

Fiduciary Watch

Case Update for Trust & Estate Professionals

September 2019

Jury Trial on Trust Modification? El Paso Court of Appeals Says Yes

In a case of first impression, the El Paso Court of Appeals on August 28, 2019 ruled that a co-trustee who opposed a petition to modify a trust was entitled to a jury trial on facts relevant to the modification request. In *Matter of Troy S. Poe Tr.*, No. 08-18-00074-CV, __S.W.3d__, 2019 WL 4058593 (Tex. App.—El Paso Aug. 28, 2019, no pet. h.), the appellate court overturned an El Paso probate court’s judgment modifying the terms of a support and maintenance spendthrift trust, holding that the probate court improperly denied the co-trustee a jury trial regarding the conditions required under Texas Trust Code § 112.054(a) to modify a trust. A copy of the opinion can be found [here](#).

Background Facts

At the time of its formation, the trust included three named trustees, including the settlor. Upon the settlor’s death, the two remaining trustees became embroiled in litigation related to the settlor’s estate and business dealings. Shortly thereafter, the trustees began to disagree about distributions from the trust. As a result, one of the trustees filed suit in probate court on grounds that the purpose of the trust had become impossible to fulfill due to changed circumstances.¹ The other trustee counterclaimed and demanded a jury trial. Despite the jury demand, the trial court set the case for a bench trial and ultimately found that a modification was proper under Trust Code §112.054(a).

The Court of Appeals’ Decision

The defendant trustee appealed the judgment and argued that the probate court had erred in modifying the trust, and in denying him a jury trial. The court of appeals held that the Texas Constitution, the Trust Code, and the Texas Rules of Civil Procedure support a party’s right to a jury trial in cases involving the modification of a trust. The court of appeals reasoned that, even though the plain language of Trust Code §112.054(a) states that a “court may order” modifications under certain situations,² a litigant has the right to

¹ The plaintiff trustee sought to modify the terms of the trust by seeking to revoke the unanimity provision and by seeking the addition of a third trustee. The plaintiff sought to further modify the terms of the trust by: (1) authorizing travel and vacation expenses for the primary beneficiary along with his travel companions; (2) requiring that the trustees give primary consideration to the primary beneficiary, and not any contingent remainder beneficiary; (3) requiring that the trustees take into consideration the primary beneficiary’s standard of living at the time of the Settlor’s death and the “substantial ancillary expenses” due to the primary beneficiary’s disability; and (4) requiring that the trustees consider that indirect benefits to the primary beneficiary’s caretakers and their families enhance the quality and enjoyment of his life.

² Section 112.054(a) states:

On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

have a jury determine whether certain factual predicates exist under the statute. According to the court, those factual predicates included whether there were changed circumstances requiring a modification, or whether the purpose of the trust had become impossible to fulfill such that a modification was proper.

The court of appeals further ruled that the probate court's error in denying the defendant trustee a jury trial was not harmless because the case contained "material fact questions" such that the plaintiff trustee was not entitled to an instructed verdict. The court remanded to the probate court without opining on the correctness of the modification. A motion for rehearing has been filed.

Key Takeaways

- If this ruling is followed, a petition to modify a trust under Section 112.054(a) – a matter that is routinely heard by the court – could be subject to a jury trial.
- Parties may try to rely on the El Paso court's ruling and seek a jury trial on disputed facts in other proceedings involving other sections of the Texas Trust Code that on their face appear to empower the court itself to take certain action without involving a jury as fact finder.

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(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

- (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or
- (B) the order is not inconsistent with a material purpose of the trust.

TEX. PROP. CODE § 112.054(a).