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SUMMARY  
May 9, 2024

**2024COA51**

**No. 23CA1083, *Matter of Hunn* — Trusts — Colorado Uniform Trust Code — Revocation or Amendment of Revocable Trust**

A division of the court of appeals holds that by enacting section 15-5-602(3), C.R.S. 2023, the General Assembly abrogated the common law rule — long applied by Colorado’s appellate courts — that if a trust provides that it may be revoked in a particular way, strict compliance with that method is required to revoke the trust, even if the trust does not say that the method it provides is exclusive. Under the statute, if the trust does not expressly make the manner of revocation exclusive, or if the trust does not provide any method of revocation, the settlor may revoke the trust in any manner clearly and convincingly evidencing the settlor’s intent to do so.

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Court of Appeals No. 23CA1083  
Mesa County District Court No. 22PR30245  
Honorable Brian J. Flynn, Judge

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In the Matter of Thomas E. Hunn Living Trust,

Jiang Tao Liu,

Appellant,

v.

Carolyn Nicole Beightel,

Appellee.

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ORDER REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division I  
Opinion by JUDGE J. JONES  
Harris and Gomez, JJ., concur

Announced May 9, 2024

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Dufford Waldeck, Nathan A. Keever, Barbara R. Butler, Grand Junction, Colorado, for Appellee

¶ 1 Petitioner, Jiang Tao Liu, appeals the district court’s order granting trustee Carolyn Nicole Beightel’s motion to transfer certain property from the Thomas E. Hunn Living Trust to herself. We reverse and remand for further proceedings. In doing so, we conclude that the General Assembly has abrogated the common law rule applied by Colorado courts that, if a trust provides that it may be revoked in a particular way, it may be revoked only in the manner specified by its terms, even if those terms don’t expressly make that manner of revocation exclusive. Under the now-applicable statute, section 15-5-602(3), C.R.S. 2023, if the trust doesn’t expressly provide that the manner of revocation is exclusive, or doesn’t provide for revocation in any manner, the settlor may revoke the trust in any manner clearly and convincingly evidencing the settlor’s intent to do so.

## I. Background

¶ 2 Thomas E. Hunn owned real property (the Property) in Grand Junction. In 2017, Hunn executed the Thomas E. Hunn Living Trust (the 2017 Trust) and transferred the Property to that trust.<sup>1</sup>

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<sup>1</sup> For ease of reference, we refer to the trust instruments and the trusts created by those interests as one and the same.

The 2017 Trust names Hunn as the settlor-trustee and his daughter, Beightel, as the successor trustee. Upon Hunn's death, the trustee is to distribute the Property to Beightel if she survives Hunn by thirty days.<sup>2</sup> The 2017 Trust also provides, as relevant to this appeal, that Hunn could revoke or amend it "by a writing delivered to trustee during the life of the settlor."

¶ 3 Later that year, Hunn was injured in an automobile accident and Beightel succeeded him as trustee of the 2017 Trust.

¶ 4 Roughly four years later, in 2021, Hunn, while living in California with his wife, Liu, created another trust by executing the Thomas E. Hunn 2021 Separate Property Trust (the 2021 Trust).<sup>3</sup> The 2021 Trust specifically includes the Property in its "Gifts of Real Property" section. It provides, "Upon my death, the Trustee shall distribute to my wife, Jiang Tao Liu, provided she survives me,

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<sup>2</sup> The 2017 Trust, along with several other documents relevant to the case, aren't part of our record on appeal. We note that the missing documents were filed in a different district court case, case number 22PR30425, which wasn't consolidated with the case from which Liu appeals, case number 22PR30245. Because the parties don't dispute the facts relevant to our resolution of this appeal (including the language of the 2017 Trust's revocation provision), these deficiencies don't hinder our ability to resolve the appeal.

<sup>3</sup> The 2021 Trust named Hunn as initial trustee and Liu as successor trustee upon Hunn's death.

all of my right, title, and interest in and to [the Property].” An appended list of “Assets of the [2021] Trust” also includes the Property.

¶ 5 On the same date, Hunn executed a pour-over will and a quitclaim deed transferring any interest he had in the Property to the 2021 Trust.<sup>4</sup>

¶ 6 Hunn died in June 2022.

¶ 7 In July 2022, Beightel filed a “Trust Registration Statement” for the 2017 Trust in the Mesa County District Court. Beightel also recorded a trustee’s deed in Mesa County, purporting to transfer the Property from the 2017 Trust to herself.

¶ 8 In December 2022, Beightel filed a motion in the Mesa County District Court to approve the transfer of the Property.<sup>5</sup> Liu filed a response, arguing that Beightel’s transfer of the Property from the 2017 Trust to herself was improper because “[w]hen [Hunn] created the 2021 Trust and transferred assets to the 2021 Trust (including [the Property]), the 2017 Trust was revoked and superseded” under section 15-5-602(3). Liu’s response specifically noted that under

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<sup>4</sup> The quitclaim deed isn’t part of the record on appeal.

<sup>5</sup> The motion is also missing from our record.

subsections (3)(a) and (b) of that statute, “a settlor may revoke a revocable trust by a method provided in the trust or by a method manifesting clear and convincing evidence of the settlor’s intent.” Therefore, Liu argued, the Property was an asset of the 2021 Trust — not the 2017 Trust — at the time of Beightel’s purported transfer. And, under the 2021 Trust, the Property was to be distributed to Liu — not Beightel — upon Hunn’s death.<sup>6</sup>

¶ 9 The district court granted Beightel’s motion to approve the transfer of the Property. The court found that Hunn had never delivered a writing to Beightel revoking or amending the 2017 Trust, as contemplated by that trust’s revocation provision. Therefore, the court concluded, “[a]t the time of Thomas Hunn’s death, [the Property] was titled to the [2017 Trust] and was therefore not the subject of Thomas Hunn’s pour-over Will that was signed in conjunction with the [2021 Trust].”

## II. Discussion

¶ 10 Liu now contends, as she did below, that even though Hunn didn’t strictly comply with the 2017 Trust’s specified method of

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<sup>6</sup> Beightel filed a reply to Liu’s response, but Beightel’s reply isn’t in our record.

revocation, he validly revoked or amended the 2017 Trust under section 15-5-602(3)(b) by a “method manifesting clear and convincing evidence of the settlor’s intent.” Because we conclude that the district court didn’t properly apply section 15-5-602(3) to determine whether the 2017 Trust had been revoked or amended, we reverse and remand for the district court to make findings and conclusions consistent with that statute.

#### A. Applicable Law

¶ 11 “The effect of a trust is to separate legal ownership of property from the equitable or beneficial ownership.” *In re Estate of McCreath*, 240 P.3d 413, 421-22 (Colo. App. 2009) (“Though a settlor of a trust may maintain the right to receive proceeds from the property of the trust, he or she cannot concurrently maintain legal ownership of the trust property.”). Thus, if a settlor has transferred certain property to a trust, he may not then, in his personal capacity, transfer that same property to a third party without first revoking the trust or amending it to exclude the subject property. *See Denver Nat’l Bank v. Von Brecht*, 137 Colo. 88, 93, 322 P.2d 667, 670 (1958); § 15-5-602(3) (a settlor may revoke or amend a revocable trust); § 15-5-602(4) (when a settlor

revokes a trust, the trustee must deliver the trust property to the settlor as the settlor directs).

¶ 12 Colorado courts long adhered to the common law rule that, if a trust instrument provides for a particular method of revocation, the settlor must strictly adhere to that method to revoke the trust. See *Brown v. Int'l Tr. Co.*, 130 Colo. 543, 546, 278 P.2d 581, 583 (1954) (“[I]f a particular method of revocation is specified, that procedure must be strictly followed in order to make the revocation effective.”); *Denver Nat'l Bank*, 137 Colo. at 95, 322 P.2d at 670-71 (following *Brown*); *McCreath*, 240 P.3d at 418 (following *Denver Nat'l Bank*).

¶ 13 But in the last decade, the General Assembly has enacted legislation based on the Uniform Trust Code (UTC) that departs from that rigid revocation rule. The “[r]evocation or amendment of revocable trust” provision of the Colorado Uniform Trust Code (CUTC), section 15-5-602, reads, in relevant part, as follows:

(3) The settlor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by any other



method manifesting clear and convincing evidence of the settlor's intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust. A provision in a trust specifying a method to revoke or amend the trust does not make the specified method exclusive unless the specified method is referred to as the "sole", "exclusive", or "only" method of revoking or amending the trust or the provision includes similar language manifesting the settlor's intent that the trust may not be revoked or amended by any other method.

§ 15-5-602(3).<sup>7</sup>

¶ 14 To summarize, if a trust "expressly [makes] exclusive" a method of revocation, then the settlor must act in "substantial compliance" with that method to revoke the trust. § 15-5-602(3)(a)-(b). A method is "expressly made exclusive" if the trust provision either (1) refers to that method "as the 'sole', 'exclusive', or 'only'

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<sup>7</sup> A prior version of the revocation provision based on the Uniform Trust Code (UTC) was first enacted in 2013 as section 15-16-702, C.R.S. 2013. It was amended in 2014. Ch. 296, sec. 9, § 15-16-702, 2014 Colo. Sess. Laws 1236. In 2018, the General Assembly adopted the Colorado Uniform Trust Code (CUTC). Ch. 169, sec. 1, §§ 15-5-101 to -1404, 2018 Colo. Sess. Laws 1144-91. The pertinent language in the CUTC's revocation provision, section 15-5-602(3), C.R.S. 2023, is identical to that in the 2014 revocation statute, section 15-16-702(3), C.R.S. 2014.

method of revoking or amending the trust”; or (2) “includes similar language manifesting the settlor’s intent that the trust may not be revoked or amended by any other method.” § 15-5-602(3)(b).

¶ 15 But if “the method provided in the terms is not expressly made exclusive,” or the terms of the trust don’t specify any method of revocation, then the settlor may also revoke a trust “by any . . . method manifesting clear and convincing evidence of the settlor’s intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust.” *Id.*

¶ 16 The amended revocation statute therefore abrogates earlier Colorado case law, such as *Denver National Bank*, 137 Colo. at 95, 322 P.2d at 670-71; *Brown*, 130 Colo. at 546, 278 P.2d at 583; and *In re Estate of McCreath*, 240 P.3d at 418, that applied the common law rule requiring a settlor to strictly adhere to a revocation method specified in a trust instrument regardless of whether the trust’s terms expressly made that method exclusive. See Unif. Tr. Code § 602 cmt., 7D U.L.A. 218 (2018) (the UTC’s provision that a settlor may revoke or modify a trust unless the terms of the trust expressly state that the trust is irrevocable “changes the common law”); see

also *Bernal v. Marin*, 196 So. 3d 432, 435-37 (Fla. Dist. Ct. App. 2016) (recognizing that UTC section 602(c) creates an analytical framework different from the common law rule); *Davis v. Young*, 2008 UT App 246, ¶ 15, 190 P.3d 23, 26 (recognizing that the UTC’s revocation provision differs from the common law rule).<sup>8</sup>

## B. Standard of Review

¶ 17 Whether a trust’s terms expressly make a method of revocation or amendment “exclusive” is a matter of trust interpretation — a question of law that we review de novo. *See In re Trs. Created by Ferguson*, 929 P.2d 33, 35 (Colo. App. 1996); *In re Marriage of Young*, 2021 COA 96, ¶ 9.

¶ 18 But whether there is clear and convincing evidence of a settlor’s intent to revoke a trust is a factual determination entrusted to the trial court. *See Water Rights of Masters Inv. Co. v. Irrigationists Ass’n*, 702 P.2d 268, 272 (Colo. 1985); *In re Omega Tr.*, 281 A.3d 1281, 1286 (N.H. 2022). We won’t disturb a trial court’s factual finding “unless it is so clearly erroneous as to find no

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<sup>8</sup> This approach is consistent with the Restatement (Third) of Trusts § 63 & cmts. h, i (Am. L. Inst. 2003). *See* Unif. Tr. Code § 602 cmt., 7D U.L.A. 219 (2018) (recognizing the consistency).

support in the record.” *Phoenix Cap., Inc. v. Dowell*, 176 P.3d 835, 841 (Colo. App. 2007).

¶ 19 We can’t review a trial court’s factual determination as to whether a trust was revoked or amended, however, if the trial court didn’t apply the proper legal standard in reaching its conclusion. *See id.* (“[O]ur use of the clear error standard of review is premised upon the trial court’s having correctly applied the law in making its findings of fact, and we review de novo the trial court’s application of the law.”); *Sheridan Redevelopment Agency v. Knightsbridge Land Co.*, 166 P.3d 259, 265 (Colo. App. 2007) (“A trial court ruling made with an incorrect legal standard must be reversed and the case remanded to afford the court an opportunity to apply the correct standard to the facts as it finds them.”).

### C. Application

¶ 20 We conclude that the district court misapplied the revocation statute — section 15-5-602(3) — in determining whether Hunn had revoked the 2017 Trust. In granting Beightel’s motion to approve the transfer of property, the district court seemed to assume that Hunn could revoke the 2017 Trust only by strictly complying with the method specified in that trust. It concluded,

Pursuant to C.R.S. 15-5-602(3)(a) and Article IV of the [2017 Trust], as the settlor of the [2017 Trust], Thomas Hunn had the authority to revoke or amend the trust at any time “**by a writing delivered to trustee** during the life of the settlor.” . . .

Here, Thomas Hunn never delivered a writing to Trustee (Ms. Beightel) revoking or amending the [2017 Trust] . . . .

At the time of Thomas Hunn’s death, [the Property] was titled to the [2017 Trust] and was therefore not the subject of Thomas Hunn’s pour-over Will that was signed in conjunction with the [2021 Trust].

(Emphasis in the court’s order.) But the district court didn’t first determine under section 15-5-602(3)(b) whether the 2017 Trust expressly makes exclusive the “writing delivered to trustee” method of revocation. The 2017 Trust doesn’t because its revocation provision doesn’t say that the method set forth therein is the “sole,” “exclusive,” or “only” way to revoke the trust or “include[] similar language manifesting the settlor’s intent that the trust may not be revoked or amended by any other method.” § 15-5-602(3)(b).

¶ 21 Because the 2017 Trust doesn’t expressly make the specified method of revocation exclusive, Hunn could have revoked it by “any other method manifesting clear and convincing evidence of the

settlor's intent, which may include a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust."

*Id.* The district court didn't make any factual findings as to Hunn's intent, nor did it determine whether there is clear and convincing evidence that Hunn intended to revoke or amend the 2017 Trust as section 15-5-602(3)(b) allows. Because a settlor's intent "is a question of fact to be determined by competent evidence and not by rules of law," *Omega Tr.*, 281 A.3d at 1286 (quoting *King v.*

*Onthank*, 871 A.2d 14, 16 (N.H. 2005)), we leave the question of Hunn's intent to the district court. *See id.* (concluding that nothing in the language of a trust made its specified method of revocation exclusive, and remanding to the trial court to determine if there was clear and convincing evidence of the settlor's intent to amend a trust); *Bernal*, 196 So. 3d at 437-38 (applying Florida's version of the UTC's revocation provision and reversing and remanding for further proceedings where the lower court made an error similar to that made by the district court in this case).

¶ 22 To sum up, the district court must determine on remand whether Hunn revoked or amended the 2017 Trust to the extent of

the inclusion of the Property by “any other method manifesting clear and convincing evidence of [his] intent” to do so. § 15-5-602(3)(b).<sup>9</sup> If he did not, Beightel’s purported transfer of the Property stands. But if he did, that purported transfer was ineffective because the Property no longer remained part of the 2017 Trust. Nothing that we say in this opinion should be

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<sup>9</sup> According to Liu’s reply brief, the 2017 Trust explicitly reserves to the settlor the right to “amend or revoke the trust . . . in whole *or in part*.” (Emphasis added.) If Hunn intended to withdraw only a portion of the 2017 Trust’s corpus, that would constitute a partial revocation. See Restatement (Third) of Trs. § 63(1) & cmt. e (Am. L. Inst. 2003) (“A power simply to revoke the trust . . . is interpreted as including also the power to revoke the trust in part, thus allowing withdrawal of some rather than all of the property from the trust, if that is all the settlor wishes to do.”); Mary F. Radford, George Gleason Bogert & George Taylor Bogert, *Bogert’s The Law of Trusts and Trustees* § 993 n.1, Westlaw (database updated June 2023) (“A power of revocation reserved to a settlor is a power to destroy the trust and resume ownership of the trust property, whereas a power to amend when exercised leaves the trust in existence but alters the dispositive or administrative provisions.”); *Garrett v. Neece*, 574 S.W.3d 686, 688, 692 (Ark. Ct. App. 2019) (the settlor “manifested her intent to revoke [a trust] in part” under Arkansas’s version of the UTC’s revocation provision by (1) executing a quitclaim deed transferring a tract of land formerly held by the trust and (2) “execut[ing] an amendment” to the trust excepting that same tract from its corpus).

construed as limiting the district court to considering only evidence already received on this issue.<sup>10</sup>

### III. Disposition

¶ 23 The district court's order is reversed, and the case is remanded for further proceedings consistent with this opinion.

JUDGE HARRIS and JUDGE GOMEZ concur.

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<sup>10</sup> Because we remand for the district court to make this determination, we don't address Liu's other contentions of error.