

SUPREME COURT OF NORTH DAKOTA

Dwyer v. Sell

2021 ND 139 (2021) · No. 20200188 · Decided August 5, 2021

SUMMARY

The North Dakota Supreme Court affirmed an amended judgment concerning the authority of trustees of the Tim Dwyer Farm Trust to sell trust property. The Court held that the co-trustees had broad discretion to sell none, some, or all of the trust property, that the trust agreement required a 15-year contract for deed with equal annual installments and no prepayment option, and that a reservation of hunting access was prohibited under N.D.C.C. § 47-05-17. The Court also affirmed the district court's conclusion that other outdoor recreational access could be reserved.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Jon J. Jensen, Chief Justice; Gerald W. VandeWalle; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	August 5, 2021
DOCKET	20200188
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tim Dwyer Jr. appealed, and the co-trustees and certain beneficiaries cross-appealed, from an amended judgment interpreting the Tim Dwyer Farm Trust agreement and resolving the parties' disputes concerning sales of trust property, financing terms, and reserved hunting access.
STANDARD OF REVIEW	Summary judgment and the interpretation and ambiguity of a trust agreement are reviewed de novo. The evidence is viewed in the light most favorable to the party opposing summary judgment, with that party receiving the benefit of reasonable favorable inferences.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Timothy S. Dwyer, a/k/a Tim Dwyer, Jr. v. Margret Sell, Co-Trustee of the Tim Dwyer Farm Trust, John Dwyer, Co-Trustee of the Tim Dwyer Farm Trust, Jane Dwyer Morgan, Barbara Dwyer Rice, Peggy Dwyer Sell a/k/a Margret Sell, John W. Dwyer a/k/a John Dwyer, Patrick Sell,

Johnny Dwyer, Molly Binger, Olin Sell, Dana Dwyer, Ingrid Kalinowski a/k/a Ingrid A. Sell, Andy Dwyer, Jack Dwyer, Rachel Meuchel, Dan Dwyer, Tommy Dwyer, Joey Dwyer, Sadie Bro, Ruth Dwyer Coleman, Michael A. Dwyer, Sarah Grossman, Johnny Coleman, Sam Coleman, Josh Dwyer, Katie Montplaisir, Anne Dwyer, Billy Morgan, Katie Joraanstad, Mike Morgan, Judah Coleman, Beky Olson, Will Rice, Janna Schmidt, Paul Rice, Charles Coleman, David Morgan, Taylor Dwyer, Tessa Dwyer, Teddi Dwyer, Tianna Dwyer

TOPICS

trusts trustee duties statutory interpretation standard of review appellate procedure

PRACTICE AREAS

trusts real property appellate procedure

QUESTIONS PRESENTED

1. Whether the trust agreement gave the co-trustees broad discretion to decide whether to sell none, some, or all of the trust property and permitted them to withdraw property from a proposed sale if dissatisfied with the appraisals.
2. Whether the trust agreement's requirement of a fifteen-year contract for deed with equal annual installments of principal and interest permitted prepayment.
3. Whether N.D.C.C. § 47-05-17 prohibited the co-trustees from reserving a right of access to trust property for hunting in a future conveyance.

HOLDINGS

1. The unambiguous trust agreement grants the co-trustees broad discretion to sell none, some, or all of the trust property when they determine that a sale is necessary to pay trust debts or taxes or is in the beneficiaries' best interests. If they decide to sell, they must first offer the property to Tim Dwyer Jr., who may purchase all, some, or none of the property offered.
2. The trust agreement does not permit prepayment of a contract for deed for the sale of trust property.
3. N.D.C.C. § 47-05-17 prohibits the co-trustees from reserving a right to access trust property for hunting in a future conveyance under Article IX of the trust agreement.

KEY QUOTATIONS

“When a trust agreement is unambiguous, the settlor’s intent is ascertained from the language of the agreement itself.” (¶ 8)

“The plain language of the Trust agreement grants the co-trustees broad discretion to sell Trust property.” (¶ 13)

“The requirement of fifteen equal annual installments of principal and interest implies if not directs that no prepayment of the contract is permitted.” (¶ 16)

FACTUAL BACKGROUND

Tim Dwyer Sr. owned more than 7,000 acres in McKenzie County and conveyed the property to the Tim Dwyer Farm Trust in December 2004, naming Margret Sell and John Dwyer as co-trustees. The trust gave Tim Dwyer Jr. a continuing right to lease the land and a first right to purchase trust property if the co-trustees decided to sell. In 2018, the co-trustees determined that selling trust property could be in the beneficiaries' best interests, but the parties disputed the trustees' authority, the financing terms, and whether hunting and recreational access could be reserved.

PROCEDURAL HISTORY

Dwyer Jr. sought declaratory relief concerning the interpretation of the trust agreement. The parties moved for summary judgment, and the district court concluded the trust was unambiguous, granted partial summary judgment for the co-trustees, held that they had broad discretion to sell trust property, required a fifteen-year contract for deed with annual principal and interest payments and no prepayment option, and held that N.D.C.C. § 47-05-17 prohibited reserving hunting access rights. The North Dakota Supreme Court affirmed the amended judgment.

DISPOSITION

affirmed

CASES CITED

- Krebsbach v. Trinity Hospitals, Inc., 2020 ND 24, ¶ 7, 938 N.W.2d 133
- Pennington v. Cont'l Res., Inc., 2019 ND 228, ¶ 6, 932 N.W.2d 897
- Trust of Roger S. Linn Restated Trust Agreement, 2019 ND 58, ¶ 10, 923 N.W.2d 815
- Trust of Roger S. Linn Restated Trust Agreement, 2019 ND 58, ¶ 11, 923 N.W.2d 815
- Hallin v. Inland Oil & Gas Corp., 2017 ND 254, ¶ 9, 903 N.W.2d 61
- Goetz v. Hubbell, 266 N.W. 836, 840 (N.D. 1936)
- Hauer v. Zerr, 2020 ND 16, ¶ 7, 937 N.W.2d 508