

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE INTER
VIVOS TRUST OF: HOYT SIBLEY AND
MARY M. SIBLEY.

No. 42751

FILED

DEC 21 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

JAMES WRAY AND DAVID WRAY,
Appellants,

vs.

DAVID JOHNSON, TRUSTEE OF THE
HOYT SIBLEY AND MARY M. SIBLEY
1973 TRUST,
Respondent.

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying the petition of James Wray and David Wray to confirm an inter vivos trust executed by their mother, Mary M. Sibley, and their stepfather, Hoyt Sibley. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

Mary Sibley died on July 28, 1991, leaving Hoyt Sibley as her surviving spouse. James and David Wray are Mary Sibley's sole surviving children. Starting in 1973, Mr. and Mrs. Sibley entered into a comprehensive estate plan that included a trust arrangement. They substantially amended the arrangement in 1986 and executed individual pour-over wills that left the entirety of their estates to the trust. Section 3.3 of the trust granted both settlers a general power to appoint or distribute the trust estate, which the Sibleys could exercise jointly with

respect to community property and individually with respect to separate property, during their lives or by will.¹

The trust provided that, upon the death of the first spouse, the trust was to be divided into two separate trusts, a "Survivor's Trust" and a "Decedent's Trust." The Survivor's Trust remained fully revocable and amendable by the survivor until his or her death, leaving the survivor with the unfettered ability to amend the Survivor's Trust during his lifetime. The Decedent's Trust was structured differently. This trust arrangement became irrevocable upon Mary Sibley's death, giving Mr. Sibley the enjoyment of the assets during his lifetime.² Interestingly, the surviving spouse was given a special power of appointment as follows:

The surviving spouse shall also have, with regard to the principal of the Decedent's Trust, the power to appoint said Trust, or any part thereof, either during life or by Will, to one or more persons or entities; provided, that this power may not be exercised to any extent in favor of the surviving spouse [or his or her creditors or the creditors of his or her estate].

The Sibleys executed the final joint amendment to the trust in May of 1991, shortly before Mrs. Sibley's death, under which James and David Wray were the named beneficiaries. Pursuant to her will executed April 24, 1986, she left the entirety of her estate to the trust. After Mrs. Sibley

¹Prior to Mrs. Sibley's death, the Sibleys exercised this power several times, omitting both of the Wray brothers as beneficiaries on one occasion, and omitting one of the two on two other occasions.

²This right was not without restriction. While Section 4.3 of the trust granted the survivor access to the principal of the Decedent's Trust for his support, maintenance, and health, distributions from principal constituted a debt owed to the Decedent's Trust by the Survivor's Trust if the Survivor's Trust was not exhausted.

died, Mr. Sibley amended the Survivor's Trust or exercised the special power of appointment of the Decedent's Trust several times. At the time of his death in 1997, provisions exercising the amended special power left the corpus of the Decedent's Trust to persons other than James and David.

In 1998, the Wrays filed a malpractice and fraud action against the attorney that drafted the trust, and the attorney that served as trustee. The complaint alleged in part that the estate-planning attorney negligently drafted the special power of appointment in favor of the surviving spouse contrary to the intent of the settlors. The district court granted summary judgment in the matter on statute of limitation grounds and for lack of proof of fraud. Citing the fact that the Wrays became aware of the terms of the trust shortly after their mother's demise in 1991, and citing deficiencies of proof, we finally affirmed via unpublished order on December 17, 2002.³

The Wrays did not file the petition below until July 2003, after the conclusion of the previous action. In that petition, they sought, inter alia, distribution of the trust estate to conform with an alleged agreement not to amend the trust so as to divest the Wrays made between Mr. and Mrs. Sibley while they were both alive, imposition of an equitable lien and constructive trust on distributed assets, and to have trust assets plus interest returned to them as the rightful beneficiaries of the trust. Because Mr. Sibley exercised his special power of appointment by amending the trust after the death of Mrs. Sibley, the Wrays contended that the exercise of the special power in favor of third parties violated the Sibleys' intent while they were alive. From this they argued that the trust

³Two justices dissented from the dismissal of the case on statute of limitations grounds.

corpus should be confirmed to them. The district court dismissed the petition based upon res judicata, collateral estoppel and laches.

On appeal, the Wrays argue that the doctrine of laches does not bar their probate petition, and that respondent David Johnson is not entitled to assert laches as a defense to the probate petition due to unclean hands. Laches is an equitable doctrine that “may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable.”⁴ A party must show that the delay caused actual prejudice;⁵ the alleged prejudice cannot be prospective or illusory.⁶ “The condition of the party asserting laches must become so changed that the party cannot be restored to its former state.”⁷

Here, nothing barred the Wrays from filing their petition in the probate forum in an action parallel to their 1998 malpractice/fraud action. Instead, without explanation, the Wrays waited until 2003, after a final order was entered in the previous case, to file the instant petition. While it may have made little sense to move to confirm the trust in 1991 because they were the beneficiaries, they could have filed their petition in

⁴Mackintosh v. California Fed. Sav., 113 Nev. 393, 404, 935 P.2d 1154, 1161 (1997) (quoting Building & Constr. Trades v. Public Works, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992)).

⁵Besnilian v. Wilkinson, 117 Nev. 519, 522, 25 P.3d 187, 189 (2001).

⁶Memory Gardens v. Pet Ponderosa, 88 Nev. 1, 5, 492 P.2d 123, 125 (1972).

⁷Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997) (quoting Home Savings v. Bigelow, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989)).


December 1997 after Mr. Sibley's death, at which time the power of appointment excluding the Wrays became final. In addition, the special power of appointment seemingly gave the survivor the right to appoint the corpus to anyone, including or excluding the two brothers.⁸

Most tellingly, the Wrays' inaction caused a material disadvantage to both the trustee and the trust because the trust property had already been distributed to its multiple beneficiaries and now the trust cannot be restored to its former state. The Wrays' charge of unclean hands against the trustee is an attempt to argue the underlying merits of their case; they fail to allege any actual attempted theft, collusion or conversion by the trustee.

In light of the above, we conclude that the district court properly dismissed the petition based upon laches. Because this issue is dispositive, we do not reach the issues of res judicata and collateral estoppel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁸It seems unlikely that the power of appointment provisions and the 1986 will were vulnerable to contest based upon a charge of undue influence as of Mrs. Sibley's death. Although Mr. and Mrs. Sibley executed the last trust amendment shortly before her demise, the will and power of appointment provisions had been in place for years.

cc: Eighth Judicial District Court Dept. 11, District Judge
James H. Wray III
David Wray
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk