

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
ADMINISTRATION OF THE SSJ'S  
ISSUE TRUST,

No. 85927

IN THE MATTER OF THE  
ADMINISTRATION OF THE SAMUEL  
S. JAKSICK, JR. FAMILY TRUST.

**FILED**

MAR 01 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

STANLEY JAKSICK, INDIVIDUALLY  
AND AS CO-TRUSTEE OF THE  
SAMUEL S. JAKSICK, JR. FAMILY  
TRUST, AND AS TRUSTEE OF THE  
SSJ'S ISSUE TRUST,

Appellant,

vs.

JAMES S. PROCTOR, CPA, CFE, CVA,  
CFF, IN HIS CAPACITY AS THE  
APPOINTED TRUSTEE OF THE  
JAKSICK FAMILY TRUST; KEVIN  
RILEY, INDIVIDUALLY AND AS  
FORMER TRUSTEE OF THE SAMUEL  
S. JAKSICK, JR. FAMILY TRUST, AND  
AS TRUSTEE OF THE WENDY A.  
JAKSICK 2012 BHC FAMILY TRUST;  
MICHAEL S. KIMMEL,  
INDIVIDUALLY AND AS CO-TRUSTEE  
OF THE SAMUEL S. JAKSICK, JR.  
FAMILY TRUST; TODD B. JAKSICK,  
INDIVIDUALLY AND AS CO-TRUSTEE  
OF THE SAMUEL S. JAKSICK, JR.  
FAMILY TRUST, AND AS TRUSTEE  
OF THE SSJ'S ISSUE TRUST; AND  
WENDY JAKSICK, INDIVIDUALLY,  
Respondents.

## ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding attorney fees and costs in a trust matter. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Having considered the parties' arguments and the record, we are not persuaded that the district court committed reversible error. As appellant Stanley Jaksick acknowledges, "[a] district court's order regarding distribution or administration of trust funds will generally not be disturbed unless it clearly demonstrates an abuse of discretion." *Hannam v. Brown*, 114 Nev. 350, 362, 956 P.2d 794, 802 (1998).

Jaksick takes issue with the district court's order insofar as it authorized payment of roughly \$91,000 from the trust's corpus to respondent James Proctor's attorneys before Jaksick's previously incurred attorney fees were paid. In particular, Jaksick claims that no statute authorized the district court to order such a payment priority. However, NRS 164.043 granted the district court such authority. That statute provides that "the court shall allow the trustee his or her proper expenses and such compensation for services as are just and reasonable." NRS 164.043(1). Attorney fees a trustee incurs are a type of "expense," and by referring to "proper expenses," NRS 164.043(1) afforded the district court the discretion to deny Jaksick's request for payment of his attorney fees from the trust's corpus. And, given that the district court would have been within its discretion to outright deny Jaksick's request for payment of his attorney fees, the district court was likewise within its discretion to defer when Jaksick would be paid.

This is consistent with the prevailing view that a court has the discretion to deny a trustee's request for payment of attorney fees from the

trust's corpus when the fees were not incurred for the benefit of the trust. *See* George Gleason Bogert, George Taylor Bogert, & Amy Morris Hess, *Bogert's The Law of Trusts and Trustees* § 871 & n.48 (2023) (observing that a court has discretion to consider whether a party's request for fee reimbursement "benefitted or enhanced the trust estate," and compiling cases to that effect); Restatement (Third) of Trusts § 88 (Am. L. Inst. 2007) ("A trustee can properly incur and pay expenses that are reasonable in amount and appropriate to the purposes and circumstances of the trust . . . ."); *see also In re Guardianship of Bloom*, 295 So. 3d 1255, 1259 (Fla. Dist. Ct. App. 2020) ("When a trustee seeks to charge a trust corpus with an expense incurred by him, including attorney fees, the burden of proof is upon the trustee to demonstrate that the expense . . . was incurred for the benefit of the trust, and *not for his own benefit* nor the benefit of others."); *Kronzer v. First Nat'l Bank of Minneapolis*, 235 N.W.2d 187, 196 (Minn. 1975) ("It is clear that a trustee may recover attorneys fees only where those fees are incurred in rendering a benefit to the trust estate.").

Additionally, although Jaksick contends that the district court did not provide factual findings to support its prioritization decision, the district court, in various hearings, reiterated its belief that Jaksick incurred his attorney fees in furtherance of his dispute with respondent Todd Jaksick and not in furtherance of the trust's best interests. *Cf. Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 643 n.1, 289 P.3d 201, 206 n.1 (2012) (recognizing that a district court's oral findings may be used to supplement findings that are absent from a written order). Accordingly, the district court was within its discretion in ordering the payment of Proctor's

attorney fees before Jaksick's outstanding fees were paid. We therefore  
ORDER the judgment of the district court AFFIRMED.

Stiglich, J.  
Stiglich

Pickering, J.  
Pickering

Parraguirre, J.  
Parraguirre

cc: Hon. David A. Hardy, District Judge  
David Wasick, Settlement Judge  
McDonald Carano LLP/Reno  
Maupin, Cox & LeGoy  
Fletcher & Lee  
Robison, Sharp, Sullivan & Brust  
Fox Rothschild, LLP/Las Vegas  
Spencer, Johnson & Harvell, PLLC  
Washoe District Court Clerk