**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0833**

In re the Trust of Donald Roy Scheid and June Vivian Scheid, Joint Revocable Trust.

**Filed February 7, 2022**
**Affirmed in part, reversed in part, and remanded**
**Ross, Judge**

Faribault County District Court
File No. 22-CV-20-271

Christopher J. Kamath, Gislason & Hunter LLP, Mankato, Minnesota (for appellant)

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato Minnesota; and

Steven R. Sunde, Sunde, Olson, Kircher and Zender, P.L.C., St. James, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

**NONPRECEDENTIAL OPINION**

**ROSS**, Judge

In this appeal from summary judgment, son and daughters dispute the interpretation of their parents' trust instrument and whether one parent's unilateral amendment violated the instrument's terms. The son maintains that the instrument prohibits any amendments after one parent dies. The daughters maintain that either parent may amend at any time. The district court construed the trust instrument to be amendable by either parent after the other parent's death. We hold that the district court properly construed the instrument. But

we also hold that genuine issues of material fact undermine the district court's rationale for granting summary judgment on the son's promissory-estoppel claim. We therefore affirm in part, reverse in part, and remand for further proceedings.

## FACTS

In 2015 June and Donald Scheid established a trust naming each other as trustees and naming their three children, Steven, Merre, and Gwen, as beneficiaries. Donald and June funded the trust with 240 acres of real estate, including a 10-acre lot where their residence and Steven's residence stood. The trust instrument provided that, on Donald's and June's death, Steven would receive the 10-acre segment.

Donald died two years later. June then amended the trust agreement three times. June's first amendment is not relevant to this appeal. June's second amendment changed the disposition of the 10-acre lot, instructing the trustees to divide it into two parcels with one residence on each—one for Steven and the other for Merre and Gwen. June's third amendment gave the three children the authority to appoint successors to their interests, so long as any successor was also one of June's descendants.

June died three years after Donald. Steven petitioned the district court to void the second and third amendments as invalid and to determine interests in trust property. He alleged that June breached her duty as trustee by amending the trust. He also raised a promissory-estoppel claim, asserting that he detrimentally relied on Donald and June's promise that he would receive the 10-acre lot when they died. Sisters Merre and Gwen opposed Steven's claims. The district court granted summary judgment favoring the sisters. This appeal follows.

## DECISION

We first decide whether the trust instrument, which in this case the settlors named their "trust agreement," authorized June to amend it after Donald's death. We then decide whether the promissory-estoppel claim is properly subject to summary-judgment dismissal. For the reasons that follow, we conclude that the amendments were not prohibited and that fact disputes prevent summary judgment on the promissory-estoppel claim.

## I

Steven challenges the district court's construction of the trust instrument as authorizing June to amend it after Donald died. We review de novo the district court's interpretation of a trust instrument, with our primary purpose being to give effect to the settlors' intent. *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012). We do so based on "the instrument as a whole, not isolated words," and we look to extrinsic evidence only if the instrument is ambiguous. *Id.* Applying this standard, we conclude that the operative language of the instrument leads to only one reasonable construction.

The disputed language of the trust instrument rests in article 1, section 1.3, and delineates June's and Donald's amendment authority following the preface, "The Settlors, individually and jointly, reserve the following rights, to be exercised (except as otherwise specified) without the consent or participation of the other Settlor or any other person":

> 1.3 **Amendment Revocation and Termination.** This Agreement may be amended or revoked only during our joint lives as follows:
>
> > 1.3.1 This Agreement may be amended only by a written instrument exercised jointly (other than a will)

> or by such Settlors who are not incapacitated and delivered to the Trustee.
>
> 1.3.2 Either Settlor may revoke this Agreement by a written instrument with respect to any part or all of the property and the property to which such revocation applies shall pass free of Trust in equal shares to each Settlor as joint tenants with right of survivorship.
>
> 1.3.3 This Trust Agreement shall terminate upon the (1) filing of a petition for the dissolution of marriage or legal separation of the Settlors, or (2) filing of a petition or action for the annulment of the Settlors' marriage. Upon such termination, the Trustee shall distribute the Trust Assets in equal shares to the Settlors, and any asset which can not be divided equally may be sold and the proceeds divided equally between the Settlors or may be distributed to the Settlors as tenants-in-common.

The parties conceded at oral argument that the amendment authority in section 1.3 is grammatically ambiguous, but each also contends that its context renders it substantively unambiguous. We agree that the placement of "only" coupled with the lack of clarifying punctuation in the phrase, "This Agreement may be amended or revoked only during our joint lives as follows," leaves the phrase grammatically ambiguous. Without considering context, the phrase's structure allows for "only" to modify "as follows," which is how the sisters ask us to construe the phrase. Under this construction, "only" refers to the methods by which the parents could revoke or amend the trust agreement during the period while both are living, meaning that no prescribed method for revocation or amendment exists after either parent dies. Rephrasing to reach this construction, one would say, *This Agreement may be amended or revoked while we both live only if amendment or revocation occurs in the following manner*. But on the other hand, the structure also allows for "only"

to modify "during our joint lives," which is how Steven asks us to construe the phrase. Under this construction, "only" is a temporal, circumstantial limit, allowing either parent to amend the trust only while both were living. Rephrasing to reach this construction, one would say, *This Agreement may be amended or revoked only while we both live and only in the following manner*.

We begin by recognizing that, although the phrase is grammatically ambiguous, accepting the sisters' proposed construction requires slightly less of a syntactic adjustment than Steven's construction. To accept the sisters' proffered interpretation, we need only move the word "only" from the beginning to the end of the clause "during our joint lives," saying, "This Agreement may be amended or revoked during our joint lives *only as follows.*" Imprecisely placing the word "only" in relation to the clause it modifies is a common drafting foible and could easily explain the disagreement here. Alternatively, the sisters' construction would result by simply inserting a comma after the clause, saying, "This Agreement may be amended or revoked only during our joint lives, as follows." By contrast, accepting Steven's proffered interpretation requires a construction based on a paraphrase that adds substantively to the provision. One would achieve his meaning by adding the word "and" along with another "only," saying, "This Agreement may be amended or revoked only during our joint lives *and only* as follows." From this comparison we believe that, although either party's proffered meaning is plausible (and arguably reasonable) based only on the imprecisely structured provision, the grammar somewhat favors the sisters.

But we are most persuaded by the substance of the agreement as a whole rather than the provision's grammatical structure, and we conclude that the sisters' interpretation is the only reasonable one in context. The first contextual cue arises from the generally revocable nature of the trust. Without dispute, the language plainly indicates a trust that was revocable during the lives of both parties. A revocable trust converts to an irrevocable trust on the death of a lone settlor. *See, e.g.*, *Norwest Bank Minn. N., N.A. v. Beckler*, 663 N.W.2d 571, 575 (Minn. App. 2003) ("Upon his death, the trust changed from revocable to irrevocable."); *Govern v. Hall*, 430 N.W.2d 874, 876 (Minn. App. 1988) ("The revocable trust became irrevocable upon [the settlor's] death . . . ."), *rev. denied* (Minn. Jan. 9, 1989). If the parties wanted this trust, having two settlors rather than one, to convert to an irrevocable trust on the death of *either* settlor rather than on the death of both, we presume that they would have accomplished this using direct and simple language and not left that key feature to be merely implied circuitously from the amendment and revocation restrictions. The settlors instead reserved to themselves the general authority to act unilaterally "except as otherwise specified," followed by the disputed authorization to amend or revoke the agreement "only during our joint lives as follows." This framing of the revocation provision as an exception to the power to act unilaterally in an otherwise irrevocable trust supports the idea that the settlors intended to allow each other to amend or revoke the trust instrument only while both were alive under the identified process.

The next contextual cue also arises from the *de facto* authority of either settlor, surviving the other, to do precisely what June did using a different and lawful testamentary method without expressly amending the trust. Steven acknowledged through counsel at

oral argument that nothing in the law or the trust agreement prevented June, as sole remaining settlor and sole trustee after Donald's death, to move all property from the trust to herself after Donald's death and then, either by creating her own separate trust or through a will, allocate the parcel between the children exactly as she did by amending the trust. That the settlors entered into a trust agreement that would not prohibit either surviving party from using simple means to remove property from the trust argues strongly against interpreting the amendment as Steven advocates.

And the final contextual cue is the substance of the listed items within section 1.3 and our assumption that no contractual phrase is superfluous. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995) ("A contract must be interpreted in a way that gives all of its provisions meaning."). Each of the three clauses in section 1.3 operates only if the parties both remain alive when the event occurs: section 1.3.1 requires a jointly signed instrument; section 1.3.2 directs any property removed from the trust by revocation to pass to the settlors as joint tenants; and section 1.3.3 automatically terminates the trust when either settlor files for divorce or annulment. Given that each of these events already requires parties who are both living, the phrase "during our joint lives" in section 1.3 has meaning under the sisters' construction but not under Steven's construction. That is, the qualifier "during our joint lives" is superfluous if a joint agreement between the two settlors were the only way either settler could amend the trust instrument. This corroborates our understanding that the settlors intended to define the amendment process only as it might occur "during [their] joint lives."

For these reasons we hold that the district court correctly interpreted the disputed provision and that June validly executed the amendments. We therefore need not address Steven's breach-of-trust argument and instead turn to his promissory-estoppel claim.

**II**

Steven argues that the district court erred by granting summary judgment favoring the sisters on his promissory-estoppel claim. We review de novo the district court's grant of summary judgment, and we will reverse if the record contains a genuine issue of material fact or if the district court erred applying the law. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We construe any disputed facts in favor of the party against whom the district court entered summary judgment. *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 513 (Minn. 2014). The record reveals fact disputes that prevent summary judgment.

The central issues at the summary-judgment proceedings were whether a fact dispute exists on the questions of whether June and Donald promised Steven the 10-acre building site, whether they intended to induce his reliance by that promise, whether Steven detrimentally relied on the promise, and whether the promise must be enforced to prevent an injustice. *See Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152 (Minn. 2001) (listing the elements of a promissory-estoppel claim). We address each question in turn.

A material fact dispute on the first question prevents summary judgment. For an enforceable promise to exist, it must be definite and clear. *Geraci v. Eckankar*, 526 N.W.2d 391, 398 (Minn. App. 1995), *rev. denied* (Minn. Mar. 14, 1995). Steven contends that his

parents made a definite and clear promise to him that he would receive the 10-acre property when they died. He supports the contention with his deposition testimony that, whenever he asked his parents whether he could make improvements to their home, they replied, "You go ahead and do it, as long as you pay for it yourself, because someday you're going to own the property." The sisters argue that "someday" is not a specific enough timeframe to constitute a clear and definite promise. The argument is unpersuasive. A factfinder could conclude that, in context of the circumstances, "someday" implies the time of June's and Donald's deaths. Although the dates were of course uncertain, their eventual deaths were not. We therefore reject the sisters' contention that no promise existed without their identifying "a specific time frame within which [their deaths] would occur." The evidence reveals a fact dispute as to whether the statement was a promise.

A material fact dispute on the second and third questions also prevents summary judgment. The district court found no evidence that Donald and June made the promise to give Steven the parcel intending to induce his reliance in part because Steven testified during his deposition that he expected nothing in return for his work. But he also testified by affidavit that he made several of the larger improvements specifically expecting that he would own the home. We believe a factfinder could reconcile any theoretical conflict between these statements by interpreting them to mean that Steven was not doing the work to gain anything in return but was doing the work because the benefit accrued to himself. We hold that a genuine issue of material fact exists as to whether the promise reasonably induced reliance and Steven detrimentally relied on it.

The final promissory-estoppel issue—whether enforcing the promise is necessary to prevent an injustice—is generally a question of law. *Faimon v. Winona State Univ.*, 540 N.W.2d 879, 883 (Minn. App. 1995), *rev. denied* (Minn. Feb. 9, 1996). It turns on "the reasonableness of a promisee's reliance and a weighing of public policies in favor of both enforcing bargains and preventing unjust enrichment." *Id.* The district court opined that no injustice occurred because Steven "benefited from the [living] arrangement during the settlors' lifetimes by having a rent-free or low rent residence for forty years." But because we determined that there are material issues of fact about whether Steven's reliance was reasonable, we conclude that whether an injustice occurred can be addressed only after a factual determination of the reasonableness of Steven's reliance on the promise. Under these circumstances, summary judgment is not appropriate.

**Affirmed in part, reversed in part, and remanded.**