

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: JOSEPH L.
DUGAN REVOCABLE LIVING TRUST
DATED JANUARY 13, 2003

BRIDGET DUGAN; AND TRACY
ZAHRT,
Appellants,

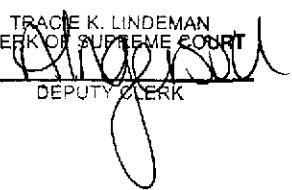
vs.

CASEY P. DUGAN; AND SEAN M.
DUGAN,
Respondents.

No. 60263

FILED

FEB 10 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order adopting a probate commissioner's report and recommendations. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Joseph Dugan established a trust for his children and appointed appellants Bridget Dugan and Tracy Zahrt (collectively the Trustees) as co-trustees. The trust contained a no-contest clause, which allowed the Trustees to disinherit any beneficiary who contested the trust or otherwise interfered with the trust's administration or distribution.

Three of the trust's beneficiaries, Kelly Dugan and respondents Sean and Casey Dugan, jointly filed two petitions for an accounting, compelling compliance with the trust's terms, removal of trustees, and appointment of new trustees.

Thereafter, the Trustees filed two notices of disinheritance as to Sean and Casey but not Kelly. The Trustees claimed that Sean and

Casey were being disinherited because they contested the trust and attempted to thwart the trustees. During a hearing, the Trustees alleged that Casey's failure to promptly provide information regarding some of the trust's assets and Sean's derogatory remarks towards the Trustees interfered with the trust's administration. The Trustees explained that they did not disinherit Kelly because he did not participate in the specific actions that gave rise to Sean and Casey's disinheritance.

Sean and Casey petitioned the district court to review the Trustees' decision. After reviewing the matter, a probate commissioner issued a report with findings of facts, conclusions of law, and recommendations. The commissioner's report recommended that the notices of disinheritance as to Sean and Casey be denied because the Trustees' filings with the district court were not enough to justify the disinheritance. The Trustees filed an objection to the commissioner's report. The district court held a hearing on the matter, and fully adopted the probate commissioner's report and recommendations.

On appeal, the Trustees assert that the probate commissioner and district court improperly reviewed the Trustees' decision to disinherit Sean and Casey. The Trustees maintain that the district court should have simply affirmed the Trustees' decision, rather than substituting its own discretion in place of the Trustees' judgment.

Under NRS 153.031(1)(f), a trust's beneficiary may petition the district court to review "the acts of the trustee, including the exercise of discretionary powers[.]" Disinheriting a beneficiary is a discretionary act; thus, the district court acted properly in reviewing the Trustees' decision to disinherit Sean and Casey.

A district court's determination as to whether a beneficiary violated a trust's no-contest clause is a finding of fact, thus we review it for clear error. *See Hannam v. Brown*, 114 Nev. 350, 357, 956 P.2d 794, 799 (1998).


The probate commissioner correctly determined that Sean and Casey's conduct did not violate the no-contest clause. The Trustees' decision to allow Kelly to keep his share of the trust, despite his involvement with the petitions, demonstrates that the petitions did not factor into the Trustees' decision to disinherit Sean and Casey. Consequently, Sean and Casey's conduct was the only basis for their disinheritance, but their conduct did not interfere with the trust's administration. Therefore, the district court did not err in adopting the report and recommendations.

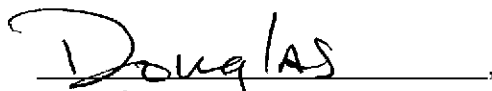
The Trustees also argue that this court should remand this matter for an evidentiary hearing because the probate commissioner and district court failed to support their respective decisions with sufficient factual findings.

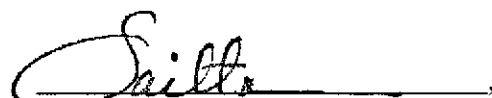
Under NRCP 52(a), "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon"

The Trustees' evidentiary hearing argument lacks merit. The probate commissioner issued findings of fact and conclusions of law detailing his reasons for disaffirming Sean and Casey's disinheritance. The district court reviewed and adopted the commissioner's report. Therefore, both decisions were supported with sufficient factual findings under NRCP 52(a). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, C.J.


Douglas, J.


Saitta, J.

cc: Hon. Gloria Sturman, District Judge
E. Paul Richitt, Jr., Settlement Judge
Lawyerswest, Inc.
McDonald Carano Wilson LLP/Las Vegas
Eighth District Court Clerk