

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

KATINA M. LITTLE,	)	KEOKUK COUNTY NO.
	)	TRPR038226
Plaintiff,-Appellee,	)	
	)	
v.	)	
	)	
KEITH A. DAVIS AND DONALD J.	)	
DAVIS, Co-Trustees of the	)	
DONALD K. AND COLLEN DAVIS	)	
FAMILY TRUST,	)	
	)	
Defendants-Appellants.	)	
	)	

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

Randall C. Stravers ATT0007666
Stravers Law Firm
110 North Market Street
Oskaloosa, IA 52577
Telephone: 641-673-9451
Fax: 641-673-3502
E-Mail: stravers@pcsia.net
Attorney for Appellee

APPELLEE'S BRIEF

CERTIFICATE OF SERVICE

On this 23rd day of November, 2021, I the undersigned, did file electronically this Appellee's Brief with the Clerk of the Iowa Supreme Court, pursuant to Iowa R. App. P. 6.701.

PROOF OF SERVICE

On this 23rd of November, 2021, I the undersigned, did serve this Appellee's Brief on the attorneys for the Appellants listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorneys for the Appellant are registered filers pursuant to Iowa R. Civ. P. 16.201.

John G. Daufeldt
John C. Wagner Law Offices, P.C.
600 39th Avenue
P. O. Box 262
Amana, IA 52203
Telephone: 319-622-3357
Fax: 319-622-3404
Email: johnd@jcwagnerlaw.com
Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities -----	4
Statement of Issues Presented for Review -----	5
Routing Statement -----	6
Statement of the Case -----	6
Statement of the Facts -----	7
Argument -----	10
THIS COURT DID NOT ERR IN FINDING AS A MATTER OF LAW THAT THE FIRST AMENDMENT TO THE TRUST WAS INVALID	
Conclusion -----	22
Request for Oral Argument -----	22
Certificate of Cost -----	22
Certificate of Compliance -----	22

TABLE OF AUTHORITIES

In Re: Marriage of Rhinehart, 704 N.W.2d 677, 681 (Iowa 2005)	14
In Re: Steinberg Family Living Trust, 894 N.W.2d 463 (Iowa 2017)	13
Joseph L. Wilmotte & Co. v. Rosenman Brothers, 258 N.W.2d 317, 323 (Iowa 1977)	20
Morgan v. American Family Mutual Insurance Company, 534 N.W.2d 92, 99 (Iowa 1995)	20
Pausher v. Iowa Methodist Medical Center, 408 N.W.2d 355 (Iowa 1987)	18
Small v. Ogden, 259 Iowa 1126, 1132, 147 N.W.2d 18, 22 (1966)	20
Van Fossen v. MidAmerican Energy Co., 777 N.W.2d 689, 692-3 (Iowa 2009)	11

COURT RULES

Iowa Rule of Civil Procedure 1.981(3)	11
---------------------------------------	----

IOWA CODE

Iowa Code Section 633A.1105	12, 14
Iowa Code Section 633A.2202	13, 15, 17, 19
Iowa Code Section 633A.2202(1)	13, 14, 20
Iowa Code Section 633A.2203	17

STATEMENTS OF ISSUES PRESENTED FOR REVIEW

THE DISTRICT COURT DID NOT ERR IN RULING THAT THE
MODIFICATION OF THE DONALD K. AND COLLEN DAVIS FAMILY
TRUST WAS VOID.

Authorities

In Re: Steinberg Family Living Trust, 894 N.W.2d 463 (Iowa
2017)

In Re: Marriage of Rhinehart, 704 N.W.2d 677, 681 (Iowa
2005)

Iowa Code Section 633A.1105

Iowa Code Section 633A.2202

Morgan v. American Family Mutual Insurance Company, 534
N.W.2d 92, 99 (Iowa 1995)

ROUTING STATEMENT

Katina M. Little believes the appeal should be retained by the Iowa Supreme Court since the issues raised are substantial questions enunciating significant legal principals. The issues are also issues of first impression upon which there is no Iowa case law.

STATEMENT OF THE CASE

On or about January 31, 2020 a Trust Notice in the matter of the Donald K. and Collen Davis Family Trust was mailed to the Appellee, Katina M. Little. The Notice required that within thirty days of the mailing of that Notice she would need to file any action to contest the validity of the Trust. (Appendix page 5-6). She filed a Petition in the District Court in and for Keokuk County which did not contest the original Trust but did contest the First Amendment to the Trust Agreement. (See Appendix pages 6-9).

As noted by the Appellants in their Statement of the Case, discovery was commenced and Motions for Summary Judgment were filed by the parties. The Court entered its Ruling on the Motions for Summary Judgment finding in favor of Katina M. Little that the First Amendment to the Trust

is not valid. Appellants filed their Notice of Appeal.

STATEMENT OF THE FACTS

On February 9, 2016 Donald K. Davis and Collen K. Davis, husband and wife, created the Donald K. & Collen Davis Family Trust. The Trust provided that while both Co-Trustees were living and competent the Trust could be altered or amended by a written instrument signed by both Co-Trustors and filed with the Co-Trustees. It also indicated that while both Co-Trustees were living the signatures of both of them would be required to revoke the Trust. (Appendix pages 41, 76).

The Trust also provided that it became irrevocable:

Upon the death of the first Co-Trustor to die, hereinafter called the "deceased spouse", the then surviving Co-Trustor, hereinafter called the "surviving spouse", shall not have the power to amend, revoke and/or terminate the DONALD K. & COLLEN DAVIS FAMILY TRUST".

(Appendix pages 42, 77). The Trust indicated that upon the death of the surviving spouse the Trustee would distribute the assets of the Trust. The Trust provided that the assets would be divided one-fourth to each of the four children of Donald K. Davis which included the Appellee, Katina M. Little, and the two Appellant Co-Trustees, Keith A. Davis and Donald J. Davis. The Trust could continue on

a year to year basis with the written consent of all the beneficiaries. (Appendix pages 43, 78).

On September 5, 2017 Collen Davis passed away. She was survived by her husband, Donald K. Davis, and at that time the Trust became irrevocable pursuant to its terms. On or about April 25, 2018, while visiting with her father, Donald K. Davis, Katina M. Little was asked by him to sign a one page document. She could tell that there was an additional page, or pages, but did not have a chance to review that. She knew there was another page, or pages, since there were holes in the paper from the removal of a staple. She recalled that her father looked around for the first page but never provided it. He did provide other pages which were in fact not the first page. He was getting upset and she eventually signed it when he told her the purpose was to remove Collen as Trustee since she was deceased. (Appendix pages 98 - 99) (Appendix pages 132 - 134).

Subsequent to the filing of this lawsuit, a two page Consent to Modify Trust Agreement was provided to the attorney for Katina M. Little. She was not aware of the contents of the document prior to that time as she had only signed a page with signature lines and one short paragraph.

The two page Consent to Modify Trust Agreement provided in this case is signed by Donald K. Davis as surviving Trustor and Trustee and the four beneficiaries. It is not signed by the other Settlor, Trustor Collen Davis.

That consent document does not contain any specifics as to what modification of the Trust is being requested. There is no specific amendment or modification presented to the beneficiaries for them to consider. The last paragraph does reference that the surviving Trustee would have power and authority to amend the Trust but nowhere are there any specifics given. (Appendix pages 52-53).

On or about May 30, 2018 a First Amendment to Trust Agreement was signed by Donald K. Davis as Trustor and Trustee. It was not signed by Collen Davis nor was it signed by any of the beneficiaries. That Amendment modified the Trust to provide that the real estate in the Trust at the time of the death of Donald K. Davis would go in equal shares to Keith A. Davis and Donald J. Davis. Katina M. Little was to receive \$25,000.00 and one-fourth of the remaining assets of the Trust rather than the one-fourth interest she received in the original Trust. (Appendix pages 55 - 56).

The First Amendment document is specific as to the change being proposed or attempted to be made by the Trustor. That is outlined in the Brief of the Appellant. Rather than having all the children equal beneficiaries of the assets of the Trust, the farm land, which was the bulk of the Trust assets, was to pass in equal shares to the Appellants, Keith A. David and Donald J. Davis. Katina Little's share was reduced to \$25,000.00 plus a one-fourth interest in the remainder. (Appendix pages 55 - 56).

On November 13, 2019 Donald K. Davis passed away. The Notice as described above was sent out January 31, 2020 giving Katina Little thirty days to file any objection and she filed her Petition on February 27, 2020 to challenge the Amendment to the Trust Agreement.

ARGUMENT

THIS COURT DID NOT ERR IN FINDING AS A MATTER OF LAW THAT THE FIRST AMENDMENT TO THE TRUST WAS INVALID.

I. PRESERVATION OF ERROR.

Katina M. Little agrees that error was preserved by the filing of the timely notice of Appeal.

II. SCOPE OF REVIEW

The scope of review for a trial court's grant of

summary judgment is for corrections of errors at law. Van Fossen v. MidAmerican Energy Co., 777 N.W.2d 689, 692-3 (Iowa 2009). Summary Judgments are appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

APPELLANTS ARGUMENT

A. THE DISTRICT COURT CORRECTLY DETERMINED THAT DONALD K. DAVIS DID NOT HAVE AUTHORITY TO AMEND THE TRUST.

The District Court notes the undisputed facts that the Trust Agreement granted the Co-Trustees the ability to amend or revoke the Agreement by written instrument requiring the signatures of both Co-Trustees. Then, as the Court noted, the Agreement provided that upon the death of one of the Co-Trustors the surviving spouse "shall not have the power to amend, revoke, or terminate the Trust" (Appendix page 140). Collen died on September 5, 2017. A few months later, Donald Davis apparently contacted an attorney and a Consent to Modify Trust Agreement was prepared for him. He executed and signed the document, as the sole Trustor and Trustee. It was signed by the beneficiaries. Katina Little was not given the chance to read it but eventually did sign it when Donald told her the

purpose of the document was to eliminate Colleen as a trustee since she had died a few months before. On May 30, 2018 Donald Davis, as the Trustor and Trustee, executed a First Amendment to the Agreement modifying the distribution of the remainder provisions. He died on November 13, 2019. (Appendix Page 141).

The District Court analyzed the issues by reviewing the applicable law and the language of the Trust. As noted in the Trust Code:

The 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, common law shall apply to any issues raised by such term."

Iowa Code Section 633A.1105. The Court went on to find that the ordinary and usual meanings of the words used by Donald and Collen indicate that the Trust shifted from revocable to irrevocable upon the death of either one of them and the Agreement contained no language to suggest that the Trust could be modified after the shift to irrevocable status, nor was there any ambiguity in the Agreement language. (Appendix Page 143). The Court further elaborated in the Ruling on the defendant's Motion to Reconsider that the Trust Agreement specifically stated

that the surviving spouse "shall not have the power to amend, revoke and/or terminate the Trust". The Court noted that this language is in contradiction with Section 633A.2202 and therefore the terms of the Agreement must control. So the First Amendment was void for lack of authority as Donald was without power to make any such amendment. (Appendix page 151).

In further elaboration of its Ruling, the Court considered the specific argument that the language of 663A.2202(1) indicated that an irrevocable trust may be modified upon the consent of the Settlor and all the beneficiaries. The Court noted that both Donald and Collen were Settlers. The language chosen by them in Article III of the Trust indicates strongly that an intent that the Trust no be modified following either of the Settlor's death. It is the intent of the Settlor that guides interpretation of the Trust Agreement. In Re: Steinberg Family Living Trust, 894 N.W.2d 463 (Iowa 2017). The Court found that language to be contrary to the terms of Iowa Code Section 633A.2202 under the present facts. (Appendix page 151).

Iowa Code Section 633A.2202(1) does indicate that an irrevocable trust may be modified or terminated upon the consent of the Settlor and all the beneficiaries. The Iowa Supreme Court has specifically stated that the predecessor section, 633.2202(1), was a default provision that applied only if the Trust instrument contained no provision to the contrary. In Re: Marriage of Rhinehart, 704 N.W.2d 677, 681 (Iowa 2005). It is a default provision because that language would apply only if the Trust instrument contained no provision to the contrary as required by the Code. Iowa Code Section 633A.1105. That Section indicates that the provisions of the Trust shall always control and take precedence over any section of the Trust Code.

The Trust Agreement states that it was to be revocable until one of the settlors died. The agreement outlined the process and requirements for a revocation prior to one of the settlors dying. But it also emphatically states that upon the death of one of the settlors/trustors the Trust becomes irrevocable and the survivor may not amend the Trust.

B. THE FIRST AMENDMENT TO TRUST AGREEMENT WAS NOT VALID AS BOTH THE FIRST AMENDMENT TO TRUST AGREEMENT AND CONSENT TO MODIFY TRUST AGREEMENT WERE NOT SIGNED BY BOTH SETTLORS.

After the death of Collen Davis, a document was produced in discovery entitled Consent to Modify Trust Agreement. It was signed by Donald K. Davis, one of the settlors/trustors. Katina M. Little did sign page 2 of that but was not aware of what she was signing. However, assuming she signed a Consent to Modify Trust Agreement, the Consent was not valid as it was not signed by both of the Settlers of the Trust.

Iowa Code Section 633A.2202 indicates that an irrevocable trust may be modified upon the consent of the Settlor and all of the beneficiaries. It does not use the plural for Settlor, but Katina M. Little submits that if there is a provision requiring consent of the Settlor and the beneficiaries that consent should come from both settlors when a trust is set up by two co-settlors.

The language of 633A.2202 clearly speaks to a requirement of consent by the settlor and beneficiaries. If the code provision allowing a modification requires consent, that consent must be read to require consent of all of the settlors/trustors just as consent is required by all of the beneficiaries.

That argument also fits in with the obvious intent of the Trustors/Settlors. The Trust Agreement clearly

indicates that while the Co-Trustees are living and competent, the Trust "may be altered or amended by written instrument signed by both Co-Trustors and filed with the Co-Trustees". (Appendix page 76). The Trust then also indicates that the Trust could be revoked with both signatures. So the Trust document created by the Settllors expressed the intent that when there was to be a modification, it must be signed by both of the Settllors. The requirement or provision regarding both signatures of course does not continue on past the time when the Trust became irrevocable. That is because the Trustors never intended for the Trust Agreement to be revocable or subject to modification after the first Co-Trustor died. The Trust provides:

"Upon the death of the first Co-Trustor to die, hereinafter called the "Deceased Spouse", the then surviving Co-Trustor, hereinafter called the "Surviving Spouse", shall not have the power to amend, revoke and/or terminate the Donald K. &Collen Davis Family Trust".

(Appendix page 77).

In this case neither the Consent nor the First Amendment were signed by both Trustors and the documents were obviously contrary to the intent of the Trustors who specifically required that they both sign any modification

or revocation.

The inability of Donald K. Davis to amend the Trust pursuant to Iowa Code Section 633A.2202 did not eliminate all the options for him. Under the following Section, 633A.2203, an irrevocable trust may be terminated or modified by the Court with the consent of all the beneficiaries if the continuance of the Trust on the same terms is not necessary to carry out a material purpose. The ability to modify the trust under 633A.2203 is not part of this case. But it is relevant to note that another option existed even though the trust could not be modified under 633A.2202.

C. THE CONSENT TO MODIFY TRUST AGREEMENT IS NOT A VALID DOCUMENT TO SHOW CONSENT AS REQUIRED UNDER THE CODE FOR MODIFICATION OF A TRUST.

Even assuming that Iowa Code Section 633A.2202 could be used to modify the Trust, the provisions of that Code Section were not followed so as to allow for the modification of the Trust.

That Section requires that in order for an irrevocable trust to be modified there must be a consent of the Settlor and all of the beneficiaries. That Code Section should be interpreted to require that if all the parties are to give their consent to a modification of the Trust they should be

consenting to a specific modification set out in the consent form. This Consent to Modify Trust Agreement does not lay out any specific provision of the Trust which is to be modified. Katina M. Little was told that it was a consent to eliminate Collen Davis as Trustee. There were no other specific provisions that she saw which would enable her to consent to a particular modification.

In the event there is a requirement of consent it should be informed consent. A physician is required to obtain informed consent from a patient prior to performing a procedure upon the patient. Informed consent would require the physician to disclose all known material information concerning the procedure. That would be significant for a patient to make a reasonable decision as to whether to consent to the procedure. Pausher v. Iowa Methodist Medical Center, 408 N.W.2d 355 (Iowa 1987).

Similarly in this case or any other situation in which there is a requirement of consent, consent should include the details as to what modifications or amendments are being requested and to which consent is requested.

In this case, the Consent did not contain the details. So none of the beneficiaries consented to any particular modification or amendment. There were no details given to

allow for informed consent. None of the signing parties could have been presumed to have consented to the modification as set out in the First Amendment since it was not included in the Consent.

The First Amendment also fails to establish informed consent. The details of the modification are set out in the First Amendment to Trust Agreement. But that amendment was not a document to which all the beneficiaries and settlors consented. There are no signatures or signature lines for the beneficiaries of the trust. The First Amendment was never presented to the beneficiaries in order to attempt to get their informed consents.

D. THE FIRST AMENDMENT TO TRUST AGREEMENT IS NOT VALID SINCE IT DOES NOT CONTAIN CONSENT OF THE BENEFICIARY.

The First Amendment to Trust Agreement which did in fact modify the terms of the Trust to provide for a different distribution of the assets of the Trust does set forth the modification to be made. However, the First Amendment to Trust Agreement was not signed by the beneficiaries nor was it signed by Collen Davis who was a Settlor of the Trust. Therefore, that document does not meet the requirements of Iowa Code Section 633A.2202 and is not a valid document to modify the terms of the Trust. It

does not follow the requirements of that Code Section which indicate that an irrevocable trust may be modified only "upon the consent of the Settlor and all the beneficiaries". Iowa Code Section 633A.2202(1).

E. THE CONSENT TO MODIFY TRUST AGREEMENT WAS NOT VALID SINCE THE SPECIFICS OF THE CONSENT WERE NOT PROVIDED TO KATINA M. LITTLE WHEN SHE SIGNED THE SECOND PAGE OF WHAT WAS APPARENTLY THE CONSENT TO MODIFY TRUST AGREEMENT.

The agreement in writing speaks for itself when absent fraud or mistake. Ignorance of the contents of a written agreement will not serve to negate or void its contents. Small v. Ogden, 259 Iowa 1126, 1132, 147 N.W.2d 18, 22 (1966); Morgan v. American Family Mutual Insurance Company, 534 N.W.2d 92, 99 (Iowa 1995). A party is charged with notice of the terms and conditions in a contract he or she entered into if the party is able to read the contract and has the opportunity to read it (emphasis added). Joseph L. Wilmotte & Co. v. Rosenman Brothers, 258 N.W.2d 317, 323 (Iowa 1977); Morgan at page 99.

Ignorance of the contents of a written agreement will not serve to negate the contents. However, that applies only when there is an adequate opportunity to review the contract prior to signing it. That did not happen in this case. Katina M. Little was visiting with her father in his

home in late April 2019. Her father, Donald K. Davis, brought out the one page document and asked her to sign it. She made inquiry as to what it was she was signing since it was not a complete document. It was apparent to her that the document she was signing was not complete since there were staple holes in the paper and it was obvious there had been another page, or pages, that had been removed and was no longer a part of the document. She made inquiry of her father about the additional page and he did say there was an additional page. He went around the house and appeared to be looking for it but was not able to locate it. At one time he did provide her with other pages to look at but they were obviously not the first page to this particular document. Finally after her father told her that the only thing he was doing was changing the Trust to remove Collen Davis as Trustee since she was now deceased and because he was becoming agitated and upset, she went ahead and signed it.

She did not consent to the terms and conditions as set out in the Consent to Modify. She signed the one page to appease her father who was getting upset with her. She was ignorant of the details of the change(s) being proposed to the Trust. But her ignorance was not the result of her

lack of effort to read the document or to obtain the full document so she could review it. As noted from the legal authority cited above she can be charged with notice of the contents a document even if she does not read it, but only if she is given the opportunity to read it.

CONCLUSION

The Court should uphold the rulings by the District Court finding that the plaintiff's Motion for Summary Judgment be granted.

REQUEST FOR ORAL ARGUMENT

The Appellee 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 Appellee's Brief herein was zero dollars, because this appeal has been converted to electronic filing per the Iowa Supreme Court.

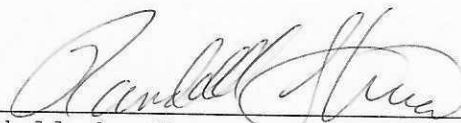
CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 4,082 words of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of

Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a monospaced typeface using Microsoft Office 2013 in font size 12 of Courier.

Submitted this 23rd day of November, 2021.



Randall C. Stravers ATT0007666
Stravers Law Firm
110 North Market Street
Oskaloosa, IA 52577
Telephone: 641-673-9451
Fax: 641-673-3502
E-mail: stravers@pcsia.net
Attorney for Appellee