[Cite as *Bjorksten v. Bjorksten*, 2026-Ohio-4451.]

F

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY

JAN BJORKSTEN, ET AL.,

PLAINTIFFS-APPELLANTS,

v.

KAREN BJORKSTEN,

DEFENDANT-APPELLEE.

CASE NO. 5-25-31

OPINION AND JUDGMENT ENTRY

Appeal from Hancock County Common Pleas Court
Probate Division
Trial Court No. 2024 CV 0010

Judgment Affirmed

Date of Decision: November 9, 2026

APPEARANCES:

Paul R. Shugar **for Appellants**

Robert C. Tucker **and** ***Dylan J. Krendl*** **for Appellee**

WILLAMOWSKI, J.

{¶1} Plaintiffs-appellants Jan Bjorksten ("Jan") and Kaj Bjorksten ("Kaj") (collectively known as "appellants") bring this appeal from the judgment of the Common Pleas Court of Hancock County, Probate Division, finding an antenuptial agreement ("the agreement"), signed by appellee, Karen Bjorksten ("Karen") and the decedent, Thorolf Bjorksten ("Rick"), to be invalid, that Karen did not breach her fiduciary duties, and denying appellants' request for an accounting. For the reasons set forth below, the judgment is affirmed.

{¶2} Karen and Rick were married on November 8, 1984. Prior to the wedding, they had discussed signing an antenuptial agreement identifying their separate property. Both Karen and Rick identified their then existing, premarital, separate property to be included. At around 10:00 a.m. on the morning of the wedding, Rick brought the agreement to Karen for her review. The agreement was prepared by Rick's attorney. Karen testified that she had not been able to review the document prior to that time and told Rick she wished to have her attorney look at it before signing. Rick told her not to worry about it and to just sign it. Rick stated that his lawyer would take care of it. Not wishing to delay the wedding set for 4:00 p.m. that day, Karen signed it. Although Rick did not say there would be no wedding if she did not sign, Karen felt pressured to sign it on that day. Karen agreed believing the agreement would only apply if they were to divorce and she

thought the marriage would be successful. After the wedding, Karen and Rick never discussed the agreement again and it was put in a box with other old papers. The property identified in the agreement as being Rick's separate property included the following: 1) an interest in an apartment building in Helsinki, Finland; 2) Various stocks in Finland; 3) 602 shares of Caterpillar Tractor Company stock; 4) 22' Catalina sailboat and trailer; 5) 20% interest in previous marital home; 6) 8 assorted oil paintings; 7) 1 antique dresser; and 8) 1 antique sofa, table and 3 chairs. The agreement also stated that any inheritance received by either party would be that party's separate property. Notably, the agreement did not affect any future rights of inheritance regarding anything not listed in the agreement.

{¶3} In July 2004, Karen and Rick created reciprocal wills in which each of them named the other as the recipient of their assets. If the other predeceased them, the assets were to then be split equally among Rick's children, Jan and Kaj, and Karen's two sons. Karen and Rick then traveled to Finland in August. While in Finland, they met up with Rick's brother, Carl-Johan ("Ca"), who was managing Rick's assets in Finland. Ca and Rick were concerned that the Finnish courts would not recognize the U.S. will, so Ca arranged for Rick to meet with an attorney in Finland and make a will to distribute the Finnish assets. Karen did not go with Rick to meet the attorney. The Finnish will was written in Swedish and Karen did not speak Swedish. Karen did not know the contents of that will until after Ca's death in 2021. Prior to that time, she thought the will left all of the Finnish assets to Kaj,

Jan, and Ca. She later learned that 6% went to Ca, 32% to Kaj, 32% to Jan, and 30% to Karen.

{¶4} In 2011, a financial advisor suggested Rick name a beneficiary for his Caterpillar stock so that it would not be subject to a probate proceeding. Rick met with an attorney and transferred the title of the stock to himself and Karen as joint owners with rights of survivorship.

{¶5} In 2015 Rick was diagnosed as having Parkinson's Disease and he began to show symptoms in 2016. In 2018, Rick decided to sell his interest in the apartment building to Ca's two children and their spouses. At that time, there was no indication that Rick's disease was affecting his cognitive ability. The money from the sale was placed into accounts in Finland and were managed by Ca until his death. Some money was transferred to the U.S. to pay taxes in the U.S. Karen indicated that this matter was handled between Rick and Ca and that she was not involved. Around that same time, Karen and Rick sold his truck to a neighbor. Due to Rick's use of the wheelchair and the difficulty in transporting him to places, Karen used the power of attorney ("POA") granted to her by Rick to transfer the title.

{¶6} In 2020, Karen noticed that Rick was showing signs of confusion related to his disease. Due to the medications Rick was taking, he would sometimes have hallucinations. However, at other times he was lucid, especially in the mornings when his medication was at low levels in his system. He was officially

diagnosed with Parkinson's related dementia in October 2021, but Karen still saw times of lucidity. Ca died on July 26, 2021. After that, Karen wanted to move Rick's money to the U.S. because it was earning no interest in the Finland accounts. She also was concerned that if Rick's health worsened, they would not have the funds to pay for his care. Karen testified that she spoke with Rick about the accounts during some of his lucid times and that Rick was unhappy that he was unable to transfer the money. To transfer the money, Rick needed the access codes set up by Ca, who had died. Without the codes, Rick and Karen would have to personally appear in Finland to sign the paperwork and Rick was unable to travel. As a result, Karen was not able to move the money and it remained in Finland.

{¶7} By May of 2022, Rick's dementia had progressed to the point he did not understand documents. Rick's health continued to decline in 2023. During this time Rick was cared for in the home by Karen. Jan testified that he visited Rick two to four times a year and called him a couple of times a month. Kaj testified that he saw Rick one or two times a year and called monthly. All bills for Rick's medical care were paid from Rick and Karen's accounts.

{¶8} In September of 2023, Rick had a grand mal seizure and ended up in the hospital. From there Rick had to be admitted to a nursing care facility. Rick died in the nursing home on January 4, 2024. The Finnish will was executed by officials in Finland. Pursuant to that will, Karen received a distribution of $461,014.98. Jan and Kaj also received distributions. All of them signed a release

indicating that they would not challenge or contest the Finnish inheritance in any manner before receiving their distributions. However, Jan testified that if he had known of the agreement, he potentially would have chosen not to sign.

{¶9} On April 12, 2024, Karen was appointed as executor of Rick's estate in Hancock County, Ohio. Karen admitted that at no time did she file a complaint challenging the validity of the agreement. However, at some point in time Jan and Kaj challenged the will, claiming that the agreement prohibited Karen from inheriting the separate property listed in the agreement and that the will filed by Karen was not the last one made by Rick. Karen responded to these allegations and hearings were held. The trial court indicated that a will challenge was filed on July 10, 2024, and then dismissed on September 16, 2024. The Finnish will was accepted by the trial court as the final will on July 23, 2024. Due to the conflict of interest between the beneficiaries and Karen as the executor, the parties agreed to a neutral third party being appointed as an administrator of the estate. The administrator was appointed on September 20, 2024, and accepted the appointment in October 2024.

{¶10} On September 13, 2024, appellants filed a declaratory action asking that the trial court determine the applicability of the agreement. The complaint also claimed that Karen had violated her fiduciary duties in the use of the POA. Karen filed her response to the complaint and challenged the applicability of the agreement. On December 9, 2024, appellants filed a motion for partial judgment on the pleadings alleging that the agreement was applicable. Karen filed a timely

response. The trial court overruled the motion for partial judgment on January 7, 2025, finding that there were material issues in dispute.

{¶11} On June 16, 2025, appellants filed a motion for partial summary judgment on a breach of contract for the benefit of a third party. Appellants again claimed that the agreement prevented Karen from inheriting any of the items identified in the agreement. On that same day, Karen filed a motion for summary judgment. The trial court entered judgment denying both motions on July 7, 2025. The trial court determined that one of the issues to be resolved was whether the agreement met the requirements to be enforceable. As a result, the trial court found there were material issues of fact to be resolved at the hearing and denied both motions.

{¶12} The trial court held a trial on August 4 and 5, 2025. At the trial, testimony was presented by Karen, Kaj, and Jan. The trial court entered judgment on September 24, 2025. In its judgment, the trial court found that Karen had otherwise attacked the agreement in a timely manner by responding to appellant's motion to challenge the will based upon the agreement. The trial court then found that based upon the undisputed testimony, the agreement was not valid based upon the fact that Karen was coerced into signing the agreement by the timing of its presentation to her and the denial of her request to have time for an attorney to review it. The trial court also found that the agreement did not contain a full disclosure of the prospective spouse's property. The trial court then found that there

was no evidence that Karen had breached her fiduciary duty and denied appellant's request for an accounting. Appellants filed an appeal from this judgment. On appeal, appellants raised the following assignments of error.

First Assignment of Error

The trial court erred as a matter of law in holding that Karen otherwise attacked the agreement when she did not satisfy the statutory minimums to commence an action to set aside [the agreement].

Second Assignment of Error

The trial court abused its discretion and erred as a matter of law in taking judicial notice of the separately filed and dismissed will-contest action.

Third Assignment of Error

The trial court erred in determining [the agreement] was unenforceable as this determination was contrary to the law and evidence

Fourth Assignment of Error

The trial court erred in holding that Karen did not breach her fiduciary duties as this determination was contrary to the law and evidence.

Fifth Assignment of Error

The trial court erred in denying appellants' request for a POA accounting as this determination was contrary to the law and evidence.

The Antenuptial Agreement

{¶13} The first and second assignments of error both address whether the validity of the agreement was appropriately before the trial court. Appellants claim in the first assignment of error that the trial court erred in determining that Karen had timely challenged the validity of the agreement.

> Any antenuptial, postnuptial, or separation agreement to which a decedent was a party is valid unless an action to set it aside is commenced within four months after the appointment of the executor or administrator of the decedent, *or unless, within the four-month period, the validity of the agreement otherwise is attacked.*

R.C. 2106.22 (emphasis added). The statute does not define what it means by "otherwise is attacked". However, a plain reading of the language leads this court to determine that it means the matter is raised before the trial court. One of the rights granted to a surviving spouse is the right to challenge the validity of an antenuptial agreement. *In re Estate of Lodwick*, 2019-Ohio-4559 (4th Dist.). The purpose of the statute is to require prompt challenges to marital agreements in estate proceedings. *Id*.

{¶14} The first will accepted for probate by the trial court in April of 2024 left all of the assets to Karen as a beneficiary. As the sole beneficiary under the will, she was not taking any of the property due to her status as a surviving spouse, but rather through her status as a beneficiary. Thus, the agreement had no effect on the estate and there was no basis for Karen to challenge the agreement. Once the

second will was accepted for probate, Karen was no longer the sole beneficiary and anything not distributed by that will (all of the American assets) were subject to distribution using the intestate succession statutes.[1] This would mean that Karen would now be limited in her recovery via the agreement. The second will was admitted to probate on July 23, 2024. Thus, as the surviving spouse, she would be entitled to her statutory rights, including the right to challenge the agreement based upon the acceptance of this will. The time for challenging the agreement would begin running from the appointment of the executor or administrator.

{¶15} On September 13, 2024, appellants filed this declaratory action requesting that the trial court set forth their rights under the agreement. The administrator was appointed on September 20, 2024, and accepted the position on October 3, 2024. Karen filed a response challenging the applicability of the agreement on October 21, 2024. Although the statute is narrow in defining when the challenge must be raised, it is broad in defining how the challenge is raised. The validity of the agreement in these circumstances was challenged by Karen within four months of the appointment of the administrator for the will being probated. Although appellants correctly state that Karen did not file a complaint, that is not required by the statute. By challenging the agreement in her response to appellants' declaratory judgment action regarding the agreement, Karen has "otherwise"

[1] The Finnish will does not contain a residuary clause. We note that the issue of whether the second will revoked the first or could be read in conjunction with it is not before us for review.

attacked the agreement. Requiring her to file a complaint when one was already filed addressing the same issue would be redundant and a waste of judicial resources. For this reason, we find the trial court did not err in holding that the agreement was otherwise attacked in a timely manner. The first assignment of error is overruled.

{¶16} Appellants claim in the second assignment of error that the trial court erred in taking judicial notice of a filing in a different case. This argument was based upon the belief that Karen had to attack the agreement within four months of the American will being admitted to probate and Karen being appointed executor. The times for appellants' will challenge were noted by the trial court through the doctrine of judicial notice. As discussed above, the time to challenge the agreement began running upon the appointment of the administrator for the Finnish will, not the American will. Appellants provided a copy of the docket sheet in Exhibit 3 showing that the administrator was appointed on September 20, 2024. Thus, it was part of the record and is not a result of judicial notice. Additionally, trial courts and appellate court may take judicial notice of court filings which are readily accessible from the internet. *Morello v. Ferrucio*, 2015-Ohio-1370, ¶ 9 (5th Dist.). *See also*, *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798 (courts can take judicial notice of public court records available on the internet); *Clark v. Beyoglides*, 2021-Ohio-4588 (2d Dist.) (the court may take judicial notice of public records and judicial opinions that can be accessed via the internet); *Mack v. City of Toledo*, 2019-Ohio-

5427 (6th Dist.) (courts can take judicial notice of judicial opinions and public records that are accessible via the internet); and *State v. Stevens*, 2026-Ohio-956 (4th Dist.) (courts can take judicial notice of publicly accessible records including court documents and dockets). The dates of the appointment of the administrator are available on the court docket that is on the internet as well as in the exhibits. The second assignment of error is overruled.

{¶17} In the third assignment of error, appellants claim that the trial court erred in determining that the agreement was unenforceable. Antenuptial agreements are contracts entered into by prospective spouses in contemplation of marriage and as such, are subject to general contract law. *Doemeny v. Doemeny*, 2026-Ohio-3007 (12th Dist.). Antenuptial agreements are valid and enforceable if 1) they have been entered into freely without fraud, duress, coercion or overreaching; 2) full disclosure and understanding of the nature, value and extent of the property of the prospective spouses; and 3) the terms do not encourage divorce. *Gross v. Gross,* 11 Ohio St.3d 99 (1984). "These conditions precedent to the enforcement of a prenuptial agreement arise in part from the fact that parties who have agreed to marry stand in a fiduciary relationship to each other. *Fletcher v. Fletcher*, 68 Ohio St.3d 464, 466 (1994). Parties to an antenuptial agreement may contract the division of property in the event of divorce or death. *Gross*.

{¶18} On appeal, the appellate court does not reweigh the evidence presented to the trial court and will uphold the findings of the trial court when the record

contains some competent evidence to sustain the trial court's conclusions. *Fletcher* at 468. Here, the trial court found that Karen received a copy of the agreement the morning of the wedding and that she wished to have an attorney review it. When she suggested this to Rick, he told her to not worry about it. These findings were supported by the uncontroverted testimony of Karen. The Supreme Court of Ohio has recognized that the assistance of counsel in reviewing an antenuptial agreement may be necessary for a fully informed and considered decision to sign. *Fletcher* at 470. The opportunity of a party to have the advice of counsel before signing the agreement is "a significant element of the *Gross* test to determine whether coercion or overreaching occurred." *Id*. Based upon the testimony presented, the trial court determined that there were concerns of coercion based upon the timing of presentation of the agreement and of the inability of Karen to have counsel review it, despite her desire to do so, due to that timing.

{¶19} In addition to possible coercion, the trial court noted that the agreement does not provide the parties with full disclosure of the parties' respective properties. The Supreme Court of Ohio has held that "good faith requires full disclosure not only as to the nature and amount of the intended husband's property but also of its value." *Juhasz v. Juhasz*, 134 Ohio St. 257, 267 (1938). The burden of showing that full disclosure occurred is on the party seeking to enforce the agreement. *Id*. and *In re Mize*, 82 Ohio App.3d 97 (1st Dist. 1992). The trial court found that the agreement only listed some then existing items that the parties wished

to deem as separate, premarital assets. This finding was supported by Karen's testimony and the agreement itself. Karen did not testify that she was aware of the full extent of Rick's property or of its value. Additionally, the agreement did not identify any items which were outside of those identified as separate property. Given the evidence before it, the trial court determined that the agreement did not meet the requirements set forth in *Gross* for the agreement to be considered enforceable. Having reviewed the record, this Court holds that the trial court's findings are supported by competent evidence in the record. As the agreement does not satisfy the required elements set forth in *Gross*, it is not an enforceable agreement.

{¶20} Even if the agreement was enforceable, the rights claimed pursuant to it are not what appellants assert. The agreement lists eight items as Rick's separate property. Appellants claim that they are entitled to these items or any traceable funds coming from the sale of the items. However, the agreement did not transfer the ownership of the property from Rick. The agreement merely identifies the property and says that Karen has no right to those items in the event of a divorce or as a surviving spouse. The ownership of the items remains with Rick and the agreement contains no restrictions over what he can do with his property.

{¶21} Initially, this Court notes that the uncontroverted evidence is that four of the items were no longer owned by Rick at the time of his death. The sailboat was sold in 1995 for $1,500, but Karen did not know what Rick did with the money

received 30 years prior. Rick's house with his first wife, in which he had an interest, was also sold in the 2000s. Karen was not sure what Rick did with the money he received for that sale. The interest in the apartment building in Helsinki, Finland was sold to Rick's relatives in 2018. The funds from the sale were deposited into the Finnish account controlled by Ca. Additionally, the stocks in Finland had been cashed out and presumably deposited by Ca into the Finnish account. Thus, the only traceable assets are those deposited into the Finnish accounts which were distributed pursuant to Rick's Finnish will.

{¶22} In 2004, approximately 20 years after Karen and Rick were married, they went to Finland and Rick made a will. Karen testified that Rick went to an attorney in Finland with Ca and she did not go. She knew that Rick made a will to distribute his property in Finland, but did not know the contents of the will until 2021. The Finnish will was admitted for Probate by the trial court in July of 2024. Pursuant to the terms of this will, Karen was named as a beneficiary and granted an interest in 30% of the Finnish assets, with appellants each receiving 32% and Ca's children receiving 6%. The Finnish estate was distributed as set forth in the will. Appellants argue that since much of these funds come from assets identified in the agreement, Karen is prohibited from inheriting under the agreement, only received the assets as a fiduciary holding the property for them, and that she is required to transfer the property to them. This position is contrary to Ohio law.

{¶23} In Ohio, the owner of separate property keeps all of the rights to that property, including the right to bequeath it through a will to any beneficiary the owner chooses. *German Mut. Ins. Co. v. Lushey*, 66 Ohio St. 233 (1902) (any person meeting the statutory requirements for making a will generally may give and bequeath their property to any person). The agreement did not name Jan or Kaj as beneficiaries and the agreement was not made for their benefit, but rather for Rick's benefit. As potential successors[2], they absolutely had no interest in the property prior to his death and Rick had the right to do whatever he wished with the property. *In re Estate of Platt*, 2002-Ohio-3382 (11th Dist.). The language of the agreement did not limit Rick's right to do with the property as he wished, thus he retained those rights. *Hightower v. Hightower*, 2002-Ohio-5488 (10th Dist.) (silence as to a waiver of a legal right is only construed as a waiver of those rights if the party had an imperative duty to speak). The agreement terminated Karen's right to inherit that separate property as a surviving spouse through the intestacy laws. However, it does not limit her right to inherit as a named beneficiary in the will. *See In re Paulson's Will*, 254 Wis. 258, 261 (1949) (holding that the effect of a bequest to a spouse in a will is not to destroy an antenuptial agreement, but rather to give the widow "something in his will regardless of the fact that she had given up all right

[2] Although they were his heirs at law at the time of the agreement, Rick could have chosen to leave the property to anyone, thus preventing them from being successors if he had so chosen.

to it."). These are two separate statuses. While the agreement limits one, it does not prohibit her inheriting as a beneficiary.

{¶24} Here, the agreement was signed in 1984. After 20 years of marriage, Rick chose to enter into not one, but two wills (the American and the Finnish wills) that named Karen as a beneficiary. As the owner of the property, Rick was free to bequeath his property to any entity he desired, including Karen. Since the will was made after the agreement, Rick knew that Karen had no intestate rights to the property and he still chose to name her as a beneficiary. This gave Karen rights as a beneficiary, not as the surviving spouse. If her inheritance had occurred due to her status as a surviving spouse, appellants would be entitled under the agreement to have the funds transferred to them. However, she inherited due to her status as a beneficiary. As such, the agreement does not apply and Karen has the same right of inheritance as any other beneficiary would have. Appellants thus have no valid claim to the inheritance Karen received from the Finnish will.

{¶25} The agreement also included shares in Caterpillar stock. On August 19, 2011, after almost 27 years of marriage, Rick signed documents transferring title of this stock from his name alone to joint ownership with Karen with rights of survivorship. No argument is presented indicating Rick was not competent at the time this occurred as it was years before his Parkinson's diagnosis. Upon Rick's death, the shares were transferred to Karen. Appellants argue that Karen owns the

stock as a fiduciary for them and must sign the shares over to them pursuant to the agreement. We disagree.

{¶26} As noted above, the agreement is a contract which reserves ownership of the property to Rick. As the sole owner of the property, he had the authority to gift it to Karen if he chose. Rick changed the title of the shares to be joint with Karen with rights of survivorship. Thus, pursuant to the contractual terms of the title to the stock shares created after the agreement, ownership of the shares is properly vested with Karen. *See In re Estate of Hutchison*, 120 Ohio St.542 (1929) (holding that if personal property is held as joint tenancy with rights of survivorship, upon the death of one owner, the other becomes the sole owner of the property). Karen's right to ownership of the shares does not stem from her status as a surviving spouse, but rather through the terms of the stock ownership which was deliberately entered into by Rick almost 27 years after the agreement was signed. Because Rick intended for Karen to obtain full ownership if she survived him and this was completed after the antenuptial agreement, the language of the contract transferring the shares to Karen supersedes the language of the parties' antenuptial agreement. *But see Kinkle v. Kinkle*, 83 Ohio St.3d 150 (1998) (holding that an antenuptial agreement prevented a surviving spouse from inheriting an IRA when no beneficiary designation was made, but the transfer was just pursuant to a general policy designation of the IRA). For this reason, the language of the agreement no

longer controls who inherits the Caterpillar stock. Thus, appellants thus have no valid interest in the stock.

{¶27} The remaining items listed in the agreement were the oil paintings, a dresser, a sofa, a table, and chairs. These items were identified by photo in Exhibit 5 at the trial. Karen admitted that the items were present. If the agreement were to be found valid, these items would belong to Kaj and Jan. Notably, Karen agreed that Jan and Kaj could have the items if they chose.

{¶28} Having determined that the trial court did not err in finding that the agreement did not meet the requirements of *Gross* to be a valid antenuptial agreement, we do not hold that the trial court erred in finding no valid antenuptial agreement. The third assignment of error is overruled.

Power of Attorney

{¶29} In the fourth assignment of error, appellants claim that the trial court erred by determining that Karen did not breach her fiduciary duties through the use of the POA granted to her by Rick. "The elements for a breach of fiduciary duty claim are '(1) the existence of a duty arising from a fiduciary relationship; (2) a failure to observe the duty; and (3) an injury resulting proximately therefrom.'" *Hoffman v. Atlas Title Sols., Ltd.*, 2023-Ohio-1706, ¶ 45 (3d Dist.) quoting *Camp St. Mary's Assn. of the W. Ohio Conference of the United Methodist Church, Inc.*, 2008-Ohio-1490, ¶ 19 (3d Dist.). The failure to prove one of these elements prevents recovery. *Huffman v. Groff*, 2013-Ohio-222 (4th Dist.).

{¶30} Here, appellants claim on appeal that Karen breached her fiduciary duties under the POA because she attempted to do things not permitted by Rick's POA to her. Appellants then identify several alleged abuses of the POA.

> 1. Sale of the vehicle on December 20, 2018;
>
> 2. Transfer of $4,991 from sale of the interest in the Helsinki apartment building in Finland to joint bank account in the U.S. on January 28, 2020.
>
> 3. Designation of Karen's son as beneficiary on joint Fifth Third Bank account signed by both Karen and Rick in March 2020.
>
> 4. Changing the beneficiary designation on a CEFCU account
>
> 5. Transfer of $199,991 from account in Finland to joint account in U.S.
>
> 6. Attempts to transfer the accounts in Finland to accounts in the U.S. starting in 2020.
>
> 7. Transfer of $7,991 from Finland accounts to U.S. accounts in November 2020.
>
> 8. Transfer of $7,991 from Finland accounts to U.S. accounts in December 2020.
>
> 9. Transfer of $29,991 from Finland accounts to U.S. accounts in April 2021.
>
> 10. Transfer of $100,000 from Finland accounts to U.S. accounts in July 2021.

Appt. Brief at 4-8.

{¶31} A review of the testimony shows that Karen used the POA to sign Rick's name in three instances. She signed a title to sell his truck to a neighbor when Rick could no longer drive. The second instance was when she signed forms from the account manager in Finland indicating that Rick lived in the United States for the purpose of calculating the taxes on the sale of the interest in the apartment building. After the death of Ca, who was managing all of Rick's accounts in Finland until Ca's death in 2021, Karen attempted to use the POA to move the funds from Finland to the U.S. However, Karen was unsuccessful in getting any funds transferred because her POA was not valid in Finland. No evidence was presented by appellants or Karen to show that the rest of the alleged events involved the use of the POA.

{¶32} Regarding the money transferred from the Finland accounts, appellants have presented evidence that sums of money were deposited into Rick and Karen's joint account. The documents do not indicate where the money came from, only that it was a wire transfer. Karen testified that Ca sent the money from Finland after Rick asked him to do so. Rick and Ca spoke on the phone regarding the amount of taxes Rick would have to pay in the U.S. due to the sale and the money was sent to pay the federal, state, and school district taxes.

{¶33} A review of the documents show that Karen did not use her POA to name her son as a beneficiary on the joint account. Rick went to the bank and signed

the card designating the payable on death beneficiary. While Karen may have taken Rick to the bank, the signature was his and thus is not a result of the POA. Similarly, the designation of Karen as the beneficiary for the CEFCU account was signed by Rick himself, not by Karen as the POA. Since Rick, not Karen, signed these transfers, Karen could not breach her fiduciary duty as a POA by signing them.

{¶34} Appellants argue that Karen's actions show an "intent to receive and control everything" and even point to Karen naming her children as "joint owners" of the joint account. However, a review of the record shows that Karen did not name her children as joint owners, but rather as POA on the account for herself in August of 2023. Being a POA is not the equivalent of being an owner. Karen testified that she did so because she wanted to have protection if something happened to her since Rick could no longer act as her POA by August 2023.

{¶35} The trial court found no credible evidence that Karen violated her fiduciary duty as a POA. The findings of the trial court are supported by the record. Most of the instances cited by appellants as evidence of violation of her fiduciary duties as a POA did not involve her signing as POA for Rick, but rather involved Rick's signing of documents on his own. The undisputed testimony regarding the transfer of the funds from Finland that occurred after the sale of the apartment showed that they resulted from Rick's discussions with Ca, not by any actions of Karen. The testimony was that the money was used to pay taxes on the sale. The transfers of funds from Finland after Ca's death may have been attempted, but they

did not occur. As a result, even if we were to assume appellants were correct in claiming the attempt was done for an improper purpose, no injury was suffered by appellants. The money remained in Finland and was distributed pursuant to the terms of the Finnish will. The fourth assignment of error is overruled.

{¶36} Finally, appellants claim that the trial court erred by not ordering a POA accounting. A named beneficiary may petition a court to order an accounting of one who acts under a POA. R.C. 1337.36. "An action requesting an accounting of an attorney-in-fact's tenure is a matter based in equity." *Fetters v. Duff*, 2018-Ohio-542, ¶ 14 (3d Dist.). Accounting issues fall within the sound discretion of a trial court. *Id*. at ¶ 11. Absent a showing that the trial court abused its discretion, this Court will not reverse a decision denying a request for an accounting. *Id*.

{¶37} As discussed above, most of the actions of which appellants complain were not the result of a POA, but rather of Rick's own actions. Appellants appear to be arguing that Karen exerted undue influence on Rick, but that is not the issue before this court. The issue is whether Karen misused her POA. The trial court found she did not. The only use of the POA that resulted in money being transferred was the sale of the truck to the neighbor. Based upon the record before this court, there is no evidence that the trial court abused its discretion in denying the request for an accounting. The fourth assignment of error is overruled.

{¶38} Having found no error prejudicial to Appellants in the particulars assigned and argued, the judgment of the Court of Common Pleas of Hancock County, Probate Division, is affirmed.

ZIMMERMAN, P.J. and MILLER, J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

William R. Zimmerman, Judge

Mark C. Miller, Judge

DATED:
/hls