

No. 1-14-2369

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> ESTATE OF ROBYN R. ROSS, Deceased,)	Appeal from the Circuit Court of Cook County.
)	
(Gail Peczkowski, Supervised Executor of the Estate of Robyn R. Ross, and as Successor Trustee and Beneficiary of the Robyn R. Trust dated January 15, 2005, Petitioner-Appellant v. Diana M. Mini, Respondent-Appellee).)	No. 13 P 1943 Honorable Karen O'Malley, Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court is affirmed where the trust amendment complied with the terms of the trust's amendment provision.

¶ 2 The petitioner, Gail Peczkowski, executor of the Estate of Robyn R. Ross, and as successor trustee and beneficiary of the Robyn R. Ross Trust, appeals from the circuit court order which denied her petition seeking a declaratory judgment that a 2012 amendment replacing her and naming the respondent, Diana M. Mini, the successor trustee and beneficiary to the trust, was invalid. For the reasons that follow, we affirm.

¶ 3 The following facts are taken from the parties' pleadings, attached documents, and orders contained in the record on appeal. On January 15, 2005, Robyn Ross (Ross) signed a document entitled the "Robyn R. Ross Trust" (Trust). Article 2, section 2.1 of the Trust states as follows:

"2.1 *Right to Amend or Revoke.* I reserve the right from time to time to amend or revoke this instrument in whole or in part by instrument (other than my Will) signed by me, referring to this instrument, and delivered to the trustee during my life. If I revoke this instrument, the trustee shall deliver the trust estate to me or as I direct."

¶ 4 The Trust directs that, upon Ross's death, the trustee "shall make gifts of tangible personal property as I direct by any written instrument signed by me." It further directs, "to the extent my written instructions are incomplete, my trustee shall transfer my personal property to my friend, Gail A. Peczkowski." Two charities are listed as contingent beneficiaries in the event Peczkowski predeceased Ross. The Trust named Ross as trustee and Peczkowski as successor trustee. In the event Peczkowski refused or could not act as successor trustee, Ross named her brother, Jules R. Ross (Jules), as contingent successor trustee.

¶ 5 Also on January 15, 2005, Ross executed a pour-over will. The will stated all of the property Ross owned at the time of her death would be distributed to the trustee of the Trust and administered and distributed as provided under the Trust. The will named Peczkowski as executor of the estate, and Jules as contingent executor.

¶ 6 On December 21, 2012, Ross executed an amendment to the Trust entitled, "The Robyn R. Ross Revocable Living Trust Amendment" (amendment). The amendment removed Peczkowski and Jules as successor trustees and beneficiaries of Ross's estate, and also provided

"[a]ny role or benefit that was devised to Gail A. Peczkowski or Jules R. Ross shall instead be changed to Diana M. Mini, residing in Minnesota." We note the amendment contains a scrivener's error at the top of the first page by listing the date as "12/21/2102." Additionally, the amendment omits the date Ross executed the Trust, and incorrectly states that Ross subscribed her name to the amendment on the "1st day" of "2004." As with the Trust, the amendment is typewritten and signed.

¶ 7 On February 11, 2013, Ross died. On April 10, 2013, the circuit court of Cook County admitted Ross's will to probate and appointed Peczkowski as independent executor of Ross's estate. Thereafter, on July 8, 2013, Mini filed a petition to terminate the independent administration of the estate, claiming she was the trustee and sole beneficiary of the Trust.

¶ 8 On September 26, 2013, Peczkowski filed a petition for a declaratory judgment seeking a judicial determination that the amendment was invalid and unenforceable. The petition alleged that the amendment did not comply with the requirements set forth in section 2.1 of the Trust because it: (1) failed to refer to the Trust by name or date; (2) lacks internal consistency; (3) contains two font types; (4) refers to Ross as "Grantor and Trustee" but is "executed by [Ross] solely as Grantor and not as Trustee"; (5) might relate to a different Trust; (6) contains a signature which might not be Ross's; and (7) is "incomplete, deficient and unfinished, *** is inherently unreliable, suspect and insufficient" to constitute a valid amendment. The petition further alleged Mini submitted two versions of the amendment, which were purportedly signed by Ross at different times. Copies of the Trust and the two amendments were attached to Peczkowski's petition for declaratory judgment.

¶ 9 Mini responded to the petition by arguing that the amendment complied with section 2.1 of the Trust because the amendment constitutes (1) an instrument (other than Ross's will); (2)

signed by Ross; (3) that references the Trust; and (4) that was delivered to the trustee during Ross's lifetime. In support of her argument, Mini submitted the affidavit of Ross's caretaker, Mariana Istvan, who stated she witnessed Ross execute the amendment on December 21, 2012. According to Istavan, Ross was "clear that she wanted Diana Mini to be charged with her affairs, and to be beneficiary and trustee under her Trust." Istavan also stated that she knew Ross was aware of her assets, drafted the amendment, and understood her assets would be distributed to Mini under the amendment.

¶ 10 On July 2, 2014, following a hearing, the circuit court entered a written order denying Peczkowski's petition for declaratory judgment and finding the amendment valid. The court's order provides no guidance into its decision. No transcript of the hearing or bystander's report (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) appears in the record on appeal. Peczkowski timely filed this appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 11 In construing a trust, our goal is to determine the settlor's intent and give effect to that intent if it is not contrary to law or public policy. *Citizens National Bank of Paris v. Kids Hope United, Inc.*, 235 Ill. 2d 565, 574 (2009). "The settlor's intent is to be determined solely by reference to the plain language of the trust itself." *Koulogeorge v. Campbell*, 2012 IL App (1st) 112812, ¶ 22. "When the language of the document is clear and unambiguous, a court should not modify or create new terms." *Ruby v. Ruby*, 2012 IL App (1st) 103210, ¶ 19. "However, where the language of a trust is ambiguous and the settlor's intent cannot be determined, a trial court may rely on extrinsic evidence to aid construction." *Id.* Language is ambiguous when it is reasonably susceptible to more than one meaning. *Id.* We review *de novo* a court's legal conclusions as to the construction and legal effect of a trust document. *McCarthy v. Taylor*, 2014 IL App (1st) 132239 ¶ 54.

¶ 12 Here, the parties dispute the interpretation of section 2.1 of the Trust. Again, section 2.1 allows for amendment of the Trust: (1) by instrument other than will; (2) signed by Ross; (3) referring to the Trust; and (4) delivered to Ross during her life. Section 2.1 is clear that any amendment, to be effective, must satisfy each of these requirements. See *Parish v. Parish*, 29 Ill. 2d 141, 149 (1963) (where a method of exercising a power to modify is described in the trust agreement, the power may be asserted only in the manner described).

¶ 13 Initially, we note the parties do not dispute that the amendment was an instrument, other than Ross's will, which was signed by Ross. Moreover, since Ross created the Trust and served as trustee, the delivery requirement was automatically satisfied the moment she drafted and signed the instrument. See *Whittaker v. Stables*, 339 Ill. App. 3d 943, 948 (2003). Thus, the parties do not raise any issue regarding three of the four requirements under section 2.1.

¶ 14 In this case, Peczkowski asserts the amendment failed to comply with section 2.1's requirement that amendments reference the Trust by name or date. We disagree. The phrase "referring to this instrument" in section 2.1 does not require that an amendment state the name or date of the Trust. Rather, the provision merely requires that the amendment reference the Trust. Here, the amendment clearly and unambiguously references the Trust. The document is entitled "The Robyn R. Ross Revocable Trust Amendment" and it references Ross's "Revocable Living Trust." Accordingly, we find the amendment properly referenced the Trust and all four requirements in section 2.1 are met.

¶ 15 Next, Peczkowski asserts the amendment itself is ambiguous because it lacks internal consistency, namely it: contains multiple dates, two font types, and lacks numbered paragraphs. We are not persuaded. Peczkowski argument elevates form over substance and disregards Ross's intent as determined from the amendment as a whole. See *Ruby*, 2012 IL App (1st) 103210, ¶ 19

(our goal is to ascertain Ross's intent and construe the Trust so that no language is rendered void or insignificant). The amendment states:

"**Gail A. Peczkowski**, of Naperville, Illinois is hereby removed as a successor trustee and a beneficiary, successor trustee and from any other role enumerated, written, promised orally or in writing and is barred from access to information, copies, details or terms of amendment regarding my estate. She is removed as are any of the rights to any benefit from any of my affairs, resources, estate, assets, before or after my demise.

* * *

Any role or benefit that was devised to Gail A. Peczkowski or to Jules R. Ross, shall instead be changed to Diana M. Mini, residing in Minnesota."

In our view, the words in the amendment are clear and the language is not susceptible to more than one reasonable interpretation. By amending the Trust, Ross sought to remove Peczkowski and Jules as successor trustees and beneficiaries and no principle of trust construction supports a contrary view. The amendment plainly states, "[a]ny role or benefit that was devised to [Peczkowski] *** shall instead be changed to [Mini]." Accordingly, Ross intended to amend her Trust to eliminate any role or benefit devised to Peczkowski.

¶ 16 Peczkowski also claims the amendment is ambiguous because it fails to identify the "specific provision or term" to be amended and incorrectly cites Article 3 as the right-to-amend clause and Article 5 as the trustee succession clause. Again, this does not render the amendment ambiguous. As already discussed, the amendment applies to the Trust as a whole, removing

Peckowski and Jules as successor trustees and beneficiaries, and adding Mini. To the extent Peczkowski argues the amendment applied to another trust, nothing in the record demonstrates the existence of any other trust executed by Ross. In any case, we find the amendment is not ambiguous.

¶ 17 Finally, Peczkowski contends the circuit court provided "no clarity" as to the basis for its ruling and, consequently, "it is possible" the court improperly relied upon extrinsic evidence in resolving ambiguities. We disagree. The court apparently held a hearing on Peczkowski's petition for declaratory judgment on July 2, 2014. Yet, Peczkowski failed to include a transcript, a bystander's report, or an agreed statement of facts reflecting the proceeding, which would be necessary to address her argument. See Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) (the appellant has the burden to present a sufficiently complete record). In the absence of such a record, we will not speculate as to what errors may have occurred below. Regardless, our review of the matter is *de novo*, and, having reviewed the record, we cannot conclude the circuit court erred.

¶ 18 Because Ross effectively amended the Trust, the circuit court properly denied Gale's petition for declaratory judgment and appropriately found the amendment valid and enforceable.

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.