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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1159**

In re the North Shore Pines Trust Agreement of  
December 26, 1955, as Amended.

**Filed April 27, 2010  
Affirmed  
Hudson, Judge**

Hennepin County District Court  
File No. 27-TR-CV-08-139

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Ronald Smith)

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Darkenwald)

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Minnesota (for respondents beneficiaries William R. Mears, William A. Mears,  
George C. and Marilyn M. Hobbs, and John D. and Virginia A. Overbye)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and  
Johnson, Judge.

**UNPUBLISHED OPINION**

**HUDSON, Judge**

Appellant argues that the district court erred by granting summary judgment to  
respondents based on a determination that certain amendments to a trust agreement are

valid and enforceable. Because there are no genuine issues of material fact and because the district court did not err in its application of the law, we affirm.

## **FACTS**

This dispute relates to certain real estate located on Upper Whitefish Lake in Crow Wing County. The real estate in question is owned by the North Shore Pines Trust. On August 23, 2008, the lot owners/beneficiaries of the Trust held a special meeting to address issues relating to the placement of certain docks on the lakeshore. Certain lot owners have docks and other property placed on the lakeshore outside of what has been deemed as the property that the owners may use under the terms of the Trust Agreement. Appellant Ronald Smith is one of these lot owners. It was determined at that meeting that lot owners with docks or other property outside of their “use and benefit” area would move their property to be within the areas defined in the Trust Agreement.

The North Shore Pines Trust was originally created in 1930. The 1930 Trust Agreement, which had a 25-year term, distinguished between the beneficiaries’ separate fee interests and their undivided interest in collectively owned Trust property. The 1930 Trust Agreement describes three types of property: (1) separate lots owned in fee simple by the beneficiaries, (2) Trust-owned timberland at the northern boundary of each fee interest, and (3) government-owned lakeshore property at the southern boundary of each fee interest. The 1930 Trust Agreement noted that each lot owner shall be entitled to the use and benefit of all of the timberland to the north of his lot “lying between two parallel lines extending due north from the northeast and northwest corners of said lot.” It goes on to state that when and if the government-owned lakeshore land between the south lines

of lots seven through seventeen is acquired by the trustees, it would be owned by the Trust in the same manner and “that each lot owner shall then also be entitled to the use and benefit of such land between the south line of his lot or parcel and the water’s edge as lies between the east and west boundaries of his lot extended to the water’s edge.” The trustees acquired title to the lakeshore property sometime before 1954.

At the beginning of the Trust’s existence, Norman Mears and Charles Buckbee owned lots as tenants-in-common, but they split their jointly-owned interests in 1941. In 1954 and 1955, a series of property transfers between Mears and Buckbee changed the boundary lines for the Mears and Buckbee lots to accommodate a building on the Mears lot. These transfers resulted in the southern property line of the Mears lot extending 300 feet and the southern boundary line of the Buckbee lot extending 80 feet. A 1954 quitclaim deed shows that Buckbee maintained a one-half equitable interest in the Trust property previously owned jointly by Mears and Buckbee, although Buckbee’s fee interest after the land transfer “does not have a frontage on Upper Whitefish Lake equal to one-half of the entire frontage thereon.” The resulting changed property line between the Buckbee and Mears lots angled in toward the boundary of the Buckbee lot rather than running parallel to it.

On December 24, 1955, in view of the imminent expiration of the 1930 Trust, the trustees deeded title to the trust property, including the lakeshore property, to the beneficiaries. The beneficiaries then established the 1955 Trust Agreement, which included the conveyance of all trust property, including the lakeshore, to the trustees of the new 1955 Trust. The 1955 Trust incorporated the language of the 1930 Trust and

also incorporated the language of the Mears and Buckbee quitclaim deeds describing the relationship of their lots and the lakeshore. The 1955 Trust Agreement notes that the interests in the Trust lakeshore land is owned collectively by the lot owners, “each of whose undivided interest and share in and to said property is and shall be at all times the same proportion of the whole as the proportion of the total southerly line of Lots 7 to 17 . . . then owned by said Lot Owners.” It goes on to specifically reference the Mears and Buckbee property, noting that their Trust interests “shall, as between them, be divided equally, even though the southerly shore line owned by Buckbee is less than one-half of the total southerly shore line of Lot 7 and the East 30 feet of Lot 8.” It then states that the proportionate interest and share in the collectively-owned Trust property is 190/2100 for Buckbee and 190/2100 for Mears.

Paragraph 5 of the 1955 Trust agreement describes how lot owners shall enjoy the use and benefit of the land between the southern boundary of each lot and the water’s edge. It states:

Each Lot Owner shall be entitled to the use and benefit of such portion of the land between the front (southerly) line of the lot or parcel of land which he, she or they own in said Lots 7 to 17, both inclusive, of said Auditor’s Subdivision of Section 4, and the water’s edge as would lie between two parallel lines extended to the water’s edge from the southeast and the southwest corners of said lot or parcel of land at the same degree of the angle as their easterly and westerly lines are extended from the southerly line of their lot or parcel of land.

Because the eastern boundary of the Buckbee lot angles in toward the western boundary from 190 feet across on the northern line to 80 feet across on the southern line,

when applying the formula for use and enjoyment of lakeshore, the Buckbee lot owner does not have the use and enjoyment of any lakeshore. This is because the lines on that lot are not actually parallel and intersect at a point before the water's edge. As a practical matter, however, the Buckbee lot owner has enjoyed the use and benefit of 80 feet of lakeshore directly south of the 80-foot-long southern boundary of the lot. The use and enjoyment of that 80 feet is not disputed here.

Another Agreement made in 1957 to add restrictive covenants to the 1955 Trust recognized that the beneficiaries "collectively owned in fee simple" all Trust property other than their individual "separate parcels of land." It also provided that "agreements, restrictions, reservations and servitudes" required a unanimous vote of all lot owners to be modified, terminated, extinguished, or released.

In 1961, Buckbee's widow conveyed the Buckbee lot and interest in the Trust to J. John and Rose Harris.

In 1976, the trustees agreed to extend the term of the 1955 Trust Agreement to 2005. The sole purpose of the 1976 agreement was to extend the terms of the Trust. It contained the same legal descriptions of the Buckbee/Harris property as contained in earlier deeds and agreements.

In 1980, appellant bought the Buckbee/Harris lot and Trust interests. Appellant's deed provided that the southern border of the lot measured 80 feet across (the easterly 30 feet of Lot 8 and 50 feet of Lot 7), and that appellant would hold "an undivided 190/2100ths interest in the real property held in trust for the owners of Lots 7 to 17."

On August 2, 1980, an amendment to paragraph 5 of the 1955 Trust, concerning the use and enjoyment of lakefront property, was drafted by appellant. The amendment states:

Each lot owner shall be entitled to the use and benefit of such portion of the land between the front (southerly) line of the lot or parcel of land which he, she or they own in said Lots 7 to 17, both inclusive, of said Auditor's Subdivision of Sec. 4, and the water's edge on the same Lakefront footage basis as said lot owners own in the trust property . . . .

Thus, the amendment granted appellant an entitlement to the use and benefit of 190 feet of the lakefront property, based on his 190/2100 interest in the trust property, rather than the 80 feet that was previously used.

In 1983, appellant also drafted a preamble to the 1980 amendment, which was recorded together with the 1980 amendment. The 1983 preamble states that if the Trust terminates for any reason, the lakeshore property would be "divided and awarded to the respective parties on the same lakefront footage basis as said lot owners own in the remaining trust property." Using an example, the preamble states that each lot owner would receive fee title, upon the termination of the Trust, to the lakeshore adjacent to his or her property in the amount of that party's interest in the Trust. Thus, the 1983 preamble gives appellant a fee interest in 190/2100 feet of lakeshore property generally to the south of his property if the Trust terminates.

In 1997, the Trust beneficiaries unanimously amended the Trust to eliminate the unanimous voting requirement from the 1957 Agreement and to allow, instead,

amendments to the 1955 Trust and 1957 Agreement by an 80% vote. It specifically revoked paragraph VI of the 1957 Agreement and substituted the following:

The agreements, restrictions, reservations, and servitudes contained in the Agreement and/or Trust Agreement, as amended, may be modified, terminated, extinguished and/or released at any time by a vote of at least eighty percent (80%), (rounded up or down to the nearest whole number) of the votes available to the Lot Owners then owning parcels of land in Lots 7-17, both inclusive, of said Auditor's Subdivision.

Appellant himself moved that the lot owners ratify the new voting rule. The new voting rule was adopted unanimously, as required by the 1955 and 1957 Agreements in place at the time.

On June 16, 2001, the lot owners amended the Trust. The 2001 Amendment references the 1980 and 1983 amendments, which gave appellant an entitlement to the use and benefit of 190 feet of the lakefront property, and states that “[i]n an effort to both eliminate the contradiction which exists as between the Amendments . . . and in order to eliminate any Amendment to the original language of paragraph 5 of the December 26, 1955 Agreement, the Lot Owners now desire to revoke both Amendments . . . .” The 2001 Amendment specifically revokes the 1980 Amendment and states:

Paragraph 5 of the original December 26, 1955 Trust Agreement shall be restored as follows:

5. Each Lot Owner shall be entitled to the use and benefit of such portion of the land between the front (southerly) line of the lot or parcel of land which he, she or they own in said Lots 7 to 17, both inclusive, of said Auditor's Subdivision of Section 4, and the water's edge as would lie between two parallel lines extended to the water's edge from the southeast and the southwest corners of said lot

or parcel of land at the same degree of the angle as their easterly and westerly lines are extended from the southerly line of their lot or parcel of land.

The 2001 Amendment was passed by a vote of 8 to 1, more than 80% of the lot owners, with only appellant voting “no.” On the same day, the lot owners voted to extend the term of the 1955 Trust to 2030. The provisions of the Trust were otherwise unmodified. The extension amendment was also passed by a vote of 8 to 1, with appellant voting “no.”

In September 2008, appellant filed suit seeking: (1) a determination of adverse claims to real estate, specifically a determination that appellant has a right to 190/2100 feet of shoreline property contained in the Trust Agreement and a fee interest in 190 feet of shoreline property lying south of appellant’s lot; (2) declaratory judgment defining appellant’s trust interests as a 190/2100 interest in trust with a 190-foot interest in lakeshore adjacent to their fee title interest, and declaring void the Trust amendment dated June 16, 2001 reinstating earlier language from the 1955 Trust Agreement; and (3) an order enjoining the Trust, its trustees, and beneficiaries from amending the Trust to change appellant’s beneficial interest in the Trust property.

The parties filed cross-motions for summary judgment. Appellant claimed that (1) he is entitled to the use and benefit of 190 feet of Trust-owned lakeshore property; (2) he is entitled to the 190 feet of lakeshore in fee simple if the Trust terminates, and (3) the Trust terminated with respect to him because he disagreed with the certain actions that were voted on and passed in 2001. On April 28, 2009, the district court granted

summary judgment for respondents and denied summary judgment to appellant on all claims. This appeal follows.

## DECISION

Appellant argues that the district court erred by granting summary judgment to respondents. “A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). On appeal from a grant of summary judgment, this court asks whether any genuine issues of material fact exist and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The evidence is viewed in the light most favorable to the party against whom judgment was granted. *Fabio*, 504 N.W.2d at 761. Whether a genuine issue of material fact exists and whether the district court erred in its application of the law is reviewed de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

“The primary function of the court in exercising jurisdiction over trusts is to preserve them and to secure their administration according to their terms.” *In re Campbell’s Trust*, 258 N.W.2d 856, 868 (Minn. 1977). When the language of the trust instrument is unambiguous, there is no need to resort to extrinsic evidence of intent. *In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985). When an agreement is unambiguous, the parties’ intent is determined from the plain

language of the agreement. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004).

The language of the Trust, as amended in 2001, is clear that the lakeshore property is owned by the Trust until at least 2030, and that the “parallel lines” formula is used for calculating the use and enjoyment of lakeshore for each lot owner.<sup>1</sup> Both of these provisions were passed by a vote of more than 80% of the lot owners as required by the 1997 Amendment.

Appellant argues, however, that the language of the 1997 Amendment allowing changes to the trust by an 80% vote is invalid. The terms of the 1955 Trust Agreement allowed amendments to be made to the Trust Agreement “at any time by the unanimous vote of all of the Lot Owners.” The 1997 Amendment was passed by a unanimous vote of the lot owners. And the law appears clear that beneficiaries can vote to revise the terms of a trust. *See, e.g.,* G. G. Bogert, et al., *The Law of Trusts and Trustees*, § 992, p. 151 (3d ed. 2006) (“If competent beneficiaries direct a trustee to vary from the trust terms, or agree to a proposal for revision . . . [they] should not be heard to complain of the administration of the trust insofar as the trustee acts according to the changed terms.”); *Ludlow’s Trustee v. Ludlow*, 60 S.W.2d 965, 966 (Ky. App. 1933) (“[A]n active trust [may] be terminated or modified by the consent of all parties interested.”). Appellant has not cited, and our independent research has not revealed, any Minnesota

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<sup>1</sup> The Trust documents clearly distinguish between each lot owner’s interest in the trust corpus and each lot owner’s use and benefit interest with respect to the lakeshore. Each party’s interest in the corpus is fixed in the trust document, while the use and benefit of the trust property is determined according to the “parallel lines” formula.

authority stating that the trustees or beneficiaries are prohibited from amending a trust agreement in this way.

Appellant alternatively argues that the 80% voting rule only applies to “the administration of trust lands, and not to the rights and interests of the [trust] beneficiaries.” In support of this theory, appellant claims that the 1997 Amendment only applied to the 1957 Agreement. Appellant notes that the language of the 1997 Amendment mirrors language in the 1957 Agreement and that the 1955 Trust Agreement also contains language stating that changes to the Trust require a unanimous vote. Appellant reasons that the 1997 Amendment therefore only changed the voting requirements for the agreements, covenants, servitudes, and restrictions contained within the 1957 Amendment relating to the administration of the Trust.

The 1997 Amendment replaces specific language from the 1957 Agreement, but also expands the scope of the voting provision to include votes to modify the 1955 Trust Agreement. The 1997 Amendment begins by stating that it is an agreement to amend the 1955 Trust Agreement. It goes on to state that an 80% vote is valid to modify or terminate the agreements, restrictions, reservations, and servitudes “contained in the Agreement, *and/or Trust Agreement*, as amended.” Consequently, the 1997 Amendment replaced the language of the 1957 Agreement and changed the voting procedures with respect to the restrictive covenants contained therein, and also applied those new voting procedures to agreements and provisions within the 1955 Trust Agreement itself.

The 1997 Amendment is broad in scope, applies the voting rules to both the 1957 Agreement and 1955 Trust Agreement, and, contrary to appellant’s claim, does not

expressly limit the voting rules to administrative matters. The clear language of a contract will not be altered based on speculation as to the unexpressed intent of the parties. *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). Appellant's argument that he had a different understanding does not change the plain language of the Amendment. The Trust Agreement was modified, as it has been many times since its inception, and the district court simply upheld the terms of the Trust as they are currently written. This court seeks to secure administration of a trust according to its terms. *In re Campbell's Trust*, 258 N.W.2d at 868. The 1997 Amendment was passed by a unanimous vote. As a result, the 2001 Amendment only needed an 80% vote to be effective under the terms of the Trust. The 2001 Amendment was passed by a vote of 8 to 1. Therefore, under the clear terms of the Trust, as modified, the amendment is effective. Because the 2001 Amendment is effective, summary judgment was properly granted in favor of respondents.

Finally, we take this opportunity to note that the district court did not, and this court does not, deny appellant a right to the use and benefit of the 80-foot strip of lakeshore that has been recognized since at least 1955. Respondent's counsel stated at oral argument before this court that appellant still has a right to 80 feet of lakeshore property, and the parties do not dispute that he and his predecessors in title have made use of 80 feet of lakeshore property for many years. "The rule of practical construction is based upon the principle that the parties to an instrument may adopt their own interpretation of obscure or doubtful provisions and as between themselves render clear and certain what their language has left in ambiguity." *In re Campbell's Trust*, 258

N.W.2d at 864 (quotation omitted). This rule may be applied to trusts. *See id.* Here, the parties appear to agree that, under the terms of the Trust, appellant is entitled to the use and benefit of 80 feet of lakeshore property based on the length of the southern boundary line of his lot.

**Affirmed.**