STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0229

In the Matter of the Lindmark Endowment for Corporate-Business Ethics Fund.

Filed October 28, 2019
Affirmed
Larkin, Judge

Stearns County District Court
File No. 73-CV-18-4431

Roger M. Lindmark (pro hac vice), Lindmark Law Offices, Los Angeles, California (attorney pro se); and

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Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's dismissal of his opposition to respondent-university's petition to modify the administration of an endowment, arguing that the district court erred by determining that it had subject-matter jurisdiction over the petition under the

Uniform Prudent Management of Institutional Funds Act (UPMIFA), Minn. Stat. §§ 309.73-.77 (2018), and that appellant did not have standing to contest the petition. We affirm.

FACTS

This case comes to us for review of a grant of summary judgment. The summary-judgment record establishes the following undisputed facts.

In January 2004, as part of a settlement of a class-action lawsuit in which appellant Roger M. Lindmark was a class representative, the U.S. District Court for the Central District of California ordered American Express Company to pay $50,000 to respondent Saint John's University (SJU) "to be used to fund programs and activities in the field of corporate-business ethics." In February 2004, SJU and Lindmark executed "The Lindmark Endowment for Corporate-Business Ethics Criteria Statement," which described the anticipated $50,000 payment from American Express as a "*cy pres* donation"[1] and a "gift." The criteria statement provided that proceeds from the endowment would be used to "fund programs and activities in the field of Corporate-Business Ethics." In June 2004, American Express sent SJU a check for $50,000.

[1] Cy pres is "[t]he equitable doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail." *Black's Law Dictionary* 470 (10th ed. 2014). The cy pres doctrine is "also used to distribute unclaimed portions of a class-action judgment or settlement funds to a charity that will advance the interests of the class." *Id.* "More recently, courts have used cy pres to distribute class-action-settlement funds not amenable to individual claims or to a meaningful pro rata distribution to a nonprofit charitable organization whose work indirectly benefits the class members and advances the public interest." *Id.*

In 2007, Lindmark represented an individual who contested a settlement agreement in a class-action lawsuit. In settlement of that individual's claim, the law firm of Engstrom, Lipscomb & Lack agreed to pay $250,000 to the endowment. In 2008, the law firm gave Lindmark a $250,000 check for the endowment, which he provided to SJU. In 2010, SJU and Lindmark executed an amended criteria statement regarding the endowment, which again described the original $50,000 payment from American Express as a "*cy pres* donation" and a "gift." The amended criteria statement included a prioritized list of programs and activities for which proceeds from the endowment could be used. The first priority on the list was the "Lindmark Fellowship in Ethics," described as follows:

> The Lindmark Fellowship in Ethics will be an attractive and competitive on-campus, summer undergraduate research fellowship experience for Saint John's students who have completed their junior year. The summer award will be substantial so the recipients will have summer income in order to return to SJU. Upon completion of the 10 week summer fellowship, students will submit their work during their senior year for presentation at conferences and/or publication in professional journals. The work will also be submitted for competition in the annual undergraduate research "Scholarship and Creativity Day." The fellowship program will be administered by Office of the Associate Provost and Academic Dean in consultation with Institutional Advancement.

The amended criteria statement also contained a "Reservation" provision, which stated:

> Because circumstances change from time to time, it is possible that the above criteria for making awards cannot be met at some future date (e.g., a major or program is dropped from the curriculum, so awards in that field can no longer be made). In such a case, after consultation with all available living donors who signed the document that governs the Fund, the Board of Regents may modify the award criteria in a way

> that it deems appropriate. In all cases, the intent of the donors to the Fund shall be foremost in this process, and new criteria shall adhere as closely as practical to the original criteria.

The amended criteria statement also contained a "Miscellaneous Matters" provision, which stated:

> This document constitutes a "gift instrument" within the meaning of and governed by Minnesota's Uniform Prudent Management of Institutional Funds Act, and this document constitutes the entire gift instrument with respect to all gifts to which it applies. The Fund does not constitute a trust. The laws of the State of Minnesota relating to endowment funds shall govern this gift instrument and the Fund.

Lastly, the amended criteria statement provided that Lindmark would receive an annual report regarding the endowment. The amended criteria statement did not otherwise assign Lindmark an oversight role in the administration of the endowment, nor did it grant him a reversionary interest in the endowment's funds. Lindmark signed the document under the heading "Donor's Signature."

In November 2017, Lindmark sent a letter to SJU's president criticizing SJU's administration of the endowment. Specifically, Lindmark asserted that SJU had failed to "monitor and supervise the student Fellows" in the Lindmark Fellowship in Ethics program "and administer the program." Lindmark demanded that the endowment be dissolved, that the summer fellows program be eliminated, that Lindmark receive an itemized account of all of the endowment's expenditures, and that he be mailed "a bank draft for the final fund balance payable to [his] name."

On May 24, 2018, SJU petitioned the district court, under UPMIFA, for an order confirming that its actions in administering the endowment have been proper, approving

the amended criteria statement as the sole governing instrument for the endowment, instructing SJU that it may not pay or transfer assets of the endowment to Lindmark, confirming that Lindmark is not the legal donor of the endowment, and awarding SJU attorney fees, costs, and disbursements. On May 30, SJU served its petition on the Office of the Minnesota Attorney General.

On June 5, Lindmark sued SJU in federal district court, based on SJU's administration of the endowment, claiming breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, and conversion. On June 26, Lindmark filed an "Opposition to and Request to Dismiss" SJU's petition in this action. Lindmark asserted that the district court lacked subject-matter jurisdiction to hear the petition because the endowment is a contract, and not a trust, and because it is not an institutional fund subject to the provisions of UPMIFA. Lindmark asked the district court to dismiss SJU's petition and allow the parties to "sort out their contract differences in Federal Court."

In September 2018, SJU moved to dismiss Lindmark's opposition to its petition under Minn. R. Civ. P. 12.02(e), or, in the alternative, for summary judgment. SJU asserted that Lindmark lacked standing to challenge its petition. The district court treated SJU's motion as one for summary judgment. *See* Minn. R. Civ. P. 12.02 (stating that if "matters outside the pleading are presented to and not excluded by the court," a motion to dismiss under rule 12.02(e) "shall be treated as one for summary judgment"). The district court dismissed Lindmark's opposition to SJU's petition for lack of standing. The district court reasoned that the endowment was a charitable gift, and not a contract; that the endowment

was an "institutional fund" governed by UPMIFA; and that only the attorney general had standing to enforce the conditions placed on the endowment. Lindmark appeals.[2]

D E C I S I O N

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court reviews a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). "We view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.*

I.

This case involves application of UPMIFA, a uniform law that "provides guidance and authority to charitable organizations concerning the management and investment of funds held by those organizations" and "imposes additional duties on those who manage

[2] After Lindmark appealed the district court's summary-judgment dismissal, the federal district court dismissed Lindmark's federal complaint against SJU, reasoning that he was collaterally estopped from raising the issues in his federal complaint. *Lindmark v. Saint John's Univ.*, No. 18-cv-1577 (WMW/LIB), 2019 WL 1102721, at *1, *4-5 (D. Minn. Mar. 8, 2019), *appeal filed* (8th Cir. Apr. 11, 2019).

and invest charitable funds." Unif. Prudent Mgmt. of Institutional Funds Act prefatory note (Unif. Law Comm'n 2006). The Minnesota Legislature adopted UPMIFA in 2008. 2008 Minn. Laws ch. 188, §§ 1-10, at 392-97 (codified at Minn. Stat. §§ 309.73-.77).

SJU's underlying petition for relief was brought under a provision of UPMIFA that authorizes the district court, "upon application of an institution," to "modify a restriction contained in the gift instrument of an institutional fund pursuant to the procedure, and in accordance with the standards, set forth" in certain charitable-trust statutes. Minn. Stat. § 309.755(b). Lindmark contends that UPMIFA is inapplicable in this case because the endowment constitutes a contract and not an institutional fund governed by UPMIFA and that the district court therefore lacked subject-matter jurisdiction over SJU's petition. "Subject-matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). The existence of subject-matter jurisdiction is a legal question, which this court reviews de novo. *Wareham v. Wareham*, 791 N.W.2d 562, 564 (Minn. App. 2010).

The endowment is not a contract.

Lindmark argues that UPMIFA does not apply because the "Endowment is a contract . . . and not a free gift," asserting that he "unquestionably supplied SJU with money consideration for its negotiated promise to establish the Endowment for Corporate Business Ethics which the parties agreed to in a mutually signed writing."

"The formation of a contract requires communication of a specific and definite offer, acceptance, and consideration." *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008) (quotation omitted), *review*

denied (Minn. Jan. 20, 2009). A gift, in contrast, is "a transfer without consideration." *Angell v. Angell*, 777 N.W.2d 32, 37 (Minn. App. 2009), *aff'd on other grounds*, 791 N.W.2d 530 (Minn. 2010). "Formation of a contract is judged by the objective conduct of the parties rather than their subjective intent." *Thomas B. Olson*, 756 N.W.2d at 918. Where there is a written agreement, this court determines the parties' intent based on the plain language of the document. *Cf. Paradigm Enters., Inc. v. Westfield Nat'l Ins. Co.*, 738 N.W.2d 416, 421 (Minn. App. 2007) (interpreting contractual provisions). Extrinsic evidence of intent may not be considered if the language of the written agreement is unambiguous. *Cf. Trebelhorn v. Agrawal*, 905 N.W.2d 237, 242 (Minn. App. 2017) (interpreting contractual provisions).

The existence of a contract is normally a question of fact. *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 232 (Minn. App. 2006). The district court generally may not weigh evidence or decide factual disputes on summary judgment. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). However, "where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Id.* at 69 (quotation omitted).

Here, the amended criteria statement is a written document manifesting the parties' intent.[3] That document repeatedly refers to the endowment as a "gift." For example, the document is entitled "The Lindmark Endowment for Corporate-Business Ethics Fund *Gift* Instrument/Criteria Statement," and it expressly states that it is "a '*gift* instrument' within

[3] The parties agree that the relevant written document governing the endowment is the 2010 amended criteria statement and not the criteria statement executed in 2004.

the meaning of and governed by Minnesota's Uniform Prudent Management of Institutional Funds Act" and that it "constitutes the entire *gift* instrument with respect to all *gifts* to which it applies." (Emphasis added.) The amended criteria statement also refers to the initial $50,000 payment that created the endowment as a "donation" and "gift." In sum, the plain language of the parties' written agreement objectively manifests their intent that the endowment constitutes a gift.

Lindmark argues that although "[i]t is true that the term 'gift' is used in the Endowment," "so are the terms, Fund, income, asset, [and] the draw." Lindmark argues that "[t]he terms used in the document do not define what the document is" and that "[t]he conduct of the parties defines the nature of the document as a contract." Lindmark's argument is unavailing. Because the language of the amended criteria statement unambiguously refers to the endowment as a "gift," we may not consider the parties' conduct to determine their intent. *Cf. Trebelhorn*, 905 N.W.2d at 242.

Lindmark also argues that because "[t]he agreement had specific terms which were accepted by SJU in exchange for the" class-action settlement payments, the amended criteria statement was a contract supported by valid consideration. "'Consideration' is an act or forbearance that induces a contractually binding promise." *State v. Schouweiler*, 887 N.W.2d 22, 25 (Minn. 2016); *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996) ("Consideration is something of value given in return for a performance or promise of performance that is bargained for . . . ."), *review denied* (Minn. Apr. 16, 1996). Consideration is what distinguishes a contract from a gift. *Angell*, 777 N.W.2d at 37; *Deli*, 542 N.W.2d at 656. When the act or forbearance was given before the return promise was

made, the act or forbearance is deemed past consideration. *Schouweiler*, 887 N.W.2d at 25. "Because a 'past consideration' does not actually induce a return promise, a promise given for 'past consideration' is not legally binding." *Id.*

SJU received the class-action settlement payments funding the endowment in 2004 and 2008. The parties did not execute the amended criteria statement until 2010. Because the settlement payments were provided approximately two years before the execution of the amended criteria statement, they did not induce or support any promise SJU may have made in the amended criteria statement. In sum, the payments were past consideration, and they could not support the purported contract.

Because the record as a whole could not lead a rational trier of fact to conclude that the endowment is a contract, there is no genuine issue of material fact regarding that issue. *See DLH*, 566 N.W.2d at 69.

The endowment is an institutional fund governed by UPMIFA.

Lindmark argues that UPMIFA does not apply because the endowment is not an "institutional fund." Again, UPMIFA allows the district court, upon application of an institution, to modify a restriction contained in the gift instrument underlying an "institutional fund." Minn. Stat. § 309.755(b). Under UPMIFA, an "[i]nstitutional fund" is "a fund held by an institution exclusively for charitable purposes." Minn. Stat. § 309.735(5). However, institutional funds do not include "program-related assets" or "a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund." Minn. Stat. § 309.735(5)(A), (C).

Lindmark argues that the "program-related assets" exception applies here because the endowment is an asset "held for the charitable purpose of providing summer research fellowships for two students" and is not held by SJU primarily for investment. UPMIFA defines a "[p]rogram-related asset" as "an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment." Minn. Stat. § 309.735(7).

Lindmark's arguments raise an issue of statutory interpretation. Issues of statutory interpretation are questions of law that this court reviews de novo. *State v. Overweg*, 922 N.W.2d 179, 182-83 (Minn. 2019). "The goal of statutory interpretation is to effectuate the intent of the Legislature." *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018). As noted above, UPMIFA is a uniform act. Unif. Prudent Mgmt. of Institutional Funds Act prefatory note (Unif. Law Comm'n 2006). "The intention of the drafters of a uniform act becomes the legislative intent upon enactment." *In re Butler*, 552 N.W.2d 226, 231 (Minn. 1996).

"The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *Overweg*, 922 N.W.2d at 183 (quotation omitted). "A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation." *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012). If a statute is unambiguous, then appellate courts must apply the statute's plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010). But if a statute is ambiguous, appellate courts may "look to other interpretative tools to assist [their] inquiry into legislative intent." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). When

"a provision of [a] uniform state law is ambiguous, resort may be had to the notes of the drafters." *Butler*, 552 N.W.2d at 231.

The statutory definition of "program-related asset" does not provide much guidance regarding which kinds of assets do and do not fall under the exception, and we can imagine more than one reasonable interpretation of that definition. We therefore look to the notes of the drafters in determining its meaning.

The Uniform Law Commission has explained that "[t]he exclusion for program-related assets applies to tangible or real assets held by a charity for direct use in its charitable activities and, for a charity engaged in micro-finance as its charitable purpose, to a fund used to make loans." Unif. Law Comm'n, *Program-Related Assets Under UPMIFA*, https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d1998325-c735-7376-bc3a-59e35184f31b&forceDialog=0 (last visited Oct. 3, 2019). Thus, "[t]he laboratory equipment owned by a university, the house owned by a homeless shelter, and the food storage building and food preparation equipment owned by a soup kitchen are all program-related assets." *Id.* "These assets all have monetary value, and a charity might decide to sell assets of this sort and use the proceeds of the sale for another charitable purpose, but the charity uses the assets primarily to carry out the charitable activities of the charity." *Id.*

The Uniform Law Commission's explanation clarifies that UPMIFA's "program-related assets" exception applies to tangible or real assets and to funds used to make certain loans. Because there is no evidence that the endowment includes tangible or real assets or

is used to make loans, it does not satisfy the "program-related assets" exception to the definition of "institutional fund" in Minn. Stat. § 309.735(5).

Lindmark also argues that the beneficiary-interest exception applies here because the "Endowment summer research students are the 'beneficiaries' who are not 'an institution' and who DO have an interest in the Fund." Again, an institutional fund does not include "a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund." Minn. Stat. § 309.735(5)(C). As SJU argues, Lindmark's proposed interpretation of "beneficiary" would swallow the rule: "since *all* scholarship funds held by charities provide benefits to some class of individuals, *no* such endowment could ever be an institutional fund." Moreover, Lindmark's broad reading of "beneficiary" contradicts the Uniform Law Commission's explanation that "[n]early all funds held by a charity are governed by UPMIFA," including funds that "serve as an endowment for scholarships." Unif. Law Comm'n, *supra*.

In sum, the endowment is an "institutional fund" governed by UPMIFA, and not a contract. And because UPMIFA expressly authorizes the district court to hear SJU's petition, the district court had subject-matter jurisdiction over the petition.

II.

Lindmark contends that the district court erred in concluding that he did not have standing to oppose SJU's petition for relief under UPMIFA. "Standing is a jurisdictional doctrine, and the lack of standing bars consideration of [a] claim by the court." *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011). Appellate courts review decisions

regarding standing de novo. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

Lindmark's contention that he has standing to oppose SJU's petition is based on two legal theories. Lindmark first argues that because "[t]he endowment is a contract with negotiated terms supported by consideration which was paid by [him] and not a free gift," he has standing to oppose SJU's petition as a party to the contract. But we have concluded that the endowment is an institutional fund governed by UPMIFA, and not a contract. Lindmark next argues that, even if he does not have a contractual right to enforce the amended criteria statement, he is a person with a "special interest" who "can assert the breach of its terms and mismanagement" under the law of charitable gifts and trusts. We therefore turn to the rules that apply to enforcement of the terms of charitable gifts and trusts, and we consider whether they apply to institutional funds under UPMIFA.

In Minnesota, charitable trusts and institutional funds are creations of statutes. Charitable trusts are governed by Minn. Stat. §§ 501B.31-.55 (2018) and Minn. Stat. §§ 501C.0101-.1304 (2018). *See* Minn. Stat. § 501C.0102(a) (providing that chapter 501C applies to express charitable trusts). Institutional funds are governed by UPMIFA, Minn. Stat. §§ 309.73-.77. The Minnesota Legislature has expressly conferred standing on the attorney general to enforce the purpose of a charitable trust. Minn. Stat. § 501B.41, subd. 1 ("The attorney general may institute appropriate proceedings to obtain compliance with sections 501B.33 to 501B.45 and the proper administration of a charitable trust."); *see also id.*, subd. 2 (providing that the attorney general must be notified of, and has the right to

participate as a party in, court proceedings regarding the termination, modification, interpretation, and administration of a charitable trust).

Prior to enactment of the charitable-trust statute, courts "construed gifts to charities as absolute or on condition rather than in trust." *Longcor v. City of Red Wing*, 289 N.W. 570, 572 (Minn. 1940). In *Longcor*, the supreme court explained, "No one is limited to the creation of charitable trusts in making a gift for a charitable purpose" and concluded that "the language of the relevant instruments" in that case "effectively created a gift on condition" and not a trust. *Id.* at 572-74. Although the relevant documents created a conditional gift and not a trust, the supreme court explained:

> Fundamentally and in substance, there is very little practical difference insofar as the beneficiaries are concerned between a gift on condition and a gift by way of charitable trust. Both accomplish the same objectives. Certainly there is little reason to make a distinction between the two in respect to the question of the proper party to enforce compliance with the terms of the conveying instrument. Logically the same general principles should prevail as to both. It is the nearly uniform rule that a charitable trust can only be enforced by the attorney general. This rule has been evolved by the courts or by enactment of the legislature. . . . In this state by 2 Mason Minn.St.1927, § 8090-3, it is provided, "The attorney general shall represent the beneficiaries in all cases arising under this act, and it shall be his duty to enforce such trusts by proper proceedings in the courts."
>
> While this provision, of course, is not applicable here, it does serve to demonstrate that the policy of our legislature is to limit the assertion of violations of the terms of charitable trusts to a responsible officer. *It seems reasonable that this same policy should run throughout this realm of the law so that as to gifts on condition for public purposes the same rule should apply.*

Id. at 574 (emphasis added).

Thus, in *Longcor*, the supreme court held that "[t]he attorney general is the proper party plaintiff to compel compliance with the conditions impressed upon a gift for a charitable purpose." *Id.* at 571. Subsequent supreme court decisions have reiterated the rule that the attorney general is the proper party to compel compliance with the conditions of a charitable gift. *John Wright & Assocs., Inc. v. City of Red Wing*, 106 N.W.2d 205, 209 (Minn. 1960) ("[T]he attorney general is the proper party plaintiff to compel a compliance with the conditions impressed upon a gift for charitable purposes . . . ."); *Schaeffer v. Newberry*, 35 N.W.2d 287, 288 (Minn. 1948) (stating that the legislature intended to leave to the attorney general the power of enforcing a charitable trust and "gifts on condition to a charity or a municipality").

Although it is clear that the law governing the enforcement of charitable trusts applies to the enforcement of conditional charitable gifts, neither caselaw nor statute expressly addresses the issue presented here: whether standing to enforce compliance with the terms of an institutional fund under UPMIFA is generally limited to the attorney general. We answer that question by considering whether an institutional fund is a "gift on condition" such that the law governing enforcement of charitable trusts should apply.

The definition section of UPMIFA provides that "'[g]ift instrument' means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund" and that "'[i]nstitutional fund' means a fund held by an institution exclusively for charitable purposes." Minn. Stat. § 309.735(3), (5). UPMIFA defines "[c]haritable purpose" as "the relief of poverty, the advancement of education or religion, the promotion of health, or any other eleemosynary

purpose." Minn. Stat. § 309.735(1). Under those definitions, in which a "gift instrument" is used to transfer property "exclusively for charitable purposes," we conclude that an institutional fund is a conditional charitable gift. Minn. Stat. § 309.735(3), (5).

Because an institutional fund is a conditional charitable gift and, under caselaw, the same general principles govern the proper party to enforce compliance with the terms of conditional charitable gifts and charitable trusts, we apply those principles to an institutional fund. We therefore hold that as a general rule, compliance with the terms of an institutional fund under UPMIFA can be enforced only by the attorney general.

However, there are exceptions to that general rule in the charitable-trust context. For example, the legislature has granted interested persons standing to participate in a charitable-trust proceeding as follows:

> [A]n acting trustee, any person named as successor trustee under the trust instrument, any person seeking court appointment as trustee whether or not named in the trust instrument, a beneficiary, a creditor, and any other person having a property or other right in or claim against the assets of the trust.

Minn. Stat. § 501C.0201(a)-(b); *see also In re Horton*, 668 N.W.2d 208, 213 (Minn. App. 2003) (stating, in interpreting earlier version of statutory interested-person exception, that "an 'interested person' is . . . a person or entity with a specific financial stake in or a specific claim against the trust"). "The meaning of interested person, as it relates to a particular person, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any petition." Minn. Stat. § 501C.0201(b).

Minnesota courts have not addressed whether the exception for interested persons in the charitable-trust context applies in the context of conditional charitable gifts such as institutional funds. But in *Schaeffer*, the supreme court determined that a party did not have standing to defend a quiet-title action regarding property that a decedent had given to a municipality as a charitable gift because that party had "no special interest" in the property, suggesting that the interested-person exception applies in the conditional-charitable-gift context. 35 N.W.2d at 287-88. For the purpose of our analysis, we assume without deciding that the exception applies here.

Lindmark argues that *In re Trust Created by Hill* supports his argument that he is an interested person who has standing to oppose SJU's petition. 509 N.W.2d 168 (Minn. App. 1993), *review denied* (Minn. Feb. 1, 1994). *Hill* is not on point for two reasons.

First, the circumstances in *Hill* are distinguishable from those here. In *Hill*, a decedent established a charitable trust that held all the shares of a philanthropic foundation. *Id.* at 169. Trustees for the trust petitioned the district court for an order amending the foundation's articles of incorporation to exclude descendants of the decedent from the nominating committee that chose trustees if those descendants were directors of the foundation. *Id.* at 170. A descendant of the decedent objected to the amendment. *Id.* The attorney general did not appear or participate in the proceeding. *Id.* The district court determined that the objecting descendant lacked standing to participate. *Id.* This court reversed, determining that the descendant "had a sufficient interest in the trust to give him standing." *Id.* at 172. This court reasoned that "[u]nder the terms of the proposed amendment to the Foundation's articles of incorporation, [the descendant] was a member

of a class of persons adversely affected by the amendment" and that because the attorney general had elected not to participate in the proceedings, "there was no party to the proceeding who claimed to represent the public interest in having any trust modification meet statutory criteria." *Id.*

In sum, the *Hill* descendant had a direct stake in the amendment, which could have excluded him from the nominating committee and, therefore, a say in who would be chosen to administer the trust. Lindmark's general interest in the endowment being used consistently with its intended charitable purpose is not comparable to the specific interest of the descendant in *Hill*. Moreover, the record does not indicate that the attorney general has refused to protect the public interest in this matter. Although the attorney general submitted a letter to the district court stating that the attorney general "takes no position as to the relief requested in [SJU's] Petition or in [SJU's] Motion" to dismiss Lindmark's opposition to the petition, the attorney general also requested that the district court consider specific issues and legal standards described in the letter and "reserve[d the] right to take a position in the future, as [the attorney general] deems appropriate."

The second reason *Hill* is not on point is that *Hill* applied an earlier version of the statutory "interested person" exception, which no longer exists. *Id.* at 171 (interpreting Minn. Stat. § 501B.16 (1992)); *see* 2015 Minn. Laws ch. 5, art. 16, § 2, at 110 (repealing Minn. Stat. § 501B.16). The statutory exception in *Hill* broadly granted standing to a "person interested in the trust." 509 N.W.2d at 171 (quoting Minn. Stat. § 501B.16). The current statutory exception is much narrower, specifying categories of persons who qualify under that exception and providing a catch-all clause limited to persons who "hav[e] a

property or other right in or claim against the assets of the trust." Minn. Stat. § 501C.0201(a)-(b). Lindmark does not fall within any of the categories of interested persons listed in the current statutory exception, and he has neither a reversionary right to the endowment assets nor any assigned oversight role in the administration of the endowment.

Lindmark also argues that as the endowment's donor, he has standing to oppose SJU's petition. SJU counters that Lindmark is not a donor because he did not provide his personal funds for the endowment. The purported factual dispute regarding Lindmark's status as a donor is material only if a donor would have standing in this case.

As to donor standing, although some of Minnesota's statutes regarding charitable trusts are modeled after the Uniform Trust Code, *see, e.g.*, *Lund as Tr. of Revocable Tr. of Kim A. Lund v. Lund*, 924 N.W.2d 274, 286 (Minn. App. 2019) (noting that Minnesota adopted a section of the Uniform Trust Code regarding attorney fees), *review denied* (Minn. Mar. 27, 2019), Minnesota has not adopted section 405(c) of the Uniform Trust Code, which provides that "[t]he settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust," Unif. Trust Code § 405(c) (Unif. Law Comm'n 2000). Instead, Minnesota does not give donors automatic standing in proceedings regarding charitable trusts. *See* Minn. Stat. § 501C.0201(b). Minnesota's approach is consistent with Restatement (Second) of Trusts, which Minnesota courts have treated as authoritative. *See Kohler v. Fletcher*, 442 N.W.2d 169, 171 (Minn. App. 1989) (noting that "Minnesota courts have applied *Restatement (Second) of Trusts* as authority"), *review denied* (Minn. Aug. 25, 1989). The relevant section of the Restatement provides:

> A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest or *by the settlor or his heirs, personal representatives or next of kin*.

Restatement (Second) of Trusts § 391 (1959) (emphasis added).

Lastly, in a comment to UPMIFA, the Uniform Law Commission noted that "[t]he Drafting Committee decided not to require notification of donors" regarding the modification of institutional funds because "[t]he trust law rules of equitable deviation and cy pres do not require donor notification and instead depend on the court and the attorney general to protect donor intent and the public's interest in charitable assets." Unif. Prudent Mgmt. of Institutional Funds Act § 6 cmt. (Unif. Law Comm'n 2006). Again, the Uniform Law Commission's intent in drafting that portion of UPMIFA became the Minnesota Legislature's intent upon its enactment in Minnesota. *See Butler*, 552 N.W.2d at 231.

In sum, Minnesota does not make an automatic exception for donors when applying the general rule that only the attorney general can enforce charitable gifts or trusts. Thus, the parties' dispute regarding whether Lindmark is in fact a donor is immaterial.

Because there is no genuine issue of material fact regarding whether Lindmark falls within any potential exception to the general rule that only the attorney general has standing to enforce a conditional charitable gift such as an institutional fund under UPMIFA, the district court did not err by ruling that Lindmark lacks standing to object to SJU's petition

for relief under UPMIFA. The district court therefore properly dismissed Lindmark's objection to SJU's petition.[4]

Affirmed.

[4] Because Lindmark does not have standing to object to SJU's petition under UPMIFA, we do not consider his argument that the district court's grant of summary judgment is "'unenforceable' pursuant to [Minn. Stat. § 501B.41, subd. 4,] because [he] did not serve any of his pleadings on the attorney general as required by that statute."