VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-00084

In re: Peter Val Preda, Jr.

RULING ON THE MERITS

This is a de novo probate appeal by which Peter Val Preda Jr. (Peter Jr. or Peter) seeks to have his wife replace his sister Diana Val Preda as trustee of two trusts created by their father Peter Val Preda Sr. before his death. The case was tried to the court on September 5, 6 and 8. The parties gave closing arguments in lieu of post-trial filings.

Because the court previously granted partial summary judgment on a number of the issues raised by this appeal, the issues at trial were limited. *See* Decision on Respondent's Motion for Partial Summary Judgment (June 28, 2022) (Hoar, J.). That ruling narrowed the case to five of the 21 issues that had been raised and granted judgment on all claims pre-dating June of 2017 based upon the statute of limitations. Id. at 8 ("The remaining 'questions' for trial are Questions 4, 9, 16, 17, and 21. Those questions are limited to the one-year period before the original petition was filed in June 2018.").

Findings of Fact

The court finds the following facts to be established not only by a preponderance of the evidence, but by clear and convincing evidence. Peter Sr. was the father of Diana and Peter Jr. He had a strained relationship with his son, to the point that he declined to go to Peter's

wedding to Nancy in 1984. Likewise, Diana and Peter Jr. were never close and had almost zero contact for many years after Peter moved to Georgia in 1978.

Peter Sr. created the two trusts at issue here in 1992. One, the Family Trust, was a revocable trust of which Peter Sr. was trustee during his lifetime. Ex. A. It named Diana and the Chittenden Bank to be successor co-trustees when he died. It directed that upon the death of his wife (after certain other payments) a portion of the principal would be divided into two equal trusts, one for Diana and one for Peter Jr. Another portion would be divided in equal shares, one of which was to be distributed to Diana and one of which was to remain in trust for Peter Jr.

With regard to the trust for Peter Jr., the document states:

> The Trustees shall invest and from time to time reinvest the same, and after defraying all expenses properly chargeable to income, shall distribute to Peter, or for his benefit, so much of the net income therefrom as the Trustees shall from time to time deem advisable, provided that no distribution of income shall be made to Peter unless he is gainfully employed at the time of the proposed distribution, unless Peter is disabled or beyond age 60.

Id. § 3.5. Peter is now over 60 and receives distribution of income. Net income is defined as follows: "dividends, interest, rents and all other income received from the principal of the trusts hereby created after the deduction of all proper charges and expenses in connection with the administration thereof and shall not be construed to mean appreciation or gain realized in the principal amount of such trusts by investment thereof or otherwise." Id. § 6.5. The document further directs that upon Peter Jr.'s death the funds in the trust would go to whomever Peter Jr. designated in his will. It also states: "It is the Donor's intention that the Trustees shall invest the trust assets employing a diversified and balanced investment strategy, with an overall emphasis on capital growth as opposed to maximization of income." Id. § 6.11. There is also a provision regarding money managers:

> The Trustees shall have the discretion to select one or more money managers to advise them in investing the trust assets; provided, however, that no money manager or advisor whose performance with respect to the trust assets is not in the top one—half of the general performance of a statistically significant group of money managers as determined by the Trustees shall be retained by the Trustees for a period of more than one (1) year beyond the time during which such money manager's performance falls below such level.

Id.

The other trust, the Insurance Trust, appointed Diana as Trustee when it was created in 1992. Ex. B. It appointed Chittenden Bank as a co-trustee upon Peter Sr.'s death. This trust provided that after Peter Sr. and his wife died, all assets in the trust would be divided equally between trusts for Peter Jr. and Diana. Id. § 6.3. The trustees were given discretion to distribute the income to Diana or Peter or their children, with "particular' attention to any needs for "serious degree programs at accredited colleges or universities." Id. §§ 6.3(a) and 6.3(b). However, "no distributions of income shall be made to Peter unless he is gainfully employed at the time . . . unless Peter is disabled or beyond age 60." Id. § 6.3(b). This trust has the same language as the first trust regarding investment goals and money managers. Id. § 9.11.

Both trusts also have provisions allowing Diana to remove the bank (or any successor corporate trustee) "at any time that the investment performance of the Corporate Trustee with respect to the trust estate shall not have been equal to or better than the Standard and Poors 500 average, for a period of three consecutive years, with respect to equities in the trust estate and the Lehman Corporate Government/Bond Index with resect to bonds held in the trust estate . . ." Ex. A § 8.3 Ex. B § 11.3.

Diana was expressly named as trustee or successor co-trustee when the trusts were written. Peter Sr. was well aware at that time that Diana and Peter Jr. had not had a relationship for many years. Peter Sr. intentionally treated the two differently. Diana had

worked with Peter Sr. in his Budget Rent-a-Car business at the airport for 20 years. When Peter Sr. learned he had cancer, he made a point of taking Diana to what was then Chittenden Bank to introduce her to the investment managers she would be working with when he died. He also connected her with his accountant. He died in August of 1995; his wife died in February of 2006. As soon as Diana became trustee, Peter Jr. pushed to have the trusts changed so he could get access to the principal, not just the income. When Diana refused, he opposed her appointment as executor of Peter Sr.'s will.

Peter Jr. currently has net assets of close to $3 million. Ex. 534. They include many car parts (his business before semi-retiring was buying and selling such items), 21 automobiles and trailers including two Corvettes valued at $150,000 and $250,000 respectively and a Dodge valued at $185,000, a boat valued at $85,000, a Rolex watch valued at $50,000, a diamond ring valued at $45,000, firearms valued at $78,000, three pieces of real estate totaling over $1,300,000, and over $100,000 in cash. His wife Nancy Val Preda (who represents him as counsel in this case) is a reportedly successful lawyer in Georgia. They are not hurting for money. Nor is there any evidence that they ever have been in the period since the trusts were created.

Peter Jr. has three adult children: Peter III, Alessandrina, and Aaron. Diana has one adult daughter, Danielle. When Peter Jr.'s children were young, he told them that Diana was "evil" and not a part of their family. He said similar things about other family members. Aaron left home in 2008 after a domestic violence incident in which Peter choked him, and has no relationship with his parents or siblings. He has not spoken with either in years. He describes his father even back in 2008 as wanting to get his hands on what he considered "his money," and described Peter as good at spending money but not saving it. He said he saw his father let hundreds of thousands of dollars "slip away." Aaron also described his mother as

not being able to stand up to Peter, and opined that she would not safeguard the funds for him or his siblings if she were trustee.

Aaron has, however, reached out to, and become close with, Diana and her daughter in recent years. They speak all the time. Diana and Alessandrina are friends on Facebook but have no relationship beyond that. Peter Jr. and Diana are also currently friends on Facebook and exchange birthday greetings, but have had no other communications since June of 2017 other than in these court proceedings. The corporate trustees (which have changed over the years due to various mergers/acquisitions of banks) have sent Peter Jr. and each of his children quarterly and/or yearly financial statements of the trust accounts.

The current corporate trustee is Wilmington Trust. Its representative and that of the prior entity, People's Bank, credibly testified that they have followed the trust requirements of balanced and diversified portfolios with an emphasis on capital growth as opposed to maximization of income. In fact, they adjusted the balance to spin off more income for Peter within the range that maintained an appropriate balance. Based upon their testimony and Diana's it is clear that Diana is an educated and engaged trustee who carefully reads the news with respect to the economy, pays attention to the trust investment portfolios, meets regularly with the co-trustee, and asks thoughtful and appropriate questions about the investments. The trust administrator from 2104-21 reached out to Peter Jr. by mail, email and phone when she started, but he never responded to her. They regularly sent Peter and his children all of the information required by Vermont law.

The statements reflect that the investments have done quite well, and there was no evidence that they have not met the benchmarks in the trusts (e.g., not meeting or exceeding the Standard and Poor's returns for three years in a row). *See, e.g.*, Ex. T at 7 (five-year gross

returns as of 8/31/2019 exceeded the benchmarks for all but "cash & equivalents," for which the benchmark was a mere .04% higher). When asked what he thought should be done differently, all that Peter offered was that he would like to see the trusts invest in real estate in Georgia. Real estate is not an investment that the corporate trustees would ever approve. Nor did Peter offer any evidence that such an investment would have done better than the existing investment portfolios.

Several months after his mother died in 2006, Peter Jr. sought to have a full distribution from the principal of one (or both, it is unclear) of the trusts rather than receiving the income as directed by the trust documents. Ex. 504 ("I would like your help in getting my $260,000 trust released."). Diana promptly responded, explain that she did not have total control over the trust but that because their mother did not restrict *her* trust, "in addition to the $200,000 you received any remaining money [from that trust] will be split and distributed outright." Ex. J.

In 2011, Peter again reached out to Diana, apparently by contacting the corporate trustee. Diana emailed him the day she heard of his inquiry, offering her email address. Ex. 510. Peter then emailed to say he wanted to come to Vermont to discuss the trust. Id. That led to a series of communications and ultimately a meeting for lunch in Vermont. Diana was happy that he was reaching out to reconnect and establish a brother/sister relationship. However, two months before that meeting, Peter and his wife had met with a representative of the bank to ask for some records and stated that they were "of the opinion that Diana has misused her authority and taken assets around $4M which rightfully should have been included, at least half, in the Peter jr. trusts." Ex. 526. On the same day that Peter had the purportedly friendly lunch with Diana in July, he and Nancy again met with the bank to investigate the disposition of certain assets. They did not tell Diana they were doing so. At the

lunch, Peter asked if she would agree to step down and let him be the trustee. She then realized he had an ulterior motive to reconnecting. Peter subsequently unfriended her on Facebook and stopped emailing.[1] He never asked Diana for any financial information.

Peter came to Vermont again in 2015 or 2016 and met with Diana again. Again, he asked her to help him get the principal of the trust because he had "been punished enough." She told him she could not do so. He then told her that Nancy was at the courthouse getting admitted as a Vermont attorney. Diana understood the message to be that this was his last request to her before initiating litigation, which he did in 2018.

Peter Jr. claims that he repeatedly tried to call and email Diana in past years but that she never responded to him. The court does not find that credible, given her immediate responses in 2006 and 2011. He claims he tried again in 2018, though he admitted his memory was unclear. Diana's credible testimony was that he had not done so, and that she would have responded if he had.

Conclusions of Law

Peter Jr. seeks to have this court remove Diana as co-trustee and install his wife Nancy —who is also acting as his legal counsel in this case—in her place. The court sees an apparent conflict created by Nancy arguing as lawyer on her husband's behalf to install herself as replacement trustee here. However, as no motion was made to remove her as counsel and the issue only came to the undersigned's attention at the start of the trial, the court will not address that further at this time.

[1] They have since again become "Facebook friends."

Peter Jr.'s argument is as follows: Diana should be replaced because she does not communicate with him, she has not acted for his benefit, the two of them have no relationship, Diana has no relationship with two of his three children, and she is not responsive to him. (Items 4, 9, 16, 17 and 21 of the Statement of Questions filed March 19, 2021). At closing argument, his counsel/wife made clear that they rely upon 14A V.S.A. § 706(c), which provides for removal and replacement of a trustee if the court "finds that a change in trustee would be in keeping with the intent of the settlor." Under Section 706(c) there are several factors the court may consider in deciding whether a replacement would be in keeping with that intent.[2] The court finds none that support replacement here. The evidence just does not support Peter's claims.

Peter focuses on what he says is a lack of communication from Diana, complaining that she does not send him regular updates or reach out to him about the trusts. However, Diana is a co-trustee. The bank sends regular statements to Peter and his children, as required by 14A V.S.A. § 813(c). Peter points to nothing more that Diana or the bank should have sent him. He argues that she has a duty to call or send a letter once a year, and asserts that being in touch by Facebook is inadequate, but points to nothing to support such a claim. He cites 14A V.S.A. § 902(c)(6), suggesting that Diana must regularly ask him what "other resources" he has so that she can properly administer the trust. Here, however, she could not invade the principal no matter how much he needed money—and there is no evidence that he ever did.

[2] The factors are: (1) Whether removal would substantially improve or benefit the administration of the trust; (2) The relationship between the settlor and the trustee as it existed at the time the trust was created; (3) Changes in the nature of the trustee since the creation of the trust; (4) The relationship between the trustee and the beneficiaries; (5) The responsiveness of the trustee to the beneficiaries; (6) The experience and skill level of the trustee; (7) The investment performance of the trustee; (8) The charges for services performed by the trustee; and (9) Any other relevant factors pertaining to the administration of the trust.

He has roughly $3 million in assets, including over $100,000 in cash. The income was all he could get from the trusts, and he has not shown that Diana could have, or should have, adjusted the investments to spin off more income while in keeping with the trust language about maximizing principal.

Peter also suggests—apparently suggesting a breach of fiduciary duty justifying removal under 14A V.S.A. § 1001((b)(7)—that Diana has not acted for his benefit because she told the bank, her co-trustee, that he is a spendthrift. However, there is no evidence that what she said was untrue, nor is there any evidence that the bank used such information to Peter's prejudice in any way. In fact, the court concludes that such information is important to share with a co-trustee.

Nor is there any other evidence that Diana has not acted for Peter's benefit. He receives all of the income he is entitled to under the trusts, and in fact Diana raised with the bank on her own a question about whether they could spin off more income to him in 2014. Ex. 528. He points to nothing to suggest that he should be receiving more income. The bank manages the day-to-day investments, and its representatives credibly testified that they have complied with the express requirement of the trusts to employ "a diversified and balanced investment strategy, with an overall emphasis on capital growth as opposed to maximization of income." Ex. A § 6.11.; Ex. B § 9.11. Peter offered no alternative investment approach that he believes should have been taken, and offered no expert witness to suggest that the strategy here was not in keeping with the terms of the trusts. The trust investments appear to have done very well, and Peter has not shown any evidence that Diana should have considered replacing her corporate co-trustee based upon the benchmarks in the trusts.

The facts that Peter and Diana have no personal relationship, and two of Peter's children and Diana have either no relationship or no more than a Facebook friendship, are not grounds to remove her as trustee. First of all, if that were the case, then the proposed replacement trustee here would also be inappropriate because she has no relationship with either her own son Aaron, or with Diana, both of whom are beneficiaries of the trusts. On top of that, Nancy has now brought and litigated a lawsuit against Diana as trustee, and aggressively cross-examined her own son Aaron when he testified for Diana, which makes her a highly inappropriate trustee over any trust for which Diana or Aaron are a beneficiary. In any case, Peter and Diana had the same nonexistent relationship at the time the trusts were created many years ago. Peter Sr. was well aware of that, and nonetheless chose Diana as trustee.

Peter argues that the relationship cannot be repaired, and that Diana has admitted that, but if that were a basis for removal anyone wanting to remove a trustee could sue them, thereby ruining the relationship, and then win the case. That is clearly not the law. "Friction between the trustee and beneficiaries is ordinarily not a basis for removal," particularly when—as here—it is not caused by the trustee. Official Comment to 14A V.S.A. § 706(b0(2). Peter points to language in the Official Comment that "incurable" friction "might" be grounds for removal. Id., cited in In re Peter Val Preda Trusts, 2019 VT 61, ¶ 11. However, given that the court attributes any friction to Peter's actions, not Diana's, and all other factors here suggest that Diana is an appropriate trustee, the court does not find this to be a significant concern.

There is no evidence that, despite whatever "friction" exists, Diana is not responsive to Peter when he has inquiries or requests. There have been no such inquiries or requests to her since the June 2017 date that limits the claims here. Moreover, when he did reach out to her

in the past, she responded promptly each time. *See* Exs. 504, J and 510. There is zero evidence that Peter has ever asked her for more financial data about the accounts, or copies of any other documents. He argues that she moved and did not send him her new mailing address, but he had her phone number—which never changed—and her email address. He could reach her if he chose, and he points to no duty to give an updated mailing address, particularly given that most communication these days is no longer done by mail.[3] There is no evidence that Diana has caused a breakdown in communications, or that it has hampered the proper administration of the trusts in any way.

In sum, the court finds no factors under Section 706(c) that support replacement here. Essentially nothing has changed since Peter Sr. chose Diana as a trustee. Diana's removal would not substantially improve or benefit administration of the trusts, the relationship between her and Peter has not changed since the trusts were created, there is no suggestion that her abilities have changed, the court finds no issue as to lack of responsiveness, she has extensive investing experience, and the investments are doing very well.

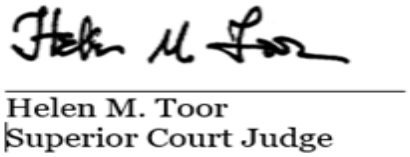
Not only is there no basis for replacing Diana, it is crystal clear that Peter Sr. wanted Diana, whom he trusted, to be the trustee despite the fact that she and Peter Jr. had no relationship. Peter Sr. also could have listed Peter's wife Nancy as a successor trustee, but he did not do so. There is nothing to suggest that he would ever have wanted her to replace Diana under any circumstances. Given Nancy's spearheading of this litigation against Diana, with whom Peter Sr. was close, it seems highly likely that she would be the last person he would want to see controlling the trusts.

[3] As Diana points out, the only statutory requirement about providing an address is when a trustee first accepts a trusteeship. 14A V.S.A. § 813(b(2). Nor does the statute define "address." It does not say "mailing address" as opposed to "email address."

Order

The petition to replace the trustee is denied.

Electronically signed on September 18, 2023 pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge