

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: TRUST AGREEMENT OF :
JACK D. and ARDELLA M. HEISER : **No. 41-03-0187 and 41-94-0126**
: **ORPHANS COURT DIVISION**

OPINION AND ORDER

Before this Honorable Court, is Helen L. Shaffer's (Petitioner) Petition by Beneficiary to Terminate Trust. The Trust was created by the Jack D. Heiser and Ardella M. Heiser (Settlors) Trust Agreement dated November 11, 1992. Under the Trust Agreement, Jack D. Heiser, Jr. as Trustee (Respondent) is to pay the net income of the trust unto the Settlor's daughter, Helen L. Shaffer, for and during her life. Upon Helen L. Shaffer's death, the principal and accumulated income is to be divided into two equal parts. One part is to be distributed outright to Petitioner's daughter, Stacy R. Shaffer (Bray) and the other part is to be held in Trust for Petitioner's son, Stephen R. Shaffer.

Petitioner, with the consent of both residual beneficiaries seeks to terminate the Trust, as Petitioner believes "continuance of the Trust is not necessary to achieve any material purpose of the Trust." Petitioner relies on § 7740.1(b) of Pennsylvania's Uniform Trust Act, which states in relevant part: "A noncharitable irrevocable trust may be terminated upon consent of all the beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust." Petitioner states that the material purpose of the trust is to provide income to her for and during her life.

Respondent opposes the termination of the Trust, due to the spendthrift provision contained in Paragraph NINTH, page 10 of the Trust Agreement, which states:

The principal of the trust and the income therefrom shall be free from the debts, liabilities and engagements of those beneficially interested therein and shall not be subject to assignment by them, nor to attachment, execution or sequestration under any legal,

equitable or other process for the enforcement of judgments or claims of any sort against them, either individually or collectively.

The Respondents rely on § 7740.1(b.1) of Pennsylvania's Uniform Trust Act, which provides:

“A spendthrift provision in a trust instrument is presumed to constitute a material purpose of the trust.”

At a hearing on July 30, 2007 on Petitioner's Petition by Beneficiary to Remove Trustees, Appoint a Successor Trustee and for Contempt, this Court heard extensive evidence of Trustees failure to provide accounting, and make distributions from the Trust to Petitioner. However, Paragraph NINTH of the Trust Agreement is a spendthrift provision. Therefore, under Pennsylvania law, the Trust cannot be terminated, as continuance of the Trust is necessary to achieve a material purpose. Petitioner may now notify this Court whether it needs to schedule a hearing or wishes this Court to rule on the evidence presented in Petitioner's Petition to Remove Trustees.

ORDER

AND NOW, this _____ day of December 2007, the Court hereby DENIES Petitioner's Petition by Beneficiary to Terminate Trust. At the request of the Petitioner, the Court in its July 30, 2007 Order deferred decision on the Petitioner's Petition to Remove Trustees, in order for Petitioner to file this Petition by Beneficiary to Terminate Trust. Petitioner may by letter renew its request of this Court to schedule a hearing or to rule on the evidence presented in Petitioner's Petition to Remove Trustees.

By the Court,

Nancy L. Butts, Judge

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Hon. Nancy L. Butts
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