

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 1, 1995

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

NOTICE

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

No. 94-3313-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**In the Matter of the Estate of
Terrance M. Knickman, Deceased:**

ESTATE OF TERRANCE M. KNICKMAN,

Appellant,

v.

CECILIA HINOJOSA,

Respondent.

APPEAL from an order of the circuit court for Milwaukee County:
DAVID V. JENNINGS, JR., Reserve Judge. *Reversed and cause remanded to the trial court with directions.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. The Estate of Terrance M. Knickman appeals from a trial court order denying a motion to vacate an order approving a stipulation between the Estate and Ceasar Hinojosa, one of the beneficiaries of the Estate,

that modified the distribution of Estate assets. On appeal, the Estate contends that the trial court should have vacated its order because Hinojosa died before the order was signed, and he could therefore not be a beneficiary of the Estate under the express terms of the will. Pursuant to this court's order dated February 1, 1995, this case was submitted to the court on the expedited appeals calendar. We conclude that the trial court erred when it declined to vacate its earlier order. We therefore reverse.

The facts are undisputed. Knickman died on September 8, 1993. Shortly thereafter, his Last Will and Testament was admitted to probate. Under the terms of the will, the residue of the Estate was to be distributed to a testamentary trust of ten-years' duration. The trust was to distribute \$1000 per month to Hinojosa until his death or until the trust terminated. The will specifically provided that "neither the estate of Ceasar Hinojosa nor any other person, be they an heir or representative or creditor of Ceasar Hinojosa shall have any interest in this trust." When the trust terminated after ten years, the remainder was to be distributed to any surviving beneficiaries named by Knickman in his will.

In April 1994, Hinojosa and the Estate entered into a stipulation whereby the trust would not be funded, Hinojosa would receive a lump-sum payment of \$32,500 from the Estate, and any residue would be distributed to the residuary beneficiaries of the trust. As reasons for the modification, the parties noted in the stipulation that Knickman had established the trust "to provide for the welfare of Ceasar Hinojosa until either his death or the expiration of ten years." The stipulation further noted that Hinojosa and two of the residuary beneficiaries, Knickman's parents, were in ill health. Consequently, all had agreed to distribution of Estate assets in accord with the agreement.

On May 4, 1994, the parties submitted the stipulation to the trial court for its approval. Due to illness, the trial judge was unavailable to approve the stipulation immediately upon its submission. On May 15, 1994, Hinojosa died. On May 16, 1994, the trial court signed the order approving distribution of Estate assets pursuant to the stipulation. On the same day, the Estate sent a check for \$32,500 payable to Hinojosa. The Estate subsequently learned of Hinojosa's death, and that Hinojosa's family intended that the money from the Knickman estate pass through Hinojosa's estate to his heirs.

The Estate then moved the trial court to vacate its order approving the stipulation. It contended that because Hinojosa died prior to court approval of the stipulation, the original terms of Knickman's will were in place at the time of his death, and that under those terms, Hinojosa's estate was entitled to no distribution from the trust. Knickman's Estate also argued that permitting Hinojosa's estate to receive the money would be contrary to Knickman's expressed wishes as the testator and the settlor of the trust. The Estate argued that distribution to the Hinojosa estate would defeat the main purpose of the Trust, which was to provide income to Hinojosa during his life, without conferring any benefit on Hinojosa's estate and heirs after his death.

The trial court declined to vacate its order. It reasoned that the terms of the Knickman trust could be "varied by stipulation of the parties alone, without formal entry of a court order." The trial court reasoned that the effective date of the stipulation was the date the parties entered into it, and that court approval of the stipulation was a mere formality. The trial court concluded that because the Estate and Hinojosa had reached an agreement departing from the will's provisions prior to entry of the court order, Hinojosa's death prior to entry of the order was without legal significance. We disagree.

Because there is no factual dispute involved in this appeal, the only question -- whether the trial court should have vacated the May 16, 1994 order in light of Hinojosa's death on May 15, 1994 -- is one of law. *Cf. First Nat'l Leasing Corp. v. Madison*, 81 Wis.2d 205, 208, 260 N.W.2d 251, 253 (1977). A trial court's legal conclusions are subject to *de novo* review. *Id.*

It is well-settled that trusts must be administered in the manner established by the settlor, and may not be modified simply by the agreement of interested parties. *Mathiowetz v. Stack*, 217 Wis. 94, 99, 258 N.W. 324, 326 (1935). Where modification of a trust is necessary to effect the main purpose of the trust, courts may undertake such a modification. *Mowrey v. Webster*, 248 Wis. 203, 209, 21 N.W.2d 391, 393 (1946).

The modification of Knickman's trust proposed by the Estate and Hinojosa in their stipulation appears to have been fashioned as an attempt to effect the purpose of the trust. Specifically, the stipulation noted that Knickman established the trust to provide Hinojosa with income until his death, or until

the trust terminated after ten years. Due to the ill health of Hinojosa and Knickman's parents, the parties agreed to alter the distribution of the trust in an effort to ensure that Hinojosa and the parents would receive the benefits of the trust. Once Hinojosa died, however, there was no reason to modify the trust to effect its purpose to provide for Hinojosa.

The respondent, Cecilia Hinojosa, contends that the stipulation conforms with the requirements of § 807.05, STATS., for enforcement of stipulations between the parties, and is "therefore binding and determinative of the rights of the parties." We disagree.

Even assuming that Ms. Hinojosa is correct in arguing that the stipulation was undertaken to effect the purpose of the trust, once Ceasar Hinojosa died, the reason for modification of the terms of the trust fell away. It was Knickman's intention to provide for Ceasar Hinojosa during Hinojosa's life, but to terminate that support upon Hinojosa's death. When the trial court became aware of Hinojosa's death, it should have vacated its order modifying distribution of estate assets. No modification of the trust had been approved by the trial court at the time of Hinojosa's death, so the terms of Knickman's will controlled at that time. The language of the will expressly provided that the purpose of the trust was to provide for Hinojosa, but that Hinojosa's estate, heirs, or representatives would have no interest in the trust. It is clear that by modifying the trust after Hinojosa's death, the trial court ignored Knickman's intentions and the purpose of the trust.

By the Court.--Order reversed and cause remanded to the trial court with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.