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In re Raggio Family Trust, 136 Nev. Ad. Op. 21 (Apr. 9, 2020)

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TRUST LAW: DISTRIBUTIONS

Summary

The Court determined that neither the language in the trust instrument nor NRS 163.4175 requires the trustee to consider the beneficiary's other assets before making distributions from the trust.

Background

In 2007, William J. Raggio created the William J. Raggio Trust (Raggio Trust). Upon Raggio's death, the Raggio Trust split into two subtrusts, the Marital Deduction Trust (Marital Trust) and the Credit Shelter Trust. The trust allowed the trustee to pay as much of the principal of the trust "as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance" of Dale. His second wife, petitioner Dale Checket Raggio, was named as the trustee and life beneficiary of the subtrusts. William Raggio's two daughters from a previous marriage, respondents Leslie Righetti and Tracy Chew (collectively, Righetti), were named as remainder beneficiaries of the Marital Trust. Dale's grandchildren from a previous marriage are the remainder beneficiaries of the Credit Shelter Trust.

In 2015, after William Raggio died, Righetti sued Dale for breach of trust and breach of fiduciary duties as trustee of the Marital Trust. Righetti alleged that Dale improperly distributed funds solely from the Marital Trust. Righetti argued that Dale sought to preserve her grandchildren's remainder interest in the Credit Shelter Trust. As a result, she breached her duties of good faith, loyalty, and impartiality, by solely drawing from the Marital Trust. Righetti also argued that Dale breached the Marital Trust by paying herself distributions amounts that were more than necessary and proper for her support, care, and maintenance. Thus, Righetti sought discovery of Dale's accounting and distributions of the Credit Shelter Trust.

Dale objected to the discovery requests because they were not "reasonably calculated" to lead to discovery of admissible evidence. Dale also filed a motion for partial summary judgment. She argued that the probate commissioner's resolution of a prior petition precluded Righetti's arguments. Righetti opposed summary judgment and filed a motion to compel discovery, which argued that issue and claim preclusion did not apply. Righetti also argued that the terms of the Marital Trust fell within the exception of NRS 163.4175, meaning that "Dale had an obligation to consider her other sources of income and resources before making support distributions to herself."²

The district court denied Dale's partial summary judgment request. The district court granted Righetti's motion to compel discovery of the accounting and distributions of the Credit Shelter Trust. The court reasoned that "the requested discovery was relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence." Following the district court's decision, Dale filed a petition seeking a writ of prohibition or mandamus, arguing that the district court's discovery order was improper as a matter of law and asked the Court to vacate the district court's order.

¹ By Ariel Williams.

² NEV. REV. STAT. § 163.4175 (2009).

Discussion

We exercise our discretion to entertain Dale's petition for a writ of prohibition

A writ of prohibition is the appropriate remedy to prohibit the district court from compelling a party to disclose privileged or irrelevant discovery. The Nevada Supreme Court generally declines to review a discovery order through a petition for extraordinary relief. However, the Court may exercise their discretion for writ relief if the challenged discovery order is likely to cause irreparable harm and a later appeal would not effectively remedy an improper disclosure of information. The Court reasoned that the discovery order implicated Dale's privacy interest as the district court concluded that it needed to review her "standard of living and supportive resources beyond the marital deduction trust" to determine if the distributions were necessary and proper. The Court further explained that, if the discovery permitted by the district court was legally irrelevant, a later appeal would not remedy the improper disclosure of the information. As a result, the Court exercised their discretion to entertain the writ of the prohibition.

The terms "necessary" and "proper" do not sufficiently trigger the exception of NRS 163.4175

The Court reviewed whether the interpretation of NRS 163.4175, which informs whether the accounting and distribution records of the Credit Shelter Trust are relevant to Righetti's breach of fiduciary duty claims, and they reviewed the issue de novo. Dale argued that neither Nevada trust law nor the terms of the trust instrument impose an obligation on her to consider her other assets before making trust distributions. Dale argued that that the district court's order was contrary to Nevada trust law, and the Court should issue a writ of prohibition arresting discovery. Righetti agreed with the district court's decision, because Dale's distributions from the Credit Shelter Trust are relevant to the claims of breach of trust and breach of fiduciary duties.

The Court examined whether Dale, as trustee, has an obligation to consider other assets before making distributions to herself, as beneficiary, from the Marital Trust. NRS 163.4175 states, "except as otherwise provided in the trust instrument, the trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets." Unless the trust instrument sets forth a requirement, Nevada trust law does not obligate a trustee to consider other assets or resources before making a distribution.

Section 5.1 of the Marital Trust states that the trustee "shall pay to or apply for the benefit of [Dale] as much as of the principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance" of Dale. Dale and Righetti offered two conflicting interpretations of the term "necessary." The district court adopted Righetti's interpretation of "necessary," which would create a threshold of financial need. The district court reasoned that it "cannot determine what is necessary and proper without a complete understanding of the trustee's circumstances, to include standard of living and supportive resources beyond the marital deduction trust." However, the Court concluded that the district court's determination was clearly erroneous.

The Court construes trusts in a manner effecting the apparent intent of the settlor. The Court reasoned that, evidence from the trust itself, "a fair and reasonable interpretation of the text as a whole" demonstrated that William Raggio did not restrict Dale's discretion and require that she consider her other assets before making distributions. The Court further reasoned that the district court's reading is contrary to other provisions of the trust instrument itself. Section 6.4, which covered the administration and distribution to the living issue of a grandson, provided that Dale shall pay such amounts that "[Dale] in [her] discretion, shall deem necessary for their proper support . . . after taking into consideration . . . any other income or resources of such issue known to Dale." The Court considered the trust as whole to

determine the most fair and reasonable interpretation of Section 5.1 and determined that the trust instrument does not invoke NRS 163.4175's exception. Thus, Dale was not required to consider her assets or resources to make distributions from the trust assets.

Dissent

Justice Cadish wrote the dissent, with whom Chief Justice Pickering concurred. Justice Cadish argued that the writ of prohibition did not meet the standard to warrant the Court's discretionary review. The Court generally declines to review discovery orders through writ petitions, but they may review the orders "if the challenged discovery order is likely to cause irreparable harm *and* a later appeal would not effectively remedy an improper disclosure of information." Justice Cadish argued that the majority, in conclusory fashion, made no determination that the challenged discovery order is likely to cause irreparable harm. She further argued that Dale made no showing of a likelihood of irreparable injury, as Dale acknowledged that the requested discovery would not result in the disclosure of any privileged information. Dale also failed to demonstrate any particular harm if the records were to be disclosed.

Justice Cadish would have declined to consider writ relief. She argued that it was not proper for the Court to consider the interlocutory writ proceeding, because the district court had not made a final ruling on the issue. She further explained that issuing an opinion prior to a final ruling from the district court is contrary to the court's "general practice of ruling on issues only after the district court has had the opportunity to fully analyze and reach its own conclusion...particularly, since the majority's conclusion rests on its factual determination of the trustor's intent." Thus, she respectfully dissented.

Conclusion

The Court granted Dale's petition for writ relief and directed the clerk of the Court to "issue a writ of prohibition directing the district court to vacate its order compelling discovery of the accounting and distributions of the Credit Shelter Trust."