

FRIDAY, MARCH 28, 2008  
9:00 A.M.

NO. 1

#24466

IN THE MATTER OF THE  
ESTATE OF RONALD W. SMID,  
DECEASED.

AUDREY E. SMID,  
Plaintiff and Appellant,

vs.

DALE D. SMID,  
As the Trustee of the Ronald W. Smid  
Revocable Trust,  
Defendant and Appellee.

Mr. Drew C. Johnson  
Attorney at Law  
Johnson Law Office  
428 N Hwy 281 #3  
Aberdeen SD 57401-1891  
Ph 225-5895

(FOR APPELLANT)

Ms. Kimberly A. Dorsett  
Attorney at Law  
Richards, Oliver & Dorsett  
PO Box 114  
Aberdeen SD 57402-0114  
Ph 225-1200

(FOR APPELLEE)

The Honorable Scott Myren  
Fifth Judicial Circuit  
Brown County

(PRO 06-034)

LEGAL ISSUES

ISSUE I

WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN ENTERING ITS JUDGMENT AND ORDER IN FAVOR OF THE DEFENDANT AND APPELLEE (TRUSTEE OF RONALD W. SMID REVOCABLE TRUST) AND AGAINST AUDREY SMID, PLAINTIFF AND APPELLANT, BY FINDING THE TRUST AGREEMENT/WAIVER WAS ENFORCEABLE UNDER SDCL 29A-2-213.

The trial court found that the waiver language in the trust agreement waived all of Audrey Smid's rights to homestead, surviving spouse award, surviving spouse right of election, exemptions, family allowance, inheritance, descent or other marital rights in and to the real property [the marital home]. (See Memorandum Decision, RA 56; APP 1-8.)

Most Relevant Cases:

SDCL 29A-2-213

SDCL 25-2-21

Smetana vs. Smetana, 2007 SD 5

Sanford vs. Sanford, 2005 SD 34

## ISSUE II

WHETHER THE CONTRACT, I.E. THE REVOCABLE TRUST AGREEMENT, THAT AUDREY SMID SIGNED WAS VOIDABLE SINCE HER CONSENT WAS OBTAINED THROUGH FRAUD, UNDUE INFLUENCE OR MISTAKE.

The trial court held that Audrey Smid did not show there was fraud, undue influence or mistake that would void the contract.

### Most Relevant Cases:

SDCL 53-4-1, et. seq.

Dolan vs. Hudson, 156 NW2d 78 (SD 1968)

Kase vs. Flinch, 325 NW2d 78 (SD 1982)

Schmidt vs. Wild Cat Cave, Inc., 261 NW2d 114 (SD 1977)

## ISSUE III

WHETHER THE CONTRACT, I.E. THE REVOCABLE TRUST AGREEMENT, SIGNED BY AUDREY SMID, IS SUBJECT TO BEING RESCINDED.

The trial court found that Audrey Smid did not prove she was entitled to a rescission of her contractual arrangement contained within the Revocable Trust Agreement.

### Most Relevant Cases:

SDCL 53-11-2

Chamberlain Livestock Auction, Inc. vs. Penner, 462 NW2d 479 (SD 1990)