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In re Tr. Agreement of Davies, 138 Nev. Adv. Op. 89 (Dec. 29, 2022)

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A CONVEYENCE OF REAL PROPERTY HELD IN TRUST DOES NOT NEED A
SEPARATE DEED AND A DESCRIPTION OF THAT REAL PROPERTY MAY SATISFY
THE STATUTE OF FRAUDS USING EXTRINSIC EVIDENCE.

Summary

In an opinion authored by Justice Pickering, following both the NRS and California law, the Court affirmed the district court's holding, finding that a written instrument can transfer assets within a trust with real property, without a separate deed and, a description of real property held in trust satisfies the Statute of Frauds so long as the description provides sufficient means to identify the property using extrinsic evidence.

Background

Before dying intestate in September of 2020, David Francis Davies III created a living trust agreement. Within this trust, Davies was listed as the Grantor, and Respondent Cathy Codney, later assumed the role of the Trustee. The trust specifically acknowledged the intentional disinheritance of Davies' children, who would later become the appellants.

The trust stated that Davies, as the Grantor, transferred and conveyed the property described in Schedule A attached to the Trustee. Within the heading titled "Real Property," Schedule A listed Davies' "House" as a trust asset. This House was the only real property Davies owned when he created the trust as well as when he died. Schedule A, however, did not list any street address or applicable parcel number, to further identify the House within the trust. Davies also failed to prepare a formal deed conveying the House to the trust. Despite this, the probate commissioner recommended that the title to the House be formally conveyed to the trust by order incorporating the description of the property. Davies' children, who would have inherited the House if not for the trust, objected.

Despite objections by Davies' children, the district court held, following the recommendation of the probate commissioner, that the description within Schedule A was valid, establishing the House as an asset of the trust under Nevada law. The district court also held that the description listed under Schedule A of the House satisfied the requirements of the Statute of Frauds. Davies' children then appealed the decision to the Supreme Court.

Discussion

The Court reviewed this appeal in two separate issues. First, the Court considered whether, under NRS 163.002 (which defines methods of trust creation) and NRS 163.008 (which defines the Statute of Frauds for trusts funded by real property), a written instrument can transfer assets within a trust that has real property, absent a separate deed. And second, if so, how specific the writing to describe the real property must be in order to comply with the Statute of Frauds.

Davies' children objected to the validity of the trust in regard to the real property, arguing that NRS 163.002 requires a trust involving real property to be performed by a formal deed specifically conveying the property to the trust. Additionally, they felt the trust's vague description of Davies' "House" violated the Statute of Frauds as required by NRS 163.008. However, after analyzing NRS 163, accompanied by California precedent, the Court disagreed.

¹ By Camille Bayard.

A.

The Court found that under Nevada law, a valid express trust created in relation to real property must either: arise by operation of law or be evidenced by “[a] written instrument signed by the trustee”² or “[a] written instrument ... conveying the trust property and signed by the settlor”.³ From reviewing these statutes, unlike what the appellants contend, the Court found nothing that requires a grantor to have a formal deed to create a trust as to real property.

Additionally, because the State has only spoke about a similar issue once in passing, the Court looked to California law (which much of NRS 163 was derived from), to further guide the decision. For instance, in *Carne v. Worthington*, the appellant contended that the trust in question was not valid because the grantor “had not properly transferred title to the only asset”⁴ in the trust, the only piece of real property. Using the California Probate Code, the court in *Carne* concluded that the trust effectively transferred the real property from the grantor to the third-party trustees, without requiring the grantor to execute a separate deed.⁵ Seeing that California’s statutes governing real property transfers into trusts are nearly identical to Nevada’s, the Court felt it was appropriate to follow the holding of *Carne* when making its decision.

The only material difference the Court found when choosing to follow *Carne* to make the decision is that NRS 163.002(1)(a) allows a grantor to create a real property trust through declaration whether the trustee is the grantor or a third party. This statute allows a Nevada grantor to create a trust by declaration if the grantor has named a third party as trustee, as Davies did.

The Court found through the language of the agreement, Davies’ trust can be characterized either as a declaration that the House is held in trust or as a transfer of that property to the trust, and it is in writing and signed by the grantor and trustee. Therefore, following both California law and NRS 163.002(1)(a), the Court found the transfer of the House listed in Schedule A to Davies trust as valid.

B.

Extrinsic evidence can be used to satisfy the Statute of Frauds. When looking into the question of specific compliance with the Statute of Frauds, the Court looked to Nevada precedent to guide the decision.⁶

1.

The Court started out this discussion by recognizing that NRS 163.008(3) does not require trusts conveying real property to specifically identify the property using the legal description, street address, or assessor’s parcel number, as the appellants alluded to in their initial argument.⁷ Specifically, the Court found the phrase “must not be construed”⁸ within NRS 163.008(3) to relieve Davies, as the property owner, from any such obligation to further identify the real property held within the trust. Therefore, as a matter of statutory interpretation under the NRS, Schedule A of Davies’ trust does not violate the Statute of Frauds.

² NEV. REV. STAT. § 163.008(1)(a) (2011).

³ NEV. REV. STAT. § 163.008(1)(b) (2011).

⁴ *Carne v. Worthington*, 200 Cal. Rptr. 3d 920, 992 (Ct. App. 2016).

⁵ *Id.* at 927-28.

⁶ *See e.g.*, *Wiley v. Cook*, 94 Nev. 558, 563, 583 P.2d 1076, 1079 (1978); *Roberts v. Hummel*, 69 Nev. 154, 159, 243 P.2d 248, 250 (1952); *Wainwright v. Dunseath*, 46 Nev. 361, 366-68, 211 R.1.104, 1106-07 (1923).

⁷ NEV. REV. STAT. § 163.008(3) (2011).

⁸ *Id.*

2.

Furthermore, when considering the common law interpretation of this issue, the appellants argument that Davies' trust fails the Statute of Frauds requirements, becomes even weaker. NRS 111.205(1) codifies the common law Statute of Frauds for interests in land into Nevada law. Applying both Nevada and California law to the holding, the Court found that modern state courts have frequently held that a description similar to Davies' (e.g., "my property") satisfies the Statute of Frauds when extrinsic evidence demonstrates that only one tract of land satisfies the description.⁹ Here, because it was undisputed that this House was the only real property Davies owned when he created the trust as well as when he died, the property was easily identifiable without a necessity for any extra identifiers such as using the legal description, street address, or assessor's parcel number, as the appellants claimed. Additionally, because neither the county assessor, nor the probate commissioner had any issues correctly identifying the property through the description provided in Schedule A, the description was sufficient to identify the House through extrinsic evidence. The trust, therefore, satisfies the common law Statute of Frauds as codified in NRS 111.205(1).

Conclusion

The Supreme Court affirmed the district court's holdings. The district court properly interpreted both NRS 163.002 and NRS 163.008. Moreover, because persuasive California authorities support the district court's decision that the language within Schedule A of the trust sufficiently established Davies' House as trust property, the district court's decision is affirmed.

⁹ See *Wiley v. Cook*, 94 Nev. 558, 563, 583 P.2d 1076, 1079 (1978); *Roberts v. Hummel*, 69 Nev. 154, 159, 243 P.2d 248, 250 (1952); *Ukkestad v. RBS Asset Finance, Inc.*, 185 Cal. Rptr. 3d 145, 148-51 (Ct. App. 2015); see also *Alameda Belt Line v. City of Alameda*, 5 Cal. Rptr. 3d 879, 883 (Ct. App. 2003).