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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Estate of RICHARD LIEURANCE,  
Deceased.

DANIELA LIEURANCE, as Trustee etc.,  
Petitioner and Respondent,

v.

MICHAEL ALEXANDER et al.,  
Claimants and Appellants.

A145526

(Alameda County  
Super. Ct. No. RP14724503)

**I.**

**INTRODUCTION**

This appeal arises from a probate dispute about the disposition of residential property brought by appellants Michael and Jean Alexander’s deceased mother, Dolores Alexander Lieurance.<sup>1</sup> The outcome of the appeal hinges upon this court’s interpretation of a single word in the original family trust: “trustee.” If “trustee” was intended to be used in the singular form, then each of Dolores’s actions concerning the disposition of her interest in the subject property is enforceable and appellants retain their interest in it. If “trustee” was intended to be used in its plural form, then Dolores’s subsequent transfers of the property were invalid, and appellants no longer have an interest in the contested property.

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<sup>1</sup> We refer to all parties by their first names to avoid confusion. No disrespect is intended by this usage.

We conclude that “trustee” as defined in the trust was intended to be applicable in its plural form, and Dolores was required to deliver written notice of her withdrawal of assets to her cotrustee, her now deceased husband Richard “Doc” Lieurance. Dolores’s failure to follow the language of the trust made her withdrawal ineffective and the property remained in the family trust upon her death. We further conclude that because the withdrawal notice was not effective, Richard was under no obligation to contest Dolores’s subsequent trust disposing of her separate property as well as her community property. Accordingly, we affirm.

## **II.**

### **FACTUAL AND PROCEDURAL BACKGROUND**

Richard and Dolores married in 1975. They each had children from previous marriages. Richard had four adult children (Cheryl Rawson, Daryl Allen, Collette Newell and Richard C. Lieurance), and Dolores had two (appellants Michael and Jean). In 1979, Richard and Dolores bought a residential property on Sandalwood Isle in Alameda, California (Sandalwood property). In December 1991, Richard and Dolores signed the “The Richard and Dolores Lieurance Family Trust” (Family Trust), which included the Sandalwood property.

#### ***Terms of the Family Trust***

The Family Trust declared Richard and Dolores to be the “trustors,” and when referred to in their fiduciary capacity, as “trustee.” Section 9.3 of the trust provided: “Where appropriate, except where the context otherwise requires, the singular includes the plural.”

Section 3.2 of the Family Trust, “General Provisions Regarding Power of Revocation and Power of Amendment,” stated that the trust may only be revoked or amended by “a written instrument signed by the person or persons exercising the power and delivered to the trustee.” It stated further: “The provisions of this article dealing specifically with the power of revocation and the power of amendment set forth the exclusive procedure for revocation or amendment of all trusts created under this instrument.”

Section 4.3 of the Family Trust related to the withdrawal of principal during the trustors' joint lives. Section 4.3, subdivision (a) provided: "Either trustor acting alone, if he or she is not incompetent (as defined in Article Nine) at the pertinent time, or both of the trustors acting jointly, if at least one of them is not incompetent at the pertinent time, shall have the power, by instrument in writing delivered to the trustee, to withdraw, in whole or in part, trust principal that is the trustor's community property."

The Family Trust provided that upon the death of the first spouse, his/her separate property shall be distributed in equal shares to the children of the deceased spouse. For Dolores, her separate property included her Pampered Pup business. Under section 5.4 of the trust, the community property was to pass to the surviving spouse through the marital deduction trust. The Family Trust also provided that upon the death of the first of trustors, the surviving trustor could revoke or amend the trust.

#### ***Dolores's Withdrawal Notice***

On November 2, 2001, two weeks before her death, Dolores signed a "Withdrawal of Assets and Interests from Trust" (the Withdrawal Notice) removing her community property share of the Sandalwood property from the Family Trust. It stated: "Pursuant to Article Four, Part 4.3 of the 1991 Trust, I do hereby withdraw from the 1991 Trust all of my share of assets and my interests in the community property and separate property." It specifically listed the Sandalwood property. It was signed by Dolores and "[a]cknowledged and accepted" by Dolores as "Trustee."

On the same date, Dolores created "The Dolores E. Alexander Trust," to be known as the "Dolores Alexander Trust" (Dolores Trust), which provided that upon Dolores's death her one-half interest in all community property from her marriage to Richard, including the Sandalwood property, be held in trust for the benefit of Richard until his death, and then her interest be distributed to her children, Michael and Jean.

Dolores died on November 17, 2001. On December 27, 2001, Dolores's attorney gave Probate Code section 16061.7 notice to Richard, along with copies of the Dolores Trust and the Withdrawal Notice.

On December 5, 2002, after recording an “Affidavit—Death of Trustee” (Dolores), Richard filed an individual grant deed as the surviving trustee, granting himself the Sandalwood property. After refinancing the loan on the property, Richard again granted the Sandalwood property to himself as trustee, and the deed was recorded on May 13, 2003.

The Dolores Trust was recorded on December 21, 2006, listing her community property interest in the Sandalwood property.

On May 22, 2013, Richard revoked the Family Trust and added the assets to the “The Richard Lieurance Living Trust” (Richard’s Trust.) The revocation stated the Family Trust “reserves to the Trustors, or either of them, the right and power to revoke said Trust, in whole or in part; and [¶] Whereas, Dolores Lieurance revoked her interest in said Trust on November 2, 2001; [¶] Now, Therefore, I as Trustor thereof, hereby revoke, rescind and terminate said Trust, in its entirety and direct the Trustee thereof to transfer all of my interest in and to any assets now in said Trust or any assets which may later be added to said Trust to the then-acting Trustee of The Richard Lieurance Living Trust.” (Original capitalization omitted.) Richard’s Trust provided that the Sandalwood property was allocated to his current spouse, Daniela Lieurance, for her benefit until her death, and then it is to be distributed to Richard’s four adult children. Daniela was the named trustee upon Richard’s death. Richard died on June 29, 2013.

### ***Daniela’s Petition***

In May 2014, Daniela filed a “Petition to Establish Trust Ownership of Real Property and for Instructions.” It stated that under Richard’s Trust, Daniela has use of the Sandalwood property until her death, but Dolores’s children, Jean and Michael, claimed a 50 percent ownership interest in the Sandalwood residence. On the other hand, Richard’s children assert a 100 percent ownership interest subject to the life estate granted to Daniela. Daniela sought instructions from the court regarding the Sandalwood property and whether she is entitled to her life estate.

### *Referee's Report*

The court appointed a referee to assist the court in its ruling on the petition. The referee found that the Withdrawal Notice was not delivered to Richard during Dolores's lifetime, as required by Section 4.3 of the Family Trust. Section 4.3 required an instrument in writing to be delivered to the "trustee." Section 9.3 of the Family Trust stated that "the singular includes the plural," and therefore the term "trustee" meant both Richard and Dolores together. Dolores only delivered the Withdrawal Notice to herself, so the delivery was not effective.

The referee was not persuaded by declarations filed by family members that attested to the fact Richard likely saw the Withdrawal Notice prior to Dolores's death. Dolores's counsel stated that she left a manila envelope with a complete set of duplicates with Dolores, and Dolores told her counsel she would discuss the changes with Richard and give him the signed copies. Jean filed a declaration stating: "Although I have no personal knowledge as to whether Mom gave the documents to DOC [Richard], I believe she did so . . . . I do not know if Doc read the contents before she died." The referee concluded that any inference that Dolores gave the documents to Richard was speculative.

On the other hand, the referee found evidence from Richard's daughter, Daryl, probative of the fact Richard learned of the Withdrawal Notice after Dolores's death. Daryl's declaration stated Richard's emotional state changed dramatically after he met with Dolores's attorney after her death. She described Richard as changing from sad and depressed to confused and angry. Richard felt betrayed and blind-sided by the "deathbed disinheritance." He was upset that Dolores had been "sneaky" and done the withdrawal "behind [his] back."

The referee also relied on the declaration of Kathleen Hunt, the attorney who prepared Richard's Trust. Richard advised Hunt that his prior attorney had told him the Sandalwood property was his to convey as he wished. Hunt and Richard never discussed Richard's consent to Dolores's attempted revocation of her community property interest in the Sandalwood property. Hunt declared that the language in Richard's Trust that

stated, “Whereas, Dolores Lieurance revoked her interest in said Trust on November 2, 2001” was “simply a recital,” and not intended to have any legal effect. Hunt stated “[i]t was not included for the purpose of recognizing that Dolores Lieurance had, in fact, effected a valid revocation of the trust nor to consent to any such attempted revocation.”

The referee noted that the recital in Richard’s revocation of the Family Trust, which stated that Dolores had “revoked her interest in said Trust on November 2, 2001,” seemed to create ambiguity indicating Richard’s approval of Dolores’s withdrawal. The referee found, however, “the language is a ‘recital,’ it is not an admission or an approval by Richard of Dolores’s withdrawal of her community property ownership of the Sandalwood Residence.” The referee relied on the refinancing documents, deeds, the declaration of Kathleen Hunt, and Richard’s course of conduct over the 11 years after Dolores’s death to conclude Richard considered himself the sole owner of the Sandalwood property after Dolores’s death.

The referee recommended the court grant the petition filed by Daniela and order a life estate in the Sandalwood property to her, with the remainder interest to pass upon her death to Richard’s then-living children. The recommendation was based upon the finding that Dolores never delivered the Withdrawal Notice to Richard as required under the Family Trust. For delivery to have been effective, both Richard and Dolores had to receive the notice during Dolores’s life. Therefore, Richard could convey the property to himself after Dolores’s death. “Never in any document did he indicate a limitation that he was bound by Dolores’s attempted withdrawal or that he held any less than a full ownership of the Sandalwood Residence.”

The referee concluded that although Richard never objected to the Probate Code section 16061.7 notice, Richard was under no obligation to object because delivery of the Withdrawal Notice failed.

The probate court held a brief hearing on April 27, 2015, and adopted the recommendations of the referee. The court issued an order, finding that Richard’s Trust held title and possession of the Sandalwood property, while Daniela held a life estate to

the property. After Daniela's death, the property would pass in equal shares to Richard's four children.

### III.

#### DISCUSSION

The interpretation of a will or trust instrument presents a question of law reviewed de novo. (*Burch v. George* (1994) 7 Cal.4th 246, 254.) The “ ‘primary rule in construction of trusts is that the court must, if possible, ascertain and effectuate the intention of the trustor or settler.’ ” (*Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888 (*Gardenhire*), quoting *Ephraim v. Metropolitan Trust Co. of Cal.* (1946) 28 Cal.2d 824, 834.) “ ‘[I]n ascertaining the intention of the trustor the court is not limited to determining what is meant by any particular phrase but may also consider the necessary implication arising from the language of the instrument as a whole.’ ” (*Ammerman v. Callender* (2016) 245 Cal.App.4th 1058, 1074, quoting *Brock v. Hall* (1949) 33 Cal.2d 885, 890; Prob. Code, § 21121 [“All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument.”].)

However, where, as here, conflicting parol evidence is admitted to aid the trial court in interpreting the instrument, then the trial court's factual findings will be upheld as long as they are supported by substantial evidence. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.)

#### **A. *Under the Definition of Trustee, Dolores Had to Deliver The Notice of Withdrawal to Richard Prior to Her Death***

Probate Code section 15401 provides a trust is revocable: “(1) By compliance with any method of revocation provided in the trust instrument” or “(2) By a writing (other than a will) signed by the settlor and delivered to the trustee during the lifetime of the settlor or the person holding the power of revocation. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of

revocation, the trust may not be revoked pursuant to this paragraph.” (Prob. Code, § 15401, subd. (a).)

Probate Code section 15402 applies to the modification or amendment of trusts: “Unless the trust instrument provides otherwise, if a trust is revocable by the settlor, the settlor may modify the trust by the procedure for revocation.” (Prob. Code, § 15402.) “The qualification ‘unless the trust instrument provides otherwise’ indicates that if any modification method is specified in the trust, that method must be used to amend the trust.” (*King v. Lynch* (2012) 204 Cal.App.4th 1186, 1193 (*King*)). “Thus, section 15402 recognizes a trustor may bind himself or herself to a specific method of modification or amendment of a trust by including that specific method in the trust agreement.” (*Conservatorship of Irvine* (1995) 40 Cal.App.4th 1334, 1344.)

The Second District Court of Appeal considered this issue in *Masry v. Masry* (2008) 166 Cal.App.4th 738 (*Masry*). In *Masry*, a husband and wife were trustors and trustees of a family trust. (*Id.* at p. 740.) The trust provided that each spouse had the power to revoke the trust during their joint lifetime by written direction delivered to the other trustor and to the trustee. (*Ibid.*) The husband executed a revocation of the trust to transfer his assets to his own trust to benefit his children from a previous marriage, but did not deliver notice of revocation to the wife; she received notice after his death. (*Id.* at pp. 740-741.)

The *Masry* court examined the trust and concluded the revocation provision in the trust was not exclusive, and because the husband’s method of revocation complied with Probate Code section 15401, subdivision (a), it was valid. (*Masry, supra*, 166 Cal.App.4th at p. 740.) Thus, the husband complied with section 15401 by giving notice to himself as trustee without providing notice to the other trustor. (*Ibid.*) “[A]bsent language in the trust that its method of revocation is exclusive, the trustor has the option of revoking according to the method provided in Probate Code section 15401, subdivision (a)(2), delivering notice to himself as trustee. That there are two trustees here does not change our view. Under section 15401, subdivision (a)(2), [husband]’s notice to himself is sufficient as notice to ‘the trustee.’” (*Masry* at pp. 742-743.)

The *Masry* court rejected the wife’s argument that Probate Code section 15401 is not good public policy because it allows secret revocations where one spouse can take advantage of the other. (*Masry, supra*, 166 Cal.App.4th at p. 743.) The court reasoned that married parties are permitted to dispose of their share of the community property without consent from their spouse so the revocation was proper. (*Ibid.*)

Both parties here cite to *Masry* to support their position. Actually, it supports respondent’s position by logical implication. Unlike *Masry*, here Section 3.2 of the Family Trust states: “The provisions of this article dealing specifically with the power of revocation and the power of amendment set forth *the exclusive procedure* for revocation or amendment of all trusts created under this instrument.” (Italics added.) Thus, unlike *Masry*, the language of the Family Trust makes the method of revocation exclusive. “If the trust is not silent and instead provides a method of revocation, then [Probate Code] section 15401, subdivision (a)(2) is inapplicable.” (*Gardenhire, supra*, 127 Cal.App.4th at p. 894.) The revocation language applies equally to a trustor’s attempt to amend or withdraw property from the trust. “The right to revoke includes the right to modify. [Citation.]” (*Masry, supra*, 166 Cal.App.4th at p. 741.)

Section 4.3, subdivision (a) of the Family Trust is the provision that sets forth the exclusive manner in which the trust could be modified. It provided: “Either trustor acting alone . . . shall have the power, *by instrument in writing delivered to the trustee*, to withdraw, in whole or in part, trust principal that is the trustors’ community property.” (Italics added.) The probate court concluded under the terms of the Family Trust, the term “trustee” referred to both Richard and Dolores. The trust states: “Richard Edward Lieurance and Dolores E. Lieurance, when referred to in their fiduciary capacity, and each successor trustee, is referenced to as the ‘trustee.’ ” Respondent argues the use of “and” between Richard and Dolores rather than “or” meant both are jointly the “trustee.” We agree the trust refers to both Dolores and Richard in “their fiduciary capacity,” again implying “trustee” meant both parties.

“All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of an instrument is

ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the instrument.” (Prob. Code, § 21121; see also *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 73 (*Ike*) [“ ‘In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it.’ ”].) If we look to the Family Trust document as a whole, the word “trustee” in its singular form is used throughout. Respondent argues that “trustee” is used 162 times, while “trustees” is only used 5 times. Respondent points to various sections of the trust as examples: the “trustee” shall distribute the income from the trust (Section 4.1), the “trustee” may exercise any powers, authority or discretion conferred by the trust (Section 6.2), and the “trustee” may sell, exchange, transfer, or convey property (Section 6.3). Respondent asserts that each of these references was meant to be plural because Richard and Dolores clearly did not intend for these actions to be taken independently given the introductory language in the trust.

As a counter argument, appellant references Section 3.3 of the Family Trust, which states, upon revocation of the trust regarding community property, “the trustees shall pay to either trustor or both trustors” their share. Appellants argue that if the term “trustee” was meant to reference both Richard and Dolores, it would have been unnecessary to use the term “trustees” in the plural.

The Family Trust contains some inconsistency in the use of the term “trustee” versus “trustees.”<sup>2</sup> But when reviewed as a whole, the word “trustee” is used the majority of the time and is meant to signify the plural: both Richard and Dolores. This is further supported by the definition of the term in the introductory paragraph, as well as section 9.3, which provides the “singular includes the plural.”

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<sup>2</sup> It may be that the use of the word “trustee” throughout the trust is the result of careless drafting. “The provision for delivery to the trustee was probably a result of taking a more conventional trust and not editing it so as to adapt it for cases where the trustors are their own trustees—editing, as journalists say, ‘with a shovel.’ ” (*Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 291, fn. 2 (*Heaps*).)

The presumption is cotrustees must act jointly. (*Kaneda v. Kaneda* (1965) 235 Cal.App.2d 404, 423.) Probate Code section 15620 provides: “Unless otherwise provided in the trust instrument, a power vested in two or more trustees may only be exercised by their unanimous action.” (Prob. Code, § 15620.)

Other cases involving different facts have applied the overarching principle that Probate Code section 15402’s procedure for modification of a trust instrument is not applicable where the instrument itself sets forth the exclusive manner in which such modifications may be effected. (*King, supra*, 204 Cal.App.4th at pp. 1192-1194 [amendments to trust were not effective because they were not signed by both trustees as required by the trust]; *Heaps, supra*, 124 Cal.App.4th at pp. 290-291 [in order to amend the trust or withdraw assets, the trustors were required to deliver a duly executed instrument to themselves as trustees].)

Here, the Family Trust specified procedures for both revocation and withdrawal from the Trust. Notice of withdrawal must be delivered to the “trustee,” meaning both to Dolores and Richard. Appellant presented no evidence to the probate court that Dolores delivered the Withdrawal Notice to Richard before her death. To the contrary, the referee found that the only persuasive evidence was that Richard was notified by Dolores’s attorney after her death, much to his dismay. Therefore, the Withdrawal Notice was invalid and Dolores’s community property share of the Sandalwood property passed to Richard upon her death.

**B. *Richard Did Not Accept Dolores’s Withdrawal of Assets by Failing to Object to the Ineffective Withdrawal Notice***

Appellants argue that Richard’s failure to object to Dolores’s Withdrawal Notice or to the Probate Code section 16061.7 notice of her trust constituted a waiver of any objection, and that this waiver is binding on his heirs. The probate court found that Richard was not obligated to object to the Withdrawal Notice or to the Dolores Trust because there was no delivery of the Withdrawal Notice before Dolores’s death. We review the trial court’s order based upon the interpretation of Probate Code sections 16061.7 and 16061.8 de novo. (*Straley v. Gamble* (2013) 217 Cal.App.4th 533, 536.)

Probate Code section 16061.7 provides a trustee shall serve notice when a trust becomes irrevocable. (Prob. Code, § 16061.7.) After Dolores's death, her attorney sent section 16061.7 notice to Richard of the Dolores Trust, which included the withdrawal of her assets from the Family Trust. Probate Code section 16061.8 provides that an action to contest a trust must be filed within 120 days after receiving section 16061.7 notice. (Prob. Code, § 16061.8.)

Thus, we are faced with the question of whether Richard was obligated to raise an objection to the Withdrawal Notice at the time he was provided Probate Code section 16061.7 notice of Dolores's Trust. Appellants fail to cite any authority that Richard was so obligated, and was required to contest the validity of the Withdrawal Notice.

The requirements of Probate Code section 16061.8 only apply to an action to *contest* a trust. (*Safai v. Safai* (2008) 164 Cal.App.4th 233, 243.) While appellants are correct that Richard never brought an action to contest Dolores's Trust, respondent contends Richard was not required to do so. Richard and his heirs do not contest Dolores's Trust because they believe the Sandalwood property was never part of her trust. Richard had no objection to Dolores's separate trust except as it related to the Withdrawal Notice. Richard (and his attorneys) operated under the assumption that the Withdrawal Notice failed and the Sandalwood property remained part of the Family Trust, and therefore, was never part of Dolores's trust. As respondent points out, there is no reason Dolores's could not have two trusts simultaneously.

If the Withdrawal Notice was ineffective, the Sandalwood Property remained in the Family Trust and was Richard's to transfer to Richard's Trust. Dolores's transfer was void and Richard was under no obligation to raise an objection under Probate Code section 16061.8. (See *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 215 [where trustee sent an improper and legally insufficient notice of the change in trust status, any § 16061.8 petition contesting the trust was not untimely].) The law does not require idle acts. (*Germino v. Hillyer* (2003) 107 Cal.App.4th 951, 955 (*Germino*).

Appellants argue that Richard's failure to object after receiving the Probate Code section 16061.7 notice demonstrated that he acquiesced in Dolores's withdrawal of her

assets. Appellants argue Richard accepted the benefits of the life estate in Dolores's half of the Sandalwood property. The problem with this argument is the assumption that Richard's actions were consistent with his having accepted a life estate, and not consistent with an understanding that he was the sole owner of the property after Dolores's death. To the contrary, Richard's actions after Dolores's death demonstrate his belief that he owned the Sandalwood residence in its entirety. As the probate court found, Richard considered himself the sole owner and "[n]ever in any document did he indicate a limitation that he was bound by Dolores' attempted withdrawal or that he had any less than full ownership in the Sandalwood Residence."

In support of this conclusion the record includes evidence that in 2002, Richard recorded an affidavit of death of a trustee (Dolores), and recorded an individual grant deed as the surviving trustee granting himself the Sandalwood property. In 2003, after refinancing the Sandalwood property, he again granted it to himself as trustee. In 2013, he revoked the Family Trust and added the assets, including the Sandalwood property, to Richard's Trust.

Furthermore, the declarations filed in the probate court do not support appellant's theory that Richard had accepted a life estate in the property. Instead, attorney Kathleen Hunt stated that Richard told her he was advised by his prior attorney that the Sandalwood property was his to convey. Daniela's declaration stated that Richard always indicated to her the Sandalwood property belonged to him. "He never indicated that the children of his former wife, Dolores Alexander, might have any present or future ownership interest in the house."

The only contrary evidence was the declaration filed by Michael, which stated that shortly after Dolores's death, Richard informed him he was refinancing the loan on the Sandalwood property. Michael alleges: Richard "asked that Jean and I do not record Dolores's interest to the 2001 Trust so the then-existing bank loan against the property would not be called early. It was only after Doc's death that we learned that he had refinanced the loan on Sandalwood and that not long after Dolores's death he had tried to

transfer the property by Deed from himself as surviving trustee to himself, individually.” (Original capitalization omitted.)

In her declaration, Jean stated that Richard never indicated he would not abide by the terms of Dolores’s Trust. She believed Richard accepted the life estate in Dolores’s half of the Sandalwood property until his death.

Michael and Jean operated under the belief that Richard had accepted a life estate in Dolores’s share of the Sandalwood property, but there was no evidence Richard shared this belief. And as outlined above, his actions evidenced a contrary understanding that he was the sole owner of the property.

Appellants further argue that the recital in Richard’s 2013 revocation of the Family Trust demonstrates Richard consented to Dolores’s withdrawal of her share of the Sandalwood property. The recital states: “Whereas Dolores Lieurance revoked her interest in said Trust on November 2, 2001,” and then continues to state that Richard is revoking the trust in its entirety. The probate court found this to be a mere recital, and to the extent this created any ambiguity, the “declaration [of] Kathleen Hunt, his attorney, and Richard’s course of conduct over approximately 11 years holding himself out and treating the Sandalwood residence as sole owner resolve the ambiguity: Richard considered that he was the sole owner.”

All of Richard’s conduct demonstrated he did not intend to acknowledge or consent to the withdrawal of assets. This revocation was signed along with Richard’s Trust, which provided a life estate in the Sandalwood property to Daniela. Richard could not have purported to provide the life estate if he believed that any of the Sandalwood property belonged to Michael and Jean.

The language of the revocation could have made clear Dolores had attempted, but failed, to withdraw her community property assets. But, it “is the intention of the trustor, not the trustor’s lawyer, which is the focus of the court’s inquiry.” (*Ike, supra*, 61 Cal.App.4th at p. 73.)

Where, as here, “a trust instrument contains some expression of the trustor’s intention, but as a result of a drafting error that expression is made ambiguous, a trial

court may admit and consider extrinsic evidence[.]” (*Ike, supra*, 61 Cal.App.4th at p. 74.) As outlined by the probate court, the extrinsic evidence of Richard’s conduct over the 11-year period, the declaration of his lawyer, and the jointly signed trust documents, belie any intention on Richard’s part to acquiesce in Dolores’s withdrawal of assets from the Family Trust.

Finally, we consider whether Michael and Jean relied to their detriment or suffered prejudice based on Richard’s failure to object to the withdrawal of assets when he was provided notice. “[C]ases consistently hold that courts will look to the issue of prejudice when a party seeks to excuse its own failings—such as appellant’s failure to file his petition attacking the trust within 120 days of the trustee’s notice—based on a defect in statutory notice provided by the other party—such as the claimed omission from the trustee’s notice in this case.” (*Germino, supra*, 107 Cal.App.4th at p. 956.)

Appellants have not demonstrated they were harmed by Richard’s failure to respond to the Probate Code section 16061.7 notice. Under either the Family Trust or Dolores’s Trust, Richard properly continued to live at the Sandalwood property until his death. From the record, it appears that Richard maintained and improved the property over the years since Dolores’s death. Michael and Jean cannot demonstrate they took or failed to take any actions in reliance on Richard’s failure to object to Dolores’s Trust. The need for Michael and Jean to exercise their rights was only triggered upon Richard’s death. With the end of what they believed to be his life estate, the ownership of the Sandalwood property became a contested issue.

In *Heaps*, the court rejected a similar argument that the first wife’s sons should have brought an action against her husband eight years earlier, after her death, because they properly assumed that husband was managing the trust assets during the remainder of his life. (*Heaps, supra*, 124 Cal.App.4th at p. 293.) The sons had no need to exercise their rights until after husband’s death. (*Ibid.*)

With Daniela’s petition to establish trust ownership, Michael and Jean have been able to raise their arguments about Dolores’s residual share of the Sandalwood property, if any, resulting from the withdrawal. Even if Dolores’s Withdrawal Notice had been

valid, Michael and Jean's interest would not have vested until after Richard's death when his life estate otherwise would have ended. Thus, they were not prejudiced by any delay resulting from Richard's failure to object to the Withdrawal Notice, if he were obliged to do so.

#### **IV.**

#### **DISPOSTION**

The judgment of the probate court is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.