

*This opinion is nonprecedential except as provided by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
A20-1186**

In re the Trust of the Elvira Ruth Halvorson Revocable Living Trust
Created under Agreement by Elvira Ruth Halvorson, Settlor, and
Elvira Ruth Halvorson, Trustee,
dated September 26, 2009, as amended.

**Filed March 22, 2021
Affirmed
Florey, Judge**

Stearns County District Court
File No. 73-CV-19-3822

John G. Westrick, Savage-Westrick, PLLP, Bloomington, Minnesota (for appellants)

Robert B. Bauer, Lauri A. Schmid, Dougherty, Molenda, Solfest, Hills & Bauer, PA, Apple Valley, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from summary judgment dismissing appellant-beneficiaries' breach-of-fiduciary-duty claims against respondent-trustee, appellants argue that the district court erred by concluding that respondent did not breach his fiduciary duties by purchasing fixed annuities instead of variable annuities, as the trust documents called for. Because the trustee acted in good faith, reasonably interpreted the settlor's intent, and did not abuse the discretion invested in him as trustee, we affirm.

FACTS

The Elvira Ruth Halvorson Revocable Living Trust (trust) was created in 2009 by Elvira Halvorson (decedent), who died on April 15, 2016. Appellants Sharon McCarney, Robert Halvorson, Chelsie Halvorson, Abigale Halvorson, and Shalie Halvorson, the children and grandchildren of decedent, were beneficiaries under the trust. Respondent Ralph Haag, decedent's brother, was appointed as sole trustee.

Under the terms of the trust, decedent directed respondent to use one-half of the trust assets to “purchase equal variable annuities to be paid to [appellants] over their lifetime.” Respondent interpreted decedent's instruction to mean he “should purchase annuities which provided steady payments to [appellants], and which did not allow them immediate access to the entire funds.” When respondent attempted to buy variable annuities, he discovered that such annuities could be cashed in for a lump sum. Respondent considered variable annuities to be unstable and thought appellants could “lose [their] money.” Respondent contacted several financial-advisor firms looking for variable annuities that would satisfy the trust specifications and, based on the advice he received, concluded that only fixed annuities transferred after the surrender period would satisfy decedent's intent to purchase annuities that would be paid out over an extended period of time. Respondent purchased fixed-term annuities and held them through the surrender period. When respondent tried to transfer the annuities to appellants, they refused to accept the transfer, fearing it would jeopardize their objections to the purchase of fixed annuities.

In May 2019, respondent petitioned for approval of the final account, termination of the trust, and discharge of the trustee. Appellants objected to the petition and then sued

respondent, alleging breach of fiduciary duty. Both respondent and appellants moved for summary judgment.

Appellants submitted a report from an expert, who explained the various types of annuities (variable, immediate variable, and fixed). The expert opined that respondent had breached his fiduciary duty to appellants by purchasing fixed annuities rather than variable annuities, as directed in the trust. He did not explain whether variable annuities could be cashed out, but did state that “fixed annuities are used to provide a guaranteed stream of income over a particular time period” and that “[a]nother popular feature of a fixed annuity is that these investment vehicles are not subject to market risk or fluctuation.”

The district court granted summary judgment in favor of respondent, concluding as a matter of law that he had not breached his fiduciary duty as trustee, and denied appellants’ motion for summary judgment. This appeal followed.

DECISION

A court “shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. We conduct a de novo review, viewing facts in the light most favorable to the nonmoving party. *Kelly v. Kraemer Const., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017). “A genuine issue of material fact arises when there is sufficient evidence regarding an essential element to permit reasonable persons to draw different conclusions.” *Id.* (quotation omitted). The essential facts here are undisputed: decedent specified purchase of variable annuities but also indicated that the annuities should provide payments over appellants’ lifetimes; respondent purchased fixed annuities because they would

provide lifetime income to appellants; appellants' expert explained the difference between the types of annuities and opined that respondent violated the trust terms by failing to purchase variable annuities, but stated that fixed annuities provided more stable income; and appellants' expert did not state whether appellants could cash out variable annuities. At issue is whether respondent was entitled to judgment as a matter of law.

To maintain an action for breach of fiduciary duty, a plaintiff must prove four elements: (1) duty; (2) breach; (3) causation; and (4) damages. *Lund ex rel. Revocable Tr. of Kim A. Lund v. Lund*, 924 N.W.2d 274, 284 (Minn. App. 2019), *review denied* (Minn. Mar. 27, 2019). Failure to establish one of these elements defeats a claim of breach of fiduciary duty. *Id.* A trustee owes a fiduciary duty to the beneficiary of a trust. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 914 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009). Failure to administer a trust in accordance with the settlor's intent is a breach of fiduciary duty. *Lund*, 924 N.W.2d at 284. Appellants argue that respondent breached his fiduciary duty by failing to carry out decedent's direction to purchase variable annuities.

We conduct a de novo review in interpreting a trust's language. *In re Trusteeship of Williams*, 591 N.W.2d 743, 746 (Minn. App. 1999). In trust matters, a court's role is to ensure that the settlor's intent is fulfilled. *Id.* at 747. Intent is determined by reviewing the trust instrument and considering any reasonable inferences that can be drawn from the document. *Id.* A court determines a settlor's "dominant intention" by considering the trust agreement as a whole; if the trust agreement is not ambiguous, the court confines itself to the agreement's language and does not consider extrinsic evidence. *In re G.B. Van Dusen*

Marital Trust, 834 N.W.2d 514, 520 (Minn. App. 2013), *review denied* (Minn. Jun. 26, 2013). The parties do not argue that the trust language is ambiguous but differ on what they perceive decedent's dominant intention to be.

“If a trustee acts in good faith, from proper motives, and within the bounds of reasonable judgment in distributing trust funds,” a court will generally not interfere in the trustee's exercise of discretion, unless the trustee's actions violate the settlor's intent or the trust's purpose. *Id.* at 523-24 (quotation omitted). This court has discussed factors to consider in determining if a trustee has abused his or her discretion, including (1) the extent of the trustee's discretion under the trust terms; (2) the purpose of the trust; (3) the nature or extent of power vested in the trustee; (4) the existence of a standard to judge the reasonableness of the trustee's actions; (5) the trustee's motives; and (6) any conflicts of interest between the trustee and the trust beneficiaries. *In re Trusts A & B of Divine*, 672 N.W.2d 912, 919-20 (Minn. App. 2004).

Respondent had broad discretion under the trust. Although decedent designated variable annuities, the choice of annuities was left to respondent. By the language of the trust, decedent intended that appellants receive a lifetime stream of income rather than a lump sum. Respondent's powers under the trust were similarly broad. Respondent consulted a variety of experts before settling on the fixed annuities. Appellants do not allege that respondent acted in bad faith or from an improper motive, or that there was a conflict of interest.

Respondent provided an affidavit documenting his search for variable annuities that would guarantee a lifetime stream of income and was advised that such a product was not

available. Respondent chose to focus on what he discerned as decedent's intent: a lifetime stream of income that could not be immediately liquidated as a lump sum. Appellants' expert thoroughly explained the differences between the various types of annuities, but he did not address the question of liquidation or potential for volatility of variable annuities, which would have frustrated decedent's intent. Appellants have not identified a genuine issue of material fact that negates respondent's exercise of reasonable discretion in accord with decedent's intent of providing a lifetime stream of income.

Because respondent did not abuse his discretion in the exercise of his duties as trustee, the district court did not err by granting summary judgment in favor of respondent on the issue of breach of fiduciary duty.¹

Affirmed.

¹ Appellants acknowledged at oral argument before this court that their challenge to the final accounting was tied to resolution of the breach-of-fiduciary-duty question, and we therefore decline to address this issue.