

Minnesota Court of Appeals Upholds Settlor's Intent, Rejects Beneficiary's Petition to Modify Trust and Receive Attorney Fees

January 6, 2022

In an opinion released last week, the Minnesota Court of Appeals rejected a petition to modify the terms of a trust to allow for the early distribution of trust assets to the beneficiaries. The court also denied the petitioner's request for attorney's fees from the trust, concluding that the litigation had been neither necessary nor for the benefit of the trust as a whole. The opinion serves as a fresh reminder of the high bar that must be overcome whenever beneficiaries seek to modify the distributive terms of a trust.

The Opinion

In *Skarsten-Dinerman v. Milton Skarsten Living Trust*, 2021 WL 6109571 (Minn. Ct. App. Dec. 27, 2021), the trust settlor created a revocable trust naming his six children as the primary beneficiaries upon his death. The trust assets consisted primarily of income producing farmland, and the trust agreement directed the trustee to distribute this income at least annually to the beneficiaries until three of the six children had passed away. At that point, the trustee was to terminate the trust and distribute the principal in equal shares to the three surviving children and the descendants of the three deceased children. Notably, the terms of the trust generally prohibited the sale of the farmland under any circumstance.

Three years after the settlor's death, one of the children petitioned the court to modify the trust to permit the sale of the farmland and distribution of the proceeds to the six children. According to the petitioner, modification was warranted for three reasons: (1) the value of the farmland held by the trust had decreased; (2) this decrease in value would result in reduced income to the trust beneficiaries; and (3) the terms of the trust requiring distribution after the first three children had died would unfairly penalize those children who died while arbitrarily benefiting the children who survived. Although all of the trust beneficiaries consented to the proposed modification, the trustee opposed the request. In the trustee's view, an early sale or distribution of the farmland would violate a clear material purpose of the trust. Although the district court concluded the trust was ambiguous regarding the sale of the farmland, it nonetheless agreed with the trustee that the proposed modification was unwarranted and denied the petitioner's corresponding request for attorney fees from the trust.



The Minnesota Court of Appeals affirmed the trial court's decision and refused to authorize any modification of the trust. The court first considered whether a modification of the trust was appropriate under Minnesota Statutes § 501C.0411(b), which authorizes a court to modify an irrevocable trust if: (1) all beneficiaries consent to the requested modification; and (2) the requested modification is not inconsistent with a material purpose of the trust. On this issue, the court found that although all of the beneficiaries consented to the requested modification (satisfying prong 1), an unmistakable purpose of the trust was to retain the farmland as a continuous source of income for the settlor's six children until three of them passed away. As the court observed, the settlor's specific view of how best to provide for the trust beneficiaries was controlling, even if the trust beneficiaries disapproved of that choice and believed a greater return could be achieved in a different way.

The court next turned to whether a modification of the trust might be appropriate under Minnesota Statutes § 501C.0412(a), which permits judicial modification of a trust if, because of circumstances not anticipated by the settlor, the modification would further the purposes of the trust. According to the petitioner, two unanticipated circumstances occurred after the settlor died that warranted modification of the trust: (1) three of the children formed special needs trusts and transferred their interests in the trust to those special needs trusts; and (2) the farmland decreased in value. The court concluded that neither circumstance justified a modification of the trust. As to the first, the court found the petitioner's concern — that trust assets would end up flowing to the state in repayment for medical costs if the three children with special needs were the surviving children to receive the farmland when the trust terminated — was both speculative and not a true changed circumstance, as assets would pass to the state even if the modification was permitted. As to the second, the court observed that as a farmer himself, the trust settlor would have been familiar with fluctuation in the value of farmland. Accordingly, neither circumstance justified modifying the trust.

Finally, the court affirmed the district court's decision to deny the petitioner's request for reimbursement of attorney fees from the trust. Acknowledging that the district court has the statutory authority under Minnesota Statutes § 501C.1004 to award reasonable attorney fees in any judicial proceeding involving the administration of a trust, the court observed that the recent decision in *Lund ex rel. Revocable Trust of Lund v. Lund*, 924 N.W.2d 274 (Minn. Ct. App. 2019) left open the possibility that the traditional common law standard for awarding attorney fees in these types of cases may also still apply. Under that standard, a beneficiary may recover attorney fees from a trust when the litigation is: (1) necessary to resolve ambiguous language in the trust document; (2) essential to proper administration of the trust; and (3) conducted in good faith, without unnecessary expense or delay, for the primary benefit of the trust as a whole.

Reviewing the record of the case, the court of appeals found the district court was within its discretion to conclude that justice and equity did not require payment of the petitioner's legal fees from the trust, and, under the common law standard, the litigation was neither essential to the proper administration of the trust



nor for the primary benefit of the trust. In particular, the court noted the trust agreement was unambiguous in prohibiting sale of the farmland, and thus the litigation was unnecessary in order to establish the meaning and effect of the document as a whole.

Key Takeaways

Settlors, trustees, and beneficiaries alike should take note of the decision in *Skarsten-Dinerman*. Although an unpublished opinion, meaning it is not technically binding on future decisions, the case provides several important takeaways:

- Trustees have a duty to administer a trust as the settlor intended, even if doing so conflicts with the wishes of the trust beneficiaries. As in *Skarsten-Dinerman*, this duty can at times require a trustee to take legal action to defend the plain language of the trust against beneficiary action to modify the trust agreement.
- Although the Minnesota Trust Code provides several mechanisms that can be used to modify an irrevocable trust, the universal touchstone is furtherance of the settlor's intent. Where a proposed modification is contrary to the plainly expressed wishes of the settlor, Minnesota courts will refuse to approve the change.
- A trust settlor is free to use his or her best judgment when determining how trust assets should be invested and distributed, even if another option might produce a higher rate of return for the trust. Trustees — and courts — must follow these wishes absent significant changes in circumstances.
- The case leaves open the question — unanswered since *Lund* — of whether Minnesota courts can apply the old common law standard to requests by beneficiaries for payment of attorney fees from the trust, in addition to the newer statutory standard. For now, litigants should continue to look to both standards when seeking (or opposing) awards of attorney fees.

Trust modifications and fiduciary duties are complex and litigation involving trusts and trustees is increasing. Hiring an attorney to help navigate these potential pitfalls can be essential. If you have questions about *Skarsten-Dinerman* or want to discuss trust administration or litigation, please contact Jim Thomson, Brian Dillon, or your regular Lathrop GPM Trust, Estates & Legacy Planning contact.