

**Fifth Circuit Court of Appeal**  
**State of Louisiana**

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No. 25-CA-565

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IN THE MATTER OF THE ARTEE MILLIGAN, JR. FAMILY TRUST

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ON APPEAL THE FORTIETH JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA  
NO. 81,303, DIVISION "A"  
HONORABLE KIRK A. VAUGHN, JUDGE PRO TEMPORE, PRESIDING

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June 17, 2026

**FREDERICKA HOMBERG WICKER**  
**JUDGE**

Panel composed of Judges Susan M. Chehardy,  
Fredericka Homberg Wicker, and Stephen J. Windhorst

**AFFIRMED**

**FHW**  
**SMC**  
**SJW**

TRUE COPY  
  
JALISA WALKER  
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,  
ERICA MILLIGAN

Thomas M. Lockwood

COUNSEL FOR DEFENDANT/APPELLEE,  
TARNI MITCHELL

Gregory O. Wilson

**WICKER, J.**

Appellant, Erica Milligan, appeals the Judgment of the 40th Judicial District Court, rendered on April 30, 2025, wherein the district court issued a declaratory judgment interpreting certain provisions of the instrument that established the Artee Milligan, Jr. Family Trust. For the reasons stated below, the district court's judgment is affirmed.

**CONCISE STATEMENT OF FACTS**

This case involves the interpretation of the trust instrument (the "Trust Instrument") creating the Artee Milligan, Jr. Family Trust (the "Trust"), including a declaration of the rights of appellant, Erica Milligan ("Ms. Milligan"), the current income beneficiary, and the obligations of the trustee (the "Trustee") to her. Ms. Milligan is the niece of the Settlor, Artee Milligan, Jr. (the "Settlor"). He had no children and adopted no children during his lifetime. The Settlor provided in the Trust Instrument that Ms. Milligan would receive distributions of Trust income, not to exceed two thousand dollars (\$2,000) per month (or \$24,000 per year), for her lifetime. The Trust Instrument provides for successor income beneficiaries, specifically, Ms. Milligan's descendants – she has two children – and, ultimately, Southern University A&M College ("Southern").

In this matter, Ms. Milligan contends that she should not be limited to \$2,000 per month but should receive all income generated by the Trust annually or during her lifetime. Based on the premise that the Trustee's duty is to administer the trust solely for her benefit, as she is the sole current income beneficiary, Ms. Milligan contends that all of the Trust Property, as hereafter defined, should be invested in such a manner so as to maximize income for her benefit. The district court ruled against her on both issues. Ms. Milligan contended that, alternatively, the Trust Instrument should be reformed to require the Trustee to distribute to her annually, the amount of income earned by the Trust, on which the Trust, if it failed

to distribute same to her, would pay taxes at higher rates than she would be required to pay as an individual, had the income been distributed to her. The district court also ruled against Ms. Milligan on this issue. In this appeal, Ms. Milligan assigns these three decisions as error.

### **FACTS AND PROCEDURAL HISTORY**

By Trust Instrument executed on September 20, 2019, the Settlor created the Trust, pursuant to the Louisiana Trust Code (La. R.S. 9:1721, *et seq.*). The Settlor funded the Trust with immovable and movable property, including certain monetary accounts.

#### **Relevant Provisions of the Trust Instrument**

The Trust Instrument provides that the Trust is revocable during the lifetime of the Settlor but becomes irrevocable upon his demise. The Trust was established for the benefit of the Settlor, his descendants, Ms. Milligan and her descendants, and any other parties designated in the Trust Instrument, *i.e.*, Southern. The Trust continues until the death of the last surviving income beneficiary. During his lifetime, the Settlor also served as the Trustee. Tarni Jones-Mitchell, Appellant's mother, was named as the successor Trustee upon the death of the Settlor.<sup>1</sup>

The Settlor was the sole income beneficiary of the Trust during his lifetime and exercised complete control over the Trust. Prior to his death, the net income and principal of the Trust were distributed as he saw fit. The Trust Instrument required that any income of the Trust not disposed of in any year was to be added to the principal of the Trust at the end of each year. Upon the death of the Settlor, all non-liquid property then owned by the Settlor, both movable and immovable, was to be liquidated, with the proceeds becoming property of the Trust (the "Trust Property"). Pursuant to the Trust Instrument, the net income generated by the

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<sup>1</sup> Tarni Jones-Mitchell was married to Artee Milligan's brother, Mark. Ms. Milligan is the daughter of Ms. Jones-Mitchell and Mark Milligan.

Trust Property, in the discretion of the [successor] Trustee, was to be used in the following manner:

First, to make distributions to the Settlor's direct descendants, in amounts and at times discretionary with the Trustee, for purposes of health, education, support, or maintenance, not to exceed two thousand dollars per month; and,

Second, to make distributions to Ms. Milligan, in amounts and at times discretionary with the Trustee, for purposes of health, education, support, or maintenance, not to exceed two thousand dollars per month.

The Trust Instrument also states that:

Any distribution must reduce the share of the beneficiary who received the distribution. Any income accumulated by the trustee must ultimately be paid to the beneficiary, or to the beneficiary's estate, whose share of the income was accumulated, and must be payable before or on termination of the trust. A distribution of principal to a beneficiary will affect the amount of income allocable to the beneficiary in that the distribution will be chargeable against the proportionate share of principal held in trust for the payment of income to the beneficiary as if the principal constituted a separate trust. The income allocated to a beneficiary's share must be based on the beneficiary's share of trust property compared to all the trust property from time to time.<sup>2</sup>

The Trust Instrument further provides that if a beneficiary dies with descendants prior to the termination of the Trust, the share of the beneficiary is to remain in trust for benefit of the beneficiary's descendants or legatees. If, however, a beneficiary dies without descendants prior to the termination of the Trust, the beneficiary's share is to be divided among the remaining principal beneficiaries – of which there are none – on a per stirpes basis, subject to the terms of the Trust.

When there are no longer any living descendants of Ms. Milligan, Southern becomes the beneficiary of a portion of the monies from the Trust for the establishment by the Trustee of two grants/scholarships, to be known as The Artee Milligan, Jr. Scholarships. The amounts of the grants/scholarships are within the

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<sup>2</sup> It is this section of the Trust Instrument that has resulted in the dispute as to the Settlor's intent and spawned the instant declaratory judgment action.

Trustee's discretion. The Trustee may also, in her discretion, change the selection criteria for the grants/scholarships from those set forth in the Trust Instrument.

The Trust Instrument provides that the Trustee is granted all of the powers conferred upon a Trustee under Louisiana law. The Trust Instrument expressly authorizes the Trustee to "make such investments as they may deem advisable with a view both to present income and to possible future growth of principal." It further provides that the Trustee, "in his/her uncontrolled discretion may determine what shall be income and what shall be principal and may allocate expenses . . . to income or principal as he/she deems proper." Capital gains and losses arising from the sale or exchange of the Trust Property "shall become a part of or be charged to the principal of the trust, and any income tax on capital gains shall be paid out of the trust." The Trustee may be paid for her services in an amount not to exceed five thousand dollars per year. All compensation and charges payable by the Trust, including legal fees, are to be paid from income, if adequate. The Trustee is obligated to render an annual accounting of the Trust, showing the status of the trust estate.

### **The Declaratory Judgment Action**

On January 4, 2024, Ms. Milligan filed a Petition for Declaratory Relief (the "Petition") in the district court, pursuant to La. R.S. 9:2223(A), seeking an interpretation of provisions of the Trust Instrument and a declaration of her rights and the obligations of the Trustee to her.<sup>3</sup> The Trustee was named as the

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<sup>3</sup> La. R.S. 9:2223(A) provides, in pertinent part:

A trustee, a beneficiary, or a settlor in an ordinary or a summary proceeding may apply to the proper court for instructions concerning the trust instrument, the interpretation of the instrument, or the administration of the trust. An order of a proper court issued pursuant to such an application shall be full authority to act in accordance thereunder, and a trustee shall be fully protected from all claims of any person who has or who may subsequently acquire an interest in the trust property.

defendant. In the Petition, Ms. Milligan sought to have the district court declare that:

- (1) the class of income beneficiaries consisting of the direct descendants of the Settlor contains no members and has closed, pursuant to La. R.S. 9:1896;
- (2) she is presently the sole income beneficiary of the Trust and will be such until her death;
- (3) the Trustee must render annual accountings to her as provided in the Trust Instrument and La. R.S. 9:2088;
- (4) the Trustee must immediately list for sale all immovable and movable property owned by the Trust at the time of the Settlor's death;
- (5) the Trustee must invest the Trust Property exclusively in income producing investments;
- (6) all income generated by the Trust during her lifetime be allocated to and paid to her, as the sole income beneficiary of the Trust;
- (7) a separate account in her name be created by the Trustee, into which shall be deposited all of the income generated by the Trust property during Ms. Milligan's lifetime, but not paid to her during her life, which shall be invested in income producing investments, and which shall not be comingled with any other Trust property, but which ultimately shall be paid to Ms. Milligan or her estate; and
- (8) the Trustee must pay her all of the income generated by the Trust property on an annual basis or, alternatively, the Trustee shall refrain from paying Federal and State income taxes on income earned by the Trust and not distributed to Ms. Milligan and to instead distribute to Ms. Milligan all of the income earned by the Trust on which the Trust, if it failed to distribute same to her, would pay Federal and State income tax at rates higher than the rates she would be required to pay were the income to be distributed to her.

The Trustee filed an Answer and Affirmative Defenses to the Petition. Upon the completion of discovery, the parties submitted the matter to the district court on stipulations of facts, exhibits, and issues for decision. The first four issues listed above had been satisfied by the Trustee by the time the matter was submitted to the district court and are not at issue in this appeal.

**Stipulations:**

*Stipulated Facts:*

The following facts are not in dispute, as they have been agreed or stipulated by the parties:

The Settlor died on February 14, 2023, leaving no direct descendants, as a result of which, Ms. Milligan became the sole income beneficiary of the Trust during her lifetime. Ms. Milligan is the biological mother of two children who will become income beneficiaries of the Trust upon her death. Upon the death of Ms. Milligan's children, their descendants will become income beneficiaries of the Trust. When there are no living descendants of Ms. Milligan, Southern will become the sole beneficiary of the Trust for the establishment of two grants/scholarships, as provided in the Trust Instrument.

Ms. Milligan received income payments from the Trust in the amount of \$2,000 per month for twenty-four months prior to the entry of the Stipulations, and said payments were continuing thereafter on a monthly basis. The Trustee had filed into the record an accounting of her administration of the Trust and had provided same to Ms. Milligan. The corpus of the Trust was invested with Bellingrath Wealth Management/LPL Financial ("Bellingrath/LPL"). The 2025 tax rates and brackets for trust income, qualified dividends, and long-term capital gains were also stipulated.

*Stipulated Evidence:*

The parties stipulated that the evidence informing the district court's decisions consisted of: (A) the Trust Instrument; (B) the Last Will & Testament of Artee Milligan, Jr.; (C) the Petition (not offered for proof of contents); (D) the Answer and Affirmative Defenses of the Trustee (not offered for proof of contents); (E) the Trust tax return for the tax year ended December 31, 2023; (F) the Deposition of Dorothy Jackson, taken February 25, 2025; (G) the Accounting

of Trustee, filed November 27, 2024; and (F) LPL statements for Trust investment account(s). The only testimony considered by the district court was the deposition testimony of Dorothy Jackson, the attorney who prepared the Trust Instrument for the Settlor and at his direction.<sup>4</sup>

Ms. Jackson testified regarding the intentions of the Settlor at the time the Trust Instrument was confected.<sup>5</sup> She stated that the Settlor was clear that he did not want Ms. Milligan to have access to the principal of the Trust; he only wanted to provide an allowance for her. In email correspondence that was identified by Ms. Jackson as having been sent to her by the Settlor and which was attached as an exhibit to her deposition, the Settlor wrote:

[W]hat I am hoping to do is to never allow my niece (Erica) to have access to the principal. I only want her to receive an allowance for her entire life. The trust would be transferred to her children upon her death, biological. I do not want her spouse to have access to the funds. She has bipolar disorder and is refusing treatment. She cannot control her spending habits. It is part of the disease.

Ms. Jackson stated that the Settlor wanted to limit Ms. Milligan to the sum of \$2,000 per month in support and wanted the Trustee to have discretion to distribute a lesser amount if she felt that less than \$2,000 per month was appropriate. Ms. Jackson said that the Settlor trusted that the Trustee would “do exactly as he wanted and that she could withstand the pushback that he anticipated would come from his immediate family members.” Ms. Jackson further stated that the Settlor wanted the Trust to be perpetual and to that end, included the language

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<sup>4</sup> Ms. Jackson also prepared the Last Will and Testament of Artee Milligan, Jr. (the “Will”), which was being contested in the Superior Court of the District of Columbia, Probate division. The parties stipulated that the issues pertaining to the Will were not part of the instant Trust litigation.

<sup>5</sup> Hearsay objections were lodged to some of Ms. Jackson’s testimony relative to discussions with the Settlor. Her deposition, however, was stipulated to be evidence to be considered by the district court, without any further objections being raised as to hearsay. Because the parties jointly submitted Ms. Jackson’s deposition testimony as evidence, with no request for any ruling on evidentiary objections and no further objections to hearsay, we will consider the deposition testimony in our review.

that when there were no more descendants of Ms. Milligan, the Trustee was to establish scholarships at Southern.

Ms. Jackson acknowledged that Section 5.1(c) of the Trust Instrument states that accumulated income must “ultimately be paid to the beneficiary, or to the beneficiary’s estate, whose share of the income was accumulated, and must be payable before or on termination of the trust,” and that “the income allocated to a beneficiary’s share must be based on the beneficiary’s share of trust property compared to all the trust property from time to time.” She testified, however, that this language did not alter the fact that Ms. Milligan was only entitled to a distribution from Trust income of no more than \$2,000 per month during her lifetime. She further stated that the language in Section 5.1(c) is “boilerplate language” which does not apply to Ms. Milligan because the provision refers to someone who would be a principal and an income beneficiary. Ms. Milligan is not a principal beneficiary and has no share of Trust Property, so the section does not apply to her. In Ms. Jackson’s view, the Trustee would not be required to account for accumulated income during Ms. Milligan’s lifetime. Ms. Jackson suggested that the court should interpret the Trust Instrument in a manner that complies with the “fundamental intent” of the Settlor, which was:

[A]n allowance of no more than \$2,000 per month to his niece, Erica Milligan, period. It was not for her to get an additional lump sum based on accumulated income or any of those things . . . He wanted her to have no more than \$2,000 per month.

And if the Trustee determined that she didn’t need the \$2,000 per month, then she could give her 500 or 750 or an amount that she thought or she deemed was appropriate under the circumstances, not to exceed \$2,000 per month.

*Stipulated Issues:*

In the Stipulation, the parties provided the following descriptions of the disputes that were submitted to the district court for decision:<sup>6</sup>

Issue No. 1:

***The Trust Beneficiary*** seeks a judgment declaring that the Trustee be ordered to invest the Trust Property exclusively in holdings designed to produce income rather than in holdings designed to produce growth/wealth resulting in less income or no income at all.

***The Trustee*** asserts that the Trust instrument specifically states that the Trustee has discretion with regards to investments and that a balanced growth and earnings investment approach is acceptable and consistent with the Trust.

Issue No. 2:

***The Trust Beneficiary*** seeks a judgment declaring that all income generated by the Trust Property during her lifetime be allocated to and paid to her during her lifetime, as the sole income beneficiary of the Trust and that the Trustee not be limited to \$2,000 per month.

***The Trustee*** asserts that the clear language of the Trust mandates that in the Trustee's sole discretion the income of the Trust up to a maximum of \$2,000 be paid to the Trust Beneficiary. The Trustee acknowledges that during the lifetime of the Trust Beneficiary the limitation is to \$2,000 per month, with the balance of any additional earnings of the Trust being paid to the Trust Beneficiary's estate at her death.

Issue No. 3

***The Trust Beneficiary*** seeks a judgment declaring that the Trustee shall create a separate account in her name and/or in the name of her estate, and: (a) to deposit therein all income generated by the Trust Property during the Beneficiary's lifetime, but not paid to the Beneficiary during her life; (b) to invest those funds in income-producing investments; (c) to refrain from comingling the funds on deposit in that account with any of the other Trust Property; and (d) to utilize the funds on deposit in that account solely for the purpose of ultimately paying same to the Beneficiary or her estate, and not for any other purpose.

***The Trustee*** asserts that the Trust funds can be managed under a single account and that a determination of the earnings and income of the Trust during the Trust Beneficiary's lifetime can be calculated and paid to the Trust Beneficiary's estate at her death without the need for separate accounting and without a prohibition of "comingling."

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<sup>6</sup> The contentions of the Trust Beneficiary, *i.e.*, Ms. Milligan, have been slightly rephrased where appropriate for purposes of streamlining and clarity.

*The Trust Beneficiary* seeks a judgment ordering the Trustee to annually pay her all income generated by the Trust Property or, in the alternative, and only in the event that the Court should refuse to order that all income generated by the Trust Property be paid annually to the Trust Beneficiary, a judgment be entered ordering the Trustee to refrain from paying Federal and State income taxes on income earned by the Trust and not distributed to the Beneficiary, and to instead distribute unto the Beneficiary annually all of the income earned by the Trust on which the Trust, if it failed to distribute same to the Beneficiary, would pay Federal and State income tax at rates higher than the rates the Beneficiary would be required to pay were that income distributed to her individually.

*The Trustee* asserts that a maximum of \$2,000 per month should be paid to the Trust Beneficiary during her lifetime and that there should be no restraint on the payment of any federal and state income taxes owed by the Trust and that a “required annual distribution of income earned” sought by the Trust Beneficiary is contrary to the language of the Trust.

### **Judgment of the District Court**

The matter was submitted to the district court on the foregoing stipulations. On April 30, 2025, the district court entered judgment. Relevant to this appeal, the judgment declared that: (1) the investment of the assets of the Trust is within the discretion of the Trustee subject to the duties set out in La. R.S. 9:2127 as a prudent investor, with the duties of a fiduciary; (2) taxes on any undistributed Trust income shall be paid by the Trust based on applicable tax laws pertaining to the Trust even though a higher tax obligation results than would be the case if income were to be distributed with the income beneficiary paying the taxes on same; (3) Ms. Milligan is not entitled to a distribution of all Trust income during her lifetime; instead, her benefits are limited to the Trust Instrument’s provisions calling for payment of up to \$2,000 per month, subject to the Trustee’s discretion; provided that Ms. Milligan’s Estate shall be paid all accumulated income generated during her term or life; and (4) in the Trustee’s Annual Account of the Trust, the amount(s) of income generated by the Trust, but not paid to income

beneficiary/beneficiaries, shall be designated and preserved so that it may be paid to the Estate of beneficiary/beneficiaries upon the death of such beneficiary. No reasons for judgment were provided by the district court.

Ms. Milligan filed a Motion and Order for Devolutive Appeal, which was granted on June 9, 2025. This appeal timely followed.

### **ASSIGNMENTS OF ERROR**

Ms. Milligan has assigned three errors purportedly made by the court below. First, she contends that the district court erred in failing to render judgment declaring that the Trustee is required to invest the Trust Property exclusively in holdings designed to produce income. Second, she asserts that the district court erred in failing to render judgment declaring that all income generated by the Trust Property during her lifetime be allocated and paid to her annually or during her lifetime, without regard to the \$2,000 per month maximum set forth in the Trust Instrument, as hereafter defined. Third, she maintains that, after determining that the Trustee was not required to pay annually to her all of the income generated by the Trust Property, the district court then erred in failing to render judgment declaring that the Trustee is required to annually distribute to her all of the income earned by the Trust on which the Trust, if it failed to distribute same to her, would pay federal and state income tax at rates higher than she would be required to pay had the income been distributed to her, individually.

### **APPLICABLE LAW**

The requirements and characteristics of Louisiana trusts are found in Louisiana's Trust Code (the "Trust Code"). La. R.S. 9:1721, *et seq.*; *Bridges v. Autozone Properties, Inc.*, 04-814 (La. 3/24/05), 900 So.2d 784, 796. A trust is the relationship resulting from the transfer of title to property to a person to be administered by him as a fiduciary for the benefit of another. La. R.S. 9:1731. A trust instrument is the written document creating the trust and all amendments and

modifications thereof. La. R.S. 9:1725(8). Property susceptible of private ownership, and any interest in such property, may be transferred in trust. *Bridges*, 900 So.2d at 796. *Inter vivos* trusts, such as the one at issue, are created upon executing the trust instrument. La. R.S. 9:1822.

The settlor, trustee, and beneficiary are the essential persons in the creation and maintenance of a trust. *Bridges*, 900 So.2d at 796. A settlor is a person who creates a trust. La. R.S. 9:1761. A trustee is a person to whom title to the trust property is transferred to be administered by him as a fiduciary. La. R.S. 9:1781. A beneficiary is a person for whose benefit the trust is created and may be a natural person, corporation, partnership, or other legal entity having the capacity to receive property. La. R.S. 9:1801.

A principal beneficiary is a beneficiary presently, conditionally, or ultimately entitled to the principal, which is the thing in trust. La. R.S. 9:1725(4). An income beneficiary is a beneficiary to whom income is payable, presently, conditionally, or in the future, or for whom it is accumulated, or who is entitled to the beneficial use of principal presently, conditionally, or in the future, for a time before its distribution. La. R.S. 9:1725(2). A trust may have one or more, or no, principal beneficiaries and/or one or more, or no, income beneficiaries. *See* La. R.S. 9:1804, 1805, 1806, 1807.

Title to trust property vests in the trustees alone. *Bridges*, 900 So.2d at 796. The powers of the trustee are those conferred upon the trustee by the trust instrument or those that are necessary or appropriate to carry out the purposes of the trust and not forbidden by the trust instrument. La. R.S. 9:2111; *LeDoux v. LeDoux*, 24-905 (La. App. 1 Cir. 4/17/25), 409 So.3d 1127, 1134-35, *writ denied*, 25-641 (La. 9/24/25), 417 So.3d 54. La. R.S. 9:1899 provides that except in the case of a legitime trust, “[t]he trust instrument may provide when income shall be

distributed, or it may provide that the trustee has discretion to determine the time or frequency of distribution or to accumulate some or all of the income.”

Louisiana has a strong public policy in effectuating and protecting the settlor's intent as set forth in the trust instrument. *Marlies Margot Cernicek Irrevocable Living Tr. v. Becnel*, 22-62 (La. App. 5 Cir. 11/16/22), 353 So.3d 950, 954–55, *citing McCaffery v. Lindner*, 18-163 (La. App. 5 Cir. 12/27/18), 263 So.3d 1205, 1210, *writ denied*, 19-0140 (La. 3/18/19), 267 So.3d 89; *J-W Oper. Co. v. Olsen*, 48,756 (La. App. 2 Cir. 1/15/14), 130 So.3d 1017, *writ denied*, 14-0313 (La. 4/11/14), 137 So.3d 1217. Inherent within the trust law is the concept of trust indestructibility and the protection of the trust instrument from any modification or termination contrary to the settlor's clearly expressed intent. *Elmer v. Poynor*, 23-251 (La. App. 5 Cir. 5/15/24), 389 So.3d 931, 938–39, *reh'g denied* (5/28/24), *writ denied*, 24-828 (La. 10/15/24), 394 So.3d 814, *citing Succession of Lanier*, 17-540 (La. App. 3 Cir. 5/30/18), 249 So.3d 1059, 1062–63, *writ denied*, 18-1091 (La. 10/15/18), 253 So.3d 1304, *citing Succession of Gourgis*, 08-430 (La. App. 5 Cir. 11/12/08), 1 So.3d 528, 532, *writ denied sub nom. In re Gourgis*, 08-2902 (La. 2/13/09), 999 So.2d 1147.

La. R.S. 9:1724 provides that trust instruments are to be interpreted liberally, in favor of freedom of disposition. Thus, a trust instrument is to be given an interpretation that will sustain the effectiveness of its provisions if the trust instrument is susceptible to such an interpretation. *Marlies Margot Cernicek Irrevocable Living Tr. v. Becnel*, 22-62 (La. App. 5 Cir. 11/16/22), 353 So.3d 950, 954, *citing Grant v. Grant*, 35,635 (La. App. 2 Cir. 2/27/02), 810 So.2d 1226, 1228. The settlor's intent controls, unless contrary to law or public policy. *Richards v. Richards*, 408 So.2d 1209, 1211 (La. 1981); *McCaffery*, 263 So.3d at 1210. Parol or extrinsic evidence may be admitted to aid in construing the trust instrument only if the instrument is ambiguous and uncertain and only to explain,

not contradict the instrument. *In re James C. Atkinson Clifford Tr.*, 00-253 (La. App. 1 Cir. 6/23/00), 762 So.2d 775, 776, *writ denied*, 00-2262 (La. 10/27/00), 772 So. 2d 655.

Here, neither party contends that the Trust Instrument is ambiguous; however, the parties stipulated that the deposition testimony of Ms. Jackson was evidence to be considered by the district court and both parties relied upon portions of Ms. Jackson's testimony in making their arguments to the district court and to this Court. Accordingly, as previously stated, we will consider Ms. Jackson's deposition testimony in conducting our review of the district court's judgment in this case.

#### **DISCUSSION OF ASSIGNMENTS OF ERROR**

Ms. Milligan's assignments of error are premised on the fiduciary duty of the trustee to the beneficiary imposed under La. R.S. 9:2082, and the duty of loyalty owed to the beneficiary by the trustee under La. R.S. 9:2062. La. R.S. 9:2082 states:

- A. A trustee shall administer the trust solely in the interest of the beneficiary.
- B. When there is more than one beneficiary, a trustee shall administer the trust impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the trust instrument manifests an intention that the trustee shall or may favor one or more of the beneficiaries.

Revision comment (c) to Section 2082 states that "[t]he fundamental duty a trustee owes to a beneficiary is the duty of loyalty. . . ." To that end, La. R.S. 9:2062 provides that a provision in a trust instrument that purports to limit the trustee's duty of loyalty to the beneficiary or beneficiaries is ineffective, except to the extent otherwise provided in the Trust Code.

*Assignment of Error No. 1 - Investment of Trust Property in Income Producing Investments Only*

Ms. Milligan asserts that, because she is the sole current beneficiary of the Trust, the Trustee's fiduciary duty and duty of loyalty is to her and her alone. We disagree. While she is currently the only income beneficiary entitled to receive a portion of the Trust income, she is not the sole income beneficiary of the Trust. Her descendants are also beneficiaries of the Trust, as is Southern.<sup>7</sup> In this case, the Trustee is bound to administer the trust "impartially," based on what is "fair and reasonable" to *all* of the beneficiaries. The Trust Instrument recognizes this, as it authorizes the Trustee to "make such investments as [she] may deem advisable **with a view both to present income and to possible future growth of principal.**"

The Trust Instrument does not permit the Trustee to favor Ms. Milligan over successor beneficiaries. It does not contain any provision obligating the Trustee to make investments designed primarily to generate income for Ms. Milligan. Indeed, the Trust Instrument expressly provides that distributions to Ms. Milligan are limited to no more than \$2,000 per month, at the Trustee's discretion, which is permitted under La. R.S. 9:1899. Ms. Jackson's testimony, which was admitted into evidence without objection, makes it clear that the intent of the Settlor was that Ms. Milligan would only receive a lifetime allowance of no more than \$2,000 per month. Ms. Jackson's testimony in this regard is confirmed by email correspondence from the Settlor attached to her deposition, without objection, wherein the Settlor stated:

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<sup>7</sup> While neither party raised or discussed this issue, the Trust is a mixed trust that is to be administered for both charitable and non-charitable purposes under La. R.S. 9:1951, by virtue of the inclusion of Southern as a charitable beneficiary for educational purposes. This is true even though the Settlor did not specifically state that the Trust was a mixed Trust. See *Succ'n of Baker*, 432 So.2d 817, 821 (La. 1983). Ms. Jackson testified that the inclusion of Southern as a successor beneficiary was for the purpose of preserving the perpetual nature of the Trust. She stated that the primary purpose of the Trust was providing an allowance to Ms. Milligan during her lifetime not to exceed two thousand dollars per month, and that once that was accomplished, to provide funds to Southern to establish the two scholarships.

[W]hat I am hoping to do is to never allow my niece (Erica) to have access to the principal. **I only want her to receive an allowance for her entire life. The trust would be transferred to her children upon her death, biological. I do not want her spouse to have access to the funds. She has bipolar disorder and is refusing treatment. She cannot control her spending habits. It is part of the disease.** (Emphasis added).<sup>8</sup>

As stated above, Louisiana has a strong public policy in effectuating and protecting the settlor's intent as set forth in the trust instrument, which is controlling unless contrary to law or public policy. *Richards*, 408 So.2d 1209; *McCaffery*, 263 So.3d at 1210; *Marlies Margot Cernicek Irrevocable Living Tr.*, 353 So. 3d at 954–55. The provisions of the Trust Instrument regarding Ms. Milligan's lifetime allowance are not against public policy and do not violate the Trust Code.

The same is true with respect to the Trust Instrument's instructions to the Trustee related to investments of Trust Property. The applicable Trust Code provisions relating to administration/investment of trust property provide that the trustee is to administer the trust and invest and manage the trust property as a prudent person would administer it, exercising reasonable care and skill, considering the purposes, terms, distribution requirements, and other circumstances of the trust. The investment and management decisions are to be made in the context of the trust property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. La. R.S. 9:2090(A), La. R.S. 9:2127. The trustee is permitted to delegate investment and asset management functions to a registered investment company. La. R.S. 9:2082.

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<sup>8</sup> Whether or not Ms. Milligan suffers from untreated bipolar disorder and whether or not she can control her spending habits is of no moment. It only matters that the Settlor believed those things to be true and established the Trust in such a manner as to limit Appellant to a monthly allowance of no more than \$2,000 per month.

The Trust Instrument's investment provisions do not limit the Trustee's duty of loyalty to Ms. Milligan, as the income beneficiary.<sup>9 10 11</sup> The Trust Instrument specifically instructs the Trustee to invest in holdings that will create present income and preserve principal. This instruction is entirely consistent with the provisions of the Trust Code, as is the Trustee's delegation of investment authority to Bellingrath/LPL.

Based on the authorities cited above, we are bound to interpret the Trust Instrument liberally in favor of freedom of disposition by the Settlor and in a manner that will sustain the effectiveness of its provisions. In this case, the Trust

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<sup>9</sup> We distinguish *Succession of Burgess*, 359 So.2d 1006 (La. App. 4<sup>th</sup> Cir. 1978), cited by Ms. Milligan as support for her position that the trust property must be invested in a manner so as to maximize income for her, as the current sole income beneficiary. *Burgess* involved a situation in which the appellant's legitime was left in trust. After payment of taxes and expenses of administration, the only property in the trust would be a one-third interest in decedent's undivided interest in swamp lands, which provided *no* income and which could not be sold. The appellant argued that this was an impingement on his legitime. The case was before the Court on an appeal from a summary judgment. The Trust Code contains specific provisions applicable to the legitime in trust. In that case, the court found that if the property comprising his legitime was in a trust producing no income, and the forced heir would never receive the principal of the trust, then his legitime would not be satisfied. Ms. Milligan is not a forced heir, and this case does not involve the legitime in trust. Further, the Trust is producing income, and in an amount sufficient to distribute to Ms. Milligan the amount to which she is entitled under the Trust Instrument. The parties stipulated that Ms. Milligan had been receiving the maximum distribution of \$2,000 per month at the time of the Stipulations and would continue to receive that amount. Thus, *Burgess* is inapplicable to the situation presented here.

<sup>10</sup> We also distinguish *Succession of Dunham*, 393 So.2d 438 (La. App. 1<sup>st</sup> Cir. 1980), *rev'd in part, affirmed in part*, 408 So.2d 888 (La. 1981), for the same reasons. There, the decedent established a legitime trust in his will for each of his sons, subject to spendthrift provisions. The primary asset of each of the legitime trusts was stock in Anderson-Dunham, Inc. (the "Company"), a company founded by the testator, his second wife, and James Anderson in 1937. The testator ultimately purchased Anderson's shares in the Company. At the time of the testator's death and the funding of the legitime trusts in 1974, the Company had not paid dividends since 1943, some 31 years. Because of the spendthrift provisions, there was no possibility that either son would ever receive the principal from his trust. Each could only receive his legitime if the trust property generated income that was payable to him in his lifetime. Accordingly, the sons contended that, because the trusts generated no income payable to them, their legitimes were impinged. The First Circuit Court of Appeal found that "if an income and principal interest representing the legitime is placed in trust, the trust property must be at least reasonably productive of income." 393 So.2d at 451. The Louisiana Supreme Court affirmed this decision. 408 So.2d at 901. Again, this case does not involve forced heirship rights. The Trust Property is generating income, and in an amount sufficient to pay Ms. Milligan her income beneficiary interest.

<sup>11</sup> Finally, we do not find the cases cited by Ms. Milligan from other jurisdictions to be persuasive in rendering our decision herein, which is based on the provisions of the Trust Instrument at issue in this case and the Trust Code.

Instrument expressly vests the Trustee with discretion in making investment decisions, in accordance with the instructions provided by the Settlor therein.

Ms. Milligan's first assignment of error is without merit.

*Assignment No. 2 – Payment of Accumulated Income to Ms. Milligan during her Lifetime or Annually, without regard to the \$2,000 limit*

Ms. Milligan contends that, in addition to the allowance provided to her, Section 5.1(c) of the Trust Instrument requires the Trustee to pay her all of the income generated by the Trust Property during her lifetime. In fact, she contends that all income generated by the Trust Property should be paid to her annually. We disagree. Section 5.1(c) provides:

Any distribution must reduce the share of the beneficiary who received the distribution. Any income accumulated by the trustee must ultimately be paid to the beneficiary, or to the beneficiary's estate, whose share of the income was accumulated, and must be payable before or on termination of the trust. A distribution of principal to a beneficiary will affect the amount of income allocable to the beneficiary in that the distribution will be chargeable against the proportionate share of principal held in trust for the payment of income to the beneficiary as if the principal constituted a separate trust. The income allocated to a beneficiary's share must be based on the beneficiary's share of trust property compared to all the trust property from time to time.

Section 5.1(c) primarily relates to beneficiaries who are also principal beneficiaries. Appellant is not a principal beneficiary and has no share to be reduced, no entitlement to a distribution of principal, and no share of Trust Property. Ms. Milligan relies upon the second sentence of this Section for her contention that accumulated Trust income must be paid to her in her lifetime.

The second sentence of Section 5.1(c) provides only that accumulated income must *ultimately* be distributed to the beneficiary *or* to the beneficiary's estate whose *share of the income* was accumulated before or on *termination of the trust*. This sentence does not say that income must *annually* be distributed to the beneficiary. The Trust does not terminate until there are no remaining income beneficiaries. While Ms. Milligan may currently be the only income beneficiary,

her *share* of the Trust income is limited to no more than \$2,000 per month, in accordance with the expressed intent of the Settlor.

Nothing in Section 5.1(c) requires the Trustee to distribute accumulated income to Ms. Milligan during her lifetime, much less annually. Section 5.1(c) requires that accumulated income is to be paid either to the beneficiary or to her estate. The Trust Instrument clearly provides that Ms. Milligan is to receive no more than \$2,000 per month *during her lifetime*. We interpret this provision to provide that, to the extent that she was paid less than \$2,000 per month during her lifetime, any income not distributed to her, up to \$2,000 per month, would be accrued income that would be paid to her estate upon her death or upon termination of the Trust, whichever is earlier.<sup>12</sup> We find this interpretation to be consistent with, and to give effect to, the intent of the Settlor.<sup>13</sup>

Our interpretation differs from that of the district court, which declared that upon Ms. Milligan's demise, her estate is entitled to receive *all* of the accumulated Trust income generated during her term or life. It also differs from the interpretation given to Section 5.1(c) by the Trustee. In the district court, the Trustee argued that "income exceeding the \$2,000 monthly cap accumulates during Ms. Milligan's lifetime and is preserved for her estate upon her death." In its brief filed in this Court, the Trustee argued that the district court's declaration as to this

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<sup>12</sup> La. R.S. 9:1964 provides that "interest in income terminates upon the death of the designated beneficiary, or at the expiration of the period of his enjoyment if the interest is for a period less than life. At the termination of an income interest, accumulated or undistributed income *that has been or is required to be allocated to the beneficiary* shall be paid to the beneficiary or his heirs, legatees, assignees, or legal representatives, except as otherwise provided in this Code." In this case income that has been or is required to be allocated to the beneficiary is an amount up to \$2,000 per month.

<sup>13</sup> This interpretation is also consistent with Ms. Jackson's testimony relative to the Settlor's intent and her understanding of the effect of Section 5.1(c) at the time she drafted the Trust Instrument.

issue was correct and should be affirmed. Under these circumstances we will not disturb the district court's finding on this issue.<sup>14</sup>

Ms. Milligan's reliance on La. R.S. 9:1962, which requires that income be distributed to the designated beneficiary at least every six months, in the absence of a contrary stipulation, is misplaced. Here, the Trust Instrument contains a contrary stipulation, *i.e.*, that distributions be made by the Trustee, in her discretion, not to exceed \$2,000 per month. This stipulation necessarily implies that income will be distributed monthly to Ms. Milligan. She has received and presumably continues receiving monthly distributions, as per the Trust instrument. Her issue is not with the frequency of distributions, but with their amount; however, the amount of distributions is clearly limited to that provided in the Trust Instrument.

Ms. Milligan also argues that the provision of the Trust Instrument relating to her allowance runs afoul of the Trust Code in that the Trust does not mandate that the Trustee administer the Trust solely in the interest of the beneficiaries because the distributions to her are subject to the Trustee's discretion. We disagree. Ms. Milligan relies on Ms. Jackson's testimony to support this argument, but Ms. Jackson clearly testified, and the Trust Instrument provides, that the Settlor created the Trust, first, for his own benefit, then, for his descendants and Ms. Milligan and her descendants, but limited income distributions to be made to them from the

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<sup>14</sup> Under our interpretation of the Trust Instrument, accrued income over \$24,000 per year would be returned to principal pursuant to La. R.S. 9:1961(B), which states that "[a] settlor may allocate to a beneficiary of income a portion of income [and] **[a]ny income not allocated to an income beneficiary shall be allocated to principal.**" In this case, the Settlor allocated a portion of income – an amount not to exceed \$2,000 per month, or \$24,000 per year – to Ms. Milligan, the current income beneficiary. Under Section 1961(B), to the extent that the Trust Property generates more than \$2,000 per month, or \$24,000 per year, any such income is required to be allocated to principal. The Trustee did not appeal or answer the appeal to raise this issue and instead agreed that undistributed net income would be accumulated and would devolve to Ms. Milligan's descendants upon her death. There being no assignment of error challenging the interpretation of the parties (and the district court) on his issue, we will not supplant our interpretation for theirs.

Trust. These provisions are consistent with the provisions of the Trust Code and particularly La. R.S. 9:1899. Ms. Milligan has, in fact, received distributions of the maximum amount of \$2,000 per month since the Trust became irrevocable and she became an income beneficiary. Moreover, even though monthly distributions are subject to the Trustee's discretion, accumulated income will be distributed to Ms. Milligan's estate upon her death.

Ms. Milligan's second assignment of error is without merit.

*Assignment of Error No. 3: Annual Distributions of Income to Ms. Milligan based on Tax Considerations*

Ms. Milligan argues, in the alternative, that the Trustee should be required to deviate from the provisions of the Trust Instrument to annually distribute to her all of the income earned by the Trust on which the Trust would be required to pay income taxes at rates higher than she would be required to pay if the income had been distributed to her. She cites La. R.S. 9:2064 in support of this argument. That Section provides that a court may order deviation from the provisions of the Trust Instrument if compliance with the provision would "defeat or substantially impair" the purposes of the Trust.

The modification or deviation from the terms of the trust or trust provisions depends upon an analysis of four essential elements: (1) what is the purpose(s) of the trust; (2) what is the change of circumstances, if any; (3) whether the result of the change of circumstances was anticipated by the settlor; and (4) whether the change of circumstances not anticipated by the settlor defeats or substantially impairs the purposes of the trust. La. R.S. 9:2026; 9:2064; *In re Merlin A. Abadie Inter Vivos Tr.*, 483 So. 2d at 1294 (citations omitted). Here, as to Ms. Milligan, the Settlor's intent, and purpose of the Trust, was to provide her with a lifetime allowance not to exceed \$2,000 per month and then, to pay accumulated income to her estate upon her death. Ms. Milligan has not shown any change of

circumstances since the inception of the Trust; nor has she demonstrated that any purpose of the Trust would be defeated or substantially impaired by the Trustee's failure to distribute income to her for the purpose of reducing the tax liability of the Trust.

Ms. Milligan's arguments are based on her contention that she is entitled to receive all accumulated income of the Trust. As we have repeatedly stated herein, she is not. Contrary to Ms. Milligan's contentions, compliance with the provisions of Trust Instrument, as written, serves to implement the purposes of the Trust by (i) providing a lifetime allowance to Ms. Milligan; (ii) preserving accumulated Trust income for her descendants; and (iii) preserving the Trust corpus for future beneficiaries.

Further, the Trust Instrument provides that capital gains and losses arising from the sale or exchange of Trust property shall become a part of or be charged to the principal of the Trust and income tax on any capital gains shall be paid out of the Trust. The Trust Instrument also provides that the Trustee in her uncontrolled discretion may determine what shall be income and what shall be principal and may allocate expenses to income or principal as she deems appropriate. These provisions are indicative of the Settlor's intent that any tax burden be borne by the Trust.

We may not override, nor may the Trustee override, the intent of the Settlor, as expressed in the Trust Instrument, for the purpose of reducing Ms. Milligan's or the Trust's tax burden. The mere fact that the structure established by the Trust Instrument results in the payment of taxes at higher rates than those applicable to the income beneficiary does not defeat the purposes of the Trust and, in this case, are not inconsistent with the Settlor's intent. We are bound to uphold and implement the Settlor's intent, as expressed in the Trust Instrument unless contrary to public policy or the provisions of the Trust Code, a situation not presented here.

Ms. Milligan's third assignment of error lacks merit.

**DECREE**

For the reasons stated above, the Judgment of the District Court, rendered on April 30, 2025, is affirmed.

**AFFIRMED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JUNE 17, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**25-CA-565**

**E-NOTIFIED**

40TH DISTRICT COURT (CLERK)

HONORABLE KIRK A. VAUGHN (DISTRICT JUDGE)

HONORABLE VERCELL FIFFIE (DISTRICT JUDGE)

VERCELL FIFFIE (APPELLANT)

THOMAS M. LOCKWOOD (APPELLANT)

GREGORY O. WILSON (APPELLEE)

**MAILED**

NO ATTORNEYS WERE MAILED