

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140952-U

NO. 4-14-0952

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED
October 9, 2015
Carla Bender
4th District Appellate
Court, IL

In re: the Estate of J.L. WADE, a/k/a)	Appeal from
JESSE LORAIN WADE, Deceased,)	Circuit Court of
SUSAN WADE BARR,)	Pike County
Petitioner-Appellant,)	No. 07P40
v.)	
MERCANTILE TRUST & SAVINGS BANK,)	
Successor Trustee of the J.L. Wade Trust)	
Dated March 22, 2001, as Amended; J.L.)	
WADE FOUNDATION, INC.; MIMI CHUNMEI HU;)	
and THE UNIVERSITY OF ILLINOIS)	Honorable
FOUNDATION,)	Diane M. Lagoski,
Respondents-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying petitioner's request to be appointed as successor trustee.

¶ 2 In May 2015, petitioner, Susan Wade Barr, petitioned the trial court to name her successor trustee of the J.L. Wade Trust dated March 22, 2001 (J.L. Wade Trust). The court denied the petition and appointed respondent Mercantile Trust & Savings Bank as the successor trustee at the request of respondent J.L. Wade Foundation, Inc. (Foundation). Petitioner appeals, arguing the court abused its discretion. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 This appeal is another in a long line of appeals arising from the litigation over J.L. Wade's estate. See, e.g., *In re Estate of Wade*, 2015 IL App (4th) 140229-U; *Barr v. Hu*, 2012 IL App (4th) 110865-U; *In re Estate of J.L. Wade*, 2011 IL App (4th) 110288-U. J.L. died in June 2007 at the age of 94. During his lifetime, J.L. created and operated Nature House, Inc., a company that manufactured houses for purple martins. When he died, he left a sizeable estate. J.L. had one daughter, petitioner.

¶ 5 J.L.'s estate plan included a will (2001 Will) and trust agreement (2001 Trust Agreement) executed in March 2001. Under the terms of his 2001 Will, J.L. left his estate to the trust, J.L. Wade Trust, which was created in the 2001 Trust Agreement. J.L. designated himself as the trustee and named Bank of America as the successor trustee. According to the 2001 Trust Agreement, the J.L. Wade Trust was to employ Mimi Chunmei Hu, J.L.'s caretaker, during J.L.'s lifetime and, if she remained employed by J.L. at his death, to provide Hu \$100,000 and a home in Scottsdale, Arizona. The 2001 Trust Agreement provided \$1 million be given to petitioner, J.L.'s only child, so long as she did not challenge the validity of the testamentary documents. The balance of J.L.'s estate was to be given to the Foundation for scholarship purposes.

¶ 6 J.L. amended his estate plan by amendment in May 2002 (2002 Amendment) and January 2004 (2004 Amendment) and by codicil in May 2004 (2004 Codicil). In the 2002 Amendment, J.L. reduced the gift to petitioner to \$300,000 and confirmed the 2001 Trust Agreement "[i]n all other respects." In the 2004 Amendment, J.L. named Mercantile Trust & Savings Bank (Mercantile) as successor trustee. In the 2004 Codicil, J.L. appointed Mercantile as the executor of his 2001 Will.

¶ 7 After J.L.'s death, petitioner initiated litigation contesting the 2001 Will, the 2001

Trust, the amendments, and the 2004 Codicil. A trial was held. At trial, a jury considered the will contest, while the trial court considered the trust contest. Ultimately, the 2001 Will and 2001 Trust, as well as the 2002 Amendment, were found valid. The 2004 Amendment and 2004 Codicil were set aside. The trial court found, in 2004, due to Alzheimer's disease, J.L. lacked testamentary capacity. On appeal, this court affirmed those decisions. See *Wade*, 2015 IL App (4th) 140229-U, ¶¶ 38, 83.

¶ 8 As a result of the trial court's ruling, J.L.'s appointment of Mercantile as successor trustee was set aside. In May 2014, the trial court entered a finding removing Mercantile as trustee of the J.L. Wade Trust. Mercantile continued to act as an interim administrator under section 10-1 of the Probate Act of 1975 (755 ILCS 5/10-1 (West 2014)) until a successor trustee could be appointed. Section 8 of the 2001 Trust set forth the means by which a successor trustee may be designated. Section 8 provides as follows, in part:

"I may resign as trustee at any time ***. After my resignation, death or inability to manage my affairs, Bank of America *** or its successor, shall be successor trustee.

Any trustee may resign at any time by giving sixty (60) days written notice to me, if living, otherwise to each beneficiary then entitled to receive or have the benefit of the income from the trust. In case of the resignation, refusal or inability to act of any trustee, I, if living, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust, shall appoint a successor

trustee, but any successor trustee shall be a bank or trust company qualified to accept trusts.

* * *

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any Court."

¶ 9 That same month, petitioner filed her petition seeking the appointment of herself as successor trustee. Petitioner asserted she was the only surviving heir of J.L.'s and a beneficiary of the trust. Petitioner alleged the language in section 8 of the 2001 Trust did not apply as there were no income beneficiaries and no agreement among the beneficiaries of the trust. Petitioner asserted, under section 13 of the Trusts and Trustees Act (Act) (760 ILCS 5/13 (West 2014)), she should be appointed. Petitioner emphasized her willingness to serve without trustee fees and her familiarity with the trust properties and real estate, including Nature House, Inc.

¶ 10 The Foundation petitioned for the appointment of Mercantile as successor trustee. The Foundation asserted it was the only income beneficiary of the J.L. Wade Trust. Thus, according to the Foundation, the terms of both the 2001 Trust and section 13(2) of the Act (760 ILCS 5/13(2) (West 2014)) dictate the Foundation, not petitioner, has the sole authority to designate a successor trustee. In addition, the Foundation argued the terms of the 2001 Trust, which mandate "any successor trustee shall be a bank or trust company qualified to accept trusts," explicitly prevents petitioner from serving. The Foundation asserted Mercantile should be designated because it had administered the trust and estate since 2004 and was familiar with

the trust and its administration as well as with the litigation.

¶ 11 The trial court agreed with the Foundation. The court found the language in the 2001 Trust controlled. The court determined, based on *Vena v. Vena*, 387 Ill. App. 3d 389, 394-95, 899 N.E.2d 522, 526-27 (2008), the Foundation was the income beneficiary under the trust and that Hu and petitioner were not income beneficiaries. The court observed Mercantile was not removed for cause, but was unable to act as trustee as a result of the orders setting aside the 2004 Amendment and 2004 Codicil. The court granted the Foundation's request for appointment of the successor trustee.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 A. Standard of Review

¶ 15 Section 13 of the Act authorizes a court to appoint a successor trustee "[i]n the event of the death, resignation, refusal or inability to act of any trustee." 760 ILCS 5/13 (West 2014). Subsection 13(2) provides a successor trustee may be appointed by a majority of the interest beneficiaries. When appointing a successor trustee, the trial court should consider the intention of the creator of the trust, the interests and wishes of the beneficiaries, and the proper administration of the trust. See *Matter of Estate of Wasson*, 117 Ill. App. 3d 368, 367, 453 N.E.2d 120, 123 (1983). This court will not disturb a decision on this matter absent proof the trial court abused its discretion. *Id.* at 371, 453 N.E.2d at 123.

¶ 16 To ascertain the intention of the creator of the trust, the trial court must look first to the terms of the document creating that trust. See *Church of Little Flower v. U.S. Bank*, 2012 IL App (4th) 120266, ¶ 16, 979 N.E.2d 106. "[I]f the trust instrument's language clearly

expresses that intent, then we will adhere to that language unless contrary to law or public policy." *Id.* Appellate review of a trial court's construction of a trust instrument is *de novo*.

¶ 17 B. Section 8 of the 2001 Trust

¶ 18 Petitioner first argues the language in section 8 of the trust is "boilerplate" and J.L. "most likely had no idea whatever about the provision." In her reply brief, petitioner stresses the boilerplate nature of section 8 and even provides a similar excerpt from another form.

¶ 19 Petitioner, however, cites no authority to establish "boilerplate" language in an executed contract may be ignored. Her unsupported argument is bold. To accept this premise as true would undermine the validity of nearly every contract or testamentary device in this country. Absent any authority, we will not consider this argument. Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived ***.").

¶ 20 Next, petitioner contends—in three sentences—Section 8 does not apply to the circumstances in which the trustee was removed by court order. Petitioner contends, under section 8, the successor trustee appointment may be made only "in the case of the resignation, refusal or inability to act of any trustee." Petitioner thus seems to argue the trial court's order removing Mercantile as executor without cause does not equate to Mercantile's "inability to act." Given petitioner's failure to support this contention with any argument or authority, this court will not address it. See *id.*; see also *In re Estate of Lasley*, 2015 IL App (4th) 140690, ¶ 14 ("This court has often stated it is not a depository upon which an appellant may hoist his burden of argument and research.").

¶ 21 Petitioner further contends section 8 does not apply because it violates public policy and is void. Petitioner points to the last sentence of section 8 as violating public policy by asserting the trust need not account to any court: "No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any Court." Petitioner argues the entire section may not be considered. In support, petitioner quotes *Vena*, 387 Ill. App. 3d at 397, 899 N.E.2d at 529, in which the court stated it would "not consider the possibility that the provision is partially enforceable."

¶ 22 In this argument, petitioner again attempts to leave the burden of research and argument to this court. Petitioner cites no case law or other authority to support her assertion the language in the last sentence violates public policy. For the proposition this lone sentence undermines the entire section and its usefulness in ascertaining the settlor's intent, petitioner cites one case. Again, however, petitioner takes language from that case out of context. The above sentence followed the court's observation no party had argued the provision could be partially enforced:

"We also point out that both parties have assumed that the enforcement of the majority-approval provision is an all-or-nothing matter. That is, neither party has suggested that the provision is enforceable except to the extent that it, for example, prevents a beneficiary from raising a claim of bad faith by the trustee. We therefore will not consider the possibility that the provision is partially enforceable ***." *Id.* at 396-97, 899 N.E.2d at 529.

¶ 23 Having provided no applicable authority and developed no legal argument,

petitioner forfeited this argument. *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719, 495 N.E.2d 1132, 1137 (1986) ("A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented.").

¶ 24 C. The Decision Rejecting Petitioner as Successor Trustee

¶ 25 Petitioner first argues the trial court abused its discretion when it acted "under the *mistaken impression* that it was required to follow the administrative or 'housekeeping' trust provisions." (Emphasis in original.) Petitioner argues the court, under the doctrine of equitable deviation, had the authority to modify administrative provisions of the trust. Petitioner contends, however, the trial court was unaware it could modify section 8 and appoint a successor trustee. In support, petitioner cites the following language from the trial court's ruling: "So I think I'm bound to use that trust instrument, which says that a successor has to be a bank ***. *** I think I have to deny her petition because I think I am obligated under the trust document."

¶ 26 We are not convinced. The trial court is presumed to know the law unless the record indicates otherwise. See *People v. Robinson*, 368 Ill. App. 3d 963, 976, 859 N.E.2d 232, 246 (2006). Here, our presumption is not contradicted by the record. The language cited by petitioner does not show the trial court was unaware of the doctrine of equitable deviation. Petitioner takes the sentences out of context. The excerpted language from the trial court addressed petitioner's counsel's attempt, during the hearing on her petition, to convince the court other trust and will documents should be considered:

"[Petitioner's Counsel] suggests that [petitioner] has appealed that, but I think I have to deal with what we have right now, and not what could be if it was—if the jury verdict and the court's findings

were overturned on appeal. What we have right now is that the trust gets everything under the will, and the division of that is according to that trust instrument, not any other trust instrument that may have preceded it. *So I think I'm bound to use that trust instrument, which says that a successor has to be a bank ***.*"

(Emphasis added.)

¶ 27 In addition, the conclusion to deny petitioner's request "because I think I am obligated under the trust document" does not evidence a misconception regarding the doctrine of equitable deviation. Under the doctrine of equitable deviation, a trial court "may modify an administrative or distributive provision of a trust, or direct or permit the trustee to deviate from an administrative or distributive provision, if because of circumstances not anticipated by the settlor the modification or deviation will further the purposes of the trust." *Church of Little Flower*, 2012 IL App (4th) 120266, ¶ 17, 979 N.E.2d 106 (quoting Restatement (Third) of Trusts § 66, at 492 (2003)). Here, the record supports a conclusion the doctrine does not apply as the trust instrument shows J.L. anticipated circumstances in which a successor trustee may need to be appointed. The determination, "I think I am obligated under the trust document," appears to be not a rejection of the argument equitable deviation could apply but an affirmation that it should not apply.

¶ 28 Moreover, any alleged error is harmless. Given the language in section 8 and petitioner's failure to establish error with that language, it is clear J.L., the settlor, anticipated circumstances in which a successor trustee may be unable to act. Petitioner also has not established a deviation would further the purposes of the trust. The equitable-deviation doctrine

does not apply to these circumstances.

¶ 29 Petitioner last argues the order is an abuse of discretion. Petitioner emphasizes the evidence showing her qualifications to serve as a trustee and the absence of evidence supporting Mercantile's reappointment in light of its removal. Petitioner contends Mercantile did not show it was qualified and licensed to accept the appointment as trustee.

¶ 30 We disagree. We note, again, petitioner failed to support this argument with any authority. The record shows, however, no abuse of discretion occurred.

¶ 31 Section 8 clearly evidences J.L.'s intent. J.L. desired a bank or similar institution to serve as a trustee. J.L. intended the income beneficiaries to decide on a successor trustee. The trial court determined, under *Vena*, the Foundation, which is to receive the remainder of the trust estate, is the only beneficiary of income derived by the trust while assets are distributed. While petitioner disagrees with this conclusion, petitioner developed no argument with citations to authority to dispute it. We, therefore, presume the decision is proper. It was J.L.'s intent the Foundation, as the only income beneficiary, decide the successor trustee. This approach is consistent with Illinois law, which authorizes beneficiaries entitled to the income to decide on a successor trustee. See 760 ILCS 5/13(2) (West 2014). The Foundation requested Mercantile. Mercantile had been acting as trustee for years. It knew the trust and its assets. It defended the trust in litigation. Mercantile was not removed for any ill conduct on its part, which the trial court acknowledged. We find no abuse of discretion in appointing Mercantile and denying petitioner's request.

¶ 32

III. CONCLUSION

¶ 33 We affirm the trial court's judgment.

¶ 34

Affirmed.