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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DEBORAH J. STONE,

Plaintiff and Appellant,

v.

TIMOTHY G. HORAN,

Defendant and Respondent.

B277287

(Los Angeles County  
Super. Ct. No. BP160058)

APPEAL from an order of the Superior Court of Los Angeles County. David J. Cowan, Judge. Affirmed.

FisherBroyles and Daniel L. Alexander for Plaintiff and Appellant.

Schindler Eyrich, John F. Eyrich, Trudi Schindler; Law Office of Stephen E. Grant and Stephen E. Grant for Defendant and Respondent.

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Following the death of Timothy A. Horan, Jr. (the Trustor), his son, Timothy G. Horan (Horan), became the successor trustee of the Timothy A. Horan, Jr. Trust (the Trust). The Trustor's daughter, Deborah Stone (Stone), petitioned the probate court to determine a purported amendment to the Trust was invalid. While the original trust documents named both Horan and Stone as remainder beneficiaries, a subsequent unsigned amendment and a signed document titled "Certificate of Trustee's Power and Authority and Abstract of Trust" identified Horan as the Trust's sole beneficiary after the Trustor's death. Horan filed a competing petition to confirm the validity of the Trust amendment and to confirm the validity of the Abstract as an independent amendment. The trial court concluded the Abstract was a valid amendment of the Trust. Stone appealed. We affirm the trial court order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Horan and Stone are the Trustor's children. Horan and Stone's parents divorced and, in 1968, when Stone was seven years old, her stepfather adopted her. In 2003, the Trustor established the Trust in his name, designating himself as both the trustor and trustee. The Declaration of Trust identified the beneficiaries, in order of priority: Timothy A. Horan, Jr. (the Trustor) as a lifetime beneficiary; Helene Sutter, the Trustor's long-term companion, as primary beneficiary; and Horan and Stone as residuary beneficiaries.<sup>1</sup>

The Trust provided the Trustor the power to amend or revoke the Trust. Part 3.1 stated: "Power in Trustor During Lifetime of Trustor. In addition to any powers reserved to the Trustor elsewhere in this Trust, Trustor reserves the right at any

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<sup>1</sup> Helene Sutter died in 2012, predeceasing the Trustor.

time or times to amend or revoke this Declaration of Trust and the Trusts hereunder, in whole or in part, by an instrument in writing, signed by Trustor and delivered in Trustor's lifetime to Trustee." The Declaration of Trust was dated August 27, 2003.<sup>2</sup>

The identification of beneficiaries, the provision regarding amendment or revocation, and numerous other trust provisions were included in a Certificate of Trustee's Power and Authority and Abstract of Trust, which the Trustor executed and had notarized on October 7, 2003. On the same day, the Trustor signed and dated a schedule of assets transferring property into the trust estate.

At some point, a four-page amendment to the Trust was prepared (the Amendment). The Amendment identifies Horan as the Trust's sole beneficiary after the Trustor's death. The Trustor initialed pages two through four of the Amendment, which included the provision regarding beneficiaries. The last page bears a date and signature line and a space for the document to be notarized. The Trustor initialed the signature

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<sup>2</sup> On appeal, Horan argues Stone improperly relies on the original Trust document in her appellate arguments. The parties have no signed copy of the Declaration of Trust. It also appears the unsigned Declaration of Trust was never admitted into evidence at trial, even though copies were attached to both parties' petitions filed in the trial court. However, neither party challenges the existence or validity of the "original" trust, as reflected in the unsigned trust declaration and the 2003 signed and notarized abstract of trust. Indeed, the entire litigation has concerned whether the original trust was amended, without any dispute regarding the terms of the original trust. We refer to the original trust, as evidenced by the unsigned Declaration and the 2003 abstract of trust.

page at the bottom corner of the page, but he did not sign or date the document at the signature line.

In March 2010, the Trustor executed a second “Certificate of Trustee’s Power and Authority and Abstract of Trust” (the Abstract). The first page of the Abstract refers to the “Effective Date of Original Abstract: August 27, 2003” and states: “The following provisions are found in that certain Trust Agreement named and described above, by and between the above-designated Trustors and Trustee, and may be relied upon as a full statement of the matters covered by such provisions by anyone dealing with Trustee or any successor Trustee. However, in the unlikely event there is a clerical error causing a discrepancy between the original Trust and this Certificate of Trustee’s Power and Authority and Abstract of Trust, the original Trust Agreement will control the interpretation and administration of the Trust.”

The Abstract identifies Horan as the sole beneficiary after the Trustor’s death. The Trustor initialed each page of the Abstract and signed the final page as Trustor and Trustee. The signature provision declares: “In witness whereof, the parties execute this Trust intending that it be effective on the Effective Date and at the Effective Place of Execution.” The Abstract was also notarized.

The Trustor died on October 30, 2014. All of the Trust documents had named Horan the successor trustee. In December 2014, Horan served Stone with a notification by trustee, pursuant to Probate Code section 16061.7. Stone requested a copy of the terms of the Trust. In February 2015, Stone filed a petition seeking a finding that the Amendment was invalid due to failure of execution. Horan filed a competing petition seeking validation

of the Amendment and the Abstract, either as ratifying the Amendment, or as an independent amendment of the Trust.

The matter proceeded to a bench trial. At trial, the Trustor's financial advisor testified that between 2013 and 2014, the Trustor told him on several occasions that Horan was the beneficiary of the Trust. The Trustor referred to the Abstract as "the Trust." The advisor also testified the Trustor said his daughter was not his beneficiary. According to the advisor, during the year the Trustor was the advisor's client, the Trustor informed him on a monthly basis that Horan was the beneficiary of the Trust and Stone was not.

The Trustor's brother testified that in 2009, the Trustor said he was going to "give everything" to Horan and Stone would receive none of his estate.<sup>3</sup> The Trustor made similar comments three or four additional times. According to the Trustor's brother, on one occasion he asked if the Trustor thought he would ever like to talk to Stone again. The Trustor responded: " 'No.' . . . 'She's out of my life. She's getting nothing. Everything's going to [Horan]. I don't want to talk about that again.' "

Stone testified that between March 2009 and October 2014, she had little to no communication with the Trustor. She further testified that approximately two weeks before the Trustor's death, she spoke to him by telephone. According to Stone, when she asked who had put him in a nursing home, he answered: " 'Deb, it wasn't you, but I didn't sign it.' " Stone was then asked

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<sup>3</sup> According to the Trustor's brother, these statements occurred after the Trustor felt Stone was harassing him. The Trustor believed Stone had made arrangements for him at a nursing home, without his knowledge or consent.

what the Trustor said about his estate plan. She answered: “He said I never signed the document or I never signed it.”

The trial court concluded the testimony at trial and documentary evidence confirmed the Trustor intended to amend the Trust to be administered as set forth in the Abstract. The court found the Abstract was a valid amendment of the Trust, as it was a written instrument, signed by and delivered to the Trustor/Trustee. The court reasoned the Abstract’s title was not controlling and, irrespective of the instrument name, the Abstract satisfied the requirements for a valid amendment of the Trust. The court did not resolve the question of whether the Trustor “signed” the Amendment. The court thus denied Stone’s petition and granted Horan’s petition. Stone’s appeal followed.

## **DISCUSSION**

### **The Trial Court Properly Concluded the Trustor Amended the Trust**

On appeal, Stone contends neither the Amendment nor the Abstract could be deemed a valid amendment of the Trust. Stone argues the initials on the Amendment cannot be construed as a signature. She further asserts the sole purpose of the Abstract is to provide notice and the language of the document cannot be interpreted such that it could, on its own, serve as an amendment to the original Trust. We disagree and conclude the Abstract was an effective amendment of the Trust.

“ ‘In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker.’ [Citations.]” (*Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888 (*Gardenhire*).) “The interpretation of a will or trust instrument presents a question of law unless

interpretation turns on the credibility of extrinsic evidence or a conflict therein.” (*Burch v. George* (1994) 7 Cal.4th 246, 254.) We review legal questions de novo. (*Citizens Business Bank v. Carrano* (2010) 189 Cal.App.4th 1200, 1205 [de novo review when interpretation of a trust does not require court to resolve conflicts in the evidence]; *McKenzie v. Vanderpoel* (2007) 151 Cal.App.4th 1442, 1450.)

We begin with the trial court’s ruling that the Abstract served as a valid amendment of the Trust. Part Three, section 3.1 of the Trust gave the Trustor the right to amend or revoke the Trust “by an instrument in writing, signed by Trustor and delivered in Trustor’s lifetime to Trustee.” The Trust did not define “instrument.” Under Probate Code section 45, instrument “means a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property.” Black’s Law Dictionary defines “instrument” as: “A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate.” (See Black’s Law Dict. (7th ed. 1999) p. 801.) As relevant here, Merriam-Webster’s Collegiate Dictionary defines “instrument” as “a formal legal document (as a deed, bond, or agreement).” (Merriam-Webster Collegiate Dict. (10th ed. 2002) p. 605.) Under any of these definitions, the Abstract qualifies as an “instrument.” The Abstract designated beneficiaries of the Trust and made a donative transfer of property. Indeed, the notary affirmation described the document as an “instrument.” Moreover, the document was in writing, signed, and there is no

dispute it was “delivered” to the settlor who was both the Trustor and Trustee during his lifetime.<sup>4</sup>

The principles underlying *Gardenhire, supra*, 127 Cal.App.4th 882, are instructive here. *Gardenhire* concerned a trust that allowed the trustor to amend or revoke by written notice, signed by the trustor and delivered to the trustee. As in this case, the decedent settlor was the trustor and the trustee during her lifetime. (*Id.* at pp. 885-886.) The petitioner contended the provision did not authorize revocation or amendment by will. The Court of Appeal rejected this argument. The court reasoned that “because [the settlor] did not limit or qualify the term ‘written notice,’ she authorized revocation via *any* writing that unambiguously manifested her intent to revoke, including a will. We find significant support for such broad

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<sup>4</sup> Under Probate Code section 15402, “[u]nless the trust instrument provides otherwise, if a trust is revocable by the settlor, the settlor may modify the trust by the procedure for revocation.” Under section 15401, a settlor may revoke a trust (1) by compliance with any method of revocation provided in the trust instrument, or (2) “by a writing, other than a will, signed by the settlor or any other person holding the power of revocation and delivered to the trustee during the lifetime of the settlor or the person holding the power of revocation.” (Prob. Code, § 15401, subd. (a)(2).) In *King v. Lynch* (2012) 204 Cal.App.4th 1186, 1190, the court held that if the trust provides a method for modification, that method must be used, even if it is not explicitly exclusive. (Compare *Huscher v. Wells Fargo Bank* (2004) 121 Cal.App.4th 956, 971, fn. 13 [presuming change in Probate Code was to require statement of explicit exclusivity to avoid problems in determining issues of implicit exclusivity].) Under either the Trust or Probate Code section 15401, subdivision (a)(2), the Abstract qualifies as a permissible amendment under the circumstances of this case.



latitude in the fact that she named herself the trustee. The trust allowed [the settlor] to revoke simply by giving herself written notice of her intent to do so. Since she could not be mistaken about her own intent no matter how she chose to manifest it in writing, the broad, unqualified language of the trust reasonably implies that she did not intend to restrict the form of written notice or the nature of the documents used to provide it. Rather, any writing that unambiguously manifested her intent would do.” (*Gardenhire, supra*, 127 Cal.App.4th at p. 888.)

Here, the Trustor afforded himself similarly broad latitude to amend the Trust, by naming himself as trustee, and in allowing any written instrument to suffice to effect an amendment. As Stone points out, Probate Code section 18100.5 allows for the use of a certification of trust *in lieu* of actual trust documents. However, these provisions do not prohibit a trustor from using an “abstract” for another purpose.

Moreover, while the title of the document identified it as an “abstract,” the signature declaration stated the Trustor, in signing the document, was executing “this Trust.” This suggests the Trustor intended the Abstract to serve as something more than merely a notice document. Neither the Trust nor the law required any particular form of instrument to serve as an amendment; there was likewise no requirement that the instrument explicitly state that it was amending the Trust in order to be effective. (See, e.g., *McHenry v. Reiner (In re Wendland-Reiner Trust)* (Neb. 2004) 677 N.W.2d 117 [letter amending the trust was sufficient without stating it was an amendment; court rejected argument that the letter was not an “instrument” and was not delivered to trustee]; *Estate of Davis* (2001 Me.) 775 A.2d 1127, 1131 [lack of language in document

stating it was an amendment was not dispositive on whether document was in fact an amendment].)

The extrinsic evidence in this matter supports the conclusion that the Abstract was in fact intended to amend the Trust. It is well established that extrinsic evidence is admissible to determine whether a document reflects testamentary intent. (*Estate of Duke* (2015) 61 Cal.4th 871, 886, 888.) In addition, “[w]here a trust instrument contains some expression of the trustor’s intention, but as a result of a drafting error that expression is made ambiguous, a trial court may admit and consider extrinsic evidence . . . to resolve the ambiguity and give effect to the trustor’s intention as expressed in the trust instrument.” (*Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 74.)

The only ambiguity in this case arises out of the title of the Abstract, which obscures the effect the Trustor intended the document to have. Yet, the uncontradicted extrinsic evidence offered in this case was that the Trustor referred to the Abstract as “the Trust,” suggesting he viewed that document, which he executed and had notarized, as a writing of separate legal effect, and not merely a notice document. While the Trustor had the Amendment prepared and he initialed its terms which were consistent with the Abstract, it was the Abstract he signed, had notarized, and “delivered” to himself. That the Abstract was intended as an amendment of the Trust is further consistent with the additional evidence indicating the Trustor believed he had, in fact, amended the Trust to designate Horan the sole beneficiary upon his death.

Stone argues the Abstract's failure to include provisions regarding the distribution of the Trust among beneficiaries, which were included in the "unsigned" Amendment, indicates the document was intended to serve only as an abstract of some provisions of the Trust and not as an amendment. We again disagree.

Section 2.5 of the Trust governs the administration and distribution of the primary beneficiary trust. In the original trust declaration and abstract, sections 2.5.a and 2.5.c directed that upon the death of the Trustor, the primary beneficiary was to receive the benefits of the Trust. The original declaration indicated that Helene Sutter—then the primary beneficiary—would receive 100 percent of the Trust assets. The unsigned amendment changed section 2.5.c to indicate that Horan was to receive 100 percent of the Trust as the primary beneficiary. The Abstract does not include section 2.5.c.

According to Stone, this omission "strongly suggests" the document was intended to only restate certain of the Trust's provisions for notice purposes, rather than to serve as an amendment. Stone therefore argues the change in beneficiaries between the Trust and the Abstract must be construed as a mistake.

We are mindful, however, that our primary goal must be to give effect to the intent of the Trustor. (*Gardenhire, supra*, 127 Cal.App.4th at p. 888; *Estate of Cairns* (2010) 188 Cal.App.4th 937, 944 [intent of trustor must be ascertained from the whole of the trust instrument, not just separate parts].) Construing the Abstract's change of beneficiaries as a mistake is unreasonable, particularly in light of the Trustor's act of initialing every page and executing the document before a notary. Stone's approach

would have us disregard the Trustor's expression of intent manifested by the words of the Abstract, as well as his act in formally executing it, and his conduct involving the document, in which he treated it as a legal formality that reflected his testamentary wishes as "the Trust."

The Abstract can reasonably be interpreted as including the provision the Trustor wished most to change—the elimination of all beneficiaries other than Horan.

We reject Stone's argument that concluding the Trustor used the Abstract to amend the Trust requires that we disregard the Probate Code or the terms of the Abstract. We further reject her argument that the only proper conclusion is that the Abstract is nothing more than a notice document containing a mistake regarding the identification of beneficiaries. Despite the title of the document, the Abstract unambiguously manifested and effectuated the Trustor's intent to amend the Trust to eliminate all beneficiaries except Horan. We find no error in the trial court ruling.

### **DISPOSITION**

The trial court order is affirmed. Respondent to recover his costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.