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SUPREME COURT OF TEXAS
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NO. 26-0428

IN THE SUPREME COURT OF TEXAS

CAROLINE ALLISON AND RICHARD ALLISON,
Petitioner,

V.

BORUNDA, P.C., JORGE BORUNDA, NICHOLAS ABAZA, LAW OFFICES OF NICHOLAS ABAZA, P.C., MICHAEL TREVINO, AND LAW OFFICE OF MICHAEL A. TREVINO, PLLC
Respondents.

On Review from the Court of Appeals for the 14th District of Texas

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BRIEF OF AMICUS CURIAE AMERICAN NATIONAL BANK OF TEXAS AND THE INDEPENDENT TRUSTEE ALLIANCE

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IDENTITIES OF AMICUS CURIAE AND COUNSEL

Amicus Curiae American National Bank of Texas and the Independent Trustee Alliance ("ITA") hereby incorporate the designation of parties and counsel as set forth in the petition for review filed by the Petitioners in this appeal.

American National Bank of Texas was founded 150 years ago in Terrell, Texas. It has grown to have locations all over North Texas and is an independent community bank that strives to deliver best-in-class financial solutions and expertise. Specifically, for over 100 years it has provided private wealth and trust solutions for its customers. It has an interest in ensuring that Texas courts correctly apply trust law.

The Independent Trustees Alliance ("ITA") is an organization made of trustees, fiduciaries, and family consultants who operate autonomously or within family offices. Its mission is to promote recognition of the role of "Independent Trustee" through activities such as continuing education programs, workshops, and conferences. The ITA provides education and training to its members, who offer an alternative to traditional family or corporate fiduciaries. It has an interest in ensuring that important trust issues are correctly resolved by Texas courts so that its members can properly meet their fiduciary duties.

Pursuant to Texas Rule of Appellate Procedure 11, Amicus Curiae states as follows:

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Amicus respectfully submits this amicus brief and requests that this Court accept the Petition for Review and reverse the opinion and judgment of the Court of Appeals. No party has paid for the preparation of this brief.

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ISSUE PRESENTED

Amicus adopts the issues presented by the Petitioners in this appeal.

INTRODUCTION

Trust disputes are litigated all over Texas in many different courts. Often, beneficiary plaintiffs retain counsel via a contingency agreement that is solely between the attorney and the beneficiary in their individual capacity. The Author has dealt with this issue many times in litigation. The contingency arrangement works fine when the beneficiary is entitled to recovery in his or her own individual capacity and the attorneys take a cut of the proceeds. But what impact does it have when the recovery goes not to the client beneficiary, but to a non-client trustee? Is the trustee, who did not sign the contingency agreement, required to pay 35% or 45% of the assets coming to the trust to the beneficiary's counsel because the beneficiary signed a contingency agreement? Of course, that cannot be the result.

In Texas, to be enforceable, contingency agreements must be in writing and signed by the client; in this case, there were no contracts in writing signed by the attorneys and the Siblings as trustees. Tex. Gov't Code § 82.065(a) ("A contingent fee contract for legal services must be in writing and signed by the attorney and client."); *Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 733 (Tex. 2018); Tex. R. Prof. Conduct 1.04(a), (d).

However, this happens all the time. Often, beneficiary counsel hold up settlement, creating a tripartite settlement negotiation with three units: (1) defendant trustee, (2) plaintiff beneficiary, and (3) beneficiary counsel. Until the beneficiary counsel gets his or her cut of the trust's assets, the case cannot settle. This hardly seems ethical.

This is exactly what the attorney respondents did in this case. When the Petitioners, acting as trustees, refused to pay trust assets to the attorneys who had no engagement letter with them in that capacity, the dispute proceeded to arbitration, where a sole arbitrator issued an unsupported ruling that exceeded her jurisdiction under the governing facts and law. The arbitrator ordered the trustees, who were not parties to the arbitration, to pay the debts of the trust's beneficiaries (which was contrary to a spendthrift clause), and froze trust assets until the arbitrator's incorrect ruling was completed. Every part of that decision was wrong on substantive and procedural grounds. Because the arbitrator grossly exceeded her authority, her order should be vacated.

This is a very important case to Texas jurisprudence.

This case deals with fundamental issues of the validity and impact of spendthrift trust protections; the difference in the capacities in trust disputes (a beneficiary in their individual capacity versus a trustee in their fiduciary capacity);

and an arbitrator making orders that impact non-parties who did not participate in the proceedings, violating the non-parties' fundamental due process rights.

This Court should accept this case and provide guidance on the importance of spendthrift trusts, capacity distinctions, and non-party rights.

STATEMENT OF FACTS

Amicus adopts the statement of facts set forth by the Petitioners in this appeal.

Siblings Caroline and Richard Allison ("Siblings") hired attorneys on contingent fee agreements to investigate their father's 2013 estate plan. The contingent fee agreements were signed by the Siblings in their individual capacities, with both contingent fee agreements arranging for a thirty-five percent payment on any recovery achieved as a result of the lawyers' handling of the dispute. The fee agreements also had a broad arbitration clause.

Under the documents, the father's estate would be divided into two trusts: the marital trust and the family trust. The attorneys negotiated a settlement where the trustee of the family trust would be replaced by the Siblings and that certain assets would be funded into the marital trust, including interests in an entity, Minaki, L.P., whose account had a balance of at least $9,500,000.00 on the date of the mediation. Once the settlement was completed, the opposing party retained approximately half of the estate through her control of the marital trust. The

Siblings, in their newly-created capacities as co-trustees, gained control over the other half of the estate in the family trust.

A dispute then arose between the Siblings and the attorneys, and the Siblings filed suit against the attorneys for malpractice. The attorneys compelled arbitration under the fee agreements' arbitration clauses and sought to recover their contingency fees. The arbitrator ruled in their favor.

The arbitrator held that the Siblings were each individually liable for various amounts of damages. Importantly, the arbitrator also ordered the Siblings to each "direct the trustee(s) of the Allison Family Trust to liquidate sufficient trust assets to pay the Final Award and all accrued interest in full." The arbitrator also ordered a "freeze" on Minaki, L.P.'s account until the final award and all accrued interest had been paid in full. The Siblings appealed.

The court discussed the issue of the Siblings' challenges to the arbitration award. *Allison v. Borunda, P.C.*, No. 14-24-00753-CV, 2025 Tex. App. LEXIS 9388 (Tex. App.—Houston [14th Dist.] Dec. 9, 2025, pet. filed). The court noted that the FAA permits a court to vacate an arbitration award on certain grounds, including "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." *Id.*

The court addressed the Siblings' argument that the arbitrator exceeded her authority by ordering nonparties to pay debts owed by the beneficiaries and freezing of the trust's accounts. The court held that because the Siblings signed the agreement in their individual capacities, and the attorneys obtained the desired results, the broad arbitration agreement allowed the arbitrator to order the Siblings pay the fees in their trustee capacities. Specifically, the court noted that "[a]s co-trustees, appellants had the right to access all principal and income from the Family Trust." *Id*. The court then held that the Siblings, although acting as trustees and not parties to the arbitration, controlled an account containing more than $10 million, which the arbitrator froze. *Id*. The court justified this by stating that the arbitration clause was broad. However, the breadth of the arbitration clause did not eliminate its express limitation: it covered only disputes involving the attorneys' services to, or relationship with, the "Client," and the "Client" was the Siblings in their individual capacities (not acting as trustees). The court then concluded:

> Because the dispute over the payment of the Lawyers' contingent fee fits squarely within the language of the arbitration agreement, we conclude that the arbitrator did not exceed her powers by resolving each of the Lawyers' claims against appellants. The fact the arbitrator may have misinterpreted or misapplied the law in its award does not empower this court to vacate it.

Id.

The court then held that even if the arbitrator violated Texas public policy by enforcing contingent fee agreements, this was not a valid ground for vacating the arbitration award under the FAA. *Id*. Additionally, the court held that the arbitrator did not exceed her powers by ordering appellants to pay attorneys from settlement proceeds or by awarding attorneys' fees, as these remedies were rationally inferable from the broad arbitration agreements. *Id*.

The court of appeals had several incorrect holdings:

- That an arbitrator can order a trustee of an irrevocable spendthrift trust to pay the debt of a beneficiary;
- That an arbitrator can completely disregard the capacities of a person in a trust dispute and order a beneficiary to do something in a non-party trustee capacity;
- That an arbitrator can order a non-party trustee to do something; and
- That an arbitrator can freeze the assets of a non-party trustee and non-party entity.

ARGUMENT AND AUTHORITIES

I. The Lower Courts Ignore That Spendthrift Trusts Protect Beneficiaries' Interests In Trusts

In this case, the arbitrator ordered the individual beneficiaries of an irrevocable spendthrift trust to direct the trustees to pay a debt of the beneficiaries using trust assets. This is an extraordinary order, and one that contradicts current Texas authority on spendthrift trusts.

A spendthrift trust is one where a beneficiary cannot voluntarily or involuntarily alienate his interests. Tex. Prop. Code Ann. § 112.035; 72 TEX. JUR. 3D TR. § 37; *see also Nichols v. Eaton*, 91 U.S. 716 (1875); *Dierschke v. Central*

Nat'l Branch of First Nat'l Bank at Lubbock, 876 S.W.2d 377, 380 (Tex. App.—Austin 1994, no writ). Spendthrift trusts are enforceable in Texas. Tex. Prop. Code Ann. § 12.035; *Tex. Commerce Bank Nat. Ass'n v. U.S.*, 908 F. Supp. 453, 457 (S.D. Tex. 1995) (applying Texas law). "Where it appears from the terms of the instrument creating the trust that it was the donor's or testator's intention to create a trust estate immune from liability for the debts of the beneficiary and to prohibit its alienation by him during the term of the trust, a spendthrift trust is created, and the intentions of the donor or testator will be enforced by the courts of this State." *First Bank & Tr. v. Goss*, 533 S.W.2d 93, 95 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ); *see also Long v. Long*, 252 S.W.2d 235, 247 (Tex. Civ. App.—Texarkana, 1952, writ ref'd n.r.e.).

Texas courts have long upheld and enforced spendthrift provisions, justifying this restraint on alienation not out of consideration for the beneficiary, but rather for the right of the donor/grantor creating the trust to control his or her gift. *See Caples v. Buell*, 243 S.W. 1066, 1067 (Tex. Com. App. 1922); *Hines v. Sands*, 312 S.W.2d 275, 279 (Tex. Civ. App.—Fort Worth 1958, no writ).

A spendthrift provision protects the property that is held by the trust, both corpus and income. TEX. JUR. 3D TR. § 41 (2003); 76 AM. JUR. 2D TR. § 104 (2005); *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 321 (Tex. App.—Dallas 1997, writ denied); *Dierschke*, 876 S.W.2d at 380; *Goss*, 533 S.W.2d 93, 95 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). For example, in *In re BancorpSouth Bank*, the court of appeals held that there was no authority for a trial court to direct a trustee of a spendthrift trust to make spousal support payments for the beneficiary. No. 05-14-00294-CV, 2014 Tex. App. LEXIS 4052, *5 (Tex. App.—Dallas 2014, original proc.). In *Harrison v. Wells Fargo*, the spendthrift clause in a beneficiary's trust protected her from creditors after she caused a car collision involving serious injury to her passenger. No. 14-97-00951-CV, 1999 Tex. App. LEXIS 1691 (Tex. App.—Hous. [14th Dist.] March 11, 1999, no pet.) (not designated for publication). In *Bradley v. Shaffer*, family members placed mineral interests they inherited into a spendthrift trust. No. 11-15-00247-CV, 2017 Tex. App. LEXIS 11154 (Tex. App.—Eastland Nov. 30, 2017, no pet.). A beneficiary of the trust executed deeds purporting to convey his share of the mineral estate to a third party. The trustees of the trust sued and obtained a summary judgment declaring the deeds to be invalid with respect to the beneficiary's interest in the trust. The court affirmed the trial court's determination that the mineral interests remained in the trust and that the purported conveyance was void. *Id.*

Although spendthrift trust protections originated at common law, Texas now protects spendthrift trusts by statute. Those statutes reflect Texas's strong public policy favoring the enforcement of spendthrift trusts. The Texas legislature enacted and amended Section 112.035(a) of the Texas Property Code to clarify that a spendthrift trust retains its protection even when the trustee is also a beneficiary, so long as the trust is limited by an ascertainable standard. Tex. Prop. Code Ann. § 112.035(a). The statute also states: "A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee." *Id*.

The validity of spendthrift trusts are accepted in almost every state. 76 AM. JUR. 2D TR. § 99, 115 (2005); Adam Hirsch, *Spendthrift Trs. and Public Policy: Econ. and Cognitive Perspectives*, 73 WASH. U. L.Q. 1, 3 n.8 (1995); *Dall. Nat'l Bank v. U.S.*, 167 F.2d 468 (1948). Commentators agree that spendthrift trusts are important and effective to prevent a beneficiary's creditors from reaching trust assets.

The Uniform Trust Code Section 502 provides that a spendthrift provision is valid and that a "creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary." UN. T. CODE § 502. The comments state: "Unless one of the exceptions under this article applies, a creditor of the beneficiary is prohibited from attaching a protected interest and may only attempt to collect directly from the beneficiary after payment is made." *Id*. at cmts. The Restatement (Third) of Trusts provides:

> A spendthrift trust protects the income and principal interests of its beneficiaries from the claims of their creditors as long as the income or principal in question is properly held in the trust. Thus, a beneficial interest that is subject to a valid spendthrift restraint cannot be attached by judgment creditors of the beneficiary, nor does it become an asset of the beneficiary's bankruptcy estate under § 541 of the Bankruptcy Code.

RESTATEMENT (THIRD) TRS., § 58 cmt. d(2).

Additionally, Bankruptcy Code § 541(c)(2) states that a "restriction on the transfer of a beneficial interest of a debtor in a trust that is enforceable under applicable nonbankruptcy law" is to be honored in bankruptcy and that those assets will not be included in the debtor's estate. 11 USCS § 541(c)(2).

Here, the Siblings, in their individual capacities, were beneficiaries of the Trust and were found to be debtors to the Attorneys/Respondents. The Siblings, as co-trustees, were not debtors nor parties to the arbitration. So, could the arbitrator order the Siblings as co-trustees to use trust assets to pay a debt of the Siblings as beneficiaries? The arbitrator and the courts should look to the terms of the Trust. Here, the Trust states:

> After the death of the last to die of the Grantors, each trust created by this Trust Agreement shall be a spendthrift trust to the fullest extent allowed by law. Prior to the actual receipt of trust property by any beneficiary, no property (income or principal) distributable under any trust created by this Trust Agreement shall, voluntarily or involuntarily, be subject to anticipation or assignment by any beneficiary, or to attachment by or to the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any

> interest in such property by any beneficiary hereunder prior to distribution shall be void.

(1 C.R. 2621).

This language clearly creates a spendthrift trust. Moreover, the Trust in this case has a health, education, maintenance and support standard that is an ascertainable standard and qualifies for the spendthrift protection of Texas Trust Code Section 112.035(a). Thus, the question is answered: the Siblings, as co-trustees of an irrevocable spendthrift trust, could not be compelled to use trust assets to satisfy their debts as beneficiaries because doing so would violate the settlor's intent as expressed in the Trust and its spendthrift clause.

Historically, courts in Texas have uniformly held that where a trustee has discretion in taking an act, a third party cannot sue the trustee for breach of fiduciary duty for not making that act. *See Burns*, 948 S.W.2d at 317; *Ridgell v. Ridgell*, 960 S.W.2d 144 (Tex. App.—Corpus Christi 1997, writ denied). Courts have described this as a jurisdictional issue; a court cannot substitute its discretion for that of a trustee. *See Di Portanova v. Monroe*, 229 S.W.3d 324, 329-332 (Tex. App.—Houston [1st Dist.] 2006, pet. denied); *Aguilar v. Garcia*, 880 S.W.2d 279, 281 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding) (noting that the trial court had no discretion to limit discretionary authority granted solely to trustee by statute); *see also In re Bass*, 171 F.3d 1016 (5th Cir. 1999) ("It follows that when such discretionary powers are granted to trustees of a spendthrift trust, assets of the trust are immune from claims of the beneficiary's creditors…").

The arbitration clause is limited by its own language: it covers disputes regarding "services by the attorneys" provided to the "Client"; and it covers disputes related to "the relationship between the attorneys and the Client." However, the arbitration clause does not cover disputes about how non-signatory trustees manage trust assets and pay claims. Thus, the arbitration clause did not give the arbitrator authority to order control over trust assets because the trustees were not "Clients." Moreover, the court of appeals' reliance on the clause being "broad" is insufficient—even broad clauses have limits. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (arbitration agreements must be interpreted according to their terms and parties may agree to limit the issues subject to arbitration).

The arbitrator ordered the liquidation of trust assets held by trustees and ordered a freeze on Minaki, L.P.'s account. Neither of these orders related to the dispute between the Siblings, in their individual capacities, and their attorneys. The dispute was about attorney malpractice and fee disputes for clients in their individual capacities—not about trust management by non-client trustees. Even more so, the arbitration clause cannot rationally be read to empower an arbitrator to direct how beneficiaries' trust assets are managed, freeze investment accounts, or override trustees' fiduciary discretion.

At most, the arbitrator could have held the Siblings liable for attorneys' fees in their individual capacities. But ordering non-party trustees to manage, liquidate, or freeze trust assets is an entirely different matter. Such relief goes beyond enforcing a judgment; it seizes control of non-party fiduciary property. The arbitrator therefore exceeded her authority by ordering non-party trustees of an irrevocable, spendthrift trust to use trust assets to pay the debts of the beneficiaries.

II. The Arbitrator And The Lower Court Completely Misapply The Concept Of Capacities

The arbitration clause in the engagement letter bound only the "Client," explicitly defined as the Siblings in their individual capacities. As trustees, the Siblings occupied a legally distinct role, and trustees are not bound to contracts that beneficiaries enter into. Yet the arbitrator expanded the arbitration clause beyond its terms to reach nonparties to the engagement letter, the Siblings in their capacities as trustees, and entered relief against them even though they were not parties to the arbitration. In doing so, the arbitrator, and the courts that sustained the award, impermissibly collapsed the fundamental trust-law distinction between a trustee and a beneficiary acting in separate legal capacities. A person's agreement to arbitrate in one capacity does not consent to arbitrate in another.

The concept of capacity is incredibly important in fiduciary law and litigation because parties often wear multiple hats. For example, a trust may own a business, and the same person may serve as a (1) trustee, (2) beneficiary, (3) agent for another beneficiary under a power of attorney, (4) director of the company, and (5) officer of the company. Each role is a distinct legal capacity, and the law treats those capacities as separate parties even if the same person is acting in all of the capacities.

Otherwise stated, a party acting in an official or representative capacity is, in law, a distinctly separate individual from the same party acting as an individual. *See Werner v. Colwell*, 909 S.W.2d 866, 870 (Tex. 1995) ("Because I.M. Werner *as trustee* was not named as a party to the suit, was not served process, and did not make a general appearance before the court in her capacity as trustee of the benefit plan, the judgment rendered against her as trustee was improper.") (emph. in original); *Crowder v. Ann L. Crowder Est. Tr.,* No. 01-06-00606-CV, 2007 Tex. App. LEXIS 7890, 2007 WL 2874818, at *2 (Tex. App.—Houston [1st Dist.] Oct. 4, 2007, no pet.) (mem. op.); *Elizondo v. Tex. Nat. Res. Conservation Comm'n*, 974 S.W.2d 928, 931 (Tex. App.—Austin 1998, no pet.). Thus, naming a trustee in its trustee capacity does not mean that the trustee in its individual capacity is a party to the suit. 4 TEX. PROB., EST. AND TR. ADMIN. § 84.20.

Further, even where a plaintiff names a trustee in its fiduciary and individual capacity in a pleading, the plaintiff still has to have citation issued in both capacities. In *Hanschen v. Hanschen*, the family sued the trustee both individually and in his capacity as trustee. 605 S.W.3d 57 (Tex. App.—Dallas 2020, no pet.). While the trustee was in Texas, however, the family served him only in his individual capacity. The family later obtained a default judgment against him in both his individual capacity and in his trustee capacity. The trustee filed a special appearance, which the trial court granted. On appeal, the court considered whether the trial court had personal jurisdiction over the trustee in his fiduciary capacity and noted that citation had not been issued to him in that capacity. The court held that this defect was dispositive and affirmed the special appearance for the trustee in his representative capacity:

> In this case, James was not served with citations which were returned to the court clerk stating he had been served in his representative capacities. Any failure to comply with the rules regarding service of process renders the attempted service of process invalid, and the trial court acquires no personal jurisdiction over the defendant. A default judgment based on improper service is void. Accordingly, the trial court did not have personal jurisdiction over James in his representative capacities.

Id.

In *Tomlinson v. Khoury*, a judgment creditor discovered that the judgment debtor was the trustee and beneficiary of a spendthrift trust and brought a turnover action to invalidate the trust. No. 01-19-00183-CV, 2020 Tex. App. LEXIS 8427

(Tex. App.—Houston [1st Dist.] October 27, 2020, no pet.). The judgment creditor was never sued in his capacity as trustee of the trust, but the trial court invalidated the trust and ordered a turnover of trust assets. The court of appeals reversed, holding that the individual in his trustee capacity was a necessary party to the proceeding concerning a trust:

> [W]here the trustee is not properly before the court as a result of service, acceptance, waiver of process, or an appearance, Texas courts have invalidated orders that grant relief against a trust… Although Tomlinson was before the court in his individual capacity, he was not sued, and did not appear, in his capacity as trustee of the Trust. Therefore, he, as trustee of the Trust, was not "properly before the trial court as a result of service, acceptance, or waiver of process, or an appearance." Under these circumstances, we conclude the trial court lacked jurisdiction over the Trust and thus erroneously invalidated the Trust, and erroneously required the turnover of Trust assets, in its February 12 and 14, 2019 modified turnover orders. Accordingly, we hold that these two post-judgment, modified turnover orders are void.

Id.

Here, the arbitrator exceeded her authority and power by ordering the non-party co-trustees of the Trust to pay the debt of the beneficiaries and by freezing assets held by a non-party entity. *See Elgohary v. Herrera*, 405 S.W.3d 785, 789 (Tex. App.—Houston [1st Dist.] 2013, no pet.) ("Arbitrators exceed their powers when they decide matters not properly before them."); *Rapid Settlements, Ltd. v. Green,* 294 S.W.3d 701 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (the court granted a motion to vacate an arbitration award that purported to require a nonparty to make payments pursuant to the award); *Leshin v. Oliva,* No. 04-14-00657-CV, 2015 Tex. App. LEXIS 7802, at *22 (Tex. App.—San Antonio July 29, 2015, no pet.); *In re Est. of Hendricks*, No. 05-02-00871-CV, 2002 Tex. App. LEXIS 4560, at *1-3 (Tex. App.—Dallas June 27, 2002, no pet.). One wonders whether the arbitrator would have made the same ruling if the trustees of the Trust were independent professional trustees, but that distinction should not matter as the same person can serve in different capacities. The lower courts erred by refusing to vacate the arbitrator's award, thereby compounding the confusion between the Siblings' participation in the arbitration in their individual capacities and their separate roles as co-trustees of the Trust.

III. The Lower Courts Violated The Co-Trustees' Due Process Rights

Like all parties, trustees have due process rights. Fundamentally, a person must be named as a defendant and be served with citation before a court has personal jurisdiction over the person to issue relief. *See Werner v. Colwell*, 909 S.W.2d 866, 869 (Tex. 1995) ("Judgment shall not be rendered against one who was neither named nor served as a party defendant."); *Tex. Alcoholic Beverage Comm'n v. Top of the Strip, Inc.*, 993 S.W.2d 242, 247 (Tex. App.—San Antonio 1999, pet. denied) (service of process gives a trial court personal jurisdiction over parties).

For example, in *Landry v. Burge*, a court of appeals reversed a temporary injunction issued against two nonparties. No. 05-99-01217-CV, 2000 Tex. App. LEXIS 6606, at *6-7 (Tex. App.—Dallas Oct. 2, 2000, no pet.). The court held: "A court may not enter an injunction against a person who has not been made a party to the case before it." *Id*. at * 7. The court held that the nonparties were "not parties to the litigation and thus the trial court lacked jurisdiction to enjoin them." *Id.; see also In re Poe*, 996 S.W.2d 281, 282-83 (Tex. App.—Amarillo 1999, no pet.) (finding that absent any evidence in record that citation and notice were issued and served on psychiatrist, trial court was without jurisdiction to rule on plaintiff's request for injunction against him).

In *In re Estate of Moore*, a beneficiary filed a motion to remove a trustee, but did not serve notice of the hearing. 553 S.W.3d 533 (Tex. App.—El Paso 2018, no pet.). After the court removed the trustee, the trustee appealed. The appellate court held that the trustee was denied due process by being removed without notice of the hearing:

> Failure to give proper notice "violates 'the most rudimentary demands of due process of law.'" If improper notice is given to a party of proceedings when notice is required, any subsequent court proceedings vis-à-vis the party not given notice are void… Since proper service on Appellant is not shown, it is apparent that the county court at law did not obtain jurisdiction over Appellant and the proceeding to have her removed as trustee and a successor trustee appointed is void.

Id. (internal citation omitted).

Because the co-trustees, in their fiduciary capacities, were never named in the arbitration proceeding, served with citation, or given notice of the proceedings, the arbitrator and the lower courts deprived them of their due process rights.

IV. The *Allison* Ruling Is Important to the Jurisprudence of the State

This Court has jurisdiction to review the judgment of the court of appeals affirming the arbitrator's award as it raises questions of law important to the jurisprudence of the State. *See* Tex. Gov't Code § 22.001(a). Thus, this case is extremely important for several reasons.

First, the lower courts and the arbitrator erode spendthrift trust creditor protection. The last time this Court discussed spendthrift trusts in any substantive way was in 1967. *See, e.g., Rekdahl v. Long*, 417 S.W.2d 387 (Tex. 1967). The enforcement of spendthrift trusts is critically important to Texas's estate-planning and banking sectors because settlors carefully and intentionally create these trusts to provide creditor protection. Arbitrators and courts should not be permitted to erode the settlors' intent. Therefore, clear judicial guidance enforcing spendthrift trust protections is essential.

Second, the lower courts' and the arbitrator's decisions inject confusion into an area of law that will only become more important in the coming years. As baby boomers increasingly transfer wealth through trusts, courts, beneficiaries, and fiduciaries will need clear and consistent guidance for administering these vehicles.

Texas courts are likely to stand at the forefront of this growing wave of wills-and-trusts litigation driven by the great transfer of wealth from the baby-boomer generation. One publication reports:

> America stands at the edge of the most dramatic shift in personal finance ever measured—a generational transfer of nearly $124 trillion in assets over just 25 years. According to a wealth transfer report from Boston wealth management firm Cerulli Associates, published in June 2025, a combination of demographic and economic forces will see a record amount of wealth move from baby boomers and older Americans to heirs, widows, and charities by 2048. This transformation has profound implications for families, advisors, businesses, and every segment of the financial industry.

https://fortune.com/2025/07/23/great-wealth-transfer-124-trillion-bigger-than-ever-millennials-gen-x.

The use of trusts will be an increasingly important aspect of estate planning for the baby-boomer generation. *See Harry S. Margolis*, THE BABY BOOMERS' GUIDE TO TRS.: YOUR ALL-PURPOSE ESTATE PLANNING TOOL (2021) (found on Amazon); *Ronald Farrington Sharp*, LIVING TRUSTS FOR EVERYONE: WHY A WILL IS NOT THE WAY TO AVOID PROBATE, PROTECT HEIRS, AND SETTLE ESTATES (2017) (same).

If the courts follow the lower courts' decision in this case, future courts will not have the same level of respect for spendthrift trust protection they have historically had.

Third, the lower courts' and the arbitrator's decision ignores the settlor's intent in creating the Trust. The cardinal principle in construing a trust is the settlor's intent. *Parrish v. Mills*, 101 Tex. 276, 106 S.W. 882, 883 (Tex. 1908); *Soefje v. Jones*, 270 S.W.3d 617, 628-631 (Tex. App.—San Antonio 2008, no pet.). Indeed, the Texas Legislature has expressly stated that the words used by a settlor in creating a trust generally control over or trump other statutory provisions. Tex. Prop. Code Ann. § 111.0035(b). To modify a trust, a court must do so in a "manner that conforms as nearly as possible to the probable intention of the settlor." *Id*. § 112.054(b).

Here, the settlor created an irrevocable spendthrift trust for the Siblings benefit to shield the Trust's assets from the Siblings' creditors, including the attorneys in this case. The lower courts set a dangerous precedent by effectively writing the spendthrift trust provisions out of the Trust, disregarding its creditor-protection purpose, and ordering non-part trustees and a non-party entity to satisfy the Siblings' personal debts as beneficiaries. Courts and arbitrators should give greater respect to the settlors' intent.

Fourth, this case is important because it revolves around the enforceability of a contingency fee agreement against non-parties. For a contingent fee agreement to be enforceable in Texas, it must satisfy strict statutory and professional conduct rules, must be in writing, and must be signed by the client. Tex. R. Prof. Conduct

1.04, Tex. Gov't Code § 82.065. "Because a lawyer's fiduciary duty to a client covers contract negotiations between them, such contracts are closely scrutinized." *Anglo-Dutch Petroleum International, Inc. v. Greenberg Peden, P.C.,* 352 S.W.3d 445 (Tex. 2011). A lawyer has a duty to "appreciate the importance of words" and "detect and repair omissions in client-lawyer contracts." *Id*. at 450; *see also In re Davenport,* 522 S.W.3d 452, 457-58 (Tex. 2017). Where the attorney contract in this case did not include the trustees, who never signed it in those capacities, the lower courts and the arbitrator violated the Texas statute and the Texas Rules of Professional Conduct by taking trust assets to satisfy the Siblings' obligations to the attorneys.

Fifth, this case is important because it raises common issues in trust litigation regarding the importance of capacity in determining whether a trustee is a party to a suit or arbitration proceeding. These issues are raised often in trust disputes, and the lower court's opinion in this case will certainly muddy the waters as to when a court can replace the non-party trustee's discretion with its own and order a non-party trustee to do a discretionary act.

The arbitration clause bound only the "Client," explicitly defined as the Siblings in their individual capacities. As trustees, the Siblings occupied a legally distinct role. An arbitration clause does not automatically extend to parties in different legal capacities unless explicitly stated. The arbitrator, therefore, impermissibly expanded the scope of the arbitration clause to include non-signatory trustees.

This Court should grant the petition in this case because the lower courts issued dangerous precedent that contradicts Texas statutes, common law, and the public policy that settlors' intent should be followed regarding spendthrift trust protection.

CONCLUSION AND PRAYER

The lower courts in this case simply did not view spendthrift trust provisions and fiduciary capacity issues the same way that this Court and most other courts have viewed those issues. Rather, the lower courts granted relief against a non-party trustee and entity, replacing the trustees' discretion, and violating those non-parties' due process rights. This Court should step in to clear up the confusion created by the lower courts and the arbitrator in this case. These issues are prevalent in fiduciary litigation today and will only become more prevalent tomorrow.

The Amicus Parties request that this Court grant the petition, reverse the lower courts, and grant any and all other relief to which the Petitioners are entitled.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(2)(D), I hereby certify that the above styled document contains 5518 words, excluding the caption, identity of parties and counsel, table of contents, index of authorities, signature, proof of service, and certificate of compliance. Counsel is relying on a word count computer program used to prepare the document.

/s/ David F. Johnson

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The undersigned hereby certifies that on the 14th day of August, 2026, a true and correct copy of the foregoing is being electronically filed with the Supreme Court of Texas and served via electronic mail requested on all parties or their attorneys of record listed below pursuant to the Texas Rules of Appellate Procedure:

/s/ *David F. Johnson*
One of Counsel

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