IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANTHONY GUDE and CYBELE BENTON McCORMICK,	)	
Appellants,	)	
and	)	
RICHIE P. GUERIN, SUCCESSOR TRUSTEE OF THE JESSIE BENTON DYNASTY TRUST,	)	**WD87870 (Consolidated with WD87871 and WD87890)**
Appellant,	)	**OPINION FILED: October 6, 2026**
v.	)	
UMB BANK, N.A.,	)	
Respondent.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Mark A. Styles, Jr., Judge

Before Division Three: Thomas N. Chapman, Presiding Judge, Karen King Mitchell, Judge, and Janet Sutton, Judge

This case stems from a dispute between descendants of Thomas Hart Benton (Thomas),[1] a prominent American artist, and UMB Bank, N.A. (the Bank). Before their

[1] We refer to the family members by their first names for ease of reference. No disrespect or undue familiarity is intended.

deaths, Thomas and his wife, Rita Benton, executed complementary last Wills and Testaments establishing a testamentary trust funded with assets remaining after specific bequests (the Benton Trust or Trust).[2] The Benton Trust named The City National Bank and Trust Company of Kansas City, now the Bank, (1) as executor of Thomas's and Rita's probate estates and (2) co-trustee of the Benton Trust along with Attorney Lyman Field (Co-Trustee).[3] The Bank served as trustee of the Benton Trust from 1979 to 2021, when the Bank resigned and successor co-trustees were appointed.

In 2019, Thomas's daughter, Jessie Benton, and her three children—Anthony Gude, Daria Lyman, and Cybele McCormick—filed the underlying lawsuit, alleging that the Bank breached its fiduciary duty to the Benton Trust and its beneficiaries. The successor co-trustees intervened as plaintiffs. Following a lengthy bench trial, the court entered judgment awarding Jessie, Anthony, Daria, and Cybele $35,000 to compensate them for five pieces of missing artwork, but the court denied all other requested relief.

Anthony, Cybele, and the successor trustee[4] (collectively, Beneficiaries) challenge the trial court's judgment, raising five points on appeal.[5] Beneficiaries argue the trial court erred in ruling that (1) they could not recover for transactions involving alleged

---

[2] Thomas executed two codicils to his Will and Rita executed one codicil to her Will, each of which made modest revisions. Together, these documents established a unified testamentary plan, and, to the extent they created a single testamentary trust upon Rita's death, they are referred to as the Benton Trust or the Trust.

[3] Co-Trustee died in 1999 and, thereafter, the Bank continued to serve as sole trustee of the Benton Trust.

[4] Jessie died shortly after the trial began. While this appeal was pending, Jessie's husband was substituted as successor trustee of the Jessie Benton Dynasty Trust, which now possesses the remaining corpus of the Benton Trust.

[5] Daria did not appeal the trial court's judgment.

conflicts of interest unless they proved that the Bank benefitted from the transactions or they caused harm to the Benton Trust or Beneficiaries; (2) the Bank did not breach its fiduciary duty by selling artwork without first obtaining contemporaneous appraisals; (3) Beneficiaries bore the burden of proving the Bank failed to obtain Co-Trustee's approval for art sales; (4) the Bank's disclaimer of the painting titled *Self-Portrait with Rita* (*Self-Portrait*) was authorized by Thomas's Will; and (5) Beneficiaries are not entitled to damages for the Bank's failure to preserve and protect copyright interests in Thomas's artwork. We affirm.

Background

Thomas died in early 1975, and Rita died eleven weeks later. When the administration of both of their estates concluded, all remaining assets were distributed to the Benton Trust. By 1979, the Trust included more than 3,500 works of art by Thomas as well as cash and multiple pieces of real estate, including two estates on Martha's Vineyard and a farm in Marshall County, Kansas.

The Benton Trust provided that, upon the death of the second of Thomas and Rita to die, the Trust was to be divided equally between their two children—Thomas Piacenza Benton (T.P.) and Jessie—with each of their shares to be held in trust for their lifetimes. T.P. never married and had no children. He died in 2010 and left his estate to Jessie; his share of the Benton Trust rolled into hers.

A dispute arose concerning administration of the Benton Trust, and, on December 17, 2019, nearly forty years after assets were distributed to the Trust, Jessie, Anthony, Daria, and Cybele filed a petition containing three counts—breach of trust,

avoidance of self-dealing transactions, and violation of the prudent man rule and Prudent Investor Act.[6] Among other things, Beneficiaries alleged the Bank did not adequately maintain records, failed to obtain proper valuations of artwork when selling such works, engaged in improper sales, did not maximize revenue by promoting, copyrighting, and licensing the artwork, used trust assets for its own financial gain, and lost artwork. In addition to compensatory and punitive damages and other relief, the petition asked the court to enter a judgment and order voiding all sales and other transactions found to involve conflicts of interest.

Testimony relevant to multiple points on appeal established that, in the early years of the Benton Trust, Jessie was not involved in or engaged with the Trust's administration and her children were minors. By the early 1990s, however, Jessie and Anthony were more involved. They regularly communicated with the Bank about pricing of paintings, dealers and gallerists to work with, sales of artwork, account statements, and portfolio investments. Evidence specific to each point raised on appeal will be discussed below in connection with analysis of that point.

On December 13, 2024, the trial court issued its judgment. With one exception noted below, the court rejected Beneficiaries' claims. As to some of Beneficiaries' claims, the trial court found that the testamentary documents gave the Bank, as co-trustee, "absolute and sole discretion as it related to handling trust assets, which gave broad authority to the co-trustees so long as their action was not a willful abuse of discretion or

[6] Only the first two counts are at issue in this appeal.

an act that was arbitrary, fraudulent, or dishonest." As to other claims, the court found that Beneficiaries failed to prove all the elements of a breach of fiduciary duty. However, the court determined that, by its own admission, the Bank was unable to account for five pieces of art, totaling $35,000 in value. Thus, the court awarded Beneficiaries $35,000 in compensatory damages.

On January 13, 2025, Beneficiaries filed a motion to amend judgment, which the court denied on February 24, 2025. This appeal follows.

Standard of Review

"A court-tried probate case is reviewed under the standard of *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)." *In re Estate of Schooler*, 204 S.W.3d 338, 342 (Mo. App. W.D. 2006). "Accordingly, we will affirm the trial court's judgment 'unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law.'" *Riead, Co-Tr. of John T. Riead, Jr. Revocable Tr. v. Riead III, Co-Tr. of John T. Riead, Jr. Revocable Tr.*, 685 S.W.3d 532, 543 (Mo. App. W.D. 2023) (quoting *Murphy*, 536 S.W.2d at 32). "We review questions of law *de novo*." *Id.*

"In the appeal of a bench-tried case, we view the evidence and reasonable inferences that may be drawn therefrom in the light most favorable to the judgment, disregarding evidence and inferences to the contrary." *Copper v. Ringen*, 671 S.W.3d 409, 412 n.1 (Mo. App. W.D. 2023). All fact issues where no specific findings are made are considered as having been found consistent with the result reached. *Johannesmeyer v. Net Zero, LLC*, 716 S.W.3d 344, 348 (Mo. App. W.D. 2025) (citing Mo. Sup. Ct. R.

73.01(c)). Even when conducting a *de novo* review of questions of law, where fact findings are relevant to the legal interpretation, we defer to the trial court's findings of fact. *Modivcare Sols., LLC v. Off. of Admin.*, 682 S.W.3d 810, 818 (Mo. App. W.D. 2024). "We presume [that] the trial court's judgment is valid and [the] appellant has the burden to demonstrate that it is incorrect." *Interest of S.M.W.*, 658 S.W.3d 202, 212 (Mo. App. W.D. 2022).

Analysis

Generally, "[to] prevail on a breach of fiduciary duty [claim],[7] a plaintiff must show: (1) the existence of a fiduciary duty; (2) a breach of that fiduciary duty; (3) causation; and (4) harm." *Riead*, 685 S.W.3d at 545 (quoting *Robert T. McLean Irrevocable Tr. u/a/d March 31, 1999 ex rel. McLean v. Ponder*, 418 S.W.3d 482, 490 (Mo. App. S.D. 2013)). "The presumption is that a trustee has acted in good faith and has done his duty, and the burden is on the one attacking his accounts and seeking to establish a breach of trust to prove the contrary." *First Nat'l Bank of Kansas City v. Hyde*, 363 S.W.2d 647, 655 (Mo. 1962). "The element of harm or damages cannot 'rest upon guesswork, conjecture, or speculation beyond inferences that can reasonably decide the case[.]'" *Riead*, 685 S.W.3d at 545 (quoting *Robert T. McLean*, 418 S.W.3d at 496).

[7] In their appellate brief, Beneficiaries refer to fiduciary duty, duty of loyalty, and duty to act prudently. The duties of loyalty and prudence are elements of the fiduciary duty, with the duty of loyalty being "the most fundamental" of the "many duties emanating from the fiduciary relationship." *Ramsey v. Boatmen's First Nat'l Bank of Kansas City, N.A.*, 914 S.W.2d 384, 387 (Mo. App. W.D. 1996). For ease of reference, generally we use the term "fiduciary duty" to refer to both.

Our analysis of the points raised on appeal is guided by the language of the Benton testamentary documents because they outline the Bank's duties as executor and trustee. "In determining the meaning of trust provisions, the paramount rule of construction is that the grantor's intent is controlling and such intention must be ascertained primarily from the trust instrument as a whole." *O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d 400, 406 (Mo. App. W.D. 2013). "A grantor is presumed to know and intend the legal effect of the language he uses in the trust." *Id.* "Where the language used is clear and of well-defined force and meaning, it must stand as written and extrinsic evidence of what was intended in fact cannot be adduced to qualify, explain, enlarge, or contradict the language."[8] *Id.* (quoting *Hyde*, 363 S.W.2d at 653).

Beneficiaries raise five points on appeal. They argue that the trial court erred in ruling that (1) Beneficiaries could not recover for transactions involving conflicts of interest unless Beneficiaries proved that the Bank benefitted from the transactions or they caused harm to the Benton Trust or Beneficiaries; (2) the Bank did not breach its fiduciary duty by selling artwork without first obtaining contemporaneous appraisals; (3) Beneficiaries bore the burden of proving the Bank failed to obtain Co-Trustee's approval for art sales; (4) the Bank's disclaimer of *Self-Portrait* was authorized by Thomas's Will;

[8] At trial, Beneficiaries introduced a memorandum Thomas wrote after the creation of the Benton Trust. The memorandum includes his thoughts on the valuation and sale of his artwork. But, because the language of the Trust is unambiguous, the memorandum "cannot . . . qualify, explain, enlarge, or contradict the language" of the Trust. *O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d 400, 406 (Mo. App. W.D. 2013) (quoting *First Nat'l Bank of Kansas City v. Hyde*, 363 S.W.2d 647, 653 (Mo. 1962)).

and (5) Beneficiaries are not entitled to damages for the Bank's failure to preserve and protect copyright interests in Thomas's artwork.

For ease of analysis, we will address Beneficiaries' points out of order. First, we will address Points II and IV, which both deal with the effect of the testamentary documents' grant of discretion to the co-trustees on whether the Bank breached its fiduciary duty. Then we will address Points III, V, and I because each relies, at least in part, on an argument that Beneficiaries were relieved of the burden to prove one or more of the four elements of their breach of fiduciary duty claims or that the burden to prove one or more of the elements shifted to the Bank.

I. The trial court correctly concluded that the Bank did not breach its fiduciary duty when it sold artwork without first obtaining contemporaneous appraisals (Point II).

Beneficiaries assert that the Bank breached its fiduciary duty, specifically its duty to act as a prudent trustee, by selling artwork from the Trust without first determining the value of each piece of art, either by obtaining contemporaneous appraisals or testing the market.

At trial, Beneficiaries presented expert testimony that tended to show that the Bank should have, but did not, obtain a contemporaneous appraisal for each piece of art sold. In response to this evidence, the Bank offered testimony demonstrating that obtaining appraisals at the time of sale was not then the custom and practice in the art industry, and that, instead, the Bank consulted various sources, including recent auction data and others in the art industry when setting prices for Thomas's artwork. After analyzing and weighing the evidence presented, the trial court sided with the Bank,

finding that it acted within the discretion granted to it by the Trust and, thus, did not breach its duty to act as a prudent trustee when it came to sales of Thomas's artwork.

On appeal, Beneficiaries argue that the trial court misapplied Missouri trust law by failing to hold the Bank to the prudent trustee standard. Specifically, they argue that a corporate trustee, such as the Bank, is held to the highest and most exacting standard when selling trust assets and is obligated to take all reasonable steps to protect trust property by independently determining the fair market value of assets and securing the highest sale price. But, according to Beneficiaries, the trial court allowed the Bank to determine fair market value based on the informal standards of the artworld. And thus, the trial court applied the wrong legal standard—a lesser standard than appropriate for a corporate trustee. The Bank argues that Beneficiaries are asking this court to reconsider factual findings made by the trial court to which we must defer.

First, we must determine whether the trial court applied the appropriate legal standard; a determination we make *de novo*. *Riead*, 685 S.W.3d at 543. Second, if the trial court used the correct legal standard, we apply that standard to the court's factual findings, deferring to the trial court's credibility determinations and the weight it afforded the evidence. *Neighborhoods United v. Vaughn*, 722 S.W.3d 379, 385 (Mo. App. W.D. 2025) ("[t]he trial [court] has absolute discretion as to the credibility of witnesses and the weight of their testimony is a matter for the trial court, and its findings on witness credibility are never reviewable by the appellate court.") (quoting *Nat'l Historic Soul Jazz Blues Walker Found. v. AltCap*, 681 S.W.3d 202, 209 (Mo. App. W.D. 2023)).

The trial court found that, before Missouri adopted the Uniform Trust Code in 2004, Missouri courts relied on common law regarding the standard for determining whether a breach of fiduciary duty had occurred. Beneficiaries do not challenge this finding, and all the challenged sales occurred before 2004. Therefore, we will apply common law.

In arguing that the trial court misapplied the law, Beneficiaries fail to address the fact that the Benton Trust gave the Bank significant discretion in the sale of artwork. Missouri courts have looked to the terms of the trust to ascertain the settlor's intent. *O'Riley*, 412 S.W.3d at 406. The Trust stated that the trustees "in their sole and absolute discretion" shall "retain or sell . . . Thomas H. Benton works of art . . . consist[ing] of, but . . . not . . . limited to, paintings, sketches, models and lithographs, even though said works of art may be unproductive of income . . . ."[9] The Trust did not require the Bank to secure the highest possible price for each sale. And the Trust did not mention the use of appraisals. Generally, when a trust document grants a trustee broad discretion, courts will defer to the trustee's exercise of its judgment and "not interfere unless the trustee, in exercising his power, wilfully [sic] abuses his discretion or acts arbitrarily, fraudulently, dishonestly or with an improper motive." *Am. Cancer Soc., St. Louis Div. v. Hammerstein*, 631 S.W.2d 858, 863 (Mo. App. E.D. 1981).

[9] Through his Will, Thomas bequeathed specific pieces of artwork to named educational, historical, and philanthropic or charitable organizations. Beneficiaries do not challenge the disposition of those designated pieces.

In articulating the legal standard it was applying, the trial court stated,

> where a grantor "vests sole discretion in a trustee, and supplies no objective standard by which to evaluate the reasonableness of his conduct, a court must not interfere unless the trustee, in exercising his power, willfully abuses his discretion or acts arbitrarily, fraudulently, dishonestly, or with an improper motive."

This is consistent with the legal standard applied by courts when the trust document grants the trustee discretion in handling trust assets. Thus, the trial court applied the correct legal standard.

Beneficiaries do not argue that the Bank acted fraudulently or in bad faith in failing to obtain appraisals or test the market before selling pieces of art. Therefore, to succeed Beneficiaries would have to prove that the Bank abused its discretion or acted arbitrarily in how it determined the value of artwork at the time of sale. The crux of Beneficiaries' argument on this point—that a reasonably prudent corporate trustee that is obligated to prioritize the beneficiaries' best interests would have obtained a contemporaneous appraisal before each sale—would require the application of an inflexible rule.

Beneficiaries do not cite any Missouri case law requiring contemporaneous appraisals or supporting the application of such a rigid requirement when determining whether a trustee has abused its discretion. In essence, Beneficiaries ignore the discretion granted the Bank by the Trust. Instead, Beneficiaries focus exclusively on the general prudent trustee standard. But we cannot ignore Thomas's grant of discretion to the Bank. This does not mean that the prudence standard is irrelevant. It is simply a factor that can be considered in assessing whether the trustee abused its discretion or acted arbitrarily.

In analyzing Beneficiaries' claim about the lack of appraisals, the trial court extensively addressed the evidence presented at trial. The trial court noted the testimony of competing experts and gave "less weight" to the testimony of Beneficiaries' expert because of the "high potential of bias and partiality." This is a credibility determination to which we defer. *Neighborhoods United*, 722 S.W.3d at 385. The trial court indicated that, through the experts presented by the Bank, it was "able to clearly see how fluctuations in the Benton Market worldwide affected the sale of artwork held in the Benton Trust by" the Bank. The trial court expressly found "[t]hat the evidence failed to support [Beneficiaries'] position" in that "[n]early every expert, regardless of designating party, stated that in the art world, appraisals are not a requirement in selling a piece of art." The evidence showed that the Bank took steps to establish the value of Benton art before making sales. The trial court also found "[t]hat over its more than 40-year administration of the Benton Trust, [the Bank] obtained multiple appraisals of Benton's artwork."

Based on the trial court's findings of fact, to which we defer, we cannot conclude that the trial court erred in finding that the Bank did not breach the duty of prudence in selling Thomas's artwork. Beneficiaries simply failed to establish that the valuation steps the Bank took when selling artwork from the Trust amounted to an abuse of discretion or were arbitrary and thus a breach of the Bank's fiduciary duty.[10]

[10] The trial court rejected Beneficiaries' argument that the Bank undersold any of Thomas's artwork. Beneficiaries do not challenge that finding on appeal. Instead, they ask that we remand the case to the trial court to apply the correct legal standard. But, even if the trial court had applied the wrong legal standard, an argument we reject, and

II. The trial court did not err in finding that the Bank's disclaimer of *Self-Portrait* to the Smithsonian Institution was within the Bank's discretion and was not an abuse thereof (Point IV).

For their fourth point, Beneficiaries contend that the trial court erred in ruling that the Bank's disclaimer of *Self-Portrait* to the Smithsonian Institution falls under the authority granted to the Bank by Thomas's Will.[11] According to Beneficiaries, regardless of the Will's grant of authority, (1) the Bank was required by statute to obtain court approval before relinquishing an interest in an estate asset; (2) even if the Bank had the discretion to relinquish the interest, it acted unreasonably and abused its discretion in not notifying Beneficiaries of the claim to *Self-Portrait* before releasing it; and (3) even if the Bank was granted broad discretion to dispose of estate claims, other language in the Will limited the grant of discretion to disclaim the estate's interest in *Self-Portrait*.

Self-Portrait was not in Thomas's possession at the time of his death, and the parties strongly disputed the circumstances surrounding the whereabouts of *Self-Portrait* and how it ended up in the Smithsonian's possession. But uncontested evidence in the record shows that, by letter dated June 17, 1975, the Bank, acting as sole executor of Thomas's and Rita's estates, disclaimed any interest in *Self-Portrait*. The letter, which was signed by Lyman Field, stated,

---

the evidence supported a finding that the Bank breached its duty to act as a prudent trustee, Beneficiaries would still have to prove damages to succeed on appeal, and they failed to do so. *Riead, Co-Tr. of John T. Riead, Jr. Revocable Tr. v. Riead III, Co-Tr. of John T. Riead, Jr. Revocable Tr.*, 685 S.W.3d 532, 545 (Mo. App. W.D. 2023).

[11] The other four points on appeal deal with actions by the Bank after Thomas's and Rita's Wills had been probated and all remaining assets moved into the Trust. This point primarily addresses an action by the Bank acting as executor under Thomas's Will.

> As the attorney for the estates of Thomas Hart Benton and Rita P. Benton and in behalf of the sole executor, United Missouri Bank, . . . I am hereby authorized to write you that the estates of Mr. and Mrs. Benton through the sole executor, hereby disclaim any interest in [*Self-Portrait*] and do not and will not make any claim upon you with respect to said painting.
>
> . . . .
>
> I had discussed this matter with [Thomas] in his lifetime and he had indicated to me shortly before his untimely death on January 19[,] 1975 that this was what he wanted to do.

The record indicates *Self-Portrait* was never held by the Bank in trust. Instead, it appears that the estate had a claim that *may* have allowed it to recover the artwork.

Thomas's Will granted the Bank, as executor, the testamentary power to "pay, compromise, compound, adjust, submit to arbitration, sell or *release any claims or demands* of [the] estate or the trust estate against others . . . *as they may deem advisable*." (emphasis added). His Will also granted the executor testamentary powers to

> sell, lease, pledge, mortgage, transfer, exchange, convert or *otherwise dispose of . . . any and all property* at any time forming a part of [the] estate or of the trust estate, in such manner, at such time or times, for such purposes, for such prices and upon such terms, credits and conditions *as they may deem advisable.*

(Emphasis added.) And his Will granted the executor testamentary powers to "retain or sell in their sole discretion Thomas H. Benton works of art . . . even though said works of art may be unproductive of income[.]"

The trial court found that the "disclaimer or abandonment [of any claim to *Self-Portrait*]" fell "squarely under the authority given to [the Bank] . . . and was not a breach of fiduciary duty." The trial court inferred from the evidence that in making the decision not to pursue litigation over *Self-Portrait*, the Bank likely considered a "number

of questions such as to how successful would they have been, how much money would it have cost the [Benton] Trust, and whether [the Smithsonian] could have countersued."

As noted above, Beneficiaries make three arguments as to why the trial court erred in finding that the Bank, as executor, had discretion to release the estate's interest in *Self-Portrait* and that in doing so the Bank did not abuse that discretion. Beneficiaries first argue that § 473.293 prohibited the Bank from exercising its discretion to relinquish a claim to *Self-Portrait* without court approval. Section 473.293 creates a means by which the probate court may authorize a personal representative to dispose of valueless or encumbered property or property in such condition that it is of no benefit to the estate. Beneficiaries argue that the grant of testamentary power in Thomas's Will is mere boilerplate that cannot overcome the dictates of the statute. We disagree.

Section 473.293 does not constrain an executor's testamentary power, if granted, to deal with such property without a court order. *See Estate of Goslee*, 807 S.W.2d 552, 555 (Mo. App. S.D. 1991) (finding that, where personal representatives had no authority under the will or applicable court order to sell the property, they were required to follow the statutory procedures). The Bank could have sought court approval under § 473.293 but was not required to do so. "A testamentary power to sell or otherwise deal with the property of the decedent is derived from the will, not from the orders of the probate division." 5B Mo. Prac., Probate Law & Practice § 1155 (3d ed.). So long as the executor "executes the power granted to him in the manner prescribed by the testator, no court order is necessary to establish the validity of his conveyance or other disposition." *Id*. Here, the language of the Will granted the executor broad power in dealing with

assets including the power to "release any claims or demands of [the] estate" and to "dispose of . . . any and all property at any time forming a part of [the] estate . . . upon such terms . . . as they may deem advisable." This is not mere boilerplate, but a broad grant of discretion.

For their second ground, Beneficiaries argue that the Bank failed to notify beneficiaries of the potential claim and its relinquishment. As we have already concluded that the trial court was correct in finding that the executor had the discretion to release the estate's claim to *Self-Portrait*, the question then is whether the failure to notify Beneficiaries before exercising that authority was an abuse of that discretion or so arbitrary as to violate the grant of authority. *Am. Cancer Soc.*, 631 S.W.2d at 863. First, there is nothing in the Will that requires Beneficiaries to be notified or provide advance approval of the release of a claim. Further, when the issue regarding *Self-Portrait* arose, only Jessie and T.P. were of age; Jessie's three children were all minors. Jessie traveled the country with her extended family and was difficult to track down. For his part, T.P. rarely showed interest in the administration of his parents' estates. And Beneficiaries do not point to any evidence in the record indicating that they would have opposed the release of the artwork had they been informed.

Beneficiaries rely on expert witness testimony that a reasonable executor would have notified heirs of a potential claim to *Self-Portrait* before relinquishing that claim. But the trial court was free to disregard that testimony, even if it was uncontroverted. *See Blaylock v. Blaylock*, 715 S.W.3d 206, 213 (Mo. App. W.D. 2025) (The probate court "is free to believe or disbelieve all, part or none of the evidence, including . . . evidence that

is uncontroverted.") (quoting *Tadych v. Horner*, 336 S.W.3d 174, 177 (Mo. App. W.D. 2011)). And, even if the trial court had found that it would have been better practice to inform Jessie and/or T.P. before releasing the estate's interest in *Self-Portrait* and even if there were evidence that the Bank could have informed Jessie and/or T.P. about *Self-Portrait* but failed to do so, that alone is not enough to prove that the Bank abused its discretion or acted arbitrarily. Because the Bank acted in accordance with the authority granted to it under Thomas's Will, Beneficiaries lack recourse under these circumstances.

Lastly, relinquishing a claim to *Self-Portrait* does not contradict Thomas's intent as expressed in his Will. Beneficiaries rely on cases that stand for the proposition that a broad grant of discretion in the handling of estate assets can be overridden by other testamentary language that articulates a different intent regarding specific assets. Unlike the two cases cited by Beneficiaries on this point, there is no reference to *Self-Portrait* in Thomas's Will, and, thus, the Will does not specify an alternative disposition for the painting.[12]

Beneficiaries rely on isolated language in Thomas's Will to challenge the Bank's exercise of discretion in relinquishing a claim to *Self-Portrait*. In other words,

---

[12] In *Betty G. Weldon Revocable Trust ex rel. Vivion v. Weldon ex rel. Weldon*, the court concluded that a horse farm held in trust could not be sold under a general power to sell because the will provided specific expectations of how the horses and property would be handled upon the death of the testatrix, making it clear that the testatrix had intended for the horse farm to remain in the trust until her death. 231 S.W.3d 158, 176 (Mo. App. W.D. 2007). Similarly, in *St. Louis Union Tr. Co. v. Brug*, the court ruled that the testatrix did not intend to grant the trustee the power to sell the property at issue based on specific provisions in the will for the disposition of that property after the death of a specified beneficiary. 558 S.W.2d 375, 377-78 (Mo. App. 1977). These cases are clearly distinguishable from the present case.

Beneficiaries attempt to construe this language as limiting the broad, general grant of discretion in the testamentary documents. Specifically, they rely on the fact that the Will states that "by way of illustration *and not of limitation*" the Trustees "in their sole discretion" may "retain or sell in *their sole discretion* Thomas H. Benton works of art, . . . *even though said works of art may be unproductive of income* and to handle them in such a way as to maintain the market value." (Emphasis added.) First, this language refers to actions of the trustees, not the Bank acting as executor. Further, the language not only expressly states that it is not meant to limit the powers of the trustees, but it also repeatedly states that the trustees may take actions at their sole discretion. We do not read this language as limiting the executor's authority to release assets to those assets that are unproductive of income or to situations where such a release is necessary to maintain market value. We reject Beneficiaries' argument that other language in the Will limits its clear grant of broad discretion in the handling of estate assets.

Thus, the trial court did not err in concluding that the disclaimer of *Self-Portrait* was within the authority granted to the Bank by Thomas's Will and, thus, was not a breach of the Bank's fiduciary duty.

Point IV is denied.[13]

[13] Beneficiaries also argue that the Bank as Trustee breached a separate fiduciary duty by not pursuing a claim against itself for disclaiming *Self-Portrait* while acting as the executor. Because we affirm the trial court's judgment that disclaimer of *Self-Portrait* was authorized, we need not address this argument.

III. The trial court did not err in requiring Beneficiaries to meet their burden of proof on their claims that the Bank breached its fiduciary duty with respect to both Co-Trustee's approval of art sales and preservation of copyright interests in Thomas's artwork (Points III and V).

For their third and fifth points, respectively, Beneficiaries claim that the trial court erred by placing the burden on them to prove that the Bank breached its duty to obtain Co-Trustee's approval before selling artwork from the Benton Trust[14] (Point III) and that Beneficiaries were harmed by the Bank's breach of its duty to identify and preserve copyright interests in Thomas's artwork (Point V). In both points, Beneficiaries argue that the Bank failed to keep proper records with respect to each claim and, therefore, the burden of proving compliance with the trust requirements fell to the Bank, and the trial court erred in placing the burden on Beneficiaries. The Bank argues that Beneficiaries, as plaintiffs in a breach-of-fiduciary-duty action, bore the burden to prove all four elements of their claims (*i.e.*, "(1) the existence of a fiduciary duty; (2) a breach of that fiduciary duty; (3) causation; and (4) harm." *Riead*, 685 S.W.3d at 545 (quoting *Robert T. McLean*, 418 S.W.3d at 490)). While the Bank does not contest that it had duties to both obtain Co-Trustee's approval for all sales and properly manage all trust assets (including applicable copyrights), it argues that Beneficiaries failed to meet their burdens to prove that the Bank breached its duty to obtain Co-Trustee's approval and that Beneficiaries were harmed by the Bank's failure to determine which of Thomas's works were copyrightable at the time of his death.

[14] When a trust appoints co-trustees, they must act as one collective trustee, performing their duties jointly. *Walker v. James*, 85 S.W.2d 876, 884 (Mo. 1935).

To support their argument that the Bank bore the burden of proving compliance with trust requirements, Beneficiaries argue "that Missouri fiduciary law places the burden on the trustee, *when called to account*, to prove that it complied . . . and [the trustee] cannot convert its own lack of evidence into a presumption of compliance in its favor." (Emphasis added.) But, in making this argument, Beneficiaries rely on cases involving equitable actions for accounting, rather than breach-of-fiduciary-duty claims. And they do so for the apparent purpose of trying to apply the "strict accounting rule," which provides that, when "a trustee . . . fails to keep proper records of his trust[,] . . . 'all presumptions are against him on his accounting, or . . . all doubts on the accounting are resolved against him.'" *Pazdernik v. Stemler*, 804 S.W.2d 789, 793 (Mo. App. E.D. 1990). But Beneficiaries' reliance on cases involving actions for accounting is misplaced because there is a fundamental difference between the equitable cause of action for accounting and an action for breach of fiduciary duty.[15]

In Missouri, an action for accounting is "tried in two phases: [f]irst, a determination of the right to an accounting, and if a right to an accounting is found, then an actual accounting must occur." *Lim v. Chong*, 66 S.W.3d 97, 100 (Mo. App. E.D. 2001). "Because the trial court must determine if a plaintiff is entitled to an accounting before hearing evidence in the actual accounting, the court should determine if it has

[15] The admittedly broad language from the cases Beneficiaries rely on is simply not applicable outside of the action-on-accounting context. *See O'Riley*, 412 S.W.3d at 411-12 (holding that the same language Beneficiaries rely on here neither imposed a burden on the trustee to produce documents in a breach-of-fiduciary-duty claim nor alleviated the beneficiaries' need to establish resulting harm from the alleged breach).

equitable jurisdiction to order an accounting." *Id*. "This requires the plaintiff to adequately plead: (1) the need for discovery, (2) the complicated nature of the accounts, (3) the existence of a fiduciary or trust relationship, and (4) the inadequacy of legal remedies." *Id.* If the plaintiff fails to adequately plead all elements, the plaintiff is not entitled to an accounting. *See Tobias v. Korman*, 141 S.W.3d 468, 474 (Mo. App. E.D. 2004) (finding allegations that beneficiaries were entitled to an annual accounting from trustee, which he had failed to provide, were insufficient to warrant an accounting where beneficiaries failed to plead a need for discovery, complexity of the accounts, or inadequate remedies at law); *see also Shaner v. Sys. Integrators, Inc.*, 63 S.W.3d 674, 677 (Mo. App. E.D. 2001) ("[B]efore the plaintiff may be accorded an accounting, there must exist some distinct and special ground of equitable jurisdiction to which the demand for an accounting will be fairly incidental or ancillary.") (quoting *Am. Button Co. v. Weishaar*, 170 S.W.2d 147, 152 (Mo. App. 1943)).

Here, Beneficiaries did not plead a *prima facie* case for an accounting anywhere in their petition; thus, they cannot invoke the "strict accounting rule" and alleviate themselves of their burden to prove all four elements of their breach-of-fiduciary-duty claims. In other words, because Beneficiaries did not bring an action for an accounting, the rules and burdens of proof applicable to an accounting action are inapplicable here.

With respect to Point III, the trial court properly concluded that Beneficiaries bore the burden of establishing lack of Co-Trustee's approval, and the court determined that Beneficiaries failed to meet their burden by "fail[ing] to present any evidence to establish

that [the Bank] and . . . [Co-Trustee] did not act jointly and in agreement at all times they served together as co-trustees."[16] Instead, the court found,

> That throughout his service as co-trustee of the Benton Trust, [Co-Trustee] was active and assisted in the decisions involving . . . the Benton Trust. The evidence established that [Co-Trustee] had, inter alia, ongoing communications with the beneficiaries, assisted with strategy decisions related to the administration of the Benton Trust, advised on copyright issues, assisted in the handling of royalties due to the Benton Trust and provided insight into the management of the artwork held in the Benton Trust.

---

[16] Beneficiaries' argument with respect to Point III has evolved from arguing that the Bank bore a duty to maintain "contemporaneous documentation" of Co-Trustee's approval to acknowledging that "neither the Benton Trust nor Missouri law absolutely require co-trustee's approvals to be memorialized in any particular form," but suggesting the absence of written documentation established a breach of the duty to obtain Co-Trustee's approval. In light of Beneficiaries' acknowledgement that no written documentation of Co-Trustee's approval was required, even under the broad language of the accounting cases, Beneficiaries failed to establish that the Bank failed to keep proper records; thus, the strict accounting rule would not apply to their argument under Point III, even if they had pled the proper elements for an accounting.

Perhaps recognizing this impediment, Beneficiaries further argue that, when "the subject-matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true, unless disproved by that party." (Quoting *Swinhart v. St. Louis & S. Ry. Co*., 105 S.W. 1043, 1046 (Mo. 1907)). They then claim that the Bank is better positioned to prove what it did with respect to obtaining Co-Trustee's approval than Beneficiaries are to prove what the Bank failed to do; therefore, they reason, their allegation of breach should be taken as true unless disproved by the Bank. But the burden-of-proof rule they rely upon is inapplicable in the breach-of-fiduciary-duty context. In this context, "[a] trustee is presumed to administer a trust in good faith, and the burden of proving otherwise falls on the [challenger]." *Brown v. Brown-Thill*, 543 S.W.3d 620, 633 (Mo. App. W.D. 2018). Though couched as a "presumption," this rule is really one of burden allocation. *See, e.g., Pearson v. Koster*, 367 S.W.3d 36, 45 (Mo. banc 2012) ("The purpose behind stating that statutes are 'presumed' constitutional is not to establish a presumption but instead to allocate the burden of proof to the plaintiff for its claim that a statute is unconstitutional . . . ."). Thus, the more general burden-of-proof rule Beneficiaries rely on is inapplicable, as the burden of proof has already been allocated to Beneficiaries at common law by the requirement that we presume the Bank operated in good faith.

The evidence further showed that the Bank and Co-Trustee "worked together without discord for the twenty (20) years they served as co-trustees." In view of the evidence, the court declined to speculate from the lack of written documentation that the Bank actually breached its fiduciary duty by not obtaining Co-Trustee's approval for sale of artwork from the Trust.

Because the trial court properly applied the burden of proof and determined that Beneficiaries failed to meet their burden, Point III is denied.

With respect to Point V, the trial court found that the Bank breached its "duty to determine, at the outset of its administration of the trust, which pieces of artwork maintained their copyright status after Benton's death in 1975 . . . and take any action necessary to establish, preserve, and protect the Benton Trust copyright assets." But the trial court also determined that, *for the purpose of determining damages*, the task and burden "to examine each piece of artwork created by Benton to determine which ones were eligible for copyright" fell on Beneficiaries, and they failed to meet it.

The "harm" element of a breach-of-fiduciary-duty claim can be established by proof that the beneficiaries suffered monetary damages as a result of the trustee's breach. *See Zakibe v. Ahrens & McCarron, Inc.*, 28 S.W.3d 373, 383 (Mo. App. E.D. 2000). And to establish monetary damages in this context, Beneficiaries needed to prove that there were actual copyrightable works that did not receive the appropriate protection, resulting in monetary loss to Beneficiaries; it was not enough to establish the mere possibility of copyrightable works or associated loss. *See Addington v. Cullinane*, 28 Mo. App. 238,

242 (1887) ("damages must be proved from the evidence. A mere *possible* injury furnishes no ground of damages.").

As the trial court noted, under both common and statutory law, "any works created by [Thomas] during his lifetime that remained unpublished at the time of his death would generally be protected by copyright for a period of life plus seventy (70) years," but there were four possible ways in which Thomas may have been divested of any common-law copyright, all of which were real possibilities with respect to the various works of art before the court. Thus, while the Bank had a duty, but failed, to determine which of these works was copyrightable at the time of Thomas's death, the burden to prove that the Bank's failure *resulted in monetary loss* to Beneficiaries remained with Beneficiaries at the time of trial.

Accordingly, Point V is denied.[17]

IV. The trial court did not err in declining to apply the broad no further inquiry rule advocated by Beneficiaries to four transactions they challenge on appeal (Point I).

For their first point, Beneficiaries assert that the trial court erred by declining to apply the "no further inquiry rule" (the NFIR) and award damages for allegedly conflicted transactions without Beneficiaries' proving that the Bank benefitted or that the transactions caused harm to the Benton Trust or Beneficiaries. Beneficiaries argue that

[17] Because Point V does not argue that the trial court erred in finding that Beneficiaries failed to adequately prove damages, we need not address that issue further. *Lusher v. Gerald Harris Constr., Inc.*, 993 S.W.2d 537, 544 (Mo. App. W.D. 1999) ("A reviewing court is obliged to determine only those questions stated in the points relied on. Issues raised only in the argument portion of the brief are not presented for review." (citation omitted)).

the following transactions involved conflicts of interest and, thus, breached the Bank's fiduciary duty and that Beneficiaries were entitled to a remedy without proving that the Bank benefitted or that Beneficiaries were damaged by the conflicted transactions: (1) the sale of Thomas's *Persephone* to the Nelson-Atkins Museum of Art in Kansas City, Missouri; (2) the sale of eight paintings to the spouse of a member of the Bank's board of directors; (3) the sale of artwork to or through the art galleries of Hirschl & Adler and Martha Parrish & Jim Reinish, Inc. (collectively, the Galleries); and (4) the sale of a drawing titled *Studies for Persephone* to or through the Bank's president (President) (collectively, the challenged transactions).

The NFIR developed at common law as a mechanism to enforce the fiduciary duty of loyalty in trusts and estates law. *The No-Further-Inquiry Rule: Fiduciary Duty of Loyalty Explained*, Legal Clarity Team (May 18, 2026). Generally, under the NFIR, when beneficiaries prove that a fiduciary engaged in a transaction involving a conflict of interest, beneficiaries may seek to void the transaction without having to prove that the transaction caused harm to the trust or beneficiaries; the conflict itself triggers the rule and gives rise to voidability at the request of the beneficiaries without further proof of resulting harm. *See* Charles Bryan Baron, Esq., *Self-Dealing Trustees and the Exoneration Clause: Can Trustees Ever Profit from Transactions Involving Trust Property?*, 72 St. John's L. Rev. 43, 44, 53-54 (1998).[18]

[18] Here, rather than seeking to void the challenged transactions, Beneficiaries claim that they were entitled to damages, more specifically appreciation (or "make-whole") damages reflecting the present value of the artwork involved. We acknowledge that Beneficiaries' requested relief may be problematic, but we need not

The Bank argues that Beneficiaries failed to prove any conflicts of interest, making the NFIR irrelevant. Alternatively, the Bank argues that, even if Beneficiaries had established conflicts of interest, Missouri has not adopted the NFIR; thus, Beneficiaries still had to prove the traditional elements of a breach-of-fiduciary-duty claim, including that the alleged conflicts caused harm to the Trust or Beneficiaries.

The trial court agreed with the Bank, expressly rejecting most of Beneficiaries' claims of conflicts of interest[19] and refusing to apply the NFIR on the basis that Missouri has not adopted it. Accordingly, the court determined that Beneficiaries had to show that each of the challenged transactions caused harm to the Trust or Beneficiaries. And the court concluded that Beneficiaries failed to carry their burden.

A trustee is in a fiduciary relationship with the beneficiaries of a trust and, as a result, the trustee owes the beneficiaries a duty of loyalty, which requires the trustee to manage trust assets *solely* for the benefit of the beneficiaries. Restatement (Second) of Trusts (1959), § 170.[20] And Missouri courts have long recognized the principle that a

---

reach this issue because we reject Beneficiaries' argument that, due to the nature of the alleged conflicts, Beneficiaries are relieved of the obligation to prove that the Bank benefitted or that the Trust or Beneficiaries were harmed by the challenged transactions.

[19] The trial court found that the sales of *Persephone* and *Studies for Persephone* and use of the Galleries to sell Thomas's artwork did not involve conflicts of interest. The court was silent as to whether the sale of paintings to a Bank director's spouse involved a conflict of interest but concluded that the Benton Trust suffered no harm as a result of that sale.

[20] The Restatement (Second) of Trusts (1959) was the version of the Restatement in effect at the time of the challenged transactions. Although the Restatement (Third) of Trusts is now in use, both the Restatement Second and Third acknowledge that a trustee is obligated to manage a trust solely for the benefit of its beneficiaries.

trustee owes undivided loyalty to the beneficiaries of a trust. *Hillyard v. Leonard*, 391 S.W.2d 211, 224 (Mo. 1965).

Beneficiaries argue that Missouri has adopted the NFIR as a way to enforce the duty of undivided loyalty owed by a trustee and that, once a beneficiary demonstrates that a conflicted transaction occurred, the beneficiary's right to a remedy arises without the need to prove damages. In support of their argument, they rely primarily on three Missouri cases: *Thornton v. Irwin*, 43 Mo. 153 (Mo. 1869); *Grumley v. Webb*, 44 Mo. 444 (1869), and *Trigg v. Herndon*, 673 S.W.2d 831 (Mo. App. W.D. 1984).

In *Thornton*, the court stated that it "is well settled in the jurisprudence of England and of the United States" that trustees "cannot without, and often cannot with, [the beneficiary's] full knowledge and consent, become the purchasers of [trust] property."[21] 43 Mo. at 163. Noting that there was no evidence of fraud, the court explained that the rule is prophylactic and categorical, adopted "to prevent fraud," even though "fraud need

[21] A conflicted transaction that supports a finding of a breach of fiduciary duty will almost always exist where a trustee purchases trust assets. This is because the interests of the purchaser and the seller are naturally adverse. *Thornton v. Irwin*, 43 Mo. 153, 158 (Mo. 1869) (One person "cannot perform conflicting duties and interests—it being the duty of the seller to get the highest price, and the interest of the buyer to get the property at the lowest [price]."). The same principle has been applied when the trustee acquires title to the property indirectly following transfer to a third party. *Id.* at 167. *But cf. Pazdernik v. Stemler*, 804 S.W.2d 789, 793 (Mo. App. E.D. 1990) (noting that, under the exceptional facts of the case, the purchase of a trust asset (a family home) by the trustee (the life beneficiary's aunt) was not a conflict of interest because the sale not only resulted in no harm to the trust but also affirmatively furthered the testator's desire that his disabled son/beneficiary be able to visit the home). Due to the "very special facts of th[e] case," *id.* at 794, we decline to read *Pazdernik* more broadly.

not appear." *Id*. at 165. The court ultimately accepted the plaintiff's argument that the sale at issue was voidable without proof of harm. *Id.* at 158.

In *Grumley*, the court concluded that "[n]othing is better settled than that an agent or a trustee, or any person acting in a fiduciary capacity, [cannot] speculate for his private gain with the subject matter committed to his care, to the prejudice of his principal," and that such a fiduciary "[cannot] be allowed to purchase an interest in property where he has a duty to perform which is inconsistent with the character of [the] purchaser." 44 Mo. at 451. This rule must be "strictly pursued, and not in the least relaxed," because of the "obvious" consequences of allowing conflicted transactions. *Id*. at 454.

And in *Trigg*, a case involving an executor's sale of estate property to his wife at a public auction, this court stated, "The rule that a purchase by a fiduciary of estate property . . . affords an interested party ground[s] to avoid the sale was a principle of equity antecedent to embodiment in any statute[] and continues in effect."[22] 673 S.W.2d at 833, 835 (relying on Restatement (Second) of Trusts § 170 cmt. e: "If the third person is a spouse of the trustee, the sale can be set aside as though it were made to the trustee himself."). The rule is a prophylactic restraint to guard against the "probability in many cases, and the danger in all cases," that self-interest will supersede duty. *Id*. at 833 (internal quotation omitted). Consistent with that rationale, the *Trigg* court emphasized—explicitly—that the "invalidity . . . d[oes] not depend upon proof of

[22] In analyzing the sale to the executor's wife, the *Trigg* court relied, in part, on a Missouri statute, as well as common law. That statute, § 473.477, states, "No executor or administrator shall purchase any property belonging to the estate which is sold either at public or private sale, unless written consent thereto is filed by the distributees."

damages to the estate." *Id*. at 834. It is the conflict of interest (there the interest inherent in marriage)—"and not an incidence of actual benefit"—that brings the transaction within the "prohibition of the statute and rule of equity." *Id.* at 835.

Beneficiaries have not identified any Missouri cases expressly adopting the NFIR, and our research has not turned up any either. However, the cases addressed above demonstrate that Missouri courts have adopted the principle in substance, but only in cases involving self-dealing. The cases cited by Beneficiaries apply the remedy of voidability without proof of resulting harm in a narrow set of circumstances only—namely, those in which the fiduciary personally benefitted, directly or through his or her spouse, from the sale of assets held by the fiduciary for the benefit of another. In other words, Missouri has applied the remedy of voidability without proof of resulting harm to transactions involving self-dealing in its narrowest form.[23]

To argue that Missouri has adopted a broader application of the voidability remedy, Beneficiaries invoke *Vest v. Bialson* and *Ramsey v. Boatmen's First National Bank of Kansas City, N.A.*, for the proposition that the remedy "is not confined to a

[23] We agree with Beneficiaries that, under Missouri law, there are certain transactions—specifically, self-dealing—in which the conflict between the trustee's personal interest and the interests of the beneficiaries is so great that the beneficiaries are relieved of the burden of proving gain by the trustee or harm to the beneficiaries. But we disagree with Beneficiaries that any of the challenged transactions involved conflicts rising to that level. To be clear, the remedy of voidability is not necessarily limited to cases involving self-dealing, but only certain types of conflicts will relieve the beneficiary of the burden of proving damages. In other words, there may be circumstances in which a beneficiary is entitled to void a conflicted transaction upon proof of benefit to the trustee or harm to the trust or beneficiary, but the trial court found no evidence of such benefit or harm here, and Beneficiaries do not appeal that finding.

trustee's direct purchase" of trust assets. But those cases do not aid Beneficiaries' position, as the material facts in those cases are distinguishable from this case. First, neither case deals with the remedy of avoidance, but instead they address what circumstances may constitute a conflict and thus a breach of the duty of loyalty. In *Vest*, the court concluded that the trustee abused his discretion by retaining a 15% commission on the sale of trust assets regardless of whether the transaction produced any net income for the beneficiaries. 293 S.W.2d 369, 381 (Mo. 1956). In *Ramsey*, the court determined that a bank, acting as co-trustee, breached its fiduciary duty by acquiescing in investments that would financially benefit the other co-trustee without first advising the beneficiary regarding the investments. 914 S.W.2d 384, 389 (Mo. App. W.D. 1996). Thus, both *Vest* and *Ramsey* involved a personal benefit to a trustee, which distinguishes those cases from the challenged transactions here, none of which involved either the acquisition of Trust assets, directly or indirectly, by the Bank or a financial benefit to the Bank.

Beneficiaries seek to expand Missouri law, allowing voidability based on a conflict of interest without proof of resulting harm, to transactions in which a fiduciary is merely affiliated with the purchaser of trust assets or might realize some indirect benefit, such as a reputational gain. But doing so would mean that evidence of *any* relationship between the trustee and a purchaser of trust assets that might be perceived as a potential conflict of interest is a presumed conflict constituting a breach of fiduciary duty, allowing the transaction to be voided by the beneficiaries without requiring any proof of resulting harm.

Not only have Missouri courts not gone that far, but there are a number of Missouri cases that have refused to void a sale of assets by a fiduciary to his or her family member without proof of harm to the trust or beneficiaries. *See Estate of Mings v. Mings*, 6 S.W.3d 909, 914 (Mo. App. W.D. 1999) (finding the trial court's ruling setting aside the sale of real estate by a conservator to his son was against the weight of the evidence in light of the circumstances of the case); *Earney v. Clay*, 516 S.W.2d 59, 65 (Mo. App. 1974) (affirming an executor's sale of estate property to his parents); *In re Branch's Estate*, 100 S.W. 516, 518 (Mo. App. 1907) (affirming an executrix's sale of estate property to her son who had assisted his father in his final years and bought the property for the best price obtainable).[24]

Beneficiaries focus, too, on the fact that the Bank is a corporate trustee to argue that the challenged transactions are voidable without proof of resulting harm where the sale of assets involved individuals or entities aligned with the Bank. But, in *Cummings v. Parker*, 157 S.W. 629, 634 (Mo. 1913), our Supreme Court declined, in the absence of fraud, to apply the voidability doctrine to a sale by one corporation to another corporation even when there was significant overlap of directors.[25]

---

[24] The Restatement (Second) of Trusts (1959), which was the version of the Restatement in effect at the time of the challenged transactions, also rejected the notion that any affiliation between the trustee and the purchaser of trust property renders the sale voidable without proof of causation or harm. *See* Restatement (Second) of Trusts § 170 cmt. e. Missouri courts generally followed the Restatement (Second) of Trusts when it was in effect. *See Trigg*, 673 S.W.2d at 835; *Ramsey*, 914 S.W.2d at 388 n.2.

[25] Additionally, Beneficiaries rely on § 456.8-802 of Missouri's Uniform Trust Code (MUTC), which was enacted in 2005. Because all of the challenged transactions occurred before then, the trial court concluded that the transactions were governed by common law. Beneficiaries do not challenge that conclusion on appeal. Nevertheless,

Beneficiaries also rely on cases from other jurisdictions, the Bank's internal policies, federal banking regulations, and cases involving the federal Employee Retirement Income Security Act to support a broad application of the voidability remedy without requiring proof that the trustee benefitted or that beneficiaries were harmed. We do not find those authorities persuasive. Missouri has generally placed the burden on the party challenging a trustee's actions to prove benefit to the trustee or resulting harm to the beneficiaries and has allowed for the voiding of transactions without proof of those elements only where the fiduciary has engaged in self-dealing.

---

the MUTC is instructive because it, too, has a narrower application of voidability than that advocated by Beneficiaries. Section 456.8-802.2 provides that a transaction involving trust assets entered into by the trustee "for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary" unless:

> (1) the transaction was authorized by the terms of the trust; (2) the transaction was approved by the court; (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 456.10-1005; (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 456.10-1009; or (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

The statute also creates a rebuttable presumption that a transaction involving the investment or management of trust property is "affected by a conflict between personal and fiduciary interests" if the trustee enters into such transaction with:

> (1) the trustee's spouse; (2) the trustee's descendants, siblings, parents, or their spouses; (3) an agent or attorney of the trustee; or (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

§ 456.8-802.3.

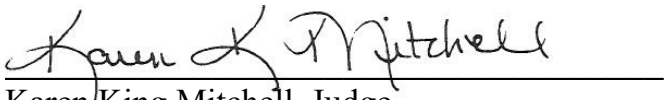
Here, Beneficiaries failed to prove that any of the challenged transactions involved the type of conflict that Missouri courts have found to give rise to a remedy without proof that the alleged conflict caused harm—namely, where the fiduciary personally benefitted, directly or through his or her spouse, from the sale of assets held by the fiduciary for the benefit of another. To be clear, Beneficiaries could have come forward with evidence that the challenged transactions involved conflicts of interest that either benefitted the Bank or harmed the Trust or Beneficiaries, but the trial court found Beneficiaries' evidence did not support a finding of benefit to the Bank or harm to the Trust or Beneficiaries, and Beneficiaries do not appeal that finding. In the absence of proof of self-dealing or proof that the challenged transactions involved other types of conflicts of interest that benefitted the Bank or caused harm to the Beneficiaries, Beneficiaries failed to show they were entitled to relief.

Thus, the trial court did not err in refusing to apply the NFIR advocated by Beneficiaries or Missouri's presumption of voidability to any of the challenged transactions.

Point I is denied.

Conclusion

For the reasons discussed above, the trial court's judgment is affirmed.



Karen King Mitchell, Judge

Janet Sutton, Judge, concurs.
Thomas N. Chapman, Presiding Judge, concurs in separate opinion.

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ANTHONY GUDE and CYBELE BENTON McCORMICK,	)	
Appellants,	)	
and	)	
RICHIE P. GUERIN, SUCCESSOR TRUSTEE OF THE JESSIE BENTON DYNASTY TRUST,	)	**WD87870 (Consolidated with WD87871 and WD87890)**
	)	**FILED: October 6, 2026**
Appellant,	)	
v.	)	
UMB BANK, N.A.,	)	
Respondent.	)	

CONCURRING OPINION

I agree that the judgment should be affirmed. I concur in the majority opinion on Beneficiaries' second through fifth points. I also concur in the result of the majority opinion on Beneficiaries' first point for the following reasons.

In the trial court, Beneficiaries brought a number of claims asserting that a number of sales of trust property – which occurred between two and four decades ago – involved or were affected by a conflict between the interests of UMB and the interests of

Beneficiaries. Following 74 days of trial, the trial court found that Beneficiaries were not damaged by any of the transactions, and that UMB received no benefit from any of the allegedly conflicted transactions. In fact, the trial court's judgment indicated that Beneficiaries actually benefited from the transactions. Thus, in accepting the trial court's findings, and considering "[a]ll fact issues upon which no specific findings [we]re made . . . as having been found in accordance with the result reached" in the judgment, *see* Rule 73.01(c), the trier of fact rejected the proposition that the alleged conflicts – none of which involved acquisition of trust property by UMB – had any effect on the transactions.[1] The trial court also rejected the notion that Beneficiaries could recover damages for a breach of the duty of loyalty without a showing that they had been damaged by the breach.

On appeal, Beneficiaries assert that the trial court erred in concluding that Missouri does not recognize what Beneficiaries have referred to as the "No-Further-Inquiry" rule, which, according to Beneficiaries, imposes a conclusive presumption of the breach of a duty of loyalty when a trustee engages in a transaction that is affected by a conflict of interest or when such a transaction might be affected by a conflict of interest. Beneficiaries assert that the trial court erred by ruling that Beneficiaries could not recover

[1] On appeal, Beneficiaries assert that the trial court did find that the transactions were conflicted transactions by pointing to two instances in which the trial court referred to the transactions as conflicted transactions, including one instance in which the trial court used the heading "Conflicted Transactions" when analyzing the allegedly conflicted transactions. But this assertion is unsupported by the judgment. Read in context, the judgment is clear that the trial court did not find that any of the transactions were affected by a conflict of interest.

damages for breaches of the duty of loyalty unless they proved that UMB profited from its conduct or that UMB caused damages.

However, Beneficiaries failed to convince the trier of fact that any of the alleged conflicts had any effect on any of the challenged transactions. On appeal, Beneficiaries have failed to establish that a conclusive presumption of the breach of the duty of loyalty would apply to any of the challenged transactions as a matter of law based on the alleged conflicts. Thus, although Missouri courts have recognized the remedy of setting aside transactions under circumstances in which a trustee has acquired trust property or when the trier of fact finds that a transaction involving an alleged conflict of interest constituted a breach of the duty of loyalty upon consideration of the circumstances, Beneficiaries have failed to establish that any such principle would apply to the transactions at issue in this case in light of the trial court's findings.

Additionally, Beneficiaries have not sought the remedy of setting aside the transactions but have instead sought damages. However, the trial court already considered Beneficiaries' theories of damages and found that Beneficiaries had not sustained any damages. The trial court did not err in declining to award damages upon finding that there were no damages.

I.

Missouri courts have long recognized the principle that a trustee owes a duty of undivided loyalty to the beneficiaries of a trust. *See Hillyard v. Leonard*, 391 S.W.2d 211, 224 (Mo. 1965). Missouri courts have also long recognized the equitable principle

that "a party holding a fiduciary relation to trust property cannot, either directly or indirectly, become the purchaser of such property, or transfer it to his own use or benefit; and if he does the sale or transfer is voidable and will be set aside . . . ." *Pazdernik v. Stemler*, 804 S.W.2d 789, 793-94 (Mo. App. E.D. 1990) (quoting *Johnson v. United Rys. Co.*, 219 S.W. 38, 66-67 (Mo. banc 1920) (concurring opinion)); *see also Thornton v. Irwin*, 43 Mo. 153, 167 (Mo. 1869). A similar principle has been applied to transactions involving self-dealing by other fiduciaries, such as executors of estates who were statutorily prohibited from purchasing estate property directly or indirectly. *See, e.g., Wortham v. Marten*, 188 S.W.2d 11, 12 (Mo. 1945) (affirming the decree of a trial court setting aside a transaction involving indirect acquisition of title to estate property by executor following transfer to a third party).

In cases in which a challenger asserted that a transaction involved a conflict of interest due to allegations of affiliation between the purchaser and the fiduciary (rather than the fiduciary's acquisition of or profit from the property), Missouri courts regularly allowed the trier of fact to consider all of the circumstances of the case in assessing whether the transaction constituted a breach of the duty of loyalty. *See Estate of Mings v. Mings*, 6 S.W.3d 909, 913-14 (Mo. App. W.D. 1999) (sale of estate property by fiduciary to son not found to be a violation of law or duty upon inquiry into the circumstances); *Earney v. Clay*, 516 S.W.2d 59, 64-67 (Mo. Ct. App. 1974) (affirming trial court's refusal to set aside sale of estate property by executor to executor's parents based on trial court's findings upon inquiry into the circumstances of the case such as whether the executor

would benefit from the transaction, the consideration received, and whether the sale was made in good faith); *Cummings v. Parker*, 157 S.W. 629, 632, 634 (Mo. 1913) (affirming the trial court's refusal to grant the remedy of setting aside a sale in "close" case involving a sale by one corporation to another corporation with a significant overlap of directors following inquiry into the circumstances of the sale including the fairness of the transaction). In fact, in one case in which a trustee had acquired trust property, a Missouri court affirmed a trial court finding that the trustee did not breach her duty of loyalty following inquiry into all of the circumstances of the case, including the testator's intent, the transaction's furtherance of that intent, and the fact that fair value was received. *Pazdernik*, 804 S.W.2d at 793-94.[2]

Upon review of these cases, Missouri courts regularly (though not always) applied the principle that, when a trustee purchased trust property or personally profited from a

[2] In *Trigg v. Herndon*, 673 S.W.2d 831 (Mo. App. W.D. 1984), an appellate court found a sale by an executor to his spouse ran afoul of a statutory prohibition against the purchase of estate property by an executor based on a comment in the Restatement (Second) of Trusts indicating that a sale to the spouse of a trustee can be set aside as though the trustee was the purchaser. *Trigg*, 673 S.W.2d at 835 (citing Restatement (Second) of Trusts § 170, cmt. e). However, in *Trigg*, the plaintiff had not joined the purchasing spouse as a party and recognized that the trial court therefore lacked authority to set aside the sale. *Id.* at 831. The *Trigg* Court thus recognized that any recovery in the case was dependent on a showing of loss – *i.e.*, the difference between the purchase price and fair market value. *See id.* at 831-32. Thus, while *Trigg* suggests that a sale to a spouse of a trustee could be treated as a sale to the trustee, *Trigg* was not a case that suggests that damages are available without a showing of injury.

Additionally, it should be noted that, following the adoption of the Missouri Uniform Trust Code, which became effective January 1, 2005, *see* § 456.11-1104, a sale to a trustee's spouse is subject to a rebuttable rather than irrebuttable presumption that the sale was affected by a conflict. *See* § 456.8-802.2-3; *see also* 4C Mo. Prac., Trust Code & Law Manual § 456.8-802; Uniform Trust Code § 802, Comment. Thus, the Missouri legislature has since rejected the notion that a purchase by the trustee's spouse is conclusively to be treated the same as a purchase by the trustee.

transaction involving trust property, the remedy of setting aside the transaction would be available without a showing of fraud or harm. However, when the alleged conflict was a lesser affiliation, trial courts were authorized to consider the circumstances of the case – including whether the consideration received was fair, how the transaction affected the trust, and whether the trustee stood to benefit from the transaction – in resolving the question of whether the alleged conflict rendered the transaction a breach of the duty of loyalty.[3]

In this matter, none of the transactions involved UMB acquiring trust property, and the trial court rejected the notion that UMB received any benefit from the transactions. The trial court further found that Beneficiaries suffered no losses or damage as a result of the transactions, and instead noted that the Beneficiaries benefited from the transactions. The judgment included other findings indicating that UMB had appropriately sold paintings with expertise as was necessary to support the trust and the requests of the

[3] The Missouri Uniform Trust Code (MUTC) became effective in 2005 after all of the transactions at issue in this case had occurred. *See* § 456.11-1104. The MUTC generally carries these principles forward – though it should be noted that the statutes displace the common law to the extent matters are covered by statute. *See* § 456.1-106. Transactions involving trust property entered into by the trustee for the trustee's personal account are, subject to enumerated exceptions, irrebuttably presumed to be affected by a conflict and are voidable without further proof under the so-called "no further inquiry" rule; however, for other transactions, the ultimate question of fact is whether the transaction was affected by a conflict between the trustee's personal and fiduciary interests upon consideration of the circumstances such as the fairness of the purchase price. *See* § 456.8-802.2-3; *see also* 4C Mo. Prac., Trust Code & Law Manual § 456.8-802; Uniform Trust Code § 802, Comment. Certain affiliations will give rise to a presumption that the transaction was affected by a conflict; however, such a presumption is rebuttable, and the ultimate fact question is whether the transaction was affected by a conflict between the trustee's personal and fiduciary interests. *Id.*

Beneficiaries. In other words, the trial court rejected the factual propositions that any of the transactions were affected by the alleged conflicts of interest, that UMB gained anything from the transactions, and that Beneficiaries sustained any losses from any of the transactions.

In light of the trial court's findings, Beneficiaries cannot establish trial court error with regard to the trial court's refusal to apply a conclusive presumption of breach to any of the challenged transactions based on the alleged conflicts, as Beneficiaries have failed to establish that a conclusive presumption would apply to any of the challenged transactions underlying their point on appeal.

II.

Regardless of the potential applicability of the remedy of voidability in cases in which that remedy is sought and available,[4] Beneficiaries did not seek to set aside the challenged transactions, but instead sought damages. However, the trial court has already fully considered Beneficiaries' theories of damages and found that they have not been damaged (and that UMB has not benefited) as a result of any of the transactions.

[4] Beneficiaries did not add as defendants any of the purchasers of the trust property involved in the allegedly conflicted transactions – which occurred between two and four decades ago – nor is it clear that such purchasers could have been added at the time Beneficiaries brought suit. Beneficiaries fail to make any argument regarding whether such purchasers had acted in good faith or were shielded as purchasers under Missouri law. Beneficiaries further fail to explain why a potentially available equitable remedy of setting aside transactions that did not involve bad faith or cause loss to the trust or result in profit to the trustee could be available as an equitable remedy decades later in an action in which the trial court could not order the return of the property and the only defendant in the case never acquired the property and was found to have received no benefit from the transactions.

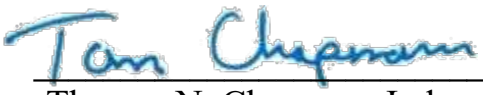
Around the time of the challenged transactions, Missouri courts regularly applied the principles set forth in the Restatement (Second) of Trusts regarding the monetary remedies available for breach of trust. *See Estate of Luyties v. Scudder*, 432 S.W.2d 210, 216 (Mo. 1968); *see also Parker v. Pine*, 617 S.W.2d 536, 540 (Mo. App. W.D. 1981). These amounts could include: "(a) loss in value of the trust property attributable to the breach, (b) profit inuring to the trustee from the breach, or (c) loss of profit to the trust which would otherwise have accrued but for the breach." *Parker*, 617 S.W.2d at 540 (citing *Estate of Luyties*, 432 S.W.2d at 216); *see also* Restatement (Second) of Trusts § 205.

Throughout the case, Beneficiaries repeatedly made clear that they were asking for "make-whole" damages. Yet, the trial court found that Beneficiaries suffered no damages – *i.e.*, that they were already whole. On appeal, Beneficiaries assert that they are entitled to damages under section 205 of the Restatement (Second) of Trusts. Yet, such damages are all premised on compensating beneficiaries for losses sustained or else disgorging a trustee of benefits obtained due to a breach. *See* Restatement (Second) of Trusts § 205; *Parker*, 617 S.W.2d at 540 (citing *Estate of Luyties*, 432 S.W.2d at 216). The trial court, having considered Beneficiaries' theories of damages following 74 days of trial, rejected the notion that Beneficiaries sustained any losses from the allegedly conflicted transactions. The trial court also rejected the notion that UMB received a benefit from any of the transactions. Although Beneficiaries seek reversal and a remand to the trial court to assess their damages under section 205 of the Restatement (Second) of Trusts,

the trial court already rejected the notion that they sustained any such damages. Consequently, Beneficiaries have failed to show that their asserted error materially affected the merits of the action so as to authorize this court to reverse the judgment. *See* Rule 84.13(b).[5]

Conclusion

For the foregoing reasons, the judgment should be affirmed.



Thomas N. Chapman, Judge

[5] Rule 84.13(b) provides: "No appellate court shall reverse any judgment unless it finds that error was committed by the trial court against the appellant materially affecting the merits of the action."