

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

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,

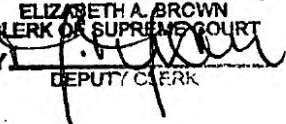
vs.

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.

No. 85927

FILED

MAR 01 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

24-07532

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