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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-654**

John M. Sell,  
Respondent,

vs.

Donald K. Sell,  
individually and as trustee of the Donald Sell Trust,  
established pursuant to the Will of Caroline Sell dated November 23, 1964,  
and as general partner of the Sell Family Limited Partnership,  
Appellant.

**Filed October 27, 2009  
Affirmed in part, reversed in part, and remanded  
Stoneburner, Judge**

Renville County District Court  
File No. 65CV06188

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Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and  
Stoneburner, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant trustee was found by the district court to have breached his fiduciary  
duty to respondent beneficiary of a trust and to have converted trust funds that should

have been distributed to respondent. In this appeal, appellant challenges the district court's (1) calculation of respondent's "base damages"; (2) award of reasonable growth of base damages through the date of trial; (3) reopening of the record, requiring production of evidence not produced at trial; and (4) post-trial appointment of an expert witness to determine reasonable growth of base damages and post-trust farm income.

Because the district court failed to define base damages, awarded multiple recovery for some trust assets, and awarded reasonable growth of some damages for which caselaw mandates only simple interest, we reverse the award of damages and remand for a recalculation of damages consistent with this opinion.

By notice of review, respondent challenges the district court's (1) finding that respondent failed to establish that appellant breached his fiduciary duties as general partner in a limited partnership or breached the partnership agreement and (2) denial of respondent's request for attorney fees. Because the record supports the district court's conclusion that respondent failed to prove appellant's breach of fiduciary duties as general partner or breach of the partnership agreement and because there is no authority for an award of attorney fees to respondent, we affirm the district court on these issues.

## **FACTS**

Appellant Donald Sell (trustee) is the father of respondent John Sell (beneficiary), whose date of birth is August 19, 1953. In November 1964, trustee's mother (settlor) made a will that provided, in relevant part, that on her death, one-half of her estate would be devised to beneficiary and his two brothers through trusts. The will provided that trustee was to divide the estate assets that were devised to settlor's grandchildren into

three equal shares and hold each of the equal shares in a separate trust: one for beneficiary and one for each of his brothers.

Under the terms of settlor's will, each grandchild, at age 21, was to receive one-third of his trust's principal and the entire net income from his trust in monthly or other convenient installments. When each grandchild reached the age of 25, trustee was to distribute one-half of the remaining two-thirds of trust assets to that grandchild, and when each grandchild reached the age of 35, his trust was to terminate and the remainder of the trust property was to be transferred to him. The will also gave trustee sole discretion to retain cash or other assets "for so long as he deems advisable . . . for terms within or extending beyond the term of this trust."

The assets that were to have been transferred to the separate trusts for beneficiary and his brothers consisted, at the time of settlor's death, of a one-fourth interest in various real estate in which settlor held a one-half interest,<sup>1</sup> and a one-half interest in stock and other personal property owned by settlor.<sup>2</sup> Trustee, individually, inherited one-half of settlor's estate and had previously inherited his father's one-half interest in all of the

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<sup>1</sup> Beneficiary and his brothers each had an undivided one-third interest in one-fourth of: (1) settlor's homestead; (2) settlor's lake property; (3) the Carson Farm I; (4) the Buelke Farm; (5) the Larson Farm; (6) the Steinbach Farm; (7) the Carson Farm II, which was later traded for the Weldy Farm; (8) the East 284 feet of Lot 1, Block 13, Fairfax Council Replat, Village of Fairfax; and (9) Lots 6, 7, 10, 11, and 12, Block 9, Brown's Addition to the Village of Fairfax. According to values used in probate, the total value of real estate that was to have been placed in beneficiary's separate trust was \$8,560.40.

<sup>2</sup> The district court found that settlor's personal property was valued at probate at \$54,594.53. One-half of that amount (\$27,297.27) was to have been divided into three separate trusts for beneficiary and his brothers; therefore \$9,099.09 should have been placed in beneficiary's separate trust.

subject real estate, giving trustee an individual three-fourths interest in all of the subject real estate and a one-half interest in settlor's personal property.

According to trustee, in order to simplify bookkeeping, he did not divide the trust funds into separate trusts for each of his three sons. Trustee instead attempted to create a single trust, the Donald Sell Trust (trust), but he did not establish a trust bank account separate from his personal account, did not obtain a separate tax identification number for the trust, and did not maintain separate accounting for the trust.

In 1996, trustee engaged in his own estate planning, which involved a meeting with his sons and an estate planner and resulted in the creation of the Sell Family Limited Partnership (partnership), transfer of trustee's individual interest in all but one parcel of real estate to the partnership, and distribution of all interest in real estate held by the trust to beneficiary and his brothers. Although beneficiary argues that the trust did not terminate at this time, he conceded at oral argument on appeal that distribution of the farm interests resulted in all trust assets having been distributed. Trustee asserts that distribution of all assets terminated the trust in 1996.

Trustee is the general partner of the partnership and has a 97% interest. Beneficiary and his brothers are limited partners, each with a 1% interest. The partnership agreement provides that partnership net profits and losses are to be allocated proportionately according to partnership interests. The general partner has full and exclusive power on the partnership's behalf, including the power to pay himself for managing the partnership.

For reasons not explained in the record, trustee failed to inform his sons of the terms of settlor's will or the existence of the resulting trust. Beneficiary first learned of the trust in 2005, when he received a copy of settlor's will. Trustee failed to make the distributions required by settlor's will and commingled trust assets with his individual funds. Trustee kept ledgers of his financial transactions, and some accountings were created for purposes of litigation.

When beneficiary learned about the trust in 2005, he made certain demands on trustee that were not met, so he sued trustee individually, as trustee, and as general partner of the partnership, asserting, in relevant part, claims of breach of fiduciary duties, conversion, and breach of contract. Beneficiary's theory of damages was that trustee should have liquidated all assets at the inception of the trust and prudently invested the proceeds. Beneficiary's expert rejected the values assigned to trust assets in the probate court in 1968 as too low and calculated damages based on significantly higher values<sup>3</sup> plus the growth that would have occurred, had the funds been invested within a reasonable time after probate, in a 60/40 stock/bond investment portfolio through the date of trial.<sup>4</sup>

After a court trial, the district court held that trustee breached fiduciary duties as trustee, but that beneficiary failed to prove breach of fiduciary duties as general partner of the partnership or breach of the partnership agreement. Specifically, the district court

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<sup>3</sup> For example, the trust owned 51.125 shares of Citizen State Bank stock valued on probate in 1968 at \$200 per share. Beneficiary's expert opined that the value of the stock should have been \$2,566.57 per share, and used this figure in his calculations.

<sup>4</sup> Beneficiary's expert calculated growth through the date of trial based on an assertion that, at the time of trial, "the trust still has not effectively terminated."

found that trustee failed to follow settlor's intent, commingled trust assets with personal assets, failed to impartially administer the trust for all beneficiaries, failed to disclose existence of the trust to the beneficiaries, and failed to provide any trust accountings during the existence of the trust.

The district court found that beneficiary did not prove that trustee breached his fiduciary duties by failing to sell farm properties or by imprudently selling trust assets. And the district court found the probate value of trust assets reliable and rejected the higher values asserted by beneficiary.

In addition, the district court found that trustee breached his fiduciary duty as trustee and converted trust assets by treating the partnership established in 1996 as sole owner of all of the farm property and by failing to distribute income from the farms attributable to beneficiary's individual ownership of farm interests conveyed to beneficiary in 1996. The district court held that beneficiary is therefore entitled to a portion of farm income plus reasonable growth of such income from the date the income was earned.

Because the district court rejected beneficiary's theory that trustee breached his duties by retaining real estate and rejected beneficiary's position that probate values of trust assets were inaccurate, the district court rejected beneficiary's expert's calculation of beneficiary's damages in the amount of \$3.2 million. The district court awarded damages based on its calculation of amounts it called "base damages" from various transactions made by trustee with trust assets, plus "reasonable growth" on each "base

damage” from the date the district court determined that the damage was incurred through the date of trial.

The district court found that respondent’s “base damages” totaled \$249,016.03.<sup>5</sup> Because there was no evidence in the record from which the district court could compute reasonable growth on the base damages it found, and no evidence from which farm income from 1997 to 2006 could be determined, the district court held that the record would be reopened and a “second phase” of trial would be held. The district court held that at this second phase of trial, an expert, agreed on by the parties and appointed by the district court, would give an opinion on the reasonable growth of the base damages found by the district court. The district court also ordered trustee to produce applicable IRS K-1 schedules for the subject farms and directed the expert to calculate beneficiary’s individual farm income from 1997 to 2006 plus reasonable growth of those amounts through the date of trial.

Appellant objected to the district court’s post-trial appointment of an expert, the reopening of the record for a second phase of trial on damages, and the order for post-trial production of partnership K-1s, but stipulated to the appointment of Andrew Biebl as the court-appointed expert. Biebl calculated beneficiary’s share of the farm income from 1997 to 2006 to be \$71,851.35 and added this amount to base damages found by the district court, resulting in total base damages of \$320,867.38. Biebl calculated “reasonable growth” by assuming investment of each base damage in a 60% stocks and

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<sup>5</sup> Initially the district court found this amount to be \$240,699.13 but later amended this amount to \$249,016.03.

40% bonds portfolio on the last day of the month in which the district court found the loss to have occurred through the date of trial. Biebl calculated respondent's total damages as ranging from \$1,619,000 to \$1,871,000, and opined that respondent's full damages were \$1,720,000.<sup>6</sup> The district court adopted Biebl's calculations and concluded that respondent incurred damages of \$1,720,000 as a result of appellant's breach of fiduciary duties and conversion. Judgment was entered in that amount. The district court denied beneficiary's request for attorney fees.

Trustee's appeal followed, challenging the calculation of base damages, award of reasonable growth, reopening of the record, and appointment of a post-trial expert. Beneficiary filed notice of review, challenging the district court's finding that he failed to prove breach of partnership fiduciary duties and the partnership agreement and the district court's denial of his request for an award of attorney fees.

## **D E C I S I O N**

### **I. Trustee's challenge to damage award**

#### **a. Standard of review**

Damage awards are reviewed for abuse of discretion. *In re Trust of Williams*, 631 N.W.2d 398, 407 (Minn. App. 2001), *review denied* (Minn. Sept. 25, 2001).

"Speculative, remote, or conjectural damages are not recoverable at law." *Lassen v. First*

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<sup>6</sup> Despite objection to the process of reopening the record for a separate damages phase with a court-appointed expert, trustee did not object to Biebl's calculations, which were based on specific direction from the district court. Trustee moved for amended findings after the first phase of trial. The district court considered the motion as a request for reconsideration and denied any relief. Trustee did not move for amended findings after the damages phase of the trial.



*Bank Eden Prairie*, 514 N.W.2d 831, 839 (Minn. App. 1994) (rejecting a claim for investment profits lost due to loss of opportunity to use money), *review denied* (Minn. June 29, 1994).

**b. Burden of proof and measure of damages**

The plaintiff bears the burden of proving damages caused by the defendant by a fair preponderance of the evidence. *Canada v. McCarthy*, 567 N.W.2d 496, 507 (Minn. 1997). The measure of damages for conversion is the fair market value at the time of conversion, plus interest from that date. *Bloomquist v. First Nat'l Bank of Elk River*, 378 N.W.2d 81, 86 (Minn. App. 1985), *review denied* (Minn. Jan. 31, 1986). Remedies of a beneficiary against a trustee are exclusively equitable except when money or a chattel is immediately owing and payable, in which case the beneficiary can sue to enforce payment or transfer. *Kohler v. Fletcher*, 442 N.W.2d 169, 171 (Minn. App. 1989) (holding that sections 197 and 198 of Restatement (Second) of Trusts (1959), apply where a beneficiary of a trust alleges breach of fiduciary duty by the trustee), *review denied* (Minn. Aug. 25, 1989). The measure of damages for breach of fiduciary duty by a trustee is the amount required to restore the values of the trust estate and trust distributions to what they would have been if the trust had been properly administered. Restatement (Third) of Trusts: Prudent Investor Rule § 205(b) (1992).

“[I]f a . . . trustee mingles the trust fund with his own money, or uses it in his private business, he will be charged with simple interest at the rate established by law as the legal rate, in the absence of special agreements.” *St. Paul Trust Co. v. Strong*, 85

Minn. 1, 11–12, 88 N.W. 256, 260 (1901). In *In re Comstock's Will*, a case involving damages for a trustee's breach of trust, the supreme court said:

The just and true rule is that simple interest only should be charged in cases where there has been no fraud or flagrant breach of trust, unless (1) the trustee has received compound interest or (2) he has received a profit which cannot be ascertained but is presumably at least equal to compound interest or (3) it was his duty to accumulate the income.

219 Minn. 325, 338, 17 N.W.2d 656, 664 (1945) (quotations omitted).

**c. Base damages**

On appeal, trustee challenges the inclusion of some amounts in the district court's calculation of base damages and the multiple inclusions of some losses. Beneficiary argues that trustee participated in the second phase of trial, failed to raise objections to base damages in the district court, and has therefore waived consideration on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court will generally not consider matters not argued to and considered by the district court). But trustee asserted in post-trial arguments, motions, and memoranda that some base-damage awards were erroneously included or resulted in multiple awards for the same loss, and trustee has consistently argued that beneficiary failed to meet his burden of proof with regard to damages. We conclude that trustee has not waived all of his challenges to the calculation of base damages by participating in the second phase of trial under protest, and we address the issues that we conclude were adequately raised in the district court.

The larger problem for this court on review of the district court's order is understanding the district court's definition of a "base damage." The district court stated

only that it was using the phrase “base amount” (which we read to include “base damage”) “because this figure will be used as a base, prior to reasonable expectation of growth therefrom, to compute additional damages during the continued trial phase.”

Trustee, in his brief on appeal, asserts that the district court’s award of base damages correlates to trustee’s failure to distribute trust assets to beneficiary and trustee’s conversion of those assets for his own use. In his brief on appeal, beneficiary likewise states that base damages consist “of the amounts that [trustee] should have, but did not, distribute to [beneficiary].” But the first base damage identified by the district court is the value of non-real-estate assets (\$9,099.09) that should have been placed in a separate trust for beneficiary at the inception of the trust. The district court concluded that this damage occurred in 1968, when the trust should have been established. Beneficiary was plainly not entitled to distribution of this amount in 1968, so it is not accurate to define a base damage as an amount that should have been distributed to beneficiary on the date that the district court found such damage to have been incurred. Adequate review is hampered by lack of explanation of what a base damage is meant to represent.

### **1. Multiple awards for same damages**

The district court’s award of a base damage for the initial value of the non-real-estate assets, plus reasonable growth on that amount, appears to assume that a reasonably prudent trustee would have sold the personal property and invested the funds in a 60/40 stock/bond investment portfolio. This approach is consistent with Restatement (Third) of Trusts: Prudent Investor Rule § 205(b), which provides that the measure of damages for breach of fiduciary duty by a trustee is the amount required to restore the values of the

trust estate and distributions to what they would have been if the trust had been properly administered. If the district court had added funds from real-estate sales that occurred before beneficiary reached age 21 and deducted the appropriate distributions mandated by the settlor when beneficiary reached the ages of 21, 25, and 35, it appears that the award of reasonable growth on trust funds, when added to (1) the mandated distributions at age 21, 25, and 35; (2) income from real estate reflected on IRS K-1 schedules; and (3) simple interest on distributions that beneficiary should have but did not receive, would have fully compensated beneficiary for liquid assets under the measure of damages described by the Restatement.

But, having presumed sale and investment of personal-property trust assets in 1968, the district court went on to find base damages for various transactions trustee engaged in with the same assets that he is presumed to have sold and invested in 1968. For example, the district court's initial base damage of \$9,099.09 included the value of stock, but, in finding of fact XV, the district court awarded beneficiary a base damage for the profit from sale of this same stock in April 1971. And the district court included a base damage for distribution for sale of this same stock reflected in beneficiary's 1971 K-1. Therefore, beneficiary has been awarded base damages (and reasonable growth thereon) three times, amounting to a triple award for one trust asset.

The award of a base damage for each K-1 issued to beneficiary purporting to represent trust distributions also results in duplicate awards for sale of at least two parcels of real property. From our review, the record demonstrates that (1) beneficiary was awarded the proceeds from the sale of the lake property as of the date of the sale and was

also awarded \$2,926 from the same sale that was included in beneficiary's 1973 K-1 and (2) beneficiary was awarded proceeds from the sale of the Steinbach farm as of the date of sale, and the same proceeds are included in beneficiary's 1989 K-1. Additionally, the district court found that sale of 40 acres of the Weldy farm did not result in damages because beneficiary received funds from that sale, but the district court awarded damages for proceeds from that sale reflected in beneficiary's 1995 K-1. We therefore reverse and remand the calculation of base damages for a clear statement of the definition of what a "base damage" represents, elimination of multiple awards for the same loss, and elimination of the award for proceeds of the Weldy farm that appear on the 1995 K-1.

**2. Trustee's challenge to inclusion of some transactions as base damages for trustee's breach of fiduciary duties**

Trustee also objects to the inclusion of certain items as base damages. Because we do not know how "base damage" is defined, we are unable to determine what should and should not be included as a base damage. Therefore, we address this challenge by determining whether the district court clearly erred in finding that certain expenditures were made from trust funds and/or whether items included as base damages resulted from the trustee's breach of fiduciary duties imposed by the trust.

**i. Interest on Federal Land Bank loan**

The district court found that the trust paid interest on a Federal Land Bank loan, an obligation that belonged to trustee individually. Trustee appears to argue that payment of interest on the loan could not have been made from the trust because trustee's ledgers show that the trust did not have assets from which to make interest payments. Because

there is evidence in the record to support the district court's finding that the interest was paid from trust funds, we affirm that finding. When a trustee's "accounts are not clear and accurate; if they were negligently kept, leaving many transactions in the fog which must come of absence or ambiguity of records of old transactions, the consequent obscurity or doubt cannot operate to his advantage, but must be resolved against him." *Smith v. Tolversen*, 190 Minn. 410, 414, 252 N.W. 423, 425 (1934).

**ii. Life-insurance premiums**

Trustee likewise argues that the district court erroneously concluded that life-insurance premiums were paid by the trust and that trustee failed to reimburse the trust when he recovered the amount of premiums paid. We conclude that this issue was not raised in the district court and has been waived on appeal. *Thiele*, 425 N.W.2d at 582. And even if not waived, we find no merit in this argument because the record supports the district court's finding that the premiums were paid from the trust and were not reimbursed.

**iii. Promissory note**

Trustee argues that the district court erred by concluding that trustee breached his fiduciary duties with regard to a \$5,000 promissory note that was part of settlor's estate. Trustee argues that the note was not part of the trust assets. We agree with beneficiary that trustee's failure to raise this issue in the district court waives review on appeal. *Id.*

**iv. Post-1996 farm income**

Trustee argues that because the trust terminated in 1996, trustee cannot be held liable *as trustee* for farm income not distributed to beneficiary for the beneficiary's

individual ownership interest in the farms as awarded by the district court from January 1997 to August 28, 2006. The record supports, and beneficiary does not dispute, that all trust assets were distributed by 1996, when the farm interests held by the trust were deeded to beneficiary and his brothers. Because the trust assets were fully distributed, the trust terminated in 1996. Beneficiary's individual interest in the farms was not a trust asset after 1996; therefore trustee could not have breached a fiduciary duty as trustee with regard to beneficiary's interest in these farms. We therefore reverse the award of \$71,851.35 in damages and reasonable growth thereon attributed to this breach of trustee's fiduciary duties.

**d. Deduction of distributions**

Trustee asserts that the district court erroneously failed to deduct approximately \$17,000 from the base damages for distributions trustee asserts were made to beneficiary from trust funds, including taxes paid for beneficiary, cash given to beneficiary, car insurance paid on beneficiary's behalf, and corporate stock given to beneficiary. This issue was raised in trustee's post-trial memorandum and is not waived. But we agree with beneficiary that the district court did not err by finding that, absent documentation that these funds were trust distributions, they cannot be considered as such. Trustee testified that he never told beneficiary that he was the beneficiary of a trust or was receiving trust distributions. Trustee admitted that some of the alleged trust distributions reflected in his ledgers were gifts. As noted above, trustee bears the consequences of failing to keep adequate, accurate trust accountings.

**e. Challenge to award of reasonable growth on base damages and process for establishing reasonable growth**

Trustee asserts that the district court abused its discretion by awarding reasonable-growth damages. Trustee's argument is based primarily on caselaw establishing simple interest as the "growth" allowed on damages for breach of trust and conversion. Trustee contends that the award of reasonable growth requires speculation about what beneficiary would have done with distributions from the trust and that there is no evidence in the record of how beneficiary would have used trust funds had funds been distributed as directed by settlor or the district court.

As noted above, the Restatement (Third) of Trusts: Prudent Investor Rule § 205(b), cited by the district court, supports an award of reasonable growth of the non-real-estate trust principal plus proceeds from sales of real property *in the hands of trustee* through the date of the termination of the trust. But we conclude that the district court erred by awarding reasonable growth of assets that it found should have been distributed to beneficiary and erred by continuing all awards of reasonable growth to the date of trial, well beyond the 1996 termination of the trust, without clearly articulating the legal basis for such awards.

Although the district court, in the memorandum of law attached to its August 13, 2008 order denying post-trial relief, stated that it was not instructing Biebl to speculate as to what beneficiary would have done with the distributions, Biebl stated in his expert report that his calculation of reasonable growth was based on beneficiary's presumed



investment of the funds in a 60/40 stock/bond portfolio, and the district court appears to have accepted this premise.

The district court rejected beneficiary's expert's opinion of damages but stated that it had "no basis in law or fact to disagree with the expert's opinion of a reasonable split between stocks and bonds for investment purposes." And Biebl found the proposed 60/40-stock/bond allocation "to be reasonable in the absence of evidence of a more appropriate allocation." But beneficiary's expert was opining that a 60/40-stock/bond allocation reflected what "moderately conservative investment strategy for the [trust] with a risk profile . . . of 60, taking into consideration the ages of the children and the purposes of the trust, would have been prudent in this case."

A trustee has a fiduciary duty to invest trust funds prudently, but a beneficiary does not have such a duty and cannot be presumed to use trust distributions prudently. Biebl and the district court have imputed a prudent-trustee duty to the beneficiary without any support in the law or the record. The caselaw is clear that growth of funds converted by a trustee is limited to simple interest in the absence of evidence that the trustee received a greater return. *Comstock's Will*, 219 Minn. at 338, 17 N.W.2d at 664.

We reverse the award of reasonable-growth damages on all distributions that should have been made to beneficiary on specified dates<sup>7</sup> and direct that growth on such awards on remand is limited to simple interest to the date of trial. We affirm the use of

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<sup>7</sup> Because the trustee was not mandated to distribute the proceeds from sale of any assets including real property at the time of sale, the district court, in its discretion, may conclude that such proceeds should have remained in the trust, managed in a manner that produced reasonable growth until the mandated dates of distribution of trust assets.

reasonable growth for any funds that remained under trustee's management, as trustee, until termination of the trust.

## **II. Trustee's challenge to post-trial appointment of an expert witness and reopening the record on damages**

Trustee argues that the district court abused its discretion and prejudiced trustee by appointing an expert witness after the conclusion of trial, mandating the production of evidence that was not introduced at trial, and conducting a separate trial on damages for which beneficiary failed to meet his burden of proof at trial.

Minn. R. Evid. 706(a), provides that the district court may appoint an expert witness, and because we have concluded that it was appropriate for the district court to award reasonable growth on assets that should have been prudently managed by the trustee during the life of the trust, we affirm the district court's use of an expert witness to assist with calculations of reasonable growth and do not limit the district court's use of such a witness on remand. Beneficiary proved damages, and "the fact that it is difficult to establish the amount does not . . . preclude recovery." *N. States Power Co. v. Lyon Food Prods., Inc.*, 304 Minn. 196, 202, 229 N.W.2d 521, 525 (1975).

## **III. Beneficiary's challenge to finding that he failed to prove trustee's breach of partnership duties**

Beneficiary claims that he introduced "ample evidence" to prove that trustee breached his fiduciary duties as general partner and breached the partnership agreement. The district court found that under the partnership agreement, trustee had discretion to distribute the net cash flow of the partnership to the partners in proportion to their interests in the partnership and had "the full and exclusive power . . . to manage, control,

administer, and operate [the partnership's] business and affairs.” The district court found that beneficiary received \$3,000 of partnership income in 2006 and that trustee also received partnership income. The partnership's K-1 schedules were not introduced in the first phase of the trial, but trustee's accountant estimated that trustee uses \$80,000 to \$100,000 of partnership assets annually. The district court, noting that no financial records of any kind relating to the partnership had been submitted, concluded that it could not find that trustee, as general partner, breached the partnership agreement.

Because the record supports the district court's finding that beneficiary failed to prove a breach of the general partner's duty to distribute partnership income, we affirm. Beneficiary's reliance on testimony that amounts of partnership income appeared to be “unusual” as compensation for managing the partnership is not persuasive. Because there was no evidence of partnership income, the witness being questioned was unable to opine that such amounts were “unreasonable” for managing the partnership. “[A] party cannot complain about a district court's failure to rule in [the party's] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.” *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Having failed to produce sufficient evidence at trial to support this claim, beneficiary is not entitled on appeal to rely on evidence that the district court subsequently required trustee to produce for the second phase of trial.

#### **IV. Beneficiary’s challenge to denial of attorney fees**

We review a district court’s denial of attorney fees for abuse of discretion. *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). “[I]t is well-settled that attorney fees are not recoverable in Minnesota unless there is a statutory authorization or a contractual agreement allowing them to be recovered.” *In re Margolis Revocable Trust*, 765 N.W.2d 919, 928 (Minn. App. 2009); *see also Williams*, 631 N.W.2d at 409–10 (stating that “it is a fundamental principle of law deeply ingrained in our common law jurisprudence that each party bears his own attorney fees in the absence of a statutory or contractual exception” and acknowledging that “there is no Minnesota case requiring a trustee whose management of a trust has been challenged to pay attorney fees incurred by the successful challenger”) (quotation omitted).

Beneficiary argues that trustee’s actions “present the type of gross and inexcusable misconduct requiring this Court to finally recognize an exception to the general rule that each party is responsible for its own fees,” citing cases from other jurisdictions that have recognized such an exception. But, as we said in *Williams*, “[i]f an exception to the American rule is to be adopted in Minnesota for trust cases, a clear expression of that change should be made by the supreme court or the legislature; it is not our role to do so.” 631 N.W.2d at 410. The district court did not abuse its discretion by denying beneficiary’s request for attorney fees.

**Affirmed in part, reversed and part, and remanded.**