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STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0770

In Re: B.C. Fox Trust, U/A/D, July 1, 1997, as Amended.

Filed April 11, 2022
Reversed and remanded
Johnson, Judge

Hennepin County District Court
File No. 27-TR-CV-18-16

Joseph J. Cassioppi, Jade B. Jorgenson, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for appellant David K. Fox)

Julian C. Zebot, Peter C. Hennigan, Maslon L.L.P., Minneapolis, Minnesota (for respondent Richard B. Fox)

Philip R. Schenkenberg IV, Taft, Stettinius & Hollister, L.L.P., Minneapolis, Minnesota (for respondent Security Bank & Trust Co.)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal concerns a dispute between two brothers regarding a trust that was established by their late father. The appellant claims that the respondent is disentitled from receiving any distributions from the trust on the ground that the respondent violated a no-contest clause in the trust agreement. The district court rejected the appellant's claim on cross-motions for summary judgment. We conclude that, as a matter of law, the respondent violated the no-contest clause. Therefore, we reverse and remand.

FACTS

B.C. Fox passed away in March 2017. At the time of his death, he had three adult children: Richard B. Fox, Gerald C. Fox, and David K. Fox. Richard is a resident of California and is both a licensed physician and a licensed attorney. Gerald was a resident of Minnesota for most of his life but relocated to California six years before his death in October 2017. David is a resident of Florida and manages a family business.

In 1997, B.C. established the B.C. Fox Revocable Trust (hereinafter the B.C. Trust). During B.C.'s lifetime, the trustee was required to pay him the trust's net income and had discretion to distribute principal to him. The trust agreement was amended ten times during B.C.'s lifetime. In 2009, B.C. executed the fifth amendment, which provided that he, David, and an unrelated person would serve as co-trustees. In January 2012, David and the unrelated person executed the sixth amendment, which purported to remove B.C. as trustee. In February 2012, B.C. executed the seventh amendment, which stated that his removal as trustee was invalid, revoked the sixth amendment, and stated that B.C. is the sole trustee. In March 2012, B.C. executed the eighth amendment, which appointed himself, David, and the unrelated person as co-trustees; stated that Richard would substitute for B.C. during any period in which B.C. was incompetent; and stated that David would become the sole trustee upon B.C.'s death. In October 2012, B.C. executed the ninth amendment, which, among other things, appointed himself, Richard (instead of David), and the unrelated person as co-trustees and further provided that Richard (instead of David) would become sole trustee upon B.C.'s death.

The B.C. Trust agreement, as amended, provides that, upon B.C.'s death, all assets identified in Schedule C shall be distributed to Richard, all assets identified in Schedule B shall be distributed to the Gerald C. Fox Intervivos Trust (hereinafter the Gerald Trust), all assets identified in Schedule D shall be distributed to David, and all assets not listed in Schedules B, C, or D shall be distributed equally to David and the Gerald Trust.

The record reflects that Gerald had limited cognitive abilities but that he graduated from high school, lived independently, held a driver's license, and worked in a warehouse of his father's business. Gerald established the Gerald Trust in 2011. He appointed Richard to be the trustee. The Gerald Trust agreement provides that, during Gerald's lifetime, the trustee was required to pay him the trust's net income and had discretion to distribute principal to him.

Gerald moved to California in 2011. He lived near Richard and his wife, who cared for Gerald in various ways. A California trial court later found that Richard "managed all aspects of [Gerald's] life and care, including payment of rent, buying food, and managing [Gerald's] medical care." In September 2016, Richard received a lump-sum payment and began receiving monthly payments from Gerald in consideration of the assistance that Richard and his wife were providing to him. Richard received a total of approximately $135,000 in such payments.

Gerald's health declined significantly in 2016 and 2017. He was hospitalized on multiple occasions and eventually was unable to live independently when not hospitalized.

After one discharge from the hospital, Richard and his wife brought Gerald to their home in lieu of his going to a nursing facility. Gerald was at Richard's home for four days before he was readmitted to the hospital on September 16, 2017.

On September 18, 2017, Richard sent a long e-mail message to Gerald's attorney in which Richard expressed "hard feelings" that he and his immediate family had not received more of the assets of the B.C. Trust and would not receive any assets of the Gerald Trust, despite having served as caregivers for both B.C. and Gerald. Richard told Gerald's attorney that he would not allow Gerald to return to Richard's home until there was "a satisfactory resolution" of Richard's concerns. Two days later, after having received no response, Richard sent another e-mail message to Gerald's attorney in which he stated that the division of B.C.'s estate was "unequal." He also stated that he should receive a share of Gerald's estate because he had borne the "heavy burden" of caring for Gerald since 2011. Richard acknowledged that Gerald was unable to amend his trust agreement and stated that he would consider asking a court to appoint a conservator for the purpose of amending the trust agreement. Richard concluded by stating that he would resign as trustee of the Gerald Trust because he had "a substantial conflict of interest." Richard formally withdrew as trustee on September 20, 2017.

Near the end of his life, Gerald was dependent on a forced-air-breathing machine, which made it difficult for him to speak, eat, or drink. On October 2, 2017, Richard visited Gerald in his hospital room and, in the presence of hospital staff, told Gerald that he would take Gerald to his home and care for him there, so long as Gerald provided him with money. On October 4, 2017, Richard returned to Gerald's hospital room and presented him with a second amendment to the Gerald Trust agreement, which Richard had drafted. The document bears an indecipherable mark on the grantor's signature line and the signatures of two witnesses, one of whom is Richard. The other supposed witness later denied witnessing Gerald's signature. Richard later stipulated that Gerald lacked capacity to execute the second amendment on October 4, 2017. It appears that Gerald moved from the hospital to Richard's home on October 7, 2017. Gerald died three days later, on October 10, 2017.

The second amendment to the Gerald Trust agreement purported to change the distributions that are required after Gerald's death. Before October 2017, the Gerald Trust agreement provided in article III that, upon Gerald's death, the trustee shall distribute certain identified trust assets to David's two children and the remainder of the trust's assets to the Gerald C. Fox Foundation (hereinafter the Gerald Foundation), a charitable foundation that Gerald had established for the purpose of making donations to certain Minnesota-based charities. The second amendment that Gerald supposedly signed six days before his death deleted the existing article III and substituted for it three new provisions. First, the second amendment provided that, after Gerald's death, five identified assets shall be distributed to David's wife or children. Second, the second amendment provided, "Any trust assets received by the Gerald C. Fox Trust from the B.C. Fox Trust Agreement dated July 1, 1997 under paragraph 7.c.4 of the B.C. Fox Trust shall be distributed to Richard B. Fox." And third, the second amendment provided that the trustee shall distribute 45 percent of the remaining assets to Richard, 5 percent to Richard's son, and 50 percent to the Gerald Foundation.

In November 2017, David filed a complaint with the office of the Minnesota attorney general, which regulates charities, stating that the Gerald Foundation had been deprived of assets due to an improper amendment to the Gerald Trust agreement. Shortly thereafter, an assistant attorney general sent a letter to Richard with 20 requests for information or documents and an instruction to not distribute or transfer any assets of the Gerald Trust "until further notice."

In February 2018, David and the Gerald Foundation commenced this action in the Hennepin County District Court. They sought to enjoin Richard from transferring any assets of the B.C. Trust, to require him to provide an accounting, and to remove him as trustee of the B.C. Trust.

At approximately the same time, David's children and the Gerald Foundation commenced an action in a California trial court. They sought, among other things, a declaration that the second amendment to the Gerald Trust agreement is invalid. In April 2018, the Hennepin County District Court stayed this action pending the outcome of the California case.

In February 2020, after a four-day court trial, the California trial court issued a 45-page order in which it concluded that Richard had committed financial elder abuse against Gerald by forcing him to sign the second amendment to the Gerald Trust agreement. *See* Cal. Welf. & Inst. Code §§ 15610.30(a)(3), 15610.70(a) (2020). The California trial court specifically found that Richard was motivated by perceived inequities in the disposition of B.C.'s estate. The California trial court declared the second amendment to the Gerald Trust agreement void and awarded David's children and the Gerald Foundation more than $1,000,000 in attorney fees and costs.

In March 2020, David and the Gerald Foundation amended the petition in this action. They sought the disallowance of Richard's accounting, the permanent removal of Richard as trustee of the B.C. Trust, and an award of attorney fees and costs. They also sought to void the distributions that otherwise would be made by the B.C. Trust to Richard, based on Richard's alleged violation of the following no-contest clause in the B.C. Trust agreement:

> In the event any beneficiary directly or indirectly contests the validity of this trust or the distributions thereof in any manner, then any bequest herein made in favor of such contesting person shall be void and of no effect and such bequest will ratably augment the shares of the other beneficiaries entitled to distributive shares of the trust estate.

The Gerald Foundation later was voluntarily dismissed.

In November 2020, the parties filed cross-motions for partial summary judgment. David sought judgment as a matter of law on his request for the removal of Richard as trustee of the B.C. Trust and his claim that Richard had violated the B.C. Trust's no-contest clause. Richard sought judgment as a matter of law on David's claim that Richard had violated the no-contest clause. While the motion was pending, Richard voluntarily resigned as trustee of the B.C. Trust, thereby resolving one issue in David's amended petition and summary-judgment motion.

In March 2021, the district court filed an order in which it granted Richard's motion and denied David's motion. The district court concluded that Richard did not violate the no-contest clause in the B.C. Trust agreement. The parties stipulated to the entry of final judgment. David appeals.

DECISION

David argues that the district court erred by entering summary judgment in favor of Richard on David's claim that Richard violated the no-contest clause in the B.C. Trust agreement.

A district court must grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

A.

The parties agree that the Minnesota Trust Code, which is contained in chapter 501C of the Minnesota Statutes, does not contain any provision governing a no-contest clause in a trust agreement. Accordingly, our resolution of the parties' dispute is governed solely by the terms of the B.C. Trust agreement. *See* Minn. Stat. § 501C.0105(b) (2020); Unif. Trust Code § 105 cmt. (Unif. Law Comm'n 2000). In interpreting and applying the no-contest clause in the B.C. Trust agreement, we are mindful that a no-contest clause is considered a forfeiture provision, *In re Estate of Vittorio*, 546 N.W.2d 751, 757 (Minn. App. 1996), and that forfeiture provisions are "strictly construed and not extended beyond the true intent of the parties," *Naftalin v. John Wood Co.*, 116 N.W.2d 91, 100 (Minn. 1962).

If a court is required to interpret a trust agreement, the court's purpose "is to ascertain and give effect to the grantor's intent." *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012). "A court should seek out the grantor's dominant intention by construing the trust agreement in its entirety." *In re Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *rev. denied* (Minn. June 26, 2013). A trust agreement is to be construed "to give effect to the [grantor's] intent as expressed in [its] plain language." *In re Trusteeship Under Kischel Trust*, 299 N.W.2d 920, 923 (Minn. 1980); *see also In re Trusteeship Under Agreement with Mayo*, 105 N.W.2d 900, 903 (Minn. 1960). "If the trust agreement is unambiguous, a court should look to the language of the agreement to discern the grantor's intent and not consider extrinsic evidence." *Van Dusen*, 834 N.W.2d at 520; *see also In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985). "Under all circumstances [the trust agreement] must be construed to carry out the main object of the settlor as disclosed by its terms notwithstanding inaccuracies of expression, ineffectiveness of terms, or the presence of provisions therein which on their face appear inconsistent therewith." *In re Fiske's Trust*, 65 N.W.2d 906, 910 (Minn. 1954). "This court applies a *de novo* standard of review to a district court's interpretation of a trust agreement." *Van Dusen*, 834 N.W.2d at 520.

B.

The district court began its analysis of the parties' arguments by stating that there are no genuine issues of material fact. The district court noted that David sought to prove "that Richard violated the [B.C.] Trust's no-contest clause by complaining about [B.C.] Trust distributions and attempting to modify the Gerald Trust." The district court rejected David's argument for the following reasons:

> Richard attempted to change the distributions made by the Gerald Trust. The Gerald Trust, however, is completely separate from the [B.C.] Trust. Richard did not contest either the validity or distributions of the [B.C.] Trust. Richard's actions did not affect the distributions of the [B.C.] Trust or the receipt of any [B.C.] Trust assets by the Gerald Trust. Richard's opinion that the [B.C.] Trust distributions were unfair does not constitute a "contest" as required by the plain language of the [B.C.] Trust's no-contest clause. To rule otherwise would be giving an overly broad interpretation to the [B.C.] Trust's no-contest clause.

David contends that Richard "contested" distributions of the B.C. Trust when he attempted to amend the Gerald Trust agreement due to his perception that he would receive an "unequal" share of B.C.'s estate. Specifically, David contends that Richard indirectly contested distributions of the B.C. Trust because, by causing Gerald to amend the Gerald Trust agreement, Richard sought to take "distributions from the B.C. Fox Trust, which B.C. Fox intended to be distributed to the Gerald Fox Trust and subsequently the Foundation, and made himself the beneficiary of those distributions." David focuses on the language of the second amendment to the Gerald Trust agreement that specifically refers to distributions required by section 7.c.4. of the B.C. Trust agreement. In response, Richard contends that, if the second amendment to the Gerald Trust agreement had not been invalidated, it would have had "*zero* impact on the distribution of" B.C. Trust assets such that Richard's conduct was not a "contest" of distributions of the B.C. Trust.

C.

At the center of the parties' dispute is the meaning of the word "contest," when used as a transitive verb. One leading lay dictionary defines the word to mean "to struggle or fight for, as in battle." *The Random House Dictionary of the English Language* 439 (2d ed. 1987). Another lay dictionary defines the word as meaning "[t]o make a subject of dispute or contention." *Webster's New International Dictionary of the English Language* 575 (2d ed. 1946). Lay dictionaries also recognize that the word has a specialized meaning in the law. *See, e.g.*, *id.* A leading legal dictionary defines the word to mean "[t]o deny an adverse claim or assert a defense to it in a court proceeding." *Black's Law Dictionary* 398 (11th ed. 2019).

We also must consider the meaning of the phrase "directly or indirectly," which serves as an adverb modifying the verb "contest." A lay dictionary defines the word "indirect" to mean "[n]ot leading to an aim or result by the plainest course or method or by obvious means," "roundabout," and "[n]ot resulting directly from an act or cause, but more or less remotely connected with, or growing out of, it." *Webster's New International*, *supra*, at 1267. Another lay dictionary defines the word "indirect" to mean "[n]ot forthright and candid" or "devious." *The American Heritage Dictionary of the English Language* 919 (3d ed. 1992).

Richard contends that a person "indirectly" contests a trust agreement only if he or she prompts another person to make a direct contest or assists another person in making a direct contest. For this contention, Richard cites Restatement (Third) of Property: Wills & Other Donative Transfers § 8.5 cmt. e (2003). The comment on which Richard relies states that a no-contest clause may be violated "not only by a direct contest or challenge . . . but also by voluntary conduct of the beneficiary that amounts to an indirect contest or challenge." *Id.* The comment gives an example of a person who "instigates or aids another person in that person's attempt to contest" a will or a trust agreement. *Id.* But the example is merely that: an example. It does not appear that the example is intended to be a statement of the exclusive means by which a person may indirectly contest a trust agreement. Accordingly, we decline to interpret the phrase "directly or indirectly" in the B.C. Trust agreement to be limited to the situation in which a beneficiary prompts or assists another person in a direct contest to a trust agreement.

D.

Given the plain meaning of the words used in the no-contest clause of the B.C. Trust agreement, we conclude, as a matter of law, that the provision encompasses Richard's conduct in this case.

Richard attempted to change the ultimate disposition of a distribution of assets from the B.C. Trust to the Gerald Trust. Richard attempted to do so by causing Gerald to sign the second amendment to the Gerald Trust agreement. The second amendment, which Richard had drafted, specifically referred to a particular distribution of the B.C. Trust: "Any trust assets received by the Gerald C. Fox Trust *from the B.C. Fox Trust Agreement dated July 1, 1997 under paragraph 7.c.4. of the B.C. Fox Trust* shall be distributed to Richard B. Fox." (Emphasis added.) In the absence of the second amendment to the Gerald

Trust agreement, the identified assets then held by the B.C. Trust would have been distributed by the B.C. Trust to the Gerald Trust and then distributed by the Gerald Trust to the Gerald Foundation. If the second amendment to the Gerald Trust agreement had not been invalidated by the California trial court, the identified assets of the B.C. Trust would have been distributed by the B.C. Trust to the Gerald Trust and then distributed by the Gerald Trust *to Richard* instead of the Gerald Foundation.

At the time that Richard caused Gerald to sign the second amendment, Richard was the sole trustee of the B.C. Trust and, thus, able to determine the timing of the distributions that were required to be made by the B.C. Trust after B.C.'s death. Richard had not made any distributions from the B.C. Trust to the Gerald Trust between B.C.'s death in March 2017 and Gerald's death in October 2017. By not distributing assets from the B.C. Trust to the Gerald Trust, and by amending the Gerald Trust to provide that assets then held by the B.C. Trust later would be re-distributed to himself, Richard essentially arranged for a different disposition of assets that were to be distributed by the B.C. Trust.

Richard's actions constitute an indirect contest of the B.C. Trust's distribution of the assets identified in paragraph 7.c.4. of the B.C. Trust agreement. Richard contested that distribution when he caused Gerald to sign the second amendment, which initiated a "struggle" or "fight" for the assets then held by the B.C. Trust and made them the "subject of dispute." *See Random House*, *supra*, at 439; *Webster's New International*, *supra*, at 575. Richard contested the same distribution of the B.C. Trust when he denied the adverse claims of David and the Gerald Foundation and defended against the Gerald Foundation's claims in the California case. *See Black's*, *supra*, at 398. Richard violated the no-contest clause even though he did not directly challenge a distribution from the B.C. Trust to the Gerald Trust. Richard's contest was indirect because it was designed to achieve a particular result by a "roundabout" means, which was "more or less remotely connected with" Richard's goal, was "not forthright and candid," and was "devious." *See Webster's New International*, *supra*, at 1267; *American Heritage*, *supra*, at 919. Furthermore, Richard's conduct is within the scope of the no-contest clause because the clause encompasses an indirect contest that is made "in any manner."

Thus, the district court erred by granting Richard's motion and by denying David's motion. Therefore, we reverse and remand with instructions that the district court grant David's motion, conclude that Richard violated the no-contest clause in the B.C. Trust agreement, order a remedy for the violation that is consistent with the language of the no-contest clause, and order the entry of summary judgment in favor of David.

Reversed and remanded.