

Trustee Appointment Lacked Due Process

John R. Cummins and Abigail D. Zaman

In Florida, the granddaughter of a married couple who had established a family trust filed a court petition seeking appointment as the successor trustee of the family trust. A circuit court granted the granddaughter's petition, but a district court of appeals reversed her appointment for the lack of due process given to the other beneficiaries of the family trust in the lower court proceeding.

In this case, the granddaughter was the last contingent beneficiary named in the family trust. Her grandmother, the co-settlor of the family trust, was still living when the petition was filed. While the grandmother was named as an initial trustee, the petition alleged (without supporting evidence) that the grandmother was incapacitated and that her son had replaced her as trustee as a result. The son had since died, so the granddaughter petitioned to be appointed as successor trustee.

The granddaughter failed to name any adverse parties in her petition and did not send any notice or summons to any of the beneficiaries of the family trust. The trial court did not hold a hearing on the petition before signing the order appointing the granddaughter as the successor trustee.

The appellate court stated that Florida trust statutes require that judicial proceedings concerning trusts must be commenced by filing a complaint and then following the Florida rules of civil procedure. Upon the commencement of an action, those rules require that service be made on the parties to the pro-

ceeding. Furthermore, parties having actual notice is not a substitute for proper service in Florida. Since no other parties were named or properly served, the petition did not comply with the Florida rules of civil procedure.

The court also noted that the petition provided no substantiation that the grandmother was incapacitated. Nor was evidence of the son's succeeding her as trustee introduced.

As a result, the trustee appointment was quashed, and the case was remanded for further proceedings compliant with the Florida rules of civil procedure. The court stated that the granddaughter could possibly be appointed as successor trustee in these new proceedings. But the court did require the granddaughter to pay the appealing beneficiary's legal fees, penalizing the granddaughter for having brought her initial petition improperly. *In re Trust of Vines*, 355 So.2d 1017 (D. Ct. Fla. 2023)

This Florida case serves as a cautionary tale to understand the process and procedure for appointing a successor trustee, and that failure to follow the applicable procedural rules may well result in adverse consequences. Under the uniform trust code, as adopted in Florida, Kentucky and many other states, successor trustees can be appointed in several ways, most without a court proceeding. If a person is designated as successor trustee in the trust terms, that person has first priority and does not require court appointment. The second priority trustee appointment is by

the unanimous agreement of the trust's qualified beneficiaries — again, without court approval. The third statutory priority is appointment of a successor trustee by the court. Only if neither of the first two statutory appointment methods can be used does the uniform trust code require court appointment of the successor trustee.

Partner John R. Cummins and Associate Abigail D. Zaman are based in Dentons' Louisville office and are members of the firm's Trusts, Estates and Wealth Preservation group. ■



MEETING ANNOUNCEMENT

Association of Legal Administrators

The monthly chapter meeting of the KY Association of Legal Administrators will be held in person on Thursday, July 13th beginning at 11:45am at the office of Frost Brown Todd in Louisville (400 W. Market St., Ste. 3200); and Lexington (250 W. Main St., Ste. 2800). Guests are welcome to join us for lunch. RSVP to Tina Kirkland, tkirkland@fbtlaw.com. ■

Time For ADVENTURE



Join us for the Let's Get Outside 1000 Hours Outside Challenge! Embrace the beauty of summer and make unforgettable memories in July with your own thrilling adventures! Whether you're hiking scenic trails, exploring hidden gems or simply enjoying nature's tranquility, we want to see it all.

Capture those incredible moments and share them with us by tagging the LBA Health & Wellness Committee in your social media posts.

Let's inspire each other to stay active and cherish the great outdoors together! And if you'd like to showcase your photographs in our community, don't hesitate to submit them to Lisa at lanspach@loubar.org. Your photos might just be featured in our upcoming health and wellness initiatives!

Adventure awaits! Let's exceed the 1000-hour mark and make this summer truly extraordinary.

Get out there and show us how you're enjoying the great outdoors!