

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE GIANNOTTI  
1990 REVOCABLE TRUST, AS  
AMENDED.

No. 80424-COA

WILLIAM KANTLEHNER; AND BRAD  
KANTLEHNER,  
Appellants,  
vs.  
PREMIER TRUST, INC.,  
Respondent.

FILED

JUN 25 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

William and Brad Kantlehner appeal from district court orders appointing and instructing a trustee, and approving trust accountings. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

This matter involves respondent and trustee Premier Trust's petition for instructions concerning its administration of the Giannotti 1990 Revocable Trust (the Trust). The settlors of the Trust, William and Mary Giannotti (collectively, the Giannottis), had one daughter, Palmarina (Paula) Kantlehner-McAlavey. As relevant here, Paula had two adult sons, appellants William and Brad Kantlehner (hereinafter, "the brothers"). William has two adult daughters, Karissa Kantlehner-Brittian and Sabrina Kantlehner-Manzano, and Brad has one adult daughter, Adrianna Kantlehner.

In 2001, William predeceased Mary, triggering the creation of several subtrusts. Upon his death, Mary, as the surviving spouse and trustee, allocated her interest in her separate and community property to the Surviving Spouse's Trust, a revocable trust. Meanwhile, William's

portion of the trust estate was divided into two parts: (1) an amount equal to the annual estate tax exemption limit, to be placed into an irrevocable Family Bypass Trust, and (2) a marital deduction gift equaling the remainder of William's estate, to be gifted to the "Survivor's Trust." Under the terms of the original Trust (as amended by William and Mary), upon Mary's death, and the death of Paula, the brothers were entitled to withdraw the entirety of the Trust estate, from all subtrusts, outright and free of trust by right of representation after they attained the age of 35.

In 2014, Mary executed an amendment to the Surviving Spouse's Trust, which included a new distribution provision. Under this new provision, the trustee has a broad discretionary power to provide, as it deems appropriate, for the "health, education, maintenance and support of Paula, and/or her descendants," during Paula and the brothers' lifetimes. Additionally, the Amendment established that "[t]he Trustee shall have discretion to pay over and distribute to or for the benefit of Paula and/or her Descendants either more or less than any other Descendant as the Trustee deems advisable because of variations in health, character, education[ ] or other requirements." Further, any discretionary decision made by the trustee under this standard shall be "final and conclusive" upon all beneficiaries of the Trust.

Mary passed away in 2015, and Paula passed away less than 30 days later. Accordingly, Premier assumed the role of trustee at the time of Mary's death. Pursuant to the terms of the Trust, Premier divided the Family Bypass Trust, and distributed it to the brothers, and Premier also provided the brothers regular monthly stipends and living expenses from the Surviving Spouse's Trust. However, the brothers continuously challenged the amount of Premier's discretionary distributions, and raised

concerns that Premier's trust officers were comingling and mismanaging the Trust investments.

After two years of escalating disputes between Premier's trust officers and the brothers, Premier filed the instant petition for instructions, requesting that the district court confirm its appointment as trustee, approve its accounting, discharge it as trustee for the Bypass Trust (which had been fully distributed), and approve its accounting and distributions for the Surviving Spouse's Trust.

The brothers then retained counsel who filed an answer on their behalf, objecting to the accounting. But after four months of representation, their counsel withdrew. The brothers then retained new counsel who filed a motion to amend the answer, asserting that, based on their expert's report, the Trust is (or was supposed to be) an ABC trust, and that the "Survivor's Trust" mentioned in the Trust instrument was a separate trust meant to hold the martial gift assets. Premier opposed this request, but the motion was never submitted for decision under WDCR 12(4).

Premier and the brothers' second set of counsel worked extensively to narrow the issues for trial, and almost negotiated a settlement agreement to narrow the issues and send the case to Alternative Dispute Resolution (ADR). But on the day the parties were supposed to sign the ADR agreement, the brothers terminated their counsel and sought to proceed pro se.

After the proposed settlement agreement fell through, Premier filed a motion for a protective order, alleging for the first time that the brothers had provided them with the incorrect addresses for Karissa, Adrianna and Sabrina, and that the brothers had been threatening their employees since Premier gained control of the Trust in 2015. Both the

daughters and Premier submitted affidavits stating that they feared retribution from the brothers for their participation in this case. Additionally, the daughters' affidavits stated that the brothers deliberately concealed the nature of these proceedings from them and represented that the brothers frequently used methamphetamine.

Based on the affidavits, the district court granted Premier and the daughters a protective order, prohibiting the brothers from contacting the parties without an attorney. The court additionally canvassed the brothers regarding their purported drug use, and they willingly submitted to a urinalysis through pretrial services, which revealed that both brothers tested positive for methamphetamine.

As part of the district court's attempts to narrow the issues for trial in this case, the court instructed Premier to file a second petition for instructions. Around this time, the brothers hired new counsel. Shortly thereafter, Premier filed a second petition for instructions, which contained three alternative distribution plans to address its concerns regarding the brothers' purported addiction to methamphetamine. Pending a more permanent solution from the court, the parties signed a stipulation and order providing that Premier would deliver the brothers' regular monthly stipends to their counsel's trust account and that counsel would deliver the stipend to them upon completion of a random urinalysis drug test, if the test was negative for all illegal drugs. If either of the brothers refused to participate in the drug test, the stipend would be withheld for that month.

The district court subsequently issued an NRCP 16 order that limited the issues for trial. As relevant here, this order determined that, based on the plain language of the Trust, the Trust was an AB trust, and not an ABC trust as the brothers had posited in their motion to amend their

answer. At this time, the district court also denied the brothers' motion to amend on the grounds that it was never submitted for decision, and that the arguments set forth therein were seemingly abandoned.

Eventually, the case proceeded to a four-day bench trial. In its final order following the trial, the district court found that the brothers have "an intemperate and aggressive style that alienates others" and further found that drug testing was necessary as the trustee's ability to make discretionary distributions under the Trust was based on the beneficiaries' health and character—attributes directly influenced by the brothers' troubles with substance abuse. The court further determined that the terms of the Trust do not allow the trustee "to fund a destructive drug-influenced lifestyle" and stated that the court will work with Premier and the [brothers'] attorneys to craft a distribution plan that prioritizes addiction recovery.

As to the brothers' objections to the accounting, the district court found that Premier made "substantial efforts to forensically re-create Mary's actions as trustee," and substantially complied with answering the brothers' questions regarding its administration of the Trust. Based on the testimony at trial, and a thorough review of the accounting, the district court found that approximately \$309,000 belonging to the Bypass Trust had been inappropriately transferred and held in the Surviving Spouse's Trust. Accordingly, the district court directed Premier to transfer the \$309,000 to the Bypass Trust, and provisionally approved both Trust accountings based on the inclusion of this transfer.

The court further released and discharged Premier from all liability relating to its appearance in this action, and denied the brothers'

statement of objections, so far as that statement requested Premier's removal as trustee. This appeal followed.

On appeal, the brothers challenge the district court's order following trial and, in the context of their appeal from the final judgment, also challenge the district court's pretrial order determining that the Trust was an AB trust, and the orders directing them to submit to drug testing and approving Premier's refusal to provide them with a monthly stipend based upon their active drug use. We address each issue in turn.

*The brothers have not demonstrated that the district court erred in determining that the Trust was an AB trust*

This court reviews a district court's interpretation of a trust document de novo. *In re W.N. Connell & Marjorie T. Connell Living Tr.*, 134 Nev. 613, 616, 426 P.3d 599, 602 (2018). In construing a trust, we strive to give effect to the settlor's intent, and employ principles of contract interpretation where necessary. *Id.*

On appeal, in challenging the district court's decision that the Trust was an AB trust, the brothers primarily rely on their expert witness report which set forth a conclusory opinion stating that the Trust established three distinct subtrusts upon William Giannotti's death: (1) a revocable Surviving Spouse's Trust (consisting of Mary's separate and community property); (2) an irrevocable Family Bypass Trust, (consisting of the portion of William's estate equal to the federal estate exemption) and (3) an irrevocable Survivor's Trust (holding the remainder of William's estate as a marital gift). Indeed, the brothers' informal brief merely repeats these assertions without offering any cogent argument or explanation to support this position or otherwise address the district court's conclusions regarding the plain language of the Trust, which the court found demonstrated that an AB trust, rather than an ABC trust had been created.

Thus, we need not consider these summary assertions. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued).

The brothers likewise offer no cogent argument to support their assertion that Mary's purported comingling of certain assets somehow caused the Surviving Spouse's Trust to become irrevocable, thereby voiding Amendment Three to the Trust document, which altered the distribution methodology for the Surviving Spouse's Trust. As a result, we also need not consider their arguments on this point. *Id.* As a result, we affirm the district court's determination that the trust was an AB trust.

*The district court correctly determined that the brothers' daughters were current beneficiaries of the Surviving Spouse's Trust*

Turning to the arguments related to the beneficiary determination, the brothers primarily argue that Karissa, Sabrina, and Adrianna—their daughters—are not beneficiaries of the trust because Premier had previously represented to them that the daughters only had a remainder interest in the Surviving Spouse's Trust. They further argue that only they have a present beneficial interest in the trust, and that any distributions Premier made to their daughters were inappropriate. Reviewing this issue de novo, *see Connell*, 134 Nev. at 616, 426 P.3d at 602, we agree with the district court's determination that the daughters have a present discretionary interest in the Surviving Spouse's Trust.

Section 4.9 of the Surviving Spouse's Trust states that the Surviving Spouse's Trust shall be held and administered for the benefit of the Giannottis' "daughter Paula and/or her descendants during Paula and [the brothers'] lifetimes." And Section 13.4 of the Trust defines descendants as "lineal descendants in any degree of the ancestor designated and shall

include persons adopted during minority.” Here, the brothers do not dispute that Karissa, Sabrina and Adrianna are lineal descendants of Mary Giannotti and Paula. Accordingly, the daughters fall under the definition of descendants as defined in Section 13.4 of the Trust. And while the trustees are instructed to utilize trust income and principal primarily for the benefit of the brothers, that is not mandatory, and nothing in the Trust prohibits Premier from making discretionary distributions to the brothers’ daughters under the plain language of the Trust. *See Love v. Love*, 114 Nev. 572, 580, 959 P.2d 523, 529 (1998) (“Where language in a document is clear and unambiguous on its face, the court must construe it based on this plain language.”); *see also Connell*, 134 Nev. at 616, 426 P.3d at 602 (applying principles of contract interpretation to trust interpretation). We therefore affirm the district court’s order approving Premier’s discretionary distributions to the brothers’ daughters as current beneficiaries of the Surviving Spouse’s Trust.

*The brothers have not demonstrated that the district court erred when it approved the accounting over their objections*

Next, the brothers contend that the district court erred when it approved Premier’s accounting of the Bypass and Surviving Spouse’s Trust over their objections, and argue that Premier failed to answer or account for the purported discrepancies that they attached to their answer. However, to the extent the brothers ask this court to review their particular objections to the accounting, they do not present cogent argument in support of the same or otherwise explain why the district court’s handling of these objections was purportedly incorrect. Thus, we need not consider this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Indeed, most of the brothers’ informal brief simply directs this court to Exhibit 7 of their Verified Answer—which encompasses their statement of



objections—violating NRAP 28(e)(2) (prohibiting parties from incorporating, by reference, district court documents for the arguments in their appellate briefs). Thus, we affirm the district court’s approval of the accounting.

*The district court did not abuse its discretion in requiring the brothers to submit to drug testing*

We now turn to the brothers’ arguments regarding the district court’s actions in ordering them to submit to drug testing, and approving Premier’s decision to withhold trust funds based on positive drug test results. This court reviews a district court’s order regarding the administration of a trust or distribution of trust funds for an abuse of discretion. *Hannam v. Brown*, 114 Nev. 350, 362, 956 P.2d 794, 802 (1998).

The brothers challenge the district court’s drug testing order on two grounds. First, they argue that drug testing was inappropriate and an invasion of privacy because they were “not involved in a child custody case and there were no criminal charges pending against either of them.” But the brothers present no cogent argument on appeal that would demonstrate that the district court does not have the authority to order drug testing outside of child custody and criminal matters. Therefore, we decline to address this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Second, the brothers contend that the terms of the trust instrument do not expressly give the trustee authority to conduct drug testing. But contrary to the brothers’ assertions, the terms of the Trust expressly authorize the trustee to provide discretionary distributions to the brothers in amounts “either more or less than any other Descendant as [Premier] deems advisable because of variations in health, character, education[ ], or other requirements.” And in ordering the brothers to

undergo drug testing, the district court found the tests were necessary to aid Premier in exercising its discretion when providing distributions to William and Brad. Thus, the terms of the Trust support the district court's drug testing orders.

Moreover, these orders were entered in direct response to Premier's petition for instructions in light of its concerns regarding the brothers' drug use. *See* NRS 153.031(f) (allowing a trustee to petition the court to review the exercise of discretionary powers); NRS 164.015(1) (applying the provisions of NRS 153.031 to nontestamentary trusts). And NRS 164.040(2) provides the district court with authority to "enter any order and take any other action necessary" to dispose of matters presented by a petition for instructions. In light of the forgoing, given that the district court's drug testing orders are directly related to Premier's second petition for instructions regarding distributions to the brothers and the brothers' suspected substance abuse, we conclude that it was within the district court's authority to order the brothers to submit to drug testing in this case. Accordingly, we affirm the district court's orders requiring the brothers to undergo drug testing.

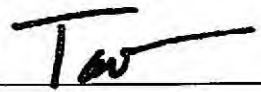
Finally, the brothers briefly contend that the district court abused its discretion when it approved Premier's actions in withholding their monthly stipend payments pending a drug test result showing that they tested negative for illegal drugs. We disagree. The terms of the Trust provide great discretion to the trustee to withhold or limit its discretionary distributions to the beneficiaries based upon variations in health and character. *See Humane Soc'y of Carson City & Ormsby Cty. v. First Nat'l Bank of Nev.*, 92 Nev. 474, 477, 553 P.2d 963, 965 (1976) (stating that "[w]here discretion is conferred upon the trustee with respect to the exercise

of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion" (internal quotation marks omitted)). Accordingly, the district court properly determined that Premier had the authority to withhold discretionary distributions on those grounds, and we affirm the district court's order approving the same. *See Hannam*, 114 Nev. at 362, 956 P.2d at 802.

In light of the forgoing we,

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David A. Hardy, District Judge  
Brad Kantlehner  
William Kantlehner  
Robertson, Johnson, Miller & Williamson  
Hawkins Folsom & Muir  
Wallace & Millsap LLC  
Washoe District Court Clerk

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<sup>1</sup>Insofar as the brothers raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.