

IN THE SUPREME COURT OF IOWA
SUPREME COURT NO. 21-0953

KATINA M. LITTLE,

Plaintiff-Appellee,

vs.

KEITH A. DAVIS and DONALD J. DAVIS,
Co-Trustees of the DONALD K. AND
COLLEEN DAVIS FAMILY TRUST,

Defendants-Appellants.

KEOKUK County No. TRPR038226

APPEAL FROM THE DISTRICT COURT
IN AND FOR KEOKUK COUNTY
THE HONORABLE CRYSTAL S. CRONK, DISTRICT COURT JUDGE

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APPELLANTS' REPLY BRIEF

CERTIFICATE OF SERVICE

On this _6th_ day of December, 2021, I the undersigned, did file electronically this Appellant's Final Reply Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

PROOF OF SERVICE

On this _6^t_ day of December, 2021, I the undersigned, did serve this Appellant's Proof Brief on the attorneys for the Appellee listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellee are registered filers pursuant to Iowa R. Civ. P. 16.201.

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT ERRED IN FINDING AS A MATTER OF LAW THAT IOWA CODE SECTION 633A.1105 IS A COMPLETE BAR TO A MODIFICATION OF AN IRREVOCABLE TRUST PURSUANT TO SECTION 633A.2202.

Authorities:

Iowa Code section 633A.2202.

ARGUMENT

In her Appellee's Brief, Ms. Little reiterates without any compelling authority, the identical argument she advanced in district court—that a trust, once denoted as irrevocable, cannot ever be modified because such modification would run contrary to Iowa Code section 633A.1105¹. Appellee's Brief, p. 10-14. She relies on the case of *In re Marriage of Rhinehart*, which is not dispositive of the issues in this appeal. *Id.* at 14. She also ignores section 633A.3102, which requires trust terms to expressly provide that a trust is irrevocable and further ignores the common law, as expressed in the *Claflin* Doctrine which allows for modification of irrevocable trusts.

I. **The *Rhinehart* Case is not Dispositive.**

Ms. Little argues that because the trust in our case stated it was irrevocable upon the death of one of the settlors, that thereafter, it could not be modified due to the prohibitions set forth in section 633A.1105. Appellee's Brief, p. 14. She cites the case of *In re Marriage of Rhinehart*, 704 N.W.2d 677, 681 (Iowa 2005) as controlling authority. Appellee's Brief, p. 14. Her reliance on

¹ The code section states in whole: "[t]he terms of a trust shall always control and take precedence over any section of this trust code to the contrary. If a term of the trust modifies or makes any section of this trust code inapplicable to the trust, the common law shall apply to any issues raised by such term." I.C. § 633A.1105.

Rhinehart, however, is misplaced and the case is easily distinguishable from the trust at issue in this appeal.

In *Rhinehart*, the Iowa Supreme Court was faced with the issue of whether a party's interests in a trust had vested for the purpose of determining property distribution within a marital dissolution case. *Id.* What little analysis *Rhinehart* provides regarding trust issues is confined to the following:

“[a]n irrevocable trust may be modified or terminated upon the consent of the settlor and all of the beneficiaries.” Iowa Code § 633.2202(1) (2003). This statute, however, is a default provision that applies only if the trust instrument contains no provision to the contrary. *See id.* § 633.1105 (“The provisions of a trust shall always control and take precedence over any section of this trust code to the contrary.”); Martin D. Begleiter, *In the Code We Trust—Some Trust Law for Iowa At Last*, 49 Drake L.Rev. 165, 183 (2001) (stating “the Trust Code is a series of default provisions, to be used when the drafter has not included in the governing instrument language controlling the situation”).

Rhinehart, 704 N.W.2d at 681.

The *Rhinehart* Court therefore only tacitly reviewed the modifying of an “irrevocable” trust that expressly retained trustor’s right to unilaterally modify its terms. *Id.* In reviewing section 633A.2202, as a “default provision that applies only if the trust instrument contains no provision to the contrary,” the Iowa Supreme Court found that a party’s interest in a trust had not vested due to the express trust terms allowing for unilateral modification, which were therefore

“contrary” to section 633A.2202. *Id.* (citing *Martin D. Begleiter*, In the Code We Trust—Some Trust Law for Iowa At Last, 49 Drake L.Rev. 165, 183 (2001)). In other words, the “irrevocable trust” at issue in *Rhinehart* was not, in reality, irrevocable².

This is not our case wherein the Trust Agreement expressly provides that the Trust becomes *irrevocable* upon the death of a Co-Trustor. (App. 42). The analysis in *Rhinehart* did not address the issues presented by Appellants. Of the 140 cases that cite to *Rhinehart*, not one case recognizes it as persuasive in the manner in which Appellee relies. Accordingly, *Rhinehart* is not dispositive of the issues presented in this appeal.

II. The *Claflin* Doctrine Recognizes and Allows the Modification of Irrevocable Trusts.

Further supportive of Appellants’ argument refuting the Appellee’s and the District Court’s blanket assertion Iowa Code section 633A.1105 precludes modification of irrevocable trusts is the *Claflin* Doctrine. *See In re Tr. Under Last Will & Testament of Weitzel*, 778 N.W.2d 219 (Table) (Iowa Ct. App. 2009). The *Claflin* Doctrine is so named based upon the case of *Claflin v. Claflin*, 20 N.E. 454, 455 (Mass 1889). The Iowa Court of Appeals has noted the Iowa Supreme Court’s

² The *Rhinehart* Court noted: “[a]lthough the trust **instrument states the trust is irrevocable, it expressly reserves** to Richard, the grantor, the **right to amend** the trust.” *Rhinehart*, 704 N.W.2d at 681 (emphasis added).

approval of the doctrine and has articulated it as the following:

“[t]he Claflin doctrine provides as does our statute ‘**that an irrevocable trust can be terminated or modified only if all the beneficiaries consent and no material purpose of the trust remains to be completed.**’ *Id.*; see also *Claflin v. Claflin*, 149 Mass. 19, 20 N.E. 454, 45 (Mass. 1889). Iowa accepted this doctrine in the case of *Hopp v. Rain*[, 88 N.W.2d 39, 44-45 (Iowa 1958)].”

Weitzel, 2009 WL 4842807 at *4 (emphasis added); see also Richard C. Ausness, *Sherlock Holmes and the Problem of the Dead Hand: The Modification and Termination of “Irrevocable” Trusts*, Quinipiac Probate Law Journal, 2015 Vol. 28, 238.

The *Claflin* doctrine is the common law and supports a commonsense approach to allowing modification of “irrevocable” trusts. Pursuant to Iowa Code section 633A.3102, all irrevocable trust must expressly state they are irrevocable. I.C. § 633A.3102³. Thus, all *irrevocable trusts* will have language that the trust may not be modified or revoked as this is precisely what “irrevocable” means. Using the Appellee’s and the District Court’s rationale, no truly irrevocable trusts could ever be modified as permitted by 633A.2202, because irrevocable trusts would state they are irrevocable, which unpacks to mean they may not be modified or revoked *or* they may even expressly state they may not be modified

³ The code section states in whole: “[u]nless the terms of the trust expressly provide that the trust is irrevocable, the settler may revoke or modify the trust.”

or revoked. Either way, under such logic, any irrevocable trust will contain language to the contrary of 633A.2202.

In our case, both prerequisites to modification set forth in the *Claflin* Doctrine are present. First, it is undisputed that **all beneficiaries consented** to the modification, as evidenced by the Appellants' Exhibit "A" to Statement of Material Facts, the Consent to Modify. (App. 91). Appellee spends considerable time in her Brief attempting to persuade the Court she should not be bound by her signature to the consent. Appellee's Brief, p. 17-22. Her deposition testimony, however, all but shatters such arguments, as Appellee:

- (a) admitted her signature is on the second page of the Consent to Modify;
- (b) admitted she read the first paragraph of the Consent to Modify at the time of her signing and she understood her signing the Consent to Modify was for the purpose of providing authority to amend the Trust; and
- (c) admitted all other beneficiaries had signed before her, as she was the last to sign the Consent to Modify.

(App. 107-08).

Second, the purpose of the Trust was completed, because Collen Davis, one of the original co-trustees, had passed away. (App. 73, 53, 97). The intent behind the creation of the Trust was to protect its primary asset, certain farmland

acquired by Donald Davis, from any claim of Collen Davis or her children, in the event that Donald predeceased her. This undisputed fact was evidenced by:

(a) the Consent to Modify Trust Agreement (App. 90);

(b) Attorney Wehr's Letter dated April 19, 2018 (App. 93); and

(c) a Special Warranty Deed conveying the farmland to the Trust (App. 192).

It is undisputed that Collen Davis passed away on September 5, 2019 and thereby pre-deceased Donald. (App. 97). The purpose behind the Trust was therefore completed. Donald had every right to terminate the Trust, but rather chose to modify it. The single greatest fact in this case is that every single beneficiary, including Appellee, agreed that Donald Davis "shall have the power and authority to alter, amend or revoke" the Trust. (App. 91).

Accordingly, and pursuant to the *Clafin* Doctrine, this Court should find the Trust in this case, although irrevocable, was lawfully modified as evidenced by the Consent to Modify.

CONCLUSION

The Amendment to Trust is enforceable because the Consent to Modify was lawfully executed pursuant to Iowa Code section 633A.2202. The District Court's order to the contrary should be overruled and this Court should find, as a

matter of law, that the Trustees' Motion for Summary Judgment should be granted.

REQUEST FOR ORAL ARGUMENT

The Trustees respectfully requests that this appeal be heard in oral argument.

CERTIFICATION OF COST

I, the undersigned, do hereby certify that the actual cost of printing the Appellants' Proof Reply Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

CERTIFICATE OF COMPLIANCE

This Proof Reply Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2), because it contains 2,762, including the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). In addition, this Proof Reply Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared with Microsoft Word for Mac version 16.36, using proportionally spaced typeface Calibri in 14-pint size.

Submitted this _6th_ day of December, 2021.

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