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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0573**

In re: Sidney A. Goodman Revocable Trust,  
U/A/D December 16, 1985 as Amended

**Filed February 12, 2018  
Affirmed; motion denied  
Johnson, Judge**

Hennepin County District Court  
File No. 27-TR-CV-16-14

Frank R. Berman, Frank R. Berman Law Offices, Edina, Minnesota; and

Scott G. Harris, Timothy M. Kelley, Stinson Leonard Street LLP, Minneapolis, Minnesota  
(for appellants Holly Goodman Shapiro, Brad Shapiro, Chad Shapiro, Dorothy Clemmer,  
and Millie Egan)

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& Weinstine, P.A., Minneapolis, Minnesota (for respondent David Gotlieb)

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respondent South Dakota Trust Company)

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Minneapolis, Minnesota (for respondent Daniel Peterka)

Bradley J. Frank, Barnes & Thornburg LLP, Minneapolis, Minnesota (for respondent  
John B. Goodman, Trustee (deceased))

Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Kirk,  
Judge.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Two persons were trustees of a trust. One trustee died in 2013, and the other trustee died in 2016. One week after the second death, a person who was specifically identified in the trust agreement as a successor trustee accepted the trusteeship. Six months later, a beneficiary of the trust appointed a different person to be the sole trustee of the trust. The district court resolved the competing claims of trusteeship by confirming as trustee the person whom the trust agreement identified as a successor trustee. We affirm.

### FACTS

In December 1985, Sidney A. Goodman created the Sidney A. Goodman Revocable Trust. Sidney appointed himself and his son, John B. Goodman, as trustees. Sidney amended the trust agreement numerous times. He executed the 21st amended agreement in December 2012.

The trust agreement, as amended, provides for the appointment of an alternate or successor trustee, which is the issue in this appeal. The pertinent provisions of the trust agreement are as follows:

**11.1 Alternate or Successor Trustee.** If for any reason SIDNEY A. GOODMAN is unable or unwilling to continue to serve as Trustee hereunder, then SIDNEY A. GOODMAN may designate an alternate or successor Trustee. . . . If SIDNEY A. GOODMAN fails to designate an alternate or successor Trustee as provided above, then DAVID A. GOTLIEB . . . shall become a Trustee hereunder upon filing a written acceptance of such office with the trust records. If for any reason DAVID A. GOTLIEB is unable or unwilling to serve or to continue to serve as Trustee hereunder, then DAVID A. GOTLIEB may designate an alternative or

successor Trustee. . . . If DAVID A. GOTLIEB fails to designate an alternate or successor Trustee as provided above or is unwilling or unable to serve as Trustee, then a senior partner of the Private Wealth Services Department of Barnes & Thornburg LLP, Minneapolis, Minnesota, shall become a Trustee hereunder upon filing a written acceptance of such office with the trust record, with the power to designate a successor Trustee.

If for any reason JOHN B. GOODMAN is unable or unwilling to serve or to continue to serve as a Trustee hereunder and SIDNEY A. GOODMAN is also unable or unwilling to serve as a Trustee hereunder, then JOHN B. GOODMAN may designate an alternate or successor Trustee. . . . If JOHN B. GOODMAN fails to designate an alternate or successor Trustee as provided above, then no alternate or successor Trustee shall be appointed unless there shall be a complete vacancy in the trusteeship.

**11.2 Vacancy in the Trusteeship.** In the event of a complete vacancy of the trusteeship of any trust created hereunder, a majority of a group consisting of the adult income beneficiaries hereunder and the parent or legal guardian of any minor income beneficiaries hereunder shall designate an alternate or successor Trustee. . . . For purposes of this Trust Agreement, a complete vacancy of trusteeship shall be deemed to occur at any time that the beneficiary of any trust is serving as the sole Trustee of that trust.

During his lifetime, Sidney did not designate an alternate or successor trustee pursuant to article 11.1 of the trust agreement. He died on October 20, 2013, at the age of 93. His will provided that, upon his death, his assets would be devised to the trust.

On January 1, 2016, John, acting on his own behalf, exercised an option to purchase assets of the trust at fair market value. John had acquired the “first option” in a written agreement that he and Sidney signed in December 2012. On February 26, 2016, John, acting as trustee of the trust, petitioned the district court for approval of the sale of the

trust's membership interests in certain limited partnerships and limited liability companies to the John B. Goodman Revocable Trust for \$3,822,158. The district court scheduled a hearing on the petition for April 13, 2016.

On March 20, 2016, John died unexpectedly at the age of 66. During John's lifetime, he did not designate an alternate or successor trustee pursuant to article 11.1 of the trust agreement.

Eight days after John's death, David A. Gotlieb, whom Sidney had identified in article 11.1, executed a writing that expressed his acceptance of the trusteeship. On the same day, Gotlieb, acting as trustee, filed an amended petition for approval of the sale of trust assets to the John B. Goodman Revocable Trust, consistent with the petition John previously had filed. Gotlieb served notice of his filings on Holly Goodman Shapiro (the only surviving child of Sidney), Sana Goldberg (a trust beneficiary), the attorney general, a family foundation, and the trustee of the John B. Goodman Revocable Trust. Holly Goodman Shapiro attended the hearing with counsel but did not express any objections to the relief requested in the petition or amended petition or to Gotlieb's acceptance of his appointment as trustee. On April 15, 2016, the district court issued an order approving the sale of trust assets to the John B. Goodman Revocable Trust, as proposed in the petition and the amended petition. The district court administrator served notice of the order on all persons who were served with the petition.

Approximately six months later, on October 11, 2016, Sana Goldberg designated Thomas A. Sherman as the trustee of the trust. On October 17, 2016, Sherman executed a writing that expressed his acceptance of the trusteeship. On October 20, 2016, acting as

trustee of the trust, Sherman commenced this action by filing a petition and a supplemental petition with the district court. Four other persons joined in the petition: Holly Goodman Shapiro, Brad Shapiro (a child of Holly), Chad Shapiro (also a child of Holly), and Dorothy Clemmer (a friend of Sidney and grandmother of Goldberg). Sherman and his co-petitioners asked the district court to vacate the April 15, 2016 order approving the sale of trust assets to the John B. Goodman Revocable Trust. On November 29, 2016, a second supplemental petition was filed by Holly Goodman Shapiro, Brad Shapiro, Chad Shapiro, and Dorothy Clemmer. In the second supplemental petition, Holly Goodman Shapiro and her co-petitioners asked the district court to confirm Sherman's appointment as trustee and to enjoin Gotlieb from acting as trustee. Gotlieb opposed the petitions, as did the trustee of the John B. Goodman Revocable Trust.

In March 2017, after a hearing on the petitions, the district court denied the petition and supplemental petition filed by Sherman and his co-petitioners, denied the second supplemental petition filed by Holly Goodman Shapiro and her co-petitioners, and confirmed the appointment of Gotlieb as the sole trustee of the trust.

Holly Goodman Shapiro, Brad Shapiro, Chad Shapiro, Dorothy Clemmer, and Millie Egan filed a notice of appeal and a joint appellants' brief. Gotlieb and the trustee of the John B. Goodman Revocable Trust filed a joint respondents' brief.

## **DECISION**

### **I. Appellants' Standing**

We begin by addressing the threshold issue of standing. Respondents argue that appellants do not have standing to pursue this appeal. Respondents note that Goldberg and

Sherman did not join in appellants' notice of appeal and did not file a separate notice of appeal. Respondents challenge appellants' standing both in their responsive brief and in a motion to dismiss the appeal, which they filed after oral argument.

“Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court.” *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007). “Standing is a jurisdictional doctrine, and the lack of standing bars consideration of the claim by the court.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011). In general, standing may be present either because the person seeking relief “has suffered some ‘injury-in-fact’” or because the person “is the beneficiary of some legislative enactment granting standing.” *Enright*, 735 N.W.2d at 329. A party’s standing may be questioned “at various stages of the litigation proceeding, including . . . when a party appeals a decision.” *D.T.R.*, 796 N.W.2d at 512. In considering whether a party has standing to appeal a district court’s decision, an appellate court asks whether standing has been “conferred by a statute” or whether an appellant is “an aggrieved party.” *Id.* An appellant is “an aggrieved party” if “there is injury to a legally protected right.” *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808, 814 (Minn. 2014) (quotations omitted).

We first consider whether standing has been conferred by statute. Both appellants and respondents cite the following statute as the source or potential source of a legislative grant of standing:

- (a) An interested person may petition the district court and invoke its jurisdiction as provided in sections 501C.0201 to 501C.0208 for those matters specified in section 501C.0202.

(b) As used in sections 501C.0201 to 501C.0208, “interested person” includes an acting trustee, any person named as successor trustee under the trust instrument, any person seeking court appointment as trustee whether or not named in the trust instrument, a beneficiary, a creditor, and any other person having a property or other right in or claim against the assets of the trust. . . . The meaning of interested person, as it relates to a particular person, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any petition.

Minn. Stat. § 501C.0201 (2016). This statute was enacted into law in 2015 and has not been interpreted by either the supreme court or this court.

Respondents assert that appellants’ interest in the appointment of a trustee arises from appellants’ status as creditors or putative creditors of the trust. Respondents explain that appellants may be creditors because they (or some of them) were beneficiaries of another trust that allegedly had acquired an option to purchase assets of the Sidney A. Goodman Revocable Trust. A “creditor” is included among the interested persons described in the first sentence of section 501C.0201(b). Appellants assert that they are interested persons because they have “a specific right in or claim against the assets of” the trust, which mirrors the language of the last clause of the first sentence of section 501C.0201(b). Thus, respondents and appellants agree that appellants are within the class of persons described in the first sentence of section 501C.0201(b).

Nonetheless, respondents contend that appellants are not interested persons because they are excluded by the last sentence of section 501C.0201(b), which, they contend, requires an inquiry into “the particular purposes of, and matter involved in, any petition.” *See* Minn. Stat. § 501C.0201(b). Respondents contend that, as a matter of statutory

interpretation, the last sentence narrows the class of interested persons described in the first sentence. *See id.* Respondents assert that appellants “may have an interest in *what* actions the Trustee may take with respect to the trust’s assets” but they “do not have any interest in *who* is appointed to serve as” trustee of the trust.

Respondents’ argument is based on the premise that the last sentence of section 501C.0201(b) is an exception to, or a carve-out from, the first sentence of section 501C.0201(b). We need not resolve that issue of statutory interpretation. Assuming without deciding that a creditor has standing only with respect to certain purposes and matters, we believe that at least one appellant has a legitimate interest in the identity of the trustee and, thus, is aggrieved by the district court’s decision. A trust must have a trustee. *See Bond v. Commissioner of Revenue*, 691 N.W.2d 831, 837 (Minn. 2005); *see also* Minn. Stat. §§ 501C.0402(a)(4), .0704(b) (2016). The identity of the trustee may be important for multiple reasons. The trust at issue in this appeal is a family-oriented trust. The trust agreement specifically mentions Holly Goodman Shapiro multiple times and makes certain provisions for other descendants of Sidney. Holly Goodman Shapiro and her co-petitioners have alleged that they hold an option to purchase assets of the trust and that the trustee should seek the return of the assets that were sold to the John B. Goodman Revocable Trust. Without expressing any opinion as to whether that claim is or is not meritorious, we believe, at the least, that Holly Goodman Shapiro has a sufficient interest in the identity of the trustee of the trust that was created by her late father to qualify as an interested person under section 501C.0201(b).

Thus, appellants have standing to pursue this appeal, and we deny respondents' motion to dismiss the appeal for lack of standing.

## **II. Goldberg's Status as Beneficiary**

We continue by addressing a second responsive argument that could be dispositive of the appeal. In their responsive brief, respondents argue that Goldberg is not an income beneficiary of the trust and, thus, is not authorized to designate an alternate or successor trustee. Respondents acknowledge that Goldberg is a beneficiary but contend that she is entitled only to principal of the trust, not to income. In their reply brief, appellants argue that respondents did not preserve this argument for appeal because they did not present it to the district court.

An appellate court generally will not consider an argument that was not presented to the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 42 (Minn. App. 2014). Appellants are correct that respondents did not preserve this argument. In the district court, no party argued that Goldberg is not an income beneficiary. In its order, the district court stated that it is undisputed that Goldberg is "the sole adult income beneficiary" and found that she is "the person authorized to nominate a successor Trustee in the event of a complete vacancy." At oral argument in this court, respondents' counsel acknowledged that respondents did not preserve the issue in the district court. Thus, we will not consider the issue for the first time on appeal.

### III. Confirmation of Gotlieb as Trustee

We next turn to the substance of appellants' argument for reversal. Appellants argue that the district court erred by denying the petitions filed by Sherman and Holly Goodman Shapiro and their respective co-petitioners and by confirming Gotlieb's acceptance of his appointment as trustee. Appellants contend that, as a matter of law, Gotlieb rejected the trusteeship before March 28, 2016, because he was required to accept the appointment within a reasonable period of time but did not do so. Appellants further contend that Gotlieb's inaction created a complete vacancy in the trusteeship, that the complete vacancy following John's death provided Goldberg with the authority to appoint a successor trustee, and that Sherman should be confirmed as the sole trustee of the trust. Respondents counter that, as a matter of law, Gotlieb was *not* required to accept the appointment within a reasonable period of time and, alternatively, if he was so required, he did so.

A grantor of a trust may choose one or more trustees to administer and manage the trust. *Kirsch v. Kahn*, 276 Minn. 294, 299, 149 N.W.2d 676, 681 (1967). If a court is required to interpret a trust agreement, the court's purpose "is to ascertain and give effect to the grantor's intent." *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012); *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *review denied* (Minn. June 26, 2013). "A court should seek out the grantor's dominant intention by construing the trust agreement in its entirety." *Van Dusen*, 834 N.W.2d at 520. We do so by examining the language of the trust agreement to determine whether it is unambiguous. *See id.* If the trust agreement is unambiguous, we discern the grantor's intent from the language of the trust agreement and do "not consider extrinsic evidence."

*Id.*; see also *In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985). A court should interpret unambiguous words and phrases in a trust agreement “according to their common and approved usage.” *Stisser*, 818 N.W.2d at 502. This court applies a *de novo* standard of review to a district court’s interpretation of a trust agreement. *Id.*

In this case, to resolve the parties’ dispute, we must interpret and apply article 11.1 and article 11.2 of the trust agreement, which are quoted in full above. All parties assert that articles 11.1 and 11.2 are unambiguous, yet the parties assign different meanings to the two articles. The district court resolved the parties’ respective arguments by reasoning that Sidney intended that either Gotlieb, Gotlieb’s appointee, or an attorney in Gotlieb’s law firm would succeed him as trustee; that the trust agreement did not impose a time limit on Gotlieb’s acceptance of the trusteeship; that Gotlieb accepted his appointment as trustee within a reasonable time after John’s death; that Gotlieb accepted his appointment as trustee before Goldberg nominated Sherman; and, thus, that there was not a complete vacancy in the trusteeship when Goldberg nominated Sherman.

The district court’s reasoning is based primarily on its determination that Gotlieb’s acceptance of the trusteeship on March 28, 2016, is valid. Appellants argue that Gotlieb’s acceptance is not valid because he did not accept the appointment within a reasonable period of time. Appellants’ contention is based primarily on the following statute:

(a) Except as otherwise provided in paragraph (c), a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method, or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. *A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.*

Minn. Stat. § 501C.0701 (2016) (emphasis added). Appellants contend that, in light of the second sentence of 501C.0701(b), Gotlieb should be deemed to have rejected his appointment as trustee because he did not take any action to accept the appointment between Sidney's death on October 20, 2013, and his eventual formal acceptance on March 28, 2016.

Respondents contend that section 501C.0701, which requires the appointment of a successor trustee upon a vacancy in the trusteeship, does not apply because it was enacted in 2015 and was not effective until January 1, 2016, more than two years after Sidney's death. *See* 2015 Minn. Sess. Laws ch. 5, art. 7, § 1, at 111. The applicability of section 501C.0701 is nuanced. The provisions of chapter 501C apply generally to "all trusts created before, on, or after January 1, 2016" (or, in other words, to all trusts). Minn. Stat. § 501C.1304(a)(1) (2016). But "an act or omission that occurs before January 1, 2016, is not affected by sections 501C.0101 to 501C.1208." *Id.* § 501C.1304(a)(5). Appellants' contention that Gotlieb rejected his appointment as trustee by not accepting it within a reasonable time is, in essence, based on an alleged omission. Accordingly, section

501C.0704(b) does not apply to Gotlieb’s non-acceptance of his appointment between Sidney’s death on October 20, 2013, and December 31, 2015. For purposes of this case, section 501C.0704(b) applies only to Gotlieb’s acts or omissions after January 1, 2016.<sup>1</sup>

Appellants’ contention that Gotlieb was required to accept his appointment within a reasonable period of time is based secondarily on the common law. Appellants contend that, in general, a reasonable-time requirement applies “to any agreement which includes no specific deadline for performance of a required act.” For that proposition, appellants cite to a single case, which concerns a breach-of-contract claim in a commercial context. *See Hill v. Okay Constr. Co.*, 312 Minn. 324, 333, 252 N.W.2d 107, 114 (1977). It appears that there are no Minnesota cases imposing a reasonable-time requirement on a person’s acceptance of an appointment as trustee. Appellants cite two cases from foreign jurisdictions, but neither provides direct support for their position.<sup>2</sup> We have searched for

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<sup>1</sup>Appellants also contend that section 501C.0704(b) applies on the ground that “any rule of construction or presumption provided in sections 501C.0101 to 501C.1208 appl[ies] to trust instruments executed before January 1, 2016, unless there is a clear indication of a contrary intent in the terms of the trust.” Minn. Stat. § 501C.1304(a)(4). The contention is without merit because section 501C.0704(b) does not contain a rule of construction or presumption. It appears that section 501C.1304(a)(4) refers to certain provisions within chapter 501C that expressly state a statutory presumption or expressly refer to a rule of construction. *See, e.g.*, Minn. Stat. §§ 501C.0112, .0401(b), .0802(c), .1102, subd. 3, .1109, subd. 1(d), .1111 (2016).

<sup>2</sup>In *In re Robinson*, 37 N.Y. 261 (N.Y. 1867), a person who was named in a will as trustee of a testamentary trust did not take any action to accept the trusteeship. *Id.* at 262-63. The court concluded that the person should be deemed to have rejected the trusteeship because he “had not accepted the trust” during the passage of 20 years and “was traveling in Europe, was advanced in years and an invalid.” *Id.* In *Galbreath v. del Valle*, 633 N.E.2d 1185 (Ohio Ct. App. 1993), no one attempted to accept a trusteeship. Rather, the probate court appointed a successor trustee to fill a vacancy, and the appellate court concluded that the probate court abused its discretion by doing so before the beneficiaries had an opportunity to select a successor trustee. *Id.* at 1190-91.

a well-established common-law rule among American courts as to whether a trustee is required to accept an appointment within a reasonable time, and we have found no such rule. *See, e.g., Restatement (Third) of Trusts* § 35 & cmt. b (2003). We are mindful that, as the district court reasoned, article 11.1’s silence on the matter indicates that Sidney did not intend to impose any deadline on Gotlieb’s acceptance of his appointment. In the absence of an express deadline in the trust agreement, and in the absence of caselaw imposing a common-law obligation on a person appointed to be a trustee, we decline to apply a reasonable-time requirement to Gotlieb for the period of time before January 1, 2016.

Accordingly, the relevant question is whether Gotlieb rejected his appointment as trustee by not accepting it within a reasonable time between January 1, 2016, and March 28, 2016. *See* Minn. Stat. § 501C.0701(b). With respect to a trustee’s duty to sell a risky investment within a reasonable time, the supreme court stated, “what is a reasonable time . . . depends upon the circumstances of the particular case, and is ordinarily a question of fact.” *In re Comstock’s Will*, 219 Minn. 325, 336, 17 N.W.2d 656, 663 (1945). Likewise, in *Bode v. Minnesota Dep’t of Nat. Res.*, 612 N.W.2d 862 (Minn. 2000), the supreme court stated that “what is a reasonable time must be determined by considering all attendant circumstances such as: ‘intervening rights, . . . prejudice to the adverse party, [and] the commanding equities of the case.’” *Id.* at 870 (quoting *Newman v. Fjelstad*, 271 Minn. 514, 522, 137 N.W.2d 181, 186 (1965)) (interpreting Minn. R. Civ. P. 60.02).

The district court found that Gotlieb accepted his appointment “within a reasonable time after the death of John Goodman.” That finding is not clearly erroneous inasmuch as

Gotlieb accepted his appointment only eight days after John died. Whether Gotlieb unreasonably delayed in accepting or rejecting his appointment between January 1, 2016, and March 20, 2016, depends on the circumstances surrounding the trust. *See Comstock's Will*, 219 Minn. at 336, 17 N.W.2d at 663; *see also Bode*, 612 N.W.2d at 870.

The trust agreement provides that, after Sidney's death, "the Trustees shall distribute the balance of the Trust Estate, including principal and all undistributed income, in accordance with Article 3, Article 4, Article 5 and Article 6." During the relevant time period, John was acting as trustee to effectuate the provisions of article 3. On January 1, 2016, John, acting on his own behalf, executed his option to purchase trust assets at fair market value. On the same date, John, acting as trustee, agreed to sell the trust's membership interests in certain limited partnerships and limited liability companies to the John B. Goodman Revocable Trust for \$3,822,158. On February 26, 2016, John, acting as trustee, petitioned the Hennepin County District Court for approval of the transaction (by signing a petition that had been drafted by one of Gotlieb's law firm colleagues). Article 4 of the trust agreement is concerned with the payment of debts, expenses, and taxes. Article 5 requires the trustee or trustees to pay Goldberg's living expenses and tuition expenses, up to a limit of \$275,000, to the extent that she is pursuing an advanced degree before her 30th birthday. The record reveals that, in October 2016, Goldberg turned 27 years old, was pursuing an advanced degree, and was receiving the benefits due her by submitting bills to an employee of "the Goodman Group," who was paying the bills "directly on [her] behalf." Article 5 also requires the trustee or trustees to distribute the balance of the funds set aside for Goldberg to John, but that duty would not arise until

Goldberg either completes her graduate education or reaches the age of 30. Article 6 requires the trustee or trustees to distribute the balance of the trust's assets to a family foundation, but that duty also would not arise until "after compliance with the foregoing provisions of this Trust Agreement."

Our review of these provisions of the trust agreement and other parts of the record reveals that John was fulfilling the duties of trustee between January 1, 2016, and March 20, 2016. The trust was distributing benefits to Goldberg pursuant to article 5. John was taking action to sell certain trust assets pursuant to article 3. No one had objected to John's status as sole trustee or to the sale of trust assets that John proposed in his February 26, 2016 petition. In light of these circumstances, Gotlieb reasonably could have determined, during the relevant 80-day period, that it was not necessary for him to take immediate action to accept his appointment as trustee. *See Comstock's Will*, 219 Minn. at 336, 17 N.W.2d at 663; *see also Bode*, 612 N.W.2d at 870. Thus, Gotlieb did not fail to accept his appointment within the reasonable time imposed by section 501C.0701 and, thus, did not reject his appointment before he formally accepted it on March 28, 2016.

Appellants contend that there was a "complete vacancy" in the trusteeship for two independent reasons: first, because Gotlieb did not accept his appointment within a reasonable time after Sidney's death, and, second, because John's death left no one in the position of trustee. With respect to the second point, we have determined that the district court did not clearly err by finding that Gotlieb accepted his appointment "within a reasonable time after the death of John Goodman." Granted, no one was a trustee during the eight days in March 2016 between John's death and Gotlieb's acceptance of his

appointment. *See* Minn. Stat. § 501C.0704(a)(5) (2016) (providing that “vacancy in the trusteeship occurs if . . . the trustee dies”). But it is immaterial whether there was a complete vacancy after Sidney’s death or during the brief period of March 20, 2016, to March 27, 2016. Regardless, there was *not* a complete vacancy in the trusteeship on October 11, 2016, when Goldberg purported to designate Sherman as trustee. Gotlieb’s acceptance of his appointment on March 28, 2016, effectively resolved the complete vacancy by filling it.

Appellants emphasize the second sentence of article 11.2, which states that “a complete vacancy of trusteeship shall be deemed to occur at any time that the beneficiary of any trust is serving as the sole Trustee of that trust.” After Sidney’s death, John could have and perhaps should have prompted “the adult income beneficiaries” to “designate an alternate or successor Trustee,” pursuant to article 11.2. But he did not do so. After Goldberg received notice of John’s February 26, 2016 petition for approval of the sale of trust assets (which included a copy of the trust agreement), she arguably could have “designate[d] an alternate or successor Trustee,” pursuant to article 11.2. But she did not do so either. After Gotlieb accepted his appointment, there no longer was a complete vacancy in the trusteeship because Gotlieb was not and is not a beneficiary of the trust. In essence, the complete vacancy was cured. Thereafter, article 11.2 no longer could be invoked. Consequently, Goldberg’s designation of Sherman as trustee in October 2016 is not valid.

Thus, the district court did not err by denying the petitions to confirm Goldberg's appointment of Sherman and did not err by confirming Gotlieb's appointment as trustee.

**Affirmed; motion denied.**