STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1646

In the Matter of: The Pamela Andreas Stisser Grantor Trust Under Second Amendment and Restatement of Trust Agreement dated June 6, 2001.

Filed May 31, 2011
Affirmed in part and reversed in part
Stoneburner, Judge
Concurring in part, dissenting in part, Schellhas, Judge

Hennepin County District Court
File No. 27TRCV0706

Charles E. Lundberg, Alan I. Silver, David A. Turner, Bassford Remele, Minneapolis, Minnesota (for appellant Vernon L.E. Stisser)

Michael R. Cunningham, Sally Stolen Grossman, Norman M. Abramson, Abigail S. Crouse, Gray, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, Minnesota (for respondent David L. Andreas)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant personal representative of decedent Pamela Andreas Stisser's estate challenges the district court's grant of summary judgment dismissing his petition for an order requiring respondent trustee of decedent's trust to pay (1) certain debts of decedent; (2) compensation for his services as personal representative; and (3) certain expenses of the administration of decedent's estate. We affirm in part and reverse in part.

FACTS

Appellant Vernon L.E. Stisser (Stisser) married Pamela Andreas Stisser (grantor) in 1983. Both had children from previous marriages. After Stisser and grantor were married, Stisser retired from lucrative employment in order to co-parent with grantor all of the children of the parties. The family enjoyed a high standard of living, funded by Stisser's accumulated savings and distributions from the Pamela Andreas Stisser Trust, which had originally been established for grantor by her parents when grantor was a minor.

Each spouse treated the children of the other as his or her own children. In 1987, the parties made a joint will in which each left the proceeds of his or her estate to the other and provided that, on the death of the surviving spouse, his or her estate would be divided equally among the seven children. Grantor also amended the trust to provide equally for the seven children on grantor's death. Grantor died in November 2002.

At issue in this litigation is the Pamela Andreas Stisser Grantor Trust Under the Second Amendment and Restatement of Trust agreement dated June 6, 2001. The controversy primarily involves the interpretation of Articles 3.1.1, 11.l and 12.4.5.[1] Articles 3.1 and 3.1.1 of the trust provide, in relevant part, that on grantor's death, at the request of the legal representative of grantor's estate, the trustee shall "pay the following expenses, debts and taxes . . . expenses of administration of my estate . . . and my legal debts." Article 11.1 provides for compensation for grantor's fiduciaries, defined in

[1] Grantor's parents created the trust in 1966. Articles 3 and 11 have remained unchanged since the trust was created.

Article 13.6 to include any personal representative of grantor's estate. Article 12.4.5 states that grantor has "intentionally omitted from this instrument any provisions for my spouse, VERNON STISSER." The trust provides that the balance of the trust after payment of expenses and specific distributions is to fund equal separate trusts for each of the children or descendants of a deceased child.

At the time of grantor's death, Stisser and grantor were jointly liable for debts secured by (1) their Florida condominium, owned as joint tenants; (2) their home in Illinois, owned as joint tenants; and (3) commercial property in Illinois owned solely by Stisser. The only probate asset was a Charles Schwab account, in grantor's name alone, subject to a margin loan on which grantor was the sole obligor. The Charles Schwab account passed to Stisser under grantor's will.

Relevant to this appeal, Stisser requested payment of all of these debts from the trust under Article 3.1.1. Respondent David L. Andreas, sole trustee of grantor's trust, refused to pay these debts. Litigation has been pursued concerning disputes between the trust and the estate in Florida, Illinois, and Minnesota. The trustee also refused to pay Stisser for serving as personal representative for the estate and some attorney fees that Stisser claims were incurred in the administration of the estate.

This litigation started with cross-petitions by Stisser and the trustee for construction of the trust and other relief under Minn. Stat. § 501B.16 (2010). The parties filed cross-motions for partial summary judgment. The district court denied Stisser's motion and partially granted the trustee's motion, holding, in relevant part, that the trust is not obligated to pay the grantor's secured debts.

Issues not resolved in the summary-judgment motions were tried to the district court. After trial, the district court held, in relevant part, that the trustee acted reasonably in declining to compensate Stisser for his services as personal representative and for certain legal fees incurred in administering grantor's estate because Stisser failed to provide evidence from which reasonable amounts for the claims could be determined. This appeal followed.

D E C I S I O N

I. Summary judgment on trustee's obligation to pay grantor's secured debts.

A. Standard of review

A district court must grant a motion for summary judgment if there is no genuine issue as to any material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. "We review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). "Where the trial court has interpreted an unambiguous written document, the standard of review is de novo." *In re Trust Created by Hill*, 499 N.W.2d 475, 482 (Minn. App. 1993), *review denied* (Minn. July 15, 1993). Whether a written instrument is ambiguous is a question of law, reviewed de novo. *Mollico v. Mollico*, 628 N.W.2d 637, 641 (Minn. App. 2001).

B. Construction of trust

"The [grantor's] intent, as expressed in the language of the trust, dominates construction." *In re Trust of Wiedemann*, 358 N.W.2d 139, 141 (Minn. App. 1984). The district court may not resort to extrinsic evidence of the grantor's intent if the language of the trust instrument is unambiguous. *In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44–45 (Minn. 1985). "The reviewing court may not speculate as to what the [grantor] would have done if [she] knew of events that occurred after [her] death." *In re Trust of Wiedemann*, 358 N.W.2d at 141.

The trust in this case unambiguously states, in relevant part, that on request of the legal representative of grantor's estate, the trustee shall pay "expenses of administration of my estate, including my non-probate assets, and my legal debts." The trustee does not dispute that the secured debts at issue in this case are legal debts of the grantor but argues that, as a matter of law, the phrase "pay . . . my legal debts" does not apply to secured debts. The district court agreed, based on a review of the history of the common-law doctrine of exoneration applicable to wills, with "guidance" from the nonexoneration statute, which provides that "[a] specific devise passes subject to any mortgage or security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts." Minn. Stat. § 524.2–607 (2008).

The trustee concedes that Minn. Stat. § 524.2–607 does not apply to trusts. *See* Minn. Stat. § 524.2–601 (2010) ("In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a *will*." (emphasis added)). The trustee also admits that there is no authority demonstrating that the common-law

doctrine of exoneration has ever been applied to a trust and that the statute governing trusts does not contain a nonexoneration provision. The trustee relies on the report of expert witness Amy Hess, which states:

> Although the Florida and Minnesota nonexoneration statutes are adapted from the Uniform Probate Code and apply only to wills, the reason for enactment applies equally to debt-payment clauses in trust agreements that function as will substitutes. Paragraph 3.1.1 should not apply to exonerate a secured debt on a probate asset in a state that has enacted such a statute.

Even if we agreed that the trust in this case is a will substitute,[2] this court cannot read language into an unambiguous written document and cannot read a provision into the statutes governing trusts. The argument that a trust should be construed consistent with the nonexoneration statute is more properly directed to the legislature than to this court. We are bound by the canons of construction to honor the plain meaning of words used in a written instrument. *See In re Fiske's Trust*, 242 Minn. 452, 460, 65 N.W.2d 906, 910 (1954) (stating that in arriving at the grantor's intent, the court is not at liberty to insert or add words or to disregard the plain language of terms employed in the trust instrument).

Because the trust unambiguously requires the trustee to pay grantor's legal debts at the request of the legal representative of her estate, we conclude that the district court

[2] All of the probate cases cited by the trustee involve whether probate assets should be used to pay debts on other probate assets. None involve a directive to pay legal debts from a non-probate source. In this case, the trust was a will substitute as to the children, but not as to Stisser, and the direction to pay legal debts at the request of the personal representative of the estate does not pertain to debts on assets passing to the beneficiaries of the trust. This case is factually distinguishable from the probate cases relied on by the trustee.

erred insofar as it held that, as a matter of law, "pay . . . my legal debts" does not include secured debts. We now turn to an examination of the application of the trust language to the subject secured debts.

1. The Charles Schwab account

The Charles Schwab account is the only asset that passed to Stisser through grantor's will. The account was solely owned by grantor, and only grantor was liable for the associated debt. It is not disputed that the encumbrance on this account is a legal debt of the grantor. Stisser requested payment of the encumbrance on this account in his capacity as personal representative of grantor's estate.

The trustee denied payment of the encumbrance. In support of this decision, the trustee relies on the provision of Article 12.4.5, stating that grantor has "intentionally omitted from this instrument any provisions for my spouse, VERNON STISSER." The trustee argues that, notwithstanding the directive to pay legal debts at the request of the personal representative of the estate, grantor intended to exclude any such payment that would benefit Stisser. But the provision is for the benefit of the estate, and Stisser only benefits by reason of grantor's will, not by this provision of the trust.

We conclude that the district court erred by permitting the trustee to disregard the plain direction contained in Article 3 that her legal debts be paid from the trust at the request of the legal representative of her estate. We reverse the holding that the trust is not obligated to pay the debt secured by the Charles Schwab account and hold that the trust is obligated to pay this debt under the unambiguous language of the trust.

2. Debt secured by non-probate assets

Stisser became the sole owner of the Florida condominium and the Illinois homestead because he was grantor's joint tenant of these properties. Stisser has always been the sole owner of the Illinois commercial property. Each of these properties was, at the time of grantor's death, mortgaged, and both grantor and Stisser were obligated on each mortgage. These properties were not assets of grantor's estate. To the extent that Stisser requested payment of the debt, or a portion of the debt, secured by these properties, he was not acting in his capacity as the legal representative of grantor's estate and his request did not trigger the mandatory directive that these debts be paid by the trustee.

Although the trust provides the trustee with discretion to pay these debts, Stisser has pursued the claim for payment of these debts under the mandatory directive to pay debts on request of the legal representative of the estate and has not argued that the trustee abused his discretion by declining to pay these debts. Any such argument is waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because the plain language of the trust does not mandate the payment of these debts, we affirm the district court's holding that the trust is not obligated to pay these debts.

C. Issues regarding the Heartland Bank note are waived

Stisser also sought payment from the trust for a debt to the Heartland Bank, but has not briefed this issue on appeal. In footnote 8 of his brief on appeal, Stisser asserts that "for the same reasons" (referring to his argument that the trustee should have been ordered to pay the debts on non-probate real estate), the district court erred by holding

that the trustee was not required to pay the Heartland Bank note. Beyond this assertion, Stisser makes no argument or analysis of this issue and it is not asserted in his statement of the issues. An assignment of error based on "mere assertion" and not supported by argument or authority is waived unless the prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). Because error is not obvious on this issue, the issue is waived.

II. Judgment denying compensation for personal representative and legal expenses allegedly incurred for administration of grantor's estate

A. Standard of review

In actions tried to the district court without a jury, the district court's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. In applying Minn. R. Civ. P. 52.01, "we view the record in the light most favorable to the judgment of the district court." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). "The decision of a district court should not be reversed merely because the appellate court views the evidence differently." *Id.* "Rather, the findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). The allowance of an administrator's compensation and that of his attorneys rests largely in the sound

discretion of the district court to which such claims are presented. *Simmons's Estate*, 214 Minn. 388, 397, 8 N.W.2d 222, 226 (1943).

B. Denial of compensation for services of personal representative

The trust plainly provides, in Article 11.6.8, that grantor's personal representative "shall be entitled to reimbursement for expenses and to receive compensation for [his] services." Such compensation from the trust is governed by a formula contained in the same trust provision:

> Such compensation shall be based principally upon the time and labor required in order to fulfill [a fiduciary's] responsibilities hereunder, giving due regard to the complexity and novelty of any special problems or issues encountered in the administration of my estate . . . as well as the nature and extent of [his] responsibilities assumed and the results obtained in performing [his] duties.[3]

Stisser asserts that the district court erred by reviewing the trustee's denial of any compensation under an abuse-of-discretion standard. He argues that the only discretion permitted by the trust language goes to the *amount* of compensation, and the trustee lacks discretion to refuse to make an award altogether. But the district court explained that it declined to order the trustee to provide any compensation not in deference to the trustee's exercise of discretion but rather because, "due to the dearth of information from the [p]ersonal [r]epresentative, any award is unsupportable in the record."[4] We conclude that the district court did not apply the wrong standard of review.

[3] This language is very similar to the factors for determining what is reasonable compensation for a personal representative set out in Minn. Stat. § 524.3–719 (2010).

[4] The district court found that "[e]ven if [it] were inclined to instruct the [t]rustee to give compensation to the [personal representative] from the [t]rust, with no records over the

Stisser argues that a personal representative is not required to keep records in order to be compensated for his services, citing *In re Bush's Estate*, 304 Minn. 105, 126, 230 N.W.2d 33, 45 (Minn. 1975). *Bush's Estate* affirmed an award of compensation to executors of an estate notwithstanding that they "did not place detailed time records in evidence." *Id.* But we find little guidance in a decision affirming the district court's exercise of discretion. "When an administrator comes into court with an account as to his charges, he should be able to present a bill of particulars specifying times and dates and character of services rendered." *Simmons's Estate*, 214 Minn. at 388, 8 N.W.2d at 226. And, in this case, the district court found that the trust formula for determining compensation "impliedly require some modicum of record keeping for compensation purposes." We agree. We recognize that the denial of all compensation is harsh, but, under the circumstances of this case, we conclude that the record supports the district court's findings with regard to the issue of compensation to the personal representative for his services, and the district court did not abuse its discretion by declining to order any compensation from the trust.

C. Denial of compensation for attorney fees claimed as expenses of administration of the estate

"[T]he allowance of compensation for attorneys' fees in probate proceedings rests largely in the discretion of the probate court; and . . . the reasonable value of such

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period from February 2004 to the present and no testimony from the [p]ersonal [r]epresentative assigning his time and labor to the various and numerous issues embroiling the Estate . . . there is no way for the [c]ourt to ascertain what that amount should be. The [c]ourt cannot simply come up with some arbitrary number and call it 'reasonable.'"

services is a question of fact."[5] *In re Estate of Baumgartner*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966). The district court ordered the trust to pay for the services for several attorneys who provided legal services in the administration of the estate but denied any compensation for the services of Florida attorney Laird Lile. Stisser challenges that denial, arguing that Lile appropriately documented legal services in the amount of $266,126.09 in the administration of grantor's estate.[6]

Article 3.1.1 of the trust provides for payment of the "expenses of administration" and the district court found that Lile's fees were administrative expenses. But the district court found that it was reasonable for the trustee to deny any compensation from the trust for Lile's fees because Stisser failed to supply the trustee with "any documentation on which to make a reasoned decision" concerning the claimed fees. And the district court found that even if it were to conclude that the trustee's refusal to pay was unreasonable "the [district court] still would not award any administrative expenses based on the Lile billings, as there is insufficient information [in the record] to make a decision. Specifically, the exhibits completely lack the amount of time spent on each item of work, the hourly rate sought for the work performed, and a detailed itemization of all amounts sought for disbursements or expenses."

Stisser argues that the detail sought by the district court can be ascertained from the numerous pages of redacted invoices from Lile for services from June 2004 through

[5] The estate was administered in Florida probate court, but Stisser does not challenge the appropriateness of having this determination made by the Minnesota court that has jurisdiction over the trust.

[6] Stisser does not appeal denial of his request for compensation of the estate's litigation fees under Article 11.6.8, quoted in relevant part in section II.B. of this opinion.

May 2009.[7] For example, Stisser asserts that the firm's hourly rate could be determined by dividing the total amount owed in a given billing period by the number of hours of work performed by Lile and his assistant. And Stisser asserts that the billing records contain detailed itemization of disbursements and allow for calculation of the time spent and the rate charged.

But the record supports the trustee's assertion that neither the redacted records nor testimony explain what the entries pertain to, and Stisser's method for determining "the firm's hourly rate" would not indicate number of hours attributable to each billing entry or the hourly rate charged for each entry. As with Stisser's claims for compensation for services as personal representative of the estate, the formula set out in the trust for determination of the reasonableness of fees claimed requires sufficient evidence to which the formula could be applied. Although we find the denial of any compensation from the trust for Lile's services harsh and might have reached a different result on the same evidence, we cannot conclude that the district court clearly abused its discretion by denying this aspect of Stisser's claim for reimbursement of administrative expenses.

Affirmed in part and reversed in part.

[7] Stisser notes that he offered to provide unredacted records for the district court's review, but the district court rejected this offer because the unredacted records were not provided to the trustee.

SCHELLHAS, Judge (concurring in part, dissenting in part)

I concur with the majority's opinion (1) affirming the district court's holding that the trust is not obligated to pay the grantor's debts that are secured by non-probate assets, (2) concluding that issues regarding the Heartland Bank note are waived, and (3) affirming the district court's denial of compensation for Stisser's services as personal representative and attorney fees as expenses of the administration of grantor's estate. But I respectfully dissent from the majority's reversal of the district court's holding that the trust is not obligated to pay the debt secured by the Charles Schwab account.

The language at issue in this case is in the Pamela Andreas Stisser Grantor Trust Under the Second Amendment and Restatement of Trust Agreement, dated June 6, 2001, Article 3, Expenses and Taxes upon My Death:

> 3. Payments. After my death, the Trustees shall make distributions from the remaining trust estate, including all property that becomes distributable to the Trustees at or after my death, as follows:
>
> 3.1 Expenses and Taxes. The Trustees shall, if requested by the legal representative of my estate, or in their own discretion may, pay the following expenses, debts and taxes, directly or through the legal representative of my estate by way of advancement to or reimbursement of said legal representative:
>
> 3.1.1 Expenses. The expenses of my last illness, funeral, burial or other disposition, unpaid income and property taxes properly chargeable against my estate, expenses of administration of my estate, including my non-probate assets, and *my legal debts*.

(Emphasis added.) This language was contained in grantor's original trust created in 1966, and it remained in her trust without amendment, despite two marriages and two amendments made to other provisions in the trust. This language is typically found in

most wills and trusts used in this state. *See* 1 Gary D. McDowell et al., *Drafting Wills and Trust Agreements* at 2-2 (wills), 6-7 (trusts) (Minn. CLE 6th ed. 2009). Minnesota courts have resolved the meaning and effect of this language with regard to wills: "The debts referred to in the typical debt clause are unsecured obligations." 6A Steven J. Kirsch, *Minnesota Practice* § 59.35 (3rd ed. Supp. 2010). But, with regard to trusts, the meaning and effect of the typical debt clause presents a question of first impression. The majority concludes that the district court erred insofar as it held that, as a matter of law, "pay my legal debts" does not include secured debts. I disagree.

In addressing this question of first impression, the district court considered the common-law doctrine of exoneration and Minnesota's current nonexoneration statute, Minn. Stat. § 524.2-607 (2010), as guidance. In my opinion, the district court's utilization of common law and statutory law applicable to wills as guidance to construe the meaning of "pay my legal debts" was proper. The district court concluded that the language does not obligate the trust to pay the margin loan on grantor's Charles Schwab account, which passed to Stisser under grantor's will. I agree.

Grantor and Stisser executed their joint will in 1987. Although the trust language at issue here is standard language typically included in wills prepared by attorneys, grantor was not an attorney nor is Stisser. Grantor and Stisser wrote their joint will by hand and did not include anything about the payment of expenses, taxes, or debts in the event of either party's death. If grantor and Stisser had included the language, "pay my legal debts," in their joint will, under the nonexoneration statute and probate caselaw, the grantor's Charles Schwab account would pass to Stisser subject to the margin loan

secured by the account. *See* Minn. Stat. § 524.2-607. The grantor's other probate assets passing under the residuary clause would not be used to pay the margin account. *See id.* The account would pass to Stisser without right of exoneration from the margin loan. *See id.*

In construing the language, "pay my legal debts," the district court noted that under common law, the language, "'pay my legal debts,' constituted a directive authorizing estate assets (rather than assets of the personal representative himself) to be used by the personal representative to pay estate debts directly." The court further explained:

> [T]he omnipresent directive to pay debts had more to do with empowering the personal representative than making a statement about exoneration of devises from any encumbrances on the devise. In modern times, the personal representative now has authority, without court order, to "satisfy and settle claims and distribute the estate as provided in this chapter . . . " Minn. Stat. § 524.3-715(27) [2010]. Similarly, the personal representative is directed to pay claims in the proper priority. Minn. Stat. § 524.3-807(a) [2010]. Thus, the pay "my legal debts" constitutes a "general directive," for purposes of the nonexoneration statute that does not exempt the statute from application in this case.
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> . . . .
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> In sum, the presumption of exoneration only applied to real property and has now been abrogated (Minn. Stat. § 524.2-607); the presumption of exoneration never applied to personal property and does not apply to the Schwab account in this case; the language of *In re* [*Estate of*] *Peterson*[, 365 N.W.2d 300 (Minn. App. 1985)] does not draw a distinction between real and personal property passing by a residuary clause in a will; a testator's intention for exoneration cannot be inferred from the general pay "my legal debts" language in the trust; and notwithstanding canons of statutory

> construction in Minn. Stat. § 645.08 [2010], [grantor's] intention was *not* to exonerate the margin loan on the Schwab account (or any other secured debt).

Stisser argues that the nonexoneration statute, as a probate statute, does not govern the administration of trusts. *See* Minn. Stat. § 524.2-601 (2010) (stating with respect to Minnesota's probate code, including its nonexoneration statute: "In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a *will*." (emphasis added)). He argues that the nonexoneration statute therefore cannot be used as guidance to construe the meaning of the "pay my legal debts" language in the trust. The district court acknowledged that the nonexoneration statute, by its terms, does not apply to the administration of the trust but rejected Stisser's argument that the statute cannot be used to guide the court's construction of the language. So too should this court reject Stisser's argument. The district court properly used the nonexoneration statute and common law pertaining to the doctrine of exoneration to guide its construction of the trust language, "pay my legal debts."

The Charles Schwab account is personal property, which passed to Stisser under the residuary clause of the joint will, and the common-law doctrine of exoneration has never applied to personal property. "[T]he common law doctrine of exoneration applied *exclusively* to testamentary gifts of *land*." *Peterson*, 365 N.W.2d at 303 (emphasis added). Under common law, therefore, the doctrine of exoneration did not, and does not, apply to the Schwab account. Utilizing common law as a guide, the district court properly construed the meaning of the trust language, "pay my legal debts," as not

obligating the trust to pay the margin loan secured by the Charles Schwab account through the use of trust assets.

I would affirm the district court's holding that the trust is not obligated to pay the margin loan secured by the grantor's Charles Schwab account.