

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-560

JULY TERM, 2003

	}	APPEALED FROM:
	}	
	}	Rutland Superior Court
	}	
In re Trust Estate of Theodore H.	}	DOCKET NO. 479-8-02 RdCv
Hubbard	}	
	}	Trial Judge: Richard W. Norton
	}	
	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Theodore R. Hubbard, Sr., the life beneficiary of a trust created by his father, appeals the superior court's denial of the trustee's request to approve two easements on trust property to benefit adjacent parcels owned by the life beneficiary. We affirm.

Theodore H. Hubbard set up a trust in 1987 as part of his will to preserve his 278-acre farm. The trust, which became effective in 1993, made his son, Theodore R. Hubbard Sr., life beneficiary and his grandson, Theodore R. Hubbard, Jr., the primary contingent remainderman. The stated purposes of the trust are to support and benefit the life beneficiary during the term of the life estate and " to maintain and continue the farm and farm operation." The trust provided that the trustee " shall not have the authority to sell, exchange, convey, or hypothecate, or to mortgage beyond the limits herein set forth, or otherwise dispose of said real property, or any part of it, during the entire term of the said TRUST." In the late 1990' s, the life beneficiary ceased the dairy farm operation and began using the farm property as pasture land for various species of wild game.

In May 2002, the trustee filed with the probate court a " Motion for License to Sell," in which he requested that the court allow him to grant two easements on trust property for the purpose of constructing septic systems that would benefit adjoining parcels owned by the life beneficiary. Three of the life beneficiary's sons intervened in the probate proceeding to oppose the motion. The probate court ruled in favor of the life beneficiary, and his sons appealed to the superior court. The superior court concluded that, although the farm operation had been greatly cut back in recent years and did not provide the life beneficiary with any income, the trust was still operative and explicitly precluded the trustee from selling, conveying, or otherwise disposing of any part of the trust property. The court determined that the proposed easements would not benefit the farm operation in any way, but rather would support adjacent properties owned by the life beneficiary and unconnected to the farm. The life beneficiary appeals, arguing that (1) the trust does not preclude the trustee from granting easements on the trust property; and (2) the trustee acted within its discretion in approving the easements.

The life beneficiary first argues that the language of the disputed provision does not preclude the trustee from granting easements because the conveyance of an easement does not transfer either title or a right of possession in the property. We find no merit to this argument. The trust explicitly precludes the trustee from conveying, selling, or otherwise disposing of any part of the farm property. Without question, conveyance of the easements in this case would cede an interest in the farm property and thus reduce the bundle of rights inherent in the property. Thus, such a conveyance is prohibited by the plain language of the trust. Cf. 1 V.S.A. §132 (defining " real estate" to include " lands . . . and all rights thereto and interests therein" ); Quechee Lakes Corp. v. L.E. Boeske Assocs., Inc., 989 F. Supp. 545, 546 (D. Vt. 1996) (noting that Black's Law Dictionary defines conveyance to include any encumbrance on interest in real property).

The life beneficiary also argues, for the first time on appeal, that the court substituted its judgment for that of the trustee and thereby improperly overrode the trustee's right to determine, in his discretion, whether conveyance of the easements benefitted the life beneficiary or interfered with the farm operations. Again, we find no merit to this argument. We agree with the life beneficiary that the "trustee must be deemed to possess or to be able to exercise such powers as are . . . necessary or appropriate to carry out the purpose of the trust and are not forbidden by the terms of the trust." In re Wellman Estate, 119 Vt. 426, 431 (1956). Here, however, the proposed conveyance is forbidden by the terms of the trust. See id. (where trust instrument does not confer on trustee power to sell trust property, trustee has no power to do so absent statutory authority). In any event, the record amply supports the court's conclusion that the proposed easements would not enhance the life beneficiary's ability to maintain the farm property, but rather would be inconsistent with use of the land for agricultural purposes. The trust does not allow the life beneficiary to encumber trust property, and thereby diminish the value of the trust estate, to benefit his non-trust property.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned