

IN THE SUPREME COURT OF MISSOURI

SAMUEL S. KNOPIK,)	
)	
Appellant,)	
)	Case No. SC 97985
v.)	
)	
SHELBY INVESTMENTS, L.L.C.,)	
)	
Respondent.)	

ON APPEAL FROM THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
Honorable Mark A. Styles
Circuit Court Case No. 17P8-PR1016
Court of Appeals, Western District, Case No. WD81931

SUBSTITUTE BRIEF OF RESPONDENT

Buford L. Farrington, #24908
Kevin D. Stanley #48008
221 West Lexington, Suite 400
P.O. Box 900
Independence, Missouri 64051
Telephone: (816) 836-5050
Facsimile: (816) 836-8966
blf@hfmlegal.com
kds@hfmlegal.com
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 3

STATEMENT OF FACTS..... 5

POINTS RELIED ON..... 7

ARGUMENT..... 8

I. THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO THE TRUSTEE BECAUSE THE COURT CORRECTLY FOLLOWED MISSOURI LAW AND CONCLUDED THAT: 1) NO-CONTEST CLAUSES ARE ENFORCEABLE IN MISSOURI, 2) THERE IS NOT “GOOD FAITH” EXCEPTION TO THE ENFORCEMENT OF NO-CONTEST CLAUSES, 3) THE CLAIMS IN THIS CASE VIOLATE THE TERMS OF THE NO-CONTEST CLAUSE, AND 4) THERE IS NO EXCEPTION IN MISSOURI TO APPLICATION OF NO-CONTEST CLAUSES

STANDARD OF REVIEW..... 8

ARGUMENT AND AUTHORITY..... 9

A. RESPONDENT WAS ENTITLED TO DECLARATORY JUDGMENT..... 9

**B. PLAINTIFF VIOLATED THE NO-CONTEST CLAUSE
OF THE TRUST.....11**

C. APPELLANT HAS NO STANDING AS A BENEFICIARY..... 20

CONCLUSION..... 22

TABLE OF AUTHORITIES

CASES

Commerce Trust Co. v. Weed,
 318 S.W.2d 289 (Mo. 1958).....7, 12, 13, 14, 15, 16

Cox v. Fisher, 322 S.W.2d 910 (Mo. 1959).....7, 9, 13, 14, 16

EGW v. First Federal Savings Bank of Sheridan,
 413 P.3d 106 (Wyo. 2018).....16, 17, 19

In Re Estate of Juppier, 81 S.W.3d 699 (Mo. Ct. App. 2002).....21

In Re Estate of Whittaker, 261 S.W.3d 615 (Mo. Ct. App. 2008).....7, 21

ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371 (Mo. 1993).....8, 9

Nickles v. Spisak, 2014 WL 2882429, No. 2013-P-0094
 (Ohio Ct. App. June 23, 2014).....17

Rafalko v. Georgiadis, 777 S.E.2d 870 (Va. 2015).....17

Sanger v. Yellow Cab Co., 486 S.W.2d 477 (Mo. 1972).....20

Savage v. Oliszczyk, 928 N.E.2d 995 (Mass. Ct. App. 2010).....17

Soars v. Easter Seals Midwest, 563 S.W.3d 111(Mo. 2018).....19, 20

Succesion of Laborde, 251 So.3d 461 (La. Ct. App. 2018)..... 16, 17, 18, 19

STATUTES AND RULES

Mo. Rev. Stat. §456.1-103(10).....7, 20

Mo. Rev. Stat. §456.10-1001.....20, 21

Mo. Rev. Stat. §456.2-202.3..... 10

Mo. Rev. Stat. §527.010.....10

Mo. Rev. Stat. §527.020.....10

Mo. Rev. Stat. §527.050.....10

Mo. Rev. Stat. §527.130.....10

Rule 74.04, Missouri Rules of Civil Procedure.....8

OTHER AUTHORITY

Restatement, Property, Ch. 33, §428.....13

STATEMENT OF FACTS

On August 17, 2018, Appellant filed a Petition for Breach of Trust and Removal with the Circuit Court of Jackson County, Missouri. D2. Appellant's Petition included two counts. *Id.* The first count in Appellant's Petition is entitled "Breach of Trust". *Id.* at pg. 2. The second count in Appellant's Petition is entitled "Removal". *Id.* at pg. 3.

The Knopik Irrevocable Trust contains an express and unambiguous no-contest clause. Paragraph 12 of the trust states that

[i]n case any beneficiary shall (i) contest the validity of this trust, or any provisions thereof, in whole or in part; (ii) **make a claim against a trustee for maladministration or breach of trust;** or (iii) **attempt to remove a trustee for any reason, with or without cause;** then such contest or claim and such attempt **shall cancel and terminate all provisions for or in favor of the beneficiary making or inciting such contest or claim,** without regard to whether such contest or claim shall succeed or not; and all and any provisions or provision herein in favor of the beneficiary so making such contest or claim, or attempting or inciting the same, to be revoked and of no force and effect; and the entire trust estate shall revert to the Settlor and be distributed to the Settlor.

D3 at pg. 3. (emphasis added)

Appellant admits that the Petition includes claims against the trustee for maladministration and/or breach of trust. D24 at pg. 3, para. 7. Appellant also admits that the Petition in this case seeks to remove the trustee of the Knopik Irrevocable Trust. D24 at pg. 3, para. 8.

In response to the Petition, Respondent filed a counterclaim for declaratory judgment. D5. In the counterclaim, Respondent sought a declaration from the

Circuit Court that Appellant had, in fact, violated the express terms of the Knopik Irrevocable Trust and, as a result, Appellant was no longer a beneficiary under the trust. D5 at pg. 5, para. 30-32.

Because it was undisputed that Appellant violated the express terms of the trust and, as a result forfeited his interest in the trust, Respondent filed a motion for summary judgment on the claim for declaratory judgment. D10. Respondent provided supporting suggestions and a statement of undisputed facts in support of the motion. D11, D12.

On July 9, 2018, the Circuit Court found in favor of Respondent and granted the motion for summary judgment of the Trustee. D32. The Circuit Court applied well-established precedent of this Court and held that the no-contest clause included in the Knopik Irrevocable Trust was enforceable. D32 at pg. 7, para. 34. The Circuit Court recognized that the arguments made by Appellant are not the law in Missouri and that the terms of the trust are enforceable in this case. D32 at pg. 7, para. 33-34. In fact, the Circuit Court recognized that the exact arguments raised by Appellant have previously been considered, and rejected, by this Court. D32 at pg. 7, para. 34.

Following the decision of the Circuit Court, Appellant sought review from the Western District Court of Appeals. D33. On May 14, 2019, the Western District Court of Appeals issued its opinion and affirmed the decision of the Circuit Court. App. At A9-A16.

Like the Circuit Court, the Western District Court of Appeals followed the established precedent of this Court and held that the unambiguous no-contest clause in the trust was enforceable. App. at A14.

POINTS RELIED ON

I. THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO THE TRUSTEE BECAUSE THE COURT CORRECTLY FOLLOWED MISSOURI LAW AND CONCLUDED THAT: 1) NO-CONTEST CLAUSES ARE ENFORCEABLE IN MISSOURI, 2) THERE IS NO “GOOD FAITH” EXCEPTION TO THE ENFORCEMENT OF NO-CONTEST CLAUSES, 3) THE CLAIMS IN THIS CASE VIOLATE THE TERMS OF THE NO-CONTEST CLAUSE, AND 4) THERE IS NO EXCEPTION IN MISSOURI TO APPLICATION OF NO-CONTEST CLAUSES

Commerce Trust Co. v. Weed, 318 S.W.2d 289 (Mo. 1958)

Cox v. Fisher, 322 S.W.2d 910 (Mo. 1959)

In Re Estate of Whittaker, 261 S.W.3d 615 (Mo. Ct. App. 2008)

Mo. Rev. Stat. §456.1-103(10)

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO THE TRUSTEE BECAUSE THE COURT CORRECTLY FOLLOWED ESTABLISHED MISSOURI LAW AND CONCLUDED THAT: 1) NO-CONTEST CLAUSES ARE ENFORCEABLE IN MISSOURI, 2) THERE IS NO “GOOD FAITH” EXCEPTION TO THE ENFORCEMENT OF NO-CONTEST CLAUSES, 3) THE CLAIMS IN THIS CASE VIOLATE THE TERMS OF THE NO-CONTEST CLAUSE, AND 4) THERE IS NO EXCEPTION IN MISSOURI TO APPLICATION OF NO-CONTEST CLAUSES

STANDARD OF REVIEW

Rule 74.04, Missouri Rules of Civil Procedure, provides that a party may move for summary judgment with or without supporting affidavits upon all or any part of the pending issues. “Summary judgment is designed to permit the trial court to enter judgment, without delay, where the moving party has demonstrated, on the basis of facts as to which there is no genuine dispute, a right to judgment as a matter of law.” *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. 1993). “Summary judgment proceeds from the analytical predicate that, where the facts are not in dispute, the prevailing party can be determined as a matter of law.” *Id.*

The standard of review is *de novo*. *Id.* “The criteria on appeal for testing the propriety of summary judgment are no different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially.” *Id.*

ARGUMENT AND AUTHORITY

Appellant argues that the Respondent’s position in this case “is contrary to Missouri law and policy.” See Appellant Brief at pg. 29. However, as two previous courts have now found, it is the Appellant’s position that is contrary to long-established Missouri precedent. See D32 at pg. 7; App. at A13.

The trust in this case included a “no-contest” clause. Doc. 3 at pg. 3. On this point there is no dispute. There is also no dispute the Petition in this case includes claims for breach of trust and to remove the trustee. D28 at pg. 1-2. The actions brought by Appellant are expressly prohibited by the no-contest clause. D3 at pg. 3.

The Circuit Court found that the intent of the grantor in this case was clear. D32 at pg. 6. Under Missouri law, when the intent of the grantor is clear, no-contest clauses are fully enforceable. *Cox v. Fisher*, 322 S.W.2d 910, 914 (Mo. 1959).

A. RESPONDENT WAS ENTITLED TO DECLARATORY JUDGMENT

The Circuit Court correctly granted summary judgment on Respondent’s counterclaim for declaratory judgment. D32 at pg. 7, para. 36. There was no

dispute regarding the facts in this case. Appellant violated the terms of the no-contest clause of the Knopik Irrevocable Trust. D32 at pg. 7, para. 35.

Under the Missouri Uniform Trust Code, a trustee may bring an action for declaratory judgment regarding the rights of a party under a trust agreement. Specifically, Mo. Rev. Stat. §456.2-202.3 provides that a proceeding involving a trust may include, among many other things, a declaration of rights of the parties. See also D32 at pg. 4, para. 18.

Declaratory judgment under Missouri law is also set forth in statute. See Mo. Rev. Stat. §527.010 – §527.130. Under Mo. Rev. Stat. §527.010, a circuit court has “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Section 527.020 provides that “any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” The specifically enumerated powers provided under the declaratory judgment statutes do not limit the exercise of power granted under §527.010 when a “judgment or decree will terminate the controversy or remove an uncertainty.” Mo. Rev. Stat. §527.050.

Missouri statutes make clear that the declaratory judgment provisions are to be broadly construed. See Mo. Rev. Stat. §527.110. Section 527.110 provides that “[t]his law is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal

relations; and is to be liberally construed and administered.” See also D32 at pg. 4-5, para. 21.

B. PLAINTIFF VIOLATED THE NO-CONTEST CLAUSE OF THE TRUST

As the Circuit Court recognized, the language of the Knopik Irrevocable Trust is clear and unambiguous. D32 at pg. 6, para. 27, 30. The material facts in this case are undisputed. Therefore, Respondent was entitled to summary judgment on the counter-claim for declaratory judgment.

Paragraph 12 of the Knopik Irrevocable Trust includes a provision that, in the event a beneficiary makes a claim against a trustee for maladministration or breach of trust, the provisions of the trust that provide a benefit to the beneficiary are revoked and the remaining trust assets are returned to the settlor. See D3 at pg. 3, para. 12. Appellant admits that this case involves a claim of maladministration or breach of trust. See D24 at pg. 3, para. 7. According to the plain language of the Knopik Irrevocable Trust, because of this action taken by Appellant, he is no longer entitled to benefits under the trust and the remaining assets are to be returned to the settlor of the trust. D3 at pg. 3; D32 at pg. 7. (“all remaining trust assets be returned to the settlor”)

Furthermore, the face of the Petition filed by Appellant seeks to have Shelby Investments, LLC removed as trustee of the Knopik Irrevocable Trust. See D2 at pg. 1, 3. See also D32 at pg. 6, para. 28, 29. The no-contest clause expressly provides that actions to remove the trustee are a violation of the clause. D3 at pg.

3. Appellant unequivocally admits that he seeks to remove the trustee of the Knopik Irrevocable Trust. D24 at pg. 3, para. 8. Again, according to the plain language of the Knopik Irrevocable Trust, by taking action to remove Shelby Investments, LLC as trustee, Appellant forfeited the right to any trust assets and the remaining trust assets are to be returned to the settlor. D3 at pg. 3; D32 at pg. 7.

The Circuit Court correctly found that the law in Missouri is just as clear on this issue as the language of the Knopik Irrevocable Trust. D32 at pg. 5, para. 22, 23, and 24. In *Commerce Trust Co. v. Weed*, 318 S.W.2d 289, 300-301 (Mo. 1958), this Court considered whether exceptions to “no contest” clauses in wills and other probate documents should be recognized and allowed. The Court in *Commerce Trust Co.* considered all of the arguments as to why “no contest” clauses should not be enforced when there is “good faith and probable cause” to challenge a will or, as in this case, a trust. *Id.*

In refusing to recognize exceptions to “no contest” provisions, the *Commerce Trust Co.* Court observed that “this court did not take a position on the question until it had thoroughly considered the authorities pro and con and the reasons supporting each view.” *Id.* at 301. The Court went on to state that “[w]e see no reason for departing from that rule. It rests upon a sound logical foundation and is supported by substantial authority.” *Id.*

The analysis in *Commerce Trust Co.* is thorough and sound. In that case, just as in this case, the Court was asked to re-examine and overrule prior decisions

holding that “no-contest” clauses were to be enforced without exception. *Id.* at 299. The *Commerce Trust Co.* Court refused to do so and rejected that argument. *Id.* at 301.

This Court should do likewise. The *Commerce Trust Co.* Court stated that “[i]f the existence of probable cause were recognized as an excuse for non-performance of the condition, full effect to the expressed desire of the testator would be denied in a case where that desire accords with social policy.” *Id.* (quoting Restatement, Property, Ch. 33, §428, pg. 2499 *et seq.*)

The same arguments made by Appellant in this case have already considered – and rejected. As the Court stated in *Commerce Trust Co.*, “[t]here has been no suggestion of any subsequent changes in our economic or social conditions of a nature that might call for a change in the rule we have adopted.” *Id.* at 301-302.

Similar issues were considered by this Court in *Cox v. Fisher*, 322 S.W.2d 910, 914 (Mo. 1959). In *Cox*, the Court observed that “forfeitures are not favored by the law” However, “a no-contest or forfeiture provision is to be enforced where it is clear that the trustor (or testator) intended that he conduct in question should forfeit a beneficiary’s interest under the indenture (or will).” *Id.* Unlike this case, in *Cox* the Court found that the no-contest clause was not triggered because it was not clear that the trustor had intended to prohibit the action being taken in that case. *Id.* at 915-916.

The court in *Cox* did however make clear that Missouri does not recognize an exception to the enforceability of a no-contest clause in cases where the clause has been triggered by actions of a beneficiary. Specifically, the Court in *Cox* stated that “[i]n the *Rossi* case the doctrine of the *Chambers*’ case was upheld and applied to the forfeiture provision of the Rossi trust indenture; and it was further made clear, in the *Rossi* case, that a valid forfeiture provision is to be enforced upon violation without regard to any exception based upon the good faith and probable cause of the contestant. And these decisions were adhered to in *Commerce Trust Co. v. Weed, supra.*” *Id.* at 913-14.

The Circuit Court properly rejected Appellant’s argument in favor of a “good faith” or “probable cause” exception to the no-contest clause provision in the Knopik Irrevocable Trust. D32 at pg. 7, para. 33-34. The Circuit Court concluded that Missouri law does not recognize any exceptions to no-contest clauses. *Id.* Appellant has shown no change in circumstances that merit this Court upsetting more than fifty years of established precedent.

The Circuit Court also correctly concluded that the facts in this case align directly with the holding of this Court in *Commerce Trust Co.* Specifically in this case, unlike *Cox*, the Circuit Court held that the settlor clearly and unambiguously provided that any action brought alleging maladministration or breach of trust triggered the no-contest provision. D32 at pg. 6, para. 30-31. Appellant admits that the claims in this case are for maladministration or breach of trust. D24 at pg.

3, para. 7. Appellant admits, as he must, that one of the counts in this case seeks the removal of Shelby Investments, LLC as trustee. D24 at pg. 3, para. 8.

The Circuit Court recognized that there is no way to distinguish or exclude the claims asserted by Appellant from having triggered the no-contest clause in this case. D32 at pg. 6, para. 28. (“Petitioner argues that he is not seeking to contest Trust, but only seeking to enforce the terms of Trust and the duties of Respondent as trustee under the Trust. While that may be true, the caption of Petition reads ‘Petition for Breach of Trust and Removal.’”)

In an effort to avoid the effect of the no-contest clause, Appellant goes to great lengths to explain that other states recognize exceptions to override the clear intent of a grantor and allow challenges to trust instruments that contain no-contest clauses without penalty. Appellant Brief at pg. 76-94. Notably absent from Appellant’s brief is any explanation of what “has changed dramatically” to merit deviating from an established rule of law that has long-provided clarity and stability in Missouri law.

In fact, in *Commerce Trust Co.* this Court already recognized that there is a split of authority on this issue. In the *Commerce Trust Co.* decision, this Court cited cases that take the opposing view as well as treatises that provide “a general discussion of the question and a review of the cases on each side of the controversy.” 318 S.W.2d at 301. This Court did not reach its well-informed and well-reasoned decision until “it had thoroughly considered the authorities pro and con and the reasons supporting each view.” *Id.*

Nothing has changed since this Court handed down the decisions in *Commerce Trust Co.* and *Cox*. As discussed above, this Court has considered both sides of this issue and has expressly rejected all of the arguments made by Appellant to this Court. *Commerce Trust Co.*, 318 S.W.2d at 301.

Appellant devotes a significant portion of his brief attempting to manufacture a “substantial shift” in the law since this Court’s decisions in *Commerce Trust Co.* and *Cox*. Appellant implicitly suggests that the approach of Missouri courts on this issue is dramatically different from the approach of other states that have recently considered this issue. This suggestion is incorrect.

As the Western District Court of Appeals recognized in its opinion, Missouri is “one of ‘a sizable minority of states that enforce no-contest clauses absolutely.’” App. at A13, FN1. Indeed, the chart included in Appellant’s brief demonstrates that Missouri is not alone in its position that no-contest clauses are enforceable without exception where the grantor has made that the intent clear as demonstrated by the trust instrument. Twelve states stand with Missouri in recognizing that

[t]he intent of the testator is **paramount** in interpreting the provisions of a will [or trust]. If the language of the will [or trust] is clear, it must be carried out according to its written terms. . . . The court’s function is to construe the will [or trust] as written, without adding words to any controversial parts under the guise of interpreting the testator’s intent.

Succesion of Laborde, 251 So.3d 461, 464 (La. Ct. App. 2018)(emphasis and bracketed material added). See e.g. *EGW v. First Federal Savings Bank of*

Sheridan, 413 P.3d 106 (Wyo. 2018)(“We begin with the proposition, long established in Wyoming precedent, that it is ‘the absolute right of the testator to dispose of his property . . . as he sees fit, provided he is legally qualified so to do and acts as the law directs.’”); *Rafalko v. Georgiadis*, 777 S.E.2d 870, 875 (Va. 2015)(“No contest clauses in trusts that are part of a testamentary estate plan are given full effect, as they are in wills.”); *Savage v. Oliszczyk*, 928 N.E.2d 995, 997 (Mass. Ct. App. 2010)(“A provision forfeiting the interest of a beneficiary who contests a will is valid.”); *Nickles v. Spisak*, 2014 WL 2882429, No. 2013-P-0094 (Ohio Ct. App. June 23, 2014).

As the cases cited above demonstrate – while the strict enforcement of no-contest clauses practiced by Missouri and other states may now be a minority position – there remains a substantial group of states that take this view. Furthermore, these jurisdictions continue to affirm this approach and demonstrate no reason to suggest that this position is now disfavored or does not continue to serve the valid purpose of preventing litigation and depletion of trust or estate assets. As the cases cited above show, Louisiana and Wyoming considered this issue and issued opinions in 2018, Virginia in 2015, Ohio in 2014 and Massachusetts in 2010.

The cautionary language of the court in *Succesion of Laborde* is worthy of emphasis given the arguments advanced by Appellant. The approach of Missouri courts for more than fifty years has provided stability, clarity and predictability in the law that has served to **benefit both grantors and grantees**. To accept the

argument of Appellant requires this Court – and invites other courts – to re-write trust documents “under the guise of interpreting the testator’s intent.” 251 So.3d at 464.

The dramatic change in law suggested by Appellant would, without question, lead to unpredictability and uncertainty in the administration of wills and trusts. It is difficult (if not impossible) to develop a bright-line test for deciding those challenges which would not trigger enforcement of a no-contest clause from those challenges which will result in forfeiture of a beneficiaries interest in trust or will.

The natural consequence of recognizing so-called “limited exceptions” is that the neither grantors nor beneficiaries can have confidence as to how clear and unambiguous no-contest clauses will be enforced. As a result, grantors will risk having their clearly stated intent disregarded. Furthermore, grantees will risk having their interest forfeited based upon uncertain and unpredictable determinations concerning whether a no-contest clause has been violated. What one court considers “good faith” or “probable cause” will fail to impress another court, resulting in the forfeiture of a beneficiary’s assets. Finally, there will absolutely be a depletion of trust and estate assets as a result of challenges to no-contest clauses regardless of outcome.

Missouri law, as it currently exists, prevents all of these negative consequences. As the law currently stands, grantors have confidence that the express terms of a will or trust will be honored. Beneficiaries clearly understand

the consequences of challenges to trusts or wills that contain a no-contest clause. Ultimately, assets are preserved because litigation is greatly reduced.

Conversely, Missouri law as it currently exists promotes an overall benefit to grantors and grantees alike. As the court in *Succesion of Laborde* observed, strict enforcement does not preclude all challenges to wills and trusts containing no-contest provisions. 251 So.3d 464 at FN 1. In most instances, a successful challenge to a no-contest clause will invalidate the will or trust containing the no-contest provision. *Id.*

There are important interests served by allowing a grantor the right to have the express terms of his or her trust honored. As the Supreme Court of Wyoming observed in *EGW*,

valid wills or trusts may contain terms that might strike outside observers as unfair. We might see it as unfair if a testator gave nothing whatsoever to a dutiful child while giving the entirety of a large estate to the dutiful child's unworthy sibling – but a testator may do that, and we would step dangerously outside our proper role were we to rewrite such an instrument to reflect our sense of justice.

413 P.3d at 113.

Grantors should have the freedom to exercise their right to dispose of property as they deem fit – regardless of whether a court believes that, in hindsight, the grantor would make the same decision given the opportunity. For example, Missouri law has long recognized a right to freedom of contract, regardless of whether a contract contains provisions that ultimately are determined to be a “bad bargain.” As this Court recently recognized in *Soars v. Easter Seals*

Midwest, 563 S.W.3d 111, 116 (Mo. 2018) “the general rule of freedom of contract includes the freedom to make a bad bargain.” (quoting *Sanger v. Yellow Cab Co.*, 486 S.W.2d 477, 481 (Mo. 1972)).

The same principle holds true in this context. Courts should not second-guess the unambiguous direction of a grantor based on a belief that the grantor made a poor decision. The general rule that a person has the right to dispose of property as they see fit necessarily includes the right to make a poor decision with respect to that disposition.

Simply put, this Court should not accept Appellant’s invitation to make dramatic changes to Missouri law in this area. To allow exceptions to otherwise enforceable no-contest provisions will, without question, result in ambiguity, uncertainty and unpredictability for all involved.

C. APPELLANT HAS NO STANDING AS A BENEFICIARY

Appellant has no standing in this case. Under the Missouri Uniform Trust Code (MUTC), an “interested person” is defined as “beneficiaries and any others having a property right in or claim against a trust estate which may be affected by a judicial proceeding.” See Mo. Rev. Stat. §456.1-103(10).

The MUTC provides remedies for breach of trust. See Mo. Rev. Stat. §456.10-1001. However, the MUTC defines breach of trust as a “violation by a trustee of a duty the trustee owes to a beneficiary.” *Id.* By violating the no-contest clause, Appellant is not a beneficiary of the trust. Therefore, Respondent owes no duty to Appellant.

Finally, the MUTC provides for removal of a trustee. However, again, Appellant does not meet the definition of those who are entitled to seek removal of Shelby Investments, LLC as trustee. Under the MUTC, only “[t]he settlor, a cotrustee, or a qualified beneficiary” are eligible to bring an action to remove a trustee. Appellant is not a qualified beneficiary because he has forfeited any right to trust proceeds by bringing the action for against Respondent Shelby Investments, LLC and, thereby, violating the no-contest clause of the trust.

Missouri courts routinely reject or dismiss claims when the person asserting the claim lacks standing. See *In Re Estate of Whittaker*, 261 S.W.3d 615, 619 (Mo. Ct. App. 2008)(“Based upon this Court’s holding in *Walker*, the precedent relied upon therein, and the plain language of Section 472.015(15)’s definition of ‘interested person,’ we are compelled to conclude Nelson, who does not have a vested financial interest in Whittaker’s estate, lacks standing to challenge Mullendore’s appointment as Whittaker’s guardian and conservatory of this estate.”). Furthermore, Missouri courts strictly construe the definition of those who are considered “interested persons” or otherwise have standing to bring claims in probate proceedings. *In Re Estate of Juppier*, 81 S.W.3d 699, 701 (Mo. Ct. App. 2002)(“When determining a party’s status as an ‘interested person,’ the courts have been reluctant to extend the definition of ‘interested person.’”). Missouri courts limit the definition of “interested person” to only those persons with a financial interest in an estate. *Id.* Since Appellant has forfeited any right to

benefits under the trust, he has no financial interest in the trust. Therefore, Appellant has no standing in this matter.

CONCLUSION

Appellant triggered the no-contest clause of the Knopik Irrevocable Trust. The Circuit Court properly granted summary judgment in favor of Respondent Shelby Investments, LLC. The Circuit Court correctly entered declaratory judgment that the no-contest clause had been violated and Appellant was no longer a beneficiary to the Knopik Irrevocable Trust. Respondent respectfully requests that the decision of the Circuit Court be affirmed.

Respectfully submitted,

HUMPHREY, FARRINGTON & McCLAIN, P.C.

/s/ Kevin D. Stanley

Buford L. Farrington, #24908
Kevin D. Stanley #48008
221 West Lexington, Suite 400
P.O. Box 900
Independence, Missouri 64051
Telephone: (816) 836-5050
Facsimile: (816) 836-8966
blf@hfmlegal.com
kds@hfmlegal.com
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on 7th of October, 2019, a copy of the above document was filed and served via the Court's ECF system and email to all counsel of record.

/s/ Kevin D. Stanley
ATTORNEY FOR RESPONDENT