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### In re Connell Living Trust, 133 Nev. Adv. Op. 19 (May. 04, 2017)

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*Nevada Law Journal*

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## WILLS AND TRUSTS: BREACH OF FIDUCIARY DUTY

### **Summary**

The Nevada Supreme Court affirmed the decision of the district court that found Appellant had breached her fiduciary duty when she withheld assets from entering a trust created for her children, the Respondents. The Court found that the mother had insufficient evidence to raise a genuine issue of material fact that she owned 100% of a trust created by her parents when her children were slated to receive 65% of said trust from their grandparents. The Court affirmed the lower court, ordered the assets be moved to the children's trust, and awarded them attorney's fees.

### **Background**

The instant action is based on a trust that was created by W.N. Connell and Marjorie T. Connell. Before his death, W.N. created a Trust (the “1972 Trust”) which was funded in part by W.N.’s separate oil assets. After his death, the 1972 was to be split into two sub-trusts (Trusts No. 2 and No. 3) after his death. A portion of the trust, Trust No. 3, would go to his wife Marjorie T. Connell. The remainder of the trust, Trust No. 2, would go to his daughter Eleanor C. Ahern (“Appellant”). Marjorie remained a trustee of the entire trust and later appointed Eleanor as co-trustee. The income of the trust was split 65% for Marjorie and 35% for Eleanor.

Before Marjorie’s death she created a pour-over will that would transfer her portion of the No. 3 trust to a new trust entitled “MTC Living Trust”. The beneficiaries of this new trust were Eleanor’s children, Jacqueline M. Montoya and Kathryn A. Bouvier (together “Respondents”). After Marjorie’s death, Eleanor, as co-trustee, ceased the distribution of the assets. She claimed that her Trust No. 2 owned 100% of the original trust and the previous 65% that was distributed to Marjorie was a gift from Eleanor.

The Respondents, initiated the underlying litigation and asked the district court for four types of relief: 1) a declaration that MTC Living Trust owned 65% of the trust’s assets, 2) a preliminary injunction to distribute the 65% of the assets to the MTC Living Trust, 3) a finding that Eleanor breached her fiduciary duties when she ceased distribution of the assets, and 4) attorney’s fees. The district court granted summary judgment on all fronts stating that laches barred Eleanor from asserting that Trust No. 2 owned 100% of the trust. Eleanor appealed this decision in its entirety, and the Nevada Supreme Court granted review.

### **Discussion**

#### *Summary judgment regarding the trust interpretation*

The district court correctly determined that, upon W.N.’s death, Eleanor was entitled to 35% interest from the 1972 Trust and the remaining 65% was assigned to the Respondents through Trust No. 3. Further, Eleanor failed to provide sufficient evidence to raise a genuine issue of

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<sup>1</sup> By Marco Luna.

material fact as to the 1972 Trust's interpretation.<sup>2</sup> Eleanor argued that the fourth article in the first trust stated that all income from the trust be paid to her. The Court was not persuaded because the fourth article clause only applied to her portion of the trust, Trust No. 2. Secondly, if the Court were to apply her argument, she would effectively receive income from portions of the trust that she is not a beneficiary to, creating inconsistencies within the trust. Third, Eleanor's argument ignores the third article clause in the trust, which designated the maximum marital deduction by federal law be allocated to Trust No. 3.<sup>3</sup>

Eleanor pointed to a number of activities that would demonstrate she was entitled to 100% of the trust but the Court was unpersuaded. Among them, Eleanor argued that the federal estate tax return was inconsistent when analyzing the trust because it had typographical errors and the errors indicated possible errors in the rest of the return. However, Eleanor failed to present evidence there may be errors within the original trust, as such her argument failed to overcome summary judgment.<sup>4</sup> Eleanor also pointed to several post hoc actions in an attempt to prove her trust, Trust No. 2, owned 100% of the assets. The Court determined that the post hoc acts were irrelevant when the original trust's terms explicitly apportioned the assets to Trust No. 3. Accordingly, there was insufficient evidence to raise a genuine issue of material fact and the Court affirmed the district court's grant of summary judgment as to the interpretation of the trust.

#### *Summary judgment regarding breach of fiduciary duty and attorney fees*

The Court agreed that Eleanor breached her fiduciary duties of impartiality when she unilaterally withheld assets from entering the MTC Living Trust, before seeking court instructions, and advocated "as trustee for a trust interpretation favoring herself." Therefore, the Court affirmed the district court's grant of summary judgement as to the breach fiduciary duties and corresponding award of attorney's fees.<sup>5</sup>

#### *Preliminary injunction*

The Court merged the underlying preliminary injunction with the final judgement.<sup>6</sup> Accordingly, the Court dismissed Eleanor's appeal of the preliminary injunction as moot.<sup>7</sup>

### **Conclusion**

None of Eleanor's arguments were sufficient to raise a genuine issue of material fact that her Trust No. 2 owned 100% of the assets of her parent's trust. Consequently, she breached her fiduciary duty when she withheld assets from entering a trust created for her children and owes Respondents attorney's fees. The decision of the lower court is affirmed.

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<sup>2</sup> Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>3</sup> Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc., 128 Nev. 384, 390, 284 P.3d 377, 380-81 (2012) (explaining that the intentions of contraction parties are ascertained by considering documents as a whole).

<sup>4</sup> See Nev. R. Civ. P. 56(e); Wood, 121 Nev. at 732, 121 P.3d at 1031.

<sup>5</sup> NEV. REV. STAT. § 153.031(3(b) (2016) (the district court may award a petitioner attorney fees to avoid injustice and a trustee may be made liable for the attorney fees if the trustee breached her fiduciary duties).

<sup>6</sup> Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 314 (1999).

<sup>7</sup> Personhood Nev. v. Bristol, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).