

Cite as 2023 Ark. App. 302
ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-21-35

ELLEN C. ROGERS

APPELLANT

V.

REBECCA LOEFFEL KEMP

APPELLEE

Opinion Delivered May 24, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SIXTEENTH DIVISION
[NO. 60CV-20-1097]

HONORABLE MORGAN E. WELCH,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Appellant Ellen Rogers appeals from an order of the Pulaski County Circuit Court granting summary judgment to appellee Rebecca Loeffel Kemp on her complaint alleging that Ellen breached multiple duties as the sole trustee of two trusts. In addition to granting summary judgment in favor of Rebecca, the order also ruled on various other motions, including the denial of Ellen’s motion to compel discovery, which Ellen also challenges on appeal. We affirm.

On May 14, 1996, Margaret L. Kemp (Margaret) created an educational trust for her granddaughter Rebecca, which was later revoked when Margaret executed the Rebecca Loeffel Kemp Education Trust Fund (Rebecca’s Trust) on June 1, 2014. Margaret executed the Margaret L. Kemp Revocable Trust (Margaret’s Trust) on April 14, 2003. Margaret

named Ellen, who is Margaret's daughter and Rebecca's aunt, as the sole trustee of both trusts. Speaking generally, Margaret's Trust dated April 14, 2003, provided for the distribution of the trust estate, after expenses were paid. Under article eight. the first amount to be distributed was as follows:

1. *Additional Funding for Educational Trust for Rebecca Loeffel Kemp.* If and to the extent grantor has not funded the Educational Trust established for her granddaughter, Rebecca Loeffel Kemp, up to two hundred fifty thousand dollars (\$250,000), the trustee shall distribute to her said Educational Trust that amount necessary to bring the funding up to two hundred fifty thousand dollars (\$250,000), valued at the date of grantor's death.

When the initial trust was created, the remainder was to be split by Margaret's four children. There was also a provision that addressed "Adjustments to Shares of Children."

Margaret amended her trust July 22, 2010; September 18, 2010; June 1, 2014; and October 29, 2015. Rebecca's Trust was created on June 1, 2014, the same day as Margaret's third amendment to her trust. The fourth amendment, which is at issue here, amends article eight. With respect to Rebecca's Trust, the amendment provides:

1. *Additional Funding for Educational Trust of Rebecca Loeffel Kemp.* If and to the extent grantor has not funded the Rebecca Loeffel Kemp Education Trust Fund, dated the 1st day of June, 2014, for the benefit of her granddaughter, Rebecca Loeffel Kemp, up to two hundred fifty thousand dollars (\$250,000), the trustee shall distribute to her said Trust that amount necessary to bring the funding up to two hundred fifty thousand dollars (\$250,000), valued at the date of grantor's death.

In the fourth amendment, Margaret declared that the remainder of the trust estate (after any payment to Rebecca's Trust) was to be paid to Ellen and noted that in making this provision, Margaret was not unmindful of her other children and descendants but had decided to omit her other children as beneficiaries of the trust. Margaret died on April 3,

2016. Sometime after Margaret's death, Rebecca sought payment of the amount due to her trust from Margaret's Trust. Ellen resisted and asserted that she was entitled to credits for previous amounts paid to Rebecca, which resulted in the present litigation.

Rebecca filed a complaint on February 4, 2020, alleging that Ellen had breached multiple duties as the sole trustee of both trusts. These duties included the duty to administer Margaret's Trust in good faith and in accordance with its terms and purposes and in the interests of the beneficiary; the duty of loyalty; the duty of impartiality; the duty to inform and report on Rebecca's Trust; and the duty to inform and report on Margaret's Trust. In her prayer for relief, Rebecca asked the court to order Ellen, as trustee of Margaret's Trust, to transfer \$250,000, plus interest at 6 percent per annum from April 3, 2016 (date of Margaret's death), from Margaret's Trust to Rebecca's Trust. In addition, Rebecca asked the court to order Ellen to provide complete accountings for both trusts; to enjoin Ellen from making disbursements from either trust until the court ordered otherwise; to remove Ellen as trustee of both trusts and appoint successor trustees; to order Ellen to pay damages in an amount required to restore the value of the trust property and trust distributions to what they would have been if the breaches had not occurred; and to award Rebecca costs, expenses, and attorney's fees.

Ellen filed an answer on March 31, 2020, which affirmatively pled the statute of limitations as a defense and that she should receive a credit for amounts Rebecca had already received for her education. On April 24, Rebecca moved for summary judgment asserting that in light of the undisputed facts, she was entitled to judgment as a matter of law because

Ellen had not transferred the \$250,000 valued at the date of Margaret's death from Margaret's Trust to Rebecca's Trust and had breached the various duties alleged in the complaint. In her May 29 response, Ellen argued that issues of material fact remained, which included how much money had already been spent on Rebecca's behalf and Margaret's intent with respect to the provisions of the trusts. The response also requested a continuance to allow her to conduct further discovery. On June 3, Ellen filed a motion to compel answers to several interrogatories and requests for production of documents to which Rebecca had objected. Rebecca responded on June 22, arguing that any money Margaret previously spent on her education had no bearing on the case.

On July 29, Ellen filed a motion for summary judgment based on the statute of limitations, which was followed by an amended answer and counterclaim filed on August 6.¹ Rebecca filed a response to Ellen's summary-judgment motion on August 24 and a motion to strike or alternatively dismiss Ellen's counterclaim on September 4.

Following an October 26 hearing, the circuit court entered an order on November 2 styled "Order Granting Summary Judgment and Addressing Pending Motions." The circuit court granted Rebecca's motion for summary judgment; denied as moot Ellen's motion to compel; denied Ellen's motion for summary judgment; granted Rebecca's motion to strike or, in the alternative, to dismiss Ellen's counterclaim; and denied Ellen's motion to strike

¹Ellen's counterclaim sought to recover a pro rata share of attorney's fees incurred by Ellen to obtain assets for the benefit of Margaret's Trust. The sole asset of Margaret's Trust was a building and land. Ellen asserted that Rebecca benefited from Ellen's actions and should be required to contribute.

Rebecca's response in opposition to Ellen's motion for summary judgment. The circuit court ordered Ellen, as trustee of Margaret's Trust, to transfer \$250,000 plus interest at 6 percent per annum, compounded annually from April 3, 2016, through the date of payment, from Margaret's Trust to Rebecca's Trust; enjoined Ellen from making any other disbursements from either trust until further orders of the court; ordered Ellen to provide complete accountings for both trusts, including, without limitation, all information described in Ark. Code Ann. § 28-73-813(c)(1); and reserved the right to determine the amount of costs, expenses and attorney's fees.

On November 4, Ellen filed notice of funding Rebecca's Trust in the amount of \$326,000 as well as a motion asking the circuit court to reconsider its order requiring Ellen to provide an accounting of Margaret's Trust given that Rebecca's Trust had been funded. Ellen filed a notice of appeal on November 6, appealing the November 2 order.

Our summary-judgment standard is well settled. Summary judgment may be granted only when there are no genuine issues of material fact to be litigated. *Patterson v. Bennett*, 2022 Ark. App. 75. On appellate review, this court determines if summary judgment was appropriate by deciding whether the evidentiary items presented by the moving party in support of the motion leave a material fact unanswered. *Id.* We view the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* Our review focuses not only on the pleadings but also on the affidavits and other documents filed by the parties. *Id.* As to issues of law presented, our review is de novo. *Id.*

I. *Statute of Limitations*

Ellen first argues that the circuit court erred in granting summary judgment because Rebecca's complaint was barred by the statute of limitations. Rebecca's complaint asserted multiple causes of action for breach of trust under the Arkansas Trust Code (ATC) based on Ellen's breach of duties as the trustee of both trusts. Arkansas Code Annotated section 28-73-1005 (Repl. 2012) contains the ATC's limitations periods and provides as follows:

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five (5) years after the first to occur of:

- (1) the removal, resignation, or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

Ark. Code Ann. § 28-73-1005. According to their briefs, both parties appear to agree that section 28-73-1005(a) applies to this case.

Ellen contends that in a March 6, 2018 letter, Rebecca's attorney made it clear that a potential claim for breach of trust was known. Ellen further asserts that her attorney in a May 2, 2018 letter "threw down the gauntlet," and Rebecca knew at this time that there was

going to be a dispute over funding her trust. The May 2 letter states that Ellen needed “an accounting as to how much Rebecca had already received.” Ellen contends that the one-year statute of limitations was triggered at that time, and Rebecca’s complaint was not filed until February 4, 2020. Rebecca argues that (1) Ellen never informed Rebecca of the time allowed for commencing the proceeding; (2) Ellen never adequately disclosed the existence of a breach of trust; and (3) Ellen never provided Rebecca with a report. In her reply brief, Ellen asserts that she was not required to use “magic words” to commence the running of the statute of limitations because that would be placing form over substance.

Under the plain language of the statute, the one-year statute of limitations for an action against a trustee for breach of trust begins to run after “a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust *and* informed the beneficiary of the time allowed for commencing a proceeding.” Ark. Code Ann. § 28-73-1005(a) (emphasis added); *see also Peck v. Peck*, 2019 Ark. App. 190, 575 S.W.3d 137. Although Ellen argues that the May 2 letter disclosed a breach of duty, she makes no argument that she informed Rebecca of the time allowed for commencing a proceeding, which is a requirement of the statute. As a result, the statute of limitations did not begin to run on May 2. Because this statutory requirement was not met, we need not address whether the May 2 letter adequately disclosed a breach of trust.

Ellen acknowledges in her brief that “Rebecca’s complaint falls under the Arkansas Trust Code,” and we agree. Therefore, we do not address Ellen’s alternative argument that to the extent Rebecca’s claim should have been filed against Margaret’s estate, it was barred

by the statute of nonclaim codified at Arkansas Code Annotated section 28-50-101 (Repl. 2012).

II. *Margaret's Intent*

Ellen argues that the circuit court erred in granting summary judgment because it did not consider Margaret's intent with respect to the funding of Rebecca's trust. Specifically, Ellen asserts that "Margaret's trusts evidence a clear intent that any advancements she made to her children or grandchildren should be deducted from any sums they would be entitled to at her death." (Emphasis added.) She states that the provisions of the trusts "also suggest that a debt of a parent should be applied against a child's portion and vice versa," noting that Rebecca's father owed Margaret over \$1 million. In addition, Ellen contends that there was a student-loan debt in the amount of \$39,291.31 and amounts of at least \$107,103 that "flowed through the 1996 education trust" initially created for Rebecca. Ellen argues that she should be entitled to a credit for these advancements.

Ellen states that genuine issues of material fact remain in dispute, including whether Margaret intended that (1) money spent on behalf of Rebecca over the years be considered gifts or advancements, (2) the funding of the 1996 education trust be considered part of the funding of the 2014 trust, and (3) her loans to Rebecca's father would affect what Rebecca was to receive. Ellen also asserts that a genuine issue of material fact remains as to how much money, if any, remains to fully fund Rebecca's Trust.

Ellen cites two cases in support of her arguments that intent must be considered and that Margaret's transfers during her life should be considered an advancement. These cases,

however, are inapplicable because they do not involve interpretation of a trust. See *Holland v. Bonner*, 142 Ark. 214, 218 S.W. 665 (1920); *Neal v. Neal*, 194 Ark. 226, 106 S.W.2d 595 (1937).

In response, Rebecca argues the trusts at issue are Margaret's Trust and the fourth amendment thereto and Rebecca's Trust. She contends that the language of Margaret's Trust is unambiguous; thus, no extrinsic evidence of Margaret's intent may be considered. We agree.

Margaret's Trust dated April 14, 2003, provides as follows:

Article Eight

Administration and Distribution of Trust Upon Death of Grantor

Upon death of the grantor, the trust estate shall (after the collection of any property which becomes payable to the trustee as a result of a bequest, devise, beneficiary designation or otherwise, and after payment or provision for the payment of any claims, expenses, or taxes which the trustee determines should be paid from this trust in accordance with Article Six) be paid and distributed as follows:

1. Additional Funding for Educational Trust for Rebecca Loeffel Kemp. If and to the extent grantor has not funded the Educational Trust established for her granddaughter, Rebecca Loeffel Kemp, up to two hundred fifty thousand dollars (\$250,000), the trustee shall distribute to her said Educational Trust that amount necessary to bring the funding up to two hundred fifty thousand dollars (\$250,000), valued at the date of grantor's death.

When the initial trust was created, the remainder was to be split by Margaret's four children.

There was also a provision that addressed "Adjustments to Shares of Children."² There

²This provision stated, in part, that in the event the trust or grantor's estate was required to pay any debts for the benefit of the grantor's children or their descendants, or in the event the grantor's children or their descendants were indebted to the grantor or the

were, however, four amendments to the trust dated July 22, 2010, September 18, 2010, June 1, 2014, and October 29, 2015. Rebecca's trust at issue in this case was created on June 1, 2014, the same day as the third amendment to Margaret's Trust. The fourth amendment, which is at issue here, amends article eight. With respect to Rebecca's Trust, the amendment provides:

1. Additional Funding for Educational Trust of Rebecca Loeffel Kemp. If and to the extent grantor has not funded the Rebecca Loeffel Kemp Education Trust Fund, dates the 1st day of June, 2014, for the benefit of her granddaughter, Rebecca Loeffel Kemp, up to two hundred fifty thousand dollars (\$250,000), the trustee shall distribute to her said Trust that amount necessary to bring the funding up to two hundred fifty thousand dollars (\$250,000), valued at the date of grantor's death.

Margaret also amended her trust such that the remainder of the trust estate was to be paid to Ellen, and specifically noted that Margaret was not unmindful of her other children and descendants but had decided to omit her other children as beneficiaries of the trust.³

In construing a trust, we apply the same rules applicable to the construction of wills. *Baker v. Baker*, 2022 Ark. App. 260, at 6, 646 S.W.3d 397, 400. The cardinal rule in construing a trust, however, is that the intention of the settlor must be ascertained. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, at 11, 591 S.W.3d 299, 307. We determine this intention by viewing the four corners of the instrument, considering the language used, and giving

trust, then the share of the grantor's estate (including the trust estate) to be received by each child or descendant shall be reduced by the amount of the debt paid or owed.

³Ellen contends in her brief that the fourth amendment made no change to the prior provisions relating to "Adjustments to Shares of Children." However, we note, as Rebecca points out, this section was removed in the fourth amendment.

meaning to all of its provisions, whenever possible. *Baker, supra*. When the terms of a trust are unambiguous, it is the court's duty to construe the written instrument according to the plain meaning of the language employed. *Dawson, supra*.

In looking at the four corners of Margaret's Trust as amended, we agree that the language used is unambiguous. The fourth amendment provides that if Rebecca's Trust had not been funded prior to Margaret's death up to \$250,000, then the trustee shall distribute the amount necessary to bring the funding up to \$250,000, valued at the date of Margaret's death. It is undisputed that the 2014 education trust for Rebecca revoked the 1996 trust and that the 2014 trust had not been funded. Ellen's only contention is that she was entitled to the various offsets or credits previously addressed. There is no indication from the plain language of Margaret's Trust and its fourth amendment that she had such an intent. Extrinsic evidence may be received on the issue of the testator's or grantor's intent if the terms of the will or trust are ambiguous. *Covenant Presbytery v. First Baptist Church*, 2016 Ark. 138, at 4, 489 S.W.3d 153, 156. Because the language of Margaret's Trust is unambiguous, no genuine issues of material fact remained. Therefore, we hold that the circuit court did not err in granting Rebecca's motion for summary judgment.

III. *Motion to Compel*

Ellen filed a motion to compel Rebecca to answer several interrogatories and requests for production to which she objected and did not provide responses. Ellen's motion provided that she raised setoff, offset, and payment as affirmative defenses, and that she could not pursue this theory without Rebecca's answers. The unanswered discovery

requested that Rebecca provide an accounting of all moneys received from Margaret for any school or living expenses while Rebecca was enrolled in high school or post-high school education; to produce a copy of all checks paid by Rebecca or on her behalf for school tuition or school or living expenses; and to produce a copy of all bills received from any school in which she was enrolled. Rebecca had objected on the grounds that the information sought was not relevant and was not reasonably calculated to lead to the discovery of admissible evidence and that the request was vague, overbroad, and unreasonably burdensome.

On appeal, Ellen contends that the circuit court erred in denying her motion to compel the discovery responses and proceeding to rule on Rebecca's motion for summary judgment. Much of Ellen's argument on appeal focuses on the speed in which the case progressed along with Ark. R. Civ. P. 56(f).⁴

In support of her argument, Ellen cites *First National Bank v. Newport Hospital & Clinic, Inc.*, 281 Ark. 332, 333, 663 S.W.2d 742, 742 (1984), in which the supreme court reversed the circuit court's grant of summary judgment prior to discovery being answered. She contends this is the exact same situation. We disagree. *First National Bank* is a medical-malpractice case. Appellees (hospital and physicians) argued on appeal that appellant, as the plaintiff in a medical-malpractice case, had the burden of proving, ordinarily by expert

⁴Rule 56(f) provides: "When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

medical testimony, that the plaintiff's injuries were caused by the defendant's failure to exercise the degree of skill and learning possessed by other physicians engaged in the same kind of practice in similar localities, which the appellant had failed to produce. In reversing the supreme court explained:

That may be so, but before being required to fully demonstrate that evidence in response to a motion for summary judgment a plaintiff is entitled to have the benefit of adequate discovery from the opposing parties as the nature of the case requires. Those benefits were withheld in this case and the trial court should not have granted summary judgment until appellant was able to complete discovery and develop, if obtainable, the necessary proof.

281 Ark. at 335, 663 S.W.2d at 743-44.

As previously discussed, Margaret's intent could be determined from the unambiguous language of the trust. As a result, extrinsic evidence of intent would not be permissible and would not have changed the outcome of the case. The information Ellen sought related to her defenses that only would have been considered if the court determined the language of Margaret's trust to be ambiguous. Ellen's argument on appeal ignores the fact that the circuit court denied the motion to compel as moot. *See, e.g., Norris v. Davis*, 2015 Ark. 442, 476 S.W.3d 163 (holding that motion to compel discovery to support a claim was moot as such discovery would have no practical legal effect because res judicata precluded appellant from raising the issues presented).

Because we affirm the circuit court's grant of summary judgment as discussed above, we cannot say that the circuit court erred in denying the motion to compel as moot.

IV. Accounting

Ellen argues that the circuit court erred in ordering her to provide an accounting of Margaret's Trust because once Rebecca's Trust was funded, the administration of Margaret's Trust is "none of [Rebecca's] business." Ellen suggests that Rebecca is not a "beneficiary" or "qualified beneficiary" of Margaret's Trust as those terms are defined by Ark. Code Ann. § 28-73-103 (Supp. 2021), and as result, Ellen is not required to make any report to her under Ark. Code Ann. § 28-73-813(c)(1) (Repl. 2012).

"Beneficiary" is defined as a person that "(A) has a present or future beneficial interest in a trust, vested or contingent; or (B) in a capacity other than that of trustee, holds a power of appointment over trust property." Ark. Code Ann. § 28-73-103(3). "Qualified beneficiary" is defined in part as a "living beneficiary who on the date the beneficiary's qualification is determined . . . is a distributee or permissible distributee of trust income or principal[.]" Ark. Code Ann. § 28-73-103(14)(A). Arkansas Code Annotated section 28-73-813, which addresses a trustee's duty to inform and report, provides in part:

(c)(1) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values.

Ark. Code Ann. § 28-73-813(c)(1).

Rebecca responds that Ellen waived this argument by not making it below and points out that Ellen admitted in her interrogatory responses that Rebecca was a beneficiary of Margaret's Trust. Rebecca further argues that Ellen's funding of Rebecca's Trust does not

remove Rebecca's beneficial interest in Margaret's Trust. Specifically, Rebecca asserts that the \$326,000 that Ellen says she deposited was short \$665.92, and thus the amount due increases each day. Rebecca also contends that if the circuit court awards the attorney's fees requested by Rebecca, and if attorney's fees are awarded for the appeal, Ellen and Margaret's Trust will owe those amounts. In light of these circumstances, Rebecca argues that she still has an interest in the trust and the circuit court's order to provide an accounting of Margaret's Trust was not in error.

In her reply brief, Ellen states that she "disputes only the trial court's ruling that Rebecca is somehow entitled to know the receipts and disbursements going in and out of [Margaret's Trust] so long as there is a sufficient balance on hand to satisfy any further obligations to the educational trust, a matter still pending before the trial court."

We agree with Rebecca that the circuit court's order directing Ellen to provide an accounting of Margaret's Trust was proper because Ellen may be responsible to Rebecca for further amounts, including attorney's fees. In its order, the circuit court reserved the right to determine the amount of costs, expenses, and attorney's fees. Any amount awarded would be a responsibility of Margaret's Trust. Although Ellen disputes the order of an accounting "so long as there is a sufficient balance on hand to pay any further obligations" to Rebecca's Trust, we note that she called into question in her brief whether there were sufficient funds, asserting that as a material question of fact remaining to defeat summary judgment. We affirm on this point.

V. Interest

For her last point on appeal, Ellen claims three reasons why the circuit court erred as a matter of law when it awarded prejudgment interest at 6 percent. First, the amount Margaret's Trust owed Rebecca's Trust was uncertain when the lawsuit was filed, and prejudgment interest does not accrue until a person is entitled to a sum certain, citing *Southern Building Services, Inc. v. City of Fort Smith*, 2014 Ark. App. 437, at 6, 440 S.W.3d 346, 351 ("Prejudgment interest is allowable where the amount of damages is definitely ascertainable by mathematical computation, or if the evidence furnishes data that makes it possible to compute the amount without reliance on opinion or discretion." (citation omitted)). Second, prejudgment interest on the entire \$250,000 is erroneous because Rebecca never asked for a distribution from her trust and was not entitled to a distribution until she turned twenty-five, which occurred in April 2021. And third, the maximum interest rate the circuit court could legally award is 2.25 percent, not 6 percent, citing Ark. Code Ann. § 16-65-114 (Supp. 2021), which provides in part:

(a)(1) Except as provided in subdivision (a)(2) of this section, a judgment entered by a court shall bear post-judgment interest and, if appropriate under the facts of the case, prejudgment interest:

(A) In an action on a contract at the rate provided by the contract or at a rate equal to the Federal Reserve primary credit rate in effect on the date on which the judgment is entered plus two percent (2%), whichever is greater; and

(B) In any other action at a rate equal to the Federal Reserve primary credit rate in effect on the date on which the judgment is entered plus two percent (2%).

Ark. Code Ann. § 16-65-114(a)(1)(A)-(B). Ellen cites the Federal Reserve website notes from October 26, 2020, which indicate the primary credit rate set by the Federal Reserve was 0.25

percent. On the basis of the statute and this figure, Ellen asserts that the maximum interest on the judgment would have been 2.25 percent.

Rebecca argues that Ellen cannot challenge the 6 percent interest rate determination because she never argued against that rate below. She also argues that the court did not order prejudgment or postjudgment interest but rather ordered her “to transfer \$250,000 plus interest at six percent per annum, compounded annually, from April 3, 2016, through the date of payment[.]” She argues that the interest rate is part of the order requiring Ellen to comply with Margaret’s Trust to transfer the amount due “valued at the day of the grantor’s death,” which was April 3, 2016. Rebecca further suggests that Margaret anticipated a potential delay in the transfer of money and accounted for it by ensuring that the money would be valued on the date of her death and that interest must accrue to comply with the terms of the trust. Rebecca also asserts that a 6 percent interest is a modest growth rate.

In support of her argument, Rebecca cites Ark. Code Ann. § 28-73-1002(a)(1) (Repl. 2012), which provides in part that “[a] trustee who commits a breach of trust is liable to the beneficiaries affected for . . . the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred[.]” She further suggests that a 6 percent interest rate is used in contract cases where the contract does not provide for a specific rate and for testamentary devises. *See* Ark. Code Ann. § 4-57-101 (Supp. 2021); Ark. Code Ann. § 28-53-112 (Repl. 2012).

From the outset of the case, Rebecca requested that Ellen be ordered to transfer the \$250,000 plus interest at 6 percent per annum from the date of Margaret’s death. Here,

Rebecca argues that the circuit court’s order does not specifically mention prejudgment or postjudgment interest; rather, the interest rate is part of the order directing Ellen to comply with Margaret’s Trust, which states that the trustee must transfer \$250,000, “valued at the day of grantor’s death.”⁵ Outside of asking for a hearing on “damages” and stating that there was “law out there that it’s not 6 percent anymore,” Ellen never argued a specific rate should be applied. We hold that, under these facts, the circuit court did not err as a matter of law in ordering Ellen to transfer \$250,000 plus interest at 6 percent per annum from the date of Margaret’s death.

Affirmed.

GLADWIN and KLAPPENBACH, JJ., agree.

Ogles Law Firm, P.A., by: *John Ogles*; and *Gregory D. Taylor*, for appellant.

Shults Law Firm LLP, by: *Peter Shults* and *Steven Shults*, for appellee.

⁵The hearing transcript indicates that the circuit court asked the parties to submit proposed orders with findings of fact and conclusions of law. However, there are no such orders in the record.