

Bellow v. Bellows (California Court of Appeal, First District, A128875, June 9, 2011)

Summary: A trustee cannot compel a beneficiary to condition the payment of a distribution on the release of other claims or demands of the trust beneficiary; and probate code §854 does not operate to abate an action filed under §17200.

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Beverly Bellows established the Beverly Bellows trust, naming her and her son Frederick as the co-trustees. The trust provided that on her death, the trust assets would be divided equally between her two sons Frederick and Donald. Following Beverly's death in 2008, Donald requested distribution of his share of the trust. When the distribution was not made, Donald filed a petition in the probate court pursuant to section 17200 seeking an accounting and distribution of the trust assets. In its November 2009 order court ordered Frederick to provide an accounting of the trust assets and to distribute one-half of the assets to Donald within 10 days.

On November 27, Frederick mailed Donald's attorney a check for \$30,376.80, which he represented was one-half of the trust assets. Accompanying the check was a document entitled "Final Trust Accounting," showing the total trust assets as of Beverly's death in December 2008 and income and expenses since that date. Donald returned the check with a letter claiming that the amount was insufficient because Frederick had improperly deducted from the remaining corpus of the trust approximately \$13,000 of his own attorney fees prior to dividing the trust assets in half. The Donald stated that if the deduction was not deleted from the accounting and a new check issued within five days, he would file an objection to the accounting. Donald also requested documentation regarding a trust account that he believed contained \$12,000 that was omitted from the accounting.

Frederick offered "to give Donald one-half of the fees actually paid by [the] trust, i.e., \$6,718.25, provided there is no petition forthcoming soon. . . ." Frederick forwarded a check to Donald for \$37,520.48, together with a letter advising that Donald is "authorized to negotiate the check when he has signed and returned the enclosed receipt of final distribution." The receipt included an acknowledgment that the payment represented "a final distribution of the trust estate." Donald cashed the check, but did not sign and return the receipt.

Donald then filed a motion to compel compliance with the court's November 2009 order. Donald sought an order "compelling trustee Frederick Bellows to provide a full and complete accounting within ten (10) days, including sufficient documentation reflecting the activity on all sums in the original Beverly Bellows trust from June 2003 through her death in 2008 and until final distribution in November 2009" and that "a check be provided to Donald Bellows and his attorney within ten (10) days for one-half of any additions to the trust corpus not previously accounted for."

Frederick opposed the motion and filed a cross-motion for abatement and for attorney fees and sanctions. Frederick argued that the motion for a further accounting should be denied because Donald had cashed the check in full satisfaction of his claim for half the trust assets. He contended that the action should also be abated because Donald's claims with respect to his management of the trust, while Beverly was alive, were pending in a civil action that Donald had filed against him in September 2009.

The trial court found that by negotiating the check presented by Frederick, "Don agreed to the terms under which it was tendered, that is to say that Donald agreed that it was a final distribution of all assets of the trust and that Donald thereby effected an accord and satisfaction of all obligations that Fredrick owed under [the trust]." The court noted that "although it appears that Fredrick fully complied with this court's order of November 13, 2009, . . . it is not necessary to make that finding in light of the accord and satisfaction referred to above." The court awarded Frederick his attorney fees "for bringing this motion after accepting the accord and satisfaction referred to above." The court also found pursuant to section 854 that the present action should be abated in favor of the civil action filed in September 2009. Donald appealed.

On appeal the appellate court held that the requirements for an accord and satisfaction based on acceptance of a negotiable instrument are governed by Commercial Code section 3311. "To obtain an accord and satisfaction under Commercial Code section 3311, a debtor must prove that: '(1) [the debtor] in good faith tendered an instrument to the claimant as full satisfaction of the claim, (2) the amount of the claim was unliquidated or subject to a bona fide dispute, and (3) the claimant obtained payment of the instrument. . . .' [Citation.] If the debtor further proves that he accompanied the tender with a conspicuous statement that the amount was tendered as full satisfaction of the claim, and if the claimant does not prove that he tendered repayment of the amount within 90 days, the debt is discharged." Donald argued that Probate code section 16004.5 overrides Commercial Code section 3311, and precludes the entry of an effective accord and satisfaction under the present circumstances. Section 16004.5, subdivision (a) provides that "A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument." Subdivision (b) adds, "This section may not be construed as affecting the trustee's right to: [¶]... [¶] (2) Seek a voluntary release or discharge of a trustee's liability from the beneficiary. [¶]... [¶] (4) Withhold any portion of an otherwise required distribution that is reasonably in dispute. [¶] (5) Seek court or beneficiary approval of an accounting of trust activities."

The appellate court held that section 16004.5 was the applicable authority. Frederick could not condition the payment on a release of liability. Frederick, as trustee, was required to make this distribution to Donald without any strings attached. He was not entitled to condition the payment on the release of other claims or demands of the trust beneficiary. "Subdivision (b)(5) permits a trustee to seek beneficiary approval of an accounting of trust activities; under this subdivision Frederick presumably could enter an agreement with Donald to resolve the attorney fee issue by distributing to Donald an agreed amount. However, Frederick could not condition such an agreement on Donald releasing his right to an accounting or of other claims he might have against the trustee. Again, such an interpretation would render subdivision (a) nugatory." "The

court below thus erred in holding that Donald's acceptance of the check prevented him from challenging the accuracy of the accounting submitted by Frederick, as trustee.”

The appellate court also addressed the abatement issue as the trial court’s order also abated the probate action under probate codes section 854 in favor of the previously filed civil complaint. The civil action alleged causes of action for financial elder abuse, constructive fraud, undue influence, negligence, and infliction of emotional distress. The complaint alleged that in 2002 Beverly inherited a substantial estate from her brother and that Frederick, acting as trustee of his uncle's estate, improperly diverted the proceeds of that estate from Beverly's trust into a "Pay-on-Death" account for which he was the only beneficiary. The complaint also alleged that in approximately June of 2003, the Beverly Bellows Trust was funded with approximately \$130,000 in fixed income assets and that "[t]hese sums have never appeared in any trust accounting provided by trustee Fred Bellows and the total amount of funding placed in the trust fund by Fred appears to total \$55,000 only." The complaint suggests that Frederick concealed his mother's inheritance from his mother and used funds from the Beverly Bellows trust to pay Beverly's living expenses in order to enrich his inheritance.

Section 854 is entitled "Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person." In relevant part, section 854 provides, "If a civil action is pending with respect to the subject matter of *a petition filed pursuant to this chapter* and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action." The appellate court reversed the trial court, holding that section 854 must be understood to be in reference to any petition filed pursuant to part 19, in which section 854 appears—section 854 is not applicable because Donald's petition was not filed under a section within part 19, but under section 17200 which appears in chapter 3 of part 5 of division 9 of the Probate Code. Section 17200 authorizes a "beneficiary of a trust [to] petition the court under this chapter concerning the internal affairs of the trust" including compelling the trustee to provide an accounting. (§ 17200, subs. (a), (b)(7)(C).)

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