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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0633**

In re The Robert Preus and Donna Mae
Preus Lake Property Family Trust.

**Filed December 20, 2021
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-TR-CV-10-120

Mark R. Bradford, Norman M. Abramson, Casey D. Marshall, Bassford Remele, P.A.,
Minneapolis, Minnesota (for appellants)

Blake Shepard, Siegel Brill, P.A., Minneapolis, Minnesota (for respondent Solveig Fiene)

V. John Ella, Nicholas N. Sperling, Anna M. Koch, Trepanier MacGillis Battina, P.A.,
Minneapolis, Minnesota (for respondent Rolf Preus)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and
Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this trust dispute, appellants-trustees challenge the district court's (A) relief granted to respondents-beneficiaries; (B) removal of one of the trustees; and (C) attorney-fee award. We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

This case concerns real property located on the Gunflint Lake in Ontario, Canada (the property). The property consists of over 200 acres of “pristine wilderness” and has over 3,000 feet of lakeshore. There are no local or provincial building codes or regulations that apply to the property, such as setbacks, building size restrictions, or other zoning or land management regulations. The property is very remote and is only accessible by boat or by ice road when the lake is frozen.

The property was originally purchased in 1929 by Idella Preus, who later transferred it to her two sons, Robert Preus and Jacob (“Jack”) Preus, as tenants in common. The brothers had the property surveyed to create 19 lakefront lots. Nine of the lots were designated to Robert and nine were designated to Jack.¹ The areas not surveyed and designated into lots remained common area. Jack later conveyed his undivided half-interest in the property to a trust he created. The remaining half-interest in the property remained with Robert as a tenant in common.

Robert died, unexpectedly, in 1995, and his undivided half-interest in the property passed to his wife, Donna Mae Preus (settlor). Based on previous discussions she had with her husband, settlor established the Donna Mae Preus Lake Property Family Trust (Trust) on December 18, 1996, to hold what had been Robert’s undivided half-interest in the

¹ Lot 11 was designated as a common lot because it has no suitable building site.

property for use by the beneficiaries of the Trust.² The beneficiaries of the Trust are “the Settlor’s [ten] children, primarily, and the Settlor’s descendants secondarily.”

Under the terms of the Trust, seven of settlor’s children were given “the exclusive right to use and build on the lots” that were designated to them in the Trust. These seven children are Christian Preus, Peter Preus, respondent Rolf Preus, Katherine Briel, Karren Perkins, respondent Solveig Fiene, and Klemet Preus.³ The children’s “exclusive right” to build on their designated lots began on January 1, 2004. The Trust characterized the time period leading up to that date as the “non-exclusive period,” in which all the trust property was “available for the use and enjoyment of the Settlor’s descendants on a reasonably equal basis.”

Each of the children’s lots has approximately 150 to 200 feet of lakeshore and each lot is approximately 250 feet deep. The land behind the individual lots is not designated to any individual. There is also a strip of land on the property that runs along the shoreline that is designated as a common beach area.

Christian, an attorney at a Minneapolis law firm, was appointed as trustee. The trustee is obligated to “administer” the Trust “for the benefit of Settlor’s children primarily and Settlor’s descendants, secondarily.” The trustee also has “the right to designate the use and enjoyment of the common portions of the property that have not been specifically

² Robert’s undivided half-interest in the property will hereinafter be referred to as the “trust property.”

³ Klemet is now deceased. And because many of the children share the same last name, our opinion will refer to the children by their first names.

designated.” And the Trust also allows the Trustee to appoint an additional or successor trustee, who “must be a descendant of ROBERT D. PREUS.”

Prior to 2004, there were three cabins on the property that were used by Robert’s and Jack’s families. One of the cabins was built on Lot 8. In addition to the cabin, a bunkhouse was constructed, which is now owned by Rolf, a retired pastor. Of the settlor’s children, Rolf has the largest family, consisting of 12 children and 65 grandchildren.

In the summer of 2003, Rolf built a second outhouse on his lot to accommodate the bunkhouse. Shortly thereafter, at the end of the non-exclusive period set forth in the Trust, the children began building cabins on their designated lots. As construction of the cabins ensued, the settlor and Christian determined that there should be some fundamental rules regarding building construction and land use. According to Christian, these rules were prompted primarily by Rolf’s construction of the second outhouse and Solveig and her husband John Fiene’s construction of a boathouse on the lakeshore.

In February 2007, the settlor informed the children of a set of rules regarding the trust property. The rules were drafted by Christian and included rules about the number and size of buildings per lot, setback requirements, and limitations on what trees could be cut down. The settlor informed the children that these rules are “not simply suggestions,” that they are consistent with her intent in establishing the Trust, and that the trustee may “make more rules as time goes by.”

In May 2007, a forest fire burned much of the forest and destroyed all of the structures on the trust property. As the children began to rebuild on their lots, disputes arose, many of which form the underlying grounds for this lawsuit. For example, because

Solveig's lot did not provide for a good cabin location on its beach elevation given the rules regarding setbacks, she chose to rebuild on the top of the bluff. But before building the cabin, Solveig and her husband built a bunkhouse. The settlor and Christian objected to the bunkhouse because of its size and location. Christian also believed that the bunkhouse was actually a shed to store ATV's, which would violate the 2007 rules. And Christian was upset because the Fienes did not consult him in advance regarding their building plans, stating in a 2008 email that all building plans must be first approved in advance by him.

In December 2008, without obtaining permission from the Fienes or providing them advance notice, Christian hired a third party to move the bunkhouse. He then sent the Fienes a bill for moving the bunkhouse, which the settlor later agreed to pay. During this time, a dispute arose over a road that was built on Solveig's lot. Although Christian believed that John was attempting to build a permanent road on the lot in violation of the Trust's rules, Solveig claimed that the road was temporary and was only created to move building materials to the upper elevation of her lot.

Another dispute during the rebuilding process involved Rolf's desire to rebuild a second outhouse on his lot. Christian objected to the construction of the second outhouse, which prompted him to promulgate a second set of rules in May 2009. In response, Rolf sent several emails to Christian questioning his authority to control the Trust's beneficiaries' ability to build on their lots. Ultimately, however, Rolf's second outhouse was never built.

In February 2010, the settlor wrote to her children requesting that they sign a pledge (Loyalty Pledge), or risk being disinherited. The Loyalty Pledge communicated a set of principles related to the trust property, such as (1) the Trust beneficiaries are to honor the terms of the Trust; (2) it is the trustee's responsibility to ensure that the settlor's intent is carried out, and the beneficiaries are obligated to respect and follow the rules and decisions made by the trustee; (3) any disputes between beneficiaries shall be decided by the trustee; and (4) spouses are not beneficiaries to the Trust, but are considered "guests." The Loyalty Pledge was prepared with Christian's advance knowledge and approval and contained signature lines for the settlor's children.

All the settlor's children signed the Loyalty Pledge except Solveig and, initially, Rolf. Rolf was reluctant to sign the pledge because he felt that the insistence on Christian, as trustee, having authority that could not be challenged under any circumstances was contrary to the Trust itself and the wishes of his deceased father. But he eventually signed the Loyalty Pledge after talking with the settlor and receiving a letter from some of his siblings urging him to sign it.

Solveig was also upset about being asked to sign the Loyalty Pledge and reacted by writing a letter to the settlor expressing her love for her and her disappointment with Christian's actions, as well as stating that she would not sign the Loyalty Pledge. In addition, John responded by writing a letter to the settlor's pastors, who were the settlor's son-in-law, Steven Briel, and her oldest son, Klemet. John, who, like several of his brothers and brothers-in-law, is a pastor in the Lutheran Church, claimed to have sent the letter in confidentiality to the settlor's pastors in their capacity as pastors to the settlor. In the letter,

John accused Christian of violating several Biblical commandments, attempting to maliciously destroy property, and demanding “complete submission.” The letter also attacked the settlor, accusing her of potential criminal collaboration, of “papistic legalism,” of demanding idolatry and insanely defying truth and justice, and of acting with complete absence of love. John’s letter deeply offended the settlor and was circulated amongst the settlor’s family, prompting more familial discord.

In response to John’s letter, the settlor’s lawyer wrote to John on May 5, 2010, informing him that he was not permitted to set foot on the trust property without written permission from Christian. Christian also responded by sending two letters on May 6, 2010, one to John and one to the settlor’s children. In the letter to John, Christian informed him that he was “not permitted to enter on the . . . [t]rust property” unless he “accept[s] the Trust and commit[s] to honor, respect and comply with the Trust, the rules of the Trust, and the decisions of the Trustee.” And in the letter to the children, Christian stated that “our enjoyment of the [trust] property has been disrupted,” and that the “source of the problem is John.” The letter also contained a list of misbehaviors attributed to John and stated that John could not return to the trust property unless he met with the trustee and received the trustee’s permission. Christian then followed up the May 6 letters by sending a 39-page, single-spaced letter to the entire extended family on May 21, 2010. The letter reviewed years of encounters with John, stated that John was aggressively defying the Trust, the Trust rules, and the authority of “Mom’s trustee,” and claimed that John had made it clear that he had no intent to stop his defiance and refused to be subject to the Trust, the rules of the Trust, or the authority of the trustee.

Solveig responded to Christian's communications in September 2010, by writing a letter to her family justifying the Fienes' actions and stating that they had retained an attorney to advise them of their rights with respect to the Trust. She then asked the settlor if they could all mediate the dispute regarding the Fienes' access to the trust property. The settlor rejected the mediation invitation, instead sending Solveig a copy of a proposed "Petition for Construction and Instructions" related to the trust property.

In November 2010, Karren wrote a letter to her family members asking for reconciliation, explaining that the Fienes were simply defending themselves, and stating that she would be "devastated" if the Fienes never went to the trust property again. Christian subsequently contacted Karren and told her that the Fienes were planning on suing the settlor. After contacting Solveig, and being unpersuaded by her that Christian's claim was false, Karren told several people, including Katherine, that she had been sexually harassed by John. She later filed a formal charge with John's ecclesiastical supervisor, which triggered a formal investigation by the Lutheran Church. Several of the children, including Christian, wrote unsolicited letters to the church's investigating body supporting Karren's allegations. The investigation by the church concluded in January 2013, without reaching a conclusion related to the allegations.

In the meantime, in September 2010, Christian appointed Katherine and Erik as co-trustees.⁴ Two months later, the settlor and trustees filed a petition for clarification of the Trust. The petition alleged that the Trust's language "is ambiguous and uncertain as to the

⁴ Christian, Katherine, and Erik, as trustees of the Trust, are the appellants in this case. They will, hereinafter, be collectively referred to as the "trustees."

‘continuing enjoyment of the [trust] property for all beneficiaries,’ the ‘exclusive use of the cabin,’ and ‘the exclusive right to use and enjoy the lot’ designated to individuals.” The petition sought an order clarifying the Trust consistent with the settlor’s intent.

The petition was unopposed. In an order dated February 17, 2011 (2011 order), the district court largely adopted the language of the petition and concluded that the Trust is to be construed in accordance with the settlor’s stated intent. The 2011 order authorized the trustees “to establish rules and regulations for the management, administration, and use of the Trust Property as they deem prudent, subject to their fiduciary standards.” The 2011 order also authorized the trustees to enforce their rules and impose sanctions, both financial and otherwise, for failure to follow the rules.

In the summer of 2012, John visited the trust property for the first time in three years. Apparently aware of his plans, the trustees wrote to John reminding him that he was prohibited from going to the common beach area. The trustees also issued new annual rules for the Trust between 2012 to 2014. These rules, however, made no mention of restrictions involving John.

The Fienes visited the trust property during the summers of 2013 to 2015. Once during the summer of 2015, John and his family visited Rolf’s family at his cabin. Karren reported to Katherine that she could hear John’s voice coming from Rolf’s cabin. Although no action was immediately taken by the trustees, a letter from the trustees was sent to Solveig in May of 2016, reminding her that “John is not to come to the beach area while there are other beneficiaries up at the lake.”

The settlor died in May 2017. Christian was appointed the personal representative of the settlor's estate and, because she never signed the Loyalty Pledge, Solveig was disinherited. The trustees then continued to issue annual rules regarding the trust property, none of which mentioned restrictions on John accessing the trust property.

In July 2018, Rolf wrote to the trustees about several concerns regarding the Trust administration. Specifically, he was alarmed over the trustees' objection to his building of a second outhouse. He also stated that the trustees were exceeding their authority over designated lots for which the Trust granted exclusive use and enjoyment to certain designees. Rolf then met with the trustees later that summer to discuss his concerns and sent an email to "Members of the Robert Preus Family" in February 2019, criticizing Christian for his inability to reconcile issues involving the Trust.

Christian, in his capacity as personal representative of the settlor's estate, responded by suing Rolf. The suit sought to disinherit Rolf on the grounds that he signed the Loyalty Pledge under false pretenses and without intention to honor its terms. The suit sought damages equal to the amount Rolf received in his inheritance, as well as gifts he received from the settlor during her lifetime. That case is still ongoing.

Also in the summer of 2018, the trustees learned that John visited the beach on one occasion and visited Rolf's cabin. The trustees responded by issuing new rules in March 2019, including (1) no urination anywhere except in the outhouses, including no urination in the lake; (2) no more than one outhouse per lot, which must be at least 150 feet from the shoreline; (3) "[n]o more than a total of 10 people, or a married couple and their children, whichever is greater, can stay overnight . . . on a lot, unless a specific exception is approved

in advance by the trustees”; and (4) subject to “no exceptions,” John is prohibited from any portion of the trust property other than the lots designated for Solveig. The trustees justified the rules by citing the need to keep the trust property in pristine wilderness condition as well as to ensure the beneficiaries’ use and enjoyment of the trust property.

After the issuance of the March 2019 rules, Solveig filed a petition asserting that the rules involving John constituted a breach of fiduciary duty by the trustees. Shortly thereafter, Rolf filed a petition, alleging that the 2019 rules setting capacity limits, limiting outhouses, and otherwise governing urination, improperly target his family and constitute a breach of fiduciary duty. Both petitions also sought removal of the trustees.

The trustees moved for summary judgment, arguing that Solveig’s petition was barred by res judicata based on the 2011 order. The trustees also argued that the statute of limitations barred the petition. The district court denied the summary-judgment motion, concluding that res judicata did not apply because the 2011 order did not decide the issue raised in Solveig’s petition and because her claims arose from facts and events occurring after the 2011 order. The statute-of-limitations argument was denied without comment.

Following a bench trial, the district court made extensive findings of fact, including a finding that the court had “not seen [this case’s] equal in terms of intra-familial discord.” In analyzing Solveig’s challenge to the trustees’ rules restricting John’s access to the trust property, the district court applied a fiduciary-duty standard and determined that the trustees acted unreasonably and with improper motives. The district court then analyzed Rolf’s challenges to the trustees’ rules and determined that the one-outhouse rule unreasonably interfered with Rolf’s exclusive use and enjoyment of his lot. But the district

court determined that Rolf was unable to show that the trustees acted in bad faith in implementing the other rules because there were legitimate reasons for the rules. Finally, the district court removed Christian as trustee, concluding that he “eclipsed his fiduciary duty” by ignoring “the restrictions of the Trust and law to advance his own authority.” The district court also determined that removal was proper because Christian had a conflict of interest of his own making, created by his decision to sue Rolf—a beneficiary of the Trust to whom he owed a fiduciary duty—seeking to recover his inheritance and gifts from the settlor, based on Rolf’s alleged disavowal of the Loyalty Pledge and breach of his promise to “acquiesce completely to the Trustee’s authority in all matters to the Trust for the rest of his life as a condition of inheritance.” The district court, however declined to remove the other two trustees, concluding that their actions do not warrant removal.

In a separate order, the district court found that Solveig’s petition benefited the Trust and awarded her fifty percent of her attorney fees and costs. The district court applied a similar analysis to Rolf’s petition and awarded him twenty percent of his attorney fees and costs. And in considering the trustees’ request for attorney fees, the district court reiterated that the trustees acted in bad faith. But the district court concluded that a portion of the trustees’ fees and costs were incurred in service to the Trust. Thus, the district court awarded the trustees ten percent of their attorney fees and costs. There were no posttrial motions. This appeal follows.

DECISION

I.

In the absence of a motion for a new trial, our scope of review includes substantive legal issues properly raised to and considered by the district court, whether the evidence supports the findings of fact, and whether those findings support the conclusions of law and the judgment. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 309–10 (Minn. 2003) (stating that new-trial motion is not prerequisite to appellate review of substantive legal issues properly raised and considered in district court); *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976) (stating that absent motion for new trial, appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment). This court also reviews pretrial orders denying summary judgment to the extent that they are orders “involving the merits or affecting the judgment” being appealed. Minn. R. Civ. App. P. 103.04; *see also Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff & Hobbs, Ltd.*, 783 N.W.2d 733, 744 (Minn. App. 2010) (holding that summary-judgment denials based on legal determinations are within scope of review), *rev. denied* (Minn. Sept. 21, 2010).

A district court’s findings of fact are given great deference and shall not be set aside unless clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). A finding is clearly erroneous when the reviewing court is “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). But issues of law are reviewed

de novo. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984).

A trustee owes a fiduciary duty to the beneficiary of a trust. *Thomas B. Olson & Assocs., P.A. v. Leffer Jay & Polglaze, P.A.*, 756 N.W.2d 907, 914 (Minn. App. 2008), *rev. denied* (Minn. Jan. 20, 2009). Failure to administer a trust in accordance with the settlor’s intent is a breach of fiduciary duty. *Lund ex rel. Revocable Tr. of Kim A. Lund v. Lund*, 924 N.W.2d 274, 284 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019). To maintain an action for breach of fiduciary duty, a plaintiff must prove four elements: (1) duty; (2) breach; (3) causation; and (4) damages. *Id.* Failure to establish one of these elements defeats a claim of breach of fiduciary duty. *Id.*

The trustees challenge the order granting relief to respondents, arguing that the district court erred by (A) “interpreting the Trust to convey exclusive ‘easements’” over the individual lots; (B) “concluding that the one-outhouse rule is unreasonable”; and (C) concluding that the trustees cannot restrict John’s access to the trust property.

A. Easement conclusion

In addressing respondent’s claims, the district court concluded that the “Trust unambiguously provides each of the seven Children an easement to exclusively use and exclusively enjoy his/her designated lot and to not be subject to the Trustees’ administrative authority over his/her designated lot.” The trustees argue that the district court erred in interpreting the Trust to convey exclusive easements because (1) the 2011 order has res judicata effect and bars the easement conclusion; (2) the decision is “wrong”; and (3) the

district court reinterpreted the Trust to convey an easement without notice or opportunity to be heard.

Respondents contend that the trustees' challenge to the district court's easement analysis is not properly before this court because the trustees did not move for a new trial. Indeed, the supreme court has stated that a "motion for a new trial or amended findings is a prerequisite to appellate review regarding matters of trial procedure, evidentiary rulings, and jury instructions." *Continental Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 399 (Minn. 2011) (quotations omitted). But the supreme court also recognized that "a general demarcation line could be drawn between the assignment of errors that require a post-trial motion, referring to rulings of the district court that reside within the court's discretion, and substantive questions of law that we review de novo." *Id.* (quotation omitted).

First we begin by concluding that the district court's use of an easement analysis was more of a construct to frame the rights of the beneficiaries. Here, the district court's decision to use an easement construct to analyze the rights of the beneficiaries with respect to their individual lots did not involve a matter of trial procedure, nor was the decision made during the course of trial. *See Sauter v. Wasemiller*, 389 N.W.2d 200, 201-02 (Minn. 1986) (using the phrases "occurring at trial," "during the course of trial," and "during trial" to depict issues that must first be addressed in a motion for a new trial before appellate review may be sought). In other words, the district court's decision was not a quick, on-the-spot decision. *See County of Hennepin v. Bhakta*, 922 N.W.2d 194, 198 (Minn. 2019) (stating that, when objections are made during trial, the district court must make quick, on-

the-spot decisions). Instead, the decision was made after the district court heard all the evidence and arguments in the matter. Therefore, the trustees' challenge to the district court's easement construct analysis is properly before us.

1. *Res judicata*

Res judicata can bar relitigation of a claim when: “(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter.” *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2001). “The common test for determining whether an action is precluded is to determine whether the same evidence will sustain both actions.” *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 925 (Minn. 2015) (quotation omitted). “Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

The trustees argue that the 2011 order has res judicata effect because their 2010 petition “sought to resolve the scope of the Trustees’ administrative authority,” involved all the same parties, was a final resolution on the merits, and both Solveig and Rolf had notice and the opportunity to litigate the matter. But the issues raised in the 2010 petition are different from the issues raised in this case; the 2010 petition related to the general authority of the trustees, whereas the issue in this case concerns specific exercises of the trustees’ authority and whether the trustees breached their fiduciary duty in exercising that authority. And, in light of the difference between the issues, the evidence needed to sustain the issues is not the same. See *Mach*, 866 N.W.2d at 925 (stating that the “common test

for determining whether an action is precluded is to determine whether the same evidence will sustain both actions” (quotation omitted)). For example, respondents’ petitions were prompted by actions that occurred *after* the 2011 order, including the promulgation of the 2019 rules. These rules involved urination on the trust property, outhouses, and John’s access to the trust property. There is nothing in the 2011 order addressing any of these issues. Accordingly, the doctrine of res judicata is not applicable.

2. *Merits of the easement construct*

Next, the trustees contend that the district court’s easement analysis is erroneous because it fails to consider applicable Ontario law, contravenes the settlor’s intent, and makes achieving the settlor’s intent impossible. We disagree. The issue before the district court at trial was whether the rules promulgated by the trustees violated the terms of the Trust, thereby constituting a breach of the trustees’ fiduciary duties. In addressing this question, the district court looked to the plain and unambiguous language of the Trust, which provides that “[o]n and after January 1, 2004, the beneficiaries shall have the *exclusive right to use and enjoy* the lot specified to them under . . . this Agreement.” (Emphasis added.) To determine whether the rules promulgated by the trustees violated respondents’ “exclusive right to use and enjoy” their lots, the district court construed the language of the Trust to mean that the rights conveyed to the individual lot owners were akin to an easement.

The trustees argue that the district court’s easement construct analysis is erroneous because the trust property “is located *exclusively* in Ontario, Canada,” and “[a]ny determination of whether the Trust conveys an easement in real property located in Ontario

is necessarily governed by laws applicable to that province.” But, although the trust property is in Canada, the district court’s order does not convey a formal, legal easement. Rather, the order indicates that the rights bestowed on the beneficiaries under the Trust to exclusively use and enjoy their lots is identical to the rights bestowed on an easement holder under the laws of Minnesota. For example, the district court stated: “The Trust granted certain beneficiaries the exclusive right to use and enjoy specified lots on the Trust Property. *Put another way*, the Trust granted certain beneficiaries an easement for the exclusive right to use and enjoy the designated lots on the Trust Property.” (Emphasis added.) The district court could have stopped after the first sentence. Instead, it elaborated by stating, “[p]ut another way,” the beneficiaries were granted an easement to use the lots. The language used by the district court indicates an analogy—that the rights conveyed to the beneficiaries under the Trust were similar to the rights conveyed to an easement holder. The district court then looked to the laws of Minnesota pertaining to easements to convey the beneficiaries’ rights under the Trust to use and enjoy their lots. Therefore, despite the trustees’ argument to the contrary, no formal or legal easement was created by the district court’s analysis.

The trustees also contend that the district court’s “easement conclusion . . . contravenes the Settlor’s intent and undermines the entire purpose of the Trust.” This argument is unavailing. The Trust provides that “[u]ntil January 1, 2004, the [trust property] shall be for the general use, enjoyment and benefit of all the descendants of ROBERT D PREUS,” and that “[d]uring the pendency of th[is] non-exclusive use period, the [trust] property shall be available for the use and enjoyment of the Settlor’s descendants

on a reasonably equal basis.” The Trust further provides that “[o]n and after January 1, 2004, the beneficiaries shall have the exclusive right to use and enjoy the lots specified to them under . . . this Agreement.” The Trust’s specific designation of a “non-exclusive period” and an “exclusive period” reflects a specific distinction between the beneficiaries’ rights to their individual lots before and after January 1, 2004.

Moreover, the Trust expressly limits the trustees’ administrative authority with respect to the individual lots after the non-exclusive period has ended. Specifically, the Trust provides:

On and after January 1, 2004, the beneficiaries shall have the exclusive right to use and enjoy the lot specified to them under . . . this Agreement. The Trustee shall have the right to designate the use and enjoyment of the common portions of the property that have not been specifically designated.

The Trust’s language differentiating between the rights the beneficiaries have over their individual lots and the trustees’ administrative authority over the common areas indicates that the trustees’ authority over the common areas of the trust property is different from the trustees’ authority over the individual lots designated to the beneficiaries. Although the district court looked to easement authority to determine the extent of the beneficiaries’ right to use their lots and whether the trustees’ rules interfere with the beneficiaries’ rights, the difference between the trustees’ authority over the common areas and over the individual lots is depicted in the unambiguous language of the Trust, which is consistent with the settlor’s intent. Accordingly, the trustees cannot demonstrate that the district court’s easement construct analysis is erroneous.

3. *Notice and opportunity to be heard*

The trustees argue that the district court’s easement construct analysis was improper because the court “reinterpreted the Trust to convey an easement without notice or opportunity to be heard.” But the record reflects that the trustees moved for summary judgment, which was denied, and then participated in a lengthy trial in which voluminous amounts of evidence was admitted. And although the district court sua sponte used an easement construct to address the beneficiaries’ rights to their individual lots, the trustees objected to the district court’s use of that construct in their arguments concerning attorney fees. The trustees cannot show that they were denied notice and the opportunity to be heard.

B. One-outhouse rule

The trustees argue that the district court erred in concluding that the one-outhouse rule is unreasonable because the court “granted relief on a claim that Rolf . . . never asserted.” We disagree. Although Rolf testified at one point that he had “given up” on this challenge to the one-outhouse rule, his petition concerned the trustees’ general rules regarding urination on the trust property. Part of Rolf’s objections to the rules consisted of the trustees’ objections to his family’s use of a urinal on his lot, as well as the fact that a “porta potty” would be prohibited under the trustees’ one-outhouse rule. In other words, the rules regarding outhouses and urination on the trust property are intertwined and closely related. Thus, Rolf ’s general challenge to the trustees’ rule regarding urination belies the trustees’ argument that the district court granted relief on a claim that Rolf never asserted.

Moreover, the trustees' challenge to the relief granted with respect to the one-outhouse rule exemplifies the nature of this litigation as described by the district court on page 11 of this opinion. Rolf testified at trial that he takes medication for his heart that causes him to urinate frequently. He also testified that he has a prostate condition that makes it impossible to urinate while sitting. According to Rolf, "[y]ou can't pee in an outhouse standing up without making a mess, not when you're 67 years old with prostate trouble. It's not possible." In fact, Rolf noted that his "outhouse is twice as far from my cabin as anybody else's is," which further demonstrates his need for a second outhouse. The district court considered Rolf's challenge to the trustees' rules regarding urination and made extensive findings related to the impact of the rules on Rolf's use and enjoyment of his lot. The district court's findings are supported by the record and support its decision that the one-outhouse rule unreasonably interferes with Rolf's use and enjoyment of his lot. Therefore, the trustees cannot show that the district court erred in concluding that the one-outhouse rule is unreasonable.

C. Rule restricting John's access to the trust property

The trustees challenge the district court's decision that the trustees cannot restrict John's access to the individual lots. They first argue that the decision is erroneous because John was banned from the trust property in 2010, almost ten years before Solveig filed her petition. Thus, the trustees argue that Solveig's petition is barred by the statute of limitations set forth in Minn. Stat. § 501C.1005(a) (2020).⁵

⁵ Solveig argues that the trustees' statute-of-limitations argument is not properly before this court because it was not raised during or after trial. But the record reflects that the trustees'

The relevant statute of limitations provides that “[a] beneficiary may not commence a judicial proceeding against a trustee more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim.” Minn. Stat. § 501C.1005(a). Here, the record reflects that John was prohibited from entering the trust property in May 2010, after he wrote the letter to the settlor’s pastors chastising the settlor for requiring her children to sign the Loyalty Pledge. But the trustees concede in their reply brief that the 2010 prohibition was eased in 2012 when John was permitted “to visit the lots upon which Solveig . . . had the right to build and use a cabin.” Although the trustees assert that the rule banning John from access to the rest of the trust property was still in effect, this rule was apparently not enforced because the record reflects several instances in which John entered various parts of the trust property between 2012 and 2019. And although new rules were issued between 2010 and 2018, either reaffirming old rules or implementing new ones, the new rules were silent with respect to John’s access to the trust property. It was not until the trustees promulgated the 2019 rules that John’s access to the trust property was formally adopted, including penalties for violations of these rules. The promulgation of these 2019 rules appears to be based on

statute-of-limitations argument was raised in their motion for summary judgment, and the district court denied the motion without commenting on the statute-of-limitations issue. Although the trustees did not assert the statute-of-limitations argument in a motion for a new trial, that argument presents a legal issue that does not involve trial procedure, evidentiary rulings, or jury instructions. *See Johnson v. Winthrop Labs. Div. of Sterling Drug, Inc.*, 190 N.W.2d 77, 79 (Minn. 1971) (acknowledging that the application of a statute of limitations is a legal issue). The trustees’ statute-of-limitations argument is, therefore properly before us. *See Continental Retail*, 801 N.W.2d at 399 (stating that a “motion for a new trial or amended findings is a prerequisite to appellate review regarding matters of trial procedure, evidentiary rulings, and jury instructions” (quotations omitted)).

different circumstances than the circumstances related to the 2010 ban. Thus, the implementation of the *new* rules in 2019 related to John's access to the trust property demonstrates that Solveig's petition is not barred by the three-year statute of limitations.

The trustees also contend that the district court's enjoinder of the rule restricting John's access to the trust property is erroneous because it is not supported by the record. We disagree. The district court analyzed the issue "as a potential breach of fiduciary duty," noting that in order for Solveig "to prevail, she must establish that the Trustees violated the Trust, and acted unreasonably and from improper motives." The district court then found that the trustees acted with improper motives stemming from their bias against John. The district court also found that the trustees' rule restricting John's access to the trust property was unreasonable because it stemmed from John's actions that occurred long ago and concerns for which there was no support. For example, the district court referenced the fact that the letter John wrote to the settlor's pastors was written nine years prior to the 2019 rules. The district court also referenced the road that was built when the Fienes were rebuilding their cabin, noting that the road was temporary, did not result in any permanent impairment to the trust property, was necessary for the building activities, and occurred "13 years before the March 2019 rule banning John." (Emphasis omitted.) And the district court noted that "the Trustees likely placed little significance on the sexual harassment investigation [involving John] and its underlying accusations" in placing the restrictions on John's access to the trust property. Therefore, the district court concluded that "based on the Trustees' improper motives, and the unreasonableness of their actions, . . . no

reasonable trustee would have banned John . . . from the common Trust property,” or any of the individual lots.

The district court’s decision is supported by the record. The record is replete with evidence showing Christian’s bias against John, including exhibit after exhibit of letters and emails authored by Christian in which he blamed John for the family discord. Moreover, the record reflects that sexual-harassment allegations involving John originally stemmed from Christian’s false representation to Karren that the Fienes were planning on suing the settlor over the Trust. And the record reflects that much of the conduct asserted by the trustees as supporting the restrictions occurred more than a decade before the 2019 rules. Although much of the district court’s interpretation of the evidence involved assessing the credibility of the claims and evidence, it is well settled that this court defers to the court’s credibility determinations. *See Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004) (stating that due regard is given to the district court’s opportunity to judge the credibility of witnesses), *rev. denied* (Minn. Sept. 29, 2004). Thus, taking into consideration the district court’s superior position to weigh the credibility of the testimony and evidence before it, we conclude that the district court did not err in determining that the 2019 rules restricting John’s access to the trust property were unreasonable.

II.

The trustees challenge the district court’s removal of Christian as trustee. We review such a decision for an abuse of discretion. *See Lund*, 924 N.W.2d at 284 (“We review a district court’s decision whether to remove a trustee for abuse of discretion.”).

A trustee must administer a trust in good faith. Minn. Stat. § 501C.0801 (2020). “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) (2020). 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 (2020). A trustee must prudently administer the trust in light of its purpose, terms, and distribution requirements. Minn. Stat. § 501C.0804 (2020). And “[a] trustee is required to exercise a discretionary power in good faith and in . . . the best interests of the beneficiaries.” *In re the Trust of Lawrence B. Schwagerl Trust Under Agreement Dated April 9, 1999*, 965 N.W.2d 772, 783 (Minn. 2021) (quotation omitted).

Generally, district courts are reluctant to remove a trustee selected by a 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) (2020). The district court may remove a trustee if the trustee has committed a serious breach of trust or the trustee is unfit, unwilling, or persistently fails to effectively administer the trust to best serve the interests of the beneficiaries. Minn. Stat. § 501C.0706(b) (2020). “[T]he 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.

The trustees argue that the district court abused its discretion by removing Christian as trustee because he exercised authority confirmed by the 2011 order. That order provides that the “Trustees are authorized to establish rules and regulations for the management, administration and use of the Trust Property as they deem prudent, subject to their fiduciary

standards.” The trustees argue that the district court’s decision “cannot be reconciled with the 2011 Order, which recognized that the scope of the Trustees’ authority to create and administer rules *includes the designated lots* on the Trust property.”

We are not persuaded. According to the trustees, the 2011 order provides the trustees with the unrestricted authority to establish rules and regulations related to the entire trust property. But the 2011 order is not this broad. Rather, the order provides that the trustees may establish rules and regulations related to the trust property “*subject to their fiduciary standards.*” (Emphasis added.)

Failure to administer a trust in accordance with a settlor’s intent is a breach of fiduciary duty. See *Pfoser v. Harpstead*, 953 N.W.2d 507, 520 (Minn. 2021) (stating that a “trustee has a duty to administer a trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries” (quotation omitted)); see also *Lund*, 924 N.W.2d at 284 (stating that “[t]rustees owe beneficiaries duties of loyalty, full disclosure, and action pursuant to the terms of the trust”). A settlor’s intent is determined by reviewing the trust instrument and considering any reasonable inferences that can be drawn from the document. *In re Trusteeship of Williams*, 591 N.W.2d 743, 747 (Minn. App. 1999). 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), *rev. denied* (Minn. Jun. 26, 2013).

Here, the parties agree that the Trust is unambiguous but differ on what they perceive the settlor’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 Trs. A & B of Divine*, 672 N.W.2d 912, 919-20 (Minn. App. 2004).

As discussed above, the district court determined that the plain language of the Trust provides the beneficiaries with an exclusive right to use and enjoy their individual lots. And, as the district court found, some of the rules and regulations imposed by the trustees violate this right. Although the trustees contend that they imposed the rules and regulations in good faith, the district court found otherwise. Specifically, the district court found that “there is a dearth of good faith and an abundance of ill will exhibited by [Christian].” The district court’s finding is supported the record. Christian took a position in contradiction to the plain language of the Trust, believing he could exercise complete control over the individual lots. And the record is replete with evidence demonstrating that Christian acted in an abundance of ill will towards anyone who challenged his authority as trustee. Christian’s consistent pattern of conduct in contradiction to the plain language of the Trust supports the district court’s decision that Christian violated his fiduciary duty, thereby warranting his removal as trustee.

The trustees also challenge the district court's conclusion that Christian's conflict of interest warrants removal. The trustees argue that the district court's decision is erroneous because the "Trust specifically provides that a beneficiary may serve simultaneously as both a Trustee *and* in another fiduciary role, including representative of Settlor's estate." And the trustees cite *In re Hormel's Tr.*, 163 N.W.2d 844, 850 (Minn. 1968), for the proposition that a trustee should not be removed based on a perceived conflict of interest of which the settlor was aware at the time of appointment.

The trustees are correct that, under the Trust, "a Trustee may . . . be a personal representative of [the settlor's] estate." But the general rule is 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." Restatement (Third) of Trusts § 78(2) (2007).

Here, it was not an inherent conflict of interest to be the personal representative and the trustee, but once Christian sued a beneficiary of the Trust as the personal representative in a separate action, it became a conflict of interest. In other words, the record reflects that Christian owed a fiduciary duty to Rolf as the trustee of the Trust under which Rolf is a beneficiary. But the record also reflects that, as the personal representative of the settlor's estate, Christian owes a duty to uphold the wish of the settlor to disinherit any of her children attempting to hold Christian, as trustee of the Trust, accountable for his actions under the Trust. Under the circumstances presented in this case, Christian cannot do both.

Moreover, the trustees' reliance on *Hormel* is misplaced. In that case, the supreme court stated that a court "will not ordinarily remove a trustee named by the settlor upon a

ground existing at the time of his appointment and known to the settlor and in spite of which the settlor appointed him, although the court would not have appointed him trustee.” 163 N.W.2d at 850 (quotation omitted). Consistent with *Hormel*, the Trust specifically allowed a trustee to also serve as the personal representative of the settlor’s estate, which, as stated above, was not an inherent conflict. But *Hormel* is not dispositive of the issue presented here because, unlike in *Hormel*, a conflict of interest arose once Christian sued a beneficiary of the Trust. Accordingly, we conclude that the district court did not abuse its discretion by removing Christian as trustee.

III.

Finally, the trustees challenge the district court’s attorney-fee award. An award of attorney fees from a trust will not be reversed absent an abuse of discretion. *In re Great N. Iron Ore Props.*, 311 N.W.2d 488, 492 (Minn. 1981).

Minnesota courts have long recognized that a beneficiary or a party to a trust may be allowed attorney fees and expenses from a trust. *Id.* The oft-cited rule was established in *In re Atwood’s Tr.*:

In the sound and cautiously exercised discretion of the court, and not as a matter of right, attorneys’ fees and other expenses reasonably and necessarily incurred by all necessary parties to litigation may be allowed and properly charged to the trust estate where such litigation, with respect to substantial and material issues, is necessary in order to resolve the meaning and legal effect of ambiguous language used by the settlor in the trust instrument, if an adjudication thereof is essential to a property administration of the trust, and if, without unnecessary expense or delay, the litigation is conducted in good faith for the primary benefit of the trust as a whole.

35 N.W.2d 736, 740 (Minn. 1949).

The trustees argue that the district court abused its discretion in awarding attorney fees to respondents “because neither petition benefitted the Trust.” But the district court determined that although the enjoining of the 2019 ban of John appears to superficially “benefit only [the] Fiene[] family, the ruling sprang from an analysis of the Trust language, which concluded that the Trust unambiguously granted exclusive use easements to certain beneficiaries and as to those easements, the Trustee could not act in a way that unreasonably interfered with the easement holder’s easement rights.” The district court concluded that, as a result, the “ruling regarding the Trust language benefited the Trust by clarifying the proper reach of Trustee authority.” And the district court determined that the Trust was benefited by the removal of Christian as trustee due to his “egregious” behavior and “serious breach of his fiduciary duty.” The district court then used a similar analysis in determining that Rolf’s petition provided some benefit to the Trust. The district court’s analysis properly characterizes the record and demonstrates that the Trust was benefited by the decisions in favor of respondents.

Having concluded that respondents’ petitions benefited the Trust, the district court crafted an order considering the benefit to the Trust incurred by the petitions, as well as the fact that not all the relief sought in the petitions was granted. The order ultimately awarded Solveig fifty percent of her attorney fees and costs and Rolf twenty percent of his attorney fees and costs. The district court’s order is thoughtful, well analyzed, and supported by the record. Accordingly, the trustees cannot establish that the district court’s award of attorney fees to respondents was an abuse of discretion.

The trustees also contend that they “are entitled to all of their attorney fees and costs.” We disagree. A trustee defending in good faith a challenge to the trustee’s administration of the trust is generally entitled to reasonable attorney fees paid out of the trust. See *In re Tr. Created by Hill*, 499 N.W.2d 475, 494 (Minn. App. 1993), *rev. denied* (Minn. July 15, 1993). But a district court may deny a trustee’s claim for attorney fees paid out of the trust when the trustee acts in bad faith or is guilty of fraud. *In re Tr. of Freeman*, 75 N.W.2d 906, 910 (Minn. 1956).

Here, the district court found that the trustees acted in bad faith by ignoring the unambiguous terms of the Trust. But the district court recognized that it has discretion to award attorney fees where the Trust has benefited in the face of the trustees’ breach of duty or bad faith. The district court then determined that the “Trust benefited from the Trustees’ actions in upholding certain 2019 rules against the challenge of [Rolf].” Therefore, the district court awarded the trustees ten percent of their fees and costs because “a small portion of the fees the Trustees incurred [was] in true service to the Trust.”

The trustees argue that they defended the challenges to their Trust administration in good faith because they reasonably believed they had authority to make decisions regarding the designated lots based on the language of the 2011 order. But the record is replete with instances demonstrating Christian’s bad faith. And the Trust clearly and unambiguously provides the beneficiaries with the exclusive right to use and enjoy their lots. As the district court determined, some of the trustees’ rules contradict this Trust language. Therefore, the district court’s attorney-fee award was not an abuse of discretion.

Affirmed.