

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

Ennis E. Allen and Alberta Manson Allen, Deed of Trust

O.C. No. 665 IV of 2006

Control No. 065763

Control No. 067509

Twana R. Cisse, nee Twana Ray Allen v. William Jordan, Executor
of the Estate of Alberta Allen Deceased

March Term 2005, No. 1033

Control No. 031574

OPINION

Introduction

Plaintiff Twana R. Cisse, formerly Twana Ray Allen, is appealing two related orders by this Court: (1) an Order dated November 6, 2006 which dismissed plaintiff's civil action to Quiet Title of property located at 1226 South 47th Street under a March 2005, number 1033 caption, and (2) an Order dated November 6, 2006 appointing William Jordan as successor trustee in response to plaintiff's Petition for Appointment of a Substitute Trustee and Approval of the sale of Real Property. The deed of trust at issue was established by plaintiff's parents for the 1226 South 47th street property.

In her statement of matters complained of on appeal, plaintiff maintains that this court misconstrued the relevant deed of trust because the intention of the grantors "was that upon their deaths the property would pass in fee simple interest to Twana Ray Allen (now known as Twana Cisse)" and "there was never any intention to create an interest in the estate of Alberta Allen."¹ An analysis of the clear, unambiguous language of the deed of trust, however, does not support Ms. Cisse's interpretation for the reasons set forth below.

¹ Cisse, Statement of Matters Complained of Pursuant to 1925(b). This position seemingly contradicts the petition plaintiff filed in Orphans' Court to appoint a substitute trustee, since the relief she requested—appointment of a substitute trustee—suggested that the trust created by her parents continues after their death.

Plaintiff further maintains that William Jordan is an inappropriate choice for a trustee. This court disagrees, but in any event, plaintiff always has the option to file a petition seeking his removal based on evidence presented at a hearing.

Factual and Procedural Background

Plaintiff, Twana R. Cisse (hereinafter “Twana Allen Cisse” or “Cisse”) is the daughter of Ennis Allen, who died on December 29, 2002, and Alberta Manson Allen, who died on December 18, 2004.² Nearly a year before her death, Alberta Manson Allen executed a will dated October 20th 2003 that named William Jordan, Executor of her estate.³

In August 1955, property located at 1226 South 47th street was titled in the names of Ennis and Alberta Manson Allen as tenants by the entireties.⁴ Several years later, Ennis Allen and Alberta Manson Allen executed a deed dated December 17, 1971 that conveyed the property to Alberta Manson Allen, as “Trustee for Twana Ray Allen, a minor.” The precise terms of that trust are critical. The December 17, 1971 deed provides that the property was deeded:

IN TRUST, for the said TWANA RAY ALLEN, for and during the term of the natural life of the said TWANA RAY ALLEN with full power in the trustee at her discretion to sell, mortgage, and convey the said premises at either public or private sale without the necessity for the decree of court and freed and discharged of all trusts or obligations on the part of the purchaser or purchasers to see to the application of the purchase money.

To manage and receive and collect the rents and profits therefrom, and after the payment of all charges for taxes, insurance, repairs etc., to invest and reinvest the net income or the proceeds of sale if the premises are sold, for TWANA RAY ALLEN, for and during the term of her natural life with the right of the trustee to

² Cisse 8/7/2006 Petition to Appoint Successor Trustee, ¶¶ 4,6,9.

³ See Will of Alberta Allen, attached as Ex. B to Jordan 8/21/2006 Answer to Cisse Petition.

⁴ Quiet Action Complaint, March 2005, No. 1033, ¶ 4.

use all or such part of the principal as she in her discretion deems necessary for the welfare of TWANA RAY ALLEN.

Upon the death of Twana Ray Allen, the then remaining principall(sic) shall vest or be paid over to ALBERTA MANSON ALLEN.

In the event the trustee, ALBERTA MANSON ALLEN, dies, the substituted trustee is ENNIS ALLEN, who shall have all the pwers (sic.) and duties of the original trustee.⁵

On its second page, the deed once again reiterated that the Trust was to continue for “the term of the natural life of the said Twana” with the following language:

IN TRUST, for the said Twana Ray Allen for and during the term of the natural life of the said Twana Ray Allen with full power in the trustee at his discretion to sell, mortgage, and convey the said premises at either public or private sale without the necessity for the for the (sic.) decree of court and freed and discharged of all trusts or obligations on the part of the purchaser or purchasers to see to the application of the purchase money.... Upon the death of TWANA RAY ALLEN, the then remaining principal shall vest or be paid over to ALBERTA MANSON ALLEN. In the event the trustee, ALBERTA MANSON ALLEN dies, the substituted trustee is ENNIS R.ALLEN, who shall have all the powers and duties of the original trustee.⁶

The December 1971 Deed of Trust therefore created a trust that would last the lifetime of Twana Allen. The trustee, Alberta Manson Allen, was given discretion to sell the property. Upon the death of Twana Allen, “the then remaining principal shall vest or be paid over to ALBERTA MANSON ALLEN.”

Ennis and Alberta Manson Allen were divorced on March 18, 1976.⁷ On December 16, 1980 Alberta Manson Allen, as trustee for Twana Allen executed a deed to convey the 1226 S. 47th Street premises to Alberta Manson Allen, mother of Twana Ray Allen. In so doing, the property was characterized as follows:

⁵ December 17, 1971 Deed of Trust, attached as Ex. A. to Jordan Motion for Judgment on the Pleadings – Action to Quiet Title, March 2005, No. 1033 (emphasis added).

⁶ Id.

⁷ Quiet Action Complaint, March 2005, No. 1033, ¶ 10.

BEING the same premises which Ennis E. Allen and Alberta Manson Allen, his wife, by Indenture bearing date the 17th day of December, 1971, and recorded in Department of Records in and for the City of Philadelphia, in Deed Book D.C.C. No. 0257, page 070, granted and conveyed unto Alberta Manson Allen, Trustee for Twana Ray Allen, a minor.

AND under the terms of which trust the said trustee, Alberta Manson Allen, was vested with full power in the trustee at her discretion to sell, mortgage and convey the said premises at either public or private sale without the necessity for the decree of court and freed and discharged of all trusts or obligations on the part of the purchaser or purchasers to see to the application of the purchase money...⁸

While the exact implications of this 1980 deed are not presently at issue, both the plaintiff, Twana Allen Cisse, and the defendant, William Jordan, as Executor of the Estate of Alberta Manson Allen agree that Alberta Manson Allen continued to hold the property in trust for her daughter, the plaintiff.⁹ What the parties do dispute is the nature and duration of the trust created for Twana Allen.

Consequently, in March 2005, Twana Allen Cisse filed in the Civil Trial Division an Action to Quiet Title as to the 1226 S.47th Street Property against William Jordan, the executor of her mother's estate. In her complaint, plaintiff avers that William Jordan "may assert some claim to the premises adverse to Plaintiff's title" and such claims would be "without right and constitute clouds on plaintiff's title."¹⁰ She therefore sought a court order declaring that Twana Allen Cisse owned the property absolutely.¹¹

⁸ December 16, 1980 Deed of Trust, attached as Ex. B. to Jordan Motion for Judgment on the Pleadings- Quiet Title Action, March 2005, No. 1033.

⁹ In her Complaint to Quiet Title, for instance, plaintiff avers that after the 1980 deed, "[b]y operation of law, Alberta Manson Allen continued to hold said premises in trust for plaintiff." Quiet Title Complaint, March 2005, No. 1033, ¶ 12. Similarly, the defendant, William Jordan, in his Motion for Judgment on the Pleadings, concedes "[a]s per paragraph 12 of the Complaint, Alberta Manson Allen continued to hold the premises in trust for the plaintiff. Obviously, she could not change the terms of the trust that was already made and in force. Nothing in the deed or any other document referred to allowed the settler, (sic.) Alberta Manson Allen to revoke or change the terms of the Trust." Jordan Motion for Judgment on the Pleadings – Quiet Title Action, March 2005, No. 1033, ¶ 12.

¹⁰ Quiet Title Complaint, March 2005, No. 1033, ¶ 13-14.

¹¹ Quiet Title Complaint, March 2005, No. 1033, ¶ 14 (c).

In his answer, William Jordan admitted that he had an adverse claim.¹² He also asserted that Twana Allen Cisse did not own the property but rather “the most the Plaintiff has is a life estate and upon the death of Alberta Manson Allen, she could leave the property to anyone she wanted or if there be deemed to be a life estate, she could leave the remainder to anyone she wanted.”¹³ Jordan noted as New Matter that Alberta Manson Allen had left a will in which she left the 1226 S. 47th Street property to William Jordan. He averred that Alberta Manson Allen did not want Twana to have ownership of the property because she had in the past demonstrated her inability to care for the property. As executor of Alberta Manson Allen’s will, Jordan asserted that he should be named as trustee to replace Ms. Allen .¹⁴

By order dated May 3, 2006, this matter was transferred to the Orphans’ Court Division, where a conference was thereafter scheduled. On August 7, 2006, plaintiff Twana Allen Cisse filed a Petition to appoint a successor trustee and approve the sale of 1226 South 47th Street for \$180,000.¹⁵ In her petition, Twana Allen Cisse noted that she had moved into the premises shortly after her mother’s death on December 19, 2004, made various repairs and obtained tenants for two of the units. By the time she filed her petition to appoint a substitute trustee, however, Ms. Cisse conceded that the tenants had ceased paying rent, the insurance on the property had lapsed. In addition, the electricity, gas, water and sewer are about to be shut off and plaintiff “is not in a position to advance funds to prevent the utilities from being shut off.”¹⁶ The gas lien was approximately

¹² Jordan Answer to Quiet Action Complaint, March 2005, No. 1033, ¶ 13.

¹³ Jordan Answer to Quiet Title Complaint, March 2005, No. 1033, ¶14 (d).

¹⁴ Jordan Answer to Quiet Title Complaint, March 2005, No. 1033, ¶¶ 16-17, 19-20.

¹⁵ William Jordan subsequently filed his own Petition to Appoint a Substitute Trustee and asserted that he should be named to that position. In that petition, he argues that he is the remainderman to the 1226 S. 47th Street Property by virtue of Ms. Allen’s Will. Jordan 8/9/2006 Petition to Appoint Substitute Trustee, ¶ 9.

¹⁶ Cisse 8/7/2006 Petition to Appoint Successor Trustee, ¶ 14, ¶¶ 9, 12-13.

\$1,500 while the outstanding water and sewer bill was \$1,571.01. Twana Allen Cisse noted that on August 4, 2006, she had executed an agreement to sell the property for \$180,000, admitting that court approval of such sale was necessary.¹⁷

In response to this petition, William Jordan asserts that after Twana Allen Cisse moved back to the house after her mother's death, she caused the existing tenants to move out, and then obtained different tenants. He notes that the roof and porch needed repair, but when he sent workmen over to do the repairs, Twana Allen Cisse chased them away. He asserts that under the deed and Alberta Allen's will, he is the remainderman and Twana Allen Cisse had no authority to sell the property.¹⁸ He maintains that in conversations with Alberta Allen before her death, she made it clear that "she did not want Twana Cisse to have access to her property because she felt that Twana Cisse would not properly manage the money."¹⁹ Although Jordan characterizes himself as the remainderman under the 1971 deed, he suggests that under the December 16, 1980 deed, Twana Cisse "would have no interest whatsoever."²⁰ In any event, he asks that he should be named successor trustee for several reasons: 1) he is able to take action to maintain the property; 2) he is the sole beneficiary under Alberta Manson Allen's Will, which makes him the remainderman under the 1971 deed of trust; 3) he is the only one with an interest in the property under the December 16, 1980 deed and Ms. Allen's will, and; 4) he is an experienced businessman who has maintained rental units.²¹

The parties were ordered to file memoranda in support of their differing positions, and upon consideration of the record as a whole, this court on November 6, 2006

¹⁷ Cisse 8/7/2006 Petition to Appoint Successor Trustee, ¶¶ 15-16.

¹⁸ Jordan 8/21/2006 Answer to Cisse Petition, ¶¶ 8-9, 15-17.

¹⁹ Jordan 8/21/2006 Answer to Cisse Petition, ¶ 11.

²⁰ Jordan 8/21/2006 Answer to Cisse Petition, ¶¶ 14-15.

²¹ Jordan 8/21/2006 Answer to Cisse Petition, ¶25.

dismissed plaintiff's Quiet Title Complaint and appointed William Jordan successor trustee to Alberta Manson Allen.

Analysis

The starting point for resolving the parties' dispute over the 1226 South 47th Street property must be the December 17, 1971 deed. In Pennsylvania, it is well established the "intention of the creator of a trust is the guide primarily to be followed in interpreting the intended effect of the indenture." Wolters Estate, 359 Pa. 520, 525, 59 A.2d 147, 149 (1948). To determine the settlor's intention, courts scrutinize the language of the deed of trust:

A settlor's intent is to be determined from all the language within the four corners of the trust instrument, the scheme of distribution and the circumstances surrounding the execution of the instrument. Only if a settlor's intent cannot be ascertained with reasonable certainty will a court apply canons of construction, to attribute a reasonable intention to the settlor. Estate of Taylor, 361 Pa. Super. 395, 400, 522 A.2d 641,643 (1987)(citations omitted)

In addition, "where there are two or more instruments relating to a trust, they should be construed together to effectuate the settlor's intent." Id.

The language of the December 17, 1971 Deed is clear and unambiguous. It created a trust "for the said Twana Ray Allen for and during the term of the natural life of the said Twana Ray Allen" giving the trustee, Alberta Manson Allen, "full power" to sell the property. It further provided that "[u]pon the death of TWANA RAY ALLEN, the then remaining principall (sic.) shall vest or be paid over to ALBERTA MANSON ALLEN." Clearly, under these terms, Ms. Cisse had only a life estate in the property. Upon her death, the property would revert back to Alberta Manson Allen. In the instant

case, however, Alberta Manson Allen predeceased Ms. Cisse. Under such circumstances, the property would revert to the Estate of Alberta Manson Allen.

Alberta Manson Allen, likewise, has made provision for this property in a Will dated October 20, 2003. In her will, she provides that “[a]ll of my real estate of whatsoever kind and wheresoever situate, I give, devise and bequeath to my cousin, WILLIAM RAY JORDAN.” Moreover, she appointed Mr. Jordan “Executor and Trustee of this my Last Will and Testament and I direct that he shall not be required to enter security or bound (sic.) in any jurisdiction in which he may act.”²²

The effect of the December 16, 1980 deed on the trust created for Ms. Cisse is less clear.²³ As trustee, Alberta Manson Allen had full authority to convey the property. The grantor named in this December 16, 1980 deed is denominated “Alberta Manson Allen, trustee for Twana Ray Allen, a minor,” while the grantee is “Alberta Manson Allen, Mother of Twana Ray Allen.” The property is referenced as that premises which Ennis Allen and Alberta Manson Allen “granted and conveyed unto Alberta Manson Allen, Trustee for Twana Ray Allen, a minor.” The 1980 deed further emphasized the discretion granted to Alberta Manson Allen, as trustee, “with full power in the trustee at her discretion to sell, mortgage and convey the said premises....” However, since the petition filed by Twana Allen Cisse with orphans’ court merely sought the appointment of a substitute trustee and approval of Ms. Cisse’s proposed sale of the property, it is not necessary at this point to determine whether this 1980 deed terminated the trust for

²² Last Will and Testament of Alberta Allen (October 20, 2003), attached as Ex. B. to Jordan 8/21/2006 Answer to Cisse Petition .

²³ In his Petition for the Appointment of a Substitute Trustee, for instance, William Jordan characterizes the December 16, 1980 deed as “an attempt to divest Twana Ray Allen, now Twana Ray Cisse of any interest in 1226 S. 47th Street, Philadelphia, Pa.” Jordan 8/9/2006 Petition to Appoint Substitute Trustee, ¶ 6. Nonetheless, he did not seek a declaration of his full title to the property, but only appointment as successor trustee. See *id.*, ¶ 14-15, wherefore clause.

Twana Allen Cisse under the 1971 deed. Instead, the focus is solely on the selection of an appropriate trustee and a determination of the propriety of the sale proposed by Ms. Cisse.

Based on the relevant documents, it is clear that at most Twana Allen Cisse was the beneficiary of a life estate in the 1226 S.47th Street property. She had no authority whatsoever under any of the documents—the 1971 deed, the 1980 deed or her mother’s will—to enter into any agreement to sell the property. Her action to quiet title was therefore without basis and was properly dismissed.²⁴

Neither the December 17, 1971 deed nor the December 16, 1980 deed made any provision for the appointment of a substitute trustee in the event of the death of both Ennis Allen and Alberta Manson Allen. It is therefore necessary to invoke the relevant provisions of the Pennsylvania Uniform Trust Act. Section 7764 provides the following guidance as to “vacancy in trusteeship; appointment of successor:”

- (c) Filling vacancy for noncharitable trust. —A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order:
- (1) by a person designated in or pursuant to the provisions of the trust instrument to act as successor trustee;
 - (2) by a person appointed by unanimous written agreement of the qualified beneficiaries, or;
 - (3) by a person appointed by the court.
- Section 7764.

The first two alternatives under section 7764 for selecting a substitute trustee cannot be applied because neither the 1971 nor the 1980 deed gives guidance for the selection of a substitute trustee under the facts of this case. The second alternative in section 7764 of appointing a substitute trustee based on the unanimous written agreement

²⁴ In granting Mr. Jordan’s Judgment on the Pleadings as to Ms. Cisse’s Action to Quiet Title Complaint, this court merely rejected her claim of absolute title to the 1226 S. 47th street property. See Quiet Action Complaint, March 2005, No. 1033, ¶ 14(c).

of the qualified beneficiaries also will not work in this case. “Qualified beneficiaries” are defined in the Act as “a distributee or permissible distributee of trust income or principal.” Section 7703 (Definitions). A “beneficiary” is defined as a person who “has a present or future beneficial interest in a trust, vested or contingent.” Section 7703 (Definitions). Under this definition, both Twana Allen Cisse or William Jordan would be a qualified beneficiary for the purpose of selecting a substitute trustee, but they disagree as to who should be appointed and thus would be unable to give the “unanimous written agreement” required by Section 7764 (c)(2). It is therefore necessary to invoke section 7764(c)(3), which provides for court appointment of a substitute trustee.

In the instant case, this court concluded that William Jordan was the best choice to serve as substitute trustee. Twana Allen Cisse in her petition to appoint a substitute trustee admitted that she had moved into the premises at 1226 South 47th Street shortly after her mother’s death, and since that time the welfare of the premises has been imperiled. She concedes, for instance, that the tenants she obtained are no longer paying rent. The “insurance on the property has lapsed and the electricity, gas and water and sewer are about to be shut off.”²⁵ She admits that she lacks the resources to remedy these problems,²⁶ and she entered into an agreement to sell the property—which she lacked any authority to do under the deed of trust. Her suggestion that she be allowed to select a “disinterested” trustee is on this record untenable. William Jordan, in contrast, was named as substitute trustee for several reasons. First, he was chosen by the settlor of the trust, Alberta Manson Allen, to serve as executor and trustee under her will dated October 20, 2003. Since the December 1971 deed provided that the property would revert to

²⁵ Cisse 8/7/2006 Petition to Appoint Successor Trustee, ¶ 13. See also ¶¶ 9, 12

²⁶ Cisse 8/7/2006 Petition to Appoint Successor Trustee, ¶14.

Alberta Allen at the end of the life estate in Twana Allen Cisse, Mr. Jordan was expressly selected by the settlor to represent the interests of her estate in that property. Moreover, in her will, she designated Mr. Jordan as the beneficiary of “All of my real estate of whatsoever kind and wheresoever situate” as well as the remainder of her estate.²⁷ Guided by the settlor’s intent, William Jordan was selected substitute trustee. If, however, he were to breach his fiduciary duty to the beneficiary, she always has the option to file a petition for his removal.

BY THE COURT:

John W. Herron, J.

Date: _____

²⁷ Will of Alberta Allen, Paragraphs Second and Third.