

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF MARQUETTE

IN THE MATTER OF: JESSIE G. BELL, deceased.

FILE NUMBER:08-31330-DA

ORDER RE: TERMINATION OF TRUST

Jessie Bell died August 28, 2008. She left a validly-executed will which left all of her property to a trust for the benefit of her daughter, Patricia Bell. The will states that the trust should terminate and the assets should be distributed to Patricia Bell on the tenth anniversary of Jessie Bell's death, unless a "court of competent jurisdiction" ordered otherwise.

Patricia Bell has retained an attorney to file a motion in this court requesting that the trust be terminated and the property distributed immediately because the trust did not name a successor trustee. The petitioner's brief cites In re Lillian Faulhaber Trust, Docket #263701, an unpublished decision of the Court of Appeals, in support of that proposition.

The Court in the Faulhaber case held that when a corporate trustee merged into a corporation that the settler had expressly said he did not want to be his trustee, an ambiguity was created that allowed the trust to be terminated.

In this case, the settlor's intention is very clear. She wanted, in descending order of priority:

- 1.) Patricia Bell to receive all her property,

- 2.) ten years after her death; and
- 3.) she wanted George Van Cleve to be the trustee.

Mr. Van Cleve resigned as personal representative of Jessie Bell's estate, and this court held that he had performed his duties improperly and was entitled to minimal compensation for his services. Attorney Thomas Clark, the Marquette County Public Administrator, was appointed as successor personal representative on January 12, 2009, and has therefore become the new testamentary trustee as well.

There is no indication or evidence that Jessie Bell's identification of George Van Cleve as personal representative and trustee was sufficiently important to require that if Mr. Van Cleve was not the trustee, the trust should terminate. Rather, the court finds that in this case the trust is more important than the trustee. Accordingly, the trust will not be terminated. However, both the terms of this trust and MCL 700.7412(b) give this court the ability to modify the terms of the trust and/or direct an earlier distribution. The court has suggested that Ms. Bell's attorney consult with her and develop a proposal for modification of the existing trust that would allow some distribution of trust assets before the expiration of ten years. Such a modification could partially alleviate the ongoing expenditure of trust funds. Ms. Bell's proposal should be submitted to the successor trustee. Once he has reviewed it, he will forward it to the court with his recommendation. After the court takes action on the proposal, another hearing can be scheduled if necessary.

DATED:

HONORABLE MICHAEL J. ANDEREGG P10166
Probate Court Judge