

State of Minnesota
In Court of Appeals

In the Matter of the Vera Lyons Marital Trust Created
Under Article 4 of the Last Will and Testament of
M. Arnold Lyons, dated October 9, 1985.
(File No. 27-TR-CV-04-125)

In the Matter of the M. Arnold Lyons Family Trust Created
Under Article 4 of the Last Will and Testament of
M. Arnold Lyons, dated October 9, 1985.
(File No. 27-TR-CV-04-126)

In the Matter of Vera Lyons Revocable Trust Created
Under Agreement, Dated May 31, 1988.
(File No. 27-TR-CV-04-127)

RESPONDENT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF THE LEGAL ISSUE	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS.....	3
A. The Relevant Estate Planning Documents	3
B. The Trustees’ Petition and Proceedings Below	4
ARGUMENT	6
A. Standard of Review	6
B. The District Court Correctly Held That it had the Authority to Reform Vera’s Trust	7
C. The District Court Correctly Held that it had the Authority to Reform Vera’s Will.....	8
D. All of the Necessary Conditions for Reformation are Present Here.....	11
1. There is Clear and Convincing Evidence of Vera’s Intent	11
2. There is Clear and Convincing Evidence of a Mistake of Law	13
E. Appellants’ Other Complaints are Equally without Merit.....	13
1. The Reformation does not somehow “Circumvent” Arnold’s Will.....	13
2. No Point Would be Served by an Evidentiary Hearing	14
3. Appellants’ Complaint that there is no Evidence Regarding Vera’s Assets is Disingenuous	15
CONCLUSION	16
APPENDIX	1

TABLE OF AUTHORITIES

	<u>Page(s)</u>
 <u>Cases</u>	
<i>Dassori v. Patterson</i> , 802 N.E.2d 553 (Mass. 2004).....	7
<i>Erickson v. Erickson</i> , 716 A.2d 92 (Conn. 1998).....	8
<i>Estate of Ikuta</i> , 639 P.2d 400 (Haw. 1981).....	8
<i>In re Estate of Robinson</i> , 720 So.2d 540 (Fla. App. 1998)	7
<i>In Re Hartman</i> , 347 N.W.2d 480 (Minn. 1984)	12
<i>In re Jensen</i> , 414 N.W.2d 742 (Minn. App. 1988)	7
<i>In re Mary O. Foley Trust</i> , 671 N.W.2d 206 (Minn. App. 2003)	1, 7
<i>In re Trust Known as Great N. Iron Ore Props.</i> , 243 N.W.2d 302 (Minn. 1976)	1, 7
<i>Magnuson v. Diekmann</i> , 689 N.W.2d 272 (Minn. App. 2004)	passim
<i>Putnam v. Putnam</i> , 682 N.E.2d 1351 (Mass. 1997).....	8
<i>Thompson v. Thompson</i> , 385 N.W.2d 55 (Minn. App. 1986)	7
<i>Trust of George B. Lane</i> , 660 N.W.2d 421 (Minn. App. 2003)	12
<i>Yliniemi v. Mausolf</i> , 371 N.W.2d 218 (Minn. App. 1985)	6

Statutes

Minn. Stat. § 501B.16 (2002)..... 1, 7, 16

Minn. Stat. § 524.1-102..... 10

Minn. Stat. § 524.2-601 (2002)..... 9

Minn. Stat. § 524.2-603 (1993)..... 9

Other Authorities

John H. Longbein & Lawrence W. Waggoner, *Reformation of Wills on the
Ground of Mistake: Change of Direction in American Law?*, 130 U. Pa.
L. Rev. 521 (1982)..... 8, 13

Restatement (Second) of Prop.: Donative Transfers § 34.7 cmt. d (1992)..... 8

Restatement (Third) of Prop.: Wills and Other Donative Transfers § 10.1 9

Restatement (Third) of Prop.: Wills and Other Donative Transfers § 10.2 12

Restatement (Third) of Prop.: Wills and Other Donative Transfers § 12.1
(2003)..... 1, 9

Restatement (Third) of Prop.: Wills and Other Donative Transfers § 12.1
cmt. c 9

Unif. Probate Code § 2-601 comment (1990)..... 10

STATEMENT OF THE LEGAL ISSUE

Did the district court correctly hold that it could reform a trust and will to conform to the donor's clear and unambiguous intent to benefit all of her children equally where clear and convincing evidence of this intent was found in the documents themselves?

Apposite Authorities:

Magnuson v. Diekmann, 689 N.W.2d 272 (Minn. Ct. App. 2004)

In re Trust Known as Great N. Iron Ore Props., 243 N.W.2d 302, 306 (Minn. 1976)

In re Mary O. Foley Trust, 671 N.W.2d 206, 212 (Minn. App. 2003)

Minn. Stat. § 501B.16 (2002)

Restatement (Third) of Property: Wills and Other Donative Transfers
§ 12.1 (2003)

STATEMENT OF THE CASE

Appellants are the children of Respondent Barbara Hobbs. They seek to be unjustly enriched as mistaken beneficiaries at the expense of the intended beneficiary, their mother. Appellants' grandmother, Vera Lyons ("Vera"), clearly intended to leave her estate in equal shares to her three children, Lisa Lyons, David Lyons, and Appellant Barbara Hobbs. At the same time, Vera clearly did not intend to benefit any of her grandchildren, including Appellants, unless their parents already were deceased at the time of Vera's death. Indeed, nothing in the Will of Vera's husband, Arnold Lyons ("Arnold"), required her to benefit Appellants or any of her other grandchildren.

In her Will, Vera attempted to exercise a General Power of Appointment under a Marital Trust and a Special Power of Appointment under a Family Trust by having those assets appointed to her Revocable Trust. In turn, her Revocable Trust Agreement distributed the Trust assets into equal shares to her three children, Lisa, David, and Barbara.

There is no dispute with respect to Vera's exercise of the General Power of Appointment. It appears, however, that Vera's exercise of her Special Power of Appointment was invalid because she could not exercise it in favor of Barbara Hobbs.

Absent reformation, the unintended consequence of an invalid exercise of the Special Power of Appointment is that the Family Trust assets intended by Vera to pass to her daughter Barbara would instead pass to Barbara's children, Appellants Andrew and William Buirge. In addition, Vera's children David and Lisa would receive a greater

portion of her estate than Barbara. Neither of these outcomes is consistent with Vera's unambiguous intent.

The district court, citing ample statutory and case law authority, correctly determined that it could reform Vera's Will and Revocable Trust Agreement to correct her mistake and honor Vera's unambiguous intent to benefit her three children equally in her estate plan. Appellants challenge this order on appeal, arguing that the district court erred by not preserving Vera's mistake so that they could benefit financially from it.

STATEMENT OF FACTS

A. The Relevant Estate Planning Documents

Arnold created a Family Trust and Marital Trust for Vera's benefit under his Last Will and Testament, dated October 9, 1985. Vera was granted a Special Power of Appointment under the terms of the Family Trust and a General Power of Appointment under the terms of the Marital Trust. Vera's Special Power of Appointment under the Family Trust was exercisable in favor of the children and issue of Arnold. Article I of Arnold's Will, however, defined "child" or "children" to mean "DAVID LYONS AND LISA LYONS" and not "BARBARA E. LYONS." App. 26. The effect of this was that Vera could exercise her General Power of Appointment in favor of any or all of her three children, but could exercise her Special Power of Appointment in favor of David and Lisa, but not Barbara.¹

¹ Prior to his death, Arnold informed his attorney Sidney Kaplan of his intention to revise his Will to include Barbara within the definition of "child" or "children." Unfortunately, Arnold died before he could execute a new will incorporating that revision. App. 64.

On May 31, 1988, Vera executed a Revocable Trust Agreement (“Vera’s Trust”) for her benefit during her lifetime and for the benefit of certain of her descendants upon her death. Specifically, Vera’s Trust provided that, upon her death, the balance of the Trust Estate “shall be divided by the Trustees into as many separate shares, as nearly equal in value as possible, as there are children of the Grantor then living. . . .” App. 44, 45.

At the same time, Vera executed a Last Will and Testament that devised the residue of her probate estate to Vera’s Trust. She also exercised her Special Power of Appointment under the Family Trust and General Power of Appointment under the Marital Trust to distribute the assets of these Trusts to Vera’s Trusts. App. 55. The effect of this, of course, would be to divide the assets of the Family Trust and the Marital Trust equally among her three children.

B. The Trustees’ Petition and Proceedings Below

After Vera’s death, the Trustees of the Family Trust, Marital Trust, and Vera’s Trust petitioned for an Order instructing them relating to the proper administration and distribution of the Trusts and the discharge of their duties. The Trustees sought instruction from the Court with respect to Vera’s exercise of her Special Power of Appointment under the Family Trust because her exercise of this Power in favor of all three of her children appeared to be in conflict with the limitation on her Special Power set forth in Arnold’s Will. Accordingly, the Trustees asked the Court to determine whether the exercise by Vera of her Special Power of Appointment was invalid.

In response to the Petition, Respondent Barbara Hobbs asked the court to reform Vera's Will and Trust to correct her invalid exercise of the Special Power of Appointment and effectuate her clear intent to benefit all three of her children equally. Appellants opposed this request. The Trustees took no position on the appropriateness of reformation.

During the initial pretrial conference on October 27, 2004, Appellants agreed that there were no disputed facts and that the matter could be submitted to the court for a decision on the merits based upon the written submissions and arguments at the parties. App. 68-69. Appellant's counsel further confirmed this understanding at the December 21, 2004 hearing before Referee Kruger. App. 63.

On February 7, 2005, the court issued an Order reforming the Will of Vera Lyons and the Vera Lyons Revocable Trust. The court found that there was "clear and convincing" evidence from Vera Lyons' testamentary instruments that she intended to benefit all three of her children equally. App. 11. The court also found that Vera Lyons certainly did not intend to exercise ineffectively her Special Power of Appointment and thus, there was also a clear mistake of law. App. 12. Because these two conditions had been met, the court held that it had authority under Minnesota law and the various Restatements of the Law to reform the Will and the Trust. App. 11-13.

Appellants then filed a Notice of Review of Order and filed a motion seeking, for the first time, an evidentiary hearing. The court heard argument on May 12, 2005 and issued an Order Affirming Referee Kruger's Order of February 7, 2005 on May 26, 2005. This appeal followed.

ARGUMENT

Appellant's lengthy arguments about "extrinsic evidence" and "deference to Arnold's estate plan" miss the point of what the district court did and upon what basis it was done. The district court's order reforming Vera's Will and Trust was based on two unassailable findings: (1) that Vera clearly intended to benefit all three of her children equally as evidenced by her testamentary instruments; and (2) that a mistake of law with respect to the Special Power of Appointment would frustrate Vera's clear intent, absent reformation.

Based upon these findings, the district court correctly held that it had the authority to reform Vera's Will and Trust under Minnesota law and various Restatements of Law. Appellant's brief entirely avoids any discussion of the authority relied upon by the district court.

A. Standard of Review

With respect to the standard of review, Appellant's discussion of the standard of review as it relates to "ambiguity of a will or trust" is irrelevant here. All parties and the district court agree that Vera's Trust and Will are unambiguous. While this Court may review the district court's conclusions of law regarding its authority to reform *de novo*, the determination by the district court that reformation was appropriate will not be reversed on appeal unless it is "manifestly contrary to the evidence." *Magnuson v. Diekmann*, 689 N.W.2d 272, 274 (Minn. App. 2004), citing *Yliniemi v. Mausolf*, 371 N.W.2d 218, 222 (Minn. App. 1985). It appears that the district court's decision not to receive further evidence in an evidentiary hearing is reviewable under an abuse of

discretion or clearly erroneous standard. *In re Jensen*, 414 N.W.2d 742 (Minn. App. 1988); *Thompson v. Thompson*, 385 N.W.2d 55 (Minn. App. 1986).

B. The District Court Correctly Held That it had the Authority to Reform Vera's Trust

The district court correctly held that it had the authority to reform Vera's Trust under Minn. Stat. § 501B.16 (2002). App. 11. Section 501B.16 expressly provides the power to reform an express trust: "A trustee of an express trust by will or other written instrument or a person interested in the trust may petition the district court for an order: (4) to construe, interpret, *or reform* the terms of a trust, or authorize a deviation from the terms of a trust[.]" (emphasis added).

Further, the Minnesota Supreme Court has recognized that "[e]xpress provisions of a trust instrument may be reformed if it clearly appears that the settlor was mistaken as to the provisions contained in the instrument it executed." *In re Trust Known as Great N. Iron Ore Props.*, 243 N.W.2d 302, 306 (Minn. 1976); *see also In re Mary O. Foley Trust*, 671 N.W.2d 206, 212 (Minn. App. 2003) (reforming the clear terms of an express trust to provide equal treatment to the beneficiaries as intended by the settlor).² Accordingly, the district court's conclusion that it had the authority to reform Vera's Trust is correct as a matter of law.

² Other states commonly allow reformation of trust documents as well. *See, e.g., Dassori v. Patterson*, 802 N.E.2d 553, 554 (Mass. 2004) (accepting affidavit of donor's attorney as proof of intent and mistake and reforming trust to accomplish intended tax benefits); *In re Estate of Robinson*, 720 So.2d 540, 543 (Fla. App. 1998) (reforming an inter vivos trust after the donor's death to provide equal distribution to donor's children in accordance with donor's intent).

C. The District Court Correctly Held that it had the Authority to Reform Vera's Will

The district court also correctly held that it had the authority to reform Vera's Will under the Restatement (Third) of Property (Wills & Donative Transfers). App. 11. Section 12.1 of the Restatement supports reformation of an unambiguous will if both a mistake of law or fact and the testator's intent are shown by clear and convincing evidence. Restatement (Third) of Prop.: Wills & Don. Trans. § 12.1 (2003).

The Restatement explains the wisdom of allowing reformation of a will:

The law deals with situations of inherently suspicious but possible correct evidence in either of two ways. One is to exclude the evidence altogether, in effect denying a remedy in cases in which the evidence is genuine and persuasive. The other is to consider the evidence, but guard against giving effect to fraudulent or mistaken evidence by imposing an above-normal standard of proof.... Only high-safeguard allowance of extrinsic evidence achieves the primary objective of giving effect to the donor's intention.

Id.; see also Restatement (Second) of Prop.: Don. Trans. § 34.7 comment d (1992); John H. Longbein & Lawrence W. Waggoner, *Reformation of Wills on the Ground of Mistake: Change of Direction in American Law?*, 130 U. Pa. L. Rev. 521 (1982).³

This Court recently has affirmed the reformation of a donative instrument citing the same authority relied upon by the district court. *Magnuson*, 689 N.W.2d at 274-5

³ Courts in other states also have acknowledged the need to allow reformation of wills. See, e.g., *Estate of Ikuta*, 639 P.2d 400 (Haw. 1981) (replacing "oldest" with "youngest" and stating that the better policy is that a will may be reformed to reflect the testator's trust intent); *Erickson v. Erickson*, 716 A.2d 92 (Conn. 1998) (announcing a departure from prior precedent and allowing reformation of will upon clear and convincing evidence of scrivener's error); See *Putnam v Putnam*, 682 N.E.2d 1351 (Mass. 1997) (indicating in dicta a willingness to reform wills in situations wherein the court would reform a trust).

(relying upon Restatement (Third) of Property: Wills and Other Donative Transfers § 12.1 (2003) and holding that unambiguous donative document may be reformed to conform to the donor's intent where there was clear and convincing evidence of (1) a mistake of fact or law and (2) the donor's intent). While the "donative document" in the *Magnuson* case happened to be a deed rather than a will, the court's reasoning and reliance upon the principles set forth in the Restatement apply with equal force here. *Id.* at 274-5, citing, Restatement (Third) of Property: Wills and Other Donative Transfers § 10.1 ("the controlling consideration in determining the meaning of a donative document is the donor's intention [which] is given effect to the maximum extent allowed by law.") and § 12.1 cmt. c ("The trend away from insisting on strict compliance with statutory formalities is based on a growing acceptance of the broader principle that mistake, whether in execution or in expression, should not be allowed to defeat intention.").

The district court's conclusion with respect to reformation of Vera's will also is supported by changes made to Minnesota's Uniform Probate Code. Prior to 1994, the Code required that "the intention of a testator *as expressed in the testator's will* controls the legal effect of the testator's dispositions" and that the rules of construction apply "unless a contrary intention is indicated *by the will.*" Minn. Stat. § 524.2-603 (1993) (emphasis added). In 1994, the legislature removed the obligation to ascertain a testator's intent solely from the will and revised the statute to state simply, "In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will." Minn. Stat. § 524.2-601 (2002). Further, Minnesota's Uniform

Probate Code “shall be liberally construed and applied to ... discover and make effective the intent of a decedent in distribution of property[.]” *Id.* at § 524.1-102.

In making this important change, the legislature adopted almost verbatim the revision to the Uniform Probate Code made in 1990 by the National Conference of Commissioners on Uniform State Laws. The Conference made this change not only to allow extrinsic evidence regarding intent, but also to allow for the reformation of wills. The Conference stated, “a possible, though unintended, reading of [the prior language] might be that it prevents the judicial adoption of a general reformation doctrine for wills.” Unif. Probate Code § 2-601 comment (1990) (referring to general reformation doctrine providing for reformation to conform to testator’s intent). The change to the statute “removes the possible impediment to the judicial adoption of a general reformation doctrine for wills[.]” *Id.* Thus, pre-1994 case law prohibiting a court from reforming an unambiguous will does not preclude such action under the current statute.

The pragmatic considerations behind this policy change are illustrated perfectly by the present case. Probate law has long encouraged the combined use of the instruments employed by Vera Lyons in her estate planning, a pour-over will and revocable trust. The use of a revocable trust in conjunction with a will has become ubiquitous because it protects the privacy of the testator and allows for less judicial oversight of the estate. Under these circumstances, there is no rationale for employing a higher standard for the reformation of wills than for trusts. Accordingly, the district court correctly held that it had the authority to reform Vera’s Will as well as her Trust.

D. All of the Necessary Conditions for Reformation are Present Here

The district court's determination that reformation was appropriate here should not be disturbed on appeal because it was supported by overwhelming and un rebutted evidence. Similar to the district court in *Magnuson*, the court here found that reformation was appropriate because there was clear and convincing evidence of both the donor's intent and of a mistake of fact or law.

1. There is Clear and Convincing Evidence of Vera's Intent

The district court correctly found that there was "absolutely clear and convincing evidence" of Vera's intent to benefit all three of her children equally in her testamentary instruments themselves. App. 11. Indeed, no other conclusion is rationally possible. Vera's Trust expressly provides for the distribution of her Trust Estate in separate shares to her children "as nearly equal in value as possible." App. 45. Likewise, her Will provides that tangible personal property not disposed of by handwritten instructions should be divided "in equal shares to my children who survive me. . . ." App. 54. The overriding purpose of her Estate Plan was to distribute her assets in equal shares to her three children.

Appellants do not quarrel with this finding. In fact, they readily concede that there is no ambiguity in Vera's Will and Trust and that she intended to divide her assets equally between her three children. App. Brief, at 13. Instead, Appellants devote their energies to arguing that the district court erred by referring briefly to an Affidavit submitted by Sidney Kaplan, the drafting attorney.

The gist of this argument is that the district court purportedly used the Affidavit to resolve an ambiguity in Vera's Will and Trust. Thus, Appellants cite to numerous will construction cases, such as *Trust of George B. Lane*, 660 N.W.2d 421 (Minn. App. 2003) and *In Re Hartman*, 347 N.W.2d 480 (Minn. 1984) for the unremarkable proposition that extrinsic evidence is inadmissible in will construction cases unless the will itself is unambiguous.

There are two fundamental problems with Appellant's reasoning. First, this is not a will construction case. It is a reformation case. In reformation cases, the court appropriately may consider "all relevant evidence" of the donor's intention, "including the text of the donative document and relevant extrinsic evidence." *Magnuson*, 689 N.W.2d at 275, quoting, Restatement (Third) of Prop.: Wills and Other Donative Transfers § 10.2.

Second, the district court did not rely on extrinsic evidence to determine Vera's intent here. All of the parties and the district court agreed that Vera's intent to benefit all her children equally was readily apparent from her Will and Trust. Thus, Appellants' complaint about Mr. Kaplan's Affidavit is incongruous and immaterial. The district court did not need to speculate about Vera's intent or rely on any extrinsic evidence; it merely needed to read her Will and Trust.

The district court correctly found that the first condition for reformation – clear and convincing evidence of Vera's intent to benefit her three children equally – was met here.

2. There is Clear and Convincing Evidence of a Mistake of Law

The district court also correctly found that a mistake of law was made. The court stated that Vera's exercise of the Special Power of Appointment was invalid. App. 8. The court further reached the obvious conclusion that "Vera Lyons did not intend to ineffectively exercise the special power of appointment when she executed her will." *Id.* at 10.

Once again, Appellants actually agree with this conclusion. App. Brief, at 9-10, 13. Rather than arguing that no mistake was made, Appellants suggest that the district court erred by correcting the mistake. Appellants' entire argument, however, wholly ignores the ample authority providing the district court with authority to reform donative instruments to carry out the clear intent of the donor. The district court correctly found that there was a mistake of law and correctly determined to correct this mistake by reforming the Trust and Will. "To frustrate the wishes of a testator who had the prudence to follow counsel's direction seems especially offensive if it is avoidable." Longbein & Waggoner, *Reformation of Wills*, 130 U. Pa. L. Rev. at 570.

The district court's determination to reform Vera's Will and Trust is not "manifestly contrary to the evidence." Instead, as Appellants concede, it is overwhelmingly supported by the evidence regarding Vera's intent and a mistake of law.

E. Appellants' Other Complaints are Equally without Merit

1. The Reformation does not somehow "Circumvent" Arnold's Will

Appellants argue that the reformation is improper because it purportedly violates Arnold's Will. This is nonsense. Nothing in Arnold's Will requires that Andrew and

William Buirge be treated as appointees with respect to the Special Power of Appointment granted to Vera. Rather, Arnold's Will provided that the Special Power of Appointment was exercisable in favor of his children and issue and simply excluded Barbara [Hobbs] from the definition of "children."

Thus, Arnold clearly intended to give to Vera the power to determine who among the class of permissible appointees would be the ultimate takers, as long as it was not Barbara. Vera was perfectly free to exercise her Special Power of Appointment in favor of David and Lisa Lyons as both are permitted appointees. The Court's Order reforming the Will to make David and Lisa the appointees thus is consistent with Arnold's intent and is squarely within the actual authority granted to Vera under his Will. Nothing in Arnold's Will required Vera to exercise her Special Power of Appointment in favor of Appellants or to somehow favor them in her overall Estate Plan at the expense of her daughter, Barbara.

Under Arnold's Will, Vera clearly had the ability to distribute her assets in a way that would treat her three children equally. Because of the mistake of law with respect to the Special Power of Appointment, however, her intent to do so was frustrated. The reformation honors her intent in a way that is consistent with Arnold's Will.

2. No Point Would be Served by an Evidentiary Hearing

The district court correctly determined, in its discretion, that no evidentiary hearing was necessary here. App. 4. First, the district court's decision was based on the uncontradicted evidence offered by Vera Lyons' testamentary instruments themselves. Appellants do not suggest that they could offer some evidence to the contrary. In fact,

they agree with the findings made by the district court with respect to Vera's intent as evidenced by her Will and Trust.

Second, throughout these proceedings Appellants fully agreed that the matter could be submitted to the court based on the written submissions and oral argument and that there were no materially disputed facts. *See* App. 69 ("I don't think there are any facts that need to be litigated.").

3. Appellants' Complaint that there is no Evidence Regarding Vera's Assets is Disingenuous

Appellants, who urge this Court to ignore Vera's intent in all other respects, express concern that the reformation is invalid because it might not honor Vera's intent to distribute her assets equally to her three children. Thus, Appellants suggest that there is no factual basis for the district court's order because it is purportedly impossible to know whether the reformation "will actually result in an equal distribution of the assets" to the three children. App. Brief at 14. If this actually were a real problem rather than an invented one, presumably the remedy would be to remand this matter to the district court so that it could receive evidence on this discrete issue. This is not necessary for a variety of reasons.

First, Vera's intent, as evidenced by her Will and Trust, was to divide her assets among her children in shares "as nearly equal in value as possible." App. 45. Perfect equality is not required and, on its face, the reformation will divide her assets among her children in shares "as nearly equal in value as possible."

Second, the Trustees, who are perfectly aware of Vera's assets, have never raised this concern. To the extent that there is any issue about the actual distribution, the Trustees retain the ability under Minn. Stat. § 501B.16 to seek further instruction from the Court as to how to carry out their duties.

Finally, Appellants themselves are well-aware that this is a non-issue because they are in possession of the facts regarding the assets held in the Trusts and Vera's Estate. Indeed, during the pendency of this appeal, they suggested that the parties enter into a stipulation regarding this financial information. Respondent's Appendix, at 1.

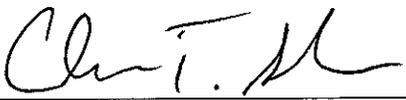
CONCLUSION

The district court was well within its authority in determining that reformation of Vera's Will and Trust was appropriate here. The district court's order honors Vera Lyons' clear intent as set forth in these instruments and achieves a just and equitable result. Respondent Barbara Hobbs respectfully requests that this Court affirm the district court's order.

Dated: December 19, 2005

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).