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STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0034
A21-0035

In the Matter of the Kurt A. Amplatz Funding Trust
Dated April 11, 2014, as Amended (A21-0034)
and
In the Matter of the KA Medical Trust
Dated October 7, 2016, as Amended (A21-0035).

Filed August 9, 2021
Affirmed; motion denied
Reyes, Judge

Ramsey County District Court
File Nos. 62-TR-CV-20-9; 62-TR-CV-20-10

Maria Amplatz, Spring Park, Minnesota (pro se appellant)

Christopher H. Yetka, Todd I. Freeman, Melissa H. Bayne, Larkin Hoffman Daly & Lindgren, Ltd., Minneapolis, Minnesota (for respondents Todd Andrews and Security Bank & Trust Company)

Ryan K. Crayne, Serena O'Neil, Spencer Fane, LLP, Minneapolis, Minnesota (for respondents Caroline Amplatz and Caroline's Kids, LLC)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In these consolidated appeals regarding two trusts, appellant argues that (1) respondents-trustees breached their fiduciary duty by serving as trustees of both trusts; (2) the district court erred by accepting respondents-trustees' valuation of various assets;

and (3) the district court erred by approving transfer of trust assets against the beneficiaries' best interests. Appellant also filed a motion to supplement the appellate record. Respondents-trustees argue that these appeals are moot. Although these appeals are not moot, we nevertheless affirm the district court's decision and deny appellant's motion to supplement the record.

FACTS

Dr. Kurt A. Amplatz, a physician and medical-device inventor, founded KA Medical, LLC (the LLC) to enable himself and several others to develop medical devices. He established the Kurt A. Amplatz Funding Trust (the funding trust) to fund the LLC from his personal assets. Later, Dr. Amplatz also established the KA Medical Trust (the medical trust) to hold his ownership interests in the LLC. Dr. Amplatz was trustee of both trusts.

The funding-trust terms allow the trustee to loan up to $19 million to the LLC. The terms also provide that, after Dr. Amplatz's death, the trustee may continue loaning money to the LLC if funds are available and necessary for further product development. However, the funding trust terminates if the LLC repays the loans or the promissory notes are uncollectable. If the funding trust terminates, the trustee must distribute the first $2 million in assets to the University of Minnesota Foundation and then distribute any remaining assets to the Kurt Amplatz Revocable Trust (the revocable trust). Upon Dr. Amplatz's death, the revocable-trust assets would be used to pay taxes, debts, and expenses and then distributed among various beneficiaries. If the revocable trust does not exist when the funding trust terminates, the remaining assets of the funding trust are to be equally distributed to two of Dr. Amplatz's daughters: G.A. and appellant Maria Amplatz.

The terms of the medical trust provide that, after Dr. Amplatz's death, it constitutes a "single pot trust" for G.A. and Amplatz. The medical trust terminates if the LLC becomes a public company, or both G.A. and Amplatz have died, or the LLC dissolves, whichever occurs first. At that time, the trustee must distribute any remaining assets from the medical trust equally to G.A. and Amplatz or, if neither survive, to the Nature Conservancy.

During Dr. Amplatz's life, the funding trust issued loans totaling about $17 million to the LLC in exchange for 25 promissory notes. The LLC has not repaid any of these loans. Before Dr. Amplatz's death in November 2019, his lawyer, respondent Todd Andrews, served as trustee of both the funding trust and the medical trust. At the time of Dr. Amplatz's death, the LLC had insufficient funds to repay its loans, yet needed funds due to a high cash-consumption rate for employee salaries. Andrews approved loans totaling $1.5 million from the funding trust to the LLC in order to "maintain the viability of the [LLC] in preparation for a potential sale." At that time, the first 25 promissory notes had an appraised value of $1.25 million, while the LLC had an appraised value of $0.

Soon after, Andrews resigned as trustee. The district court discharged Andrews as trustee and named respondent Security Bank & Trust Company (the bank) the successor trustee (together with Andrews, "the trustees").[1] The bank proposed to (1) sell the medical trust's interest in the LLC to the funding trust for $1.00;[2] (2) transfer the promissory notes from the funding trust to the LLC; and (3) sell the LLC for no less than $2.5 million,

[1] Respondents Caroline Amplatz and Caroline's Kids, LLC were listed as beneficiaries and interested parties at the district court but have not participated in this appeal.
[2] Other interest-holders would likewise transfer their interests to the LLC.

reflecting the appraised value of the 25 promissory notes plus the recent loans totaling $1.5 million.

To facilitate this plan, the trustees filed two petitions asking the district court to authorize the bank to (1) waive the medical trust's rights to distributions from the LLC, sell the medical trust's interests in the LLC, and terminate the medical trust and (2) transfer the funding trust's promissory notes to the LLC and sell the LLC. The district court held a hearing in August 2020, at which the trustees offered the testimony of William Kuhlmann, the senior vice president and trust officer of the bank, regarding the proposed plan. Amplatz objected to the petitions both at the hearing and through written objections. G.A., who is not a party on appeal, did not object to the petitions.

The district court found that the LLC was expensive to maintain and that the LLC could not repay the promissory notes. It also found that selling the LLC would enable the LLC to repay the funding trust for some of its loans. The district court rejected Amplatz's objections, finding her not credible because of several inconsistencies between her allegations and prior litigation related to her father's estate. Finally, the district court determined that the trustees' proposed actions were in the best interests of all of Dr. Amplatz's beneficiaries. It therefore granted both petitions. Amplatz appealed both decisions, and this court consolidated those appeals. Three days after this court considered this matter, Amplatz filed a motion to supplement the appellate record.

DECISION

I. Amplatz's appeals are not moot.

The trustees argue that these appeals are moot because the LLC was sold for more than $2.5 million and an award of effective relief is therefore no longer possible. We disagree.

"An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). "But an appeal is not moot when a party could be afforded effective relief." *Wayzata Nissan, LLC v. Nissan North America, Inc.*, 875 N.W.2d 279, 283 (Minn. 2016).

Subject to the innocent-third-party-purchaser rule under Minn. Stat. § 501C.1012 (2020), which protects from liability a person who deals in good faith with a trustee without knowledge that the trustee exceeded its powers, the district court may order recovery of wrongfully disposed-of trust property or its proceeds. Minn. Stat. § 501C.1001(b)(9) (2020). Additionally, Minn. Stat. § 501C.1001(b)(10) (2020) allows the district court to "order any other appropriate relief," such as damages. Here, the trustees provided no evidence that the purchaser of the LLC is an innocent third-party purchaser. Accordingly, recovery of trust assets, as well as "other appropriate relief," may still be available to Amplatz. We therefore decline to dismiss these appeals as moot.

II. Amplatz forfeited her argument that the trustees breached their fiduciary duty.

Amplatz argues that the trustees breached their fiduciary duty because they have an inherent conflict of interest that results from acting as trustees of both the funding trust and medical trust. She also argues that the trustees "grossly undervalued" the assets of the medical trust, thereby harming the interests of G.A. and Amplatz as beneficiaries of that trust. The trustees argue that Amplatz forfeited these arguments by failing to raise them before the district court. We agree with the trustees.

Appellate courts will not consider matters not presented to nor considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). A review of Amplatz's submissions to the district court shows that she failed to raise either one of these arguments there. She therefore forfeited these arguments, and we decline to address them.

III. Amplatz forfeited her arguments that the district court erred by accepting the trustees' valuations without requiring expert testimony or allowing cross-examination.

Amplatz argues that the district court erred by (1) relying on Kuhlmann's non-expert testimony regarding the valuation of the 25 promissory notes and of the LLC and (2) failing to give her an opportunity to cross-examine Kuhlmann. The trustees argue that Amplatz forfeited these arguments as well. We again agree with the trustees.

We will not consider matters not presented to nor considered by the district court. *Thiele*, 425 N.W.2d at 582. Similarly, a party's failure to object to testimony at trial "bars this court from considering an objection to that testimony for the first time on appeal." *Westling Mfg. Co., Inc. v. W. Nat'l Mut. Ins. Co.*, 581 N.W.2d 39, 48 n.4 (Minn. 1998).

The record shows that Amplatz never raised the issues of expert testimony or cross-examination, nor did she object to Kuhlmann's testimony, at the district court. Amplatz forfeited these arguments, and we therefore decline to address them.

IV. The district court did not abuse its discretion by determining that the sale of the LLC is in the best interests of Dr. Amplatz's beneficiaries.

Amplatz complains that the funding trust transferred the promissory notes to the LLC without payment, so that the funding trust received no repayment for loans totaling more than $19 million. She therefore argues that the district court "erred" by determining that the proposed sale of the LLC is in the best interests of Dr. Amplatz's beneficiaries. We are not persuaded.

A trustee must manage a trust "in good faith, in accordance with its terms and purposes and in the [best] interests of the beneficiaries." Minn. Stat. § 501C.0801 (2020). A trustee has broad authority to manage appropriately trust property unless the trust instrument or a court order limit that authority. *In re Trs. Created by Hormel*, 504 N.W.2d 505, 511 (Minn. 1993), *review denied* (Minn. Oct. 19, 1993). If a trustee acts in good faith with proper motives and reasonable judgment, we generally will not interfere with those actions. *Norwest Bank Minn. N., N.A. v. Beckler*, 663 N.W.2d 571, 580-81 (Minn. App. 2003) (*Norwest Bank*). We review the district court's findings of fact, including whether a trustee appropriately managed the trust, for clear error. *Hormel*, 504 N.W.2d at 512. We review for an abuse of discretion the district court's ultimate determination whether the trustee acted in the beneficiaries' best interests. *See In re Bodeker*, 661 N.W.2d 271, 277 (Minn. App. 2003) (concluding district court abused discretion by not removing trustee

after trustee failed to act in best interests of beneficiaries); *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (stating, in context of will contest, that we review district court's ultimate conclusions for abuse of discretion).

Here, the funding trust granted the trustees significant discretion in managing the trust: the trustee may "do anything reasonably necessary or advisable for the proper administration and distribution of any trust created hereunder."[3] Amplatz points to no evidence that the trustees' actions were not based on good faith, proper motives, and reasonable judgment. *Norwest Bank*, 663 N.W.2d at 580-81. Nor does she point to any violation of the trust terms or a court order. *Hormel*, 504 N.W.2d at 511. Instead, the record shows that the trustees' actions enabled at least some repayment of the loans made to the LLC, so that the funding trust retained some assets for distribution to beneficiaries. Further, without a sale, the LLC could have become too expensive to maintain but not worth buying, in which event the funding trust might have received no repayment.

Amplatz asserts that the LLC "could become profitable in the future." But she points to no evidence regarding *when* the LLC might become profitable or whether the LLC's funds would last until such a time as it became profitable. To the contrary, the record shows that the LLC was too expensive to continue and that it was not yet profitable. The record supports the district court's finding that the trustees appropriately managed the trust property. We therefore conclude that the district court did not abuse its discretion by determining that the trustees acted in the beneficiaries' best interests.

[3] The medical trust also gave the trustees broad discretion. But because the actions Amplatz challenges here relate to the funding trust, we focus on the funding trust's terms.

V. Amplatz's motion to supplement the record is denied.

After this case was submitted for decision, Amplatz moved to supplement the record on appeal to include district court files from "related" district court cases. Her motion also appears to make several substantive arguments that she did not make in her principal brief. We decline to consider Amplatz's new arguments and deny her motion to supplement the record.

Generally, the appellate rules allow an appellant's brief, a respondent's brief, and a reply brief but prohibit additional briefing without the court's permission. Minn. R. Civ. App. P. 128.02, subds. 1-4. Additionally, an appellant cannot raise new arguments in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *see Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (stating that arguments in reply brief that neither were raised in appellant's principal brief nor respond to respondent's brief "[are] not properly before [the court of appeals]"), *review denied* (Minn. Feb. 26, 2003). Here, not only did Amplatz not file a reply brief, she did not seek, and this court did not grant, permission for additional briefing. To the extent that Amplatz's postsubmission motion makes new substantive arguments, those arguments are not properly before this court, and we decline to address them.

The record on appeal consists of what was submitted to the district court. Minn. R. Civ. App. P. 110.01. If the record submitted on appeal is inaccurate or incomplete, a party may seek correction or modification of the record. *Id.*, 110.05. But "[r]ule 110.05 is limited to correction of the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it." *W. World Ins.*

Co. v. Anothen, Inc., 391 N.W.2d 70, 72 (Minn. App. 1986). Here, Amplatz points to no error, misstatement, or omission *related to the arguments made in her principal brief* that would warrant supplementation of the record. Further, supplementing the record after the parties completed briefing and the appeal has been submitted to the panel for decision would preclude the parties from making any arguments regarding any of the supplemental material. We therefore deny Amplatz's motion to supplement the record on appeal.

Affirmed; motion denied.