

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE M.J. MILES TRUST

No. 47239

JOHN L. MILES; ROBERT E. MILES; CLARK  
W. MILES; AND HELEN J. MILES  
RASMUSSEN,  
Appellants,

vs.

DEAN LINDSAY; MELVIN H. MILES; AND  
CAROL M. VINCENT,  
Respondents.

JOHN L. MILES,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE KATHY A. HARDCASTLE,  
DISTRICT JUDGE,

Respondents,

and

R. GLEN WOODS, ESQ.; WOODS, ERICKSON,  
WHITAKER & MILES, L.L.P; DEAN  
LINDSAY; MELVIN H. MILES; AND CAROL  
M. VINCENT,  
Real Parties in Interest.

No. 48996

**FILED**

FEB 29 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are (1) a proper person appeal from a district court order in a trust matter (Docket No. 47239), and (2) an original proper person petition for a writ of mandamus challenging a district court order striking petitioner's petition (Docket No. 48996). Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Docket No. 47239

After reviewing the parties' arguments and the record on appeal, we affirm the district court's order. A review of the district court's

legal conclusions is de novo,<sup>1</sup> and we interpret trusts “in a manner effecting the apparent intent of the settlor.”<sup>2</sup> Also, we will uphold a district court’s factual findings that are supported by substantial evidence.<sup>3</sup> Substantial evidence is defined as “evidence that a reasonable mind might accept as adequate to support a conclusion.”<sup>4</sup>

Trust assets and distribution

Substantial evidence supports the district court’s interpretation of the M.J. Miles trust and its findings regarding M.J. Miles’ intent as to which assets were included in the trust and the proper distribution of the trust assets.

In addition, the district court properly refused to consider appellants’ attempt to assert their deceased mother’s (Mary) community property claims. While the district court incorrectly concluded that only Utah had jurisdiction over those claims, the decision not to address the community property claims was proper, based on appellants’ lack of standing.<sup>5</sup> Appellants are all acting in proper person as beneficiaries of

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<sup>1</sup>Hannam v. Brown, 114 Nev. 350, 361, 956 P.2d 794, 801 (1998).

<sup>2</sup>Id. at 356, 956 P.2d at 798.

<sup>3</sup>Id. at 357, 956 P.2d at 799.

<sup>4</sup>Bongiovi v. Sullivan, 122 Nev. 556, 581, 138 P.3d 433, 451 (2006) (internal quotation marks and citations omitted).

<sup>5</sup>Secretary of State v. Nevada State Legislature, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (stating that this court can consider the issue of standing sua sponte); In re Recall of West, 126 P.3d 798, 799 (Wash. 2006); Specht v. Big Water Town, 172 P.3d 306, 308 (Utah App. 2007); Beach Lateral Water Users Ass’n v. Harrison, 130 P.3d 1138, 1141 (Idaho 2006).

the trust. In this capacity, each lacks standing to assert any community property rights that Mary (and now her estate) may have against any asset, because none is the real party in interest.<sup>6</sup> Rather, the personal representative of Mary's estate would be the proper party to assert the community property claims. Furthermore, since each of the appellants is acting pro se, none could legally represent the estate in this matter, even if he or she had attempted to do so.<sup>7</sup> Thus, we uphold the district court's refusal to entertain the community property arguments, although on a different basis.<sup>8</sup>

#### Due process

Appellant Robert Miles claims that his due process rights were violated by the probate commissioner's failure to hold a hearing on his May 23, 2005 petition.<sup>9</sup> While due process requires notice and an opportunity to be heard,<sup>10</sup> the concept of due process is flexible, and courts

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<sup>6</sup>NRCP 17(a).

<sup>7</sup>See Salman v. Newell, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994) (stating that "[a]lthough a person is entitled to represent himself or herself in the district court . . . no rule or statute permits a person to represent any other person, a company, a trust, or any other entity in the district courts or in this court").

<sup>8</sup>See Hannam, 114 Nev. at 357, 956 P.2d at 799 (quoting Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)) (stating that we will affirm the district court "[i]f it reached the correct result, albeit for different reasons").

<sup>9</sup>While all four appellants raise this issue, only Robert's petition is in question, and as each beneficiary is acting in proper person, only Robert may properly raise this argument.

<sup>10</sup>Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

have discretion in the presentation and admittance of evidence.<sup>11</sup> Due process only requires “such procedural protections as the particular situation demands.”<sup>12</sup> In addition, the court has discretion to control the disposition of cases on its docket “in a manner which will promote economy of time and effort for itself, for counsel, and for litigants.”<sup>13</sup>

We conclude that Robert’s due process rights were met. The probate commissioner conducted a hearing regarding the trust, which included all the parties involved in this appeal. Everyone was provided with sufficient notice of the hearing and given an opportunity to be heard. Moreover, at a later date, the commissioner specifically took into consideration Robert’s May 23 petition, which was filed after the evidentiary hearing. All the issues raised by Robert’s May 23 petition were addressed by the probate commissioner’s report, thus demonstrating that the commissioner considered and resolved the arguments Robert raised. Therefore, his due process rights were not violated.

Attorney and co-trustees fees

Appellants claim that the district court erred in refusing to remove the co-trustees and their attorney, and in awarding fees to both. The decision regarding the removal of a trustee is left to the discretion of

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<sup>11</sup>State, Dep’t Mtr. Vehicles v. Vezeris, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986); see also Jackson v. State, 116 Nev. 334, 335, 997 P.2d 121, 121 (2000); Hansen v. Universal Health Servs., 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999);

<sup>12</sup>Molnar v. State, Bd. Of Med. Examiners, 105 Nev. 213, 216, 773 P.2d 726, 727 (1989) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

<sup>13</sup>CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).

the court.<sup>14</sup> We conclude that appellants' arguments regarding the need to remove the co-trustees and their attorney lack merit. The co-trustees followed the requirements of the trust and therefore properly met their obligations to appellants. No removal of the co-trustees or their attorney was necessary and, as a result, both were entitled to receive appropriate fees for the work they performed.

In connection with the amount of trustees' fees awarded, appellants argue that the district court erred by awarding the fees based on a percentage of the trust assets. The amount of compensation for a trustee "is fixed either by the terms of the trust instrument, by contract between settlor and trustee, by statute or by court action."<sup>15</sup> If substantial evidence supports a lower court's award of trustee fees, then we will affirm the award on appeal.<sup>16</sup>

Here, substantial evidence supports the award of the trustee fees and the use of a percentage of the trust to calculate the amount of the fees. The trust provided for trustee fees, and the court found that all three co-trustees had done the work required and that the amount of the fees was reasonable for the work performed over an extended period of time. The district court thus properly awarded fees.

Docket No. 48996

In addition to the appeal, John Miles has filed an original petition for a writ of mandamus challenging a district court order granting the co-trustees' motion to strike John's objection to the interim accounting

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<sup>14</sup>Restatement (Second) Trusts §107 (1959).

<sup>15</sup>Harvey v. Streeter, 81 Nev. 177, 184, 400 P.2d 761, 764 (1965).

<sup>16</sup>Id. at 185, 400 P.2d at 765.

and his petition to disgorge and disallow attorney and trustee fees. In granting the motion to strike, the court found that John's petition was merely a re-arguing of issues that had already been raised and addressed in this case. As a result, the court also awarded the co-trustees' attorney fees in the amount of \$2,821.00.

John's petition for mandamus relief claims that his due process rights were violated because the court did not hold an evidentiary hearing on his opposition and petition. He also challenges the award of attorney fees, claiming that no documentation or affidavit was submitted by the co-trustees to support the actual fees incurred.

Mandamus relief is an extraordinary remedy and left to our discretion.<sup>17</sup> It is available to compel performance that the law requires or to control a manifest abuse of discretion.<sup>18</sup> We conclude that mandamus relief is not warranted, as the district court provided adequate due process to John.

With respect to the attorney fees sanction, we have consistently held that sanctions are left to the district court's discretion.<sup>19</sup> In addition, the district court has discretion in the method used for determining the amount of attorney fees awarded.<sup>20</sup> As the district court properly granted the motion to strike the objection and petition, it did not

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<sup>17</sup>Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>18</sup>NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

<sup>19</sup>Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006).

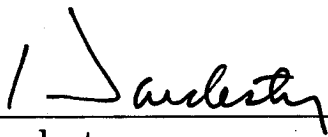
<sup>20</sup>Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005).

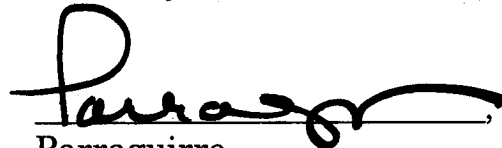
manifestly abuse its discretion in allowing reasonable attorney fees, nor was the amount awarded an abuse of discretion. Consequently, writ relief is not warranted.

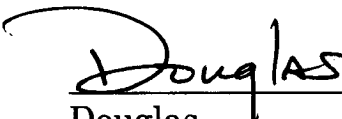
Conclusion

The district court's findings of fact are supported by substantial evidence, and its conclusions of law were correct. The district court properly interpreted the trust document and the distributions required under it. Additionally, we conclude that John has failed to show that extraordinary writ relief is appropriate. Accordingly, we affirm the judgment of the district court in Docket No. 47239, and deny the petition in Docket No. 48996.

It is so ORDERED.<sup>21</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>21</sup>John Miles' motion to file supplemental authorities, filed with this court on August 27, 2007, is granted. See NRAP 31(d). The supplemental authorities were considered in resolving this appeal.

cc: Hon. Kathy A. Hardcastle, District Judge  
John L. Miles, Albuquerque, NM  
Clark W. Miles  
Robert E. Miles  
John L. Miles, St. George, UT  
Helen J. Miles Rasmussen  
Woods Erickson Whitaker Miles & Maurice, LLP  
Eighth District Court Clerk