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ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-22-145

TRACY WARNER

APPELLANT

V.

RICHARD FORD

APPELLEE

Opinion Delivered November 29, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
ELEVENTH DIVISION
[NO. 60CV-16-4194]

HONORABLE PATRICIA JAMES,
JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

This is an appeal from proceedings over a life estate in Bobbie Warner’s one-half interest in what we will call the “Property”: twenty-three acres on Lawson Road in Pulaski County. In February 2013, Bobbie created a revocable trust with herself as original trustee, with instructions to her successor trustee (her son Tracy Warner), to distribute a life estate in her interest in the Property to Richard Ford, the appellee here, if he survived her. Ford lived with Bobbie on the Property and owned the other one-half interest. The remainder was for Bobbie’s four children as tenants in common if they survived her. All of them did. Bobbie amended the trust—and that disposition—on March 28. She died weeks later, May 12. We will refer to the first trust instrument as the “Original Trust,” the second instrument as the “Amendment,” and the amended trust (or the original trust when the version doesn’t matter) as the “Trust.”

Determining Bobbie's intent requires us to read the relevant Trust provisions in the context of the whole. *E.g., Fisher v. Boling*, 2019 Ark. App. 225, 575 S.W.3d 592. But our analysis centers on paragraph 2 of the Amendment:

Specific Distribution of Residential Property. A life estate in the Trustee's interest in the house and approximately 23 acres (including the 5 rental properties) in Pulaski County, Arkansas, (including a concurrent obligation to pay insurance, taxes, and maintenance on such property) which the Trustor occupies as her residence at the time of the Trustor's death shall be conveyed to RICHARD FORD, if he shall survive the Trustor. If this property at the time of the Trustor's death is subject to any mortgage, then this conveyance shall be subject thereto and the beneficiary shall not be entitled to have the obligation secured by such mortgage paid out of the Trust Estate or the Trustor's general estate. If, in Trustee's sole and unfettered discretion, RICHARD FORD commits waste of such property, then such life estate shall terminate, and RICHARD FORD shall have no further interest in Trustor's share of such property.

At this point, the reader might expect an appeal about whether Ford committed waste or perhaps about what standard should apply. We did too. Actually, the parties agreed Ford's life estate was subject to the waste standard above, and no one minds now whether his life estate terminates.

The core issue on appeal is whether Bobbie intended the life estate and remainder interests in the Property to be conveyed to Ford and the remaindermen immediately (as the circuit court found) or kept in trust indefinitely (as Tracy had done). That matters to Tracy because he contends in other litigation that his siblings forfeited their interests to him under an in terrorem provision. It matters to Ford because those siblings have conveyed those interests to him.¹

¹At least, the parties argued so. The siblings are not parties in this action. The circuit court ordered Tracy to convey the Trust's interest in the Property to Ford and the remaining beneficiaries but did not decide what ownership interests would result.

The appeal can be understood with relatively little of the procedural history, which is still a lot. Much of it is relevant only because Tracy contends, under a number of theories, that we should hold Ford to descriptions of the interest as “trust owned” that he made, overlooked others making, or failed to appeal earlier in these proceedings—even if the circuit court correctly concluded at the end that Tracy should have conveyed it at Bobbie’s death.

I.

The case started with Tracy’s request to inspect the Property for waste. He filed an eight-paragraph petition for declaratory judgment in July 2016 captioned *In the Matter of Bobbie D. Warner Revocable Trust dated February 9, 2013*. He identified himself as the petitioner, quoted paragraph 2 of the Amendment (attaching the Trust instruments as exhibits), and asserted that he “as Trustee, is authorized, in his sole and unfettered discretion as noted hereinabove, to determine if [Ford] has committed waste with respect to trust-owned property” but that Ford had refused to give him access. Ford filed a timely response admitting Tracy had the right to determine whether he was committing waste. But he objected to Tracy’s personal inspection because of Tracy’s alleged history of threatening or violent conduct. Ford attached correspondence with Paul White, Tracy’s counsel, including a May 2016 email in which White threatened that if the parties could not agree on an inspection, “the only choice [Tracy] has is to file the petition seeking to enforce the ‘in terrorem’ clause,” which was “set up to disinherit a beneficiary who ‘objects in any manner to any action taken or proposed to be taken in good faith by the Trustee.’” At that point, Tracy would “most likely seek the sale of the property through a partition action.”

Ford also attached a copy of a petition filed in August 2016 in Saline County, *Ricky Threlkeld et al. v. Tracy Lee “Skip” Warner*, Case No. 63CV-16-716 (*Saline County I*), in which

Tracy's siblings asked the circuit court to remove Tracy as trustee because, more than three years after Bobbie's death, he had given no accounting and made none of the distributions of real property Bobbie specified should be made at her death. Ford moved the Pulaski County Circuit Court to hold this action in abeyance until the Saline County proceedings finished.

The Pulaski County docket was quiet for two years. In July 2018, Tracy moved for a physical inspection under Rule 34. In the motion, he alleged in relevant part that "[t]he Trustee, [Tracy], and the other beneficiaries under the Trust," retained a one-half interest in the Property pursuant to the Trust. Ford filed a response admitting "that the beneficiaries of the trust estate have a one-half interest in the whole of the property[,] " but he described it as "reversionary in nature" and determinable on the termination of his life estate. To the extent Tracy alleged that the beneficiaries' interest "is other than anything conveyed to [Ford] via the trust and title," Ford denied the allegations.

The circuit court entered an order in February 2019 permitting Tracy to conduct an inspection in the company of a Pulaski County sheriff's deputy. Tracy finds significant that the order refers to the Property as "trust-owned" and Ford's counsel signed it beneath the word "Approved" under the block that identified Tracy's counsel as drafter.

In March 2020, Tracy filed an amended petition alleging waste at the Property. He sought a declaration that Ford's life estate had terminated, that Ford "should have no further interest in the Trust's ownership" in the Property, and that it should be sold at auction. Ford responded, among other things, that "the trust should have been dissolved and deeds issued to all beneficiaries," including Ford. Years of pleadings, amended pleadings, counterpleadings, and amended counterpleadings ensued. On 16 February 2021, Ford filed a "Respondent's Petition for Declaratory Judgment" asserting the Trust should have been distributed at Bobbie's

death and should be dissolved and terminated nunc pro tunc. Nine days later, he pleaded in a “Second Counter-Petition for Declaratory Judgment” that he had acquired the “future interests” in the Property from Tracy’s siblings, and asked the court to declare the parties’ ownership rights. Tracy moved to dismiss those petitions. The parties traded arguments—most of them meritless—about whether to dismiss them. The circuit court denied the motions to dismiss in July 2021.

The circuit court set Ford’s petitions to be heard 6 October 2021—the only hearing we’ll discuss. One day before the hearing, Tracy filed an amended motion to dismiss the petitions. He attached two filings from the Saline County Circuit Court as exhibits.

One exhibit is an order filed 13 August 2018 in *Saline County I*, the action by Tracy’s siblings to remove him as trustee. In it, the court contemplates dismissing the petition without prejudice on the parties’ stipulation that they have received deeds to the properties specified in the Trust.² The order finds that “[t]he Trustee remains responsible as the owner of the life estate of John Ford as it remains in the property of the late Bobbie D. Warner.”

The other exhibit from a Saline County proceeding was a “Motion for Joinder and Dismissal Pursuant to ARCP 12(b)(8)” Ford had filed in September 2021 in a Saline County case styled *In re Bobbie D. Warner Revocable Trust dated February 9, 2013*, Case No. 63CV-21-298 (*Saline County II*). We don’t have the petition. We infer that Tracy asked that court to subvert the relief Ford petitioned for in Pulaski County by finding that the siblings’ conveyances to Ford violated the Trust’s in terrorem provision.

²We don’t know if those include the Property.

Ford's motion in *Saline County II* alleged that he was an indispensable party who should have been joined under Rule 19. Tracy argued the same in Pulaski County about his absent siblings. As we've hinted, the case is a mess.

The Pulaski County hearing went forward. The circuit court ruled from the bench that the Trust's interest in the Property should have been distributed at Bobbie's death—which, as we will get to shortly, is correct. It entered an order November 9 finding that “each of the four children received a vested one-eighth (1/8) undivided interest in the trust property upon the death of the Trustor, subject to the life estate of Richard Ford.” The court ordered Tracy to execute all instruments needed to convey those interests.

Tracy, who had gone through several lawyers already, had fired one more by then. He filed a timely pro se motion for new trial or reconsideration November 24 followed by a timely notice of appeal from the November 9 order. The circuit court denied the motion as untimely December 9, but admitted that it had miscalculated and vacated the order. Tracy, now again with counsel,³ filed a reply elaborating on some arguments and adding others. The circuit court expressly denied the motion (by general denial) December 28, the last day to rule. (The thirtieth day from its filing fell on Christmas Eve, a Friday that year, and Christmas was observed the following Monday.) Tracy filed a timely amended notice of appeal from both orders.

II.

Now to the merits. Tracy's six points on appeal fall in two categories. First, he argues the Trust, properly construed, did not require him to distribute the Trust's interest in the Property at Bobbie's death. Second through sixth, he argues that even if the Trust did require

³Temporarily. Tracy discharged that lawyer after his opening brief in this appeal and filed his reply brief pro se.

that, the circuit court should not have remedied his misadministration, generally because of things Ford has said in this proceeding (res judicata, stare decisis) or in another one (judicial estoppel). We find no merit in his arguments.

A. Trust Interpretation

Tracy argues in his first point on appeal that the circuit court's interpretation that the Trust's interest in the Property should have been distributed at Bobbie's death conflicts with what is expressed or implied in Paragraph 2, as well as other terms that might contemplate a continuing administration of trust property. The circuit court below was sitting as a court of equity. Courts sitting in equity have exclusive jurisdiction in matters of the construction, interpretation, and operation of trusts. *Fisher*, 2019 Ark. App. 225, 575 S.W.3d 592. We conduct a de novo review on the record but will not reverse a finding by the circuit court unless it is clearly erroneous, meaning that, even if there is some evidence to support it, we are left with a firm and definite conviction that a mistake has been made. *Id.*

The cardinal rule for interpreting a trust (or a will) is to ascertain the intent of the settlor (or testator). *E.g.*, *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299. If the terms of the instrument are unambiguous, we construe it according to the plain meaning of the language used. *Id.* We determine the settlor's intent from the four corners of the instrument, giving meaning to all its provisions and each of its clauses, unless there is an irreconcilable conflict so that one or the other must give. *Clark v. Summers*, 2021 Ark. App. 109, 619 S.W.3d 886. We start by zooming out from Paragraph 2 to include context, including an earlier version of Article V from the Original Trust dated 9 February 2013.

The Original Trust opened the usual way, with Bobbie naming herself the original trustee:

Introductory Clause. This agreement made this February 9, 2013, between BOBBIE D. WARNER (hereinafter referred to as the “Trustor”) and BOBBIE D. WARNER (hereinafter referred to as the “Trustee”).

This Trust shall be known as the “Bobbie D. Warner Revocable Trust, dated February 9, 2013.”

The Trustor has four living children: JAMES MIKE WARNER; RICKY LYNN THRELKELD (also known as RICKY LYNN WARNER THRELKELD); TRACY LEE “SKIP” WARNER; and TINA RENE A WARNER.

Tracy was designated successor trustee in Article I of the Trust. No one disputes his succession. Articles II, III, and IV are not important. Article V, titled “Specific Distributions,” includes the original instructions for distributing specified real and personal property. The opening paragraph of that article states:

Specific Distributions Introduction. Upon the death of the Trustor, the Trustee *shall* make the following distributions:

(Emphasis added.) It then details the distributions Bobbie’s successor trustee was to make at her death. The first paragraph concerns her personal effects and tangible personal property. That is not at issue here. The second paragraph is an earlier version of Paragraph 2:

Specific Distribution of Residential Property (Not Identified). A legal life estate in the Trustee’s interest in the house and lot which the Trustor occupies as her residence at the time of the Trustor’s death shall be conveyed to RICHARD FORD, if he shall survive the Trustor. If this property at the time of the Trustor’s death is subject to any mortgage, then this conveyance shall be subject thereto and the beneficiary shall not be entitled to have the obligation secured by such mortgage paid out of the Trust Estate or the Trustor’s general estate.

The following paragraph, titled “Specific Distribution of Real Property with Condition Precedent,” refers to a schedule of real property that should be conveyed to specified recipients. We don’t have it, but no one made an issue of that below. The next one defines “Trust Estate”

to mean, for the rest of the instrument, “the entire Trust Estate minus the specific distributions under this Article.”

In the following article, Bobbie directs the successor trustee to distribute that residue upon her death to her children if they survive her:

Trust Estate to the Beneficiaries Named. Upon the death of the Trustor, the Trust Estate (which shall include any property which may be added from the Trustor’s general estate) shall be paid over and distributed, free of trust, in equal shares to my children, or if any of them fail to survive me, to their issue, per stirpes.

None of the rest of that article, or the following five, need mention. Article XII does, because (as Ford contends) it describes a contingency that was possible when the Trust was drafted (but did not ultimately come to pass) that would have required continuing administration of trust property. It begins:

Provision for Trustee to Act as Trustee for Beneficiary Under Age 25. If any share hereunder becomes distributable to a beneficiary who has not attained the age of twenty five (25) years, such share shall immediately vest in the beneficiary, but not withstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age(s) specified in accordance with the following provisions. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

The trustee’s powers under that article include making discretionary payments of income and principal for the beneficiary’s health, education, maintenance, and support. When the beneficiary reaches age twenty-five, the trustee “shall distribute to the beneficiary the entire Trust share being held for his or her benefit.”

Tracy points to other provisions from the Original Trust that he contends are nullified by the circuit court’s eventual interpretation of Paragraph 2. For example, both Article XV, titled “Addicted Beneficiary,” and Article XXI, a spendthrift provision, contemplate that there

might be payments of income or principal to trust beneficiaries. He specifically points to the direction in Article XXI that

payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale, or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities, or torts of any beneficiary.

Similarly, he argues the in terrorem provision in Article XVII must contemplate a period of trust administration after Bobbie's death because it enumerates actions by a beneficiary upon which the "person's right to take any interest given to him or her . . . shall be determined as it would have been determined if the person had predeceased the execution of this instrument without surviving issue."

Bobbie amended and restated Article V of the Trust on 28 March 2013. The Amendment is a thoughtful elaboration of points in the Original Trust that might have led to dispute. One of them was Ford's life estate. The Original Trust required Bobbie's successor to convey "a *legal* life estate" to Ford but did not detail Ford's accompanying obligations (emphasis added). Here again is Paragraph 2, the revised provision the parties have been fighting about:

Specific Distribution of Residential Property. A life estate in the Trustee's interest in the house and approximately 23 acres (including the 5 rental properties) in Pulaski County, Arkansas, (including a concurrent obligation to pay insurance, taxes, and maintenance on such property) which the Trustor occupies as her residence at the time of the Trustor's death shall be conveyed to RICHARD FORD, if he shall survive the Trustor. If this property at the time of the Trustor's death is subject to any mortgage, then this conveyance shall be subject thereto and the beneficiary shall not be entitled to have the obligation secured by such mortgage paid out of the Trust Estate or the Trustor's general estate. If, in Trustee's sole and unfettered discretion, RICHARD FORD commits waste of such property, then such life estate shall terminate, and

RICHARD FORD shall have no further interest in Trustor's share of such property.

Tracy's first arguments about the Trust's interpretation concern that paragraph.

Paragraph 2. Tracy argues the dominant purpose of the Trust was to convey everything on Bobbie's death except the interest in the Property, which was to be held in trust until the end of Ford's life estate. He asks us to infer so because Paragraph 2 refers to the "Trustee's interest" in the Property, not the "Trustor's interest," and left the determination of whether Ford was committing waste to the successor trustee in that capacity, not as a remainderman.

The circuit court correctly rejected those arguments. Bobbie was Ford's cotenant in the Property until 9 February 2013, when she contributed her interest to the Original Trust. This had at least two consequences for drafting the trust instruments. First, because Bobbie had already contributed her interest in the Property to the Trust, Bobbie the trustee—not Bobbie the trustor—now owned it. Calling it the "Trustee's interest" (as she did in both trust instruments) was an accurate reference to its present ownership, not an instruction to keep it in trust. Second, because Ford owned the other one-half undivided interest in the Property, he would enjoy possession of the whole even if his life estate in Bobbie's share were terminated for waste. The instruction that, in that event, he would have "no further interest in *Trustor's share*" of the Property clearly distinguishes the Trustor's share from Ford's share, which he would continue to own. (Emphasis added.) Indeed, describing the interest at that future point as the share Bobbie had owned indicates again that she expected the Trust's legal interests to have been distributed. Bobbie could not use "Trustee's interest" again: the trustee would have conveyed that interest when Ford's life estate began and retained no interest when it ended.

Bobbie could not know who would own the remainder interest then; she had to describe it somehow.

Next, Tracy argues that the language reserving the waste determination for Bobbie's successor trustee indicates she intended her interest in the Property to be kept in trust, asserting (without authority) that a trustee "cannot acquire or retain dominion over a real property outside the trust corpus." The key to any interpretive mystery is in Bobbie's instruction that a life estate "shall be *conveyed*" to Ford—emphasis added—if he survived her and that "this *conveyance*"—emphasis added again—would be subject to any mortgage that remained at her death, which Ford would pay along with the taxes, insurance, and maintenance. Interests in real property are *conveyed* by deed. Tracy never *conveyed* a life estate to Ford. His counsel acknowledged at the hearing that "the only way to pass title from a trust is a trustee's deed to [the] beneficiaries."

Ordinarily, a remainderman's remedies for waste by a life tenant don't include forfeiture of the life estate. *Smith v. Smith*, 219 Ark. 304, 306–07, 241 S.W.2d 113, 114 (1951). But Tracy would not have needed to keep Bobbie's share of the Property in trust to preserve the right to terminate Ford's life estate for waste—just to convey it as instructed, reserving that right as grantor in the trustee's deed.

Other Trust Provisions. We are not persuaded, either, by Tracy's arguments that language outside Paragraph 2 called for an ongoing administration. For example, Tracy argues that the in terrorem provision "clearly contemplates" a period of administration of property in trust after Bobbie's death and would be superfluous if the entire trust estate were to be distributed then. He misses that the in terrorem provision would be meaningful even then, because it would have applied to any challenge to *Bobbie's* actions before that point, either as trustor or original

trustee. Moreover, there *was* a period of administration of property in trust *before* Bobbie's death, with Bobbie herself as trustee and beneficiary. Article X, for example, specified that any distributions to the Trust from retirement accounts should be held solely for her benefit. So there is no need to contradict her express instructions about what to do afterward.

Other provisions refer to principal and income payments to beneficiaries. Tracy sees them as evidence that Bobbie intended some income-producing property (like the rent houses on the Property) to be held in trust. We see those provisions as attempts to account for contingencies that just did not occur. For example, a continuing trust would be created for any distribution that would be owed to a beneficiary under age twenty-five. If a child had predeceased Bobbie, that provision might have come into play. But they all survived her. Property could be added to the Trust, specifically including property from Bobbie's general estate. Bobbie could not know then what property she or her estate might acquire.

B. Remaining Points on Appeal

Most of Tracy's remaining points flow from the stop-and-start proceedings in this docket, beginning with his 2016 request to inspect the Property. We address them in a different order than they were presented.

The circuit court said at the hearing, "I'm going to tell you I've read this Trust document and I have ideas of what I think is going on." Tracy reads this as an indication that the court relied on statements that were not evidence, such as counsel's argument that Tracy was refusing in bad faith to distribute trust property so his siblings would be forced to forfeit their interests to him (the remaining beneficiary) under the in terrorem provision. We don't read the circuit court's remarks that way, and we affirm on this point.

Next, Tracy argues that by some name—judicial estoppel, *res judicata*, or *stare decisis*—Ford’s earlier conduct in this docket or in Saline County should have foreclosed this challenge. He argues simultaneously—and somewhat awkwardly, we think—that a life tenant like Ford lacks standing to litigate his handling of the remainder interests.

The circuit court rejected Tracy’s arguments on those points at the hearing, stating it was not bound by either the earlier proceedings about inspecting the property or the Saline County litigation with the siblings, which was “a different issue.” The court did not incorporate those remarks, or otherwise rule on those arguments, in the November 2021 order. But Tracy renewed them (in substance) in his motion for new trial, and the circuit court rejected them (for our purposes) by generally denying that motion.

We affirm for reasons we condense from the detailed arguments in Ford’s brief. First, although the circuit court ordered Tracy to convey the Trust’s interest in the Property to Ford and the remaindermen without mentioning the waste determination from Paragraph 2 (and Tracy does not appeal that omission), the parties seem to have agreed at all times that it would apply to Ford’s life estate. Second, we think that was correct. Third, because Tracy never conveyed the Trust’s interest to the beneficiaries, legal title was always in the Trust. If Ford referred to a “trust owned” interest, or failed to object to a like description, that was an accurate statement on a point that was not in issue. Indeed, we think Judge Herzfeld’s finding in *Saline County I* that “[t]he Trustee remains responsible as the overseer of the life estate of John Ford as it remains in the property of the late Bobbie D. Warner” was not only correct at the time, but would be correct under either party’s interpretation of the Trust.

Ford wasn’t a party in *Saline County I*. We know little else about that litigation. Nothing we do know suggests the circuit court should have refused to hear Ford’s challenge to Tracy’s

misadministration of the Trust. There are four elements of judicial estoppel. *Jenkins v. Mercy Hosp. Rogers*, 2021 Ark. 211, at 10–11, 633 S.W.3d 758, 765. None of them was met. In this docket, the parties said things about the Property while litigating the details of collateral issues, but its ownership was not “at issue [or] directly and necessarily adjudicated” until 2021, so res judicata did not apply. *Swindle v. State Farm Mut. Auto. Ins. Co.*, 2017 Ark. App. 632, at 4–5, 533 S.W.3d 665, 668. Because the ownership issue was not “actually litigated” in earlier proceedings in this docket, res judicata would not apply even if we treated the resulting orders as judgments under Arkansas Rule of Appellate Procedure–Civil 2(a). So we don’t need to enter that finality quagmire. *Cf. Halbrook v. Roberson*, 2023 Ark. App. 202, 665 S.W.3d 268.

We noted above that the parties treated the docket as something of an open forum for pleadings, amended pleadings, counterpleadings, and the like without strict regard for the rules of civil procedure. Tracy argues the circuit court’s November 2021 order violated due process by ordering him to “execute all instruments necessary” to convey the Trust’s interests in the Property after declaring that the Trust meant what Ford contended it meant. He argues this was “supplementary relief” under the Uniform Declaratory Judgment Act, Ark. Code Ann. § 16-111-108 (Repl. 2016), which the circuit court should not have granted without giving him notice and another opportunity to be heard. Ford responds that the Act specifically empowered the circuit court to direct trustees to “do or abstain from doing any particular act in their fiduciary capacity.” Ark. Code Ann. § 16-111-104(b) (Repl. 2016). In these cases, the court “may grant any further relief whenever necessary and proper.” *Martin v. Humphrey*, 2018 Ark. 295, at 1, 558 S.W.3d 370, 372. Further, he directs us to Arkansas Rule of Civil Procedure 57, which provides that the procedure for obtaining a declaratory judgment pursuant to the Act “shall be in accordance with these rules[.]”

Section 16-111-108 reads:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

We don't interpret the reference to "further relief" in section 108 to prohibit simultaneously granting declaratory relief and related remedies against a party who had an adequate opportunity to oppose both. And Tracy did. In a February 2021 petition, Ford pleaded that "in the event that [Tracy] has failed or refused to administer his duties consistent with the terms of The Trust, he should be ordered to do so." The circuit court granted that request after a hearing on the petition some eight months later. Procedural due process "guarantees that a state proceeding resulting in deprivation of property is fair." *City of Little Rock v. Nelson ex rel. Nelson*, 2020 Ark. 34, at 7, 592 S.W.3d 633, 639. At a minimum, it requires notice and an opportunity to be heard. *Id.* Tracy had plenty of both. So even if our interpretation of section 108 is mistaken, and there was a procedural error on these facts, it would be a harmless and ordinary one, not a due-process violation.

Finally, Tracy argues that, as a life tenant, Ford had no standing to litigate the nature of the remainder interests. Ford responds that he did. Discussing Ford's standing as a life tenant would needlessly prolong this opinion. Ford averred in his last pleading that he had "purchased and acquired by deeds" Tracy's siblings' interests in the Property. Tracy had given them no deeds. Ford had standing to ask what ownership resulted, which required the circuit court to determine their interests in the Trust. *Cf. McVesting, LLC v. Heirs of McGoon*, 2012 Ark. App.

541 (addressing statute that confers standing to determine heirship on a person who claims through an heir).

Affirmed.

KLAPPENBACH and BARRETT, JJ., agree.

Tinsley & Youngdahl, PLLC, by: *Jordan B. Tinsley*, for appellant.

Schwander Law Firm, by: *L. Howard Schwander III*; and *James, House, Swann & Downing, P.A.*, by: *Patrick James*, for appellee.