

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

Paula Minassian v. Rebecca Rachins and Rick Minassian

152 So. 3d 719 (Fla. 4th DCA 2014) · No. No. 4D13-2241 · Decided December 3, 2014

SUMMARY

The Florida Fourth District Court of Appeal held that a trust instrument was ambiguous regarding whether separate trusts for the settlor's children were to be created after the surviving spouse's death. It further held that Florida law permitted the appointment of a trust protector with authority to modify trust terms and that the protector's amendments were valid because they effectuated the settlor's probable wishes.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Conner, J.; Klingensmith, J.
JURISDICTION	Florida
DECIDED	December 3, 2014
DOCKET	No. 4D13-2241
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a partial final summary judgment invalidating amendments to a family trust made by a trust protector.
STANDARD OF REVIEW	De novo review applies to interpretation of the trust document and to summary judgment presenting a pure question of law.
PRECEDENTIAL VALUE	published precedential opinion of the Florida Fourth District Court of Appeal
PARTIES	Paula Minassian v. Rebecca Rachins, Rick Minassian

TOPICS

trust administration trustee duties trusts statutory interpretation appellate jurisdiction

PRACTICE AREAS

trusts and estates trust administration estate planning appellate procedure

QUESTIONS PRESENTED

1. Whether Florida law permits a trust instrument to authorize a trust protector or other nontrustee to modify the trust.
2. Whether the trust instrument was ambiguous concerning whether the Family Trust terminated upon the surviving spouse's death and whether new trusts were then created for the children.
3. Whether the trust protector acted within the authority granted by the trust when he amended the trust to resolve the ambiguity and effectuate the settlor's probable wishes.
4. Whether the appellate court had jurisdiction under Florida Rule of Appellate Procedure 9.110(k) to review the trust-amendment issue separately from the remaining issues in the case.

HOLDINGS

1. Florida law permits a trust instrument to confer on a trust protector or other person the power to direct modification of the trust under section 736.0808(3), Florida Statutes.
2. The trust instrument was patently ambiguous as to whether the Family Trust terminated at the wife's death and whether the children were to receive new trusts or shares in the existing Family Trust.
3. Because the trust was patently ambiguous, the court could consider uncontradicted extrinsic evidence of the settlor's intent. The trust protector acted within his powers by amending the trust to resolve the ambiguity and further the settlor's probable wishes, even though the amendment disadvantaged particular beneficiaries.
4. The court had jurisdiction under Florida Rule of Appellate Procedure 9.110(k) to review the trust-amendment issue because it was separate from the initial issues and arose after the original complaint was filed.

KEY QUOTATIONS

“The terms of a trust may confer on a trustee or other person a power to direct the modification or termination of the trust.” (at 5)

“Therefore, we conclude that the Florida Statutes do permit the appointment of a trust protector to modify the terms of the trust.” (at 6)

“We therefore reject the trial court’s conclusion that the trust is unambiguous.” (at 9)

“Removing that authority from the trust protector and assigning it to a court violates the intent of the settlor.” (at 10)

FACTUAL BACKGROUND

Zaven Minassian created a revocable trust that became irrevocable upon his death, with his wife as surviving trustee and primary beneficiary during her lifetime. The trust stated that the Family Trust would terminate upon the wife's death but also directed that the remaining property be divided into separate trust shares for the settlor's children, creating ambiguity about whether new trusts or shares of the existing trust were intended. While the children were litigating claims concerning the wife's administration of the trust, the wife appointed a trust

protector under Article 16, and the trust protector amended Article 12 to clarify that new trusts would be created for the children after the Family Trust terminated.

PROCEDURAL HISTORY

After the settlor's death, his children sued the surviving trustee for breach of fiduciary duty, surcharge, and an accounting. The trial court denied the trustee's motion to dismiss for lack of standing, after which the trustee appointed a trust protector who amended the trust to clarify that new trusts would be created for the children upon the surviving spouse's death. The children filed a supplemental complaint challenging the amendments, and the trial court granted their motion for partial summary judgment and denied the trustee's motion. The trustee appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the partial final judgment and remand with directions that the trust protector's amendments are valid.

CASES CITED

- Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993, 996 (Fla. 2003)
- Vetrick v. Keating, 877 So. 2d 54, 56 (Fla. 4th DCA 2004)
- Wells Fargo Bank, N.A. v. Morcom, 125 So. 3d 320, 321 (Fla. 5th DCA 2013)
- Bryan v. Dethlefs, 959 So. 2d 314, 317 (Fla. 3d DCA 2007)
- Sorrels v. McNally, 105 So. 106, 109 (Fla. 1925)
- In re Estate of Barry, 689 So. 2d 1186, 1187-88 (Fla. 4th DCA 1997)
- Bryan v. Dethlefs, 959 So. 2d 314, 317 n.2 (Fla. 3d DCA 2007)
- Kipp v. Kipp, 844 So. 2d 691, 693 (Fla. 4th DCA 2003)
- First Union Nat'l Bank of Fla., N.A. v. Frumkin, 659 So. 2d 463, 464 (Fla. 3d DCA 1995)
- Yates v. Wessel, 775 So. 2d 993, 994 (Fla. 4th DCA 2000)