

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 22nd day of April, 2021.

Daniel H. McMurtrie, et al.,

Appellants,

against

Record No. 200404

Circuit Court No. CL19-2690

Alexander B. McMurtrie, Jr.,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Chesterfield County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of opinion that there is error in the judgment of the Circuit Court of Chesterfield County. Therefore, we reverse, in part, and affirm, in part, the judgment of the circuit court.

BACKGROUND

This appeal concerns the interpretation of a trust's no contest clause to determine if it applies to a sole beneficiary who is also the trustor of the trust.

Alexander B. McMurtrie, Jr., (McMurtrie) created the Alexander B. McMurtrie, Jr. Revocable Trust (the Trust) that includes a no contest clause (the No Contest Clause). The No Contest Clause provides that "any devisee, legatee, or beneficiary" of the Trust will forfeit their interest in the Trust, and that of any of their descendants, if they seek to impair or invalidate any provision of the Trust.

The Trust has three co-trustees: Daniel H. McMurtrie, Alexander B. McMurtrie, III, and Brian Broadway (Broadway) (collectively, the Trustees). In 2019, McMurtrie requested the distribution of the Trust's principal to him; it is undisputed that McMurtrie, during his lifetime, is the only beneficiary of the Trust. Co-trustee Broadway refused McMurtrie's request on the basis

that, under the terms of the Trust, Broadway has absolute discretion as to distribution of the Trust's assets.

Broadway's refusal to distribute the assets of the Trust prompted McMurtrie to file a complaint in the Circuit Court of Chesterfield County, seeking a declaratory judgment regarding the No Contest Clause's applicability to McMurtrie and to any claim he might bring under Code § 64.2-729 of the Uniform Trust Code. After the Trustees filed an answer, McMurtrie filed a motion for summary judgment, claiming there were no genuine issues of material fact in dispute. Specifically, he asked the circuit court to conclude that he was not subject to the No Contest Clause, as trustor of the Trust, or to alternatively hold that, even if he is subject to it, the No Contest Clause is inapplicable to any claim he might bring (1) to terminate the Trust under Code § 64.2-729 of the Uniform Trust Code or (2) against the Trustees for breach of their fiduciary duties.

After hearing McMurtrie's motion, the circuit court granted McMurtrie's motion for summary judgment and held that the No Contest Clause does not apply to McMurtrie, who was the trustor of the Trust, and is identified as such multiple times in the Trust. Additionally, the circuit court declared that the following actions proposed by McMurtrie do not violate the terms of the No Contest Clause because they are not actions that attack the Trust or that would impair or invalidate any of its provisions: (1) McMurtrie's summary judgment action; (2) actions regarding the Trustees' administration of the Trust or breach of their fiduciary duties; and (3) actions brought under Code § 64.2-729 of the Uniform Trust Code.

The Trustees appeal.*

ANALYSIS

The Trustees assert that the circuit court erred by granting McMurtrie's motion for summary judgment because the circuit court "failed to enforce an unambiguous no contest

* McMurtrie included his two daughters, Margaret McMurtrie Forest and Kathryn O'Haren McMurtrie (the daughters), as defendants in his complaint, and the Trustees served the daughters with notice of the Trustees' appeal. The daughters did not file responses in the circuit court or participate in the proceedings below, and they are not parties in this appeal. We conclude that the daughters are not necessary parties to this appeal. The daughters had notice and an opportunity to be heard, and to participate in the proceedings below, and on appeal their interests are adequately represented by other contingent beneficiaries who have the same or similar interests. *See NationsBank of Va., N.A. v. Estate of Grandy*, 248 Va. 557, 560 (1994).

provision of the Trust, in violation of settled principles of Virginia law,” in finding that McMurtrie is not subject to the terms of the No Contest Clause. They argue that the No Contest Clause applies to “any” beneficiary under the Trust, thus it unambiguously applies to McMurtrie because it is undisputed that McMurtrie is a beneficiary under the Trust. They aver that instead of strictly enforcing the No Contest Clause, the circuit court “effectively rewrote” the No Contest Clause when it applied the terms “any . . . beneficiary” as if the language stated “any . . . beneficiary except the Trustor.”

McMurtrie responds that the Trust refers to him under the defined term of “Trustor,” not as beneficiary, and the term beneficiary, as used in the No Contest Clause, refers to third parties that may take from him pursuant to the provisions of the Trust. He contends that the terms of the Trust are ambiguous and capable of two reasonable interpretations, and that we should adopt the interpretation that effectuates his intent as the settlor of the Trust.

In construing the language of a trust, if the language is clear and unambiguous, we will apply the plain meaning of the words used in the trust. *Harbour v. SunTrust Bank*, 278 Va. 514, 519 (2009).

A no contest clause in a trust is strictly enforced and strictly construed according to its terms. *Hunter v. Hunter*, 298 Va. 414, 424 (2020); *Rafalko v. Georgiadis*, 290 Va. 382, 402 (2015). Under these principles, we enforce the language of a no contest clause “without any wincing on our part concerning its alleged harshness or unfairness.” *Hunter*, 298 Va. at 424.

Here, the No Contest Clause applies to “any devisee, legatee, or beneficiary” of the Trust. A beneficiary is “[s]omeone who is designated to receive the advantages from an action” or “the person designated to receive the income of a trust estate.” Black’s Law Dictionary 191 (11th ed. 2019); Webster’s Third New International Dictionary 203 (1993). McMurtrie admits that, during his lifetime, he is the sole beneficiary of the Trust. Therefore, strictly enforcing the terms of the No Contest Clause, specifically the “any . . . beneficiary” language, leads us to conclude that the No Contest Clause applies to McMurtrie because he is a beneficiary of the Trust.

We note, however, that the circuit court also ruled that the No Contest Clause would not apply to, and does not bar McMurtrie from raising, a claim under Code § 64.2-729 of the Uniform Trust Code or from bringing a claim that the Trustees breached their fiduciary duties. These rulings of the circuit court are not challenged on appeal. Thus, as ruled by the circuit court, McMurtrie may, without triggering the application of the No Contest Clause, pursue any

remedies to modify or terminate the Trust that may be provided in Code § 64.2-729 of the Uniform Trust Code, and any claims concerning the Trustees' alleged breaches of their fiduciary duties.

CONCLUSION

Accordingly, we reverse the judgment of the circuit court, to the extent that it ruled that McMurtrie is not subject to the No Contest Clause, in general. However, we affirm the circuit court in regards to the other aspects of its judgment. Therefore, the judgment of the circuit court is affirmed in part and reversed in part, and final judgment is entered here. This order shall be certified to the Circuit Court of Chesterfield County.

A Copy,

Teste:

Douglas B. Robelen, Clerk

A handwritten signature in blue ink, appearing to read "M. M. Robelen", is written over the printed name of the Deputy Clerk.

By:

Deputy Clerk