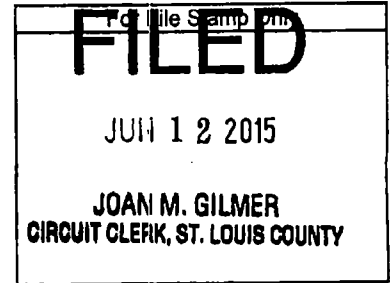


IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

21st JUDICIAL CIRCUIT

Probate Division

In the matter of)	
The Weaver Living Trust)	June 12, 2015
)	
Ronald F. Weaver,)	14SL-PR01095
Petitioner,)	
)	Division 7
v.)	
)	
Linda M. Boyer,)	
Respondent.)	



Order and Judgment

Pending before the court is Petitioner's Petition for Accounting. Cause called for hearing. Parties appear by counsel. Petition heard and submitted.

Herbert Weaver and Helen Weaver were settlors of the Weaver Living Trust dated April 27, 2000, (hereinafter "the Trust"). The Trust was amended on January 5, 2009. The amendment named Linda Boyer the Initial Trustee (Article Three, Section Four), declared the Trust irrevocable (Article One, Section 3), and made changes in distribution of trust assets (Article Five, Section Two).

Helen Weaver died on May 14, 2009. Herbert Weaver died on July 19, 2013.

Ronald F. Weaver, (hereinafter also referred to as "petitioner"), is a qualified beneficiary of the Trust. He asks the court to order the Trustee to make an accounting and further requests an order directing that the accounting reach back to January 5, 2009.

Linda M. Boyer, (hereinafter also referred to as "respondent"), is Trustee of the Trust and is also a qualified beneficiary of the Trust. She objects to the request for an accounting reaching back to January 5, 2009. The basis of the Trustee's objection is that during the settlor's lifetime, her duties ran exclusively to the settlor, not the beneficiaries. She argues that *In re Stephen M. Gunther Revocable Living Trust*, 350 S.W.3d 44 (Mo. App. E.D. 2011) has settled the issue and that her obligation to account did not begin until the death of Herbert Weaver.

Petitioner argues that under Section 456.6-603, RSMo, the duties of the Trustee are owed exclusively to the settlor only while the Trust is revocable. When the Trust became irrevocable, as he argues it did on January 5, 2009, the duties of the Trustee were no longer exclusive to the settlor.

Counsel for Respondent argues that the Trust is an instrument he drafted to be an intentionally defective grantor's income trust in order to meet the Medicaid equivalent of giving away assets. He argues that the Trust did not actually become irrevocable, however, because the right to amend was retained.

Respondent's argument is somewhat akin to wanting to eat your cake and have it also. To

please Medicaid, the Trustee wants the Trust to be viewed as irrevocable. To escape the scrutiny of beneficiaries as to whether she acted in accord with fiduciary principles, the Trustee wants the Trust to be viewed as revocable until Herbert Weaver's death.

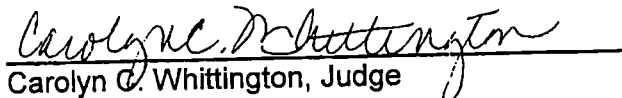
On January 5, 2009, the settlors established a trust designated "irrevocable." To please Medicaid, it addressed distribution of assets such that it qualified as a giving away of assets. The conduct of the Trustee was no longer subject to the sole control of the settlors and settlors could no longer be characterized as the sole beneficiaries of the trust.

The duty of the Trustee to account to petitioner began on January 5, 2009.

WHEREFORE, it is ORDERED, ADJUDGED, and DECREED that respondent Linda M. Boyer, Trustee, shall, within 90 days of the date of this Order and Judgment, furnish petitioner Ronald F. Weaver, a complete accounting of respondent's activities as Trustee from January 5, 2009 to the current date. The accounting shall show in chronological order, from January 5, 2009, all income, disbursements, and expenses of the assets.

Petitioner's request for attorney's fees shall be addressed by the court after hearing scheduled by petitioner.

SO ORDERED:


Carolyn C. Whittington, Judge

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