

IOWA TRUST INDUSTRY BREATHES A SIGH OF RELIEF AFTER THE SUPREME COURT'S REVERSAL IN *TRIMBLE*

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On January 25, 2013, trustees around the state breathed a sigh of relief after the Iowa Supreme Court reversed the district court's controversial decision in the trust case of In the matter of Trust #T-1 of Mary Fay Trimble.

By way of background, the underlying case involved a 1999 Revocable Trust established by settlor, Ms. Trimble, who was the trustee up until 2009. As is typical, the Trust provided that only the settlor was entitled to income distributions, and not any of the contingent beneficiaries. In 2009, the settlor chose to appoint her niece, Ms. Cunningham, as trustee. In December of 2009, the settlor passed away. Shortly after that death, one of the beneficiaries, Ms. Miller, requested an annual accounting from Ms. Cunningham from 1999 to present, and, thereafter, requested an accounting from April 2009 to the present; under both requests, Ms. Miller was requesting an accounting during the time in which the Trust was revocable and the settlor was alive. From our point of view, Ms. Cunningham rightfully declined to provide an accounting for any period of time in which the Trust was still revocable.

In May of 2010, Ms. Miller filed a district court action to compel the requested accounting. The litigation took many twists and turns, but at the end of the day, the district court issued the following two holdings, both of which were quite surprising to many ITA members. First, the district court ruled that the Trust Code, for pre-2002 trusts, provided that a contingent beneficiary was entitled to an accounting during the life of a competent settlor and while the trust was revocable, so long as the beneficiary requested the accounting after the settlor's death. In other words, the court believed that such beneficiaries should have retroactive rights for information. Second, the district court ordered that the trustee, Ms. Cunningham, must *personally* pay the attorney's fees of the petitioner-beneficiary, Ms. Miller, and further, must *personally* pay the trustee's attorney's fees/costs in lieu of such fees/costs being paid out of the trust funds; this order was despite the fact that Ms. Cunningham was never accused of malfeasance. Such fees totaled over \$50,000.

Obviously, if the aforementioned two rulings were affirmed on appeal, then (1) many qualified individual and institutional trustees would likely shy away from being trustees due to this new risk of attorney's fees and (2) trustees of revocable trusts would be put in the conflicting and scary position of having dual duties to the settlor and contingent beneficiaries. Due to the widespread implications to the trust industry if these rulings were affirmed on appeal, the Iowa Trust Association ("ITA"), the largest association of trust professionals in Iowa, opted to file an amicus curiae brief (or "friend of the court" brief) with the Supreme Court to provide further legal authority and argument to assist the Court in rendering its appellate decision. The ITA hired attorneys Jodie McDougal and Margaret Van Houten of the Davis Brown Law Firm, who worked with ITA counsel Mike Deege, to prepare and file such amicus curiae.

On January 25th, the Iowa Supreme Court issued its 32-page decision fully reversing the district court rulings. The full decision can be found at http://www.iowacourts.gov/Supreme_Court/. First, the Supreme



Court unanimously ruled that a “trustee who owes no accounting to beneficiaries while the trust is revocable should not face retroactive accounting duties for the same period upon the settlor’s death.” This ruling was based the Court’s proper interpretation of the Trust Code, a settlor’s privacy interest during his or her lifetime, and the potentially conflicting interests of the settlor and beneficiaries regarding the trustee’s investment/use of trust funds during the settlor’s life. Second, the Supreme Court held that the district court’s “decision to hold Cunningham personally responsible for the fees and costs incurred in this litigation was an abuse of discretion,” reasoning that Ms. Cunningham had met her duties and had not mismanaged the trust. Thus, the Supreme Court ruled that the trust, and not Ms. Cunningham personally, should pay the fees incurred by the trustee’s attorney, and that Ms. Miller should pay her own attorney’s fees incurred.

We can all sleep better due to the excellent decision rendered by the Iowa Supreme Court. Please feel free to contact us if you have any questions.

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