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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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In the Matter of:

FLORES REVOCABLE TRUST

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RODERICK FLOWERS, Successor Trustee of the FLORES REVOCABLE  
TRUST DATED MARCH 6, 1996; DEBORAH FLOWERS; RAYMOND  
FLOWERS,<sup>1</sup>  
*Petitioners/Appellees,*

*v.*

REBECCA FLOWERS,  
*Respondent/Appellant.*

No. 1 CA-CV 19-0187  
FILED 2-11-2020

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Appeal from the Superior Court in Maricopa County  
No. PB2015-000512  
The Honorable Aryeh D. Schwartz, Judge *Pro Tempore*

**AFFIRMED**

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<sup>1</sup> On the court's own motion, it is ordered amending the caption on this appeal as reflected above and directing that the above caption be used on all further documents filed in this appeal.

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COUNSEL

Platt & Westby, PC, Phoenix  
By R. Andrew Rahtz  
*Counsel for Petitioners/Appellees*

Degnan Law, PLLC, Phoenix  
By Mark W. Horne, David Degnan  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Judge Diane M. Johnsen delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

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**J O H N S E N**, Judge:

¶1 Rebecca Flowers ("Flowers") appeals a judgment (1) holding her liable for damages to a trust caused by her breach of fiduciary duty, (2) terminating her life estate in one of the trust's assets, (3) liquidating the trust, and (4) ordering her to pay the other beneficiaries' attorney's fees. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In 1996, Flowers's father created a revocable trust (the "Trust"), which provided that upon his death, its assets would be divided equally among five individuals, including Flowers. In 2009, Flowers's father executed an amendment (the "2009 Amendment") addressing a home (the "Home") in which he lived with Flowers in north-central Phoenix. As relevant here, the 2009 Amendment stated:

In the event the Trust owns or maintains a beneficial or equitable interest in [the Home] at the date of [the father's] death, . . . [Flowers] shall be allowed to use and reside [in the Home] to her exclusion so long as she desires or until she passes away. Her right to use shall include the rental [of the Home] . . . and the retention of any rents therefrom. So long

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as [Flowers] uses or resides [in the Home] she shall maintain all costs associated with its maintenance.

The 2009 Amendment further designated Flowers as successor trustee of the Trust after her father and provided that in the event she died or no longer lived in the Home, the Home would be sold. If Flowers were alive upon sale of the Home, the sale proceeds would be distributed 50% to her and 50% to the other four beneficiaries. If Flowers were not alive upon sale of the Home, the sale proceeds would be distributed in equal shares among the five beneficiaries, with her one-fifth share going to her living issue.

¶3 Flowers's father died in April 2013. At the time, Flowers had not worked since she became disabled in 2005. Her only income came from government disability payments amounting to less than \$45,000 a year. To supplement her income after her father died, Flowers began drawing on a line of credit secured by the Home.

¶4 Three of Flowers's siblings (the "Siblings"), all of them beneficiaries of the Trust, sued Flowers in 2015, alleging she had breached a fiduciary duty as trustee by using Trust assets for her own benefit and failing to provide an accounting. Shortly thereafter, Flowers agreed to step down as trustee, and the court appointed Roderick Flowers, one of the plaintiffs, as successor trustee. The Siblings later added claims alleging undue influence, in violation of Arizona Revised Statutes ("A.R.S.") section 14-10406 (2020), and financial exploitation, in violation of A.R.S. § 46-456 (2020).<sup>2</sup>

¶5 After a bench trial, the superior court found the Siblings proved Flowers breached her fiduciary duty as trustee by using an asset of the Trust for her own benefit and by failing to account to the other Trust beneficiaries. The court also found, however, that the Siblings failed to prove their claims of undue influence and financial exploitation. After briefing and oral argument, the court ruled that Flowers had caused \$59,301.95 in damages to the Trust by incurring that amount in unpaid debt on a line of credit secured by the Home. The court ordered Flowers's life estate in the Home terminated, the Trust liquidated, and the line of credit be paid off from Flowers's beneficial interest in the Trust. The court later granted the Siblings' request for attorney's fees, ordering Flowers to pay

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<sup>2</sup> Absent material revision after the relevant date, we cite the current version of a statute or rule.

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\$90,000 in fees and the Trust to pay \$23,030 in fees. The court further ordered Flowers to pay \$2,814.43 in costs.

¶6 After entry of a final judgment, Flowers timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2020) and -2101(A)(1) (2020).

**DISCUSSION**

¶7 "The overriding goal in the interpretation of a trust document is to ascertain the intent of the trustor." *In re Estate of Zilles*, 219 Ariz. 527, 530, ¶ 8 (App. 2008). This court "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." *In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5 (App. 2000). When this court reviews findings entered after a bench trial, it views "the facts in the light most favorable to upholding the [superior] court's ruling." *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, 417, ¶ 2 (App. 2010). This court reviews the superior court's legal conclusions *de novo*. *Zaritsky*, 198 Ariz. at 601, ¶ 5.

**A. Breach of Fiduciary Duty Damaging the Trust.**

¶8 The basis for the superior court's ruling that Flowers damaged the Trust in violation of her fiduciary duty was its finding that Flowers misused a Trust asset when she borrowed a total of \$59,301.95 against the Home. On appeal, Flowers argues the Trust specifically allowed the trustee to pledge the Home as security for debt. To be sure, the Trust granted the trustee the power "[t]o borrow money and to mortgage or pledge any property of the trust." But that grant of authority must be construed in the context of the trustee's unwavering duty to act on the Trust's behalf. *See, e.g.*, A.R.S. § 14-10802(A) (2020) ("A trustee shall administer the trust solely in the interests of the beneficiaries."). Moreover, in response to a formal Request for Admission, Flowers admitted that she used the loan proceeds "for [her] personal use in violation of [her] duties as Trustee of the Trust."

¶9 Flowers nevertheless denies that her borrowing caused damage to the Trust or constituted waste of a Trust asset and argues she enhanced the value of the Home when she put the borrowed monies toward repairs or improvements. But that argument is squarely contrary to the terms of the Trust. As noted, the Trust explicitly provided that as long as Flowers lived in the Home, "she shall maintain all costs associated with its

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maintenance." To the extent Flowers used the borrowed funds to maintain the Home, therefore, she was using an asset of the Trust to finance performance of a personal obligation, not an obligation of the trustee. Moreover, beyond her admission that she put the borrowed funds to her personal use, on appeal, she cites no record evidence disproving the court's finding that many of the expenditures she claims were improvements to the Home in fact "appear to have been necessitated by a lack of maintenance." Therefore, we reject Flowers's argument.

**B. Order Terminating the Life Estate and Liquidating the Trust.**

¶10 Flowers also argues the superior court erred in terminating her life estate and liquidating the Trust in the absence of evidence that her breach diminished the value of the Siblings' beneficial interest in the Trust. The court cited A.R.S. § 14-11001(B)(3) and (8)-(10) (2020) in its ruling, but Flowers contends those provisions "do not give courts the power or discretion to simply terminate a life estate, liquidate trust assets, or materially change the terms of a trust or terminate it."

¶11 The cited provisions in § 14-11001 allow the court to "[c]ompel the trustee to redress a breach of trust by paying money, restoring property or other means," "[r]educe or deny compensation to the trustee," "recover" trust property that has been "wrongfully disposed of," and "[o]rder any other appropriate relief." The court here did not exceed its discretion when, having found that Flowers breached her fiduciary duty as trustee, it decided to terminate her life estate in the Home. Flowers argues the court's order was contrary to the intent of her father, who had made clear that she and she alone was to decide whether and when she might move out of the Home. But, as the superior court found, given Flowers's limited income

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and the ongoing maintenance requirements of the Home, her "continued occupation of the property, with conditions for maintaining it, is not feasible."<sup>3</sup>

¶12 Flowers nevertheless contends the court should not have terminated her life estate because it was not clear that, in the end, her borrowing would wind up impairing the other beneficiaries' interest in the Trust. Flowers argues that under the 2009 Amendment to the Trust, if the Home were to be sold before her death, she would be entitled to 50% of the proceeds, and "there is no telling when [she] will die and what the Home and [the Siblings'] interests would be worth when that happens." But Flowers made clear at the trial that she very much wanted to remain in the Home, and if she were allowed to do so until she died, the Home then would be sold and her living issue and the other four beneficiaries each would receive 20% of the proceeds. In that event, the other beneficiaries, not Flowers, would suffer the brunt of the economic consequences caused by a lien on the Home. And although Flowers contends the Home will appreciate in value, the record does not demonstrate that if she were permitted to remain in the Home, she could comply with her duty to maintain the premises without further encumbering the property.

¶13 Flowers also argues the superior court did not comply with A.R.S. § 14-10412 (2020), which allows a court to modify or terminate a trust upon proof of circumstances the settlor did not anticipate or when "continuation of the trust on its existing terms would be impracticable or wasteful or would impair the trust's administration." But § 14-10412 does not limit the power of a court to order a remedy under § 14-11001 upon proof of a trustee's breach of trust. Flowers further contends the court could

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<sup>3</sup> Citing an unreported decision of a Nassau County, New York, Surrogate's Court, Flowers argues on appeal that by terminating her life estate, the superior court erroneously found the Trust imposed a condition subsequent on the life estate. *In re Strohe*, 799 N.Y.S.2d 164 (Sur. Ct. Dec. 13, 2004); see Restatement (First) of Property § 24 (1936). Flowers's citation to the unpublished decision violates Arizona Supreme Court Rule 111(d), and we will not consider it. Even so, the issue of a purported condition subsequent was not argued in the superior court, and nothing indicates that court found the Trust contained such a provision. See *Sobol v. Marsh*, 212 Ariz. 301, 303, ¶ 7 (App. 2006) (party generally waives issue on appeal by failing to raise it in superior court). Finally, and more broadly, Flowers's contention disregards the fact that it was her breach as trustee of the Trust, not as holder of a life estate in the Home, that gave rise to the court's power to impose an equitable remedy under § 14-11001.

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have ordered a less extreme remedy, such as ordering the sale of other property within the Trust. The superior court, however, has a wide choice of remedies upon finding a breach under § 14-11001, and Flowers has not shown the superior court abused its discretion in ordering her life estate terminated.<sup>4</sup>

**C. The Attorney's Fees Award.**

¶14 This court reviews an award of attorney's fees for an abuse of discretion but reviews the application of a fee statute *de novo*. *Phoenix Newspapers, Inc. v. Dep't of Corr.*, 188 Ariz. 237, 243-44 (App. 1997).

¶15 In challenging the award of attorney's fees against her, Flowers argues the court lacked the power to order fees against her under § 46-456 because it found in her favor on the Siblings' financial-exploitation claim. The superior court, however, did not grant fees based on § 46-456; it did so instead under A.R.S. § 14-11004 (2020), which allows a court to order a party to pay a trustee's reasonable fees and costs "that arise out of and that relate to the good faith defense or prosecution of a judicial or alternative dispute resolution proceeding involving the administration of the trust, regardless of whether the defense or prosecution is successful."

¶16 Flowers also argues that § 14-11004 does not support the fees award because the Siblings sued not regarding the administration of the Trust but instead sought only to "enlarge their own beneficial interests" in the Trust. She points out that she prevailed on two of the Siblings' claims and asserts it would be "unjust and erroneous" to compel her to pay fees the Siblings incurred in prosecuting those claims.

¶17 The undue-influence claim on which Flowers prevailed alleged that, under § 14-10406, the 2009 Amendment granting her a life estate in the Home was the product of undue influence she exercised upon the parties' father. Such a claim involves the "administration of the trust," A.R.S. § 14-11004(A), and the court therefore had the power to award fees against Flowers based on its implicit finding that the Siblings prosecuted

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<sup>4</sup> Flowers's arguments on appeal are directed to the court's termination of her life estate, not its corresponding decision to liquidate the Trust. According to the Siblings, the assets of the Trust have been liquidated and the proceeds are being held for distribution pending the outcome of this appeal. In the absence of argument by Flowers, and because the issue appears moot, we will not address the court's powers in these circumstances to order the Trust liquidated.

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that claim in good faith, even though they did not prevail. *See* A.R.S. § 14-10201(C) (2020) ("A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.").

¶18 The other claim on which the Siblings did not prevail alleged Flowers used her position of trust and confidence to gain joint ownership of her father's financial accounts and to misappropriate assets, in violation of § 46-456. Even assuming that § 14-11004 would not allow a fees award for the good-faith prosecution of such a claim, Flowers does not cite any specific task or time entry for which the court awarded fees relating solely to the misappropriation claim.

CONCLUSION

¶19 For the reasons stated, we affirm the judgment of the superior court. We award the Siblings their costs and, pursuant to A.R.S. § 14-11004, their reasonable attorney's fees on appeal, both contingent on compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court  
FILED: AA