STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0242

In re the Estate of
Adolph J. Wagner, Deceased,

and

In the Matter of:
The Revocable Trust Agreement of Adolph J. Wagner
dated May 17, 1994,
and The Adolph J. Wagner Revocable Trust
dated March 14, 2014.

Filed September 14, 2020
Affirmed
Bratvold, Judge

Douglas County District Court
File No. 21-PR-18-1515

Jonathan D. Wolf, Pamela A. Steckman, Rinke Noonan, St. Cloud, Minnesota (for appellant)

Michael J. Dolan, Thornton, Dolan, Bowen, Klecker & Burkhammer, P.A., Alexandria, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant challenges the district court's denial of her petition for formal probate of her stepfather's 1994 will. Appellant argues that stepfather breached a 1994 contract to

make mutual wills with appellant's mother when, just before mother died in 2014, stepfather unilaterally revoked the 1994 trust they had incorporated into their mutual wills by reference. Appellant alternatively contends that the terms of her mother's will revived the 1994 trust. Because the 1994 trust provided both mother and stepfather the unilateral right to revoke and amend the trust agreement "without the consent or participation of any other person," we conclude that stepfather did not breach the 1994 contract. We also conclude that appellant's other arguments lack merit. Thus, we affirm.

FACTS

Adolph Wagner and Janet Wagner married in March 1991. Both had children from previous marriages and both owned premarital assets. Adolph's premarital property included farmland and a residence. Janet's premarital assets included funds from the sale of a residence and retirement accounts. In May 1994, the couple executed four documents: an agreement to execute mutual wills (1994 contract), two wills (individually, 1994 will, or collectively, 1994 wills), and a revocable trust agreement (1994 trust). The 1994 contract incorporated the 1994 wills by reference, and the 1994 wills, in turn, incorporated the 1994 trust by reference. As summarized by the district court, the 1994 wills contained mutual promises to divide their estate residue and distribute one half to Adolph's children and one half to Janet's children.

In 1996 and 2012, Adolph and Janet deeded real property into the 1994 trust. The 1994 trust provided, using language much like the 1994 wills, for equal distribution of the "family share" among all of their children.

Janet fell ill. Ten days before she died, Adolph executed a document, "Revocation of Trust," dated January 17, 2014. About two months later, Adolph executed a second will (2014 will) that revoked his 1994 will. Adolph also executed a deed and transferred the real property held in the 1994 trust to himself. Adolph made "additional changes," apparently to deed his real property into the 2014 trust (2014 trust). We do not have the 2014 trust in the record, but the district court described Adolph's 2014 estate plan as including "only one of Janet's children."

Adolph passed away in July 2018. About one month later, appellant Deborah Farm, Janet's daughter, petitioned the district court for formal probate of Adolph's 1994 will. Respondents Laura Kluver and Mark Wagner, Adolph's children, objected to Farm's petition, asserting that Adolph had revoked the 1994 will. The parties stipulated to relevant facts and submitted their arguments to the district court. For example, the parties stipulated that Janet "did not consent to [Adolph's] purported Revocation of the 1994 Trust." The district court ordered additional submissions, including written final arguments and proposed factual findings. The district court also received 11 exhibits.

In January 2020, the district court issued written findings of fact, conclusions of law, and an order for judgment, denying Farm's petition. The district court found the facts summarized above. And the district court found that, in entering into the 1994 contract, Adolph and Janet "intended that all of their respective children be included as beneficiaries, receiving equal shares, regardless of which of them would predecease the other." The district court also determined that Farm had standing as an intended beneficiary under Adolph's 1994 will.

The district court then determined that the 1994 contract, wills, and trust were not ambiguous and that the 1994 trust provided that it was unilaterally revocable by either spouse before the other spouse died. From this, the district court concluded that Adolph did not breach the 1994 contract when, in 2014, he validly revoked the 1994 trust and his 1994 will. Thus, the district court determined that Adolph's 1994 will was not admissible to probate and that the court had "no authority to take any action" on Janet Wagner's estate.

This appeal follows.

D E C I S I O N

I. The district court did not err by denying Farm's petition.

"An appellate court reviews a district court's findings of fact concerning wills and trusts under a clearly erroneous standard and reviews a district court's conclusions of law de novo." *In re Estate of Short*, 933 N.W.2d 533, 537 (Minn. App. 2019); *see also* Minn. R. Civ. P. 52.01 (limiting review of factual findings to clear error). The interpretation of a will or trust agreement involves questions of law, like the interpretation of a contract, and therefore receives de novo review. *Concordia Coll. Corp. of Moorhead, Minn. v. Salvation Army, Verona, N.J.*, 470 N.W.2d 542, 546 (Minn. App. 1991) (de novo review of interpretation of will and contract to will), *review denied* (Minn. Aug. 2, 1991); *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012) (de novo review of interpretation of contract).

Farm makes two alternative arguments: first, that Adolph breached the 1994 contract when he revoked the 1994 trust in 2014, and, second, that even if Adolph validly

revoked the 1994 trust, Janet's 1994 will revived the 1994 trust. We address each argument in turn.

A. Breach of the 1994 contract

Farm argues that Adolph breached the 1994 contract because he "renounced" Janet's 1994 will by unilaterally revoking the 1994 trust and executing the 2014 will and 2014 trust. According to Farm, "renouncing the Trust is renouncing the Will." Farm asserts that "[n]o contract is unilaterally revocable." Farm also maintains that the 1994 contract evidences that Janet and Adolph "intended that their children be included as beneficiaries in one another's respective estate plans" and urges that "those intentions should be enforced."

Respondents counter that the language of the 1994 trust unambiguously granted Janet and Adolph the right to unilaterally revoke or amend the trust without the other's consent. Respondents assert that "since the agreement of the parties included the unilateral right to revoke, the contract to devise could not be irrevocable" and that Adolph validly exercised his right to revoke the 1994 trust in 2014.

Under Minnesota law, "[p]arties can contract to make wills" and such testamentary contracts are enforceable "if there is sufficient consideration." *Concordia Coll.*, 470 N.W.2d at 546. A contract to "make a will" or "not to revoke a will" may be shown by "a writing signed by the decedent." Minn. Stat. § 524.2-514 (2018).[1] Such a contract

[1] By statute, testamentary contracts may be shown in one of three ways: (1) a will that states "material provisions of the contract," (2) "an express reference in a will to a contract and extrinsic evidence proving the terms of the contract," or (3) through "a writing signed by the decedent evidencing the contract." Minn. Stat. § 524.2-514.

must be established by "clear and convincing evidence." *Olesen v. Manty*, 438 N.W.2d 404, 407 (Minn. App. 1989) (stating that petitioners must prove existence of a contract to will by "clear, positive, and convincing evidence").

Here, the district court determined that Farm offered sufficient proof to establish the existence of the 1994 contract by "clear and convincing evidence." The district court also determined that the 1994 contract "was satisfied when the parties executed Wills (and a Trust) in 1994." On appeal, Farm does not dispute that the 1994 wills and the 1994 trust satisfied the 1994 contract; she disputes, however, whether Adolph had the right to unilaterally revoke the 1994 trust incorporated into the 1994 wills. Farm claims that doing so breached the 1994 contract.

Generally, Minnesota law provides that a settlor may unilaterally revoke a trust when the express terms so provide, even if the trust was created by more than one settlor. *See* Minn. Stat. § 501C.0602(a)-(b) (2018); *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 917 (Minn. App. 2008) (stating settlor may revoke trust when express terms reserve the right to revoke), *review denied* (Minn. Jan. 20, 2009). But we agree with Farm that it is not enough to examine the terms of the 1994 trust in isolation. Because the parties executed the 1994 trust along with the 1994 contract and the 1994 wills, we consider the terms of all four instruments. *See Concordia Coll.*, 470 N.W.2d at 547 (providing wills and a contract to will "must be read as a whole"). In interpreting each instrument, we give the language "its plain and ordinary meaning." *Id.*

We begin with the 1994 contract, which includes an "explanatory statement" that describes its purpose, as follows: (1) for Adolph "to agree to make a will" and "to agree to the wife's will wherein her estate will be left to their children"; and (2) for Janet "to agree to the provisions of her husband's Will." The 1994 contract also explains, "It is the desire [of the parties] to execute Wills, satisfactory to both. It is [our] further intention that, in the event the wife predeceases her husband, her estate will be held in trust for the benefit of their children."

By executing the 1994 contract, Adolph and Janet made three central promises relevant to this appeal:

> 1. [Adolph] agrees to make a Will providing for his assets to go to [the 1994] trust.
>
> . . .
>
> 3. [Janet] agrees to make a Will leaving her estate to [the 1994] trust.
>
> . . .
>
> 5. Both parties agree not to renounce the other's Will and expressly waive all dower, legal and other interest in the other's estate.

The 1994 contract also incorporates the 1994 wills by reference.

The 1994 wills include mutual promises to devise all personal property to the surviving spouse, and upon the surviving spouse's death, to their children "in equal

shares."[2] The 1994 wills also mutually promise to give the estate residue to the 1994 trust, which is incorporated by reference.[3]

The 1994 trust has three key provisions at issue on appeal. First, the 1994 trust provides that Janet and Adolph, as settlors and trustees, have certain enumerated rights "to be exercised (except as otherwise specified) without the consent or participation of any other person." One enumerated right is "[t]o amend, in whole or in part, or to *revoke this agreement* by a written instrument executed by either of us." (Emphasis added.)

Second, the 1994 trust provides that, after the death of either spouse, the "trust assets, including all property that becomes distributable to the trustees at death, not effectively disposed of under [] this agreement, shall be allocated between the Marital and Family Shares." The trust also provides that "[t]he Marital Share shall consist of 50% of the assets selected by the trustees."

Third, the 1994 trust specifies that the remaining 50% of the trust assets "shall constitute the Family Share." The trust states, "[i]f either [Janet or Adolph] survives, the Family Share shall be *irrevocable*." (Emphasis added.) The trust directs the family share be distributed accordingly—"10% to the children of the deceased settlor"; the "income to

[2] For example, article two of Adolph's 1994 will, entitled "Special Gifts," devises all "tangible personal property" to Janet or, if Janet predeceased Adolph, then to Adolph's children and Janet's children "in equal shares."

[3] For example, article three of Adolph's 1994 will states that his estate residue goes to the 1994 trust, which is incorporated by reference, and directs that the residue be "disposed of as a part of the remaining assets of that trust." Article three also provides that 50% of any residue not effectively disposed will be given to Adolph's children in equal shares and 50% is given to Janet's children in equal shares.

the surviving spouse"; and, among other things, that "all the remaining trust assets" of the family share be distributed "equally to the children of the first deceased settlor, per stirpes."

The central dispute on appeal is whether Adolph had the right to unilaterally revoke the 1994 trust before Janet's death absent her consent. The district court first determined that the 1994 documents were not ambiguous. No party contends otherwise on appeal and we agree. The district court next determined that "[t]he unambiguous language of the [1994 trust] specifically provides for revocation by either [Adolph] or [Janet], without consent, approval or knowledge of the revocation by either of them." We agree with the district court's interpretation of the plain language of the 1994 trust. In fact, the 1994 trust bears the title, "*Revocable* Trust Agreement." (Emphasis added.) But most importantly, the 1994 trust grants both Janet and Adolph the right to revoke the trust "without the consent or participation of any other person." While the 1994 trust also provides that the family share becomes irrevocable *after the death* of one spouse, this does not affect Adolph's 2014 revocation because Janet was alive when he executed the written revocation. Thus, under the 2014 trust, Adolph had the unilateral right to revoke the trust before Janet died.

Neither the 1994 contract nor the 1994 wills disturb Adolph's right to unilaterally revoke the 1994 trust before Janet's death. The 1994 contract does not mention revocability of the 1994 wills or the 1994 trust. And the 1994 wills do not state that either instrument is irrevocable. In this respect, the grounds for Farm's petition are distinguishable from those considered by this court in *Concordia College* because, there, the decedents executed a promise that "neither party will revoke or change the Will." 470 N.W.2d at 547; *see also*

Olesen, 438 N.W.2d at 408 (assuming contract to will existed and determining appellant failed to prove wills were irrevocable because "[n]o express mention of an intent not to revoke is contained in any of appellant's documents"). Janet and Adolph made no mutual promise not to revoke the 1994 wills or the 1994 trust.

We are not persuaded by Farm's argument that the 1994 contract to will is "irrevocable" under *Jannetta v. Jannetta*, 285 N.W. 619, 622 (Minn. 1939). First, while Farm's brief accurately quotes from *Jannetta*, the revocability of the 1994 contract is not at issue. Farm's petition rests on her claims that *the 1994 trust* was irrevocable. But the 1994 trust was unilaterally revocable by Adolph before Janet died for the reasons already discussed.[4]

Second, if Farm is claiming that *Jannetta* means the 1994 wills executed in compliance with the 1994 contract were therefore irrevocable, we disagree. Minnesota Statute authorizing contracts to will specifically provide that "[t]he execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills." Minn. Stat. § 524.2-514; *see also Olesen*, 438 N.W.2d at 408 (to prove a contract not to revoke a will, petitioner must satisfy statute). Indeed, Minnesota law provides that a will

[4] Farm also maintains that "[t]he district court should be reversed on its finding that the contract to will and the Wills and Trust incorporated into it had to specifically say that it was irrevocable for it to be binding." We reject Farm's argument, which appears to be that the district court failed to enforce the 1994 contract. The district court determined that Farm had to prove by clear and convincing evidence that the 1994 contract provided that the 1994 wills "would not be revoked." This ruling is supported by the record and Minn. Stat. § 524.2-514. And the district court found that Farm did not meet this burden. We disagree with the notion that the district court, therefore, held the 1994 contract was not binding or unenforceable. Rather, the district court determined that the 1994 contract did not provide that the 1994 wills and the 1994 trust were irrevocable "while both settlors are alive."

may be revoked by adopting a new will that expressly revokes the previous will. Minn. Stat. § 524.2-507(a)(1) (2018) (stating that a will is revoked "by executing a subsequent will that revokes the previous will").

Still, Farm insists we must view Adolph's right to revoke the 1994 trust in tandem with Janet's and Adolph's promise "not to renounce the other's Will," as stated in the 1994 contract. Farm contends that Adolph's unilateral revocation of the 1994 trust is equivalent to "renouncing" Janet's 1994 will because, by revoking the 1994 trust, Adolph circumvented the provisions in Janet's 1994 will that provided the residue of her estate would pour over to the 1994 trust.

We question Farm's interpretation of the term "renounce," as used in the 1994 contract. Because the term is not defined in the 1994 contract, we consider whether it has a specialized meaning, and also consider its common meaning by reference to a dictionary. *301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 565 (Minn. App. 2010) (stating that "we may afford certain trade or special words their trade or special meaning" in limited circumstances but we otherwise apply the "plain and ordinary meaning of a contract word or phrase" (quotation omitted)). Courts have held that a spouse has a right to renounce the will of a predeceasing spouse and choose an elective share under the statute. *See, e.g.*, *In re Taylor's Estate*, 7 N.W.2d 320, 321-22 (Minn. 1942) ("The law presumes that the testator made his will with knowledge of the widow's right to renounce."); *In re Estate of Kueber*, 390 N.W.2d 22, 24-25 (Minn. App. 1986) (affirming judgment granting estranged spouse's petition to renounce will and elect statutory share); *see also* Minn. Stat. § 524.2-202(a) (2018) ("The surviving spouse of a decedent who dies

domiciled in this state has a right of election" as provided by statute). Adolph did not renounce Janet's will under this specialized meaning of the word.

But even if we apply a more generalized meaning of "renounce," Farm's argument remains unpersuasive. By definition, renounce means to "give up," "abandon formally," "disclaim," or to "decline to recognize or observe" something. *Black's Law Dictionary* 1551 (11th ed. 2019). Adolph did not give up, formally abandon, disclaim, or decline to recognize Janet's will. He availed himself of a right provided for in the 1994 trust agreement, which was incorporated into Janet's 1994 will. Thus, Adolph did not "renounce" Janet's 1994 will.

Farm also contends that the district court made a clearly erroneous finding by stating that Janet *may* have consented to the revocation, and that this finding conflicts with the stipulated facts in the record. The district court stated:

> [Adolph's] revocation of the Revocable Trust may have been sneaky and underhanded, flying in the face of Janet Wagner's wishes, or, it may have been exactly what Janet Wagner wished to happe[n] based on her conversations with [Adolph] during her last days. [Adolph's] motivations are lost with his passing, just as Janet Wagner's wishes died with her. However, their motivations do not matter.

Farm mischaracterizes the district court's point. The district court did not reject the parties' stipulation that Janet did not consent to revoke the 1994 trust. Rather, the district court recognized that the 1994 trust reserved to both parties the unilateral right to revoke before the other's death—therefore, it is irrelevant whether Adolph's revocation was "sneaky and underhanded" or done relying on conversations with Janet "during her last days." In other words, because Janet's consent to revoke was not required by the 1994 trust, it is irrelevant

whether she in fact consented to the revocation. We agree with the district court that, whatever his reasons for doing so, Adolph validly revoked the 1994 trust in 2014 and thus did not breach the 1994 contract.[5]

B. Revival of the 1994 trust

Farm argues that the district court failed to recognize that a provision of Janet's 1994 will revived the 1994 trust by "operation of law" at the time of her death. Thus, Farm asserts that when Adolph deeded property out of the 1994 trust to himself in 2014, and later to the 2014 trust, Adolph breached his fiduciary duty owed to the 1994 trust beneficiaries. Respondents contend that because this case arises from a petition to probate Adolph's 1994 will, issues concerning the distribution of assets under Janet's 1994 will were not properly before the district court. The district court agreed by concluding, "This Court has no authority to take any action in regard to the Estate of Janet Wagner in this proceeding." On appeal, Farm responds by clarifying that her arguments are "not about probating [Janet]'s estate, or about any power [Janet] had." Farm maintains that her argument is about the power of the district court, and this court, to "hold [Adolph] to the promises [he] made."

[5] Farm also asserts that when Adolph created the 2014 trust "he made it for an unlawful purpose contrary to public policy," *see* Minn. Stat. § 501C.0404 (2018), and claims that unlawful purpose was "to circumvent the irrevocability of the Family Share of the 1994 trust, and to attempt to breach the [1994 contract]." But she cites no legal authority to support her position. We will not consider an argument submitted without legal authority. *See, e.g.*, *In re Estate of Grote*, 766 N.W.2d 82, 88 (Minn. App. 2009) ("This court declines to address allegations unsupported by legal analysis or citation."); Minn. R. Civ. App. P. 128.02, subd. 1(d) (providing that appellant's brief "shall include" arguments on each issue consisting of "analyses," and "citations to the authorities").

Given our determination that Adolph did not breach the 1994 contract when he validly revoked the 1994 trust, Farm's argument on the revival of the 1994 trust cannot prevail. We begin by considering the specific terms of Janet's 1994 will that Farm contends revive the 1994 trust.

Janet's 1994 will provides, "If [the 1994 trust] is not in existence at my death, or if said gift to the trustees is ineffective" then Adolph will be appointed as trustee and any gifts "not effectively disposed of" by her will be distributed in accordance with the provisions of the 1994 trust "as if said trust agreement were set forth in full in this will." We disagree that this provision revives the 1994 trust, for three reasons. First, this passage from Janet's 1994 will (which mirrors Adolph's 1994 will) implicitly acknowledges that the 1994 trust is revocable before the death of either spouse because it recognizes that the 1994 trust may not be "in existence at my death."

Second, nowhere in this passage does it state that the 1994 trust is "revived." Rather, it states that the residue of Janet's estate will be distributed as directed by the 1994 trust "as if" the 1994 trust "were set forth in full in this will." If Farm seeks to enforce this provision of Janet's will as a new testamentary trust, then the district court was correct—it lacked the authority to "take any action" on Janet's estate. This action relates only to Adolph's estate.

Third, even if we assume that the 1994 trust somehow revived upon Janet's death through this provision, we reject Farm's argument that Adolph breached his fiduciary duty to the 1994 trust beneficiaries by deeding the real property held by the 1994 trust to himself and later to the 2014 trust. We agree with the district court's reasoning that the 1994 trust

"contains no provision prohibiting either settlor [] from amending the trust with regard to that portion of the trust property attributed to his or her contribution." In fact, the 1994 trust provides that Adolph and Janet had the right to unilaterally "amend, in whole or in part," the terms of the trust. Thus, Adolph exercised his right to amend the 1994 trust by deeding real property out of the 1994 trust after its valid revocation.[6]

In sum, the district court appropriately found that Adolph's revocation of the 1994 trust was "not fair [because] only one of [Janet]'s children was included in the later estate plan of [Adolph]." Yet, as the district court explained, Minnesota law recognizes that "[p]eople are free to dispose of their property, both real and personal, as they desire, regardless of the wishes of family (to whom the property does not belong)." We conclude that Adolph validly revoked the 1994 trust in 2014 and did not breach the 1994 contract in doing so. We see no basis on which Farm can sustain her claim and the district court properly denied her petition.

Affirmed.

[6] Farm contends that "the trial court had no authority to issue an order giving the trustee power which the trustee would not otherwise have," citing *Govern v. Hall*, 430 N.W.2d 874, 878 (Minn. App. 1988), *review denied* (Minn. Jan. 9, 1989). While this is an accurate quote from *Govern*, Farm's point is not well taken because the trust agreement in *Govern* specifically directed the trustee to give the disputed property to the trust beneficiaries upon termination of the trust. *Id*. at 878. We have no similar direction in the 1994 trust.