

RECENT APPELLATE DECISIONS CLARIFY MINNESOTA TRUST LAWS

Minnesota Court of Appeals clarity - Significant implications



By Dan Hall

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Although the principles of trust law are hundreds of years old, Minnesota cases are still clarifying and updating the law today. Recent decisions from the Minnesota Court of Appeals provide clarity on a variety of topics concerning Minnesota trusts, which have significant implications for trustees, beneficiaries, and those advising them.

The Court of Appeals clarifies the duties of a trustee.

The Court of Appeals issued a recent, published decision that addressed in detail the duties of a trustee and the consequences, including removal of the trustee for violating those duties. *Matter of Otto Bremer Tr.*, No. A22-0906, 2023 WL 193144 (Minn. Ct. App. Jan. 17, 2023). The Court of Appeals considered the actions by the trustee of a substantial charitable trust and affirmed the district court's determination that the trustee's actions warranted removal.

1. No amount of self-dealing by a trustee is allowed.

The trustee violated the duty of loyalty by using trust assets, including staff time, postage, and computer resources for his own purposes at a cost to the trust of \$1,875. *Id.* at *2. Although the cost to the trust was small when compared to the trust's \$2 billion value, the Court of Appeals concluded that there is no *de minimis* exception to the prohibition on self-dealing. *Id.* at *8. Self-dealing by a trustee violates the duty of loyalty no matter how little it impacts the trust. *Id.*

2. A trustee cannot hide information from a qualified beneficiary.

The Court of Appeals affirmed the finding that the trustee breached his fiduciary duties by failing to disclose the identity of a successor trustee he had designated when requested to do so. *Id.* at *10. A trustee has a statutory duty to keep qualified beneficiaries informed about "the material facts necessary to protect their interests." *Id.* (quoting Minn. Stat. § 501C.0813(a)). Failure to provide prompt, full and frank disclosures when requested violates the trustee's duty of information. *Id.*

3. Multiple breaches of trust that are not independently serious can justify removal of the trustee.

A trustee can be removed for committing multiple breaches of trust even if none of the breaches, on its own, was found to be a serious breach of trust. By statute, a trustee can be removed for committing a "serious breach of trust." Minn. Stat. § 501C.0706(b)(1). The Court of Appeals found that a trustee can be removed for committing a series of breaches of trust that "when viewed collectively constitute a serious breach of trust" even if no individual breach was found to constitute a serious breach of trust. *Matter of Otto Bremer Tr.*, 2023 WL 193144 at * 10.

No contest clauses in trusts are enforceable.

A recent Minnesota Court of Appeals decision

recognized that no contest clauses in trusts, which penalize parties that contest the trust or its distributive provisions, are enforceable. *In re B.C. Fox Tr., U/A/D, July 1, 1997, as Amended*, No. A21-0770, 2022 WL 1073756, at *4 (Minn. Ct. App. Apr. 11, 2022), review denied (July 19, 2022). The Court of Appeals broadly construed the kinds of actions that could trigger a no contest provision to include not only direct challenges, such as a litigation, but also indirect challenges, such as efforts to modify the distributive provisions of a trust in other ways. *See id.* The Court of Appeals' enforcement of no contest clauses according to the language of the trust contrasts with the law that applies to wills, where no contest clauses will not be enforced if probable cause exists for instituting proceedings. Minn. Stat. § 523.2-517. The difference in the treatment of no contest clauses means that trusts provide greater flexibility to limit subsequent challenges than wills do.

The terms of the trust will control.

In another recent decision, the Court of Appeals addressed how trusts can be modified. The Court of Appeals concluded that where the language of a trust is exclusive and unambiguous, the trust can only be modified according to the language of the trust. *In re Eva Marie Hanson Living Tr. dated Dec. 11, 1995*, No. A22-0826, 2023 WL 1095034, at *3 (Minn. Ct. App. Jan. 30, 2023). A modification made after the settlor became disabled was ineffective because the modification was executed by an attorney-in-fact not by the settlor, who had reserved for herself the exclusive power to amend the trust. *Id.* Despite the broad language in the power of attorney, the terms of the trust controlled. *Id.*

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