

APN: 1321-33-001-021

After Recording, Mail to:

Yvonne Anfossi-Irwin
2441 Mormon Way
Gardnerville, NV 89410

Mail Tax Statements to:

Same as above



00160779202209904240080087

KAREN ELLISON, RECORDER

The undersigned affirms that this document, and all exhibits which may be attached hereto,
DOES contain the social security number of any person, pursuant to NRS 443.380.

ORDER

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1 Case No. 2022-PB-00023

2 Dept. No. II

RECEIVED

AUG - 8 2022

Douglas County
District Court Clerk

FILED

2022 AUG -8 AM 9:34

SHIRLEY R. WILLIAMS
CLERK

K. WILFERT
DEPUTY

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 In Matter of:

10
11 THE DEAN HAMILTON IRWIN
12 LIVING TRUST DATED
13 SEPTEMBER 8, 2005.

ORDER

14
15 THIS MATTER came before the Court on August 2, 2022 for an
16 evidentiary hearing on the *Petition to Assume Jurisdiction Over*
17 *Non-Testamentary Trust and for Relief Under NRS 153.031, 164.010,*
18 *164.015, and 164.033.* Petitioner, Yvonne Anfossi-Irwin, trustor's
19 spouse ("Wife"), appeared with counsel. Trust
20 beneficiaries/trustor's children, Michael Irwin and Donna Irwin
21 ("Beneficiaries") appeared with counsel. Jennifer Harkreader
22 ("Interested Person"), filed a *Notice of Non-Opposition.* All
23 consented to the Court's jurisdiction over the trust. Having
24 considered the evidence, arguments, briefs and the record herein,
25 the Court finds and orders as follows:

26 Findings of Fact

27 Husband and Wife were married on April 28, 2000.

28 At the time of marriage, Husband held 2441 Mormon Way,

1 Gardnerville, Nevada ("Marital Residence") as his separate
2 property subject to a mortgage.

3 At the time of the marriage, Wife owned real property as her
4 separate property. Shortly after marriage, Wife sold her real
5 property, depositing an unproven amount of proceeds into a Charles
6 Schwab brokerage account in her name. Wife moved into the Marital
7 Residence with Husband.

8 In 2002, Husband refinanced the loan on the Marital
9 Residence. The Martial Residence remained deeded in Husband's
10 name. Wife executed a quitclaim deed.

11 On September 8, 2005, Husband created the Dean Hamilton Irwin
12 Living Trust ("2005 Trust"), naming the Marital Residence as a
13 trust asset. The Marital Residence was deeded to the 2005 Trust.
14 As originally worded, the 2005 Trust granted Wife a life estate in
15 the Marital Residence, should she outlive Husband, and 10% of the
16 proceeds from the eventual sale of the property.

17 In 2009, Husband again re-financed the loan on the Marital
18 Residence. The Martial Residence remained deeded to the 2005
19 Trust.

20 On February 14, 2017, Husband executed a Fourth Amendment to
21 the 2005 Trust. As to the Marital Residence, if Husband pre-
22 deceases Wife, "my trustee shall authorize and allow [Wife] to
23 reside in [Martial Residence] until her death, so long as the
24 property continues to be her only primary residence. Should the
25 property cease to be her only primary residence, or until it is no
26 longer in the best interest of [Wife], the property shall be sold.
27 (Also, the property shall be sold should [Wife] desires to lease,
28 rent, or sublease the property). At that time, the property

1 shall be sold, and the proceeds distributed as set forth in
2 Article 8 - Distribution to My Beneficiaries." Fourth Amendment
3 to 2005 Trust, Section 1.01. The Fourth Amendment calls for
4 proceeds from the eventual sale of the Marital Residence to be
5 distributed equally to Beneficiaries and Interested Party,
6 Husband's children, with none of the proceeds going to Wife.

7 On September 10, 2019, Husband died.

8 Wife continues to reside in the Marital Residence.

9 Wife testified that from the time of marriage until 2005,
10 Husband paid the mortgage on the Marital Residence and all
11 associated costs. Husband retired in 2005. Husband promised Wife
12 that in return for financial contributions from Wife, Husband
13 would give Wife "a fee title interest" in the Marital Residence
14 upon his death. In furtherance of the agreement, Husband created
15 the 2005 Trust, giving Wife a life estate in the Marital Residence
16 and a 10% interest in eventual sale proceeds (as opposed to a fee
17 interest). Wife was aware of this designation and, in reliance
18 thereon, began making financial contributions to Husband.¹

19 Specifically, Wife began writing Husband a monthly check.
20 Although the amount contributed varied, Wife predominantly paid
21 Husband \$1,000/month. Wife's testimony was supported by copies of
22 checks dating from 2005 through Husband's death. Wife believed
23 Husband used the money to help with the mortgage. Wife also
24 contributed money for a fence and a home appliance. The total
25 amount paid by Wife to Husband pursuant to the arrangement was
26

27
28 ¹ Wife testified that the gift of a life estate in the Marital Residence was
not part of the agreement, but rather was a gift from Husband based upon the
marital relationship.

1 \$161,133 (\$164,613 - \$3,480 that was for Husband and Wife's joint
2 tax returns).

3 Wife was unaware of the amendments Husband made to the 2005
4 Trust. Following Husband's death, Wife was supplied with copies
5 of the 2005 Trust and all amendments. Upon reviewing the fourth
6 and final amendment to the 2005 Trust, Wife was surprised to learn
7 that Husband, in contravention of their agreement, did not award
8 Wife any portion of the eventual sale proceeds from the Marital
9 Residence. Wife feels betrayed and asks the Court to enforce the
10 oral agreement. Beneficiaries object.

11 Conclusions of Law

12 Wife requests relief premised upon an oral contract with
13 Husband upon which she relied and fully performed. Wife argues
14 that she contributed her separate property to Husband's separate
15 property.² Significantly, Wife makes no claim to a community
16 property interest in the Marital Residence, nor does she request
17 reimbursement for her contributions to the Marital Residence
18 premised upon the rights of married couples as set forth in NRS
19 Chapters 123 and 125 and associated case law. Wife acknowledges
20 that she did not present the Court with evidence upon which to
21 equitably apportion interests in the Marital Residence as
22 prescribed in cases such as *Malmquist v. Malmquist*, 106 Nev. 231
23 (1990). Wife simply asks that Court to give her the benefit of
24 her bargain with Husband. Wife does not seek reimbursement of her
25

26
27 ² Beneficiaries do not contest Wife's "separate property" labels. For the
28 purpose of this order, the Court assumes the Wife's contributions came from
Wife's separate property and that the Marital Residence remained Husband's
separate property.

1 contributions. Wife does not contest the validity of the 2005
2 Trust and the Fourth Amendment to the 2005 Trust.

3 The Court decides the *Petition* as framed by Wife. Spouses
4 may enter into contracts with each other respecting property,
5 "subject to...the general rules which control the actions of persons
6 occupying relations of confidence and trust toward each other."
7 NRS 123.070 and 123.080. One spouse's separate property
8 contribution to the other spouse's separate property is presumed
9 to be a gift in the absence of an agreement to the contrary.
10 *Hopper v. Hopper*, 80 Nev. 302, 302-03 (1964), citing *Lombardi v.*
11 *Lombardi*, 44 Nev. 314 (1921). The Court finds by clear and
12 convincing evidence that Husband and Wife, a married couple,
13 entered into an oral agreement in 2005 as follows: In

14 return for Husband's promise that Wife would receive 10%³ of
15 the proceeds from the eventual sale of the Marital Residence, Wife
16 agreed to give Husband \$1,000 per month. In reliance thereon,
17 Wife fully performed, giving Husband approximately \$1,000 every
18 month from 2005 until Husband's death in 2019.

19
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21 ³ Although Wife acknowledges the 10% term, Wife asks for 55% of the sale
22 proceeds. Wife points to various amendments to the 2005 Trust and a never
23 formalized amendment contemplated by Husband immediately preceding his
24 death. Wife claims the amendments and the contemplated amendment are
25 indicative of Husband's intent to modify the contract by increasing Wife's
26 percentage (Wife does not arrive at her request for 55% by way of any
27 ratios, formulas or other equitable considerations and acknowledges that she
28 did not present the Court with any evidence to perform such calculations).
There are two main problems with Wife's approach. First, the Fourth
Amendment, which divests Wife of any portion of the sale proceeds, is the
operable amendment and is the best, unambiguous, representation of Husband's
intent at the time of his death. Second, Husband's evolving post-contract
amendments are irrelevant given that Wife was unaware of the Trust
amendments and cannot be said to have relied on the same in continuing to
make the same \$1,000/month payments she made before and after the
amendments. Wife asks the Court to enforce the benefit of the bargain.
Wife bargained for 10%, not 55%. Husband too bargained for 10% premised
upon Wife's promise to pay \$1,000/month.

1 Contracts conveying real property must generally be in
2 writing. NRS 111.205(1). However, an agreement "to share in the
3 proceeds of a contemplated future sale, is not one creating an
4 interest in land within the Statute of Frauds." *Montrose v.*
5 *Schneider*, 84 Nev. 377, 381 (1968) (internal citations omitted);
6 See also, NRS 111.205(2). As argued by Beneficiaries, the 2005
7 Trust did not give Wife a fee title interest in the Marital
8 Residence. While Husband may have initially offered Wife a "fee
9 title interest", Wife was made aware of the 2005 Trust giving her
10 10% of sale proceeds and relied on the same in making the
11 payments. Wife accepted the term of 10% of the proceeds, knowing
12 that the 2005 Trust also gave her a life estate, also of value.

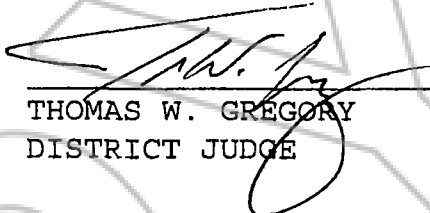
13 Husband and Wife enjoyed a confidential relationship as a
14 married couple. Wife contributed \$1,000/month of her separate
15 property to Husband's separate property Marital Residence in
16 reliance on Husband's promise that Wife would receive 10% of the
17 proceeds from the eventual sale of the Martial Residence. Equity
18 demands the raising of a constructive trust upon the proceeds of
19 the sale to prevent a failure of justice. *Montrose v. Schneider*,
20 84 Nev. 377, 381 (1968); See also, *Locken v. Locken*, 98 Nev. 369,
21 372 (1982); *Randono v. Turk*, 86 Nev. 123, 128 (1970), citing
22 *Schmidt v. Merriweather*, 82 Nev. 372, 375 (1966); *Davidson v.*
23 *Streeter*, 68 Nev. 427 (1951); *Bowler v. Curler*, 21 Nev. 158, 163
24 (1891); *Cummings v. Tinkle*, 91 Nev. 548, 550 (1975); *Jones v.*
25 *Patrick*, 140 F. 403 (Circuit Court, District of Nevada, 1905); *Hay*
26 *v. Hay* 100 Nev. 196, 199 (1984).

27 Based upon the findings herein, when the Martial Residence
28 is eventually sold pursuant to the terms of the 2005 Trust and

1 its Fourth Amendment, Wife shall be entitled to 10% of the net
2 proceeds. The remaining net proceeds shall be distributed in the
3 manner prescribed by the 2005 Trust and its Fourth Amendment.

4 IT IS SO ORDERED.

5 DATED this 8th day of August, 2022.

6
7 
8 THOMAS W. GREGORY
9 DISTRICT JUDGE

10
11 Copies served by messenger/hand delivery on August 8th, 2022,
12 addressed to:

13 Karen L. Winters, Esq.
14 P.O. Box 1987
15 Minden, Nevada 89423

(Messenger)


16 Justin M. Clouser, Esq.
17 1512 Hwy 395 N, Ste. 1
18 Gardnerville, Nevada 89410

(Hand Delivery)

19 
20 Erin C. Plante

21
22
23 **CERTIFIED COPY**

24 The document to which this certificate is attached is a
25 full, true and correct copy of the original in file and of
26 record in my office.

27 DATE September 27, 2022
28 BOBBIE R. WILLIAMS Clerk of Court
of the State of Nevada, in and for the County of Douglas,
By  Deputy