

In re Trust of Sunset Perpetual Care

Case Number

S-18-0517

Case Audio

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February 27, 2019

Court Number

Scotts Bluff

Case Location

Lincoln

Case Summary

S-18-0517 In the Matter of the Trust Known as the Maintenance Fund of the Sunset Memorial Park Chapel Mausoleum Company of Scottsbluff, Nebraska v. Sunset Memorial Park Cemetery Association, Inc. and Myrtle Hughbanks, Interested Parties (Appellants) v. Bank of the West, f/k/a The Guardian State Bank and Trust Co., Trustee (Cross-Appellant)

Scotts Bluff County Court, Judge James M. Worden

Attorneys: Robert M. Brenner (Robert M. Brenner Law Office, for Appellants) ? John A. Selzer (Simmons Olsen Law Firm, P.C., L.L.O., for Appellees (Cross Appellant))

Probate: Termination of perpetual care trust

Proceedings Below: The court determined that Cemetery lacked standing, because it did not have a legal interest in the Trust. The court discharged Trustee from any further liability with regard to the Trust, but stated that Trustee retained authority to pay all trustee fees and all attorney fees, costs, and expenses incurred during the prosecution of the petition. The court denied both parties' motions for attorney fees. The court determined that it need not take any further action regarding future trust management, because there will not be any funds remaining in the trust.

Issues: On appeal whether the court erred in 1) approving accountings and directing Trustee to disburse all funds out of the trust which were to remain inviolate under both state statute and the trust agreement; 2) allowing distribution of all of the trust funds without the consent of all beneficiaries; 3) ruling that the trust was a creation of the chapel even though statutes required its existence; 4) holding that the cemetery does not have a legal interest in the trust and lacks standing; and 5) failing to shift the burden to trustee to establish its actions were expressly granted to it in the trust or law.

On cross appeal whether the court erred in 1) failing to award costs and expenses, including a reasonable attorney fee to trustee; 2) determining that the court need not take any further action if funds of the trust remained; and 3) failing to terminate the trust under the provisions of the Nebraska Uniform Trust Code and provide for the disposition of the remaining trust funds in a manner consistent with the purposes of the trust.
