

Delaware Supreme Court Upholds Trust Pre-Mortem Validation Statute

Client Alert

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INTRODUCTION

The Delaware Supreme Court issued an order affirming a bench ruling and letter opinion of the Court of Chancery by Vice Chancellor Glasscock precluding an action to contest the validity of a trust under Delaware's pre-mortem validation statute, 12 Del. C. § 3546. In the Court of Chancery matter, In the Matter of Restatement of Declaration of Trust Creating the Survivor's Trust Created Under the Ravet Family Trust Dated Feb. 9, 2012, C.A. No. 7743-VCG, V.C. Glasscock (June 4, 2014), Petitioner, Gary Ravet, claimed that the restatement of Petitioner's mother's revocable trust was the product of undue influence by his sister. The Delaware Supreme Court affirmed the Court of Chancery's holding that Petitioner's claim against the co-trustees of the trust was time-barred because notice under 12 Del. C. § 3546 was delivered to his last known address and he failed to challenge the trust within 120 days and provided no credible evidence that the notice wasn't delivered.

BACKGROUND

Petitioner was the son of Shirley Rivet, the settlor of a trust (the "Trust") created under a restated declaration of trust dated February 9, 2012. Petitioner challenged the validity of the Trust arguing that the restatement of the Trust was the product of his sister's undue influence over the settlor.

The central issue in Ravet was whether Petitioner's claims were time barred under 12 Del. C. § 3546(a) (1). That subsection provides, in relevant part, that a judicial proceeding to contest the validity of a revocable trust, restatement of a revocable trust, or irrevocable trust may not be initiated more than 120 days after the date that the trustee notified in writing the person contesting the trust of (i) the trust's existence, (ii) the trustee's name and address, (iii) whether such person is a beneficiary, and (iv) the time allowed under 12 Del. C. § 3546 for contesting the validity of the trust.

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JANUARY 2014 HEARING

In January 2014, the Court of Chancery conducted an evidentiary hearing that addressed the limited issue of whether Petitioner received written notice of the Trust by March 27, 2012, the last day that a proper notice would time-bar his claims under 12 Del. C. § 3546. At the hearing, the parties disputed the meaning of the language of 12 Del. C. § 3546(a) (1), that provides “notice shall have been given when received by the person to whom the notice was given and, absent evidence to the contrary, it shall be presumed that delivery to the last known address of such person constitutes receipt by such person.” Petitioner argued that “absent evidence to the contrary” refers to any evidence indicating that Petitioner had not actually received the notice. The Northern Trust Company of Delaware and Barry C. Fitzpatrick, as co-trustees of the Trust (the “co-trustees” and “Respondents”), argued that, absent evidence demonstrating the notice was not delivered to Petitioner’s last known address, delivery was effective to trigger a presumption of receipt.

At the Court of Chancery hearing, counsel for the co-trustees provided evidence that written notices were sent to Petitioner’s last known address and were not returned to the sender, and counsel provided evidence that notice was delivered to Petitioner’s home address by Federal Express on March 27, 2012. Petitioner’s only evidence that the notice wasn’t delivered was his own testimony that he did not receive any of the February or March 2012 mailings. In a bench ruling dated January 29, 2014, the Court of Chancery found this testimony not to be credible as it would require the Court of Chancery to believe that all of these mailings and notices of certified mailings went missing.

MOTIONS FOR RELIEF FROM JANUARY BENCH RULING

Petitioner filed various motions for relief from the Court of Chancery’s bench ruling, but the Court of Chancery rejected each of Petitioner’s arguments.

First, Petitioner argued that he was entitled to relief altering or amending the bench ruling to correct a “clear error of law” made by the Court of Chancery. The Court of Chancery rejected Petitioner’s argument that it was giving the co-trustees the benefit of a presumption of receipt even though the co-trustees had no evidence to prove delivery because the Court of Chancery had found “overwhelming” evidence of delivery. Moreover, the Court of Chancery rejected Petitioner’s argument that the Court of Chancery erred by giving the co-trustees the benefit of presumption of receipt even though “evidence to the contrary” was presented because Petitioner had presented no credible evidence. The Court of Chancery held that to the extent Section 3546 can be interrupted to create a presumption of delivery (or receipt) rebuttable by evidence to the contrary, such evidence must at a minimum be “credible evidence”.

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Second, Petitioner argued that he was entitled to a motion for reconsideration based on an error of law or misapprehension of the facts by the Court of Chancery. The Court of Chancery reiterated that the substance of Petitioner's testimony at trial was that he never received the three mailings and four notices left at his home. Because this testimony was found not to be credible, the Court of Chancery rejected Petitioner's argument.

Petitioner further argued that he was entitled to a motion for relief from the bench ruling based on "newly discovered evidence". Specifically, Petitioner offered another piece of first-class mail sent by the co-trustees' counsel, which Petitioner claimed he found for the first time on March 3, 2014. This other mailing was postmarked as of March 26, 2012. Petitioner argued that the new evidence demonstrated that counsel's testimony regarding the first class and certified letters in February 2012 was false and the letters all must have been mailed on March 26, 2012. However, the Court of Chancery held that Petitioner could have, with minimal diligence, found and produced the March 26 letter as evidence at the January hearing. Further, the Court of Chancery held that, even if the new evidence was admitted, it did not impeach counsel's testimony and, instead, further discredited Petitioner's testimony that he never received the February 2012 mailings.

Petitioner further argued that he was entitled to relief from the January bench ruling based on alleged "fraud or misrepresentation" of the co-trustees' counsel. The Court of Chancery rejected this argument because it found that a first class mailing accompanying the Federal Express mailing in March 2012 did not impeach the co-trustees' counsel's testimony. Instead, that additional mailing reinforced Petitioner's evidence being not credible. For the same reasons, the Court of Chancery rejected Petitioner's final argument that he was entitled to relief based on "extraordinary circumstances."

DELAWARE SUPREME COURT ORDER

Petitioner appealed the judgment of the Court of Chancery to the Delaware Supreme Court. In a two-page Order dated February 12, 2015, the Delaware Supreme Court affirmed the judgment of the Court of Chancery on the basis of and for the reasons assigned by the Court of Chancery in the bench ruling and the letter opinion.

CONCLUSION

This ruling, as affirmed by the Delaware Supreme Court, is the first Delaware case of its kind, upholding Delaware's premortem validation statute, 12 Del. C. § 3546, which was enacted in 2000. A beneficiary challenging the validity of an inter vivos trust on the grounds of undue influence was time-barred from bringing the claim because the Court of Chancery held that notice in accordance with Section 3546 was delivered to the last known address of Petitioner based on the evidence of the case.

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