IN THE SUPREME COURT OF THE UNITED STATES

Bernice Rutland, Appellant

v. NO. 2022-CA-00720-COA

Regions Bank as Trustee of the
William Hunter Rutland Family Trust Appellee

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)

To THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE AND CIRCUIT JUSTICE FOR THE STATE OF MISSISSIPPI:

Pursuant to 28 U.S.C. § 2101 (c) and Rule 13, and Rule 29 (1)(2) of the Rules of this Court. Applicant, Bernice Rutland, Pro Se, respectfully request a 45-day extension of time, to and including January 03, 2025, within which to file a Writ of Certiorari to review the judgement of the Mississippi Court of Appeals in this case. The Mississippi Court of Appeals opinion was filed on January 16, 2024, Exhibit "A" and a timely filed Petition for Rehearing was denied on May 21, 2024, without an opinion, Exhibit "B." The Mississippi Supreme denied a timely filed Writ of Certiorari on August 21, 2024, "Exhibit "C". The Chancery Court of Coahoma County Final Order of June 17, 2022, Exhibit "D".

Unless extended, the time to file a petition for a Writ of Certiorari will expire on November 19, 2024. This Court has jurisdiction over the judgement under 28 U.S.C. § 1257.

Bernice acknowledges that review of a writ of certiorari is not a matter of right but of judicial discretion. However, this case presents one of national importance and significance because it conflicts with well-established rules and principles of summary judgement and conflicts with this Court and other Federal Courts.

This case also involves Fed. Rules of Evidence, Article II. Judicial Notice, Rule 201. (e) taking in the final order to reach a conclusion of law without giving defendant, Bernice Rutland, the opportunity to be heard.

On April 16, 2021, Regions filed a Petition for a Declaratory Judgement against Bernice Rutland, Individually and as Executrix of the Estate of William Hunter Rutland, Sr. This case is about an irrevocable trust worth $500,000.00 plus interest, that was divided 50/50 in a Property Settlement Agreement along with the other assets in the divorce of William Rutland and Joann Sparks Rutland. The Property Settlement Agreement was made between William and Joann and their attorneys, carefully going over every detail and even making handwritten adjustments in Joann Sparks Rutland's attorney's office, M. Lee Graves. Mr. Rutland's attorney was not there. The hearing on the divorce was on December 03, 2010, and the Final Decree of Divorce upon irreconcilable Difference was filed on December 06, 2010. The agreement was presented to the Honorable William G. Willard, Jr., who presided over the case. There was no testimony on this case. The Trust Insurance policy was included in the 50/50 split. The chancellor in the order of June 17, 2022, Exhibit "D" line 5 acknowledges the fact that the trust was included in the Property Settlement Agreement.

Bernice filed a Motion on July 15, 2021, to do depositions on Gwendolyn Kyzar, Misty Singletary, and others however, the trial court denied motion on November 29, 2021, to do depositions and Bernice was granted only limited Rule 56(f) relief only to produce relevant documents. Bernice produced the following.

1. The Property Settlement Agreement.
2. The Final Divorce decree.
3. A case that Mr. Rutland presented to the judge in his divorce of 2010, from the Supreme Court of Montana, which was similar.
4. A copy of the Trust, where the asset page "A", is blank.
5. The financial statement of William Rutland, which includes the trust.
6. Four (4) notarized statement one from Joann Sparks Rutland and the three (3) children, William Jr., Melanie and Lady, being together during the time of the divorce in M. Lee Graves office.
7. Two (2) letters of communication between both attorneys, for some reason both letters were filed with the court by M. Lee Graves, on March 03, 2011. These letters were not adjudicated facts, only communication between two attorneys and filed 3 months after the final order of divorce.

Regions provided.

1. The same trust agreement that Bernice had with the asset section "A" being blank.
2. A sworn affidavit from Misty Singletary; however, Ms. Singletary did not produce the documents she swore under oath that these documents were attached to the affidavit, and she did not have firsthand knowledge of those records that were never provided.

Ms. Singletary was one of the witnesses Bernice wanted and needed to take the deposition of but was denied. Regions did not meet the burden of proof on Summary Judgement base on case law, *Celotex Corp. v. Catrett, 477 U.S. 317, 333 (1986).*

In the Chancery Courts Final Order, on Bernices Motion for Reconsideration of Order Granting Motion for Summary Judgement and Request for Specific Findings of Fact and Conclusion of law, the court took judicial notice and conducted some research of its own in the divorce file between the decedent and the late Joanne

Sparks Rutland. Exhibit "D" (ii) page 5. The trial court in this case was not the same Chancellor that presided over the divorce in December 2010. Judicially noticed was a Contempt Order, Line 6, "Exhibit "D" and Consent Order, Exhibit "D", and stated what was in those orders. neither the contempt nor the consent order was in the record. The trial court introduced questionable evidence that was not made available to Bernice and used a letter dated March 03, 2011 from Joann Sparks Rutland's attorney that was only communication between two attorneys and not an adjudicated fact, and was never presented to the trial court in the December 03, 2010 divorce hearing. This letter was used with the judicial notice information to change the Final Order of December 03, 2010, of the Honorable William G. Williar, Jr., a decision that was never appealed. *In American Prairie Const. v. Hoich, 560 F.3d 780, 797 (8th Cir. 2009* , When taking judicial notice of adjudicative facts, the judge is required to use the procedures set forth in Fed Rule of Evidence 201. "One of the requirements of Rule 201 is procedural, namely, that the parties be given notice and an opportunity to object to the taking of judicial notice." *United States v. Hoyts Cinemas Corp.*, 380 F.3d 558, 570 (1st Cir. 2004); *see also* Fed. R. of Evidence. 201(e) ("A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed)". Since the judicial notice was first taken in the Final Order, Bernice was denied her right to be heard.

Even the Supreme Court of Mississippi that denied Bernices writ on August 21, 2024 has stated; The Supreme Court of Mississippi further stated in, *Id. Enroths,* one further point requires note." **Rule 201(e)** provides that a party affected by the

Court's taking judicial notice of a fact is entitled to an opportunity to be heard. This accords with our pre-rules law. *Eidt v. City of Natchez,*421 So.2d at 1230-31. In our February 21, 1990, order for remand, we directed that the Chancery Court "afford the Enroths a reasonable opportunity to be heard in opposition." *Enroth v. Memorial Hosp. at Gulfport*, 566 So. 2d 202, 205 (Miss. 1990).

This would also second guess the decision of the Honorable William G. Willard, Jr., the Final Order of December 03, 2010, Thirteen (13), years later. This divorce Property Settlement Agreement was never appealed and would set a bad precedent.

Summary Judgement was improperly granted, and the chancery court erred when it took Judicial Notice on its own in the final Order and did not give Bernice Rutland the opportunity to be heard. The fact that the judge took judicial notice to find a conclusion of law only proves that there were still disputed material facts.

Appellant believes good cause exists for an extension, Bernice Rutland is pro se and has been working on three (3) separate cases since my previous attorney quit, and all the cases seem to have run together. Besides the above case, Rutland v Regions, there are two other cases; A writ of Certiorari, Bernice Rutland v Robinson Properties, L.L.C., et al. that was due by October 25, 2024, NO. 24-491 and Bernice Rutland v Todd C. Stewart 2023-720, Arkansas. Bernice has continued all three cases and has completed every motion and appeal and has never been late on any of these cases.

For the foregoing reasons, Appellant, Bernice Rutland, prays for the Motion for a 45-day Extension of Time through and including January 3, 2025, be granted to finish the Writ of Certiorari in the above case and have printed.

Respectfully submitted,

Bernice Rutland

Bernice Rutland
P.O. Box 396
Lula, MS. 38644
870-995-2433 Phone
Bwhrutland@aol.com

CERTIFICATE OF SERVICE

I, Bernice Rutland, do hereby certify that I have e-mailed a copy of this motion on November 13, 2024, to the following:

Butler Snow LLP
John Dollarhide
Phone 601-948-5711
Email john.dollarhide@butlersnow.com

Bernice Rutland
BERNICE RUTLAND

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2022-CA-00720-COA

BERNICE M. RUTLAND **APPELLANT**

v.

REGIONS BANK AS TRUSTEE OF THE WILLIAM HUNTER RUTLAND FAMILY TRUST **APPELLEE**

DATE OF JUDGMENT:	05/05/2022
TRIAL JUDGE:	HON. WATOSA MARSHALL SANDERS
COURT FROM WHICH APPEALED:	COAHOMA COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	J. F. VALLEY
ATTORNEY FOR APPELLEE:	JOHN HOUSTON DOLLARHIDE
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
DISPOSITION:	AFFIRMED - 01/16/2024
MOTION FOR REHEARING FILED:	

BEFORE WILSON, P.J., GREENLEE AND McCARTY, JJ.

McCARTY, J., FOR THE COURT:

¶1. Twenty-eight years before his death, a man created a trust to benefit his children. After he died, the widow sought funds from the trust to pay his funeral expenses. The trustee declined and sought a declaratory judgment, claiming it did not have to pay any expenses. The widow counterclaimed, arguing that the trust had been terminated by virtue of her deceased husband's prior divorce and that it should be disbursed in part to his estate.

¶2. The trial court granted summary judgment to the trustee after finding that the trust was irrevocable, was not terminated, and that the contents of the trust should be disbursed to his children. Upon review, we affirm.

BACKGROUND

Exhibit "A"

¶3. In 1991, William Hunter Rutland established an "Irrevocable Trust." By its own terms, it declared that "[t]his trust is and shall be irrevocable." The Trust was for the benefit of four people: his wife at the time, Joanne, and their three children, Melanie, William Jr., and Lady.[1]

¶4. William was defined as "the Creator" and Joanne as "the Creator's wife." "In making distributions of income and principal after the death of the Creator," the Trust set out that "the Trustee shall consider the Creator's wife as the primary beneficiary and consider her needs above those of the other beneficiaries[.]"

¶5. The Trust was very detailed and included a defined series of terms as to how it was to be administered, what it covered, and what it didn't. It set out that "during the lifetime of the Creator, no principal shall be distributed to or for the benefit of the Creator or the Creator's wife." In other words, it was only upon William's death that any contents would be paid. After William and Joanne died, the Trust was to be divided "into equal and separate shares" for each child if they had reached 25 years old.

¶6. Over its nearly two dozen pages, the Trust also set clear limitations. For instance, it forbade by its own terms the "enabl[ing] [of] the Creator to borrow all or any part of the principal or income of the trust, directly or indirectly." And while the principal of the Trust could not be diminished, the trustee could "[m]ake loans to the Executor or Administrator of the estate of the Creator or the Creator's wife" in order "to facilitate payment of

---

[1] While the Trust names her as Joanne, in court papers and other matters she is called Jo Ann. Because this case is about the interpretation of the Trust, we will use the language used within that document.

administrative expenses, debts, estate, inheritance or other death taxes[.]"

¶7. The Trust also had an end date: "Upon distribution of the entire trust estate to the beneficiary or beneficiaries thereof, the trust shall terminate."

¶8. As shown by an affidavit included in the record, executed by an assistant vice president of the trustee bank, the Trust was funded by a life insurance policy. As this uncontested proof showed, "[t]he only asset of the Trust concerned a life insurance policy issued . . . on Mr. Rutland's life." "When he was alive, the Trust was the named beneficiary of the Policy," the affidavit recounted.

¶9. In 2010, after decades of marriage, William and Joanne divorced. Three years later, she passed away. After his divorce, William married the former Bernice McWhorter, whom he was married to until his death in 2019. After he passed, pursuant to a life insurance policy, the insurer "issued a death benefit check . . . for $495,120.26." It was made out to the "William Hunter Rutland Family Trust Dated 04/12/1991."

¶10. From the record, it appears that afterward, Bernice called the office of the trustee. According to her allegations, she "was assured that the final estate expenses would be paid from the trust." At some point, the Trust reversed course and declined to pay for William's funeral.

PROCEDURAL HISTORY

¶11. The trustee later filed a petition for declaratory judgment, naming Bernice and the three beneficiaries as defendants. It requested four core areas of relief: first, a judgment that the Trust would not have to pay for the administration of William's estate; second, a ruling

that the 2010 divorce between William and Joanne did not impact the Trust; third, that the Trust should be allowed to pay the beneficiaries the proceeds of William's life insurance policy "less the expense of the administration of the Trust;" and it also prayed for general relief.

¶12. Bernice answered the suit with a counterclaim. She argued her belief the Trust should pay her late husband's funeral expenses. She also pitched a novel theory: "That because the trust, which was bought with marital property, was divided in the divorce settlement" between William and Joanne, then "the proceeds, after deduction for appropriate expenses," should be paid into their separate estates. And Bernice was the executor of William's estate, so she should recover from the insurance instead of it funding the Trust.

¶13. Soon thereafter, the trustee sought summary judgment. The trial court conducted a hearing via video conference and heard from counsel for the parties. The core argument by the trustee was that Bernice "has not provided any evidence that would allow this Court to revoke this irrevocable Trust or to establish that there is any material issue of fact here."

¶14. In response, counsel for Bernice argued that the life insurance policies held by William at the time of divorce were divided as marital property. "[I]n our view," he argued, the trial court "attempt[ed] to divide or did divide the asset that was allegedly in this Trust." Since "there was a division of this Trust asset 50/50 between Mr. Rutland" and Joanne, the Trust should not have been funded by the insurance policy.

¶15. The trial court was unpersuaded. "In Mississippi, there are several ways in which an irrevocable trust can be terminated," the trial court reasoned, analyzing the statute and

precedent. This includes if all qualified beneficiaries agreed to terminate it during the creator's lifetime; if the creator is the sole beneficiary and wishes to terminate it during their lifetime; if all qualified beneficiaries agree to terminate the trust after the creator's death; or "if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration." The circuit court reviewed other known ways of ending an irrevocable trust.

¶16. In the end, the trial court found that none of these enumerated situations applied. The Court held "that there is not sufficient evidence to show that the trust was dissolved/terminated in the divorce proceeding," and "no evidence to show that the trust was dissolved/terminated through any of the legal procedures that allow for the termination of said trust." "Absent a showing that the trust was terminated," the trial court found the trust to be irrevocable and its terms to be strictly followed. The Court then granted summary judgment in favor of the trustee.

¶17. Undeterred, Bernice sought reconsideration. She leaned heavily into letters and other exhibits culled from the divorce of her late husband from his first wife, ignoring the trial court's ruling that the statute controlled and continuing to argue that the insurance policy that funded the Trust was split by the divorce.

¶18. The trial court denied the motion. In doing so, it recounted details from the divorce action between William and Joanne and a subsequent petition for contempt. Rejecting Bernice's claims of inequity, the trial court held "[i]t is not unmistakable, clear, plain, or indisputable to this Court that allowing the beneficiaries to inherit the Trust that the decedent

created for their benefit would result in any kind of injustice."

¶19. Bernice appealed, and the case was assigned to us for review.

DISCUSSION

I. Summary judgment was properly granted, as the Trust was not modified or terminated by the divorce.

¶20. Bernice raises a single issue on appeal: that "the trial court committed reversible error in granting summary judgment after doing its own fact-finding research to resolve material facts which remain in dispute and refusing to permit reasonable discovery."

¶21. To be clear, she does not take issue with the trial court's substantive finding that the Trust was irrevocable and could not have been dissolved by the divorce. Instead, her argument is procedural in nature, claiming "[t]he trial court forbade discovery which cut-off the appellant from information which would have amplified her case."

¶22. We start at the foundation of our law on trusts. "[I]t is well known that a trust must be administered according to the intent of the settlor." *Gulf Nat'l Bank v. Sturtevant*, 511 So. 2d 936, 937 (Miss. 1987). As the Supreme Court has explained, the "administration of a trust must accord strictly with the intent of the settlor and the terms of the trust[.]" *In re Est. of Smith v. Boolos*, 204 So. 3d 291, 315 (¶58) (Miss. 2016) (quoting *Reedy v. Johnson's Est.*, 200 Miss. 205, 210-11, 26 So. 2d 685, 687 (1946)). This general rule is so strong that "ordinarily even a court of equity has no authority to authorize the trustee to depart therefrom, and will do all within its power to see that the trust is executed in accordance with its terms[.]" *Id.*

¶23. Likewise, our law recognizes that "[t]he interests of the beneficiaries are paramount,

and *nothing* should be done that would diminish their rights under the terms of the agreement and granted by law." *Wilbourn v. Wilbourn*, 106 So. 3d 360, 371 (¶35) (Miss. Ct. App. 2012) (emphasis added).

¶24. We keep this law in mind as we review de novo both the decision of the trial court and the record, as this case was dismissed by summary judgment. *Turner & Assocs. P.L.L.C. v. Est. of Watkins ex rel. Watkins*, 357 So. 3d 1087, 1092 (¶13) (Miss. Ct. App. 2022). To the extent Bernice argues the trial court was in error by precluding further discovery, we review for the abuse of discretion. *Morton v. City of Shelby*, 984 So. 2d 323, 342 (¶46) (Miss. Ct. App. 2007) (holding that "control of discovery is a matter committed to the sound discretion of the trial judge").

¶25. The Trust in this case is governed by the Mississippi Uniform Trust Code. *See* Miss. Code Ann. §§ 91-8-101 & -102 (Rev. 2021). While it was created prior to the UTC's implementation in 2014, the law "applies to all judicial proceedings concerning trusts commenced on or after July 1, 2014," as this one was. Miss. Code Ann. § 91-8-1106(a)(2) (Rev. 2021).

¶26. The very terms of the Trust declare it to be irrevocable—indeed, the title of the document is "IRREVOCABLE TRUST AGREEMENT." It also meets the terms under State law to be a "noncharitable irrevocable trust," as it did not generate a charitable deduction for William and was not for the benefit of a charity.[2] The express purposes of the Trust were to

---

[2] *See* Miss. Code Ann. § 91-8-411(3)(1)-(2) (Rev. 2021) (defining a "noncharitable irrevocable trust" as one where "No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust" and "The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value

provide for the listed beneficiaries and to avoid taxes on William's estate.

¶27. Bernice's claim centers on whether the divorce between William and Joanne ended the Trust or, more precisely, whether the division of the assets between the two could have somehow dissolved the Trust. Yet once created, a noncharitable irrevocable trust may only be modified or terminated in certain defined ways. *See* Miss. Code Ann. § 91-8-411 (Rev. 2021) (establishing several methods).

¶28. We confine our analysis to the part of the statute that addresses how the Trust could have been modified or dissolved while William was still alive, as Bernice argues the operative point was his divorce from Joanne.[3]

¶29. "During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee *upon consent of all qualified beneficiaries*, even if the modification or termination is inconsistent with a material purpose of the trust *if the settlor does not object to the proposed modification or termination*." Miss. Code Ann. § 91-8-411(a) (emphasis added). This method does not require the approval of a court, even though "the trustee may seek court approval of a modification or termination." Miss. Code Ann. § 91-8-411(f).

---

of the trust."

Furthermore, by its own terms the Trust only benefitted the children of the creator, a defined class of three people. *See Allgood v. Bradford*, 473 So. 2d 402, 412 (Miss. 1985) (In contrast, "Charitable corporations . . . have as their goal the improvement of the welfare of others"); *Charitable*, Black's Law Dictionary 233 (6th ed. 1990) (Charitable gifts are those for the "benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint").

[3] There are other ways an irrevocable trust may terminate, such as situations "[f]ollowing the settlor's death," as set out by Miss. Code Ann. § 91-8-411(b), or where "because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust," as described in Miss. Code Ann. § 91-8-412(a).

¶30. As the trial court concluded, this subsection cannot apply, as *all* the beneficiaries did not consent to the Trust's modification or termination. Even taking Bernice's position that both William and Joanne intended for the Trust to be modified or terminated upon their divorce, there is nothing in the record to suggest the other beneficiaries, their three children, agreed in any way. Therefore the Trust was not modified or dissolved pursuant to subsection (a).

¶31. The statute also allows modification or dissolution when a partial number of the beneficiaries seek this remedy. Miss. Code Ann. § 91-8-411(d). In contrast to subsection (a), which can be done without court approval, subsection (d) expressly requires a trial court's authorization and oversight. *Id.* "[T]he modification or termination may be approved" if two factors are met: "If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and . . . [t]he interests of a qualified beneficiary who does not consent will be adequately protected." Miss. Code Ann. § 91-8-411(d)(1)-(2).

¶32. Even assuming William and Joanne intended for the Trust to be modified or dissolved upon their divorce, the issue was not placed before a trial court for its approval. Therefore the Trust could not have been modified or dissolved pursuant to subsection (d).

¶33. The trial court thoroughly reviewed these two statutes as well as multiple other methods that trusts may be dissolved that do not fit the facts of this case, such as when a trust has a total value less than $150,000, or the value of the trust does not warrant costs of administration. The trial court found that none of these situations applied. Accordingly, the

trial court rejected Bernice's argument that the divorce between William and Joanne could have terminated the trust via their divorce.

¶34. The trial court held "there was no evidence presented that any of the other beneficiaries to the trust consented and agreed to the termination of the trust," and "no evidence presented to the Court that any trustee ever acted to terminate the trust for any reason." Since there was "no evidence to show that the trust was dissolved/terminated through any of the legal procedures that allow for the termination of said trust," the trial court granted the motion for summary judgment.

¶35. After de novo review, we agree with the trial court. There was no competent evidence presented to the trial court that the beneficiaries or the trustee sought to modify or dissolve the Trust. There was no sworn evidence presented to the trial court that any of the beneficiaries or the trustee wanted to modify or dissolve the Trust either. And Bernice did not point to any evidence that was lacking on this point that would have precluded the grant of summary judgment. Bernice does not claim that she could have obtained any information that would have triggered the applicable statutes governing modification or termination.

¶36. The purpose of Bernice's core argument is clear. If the trial court had accepted her position, the Trust would have been defunded; she expressly asked then for the trustee to tender "half of the proceeds to the estates of William Hunter Rutland, Sr.," of which she was executor, and half to his ex-wife, "after first paying the lawful expenses of the estate of William[.]" Yet the whole point of the Trust in the first place was to avoid *just such a scenario*. Once created by William, the Trust would survive beyond his control and his death

in order to provide for beneficiaries. Bernice asks the court system to reject the express terms set in place by William in 1991 that he meant to benefit his children.

¶37. There is no authority upon which to do so. In contrast, and as explained above, our law recognizes "[t]he interests of the beneficiaries are paramount, and *nothing* should be done that would diminish their rights under the terms of the agreement and granted by law." *Wilbourn*, 106 So. 3d at 371 (¶35) (emphasis added).

¶38. Nor does her argument that it is somehow "inequitable" for us to follow the terms of the Trust have any foundation, especially as there are no statutory or common law grounds for its termination or modification. It is a longstanding "rule generally that the 'administration of a trust must accord strictly with the intent of the settlor and the terms of the trust,'" so "ordinarily *even a court of equity has no authority to authorize the trustee to depart therefrom, and will do all within its power to see that the trust is executed in accordance with its terms*[.]" *Boolos*, 204 So. 3d at 315 (¶59) (quoting *Reedy*, 26 So. 2d at 687) (emphasis added); *see also* Miss. Code Ann. § 91-8-106 ("The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state").

¶39. And Bernice's argument heavily rests upon something that did not happen. She insists that the divorce between William and Joanne split the insurance policy which was designated to fund the Trust. But upon William's death, the uncontested proof was that the applicable insurance policy did indeed pay out and fund the Trust. Bernice focuses nearly her entire argument on why that should not have happened given her strained interpretation of the

meaning of her late husband's divorce, but upon William's death, the insurance company promptly wrote a check payable to the Trust. It was deposited, and the Trust was funded with the proceeds from the insurance policy.

¶40. We find this ruling was based on the interpretation of statute and the express terms of the Trust, so no further discovery was necessary before the trial court issued its ruling. While Bernice now complains that "[t]he trial court should have permitted Mrs. Bernice Rutland to engage in reasonable discovery," this ignores that the trial court did allow an extension of time and some discovery. Bernice properly sought an extension of time to respond to the motion for summary judgment pursuant to Mississippi Rule of Civil Procedure 56(f) (requiring the affidavit of an attorney to support a request for a continuance to respond). In part, she claimed that she wanted to take the depositions of certain witnesses. However, the trial court only allowed "limited 56(f) relief only to produce relevant documents" and an extension of time to respond to the motion, likewise continuing the hearing date.

¶41. On appeal, Bernice does not show how the testimony of any witness would have impacted the trial court's interpretation of the Trust or state law. To the extent Bernice claims it was error for the trial court to curtail her attempts to conduct more discovery before granting summary judgment, "[t]he control of discovery is a matter committed to the sound discretion of the trial judge." *Morton*, 984 So. 2d at 342 (¶46). And Bernice did not show how any additional discovery would have impacted the trustee's request for summary judgment. So "any disputed facts that additional depositions might have revealed would not have been *material* facts under Rule 56," and therefore the trial court did not abuse its

discretion in denying further discovery. *Holloway v. Nat'l Fire & Marine Ins. Co.*, 360 So. 3d 671, 677 (¶15) (Miss. Ct. App. 2023) (emphasis in original).

¶42. Bernice also claims that the trial court made "a factual determination regarding the trust"—that the 2010 divorce did not impact it—and that the trial "court did the research to resolve the fact on its own." This misses the mark. First, the determination of whether the divorce impacted the Trust was a *legal* determination, one which the trial court analyzed at length before holding that this irrevocable trust was not impacted by a divorce. This was the crux of the trial court's ruling on summary judgment.

¶43. Second, it was Bernice herself who continued to argue that the various documents and letters surrounding William and Joanne's divorce warranted modification or termination of the Trust. Bernice attached these materials to various pleadings and continued to argue they applied. She cannot now complain the trial court committed error by reviewing the docket of the divorce to see if it impacted the claims in this case. *See, e.g.*, *Edwards v. State*, 441 So. 2d 84, 90 (Miss. 1983) (stating that "[i]t is an old principle that an attorney who invites error cannot complain of it").

¶44. Relatedly, Bernice argues the trial court went on "a fact-finding mission on its own" into the divorce file. Yet this critique appears focused on the trial court's motion to reconsider, not the grant of summary judgment. As set out above, Bernice does not point to any genuine material issue of fact in the record warranting reversal of the grant of summary judgment. And like the case at hand, the divorce was filed in Coahoma County Chancery Court, and it is well-settled that a "trial court may take judicial notice of available evidence

in its own court files." *In re J.C.*, 347 So. 3d 1188, 1194 (¶12) (Miss. Ct. App. 2022) (internal quotation marks omitted); *see Peden v. City of Gautier*, 870 So. 2d 1185, 1186-87 (¶¶3, 7) (Miss. 2004) (where "in a separate and subsequent action" it was proper for a trial court to take judicial notice of a prior "three-volume record in the annexation case" preceding the dispute).

¶45. We find no error and affirm.

II. All other issues are procedurally barred.

¶46. In her reply brief, Bernice presents a much more nuanced series of arguments in addition to the single argument in her principal brief, which only argued that summary judgment should not have been granted as more discovery should have been conducted. In her Reply, she lists three issues: "Upon What Evidence Did the Trial Court Rely for Proof of Funding the Trust?"; that the "Trial Court Erred in Taking Judicial Notice without giving parties an opportunity to be heard"; and that the co-trustee "Gwendolyn Kyzar was a Necessary Party to this Litigation."

¶47. This does not conform to our Rules of Appellate Procedure. Our Rules required a "Statement of Issues," and "[e]ach issue presented for review shall be separately numbered in the statement." MRAP 28(a)(3). "No issue not distinctly identified shall be argued by counsel, except upon request of the court, but the court may, at its option, notice a plain error not identified or distinctly specified." *Id.* These three new issues did not appear in Bernice's principal brief.

¶48. In a recent case from the Supreme Court, they found an argument was barred when

parties "did not raise this issue in their principal appellate brief." *Biegel v. Gilmer*, 329 So. 3d 431, 433-34 (¶11) (Miss. 2020). It further held that as a general rule it "does not consider issues raised for the first time in an appellant's reply brief." *Id.* at 434 (¶11) (internal quotations omitted). "This issue is procedurally barred," the Court determined. *Id.*; *see Sanders v. State*, 678 So. 2d 663, 670 (Miss. 1996) (first applying this procedural bar as "a fitting and obvious rule" since "[a]ppellants cannot be allowed to ambush appellees in their Rebuttal Briefs, thereby denying the appellee an opportunity to respond to the appellant's arguments").

¶49. In accord with our Rules of Appellate Procedure and this precedent, we find Bernice's three different issues raised for the first time in her Reply brief are procedurally barred.

CONCLUSION

¶50. For the reasons set out above, we affirm the grant of summary judgment. There was no proof that the Trust created by William in 1991 was modified or terminated by his subsequent divorce. No further discovery would have revealed any material evidence on this point. Furthermore, it was not improper for the trial court to review prior proceedings upon its docket when this was the central thrust of Bernice's argument.

¶51. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, SMITH AND EMFINGER, JJ., CONCUR.

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

D. Jeremy Whitmire
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail:sctclerk@courts.ms.gov

May 21, 2024

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 21st day of May, 2024.

Court of Appeals Case # 2022-CA-00720-COA
Trial Court Case # 14CH1:21-cv-00120-WMS

Bernice M. Rutland v. Regions Bank as Trustee of The William Hunter Rutland Family Trust

The motion for rehearing is denied.

* NOTICE TO CHANCERY/CIRCUIT/COUNTY COURT CLERKS *
If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found by visiting the Court's website at: https://courts.ms.gov, and selecting the appropriate date the opinion was rendered under the category "Decisions."

Exhibit "B"

Serial: 253601

IN THE SUPREME COURT OF MISSISSIPPI

No. 2022-CT-00720-SCT

BERNICE M. RUTLAND ***Appellant/Petitioner***

v.

REGIONS BANK AS TRUSTEE OF THE WILLIAM HUNTER RUTLAND FAMILY TRUST ***Appellee/Respondent***

ORDER

Before the Court is the Petition for a Writ of Certiorari filed pro se by Bernice M. Rutland. Having duly considered this matter, the Court finds that the petition should be denied.

IT IS, THEREFORE, ORDERED that the Petition for a Writ of Certiorari is denied.

SO ORDERED.

TO DENY: ALL JUSTICES.

DIGITAL SIGNATURE
Order#: 253601
Sig Serial: 100009233
Org: SC
Date: 08/21/2024

T. Kenneth Griffis, Justice

Exhibit "C"

IN THE CHANCERY COURT OF COAHOMA COUNTY, MISSISSIPPI

REGIONS BANK AS TRUSTEE OF THE WILLIAM HUNTER RUTLAND FAMILY TRUST AND GWENDOLYN KYZAR AS TRUSTEE OF THE WILLIAM HUNTER RUTLAND FAMILY TRUST, **PETITIONERS**

VS. **CIVIL ACTION NO.: 14CH1:21-cv-00120**

BERNICE RUTLAND, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF WILLIAM RUTLAND, SR., LADY RYALS, MELANIE HINTON AND WILLIAM HUNTER RUTLAND, JR. **RESPONDENTS**

FINAL ORDER ON MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION FOR SUMMARY JUDGMENT and REQUESTS FOR SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

BEFORE THIS COURT is a Motion for Reconsideration of Order Granting Motion for Summary Judgment and Requests for Specific Findings of Fact and Conclusions of Law. Also before this Court is Petitioner's Response to Respondents' Motion and Requests for Specific Findings of Fact and Conclusions of Law. After careful consideration of the record and evidence, the rules, and relevant case law, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. On or about April 12, 1991, William Rutland, Sr., ("Decedent") created an irrevocable trust naming his children Melanie Hinton, Lady Ryals, and William Hunter Rutland, Jr. as beneficiaries along with his late ex-wife Joanne Sparks Rutland and any later

Exhibit "D"

born children of the decedent. The trust consists of a life insurance policy payable on the decedent's death.

2. Article XIV of the Irrevocable Trust Agreement states in pertinent part:

> This trust is and shall be irrevocable. After the execution of this Trust Agreement, the Creator shall have no right, title, or interest in, or power, privilege or incident of ownership in regard to, any of the trust property and/or money. The Creator shall have no right or power to alter, amend, revoke or terminate this trust or any provision hereof.

3. After the Trust was created, the Trust no longer belonged to the decedent and he had no power to alter, amend, revoke, or terminate this trust.

4. On December 3, 2010, the decedent and the late Joanne Sparks Rutland divorced in Coahoma County Cause # 2010-424.

5. Attached to the property settlement agreement is a page from a financial statement that includes the insurance policy that makes up the irrevocable trust created on April 11, 1991.

6. On January 20, 2011, Joanne Sparks Rutland filed a Petition for Contempt in Coahoma County Cause # 2010-424. Specifically, Joanne Sparks Rutland alleged that the decedent failed to sell two life insurance policies, cash-in an IRA, with all proceeds being divided among the parties, and one-half of personal interest and interest in ownership of stock of Rutland Farms. On February 17, 2011, an Order was entered concerning the contempt petition wherein the decedent's counsel was ordered to present Joanne Sparks Ruland and her Counsel a statement of the values of the insurance policies, the IRA's, the values as to residences, and a plan of resolution on the matters. On March 3, 2011, Mr. Graves, Joanne Rutland's attorney, filed a letter with the Court wherein he listed the insurance policies to be divided by the parties and expressed that Irrevocable Trust Agreement and the insurance policy that makes up the

agreement was not to be included in the divorce settlement. On April 27, 2011, this Court entered a Consent Order that should be read in conjunction with the Final Decree to summarize the final property settlement agreement between the parties. In the Consent Order the decedent was awarded the following items listed in the property settlement agreement: the Crown life insurance policy, the Jackson National Life insurance policy, and the IRA at Southern Bancorp. Joanne Sparks Rutland was awarded twenty-five thousand one hundred and seventy-six dollars ($25,176.00) being the difference between the homes, IRA, and Life Insurance Policies. The Irrevocable Trust and the insurance policy that make up the trust were not included in the Consent Order as it is clear that the parties intended it not to be, because it was irrevocable.

7. The decedent later married Respondent, Bernice Rutland and no children were born of that marriage. The Court is not aware of any children the decedent had besides the children he fathered with the late Joanne Sparks Rutland.
8. Since the creation of the Irrevocable Trust, the decedent never sought to exercise ownership of said trust, even after his divorce from Joanne Sparks Rutland and even after Joanne's death. He never sought to alter the Trust and he never took any legal steps to dissolve the Trust.
9. On or about April 27, 2019, William Rutland Sr. departed this life. Respondent Bernice Rutland ("Bernice") later opened an estate for the decedent and probated his will. Bernice subsequently asked the William Hunter Rutland Family Trust to pay expenses of the estate.
10. On or about April 6, 2021, Petitioners' Regions Bank and Gwendolyn Kyzar as Trustees of The William Hunter Rutland Family Trust, filed their Petition for

Declaratory Judgment. On or about May 19, 2021, Bernice filed her Response in Opposition to Petitioner's Petition for Declaratory Judgment, arguing that the Trust was dissolved in the 2010 divorce between the decedent and the late Joanne Sparks Rutland. On June 18, 2021, Petitioners filed their Rebuttal. Before a hearing could be held on the merits of Petitioners' Petition, they filed a Motion for Summary Judgment. On February 24, 2022, Bernice filed her Response to Motion for Summary Judgment reiterating her argument that the Trust was dissolved in the 2010 divorce between the decedent and the late Joanne Sparks Rutland. On April 11, 2022, a hearing was held in this matter and on May 5, 2022, this Court entered its Order granting Petitioner's Motion for Summary Judgment. On May 13, 2022, Respondent filed her Motion for Reconsideration of Order Granting Motion for Summary Judgment and Requests for Specific Findings of Fact and Conclusions of Law. On May 20, 2022, Petitioner's filed their Response to Respondent's Motion.

CONCLUSIONS OF LAW:

Motion for Reconsideration

The Mississippi Rules of Civil Procedure provide two avenues to move the trial court to reconsider its judgment. The aggrieved party may (1) file a motion for a new trial or to alter or amend under Rule 59 or (2) file for a relief from a final judgment under Rule 60(b). *M.R.C.P.* 59(b)(e), 60(b). The timing of the motion to reconsider determines whether it is a Rule 59 or Rule 60(b) motion. A motion to reconsider filed within ten days of the entry of the judgment falls under Rule 59 and tolls the thirty-day time period to file a notice of appeal until the disposition of the motion. *Woods v. Victory Marketing, LLC*, 111 So.3d 1234, 1236 (Miss.App.,2013). A motion to reconsider filed more than ten days after the entry of the judgment falls under Rule 60(b). In this

matter, Respondent filed her motion to reconsider within (10) days after the court entered its Order so it will be treated as a Rule 59 (e) Motion to Reconsider.

For a party moving to alter or amend the judgment pursuant to M.R.C.P. 59(e) "you must show: (i) an intervening change in controlling law, (ii) availability of new evidence not previously available, or (iii) need to correct a clear error of law to prevent manifest injustice." *Brooks v. Roberts*, 882 So. 2d 229, 233 (Miss. 2004). *M.R.C.P.* 59 (e). Under Rule 56(c) of the Mississippi Rules of Civil Procedure, summary judgment is appropriate (1) where there is no genuine issue of material fact, and (2) the movant is entitled to judgment as a matter of law. *M.R.C.P.* 56(c). When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. *M.R.C.P.* 56(e).

(i) an intervening change in controlling law

In Respondent's Motion to reconsider she does not argue an intervening change in law as to revoking an irrevocable trust, so there is nothing for the court to consider. The law regarding an Irrevocable Trust is clear as stated in this Court's Final Order on Motion for Summary Judgment and the requirements needed to revoke an Irrevocable Trust were not met in this case. This factor does not weigh in Respondent's favor.

(ii) availability of new evidence not previously available

In Respondent's Motion to reconsider, she does not submit any new evidence for the court to consider. However, this Court did conduct some research of its own in the divorce court file

between the decedent and the late Joanne Sparks Rutland. This Court found that there was a Consent Order entered after the Final Decree of Divorce that further defined the property settlement agreement between the decedent and the late Joanne Sparks and that the insurance policy that makes up the Irrevocable Trust was not included in the 2010 divorce as Respondent erroneously repeatedly claims. This factor does not weigh in Respondent's favor.

(iii) need to correct a clear error of law to prevent manifest injustice

Respondent does argue that allowing the Order for Summary Judgment to stay in place will result in manifest injustice because it will enrich the heirs of Joanne Sparks Rutland who already benefitted against the decedent in his lifetime due to lawsuits against members of the Rutland family. Essentially, Respondent argues that since the beneficiaries of the Trust sued the decedent, they should not be able to inherit the trust that the decedent created for their benefit.

The Supreme Court of Mississippi has defined the word "manifest," as defined in this context to mean "unmistakable, clear, plain, or indisputable." *Mosley v. Mosley*, 784 So.2d 901, 904 (Miss.,2001). It is not unmistakable, clear, plain, or indisputable to this Court that allowing the beneficiaries to inherit the Trust that the decedent created for their benefit would result in any kind of injustice. Regardless of the breakdown in familial relationship between the decedent and the beneficiaries, the Trust was created for the sole purpose of benefitting the decedent's family at the time. This Court cannot find that it is inequitable to enforce the Trust as it was intended when it was created. Furthermore, the breakdown of the relationship between the creator of an Irrevocable Trust and the qualified beneficiaries of that Trust is not one of the ways that an Irrevocable Trust can be modified, altered, or terminated. This factor does not weigh in Respondent's favor.

CONCLUSION:

In light of the findings of fact and conclusions of law this Court finds that Respondent's Motion for Reconsideration should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED Respondent's Motion for Reconsideration is hereby **DENIED**.

SO ORDERED AND ADJUDGED this the 17th day of June 2022.

CHANCELLOR W. M. SANDERS