STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of DONALD MATUSINSKI, Deceased.

ROBERT W. KIRK, Personal Representative of the Estate of DONALD MATUSINSKI, Deceased,	UNPUBLISHED July 3, 2007
Petitioner-Appellee,	
v	No. 268553
GREGORY PELGUS,	Macomb Probate Court LC No. 03-175613-DE
Respondent-Appellant,	
and	
AUTUMN WOODS HEALTH CARE FACILITY,	
Intervening Plaintiff.	

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent, Gregory Pelgus, appeals as of right the February 8, 2006, order to return funds to the estate of Donald Matusinski. On appeal, respondent argues that the probate court erred in determining that respondent's withdrawal of funds from Donald Matusinski's credit union account upon Matusinski's death was subject to the probate code. For the reasons set forth below, we affirm.

At the time of his death on April 23, 2002, Matusinski held an account with the Detroit Edison Credit Union with a balance of $59,750.88. Respondent, designated the "First Beneficiary" on the account, withdrew the balance and closed the account on May 14, 2002. On November 23, 2005, petitioner, Robert W. Kirk, as personal representative of Matusinski's estate, moved the probate court for return of the funds withdrawn from the account, contending that there were insufficient assets in the estate to satisfy all creditors in full, and that, according to MCL 700.3805(3), petitioner could collect the account funds from respondent and return them to the estate for distribution. The estate has assets totaling $4,941.07; however, liabilities, excluding costs of administration, include a claim of $22,533.75 by Autumn Woods Health Care

Facility for care of and service to Matusinski, $4,892.20 for Matusinski's funeral expenses paid by respondent, and $2,604.50 in legal fees incurred by respondent on behalf of Matusinski. Respondent answered on December 7, 2005, by arguing that the Account was a credit union multiple-party trust account and, as such, was not subject to the probate code pursuant to MCL 490.59.

This Court reviews issues of statutory interpretation de novo. *In re Haque Estate*, 237 Mich App 295, 299; 602 NW2d 622 (1999). This Court reviews the findings of a probate court sitting without a jury for clear error. *In re White Estate*, 260 Mich App 416, 419; 677 NW2d 914 (2004). A finding is clearly erroneous if a reviewing court is left with a firm and definite conviction that a mistake has been made, although there may be evidence supporting the lower court's finding. *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 222; 707 NW2d 353 (2005).

The Estates and Protected Individuals Code (EPIC) allows an estate's personal representative to collect probate assets to satisfy creditors' claims against an estate. MCL 700.1101 *et seq*. In addition, if the estate is insolvent, as is the case with this estate, a personal representative may require certain nonprobate transfers to be returned to the estate to satisfy claims against the estate. MCL 700.3805(3).

Credit union multiple-party trust account transfers are not subject to the probate code pursuant to MCL 490.59. Respondent claims that the account in question constitutes a credit union multiple-party trust account as defined by the plain language of MCL 490.57. Thus, according to respondent, the sole function of this or any Court is simply to apply the terms of the statute to the facts of this case.

The signature card the decedent used to open the account refers to the account as a "trust account" three times, and he signed the signature card on the line designated "Master Member (First Trustee)." Respondent paraphrases MCL 490.57, "If an account states that a party is a trustee for 1 or more identified persons, that account is a trust account," and argues that, therefore, the account is a trust account. While respondent is correct that the signature card refers to a trust, and Matusinski signed as "First Trustee," his argument that the account fits the statutory definition of a credit union multiple-party trust account is misplaced. The statute does not state that an account referred to as a "trust" is always a trust account or that if the owner of the account is called a trustee, then the account always qualifies as a trust account. Rather, the statute plainly states that an account is a trust account if the account states that a party is a trustee for one or more identified persons, and the account at issue does not make such a statement.

The petitioner argues that the account did not create any type of trust, and therefore, proceeds from the Account transfer are reachable by the personal representative to satisfy creditors' claims against the estate. Petitioner asserts that words alone are not necessarily indicative of a trust. *Knights of Equity Mem Scholarships Comm v Univ of Detroit*, 359 Mich 235, 240; 102 NW2d 463 (1960) (Words such as "trust" or "trustee" are "neither necessary to the creation of a trust nor conclusive with respect thereto even if used."); *Union Guardian Trust Co v Nichols*, 311 Mich 107, 114; 18 NW2d 383 (1945) ("The use of the words 'settlors' and 'trustee' as used in the instrument are indicative, but standing alone are not absolutely decisive, if the inner meaning of the instrument . . . did not show the trust relationship."); *Frost v Frost*, 165 Mich 591, 595; 131 NW 60 (1911) ("The creation of a trust does not depend upon the use of

a particular form of words, but it may be inferred from the facts and circumstances of the case.") Rather, to create a trust, there must be a transfer of property to one for the benefit of another. *Osius v Dingell*, 375 Mich 605, 613; 134 NW2d 657 (1965). The transferor must manifest an intent "to impose enforceable duties upon the transferee." *Townsend v Gordon*, 308 Mich 438, 446; 14 NW2d 57 (1944).

Here, Matusinski filled out a signature card to open the account and named respondent as beneficiary. The language of the signature card did not impose any duties on respondent. There were no other beneficiaries named on the card. According to specific language on the card stating, "The account . . . shall be payable on proper withdrawal demand concurred in by all beneficiaries who survive the trustee," respondent was able to withdraw funds only upon Matusinski's death. Thus, we find that Matusinski's intent was to transfer ownership of the account to respondent only after Matusinski's death, thereby benefiting only respondent.

Furthermore, when Matusinski created the account, he signed the card as "Master Member (First Trustee)," but left blank the signature section under "Share Deposit Account of Trustee *For Beneficiary*," which further establishes that it was not Matusinski's intent to establish the account for the benefit of another. In addition, under the credit union multiple-party accounts act, a "beneficiary" is defined as "any person named a beneficial owner when an account provides that it is payable to a trustee for the beneficial owner." MCL 490.51(b). In the instant case, Matusinski was the trustee, and there is no evidence that Matusinski intended to have account funds payable to himself for the benefit of respondent, as required by the language of MCL 490.51(b). Consequently, we find that the account was not a trust account.

Next, petitioner contends that the account is a credit union beneficiary account pursuant to MCL 490.81 and MCL 490.82. A credit union beneficiary account is "a share or deposit account in a credit union where 1 or more persons are designated as owners and 1 or more other persons are designated as beneficiaries. A beneficiary account is not a trust or trustee for beneficiary account." MCL 490.81(b). A beneficiary account "owner" is "the person or persons designated as the owner in the documents establishing a credit union beneficiary account." MCL 490.81(d). A "beneficiary" is "a person who does not have an ownership interest in a beneficiary account but is the person designated to receive the funds in the beneficiary account upon the death of the owner of the account." MCL 490.81(a).

The language on the signature card indicates that Matusinski fits the statutory definition of "owner" and respondent fits the statutory definition of "beneficiary" under the credit union beneficiary account statute, MCL 490.81. Matusinski signed the card as First Trustee and respondent signed as First Beneficiary. Language on the signature card states, "Until the death of the sole trustee or the death of the survivor trustees, if more than one, sums paid to the [Account] shall be paid to the trustees on proper withdrawal demand." Thus, Matusinski as First Trustee was able to withdraw funds from the account until his death. The next sentence states, "The account also shall be payable on proper withdrawal demand concurred in by all beneficiaries who survive the trustee or survivor of the co-trustees, or their representatives." Thus, respondent as First Beneficiary was able to withdraw funds if he survived Matusinski, the First Trustee. Since respondent had no ownership interest, but was designated to receive the funds upon Matusinski's death, we find that respondent was a beneficiary as defined under the credit union beneficiary account statute.

Given that the Account is a beneficiary account, petitioner contends that the account is subject to MCL 700.3805(3), which gives the personal representative the right to collect nonprobate transfers, in the event that the estate is insolvent, in order to satisfy creditors' claims. A nonprobate transfer is defined under MCL 700.6101, in relevant part, as a transfer made in a written instrument, such as an account agreement or other written instrument of similar nature, which is nontestamentary. A written transfer provision is included in MCL 700.6101 if it is intended to result in "Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person . . . whom the decedent designates [] in the instrument . . . ." MCL 700.6101(1)(1a). Here, the written instrument was an account agreement, and the intent of the transfer provision was to transfer money Matusinski owned before his death to respondent after Matusinski's death. Thus, respondent's withdrawal of funds from the account qualifies as a nonprobate transfer under MCL 700.6101, and hence, is subject to the probate code pursuant to MCL 700.3805(3). We therefore hold that the probate court did not err in its determination that the personal representative can collect from respondent $59,750.88 and return it to the estate in order to satisfy claims against the estate.

Affirmed.

/s/ William C. Whitbeck, C.J.
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello