

DOCKET NO. KNL-CV21-6050864-S : **SUPERIOR COURT**
WATSON, DAVID : **JD OF NEW LONDON**
V. : **AT NEW LONDON**
KENDALL TRUSTEE OF THE : **APRIL 22, 2024**
ELEANOR WATSON TRUST, CHRIS ET AL

MEMORANDUM OF DECISION

The plaintiff, David Watson, is the sole beneficiary of the Eleanor Watson Irrevocable Trust [hereinafter referred to as the “trust”]. The plaintiff filed a Petition for Removal of the trustees, Colleen Watson-Brooks, and Christine Kendall in the probate court. A hearing was held at the probate court on July 20, 2020. No evidence was taken. On January 14, 2021, the probate court denied the Petition for Removal. On April 6, 2021, the plaintiff filed an appeal of the probate court’s decision. The court held a trial de novo on January 31, 2024. The court has reviewed the evidence presented at the trial.

Facts

Eleanor Watson had three (3) children, Lucille Thoma, Colleen Watson-Brooks and David Watson. Upon Eleanor Watson’s death in 2008, the trust was divided into three (3) shares, one for each of her three (3) children. Thoma and Watson-Brooks withdrew their shares from the trust upon the death of their mother, leaving Watson as the sole beneficiary. The terms of the trust provided that Watson-Brooks and Thoma were trustees of the share held for Watson’s benefit. Prior to Eleanor Watson’s death, Eleanor Watson, Thoma, Watson-Brooks

and Watson, transferred their individual interests in 512 Route 164, Preston, Connecticut into the trust. The trust held the title to property until July 16, 2008, at which time Thoma and Watson-Brooks as trustees transferred the trust and its assets to White Gate, LLC.

White Gate, LLC is a limited liability company that was formed on June 20, 2002. The current members are Kendall, Watson-Brooks and the trust. Kendall is Thoma's daughter. Thoma died in December 2017. At the time of Thoma's death, Kendall became the successor trustee of the trust and managing member of White Gate, LLC. The trust has a 24% interest in White Gate, LLC. Kendall has a 52% interest in White Gate, LLC. Watson-Brooks has a 24% interest in White Gate, LLC.

Watson resided at 512 Route 164, Preston, Connecticut until February 1, 2021. He was removed from the premises after a summary process proceeding brought by White Gate, LLC. Kendall made the decision to evict the plaintiff in 2019 in her capacity as the managing member of White Gate, LLC.

For ten years prior to the eviction, the trust paid White Gate, LLC rent for the 512 Route 164, Preston, Connecticut. In 2019, both White Gate, LLC's funds and the trust's funds were depleting. After consultation with Watson-Brooks, Kendall made the decision to sell the property which meant that she had to evict Watson.

In addition to the property located at 512 Route 164, White Gate, LLC owned the property located across the street at 499 Route 164. White Gate, LLC also owned 177 Krug Road.

Thereafter, the plaintiff filed his Petition for Removal.

In the Complaint, the plaintiff alleges that the probate court's denial of the Petition for Removal was contrary to law and fact in that: (1) it is clear from the language of 45a-499bbb and the facts of this matter that the trustee's personal ownership interests in White Gate LLC create a conflict of interest which is an untenable situation for the plaintiff which requires the trustees' removal; (2) it is clear from the language of 45a-499ww as well as the facts of this matter that there has been a substantial change in circumstances between the parties brought upon by one set owner's desire to sell commonly-owned land the other owner's desire to keep it, as well as the eviction of the plaintiff; (3) by allowing the trustees to remain the probate court has allowed the trustees to make decisions and are not held accountable to anyone; (4) by allowing the trustees to remain, the probate court is denying the plaintiff his right to be heard; and (5) by allowing the trustees to remain, the probate court is denying the plaintiff his right to information relative to his beneficial membership interest in White Gate, LLC and the opportunity to protect his interest. The plaintiff asks the court to sustain the appeal, reverse the decision of the probate court and remove the current trustees of the trust. The plaintiff also asks the court to appoint a third-party successor trustee.

Discussion

“When hearing a probate appeal the Superior Court sits as the probate court and exercises the powers of a probate court. The issues are tried de novo and this Court must consider the evidence presented, unfettered by the judgment of the probate court.” *Byrne v.*

Spurling, Superior Court, judicial district of Tolland, Docket No. CV054002588S (October 12, 2006, *Klaczak, J.*). “The burden of proof is on the party submitting the claims.” *Id.*

Connecticut General Statutes § 45a-499ww (a) outlines the requirements for removal of a trustee: “The settlor of a noncharitable trust, the settlor of a charitable trust who has expressly retained the right to do so, the Attorney General in the case of a charitable trust, a co-trustee, a beneficiary or the surety on the trustee's probate bond, may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.” Subsection (b) (4) of that statute further states that a court may remove a trustee if “[t]here has been a substantial change of circumstances or removal is requested by all the qualified beneficiaries and the court finds that (a) removal of the trustee best serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust; and (b) a suitable co-trustee or successor trustee is available.”

“The existence of a potential conflict of interest does not, of itself, mandate removal of the defendant an executor. Removal of an executor is an extraordinary remedy designed to protect against harm caused by the continuing depletion or mismanagement of an estate. . . . In the absence of continuing harm to the interest of the estate and its beneficiaries, removal is not justified merely as punishment for a fiduciary's past misconduct. . . . Thus, in order to justify removing the defendant in this case, there must be evidence of a clear and continuing conflict of interest rendering the defendant unfit to perform its duties to the estate.” (Citations omitted). *Andrews v. Appeal/Prob.*, Superior Court, Docket No. CV000379029S (August 19, 2002,

Gormley, J.), *aff'd sub nom. In re Andrews' Appeal from Prob.*, 78 Conn. App. 429, 826 A.2d 1260 (2003).

It is against this backdrop that the court now looks at the law regarding the trustee's duties. "It is a fundamental principle of trust law that a trustee is a fiduciary obligated to act in the best interest of the trust beneficiaries." *Barash v. Lembo*, 348 Conn. 264, 285, 303 A.3d 577 (2023). "A trustee owes a fiduciary duty to administer the trust in the interest of the beneficiaries, and that duty commences when the trustee accepts the trusteeship." *Id.* at 591. "The trustee's administration of the trust must comport with her duties of loyalty and prudence." *Id.* "One of the most fundamental duties of the trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the cestui que trust. He must exclude all selfish interest and also all consideration of * * * third persons." (Internal quotation marks omitted). *Phillips v. Moeller*, 148 Conn. 361, 369, 170 A.2d 897 (1961). These principles are codified in General Statutes § 45a-499bbb and General Statutes § 45a-499ddd.

General Statutes § 45a-499bbb provides in relevant part: "(a) A trustee shall administer trust assets solely in the interests of the beneficiaries consistent with the settlor's intent."

General Statutes § 45a-499ddd provides in relevant part: "A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution."

General Statutes § 45a-499bbb (c) contains a presumption that there is a conflict of interest in certain situations. General Statutes § 45a-499bbb (c) provides: “A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with . . . (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in an entity that is acting as the trustee, has an interest that may affect the trustee's best judgment.”

Here, the terms of the trust provide: “The trustee shall be guided in its determination by the standards of living which shall have been maintained by my children prior to my death which standards shall, insofar as it is practical to do so, be maintained for each beneficiary of the trusts hereof entitled in the discretion of the Trustee to distributions of income or principal.” The terms of the trust permit Thoma and Watson-Brooks to withdraw their interests from the trust. The terms of the trust, however, do not permit the Watson to withdraw his interest in the trust from the trust. This indicates an intent to have Watson’s interest in the trust managed by another family member, if possible, until he passes away.

The trust also provides: “If any residential real estate shall be held as part of the trust estate, the Trustee may permit any beneficiary or any member of any beneficiary’s household to occupy such real estate rent free, but this shall not prevent sale or lease of such real estate if the Trustee shall deem it advisable.”

The issue presented to the court is that Kendall is essentially wearing two (2) hats at the same time- she is the trustee of the trust and she is the managing member. The plaintiff claims

that these hats are in conflict with each other and his interests as the sole beneficiary. Kendall owns 52% of White Gate, LLC. Watson-Brooks, the other co-trustee, owns 24% of White Gate, LLC and the trust owns 24% of White Gate, LLC. Kendall has the majority interest in White Gate, LLC. White Gate, LLC derives income from the property that the trust owns, including the property that Watson lived at before he was evicted. Kendall made the decision to evict Watson because White Gate, LLC was running out of money. Kendall admitted that she made the decision to sell the property because it was not fair to the members of White Gate, LLC to keep the property.

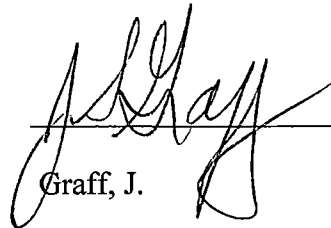
Although Kendall claims that she was acting in Watson's best interest when she made the decision to evict him, the court does not find this claim to be credible. While the house may have been in a state of disrepair, Kendall did not take any steps to provide Watson with any income from the trust during the eviction process. She likewise did not take any actions to find him suitable housing during the eviction process. Instead, she testified, in a less than credible manner, that it was incumbent on Watson to ask her for financial assistance from the trust. Kendall had and continues to have a complete lack of communication with Watson. Moreover, Kendall testified that the co-trustee also does not communicate with Watson. Notably, Watson-Brooks did not attend the trial and lives out of state.

Although Kendall testified that she was protecting Watson's assets for him, she has not made any disbursements to him from the trust assets once he was evicted. Watson is now living with his daughter. Kendall's actions are in contravention to the terms of the trust that require her to maintain Watson's standard of living that was in place when his mother was alive. The

court finds that based on these facts, the conflict of interest between Kendall's position as a trustee and her position as managing member is on-going. In addition, Kendall's position as the managing member of White Gate, LLC continues to put Kendall in conflict with the sole beneficiary of the trust, Watson. The court finds that this is a conflict of interest. The court further finds that the defendant has not overcome the presumption set forth in General Statutes § 45a-499bbb (c).

Conclusion

The court sustains the appeal, reverses the decision of the probate court and removes the trustees from the trust. The court remands this matter to probate court for the determination of the proper successor trustees. The court denies the plaintiff's request for costs.



Graff, J.