

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1627**

In Re: The Jorgenson Family Trust Agreement dated March 12, 2001.

**Filed July 22, 2024
Affirmed
Ross, Judge**

Chippewa County District Court
File No. 12-CV-10-230

Jason C. Brown, Tammy J. Schemmel, Barna, Guzy & Steffen Ltd., Minneapolis, Minnesota (for appellants Val Rae Boe, Angela Weber, Kristi Block, Jeremy Jorgenson, and Sharlene Jorgenson)

Krystal M. Lynne, Stermer & Sellner, Chtd., Montevideo, Minnesota (for respondent Michael Jorgenson)

Susan E. Johnson-Drenth, Crystal R. Pound, JD Legal Planning, PLLC, Fargo, North Dakota (for respondent Heartland Trust Company)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reyes, Judge.

SYLLABUS

In litigation involving the administration of a trust, Minnesota Statutes section 501C.1004 (2022), rather than the common law of trusts, governs a trust beneficiary's right to reimbursement for attorney fees out of trust property.

OPINION

ROSS, Judge

The district court ordered a trust to pay attorney fees to a former trustee based on the statutory attorney-fee provision that broadly allows the court to order “any party” to

obtain a fee award in a trust case “as justice and equity may require” rather than under the common-law standard, which narrowly allows the court to order any “necessary party” to obtain a fee award only in litigation that “is necessary . . . to resolve the meaning and legal effect of ambiguous language . . . in the trust instrument.” Because the common law of trusts applies only to the extent that the statutory trust provisions do not modify the common law, and because the attorney-fee statute modifies the common-law standard, we hold that the district court applied the correct standard here. We also hold that the district court’s fee-award procedure comported with the requirements of due process and that it did not clearly err in finding the requested fees reasonable. We therefore affirm.

FACTS

Respondent Michael Jorgenson and appellant Sharlene Jorgenson divorced in 2001 and created the Jorgenson Family Trust to provide income for themselves and an inheritance for their four now-adult children. This dispute primarily between Michael and Sharlene arose over the management of a trust asset—a nearly 300-acre Chippewa County parcel that the trust leases for farming. The district court replaced Michael as trustee in 2012 with Bremer Bank, which, in 2020, petitioned the district court to authorize an approximately \$680,000 drain-tile project on the property. The district court rejected the petition as too costly and found that any drain-tile project would require both Michael and Sharlene’s approval. When Bremer proposed a less costly plan, Michael petitioned the district court in opposition. Most relevant here, Michael also asked the district court to order that the “attorney[] fees incurred by the parties regarding [the] request . . . be borne by the parties incurring the fees and not the Trust.” And he maintained in his written closing

argument after a hearing, “[Bremer’s] acts breach several fiduciary duties of the trustee, and therefore the burden of these breaches (such as attorney[] fees) should fall to Bremer.”

The district court denied Bremer’s drain-tile plan and ordered “[t]he trustee [to] pay the legal fees and costs of [Michael] associated” with his challenge. And it ordered Bremer to pay its own legal fees and costs. Michael’s attorney submitted an affidavit of attorney fees and costs totaling \$18,960 in fees based on about 95 hours of work at a \$200 hourly rate. Bremer’s attorneys likewise submitted an affidavit detailing their attorney fees of \$22,715 based on an hourly rate of \$390. The district court requested written arguments from the parties and scheduled a hearing to address the attorney-fee dispute and Bremer’s role as trustee.

Sharlene submitted a written argument before the hearing, contending that Bremer, not the trust, should pay Michael’s attorney fees and that Michael’s requested fee amount was unreasonable. Michael likewise briefed the issues before the hearing, arguing that the trust should pay his fees. The district court found that Michael’s requested fees were reasonable and that, when it previously ordered the trustee to pay Michael’s fees, it intended that the trust itself pay the fees. It removed Bremer as trustee and ordered that “[t]he [s]uccessor [t]rustee, on behalf of the [t]rust, shall pay Michael Jorgenson’s legal fees and costs related to his [p]etition for [i]nstructions in the amount of \$18,960.00.” It appointed Heartland Trust Company to succeed Bremer.

Sharlene appeals.

ISSUES

- I. Did the district court abuse its discretion by failing to apply the common-law standard for determining whether Michael is entitled to attorney fees?
- II. Did the district court clearly err by finding that Michael's requested attorney fees were reasonable?
- III. Did the district court violate Sharlene's right to due process by ordering that the trust rather than Bremer pay Michael's attorney fees?

ANALYSIS

Sharlene asks us to reverse the district court's attorney-fee award. We will not reverse a district court's award of attorney fees absent an abuse of discretion. *In re Margolis Revocable Tr.*, 765 N.W.2d 919, 928 (Minn. App. 2009). A district court abuses its discretion if it makes fact findings unsupported by the evidence, misapplies the law, or renders a decision contrary to logic and facts in the record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). Sharlene bases her fee-award challenge on three theories. She argues principally that the district court inappropriately failed to apply the common law to reject Michael's fee request. She argues also that the district court should have rejected Michael's fee request as unreasonable. And she argues that the district court failed to afford her due process by ordering the trust to pay Michael's fee award when Michael had asked only that Bremer pay the fee. These arguments fail.

I

We are unconvinced by Sharlene's contention that the district court failed to apply the correct legal standard to decide Michael's fee request. We review *de novo* whether the district court applied the correct legal standard. *Am. Bank of St. Paul v. City of Minneapolis*,

802 N.W.2d 781, 785 (Minn. App. 2011). The district court did not expressly indicate the legal standard it was applying to the fee dispute. But our *de novo* review leads us to conclude that the district court implicitly applied the correct legal standard in its decision to award attorney fees.

Sharlene maintains that the district court was required to apply the common-law standard governing a beneficiary's entitlement to attorney fees. She points to the common law, which permits a district court to award attorney fees to a trust beneficiary and other third parties only in a defined circumstance:

In the sound and cautiously exercised discretion of the court, and not as a matter of right, attorney[] 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 proper 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.

In re Atwood's Tr., 35 N.W.2d 736, 740 (Minn. 1949); *see also In re Campbell's Trs.*, 258 N.W.2d 856, 867–68 (Minn. 1977) (emphasizing that “*Atwood* . . . holds that the trust instruments in dispute must be sufficiently ambiguous” to support an attorney-fee award); *In re Great N. Iron Ore Props.*, 311 N.W.2d 488, 492 (Minn. 1981) (authorizing award of attorney fees to nontrustee despite an ultimate judicial determination that the trust instrument was unambiguous where it “was sufficiently ambiguous to require litigation to establish its meaning and legal effect”). Because the underlying drain-tile dispute did not

turn on any ambiguous trust language, argues Sharlene, it was not the type of dispute that could warrant attorney fees under the common-law standard.

We agree with Sharlene that the parties' dispute over Bremer's proposed drain-tile project did not require the district court to construe ambiguous language in the trust instrument so as to justify the attorney-fee award under the common law. But we do not agree that the narrow common-law standard applies here. The legislature has instituted a broad, different standard, providing that "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party from the trust that is the subject of the judicial proceeding." Minn. Stat. § 501C.1004. The legislature has also directed courts under which circumstances the trust statutes supplant the common law: "The common law of trusts . . . supplement[s] this [trust] chapter, except to the extent modified by this chapter or another law of this state." Minn. Stat. § 501C.0106 (2022). Paraphrased succinctly, the trust code rather than the common law applies wherever the trust statutes modify the common law.

Our remaining question therefore—one we easily answer—is whether section 501C.1004 modifies the common law. It plainly does. Under *Atwood's* common-law standard, among other requirements, a beneficiary could obtain attorney fees from the trust only in disputes over ambiguous trust-instrument language. But under the trust code, any party may be entitled to attorney fees in trust disputes without limit by subject matter, based only on whether the district court concludes that justice and equity require the award. The statute changes rather than mirrors the common-law standard of attorney fees for

beneficiaries and third parties. The result here therefore differs from the result we reached in *Lund ex rel. Revocable Tr. of Lund v. Lund*, where we held that the trust code mirrored rather than supplanted the common law of trusts regarding a trustee’s entitlement to recover fees and costs from the trust assets. 924 N.W.2d 274, 286 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019). In that case we saw no conflict between the trust code, which authorizes a trustee to recover expenditures incurred while administering the trust, and the common law, which does the same. *Id.* (observing that the trust statute “leaves the common-law standard for trustees—now codified in section 501C.0709—undisturbed”). Indeed, our dictum in *Lund* foreshadowed our decision today: “As amicus probate and trust law section of the Minnesota State Bar Association advises, section 501C.1004 governs a beneficiary or third party’s ability to recover attorney fees from trust assets.” *Id.* We now expressly hold that section 501C.1004, not the common law, governs a beneficiary’s ability to recover attorney fees from trust assets.

Our conclusion does not depend on but is supported by the supreme court’s recent use of the abrogation doctrine when deciding whether a different provision in the trust code replaced a common-law rule. In *In re Moreland*, the supreme court considered whether Minnesota Statutes section 501C.0415 (2022)—which permits the district court to strike ambiguous trust language in specified circumstances—supplanted or supplemented the common law. 993 N.W.2d 80, 89 (Minn. 2023). It held that the legislature did not abrogate the common-law rule for striking ambiguous trust language because “section 501C.0415 applies only to specific scenarios . . . [and the] section’s enactment did not alter the common law authority.” *Id.* Although we have applied the rule established in section

501C.0106 rather than the abrogation doctrine here, the result would be the same under either approach, which is that section 501C.1004 controls. And although we have instead applied the *Atwood* standard in nonprecedential opinions, *see, e.g., In re Lake Prop. Fam. Tr.*, No. A21-0633, 2021 WL 5999557, at *13 (Minn. App. Dec. 20, 2021), *rev. denied* (Minn. Mar. 15, 2022); *In re Schauer*, No. A18-0969, 2019 WL 1510698, at *6 (Minn. App. Apr. 8, 2019), we clarify the correct standard today.

Having decided that section 501C.1004 governs attorney-fee awards to beneficiaries and other third parties, we cannot say the district court abused its discretion by awarding Michael attorney fees in the dispute over the drain-tile project. Sharlene categorizes the dispute as beneficial only to Michael and argues that justice and equity therefore do not support the award. But the litigation arose from a project that the district court decided was too expensive, a decision that protected the trust assets for all six beneficiaries, not just Michael. The litigation also involved a trustee that arguably failed to abide by the district court's orders restraining its power. Although the district court did not explicitly reference the statute, we infer that it was implicitly awarding Michael the attorney fees out of fairness to him. A remand to the district court to more expressly provide its rationale is therefore unnecessary.

II

Sharlene argues that the district court erroneously found Michael's requested attorney fees to be reasonable. Whether the amount of attorney fees demanded was reasonable is a question of fact that we review for clear error, which means that we will leave the finding intact unless it leaves us with a firm conviction that the district court made

a mistake. *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 507 (Minn. 2012); *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221–22 (Minn. 2021) (discussing in detail appellate review of a district court’s findings of fact); *In re Otto Bremer Tr.*, 2 N.W.3d 308, 319, 322 (Minn. 2024) (citing *Kenney* in a trust dispute). Seven factors bear on the question of the reasonableness of attorney fees. These are “the character, ability and experience of the attorneys; the responsibilities they assumed; the difficulty of the issues raised; the time, labor and skill required; customary fees for similar services; the amount involved; and the results obtained.” *Great N. Iron Ore Props.*, 311 N.W.2d at 493. We “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court,” *Kenney*, 963 N.W.2d at 222, and our review of the record satisfies us that the district court implicitly applied these factors when it determined Michael’s request to be reasonable.

Sharlene argues specifically that Michael’s attorney unreasonably spent twice the number of hours that Bremer’s attorney spent on the drain-tile dispute, that the amount involved suggests the fees are unreasonable, and that Michael’s attorney’s itemized work was insufficiently detailed. None of these assertions convince us that the district court made a mistake. The district court found that Michael’s attorney was skilled and experienced, and her hourly rate was about half the rate Bremer’s attorneys charged. It is true, as Sharlene emphasizes, that the cost of the modified drain-tile project Bremer eventually proposed would be borne by tenants rather than the trust, but the success of the plan and any potential negative impact on the land were uncertain. And although the billing statements were not as detailed as they might have been, the descriptions were not so vague

as to lead us to conclude that the district court mistakenly found the fees reasonable under the circumstances. Sharlene has not shown that the district court's reasonableness finding constitutes a clear error.

III

Sharlene's contention that the district court violated her right to due process is not convincing. The United States and Minnesota Constitutions prohibit the state from depriving persons of property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. This constitutional requirement ensures that the state not take property without providing the deprived party with notice and the opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Sharlene had sufficient notice and the opportunity to be heard before the district court directed that Michael's requested attorney fees be drawn from the trust assets. It is true that Michael's petition challenging the drain-tile project had requested that Bremer, not the trust, pay his attorney fees. But before the district court conducted the hearing on the attorney-fee request, the parties provided the district court their written arguments. Sharlene specifically argued against the trust having to pay Michael's requested attorney fees. She argued that charging the trust would be inappropriate for three reasons: because the district court had previously directed that the "trustee" pay those fees, because the law prohibited the trust from having to pay the fees, and because the amount of requested fees was not reasonable. Sharlene's counsel repeated the same arguments during the hearing. Sharlene therefore had notice of, and the opportunity to be heard on, the issue of whether the trust might be bound to pay Michael's attorney fees. A remand is

unnecessary to provide Sharlene the opportunity to be heard on an issue on which she has already been heard. The district court did not violate Sharlene's right to due process.

DECISION

The district court did not abuse its discretion by awarding Michael attorney fees. Minnesota Statutes section 501C.1004, not the common law, governs a beneficiary's ability to recover attorney fees from trust assets. The district court did not clearly err in finding that the requested attorney fees were reasonable. And its award of attorney fees comported with due process.

Affirmed.