

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1740**

In the Matter of the Alice Larson Irrevocable Trust Agreement
dated March 6, 1992.

**Filed May 11, 2010
Affirmed
Kalitowski, Judge**

Brown County District Court
File No. 08-PR-09-345

Rodney J. Mason, Melanie A. Boes, Rodney J. Mason, Ltd., St. Paul, Minnesota (for
appellant Maynard F. Kretsch)

C. Thomas Wilson, Sara N. Wilson, Gislason & Hunter LLP, New Ulm, Minnesota (for
respondent Kenneth Weicherding)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Maynard F. Kretsch challenges the district court order determining that he is entitled to a life estate in trust property, arguing that (1) the trust language was unambiguous and the district court was not permitted to consider extrinsic evidence to determine the settlor's intent; and (2) the clear and unambiguous language of the trust provides that appellant is entitled to immediate distribution of a full one-third share in the trust property. We affirm.

DECISION

I.

“The primary function of the court in exercising jurisdiction over trusts is to preserve them and to secure their administration according to their terms.” *In re Campbell’s Trusts*, 258 N.W.2d 856, 868 (Minn. 1977). When the language of a trust is clear, the district court must determine the settlor’s intent from the plain language. *In re Mayo*, 259 Minn. 91, 95, 105 N.W.2d 900, 903 (1960). But where there is ambiguity as to the settlor’s intent, the district court may admit extrinsic or parol evidence. *Campbell*, 258 N.W.2d at 864. A will is ambiguous if, on its face, it suggests more than one interpretation. *In re estate of Arend*, 373 N.W.2d 338, 342 (Minn. App. 1985). Whether the language of a will is ambiguous is a question of law that we review de novo. *In re Estate of Zagar*, 491 N.W.2d 915, 916 (Minn. App. 1992).

The district court concluded that the language of the trust alone was not sufficient to determine Larson’s intent, and that an evidentiary hearing was necessary. Appellant argues that because the trust language is not ambiguous, the district court erred in admitting extrinsic evidence. We disagree.

We conclude that the district court properly determined that the language of the relevant section of the trust is, on its face, subject to more than one interpretation. *See Arend*, 373 N.W.2d at 342. The language at issue states that the remaining balance of the trust is to be “distributed outright and free of trust to my children, . . . provided, however, that the share going to my son, Maynard F. Kretsch, shall be for his use and enjoyment during his lifetime. . . .” Appellant’s interpretation of this provision is that the trust

property is to be immediately and fully distributed to all three children. But a second interpretation is that Larson intended appellant's share to remain in trust for his use during his life. The ambiguity regarding Larson's intent is highlighted by the fact that both appellant and respondent trustee argued to the district court that the trust instrument was unambiguous, but both parties argued different interpretations: appellant argued that it conveyed a fee simple one-third share of the trust, and respondent argued that it conveyed a life estate. Thus, the district court did not err in concluding that it needed to conduct an evidentiary hearing and consider extrinsic evidence, because the trust instrument alone did not make Larson's intent clear.

Further, if we were to accept appellant's assertion that the trust agreement unambiguously entitles him to immediate distribution of his share of the trust, the language "provided, however, that the share going to my son, Maynard F. Kretsch, shall be for his use and enjoyment during his lifetime . . ." would be rendered meaningless. See *In re Anneke's Trust*, 229 Minn. 60, 71, 38 N.W.2d 177, 183 (1949) (stating that meaning is to be given to all of the language in a trust).

II.

Appellant argues that, based on the plain language of the trust, he is entitled to immediate distribution of his one-third share of the estate. We disagree.

We apply a "clearly erroneous" standard of review "where critical evidence in the case turns on extrinsic evidence about the settlor's intent." *In re Trust Created by Hill*, 499 N.W.2d 475, 482 (Minn. App. 1993), *review denied* (Minn. July 15, 1993).

The district court concluded that Larson intended to convey appellant's share of the trust as a life estate, based on (1) the language of the trust agreement that "the share going to my son, Maynard F. Kretsch, shall be for his use and enjoyment during his lifetime. . ."; (2) witness testimony that Larson intended to give appellant a life estate in the trust; (3) a letter from respondent to appellant providing that Larson intended "to use the trust to provide [appellant] with a monthly income"; and (4) a letter from Larson's estate attorney to Larson stating that the trust will "go equally to the three (3) children except that Maynard's is in the form of a life estate."

Considering this extrinsic evidence and the language of the trust, the district court determined that appellant's share should remain in trust for his use and enjoyment during his lifetime, and that respondent has sole discretion regarding distributions. On this record we cannot say the district court clearly erred in so concluding.

Affirmed.