

Minnesota Court of Appeals Decides Beneficiary Subject to Fiduciary Duty When Exercising Power to Remove Trustee

November 27, 2023

On November 6, 2023, the Minnesota Court of Appeals issued its opinion in *In the Matter of the Trust Agreement of Genevieve M. Rossow*. Among other topics, the court's opinion addressed whether a trust beneficiary's power to remove a trustee must be exercised under a fiduciary standard when that beneficiary is separately a co-trustee of the trust. The court held in the affirmative, concluding that a trustee is not released from fiduciary obligations when exercising a power simply because that power is granted to him in a separate capacity.

The Opinion

The case involved a trust established by Genevieve Rossow, who died in 2014. Following Genevieve's death, the trust agreement named her husband, LeRoy, and their two sons to serve as co-trustees alongside an independent trustee, who was to be appointed by the two sons. Of particular note, the trust instrument granted LeRoy an independent power to remove any trustee.

In 2018, LeRoy's sons filed suit against their father due to concerns regarding the administration of the trust, which had no independent trustee then serving. A court-approved settlement was reached in which the parties agreed to cooperate in good faith to find an independent trustee for the trust. By 2021, the parties had failed to agree on an independent trustee and LeRoy filed a petition in district court to remove his sons as co-trustees and appoint an independent trustee of his choice.

The district court denied LeRoy's petition, concluding among other things that his removal power was subject to a fiduciary standard and accordingly could not be exercised to remove his sons because the removal was sought in bad faith.

Affirming the district court's denial, the court of appeals focused on the fiduciary duties owed by trustees in Minnesota. First, the court noted that the duties imposed by Minnesota Trust Code are not released or limited when a powerholder is described as holding the power in a capacity other than as trustee. Of note, although Genevieve's trust agreement stated that "[LeRoy] shall have power to remove any trustee," without declaring that the power was held in a fiduciary capacity, the court was not persuaded that such a bare

reference was sufficient to release him from the requirement to act in the best interests of the trust beneficiaries. In so holding, the court noted that LeRoy had cited no law that would justify a contrary conclusion.

The court next turned to the fiduciary standard applicable under Minnesota law and its consequences for LeRoy's actions. The court concluded that even if a trust document gives the trustee broad powers, such as the ability to remove any trustee, a trustee is not permitted to disregard fiduciary duties. Indeed, if the exercise of a power would constitute a violation of any fiduciary duty, then that power is non-exercisable. Accordingly, the court affirmed the district court's determination that LeRoy's removal power was subject to a fiduciary standard and could not be exercised in bad faith.

Key Takeaways

Although an unpublished opinion, meaning that it is not technically binding on future cases, the court's decision plants a clear guidepost with regard to the all-encompassing nature of a trustee's fiduciary duties: absent an unmistakable waiver of fiduciary duty in the trust agreement itself, an individual acting as trustee must always expect that a power is subject to fiduciary obligations. If those obligations are disregarded, the action in question may be impermissible regardless of the apparent language of the trust agreement.

While the court set forth a detailed analysis to support its holding, it is arguably the case that a simpler rationale existed—one that was apparently not explored by any of the parties in their briefing. Under Minnesota Statutes § 501C.0808, anyone having the power to remove a trustee is automatically deemed a "trust protector." Under that statute, a trust protector is a fiduciary unless the trust agreement *expressly* states otherwise. Because Genevieve's trust agreement was silent on LeRoy's fiduciary duties when exercising his power to remove a trustee, he was statutorily obligated to exercise that power as a fiduciary. Had this statute been considered by the parties and presented to the court, it is possible that much time and effort could have been saved by all involved.

The full text of the court's opinion may be found [here](#), or on Westlaw at 2023 WL 7293812. If you have questions about *In the Matter of the Trust Agreement of Genevieve M. Rossow*, please contact Jim Thomson, Andrew Biddison, or your regular Lathrop GPM Trusts, Estates & Legacy Planning contact.