

SUPREME COURT OF NORTH DAKOTA

Langer v. Pender

Langer, 2009 ND 51 (N.D. 2009) · No. No. 20080115 · Decided April 6, 2009

SUMMARY

The North Dakota Supreme Court reviewed a summary judgment decision concerning whether a revocable inter vivos trust remained revocable after the death of one trustor. The court held that the trust agreement created a revocable Survivor's Trust and that the surviving trustor's revocation complied with the agreement. The court modified and affirmed the judgment, while also addressing the trust's no-contest provision.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Carol Ronning Kapsner; Mary Muehlen Maring; Everett Nels Olson, Surrogate Judge
JURISDICTION	North Dakota
DECIDED	April 6, 2009
DOCKET	No. 20080115
DISPOSITION	modified_and_affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment granting the defendant summary judgment in a declaratory judgment action seeking enforcement of a revocable inter vivos trust agreement, and from the denial of a motion to reconsider.
STANDARD OF REVIEW	Summary judgment is reviewed de novo on the record. The interpretation of a trust instrument and whether it is ambiguous are questions of law reviewed fully on appeal. A district court's decision on a motion to reconsider treated as a Rule 59(j) motion is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Henry J. Langer, Mary Ann Weiss v. Phillip M. Pender

TOPICS

- trusts
- trust administration
- estate planning
- summary judgment
- civil procedure

PRACTICE AREAS

trusts and estates

probate

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contracts

QUESTIONS PRESENTED

1. Whether the trust agreement remained revocable by the surviving trustor after the death of the first trustor.
2. Whether Phillip Pender's revocation and transfer of trust property complied with the trust agreement.
3. Whether the Survivor's Trust was automatically funded by operation of the trust agreement without additional conveyance documents.
4. Whether the plaintiffs' declaratory action to enforce the trust constituted a contest triggering the trust's no-contest clause.

HOLDINGS

1. The trust agreement created a revocable Survivor's Trust upon Josephine Pender's death, and the trust remained revocable by Phillip Pender until the death of the surviving trustor.
2. Phillip Pender's revocation of the trust and transfer of the trust property to himself complied with the trust agreement.
3. The plaintiffs' action did not constitute a contest of the trust because they sought declaratory relief to enforce the trust's terms rather than to invalidate or challenge the trust.

KEY QUOTATIONS

"We affirm the district court's judgment to the extent that it holds the revocable inter vivos trust agreement entered into by Phillip Pender and Josephine Pender remained revocable until both trustors have died and that Phillip Pender's actions in revoking the trust were in compliance with the trust agreement." (§ 30)

"We therefore conclude that the no-contest clause found in the trust agreement's Article 17 is not applicable to the present action." (§ 33)

"The district court judgment is modified and affirmed." (§ 34)

FACTUAL BACKGROUND

Phillip and Josephine Pender executed a revocable inter vivos trust in 1996 and served as its co-trustees and trustors. Josephine contributed separately owned real property to the trust and died in June 2006. After her death, Phillip transferred the specified trust property to himself as trustee of the Survivor's Trust and later revoked the trust. Josephine's siblings, Henry Langer and Mary Ann Weiss, sued to enforce provisions they claimed required immediate distribution of the property to them.

PROCEDURAL HISTORY

Langer and Weiss sued Pender, alleging that he improperly transferred trust and estate property to himself and seeking rescission, conveyance of the property to them, and attorney fees and costs. The district court denied the

plaintiffs' summary judgment motion, granted summary judgment to Pender, determined that the plaintiffs were disqualified under the trust's no-contest clause, and entered an alternative ruling concerning failure of the trust. The district court denied reconsideration. The Supreme Court modified the judgment by deleting the no-contest and alternative-failure paragraphs and affirmed as modified.

DISPOSITION

modified_and_affirmed

CASES CITED

- Duemeland v. Norback, 2003 ND 1, ¶ 8, 655 N.W.2d 76
- Trinity Hosps. v. Mattson, 2006 ND 231, ¶ 10, 723 N.W.2d 684
- Hasper v. Center Mut. Ins. Co., 2006 ND 220, ¶ 5, 723 N.W.2d 409
- Riemers v. Grand Forks Herald, 2004 ND 192, ¶ 4, 688 N.W.2d 167
- White v. Altru Health System, 2008 ND 48, ¶ 7, 746 N.W.2d 173
- Ellingson v. Knudson, 498 N.W.2d 814, 817 n.5 (N.D. 1993)
- Korynta v. Korynta, 2006 ND 17, ¶ 7, 708 N.W.2d 895
- Alerus Fin., N.A. v. Western State Bank, 2008 ND 104, ¶¶ 18-21, 750 N.W.2d 412
- Matter of Estate of Schmidt, 1997 ND 244, ¶ 13, 572 N.W.2d 430
- Hecker v. Stark County Soc. Serv. Bd., 527 N.W.2d 226, 230 (N.D. 1994)
- Oak Hill Cemetery of Hammond, Inc. v. First Nat. Bank of Kokomo, 553 N.E.2d 1249, 1251 (Ind. Ct. App. 1990)
- Matter of Estate of Duemeland, 528 N.W.2d 369, 371 (N.D. 1995)
- State ex rel. Sathre v. Moodie, 65 N.D. 340, 358, 258 N.W. 558, 566 (N.D. 1935)
- Estate of Davies, 127 Cal. App. 4th 1164, 26 Cal. Rptr. 3d 239, 246 (2005)
- Garofalo v. Saint Joseph's Hosp., 2000 ND 149, ¶ 7, 615 N.W.2d 160
- Metcalf v. Security Intern. Ins. Co., 261 N.W.2d 795, 799 (N.D. 1978)