



IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

James W. Curtis, et al.,

Plaintiffs,

v.

Kenneth M. Curtis, et al.,

Defendants.



20231002000293190 1/3 \$28.00
Shelby Cnty Judge of Probate, AL
10/02/2023 10:32:01 AM FILED/CERT

CIVIL ACTION NO.:
CV 2010-900442

ORDER OF FINAL JUDGMENT

This cause is before the court on cross motions for summary judgment filed by the respective parties. The facts of this case are virtually undisputed.

The plaintiffs are beneficiaries of a trust in the amount of \$10,000.00 created by their grandmother's will which was probated in 1995. The will established the defendants as co-trustees of the trust. The beneficiaries were to receive their respective shares of the trust as each turned 21 years of age. Plaintiff Kimberly Curtis turned 21 on January 30, 2006. Plaintiff James W. Curtis turned 21 on August 25, 2008.

Defendant/co-trustee James T. Curtis held the \$10,000.00 until February 13, 2003, at which time he transferred the \$10,000.00 by check made payable to the co-trustee, Defendant Kenneth Curtis. Kenneth Curtis is the father of the two plaintiffs who are the trust beneficiaries. The check memo stated "Jim & Kim's college." Kenneth applied these funds to an outstanding mortgage on property that he owned. No funds of any type whatsoever were ever distributed from the trust to either of the beneficiaries.

Plaintiffs claim negligence, breach of fiduciary duty, and conversion on the part of the defendants/co-trustees. With respect to Plaintiffs' claims for conversion, the court finds that the trust funds had never been made separate, specific or capable of identity in sufficient manner to support a claim for conversion. The only occasion upon which the trust funds were ever segregated or identified appears to be the issuance of the \$10,000.00 check from James T. Curtis to Kenneth Curtis in February 2003. Thereafter,



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the funds were again comingled by Kenneth Curtis. Plaintiffs' claims for conversion, therefore, have no legal basis.

With respect to the claims of negligence and breach of fiduciary duty, the trust funds were to have been distributed to the beneficiaries at age 21, "regardless of their educational choices." Plaintiff Kimberly Curtis reached the age of 21 on January 30, 2006. Her claims are therefor time barred, as the filing of this complaint did not occur until May 2010. Consequently, all claims asserted by Kimberly Curtis are due to be dismissed.

Plaintiff James W. Curtis reached age 21 on August 25, 2008. His negligence based claims are not time barred. Nevertheless, based upon the undisputed facts, including the express terms of the trust itself, the court finds that Defendant James T. Curtis can not be found to have been negligent or to have breached his fiduciary duty by transferring trust funds to the co-trustee who was the parent of the beneficiaries. At that time, the eldest child was turning 18 and the trust funds would have been readily available for distribution for the child's educational expenses. The court finds that the actions of Kenneth Curtis could not have been reasonably foreseen by James T. Curtis, who appears to have been acting in good faith by making the funds readily available to the beneficiaries.

By the terms of the trust, the funds were to be invested at the sole discretion of the co-trustees. Though the court can not fathom why funds would not have at least been placed in a simple interest bearing money market account or CD, the co-trustees had no legal obligation to do so. The result is that no interest accrued on the principal. Poor investment decisions by the trustee are permitted under the terms of the trust. At least the corpus of the trust remained intact and was not lost in the stock market.

Based upon the forgoing, the court finds that with respect to the claims asserted by Plaintiff Kimberly Curtis, there exist no genuine issues of material fact and that Defendants are entitled to judgment as matter of law. Accordingly, it is ORDERED that summary judgment be, and it hereby is, entered in favor of Defendants and against Plaintiff Kimberly Curtis. All claims asserted by this Plaintiff are, therefore, dismissed with prejudice.



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The court further finds that there exist no genuine issues of material fact with respect to the claims assert by Plaintiff James W. Curtis against Defendant James T. Curtis, and that Defendant James T. Curtis is entitled to judgment as a matter of law as to all such claims. It is , therefore, ORDERED that summary judgment be, and it hereby is, entered in favor of Defendant James T. Curtis as to all claims asserted against him. Defendant James T. Curtis is dismissed with prejudice as a party to this action.

With respect to the claims of negligence and breach of fiduciary duty by Defendant Kenneth Curtis, the court finds that by Defendant's admission there exist no genuine issues of material fact, and that Plaintiff James W. Curtis is entitled to a judgment as a matter of law against this Defendant. Accordingly, it is ORDERED that summary judgment be, and it hereby is, entered in favor of Plaintiff James W. Curtis and against Defendant Kenneth Curtis. Judgment in the amount of \$10,000.00 is hereby entered in favor of Plaintiff James W. Curtis, and against Defendant Kenneth Curtis for which execution may issue.

The costs of court are taxed against Defendant Kenneth Curtis.

DONE and ORDERED this 17th day of June, 2011

s/Hub Harrington
Circuit Judge

Certified a true and correct copy

Date: 10-2-23

Mary H. Harris SB

Mary H. Harris, Circuit Clerk
Shelby County, Alabama