

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**C. DAVID ROUNER AND ALISHA HUDSON,
APPELLANTS
vs.**

**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,
RESPONDENTS**

DOCKET NUMBER WD75305

DATE: JULY 30, 2013

Appeal from:

The Circuit Court of Adair County, Missouri
The Honorable Karl Demarce, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Cynthia L. Martin, J. and Robert Clayton, Sp.J.

Attorneys:

Mark L. Williams, for Appellants

Robert J. Selsor, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

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C. DAVID ROUNER AND ALISHA HUDSON, APPELLANTS

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, RESPONDENTS

WD75305

Adair County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Cynthia L. Martin, J. and Robert Clayton, Sp.J.

In 1996, K.R. Conklin ("Decedent") executed the K.R. Conklin Living Trust ("the Trust"). Decedent had two biological daughters Cari Wise and Carli Conklin (collectively, "Respondents"), who he named successor trustees and beneficiaries under the Trust. Decedent also had two step-children, C. David Rouner and Alisha Hudson (collectively "Appellants"). Appellants were not named as beneficiaries of the Trust.

Upon Decedent's death, litigation arose regarding the distribution of the Trust's assets. At the forefront of that litigation was a three-page, handwritten document penned by Decedent on November 1, 2002. The 2002 writing stated "If you are reading this it means that Jo & I have met our demise either going to or coming back from Phoenix. The [T]rust has not been updated for several years so I will express my desire on how I wish everything to be handled." The writing was addressed to Appellants and Respondents and went on to dispose of the majority of Decedent's property. Decedent and Jo, his wife, returned safely from their trip to Phoenix. Decedent, however, kept the writing in a folder with his life insurance papers.

In 2011, Appellants filed a petition for declaratory judgment requesting the trial court to find the 2002 writing to be a valid amendment to the Trust which, thereby, made Appellants beneficiaries of the Trust. At trial, the court permitted extrinsic evidence to be admitted regarding Decedent's statements about the Phoenix trip and his estate planning practices. Ultimately, the trial court determined that the 2002 writing did constitute a valid amendment to the Trust. Nevertheless, the trial court determined the 2002 writing never became an operative amendment to the Trust because the writing was conditioned upon Decedent and Jo meeting their demise in Phoenix, which never occurred. Appellants now raise four points of error on appeal.

AFFIRMED IN PART and REVERSED AND REMANDED IN PART

Division Three holds:

(1) The trial court erred in finding the 2002 writing constituted a conditional amendment to the Trust because, when read in the context of the writing as a whole, the Phoenix language pertains to Decedent's motivation for composing the 2002 writing as opposed to stating a condition upon which the writing would become an operative amendment to the Trust in that the Phoenix language is expressed between two sentences that clearly convey the occasion and Decedent's motivation for drafting the 2002 writing and the conditional nature of the "if you're reading this" language is not used in the context of distributing the Trust's assets. Thus, the language regarding Decedent and Jo meeting their demise during their trip to Phoenix does not constitute compelling language evidencing a condition precedent to the writing becoming an effective amendment to the Trust.

(2) The trial court erred in admitting extrinsic evidence regarding the 2002 writing because no ambiguity exists with respect to the Phoenix language when the 2002 writing is examined as a whole. Thus, Decedent's intent was to be ascertained from the four corners of the Trust, not extrinsic evidence regarding statements Decedent made about the Phoenix trip and his estate planning strategy.

(3) The trial court did not abuse its discretion in awarding Respondents' attorney's fees to be paid from the corpus of the Trust because, pursuant to § 456.10-1004 RSMo Cum. Supp. 2008, the trial court has the discretion to award attorney's fees to either party from the corpus of the Trust, and the record supports that trial court's finding that the complex issues raised in Appellants' petition were not frivolous and required judicial resolution and that Respondents incurred their attorney's fees in attempting to defend the Trust.

(4) The trial court did not abuse its discretion in awarding attorney's fees to Respondents because the only evidence that Appellants offered that Respondents were challenging the 2002 writing for their own benefit was the fact that Respondents stood to gain more if the 2002 writing was deemed an inoperative amendment because Respondents would then be the only beneficiaries of the Trust. Such evidence is insufficient to establish that Respondents challenged the 2002 writing for their own benefit; thus, Appellants failed to prove that Respondents could not be awarded attorney's fees to be paid from the corpus of the Trust.

(5) The trial court did not err in finding that Respondents did not violate the Trust's no-contest clause because Respondents' participation in the suit was not of the type of conduct Decedent intended to result in the forfeiture of Respondents' interests as beneficiaries of the Trust in that Respondents, as co-trustees of the Trust, had a duty to represent the Trust in all proceedings, actions, suits, and claims against it and, thus, Respondents' participation in the action amounted to them fulfilling their duties to the Trust.

(6) The trial court erred in denying Appellants' request for attorney's fees because Appellants' litigation did result in a benefit to the Trust in that all provisions of the Trust as amended will now be enforced. Accordingly, the trial court should enter an award of attorney's fees to Appellants.

Opinion by Joseph M. Ellis, Judge

Date: July 30, 2013

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