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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MATTER OF THE JOHN RAY MCMURTRY REVOCABLE TRUST, VICKIE L. WOODALL, TRUSTEE,	)	
Appellant-Petitioner,	)	
vs.	)	No. 67A01-0512-CV-582
LYNN SHAW, WILLIAM MCMURTRY, and DENVER MCMURTRY,	)	
Appellees-Respondents.	)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew Headley, Judge
Cause No. 67C01-0508-TR-45

October 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

William and Denver McMurtry appeal from the trial court's Findings of Fact and Conclusions of Law and Order Declaring Beneficiaries with regard to the revocable trust created by John Ray McMurtry. William and Denver raise one issue for review, restated as whether the trial court correctly enforced John's unsigned, handwritten notations on the trust document as a modification of the trust. Because the notations failed to comport with the method of modification contained in the trust's language, we reverse the trial court's enforcement of the handwritten provisions and remand.

Facts and Procedural History

On July 24, 2001, John executed a revocable trust that would become irrevocable upon his death. John was the settlor as well as the trustee until his death, when Vickie Woodall became trustee. The trust provided for distribution of assets to seven people, including 50% to William, 30% to Denver, and 8% to Woodall. Article I, section B, of the trust states in part:

> **Revocability.** The Settlor may by signed instrument delivered to the Trustee, revoke this Agreement in whole or in part and may amend it from time to time in any respect, but no amendment changing the powers, duties, or compensation of the Trustee shall be effective unless approved in writing by the Trustee.

Appellant's Appendix at 11. Article III, section J, states:

> **Written Agreement.** This Trust Agreement contains the entire Trust Agreement and Settlor agrees this Trust Agreement may not be changed orally, but may be changed by a written agreement.

Id. at 14.

After John died in December of 2004, Woodall and William retrieved the trust from a

safe in John's office, to which only John and Woodall, who was his secretary, had access. Upon review of the trust, they discovered handwritten notations on the otherwise typewritten document. An additional distribution of 3% to an eighth beneficiary, Lynn Simpson was written below the enumerated list allocating trust assets. Other notations included "30%" beside the original 50% distribution to William, "3%" beside the original 30% distribution to Denver, and "25%" beside the original 8% distribution to Woodall. Id. at 12. The sum of all the handwritten notations together with the unaltered allocations equaled 100%, and none of the original typewritten language was crossed out. In addition, "4/27" appeared beside each handwritten notation. Id. No other documents signed by John revoking or modifying the trust were discovered. Later, Woodall testified that John often made notes, and that she was unaware of when and why the notations to the trust were made. Transcript at 13, 16.

On August 8, 2005, Woodall filed a Petition to Docket Trust and For an Order Declaring Beneficiaries. Simpson also filed a Petition to Determine Share of Trust. The Putnam Circuit Court heard argument and reviewed evidence on September 30, 2005. Simpson requested that the trial court make specific findings and conclusions pursuant to Indiana Trial Rule 52. On December 7, 2005, the trial court rendered judgment, concluding that John had modified the trust, and ordering distribution in accordance with the handwritten percentages. William and Denver now appeal.

Discussion and Decision

I. Standard of Review

When the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. Kalwitz v. Estate of Kalwitz, 822 N.E.2d 274, 280 (Ind. Ct. App. 2005), trans. denied. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them and leaves us with a firm conviction that a mistake has been made. Id. Nevertheless, "[o]ur determination of the settlor's intent based upon unambiguous trust document terms is a question of law" to which we apply a de novo standard of review. In re Valma M. Hanson Revocable Trust No. 103-83-1, 779 N.E.2d 1218, 1221 (Ind. Ct. App. 2002), trans. denied.

II. Modification of the Trust

The long-established primary objective when interpreting a trust is to determine and give effect to the settlor's intent. Id. We look at the trust document as a whole, and to the language used within its four corners. Id. In the present case, the trial court framed the issue as "whether or not the handwritten notations qualify as a change in the trust pursuant to Article III, Section J of the trust." Appellant's App. at 6. It therefore concluded that John's handwritten notations were sufficient to modify the trust because Article III, section J, "does not specify that any modification must be in a separate document – only in writing." Id. (emphasis in original). This analysis is faulty.

In focusing on Article III, section J, the trial court failed to consider Article I, section B, either individually or in tandem with the provision in Article III, section J. These

provisions may be harmonized, resulting in an outcome opposite that reached by the trial court. Article III, section J, excludes oral modification and permits written modification. Article I, section B, also permits written modification, but specifies as the method for amendment a signed instrument delivered to the trustee. Thus, Article III, section J, permits changes only by written agreement, as previously indicated and further defined by Article I, section B.

Here, there is no question of delivery because John was both settlor and trustee at the time he made the handwritten notations. Whether the original trust document with handwritten annotations constitutes a written instrument satisfying the trust's modification provisions is debatable. However, assuming without deciding that it is enough, John did not comply with the requirement that the instrument be signed.

Simpson argues that John's repetition of "4/27" beside each notation, assumed by the trial court to be the date he made the notations, is effective as a signature. She points to our supreme court's explanation in State v. Schell, 248 Ind. 183, 189-90, 224 N.E.2d 49, 53 (1967), that the underlying principle in determining if a marking meets the legal requirements for a person's signature is whether "the person intended the mark . . . , printed or written, when it is imprinted upon the document, to be his signature and he so adopts it as his act and intends to be bound thereby." We cannot say John's intent was to adopt and be bound by the handwritten notations. Rather, because John did not abide by the unambiguous provisions of the trust, it cannot be concluded that his intent was to create an effective modification. His intent with regard to the handwritten notations remains unknown. Therefore, distribution of the assets should follow the original typewritten allocations.

Conclusion

The provisions of the trust regarding amendment and changes can be harmonized by permitting modification by delivery of a signed instrument. John's intent in making handwritten notations to the original trust document is unclear, and these notations do not satisfy the modification provisions. Consequently, we reverse the trial court's order distributing the trust's assets in accordance with these notations, and remand for distribution as recorded in the typewritten allocations of Article II, section D, of the trust.

Reversed and remanded.

SHARPNACK, J., and NAJAM, J., concur.