

STATEMENT OF LEGAL ISSUES

1. Whether the trial court erred in its decision finding that it was not the settlor's intent to include his son-in-law as a beneficiary entitled to receive an amount equal to the amount that the other secondary beneficiaries were previously advanced or distributed by the Trustee under the provisions of the Elmer Stevenson Trust.

The trial Court ruled that the Settlor's son-in-law, Gerard Hehn, was not entitled to receive an amount equal to the amount that the other secondary beneficiaries were previously advanced or distributed by the trustee.

2. Whether the trial court erred in denying Gerard Hehn's Motion for Reconsideration and Motion for New Trial to determine the Settlor's intent regarding Issue I.

The trial Court denied Gerard Hehn's Motion for Reconsideration and Motion for New Trial and stated that extrinsic evidence was not necessary to determine the Settlor's intent regarding Issue I.

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Issue 1: Whether the Trial Court erred in disregarding the testimony of attorney Alice Rokahr, who drafted the Elmer Stevenson Trust, and who testified at the July 24, 2001, hearing that she was instructed by Elmer and Clara Stevenson to take out of the said trust instrument any language referring to "after born children." The Trial Court held such testimony need not be considered as the Elmer Stevenson Trust document was not ambiguous and thus said testimony was not relevant as the trust document provided for inclusion of Angela as a beneficiary of the Trust.

Issue 2: Whether the Trial Court erred in allowing an unborn great grandchild, namely, Angela, to be included as a beneficiary of the Elmer Stevenson Trust, based upon the Court's application of the Uniform Probate Code, which became law in South Dakota on July 1, 1995, and retroactively applied that law back to the date that the Elmer Stevenson Trust was created, which was August 8, 1990. The Trial Court held that the Uniform Probate Code was dispositive of this issue even though the Uniform Probate Code was not in existence at the creation of the Elmer Stevenson Trust.