

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 6, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2004AP2896**

**Cir. Ct. No. 1998PR16**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE MATTER OF THE STADLER TRUST:  
MARY M. KRAUSE, TRUSTEE,**

**PETITIONERS-RESPONDENTS,**

**V.**

**RICHARD C. HERBST,**

**OBJECTOR-APPELLANT,**

**GERALD E. HERBST, YVONNE HEID AND LEON HERBST,**

**INTERESTED PERSONS.**

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APPEAL from an order of the circuit court for Outagamie County:  
JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Richard Herbst, pro se, appeals an order construing a 1996 document as the Stadler Trust, thereby excluding Richard as a beneficiary. Because the circuit court properly concluded that Richard is excluded as a beneficiary under any interpretation of the subject documents, we need not address his numerous claims and we affirm the order.

### BACKGROUND

¶2 In October 1990, Margaret Herbst conveyed a home by warranty deed to her daughter, Mary Krause. In March 1991, Krause laid out the substance for a trust entitled “Stadler Trust.” The document provided, in relevant part: “Mary M. Krause hereby agrees to form an Inter Vivos Trust naming me, Margaret Herbst, as the Trust’s sole beneficiary for a period of time beginning no later than May 15, 1991 and ending no earlier than one month after decedent date.” The document also identified five third-party beneficiaries: Gerald Herbst, Richard Herbst, Yvonne Heid, Mary Krause and Leon Herbst.

¶3 In September 1991, Krause conveyed to the Stadler Trust the same house that Margaret had conveyed to Krause one year earlier. In 1993, Margaret moved into the trust house and in December 1995, she suffered a stroke. Around that time, Margaret decided to exclude Richard from her estate and omit him as a beneficiary of the trust. Margaret consequently conferred with attorney James Snyder, and counsel concluded that further documentation was necessary to effectuate Margaret’s intentions. In February 1996, Snyder prepared Margaret’s Last Will and Testament and also created a formal trust document consistent with the terms of the 1991 “Stadler Trust” document. Margaret immediately resigned as trustee, making Krause the successor trustee. Snyder also simultaneously

prepared an amendment to the Stadler Trust, eliminating Richard as a beneficiary to reflect Margaret's wishes.

¶4 In 1998, Margaret and Krause conferred with a second attorney, Richard Stiles, who opined that the 1991 document was actually a trust document that could not be amended. Stiles consequently advised Krause to petition the circuit court to appoint her as successor trustee. Following a hearing, the court appointed Krause as trustee and ordered, in relevant part:

At the time that Margaret Herbst is no longer residing in [the trust residence], the residence shall be sold and a special Trustee shall be appointed by this Court to determine how the proceeds from the sale will be invested, accounted for and used for the benefit of Margaret Herbst.

¶5 Margaret was transferred from the trust residence to a nursing home in July 2000 and she died in November 2002. Krause ultimately sold the trust residence to a third party in May 2003. She then sought to terminate the trust and distribute the proceeds among the four named beneficiaries. Richard consequently filed a "Petition for Compliance," asserting he was a beneficiary of the trust and seeking sanctions against both Krause and trust counsel Stiles for failing to comply with the court's 1998 order. Specifically, Richard claimed the trust home should have been sold rather than rented out at the time Margaret entered the nursing home.

¶6 Krause subsequently petitioned the court to construe the 1996 document and contemporaneous amendment as the controlling "Stadler Trust," thus excluding Richard as an interested person and beneficiary of the trust. The circuit court granted the petition. With respect to Richard's motion for sanctions, the court determined that the purpose of the 1998 order was to provide for Margaret's welfare. The court acknowledged that although the trust home should

have been sold when it was clear Margaret was not going to return there, the purpose of the order was nevertheless achieved. Specifically, the court concluded that Margaret obtained more benefit from the rental proceeds than she would have had from the interest on the investment of any proceeds from the sale of the house. This appeal follows.

### DISCUSSION

¶7 Richard raises the following claims: (1) the trustee lacked the authority to alter the terms of an irrevocable trust; (2) the court misused its discretion by overruling related trust court orders of another court; (3) the court exceeded its authority by ordering that trust court costs and attorney fees be paid from trust funds; and (4) the court erred by failing to impose sanctions against trust counsel. These arguments, however, are based on a faulty premise – namely, that the 1991 document created an irrevocable trust.

¶8 As Krause notes, the appropriate issue before this court is whether the circuit court erred by concluding that the 1996 document constitutes the formal trust document controlling these proceedings. The construction of a testamentary document presents a question of law that we review independently. *Furmanski v. Furmanski*, 196 Wis. 2d 210, 214, 538 N.W.2d 566 (Ct. App. 1995). The same principles of construction, which are applicable to wills and testamentary trusts, also apply to *inter vivos* trusts. *Id.* Our obligation is to discern and uphold the settlor's intent. *Weinberger v. Bowen*, 2000 WI App 264, ¶12, 240 Wis. 2d 55, 622 N.W.2d 471. We determine the intent from the language of the document itself, considered in light of the circumstances surrounding the settlor at the time the document was executed.

¶9 Here, the circuit court properly concluded that the 1991 document was not an irrevocable trust but, rather, an agreement to form a trust. Although the 1991 document bore the heading “Stadler Trust,” that label is not determinative. “[T]he court must look to the essential nature of the agreement to determine its effect.” *C.R. Stocks, Inc. v. Blakely’s Matterhorn, Inc.*, 90 Wis. 2d 118, 121, 279 N.W.2d 499 (Ct. App. 1979). The 1991 document repeatedly indicates that Krause and Margaret “agree” to form a trust. However, even were we to construe the 1991 document as an actual trust, it was ambiguous as to whether it could be modified and the only evidence as to intent established that Margaret did not intend for it to be irrevocable. In fact, Margaret modified the 1991 document by striking Richard as a named beneficiary.

¶10 The circuit court properly concluded that the 1996 document constituted the “Stadler Trust.” The trust permitted amendment of its terms “at any time.” The 1996 amendment to the Stadler Trust eliminated Richard as a beneficiary to reflect Margaret’s wishes. Under either scenario, Richard is not a beneficiary. Therefore, the circuit court properly concluded that Richard lacked standing to raise his claims and this court, likewise, need not address his numerous issues.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

