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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-1653

A18-1656

In re the Trust of the Charles W. J. Curry
Trust Dated June 5, 1991, as amended,

and

In re the Trust of the Phyllis A. Curry
Trust Dated June 5, 1991, as amended.

Filed June 24, 2019
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge

Dakota County District Court
File Nos. 19HA-CV-16-954, 19HA-CV-16-955

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Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Janet A. Curry (Janet)¹ is a beneficiary of her deceased parents' trusts. She sued respondent Charles W.J. Curry Jr. (Charlie), her brother and trustee of the trusts, for breach of fiduciary duty. Following a bench trial, the district court made factual findings, concluded that Janet had not established her claim for breach of fiduciary duty, and ordered repayment of two sums to the trusts. The district court further ordered that Charlie's attorney fees be paid from the trusts and denied payment of Janet's attorney fees. On appeal, Janet does not challenge the district court's factual findings or the ordered repayments to the trusts. Rather, she argues (1) that, given the factual findings, the district court made a reversible legal error by concluding that Charlie did not breach his fiduciary duty, and (2) that the district court abused its discretion by awarding payment of Charlie's attorney fees and denying payment of hers. We affirm the district court's rejection of Janet's claim for breach of fiduciary duty, but we reverse and remand for redetermination of attorney-fee awards to both parties.

FACTS

The district court found the following facts. Charles W.J. Curry Sr. (Charles) and Phyllis A. Curry (Phyllis) were married and had three children: Carol O.A. Curry (Olivia), Janet, and Charlie. In 1991, Charles created the Charles W.J. Curry Trust (the Charles trust), and Phyllis created the Phyllis A. Curry Trust (the Phyllis trust), which was the

¹ Because the family members involved in this case share the same last name, we use their first names for ease of reference.

mirror image of the Charles trust. Both trusts made the other spouse the lifetime beneficiary and a trustee. They also made the children—Olivia, Janet, and Charlie—equal remainder beneficiaries. The trusts further provided that, if any of the children were to die before Charles or Phyllis, the predeceased child's issue was to take the child's share by right of representation. The trusts were subsequently amended so that, by 2000, Charlie was a co-trustee of each trust, along with his parents.

Charles died in 2003, leaving an estate worth approximately three million dollars. Starting then, Charlie and Phyllis managed the trusts as co-trustees. At the end of each year, Charlie and Phyllis discussed “the performance of the trusts’ investments, the balance in various accounts, and tax implications.” Charlie also kept good records of the expenses of the trusts. Charlie was “competent and knowledgeable in investing,” and “the trusts’ investments or their performance” were nothing but suitable.

In 2008, Olivia died unexpectedly, and Morgan LaManna (Morgan)—Olivia's daughter—became entitled to Olivia's share in the trusts. In the wake of this event, Charlie and Phyllis discussed the possibility of amending the Phyllis trust so that Phyllis's other grandchildren would receive some distributions on her death from the Phyllis trust as Morgan unchangeably would from the Charles trust. Phyllis's only other grandchildren were Charlie's two daughters. In 2009, the Phyllis trust was validly amended, and the beneficiaries were changed to Janet (30%), Charlie (30%), Charlie's wife (20%), and Charlie's daughters (10% each).

In 2009, 2010, 2012, and 2013, co-trustees Phyllis and Charlie withdrew some of the trust principal from the Charles trust and transferred it to the Phyllis trust. The withdrawals were made under article 6.1(1) of the trust agreement of the Charles trust:

[Phyllis] shall have the absolute right to withdraw the greater of Five Thousand and 00/100 (\$5,000.00) Dollars or five percent (5%) of the value of the principal of the trust as of the end of the preceding fiscal year of the trust, from the principal of the trust, in any one year, by submitting a written request for such withdrawal to the trustee.

The withdrawal amounts were all within the financial limits of this trust provision, but only the 2009 withdrawal was made upon a written request. Phyllis did not submit her request in writing for the 2010, 2012, or 2013 withdrawals. Charlie testified that Phyllis and he “just thought [a written request] wasn’t necessary” because the exercise seemed too formal given their relationship. However, wanting to “keep the balances of the two trusts somewhat equal to one another,” Phyllis intended to effectuate the principal withdrawals.

The Charles trust permitted income distributions to Phyllis as the lifetime beneficiary of that trust. Phyllis died in 2013, and Charlie became the sole trustee of both trusts. A few months after Phyllis’s death, Charlie made an income distribution in the amount of \$38,958 from the Charles trust to the Phyllis trust. Also, he began to compensate himself for the services he provided as trustee at a rate of \$30 per hour.

Janet commenced this action in 2016, alleging that the 2009 amendment was the result of Charlie’s undue influence on Phyllis and that Charlie breached his fiduciary duty. The district court rejected both claims, rendering judgment in favor of Charlie. While the district court concluded that Charlie did not breach his fiduciary duty, it did make factual findings that the three acts challenged by Janet—the principal withdrawal, the post-mortem

income distribution, and the trustee compensation—were against the clear terms of the trust. The district court ordered the income distribution and the trustee compensation to be returned to the respective trust from which each came. Also, the district court declined Janet’s request that her attorney fees be paid from the trusts while allowing, over Janet’s objection, Charlie to charge his attorney fees to the trusts.

Janet appeals.²

DECISION

I. The district court did not err by rejecting the breach-of-fiduciary-duty claim.

Janet argues that the district court should have concluded that Charlie breached his fiduciary duty because it found that he violated the clear terms of the trusts. It is undisputed on appeal that, in three specific ways, Charlie violated the clear terms of the trusts: by making principal withdrawals without a written request from Phyllis, by making a post-mortem income distribution from the Charles trust, and by charging trustee compensation to the trusts.³

Despite these violations, the district court rejected Janet’s breach-of-fiduciary-duty claim, reasoning that she failed to prove that Charlie did not exercise reasonable care, skill, and caution in carrying out his duties. Janet argues that, under Minnesota caselaw and the

² Janet does not appeal the district court’s rejection of her undue-influence claim.

³ Charlie argues that the Charles trust “specifically permitted fees to be charged by a trustee,” implying that the district court’s order making him repay the trustee compensation is erroneous as applied to the Charles trust. We decline to address that issue, however, because Charles did not file a notice of related appeal. Failure to file a notice of related appeal limits the issues on appeal to those properly raised by the appellant. *Nordling v. N. States Power Co.*, 465 N.W.2d 81, 87 (Minn. App. 1991), *rev’d on other grounds*, 478 N.W.2d 498 (Minn. 1991).

Restatement (Second) of Trusts, a trustee breaches his fiduciary duty whenever he fails to follow the unambiguous terms of the trust instrument. *See, e.g., In re Revocable Tr. of Margolis*, 731 N.W.2d 539, 546 (Minn. App. 2007) (“Trustees also have a duty to act pursuant to the terms of the trust, and they commit a breach of trust when they fail to do so.”) (citing Restatement (Second) of Trusts at § 201); Restatement (Second) of Trusts § 201 cmt. b (commenting that “[a] trustee commits a breach of trust . . . where he violates a duty because of a mistake as to the extent of his duties and powers”). Because Charlie violated the clear terms of the trust in three ways, she argues, he necessarily breached his fiduciary duty.

On appeal, if a complaining party shows that the district court committed an error, the mere existence of that error is, by itself, insufficient to require a grant of relief; the complaining party must also show that the error prejudiced the complaining party. *See In re Tr. of Hill*, 499 N.W.2d 475, 488 (Minn. App. 1993) (citing Minn. R. Civ. P. 61), *review denied* (Minn. July 15, 2003). We need not decide whether the district court erred by concluding that Charlie did not violate his fiduciary duty if the district court’s error was harmless. Minn. R. Civ. P. 61 (requiring harmless error to be ignored). We turn to that question.

A. The principal withdrawals

Janet argues that the district court erred by not concluding that Charlie breached his fiduciary duty when he permitted Phyllis to make principal withdrawals without a written request. “To prevail on a breach-of-fiduciary-duty claim, a plaintiff must prove four elements: duty, breach, causation, and damages.” *Lund as Tr. of Revocable Tr. of Kim A.*

Lund v. Lund, 924 N.W.2d 274, 284 (Minn. App. 2019), *review denied* (Minn. Mar. 27, 2019). Janet’s argument addresses the first two elements—duty and breach. But the district court also addressed the element of causation. And the court found it lacking.

The district court found that “[i]t was completely up to Phyllis whether to withdraw 5% of the principal from [the Charles trust] each year” and that, “when these withdrawals were made, it was by [Phyllis’s] intention.” The district further found that there was no evidence of injury “based on”—in other words, caused by—the lack of writing from Phyllis requesting the withdrawal. Janet does not challenge these findings. They establish that, even if Charlie had fully discharged the duty that Janet argues he was bound with (the duty to enforce the trust instruments and require Phyllis to submit a written request), the principal withdrawals would still have occurred. Phyllis, intending to effectuate the principal transfers and having every right to do so, would have produced the written request. The lack of a written request therefore did not cause harm.

Because Janet’s breach-of-fiduciary-duty claim fails for lack of causation based on the district court’s findings, any error by the district court in concluding that Charlie did not breach his fiduciary duty by allowing the principal withdrawals to happen without a writing is harmless.

B. The income distribution and trustee compensation

Janet also asserts error by the district court regarding the income distribution and trustee compensation. But, on both matters, the district court granted the remedies that Janet sought. Janet asked the district court to order repayment of the income distribution and trustee compensation to the trust from which the funds came, and the district court

ordered exactly that. Janet does not explain how she was prejudiced by the fact that the harm corrected by the district court was not labeled as the result of a breach of fiduciary duty. She therefore fails to show prejudice. Nevertheless, while Janet has not shown a basis for reversal on the merits of her claim, the fact that the district court ordered remedies that Janet sought is relevant to the parties' requests for attorney fees, which we address next.

II. The district court abused its discretion by awarding Charlie his full attorney fees from the trusts and denying all attorney fees to Janet.

Appellate courts do not reverse a district court's decision on attorney fees absent an abuse of discretion. *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 509-10 (Minn. 2012). "A trustee is entitled to reasonable attorneys' fees, to be paid out of the trust estate, incurred in good faith in defending his administration of the trust." *In re Freeman's Tr.*, 75 N.W.2d 906, 910 (Minn. 1956).

The district court found that the alleged breaches of fiduciary duty were mistakes and concluded that Charlie's attorney fees were incurred in good faith. With respect to two narrow issues, we conclude that the district court's decision is an abuse of discretion. It is undisputed that the single post-mortem income distribution and the trustee compensation violated the clear terms of the trusts, that the payments unjustifiably diminished the value of the trusts that they came from, and that the district court rightly ordered the payments to be returned to the respective trust. Charlie argues that those two acts were honest mistakes as opposed to breaches of fiduciary duty. But once those mistakes came to light, if he was acting in good faith, Charlie would have conceded liability and made amends. He did not do so, making the litigation on the two issues necessary. The district court therefore abused its discretion by allowing Charlie to charge all of his attorney fees to the trusts. *See In re*

Drake's Will, 263 N.W. 439, 442 (Minn. 1935) (holding that the trustee's refusal to concede his liability on an issue brought the issue into court and that the attorney-fee award to the trustee on that issue should therefore not be allowed).

The rule regarding the right of a beneficiary to recover attorney fees is similar to that regarding a trustee. "[A]ttorneys' fees and expenses incurred in good faith in litigation brought and prosecuted for the benefit of the estate may be allowed by the court." *Freeman*, 75 N.W.2d at 911. The district court decided that Janet was not entitled to any attorney fees because she had not conferred any benefit on the trusts. But, as discussed above, Janet effectively won on the issues of the income distribution and the trustee compensation, and the payments were returned to the respective trust. Therefore, the trusts in fact benefited from Janet's action by the amount returned to them. As to those two issues, the district court abused its discretion by denying Janet's request for attorney fees.

We reverse the district court's determinations with respect to attorney fees and remand for the district court to re-determine both parties' requests for attorney fees in a manner consistent with this opinion. The district court may, in its discretion, reopen the record for this purpose.

Affirmed in part, reversed in part, and remanded.