

**Summary of SC93679, C. David Rouner and Alisha Hudson v. Cari Renee Wise, Individually and as Co-Trustee of the K. R. Conklin Living Trust, and Carli Nicole Conklin, Individually and as Co-Trustee of the K. R. Conklin Living Trust**

Appeal from the Adair County circuit court, Judge Karl DeMarce

Argued and submitted March 12, 2014; opinion issued October 14, 2014

**Attorneys:** The stepchildren were represented by Antony L. Dewitt, Edward D. Robertson Jr. and Mary D. Winter of Bartimus, Frickleton, Robertson & Gorny PC in Jefferson City, (573) 659-4454; and Mark L. Williams and John Jay Benson of The Benson Law Firm in Kriksville, (660) 627-0111. The children were represented by Robert J. Selsor and Jeffrey M. Glogower of Polsinelli PC in St. Louis, (314) 889-8000, David L. Knight of Knight & Salladay Law Offices in Columbia, (573) 355-5592.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Two stepchildren appeal the circuit court’s judgment in favor of their stepfather’s natural children in a dispute over whether a letter amended terms of the stepfather’s trust leaving all his property to his children and excluding the stepchildren. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the circuit court’s judgment. The stepchildren failed to prove that their stepfather intended the letter to serve as an amendment to his trust. Neither the language of the letter nor the extrinsic evidence provides any clear and convincing basis – directly or by any fair inference – for concluding that the stepfather understood and intended for the letter to serve as an amendment to the trust. The circuit court did not abuse its discretion in awarding attorney fees and costs to the children, nor did it err in holding the children did not violate the trust’s no-contest provision in defending the trust.

**Facts:** Dr. K. R. Conklin had two children with his first wife and two stepchildren with his second wife, whom he married in 2000. In 1996, Conklin executed an agreement creating a living trust and a pour-over will addressing the remainder of his estate. The 1996 agreement named Conklin as the sole trustee and his two children as beneficiaries. The agreement also purported to transfer all real and personal property that Conklin owned at the time to the trust but did not identify what real or personal property he was transferring. The trust provided that, upon Conklin’s death, his two children would become co-trustees and would receive interest from their shares in the trust as well as whatever principal distributions they deemed necessary for their health, maintenance, support and education. It further provided that, upon each child’s death, that child’s share in the trust would be distributed immediately, free of the trust, to that child’s living descendants. Although Conklin already was in a relationship at the time with the stepchildren and their mother, neither the 1996 agreement nor the pour-over will mentioned any of them. In November 2002, Conklin and his second wife embarked on a journey to Arizona and then Iowa before planning to return home. On the way to the Kansas City airport at the beginning of the journey, Conklin hand-wrote a letter, signed by both him and his wife, to both children and both stepchildren. He sealed it an envelope addressed to one of his children and left it in the glove box of the vehicle he and his wife were driving. The letter states in part that, if the children and stepchildren were reading it, “it means that Jo and I have met our demise either going to or

coming back from Phoenix. The trust has not been updated for several years so I will express my desire on how I wish everything to be handled.” The letter then explains his desires for distributing among both the children and stepchildren the couple’s life insurance proceeds, cash flow from property they owned, real property they owned, farm equipment, vehicles and other personal property. Sometime after the couple returned safely from Arizona, the wife found the unopened envelope in the car and apparently delivered it to Conklin. After Conklin died in 2009, the opened letter was discovered among his records but not with or as a part of his trust papers. The stepchildren sued the children, contending Conklin intended the 2002 letter to amend the terms of the trust. Following a trial, the circuit court entered judgment for the children on all counts, finding the letter was not an amendment to the trust. The stepchildren appeal.

## **AFFIRMED.**

**Court en banc holds:** (1) The stepchildren failed to prove that Conklin intended the 2002 letter to serve as an amendment to the trust he created in 1996.

(a) The language of the letter does not provide any clear and convincing basis – directly or by any fair inference – for concluding that Conklin understood and intended for that letter to serve as an amendment to the trust. The stepchildren concede they are not beneficiaries of the trust terms set forth in the 1996 agreement, and they rely solely on the plain language of the 2002 letter as proof of their stepfather’s intention to amend his trust. To amend a trust, a writing must show clearly and manifestly that the writer understood and intended the writing to be an amendment. On its face, however, the 2002 letter purports to be nothing more than a “farewell” letter from Conklin and his wife to their children. The 2002 letter’s statements about what to do in the event that Conklin and his wife died simultaneously cannot be equated with an intention for the letter to amend the trust. While the 1996 agreement contains unambiguous and mandatory language, the 2002 letter contains no language unambiguously showing Conklin intended it to serve as an amendment to the trust. In fact, the letter serves as a wholesale departure from the trust’s express provision that no beneficiary would receive specific property upon Conklin’s death. There also is no evidence that Conklin delivered the letter to himself as trustee, as would have been required by the trust’s own terms for the letter to constitute an amendment to the trust. Further, the letter deals with certain property that what little evidence is available in the record shows was not subject to the trust when the letter was written and that would not become subject to the trust pursuant to Conklin’s pour-over will except in very limited circumstances.

(b) There also is extrinsic evidence of Conklin’s intent, which the circuit court properly admitted at trial. Generally, under the “four corners rule,” extrinsic evidence is not admissible to contradict terms of an express trust set forth in an unambiguous writing or to add new terms to such a document the person creating the trust intended to be a complete recitation of the trust’s terms. But extrinsic evidence may be admitted to explain and resolve ambiguous trust terms or to determine whether a writer intended a writing to amend a trust. The circuit court, therefore, did not err in considering extrinsic evidence of whether Conklin intended the letter to amend the trust. While in Arizona during the 2002 trip, Conklin told one of his brothers that he had written a letter to

assuage his wife's concerns about how the stepchildren would be provided for should both Conklin and his wife die during that trip, stating that it was "a million to one" that the letter ever would matter. Conklin gave his other brother a similar description of the letter in a conversation that occurred after the Conklins returned from the trip. Conklin had been greatly interested in and had a detailed understanding of his estate planning and ensured his wife received more than \$1 million in non-probate transfers and insurance proceedings after he died. Together with the text of the letter, the extrinsic evidence merely reinforces the inference that Conklin wished his property to be disposed of according to the letter in the event he and his wife died simultaneously, not that he believed or intended the letter legally would require the children to do so.

(2) The circuit court did not abuse its discretion in awarding attorney fees and costs to the children. The children's actions in defending the trust benefited not only themselves as beneficiaries but also the interest of their descendants, who were named as remainder beneficiaries upon the children's deaths. As such, the fees and expenses incurred to the benefit of the trust and should be payable from trust assets. Further, the court's award was based on a statute that does not limit awards only to trustees or others whose actions benefited the trust.

(3) The circuit court properly held the children did not violate the trust's no-contest provision by resisting the stepchildren's claims against the trust and subsequent lawsuit. The stepchildren fell far short in proving the existence and validity of the alleged amendment to the trust under which they sought to recover. As a result, it was the stepchildren – not the children – who acted against the validity of the trust.