STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0612

In the Matter of the Trust Under Will of Carrie Blumberg, deceased,
for Robert C. Blumberg.

Filed December 16, 2024
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-TR-CV-22-26

John E. Trojack, Trojack Law Office, P.A., West St. Paul, Minnesota (for appellant Robert C. Blumberg, Jr.)

William R. Asp, Best & Flanagan LLP, Minneapolis, Minnesota (for respondent Associated Trust Company, N.A.)

Alan C. Eidsness, Eric M. Friske, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent Richard M. Blumberg)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this dispute regarding administration of a trust, appellant-beneficiary argues that the district court (1) erred by preventing him from obtaining information regarding a prospective corporate trustee's costs and fees, (2) erred in interpreting the trust's language, and (3) abused its discretion in denying his request for attorney fees. We affirm.

FACTS

This appeal stems from the administration of a trust created under the Will of Carrie Blumberg, deceased, for Robert C. Blumberg (the "Trust"). Appellant Robert C. Blumberg, Jr. and respondent Richard M. Blumberg are sons of Robert C. Blumberg and are beneficiaries of the Trust. Respondent serves as the Trust's individual co-trustee. Associated Trust Company, N.A. (Associated Trust) serves as the corporate co-trustee.[1]

On June 8, 2022, Associated Trust filed a Petition for Order Allowing Annual Accounts, Instructing the Trustees and Granting Other Relief. On July 27, 2022, appellant petitioned the district court for reformation of the Trust under Minn. Stat. § 501C.0202 (2020). Respondent moved for summary judgment on appellant's petition. Respondent also moved for summary judgment against Associated Trust, seeking to remove it from its role as co-trustee and to dismiss some of its claims in its June 8, 2022 petition. The district court granted respondent's motion for summary judgment on appellant's petition for reformation. The district court granted in part and denied in part respondent's motion for summary judgment on Associated Trust's petition, holding that there were disputed facts related to whether there was a legal basis to remove Associated Trust from its co-trustee position.

In February 2023, the Trust beneficiaries and trustees entered into a settlement agreement. Appellant and respondent signed the agreement. The parties notified the court

[1] Although Associated Trust is a respondent, it takes no position in this appeal. We therefore use respondent to refer only to Richard.

that they had settled the matter and submitted the agreement to the district court for approval.

The settlement agreement states that the parties "consent to the discharge of Associated [Trust] as trustee of the Trust upon [its] resignation and the Court's approval, ratification, and confirmation of all acts of Associated [Trust] in its administration of the Trust." They also agreed "that Associated [Trust] will resign as co-trustee of the Trust, effective upon the successor corporate trustee's acceptance . . . pursuant to [the appointment provision] of this Agreement." The appointment provision states:

> The Parties agree that First State Trust Company will be appointed as successor co-trustee of the Trust, unless the beneficiaries of the Trust unanimously agree in writing to the appointment of a different successor corporate trustee on or before April 3, 2023. The appointment of the successor corporate trustee shall be effective upon written acceptance being filed with the Trust records subsequent to the Court's approval of this Agreement and allowance of the Accounts. The Parties agree that all beneficiaries of the Trust shall retain and reserve their rights under Minnesota law to petition the Court for the appointment or removal of a successor corporate trustee.

The district court approved the settlement agreement. The district court also approved, ratified, and confirmed the acts of the trustees in their administration of the Trust and authorized Associated Trust to file a petition for approval of final accounting, resignation, and discharge.

A few months later, appellant filed an Objection to Annual and Final Accounts and Petition for Order Appointing Successor Corporate Trustee, Granting Robert C. Blumberg, Jr. Attorneys Fees, and for Court Interpretation of Terms in Trust. Appellant "[o]bject[ed]

to the allowance of any accounts or discharge of corporate trustee in this matter until a new corporate trustee has been appointed and the relief sought in this Petition is granted." He asserted that he requested but did not timely receive information regarding the amounts First State Trust Company (First State) would charge to serve as trustee. He stated that once the Trust beneficiaries received that information,

> [he] can determine which bid is the best deal for the family trust. If it is . . . First State . . . , [he] will approve this Trust company. If the best deal is another bid [he] obtained from the other companies, [he] requests that upon notice to all beneficiaries, the Court appoint the corporate trustee with the best bid as the successor corporate trustee.

Appellant also asked the district court to interpret Trust language, including "what 'issue' means" as it relates to termination of the Trust and what "financial needs" means as it relates to discretionary distributions. He further asked that the district court rule "that the corporate trustee has final sole discretion in distributing the trust principal." Finally, appellant requested that "all of his legal expenses" be paid since Associated Trust and respondent could be awarded their legal fees. Appellant did not file an affidavit from his attorney to support his claim for attorney fees.

On August 2, 2023, the parties came before the district court for a hearing, and the district court ordered that "First State . . . shall disclose any additional fees beyond the fees set forth" in the Investment Manager Fees Acknowledgment by August 16, 2023. On August 16, 2023, respondent's counsel filed an affidavit, with letters from First State and Morgan Stanley attached, stating that the letters "disclose all fees and there are no 'hidden fees.'"

The parties also came before the district court for a hearing on appellant's objection. The district court appointed First State as successor trustee, defined "issue," declined to define other language in the Trust, and refused to award appellant attorney fees.

Appellant moved the district court for a new trial or amended findings, alleging that the district court did not read, disregarded, and did not take into consideration his arguments; that respondent and his attorney breached the settlement agreement; and that "since [the district court] has made numerous errors of law and fact," the matter should "be transferred to a new judicial officer who will read [appellant's] submissions and carefully prepare an Order with minimum errors of law and fact."

The district court granted appellant's motion "to the extent that the motion requested a more detailed analysis of the Court's reasoning, clarification of the record, and correction of the inadvertent transposition of party names," but the district court denied all of appellant's other requests. The district court filed an amended version of its earlier order.

This appeal followed.

DECISION

"[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it." *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted).

I.

Appellant contends that the district court "arbitrarily bar[red]" him from obtaining "information regarding a prospective corporate trustee's costs and fees on the basis of a settlement agreement." Appellant argues that the district court "relie[d] heavily upon the

settlement agreement of the parties" and that the parties' settlement agreement has "absolutely no effect on the trustee's duty to provide information to a beneficiary."

"[District] courts have the inherent power to summarily enforce a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous." *Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 272 (Minn. 2008) (quotations omitted). We review a district court's decision to enforce a settlement agreement for abuse of discretion. *See Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981).

Here, the settlement agreement clearly states that the "[p]arties agree that First State . . . will be appointed as successor co-trustee of the Trust, unless the beneficiaries . . . unanimously agree in writing to the appointment of a different successor corporate trustee on or before April 3, 2023." Each of the Trust beneficiaries signed the settlement agreement, and it is undisputed that the beneficiaries did not unanimously agree in writing to the appointment of a different successor corporate trustee on or before April 3, 2023. Thus, the district court did not abuse its discretion by enforcing the clear, unambiguous language of the settlement agreement providing that First State would serve as successor corporate trustee unless all Trust beneficiaries agreed otherwise in writing.

Appellant argues that there was a 60-day period between the signing and effective dates of the settlement agreement, during which the beneficiaries could investigate fees, and that respondent and respondent's counsel asked First State not to reveal actual costs to beneficiaries. However, appellant received fee disclosures: in August 2023, respondent's counsel filed an affidavit and attached letters from First State and Morgan Stanley, stating

that the letters "disclose all fees and there are no 'hidden fees.'" The district court determined that those disclosures were adequate.

Moreover, under the settlement agreement, all beneficiaries were required to agree unanimously in writing to appointment of a trustee other than First State. To the extent appellant argues that, if he had received the fee information sooner, all beneficiaries would have unanimously agreed to a different corporate trustee, the record belies that argument: all Trust beneficiaries other than appellant have filed affidavits with the district court stating that they want First State to serve as institutional trustee.

Appellant also complains that respondent breached his statutory duty to keep him informed as a beneficiary of the Trust. Under Minnesota law, a "trustee shall keep the qualified beneficiaries of an irrevocable trust *reasonably* informed about the administration of the trust and of the material facts necessary to protect their interests." Minn Stat. § 501C.0813(a) (2022) (emphasis added). "Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of an irrevocable trust." *Id.* Although a beneficiary has a right to be reasonably informed, a beneficiary does not have the same authority and responsibilities as a trustee. *See* Minn Stat. §§ 501C.0801-.0817 (2022).

As to this issue, the district court explained,

> In support of [appellant's] Objection, he documents his efforts to "obtain the entire picture of fees and costs." While [appellant] is correct that as a beneficiary he is legally entitled to information about the administration of trust assets and fees. His actions, however, far exceed the scope of a beneficiary or non-trustee. Based on the documents [appellant] submitted, he was not simply gathering information as an interested person

> to be informed of the trust. He, instead, took it upon himself to act and assume the role of a Trustee by soliciting written bids from financial institutions. *See* Objection and Petition, Exhibit B ("[W]e are getting renewal bids a head of time. . . . I would like all of this info no later than 10 March 2023, and I would like the packet sent to my Attorney's Office . . .). This conduct is not appropriate. There was nothing in the Settlement Agreement stating that the naming of First [State] as a successor trustee was contingent on further disclosure of fees, that First [State] must have the lowest fees, or that the Trustees were obligated to solicit bids from various financial institutions or authorized others to do so.

Appellant acknowledged that he received a bid proposal from First State, and respondent's counsel filed an affidavit with the district court that included letters from First State and Morgan Stanley stating that the letters "disclose all fees and there are no 'hidden fees.'" This record does not reasonably suggest that respondent violated the duty to keep appellant informed as a beneficiary of the Trust.

Appellant's other assertions of error are similarly unpersuasive. For example, appellant asserts that the district court did not read his filings or consider his arguments. The district court appropriately rejected that argument as follows:

> The primary argument asserted in the underlying motion was that the Court did not read or consider any of [appellant's] arguments or submissions. Therefore, this Court should vacate its Order, filed October 18, 2023, recuse itself, and assign another judge to either consider the motion anew or schedule a trial. The Court, however, did consider [appellant's] arguments and submissions, and, for the reasons set forth in its Order, found the arguments made by [respondent] to be more cogent and persuasive.

Appellant also asserts that the district court's holding was "a foregone conclusion" because "the appointment of First State was based on a contract in which the present trust

and the Dr. Henry Blumberg trust were both to come over to First State at the same time," and because the district court knew "that it had already approved the transfer of the Henry Blumberg Trust to First State." However, the district court did not mention the alleged contract or the Dr. Henry Blumberg trust in denying appellant's petition. Instead, it relied on the plain language of the settlement agreement.

In sum, appellant has not shown that the district court abused its discretion by enforcing the settlement agreement.

II.

Appellant contends that the district court "arbitrarily refuse[d] to interpret the language of the Trust when doing so would preclude further costs and litigation." Appellant sought clarification regarding three aspects of the Trust: (1) the definition of "issue" as used in the Trust instrument; (2) the termination date of the Trust; and (3) definitions related to distributions, such as the type of "financial needs" necessary to receive discretionary distributions from trustees. We address each in turn.

A.

Appellant argues that although the district court defined the term "issue" under existing caselaw, it "did not consider [a]ppellant's argument that the internal evidence in the trust suggested a different meaning."

When courts interpret the language of a trust agreement, they "generally construe words and phrases according to their common and approved usage." *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012). "But when a grantor uses technical words which have a definite and well-understood meaning," courts "generally presume that the words

carry that meaning." *Id.* (quotation omitted). "This court applies a de novo standard of review to a district court's interpretation of a trust agreement." *In re Van Dusen Marital Tr.*, 834 N.W.2d 514, 520 (Minn. App. 2013) (emphasis omitted), *rev. denied* (Minn. June 26, 2013).

The district court explained:

> As to the first question posed by [appellant] the Court finds that 'issue' includes all lineal descendants of every degree. This is also consistent with the language of the trust, which provides that the net income be paid to "said child and the children and remote issue of said child living from time to time."

(Emphasis and citations omitted.)

The Trust instrument includes the following language:

> [T]he trustees shall pay the net income to or apply the same for, one or more or all of the class consisting of said child and the children and more remote issue of said child living from time to time . . . .

Although we construe words based on common and approved usage, "issue" is a technical term and "means lineal descendants including those of every degree." *In re Holden's Tr.*, 291 N.W. 104, 107 (Minn. 1940). Appellant does not explain why "issue" has a different meaning here. Moreover, as the district court found, that usage is "consistent with the language of the trust," because it "refers to classes of people that include three categories of people (child, children of the child, and remote issue of the children)."

B.

Appellant argues that the district court erred in ruling that "the Trust does not violate Minn. Stat. § 501A.01, because the Trust will terminate no later than 21 years after the

death of the last surviving issue . . . or within 90 years after its creation according to its own terms." The district court refused to determine the precise termination date because "when the trust will terminate is hypothetical and speculative and, most importantly, it is not ripe."

"Ripeness is based on the principle that courts will consider only redressable injuries." *Minnesota Democratic-Farmer-Labor Party by Martin v. Simon*, 970 N.W.2d 689, 695 (Minn. App. 2022). "Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies." *In re Civ. Commitment of Nielsen*, 863 N.W.2d 399, 401 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Apr. 14, 2015). "The existence of a justiciable controversy is a prerequisite to adjudication." *In re Welfare of Child of K.O.*, 4 N.W.3d 359, 364 (Minn. App. 2024) (quotation omitted).

A claim creates a justiciable controversy if it "(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 336 (Minn. 2011) (quotation omitted). "We do not issue advisory opinions, nor do we decide cases merely to establish precedent." *Id.* at 337 (quotation omitted). "Justiciability issues receive de novo review." *Nielsen*, 863 N.W.2d at 401.

Appellant asserts that "[t]rust law does not have a Doctrine of Ripeness associated with it." As support, he cites Minn. Stat. § 501C.0202(4) (2022), which provides: "A

judicial proceeding involving a trust may relate to [a matter] . . . to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31." Minn. Stat. § 501C.0202(4). Although that section authorizes a district court to interpret or construe the terms of a trust, nothing in the section indicates that the ripeness doctrine does not determine *when* a court may do so. *See McCaughtry*, 808 N.W.2d at 338 (stating that ripeness governs *when* a claim may be brought).

The Trust states that it will terminate "not later than 21 years after the death of the survivor of such of [the settlor's] issue as are living at the date of [the settlor's] death" or "at such earlier time as termination vesting or distribution be required to avoid violation of any applicable rule against perpetuities, remoteness or excessive duration." Because "issue" are lineal descendants of every degree, the Trust shall terminate "not later than 21 years after the death of the survivor" of the lineal descendants living at the date of the settlor's death. Because the Trust's termination date is based on the death of the survivor of issue who are still alive, that date could not be determined when the district court ruled. The district court therefore correctly declined to determine the date on which the trust will end.

Moreover, appellant does not identify an injury that can be redressed by determining the Trust's termination date; he merely requests clarification to "lend certainty for all parties and their descendants." Nor does he identify a definite and concrete assertion of right or a genuine conflict in tangible interests. Indeed, he requests clarification now, "*before* [interpretation issues] have a chance to develop." (Emphasis added.) That

approach conflicts with the purpose of the ripeness doctrine: "avoidance of premature adjudication." *Nielsen*, 863 N.W.2d at 401 (quotation omitted). The district court appropriately declined to determine the Trust termination date because the issue was not ripe.

C.

Appellant argues that the district court erred by refusing to define "financial needs," "what needs to be proven" for a beneficiary of the Trust to receive discretionary distributions, and "sole discretion" with regard to principal distributions. The district court refused to do so because no pending action regarding these issues was before it and because doing so would improperly substitute its discretion for that of the trustees. The district court explained:

> Under Minnesota law, courts must avoid issuing advisory opinions on hypothetical or contingent situations, and without a concrete scenario before the Court. The Court is also prohibited by law to substitute its discretion for that of the trustees, which it might improperly do if it were to express an advisory opinion at this stage.
>
> Here, there is no pending request for a discretionary distribution for either medical or educational needs. There is also no pending action by the Corporate Trustee to initiate the final principal distribution of the Trust. Therefore, it would be inappropriate for this Court to advise or opine on these issues. Based upon the numerous hearings over the past year and a half, it is obvious that [appellant] is concerned that his brother, [respondent], acting as co-trustee will deny his requests for discretionary distributions to cover medical costs or delay responses to these requests. As the Court stated at the hearing, it is in the best interest of all parties to identify an arbitrator now who can address these issues quickly and cheaply should they arise in the future. It sounded as if both parties were amenable to binding arbitration, and it is the Court's hope that both parties follow through on that commitment.

(Citations omitted.)

The district court correctly declined to define terms related to a discretionary distribution in the absence of a justiciable claim. Doing so would also have infringed on the role of the trustee. "The well-settled rule in Minnesota is that the courts will not substitute their discretion for that of a trustee except when necessary to remedy an abuse of discretion." *In re Trs. A & B of Divine*, 672 N.W.2d 912, 919 (Minn. App. 2004).

In sum, because there was no "pending request for a discretionary distribution" and "no pending action by the Corporate Trustee to initiate the final principal distribution of the Trust," the district court properly declined to advise on those nonjusticiable issues.

III.

Appellant contends that the district court arbitrarily denied his request for attorney fees and costs. The district court denied his request (1) because he did not comply with Minn. R. Gen Prac. 119 and (2) because "'justice and equity' do not weigh in favor of granting the request."

Minnesota General Rules of Practice provide that any request for attorney fees in the amount of $1,000 or more "shall be made by motion." Minn. R. Gen. Prac. 119.01. Minnesota General Rules of Practice provide that a motion for attorney fees "shall be accompanied by an affidavit of any attorney of record" and include a "description of each item of work performed," the "normal hourly rate for each person for whom compensation is sought," a "detailed itemization of all amounts sought for disbursements or expenses," and an indication that the affiant reviewed the work or records and that the fees were for

work necessary to properly represent the client. Minn. R. Gen. Prac. 119.02. "A district court has discretion to strictly enforce or to waive the requirements of rule 119 when considering a motion for attorney fees." *Rooney v. Rooney*, 782 N.W.2d 572, 577 (Minn. App. 2010).

In relying on rule 119 to deny fees and costs, the district court explained:

> Here, the record submitted in support of fees and costs was inadequate. Although there was a document listing fees that were presumably charged by counsel amongst the various exhibits attached to the Objection and Petition filed on July 20, 2023, there was no detailed affidavit pertaining to any of the attached exhibits, including the list of attorneys' fees. The Affidavit of John E. Trojack was not filed until September 8, 2023, just seven days prior to the hearing and *after* the other party had filed their responsive pleading. For this reason, the request for attorneys' fees and costs are denied pursuant to Rule 119.

The district court did not abuse its discretion by enforcing the requirements of rule 119.

The district court also denied the request for attorney fees and costs because "'justice and equity' do not weigh in favor of granting the request." Appellant argues that he should have been awarded attorney fees because he was "acting primarily for the benefit of the estate in securing a clarification of ambiguous trust-instrument language where a reasonable doubt as to its meaning exists."

"In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party from the trust that is the subject of the judicial proceeding." Minn. Stat. § 501C.1004 (2022). Minn. Stat. § 501C.1004 "governs a beneficiary or third party's ability to recover attorney fees from trust assets." *Lund ex rel. Revocable Tr. of Lund v.*

Lund, 924 N.W.2d 274, 286 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019). However, "the common-law standard for trustees—now codified in section 501C.0709," provides that a "trustee is entitled to be reimbursed out of the trust property, with interest as appropriate" for "expenses that were properly incurred in the administration of the trust." Minn. Stat. § 501C.0709 (2022); *Lund*, 924 N.W.2d at 286. "Determination of whether attorney fees will be chargeable to a trust is within the sound discretion of the [district] court and will not be reversed absent an abuse of discretion." *In re Tr. Created by Hill*, 499 N.W.2d 475, 493-94 (Minn. App. 1993), *rev. denied* (Minn. July 15, 1993).

Appellant is a beneficiary of the Trust, and not a trustee. Thus, any award of attorney fees would be governed by Minn. Stat. § 501C.1004, which states that the district court "may" award attorney fees. "'May' is permissive." Minn. Stat. § 645.44, subd. 15 (2022). In ruling that justice and equity did not warrant an award of attorney fees to appellant, the district court reasoned, "The petition filed by [appellant] was largely, if not entirely, unsuccessful. The Court also finds that many of the issues raised were unnecessary and simply created delays in implementing the parties' Settlement Agreement." The district court did not abuse its discretion in determining that justice and equity did not require an award of attorney fees.

Affirmed.