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1-27-2023

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In re Tr. Agreement, 23 Partners Tr. I, 138 Nev. Adv. Op. 84 (Dec. 22, 2022)¹
WHETHER THE TRUSTEES OF AN IRREVOCABLE DISCRETIONARY TRUST MUST
DISCLOSE ACCOUNTING OR TRUST INSTRUMENTS TO BENEFICIARIES.

Summary

Where an irrevocable trust uses terms to distinguish between different classes of beneficiary, the court must look at the usage of those terms within the instrument to determine whether a beneficiary is entitled to an accounting of the trust. Additionally, NRS 165.180 only stands for the proposition that NRS Chapter 165 does not contain an exhaustive list of the district court's power over trusts. NRS 165.180 does not stand as an independent grant of powers not otherwise listed in the chapter.

Background

The trustees of 23 Partners Trust I refused to disclose detailed information about the trust to the beneficiaries. The beneficiaries then petitioned the district court to assume jurisdiction over the trust and obtain an accounting and a copy of the trust document. The district court concluded that the beneficiaries were not entitled to an accounting, but did order the trustees to relinquish tax returns, an inventory of assets, a summary of financial transactions and other select financial information. In addition, the district court held that the beneficiaries were entitled to certain portions of the trust document that affected their rights. The trustees appealed; the beneficiaries cross-appealed.

Discussion

Nevada statutes do not entitle Beneficiaries to receive an accounting, but the terms of the trust provide for annual accountings.

Nevada statutes do not require accounting to discretionary interest beneficiaries.

The question before the court was whether NRS 165.180 and NRS 165.1207 empower a district court to order an accounting of a trust. The beneficiaries argue that NRS 165.180 stands for the proposition that NRS Chapter 165 is not an exhaustive list of the powers of the court regarding trusts. From that, they argue that the district court is empowered to use NRS 165.1207 to order an accounting of the trust. Though NRS 165.1207 typically demands an interest that is not discretionary, the beneficiaries argue that they hold other interests within the trust besides discretionary interests. The court disposes of this argument on two bases. With regards to NRS 165.180, the court holds that the word “abridge” does not serve to grant the district court with further powers rather it serves solely for the proposition that NRS Chapter 165 is not an exhaustive list of powers.² With regards to NRS 165.1207, the court holds that all parties involved considered the interests held by the beneficiaries to be discretionary interests. Therefore, the court holds that there is no private basis of relief under these statutes.³

¹ By Chase Christensen.

² NEV. REV. STAT. 165.180 (2022).

³ NEV. REV. STAT. 165.1207 (2022).

The trust provides that Beneficiaries are entitled to review certain trust materials and to annual accountings.

The beneficiaries additionally argued that they were vested beneficiaries and therefore entitled to an accounting of the trust. The trustees argued that the interest is plainly discretionary. As part of their argument, the beneficiaries include distinctions made in the instrument between various classes of beneficiary as well as the definitions of “present” and “vested” beneficiaries, which the instrument continually confers rights upon. The trustees do present colorable persuasive authority from other jurisdictions which would rule upon the interest rather than the language in the document, but the court finds these holdings to be contrary to the will of the decedent and purpose of the sections at issue in the trust. Instead, the court holds that where the usage of a term clearly indicates an intent or will to confer rights upon a beneficiary, that intent should be given greater weight in the construction of the trust than the interest purported.⁴ The instrument granted “present” and “vested” beneficiaries a right to a reasonable inspection of the books as well as an accounting upon request. The court analyzes the usage of those terms in the trust instrument itself and concludes that their frequent usage throughout, the fact that the children were living at the time of the decedent’s death, and the fact that the trust was irrevocable suggest that the beneficiaries are not contingent and are rather present and vested beneficiaries. Therefore, the court holds that the beneficiaries are entitled to those grants made to them under the trust.

The district court did not abuse its discretion in ordering Trustees to provide portions of the trust instrument but should have identified the specific sections to be provided.

Trustees argued that the district court abused its discretion on two fronts. The first was an error as to ordering the delivery of the trust. In the alternative, the trustees argued there was error as to failing to provide guidance on what specific portions of the trust must be delivered. The beneficiaries argue that these actions were not an error and further argue that the rights conferred to them by the document imply a right to receive a copy of the whole instrument. The court holds the district court did not abuse its discretion in ordering delivery of portions of the trust instrument. The court rejects the beneficiaries argument regarding the disclosure of the whole trust because of the beneficiaries faulty reliance on *Matter of Estate of Ella E. Horst Revocable Trust, U/A/D 05/21/1991*.⁵ The court explains that decision dealt with whether strict compliance was necessary when a trustee chose to tell beneficiaries that a revocable trust became irrevocable under a different statute. However, the failure on the part of the district court to specify which portions of the trust instrument were to be delivered was an abuse of discretion. For that reason, the court remands with instructions to specify which portions are demanded delivery by the instrument.

Conclusion

This opinion concerns whether NRS 165.180, NRS 165.1207, or the language of the trust document in issue require the trustees of a discretionary, irrevocable trust to disclose accounting

⁴ In re W.N. Connell & Marjorie T. Connell Living Tr., 134 Nev. 613, 616 (2018).

⁵ Matter of Estate of Ella E. Horst Revocable Trust, U/A/D 05/21/1991, 135 Nev. 755, 761 (2020).

of that trust or its instrument to its beneficiaries. Regarding NRS 165.180, the court concludes that while NRS 165.180 purports not to “abridge” the courts’ actions regarding trusts, it serves as no independent grant of power to the court, and therefore, no basis for relief in this issue. Regarding NRS 165.1207, the court holds that because this is a discretionary trust, there is likewise no basis for relief under that statute. With regards to the language of the instrument, however, the court holds that where a trust does not define terms describing a class of beneficiary, the court must look to the usage of those terms in the trust to determine the appropriate rights of beneficiaries. Here, the court holds that the terms “present” and “vested” beneficiaries should be constructed to grant the beneficiaries of the trust the same rights as “present” and “vested” beneficiaries, regardless of their discretionary interest. The court affirms the lower court’s order for the trustees to disclose instruments of the trust to the beneficiaries but reverses the lower court’s determination that the beneficiaries were not entitled to an accounting.