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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0368
A17-0997**

In the Matter of the Edward M. Williams Residuary Trust Created Under Article 5 of
Last Will and Testament of Edward M. Williams dated February 1, 1991.

**Filed December 26, 2017
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-TR-CV-16-24

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Minnesota (for appellant)

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Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's award of summary judgment to respondent in this dispute regarding the application of a settlement agreement to a trust beneficiary. Appellant argues that the district court erred by ruling that the settlement agreement prevented appellant from bringing this action. We affirm.

FACTS

In 1991, Edward M. Williams died, and a trust was created pursuant to his will. The trust contained real property, including a parcel of land in Minnetrista (the Bruhn Property), and other assets. Edward Williams was survived by his wife, Annabelle Williams, who was the sole beneficiary of the trust during her lifetime. On her death in 2005, their nine grandchildren, including David Younes (appellant), became beneficiaries of the Bruhn Property, and the Williams' two daughters Catherine Younes and Mary Younes¹ became beneficiaries to the trust residue. Catherine served as trustee (the trustee) for the trust during the relevant time period of this case. The trustee and Mary disputed aspects of the trust, and litigation ensued. The parties reached a settlement in 2008, which was recorded in a settlement agreement. The nine grandchildren were also parties to the settlement agreement. Under the settlement agreement, Mary and the trustee resolved the litigation between them, and Mary received property and assets. Mary's children Andrew, Aleen, and David retained an interest in the proceeds of the Bruhn Property, but they agreed that the trustee had the sole discretion to determine the terms of sale for the Bruhn Property. They further relinquished any right to challenge the trustee's actions with respect to the Bruhn Property.

Following the execution of the settlement agreement, the trustee did not list the Bruhn Property for sale. In late 2015 and early 2016, seven years after entering the settlement agreement, appellant sent a series of letters to the trustee inquiring about the

¹ Because these individuals share the same last name, we will use their first names for ease of understanding.

status of the Bruhn Property and threatened to file suit if the trustee did not promptly list the property for sale. After the trustee declined to list the property for sale, appellant brought the present action. Soon after appellant filed suit, the trustee listed the property for sale. The listing attracted a potential buyer, but the sale was not successful. The Bruhn Property remained in the trust until late 2016, when it was sold to one of the trustee's children. In late 2016, the trustee moved for summary judgment, arguing that the settlement agreement precluded appellant from contesting any activity by the trustee in relation to the Bruhn Property. The trustee also moved for sanctions against appellant and appellant's attorney under Minn. Stat. § 549.211 (2016). The district court granted the trustee's motion for summary judgment, ruling that appellant breached the settlement agreement by inserting himself into the sale of the Bruhn Property. By signing the agreement, appellant agreed to forego involvement in any aspect of the sale of the Bruhn Property, including whether the Bruhn Property is listed. The district court ruled that appellant and appellant's attorney violated Minn. Stat. § 549.211 and directed them to pay \$7,090.66 to the trustee's counsel. This appeal followed.

D E C I S I O N

“On appeal from summary judgment, we must review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504-05 (Minn. 2011). “We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v.*

JADT Dev. Grp., LLC, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

There is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.

DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.*

I. The settlement agreement was unambiguous and precluded appellant from contesting the sale of the Bruhn Property.

Appellant argues there were genuine issues of material fact whether the settlement agreement was valid and that the trustee was not entitled to judgment as a matter of law. Because the district court correctly determined the settlement agreement unambiguously precluded appellant from contesting the sale of the Bruhn Property, we affirm.

Settlement agreements are contracts, and we review the language of a contract to determine the intent of the parties. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581-82 (Minn. 2010) (citation omitted). When the contract language is clear and unambiguous, we enforce the agreement according to the language in the contract. *Id.* “Settlement of an estate by agreement of all heirs is generally favored, and the right of the heirs to agree among themselves to alter the interest and amount to which they are entitled under the will is recognized [in statute].” *Swan v. Swan*, 308 Minn. 466, 466, 241 N.W.2d 817, 818

(1976); see Minn. Stat. § 524.3-912 (2016) (“[S]uccessors [to a trust] may agree among themselves to alter the interests, shares, or amounts to which they are entitled under [a] will”). If the contract language is ambiguous, parol evidence may be used to determine the intent of the parties. *Dykes*, 781 N.W.2d at 582 (citation omitted). The language of a contract is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* (citation omitted). “Whether a contract is ambiguous is a question of law that we review de novo.” *Id.* (citation omitted).

The district court determined that, by signing the settlement agreement, appellant agreed not to contest the sale of the Bruhn Property. The settlement agreement describes how Mary was to receive property and a sum of money in exchange for dismissing her lawsuit. As part of the settlement, appellant waived his rights as an interested person² and agreed not to involve himself with the sale of the Bruhn Property. The settlement agreement was clear on this point:

[T]he Mary Younes Children shall have no further interest, claim, or right . . . to any . . . of the assets of the Trust
[T]he Mary Younes Children . . . hereby acknowledge[] and agree that [they] are no longer an interested person(s), as defined in Minnesota Statutes § 524.1-201(24).

. . .

Regarding the Bruhn Property: . . . [t]he Trustee . . . shall have the right, power, and authority, without any future action by any party to this Agreement or by the Court, to sell the Bruhn Property in its sole discretion. . . . The Trustee . . . shall have

² “‘Interested person’ includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding.” Minn. Stat. § 524.1-201(33) (2016).

sole and absolute discretion to determine the price, terms, and conditions of the sale of the Bruhn Property. Without . . . limiting the broad scope of the [Trustee's discretion], . . . the Trustee . . . shall use reasonable efforts to obtain a fair price for the Bruhn Property. . . . Upon the sale of the Bruhn Property, the Trustee shall distribute the net proceeds from the sale in equal shares to the Catherine Younes Children and the Mary Younes Children.

...

[T]he Mary Younes Children . . . shall [not] have any power, right, or authority to be involved with, or challenge the actions of the Trust or any Trustee in connection with the manner of, the offering or any other aspect of the sale of the Bruhn Property, (including, but not limited to, whether or not the Bruhn Property is listed . . .).

The foregoing passages from the settlement agreement clearly and unambiguously divest appellant of his ability to challenge any trustee action with respect to the Bruhn Property. Appellant breached the settlement agreement by bringing this lawsuit and does not have a valid claim to challenge the trustee's actions in this matter. Summary judgment was proper, because the settlement agreement clearly precludes appellant from contesting the trustee's decision regarding the sale of the trust property. The trustee was entitled to judgment as a matter of law, and the district court did not err by granting summary judgment to the trustee.

II. The settlement agreement was supported by adequate consideration.

Appellant argues the settlement agreement is invalid for lack of consideration and unconscionability; and that the settlement agreement deprived him of legal rights without receiving anything in return. Consideration is a basic element of contract formation. *Cityscapes Dev., LLC v. Scheffler*, 866 N.W.2d 66, 71 (Minn. App. 2015). Consideration

is the giving of something of value to one not otherwise entitled to the thing of value. *Sorenson v. Coast-to-Coast Stores, Inc.*, 353 N.W.2d 666, 669 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). Consideration does not include “[a] promise to do something that one is already legally obligated to do.” *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). This court generally does not examine the adequacy of consideration as long as something of value has passed between the parties. *Cityscapes*, 866 N.W.2d at 71. Even so, agreements lacking adequate consideration that are “clearly erroneous and against both logic and the facts on record” may be unenforceable. *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 534 (Minn. App. 2009) (citation omitted). Inadequate consideration, standing alone, is not sufficient to establish unconscionable conduct unless it is “so great as to shock the conscience.” *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 505 (Minn. App. 2007), *review denied* (Minn. Feb. 28, 2007).

Appellant claims he received nothing of value in return for relinquishing his beneficiary rights. To the contrary, appellant did receive something of value under the settlement agreement—the benefit of resolving all legal disputes related to the Bruhn Property and indemnification from tax liability.³ Because something of value passed

³ The settlement agreement recited,

WHEREAS, the Internal Revenue Service has audited the federal Estate Tax Return and has assessed additional federal estate taxes, penalties, and interest against the Estate;

WHEREAS, the Minnesota Department of Revenue has assessed additional Minnesota estate taxes, penalties, and

between the parties, we do not consider the adequacy of the consideration. *Cityscapes*, 866 N.W.2d at 71.

We conclude the settlement agreement was valid, unambiguous, and supported by consideration, and appellant promised not to contest trustee action with respect to the Bruhn Property. The district court did not err by granting summary judgment to the trustee, and we affirm.

III. The district court did not abuse its discretion when it imposed sanctions.

Appellant and his attorney argue the district court erred by imposing sanctions against them. This court reviews the district court's award of sanctions for an abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011),

interest against the Estate based on the adjustments to the federal Estate Tax Return made by the Internal Revenue Service;

WHEREAS, the Estate has contested the adjustments to the federal and Minnesota Estate Tax Returns proposed by the Internal Revenue Service and the Minnesota Department of Revenue;

WHEREAS, any adjustments to the Estate Tax Returns as filed with the Department of the Treasury and with the Minnesota Department of [R]evenue are appropriate has not been finally resolved

. . .

Catherine Younes and the Catherine Younes Children hereby release and indemnify Mary Younes and the Mary Younes Children from any and all liability they may have relating to amounts due or may be claimed to be due to the Internal Revenue Service and/or the Minnesota Department of Revenue relating to the Estate, now or at any time in the future.

review denied (Minn. Mar. 15, 2011). “The goal of sanctions is not to punish the offender or to shift fees, but to deter bad faith litigation.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016) (quotation omitted). An abuse of discretion occurs when a judge improperly applies the law to the facts. *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998). An abuse of discretion also occurs when the district court rules in a manner that is “against logic and the facts on [the] record.” *O’Donnell v. O’Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004). Under Minn. Stat. § 549.211, subs. 2(1), 3, a court may impose sanctions if a party presents an argument for “any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

Appellant’s attorney wrote a series of letters to the trustee’s counsel inquiring about the status of the Bruhn Property and threatened litigation if the property was not listed for sale. Appellant then filed this lawsuit in the district court. When the trustee listed the property for sale two weeks later, appellant persisted in litigating the issue to the present appeal.

The district court determined that, by signing the settlement agreement, appellant previously agreed to “refrain from future disputes” related to the trust. Appellant failed to honor the agreement by bringing this lawsuit. The district court also determined that appellant agreed he would not “challenge the actions of the trust or trustee in connection with . . . the sale of the Bruhn Property.” By sending the letters, appellant plainly breached the settlement agreement. We highlight, as the district court did below, that appellant’s attorney personally negotiated the settlement agreement, and so was aware of its terms. Bringing a lawsuit against the trustee was in direct conflict with appellant’s agreement to

“refrain from future disputes” related to the trust. Because the record supports the district court’s finding of harassing behavior and its conclusion was not illogical, we affirm.

The trustee argues that the district court abused its discretion by excluding discovery costs from the sanction award. The district court limited the sanction award to include only those costs that would have been associated with prevailing on a motion to dismiss, rather than those for a motion for summary judgment. The district court determined a motion to dismiss would have been successful and ruled that “[i]t would be unfair to reimburse expenses beyond those necessary to respond to the action file[d] by Petitioner.” *Id.*

The trustee argues a rule 12 motion to dismiss would not have been successful, because the district court would have had to accept appellant’s factual allegations as true. *See Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 607 (Minn. 2014) (“We accept as true all factual allegations in a complaint, even broad ones.”). We are not persuaded, because the district court’s summary judgment ruling was based in law, not facts. The settlement agreement legally barred appellant’s ability to sue the trustee. Because of the settlement agreement, any of appellant’s claims against the trustee would “fail[] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). Appellant’s factual allegations had no bearing on the district court’s decision to grant a motion to dismiss.

The trustee also contends that the sanction award does not serve to deter bad faith litigation, as evidenced by this continuing appeal. This court will not upset a sanctions award unless we find an abuse of discretion. Appellant’s persistence in litigating this case supports our conclusion that the district court did not abuse its discretion when it imposed sanctions.

Because the settlement agreement precluded appellant from bringing this action, the district court did not err by granting summary judgment to the trustee. We also conclude that the district court did not abuse its discretion by imposing the sanctions it did against appellant and his attorney.

Affirmed.