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THE STATE OF NEW HAMPSHIRE
SUPREME COURT
2019 TERM

CASE NO. 2019-0319

DAVID A. HODGES, JR., ET AL.

v.

ALAN JOHNSON, ET AL.

MANDATORY APPEAL PURSUANT TO RULE 7 OF DECISION FROM 7TH CIRCUIT – PROBATE DIVISION- DOVER COMPLEX TRUST DOCKET

BRIEF OF APPELLEES, JUDITH L. BOMSTER, ESQUIRE AND J. DANIEL MARR, ESQUIRE, CO-TRUSTEES OF THE 2004 "DAVID A. HODGES, SR. IRREVOCABLE GST EXEMPT TRUST" AND THE 2004 "DAVID A. HODGES, SR. IRREVOCABLE GST NON-EXEMPT TRUST"

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1. The trial court held that the Appellants were required to reimburse the 2004 Trusts for attorneys' fees and costs that they caused the 2004 Trusts to pay to defend decantings that were undertaken in violation of the Former Trustees' fiduciary duties. The trial court also held that the Former Trustees were not entitled to reimbursement for attorneys' fees and costs that they personally incurred while defending the voided decantings. Were these holdings unsustainable abuses of the trial court's discretion? (App. at 2-4)[1]
2. Did the trial court make sufficient factual findings to support its order that the Former Trustees are not entitled to indemnification from the 2004 Trusts and are personally liable to reimburse the 2004 Trusts for attorneys' fees and costs that Appellants caused to be paid while defending the validity of decantings from claims of the beneficiaries whose interests had been eliminated? (App. at 4-17.)

[1] Citations to the record are as follows:
"App" refers to the Appellants' Appendix filed contemporaneously with their brief.
"Supp." refers to the documents filed as a Supplemental Appendix to the Appellees' brief.
"Trial Tr." refers to the consecutively-paginated transcripts from the hearing on the merits on September 23-24, 2015 and October 15, 2015.
"Hearing Tr." refers to the transcript of the motion hearing on April 1, 2019.

STATEMENT OF THE CASE

This is an appeal from the 7th Circuit – Probate Division- Dover, Complex Trust Docket's Order on Motions Regarding Former Trustees' Entitlement To and/or Obligation for Attorney's Fees and Costs. The Appellants, Alan Johnson ("Johnson") and Attorney William Saturley ("Attorney Saturley")(collectively the "Appellants" or "Former Trustees"), former trustees of the 2004 "David A. Hodges, Sr. Irrevocable GST Exempt Trust" and the 2004 "David A. Hodges, Sr. Irrevocable GST Non-Exempt Trust" (collectively "2004 Trusts"), filed a Motion for Reimbursement of, and Indemnity for, Attorney's Fees and Costs, asking the court to order the 2004 Trusts to reimburse attorneys' fees and costs that they incurred litigating this case to defend the validity of decantings of the 2004 Trusts (hereinafter referred to as the "Former Trustees' Fee Claim"). (App. at 2.) In a competing Motion for Court Order to Reimburse Trusts for Costs and Attorneys' Fees, the Appellees, Attorney Judith L. Bomster and Attorney J. Daniel Marr, successor co-trustees of the 2004 Trusts (collectively the "Successor Co-Trustees" or "Appellees"), sought an order from the trial court requiring the Appellants to reimburse the 2004 Trusts for costs and attorneys' fees that the Former Trustees caused to be paid from the 2004 Trusts during the same litigation (hereinafter referred to as the "2004 Trusts' Fee Claim"). *Id.*

This action was instituted by certain beneficiaries of the 2004 Trusts, Barry R. Sanborn ("Barry"), Patricia Sanborn Hodges ("Patricia"), and David A. Hodges, Jr. ("David, Jr.") to challenge decantings of the 2004 Trusts that would have eliminated or reduced their and other beneficial interests in those Trusts. *See Hodges v. Johnson*, 170 N.H. 470, 473 (2017). During the first phase of litigation, the 2004 Trusts paid the Former Trustees' legal fees and expenses for their defense of the decantings. (App. at 5-6.) Following the decision of the trial court that the decantings were *void ab initio* and that the Former Trustees were to be removed due to their serious breach of trust, the Former Trustees appealed the trial court's order. (App. at 6.) The trial court stayed the removal of the Former Trustees pending the outcome of the appeal but ordered that no funds could be spent from the 2004 Trusts during the appeal and that a stipulation requiring assets of the 2004 Trusts to continue to be held in the 2004 Trusts would remain in effect. *Id.*

The Supreme Court upheld the trial court's finding that the Former Trustees committed a serious breach of trust when they permitted the decantings, which justified their removal. *Hodges,* 170 N.H. at 473. The Supreme Court applied comparable legal reasoning to that of the trial court and found that the Former Trustees breached the duty of impartiality under RSA 564-B:8-803. *Id.* at 485-88. The Supreme Court affirmed the trial court's findings that the Former Trustees failed to consider the interests of the beneficiaries, even though one of the primary purposes of the 2004 Trusts was to provide for the beneficiaries. *Id.* at 484.The Supreme Court also affirmed the trial court's finding that the decantings were *void ab initio*. *Id.* at 488.

After the appeal concluded, the trial court appointed the Successor Co-Trustees, effective July 2, 2018. (App. at 6.) The beneficiary-petitioners filed a motion seeking reimbursement of the fees they incurred during the decanting litigation, which included a request that the Former Trustees and the other respondent, Attorney Joseph McDonald ("Attorney McDonald"), be held personally liable for their legal costs. (App. at 7.) The Former Trustees filed a motion seeking the Former Trustees' Fee Claim and indemnity from the 2004 Trusts for the petitioners' claims of attorneys' fees and costs. (App. at 7-10.) Following the Former Trustees' settlement of the petitioners' fee requests, the Successor Co-Trustees filed the 2004 Trusts' Fee Claim, seeking an order requiring the Former Trustees to repay the 2004 Trusts $89,586.91 that the Former Trustees paid from the 2004 Trusts to defend the decantings. (App. at 12.)

In ordering the Former Trustees to pay the 2004 Trusts' Fee Claim, the trial court found that it was justified because "of the [Former Trustees]'s serious breach; admitted and improper near total reliance on the Settlor's paid counsel, Attorney McDonald; failure to seek independent advice concerning their duties to the beneficiaries; and pursuit of decantings that *increased* the likelihood of litigation, it would be unfair and unjust for this Court to charge the 2004 Trusts with the cost of lengthy litigation in defense of what is seen as an indefensible fiduciary breach of duty." (App. at 42.) The trial court denied most of the Former Trustees' Fee Claim for the same reasons but did order the 2004 Trusts to reimburse $5,102.50 of attorneys' fees and $203.93 of costs from the Former Trustees' Fee Claim, which the Former Trustees incurred responding to trial court orders regarding recommendation of successor trustees. (App. at 40.) The Former Trustees filed this appeal to challenge the order that they must reimburse the 2004 Trusts' Fee Claim and denying most of the Former Trustees' Fee Claim.

STATEMENT OF THE FACTS

In ruling on the Appellants' Motion for Reimbursement of, and Indemnity for, Attorney's Fees and Costs and the Successor Co-Trustees' Motion for Court Order to Reimburse Trusts for Costs and Attorneys' Fees, the trial court relied on the factual findings it made during the Fall 2015 hearing on the merits. (App. at 4.) Although a hearing on the competing requests for award of attorneys' fees and costs was held, no evidentiary hearing was requested or required. *See In re Estate of King,* 920 N.E.2d 820, 828 (Mass. 2010). The factual findings that the trial court made during the trial were undisturbed on appeal, and the Supreme Court relied on those facts in the prior appeal. *See Hodges*, 170 N.H. 470.

David A. Hodges, Sr. (the "Settlor" or "David, Sr.") created the 2004 Trusts, and the Appellants served as co-trustees of the 2004 Trusts at the time the now void decantings were undertaken. (Supp. at 20-21.) The beneficiaries of the 2004 Trusts included the Settlor's then-wife and the Settlor's children and step-children, as well as other generational beneficiaries. (Supp. at 21.) The 2004 Trusts were irrevocable. (Supp. at 21.) The 2004 Trusts also contain *in terrorem* clauses that would revoke any provisions for beneficiaries that "in any manner whatsoever takes part in or aids in any proceedings to impair, invalidate, oppose or set aside [the] trust[s]." (Supp. at 25; App. at 91; App. at 167.)

The 2004 Trusts were created to hold non-voting stock of a closely-held family business, Hodges Development Company ("HDC") and to take advantage of certain tax benefits. (Supp. at 28.) The 2004 Trusts in fact hold 100% of the non-voting stock of HDC, which represents 98% of HDC's total stock. (Supp. at 28-29.)

In addition to serving as a trustee of the 2004 Trusts, Johnson served as the Chief Financial Officer of HDC prior to David, Sr.'s death, and he has served as the President of HDC since soon after David, Sr.'s death. (Supp. at 35.) Johnson received an employment agreement with HDC totaling One Million Dollars ($1,000,000) through a revocable trust established by David, Sr. (the "Revocable Trust"). (Supp. at 35.) Johnson testified about his employment agreement as follows:

> Q And in addition to that, you're also the beneficiary of a trust that Mr. Hodges, Sr., created, that may be funded with up to a million dollars, correct?
>
> A Yes, that's correct.
>
> Q When did you learn you were a beneficiary of that trust?
>
> A Back in 2007, 2008 times. Dave Hodges, Sr., wanted to have a employment contract drafted up for me that, effectively, would try to incentivize me to stay on as employee and try to provide an -- a inducement to work there as long as I could. We went through the process that was handled by Cleveland, Waters & Bass at the time. When I told them that an employment contract, in my belief, had to be brought before the board of directors, he said, "Well, I don't want to do that. I think it would create more trouble."
>
> And so, I think then he went and worked with Joe McDonald and Bill Saturley, as you mentioned earlier, to try to do something through his revocable trust.

(Trial Tr. 354:13-355:5.) Attorney Saturley testified that upon David, Sr.'s death Johnson was to "immediately vest with 500,000 … and that if he met certain marks and stayed, you know -- it was a golden handcuff I guess is the term, that if he stayed, the other part would vest." (Trial Tr. 324:7-11.)

Attorney Saturley and Johnson testified that this compensation was arranged through the Revocable Trust to avoid revealing the employment contract to the HDC board of directors, which at that time included Barry and David, Jr. (Trial Tr. 324:14-325:1; 354:19-355:11.)

Attorney Saturley acted as counsel for HDC and as a personal attorney for the Settlor in addition to serving as a trustee of the 2004 Trusts. (Supp. at 34; Trial Tr. 259:9-262:14.) For example, Attorney Saturley: (1) had attended nearly all of the HDC board of directors' meetings during the period that the decantings occurred (Trial Tr. 259:9-262:14); (2) represented David, Sr. "with regards to his divorce" (Trial Tr. 261:2-3); and (3) "filed an appearance in the employment action that Mr. Sanborn and Mr. Hodges, Jr., brought against the company." (Trial Tr. 261:3-5.)

The 2004 Trusts purportedly were decanted in 2010, 2012, and 2013. (Supp. at 25-27.) Each time, the decantings were undertaken, Johnson resigned as trustee and was replaced by Attorney McDonald, who completed the decantings without any participation by Attorney Saturley, because he delegated his fiduciary powers to decant to Attorney McDonald. (Supp. at 25-27.) After the decantings took place, Attorney McDonald resigned, and Johnson was reappointed as co-trustee. (Supp. at 26-28.) Both Johnson and Attorney Saturley knew that Attorney McDonald would eliminate or reduce certain beneficial interests during the decantings. (Trial Tr. 283:4-10; 352:1-14.) All of the decantings were undertaken because David, Sr. was reconsidering his generosity to certain beneficiaries of the irrevocable 2004 Trusts. (App. at 39.)

Attorney Saturley first became aware of the plan to decant the 2004 Trusts when he was contacted by Attorney McDonald who was estate planning counsel to David, Sr. (Trial Tr. 269:10-25.) Attorney McDonald then acted as counsel for David, Sr. and the Former Trustees, though David, Sr., rather than the 2004 Trusts, paid for all of Attorney McDonald's legal fees. (App. at 8 n.8; Supp. at 29; Trial Tr. 270:19-274:13.) Johnson also understood that Attorney McDonald was representing David, Sr.'s personal estate planning interests when he spoke to them about the decantings. (Trial Tr. 357:23-358:3.) There was no evidence that the Former Trustees ever sought independent legal advice. (Supp. at 30; Trial Tr. 276:1-277:15.) Other than possibly consulting a partner at his firm who did corporate or real estate work for HDC, Attorney Saturley did not consult with anyone other than David, Sr., Attorney McDonald, and Johnson when deciding whether the decantings were appropriate. (Trial Tr. 160:22-161:8; 276:1-277:11; 296:23-297:1.)

Although conflicting testimony was offered about who initiated the 2012 and 2013 decantings, the Settlor's opinions were actively taken into consideration. (Supp. at 30-31.) Attorney McDonald testified that "to the best of [his] recollection," David, Sr. "was the one who initiated the conversations" regarding the decantings. (Trial. Tr. 111:15-24.) Regardless, the Former Trustees were aware of the plan to decant the 2004 Trusts each time, participated by delegating fiduciary duties or resigning entirely to permit each decanting, and understood that the decantings were undertaken to conform with the desires of David, Sr. (Supp. at 31.)

The 2010 decantings excluded the Settlor's step-children, Barry and Patricia, from the definition of "descendants," the 2012 decanting eliminated one of the Settlor's children, David, Jr., as well as Barry and Patricia's beneficial interests, and the 2013 decanting additionally excluded

Joanne Hodges, who was by then divorcing the Settlor. (Supp. at 26-28.) The decantings were not expected to be discovered until David, Sr.'s death. (Supp. at 26-28; Trial Tr. 228:22-229:15.)

Although the Former Trustees had claimed to have considered the beneficial interests that were being eliminated, the trial court found "that each deeply considered David, Sr.'s wishes." (Supp. at 31.) Testimony from Attorney McDonald confirmed that David, Sr. "was calling the shots" with regards to the decanting. (Trial Tr. 157:2-160:11.) The Former Trustees asserted the decantings were necessary for the continuation of HDC due to discord in the family, but the trial court found that it was the Settlor's personal desires to disinherit family members from whom he was estranged that caused the decantings, rather than any actual threat to HDC. (Supp. at 31-32.) For instance, Attorney Saturley testified that he "strongly believe[d] that [Joanne] would be disruptive to the operation and going operation of the business" following the divorce "[b]ecause she had expressed, both orally to other people and in writing, in her answers to interrogatories, a significantly high level of antagonism towards her spouse." (Trial Tr. 339:16-340:1.) Meanwhile, Attorney Saturley also testified that he provided legal advice to David, Sr. in his divorce, represented HDC, and continued to act as a trustee of the 2004 Trusts although he delegated his decanting authority to Attorney McDonald to facilitate the elimination of Joanne's beneficial interests. (Trial Tr. 258:13-264:19.)

As to the elimination of Barry and Patricia, David, Sr. told Attorney McDonald he was concerned that Barry was not spending enough time at the HDC office and that Patricia did not consider David, Sr. to be her father. (Trial Tr. 76:21-77:8.) While the first decanting occurred in 2010 and was to take effect on David, Sr.'s death, David Sr., as the sole voting shareholder, took no action to remove Barry from the HDC Board of Directors or as an employee until 2012. *Hodges*, 170 N.H. at 474-75. Attorney Saturley's "understanding was that [Patricia] was estranged from her stepfather and that she had no connection whatsoever to the operation of Hodges Development Corporation." (Trial Tr. 312:14-16.)

For these and other reasons, the trial court found there was no evidence supporting the Former Trustees' allegations that they permitted the decantings to protect the business. (Supp. at 32-33.) In fact, the trial court found that the Settlor had power to amend the composition of the trust advisor committee that ultimately would direct the management of HDC, the 2004 Trusts only held non-voting stock, and the *in terrorem* clauses would discourage challenges to the 2004 Trusts, so there was only a limited, if any, threat to HDC. (Supp. at 31-32.) Additionally, the trial court found there was insufficient evidence that the Former Trustees ever considered the beneficial interests of any of the beneficiaries impacted by the decantings. (Supp. at 32.) This finding was upheld on appeal. *Hodges*, 170 N.H. at 481-82 (finding that although the defendants argued that the trial court erred in finding that they failed "to give due consideration to the [plaintiffs'] … interests," the finding was not an error).

Ultimately, the trial court found that the Former Trustees "nearly assured potentially expensive litigation instituted against the [Former] Trustees given that the Petitioners, left with nothing to risk forfeiture-wise pursuant to the *in terrorem* clauses, had nothing to lose." (Supp. at 33.); s*ee also Hodge*s*,* 170 N.H. at 486 ("Indeed, by eliminating the plaintiffs' future beneficial interests, the decantings actually increased the risk that the plaintiffs would engage in litigation. As the trial court found, and as the record supports, although the 'No Contest' provisions revoke the plaintiffs' beneficial interests if they institute proceedings to impair the trusts, by eliminating those interests through decanting, the defendants left the plaintiffs with 'nothing to risk' and 'nothing to lose' under those provisions.")

SUMMARY OF THE ARGUMENT

The trial court did not commit an unsustainable exercise of its discretion when it rejected most of the Former Trustees' Fee Claim and ordered the Former Trustees to pay the 2004 Trusts' Fee Claim.[2] The Former Trustees committed a serious breach of trust when they permitted the decantings to occur without giving consideration to the beneficial interests that were impacted. It was the Former Trustees' misconduct that caused this litigation to occur.

While in their defense of the decantings, the Former Trustees claimed the decantings were necessary to protect HDC, the trial court was unconvinced and, instead, concluded the evidence supported the following findings: (a) the decantings would only take effect upon David, Sr.'s death; (b) the 2004 Trusts were irrevocable trusts that held only non-voting shares of HDC and contained a trust advisor (the "Committee of Business Advisors") that exercised control over any business interests held in the 2004 Trusts; (c) the beneficiaries eliminated through the decantings were

[2] The Appellees fully support the trial court's findings and believe they are well reasoned in fact and law; however, the Appellees' brief focuses on the appellate standard of review and whether the Appellants have met their burden.

subject to a no contest clause; (d) Attorney Saturley delegated his decanting authority to David, Sr.'s estate planning attorney while continuing to act as counsel for both HDC and David, Sr. personally; (e) Johnson understood he was to receive $1,000,000 in compensation from the voting shareholder of HDC, David, Sr., instead of from HDC itself, through a process designed to be hidden from the HDC board members; (f) when Johnson resigned as trustee, he understood that he was enabling David, Sr.'s estate planning attorney to eliminate certain beneficial interests in the 2004 Trusts; (g) although Barry's beneficial interest was alleged to be eliminated beginning in 2010 due to poor job performance at HDC, he remained an officer and director of HDC until 2012; and (h) the decantings were completed due to David, Sr. reconsidering his prior generosity. *See* App. at 38 n.30. While Attorney Saturley and Johnson requested a finding that they acted in good faith, the trial court found the record did not support such a finding. *Id.*

As referenced above, the trial court made numerous factual findings that supported its conclusion that the Former Trustees should pay the 2004 Trusts' Fee Claim and were not entitled to reimbursement of the Former Trustees' Fee Claim. The trial court thoroughly analyzed the applicable provisions of RSA 564-B when making its order. The trial court did not focus solely on the result of the decanting litigation; however, it was proper for the trial court to consider how and why the Former Trustees' actions precipitated the litigation when making its decision. Because there is ample support in the record for the trial court's order, it was not abuse of the trial court's discretion to order the Former Trustees to reimburse the 2004 Trusts' Fee Claim and deny the Former Trustees' request for reimbursement of most of the Former Trustees' Fee Claim. The order should be affirmed.

STANDARD OF REVIEW

The findings of fact of the judge of probate are final unless they are so plainly erroneous that such findings could not be reasonably made. RSA 567-A:4 (2019). "Consequently, [the Supreme Court] will not disturb the probate division's decree unless it is unsupported by the evidence or plainly erroneous as a matter of law." *Hodges v. Johnson*, 170 N.H. at 480.

The Supreme Court will "review the probate division's interpretation of a statute *de novo*." *Id.* In interpreting statutes, the Supreme Court will rely on ordinary rules of statutory construction and will act as "the final arbiter of the legislature's intent as expressed in the words of the statute considered as a whole." *Id.* The Supreme Court will "first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." *Id.* All parts of a statute are construed together "to effectuate its overall purpose and avoid an absurd or unjust result." *Id.*

The trial court's review of an award of attorneys' fees and costs is subject to a review by the Supreme Court for an abuse of discretion. *See Shelton v. Tamposi*, 164 N.H. 490, 501 (2013). The Supreme Court will uphold the trial court's award of attorneys' fees and costs "[if] there is some support in the record for the trial court's determination." *Shelton v. Tamposi*, 164 N.H. at 502.

ARGUMENT

The record supports affirming the finding that the Former Trustees should personally reimburse the 2004 Trusts' Fee Claim and denial of most of the Former Trustees' Fee Claim for reimbursement because it was the

Former Trustees' serious breach of trust that made the litigation almost certain to occur. Even though it may be possible to eliminate a beneficial interest through decanting and to treat beneficiaries partially in certain circumstances, the interests of beneficiaries must be considered when administering a trust. In the underlying litigation, the Supreme Court affirmed a finding that the Former Trustees had committed a serious breach of trust when: (1) they relied on the advice of Attorney McDonald, the Settlor's estate planning attorney, in undertaking the decantings; (2) failed to obtain any independent advice; and (3) acted unreasonably in decanting the 2004 Trusts in such a way that would actually increase the likelihood of litigation. In the prior appeal, the Supreme Court clarified the legal analysis of the requirements of the duty of impartiality that trustees owe to beneficiaries, but it did not disturb the trial court's factual findings, which the trial court relied on in issuing its order on the competing requests for attorney's fees and costs. The Former Trustees did not act in good faith when they undertook the actions that led to the litigation.

Although the Former Trustees assert that they did not have the benefit of strong legal guidance relative to how to successfully eliminate a beneficial interest, their argument further demonstrates the seriousness of their failure to have secured any independent legal advice, which ultimately might have dissuaded the Former Trustees from merely following the Settlor's wishes and the advice of the Settlor's personal estate planning counsel. The trial court did not need to analyze how the decantings properly could have been undertaken when the Supreme Court already affirmed a finding that the Former Trustees breached their duty of impartiality on the facts of this case. Because the trial court did not abuse its discretion when finding justice and equity required the Former Trustees to bear the costs of litigation rather than the 2004 Trusts, and effectively all of the beneficiaries, in light of their serious breach of trust, the trial court's order should be affirmed.

I. THE RECORD SUPPORTS THE TRIAL COURT'S FINDINGS THAT THE FORMER TRUSTEES ARE PERSONALLY LIABLE FOR THE 2004 TRUSTS' FEE CLAIM AND ARE NOT ENTITLED TO REIMBURSEMENT OF THE FORMER TRUSTEES' FEE CLAIM

The trial court did not abuse its discretion in finding that the Former Trustees should pay the 2004 Trusts' Fee Claim and that the 2004 Trusts should not pay most of the Former Trustees' Fee Claim. The Former Trustees inappropriately attempt to require the trial court to reconsider whether the Former Trustees violated their fiduciary duty of impartiality, although that finding was previously made and affirmed. *Hodges*, 170 N.H. at 486 ("The trial court's determination that the trustees failed to give any consideration to the plaintiffs' future beneficial interests, contrary to the statutory duty of impartiality, is supported by the record and is not plainly erroneous as a matter of law.")

The Former Trustees' reliance on the dissenting opinion in *Hodges* for the proposition that the trial court needed to undertake additional analysis of whether the Former Trustees breached the duty of impartiality is misplaced. In his dissent, Justice Bassett expressed a concern that the legal analysis on which the trial court's original decision was affirmed had not been briefed or considered by the trial court. *Id.* at 488-92. Justice Bassett expressed a desire to vacate the trial court's order for further consideration of the duty of impartiality in unequal distributions, but the dissent did not set forth guidance for the trial court to consider when awarding attorneys' fees and costs or advocate for a finding that the Former Trustees had not breached the duty of impartiality. *See generally*, *id.* at 489-92. The Former Trustees now seek to require the trial court to undertake further analysis on the merits of the decantings, although a majority of the Supreme Court has affirmed the trial court's ruling. *See Hodges,* 170 N.H. at 488 ("The trial court could reasonably have concluded that Johnson and Saturley committed a 'serious breach of trust' when they, along with McDonald, violated their duty of impartiality.") Because the Supreme Court already applied the trial court's previous findings of fact to the legal standard set forth in *Hodges*, it was unnecessary and inappropriate for the trial court to reconsider this issue.

Further, the Former Trustees request a reversal without remand due to an alleged lack of support in the record without pointing to any matters in the record that support a finding that the probate court's rulings were plainly erroneous. *See* RSA 567-A:4. When the primary motivation of the decantings were the Settlor's reconsideration of generosity, the trial court could not have found the Former Trustees acted impartially. (App. at 13.) The Former Trustees also continue to suggest that since the trial court did not make a finding that they acted in bad faith, the Former Trustees should not have to pay for attorneys' fees and costs related to the litigation. However, the law is clear that a finding of bad faith is not required. *Shelton*, 164 N.H. at 502. The trial court fully developed a record of the facts it considered when ruling on the 2004 Trusts' Fee Claim and the Former Trustees' Fee Claim, which included the same facts that established the

Former Trustees had committed a serious breach of trust. (App.at 2-4.) Therefore, the trial court's order should be affirmed.

II. THE TRIAL COURT PROPERLY CONSIDERED THE CIRCUMSTANCES THAT RESULTED IN THE LITIGATION IN ADDITION TO THE FORMER TRUSTEES' DECISION TO DEFEND IT.

The Former Trustees argue that the trial court only should have judged whether the attorneys' fees and costs at issue were reasonably incurred and that only the Former Trustees' actions in defending the decantings should have been considered. However, this ignores the provisions of RSA 564-B that addresses trustee liability for breach of trust. Additionally, the Former Trustees incorrectly assert that RSA 564-B:8-805 is a more specific statute that controls the determination of trustee liability for attorneys' fees. Because RSA 564-B:7-709, RSA 564-B:8-805, and RSA 564-B:10-1004 can be read in harmony, all of the provisions should be considered in an order on payment of attorneys' fees and costs. Even if there were a conflict between these provisions, RSA 564-B:10-1004 is the more specific statute that governs the payment of attorneys' fees and costs in connection with trust-related litigation, rather than RSA 564-B:8-805 and RSA 564-B:7-709, which address expenses regularly incurred in connection with trust administration and reimbursement of trustee expenses.

A. There is no conflict between RSA 564-B:7-709, RSA 564-B:8-805, and RSA 564-B:10-1004.

The trial court properly considered the various provisions of RSA 564-B that address the reimbursement of attorneys' fees and costs in normal administration of a trust, including RSA 564-B:7-709 and RSA 564-B:8-805, as well as provisions considering liability for attorneys' fees in connection with litigation pursuant to RSA 564-B:10-1004. (App. at 19.) When interpreting statutes, the Supreme Court "do[es] not construe statutes in isolation; instead, we attempt to do so in harmony with the overall statutory scheme." *Holt v. Keer*, 167 N.H. 232, 241 (2015). "When interpreting two statutes that deal with a similar subject matter, we construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes." *Id.* Although trust instruments can address the reimbursement of attorneys' fees, the 2004 Trusts' instruments do not expressly address this issue. (App. at 18 n.20.) Therefore, the trial court properly consulted the relevant provisions of the trust code in rendering its order.

RSA 564-B:7-709(a) provides in part that a trustee "is entitled to be reimbursed out of the trust property, with interest as appropriate, for (1) expenses that were properly incurred in the administration of the trust..." RSA 564-B:8-805 states that in administrating the trust, "the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and skills of the trustees." Meanwhile, RSA 564-B:10-1004 states that "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expense including reasonable attorney's fees, to any party , to be paid by another party or from the trust that is the subject of the controversy."

When multiple provisions of a statute may bear on the matter being considered, the Court first should determine whether the provisions could be read in harmony. In *Holt*, the court read two provisions of RSA 356-B in harmony with each other because to do otherwise would "essentially nullify" the protections contained in the statute. 167 N.H. at 242. Similarly, if the provisions of RSA 564-B:10-1004 are not read in harmony with other provisions of RSA 564-B that address expenses incurred by trusts, it would essentially nullify the statutory authority of the court to order that trustees may be required to pay attorneys' fees in judicial proceedings involving the administration of the trusts. Although, trustees will generally not be held personally liable for attorneys' fees and costs when acting in the proper exercise of their official duties, in this case, the Former Trustees delegated or resigned their respective trustee duties so that David, Sr.'s estate planning attorney could accomplish decantings that matched the Settlor's estate planning objectives, and then incurred the attorneys' fees and costs at issue in defending those improper actions. The decantings were not a proper exercise of the Former Trustees' official duties, nor was the defense of the Former Trustees' actions. Furthermore, RSA 564-B:10-1004 allows the trial court to decide if the principals of justice and equity in the case before it support holding a trustee personally liable. *See Shelton*, 164 N.H. at 502.

The provisions of these statutes are unlike others that have been found to conflict. For instance, *In the Matter of Heinrich & Curotto*, the Court considered the interplay of RSA 461-A:4, which discussed a standard to be applied to parenting plans and parental rights and responsibilities, and RSA 461-A:12, which applied if a parent wanted to relocate a child. 160 N.H. 650, 654-55 (2010). The Court found the statutes conflicted because they stated different standards, so the more specific RSA 461-A:12 on relocating a child applied when that matter was at issue. *Id.*

Unlike *In the Matter of Heinrich*, RSA 564-B:8-805 does not set forth a standard that conflicts with RSA 564-B:10-1004. RSA 564-B:8-805 sets forth a reasonable standard to be applied in the normal course of incurring expenses on behalf of the trust, while RSA 564-B:10-1004 authorizes a Court to shift the burden of attorneys' fees in litigation concerning administration of a trust to any party. If there are grounds to shift the burden of payment of attorneys' fees and costs to the trustee, the fees would also not be reasonable pursuant to RSA 564-B:7-709 and RSA 564-B:8-805. *See Concord Nat'l Bank v. Haverhill*, 101 N.H. 416, 419 (1958) (recognizing that attorneys' fees and costs are not reasonably incurred when the litigation is not conducted in good faith for the benefit of the trust.)

Further, even if these provisions of RSA 564-B were read to conflict with each other, RSA 564-B:10-1004 is more specific because while RSA 564-B:7-709 and RSA 564-B:8-805 address expenses incurred in the normal administration of a trust, RSA 564-B:10-1004 addresses the payment of attorneys' fees and costs in a judicial proceeding involving the administration of the trust. As such, RSA 564-B:10-1004 would be the more specific statute. *See, e.g., Garwood v. Garwood,* 233 P.3d 977, 985 (Wyo. 2010) (finding that the provisions of the analogous UTC provision, Wyo. Stat. Ann. § 4-10-1004, "governing an award of fees and costs is more specific to the question of litigation expenses and therefore controls over the general UTC provisions authorizing a trustee to defend claims and pay expenses related to trust administration"); *Atwood v. Atwood*, 25 P.3d

936, 946-47 (Okla. Civ App. 2001)(finding that when determining whether a trustee should be indemnified for attorneys' fees and costs incurred in litigation over alleged breaches of trust and trustee removal, the specific statute addressing "judicial proceedings involving a trust" superseded the more general trust code provisions dealing with payment of reasonable expenses and charges of the trust).

The trial court did consider whether RSA 564-B:8-805 would authorize indemnifying the Former Trustees in this case. *See* App. at 21-23. The trial court found that the fees were incurred defending decantings that were undertaken at the behest of the Settlor's estate planning attorney and that the decantings actually increased the risk of litigation. (App. at 42.) Based on the factual findings in this case, it was unreasonable for the Former Trustees to incur fees defending against an action that was commenced because of their serious breach of trust. The trial court did, in fact, order the 2004 Trusts to reimburse a small portion of the Former Trustees' Fee Claim, which the trial court found properly was incurred in the administration of the trust while addressing the appointment of successor trustees. (App. at 40.)

This case is unlike the circumstances of *In re Trust No. T-1 of Trimble,* which the Former Trustees rely on to support their proposition that RSA 564-B:8-805 is the proper standard to apply. *See* 826 N.W.2d 474 (Iowa 2013). In that case, the Iowa Supreme Court reversed the trial court's finding that the trustee was required to provide an accounting for the period the trust was revocable and ordered that the trustee's fees should be reimbursed because her position had been reasonable and correct. *Id* at 478. The court first noted that the fees and expenses the trustee sought indemnity for were "properly incurred in the administration of the trust," but the court then considered whether the attorney's fees were properly reimbursable under an Iowa trust code provision that is analogous to RSA 564-B:10-1004. *Id.* at 492. Thus, it would have been harmless error if the trial court had not considered RSA 564-B:7-709 and RSA 564-B:8-805 because the analysis under RSA 564-B:10-1004 was still required, which would have resulted in the same outcome. *See Place v. Place*, 129 N.H. 252, 260 (1987) ("A harmless error is an error that does not affect the outcome.") Because there is support in the record for the trial court's application of its factual findings to RSA 564-B:10-1004, it was not an abuse of discretion for the trial court to find that the Former Trustees are personally liable for the 2004 Trusts' Fee Claim and are not entitled to reimbursement of most of the Former Trustees' Fee Claim.

B. The attorneys' fees and costs that the Former Trustees incurred in this litigation were not reasonable or necessary because their bad conduct caused the litigation to occur.

There is no support for the Former Trustees' assertion that only the reasonableness of the defense of the litigation should be considered. As discussed above, the trial court considered the applicability of RSA 564-B:7-709 and RSA 564-B:8-805 when it considered the Former Trustees' Fee Claims and the competing 2004 Trusts' Fee Claim. When ruling on the motions, the trial court did not impose a loser pays rule. (App. at 42.) Instead, the trial court found that "this is the 'classic' case justifying an award of reimbursed fees and costs, namely the [Former Trustees] acted 'wrongfully' and 'the litigation itself [was] made necessary by the trustees' defalcation.'" (App. at 42) (quoting *Dardovitch v. Haltzman*, 190 F.3d 125, 146 (3rd Cir. 1999)).

Even if the trial court were required to focus its analysis only on RSA 564-B:7-709 and RSA 564-B:8-805, the trial court would not have found that the costs and attorneys' fees were properly incurred. It was not reasonable for the Former Trustees to require the irrevocable 2004 Trusts to pay for the defense of actions taken to support David, Sr.'s evolving estate planning objectives. As the trial court noted, the comments to the UTC provision that was adopted to become RSA 564-B:7-709(a) states that "'a trustee is not ordinarily entitled to attorney's fees and expenses if it is determined that the trustee breached the trust.'" (App. at 20 & 37-38) (quoting Uniform Laws Commission, *Trust Code – Final Act* §709, Comment at 133-34 (2010)). Similarly, in response to the Former Trustees' argument that RSA 564-B:8-805 should control the determination of the Former Trustees' Fee Claim and the 2004 Trusts' Fee Claim, the trial court noted that although a trustee is "normally entitled to indemnification for reasonable attorneys' fees and other costs, to the extent the trustee is found to have committed a breach of trust, indemnification is ordinarily unavailable." (App. at 22) (quoting RESTATEMENT (THIRD) OF TRUSTS § 88, *Power to Incur and Pay Expenses* comment d (2019)). The trial court found that the Former Trustees' breaches "were serious and egregious, and use of trust funds to defend these acts would not constitute a reasonable use of trust assets." (App. at 38.) In this case, the litigation involved the Former Trustees unsuccessfully defending themselves against claims they breached their fiduciary duties, which were found to be a serious breach of trust.

Thus, there is support in the record for the trial court's finding that the fees and expenses were not reasonably incurred.

C. The Former Trustees are not protected from personal liability because they created a situation where they may have been sued by any of the beneficiaries.

The Former Trustees assert they were required to consider the interests of two of the remaining beneficiaries, Jan Coville and Nancy Friese, when deciding whether to defend the decantings. However, this argument patently ignores the essential fact that the Former Trustees created the need to defend indefensible conduct when they decanted without giving any consideration to beneficial interests under the 2004 Trusts in the first instance. It also should be noted that at the hearing on the motion for reimbursement of attorneys' fees, Jan Coville was represented by counsel who asserted that the Former Trustees "acted as 'hired assassins' intent on removing the Petitioners' beneficial interests in violation of their fiduciary duties." (App. at 17 n.19.) It is unreasonable to effectively require the beneficiaries of the 2004 Trusts to pay for the litigation, by depleting trust assets to pay for defending the Former Trustees' serious breach of trust.

D. The Former Trustees did not act in good faith when their breach of duty caused the circumstances that gave rise to this litigation

The record supports the trial court's finding that the Former Trustees' should be held personally liable for the 2004 Trusts' Fee Claim and the portion of the Former Trustees' Fee Claim incurred while defending the voided decantings. Although the Former Trustees requested the trial court make a finding that the Former Trustees acted in good faith, the trial court concluded that the record did not support such a finding. (App. at 38 n.30.) The Former Trustees asserted they believed the decantings were valid based on the advice of Attorney McDonald and that the trial court should have considered the amount of guidance that exists on carrying out decantings. The trial court, in fact, did consider this argument and stated that it was:

> not persuaded by the [Former Trustees] assertion that their breach was a "failure of process." Indeed, it was their failure to undertake the unwaivable duty to consider the interests of the beneficiaries that allowed the decantings to occur and necessitated costly litigation on the part of the beneficiaries. This was not a simple mistake by them, rather, the testimony at trial demonstrated that it was a long-term, deliberate, undertaking coordinated under the direction of Attorney McDonald to remove the beneficial interests of the Petitioners at the behest of David, Sr.

App. at 38-39.

The trial court also rejected the Former Trustees' arguments to the extent they appeared to assert an "advice of counsel" defense. (App. at 30-39) (finding that an advice of counsel defense is unavailable when "a fiduciary has colluded with hired counsel to reach a desired result" and that "after review of the circumstances of the breach [of trust], the [Former Trustees] cannot find shelter in the advice of counsel defense"). Further, the Supreme Court does not need to consider whether the advice of counsel defense could apply in this case because the Appellants failed to fully develop that argument for review by this Court. *See Hodges,* 170 N.H. at 488; *Kilnwood on Kanasatka Condo. Unit Assoc. v. Smith*, 163 N.H. 751, 753 (2012).

Further, the trial court's discretion to award attorneys' fees and costs is not limited to the propriety of participating in the litigation itself. *See* RSA 564-B:10-1004. Courts properly may consider conduct before and during litigation when awarding attorneys' fees. *See Shelton*, 164 N.H. at 502 (noting that "the statute gives the trial court flexibility to determine what is fair on a case by case basis"); *see also Lattuca v. Robsham*, 812 N.E.2d 877, 882 (Mass. 2004) ("The test for awarding attorney's fees includes a determination whether the trustee was at fault, and the decision to award fees is a matter within the sound discretion of the trial judge.")

Because there is support in the record for the trial court's finding that the Former Trustees are personally liable for 2004 Trusts' Fee Claim and are not entitled to reimbursement for most of the Former Trustees' Fee Claim, the trial court's order should be affirmed.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE FORMER TRUSTEES SHOULD PAY ATTORNEYS' FEES AND COSTS

The Former Trustees also assert that when analyzing whether justice and equity support an award of attorney's fees pursuant to RSA 564-B:10-1004, the trial court was required to consider certain factors articulated by an Oklahoma Appellate Court, *Atwood*, 25 P.3d at 947, and adopted by Iowa Supreme Court. *See In re Trust No. T-1 of Trimble*, 826 N.W. 2d at 492-93. The trial court did not undertake a detailed analysis of the criteria set forth in *Atwood* when applying RSA 564-B:10-1004 because the New Hampshire Supreme Court has not adopted that analysis. (App. at 25-26 n.23.) In fact, the New Hampshire Supreme Court previously recognized the criteria set forth in *Atwood* when citing it for the proposition that because "the statute does not provide specific criteria for such an award, it gives the trial court flexibility to determine what is fair on a case by case basis." *Shelton*, 164 N.H. at 502. The *Atwood* court itself recognized that the factors it set forth were "general criteria drawn from other types of cases [that] provide nonexclusive guides." 25 P.3d at 947. Although the trial court determined it did not need apply the *Atwood* criteria, it found that if it had, the outcome would be the same. (App. at 25-26 n.23.) Thus, even if the Supreme Court now adopts the non-exclusive *Atwood* factors, the trial court's failure to exclusively apply them would be harmless error. *See Place*, 129 N.H. at 260.

In fact, even if the *Atwood* factors were applied to the facts of this litigation, there still would be support for the trial court's denial of most of the Former Trustees' Fee Claim and order that the Former Trustees must personally pay the 2004 Trusts' Fee Claim. The five factors that the *Atwood* court considered were:

> (a) the reasonableness of the parties' claims, contentions, or defenses; (b) unnecessarily prolonging litigation; (c) relative ability to bear the financial burden; (d) result obtained by the litigation and prevailing party concepts; and (e) whether a party has acted in bad faith, vexatious, wantonly, or for oppressive reasons in the bringing or conduct of the litigation.

25 P.3d at 947. The Former Trustees' position in the litigation was unreasonable because "[t]hey did not consider the interests of the beneficiaries when assisting Attorney McDonald with the decantings, and this not only resulted in lengthy and costly litigation, but made it more likely to occur." (App. at 38.) The Former Trustees' "role in the decantings was a particularly egregious breach of trust." *Id.* Further, the trial court

declined to find that the Former Trustees acted in good faith when they defended their decantings. App. at 38-39. The Former Trustees committed a serious breach of trust that resulted in their removal. *Hodges,* 170 N.H. at 473. Although there is no record of the Former Trustees unnecessarily prolonging litigation, the weight of the other factors supports the trial court's discretion in issuing its order on the payment of attorneys' fees and costs. Additionally, although the 2004 Trusts may have assets available to support payment of attorneys' fees and costs, it would be unjust for the beneficiaries of the 2004 Trusts to face reduced distributions because of the Former Trustees' decision to defend their serious breaches of fiduciary duty. In fact, it is well recognized that a trustee that has committed a breach of fiduciary duty may be chargeable with the costs of restoring the assets of the trust. RESTATEMENT (THIRD) OF TRUSTS, *Liability of Trustee for Breach of Trust* §100 (2012). Thus, even in applying the *Atwood* factors, the trial court's order requiring the Former Trustees to pay the 2004 Trusts' Fee Claim and denying most of the Former Trustees' Fee Claim is supported by the record.

The trial court also correctly found that it could not make an order on the attorneys' fees and costs incurred in the prior appeal in this matter, which was a large portion of the Former Trustees' Claim. Even if RSA 564-B:7-709 provided a proper basis for an order that the 2004 Trusts should pay the Former Trustees' Claim, that statute would have needed to be applied by the Supreme Court when considering the fees and expenses incurred on appeal. *See LaMontagne Builders, Inc. v. Brooks*, 154 N.H. 252, 259 (2006) (reversing a trial court's award of attorneys' fees that had been incurred on appeal because the award violated Sup. Ct. R. 23); *see* *also Burrows v. Keene*, 121 N.H. 590, 601-02 (1981) (awarding the plaintiff's reasonable counsel fees and costs on appeal and remanding the case to the trial court for an assessment of fees and expenses incurred at the trial level). Additionally, deciding this issue is unnecessary when the trial court already has found that it would not have ordered the 2004 Trusts to pay the Former Trustees' Fee Claim for the appeal even if it had jurisdiction. *See Place*, 129 N.H. at 260.

IV. IT WAS NOT AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO SUGGEST THAT ONE WAY THE FORMER TRUSTEES COULD HAVE AVOIDED LIABILITY WOULD BE TO FILE A PETITION FOR INSTRUCTION

The Court does not need to consider whether it was an abuse of discretion for the trial court to suggest the Former Trustees could have filed a petition for instruction because this issue was not preserved in their Notice of Appeal. *See Gunderson v. Comm'r, N.H. Dep't of Safety*, 167 N.H. 215, 217 (2014); *see also Lassonde v. Stanton*, 157 N.H. 582 (2008) ("Appellate questions not presented in a notice of appeal are generally considered waived by this court.")

Even if the Court addresses this argument, it was not an abuse of discretion for the trial court to suggest such an action could have been taken. The trial court's decision on the competing requests for attorneys' fees and costs did not turn on whether or not the Former Trustees had filed a petition for instruction. Instead, the trial court offered that approach as an example of one possible step the Former Trustees might have taken that would have demonstrated they were acting in good faith. The Former Trustees' failure to seek a petition for instruction, just like the failure to seek independent legal advice, is further evidence the Former Trustees did not want to take action that could jeopardize facilitating David, Sr.'s revised estate planning goals. (App. at 39.) Although the Former Trustees assert that the lack of established law guiding their decision-making supports finding their actions were not improper, such an argument actually supports the contrary conclusion. A petition for instruction could have caused the Former Trustees to give due consideration to the beneficiaries' interests, and potentially could have given the Appellants the cover they seek from liability.

The Former Trustees asserted at trial that they agreed to permit the decantings because they were concerned the beneficiaries whose interests were being removed would disturb the continuation of HDC. The trial court considered this asserted motive and found the record did not support such a finding. (Supp. at 31-33.) Instead, the trial court found that the decantings were undertaken at the behest of Attorney McDonald who "was hired by David Sr. as he was reconsidering his generosity, despite the fact that he had earlier established <u>irrevocable trusts</u>." (App. at 39) (emphasis in original). The Former Trustees also argued there would have been too much of a time delay to bring a petition for instruction, but there was no evidence of any real urgency or threat to HDC when the first decanting took place. For instance, Barry remained employed with HDC for years after his interests were first removed from the Trusts, and the decantings were not to become effective until David, Sr.'s death. *Hodges*, 170 N.H. at 474-75. Unlike *In re Lykes Estate,* requesting instruction on the propriety of decanting to remove certain beneficiaries under these specific circumstances does not constitute a contingency that may never come to pass or a request to establish a minimum and maximum limit of trustee discretion. 113 N.H. 282, 286 (1973).

Although the Former Trustees also assert that a petition for instruction would have been expensive and hotly contested, their assertion is not necessarily true. For instance, the no contest provisions contained in the 2004 Trusts reasonably may have discouraged the beneficiaries from actively participating in the petition for instruction. Certainly, a petition for instruction likely would have set forth standards for how the Former Trustees could have exercised their duty of impartiality, even if they were attempting to remove beneficial interests. Requesting such guidance would have been evidence that the Former Trustees gave at least some consideration to their duty of impartiality. However, filing a petition for instruction prematurely would have revealed David, Sr.'s and the Former Trustees' clandestine plans to David, Sr.'s spouse, stepchildren, and children, when the intent was for the decantings to be revealed only upon David, Sr.'s death.

Although the trial court mentioned a petition for instruction could provide a way for a trustee to avoid liability when there is uncertainty concerning whether or how to exercise discretion, *see* RSA 564-B:2-201, the trial court did not find that the Former Trustees had to file a petition. Instead, the availability of a petition for instruction was an illustration of the options available to the Former Trustees to more appropriately consider the decantings in the first instance and their decision to defend the decantings when the actions were challenged. (App. at 16 n.18, 33-35 & 39). The trial court also suggested that the Former Trustees could have hired independent counsel. (App. at 33-35.) Because the trial court's decision on the Former Trustees' Claim and 2004 Trusts' Claim for attorneys' fees and costs did not turn on whether or not the Former Trustees' filed a petition for instruction, and there otherwise is support in the record for the trial court's order, that trial court's order should be affirmed.

CONCLUSION

There is sufficient support in the record to sustain the trial court's order that the Appellants are personally liable for the 2004 Trusts' Fee Claim and denial of the majority of the Former Trustees' Fee Claim for reimbursement. The trial court did not abuse its discretion in making its order, so the Court should affirm.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully request oral argument before the full Court. Oral argument will be made by Jamie N. Hage, Esquire.

CERTIFICATION

Counsel certifies that in compliance with Sup. Ct. R.16(11), this brief contains 9,284 words.

Respectfully submitted,
Judith L. Bomster, Esquire and J. Daniel Marr, Esquire, Co-Trustees of the 2004 "David A. Hodges, Sr. Irrevocable GST Exempt Trust" and the 2004 "David A. Hodges, Sr. Irrevocable GST Non-Exempt Trust"

By and through their attorneys,
HAGE HODES, P.A.

Dated: December 2, 2019 By: */s/ Jamie N. Hage*

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CERTIFICATE OF SERVICE

I, Jamie N. Hage, Esq., certify that on this date a copy of this brief is being or has been served on all other parties or their counsel, in accordance with the rules of the Supreme Court, as follows: I am serving all counsel of record, that are registered e-filers through the court's electronic filing system, including Pamela J. Newkirk, Esq., Russell F. Hilliard, Esq., Robert A. Stein, Esq., Edward J. Sackman, Esq, Roy W. Tisley, Jr., Esq., Jan P. Myskowski, Esq., Virginia Symmes Sheehan, Esq., Alexandra S. Cote, Esq., Ralph F. Holmes, Esq., and Jeffrey H. Karlin, Esq.

/s/ Jamie N. Hage
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