

**IN THE COURT OF APPEALS OF IOWA**

No. 9-929 / 09-0447  
Filed December 17, 2009

**IN THE MATTER OF THE TRUST UNDER THE LAST WILL AND  
TESTAMENT OF MARY E. WEITZEL**

**MARY ANN STRICKER, MICHAEL H.  
STRICKER, and KENT D. STRICKER,**  
Petitioners-Appellants,

**vs.**

**FIRST CITIZENS TRUST COMPANY,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Mitchell County, Bryan H.  
McKinley, Judge.

Three beneficiaries of a trust appeal from a district court order refusing to  
terminate the trust and awarding the trustee compensation. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellants.

Scott D. Brown of Brown, Kinsey, Funkhouser & Lander, P.L.C., Mason  
City, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**DOYLE, J.**

Mary Ann Stricker, Michael Stricker, and Kent Stricker, the beneficiaries of a trust created by Mary Weitzel, appeal from a district court order refusing to terminate the trust and awarding compensation to the trustee, First Citizens Trust Company. The primary issue presented in this appeal is whether a discretionary support trust that contains a spendthrift clause may be terminated with the consent of all the beneficiaries. We think not based upon the facts of this case and affirm the judgment of the district court.

***I. Background Facts and Proceedings.***

In 1994, Mary Weitzel executed a will leaving all her assets to her husband, Adam Weitzel, provided he survived her. In the event Adam predeceased Mary, the assets were to pass to their daughter, Mary Ann Stricker, in trust for her lifetime. After Mary Ann's death, the assets were to pass to the Weitzels' grandsons, Michael Stricker and Kent Stricker. Mary appointed a local bank as trustee for her testamentary trust.

The relevant provisions of Mary's will creating the trust for Mary Ann provided:

1. My trustee shall, from time to time, pay to my said daughter or to her guardian, or apply for her benefit the income of this trust. My trustee in the exercise of its discretion, as it deems necessary or advisable, may pay sums from the principal to provide for her proper care, support, and maintenance.

2. Upon the death of my said daughter, my trustee shall distribute the remainder of the trust, as then constituted, to my grandsons, Kent David Stricker and Michael Harold Stricker, share and share alike.

3. No title in the trust created in this Article or in any property at any time becoming a part of any such trust, or in the income therefrom shall vest in the beneficiary and neither the principal nor the income of any such trust estate shall be liable to

be reached in any manner by the creditors of said beneficiary, and the beneficiary shall have no power to sell, assign, transfer, encumber, or in any other manner to anticipate or dispose of his interest therein.

4. It is my wish that my farm land not be sold.

Adam died in 1996, and Mary died in 2005. First Citizens Trust Company assumed its role as trustee in August 2006. The trust assets, which consisted of a 312-acre farm and house valued together at \$872,000, were conveyed to First Citizens in January 2007. Mary Ann and her husband, Harold Stricker, had lived in the house located on the farm for fifty-two years. With the consent of all the beneficiaries, the trustee transferred the house and approximately four acres to Harold and Mary Ann. It then rented the farmland to Stricker Farms, Ltd., which was owned by Mary Ann, Harold, and their sons, Michael and Kent, for \$26,250 per year.

First Citizens filed an annual report in May 2008, requesting the court to approve fees for its services as trustee from the inception of the trust as well as fees for the services of the trustee's attorney, John Reuber. Statements itemizing the services of the trustee and attorney were attached to the annual report. First Citizens requested compensation in the amount of \$2375.43, and Reuber requested compensation in the amount of \$2918.75.

In July 2008, Mary Ann, Michael, and Kent filed a petition to terminate the trust under Iowa Code section 633A.2203 (2007). They alleged the trust was created

due to financial problems that existed for Mary Ann Stricker and her husband, Harold Stricker. There were concerns that the inheritance to Mary Ann Stricker would be involved in financial debt and other debt associated with businesses operated by Harold and

Mary Ann Stricker. These debt concerns have been resolved and there is no purpose in having the Trust.

Several months later, the Strickers filed an objection to the annual report filed by First Citizens in May 2008, contesting the fees sought by both the trustee and the trustee's attorney.

A hearing was held on the petition and objection in January 2009. At the beginning of the hearing, the Strickers withdrew their objection to the fees sought by the trustee's attorney but maintained their objection to the fees sought by the trustee. Following the hearing, the district court entered a ruling determining the fees requested by First Citizens were reasonable. It denied the Strickers' petition to terminate the trust, finding that a material purpose of the trust remained to be accomplished based upon the trust's spendthrift clause.

The Strickers appeal. They assert the district court erred in determining the fees charged by the trustee were reasonable and in failing to terminate the trust.

## ***II. Scope of Review.***

The parties disagree as to the applicable scope of review. The Strickers contend our review is for correction of errors at law, while First Citizens contends we must review the record de novo. This case was tried by the probate court in equity. See Iowa Code § 633.33; *In re Barkema Trust*, 690 N.W.2d 50, 53 (Iowa 2004) (noting a hearing on objections to a fiduciary's final report is an equitable proceeding); *Bass v. Bass*, 196 N.W.2d 433, 435 (Iowa 1972) (stating a hearing on allowance of fiduciaries' compensation for services rendered in administration

of an estate “stands in equity”). Thus, this court’s scope of review is de novo. Iowa R. App. P. 6.907 (2009).

### ***III. Discussion.***

#### ***A. Trustee Compensation.***

Iowa Code section 633A.4109 governs compensation for trustees, although “considerable discretion is left to [the] trial court in the allowance or nonallowance” of such fees. *Bass*, 196 N.W.2d at 435; see also *In re Woltersdorf*, 255 Iowa 914, 916, 124 N.W.2d 510, 511 (1963) (“The matter of fees for executors and trustees rests within the sound discretion of the trial court.”); Restatement (Third) of Trusts § 38 cmt. c(1), at 150 (2003) (stating trial courts have discretion in determining a trustee’s reasonable compensation). That statute provides that where, as here, “the terms of the trust do not specify the trustee’s compensation, a trustee or cotrustee is entitled to compensation that is reasonable under the circumstances.” Iowa Code § 633A.4109(1). The district court determined the fees requested by First Citizens were reasonable. We agree.

Gregory Nicholas, an attorney with twenty-five years’ experience as a trust officer, testified on behalf of First Citizens. He explained the standard annual fee charged by First Citizens for administering trusts involving farms such as this is one-tenth of one percent of the value of the farm plus five percent of the income. Nicholas testified that standard rate resulted in First Citizens’ requested fee of \$2375.43 for its services in 2006 and 2007. The Strickers argue the compensation requested by the trustee is unreasonable because it is based on a

fixed fee schedule and “[n]o itemization of time spent was provided.” This argument lacks merit for several reasons.

First, section 633A.4109 does not require trustees to submit an itemized statement in order to receive compensation. Cf. Iowa Code § 633.200 (authorizing compensation for other fiduciaries and their attorneys “for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of”). Second, First Citizens did attach a document to its annual report that detailed its activities in the administration of the trust. Those activities included account setup, asset management, accounting, review of annual report to the court, correspondence with attorney, collection of farm rent, and preparation of tax information. Third, in *Woltersdorf*, our supreme court approved a trustee fee in the absence of an itemized statement, reasoning, “While no itemized statement was made as to each day by day work done in connection with the trust, it appears that whatever was necessary was done . . . .” 255 Iowa at 916, 124 N.W.2d at 511 (finding no abuse of discretion in trustee fee of \$1000 for trust estate valued at \$15,000). The same can be said here.

Nicholas testified “there were substantial services that were rendered” since the inception of the trust, including the transfer of real estate from the trust to Harold and Mary Ann and the discretionary distributions made to Mary Ann. He believed the fees requested were reasonable based upon his experience in administering other trusts. The district court agreed, finding in relevant part that

[t]he \$100 per acre rental value [charged by the trust to Stricker Farms] is a considerable reduction from the fair market rent that the fiduciary could have received, and by allowing the rent to be

reduced to accommodate the request of the beneficiaries, First Citizens Trust Company by the formula used had their fees reduced. By such action, the Court finds that the trustee . . . placed greater emphasis upon the beneficiaries' request for accommodation as to rent as opposed to First Citizens Trust Company's right to secure fees based upon the higher level of reasonable income.

We find no abuse of discretion in the court's decision. In so concluding, we have considered the factors set forth in the Restatement (Third) of Trusts in determining whether the compensation requested by a trustee is reasonable. See Restatement (Third) of Trusts § 38 cmt. c(1), at 150 (stating factors that may be considered include local custom, trustee's skill and experience, time devoted to trust duties, amount and character of trust property, degree of difficulty, responsibility, and risk assumed in administering the trust, including making discretionary distributions, nature and costs of services rendered by others, and quality of the trustee's performance).

This brings us to the parties' primary contention on appeal: whether the district court erred in denying the Strickers' request to terminate the trust.

***B. Termination of Trust.***

We again begin our analysis with a provision of the Iowa Trust Code, namely section 633A.2203(1), which provides: "An irrevocable trust may be terminated . . . by the court with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose." Because all of the beneficiaries consented to the termination of the trust in this case, the question before the district court was whether a material purpose of the trust remained to be completed. The court answered this question in the affirmative based upon the spendthrift clause of the

trust. The Strickers claim this conclusion was in error, arguing the court's assumption that a trust with a spendthrift clause "is per se a material purpose is contrary to the Iowa Trust Code."

For guidance in answering this question, we look to a law review article written by Professor Martin D. Begleiter, who was involved in the drafting of the Iowa Trust Code, entitled *In the Code We Trust—Some Trust Law for Iowa at Last*, 49 Drake L. Rev. 165 (2001) (hereinafter Begleiter). In that article, Professor Begleiter explained section 663A.2203 is "basically the Trust Code's version of the *Claflin* doctrine." Begleiter, 49 Drake L. Rev. at 196. The *Claflin* doctrine provides, as does our statute, "that an irrevocable trust can be terminated or modified only if all the beneficiaries consent and no material purpose of the trust remains to be completed." *Id.*; see also *Claflin v. Claflin*, 20 N.E. 454, 455 (Mass. 1889). Iowa accepted this doctrine in the case of *Hopp v. Rain*, in which our supreme court noted the corollary rules that

if one of the purposes of the trust is to deprive the beneficiary entitled to income of the management of the trust property for the period during which he is entitled to the income, the trust will not be terminated during the period, although both of the beneficiaries are of full capacity and desire to terminate it. Similarly, if by the terms of the trust it is provided that the trustee shall make payments out of income or principal to a beneficiary if the beneficiary should be in need, the trust will not be terminated although that beneficiary and all the other beneficiaries are of full capacity and desire to terminate it.

249 Iowa 891, 900-02, 88 N.W.2d 39, 44-45 (1958); accord *Sawyer v. Sawyer*, 261 Iowa 112, 122, 152 N.W.2d 605, 611 (1967); *Windsor v. Barnett*, 201 Iowa 1226, 1231, 207 N.W. 362, 365 (1926); *Olsen v. Youngerman*, 136 Iowa 404, 411, 113 N.W. 938, 941 (1907).



Along those same lines, comments l and m to section 337 of the Restatement (Second) of Trusts, at 165 (1959), provide a trust created for the support of a beneficiary and a trust with a spendthrift clause are examples of trusts with a material purpose yet to be completed. See Begleiter, 49 Drake L. Rev. at 198. These comments, along with the court's decision in *Hopp*, suggest the district court correctly determined a material purpose of the discretionary support trust<sup>1</sup> in this case remained due to the trust's spendthrift clause. See Iowa Code § 633A.1104 ("Except to the extent that this chapter modifies the common law governing trusts, the common law of trusts shall supplement this trust code."); see also Begleiter, 49 Drake L. Rev. at 197, n.181 (observing that "Iowa courts have been quite receptive to arguments that a material purpose remains to be completed"). However, as noted by Professor Begleiter, there has been a trend away from such a presumptive rule in recent years. See Begleiter, 49 Drake L. Rev. at 198.

This is reflected in the new rule adopted in the Restatement (Third) of Trusts, which now provides:

[S]pendthrift restrictions are not sufficient in and of themselves to establish, or to create a presumption of, a material purpose that would prevent termination by consent of all of the beneficiaries. This is also true, in many contexts, of discretionary provisions.

Restatement (Third) of Trusts § 65 cmt. e at 479. The comment explains,

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<sup>1</sup> In *In re Estate of Gist*, the court noted the Restatement (Third) of Trusts now classifies a discretionary support trust as a discretionary trust with standards but stated, "Regardless of whether we refer to a trust as a discretionary support trust or a discretionary trust with standards, they are the same animals." 763 N.W.2d 561, 565 (Iowa 2009). The court then explained a settlor creates a discretionary trust with standards if, as here, the "stated purpose of the trust is to furnish the beneficiary with support, and the trustee is directed to pay to the beneficiary whatever amount of trust income [or principal] the trustee deems necessary for his support." *Id.* (citations omitted).

A spendthrift clause may be included as a routine or incidental provision of a trust (unimportant or even unknown to the settlor). . . . Thus, for example, the fact that a lawyer had explained the effect and advised the inclusion of a spendthrift provision is not alone sufficient to establish that it represents more than an advantage that the beneficiaries are free to relinquish by consenting to termination of the trust.

Similarly, discretionary provisions, like other provisions involving successive enjoyment, may represent nothing more than a settlor's plan for allocating the benefits of his or her property flexibly among various beneficiaries rather than revealing some significant concerns or protective purposes that would prevent the beneficiaries from joining together to terminate a trust and divide or distribute the property as they wish under the rule of this Section. This is particularly so when the trust is created to provide, as needed, for the life beneficiary's support and care, with remainder to others.

*Id.* at 479-80.

Professor Begleiter criticizes the reasoning of this provision and notes the drafters of the revised Iowa Trust Code “wisely rejected this change.”<sup>2</sup> Begleiter, 49 Drake L. Rev. at 199 n.190. In any event, regardless of whether a spendthrift clause presumptively establishes a material purpose, we conclude based on the facts of this case that such a purpose remained to be completed. *See Eldred v. Merch. Nat'l Bank*, 468 N.W.2d 221, 223 (Iowa 1991) (“The purpose of the trust is determined by examining the language of the instrument which creates the trust and the surrounding circumstances.”); *see also* Restatement (Third) of Trusts § 65 cmt. d at 477 (“[A] court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more

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<sup>2</sup> He notes a preliminary draft of section 410 of the Uniform Trust Code (UTC) (2000 Annual Meeting Draft) that was reviewed by the individuals involved in drafting the Iowa Trust Code included a provision stating, “A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.” Begleiter, 49 Drake L. Rev. at 198 n.189.

than a method of allocating the benefits of property among multiple intended beneficiaries. . . .”).

The final provision of the article in Mary’s will that created the trust expressly provided, “It is my wish that my farm land not be sold.” That provision comes immediately after the spendthrift clause, which follows the provision providing for discretionary payments to Mary Ann as necessary for her support. When these provisions are read together, we believe it is clear that Mary’s intent in creating the trust was to protect her farmland from the creditors of Mary Ann. See Restatement (Third) of Trusts § 65 cmt. d at 477 (“A finding of . . . a [material] purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary’s management skills, judgment, or level of maturity.”).

The Strickers nevertheless argue that Mary Ann and Harold’s “financial problems occurred in 1979 and 1980” and have since been resolved.<sup>3</sup> However, Mary’s will was executed in 1994, and she did not die until 2005. We thus find this argument unavailing. It is clear from the circumstances presented in this case that the trust arrangement created by Mary represented “more than a method of allocating the benefits of property among multiple intended beneficiaries.” *Id.* As evidenced by the text of the will itself, Mary wanted to preserve her farmland for her grandsons. Mary Ann’s supposed improved

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<sup>3</sup> In making this argument, the Strickers refer to extrinsic evidence that was introduced at trial (over opposing counsel’s objection) regarding Mary’s intent in executing her will and creating the trust. While the evidence was appropriately admitted subject to the objection, as the case was tried in equity, we refuse to consider such evidence in our review of this case. See *In re Estate of Roberts*, 240 Iowa 160, 164, 35 N.W.2d 756, 758 (1949) (“Evidence to show the testatorial intention as an independent fact divorced from the words of the will is clearly inadmissible.”).

financial circumstances, which Mary was aware of before her death, do not obviate this purpose. See *Roberts*, 240 Iowa at 164, 35 N.W.2d at 758 (rejecting beneficiary's argument that a spendthrift trust created in his mother's will to supposedly protect her property from beneficiary's wife no longer served a purpose after his divorce). We therefore find a material purpose of the trust remains thereby necessitating its continuation. See Iowa Code § 633A.2203(1).

In reaching this conclusion, we echo the court's observation in *Hopp*, 249 Iowa at 902, 88 N.W.2d at 45, that

trusts are usually created for the purpose of withholding from the beneficiaries or other interested parties the control and disposition of the principal of the fund for reasons which appear sufficient to the trustor, and they are not usually regarded with satisfaction by the persons who are deprived of the possession of the estate. This, however, furnishes no ground for disregarding the conditions on which the bounty is to be bestowed, nor for refusing to carry out the expressed design of the party creating the trust.

We accordingly affirm the district court's decision denying the Strickers' petition to terminate the trust.

#### ***IV. Appellate Attorney Fees.***

The Strickers request an award of appellate attorney fees, but they have cited no authority in support of such a request. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). We therefore deem this issue waived and deny the Strickers' request.<sup>4</sup>

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<sup>4</sup> We note several common violations of our rules of appellate procedure. The name of each witness was not placed at the top of each page where the witness's testimony appears in the parties' appendix as required by Iowa Rule of Appellate Procedure 6.905(7)(c). In addition, rules 6.905(7)(d) and (e) were not followed. We recognize that the transcript testimony of the five witnesses included in the parties'

***V. Conclusion.***

In conclusion, we find no abuse of discretion in the district court's determination that the compensation requested by the trustee was reasonable. We also find, like the district court, that a material purpose of the trust remained to be completed. The judgment of the district court awarding the trustee compensation and denying the beneficiaries' petition to terminate the trust is therefore affirmed. The Strickers' request for appellate attorney fees is denied.

**AFFIRMED.**

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appendix covers only twenty-eight pages, and therefore the noncompliance we point out may seem trivial. Nonetheless, compliance with the rules facilitates efficient navigation of an appendix, thus promoting our duty to achieve maximum productivity in deciding a high volume of cases. See Iowa Ct. R. 21.30(1).