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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1531**

In re: Pearl F. Dynan Living Trust
Under Agreement dated November 30, 1992.

**Filed April 19, 2011
Reversed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-C0-98-000140

Martin V. Aydelott, Mackall, Crouse & Moore, PLC, Minneapolis, Minnesota (for
appellant Melvin Rouillard)

James M. Crist, Steinhagen & Crist, P.L.L.P., Minneapolis, Minnesota; and

Eric C. Dammeyer, Dammeyer Law Firm, P.A., Eden Prairie, Minnesota (for respondent
trustee Eric C. Dammeyer)

Michael R. Quinlivan, Cronan, Pearson, Quinlivan, P.A., Minneapolis, Minnesota (for
respondent Antoinette Moore)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Melvin J. Rouillard challenges the district court's order allowing a
\$200,000 partial distribution of the trust assets of his late wife, Pearl F. Dynan, to one of
her nine children, respondent Antoinette Moore. Appellant claims that the partial

distribution breaches a settlement agreement that prohibits any trust distributions until after his death. Because we conclude that the terms of the settlement agreement bar such a partial distribution, we reverse.

FACTS

Appellant and Pearl F. Dynan were married in 1975; it was a second marriage for both. In 1992, Dynan created a revocable living trust into which she placed her primary asset, a family dry cleaning/laundry business. The trust was set up with five specific devises upon Dynan's death: the stock in the business was to be equally divided among four of her nine children, and Moore was to receive a "sum of cash equal to one-fourth (1/4th) of the fair market value of all stock in [the business]." All of the other assets of the business were to be held in the trust, and appellant was to receive the trust income until his death. Upon appellant's death, the assets are to be distributed in unequal shares to all nine of Dynan's children.

Dynan died in October 1997. Shortly after her death, environmental contamination was discovered at the business site. Because of the cost of remediation, the four children who were entitled to split the stock initially declined to accept their shares. Because there were insufficient cash assets in the trust to fund the cleanup, Moore agreed to delay receipt of her gift until environmental remediation was complete. Moore and respondent-trustee Eric C. Dammeyer agreed that Moore's gift would be valued as of the date the environmental remediation was complete in exchange for her agreement to delay receipt of her gift.

Meanwhile, appellant was having a difficult time obtaining any of the trust income, and, therefore, he petitioned for his elective share of the estate in Wright County District Court in February 1999. In March 1999, for reasons not clear from the record, Dynan's four children who were stock beneficiaries accepted their shares. In July 1999, the Wright County District Court allowed appellant to proceed with his election.

In January 2000, appellant, Dammeyer, the co-representatives of Dynan's estate, and the business entered into a settlement agreement. The settlement agreement provided that, in lieu of his elective share, appellant would receive a one-time payment of \$70,000 from the principal of the trust and \$2,000 monthly for his lifetime. To secure the \$2,000 monthly payment, appellant was granted a lien on the trust assets, and the trustee is "prohibited from making any distribution from the Trust other than for normal and ordinary expenses." There is no mention in the settlement agreement of Moore's yet-unpaid specific devise. In February 2000, Dammeyer petitioned the Hennepin County District Court, which has jurisdiction over the trust, to confirm the settlement reached in the Wright County proceedings, and the Hennepin County District Court did so.

In June 2000, the Wright County probate court incorporated the terms of the settlement agreement into its order of complete settlement of Dynan's estate, approval of final account, and decree of distribution. There was no appeal of that order. All subsequent trust-related litigation has occurred in Hennepin County District Court.

In June 2009, after many years of litigation among the siblings as to how Moore's gift should be valued, Dammeyer petitioned the district court for an order allowing him to make a distribution from the trust assets to Moore to satisfy her gift. The petition

asserted that remediation was complete as of October 2003 and that one-fourth of the value of the business at that time was \$377,443.50. In December 2009, the district court determined that the value of Moore's interest as of October 2003 was \$347,198 and that she is entitled to a distribution of that amount plus interest. In February 2010, after years of choosing not to participate in Dynan's children's dispute, appellant petitioned the district court for an order enforcing his lien and clarifying that no distribution from the trust can be made during his lifetime.

The district court denied appellant's petition in part and allowed a distribution to Moore in the amount of \$200,000 plus interest in partial satisfaction of her gift; the district court granted appellant's petition in part by allowing his lien to remain in place against the remaining trust assets. The district court acknowledged appellant's lien but concluded that it had the authority to reform the trust pursuant to Minn. Stat. § 501B.16 (2010). The district court stated that it was "appropriate that Moore receive at least a portion of her gift now" because she had delayed her gift to finance the environmental cleanup and her siblings have "had the use and enjoyment of their gift for many years." The district court therefore balanced appellant's need for monthly payments with the equities in favor of paying Moore's gift and determined that "payment of \$200,000 of the Moore gift plus accrued interest to the date of the payment . . . would be an appropriate balance between satisfaction of the long-postponed Moore gift and providing adequate security for [appellant's] payments." This appeal follows.

DECISION

The district court ordered the partial distribution to Moore pursuant to its authority under Minn. Stat. § 501B.16. This section allows a trustee to petition the district court for an order “to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust.” Minn. Stat. § 501B.16(4). Dammeyer asserts that this section expressly allows the district court to authorize the partial distribution. Appellant, on the other hand, argues that the settlement agreement controls and that the terms of the settlement agreement can only be reformed under principles of common-law contract reformation.

A district court has the authority to deviate from the terms of a trust to effectuate the settlor’s intent when it is appropriate to do so. Minn. Stat. § 501B.21 (2010); *In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44 (Minn. 1985) (“The court’s purpose in construing a trust is to ascertain the intent of the settler.”). And based on our review of the record, it is clear that the district court in this case was attempting to strike an equitable balance, given Moore’s generosity in delaying receipt of her gift and Dammeyer’s promise that her gift would be valued after the environmental cleanup was complete. But a district court’s authority to reform or deviate from the terms of the trust does not extend to this circumstance where there is an intervening settlement agreement. The settlement agreement states that Dammeyer is “prohibited from making any distribution from the Trust other than for normal and ordinary expenses.” We interpret settlement agreements in the same manner we would any contract. *In re Crablex, Inc.*, 762 N.W.2d 247, 254 (Minn. App. 2009), *review denied* (Minn. Apr. 29,

2009). Our review is de novo, and our goal “is to determine and enforce the intent of the parties.” *Id.* at 254-55 (quotation omitted). But when the terms are unambiguous, we give effect to their plain and ordinary meaning. *Id.* at 255.

There is nothing ambiguous about the settlement agreement in this case. Under its terms, Dammeyer is prohibited from making any distributions from the trust assets other than for normal and ordinary expenses. Dammeyer is therefore prohibited from making a distribution to Moore to satisfy her specific devise until after appellant’s death. We therefore conclude that the district court erred when it allowed the partial distribution to Moore in direct contravention of the unambiguous terms of the settlement agreement.

Reversed.