

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF CLIFFORD R.
MIXER.

VICKI CLIFF, SPECIAL
ADMINISTRATOR OF THE ESTATE
OF CLIFFORD R. MIXER, DECEASED,
Appellant,

vs.

GUARDIANSHIP SERVICES OF
NEVADA, INC., INDIVIDUALLY AND
AS TRUSTEE OF THE CLIFFORD R.
MIXER REVOCABLE LIVING TRUST;
AND BETTY BRYANT, INDIVIDUALLY
AND AS TRUSTEE OF THE LUCILLE
MIXER REVOCABLE LIVING TRUST,
Respondents.

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Respondents.

No. 55104

FILED

DEC 20 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

No. 55354

ORDER OF REVERSAL AND REMAND

These are consolidated appeals from multiple district court orders entered in guardianship proceedings. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

These appeals involve reciprocal trusts created by Clifford Mixer and his wife, Lucille Mixer. The trusts, which held liquid assets and real property consisting of farms in the state of Kansas, named the settlor's spouse as the successor trustee and also gave each spouse a life estate in all of the other spouse's trust assets upon death. Betty Bryant, Lucille's niece, was the second successor trustee for both trusts.

Lucille passed away in 2004, at which time Clifford became the successor trustee and his life estate in Lucille's trust assets vested pursuant to the terms of the trusts. It appears Clifford conveyed that life estate to himself personally and then, separately, to his trust.¹ Meanwhile, relations between Bryant and Clifford deteriorated, resulting in significant litigation regarding the trusts. In earlier related appeals, Clifford challenged the district court's orders appointing a guardian over his person and his estate. See In Re: Guardianship of Mixer, Docket Nos. 53099 and 53695. The earlier appeals were assigned to this court's

¹On March 19, 2009, Bryant filed a verified inventory and record of value which showed that all of the cash assets in the Lucille Mixer trust (approximately \$392,000) were subject to Clifford Mixer's life estate. On April 23, 2009, Bryant filed a supplemental inventory of the balances on the bank accounts held by Clifford's trust. This supplement listed approximately \$498,000 in liquid assets and did not contain any reference to Lucille's trust.

settlement program. See NRAP 16. In June 2009, the parties reached a global settlement agreement, which purportedly resolved all issues. In pertinent part, the agreement removed Bryant as trustee of the Clifford Mixer Trust, provided for the appointment of a new guardian for Clifford, and provided for payment for Clifford's ongoing care based on a proportion of the assets in his trust and his personal guardianship estate. After the district court approved the settlement agreement and the parties stipulated to dismiss both appeals, this court dismissed the appeals and remanded to the district court to conduct any proceedings as necessary for the parties to fulfill the terms of the settlement agreement.

Soon after, Bryant requested instructions from the district court "regarding the manner in which trust corpus will be divided as well as the manner in which the two Trusts will be administered." The district court's resulting orders focused primarily on allocating cash assets among the trusts, which would affect the proportional payment for Clifford's ongoing care:

- On September 1, 2009, the district court found that Lucille and Clifford's trusts held combined assets of \$498,000 consisting of funds derived from the Kansas property. It divided the assets in proportion to the amount of land allocated between the two trusts: 69 percent to Lucille's trust and 31 percent to Clifford's trust.
- On October 27, 2009, the district court appointed Guardian Services of Nevada, Inc. as successor trustee to Clifford's trust and approved Bryant's appointment or designation by GSN as agent. The court also found that while Clifford "demonstrated [that] the Lucille Mixer Trust relinquished life estates to the acreage it previously owned," he failed to demonstrate "the relationship between the 2005 life

estate conveyance deeds and the accumulated funds subject to division.” While it did not order a forensic accounting or vacate its cash allocation order, the court ordered the parties to determine the value of accumulated liquid resources owned by the trusts and by Clifford individually.

- On November 24, 2009, the district court denied Clifford’s motion for a new trial and/or to alter or amend judgment.
- On January 8, 2010, the district court approved Clifford’s guardian’s report of the assets in Clifford’s guardianship estate and trust and denied Clifford’s request to include real property valuation in the allocation scheme. It directed that the real property, including Lucille’s, would not be sold until all liquid resources were exhausted.

Clifford appeals these orders.² Specifically, he challenges the district court’s interpretation of three paragraphs in the settlement agreement. First, he contends that the district court modified the Lucille Mixer trust in violation of paragraph 3(a), which prohibits any alteration to the Lucille Mixer trust. Next, he challenges the district court’s treatment of paragraph 3(c), which addresses Bryant’s resignation as the trustee.³ Finally, he contends that the district court impermissibly modified paragraph 3(e), which addressed the source of payment for Clifford’s care, when it excluded real property valuation from the calculation of the net value of the assets in Clifford’s trust.

²Clifford passed away after filing this appeal, and appellant Vicki Cliff is now the special administrator for his estate. We refer to Clifford instead of appellant because the briefs were filed before Clifford’s death.

³Appellant now concedes that the argument surrounding paragraph 3(c) became moot upon Clifford’s death. We therefore do not address paragraph 3(c) in this order.

A “settlement agreement is a contract,” and “[c]ontract interpretation is subject to a de novo standard of review.” May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). The district court cannot make, rewrite, or revise a contract between parties when resolving a dispute arising out of the agreement. Club v. Investment Co., 64 Nev. 312, 323-24, 182 P.2d 1011, 1016-17 (1947). “Interpretation of an agreement does not include its modification or the creation of a new or different one.” Id. (quotations and citations omitted).

Paragraph 3(a) of the settlement agreement states that “there shall be no alteration as to Lucille Mixer’s Trust. Clifford Mixer shall continue to receive all net income therefrom and Betty Bryant shall remain its Trustee.” Here, the district court allocated liquid assets (approximately \$375,000) to Lucille’s trust free of Clifford’s life estate, even though Lucille’s trust did not have any liquid assets when the settlement agreement was created. Clifford challenges this allocation because he argues that he obtained a life estate in those assets pursuant to Lucille’s trust. He contends that the district court orders of September 1, 2009, and October 27, 2009, were entered in error because the district court improperly interpreted Lucille’s trust by dividing the cash assets and thereby reduced his rights as a life tenant of Lucille’s trust. Bryant counters that Clifford could not empty Lucille’s trust because he only had a “lifetime beneficial interest” in the assets of the trust. To resolve this issue, we examine both Article V of Lucille’s trust, which gave Clifford a life estate in Lucille’s entire estate, and the rights Clifford obtained by virtue of his life estate.⁴ We conclude that the district court failed to

⁴The parties do not dispute that the governing-law provision of Lucille’s trust, which states that Kansas law will control, is valid and

consider the effect of Clifford's life estate on Lucille's trust assets, which gave him the right to deplete those assets. We further conclude that because there were no liquid assets in Lucille's trust at the time of the settlement agreement, the district court impermissibly altered her trust in violation of paragraph 3(a) when it allocated liquid assets to Lucille's trust.

A life tenant obtains a right of possession nearly equivalent to that of the owner of property in fee simple absolute. Restatement (First) of Property § 117 (2010). With regard to real property, the life tenant has the "right to rents, issues, and profits generated by the parcel during the tenant's life." 51 Am. Jur. 2d Life Tenants and Remaindermen § 32 (2010); see also Lehner v. Estate of Lehner, 547 P.2d 365, 369 (Kan. 1976) ("[A] tenant for life is entitled to the full use and enjoyment of the property in which he has a life estate . . . and [may] take all the income and profits."). The only limitation on the rights of a life tenant is a prohibition on committing waste. 31 C.J.S. Estates § 50 (2011). Life estates also apply to personal property. How personal property may be used by the holder of the life estate depends on the language of the instrument conveying the estate. Sharpe v. Sharpe, 190 P.2d 344, 348-49 (Kan. 1948); see also Estate of Steiner, 49 Cal. Rptr. 352, 354 (Ct. App. 1966). In Sharpe, the Supreme Court of Kansas examined a portion of a will that read: "I give, devise and bequeath to my wife, Birdie, all of my property, real, personal, or mixed." 190 P.2d at 349. The court held that this

controlling. See Sievers v. Diversified Mtg. Investors, 95 Nev. 811, 815, 603 P.2d 270, 273 (1979) ("Under choice-of-law principles, parties are permitted within broad limits to choose the law that will determine the validity and effect of their contract."). Thus, Kansas law governs the provisions of Lucille's trust.

language “carrie[d] with it all of the implications incident to ownership” unless limited by other language in the will. Id.

Here, pursuant to Article V of her trust, Lucille gave Clifford a life estate in her entire estate, “be it real, personal or mixed, of whatsoever kind and nature and wheresoever situated.” “[W]hen a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written.” Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004). The clear and unambiguous language of Lucille’s trust “carrie[d] with it all of the implications incident to ownership,” see Sharpe, 190 P.2d at 349, and Clifford therefore had the right to deplete liquid assets in Lucille’s trust because of his life estate.

In evaluating the effect of the life estate Clifford obtained upon Lucille’s death, the district court confused the rights that Article V of the trust granted to Clifford. In both its September 1, 2009, and its October 27, 2009, orders, the district court found that the liquid trust assets that Lucille’s trust accumulated prior to her death needed to be segregated from Clifford’s liquid assets and allocated to her trust so that “each trust has an ascertainable amount of money from which each Trust’s respective expenses can be paid.” In its October 27, 2009, order, the district court stated that “[t]he mere transfer of a present interest in real property does not require a concomitant transfer of accumulated resources.” However, pursuant to the broad language of Article V, Clifford obtained a life estate upon Lucille’s death without limitation. Therefore, we conclude that the district court failed to consider the effect of Clifford’s life estate on Lucille’s trust, which gave Clifford control over all of its liquid assets.

We further conclude that because Lucille's trust did not have any liquid assets at the time of the settlement agreement, the district court impermissibly modified the settlement agreement by allocating liquid assets to Lucille's trust. As permitted by his life estate, Clifford made a distribution from Lucille's trust to himself personally and then to his trust. At the time of the settlement agreement, the absence of liquid assets in the Lucille Mixer trust was reflected in Bryant's March 2009 inventory and record of value and Bryant's April 2009 supplement. Therefore, we conclude that by allocating liquid assets to Lucille's trust, the district court improperly altered Lucille's trust in violation of paragraph 3(a) of the settlement agreement.⁵ See Club v. Investment Co., 64 Nev. 312, 323-24, 182 P.2d 1011, 1016-17 (1947).

Paragraph 3(e) of the parties' settlement agreement states that "[t]o the extent resources are available, the costs of Clifford Mixer's care shall be split between the Clifford Mixer Trust and the assets currently in the Estate of the Guardianship of Clifford Mixer in proportion to their relative net values." Here, in its January 8, 2010, order, the district court denied Clifford's request to include real property owned by

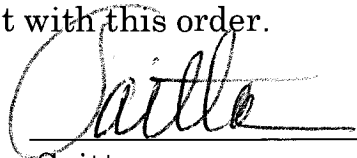
⁵We also note that pursuant to paragraph 2 of the settlement agreement, the parties waived all actual and potential claims related to the trusts:

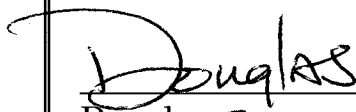
The [p]arties hereto agree that this is a global settlement of all claims, actual or potential now existing or which may hereafter be discovered, arising from or in connection with the Guardianship of Clifford Mixer and the Clifford and Lucille Mixer Trusts. . . .

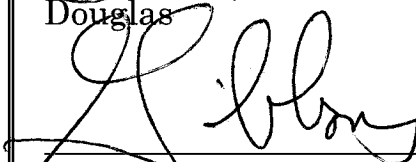
Accordingly, Bryant was precluded from making a claim for allocation of cash assets because she waived that claim as part of the settlement agreement.

the two Mixer Trusts in Kansas into its calculation of the net assets. Clifford maintains that this exclusion had an impact on the proportion of payment for Clifford's care that was outlined in paragraph 3(e) of the settlement agreement. Specifically, he contends that the exclusion of the real property valuation (as well as the allocation of \$375,000 to Lucille's trust) reduced the balance of his trust assets and forced his guardianship estate to pay a disproportionate share of his care costs. We agree, and conclude that this exclusion constituted an impermissible modification of the settlement agreement by the district court. As such, we remand this particular issue to the district court to reexamine the respective costs allocated between Clifford's guardianship estate and his trust by adding the real property valuation and the \$375,000 in liquid assets previously allocated to Lucille's trust to calculate the net value of Clifford's trust.

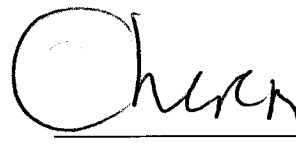
Accordingly, we ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Saitta

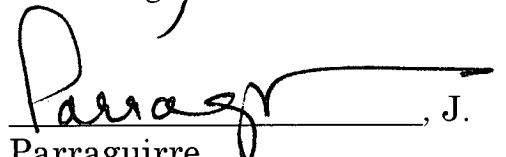

_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Cherry


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. David A. Hardy, District Judge
Carolyn Worrell, Settlement Judge
Michael A. Rosenauer, Ltd.
Stanley H. Brown, Jr.
Washoe District Court Clerk