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2019 IL App (3d) 180392-U

Order filed February 7, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

LYNN STENDER and FIRST MIDWEST,)	Appeal from the Circuit Court
BANK, as Successor Trustee of the Leo)	of the 12th Judicial Circuit,
Stender Living Trust Dated October 16, 1995,)	Will County, Illinois,
)	
Plaintiffs-Appellees,)	
)	
v.)	Appeal No. 3-18-0392
)	Circuit No. 13-CH-3818
BRENDA and HAROLD KRAPF,)	
Individually and as Successor Co-trustees of)	
the Leo Stender Living Trust Dated)	
October 16, 1995,)	
Defendants)	Honorable
)	Roger Rickmon,
(Brenda Krapf, Defendant-Appellant).)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Beneficiary had standing to request an accounting of all the expenditures, including those made prior to the grantor's death.

¶ 2 Defendant, Brenda Krapf, appeals the circuit court’s judgment, arguing that plaintiff, Lynn Stender, lacked standing to request an accounting of the Leo Stender Living Trust (Trust). We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 1995, Leo Stender executed the Trust as a revocable living trust. Lynn is Leo’s daughter. Defendant, Harold Krapf, was the son of Leo’s deceased spouse, and Brenda was his wife. The Trust distributed Leo’s assets, which included, in part: (1) all personal property not distributed by memorandum should be given to Lynn, or if she was not living, then to defendants; (2) all real estate should be held in trust for the benefit of Lynn, unless Lynn should die or the real estate should make Lynn ineligible for government assistance, then it would be distributed to Brenda and Harold; and (3) the remaining property should be distributed 50% to Lynn, 25% to Brenda, and 25% to Harold. The Trust provided, *inter alia*:

“My Trustee shall report, at least semiannually, to the beneficiaries then eligible to receive mandatory or discretionary distributions of the net income from the various trusts created in this agreement all of the receipts, disbursements, and distributions occurring during the reporting period along with a complete statement of the trust property.

The trust’s books and records along with all trust documentation shall be available and open at all reasonable times to the inspection of the trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust records or documentation to any individual, corporation, or other entity that is not a beneficiary, does not have the express written approval of a beneficiary, or is not requesting such pursuant to a court order.”

¶ 5 When the Trust was created, Leo was the only trustee. However, Leo amended the Trust in 2003 to appoint defendants as successor trustees upon Leo's death or disability. On October 9, 2006, Leo again amended the Trust to appoint Brenda as his co-trustee during his life. Brenda signed the 2006 amendment and accepted the appointment as co-trustee. The 2006 amendment further provided: "[w]hen either LEO STENDER or BRENDA E. KRAPF is acting as Trustee, either of their signatures is sufficient to transfer assets or conduct any business of my trust."

¶ 6 Leo died on March 9, 2013. Upon his death, defendants became successor co-trustees. On November 27, 2013, Lynn filed a petition for a trust accounting beginning on October 9, 2006, the day Brenda became a co-trustee, up to that time. The petition stated that Lynn had previously requested a trust accounting, but had not received one. The petition further stated, "[Lynn] believes [defendants] have been mismanaging trust funds as tax payments that were to be paid on the house held in trust were delinquent and [Lynn's] requests for an accounting have gone ignored."

¶ 7 On March 24, 2015, the court ordered defendants to provide an accounting of the Trust. When defendants did not do so, Lynn filed a petition to remove trustee on May 12, 2015. Multiple times defendants filed incomplete or incorrect accountings, Lynn objected, and the court ordered defendants to supplement the accounting. During such time, on August 22, 2015, Harold died.

¶ 8 An evidentiary hearing was held on September 8, 2016, regarding Lynn's objections to the accountings and the petition to remove trustee. The court found that Brenda failed to show that \$165,216.43 of trust transactions were done to benefit the Trust or its beneficiaries. The court thus removed Brenda as trustee. Plaintiff, First Midwest Bank, was appointed as successor trustee.

¶ 9 On September 20, 2017, First Midwest Bank moved for an entry of judgment against Brenda for the \$165,216.43 of Trust transactions that Brenda failed to account for. A hearing was held on the motion on December 20, 2017. Brenda argued that Lynn never had standing to request an accounting of anything that happened with the Trust prior to Leo’s death and approximately \$161,000 of the unaccounted for trust transactions predated Leo’s death. In a written order, the court stated that it did not accept Brenda’s standing argument. The court found that it was appropriate that restitution be ordered and judgment entered against Brenda “for her unjustified expenditures of trust funds.” Brenda was further responsible for the costs of litigation. Brenda filed a motion to reconsider, again arguing that Lynn lacked standing. The court denied the motion to reconsider.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Brenda argues that Lynn lacked standing to request an accounting for money expended prior to Leo’s death. Because Lynn was a beneficiary at the time she requested the accounting and the language of the Trust specifically required that all Trust records and documentation be available to beneficiaries, we find that Lynn had standing to demand an accounting.

¶ 12 At the outset, plaintiffs argue that the case should be dismissed because Brenda’s appeal was untimely under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). Specifically, plaintiffs state,

“[T]he basis of [Brenda’s] appeal rests on the issue of whether she was obligated to provide an accounting for the period in question. The Circuit Court ruled on this issue when it ordered her to provide the accounting on March 24, 2015. At

that time, Brenda’s rights and obligations with respect to the accounting were finally determined.”

Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) states,

“If multiple parties or multiple claims for relief are involved in an action, an appeal *may* be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of judgment or thereafter on the court’s own motion or on motion of any party.” (Emphasis added.)

The “legislature’s use of the word ‘may’ generally indicates a permissive or directory reading, rather than a mandatory one.” *People v. One 1998 GMC*, 2011 IL 110236, ¶ 16. While Brenda may have been able to file an appeal earlier in the case, it was not required for her to do so.

Moreover, she could not have done so without the court making a finding that there was no just reason for delaying enforcement or appeal, which the record does not show that the court did here. Brenda’s appeal was properly, and timely, brought under Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015).

¶ 13 We next turn to Brenda’s contention that Lynn lacked standing to ask for an accounting of the Trust for the period prior to Leo’s death. In support of her contention, Brenda states that under the Trust, the trustees were only required to report to “beneficiaries then eligible to receive mandatory or discretionary distributions of the net income.” (Emphasis omitted.) Under the Trust, Lynn did not become a beneficiary until Leo’s death in 2013. Therefore, Brenda argues, Lynn was not a beneficiary for the period between 2006 and 2013, and cannot ask for an

accounting for that period of time. However, Brenda overlooks the portion of the Trust that states,

“The trust’s books and records along with all trust documentation shall be available and open at all reasonable times to the inspection of the trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust records or documentation to any individual, corporation, or other entity that is not a beneficiary, does not have the express written approval of a beneficiary, or is not requesting such pursuant to a court order.”

Under this Trust provision, once a person became a beneficiary of the Trust, all Trust records, books, and documentation would become available for the beneficiary’s inspection. We read this to include all Trust documentation and records from the inception of the Trust. Therefore, in 2013 when Lynn became a beneficiary, she had the ability, under the Trust, to request and view all trust documents and records, including those from 2006 to 2013 and had standing to request such in court.

¶ 14

III. CONCLUSION

¶ 15

The judgment of the circuit court of Will County is affirmed.

¶ 16

Affirmed.