In re Link

Superior Court of New Jersey, Appellate Division

January 3, 2011, Submitted; July 15, 2011, Decided

DOCKET NO. A-4930-09T4

Reporter
2011 N.J. Super. Unpub. LEXIS 1906 *; 2011 WL 2731899

IN THE MATTER OF THE GEORGE LINK, JR. CHARITABLE TRUST ESTABLISHED UNDER THE LAST WILL OF ELEANOR IRENE HIGGINS LINK, DECEASED.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Monmouth County, Docket No. P-83-10.

Core Terms

designation, successor, successor trustee, decedent's, appoint, the will, appellants'

Counsel: Emmet, Marvin & Martin, LLP, attorneys for appellants Michael J. Catanzaro and Bernard F. Joyce (Tyler J. Kandel, of counsel and on the brief).

Greenbaum, Rowe, Smith & Davis LLP, attorneys for respondent Robert E. Link, Jr. (Michael A. Backer, of counsel and on the brief).

Judges: Before Judges C.L. Miniman and LeWinn.

Opinion

PER CURIAM

This matter concerns a dispute over the interpretation of provisions in the will of decedent, Eleanor Irene Higgins Link, regarding the appointment of successor trustees of the George Link, Jr. Charitable Trust, created under that will in the name of her deceased husband. Decedent's will named her husband's nephew, Robert E. Link, Jr. (hereinafter Robert), Michael J. Catanzaro[1] and Bernard F. Joyce as trustees. Catanzaro and Joyce (hereinafter collectively "appellants") appeal from the June 2, 2010 order of the Chancery Division (1) declaring null and void appellants' designation of John T. Catanzaro as Robert's successor trustee; (2) declaring valid and in full force and effect Robert's designation of his daughter, Nora Link (or if she cannot serve, his **[*2]** daughter Alannah Link), as his successor; and (3) denying appellants' motion to remove Robert as a trustee. We affirm.

The following two provisions of the will are pertinent to this appeal:

> [ARTICLE] SEVENTH:
>
> . . . .
>
> (c) I appoint [appellants] and [Robert] . . . to be the trustees of the charitable trust created [herein] and I direct that all decisions of my trustees shall be made by a majority of my trustees then acting; provided, however, that at any time that Michael is acting as a trustee hereunder, my trustees shall take no action in which Michael does not concur, and I direct that Michael shall be the controlling trustee of the charitable trust when he is acting as a trustee.
>
> (d) At any time and from time to time, the then acting trustee or trustees of the charitable trust shall have the right to designate successor trustees to act upon the happening of some future event and at any time to revoke any designation of a successor trustee heretofore made, each by instrument in writing, signed and acknowledged.

Shortly after decedent's death in January 1999, the trustees held their initial meeting. The April 26, 1999

[1] Catanzaro was also appointed executor of decedent's will.

minutes of that **[*3]** meeting state that "[i]n accordance with the terms of the will . . . namely, Article Seventh (d) thereof, each of the [t]rustees designated their respective successors, in writing, with the approval of all [t]rustees. Said designations were delivered to . . . Catanzaro to be retained as part of the official records of the [t]rust." The minutes do not reflect the identities of the successors designated at that time.

The minutes of the trustees' meeting of July 14, 2008, however, reflect that "Nora M. Link, the designated successor [t]rustee for Robert . . . [was] . . . present." Robert announced his intention to resign as trustee at that meeting and "Catanzaro mentioned that he would contact the [t]rust's attorney to prepare the necessary court documents, relative to his resignation."

On July 30, 2008, Catanzaro executed a designation of successor trustee, "revok[ing] any prior designations of a successor trustee[,]" and naming his daughter, Debra Ann Wayne, as his successor. On August 5, 2008, Joyce executed a similar form, designating his daughter, Colleen Hanczor, as his successor. Catanzaro and Joyce witnessed each other's form; the line for Robert's signature is blank on both forms. **[*4]** On those two dates, Catanzaro and Joyce also executed a designation of successor trustee for Robert, naming Catanzaro's son, John T. Catanzaro, as Robert's successor.

On August 7, 2008, Catanzaro forwarded the three successor designation forms to Robert for his "endorse[ment]." In his cover letter, Catanzaro stated that he and Joyce had "some experience" with Robert and his family which made them "feel uncomfortable and not confident" to accept Nora as Robert's designated successor; they concluded that "it is not in the best interests of the [t]rust that you be succeeded by a member of your immediate family."

It appears that Robert "change[d] his mind about resigning his trusteeship under the new circumstances presented to him" in Catanzaro's letter. Nora attended trustees' meetings from August 2008 through July 2009. In August 2009, Catanzaro wrote to Robert protesting that Nora's "presence during those meetings is out of character[,]" and that her attending "as an outsider . . . d[id] not fit well with [him]."

On February 22, 2010, Robert executed a designation of successor trustee, naming Nora and designating Alannah in the event Nora was unwilling or unable to serve. One month later, **[*5]** Robert filed an order to show cause in the Chancery Division seeking to declare appellants' August 2008 designation of Catanzaro's son as his successor trustee null and void, and to declare his February 2010 successor designation as valid and in full force and effect.

On April 29, 2010, appellants filed a cross-motion to deny Robert's motion, remove him as trustee and surcharge him for costs and fees incurred in the litigation. They also filed an answer and counterclaim; the gravamen of their position was that, according to Article Seventh (c), Catanzaro was required to "concur" in any decision to name a successor trustee pursuant to section (d).

At oral argument, Robert contended that decedent's intent to have a Link family member serve as trustee was borne out by the following factors: (1) a November 24, 1980 letter from the Chairman of the Board of the Bank of New York,[2] which administered the George Link, Jr. Foundation, "assur[ing]" decedent that, "unless and until [she] advise[d] . . . otherwise," the Bank intended "to continue the Link family involvement with the Foundation by voting to elect a male member of the Link family . . . as a director . . . as long as there is such a **[*6]** person willing and able to serve"; and (2) decedent's specific appointment of a Link family member as trustee in her will. Robert also contended that if the successor forms executed by appellants were permitted to stand, two members of the Catanzaro family would be trustees when Robert stepped down; they could "simply refuse to agree to appoint any other successor trustee and it then becomes the Catanzaro trust."

Appellants contended that section (c) of Article Seventh clearly applied to successor designations made pursuant to section (d). They further asserted that Robert had acceded to that interpretation in 1999, when he executed a successor trustee subject to their approval.

The judge rendered a decision from the bench, basing her decision on the following analysis of Article Seventh:

> Paragraphs (a) and (b) deal with the administration of the decedent's estate. Paragraph (c) provides for the appointment of up to three trustees. It creates the requirement of a majority vote to take action and vests in Michael Catanzaro what is essentially the veto power over any decision **[*7]** made by

[2] The foundation administered by the Bank of New York is a separate entity from the trust involved in this appeal.

trustees.

Separately, paragraph (d) creates in the trustee or trustees the right to designate a successor trustee. The [c]ourt finds significant meaning in the creation of a separate paragraph (d). If it was intended by the testator that a successor trustee had to be appointed by a majority vote with the veto residing with Mr. Catanzaro, there would be no reason to have a paragraph (d).

Its existence as a separate paragraph can only mean that the right to designate a successor is a right personal to the trustee making the designation and is only subject to the majority vote rule or the veto power of Mr. Catanzaro if a trustee does not name a successor and the remaining trustees must do so.

This conclusion is also compelled by an examination of paragraph 7(d). That paragraph which is a single sentence refers to a then acting trustee singular or trustees plural. It is clear to the [c]ourt that the power to appoint a successor trustee is personal to each of the original trustees since a singular trustee is distinguished from a plural trustee. If it was the intention of the testator to require successor trustees to be appointed by a majority vote subject to Michael Catanzaro's veto, **[*8]** there would be no reason to use the words acting trustee in the singular.

The judge concluded that there was "no ambiguity in the terms of the will" and, thus, "no need to examine extrinsic evidence outside the four corners of the [w]ill."

"In light of [her] decision," the judge found "no merit in any of [appellants'] claims" and, therefore, dismissed their counterclaim. The judge ordered the trust to pay both parties' fees, finding "that th[e] action was brought in good faith to solve a difficult problem."

On appeal, appellants contend the judge erred in (1) finding that section (c) did not apply to trustee successor designations pursuant to section (d) of Article Seventh; and (2) denying their motion to surcharge Robert and remove him as trustee. Having reviewed these contentions in light of the record and the controlling legal principles, we are satisfied that they lack "sufficient merit to warrant discussion in a written opinion[,]" *R. 2:11-3(e)(1)(E)*, beyond the following brief comments.

The judge's decision was based upon her assessment of decedent's "probable intent."

Under the probable intent doctrine, New Jersey courts construe wills to "ascertain and give effect to the 'probable **[*9]** intention of the testat[rix].'" In determining the testat[rix]'s subjective intent, "courts will give primary emphasis to h[er] dominant plan and purpose as they appear from the entirety of h[er] will when read and considered in the light of the surrounding facts and circumstances."

[*In re Estate of Zahn, 305 N.J. Super. 260, 271, 702 A.2d 482 (App. Div. 1997)* (quoting *Fid. Union Trust Co. v. Robert, 36 N.J. 561, 564-65, 178 A.2d 185 (1962))* (internal citations omitted).]

We concur with the judge's assessment, particularly in light of the language in section (d) referring to the "right" of each trustee to designate a successor; nothing in that section subordinate's the individual trustee's "right" to the will of a majority of the trustees. By contrast, section (c) refers to "decisions" with respect to the trust, and the phrase "no action" refers to such decisions.

In this respect, we concur with Robert's contention that section (c) governs "those duties and responsibilities devolving upon the trustees in the day-to-day administration of the trust" such as distributing trust income and paying trust expenses and taxes. The trustees have a fiduciary duty to the trust to carry out such obligations in a manner that comports **[*10]** with the purpose of the trust. *See Wolosoff v. CSI Liquidating Trust, 205 N.J. Super. 349, 359-60, 500 A.2d 1076 (App. Div. 1985)* ("[i]t is axiomatic that the most fundamental duty owed by a trustee . . . is the duty of loyalty"). Section (c) defines the trustees' "fundamental duty" to this trust.

It stands to reason that decedent would intend that each of her chosen trustees choose his successor; otherwise, section (d) would be superfluous if successor designations were subject to approval by a majority of the trustees.

In light of the judge's decision upholding Robert's right to designate his successor trustee, we consider appellants' contention regarding their motion to surcharge and remove him to be without merit. *R. 2:11-3(e)(1)(E)*.

Affirmed.

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