

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST OF  
WALTER W. WALLACE, DECEASED.

No. 35064

KIMBERLY BEUHNING,  
INDIVIDUALLY AND AS NATURAL  
PARENT OF GAREHARDT  
BEUHNING,  
A MINOR, CHELSE BEUHNING, A  
MINOR,  
AND SAXON BEUHNING, A MINOR,

Appellant,

vs.

PATRICIA WALTER BERG,  
AS TRUSTEE OF THE  
WALTER W. WALLACE TRUST,

Respondent.

**FILED**

OCT 05 2001

ANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court determining the rights of the parties with respect to an inter vivos trust. The district court entered an order determining that respondent, Patricia Walter Berg, was the sole income beneficiary and appellant, Kimberly Beuhning, was a contingent income beneficiary entitled to income only in the event of Berg's death. Beuhning filed a timely appeal.

Beuhning first contends that the district court erred in construing paragraph 7.02 of the trust to pay the income in equal shares to Berg and the settlor's living children. Beuhning argues that there was no need to interpret the terms of the trust as paragraph 7.02(a) clearly states that the income was to be divided into equal shares and paragraph 7.02(b) states how the income was to be paid.

Alternatively, Beuhning contends that even if the express terms of the trust were not clear, the district court erred in concluding that Berg was the sole income beneficiary under paragraph 7.02 of the trust. Beuhning argues that the trust was ambiguous as to the named

beneficiaries but clearly stated that the income was to be divided into equal shares.

“This court has historically construed trusts in a manner effecting the apparent intent of the settlor.”<sup>1</sup> Further, a district court’s order regarding distribution or administration of trust funds will generally not be disturbed unless it clearly demonstrates an abuse of discretion.<sup>2</sup> This court will not set aside the district court’s factual determinations if they are supported by substantial evidence.<sup>3</sup> Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.”<sup>4</sup>

The language of paragraph 7.02 of the trust clearly and unambiguously provides that Berg is to be the sole income beneficiary of the trust during her lifetime and that, upon settlor’s death, one and only one share shall be created for Berg. Only in the event that Berg predeceased the settlor would two shares have been created – one for each of the settlor’s then living children.

Furthermore, even if the language of the trust is unclear, the result reached by the district court was supported by substantial evidence. Sufficient extrinsic evidence supported the district court’s conclusion that Berg is the sole income beneficiary. Although the court received testimony tending to demonstrate that the settlor, Mr. Wallace, intended to provide for his children, there was also substantial evidence in the record to show that Mr. Wallace expected his children to be provided for in their

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<sup>1</sup>Hannam v. Brown, 114 Nev., 350, 356, 956 P.2d 794, 798 (1998) (internal citations omitted).

<sup>2</sup>Id., at 362, 956 P.2d at 802 (internal citations omitted).

<sup>3</sup>Gepford v. Gepford, 116 Nev. \_\_, 13 P.2d 47, 49 (2000) (citing Primm v. Lopes, 109 Nev. 502, 506, 853 P.2d 103, 105 (1993)) (stating that the Court’s “proper function [is] to review the district court’s factual determinations and ensure that those determinations are supported by substantial evidence.”)

<sup>4</sup>Bally’s Employees’ Credit Union v. Wallen, 105 Nev. 553, 556, 779 P.2d 956, 957 (1989) (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

grandfather's will. Accordingly, we conclude that the district court's decision is supported by substantial evidence. We therefore

ORDER the judgment of the district court AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Lee A. Gates, District Judge  
Cary Colt Payne, Esq.  
Frank J. Cremen, Esq.  
Clark County Clerk