STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1507

In the Matter of the Mary Kristen Francis Revocable Trust Agreement.

Filed September 18, 2023
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-TR-CV-14-213

Johanna Francis, c/o Etienne Estates LLC, Brooklyn, New York (pro se appellant)

Megan C. Kelly, Northwoods Law Group, P.A., Minneapolis, Minnesota (for respondent trustee Jullene Z. Kallas, LLC)

Sharon R. Markowitz, Stinson LLP, Minneapolis, Minnesota (for respondent Genevievre Collin Lise Broche)

Steffian Francis, Brooklyn, New York (pro se respondent)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this trust dispute, appellant-beneficiary argues that the district court improperly (1) failed to consider her request for trustee removal, (2) approved the trustee's accounts of the trust, and (3) considered the trustee's petition for instruction and provided instruction outside the scope of the petition. Appellant also argues that the district court abused its discretion by denying her continuances when she received deficient notice. Appellant

additionally argues that the district court improperly (1) failed to consider a codicil to the settlor's will, (2) distributed trust property randomly, (3) established a separate trust for one of the beneficiaries and terminated the trust at issue, and (4) granted compensation and attorney fees from the trust to the trustee. We affirm.

FACTS

In March 2011, Mary Kristen Francis (the settlor) created the Mary Kristen Francis Revocable Trust (the Francis trust) with herself as trustee. The beneficiaries are the settlor's children—appellant Johanna Francis (appellant), respondent Steffian Francis (Steffian), and respondent Genevievre Broche, now known as Genevievre Colianni (Genevievre). The Francis trust provides that upon the settlor's death, appellant and Genevievre receive their distributions "outright and free of trust," while Steffian's distribution goes to a supplemental needs trust (SNT) for his benefit.

In 2012, the settlor appointed Genevievre as cotrustee. On July 21 and August 4, 2014, the settlor executed documents purporting to amend the Francis trust to appoint appellant as trustee in the event of the settlor's death or legal incapacity, to revoke the power of attorney granted to Genevievre, and to grant that power to appellant. In September 2014, Genevievre petitioned under Minn. Stat. § 501B.16 (2014) to discharge appellant as trustee and reinstate Genevievre's trusteeship and power of attorney based on the settlor's incapacitation when she signed the revoking documents. Genevievre also petitioned in a separate proceeding to place the settlor under conservatorship.

In October 2014, the conservatorship court filed an order finding the settlor incapacitated and appointing Jullene Kallas as the settlor's guardian and conservator.[1] Soon after, the district court in this case filed an order adopting a stipulation between Genevievre and the settlor's counsel that voided any legal document signed by the settlor after July 20, 2014, for lack of capacity, appointed respondent Jullene Z. Kallas, LLC, as sole trustee of the Francis trust,[2] and placed the trust under court supervision.

In 2015, the settlor's parents, Phyllis and Konald Prem, died. Before passing, the Prems had created revocable trusts (the Phyllis trust) and (the Konald trust) (collectively the Prem trusts). In August 2017, through a separate probate proceeding, the district court approved distribution and termination plans for the Prem trusts. Approximately $477,000 was distributed for the benefit of the settlor and approximately the same amount was distributed for the benefit of Genevievre.

In March 2019, the settlor died. In May 2019 and 2020, appellant requested from the trustee all financial and legal documents concerning the settlor, including documents regarding the Prem trusts. In July 2020, the trustee filed a petition for instruction on "information it must provide to" appellant.

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[1] The district court in this case took judicial notice only of the settlor's testimony and the finding of incapacitation in the conservatorship file. We take judicial notice of the additional facts stated above from the October 2014 order placing the settlor under guardianship and conservatorship. *See Smisek v. Comm'r of Pub. Safety*, 400 N.W.2d 766, 768 (Minn. App. 1987) (taking judicial notice on appeal of district court order in a related proceeding).

[2] We refer to Kallas and Jullene Z. Kallas, LLC, collectively as "the trustee."

In August 2020, the trustee filed a petition to approve its first five annual accounts of the Francis trust. In December 2020, appellant objected to the petition, asserting that the trustee was improperly appointed and further discovery was necessary to determine whether the trustee collected all assets that should have been contributed to the Francis trust, including assets improperly paid to a trust for the benefit of Genevievre and proceeds from "the Prem Vail Limited Partnership" (the partnership).

At a March 24, 2021 status conference, appellant asserted that the trustee should not have been appointed, and that she was the rightful trustee per the settlor's appointment. The district court ruled that appellant should have objected in 2014, and that it was unlikely that the court would address the objection without appellant filing a motion with legal argument.

In May 2021, the district court set a hearing on the petitions for instructions and to approve accounts for June 17, 2021. After consulting with the parties, the district court then rescheduled the hearing to July 23, 2021. On July 16, 2021, the district court denied appellant's request to continue the hearing. At the July 23 hearing, appellant was represented by counsel retained the day before. At the start of the hearing, appellant asserted that she was "not served proper and adequate notice of the hearing." The district court disagreed and denied a continuance.

The trustee testified on several topics at the hearing, including how to distribute two of the settlor's rings. The district court asked the parties to submit written recommendations on a "fair process" for distributing the rings.

When given the opportunity to cross-examine the trustee, appellant's counsel declined to do so for lack of preparation. The district court denied counsel's request for additional time for discovery but permitted 60 days to file written submissions supporting appellant's position. Appellant submitted affidavits and supporting documents in September 2021. In her affidavit, appellant asserted that the rings should be distributed jointly to her and Steffian because Genevievre received jewelry from the Konald trust.

In February 2022, the district court filed an amended order concluding that some of appellant's arguments were barred by collateral estoppel, briefly rejecting those arguments on the merits, approving the scope of documents produced to appellant by the trustee, approving the trustee's accounts, and ordering that the rings be distributed by "a random process." The district court also appointed appellant as trustee of the SNT. Finally, the district court ordered termination of the Francis trust pending approval of the trustee's final account and distribution plan.

In April 2022, the district court ordered the trustee to produce bank statements and invoices to support trustee and attorney fees. The district court gave appellant until May 11, 2022, to review and respond to the documents expected to be received on May 2, 2022, and denied her request for more time. On May 11, appellant filed a motion for 45 more days, asserting that she had not received the documents until May 5.

In June 2022, the district court filed an order approving accounts and trustee compensation and attorney fees. It denied further discovery and reiterated the denial of appellant's request for additional time to audit documents produced by the trustee. In July 2022, the district court filed an order approving the trustee's amended final account and

rejecting appellant's claim that the existence of the SNT meant that the Francis trust could never be terminated. Finally, in August 2022, the district court filed an order approving the trustee's second amended final account and distribution plan. The district court concluded that the trustee provided all required documents and notice to appellant. This appeal followed.

DECISION

Appellant raises a host of pro se claims that are difficult to discern from her briefs and the large record. We attempt to address each claim. In so doing, we keep in mind that "pro se litigants are generally held to the same standards as attorneys." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). We also note that it is appellant's "burden to show error" and "prejudice" from the error. *See Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *rev. denied* (Minn. June 28, 1993); *see also* Minn. R. Civ. P. 61 (requiring us to disregard any error not affecting substantial rights); S*tate, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider issue that is inadequately briefed); *In re Est. of Hadaway*, 668 N.W.2d 920, 924 (Minn. App. 2003) (applying this concept in probate appeal).

I. Trustee removal

A. Hearing on removal under terms of the Francis trust

First, appellant seems to argue that the district court improperly appointed the trustee in 2014 under the plain language of the Francis trust, that appellant should have been appointed instead, and that the district court erred by failing to consider this claim.

An order under section 501B.16 is "final as to all matters determined by it[,] binding . . . upon the interests of all beneficiaries" unless appealed, and not subject to later collateral attack. Minn. Stat. § 501B.21 (2014); *In re Est. & Tr. of Anderson*, 654 N.W.2d 682, 686 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003). "[A]ny party" served with written notice of the order's filing may appeal under the Minnesota Rules of Civil Appellate Procedure. Minn. Stat. § 501B.21.

Here, appellant was mailed notice of the hearing on Genevievre's section 501B.16 petition in compliance with Minn. Stat. § 501B.18 (2014). Notice was also published over a month before the hearing, also in compliance with section 501B.18. Finally, appellant was mailed notice of filing of the October 2014 order that invalidated the trust amendment that purportedly made appellant trustee, and appointing the trustee. The notice stated appellant's right to appeal the order within 60 days, which she failed to do. *See* Minn. R. Civ. App. P. 104.01, subd. 1. Therefore, that ruling is final and cannot be challenged in the current appeal, even if it is wrong. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that "[e]ven though decision of the [district] court in the first order may have been wrong, if it is an appealable order, it is still final after the time for appeal has expired"); *Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (citing this aspect of *Dieseth*).[3]

[3] Our ruling here is merely that, even if the 2014 appointment of the trustee was wrong, we would lack the authority to alter that ruling. Our ruling should *not* be read to suggest that the 2014 appointment of the trustee was in any way wrong.

B. Hearing on removal for breaching duty of disclosure

Alternatively, appellant seemingly argues that the district court erred by failing to hold a hearing on and consider her requests to remove the trustee for a serious breach of the trustee's duty of disclosure to appellant under the Francis trust and Minn. Stat. §§ 501C.0706(b)(1), .0813(a) (2022). But appellant makes no argument and cites no legal authority for why the district court was required to address these requests or hold a hearing. "An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017). Because we see no prejudicial error on mere inspection, appellant has forfeited her argument that the district court should have held a hearing on and considered her alternative trustee-removal claim. *See Dieseth*, 147 N.W.2d at 103; *Johnson*, 902 N.W.2d at 83.

II. Accounting

A. Approval of accounts without additional evidence

Appellant argues that the district court improperly approved the accounts without additional evidence to support the accounts' accuracy. "[T]he duty of a trustee to make annual accounts requires a complete disclosure of the financial transactions affecting trust property." *Bailey v. Bailey (In re Bailey's Tr.)*, 62 N.W.2d 829, 833 (Minn. 1954). The sufficiency of the trustee's bookkeeping is ordinarily a fact question for the district court. *Id.* at 833-34. Findings of fact are reviewed for clear error. *In re Tr. of Schwagerl*,

965 N.W.2d 772, 781 (Minn. 2021). "Under this standard, findings of fact may be set aside only if there is no reasonable evidence in the record to support" them. *Id.*

Appellant specifically takes issue with the following: (1) the trustee's accounts valued the Francis trust's share of the partnership at $1;[4] (2) the accounts do not disclose the original value or number of shares involved in a sale of certain stocks; and (3) the trustee violated the Francis trust's spendthrift provision by drawing money from the trust for purposes other than the settlor's care. We address these contentions in turn.

First, the trustee did assign a value of $1 to the partnership interest in the first annual account and a value of $0 in the last two annual accounts. But in the record is the certificate of partnership showing that the settlor, not the Francis trust, was one of two partners. At a hearing, the trustee testified that she audited the partnership and found that the settlor "received everything from the partnership to which she was entitled." The trustee's second annual account reflects a distribution to the Francis trust of $24,180 from the partnership. And the trustee's fifth annual account reflects an increase of $63,395.76 in the Francis trust's principal because money associated with the partnership was transferred to the Francis trust from the settlor's conservatorship.

The Francis trust ultimately received over $87,000 from the partnership—more than half of the partnership's 12.6% interest in a Florida property on which appellant relied to

[4] The trustee argues that appellant failed to preserve any issue regarding the partnership. We disagree. Appellant preserved this issue by raising it in her objections to the trustee's petition and to approve accounts.

object to the accounts with respect to the partnership.[5] Appellant cites nothing in the record nor any authority to suggest that more information regarding the partnership was necessary or that the Francis trust was entitled to more from the partnership. Appellant has not shown that the district court clearly erred based merely on the accounts' valuation of the Francis trust's interest in the partnership.

Regarding the stocks, appellant seemingly takes issue with a $1,689.03 sale of those stocks listed in the sixth annual account. Appellant cites no authority for the idea that finding this notation a complete and accurate record of the transaction was clear error. Absent such authority, we conclude that the notation was reasonable evidence that the trustee accurately accounted for the stock sale, and that relying on the notation was not clear error.

As to the spendthrift provision, appellant misunderstands it. It prohibits only "any beneficiary" from alienating or encumbering the assets of any trust created under the Francis trust "prior to the actual distribution . . . by the [t]rustee to the beneficiary." The spendthrift provision does not govern the powers of any trustee. Because we see no evidence in the record of any beneficiary prematurely alienating or encumbering their share of the Francis trust through the trustee or otherwise, appellant has not shown clear error in approving the trustee's accounts.

[5] The inventories of the Prem trusts are in the record. They show that the Prem trusts each owned a 43.7% interest in the Florida property. Each 43.7% interest was worth $453,387.50 when the Prem trusts were administered. After the April 27, 2022 hearing, the trustee submitted an affidavit explaining that the partnership had previously owned the other 12.6% of the Florida property before the property was sold in 2015 and that the partnership previously owned other real estate sold before the trustee was appointed.

B. Assets from the Prem trusts

Appellant argues that assets distributed through the Prem trusts to Genevievre should have gone to the Francis trust and that the trustee failed to properly account for these assets. The district court ruled that this challenge is collaterally barred because the Prem trusts were administered several years prior. We agree.

An order regarding a trust under the district court's in-rem jurisdiction "is binding . . . upon the trust estate" unless appealed within 60 days by a party served written notice of the order under the Minnesota Rules of Civil Appellate Procedure, or within six months by a party not served notice. Minn. Stat. § 501C.0204, subd. 1 (2022); Minn. R. Civ. App. P. 104.01, subd. 1; *see also Swanson v. Wolf*, 986 N.W.2d 217, 222 (Minn. App. 2023) (stating that "in rem jurisdiction is over the trust estate and in personam jurisdiction is over the person"). Appellant did not timely appeal the orders to administer the Prem trusts and she is collaterally barred from challenging them here. *See Anderson*, 654 N.W.2d at 686. Appellant has failed to show error in approving the accounts of the Francis trust.

III. Other issues

Additionally, appellant seems to argue that: (1) the district court improperly heard the trustee's petition for instruction and issued orders outside the scope of the petition; (2) she received deficient notice of hearings and the district court should have granted her continuances; (3) a purported codicil to the settlor's will requires reversal; (4) the district court improperly distributed the rings by random process; (5) the district court improperly established the SNT and terminated the Francis trust; and (6) the district court improperly

granted the trustee compensation and attorney fees. These arguments are forfeited, are based on matters outside the record, or lack merit.

Appellant forfeited her arguments regarding the petition for instruction because she did not raise them to the district court. *See Schwagerl*, 965 N.W.2d at 783. Appellant had sufficient opportunity to be heard, has shown no prejudice from any deficient notice, and has shown no abuse of discretion in denying her continuance requests. *See In re Tr. Created by Hill*, 499 N.W.2d 475, 488 (Minn. App. 1993) (stating that district court "has great discretion . . . to determine the procedural calendar of a case"), *rev. denied* (Minn. July 15, 1993). The purported codicil is outside the appellate record, and we disregard it. *See Est. of King*, 992 N.W.2d 410, 415 (Minn. App. 2023). Appellant then premises her apparent challenge to the distribution of the rings on mere assertion with no argument or legal authority; she has forfeited that issue. *See Scheffler*, 890 N.W.2d at 451. Likewise, appellant identifies no specific error in the establishment of the SNT warranting appellate review; any issue regarding it is forfeited. *See id.*

Appellant also shows no error in terminating the Francis trust. The Francis trust was intended to provide for the settlor's and her children's needs. The settlor is deceased. All of the Francis trust's assets have been or will be distributed. And there is no remaining purpose of the trust. *See In re Tr. of Boright*, 377 N.W.2d 9, 11 (Minn. 1985).

Finally, appellant shows no error in granting the trustee compensation and attorney fees. We review these grants for an abuse of discretion. *See In re Tr. Created by Voss*, 474 N.W.2d 199, 201 (Minn. App. 1991) (reviewing allowance for reasonable trustee compensation for abuse of discretion); *Lorberbaum v. Huff* (*In re Margolis Revocable Tr.)*,

765 N.W.2d 919, 928 (Minn. App. 2009) (reviewing attorney-fee award for abuse of discretion). The Francis trust allows "reasonable" trustee compensation, permits the trustee to engage in litigation, and permits the trustee to hire attorneys and pay them "reasonable compensation" from the trust. The district court did not abuse its discretion by granting compensation and attorney fees under provisions of the Francis trust.

Affirmed.