



Appellant-plaintiff Jeannie Hall appeals the trial court's determination that she is not entitled to the income from all of the properties in The Larry A. Hall Trust (the Trust). Specifically, Jeannie argues that the trial court erred by admitting the testimony of Attorney Ronald Nelson, who prepared the Trust, to clarify its terms. Additionally, Jeannie contends that the trial court erred by precluding her testimony pursuant to the Dead Man's Statute.<sup>1</sup> Finding no reversible error, we affirm.

### FACTS

On December 22, 1999, Larry Hall executed the Trust, which provided that upon his death, his brother, Jack Hall, would become the trustee. In Section One of the Trust, Larry assigned, transferred, and conveyed to the trustee the properties that were listed and described in Exhibit A, which was attached to the Trust. Among the properties listed in Exhibit A are a farm in Wheatfield, a farm in Valparaiso, a rental house in Valparaiso, a mobile home in Michigan, a warehouse in Valparaiso, a Hilda Hall Land Trust, and a residence in Valparaiso (the Residence). Section Four of the Trust provided that after Larry's expenses had been paid, the income and principal from the properties was to be distributed to Jack.

On April 27, 2004, Larry amended Section Four of the Trust (2004 Amendment). The 2004 Amendment provided that the Residence, including all personal property inside it, and the balance owed on a land contract with Steve Qualizza (the Land Contract) was to be distributed to Jeannie.

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<sup>1</sup> Ind. Code § 34-45-2-4.

On June 12, 2006, Larry and Jeannie entered into an antenuptial agreement, which provided that if Larry died, Jeannie would be entitled to \$200,000 and the proceeds from an insurance policy “should said policy be in effect at the time of Larry’s death.” Ex. 6 at 3. Larry and Jeannie were married on June 15, 2006.

On December 6, 2007, Larry executed a second amendment to the Trust (2007 Amendment), which again amended Section Four. The 2007 Amendment provided that the Residence and the Land Contract were to be held in the Trust for Jeannie’s benefit “if she be living at the time of my death and so long as she may live or is not married.” Ex. C. at 2. The 2007 Amendment also stated that “the income from the properties herein shall be distributed to her at least quarterly. Should there be a need for additional income for her support[,] comfort, and general welfare, the Trustee may invade the principal and distribute moneys to her.” Id.

Larry died on March 16, 2008, and following his death, Jeannie received \$201,000 of insurance monies. On June 4, 2008, Jeannie filed a Petition for Removal of Trustee and Enforcement of Trust, maintaining that she was entitled to the income from all of the property in the Trust.<sup>2</sup>

At the April 27, 2009, hearing, the Trust moved for admission of the deposition of Attorney Ronald Nelson, who drafted the Trust and both Amendments, to which Jeannie objected. The trial court took the admission of the deposition under advisement. Additionally, pursuant to the Dead Man’s Statute, the trial court precluded Jeannie from

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<sup>2</sup> Jeannie’s Petition for Removal of Trustee and Enforcement of Trust is not included in the record; however, we infer from the transcript what the petition alleged.

testifying about conversations between her and Larry.

On October 15, 2009, the trial court entered its findings of fact and conclusions of law. The trial court determined that “in Paragraph 1A of the [2007] Amendment ‘that the income from the properties herein shall be distributed to her at least quarterly’ is not clear and is ambiguous,” and, therefore, the trial court looked “to the extrinsic evidence of the testimony of Ronald Nelson.” Appellant’s App. p. 5-6 (quoting Ex. C at 2). The trial court concluded that Jeannie “is not entitled to all of the income from the Trust corpus, but only that from the balance owed on the [Land Contract] . . . as long as she may live or is not married.” Id. at 7. Jeannie now appeals.

## DISCUSSION AND DECISION

### I. Nelson’s Deposition

Jeannie argues that the trial court erred by relying on Nelson’s deposition to interpret the 2007 Amendment and that, consequently, the trial court improperly interpreted the Trust. The interpretation of a trust is a question of law, which we review de novo, giving no deference to the trial court’s interpretation. Univ. of S. Ind. Found. v. Baker, 843 N.E.2d 528, 531 (Ind. 2006).

In construing a trust, our primary purpose is to ascertain and give effect to the settlor’s intention. Id. at 532. Additionally, “Indiana follows ‘the four corners rule’ that ‘extrinsic evidence is not admissible to add to, vary or explain the terms of a written instrument if the terms of the instrument are susceptible of a clear and unambiguous construction.’” Id. (quoting Hauck v. Second Nat’l Bank of Richmond, 153 Ind. App.

245, 260, 286 N.E.2d 852, 861 (1972)). “[L]anguage is ambiguous only if reasonable people could come to different conclusions about its meaning” but a trust is not ambiguous merely because the parties disagree as to the interpretation of the trust. Kelly v. Estate of Johnson, 788 N.E.2d 933, 935 (Ind. Ct. App. 2003).

The 2007 Amendment amended Section Four and provided, in part, that:

Once the expenses above stated have been paid, the Trust property, including principal and income shall be distributed as follows, to wit:

A. The house at 93 S. Smoke Road, Valparaiso, Indiana 46383 including the south twenty (20) acres of the sixty (60) acres the house is currently on along with the personal property in the house and the balance owed on a contract with Steve Qualizza for the purchase of 4008 Murvihill Road, Valparaiso, Indiana 46383, shall be held in this Trust for the benefit of MEVEL JEANNIE GUPTON . . . if she be living at the time of my death and so long as she may live or is not married.

That the income from the properties herein shall be distributed to her at least quarterly. Should there be a need for additional income for her support[,] comfort, and general welfare, the Trustee may invade the principal and distribute moneys to her.

Ex. C at 1-2 (emphases added).

Jeannie maintains that the 2007 Amendment is clear and unambiguous and, therefore, the trial court erred when it used extrinsic evidence to interpret it. Jeannie “contends that the language, ‘the Trust property, including principal and income . . .’ includes the whole of the Trust property” and that “she is entitled to [the] same so long as she lives and so long as she does not remarry.” Appellant’s Br. p. 6.

The Trust counters that the language in the 2007 Amendment is ambiguous and is susceptible to Jeannie’s interpretation or its interpretation that the language, “the

properties herein” refers only to the properties listed in Paragraph A. The Trust points out that “[i]f Jeannie was to receive income from all the properties, then they would all be listed.” Id.

As stated above, Paragraph A of the 2007 Amendment specifically describes the Trust property that was to be for Jeannie’s benefit “so long as she may live or is not married.” Ex. C. at 2. Consequently, to give effect to Paragraph A, the 2007 Amendment must be construed such that Jeannie is entitled to only the income from the properties described in Paragraph A, namely, the Residence and the Land Contract.

That being said, we cannot agree with the trial court’s determination that the 2007 is ambiguous and its reliance on Nelson’s deposition to clarify it. Nevertheless, the error is harmless, inasmuch as the trial court concluded that “[Jeannie] is not entitled to all of the income of the Trust corpus, but only that from the balance owed on the [Land Contract] as long as she may live or is not married.” Appellant’s App. p. 7.

## II. Dead Man’s Statute

Jeannie argues that the trial court erred when it determined that she was precluded by Indiana Code section 34-45-2-4, the Dead Man’s Statute (the Statute), from testifying regarding what Larry had told her about the Trust. A trial court’s ruling on witness competency will be reversed only for an abuse of discretion. Bedree v. Bedree, 747 N.E.2d 1192, 1194 (Ind. Ct. App. 2001). An abuse of discretion will be found when the trial court’s ruling is against the logic and effect of the facts and circumstances before it. Id.

The Statute provides that “a necessary party . . . whose interest is adverse to the estate . . . is not a competent witness as to matters against the estate.” A witness’s interest is adverse to the estate if the witness will gain or lose by the direct legal operation of the judgment. Senff v. Estate of Levi, 515 N.E.2d 556, 558 (Ind. Ct. App. 1987).

The purpose of the Statute “is to protect the decedents’ estates from spurious claims.” In re Estate of Lambert, 785 N.E.2d 1129, 1132 (Ind. Ct. App. 2003). Additionally, the Statute “guards against false testimony by a survivor by establishing a rule of mutuality, wherein the lips of the surviving party are closed by law when the lips of the other party are closed by death.” Id. The Statute is applied in limited circumstances “in which the decedent, if alive, could have refuted the testimony of the surviving party.” In re Unsupervised Estate of Harris, 876 N.E.2d 1132, 1135 (Ind. Ct. App. 2007).

In the case herein, Jeannie’s interest was adverse to the Trust, inasmuch as her claim was that she was entitled to a larger portion of the Trust. Consequently, pursuant to the Statute, Jeannie was not a competent witness as to matters against the Trust, and the trial court did not err when it precluded her testimony.

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.