DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

VIOLETTE A. CHILLIS, Plaintiff/Appellee, v. CAROL ANN CHILLIS and LAWRENCE P. ODIE, wife and husband, Defendant/Appellant.	)	1 CA-CV 10-0289 1 CA-CV 10-0518 (Consolidated) DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-090058

The Honorable Karen A. Potts, Judge

AFFIRMED

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D O W N I E, Judge

¶1 Carol Ann Chillis and Lawrence P. Odie appeal from a final judgment of the superior court. Finding no error, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Violette Chillis had three children: Carol Chillis, Maureen MacDonald, and John Hagerty; Tonya Lapham is Violette's step-daughter. In 2004, Violette moved from Massachusetts to Arizona, where Maureen lived. Carol, who resided in Massachusetts, assisted Violette with selling her Massachusetts home.

¶3 To facilitate the sale of the residence, Carol sent Violette a power of attorney for her signature. Violette signed the power of attorney, which gave Carol certain enumerated powers, including: holding funds; selling real estate; making gifts in advance of a devise to beneficiaries under Violette's will; applying funds in keeping with Violette's wishes and interests to conserve Violette's property and benefit Violette's relatives; and maximizing entitlements to federal and state medical programs by all legitimate means through

[1] Appellants have failed to include citations to the record for some of their factual recitations. We disregard unsupported "facts" and instead draw the facts from appellees' properly-supported factual recitations and from the record on appeal. *See Ariz. Dep't of Econ. Sec. v. Redlon*, 215 Ariz. 13, 15, ¶ 2, 156 P.3d 430, 432 (App. 2007).

revocable/irrevocable transfers into trusts for the benefit of Violette or other recipients. The power of attorney expressly prohibited Carol from making gifts or creating beneficial interests for herself that exceeded the portion of Violette's estate to which Carol would be entitled under Massachusetts law if Violette died intestate.

¶4 Violette's house sold for $355,000. Carol initially deposited the proceeds into a checking account in her name. In January 2006, Carol, as "donor," created two revocable trusts with the sales proceeds: The TMC Trust and The JCH Trust. Violette had no interest in either trust, and she had no actual knowledge of the trusts' creation. Carol was both the trustor and trustee. In May 2007, Carol converted the two revocable trusts into irrevocable trusts known as The TMC Family Trust and The JCH Family Trust. Carol was again the trustor and trustee; Violette had no interest in either trust, and Violette lacked actual knowledge of the trusts' creation.

¶5 Violette later instructed Carol to sign documents terminating the trusts and return the funds to Violette's control. Carol refused. In July 2007, Violette revoked the power of attorney in favor of Carol. In January 2008, Violette sued Carol and her husband, alleging breach of fiduciary duty, conversion, and violation of the Vulnerable Adult Act, Arizona Revised Statutes ("A.R.S.") section 46-456. Violette alleged

that Carol misused proceeds from the home sale and funds from several certificate of deposit accounts in Violette's name.

¶6 Violette filed a Motion for Return of Funds, which Carol opposed. After oral argument on the motion, the superior court entered the following order:

> [N]o withdrawals from the principal of any account in [Carol's] name which contains money that originated from [Violette] will be made without prior approval of the Court, to be granted upon showing of good cause. However, [Carol] shall cause a monthly payment equal to the total amount of monthly interest earned on any such account to be paid to Violette within five days of the first of each month.

The parties later submitted a stipulated order restricting disbursement of funds in three specified accounts. Violette was to receive interest earned on these accounts.

¶7 Violette died on November 14, 2008. Maureen and Tonya moved to substitute as plaintiffs in this litigation, which the court allowed.

¶8 In October 2009, Carol asked the court to release $5,000 in trust funds to pay for a deposition of the Massachusetts attorney who "drafted the powers of attorney . . . and trusts in question and who advised both [Violette] and [Carol] in relation to the POAs and trusts." Maureen and Tonya objected, and the court denied the request. Carol unsuccessfully moved for reconsideration. On the first day of

trial, Carol filed a "supplement to and renewal of" her motion to release funds to depose the Massachusetts attorney. The court once again denied the request, stating:

> [Carol] seek[s] approximately $5,000.00 to take one deposition in Massachusetts. This is simply not reasonable. The deposition in question is of an attorney that represented [Carol] and also [Violette] (prior to her death). As the attorney for [Carol], a deposition is unnecessary as [Carol] may freely interview her own counsel. If the reason is to preserve testimony for trial, [Carol] could have requested that the attorney testify telephonically. If the reason is for discovery, the deposition could have been taken telephonically or upon written questions, neither of which would have required significant costs. [Carol] never requested or pursued any of these alternatives. A.R.S. §14-10805, 10811, and 10709 do not allow an advance of costs from trust funds for a deposition in a case of this nature, and A.R.S. §14-3720 and §14-3721 do not apply to a proceeding of this nature.

¶9 After a bench trial, the court ruled that Carol had breached her fiduciary duties and converted funds belonging to Violette. Specifically, the court found Carol "did not act in good faith, failed to honor the wishes of [Violette], and engaged in self-dealing to the detriment of [Violette]." The court did not, however, find Violette to be a vulnerable adult within the meaning of A.R.S. § 45-451.

¶10 Carol timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B).

DISCUSSION

¶11 In her opening brief, Carol appears to raise two independent issues for our review: (1) whether the court abused its discretion by refusing to release trust funds for the Massachusetts deposition; and (2) whether the court erred in failing "to consider [Carol's] understanding of her authority under the power of attorney and the reasonableness of that understanding." In her reply brief, though, Carol clarifies that the second issue is tied to the first, stating: "[T]he precise issue is that the trial court was wrong to make findings without the deposition of [the Massachusetts lawyer] and that, if this Court permits the funding of the deposition, that all factual findings should be vacated until [the Massachusetts lawyer's] input, in whatever fashion, is presented to the trial court." Because we affirm the denial of Carol's disbursement requests, we do not reach the second issue.

¶12 A trustee is generally entitled to reimbursement from the trust for his or her reasonable expenses relating to a good faith defense involving administration of the trust. A.R.S. § 14-11004(A); *see also* A.R.S. § 14-10709 (trustee entitled to reimbursement for expenses incurred to administer trust). Although § 14-11004 allows a trustee to seek reimbursement of litigation expenditures, Carol sought to avoid out-of-pocket expenses by having the trust advance anticipated costs

associated with a deposition of her attorney. Carol cites no authority *requiring* a court to order such an advance, and we are aware of none.[2]

¶13 Moreover, § 14-11004 contemplates payment or reimbursement of *reasonable* expenses. The court here expressly found Carol's requests to be unreasonable. It explained that, because the Massachusetts lawyer was Carol's own counsel, a pretrial deposition was unnecessary. And even assuming Carol needed to have the attorney's testimony, the court identified less costly alternatives, including telephonic testimony or written interrogatories, which Carol did not pursue.

¶14 The court did not abuse its discretion by denying Carol's disbursement requests. The May 2008 order made clear that any party seeking a disbursement of trust funds must establish good cause. "Abuse of discretion" is "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Torres v. N. Am. Van Lines, Inc.*, 135

[2] Section 14-3720, cited by Carol, focuses on a personal representative's right to recover expenses incurred as a result of litigation: "If any personal representative . . . defends . . . any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred." Setting aside the fact that Carol was a trustee and not a personal representative, and assuming the court could have found that Carol defended the claim in good faith, the statute still does not demonstrate a legislative intent to mandate pre-payment of anticipated litigation expenses.

Ariz. 35, 40, 658 P.2d 835, 840 (App. 1982). In reviewing for an abuse of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge." *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (quoting *Davis v. Davis*, 78 Ariz. 174, 179, 277 P.2d 261, 265 (1954) (Windes, J., specially concurring).

¶15 The court cogently explained why Carol's requests were inappropriate. Additionally, in her first request, Carol merely stated in a conclusory fashion that the Massachusetts lawyer "indicates that he cannot travel to Arizona to testify at trial." Upon renewing her motion on the day of trial, Carol attached, among other things, a letter stating that the attorney objected to a trial subpoena "based on his fear of being arrested should he ever fulfill his long-held desire of someday visiting the State of Arizona." Finally, it is significant that Carol did not seek funds for the deposition until almost three months after the court-mandated discovery cut-off had expired.

CONCLUSION

¶16 We affirm the judgment of the superior court. We deny appellee's request for attorneys' fees incurred on appeal

pursuant to A.R.S. §§ 12-341.01(C), 12-349(1) and Rule 25, Arizona Rules of Civil Appellate Procedure. Although we disagree with Carol's substantive claims, we do not find that they rose to the level of harassment or bad faith. Appellee is, however, entitled to appellate costs upon compliance with Rule 21, Arizona Rules of Civil Appellate Procedure.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Presiding Judge

/s/
JON W. THOMPSON, Judge