STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1814

In re the Trust of Lawrence B. Schwagerl Trust
Under Agreement Dated April 9, 1999.

Filed April 4, 2022
Reversed
Worke, Judge
Dissenting, Smith, Tracy M., Judge

Big Stone County District Court
File No. 06-CV-15-246

Joseph A. Gangi, Farrish Johnson Law Office, Mankato, Minnesota (for appellants)

Joseph J. Cassioppi, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

This court's decision in this family-trust dispute was remanded by the supreme court for this court to determine whether the district court erred in finding that the mother-recipient of certain trust assets waived her right to distribution of the assets because she placed the assets in the family share of the trust. *In re Tr. of Schwagerl*, 965 N.W.2d 772 (Minn. 2021) (*Schwagerl II*). Because we determine that she did not intentionally relinquish her right to her assets, we reverse the district court.

FACTS

Lawrence Schwagerl (Lawrence) and Phyllis Schwagerl (Phyllis) were married for 53 years. They had eight children, including respondent Barbara Higinbotham (Barbara) and appellants Jerome Schwagerl (Jerome) and Diana Miller (Diana).[1]

The couple resided on their farm and owned 792.12 acres of real estate. When Lawrence was diagnosed with a terminal illness, the couple created pour-over wills and revocable trusts to ensure the smooth disposition of Lawrence's assets at his death. The couple transferred all of their assets into the trusts, including undivided half-interests in the couple's farm real estate and personal residence. Lawrence and Phyllis were named trustees of each other's trust.

When Lawrence died in 1999, Phyllis became the sole trustee of Lawrence's trust (the Trust). She hired an attorney and an accountant to assist her in dividing the property owned by the Trust. Articles 3 through 6 directed the disposition of the Trust's assets. Under Article 3.3.3, Phyllis was to receive all of Lawrence's personal property and "[a]ll interests in property used . . . for residential purposes and in all real estate contiguous to or used in connection with such property." All remaining property was to be disposed of as specified in Article 4, divided between a marital share and a family share. Phyllis followed the accountant's instructions to open a separate bank account for the assets in the family

[1] Because many of the Schwagerl family members share a last name, we refer to them by their first names.

share and to continue using the federal tax identification number for the Trust. Article 6 provided for the distribution of the family share of the Trust.[2]

A 2000 tax return stated that the value of the Trust at Lawrence's death was $969,817. Of that amount, $319,663 was allocated to Phyllis and the remainder was allocated to the family share. The assets in the family share comprised Lawrence's undivided one-half interest in the real estate and other property interests, even though some of these assets could have been distributed directly to Phyllis under the language of the Trust. This distribution of property into the family share, while not in strict compliance with the dispositional terms of the Trust, was done to realize favorable tax treatment as envisioned in the Trust. The district court found that "[t]he division of property between the [m]arital [s]hare and the [f]amily [t]rust was done deliberately to shelter as many assets as possible from any future estate tax that could be due upon Phyllis's death by allocating as much as possible to the [f]amily [t]rust."

In 2011, Phyllis, as trustee of both her trust and the Trust, sold all 792.12 acres that the couple had owned on a contract for deed to Schwagerl Family Farm LLC, which is owned by Jerome and his wife. Half of the sale price was allocated to the family trust's undivided one-half interest in the property. The sale price was substantially less than fair-market value because Phyllis wanted, and believed that Lawrence had wanted, Jerome to have the property on favorable terms. The contract permitted Phyllis to retain her right to

[2] The supreme court determined that "[t]here is ample support in the record for the district court's finding that a family trust was created out of the assets placed in the family share of [the Trust]." *Schwagerl II*, 965 N.W.2d at 782. Therefore, in this opinion, the terms "family share" and "family trust" are synonymous.

use the house and garage. Barbara objected to the sale, and she initiated this case by petitioning to remove Phyllis as the trustee and for an accounting.

In 2016, Phyllis named Diana as a co-trustee of the Trust. Phyllis and Diana removed the cash assets in the family trust and transferred the assets into Phyllis's trust or to Phyllis directly. The Trust's remaining asset was the undivided half-interest in the real estate subject to the contract for deed. Phyllis died in 2017.

As the case proceeded through district court, the parties agreed to the appointment of a neutral trustee "to investigate, report, and account for the assets of the Family Share." The district court adopted the trustee's factual findings, made additional findings, and reached legal conclusions regarding the Trust.

The district court found that Phyllis had distributed the farm real estate to the family trust rather than distributing the interest to herself directly. The district court concluded that, by doing so, Phyllis waived her right to her interest in the property. The district court concluded that Jerome accepted a role as trustee, and that he, Phyllis, and Diana breached their fiduciary duties by selling the farm real estate and depleting the family trust of its cash assets.

Diana and Jerome appealed. *See In re Tr. of Schwagerl*, No. A19-1814, 2020 WL 5359409 (Minn. App. Sept. 8, 2020) (*Schwagerl I*), *aff'd in part, rev'd in part & remanded*, 965 N.W.2d 772 (Minn. 2021). We determined that, under the unambiguous language of the Trust, Phyllis received all real estate, which should have been distributed to her when Lawrence died. *Id.* at *5. We stated that if the assets were not directly distributed to Phyllis as provided for in the Trust, the assets went into the family share. We described this as an

"ineffective transfer"—the assets were not effectively transferred to Phyllis.[3] We concluded that even if the assets went into the family share, the Trust gave Phyllis, as trustee, extensive powers, including the power to dispose of the property as she saw fit. *Id.* Consequently, we did not address the district court's decision that Phyllis waived her right to her assets placed in the family trust. *Id.* at *7 n.2. We concluded that our interpretation of the Trust resolved additional issues raised on appeal. *Id.* at *6. Barbara petitioned for further review, which the supreme court granted.

The supreme court agreed that the Trust "unambiguously gave Lawrence's share of the couple's farm real estate to Phyllis." *Schwagerl II*, 965 N.W.2d 780. But it rejected our analysis regarding treatment of the assets placed in the family trust that were intended to be distributed directly to Phyllis. The supreme court instructed:

> [O]n remand, the court of appeals must determine whether the district court erred in finding that Phyllis waived her right to require the Lawrence Trust's interest in the real estate be distributed to her in her personal capacity by placing that interest within the family trust. If the court of appeals agrees with the district court that Phyllis waived her right to these assets, then it must also address whether Phyllis's sale of the farm real estate and residence and her transfer of all cash assets out of the family trust constituted a breach of her fiduciary duties.

[3] The Trust provides: "The remaining trust assets not effectively disposed of under the preceding sections of this Article shall be allocated and distributed according to the terms of Article Four below." Article Four provides for allocation and distribution of "[t]he trust assets, including all property that becomes distributable to the trustees at my death, not effectively distributed under the preceding provisions of this agreement." The Trust uses the terms "not effectively disposed of" and "not effectively distributed" while we used the term "ineffective transfer" to refer to the same circumstances contemplated by the Trust.

Id. at 782. We solicitated supplemental briefs from the parties and now address the remand question.

DECISION

The district court concluded in its April 2019 order:

> 4. "Waiver is the intentional relinquishment of a known right." *Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 182 (Minn. 2011).
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> 5. ["A] valid waiver requires two elements: (1) knowledge of the right, and (2) an intent to waive the right." *Id.*
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> 6. Here, Phyllis knew she could require that the Trust's interest in the residence be distributed to her pursuant to Section 3.3.3 of [the Trust]. However, she waived her right by intending to keep the real estate that was distributable outright to her in the Family Trust.

In its October 2019 order following posttrial motions, the district court found that "Phyllis waived her right to the real estate under the Trust . . . by choosing to forego and keep her distribution in the family trust. . . . in order to reduce her federal income taxes."

Jerome and Diana argue that we should reject the district court's waiver theory because it is not supported by precedent.[4] In finding that Phyllis waived her right to her property distribution, the district court cited *Frandsen*, a workers' compensation case. 801 N.W.2d at 179. The district court did not cite precedent that applies waiver to the actions

[4] They also argue that Phyllis did not waive her right to the property distribution because the property was not transferred to a family trust. As stated above, however, the supreme court determined that the record supported the district court's finding that a family trust was created. *Schwagerl II*, 965 N.W.2d at 782.

of a beneficiary of a trust.[5] And Barbara has not supported the claim that Phyllis waived her right to her property with any precedential caselaw. Therefore, we agree with Jerome and Diana that we could reject the district court's waiver theory because it is unsupported by precedent. *See Schwagerl II*, 965 N.W.2d at 782 (concluding that this court "erred by reversing the district court based on a theory not raised by the parties and unsupported by precedent").[6]

We nevertheless continue our analysis to determine "whether the district court erred when it found that Phyllis waived her right to the assets in the family trust," because that is what the supreme court instructed us to do on this remand. *See id.* at 785.

We first look to the Trust itself. "[I]n construing a trust agreement, [this court] attempt[s] to ascertain and give effect to the grantor's intent." *Id.* at 779 (quotation omitted). The supreme court stated that the Trust "unambiguously gave Lawrence's share

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[5] In its October 2019 order, the district court cited cases to explain the general principles of waiver. *See Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359 (Minn. 2009) (district court cited to state that waiver is intentional relinquishment of a known right that may be inferred from conduct); *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771 (Minn. 2004) (district court cited for burden of proof); *Stephenson v. Martin*, 259 N.W.2d 467 (Minn. 1977) (district court cited for elements of waiver). None of these are cases related to a beneficiary of a trust.

[6] We have stated that theories should be supported by caselaw. In a similar case involving interfamily disputes and the validity of a will, appellant-children of the deceased-mother provided several theories to support their argument that the district court should not have addressed the validity of a version of the mother's will. *In re Estate of Chisholm*, No. A17-0123, 2018 WL 492614, *1,*4, (Minn. App. Jan. 22, 2018), *rev. denied* (Minn. Apr. 17, 2018). One argument raised was that respondents, appellants' siblings, waived their argument that the will was invalid. *Id.* at *4 n.6. This court declined to reach the issue, in part because appellants did not "cite to any caselaw holding waiver in similar circumstances." *Id.*

of the couple's farm real estate to Phyllis." *Id.* at 780. Thus, Lawrence, the grantor, intended for Phyllis, his wife of 53 years, to have his half interest in the couple's real estate when he died. Phyllis had an identical trust; thus, the couple intended for the surviving spouse to retain the couple's property. Finding that Phyllis waived her right to her property does not give effect to Lawrence's intent or the couple's intent when they created the identical trusts to ensure that the surviving spouse received the couple's property.

Second, the Trust gave Phyllis, as trustee, dispositive powers. Under Article 8.1.2, Phyllis could merge assets with the Trust's assets leaving in place the Trust's same terms and beneficiaries.[7] The district court assumed that the property was not distributed to Phyllis outright. But the property belonged to Phyllis upon Lawrence's death. The supreme court so stated: "[T]he farm real estate belonged to Phyllis." *Id.* at 781. Thus, Phyllis over-funded the family share with her own property, but this does not show that she waived her right to her property.[8]

Third, the terms of the Trust provide for distribution of the family share to be administered in a way that benefitted Phyllis. The district court found that the family share

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[7] By its terms, the Trust does not prohibit additional funding of the Trust by a trustee.

[8] The dissent likens our reference to the Trust's merger provision as being a new theory not advanced by appellants at the district court or on appeal. In that respect, we note that we review the district court's findings for clear error, looking for reasonable evidence in the record to support the findings. *See Schwagerl II*, 965 N.W.2d at 781. The Trust is evidence in the record, which we view in a manner that gives effect to a grantor's intent. *Id.* at 779. In doing so, we look at the "document as a whole." *Id.* We cannot find support in the record for the district court's finding that Phyllis intentionally relinquished her ownership of the property when she acted consistent with the terms of the Trust.

"was administered according to . . . [Article] [s]ix of the Trust]." Under Article 6, the trustee, Phyllis, was to distribute the net income of the family share at least annually to Phyllis. The trustee was to distribute to Phyllis portions of the principal of the family share "as the trustees deem[ed] advisable to provide for [Phyllis's] health, education, support and maintenance." Under Article 6, the children were entitled to a share of the family share if Phyllis did not survive Lawrence or upon Phyllis's death. It was Lawrence's intent that administration of the family share was to benefit Phyllis during her lifetime. Thus, the evidence does not support a finding that Phyllis waived her right to her property, because she knew that the assets in the family share were intended to provide for her. The trustees, including Phyllis, acted in a way to benefit Phyllis's support and maintenance by selling the property to the LLC because, under the contract for deed, Phyllis retained use of the house and garage. The trustees' removal of cash assets also benefitted Phyllis because they were distributed directly to her or into her trust.

Waiver is "the intentional relinquishment of a known right." *Valspar*, 764 N.W.2d at 367 (quotation omitted). "Waiver generally is a question of fact . . . ." *Id.*

> We review the district court's findings of fact for clear error. Under this standard, findings of fact may be set aside only if there is no reasonable evidence in the record to support those findings, and we are left with a definite and firm conviction that a mistake has been made.

Schwagerl II, 965 N.W.2d at 781 (citation and quotation omitted).

Here, in its April 2019 order, the district court found that Phyllis hired an attorney and an accountant to assist her with division of the property under the Trust. The accountant advised Phyllis of the assets in the family trust and instructed her to establish a

separate checking account and to continue using the federal tax identification number for the Trust. The district court found that the division of property was done "deliberately to shelter as many assets as possible from any future estate tax that could be due upon Phyllis's death by allocating as much as possible to the Family Trust." In its October 2019 order, the district court found that Phyllis knew of her right to her property after the attorney and the accountant informed her of her rights under the Trust and about what property was distributable to her. And the district court found that Phyllis intended to waive her right to her property because she "chose to leave the farm real estate in the Family Trust" "to shelter as many assets as possible from any future estate tax that could be due upon [her] death."

We agree that the record shows that the attorney and the accountant advised Phyllis of the assets in the Trust and that Phyllis was assisted in the division of the assets. We also see support for the finding that Phyllis acted in reliance on the experts' advice. We do not detect, however, evidence in the record that the experts advised or warned Phyllis that she would waive her rights to her property if she placed the assets in the family share. Even if Phyllis intentionally acted in reliance on her experts' advice, we see no evidence that she intended to relinquish her rights in so acting.

Additionally, the district court found that Phyllis funded the family share "deliberately to minimize the future estate taxes that would occur at [her] death." But if there was no immediate benefit to Phyllis—and only this future benefit to her estate and its beneficiaries—it would seem that Phyllis would have until her passing to distribute the assets according to the Trust's terms. It is unreasonable to assume that Phyllis would intentionally forego her property (and control over it) for this future benefit.

Further, Lawrence and Phyllis created pour-over wills and mirror-image trusts to ensure that the surviving spouse would receive the couple's property. It is illogical for Phyllis to intentionally waive her right to the couple's property when the couple, in creating the trusts, intended for the property to be retained by the surviving spouse. And Phyllis's act of intentionally treating the property as her own, by selling the real estate and distributing cash assets to herself, shows that she did not intentionally relinquish her rights. Thus, we do not see support in the record for the district court's finding that Phyllis waived her right to her property.

In sum, the district court's finding that Phyllis waived her right to her distribution is clearly erroneous because it is contrary to both Lawrence's and Phyllis's intent and there is no evidence in the record to reasonably support the finding that Phyllis intentionally waived her property rights. And because Phyllis did not waive her rights, and the family share was intended to benefit her during her lifetime, the trustees did not breach their fiduciary duties by selling the property or withdrawing assets from the family share and distributing them to Phyllis directly or into her trust.[9]

Reversed.

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[9] The supreme court directed: "If Phyllis did breach her fiduciary duties by either selling the farm real estate at a discount or by transferring the cash assets out of the family trust, the court of appeals will then be required to address the challenge raised by [Jerome and Diana] regarding the partiality of the neutral trustee." *Schwagerl II*, 965 N.W.2d at 782 n.5. Because we conclude that the trustees did not breach their fiduciary duties, we need not address this challenge to the neutral trustee.

SMITH, TRACY M., Judge (dissenting)

I respectfully dissent.

The supreme court gave us three instructions on remand. First, we must "determine whether the district court erred in finding that Phyllis [Schwagerl] waived her right to require the Lawrence [Schwagerl] Trust's interest in the real estate be distributed to her in her personal capacity by placing that interest within the family trust." *In re Schwagerl Tr.*, 965 N.W.2d 772, 782 (Minn. 2021) (*Schwagerl II*). Second, if we affirm the waiver finding, we must determine whether "Phyllis's sale of the farm real estate and residence and her transfer of all cash assets out of the family trust constituted a breach of her fiduciary duties." *Id.* Third, if we conclude that those actions constituted a breach of fiduciary duties, we must "address the challenge raised by the respondents regarding the partiality of the neutral trustee" who was appointed by the district court to account for the assets in the family trust and who, after trial, was appointed by the district court as successor trustee. *Id.* at 778, 782 n.5.

The majority concludes that the district court clearly erred by finding that Phyllis waived her right under the Lawrence Trust to distribution of the assets that she placed in the family trust. Given that ruling, the majority does not need to address the remaining two issues. I disagree that the district court clearly erred by finding waiver. As to the remaining two issues, I would conclude that the district court did not err by determining that there was a breach of fiduciary duties related to the family trust and did not err with respect to the neutral trustee. I would affirm.

1. Waiver of Phyllis's Right to Distribution of Assets

Waiver, as the majority explains, is "the intentional relinquishment of a known right." *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotation omitted). "It is the expression of an intention not to insist on what the law affords." *Id.* (quotation omitted). Waiver "generally is a question of fact." *Id.*

We review a district court's factual findings for clear error. *See Schwagerl II*, 965 N.W.2d at 781. "Under this standard, findings of fact may be set aside only if there is no reasonable evidence in the record to support those findings" and the reviewing court is "left with a definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). In applying the clear-error standard, we must "view the evidence in a light favorable to the findings." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We must not reweigh evidence or reconcile conflicting evidence. *See id.* at 221-22. We must not deem a finding erroneous even if we "would find the facts to be different." *Id.* at 222. We must "fully and fairly consider the evidence, but so far only as is necessary to determine beyond question that it reasonably tends to support the findings." *Id.* at 223 (quotation omitted). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* (quotation omitted).

In its findings of fact, conclusions of law, and order following trial, the district court identified the knowledge and intent elements of waiver and found that Phyllis "waived her

right [to distribution of the assets] by intending to keep the real estate that was distributable outright to her in the Family Trust." The majority decides that this finding was clear error.[1]

Though, as the majority well describes, there is evidence that weighs against the district court's factual determination that Phyllis waived her right, in my view the record reasonably supports the finding. The record evidence includes that Phyllis and her husband together created the estate plan that involved mirror-image trusts; that, after her husband died in 1999, Phyllis served as trustee for the Lawrence Trust and as personal representative of Lawrence Trust's estate; that she hired both an attorney and an accountant to assist her in handling the property owned by the Lawrence Trust; that Phyllis divided the assets distributable to her under the Lawrence Trust and allocated a portion of those assets to the family trust; that the tax return for Lawrence's estate in 2000 reflects that allocation of assets; that Phyllis allocated the assets otherwise distributable to her to the family trust in order to secure favorable tax treatment; and that the assets remained in the family trust for over ten years. This evidence, viewed in the light most favorable to the district court's

[1] The majority suggests that the waiver theory could be rejected entirely because neither the district court nor respondent Barbara Higinbotham cited precedent that applies the waiver doctrine to the actions of a trust beneficiary. I am not persuaded that the waiver doctrine, which is applicable in all manner of cases, does not apply equally to a trust case simply because the waiver cases cited by a district court or a party do not happen to involve a trust beneficiary. *See, e.g.*, *Valspar*, 764 N.W.2d at 362 (contract); *In re Civ. Commitment of Giem*, 742 N.W.2d 422, 432 (Minn. 2007) (civil commitment); *Stephenson v. Martin*, 259 N.W.2d 467, 470 (Minn. 1977) (subrogation); *see also Stephenson*, 259 N.W.2d at 470 ("It is also well established that, except as limited by public policy, a person may waive a statutory right."). Moreover, it is appellants' burden to show that the district court erred, *see Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944), and they have cited no law establishing that the waiver doctrine is unavailable in these circumstances.

findings, provides grounds to find that Phyllis understood her right to distribution of assets under the Lawrence Trust, that she had a motivation for relinquishing her right to distribution, and that she did in fact relinquish that right. Thus, in my view, the record adequately supports the district court's finding of waiver.[2]

2. Breach of Fiduciary Duties

The next question is whether a breach of fiduciary duties occurred with respect to the assets in the family trust. The district court determined that selling the farm real estate for a fraction of fair market value and draining the cash assets out of the family trust constituted a breach of fiduciary duties.

A trustee "must exercise a discretionary power in good faith . . . in the best interests of the beneficiaries." Minn. Stat. § 501C.0814(a) (2020); *see also Schwagerl II*, 965 N.W.2d at 783. Appellate courts evaluate a district court's findings concerning trusts under a clear-error standard of review and the district court's conclusions of law de novo. *In re Tr. Created Under Agreement with Lane*, 660 N.W.2d 421, 425-26 (Minn. App. 2003).

[2] The majority also concludes that Phyllis did not waive her right to distribution, based, in part, on Article 8.1.2 of the Lawrence Trust. That article states that "[t]he trustees may merge the assets of any trust with those of any other trust, by whomever created, having the same beneficiaries in substantially the same terms." It is unclear to me how this merger provision, which was not raised by appellants in the district court or on appeal, relates to the question of Phyllis's intent to waive or not waive her right to distribution. But even if the existence of Article 8.1.2 is considered as evidence from which a factfinder could infer that Phyllis, presumably knowing of that provision, did not intend to waive her right to distribution of property under the Lawrence Trust when she placed the property in the family trust, I do not think that that evidence renders clearly erroneous the district court's factual finding to the contrary.

Appellants make three arguments challenging the district court's determination of a breach of fiduciary duties. First, they argue that, because the farm property was not deeded to the family trust, it "belonged" to Phyllis and no duty could be owed to the beneficiaries of the family trust with respect to property that belonged to Phyllis. I disagree. As already discussed, in my view, Phyllis waived her right to distribution of the property that she placed in the family trust. In addition, the supreme court explicitly stated that the trustees owed fiduciary duties with respect to the family trust. *See Schwagerl II*, 965 N.W.2d at 783. For these reasons, I would conclude that appellants' argument that no duty was owed to the family trust beneficiaries is unavailing.

Second, appellants argue that any assets that went into the family trust "went there contrary to the plain terms of the [Lawrence] Trust" and that the trustees owed a duty "to the Trust" to "fix that error" by "tak[ing] possession of the assets . . . as the Trust terms required." This argument is also unpersuasive. The question on remand is not whether the trustees would have breached a duty related to the Lawrence Trust had they not corrected Phyllis's action of placing property in the family trust contrary to Lawrence's intent; the question is whether the district court erred by determining that the trustees breached a duty to the beneficiaries of the family trust by selling the farm at below market value and by depleting cash assets. *Id.* at 778, 783.

Third, appellants argue that Phyllis, as a trustee, was relying upon advice of counsel in taking the challenged actions. The district court found that assertion not credible. It stated:

> Phyllis was actively and independently involved in the administration of the trust and all of her own personal financial matters. She was an intelligent, strong-willed woman who controlled her own life. . . . The evidence is overwhelming that Phyllis, faced with legal advice that she did not want to follow, simply rejected that advice.

Without listing all of the evidence supporting the district court's finding, I would conclude, based on my review of the record, including an affidavit from Phyllis, that the record reasonably supports the district court's finding that Phyllis did not take the challenged actions in reliance on legal advice. *See Kenney*, 963 N.W.2d at 222 (stating that "the appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court" (quotation omitted)).

In sum, I would conclude that the district court did not err by determining that the sale of the farm for less than market value and the depletion of cash assets constituted a breach of fiduciary duties to the beneficiaries of the family trust.

3. Impartiality of the Neutral Trustee

Lastly, I turn to the third issue on remand. Before trial, the district court appointed C. Thomas Wilson as a neutral trustee to account for and report on the assets of the family trust. Wilson did so and testified about his work at trial. In its order following trial, the district court adopted Wilson's report as part of its findings of fact and it appointed him as successor trustee. Appellants argue that the district court erred by adopting Wilson's report as the district court's factual findings and erred by appointing him as successor trustee. Both assertions of error rest on appellants' claim that Wilson was not impartial.

I discern no error in the district court's adoption of Wilson's report and findings. A district court's factual findings are reviewed for clear error, *Schwagerl II*, 965 N.W.2d at 783, and deference is owed to the district court's credibility determinations, *see In re Civ. Commitment of Ince*, 847 N.W.2d 13, 23-24 (Minn. 2014). The district court observed that Wilson reviewed 1,682 pages of documents; that he engaged in discussions with counsel for Phyllis, counsel for the parties, accountants, and bankers; and that he obtained additional information, including bank statements, as a result of those conversations. The district court stated that it had "reviewed C. Thomas Wilson's report in detail" and "conclude[d] that it is supported by a thorough investigative process, sound analysis, and substantial documentary evidence." While appellants may disagree with the district court's factual findings, I would conclude that Wilson's testimony and report reasonably support the district court's adoption of Wilson's findings as the district court's factual findings.

For the same reason, appellants' challenge to the appointment of Wilson as successor trustee also fails. An appellate court reviews the decision to appoint a successor trustee for an abuse of discretion. *Papermaster v. Blumenthal (In re Tr. Created by Gershcow)*, 261 N.W.2d 335, 339-40 (Minn. 1977). By appointing Wilson, the district court implicitly found him to be impartial. I would conclude that this implicit determination is reasonably supported by the record and that the district court therefore did not abuse its discretion by appointing him as successor trustee.

For these reasons, I would affirm the district court.