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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2028**

In re the Matter of the Frank J. Rekucki, Sr.
Revocable Trust under agreement dated September 8, 1997

**Filed June 25, 2012
Reversed and remanded
Willis, Judge***

Ramsey County District Court
File No. 62-TR-CV-10-33

Donald W. Anderson, Donald W. Anderson, PLLC, Minneapolis, Minnesota; and

Anne Marie Marcotte, Hill City, Minnesota (for appellant Donna Rekucki)

Christopher J. Burns, Court J. Anderson, Amy E. Papenhausen, Henson & Efron, P.A.,
Minneapolis, Minnesota (for respondent Jim Rekucki)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Willis,
Judge.

UNPUBLISHED OPINION

WILLIS, Judge

In this trust dispute, appellant challenges the district court's order enforcing a settlement agreement. Because the settlement agreement conflicts with the trust instrument's provision regarding the appointment and succession of trustees, we reverse and remand.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Frank Rekucki Sr. (Frank Sr.) created a revocable trust and appointed himself as trustee. The beneficiaries of the trust are his six adult children: Anne Marcotte (Anne), appellant Donna Rekucki (Donna), Frank Rekucki Jr. (Frank Jr.), respondent James Rekucki (James), Richard Rekucki (Richard), and Thomas Rekucki (Thomas). The trust instrument contains the following provision regarding the appointment and succession of trustees:

When donor [Frank Sr.] ceases to be trustee, donor's daughter, DONNA M. REKUCKI, and donor's son, RICHARD M. REKUCKI, shall, upon acceptance, succeed donor as co-trustees and become the successor co-trustees. If neither DONNA M. REKUCKI nor RICHARD M. REKUCKI are unable [sic] to serve, donor's daughter, ANNE M. MARCOTTE, shall succeed as successor trustee. Any named trustee may appoint a co-trustee to serve with her/him.

Upon Frank Sr.'s death in October 2008, Donna and Richard became co-trustees. Richard resigned, and Donna became the sole trustee.

In October 2010, James petitioned the district court to require Donna to provide an accounting and to remove her as trustee. The district court scheduled an evidentiary hearing for August 16 and 17, 2011. In July 2011, Donna, James, and their respective attorneys met to mediate a settlement. Anne, Frank Jr., and Thomas also attended this meeting. Donna, Frank Jr., James, and Thomas signed a settlement agreement; Anne did not. The settlement agreement provides, in relevant part: "Donna Rekucki will resign as trustee and will be replaced as trustee of the Trust by James Rekucki . . . and Anne Marcotte . . . , who will serve as co-trustees."

In August 2011, James petitioned the district court to enforce the settlement agreement. The court scheduled a hearing on the enforcement petition for August 16. Because the attorney who had represented her through the mediation had withdrawn, Donna retained Anne, who is an attorney, to represent her at the August 16 hearing. Anne asked the district court not to enforce the settlement agreement, arguing, among other things, that the trust instrument does not give Donna authority to appoint James as a successor trustee.

The district court issued an order enforcing the settlement agreement, and this appeal follows.

D E C I S I O N

This court reviews the district court's decision regarding a petition to enforce a settlement agreement for an abuse of discretion. *See Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981). But a settlement agreement is a contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 581 (2010). And the determination of whether a document is an enforceable contract is a question of law, which this court reviews de novo. *Mohrenweiser v. Blomer*, 573 N.W.2d 704, 706 (Minn. App. 1998), *review denied* (Minn. Feb. 19, 1998).

Donna argues that the settlement agreement is unenforceable because it conflicts with the provision in the trust instrument regarding the appointment and succession of trustees. Specifically, Donna argues that the settlement agreement results in the appointment of Anne and James as successor co-trustees, which is contrary to the provision of the trust instrument naming Anne as the sole successor trustee if Donna

ceases to serve. We agree, and because our determination in this regard is dispositive, we need not reach Donna's other arguments on appeal.

The settlement agreement provides that "Donna Rekucki will resign as trustee and will be replaced as trustee of the Trust by James Rekucki . . . and Anne Marcotte . . . , who will serve as co-trustees." On the signature page of the settlement agreement, Anne and James are referred to as "successor co-trustee[s]." The plain meaning of the settlement agreement is that Anne and James, as co-trustees, are to succeed Donna.

A trustee has no inherent power to appoint a co-trustee or her successor. *See* Minn. Stat. §§ 501B.08 (2010) ("If the terms of a trust do not effectively provide for the appointment of a successor trustee and appointment of a successor is required, . . . the district court may appoint a successor trustee"), 501B.16 (2010) (providing that a person interested in a trust may petition the district court to confirm the appointment of a trustee or to appoint a successor trustee), 501B.81 (2010) (enumerating powers of a trustee without mention of a power to appoint a co-trustee or a successor); *In re Trust Created by Hill*, 499 N.W.2d 475, 483 (Minn. App. 1993) (relying on appointment provision in trust instrument in reviewing whether party had power to appoint trustees), *review denied* (Minn. July 15, 1993). Absent legislation to the contrary, the trust instrument controls the appointment of trustees. 90 C.J.S. *Trusts* § 299 (2012). And only a district court can appoint successor trustees other than the ones specified in the trust instrument. *See Wertin v. Wertin*, 217 Minn. 51, 57–58, 13 N.W.2d 749, 753 (1944) (explaining that a district court has inherent power to appoint trustees).

Under the plain language of the trust instrument, Donna and Richard became co-trustees after Frank Sr.'s death. Then, when Richard resigned, Donna became the sole trustee. According to the trust instrument, when Donna ceases to serve as trustee, Anne is to succeed her. Thus, the settlement agreement does not conflict with the trust instrument to the extent that the settlement agreement provides that Anne is to become trustee upon Donna's resignation.

Nothing in the language of the trust, however, allows Donna (as trustee) to appoint James to be a successor co-trustee with Anne. James argues that the trust instrument empowers Donna to appoint a co-trustee and that the settlement agreement merely requires Donna to exercise that power. James asserts that, upon Donna's resignation, he would continue to serve as a co-trustee with Anne, whose appointment would be triggered by Donna's resignation.

But the trust instrument does not simply provide that Donna may appoint a co-trustee; it states that Donna "may appoint a co-trustee *to serve with her*." (Emphasis added.) This language, in combination with the provision of the trust instrument that names Anne as the sole successor to Donna, indicates that Donna has the power to appoint a co-trustee whose service is limited to Donna's tenure as trustee—not the power to appoint a co-trustee who will succeed her.

Donna has no power under the terms of the trust to appoint a successor trustee. Because the settlement agreement conflicts with the trust instrument's provision regarding the appointment and succession of trustees, we reverse the district court's order

enforcing the settlement agreement and remand for further proceedings consistent with this opinion.

Reversed and remanded.