STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1150

In Re: The H & A Neumann Revocable Trust, dated September 21, 1995

Filed April 14, 2014
Affirmed
Rodenberg, Judge

Winona County District Court
File No. 85-CV-13-313

James P. Ryan, Jr., Ryan & Grinde, Ltd., Rochester, Minnesota (for appellant Kimberly Pronschinske)

Michael D. Bernatz, Winona, Minnesota (for respondent Eastwood Bank)

James R. Forsythe, Marcy A. Faircloth, Streater & Murphy, P.A., Winona, Minnesota (for respondent Jack Neumann)

Considered and decided by Chief Judge Cleary, Presiding; Johnson, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

In this trust proceeding, appellant-beneficiary Kimberly Pronschinske challenges an order issued by the district court under Minn. Stat. §§ 501B.16(23), .21 (2012), instructing respondent-trustee Eastwood Bank to distribute the trust's real property equally between Kimberly and the other two beneficiaries of the trust. We affirm.

FACTS

Henry and Alice Neumann created the H & A Neumann Revocable Trust on September 21, 1995. The Neumanns named themselves as trustees and lifetime beneficiaries and named their three children, respondent Jack Neumann, Roxann Anderson, and appellant as residual beneficiaries. The trust corpus consisted of both real and personal property, including the farmland that is the subject of this dispute. This dispute centers around two amendments to the original trust agreement: one amending subparagraphs 3.4.1 and 3.4.2, and a later amendment of paragraph 3.4, which makes no reference to the former subparagraphs.

The relevant portion of the original trust agreement stated:

> 3.4 DISTRIBUTION OF RESIDUE OF TRUST ESTATE. At such time the trustees are authorized to distribute the residue of the trust estate, the trustees shall as soon as administratively and reasonably possible, distribute, deliver, and pay over the remaining trust estate to the children of the grantors in equal one-third (1/3rd) shares as determined by market value at date of distribution, outright and free of trust, except as follows:
>
> 3.4.1 Farming Assets to Kimberly. If, at the death of the survivor grantor, (1) there are farming assets, including farm real estate . . . and farm personal property . . . used and associated with the farming business . . . ; and (2) their daughter, Kimberly, is actively managing and working in said farming business, the trustees shall convey, assign, distribute and deliver such farming assets to their daughter, Kimberly, outright and free of trust. . . .
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> 3.4.2 Excess Farming Assets as Special Distribution. To the extent that the value of these farming assets might exceed the value of Kimberly's 1/3rd share, such excess shall be set up as a mortgage on the real estate to be paid in monthly installments of $500 each, including the minimum interest rate permitted by the IRS for similar transactions, to

her brother, Jack, and her sister, Roxann[], for a term of 120 months, unless sooner paid off. . . .

3.4.3 Distribution to Descendants of Deceased Child. If any child is not then surviving, the share of the deceased child shall go to his descendants then surviving, by the right of representation and not per capita. . . .

In 2000, the Neumanns amended the trust agreement to state:

A1-2. Paragraphs 3.4.1 and 3.4.2 – Change in Distribution of Residue of Trust Estate. Grantors amend Paragraphs 3.4.1 and 3.4.2 to read as follows:

3.4.1 Farming Assets to Kimberly. If, at the death of the survivor grantor, (1) there are farming assets, including farm real estate . . . and farm personal property . . . used and associated with the farming business . . . ; and (2) their daughter, Kimberly, is actively managing and working in said farming business, the trustees shall convey, assign, distribute and deliver such farming assets to their daughter, Kimberly, outright and free of trust. . . . If the value of the farming assets as determined is less than a 1/3rd share, Kimberly shall be entitled to share in the other assets to receive her equal 1/3rd share. If the value of the farming assets is more than a 1/3rd share, she will receive the farm assets, with all remaining assets to be divided equally among Jack and Roxann[], or their descendants.

3.4.2 Lifetime Advances as Part of Distribution. The assets shall include lifetime advances made to Jack in the amount of $58,000 and shall be included in his distributive share as a part of his distribution. If Jack's lifetime advances are more than his 1/3rd share, he is to receive that amount with the remaining assets to be divided equally between Kimberly and Roxann[]. However, the share for Kimberly shall be governed by paragraph 3.4.1 with respect to receipt of any farming assets in excess of her 1/3rd share. If the value of the farming assets to Kimberly and the lifetime advances to Jack exceed their 1/3rd share, Roxann[] shall receive the remaining trust assets after the adjustments for Kimberly and Jack have been made.

In 2006, the Neumanns again amended the trust agreement:

> A1-4. Paragraph 3.4 – Change in Distribution of Residue of Trust Estate. Grantors amend Paragraph 3.4 to read as follows:
>
> 3.4 DISTRIBUTION OF RESIDUE OF TRUST ESTATE. Except as otherwise provided in this agreement, Trustees shall then distribute, deliver, and pay over the remaining trust estate to Grantor's children in equal shares outright and free of trust. If any child might owe the Trust money at such time, as listed in Exhibit "D" hereto, such amount shall be added to the residue and charged as a deemed distribution to such child debtor; or, if the Trust might owe a child money at such time, as listed in Exhibit "E" hereto, such amount shall be added to the share distributed to the child. If any child is not surviving but with descendants surviving, the distributive share of such child shall be distributed to such descendants by the right of representation. If there be no descendants surviving, such share shall drop out and augment the other shares within this paragraph for the other beneficiaries hereunder. If any descendant be under the age of twenty-one (21) and within the discretion of Trustee then serving, descendant's share may be held and administered pursuant to paragraph 3.5 hereof, or may be distributed for the benefit of the descendant under the Minnesota Uniform Custodial Trust Act or under the Minnesota Uniform Transfers to Minors Act.

Henry Neumann died in October 2008. Alice Neumann amended the trust agreement again in 2010, resigning as trustee and naming respondent Eastwood Bank as trustee. Following Alice Neumann's death in May 2012, Eastwood Bank "attempt[ed] to facilitate an agreement between the beneficiaries" regarding distribution of the trust assets. Its efforts were unsuccessful. The beneficiaries objected to Eastwood Bank's plan to deed the farm property to the three of them, so Eastwood Bank had the property appraised. Eastwood Bank then received two bids from Kimberly and one bid from Jack to purchase the trust's farmland. None of those offers was acceptable to everyone.

As a result of its inability to reach an agreement with the beneficiaries, Eastwood Bank requested a scheduling conference with the district court in February 2013.[1] Eastwood Bank explained in its letter requesting the scheduling conference that it intended to make a recommendation to the district court concerning disposition of the trust's real estate, and seek a court order approving a sale of it.

A scheduling conference was held on March 5, 2013, attended by all parties to this appeal. Eastwood Bank explained that "the goal was to bring the parties together and give them a chance to talk about the ideas for a plan for receiving bids and then having the property sold" pursuant to a court order. Eastwood Bank and Jack presented different plans to the district court regarding how the property should be sold, but agreed that the trust agreement as amended unambiguously called for distribution of the property to the three children "in equal shares." Kimberly disagreed that the trust as amended required or directed division of the farm property. She sought to conduct discovery and a hearing for the presentation of evidence regarding the Neumanns' intent. Kimberly also expressed her intention to "prepare a petition asking the court to construe and find the intent of the . . . trustors so that we can move on with this." At the scheduling conference, the district court stated:

> There is nothing here before me with regard to what the intent of the trust was. . . . [If Kimberly] intends to challenge the face of the trust here on what the intent was, [she] will have to file . . . the appropriate petition in order to get this before the court.

[1] No petition for instruction had yet been filed under Minn. Stat. § 501B.16(23). It appears that Eastwood Bank requested a scheduling conference in contemplation that petitions for instruction would be filed in the future, which they were.

The district court initially struck from the calendar an additional hearing that had been set for April 4. But Jack asked that the April 4 hearing date be left on the calendar to address an issue relating to rental of the farmland for 2013. Jack also explained that he intended to file a petition for instruction, and Kimberly had indicated her own intention to file a petition. The district court then stated: "Well we can keep that blocked off the morning of April 4 since I believe everybody else probably has it blocked off on their calendar. We'll just keep it blocked off for any issues that may come up through any petitions that may be filed."

On March 14, 2013, Kimberly served a petition alleging that the Neumanns intended for her to receive the farm property and that subparagraphs 3.4.1 and 3.4.2 of the 2000 amendment were never revoked or amended.[2] Kimberly requested that the farm property be conveyed to her pursuant to subparagraphs 3.4.1 and 3.4.2. In the alternative, she requested that the trustee be ordered to accept her earlier offer to purchase the property.[3]

On March 18, Jack filed a petition for instruction pursuant to section 501B.16(23) asking the district court to instruct Eastwood Bank "to sell the trust's farm real estate by offering the property for sale to the public at large." Jack provided notice to the other parties that a hearing on his petition would take place at the previously scheduled April 4 hearing.

[2] Unlike Jack and Eastwood Bank, Kimberly did not label her petition as a petition for instruction pursuant to section 501B.16(23).

[3] For reasons not relevant to this appeal, the petition was not filed until April 4.

On March 22, Eastwood Bank served its own petition for instruction pursuant to section 501B.16(23) requesting that the district court instruct it "to distribute [the trust] real estate in equal shares to [the] children pursuant to the terms of [the amended trust agreement]." Eastwood Bank also provided notice that its petition would be heard on April 4. On March 27, Kimberly provided notice that her petition would be heard on April 4.

At the April 4 hearing, the district court explained that the hearing was intended to address the parties' competing petitions. The district court "anticipated that today's . . . hearing would entail a final contested hearing." But the parties initially disagreed. Eastwood Bank stated that the parties needed to prepare for any contested hearing. Kimberly's attorney argued that there was a need for "considerable testimony" and that she was unprepared to call witnesses. And Jack's attorney stated that "today is not the time for the contested hearing." But Jack's attorney argued that the district court should first determine whether, as he contended, the trust agreement was unambiguous, in which case there would be no need for an evidentiary hearing. Eastwood Bank agreed that there was no ambiguity. Kimberly's attorney disagreed, arguing that there was ambiguity requiring an evidentiary hearing. At the close of the hearing, the district court explained: "I am going to take an opportunity to review that trust and see whether there is that ambiguity. And I will issue an order one way or another. And one of the ways may be scheduling an evidentiary hearing or may not, depending on my review of the trust."

On April 25, 2013, the district court issued its order, concluding that, "it is clear from the language of the 2006 amendment and the context of the H & A Neumann Trust

as a whole that it was the Trustors' intent to replace the original paragraph 3.4 and sub-parts 3.4.1 and 3.4.2 and 3.4.3 by the new paragraph 3.4." Following the 2006 amendment, the trust agreement requires "the trustee to distribute the trust assets in equal shares to the three children." Therefore, the district court granted Eastwood Bank's petition to "distribute the farm real estate in equal shares to the three children pursuant to the terms of the H & A Neumann Trust, as amended." The district court denied the other petitions.

While the district court had under advisement the issue of whether the trusts were ambiguous, Kimberly's attorney scheduled a deposition of the trustee to investigate the Neumanns' intent. Jack moved the district court for an order precluding discovery pending the issuance of the order, arguing that discovery would be irrelevant if the district court found the trust agreement to be unambiguous. On May 9, the district court granted Jack's motion for a protective order because "the proposed discovery is oppressive, unduly burdensome and unjustifiably expensive given the fact that the purported purpose of the discovery is to develop evidence that is irrelevant and made moot by this court's April 25, 2013 ruling." The district court reiterated that the 2006 amendment "was intended to replace all of the former section 3.4." And the district court elaborated on its reasoning:

> Since the wording of the amendment was clear, delving into parol and other extraneous evidence purporting to reveal a contrary intent by the settlors is irrelevant. Going beyond the wording of the instrument to discern the intent of the settlors is pertinent only where the wording of the instrument is ambiguous. That is not the case here.

As a result, the district court ruled that the "April 25, 2013 ruling end[ed] this case at the trial level," and Kimberly was free to appeal, but "not to proceed with discovery in an effort to develop evidence that the 2006 amendment did not mean what it said." This appeal followed.

D E C I S I O N

I.

We apply "a de novo standard of review to a district court's interpretation of a trust agreement." *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *review denied* (Minn. June 26, 2013). "A grantor may dispose of his property as he sees fit . . . ." *Id.* (quotation omitted). Therefore, "our purpose in construing a trust agreement is to ascertain and give effect to the grantor's intent." *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012). In seeking to ascertain the grantor's intent, we must construe the trust agreement "as a whole." *Id.* "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.*

The 2006 amendment to the trust agreement states that the "grantors amend Paragraph 3.4 to read as follows[.]" Kimberly argues that this amendment is ambiguous, as the Neumanns did not state that they "revoked and replaced" paragraph 3.4 and only "amended" it. Thus, she argues, they did not unambiguously intend to supplant the previous version of paragraph 3.4. Paragraph 3.4 in the 2006 amendment should therefore be read together with subparagraphs 3.4.1 and 3.4.2 as they existed following the 2000 amendment. But Kimberly cites no caselaw that requires the settlors to use

"revoked and replaced" in order to unambiguously supplant prior language in a trust agreement.

"[W]e generally construe words and phrases according to their common and approved usage." *Id.* "Amend" is defined as "to formally alter . . . by striking out, inserting, or substituting words." *Black's Law Dictionary* 94 (9th ed. 2009). Using this definition, Kimberly's argument is that the 2006 amendment merely *inserts* language into the trust agreement but does not replace both the old paragraph 3.4 and the subparagraphs that follow. But the resulting reading of the trust agreement would be nonsensical. Under Kimberly's proposed reading, the new paragraph 3.4 would discuss how to distribute trust property to descendants of a predeceased child and how to distribute assets to someone under age 21, as would the old subparagraph 3.4.3. Using the ordinary meaning of "amend," the Neumanns *struck out* the earlier version of paragraph 3.4 and its subparagraphs and *substituted* the 2006 version of paragraph 3.4. *See id.* This reading of "amend" avoids unnecessary duplication in the language of the agreement and renders the 2006 amendment logical and meaningful.

Further, the 2006 amendment plainly intends to supplant the earlier versions of paragraph 3.4, including the subparagraphs that follow. The original version of paragraph 3.4 provides the general rule of equal distribution with a colon, followed by exceptions (subparagraphs 3.4.1, 3.4.2, and 3.4.3) to the general distribution. The 2000 amendment follows this same construction, and specifically states that it amends the exceptions in subparagraphs 3.4.1 and 3.4.2. In contrast, the 2006 amendment states that it amends paragraph 3.4 and then provides the amended paragraph 3.4 *without* any colon

for exceptions. The 2006 paragraph unambiguously distributes the trust property in equal shares to the three children without incorporating the exceptions found in the earlier versions of the trust agreement.

Kimberly also suggests that, under the district court's reading of "amend," paragraph 3.4 contains an inexplicable phrase, "except as otherwise provided in this agreement." She suggests that this phrase cannot be read without reference to the prior subparagraphs distributing the farming assets to her. This assertion is incorrect. "Except as otherwise provided in this agreement" still has meaning under the 2006 amendment, because the Neumanns identify how other specific property (including a truck and a horse-drawn cutter) must be distributed. We must construe the trust agreement in its entirety. *Stisser*, 818 N.W.2d at 502. Therefore, the 2006 amendment requires the trustee to distribute trust property in equal shares to the three children, except for the few items that must be distributed to a specified child. The 2006 version of paragraph 3.4 contains no inexplicable phrase, and is not ambiguous.

Nevertheless, Kimberly requests an evidentiary hearing to provide evidence that the Neumanns intended for her to receive or purchase the farm property because the 2006 amendment is ambiguous concerning the Neumanns' intent. As discussed, there is no ambiguity in amended paragraph 3.4. The 2006 amendment unambiguously provides that all trust property is to be distributed in equal shares to the three children (with some specific exceptions). As such, we "ascertain the grantor's intent from the language of the agreement, without resort to extrinsic evidence." *Id.* The district court correctly declined to allow Kimberly's attempt to contradict the unambiguous language of the trust

agreement with extrinsic evidence. We may not "thwart the manifest purpose" of the Neumanns by construing their unambiguous language to discern a result different from the intent clearly expressed and memorialized in their trust agreement. *See In re Trusts of Campbell*, 258 N.W.2d 856, 862 (Minn. 1977).

The district court correctly determined that the 2006 amendment to the trust agreement unambiguously replaced the earlier versions of paragraph 3.4 and unambiguously overwrote and eliminated the former subparagraphs. The district court properly declined to consider extrinsic evidence contradicting the unambiguous language of the amended trust agreement.

II.

Kimberly also argues that she did not receive adequate notice of the April 4 hearing under Minn. Stat. § 501B.18 (2012). And she argues that sections 501B.18 and 501B.21 require an evidentiary hearing on the issue of the Neumanns' intent.

Whether notice was proper is a question of law, which we review de novo. *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008). "Upon the filing of a petition under section 501B.16, [a district] court shall, by order, fix a time and place for a hearing, unless notice and hearing have been waived in writing by the beneficiaries of the trust then in being." Minn. Stat. § 501B.18. Kimberly argues that she did not waive her right to notice in writing and that Eastwood Bank did not serve notice that its petition would be heard at the April 4 hearing until March 22. Therefore, she argues, Eastwood Bank failed to provide notice by mailing "at least 15 days before the date of the hearing,"

as required by section 501B.18. But "[n]otice may be given in any other manner the court orders." *Id.*

The procedure followed in this case was not ideal. The parties attended a scheduling conference on March 5 even though no petition for instruction had been filed. However, the parties were all aware of the nature of their dispute and of the scheduling of both the March 5 and the April 4 hearings. At the March 5 scheduling conference, the district court explained that the April 4 hearing would address "any issues that may come up through any petitions that may be filed." Each party then filed a petition for instruction pursuant to section 501B.16(23), and *each party provided notice prior to the hearing that the petition would be heard at the April 4 hearing*. The district court's oral notice and the notice provided by the parties satisfy the requirements of section 501B.18. *See id.* ("Notice may be given in any other manner the court orders.").

Kimberly's argument that, because she was not given proper notice, "she was deprived of her fundamental right to be heard and oppose the relief requested in [Eastwood Bank's] petition" ignores that she knew that the April 4 hearing would address issues concerning the competing petitions for instruction. *She filed the first petition*, provided notice (after the other parties had served notice of a hearing date) that her petition would be heard at the April 4 hearing, and appeared at the hearing. During the hearing, she opposed the relief requested in Eastwood Bank's petition, arguing that there was ambiguity in the trust agreement. She was not denied an opportunity to oppose Eastwood Bank's petition.

Kimberly also argues that sections 501B.18 and 501B.21 required the district court to hold an evidentiary hearing. A "district court must conduct a hearing when a section 501B.16 petition is filed." *In re Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. App. 1996) (citing Minn. Stat. § 501B.18 (1994)). Then, "[u]pon hearing a petition filed under section 501B.16, the [district] court shall make an order it considers appropriate." Minn. Stat. § 501B.21. However, sections 501B.18 and 501B.21 require only that a hearing take place. Neither statute further defines the hearing required. *See Hormel*, 543 N.W.2d at 671 (holding that the district court "acted within its discretion in holding a preliminary hearing" to discuss a motion under section 501B.16, rather than holding the full evidentiary hearing that the beneficiaries desired).

Here, the district court held a hearing to address the competing section 501B.16(23) petitions. And Kimberly's attorney referred to the April 4 hearing as a "preliminary hearing," which we have previously held satisfies the hearing requirement. *See id.* The district court properly stated that an evidentiary hearing would be scheduled if the district court determined that the trust agreement was ambiguous. But because the district court determined that the trust agreement was unambiguous, no evidentiary hearing was required. *See Stisser*, 818 N.W.2d at 502 ("When the trust agreement is unambiguous, we will ascertain the grantor's intent from the language of the agreement, without resort to extrinsic evidence.").

Because neither section 501B.18 nor section 501B.21 requires an evidentiary hearing and because the language of the trust agreement is not ambiguous, the district

court did not err in ordering distribution of the property in equal shares to the three children following the April 4 hearing.

Affirmed.