

# Court Affirmed Temporary Injunction Precluding a Surviving Spouse from Acting as Trustee of a Trust

Article By:

David Fowler Johnson

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In *Kirkland v. Kirkland*, a husband and wife created a revocable trust. No. 02-22-00469-CV, 2023 Tex. App. LEXIS 3598 (Tex. App.—Fort Worth May 25, 2023, no pet. history). Upon the death of one of the spouses, the right to revoke the trust by the surviving spouse was limited. An individual was listed as the first successor trustee, and the surviving spouse was limited to removing and replacing him with someone who was not related to her. The trust also limited what provisions of the trust could be amended by the surviving spouse. Notwithstanding, the surviving spouse executed a document that purported to remove the individual and replace him with the surviving spouse. The individual and the surviving spouse then filed claims against each other, and the individual obtained a temporary injunction precluding the surviving spouse from acting as a trustee, and the surviving spouse appealed that order.

The court of appeals affirmed the injunction order holding that there was evidence of a breach of fiduciary duty by the surviving spouse and that there was evidence of irreparable harm, both of which are required for a temporary injunction. The court stated:

Here, the record demonstrates that upon Benny's death, the trust provided for Calvin to serve as trustee. While Calvin was serving as trustee, Jerri executed the Second Amendment to remove Calvin as trustee and appoint herself as trustee. This appointment was a change to Article I of the Restated Amendment and violated 5.C. of the Restated Amendment, allowing only Articles II, III, or IV to be amended by the surviving spouse. Jerri's appointment of herself as trustee also violated the Restated Amendment's 3.A., which required that a successor trustee not be related to the surviving spouse. Additionally, Jerri's appointment of herself as trustee altered the status quo.

Further, once Jerri usurped the role of trustee, she did not uphold the high fiduciary standards required of a trustee. Jerri did not exhibit fidelity to the beneficiaries of the Decedent's Trust as she admitted that she had not taken a single action since she had purportedly appointed herself as trustee of the trust: she had not arranged to take care of the trust's taxes; she had not investigated what assets were currently in the trust; she had not checked to see what bills

were due on the New Mexico property or done anything to make sure that they were paid; and she had not reached out to the investment advisor to check on the Stifel account that had rapidly declined in value. Indeed, she professed to not knowing that she had removed Calvin as trustee.

Jerri claims that Calvin never proved that she had tried to harm him or that she intended to harm him in the future. The failures listed above are some evidence that Jerri had harmed Calvin, who was a beneficiary of the Decedent's Trust and the Stifel account. Moreover, as stated above, "[i]n determining imminent harm, 'the trial court may determine that, when violations are shown up to or near the date of trial, the defendant has engaged in a course of conduct[,] and the court may assume that it will continue, absent clear proof to the contrary.'" Hartwell, 528 S.W.3d at 764. The trial court was within its discretion to conclude that Jerri's actions in removing Calvin as trustee and appointing herself as trustee—both actions in violation of specific provisions in the trust—and then failing to act as trustee demonstrated that she had engaged in a course of conduct that would continue in the future.

*Id.* The court also held that there was evidence that the surviving spouse did not have sufficient assets to reimburse the trust for damages associated with her inaction.

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