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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0444**

In re the Matter of the  
Blossom Mary Spencer Irrevocable Trust Kathleen M. Mosloski, et al.,  
Appellants,

vs.

Kevin Spencer, et al.,  
Respondents.

**Filed December 10, 2012  
Affirmed  
Peterson, Judge**

Dakota County District Court  
File No. 19HA-CV-11-2308

Bradley Allen Kletscher, Sheldon Michael Clark, Barna, Guzy & Steffen, Ltd.,  
Minneapolis, Minnesota (for appellants)

Silas Leonard Danielson, Jill Karen Baker-Jueneman, Blethen, Gage & Krause, PLLP,  
Mankato, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and  
Cleary, Judge.

**UNPUBLISHED OPINION**

**PETERSON**, Judge

In this appeal from summary judgment, appellants, two daughters who were  
named as beneficiaries of their mother's irrevocable trust, argue that the district court

erred by (1) determining that three of appellants' nephews have a beneficiary interest in the trust that authorizes them to seek a trust accounting, and (2) failing to rule on the validity of their mother's two attempts to exercise her testamentary power of appointment to designate a class of trust beneficiaries. We affirm.

## **FACTS**

In December 1996, Blossom Mary Spencer (Blossom Spencer) established an irrevocable trust for the stated purpose of "primarily benefit[ing] [her] children, or their issue by right of representation." Blossom Spencer, who is still living, had four children: Charles J. Spencer, Charlene A. Faulk, appellant Kathleen M. Mosloski, and appellant Christine M. Koch. Charles J. Spencer died on August 7, 2001; his children are respondents Kevin Spencer, James Spencer, and Joseph Spencer.

The trust prohibits Blossom Spencer from "amend[ing] or modify[ing] its terms" but specifically reserves for her "a Testamentary Power of Appointment [TPOA] exercisable in the Last Will and Testament of [Blossom Spencer] to appoint the Trust Income and Corpus to a designated class of beneficiaries chosen by [Blossom Spencer]." On August 17, 2009, Blossom Spencer signed a notarized document drafted by an accountant that purported to exercise her TPOA to designate a class of trust beneficiaries. This document excluded respondents from the class of trust beneficiaries.

On May 3, 2011, Blossom Spencer executed a will that includes language revoking any prior wills. The will also includes the following language exercising Blossom Spencer's TPOA :

I exercise my right to designate the following class of beneficiaries to the Trust. The beneficiaries will be as follows:

4.1 One-third (1/3) of the Trust to my daughter, KATHLEEN MOSLOSKI, or her heirs;

4.3 One-third (1/3) of the Trust to my daughter, CHRISTINE KOCH, or her heirs; and

4.3 One-third (1/3) of the Trust, less \$180,000.00 to CHARLENE A. SPENCER, or her heirs. The \$180,000.00 will be distributed (\$90,000 each) to KATHLEEN MOSLOSKI and CHRISTINE KOCH, in addition to their one-third (1/3) shares.

4.4 Since my son, CHARLES J. SPENCER, has predeceased me and his children have received adequate funds prior to my death, they are specifically excluded from this agreement.

On April 28, 2011, appellants petitioned the district court to uphold the August 2009 TPOA. Respondents answered appellants' petition, asserting that the TPOA was invalid because it was not exercised through the required mechanism of a will, the TPOA constituted a prohibited attempt to modify the trust, Blossom Spencer lacked legal capacity to exercise the TPOA, and Blossom Spencer "may have been the victim of undue influence[.]" Respondents also sought "a complete and detailed accounting" of the trust. Respondents later waived the lack-of-capacity claim.

Both sides moved for summary judgment. Appellants sought an order to exclude respondents as beneficiaries of the trust; respondents sought an order to invalidate the TPOA and to require a trust accounting. Following a hearing, the district court denied appellant's motion and partially granted respondents' motion by ordering a trust

accounting “dating back to August 2009.” The district court declined to rule on the validity of the August 2009 TPOA or the May 2011 will after concluding that any exercise of Blossom Spencer’s TPOA was ambulatory and not effective until her death. Appellants argue that the district court erred by determining that respondents have a beneficiary interest in the trust that authorizes them to seek a trust accounting, and that the district court erred by failing to rule on the validity of Blossom Spencer’s two attempts to exercise her TPOA.

## **D E C I S I O N**

A party may move for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. An appellate court reviews a “district court’s legal decisions on summary judgment under a de novo standard, and view[s] the evidence in the light most favorable to the party against whom judgment was granted.” *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 6 (Minn. Sept. 5, 2012) (quotations omitted). An appellate court reviews de novo the interpretation of a trust agreement. *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012).

Trust matters are governed by statute. Under Minn. Stat. § 501B.16(8) (2010), a “person interested in the trust may petition the district court for an order” to, among other things, “require a trustee to account.” The general function of the district court in trust matters is “to preserve [trusts] and to secure their administration according to their terms.” *In re Trusts of Campbell*, 258 N.W.2d 856, 868 (Minn. 1977); see *In re Trust of*

*Foley*, 671 N.W.2d 206, 209 (Minn. App. 2003) (stating that the role of district courts in trust matters is to exercise “control over the trust and protect[] the trustee when . . . there [is] uncertainty as to the proper application of the law”).

Respondents have a financial interest in the Blossom Spencer trust because by its terms they could receive their deceased father’s share of the trust proceeds by right of representation. Appellants claim that the August 2009 TPOA and the May 2011 will extinguished this right and correspondingly extinguished any interest respondents had in the trust under section 501.B16. We disagree. “[A] power granted expressly for exercise by will can be none other than a testamentary power, as neither the will nor any power exercised therein is effective until the testator’s death.” *In re the Trusteeship under the Last Will and Testament of Gold*, 342 N.W.2d 332, 334 (Minn. 1984). As the district court ruled, neither the TPOA nor the will has any effect until Blossom Spencer’s death. We therefore conclude that the district court did not err by finding that respondents have an interest in the Blossom Spencer trust, or by declining to rule on the validity of the August 2009 TPOA or the May 2011 will.

**Affirmed.**