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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 11-0779
) 1 CA-CV 12-0217
PERRY C REDDEN FAMILY TRUST,) 1 CA-CV 12-0256
Under Agreement dated February) (Consolidated)
13, 1980, and Amendments)
Thereeto.) DEPARTMENT E
)
RAQUEL YOUNG; LAURA L. REDDEN;) **MEMORANDUM DECISION**
CYNTHIA LOUISE REDDEN-HALL;) (Not for Publication -
SUZANNE PETTY; SETH REDDEN;) Rule 28, Arizona Rules of
CAMERON REDDEN; DEBBIE FULTON;) Civil Appellate Procedure)
ERIK BOWERS,)
)
Plaintiffs/Appellants,)
)
v.)
)
JUDITH BOWERS, as Successor)
Trustee; TAMARA BEATSON; DORINDA)
BOWERS; and MICHELLE SOMMER,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. PB2003-004879

The Honorable Robert D. Myers, Retired Judge

AFFIRMED

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P O R T L E Y, Judge

¶1 Some of the beneficiaries of the Perry C. Redden Family Trust ("Trust") appeal from an order determining the contents and management of the Trust and awarding fees and costs to Judi Bowers, the successor Trustee. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Perry and Charlotte Redden, the parties' grandparents, executed the Trust in 1980 for the benefit of their children, daughter, Joyce, and son, Lynn. Lynn was removed as a beneficiary in 1992. Joyce died in 1999,¹ and Perry, the patriarch of the family, died later that year.

¶3 After Perry's death, and pursuant to the Trust Agreement, the Trust was divided into an irrevocable Decedent's Trust, and a Survivor's Trust. Charlotte, the family matriarch, amended the Survivor's Trust by her 2001 Last Will and Testament

¹The administration of Joyce Bower's estate was closed on January 19, 2012. The assets in the estate, including coins, were distributed to her children.

and gave Lynn's six children ("Redden grandchildren") an amount equal to the amount Joyce's children ("Bowers grandchildren") would receive from the Decedent's Trust. Charlotte passed away in 2002, and Joyce's daughter, Judi, became the successor Trustee.

¶4 Litigation began in 2003 over the efficacy of the Survivor's Trust amendment and the administration of Trust assets.² Some seven years later, the parties participated in a settlement conference and entered into a written agreement detailing the distribution of the Trust assets and releasing Judi, as Trustee, the Trust, and Joyce Bower's Estate from any and all claims. Although there were disputes about the May 2010 agreement, the court held an evidentiary hearing in March 2011 and found that it was a valid and binding settlement agreement pursuant to Arizona Rule of Civil Procedure ("Rule") 80(d).

¶5 Judi filed a petition in July 2011, which she later amended, seeking a judicial determination that her actions as Trustee were appropriate. The Redden grandchildren, joined by three of the Bowers grandchildren, filed an objection to the

²The litigation began with an unsuccessful challenge to Charlotte's amendment to the Survivor's Trust. The Redden grandchildren then sought to remove Judi as Trustee and secure an order for the equitable division of the Trust's assets. Although Judi won a partial summary judgment, on appeal we ruled the lawsuit was not barred by standing, statute of limitations, and the untimely objection under the Trust Agreement. See *In re Redden Family Trust*, 1 CA-CV 08-0206, 2009 WL 3415728 (Ariz. App. Oct. 22, 2009) (mem. decision).

petition, cross-petition, and third party petition, which they later amended, and alleged that Judi had breached her fiduciary duty by concealing and then failing to claim the coins³ found in Joyce's home as assets of the Trust.

¶16 After denying the grandchildren's request for a jury trial, the court held an evidentiary hearing in September 2011. Following the hearing, the court found that the coins belonged to Joyce Bower's estate and not the Trust, that the grandchildren's claim to the coins was barred by the statute of limitations, and that Judi did not breach her fiduciary duty to the Trust. The court, as a result, released Judi from all liability in connection with her acts and transactions as Trustee and awarded her Trustee and attorneys' fees. The Appellants subsequently filed an unsuccessful motion for new trial, and this appeal followed.

DISCUSSION

I.

¶17 Appellants raise evidentiary and procedural claims seeking to set aside the court's ruling that Judi be released from any liability as the Trustee pursuant to the settlement agreement. We address each in turn but consider the facts in the light most favorable to upholding the superior court's

³ The coins consisted of one 50-pound bag of old silver U.S. quarters, two bags of silver dimes, twenty Krugerrands, and twenty \$50 U.S. gold pieces.

judgment. *In re Estate of Newman*, 219 Ariz. 260, 263, ¶ 3, 196 P.3d 863, 866 (App. 2008).

A.

¶8 Appellants first contend the court erred by finding that Judi did not breach her fiduciary duty to the Trust and, as a result, the settlement agreement was not voidable. Specifically, they contend that the court erred by determining that the coins did not belong to the Trust. We review the court's factual determinations for an abuse of discretion. *In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5, 12 P.3d 1203, 1205 (App. 2000) ("We will not set aside the probate court's findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses."). "A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue*, 206 Ariz. 480, 482, ¶ 9, 80 P.3d 287, 289 (App. 2003).

¶9 Here, it was undisputed that after Joyce passed away, Judi found the coins in different locations throughout her mother's house. As a result, the court concluded that the coins belonged to Joyce's estate. We agree.

¶10 Although Lynn testified that he gave the coins to his father in the early 1990s, no coins were found in the family home or on the property. Charlotte never listed any coins as

assets before she passed away. Additionally, the Trust's bookkeeper testified that after a meeting with Charlotte and her attorney, it was his impression that the coins belonged to Joyce. And, even though Joyce did not list the coins when she filed for bankruptcy in 1996, the coins were never inventoried as part of the Trust. Consequently, because the court had to evaluate the credibility of the witnesses, weigh the evidence and determine the facts, we cannot conclude as a matter of law that the court abused its discretion by determining that the coins found in Joyce's home were not part of the Trust estate. Therefore, the court did not err by releasing Judi from liability as the Trustee or precluding a challenge to the Rule 80(d) settlement agreement.

B.

¶11 Appellants argue that the court erred by denying their request for a jury trial. They contend that the determination of whether the coins belonged to Joyce's estate or the Trust was not an equitable claim but one of law which required a jury to resolve. We disagree.

¶12 The issue was not merely the ownership of coins found in Joyce's house. The issue was whether Judi, as Trustee, breached her fiduciary duty by failing to include the coins found in her mother's home as part of the Trust estate. As a result, it was an equitable claim.

¶13 We addressed the issue in *Newman*, 219 Ariz. at 271-72, ¶ 44, 196 P.3d at 874-75. There, the superior court denied the request for a jury trial to resolve the division of assets between three children. *Id.* at 263-64, ¶¶ 1, 7, 196 P.3d at 866-87. In addressing the ruling and after reviewing the applicable law, we determined that the claim for breach of fiduciary duty by the trustee was an equitable claim and held that there is no constitutional right to a jury trial to resolve equitable claims. *Id.* at 271-74, ¶¶ 44-57, 196 P.3d at 874-77. Here, because ownership of the coins is tied to the claim that Judi breached her fiduciary duty, Appellants were not entitled to a jury trial. Consequently, the court did not err by denying the request for trial by jury.

C.

¶14 Appellants next contend the court erred by refusing to hold a hearing on their cross-claims and third party claims. We disagree.

¶15 Following Judi's petition, Appellants filed a pleading entitled "Objection to the Petition, Cross-Petition, and Third Party Petition" and later filed an amended pleading. They alleged that (1) Judi and Tamara Beatson, as co-personal representatives of Joyce Bower's Estate, and Mark Beatson, in his capacity as bookkeeper of the Trust, had a conflict of interest and breached their fiduciary duty by concealing

knowledge of the coins; and (2) Roger Curley and James Fassold, in their capacity as Judi's attorneys, breached their fiduciary duty by failing to report Judi's alleged concealment of the coins to the probate court. There is no indication in the record that Appellants formally served any third party, or that service was waived. As a result, the court held a hearing on Judi's petition and the objection.

¶16 During the hearing, the parties were given time and opportunity to prove their positions. Appellants were given the opportunity to call witnesses, and to present testimony and evidence in an attempt to demonstrate that Judi purposefully omitted the coins from the Trust's estate. They were also given the opportunity to cross-examine Judi and other witnesses she called.

¶17 Although the court refused to schedule a scheduling conference, the Appellants' cross-petition and third party petition claims arose from the same underlying facts: whether Judi had breached her fiduciary duty as Trustee by failing to claim the coins or include them in the Trust's assets. And, even if we assume for the sake of argument that the court erred by failing to set a scheduling conference, Appellants have failed to articulate in a pleading or offer of proof what other witnesses they may have called or what discovery they wanted to conduct that had not been conducted during the course of the

litigation. Consequently, the court did not err by failing to address the cross-petition and third party petition in a separate hearing.⁴

D.

¶18 Finally, Appellants contend that the court erred by awarding Judi's Trustee and attorneys' fees against them. Appellants, however, provide no legal authority to support their argument, and we find none. The fees were awarded pursuant to Arizona Revised Statutes ("A.R.S.") sections 14-11004(B) and 12-341.01 (West 2013) and in accordance with Arizona Rule of Probate Procedure 33. Consequently, we find no abuse of discretion in the fee award.⁵

⁴ Citing *Giovanelli v. First Federal Savings & Loan Ass'n*, 120 Ariz. 577, 587 P.2d 763 (App. 1978), Appellants also request that we grant them summary judgment on their cross and third party claims. *Giovanelli* does not allow an appellate court to sua sponte enter summary judgment, and we will not reweigh the evidence or second-guess the credibility findings of the trial court. *Newman*, 219 Ariz. at 271, ¶ 40, 196 P.3d at 874.

⁵ In their reply brief, Appellants contend that the court erred by determining that their claim was barred by the statute of limitations and by denying their motion for new trial. We do not address issues raised for the first time in a reply brief. See *State v. Guytan*, 192 Ariz. 514, 519-20, ¶¶ 14-15, 968 P.2d 587, 592-93 (App. 1998); see also *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) ("[O]pening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.") (internal quotation marks omitted).

II.

¶19 Appellants and Appellees Tamara Beatson, Dorinda Bowers, and Michelle Sommer have requested attorneys' fees and costs pursuant to A.R.S. §§ 14-11004(B), 12-341.01, -349 (West 2013), and Arizona Rule of Civil Appellate Procedure ("ARCAP") 21.⁶ Because Appellees have prevailed in this action that involves the enforceability of a settlement agreement, we will grant Appellees their reasonable attorneys' fees and costs upon compliance with ARCAP 21.

CONCLUSION

¶20 Based on the foregoing, we affirm the judgment of the trial court.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Presiding Judge

/s/

PHILIP HALL, Judge

⁶ Appellee Judi Bowers did not request attorneys' fees or costs on appeal.