Missouri Court of Appeals
Southern District

In Division

In re the Matter of:
THE JACK L. WASHBURN TRUST AGREEMENT DATED DECEMBER 30, 2015, AS AMENDED, NORMAN E. ROUSE, TRUSTEE,

Petitioner-Respondent,

v.

JACQUELINE SUE EMMERT and PATRICIA L. COLVIN,

Respondents-Appellants,

and JACK DAVID WASHBURN,

Respondent-Respondent.

Case Number SD39163

Filed: August 5, 2026

APPEAL FROM THE CIRCUIT COURT OF JASPER COUNTY

Honorable Dean G. Dankelson, Circuit Judge

AFFIRMED

This appeal arises out of a dispute over the late Jack L. Washburn's Trust Agreement dated December 30, 2015 (the Trust), later amendments to the Trust, and a

subsequent contract for the sale of real estate (the Contract) that was part of the Trust corpus. Norman Rouse (Rouse), the successor trustee of the Trust, filed a petition for declaratory judgment (the Petition) seeking a determination that the terms of the Trust authorized Rouse to sell the real estate described in the Contract. Trust beneficiaries, Jaqueline Emmert and Patricia Colvin (Appellants), appeal from an order determining that their proposed answer (Answer), affirmative defense (Affirmative Defense), and counterclaim to the declaratory judgment action (Counterclaim) would violate the Trust's no-contest clause.

Appellants present three points on appeal. They contend: (1) the trial court erred in finding that Appellants' Counterclaim violates the no-contest clause, in that the Counterclaim challenges the validity of the Contract, a separate and distinct instrument; (2) the trial court erred in finding that Appellants' Affirmative Defense violates the no-contest clause, in that the Affirmative Defense also challenges the validity of the Contract, not the Trust; and (3) the trial court erred in finding that Appellants' Answer violates the no-contest clause, as the Answer does not seek to have the Trust invalidated, voided, and/or diminished.

Factual Background

Jack L. Washburn (hereinafter referred to as Washburn or Grantor) was the original grantor and trustee of the Trust. Article V gave Grantor the right to amend the Trust. Article VII contained provisions to distribute Grantor's personal and household

effects upon his death. Article VIII contained the general provisions of how the Trust estate was to be distributed upon Grantor's death.

Article XI of the Trust states, in relevant part:

> **Powers for Trustee.** The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:
>
> ….
>
> C. To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

Article XIII of the Trust states:

> **No Contest Provision.** The Grantor specifically desires that this Trust and the Trusts created herein be administered and distributed without litigation or dispute of any kind. If any heir, any beneficiary, or any other person, whether a stranger, relative or a person or persons who may hereafter become the Grantor's heir or heirs, or any beneficiary under the Grantor's Will, or the successors-in-interest of any such person, or any other person, lawfully or directly or indirectly, singly or in conjunction with another person, contests, or attempts to impair or invalidate, in whole or in part, the Trust or any amendment thereto, or the Grantor's Will or any Codicil thereto, or seeks to have the same or any part hereof and/or thereof declared null and void or diminished, on any ground whatsoever, then such person or persons shall neither take nor receive anything from the Trust or the Grantor's Will or estate, and such person or persons shall, for the purposes of the Trust, any amendment to the Trust, the Grantor's Will, and any Codicil to the Grantor's Will, be deemed to have

predeceased the execution of the Trust and of the Grantor's Will and shall receive nothing.

On July 11, 2017, Washburn amended the Trust for the first time. He revoked the original Article VIII of the Trust in its entirety and substituted in its place a new Article VIII, which states, in relevant part, as follows:

> **Distribution of Trust Estate.** Upon the death of the Grantor, the Trust Estate (which shall include any property which may be added from the Grantor's general estate) shall be distributed as follows:
>
> ….
>
> B. **Distribution of Real Property.** Subject to the limitations and provisions of subparagraph A of this Article, all real property owned or acquired by the Grantor shall be distributed to **PATRICIA L. COLVIN**, **JACK DAVID WASHBURN**, and **JACQUELINE SUE EMMERT**, and their lineal descendants, per stirpes. The beneficiaries shall hold title as tenants-in-common, with the further restriction that no tenant-in-common shall have the right to transfer his or her interest without the agreement or consent of all the tenants-in-common. Prior to distribution of the real property to the beneficiaries, the Trustee shall require each beneficiary to sign an Agreement with this restriction which shall be recorded with the Recorder of Deeds where the real property is located. The Agreement shall also provide that in the event a Court of competent jurisdiction should determine such a restriction to be invalid and of no effect, then the tenants-in-common, either singularly or as a group, shall have the right of first refusal. In the event any tenant-in-common desires to transfer or sell their interest, whether voluntarily or involuntarily, then the tenants-in-common who wish to exercise their right of first refusal shall have ninety (90) days to provide written notice of their intent to exercise their option to purchase said interest. In such case, the property shall be appraised by an appraiser agreed upon by the parties. If the parties cannot agree as to an appraiser, then each party shall select an appraiser and the two appraisers shall select a third appraiser. The purchase price shall be determined by an average of the three appraisals. Any discount for a minority interest shall also be determined and applied to determine the final purchase price.

C. **Distribution of remaining Trust Property.** Subject to the provisions of subparagraph A of this Article, and after the distribution of the real property as provided in paragraph A of this Article, any remaining Trust property shall be paid over and distributed free of trust to **PATRICIA L. COLVIN**, **JACK DAVID WASHBURN**, and **JACQUELINE SUE EMMERT**, in equal shares, provided, however, in the event any of them are deceased, then their living issue shall take per stirpes the share their parent would have taken had he or she survived the Grantor.

Washburn amended the Trust for the second time on February 19, 2019. Article VIII.A was amended to state:

A. **Provision for Spouse, JOANN M. WASHBURN.** Upon the death of the Grantor, the Grantor's spouse, **JOANN M. WASHBURN** shall have the right to reside in Grantor's residence and manage any farms of Grantor for five years after Grantor's death. This shall include the management of the farms and any cattle owned by the Grantor as well as the use of any of Grantor's farm equipment or machinery during said five years … as may be required to manage the farms and cattle.

This provision had previously afforded Grantor's spouse a period of one year, rather than five years, to reside in Grantor's residence and manage his farms.

Washburn amended the Trust for the third time on June 30, 2023. Article I was amended to name Rouse as successor trustee. Subparagraphs A and B of Article VIII were amended to state:

Distribution of Trust Estate. Upon the death of the Grantor, the Trust Estate (which shall include any property which may be added from the Grantor's general estate) shall be distributed as follows:

A. **Provision for Spouse, JOANN M. WASHBURN.** Upon the death of the Grantor, the Grantor's spouse, JOANN M. WASHBURN shall have the right to reside in Grantor's residence and the surrounding yard of Grantor for one year after Grantor's death.

> B. **<u>Distribution of Real Property.</u>** Subject to the limitations and provisions of subparagraph A of this Article, ***and any contracts for the sale of real estate entered into by the Trustee***, all real property owned or acquired by the Grantor shall be distributed to PATRICIA L. COLVIN, JACK DAVID WASHBURN, and JACQUELINE SUE EMMERT, and their lineal descendants, per stirpes. The beneficiaries shall hold title as tenants-in-common, with the further restriction that no tenant-in-common shall have the right to transfer his or her interest without the agreement or consent of all the tenants-in-common. Prior to distribution of the real property to the beneficiaries, the Trustee shall require each beneficiary to sign an Agreement with this restriction which shall be recorded with the Recorder of Deeds where the real property is located. The Agreement shall also provide that in the event a Court of competent jurisdiction should determine such a restriction to be invalid and of no effect, then the tenants-in-common, either singularly or as a group, shall have the right of first refusal. In the event any tenant-in-common desires to transfer or sell their interest, whether voluntary or involuntary, then the tenants-in-common who wish to exercise their right of first refusal shall have ninety (90) days to provide written notice of their intent to exercise their option to purchase said interest. In such case, the property shall be appraised by an appraiser agreed upon by the parties. If the parties cannot agree as to an appraiser, then each party shall select an appraiser and the two appraisers shall select a third appraiser. The purchase price shall be determined by an average of the three appraisals. Any discount for a minority interest shall also be determined and applies to determine the final purchase price.

(Bold, italics emphasis added.) This third amendment of the Trust altered only subparagraphs A and B of Article VIII. It set forth an identical subparagraph C, regarding distribution of the remaining Trust property to the named beneficiaries. The bold and italicized portion above was the sole change to subparagraph B.

Washburn, acting in his capacity as trustee, executed the Contract for sale of real estate on or about September 15, 2023. The purchase price was $573,735. The Contract

stated that "[t]his sale shall be closed … within ninety (90) days of the death of Trustee, Jack Washburn[.]" Washburn died on August 30, 2024.

After Washburn's death, Rouse became the successor trustee. On November 26, 2024, Rouse filed the Petition for declaratory judgment seeking instructions and an interpretation of the Trust language as it pertained to the Contract. In relevant part, the Petition alleged:

> That the Trustee, Norman E. Rouse, seeks to honor the terms of the contract and close on the sale of real estate.
>
> That some of the beneficiaries disagree with the [Rouse's] interpretation of the "Distribution of Real Property" and "General and Powers for Trustee" clauses and seek to stop the Trustee from closing on the sale.
>
> That [Rouse] is uncertain how to further administer and ultimately distribute the Trust without judicial interpretation and has been required to obtain an attorney to assist the Trust in this regard.

In response, Appellants filed a verified petition for interlocutory judgment regarding the applicability of the no-contest clause contained in the Trust to their proposed Answer and Counterclaim to Rouse's Petition. Appellants' verified petition stated that:

> 1. Appellants were "aware of the no contest clause found within the Trust."
>
> 2. They were not "challenging the Trust or [its] provisions[.]"
>
> 3. They were "challenging the actions of [Washburn] to bind the Trust in a sale agreement."

In Appellants' proposed Affirmative Defense in response to Rouse's Petition, they asserted that Washburn had "years of declining mental health prior to his time of death insomuch that during his last few months of life he did not have the mental capacity to understand legal documents and was susceptible to undue influence by the buyer or others." Appellants' proposed Counterclaim stated that "Washburn did not have the legal mental capacity to sign the alleged Contract for sale of the [real estate] as purported[.]"

On May 13, 2025, the trial court overruled Appellants' motion for interlocutory judgment. Appellants thereafter filed a motion to amend, vacate, or modify the ruling. On August 22, 2025, the court entered its judgment and order, finding that the proposed Answer, Affirmative Defense, and Counterclaim would violate the no-contest clause of the Trust. This appeal follows.

Standard of Review

This Court conducts *de novo* review of questions of law, including the determination of the meaning of a trust instrument, and we give no deference to the trial court's judgment. ***Labantschnig v. Bohlmann***, 439 S.W.3d 269, 273 (Mo. App. 2014). "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. 2014).

Discussion and Decision

Appellants argue that their proposed Answer, Affirmative Defense, and Counterclaim do not violate the Trust's no-contest provision, because they challenge only the validity of the Contract and are not seeking to have the Trust itself invalidated, voided, and/or diminished. For the following reasons, we find no merit in that argument.

Section 456.4-420, enacted by the Missouri legislature in 2014, addresses a procedure by which an interested person can seek to avoid the effect of a no-contest clause in a trust. ***Knopik v. Shelby Invs., LLC***, 597 S.W.3d 189, 192-93 (Mo. banc 2020).[1] "The statute provides 'for an interlocutory determination whether a particular … petition … by the interested person would trigger … a forfeiture that is enforceable under applicable law and public policy.'" ***Id***. at 193 (quoting § 456.4-420.1). When ruling on such a request, "the court shall consider the text of the clause," in relation to "the terms of the trust instrument as a whole, and in the context of the verified factual allegations in the petition." § 456.4-420.2. The interlocutory determination "shall result in the no-contest clause being enforceable to the extent of the court's ruling, and shall govern application of the no-contest clause to the extent that the interested person then proceeds forward with the claims described therein." § 456.4-420.4.

[1] All statutory references are to RSMo (2016).

No-contest clauses are strictly construed, and forfeitures are generally not favored by the law. ***Estate of Buder***, 658 S.W.3d 168, 173 (Mo. App. 2022) (citing ***Bohlmann***, 439 S.W.3d at 273). However, the no-contest clause in a trust instrument serves a dual purpose: (1) it permits the grantor to dispose of his own property as he sees fit; and (2) it forces the "grave consequence" of forfeiture upon a beneficiary who attempts to frustrate the intention of the grantor as expressed in the instrument. ***Id***. at 173-74 (citations omitted). Although treated with caution by courts, these provisions in wills and trusts instructing that a contest to the validity of the instrument will result in forfeiture have long been held valid and enforceable. ***Id***. at 174; *see* ***Knopik v. Shelby Invs., LLC***, 597 S.W.3d 189, 191 (Mo. banc 2020); ***Cox v. Fisher***, 322 S.W.2d 910, 913 (Mo. banc 1959); ***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).

The issue of whether a beneficiary violates a forfeiture provision of a trust "depends on the facts of the case and the language of the forfeiture provision." ***Knopik***, 597 S.W.3d at 191-92 (citing ***Cox***, 322 S.W.2d at 914). A grantor is free to dispose of his property as he wishes; thus, the grantor has the power to determine what type of conduct by a beneficiary will forfeit the beneficiary's interest in the instrument. ***Id***.

As our Supreme Court explained in ***Knopik***, "[t]he basic principle is that a no-contest or forfeiture provision is to be enforced where it is clear that the [grantor]

intended that the conduct in question should forfeit a beneficiary's interest under the trust." ***Id***. at 192 (internal quotation marks and citation omitted); *see also* ***Estate of Buder***, 658 S.W.3d at 174. Thus, our task is to ascertain what type of conduct Washburn clearly intended to cause that result.

We first consider the text of the no-contest clause and the context of the Trust instrument as a whole. On June 30, 2023, Washburn amended his Trust for the third time. As Grantor, he changed the distribution plan for his real estate to exclude any property that was subject to a sale contract. This was a highly unusual change because, as the trustee, he already had the power to sell real estate. The Contract was executed on or about September 15, 2023, which was only 11 weeks, or 2 ½ months, after the third amendment of the Trust. More importantly, the closing date was indefinite (within 90 days after Washburn's death). Therefore, it is abundantly clear that Washburn, as Grantor, had this specific Contract in mind when he amended his Trust.

The first sentence of the no-contest clause of the Trust states that "Grantor specifically desires that this Trust and the Trusts created herein be administered and distributed *without litigation or dispute of any kind*" (italics added). This statement of intention is clear, unambiguous and expansive. In Missouri, grantors of a trust are presumed to have known and intended the legal meaning and effect of the language they employed at the time the instrument was executed. ***Larson v. Winkler***, 690 S.W.3d

193, 204 (Mo. App. 2024); ***Estate of Buder***, 658 S.W.3d at 176. As our Supreme Court explained in ***Knopik***:

> [A court] should not place a strained or overtechnical construction upon the language used in order to enable a beneficiary to take under the trust and thus ignore the condition imposed and accordingly refuse to give effect to the intent of the settlor. When a settlor explicitly and unambiguously describes the type of conduct by a beneficiary that will cause forfeiture, the settlor's clear intent cannot be overlooked.

Knopik, 597 S.W.3d at 192 (internal brackets and citation omitted). In ***Tobias v. Korman***, 141 S.W.3d 468 (Mo. App. 2004), the eastern district of this Court affirmed a trial court's decision enforcing a no-contest clause in a trust that stated: "If any beneficiary, excluding trustee, makes any allegation or causes litigation either prior to or after his death they will automatically forfeit their designated amount." ***Id***. at 477. This clause is very similar to the first sentence of the no-contest clause in Washburn's Trust. Considering the explicit and clear language in the clause and the relation of that clause to the terms of the Trust instrument as a whole, Appellants' proposed pleadings violate the no-contest clause of the Trust because they would directly impede Washburn's clear intent as Grantor for his estate to be distributed without litigation or dispute of any kind, and subject to the real estate transfer decisions he made prior to his passing.

In addition, we are required to consider the no-contest clause in the context of the verified factual allegations in Appellants' petition for interlocutory judgment. *See* § 456.4-420.2. As noted above, the Trust's no-contest clause clearly and explicitly stated Washburn's intent as Grantor that his Trust be administered without litigation or

dispute of any kind. He declared that a beneficiary would suffer a forfeiture if that person "lawfully or directly or indirectly, singly or in conjunction with another person, contests, or attempts to impair or invalidate, in whole or in part, the Trust or any amendment thereto, … or seeks to have the same or any part hereof … declared null and void or diminished, on any ground whatsoever[.]" Appellants' proposed Counterclaim alleged as a bare legal conclusion that Washburn, as trustee, did not have the legal mental capacity to sign the Contract. The sole factual allegation to support this assertion is found in Appellants' Affirmative Defense, which stated that Washburn had "years of declining mental health prior to his death insomuch that during his last few months of life he did not have the mental capacity to understand legal documents and was susceptible to undue influence by the buyer or others."

We begin by noting that: (1) Washburn executed the third amendment to the Trust on June 30, 2023; (2) Washburn as trustee executed the Contract on or about September 15, 2023; and (3) Washburn died on August 30, 2024. Based on the date of his death, the factual allegation that Washburn lacked legal capacity to understand legal documents "during *the last few months* of his life" addresses a time period long after the Contract was signed. On the other hand, the allegation that Washburn had "*years of declining mental health* prior to his death" inevitably amounts to a challenge to Washburn's competency to execute the third amendment to his Trust. Proof to support this allegation would not give the fact-finder any rational basis to determine that

Washburn was competent when he executed the third amendment of the Trust, but that he became incompetent thereafter due to some sudden event, such as a stroke or brain injury. This specific allegation, if proven, would impair the Trust because there would be no way to separate Washburn's competency on June 30, 2023, from his competency 11 weeks later, on September 15, 2023.

We also note that the sale of the real estate pursuant to the Contract was an explicit part of the planned distributions in subparagraphs B and C to Article VIII of the Trust. Therefore, an attack on the Contract alone impairs the distributive provisions of the Trust. Sale of the real estate pursuant to the Contract would generate cash proceeds to be divided and distributed to the beneficiaries. A successful challenge to the Contract would impair the Trust because the distribution of the real property itself would be much more complicated. Pursuant to Article VIII.B of the Trust:

> The beneficiaries shall hold title as tenants-in-common, with the further restriction that no tenant-in-common shall have the right to transfer his or her interest without the agreement or consent of all the tenants-in-common. Prior to distribution of the real property to the beneficiaries, the Trustee shall require each beneficiary to sign an Agreement with this restriction which shall be recorded with the Recorder of Deeds where the real property is located. The Agreement shall also provide that in the event a Court of competent jurisdiction should determine such a restriction to be invalid and of no effect, then the tenants-in-common, either singularly or as a group, shall have the right of first refusal. In the event any tenant-in-common desires to transfer or sell their interest, whether voluntary or involuntary, then the tenants-in-common who wish to exercise their right of first refusal shall have ninety (90) days to provide written notice of their intent to exercise their option to purchase said interest. In such case, the property shall be appraised by an appraiser agreed upon by the parties. If the parties cannot agree as to an appraiser, then each party shall select an

> appraiser and the two appraisers shall select a third appraiser. The purchase price shall be determined by an average of the three appraisals. Any discount for a minority interest shall also be determined and applied to determine the final purchase price.

For this distribution to occur, all beneficiaries would have to waive, in a binding fashion, their right to sever the tenancy in common. If that provision were to be invalidated, a tenant's desire to transfer or sell his or her interest would involve notice and a right of first refusal. The right-of-first-refusal process requires at least one, and possibly three, appraiser(s) to determine a final purchase price. These processes would impair the Trust by eliminating the simple cash distribution envisioned by Washburn as Grantor.

For all of the foregoing reasons, Appellants' three points lack merit and are denied. The judgment of the trial court is affirmed.

JEFFREY W. BATES, J. – OPINION AUTHOR

BECKY J. WEST, J. – CONCUR

MATTHEW P. HAMNER, J. – CONCUR