Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 08:23 AM CST

In re Trust Created by Henry S. Hansen, deceased. Wells Fargo Bank, N.A., Trustee of the Henry S. Hansen Trust, et al., appellees, v. Estate of Ruth Elaine Mansfield, appellant.

798 N.W.2d 398

Filed June 10, 2011. Nos. S-10-537, S-10-902.

1. **Judgments: Jurisdiction: Appeal and Error.** A jurisdictional issue that does not involve a factual dispute presents a question of law, which an appellate court independently decides.
2. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
3. ____: ____. In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted, and the court gives that party the benefit of all reasonable inferences deducible from the evidence.
4. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.
5. **Appeal and Error.** An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.

Appeals from the County Court for Douglas County: Edna Atkins, Judge. Judgment in No. S-10-537 affirmed. Appeal in No. S-10-902 dismissed.

Michael D. McClellan and William E. Gast, of Gast & McClellan, for appellant.

M.H. Weinberg, of Weinberg & Weinberg, P.C., for appellees Paula Baird-Kaminski and Stephen Scholder.

William R. Johnson, of Lamson, Dugan & Murray, L.L.P., and Raymond E. Walden, of Walden Law Office, for appellee Wells Fargo Bank, N.A.

Heavican, C.J., Connolly, Gerrard, Stephan, and McCormack, JJ.

Stephan, J.

This case is before us for the second time. It presents the question of whether a trustee violated its fiduciary duty by

declining to pay the amount of the beneficiary's last-illness expenses to the beneficiary's estate following her death. In the first appeal, we held that a decedent beneficiary's estate can seek to enforce the beneficiary's interests in a trust to the same extent that the beneficiary could have enforced his or her interests immediately before death, and we remanded the cause to the county court for Douglas County with directions to hold an evidentiary hearing.[1] These consolidated appeals are from the county court's entry of summary judgment in favor of the trustee and the remainder beneficiaries.

FACTS AND PROCEDURAL BACKGROUND

In June 1979, Henry S. Hansen executed an inter vivos trust. The trust provided for the care, support, and maintenance of Hansen during his lifetime. Upon Hansen's death, the residue of his estate was to be held in trust for the lifetime benefit of his daughters. Article I provided: "The Trust shall continue for the duration of the lives of Grantor's two daughters, MILDRED B. BONACCI and RUTH E. MANSFIELD, and until the death of the survivor of them." Article II provided in part:

> The Trustee shall make two divisions of the corpus of the Trust, one for MILDRED B. BONACCI and one for RUTH E. MANSFIELD. During the lifetime of each of said daughters, the Trustee shall pay the net income of the respective divisions of the Trust to said daughters in installments not less frequently than quarterly. In addition, should either of said daughters, by reason of accident or illness require funds in excess of the net income of the Trust, then the Trustee shall make such payments from such daughter's division of the principal as it may deem proper for the benefit of such daughter.

Article III provided that upon the death of one of the daughters, the trust would continue for the benefit of the surviving daughter, "with the division of the Trust for the deceased daughter remaining in the Trust for the use and benefit of the surviving daughter." Article III instructed that upon the surviving daughter's death, the trustee was to pay out of the "corpus

---

[1] *In re Trust Created by Hansen*, 274 Neb. 199, 739 N.W.2d 170 (2007).

of both divisions of the Trust" $5,000 to each of Hansen's four great-grandchildren, if living, and to then distribute the remaining funds to his two grandchildren, Paula Sue Baird-Kaminski and Stephen Scholder (remainder beneficiaries). At all relevant times, Wells Fargo Bank, N.A. (Wells Fargo), has served as trustee of Hansen's trust.

Hansen died in 1979, and Mildred B. Bonacci died in 1986. Ruth Elaine Mansfield (Ruth) died at the age of 87 on January 8, 2005, in New York City, where she had resided as an adult. For the last 13 or 14 years of her life, Ruth suffered from diffuse cerebrovascular disease, which was gradually progressive and eventually resulted in severe dementia. By June 2002, her medical condition required that she have home health care. In August 2004, she was placed in a nursing home in New York, where she resided until her death. Ruth did not have children. Beginning in late 2002, Jane Falion assisted Ruth in arranging home health care and eventually residential long-term care services. Falion was the daughter of Ruth's longtime companion who resided with her and predeceased her.

In August 2004, a social worker advised Falion that Ruth "needed the appointment of a guardian for her person and property." Falion, assisted by an attorney, began the process of having herself appointed as Ruth's guardian in a proceeding initiated in a New York state court. During the pendency of the guardianship proceeding, Falion and her attorney learned of the existence of the Hansen trust. During September and October 2004, Falion attempted to contact the trustee regarding Ruth's circumstances but was not permitted to speak with a trust officer because she had not been appointed Ruth's guardian. The remainder beneficiaries appeared in the New York guardianship proceeding for the purpose of asserting their interest in the Hansen trust and objecting to its use to pay Ruth's expenses. On or about December 22, 2004, Dawn Heese, the Wells Fargo trust administrator assigned to the Hansen trust, received unsigned copies of documents pertaining to the New York guardianship proceedings, apparently sent by one of the remainder beneficiaries.

On January 5, 2005, Heese received a telephone call from the attorney representing Falion in the New York guardianship proceedings. The attorney told Heese that Ruth was not doing

well and that a judge had entered an order requiring the trust to pay her medical expenses until a guardian was appointed. The attorney said that he would fax a copy of the order to Heese, but he never did. Heese told the attorney that Wells Fargo would need to see documentation of the claimed expenses, which the attorney agreed to provide. On or about January 7, another Wells Fargo trust administrator received a message from the attorney representing the remainder beneficiaries in the New York guardianship proceeding, stating that they were not objecting to the appointment of a guardian but were taking the position that Ruth's assets "should be utilized for her care first before the Trust is invaded."

On January 10, 2005, one of the remainder beneficiaries informed Heese that Ruth had died on January 8. Also on January 10, the New York guardianship proceedings were dismissed as moot as a result of Ruth's death. Several days later, Heese received copies of Ruth's medical bills from Falion. In an accompanying letter dated January 5, 2005, Falion identified herself as Ruth's stepdaughter and requested payment of "all of [Ruth's] medical expenses" from the Hansen trust principal. Falion's letter instructed Heese to contact her attorney regarding any questions and identified the same attorney with whom Heese had spoken on January 5. In e-mail correspondence sent to Heese on February 2, one of the remainder beneficiaries questioned Falion's right to make any claim against the trust and stated her belief that Falion was attempting to maximize the assets of Ruth's estate because she stood to inherit from it.

On March 10, 2005, Heese sent letters to Falion's attorney and the attorney representing the remainder beneficiaries, stating that the trustee would not pay the claimed expenses because Ruth's interest in the trust terminated upon her death and Ruth's estate had sufficient assets to pay the expenses. Falion's attorney responded in a letter dated March 22, 2005, indicating that his firm was representing Ruth's estate and requesting that the trust pay $69,000 in medical expenses and $9,175 for the cost of the guardianship proceeding.

In May 2005, the trustee registered the trust with the county court for Douglas County, with notice to interested parties, including Ruth's estate and the remainder beneficiaries. Shortly

thereafter, the remainder beneficiaries filed an action to determine their interests in the trust, specifically raising the issue of whether the estate's claim for Ruth's last-illness expenses was payable from the trust. In the same docketed proceeding, Wells Fargo filed a petition requesting the court, pursuant to Neb. Rev. Stat. § 30-3812 (Reissue 2008), to determine whether Ruth's last-illness expenses were payable from the trust, and Ruth's estate filed a petition to compel the trustee to pay the expenses.

The county court initially concluded that the trust was a discretionary support trust and that the trustee had properly denied payment of the medical bills because the purpose of the trust had ended with Ruth's death. In our opinion in the first appeal, we concluded that the provision in the trust that the trustee "shall" make payments for the daughters' benefit if they should require funds in excess of the trust's income because of an accident or illness was "the functional equivalent of a term providing that '"the trustee '*shall* pay or apply only so much of the . . . principal . . . as is necessary for the [medical care] . . . of a beneficiary.'"'"[2] In light of this language, we stated that the trustee "had discretion to determine whether and how much additional support Ruth properly required as the result of an accident or illness, but it did not have discretion to determine whether to support her."[3]

Our prior opinion also rejected the premise that the trustee properly refused to make payments under the trust because the trust's purpose ended when Ruth died. In this respect, we noted the "general common-law rule" that a beneficiary's estate may recover income of the trust, which is accrued and payable at the time of the beneficiary's death but has not been paid over, "unless the trustee had uncontrolled discretion whether to make distributions of income."[4] We held that "Ruth's estate can seek to enforce Ruth's interests in the trust to the extent that Ruth could have enforced her interests immediately before

---

[2] *Id*. at 209, 739 N.W.2d at 179, quoting *Pohlmann v. Nebraska Dept. of Health & Human Servs*., 271 Neb. 272, 710 N.W.2d 639 (2006).

[3] *In re Trust Created by Hansen, supra* note 1, 274 Neb. at 209, 739 N.W.2d at 179.

[4] *Id.* at 212, 739 N.W.2d at 181.

her death."[5] We adopted the legal standard set forth in the Restatement (Third) of Trusts § 50[6] for determining whether the estate was entitled to recover the beneficiary's last-illness expenses from the trust.

Following remand, additional proceedings were conducted. On December 12, 2008, the county court entered an order on a motion for partial summary judgment filed by Ruth's estate and a motion for summary judgment filed by the remainder beneficiaries. The court made findings of fact but overruled both motions and directed the trustee to determine "whether to pay [Ruth's] expenses related to her illness, and, if payable, how much as it may deem proper" utilizing the legal standard adopted in our previous opinion applied to the facts as determined by the court. Ruth's estate filed a motion for new trial, which the court overruled.

Subsequently, the trustee declined the estate's request that Ruth's last medical expenses be paid from the trust and proposed a distribution of all trust assets in accordance with article III of the trust instrument, with Hansen's four great-grandchildren to receive $5,000 each and the balance paid in equal shares to the remainder beneficiaries. Ruth's estate objected to the proposed distribution. The trustee and remainder beneficiaries filed motions for summary judgment. On November 3, 2009, the court entered a "Final Judgment Order" and granted the motions, concluding that the trustee "did not breach its fiduciary duty or abuse its discretion toward Ruth . . . or her Estate, and its proposed distribution is proper and not contrary to law."

Through apparent inadvertence, the county court's November 3, 2009, order was never mailed to the parties. Upon realizing this, Ruth's estate filed a motion asking the court to vacate the November 3 order due to lack of notice to the parties. The court conducted a hearing on this motion on May 5, 2010, at which counsel for all parties were present. Counsel orally agreed that the motion to vacate should be granted. The court announced on the record that the November 3, 2009, order

---

[5] *Id.*

[6] Restatement (Third) of Trusts § 50, comment *d(5)* (2003).

was vacated and made a written docket entry reflecting this action. The court then issued a new "final" order on May 5, 2010, which was identical to the November 3, 2009, order. The May 5, 2010, order made no reference to the vacating of the November 3, 2009, order.

The estate filed an appeal from the May 5, 2010, order on May 26, and that appeal is docketed in this court as case No. S-10-537. Apparently still concerned about the jurisdictional issue, the trustee, the estate, and the remainder beneficiaries then jointly sought an order nunc pro tunc from the county court. The rationale was that the court's failure to address the motion to vacate in the May 5 order was a clerical error that could be corrected via a motion nunc pro tunc. In response to this joint request, and while the appeal from the May 5 order was pending, the county court then issued a "Final Judgment Order and Order Nunc Pro Tunc" on August 13. The August 13 order is substantively identical to both the November 3, 2009, and May 5, 2010, orders, except that the August 13 order specifically states that the November 3, 2009, order is vacated effective May 5, 2010. It also states that the effective date of the final order is May 5. On September 9, Ruth's estate filed a notice of appeal from the August 13 order, and that appeal is docketed as case No. S-10-902.

ASSIGNMENTS OF ERROR

Ruth's estate assigns, restated and summarized, that the county court erred in (1) finding that the trustee did not breach a duty to pay or abuse its discretion in refusing to pay the estate for Ruth's medical expenses, (2) finding that the trustee did not unduly delay its response to Ruth's claim, (3) failing to find that the trustee breached fiduciary duties to Ruth during her lifetime, and (4) construing the language of the trust.

STANDARD OF REVIEW

[1] A jurisdictional issue that does not involve a factual dispute presents a question of law, which we independently decide.[7]

---

[7] *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010).

[2,3] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.[8] In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted, and the court gives that party the benefit of all reasonable inferences deducible from the evidence.[9]

ANALYSIS

Appellate Jurisdiction

[4] Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.[10] In preargument filings, both Ruth's estate and the remainder beneficiaries questioned whether the appeals before us are from final orders. We ordered the parties to address these issues in the briefs.

From our review of the record, we are satisfied that the county judge entered a final order resolving all pending substantive and procedural issues on May 5, 2010. Accordingly, the notice of appeal filed in case No. S-10-537 was timely and sufficient to confer appellate jurisdiction. We address the merits of that appeal and dismiss the subsequently filed appeal designated as case No. S-10-902.

Summary Judgment

As we noted in our previous opinion, the trust provided that Ruth was to receive the net income from her division of the trust for her lifetime. It further provided: "'In addition, should [Ruth], by reason of accident or illness require funds in excess

---

[8] *Id.*; *Community Dev. Agency v. PRP Holdings*, 277 Neb. 1015, 767 N.W.2d 68 (2009).

[9] *State ex rel. Wagner v. Gilbane Bldg. Co.*, 280 Neb. 223, 786 N.W.2d 330 (2010). See *Ashby v. State*, 279 Neb. 509, 779 N.W.2d 343 (2010).

[10] *Davis v. Choctaw Constr.*, 280 Neb. 714, 789 N.W.2d 698 (2010); *In re Estate of Hockemeier*, 280 Neb. 420, 786 N.W.2d 680 (2010).

of the net income of the Trust, then the Trustee shall make such payments from [Ruth's] division of the principal as it may deem proper for the benefit of [Ruth].'"[11]

It is undisputed that Ruth suffered from an illness that commenced in 2002 and that the expenses she incurred as a result of that illness were in excess of the net income she received from the trust during the time period of the illness. Ruth's estate argues that under the language of the trust, these facts alone trigger the trustee's duty to pay Ruth's last-illness expenses, regardless of whether her other assets were sufficient to satisfy her obligations. The estate relies in part on our statement in the prior appeal that "[t]he language of Hansen's trust indicates that his primary concern was the care of his daughters in the event of an accident or illness."[12]

But the estate's interpretation of the trust language fails to consider the whole of our prior opinion. Immediately after the language on which the estate relies, we stated: "We conclude that Hansen authorized the trustee to exercise the same degree of discretion created by an ordinary support trust but limited Ruth's interests in the trust's principal to the support she needed upon the happening of a designated event."[13] We also expressly stated that the trust language was the "functional equivalent" of a trust providing that the trustee "shall" pay or apply "only so much" of the principal "as is necessary" for the medical care of the beneficiary. We noted that the trustee therefore "had discretion to determine *whether and how much* additional support Ruth properly required as the result of an accident or illness, but it did not have discretion to determine *whether* to support her."[14] The statements mean that the trustee was required under the trust instrument to support Ruth through regular payments of trust income, and also had the power to determine whether additional support should be paid from the trust principal for her medical expenses. Thus, contrary to the estate's argument,

---

[11] *In re Trust Created by Hansen, supra* note 1, 274 Neb. at 201, 739 N.W.2d at 174.

[12] *Id.* at 210, 739 N.W.2d at 179.

[13] *Id.*

[14] *Id.* at 209, 739 N.W.2d at 179 (emphasis supplied).

we have already determined that the language of the trust did not impose a duty on the trustee to pay Ruth's medical expenses from the trust principal simply because they exceeded the amount of the trust income.

In our prior opinion, we adopted the following standard for an estate's recovery of the beneficiary's last-illness expenses from the Restatement:

> A question may arise, following the death of the beneficiary of a discretionary interest, whether a support or other standard authorizes or requires the trustee to pay the beneficiary's funeral and last-illness expenses and debts incurred by the beneficiary for support. Ultimately, the question is one of interpretation when the terms of the trust are unclear, with the presumption being that the trustee has discretion to pay these debts and expenses.
>
> A duty to do so is presumed only to the extent that (i) probate estate, revocable trust, and other assets available for these purposes are insufficient or (ii) the trustee, during the beneficiary's lifetime, either agreed to make payment or unreasonably delayed in responding to a claim by the beneficiary for which the terms of the trust would have required payment while the beneficiary was alive.[15]

Focusing on the second paragraph of the standard, we first consider whether the trustee is presumed to have a duty to pay Ruth's medical expenses. The evidence does not support a reasonable inference that Ruth's assets were insufficient to pay her last expenses. At the time of her death, Ruth owned assets valued at approximately $574,000, notwithstanding the fact that according to her tax returns, she paid health care expenses of over $200,000 in the 3-year period preceding her death. An intermediate accounting filed in Ruth's estate reflected unpaid claims for medical expenses as of December 31, 2005, in the amount of only $23,081. In 2006, Ruth's estate had sufficient funds to make distributions totaling $270,000 to various institutions and individuals, including Falion. Clearly, the only reasonable inference is that Ruth's assets were sufficient to pay

---

[15] Restatement, *supra* note 6 at 269.

any medical expenses which had not already been paid at the time of her death.

The estate argues that, notwithstanding our adoption of the Restatement standard in the prior appeal, the sufficiency of Ruth's assets is irrelevant in Nebraska. It bases this argument upon our holding in *Roats v. Roats*.[16] In that case, we held that a trustee who was required to use as much of the trust principal as he deemed necessary for the care and support of the beneficiary had a duty to pay the cost of a new home for the beneficiary. We found that this duty existed regardless of the sufficiency of the beneficiary's other assets. *Roats*, however, was based on the trustee's specific promise to the beneficiary that he would purchase the home for her. Here, there is no evidence that the trustee ever agreed to pay any of the expenses which the estate claims, and *Roats* is therefore distinguishable.

Instead, because Ruth's assets were sufficient to cover her medical expenses and the trustee made no promise to pay those expenses, under the Restatement, the trustee had a duty to pay Ruth's medical expenses only if it "unreasonably delayed in responding to a claim by the beneficiary for which the terms of the trust would have required payment while the beneficiary was alive." There is no evidence that Ruth ever requested that the trustee pay her medical expenses during her lifetime. The first such request was made by Falion and her attorney on or about January 5, 2005, just a few days before Ruth's death. It is clear from the record that Falion had not been appointed Ruth's guardian when she made the request, and there is no evidence that Falion acted pursuant to a power of attorney or any other form of legal authorization. Ruth died before the trustee received the documentation for Falion's claim. These uncontroverted facts do not support a reasonable inference that Wells Fargo "unreasonably delayed" in responding to the claim. And in any event, the claim as a matter of law was not one "for which the terms of the trust would have required payment while the beneficiary was alive." As we stated in our prior opinion, the "trustee had discretion to determine whether and how much additional support Ruth properly required as

---

[16] *Roats v. Roats*, 128 Neb. 194, 258 N.W. 264 (1935).

the result of an . . . illness."[17] The same discretionary standard applied to the trustee both before and after Ruth's death, and we have already held that the trustee did not have a duty to pay Ruth's medical expenses under this standard. We conclude that the evidence establishes as a matter of law that the trustee did not have a duty to pay Ruth's last-illness expenses under the Restatement standard adopted in our prior opinion.

Clearly, however, the trustee had the discretion to pay Ruth's medical expenses. The remaining question then is whether the trustee abused that discretion in declining to pay her medical expenses from the trust principal. Under the trust instrument, the trustee's discretionary authority to make payments to Ruth from the trust principal involved an assessment of whether Ruth "'by reason of accident or illness require[d] funds in excess of the net income of the Trust . . . .'"[18] Contrary to the estate's argument, one factor in this determination was Ruth's ability to meet her expenses without a payment from the trust principal. As we noted in our prior opinion, the trust instrument "limited Ruth's interests in the trust's principal to the support she needed upon the happening of a designated event."[19] Whether Ruth "needed" a disbursement from the trust principal to pay her medical expenses depended upon what other resources were available to her. The trustee initially declined the request made by Falion and her attorney to pay the last-illness expenses, based in part upon its understanding that the estate had "sufficient assets to pay those expenses," and the record shows that that understanding was correct.

The estate argues that the trustee breached a fiduciary duty to inquire as to Ruth's health and her possible need for payments from the trust principal and that it had improper communications with the remainder beneficiaries. We consider these arguments only to the extent that they pertain to the issue of whether the trustee abused its discretion in declining to pay the last-illness expenses, because the estate has made no other

---

[17] *In Re Trust Created by Hansen, supra* note 1, 274 Neb. at 209, 739 N.W.2d at 179.

[18] *Id.* at 201, 739 N.W.2d at 174.

[19] *Id.* at 210, 739 N.W.2d at 179.

claim against the trustee. We find no language in the trust instrument which requires the trustee to make specific inquiries regarding the health of a beneficiary. But even if such a duty did exist, there is no indication that inquiries made in 2002, 2003, or 2004 would have disclosed facts different from those in the record, i.e., that Ruth's health was deteriorating but that she was able to meet the increased health care expenses from her existing resources without the need for payments from the trust principal. We find no basis in the record for the estate's argument that the trustee's communications with the remainder beneficiaries were improper or that they resulted in an abuse of discretion with respect to the trustee's decision not to pay Ruth's last-illness expenses. In summary, we find no evidence in the record which would support a reasonable inference that the trustee abused its discretion in declining to pay the last-illness expenses.

[5] Finally, the estate argues that the county court erred in construing article II of the trust instrument as creating separate and distinct "divisions" of the trust principal for the daughters' benefit. This issue is not material to our disposition of the appeal, and because an appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it, we need not address it.[20]

CONCLUSION

Applying the legal standard adopted in our prior appeal, the county court concluded that there was no genuine issue of material fact and that the trustee and remainder beneficiaries were entitled to judgment as a matter of law. For the reasons discussed, we find no error and therefore affirm.

JUDGMENT IN NO. S-10-537 AFFIRMED.
APPEAL IN NO. S-10-902 DISMISSED.

WRIGHT and MILLER-LERMAN, JJ., not participating.

---

[20] *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).