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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1872**

In re the Matter of the Revocable Trust Agreement of Avis V. Cordes under agreement
dated February 12, 2015.

**Filed August 31, 2020
Affirmed
Reilly, Judge**

Goodhue County District Court
File No. 25-CV-19-578

Thomas R. Haugrud, Thomas C. Atmore, Leonard, O'Brien, Spencer, Gale & Sayre, Ltd.,
Minneapolis, Minnesota (for appellants Scott Cordes and Cynthia Stabenow)

William M. Hart, Timothy W. Ridley, Julia J. Nierengarten, Meagher & Geer, P.L.L.P.,
Minneapolis, Minnesota; and

James T. McNary, Cole W.R. Langsdorf, McNary Law Office, P.A., Red Wing, Minnesota
(for respondent John Cordes)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Frisch,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this trust dispute between appellant-objectors, former trustees, and respondent-petitioner, a trust beneficiary, appellants argue that the district court (1) abused its discretion by removing appellants as trustees on the ground that they committed serious

breaches of the trust agreement, and (2) erred in establishing the commencement date of the interest payment. We affirm.

FACTS

This appeal arises out of a trust dispute between appellant-objectors, Cynthia Stabenow and Scott Cordes, and respondent-petitioner, John Cordes, over the Revocable Trust Agreement of Avis V. Cordes dated February 12, 2015 (the trust agreement). Avis Cordes and Lloyd Cordes, a married couple, created the trust agreement and served as the original trustees. Avis Cordes died in February 2018. Under the trust agreement, the couple's three adult children: John Cordes, Scott Cordes, and Cynthia Stabenow, were nominated to succeed Avis Cordes as trustees and become independent trustees with Lloyd Cordes.¹ While Scott Cordes and Cynthia Stabenow accepted their trustee appointments, John Cordes did not.

The trust owns about 160 acres of land in Goodhue County. Respondent farmed the property with his father for 30 years, and lives in a farmstead house on the property. Respondent continues to farm the land with his son and intends to "pass [the farm] on" to his children. Respondent had discussions with his father about acquiring the property after his parents died. The trust agreement provided respondent with an exclusive, time-limited option to purchase a portion of the property for a below-market price. Respondent had six months from the date of Avis Cordes's death to exercise his option to purchase, with an additional 60 days to close on the purchase. The trust agreement provided that:

¹ Lloyd Cordes died during the pendency of this appeal.

Option to Purchase. Upon my death, . . . [respondent] is granted an exclusive first option to purchase the 80 acre farm located in the West Half of the Southeast Quarter of Section 24, Township 109 North, Range 17 West, Goodhue County, Minnesota (tax parcel 30.024.0500) and/or the 80 acre farm located in the East Half of the Southeast Quarter of Section 24, Township 109 North, Range 17 West, Goodhue County, Minnesota (tax parcel 30.024.0400). The purchase price shall be \$2,000.00 per acre. The purchase price may, at the election of [respondent], be payable in monthly installments, on a 30 year amortization at the then applicable long term federal rate in the month of my death, with a 10 year balloon. [Respondent] shall have six (6) months after the date of my death to exercise the option granted herein. Should he exercise the option, he shall provide written notice of intent to exercise to my trustees within this six (6) month period. Closing shall take place within sixty (60) days after delivery of written notice of intent to exercise the option. If the option is not exercised within six (6) months after the date of my death, the option will lapse. This option is personal to . . . [respondent], and may not be transferred, assigned or pass by devise or descent.

Should my spouse survive me but die during the contract for deed term, any subsequent contract payments including the final balloon payment to be made attributable to [respondent's] 1/3 share shall either be waived or shall be immediately refunded to him by the trustees, whichever is preferable to the parties.

Should [respondent] exercise this option to purchase, he may not sell, assign or otherwise convey said real property for a period of 10 years following the date of purchase unless written consent is obtained from my other children. In the event [respondent] should sell, assign or otherwise convey his interest in the optioned property during this 10 year period, then the contract balance shall be recalculated as if the original contract sale price had been \$3,500.00 per acre, with all contract payments made to date being applied according to the redetermined contract balance, together with all accrued interest calculated to date, payment in full of which shall be required as a condition of entitlement to a deed of conveyance of title.

The vendor's interest in said contract for deed shall be subject to allocation between the Marital Trust and/or the Family Trust pursuant to Article Four herein.

On July 10, 2018, respondent timely exercised his option to purchase the farmland by sending a Notice of Exercise of Option to the trustees and their attorney. Under the trust agreement, the letter triggered a closing date of no later than September 9, 2018, or 60 days after delivery of the written notice. The parties held a family meeting in August 2018, to discuss the sale of the property and agreed that the trust's attorney would prepare a contract for deed.

When the trust's attorney did not prepare a draft contract for deed, respondent's attorney sent a proposed contract for deed to the trustees and their attorney for review. Appellants considered the proposed contract to be defective and did not reply to respondent. On September 13, 2018—and after the expected closing date—respondent's attorney asked about the status of the sale. Appellants' attorney responded by sending a revised draft of the contract for deed, containing additional terms. One of the other terms was a provision giving appellants a right of first refusal if respondent decided to sell the property. Respondent objected to the new provision, which was not included in the original terms of the trust agreement. However, appellants refused to sign a contract for deed unless the right-of-first-refusal provision was included. Respondent refused to sign appellants' proposed contract for deed, and the sale did not close by the September 2018 deadline.

On March 14, 2019, Lloyd Cordes sent a Notice of Removal of Trustee, purportedly removing respondent as trustee effective immediately.² The letter advised respondent that because the closing on the purchase of the farmland did not occur, the option to purchase had expired. The letter demanded that respondent pay rent on the farm that was past due, and informed him that he was no longer permitted to farm the property. Five days later, respondent filed a petition with the district court requesting an order removing appellants as trustees for breaching the terms of the trust agreement, appointing a new trustee to serve as co-trustee with Lloyd Cordes, and directing the trustees to sell the property to respondent.

Appellants filed an objection to the petition and filed a counter-petition. Appellants denied committing a serious breach of trust, objected to their removal as co-trustees, and denied that respondent had a right to purchase the property. Following an evidentiary hearing, the district court issued an order on May 22, 2019. The district court determined that respondent properly exercised his option to purchase the farmland and ordered the trustees to sell the land to respondent under the original terms of the trust agreement. The district court ordered the parties to execute the contract for deed by June 30, 2019. The district court also ordered respondent to make certain rent payments before the closing date, and reserved the remaining issues raised in the petition and counter-petition. The parties closed on the purchase on June 30, 2019. Appellants do not challenge this portion

² As stated above, while appellants accepted their appointments as trustees following Avis Cordes's death, respondent did not accept his appointment as trustee.

of the district court's ruling, nor do they seek to set aside the June 30, 2019 conveyance of the property to respondent.

On July 24, 2019, the district court issued an order about the commencement date for interest payments. Appellants argued that the interest calculation should begin running on January 1, 2019, while respondent argued that interest should run from the date of the sale on June 30, 2019. The district court ordered that interest should run from the date of the sale as required under the trust agreement, or June 30, 2019. The district court held an evidentiary hearing in August 2019, to address the remaining issues raised in the petition and counter-petition. The district court issued its findings of fact, conclusions of law, and order. The district court ruled that appellants committed serious breaches of the trust, requiring their removal as trustees.

This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by removing appellants as trustees.

a. Standard of review

“We review a district court’s decision whether to remove a trustee for abuse of discretion.” *Lund ex rel. Revocable Tr. of Kim A. Lund v. Lund*, 924 N.W.2d 274, 284 (Minn. App. 2019) (citation omitted), *review denied* (Minn. Mar. 27, 2019). “To the extent the parties challenge underlying findings of fact, we do not reconcile conflicting evidence on appeal from a court trial.” *Id.* (citation omitted). Instead, “we defer to the district court’s factual findings and will not set them aside unless clearly erroneous.” *Id.* Findings of fact

are clearly erroneous if we are “left with the definite and firm conviction that a mistake has been made.” *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted). We give great deference to the district court’s findings of fact because the district court can hear the witnesses’ testimony and assess their credibility. *Id.* But a district court’s interpretation of a trust agreement is reviewed de novo. *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012).

b. The record supports the district court’s determination that appellants breached the trust agreement.

Appellants argue that the district court’s findings that they breached the trust agreement are clearly erroneous and unsupported by evidence in the record. A trustee must administer a trust in good faith. Minn. Stat. § 501C.0801 (2018). “A trustee owes a duty of loyalty to the beneficiaries,” and “shall not place the trustee’s own interests above those of the beneficiaries.” Minn. Stat. § 501C.0802(a) (2018). When a trust has two or more beneficiaries, “the trustee shall administer the trust impartially, giving due regard to the beneficiaries’ respective interests.” Minn. Stat. § 501C.0803 (2018). A trustee must prudently administer the trust in light of its purpose, terms, and distribution requirements. Minn. Stat. § 501C.0804 (2018). Generally, district courts are reluctant to remove a trustee selected by the settlor. *See In re Will of Gershcov*, 261 N.W.2d 335, 338 (Minn. 1977). But a beneficiary may petition the district court to remove a trustee. Minn. Stat. § 501C.0706(a) (2018). The district court may remove a trustee if “the trustee has committed a serious breach of trust.” *Id.* at (b)(1) (2018). “The determination of what

constitutes sufficient grounds for removal of a trustee is within the discretion of the [district] court.” *Gershcov*, 261 N.W.2d at 338.

Following an evidentiary hearing, the district court determined that removal was appropriate because appellants failed to follow the terms of the trust agreement by trying to add a right of first refusal, thus breaching their duty of loyalty. The order stated that:

The Court finds that attempting to add the right of first refusal term and then taking the position that [respondent] could not close, with the term added, within the specified time period, was not in accordance with the Trust Agreement. The actions by [appellants] breached a duty of loyalty that trustees must follow the terms of the Trust Agreement. Additionally, attempts to add the term obstructed and hindered the closing to the point of creating a benefit to [appellants]. Because if the closing did not occur, . . . [appellants] would financially benefit if/when the Real Estate was sold at market value instead of to [respondent]. Such actions were self-serving actions by [appellants], and not in accordance with the Trust Agreement. These actions demonstrate [appellants] failed their duty of loyalty to the trust and failed to follow the terms of the trust. The terms of the trust were explicit and clear. The trustees had no authority to add terms to the trust agreement. *See* Minn. Stat. § 501C.0602. Given their inability to follow the terms of the trust and creating a self-serving situation, . . . [appellants] have committed a serious breach of trust. Therefore, [appellants] are unable to serve as trustees in the future and must be removed.

Appellants concede that the trust agreement did not include a right of first refusal. Yet appellants argue that the agreement did not preclude a right of first refusal either and, by implication, they also had the right to buy the farmland. Appellants also argue that the trust agreement gave them the “unfettered right to consent or refuse to consent to any attempted sale by [respondent] in [a] ten-year period,” and does not address “what happens after that ten-year period.”

These arguments are not persuasive. A district court interprets a trust agreement “to ascertain and give effect to the grantor’s intent.” *Stisser*, 818 N.W.2d at 502. A court does so by examining the language of the trust agreement to determine whether it is unambiguous. *In re G.B. Van Dusen Marital Trust*, 834 N.W.2d 514, 520 (Minn. App. 2013), *review denied* (Minn. June 26, 2013). If the trust agreement is unambiguous, a court discerns the grantor’s intent from the language of the trust agreement and does not consider extrinsic evidence. *Id.* On review, we interpret unambiguous words and phrases in a trust agreement “according to their common and approved usage.” *Stisser*, 818 N.W.2d at 502.

Here, the plain language of the trust agreement provided respondent with an exclusive, time-limited option to purchase a portion of the farmland at a below-market price. The trust agreement did not provide appellants with a right of first refusal and did not give appellants the right to purchase farmland at a below-market price. We will not read into the trust agreement language that Avis Cordes omitted. *See Van Dusen*, 834 N.W.2d at 521-22 (determining document’s meaning based on its plainly expressed intent). The plain and unambiguous language of the trust agreement granted respondent the right to buy the property on special terms, distinct from his siblings. We determine, based on our de novo review, that the district court properly applied the language of the trust agreement in determining that appellants breached their duties as trustees by trying to encumber the property and add a right of first refusal.

The district court also determined that appellants breached their duty of loyalty by attempting to add new terms, which “obstructed and hindered the closing to the point of creating a benefit to [appellants].” The district court noted that “if the closing did not

occur . . . [appellants] would financially benefit if/when the Real Estate was sold at market value instead of to [respondent].” The district court found that “[s]uch actions were self-serving actions by [appellants], and not in accordance with the Trust Agreement” and “demonstrate[d] [appellants] failed their duty of loyalty.” Appellants argue that the district court abused its discretion by holding that they breached their duty of loyalty. See *Gershcow*, 261 N.W.2d at 338 (applying abuse-of-discretion standard to “the determination of what constitutes sufficient grounds for removal of a trustee”).

We do not agree. Appellants refused to sign the contract for deed unless respondent agreed to include the right-of-first-refusal provision. Respondent did not agree to the proposed revision and, as a result, the closing did not occur by the September 2018 deadline. In March 2019, the trustees notified respondent that because the closing did not occur, the option to purchase the farmland had expired. The trustees also demanded rental payment and informed respondent that he was no longer permitted to farm the property. During the hearing, respondent testified that he felt threatened by appellants and believed that they were threatening his livelihood. The district court found respondent’s testimony credible, and we defer to the district court’s ability to assess the credibility of the witnesses. *LaPoint*, 892 N.W.2d at 515. The evidentiary record supports the district court’s determination that appellants hindered the closing of the sale, tried to create a benefit for themselves, and ultimately breached their duty of loyalty. See Restatement (Third) of Trusts § 78(2) (2007) (articulating general rule that trustees are “strictly prohibited from engaging in transactions that involve self-dealing or that otherwise involve or create a conflict between the trustee’s fiduciary duties and personal interests”).

In sum, the record supports the district court's determination that appellants breached their duties as trustees by failing to follow the plain language of the trust agreement, and by breaching their duty of loyalty. We conclude that the district court did not abuse its discretion by determining that appellants acted in bad faith and failed to administer the trust in accordance with its plainly written terms.

c. The breach constituted a serious breach.

Appellants argue that even if a breach occurred, it was not a "serious" breach of trust. A trustee may be removed if "the trustee has committed a serious breach of trust." Minn. Stat. § 501C.0706(b)(1). Whether sufficient grounds for removal exist is within the district court's discretion. *Gershcov*, 261 N.W.2d at 338. The district court determined that appellants committed a serious breach of their duties and concluded that "[g]iven their inability to follow the terms of the trust and creating a self-serving situation, . . . [appellants] have committed a serious breach of trust." The record supports the district court's decision. Appellants disregarded the plain language of the trust agreement by trying to add new terms and defeat the plainly worded provision allowing respondent to purchase farmland at a below-market rate. Respondent testified that his siblings threatened his livelihood and pressured him to sign a contract containing the new terms. The trustees also sent a letter to respondent declaring that the option to purchase had expired, and directing him to stop farming and pay rent. Given this record, we conclude that the district court did not abuse

its discretion by removing appellants as trustees because they breached their duties under the trust agreement, and that the breaches were serious and warranted removal.

II. The district court did not err by ordering interest from the date of the closing.

Appellants argue that the district court erred in establishing the commencement date of the interest payment. We review questions of law de novo. *Stisser*, 818 N.W.2d at 502.

The district court determined that respondent properly exercised the option to purchase the farmland. The district court ordered the trustees to sell the farmland to respondent, based on the original terms of the trust agreement, by June 30, 2019. The trustees timely complied with this order. But the parties disagreed about when the interest on the contract for deed should begin to run. Appellants argued that interest should run from January 1, 2019. Respondent argued that interest should run from the date of the sale of the property. The district court agreed with respondent and ordered that “June 30, 2019 is the date interest begins to accrue on the principal balance of the contract.”

Appellants claim that the district court deprived the trust of income from the property from January through June 2019. But this argument contradicts the plain language of the trust agreement itself. *See Van Dusen*, 834 N.W.2d at 520 (noting that a document’s meaning depends on its plainly expressed intent). The trust agreement provided respondent with an option to purchase the farmland. The option provided that: “The purchase price shall be \$2,000.00 per acre. The purchase price may, at the election of [respondent], be payable in monthly installments, on a 30 year amortization at the then applicable long term federal rate in the month of my death, with a 10 year balloon.” It is uncontested that respondent purchased the property on June 30, 2019. Based on the plain terms of the trust

agreement, we discern no error in the district court's ruling that interest began to accrue from the date of the sale.

Affirmed.