MEMORANDUM DECISION

ATTORNEY FOR APPELLANTS

April L. Edwards
Boonville, Indiana

ATTORNEYS FOR APPELLEES

S. Anthony Long
Long Law Office, P.C.
Boonville, Indiana

Scott M. Stratman
Stone & Stratman, LLP
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Douglas B. Hendrickson, et al.,
Appellants,

v.

Elizabeth Anne Stuart, as Successor Trustee of the Don Klippel Trust and as Personal Representative of the Estate of Donald C. Klippel, et al.,
Appellees.

May 17, 2021

Court of Appeals Case No. 20A-TR-1412

Appeal from the Warrick Circuit Court

The Honorable Greg A. Granger, Judge

Trial Court Cause No. 87C01-1704-TR-50

Bailey, Judge.

Case Summary

[1] This litigation concerns the administration of a trust created by Vera Lou Klippel ("Vera"). Upon Vera's death, Donald C. Klippel ("Klippel")—Vera's surviving spouse—became both the trustee and the lifetime beneficiary, with Douglas B. Hendrickson and Marla G. Hendrickson (the "Plaintiffs") among the remainder beneficiaries. The Plaintiffs filed the instant lawsuit against Klippel and the other remainder beneficiaries, alleging that Klippel committed a breach of trust. The Plaintiffs sought to have Klippel removed as the trustee. They also sought damages for the alleged breach of trust. Following a fact-finding hearing, the trial court determined that the trust instrument gave Klippel broad discretion in administering the trust. The trial court determined that the Plaintiffs ultimately failed to establish a breach of trust. The Plaintiffs appeal.[1]

[2] We affirm.

Issues

[3] The Plaintiffs list eight issues, which we consolidate and restate as follows:

1. Whether Klippel committed a breach of trust (a) in failing to provide financial reports to the remainder beneficiaries where the trust required reporting only to the "current" beneficiaries; or (b) in funding the trust and engaging in various transactions where the trust gave Klippel broad

[1] For ease of reading, references to the Plaintiffs often includes reference to two defendant-beneficiaries who filed cross-claims against Klippel; the Plaintiffs and those defendant-beneficiaries filed joint appellate briefs.

discretion in administering the trust and authorized distributions to himself when he deemed "desirable."

2. Whether the Plaintiffs have shown entitlement to reversal based upon their allegations that Klippel, who is no longer the trustee, tendered a deficient accounting.

3. Whether the judgment is clearly erroneous due to the entry of certain findings that amount to mere surplusage.

Facts and Procedural History

[4] In 2006, Vera executed the following estate-planning documents: (1) a trust agreement (the "Trust Agreement") establishing a revocable *inter vivos* trust, of which Vera was both the lifetime beneficiary and the initial trustee and (2) a pourover will that distributed substantially all of her estate to the trust. These documents were in effect when Vera died in 2013, with Klippel surviving her.

[5] Under the terms of the Trust Agreement, upon Vera's death, Klippel would become the lifetime beneficiary. He would also become the successor trustee. The successor trustee was obligated to "divide the residue of the trust estate" into two shares—the Marital Share and the Credit Shelter Trust (the "CST"). Ex. Vol. 12 at 78. The Marital Share, to be distributed to Klippel free from trust, was to consist of "the smallest fractional share, if any, of the residue of the trust estate [that] will result in no federal estate tax being due on [Vera's] gross estate." *Id.* at 79. The CST was to consist of the remainder of the trust estate. As for distributions from the CST, the Trust Agreement specified that

> [t]he Successor Trustee[, *i.e.*, Klippel,] shall pay and distribute to the Grantor's spouse, [*i.e.*, Klippel], or for his use and benefit, for and during his life, so much of the net income and such portions of the principal of the trust property as the Successor Trustee shall determine to be necessary **or desirable** to provide [Klippel] with health care, maintenance[,] and support, taking into consideration the standard of living to which [Klippel] has been accustomed, and taking into consideration the other income and cash resources known to the Successor Trustee to be available to him for such purposes.

Id. at 80 (emphasis added). The Trust Agreement also contained a provision related to financial reporting, providing that the successor trustee "shall provide financial reports . . . at least annually . . . to the **current beneficiaries**[.]" *Id.* at 85 (emphasis added). The Trust Agreement further provided that, upon Klippel's death, a charitable donation was to be made. Any remaining property was to be equally distributed among five individuals, including the Plaintiffs.

[6] In 2017, the Plaintiffs filed the instant action against Klippel (individually and in his capacity as trustee) and the other remainder beneficiaries. The Plaintiffs chiefly alleged that Klippel had engaged in improper self-dealing and had failed to follow the terms of the Trust Agreement in funding the CST, making distributions, and depleting the principal of the CST. There were also allegations that Klippel had failed to provide required financial reports and that a court-ordered accounting was deficient in several respects. The Plaintiffs ultimately alleged breach of trust. They sought, *inter alia*, removal of Klippel as trustee and damages for the allegedly improper administration of the CST.

Eventually, two of the defendant-beneficiaries brought a cross-claim against Klippel, raising the same claims that the Plaintiffs set forth in their complaint.

[7] In 2019, the Plaintiffs and the cross-claimants filed a Motion for Bifurcation, seeking a fact-finding hearing to address the allegations of improper trust administration so that, if successful, they could obtain the initial remedies of having Klippel removed as the trustee, having a successor trustee appointed, and having a receiver appointed to conduct an accounting. They sought to reserve the issue of damages. The trial court agreed to bifurcation, and the Plaintiffs filed a timely request for special findings. Following a fact-finding hearing, the trial court entered a written judgment in favor of Klippel. Therein, the trial court largely adopted Klippel's proposed findings. The trial court ultimately determined that Klippel "ha[d] not breached any duties as Trustee of the [CST] and should not be removed as Trustee." App. Vol. 4 at 181.

[8] The Plaintiffs filed the instant appeal. During the pendency of the appeal, Klippel died and his estate was substituted as a party on appeal. His death led the Appellees to file a motion to dismiss the appeal. Therein, the Appellees asserted that because the Plaintiffs sought to have Klippel personally removed as the trustee and because Klippel was no longer the trustee, the appeal should be dismissed as moot. In response, the Plaintiffs asserted that the appeal is not moot because, if this Court reverses the judgment, the Plaintiffs could obtain damages for breach of trust. Our motions panel denied the motion to dismiss, and we decline to revisit that ruling. Indeed, we cannot say that this appeal is moot insofar as the Plaintiffs are contending that Klippel committed a breach of

trust that could potentially lead to damages. However, insofar as the Plaintiffs sought to establish that Klippel should be removed as trustee due to his alleged actions or shortcomings, we note that Klippel is no longer personally serving as the trustee. Thus, we conclude that the appeal is moot insofar as the Plaintiffs sought to have Klippel personally removed as the trustee. *See T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019) (observing that a matter is "deemed moot when no effective relief can be rendered to the parties before the court" (quoting *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991)). We therefore do not address the Plaintiffs' arguments regarding the propriety of having Klippel personally serve as trustee.[2] Our review herein is limited to the Plaintiffs' arguments seeking to establish a breach of trust leading to damages.[3]

---

[2] The Trust Agreement names two individuals to jointly serve as successor trustee upon the death of Klippel. When the trial court issued its written order declining to remove Klippel as the trustee, the trial court included excess findings stating that those named individuals would not be suitable to serve as successor trustee. In November 2020, following the death of Klippel, this Court issued an order remanding the case for proceedings on the Plaintiffs' motion to appoint a successor trustee. In February 2021, the Plaintiffs filed a status report stating that the trial court had not yet appointed a successor trustee. Although the Appellees objected to the status report, they agreed that the court had not yet appointed a successor trustee. Thereafter, this Court issued an order accepting the Plaintiffs' status report, therein observing that "[t]he parties' filings suggest that . . . [a] ruling in this case may aid the trial court's efforts to appoint a successor trustee."

With this procedural posture in view, we proceed to address the live issues. In doing so, however, we note that—as further discussed herein—the court's findings related to the suitability of prospective trustees amount to surplusage. We discern no reason why those excess findings would be binding upon the trial court when appointing a successor trustee in this action. *See, e.g.*, *CBR Event Decorators, Inc. v. Gates*, 4 N.E.3d 1210, 1216 (Ind. Ct. App. 2014) (noting that the doctrines of claim preclusion and issue preclusion do not apply within the same action and that the related "law of the case" doctrine does not apply to "statements that are not necessary in the determination of the issues presented"); 50 C.J.S. *Judgments* § 912 ("By definition, res judicata only applies to new suits and is inapplicable in a continuation of the same suit; the technical rules of preclusion are not strictly applicable in the context of a single ongoing original action." (footnote omitted)).

[3] We therefore do not consider the Plaintiffs' request that we "remand[] with instructions to the Trial Court to enter an Order finding [that Klippel] . . . committed multiple egregious breaches of his fiduciary duties **which should have resulted in his removal**[.]" Reply Br. at 37 (emphasis added). Indeed, unless the Plaintiffs have demonstrated a viable connection to damages, the freestanding issue of removal is moot.

Discussion and Decision

[9] Where—as here—a trial court has entered special findings upon a party's timely written request, *see* Ind. Trial Rule 52(A), our role is to examine whether the evidence supports the findings and the findings support the judgment, *Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015). In conducting our review, we "shall not set aside the findings or judgment unless clearly erroneous" and shall give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." T.R. 52(A). In other words, we do not reweigh the evidence, *Masters*, 43 N.E.3d at 577*,* and we will reverse the judgment of the trial court only upon a showing of clear error, which is "that which leaves us with a definite and firm conviction that a mistake has been made," *id.* at 575 (quoting *Egly v. Blackford Cty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

[10] A finding is clearly erroneous if "the record contains no facts supporting [it] either directly or inferentially." *Town of Brownsburg v. Fight Against Brownsburg Annexation*, 124 N.E.3d 597, 601 (Ind. 2019). Moreover, the judgment—which must follow from the findings—"is clearly erroneous if the court applied the 'wrong legal standard to properly found facts.'" *Id.* (quoting *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016)). Further, although we defer to the court's factual findings, to the extent that an appeal turns on questions of law, we review questions of law *de novo*. *Id.*

[11] As to the instant findings, the Plaintiffs note that the findings are substantially the same as those proposed by Klippel. A trial court is not prohibited from

adopting verbatim one party's proposed findings. *See River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 916 (Ind. 2020). However, the practice "'weakens our confidence' that those findings were 'the result of considered judgment,'" and so we keep that in mind while conducting our review. *Id.* (quoting *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 273 n.1 (Ind. 2003)).

Breach of Trust

[12] Pursuant to Indiana Code Section 30-4-3-6(a), a trustee "has a duty to administer a trust according to the terms of the trust." Moreover, "unless the terms of the trust . . . provide otherwise," the trustee also has certain statutorily enumerated duties, including a duty to "[p]reserve the trust property[.]" Ind. Code § 30-4-3-6(b). The trustee commits a breach of trust by violating "any duty [that] is owed to the . . . beneficiary." I.C. § 30-4-1-2(4). "Beneficiary" means both "an income beneficiary . . . and a remainder beneficiary." I.C. §§ 30-4-1-2(3), 30-2-14-2(2). "Remainder beneficiary" means "a person entitled to receive principal when an income interest ends." I.C. § 30-2-14-11.

[13] To evaluate a claim of breach of trust, a court must interpret the terms of the trust instrument. *See* I.C. § 30-4-3-6. The interpretation of a trust instrument is a question of law that we review *de novo*. *Univ. of S. Ind. Found. v. Baker*, 843 N.E.2d 528, 531 (Ind. 2006). In interpreting a trust instrument, our role is to "ascertain and give effect to the settlor's intention[.]" *Id.* at 532. In doing so, we adhere to the "four corners rule," under which we discern intent from the language used in the instrument. *Id.* That is, where the instrument "is capable

of clear and unambiguous construction," we "give effect to the [instrument's] clear meaning without resort to extrinsic evidence." *Id.* We also consider the writing as a whole, "striv[ing] to give effect to every provision, clause, term, or word if possible." *Carlson v. Sweeney, Dabagia, Donoghue, Thorne, Janes & Pagos*, 895 N.E.2d 1191, 1197 (Ind. 2008). Ultimately, unless the Trust Code "clearly prohibit[s] or restrict[s]" the action purportedly authorized by the trust instrument, the terms of the instrument will control. I.C. § 30-4-1-3. Put differently, if the trust instrument permits an action, the trustee generally cannot be said to have breached a fiduciary duty by taking the action. *See id.*; *Shriner v. Sheehan*, 773 N.E.2d 833, 846 (Ind. Ct. App. 2002) (noting that "a cause of action for breach of trust is a claim for breach of fiduciary duty"), *trans. denied*.

Reporting

[14] Below, the Plaintiffs asserted that Klippel committed a breach of trust by failing to provide financial reports to the remainder beneficiaries. The trial court rejected this claim, determining that the Trust Agreement did not require the reporting. On appeal, the Plaintiffs claim that the trial court clearly erred in interpreting the Trust Agreement. They focus on the following provision: "The . . . Successor Trustee[] shall provide financial reports concerning the trust at least annually . . . to the **current beneficiaries** of the trust." Ex. Vol. 12 at 85. According to the Plaintiffs, the phrase "current beneficiaries" "include[s] the remainder beneficiaries," *i.e.*, the Plaintiffs. Br. of Appellants at 72.

[15] The Trust Agreement does not define "current beneficiaries." Moreover, this phrase is not defined in the Indiana Trust Code and it does not appear to be a term of art. As we proceed to interpret the language used in the Trust Agreement, we note that the word "beneficiaries," unmodified, would have referred to Klippel and all remainder beneficiaries. *See* I.C. §§ 30-4-1-2(3), 30-2-14-2(2) (defining beneficiary as "an income beneficiary . . . and a remainder beneficiary"). Thus, if Vera intended to refer to Klippel and all remainder beneficiaries, there would be no need to modify "beneficiaries." Indeed, any modification would be superfluous. Yet, Vera chose to modify "beneficiaries" with the word "current." "Current" means "presently elapsing," "occurring in or belonging to the present time," or "in evidence or in operation at the time actually elapsing[.]" *Webster's Third New Int'l Dictionary*, 557 (2002).

[16] Giving meaning to every word in the phrase, we conclude that Vera intended to refer to beneficiaries currently entitled to receive distributions. In other words, the reference is to those who stand to benefit "at the time actually elapsing." *Id.* In this case, the current beneficiary would be Klippel, the lifetime beneficiary. Therefore, under the terms of the Trust Agreement, Klippel was not obligated to provide annual financial reports to the remainder beneficiaries. Because the Trust Agreement did not require annual reporting, we cannot say that the Plaintiffs have demonstrated clear error in the court's rejection of this claim.[4]

---

[4] In arguing entitlement to financial reports, the Plaintiffs also quote Indiana Code Section 30-4-3-6, which imposes additional duties upon the trustee so long as the terms of the trust instrument do not provide

Transactions

[17] The Plaintiffs challenge the propriety of certain transactions that Klippel made in his capacity as the successor trustee. Specifically, the Plaintiffs contend that Klippel committed a breach of trust by (1) failing to adhere to the applicable standard set forth in the Trust Agreement when he distributed principal and income to himself; (2) removing principal to pay attorney's fees and trustees fees; (3) failing to fully fund the CST in accordance with the Trust Agreement; (4) purchasing real estate from the CST; and (5) transferring stock to one of the remainder beneficiaries rather than to all of the remainder beneficiaries.

Distributions to the Lifetime Beneficiary

[18] In claiming that Klippel, as the trustee, exceeded his authority in making distributions to himself, as the lifetime beneficiary, the Plaintiffs focus on the following provision in the Trust Agreement (the "Discretionary Provision"):

---

otherwise. Although the Plaintiffs quote this statute, the Plaintiffs do not directly argue that the statute applies. Indeed, in the section of the Brief of Appellants focused on entitlement to reports, the supporting argument is limited to the following: "[A witness] testified, while 'current beneficiaries' is not defined in the Trust Code, this term would include the remainder beneficiaries such as [the Plaintiffs.] Based upon the evidence, the Trial Court committed clear error in finding the Appellants were not entitled to financial reports." Br. of Appellants at 72. In a separate section, the Plaintiffs cursorily assert without citation to authority that the "Trust Code sets forth two kinds of accountings, an annual statement and a court ordered accounting" and the Trust Agreement "did not opt out of annual statements." *Id.* at 74. We have addressed the Plaintiffs' argument that "current beneficiaries" includes reference to remainder beneficiaries, an issue adequately addressed elsewhere in the briefing. *See id.* at 39-41. However, to the extent the Plaintiffs are attempting to argue that Section 30-4-3-6 independently requires regular reporting, we deem the contention waived due to the failure to develop cogent argument as to why reporting aspects of the statute apply when the Trust Agreement contains a provision limiting reporting. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring the argument section to contain "the contentions of the appellant on the issues presented, supported by cogent reasoning"); *Wentz v. State*, 766 N.E.2d 351, 362 (Ind. 2002) (identifying appellate waiver).

> The Successor Trustee[, *i.e.*, Klippel,] shall pay and distribute to the Grantor's spouse, [*i.e.*, Klippel], or for his use and benefit, for and during his life, so much of the net income and such portions of the principal of the trust property as the Successor Trustee shall determine to be necessary **or desirable** to provide [Klippel] with health care, maintenance[,] and support, taking into consideration the standard of living to which [Klippel] has been accustomed, and taking into consideration the other income and cash resources known to the Successor Trustee to be available to him for such purposes.

Ex. Vol. 12 at 80 (emphasis added).

[19] The Plaintiffs direct us to portions of the judgment indicating that the trial court read the Discretionary Provision as conferring upon Klippel the unfettered power to make distributions to himself. For example, the court stated that, "[i]f Vera . . . had intended to limit or restrict . . . Klippel's use or access to the trust assets," she "could have used more restrictive language than 'necessary or desirable,'" but "she did not include such language." App. Vol. 4 at 167. The Plaintiffs argue that the Discretionary Provision did not confer unfettered power to make distributions. According to the Plaintiffs, the court erred in its expansive interpretation, and the adverse judgment is predicated on that error.

[20] The Plaintiffs contend that the Discretionary Provision instead imposes a restrictive standard. In advancing their reading of the Discretionary Provision, the Plaintiffs have largely focused on the federal-estate-tax implications of the competing interpretations. The Plaintiffs assert that Vera intended to create a limited power of appointment under federal law—*i.e.*, an "ascertainable

standard" that limits the trustee's discretion to make distributions—rather than a general power of appointment that does not provide such a limitation. *See* 26 U.S.C. § 2041(b)(1)(A) ("A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment."); 26 C.F.R. § 20.2041-1(c)(2) (noting that a limited power of appointment exists "if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them)").

[21] The Plaintiffs direct us to extrinsic evidence indicating that Vera intended to take advantage of the tax exemption, which would be available to her heirs only if there was a limited power of appointment. *See, e.g.*, Br. of Appellants at 55 (focusing on testimony that a general power of appointment would "destroy" Vera's intent to take advantage of the tax exemption). The Plaintiffs assert that, at one point, the court found that Vera intended to take advantage of that tax exemption. The Plaintiffs suggest that the judgment is internally inconsistent.

[22] First, we note that this Court must interpret the Trust Agreement *de novo*. In doing so, we must adhere to the "four corners rule," attempting to discern intent from the language used in the trust instrument. *Baker*, 843 N.E.2d at 532. Thus, to the extent the trial court made findings pertaining to Vera's intent, those findings will not guide our interpretation of an unambiguous writing; an unambiguous writing speaks for itself. *See, e.g.*, *Vic's Antiques & Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300, 306 (Ind. Ct. App. 2020), *trans. denied*.

[23] In support of their reading of the Discretionary Provision, the Plaintiffs cite to the Indiana Supreme Court's opinion in *Carlson*. We note that the *Carlson* Court looked to extrinsic evidence of intent. 895 N.E.2d at 1193. Critically, however, that case involved an action to **reform** an instrument to comport with the testator's intent, not to **enforce** the instrument as written. *Id.* Here, the Plaintiffs have not sought to reform the Trust Agreement. *See* I.C. § 30-4-3-25 (permitting reformation "[u]pon petition by an interested party"). Ultimately, in an action like this one—brought to enforce a written instrument rather than to reform it—a court may resort to extrinsic evidence only if the instrument is ambiguous or if the evidence is useful for a purpose other than "contradicting the meaning of [the] instrument[.]" *Baker*, 843 N.E.2d at 532-33.[5] "[L]anguage is ambiguous only if reasonable people could come to different conclusions as to its meaning." *Id.* at 532. As to meaning, unless there is language in the instrument clearly indicating that the settlor "did not use the words in question in their plain and ordinary sense," we will apply the plain and ordinary meaning of the words at issue. *West v. Rassman*, 34 N.E. 991, 995 (Ind. 1893).

[24] Here, the Discretionary Provision permits distributions to Klippel whenever "necessary **or desirable**" for his health care, maintenance, and support, "taking

---

[5] In arguing that Vera intended for the Discretionary Provision to have a specific meaning, the Plaintiffs cite to several other cases, including cases from other jurisdictions. Ultimately, however, the Plaintiffs have not cited to a binding case that supports considering extrinsic evidence of intent to contradict an unambiguous writing. As to the Plaintiffs' arguments regarding intended meaning, we note that if a settlor intends to limit the trustee's discretion, but mistakenly adopts language conferring broad discretionary power, the settlor's unilateral mistake could support reformation of the trust instrument upon a petition to reform. *Carlson*, 895 N.E.2d at 1199. However, until reformation, the language in the trust instrument is controlling. *See id.*

into consideration the standard of living to which [Klippel] has been accustomed, and taking into consideration the other income and cash resources known to the Successor Trustee to be available to him for such purposes." Ex. Vol. 12 at 80 (emphasis added). Something that "merits or attracts desire" is "desirable." *Webster's Third New Int'l Dictionary*, 612 (2002). Moreover, if something is desired, it is the "object of longing" or "intense yearning." *Id.*

[25] We conclude that the Discretionary Provision is unambiguous. Indeed, although the Discretionary Provision states that the trustee must "tak[e] into consideration" Klippel's standard of living and the resources available to him, the provision plainly authorizes a distribution when **desirable**. Ex. Vol. 12 at 80. Because of the broad discretion conferred—with distributions authorized based upon desire, *i.e.*, longing or yearning, rather than a need arising from a lack of actual resources—the language regarding the availability of resources does not provide a meaningful limitation on the power to make distributions.

[26] All in all, for the reasons stated, we conclude that the Discretionary Provision permitted Klippel to make distributions whenever he wanted. Moreover, because the Discretionary Provision gave Klippel broad discretion in making distributions of principal and income, we note that Klippel was not bound by

conflicting statutory duties, such as the duty to "[p]reserve the trust property[.]" I.C. § 30-4-3-6(b). We ultimately discern no restraint on making distributions.[6]

[27] Having concluded that Klippel had broad discretion in making distributions, we are unpersuaded that the trial court clearly erred in failing to find that Klippel committed a breach of trust when he made various distributions to himself. Furthermore, in light of Klippel's broad discretion to make distributions to himself, we can readily dispose of other appellate claims. Indeed, to the extent that the Plaintiffs argue that an accounting Klippel filed was not specific enough to explain the purpose of various transactions, we note that any unspecified transaction could be characterized as a discretionary distribution authorized by the Trust Agreement. Moreover, to the extent that the Plaintiffs contend that Klippel improperly used trust funds to pay for attorney's fees, to pay himself a trustee's fee, and to adjust for an alleged overpayment into the CST, those transactions could also be characterized as discretionary distributions plainly authorized by the Trust Agreement. Therefore, in light of Klippel's broad discretion, we are ultimately unpersuaded that the trial court clearly erred in

[6] To the extent the Plaintiffs contend that federal law supports a different reading, we note that the scope of rights and responsibilities under a trust instrument is a matter of state law. *Carlson*, 895 N.E.2d at 1196. Having reviewed the cited authorities, we are unpersuaded that we should read the Discretionary Provision as substantially limiting the trustee's discretion to make distributions. Rather, applying the plain meaning of the language used in the Discretionary Provision, distributions were proper whenever desirable. *Accord* Rev. Rul. 77-60, 1977-1 C.B. 282 ("[T]he power . . . to invade trust principle **as desired** to continue an accustomed standard of living was not limited by an ascertainable standard relating to health, education, support or maintenance. Therefore, the decedent possessed . . . a general power of appointment[.]" (emphasis added)).

declining to find a breach of trust based upon a lack of specificity in the records or in the depletion of trust assets for purposes deemed appropriate by Klippel.

Underfunding

[28] The Trust Agreement specifies that Klippel was obligated to establish two shares, his Marital Share—an amount to be calculated based on tax liability and taken free from trust—and the CST, which was to consist of the balance of the trust estate. The Plaintiffs argue that Klippel failed to fully fund the CST. Yet, even assuming *arguendo* that Klippel failed to fully fund the CST, the Plaintiffs have not explained why any shortfall cannot be characterized as a discretionary distribution. In other words, the Plaintiffs have relied on their interpretation of the Trust Agreement and have not provided arguments in the alternative showing the materiality of any alleged underfunding. Ultimately, in light of Klippel's broad discretion to remove assets from the CST, we cannot say that the Plaintiffs have demonstrated clear error as to the alleged underfunding.

Purchase of Real Estate

[29] The Plaintiffs argue that Klippel committed breach of trust by purchasing real estate from the CST. In so arguing, the Plaintiffs focus on provisions of the Indiana Code that generally prohibit a trustee from engaging in self-dealing or conflict-of-interest transactions. *See* I.C. §§ 30-4-3-5, -7(a). Critically, however, the terms of the Trust Agreement control. *See, e.g.*, I.C. §§ 30-4-3-5(a)(3) (allowing a trustee to engage in transactions where "[t]he exercise of the power is specifically authorized by the terms of the trust"), -7(a) (prohibiting self-

dealing "[u]nless the terms of the trust provide otherwise"). Having concluded that the Trust Agreement authorized Klippel to distribute principal and income to himself as desired, without payment to the CST, the Plaintiffs have not demonstrated clear error regarding any purchase of real estate from the CST.

Stock Transfer

[30] Finally, the Plaintiffs argue that Klippel improperly transferred shares of stock that were allocated to the CST. The Plaintiffs point out that Klippel transferred those shares directly to one of the remainder beneficiaries, not to all of them. Yet, regardless of who benefitted from Klippel's decision to remove an asset from the CST, because Klippel was afforded broad discretion to make distributions desirable to him, we cannot say that Klippel was prohibited from exercising control over shares of stock and disposing of them as he desired.[7]

[31] All in all, for the foregoing reasons, the Plaintiffs have failed to demonstrate that the court clearly erred when it determined that there was no breach of trust.

Accounting

[32] The Plaintiffs contend that the trial court ordered Klippel to prepare an accounting and that Klippel's accounting fell short of that which was required.

---

[7] The Plaintiffs inform us that there is separate litigation regarding the shares. Apart from deciding herein that Klippel had the authority to engage in the alleged transfer, we decide nothing further about the shares.

The Plaintiffs focus on Indiana Code Section 30-4-5-13, which they assert contains the information that Klippel should have included in the accounting.

[33] In briefing, the Plaintiffs seem to primarily raise this issue as a ground for removing Klippel as the trustee, not as a ground for a breach of trust that would potentially lead to damages. *See* Br. of Appellants at 72-77 (addressing in a single section the alleged deficiencies in the accounting and the court's findings related to whether Klippel's age or health impacted his ability to perform his duties as trustee); 80 (asserting that "[a] trustee's failure to keep clear and accurate accounts as to what has been done with trust principal and income may warrant removal of a trustee") & 80-81 (arguing that "[t]he facts of this case demonstrate that [Klippel] should have been removed for his violations of his duties to the . . . CST beneficiaries by . . . [f]ailing to complete and file a trust accounting as ordered that accounts for all trust assets and income").

[34] Ultimately, because Klippel is no longer personally serving as the trustee, and because the Plaintiffs have not shown in their briefing how any alleged defect in the accounting prejudiced their substantial rights, we cannot say that the Plaintiffs met their burden of showing entitlement to reversal based upon the tendered accounting. *See* Ind. Appellate Rule 66(A) (specifying that we may reverse only upon a showing of reversible error); *Gray v. State*, 579 N.E.2d 605, 609 (Ind. 1991) (observing that the appellant bears the burden of establishing reversible error).

Surplusage

[35] Throughout their briefs, the Plaintiffs argue that the court erred in entering certain findings, including findings related to whether particular individuals would be suitable to serve as successor trustee. Notably, however, even if certain findings are erroneous, reversal is not warranted where the findings "amount to mere surplusage and add nothing to the trial court's decision." *Bell v. Clark*, 653 N.E.2d 483, 489 (Ind. Ct. App. 1995), *summarily adopted on transfer*.

[36] Here, our resolution of the Plaintiffs' claims and the ultimate issue at hand—whether the court clearly erred in determining that Klippel had not committed a breach of trust that could lead to damages—turned on our *de novo* interpretation of the Trust Agreement and has not required applying the challenged findings. Therefore, even if several findings were clearly erroneous or unnecessary, those findings amount to surplusage and do not support disturbing the judgment.[8]

Conclusion

[37] The Plaintiffs have not demonstrated that the judgment is clearly erroneous.

---

[8] In focusing on certain findings, the Plaintiffs cursorily assert that the court showed "clear bias" by adopting Klippel's "wish list" as expressed in his proposed findings. Br. of Appellants at 84. The Plaintiffs do not further develop their allegation of judicial bias. Therefore, we do not address this allegation beyond pointing out that a trial court is not prohibited from adopting one party's proposed findings, something a court might do to "keep the docket moving," which is "a high priority of our trial bench." *Prowell v. State*, 741 N.E.2d 704, 709 (Ind. 2001). Although we encourage courts to tailor findings whenever possible, we recognize that adopting proposed findings may be necessary due to limited judicial resources. *See id.* In this case, it is worth pointing out that the fact-finding hearing took fifteen days to complete, generating a voluminous record.

[38] Affirmed.

May, J., and Robb, J., concur.