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### In re Fund for Encouragement of Self Rel., 135 Nev. Adv. Op. 10 (Apr. 25, 2019)

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*In re Fund for Encouragement of Self Rel.*, 135 Nev. Adv. Op. 10 (Apr. 25, 2019)<sup>1</sup>

## STATUTORY INTERPRETATION: APPOINTING TRUST ASSETS

### **Summary**

NRS § 163.556 does not permit a court to disregard trustees' objections and appoint half of a wholly charitable trust's assets to a new trust when, pursuant to the trust instrument's terms, all trustees must consent before distributing half of the trust's assets.

### **Background**

The Fund for the Encouragement of Self Reliance ("the Fund") is a wholly charitable trust with several co-trustees. One of those trustees, Respondent Thu-Le Doan, sought to distribute half of the trust's property to another wholly charitable trust, which Doan alone would administer. Interpreting NRS § 163.556(1), the district court found that Doan had authority to unilaterally distribute the trust's assets. Doan's co-trustee, Appellant Doan L. Phung, challenged the district court's determination.

### **Discussion**

First, the Court analyzed the word "trustee." In the context of charitable trusts, NRS § 163.500 states that the word "trustee" is defined as "trustee, trustees, person or persons possessing a power or powers referred to in [the Charitable Trust Act]."<sup>2</sup>

Next, the Court reviewed NRS § 163.556(1). The statute states that a trustee, who had authority to distribute trust property may distribute trust property to another trust "unless the terms of... [the] irrevocable trust provide otherwise."<sup>3</sup>

The Court emphasized that it would consider the settlor's intent when construing a trust.<sup>4</sup> The trust instrument expressly stated that "[t]rustees...may, in *their* discretion, manage trust property and income."

### **Conclusion**

Informed by the statutory provisions regarding charitable trusts, case precedent, and the trust instrument's terms, the Court found that one trustee did not have authority to unilaterally distribute half of the Fund's property to a new trust. The Court reversed the district court's decision and remanded the case for further proceedings.

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<sup>1</sup> By Skylar Arakawa-Pamphilon.

<sup>2</sup> NEV. REV. STAT. § 163.550 (2017).

<sup>3</sup> NEV. REV. STAT. § 163.556(1) (2017).

<sup>4</sup> *In re Connell Living Tr.*, 134 Nev., Adv. Op. 73 (2018).