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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1504**

In the Matter of the Trust Agreement of Julian M. Johnson.

**Filed July 19, 2021
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-TR-CV-19-83

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Minneapolis, Minnesota (for appellants)

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Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this appeal from summary judgment, appellant-trust beneficiaries argue that the district court misread relevant portions of the trust and improperly disregarded their arguments that respondent-trustees breached their duties of loyalty and impartiality. We affirm.

FACTS

The Trust Agreement of Julian M. Johnson (trust) was created in 2010 by Julian Johnson, who died in 2015. Upon Julian's death, respondent JoAnn Johnson, Julian's wife, and respondent Thomas Stoltman, an attorney and Julian's friend, became the co-trustees of the trust. JoAnn is also a beneficiary, along with the children of Julian and JoAnn. Appellants Karen Carlson and Diane Waller are two of Julian's children who are beneficiaries under the trust.

In 2017, appellants and two other beneficiaries brought a lawsuit against respondents that ended in a settlement agreement. The relevant portions of the settlement agreement stated that (1) JoAnn remains a trustee; (2) Stoltman will provide the beneficiaries quarterly updates; (3) Stoltman will provide the beneficiaries an annual accounting of the income, expenses, and distributions of the trust; and (4) Stoltman will provide the beneficiaries a copy of the trust tax returns. The settlement agreement also stated that "Stoltman will be the sole trustee to make decisions on beneficiary distributions of income" for the trust.

In 2019, appellants filed a petition to remove respondents as trustees, appoint a successor trustee, void transfer of funds, and subject the trust to court supervision. The dispute is largely focused on how Stoltman allegedly failed to abide by the terms of the settlement agreement and distributed trust income in a manner partial to JoAnn. Section 6.1.1 of the trust states the terms for income distribution:

The Trustees shall distribute the income to my spouse; provided that to the extent the Independent Trustees determine that my Spouse has adequate other income, such Trustee may

distribute all or any part of the net income to one or more of my or my spouse's Children in any proportions deemed advisable by such Trustees and may accumulate all or any part of the income and shall add it to principal.

Respondents filed concurrent motions for summary judgment. The district court granted summary judgment in respondents' favor and dismissed appellants' petition. The district court found several facts to be undisputed, including the following. Stoltman is the independent trustee of the trust. Stoltman consulted with JoAnn for guidance on her income distributions after the settlement agreement. "Stoltman discussed [JoAnn's] financial needs in relation to how much income distribution she wanted from the Trust and identified the amount of approximately \$200,000.00 per year as an amount. . . . Stoltman would follow up distributions to [JoAnn] and ask her 'are you comfortable? Is this working out?'" He did not ask JoAnn what her other income was or seek any records. Although he obtained JoAnn's input, Stoltman stated that he made the final distribution decisions on his own.

The district court interpreted section 6.1.1 as a mandate for Stoltman to make income distributions to JoAnn to cover her needs. If Stoltman determines that her needs are met, the trust permits him to make distributions to the secondary beneficiaries or invest the income back into the trust. The district court also dismissed appellants' concerns about the communication between Stoltman and JoAnn by stating, "The record reflects adequate determinations were made by Stoltman as to [JoAnn]'s needs before allowing distributions to [appellants] and the other Children. Nothing in the language of the Trust requires that Stoltman conduct a formal accounting of [JoAnn]'s finances to justify making

distributions” Even though the settlement agreement stated that Stoltman would make the sole decision for distributions, it did not prohibit him from communicating with JoAnn on the matter, and the district court concluded that appellants failed to produce evidence that JoAnn controlled and made the decisions about distributions. This appeal followed.

DECISION

Appellants challenge the district court’s grant of summary judgment in favor of respondents. “We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In doing so, “we view the facts in the light most favorable to the nonmoving party.” *Kelly v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 506 (Minn. 2017). “A genuine issue of material fact arises when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions.” *Id.* at 508 (quotation omitted).

Trust language

Appellants argue that the district court misread relevant portions of the trust by (1) focusing on specific words instead of the entire language of the provision, (2) contradicting precedent, and (3) interpreting the language in a way that contradicts the intent of the settlor.

Appellate courts review a district court’s interpretation of a trust agreement de novo. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012). “[O]ur purpose in construing a trust agreement is to ascertain and give effect to the grantor’s intent.” *Id.* This

is determined by looking at “the instrument as a whole, not isolated words.” *Id.* (quotation omitted). “When the trust agreement is unambiguous, we will ascertain the grantor’s intent from the language of the agreement, without resort to extrinsic evidence.” *Id.*

The language of the trust determines whether a trustee’s exercise of power is discretionary or mandatory. *Id.* at 509. “When a trustee’s exercise of power is discretionary, a court will generally interfere with the trustee’s decisions only to prevent an abuse of discretion.” *Id.* But if the terms are mandatory, “there is no deferential review.” *Id.*

Appellants first argue that the district court improperly focused on the word “shall” instead of the qualifying language following the semicolon. The relevant portion of the trust states:

The Trustees shall distribute the income to my Spouse; provided that to the extent the Independent Trustees determine that my Spouse has adequate other income, such Trustee may distribute all or any part of the net income to one or more of my or my spouse’s Children in any proportions deemed advisable by such Trustees and may accumulate all or any part of the income and shall add it to principal.

The district court relied on the use of “shall” and “may” in the trust to determine that distributing income to JoAnn is mandatory while distributing income to the children is discretionary upon a determination that JoAnn has adequate other income. Appellants argue that the phrase “provided that to the extent the Independent Trustees determine that my Spouse has adequate other income” is a qualifier that required Stoltman to diligently inquire about JoAnn’s other income before distributing to her any of the trust income.

The district court's interpretation of the trust is the only reasonable interpretation. The first clause states that the trustee shall distribute the trust's income to JoAnn. This is set off from the next clause by a semicolon. Semicolons are "most commonly used between two independent clauses not joined by a conjunction to signal a closer connection between them than a period would." *The Chicago Manual of Style* § 6.56 (17th ed. 2017); see *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 296 (Minn. 2016) (using Chicago Manual to interpret grammar of a statute). The mandate to distribute income to JoAnn is independent from, but closely related to, the following discretionary clause. In other words, Stoltman must distribute the income to JoAnn, but if he determines that she has adequate income, then he may distribute income to the children or back into the trust. Finally, the plain language does not list any requirements as to how Stoltman should consider JoAnn's other income, if at all. A plain reading of the trust shows that the district court correctly interpreted the clause and that it properly granted summary judgment in favor of respondents.

Appellants argue that this interpretation of the trust contradicts our caselaw. We have interpreted similar trust language to determine that the appellant was the primary beneficiary of a support trust and thus had resources available to her for purposes of her eligibility for medical assistance. *In re Decision of Comm'r of Human Servs. in Appeal of Flygare for Med. Assistance*, 725 N.W.2d 114, 119-20 (Minn. App. 2006), *review denied* (Minn. Feb. 28, 2007). Appellants attempt to extend this holding to mean that Stoltman had a duty to inquire into JoAnn's needs and other income to determine if her needs are met, and that he did not satisfy his duty simply by asking her about her needs. But appellants' argument is inconsistent with our conclusion in *Flygare*, which was that the

trustee did not have discretion to ignore the primary beneficiary's needs. *Id.* Appellants have not shown that the district court's decision contradicts precedent.

Finally, appellants argue that the district court's interpretation of the trust violates the intent of the settlor because there is no evidence that the settlor wanted to deprive his children of support through the trust. But appellants have not shown, and we did not observe, any section of the trust to suggest that the plain language of section 6.1.1 does not reflect the settlor's intent. Appellants have not shown that the district court erred by granting summary judgment in favor of respondents.

Duty of loyalty

Appellants next argue that the district court erroneously disregarded the substantial evidence that they provided that showed that Stoltman breached his duty of loyalty by withholding information and being partial to JoAnn.

A trustee owes a duty of loyalty to the beneficiaries to not put their own interests above those of the beneficiaries. Minn. Stat. § 501C.0802(a) (2020). The trustee's primary duty is to not allow their personal interest to conflict with their interest as a trustee. *In re Revocable Trust of Margolis*, 731 N.W.2d 539, 545 (Minn. App. 2007).

Appellants first argue that Stoltman "demonstrated his disinterest in meeting his duties to [a]ppellants by withholding information and then purposefully obscuring other information." Appellants cite two instances in the record to support this assertion. The first is a portion from Stoltman's deposition when he was asked about an email to an accountant in which he stated, "In equity why are the distributions shown? Will these be

carried forward on future statements,” and, “If so, put them under a single distribution heading.” This deposition dialogue followed:

Q: That would essentially eliminate any idea of who got how much distribution, correct?

STOLTMAN: [T]hat may be the result, but that wasn't the intent. My intent was to make this more understandable.

Q: But it would, also, serve to blur the amount that JoAnn was getting, right?

STOLTMAN: [I]f you say so. That wasn't my intent.

The second instance is an email from Stoltman to JoAnn in which Stoltman stated, “I'm sending out 3rd Quarter financials today to all beneficiaries and will copy [appellants' attorney]. For the moment, I am not going to provide [appellants' attorney] with information on distributions.”

Appellants have not shown that Stoltman violated his duty of loyalty because they have not alleged any self-dealing. Further, the record shows that Stoltman sent appellants' attorney the distributions four days after the quoted email above. The district court also properly noted that appellants offered evidence that supported “an inference that Stoltman intended to make only minimal disclosures of information” on distributions to JoAnn, but that “most if not all of the amounts are reflected in the annual accounting, quarterly reports or, if unclear, could have been answered with a brief inquiry from [appellants] seeking clarification.” Finally, because appellants' interpretation of section 6.1.1 is unreasonable and inapplicable, it is unclear how they were harmed.

Next, appellants argue that, “By allowing JoAnn to tell him how much should be distributed and requiring no documentation or other information to validate or confirm these requests, Stoltman has shown that he is not loyal to preserving the interests of

[a]ppellants or the other beneficiaries.” But appellants’ argument is based on their erroneous interpretation of the trust, which only mandates that Stoltman meet JoAnn’s needs when distributing income. There is no language in the trust indicating that Stoltman violated a duty of loyalty by asking JoAnn about her unmet needs. Appellants have not shown that a genuine issue of material fact exists, and the district court properly granted summary judgment on this issue.

Duty of impartiality

Finally, appellants argue that respondents breached their duty of impartiality. “If a trust has two or more beneficiaries, the trustee shall administer the trust impartially, giving due regard to the beneficiaries’ respective interests.” Minn. Stat. § 501C.0803 (2020). “But a grantor of a trust may express an intention to provide for one beneficiary to a greater or different extent than others, which requires the trustee to fulfill that intention.” *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 521 (Minn. App. 2013), *review denied* (Minn. June 26, 2013).

Appellants first argue that Stoltman did not consider the interests of the other beneficiaries with JoAnn’s interests, and that the amounts distributed to JoAnn show this partiality. But this is a product of the trust, not partiality.

Appellants next argue that respondents formed an alliance when they were on the same side of the previous litigation and settlement negotiations, and that this bias against the other beneficiaries is clear by both of their refusals to provide information. Appellants cite a February 18, 2020 email from Stoltman to JoAnn in which Stoltman stated, “At your convenience, we should discuss whether or not we want to make a distribution for

2019” The district court correctly concluded that this allegation did not create an issue of material fact because neither the trust nor the settlement agreement prohibits Stoltman from seeking JoAnn’s input, and Stoltman stated that he always made the final decisions on distributions. The district court properly granted summary judgment in favor of respondents.

Affirmed.