the donor's property). However, this is an error of semantics and does not resolve the ultimate issue of whether Shirley had the authority pursuant to Section 4.06 to make certain changes to the Trust beneficiary designations. Curtis also correctly notes the Trust was irrevocable. However, the fact that Shirley was not entitled to revoke the Trust (except as provided in 60 O.S.2021, § 175.41) does not answer the question of whether she had the authority pursuant to the terms of the Trust to change certain beneficiary designations made therein.

retained no powers. Thus, I would find that Shirley, as the surviving Grantor, had the authority to change certain Trust beneficiaries.

However, as the title of Section 4.06 states, this authority was “limited.” Under the plain language of Section 4.06, Shirley only had the authority to change “the current or residuary beneficiaries” of the Trust. Based on a plain reading of this provision and in view of the Trust’s language and structure, I interpret the term “current” beneficiaries to mean the lifetime beneficiaries.⁶ Furthermore, as noted above, the Trust explicitly defines “residuary beneficiaries” as those entitled to the residual assets held by the Trust after payment of all Lifetime Trust benefits while any Grantor remains alive and specific bequests after both Grantors’ deaths. Accordingly, pursuant to Section 4.06, Shirley had the power to change the lifetime and residuary beneficiaries but not the “specific bequests” contained in the Trust, i.e., the “Ford Farm” proceeds bequeathed to Curtis.

This interpretation is not only consistent with the Trust’s plain language but also with the Election itself. The title of the Election explicitly states it is changing the “Lifetime” and “Residuary” beneficiaries. The body of the Election explicitly only changes the “Lifetime Trust” beneficiaries and the “residuary beneficiaries.” Although the last sentence of the Election states Curtis is no longer a “beneficiary, current, residuary, or otherwise, of the Trust,” it makes no mention of the specific bequest to him of the Ford Farm proceeds.

⁶ The body of the Election acknowledges that the reference to “current” beneficiaries in Section 4.06 is synonymous with the lifetime beneficiaries.

Accordingly, I would find that after Shirley made the Election, Curtis was no longer a lifetime or a residuary beneficiary, but he remained a beneficiary of the Ford Farm proceeds. Therefore, I agree with the Majority's determination that Curtis had standing under the Trust on this basis and concur in result.

September 5, 2024