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ESTATE PLANNING AND DIVORCE: LESSONS FROM IN RE E. EARL LYDEN TRUST Highlighted by *Lyden v. Lyden (In re E. Earl Lyden Trust)*

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In early April, the Michigan Court of Appeals issued an opinion in the case of *In re E. Earl Lyden Trust*, which highlights the importance of a comprehensive review of the estate plan during the pendency of a divorce.

BACKGROUND OF CASE

Denice and Earl Lyden were married, and Earl had a son, Hunter, from a prior marriage. As relevant to the case, Earl had created a revocable trust and named it as the beneficiary of his retirement plans. Denice consented to this change of the designated beneficiary by executing a waiver of her spousal-survival interest in the plans. In turn, Earl named her as the beneficiary of all income generated by the trust and up to 3% of the principal for her medical expenses. If Denice remarried, she would lose the aforesaid benefits under the trust and instead receive a \$200,000 lump sum. The remainder of the trust would pass to Hunter upon Denice's remarriage.

In 2019, Earl and Denice filed for divorce in Missouri, and the Missouri court entered a status quo order prohibiting the parties from dissipating or transferring the marital assets. While the divorce was pending, Earl amended his revocable trust and removed Denice as beneficiary.

He made this amendment after speaking with his counsel, who confirmed that Earl could legally make changes to his trust since such changes would only affect the distribution of his property upon his death and would not affect the distribution of property during the divorce proceeding. In the amendment, Earl expressly noted that he was not providing for Denice under the trust due to the divorce. Earl also informed Denice of the amendment to the trust.

Sometime later, Earl was diagnosed with lung cancer. At the time of the diagnosis, the divorce was under a not-yet-finalized settlement agreement that would result in a near-equal division of the marital assets. Finalization was delayed because Denice requested to be designated as the beneficiary of his life insurance policy in lieu of spousal support.

Before the conclusion of the divorce, Earl died and Denice received \$69,000 from Earl's probate estate as her elective share as the surviving spouse as well as \$300,000 from the sale of the marital home and \$22,000 from the sale of two cars. Denice does not receive any of the property under Earl's trust since, per the trust amendment, all of the trust property was to be distributed to Hunter.

CONTINUED

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LESSONS FROM IN RE E. EARL LYDEN TRUST

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**RULING OF THE MUSKEGON
PROBATE COURT**

Denice filed a petition in the Michigan probate court, as Earl's widow, to reform or set aside the trust amendment. Denice argued that the trust amendment was (1) contrary to public policy because the trust disinherited Denice and caused a divestment of the marital property and (2) a breach of Earl's fiduciary duties to her. Hunter, as the successor Trustee and beneficiary of the trust, filed a motion to dismiss the case. The trial court granted Hunter's motion and, among other reasons, noted that the amendment to the trust was not contrary to public policy, because it did not interfere with the freedom to marry or divorce or limit religious freedoms nor was the amendment frivolous or capricious. Furthermore, Earl did not owe Denice a fiduciary duty. Denice appealed.

**RULING OF THE MICHIGAN COURT
OF APPEALS: THE APPELLATE
COURT UPHELD THE PROBATE
COURT'S RULINGS**

The court declined to adopt a claim of fraud on marital assets or to rely upon Missouri caselaw to inform public policy in Michigan. The court instead looked to *Soltis v. First of America Bank-Muskegon*, where this court concluded that if there is no indication of intent to defraud the other spouse of her marital rights, a spouse may use a revocable trust to effectively disinherit the other

spouse. Here, Earl's amendment to the trust provided for Hunter in light of his pending divorce, which is a proper purpose. Furthermore, before Earl made the amendment, he sought legal counsel to make sure this was legal in Michigan, he negotiated the terms of the divorce settlement in good faith, he offered Denice a near equal split of the marital assets, and he told Denice that he modified the trust to disinherit her. The court held that Denice possessed sufficient knowledge that Earl might die before the divorce was finalized and she would be disinherited. Therefore, the amendment to the trust was not against public policy.

The appellate also ruled that Denice did not demonstrate that Earl owed her a fiduciary duty because "while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee owed exclusively to, the settlor." The only fiduciary duty that Earl owed as a Trustee was that to himself as the Grantor of the trust.

TAKEAWAYS

In re E. Earl Lyden Trust reminds us that estate plans should be reviewed during the pendency of a divorce, with special attention being given to what happens if a spouse dies while the divorce is still pending. Please contact a Wiggin and Dana attorney if you have further questions on this case. We would be happy to help.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.