

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Elizabeth Papps, et al.

Court of Appeals No. L-14-1246

Appellants

Trial Court No. CI0201304460

v.

Chrisoula Karras, etc.

DECISION AND JUDGMENT

Appellees

Decided: March 20, 2015

* * * * *

Steven C. Hales, for appellant, Thomas Papps.

Paul Skaff, for appellees.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Thomas Papps, appeals from the judgment of the Lucas County Court of Common Pleas, which granted appellee's, Chrisoula Karras, motion for summary judgment. We affirm.

A. Facts and Procedural Background

{¶ 2} In late 2005, appellant's sister, Elizabeth Papps, created a revocable trust, naming herself as beneficiary and trustee of the trust. On September 4, 2007, Elizabeth amended the trust to include a provision under which appellant was entitled to receive, upon her death, "(i) all of Elizabeth's books located within her residence * * *; and (ii) all shares of the common stock of Pfizer (fka Pharmacia, fka Upjohn Company)."¹ Subsequently, on December 5, 2012, Elizabeth resigned as trustee and named appellee as the successor trustee. One month later, Elizabeth converted the trust into an irrevocable trust, and ordered that the proceeds of the trust should be used for her exclusive benefit.

{¶ 3} During the several months that followed, appellee, acting as trustee, decided to sell the trust's real estate located at 2345 Cheltenham, Toledo, Ohio. Seeking to prevent such a sale, appellant, on September 13, 2013, filed a motion for a temporary restraining order. On that same day, appellant also filed a complaint alleging that appellee breached her fiduciary duty as trustee and seeking to be appointed as trustee of the trust in place of appellee. In the complaint, appellant, who had previously been appointed Elizabeth's guardian, also named Elizabeth as a plaintiff.

¹ The Pfizer stock to which appellant would have been entitled has since been sold and is no longer part of the trust corpus.

{¶ 4} Two weeks later, the trial court issued an order denying appellant's motion for a temporary restraining order.² Thereafter, on October 7, 2013, appellee filed her answer in which she averred, inter alia, that appellant was not the real party in interest since he "claims no beneficial interest in the Trust which is the subject of his Complaint."

{¶ 5} Following 11 months of pretrial discovery, appellee, on September 11, 2014, filed her motion for summary judgment, arguing that the case should be dismissed because appellant lacked standing to bring the action. The trial court agreed. Thus, on October 27, 2014, the court granted appellee's motion for summary judgment. In its decision, the trial court found that appellant lacked standing to challenge appellee's actions as trustee because he is not a settlor, trustee, co-trustee, or beneficiary of the trust. In reaching its conclusion, the court noted that appellant's

role as a trust beneficiary is limited to a provision directing [appellee] to distribute Elizabeth Papps' books to him upon her death. After the sale of the Cheltenham property, [appellee] offered the books to [appellant], but he declined the offer. [Appellant] has absolutely no interest, beneficial or otherwise, in any other trust property.

{¶ 6} It is from this decision that appellant now appeals.

B. Assignment of Error

{¶ 7} On appeal, appellant asserts the following assignment of error:

² Subsequent to the trial court's denial of appellant's motion for a temporary restraining order, a new person, Kevin McManus, was appointed Elizabeth's guardian. McManus has since dismissed Elizabeth's claims against appellee.

I. THE TRIAL COURT IMPROPERLY RULED THAT
PLAINTIFF LACKED STANDING TO BRING AN ACTION OF
BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT.

II. Analysis

{¶ 8} We review summary judgment decisions de novo, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). Applying Civ.R. 56(C), summary judgment is appropriate where (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and viewing the evidence in the light most favorable to the non-moving party, that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 9} In his assignment of error, appellant argues that the trial court erred when it concluded that he lacked standing. Appellant contends that, as a trust beneficiary, he had standing to bring an action to remove appellee as trustee of the irrevocable trust under R.C. 5807.06(A).

{¶ 10} In general, standing determines “whether a litigant is entitled to have a court determine the merits of the issues presented.” *Ohio Contrs. Assn. v. Bicking*, 71 Ohio St.3d 318, 320, 643 N.E.2d 1088 (1994). “Whether a party has established standing to bring an action before the court is a question of law.” *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 20, citing *Cuyahoga Cty. Bd. of Commrs.*

v. State, 112 Ohio St.3d 59, 2006-Ohio-6499, 858 N.E.2d 330, ¶ 23. In order to establish standing, the plaintiff must show that he or she suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief. *Id.* at ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

{¶ 11} Here, appellant claims that he had standing under R.C. 5807.06(A) to bring this action as a beneficiary of the trust. R.C. 5807.06(A) provides: "The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or the court may remove a trustee on its own initiative." The trial court examined appellant's interest in the trust and concluded that appellant was not a beneficiary under R.C. 5807.06(A). In so concluding, the court noted that, under the terms of the trust agreement, appellant is merely entitled to receive Elizabeth's books *upon her death*. The court found that appellant "has absolutely no interest, beneficial or otherwise, in any other trust property." The court went on to reference the fact that appellee already offered the books to appellant. According to appellant's own affidavit, he refused to accept the books from appellee.

{¶ 12} Having examined the trust agreement, along with its subsequent amendments, we agree with the trial court that appellant is not a current beneficiary of the trust. Notably, after its most recent amendment, the trust agreement provides that all the income of the trust is to be distributed to Elizabeth. Further, the trust agreement directs appellee to use whatever trust funds are necessary to provide for Elizabeth's "health,

education, maintenance and support.” These funds could include any monies generated from the sale of Elizabeth’s book collection, if such action is necessary to provide adequate care to Elizabeth. Finally, the trust forbids appellee from making “any distributions from the Trust for benefit of anyone other than Elizabeth.”

{¶ 13} Given the language of the trust, we find that appellant’s interest in Elizabeth’s book is contingent upon said books being part of the trust corpus at the time of Elizabeth’s death. Therefore, appellant has not established standing to bring the present action as a beneficiary. *See Cartwright v. Batner*, 2014-Ohio-2995, 15 N.E.3d 401, ¶ 57 (2d Dist.) (“In situations where a trust beneficiary’s interest does not vest until the settlor’s death, because it is subject to defeasance prior to death (as here), courts have held that the beneficiary cannot maintain a cause of action based on events that occurred prior to the settlor’s death.”).

{¶ 14} Furthermore, we find that appellant has failed to establish the basic requirements of standing set forth in *Moore, supra*; namely, he has failed to demonstrate how he was injured by appellee’s actions concerning the sale of certain trust property to which he was not, and has never been, entitled in the first place. As noted above, appellant’s interest in the trust property is limited to Elizabeth’s book collection upon her death. Appellee has done nothing to impair appellant’s future interest in the books. On the contrary, appellee actually offered the books to appellant, but he refused to accept them. Given these facts, we find that the trial court did not err when it granted appellee’s

motion for summary judgment based on its determination that appellant lacked standing to bring this action.

{¶ 15} Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 16} The judgment of the Lucas County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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