

FILED
COURT OF APPEALS
DIVISION II

2014 AUG 22 PM 1:54

STATE OF WASHINGTON

BY Ch
DEPUTY

NO. 45926-4-II

IN THE COURT OF APPEALS

STATE OF WASHINGTON

DIVISION II

STANGEL FAMILY TRUST by BEATRICE STANGEL, Trustee

Appellant,

v.

ELLEN MARIE STANGEL

Respondent.

APPELLANT'S REPLY BRIEF

ORIGINAL

HOLUM & HANN, P.S.
Attorneys for Plaintiffs/Appellants
Kim A. Hann
WSB #43640
820 A Street, Suite 601
Tacoma, WA 98402

TABLE OF CONTENTS

	<u>Table of Authorities</u>	ii
A.	<u>Reply to Respondent’s Statement of Facts</u>	1-3
B.	<u>Argument</u>	10- 20
	1. STANDARD OF REVIEW	4
	2. RESPONSE TO DEFENDANT/ RESPONDENT ELLEN STANGEL’S ARGUMENT THAT THE TRIAL COURT PROPERLY INTERPRETED CONFLICTING TRUST LANGUAGE COUPLED WITH THE PERFORMANCE OF THE PARTIES TO EFFECTUATE THE INTENT OF THE TRUST DONORS.	4-7
C.	<u>Conclusion</u>	7

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
1. <i>Bartlett v. Betlach</i> , 136 Wash.App. 8, 19, 146 P.3d 1235 (2006).	5
2. <i>Cook v. Brateng</i> , 158 Wash.App. 777, 262 P.3d 1228 (2010).	6
3. <i>In re Estate of Curry</i> , 98 Wash.App. 107, 112-13, 988 P.2d 505 (1999).	5
4. <i>Happy Bunch, LLC v. Grandview N., LLC</i> , 142 Wash. App. 81, 88, 173 P.3d 959, 963 (2007).	4
5. <i>In re Estate of Sherry</i> , 158 Wash.App. 69, 78, 240 P.3d 1182 (2010).	5
6. <i>Templeton v. Peoples Nat'l Bank of Wash.</i> , 106 Wash.2d 304, 309, 722 P.2d 63 (1986).	5
7. <i>Waits v. Hamlin</i> , 55 Wash.App. 193, 200, 776 P.2d 1003 (1989).	5
<u>Statutes</u>	
1. RCW.11.96A.210	6

A. REPLY TO RESPONDENT/DEFENDANT ELLEN STANGEL'S STATEMENT OF FACTS.

The trial court stated, "This case was an assertion by the Stangel Family Trust that the terms of the trust had not been complied with by Elena Stangel, and, therefore, the property should revert to the trust. That's where we begin." (VRP-3, p. 14, ll. 14-18).

Finding of Fact 1.2 states:

The subject property was purchased by statutory warranty deed by William and Beatrice Stangel on June 30, 1997. For two years, Defendant Ellen Stangel made the mortgage payments on the property. (CP 149).

Finding of Fact 1.3 states:

On August 26, 1999, William and Beatrice Stangel quit claim deeded said property to William J. Stangel and Beatrice F. Stangel as trustees of the Stangel Family Trust. (CP 149).

Finding of Fact 1.4 states:

On November 4, 2003, William and Beatrice Stangel amended the family trust by a document referred to as the Second Amendment to Declaration of Trust of William J. Stangel and Beatrice F. Stangel. The terms of the second

amendment to the trust required Defendant to pay the mortgage, taxes, insurance and all maintenance of the property. Defendant was notified of the terms of the amendment. Demand has been made by Plaintiff for Defendant to make said payments but Defendant has failed to comply. Defendant has made no payment since the second amendment to the trust. Failure to make said payments entitled the trustee of the trust to possession of the property. (CP 149-150).

Finding of Fact 1.5 states:

On March 20, 2013, Defendant was served a Notice to Quit Premises. Said notice required the Defendant to surrender the premises on or before April 30, 2013. Defendant has failed to vacate the premises and is now in unlawful possession thereof, in violation of the Notice to Quit Premises. (CP 150).

Finding of Fact 1.7 states:

Defendant was required to make all mortgage, insurance, and tax payments on the property. Defendant made said payments for two years up to but not beyond November 1999. (CP 150).

On page 5 of Defendant/Respondent Ellen Stangel's brief, it states "The court also stated that it found the language of the trust ambiguous RP-10/24/13 at 88, 110 and 121." In reading each of those pages, this statement is clearly inaccurate. At page 88, the trial court states, "And while one side argues it is not ambiguous at all, I don't know whether as a matter of law it's ambiguous or not, but I know that it is not clear enough for me to preclude someone to testify as to their understanding." At page 110, the trial court is contemplating how to interpret the trust and whether the trial court should determine it to be ambiguous. At page 121, the trial court acknowledges the fact that it will take the trust, the law, the evidence, and make a decision regarding the applicability of the provisions of the trust. None of these pages contain a "finding" of ambiguity, nor is there a conclusion of law in the trial court's orders of an ambiguity. Also on page 5 of the brief, it states that Beatrice Stangel testified that if the house was sold the mortgage would be paid and the balance of the proceeds would be given to Elena. RP-11/4/13 at 56. A close reading of page 56 shows that the statement has been taken out of context. That was the intent during 2008 while William Stangel was alive.

B. ARGUMENT.

1. STANDARD OF REVIEW. Where the relevant facts are undisputed and the parties dispute only the legal effect of those facts, the standard of review is also de novo.¹ The trial court's "Findings of Fact" referenced above have not been appealed, but the legal effect in the Order on Reconsideration of January 24, 2014, of those facts giving Defendant/Respondent Ellen Stangel the right to purchase the subject property is appealed as stated in Assignment of Error No. 9. The Order on Reconsideration does not properly follow from the Findings of Fact. Whether the right to purchase has been established by the facts as found by the trial court is a question of law, which is reviewed de novo.²

2. RESPONSE TO DEFENDANT/ RESPONDENT ELLEN STANGEL'S ARGUMENT THAT THE TRIAL COURT PROPERLY INTERPRETED CONFLICTING TRUST LANGUAGE COUPLED WITH THE PERFORMANCE OF THE PARTIES TO EFFECTUATE THE INTENT OF THE TRUST DONORS.

This action is not a TEDRA action for trust interpretation to determine the parties' respective rights under the trust. Even if it was, the trust does not provide any beneficiary the right to purchase any trust asset. This is an action for ejectment based on the terms of the trust. There is no finding or conclusion of law that the terms of the trust or its amendments are

¹ *Happy Bunch, LLC v. Grandview N., LLC*, 142 Wash. App. 81, 88, 173 P.3d 959, 963 (2007).

ambiguous. Interpretation of a will or trust instrument is a question of law.³ A Trustor's intent in a trust requires the trust instrument to be construed as a whole, and to give effect to each part of the trust instrument.⁴ Where the meaning of the trust instrument is unambiguous, judicial construction or interpretation is not required.⁵ Ambiguity is a question of law.⁶ The trust in the case at hand requires Defendant/Respondent Ellen Stangel to pay the mortgage, taxes, insurance and maintain the property. Finding of Fact 1.4 states, "The terms of the second amendment to the trust required Defendant to pay the mortgage, taxes, insurance and all maintenance of the property." Said provision in the trust is unambiguous and the trial court did find she was required to pay.

Defendant/Respondent Ellen Stangel believes the Trustees did not, as a matter of course, enforce the provisions of the Second Amendment to the trust that requires her to make the mortgage, tax and insurance payments. While the facts of this case both show that her failure to make payments was a problem for the Plaintiff/Appellant, there is nothing in the present trust that would require the Trustees to either account to Ellen Stangel as a beneficiary of the trust, or to notify her of any changes in direction the Trustee(s) may

² *Supra*.

³ *In re Estate of Curry*, 98 Wash.App. 107, 112-13, 988 P.2d 505 (1999).

⁴ *In re Estate of Sherry*, 158 Wash.App. 69, 78, 240 P.3d 1182 (2010); *Bartlett v. Betlach*, 136 Wash.App. 8, 19, 146 P.3d 1235 (2006).

⁵ *Templeton v. Peoples Nat'l Bank of Wash.*, 106 Wash.2d 304, 309, 722 P.2d 63 (1986).

⁶ *Waits v. Hamlin*, 55 Wash.App. 193, 200, 776 P.2d 1003 (1989).

take. The case of *Cook v. Brateng*⁷ states that an accounting would be required only in the event that a trust beneficiary was an income beneficiary. There is nothing in this case from the trust document itself or from the claims of the Defendant/Respondent Ellen Stangel that she was an income beneficiary. As a result, nothing precluded Plaintiff/Appellant from bringing an ejectment action in the present case.

Defendant/Respondent Ellen Stangel's Answer to Complaint for Ejectment raised an affirmative defense regarding TEDRA and that the dispute should be resolved pursuant to TEDRA. (CP 125). RCW.11.96A.210 states the purpose of TEDRA (RCW 11.96A.220 through 11.96A.250) as follows:

“The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law.”

As can be seen from RCW 11.96A.210, TEDRA is supplemental to any other proceeding or provision authorized by statute or the common law. In other words, this action for ejectment, pursuant to the terms of the trust, is not precluded by TEDRA. It is also not precluded because of accusations of improper allocation of assets within the trust. Again, this action is not a

⁷ *Cook v. Brateng*, 158 Wash.App. 777, 262 P.3d 1228 (2010).

TEDRA action for trust interpretation to determine the parties' respective rights under the trust, but an action for ejectment based on failure to pay pursuant to the terms of the trust. The Order on Reconsideration is not supported by the Findings of Fact.

C. CONCLUSION. Plaintiff/Appellant asks this Court to reverse the trial court's Order on Reconsideration in its entirety and hold the following: 1) Defendant/Respondent be evicted as Plaintiff/Appellant is entitled to immediate possession of the subject property; 2) The Clerk of Pierce County Superior Court shall issue a writ of restitution for the subject property ordering the Sheriff of Pierce County to restore the property to the Plaintiff/Appellant without bond; 3) Plaintiff/Appellant is entitled to judgment in the amount of \$31,867.92 and \$4,426.10 for a total of \$36,294.02; and 4) Plaintiff/Appellant is authorized to sell, lease, encumber, or take any other action regarding the subject property without restriction pursuant to the terms of the trust.

Respectfully submitted,

DATED: August 22, HOLUM & HANN, P.S.
2014

By: 
Kim A. Hann, WSB #43640
Attorney for Appellant
820 A Street, Suite 601
Tacoma, WA 98402
(253) 471-2141

FILED
COURT OF APPEALS
DIVISION II

2014 AUG 22 PM 1:54

STATE OF WASHINGTON

BY _____
DEPUTY

NO. 45926-4-II

IN THE COURT OF APPEALS

STATE OF WASHINGTON

DIVISION II

STANGEL FAMILY TRUST by
BEATRICE STANGEL, Trustee,

Appellant,

vs.

ELLEN MARIE STANGEL,

Respondent.

NO. 45926-4-II

DECLARATION OF
SERVICE

Kim A. Hann states:

I am the attorney for Appellant in the above-entitled cause of action,
over 18, competent to testify on the matters stated herein and do so based on
personal knowledge.

DECLARATION OF SERVICE - 1

ORIGINAL

On August 22, 2014, I caused to be delivered an original and one true and correct copy of Appellant's Reply Brief and this declaration by placing said document(s) in a sealed envelope and hand delivering to *The Court of Appeals of the State of Washington, 950 Broadway, Suite 300, Tacoma, Washington 98402*. In addition, I caused to be delivered one true and correct copy of Appellant's Reply Brief and this declaration by placing said document(s) in a sealed envelope and hand delivering to *Peter Kram of Kram & Wooster, P.S., 1901 SI Street, Tacoma, Washington 98405-3810*. I hereby declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, on August 22, 2014.



Kim A. Hann