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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0243**

Bennie James Gilyard, Jr., as Trustee of the Gilyard Family Trust, petitioner,
Appellant,

vs.

Craig Stephen Lichtsinn,
Respondent,
Jay Eileen Lichtsinn,
Respondent.

**Filed December 9, 2008
Affirmed
Stoneburner, Judge**

Traverse County District Court
File No. 78CV07151

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant, trustee of a family trust, challenges the ruling of the district court upholding a trust provision granting respondents an option to purchase trust property at a fixed price. We affirm.

FACTS

In 1995, Norman and Elizabeth Gilyard created the Gilyard Family Irrevocable Trust (the Trust). Farm land was placed in the trust which provided, in relevant part, that for ninety days after the death of the surviving trustor, respondents Craig Lichtsinn and Jay Lichtsinn (the Lichtsinns) had an option to purchase the farm land for \$112,000 in cash or by contract for deed, the terms of which were spelled out in the trust. After Elizabeth Gilyard died in May 2007, the Lichtsinns sought to exercise the option. Appellant James Gilyard, Jr., trustee (the trustee), refused to honor the option. The trustee relied on a section of the trust limiting the trustee's powers to argue that the intent of the trustors was to prohibit any transfer of property for less than its fair market value at the time of the transfer. The district court held that the section limiting the trustee's powers did not negate the section expressing the trustors' clear intention to give the Lichtsinns the option to purchase for a fixed amount and ordered the trustee to permit the Lichtsinns to exercise the option. This appeal followed.

DECISION

A district court's construction of an unambiguous trust is reviewed de novo. *In re Estate and Trust of Anderson*, 654 N.W.2d 682, 687 (Minn. App. 2002), *review denied*

(Minn. Feb. 26, 2003). Minnesota courts interpret trust provisions in the context of the trust instrument as a whole rather than in isolation, and give effect to each provision in the instrument whenever possible. *In re Wyman*, 308 N.W.2d 311, 315 (Minn. 1981); *In re Trust Created Under Agreement with Lane*, 660 N.W.2d 421, 425 (Minn. App. 2003). A court cannot disregard any of the words in a trust as meaningless where a meaning can be given that is consistent with the rest of the instrument. *In re Trust Created by Anneke*, 229 Minn. 60, 71, 38 N.W.2d 177, 183 (1949). “One of the court’s highest duties is to give effect to the donor’s dominant intention as gathered from the instrument as a whole.” *In re Trusteeship Under Agreement with Mayo*, 259 Minn. 91, 95, 105 N.W.2d 900, 903 (1960).

The Trust consists of thirteen sections. Section One describes the property transferred to the Trust. Section Two provides for the disposition of income and principal after the death of both trustors. Paragraph D of Section Two, however, provides that prior to the distribution of any real estate and for 90 days after the death of the surviving trustor:

Craig Lichtsinn and/or Jay Lichtsinn shall have the option to purchase [described property] from the Trustee of this Trust for \$112,000.00. This may be a cash purchase or the purchasers may purchase the property on a Contract for Deed. The terms shall be \$12,000.00 down and \$5,000.00 per year plus interest, with full payment due on the third anniversary on the contract. Interest shall accrue at 9% per annum with full prepayment privileges. This option shall only run in favor of Craig Lichtsinn and/or Jay Lichtsinn.

Sections Three, Four and Five of the trust prevent invasion of the principal, provide for additions to the Trust, and make the Trust irrevocable, respectively. Section Six of the

Trust defines the powers of the trustees. The powers include the power to sell, exchange, mortgage, lease or otherwise dispose of the Trust assets. Section Seven, titled

“Limitations of Powers,” provides in relevant part:

Notwithstanding any other provision of this Trust instrument, no power given to the Trustees hereunder shall be construed to enable Trustors or any other person to purchase, exchange, or otherwise deal with or dispose of the principal or income therefrom for less than an adequate consideration in money or money’s worth

The Trust clearly and unambiguously gives the Lichtsinns an option to purchase the described farm land. But the trustee asserts that because the current value of the subject property is at least \$303,600, \$112,000 is not “adequate consideration” and Section Seven of the Trust prohibits the transfer of the land for “less than an adequate consideration.” The trustee argues that Lichtsinn’s option can only be exercised for the fair market value of the land. We disagree.

Section Seven is a limitation on the “power given to the trustees.” Section Two does not give any power to the trustees and does not refer to any power of the trustees. “Power” is defined as “[t]he ability to act or not to act.” *Black’s Law Dictionary* 1189 (7th ed. 1999). Section Two (D) provides that the Lichtsinns “shall have the option to purchase” the property. Because Section Two (D) does not involve any power given to the trustees, the district court correctly determined that the provisions of Section Two (D) are not affected by Section Seven.

At oral argument on appeal, the trustees argued that the limitation in Section Seven applies to Section Two (D) because, in order to permit Lichtsinns to exercise the

option, the trustee would have to exercise his power under Section Six (G) to “make division or distribution.” We have grave doubts about whether an argument raised for the first time is properly before this court. *See Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (stating that issues not briefed are waived). Even if the question was properly before this court, we would disagree. The option given to the Lichtsinns in Section Two (D) is not a division or distribution of property by the trustee: an option is “nothing more than an irrevocable and continuous offer to sell for a specified period of time” *Nafstad v. Merchant*, 303 Minn. 569, 571, 228 N.W.2d 548, 550 (1975). Additionally, if Section Seven limited Section Two as argued by the trustee, the beneficiaries would also be required to give “adequate consideration” for any distribution, creating an absurd result.

We also reject the trustee’s assertion that the Trust expresses the trustors’ intent to allow the trustee to dispose of the property for \$112,000 only if that amount constituted “adequate consideration” at the time the option was exercised. A court is not at liberty to disregard plain terms used in a trust agreement. *In re Trust Estate Created by Moulton*, 233 Minn. 286, 290, 46 N.W.2d 667, 669 (1951). “A court may not rewrite a trust . . . to provide by conjecture what a trustor might have intended if he knew how events would occur” *In re Wiedemann*, 358 N.W.2d 139, 142 (Minn. App. 1984). The terms of the option are plain and unambiguous and leave no room for the interpretation that the trustee suggests.

Affirmed.