

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

TRUST DOCKET
6TH CIRCUIT COURT
PROBATE DIVISION

IN RE: BEATRICE C. SKILLEN 1995 TRUST AGREEMENT

320-2018-EQ-0074

ORDER ON MOTION FOR RECONSIDERATION

Presently before the Court is a *Motion for Reconsideration*, see Index #27; see generally, Cir. Ct. – Prob. Div. R. 59-A, filed by Petitioner Maisley Paxton, seeking to set aside this Court’s dismissal of her *Petition to Set Aside Certain Amendments to the Beatrice C. Skillen 1995 Trust Agreement*, (the “*Petition*”), see Index #1, on the basis that it was not timely filed pursuant to RSA 564-B:4-406(b). See Order on Motion to Dismiss (Index #26). The Respondents, Richard Skillen, as beneficiary and trustee of the Beatrice C. Skillen 1995 Trust Agreement (the “Beatrice Trust”), Charlotte Croft, Richard J. Croft, Jr., Whitney Skillen, and Olivia Skillen, (collectively the “Respondent-Beneficiaries”)¹ filed an *Objection*. See Index #28; see generally, Cir. Ct. – Prob. Div. R. 59-A (2).

In order to prevail on her motion, Ms. Paxton is required to demonstrate to the Court that it “has overlooked or misapprehended” particular points of law or fact. Cir. Ct. – Prob. Div. R. 59-A (1). After review of the *Motion for Reconsideration* and the

¹The above-named Respondents are all beneficiaries of the Beatrice Trust. In addition, the *Petition* names eight additional individual or institutional beneficiaries and an institutional trustee as “interested persons.” These eight have not filed pleadings responding to the *Motion to Dismiss*, and consequently, the Court, for purposes of efficiency, will refer to the interested parties who *have filed* pleadings as the “Respondent-Beneficiaries” even though others technically are respondents and beneficiaries as well.

contentions set forth in it, the *Motion* is respectfully **DENIED** so far as it articulates no points of law or fact that the Court discerns as having been overlooked or misapprehended. To the contrary, the Court is amply satisfied that it has addressed the issues properly raised and presented by the parties to fullest extent put forth in their multiple pleadings and the arguments made at the July 2, 2018 hearing. See Index ##20, 24. The Court observes that the parties had ample opportunity to address the issue asserted in the *Motion to Dismiss*, namely, whether Ms. Paxton's *Petition* was timely filed pursuant to RSA 564-B:4-406, since, in addition to the *Motion to Dismiss* submitted by the Respondent-Beneficiaries, see Index #16, Ms. Paxton filed an *Objection*, see Index #18, to which the Respondent-Beneficiaries replied, see Index #22, and Ms. Paxton filed a *Sur-Reply*. See Index #23. The Court spent considerable time addressing the matter because, as it noted in its Order on Motion to Dismiss:

dismissal based upon application of a statute of repose/limitation results in a harsh outcome for [Ms. Paxton]. However, this is simply a matter of [Ms. Paxton] misapplying the applicable statute. Although apparently intending for many months to file the instant action, she chose to defer filing until after resolution of [a related] Superior Court matter. One does so at their peril.

Id. at 10, n. 10.

In her *Motion for Reconsideration*, Ms. Paxton raises a new argument not previously brought to the Court's attention for consideration.² Specifically, despite previously contending that the statute was clear, see *Objection* at 1-2 (Index #18); *Surreply* at 3-4 (Index #23), she now asserts that "to the extent that the statute at issue

² Indeed, she recognizes that she is raising a new argument on consideration. See *Motion for Reconsideration* ¶1 (Index #27).

in this case . . . is ambiguous, as applied to trusts that become irrevocable upon the death of the settlor, it should be construed in favor of the person harmed by its application." *Motion for Reconsideration* ¶2 (Index #27). Consequently, she contends that "to the extent that RSA 564-B:4-406 is ambiguous, [Ms. Paxton] should be given the benefit of the doubt." *Id.* ¶6. The Court disagrees.

First, the Court observes that it would be well within its discretion to "not consider the issue." *Palazzi Corp. v. Stickney*, 136 N.H. 250, 254 (1992); see, e.g. *Smith v. Shepard*, 144 N.H. 262, 265 (1999); *Mount Saint Mary's Condo. Ass'n v. LeClerc*, No. 2016-0189, 2017 WL 695379, at *2 (N.H. Jan. 27, 2017)(unpublished opinion). "It is in the interest of judicial economy to *require* a party to raise all possible objections at the earliest possible time," *Mountain Valley Mall Assocs. v. Municipality of Conway*, 144 N.H. 642, 654–55 (2000), particularly here, where Ms. Paxton not only filed an *Objection*, see Index #18; but a *Surreply*, see Index #23, and, despite the fact that the issue at bar consisted of only a single question of law and the relevant facts were undisputed, she had the additional benefit of oral argument. Cf. *Mountain Valley Mall Assocs.*, 144 N.H. at 655 (court did not err in refusing to entertain new argument where multiple arguments had previously been raised and alleged error could have been raised at an earlier time).

That said, the Court finds that the new argument raised on reconsideration is without merit. Although Ms. Paxton now asserts that the statute is ambiguous, she also claims that where there is an ambiguity, it should be construed in favor of the petitioning party, who is harmed by such a construction. It is black letter law that "[w]hen statutory language is ambiguous, however, [courts] will consider legislative history and examine

the statute's overall objective and presume that the legislature would not pass an act that would lead to an absurd or illogical result." In re Teresa E. Craig Living Tr., No. 2017-0532, 2018 WL 4266433, at *1 (N.H. Sept. 7, 2018). RSA 564-B is not a taxing statute, where courts are directed to construe it "against the government and in favor of the taxpayer," Carr v. Town of New London, 170 N.H. 10, 14 (2017), rather, it is an enactment of a uniform law intended to enhance certainty in the governance of trusts in disputes between private individuals. This matter also involves a statute applicable to trusts, not the terms of an insurance contract where ambiguity is construed against the drafter. See, e.g., Centronics Data Computer Corp. v. Salzman, 129 N.H. 692, 696 (1987) ("The general rule applied to non-insurance contracts is that no presumptions are to be indulged in either for or against a party who draws an agreement." (quotations omitted)). Ms. Paxton relies for authority on a rather dated family law case,³ Bernier v. Bernier, 125 N.H. 517, 518-19 (1984), where the New Hampshire Supreme Court interpreted a Superior Court Rule, then applicable in divorce matters, to give a self-represented party, who had filed an appearance but no pleadings in a divorce matter, "the benefit of the doubt" and allowed her to contest alimony. That decision is narrowly focused, and does not convince the Court that in matters concerning the New Hampshire Trust Code, it should, in any case, construe ambiguous terms "in favor of the person harmed by its application." Indeed, as noted in its prior order, the New Hampshire Supreme Court has directed that statutes of limitations (and by extension statutes of repose) should be strictly applied. See Donnelly v. Eastman, 149 N.H. 631,

³ That matter arose when family law cases were heard in the Superior Court, and not the Circuit Court-Family Division.

633-34 (2003)(admonishing the trial court that statutes of limitations periods should be strictly applied by the courts). This is because,

[c]ompliance with statutes of limitations, . . . is not a mere procedural technicality. Given the purposes of statutes of limitations, they differ from other procedural rules. Non-compliance with statutes of limitations is an affirmative defense to an action. Statutes of limitations represent the legislature's attempt to achieve a balance among State interests in protecting both forum courts and defendants generally against stale claims and in insuring a reasonable period during which plaintiffs may seek recovery on otherwise sound causes of action. Furthermore, statutes of limitation are designed to expedite the orderly administration of justice. The main purposes of statutes of limitations are to ensure timely notice to an adverse party, and to eliminate stale or fraudulent claims. The statute of limitations establishes a deadline after which the defendant may legitimately have peace of mind; it also recognizes that after a certain period of time it is unfair to require the defendant to attempt to piece together his defense to an old claim.

Id. (quotations, citations, and brackets omitted). Certainly, strict adherence to the statutes of repose/limitation established by the Legislature in the New Hampshire Trust Code should be followed.

For all of these reasons, the motion for reconsideration is respectfully DENIED.

SO ORDERED

Dated: 10/3/2018



David D. King, Judge