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STATE OF DELAWARE

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September 30, 2011

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Re: Vincent v. Baize  
C.A. No. 3432-VCN  
Date Submitted: May 2, 2011

Dear Counsel:

Plaintiff Danielle M. Vincent (“Danielle”) and her brother, Third-Party Defendant Joseph C. Vincent (“Joseph”), were being raised by their grandfather, Donald B. Vincent (“Donald”), because their parents were not fit for that task.<sup>1</sup> Recognizing that alternate arrangements would become necessary in the event of his death, Donald designated Defendant Donna C. Baize (“Donna”) as their guardian, as executrix of his estate, and as trustee of the trust that he would establish for their benefit. Donald died shortly after making these arrangements,

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<sup>1</sup> First names are used for convenience and not because of any lack of respect. Danielle and Joseph are sometimes collectively referred to as the “Vincent’s.”

and Danielle, then thirteen years old, and Joseph, then fifteen years old, came under the care of Donna and her husband, Defendant Michael Baize (“Michael”).<sup>2</sup>

For many reasons and with much blame to spread around, it did not work out. In this post-trial letter opinion, the Court must factor in the many disagreements among them and give careful consideration to the fiduciary duties which came with the assignment that Donna accepted. The core of the debate grows out of the tension between Danielle’s allegations that Donna breached her fiduciary duties by using access to the Vincents’ inheritance to obtain personal enrichment and Donna’s claim that Danielle and Joseph owe her (and her husband) some \$200,000 for raising them.

Donald died on October 18, 1999. He had known Donna since the early 1980s and was friends with the Baizes.<sup>3</sup> Donald’s will, executed on October 14, 1999, named Donna as the executrix, and established a testamentary trust for the benefit of the Vincents with her as the trustee. Donald’s will also contained a clause limiting Donna’s liability as trustee:

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<sup>2</sup> Donna and Michael are sometimes collectively referred to as the “Baizes.”

<sup>3</sup> Donna had briefly dated Donald’s son, Kimothy Vincent. There was no familial relationship.

My Trustee [Donna] shall not be liable for anything said Trustee may do or fail to do in the administration of the trust created hereunder, provided only that said Trustee shall have acted in good faith.<sup>4</sup>

Donna was authorized by the will that established the trust to pay the expenses of raising the Vincents out of the trust's income and assets:

In addition to said net income, my Trustee may pay to or use and apply for the benefit of my said grandchildren, such sums from the principal of this Trust fund, if any, as may be necessary from time to time in the discretion of my Trustee, acting independently to provide for the reasonable comfort, support, maintenance, education and medical expenses, such discretion to be exercised by my Trustee to reflect the needs of my said grandchildren without giving due consideration to conservation of principal.<sup>5</sup>

Donna was “not . . . required to file with the Court of Chancery or the Register in Chancery or with any other Court or officer of any other Court, . . . inventory or accounting unless specifically ordered to do so on the written application of any beneficiary of such trust or on the Court's own motion.”<sup>6</sup>

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<sup>4</sup> JX 2 (Last Will and Testament of Donald B. Vincent) Item XI. Although Donald limited Donna's liability for her actions as trustee to steps taken other than in good faith, it is important to recognize that “good faith” encompasses both “honesty in fact and the observance of reasonable standards of fair dealing.” 12 *Del. C.* § 3580. See *Paradee v. Paradee*, 2010 WL 3959604, at \*11 (Del. Ch. Oct. 5, 2010).

<sup>5</sup> JX 2 at Item III.A. That a trustee may have specific authority to take certain steps generally does not absolve the trustee of fiduciary duty responsibilities with respect to those undertakings. See, e.g., *Sample v. Morgan*, 914 A.2d 647, 672-73 (Del. Ch. 2007).

<sup>6</sup> JX 2 at Item IX.

Donald's estate included some land near Harrington, Delaware with a double-wide modular home in which he and the Vincents had resided, valued at \$110,000, four horses, a horse trailer, and a bank account with a little more than \$6,000.<sup>7</sup>

The Vincents moved into the Baizes's home in Dover, Delaware, and Donna managed Donald's assets. Although the Baizes's relationship with Joseph would eventually deteriorate, the earlier and more difficult problems emerged from the interactions between Danielle and Donna. Donna did not approve of some of Danielle's lifestyle choices; Danielle chafed at some of the restrictions that Donna tried to impose. Although there were challenges, the Baizes encountered some success in raising the Vincents. They supported Joseph and Danielle's attendance of Lake Forest schools, where they had studied before their grandfather's death. Danielle played varsity sports and was a member of the National Honor Society. She attracted the attention of several colleges as a field hockey player. Indeed, she went to field hockey camps and tournaments—one in Europe—all at some cost. Joseph graduated from high school, went on to college, and eventually graduated

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<sup>7</sup> Donna filed an inventory of Donald's personal effects. Danielle questions the accuracy of the inventory. In particular, she accuses Donna of having left valuable antiques off the inventory.

from chiropractic school in Bridgeport, Connecticut. The personal relationships came to an end, at different times, when the Baizes excluded Danielle and Joseph from their home.

One of Donna's early decisions, as trustee, was to attempt to hold onto Donald's residence for the benefit of the Vincents. She rented it. She was able to reduce the mortgage on it. The Vincents have benefited from that decision.<sup>8</sup>

The case before the Court is not one focused on how Donna treated Danielle or how Danielle behaved. Instead, it is largely about money—either Donna's improper profiting or Danielle and Joseph's obligations to the Baizes of a substantial sum for their care.<sup>9</sup> Much of the antipathy developed after Danielle became of age, the guardianship had ended, and the trust was near termination. During most of Danielle's high school years, there was little debate about money. Indeed, while perhaps not ideal, the financial issues were not of major concern in those years. Even though a minor, Danielle was not without some material ability

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<sup>8</sup> Saving the Harrington property was a major trustee management goal but, after serious personal troubles arose, Donna decided to seek recovery from the trust of an amount approaching, if not exceeding, the value of the property. A change of heart does not alter the economic balance that had been established during the time the Vincents lived with the Baizes.

<sup>9</sup> There is a debate about the disposition of certain personal property, both from Donald's estate and Danielle's holdings, that Danielle and Joseph claim Donna expropriated for her benefit.

to assess the disposition of the trust's assets. Notwithstanding the tension that may have existed within the relationship, the desire for financial recovery seems to have materialized and hardened late in the process.

The duties of a trustee may arise from statute, court rule, the document establishing the trust, or the common law.<sup>10</sup> The duty of loyalty is the foundation for the trustee-beneficiary relationship. "A trustee is . . . under a duty to deal fairly with the beneficiaries and not to place his personal interests . . . ahead of the interests of the Trust and its other beneficiaries."<sup>11</sup> The trustee, as a fiduciary, must carry the burden of persuasion in justifying her self-interested transactions.<sup>12</sup> Delaware statute confirms the importance of a trustee's duty to her beneficiary and the broad authority that the Court has in remedying a breach of trust. "A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust."<sup>13</sup> In

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<sup>10</sup> See, e.g., *In re Jones*, 2006 WL 2035714, at \*5 (Del. Ch. July 13, 2006).

<sup>11</sup> *Estate of Howell*, 2002 WL 31926604, at \*7 (Del. Ch. Dec. 20, 2002) (citation omitted). See also *Paradee*, 2010 WL 3959604, at \*10 ("As a part of the duty of loyalty, a trustee 'must exclude all selfish interest and all consideration of the interests of third persons.'") (quoting George Gleason Bogert & George Taylor Bogart, *The Law of Trusts and Trustees* § 543 (2d ed. 1993)).

<sup>12</sup> See, e.g., *Stegemeier v. Magness*, 728 A.2d 557, 563 (Del. 1999)

<sup>13</sup> 12 Del. C. § 3581(a).

addition, “[t]o remedy a breach of trust that has occurred or may occur, the court may order any equitable remedy . . . .”<sup>14</sup>

Danielle, together with Joseph, has quantified the claims:

“Uncle Burton” <sup>15</sup>	\$17,397.50
“Pop-Pop Chick” <sup>16</sup>	15,500.00
Sale of Donald’s truck	5,700.00
Truck expenses paid from the trust	1,190.17
Danielle’s personal property retained by Donna	<u>5,419.39</u>
Total:	\$45,207.06 <sup>17</sup>

With the exception of Danielle’s personal property, the Baizes do not dispute that they received the funds listed. They claim to have used the funds appropriately for the support and care of the Vincents.<sup>18</sup> Donna was authorized to

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<sup>14</sup> 12 *Del. C.* § 3581(b).

<sup>15</sup> These funds were received in 1999 from the Vincents’ uncle, Burton Vincent.

<sup>16</sup> These funds were inherited from the Vincents’ great-grandfather, Howard (“Pop-Pop Chick”) Knowles.

<sup>17</sup> These claims are summarized at pages 48-49 of the Vincents’ post-trial brief.

<sup>18</sup> In addition, Donna also received child support from (or on behalf of) the Vincents’ parents in the approximate amount of \$20,000.

draw reasonable child-rearing expenses from the assets she held. The amounts which the Baizes have withdrawn are not inherently unreasonable. Indeed, the Baizes have demonstrated that the funds they took were reasonable and that the funds were taken under appropriate circumstances. Joseph and Danielle enjoyed a fine standard of living. They were driven primarily by Donna from Dover to Felton for schooling. The records which were maintained are consistent with these expenditures and there is little doubt that these funds were primarily spent on Joseph and Danielle and, perhaps more significantly, were spent on Joseph and Danielle with the consent of Joseph and Danielle.

Pop-Pop Chick's funds were held by a lawyer. At different times Joseph and Danielle accompanied Donna to the lawyer's office to draw out their money. Both Joseph and Danielle consented. Danielle's funds were used in part to pay for a field hockey trip to Europe. Joseph's funds were used specifically to assist in the purchase of a Camaro for him in 2000. The Baizes put up their own funds in the approximate amount of \$12,500 to complete that purchase.<sup>19</sup>

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<sup>19</sup> When the Camaro was eventually sold in 2006, Michael kept the sales proceeds. Although Danielle did not have a car that was "hers," she had the regular use of a car, owned by the Baizes, when she was of "driving age."



The truck expenses—for tags, insurance, and repairs—were paid for with estate funds. The truck was used, at times, to transport the Vincents and to assist with work on the Harrington Property. The Baizes also put the truck to other uses. After about two years, the truck was sold and the proceeds from the sale were used—perhaps with some comingling with the Baizes’s personal funds—to pay the expenses of the Vincents.

The Baizes’s personal—i.e., not for the direct benefit of the Vincents—use of the truck cannot be viewed in the abstract. Bringing children into a family setting predictably leads to some cross-use of assets and the payment of expenses from different—and perhaps sometimes inconsistent—sources. There is nothing necessarily unfair about that. The benefits accruing to the Baizes from the truck, as well as from other assets held for the benefit of the Vincents, were, ultimately, a fair allocation against the expenses properly incurred in the raising of the Vincents.

The Baizes also acknowledge that they received rent from the Harrington Property previously held by Donald in the amount of \$62,750 which they assert was applied to the payment of the mortgage (\$39,169.68), payment of taxes and insurance (\$4,876.84), payment of utilities (\$1,038.33), repairs and maintenance

(\$17,500.60), and capital expenses (\$4,032.94), with the balance used for the benefit of the Vincents.<sup>20</sup> If these numbers are correct (and there is no persuasive evidence to the contrary although they do conveniently add up), the Baizes did not clear any funds to defray the cost of supporting the Vincents or for their personal benefit.

Although Danielle seems reluctant to acknowledge it, Donna was entitled to use the Vincents' funds—primarily those in the Trust—to defray the cost of raising them. The expenses were incurred over several years for many different reasons ranging from basic care—food and shelter—to sports, school, activities, and trips. Some of the funds also provided benefit to Donna and her husband. These would include, for example, payments for repairs, their travel expenses incurred in accompanying one or both of the Vincents, and meeting a portion of routine household outlays. Many of the expenses were incurred specifically with the needs or interests of Danielle and Joseph in mind.

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<sup>20</sup> See Defs.' Post-trial Br. at 11.

According to Donna, she had a “mother-daughter relationship” with Danielle.<sup>21</sup> For a significant part of the time during which Danielle resided with the Baizes, that description might have been accurate.<sup>22</sup> Nonetheless, there was stress and disagreement. Efforts at counseling were not successful.

Danielle and Donna had a verbal altercation by telephone during the 2006 Christmas season. Donna told Danielle, then 20 years old, not to return to the Baizes’s residence until she was able to modify her behavior. Roughly three weeks later, Danielle did return, but it would not last. Danielle soon thereafter decided to depart. She packed some of her belongings in mid-February 2007, but, before she could complete the move, Donna returned home and yet another intense disagreement ensued.<sup>23</sup> That marked the end of any hope for an acceptable personal relationship.<sup>24</sup>

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<sup>21</sup> Trial Transcript (“Tr.”) 909.

<sup>22</sup> In contrast, Danielle testified that she and Donna did not get along 80% of the time. Tr. 647.

<sup>23</sup> More of Danielle’s personalty was transferred to her in mid-March 2007.

<sup>24</sup> Joseph’s relationship with the Baizes continued somewhat longer—until perhaps late 2008. In early 2009, he was accused of breaking into the Baizes’s home when he attempted to collect his belongings.

Following the collapse of any semblance of a viable personal relationship, the parties’ positions became more rigid. Arguments about, for example, the duty of loyalty and the burden of persuasion, have unavoidably ensued. This litigation, however, is not about some technical, perhaps abstract, doctrinal debate. It is, instead, a review of how parties lived together during a

In light of the manner by which she was “evicted” from the Baizes’s home, it is clear that Danielle did not get all of her “stuff.” Unfortunately, the proof of the specific belongings that she did not obtain is paltry. Perhaps more importantly, reasonable and reliable valuations of those items were not presented. To the extent that Donna continues to hold any of Danielle’s possessions, she should turn them over. Because of the indefiniteness of the record, an express order to accomplish that objective does not seem possible.

Donald’s home was furnished when he died. Very little furniture was listed by Donna on the estate’s inventory. What happened to the rest of the furniture is unclear. What the furnishings were is unclear. There is some limited suggestion that some antiques were among the furnishings. There is no credible evidence that more than a few of the furnishings ended up in Donna’s (or Michael’s) possession. Most importantly, there simply is no way to value Donald’s furnishings based on the record. Any value that the Court might reach would be based on speculation. Even though Donna may have the fiduciary’s burden because of the potential self-

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period when they aspired to something akin to normal family life. Context is important, and assessing the parties’ rights today should not ignore the context in which the funds at issue were spent.

interested context, it nevertheless is the responsibility of Danielle (and Joseph) to frame the dispute over the furniture with some helpful focus and fundamental factual basis. That they have failed to do, and, accordingly, they have not provided the Court with a basis for an award.

Donna's statutory duty<sup>25</sup> to file accountings with the Court was excused by Donald's will. As an outcome of this litigation, Donna has produced an accounting of sorts. It is not perfect, but that, in a matter such as this, would be an unreasonable expectation. It reflects a reasonable effort under the circumstances. Compilation of the data was motivated by litigation, and, thus, the underlying reasons for the expenditures at the time are not always discernable. The Baizes were frequently generous to the Vincents. Thus, it is difficult to divine whether any particular expenditure was a gift by the Baizes, the typical day-to-day expense incurred by (functional) parents in the raising of children, or something for which reimbursement was anticipated. Nonetheless, as the result of litigation, Donna has produced the best accounting—however disjointed that it may be—that she could from the records that she has. There are gaps; there are mistakes; uncertainty and

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<sup>25</sup> See 12 *Del. C.* §§ 3521 & 3522.

confusion result. Nonetheless, the Court is not persuaded that any formal accounting effort would lead to a more useful and accurate product. Without a reasonable expectation of improvement, the Court will not enter any such order.

Joseph also now seeks an award from the Baizes for the losses which he claims to have suffered—either from the handling of his personal property or because of Donna’s actions as trustee.<sup>26</sup> Joseph’s claims fail for a simple reason: he never, in any pleading, asserted any claims against the Baizes.<sup>27</sup> Thus, any claim now sponsored by Joseph must be denied.

In addition, the Vincents assert that the Baizes wrongfully claimed them as dependents for income tax purposes and improperly obtained tax benefits of \$7,053. They argue that the Baizes should pay this benefit to them. Even if the Court accepts that the Baizes took deductions improperly, it does not follow that those funds should be paid to the Vincents. Under this scenario, the victim,

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<sup>26</sup> When the Court has used the numbers advanced by the Vincents, it has not indicated that, except for Danielle’s personal property, the claims would be divided equally between Joseph and Danielle.

<sup>27</sup> The Baizes joined him as a third-party defendant some eighteen months after this action was filed. Joseph did not file a counterclaim.

assuming that there is one, is the United States Treasury which would be the rightful recipient of the funds.

Donna and Michael seek an award of \$207,719.16 from Joseph and Danielle for the care they provided to them.<sup>28</sup> In support of their claim, they have looked to generally available statistics to support the cost of raising children.<sup>29</sup> Whether those numbers are fairly applicable to the circumstances of providing care for Danielle and Joseph is unclear. Moreover, it is clear that the Baizes benefited from the assets left to the Vincents by their grandfather, which were intended to defray the cost of raising the children.<sup>30</sup> Donna kept some records of her expenditure of funds for Joseph and Danielle. Some can fairly be tied to each child. Others may reflect expenses not even for the benefit of the Vincents.

Donna asserts that early on in the guardianship, she informed Joseph and Danielle that she would expect to be repaid the expenses which she incurred in

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<sup>28</sup> They also seek reimbursement for other items in the amount of \$17,533.90 as well as payment of fiduciary commissions and attorneys' fees and expenses.

<sup>29</sup> They have divided their claim into three categories of outlays: (1) general expenses of \$87,574; (2) Joseph's share of \$82,000; and (3) Danielle's share of \$96,000. From these, they have subtracted funds the receipt of which they acknowledge (\$57,855).

<sup>30</sup> Some limited child support was paid by the Vincents' natural parents. Also, publicly supported medical assistance was available for the Vincents as well.

raising them when they became of age.<sup>31</sup> Indeed, she says that they agreed to this arrangement. Both Joseph and Danielle deny that any such agreement had been reached. Moreover, at the time, both Joseph and Danielle were minors and, thus, their ability to make such an agreement is unclear. That Donna could have drawn on the trust to meet expenses associated with raising Joseph and Danielle is clear. To some extent, she used these funds on a continuing basis. The difficulty is that she now seeks to come back well after the expenses were incurred, without persuasive evidence as to the amount expended, and seeks to draw down from the assets of the Vincents an amount in excess of \$200,000. Regardless of how one may assess the records which she kept, the notion that, in addition to what she otherwise obtained as the result of her status as trustee and guardian, she is entitled to such an amount is difficult to accept. To determine that Donna is entitled to any specific number, especially one approaching her demand, requires inordinate speculation. The lack of a firm number may—at least arguably—be attributed to her late-developing desire to extract as much money from the Vincents as possible.

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<sup>31</sup> Donna concedes that she did not seek repayment from the Vincents until 2009. Tr. 1199. Moreover, she testified that she would have provided care for the children if there had been no money. Tr. 1190.



One of her objectives was to preserve the real estate in Harrington for the benefit of the Vincents. That was done, but other than that, there does not appear to have been any significant accumulation of funds for the benefit of the Vincents. They will have ended up with the Harrington property as all anticipated, but they will not have much beyond that. That was the financial arrangement which Donna expected when she started the project of raising Danielle and Joseph during their teenage years. There is neither proof of an entitlement to additional payment, nor any compelling equitable reason why Donna, or Michael for that matter, should benefit as has been sought in this Court.

For the most part, while the Vincents were living with the Baizes, the cash flows were reasonable. The Vincents were not entitled to a free upbringing. Donna's expenditures of the Vincents' (or the trust's) funds were made in good faith.<sup>32</sup> The Baizes were not entitled to a lucrative funding source. The dispute over money generally—perhaps not exclusively—arose on a retrospective basis. Now the Vincents question every penny of their money spent by the Baizes. The Baizes want, instead of the payments which seemed satisfactory at the time, an

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<sup>32</sup> This was the standard chosen by Donald in his will for assessing the culpability of Donna as fiduciary.

after-the-fact payment in the hundreds of thousands of dollars. Danielle Catarelli Vincent, now Joseph's wife, may well have been right: if Donna had just let Danielle have her "stuff," none of this litigation would have ensued.<sup>33</sup>

Given the proof at trial and the burdens among the various parties, the proper and fairest outcome is simply to leave the parties where they are.<sup>34</sup> A shifting of funds as the result of a retrospectively-created financial dustup, based largely on personal animosity, is neither equitable nor necessary. With that conclusion, there is no basis for a departure from the American Rule by which, as a general matter, each party pays its own attorneys' fees.<sup>35</sup> In addition, each party shall bear his or her own costs.<sup>36</sup>

**IT IS SO ORDERED.**

Very truly yours,

*/s/ John W. Noble*

JWN/cap  
cc: Register in Chancery-K

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<sup>33</sup> Tr. 350.

<sup>34</sup> From the conclusion that Donna has no monetary liability, it follows that Michael has no separate or derivative liability either.

<sup>35</sup> See generally *Paradee*, 2010 WL 3959604, at \*15.

<sup>36</sup> The final trust administration work appears not to have been completed. The Court retains jurisdiction to deal with that topic.