**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0257**

In re the Matter of the Irrevocable Trust Agreement
for the New Jacqueline E. Johnson Trust
Created By and Between Jacqueline E. Johnson, Settlor,
and Dennis W. Johnson, Trustee, dated June 24, 2011

**Filed August 21, 2017**
**Reversed and remanded**
**Worke, Judge**

Dakota County District Court
File Nos. 19HA-CV-16-1098, 19HA-PR-12-64

Gerald W. Von Korff, Anna K. Finstrom, Rinke Noonan, St. Cloud, Minnesota (for appellant Ronald Johnson)

Andrew Carlson, Carlson Law Office, LLC, St. Louis Park, Minnesota (for respondent Patricia Ryerson)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Klaphake, Judge.*

**U N P U B L I S H E D  O P I N I O N**

**WORKE**, Judge

Appellant challenges the district court's award of summary judgment to respondent in this dispute regarding the interpretation of a trust, arguing that the district court

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

misapplied caselaw and rules for construing trusts. We agree, and reverse and remand for entry of summary judgment in appellant's favor.

## FACTS

In March 2010, Jacqueline E. Johnson (Jacqueline) created a trust. Upon Jacqueline's death, the trust estate was to be distributed to her spouse; if Jacqueline's spouse did not survive her, the trust estate would be managed under the family trust. Under the family trust, the estate was to be divided into equal shares, one for each of Jacqueline's children, to be distributed "as soon as practicable." If one of Jacqueline's children predeceased her, that child's share passed to his or her issue per stirpes. If the child who predeceased Jacqueline left no issue, that child's share would be distributed equally between her other children. Jacqueline had four children: appellant Ronald Johnson, Dennis Johnson, Michael Johnson, and Leann Russel. Dennis was the only child who never married and did not have any children.

In March 2011, Jacqueline and her husband separated after more than 50 years of marriage. On June 24, 2011, Jacqueline created The New Jacqueline E. Johnson Trust to manage distribution of her estate. Jacqueline appointed her son, Dennis, as trustee and her son, Ronald, as successor trustee.

The trust states: "Upon the death of Jacqueline . . . the [t]rust shall not terminate but shall continue in force and effect for the benefit of Ronald . . . Dennis . . . Michael . . . and Leann . . . for a period of [f]ive (5) years." The trust states in Article 3(2):

> At the end of the [f]ifth (5th) [year], the [t]rustee shall divide the [t]rust into five equal shares so as to provide two shares for Dennis . . . , and one share for each of the remaining

> living children of Jacqueline . . . and one share for the living issue, collectively, of each deceased child. [Jacqueline] has taken into consideration the additional care, support and attention which she has received from Dennis . . . .

The trust states in Article 4:

> If at any time before the final distribution of this [t]rust, there shall not be in existence anyone who is or might be entitled to receive benefits from the [t]rust as provided above, then on the happening of any such event, any portion of the [t]rust [e]state then remaining shall be paid over and distributed outright to the heirs at law of Jacqueline . . . in the proportions set forth in Article Three (2).

Jacqueline died on July 3, 2011.

On July 5, 2013, Dennis executed his last will and testament, leaving his estate to respondent Patricia Ryerson and appointing Ryerson as the personal representative of his estate. In the event that Ryerson failed to survive him, Dennis left his estate to Mark O'Brien. Neither Ryerson nor O'Brien is a member of the Johnson family. Dennis died on December 11, 2013.

In July 2015, a district court filed an order of complete settlement of Jacqueline's estate and decree of distribution. Jacqueline's property included: nearly $300,000, stock shares, and two undivided 1/2 interests in real property, including the homestead.

In April 2016, Ryerson petitioned the district court for construction of terms and distribution of trust pursuant to Minn. Stat. §§ 501C.0201-.0208 (2016). Ryerson claimed that she was a beneficiary of Jacqueline's trust because Dennis was a beneficiary of the trust and had left his estate to Ryerson. Ryerson requested that the district court ascertain Jacqueline's intent with the trust because doubt existed as to the meaning of material terms

in the trust. Ronald, acting as successor trustee of Jacqueline's trust, objected to Ryerson's petition, claiming that, according to the trust, the trust assets were to be disbursed at the end of the fifth year following Jacqueline's death and, because Dennis died prior to the disbursement date, his interest lapsed.

Ryerson moved for summary judgment, arguing that Jacqueline did not include a survival requirement in the trust for Dennis, as she did for her other children; therefore, because Dennis's interest was not contingent upon his survival, his interest passed to his estate when he died.

Ronald opposed the motion, arguing that Jacqueline's intent was to have all interests vest at the end of the fifth year after her death. Ronald asserted that Ryerson was an attorney who was disbarred for engaging in dishonest and fraudulent conduct. Ronald challenged Ryerson's relationship with Dennis. He also claimed that the new trust was not created by Jacqueline's prior estate attorneys and was done without the knowledge of her spouse or children, other than possibly Dennis.

The district court granted Ryerson's motion for summary judgment, concluding that Dennis's interest vested upon Jacqueline's death, and thus, his death prior to the distribution date did not cause his interest to lapse. The district court stated:

> The contingency that her children be "living" at the time of distribution only applies [to] the "remaining" children, not Dennis, who is singled out in the beginning with no contingency language placed before his interest. The [c]ourt also notes that Jacqueline used divestment language to describe what happens when the other remaining children are deceased, but omitted any divestment language regarding Dennis'[s] interest. . . . [W]ithout any express intention to the contrary, there was no requirement for Dennis to survive the

> intermediate five year period. *In re Trust under Will of Holt*, 491 N.W.2d 25, 29 (Minn. App. 1992).

The district court noted that "[f]urther support for Dennis['s] . . . interest being different is contained in the last sentence of Article 3.2 when his extra care and attention is mentioned."

The district court also concluded that, although Ronald claimed that Jacqueline would never have intended for a person outside of the family to benefit from her estate, it could not speculate as to what Jacqueline would have done. Finally, the district court concluded that Ronald's claims regarding Ryerson's "professional history," Ryerson's "relationship (or lack thereof) with Dennis," Jacqueline's prior trust, and the effectiveness of the attorney who drafted the new trust were irrelevant to interpretation of the trust. This appeal followed.

## D E C I S I O N

A district court must grant a motion for summary judgment if the evidence demonstrates "that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03; *see* Minn. Stat. § 524.1-304(a) (2016) (noting that generally the rules of civil procedure apply to probate proceedings). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court reviews de novo "whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn.

2002). This court "view[s] the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.* at 76-77.

The district court ruled that the trust "[u]nambiguously" provides for distribution to Dennis's estate because his interest vested upon Jacqueline's death, and therefore, his death prior to distribution did not cause his interest to lapse. Ronald argues that the district court erred by not ascertaining Jacqueline's intent from reading the trust as a whole in the context of surrounding circumstances.

A court's purpose in interpreting a trust is to "ascertain and give effect to the grantor's intent," *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012), "as expressed in the plain language of the will." *In re Kischel*, 299 N.W.2d 920, 923 (Minn. 1980). To discern the grantor's intent, the trust is to be read as a whole, "aided by the surrounding circumstances, due weight being given to all its language, with some meaning being given, if possible, to all parts, expressions and words used." *In re Anneke's Trust*, 229 Minn. 60, 71, 38 N.W.2d 177, 183 (1949) (quotation omitted). This court applies a de novo standard of review to a district court's interpretation of a trust. *Stisser*, 818 N.W.2d at 502.

The district court cited two cases. It relied on *Holt* in concluding that Dennis's interest did not lapse when he died before the distribution date because common-law principles favor early vesting when the trust is silent as to the grantor's intent. *See* 491 N.W.2d at 27, 29. The district court cited *In re Trusts of Hartman* for the proposition that a "testator's intention is to be gathered from the language of the [trust] itself." *See* 347 N.W.2d 480, 484 (Minn. 1984) (quotation omitted). It also cited *Hartman* to support its

decision to not speculate as to what Jacqueline would have done if she had known that Dennis would die before the distribution date and his interest would be distributed as part of his estate. *See id.* Ronald argues that the district court misapplied this caselaw. He claims that when the rules for construing trusts are applied correctly, the result is that Jacqueline intended for Dennis's interest to vest at the end of the fifth year following her death. We review the caselaw below and apply the rules to interpret the trust here.

The issue in *Holt* was whether trust beneficiaries' interests lapsed when they died after the testator but before termination of an intermediate estate. 491 N.W.2d at 26. Holt created two residuary trusts that paid income to his wife, Esther, during her lifetime. *Id.* The corpus of the trusts was to be paid to 13 beneficiaries following Esther's death. *Id.* The beneficiaries survived Holt, but two did not survive Esther. *Id.* Some of the survivors asserted that the shares of the deceased beneficiaries should pass to the 11 surviving beneficiaries rather than to the deceased beneficiaries' estates. *Id.*

This court affirmed the district court's decision that the "shares of the deceased beneficiaries should pass to their estates." *Id.* at 29. This court looked to common-law rules of construction to determine Holt's intent because his will contained no language indicating that he intended that the 13 beneficiaries survive Esther in order to take their shares. *Id.* at 27. Because Holt's intent could not be derived from the reading of the will as a whole, this court relied on a common-law rule that presumes early vesting. *Id.* This court concluded that "[t]he presumption in favor of early vesting, the absence of an alternative gift over, and the postponement of a gift solely to let in an intermediate estate

all support the conclusion that . . . Holt did not intend to impose a condition of survivorship." *Id.* at 29.

Here, the district court relied on the common-law rule favoring early vesting. But the court in *Holt* stated that common-law rules are to be employed only when "the testator does not clearly express an intention in his will." *Id.* at 27. Here, Jacqueline's intent is expressed in the plain language of the trust read in its entirety. *See Stisser*, 818 N.W.2d at 502; *Kischel*, 299 N.W.2d at 923. We will explain further after we review the district court's application of *Hartman*.

The court in *Hartman* stated that "[t]he purpose of the court in construing a will is to ascertain the actual intention of the testator as it appears from a full and complete consideration of the entire will when read in light of the surrounding circumstances at the time of the execution of the will." 347 N.W.2d at 482-83. The court further explained that in ascertaining intent, a court is to draw inferences from "surrounding circumstances that most closely reflect the plain meaning of the language." *Id.* at 484. Surrounding circumstances include, "the character and the occupation of testator; the amount, the extent and the condition of testator's property; the number, identity and the like of testator's family and of other natural objects of his bounty; and testator's relation to the beneficiaries and to the natural objects of his bounty." *Id.* at 483 (quotation omitted).

The district court relied on *Hartman* for the proposition that a testator's intent is to be gathered from the language of the trust itself, but failed to acknowledge that a court should also look to surrounding circumstances that reflect the meaning of the language. The district court also stated that it could not "speculate what [Jacqueline] would have

done." But the district court failed to quote, and thus apply, the complete thought expressed in *Hartman*, which stated: "*Though the court is to consider surrounding circumstances*, it cannot speculate what the testator would have done with knowledge of events subsequent to . . . her death and thereby rewrite the will." *Id.* at 484 (emphasis added).

Ryerson concedes that the district court "did not elaborate" on its application of *Hartman*, but claims that the district court considered surrounding circumstances to ascertain Jacqueline's intent, including a declaration of Ronald, a document describing the professional disciplinary action against Ryerson, Jacqueline's 2010 trust, the order of complete settlement of Jacqueline's estate, and an affidavit of Ryerson.

Contrary to Ryerson's claim, the district court's order does not show that any surrounding circumstances were considered to assist in ascertaining Jacqueline's intent. *See id.* at 483 (stating that surrounding circumstances include the character and occupation of testator; the amount and condition of testator's property; the identity of testator's family and natural objects of her bounty; and testator's relation to beneficiaries).

In reviewing the trust itself in its entirety, in light of surrounding circumstances, Jacqueline's intent is unambiguous that Dennis was required to survive to the distribution date in order to receive his gift.

Jacqueline's trust states in Article 3:

> 1. Upon the death of Jacqueline . . . the [t]rust shall not terminate but shall continue in force and effect for the benefit of Ronald . . . Dennis . . . Michael . . . and Leann . . . for a period of [f]ive (5) years.
>
> 2. At the end of the [f]ifth (5th) [year], the [t]rustee shall divide the [t]rust into five equal shares so as to provide

> two shares for Dennis . . . , and one share for each of the remaining living children of Jacqueline . . . and one share for the living issue, collectively, of each deceased child. The [s]ettlor has taken into consideration the additional care, support and attention which she has received from Dennis . . . .

In Article 4, the trust provides the following for ultimate contingent beneficiaries:

> If at any time before the final distribution of this [t]rust, there shall not be in existence anyone who is or might be entitled to receive benefits from the [t]rust as provided above, then on the happening of any such event, any portion of the [t]rust [e]state then remaining shall be paid over and distributed outright to the heirs at law of Jacqueline . . . in the proportions set forth in Article Three (2).

Reading these provisions together shows that summary judgment was appropriate, but should have been granted in Ronald's favor. First, Jacqueline named all of her children, including Dennis, in the provision that continues the trust for five years following her death. If Jacqueline had intended for Dennis's gift to vest earlier than the other children's gifts, it seems she would have anticipated him enjoying the gift immediately upon her death rather than waiting for the five-year distribution date.

Second, the district court noted that Dennis is "singled out in the beginning," but Dennis (1) was gifted a greater share and (2) is the only child without children. Dennis's siblings each have more than one child; thus, the sentence: "one share for each of the remaining living children of Jacqueline . . . and one share for the living issue, collectively, of each deceased child," indicates Jacqueline's intent that the children of her deceased child (her grandchildren) receive their parent's share. This shows that Jacqueline intended for her deceased child's share to go to her grandchildren and not to her deceased child's estate.

This demonstrates Jacqueline's intent that her assets stay in her family because if Jacqueline's deceased child's share went to the child's estate rather than to Jacqueline's grandchildren, Jacqueline would have no control over where her assets end up as part of her deceased child's estate.

Third, the trust states that Jacqueline considered "the additional care, support and attention which she has received from Dennis." The district court determined that this supported the conclusion that Dennis's interest vested early. But this explains why Dennis was gifted a greater share. It does not support a claim that Dennis did not have to survive in order to receive his gift. Indeed, he could not enjoy a greater share if deceased. And because Jacqueline showed her intent to keep the shares gifted to her other children in the family, it is incongruent that she would intend for two fifths of her estate to end up in Dennis's estate.

Finally, the ultimate-contingent-beneficiaries provision does not support a conclusion that Dennis's gift vested when the trust was executed. Contingent beneficiaries receive only if all primary beneficiaries are not living at the time the trust is to be distributed. *See Black's Law Dictionary* 176 (9th ed. 2009) (defining contingent beneficiary). But if Dennis's interest vested when the trust was executed, there would always be a primary beneficiary—Dennis's estate—"anyone who is or might be entitled to receive benefits from the [t]rust [as provided in Article 3]." If Dennis or his estate is entitled to receive Dennis's gift because Dennis's interest vested when Jacqueline died, this contingent-beneficiaries provision is meaningless. And when construing intent from

a trust, it is to be read as a whole, "with some meaning being given, if possible, to all parts, expressions, and words used." *Anneke's Trust*, 229 Minn. at 71, 38 N.W.2d at 183.

Because there is no ambiguity in the trust that each of Jacqueline's beneficiaries survive to the end of the fifth year after Jacqueline's death in order to receive a gift, summary judgment should have been granted in favor of Ronald. We, therefore, reverse and remand to the district court with instructions to enter judgment in favor of Ronald.

**Reversed and remanded.**