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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PROBATE PART
MONMOUTH COUNTY
DOCKET NO. MON-P-316-24

IN THE MATTER OF THE A.
HARVEY STEWART 2008
IRREVOCABLE TRUST.

OPINION

Decided June 13, 2025.

Menar & Menar (Paula A. Menar, Esq., appearing), attorneys for plaintiff.

Riker Danzig LLP (Stephen J. Pagano, Esq., appearing), attorneys for defendant.

FISHER, P.J.A.D. (t/a, retired on recall).

This dispute between an irrevocable trust's two co-trustees – one the late settlor's wife and the other her stepson – now before the court by way of the former's summary judgment motion, requires the court's consideration of whether payments into a trust should be characterized as income, not principal,

under the Uniform Principal and Income Act of 2001 (the Act), N.J.S.A. 3B:19B-1 to -31, and, if so, whether the settlor's wife's entitlement to the trust's "net income" is the same as all income. Based on the undisputed facts, the court concludes that the funds in question are income, but the record does not presently permit a finding about what the trust instrument means by "net income."

I

Much here is undisputed. Plaintiff James D. Stewart and defendant Martha A. Chamberlain are co-trustees of the A. Harvey Stewart 2008 Irrevocable Trust. The trust's settlor was A. Harvey Stewart, who died on January 29, 2023. Harvey was James's father and Martha's husband. James, as well as his two siblings, Hilary and Zachary, who have appeared unrepresented in these proceedings, are all Martha's stepchildren; that is, they are the issue of Harvey's marriage to his first wife.

The trust instrument provides that during Martha's lifetime the co-trustees were to pay her "all the net income in quarter-annual or more frequent installments." Verified Complaint, Exhibit A, Article First (A)(1). The co-trustees were also authorized to use their discretion in determining whether to distribute to Martha "from time to time . . . such amounts of principal (even to the point of completely exhausting the same)" for Martha's "health, support, and

maintenance [in her] accustomed manner of living." Id., Exhibit A, Article First (A)(2). The trust instrument further instructs that after Martha's death the corpus of the trust is to be transferred to Harvey's estate. Thus, a natural tension was created when Harvey made Martha (the trust beneficiary entitled to the income and, at times, other "such amounts of principal") a co-trustee along with James, her stepson, who might have a personal interest in the retention of as much of the trust's corpus as possible at the time of Martha's death, because those funds might ultimately benefit his siblings, the estate's beneficiaries.[1]

James commenced this suit when recently a $51,425 check was sent to Martha made payable to the trust; Martha deposited the check into the trust account and then transferred the entirety of those funds to her personal account. James asserted in his verified complaint that he "believed" this $51,425 was principal and not income and that Martha acted wrongfully in at least two respects: she acted without his input, and she paid to herself trust funds that constitute principal, not income. James seeks Martha's removal as co-trustee, her return of $51,425 to the trust, and an accounting, among other things.

In response to the initial order to show cause, Martha claimed, in so many words, that she acted in good faith and did nothing that her husband hadn't done

[1] It has been asserted that Harvey disinherited James, so it may be that James would not be a beneficiary of whatever funds remain in the trust when Martha dies.

in the past with similar types of payments into the trust. She also asserted that the nature of the payment – whether labeled income, principal or a combination of both – is not necessarily clear and that she wasn't required to act in concert with James even though he is a co-trustee because James had been asked to resign as a co-trustee by Harvey during Harvey's lifetime, because James was in fact disinherited by Harvey, and because James has been otherwise uninvolved with the trust.

Martha has now moved for summary judgment, contending that, as a matter of law, and based on certain undisputed facts, the $51,425 is income, not principal.[2] The court agrees.

II

The basic undisputed facts are that the trust holds an 8.5% interest in New Shrewsbury Investment Ltd. (New Shrewsbury),[3] that New Shrewsbury is a holding company that owns a 50% interest in TF Associates, see Bowers-

[2] James's opposition to Martha's summary judgment motion raises questions about another payment to the trust of $10,285 that he claims was transferred to her personal account in October 2024. See Pb at 2. This other payment has not been shown to be different in kind to that $51,425 that was the focus of this case and calls for the same result on this motion.

[3] A list of the trust property, which includes only this interest in New Shrewsbury and a 9.7403% interest in Red Bank Investment Company, is appended to the trust instrument as its Exhibit A.

Metzheiser Certification (May 2, 2025), ¶ 2,[4] and that TF Associates owned 100% of Tinton Falls Associates, LLC, id., ¶ 3, which owned property in Toms River that it sold in March 2024 for $2,600,000, id., ¶ 4. From the proceeds of that sale, Tinton Falls Associates paid off a loan to TF Associates, id., ¶ 5, which also received the remaining net proceeds from the sale as Tinton Falls Associates' only member, id., ¶ 5. TF Associates then distributed some of the proceeds to its partners, one of whom is New Shrewsbury, id., ¶ 6, which thereafter paid a portion of what it received to the trust, since the trust holds an 8.5% interest in New Shrewsbury.

The Act governs how the funds in question should be characterized. The Act declares that "a trustee shall allocate to income money received from an entity," N.J.S.A. 3B:19B-10(b), unless it can be characterized as, or fall within, one of the following categories:

> (1) property other than money;
>
> (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

[4] Nicola Bowers-Metzheiser, vice-president of Philip J. Bowers & Co., a real estate management and investment firm, claims personal knowledge of these and other circumstances related to the transactions that produced the funds in question in this suit. Bowers-Metzheiser has provided two certifications; one (dated May 2, 2025) was submitted by Martha, and the other (dated May 20, 2025) by James.

> (3) money received in total or partial liquidation of the entity; and
>
> (4) capital gain dividends from regulated investment companies or real estate investment trusts.
>
> [N.J.S.A. 3B:19B-10(c).]

It has not been argued that either the first or fourth exceptions apply. In attempting to argue that the second or third may pose factual questions about whether the funds might be characterized as principal, James questions the scope of the word "entity." The court rejects his argument.

To be sure, as James points out, there were multiple entities involved in generating the eventual payment to the trust of the questioned $51,425. But the "entity" to which subsections (2) and (3) of N.J.S.A. 3B:19B-10(c) refers is the entity in which the trust holds an interest. Despite James's attempt to cloud the issue in responding to the summary judgment motion, N.J.S.A. 3B:19B-10(a) clearly defines "entity" for these purposes as any type of organization "in which a trustee has an interest."

The trust holds an interest in New Shrewsbury only; the trust did not then and does not now hold an interest in TF Associates or Tinton Falls Associates. So, while the sale of the Toms River property may have resulted in a total or partial liquidation of Tinton Falls Associates, Bowers-Metzheiser Certification (May 2, 2025), ¶ 8, and that Tinton Falls Associates' liquidation or dissolution

may be of the type falling within N.J.S.A. 3B:19B-10(c)(2), that circumstance has no impact on the statute's application to the payment the trust received from New Shrewsbury because New Shrewsbury has not been wholly or partially liquidated or dissolved. Bowers-Metzheiser Certification (May 2, 2025), ¶ 11. And for that matter, neither has TF Associates. Id., ¶ 10. There is no dispute that New Shrewsbury held an interest in TF Associates, which held an interest in Tinton Falls Associates, which owned property that was sold. Only New Shrewsbury is the "entity" of concern in the application of N.J.S.A. 3B:19B-10(c)(2). The money received by the trust was not "a distribution or a series of related distributions in exchange for part or all of" the trust's interest in New Shrewsbury. Ibid. No part of the 8.5% interest the trust held in New Shrewsbury was exchanged by the trust for the money in question; the trust still holds that 8.5% interest. And the money received was not "in total or partial liquidation of" New Shrewsbury; that entity has remained unchanged. So, N.J.S.A. 3B:19B-10(c)(3) does not require the allocation of the payment to principal. The money received by the trust came from income New Shrewsbury received from TF Associates, which received money from Tinton Falls Associates, which sold property it alone owned.

James argues that because, in his view, these three entities (New Shrewsbury, TF Associates, and Tinton Falls Associates) are "related," there is

a question of fact about whether the $51,425 is income or principal. That mistaken generality, which is untethered to the precise facts and the clear meaning of the applicable statute, cannot stand in the way of summary judgment. Not one of the exceptions in N.J.S.A. 39:19B-10(c) to the general declaration in N.J.S.A. 3B:19B-10(b) that money received by a trust is income has application here.

The $10,285 payment by New Shrewsbury over which Martha took dominion was also properly allocated as income. In his opposition, James acknowledges that the money ultimately came to New Shrewsbury from the sale of property by Monroe Lake, LLC. As noted above, New Shrewsbury owns an interest in TF Associates, which held a 29% membership in Lake Monroe. See Bowers-Metzheiser Certification (May 20, 2025), ¶ 16. The same analysis of the trust's receipt of this fund calls for its characterization as income.

All this means there is, as a matter of law, no merit to James's claim that New Shrewsbury's payment to the trust of $51,425 and $10,285 constituted principal. Those payments were income.

III

That conclusion, however, doesn't end the matter.

First, the trust declares Martha's entitlement to "net income" not "income." In opposition, there are assertions that some part of the questioned

payments should have remained in the trust for the payment of any tax liability, see Bowers-Metzheiser Certification (May 20, 2025), ¶ 18, and, from this, that Martha's removal of what might have been more than net income was a violation of her fiduciary duty as a trustee.

While the trust instrument contains a definition section, it does not define "net income," nor has it been shown how other provisions in the instrument should guide the court in understanding what might have been intended by the phrase "net income." Did the settlor intend "net income" to be the equivalent of "income" or did he intend that the former presupposed some deduction for some other purpose and that Martha would be entitled only to the remainder?[5] Absent a clear understanding about what the trust intended about the difference – if any – between income and net income, the court cannot determine whether Martha overstepped her bounds when she exerted dominion over the entirety of the two sums in question or whether there is some amount that she should disgorge for the benefit of the trust.

Because of that uncertainty, the court also cannot resolve the second part of Martha's motion, in which she seeks a dismissal of those parts of James's

[5] Martha previously argued she only did what her late husband did when money like this came into the trust. If so, that might shed light on what was intended. But the present record doesn't allow for a conclusion about the meaning of "net income" based on past practices that might be fixed when applying the rigorous principles of Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

complaint that demand an accounting and her removal as a co-trustee. The court does agree that, as a matter of law, Martha need not provide James with an accounting insofar as he would seek to have her provide information that is readily available to him. But if Martha's alleged breach of a fiduciary duty – limited to whether she improperly exerted dominion over the difference, if there is a difference, between trust income and net income – warrants her removal as a co-trustee, then the court may deem it advisable to require some sort of accounting. Both the claim for an accounting and the claim for her removal turns not on the bare and unsupported allegation that Martha kept James in the dark – since he had every right to relevant bank statements and transactions related to the trust as did she – but, again, on whether Martha overstepped her bounds by taking dominion over more than the "net income," whatever that might mean, of the recent $54,125 and $10,285 payments.

* * *

For these reasons, the summary judgment motion is granted in part and denied in part, and the matter scheduled for a case management conference for the scheduling of any remaining discovery and the setting of a trial date.

An appropriate order has been entered.