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IN THE
COURT OF APPEALS OF INDIANA

William G. Zartman, III,
Individually and as Successor
Co-trustee of the Marilyn M.
Zartman Revocable Trust, Kim
Zartman, W. K. Zartman Farms,
LLC, and William G. Zartman,
III and Kim R. Zartman,
Member Managers of W. K.
Zartman Farms, LLC,
Appellants-Defendants,

v.

Paul Zartman and Brenda
Cameron, Individually, Brenda
Cameron as Successor Trustee of
the William G. Zartman, Jr.,
Revocable Trust, and Paul
Zartman as Successor Co-trustee
of the Marilyn M. Zartman
Revocable Trust,
Appellees-Plaintiffs.

April 9, 2021

Court of Appeals Case No.
20A-PL-1861

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-1601-PL-28

Tavitas, Judge.

Case Summary

- [1] In the second appeal involving this litigation, William Zartman, III (“William III”), individually and as successor co-trustee of the Marilyn Zartman Revocable Trust; Kim Zartman (“Kim”); W. K. Zartman Farms, LLC (“Zartman Farms”); and William III and Kim Zartman, member managers of Zartman Farms (collectively “Appellants”) appeal the trial court’s grant of summary judgment to Paul Zartman (“Paul”) and Brenda Cameron (“Brenda”), individually; Brenda Cameron, as successor trustee of the William Zartman Jr. Revocable Trust; and Paul Zartman, as successor co-trustee of the Marilyn Zartman Revocable Trust (collectively “Appellees”).
- [2] William III, as trustee of the Marilyn Zartman Revocable Trust, improperly transferred a one-quarter interest in property to himself and his wife, Kim, in violation of the trust. William III and Kim then transferred the same property interest to Zartman Farms, of which William III and Kim are member managers. Appellees brought an action challenging William III’s actions. On remand after the first appeal in this case, the trial court: (1) determined the content of Marilyn’s Trust; (2) determined that William III committed breach of trust; (3) voided the transfer of property; (4) ordered Appellants to pay for lost income to the trust; and (5) ordered William III to pay Appellees’ attorney’s fees. Concluding that no genuine issues of material fact exist, and that Appellees were entitled to judgment as a matter of law, we affirm.

Issues

- [3] Appellants raise three issues, which we restate as follows:
- I. Whether the trial court properly interpreted the trust documents and entered summary judgment for Appellees.
 - II. Whether the trial court properly entered judgment against Kim and Zartman Farms regarding the lost income.
 - III. Whether the trial court properly ordered William III to pay attorney's fees to Appellees in the amount of \$110,000.00.

Facts

- [4] William Zartman Jr. ("William Jr.") and Marilyn Zartman were married and had three children: William III, Brenda, and Paul. William Jr. and Marilyn owned a 303-acre farm in Miami County and Fulton County.
- [5] In 1980, William Jr. and Marilyn established the William Zartman Jr. Revocable Trust ("William Jr.'s Trust") and the Marilyn Zartman Revocable Trust ("Marilyn's Trust"). In 1993, William Jr. and Marilyn executed First Amendments to both trusts. This appeal concerns only Marilyn's Trust.
- [6] The parties to this litigation possess only the first and last pages of Marilyn's Trust and were unable to locate a copy of the First Amendment to Marilyn's Trust. William Jr. and Marilyn showed the First Amendment of William Jr.'s Trust and the First Amendment of Marilyn's Trust to Paul shortly after the documents were signed. Paul read the documents, which were identical except for the names of the trusts, signatures, and the pronouns used in the documents.

Paul saw the documents again in 2009, and the First Amendment of Marilyn's Trust was the same document that Paul previously read. In a deposition, William III testified that the First Amendment of William Jr.'s Trust and the First Amendment of Marilyn's Trust were identical except for the names.

[7] The parties possess the documentation establishing William Jr.'s Trust, the First Amendment to that trust, and a Second Amendment to the trust.¹ The First Amendment to William Jr.'s Trust provided, in part:

Section 6.4. Disposition After Wife's Death. Upon the death of Settlor's wife, or if Settlor's wife does not survive Settlor, upon Settlor's death, Settlor's Trustee shall divide the principal and accumulated income of this Trust into that number of shares equal to the number of Settlor's children living at that time. The Trustee shall then distribute free of Trust (subject to the Provisions of Article VII) each share so established to each child of Settlor's who is then living.

* * * * *

Section 9.7. Successor Trustee. Settlor has appointed Marilyn M. Zartman and William G. Zartman, Jr. to serve as Co-Trustees of any trust created under this Trust Agreement. In the event Marilyn M. Zartman or William G. Zartman, Jr. are unable or unwilling to serve as a Trustee, or having qualified, should die, resign or become incapacitated, Settlor appoints William G. Zartman III, or Brenda Ann Zartman Cameron or Paul R. Zartman, in that order, to serve as such successor co-trustee.

¹ The Second Amendment to William Jr.'s Trust was executed after Marilyn's death.

* * * * *

Reference in this instrument to Trustee or Co-Trustees shall mean William G. Zartman, Jr. and Marilyn M. Zartman, or any successor who has qualified for herein.

Appellants' App. Vol. II p. 228, 234, 235.

[8] By 2003, each trust held a one-quarter interest in the farm, and William III and his wife, Kim, owned a one-half interest in the farm. Marilyn died in August 2004, and William Jr. died in February 2010.² In March 2011, William III, as trustee of Marilyn's Trust, conveyed Marilyn's Trust's one-quarter interest in the farm to himself and his wife, Kim, as tenants in common.³ In the trustee's deeds, William III warranted that he was appointed the successor trustee under the trust and that, under the trust agreements, he had the "full power to execute" the trustee's deeds. Appellees' App. Vol. II pp. 132, 138.

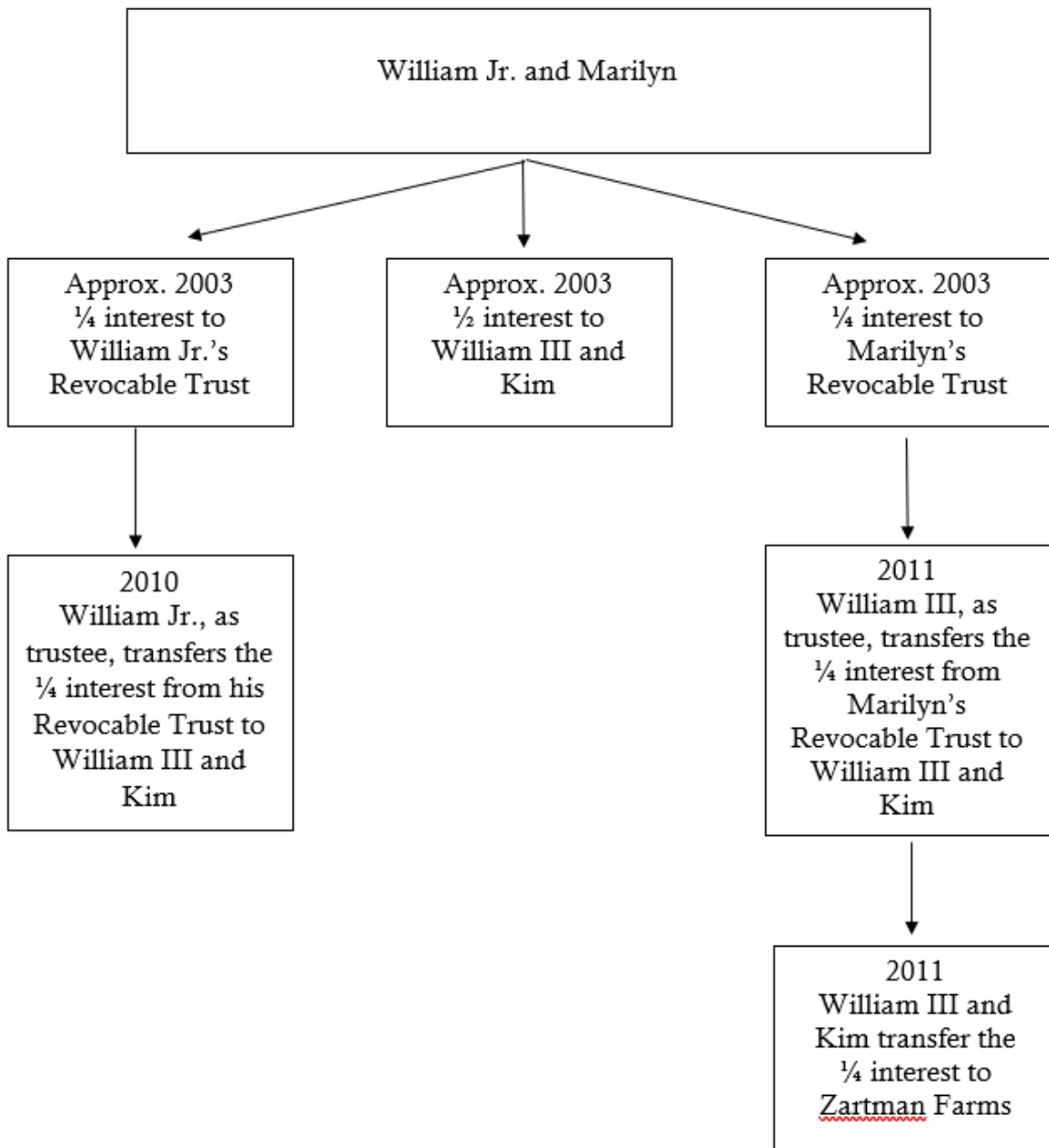
² At the time of his death, William Jr. resided in Florida. Shortly before his death, William Jr. allegedly executed deeds in his capacity as trustee of William Jr.'s Trust transferring an interest in the Indiana farm property to William III and Kim. In May 2010, Paul and Brenda filed a complaint in Florida to compel an accounting by William III of William Jr.'s Trust. The Florida court determined that it did not have jurisdiction over the Indiana property. In 2015, however, the Florida court removed William III as successor trustee of William Jr.'s Trust as a result of "a serious breach of trust" and appointed Brenda to replace him. Appellees' App. Vol. II p. 43. This appeal, however, concerns only Marilyn's Trust.

³ The March 2011 deeds also purported to transfer William Jr.'s Trust's interest in the farm to William III and Kim.

[9] William III and Kim then immediately transferred the one-quarter interest in the farm to Zartman Farms, of which William III and Kim are member managers. William III and Kim warranted as Grantors in the deeds that:

(Grantor [sic]) is lawfully seized of said land in fee simple; that the (Grantor [sic]) has good right and lawful authority to sell and convey said land; that the (Grantor [sic]) hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2010.

Id. at 142, 148. A graphic representation of the land transfers is included below:



[10] In January 2016, Appellees filed a complaint against Appellants to, among other things, set aside William III's conveyance of Marilyn's Trust's one-

quarter interest in the farm.⁴ Appellees argued, in part, that after William Jr.'s death, Brenda and William III became co-trustees of Marilyn's Trust and that William III could not act alone to transfer property from the trust. Further, Appellees argued that the transfer of the property from the trust violated the trust's disposition provisions. Appellees sought to recover the one-quarter interest in the farm as well as lost income. Appellees also sought to recover reasonable attorney's fees pursuant to Indiana Code Section 30-4-3-11.

[11] In November 2017, Appellees filed a motion for summary judgment and argued, in part, that the March 2011 deeds conveying Marilyn's Trust's one-quarter interest in the farm to William III and Kim were void.⁵ Appellees designated evidence, including an affidavit from Brenda, an affidavit from Paul, William III's deposition, and an affidavit from an appraiser regarding the value of the property and fair market rental values. In February 2018, the trial court denied the motion for summary judgment. In discussing the content of Marilyn's Trust documents, the trial court determined that, under the Indiana Rules of Evidence, "the issue of the content of such writings is not one that is properly amenable to resolution through the process of summary judgment." Appellants' App. Vol. II p. 61. Rather, the trial court determined that the

⁴ The complaint also raised allegations concerning William III's undue influence over William Jr. and improper transfers of property from William Jr.'s Trust. Those allegations are not part of this appeal.

⁵ Appellants also filed a motion for summary judgment, which the trial court granted in part and denied in part. That motion for summary judgment is not part of this appeal.

content of Marilyn’s Trust had to be resolved by a jury. A jury trial was then conducted, and the jury returned a verdict in favor of Appellants.

[12] Appellees appealed only the denial of their motion for summary judgment regarding Marilyn’s Trust, and this Court discussed one issue—whether the trial court erred in its application of the Rules of Evidence. This Court noted:

Much of the difficulty in this case has arisen because none of the parties has a complete copy of either Marilyn’s original trust document or the amendment to her trust. In seeking to set aside William III’s conveyance of that trust’s one-quarter interest to himself, Paul and Brenda have argued the conveyance was invalid because the deed conveying the property should have been executed by both co-trustees (William III and Brenda) but instead was executed solely by William III. To sustain this argument, Paul and Brenda need to establish the terms of Marilyn’s trust and amendment. Because the parties have only the first and last pages of Marilyn’s original trust document, they turned to the series of rules about “best evidence” to prove the content of the trust and the amendment.

Zartman v. Zartman, 127 N.E.3d 242, 244-45 (Ind. Ct. App. 2019), *trans. denied*.

[13] This Court determined that the undisputed evidence, which included William Jr.’s First Amendment to his trust, William III’s deposition testimony, and Paul’s affidavit, “establishes the content of Marilyn’s First Amendment to her trust.” *Id.* at 245. This Court then held that, given the undisputed designated evidence, the trial court could determine the contents of the document on summary judgment, and a jury was not required to determine the contents. *Id.* at 246-47. This Court concluded:

[T]he trial court misconstrued its role in determining the contents of Marilyn’s trust for purposes of deciding summary judgment, and it erred by taking into account evidence that had not been designated (i.e., a deposition taken of Paul that was in the court’s file). We remand so that the trial court can reconsider its ruling on summary judgment in accordance with these directions and sustain the present judgment, or not, accordingly.

Id. at 247.

[14] On remand, the trial court held a hearing on the summary judgment motion and allowed the parties to submit supplemental briefing. On April 21, 2020, the trial court granted summary judgment to Appellees. The trial court determined that, upon Marilyn’s death, William Jr. and William III became co-trustees of Marilyn’s Trust. Upon the death of William Jr., William III and Brenda became the co-trustees of Marilyn’s Trust. William III’s transfer of Marilyn’s Trust’s one-quarter interest in the farm to himself and his wife violated Indiana Code Section 30-4-3-4 because the power to transfer property was required to be exercised by the co-trustees jointly. Accordingly, the trial court found that the Trustee’s Deeds dated March 14, 2011, were “null and void” and that Marilyn’s Trust “remains the owner of an undivided one-quarter (1/4) tenancy-in-common interest in and to the real estate. . . .” Appellants’ App. Vol. II p. 25.

[15] Further, the trial court found that Marilyn’s Trust required that “the trust property be divided and distributed equally between the Settlor’s three children at the time of the distribution,” and that the March 14, 2011 transfer violated this provision. *Id.* at 26. The trial court concluded that William III breached

his duty as a trustee and removed William III “for cause” as a trustee of Marilyn’s Trust. *Id.* at 28. The court then appointed Paul as a successor co-trustee.

[16] The trial court determined that the fair market value of the one-quarter interest belonging to Marilyn’s Trust was \$370,000.00. The trial court further found that Marilyn’s Trust “is entitled to recover judgment against the [Appellants] (who have all wrongly benefitted from receiving the entirety of that income)” in the amount of \$134,799.98 for loss of income during the time Appellants “have had the use of the land.” *Id.* at 27. Accordingly, the trial court entered judgment in favor of Brenda and Paul, in their capacity as successor co-trustees of Marilyn’s Trust, and against Appellants in the amount of \$134,799.98, plus costs and interest.

[17] The trial court directed Appellees to submit an attorney’s fee affidavit “regarding the amount and reasonableness of the attorney fees charged that provides the sort of details that are required under Indiana case law.” *Id.* at 28. Counsel for Appellees submitted an attorney’s fee affidavit, and the trial court scheduled a hearing on the matter. After the hearing, the trial court noted that this case was “among the longest-running and most actively litigated cases currently pending,” and awarded Appellees \$110,000.00 in attorney’s fees from William III as a result of his “breach of trust.” *Id.* at 50. Appellants now appeal.

Analysis

[18] “When this Court reviews a grant or denial of a motion for summary judgment, we ‘stand in the shoes of the trial court.’” *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020) (quoting *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 452 (Ind. 2019)). Summary judgment is appropriate “if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Murray*, 128 N.E.3d at 452; *see also* Ind. Trial Rule 56(C). The party moving for summary judgment bears the burden of making a prima facie showing that there is no issue of material fact and that it is entitled to judgment as a matter of law. *Burton*, 140 N.E.3d at 851. The burden then shifts to the non-moving party to show the existence of a genuine issue. *Id.* On appellate review, we resolve “[a]ny doubt as to any facts or inferences to be drawn therefrom . . . in favor of the non-moving party.” *Id.* We review the trial court’s ruling on a motion for summary judgment de novo, and we take “care to ensure that no party is denied his day in court.” *Schoettmer v. Wright*, 992 N.E.2d 702, 706 (Ind. 2013). “We limit our review to the materials designated at the trial level.” *Gunderson v. State, Indiana Dep’t of Nat. Res.*, 90 N.E.3d 1171, 1175 (Ind. 2018), *cert. denied*, 139 S. Ct. 1167 (2019).

I. Interpretation of Marilyn’s Revocable Trust

[19] Appellants argue that the trial court erred by granting summary judgment to Appellees, voiding William III’s transfer of property from Marilyn’s Trust to himself and his wife, and awarding Appellees lost income on the property.

According to Appellants, (1) the trial court's first and second summary judgment orders are fatally inconsistent regarding whether a genuine issue of material fact exists; (2) there is "insufficient evidence to support the trial court's conclusion that Marilyn Zartman's trust remained the owner of an undivided one-fourth interest in the farm, following both the death of Marilyn herself, as well as the death of her husband, William G. Zartman, Jr., whose death occurred in February, 2010" because Appellees did not present evidence of a title search or proof of title in Marilyn's trust, Appellants' Br. p. 25; and (3) there is no adequate evidence to establish the contents of Marilyn's Trust. We disagree with Appellants' contentions.

[20] The first summary judgment order found genuine issues of material fact regarding the contents of the First Amendment of Marilyn's Trust. Specifically, the first order found that the contents of the First Amendment required a determination by a jury pursuant to the Indiana Rules of Evidence. In the first appeal, this Court held that the contents of the First Amendment did not require a jury determination because the undisputed designated evidence, which included William Jr.'s First Amendment to his trust, William III's deposition testimony, and Paul's affidavit, "establishes the content of Marilyn's First Amendment to her trust." *Zartman*, 127 N.E.3d at 245. Any inconsistencies between the two summary judgment orders occurred because the second order corrected the trial court's earlier error regarding the application of the Rules of Evidence and followed this Court's instructions given in the first appeal.

[21] Next, we decline Appellants' invitation to speculate regarding the ownership of the one-quarter interest in the farm by Marilyn's Trust. Although Appellants argue that the interest *could have* been transferred earlier and that a title search was necessary, the designated evidence does not support these conjectures. Appellees designated evidence that Marilyn's Trust acquired a one-quarter interest in the farm in 2002. In 2011, William III, as trustee of Marilyn's Trust, transferred that interest to himself and his wife. In response, Appellants did not designate any evidence to suggest that the one-quarter interest was transferred prior to 2011. Moreover, Appellants' argument is inconsistent with representations made by William III when he executed the trustee's deeds in 2011.

[22] Further, pursuant to the law of the case doctrine, we decline Appellants' invitation to reconsider the contents of the First Amendment to Marilyn's Trust.

The "law of the case doctrine" is a discretionary tool by which appellate courts decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts. Under that doctrine, the decision of an appellate court becomes the law of the case and governs the case throughout all of its subsequent stages, as to all questions which were presented and decided, both directly and indirectly. However, to invoke the law of the case doctrine, "the matters decided in the prior appeal must clearly appear to be the only possible construction of the opinion."

Maciaszek v. State, 113 N.E.3d 788, 791 (Ind. Ct. App. 2018) (internal citations omitted). Our opinion in the first appeal of this case clearly determined that the contents of the First Amendment to Marilyn’s Trust were established by William Jr.’s First Amendment to his trust, William III’s deposition testimony, and Paul’s affidavit. Accordingly, we will not revisit that holding.

A. Breach of Trust

[23] In the second summary judgment order, the trial court followed the holding and instructions given in the first appeal and properly determined that, based upon the language of William Jr.’s First Amendment, Marilyn’s First Amendment named William III and Brenda to serve as successor co-trustees after the deaths of William Jr. and Marilyn. Indiana Code Section 30-4-3-4 provides: “Unless the terms of the trust provide otherwise: (a) Any power vested in two (2) trustees must be exercised by them jointly” *See also In re Edwardson Revocable Tr.*, 949 N.E.2d 851, 855 (Ind. Ct. App. 2011) (“Both the Trust and Indiana law provide that the two trustees must exercise their power jointly.”), *trans. denied*. The terms of the First Amendment to Marilyn’s Trust did not specify that William III, as a co-trustee, could act alone in conveying the one-quarter interest in the farm owned by the trust.⁶

⁶ We also note Indiana Code Section 30-4-3-5(a), which provides:

If the duty of the trustee in the exercise of any power conflicts with the trustee’s individual interest or the trustee’s interest as trustee of another trust, the power may be exercised only under one (1) of the following circumstances:

[24] Moreover, the First Amendment to Marilyn’s Trust required that its interest in the property be distributed equally between William III, Brenda, and Paul upon William Jr.’s death. No terms of the First Amendment to Marilyn’s Trust allowed William III to distribute the trust’s interest in the property to himself and his wife. Accordingly, William III’s March 2011 conveyance of the one-quarter interest in the farm to himself and his wife was improper.

B. Remedies

[25] Indiana Code Section 30-4-3-22 governs the remedies of a beneficiary against a trustee and provides:

(a) A beneficiary of a trust may maintain an action:

(1) to compel the trustee to perform his duties;

(2) to enjoin the trustee from committing an act which may be a breach of trust;

(3) to compel the trustee to redress a breach of trust; or

(1) The trustee receives court authorization to exercise the power with notice to interested persons as the court may direct.

(2) The trustee gives notice of the proposed action in accordance with IC 30-2-14-16 and:

(A) the trustee receives the written authorization of all interested persons to the proposed action within the period specified in the notice of the proposed action; or

(B) a beneficiary objects to the proposed action within the period specified in the notice of the proposed action, but the trustee receives court authorization to exercise the power.

(3) The exercise of the power is specifically authorized by the terms of the trust.

William III’s conduct was not authorized under any of these subsections.

(4) to remove a trustee for cause and to appoint a successor trustee.

(b) If the trustee acquires property and wrongfully holds it outside the trust, a beneficiary is entitled at his option to either:

(1) require the property to be transferred to the trust or

(2) impose an equitable lien upon it to secure his claim for damages for breach of trust.

(c) If the trustee commingles the trust funds or property with his own funds or property or converts the trust fund or property into another form which is wrongfully held outside the trust:

(1) if the fund or property can be traced and identified, the beneficiary is entitled to restoration of the fund or property to the trust; or

(2) if the fund or property cannot be traced and identified,

(A) In a case of commingling of funds or property, the beneficiary is entitled to a lien against the trustee's individual property from the date and in the amount of the fund or the value of the property at the time of the commingling.

(B) In a case of conversion of property, the beneficiary is entitled to a lien against the trustee's individual property from the date and according to the value of the property at the time of the conversion.

(d) If the trustee is also a beneficiary, the other beneficiaries will be entitled to a charge against the trustee’s beneficial interest to secure their claims against him for a breach of trust.

(e) If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney’s fees.

(emphasis added).

[26] The trial court properly ordered that the 2011 trustee’s deeds, which transferred the one-quarter interest in the farm from Marilyn’s Trust to William III and Kim, were “null and void” and found that “the Marilyn M. Zartman Revocable Trust remains the owner of an undivided one-quarter (1/4) tenancy-in-common interest in and to the real estate” Appellants’ App. Vol. II p. 25; *see Deal v. Gittings*, 144 N.E.3d 716, 726 (Ind. Ct. App. 2020) (holding that improper transfers of property by a trustee were “void ab initio”), *trans. denied*. No genuine issues of material fact exist regarding the content of Marilyn’s Trust or William III’s breach of trust, and Appellees were entitled to judgment as a matter of law.

[27] We further note that Indiana Code Section 30-4-3-11(b) provides:

If the trustee commits a breach of trust, the trustee is liable to the beneficiary for:

(1) any loss or depreciation in the value of the trust property as a result of the breach;

(2) *any profit made by the trustee through the breach;*

(3) any reasonable profit which would have accrued on the trust property in the absence of a breach; and

(4) *reasonable attorney's fees incurred by the beneficiary in bringing an action on the breach.*

(emphasis added).

[28] The trial court also ordered the payment of \$134,799.98 to Marilyn's Trust in lost income for 2011 to 2019, the years that Appellants received all of the income from the farm. Under Indiana Code Section 30-4-3-11(b), William III was liable for any profit he made through the breach of trust and "any reasonable profit which would have accrued on the trust property in the absence of a breach." No genuine issues of material fact exist regarding the lost income, and Appellees were entitled to judgment as a matter of law. Accordingly, the trial court properly ordered William III to pay the lost income as a result of his breach of trust. The trial court's order that Kim and Zartman Farms are also liable for the lost income will be considered in Section II.

II. Judgment Against Kim and Zartman Farms

[29] Appellants argue that the trial court erred by entering a money judgment against Kim and Zartman Farms for the lost income. According to Appellants, Kim and Zartman Farms were not parties to the breach of trust and the trial court did not provide a legal basis for the money judgment against Kim or Zartman Farms. Appellees argue that the judgment was supported by

principal/agent considerations and unjust enrichment. Seemingly relying on unjust enrichment principles, the trial court noted that Appellants had the use of the farmland since the death of William Jr. and that Appellants “have all wrongly benefited from receiving the entirety of that income.” Appellants’ App. Vol. II p. 27. Accordingly, the trial court ordered Appellants to pay \$134,799.98 in the lost income to Marilyn’s Trust.

[30] Regarding unjust enrichment, our Supreme Court has held:

A claim for unjust enrichment “is a legal fiction invented by the common law courts in order to permit a recovery . . . where the circumstances are such that under the law of natural and immutable justice there should be a recovery . . .” *Bayh v. Sonnenburg*, 573 N.E.2d 398, 408 (Ind. 1991) (citation omitted). “A person who has been unjustly enriched at the expense of another is required to make restitution to the other.” RESTATEMENT OF RESTITUTION § 1 (1937). To prevail on a claim of unjust enrichment, a claimant must establish that a measurable benefit has been conferred on the defendant under such circumstances that the defendant’s retention of the benefit without payment would be unjust. *Bayh*, 573 N.E.2d at 408.

Zoeller v. E. Chicago Second Century, Inc., 904 N.E.2d 213, 220 (Ind. 2009).

[31] In March 2011, William III, as trustee of Marilyn’s Trust, improperly conveyed Marilyn’s Trust’s one-quarter interest in the farm to himself and his wife, Kim, as tenants in common. At this time, litigation was already pending in Florida regarding William III’s conduct as trustee of William Jr.’s Trust. Immediately after the transfer from Marilyn’s Trust to William III and Kim, William III and Kim transferred the one-quarter interest in the farm to Zartman Farms, of

which William III and Kim are member managers.⁷ Appellees designated evidence regarding the fair market rental value of the property during this time period. Appellants significantly benefitted from their wrongful possession of the one-quarter interest between 2011 and 2019. Accordingly, the designated evidence demonstrates that a measurable benefit was conferred on Kim and Zartman Farms under such circumstances that the retention of the benefit without payment would be unjust.⁸ The trial court properly granted summary judgment to Appellees on the claim against Kim and Zartman Farms.

⁷ We note that Indiana Code Section 23-18-3-1.1(b) provides, in part:

Except as provided in subsection (c) or the articles of organization, each member is an agent of the limited liability company for the purpose of the limited liability company's business or affairs, and *the act of any member*, including the execution in the name of the limited liability company of an instrument for apparently carrying on in the usual way the business or affairs of the limited liability company, *binds the limited liability company*, unless:

- (1) the acting member does not have authority to act for the limited liability company in the particular matter; and
- (2) the person with whom the member is dealing has knowledge of the fact that the member does not have the authority to act.

(emphasis added).

⁸ Although not mentioned by Appellants or Appellees, we note that the Restatement (Third) of Trusts provides:

- (1) A third party is protected from liability in dealing with or assisting a trustee who is committing a breach of trust if the third party does so without knowledge or reason to know that the trustee is acting improperly.
- (2) A third party who acquires an interest in trust property through a breach of trust is entitled to retain or enforce the interest to the extent the third party is protected as a bona fide purchaser.
- (3) In dealing with a trustee, a third party need not:
 - (a) inquire into the extent of the trustee's powers or the propriety of their exercise; or
 - (b) ensure that assets transferred to the trustee are properly applied to trust purposes.

RESTATEMENT (THIRD) OF TRUSTS § 108 (2012). Given William III's member manager relationship with Zartman Farms, Zartman Farms was not a bona fide purchaser and cannot be said to be unaware of the breach of trust.

III. Attorney's Fees

- [32] Finally, Appellants challenge the trial court's award of attorney's fees to Appellees. "We review a trial court's award of attorney's fees for an abuse of discretion." *River Ridge Dev. Auth. v. Outfront Media, LLC*, 146 N.E.3d 906, 912 (Ind. 2020). "An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law." *Id.* "To make this determination, we review any findings of fact for clear error and any legal conclusions de novo." *Id.*
- [33] After granting Appellees' motion for summary judgment, the trial court ordered Appellees to submit an attorney's fee affidavit, which they did. The trial court then held a hearing and ordered William III to pay "reasonable attorney fees" in the amount of \$110,000.00 as a result of his "breach of trust." Appellants' App. Vol. II p. 50. This award of attorney's fees is authorized by Indiana Code Section 30-4-3-22(e), *supra*, which provides: "If a beneficiary successfully maintains an action under subsection (a) of this section or is entitled to a judgment under subsections (b), (c), or (d) of this section, he is entitled to a judgment for reasonable attorney's fees." We further note that Indiana Code Section 30-4-3-11(b), *supra*, provides: "If the trustee commits a breach of trust, the trustee is liable to the beneficiary for . . . (4) reasonable attorney's fees incurred by the beneficiary in bringing an action on the breach."
- [34] Appellants first argue that Appellees should have designated evidence in their motion for summary judgment regarding their request for attorney's fees and, having failed to so do, Appellees are not entitled to an award of attorney's fees.

Appellants, however, cite no authority for this proposition. Our courts have previously authorized the procedure utilized by the trial court here, and we find no error in the trial court granting summary judgment and then separately considering the attorney’s fees issue. *See, e.g., Daurer v. Mallon*, 597 N.E.2d 334, 336 (Ind. Ct. App. 1992) (finding “no error on the part of the trial court in addressing the fee issue after its entry of summary judgment”), *trans. denied*; *Burke v. Elkin*, 51 N.E.3d 1287, 1288 (Ind. Ct. App. 2016) (addressing the award of attorney’s fees where the trial court granted summary judgment to the defendant on the complaint and counterclaim and then set the matter for a hearing on damages).

[35] Next, Appellants challenge the amount of fees awarded. “In assessing what qualifies as a reasonable fee, trial courts have broad discretion in determining a fee award and may consider several factors.” *Rainbow Realty Grp., Inc. v. Carter*, 131 N.E.3d 168, 178 (Ind. 2019). “When evaluating the reasonableness of an attorney fee award, the starting point is the hours worked and the hourly rate charged.” *Himsel v. Indiana Pork Producers Ass’n*, 95 N.E.3d 101, 113 (Ind. Ct. App. 2018). “The trial court may consider a number of other factors, including the responsibility of the parties in incurring the attorney fees and the judge’s personal expertise and knowledge.” *Id.* “In addition, a court may consider the factors listed in Indiana Professional Conduct Rule 1.5(a) governing the reasonableness of a fee for disciplinary purposes, but it is not required to expressly do so.” *Id.* at 113-14.

[36] Appellants contend that the \$110,000.00 attorney's fee award was excessive because it exceeds the amount Appellees would owe under the contingency fee agreement and "very nearly doubles the money judgment amount" owed by Appellants. Appellants' Br. p. 33. We have held, however, that contingency fee agreements may not be used as the basis for determining the reasonable attorney's fees to be paid by a nonparty to the fee arrangement. *Whiskey Barrel Platers Co. v. Am. Garden Works, Inc.*, 966 N.E.2d 711, 724 (Ind. Ct. App. 2012). "A trial court's award of attorney fees based on a contingency fee contract is inappropriate because such arrangements are susceptible to abuse." *Id.* "The party who stands to be awarded attorney fees by the trial court must be content with reasonable attorney fees based upon traditional factors." *Id.* Moreover, Appellees' contingency fee agreement with their attorneys provided for a fee of thirty-three and 1/3 percent of the total amount recovered, or forty percent of the total amount recovered in the event of an appeal. The trial court awarded \$134,799.98 in lost income to Marilyn's Trust and ordered the return of the one-quarter interest in the farm, which the trial court valued at \$370,000.00. Appellants, however, seek to ignore the value of the one-quarter interest in the farm in determining the attorney's fees.

[37] Here, Appellees' attorney submitted an affidavit detailing his fees incurred in the litigation. In determining the attorney's fee award, the trial court considered the factors of Indiana Professional Conduct Rule 1.5(a)⁹ and found:

The instant case is among the longest-running and most actively litigated cases currently pending before this Court and it has generated a voluminous record. Numerous motions have been filed by both sides during the life of this case. For example, as the Court noted it in its Order dated February 4, 2018, the parties made 16 filings in regard to summary judgment matters, not including five other pleadings relating to requests for the entry of Orders in Limine. This case proceeded to a five-day jury trial that necessitated uncharacteristically lengthy workdays for counsel, court staff, and the undersigned judicial officer. That jury trial involved numerous complex legal issues, including, inter alia, matters of both Indiana trust law and Florida trust law. Following that trial, counsel for the Plaintiffs successfully prosecuted an appeal, earning a reversal and remand, and then responded to the Defendants' ultimately unsuccessful Petition to Transfer. Following a second contested summary judgment hearing, this Court entered a judgment favorable to the Plaintiffs. The hourly rate charged by counsel for the Plaintiff is appropriate

⁹ Indiana Professional Conduct Rule 1.5(a) provides:

- The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.

for the Miami County area, given the level of experience (51 years of experience), reputation, and ability of counsel for the Plaintiff and the novelty and difficulty of the legal issues involved in this case.

Appellants' App. Vol. II pp. 49-50. Given the extraordinarily lengthy litigation, which involved complex issues, two summary judgment proceedings, a jury trial, and two appeals, we cannot say that the trial court abused its discretion when it awarded Appellees \$110,000.00 in attorney's fees.

Conclusion

[38] The trial court properly granted summary judgment to Appellees, voided the deeds at issue here, ordered Appellants to pay lost profits, and ordered William III to pay Appellees' attorney's fees. We affirm.

[39] Affirmed.

Najam, J., and Pyle, J., concur.