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2017 IL App (4th) 160290

NO. 4-16-0290

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 6, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re</i> THE LIVING TRUST OF JAMES W. BUTCHER AND RUBY M. BUTCHER	)	Appeal from
	)	Circuit Court of
	)	Macoupin County
(Paul Wayne Butcher and William Byron Butcher, Plaintiffs-Appellants,	)	No. 13CH133
v.	)	
Ruth Ann Roberts, James Lee Butcher, and Michael Ray Butcher,	)	Honorable
Defendants-Appellees).	)	Kenneth R. Deihl, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Harris and DeArmond concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court's rulings over challenges that the trial court erred by (1) granting an easement, (2) calculating the boot payment, (3) interpreting the personal property agreement, (4) approving attorney fees as a trust expense, (5) approving the trustee fees as a trust expense, and (6) allowing the trustees to rent trust property.

¶ 2 In November 2001, James W. Butcher and Ruby M. Butcher created a living trust, providing them with income for life, with the remainder of the property to be split equally among their five children: Ruth Ann Roberts, James Lee Butcher, Paul Wayne Butcher, Michael (Mike) Ray Butcher, and William Bryon Butcher. Ruth Ann and James Lee were appointed to serve as trustees upon the death of their parents. Ruby died in April 2009, and James died in January 2012.

¶ 3 In November 2013, Paul and William filed for a trust accounting and distribution

after negotiations failed to divide the property between the beneficiaries. In March 2014, Ruth Ann and James Lee filed a final report for trust accounting and distribution.

¶ 4 In September 2014, Paul and William filed an objection to the final report. Paul and William objected to the final report on the following grounds: (1) an easement was granted on Paul's property, (2) the calculation of the boot payment was inaccurate, (3) the payment of attorney fees was not a proper trust expense, (4) trustee fees were not a proper trust expenses, and (5) the division of personal property was unequal.

¶ 5 In November 2015, the trial court rejected the claims of Paul and William and accepted the final report of the trustees. In January 2016, the trustees filed motions to collect past and future rent payments from Paul and William because they farmed trust property without paying compensation. In March 2016, the trial court granted the trustees' motions to collect rent.

¶ 6 Paul and William appeal, arguing that the trial court erred by (1) granting an easement on Paul's property, (2) calculating the boot payment, (3) dividing the personal property, (4) approving attorney fees as a trust expense, (5) approving trustee fees as a trust expense, and (6) allowing the trustees to collect rent from Paul and William. For the reasons that follow, we affirm.

¶ 7 I. BACKGROUND

¶ 8 In November 2001, James and Ruby created a living trust. The trust provided income for life to James and Ruby. Upon their deaths, the remainder of the trust property would be split equally among their five children: Ruth Ann, James Lee, Paul, Michael, and William. The trust appointed Ruth Ann and James Lee to serve as cotrustees when their parents died. The trust granted broad powers to the trustees, including the power to sell and dispose of property, to grant easements, to divide the remaining trust property equally between the children, to hire an

attorney for trust business, and to receive reasonable compensation for their services. An amendment by James to the trust document stated that it "is my earnest wish and desire that the farmland contained in the trust be retained by my children and that the same be kept in the Butcher family."

¶ 9 In April 2009, Ruby died. In January 2012, James died. The children agreed to continue the farming operation for the year 2012 to allow time for a division of assets. In June 2013, the beneficiaries signed the "Butcher Land Division/Boot Calculation" (June 2013 agreement). This agreement sought to divide the real estate equally among the children. In that agreement, the real estate was initially valued at \$2,424,061.80. Each of the five children was to receive an equal share of the trust property worth \$484,812.36, which would be obtained by dividing the property among them. Children who received land worth less than their one-fifth share would receive a cash payment, known as a boot, as compensation. See Boot, Investopedia, (2017) <http://www.investopedia.com/terms/b/boot.asp> (last visited Aug. 23, 2017). Between the real estate and the boot, each of the children would receive a one-fifth share of the remaining property. Each of them signed the June 2013 agreement.

¶ 10 The June 2013 agreement provided that Paul and Mike were to split a 25-acre field. Paul was to receive the eastern 12 1/2 acres while Mike was to receive the western 12 1/2 acres. The agreement did not provide Mike an easement over Paul's acreage. However, because of later-discovered information, the cotrustees granted Mike an easement across Paul's property. This easement was granted through the language of the deed delivered to Paul and encompassed .449 acres of Paul's land. The easement was to allow for farm machinery to reach Mike's half of the property. The trustees increased the boot to Paul by \$690 to compensate him for the encumbrance on his land.

¶ 11 Paul refused his deed because the June 2013 agreement did not contain reference to an easement. Paul argued that an easement was unnecessary because a path through the woods allowed Mike access to the road. The trustees argued this path was not suitable for modern farm machinery.

¶ 12 In September 2013, the parties reached an oral agreement for the distribution of the personal property of the trust (September 2013 oral agreement). The parties later disputed the division and valuation of the personal property of the trust. Negotiations between the children over the proper allocation of the trust assets ultimately failed.

¶ 13 In November 2013, Paul and William filed a demand for a trust accounting and distribution. In March 2014, Ruth Ann and James filed a final report of the trust. The final report divided the remaining trust property among the five children and sought to terminate the trust. The final report granted Mike an easement across Paul's 12 1/2 acres. The report also distributed the proceeds of the personal property.

¶ 14 In September 2014, Paul and William objected to the final report. They argued that (1) the boot calculation was incorrect, (2) the trustees did not have the power to grant an easement on Paul's land, (3) the cotrustees were not entitled to compensation for their services, (4) the attorney fees and other trust expenses were the personal expenses of Ruth Ann and James, and (5) the distribution of personal property proceeds was unequal. In November 2014, the cotrustees disagreed with these claims and filed a supplement to their final report.

¶ 15 In November 2015, the trial court approved the trustees' final report. This ruling approved the trustees' real estate distribution, the easement on Paul's property, the paying of trustee compensation, the inclusion of lawyer fees as a trust expense, the calculation of the boot, and the distribution of personal property proceeds.

¶ 16 In December 2015, Paul and William filed a motion to reconsider. In January 2016, the trustees filed a motion to collect past rent from Paul and William because they farmed trust property for the 2014 and 2015 growing seasons without paying the trust for use of the property. The trustees also filed a motion for permission to rent the trust real estate for the 2016 growing season to Paul and William. In March 2016, the trial court denied the motion to reconsider and granted both of the trustees' motions to collect rent.

¶ 17 This appeal followed.

## ¶ 18 II. ANALYSIS

¶ 19 On appeal, Paul and William argue that the trial court erred in the following ways: (1) by granting an easement on Paul's property, (2) in calculating the boot payment, (3) in interpreting the personal property agreement, (4) in approving attorney fees as a trust expense, (5) in approving the trustee fees as a trust expense, and (6) in allowing the trustees to rent the trust property. We address these contentions in turn.

### ¶ 20 A. The Easement

¶ 21 Paul and William argue that the trial court erred by accepting the final reports, which included an easement on Paul's 12 1/2 acres. We disagree. We conclude that (1) the trustees had the authority to grant an easement and (2) the trial court properly interpreted the June 2013 agreement. Further, Michael would be entitled to an easement by necessity.

#### ¶ 22 1. *Trustee Authority*

¶ 23 Trustees have the statutory authority to grant easements over trust property. 760 ILCS 5/4.04 (West 2012). The limits of a trustee's powers are determined by the instrument which creates the trust. *Stuart v. Continental Illinois National Bank & Trust Co. of Chicago*, 68 Ill. 2d 502, 522, 369 N.E.2d 1262, 1271 (1977). Whether a trustee had the authority to grant an

easement is a question of law reviewed *de novo*. See *Smith v. Heissinger*, 319 Ill. App. 3d 150, 153, 745 N.E.2d 666, 670 (2001). If a trustee had the power to grant an easement, the court will not interfere with the discretionary powers of a trustee absent fraud, bad faith, or an abuse of discretion. See *Continental Illinois National Bank & Trust Co. of Chicago v. Sever*, 393 Ill. 81, 93, 65 N.E.2d 385, 391 (1946).

¶ 24 Here, rather than limiting the trustees' power to grant easements, the trust document explicitly empowered the trustees to "grant easements in or over \*\*\* trust property in such a manner as an individual might do as outright owner thereof." The trustees therefore had the power to grant an easement. The trustees exercised this discretionary power by granting Mike an easement over Paul's property. Nothing in the record shows that the trustees granted the easement in bad faith or as an abuse of discretion. Instead, the trustees granted Mike an easement over Paul's property so that Mike could access his tillable acres with farm equipment. The trustees reasonably concluded that granting an easement was the most efficient method for Mike to have effective access to his property.

¶ 25 2. *Interpretation of the June 2013 Real Estate Agreement*

¶ 26 The language of the June 2013 agreement did not affect the validity of the easement granted by the trustees. A trial court's construction of a contract is a question of law subject to *de novo* review. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219, 874 N.E.2d 43, 50 (2007). "The primary objective in construing a contract is to give effect to the intent of the parties." *Id.* at 232, 874 N.E.2d at 58. To determine the intent of the parties, a court must first look to the plain meaning of the contract as the best indication of the parties' intent. *Id.* at 233, 874 N.E.2d at 58. When the parties intended to form a contract, absent terms can be supplied by reasonable inference of what the parties intended. *Preferred Enternal Systems, Inc. v. Central Home, Inc.*,

277 Ill. App. 3d 414, 421, 660 N.E.2d 174, 178 (1995).

¶ 27 In this case, the trust instrument granted the trustees the power to "grant easements in or over \*\*\* trust property in such a manner as an individual might do as outright owner thereof." Each of the children would later sign the June 2013 real estate agreement which sought to *equally* divide the trust real estate. This contract made no mention of an easement on Paul's 12 1/2 acres. However, the agreement did require that a "Boot to be paid to Mike [and] Paul \*\*\* to be *modified* by division of the 25 acres \*\*\*." (Emphasis added.)

¶ 28 The easement granted here was necessary to *equally* divide the property, which was the intent of the parties to the June 2013 agreement and the settlors of the trust. Without an easement, Mike would not be able to access his property with farm machinery without making substantial improvements to the path through the woods. If Mike could not farm his land, the value of his property would significantly decrease. Thus, without an easement, the division of property would have been unequal. Likewise, although the June 2013 agreement did not mention the possibility of an easement, it explicitly mentioned the possibility of paying a boot for *modifications* that might occur when dividing the 25 acres between Paul and Mike. The trustees provided for a modification by granting Mike an easement and compensating Paul with additional boot for the encumbrance. Thus, the easement comported with the language of the June 2013 agreement.

¶ 29 *3. Easement By Necessity*

¶ 30 Even if the trust did not provide authority for an easement, Mike was entitled to an implied easement by way of necessity. For an easement by necessity for access to a public road, a plaintiff must prove (1) unity of title between the dominant estate and the servient estate, followed by separation of title, and (2) no access to the public road. *Weaver v. Cummins*, 323 Ill.

App. 3d 359, 363, 751 N.E.2d 628, 630 (2001). The law does not require absolute necessity to support an easement by necessity; however, the easement must be reasonable, highly convenient, and beneficial to the dominant estate. *Martin v. See*, 232 Ill. App. 3d 968, 979, 598 N.E.2d 321, 329 (1992). An easement by necessity will not be granted if available alternative routes afford reasonable access to the public highway. *Id.* at 978, 598 N.E.2d at 328. The party seeking an easement must prove his right to one by clear and convincing evidence. *Evanik v. Janus*, 120 Ill. App. 3d 475, 485, 458 N.E.2d 962, 969 (1983).

¶ 31 On appeal, the court will not disturb the findings of the trial court regarding an easement by necessity unless they are contrary to the manifest weight of the evidence. *Martin*, 232 Ill. App. 3d at 978, 598 N.E.2d at 328. A trial court's findings are against the manifest weight of evidence when the findings appear to be unreasonable, arbitrary, or not based on evidence. *Id.* If the trial court does not specifically refer to the type of easement granted, the reviewing court may affirm the trial court for any reason which appears on the record. *Id.* at 983, 598 N.E.2d at 331.

¶ 32 Examples of easements by necessity in Illinois case law are numerous. In *People ex rel. Helgeson v. Hackler*, 21 Ill. 2d. 267, 271, 171 N.E.2d 599, 601 (1961), the Illinois Supreme Court found that an easement by necessity arose across defendant's field where a bridge would otherwise have to be built over a drainage ditch to reach plaintiff's farm. Likewise, in *Miller v. Schmitz*, 80 Ill. App. 3d 911, 913-15, 400 N.E.2d 488, 490-91 (1980), the court held that an easement by necessity arose where the only way of reaching landlocked property with modern farm equipment was to build a bridge. The court so ruled despite the fact that a bridge once existed for horses and small tractors. *Id.* This court has found that an easement by necessity arose over defendant's path when plaintiff's only alternative to reach his property would have

been to install a culvert over an irrigation ditch. *Martin*, 232 Ill. App. 3d at 980, 598 N.E.2d at 329.

¶ 33 Here, the trial court did not specifically refer to the type of easement granted. However, the record shows that the title to the 25-acre field was separated into two equal parcels: the eastern 12 1/2 acres going to Paul and the western 12 1/2 acres going to Mike. The record shows that the only available road access for agricultural equipment for Mike was either through an easement across Paul's property or through a narrow path through the woods. Testimony at trial established that this narrow path was not suitable for modern farm implements unless substantial improvements were made. These improvements would have cost approximately \$14,500 and would have required heavy machinery such as bulldozers. The trustees reasonably concluded this was an unjustified cost for a small field of only 12 1/2 acres. Thus, the path through the woods did not constitute a reasonable alternative route to the highway. Mike therefore was entitled to an easement by necessity. Hence, the trial court's ruling was not contrary to the manifest weight of evidence.

¶ 34 B. Calculation of the Boot Payment

¶ 35 Paul and William argue that the trial court abused its discretion in calculating the boot payment. We disagree. Generally, the valuation of property is a question of fact and the trial court's valuation will not be reversed absent an abuse of discretion. *In re Marriage of Schneider*, 214 Ill. 2d 152, 162, 824 N.E.2 177, 182-83 (2005). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Id.* at 174, 824 N.E.2d at 189.

¶ 36 Here, the parties presented conflicting evidence as to the proper valuation of the real estate and the amount of the boot payments. Paul and William argued that Paul should not

receive a boot payment for the easement because Paul refused an easement on his property. Paul and William also disputed the value of the property based on their perception of the number of tillable acres. The trustees, however, presented the expert testimony of Gerald Joyce as to the value of the property. The trustees used the advice and appraisals of Joyce in an attempt to equally divide the property. The differences in value between the two estimates were minimal. The trial court ultimately accepted the trustee's valuation of the property rather than the valuation of Paul and William. After reviewing the record, including the real estate valuations and testimony of Joyce, we conclude that the trial court did not abuse its discretion in calculating the boot payment because a reasonable person could have adopted the view of the trial court.

¶ 37 C. The September 2013 Agreement

¶ 38 Paul and William argue that the trial court's interpretation of the September 2013 personal property agreement was against the manifest weight of evidence. We disagree. The terms and conditions of an oral contract and the intent of the parties are questions of fact to be determined by the trial court. *Hartbarger v. SCA Services, Inc.*, 200 Ill. App. 3d 1000, 1009, 558 N.E.2d 596, 601 (1990). The findings of the trial court will not be reversed unless they are contrary to the manifest weight of the evidence. *Id.*

¶ 39 In September 2013, the children entered into an oral agreement to distribute the personal property and livestock operation of the trust. Due to various disputes, the trustees did not distribute the agreed-upon amounts until a year after the agreement. Paul and William would ultimately reject payment from the trustees because the money would be paid from the trust rather than from the trustees personally. The trial court ruled that the trustees' valuation was correct and that the trustees had made full payment to Paul and William.

¶ 40 On appeal, Paul and William argue that the trustees withheld payment to force

them to come to an agreement on distribution of the trust. Paul and William further contend that the source of payment should have come from the trustees personally rather than from the trust. Finally, Paul and William argue that the trial judge failed to perform an independent analysis of the evidence and merely adopted the findings of the trustees.

¶ 41 The arguments of Paul and William are without merit. They do not adequately cite to the record or provide other persuasive grounds to support their arguments. Paul and William therefore fail to demonstrate that the findings of the trial court were contrary to the manifest weight of the evidence.

¶ 42 D. Attorney Fees

¶ 43 Paul and William argue that the attorney fees of the cotrustees were their personal expense rather than a proper trust expense. We disagree.

¶ 44 Under Illinois law, a trustee shall be reimbursed for all proper expenses incurred in the management and protection of the trust. 760 ILCS 5/7 (West 2012). Generally, attorney expenses for the preservation, management, or benefit of a trust are proper trust expenses. *Wool v. LaSalle National Bank*, 89 Ill. App. 3d 560, 564-65, 411 N.E.2d 1135, 1139 (1980). When a court with proper authority to award attorney fees exercises its authority, the appellate court reviews the decision to award attorney fees under an abuse of discretion standard. *Gate v. Grzetich*, 373 Ill. App. 3d 228, 231, 867 N.E.2d 577, 579 (2007).

¶ 45 In this case, the trust instrument provided the trustees with the authority to pay all expenses incurred in the administration of the trust, including the power to pay reasonable compensation to attorneys. The trustees hired attorneys in response to being sued in their official capacity as trustees by Paul and William for distribution of the trust. The trustees and Paul and William had *bona fide* disagreements as to the proper distribution and allocation of trust proper-

ty. This dispute resulted in years of negotiations, the filing of multiple legal documents, a civil trial, and now an appeal. We conclude that the awarding of attorney fees was not an abuse of discretion.

¶ 46 E. Trustee Compensation

¶ 47 Paul and William argue that the trustees should not be compensated for their service. We disagree.

¶ 48 A trustee is entitled to reasonable compensation for services rendered. 760 ILCS 5/7 (West 2012). The amount of compensation rests within the sound discretion of the trial court. *Lampe v. Pawlarczyk*, 314 Ill. App. 3d 455, 464, 731 N.E.2d 867, 874 (2000). The standard of review for a trial court's determination of trustee compensation is an abuse of discretion standard. *Id.*

¶ 49 Paul and William take issue with both the amount of compensation paid to the trustees and whether the trustees are entitled to any compensation at all. However, in addition to statutory authority, the trust instrument entitled the trustees to reasonable compensation. The record shows that the trustees expended great effort in managing and attempting to dissolve the trust. Further, the trustees continue to actively manage the trust to this day because of this pending litigation. We conclude that the trial court did not abuse its discretion by awarding compensation to the trustees.

¶ 50 F. Renting Trust Property

¶ 51 Paul and William argue that the trial court erred in granting the trustees authority to rent trust real estate. We disagree.

¶ 52 A trustee is authorized to lease trust property. 760 ILCS 5/4.02 (West 2012). The trust instrument in this case also empowered the trustees to rent trust property "for a term within

or extending beyond the term of the trust \*\*\*." Review of a trial court's interpretation of a trust instrument is *de novo*. *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1131 (2002). However, the appellate court will not reverse the trial court's factual findings unless they are against the manifest weight of evidence. *Id.* at 251, 779 N.E.2d at 1130. A trial court's findings are against the manifest weight of evidence when the findings appear to be unreasonable, arbitrary, or not based on evidence. *Id.* at 252, 779 N.E.2d at 1130.

¶ 53 Here, Paul and William refused the deeds to their farms. The farms thus remained trust property. The trustees then sought to charge past rent for the 2014 and 2015 farming year because Paul and William farmed trust property without paying rent or expenses. Further, because of this litigation, the trustees sought permission to rent trust property to William and Paul for the 2016 farming year. The trustees offered into evidence the average cash rent for Macoupin County farmland as a basis for the rent. The trial court approved of the trustee's motion to set rent and adopted their proposed findings.

¶ 54 On appeal, Paul and William fail to show that the findings of the trial court were unreasonable, arbitrary, or not based on evidence. Paul and William merely argue that it is unfair for them to pay rent on trust property when other children have already received their trust property. However, Paul and William overlook that they have not received their property because they refused their deeds, while the other beneficiaries accepted their deeds. Paul and William do not persuade this court that the amount of the rent for the trust property was unreasonable, arbitrary, or not based on evidence. Instead, we conclude that the evidence on the record supports the trial court's findings.

¶ 55 III. CONCLUSION

¶ 56 As a last matter, we thank the trial court for its thoughtful, comprehensive written

order addressing all of the issues raised in this appeal. This court found that order most helpful as we reviewed this factually complex case.

¶ 57 For the reasons stated, we affirm the trial court's judgment.

¶ 58 Affirmed.