In the Missouri Court of Appeals
Eastern District

DIVISION ONE

IN THE INTEREST OF: SUZANNE M. KOLB, DECEASED	)	ED113967
	)	Filed: April 28, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Nicole S. Zellweger, Judge

INTRODUCTION

Carole Ann Gray (Appellant) appeals from the trial court's interlocutory judgment holding her proposed contest to the validity of the Fourth Amendment to the Revocable Living Trust Agreement of Suzanne M. Kolb (Mother) would forfeit her distribution.[1] We affirm.

[1] Appellant sought "safe harbor" protection pursuant to Section 456.4-420.2 RSMo (2016), which permits beneficiaries to obtain a determination whether a no-contest clause applies to them. Thus, "beneficiaries can bring suit with a 'safe harbor' to shelter their beneficial interests." *Keen v. Wolfe*, 660 S.W.3d 14, 18 (Mo. App. S.D. 2023) (citing Peter B. Allport & Robin Drey Maher, Charting a Course in Complex Trust Litigation: Safe Harbors From In Terrorem Storms, 48 Estate Planning 14, 14 (August 2021)).

BACKGROUND

The facts of this case are not in dispute. Mother created a living trust (Trust) before she died on August 31, 2023. She was survived by four adult children: Respondents, Stephen Kolb, Sr.; Patricia Kolb; James Michael Kolb and Appellant. Mother signed four amendments to the Trust. She added a no-contest clause (no-contest clause) to her Second Amendment. In her Third Amendment she specifically disinherited two children and added the second sentence at issue in this appeal. Other than removing the disinheritance language, the no-contest clause remained the same in her final Fourth Amendment as follows:

> ***If any Beneficiary*** of any Trust created hereunder ***shall institute*** or cause to be instituted, directly or indirectly, ***any suit***, action or proceeding ***to seek the destruction or contest the validity of this Trust***, then such Beneficiary so acting ***shall forfeit*** all of his or her right, title and interest to that portion or interest in the trust assets which he or she would otherwise have received under the provisions of this Trust, and the trust shall be administered and distributed as though such Beneficiary had predeceased Grantor without a spouse or descendants surviving him or her; provided however, that nothing in this paragraph shall be construed to prevent a Beneficiary from seeking enforcement of his or her rights as a Beneficiary under this Trust in a court of equity. ***In the event that any court*** of law or equity, in any jurisdiction, ***determines that any person,*** whether or not named as a Beneficiary hereunder, ***has a right to any interest*** in any Trust created hereunder ***which is <u>different</u> from any interest set forth in this agreement, then Grantor hereby directs that the Trustee to [sic] distribute to such person the sum of One Dollar ($1.00) in full satisfaction of said trust interest.*** Anything herein to the contrary notwithstanding, any damages, attorneys' fees and other costs related to any legal proceeding in which a person is claiming or contesting an interest in any Trust created hereunder and to which the Trustee is named as a party shall be paid out of this Trust.

Paragraph D, Fourth Amendment to the Trust (emphasis added).

The Fourth Amendment substantially changed the distribution of Mother's assets. She removed Appellant as a beneficiary of her home and equally divided the residue between her four living children rather than between Appellant and a sibling. Appellant sought an interlocutory judgment whether her proposed pleading to invalidate these terms due to Mother's lack of testamentary capacity or undue influence would violate the no-contest clause. The court held Appellant's pleading "seeks to contest the validity of the Trust and the filing of that Counterclaim will trigger the no[-]contest clause." This appeal follows.

DISCUSSION

Appellant raises three points on appeal alleging the trial court erred in holding Appellant's proposed trust contest would violate the no-contest clause because the provision is unenforceable as against public policy, the clause does not penalize Appellant for contesting only the Fourth Amendment because she is not seeking a destruction of the Trust, and the court should have conditioned its judgment by providing Appellant would suffer forfeiture only if she filed her contest without good faith and probable cause.

Standard of Review

"The construction of a legal document, such as a trust, based upon its language is reviewed *de novo*." *Winston v. Winston*, 449 S.W.3d 1, 7 (Mo. App. W.D. 2014) (internal citations omitted). We give no deference to the trial court's judgment. *Estate of*

Buder, 658 S.W.3d 168, 173 (Mo. App. E.D. 2022) (citing *Labantschnig v. Bohlmann*, 439 S.W.3d 269, 273 (Mo. App. E.D. 2014).

Point One – Valid No-Contest Clause

In her first point on appeal, Appellant alleges the trial court erred in entering the judgment holding her proposed Trust contest would result in forfeiture because she asserts the second sentence is an "indiscriminate forfeiture provision." She contends any challenge to the Trust would penalize the challenger with a one-dollar distribution and accordingly increase the distribution to the remaining heirs. Appellant claims the larger distribution violates the second sentence by rendering it "***different*** from any interest set forth in this agreement" and results in all Mother's heirs also becoming "such person(s)" paid "the sum of One Dollar ($1.00) in full satisfaction of said trust interest."

In addition to her public policy claim, Appellant also argues the no-contest clause is not narrowly tailored to serve both goals of upholding the Trust and discouraging trust contests; it unduly impedes the search for the truth as to whether the decedent had testamentary capacity and was not unduly influenced when she signed the Fourth Amendment; and its "global forfeitures" would frustrate the decedent's intentions to benefit some or all of her children.

Appellant's point is multifarious because it asserts several claims of error in a single point, inconsistent with Missouri Supreme Court Rule 84.04(d) (2025). Such a point fails to preserve an issue for review, but we may review all or part of it *ex gratia*. *Matter of Wilma G. James Trust*, 487 S.W.3d 37, 52 (Mo. App. S.D. 2016). We prefer to reach the merits when we can discern the argument on appeal. *Crisp v. Missouri Sch. for*

Deaf, Dep't of Elementary & Secondary Educ., 681 S.W.3d 650, 659 (Mo. App. W.D. 2023). Thus, we elect to review the validity of the no-contest clause in this matter.

Analysis

The issue of whether a beneficiary violates a no-contest provision of a trust "depends on the facts of the case and the language of the forfeiture provision." *Knopik v. Shelby Invs., LLC,* 597 S.W.3d 189, 191-92 (Mo. banc 2020) (citing *Cox v. Fisher*, 322 S.W.2d 910, 914 (Mo. 1959)). A grantor is free to dispose of his property as he wishes and has the power to determine what type of conduct will forfeit a beneficiary's interest in the instrument. *Id.* at 192.

Disputes over trust terms are common. "The paramount rule of construction in determining the meaning of a trust provision is that the intent of the grantor is controlling." *A.G. Edwards Trust Co. v. Miller*, 59 S.W.3d 550, 552 (Mo. App. E.D. 2001) (citing *Holdener v. Fieser*, 971 S.W.2d 946, 951 (Mo. App. E.D .1998). Courts must ascertain the grantor's intent at the time the trust was created, which must be gleaned primarily from the trust instrument as a whole. *Rouner v. Wise*, 446 S.W.3d 242, 252-53 (Mo. 2014); *Winston*, 449 S.W.3d 7 (Mo. App. W.D. 2014) (citing *Commerce Bank, N.A. v. Blasdel*, 141 S.W.3d 434, 443 (Mo. App. W.D. 2004)). "In determining the grantor's intent, ***no single clause or word is given undue preference***." *A.G. Edwards Trust Co.*, 59 S.W.3d at 552 (emphasis added) (citing *Cent. Trust Bank v. Scrivner*, 963 S.W.2d 383, 385 (Mo. App. W.D. 1998)). Critical to donative intent analysis, "the court is required to give meaning to the entire trust instrument, avoiding repugnancies, if

possible, and to adopt a construction which reconciles rather than creates inconsistencies." *Id.*

Here, we hold Appellant's attempt to invalidate the no-contest clause in its entirety based on the second sentence is repugnant to Mother's intent which would result in an inconsistency within the Trust, rather than properly reconciling its terms. In fact, Appellant's own brief admits the absurdity of her interpretation as she argues it "leads to illogical and preposterous results" by passing the residue of Mother's estate to more distant relatives, or be escheated, which she admits "would completely frustrate Mother's obvious intention, shown consistently over a nineteen-year period, in the five expressions of her Trust, to give the greater part of the Trust property to some or all of her children." We agree.

The first sentence in the no-contest paragraph evinces Mother's intent to provide for forfeiture of "all of his or her right, title and interest to that portion or interest in the trust assets which he or she would otherwise have received under the provisions of this Trust" if he or she contests the validity of the Trust. The first forfeiture sentence also provides the Trust shall be administered "as though such Beneficiary had predeceased Grantor" without surviving heirs. Therefore, the plain language of the Trust dictates the beneficiary should lose their interest as a result of filing a contest. See *Knopik*, 597 S.W.3d at 192.

The second sentence in the same clause makes no change to the first sentence other than to define the consequences to challenging the Trust and creating an interest

> ***different from any interest*** set forth in this agreement, then Grantor hereby directs that the Trustee to [sic] distribute to such person the sum of One Dollar ($1.00) in full satisfaction of said trust interest.

(Emphasis added). Read in tandem with the prior sentence, Mother's intent – gleaned from the trust instrument as a whole – is clearly to penalize anyone who files a lawsuit and replace their distribution with one dollar. *See Rouner*, 446 S.W.3d at 252-53; *Winston*, 449 S.W.3d at 7 (citing *Commerce Bank, N.A.*, 141 S.W.3d at 443). It naturally follows the consequence of a one-dollar distribution to a beneficiary who institutes a prohibited challenge will increase the distribution to Mother's remaining heirs. Therefore, we find the court properly reconciled the Trust terms to restrict Appellant's inheritance if she contested the validity of the Trust and not to inflict her consequences upon Mother's remaining heirs because Appellant's challenge increases their interest in the Trust. Appellant's inimitable interpretation of – and an ***"undue preference"*** for – the term ***"different"*** is repugnant to Mother's donative intent. *A.G. Edwards Trust Co.*, 59 S.W.3d at 552 ("no single clause or word is given undue preference").

We need not consider Appellant's other arguments in point one based on her improper construction of the Trust terms. The no-contest clause in Mother's Trust served her dual purpose to dispose of her own property as she saw fit and force "the grave consequence of a forfeiture upon the beneficiary who attempt[s] to frustrate" her intended distribution to her heirs. *Knopik,* 597 S.W.3d at 191 (quoting *Cox*, 322 S.W.2d at 913).

Appellant's first point is denied.

Point Two – Destruction of the Trust

In her second point, Appellant alleges the trial court erred in holding her proposed trust contest would trigger a forfeiture under the no-contest clause of the Fourth Amendment of the Trust because the clause, strictly construed, does not penalize Appellant for contesting just the Fourth Amendment. She contends her contest to the Fourth Amendment is not "seek[ing] the destruction [of the Trust] or [seeking to] contest [its] validity." Appellant solely relies on caselaw from other jurisdictions to support her argument. We find point two lacks merit because it is not supported by any Missouri statute or our caselaw leaving this court with nothing to review on appeal.

Appellant's second point is denied.

Point Three – No Exception for Good Faith and Probable Cause

In her third and final point, Appellant alleges the trial court erred in entering its judgment holding her proposed trust contest would result in a forfeiture under the no-contest clause of the Fourth Amendment of the Trust, because the court should have conditioned its judgment by saying Appellant would suffer forfeiture only if she filed her contest without good faith and probable cause. Appellant argues such an exception to the enforcement of such no-contest provisions serves the interests of justice in determining the truth and enforcing the law.

Analysis

It is true no-contest provisions are treated with caution by our courts but they have still long been held valid and enforceable. *Knopik,* 597 S.W.3d at 191 (citing *Cox*, 322 S.W.2d at 913); *Commerce Tr. Co. v. Weed*, 318 S.W.2d 289, 299 (Mo. 1958); *Rossi v.*

Davis, 133 S.W.2d 363, 372 (Mo. 1939); *In re Chambers' Estate*, 18 S.W.2d 30, 37 (Mo. banc 1929)). An equally long-held principle in Missouri probate law upholds forfeiture provisions like this one despite the contestant's good faith and probable cause. Not only does Appellant's argument lack support in Missouri law, it was soundly rejected by our Missouri Supreme Court in 1958. In *Commerce Trust Co.*, the Missouri Supreme Court acknowledged these exceptions to the general rule but was more persuaded by the "sound logical foundation" and "substantial authority" opposing the exceptions in decidedly holding Missouri would not adopt them. *Id.* at 301. Precedent dictates no-contest provisions must be enforced without regard to good faith or probable cause exceptions.

Appellant's third point is denied.

CONCLUSION

The judgment of the trial court is affirmed.



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Lisa P. Page, Judge

Robert M. Clayton III, Presiding Judge and
Michael E. Gardner, Judge concur.