

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0337**

Scott Mathias,
Appellant,

vs.

Ann Lee Coleman Living Trust, dated March 21, 2018,
Respondent.

**Filed February 16, 2021
Reversed in part and remanded
Ross, Judge**

St. Louis County District Court
File No. 69DU-CV-19-1899

Robert E. Mathias, Duluth, Minnesota (for appellant)

Michael E. Orman, Beaumier Trogon Orman Hurd & Viegas, PLLP, Duluth, Minnesota
(for respondent)

Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Facing a terminal illness, Ann Coleman established a trust designed to provide housing and financial support for her minor children on her death. The trust terms allowed her former husband Scott Mathias to move into a trust-purchased house if he was given custody of the children, so that he could care for them there as long as they remained minors

and he maintained the house. The trustee sought to evict Mathias for his failure to maintain the house and later asked the district court to enforce the settlement agreement that the trustee and Mathias had entered into to resolve the eviction suit. Mathias appeals from the district court's order requiring him to fund numerous house repairs and affording the trustee the power not to reimburse him certain expenses he makes for the children. Because the settlement agreement did not obligate Mathias to pay for property defects that preexisted his occupancy or to make any repairs that would not have triggered a reasonable eviction under the trust terms, we reverse in part and remand for further findings. We reject as unripe Mathias's contention that the district court improperly empowered the trustee to decide whether to reimburse him for expenditures he makes for the children because the reimbursements were to come from Social Security payments that Mathias agreed to redirect to the trustee, and Mathias never redirected those payments.

FACTS

Decedent Ann Coleman and appellant Scott Mathias had four children before they divorced. Suffering from a terminal illness and nearing the end of her life, Coleman executed the Ann Lee Coleman Living Trust on March 21, 2018. She died ten days later, on March 31.

Coleman funded the trust with a \$500,000 death benefit from her life-insurance policy, named the four children as beneficiaries, and designated her sister Susan Hettich as successor trustee. The trust terms directed the trustee to sell Coleman's house, purchase another house with some of the proceeds, and, on specified conditions, allow Mathias to move into the house and remain there to parent the children until they reached adulthood:

Upon my death, if Scott Mathias is granted custody of our children, the Corporate Trustee shall sell my house located at [- - -] Ridgewood Road, Duluth, MN 55804 and utilize up to \$210,000 of the proceeds for the purchase of a home that Scott Mathias may raise our children in. Scott Mathias shall be responsible for the payment of the following costs associated with the Residence, including but not limited to utilities, repairs, and maintenance. The Corporate Trustee shall pay for the property taxes and casualty insurance on the property. The Corporate Trustee shall have no obligation to utilize any Trust assets for the maintenance of the Residence or for other costs associated with the Residence.

After Coleman died, Mathias obtained custody of the children, moved into Coleman's Ridgewood house (where the children were already living), and began receiving the children's Social Security survivor benefits totaling about \$3,800 monthly.

The conflict in this case began when Mathias refused to move himself and the children from the Ridgewood house after the trustee, following the trust terms, purchased a different house for them to live in. The trustee responded to Mathias's resistance by bringing two actions against him. She first filed an eviction action to oust him and the children from the Ridgewood house. She then petitioned the district court to appoint a conservator for the children, alleging that Mathias was misusing the Social Security payments. Mathias likewise began legal proceedings against the trustee. He filed a civil complaint challenging the validity of the trust on a theory that it had been the product of Hettich's manipulation when Coleman was no longer competent. And he petitioned the district court to order the trust's supervision and an accounting.

The district court denied Mathias's supervision and accounting petition, and the parties resolved their other litigation by dismissing their actions and, on April 30, 2019,

entering into a settlement agreement. The parties agreed that Mathias could remain in the Ridgewood house until after the date set for the youngest child to graduate from high school. The meaning and enforcement of two key provisions of that agreement are at the heart of this appeal. The first concerns home-repair costs and reads, “The Children and Scott Mathias may continue to reside in the Ridgewood House,” and “Scott Mathias shall continue to be responsible for the house costs as set forth in the Trust.” The second regards Social Security survivor benefits and reads as follows:

The Trust shall pay on a monthly basis all of the Children’s reasonable expenses as they presently exist up to the amount of the social security payments. In determining what is a reasonable expense, the Trustees shall be guided by federal regulations governing the use of social security benefits by a representative payee. . . . Each month, the Trust will advance (pay ahead) the amount of the current social security benefits for the Children (currently approximately \$3,800) received by the Trust to Scott Mathias.

Pipes at the Ridgewood house froze around January 2019, causing water damage. An inspector extensively checked the home’s overall condition and recommended multiple repairs to or replacement of the sump pump, pipes, carpeting, ceiling, bathroom drain, furnace, and roof, among many other things. The trustee moved the district court to order Mathias to make the repairs, contending that the settlement agreement obligated him to fix any defects in the home. The district court agreed with the trustee and ordered Mathias to do the following: (1) replace the sump pump; (2) clean and replace the carpet; (3) repair the ceiling; (4) replace the bathroom-tub drain; (5) repair the front-door screen; (6) trim the trees; (7) dispose of refuse in the garage; (8) remove mold from the bathroom; (9) mow the lawn; (10) remove tree branches; (11) repair or replace the furnace; (12) reinstall the

sliding screen door; (13) repair the side screen door; (14) repair or remove the playground; (15) replace the roof “if necessary”; (16) repair window screens; (17) repair window blinds; (18) repair or replace the outdoor stairs; and (19) replace burst pipes. Regarding Social Security benefits, the district court held that the trustee could determine which expenditures warranted the trust to reimburse Mathias.

This appeal follows.

DECISION

Mathias challenges the district court’s order requiring him to make repairs, arguing that it rests on a misinterpretation of the settlement agreement’s terms. The argument is partly convincing. He also contends that the district court improperly vested the trustee with discretion to decide whether to reimburse him for expenditures he makes on the children’s behalf. We do not reach the merits of that premature issue.

I

This appeal requires us to interpret the parties’ contract. We do so *de novo* if the contract terms are unambiguous. *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005). And unambiguous terms must be enforced based on their plain and ordinary meaning. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346–47 (Minn. 2003). Interpreting the settlement agreement in this case also involves interpreting the trust terms, because the primarily disputed settlement-agreement term expressly incorporates the trust instrument, requiring Mathias to “continue to be responsible for the house costs *as set forth in the Trust*.” (Emphasis added.) Our “guiding principle” in interpreting a trust is to effectuate the testator’s intent as expressed by the trust instrument’s plain language,

requiring us to read the trust instrument “as a whole, aided by surrounding circumstances, due weight being given to all its language, with some meaning being given, if possible, to all parts, expressions, and words used.” *In re Ruth Easton Fund*, 680 N.W.2d 541, 548 (Minn. App. 2004) (quotation omitted). Under this standard, we believe the district court’s order exceeds the agreement.

We must first describe the relationship between the relevant documents to determine any obligations they carry regarding property repairs, beginning with the trust instrument. The trust instrument says, “Scott Mathias shall be responsible for the payment of the following costs associated with the [replacement] Residence, including but not limited to utilities, repairs, and maintenance.” To be clear, by itself the trust instrument did not actually obligate Mathias to pay any costs, nor could it have because it was not a contract to which Mathias was a party. A trust creates a fiduciary relationship in which the trust settlor transfers property to the care of a trustee to manage or convey in the interests of designated beneficiaries. *See Black’s Law Dictionary* 1740 (10th ed. 2014) (defining “trust”). The trust instrument here sought to benefit the settlor’s children, only incidentally affording Mathias the opportunity to reside in a trust-owned house conditioned on Mathias’s maintaining the home. It made Mathias, at most, a long-term guest based on his role as father of the settlor’s children. It provided him something far less than a life estate—his only right to occupancy (and we use the term “right” here loosely) depended on his retaining custody of the children and on their right of occupancy as beneficiaries. Mathias’s duty to make repairs under the trust was an obligation only in the sense that Mathias and his children might lose their occupancy by his failure to maintain the home: “If Scott

Mathias . . . is delinquent for more than three months in any of the Residence related expenses or costs, the Residence may be sold and the funds distributed” by the trust.

But Mathias’s interest in the property increased substantially under the settlement agreement. In that contract, the parties agreed that “Mathias may continue to reside in the Ridgewood House” and that the trustee “may not place the Ridgewood House on the market for sale” before specified events establishing that the children have all reached majority. The settlement agreement included no language allowing the trustee to evict Mathias. Unlike the trust instrument, which could not bind Mathias, the settlement agreement is a contract with mutual obligations and enforcement rights. And in that contract, Mathias agreed to “continue to be responsible for the house costs as set forth in the Trust.” The contract elevated Mathias’s status to that of a long-term tenant who has the duty to maintain the property. And in light of the express relationship between that duty and the trust, the parties’ agreement implicitly incorporated the trust’s purpose of providing a dwelling for the children and an income source for the trust on an eventual sale of the home. In this context, Mathias incurred a new obligation to cover certain costs.

The trouble is that neither the agreement nor the trust instrument precisely defines those costs. But we believe that the agreement’s operative phrase—“as set forth in the Trust”—establishes the extent to which Mathias can “be [held] responsible” to cover repair costs. The trustee defends all of the repairs ordered by maintaining that the district court could order Mathias to pay the costs to repair virtually any defect in the Ridgewood house regardless of when the defect originated, regardless of the defect’s cost, and regardless of

the defect's nature. We do not read the settlement agreement so broadly because we do not read the trust instrument so broadly.

Although the trust instrument does not define Mathias's potential home-repair duties precisely, it says enough for us to discern at least one bright-line distinction based on the clear intent of the settlor: the *timing* of any potential defects for which Mathias could conceivably be held responsible to repair. The instrument establishes that the settlor intended for the trustee to sell the Ridgewood house upon the settlor's death and to then purchase a different house where the children and Mathias could live until Mathias finished rearing the youngest child. The trust structure implies necessarily that the settlor expected Mathias to cover only the repairs to the replacement home, not to the Ridgewood home, which would have already been sold by the time Mathias moved in. Had circumstances unfolded in the sequence anticipated by the trust instrument, Mathias would not have been involved in that sale-and-purchase sequence. The cost of repairing any presale defects to the Ridgewood house would therefore have fallen exclusively on the trust, not on Mathias. In that scenario, the trust would exercise its discretion as owner and seller to choose either to incur the cost of making repairs and demanding a corresponding higher sale price or instead to incur the cost of not making any repairs and accepting a lower sale price. Either way, the cost would be the trust's alone, not Mathias's. This arrangement informs us that, under the trust instrument, Mathias's repair obligation would never have involved any Ridgewood house defects that preexisted the settlor's death. And because the settlement agreement makes Mathias "responsible" for repair costs only "as set forth in the trust," we

hold that the agreement does not obligate him to pay for any Ridgewood house defects existing before March 31, 2018, the date of the settlor's death.

The trust instrument, and therefore the agreement, is less clear about the *type* of repairs Mathias was expected to make. Mathias argues that the district court incorrectly required him to pay for “capital repairs” or “capital improvements” while the trust instrument contemplated his making only “repairs” and performing “maintenance.” Looking to the trust instrument to frame the nature of the costs the agreement obligated Mathias to pay, we cannot conclude that Mathias was agreeing to pay for every kind of defect regardless of its extent or type. We extrapolate this from the nature of the consideration and rights exchanged and received in forming the agreement. By entering into the agreement, the trustee surrendered the right to exercise its power created by the trust instrument to evict Mathias and the children for Mathias's failure to make repairs. Having gained the contracted right to stay in the home without fear of eviction and correspondingly accepting the repair obligations as “set forth in the Trust,” Mathias was agreeing to make the type of repairs that he would have made voluntarily under the trust instrument to avoid a legitimate eviction by the trustee. We therefore conclude that the district court can hold Mathias contractually liable for failing to repair only those post-March 2018 defects that meet two elements: they must be the kind of defect that, if not repaired by Mathias, would have justifiably led the trustee to seek to evict Mathias and the children under the trust terms, and they must be the kind of defect that a reasonable person in Mathias's shoes would have made willingly under the trust rather than suffer eviction and find housing for himself and the children on his own.

The district court is in the best position to apply these implied contractual elements on remand. It may, in its discretion, reopen the record for additional evidence and argument to resolve the essential questions. It must determine as a matter of fact which defects preexisted the settlor's death and exclude them from Mathias's duty to repair. It must also determine whether a cited defect involves such an extensive expenditure or would result in an investment so capital in nature that a reasonable person with Mathias's means and only a short-term occupancy interest would vacate or be evicted rather than make the repair. And it must weigh the factors that bear on the question of the propriety of a hypothetical eviction attempt, determining whether a trustee would even bring an eviction action for the repair failure in light of her competing duties to retain the property's value for eventual resale and to provide ongoing housing for the children. And without any intervening agreement by the parties, it must apply this standard to all repairs it assigns to Mathias with the settler's intent in mind. We offer no opinion about how the district court should weigh these factors except to say that it would seem difficult to conclude that a reasonable tenant-parent would willingly invest in replacing a roof on a house in which he has no ownership interest, rather than vacate and find other housing.

II

We do not reach the merits of Mathias's argument that the district court misinterpreted the agreement by granting the trustee discretion to decide which expenses the trustee will cover from Social Security payments. We address only those claims ripe for consideration, which are those that involve redressable rather than theoretical or speculative injuries. *State by Friends of Riverfront v. City of Minneapolis*, 751 N.W.2d

586, 592 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). Although Mathias agreed to make arrangements for the reimbursement process, he has refused to transfer the Social Security funds to the trust once he receives them. That the district court inappropriately conferred discretion on the trustee as to whether to make payments to Mathias from the Social Security benefits is therefore an alleged error that bears no real injury. It is not ripe, and we will not address it.

Reversed in part and remanded.