

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CHARLES J. SCHULZE, SUCCESSOR	:	O P I N I O N
TRUSTEE OF THE TRUST AGREEMENT		
OF SEAN M. GRANDSTAFF, UDT DEC.	:	
16, 2003,		
Plaintiff-Appellant,	:	
		CASE NO. 2012-L-040
- vs -	:	
LISA M. GRANDSTAFF,	:	
Defendant-Appellee.	:	

Appeal from the Lake County Court of Common Pleas, Probate Division, Case No. 11 CV 0069.

Judgment: Reversed and remanded.

Ian Robinson, Fitch, Kendall, Cecil, Robinson & Barry Co., 600 East State Street, P.O. Box 590, Salem, OH 44460 (For Plaintiff-Appellant).

Alan J. Rapoport, 55 Public Square, #1717, Cleveland, OH 44113 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Charles J. Schulze, Successor Trustee of the Trust Agreement of Sean M. Grandstaff, appeals from the judgment of the Lake County Court of Common Pleas, Probate Division, dismissing his complaint for declaratory judgment. At issue is whether the trial court erred in concluding appellee, Lisa M. Grandstaff, was vested with authority to remove appellant as successor trustee and appoint herself in

appellant's stead. For the reasons discussed below, we reverse and remand the matter.

{¶2} Appellee and Sean M. Grandstaff were married in 2000 and two children were born as issue of their marriage. On December 6, 2002, Sean M. Grandstaff established a trust ("the trust") for the benefit of the two minor children. Mr. Grandstaff was designated the trustee of the trust during his lifetime.

{¶3} In April 2003, the couple divorced and appellee was deemed the custodial parent. And in February 2006, Mr. Grandstaff passed away. Pursuant to the trust agreement, appellant was named successor trustee. On February 28, 2011, appellee, as guardian of the person of the beneficiaries, sought to remove appellant as trustee of the trust. As authority for doing so, appellee cited Section 13.3 of the trust, which provides, in pertinent part:

{¶4} "After the death of Grantor, a majority of * * the guardians of the incompetent beneficiaries, who are then entitled to receive income or who in the Trustee's discretion may then receive income hereunder, may remove the Trustee (or any successor Trustee) of the Trust and designate as Trustee of said Trust any person(s)."

{¶5} After removing appellant as trustee, appellee moved to be appointed guardian of the estates the beneficiaries. The court, on April 11, 2011, granted her request.

{¶6} On May 20, 2011, appellant filed a declaratory judgment action seeking an order declaring that appellee was precluded, as a former spouse of the settler, from exercising any general or special power of appointment under the trust. Appellant

based his complaint upon the operation of R.C. 5815.31, which provides, in relevant part:

{¶7} Unless the trust or separation agreement provides otherwise, if, after executing a trust in which the grantor reserves to self a power to alter, amend, revoke, or terminate the provisions of the trust, a grantor is divorced, * * * the * * * former spouse of the grantor shall be deemed to have predeceased the grantor, and any provision in the trust conferring any beneficial interest or a general or special power of appointment on the spouse or former spouse or nominating the spouse or former spouse as trustee or trust advisor shall be revoked.

{¶8} Pursuant to the statute, appellant maintained appellee, as a former spouse must be deemed to have predeceased Mr. Grandstaff and was therefore without authority under the law or the agreement to remove him and appoint herself as trustee. Appellant therefore claimed that appellee must be removed as trustee, and he was entitled to be reinstated as the successor trustee as a matter of law.

{¶9} Appellee filed an answer and counterclaim asserting R.C. 5815.31 did not apply to her since the trust agreement did not specifically afford her a power of appointment. She further asserted that her actions were permissible under the trust agreement because the trust allowed the guardian of the beneficiaries to remove the existing trustee and designate anew any person as trustee without cause. As no facts were disputed, the court directed the parties to submit briefs on the matters at issue in lieu of trial.

{¶10} After considering the parties respective positions, the trial court concluded that R.C. 5815.31 was inapplicable because the trust agreement did not give appellee a general or specific power of appointment. The court further observed that the trust instrument empowered the minor beneficiaries' guardian to remove a successor trustee. Hence, because appellee was the guardian of the minors' estates, the court concluded she had the authority under the trust to remove appellant and re-designate a new trustee, including herself. Appellant's complaint for declaratory judgment was consequently dismissed.

{¶11} Appellant now appeals and assigns the following error for our review:

{¶12} "The trial court committed an error of law when it held that R.C. [Sec.] 5815.31 did not apply after a divorce to bar a former wife of a deceased settler from removing his trustee and appointing herself trustee where the former wife had herself appointed as guardian of her children, the minor beneficiaries."

{¶13} Appellant's assignment of error challenges the trial court's interpretation and application of R.C. 5815.31. When interpreting a statute and considering its application, an appellate court conducts a de novo review, without deference to the trial court's decision. See *e.g. Millstone Conds. Unit Owners Assn. v. 270 Main St.*, 11th Dist. No. 2011-L-078, 2012-Ohio-2562, ¶27.

{¶14} In his merit brief, appellant contends that, even though appellee was the guardian of the persons of each beneficiary when she removed appellant and re-designated herself trustee, she, in so acting, exercised a power of appointment which was revoked upon her divorce from the decedent via R.C. 5815.31, the statute deeming appellant to have predeceased the decedent in such circumstances. Appellant argues

that the term “guardian” is a descriptive label and appellee cannot avoid the preclusive operation of R.C. 5815.31 by simply identifying herself with a label. Because the statute deems appellee to have predeceased Mr. Grandstaff, appellant concludes appellee is legally barred from removing or appointing a trustee.

{¶15} Alternatively, appellee claims she was entitled to remove appellant as trustee in her capacity of legal guardian of the beneficiaries. Appellee cites Section 13.3 of the trust, which grants authority in the guardian of the beneficiaries to remove the existing trustee and designate as trustee any person after the death of the grantor. She denies that Section 13.3 created a “power of appointment.” Instead, she maintains that section merely contains a “trustee removal provision,” which may be exercised by the beneficiaries’ guardian if such action would redound to the advantage of the beneficiaries.

{¶16} In his reply brief, appellant highlights a mutual release provision of Mr. Grandstaff’s and appellee’s separation agreement in which both parties agreed to release one another from any right, privilege or benefit accruing “from any other source, act, matter or agreement.” Appellant maintains that this provision of the separation agreement acts to relinquish any privilege or entitlement appellee may have had as the beneficiaries’ guardian to intercede in the trust’s functioning. This argument, however, was not raised in the trial court.

{¶17} The record demonstrates that, after executing the trust, Mr. Grandstaff and appellee were divorced. Mr. Grandstaff did not, subsequent to the divorce, affirmatively amend the trust to specifically state that, regardless of the divorce, he desired appellee to have some ultimate administrative control over the trust in the event

of his death. Reading the statute plainly, therefore, appellee, upon Mr. Grandstaff's death, was deemed to have predeceased him for purposes of the trust. We, accordingly, conclude that because, prior to Mr. Grandstaff's death, the trust did not otherwise provide for appellee to have a role in managing or otherwise involving herself in the oversight of the trust, she was statutorily precluded from exercising any authority over the trust, irrespective of her role as guardian.

{¶18} This conclusion is further supported by the parties' separation agreement. The trust was created by Mr. Grandstaff in 2002; the parties entered into their separation agreement, which was incorporated into the court's April 2003 final divorce decree. By virtue of the divorce decree, appellee released all rights and privileges accruing to her "either by virtue of [the] marriage or accruing to [her] from any other source, act, matter or agreement whatsoever." The decree further provided that appellee:

{¶19} completely and forever adjusted, settled, disposed of, and terminated any and all rights, claims, demands, causes of action [she] has or * * * may have arising out of [her] marriage and/or otherwise arising or resulting from any other matter, act, agreement or cause whatsoever occurring prior to the date hereof.

{¶20} Although the trust permits the guardian of the beneficiaries to remove and re-designate the trustee without cause, the separation agreement demonstrates that appellee had released all rights and privileges deriving from any source, matter, or agreement to which Mr. Grandstaff was connected or in which he was involved or had an interest. This release was reduced to a judgment and therefore binding upon appellee. Appellee, however, via her status as guardian, exercised a "right" of removal,

pursuant to the trust, an agreement created by the decedent prior to the divorce. And, by re-designating herself trustee, appellee will accrue certain rights and privileges that are incident to the duties of a trustee. By successfully seeking removal of appellant and re-designating herself trustee, appellant has accrued rights and privileges, which will bring her benefits in the form of remunerations from an agreement to which she released any claim or interest by way of her separation agreement. She has therefore acted in violation of the divorce decree.

{¶21} By operation of R.C. 5815.31, appellee is barred, as a matter of law, from involving herself in the affairs of the trust. We therefore hold the trial court erred when it permitted appellee to remove the successor trustee and re-designate herself trustee.

{¶22} Appellant's assignment of error is sustained.

{¶23} For the reasons discussed above, the judgment of the Lake County Court of Common Pleas, Probate Division, is reversed and the matter remanded.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.