

IN THE SUPREME COURT OF IOWA

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NO. 17-1964

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VINCENT ANGERER TRUST and  
DEWITT BANK & TRUST COMPANY,  
as Trustee of the Vincent Angerer Trust

Appellants,

vs.

SERENA KONRARDY and CARRIE RIGDON,

Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CLINTON COUNTY,  
THE HONORABLE MARK R. LAWSON PRESIDING

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**APPELLANTS' REPLY BRIEF IN FINAL FORM**

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## ARGUMENT

### I. THE DISTRICT COURT ERRED IN DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

#### A. Discussion

##### 1. Plaintiffs' Claims are barred by the Statute of Limitations under Iowa Code Section 633A.4503

In order to avoid the one-year statute of limitations under Iowa Code section 633A.4504, the Plaintiffs first renewed their argument which was rejected by the District Court—that their action is not one for breach of trust. This contention is easily refuted by the contents of Plaintiffs' Petition and their claim for relief. The Plaintiffs' action is clearly based on breach of trust and, thus, the statute of limitations under section 633A.4504 applies and bars their claim.

It is true that the one-year statute of limitations under section 633A.4504 only applies to claims for breach of trust. It provides the following:

Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received an accounting pursuant to section 633A.4213 or other report that adequately discloses the existence of the claim, *unless a proceeding to assert the claim is commenced within one year after the receipt of the accounting or report.* An accounting or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or

reasonably should have inquired into its existence.

Iowa Code § 633A.4504 (1) (emphasis added). Iowa Code section 633A.4501(1) defines “breach of trust” as follows: “A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust.” Iowa Code § 633A.4501(1). One duty that trustees owe to beneficiaries is the duty to administer the trust in accordance with its terms and the trust code. Iowa Code § 633A.4201(1) (“On acceptance of a trust, the trustee shall administer the trust according to the terms of the trust and according to this trust code, except to the extent the terms of the trust provide otherwise.”). Included among the remedies for a breach of trust, as provided by the Iowa Trust Code, is to compel the trustee to perform his duties and to compel the trustee to redress a breach of trust by payment of money. Iowa Code § 633A.4502(1)(a)–(c).

The Plaintiffs’ Petition clearly and plainly set forth a cause of action for breach of trust; specifically, that the Defendants failed to administer the Trust in accordance with its terms. Plaintiffs are beneficiaries of the Vincent Angerer Trust, and Defendant is the trustee of the Trust. Defendant made certain distributions to the Plaintiffs pursuant to the Trust. (App. 8–9). Plaintiffs disagree with the Defendant’s valuation of their respective distributions; in their Petition, Plaintiffs claim those distributions should

have been valued as of the date of distribution, rather than the date of the death of Vincent Angerer. (App. 8–11). The Plaintiffs then ask the Court to order the Defendants to revalue and redistribute the funds according to their proposed valuation date. This clearly amounts to a breach of trust claim. The Plaintiffs are claiming that the distributions were incorrectly valued; those distributions—and when they are to be valued—are solely governed by the terms of the Trust. Plaintiffs’ allegation that the Defendant improperly made distributions is, by rule, an allegation that the Defendant breached the Trust.

In fact, the District Court correctly rejected this argument, finding that the Plaintiffs’ claim was for breach of trust. The District Court reasoned as follows:

The plaintiffs argue this statute does not apply because they are not claiming a breach of trust by the trustee. The Court disagrees. By arguing the trustee favored one class of beneficiaries over another by its determination of a valuation date, the beneficiaries are necessarily arguing the trustee breached a duty. *See* Iowa Code §§633A.4501(1) (“A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust”); 633A.4201(1) (“On acceptance of a trust, the trustee shall administer the trust according to terms of the trust and according to this trust code . . .”).

(App. 131). With the Plaintiffs’ action based on breach of trust, the one-year statute of limitations under section 633A.4504(1) does, in fact, apply, and the Plaintiffs’ claims are time-barred.

Plaintiffs cite to the case, *Turner v. Iowa State Bank & Tr. Co. of Fairfield*, 743 N.W.2d 1, 5 (Iowa 2007), claiming its holding supports their contention that the present action is not based on breach of trust. However, the *Turner* case is easily distinguishable. First and foremost, *Turner* involved a pre-answer motion to dismiss; the court's ruling was simply that it could not determine, judging only from the Petition, whether the Plaintiff's claim was for breach of trust and thus subject to the one-year statute of limitations under section 633A.4504(1). *Id.* at 6. In the present case, the statute of limitations defense raised in a motion for summary judgment, and, therefore, the District Court was not limited to reviewing the pleadings.

As for the substance of the *Turner* case, the beneficiaries of a trust entered into a family settlement agreement which ended the trust and distributed the assets. *Id.* at 3. The plaintiff in *Turner*, one of the trust beneficiaries, also entered into an agreement with the defendants, co-trustees of the trust, not to interfere with any lawsuit between trust beneficiaries. *Id.* According to the plaintiff, the defendants then distributed the trust assets, in violation of the family settlement agreement, and conspired to bring a legal action to have the plaintiff declared incompetent. *Id.* at 4. The court found that the one-year statute of limitations under section 633A.4504 did not apply, as the plaintiff's claims were based on breaches of the family

settlement agreement and the agreement to refrain from interfering with litigation. *Id.* In other words, the claims alleged in the petition were not based on a breach of the trust agreement. *Id.* Here, the Plaintiffs' claims are not collateral to the Trust agreement, as they were in *Turner*. The Plaintiffs' claims are straightforward—they believe they were entitled to receive greater distributions under the Trust agreement. That unequivocally amounts to a breach of trust claim. Therefore, the statute of limitations under section 633A.4504(1) bars the Plaintiffs' claims, and the District Court erred in denying the Motion for Summary Judgment.

Plaintiffs then correctly point to the definition of “report” found in Iowa Code section 633A.4504(4), which states as follows: “For the purposes of this section ‘report’ means a document including but not limited to a letter delivered by or on behalf of the Trustee to a beneficiary of the Trust.” Iowa Code § 633A.4504(4). The documents and letters received by the Plaintiffs easily fall within this definition of “report.” The Plaintiffs received the Trust accounting in October 2011. Even if it is assumed that the accounting did not put the Plaintiff on notice of their claims, under the plain language of section 633A.4504(4), the letters themselves amount to “reports” which trigger the running of the statute of limitations. The letters sent between August 11, 2015 and September 9, 2015 were signed and

mailed by Roger Hill, representative of the Trustee, DeWitt Bank & Trust Company. (App. 49). The content of the letters clearly and unequivocally lays out the claims the Plaintiffs make in the present action—that their distributions were valued as of the date of Vincent Angerer’s death. Not only that, the Plaintiffs then made a demand that the Trustee revalue the real estate, the very relief they seek in this lawsuit. Contrary to the Plaintiffs’ claim in their Brief, the information in the letters was willingly provided by a representative of the Trustee; the information on the valuation date was not “discovered by the beneficiaries or on their behalf.”

Having been delivered to Plaintiffs’ retained counsel on behalf of the Trustee, the letters sent by Roger Hill squarely fit within section 633A.4504(4)’s definition of “report.” Thus, the one-year statute of limitations under section 633A.4504 began to run in August or September 2015. Plaintiffs did not file this action until March 2017, well beyond the expiration of that one-year period; consequently, their claims for breach of trust are barred as a matter of law.

**2. The Trust Clearly and Unambiguously Provides for Plaintiffs’ Share of the Trust Estate to be Valued as of the Date of Vincent Angerer’s Death**

The Plaintiffs next argue that the District Court properly declined to interpret the language of the Trust, denying the Defendants’ Motion for

Summary Judgment on this issue. In support of their argument, the Plaintiffs point to a few immaterial passages found in other parts of the Trust. Just as in the District Court, the Plaintiffs' proposed interpretation of the Trust is not supported by its plain language; there exists no genuine issue of material fact as to the proper valuation date, and summary judgment should have been granted in favor of Defendants.

Plaintiffs, following the analysis of the District Court, first claim the Defendants' interpretation ignores paragraph 4(b)'s provision that the Trustee is to "hold, manage, invest and reinvest the Trust Estate," followed by its instruction for the Trustee to "divide the remainder of the Trust Estate, *as then constituted*, including any property added thereto . . . ." (App. 32–33). Rather than defining when a distribution should be valued, the directive for the Trustee to hold, manage, invest and reinvest is more likely just a general definition of the duties of the Trustee. In fact, the same directive appears in paragraph 3, which addresses the Trustee's handling of income and principal prior to the Grantor's death. (App. 32). The passage in paragraph 4 simply instructs the Trustee to continue his general duty to manage the Trust Estate; it does not reflect any intent of the Grantor with regard to the valuation of distributions.

Finally, paragraph 4(b)(i) also provides that the shares of the Trust Estate should be “equal in value.” In order to ensure the shares are equal in value, they must be valued at the time of the Grantor’s death. If the Plaintiffs’ argument is accepted, the value of the shares would depend on when, exactly, the shares were able to be distributed. Some shares, because they were paid immediately, may be less than shares which, for various reasons, could not be paid until later, when the value of the Trust Estate increased. On the other hand, the reading of the Trust set forth by Defendants guarantees that the shares will be equal in value, just as the plain language of the Trust provides; the shares would be valued equally at a precise point in time. Thus, the plain language of the Trust reflects the Grantor’s intent to value the Estate at the time of Vincent Angerer’s death, and the District Court erred in denying summary judgment on that issue.

### **CONCLUSION**

For the reasons stated above, Appellants respectfully request that the judgment of the District Court be reversed in accordance with the arguments set forth herein, and the case remanded for entry of judgment in that regard and determination of attorneys fees, with costs of this action and appeal assessed against Appellees.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
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1. This brief complies the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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/s/ Ryan F. Gerdes  
Ryan F. Gerdes

July 3, 2018  
Date

**CERTIFICATE OF SERVICE AND FILING**

I certify that on the 3<sup>rd</sup> day of July, 2018, I, the undersigned, did file electronically this Appellants' Reply Brief in Final Form with the Clerk of the Iowa Supreme Court using the Electronic Document Management System.

I certify that on the 3<sup>rd</sup> day of July, 2018, I, the undersigned, did serve this Appellants' Reply Brief in Final Form on the attorney for the Appellees listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorney for the Appellees is a registered filer pursuant to Iowa R. Civ. P. 16.201.

*/s/ Ryan F. Gerdes*\_\_\_\_\_

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