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CIVIL DIVISION  
Case No. 22-CV-00685

In Re: Marjorie T. Palmer Trust Fund

### RULING ON APPEAL

This is an appeal from a probate court order granting an unopposed motion to amend a plan to liquidate and distribute trust properties. As odd as it seems, the parties agreed that although the motion was unopposed below, it can be appealed here because this is a de novo proceeding. In re Trustees of Marjorie T. Palmer Tr., 2018 VT 134, ¶ 34, 209 Vt. 192 (“appeal to the civil division is de novo”). Craig Weatherly, Esq. represents appellants Loren Palmer and Lorelei Kjelleren. The trustee, Richard Kozlowski Esq., represents himself.

### Statement of Questions for Appeal

The questions appellants raise on appeal as directed by V.R.C.P. 72 are as follows:

1. Does the Court have authority to allow the Trustee to sell the Trust’s Charlotte property?
2. If so, does the Trustee have a sufficient factual basis for invoking the Court’s authority?
3. If so, should the Court allow the Trustee to exercise that authority and sell the Charlotte property?
4. Would it amount to an abuse of the Trustee’s discretion if he were to sell the Charlotte property against the wishes of all the Trust beneficiaries rather than dividing it among them in accordance with the Trust’s terms?

### Findings of Fact

The court finds the following facts to be established by a preponderance of the evidence. The trust at issue here is that of decedent Marjorie Palmer. Mr. Kozlowski is the trustee. The relevant portion of the trust directs that after certain other distributions, the “principal of the Trust Fund . . . shall be divided into a number of equal shares. . .” Ex. A, pp. 3-4. The Trust Fund consisted almost entirely of real estate rather than liquid assets. The parties have fought over various issues, some leading to an appeal to the Supreme Court.

One requirement of the Trust, confirmed by the Supreme Court,<sup>1</sup> was that one beneficiary get a building site on land in Hinesburg. That involved getting subdivision permission from the town, a process that cost money that the Trust did not have. The realtor agreed to front the money and get paid from the sale of the land. However, Steven, Loren and Nancy Palmer opposed the subdivision proposal before the Hinesburg Development Review Board—see Ex. D—and it became clear that among other things a wetlands study would be required. The realtor declined to front the funds for any more work and advised that, with opposition from the family, the costs would be substantial to get through the process. The Trust did not have the funds to proceed. The trustee was able to offer the beneficiary in question a lot in Shelburne instead, and then sold the Hinesburg property in toto in November of 2021. However, there remained an issue of getting septic capacity for the buyer of that Hinesburg land on the adjoining Charlotte land, and the Town of Charlotte required several permitting steps to approve that. Ex. 3.

The Charlotte town planner indicated to the trustee in an email that Loren and Steven had met with him on December 29, and said that the email was to remind the trustee that

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<sup>1</sup> See In re Trustees of Marjorie T. Palmer Tr., 2018 VT 134, 209 Vt. 192.

permits were required, and that a failure to obtain them could lead to enforcement action by the town. Id. The tone of the letter (with the warning in bold print) and the fact that it was the result of Loren and Steven meeting with the planner, led the trustee to reasonably conclude that the Palmers were again trying to stand in the way of his attempts to move forward by trying “to unravel that sale by preventing [the buyer] from building the necessary septic systems in Charlotte.” Ex. 1, p. 2. Although the town planner told the trustee by phone that Steven said he did not oppose the septic proposal, Steven later appeared at the hearing on the permit request and opposed it.

It is not clear whether the trust had any legal obligation to assist the buyer of the Hinesburg land in getting the permits, or whether the permits were actually legally required, but with the advice of a real estate lawyer and the realtor the trustee decided it was easier to work to assist the buyer to get the permits than to fight the town or risk the buyer failing to obtain permits and suing the trust.

The land remaining at issue now is over 100 acres in Charlotte. The plan previously approved by the Probate Division called for dividing that land into equally valued shares for each beneficiary. Ex. 5. The trustee’s goal was “to preserve, to the extent possible, the historical use of this property by the Trust beneficiaries . . .” Ex. 5, p. 2. That historical use includes several generations of maple sugaring: according to Steven Palmer, Marjorie Palmer started sugaring on the property in 1942, and was the first woman inducted into the Sugarmakers’ Hall of Fame. In addition, the land has been open to the public for many years to walk, bike, ski, and snowshoe, and is used by hundreds of people on a weekly basis. Steven, one of Marjorie’s grandsons, has his own sugarhouse on an adjoining 10-acre lot in Hinesburg and leases Trust land to tap trees, as does grandson David Palmer. There are also ancestral remains buried on the property.

The trustee's plan to equally divide the land ran into roadblocks, however. He made numerous proposals about how to divide the property, but Loren and Lorelei on one side, and David on the other, refused to agree to any of the proposals and did not propose any other plan that they all agreed to. Each said if they did not get the sugarhouse lot they would never agree to the division.

The trustee finally gave up on dividing the property, and filed the motion at issue here, seeking to sell the property. He explained in the motion that the original plan to create "three separate lots of equal value from the property that has limited access, varying topography, and limited septic capacity" was always going to be "a difficult task," and that given the continuing opposition that had been raised by the beneficiaries to much of what he had been trying to do both with the Hinesburg land and the Charlotte land, he expected that the Palmers would do all they could to oppose any attempts to subdivide the Charlotte property. Ex. 1, p. 3. Thus, he concluded that trying to subdivide would be a long, drawn-out, and expensive process and that it was better for the trust to sell the Charlotte property, with the beneficiaries all able to bid if they chose. Id. p. 4.

Steven Palmer is a civil engineer and testified that he was not trying to be oppositional when he sent Exhibit D and testified against the Hinesburg subdivision. He said the family did not believe the land was subdividable and did not want the trustee wasting money on trying to do so. He also testified that he did not go to the Charlotte town planner to oppose the septic proposal, but instead in response to an interaction between his father and the planner that stemmed from a misunderstanding that the father was involved somehow. Even so, it was not unreasonable for the trustee to *interpret* these actions as ongoing opposition to his management of the trust assets.

After filing the motion to sell, the trustee advised the beneficiaries' counsel that he would withdraw the motion if the parties could reach an agreement on division of the property. No such agreement has been proffered.

### Conclusions of Law

At the conclusion of the hearing, the court inquired what standards Appellants believe apply to the court's review here. No rule, statute, or case law was cited. Question 1 of the Statement of Questions is whether the court has "authority to allow the Trustee to sell the Trust's Charlotte property." Appellants offer nothing to support an argument that the court has no such power. To the extent that the question is whether the trust permits such a sale, the answer is clearly yes. It directs the trustee to divide the principal of the trust equally. Ex. A, pp. 3-4. It does not restrict the sale of the property, and does not say the land shall be divided into three equal shares, though that would have been easy to say if it was the grantor's intent to restrict the trustee's options.

Questions 2 through 4 of the Statement of Questions are essentially all the question of whether the trustee abused his discretion. This is the only standard the court can find for review of a trustee's actions. *Accord*, Destitute of Bennington Cnty. v. Henry W. Putnam Mem'l Hosp., 125 Vt. 289, 297 (1965) (trustee's exercise of his powers over a charitable trust "is not subject to control by the court except to prevent an abuse of discretion"); Restatement (Third) of Trusts § 87 (2007) ("When a trustee has discretion with respect to the exercise of a power, its exercise is subject to supervision by a court only to prevent abuse of discretion.").

The trust here directed the trustee to divide the property at issue equally among the beneficiaries. Marjorie Palmer could have directed the trustee to keep certain land in the family, or to deed the sugarhouse and sugarbush to one particular beneficiary, but she did

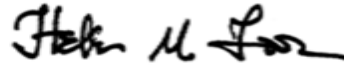
neither. She may have presumed that the family members would all work together to agree on who should get what, as one would hope. Instead of directing the exact disposition, she gave the trustee discretion to divide the land. He has made repeated attempts to reach some division to which they would all agree. He has rightfully attempted to keep the land in the family, despite the fact that the trust does not require that. However, he has been met with what any reasonable observer would see as repeated opposition to his attempts to move forward with the real estate issues. It was also not unreasonable for him to conclude that subdividing the Charlotte acreage into three equal value lots would not be a simple task. Nor have the beneficiaries been able to propose a division to which they would all agree. It seems clear that based upon the issues described here, as well as the tortured history described by the Supreme Court in its decision, the trustee is correct to expect ongoing litigation over any division he might propose, costing the trust money and delaying termination of the trust.

An abuse of discretion exists when the decisionmaker “declined to exercise [his] discretion or has done so on untenable or unreasonable grounds.” In re Champlain Parkway SW Discharge Permit, 2021 VT 34, ¶ 11 quoting In re Stowe Cady Hill Solar, LLC, 2018 VT 3, ¶ 17, 206 Vt. 430; *see also*, Knutsen v. Cegalis, 2011 VT 128, ¶ 13, 191 Vt. 546 (“That a different weight or conclusion could be drawn from the same evidence may be grist for disagreement, but does not show an abuse of discretion.”). It was entirely reasonable for the trustee to decide that the best route here is to sell the property and divide the proceeds equally among the beneficiaries. “A trustee in making a determination where discretion is conferred has an important responsibility, which, if honestly exercised, calls for no revision by the court.” Destitute of Bennington Cnty., 125 Vt. at 298. There was no abuse of discretion here.

Order

The appeal is denied. The order of the Probate Division granting the trustee's motion to amend the plan to liquidate and distribute trust properties is affirmed.

Electronically signed on October 5, 2022 pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Helen M. Toor", written over a horizontal line.

Helen M. Toor  
Superior Court Judge