

# Texas Supreme Court Reverses Order in Trust Dispute Granting a Constructive

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In *In re Trust A & Trust C*, a beneficiary sued a trustee for breach of fiduciary duty and sought a constructive trust over assets that were transferred out of the trust. 690 S.W.3d 80 (Tex. 2024). The trial court granted that relief. The court of appeals reversed, holding that other parties, who possessed the assets, were indispensable and not parties to the suit. The parties appealed to the Texas Supreme Court.

The Court first addressed whether the trial court had jurisdiction despite the missing parties:

Texas Rule of Civil Procedure 39 provides that a person who is subject to service of process shall be joined in an action if (1) the court cannot grant “complete relief” to the parties in the person’s absence or (2) the person “claims an interest relating to the subject of the action” and a judgment may impair his ability to protect his interest or leave the parties subject to a “substantial risk of incurring” multiple or inconsistent obligations. If either situation exists, but the person cannot be joined, the trial court must decide whether to proceed without him or dismiss the action. Under Rule 39, however, the parties’ failure to join a person will rarely deprive the court of jurisdiction. Instead, Rule 39 addresses whether the court has “authority” to proceed in the person’s absence. But the rule was designed “to avoid questions of jurisdiction,” and it “would be rare indeed if there were a person whose presence was so indispensable in the sense that his absence deprives the court of jurisdiction to adjudicate between the parties already joined.”

This is not such a “rare” case. No one disputes that the probate court had jurisdiction to resolve the dispute between Glenna and Mark. Assuming Weston and Lane should have been joined under Rule 39(a), it was incumbent on the probate court to decide whether to dismiss the case or proceed without them, as it in fact decided to do. As discussed below, Weston and Lane’s absence may have limited the relief the court could grant, but it did not deprive the court of jurisdiction to resolve the case before it. We will therefore reverse the court of appeals’ judgment vacating the probate court’s order for lack of jurisdiction.

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*Id.* The Court therefore agreed with the trial court that it had jurisdiction to proceed with the case.

The Court also held that the trial court did not err in finding that the trustee breached her fiduciary duty by transferring assets as a sole trustee when she had to cooperate with her co-trustee:

Glenna argues that the probate court erred by voiding the transfer of the shares and imposing a constructive trust because no evidence supports a finding that she committed a “breach of trust.” See Tex. Prop. Code § 114.008(a)(9) (“To remedy a breach of trust . . . , the court may . . . void an act of the trustee [or] impose a lien or a constructive trust on trust property . . .”). A “breach of trust” means a trustee’s violation of a duty owed “to a beneficiary.” *Id.* § 111.004(25). Because the amended trust agreement and Jeannette’s will granted Mark no interest in the shares and instead required that they be transferred to Glenna’s Trust, she contends the transfer could not have breached any duty she owed to Mark “as a beneficiary.”

By acting without involving Mark in the process, however, Glenna acted as a sole trustee when she was actually a co-trustee. The trust agreement expressly provides that “[i]n any instance in which two Co-Trustees are serving jointly, any action of the Trustee shall require the joinder and consent of both Co-Trustees.” Glenna thus breached her duties by acting unilaterally with regard to the valuation and transfer of the shares. Mark asserts that the valuation reduced the “equivalent value” of other assets that must be allocated to Mark’s Trust, and the timing of the transfer prevented the Sub-Trusts from receiving the dividend payments and thus reduced the trust assets available for distribution to Mark’s Trust after the transfer. If either of these allegations is true, Glenna’s unauthorized actions could constitute a “breach of trust” because Mark’s Trust is a beneficiary entitled to receive an equal share of those assets. Based on these facts, we cannot agree with Glenna’s contention that, as a matter of law, Glenna did not commit a breach of trust.

*Id.*

The Court, however, disagreed that the trial court had the ability to order the restoration of the assets to the trust:

“[C]oercive relief” is improper when it “becomes impossible.” Because Weston and Lane were not parties to the suit, the probate court could not require them to transfer the shares back to Glenna’s Trust or to the Sub-Trusts. But their absence did not empower the probate court to order Glenna to perform an act she has no power or ability to perform.

If Glenna had not sold the shares and her trust still owned them, the Property Code would allow Mark to choose between a damages award or an order requiring Glenna to restore the shares to the Sub-Trusts. But because Glenna sold the shares to Weston and Lane, Mark’s only available relief against Glenna is a money judgment ordering her to pay the proceeds of that sale or the value of the shares.

Mark argues, however, that the injunctive relief was proper because the probate court imposed a constructive trust on the shares and the proceeding was, in effect, an *in rem* action affecting the shares without regard to who may own or claim an interest in them. He notes that the Texas Trust Code permits a court that finds a breach of trust to “void an act of the trustee,” “impose a lien or constructive trust on trust property,” and compel a trustee to “restore property” to the trust. Again, we disagree...

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Courts may impose a constructive trust if “the person holding the title to property would profit by a wrong or would be unjustly enriched if he were permitted to keep the property.” A court may impose a constructive trust only when “money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant’s possession.”... Because Glenna no longer owns or controls the shares, Mark cannot obtain a constructive trust that requires Glenna to restore them.

No one here disputes that Glenna disposed of the W. Silver Recycling shares by transferring them from the Sub-Trusts to her trust and then selling them to Weston and Lane. If Weston and Lane were named as parties in this action, the probate court could potentially impose a constructive trust and compel them to restore the shares to Glenna’s Trust or to the Living Trust, subject to whatever defenses they may raise. Alternatively, the court could potentially impose a constructive trust on any traceable proceeds Glenna or her trust received from the sale to Weston and Lane. Or the court could impose personal liability against Glenna and her trust for money damages resulting from the wrongful transfers. But it cannot impose a constructive trust requiring Glenna to restore the shares to the Sub-Trusts when she no longer owns or controls those shares.

*Id.*

The Court then addressed several arguments. First, the Court agreed with the trustee that the plaintiff, as a co-trustee, has a duty to follow the terms of the trust, which required the distribution of assets to the defendant’s trust. “Undoing the transfers at this point, she contends, would not only be unnecessary, it would harm both parties by causing the trusts to incur additional tax liabilities and penalties and by jeopardizing recent bank loans to W. Silver Recycling. We agree with this argument.” *Id.* The Court noted:

Even if the claimant has conferred a benefit that results in the unjust enrichment of the recipient when viewed in isolation, the recipient may defend by showing that some or all of the benefit conferred did not unjustly enrich the recipient when the challenged transaction is viewed in the context of the parties’ further obligations to each other.” As a co-trustee, Mark owes a fiduciary duty not just to himself and his trust but to all beneficiaries, including Glenna’s Trust. And given the clear instructions in the amended trust agreement and Jeannette’s will, Mark has a nondiscretionary duty to ensure that the shares are transferred to Glenna’s Trust. Based on the arguments made thus far in this case, we see no reason why the probate court should or could require the shares to be transferred back to the Sub-Trusts when the trust agreement required that they be transferred to Glenna’s Trust and gave Glenna the sole authority over them from that point.

*Id.*

The Court also held that the plaintiff must be permitted to participate in the valuation process, and that he may attempt to prove that the value of the shares was greater than the valuation the defendant unilaterally accepted. “If he meets that burden, the total value of the Sub-Trusts’ assets, and thus his trust’s proportional ‘equivalent’ share of those assets, will increase over the values fixed by the \$3,450,000 value Glenna unilaterally accepted.” *Id.* Moreover, the Court noted that a proper valuation of the shares must reflect the company’s value prior to any distribution, and that value should reflect the \$6 million the company had available for distributions at that time.” The court

reversed the order restoring the assets to the trust.

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