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# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* KATHRYN PLANK REVOCABLE LIVING TRUST.

FRANKIE L. HAMILTON and PAULA DUNCAN,

Appellants,

v

MARY WALTERS, Trustee of the REVOCABLE LIVING TRUST OF KATHRYN PLANK, and RAY MARENTETTE,

Appellees.

UNPUBLISHED
January 09, 2026
9:45 AM

No. 373195
Kalkaska Probate Court
LC No. 22-010745-TT

Before: BOONSTRA, P.J., and O'BRIEN and YOUNG, JJ.

PER CURIAM.

A probate court may remove a trustee only in accordance with MCL 700.7706(2). Because the probate court did not provide a factual basis to support any of the statutory reasons for trustee removal, we vacate the appointment of a new trustee and remand to the probate court for further proceedings.

## I. FACTUAL AND PROCEDURAL HISTORY

Kathryn Plank executed the Kathryn Plank Revocable Living Trust ("the Plank Trust") on July 31, 2002, and originally named herself as the trustee. Plank has two daughters, Helen Marentette and Virginia Hamilton, as well as several grandchildren.[1] It is unclear from the record when Helen became Trustee of the Plank Trust, but she voluntarily resigned as Trustee on April 15, 2019. Helen was later found guilty of embezzlement from a vulnerable adult,

[1] We refer to the family members or parties involved in this case by their last name except when they share the same last name as another involved family member or party.

MCL 750.174a(7)(a) ($100,000 or more), for stealing upwards of $400,000 from the Plank Trust during her time as Trustee. She was sentenced to two months in jail, and ordered to pay $375,000 in restitution to the Plank Trust.

After Helen's voluntary resignation, Virginia became Trustee. Plank passed away on September 12, 2020. As of May 2022, Helen had not paid any restitution money to the Plank Trust. Virginia petitioned to modify the Plank Trust to remove Helen as a beneficiary because of the embezzlement conviction and restitution owed, and the probate court treated Helen as if she had predeceased Plank and removed Helen as a beneficiary. However, the probate court allowed Helen's children, Appellees Mary Walters and Ray Marentette, to receive her share of Trust assets.

In March 2023, Walters and Ray moved for the probate court to order Virginia to conduct a full accounting and inventory of the Plank Trust from April 2019, when she became Trustee, through September 2020, the month Plank died. The motion stated Walters and Ray requested a full accounting "on different occasions" since Helen was removed as a beneficiary, and "only received a hand written inventory and accounting for the year 2019."

In a responsive pleading, Virginia detailed her responsibilities when she took over as Trustee in 2019. Virginia became responsible for working with law enforcement to track remaining assets still owned by the Plank Trust during Helen's embezzlement trial. She also became Plank's caregiver. Virginia relocated Plank from Michigan to Arkansas to care for her, transitioned Plank into an assisted living facility during the COVID-19 pandemic, took Plank to all her doctor's appointments, and prepared the real property held in the Plank Trust in Michigan for sale, while overseeing the removal and storage of items inside the real property. Virginia's response also detailed that ever since Helen was removed as a beneficiary, Virginia had been working to compile an accounting to turn over to Walters and Ray. Virginia argued she substantially complied with their requests and provided them with various documents and ledgers to show the financial activities of the Plank Trust from April 2019 to September 2020, the last year or so of Plank's life. Virginia argued she did her best to keep adequate records of the administration of the Trust, and tried to figure out what accounts were still open and what funds remained.

The probate court heard oral argument on the motion for an accounting, and remarked that some of the documents and ledgers Virginia provided were illegible, and she needed to provide banking records rather than handwritten notes. Virginia was present at the hearing, and stated on the record there was no money left in the Plank Trust. Nevertheless, the probate court ordered Virginia to produce an accounting from April 15, 2019 to September 12, 2020, within 60 days. On August 15, 2023, Virginia, through her counsel, produced an accounting for the Plank Trust. Virginia passed away on August 30, 2023.

Following Virginia's death, her daughter, Appellant Paula Duncan, petitioned the probate court in February 2024 to be appointed as Trustee of the Plank Trust. The petition stated the administration of the Plank Trust was plagued by complications because of Helen's embezzlement and her lack of proper documentation of trust assets, but that Duncan had general knowledge of the remaining assets and desired to assist in overseeing the proper accounting and distribution of assets in the Plank Trust. On June 21, 2024, the trial court granted the petition and appointed Duncan as Trustee, giving her full powers and authority over the Plank Trust. The order stated

Duncan agreed to "notify the parties as soon as practicable of the remaining assets owned by the Trust," and that she agreed to refrain from expending any Trust funds until she notified all parties of the remaining assets.

On July 10, 2024, counsel for Walters and Ray contacted counsel for Duncan asking Duncan to "provide an accounting" of Plank Trust assets within 30 days. On August 20, 2024, counsel for Walters and Ray contacted counsel for Duncan again, stating "we have heard nothing from your client regarding an analysis. Please be advised that you are given 5 days from the date of this letter to provide same or we will once again file a Motion." On September 27, 2024, Walters and Ray filed a motion to remove Duncan as Trustee of the Plank Trust. The motion stated Walters should be appointed to provide a full accounting of Plank Trust assets to the probate court. The motion did not make any legal arguments, and did not include a brief in support, but attached the letters to Duncan's counsel as exhibits.

Through counsel, Duncan responded to the motion, stating that on October 11, 2024, she emailed counsel for Walters and Ray "an accounting of the remaining trust assets" from September 2020 to September 29, 2024, which documented that $2,059.94 remained in the Plank Trust. Duncan stated no funds were spent since she assumed her role as Trustee, and explained that the Plank Trust remained open to receive restitution payments from Helen, who still owed $375,000. Duncan argued she demonstrated responsible stewardship of Plank Trust assets and complied in full with the probate court's order appointing her as Trustee.

The probate court heard argument on the motion to remove Duncan as Trustee on October 15, 2024. Counsel for Walters and Ray argued the accounting Duncan provided was "very simplistic" and not a proper accounting, and "it really is time to appoint someone who can get this done and finalize this matter." Duncan's counsel responded that she complied with the order appointing her as Trustee, and the accounting she provided was "simplistic" because there was very little revenue left in the Plank Trust. Walters' and Ray's counsel responded that when Plank was relocated from Michigan to Arkansas to live with Virginia, Plank "was sent out with about $1.2 million worth of assets," and Virginia "began to move the assets for her own." Duncan's counsel stated he was unsure where the $1.2 million figure came from and needed evidence that $1.2 million existed in the first place.

The probate court found that Duncan did very little between being appointed and the hearing date, and "a full accounting and investigation" was still necessary. The court ultimately granted the motion to replace Duncan as Trustee, asking:

> What would be the harm, if you're claiming there's only $2,000 left in the trust, you know, somebody else to get in there and see what happened with these items that were taken out or removed from the trust and where it ended up.

The order removing Duncan and appointing Walters as Trustee of the Plank Trust was entered October 15, 2024.

Duncan now appeals by right.[2]

## II. ANALYSIS

### A. ISSUE PRESERVATION AND STANDARD OF REVIEW

For an issue to be preserved for appellate review, it must be raised in or addressed by the trial court. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020). Although neither party raised the circumstances listed in MCL 700.7706(2) below and the trial court did not expressly consider it when granting the motion to remove Duncan and appoint Walters as Trustee, "appellate consideration is not precluded merely because a party makes a more developed or sophisticated argument on appeal." *Mueller v Brannigan Bros Restaurants & Taverns LLC*, 323 Mich App 566, 585; 918 NW2d 545 (2018). Duncan's response to the motion to remove her as Trustee argued she demonstrated "responsible stewardship of trust assets" and "complied with the [c]ourt]'s [o]rder appointing her as Trustee." Affording Duncan "the very maximal benefit of the doubt," *Mueller*, 323 Mich App at 585, her arguments speak to the responsibility she held as Trustee, allowing us to consider MCL 700.7706(2).

Duncan challenges the probate court's decision to remove her as Trustee, arguing there are no facts to support any of the conditions for removal in MCL 700.7706(2). Specifically, she argues by the time of the hearing on the request for her removal, Duncan provided a list of the remaining Plank Trust assets as of the date she became Trustee and through the date of the hearing. She points out that she also did not spend any Plank Trust assets since assuming her role. Although her response to Walters' and Ray's letters was delayed, Duncan argues this was because she was trying to make sense of the complicated financial issues that stemmed from the embezzlement issue preceding her appointment.

"This Court reviews for an abuse of discretion a probate court's dispositional rulings and reviews for clear error the factual findings underlying a probate court's decision." *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018) (cleaned up). "An abuse of discretion occurs when the probate court chooses an outcome outside the range of reasonable and principled outcomes." *Id*. (cleaned up). "A probate court's finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id*. (cleaned up).

"Issues of statutory interpretation are questions of law reviewed de novo." *In re Duane v Baldwin Trust*, 274 Mich App 387, 396; 733 NW2d 419 (2007). "If the language in a statute is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning, and the statute must be enforced as written. This Court may read nothing into an unambiguous statute

[2] After the claim of appeal was filed in this matter, appellees filed subpoena requests and a motion to compel copies of tax returns for Virginia, Duncan, and other involved family members, from 2018 to 2024, as well as copies of all statements, deposits, checks, and withdrawals from 13 listed accounts from 2018 to present, stating these documents were necessary to conduct a full accounting of the Plank Trust. Duncan responded, arguing the requested tax returns were irrelevant and an invasion of privacy, and the request was unduly burdensome.

that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Bay City v Bay Co Treasurer*, 292 Mich App 156, 166-167; 807 NW2d 892 (2011) (quotation marks and citations omitted).

## B. THE RECORD BEFORE US DOES NOT SUPPORT ANY CIRCUMSTANCES FOR REMOVAL UNDER MCL 700.7706(2)

A trustee is required to administer a trust "in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries," and in accordance with the Michigan Trust Code (MTC), MCL 700.7101 *et seq*. MCL 700.7801. The probate court's power to remove a trustee and appoint a successor is recognized by MCL 700.7706; however, a probate court may not remove a Trustee for "any good cause." *In re Pollack Trust*, 309 Mich App 125, 163; 867 NW2d 884 (2015) (citation omitted). Removal is limited to the circumstances listed in MCL 700.7706(2) (emphasis added):

> (a) The trustee commits a serious breach of trust.
>
> (b) Lack of cooperation among cotrustees substantially impairs the administration of the trust.
>
> (c) Because of *unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively*, the court determines that removal of the trustee best serves the purposes of the trust.
>
> (d) There has been a substantial change of circumstances, the court finds that removal of the trustee best serves the interests of the trust beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

Although the probate court did not expressly rely on the statutory grounds for removal listed in MCL 700.7706(2), the court reasoned Duncan did very little between being appointed and the date of the removal hearing, "a full accounting and investigation" was still necessary, "and clearly she's not." From what we can gather from the scant record, it seems the statutory reason for the removal was MCL 700.7706(2)(c).[3]

Walters and Ray began demanding an accounting of Plank Trust assets as soon as Duncan became Trustee, and the hostility between the parties is apparent from the record. But hostility between a Trustee and beneficiaries, by itself, without evidence that the administration of the Trust has been affected, does not provide a basis for removing a Trustee. *Pollack Trust*, 309 Mich App at 167. While there is some record evidence of Duncan's delay in reporting the remaining balance of assets, the record does not yet support Duncan's "unfitness, unwillingness, or persistent

[3] Considering Duncan did not spend any Trust assets since her appointment, there were no cotrustees, and nothing significant happened between her appointment and removal to constitute a "substantial change of circumstances," the facts do not support the probate court's potential reliance on subsections (a), (b), or (d).

failure . . . to administer the Trust effectively . . . ." MCL 700.7706(2)(c). Duncan was Trustee of the Plank Trust for only three months before appellees sought her removal, and the probate court and both parties acknowledged the complexity of the Plank Trust assets because of Helen's embezzlement. While the MTC imports on the Trustee a duty to keep beneficiaries "informed about the administration of the trust," MCL 700.7814(1), it does not specifically define what is required for an accounting. But the minimum requirement of the MTC is that a Trustee provide beneficiaries an "annual report of the trust property, liabilities, receipts, and disbursements." MCL 700. 7814(2).

Even though MCL 700.7814(4)[4] affords the probate court discretion to order the Trustee to provide more than an annual accounting, and Walters and Ray moved for the probate court to order an accounting, the probate court did not order one. The probate court's order directed Duncan to "notify the parties as soon as practicable of the *remaining assets* owned by the Trust," which is distinct from an accounting because it does not include an order for a report of Trust liabilities, receipts, and disbursements. And Duncan substantially complied with the probate court's order when, on October 11, 2024, she emailed counsel for Walters and Ray a summary of the balance of Plank Trust Account funds from September 2020 to September 29, 2024, which documented that $2,059.94 in assets remained.

This amount is not entirely unreasonable given that Virginia informed the probate court that during her Trusteeship, she sold the real property within the Plank Trust, as well as the items inside it, and relocated Plank to assisted living in Arkansas before her death. The Plank Trust assets were further affected by Helen's embezzlement. Although the MTC directs a Trustee to take "reasonable steps to locate trust property and compel a former trustee or other person to deliver trust property to the trustee," MCL 700.7813(1), by the time Duncan became Trustee, the record evidence supports that there was very little left in the Plank Trust. Walters and Ray further contend that there was $1.2 million in Plank Trust assets that Duncan failed to account for, and seemed to imply Virginia embezzled Plank Trust assets during her time as Trustee. But the record does not support this, and the probate court clearly erred to the extent that it relied on the allegedly missing $1.2 million dollars as grounds for Duncan's removal as Trustee.

With very little assets left in the Plank Trust, and no evidence that Duncan failed to sell, invest, or receive any Plank Trust assets or property, it is not clear what more Duncan could do to comply with her duties as Trustee. Duncan's failure to do more than what she was ordered to do does not constitute "unfitness, unwillingness, or persistent failure . . . to administer the Trust effectively . . . ." MCL 700.7706(2)(c). To the extent there is more to this that is not reflected on the record, the probate court is permitted to further develop the record on remand. However, at

[4] "If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's discretion, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs." MCR 700.7814(4).

this juncture, and with this record, we hold the trial court has abused its discretion by removing Duncan as Trustee under MCL 700.7706(2).[5]

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Colleen A. O'Brien
/s/ Adrienne N. Young

[5] Both parties separately argue on appeal that appointing the other as Trustee creates a conflict of interest. "MCL 700.7706(2) does not list 'conflict of interest' by itself as a ground for removal." *Pollack Trust*, 309 Mich App at 166. Thus, absent "evidence of any mismanagement or negative effect on the administration of the Trust," a conflict of interest is not, by itself, grounds for removal of a Trustee. *Id*. at 167. The record is not sufficiently developed to determine whether Duncan mismanaged the Plank Trust or whether her relationship with Plank, Walters, or Ray had a negative effect on administering the Plank Trust, and the trial court did not indicate it removed Duncan as Trustee over a conflict of interest. These arguments necessarily fail.