

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MARQUETTE

JAMES C. JACKSON and JOHN W. JACKSON,
current beneficiaries of the STELLA D. JACKSON
LIVING TRUST, dated May 20, 2005 File No. 10-31780-TV

STELLA D. JACKSON LIVING TRUST
dated May 20, 2005

WELLS FARGO BANK, N.A.,

Petitioner

File No. 10-31838-TV

CLIFFORD W. JACKSON and STELLA D. JACKSON
REVOCABLE LIVING TRUST, dated August 1, 1997

WELLS FARGO BANK, N.A.

Petitioner

File No. 10-31839-TV

OPINION AND ORDER

FACTS

The facts of this matter are not in dispute. On August 1, 1997, Clifford W. Jackson and Stella Jackson signed a Revocable Living Trust. The trust document says it is funded by assets described in “. . . attached Schedule A”, but no Schedule A was attached or submitted. Counsel concedes that it is impossible to determine, at this point, which of the Settlers owned the assets which funded the trust. In addition, there is almost no information before the court about what assets were administered subject to which trust, or what assets were transferred from one trust to another. The only exception is two annual accountings filed for 2009. These accountings purport to be for two trusts.

The 2009 accounting for the Clifford Jackson Trust was filed as Exhibit “K” attached to a copy of the Trustee’s Petition for approval of its actions with regard to the Clifford Jackson Joint Trust. The 2009 accounting for the Stella Jackson Interim Trust was filed as Exhibit “K” attached to the Trustee’s Petition for approval of its actions with regard to the Stella Jackson Trust. At the time the motion was argued, there was about \$26,000 in the Joint Trust and about \$100,000 in the Stella Jackson Trust. On October 23, 2010, this Court ordered the release of \$50,000 from the Stella Jackson Trust to First Bank, Upper Michigan, the Successor Trustee.

The Joint Trust refers to both parties as “Settlor” without identifying them individually after the first sentence. It does refer, later in the document, to “Settlor, or the survivor thereof”, in several places.

The joint trust was amended four times, the last amendment being December 9, 1998. The amendments all concern distribution of trust assets. Each amendment refers to the authority to amend the Trust contained in “Paragraph Sixth” of the original trust document. Each amendment was signed by both Clifford and Stella Jackson.

Clifford W. Jackson died March 3, 2003.

On November 13, 2003, Stella D. Jackson executed a document entitled “Disclaimer”. The Disclaimer purported to renounce any right Ms. Jackson may have and to “. . . use or direct payment of any part or all of the net income and principal of trust assets . . .”. The Disclaimer also indicated Ms. Jackson was renouncing “. . . the ability to make or amend the trust”. The purpose of the Disclaimer was to “. . . insure [sic] that the assets distributed to the Family Trust do not qualify for the marital

deduction”. An officer of Wells Fargo Bank, N.A., acknowledged receipt of the Disclaimer by signing it.

On May 10, 2005, Stella Jackson executed the Stella D. Jackson Living Trust. There is no information before the court about the actual funding of the Stella Jackson Trust. The Stella Jackson Trust document says that the Clifford and Stella Jackson Living Trust is “. . . amended and restated in its entirety”. The Stella Jackson Trust cites article Sixth of the Clifford and Stella Jackson Trust as authority for making the amendments. The Stella Jackson Trust makes provisions for a distribution of trust assets to relatives and charities that are inconsistent with the Fourth Amendment of the Clifford and Stella Jackson Trust, although some of the proposed distributions are consistent with earlier amendments.

Stella Jackson died on March 6, 2009.

In August and September, 2009, Wells Fargo Bank made distributions to the trust beneficiaries. According to annual accounts filed with the Trustee’s petitions, the distributions were from the Stella Jackson Trust, not the Clifford Jackson Trust. Shawn Jackson received \$5,000; Patricia Seelen, Andrea Jackson, and Holly Jackson received \$250,000; St. John the Evangelist Church received \$100,000; the Ishpeming Schools received \$100,000; the Salvation Army received \$5,000; and the St. Vincent de Paul Society received \$5,000.

The specific bequests set forth in the original trust and amendments and those set forth in the Stella Jackson Trust are quite similar.

On September 16, 2010, the trustee filed Petitions asking that its actions be approved and that it be discharged as trustee of both the Clifford Jackson Joint Trust and

the Stella Jackson Trust. On September 30, 2010, a responsive pleading was filed on behalf of James C. Jackson and John W. Jackson, asking the court to set aside the distributions and surcharge Wells Fargo for action they claim was wrongful. On November 8, 2010, Patricia Seelen, Andrea Jackson, and Holly Jackson filed a pleading concurring with the position of the trustee.

JURISDICTION

This court has exclusive jurisdiction over cases involving trusts pursuant to MCL 700.1302(b) and (d) and MCL 700.7201(1).

CLAIMS OF THE PARTIES

(a) PETITIONER

Petitioner seeks court approval of its actions, including the distributions of trust assets pursuant to Article V of the Stella Jackson Trust. Petitioner also requests allowance of its accounts and fees, and a discharge.

(b) OBJECTORS

The Jackson brothers claim that Stella Jackson's disclaimer was ineffective. They claim that because Stella Jackson continued to have the ability to modify the original Joint Trust under Paragraph Sixth of the original trust, her execution of the Stella Jackson Trust in 2005 constituted an effective revision of the Joint Trust. The Jackson brothers claim that Ms. Jackson's disclaimer was ineffective because she may have contributed property to the original trust and because there was no transfer of trust property to her at the time of Clifford's death. They say she could not disclaim property that she already owned.

The attorney for the trustee asserts that Stella Jackson filed an estate tax return that allocated assets to the Family Trust. The return was approved by the IRS. She contends that because her sons failed to object to the trustee's accounts for two separate trusts during her lifetime, that they waived their right to object to the distributions.

DISCUSSION

The primary issue in this case is the legal effect of the Disclaimer executed by Stella Jackson on November 13, 2005. If the Disclaimer is effective, then the Clifford and Stella Jackson Trust became irrevocable on that date, in spite of the language in Paragraph Sixth, which says the "Settlor or the survivor thereof" has the right to amend the trust. The Disclaimer, if effective, also supersedes the language at the end of Paragraph Sixth, which says the trust becomes irrevocable "after the death of the Settlor", which by definition includes both Clifford and Stella Jackson.

Counsel for the Jackson brothers properly point out that disclaimers should be "narrowly interpreted" (Brief, pp 11 & 19). The Jackson brothers contend that because there is no testamentary power of appointment mentioned in the trust, there was no transfer of property to Stella Jackson in 2003, and because there was no transfer, there was nothing for Ms. Jackson to disclaim.

For purposes of this litigation, that contention is beside the point. Although the document is captioned as a "Disclaimer", the importance of the wording to these facts is that it operates as a renunciation of Stella Jackson's right to amend the Clifford and Stella Jackson Trust.

It is true that that right to amend was contained in two different sections of the original trust document. It is somewhat confusing because Paragraph Five of the Disclaimer, which contains the operative language about disclaiming an interest, also refers to “Paragraph Second of the trust”.

This court concludes that the phrase “. . . as well as . . .” in conjunction with the “ability to revoke or amend” refers to the authority under both Paragraph Second and Paragraph Sixth of the original trust document. It is clear that Stella Jackson was aware of Paragraph Sixth; the four amendments which she signed between 1998 and 2001 all referred to the authority to amend under Paragraph Sixth.

Her establishment of the Stella Jackson Living Trust in 2005 also refers to Paragraph Sixth and says that she intends to “completely restate the terms” of the [Clifford and Stella Jackson] Trust. Because she had previously, in this court’s view, renounced her ability to amend the Family Trust, this language in the 2005 document was ineffective.

Counsel for the trustee also points out, as noted earlier, that the Jackson brothers had received copies of the accounting for two trust accounts, one for the Joint Trust, and one for the “Stella D. Jackson Interim Trust”. These accountings, according to Wells Fargo’s Supplemental Brief, were sent to the Jackson brothers beginning in 2007. Copies of the accountings for each trust for calendar 2009 were attached to Wells Fargo’s initial petitions. The last page of each accounting contains the following Notice:

For accounts where Wells Fargo is acting as a trustee, an action by a beneficiary against Wells Fargo for breach of trust based on any matter adequately disclosed in these statements is barred unless the action is commenced within one year after receipt of the statements.

While a trustee cannot use such a unilateral statement to protect itself from liability for wrongdoing, it is worthy of consideration by the court in determining whether the Jackson brothers should prevail, especially in circumstances where the distributions claimed to be wrongful were not made by Wells Fargo until two years after the brothers began to receive the dual statements.

For the foregoing reasons, this court finds that the Disclaimer executed by Stella Jackson on November 13, 2003, and thereafter accepted by the Internal Revenue Service, is effective to disclaim her interest in payments from the Family Trust during her lifetime and to prevent her from further amending the Family Trust. To the extent that assets were available in the Family Trust or the Stella Jackson Trust to be distributed to specific beneficiaries, this Court finds those distributions by the Trustee were authorized.

Dated: _____

Hon. Michael J. Anderegg
Probate Court Judge