

**Affirmed and Memorandum Opinion filed October 25, 2022.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-21-00096-CV**

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**MOODY NATIONAL BANK, Appellant**

**V.**

**LINDA MOODY, Appellee**

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**On Appeal from the Probate Court  
Galveston County, Texas  
Trial Court Cause No. PR-0075340-B**

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**MEMORANDUM OPINION**

In this interlocutory appeal, appellant Moody National Bank (“MNB”) appeals an order appointing a receiver as requested by appellee Linda Moody (“Linda”). *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(1) (authorizing interlocutory appeal of an order appointing a receiver). In four issues, MNB argues the trial court erred when it (1) appointed a receiver without the joinder of all beneficiaries of the relevant trusts; (2) determined that MNB committed an actual

or potential breach of trust;<sup>1</sup> (3) appointed a receiver in the absence of any danger of loss, removal, or material injury to the trust property; and (4) the broad powers granted to the receiver impermissibly infringed upon MNB’s discretionary authority as trustee. We affirm.

## I. BACKGROUND

This dispute concerns the estate plan of the late William L. Moody (“Bill”), who died on July 14, 2014, at age eighty-nine. *See Moody v. Moody*, 613 S.W.3d 707, 711 (Tex. App.—Houston [14th Dist.] 2020, pet. filed). Bill’s estate plan consisted of a will, a trust agreement, and a marital property agreement (“MPA”), all executed on April 16, 2014.

Bill’s estate plan provided for the creation and funding of multiple trusts for the benefit of Bill, his wife Darlene Moody (“Darlene”), and his four children: Linda, William Moody (“William”), Janice Moody (“Janice”), and Elizabeth Moody (“Elizabeth”). Bill’s estate plan also appointed MNB as the independent executor of his estate and as trustee of the trusts created through his estate plan. *See id.* Bill’s estate plan created a living trust, which terminated on Bill’s death. The corpus of this living trust was then used to fund two marital trusts (an exempt trust and non-exempt trust) and a by-pass trust. Darlene was the income beneficiary of these trusts, with the trusts terminating on Darlene’s death. Pursuant to Bill’s trust agreement, the corpus of the bypass trust, exempt marital trust, and non-exempt marital trust were to be used to establish and fund three new trusts for

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<sup>1</sup> Specifically, MNB argues that the trial court erred in appointing a receiver based on the allegations that MNB committed breaches of trust when it (1) sold a piece of real property under-value, (2) engaged in self-dealing by retaining a law firm whose partner was a member of MNB’s board, (3) defended and appealed a marital property agreement, and (4) untimely funded the relevant trusts.

the benefit of Bill’s then living children: Linda, Janice, and Elizabeth.<sup>2</sup>

The MPA divided the majority of Bill and Darlene’s separate and community property among Bill and Darlene. One of the largest assets of Bill’s estate was Moody Ranches, Inc. (“MRI”), which Bill incorporated in 1959,<sup>3</sup> and through which Bill owned a ranch in west Texas consisting of approximately 48,670 acres.<sup>4</sup> Linda argues that MRI was Bill’s separate property. Pursuant to the terms of the MPA, following Bill’s death, MNB treated Darlene as owning fifty percent of MRI as her separate property, while the other fifty percent was in the non-exempt marital trust. Linda was unaware of the execution and existence of the MPA until approximately two years after Bill’s death, when, after a request by her attorney, MNB provided the MPA on July 20, 2016, to Linda’s counsel.<sup>5</sup>

On November 9, 2016, Linda filed a separate suit, challenging the validity of the MPA by seeking a declaration and an injunction alleging Bill lacked the requisite mental capacity to execute the MPA, and that the MPA was void and unenforceable.<sup>6</sup> *See id.* at 712. At the conclusion of a trial the jury found that Bill lacked the requisite mental capacity to sign the MPA, Darlene breached a fiduciary duty to Bill in connection with creating the MPA, Darlene committed fraud regarding Bill’s separate property rights, and the MPA was unenforceable. *Id.* The trial court awarded fees, costs, and expenses of \$633,817.94 to Linda and

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<sup>2</sup> Bill’s fourth child William is deceased.

<sup>3</sup> Bill and Darlene married in 1961.

<sup>4</sup> MNB and Darlene sold MRI in 2016 for \$37,032,170.10.

<sup>5</sup> A letter from Linda’s counsel addressed to MNB, dated October 13, 2015, states: “MNB shall confirm that it views all of the personal effects covered under Section 5.2 of the Trust as community property pursuant to MNB’s interpretation of a marital agreement between [Bill and Darlene], and MNB shall provide [Linda] with a copy of such agreement . . . .”

<sup>6</sup> Linda’s 2016 suit was filed in trial court case number PR-0076077 in the probate court of Galveston County, Texas. Linda’s 2020 suit—the suit giving rise to this appeal—was filed in trial court case number PR-0075340-B in the probate court of Galveston County.

\$750,000.00 to Darlene and made each award payable from the W.L. Moody, IV living trust. *Id.* MNB appealed the judgment, asserting in relevant part that Linda lacked standing to challenge the marital property agreement. *Id.* A panel of this court concluded that Linda lacked standing to challenge the MPA, reversed the trial court’s judgment for lack of subject matter jurisdiction over Linda’s suit, and rendered judgment dismissing Linda’s suit for lack of jurisdiction. *Id.* at 722.<sup>7</sup>

In November 2018, Darlene died. Although the trusts held nearly \$22,000,000.00 in assets, MNB did not fund the children’s trusts. On February 27, 2020, Linda filed the underlying suit against MNB in its corporate capacity, asserting claims for breach of fiduciary duty, misapplication of fiduciary property, negligence, and gross negligence, and against MNB in its capacity as trustee, seeking protection of the fiduciary assets.<sup>8</sup> Linda’s petition complained, in relevant part, that “MNB has withheld information from [Linda] and acted without competence. MNB’s actions are, at a minimum, breaches of its duties of loyalty and disclosure.” Furthermore, Linda alleged that:

MNB knew about the [MPA], knew [Bill] suffered from dementia during the requisite time period, knew the [MPA] purported to drastically reduce [Bills] estate, and ultimately the [children’s] Testamentary Trust[s] by more than \$25,000,000.00. Yet, MNB intentionally failed to disclose the existence of the [MPA] or its terms to [Linda]. Instead, MNB chose to protect Darlene’s actions to the detriment of the other beneficiaries of the Testamentary Trusts, including [Linda]. This is a breach of fiduciary duty.

Then, on August 28, 2020, Linda filed a “Motion for Relief Under Texas Trust Code and Alternative Application for Receivership,” seeking the

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<sup>7</sup> Linda filed a petition for review with the Texas Supreme Court that remains pending.

<sup>8</sup> Linda’s second supplement to her petition states that MNB “has asserted that the Trustee[, MNB,] is a necessary party only and thus [Linda] joins the Trustee to avoid any arguments regarding joinder in the future” and that Linda “makes no claims for money damages against the Trustee and only seeks protection of the fiduciary assets.”

appointment of a receiver under (1) the Texas Property Code and (2) the Texas Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. § 64.001(a); Tex. Prop. Code Ann. § 114.008(a)(3). The motion asked the court to appoint a receiver “over the Living Trust and Testamentary Trusts” and complained, in relevant part, of MNB’s failure to disclose and investigate the MPA and failure to fund Linda’s trust. Approximately twenty-two months after Darlene’s death, and seven months after Linda filed suit, MNB partially funded the children’s trusts in September of 2020.

MNB filed a response to Linda’s motion for a receiver and argued that Linda failed to join the other beneficiaries of the living trust, the marital trusts, and the bypass trust: Darlene’s estate, because of Darlene’s income interest in the marital trust and bypass trust, and Elizabeth and Janice, as beneficiaries of the trusts funded from the marital trusts and bypass trust following Darlene’s death. In October and November of 2020, the trial court held an evidentiary hearing on Linda’s motion to appoint a receiver. The trial court heard testimony from Linda; Linda’s son Edwin Meredith Sykes, IV (“Sykes”); and two representatives of MNB, Wayne Madsen (“Madsen”) and John Smith (“Smith”).

Smith is MNB’s executive vice president and senior business development officer. In relevant part, Smith testified that MNB relied on the MPA to decide that MRI was Bill and Darlene’s community property. Smith further testified that MNB did not disclose the MPA to Linda until two years after Bill’s death.

On January 26, 2021, the trial court signed an order granting Linda’s motion to appoint a receiver, finding in relevant part that “[d]uring the hearing a representative of Moody National Bank testified that the Marital Agreement was not voluntarily provided to Linda, instead it was only provided after requested by Linda’s counsel.” The trial court further found that, pursuant to Bill’s trust

agreement, the marital trusts and the bypass trust terminated upon Darlene's death, and that MNB "allegedly" failed to fund the trusts for approximately twenty-two months. The order further provided that the trial court based its decision to appoint a receiver on the following:

26. There is risk of further harm, injury, damage, and/or loss to the property or funds of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust, by reason of the alleged failure of Moody National Bank to properly collect and manage the property or funds that belong to such trusts, specifically including, but not limited to, Moody National Bank's continued efforts to enforce the Marital Agreement.

27. Moody National Bank has breached and/or might breach fiduciary duties resulting in material financial loss to the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust.

28. The Court's grant of temporary relief is based on breaches of trust that have occurred and/or might occur with respect to the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust.

29. Moody National Bank's actual and/or potential breaches of fiduciary duty and their violations of the terms of the Trust Agreement justify interim relief pursuant to Section 114.008 of the Texas Property Code and/or Section 64.001 of the Texas Civil Practice & Remedies Code.

The trial court's order appointed a receiver based on the Property Code "and/or" the Texas Civil Practice and Remedies Code. The order further specified the powers and authority of the receiver. This interlocutory appeal followed. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(1).

## **II. NECESSARY PARTIES**

In its first issue, MNB argues the trial court erred in proceeding without necessary parties—Darlene's estate and Janice and Elizabeth. MNB argues these beneficiaries are necessary parties under the Texas Rules of Civil Procedure. *See*

Tex. R. Civ. P. 39(a).

**A. STANDARD OF REVIEW**

We review the trial court’s rulings on issues concerning joinder of parties for an abuse of discretion. *Bennett v. Grant*, 525 S.W.3d 642, 653 (Tex. 2017); *Crawford v. XTO Energy, Inc.*, 509 S.W.3d 906, 910–11 (Tex. 2017). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner, without reference to guiding rules or principles. *Crawford*, 509 S.W.3d at 910–11.

**B. APPLICABLE LAW**

Texas Rule of Civil Procedure 39(a) provides for joinder of indispensable parties in mandatory terms, but no precise formula exists for determining whether a party falls within its provisions. *Conrad Constr. Co. v. Freedmen’s Town Pres. Coal.*, 491 S.W.3d 12, 16 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *see* Tex. R. Civ. P. 39(a).

A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been joined, the court shall order that he be made a party.

Tex. R. Civ. P. 39(a). Additionally, the Texas Property Code provides who is a necessary party for purposes of an action brought seeking the appointment of a receiver pursuant to § 115.001.<sup>9</sup> *See* Tex. Prop. Code Ann. §§ 115.001, 115.011.

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<sup>9</sup> Texas Property Code § 115.001(a) provides:

Except as provided by Subsection (d) of this section, a district court has original

(a) Any interested person may bring an action under Section 115.001 of this Act.

(b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:

(1) a beneficiary of the trust on whose act or obligation the action is predicated;

(2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid;

(3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and

(4) the trustee, if a trustee is serving at the time the action is filed.

(c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.

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and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:

(1) construe a trust instrument;

(2) determine the law applicable to a trust instrument;

(3) appoint or remove a trustee;

(4) determine the powers, responsibilities, duties, and liability of a trustee;

(5) ascertain beneficiaries;

(6) make determinations of fact affecting the administration, distribution, or duration of a trust;

(7) determine a question arising in the administration or distribution of a trust;

(8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

(9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and

(10) surcharge a trustee.

Tex. Prop. Code Ann. § 115.001(a).



(d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration or on a contract executed by the trustee.

Tex. Prop. Code Ann. § 115.011.

The general rule in suits affecting trusts is that a trust's beneficiaries are a necessary party.<sup>10</sup> *Slay v. Burnett Tr.*, 187 S.W.2d 377, 382 (Tex. 1945); *Citizens State Bank of Dickinson v. Bowles*, 663 S.W.2d 845, 848 (Tex. App.—Houston [14th Dist.] 1983, writ dismissed); *see also* Tex. Prop. Code Ann. § 115.011(b)(2). However, in the absence of a conflict of interest or a pleading that they are inadequately represented, beneficiaries who are not included in another beneficiary's suit are not considered necessary parties to the case. *See* Tex. Prop. Code Ann. § 115.011(b)(2); *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 476–77 (Tex. 1979); *Mason v. Mason*, 366 S.W.2d 552, 554 (Tex. 1963); *Starcrest Tr. v. Berry*, 926 S.W.2d 343, 355 (Tex. App.—Austin 1996, no writ); *Hedley Feedlot v. Weatherly Tr.*, 855 S.W.2d 826, 833 (Tex. App.—Amarillo 1993, writ denied).

### C. ANALYSIS

Here, Linda filed suit against MNB in its corporate and fiduciary capacity and asserted claims for breach of fiduciary duty, misapplication of fiduciary property, negligence, and gross negligence. Linda also filed an application for a receiver under Texas Property Code § 115.011 and Texas Civil Practice and Remedies Code § 64.001(a). *See* Tex. Civ. Prac. & Rem. Code Ann. § 64.001(a);

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<sup>10</sup> Section 111.004(2) of the Property Code defines “beneficiary” as “a person for whose benefit property is held in trust, regardless of the nature of the interest.” Tex. Prop. Code Ann. § 111.004(2). Section 116.002(2) provides that “beneficiary” includes both “an income beneficiary and a remainder beneficiary.” *Id.* § 116.002(2). Section 116.002(11) defines “remainder beneficiary” as “a person entitled to receive principal when an income interest ends.” *Id.* § 116.002(11).

Tex. Prop. Code Ann. § 115.011. MNB argued that Linda’s suit did not include Darlene’s estate, Janice, and Elizabeth, which MNB argued were necessary parties. The trial court appointed a receiver to Bill’s living trust, the marital trusts, and the bypass trust under the Property Code “and/or” the Civil Practice and Remedies Code.

However, MNB did not argue at the trial court, nor does it argue on appeal, that a conflict of interest exists between Linda and the other beneficiaries. *See* Tex. R. App. P. 33.1. Therefore, we cannot conclude that the trial court abused its discretion when it determined that Janice, Elizabeth, and Darlene’s estate were not necessary parties. *See Transamerican Leasing*, 586 S.W.2d at 476–77; *Mason*, 366 S.W.2d at 554; *Starcrest Tr.*, 926 S.W.2d at 355; *Hedley Feedlot*, 855 S.W.2d at 833. Furthermore, as to Darlene’s estate, while Darlene was the income beneficiary of the marital trusts and the bypass trust while she was alive, she did not have any interest in the corpus, and her income interest ended when she died. Neither the appointment of a receiver by the trial court nor Linda’s underlying claims are adverse to Darlene’s estate nor did they negatively impact the income Darlene received from the trusts while she was alive. Accordingly, we conclude that there was no conflict of interest between Darlene or Darlene’s estate and Linda as to the underlying lawsuit.

MNB argues that Darlene’s estate is a necessary party because “her estate would be entitled to further distribution pending the final outcome of the MPA Suit, and if necessary, a final marital property characterization of the universe of marital assets.” MNB also argues in its reply brief that Darlene’s estate is a necessary party because Linda “seeks to change the pot of assets in the Marital Trusts by adding assets, and if the assets of the Marital Trusts increase, the Marital Trusts’ income would also increase, and Darlene’s Estate has a beneficial interest

in that income.” Contrary to MNB’s argument, Linda’s underlying suit does not seek a reallocation of Bill’s property or the trusts’ assets; instead, it seeks to hold MNB liable for alleged breaches of fiduciary duty, misapplication of fiduciary property, negligence, and gross negligence and to secure the trusts’ assets. None of these causes of actions would change the amount of assets in the marital trusts or the bypass trust, unlike the prior litigation initiated by Linda which sought to invalidate the MPA. Second, even if the assets and Darlene’s income benefit increased, this did not create a conflict between Linda and Darlene’s estate because it would only increase Darlene’s income benefit. MNB also argues that Darlene’s Estate is a necessary party because personal property is at issue in this litigation. But the underlying lawsuit does not seek to invalidate the MPA and does not seek reallocation of any personal property or any other property connected to any of the trusts. Accordingly, we reject these arguments.

We overrule MNB’s first issue.

### **III. SUFFICIENCY OF THE EVIDENCE**

In its second issue, MNB argues that there is no evidence that a breach of trust has occurred or might occur.

#### **A. STANDARD OF REVIEW**

A trial court’s findings of fact are reviewable for legal sufficiency by the same standard applied in reviewing the evidence supporting a jury’s answer. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994). If an appellant attacks the legal sufficiency of an adverse finding on an issue on which he did not have the burden of proof, then the appellant must demonstrate on appeal that there is no evidence to support the adverse finding. *Univ. Gen. Hosp., LP v. Prexus Health Consultants, LLC*, 403 S.W.3d 547, 550–51 (Tex. App.—Houston [14th Dist.]

2013, no pet.); *Price Pfister, Inc. v. Moore & Kimmey, Inc.*, 48 S.W.3d 341, 347 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

In conducting a legal sufficiency review, we must consider the evidence in the light most favorable to the appealed finding and indulge every reasonable inference that supports it. *2900 Smith, Ltd. v. Constellation NewEnergy, Inc.*, 301 S.W.3d 741, 745 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 821–22 (Tex.2005)). The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the decision under review. *Id.* This court must credit favorable evidence if a reasonable trier of fact could, and disregard contrary evidence unless a reasonable trier of fact could not. *Id.* The trier of fact is the sole judge of the witnesses’ credibility and the weight to be given their testimony. *Id.*

This court may sustain a legal sufficiency (or no evidence) issue only if the record reveals one of the following: (1) the complete absence of evidence of a vital fact; (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a scintilla; or (4) the evidence established conclusively the opposite of the vital fact. *Id.* at 745–46. Evidence that is so weak as to do no more than create a mere surmise or suspicion that the fact exists is less than a scintilla. *Kellmann v. Workstation Integrations, Inc.*, 332 S.W.3d 679, 684 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

## **B. APPLICABLE LAW**

There are two statutes Linda asserted in her pleadings supporting her request for the appointment of a receiver upon which the trial court relied in ordering the appointment of the receiver: Texas Civil Practice and Remedies Code § 64.001 and Texas Property Code § 114.008. Because it is dispositive, we address the

appointment of the receiver pursuant to the Texas Property Code only.

A trial court may appoint a receiver to take possession of trust property and administer the trust to remedy a breach of trust. *See* Tex. Prop. Code Ann. § 114.008(a)(5).<sup>11</sup> A breach of trust occurs when a trustee breaches his statutory or common law fiduciary duties. *See id.* §§ 113.051, 114.001(b), (c); *see also Brault v. Bigham*, 493 S.W.2d 576, 578–79 (Tex. App.—Waco 1973, writ ref’d n.r.e.) (“A trustee commits a breach of trust not only where he violates a duty in bad faith, or intentionally although in good faith, or negligently, but, also where he violates a duty because of a mistake.”).

“High fiduciary standards are imposed upon trustees, who must handle trust property solely for the beneficiaries’ benefit.” *Ditta v. Conte*, 298 S.W.3d 187, 191 (Tex. 2009); *see Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 674 (Tex. 1998); *see also* Tex. Prop. Code Ann. §§ 113.051–115.059. A trustee owes an unwavering duty of good faith, fair dealing, loyalty, and fidelity to the trust’s beneficiaries when managing the affairs of a trust and its corpus. *See* Tex. Prop. Code Ann. §§ 113.051–.058; *Harrison v. Reiner*, 607 S.W.3d 450, 462 (Tex. App.—Houston [14th Dist.] 2020, pet. denied); *Ludlow v. DeBerry*, 959 S.W.2d 265, 279 (Tex. App.—Houston [14th Dist.] 1997, no writ). Further, a trustee has a duty to fully disclose all material facts known to the trustee which might affect the beneficiaries’ rights. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (citing *Montgomery v. Kennedy*, 669 S.W.2d 309, 313 (Tex. 1984)). “This duty [to disclose] exists independently of the rules of discovery, applying even if no

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<sup>11</sup> A trial court may also appoint a receiver under Texas Civil Practice and Remedies Code § 64.001, which provides that a receiver may be appointed, in relevant part, “in an action between partners or others jointly owning or interested in any property or fund . . . .” Tex. Civ. Prac. & Rem. Code Ann. § 64.001(a)(3). Under this statute, for the appointment of a receiver, “[t]he party must have a probable interest or right to the property or fund, and the property or fund must be in danger of being lost, removed, or materially injured.” *Id.* § 64.001(b).

litigious dispute exists between the trustee and beneficiaries.” *Id.*

### C. ANALYSIS

Here, the trial court’s order provided that “[t]he Court’s grant of temporary relief is based on breaches of trust that have occurred and/or might occur with respect to the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust.” Under the section titled “Basis for Interim Relief,” the court’s order stated that “[d]uring the hearing a representative of Moody National Bank testified that the Marital Agreement was not voluntarily provided to Linda, instead it was only provided after requested by Linda’s counsel.” On appeal, MNB does not challenge this finding as the basis for the trial court’s finding that MNB committed a breach of trust.

It is undisputed that MNB did not disclose the existence of the MPA to Linda until Linda’s counsel requested it two years after Bill’s death, and that the MPA materially affected the assets that Linda received through Bill’s estate plan, because the MPA reduced Bill’s assets that were to be placed into the trusts by designating assets as Darlene’s separate property. This evidence, viewed in the light most favorable to the trial court’s ruling, supports the trial court’s finding that MNB committed a breach of trust by failing to disclose the existence of the MPA to Linda. Thus, we conclude that there was legally sufficient evidence that MNB committed a breach of trust. *See Huie*, 922 S.W.2d at 923. Accordingly, we cannot conclude that the trial court abused its discretion when it appointed a receiver. *See* Tex. Prop. Code Ann. § 114.008(a)(5) (providing that a trial court may appoint a receiver to take possession of trust property and administer the trust to remedy a breach of trust).<sup>12</sup>

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<sup>12</sup> In its third issue, MNB argues there is no evidence of any danger of loss, removal, or material injury to the trust property. Because we have determined that the trial court did not

We overrule MNB’s second issue.

#### IV. RECEIVER’S POWERS

In its fourth issue, MNB argues that the broad powers granted to the receiver by the trial court are “overbroad” and impermissibly infringe upon MNB’s discretionary authority as trustee.

##### A. STANDARD OF REVIEW

We review the powers granted to a receiver by the trial court for an abuse of discretion. *See Perry v. Perry*, 512 S.W.3d 523, 526 (Tex. App.—Houston [1st Dist.] 2016, no pet.); *Benfield v. State*, 266 S.W.3d 25, 31 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *see also In re Doe*, 19 S.W.3d at 253 (“The abuse of discretion standard applies when a trial court has discretion either to grant or deny relief based on its factual determinations.”). A trial court abuses its discretion if it acts arbitrarily or unreasonably or without reference to guiding rules or principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam).

##### B. APPLICABLE LAW

As noted above, a trial court may appoint a receiver to take possession of trust property and administer the trust to remedy a breach of trust. *See Tex. Prop. Code Ann. § 114.008(a)(5)*. To remedy a breach of trust that has occurred or might occur, the court may:

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abuse its discretion when it appointed a receiver pursuant to the Texas Property Code, we need not address its third issue challenging the other basis for the trial court’s receivership order—Texas Civil Practice and Remedies Code § 64.001. *See Tex. R. App. P. 47.1*; *see also Tex. Civ. Prac. & Rem. Code Ann. § 64.001(a)(3)*; *Myrtle Consulting Grp., LLC v. Resulting Partners, Inc.*, No. 01-20-00095-CV, 2021 WL 2231248, at \*10 n. 6 (Tex. App.—Houston [1st Dist.] June 3, 2021, no pet.) (mem. op.) (“[B]ecause we hold that [appellee] established each element entitling it to a common-law temporary injunction, an independent basis that supports the trial court’s issuance of the temporary injunction, we need not address whether the trial court’s injunction order is also proper as an anti-suit injunction.”). MNB’s third issue is overruled.

- (1) compel the trustee to perform the trustee's duty or duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust, including compelling the trustee to pay money or to restore property;
- (4) order a trustee to account;
- (5) appoint a receiver to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided under Section 113.082;
- (8) reduce or deny compensation to the trustee;
- (9) subject to Subsection (b), void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property of which the trustee wrongfully disposed and recover the property or the proceeds from the property; or
- (10) order any other appropriate relief.

Tex. Prop. Code Ann. § 114.008(a).

### C. ANALYSIS

Here, the trial court's order provides:

7. Receiver is ordered to well and faithfully perform the duties of Receiver's office to timely account for all monies, securities, and other properties which may come into Receiver's hands . . . and to abide by and perform all duties set forth in this Order and required by law.

8. As of the date of the entry of this Order, is, subject to the control of this Court, also specifically directed and authorized to perform the following acts and duties:

- (a) Immediately collect, marshal, and take custody, control, and possession of all assets traceable to the Receivership Estate, in whole or in part, wherever situated, including all assets of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and the Non-Exempt Marital Trust, including the income and profit from such assets, to insure such assets against hazards and risks, and attend to the maintenance of



such assets.

(b) Exercise all rights, powers, and duties of the Trustee of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and the Non-Exempt Marital Trust as set out in the Trust Agreement, along with all powers granted to trustees under the Texas Property Code.

(c) Manage and direct the business and financial affairs of the Receivership Estate and any entity owned or controlled by the Receivership Estate.

(d) Collect, receive, and take possession of all goods, chattel, rights, credits, monies, effects, lands, leases, books and records, work papers, records of account, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions (provided Moody National Bank shall continue to hold the assets currently in its possession as described in Paragraph 5 above), and other papers of individuals, partnerships, or corporations whose interests are now directly or indirectly held by or under the direction, possession, custody, or control of the Receivership Estate.

(e) Upon application and approval from the Court, retain or remove, as the Receiver deems necessary or advisable, any officer, director, independent contractor, employee, or agent of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust (including retained professionals).

(f) Obtain, by presentation of this Order, all documents, books, records, accounts, deposits, testimony, or other information within the custody or control of any person or entity, sufficient to identify accounts, properties, assets, liabilities, and causes of action of the Receivership Estate.

(g) Upon application and future order of this Court, pay, compromise, or settle all debts of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust, including but not limited to taxes, penalties, and interest owed with respect to property of the respective trusts.

(h) Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate. Specifically including, but not limited to, consulting with Moody National Bank before each and every transaction taken with respect to assets of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust held by Moody National Bank.

(i) Upon application and approval from this Court, the Receiver may liquidate, transfer, restructure or otherwise modify the assets held by the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust.

(j) Pay the Receiver's reasonable attorneys' fees from the Receivership Estate upon application and future order of this Court.

(k) Distribute the assets from the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust per the terms of the Trust Agreement upon application and future order of this Court.

(l) Enter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of such managers, agents, custodians, consultants, investigators, appraisers, attorneys, and accountants as the Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Estate upon application and future order of this Court.

(m) The Receiver shall have the authority to investigate the previous business transactions of Moody National Bank during its tenure as trustee of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and/or the Non-Exempt Marital Trust.

(n) The Receiver shall further have the authority to prosecute, defend, and/or settle all legal proceedings (including lawsuits and arbitrations) brought by or against the property, or residue, of the Living Trust, the Bypass Trust, the Exempt Marital Trust, and for the Non-Exempt Marital Trust,

including but not limited to lawsuits for the condemnation of real property in which the respective trust has an interest, and take all steps necessary or appropriate for the prosecution, defense, or settlement of such legal proceedings subject to application and future order of this Court. The Receiver shall have no right or obligation to defend Moody National Bank in any capacity, and Moody National Bank shall at all times retain the right to independently defend itself and hire counsel.

MNB argues that the trial court was required to make a finding of fraud, misconduct, or clear abuse of discretion to interfere with MNB's discretionary powers as trustee. However, the cases MNB cites in support of this argument do not concern the appointment of a receiver pursuant to the Property Code or any prior analogous statute. *See Di Portanova v. Monroe*, 229 S.W.3d 324, 329–30 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (concluding that trial court erred when it granted declaratory relief against trustee regarding trustee's power and authority to make a distribution); *Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 271, 284 (Tex. App.—Houston 1966, writ ref'd n.r.e) (“This is a suit brought by William Marsh Rice University, and the Trustees thereof, for the purpose of securing an interpretation of the organic instruments by which the institution was created that the Trustees, in the exercise of their discretion, are free to accept as students qualified applicants without regard to color and to charge tuition to those able to pay the same.”); *Brown v. Scherck*, 393 S.W.2d 172, 173 (Tex. App.—Corpus Christi–Edinburg 1965, no writ) (“This suit was instituted by appellants . . . against appellees as trustees of a testamentary trust created by the will of their father, and was brought under the Uniform Declaratory Judgment Act . . . , and pursuant to the provisions of the Texas Trust Act . . . , for construction of said will and declaratory judgment . . .”). Further, the Property Code contains no such requirement for the appointment of a receiver to a trust, and MNB does not argue that the powers granted to the receiver under the order cannot

be affirmed based on § 114.008(a). *See id.* Accordingly, we reject this argument and MNB’s reliance on these authorities.

MNB also argues that the order requires MNB to “continue to fulfill obligations and duties, such as duties [sic] to act as a prudent investor,<sup>[13]</sup> without affording MNB the proper discretion to make the necessary actions to fulfill those duties.” Accordingly, MNB argues, “the Order carved out a role for MNB as is internally inconsistent and consequently not possible to fulfill.” Here, the trial court’s order did not remove MNB as trustee and provided:

Any assets continued to be held by Moody National Bank shall only be held as discretionary custodian with a duty to timely monitor assets as a prudent investor and Moody National Bank shall engage in ongoing dialogue with the Receiver relating to the management of the assets in the Receivership Estate held by Moody National Bank.

We cannot conclude that the trial court acted unreasonably or arbitrarily when it ordered MNB to timely monitor the trust assets it holds as a prudent investor and communicate with the receiver regarding the management of the assets. *See* Tex. Prop. Code Ann. § 114.008; *Worford*, 801 S.W.2d at 109.

Because the trial court is authorized by statute to order the receiver to take the actions stated in the order to remedy a breach of trust, and because there was evidence of a breach of trust by MNB, we cannot conclude that the trial court abused its discretion when it granted the receiver the powers delineated in the order. *See* Tex. Prop. Code Ann. § 114.008; *Worford*, 801 S.W.2d at 109.

We overrule MNB’s fourth issue.

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<sup>13</sup> MNB does not identify in its brief any other obligations or duties. *See* Tex. R. App. P. 38.1(i).

## V. CONCLUSION

The trial court's order is affirmed.

/s/ Margaret "Meg" Poissant  
Justice

Panel consists of Justices Hassan, Bourliot, and Poissant.