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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1359**

Katherine Y. Huber,
Appellant,

vs.

Timothy R. Geck, as personal representative of the
Estate of Mortimer Joseph Huber a/k/a Mortimer J. Huber,
and as Trustee of the Mortimer J. Huber Amended and
Restated Revocable Trust Agreement dated April 16, 2004,
Respondent.

**Filed May 20, 2013
Affirmed
Kirk, Judge**

Washington County District Court
File No. 82-CV-11-2433

Dominique J. Navarro, Larry B. Stevens, Larry B. Stevens & Associate, Roseville,
Minnesota (for appellant)

Robert D. Maher, Elizabeth C. Borer, William R. Asp, Best & Flanagan LLP,
Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

We are asked to consider whether the district court erred when it determined that a testamentary document and a prenuptial agreement are ambiguous and subject to interpretation using parol evidence. We conclude that the documents are ambiguous and that the district court correctly considered extrinsic evidence when interpreting the documents. Accordingly, we affirm.

FACTS

Appellant Katherine Y. Huber (Huber) met decedent Mortimer J. Huber sometime in 2001. They were married June 3, 2005. Decedent died on May 9, 2008.

On April 16, 2004, decedent executed an amended and restated revocable trust agreement, which modified a trust agreement of December 6, 2000. Respondent Timothy Geck was trustee. The April 2004 trust agreement made no provisions for Huber. On February 3, 2005, Huber and the decedent executed a prenuptial agreement. The prenuptial agreement made several provisions for Huber in the event that decedent predeceased her. Among the gifts allotted to Huber in the prenuptial agreement was title to decedent's home in Florida and a payment of \$2,000 a month to assist with expenses related to the Florida home, conditioned on Huber maintaining ownership of the home and residing there at least six months a year.

On January 11, 2007, decedent executed a document entitled First Amendment to the Mortimer J. Huber Amended and Restated Trust Agreement. The trust amendment modified several provisions of the underlying trust agreement, and included the addition

of certain gifts to Huber. Among these gifts is the decedent's entire interest in his residential property in Florida and a payment of \$2,000 a month to be paid to Huber for the balance of her life. The trust amendment's \$2000-a-month provision makes no mention of Huber's ongoing ownership of or residence in the Florida home. On January 24, 2007, Huber signed a document entitled Consent of Spouse to Amended and Restated Revocable Trust, as Amended, certifying that she had read and understood the trust agreement and amendment and waived all her rights to elect to take under Minnesota's elective share statute instead of under the trust.

The trust amendment also makes no mention of the prenuptial agreement, and the prenuptial agreement was never amended or revoked.

Following decedent's death, Huber brought a declaratory-judgment action against Geck, seeking a ruling from the district court that the gifts provided in the trust amendment supplemented, as opposed to duplicated, the gifts contained in the prenuptial agreement.¹ The district court determined that the contents of the prenuptial agreement and the trust amendment "vary to some degree in their terms, creating ambiguities which may be resolved by referring to the intent of the testator."

Huber brought a motion in limine to prohibit the use of extrinsic evidence in interpreting the prenuptial agreement and the trust amendment. The district court never ruled directly on Huber's motion; however, the district court's judgment discloses that it

¹ Geck counterclaimed, alleging that Huber had unduly influenced the decedent into purchasing an expensive home that she would inherit upon his death. The district court denied this claim, and it is not before us on appeal.

considered the testimony of Geck, who helped the decedent prepare the prenuptial agreement and the trust amendment, and the testimony of Huber, who was heavily impeached at trial.

The district court concluded that it was the decedent's intention that the trust amendment codify the \$2,000-a-month gift in the prenuptial agreement, and it concluded that Huber was entitled only to the monthly payment authorized by the trust. This appeal follows.

D E C I S I O N

I. Huber did not fail to preserve for appeal the district court's denial of her motion in limine.

Geck argues that because Huber failed to move for a new trial pursuant to Minn. R. Civ. P. 59.01, the issue of whether the district court erroneously denied Huber's motion in limine was not preserved for appeal. Thus, argues Geck, this court's review is limited to deciding whether the district court clearly erred in ascertaining the decedent's intent and interpreting the documents. It is Huber's position that a motion for a new trial was unnecessary, in part because the denial of the motion in limine raised a question of substantive law that does not require a motion for a new trial. Huber is correct.

An error of the district court "may not be predicated upon a ruling which admits . . . evidence unless a substantial right of the party is affected, and . . . a timely objection or motion to strike appears of record." Minn. R. Evid. 103(a)(1). It is "the general rule that in order to preserve for appellate review issues arising during the course of trial, counsel—in addition to taking the other requisite steps, including making timely

objection—must move the trial court for a new trial.” *Sauter v. Wasemiller*, 389 N.W.2d 200, 202 (Minn. 1986). Thus, matters “arising during the course of trial” such as “trial procedure, evidentiary rulings and jury instruction” are not subject to appellate review without a motion for a new trial at the district court. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003) (quoting *Sauter*, 389 N.W.2d at 202) (quotation marks omitted). The purpose of requiring an appellant to move for a new trial is to provide the district court with “the opportunity to correct its own errors without subjecting the parties and the appellate courts to the time, expense and inconvenience involved in an appeal.” *Sauter*, 389 N.W.2d at 202.

But the rule is not ironclad. “[A] general demarcation line can be drawn as to when post-trial motions are required for assignments of error relating to the conduct of the trial that reside within the district courts’ discretion and substantive questions of law.” *Alpha Real Estate*, 664 N.W.2d at 310. The rule requiring a motion for a new trial “does not apply to substantive questions of law that were properly raised during trial.” *Id.*

While our review of a ruling on a motion in limine typically must be preceded by a motion for a new trial, here it was impossible for the district court to decide whether to exclude evidence as to the decedent’s intent without also deciding whether the contested contractual language is ambiguous. And the question of contract interpretation is a question of law. *Isaac v. Vy Thanh Ho*, 825 N.W.2d 379, 386 (Minn. 2013). The motion in limine is, strictly speaking, an evidentiary ruling, but in the posture that it comes before this court it exhibits all the qualities of a substantive question of law. Geck’s argument that this evidentiary ruling is not properly before this court fails.

II. The amended trust agreement and prenuptial agreement are ambiguous.

Huber argues that the district court erred when it concluded that the transfer provision of the prenuptial agreement created an ambiguity that required the trust amendment and prenuptial agreement to be interpreted in light of evidence of the decedent's intent. The court heard from Huber, and it concluded that her testimony that the decedent intended the trust amendment to result in a doubling of her entitlement under the prenuptial agreement was unreliable. The court also heard Geck testify, and it determined that the trust amendment lifted the six-month Florida residency requirement in the prenuptial agreement. The district court then concluded that the gift of \$2,000 a month in the prenuptial agreement and the trust amendment are duplicative and that Huber is not entitled to a double payment.

The primary goal of contract interpretation is to determine and enforce the intent of the parties. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). The construction of a contract is a question of law unless the contract is ambiguous. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). “Whether a contract is ambiguous is a question of law that we review de novo. Language in a [contract] is ambiguous if it is susceptible to two or more reasonable interpretations.” *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008) (citation omitted).

A trust agreement is considered in light of the grantor's dominant intention, which is gathered from the instrument as a whole, not isolated words. *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012). “When the trust agreement is

unambiguous, we will ascertain the grantor’s intent from the language of the agreement, without resort to extrinsic evidence.” *Id.*

“A man and woman of legal age may enter into an antenuptial contract . . . which shall be valid and enforceable . . . [to] determine what rights each party has in the nonmarital property . . . upon dissolution of marriage, legal separation or after its termination by death.” Minn. Stat. § 519.11, subd. 1 (2012). “A bona fide and reasonable agreement, securing to the wife the enjoyment of a portion of her husband’s property . . . after his death, will be enforced.” *In re Estate of Malchow*, 143 Minn. 53, 57, 172 N.W. 915, 916 (1919).²

Huber asks us to hold that the district court erred when it relied on the transfer provision of the prenuptial agreement as a basis for finding ambiguity, thereby justifying its inquiry into the decedent’s intent. The transfer provision states:

Each party agrees . . . [that] he or she will . . . [e]xecute and acknowledge any instrument that may be desirable or necessary to transfer an interest in property of the other acquired under a community property law to the persons entitled to the property in accordance with this Agreement. To the extent required by third parties, each party irrevocably authorizes the other to act as his or her attorney-in-fact to join in the making, execution, acknowledgment and

² On appeal, the parties do not address whether the trust amendment operated as an amendment or revocation of the prenuptial agreement, which is prohibited under Minn. Stat. § 519.11, subd. 2a (2012), unless certain requirements are met. The parties have likely waived this argument, and the issue is probably a nonstarter anyway. Analyzing the statute would lead us to where we are today: determining whether to apply one or both of the disputed terms. Further, the statute appears to contemplate the possibility that a testamentary document can operate in addition to a prenuptial agreement. *See* Minn. Stat. § 519.11, subd. 1 (providing that prenuptial agreement can provide for disposition of property upon death of one of the spouses).

delivery of any deed, conveyance, transfer or assignment of such property so that thereby the joinder, if necessary, may be made freely and without restraint. *Each party shall, upon the request of the other execute, acknowledge and deliver to the other party any and all such instruments necessary or appropriate to carry into effect the purpose and intent of this Agreement.*

(Emphasis added.) The district court concluded that this last sentence was an indication that the prenuptial agreement contemplated its terms being executed through additional documents like the trust amendment. Huber argues that this sentence, when read in context, only supports the conclusion that it refers to the transfer of documents such as deeds, conveyances, transfers, and assignment documents—not testamentary devices.

Words in a contract are not interpreted in isolation, “but rather from a process of synthesis in which the words and phrases are given a meaning in accordance with the obvious purpose of the contract . . . as a whole.” *Motorsports Racing Plus*, 666 N.W.2d at 324 (quotation omitted). The last sentence of the transfer provision is reasonably susceptible to two meanings. It can mean, as Huber argues, that the parties agree to execute, acknowledge, and deliver such instruments (*i.e., deeds, conveyances, transfers, or assignments of property rights*) necessary to carry into effect the purpose and intent of the prenuptial agreement. Or the sentence can mean that the parties agree to execute, acknowledge, and deliver such instruments *that are* necessary to carry into effect the purpose and intent of the prenuptial agreement. Under this second meaning, a testamentary device may reasonably be construed as necessary to carry into effect the devises contained in the prenuptial agreement. Huber is correct that the clause addressing

transfers may limit the scope of this sentence to certain property conveyances. But neither party disputes that the “obvious purpose of the contract . . . as a whole” includes certain testamentary devises, best implemented through a trust. *See Motorsports Racing Plus*, 666 N.W.2d at 324.

Geck also argues that the ambiguity is evidenced by the variation in the \$2,000-a-month term between the prenuptial agreement and the trust amendment. While it is true that the terms vary from each other, it is illogical to consider them a source of ambiguity justifying the use of extrinsic evidence of the parties’ intent. Confining our review separately to the four corners of each agreement, each \$2,000-a-month term appears fully enforceable and facially unambiguous. Without ambiguity, we are deprived of a basis to enter into a comparison of the individual agreements.

It is entirely possible to enforce both of the terms simultaneously and without conflict. The \$2,000-a-month term in the prenuptial agreement purports to be intended to assist Huber with the payment of expenses related to the Florida home, and it imposes residency and ownership requirements as conditions of receiving the payment. The trust amendment’s term can be simultaneously awarded, for it awards \$2,000 a month without any conditions. The only way that the \$2,000-a-month terms become ambiguous is when they are read in light of Geck’s testimony regarding decedent’s intent. The district court’s reliance on Geck’s testimony was justified not by any ambiguity in the \$2,000-a-month terms, but by the ambiguity in the prenuptial agreement’s transfer provision.

In sum, the transfer provision can mean either that certain property conveyances may be attached to the prenuptial agreement or that a testamentary device may be

attached to the prenuptial agreement. Consequently, the district court did not err as a matter of law in concluding that the prenuptial agreement was ambiguous and that extrinsic evidence was needed to determine whether the trust amendment supplemented or replaced the gifts in the prenuptial agreement.

III. Huber is not entitled to an additional \$2,000 per month under the plain terms of the prenuptial agreement.

Huber next appears to argue that the district court erred when it found that the extrinsic evidence it reviewed supports the conclusion that Huber is entitled only to a single \$2,000-a-month payment. Once a court determines that a contract is ambiguous and subject to interpretation in light of extrinsic evidence, the interpretation of the contract becomes a question of fact. *EEP Workers' Comp. Fund v. Fun & Sun, Inc.*, 794 N.W.2d 126, 131 (Minn. App. 2011). The factual conclusions of the district court regarding the extrinsic evidence of the parties' intentions are reviewed for clear error. *Trondson v. Janikula*, 458 N.W.2d 679, 682 (Minn. 1990).

The district court, in determining whether the trust amendment was intended to replace the provisions for Huber in the prenuptial agreement, relied on the testimony of Geck, Huber, and the language of the documents themselves. Geck exhibits indicia of reliability: he knew decedent for at least two decades, he helped in drafting the estate plan and the trust amendment, and he plainly testified that decedent intended to satisfy the prenuptial agreement by including the \$2,000-a-month gift in the amended trust. In contrast, Huber was vigorously impeached by Geck's counsel when her testimony at trial (where she claimed that the decedent spoke with her about doubling the \$2,000-a-month

gift) conflicted with her deposition testimony (where she denied she ever discussed the \$2,000-a-month gift with decedent). Because Geck's testimony with regard to the \$2,000-a-month payment was more reliable, it was not clearly erroneous for the district court to have credited his testimony over Huber's when it interpreted the documents.

But we are puzzled by the inconsistency in the district court's treatment of certain other disputed contractual terms. The district court determined that a \$25,000 lump-sum payment in the prenuptial agreement was not replaced by the gift of the decedent's Minnesota home in the trust amendment because "nowhere is this mentioned in the Amended Trust and Plaintiff testified that she was never told that the homestead was intended to satisfy the award of \$25,000 in cash." The district court also determined that Huber is entitled to both a fully loaded, new Ford Crown Victoria and decedent's most recently purchased automobile, pursuant to the prenuptial agreement and the trust amendment, respectively, because "[t]hese provisions are not inconsistent and both may be enforced."

The parties do not address these apparent inconsistencies in how the terms are interpreted, but they can perhaps be explained by the requirement that ambiguous contract terms must be construed against the drafter. *See Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002). Huber's unreliable testimony on the \$2,000-a-month payment was likely sufficient to persuade the district court that Geck's interpretation of the corresponding contractual terms was correct, therefore providing a sufficient basis for construing the terms in favor of the drafter. On the other provisions, Huber's testimony

did not appear unreliable and the remaining terms must then be enforced against the drafter.

Huber has asked for an award of appellate costs and attorney fees. “This litigation primarily concerned the proper disposition of the trust principal. Therefore, allowances for attorney fees and expenses must be charged against the trust principal.” *Matter of Great N. Iron Ore Properties*, 311 N.W.2d 488, 495 (Minn. 1981). Huber is entitled to an award of costs and attorney fees, and she should file her motion for fees following the procedures laid out in Minn. R. Civ. App. P. 139.06.

Affirmed.