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Shorr v. Harris, 248 A.3d 633 (R.I. 2021)

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Wills and Trusts. *Shorr v. Harris*, 248 A.3d 633 (R.I. 2021). A trust beneficiary cannot request an accounting of the trust if they cannot assert proper standing in their challenge. Standing under the Rhode Island Uniform Custodial Trust Act (Custodial Trust Act) requires that the trust beneficiary prove, through the trust's written terms or other evidence in the court record, the settlor's intent to create a custodial trust. Also, when a will's pour-over provision partly funds the trust, the trust beneficiary does not acquire standing to request an accounting of the trust by becoming the court-appointed administrator of the settlor's probate estate.

FACTS AND TRAVEL

In 1991, the defendant Herbert Harris, "drafted a revocable inter vivos trust agreement (the trust) and 'pour[-]over will' (the will)" for Rhode Island resident Anna Blankstein, which Blankstein subsequently reviewed and approved.[1] The trust designated Harris, Blankstein, and Sophia Garelick as trustees.[2] It also specifically referred to Harris and Garelick as "the other trustees."[3] Under the trust's terms, Blankstein was a beneficiary who would receive the trust estate's net income during her lifetime.[4] Upon Blankstein's death, the trust instructed the trustees to make specific bequests from the trust to other beneficiaries, including the plaintiff Irwin Schorr.[5] Pursuant to the will, Blankstein's residuary estate upon her death would partly fund the trust.[6]

Shortly after Blankstein's death in January 2011, the defendant sent the plaintiff a letter detailing the plaintiff's $2,000 specific bequest from the trust.[7] The plaintiff responded by seeking "an

1. Shorr v. Harris, 248 A.3d 633, 634 (R.I. 2021).
2. *Id.*
3. *Id.* at 637.
4. *Id.* at 634.
5. *Id.*
6. *See id.* at 638.
7. *Id.* at 634.

accounting of the trust from the defendant."[8] In response, the defendant sent a letter to the plaintiff stating that the "plaintiff was not entitled to an accounting of the trust."[9]

In December 2011, the Providence Probate Court appointed the plaintiff as the administrator of Blankstein's estate.[10] As the administrator, the plaintiff sought to depose and subpoena the defendant outside Rhode Island to obtain detailed records regarding the trust and transactions between the defendant and Blankstein.[11]

After the defendant opposed the plaintiff's subpoena efforts, the plaintiff filed this lawsuit on July 13, 2017, in the Providence County Superior Court seeking an accounting of Blankstein's trust, and asserting standing under section 18-13-15(b) of the Rhode Island Uniform Custodial Trust Act[12] (Custodial Trust Act).[13] The plaintiff's complaint requested, inter alia, "a copy of the trust . . . [and] full accounting of the trust."[14] The defendant filed an answer and counterclaimed, seeking compensatory damages for "time and money spent addressing these issues and for emotional distress caused by the plaintiff."[15]

In 2018, the defendant filed a motion for summary judgment asserting that "the trust was not a custodial trust" based on its undisputed terms, so the "plaintiff was not entitled to an accounting

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8. *Id.*
9. *Id.* at 635.
10. *Id.*
11. *Id.*
12. R.I. GEN. LAWS § 18-13. The Restatement (Third) of Trusts defines custodial trusts and explains their potential uses:

> [A] "custodial trust" is a trust that is established by declaration or transfer under the Uniform Custodial Trust Act, adopted in a number of states. . . . [It] is a revocable trust that offers property management by a trustee in the event of the disability of the primary beneficiary . . . . This statutory trust is mainly intended for use by elderly property owners of modest means but may also be used by others. In addition, it offers a simple method of making a trustee-managed gift to younger adults or of establishing a "successor" to a custodianship (below) if its beneficiary is under disability after coming of age.

RESTATEMENT (THIRD) OF TRUSTS § 1 cmt. a (AM. L. INST. 2003).
13. *Shorr*, 248 A.3d at 635.
14. *Id.*
15. *Id.*

of the trust" under the Custodial Trust Act.[16] The plaintiff opposed the motion and contended that the trust was a custodial trust because "the 'trust touch[ed] most of the bases' under the Custodial Trust Act."[17]

On April 2, 2019, the hearing justice entered an order that granted the defendant's motion for summary judgment and found that Blankstein had not satisfied the statutory requirements under the Custodial Trust Act to create a custodial trust.[18] The hearing justice specifically found that there were "absolutely no indicia or terms set for the subject trust that would support a finding that Miss Blankstein created the trust pursuant to the . . . Custodial Trust Act."[19] Accordingly, the hearing justice concluded that the plaintiff did not have standing to request an accounting of Blankstein's trust.[20]

The plaintiff appealed the hearing justice's decision arguing, inter alia, that the hearing justice erred in two ways by finding that he did not have standing to request an accounting of the trust.[21] First, the plaintiff asserted that the hearing justice erred in finding that he did not have standing under the Custodial Trust Act.[22] Second, the plaintiff contended that the hearing justice did not address his "standing as the administrator of Blankstein's estate."[23]

ANALYSIS AND HOLDING

Reviewing the motion for summary judgment *de novo,* □ the Court examined two issues raised on appeal. First, the Court determined whether the trust satisfied the Custodial Trust Act's requirements to create a custodial trust, thereby providing the plaintiff withstanding under the statute to seek an accounting of the trust.[24] Second, the Court reviewed whether the plaintiff had

16. *Id.*
17. *Id.* (alterations in original) (citation omitted).
18. *Id.*
19. *Id.* (citation omitted).
20. *See id.* at 636.
21. *Id.*
22. *Id.*
23. *Id.*
24. *See id.* at 637.

standing under common law to request an accounting of the trust as the court-appointed administrator of Blankstein's estate.[25]

A. *Standing Under the Custodial Trust Act*

1. Interpreting the Custodial Trust Act

To apply the law to these facts, the Court reviewed the Custodial Trust Act's relevant provisions. Under section 18-13-15(b) of the statute, "[a] beneficiary . . . may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative."[26] Section 18-13-2(a) and (b) outline two pertinent ways to create a custodial trust:

> (a) A person may create a custodial trust of property by a written transfer of the property to another person . . . naming as beneficiary an individual who may be the transferor, in which the transferee is designated, *in substance*, as custodial trustee under this chapter.
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> (b) A person may create a custodial trust of property by a written declaration . . . naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, *in substance*, as custodial trustee under this chapter. *A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter*.[27]

Relying on its previous interpretation of the statute's provisions in *Miller v. Saunders*,[28] the Court recognized that the statute's "language [is] unambiguous to the effect that the [Custodial Trust Act] 'does not require a verbatim recitation of the statute's suggested language for the creation of a valid custodial trust.'"[29] Notwithstanding the above interpretation, there still must be evidence of

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25. *See id.* at 637-38.

26. *Id.* at 637 (alterations in original) (quoting R.I. GEN. LAWS § 18-13-15(b)).

27. *Id.* at 636-37 (emphasis added) (quoting § 18-13-2(a)-(b)).

28. 80 A.3d 44 (R.I. 2013).

29. *Id.* at 637 (quoting *Miller*, 80 A.3d at 50); *see Miller*, 80 A.3d at 50 ("[W]e hold that the phrase 'in substance' does not require a verbatim recitation of the statute's suggested language for the creation of a valid custodial trust.").

the settlor's intent to create a custodial trust or designate trustees as custodial trustees.[30] The Court also found that section 18-13-2(b) specifically prohibits a custodial trust from holding "property for the sole benefit of [the declarant] herself."[31] With these considerations in mind, the Court proceeded to examine the trust's terms and the lower court's record for evidence of Blankstein's intent to create a custodial trust.[32]

2. Evidence of the Intent to Create a Custodial Trust

The Court determined that the plaintiff did not provide any evidence that Blankstein intended to create a custodial trust pursuant to the Custodial Trust Act.[33] Specifically, there was no evidence in the trust's terms or the record establishing Blankstein's intent to designate the trustees as "custodial trustees" or to create a "custodial trust."[34] In *Miller*, the Court held that the decedent's writing on a life insurance service request form created a custodial trust because it expressly designated the decedent's sister as a "custodial trustee for the benefit of [the decedent's] minor children."[35] In contrast, the terms of Blankstein's written trust did not designate Harris or Garelick as "custodial trustees."[36] Instead, the terms designated Harris and Garelick as "the other Trustees."[37] Hence, the Court concluded that Blankstein had not "in fact" created a custodial trust under the Custodial Trust Act.[38] However, this conclusion alone did not settle the intent issue.

The Custodial Trust Act unambiguously "does not require a verbatim recitation of the statute's suggested language for the creation of a valid custodial trust."[39] Accordingly, the Court also reviewed the entire record and did not find any evidence that Blankstein intended to designate the trustees as "custodial trustees" or

30. *See Shorr*, 248 A.3d at 637.
31. *Id.*
32. *See id.*
33. *Id.*
34. *See id.*
35. 80 A.3d 44, 50 (R.I. 2013).
36. *Shorr*, 248 A.3d at 637.
37. *Id.*
38. *See id.*
39. *Id.* (quoting *Miller*, 80 A.3d at 50).

create a "custodial trust."[40] Without a writing designating the trustees as "custodial trustees" for the benefit of others or evidence in the record showing Blankstein's intent to create a custodial trust, the Court held that the trust was not a custodial trust under the Custodial Trust Act's requirements.[41]

3. Trust's Compliance with the Custodial Trust Act

Regardless of Blankstein's intent, the Court also found that the trust could not be a custodial trust because the trust's terms are inapposite to section 18-13-2(b) of the statute.[42] The Custodial Trust Act proclaims that a "declaration of trust for the sole benefit of the declarant is not a custodial trust."[43] Because Blankstein's trust instructed the trustees to "pay to the Settlor all of the net income in monthly installments,"[44] the Court concluded that "the trustees held the property for the sole benefit of Blankstein[,]" so it could not be a custodial trust pursuant to section 18-13-2(b).[45] Due to the trust's noncompliance with the statute, the Court reiterated its holding that Blankstein's trust was not a custodial trust pursuant to the Custodial Trust Act, and therefore, the plaintiff did not have standing under the statute to request an accounting of the trust.[46]

B. *Standing Under Common Law*

Next, the Court determined that the plaintiff did not have standing under common law to request an accounting of the trust, even though he was the administrator of the estate, because Blankstein's will included a pour-over provision that bequeathed the entire residuary estate "to the other trustees to be administered under the terms of the trust."[47] The Court reasoned that it previously treated disputes over revocable inter vivos trusts as trust disputes rather than will contests when the will's pour-over provision helps

40. *See id.*
41. *See id.*
42. *See id.*
43. *Id.* (quoting R.I. GEN. LAWS § 18-13-2(b)).
44. *Id.* at 634.
45. *Id.* at 637.
46. *See id.*
47. *Id.* at 638.

fund the trust.[48] Given that precedent, the Court declared that the plaintiff lacked the authority to request an accounting over assets that became part of the trust estate rather than the probate estate that the plaintiff administered.[49] Because the plaintiff lacked the requisite authority over the trust, the Court held that the plaintiff lacked common law standing to request an accounting of the trust even though he was the probate estate's administrator.[50]

COMMENTARY

The Court's opinion reaffirms its prior interpretation of the Custodial Trust Act in *Miller* while also breaking new ground by conducting a comprehensive review of the record and subsequently holding there was no custodial trust in this case.[51] First, as it did in *Miller*, the Court exhausted its interpretative tools in determining whether the written transfer or written declaration, "in substance," created a custodial trust.[52] The Court looked to the written trust to determine whether it explicitly designated a custodial trustee and beneficiaries other than the settlor.[53]

At this point, the Court diverged from its analysis in *Miller*. In *Miller*, the Court concluded its analysis at this step because it reasoned that the writing "in fact created a custodial trust pursuant to [the Custodial Trust Act]" by expressly designating a "custodial trustee for the benefit of [others]."[54] However, the Court in *Shorr*

48. *Id.* (citing Filippi v. Filippi, 818 A.2d 608, 629 (R.I. 2003)).

49. *Id.*

50. *Id.*

51. *See id.* at 636 ("We have previously had occasion to examine the pertinent provisions of the Custodial Trust Act." (citing Miller v. Saunders, 80 A.3d 44 at 48-51 (R.I. 2013))); *compare Shorr*, 248 A.3d at 637 (holding that there was no custodial trust because the trust did not satisfy the Custodial Trust Act's requirements), *with Miller*, 80 A.3d at 50-51 (holding that there was a custodial trust because the life insurance service request form satisfied the Custodial Trust Act's requirements).

52. *See Shorr*, 248 A.3d at 637; *Miller*, 80 A.3d at 50.

53. *See Miller*, 80 A.3d at 50 ("[W]e hold that the phrase 'in substance' does not require a verbatim recitation of the statute's suggested language for the creation of a valid custodial trust. . . . Because Mr. Miller identified his children as the beneficiaries of his life insurance policy and designated Mrs. Saunders as the 'custodial trustee for the benefit of [his] minor children,' we conclude that it is clear that he in fact created a custodial trust pursuant to [the Custodial Trust Act]."). (citations omitted)).

54. *Id.*

demonstrated that when the existence of a custodial trust is still unclear, and ambiguous after this step, then the Court will proceed to review the record for "any evidence that [the settlor] intended to create a custodial trust."[55]

Suppose you are a litigant who cannot establish with admissible evidence that a writing itself unambiguously creates a custodial trust. In that case, a plausible argument for establishing a custodial trust may present itself if you can produce extrinsic evidence that suggests the settlor's intent to create a custodial trust or designate the trustees as custodial trustees. Given the Court's exhaustive review of the record in this case, future litigants may still have hope in establishing a custodial trust, despite the writing not using the term "custodial trustee," if there is extrinsic evidence proving that intent. In sum, when reviewing a custodial trust claim, the Court will likely ask the following questions: (1) whether the writing expressly designated the trustees as "custodial trustees," (2) whether the writing named beneficiaries other than the settlor, and (3) whether the record includes any extrinsic evidence proving that the settlor intended to designate the trustees as custodial trustees or that the settlor intended to create a custodial trust.

CONCLUSION

The Rhode Island Supreme Court held that a trust beneficiary does not have standing under the Custodial Trust Act to request an accounting of a trust when there is no evidence that the trust is a custodial trust. Specifically, the Court found that there is no custodial trust pursuant to the Custodial Trust Act when the trust violates the statute's requirements or there is no evidence of the settlor's intent to create a custodial trust. Regarding statutory compliance, an inter vivos trust solely benefiting the settlor during the settlor's life will not comply with the Custodial Trust Act. For intent, there must be proof in the written trust agreement or the lower court record that the settlor intended to designate trustees as

55. *See Shorr*, 248 A.3d at 637.

custodial trustees or otherwise create a custodial trust. The Court also held that a pour-over will that partly funds a trust does not provide the court-appointed administrator of the probate estate with common law standing to request an accounting of the trust.

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