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Summary of In re Irrevocable Trust Agreement of 1979, 130 Nev. Adv. Op. 63

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Summary

The Court determined whether unilateral mistakes, if proven, will allow a donor to rescind or reform an errant gift.

Disposition

The Nevada Supreme Court held that a donor may obtain relief from an erroneous gift if he or she proves by clear and convincing evidence that the donor's intent was mistaken and was not in accord with the donative transfer. Further, the remedies available to correct such mistakes are dependent upon the nature of the unilateral mistake in question.

Factual and Procedural History

Daisy Monzo, the real party in interest, executed a deed gifting her condominium to an irrevocable trust for the benefit of her daughter Charron C. Monzo, petitioner. The real party in interest later rescinded that transfer because her attorney drafted the deed gifting a 100-percent interest in the condominium, when the real party in interest typically transferred a one-third interest in the subject properties to each of her three daughters' trusts. The real party in interest's attorney then prepared a correction deed to rectify this situation, but the real party refused to sign that deed. Instead, the real party signed another deed three months later, prepared by a different attorney, transferring the condo back into her own name.

After the real party rescinded the prior gift, her daughter filed a petition in the district court seeking an order requiring the real party to transfer the condo back to her trust. The real party subsequently filed counter claims for fraudulent misrepresentation, elder abuse, breach of contract, conversion, undue influence, and mistake. She also moved the district court for partial summary judgment, seeking rescission of the initial gift deed based on at least three mistakes that she allegedly made in transferring the condo into her daughter's trust.

First, the real party contended that she mistakenly believed the deed would transfer the condo into a trust that she controlled while granting her estate planning flexibility. Second, the real party argued that she mistakenly thought that transferring the property was necessary to avoid having it escheat to the state upon her death. Lastly, the real party asserted that she mistakenly believed that the deed would transfer a one-third interest in the property to each daughter's trust, rather than conveying the full interest to Charron's trust.

Charron filed a countermotion for partial summary judgment on the real party's counterclaims and, in the alternative, for reformation of the deed transferring the condo into her trust. The district court entered partial summary judgment in the real party's favor, concluding that she made unilateral mistakes. Her daughter then filed a writ petition challenging the district court's partial summary judgment order.

Discussion

¹ By Michael Paretti.

Mutual and unilateral mistake in the contract context do not apply to donative transfers

The district court held that the real party's transfer of the property into her daughter's trust was affected by unilateral mistake in granting rescission of the transfer deed. The Court has previously held that, in the contract context, a mutual mistake may provide a basis for relief from a contract.² However, mutual mistake is entirely inapplicable in the gift context because a gift, by its very nature, is unilateral.³ Aside from the donee accepting or refusing the gift, the donor is the only party bearing the risk of mistake.⁴ The donee's knowledge of a mistake is likely irrelevant.

In Nevada, a valid inter vivos gift or donative transfer requires: (1) a donor's intent to voluntarily make a present transfer of property to a donee without consideration, (2) the donor's actual or constructive delivery of the gift to the donee, and (3) the donee's acceptance of the gift.⁵ Unless conditional, a gift is irrevocable once it is accepted by the donee.⁶

Unilateral mistake in the donative transfer context

The Court addressed whether a donor whose gift is induced by a unilateral mistake and who mistakenly transfers something more than, or different from, the intended transfer may pursue an action to remedy his or her unilateral mistake. Relying on the Restatement and extra-jurisdictional approaches, the Court determined that

[A] donor's unilateral mistake in executing a donative transfer may allow a donor to obtain relief from that transfer if the mistake and the donor's intent are proven by clear and convincing evidence. And depending on whether the unilateral mistake constitutes an invalidating mistake or a mistake in the content of the document, the donor may be entitled to rescission or reformation of the transfer.

Genuine issues of fact as to the real party's alleged intent and unilateral mistakes

The district court granted the real party's motion for summary judgment finding that the real party made unilateral mistakes in executing the gift deed and that rescission of the deed transferring the property to her daughter's trust was warranted. Unilateral mistakes are dependent upon the donor's intent at the time when delivery and all other elements necessary to complete a donative transfer were completed. "If the donor's intent is not in accord with the facts, then a mistake may have occurred warranting relief. Determining a donor's donative intent and beliefs is a question for the fact-finder, and the presence of ambiguity in a donor's intent in making a gift creates genuine issues of material fact that preclude summary judgment."⁷

Because there is conflicting testimony from the real party, her daughter, and the lawyer who drafted the trust in question, the Court determined it was uncertain what the real party's

² *Gramanz v. Gramanz*, 113 Nev. 1, 8, 930 P.2d 753, 758 (1997).

³ *See Wright v. Sampson*, 830 N.E.2d 1022, 1027 (Ind. Ct. App. 2005).

⁴ *See Twyford v. Huffaker*, 324 S.W.2d 403, 406 (Ky. Ct. App. 1958)

⁵ *Schmanski v. Schmanski*, 115 Nev. 247, 252, 984 P.2d 752, 756 (1999);

⁶ *Simpson v. Harris*, 21 Nev. 353, 362-63, 31 P. 1009, 1011-12 (1893).

⁷ *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123 Nev. 212, 215-16, 163 P.3d 405, 407 (2007); *Mullis v. Nev. Nat'l Bank*, 98 Nev. 510, 513, 654 P.2d 533, 535-36(1982).

donative intent was at the time of the donative transfer. Accordingly, the Court precluded the district court from summary judgment.

Conclusion

The Nevada Supreme Court determined that a donor may obtain relief from an erroneous gift if he or she proves by clear and convincing evidence that the donor's intent was mistaken and was not in accord with the donative transfer. Further, the Court asserted that the remedies available to correct such mistakes, which include rescission or reformation of the deed transferring the property, depend on the nature of the unilateral mistake in question.