Circuit Court for Montgomery County
Case No. 486908V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2335

September Term, 2024

MATTHEW LOVE, ET AL.

v.

CAROLYN HOFF, ET AL.

Berger,
Leahy,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 26, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This case arises from the administration of the Janetta G. Love Family Trust ("the Trust"). On November 27, 2004, Janetta G. Love ("decedent") passed away testate as a citizen of Montgomery County, Maryland. Decedent was survived by two daughters, Carolyn Hoff ("Carolyn")[1] and Nancy Love ("Nancy," collectively, "appellees"), and two sons, Steven Love ("Steven") and Arthur Love ("Arthur").[2] Prior to her death, decedent created a revocable trust that would pass into the Trust upon her death. The Trust listed decedent's four children as beneficiaries. A separate document, titled "Expression of Wishes, Instructions and Information," provided that part of Arthur's share was to be remitted to his son, Matthew Love ("Matthew"),[3] for college tuition. Carolyn and Nancy assisted decedent with the creation of the Trust and conducted activities related to it thereafter. No distributions were made from the Trust to Steven, Arthur, or Matthew.

On August 11, 2022, Matthew, in his individual capacity and as Personal Representative of Arthur's estate, and Steven (collectively, "appellants"), filed an Amended Verified Petition for Assumption of Jurisdiction Over Trust and Accounting and Complaint for Breach of Fiduciary Duties, Conversion, Constructive Trust, Damages and for Injunctive Relief against Carolyn and Nancy in the Circuit Court for Montgomery County. On January 23, 2025, the trial court issued a memorandum opinion finding that

[1] In parts of the record, Carolyn is referred to and refers to herself as Robin. For clarity, we only use the name Carolyn throughout this opinion.

[2] In parts of the record, Arthur is referred to as Artie. For clarity, we only use the name Arthur throughout this opinion.

[3] In parts of the record, Matthew is referred to as Shaun. For clarity, we only use the name Matthew throughout this opinion.

Carolyn breached her fiduciary duty by failing to remit tuition payments to Matthew and failing to provide an accounting to Steven. The trial court entered judgment in favor of Carolyn on all other counts and ordered her to submit a plan to wind up the Trust. Further, after concluding that Nancy was not a co-trustee, the trial court entered judgment in favor of Nancy on all counts. This appeal followed.

On appeal, appellants present eight questions for our review, which we have consolidated into six and reordered and rephrased as follows:[4]

[4] Appellants phrased the questions as follows:

Did the Circuit Court err in the following holdings:

1. Carolyn did not breach her fiduciary duty to Steven and Arthur.

2. Plaintiffs' remedies are limited to an accounting, which was received in discovery, and a payment of Matthew's tuition as contemplated by the Expression of Wishes (defined below).

3. Nancy was merely "a confidante, a sounding board and a helper to Carolyn" and not an agent or trustee subject to liability under the Maryland Trust Act or otherwise.

4. Attorney fees for Nancy and Carolyn are payable out of Trust assets, but those of Steven and Matthew are not.

5. Jonathan Lasley, Esq. was duly qualified as an expert to opine as to trust administration.

6. Steven was not qualified to testify as to rental income of Trust assets.

7. Pam Gogol could not testify to explain a chart of publicly available data gathered and collated from her employer.

I. Whether the trial court erred in concluding that Carolyn did not breach her fiduciary duty to Steven and Arthur.

II. Whether the trial court erred in excluding (1) Steven's testimony concerning rental income of Trust assets, (2) Steven's testimony regarding decedent's intent in forming the Trust, and (3) Pam Gogol's testimony related to publicly available data that she gathered and collated.

III. Whether the trial court erred in concluding that Nancy was not subject to liability under the Maryland Trust Act or otherwise as either a trustee or agent of the Trust.

IV. Whether the trial court erred in awarding Nancy attorneys' fees to be paid out of the Trust.

V. Whether the trial court erred in limiting appellants' remedies to an accounting and payment of Matthew's tuition.

VI. Whether the trial court erred in qualifying Jonathan Lasley, Esq. as an expert on trust administration.

For the forthcoming reasons, we answer questions one, three, five, and six in the negative, discerning no error by the trial court. Because, as we shall explain, we answer question one in the negative, we do not reach question two. We, however, answer question four in the affirmative. We, therefore, vacate the decision of the trial court only with respect to its order regarding the payment of Nancy's attorneys' fees from the Trust. We affirm the judgment by the trial court on all other issues recited in this appeal.

8. Steven could not testify as to Decedent's intentions in forming the Trust.

BACKGROUND

The Trust

On March 30, 2004, decedent Janetta G. Love executed a Trust Declaration ("Declaration"). The document created a revocable trust during decedent's lifetime and named her as trustee thereof. Schedule A of the Declaration set forth the property transferred into the trust by decedent. Among other things, Schedule A includes a list of residential properties located in Maryland, Virginia, Florida, and Washington, D.C. Decedent received most of the real properties from her grandfather and they were intended to be income producing. Prior to her death, decedent rented out several of the properties. Article I of the Declaration identifies this revocable trust as the "Janetta G. Love Revocable Trust" or the "Janetta G. Love Living Trust" ("Revocable Trust"). Section 6.06 of the Declaration provides a trustee succession plan: if decedent was unwilling or unable to serve as trustee, Carolyn shall serve as trustee; if Carolyn is unwilling or unable to serve as trustee, Nancy shall serve. Upon decedent's death, the Declaration directed the trustee to collect all debts payable to the trustee, gather personal property of decedent, and establish a second trust called the "Janetta G. Love Family Trust" ("the Trust").

The Declaration vests broad discretion in the trustee to manage the Trust assets. Section 3.01 directs the trustee to hold and administer the Trust assets and to invest them so that they would result in income production. Section 3.02 requires the trustee to distribute the Trust assets according to Schedule C. Schedule C, in turn, provides that Trust assets shall be divided into four equal shares, one for each of decedent's children. Further, Schedule C gives Carolyn and Nancy the right to select Trust properties in an alternating

order and allows Steven to select from any properties which neither Carolyn nor Nancy selects. Additionally, Section 3.02 creates a separate trust for the distribution of Arthur's share of the Trust assets to be paid out during his lifetime to supplement living expenses. Any unpaid share at Arthur's death would be distributed to decedent's other beneficiaries pursuant to the terms of the Trust, rather than being distributed to his estate or issue.

Certain rights and duties of the trustee are articulated in Section 6.02 of the Declaration. Relevant here, those rights include continuing to operate all or any part of such businesses or business interests which may be part of the trust estate. Specifically, Section 6.02(a)(ii) of the Declaration authorizes the trustee to carry on the businesses or business interests "for such period of time as shall be in the best interests of Grantor's estate or any trust created hereunder."

A separate document titled "Expression of Wishes, Instructions and Information" ("Expression of Wishes") was executed by Carolyn under power of attorney on November 23, 2004.[5] Paragraph 2 of the Expression of Wishes provides additional stipulations as to the creation of a trust for Arthur's share and Paragraph 2E establishes an education sub-trust for Matthew and any additional offspring of Arthur.

Administration of the Trust

Shortly before and after decedent's death, Steven sought information about his inheritance property rights. Neither Carolyn nor Nancy provided the requested

[5] An Expression of Wishes was initially signed, but not dated, by decedent. The second document of the same name is nearly identical to the original and any difference is immaterial here.

information.[6] Decedent's estate was administered by the Register of Wills for Montgomery County and on August 23, 2005, Carolyn was appointed Personal Representative of decedent's estate. Shortly after she was appointed, Carolyn contacted Steven to request his signature on some documents associated with the estate. Steven responded with a series of questions regarding his status as beneficiary and indicated that he wanted to participate in meetings to decide how property issues should be resolved. Carolyn did not respond. Over the years, Steven contacted Carolyn and Nancy at least twice to inquire about his rights as a beneficiary but received no substantive response. Matthew contacted Carolyn over a dozen times regarding his rights as a beneficiary through his father, Arthur. Carolyn did not, at any time, inform Matthew of the provision in the Expression of Wishes for his tuition and never set up the education sub-trust.

In February 2006, the federal estate tax return was completed and showed that the estate owed over $800,000 in taxes. At the time, there were insufficient liquid assets to pay the estate tax. Carolyn entered a 6166 Tax Agreement ("6166 Agreement") with the Internal Revenue Service ("IRS"), which allows for a family business to pay estate taxes over time. Pursuant to the 6166 Agreement, no taxes were due for five years. Thereafter, the taxes were to be paid off over the next 10 years. Under the agreement, taxes accrue interest at a rate of two percent. Further, the 6166 Agreement provides that, if more than fifty percent of the Trust assets are distributed prior to the end of the deferred payment plan, the tax debt accelerates. By the terms of the 6166 Agreement, Carolyn paid the estate

[6] Testimony at trial established that neither Carolyn nor Nancy had a strong relationship with Steven at any relevant time.

taxes off in full in 2019. Because of the 6166 Agreement, no distributions were made from the Trust. In 2019, Arthur passed away. Prior to his passing, Carolyn made no distributions to him.

When Carolyn took over as trustee, she retained the real properties held in the Trust and endeavored to make them income producing as decedent had done. Because she did not have access to funds to refurbish all the properties at once, she endeavored to rehabilitate one property at a time using her labor as well as that of her husband and Nancy. Nancy was reimbursed for at least some of her labor pursuant to the Expression of Wishes which allows for reimbursement at the rate of $20.00 per hour, with a 5% rate increase per year. Carolyn did not reimburse her husband for his time working on the properties. To provide funds necessary to renovate and repair some of the properties, Carolyn, her husband, her daughter, and Nancy loaned money to the Trust at various times without the preparation of promissory notes. Over the years, Carolyn was able to rent out some of the properties, but some have yet to become income producing.

Throughout her time administering the Trust, Carolyn discussed many aspects of Trust administration with Nancy and requested her help with matters related to the Trust multiple times. On several occasions, Nancy received and deposited checks for the Trust. Further, Nancy was listed as an additional insured on certain property insurance, including properties which she owned an interest of one percent.[7] On one occasion, Nancy identified herself as an agent of the Trust on a building permit submitted to the Washington, D.C.

[7] There are several Trust properties that Carolyn and Nancy were transferred a fractional interest in as a means to lower taxes.

government. Carolyn, however, never expressed an inability or unwillingness to serve as trustee.

The Present Action

On August 24, 2021, Matthew, in his individual capacity and as Personal Representative of his father's estate, and Steven, filed a Verified Petition for Assumption of Jurisdiction Over Trust and Accounting and Complaint for Breach of Fiduciary Duties, Conversion, Constructive Trust, Damages and for Injunctive Relief. Thereafter, on August 11, 2022, appellants filed an Amended Petition and Complaint ("the Complaint") against Carolyn and Nancy. Therein, appellants requested the trial court to assume jurisdiction over the Trust and order an accounting. Further, appellants alleged that appellees breached their fiduciary duties by failing to preserve "the Trust property for the benefit of all beneficiaries in good faith and with loyalty to all beneficiaries equally," self-dealing, "elevating the personal interest of one beneficiary over another," committing waste, and not "keeping proper accounts." Additionally, appellants brought claims of conversion and constructive trust and sought an injunction. Appellants requested, among other things, compensatory and punitive damages.

A bench trial was held from December 16 to December 19, 2024. At the conclusion of appellants' case, the trial court granted appellees' motion for judgment as to appellants' claims for conversion, constructive trust, and injunctive relief. At the same time, the trial court determined that it would not award compensation for emotional distress. Because only equitable claims remained, the trial court concluded that it would not consider punitive damages.

Thereafter, on January 23, 2025, the trial court issued a memorandum opinion and order ("January Order"). Therein, the trial court concluded that Carolyn failed to provide an accounting to Steven but found that the breach was remedied by discovery. Further, the trial court concluded that Carolyn breached her fiduciary duty by failing to remit tuition payments to Matthew but found that Matthew was not otherwise entitled as a beneficiary of the Trust. Further, the trial court concluded that Carolyn did not otherwise breach her fiduciary duty, and that Nancy was not a co-trustee at any relevant time. Appellants noted a timely appeal. We shall provide additional facts as necessary in our forthcoming analysis.

STANDARD OF REVIEW

First, "[w]hether an appellate court has jurisdiction over a case is a question of law that this Court reviews de novo." *Saunders v. Gilman*, 490 Md. 413, 420 (2025) (citing *Rowe v. Md. Comm'n on C.R.*, 483 Md. 329, 340 (2023)).

Next, "[w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence." Maryland Rule 8-131(c). We will not set aside a trial court's findings of fact unless clearly erroneous. *Id.* "A trial court's findings are not clearly erroneous if 'any competent material evidence exists in support of the trial court's factual findings[.]" *Plank v. Cherneski*, 469 Md. 548, 568 (2020) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)). We, however, "review the trial court's conclusions of law and application of law to facts without deference to the trial court." *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 414 (2016) (citing *Tribbitt v. State*, 403 Md. 638, 644 (2008)).

Further, "[d]ecisions concerning the award of counsel fees rest solely in the discretion of the trial judge." *Petrini v. Petrini*, 336 Md. 453, 468 (1994) (citing *Jackson*

v. Jackson, 272 Md. 107, 111-12 (1974)). "An award of attorney's fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong." *Id.* (citing *Danzinger v. Danzinger*, 208 Md. 469, 475 (1955)).

Finally, we review a trial court's determination concerning the admissibility of evidence for abuse of discretion. *Hopkins v. State*, 352 Md. 146, 158 (1998) (citing *Robinson v. State*, 348 Md. 104, 121 (1997)).

DISCUSSION

I. Appellees' motion to dismiss.

Before turning to the questions presented by appellants, we address appellees' motion to dismiss.

A. The January Order is a final judgment. We, therefore, deny appellees' motion to dismiss pursuant to Maryland Rule 2-602.

Appellees contend that this appeal is not properly before us because the January Order does not constitute a final judgment. Appellees reason that, because the trial court expressly retained jurisdiction over the Trust to oversee its final administration and distribution, not all of appellants' rights under the Trust were disposed of, therefore, there is not an appealable final judgment.[8] Appellants counter that the January Order constitutes a final judgment because it disposed of all issues raised by appellants, notwithstanding the fact that the trial court retained jurisdiction to oversee the winding up of the Trust.

As the Supreme Court of Maryland recently explained:

[8] Because, as we shall explain, we conclude that the January Order constitutes a final judgment, we do not address appellees' argument that the January Order does not fall within the narrow exceptions to the final judgment rule.

> It is well settled that, to be appealable, an order or judgment ordinarily must be final. To qualify as a final judgment, an order must either determine and conclude the rights involved or deny the appellant the means of further prosecuting or defending [their] rights and interests in the subject matter of the proceeding. As Maryland Rule 2-602(a) provides, an order that adjudicates fewer than all the claims in an action—or that resolves the rights and liabilities of fewer than all the parties—is not a final judgment.

Saunders, 490 Md. at 422 (citations and internal quotation marks omitted).

Here, the January Order disposed of all claims. The trial court retained jurisdiction, yet it did so for the sole purpose of overseeing the final administration and distribution of the Trust. Although, as appellees correctly argue, the January Order contemplates additional hearings, it does so only within the context of Carolyn's wind-up plan. To be sure, the trial court expressly stated in its January Order:

> 7. This matter shall be set for a status hearing in approximately 90 days to check on the status of the wind-up plan. The Court will look to the Trustee at that time for progress on a plan for valuing and distributing the Trust assets.
>
> 8. Once the plan is submitted, Plaintiffs [sic] Steven Love shall have 30 days to file any objections to the proposed plan. Additional evidentiary hearings may be necessary before the plan is approved. The Court recognizes that additional issues will need resolution before the plan can be executed.

Contrary to appellees' assertion, the January Order does not provide appellants with further means to prosecute their claims. As such, we conclude that the January Order constitutes a final judgment over which we have jurisdiction. Accordingly, we deny appellees' motion to dismiss on that ground.

B. To the extent that appellants' brief violates certain provisions of the Maryland Rules, we decline to dismiss the present appeal based on such grounds.

Next, appellees urge us to dismiss the present appeal because appellants failed to consistently cite to the record extract in their briefing, as is required by Maryland Rule 8-504 ("Rule 8-504"). In support of their argument, appellees cite *Rollins v. Capital Plaza Associates, L.P.*, 181 Md. App. 188 (2008), a case in which we dismissed the subject appeal after finding substantial violations of Maryland Rule 8-504. Appellants counter that, to any extent their briefing lacks citations to the record, such a violation of Rule 8-504 is minor compared to the violations present in *Rollins* and, therefore, does not warrant dismissal.

In pertinent part, Rule 8-504(a)(4) provides that a brief shall include "[a] clear concise statement of the facts material to a determination of the questions presented . . . . Reference shall be made to the pages of the record extract or appendix supporting the assertions." Maryland Rule 8-504(c) then confers upon us discretion to dismiss appeals that fail to comply with Rule 8-504: "For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case[.]"

To be sure, appellants make multiple factual assertions without citing the record extract in their briefing. To the extent that the omitted citations violate the Maryland Rules, however, such violation pales in comparison to the violations we discussed in *Rollins*. In *Rollins*, for example, the appellants' record extract omitted pertinent parts of the record, while including "at least fifty documents . . . , some of which were not even listed in the table of contents, [which were] not part of the record." *Rollins*, 181 Md. App. at 200.

Further, more than half of the appellants' factual assertions lacked citation to the record. *Id.* at 201.

In the interest of providing a resolution to the parties, we decline to exercise our discretion to dismiss appellants' appeal pursuant to Rule 8-504. *See id.* at 202 ("We recognize that dismissing an appeal on the basis of an appellant's violations of the rules of appellate procedure is considered a 'drastic corrective' measure.").

II. The trial court did not err in concluding that Carolyn did not breach her fiduciary duty to Steven and Arthur.

Appellants first argue that the trial court erred in concluding that Carolyn did not breach her fiduciary duty beyond her failure to provide Steven an accounting and to remit tuition payments to Matthew. Appellants' argument appears to be two-fold. First, appellants argue that the trial court erred by concluding that the primary source of fiduciary duty in this case is the Trust documents. In so concluding, appellants contend that the trial court ignored aspects of a trustee's fiduciary duty that are well established by Maryland common law and the Maryland Trust Act, such as the duty to avoid self-dealing, the duty of loyalty, and the duty to make trust assets income producing. Second, appellants contend that Carolyn breached her fiduciary duty by failing to make the Trust properties income producing, treat all beneficiaries equally, and remit distributions for living expenses to Arthur during his lifetime.[9]

[9] Appellants provide a list of additional alleged breaches of fiduciary duty, but do not fully develop these arguments. Specifically, appellants contend that Carolyn also breached her fiduciary duty by: (1) committing waste; (2) engaging in self-dealing; (3) administering the Trust in a way that presented a conflict of interest; (4) mismanaging Trust assets; (5) failing to provide Trust documentation and information; and (6) failing to follow

Appellees counter that the trial court properly determined that Carolyn did not breach her fiduciary duty to Steven and Arthur. Appellees reason that the Trust granted Carolyn authority to delay the distribution of Trust assets. According to appellees, Carolyn's entry into a 6166 Agreement with the IRS, which allowed her to pay off more than $800,000 due in federal estate taxes over time and at a low interest rate, while prohibiting her from distributing more than fifty percent of the Trust assets, was a reasonable exercise of that discretion. In such circumstances, appellees argue that it is not the place of this Court to determine what alternative actions may have been more beneficial to the Trust and beneficiaries thereof in hindsight.

A. The trial court's January Order addressed the applicable law in analyzing whether Carolyn breached her fiduciary duty.

A "fiduciary duty is, in general, a duty to act for the benefit of another on matters within the scope of the parties' relationship." *Plank*, 469 Md. at 601 (citing Restatement (Third) of Torts: Liab. For Econ. Harm § 16 (A.L.I. 2020) ("Restatement (Third) of Torts")). "To establish a breach of fiduciary duty as an independent cause of action, a plaintiff must show: (i) the existence of a fiduciary relationship; (ii) breach of the duty owed by the fiduciary to the beneficiary; and (iii) harm to the beneficiary." *Id.* at 599 (citation and internal quotation marks omitted).

It is well established that the fiduciary relationship "between a trustee and the beneficiary of a trust" arises "as a matter of law." *Id.* at 601 (quoting Restatement (Third)

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the Declaration, as modified by the Expression of Wishes. Mindful of our role, we do not endeavor to make appellants' arguments for them. Accordingly, we do not fully address these arguments here.

of Torts § 16 cmt. a). All fiduciary relationships "have 'general responsibilities that are common to all settings,' such as a duty of loyalty, and an obligation to avoid self-dealing and conflicts of interest." *Id.* at 601 (quoting Restatement (Third) of Torts § 16 cmt. a) (cleaned up). Beyond that, the "particular obligations of a trustee are defined by the law of trusts." *Id.* at 601 (quoting Restatement (Third) of Torts § 16 cmt. a) (cleaned up).

At common law, "[a] trustee owes to the beneficiaries of a trust duties of administration, prudence and loyalty." *Hastings v. PNC Bank, NA*, 429 Md. 5, 25 (2012). "The trustee's duty of loyalty . . . is well-established in the common law." *Id.* (citing *Bd. of Trustees v. Mayor of Balt.*, 317 Md. 72, 109 (1989)). Generally, "the duty prohibits a trustee from using the property of a beneficiary for the trustee's own purpose." *Id.* (citation omitted). Trustees are prohibited from placing themselves "in any position where [their] self-interest will or may conflict with [their] duties as trustee" and "using the advantage of [their] position to gain any benefit for [themselves] at the expense of the beneficiary." *Id.* (quoting *Hughes v. McDaniel*, 202 Md. 626, 632 (1953)).

A trustee's duty of loyalty, however, is not absolute. *Id.* Indeed, "[a] trustee may engage in an otherwise-prohibited course of action if authorized '. . . by the instrument creating the trust[.]'" *Id.* (quoting *Goldman v. Rubin*, 292 Md. 693, 706 (1982)).[10]

[10] Appellants argue that the Maryland Trust Act should also apply in this case. In 2014, the General Assembly passed the Maryland Trust Act ("the Act"). Md. Code (1974, 2022 Repl. Vol.), § 14.5-101, et seq. of the Estates and Trusts Article ("ET"). "The Act 'provides a more comprehensive codification of the law of trusts within the Maryland Code. It partially codifies the existing law in Maryland governing trusts, but also contains modifications and additions to existing law.'" *In re Tr. Under Item Ten of Last Will & Testament of Lanier*, 262 Md. App. 396, 419 (2024) (quoting *Hector v. Bank of N.Y. Mellon*, 473 Md. 535, 561 (2021)). The Act "applies to all trusts created before, on, or

The Restatement (Third) of Trusts addresses the duty of prudence with which a trustee must administer a trust:[11] "(1) The trustee has a duty to administer the trust as a prudent person would, in light of the purposes, terms, and other circumstances of the trust[;] (2) The duty of prudence requires the exercise of reasonable care, skill, and caution. . . ." Restatement (Third) of Trusts § 77 (A.L.I. 2007) ("Restatement (Third) of Trusts"). The comments to this provision bear out the relevant standards:

> In matters relating to the administration of the trust, the trustee has a duty to exercise prudence—that is, to act with care, skill, and caution. . . .
>
> The test of prudence is one of conduct not of performance. The trustee's conduct, and compliance with other fiduciary standards, is to be judged as to the time of the decision or action in question.

after January 1, 2015[.]" ET § 14.5-1006(a)(1). Further, "[a] rule of construction or presumption provided in [the Act] applies to trust instruments executed before January 1, 2015, unless there is a clear indication of a contrary intent in the terms of the trust[.]" ET § 14.5-1006(a)(4). The Act, however, does not apply to "judicial proceedings concerning trusts commenced before January 1, 2015[,]" or to "act[s] done before January 1, 2015[.]" ET § 14.5-1006(a)(3), (5). Here, some of the challenged actions occurred prior to January 2015. Moreover, appellants do not cite to a particular provision of the Act for us to determine whether it involves a rule of construction or presumption that would, nevertheless, be applicable to this judicial proceeding. Accordingly, we decline to grapple with the applicability of the Act to the present case.

[11] Appellants reference both the Restatement (Third) of Torts and the Restatement (Second) of Trusts in their brief. Appellants, however, do not make clear when they are citing the Restatement (Second) of Trusts. Moreover, appellants' table of contents does not list the Restatement (Second) of Trusts provisions to which the brief refers. After thoroughly reviewing both Restatements, it appears that the only Restatement (Third) of Torts provision to which appellants cite is Section 16; all other citations appear to be to the Restatement (Second) of Trusts. Our recent case law on the subject, however, has cited to the Restatement (Third) of Trusts. *See In re Tr. Under Item Ten of Last Will & Testament of Lanier*, 262 Md. App. at 420-24. Accordingly, we rely here on the parallel provisions of the Restatement (Third) of Trusts.

> Thus, the prudence of a trustee's conduct is to be judged on the basis of circumstances at the time of that conduct, not with the benefit of hindsight or by taking account of developments that occur after the time of the action or decision. Also, whether a breach of trust has occurred depends on the prudence or imprudence of the trustee's conduct, not on the eventual results of managerial or other decisions.

Id. § 77 cmt. a. Whether a trustee's actions comply with the duty of prudence is judged by an objective standard:

> The duty of prudence encompasses the duty to exercise reasonable care and skill in trust administration and the duty to act with a degree of caution suitable to the particular trust and its objectives, circumstances, and overall plan of administration.
>
> The duty of care requires the trustee to exercise reasonable effort and diligence in planning the administration of the trust, in making and implementing administrative decisions, and in monitoring the trust situation, with due attention to the trust's objectives and the interests of the beneficiaries. . . .
>
> . . .
>
> More is required than the exercise of reasonable care alone, for a trustee may be liable for losses that result from failure to use the skill of an individual of ordinary intelligence, despite use of all the skill the particular trustee possesses. . . .

Id. § 77 cmt. b (emphasis omitted).

Further, a trustee is obligated to protect trust property. *Id.* § 76. "This duty includes the use of reasonable care to protect trust property from loss or damage . . . as a prudent person would for the protection and preservation of trust property." *Id.* § 76 cmt. d.[12]

[12] Additionally, appellants cite provisions of the Restatement of Trusts pertaining to a trustee's duty to furnish information about the trust to beneficiaries. *See* Restatement (Third) of Trusts § 82. Appellants, however, fail to explain how any such breach caused

Appellants argue that the trial court ignored these standards, and relied only on provisions within the Trust documents to conclude that, beyond failing to provide an accounting to Steven and remit tuition payments to Matthew, Carolyn did not breach her fiduciary duty as trustee. We are not persuaded. True, the trial court provided in its January Order that "[t]he primary sources of fiduciary duty in this case come from the Trust documents themselves. . . . [T]he trustee's discretion is quite broad, as is common in such documents. However, this discretion is not unlimited." Indeed, in concluding that Carolyn did not breach her fiduciary duty by not distributing Trust assets promptly, the trial court explained:

> [T]he Trust documents give the Trustee the discretion to carry on the businesses or business interests "for such period of time as shall be in the best interests of Grantor's estate or any trust created hereunder." ([citing § 6.02(a)(ii) of the Trust document]).
>
> As set forth above, Carolyn [] did not steal or embezzle anything. She did not even seek to collect the trustee commissions to which she was entitled. None of the trust assets are "missing." It is easy to say with hindsight that she should have made different decisions, but none of the decisions she made regarding the assets rises to a breach of her fiduciary duties as trustee (except as to the failure to distribute to Matthew . . .). She made the decision to tie up the assets for many years in order to take advantage of the 6166 tax Agreement. The Court finds this decision to be a proper exercise of her discretion.

harm to Steven or Arthur. Because harm to the beneficiary is a required element in a breach of fiduciary duty claim, we decline to address whether Carolyn breached her duty to provide information concerning the Trust to Steven or Arthur.

The trial court, however, did not end its analysis there. Indeed, the trial court went on to weigh the expert testimony offered by both parties, which opined on the reasonableness of Carolyn's conduct and whether such conduct constituted a breach of fiduciary duty under the applicable standards. Regarding appellants' expert, the trial court agreed with testimony that Carolyn failed to provide informal accountings. The trial court, however, disagreed with the expert's opinion that Carolyn "owed a duty to distribute promptly, or that she breached a fiduciary duty by entering into the 6166 Agreement." The trial court explained that, in its view, "[w]hile [Carolyn] certainly could have made distributions, and she certainly failed to provide Steven information in a timely manner, the Court is not persuaded that her fiduciary duty required her to distribute the Trust assets earlier." (emphasis omitted).

The trial court further credited appellees' expert who testified about the "financial workings of the Trust" and opined that Carolyn's decisions, including entering into the 6166 Agreement, "were within the scope of her discretion as Trustee." Similarly, the trial court credited appellees' expert witness, Jonathan Lasley, Esquire.[13] The trial court agreed with Mr. Lasley's "opinion that Carolyn [] acted within the 'reasonable care' standard when she entered into the 6166 Tax Agreement with the IRS and delayed distributions."

From these excerpts of the January Order, we conclude that the trial court did not look to the Trust documents as the sole source of Carolyn's fiduciary duty. Rather, the

[13] Appellants argue that Mr. Lasley was improperly admitted as an expert on trust administration. Because, as we shall explain, appellants waived their challenge to Mr. Lasley's expert witness designation, we find no error in the trial court's reliance on Mr. Lasley's testimony.

trial court's conclusion that Carolyn did not breach her fiduciary duty was guided by the Trust documents, as well as the relevant standards as highlighted by counsel and the parties' expert witnesses.

B. The trial court did not err in concluding that Carolyn only breached her fiduciary duty by failing to provide an accounting to Steven and remit tuition payments to Matthew.

Next, appellants contend that the trial court erred in finding that Carolyn did not breach her fiduciary duty by failing to make the Trust properties income producing, treating all beneficiaries equally, and failing to remit distributions for living expenses to Arthur during his lifetime.

Regarding the first contention, appellants argue that Carolyn's actions -- repairing the properties one by one, entering the 6166 Agreement with the IRS, and not selling off properties that were not income producing -- were imprudent. Rather, appellants argue that Carolyn should have distributed the Trust. Accordingly, appellants contend that the trial court erred in concluding that Carolyn did not breach her fiduciary duty by entering the 6166 Agreement and failing to distribute the Trust more promptly.

At bottom, appellants merely argue that Carolyn should have chosen a different course of action. Simply because a different decision may have been more favorable to the trust or beneficiaries in hindsight does not mean the decision made constitutes a breach of fiduciary duty. This is so even if the decision made is not the best in retrospect. The trial court's conclusion, therefore, was not erroneous. To be sure, as the trial court aptly explained, the Declaration gave Carolyn discretion to continue carrying out the business, and Carolyn did just that in deciding to repair the Trust properties and rent them as decedent

had done. Although the properties were renovated slowly, and many remain unrented, one of appellees' expert witnesses, whom the trial court found credible, testified that Carolyn's management of the Trust property as a closely held business was reasonable. In such circumstances, we discern no error in the trial court's conclusion that Carolyn did not breach her fiduciary duty in her management of the Trust assets.

Further, Section 2.05 of the Declaration expressly vests Carolyn as trustee with the discretion to use Trust assets to pay and discharge estate or inheritance taxes if "deemed to be in the best interests of the trust estate and the beneficiaries thereof." Accordingly, we discern no error in the trial court's conclusion that Carolyn's decision to enter the 6166 Agreement did not constitute a breach of fiduciary duty.

As to appellants' argument that Carolyn failed to treat all beneficiaries equally, we similarly discern no error in the trial court's conclusion. Appellants contend that "Carolyn treated the Trust estate as if no beneficiaries existed, refusing to involve Steven and Arthur[.]" Appellants cite opportunities that Carolyn and Nancy had that Steven and Arthur were not offered as evidence that Carolyn failed to treat the beneficiaries equally and thereby breached her fiduciary duty. Specifically, appellants contend that Carolyn refused to accept appellees' assistance, used the Florida property as a vacation home for her family, and offered Nancy the opportunity to develop two Trust properties. Appellants, however, do not explain how the challenged conduct harmed them. In such circumstances, we decline to address this argument further.[14]

[14] Even if we were to consider this argument further, we discern no error. Indeed, at trial there was little, if any, evidence that Carolyn was benefitting from the Trust

Finally, appellants contend that Carolyn breached her fiduciary duty to Arthur by failing to set up a trust for him and provide him with distributions for living expenses therefrom as contemplated by the Expression of Wishes. Rather than being an exercise of the discretion vested in her by the Declaration and Expression of Wishes,[15] appellants contend that Carolyn's failure to distribute to Arthur constitutes an abdication of her discretion. The trial court explained:

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properties. Although there was evidence that Carolyn visited the Florida property, there was also evidence that she did so to perform maintenance and repairs on the property. Further, as noted *supra*, there was evidence that Carolyn neither stole nor misappropriated any trust assets and that she never "even [sought] to collect the trustee commissions to which she was entitled." Moreover, that Carolyn consulted with Nancy in connection with her administration of the Trust was precisely what the Expression of Wishes contemplated: "My daughter, [Carolyn] if she is serving as Trustee . . . will consult with my daughter, Nancy . . . , in connection with decisions and actions."

[15] Section 3.02(b) of the Declaration provides for the creation of a trust for Arthur's share to be distributed "for his benefit during his lifetime." Specifically, the Declaration provides that "[t]he Trustee may pay such amounts of income or principal for the benefit of [Arthur] as is determined in the Trustee's sole discretion to be proper" subject to one limitation:

> No distributions under this trust, or applications of property of this trust, shall be made or applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

Similarly, the Expression of Wishes vests the trustee with discretion and evinces a similar intent:

> Arthur . . . is fully expected to work until he reaches normal retirement age . . . . He may, however, receive income from the Trust principal on a monthly basis to augment his income. This amount will not exceed an amount determined by my Trustee to be appropriate.

> Arthur had a series of major life problems, including a serious accident in 2017. Ultimately, Carolyn did not distribute trust assets to Arthur, apart from letting him live rent free at the trust property. . . . Carolyn relied on the "Expression of Wishes" document in dealing with Arthur and deciding what, if anything, to distribute to him. She tried to work out an arrangement with Arthur regarding rent, but he did not or could not keep it.

(citations to record omitted).

On appeal, appellants assert that evidence adduced at trial established that Carolyn failed to exercise judgment regarding her discretion to distribute to Arthur. Specifically, appellants cite testimony concerning Arthur's financial and health struggles and a text message exchange between Carolyn and Nancy concerning Arthur's struggles which appellants characterize as their "acquiescence." Evidence adduced at trial, however, supports the trial court's conclusion that Carolyn did, in fact, exercise her discretion in deciding what, if anything, to distribute to Arthur. Indeed, there was evidence that Carolyn had discussed with Arthur arrangements for him to pay rent to cover costs associated with maintaining the Trust property that he lived in and discussed citations lodged against the property for violations of regulations. In such circumstances, it can hardly be said that Carolyn abdicated her discretion. Moreover, given the broad discretion that the Trust imparted on Carolyn, we find no error in the trial court's conclusion that Carolyn did not breach her fiduciary duty by failing to distribute to Arthur during his lifetime.

Because we discern no error in the trial court's conclusion that, apart from Carolyn's failure to provide an accounting to Steven and remit tuition payments to Matthew, there was no breach of fiduciary duty, we do not reach appellants' argument that Steven and

Pamela Gogol's testimony on rental income and the housing market respectively were improperly excluded. Indeed, both pieces of proffered testimony went directly to the issue of damages, and therefore is irrelevant in light of our conclusion that there was no further breach of fiduciary duty.

Similarly, we need not reach appellants' contention that the trial court abused its discretion by excluding Steven's testimony as to decedent's intent in creating the Trust after finding that such testimony was irrelevant. Appellants' only salient argument is that, in Arthur's context, Steven's proffered testimony concerning decedent's intent in leaving funds for Arthur's trust would be relevant to calculating damages.[16] Appellants do not challenge the validity of the Declaration, accompanying schedules, or the Expression of Wishes. Because we conclude that the trial court did not err in finding that Carolyn did not breach her fiduciary duty by failing to pay distributions to Arthur during his lifetime, we need not address whether the trial court erred in excluding Steven's testimony regarding decedent's intent.

III. The trial court did not err in concluding that Nancy is not subject to liability under the Maryland Trust Act or otherwise.

Appellants next argue that the trial court erred in concluding that Nancy was not liable as either a trustee or agent, reasoning that decedent appointed Nancy as co-trustee in

[16] In their reply brief, appellants assert that Steven's testimony about decedent's intent was relevant because it "both establishes Carolyn's malice, and rebuts her assertions that she was complying with Decedent's wishes in not distributing anything to Arthur." This argument was not raised in appellants initial brief, therefore, we do not address it. *See, e.g.*, *Jones v. State*, 379 Md. 704, 713 (2004) (explaining that we "ordinarily will not consider an issue raised for the first time in a reply brief").

2004. Further, appellants cite Carolyn's testimony regarding Nancy's involvement in the administration of the Trust as evidence that she was, at a minimum, an agent of the Trust. Appellees counter that the trial court was correct in concluding Nancy is not a co-trustee because the plain language of the Trust provides that Carolyn -- not Nancy -- is trustee. Further, appellees contend that the trial court's conclusion that Nancy's involvement with Trust administration was just as consistent with her being a confidante and sounding board to Carolyn was not clearly erroneous.

The trial court concluded that Nancy owed no duty to appellants because she is not a trustee, explaining that:

> The Trust documents clearly identify Defendant Carolyn Hoff as Trustee. Defendant Nancy Love is appointed as successor Trustee, only if Carolyn Hoff "is unwilling or unable to serve as Trustee." Plaintiff produced substantial evidence that Nancy Love was made aware of the Trust operations, that she participated in various Trust decisions, and that she sought renovations of certain properties. She received and deposited checks on occasion. She was listed as an additional insured on certain property insurance (including properties where she was a 1% owner). She even identified herself as an agent for Janetta Love on a government form. Plaintiff contends that the Court should treat her as a "Co-Trustee."
>
> The Court declines to declare Defendant Nancy Love a Co-Trustee. All of the evidence provided by Plaintiff is just as consistent with Nancy Love being an advisor, sounding board, and helper to Trustee Carolyn Hoff. The fact that Nancy Love acted at the request of Carolyn Hoff does not make her a Co-Trustee. She simply does not owe the fiduciary duties of a Trustee.

(citations to record omitted). We discern no error in this conclusion.

Indeed, pursuant to Section 6.06 of the Declaration:

> If Grantor is unwilling or unable to serve as Trustee, Grantor's daughter, CAROLYN R. HOFF, shall serve as Trustee. If she is unwilling or unable to serve as Trustee, Grantor's daughter, NANCY D. LOVE, . . . shall serve as Trustee.

By the plain language of the Trust, therefore, Carolyn became the sole trustee upon decedent's passing. Appellants cite to no evidence that Carolyn was either unwilling or unable to serve as trustee.

Instead, appellants cite a Trust document signed by decedent in April 2004 that provides, in pertinent part:

> The undersigned Trustee, pursuant to Section 6.06 of the JANETTA G. LOVE REVOCABLE TRUST . . . hereby delegates full power and authority to act as Trustee or Co-Trustee to her daughter, NANCY D. LOVE. Either the undersigned or NANCY D. LOVE may act as sole Trustee on her sole signature and authority, or they may act as Co-Trustees on their signatures and authority.

By its express language, however, this delegation only applied to the Revocable Trust, which ceased to exist upon decedent's death. To be sure, Article I of the Trust provides for the creation of the Revocable Trust during decedent's lifetime. Article II of the Trust contains provisions for after decedent's passing. Specifically, Section 2.02 provides in pertinent part that:

> Upon the death of Grantor, the Trustee shall establish a separate trust with the remaining principal of the trust estate and out of any accrued, accumulated and unpaid net income thereon, including all property received by the Trustee under the provisions of Section 2.01(a). The trust shall be known as the "JANETTA G. LOVE FAMILY TRUST" . . . .
>
> Upon the setting up of the JANETTA G. LOVE FAMILY TRUST as set forth in this ARTICLE, the JANETTA

> G. LOVE REVOCABLE TRUST created under ARTICLE I of this Declaration shall terminate.

The trial court, therefore, properly concluded that Nancy is not a co-trustee of the Trust.

Even if Nancy was not a trustee, appellants contend that liability should still attach under an agency theory, which appellants argue the trial court did not consider. In its well-reasoned opinion, the trial court did not address whether Carolyn was an agent of the Trust. We are not, however, convinced that this omission was in error. Appellants do not cite to where in the record they argued that Nancy was an agent and our review of the record leads us to conclude that appellants did not sufficiently advance the agency theory at trial. The only mention of Nancy serving as an agent of the Trust at trial concerned Nancy listing herself as agent on an application for a building permit filed in Washington, D.C.

Specifically, Nancy testified that she applied for the permit at Nancy's request. Nancy explained that, although she could have listed Carolyn's name on the application, she listed her own because she had professional experience applying for building permits through the Washington, D.C. government and, therefore, was familiar with the process. The trial court certainly addressed this evidence in its co-trustee analysis and concluded it was just as consistent with Nancy being a "helper" to Carolyn. In such circumstances, we conclude that the trial court's omission of a discussion as to whether Nancy was an agent of the Trust was not erroneous.[17]

[17] Notably, appellants do not appear to challenge any acts of Nancy separate and apart from those of Carolyn which, as we concluded *supra*, did not constitute a breach of fiduciary duty. Even if, therefore, we were inclined to conclude that Nancy was an agent of the Trust, appellants allege no acts to which additional liability would attach.

IV. Because Nancy was not a trustee, she was not entitled to have her attorneys' fees paid out of the Trust.

Next, appellants contend that, should we agree with the trial court's conclusion that Nancy was not a trustee, we must vacate the trial court's order to the extent that it awards Nancy attorneys' fees to be paid out of the Trust. Appellants reason that the Act provides that only trustees are entitled to be reimbursed out of a trust.[18] Appellees counter that the trial court properly awarded Nancy attorneys' fees payable out of the Trust because "Nancy only incurred those attorneys' fees because appellants sued her and alleged that she was a co-Trustee." Further, appellees argue that, based on "the allegation that she was a Trustee, Nancy was properly permitted to be reimbursed by the Trust for her attorneys' fees" pursuant to Section 14.5-709(a)(1) of the Act.

The trial court summarily ordered that appellants' claim that appellees "should reimburse the Trust for attorneys' fees is denied." As we shall explain, we conclude that the trial court abused its discretion in determining that Nancy was not required to reimburse the Trust for attorneys' fees.

As explained, *supra*, we are not convinced that the Act applies to the present action. Neither party argues that Section 14.5-709 of the Act provides a rule of construction or

[18] Appellants frame their question as challenging the trial court's conclusion that "[a]ttorney fees for Nancy and Carolyn are payable out of the Trust assets, but those of Steven and Matthew are not." In their opening brief, however, appellants only argue that the trial court abused its discretion in awarding Nancy attorneys' fees payable out of the Trust after concluding that she was not a trustee. Appellants do not raise the argument that Carolyn's attorneys' fees should not be payable out of the Trust until their reply brief. We, therefore, limit our review to the challenge to the trial court's conclusion that Nancy was entitled to have her attorneys' fees paid out of the Trust. *See, e.g.*, *Jones*, 379 Md. at 713.

presumption. *See* ET § 14.5-1006(a)(3), (4) (providing that, other than "rule[s] of construction or presumption," the Act does not apply to "judicial proceedings concerning trusts commenced before January 1, 2015"). Section 14.5-709 of the Act provides in pertinent part:

> (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:
>
> (1) Expenses that were properly incurred in the administration of the trust; and
>
> (2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

This provision is neither a rule of construction nor a rule of presumption. Accordingly, because the subject Trust was commenced before January 1, 2015, we conclude that Section 14.5-709 of the Act does not apply to the present judicial proceeding.

Notwithstanding, Section 14.5-709 of the Act mirrors the common law. Indeed, the Restatement (Third) of Trusts provides that "[a] trustee can properly incur and pay expenses that are reasonable in amount and appropriate to the purposes and circumstances of the trust and to the experience, skills, responsibilities, and other circumstances of the trustee." Restatement (Third) of Trusts § 88. As the comments explain,

> [t]he trustee can properly incur expenses for reasonable counsel fees and other costs in bringing, defending, or settling litigation as appropriate to proper administration or performance of the trustee's duties. . . .
>
> More complicated issues are presented by costs incurred by trustees in controversies, or in anticipation of possible litigation, involving allegations of breach of trust and thus exposing the trustee personally to risks such as surcharge or

> removal. To the extent the trustee is successful in defending against charges of misconduct, the trustee is normally entitled to indemnification for reasonable attorneys' fees and other costs; to the extent the trustee is found to have committed a breach of trust, indemnification is ordinarily unavailable. Ultimately, however, the matter of the trustee's indemnification is within the discretion of the trial court[.]

Id. § 88 cmt. d.

This provision and the accompanying comment expressly provide that payment of attorneys' fees out of trust assets is only contemplated for trustees. Appellees do not cite to any case law or statute providing that someone determined to be a mere beneficiary of a trust is entitled to have their attorneys' fees reimbursed by the trust. Because Nancy was not a trustee, the trial court's conclusion that Nancy's attorneys' fees were, nevertheless, payable out of the Trust, was an abuse of discretion.

V. The trial court did not err in limiting appellants' remedies to an accounting and payment of Matthew's tuition.

Appellants next assert that the trial court erred by limiting appellants' remedies to an accounting and payment of Matthew's tuition. As best as we can tell, appellants' argument is that the trial court erred in concluding that punitive damages were unavailable to them. In support of this contention, appellants cite the Restatement (Third) of Trusts[19] which provides that "punitive damages are permissible" in breach of fiduciary duty cases "under the laws of many jurisdictions." Restatement (Third) of Trusts § 100 cmt. d.

[19] In their brief, appellants incorrectly cite the Restatement (Third) of Torts for this proposition. The language which appellants quote, however, comes from the Restatement (Third) of Trusts.

Appellants urge that the Restatement's approach is consistent with Maryland's case-by-case approach of crafting remedies in breach of fiduciary duty cases.[20] Appellees counter that the trial court properly declined to award punitive damages because such a remedy is unavailable in equity.

After appellants rested their case, appellees moved for judgment, which the trial court granted as to appellants' claims for conversion, constructive trust, and injunctive relief. The trial court's grant of appellees' motion for judgment on these counts left two claims: a request that the trial court assume jurisdiction over the Trust, and an allegation of breach of fiduciary duties. The trial court explained: "[t]hat has the effect of eliminating punitive damages, because that is not an equitable remedy[.]"

Appellants are correct that the Supreme Court of Maryland has concluded that "a breach of fiduciary duty may be actionable as an independent action." *Plank*, 469 Md. at 625. In so holding, the Court noted that, "[t]he remedy for the breach is dependent upon the type of fiduciary relationship, and the historical remedies provided by law for the specific type of fiduciary relationship and specific breach in question, and may arise under a statute, common law, or contract." *Id.* Appellants, however, cite no authority providing that punitive damages are an appropriate remedy for breaches such as those involved here, namely Carolyn's failure as trustee to provide an accounting and follow the terms of the Trust to the extent that they provided Trust funds for Matthew's tuition. In such

[20] Appellants develop their argument that Maryland allows for punitive damages in breach of fiduciary duty cases more fully in their reply brief. As we explained *supra*, because these arguments were not fully developed until appellants' reply brief, we decline to address them here.

circumstances, we cannot say that the trial court erred in concluding that appellants are not entitled to punitive damages.

VI. Appellants waived their challenge to Jonathan Lasley's qualification as an expert on trust administration.

Finally, appellants argue that the trial court abused its discretion by qualifying appellees' witness Jonathan Lasley as an expert in the field of trust administration. According to appellants, Mr. Lasley was offered as an expert in estate planning, but not trust administration. In such circumstances, appellants urge us to remand to the trial court to reconsider the case without Mr. Lasley's testimony.[21] Appellees counter that, because appellants failed to object when Mr. Lasley was offered as an expert in the field of "estate and trust planning, tax and administration," appellants waived their challenge to his expert designation. Appellants respond that they properly preserved their challenge by objecting at the beginning of their cross-examination of Mr. Lasley when he opined on the difference between estate planning and trust administration.

Pursuant to Maryland Rule 2-517(a) ("Rule 2-517(a)"), "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."

[21] Additionally, appellants contend that the expert opinions to which Mr. Lasley testified were not properly supported by legal precedent. Appellants, however, do not cite to where in the record Mr. Lasley made these allegedly unsupported opinions. Accordingly, we decline to address this argument. *See Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 618 (2011) ("[A]ppellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented.").

Here, Mr. Lasley was offered by appellees "as an expert in the field of estate and trust planning, tax and administration." When asked if they objected to Mr. Lasley's qualification as an expert in the proffered fields, appellants stated:

> I would note, . . . that the scope as articulated in answers to interrogatories. And I will read it with respect to his scope. He's expected to testify regarding the administration of the trust in this matter, including, but not limited to, interpretation of the trust document, federal and state estate tax obligations, fiduciary duties, and applicable standard of care. And I have no objection to him testifying as to those, Your Honor.

Thereafter, appellees proceeded to question Mr. Lasley on matters related to estate and trust planning, trust administration, and taxation. Appellants lodged no objection to Mr. Lasley's testimony related to trust administration.

Subsequently, at the beginning of appellants' cross-examination of Mr. Lasley, the following transpired:

> [APPELLANTS]: . . . So is there a distinction between estate and trust planning and estate and trust administration?
>
> [JONATHAN LASLEY]: Sure. I mean, they, obviously one flows into the other, but yes.
>
> [APPELLANTS]: Can you describe the difference?
>
> [JONATHAN LASLEY]: Well, planning, you're looking at you're talking to the client, figuring out what the -- what their goals are, and how -- how -- how to implement them. So that may -- that involves document preparation and conversations. And you know, all -- all of those things to produce a final product. Administration kicks in typically in -- in -- certainly in this circumstance, upon the client's death. I mean, there may have been some administration efforts with respect to Mrs. -- the revocable trust during Mrs. Love's lifetime, but that's generally fairly nominal.

> [APPELLANTS]: So for the record, Your Honor, I would move to strike his testimony with respect to any sort of estate and trust administration, given that he was qualified as an expert in estate and trust planning, and tax administration.
>
> . . .
>
> THE COURT: I'll deny the motion.

Even if appellants are correct that there was nothing to object to when Mr. Lasley was admitted as an expert because no testimony had been made, we conclude that appellants failed to timely object. Indeed, Mr. Lasley testified about trust administration well before appellants objected at the beginning of his cross-examination. Moreover, by moving to strike Mr. Lasley's "testimony with respect to any sort of estate and trust administration," appellants necessarily conceded that Mr. Lasley testified on such matters prior to their motion, yet appellants made no prior objection. We, therefore, conclude that appellants waived their challenge to Mr. Lasley's qualification as an expert in the field of trust administration.

CONCLUSION

For the foregoing reasons, we conclude that appellants appealed a valid final judgment and, therefore, deny appellees' motion to dismiss. Further, we conclude that, to the extent appellants failed to comply with the Maryland Rules in their briefing, any such violations are not so egregious as to warrant dismissal.

Additionally, we conclude that the trial court did not err in finding that, aside from Carolyn's failure to provide an accounting to Steven and remit tuition payments to Matthew, Carolyn did not breach her fiduciary duties. We further conclude that the trial

court did not err in limiting appellants' remedies to an accounting and payment of Matthew's tuition. Furthermore, we conclude that appellants waived their challenge to Jonathan Lasley, Esq.'s qualification as an expert in trust administration.

Finally, we conclude that the trial court did not err in concluding that Nancy is not liable as either a trustee or agent of the Trust. In light of this determination, however, we conclude that the trial court erred in awarding Nancy attorneys' fees to be paid out of the Trust. We, therefore, vacate solely the trial court's order that Nancy need not reimburse the Trust for her attorneys' fees.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED, IN PART, AND VACATED, IN PART. COSTS TO BE PAID FOUR-FIFTHS BY APPELLANT AND ONE-FIFTH BY APPELLEE.