*This opinion is nonprecedential except as provided by Minn.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

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A25-0194**

In the Matter of the Arthur F. Symens Revocable Trust created September 21, 2016.

**Filed September 2, 2025**
**Affirmed**
**Bentley, Judge**

Blue Earth County District Court
File No. 07-CV-22-290

Elizabeth C. Henry, Christopher P. Renz, Annaliisa P. Gifford, Andrew C. Case, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellants Cathryn Rae Cole and Michelle Kawohl)

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota; and

Paul E. Grabitske, Grabitske Law Firm, PLC, Mankato, Minnesota (for respondent Fern M. Symens)

Considered and decided by Bentley, Presiding Judge; Larson, Judge; and Reilly, Judge.*

**NONPRECEDENTIAL OPINION**

**BENTLEY**, Judge

The appellant-trustees appeal a district court order interpreting the Arthur F. Symens Revocable Trust (the trust). The trust provides that, if the donor, Arthur F. Symens, passes away before his spouse, respondent Fern Symens, two subtrusts will be created—

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

Trust A and Trust B.[1] The trustees challenge the district court's interpretation of Trust B to require an annual distribution from Trust B so that Fern will receive at least $120,000 in income each year. The trustees argue that (1) the distribution amount is aspirational, meaning they are not required to distribute the full amount if Trust B lacks sufficient liquid funds in a given year and (2) they are allowed to consider sources of income other than those expressly identified in Trust B when they are determining the annual distribution amount. Neither argument persuades us that the district court erred. We therefore affirm.

## FACTS

The donor created the trust in September 2016 and amended it in December 2019. The trust names the donor's daughters, appellants Cathryn Cole and Michelle Kawohl, as trustees.

If the donor passes away before Fern, the trust instructs that two subtrusts, Trust A and Trust B, will be created. Trust A will be a marital trust made up of assets selected by the trustees which, when combined with "all other interests in property that pass or have passed to [Fern] in a manner qualifying for the marital deduction under the Internal Revenue Code," equals the "maximum marital deduction allowable in the donor's estate." Trust B will be made up of "[a]ll the assets of the trust estate not allocated" to Trust A that remain after the trustees make certain discretionary payments outlined in the trust. Upon

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[1] Because they share the same last name, we refer to Fern Symens as "Fern" and to Arthur Symens as "donor" throughout this opinion. We use "donor" because it is the term used in both the trust and the district court's order. For purposes of this opinion, we intend "donor" to have the same meaning as "settlor" under the applicable Minnesota statutes and case law.

Fern's death, the trust provides that Trust B will be distributed to the Arthur F. Symens and Fern M. Symens Grandchildren's Trust and to the donor's children.

The administration of Trust A is provided for in article four. Relevant here, article four, paragraph A provides, "The net income of [Trust A] shall be paid to [Fern] in quarterly or other convenient installments but at least annually." It also states that Fern "may compel the conversion of any non-productive property held in [Trust A] into productive property, it being the donor's intention that [Fern] is to have the full enjoyment of the marital trust." Paragraph B provides that, "[i]n addition to said payments of net income, the trustees, . . . in their sole and exclusive discretion," may distribute principal to Fern as they "deem advisable for [Fern's] care, support and maintenance." The trustees may not distribute principal from Trust A under this provision if, in their judgment, "there are funds reasonably available in [Fern's] own estate or from other sources."

The administration of Trust B is contained in article five, as amended in December 2019. Article five, paragraph A provides that, "The trustees shall pay to the donor's spouse, [Fern], during [Fern's] life, the entire net income of and from Trust B in quarterly or other convenient installments." It then states:

> It is the intent of the donor to provide to the donor's surviving spouse, [Fern], cash flow from all sources of income of this Trust, but to include social security benefits provided to [Fern] and taking into account all cash distributed to my spouse pursuant to the provisions of Trust A above, that will result in a distribution of cash annually in the amount of at least $120,000 per year and not to exceed the sum of $144,000 per year; provided that said trustees may distribute all or any part of the excess cash flow to and among the donor's children and their issue in whatever proportions are deemed advisable by

> the said trustees. Any cash flow which is not so distributed shall be accumulated and added to principal for reinvestment.

Trust B also recognizes a difference between the terms "net income" and "cash flow," and it states that, although "the net income may be different than the cash flow of the Trust[,] . . . it is the intent to prioritize the cash flow distribution to the donor's spouse, Fern[.]"

Article five, paragraph B addresses discretionary payment of principal from Trust B:

> In addition to the benefits hereinbefore provided for [Fern], the trustees acting alone and without [Fern] for the purpose of this Paragraph B, may in their sole and exclusive discretion during the time Trust B is being held for the benefit of [Fern] and consistent with the above objective, withdraw installments of principal from said Trust B from time to time and pay the same to or for the benefit of the donor's spouse, [Fern], for the donor's spouse's health, education, maintenance and support, or to or for the benefit of the donor's children and issue. The determination of the trustees acting alone and without [Fern] as to the necessity or propriety of such withdrawals of principal and as to the amounts thereof shall be final and conclusive.

The trust's income-generating assets are real property, and they include, among other real property, a 50% interest in Lee Estates in Trust A and a 50% interest in Welcome Apartments in Trust B. Fern personally owns the other 50% interest in both Lee Estates and Welcome Apartments.

The donor passed away in August 2020. Since January 2022, the parties have engaged in extensive litigation over the trust, regarding issues such as accountings, payment of debts, breach of the trustees' duties, and the trustees' authority to allocate assets. The district court filed orders regarding those issues in February 2023, November

2023, and April 2024. Relevant here, the district court stated in its November 2023 order that the trustees have "an obligation to pay [Fern] a minimum of $120,000 per year. Should the Trustees know this obligation is not being met, they are obligated to take steps to ensure these funds are distributed to [Fern]." In its April 2024 order, the district court noted that the trustees had moved for an interpretation of Trust B "that they are not obligated to increase distributions to [Fern] as the Trust's income beneficiary by paying [Fern] from Trust principal when the Trust's net income and cash flow, considered together with [Fern's] Social Security benefits, are insufficient to reach $120,000 in annual income to [her]." But the district court declined to reach that question, reasoning that the issue was "not ripe for adjudication" because it had determined that Fern had been receiving $120,000 annually. Still, the district court noted that "[t]he specificity of the goal of providing at least $120,000 [to Fern] from Trust income, cash flow, and social security is very explicit." The February 2023, November 2023, and April 2024 orders are currently before this court in a separate appeal.[2]

In December 2024, the trustees filed the petition relevant to this appeal, requesting interpretation of the trust with respect to two issues. First, the trustees "request[ed] that the [district court] interpret the donor's directive that the beneficiary receive at least $120,000 annually from all Fern's income sources to include any income Fern receives, not just the trust." Second, the trustees requested an interpretation "that the trustees are not required to liquidate principal when trust distributions plus Fern's income sources collectively cannot

[2] We issued an order staying that appeal pending the resolution of this appeal, which is taken from a January 15, 2025 order.

reach $120,000." More specifically, the trustees sought an order that "the Trustees are not required to liquidate principal to make distributions to Fern Symens where the net income of Trust A and cash flow of Trust B are negative."

In a January 2025 order, the district court "decline[d] to adopt [the trustees'] interpretation of the trust terms." The district court noted that the trust included "clear language" that "[i]t is the intent of the donor to provide to the donor's surviving spouse, [Fern], cash flow from all sources of this Trust." The district court ordered that its "previous findings will control, and [Fern] shall be entitled to receive a combined annual income of at least $120,000 from Trust income, cash flow, and social security."

The trustees appeal.

**DECISION**

The trustees argue on appeal that the district court erred in its interpretation of the trust. In doing so, the trustees make two primary arguments. First, the trustees contend that Trust B does not guarantee Fern $120,000 annually. Second, the trustees contend that all of Fern's income sources should be considered in calculating her annual distribution from Trust B. Fern defends the district court's decision and maintains that the district court properly interpreted the trust in both respects.

A trustee may petition the district court "to construe, interpret, or reform the terms of a trust" and "to instruct the trustee regarding any matter involving the trust's administration or the discharge of the trustee's duties." Minn. Stat. §§ 501C.0201(a)-(b), .0202(4), (24) (2024). In construing a trust, a court's purpose "is to ascertain the intent of the [donor]." *In re Eva Marie Hanson Living Tr.*, 986 N.W.2d 1, 5 (Minn. App. 2023) (quoting *In re Tr. Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44-45 (Minn. 1985)); *see also In re Kischel*, 299 N.W.2d 920, 923 (Minn. 1980) (stating that a court's "primary concern is to give effect to the testator's intent as expressed in the plain language of the will"). "Where the language of the trust instrument is unambiguous," which neither party disputes here, "the intent of the [donor] must be ascertained from the four corners of the agreement, without resort to extrinsic evidence of intent." *Hanson*, 986 N.W.2d at 5 (quoting *McLaughlin*, 361 N.W.2d at 44-45). As an appellate court, we review unambiguous language in a trust de novo. *See In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012) ("We . . . review de novo a district court's interpretation of a written document, which in this case is the Trust Agreement"); *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) ("The construction and effect of a contract is . . . a question of law unless the contract is ambiguous.").

We first address the trustees' argument that the trust provides an intent but not an "absolute guarantee" that Fern should receive a minimum of $120,000 in income each year. Second, we address the trustees' argument that they may consider "all of Fern's income sources," including sources outside of the trust and social security benefits, in calculating Fern's annual distribution from Trust B.

**I**

In interpreting the trust, the district court determined that Fern "shall be entitled to receive a combined annual income of at least $120,000 from Trust income, cash flow, and social security." We agree.

The donor's intent is expressed unambiguously in the trust documents. The donor stated in Trust B that he intended "to provide to the donor's surviving spouse, [Fern], cash flow . . . that *will result* in a distribution of cash annually in the amount of at least $120,000 per year and not to exceed the sum of $144,000 per year." (Emphasis added.)

The trustees maintain that the $120,000 to $144,000 income amount is not an "absolute guarantee," because there may be circumstances where the trust is "insolvent" and has "negative cash flow" such that there is not enough cash to achieve the donor's desired annual distribution. But the trust language itself renders the trustees' position untenable. Trust B explains that "[t]he donor acknowledges that the net income may be different than the cash flow of the Trust but it is the intent to prioritize cash flow distribution" to Fern. Construing the trust agreement in its entirety, as we must, *In re Van Dusen Marital Tr.*, 834 N.W.2d 514, 520 (Minn. App. 2013), *rev. denied* (Minn. June 26, 2013), we understand the donor's discussion of "net income" and "cash flow" to mean that, even if the net income is less than the cash flow, the trustees still must make a distribution that results in income to Fern of at least $120,000.

The trustees also assert that, if there is not sufficient cash flow to meet their obligation to provide Fern at least $120,000, the district court's interpretation "effectively convert[s] the Trustees' discretionary power to withdraw from principal into a mandatory obligation" by requiring them to liquidate principal. There are two problems with this assertion. First, the trustees' *discretionary* authority to withdraw from the principal appears in article five, paragraph B of the trust, as amended in December 2019, which authorizes benefits "[i]n addition to the benefits hereinbefore provided," i.e., in addition to the cash distribution requirement set forth in article five, paragraph A. The fact that the trustees may, in their sole discretion, liquidate principal to provide *additional* benefits does not inform whether they may need to liquidate principal to generate sufficient cash flow to satisfy the cash distribution requirement. Second, nothing in the trust requires the trustees to meet their obligation by withdrawing from principal. As trustees, they have a fiduciary duty to the trust beneficiaries. *In re Otto Bremer Tr.*, 2 N.W.3d 308, 319 (Minn. 2024); *see also* Minn. Stat. § 501C.0802(a) (2024) ("A trustee owes a duty of loyalty to the beneficiaries."). The trustees are left with discretion to decide how to generate the net income or cash flow needed to fulfill their fiduciary duty in ensuring that Fern receives distributions that result in a total income of $120,000 to $144,000 annually. Liquidating principal may be one way to do that, but the trustees may use their discretion to find other ways to generate cash flow, such as raising the rent on the jointly owned real property or reducing operating costs.

Considering the "the intent of the [donor]" as "ascertained from the four corners of the agreement," *Hanson*, 986 N.W.2d at 5 (quoting *McLaughlin*, 361 N.W.2d at 44-45), we interpret the trust as the district court did—to require that the trustees make a distribution from Trust B so that Fern receives $120,000 to $144,000 each year.

**II**

The trustees also argue that the trust should be interpreted to allow "all of Fern's income sources" to be considered when calculating Fern's annual income for purposes of determining the annual cash distribution amount from Trust B, including Fern's personal 50% interests in Lee Estates and Welcome Apartments. We disagree.

In addition to intending that Fern will receive $120,000 to $144,000 in income, the trust identifies the sources of income that the trustees may take into consideration in calculating the distribution amount: the net income of Trust A and Trust B, cash flow from Trust B, and Fern's social security. Specifically, Trust B states: "It is the intent of the donor to provide . . . [Fern], cash flow from all sources of income of this Trust, but to include social security benefits provided to Fern . . . and taking into account all cash distributed to [Fern] pursuant to the provisions of Trust A[.]" From these sources, the donor intended that this "will result in a distribution of cash annually in the amount of at least $120,000 per year and not to exceed the sum of $144,000 per year."

This provision instructs the trustees to consider Fern's social security and cash distributed from Trust A in calculating the distribution amount from Trust B. It does not authorize the trustees also to consider Fern's other income sources, such as her personal 50% interests in Lee Estates and Welcome Apartments. That omission is notable because, for other purposes, the trust instructs the trustees to consider Fern's other sources of income. Specifically, article four, paragraph B of the trust allows the trustees to consider "funds reasonably available in [Fern's] own estate or from other sources" in making discretionary payments of principal from Trust A. The trust's reference to Fern's other income sources in that provision leads us to conclude that the omission of those sources of income from the cash-distribution requirement in Trust B was intentional. "Under the doctrine of *expressio unius est exclusio alterius*, meaning 'the expression of one thing implies the exclusion of all not expressed,' we attach significance to the differences in the provisions." *In re Ruth Easton Fund*, 680 N.W.2d 541, 550 (Minn. App. 2004).

Because Fern's personal 50% interests in Lee Estates and Welcome Apartments are not cash distributions from Trust A, net income or cash flow from Trust B, or social security benefits, the trustees cannot look to those sources of income, or any other non-listed sources of income, in meeting their obligation to distribute $120,000 to $144,000 to Fern annually. The district court did not err by construing the trust accordingly.

**Affirmed.**