

Reverse and Render; Opinion Filed November 30, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00876-CV

KAREN COYLE, Appellant

V.

**SUSAN E. JONES, INDIVIDUALLY AND
INDEPENDENT EXECUTRIX OF THE ESTATE OF
FRANCES J. HUTCHINS, DECEASED, Appellee**

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-12-00182-3**

MEMORANDUM OPINION

Before Justices Lang, Evans, and Schenck
Opinion by Justice Evans

Karen Coyle appeals a judgment rendered after a jury trial awarding \$197,034.64 in damages to her sister, Susan E. Jones. The parties' underlying dispute arose after their mother, Frances J. Hutchins, died. Jones asserted that certain assets were part of Frances's estate while Coyle contended they belonged to a trust created in 1997 by Francis and her late husband Stuart. In four issues, Coyle complains of charge error and challenges the legal sufficiency of the evidence supporting the jury's verdict. Because we conclude the evidence is legally insufficient to support the jury's finding that Frances revoked the trust, we reverse the trial court's judgment and render judgment that Jones take nothing on her claims against Coyle.

BACKGROUND

In September 1997, Frances Hutchins and her husband Stuart (trustors) executed the Stuart Hutchins and Frances J. Hutchins Revocable Living Trust Agreement (Agreement). Among other things, the Agreement provided that, “At any time during the joint lives of the Trustors, . . . the Trustors may . . . revoke this Trust Agreement in part or in whole.” It further provided that the right of revocation must be exercised by the Trustor and not by any other person, including an agent, a guardian or conservator. Finally, the Agreement provided that “except as otherwise provided,” on the death of either trustor, the designation of the beneficiaries of specific gifts in the Agreement would become irrevocable, and not subject to amendment or revocation.

Stuart died in 2001. On April 9, 2010 Frances executed a document purporting to revoke the Agreement and transfer all trust assets to herself. Frances died in April 2011. Jones was appointed executrix of her mother’s estate. She filed this suit against Coyle after Coyle took possession of \$197,034.62 in assets claiming they were assets of the 1997 trust of which she became the trustee after her mother died.

The case proceeded to trial and the jury was instructed as follows: (1) “The Trust Agreement” means the trust created on September 27, 1997 by Stuart and Frances J. Hutchins and made the basis of this lawsuit; (2) the terms “Trustor,” and/or “Settlor,” shall refer individually and collectively to Husband and Wife; and (3) a settlor may revoke a trust unless it is irrevocable by the express terms of the trust agreement creating it or of an instrument modifying it. The jury was presented with two questions. The jury answered “Yes” to the first question “Do you find that on April 9, 2010, Frances J. Hutchins revoked the Trust Agreement?” The second question, which was conditioned on a “yes” answer to the first question, asked “What amount of money, if any does Karen Coyle owe Susan E. Jones, as Independent Executor

of the Estate of Francis J. Hutchins?” The jury responded to this question “\$197,034.62.” The trial court rendered judgment on the jury verdict.¹ Coyle then filed a motion for a judgment notwithstanding the verdict, motion to disregard jury findings or, alternatively, a motion for new trial. The trial court granted Coyle’s motion for new trial. Jones filed a petition for writ of mandamus with this Court seeking to vacate the new trial order asserting the trial court’s reasons were neither sufficiently specific nor legally appropriate bases for a new trial. We conditionally granted the writ concluding, among other things, the trial court’s determination that Jones produced no evidence on certain facts essential to her recovery was not a legally appropriate basis for ordering a new trial after a jury trial. *In re Jones*, No. 05-16-00081-CV, 2016 WL 3166080, at *3 (Tex. App.—Dallas June 7, 2016, orig. proceeding) (mem.op.). The trial court vacated its new trial order, and Coyle now appeals from the final judgment.²

ANALYSIS

Because it is dispositive of this appeal, we begin with Coyle’s third issue in which she contends the evidence is legally insufficient to support the jury’s finding that Frances revoked the 1997 Trust. When reviewing for legal sufficiency, we must determine whether more than a scintilla of evidence supports the jury’s finding by considering evidence favorable to the finding if a reasonable fact-finder could and disregarding contrary evidence unless a reasonable fact-finder could not. *Cent. Ready Mix Concrete Co. v. Islas*, 228 S.W.3d 649, 651 (Tex. 2007). Evidence will be legally insufficient when there is complete absence of evidence of a vital fact, the rules of law or of evidence bar a court from giving weight to the only evidence presented to prove a vital fact, there is no more than a mere scintilla of evidence presented to prove a vital

¹ There is no explanation of, or challenge to, a two-cent discrepancy between the jury verdict and judgment.

² Although there is no formal order reinstating the original trial court judgment, it was impliedly reinstated, and the appellate time table began to run, on June 6, 2016, the date the trial court signed an order vacating the new trial order. *See In re Baylor Med. Ctr.*, 280 S.W.3d 227, 230–31 (Tex. 2008).

fact, or the evidence offered conclusively establishes the opposite of a vital fact. *See City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). In our review, we consider only evidence supporting the jury’s verdict, disregarding contrary evidence, unless the contrary evidence is conclusive. *City of Keller*, 168 S.W.3d at 817.

Generally, we evaluate the legal sufficiency of the evidence against the charge given where, as here, there is no objection to the form of the charge brought forward on appeal. *See Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat’l Dev. & Research Corp.*, 299 S.W.3d 106, 112 (Tex. 2009).³ In the case before us, the jury was instructed that a settlor may revoke a trust “unless it is irrevocable by the express terms of the trust agreement creating it or of an instrument modifying it.” The express language of the Agreement creating the trust at issue provided that the trust agreement could be revoked “at any time during the *joint* lives of the Trustors.” (emphasis added). The Agreement further provided that other than that, when either trustor died, “the designation of Beneficiaries of specific gifts in this Trust shall become irrevocable, and not subject to amendment or modification.” The only evidence of revocation before the jury, however, was Frances’s 2010 written revocation. It is undisputed that Frances executed the revocation almost nine years after Stuart’s death. Absent any evidence to support the jury finding that the Agreement was revoked while both trustors were alive, there is legally insufficient evidence to support the jury’s revocation finding. To the contrary, the evidence at trial conclusively established that Frances could not revoke the Agreement after Stuart’s death. Because there is no evidence to support jury’s revocation finding, we resolve Coyle’s third issue in her favor. Our resolution of this issue makes it unnecessary to address Coyle’s issues complaining of charge error or the legal sufficiency of the jury’s damage award.

³ Although Coyle asserts question one impliedly instructed the jury that Frances could revoke the Agreement on April 9, 2010, she does not challenge the jury instruction that the Agreement was revocable “unless it was irrevocable by the express terms of the trust agreement creating it or of an instrument modifying it.”

CONCLUSION

Because we conclude the evidence is legally insufficient to support the jury's finding that Frances revoked the Agreement and that revocation was the sole basis for Jones's claim, we reverse the trial court's judgment and render judgement that Jones take nothing on her claims.

160876F.P05

/David Evans/
DAVID EVANS
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

KAREN COYLE, Appellant

No. 05-16-00876-CV V.

SUSAN E. JONES, INDIVIDUALLY AND
INDEPENDENT EXECUTRIX OF THE
ESTATE OF FRANCES J. HUTCHINS,
DECEASED, Appellee

On Appeal from the Probate Court No. 3,
Dallas County, Texas
Trial Court Cause No. PR-12-00182-3
Opinion delivered by Justice Evans, Justices
Lang and Schenck participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and judgment is **RENDERED** that Susan E. Jones, individually and as independent executrix of the Estate of Frances J. Hutchins, deceased, take nothing on her claims against Karen Coyle.

It is **ORDERED** that appellant Karen Coyle recover her costs of this appeal from appellee Susan E. Jones, individually and as independent executrix of the Estate of Frances J. Hutchins, deceased.

Judgment entered this 30th day of November, 2017.