



of the Jungerman Family Irrevocable Trust (“Trust”); Jungerman’s daughter, Angelia Buesing, individually and in her capacity as trustee and/or co-trustee of the Trust; Jungerman Farm Corporation (“Farm Corporation”); and Baby-Tenda Corporation (“Baby-Tenda”).

A settlement agreement was reached between Plaintiffs and all defendants except Jungerman and Baby-Tenda, and the settling parties sought court approval of the partial settlement agreement. Jungerman objected to the settlement on the ground that, in his capacity as trustee, he was entitled to participate in settlement negotiations and approve any settlement involving the Trust or Trust assets, which he had not been permitted to do. The trial court overruled his objection, finding that Jungerman had resigned as trustee in 2018—prior to the initiation of this lawsuit—and that Buesing was the sole trustee with authority to settle claims on behalf of the Trust. As such, the trial court found that Jungerman lacked standing to challenge the partial settlement agreement. The trial court also found that Jungerman’s objection to the settlement was untimely pursuant to section 515.610, RSMo.<sup>2</sup> Thereafter, the trial court entered its judgment approving the partial settlement agreement, and it is from that judgment Jungerman appeals in his capacity as the alleged trustee of the Trust.

Jungerman asserts the trial court erred in finding he lacked standing to challenge the partial settlement agreement and did not timely object to the settlement. We do not reach the merits of Jungerman’s claims of error, however, because Jungerman lacks standing to bring this appeal and thus we are required to dismiss it.

### **Factual and Procedural Background**

In 2012, Jungerman shot and seriously injured Jeffery Harris. Harris retained Pickert to represent him in a personal injury lawsuit against Jungerman. The jury in that lawsuit returned a

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<sup>2</sup> All statutory references are to RSMo 2016.

\$5.75 million verdict in favor of Harris. The trial court entered judgment on the jury verdict, and that judgment was affirmed on appeal. *See Harris v. Jungerman*, 560 S.W.3d 549, 563 (Mo. App. W.D. 2018). While the appeal was pending, Pickert began proceedings against Jungerman to execute on his assets to satisfy the *Harris* judgment. On October 24, 2017, Jungerman was served with documents related to those execution efforts.

On October 25, 2017, Pickert was shot and killed in front of his home after walking his children to school. Jungerman has been charged with first-degree murder and armed criminal action for causing Pickert's death. That criminal case remains pending.

On May 17, 2018, Plaintiffs initiated this lawsuit. In April 2019, Plaintiffs filed a First Amended Wrongful Death Petition for Damages and to Set Aside Fraudulent Conveyances, asserting wrongful death claims for battery and negligence and a claim of "fraudulent conveyances and civil conspiracy to commit fraudulent conveyances as part of a scheme to prevent [Pickert] and Plaintiffs from collecting a judgment lien." The petition alleges that, shortly after the jury's verdict in the *Harris* case was announced, Jungerman approached Pickert in a threatening manner in the courtroom and told him: "None of this matters. I have 186 guns. I did it once before. I will do it again. You can't touch me." The petition further alleges that Jungerman shot and killed Pickert on October 25, 2017, and thereafter admitted that he "killed a lawyer with a gun" and that he did it "because a lawyer stole his money" and "caused [him] a lot of problems."

Relating to the fraudulent transfer claim, the petition contains detailed allegations of property transfers by Jungerman and Buesing beginning in August 2017—shortly after entry of the *Harris* judgment—and continuing after Pickert's death, which were alleged to be part of "a scheme to fraudulently transfer assets to hinder, delay, and defraud" present and/or future creditors, including Plaintiffs. By way of example, the petition alleges that on August 24, 2017,

Jungerman made a \$900,000 transfer into the Trust and a \$1.5 million deposit into a bank account in the name of the Farm Corporation, the following day he transferred his home and other property to Buesing, and approximately two months later, Jungerman withdrew \$2,100,000 from the Farm Corporation account and \$900,000 from the Trust account in the form of cashier's checks made payable to a title company. The petition alleges that the Trust, the Farm Corporation, and Baby-Tenda<sup>3</sup> are alter egos of Jungerman, and that, as a result, "any assets held by and/or fraudulently transferred to and/or from [the corporations or Trust] constitute a transfer by Jungerman himself such that the assets of these alter egos are available to the extent necessary to satisfy any judgment entered in favor of Plaintiffs herein." The petition further alleges that Jungerman, Buesing, the corporations, and the Trust were acting as a joint venture at all relevant times and thus the corporations, Trust, and Buesing are vicariously liable for Jungerman's actions. Plaintiffs requested the trial court void and/or set aside all fraudulent transfers.

Plaintiffs also requested the trial court appoint a receiver "to take charge and manage Defendants' assets," including bank accounts, the Trust, the Farm Corporation, the assets of Baby-Tenda, and "any real property owned or managed by any of the Defendants." Over Jungerman's objection, the trial court appointed a receiver "to take charge over all of the Defendants' property and assets," finding that "the facts presented show the existence of conduct on the part of Defendants which constitutes a great emergency and places this matter in an urgent posture sufficient to require and justify the appointment of a receiver immediately to take charge of, manage, preserve, and protect the assets of the Defendants." Jungerman filed a motion to revoke the order appointing a receiver, which was overruled by the trial court. The trial court's denial of

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<sup>3</sup> Baby-Tenda is alleged to be "a vintage-style baby furniture business" that, since 2011, operates only online. Plaintiffs allege that "Jungerman is and has been the owner and sole shareholder of Baby-Tenda since at least 1971."

Jungerman’s request to revoke the order was affirmed on appeal. *See Riegel v. Jungerman*, 597 S.W.3d 695, 708-09 (Mo. App. W.D. 2019).

The trial court entered an order establishing November 15, 2019 as the “Claim Bar Date”—i.e., the date by which any creditors seeking to participate in the distribution of the receivership estate must submit their claims to the receiver. *See* § 515.615.5 (notice of a claim against the receivership estate shall be filed with the court and shall include, among other items, the name of the creditor asserting the claim and whether the claim is secured or unsecured). Plaintiffs filed their “Notice of Claim (Pursuant to RSMo. § 515.615)” on October 17, 2019, advising that they “are unsecured creditors of the Receivership Estate and have asserted their claims in the First Amended Wrongful Death Petition for Damages and to Set Aside Fraudulent Conveyances in this Court.” Thereafter, Jungerman, individually, filed an objection to Plaintiffs’ claim pursuant to section 515.620.1, which provides that “[a]t any time prior to the entry of an order approving the general receiver’s final report, the receiver or any party in interest may file with the court an objection to a claim[.]”

Earlier in 2019, the parties had begun settlement discussions. On October 18, 2019, Plaintiffs filed a notice of hearing advising that they, Buesing—individually and as trustee of the Trust—and the Farm Corporation (“settling parties”) would be seeking court approval of a Confidential Partial Wrongful Death Settlement Agreement on November 21, 2019. The notice of hearing stated it was being “provided in accordance with R.S.Mo. § 515.610.”<sup>4</sup>

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<sup>4</sup> Section 515.610 of the Missouri Uniform Receivership Act provides that relevant persons “are entitled to not less than thirty days’ written notice of the hearing of any motion or other proceeding involving any proposed . . . [c]ompromise or settlement of a controversy that might affect the distribution to creditors from the receivership[.]” § 515.610.6(3).

On November 13, 2019, Jungerman filed a motion “in his alleged capacity as Trustee or Co-Trustee” of the Trust to continue the settlement hearing. He asserted that, as trustee or co-trustee, he was “entitled, and obligated, to participate in settlement negotiations regarding the Trust and/or Trust assets” and “approve any settlement involving the Trust or Trust assets.” He stated that he had “not agreed to any settlement, nor ha[d] he seen the Agreement” and requested “time and an opportunity to conduct discovery prior to any hearing on the proposed Agreement.”

The settling parties filed an opposition to Jungerman’s motion to continue, arguing that his objection was untimely pursuant to section 515.610<sup>5</sup> and that he lacked standing to object to the settlement in that he was no longer trustee or co-trustee of the Trust. Regarding the latter argument, the settling parties referenced (and attached to their opposition) a document executed by Jungerman and Buesing on April 30, 2018, in which Jungerman purported to appoint Buesing as successor trustee and resign as trustee, and Buesing accepted the appointment. The document was notarized by the Barton County Sheriff.<sup>6</sup>

The trial court denied Jungerman’s request to continue the November 21, 2019 settlement hearing; however, it ordered that the hearing “shall be bifurcated” and “[t]he initial portion of the hearing shall be devoted to the issue of David Jungerman’s standing as trustee or co-trustee of the

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<sup>5</sup> Section 515.610.6(5) requires that any objections to a motion to authorize a “settlement of a controversy that might affect the distribution to creditors from the receivership” be filed at least ten days before the date of the proposed settlement authorization. The settling parties asserted that Jungerman’s objection to the settlement (which was filed in his capacity as trustee) was untimely because it was first raised in his motion to continue the hearing, filed on November 13, 2019, less than ten days before the settlement approval hearing. They further argued that Jungerman’s Objection to Claim, filed in his individual capacity on November 4, 2019 and pursuant to section 515.620, was not directed at the settlement, but rather at Plaintiffs’ Notice of Claim filed against the receivership estate pursuant to section 515.615. Thus, they asserted, Jungerman’s Objection to Claim was not a timely objection to the settlement in compliance with section 515.610.6(5).

<sup>6</sup> In his motion to continue the settlement hearing, Jungerman questioned the “authenticity and/or validity” of the document and advised that “[a] notice to depose the Notary Public whose seal is affixed to the Appointment has been filed and served on all parties this date.” To the extent Jungerman was suggesting the signatures and/or notarization on the document were not authentic or valid, he appeared to have abandoned such argument, as he did not present any evidence or further argument on this issue in any subsequent proceeding before the trial court (or this Court on appeal).

[Trust] and his potential legal interest in the proposed settlement.” “The second portion of the hearing, if necessary, shall be devoted to the settlement itself.”

The day before the hearing, Jungerman filed a “Legal Brief of Defendant David G. Jungerman as Alleged Trustee or Co-Trustee of the [Trust] Regarding Proposed Partial Settlement,” in which he asserted that Plaintiffs were attempting to utilize Trust assets, which they allege were fraudulently obtained by the Trust, to settle with the Trust, and that if approved by the trial court, “this partial settlement would prohibit the alleged fraudulently transferred assets from being restored to individual Defendant Jungerman and/or Defendant Baby-Tenda.” Jungerman argued “[t]hose assets then would be unavailable to Defendant Jungerman and/or Defendant Baby-Tenda for use in negotiating potential settlement or satisfaction of any enforceable judgment or any other lawful purpose.”

Jungerman also asserted in his brief that he was still trustee because the April 30, 2018 resignation and appointment of Buesing as successor trustee was “ultra vires and void ab initio.” He claimed that “[i]f the Trust, acting through Jungerman, engaged in a criminal or civil conspiracy [as alleged by Plaintiffs], then, Jungerman’s resignation and appointment of his daughter as Successor Trustee in order to further defraud creditors would be an action outside of his authority as Trustee and, therefore, void from its inception.” He argued, “Stated succinctly: If there was no conspiracy, the Trust has no liability. If there was a conspiracy, the appointment of Ms. Buesing as Trustee is invalid and she has no authority to settle with Trust assets.”

The trial court began the November 21, 2019 hearing by receiving evidence and hearing argument on the issue of Jungerman’s status as trustee. The evidence admitted included the Irrevocable Trust Agreement for the Jungerman Family Irrevocable Trust (“Trust Agreement”) and the testimony of Buesing. The evidence was that the Trust was created in 2003 when Buesing,

the grantor, transferred property (including real property, as the business of the Trust was to engage in farming operations) into the Trust. Buesing is the sole income beneficiary of the Trust. The Trust Agreement names Jungerman as trustee and Buesing as successor trustee, and provides that, upon Buesing's death, any assets held by the Trust shall be distributed to her children. Buesing has one daughter, who is the sole contingent beneficiary.

Buesing testified that in April 2018, she and Jungerman discussed Jungerman resigning as trustee. Jungerman asked Buesing to create a resignation document that he could execute so Buesing would become trustee, and he suggested they have it notarized at the Barton County Sheriff's Department.<sup>7</sup> Buesing "typed up" a document containing an "Appointment of Successor Trustee and Notice of Resignation of Trustee" and an "Acceptance of Appointment as Trustee." The document was executed by Jungerman and Buesing, and notarized by L. Mitchell Shaw, the Barton County Sheriff, on April 30, 2018.<sup>8</sup> In this document, Jungerman purported to appoint Buesing as successor trustee and resign as trustee, and Buesing "accept[ed] appointment as Trustee."

Buesing testified that she executed a document in her capacity as trustee "regarding the settlement of [this] litigation," and had "the full authority and consent of anybody that [she] need[ed] consent from to execute that document[.]"<sup>9</sup> Buesing stated that there was no objection from her daughter, the sole contingent beneficiary, to the settlement of this case.<sup>10</sup>

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<sup>7</sup> Jungerman was incarcerated at this time, and he was in Barton County on April 30, 2018 for court business on a different matter. His jail phone calls with Buesing relating to his resignation as trustee were recorded. Transcripts of the phone calls were admitted at the November 21, 2019 hearing.

<sup>8</sup> Sheriff Shaw testified at the hearing that he notarized these documents after he observed Jungerman and Buesing execute them at the Sheriff's office on that date.

<sup>9</sup> Article VI, Paragraph C(7) of the Trust Agreement provides authority for the trustee "to compromise and adjust any claims . . . which others may assert against the trust estate or the Trustee."

<sup>10</sup> Buesing testified that her daughter is represented by separate counsel.

After the parties presented argument and evidence,<sup>11</sup> the trial court ruled that it would “not continue with the settlement” that day, and instead would give the settling parties “an opportunity to fully brief [the] court on the issues that have been raised to standing[.]”

Thereafter, the settling parties and Jungerman submitted additional briefing on Jungerman’s standing to challenge the partial settlement agreement. Among other arguments raised in their briefing, the settling parties asserted that (1) Jungerman lacks standing to claim his breach of trust invalidates his resignation as trustee, (2) his resignation was valid and effective, (3) he retains no authority to settle claims asserted against the trust estate or trustee, and (4) Buesing is the trustee with full power and authority to enter into a settlement agreement with Plaintiffs on behalf of the Trust.<sup>12</sup>

On May 15, 2020, the trial court entered its Amended Order Overruling Defendant David Jungerman’s Objection to the Partial Settlement of the Settling Parties. The trial court made the following “Findings and Conclusions”:

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<sup>11</sup> At the hearing, the trial court took judicial notice of Jungerman’s answer to the original petition, which was titled “Answer of David Jungerman as Former Trustee of [the Trust]” and filed on November 2, 2018.

<sup>12</sup> The settling parties retained Daniel P. Wheeler, former Probate Commissioner of the Circuit Court of Jackson County, as an expert to review the Trust Agreement, transcript of the November 21, 2019 hearing, and other documents, and to provide detailed opinions in support of the four above-cited arguments. One such opinion was that Buesing was automatically named successor trustee by the plain language of the Trust Agreement when Jungerman resigned, subject only to her acceptance of this role; in other words, she became successor trustee not by Jungerman’s appointment of her to this role, but by virtue of Jungerman resigning. To support this opinion, Wheeler cited to the following provisions of the Trust Agreement:

“In the event DAVID JUNGERMAN should *fail or cease* to act as Trustee . . . for any reason, the following *shall* become the successor Trustees of such trust, to serve in the order named: the Grantor, first successor [i.e., Buesing, as she was the Grantor of the Trust] . . . . Art. V, ¶ A(1) (emphasis added).

“A person serving as Trustee shall be deemed to have *failed, declined or ceased* to serve as Trustee in the event of the . . . resignation . . . of that person.” Art. V, ¶ D (emphasis added).

Thus, Wheeler opined, requirements of the Trust Agreement relating to the appointment of a successor trustee did not apply to Buesing because she was not successor trustee by virtue of appointment.

5. The Court finds Defendant David Jungerman's April 30, 2018 resignation as Trustee of the Trust is valid and enforceable.

6. The Court finds Defendant David Jungerman, both individually and in his capacity as the alleged Trustee and/or co-Trustee of the Trust, lacks standing to challenge the Settling Parties' settlement. David Jungerman lacks standing to claim that his own breach of trust invalidates his resignation as Trustee of the Trust. By operation of the Trust, Defendant Angelia Buesing became successor Trustee once Defendant Jungerman resigned and she accepted the role as Trustee.

7. The Court finds that the Defendant David Jungerman retained no power or authority to approve or disapprove the Settling Parties' settlement agreement.

8. The Court finds Angelia Buesing is the Trustee of the Trust with full power and authority to enter the Settlement Agreement with Plaintiffs on behalf of the Trust. The Court further finds that since April 30, 2018, Angelia Buesing acted as sole Trustee of the Trust with the full power and authority to take reasonable steps to defend claims against the Trust, to settle any such claims, and to seek Court approval of any negotiated settlements.

9. The Court further finds that Defendant David Jungerman, individually, timely objected to Plaintiffs' Notice of Claim against him individually pursuant to R.S.Mo. § 515.620. Plaintiffs' claim against David Jungerman in any capacity will not be compromised or resolved by the Settling Parties' settlement.

10. The Court finds that Defendant David Jungerman, both individually and in his capacity as the alleged Trustee and/or co-Trustee of the Trust, did not timely object to the settlement pursuant to R.S.Mo. § 515.610 and have therefore, at a minimum, failed to preserve any objections as they pertain to the funding and distribution of the Settlement Agreement.

The trial court set a settlement approval hearing to occur on June 4, 2020.

On May 28, 2020, Jungerman, "in his alleged capacity as Trustee or Co-Trustee" of the Trust, filed with this Court a Petition for Preliminary and Permanent Writ of Mandamus, or in the Alternative, Writ of Prohibition, seeking relief from the "May 15, 2020, Order and the Notice of Hearing for June 4, 2020." On June 1, 2020, this Court issued its Order denying Jungerman's petition for writ.

Meanwhile, the trial court granted the general receiver leave to resign and appointed a new general receiver on May 30, 2020. The settlement hearing was continued to allow the new general

receiver “adequate time to familiarize himself with this matter in order to fulfill his obligations, duties in a prudent matter.”

The settlement approval hearing occurred on August 20, 2020, at which the trial court received evidence from the settling parties in support of their settlement agreement. Present were counsel for the settling parties and Jungerman, in both his individual capacity and as alleged trustee of the Trust.<sup>13</sup> The following day, the trial court entered its Judgment and Order Approving Confidential Partial Wrongful Death Settlement Pursuant to R.S.Mo. § 537.095 and § 515.610 and Approving Distributions to Minor Beneficiaries.<sup>14</sup> The trial court expressly incorporated into the Judgment its May 15, 2020 order overruling Jungerman’s objection to the settlement. The trial court also made an express determination that “[t]his Judgment and Order is final and there is no just reason for delay under Rule 74.01(b).”

Jungerman, in his capacity as alleged trustee, filed a notice of appeal. Plaintiffs moved to dismiss his appeal for lack of jurisdiction, asserting Jungerman was not aggrieved by the trial court’s judgment and thus lacked standing to bring this appeal. We took the motion with the case, and the parties submitted briefing on the merits of Jungerman’s points on appeal.

Jungerman asserts three claims of error in this appeal. In his first and second points, he argues the trial court erred in finding he “did not have standing to challenge the partial settlement.” In his first point, he argues that “he has a duty to take reasonable steps to defend claims against the Trust in that [he] remains a defendant in his capacity as trustee.” In his second point, he argues that he “remains trustee in that, based upon Plaintiff’s [sic] allegations of fraud, his resignation and Defendant Buesing’s appointment as trustee would not be valid and enforceable.” In his third

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<sup>13</sup> At the hearing, no objection was raised on behalf of Jungerman, in either capacity, to the settlement.

<sup>14</sup> Plaintiff Emily Riegel, Pickert’s wife and the mother of their two minor children, was appointed next friend for the children.

point, Jungerman asserts the trial court erred in finding he “did not timely object to the settlement and failed to preserve any objections as pertaining to funding and distribution because no specific objection was required by law in that § 537.095, R.S.Mo does not set forth any procedure for objection and the objection procedure outlined in § 515.610, R.S.Mo did not apply to action not initiated by receiver.”

### **Analysis**

We first address the threshold issue of Jungerman’s standing to bring this appeal. *See State ex rel. Koster v. ConocoPhillips Co.*, 493 S.W.3d 397, 399 (Mo. banc 2016) (“Before reaching the merits of [the appellant’s] appeal, this Court must first determine whether he is entitled to an appeal[.]”); *In re Lawson*, 496 S.W.3d 620, 622 (Mo. App. S.D. 2016) (“As a threshold issue, we must determine that the [appellants] have standing to bring this appeal. Otherwise, we must dismiss.” (internal citation omitted)).

“The right to appeal is purely statutory, and where a statute provides no right to appeal, none exists.” *Wooldridge v. Hull*, 604 S.W.3d 364, 367-68 (Mo. App. S.D. 2020). As stated above, Jungerman appeals in his capacity as alleged trustee. Trusts “are governed by chapter 456, the Missouri Uniform Trust Code (MUTC), which does not address appellate standing, so any right of appeal must lie in the general appeals statute, section 512.020.” *In re Knichel*, 347 S.W.3d 127, 130 (Mo. App. E.D. 2011). “Section 512.020 grants a right of appeal to ‘any party to a suit aggrieved by any judgment of any trial court in any civil cause.’” *Id.* “A party is ‘aggrieved’ when the judgment operates prejudicially and directly on his personal or property rights or interest.” *Id.* (quoting *Betty G. Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon*, 231 S.W.3d 158, 168 (Mo. App. W.D. 2007)). “A party who has not been aggrieved by a judgment has no standing to appeal.” *Betty G. Weldon Revocable Trust*, 231 S.W.3d at 168.

The trial court found that Jungerman’s 2018 resignation as trustee was valid, and thus he was no longer trustee with the authority to settle claims on behalf of the Trust. However, even assuming Jungerman were still the trustee (which we do not determine, because we do not reach the merits of his appeal), we would still find that he was not aggrieved by the trial court’s judgment, as the judgment did not operate prejudicially and directly on any personal or property rights or interest Jungerman would have held in his capacity as trustee. *See In re Knichel*, 347 S.W.3d at 130-32; *see also Wooldridge*, 604 S.W.3d at 371 (dismissing the trustee’s appeal for lack of standing where the trustee did “not allege or argue nor [was] there anything in the record to indicate that, in his role as trustee, any of his personal or property rights or interests [were] at stake”).

In *Knichel*, the trial court found that a co-trustee breached his fiduciary duty to the beneficiaries and removed him as co-trustee. 347 S.W.3d at 129. The appeal brought by the co-trustee was dismissed for lack of standing. *Id.* at 132. The Eastern District of this Court found that while a trustee “would have standing under section 512.020 to appeal on behalf of a beneficiary aggrieved by the lower court’s judgment,” it does not follow that a trustee has “standing to advance his personal interests unrelated to those of his protectees.”<sup>15</sup> *Id.* at 130. Noting that “none of the beneficiaries” appealed the trial court’s judgment, the Court found that the co-trustee “was not representing their interests,” as he was not “seek[ing] a property right in or claim against the trust on their behalf.” *Id.* “Rather,” the Court found, “the substance of [the co-trustee’s] challenge . . . advances his own interests,” namely in his status as trustee and trustee fees, and neither “equate[s] to a pecuniary interest in [the] trust assets.” *Id.* at 130-31 (finding the co-trustee’s status as trustee “was not his personal right but rather a legal duty, of which the [trial court] discharged him” and

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<sup>15</sup> “A trustee shall administer the trust solely in the interests of the beneficiaries.” § 456.8-802.1.

his “right to collect fees was not a beneficial interest in the underlying trust but merely compensation allowed by law”).

Similar to the co-trustee in *Knichel*, in challenging the trial court’s judgment in his capacity as alleged trustee, Jungerman seeks to advance his own personal interests unrelated to those of his “protectees”—the beneficiaries of the Trust. Jungerman asserts that he “is an aggrieved party under § 512.020 R.S.Mo” because the trial court “made specific orders directly impacting [his] position in this suit[.]” This vague claim echoes the co-trustee’s basis for standing in *Knichel*—which was ultimately rejected—that he was aggrieved by the trial court’s judgment because it implicated his status as trustee.

Jungerman also asserts that “unlike in *Knichel*, he is directly accused of conspiring with other defendants to fraudulently transfer personal assets into [the] Trust, allegedly for Defendant Jungerman’s benefit. As a result, he has a pecuniary and/or personal interest in the assets of the Trust.” Jungerman does not explain, nor do we comprehend, how he (as trustee) would have obtained a pecuniary or personal interest in the assets of the Trust “[a]s a result” of Plaintiffs’ allegations that he fraudulently transferred assets into the Trust.<sup>16</sup> Furthermore, any assets that were fraudulently transferred into the Trust would not be returned to the party that committed the fraud.<sup>17</sup> See *Taylor v. Clark*, 140 S.W.3d 242, 256 (Mo. App. S.D. 2004) (“[F]raudulent conveyances are generally valid as against a grantor” and “[i]n such cases, a party who makes a

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<sup>16</sup> Jungerman made a similar—although more transparent—argument to the trial court, when he asserted that if approved by the trial court, “this partial settlement would prohibit the alleged fraudulently transferred assets from being restored to individual Defendant Jungerman and/or Defendant Baby-Tenda” and “[t]hose assets then would be unavailable to Defendant Jungerman and/or Defendant Baby-Tenda for use in negotiating potential settlement or satisfaction of any enforceable judgment or any lawful purpose.”

<sup>17</sup> If the assets were not fraudulently transferred into the Trust, there would still be no basis for Jungerman, in his capacity as trustee, to assert a beneficial interest in those assets held by the Trust.

conveyance for the purpose of hindering, delaying, or defrauding a creditor, will ordinarily be left where the court finds him.”).

There is simply nothing in the record before us demonstrating that Jungerman, even assuming he remained trustee of the Trust, has a personal or property right that was prejudicially and directly affected by the trial court’s judgment denying him the opportunity to frustrate the settlement. Jungerman is not a beneficiary of the Trust. He, as trustee, would have no beneficial right or interest in the Trust property. Jungerman cannot claim—nor has he attempted to claim—that he seeks to challenge the trial court’s judgment on behalf of the beneficiaries, as they have consented to and are in favor of the settlement, and Buesing, the sole income beneficiary, has actively opposed Jungerman’s challenges to the settlement. Nor has he attempted to claim that his motivation in challenging the settlement is to enforce a term, condition, or provision of the Trust Agreement that would be violated by the settlement. Finally, Jungerman, in his claimed capacity as trustee, has not incurred any damages, fees, or costs by operation of the trial court’s judgment. *Cf. In re T.R. Potter, Jr. Exempt Trust*, 593 S.W.3d 556, 562 (Mo. App. E.D. 2019) (trustee had standing to appeal because—unlike the co-trustee in *Knichel*—the trustee was subject to a money judgment for attorney’s fees and expenses).<sup>18</sup> In short, even if Jungerman were found to have retained the position of trustee, he would not be an aggrieved party with standing to appeal.

Because Jungerman was not aggrieved by the trial court’s judgment, he lacks standing to bring this appeal and we are required to dismiss it. *See In re Knichel*, 347 S.W.3d at 132.

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<sup>18</sup> The Court also found in *T.R. Potter, Jr. Exempt Trust* that, while the trustee did not “have a personal interest in the trust, trustees are permitted as fiduciaries to pursue claims on behalf of beneficiaries who are aggrieved by a judgment of a lower court,” and the trustee argued that the “contingent remainder beneficiaries of the trust assets [were] aggrieved by the probate court’s interpretation of the trust.” 593 S.W.3d at 562. Here, as previously explained, the sole contingent remainder beneficiary under the Trust Agreement (Buesing’s daughter) has consented to the settlement and Jungerman has not purported to bring this appeal on her behalf. Thus, for this reason, too, we find *T.R. Potter, Jr. Exempt Trust* distinguishable.

## Conclusion

Plaintiffs' motion to dismiss the appeal is granted.<sup>19</sup> This appeal is dismissed.



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EDWARD R. ARDINI, JR., JUDGE

All concur.

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<sup>19</sup> Plaintiffs also sought dismissal of Jungerman's appeal on the ground that he "already sought—and was denied—appellate review of this issue by way of extraordinary writ," which Plaintiffs assert was the sole avenue by which Jungerman could challenge the trial court's ruling. For this proposition, Plaintiffs rely exclusively on *Stichler v. Jesiolowski*, 547 S.W.3d 789 (Mo. App. W.D. 2018), however we find *Stichler* distinguishable. The issue in *Stichler* was who was the proper plaintiff in a wrongful death action involving an unborn child. 547 S.W.3d at 791. The trial court found Stichler (the child's grandfather) was not the proper plaintiff and dismissed his petition. *Id.* at 792. Stichler appealed, but we determined he lacked standing to bring the appeal, finding he "was never appointed as *plaintiff ad litem*," therefore he was "attempting to appeal the judgment of a case to which he was never a proper party." *Id.* at 793-95. We held that "[t]o the extent Stichler wished for this Court to review the decision of the trial court not to appoint him as *plaintiff ad litem*, his remedy was one of writ." *Id.* at 794. Here, Plaintiffs named Jungerman as a defendant in his capacity as trustee. Although the trial court ultimately determined he resigned as trustee in 2018, we cannot say that Jungerman, as trustee, was never a named party to this case.