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The Honorable Presiding Justice Manuel A. Ramirez
The Honorable Associate Justice Thomas E. Hollinghorst
The Honorable Associate Justice Carol D. Codrington
California Court of Appeals, Fourth Appellate District
Division Two
3389 12th Street
Riverside, CA 92501

Re: David Hitz et al. v. Kinch Hoekstra et al., Court of Appeal No. E058293
David Hitz et al. v. Kinch Hoekstra et al., Court of Appeal No. E062777
Inyo County Superior Ct. No. SICVPB1253232

To Presiding Justice Manuel A. Ramirez and the Associate Justices of the California Court of Appeals, Fourth Appellate District, Division Two:

Pursuant to California Rules of Court Rule 8.1120, we respectfully request publication of the April 13, 2017 appellate opinion in David Hitz et al. v. Kinch Hoekstra et al., Court of Appeal Case Nos. E058293 and E062777 (the "Opinion"). We attach a copy of the Opinion as Exhibit A.

Our Interest in the Opinion

We are counsel for the Appellants and Applicants Kinch Hoekstra and Edward Keonjian ("Applicants"). So, our interest in this Opinion's publication is manifest.

Summary of the Holding

The Opinion affirmed the trial court's decision that it could modify the purpose of a charitable trust under statutory equitable deviation (Cal. Prob. Code, § 15409). Section 15409 was one of three trust modification standards the trial court applied to change the purpose of the charitable trust. The trial court did hold that the trustees seeking modification did not meet their burden when it applied the standard of *cy pres*, but the Opinion did not address this ruling as neither party raised it on appeal.

The Opinion rejected Applicants' argument that the trial court abused its discretion when it applied these three modification standards to change the purpose of the charitable trust. Applicants argued that only in applying the heightened standard of *cy pres* may a court modify a charitable trust's purpose. The Opinion found unpersuasive Applicants' argument that the clause at issue could not be modified using section 15409 because it was "not a dispositive or administrative provision in the meaning of section 15409, but

Received by Fourth District Court of Appeal, Division Two

instead express[ed] a purpose of the Trust." (Exh. A, at p. 14.) The Opinion found that "**every trust has two parts**" and then described the clause at issue as a dispositive provision subject to modification under section 15409. (*Ibid.*)

Reasons to Publish the Opinion

The Opinion meets several of the criteria for publication stated in Rule 8.1105. Simply put, the Opinion applies the doctrine of equitable deviation, which is codified in section 15409 of the California Probate Code, to change the purpose of a charitable trust. Applicants maintain, based on precedent, that only the doctrine of *cy pres* can be used to change the purpose of a charitable trust. The Washington Supreme Court described the distinction between the doctrines succinctly: "courts apply equitable deviation to make changes in the manner in which a charitable trust is carried out while courts apply cy pres in situations where trustees seek to modify or redefine the settlor's specific charitable purpose." (*Niemann v. Vaughn Community Church* (2005) 154 Wash.2d 365, 378.) Likewise, before this Opinion, California courts have only changed the purpose of a charitable trust by applying the doctrine of *cy pres*. (See e.g., *Estate of Loring* (1946) 29 Cal.2d 423 [*cy pres* applied when trust fund shrank thereby making it insufficient to fund the construction of a hospital]; *O'Hara v. Grand Lodge Independent Order of Good Templars of State of Cal.* (1931) 213 Cal. 131, 134 [buildings used as orphanage were in dismal state and could not be remodeled without prohibitive expense to organization]; *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850, 853 [the dissolving church's membership had dwindled down to three persons]; *Estate of Klinkner* (1978) 85 Cal.App.3d 942, 947 [the church ceased to exist and thus could not receive a share of testator's residuary estate].) So too a proceeding where "a charitable corporation being wound up and dissolved and its assets held upon a charitable trust are to be transferred to another corporation, organization, society, or trust so that the original trust purposes can be carried out if that is possible" calls for an application of the equitable doctrine of *cy pres*. (*In re Veterans' Industries, Inc.* (1970) 8 Cal.App.3d 902, 917–18.)

As a result, there are no published cases in California that apply equitable deviation or section 15409 to change a charitable trust's purpose. Therefore, the Opinion "applies an existing rule of law to a set of facts significantly different from those stated in published opinions" by lowering the standard by which Courts may change a charitable trust's purpose. (Cal. Rules of Court, Rule 8.1105, subd. (c)(2).)

Second, in declaring that a charitable trust purpose can "also be an administrative or dispositive provision, subject to modification pursuant to section 15409," the Opinion is essentially retiring the *cy pres* doctrine, which has long been the standard by which a charitable trust purpose is modified. (Exh. A, at p. 15.) This "creates a new rule of law" as *cy pres* is no longer the standard by which a charitable trust's purpose is changed or modified. (Cal. Rules of Court, Rule 8.1105, subd. (c)(1).) This in turn "creates an apparent conflict in the law" by applying private trust principles to a charitable trust where all prior

decisional authority on modifying a charitable trust purpose requires application of *cy pres*. (Cal. Rules of Court, Rule 8.1105, subd. (c)(5).)

Third, the Opinion cites section 561 from Bogert's treatise as its textual basis for its decision that equitable deviation is an appropriate means to change a charitable trust's purpose. Yet, this passage explicitly applies to private trusts rather than charitable trusts (and the only other cited source is a case about a private trust). The Opinion maintains that "objectors have presented no authority in support of the notion that a provision expressing a purpose of a trust must necessarily be something other than the 'administrative or dispositive provisions of the trust' in the meaning of section 15409." (Exh. A, at p. 14.) In fact, Appellants argued that the plain language of Section 15409, in the context of charitable trust law, depends on just such a distinction. The Opinion then follows by stating:

> To the contrary, as explained in Bogert's treatise on trust law, **every trust has two parts**; the "dispositive provisions" are those parts "in which the settlor describes the beneficiaries who are to obtain the financial benefits, determines the amount or size of those benefits, *and in many cases states the purposes of the settlors in providing those benefits*"; the "administrative provisions are those in which the settlor provides the methods by which the trustee is to manage the trust property...." (Bogert, The Law Of Trusts And Trustees (rev. ed. Sept 2016) § 561 at p. 1, italics added) see *In re Estate of Traung, supra*, 207 Cal.App.2d at p. 830 [quoting a substantially similar previous edition of treatise].) Applying these definitions to the facts of this case, the clause "for the education of promising young men" is a dispositive provision; the "students in attendance" are the "sole beneficiaries" of the Trust, so any clause directing who may become a student describes the beneficiaries who are to obtain the benefits of the Trust. (Exh. A, at p. 14-15 [bolded added].)

Yet, the first sentence of section 561 of the Bogert treatise reads "Every instrument creating *a private trust* contains two parts." (Bogert § 561. Court control—Alteration of powers—Deviation, The Law Of Trusts And Trustees § 561 [italics added].) Later in section 561, the treatise states that although "a similar power with regard to deviation exists in the field of charitable trusts.... This is not to be confused with the cy pres power where an emergency necessitates a court modification of the charitable objectives, rather than merely a change in methods of administration of the trust." (§ 561. Court control—Alteration of powers—Deviation, The Law Of Trusts And Trustees § 561.) The Opinion truncates and therefore misleadingly misstates the sole source for its reasoning in its decision. As a result, the Opinion "advances a new interpretation or construction of a provision of a statute" by misapplying a treatise's definitions to interpret Probate Code section 15409. (Cal. Rules of Court, Rule 8.1105, subd. (c)(4).) It is likely that should a similar matter come before the Court, a careful review of the same literature would yield a different result unless this Opinion is published.

Lastly, many Californians are drafting trusts to transfer their assets outside of probate. Many of these trusts have charitable gifts or create sub trusts with charitable purposes. Drastically changing the way in which these trusts may be modified involves a legal issue of continuing public interest. (Cal. Rules of Court, Rule 8.1105, subd. (c)(6).)

When the court applies a new rule of law to litigants in one case, "it must do so with respect to all others not barred by procedural requirements or res judicata." (*James B. Beam Distilling Co. v. Georgia* (1991) 501 U.S. 529, at p. 538.)

> The [opinion publication] rules protect against selective prospectivity by providing a uniform and reasonable procedure to assure that actual changes to existing precedential decisions are applicable to all litigants. They establish comprehensive standards for determining publication of Court of Appeal cases, particularly specifying that an opinion announcing a new rule of law or modifying an existing rule be published. They permit any member of the public to request the Court of Appeal to publish an opinion and, if the request is denied, require the Supreme Court to rule thereon. In short, the rules assure that all citizens have access to legal precedent....

(*Schmier v. Supreme Court* (2000) 78 Cal.App.4th 703, 710-711.)

In conclusion, the Opinion meets at least four of the stated reasons for publication under Rule 8.1105, as it drastically changes the precedential law on the modification of a charitable trust's purpose. For the foregoing reasons, the Applicants request publication of the Opinion.

Very truly yours,

Joseph C. Liburt
Counsel for Appellants Kinch Hoekstra and Edward Keonjian

cc: Heather Matsumoto Hoekstra
Eric George
Ira Bibbero
Counsel for Appellants Kinch Hoekstra and Edward Keonjian

EXHIBIT A

Court of Appeal, Fourth Appellate District, Division Two
Kevin J. Lane, Clerk/Administrator
Electronically FILED on 4/13/2017 by B. Frey, Deputy Clerk

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DAVID HITZ, as Chairman of the Board etc., Plaintiff and Appellant, v. KINCH HOEKSTRA, as Trustee, etc. et al., Objectors and Respondents.	E058293 (Super.Ct.No. SICVPB1253232)
DAVID HITZ, as Chairman of the Board etc., Plaintiff and Respondent, v. KINCH HOEKSTRA, as Trustee, etc. et al., Objectors and Appellants.	E062777 (Super.Ct.No. SICVPB1253232) OPINION

APPEAL from the Superior Court of Inyo County. Dean T. Stout, Judge.

Affirmed.

Arnold & Porter, Steven L. Mayer, Lisa Hill Fenning and Andras Kosaras; Baker Manock & Jensen, Christopher L. Campbell, Jeffrey A. Jaech, Dirk B. Paloutzian, and

Amanda M. Neal; Law Office of Peter E. Tracy and Peter E. Tracy for David Hitz, as Chairman of the Board, etc.

Brown George Ross, Eric M. George and Ira Bibbero; Orrick, Herrington & Sutcliffe and Joseph C. Liburt; Heather M. Hoekstra for Kinch Hoekstra and Edward Keonjian, Trustees of L.L. Nunn Trust.

Since its founding in 1917, Deep Springs College has accepted only male students. In 2011, the board of trustees of a trust set up in 1923 by the school's founder, L.L. Nunn (the L.L. Nunn Trust or the Trust) voted by a 7-2 margin to make the college coeducational. Naturally, litigation ensued.

These consolidated appeals present the questions of whether the Trust can be interpreted or modified to allow the admission of female students. Petitioner David Hitz, as chairman of the board of trustees of the L.L. Nunn Trust, acting on behalf of the board of trustees, answers both questions in the affirmative, as does real party in interest Deep Springs College Corporation.[1] Objectors Kinch Hoekstra and Edward Keonjian, as trustees of the L.L. Nunn Trust—who cast the two dissenting votes in 2011—answer both questions in the negative.[2]

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[1] The Deep Springs College Corporation Board also voted in September 2011 to implement coeducation. And in March 2014, the 2013-2014 student body of the college unanimously voted to consent to modification of the Trust to allow for the education of women, in addition to the education of men.

[2] Petitioner is the appellant in appeal No. E058293, but respondent in appeal No. E062777; conversely, objectors are respondents in appeal No. E058293, but appellants in appeal No. E062777. In the interest of clarity, we will refer to the parties as "petitioner" and "objectors," respectively.

Trial of the matter was bifurcated. In the first phase, the trial court concluded the Trust cannot be interpreted to allow the trustees the discretion to institute coeducation at the college. Petitioner appealed this ruling (case No. E058293). Subsequently, in the second phase of the trial, the trial court concluded the Trust both can be and should be modified to allow the trustees such discretion on any of three alternative bases: (1) the consent of all beneficiaries, pursuant to Probate Code[3] section 15403; (2) the court's statutory equitable power to modify the Trust pursuant to section 15409; and (3) the court's common law equitable power to modify the Trust.[4] Objectors appealed the phase two rulings (case No. E062777). We ordered the two appeals consolidated for purposes of oral argument and decision.

We find that objectors have demonstrated no error with respect to the trial court's exercise of its statutory equitable power to modify the trust. We affirm the judgment on that basis, without reaching the other issues raised by the parties.[5]

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[3] Further undesignated statutory references are to the Probate Code.

[4] The trial court rejected a fourth ground for modification asserted by petitioner, the *cy près* doctrine. This ruling has not been raised on appeal by any party, however, so it will not be discussed.

[5] We previously reserved for consideration with the appeal petitioner's request for judicial notice filed in case No. E058293 on January 15, 2014. The request is granted as unopposed. Moreover, the document that is the subject of the request is part of the record on appeal in case No. E062777.

I. FACTUAL BACKGROUND[6]

Deep Springs College was founded in 1917 by L.L. Nunn, who made his fortune in the power industry, and then turned his attention to educational pursuits. From 1917 until Mr. Nunn's death in 1925, the college consumed most of his energy, attention, and wealth; he regarded the institution as the culmination of his life's work. In 1923, Mr. Nunn executed the "Deed of Trust" at issue in the present case, which governs the application and administration of some of the assets used to operate the college.[7]

The college is located in Deep Springs Valley, a remote area of Inyo County. It operates a cattle ranch, and raises much of the other food consumed on site. It is the smallest institution of higher learning in the United States, with 26 students at the time of the trial in this matter, and a normal compliment of six faculty members. Students pay no tuition.

The college's two-year program is built around three "pillars": (1) academic pursuits; (2) a labor program, requiring each student to devote at least four hours each day to ranch work; and (3) a unique opportunity to exercise self-governance, including direct participation in the management of college affairs. The college's president

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[6] As the trial court noted, the historical origins of this case are "interesting" and "essentially undisputed among the parties." Our description of the background facts underlying these appeals is in large part derived from the trial court's more expansive discussion in its statement of decision following the second phase of the trial.

[7] The liquid assets Mr. Nunn provided to the college are, in the words of the trial court, "long gone," but the college is located on property contributed by Mr. Nunn to the Trust.

testified that the program "'is designed to allow gifted students to take an extraordinary amount of responsibility for their own lives.'"

Various aspects of the college's program have changed since its founding. One of the most important features of the college's academic program in the eyes of its founder was its religious emphasis and instruction, which was dropped within 20 or 25 years following Mr. Nunn's death. During Mr. Nunn's lifetime, student self-governance was limited to their collective life in the dormitory. Now, students serve as full voting trustees of the Trust and as members of the board of directors of the Deep Springs College Corporation. Students participate in virtually all aspects of the college's operation, including hiring and firing of administrators, faculty, and staff, recruitment and selection of new students, communications with the "outside" world, and curriculum design. Students are responsible for even basic tasks, such as cooking for the entire community, planning, maintaining, and harvesting the garden, milking cows, irrigating fields, cutting and bailing hay, herding and branding cattle, assisting with the slaughter of livestock, washing dishes, cleaning toilets, and mopping floors.

One aspect of the college that has not changed since its inception is that all of the students have been men; it is one of four all-male colleges that still exist in the United States. A change to this aspect of the college has, however, long been considered and debated. The issue of coeducation at the college was first raised in the 1950s, and first seriously considered by the trustees in the 1960s. The issue was the subject of extensive formal study and debate among the trustees and the college community in the late 1970s, and again in the mid-1990s, and yet again from 2003-2005, each time without a

resolution. A formal student body bylaw requires that the issue be discussed—at least among the students themselves—every year. In 2009, the trustees again decided to devote substantial time and attention to the issue, resulting in the 2011 vote to implement coeducation.

Several portions of the 1923 Deed of Trust are relevant to the issue of coeducation. In the recitals, the instrument acknowledges that "grantor has heretofore established an educational institution at Deep Springs in Inyo County, California, and has been there carrying on educational work *for the education and development of promising young men* . . . ." (Italics added.)

The Trust also identifies the "purpose" of the grant in a paragraph consisting of a single, 174-word sentence: "The purpose for which the property hereby conveyed and the rents, income, profits, and proceeds thereof, shall be used by said trustees is to provide for and carry on educational work in the State of California similar to and in development of the work already inaugurated by grantor at Deep Springs in Inyo County, California, but in such manner and form and at such place or places within said state as said trustees in good conscience and the exercise of their best judgment may determine, *for the education of promising young men*, selected by said trustees or as they may prescribe, in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism, to a life in harmony with the Creator, in the conduct of which educational work democratic self government by the students themselves shall be a feature as is now the case at said Deep Springs, and which work

shall be carried on not for profit but solely for the advancement of the purpose hereinabove mentioned." (Italics added.)

The Trust identifies "[t]he students in attendance receiving the benefits of the educational work being conducted hereunder" as the "sole beneficiaries" of the Trust, and they are "to be considered as the beneficial owners of all the property at any time held by the said trustees" under the terms of the Trust.

II. PROCEDURAL BACKGROUND

This case commenced in 2012 with the filing of petitioner's "Petition for Court Order Construing Trust Provisions, Or, If Necessary, Modifying the Trust Instrument" (the petition). The petition sought a judicial declaration construing the provisions of the Trust to allow the board of trustees the discretion to institute coeducation, or in the alternative, an order modifying the Trust to allow the trustees such discretion, pursuant to the court's equitable powers under section 15409 or the common law.

Pursuant to a stipulation of the parties, the trial court bifurcated the proceedings so as to hear and decide first the "interpretation issue," that is, "whether the language of the Trust can be interpreted as giving the Trustees the discretion to institute coeducation at Deep Springs College." On February 13, 2013, the trial court ruled in favor of objectors, finding that the Trust cannot "be construed as giving the Trustees discretion to admit female students."

In so ruling, the trial court rejected petitioner's argument that Mr. Nunn used the term "men" in the phrase "for the education of promising young men" to refer generically

to mankind; the court observed that "it appears that the only purpose intended by him was to continue a men's college."

On March 11, 2013, petitioner filed a notice of appeal with respect to the trial court's ruling on the interpretation issue (case No. E058293).

On March 22, 2013, petitioner supplemented the petition to allege two additional grounds for the modification of the Trust, namely, modification with the consent of all beneficiaries pursuant to section 15403, and the *cy près* doctrine.

Trial on the modification issue was conducted over six days in April and May 2014. The trial court issued its statement of decision on November 19, 2014. The court found that modification of the Trust was appropriate on three grounds: (1) the consent of all beneficiaries, pursuant to section 15403; (2) the court's statutory equitable power to modify the Trust, pursuant to section 15409, and (3) the court's common law equitable power to modify the Trust.

In so ruling, the trial court found the language of the Trust to be ambiguous as to its purpose or purposes, in that it "can be read at least three different ways, all of which interpretations are reasonable." After looking to extrinsic evidence to resolve the ambiguity, the trial court concluded that Mr. Nunn intended the Trust have several purposes. The "overarching purpose" for the Trust was to conduct "'educational work' similar to and in development of that already inaugurated at Deep Springs College, in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism." The trial court found the phrase "the education of promising young men" also to describe "a purpose" of the Trust, but "at the same time, a

description of the *type* of student that could be most effective in carrying out the overarching purpose." Put another way, "[n]othing in the extrinsic evidence suggests that L.L. Nunn intended to limit his program to promising individuals simply to be elitist, or to young people simply to have a homogeneous student body or to men simply to create a single-sex college (of which there were many at the time.)" On that basis, the trial court found "that the term 'men' is a purpose that may be modified without destroying the greater whole, so long as the students admitted are most likely to fulfill the overarching purposes set out by L.L. Nunn."

The trial court went on to conclude that the Trust should be modified on any of three alternative bases: (1) the consent of all beneficiaries, pursuant to section 15403; (2) the court's statutory equitable power to modify the Trust pursuant to section 15409; and (3) the court's common law equitable power to modify the Trust.

The trial court's decision to modify the Trust was supported by factual findings regarding the effects of the all-male admissions policy. The trial court found that the societal changes in gender roles since the founding of the school, "including the increasing numbers of women in positions of power and influence formerly reserved to men, was unanticipated and unknown by [Mr. Nunn] at the time he executed the instrument." It also found "compelling" evidence that the policy "reduces the quality of the applicant pool and of the resulting student body"; that it "burden[s] and complicate[s] the tasks of hiring and retaining the highest quality faculty and staff"; that it "adversely impact[s]" not only the classroom education at the college, but also the other two

"pillars" of the college's program, labor and self-governance; and that the college's "financial status . . . is not as viable as it could be as a result of the all-male restriction."

The trial court found objectors' arguments in support of the "supposed advantage[s]" of maintaining an all-male student body to be "relatively weak." Among other things, it found the policy unnecessary to reduce "distractions" and promote "higher levels of intensity and focus among the students," or to minimize conflict arising from sexual relationships between students. It acknowledged that a "single sex environment can offer something unique" with respect to bonding among students, but found that "bonding and concomitant character development can and do take place when men and women attend college together." It found it to be "unclear whether the emergence of deep personal relationships among students is attributable to the Deep Springs single sex policy or is 'an effect of the other unique aspects of the College's program.'" And it rejected the objectors' argument that an all-male student body is "integral" to the "well-conceived combination of elements" developed by Mr. Nunn for the college, noting that the college has changed in other important respects since Mr. Nunn's time; that the "all-male factor in particular has sometimes been a disruptive rather than constructive influence"; and that "several elements which make Deep Springs such a remarkable place have nothing to do with restricting student participation to males."

On January 5, 2015, the trial court issued its order modifying the Trust as follows: "substitute the word 'people' for 'men' in the phrase 'for the education of promising young men.'" Objectors filed their notice of appeal on January 22, 2015 (case No. E062777).

In February 2015, on objectors' motion, we ordered the two pending appeals consolidated for purposes of oral argument and decision.

III. DISCUSSION

Objectors contend, among other things, that the trial court erred by modifying the trust pursuant to section 15409. We find objectors have demonstrated no error in that ruling, and therefore affirm the trial court's judgment on that basis.

A. Applicable Law and Standard of Review

Section 15409 provides that a court may "modify the administrative or dispositive provisions of the trust . . . if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust." (§ 15409, subd. (a).) Section 15409 codifies the common law equitable power of trial courts to modify the terms of a trust instrument where modification is necessary to preserve the trust or to serve the original intentions of the trustors. (*Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 368; *Stewart v. Towse* (1988) 203 Cal.App.3d 425, 428.) The language of section 15409 derives from the description of the common law equitable power in the Restatement Second of Trusts, which allows the court to direct or permit the trustee to deviate from the terms of a trust where compliance "would defeat or substantially impair the accomplishment of the purposes of the trust."[8] (Rest. 2d Trusts, § 167, subsection (1); see also *id.*, § 336 [similar language regarding termination of trust].)

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[8] Like the Legislature, California appellate courts have looked to the Restatement Second of Trusts for description of the trial courts' common law equitable power to modify a trust. (E.g. *In re Estate of Traung* (1962) 207 Cal.App.2d 818, 829.)

The substantial evidence standard applies to any review of the trial court's factual findings based on its evaluation of extrinsic evidence. (*Estate of Dodge* (1971) 6 Cal.3d 311, 318-319.) In conducting a substantial evidence review, we resolve any conflicts and draw all legitimate and reasonable inferences in favor of the judgment. (*Estate of Bristol* (1943) 23 Cal.2d 221, 223.)

The trial court's decision to modify the Trust under section 15409 is an exercise of discretion. (See § 15409 [the court "may" modify a trust, under certain circumstances]; see also § 17200, subds. (a), (b)(13) [authorizing petition to modify a trust]; § 17206 ["[t]he court *in its discretion* may make any orders and take any other action necessary or proper to dispose of the matters presented" by a petition under section 17200] (italics added).) We therefore review the trial court's decision under the abuse of discretion standard: "The appropriate [appellate] test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

The proper interpretation of statutory language is a question of law that this court reviews de novo, independent of the trial court's ruling or reasoning. (*Union Bank of California v. Superior Court* (2004) 115 Cal.App.4th 484, 488.)

B. Analysis

On appeal, objectors have not challenged any of the trial court's factual findings as lacking the support of substantial evidence. Nor have they argued that its conclusions derived from its weighing of the evidence exceeded the bounds of reason.

Objectors argue, however, that the trial court exceeded the scope of its power to modify the Trust under section 15409 in several respects. First, they argue that in the

interpretation phase of the trial, the trial court determined the Trust to have a single purpose—to educate promising young men—and that it "was not free to revisit the purpose" because that ruling was on appeal during the trial of the modification issue. Second, they argue that section 15409 "may not be employed to alter the purpose of a trust, but only to advance that purpose." In other words, in objectors' view, the phrase "'for the education of promising young men'" is neither an administrative nor a dispositive provision of the Trust, in the meaning of section 15409, but instead a purpose, which can be modified only with the consent of all beneficiaries under section 15403, or through application of the *cy près* doctrine.

Each of objectors' arguments fails. First, objectors' characterization of the trial court's ruling in the interpretation phase of the bifurcated trial is incorrect. As the trial court acknowledged, the language of its interpretation phase ruling was "fairly strong," and out of context it "could appear" that the trial court had determined the Trust had only one purpose. Nevertheless, "'[l]anguage used in any opinion is of course to be understood in light of the facts and the issue then before the court . . . .'" (*People v. Scheid* (1997) 16 Cal.4th 1, 17, quoting *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.) The matter at issue in the interpretation phase was only "whether the language of the Trust can be interpreted as giving the Trustees the discretion to institute coeducation at Deep Springs College." In this context, the trial court's comment that "it appears that the only purpose intended by [Mr. Nunn] was to continue a men's college" is properly understood as an interpretation of the phrase "for the education of promising young

men"—specifically, that it excludes female students—not a ruling that the sole purpose of the Trust is for the education of male students.

Objectors are incorrect, therefore, that the trial court's analysis regarding modification improperly "revisit[ed]" any finding made in the first phase of the bifurcated trial. Whether or not the Trust instrument expressed multiple purposes, and how multiple expressed purposes might relate to or conflict with one another, was a matter explicitly set aside for determination later, in the second phase of the trial, as objectors acknowledged in their briefing on petitioner's appeal of the interpretation phase ruling. Petitioner's appeal of the trial court's ruling in the first phase of the bifurcated trial did not divest the trial court of jurisdiction to consider such "specified excepted . . . matters" during the second phase. (*Sacks v. Superior Court* (1948) 31 Cal.2d 537, 540.)

Objectors' second argument—that the phrase "for the education of promising young men" is not an administrative or dispositive provision of the Trust, in the meaning of section 15409, but instead expresses a purpose of the Trust, so it cannot be modified pursuant to section 15409—is also unpersuasive. Objectors have presented no authority in support of the notion that a provision expressing a purpose of a trust must necessarily be something other than the "administrative or dispositive provisions of the trust" in the meaning of section 15409.

To the contrary, as explained in Bogert's treatise on trust law, every trust has two parts; the "dispositive provisions" are those parts "in which the settlor describes the beneficiaries who are to obtain financial benefits, determines the amount or size of those benefits, *and in many cases states the purposes of the settlor in providing for these*

benefits"; the "administrative provisions" are those in which "the settlor provides for the methods by which the trustee is to manage the trust property . . . ." (Bogert, The Law of Trusts and Trustees (rev. ed. Sept. 2016) § 561 at p. 1, italics added); see *In re Estate of Traung, supra*, 207 Cal.App.2d at p. 830 [quoting substantially similar previous edition of treatise].) Applying these definitions to the facts of the present case, the clause "for the education of promising young men" is a dispositive provision; the "students in attendance" are the "sole beneficiaries" of the Trust, so any clause directing who may become a student describes the beneficiaries who are to obtain the benefits of the Trust.

We conclude, therefore, that by means of the phrase "administrative or dispositive provisions of the trust," section 15409 specifies that the trial court is empowered to modify either type of substantive provision of a trust, under the appropriate circumstances. The purpose of a trust may also be expressed elsewhere than in the administrative or dispositive provisions—say, in the recitals. Regardless, there is no basis for objectors' assumed premise that, because a provision expresses a purpose of the trust, the provision cannot also be an administrative or dispositive provision, subject to modification pursuant to section 15409.

Our analysis is supported by the circumstance that, as objectors recognize in their briefing, section 15409 was drawn in particular from section 167 of the Restatement (Second) of Trusts. That section provides that the court will direct or permit the trustee to deviate from any "term of the trust," under the appropriate circumstances. (Rest. 2d Trusts, § 167, subsection (1).) Objectors can point to nothing in the legislative history that suggests any intent to narrow the scope of the trial court's authority in this regard.

Because the trial court did not exceed the scope of its power under section 15409, and because objectors have failed to demonstrate any other abuse of the trial court's discretion, the trial court's judgment modifying the Trust must be affirmed. We therefore need not, and do not, address either petitioner's claim of error with respect to the trial court's interpretation phase ruling, or objectors' arguments with respect to the other alternative bases for the trial court's modification phase ruling.

IV. DISPOSITION

The judgment is affirmed. Petitioner is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

David Hitz, Chairman of the Board of Trustees of the L. L. Nunn Trust, acting on behalf of the Board of Trustees,
Petitioner and Appellant,

v.

KINCH HOEKSTRA and EDWARD KEONJIAN, Trustees of the L. L. Nunn Trust,
Objectors and Respondents.

Superior Court of California, County of Inyo
Case No. SICVPB 1253232
The Honorable Hon. Judge Stout

PROOF OF SERVICE

Case No. E058293

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PROOF OF SERVICE BY MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025. On May 3, 2017, I served the following document(s):

LETTER REQUESTING PUBLICATION OF OPINION

on the interested parties in this action by placing true and correct copies thereof in sealed envelope(s) addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 3, 2017 at Menlo Park, California.

Tina McBride

Tina McBride