

*This opinion is nonprecedential except as provided by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
A23-0473**

In the Matter of the Trust Agreement of Genevieve M. Rossow.

**Filed November 6, 2023
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-CV-21-4706

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Minnesota (for appellant LeRoy J. Rossow Jr.)

Chelsea McLean, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent Craig
L. Rossow)

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Minnesota (for respondent James D. Rossow)

Considered and decided by Gaïtas, Presiding Judge; Slieter, Judge; and Halbrooks,
Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

On appeal from the denial of his petition to remove his sons as trustees and appoint
an independent trustee, appellant challenges the district court's determinations that his
authority to remove a trustee is subject to a fiduciary standard, that the trust document does

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

not authorize him to appoint the independent trustee, and its decision to award respondents attorney fees due to appellant's bad faith. Because appellant's authority to remove a trustee is subject to a fiduciary standard and the trust document provides appellant with no authority to appoint the independent trustee, and because the district court acted within its discretion in awarding attorney fees, we affirm.

FACTS

Genevieve (Geni) Rossow established a trust in 2008, naming herself and her husband, appellant LeRoy Rossow, as trustees. Upon Geni's death, the trust names the sons of Geni and LeRoy, respondents Craig Rossow and James Rossow, as successor trustees to Geni.¹

The trust requires that, after Geni's death, there "always be one and only one independent trustee." The trust directs Craig and James to appoint the independent trustee, and if no "independent trustee is appointed within sixty (60) days of [Geni's] death, then [Geni] appoint[s] BNC Bank of Minneapolis, Minnesota as the independent trustee." Geni died in August 2014.

In 2018, Craig and James commenced legal action against LeRoy relating to their concerns over his administration of the trust. As part of settlement and dismissal of the litigation, the parties agreed to contact BNC Bank to serve as an independent trustee, and "[i]f BNC Bank is unwilling to serve, [parties] shall cooperate in good faith in finding a suitable replacement independent trustee per the terms of the [t]rust."

¹ We refer to the parties by first name for clarity.

BNC Bank declined to serve as independent trustee. Craig and James then contacted First State Bank and Trust of Bayport, which declined to serve because of animosity in the family. Craig and James next contacted Wells Fargo to serve as the independent trustee but LeRoy “wasn’t interested in discussing Wells Fargo as an independent trustee.” Sometime before November 2021, and without communicating with Craig or James, LeRoy contacted First Trust Company about serving as the independent trustee.

In November 2021, LeRoy petitioned the district court to remove Craig and James as trustees and appoint First Trust as independent trustee. The district court held an evidentiary hearing on LeRoy’s petition in July 2022. During the hearing, LeRoy testified that he informed First Trust that he believed that he was entitled to all trust income, and that he believed that First Trust shared in his understanding. LeRoy also acknowledged that the trust document granted Craig and James sole authority to appoint the independent trustee, which motivated him to seek their removal as trustees.

The district court denied LeRoy’s petition in September 2022, concluding that LeRoy could not remove Craig and James as trustees because he was acting in bad faith, and that he lacked the authority to appoint an independent trustee. LeRoy appeals.

DECISION

I. The district court properly determined that LeRoy’s authority to remove a trustee is subject to a fiduciary standard and that he has no authority to appoint an independent trustee.

A court’s purpose in interpreting a trust agreement is to “ascertain and give effect to the grantor’s intent.” *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012), *rev. denied* (Minn. June 26, 2013). A court should seek out the grantor’s intent by construing

the trust agreement in its entirety. *Id.* If the trust agreement is unambiguous, a court should look to the language of the agreement to discern the grantor’s intent without considering extrinsic evidence. *Id.* This court applies a *de novo* standard of review to a district court’s interpretation of a trust agreement. *Id.*

LeRoy’s Removal Authority is Subject to a Fiduciary Standard

LeRoy argues that his removal power is not subject to a fiduciary standard. He claims that because the trust states that “[m]y spouse shall have power to remove any trustee,” without referring to LeRoy as a trustee, his removal power is not subject to a fiduciary duty. We are not persuaded.

Minnesota law imposes several fiduciary duties on trustees.² *See e.g.*, Minn. Stat. §§ 501C.0801 (duty to administer in good faith), .0802 (duty of loyalty), .0803 (duty to administer impartially) (2022). And caselaw highlights the importance of trustees honoring their fiduciary duties. *See e.g.*, *In re Lee’s Est.*, 9 N.W.2d 245, 250 (Minn. 1943) (“[t]he fiduciary character of [the trustee’s] position precludes him from taking any advantage of his influence as trustee” (citation omitted)); *Smith v. Tolversen*, 252 N.W.2d 423, 425 (Minn. 1934) (noting a trustee’s “primary duty [is] not to allow his interest as an individual even the opportunity of conflict with his interest as trustee”).

LeRoy cites no law, and we are aware of none, releasing a trustee from this fiduciary standard simply because a trust provision refers to the trustee according to his relationship

² Parties do not dispute the applicability of chapter 501C to this trust. *See* Minn. Stat. § 501C.1304(a)(1) (2022) (providing that “sections 501C.0101 to 501C.1208 apply to all trusts created before, on, or after January 1, 2016”).

to the settlor. *See* Minn. Stat. §§ 501C.0801-.0817 (outlining duties and powers of trustees) (2022). Instead, caselaw makes clear that “[a] trustee is not permitted to disregard fiduciary duties . . . even if a trust document gives the trustee broad authority.” *In re Tr. of Schwagerl*, 965 N.W.2d 772, 783 (Minn. 2021). Indeed, “[a]lthough a power is conferred upon the trustee, he cannot properly exercise the power if it constitutes a violation of any of his duties to the beneficiary.” *Id.* (quotation omitted). Thus, the district court properly determined that LeRoy’s removal authority is subject to the fiduciary duties outlined in statute.³

LeRoy Lacks Authority to Appoint the Independent Trustee

LeRoy claims that the district court erred by denying his petition to appoint First Trust as independent trustee. According to the trust, the independent trustee may be appointed by Craig and James, or by court appointment. LeRoy has no authority pursuant to the terms of the trust to select or appoint the independent trustee. *See Stisser*, 818 N.W.2d at 502 (“When the trust agreement is unambiguous, we will ascertain the grantor’s intent from the language of the agreement, without resort to extrinsic evidence.”). Because LeRoy has no authority to appoint the independent trustee, the district court did not err by denying his petition to appoint First Trust to serve as independent trustee.

II. The district court acted within its discretion by awarding attorney fees.

“An award of fiduciary compensation or attorney fees rests largely within the district court’s discretion.” *Id.* at 507. For a trustee to be held personally liable for

³ LeRoy does not challenge the district court’s findings, which formed its basis to deny his petition, that he “committed multiple breaches of fiduciary duty.”

another's fees and costs, the district court must make a finding of mismanagement or bad faith. *Ariola v. City of Stillwater*, 889 N.W.2d 340, 361 (Minn. App. 2017).

LeRoy posits that he had a reasonable basis for the action, stating that the trust unambiguously allows him to remove trustees. As we have already explained, the district court correctly concluded that he may not remove trustees absent adherence to the fiduciary standard, see *supra* part I.

The district court awarded attorney fees against LeRoy after finding he acted in bad faith pursuant to Minn. Stat. § 549.14 (2022) (providing recovery of attorney fees for mismanagement or bad faith in an action). The district court found “that LeRoy engaged in bad faith in obstructing the appointment of an independent trustee” by “attempting to remove Craig and James . . . as trustees to replace them with a hand-selected independent trustee when he had no power to do so under the [t]rust.” The record supports this determination. LeRoy refused to speak with potential independent trustees proposed by Craig and James, excluded Craig and James from conversations with First Trust, and then sought to remove Craig and James as trustees to unilaterally select an independent trustee though the trust grants him no such authority. Thus, the district court acted within its discretion in awarding attorney fees.⁴

Affirmed.

⁴ LeRoy also argues that the terms of the October 2018 stipulation, which ended the previous litigation, impermissibly modifies his rights under the trust. Because we determine that LeRoy's trustee-removal authority is subject to a fiduciary standard, and because he does not contest the district court's findings that he breached his fiduciary duties, we need not determine whether the district court erred by determining that the October 2018 order temporarily limits LeRoy's removal authority.