

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ESTATE OF LYNN GUPTON
BRETON, BY AND THROUGH ITS
PERSONAL REPRESENTATIVE,
DENISE BRETON,

Appellant,

vs.

ANNA BRETON, AS TRUSTEE UNDER
THE DECLARATION OF TRUST
DATED DECEMBER 13, 1978, AS
AMENDED,
Respondent.

No. 50396

FILED

APR 30 2009
TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order resolving property ownership rights in an action to quiet title to certain real property. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellant Denise Breton, as the personal representative for the estate of her deceased husband, Lynn Breton, filed a complaint against Anna Breton, as trustee of the Breton Trust, seeking certain property rights in land located in Minden, Nevada (the Minden Property).

Following a two-day bench trial, the district court entered an order finding that: 1) Denise had no right, estate, title, lien, or interest in the Minden Property; 2) Denise had no right to an order to quiet title in the Minden Property; and 3) Anna, as trustee for the Breton Trust, owned the entirety of the Minden Property. This appeal follows.¹

¹As the parties are familiar with the facts of this case, we decline to restate them here and use only those that are pertinent to the discussion below.

On appeal, Denise argues that the district court erred in finding that: 1) Lynn did not have the power to unilaterally revoke his one-half interest in the Minden Property because Section I(B) of the Breton Trust was ambiguous, and the several agreements between the parties did not favor unilateral revocation; and 2) Lynn's revocation was ineffective.² We disagree because we conclude that: 1) the district court was correct in finding that the language of the trust agreement was susceptible to two interpretations, thus making it ambiguous; 2) there was substantial evidence to support the district court's finding that the agreements between the parties did not favor unilateral revocation; and 3) Lynn's revocation was ineffective because he failed to follow the instructions set out for revocation in the trust agreement.

Unilateral revocation

Denise argues that the district court erred in finding that Lynn did not have the power to unilaterally revoke his one-half interest in the Minden Property for two reasons. First, Denise contends that the district court erroneously found that the language of Section I(B) of the Breton Trust was ambiguous in that its interpretation of that section did not favor unilateral revocation. Second, Denise contends that the district

²Denise also argues that the district court erred in finding that the Minden Property was not Lynn's separate property. This issue is controlled by whether the language of the trust agreement was erroneously found to be ambiguous by the district court, a point Denise concedes. As we conclude that the district court did not err in finding the language of the trust agreement to be ambiguous, we further conclude that the district court did not err in finding that the Minden Property was not Lynn's separate property and, therefore, Denise's argument is without merit.

court erroneously found that the resolution of the terms of the several agreements between Anna and Lynn did not favor unilateral revocation.

Ambiguity of Section I(B) of the Breton Trust

Section I(B) of the Breton Trust Declaration states that to revoke or change any interest in the trust, Anna and Lynn must give written notice, signed by both of them, to the trustee. However, this section also states that separate property given to the trust is freely revocable by the person who put that property into the trust. In the recitals of the first amendments to the Breton Trust and in the second amendments to the Breton Trust, Anna and Lynn recognized that they disagreed about whether the Breton Trust was unilaterally revocable and reserved this issue because neither of them wished to litigate it at that time.

Denise argues that the district court erred in finding that the language of Section I(B) of the Breton Trust was ambiguous. Denise contends that the district court erred because it based its determination only on the parties' disagreement over the right to unilaterally revoke the Breton Trust as to certain types of assets.

The question of whether or not the language of an agreement is ambiguous is a question of law which we review de novo. Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994). Language in an agreement will be found to be ambiguous if that language is susceptible to more than one interpretation. Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003). If an agreement is reasonably susceptible to more than one interpretation, the best approach to interpreting that agreement is to look beyond the actual words and “examine the circumstances surrounding the parties’ agreement in order to determine the true mutual intentions of the parties.” Id. at 497, 78

P.3d at 510 (quoting Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 231, 808 P.2d 919, 921 (1991)). The subsequent acts and declarations of the parties must be examined when interpreting an ambiguous agreement. Id.

We conclude that the district court did not err in finding that Section I(B) of the Breton Trust was ambiguous because the language of this section contradicts itself and, thus, is susceptible to more than one interpretation. First, the language of this section could be interpreted as providing that separate property is unilaterally revocable and not subject to the notice requirement. Second, the language of this section could also be interpreted as providing that a settlor may freely revoke his separate property but it is still subject to the notice requirement. As such, we conclude that the district court did not err in finding that the language of Section I(B) of the Breton Trust was ambiguous and in its interpretation of Section I(B) in a way that does not favor unilateral revocation.

The agreements between the parties did not favor unilateral revocation

Anna and Lynn executed two agreements on August 20, 1985: a marital settlement agreement and a general partnership agreement. In the marital settlement agreement, Lynn was given the right to exclusively occupy the Minden Property with the restriction that if Lynn abandoned that property, it was to be sold and revoked from the Breton Trust with the proceeds divided equally between Anna and Lynn.

Denise argues that under the marital settlement agreement Lynn has always had the right to unilaterally revoke the Breton Trust in regard to the Minden Property. Specifically, Denise contends that, under the marital settlement agreement, Lynn could cause the Breton Trust to be revoked as to the Minden Property by simply abandoning the property.

Further, Denise argues that a construction of both 1985 agreements that would preclude Lynn's right to unilateral revocation would be grossly unreasonable. Denise contends that because of the separate and distinct purpose for each of the agreements between Anna and Lynn, the only reasonable construction of the agreements is in favor of unilateral revocation.

It is the exclusive province of a district court, when sitting without a jury, to determine facts on conflicting evidence. Larson v. B.R. Enterprises, 104 Nev. 252, 254, 757 P.2d 354, 356 (1988). We will not disturb the district court's findings of fact on appeal as long as those findings of fact are supported by substantial evidence. Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). "Substantial evidence has been defined as that which 'a reasonable mind might accept as adequate to support a conclusion.'" State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

We conclude that the district court's finding that the agreements between Anna and Lynn did not favor unilateral revocation is supported by substantial evidence and the district court's interpretation of the agreements was reasonable. Based on the language of the several agreements between Anna and Lynn in those sections which dealt with revocation, a reasonable mind could accept the district court's conclusion because there was no specific language ever inserted in the agreements which dealt with unilateral revocation. In fact, this point was always in dispute, and Anna and Lynn continuously delayed deciding this issue to avoid litigation. While it is true that each of the agreements between Anna and Lynn were entered into for a specific and distinct purpose, it

does not follow that the only reasonable resolution of the reading of these agreements together is in favor of unilateral revocation.

Ineffective revocation

On November 5, 2004, Lynn executed a partial revocation of his interest in the Breton Trust. In his partial revocation document, Lynn revoked his one-half interest in the Minden Property that he had given to the Breton Trust.

Denise argues that the district court erred by concluding as a matter of law that even if Lynn had the right to unilaterally revoke his one-half interest in the Minden Property from the Breton Trust that Lynn's revocation was ineffective. Denise contends that the district court erred by relying on the fact that Lynn's interest in the Minden Property was never conveyed from the trust to him individually.

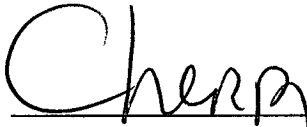
We review a district court's conclusions of law de novo. Birth Mother v. Adoptive Parents, 118 Nev. 972, 974, 59 P.3d 1233, 1235 (2002).

We conclude that the district court did not err in concluding that Lynn's revocation was ineffective because the language of the Breton Trust gave specific instructions on revocation of trust assets and Lynn


failed to follow these instructions.³ Because Lynn failed to follow the procedure he agreed to in the Breton Trust, his revocation was ineffective.

In light of the foregoing discussion, we

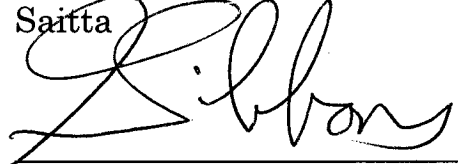
ORDER the judgment of the district court AFFIRMED.

 _____ J.

Cherry

 _____ J.

Saitta

 _____ J.

Gibbons

cc: Hon. David R. Gamble, District Judge
Carolyn Worrell, Settlement Judge
Law Offices of Judith A. Otto, Ltd.
Molof & Vohl
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.
Douglas County Clerk

³Section I(B)(3) of the Breton Trust states that to revoke any trust, in whole or part, during the lifetime of the settlors, written notice, signed by both settlors, must be delivered to the trustee.