

Court Held That A Trust Terminated Upon The Primary Beneficiary's Death And That The Trustee Did Not Have Authority To Accept New Assets As A Part Of Its "Winding Up" Authority

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In Herbig v. Welch, a dispute arose around whether a trust terminated and whether certain transfers were valid. No. 01-22-00080-CV, 2023 Tex. App. LEXIS 4505 (Tex. App.—Houston [1st Dist.] June 27, 2023, no pet.). The parties disputed whether a trust terminated, whether a trustee had authority to accept transfers after termination, whether certain transfers were void, and whether a party had capacity or standing to assert all these issues. The court first noted that whether a party was an "interested party" under Section 115.001 of the Texas Trust Code, and had authority to bring claims under that statute, was an issue of capacity that could be waived. The court had that the issue was waived. Notwithstanding, the court held that even under a traditional standing analysis, that the trustee of an alleged terminated trust had standing because if certain transfers were void, the assets would refund into the trust.

The trial court granted summary judgment that the trust did terminate upon the death of the primary beneficiary, and the court of appeals affirmed:

In her motion for summary judgment, Jeanne pointed to the following language in Article IV of the WFT as evidence that it, and the sub trusts, terminated upon Richard's death: ... "Upon the death of the surviving Beneficiary, the Trustee shall distribute all assets remaining in the various Trusts established in Article III in accordance with any powers of appointment exercised by the surviving Beneficiary. To the extent not exercised, such property will be distributed to the descendants of Trustors on a per stirpes basis." Herbig argues that while this article "provides for the distribution of assets upon Richard's death, . . . it does not provide for an immediate extinction of the WFT." While Herbig is correct that this language does not expressly state that the Welch Family Trust C became "immediate[ly] extinct[]" or that it terminates upon Richard's death, it does, by its terms, direct that the trust be terminated. It provides for the distribution of "all assets remaining in the various Trusts . . . in accordance with any powers of appointment exercised by [Richard]," and to the extent such powers of appointment were not exercised, "such property will be distributed to the descendants of Trustors on a per stirpes basis." There are no provisions allowing for powers of appointment related to the Welch Family Trust C, so under the terms applicable to that

trust, any remaining assets at the time of Richard's death "will be distributed to the descendants of Trustors on a per stirpes basis." Other than to distribute "all assets remaining," there are no directives as to what would be done with the trust following Richard's death. After all trust property and assets remaining in the Welch Family Trust C are distributed upon Richard's death, the trust would have no remaining property or corpus. The only reasonable interpretation of this provision is that the Welch Family Trust C was "to continue only until . . . the happening of a certain event," i.e., Richard's death. See Tex. Prop. Code § 112.052. In other words, Richard's death was the "event of termination." See *id.* Once that event occurred, i.e., Richard died, the Welch Family Trust C terminated.

Id. The court of appeals then determined whether the trustee of the terminated trust could accept new property to the trust after termination. The court stated:

As noted above, Section 112.052 of the Texas Property Code states: "If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust." Tex. Prop. Code § 112.052...

Under this law, after the Welch Family Trust C terminated on September 9, 2019, Herbig was permitted to continue to exercise his powers as trustee for a reasonable time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. See Tex. Prop. Code § 112.052; *Sorrel*, 1 S.W.3d at 870. Herbig argues that because his powers as trustee included the power to accept additional property or interests into the trust "at any time," he was endowed with that right beyond the termination of the trust. He asserts that winding up the trust necessarily could include accepting the transfer of property. We disagree.

The opening paragraph of the WFT provides that it assigned to Richard and Margaret "all property, real or personal, which we, or through the actions of our attorneys-in-fact, or any other person may, at any time or from time to time, transfer, add or cause to be added to this Trust, all of which, together with any income thereon, is hereinafter called 'Trust Property[.]'" Article II also provides that "[s]ubject to acceptance by the Trustee, additional property or interests may be transferred or assigned from time to time or at any time by any person" It is this language that Herbig points to in support of his argument that he could continue to accept new property into the trust even after termination. He contends that Jeanne, and the trial court's, construction of the WFT renders the "at any time" language meaningless. But this language cited by Herbig presupposes that there is a trust in which to accept property. If we were to adopt Herbig's interpretation, this would mean that the trustee could continue to accept new property into a trust even many years after the termination event occurs, preventing the winding up of the trust indefinitely.

Furthermore, this language of the trust neither expressly permits, nor prohibits, the trustee from accepting new property into the trust after termination. Accordingly, as Herbig recognizes, where the language of the trust is silent, the provisions of the Trust Code govern. See Tex. Prop. Code § 113.001; *Myrick v. Moody Nat'l Bank*, 336 S.W.3d 795, 802 (Tex. App.—Houston [1st Dist.] 2011, no pet.). As stated above, Section 112.052 permits a trustee to retain his powers after termination "for the reasonable period of time required to

wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries.” ... Accordingly, we hold that the neither the express terms of the Welch family Trust C, nor the Trust Code, authorized Herbig to accept the transfers of new property into the trust following Richard’s death and the termination of the trust.

Id.

The court then held that because the trustee did not have authority to accept the transfers, that the attempted conveyances were void. The court noted that “Texas courts have held that a deed is void if the grantee is not in existence at the time the deed is executed. Because we have concluded that the Welch Family Trust C terminated upon Richard’s death, and that as trustee, Herbig did not have the power to accept new property into the trust after termination, we hold that this is sufficient to establish that the Welch Family Trust C no longer existed for the purposes of receiving property as a grantee.” *Id.* The court affirmed the trial court’s ruling that the conveyances made after the primary beneficiary’s death were void.

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