

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In re: :
: ORPHANS COURT DIVISION
THE IRENE BRICKELL TRUST :
: No. 41-03-0541
:

OPINION AND ORDER

Before the Court are two Petitions filed by the co-guardians of Edmund D. "Buddy" Brickell (Buddy). Co-guardian Debra Paucke (Paucke) has filed a Petition seeking reimbursement of funds paid to co-guardian Cynthia Mantle (Mantle). Mantle is also Trustee of the Irene Brickell Trust. Paucke's Petition also seeks disbursements of the Trust's funds for expenses relating to the care of Buddy. Mantle has filed a Petition seeking approval to pay out from the Trust reimbursements for travel and lodging expenses related to the present matter. The Petition also seeks approval to make payment from the Trust for work performed at 1439 Walnut Street in Jersey Shore.

The relevant facts are as follows. Irene Brickell (Settlor) established a Trust the res of which consisted of the real estate and furnishings located at 1439 Walnut Street in Jersey Shore. The instrument appointed Mantle as Trustee. The Trust named the Settlor as life beneficiary. Upon the death of Settlor, Buddy became the beneficiary and was entitled to the use and enjoyment of the property for the remainder of his life. The Trust provides that upon the death of Buddy, the liquidated assets of the Trust are to be distributed to listed survivors including Petitioners Paucke and Mantle, who are the daughters of the Settlor and sisters to Buddy. Settlor died May 28, 2003. On July 11, 2003 this Court appointed Paucke and Mantle Co-Guardians of the Estate and Person

of Buddy. On March 1, 2004 upon agreement of the Co-Guardians and motion of the Trustee, the Court authorized the sale of the Trust assets and ordered that the proceeds be placed back into Trust for Buddy's life-use benefit. The primary basis for this decision was that Buddy was no longer deriving a benefit from the property since he commenced residence with Paucke, his primary caretaker. Until the time of sale the Co-Guardians maintained the residence. Funding for much of the maintenance consisted of a check for \$13,000 forwarded from Paucke to Mantle. This check and the expenses incurred for said maintenance form the basis of a primary issue in the present Petitions. A second issue involves the alleged need for funds from the Trust for Buddy's current use and support.

Petition of Paucke

The first issue the Court will address is the claim by Paucke that the \$13,000 forwarded to Mantle should be reimbursed. However, from the testimony presented at the November 8, 2004 hearing, the Court finds insufficient evidence of an agreement by Mantle to repay to Paucke the \$13,000. To the contrary, the evidence suggests that while Paucke had access to the funds in the checking account, the money belonged to Settlor, and had been intended for Settlor's expenses, property maintenance, and Buddy's care. Without evidence to the contrary, it seems natural and intended that the \$13,000 would continue to be earmarked for these purposes by the Co-Guardians. Even were the Court to find that the money in the account clearly and freely belonged solely to Paucke, the lack of evidence of an agreement for Mantle to repay the amount is sufficient to deny the request for reimbursement.

Paucke's second contention is that the Trust funds should pay for necessary expenses for Buddy's care. The expenses listed in the Petition include converting a bedroom in Paucke's home to a handicapped-accessible bathroom, adding a front porch to her home, and adding a sitting room to her home. The Petition contends these improvements would enhance Buddy's quality of life and that they are in accord with the Settlor's intent and the terms of the Trust.

Pennsylvania follows the view of the Restatement of Trusts that when discretion is conferred upon a trustee with respect to the exercise of a power, its exercise is not subject to control by the courts, except to prevent an abuse by the trustee of his discretion. *Geron v. Kennedy*, 381 Pa. 97, 112 A.2d 181, 183 (1955) (citing Restatement of Trusts § 187 (1929)). However, even when there is no evidence of bad faith or improper motive, the exercise of discretion by trustees is subject to the limitation that they must not act outside "the bounds of reasonable judgment." *In re Briggs' Estate*, 150 Pa.Super. 66, 27 A.2d 430, 433 (1942). The real question is whether it appears from the record that the trustees acted in "that state of mind" contemplated by the grantor of the trust. *Id.* (citing Restatement of Trusts § 187 (1929)); *as cited in, In re Scheidmantel (In re Sky Trust)*, 2005 Pa.Super 6, 28 (2005).

The Court will not compel the Trustee to release funds for the sitting room or the front porch as requested by Paucke. Based on testimony given at the time of the hearing, the Court finds that denying funds for these improvements does not rise to the level of a breach of fiduciary duty nor can it be said to be "outside the bounds of reasonable judgment." While the "state of mind" of the Settlor surely contemplated Buddy's comfort and happiness, the Trustee has the discretion to release funds for the

use and benefit of Buddy, and is not required to agree with a guardian on the best use of said funds. Trustee is responsible for making prudent decisions concerning the balance of the Trust. Prudence includes assuring that ample amounts remain available for the whole of Buddy's life. While the Court today declines to *compel* these disbursements, it is not the intention of the Court to dissuade the Co-Guardians from working together to make decisions towards beneficial and prudent expenditures in furtherance of Buddy's care and happiness. With regard to converting the bedroom in Paucke's home into a handicapped-accessible bathroom, the Court finds after testimony that the parties may be able to agree on completing this project. The Court will not now compel the release of funds for this conversion, but will leave the issue open to further discussion between the parties. Mantle testified that she may be willing to release funds for this purpose but requires further cost estimates and details, including whether subsidies may be available to defray the cost to the Trust. The Court recommends that Paucke supply Trustee with the requested details and cost-estimates in furtherance of the proposed conversion.

Petition of Mantle

Mantle, as Trustee, petitions the Court to approve disbursements of Trust funds for travel and lodging expenses incurred by participation in these proceedings. The Court will authorize the payment of \$240.00 from the Trust for this purpose. Mantle is acting in, "the administration or protection" of the Trust and such fees and expenses were explicitly contemplated by the instrument. Brickell Trust 3.05. The Court will also authorize payment for repairs in the amount of \$900.00 as requested in the Petition.

The Trust explicitly grants the Trustee the power to repair Trust property at the expense of the Trust. Brickell Trust 3.03(a); 3.05.

ORDER

AND NOW, this _____ day of January, 2005, based on the foregoing opinion, the Court hereby DENIES Petitioner Paucke's claim for reimbursement of funds. The Court DENIES Petitioner Paucke's request that the Court compel payment from the Trust for expenses regarding the additions of a sitting room and front porch to Petitioner's residence. The Court withholds judgment with respect to expenses needed for a handicapped-accessible bathroom based on testimony that an agreement between the parties is attainable. The Court GRANTS Petitioner Mantle's request for approval of payments from the Trust in the amounts of \$900.00 for repair to the residence, and \$240.00 for travel expenses and lodging of Mantle, while acting as Trustee.

By The Court,

Nancy L. Butts, Judge

xc:

R. Gahr, Esquire
R. Tira, Esquire
G. Weber, Esquire
Judges
Hon. Nancy L. Butts
Law Clerk