

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

In the Matter of the Ina C. Holman Family Trust.	)	MEMORANDUM DECISION
_____	)	(Not For Official Publication)
	)	Case No. 20060390-CA
Central Bank,	)	
	)	F I L E D
Petitioner and Appellee,	)	(April 3, 2008)
	)	
v.	)	2008 UT App 120
	)	
Robert Holman,	)	
	)	
Respondent and Appellant,	)	
	)	
and	)	
	)	
Jenevieve Holman, Kathleen Robinson, R. Henry Spencer, Cindy Riley, Pam Gondola, Jana Hay, John Spencer, Sue Frampton, Beth Jeppson, Edith Dunn, Andrew Spencer, Heather Spencer, Allison Mack, and Phyllis Hall,	)	
	)	
Respondents and Appellees.	)	

-----

Fourth District, Provo Department, 053400366  
The Honorable Gary D. Stott

Attorneys: Hunt W. Garner, Ogden, for Appellant  
Mark F. Robinson, Morgan Fife, and John L. Valentine,  
Provo; and Douglas T. Hall, Midvale, for Appellees

-----

Before Judges Greenwood, Thorne, and Bench.

BENCH, Judge:

Robert Holman appeals the decision of the trial court giving full force and effect to an amendment (the Update) to the terms of a revocable trust established by his mother (the Settlor). Specifically, Holman claims that the trial court applied an incorrect standard of proof in deciding to enforce the Update and

improperly admitted photocopies of the Update in violation of the Utah Rules of Evidence.

Under Utah law, a settlor may revoke or amend a revocable trust by "any . . . method manifesting clear and convincing evidence of the settlor's intent." Utah Code Ann. § 75-7-605(3)(b)(ii) (Supp. 2007). However, terms of a trust that limit the settlor's powers to amend or revoke to expressed methods, if any such limitations exist, cannot be violated. See id. § 75-7-605(3)(b).

Holman claims that the failure of the trial court to acknowledge some inconsistent conduct by other named trustees, who knew that the Update terminated Holman's interest in the trust, implies that the trial court improperly applied the preponderance of the evidence standard of proof rather than the clear and convincing standard of proof. Holman's argument fails for two reasons: (1) in the Memorandum Decision, the trial court expressly mentions the conduct that Holman complains was not considered; and (2) the record reflects that Holman initiated the concept of the Update in order to obtain the Settlor's forgiveness for a debt previously incurred.

Correspondence between Holman and the Settlor about his plan to trade his share in the trust for forgiveness on the debt was admitted into evidence, and the Update itself includes language referencing the reasons why Holman's interest in the trust was terminated. There is no indication that the trial court applied the incorrect standard of proof. Holman fails to provide us with any binding or persuasive authority that the trial court is required to expressly state the standard of proof it is applying. Further, the Settlor's intent was clearly and convincingly shown by the admitted evidence.

Holman also argues that the trial court improperly admitted photocopies of the Update into evidence in violation of the best evidence rule outlined in rule 1002 of the Utah Rules of Evidence. See Utah R. Evid. 1002. "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Id. R. 1003. While arguing that the execution of the Update was legally tainted by fraudulent inducement or the Settlor's lack of capacity, Holman has not raised a question as to the authenticity of the Update in the way that the best evidence rule contemplates.

The best evidence rule "has no application to a case where a party seeks to prove a fact which has an existence independent of any writing." Roods v. Roods, 645 P.2d 640, 642 (Utah 1982).

Whether there were problems surrounding the execution of the Update is a factual question independent of the contents of the Update itself. Holman has not claimed that the photocopies were in some way altered or changed from the originals. The trial court therefore properly admitted the photocopies into evidence pursuant to rule 1003.

We affirm the judgment. Appellees' request for attorney fees under rule 33 of the Utah Rules of Appellate Procedure is denied.

---

Russell W. Bench, Judge

-----

WE CONCUR:

---

Pamela T. Greenwood,  
Presiding Judge

---

William A. Thorne Jr.,  
Associate Presiding Judge