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IN THE
COURT OF APPEALS OF INDIANA

In Re: Petition to Docket Trust of Mary Ruth Moeder

Susan Moeder,

Appellant,

v.

Robert W. York, Temporary Successor Trustee of the Irrevocable Trust of Mary Ruth Moeder,

Appellee.

September 22, 2022

Court of Appeals Case No. 21A-TR-2522

Appeal from the Marion Superior Court

The Honorable Steven R. Eichholtz, Judge

Trial Court Cause No. 49D08-0510-TR-41012

Weissmann, Judge.

[1] After withdrawing her share of funds from a family trust, Susan Moeder (Susan) spent the next 15 years trying to claim her disabled brother's remaining equal share as well. Several settlements, multiple court orders, and five appeals drove the trust's legal fees for administering and defending her brother's share to around $500,000. Susan now challenges the trial court's imposition of attorney's fees and a finding that her latest request for Trust information violated an agreement between the parties that she refrain from exactly that sort of conduct. We affirm the trial court in all respects and remand for a determination of appellate attorney's fees.

Facts

Background[1]

[2] Mary Ruth Moeder created the Mary Ruth Moeder Revocable Living Trust (Trust) in 1997, naming her two children, Susan and John Moeder, as the primary beneficiaries. The Trust provided that upon Mary's death, any assets would be divided equally by Susan and John, who is blind. After Mary died in 2001, Susan took control of the Trust as successor trustee.

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[1] The Trust requests that we take judicial notice of our decisions detailing the procedural history of this case and denying relief to Susan. We do so in accordance with Indiana Evidence Rule 201(a)(2)(C). We rely, in part, on the recitation of facts in our previous decisions when outlining the history of this proceeding. *Moeder v. York*, No. 20A-TR-1654 (Ind. Ct. App. June 22, 2021); *In re Moeder*, 27 N.E.3d 1089 (Ind. Ct. App. 2015), *reh'g denied*, *trans. denied*; *In re Moeder*, No. 49A02-1205-TR-377, 2012 WL 5328124 (Ind. Ct. App. Oct. 30, 2012).

[3] In 2005, Susan filed a guardianship petition alleging John had mild cognitive impairments and was incapacitated. John responded by attempting to terminate the Trust, presumably resulting in equal distributions to John and Susan. The probate court appointed Salin Bank & Trust Company (Salin) as guardian of John's estate only.[2]

[4] In 2006, the trial court authorized Susan to resign as trustee, appointed Salin as successor trustee, and ordered the distribution of Susan's one-half share of the Trust's assets to her. As John's share was not distributed, he became the main beneficiary of the Trust, and Susan became the contingent remainder beneficiary of John's share. The trial court also ordered that except for fees, the assets in the John W. Moeder Revocable Trust, a separate trust for John's benefit, must be exhausted before the Trust's assets could be distributed to or expended on behalf of John.[3]

Nine Years of Litigation, Appeals, Settlement Agreements, and Agreed Orders

[5] Although Susan had received her half share of the Trust, she sought to claim the remainder of the Trust for herself. She argued that John was incompetent or

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[2] The most recent assessment of John's abilities, offered by John's guardian ad litem, is that "John and his wife Jean (are) capable of managing their daily affairs of their lives" and that John does not need any assistance from Susan in managing his life in any way. App. Vol. II, p. 17. Susan does not contest the trial court's finding quoting that portion of the guardian ad litem's report. *Id.*; *see* Appellant's Reply Br., pp. 6-7.

[3] The record contains little information about the John W. Moeder Revocable Trust. According to pleadings filed by Susan, she established John as the sole beneficiary of that trust, which was "funded by the wrongful death proceeds she procured for [John] after their mother's death." App. Vol. III, p. 215.

disabled and therefore no longer a beneficiary of the Trust. In 2012, the trial court issued two orders that modified the Trust to allow payment of some of John's expenses and a distribution afterward of $1,500 a month to John to "supplement his meager earned income." Appellant's App. Vol. II, p. 197. Susan appealed both orders, and we affirmed in an unpublished decision that found, in part, that Susan ignored language in the Trust authorizing such payments. *In re Irrevocable Trust of Mary R. Moeder*, No. 49A02-1205-TR-377, 2012 WL 5328124, at *12-13 (Ind. Ct. App. Oct. 30, 2012).

[6] In 2013, a disagreement between Susan and a successor trustee for the Trust about payment of John's expenses led to further litigation. The trial court ultimately resolved it by ordering that the trustee can distribute Trust income or principal to or for John's benefit in such amount and at such times as the trustee deems appropriate. The trial court also found that the trustee could pay existing and future attorney fees associated with John's guardianship if approved by the guardianship court.

[7] Susan continued to object to payment of Trust monies to or for her brother's benefit. She challenged multiple accountings by the successor trustee and John's Guardian and accused the trustee of mismanagement. The court rejected

Susan's claims as either time-barred or unsupported by the facts and ordered her to pay the successor trustee's attorney fees of $106,001.28.[4]

[8] Years later, in 2017, the trial court dismissed or denied the last of Susan's objections to distributions from the Trust for the benefit of John or to pay the guardian's attorney fees. Sixteen days after that order, Susan, the successor trustee, and the current guardian of John's estate entered into a settlement agreement "to resolve all issues, claims, disputes, costs, and litigation as to the Trust, including without limitation the claims, allegations, and requests for costs that have been presented or could be presented in the action pending [in the Trust case]." App. Vol. III, p. 201. The settlement specified that: 1) Susan and the guardian of John's estate would identify a new successor trustee by November 30, 2017; 2) the current successor trustee would resign once the replacement was appointed no later than the end of 2017; and 3) the current successor trustee would "continue to provide periodic account statements to [Susan] with any other documents or information." *Id.*; App. Vol. V, p. 232. In accordance with the settlement, the trial court dismissed with prejudice all of Susan's claims encompassed by the agreement.

[9] Still, the disputes continued. Susan filed a 14-page challenge to the guardian's accounting, and they could not agree to a successor trustee. Unhappy with the

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[4] Susan appealed, and we affirmed. *Moeder v. Salin Bank & Tr. Co.*, 27 N.E.3d 1089, 1104 (Ind. Ct. App. 2015), *reh. denied*, *trans. denied*. Susan launched another appeal in 2016 but never filed an appellant's brief, leading to dismissal. *Matter of the Irrevocable Trust of Mary Ruth Moeder*, No. 49A05-1609-TR-2256 (Ind. Ct. App. May 18, 2017) (order dismissing appeal).

trial court's dismissal of her pending claims, Susan immediately began another appeal. *Moeder v. Salin Bank & Tr. and First Merchants Bank*, case number 20A-GU-368.

[10] Five days later, the parties submitted an agreed order (Agreed Order) that addressed both John's guardianship and ongoing Trust matters. The Agreed Order provided that Susan would dismiss her latest appeal and the current successor trustee would resign after two conditions were met: 1) payment from the Trust of attorney fees totaling $247,753.03 to the Krieg DeVault LLP law firm and $4,260.77 to the guardian over John's estate; and 2) the appointment of a temporary successor trustee. The Agreed Order also provided for the guardian to resign upon the guardianship court's appointment of a guardian ad litem (GAL) for John and further specified:

> The parties shall hold each other harmless and will not take any action against each other as a result of the above-described payments being made from the Trust, nor take any action against each other, or any of their attorneys, representatives or agents, for anything that occurred before the issuance of this Order or for compliance with this Order. In furtherance thereof, the Parties have each executed the attached "Mutual Release of the Parties" and is shall [sic] be fully binding on the Parties, their successors in interest and all of their heirs and assigns . . .
>
> Consistent with the Court's Order appointing a GAL, Susan shall have the right to openly communicate with [Robert] York, [the appointed temporary successor trustee, any GAL or any other guardian appointed for John, and, [sic] any subsequently appointed successor trustee of the Trust.

Appellant's App. Vol. V, pp. 55-56.

Additional Disputes and Demands

[11] Within months, as the Trust account assets diminished to $443,000, Susan initiated more disputes. *Id.* at 108. She refused to agree to any payment of the temporary successor trustee's fees. And she insisted on two pages of single-spaced revisions to the agreement with the investment firm that she had chosen for the Trust and to which the temporary successor trustee had acquiesced. Susan also was insisting that the Trust hire a CPA firm that she said charged one rate when, in fact, that firm had reported that it would charge more than twice as much.

[12] After the temporary successor trustee informed the trial court of the disputes, the trial court ordered the parties to confer and report. After yielding to some of Susan's demands and hitting a roadblock on others, the temporary successor trustee informed the trial court "that there is no likelihood of entering into any reasonable agreement with Susan regarding transfer of the Trust Assets." *Id.* at 111.

[13] In August 2020, in response to the temporary successor trustee's request for instructions on the Trust's construction, the trial court entered detailed orders that 1) approved the temporary successor trustee's fees, and 2) reiterated that the Trustee could make distributions from the Trust's principal and provide income for John's maintenance "as the Trustee deems appropriate at his or her sole discretion." *Id.* at 135. Susan appealed. We affirmed, finding her appeal to

be "frivolous, without merit, and in bad faith" and ordering appellate attorney fees. *Moeder v. York*, No. 20A-TR-1654, *13 (Ind. Ct. App. June 22, 2021).

The Demand Letter and More Litigation

[14] Despite the limitations placed on her, Susan continued to seek detailed information from the Trust. After her attorney asked about the attorney fees that Susan, under the Agreed Order, had agreed would be paid, Susan decided to take the matter into her own hands. She sent a letter to the temporary successor trustee demanding:

> "1. Executed copy of 2019 [Trust] State and Federal Tax Returns
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> 2. Executed copy of 2020 [Trust] State and Federal Tax Returns
>
> 3. Monthly statements from December 2020 forward and ongoing from [the Trust's investment firms] that (1) identify the account number and Legal title of these accounts, (2) the mailing address for these accounts, (3) the statement date, (4) date of each transaction, (5) itemized description of each transaction, (6) allocations to income and to principal of assets and of each transaction, (7) cost basis of assets, (8) current market value of assets, (9) estimated annual income of assets, (10) current yield of assets, and (11) all fees and expenses charged to and/or withdrawn from the accounts.
>
> 4. The current Investment Policy Statement executed with Deerfield for the [Trust] and all revisions going forward
>
> 5. The engagement agreements executed with Deerfield and Charles Schwab for the [Trust] and all revisions going forward
>
> 6. The Fee Policies in force with Deerfield and Charles Schwab for the [Trust] and all revisions going forward

> 7. Unredacted and itemized Invoices for legal fees paid to Hewitt Law from the [Trust] from February 2020-present
>
> 8. Unredacted and itemized Invoices for legal fees paid to Krieg DeVault from the [Trust] from April 2020-present . . .
>
> 9. The February 19, 2020 Agreed Order directs the resignation of First Merchants as the Guardian of the Estate of John W. Moeder and preserves my standing to communicate freely with you and Mr. Mathies about guardianship issues. The 2020 tax filing deadline is May 17, 2021. Therefore, it is urgent that you immediately confirm the filing of John Moeder's 2020 individual and guardianship tax returns.
>
> The February 19, 2020 Agreed Order directs your compliance with Indiana Trust Code and all pertinent laws as the Temporary Trustee of the [Trust]. I have now requested this information from you through legal counsel and directly, in writing. You may forward the above documentation to [Susan's counsel] using the contact information below. I would appreciate your prompt and full cooperation by the end of May so that I am not compelled to seek Court intervention to enforce Indiana Trust Code."

App. Vol. II, pp. 140-41 (emphases in original).

[15] Susan's demand letter led to still more litigation, and the temporary successor trustee eventually filed a petition for instructions with the trial court. After a hearing, the trial court issued a detailed order, finding Susan violated the settlement agreement and the Agreed Order and had consistently acted in bad faith in challenging Trust expenditures and administration. It denied Susan's request for attorney fees and instructed the Trustee:

> 1. That Robert W. York, as the Temporary Successor Trustee of [the Trust] . . . is hereby authorized and instructed to provide to Susan Moeder periodic account statements as to the assets of Trust and he shall not be required to supply Susan Moeder with any other documents or information pertaining to the Trust.

Id. at 28. The trial court later ordered Susan to pay attorney fees totaling $83,667. Susan appeals.

Discussion and Decision

[16] Susan first claims that the trial court improperly limited the information that she can receive about the Trust. In a related argument, she also claims the trial court erroneously found she violated the settlement agreement and Agreed Order by seeking information to which she was not entitled. Finally, she challenges the trial court's award of attorney fees, alleging the trial court's finding of bad faith was unsupported by the evidence. Finding that Susan's arguments on appeal are in bad faith, we affirm and remand to the trial court for a determination of the Trust's reasonable appellate fees to be paid by Susan.

I. Standard of Review

[17] Where, as here, the trial court enters findings sua sponte, they "control our review and the judgment only as to the issues those specific findings cover." *Samples v. Wilson*, 12 N.E.3d 946, 949-50 (Ind. Ct. App. 2014). A general judgment standard applies when specific findings are absent. *Id.* at 950.

[18] We apply a two-tiered standard of review to sua sponte findings and conclusions, determining first whether the evidence supports the findings and then whether the findings support the judgment. *Winters v. Pike*, 171 N.E.3d 690, 698 (Ind. Ct. App. 2021). We set aside findings and conclusions only if they are clearly erroneous. *Id.* Neither do we reweigh the evidence or judge witness credibility. *Id.*

[19] Susan challenges only the trial court's conclusions and not any of its findings. *See* Appellant's Reply Br., pp. 6-7. Unchallenged findings stand as proven. *Winters*, 171 N.E.3d at 698.

II. Limitation to Susan's Access of Information

[20] Susan first argues that the trial court erroneously limited her access to the Trust's information by misinterpreting sections 5.03 and 6.04 of the Trust Agreement.

i. Section 5.03

[21] Section 5.03 specifies:

> In the absence of proof of bad faith, all questions of construction or interpretation of any trusts created by this Trust Agreement will be finally and conclusively determined solely by the Trustee, according to the Trustee's best judgment and without recourse to any court, and each determination by the Trustee is binding on the beneficiaries and prospective beneficiaries hereunder . . . The Trustee, when exercising any discretionary power relating to the distribution or accumulation of principal or income or to the termination of any trust, will be responsible only for lack of good faith in the exercise of such power. Each determination may be relied upon to the same extent as if it were a final and binding judicial determination. In the event of a conflict between the

> provisions of this Trust Agreement and those of the Indiana Trust Code, the provisions of this Agreement will control.[5]

Appellant's App. Vol. II, p. 172.

[22] We find Susan's various interpretations of Section 5.03 frivolous. First, Susan focuses on the portion of Section 5.03 limiting its breadth to "all questions of construction or interpretation of any trusts created by this Trust Agreement." She appears to suggest Section 5.03 only gives the temporary successor trustee final authority to interpret *other* trusts created by the Trust Agreement and not the Trust itself. But as the Trust is the only trust created by the Trust Agreement, the plain language of Section 5.03 applies to the Trust.[6] *See Fulp v. Gilliland*, 998 N.E.2d 204, 207 (Ind. 2013) (noting that if the trust is capable of clear and unambiguous construction, reviewing court must give effect to the trust's clear meaning).

[23] We also reject Susan's claim that Section 5.03 is trumped by Indiana Code § 30-4-3-32, which invalidates terms of a trust instrument that "relieve a trustee of liability for breach of trust committed in bad faith, intentionally, or with

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[5] In her brief, Susan only cites the portion of Section 5.03 ending with "without recourse to any court," although the rest of that provision is central to resolution of this case.

[6] Her view that the Trust agreement allows creation of extra trusts misreads Section 4.03(t) of the Trust Agreement. Appellant's App. Vol. II, p. 169. Section 4.03(t), by its plain language, allows merger of this Trust with another separately created trust (not at issue here) if established to help the same beneficiaries.

reckless indifference to the interest of the beneficiary."[7] By providing that the trustee "will be responsible only for lack of good faith in the exercise of such power," Section 5.03 ensures that the trustee remains liable under Indiana Code § 30-4-3-32 for actions taken in "bad faith, intentionally, or with reckless indifference to the interest of the beneficiary."

[24] As her final claim about Section 5.03, Susan asserts that the trial court's interpretation of that provision conflicts with the arbitration clause in Section 6.01 of the Trust Agreement. Section 6.01 specifies:

> Any controversy between the Trustee or Trustees and any other Trustee or Trustees, or between any other parties to this Trust, including Beneficiaries, involving the construction or application of any of the terms, provisions, or conditions of this Trust shall, on the written request of either or any disagreeing party served on the other or others, be submitted to arbitration.

Appellant's App. Vol. II, p. 172.

[25] In response, the temporary successor trustee contends that Sections 5.03 and 6.01—by their plain language and as interpreted by the trial court—are consistent. The temporary successor trustee argues that under Section 5.03, the trustee has "final and conclusive" authority to interpret the Trust provisions,

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[7] In any case, Susan raised Indiana Code § 30-4-3-32 for the first time in her reply brief and thus waived that issue. "The law is well settled that grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived." Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 977 (Ind. 2005); see also Ind. Appellate Rule 46(C) ("No new issues shall be raised in the reply brief.").

and a beneficiary may not challenge that determination unless it stems from bad faith. And when allegations of the trustee's bad faith are raised, the arbitration clause in Section 6.01 provides for a determination of that issue, according to the temporary successor trustee. We agree with that interpretation, which harmonizes the two sections. *See ShermansTravel Media, LLC v. Gen3Ventures, LLC*, 152 N.E.3d 616, 624 (Ind. Ct. App. 2020) (ruling that courts should interpret contracts to harmonize its provisions).

ii. Section 6.04

[26] Section 6.04 specifies:

> The Trustor further declares that it is his or her desired intent that the provisions of this Trust Agreement are to remain confidential as to all parties. The Trustor directs that only the information concerning the benefits paid to any particular Beneficiary shall be revealed to such individual and that no individual shall have a right to information concerning the benefits being paid to any other Beneficiary.

Appellant's App. Vol. II, p. 173.

[27] Susan claims Section 6.04 unambiguously limits the provision of information to beneficiaries *other* than Susan and John. Alternatively, Susan argues that Section 6.04, at most, limits her access to information about Trust distributions to John and not to information about the Trust generally.

[28] But Susan ignores the plain language of Section 6.04, which unambiguously ensures that a beneficiary of the Trust is entitled to information about the

benefits paid to that beneficiary only. Because Section 6.04 provides that "no individual shall have a right to information concerning the benefits being paid to any other Beneficiary," it bars Susan's access to any information about benefits paid to John, as the trial court correctly found.

iii. Other Challenges

[29] In any case, the trial court offered other legitimate reasons for limiting Susan's access to Trust information: 1) the Trustee had construed the trust agreement as allowing such restrictions; 2) Susan had agreed to those restrictions through the Agreed Order; and 3) the trial court had previously denied Susan the information she again sought. Appellant's App. Vol. II, p. 151. We have already ruled that the Trust Agreement provides for the trustee to be the final authority on the meaning of the trust language unless that interpretation is in bad faith. Susan makes no claim that the temporary successor trustee acted in bad faith, so the broader restrictions may be justified on that basis alone.[8]

[30] Still, Susan argues that the trial court erred in finding that the terms of the settlement agreement also limited her access to the Trust's information. First, she claims that rather than limit her access, the settlement agreement ensured her right to such information. Susan focuses on the settlement agreement's provision stating that "[t]he beneficiaries of the Trust are irrevocable, and Susan

[8] Susan refuses to acknowledge *any* right by the temporary successor trustee to limit her access to the Trust's information, despite the clear language of the Trust Agreement and her status as only a contingent remainder beneficiary. Appellant's Br., p. 26.

retains her beneficiary rights." Appellant's App. Vol. V, p. 59. She notes that Indiana Code § 30-4-3-6(b)(7) generally imposes certain duties on trustees to keep beneficiaries "reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests."[9] Susan argues that her beneficiary rights in the Trust therefore entitled her to the information she sought in her demand letter.

[31] But Susan's piecemeal recitation of Indiana Code § 30-4-3-6(b)(7) ignores its prefatory language: "*Unless the terms of the trust . . . provide otherwise."* Ind. Code § 30-4-3-6(b). Moreover, Indiana Code § 30-4-3-6(c) specifies that "[t]he terms of a trust may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed of the beneficiary's interest in a trust for a period of time . . . ." These statutory provisions make clear that beneficiaries have only

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[9] The full text of Indiana Code § 30-4-3-6(b)(7) follows:

> (7) Except as provided in subsection (c), keep the following beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests:
>
> (A) A current income beneficiary.
>
> (B) A beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust has become irrevocable by:
>
> (i) the terms of the trust instrument; or
>
> (ii) the death of the settlor.
>
> A trustee satisfies the requirements of this subdivision by providing a beneficiary described in clause (A) or (B), upon the beneficiary's written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the trust.

the right to information that the Trust document designates and that the trustee has some statutory authority to limit the provision of information.

[32] The temporary successor trustee interpreted Section 6.04 as limiting Susan's right to information about the Trust, and the trial court determined that the temporary successor trustee's interpretation was conclusive under the Trust. Appellant's App. Vol. II, p. 143. As we have determined that the trial court did not err in that ruling, any beneficiary right that Susan retained did not expand the amount of information that she has been granted.

[33] Alternatively, Susan claims that the settlement agreement no longer is binding on her. The settlement agreement specified that "[f]rom the date of this Agreement, and until the appointment of a successor trustee as provided below, [the original successor trustee] shall continue to provide periodic account statements to Susan Moeder as to the Trust, but shall not be required to supply Susan Moeder with any other documents or information." Appellant's App. Vol. III, p. 204. The settlement agreement then outlined a specific procedure by which a successor trustee would be named. Susan acknowledges that procedure was not followed.

[34] The trial court found that the limitation on Susan's access to information in the settlement agreement still was in effect because the condition precedent to its expiration—that is, appointment of the trustee in accordance with the settlement terms—had not occurred. Appellant's App. Vol. II, pp. 143-44. We

need not consider whether the settlement agreement's limitations on information are still in effect because the temporary successor trustee's interpretation of the Trust provisions effectively limits her access even if the settlement agreement does not.

III. Violation of Agreed Order

[35] Susan next argues the trial court erred in finding that she violated the Agreed Order by seeking information through her demand letter to which she was not entitled. The court determined that Susan's demand for the former successor trustee's fee statements "is a bad faith attempt to violate the Agreed Order."' *Id.* at 145. The court based that conclusion on several findings, including that:

- Susan waived in the Agreed Order all accountings by the former successor trustee and the law firms, as well as the right to request the court [to] compel such accountings.
- Susan admitted she had all the Trust's account statements through December 2020 at the time of her demand letter.
- When Susan demanded "[u]nredacted and itemized Invoices for legal fees paid to Krieg De Vault [sic]from the" Trust, she knew, based on the information she had already received, that the only fees paid to Krieg DeVault LLP were the $247,753.03 in fees already ordered under the Agreed Order.
- In response to the temporary successor trustee's petition for instructions following Susan's demand letter, Susan contended in bad faith that the legal fees for which she sought information were "undocumented."
- Susan "untruthfully and in bad faith" represented that the Agreed Order "stipulates limitations on the payment of legal fees for" the former successor trustee when, in fact, the order contained no such limitation. The Agreed Order, instead,

> provided for payment of *all* the former successor trustee's legal fees.

Id. at 144-45.

[36] Susan argues that she mostly requested invoices for the attorney fees paid after February 2020 – outside the period for which she had received statements. But that is not true. The $247,753.03 in court-ordered fees paid to Krieg DeVault LLP were for the period 2012 through mid-2019, and Susan had received those invoices by July 2019. Appellant's App. Vol. IV, pp. 2, 22-62.

[37] Susan also parses language in the Agreed Order and the judgment under appeal, claiming her demand for fee invoices did not amount to a request for an "accounting" and thus did not violate the Agreed Order. She also asserts that she was seeking information only about fees *not* specified in the Agreed Order. For instance, Susan argues that the Agreed Order allowed the former successor trustee only those attorney fees arising from its resignation or the filing of petitions, and Susan was attempting to determine whether the fees exceeded that. Her final claim is that she could seek John's tax returns because the temporary successor trustee was vague in his answers about whether those returns had been filed.

[38] These are frivolous claims for the reasons stated by the trial court. She waived any right to such information through the Agreed Order. Appellant's App. Vol. V, pp. 51-60. In some cases, like the court-ordered legal fees, she had already received the documents she later requested in her demand letter, agreed to their payment, and waived any right to challenge them. *See id.*

[39] Susan also had no right to know anything about John's private tax returns, as she was neither his guardian nor his protector in any sense of the word. As the trial court noted, through the many years of litigation, Susan has shown herself to be more of an enemy than a friend to her brother. The court's uncontested finding establishes that

> Susan's actual "genuine concern" is well established by the record in this case . . . [as] she vigorously fought to have John terminated as a Trust beneficiary so that she could receive not only her half of the Trust but John's half as well, and when that proved unsuccessful, initiated unrelenting litigation as to virtually every Trust issue, including as to Trust distributions to or for John.

Appellant's App. Vol. II, p. 147.[10]

[40] The trial court issued a well-reasoned and detailed order explaining how Susan, in bad faith, violated the Agreed Order through her demand letter. Susan's arguments attacking the judgment are frivolous and reflect her continuing bad faith. *See Kitchell v. Franklin*, 26 N.E.3d 1050, 1056 (Ind. Ct. App. 2015) (ruling that a claim is "frivolous" if made mainly to harass or maliciously injure another or "where counsel is unable to make a good faith and rational argument on the merits of the action").

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[10] This was not the trial court's first finding of Susan's bad faith. In the proceedings leading to Susan's 2015 appeal, the trial court found "not credible" Susan's claim that she pursued the litigation "in a good-faith effort to protect the interests of her brother." *Moeder v. Salin Bank & Tr.*, 27 N.E.3d 1089, 1102 (Ind. Ct. App. 2015).

IV. Attorney Fees Award

[41] Susan's final claim is that the trial court erroneously ordered her to pay the Trust's attorney fees. We review such awards for an abuse of discretion, which occurs when the court's decision clearly contravenes the logic and effect of the facts and circumstances before the trial court. *River Ridge Dev. Authority v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020). When the trial court enters findings of fact and conclusions of law relating to an attorney fees award, we review factual findings for clear error and conclusions of law de novo. *Id.*

[42] We find no abuse of discretion. The trial court had the ability to award attorney fees on several different bases, but we focus on just one. As Susan acknowledges, courts have the authority to "equitably sanction" parties through an award of attorney fees. Appellant's Br., p. 42 (citing *River Ridge,* 146 N.E.3d at 915-16). Such sanctions must be based on a finding "that a party has acted in bad-faith and such conduct is calculatedly oppressive, obdurate, or obstreperous." *River Ridge,* 146 N.E.3d at 916 (citing *Matter of Estate of Kroslack*, 570 N.E.2d 117, 121 (Ind. Ct. App. 1991)).

[43] The trial court made such findings here, determining that Susan's demand for information was "vexatious and oppressive" and detailing the many ways in which Susan had acted in bad faith. Susan challenges those conclusions by reiterating her earlier arguments that we have rejected and asking this Court to reweigh the evidence.

[44] For instance, Susan underplays her violation of the Agreed Order as a mere effort to communicate with the temporary successor trustee explicitly allowed by the Agreed Order. She ignores the broad scope of her written request and her threat of legal action if the temporary successor trustee did not comply with it. Placed in the context of her history of litigiousness during the prior decade, hers was an ultimatum that virtually guaranteed future litigation absent compliance. It was not the sort of productive communication suggested in the Agreed Order and aimed at reducing the need for court intervention.

[45] We also reject her claim that the trial court erroneously relied on the temporary successor trustee's detailing of about $500,000 in fees that the Trust paid to defend itself against Susan's interference. Susan claims those fees are irrelevant to this issue of attorney fees because most of those fees predate the Agreed Order. We disagree.

[46] The attorney fees are highly relevant evidence of her intent in issuing and litigating the demand letter. Indeed, Susan placed her intent at issue when she claimed she was motivated, in part, by concern for her brother when she sent the demand letter. The fees evidence shows that Susan's relentless interference has dramatically dissipated John's share of the Trust, effectively undermining her claim of an altruistic motive.[11] A history of bad faith may show current bad

[11] The Trust assets expended for attorney fees in opposing Susan may total more than the remaining assets of the Trust, which had a balance of $430,000 in March 2020. Appellant's App. Vol. V, p. 108.

faith. *See*, *e.g.*, *Holland v. Ketchem*, 181 N.E.3d 1030, 1037 (Ind. Ct. App. 2021) (where litigant was alleged to have transferred property fraudulently, her history of improperly using financial assets in which her creditor had an interest was evidence of her intent in transferring the property).

[47] Finally, in her most frivolous claim yet, Susan asserts that her actions were not in bad faith because she prevailed in part. She claims the temporary successor trustee agreed to give her monthly, rather than quarterly statements, after her response to his petition for instructions. But the trial court merely ordered "periodic account statements," not necessarily monthly statements. Appellant's App. Vol. II, p. 151. The trustee's mere offer of more frequent statements does not equate to a victory for Susan. *See Reuille v. E.E. Brendenberger Const., Inc.,* 888 N.E.2d 770, (Ind. 2008) (interpreting "prevailing party" as contemplating a judgment in that party's favor). Susan has offered no non-frivolous grounds for setting aside the attorney fees award.

[48] As we did in Susan's last appeal, we find that Susan's appeal is frivolous and in bad faith. *See Moeder v. York*, case no. 20A-TR-1654, *13 (Ind. Ct. App. June 22, 2021). She entered into an agreed order and then promptly violated it by seeking information already in her possession and for which she had waived any challenge. Despite the trial court's comprehensive judgment detailing her violation of the Agreed Order and continuing bad faith, she launched this appeal, raising only frivolous and bad-faith contentions.

[49] We affirm the trial court's judgment and remand for a determination of the Trust's appellate attorney fees, to be paid by Susan. *See* Ind. Appellate Rule 66(E).[12]

Robb, J., and Pyle, J., concur.

[12] The Trust seeks an award of appellate attorney fees only against Susan, and we remand for that purpose. But we remind Susan's counsel, who has represented her for at least eight years, that attorneys may be personally sanctioned for pursuing groundless claims on behalf of a client. *See*, *e.g.*, Ind. Trial Rule 11(A) (allowing for "appropriate disciplinary action" when counsel willfully signs a frivolous pleading); *Geico Ins. Co. v. Rowell*, 705 N.E.2d 476, 482-83 (Ind. Ct. App. 1993) (ordering, sua sponte, under former Indiana Appellate Rule 15(G) that appellant's counsel pay appellee's attorney fees arising from bad faith appeal).