

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

KAREN L. FAY,

Appellant

v.

LLOYD GRAFTON AND RONALD W. GRAFTON.

Respondents

DOCKET NUMBER WD78302

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 17, 2015

Appeal From:

Circuit Court of Linn County, MO
The Honorable Tracey A. Mason-White, Judge

Appellate Judges:

Special Division
James Edward Welsh, P.J., Gary D. Witt, J., and Andrea R. Vandeloecht, Sp. J.

Attorneys:

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Co-Counsel for Appellant

Attorneys:

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Counsel for Respondents

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**KAREN L. FAY, Appellant, v. LLOYD GRAFTON AND
RONALD W. GRAFTON, Respondents**

WD78302

Linn County

Before Special Division Judges: Welsh, P.J., Witt, J., and Vandeloecht, Sp. J.

Karen L. Fay appeals the circuit court's judgment in favor of Lloyd Grafton on her Amended Petition to Disapprove the Wrongful Termination of an Irrevocable Trust. Fay contends that the circuit court erred (1) in approving Lloyd Grafton's revocation and then modification of the trust without requiring the consent of all beneficiaries of the trust; (2) in not removing Lloyd Grafton as trustee of the trust because he violated the interests of the beneficiaries, committed a breach of the trust, and violated his duty of loyalty and duty to inform; (3) in approving Lloyd Grafton's revocation of trust and the subsequent transfer of the shares of Lloyd Grafton, Inc., to himself without consideration of the "ascertainable standard" as set forth in section 456.8-814, RSMo Cum. Supp. 2013; and (4) in not terminating all income and benefits to Lloyd Grafton and holding him subject to the no-contest clause of the trust.

Affirmed.

Special Division holds:

(1) An order disapproving the Lloyd Grafton's Restatement of the Grafton Family Trust Agreement is not necessary because Lloyd Grafton's actions in revoking the Restatement were sufficient to reinstate the original trust without modification. Because the trust was not modified or terminated, the consent of the beneficiaries was not required.

(2) Because Grafton did not ultimately revoke the trust and because he had the discretion as a settlor to remove some but not all assets from the trust, the circuit court did not err in refusing to remove Lloyd Grafton as trustee of the trust.

(3) The ascertainable standard set forth in section 456.8-814, RSMo Cum. Supp. 2013, does not apply when the trustee is also the settlor. The trust gave Lloyd Grafton as trustee of the trust the discretion to pay all or part of the principal to himself as a settlor without an ascertainable standard being applied.

(4) The no-contest clause in the trust does not appear to include actions by the settlor. Moreover, as we have already concluded, the trust was not ultimately modified or revoked by Lloyd Grafton. The trust remains as originally drafted and with no changes or amendments.

Opinion by James Edward Welsh, Presiding Judge

November 17, 2015

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