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DISTRICT II

March 1, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP1108

In the matter of the Roman B. Pechacek Family Trust and the
Dolores L. Pechecek Family Trust: Patricia A. Most v. Richard
Pechacek (L.C. # 2015PR3)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Patricia A. Most, Karen L. Marsh, and Thomas A. Pechacek (collectively, the appellants) appeal from an order dismissing their petition to prevent the transfer of property from a trust. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

The Roman P. Pechacek Family Trust and the Dolores L. Pechacek Family Trust are irrevocable trusts that were executed in 1987 (hereinafter “the trust”).² The primary asset owned by the trust is the Pechacek family farm. Roman and Dolores’ son, Richard A. Pechacek, was named as trustee.

The stated purpose of the trust was “to provide for the general support and welfare of” Roman and Dolores while alive to the extent needed. The trust was also created to protect the farm from creditors, remove the asset from consideration for Medicaid and other like program eligibility, and provide distribution to Roman and Dolores’ five children (Richard, the appellants, and Janice M. Joy) when both Roman and Dolores are deceased.

Roman died in 2010. Dolores is alive and resides on the farm owned by the trust.

In December 2014, Richard sent a letter to his four siblings providing notice of his intent to transfer the farm from the trust to Dolores personally. The appellants objected. They subsequently petitioned the circuit court for an order stating that Richard had no authority to transfer the property.

At a hearing on the petition, Richard made two arguments in support of his decision to transfer the property: (1) based on a change in the law, the trust would no longer protect the farm from being a countable asset for Medicaid eligibility purposes; and (2) he had authority to make distributions for Dolores’ general welfare. Dolores had expressed a desire to reacquire the

² The parties agree that the trusts are substantively identical and function as one trust.

farm to prevent acrimony between her children regarding what would happen to it when she passed away.

Ultimately, the circuit court agreed with Richard that he had authority to transfer the property. Accordingly, it dismissed the appellants' petition. This appeal follows.

On appeal, the appellants renew their argument that Richard lacked authority to transfer the property. Their argument requires construction of the trust at issue.

The construction of a trust presents a question of law that we review de novo. *See Furmanski v. Furmanski*, 196 Wis. 2d 210, 214, 538 N.W.2d 566 (Ct. App. 1995). The principal object of trust construction is the ascertainment of the settlor's intent. *Id.* at 215. The best evidence of that intent is the language of the document. *Id.*

Upon review of the trust, we are satisfied that Richard had authority to transfer the property. As noted, one of the purposes of the trust was to provide for the general welfare of Dolores. Moreover, the trust states, "It shall be entirely within the discretion of the Trustee, without any restriction whatsoever, as to whether the trust should make such payment for the beneficiaries." Dolores was a beneficiary. It was within Richard's complete discretion to make payment to her for her general welfare, and this included transferring the trust's primary asset.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals