

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2005

MICHAEL P. MCMULLIN, as Successor Trustee to the J. Alfred McMullin
Living Trust dated 12/21/95,
Appellant,

v.

THOMAS MERRILL BEAVER, JR., and **T.M.B. ENTERPRISES, INC.**, a
Florida corporation,
Appellees.

No. 4D04-1527

[June 1, 2005]

PER CURIAM.

Appellant, Michael P. McMullin, is the trustee and beneficiary of an inter vivos trust. That trust owns the rights to a contract with Appellees. McMullin brought this suit on the contract in his capacity as trustee. The trial court entered final summary judgment, finding that McMullin lacked standing to bring the action because the trust provided that it would terminate on the settlor's death (which had occurred prior to the filing of the action).

By statute, a trustee has the power to "prosecute actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his or her duties" until final distribution of the trust assets. § 737.402, Fla. Stat. (2003). After a trust terminates, a winding up period is usually necessary. *See Hamilton v. Donahue*, 847 So. 2d 1112 (Fla. 4th DCA 2003). Even if the beneficiary may have the right to complain that a winding up period is being unduly extended by litigation brought by the trustee, the party sued does not. The summary judgment was thus erroneous. We have considered appellees' "right for the wrong reason" arguments and find that none of them support entry of summary judgment.

Reversed.

WARNER, KLEIN and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Robert A. Hawley, Judge; L.T. Case No. 000315 CA 19.

Robert J. Gorman and Michael P. McSoley of Robert J. Gorman, P.A., Fort Pierce, for appellant.

Janet Carney Croom and Louis B. Vocelle, Jr. of Clem, Vocelle & Berg, L.L.P., Vero Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.