OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

U.S. BANK, N.A., AS TRUSTEE OF THE LIVING TRUST AGREEMENT OF LORENZ K. AYERS, DATED MAY 3, 1967, AS AMENDED AND RESTATED,	)	No. ED108598
Respondent,	)	Appeal from the Circuit Court of the City of St. Louis Cause No. 1722-PR00637
vs.	)	
ELIZABETH MOLK,	)	Honorable Rex M. Burlison
Appellant,	)	
and	)	
ANNE HERBST, CATHERINE HERBST, DONALD A. HERBST, MILES HERBST, DAVID C. MOLK, REBECCA B. MOLK and PETER F. MOLK,	)	
Defendants.	)	Filed: January 19, 2021

Elizabeth Molk ("Appellant") appeals the probate court's grant of the motion for summary judgment filed by U.S. Bank, as trustee of the Living Trust Agreement of Lorenz K. Ayers, dated May 3, 1967, as amended and restated (the "Lorenz K. Ayers Trust"), on U.S. Bank's petition for declaratory judgment. Appellant raises five points on appeal related to the probate court's grant of U.S. Bank's motion for summary judgment. Specifically, Appellant argues that the probate court erred in concluding that U.S. Bank could convert a separate, individual trust created under the terms of the Lorenz K. Ayers Trust instrument to a unitrust pursuant to § 469.411[1] and in awarding attorney's fees to U.S. Bank. U.S. Bank also filed a motion for appellate attorney's fees with our Court that was taken with the case.

AFFIRMED AND REMANDED IN PART.

Division One Holds: We find that the probate court did not err in granting summary judgment on U.S. Bank's petition for declaratory judgment, as U.S. Bank demonstrated that there was no

[1] All references are to Mo. Rev. Stat. Cum. Supp. 2016.

genuine issue of material fact and that it was entitled to judgment as a matter of law. U.S. Bank, in its discretion as trustee of the Lorenz K. Ayers Trust, was permitted to convert the subject separate trust to a unitrust pursuant to § 469.411. Likewise, we find that the probate court did not abuse its discretion in ordering Appellant to reimburse the attorney's fees incurred by U.S. Bank in the below action. Such an award of attorney's fees was authorized by statute and was not an abuse of discretion. Additionally, we grant U.S. Bank's motion for appellate attorney's fees considering the same circumstances as were recognized by the probate court and as such award of attorney's fees is authorized by statute. However, acknowledging that the probate court is better situated to hear evidence on the reasonableness of the appellate attorney's fees requested by U.S. Bank, we remand for the probate court to determine U.S. Bank's reasonable attorney's fees on appeal.

Opinion by: Colleen Dolan, P.J.

Mary K. Hoff, J., and Robert M. Clayton III, J., concur.

Attorneys for Appellant: Steven M. Hamburg and Michael A. Gross

Attorneys for Respondent: Clayton G. Kuhn and James R. Ruffin

Attorney for Defendants Anne Herbst, Catherine Herbst, Donald A. Herbst, and Miles Herbst: Tim Lemen

Attorney for Defendants Rebecca B. Molk, David C. Molk, and Peter F. Molk: Steven M. Hamburg

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.