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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0327**

In the Matter of the Petitions of The Auto Club Group,
a Michigan non-profit corporation, et al.,
Respondents,

vs.

Lawrence J. Anderson, et al.,
Appellants.

**Filed September 16, 2019
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CV-17-2081

Marc D. Simpson, Calvin P. Hoffman, Stinson LLP, Minneapolis (for respondent The Auto Club Group)

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Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge the district court's grant of summary judgment permitting real property to be used for purposes other than a golf course. They contend that a corporate merger agreement placed the property in trust and that the district court erred in determining the agreement's prohibition against other uses expired after 30 years pursuant to Minn. Stat. § 500.20 (2018). We affirm.

FACTS

The facts underlying this appeal are undisputed. The Duluth Automobile Club, a Minnesota nonprofit, operated a membership association that provided services and benefits related to automobiles. On December 2, 1931, the Duluth Automobile Club obtained land in St. Louis County that contains a golf course and related facilities. On November 29, 1982, the Duluth Automobile Club agreed to merge into the Minnesota State Automobile Association (the MSAA). The merger agreement (agreement) was filed as a memorial on the certificate of title. The agreement contains use covenants requiring the MSAA to “continue to own and operate, as a service to the members of the MSAA, as the surviving corporation, the Pike Lake golf course and related facilities” so long as “the balance in the [course's] [a]ccount, as of the end of the MSAA's regular accounting year, is greater than zero.” And the agreement creates an advisory committee to “render advice and comment” on “matters concerning Pike Lake.”

Through a series of mergers concluding in October 2005, the MSAA became part of respondent The Auto Club Group (Auto Club), a Michigan nonprofit corporation. The

certificate of title lists the Auto Club as the current owner of the property on which the Pike Lake golf course is located.

In June 2017, the Auto Club agreed to sell the property to respondent Pike Lake Golf & Beach, LLC (Pike Lake Golf). The Auto Club and Pike Lake Golf (collectively, respondents) subsequently petitioned the district court for an order deleting the use covenants and other memorials on the certificate of title. Respondents argued that the covenants “ceased to be valid and operative on November 29, 2012,” pursuant to the 30-year limitation set forth in Minn. Stat. § 500.20, subd. 2a.

Appellants, who include members of the Pike Lake Advisory Committee (advisory committee), opposed the petition, arguing that the 1982 agreement created a trust that requires the property to be used for a golf course. The advisory committee filed a counter-petition seeking to enforce the terms of the agreement.

The parties brought cross-motions for summary judgment. Respondents requested the “removal of the memorial pursuant to the [30]-year rule, which is codified as Minn. Stat. § 500.20, subd. 2(a).” The advisory committee argued that the agreement created a trust, section 500.20 does not apply to the agreement, and retroactive application of the 30-year rule would be unconstitutional.

After a hearing, the district court granted respondents’ motion and denied the advisory committee’s motion. The advisory committee appeals.

D E C I S I O N

A district court must grant summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ.

P. 56.01. We review the district court’s legal conclusions on summary judgment de novo, viewing “the evidence in the light most favorable to the party against whom summary judgment was granted.” *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

I. The agreement did not create a trust.

Under Minnesota law, an express trust is created when there is “(1) a designated trustee with enforceable duties; (2) a designated beneficiary vested with enforceable rights; and (3) a definite trust res in which the trustee has legal title and the beneficiary has the beneficial interest.” *Bond v. Comm’r of Revenue*, 691 N.W.2d 831, 837 (Minn. 2005). No specific language is required to create a trust, but there must be “a definite, unequivocal, explicit declaration of trust,” or circumstances that “show with reasonable certainty or beyond a reasonable doubt that a trust was intended to be created.” *Id.* (quotations omitted); *see also In re Bush’s Trust*, 81 N.W.2d 615, 619 (Minn. 1957). “A trust is created only if the settlor demonstrates, by external expression, the intent to create a trust.” *Bond*, 691 N.W.2d at 837. Minnesota law examines the intent of the settlor at the time the trust was purportedly created. *Bush’s Trust*, 81 N.W.2d at 619-20.

The advisory committee first argues that the agreement created an express trust, wherein the Auto Club is the trustee, the group’s members are the beneficiaries, and the Pike Lake golf course is the trust property. We are not persuaded. While the agreement discusses Pike Lake generally, nothing in the agreement is sufficient to establish an express trust relating to the property. The agreement does not name the Auto Club as trustee, does not identify the advisory committee members (or anyone else) as beneficiaries, and does

not state that the agreement holds the property “in trust” for the benefit of anyone. Moreover, the agreement does not identify a “definite res” in which any trustee has a legal title and a beneficiary has the beneficial interest. In short, the agreement does not demonstrate, “by external expression, the intent to create a trust.” *Bond*, 691 N.W.2d at 837.

As support for its argument, the advisory committee points to a legal memorandum drafted by an attorney in preparation for the 1982 merger. While the memorandum contains references to trust principles, and suggests the merging entities *could* create a trust, we are not persuaded that the memorandum advances the advisory committee’s argument. See *United Artists Commc’ns v. Corp. Prop. Inv’rs*, 410 N.W.2d 39, 42 (Minn. App. 1987) (stating that matters discussed in negotiations that do not make it into the final writing are considered waived or abandoned).¹ The memorandum and agreement differ in two important ways. First, the memorandum states that “the proposed agreement of merger” amounts to a trust “presumably for the benefit of the present and future members of MSAA in the DAC geographical area.” But the final agreement does not use this language, does not mention a trust, and does not designate a group of beneficiaries with enforceable rights. Second, the memorandum suggests that if the parties intend to place assets in a special fund to support the Pike Lake facility, the agreement should specify that this is a trust fund. The final agreement contains no such specification. In sum, the memorandum does not evince

¹ Even if we consider the memorandum in our analysis of the trust issue, the memorandum does not concretely establish a trust. In fact, the memorandum includes several caveats, stating, for example, “[p]aragraph 4 of the proposed agreement of merger *essentially amounts to a conveyance in trust.*” (Emphasis added.)

an intent to create a trust at the time the trust was purportedly created, which is the relevant time in evaluating whether a trust was intended. *See Bush's Trust*, 81 N.W.2d at 619-20.

Alternatively, the advisory committee argues that the district court should have imposed a constructive trust. “A constructive trust is an equitable remedy imposed to prevent unjust enrichment.” *Freundschuh v. Freundschuh*, 559 N.W.2d 706, 711 (Minn. App. 1997), *review denied* (Minn. Apr. 24, 1997). A party seeking to enforce a constructive trust must prove “the existence of a fiduciary relation and the abuse by defendant of confidence and trust bestowed under it to plaintiff’s harm.” *Wilcox v. Nelson*, 35 N.W.2d 741, 744 (Minn. 1949). Constructive trusts are “designed to correct abuses of fiduciary relationships and force a conveyance to prevent unjust enrichment.” *PJ Acquisition Corp. v. Skoglund*, 453 N.W.2d 1, 20 (Minn. 1990). The existence of a constructive trust is a question of fact, which we review for clear error. *Freundschuh*, 559 N.W.2d at 711.

The advisory committee asserts that because the Auto Club “had very substantial assets” at the time of the merger—and now stands to receive “about 2 million dollars” for selling the property—the Auto Club will be unjustly enriched if this court does not recognize a constructive trust. We disagree. As discussed below, the agreement’s requirement that the Auto Club continue to operate the Pike Lake property as a golf course is no longer valid by operation of law, not because of anything respondents have done or propose to do. In its brief to this court, the Auto Club explained that it intends to sell the property because it is “not part of [its] non-profit purpose of providing benefits and services

related to automobiles.” Under these circumstances, we discern no unjust enrichment and no basis to impose a constructive trust.

II. The agreement’s provisions requiring the Pike Lake property to be used as a golf course expired after 30 years pursuant to Minn. Stat. § 500.20, subd. 2a.

Minn. Stat. § 500.20, subd. 2a, provides that “all private covenants, conditions, or restrictions created by which the title or use of real property is affected, cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and may be disregarded.”

Whether Minn. Stat. § 500.20, subd. 2a, applies to the agreement is a question of statutory interpretation, which this court reviews de novo. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2018). “When legislative intent is clear from the statute’s plain and unambiguous language, we interpret the statute according to its plain meaning.” *State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 276 (Minn. 2016) (quotation omitted).

The advisory committee argues that Minn. Stat. § 500.20, subd. 2a, does not govern the subject matter of the agreement, that the 2005 statutory amendment does not apply retroactively, and that retroactive application of the 2005 statutory amendment violates the advisory committee’s constitutional rights. We address each argument in turn.

A. Minn. Stat. § 500.20, subd. 2a, applies to the agreement.

The advisory committee first contends that it “cannot be the legislature’s intent that the restrictions on use of property and leases, non-profit corporate documents or mergers

and other such circumstances are subject to the 30-year rule” and that numerous bad outcomes would occur if limitations on property restrictions applied to nonprofits. We disagree. The legislature’s use of the term “other instrument” broadly encompasses *any* legal document that conveys an interest in real property, which is exactly what the agreement and related memorial on the certificate of title do. *See Black’s Law Dictionary* 918 (10th ed. 2014) (defining instrument as “[a] written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate”). And our supreme court has stated that section 500.20 applies broadly to “covenants, conditions, or restrictions created by *any* instrument conveying land.” *See In re Turners Crossroad Dev. Co.*, 277 N.W.2d 364, 373 (Minn. 1979) (emphasis added). To the extent that any interested party, or the advisory committee in this case, wants to delay the application of the 30-year rule, they may do so by following the procedure outlined in the statute. Under section 500.20, a party can file notice and delay the application of the 30-year restriction for seven years “after the date of filing of the notice.” *See* Minn. Stat. § 500.20, subd. 2a (stating that a notice filed in accordance with the statute “delays application of this subdivision to the covenants, conditions, or restrictions”).

The advisory committee next asserts that Minn. Stat. § 317A.671 (2018), which has no time limits, is the governing statute. This statute provides that when a nonprofit corporation merges

assets of the corporation or a constituent corporation or converting corporation, and assets subsequently received by a single or converted corporation after a merger or consolidation, or held by a converted organization after a conversion may not be diverted from the uses and purposes for which the assets

have been received and held, or from the uses and purposes expressed or intended by the original donor.

Minn. Stat. § 317A.671. The statute is intended to prevent nonprofit corporations from changing the uses of property received as donations before a merger. *See Gethsemane Lutheran Church v. Zacho*, 104 N.W.2d 645, 650 (Minn. 1960) (“Under the Minnesota Nonprofit Corporations Act, the association has the authority to dispose of its real property provided that the property is not diverted from its intended use . . .”). In addition, section 317A.671 applies to all donated “assets of [a] corporation”—not just real property. *See* Minn. Stat. § 371A.671; *see also Black’s Law Dictionary* 140 (10th ed. 2014) (defining asset as “property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill”). As the district court aptly noted, there is no “indication there was a donation of the Pike Lake Golf Course with the condition of its continued use while profitable.” And, if both statutes are applicable, we are persuaded that Minn. Stat. § 500.20, subd. 2a, controls because it more specifically focuses on the situation here—restrictions on the use of real property. *See Beck v. Groe*, 70 N.W.2d 886, 889 (Minn. 1955); *see also In re Ret. Benefits of Yetka*, 554 N.W.2d 85, 91 (Minn. App. 1996) (“Statutes of specific application prevail over statutes of general application when there is a conflict, and each cannot be given full effect.”).

B. The 2005 amendment to Minn. Stat. § 500.20, subd. 2a, applies retroactively to the agreement.

To determine whether the 2005 amendment applies to the agreement, we begin by examining the history of section 500.20, subdivision 2a. The legislature promulgated the 30-year rule in 1937 for the purpose of “removing restraints on the alienation of real estate.”

See *Haugen v. Peterson*, 400 N.W.2d 723, 726 (Minn. 1987). The rule operated “successfully . . . for 45 years until its repeal in 1982.” *Id.* In 1988, the legislature reinstated the rule, once again setting a 30-year limitation for covenants on real property. See 1988 Minn. Laws ch. 477, § 1, at 261-63. The 1988 statute, by its express terms, did not apply to covenants “created before August 1, 1988, by deed or other instrument dated on or after August 1, 1982.” *Id.* at 262. Section 500.20 was also amended in 1989, 1993, and 1999; each version of the statute included the language expressly excluding covenants “created before August 1, 1988, by deed or other instrument date on or after August 1, 1982.”

In 2005, the legislature again amended section 500.20. This time, the amendment was enacted for the purpose of making the 30-year rule applicable to all private restrictions on the use of real property, regardless of when they were created:

Subd. 2a. RESTRICTION OF DURATION OF CONDITION. Except for any right to reenter or to repossess as provided in subdivision 3, all private covenants, conditions, or restrictions created by which the title or use of real property is affected, cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and may be disregarded.

This subdivision does not apply to covenants, conditions, or restrictions:

(1) ~~that were created before August 1, 1988, by deed or other instrument dated on or after August 1, 1982, or by will the date of death of the testator of which was on or after August 1, 1982.~~

2005 Minn. Laws ch. 119, § 1, at 734; *see also* Minn. Stat. § 500.20, subd. 2a.

The advisory committee argues that because the “30-year statute was not in effect when the Merger Agreement was executed, there was no reason to believe that the terms

of the Merger Agreement would not continue to be effective.” While this may be true, we are not persuaded that the parties’ beliefs in 1982 preclude application of the 30-year rule.

“No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.” Minn. Stat. § 645.21 (2018). Accordingly, for a statute to be applied retroactively, the legislature must provide clear evidence that it intended retroactive application. *See State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988). We review the retroactivity of a statute de novo. *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

The district court concluded that Minn. Stat. § 500.20, subd. 2a, applies to the agreement because the legislature provided clear evidence that it intended retroactive application. We agree. In 2005, the legislature removed the exception for covenants created before 1988, but left undisturbed other date restrictions in the statute. For example, the 2005 amendment did not disturb the statute’s exception for certain covenants created “before August 1, 1959.” *See* 2005 Minn. Laws ch. 119, § 1, at 734. The sole legislative change was removal of the existing exception for covenants created before 1988, which had been in place since 1988. The 2005 amendment, when viewed in the context of the statute’s history, convinces us that the legislature intended the 30-year rule to apply to all private restrictions on the use of real property, including the agreement.

To the extent the advisory committee argues that the 30-year rule does not apply because the legislature did not specifically use the word “retroactive” in the 2005 amendment, we do not agree. The question of retroactivity does not turn on the legislature’s use of the word “retroactive.” Rather, caselaw only requires clear evidence of retroactive intent. *See Duluth Firemen’s Relief Ass’n v. City of Duluth*, 361 N.W.2d

381, 385 (Minn. 1985) (stating that retroactive application of a statute requires clear evidence of “retroactive intent in the statute’s language—*such as* mention of the word ‘retroactive’” (emphasis added)). Here, that clear evidence of retroactive intent is the legislature’s removal of the date exception.

C. Application of the 2005 amendment to Minn. Stat. § 500.20, subd. 2a, does not violate the advisory committee’s constitutional rights.

The advisory committee first asserts that applying the 30-year rule here would result in a “substantial impairment of contracts” in violation of the United States and Minnesota Constitutions. See U.S. Const. art. I, § 10; Minn. Const. art. I, § 11. When deciding contract-impairment challenges, we consider: (1) whether the state law has substantially impaired a contractual obligation, (2) whether there is a significant and legitimate public purpose behind the law, and (3) whether the impairment is reasonable and justified given the public purpose. See *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872 (Minn. 1986). The 30-year rule substantially impairs the agreement because it effectively removes the use covenants that were contained in the merger agreement. Regarding the second and third factors, we note that the 30-year rule serves the important purpose “of removing restraints on the alienation of real estate.” *Haugen*, 400 N.W.2d at 726. In *Haugen*, our supreme court considered whether the repeal of the 30-year rule in 1982 “revived a restrictive covenant which, under the statute, terminated in 1979.” *Id.* at 725. In concluding it did not, the supreme court noted the 30-year rule had worked well for 45 years, operating to “remov[e] restraints on the alienation of real estate” and “allow[] local governmental units future discretion” in zoning. *Id.* at 725-26. *Haugen* instructs that the

30-year rule promotes a significant public purpose and is reasonable because it does not disturb private covenants for at least 30 years. Accordingly, we conclude that the application of the 30-year rule in this case does not result in substantial impairment of the agreement.

The advisory committee next contends that application of the 30-year rule violated its due-process rights because there was “no 30-year statute at the time” of the agreement. The United States and Minnesota Constitutions provide that the government shall not deprive a person of “life, liberty, or property without due process of law.” U.S. Const. amends. V, XIV; Minn. Const. art. I, § 7. Due process requires notice and the opportunity for a hearing to present arguments. *See In re Minnikka Props., LLC*, 834 N.W.2d 572, 580 (Minn. App. 2013).

We conclude that there was no due-process violation here. As the supreme court has held, section 500.20 “itself is notice to all those who place any restriction on the use of land that such restriction will become invalid 30 years after its creation.” *See Turners Crossroad*, 277 N.W.2d at 373. The 2005 statute was available to the advisory committee, even if the committee was unaware of it. *See Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 581, 130 S. Ct. 1605, 1611 (2010) (stating that ignorance of the law will not excuse any person, either civilly or criminally). In addition, as the district court stated, “[t]he current form of the statute is also constitutional because [the advisory committee] had the opportunity to keep the restriction in place,” if it had followed the statute’s procedure to delay the application of the 30-year rule. *See* Minn. Stat. § 500.20, subd. 2a (stating that a notice filed in accordance with the statute “delays application of

this subdivision to the covenants, conditions, or restrictions for a period ending on the later of seven years after the date of filing of the notice”). The advisory committee had from 2005 until November 8, 2012—nearly seven years—to record the required notice and delay application of the statute. It did not do so.

In sum, the 30-year rule set out in Minn. Stat. § 500.20, subd. 2a, applies to the agreement. The covenants regarding use of the Pike Lake property for a golf course have expired. Respondents are not required to operate a golf course for members of the advisory committee or anyone else.

Affirmed.