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Trust No-Contest Litigation and Statutory Safe Harbor

Knopik v. Shelby Investments, LLC

2019 WL 2093887 (Mo. Ct. App.)

Missouri is one of a sizable minority of states in which the courts will enforce a no-contest clause found in a will or trust, if the settlor's intent is clear and unambiguous on its face and the cause of action clearly and unambiguously falls within the scope of the behavior the settlor intended would result in a forfeiture. The Missouri Supreme Court has repeatedly refused to subject the enforceability of no-contest clauses to the good faith and probable cause exception that has been adopted by a majority of the states. *See, e.g.,* Cox v. Fisher, 322 S.W.2d 910 (Mo. 1959); Commerce Trust Co. v. Weed, 318 S.W.2d 362 (Mo. 1958); Rossi v. Davis, 133 S.W.2d (Mo. 1939).

In order to ameliorate the chilling effect of no-contest provisions in appropriate cases, the Missouri legislature enacted R.S. Mo. §456.4-420 in 2014, which provides a procedure that a beneficiary may utilize to test whether the particular proposed cause of action would violate a particular no-contest provision. The statute requires the court to test whether the claims on the face of the petition (without discovery), if proven in a later trial, fall within the clear terms of the no-contest provision of the governing instrument. This new statutory procedure was used shortly after it was enacted by counsel who represented the *Knopik* plaintiff brought in the Probate Division of the St. Louis City Circuit Court. See In re Goldstein Irrevocable Trust, Cause No. 1322-PR00895. In that case, they filed a petition seeking a determination that their proposed future petition would not violate the no-contest provision contained in the Goldstein Irrevocable Trust. The trial court entered an order in April of 2015 finding that the proposed future petition would violate the no-contest provision contained in that trust. The plaintiff appealed that decision. The Missouri Court of Appeal issued an unpublished decision in August of 2016, rejecting all of plaintiff's arguments and affirming the lower court order. See Goldstein v. Bank of America, Case No. ED102989,

In November of 2016, one of the same attorneys who represented the plaintiff in *Goldstein* created a Missouri LLC known as Shelby Investments, LLC. On December 1, 2016, another individual created the Gift L.L.C. On December 21, 2016, Gift L.L.C. created the Knopik Irrevocable Trust for the benefit of Samuel Knopik. The trust was funded sometime in January of 2017 with just $6,000 (an amount well below the Missouri statutory authority for the trustee to terminate a trust), and named Shelby Investments, LLC as the sole trustee, to serve without compensation. The trust directed the trustee to distribute $100 each month to Knopik, beginning the first day of December 2016 (20 days prior to creation of the trust and over a month before the Trust was funded) for a period of just under four years. At the end of four years, the trust would terminate and the trustee was directed to then return whatever was left in the trust to Gift L.L.C. Finally, the Trust contained a no-contest provision stating that if Knopik made any claim against the Trustee "for maladministration or breach of trust" or attempted to remove Shelby Investments, LLC as trustee, "with or without cause," Knopik would lose his interest under the trust and the funds in the trust would immediately be returned to Gift L.L.C. The first month after the trust was funded the trustee distributed $100 to Knopik. Soon after making this first distribution, the trustee informed Knopik that it would make no further distributions to Knopik from the trust.

After the trustee affirmatively refused to make any further distributions of the $100 monthly amount to Knopik as required by the trust, Knopik filed a Petition against the trustee for breach of fiduciary duty, for removal as trustee, and for appointment of another lawyer as successor trustee. The lawyers who respectively represented Knopik and Shelby Investments, LLC were the same

lawyers who represented the plaintiff in *Goldstein*, and the lawyer who Knopik sought to appoint as a successor trustee also was a lawyer who worked for plaintiff in *Goldstein*. Significantly, Shelby Investments, LLC admitted virtually everything in the petition and filed a counterclaim asserting that Knopik no longer had standing to bring this claim because the no-contest provision in the trust resulted in a forfeiture of Knopik's interest as the beneficiary. And Knopik admitted virtually everything in the counterclaim. Each party filed requests for admissions, which the other party admitted in total, and the parties filed cross motions for summary judgment.

Based on the circumstantial evidence gathered thus far, *Knopik* appears to be a "contrived" case, put together by the two disappointed lawyers in *Goldstein*, which led to the decision in *Knopik*. The court first reiterated Missouri's long-standing minority rule that, although "forfeitures are not favored by the law," Missouri courts enforce no-contest provisions if the intent of the settlor is clear as to the conduct proscribed by the no-contest provision and the beneficiary's conduct clearly falls within such proscribed conduct. Because both parties agreed that Knopik's claims (set out in his petition) violated the no-contest provision, and Knopik did not effectively raise any countervailing points, it is no wonder that the court found that a forfeiture occurred. We caution careful practitioners not to rely on this case as persuasive precedent. The trust's no-contest provision was too egregious and the facts of the case are too unbelievable. What settlor would ever purposefully create such an uneconomic trust (with only $6,000) and provide that the trustee could willfully violate the terms of the trust with impunity? And what professional trustee would ever agree to serve as trustee of such a trust without compensation?

Indeed, the lower court chastised the *Knopik* plaintiff for not filing an action to enforce the trust instead, as there is case law in Missouri holding that a no-contest provision can't be enforced under circumstances in which the beneficiary was seeking to enforce the trust. *Labantschnig v. Bohlmann,* 439 S.W.3d 269 (Mo. Ct. App. 2014). The appellate court also chastised Knopik for failing to seek a ruling under R.S. Mo. § 456.4-420 as to whether the proposed petition would violate the no-contest provision before filing this petition that resulted in the forfeiture. These omissions were not due to an ignorance of the law, as all involved counsel knew exactly what the law was (based on their prior experience with the *Goldstein* case). Rather, one can reasonably conclude that it was an intentional omission, designed to seek the particular outcome and the opinion that was issued. One is left to wonder why the court upheld and enforced such an egregious no-contest provision that clearly appears to violate other provisions of the Missouri Trust Code. Had the parties been truly adversarial, perhaps the proper and persuasive legal arguments against this result may have persuaded the courts to a contrary result. Because this was a "contrived" case with no true adversaries, this is left to speculation.

No matter how you look at it, the *Knopik* court's conclusion is just plain wrong. It is unlikely that this ruling will be followed by other Missouri courts when presented with the reasons why the *Knopik* court's ruling violates fundamental principles of Missouri law. In addition to bringing the proper claim, as in *Labantschnig,* an adversarial litigant would likely cite other provisions of the Uniform Trust Code (UTC) that would yield a result opposite to *Knopik*. For example, R.S. Mo. § 456.1-105(10) makes mandatory the provisions of R.S. Mo. § 456.10-1008, which prohibits relieving a trustee of liability for actions taken in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiary. Because the no-contest provision in the Knopik Trust protects the trustee from suits for willful misconduct, it would be in clear violation of the mandatory prohibition contained in these Missouri Trust Code provisions. Unfortunately, that argument was never meaningfully advanced to the court in *Knopik*.

In sum, a careful practitioner should not charge full force into this china shop. First, no-contest provisions should not be routinely used, but should only be used when the client's concerns and the circumstances warrant such use. Second, when used, any no-contest provision that the careful