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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1814

In re the Trust of Lawrence B. Schwagerl Trust
Under Agreement Dated April 9, 1999.

Filed September 8, 2020
Reversed
Worke, Judge

Big Stone County District Court
File No. 06-CV-15-246

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Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

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

WORKE, Judge

In this family-trust dispute, appellants argue that the district court erred in (1) interpreting the trust; (2) ruling that the mother "waived" her right to a property distribution; (3) concluding that a son was a trustee; (4) concluding that the trustees breached a fiduciary duty; (5) appointing a successor trustee who was partial; and (6) ruling that appellant-farm business was in default on a contract for deed when it was not a party

to the proceeding. Because we agree that the district court misinterpreted the trust, we reverse.

FACTS

Lawrence and Phyllis Schwagerl were married for 53 years and lived on their farm for decades. The Schwagerls had eight children, including appellants Diana Miller and Jerome Schwagerl. Jerome farmed with his father for 25 years and owns appellant Schwagerl Family Farm LLC. Respondent Barbara Higinbotham is one of the Schwagerls' daughters. Both Lawrence and Phyllis are deceased. Lawrence predeceased Phyllis, and his trust, the Lawrence B. Schwagerl Trust dated April 9, 1999 (the Trust), is at issue in this appeal.

On April 9, 1999, the Schwagerls created mirror-image trusts and pour-over wills to accomplish their estate-planning goals, which were to retain full control over their farm and assets and bequeath all personal property and real estate to the surviving spouse. The couple named themselves and each other as the trustees of their trusts during their lifetimes. The trusts were funded by a transfer of undivided one-half interests in the Schwagerls' real estate, which totaled 729.12 acres. Thus, Lawrence had one-half interest in the couple's property funding the Trust, and Phyllis had the other one-half interest in the couple's property funding her trust.

When the Trust was created, it provided in article three that upon Lawrence's death, Jerome would have the first option to purchase all farm real estate at the appraised value. If Jerome did not exercise the option, the other children could purchase the farm real estate.

And if no child purchased the farm real estate, it would be sold during probate, and the proceeds would be part of the residue and remainder of the estate.

On the same day, however, Lawrence reconsidered article three and executed the First Amendment to Trust Agreement, which removed the option-to-purchase provision. The other language in article three remained the same, including article 3.3.1, which provided that all of Lawrence's "tangible personal property" was to be distributed to Phyllis. Article 3.3.3 provided: "All interests in property used by me or my spouse for residential purposes and in all real estate contiguous to or used in connection with such property, other than tangible personal property, [shall be distributed] to my spouse if my spouse survives me." Lawrence died on August 26, 1999. Phyllis became the sole trustee of the Trust.

In August 2011, Phyllis sold all 729.12 acres of the Schwagerls' property to Schwagerl Family Farm on a contract for deed. The contract for deed was under market value. Phyllis believed that she could sell the property because article 3.3.3 of the Trust granted her Lawrence's interests in "all real estate."

In December 2015, Barbara petitioned to remove Phyllis as the trustee and for an accounting. Barbara later moved to amend the petition, seeking to name Diana and Jerome as trustees, to charge all trustees for any loss in value to the Trust due to the sale of the property, and to have the sale voided.

Phyllis moved for summary judgment. Phyllis asserted that the trusts were "not designed to protect [the] children's inheritances," but rather, "were designed only for the

[couple] to keep [their] assets in [their] control" and to pay minimal taxes upon death. The district court denied the summary-judgment motion.

Phyllis died on February 27, 2017. Following Phyllis's passing, Diana acted as the sole trustee. In March 2017, the parties chose, and the district court appointed, a neutral co-trustee, C. Thomas Wilson, to analyze and file a report of the assets of the Trust.

In November 2018, the district court held a court trial. Wilson testified about his report, in which he concluded that after Lawrence passed, assets in the Trust were divided into a marital share and a family share. The marital share was to be distributed outright to Phyllis. The family share was to stay in the Trust, which resulted in the family trust. He testified that a family trust is typically created to "remove additional assets from the surviving spouse so they don't get taxed on the second death." The family trust was to be funded up to the amount of the federal-estate-tax exemption (at the time $650,000). Wilson testified that when Lawrence died, $639,798 was to go to the family trust, and those assets were owned by the family trust.

Wilson admitted that he never contacted Phyllis or Diana in preparation of his report. Wilson also admitted that when he began his analysis, he took "direction" from Barbara's attorney, and he agreed that he "overstepped [his] neutrality." Additionally, Wilson testified that he never inquired into whether Jerome acted as trustee; he just looked at a document that Jerome purportedly signed as trustee. But Jerome testified that while his name appears on the document next to the title "Trustee," he did not put the word Trustee on the document; rather, someone typed it in. Jerome testified that he never accepted an appointment as trustee of the Trust.

In April 2019, the district court granted Barbara's petition, adopting the findings in Wilson's report. The district court found that the Trust provided that, upon Lawrence's death, the assets were to be divided between a marital share and a family share. The family share was to remain in trust as the family trust.

The district court concluded that the Trust was unambiguous and "section 3.3.3 directs distribution of only the home and surrounding curtilage to Phyllis, not the entire undivided one-half interest [in the property]." The court found that Phyllis could have had the interest in the residence distributed to her outright; "[h]owever, she waived her right" to the distribution by keeping the interest in the family trust. The district court found that when Lawrence died, $639,798 was distributed to the family trust, which comprised the one-half interest in the couple's real estate and $352,548 in miscellaneous property.

The district court found that because Jerome once "delivered materials relating to the [f]amily [t]rust to" Phyllis's attorney, "actively participated in meetings with lawyers and accountants, . . . had access to materials," and signed a document on behalf of the family trust, he was a trustee. The district court concluded that Phyllis and Jerome breached their fiduciary duties by entering into the below-market contract for deed. Further, the district court concluded that no contract-for-deed payment was made in 2016; thus, Schwagerl Family Farm was in default. Finally, the district court appointed Wilson as successor trustee and ordered him to restore the family trust.

Appellants moved for amended findings, a new trial, and for Schwagerl Family Farm to intervene as a party. The district court denied the requested relief. But the district court reversed its ruling that the Trust was unambiguous. The district court found that the

Trust was ambiguous and used extrinsic evidence, the pre-amended version of article three, to reach its original conclusion that section 3.3.3 directed distribution of only the home and surrounding curtilage to Phyllis. This appeal followed.

D E C I S I O N

Interpretation of article three

Appellants argue that Phyllis owned all of the Trust assets and could sell the property to Schwagerl Family Farms. Appellants claim that an accurate reading of article three of the Trust demonstrates that the property belonged to Phyllis.

In interpreting a trust agreement, the court's purpose "is to ascertain and give effect to the grantor's intent." *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012). "A court should seek out the grantor's dominant intention by construing the trust agreement in its entirety." *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *review denied* (Minn. June 26, 2013). A trust is to be construed "to give effect to the [grantor]'s intent as expressed in the [trust's] plain language." *In re Kischel*, 299 N.W.2d 920, 923 (Minn. 1980).

"If the trust agreement is unambiguous, a court should look to the language of the agreement to discern the grantor's intent and not consider extrinsic evidence." *Van Dusen*, 834 N.W.2d at 520; *see also In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985) (stating when the language of the trust is unambiguous, the grantor's intent "must be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent"). The trust "must be construed to carry out the main object of the [grantor] as disclosed by its terms notwithstanding inaccuracies of expression,

ineffectiveness of terms, or the presence of provisions therein which on their face appear inconsistent therewith." *In re Fiske's Trust*, 65 N.W.2d 906, 910 (Minn. 1954). A district court's interpretation of a trust agreement is reviewed de novo. *Stisser Grantor Trust*, 818 N.W.2d at 502.

Following posttrial motions, the district court reversed its determination that article three of the Trust was unambiguous. Determining that article three was ambiguous, and relying on the original article three without the same-day amendment, the district court ruled that article three directed "distribution of only the home and surrounding curtilage to Phyllis, not the entire undivided one-half interest in [the property]." We disagree with the district court's interpretation and its reasons supporting its conclusion.

Article 3.3.3 of the Trust states that, upon Lawrence's death, the trustee shall distribute: "All interests in property used by me or my spouse for residential purposes and in all real estate contiguous to or used in connection with such property, other than tangible personal property, to my spouse if my spouse survives me." The plain language of this clause indicates that, when Lawrence died, the trustee was to transfer to Phyllis the Trust's interests in three types of property: (1) residential real property; (2) real property "contiguous to" the residential real property; and (3) real property "used in connection with" the residential real property." The land at issue is contiguous; thus, the Trust's plain language required the trustee to transfer to Phyllis the Trust's interests in all of that land.

The district court provided two reasons for declining to read the Trust in this manner. First, the district court stated that the farm real estate was not awarded to Phyllis under article 3.3.3 because it did not believe that the Trust would distribute over 700 acres

of farm real estate by describing it as property attached to the homestead. But, although the district court essentially rejected the idea that article three cannot mean what it actually states, a trust is construed "to give effect to the [grantor]'s intent as expressed in the [trust's] plain language." *See Kischel*, 299 N.W.2d at 923. When a document is unambiguous, a court should not read or inject an ambiguity into the document, and then use that injected ambiguity as a basis for referring to evidence outside the document to construe the document. *See Polk v. Mut. Serv. Life Ins. Co.*, 344 N.W.2d 427, 430 (Minn. App. 1984) (stating that "[t]he court will not read an ambiguity into an unambiguous document in order to be able to alter or vary its terms"). Absent a basis in the Trust itself to reject the plain reading of article three, the district court's mere disbelief of the terms runs afoul of caselaw.

The second reason that the district court stated that the farm real estate was not awarded to Phyllis under article 3.3.3 was because before the Trust was amended, the original option-to-purchase clause described how farm real estate was distributed, and it did not distribute the farm real estate to Phyllis. Thus, the district court seemingly rejected the plain reading of article three because it produced a disposition of the farm real estate different than the disposition generated by article three in the pre-amended trust. But one reason trust provisions are amended is to produce a different result. The mere fact that the result under article three is different from the result under the pre-amended trust is not independently sufficient to justify construing article three to mean something other than what it states in its unambiguous terms. *See Van Dusen*, 834 N.W.2d at 520 (stating that when a trust is "unambiguous, a court should look to the language of the [trust] to discern the grantor's intent and not consider extrinsic evidence").

Further, not only did the district court fail to give effect to the unambiguous language of the Trust, it also failed to interpret the language in a way to give effect to Lawrence's intent. *See Stisser Grantor Trust*, 818 N.W.2d at 502 (stating that a court is "to ascertain and give effect to the grantor's intent"). Lawrence and Phyllis funded each of their trusts with undivided one-half interests in all the couple's property. The couple intended to keep their property under their control; thus, it does not follow that Lawrence's intent was for one-half interest in the couple's property to go to anyone other than Phyllis. Accordingly, based on a reading of the unambiguous terms of article three of the Trust, in conjunction with Lawrence's intent, the land interests in the Trust should have been conveyed to Phyllis upon Lawrence's death.

Rejecting the district court's conclusion that the Trust was ambiguous, we now conduct our de novo interpretation of the Trust according to its unambiguous language.

As read, in the First Amendment to Trust Instrument, article 3.3.1 provides that the trustee, Phyllis, shall "give all of [Lawrence's] tangible personal property to [Phyllis]." Article 3.3.3 provides that "[a]ll interests in property used by [Lawrence or Phyllis] for residential purposes and in all real estate contiguous to or used in connection with such property, other than tangible personal property, [be distributed] to [Phyllis]."

The last paragraph of article three of the Trust states: "The remaining trust assets not effectively disposed of under the preceding sections of [article three] shall be allocated and distributed according to the terms of [a]rticle [f]our below." Article four of the Trust divides remaining assets into a marital share and a family trust. The marital share was to be funded first and distributed to Phyllis outright. The assets put into the family trust were

to stay in the trust until Phyllis's death, at which time the family share was to be distributed to Lawrence's descendants per stirpes. We can look at how the Trust was handled following Lawrence's death in two ways—one, there was an ineffective transfer of assets to the family trust, or two, there was an effective transfer of assets to the family trust. Either way leads us to the conclusion that Phyllis was entitled to sell the property.

First, if there was an ineffective transfer of the real-estate interests to the family trust, those interests were distributed to Phyllis when Lawrence died, either outright under article three, or as part of the marital share of the assets that were not disposed of by article three. In either case, Phyllis, in her personal capacity, owned those interests and could dispose of them as she saw fit. Indeed, if Phyllis owned the real-estate interests, she put the proceeds of their sale in the family trust, which overfunded the family trust to the extent of the sale price paid to the family trust for those interests. How overfunding the trust prejudiced the other beneficiaries is unclear.

Second, if there was an effective transfer to the family trust, article eight of the Trust granted many powers to the trustee, who was Phyllis up until 2016. These powers include the ability to "sell, exchange, mortgage, lease, convey, encumber, pledge or otherwise dispose of any real, personal or other property for any period, upon any terms and conditions, to any individual, entity, beneficiary or agent, or to a trust or estate of which one (1) of my trustees is also a fiduciary, including my estate." As we read this language, Phyllis, as trustee of the family trust, could convey the land interests in the family trust, and do so at "any" price and terms she selected. Therefore, based on article eight, we see limited basis to challenge Phyllis's decisions on these matters. *See Nat'l City Bank v.*

Coopers & Lybrand, 409 N.W.2d 862, 866 (Minn. App. 1987) ("A trustee derives [her] authority from the instrument creating the trust, and each case involving a question as to authority of the trustee must be decided in the light of the provisions of the particular trust instrument."), *review denied* (Minn. Oct. 21, 1987).

To conclude, under article 3.3.1, Phyllis received all tangible personal property. Under article 3.3.3, Phyllis received all real estate. These real-estate interests should have been distributed to Phyllis when Lawrence died. But if the assets went into the family share, the ability of Phyllis as the trustee of the family trust to dispose of the assets that ended up in the family trust was sufficiently broad to allow her to convey those interests. Essentially, the district court failed to recognize the extent of Phyllis's ability, as the trustee of the family trust, to dispose of the assets of the Trust. Thus, the property belonged to Phyllis and she could sell it to Schwagerl Family Farm for the price and under the terms she chose. Therefore, the district court misinterpreted the Trust, and we reverse its order.[1]

Waiver

Appellants next argue that the district court erred by determining that Phyllis waived her right to a real-estate distribution by keeping the interest in the Trust. When Lawrence died, Phyllis, as trustee of the Trust, arguably should have conveyed the real-estate interests in the Trust to herself in her personal capacity. The district court found, however, that "[i]nstead of exercising her right to receive real property under [s]ection 3.3.3 of the

[1] Questions of the accounting and taxation of estates and trusts are beyond the scope of this appeal; this opinion addresses neither of those matters nor the implications of this opinion on those matters.

Trust . . . Phyllis kept the real estate that was distributable outright to her in the Family Trust." On appeal, the parties dispute whether Phyllis effectively transferred the real-estate interests in the Trust to the family trust. Appellants claim that Phyllis cannot and did not waive distribution of the real-estate interests in the Trust.

Following the above analysis, if the real-estate interests were in the family trust, Phyllis's authority regarding those interests was, at least for purposes of this appeal, the same as it would have been had she owned those interests outright. Thus, whether Phyllis acted on her own behalf or as trustee of the family trust, she was able to convey, without liability to the beneficiaries of the family trust, the real-estate interests that originated in the Trust. It is, therefore, unnecessary for us to address whether Phyllis properly disclaimed[2] those interests.

Trustee

Next, appellants argue that the district court erred by identifying Jerome as a trustee. We review findings of fact under a clearly erroneous standard. *In re Trust Created Under Agreement with Lane*, 660 N.W.2d 421, 425-26 (Minn. App. 2003).

First, the Trust provides for Trustee Selection in article seven, stating that upon Lawrence's death, "Jerome Schwagerl and Janelle Tritz [daughter], if not then acting, shall,

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[2] The district court ruled that Phyllis "waived" her right to the property distribution by not acting on it. But under article four of the Trust, assets pass to Phyllis in the marital share, "but for a disclaimer." We do not need to review appellants' claim that waiver is inapplicable. Nor do we need to review whether appellants procedurally forfeited an argument regarding disclaimer. Even if Phyllis could and did waive her right to an outright distribution because she retained the property in the family share of the Trust, she was trustee and had the power to sell the property.

upon acceptance, succeed [Lawrence] as trustee." It also provides that while Phyllis is serving as a trustee, she had the power to remove and/or appoint any trustee. There is nothing in the record showing that Jerome accepted the trustee appointment. In fact, the record shows that prior to the litigation, Phyllis acted as sole trustee and Jerome formally rejected acceptance.

The district court determined that Jerome acted like a trustee, and was therefore a trustee. Curiously, the district court found that Janelle performed similar acts, but did not conclude that Janelle was a trustee. The only evidence that Jerome was a trustee was the document that he signed that had the word trustee typed next to his name. Because Jerome did not accept appointment as a trustee as provided in the Trust and performed only trivial tasks, the district court erred by finding that Jerome was a trustee of the Trust. *See In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986) (stating that this court will not overturn district-court findings unless, based on a review of the record, this court is "left with the definite and firm conviction" that a mistake has been made).

Moreover, even if Jerome was a trustee for purposes of the sale, which seems to be the issue, under section 9.14 of the Trust, if there were multiple trustees serving simultaneously, a majority of those trustees can exercise the powers of a trustee. Thus, if Jerome was a trustee, he would have favored the conveyance. If he was not a trustee, his position on the conveyance was irrelevant. Regardless, the conveyance is not inconsistent with the terms of the Trust.

No breach of duty

Because we conclude that Phyllis appropriately exercised her authority granted by the Trust, we do not need to reach appellants' argument that Phyllis is not culpable because she relied on the advice of counsel.

Appointment of successor trustee

Next, appellants argue that the district court should not have appointed Wilson as the successor trustee. Because the trustees did not breach any duty of a trustee, the trustee should be as designated by the Trust. Thus, the district court's appointment of a successor trustee is reversed as unnecessary.

Ruling on contract for deed

Finally, appellants argue that the district court erred in concluding that Schwagerl Family Farm was in default on the contract for deed because it was not a party to the proceeding and the issue was not raised in the pleadings. Respondent claims that the issue was litigated by consent. The district court permitted Barbara to amend her petition and she did not include this issue. *See Roberge v. Cambridge Co-op Creamery Co.*, 67 N.W.2d 400, 403 (Minn. 1954) ("Where a party fails to take advantage of [amending their complaint], [s]he is bound by the pleadings unless the other issues are litigated by consent."). The record supports the conclusion that the issue was not litigated by consent. The interested party was Schwagerl Family Farms, but it was not included as a party. However, the conclusion that Schwagerl Family Farms was in default did not result in a judgment against it. Thus, despite the fact that it was likely improper for the district court

to make this ruling, it does not appear to be of consequence as we reverse the district court's order.

Reversed.