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MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 31 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In the Matter of the	)	
	)	
WILLIAM & LEOLA F. GOAR TRUST	)	2 CA-CV 2012-0057
U/A/D FEBRUARY 7, 1991	)	DEPARTMENT B
	)	
and	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
THE WILLIAM GOAR GST REVERSE	)	Rule 28, Rules of Civil
QTIP TRUST CREATED UNDER THE	)	Appellate Procedure
WILLIAM & LEOLA F. GOAR TRUST	)	
U/A/D FEBRUARY 7, 1991.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. PB20100243

Honorable Charles V. Harrington, Judge

AFFIRMED

Law Offices of Joseph H. Watson  
By Joseph H. Watson

Tucson  
Attorney for Appellant/Intervenor Lynn Myers

Gabroy, Rollman & Bossé  
By Brenden J. Griffin

Tucson  
Attorneys for Appellee/Trustee Susan J. Bossé

V Á S Q U E Z, Presiding Judge.

¶1 This appeal arises out of a trust agreement executed by William and Leola Goar for the benefit of William’s daughters, Sheila Goar and Sandra Wattawa. We are asked to determine whether the trustee complied with A.R.S. § 14-10813(C) in providing a trust report to the beneficiaries. For the reasons stated below, we conclude the trustee complied with the statute and affirm the trial court’s judgment dismissing the case with prejudice.

### **Factual Background and Procedural History**

¶2 “We view the facts in the light most favorable to supporting the trial court’s judgment.” *In re Estate of Pouser*, 193 Ariz. 574, ¶ 2, 975 P.2d 704, 706 (1999). In February 1991, the Goars created the William and Leola F. Goar Revocable Trust Agreement (the Goar Trust). Upon William’s death in March 1994, the Goar Trust was split into the William Goar GST Reverse QTIP Trust (the QTIP Trust) and the Goar Survivor’s Trust (the Survivor’s Trust). Then, upon Leola’s death in March 2009, the Goar Trust consisting of the QTIP and Survivor’s Trusts was to be distributed equally to Sheila and Sandra. Sheila’s share was to be distributed to the Sheila Goar Irrevocable Trust (the Sheila Trust) for her benefit, and Sandra’s share was to be distributed to her outright. Susan Bossé has been trustee of the Goar Trust since December 1999, and Lynn Myers is trustee of the Sheila Trust. Both are certified public accountants.

¶3 In March 2010, Sandra filed a petition seeking final distribution of the Goar Trust assets. She also requested that the trial court determine whether an annuity purchased by William, for which she was the annuitant and beneficiary, belonged to her

or the Goar Trust. Pursuant to the court's order, Bossé filed a proposed trust distribution on September 13, 2010. Myers, as trustee of the Sheila Trust, and Sandra filed responses, opposing parts of Bossé's proposed distribution. Specifically, Myers objected to "any further distribution to Sandra" because of disputes regarding the annuity and a life insurance policy, insuring the life of Leola for the benefit of Sandra's children, held by an Irrevocable Life Insurance Trust (the Life Insurance Trust). In October 2010, the court found that Sandra was the owner of the annuity and that "any decision regarding distribution [of the Goar Trust] shall be at [Bossé]'s discretion."

¶4 In July 2011, Myers filed a petition for an accounting, requesting "a final accounting" and "annual accountings" for the Goar Trust and the Life Insurance Trust. Despite having been provided all of Bossé's records, Myers maintained that Bossé had failed to provide proper "accountings" pursuant to § 14-10813(C). Bossé responded that she had met the statutory requirement because the "account statements and documentation provided to Myers" were sufficient for him to protect his interests as trustee of the Sheila Trust. She also filed a petition for instructions on the final distributions. At a hearing in November 2011, the parties stipulated to the trial court's denial of Myers's petition for accounting, granting Bossé's petition for instructions, and dismissal of the case. Myers, however, argued that the denial of the petition should be without prejudice because he had alleged claims of disparate treatment between Sheila and Sandra in his petition for accounting and wanted those claims preserved. At Bossé's

prompting, the court denied Myers's petition with prejudice, granted Bossé's petition, and dismissed the case with prejudice.

¶5 Later that month, Myers filed a motion for a new trial, requesting that the trial court "reconsider the sufficiency of the report presented by [Bossé], as failing to adequately reflect disbursements and expenses." In January 2012, the court denied the new trial motion, finding it "br[ought] nothing new to the Court, nor d[id] it state a basis for the new trial." Myers filed a notice of appeal.<sup>1</sup> We have jurisdiction pursuant to A.R.S. §§ 12-120.21 and 12-2101.

## Discussion

### Standing to Appeal

¶6 As a preliminary matter, we address Bossé's contention that Myers lacks standing to appeal because he "consented to the [denial] of his petition for accounting." Citing *Douglas v. Governing Board of Window Rock Consolidated School District No. 8*, 221 Ariz. 104, 210 P.3d 1275 (App. 2009), Bossé correctly points out that a party generally cannot appeal from a judgment to which it consented. *See also Duwyenie v. Moran*, 220 Ariz. 501, ¶ 16, 207 P.3d 754, 759 (App. 2009); *Dowling v. Stapley*, 221 Ariz. 251, ¶ 75, 211 P.3d 1235, 1258 (App. 2009). In response, Myers argues he agreed only to a denial of the petition and dismissal of the case without prejudice and specifically objected to a denial or dismissal with prejudice.

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<sup>1</sup>Because the January 2012 order was unsigned, we revested the trial court with jurisdiction for the purpose of allowing Myers to obtain a signed order. *See Ariz. R. Civ. App. P. 9(b)*. A signed order was entered on June 8, 2012, and we reinstated the appeal.

¶7 In determining whether Myers consented to the trial court’s judgment, we find *R. L. Harris & Co. v. Houck*, 22 Ariz. 340, 197 P. 575 (1921), instructive. There, the plaintiff moved for the dismissal of his complaint, and the defendant agreed but asked that it be dismissed with prejudice, to which the plaintiff objected. 22 Ariz. at 341, 197 P. at 575. The trial court dismissed the complaint with prejudice, and the plaintiff appealed. *Id.* Our supreme court noted that “[i]f the plaintiff’s motion had been granted in the form in which it was made, he would not be permitted to prosecute th[e] appeal; for the dismissal in that case would have been voluntary and upon his invitation.” *Id.* But the court concluded that the defendant’s motion, not the plaintiff’s, was granted and that “[t]he dismissal, in the form it took, was not voluntary.” *Id.* Accordingly, the plaintiff had standing to appeal. *Id.*

¶8 Here, Bossé requested that the trial court deny Myers’s petition for accounting and dismiss the case, both with prejudice. Although Myers agreed to the entry of the orders, he argued the denial should be without prejudice. He asserted he had raised claims in his petition for accounting alleging Sheila and Sandra had been disparately treated and wanted to ensure that those claims survived. The court nonetheless adopted Bossé’s proposed form of judgment—denying the petition with prejudice and dismissing the case with prejudice—and rejected Myers’s. Thus, although Myers agreed to the order denying his petition for accounting, the denial with prejudice was contrary to his position and, thus, not voluntary. *See id.*

¶9 Bossé nevertheless contends Myers’s “objection to [the denial] with prejudice had nothing to do with the accounting issue; rather, he was concerned about prejudice impacting” the unrelated claims of disparate treatment, presumably concerning the annuity and the Life Insurance Trust. But Myers made clear that he wanted to preserve those claims, and, as we understand them, they are intertwined with the petition for accounting. Moreover, the court’s dismissal of the case with prejudice effectively terminated the proceedings. Because Myers did not consent to the court’s judgment, he has standing to appeal.<sup>2</sup> See also *City of Tucson v. Pima Cnty.*, 199 Ariz. 509, ¶ 11, 19 P.3d 650, 655 (App. 2001) (standing not jurisdictional but solely rule of judicial restraint). We thus turn to the merits of Myers’s appeal.

### **Sufficiency of Trustee’s Report**

¶10 Myers argues that Bossé’s proposed trust distribution dated September 13, 2010, was insufficient to satisfy the reporting requirements of § 14-10813(C) regarding the Goar Trust.<sup>3</sup> Accordingly, he contends the trial court erred in denying his petition for an accounting. The interpretation and application of a statute is a question of law we

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<sup>2</sup>We likewise reject Bossé’s contention that Myers “waived his arguments” on appeal by consenting to the denial of his petition for accounting. Although a party generally waives the right to appellate review by voluntarily consenting to a judgment, see *Douglas*, 221 Ariz. 104, ¶ 4, 210 P.3d at 1278, Myers did not voluntarily consent to the trial court’s denial with prejudice.

<sup>3</sup>In the trial court, Myers also requested reports for the Life Insurance Trust. In response, Bossé argued that Myers was not a distributee or beneficiary of the Life Insurance Trust and therefore not entitled to a report on that trust. On appeal, Myers apparently has limited his argument to the Goar Trust.

review de novo. *In re Naarden Trust*, 195 Ariz. 526, ¶ 4, 990 P.2d 1085, 1087 (App. 1999).

¶11 Section 14-10813(C) provides in relevant part:

A trustee shall send to the distributees or permissible distributees of trust income or principal and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values.

When interpreting a statute, our primary goal is to ascertain and give effect to the legislature's intent. *In re Estate of Winn*, 214 Ariz. 149, ¶ 8, 150 P.3d 236, 238 (2007).

“We look primarily to the language of the statute and give effect to the terms according to their commonly accepted meanings . . . unless the legislature provides a specific definition or the context of the statute indicates a specific meaning.” *Mercy Healthcare Ariz., Inc. v. Ariz. Health Care Cost Containment Sys.*, 181 Ariz. 95, 98, 887 P.2d 625, 628 (App. 1994). When the language of a statute is clear and unambiguous, we look no further and apply it as written. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 6, 181 P.3d 219, 225 (App. 2008).

¶12 Myers seems to suggest that Bossé's proposed trust distribution was intended to be the report required “at the termination of the trust” pursuant to § 14-10813(C). But, according to Bossé, she was “in the process of terminating the trust and preparing a final distribution report” at the time Myers filed his motion for a new trial in November 2011. As Bossé notes, the Goar Trust still has not terminated because the

litigation is ongoing, which has increased administrative and legal fees, thereby affecting the proposed distributions. We therefore do not agree that the proposed trust distribution constitutes the report required “at the termination of the trust.” § 14-10813(C). But, regardless of whether the proposed trust distribution was the report at termination or an annual report pursuant to § 14-10813(C), we conclude that it was sufficient.

¶13 Myers argues the trust distribution report was deficient because, pursuant to § 14-10813(C), Bossé had a duty to provide a trust “accounting” complete with “disbursements and receipts.” To support this assertion, he cites A.R.S. § 14-7303(3), which provides: “Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.” But § 14-7303 was repealed in 2008, when the legislature enacted the Arizona Trust Code, A.R.S. §§ 14-10101 through 14-11102. 2008 Ariz. Sess. Laws, ch. 247, § 15. Under the new code, § 14-10813 imposes similar duties upon the trustee as those previously imposed by § 14-7303.

¶14 Moreover, the clear and unambiguous language of § 14-10813(C) requires the trustee to send the distributees and beneficiaries a “report,” not an “accounting.” And, although “report” is not defined in the Arizona Trust Code, *see* A.R.S. § 14-10103, it is commonly understood to mean a “formal oral or written presentation of facts or a recommendation for action,” *Black’s Law Dictionary* 1414 (9th ed. 2009). The “facts” required by § 14-10813(C) include, as Myers suggests, receipts and disbursements, but also properties, liabilities, assets, and market values if possible. *See also* A.R.S. § 14-



10810 (trustee shall keep adequate records). An “accounting” however requires more, such as “establishing or settling financial accounts,” and “extracting, sorting, and summarizing the recorded transactions to produce a set of financial records.” *Black’s Law Dictionary* 22 (9th ed. 2009). We will not read into the statute something that is not within the manifest intent of the legislature as reflected by the statute’s plain language. *See In re Martin M.*, 223 Ariz. 244, ¶ 7, 221 P.3d 1058, 1060 (App. 2009).

¶15 Indeed, the comments to the Uniform Trust Code, from which the Arizona Trust Code was derived, support our interpretation. The comment to Unif. Trust Code § 813(c)—the nearly identical counterpart of § 14-10813(C)—provides:

The Uniform Trust Code employs the term “report” instead of “accounting” in order to negate any inference that the report must be prepared in any particular format or with a high degree of formality. The reporting requirement might even be satisfied by providing the beneficiaries with copies of the trust’s income tax returns and monthly brokerage account statements if the information on those returns and statements is complete and sufficiently clear. The key factor is not the format chosen but whether the report provides the beneficiaries with the information necessary to protect their interests.

“When, as here, ‘a statute is based on a uniform act, we assume that the legislature intended to adopt the construction placed on the act by its drafters,’ and ‘[c]ommentary to such a uniform act is highly persuasive.’” *May v. Ellis*, 208 Ariz. 229, 232, 92 P.3d 859, 862 (2004), *quoting UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, ¶ 25, 26 P.3d 510, 515 (2001). We thus conclude § 14-10813(C) requires trustees to send reports, which need not be in any particular format but must provide sufficient information for the

recipients to protect their interests. *Cf. In re Esther Caplan Trust*, 228 Ariz. 182, ¶ 11, 265 P.3d 364, 366 (App. 2011) (describing “relatively minimal requirements” of § 14-7303).

¶16 Contrary to Myers’s assertion, Bossé’s proposed trust distribution meets the reporting requirements of § 14-10813(C). The document provides detailed information about the trusts; the assets held therein and their respective values; the previous and proposed distributions; and a holdback for administrative expenses. In addition, Bossé attached to that document a recent account statement listing the trust assets with more specificity and reflecting the income, deposits, withdrawals, expenses, purchases, and sales. The proposed distribution submitted by Bossé thus includes the “receipts and disbursements” that Myers had specifically requested.

¶17 Furthermore, even assuming the proposed trust distribution was not intended to be a § 14-10813(C) report or it was somehow incomplete, Bossé otherwise met her statutory obligation by providing Myers with sufficient information to protect his interests as trustee of the Sheila Trust. *See* Unif. Trust Code § 813(c) cmt. Before submitting the proposed trust distribution, Bossé provided Myers with 2,918 pages of documentation regarding the Survivor’s and QTIP Trusts, including tax returns; portfolio position statements; stock transfer summaries; cash distribution summaries; account statements; check ledgers; and tax returns, an inventory, and an accounting for William’s estate. And, notably, in August 2011, Myers received an additional 2,122 pages of account statements for the Survivor’s Trust pursuant to a subpoena. Thus, the proposed

trust distribution submitted by Bossé met the requirements of § 14-10813(C), and the trial court therefore did not err in denying Myers’s petition for an accounting.

**Disposition**

¶18 For the foregoing reasons, we affirm. Myers and Bossé both have requested attorney fees on appeal. In our discretion, we grant Bossé’s request, upon her compliance with Rule 21, Ariz. R. Civ. App. P., and order that the fees shall be paid by Myers, as trustee of the Sheila Trust, to reimburse the Goar Trust. See A.R.S. § 14-11004(B).

*/s/ Garye L. Vásquez*  
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GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

*/s/ Philip G. Espinosa*  
\_\_\_\_\_  
PHILIP G. ESPINOSA, Judge

*/s/ Virginia C. Kelly*  
\_\_\_\_\_  
VIRGINIA C. KELLY, Judge