Minnesota Court of Appeals Rules Power of Attorney Insufficient to Amend Revocable Trust

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On January 30, 2023, the Minnesota Court of Appeals issued an opinion in *In re Eva Marie Hanson Living Trust* addressing the ability of an attorney-in-fact to amend a revocable trust on behalf of an incapacitated trust settlor. The court held that the attorney-in-fact lacked the ability to amend the trust when the trust agreement explicitly reserved that power to the settlor herself. The court's decision was issued as a "published opinion," making it binding precedent in Minnesota.

The Opinion

The case arose out of efforts by Eva Marie Hanson's daughter, Shari, to amend Eva Marie's revocable trust after she had become incapacitated and unable to do so herself. Eva Marie had appointed Shari as her attorney-in-fact in 2013 using a Minnesota statutory short form power of attorney (an SSFPOA) — a common financial and incapacity planning tool in Minnesota. The SSFPOA granted Shari broad powers to act on Eva Marie's behalf and was a "durable" power of attorney, meaning that it would remain in effect even if Eva Marie became incapacitated.

Following Eva Marie's incapacity, and acting as her attorney-in-fact, Shari amended the revocable trust in 2017. The amendment redirected the share of the trust assets that was ultimately to pass to Eva Marie's son, Randy, to a supplemental needs trust for his benefit. Eva Marie died the following year, and Shari, as her trustee, distributed the trust assets according to the 2017 amendment. Randy died in 2019, and the residue of his supplemental needs trust — including the assets received from Eva Marie's revocable trust — was distributed to his second wife.

Randy's children subsequently petitioned the district court to invalidate the 2017 trust amendment, arguing that Eva Marie's revocable trust agreement had been improperly amended. The district court denied the petition, concluding that although the 2013 version of Eva Marie's trust agreement had limited the power to amend to herself alone, the SSFPOA "expressly provided [Shari] the authority to amend the trust."

On review, the court of appeals disagreed. The court began by noting that "[w]hen the language of the trust instrument is unambiguous, the intent of the settlor must be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent." Supporting this statement, the court further noted

that the Minnesota Trust Code provides that a trust may be amended only by substantial compliance with a method of amendment set forth in the trust agreement, so long as that method is expressly made exclusive. With these guideposts in mind, the court turned to examine the language of the 2013 version of the trust.

Beginning with the section on amendment of the trust found in the 2013 version of the agreement, the court emphasized that Eva Marie had unambiguously stated that the power to amend the trust was (1) express, (2) personal to her, and (3) absolute. Parsing this language, the court concluded that no one but Eva Marie had the authority to amend the trust agreement. As a result, the court of appeals held that it was error on the part of the district court to look beyond the 2013 version of the agreement to extrinsic evidence — the SSFPOA — to determine whether Shari could also amend the trust. To remedy that error, the court of appeals directed that the case be returned to the district court for determination of the proper distribution of the trust assets according to the 2013 version of Eva Marie's trust.

Key Takeaways

The court of appeals' decision in *In re Eva Marie Hanson Living Trust* provides a timely — and binding — reminder of the importance of carefully considering how and under what circumstances a revocable trust can be amended. Some of the key takeaways include:

- Every clause in a trust or other testamentary instrument can have a big impact on administration. For many practitioners, provisions on trust amendment can be "boilerplate" that are not carefully reviewed with the client. *In re Eva Marie Hanson Living Trust* should serve as a clear reminder to ensure that restrictions on trust amendments really reflect client wishes.

- Just as importantly, clients should be encouraged to discuss their views regarding amending their estate plans in the event of incapacity with their fiduciaries and loved ones. Doing so before incapacity strikes can give families the confidence — and the flexibility — they need to ensure a settlor's true intentions are carried out.

- While the court of appeals' opinion in *In re Eva Marie Hanson Living Trust* is an important new legal guidepost, it left one very important question unanswered: whether the Minnesota SSFPOA is ever sufficient to allow an attorney-in-fact to amend a principal's revocable trust agreement. Although the court was apparently urged by the Minnesota State Bar Association's Probate & Trust Law Section to address the long-standing uncertainty on this point, it declined to do so. Practitioners and the public alike will have to wait for another case — or for the legislature — to resolve this issue.

The full text of the court's opinion may be found here, or on Westlaw at 2023 WL 1095034. If you have questions about *In re Eva Marie Hanson Living Trust* or about your estate planning generally, please contact Jim Thomson or your regular Lathrop GPM Trust, Estates & Legacy Planning contact.