[Cite as *Price v. Glenmede Trust Co., N.A.*, 2026-Ohio-3480.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Sandra L.A. Price Appellee v. Glenmede Trust Company, N.A., et al. Appellant	Court of Appeals No. L-25-00242 Trial Court No. 2021 ADV 2840 **DECISION AND JUDGMENT** Decided: September 4, 2026

* * * * *

Thomas P. Dillon and Nicholas T. Stack, for appellee

Brian S. Sullivan and Sarah E. Abbott, for appellant

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MAYLE, J.

{¶ 1} Appellant, David Epstein, appeals the January 16, 2026 judgment of the Lucas County Court of Common Pleas, Probate Division, that approved the modification of five trusts of which appellee, Sandra Price, is the beneficiary. For the following reasons, we affirm.

I. Background and Facts

{¶ 2} This case involves control of five trusts set up for Price's benefit. Each trust contains a provision creating a trust advisory committee that holds the "rights and powers" set forth by the trust, which "shall be held by the Advisory Committee in a fiduciary capacity and shall be exercised in all respects as though the same were exercised by trustees . . ." of the trust. Each trust also has a trustee, whose powers are to be exercised in accordance with the written directions of the advisory committee. The provisions related to the advisory committees provide for replacing an advisor "[u]pon the death, resignation, incapacity or refusal to serve of any member[,]" but do not otherwise provide for removing and replacing a member.

{¶ 3} In December 2021, Price filed a complaint seeking to remove Epstein as a member of the trusts' advisory committees. She alleged that she and Epstein were married and going through a divorce; she had asked Epstein to step down from the advisory committees, but he had refused; Epstein was controlling and hiding assets of the trusts; Epstein had taken steps to consolidate power over trust assets in himself; removing Epstein from the advisory committees would not impact any interest Epstein had in the trusts because such interest did not exist, and would not harm Epstein because he was not compensated for his service on the advisory committees; and Epstein's actions were violating his fiduciary duties. Some examples she gave of Epstein's behavior included removing Price from bank accounts related to trust assets, using trust assets to pay for "extravagant" personal expenses like private jets, signing documents indicating that he, personally, owned trust assets, conditioning his cooperation in making regular

distributions from the trust to Price on her giving him temporary spousal support in their divorce, not paying the trusts' bills or depositing their income, and threatening the remainder beneficiaries (i.e., Price and Epstein's children) that he would cause problems with their interests in the trusts.

{¶ 4} Additionally, Price alleged that the Glenmede Trust Company was the trustee for the trusts and continued to hold trust assets and charge the trust management fees despite Epstein's business moves that purported to remove Glenmede as the trustee. These business moves included Epstein forming Peak Fiduciary LLC, which has as its sole member another LLC that is owned by the trusts and now controlled by Epstein. Epstein made himself, Price, and Jackson Hole Trust Company comanagers of Peak. Jackson Hole resigned as registered agent of Peak but continued charging administrative fees because it retained some of Peak's funds and uncashed checks. Since the beginning of their divorce proceedings, Price had learned that her signature was forged on some of the documents relating to the formation of Peak.

{¶ 5} According to Price, for "decades" before she filed for divorce, she received distributions from the trusts at regular, required intervals, and the trusts were funded more than adequately for these distributions. Although Epstein has access to the current details about the trusts' values and holdings, he refuses to disclose them to Price. Price alleged that Epstein created a "circular ownership structure" of LLCs that gave him "complete control" of the trusts' assets.

{¶ 6} Despite demands from Price and her counsel, Epstein refused to resign from the advisory committees and his positions with the trust-related LLCs. He initially

agreed to resign, but then went back on his agreement, apparently in an attempt to extract agreements from Price in their divorce proceedings. Epstein had refused to account for trust assets, despite demands by and on behalf of Price. He had also required Price to fill out "'request and consent'" documents that required his approval in his capacity as trust advisor for Price to receive trust distributions. These documents were not required before 2021.

{¶ 7} Price attempted to remove Epstein from the advisory committees in March 2021 based on "his self-proclaimed inability to handle business affairs relating to the Price Trusts due to his then-existing emotional and mental state, as well as his mismanagement and lack of transparency." Price also attempted to remove Epstein as manager of the trust-owned LLCs and Peak. Epstein "refuse[d] to acknowledge or abide by his removal" from any of these positions.

{¶ 8} Because of Epstein's actions, Price sought in count one of the complaint to have the trial court remove him from his role as trust advisor. Specifically, she alleged that a trust advisor had a fiduciary duty under R.C. 5808.08(D), and Epstein's "acts and omissions regarding these Price Trusts are contrary to his fiduciary duties as a Trust Advisor and his removal is necessary to protect the Price Trusts' assets and interests of the beneficiaries."[1]

{¶ 9} In his answer, Epstein admitted to many of Price's allegations regarding the structure of the business entities related to the trusts but denied the allegations of

[1] Price alleged other claims in her complaint but ultimately moved to voluntarily dismiss them under Civ.R. 41(A), which the trial court granted.

wrongdoing against him. He also admitted that Price attempted to remove him from the advisory committees and his positions with the LLCs, which he did not believe was valid.

{¶ 10} Epstein filed counterclaims against Price in his capacity as trust advisor and manager of the LLCs. In his countersuit, he alleged that he was appointed to the advisory committees and was named manager of the various trust-owned LLCs. In 2018, at the suggestion of their attorney, Epstein and Price began discussing creating a private trust company, which they did in 2019 when they formed Peak. According to Epstein, Price chose Peak's name. On the advice of counsel, Epstein and Price named themselves and Jackson Hole comanagers of Peak. Jackson Hole resigned as Peak's registered agent in 2021 "following unreasonable threats and demands of Sandra to take action, which was not authorized under the Trusts."

{¶ 11} Epstein alleged that each of the trusts provide for removal of an advisory committee member only by "'consent of the majority of the members'" of the committee. In March 2021, after filing for divorce from Epstein, "in a fraudulent attempt to circumvent the provisions of the trust, and acting unilaterally without consent of the majority of the members of the Trust Advisory Committee," Price attempted to remove Epstein from the advisory committees, install new advisory committee members, remove Peak as trustee, install Glenmede as trustee, and remove Epstein as manager of the LLCs. Epstein also claimed that Price was using his personal information to access bank accounts and financial records, some related to the trusts and some unrelated to the trusts.

{¶ 12} Epstein sought in count three of the counterclaim to remove Price as a member of the advisory committees.[2] He alleged that Price "committed serious breaches of trust and fiduciary duty in mandating expenditures from the Trusts for her own personal benefit, while sacrificing the monetary appreciation or adverse financial impact to future beneficiaries of the Trust[s] . . . ." He cited purchases of multimillion dollar real estate, hundreds of thousands of dollars spent on fine art and custom silk rugs, and yearly private club dues. Because of these expenditures, Epstein alleged that Price was unfit to effectively serve as a trust advisor.

{¶ 13} In her reply to Epstein's counterclaim, Price denied the allegations of wrongdoing against her.

{¶ 14} There has been extensive motion practice in this case since it was filed. As relevant for our purposes, in January 2023, Glenmede filed a motion to appoint a special fiduciary. It argued that an interim special fiduciary was necessary because it held accounts belonging to the trusts but could not act on requests relating to those accounts from Price in her capacity as the beneficiary because of a "lack of uncontested authority" over the trusts. In short, Glenmede claimed that the trusts could not function while the identities of the advisory committee members and trustees were disputed. Price filed a response agreeing that a special fiduciary was necessary and suggesting that the court appoint First Trust Company LLC, which she claimed that she had vetted over many

[2] Epstein alleged other claims against Price in his counterclaim, but the trial court ultimately dismissed them; his claim to remove Price from the advisory committees is the only claim that remains pending in the trial court.

months. Epstein also filed a response in which he did not oppose the appointment of a special fiduciary, as long as the court ensured that the special fiduciary was "truly independent," would serve temporarily, would consent to the court's jurisdiction, and would agree to provide information to the court and the parties. In his response, he warned the trial court to be "wary" of Sandra's claims because she had allegedly "subvert[ed the donor's] intentions" by petitioning the trial court in four separate cases to remove the in terrorem (or no-contest) clauses in the trusts so that she could bring this suit against him.

{¶ 15} The trial granted Glenmede's motion; appointed First Trust as special fiduciary; suspended the trusts' advisory committees; gave First Trust "wide powers" over the trusts, including the powers to evaluate assets, vote membership interests, remove and appoint managers for trust-owned entities, and direct financial institutions that hold trust assets and accounts; and ordered the parties to cooperate with First Trust to identify and produce assets, accounts, documents, and information related to the trusts.

{¶ 16} In March 2024, Epstein moved for summary judgment. He argued that Price committed fraud on the trial court in 2021 when she filed separate actions to remove in terrorem clauses from four of the trusts because Peak, as trustee, was part of those lawsuits, but Price had purported to remove Peak and replace it with Glenmede about a month before filing those lawsuits. He claimed that this subjected the trial court's decisions removing the in terrorem clauses to collateral attack because the decisions were void. He also claimed that the in terrorem clauses were removed contrary to Ohio law. And, when the in terrorem clauses were put back into the trusts, he argued that Price

should lose her status as a beneficiary because she filed this lawsuit in defiance of the in terrorem clauses. Next, Epstein argued that judicial estoppel barred Price from claiming in this case that Peak was invalidly formed because she claimed that Peak was valid for purposes of modifying the trusts. He also argued that she was judicially estopped from claiming that she removed Epstein as a trust advisor because she failed to plead that she conformed to the requirements of the trusts when she purported to remove him from the advisory committees.

{¶ 17} In her memorandum in opposition, Price first argued that Epstein was seeking summary judgment on claims that were not pleaded in the complaint or counterclaim. Next, she argued that Epstein did not have standing to challenge the orders from the 2021 lawsuits because he had no valid legal interest in the trusts and no personal stake in the outcome of the 2021 proceedings. Assuming that Epstein had standing, Price argued that his collateral attack on the 2021 cases was impermissible because he should have intervened in that case, appealed, or filed a Civ.R. 60(B) motion, which he did not do. Beyond that, she claimed that fraud on the court was inapplicable because the actions Epstein complained of were committed by a party, not an officer of the court, so that theory was not a basis for collateral attack. Finally, she argued that judicial estoppel did not apply because that theory required prior sworn testimony and she did not give any sworn testimony in the 2021 cases.

{¶ 18} Price and Epstein's children also filed a motion in response to Epstein's motion for summary judgment. They agreed with Price's positions on Epstein's standing and improper collateral attack on the 2021 judgments. They also argued that the in

terrorem clauses were not triggered by the 2021 cases or this case because the lawsuits did not challenge the validity of the trusts, which is required to invoke a no-contest clause.

{¶ 19} The trial court denied Epstein's motion. It observed that Epstein did not argue that Price's claims lacked sufficient evidence. Instead, Epstein claimed that Price lacked standing because she was no longer a beneficiary of the trusts due to her fraudulent conduct and the operation of the in terrorem clauses. The court noted that Epstein was neither an actual nor potential beneficiary of the trusts, so he was not a real party in interest as it related to the distribution of trust assets. Therefore, Epstein lacked standing to request that the court invoke the in terrorem clauses. Thus, the court found that Epstein's motion for summary judgment lacked merit.

{¶ 20} Finally, in July 2025, Price filed a motion to modify the court's February 2023 order appointing the special fiduciary and dismiss counts two through seven of her complaint. She sought an order reinstating the advisory committees so they could vote on a resolution removing both Epstein and Price as members and replacing them with two members apparently chosen by Price. She requested this remedy as a way of resolving the litigation; by removing both Epstein and Price from the advisory committees, the single remaining claim from Price's complaint (seeking removal of Epstein from the advisory committees) and the single remaining claim from Epstein's counterclaim (seeking removal of Price from the advisory committees) would both become moot. Under Price's proposed scenario, she assumed that Epstein would not vote to remove and replace himself, meaning that the resolution would not have the support of a majority of

the members of the two-member advisory committees, so First Trust—the special fiduciary—would be able to break the tie. She believed this was consistent with the trusts' requirement that the trustee break any ties of advisory committees' votes.

{¶ 21} The children filed a response agreeing with and supporting Price's motion.

{¶ 22} Epstein filed a memorandum in opposition to Price's motion. He argued that Price's motion "makes no sense," did not comply with the terms of the trusts, and did not comply with Ohio law. He pointed out that the trusts were silent as to advisory member removal, which meant that the advisors did not have the right to remove each other under Ohio law because a trust advisor only has the authority given to them by the trust instrument. For the court to remove either Epstein or Price as an advisor, he claimed, it must first hold an evidentiary hearing to determine whether they acted irrationally, irresponsibly, or unsuitably as it relates to the trusts. Epstein also asked that the court condition the dismissal of the claims in Price's complaint on the "Price Trusts reimbursing and indemnifying David for the hundreds of thousands of dollars he has spent litigating this action . . . ."

{¶ 23} In her reply, Price argued that the trial court had power under R.C. 5807.06(C) to take actions under R.C. 5810.01(B) while a motion to remove a trustee was pending, which included taking actions that were not specifically authorized by the language of the trust, but were authorized by R.C. 5810.01(B). So, although her plan to have the advisory committees vote to remove both her and Epstein was not covered by the language of the trusts, it was within the trial court's power under R.C. 5810.01(B) to

"order any other appropriate relief." Price also argued that Epstein was not entitled to attorney fees.

{¶ 24} On September 18, 2025, the trial court granted Price's motion. In its order, the court (1) unsuspended the advisory committees, (2) ordered under R.C. 5810.01(B) that the advisory committees vote on the removal and replacement of Epstein and Price within three days, (3) outlined the procedure to be followed if a party did not cast a vote, and (4) empowered First Trust to cast the tie-breaking votes if the advisory committees ended up deadlocked. The court also granted Price leave to dismiss counts two through seven of her complaint and set a briefing schedule in the event that the parties could not agree to dismiss count one of the complaint and count three of the counterclaim.

{¶ 25} Epstein filed a notice of appeal from the trial court's September 18 order. Price filed a motion to dismiss for lack of a final, appealable order, which we denied. However, we remanded the case to the trial court to allow it to enter a final, appealable order "consistent with [our] decision." We specifically found that "the trial court's September 18, 2025 judgment is not yet final and appealable until the trial court enters judgment under R.C. 5804.11(A) . . ." approving the modification of the trust that occurred under the statutory processes outlined in R.C. 5804.10(B) and 5804.11(A).

{¶ 26} On January 16, 2026, the trial court issued its final, appealable order. In that judgment entry, the trial court acknowledged that we had remanded the case for entry of an order under R.C. 5804.11(A). The court went on to state,

> On December 24, 2025, the Special Fiduciary notified the parties and the court that the Committee had acted pursuant to the September 18, 2025 order and that the Special Fiduciary had cast the deciding vote in

favor of the pending resolution removing both David Epstein and Sandra Price as members of the Committee. At no time did the court order the removal of any trust advisor but rather provided a mechanism for the Committee to vote on its membership.

This court acknowledges that, in two separate entries, it mistakenly cited the wrong code section. In paragraph two of the September 18, 2025 Order (currently under appeal) the court cited R.C. 5810.01(B) when it should have cited R.C. 5804.11(B). Additionally, in the October 30,2025 Judgment Entry (not under appeal) the court cited R.C. 5804.11 (A) when it once again should have cited R.C. 5804.11(B).

Pursuant to R.C. 5804.11(B), a court may modify such a trust upon the consent of all of the beneficiaries if the modification is not inconsistent with a material purpose of the trust.

While the December 30, 2025 Decision and Judgment of the Court of Appeals explicitly directed this court to enter an order pursuant to R.C. 5804.11(A), the code section that actually applies is R.C. 5804.11(B), since the settlors of these trusts are deceased. Under either section however, this court approves the modification of the trusts that eventually resulted in the removal of Sandra Price and David Epstein from the Trust Advisory Committee. This court further finds the modification was with the consent of all beneficiaries and is not inconsistent with a material purpose of the trusts. Additionally, the court finds that there is no just cause for delay pursuant to Civ.R. 54(B).

(Underlining in original.)

{¶ 27} Epstein raises two assignments of error in his brief:

The Trial Court Exceeded this Court's Mandate By Changing the Legal Basis for the September 18, 2025 Order on Appeal.

The Trial Court Erred By Entering an Order Modifying the Price Trusts Without Ever Finding that a Breach of Trust Had Occurred or May Occur.

II. Law and Analysis

A. The trial court's error in violating our mandate was harmless.

{¶ 28} In his first assignment of error, Epstein argues that the trial court improperly exceeded the scope of our remand order, which clearly instructed the trial court to "enter judgment under R.C. 5804.11(A)." Epstein argues that the trial court therefore erred when it entered a final judgment under R.C. 5804.11(*B*) after it clarified that the order under appeal—i.e., the September 18, 2025 order—should have been entered under R.C. 5804.11(B) rather than R.C. 5810.01(B). He asks that we strike the language in the trial court's January judgment entry that altered the basis for the September order and proceed with this appeal on the basis that the September order is a final, appealable order.[3]

{¶ 29} Price responds that the trial court did not violate our mandate on remand. She claims that this court's citation to R.C. 5804.11(A) in our remand order was a mere clerical error, and the mandate rule does not require a trial court to perpetuate an appellate court's clerical error. She argues that the trial court's correction of its order was patently correct, i.e., it is clear from the facts of this case that R.C. 5804.11(B)—not R.C. 5804.11(A)—is the applicable statutory section.

{¶ 30} The mandate rule requires a lower court to "carry the mandate of the upper court into execution and [] not consider the questions which the mandate laid at rest . . . ."

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[3] To be more precise, Epstein asks this court to "strike the language altering the basis of the September 18, 2025 *and October 30, 2025 Orders* from the January 16, 2026 Judgment Entry and allow the appeal to proceed on the basis that the September Order—as written—is a final, appealable order." Epstein, however, did not appeal the October 30 order, so we lack jurisdiction to change that order as modified by the January 16, 2026 decision. We do, of course, retain jurisdiction to consider the October 30 order as part of our overall review of the record on appeal.

Sprague v. Ticonic Natl. Bank, 307 U.S. 161, 168 (1939). "'[T]he Ohio Constitution "does not grant to a court of common pleas jurisdiction to review a prior mandate of a court of appeals."' *Giancola v. Azem*, 2018-Ohio-1694, ¶ 15, quoting *State ex rel. Cordray v. Marshall*, 2009-Ohio-4986, ¶ 32, quoting *State ex rel. Potain v. Mathews*, 59 Ohio St.2d 29, 32 (1979). "[A] lower court must follow the mandate of its court of appeals, whether correct or incorrect, absent extraordinary circumstances such as an intervening decision by the Supreme Court." *In re Testamentary Trust of Manning*, 2005-Ohio-4764, ¶ 32 (7th Dist.), citing *State ex rel. Sharif v. McDonnell*, 91 Ohio St.3d 46, 48 (2001), and *Nolan v. Nolan*, 11 Ohio St.3d 1, 5 (1984); *Potain* at 32.

{¶ 31} The mandate rule is a corollary of the law of the case doctrine, which "provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels." *Nolan* at 3. "Thus, the decision of the appellate court in a prior appeal must ordinarily be followed in a later appeal in the same case and court." *Pavlides v. Niles Gun Show, Inc.*, 112 Ohio App.3d 609, 615 (5th Dist. 1996). "The doctrine is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." *Hopkins v. Dyer*, 2004-Ohio-6769, ¶ 15.

{¶ 32} However, the law of the case doctrine "is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results." *Nolan* at 3. Accordingly, "[a]n appellate court may choose to re-examine the law of the case it has itself previously created if that is the only means to avoid

injustice." *Pavlides* at 615. Even so, "such reexaminations must not be undertaken lightly by an appellate court, nor encouraged as a common course of conduct for unsuccessful litigants." *Weaver v. Motorists Mut. Ins. Co.*, 68 Ohio App.3d 547, 549 (2d Dist. 1990).

{¶ 33} "[W]hen a higher court's mandate is not involved, application of the law of the case doctrine is, in essence, discretionary." *Herman v. Herman*, 2022-Ohio-4148, ¶ 40-41, 43 (3d Dist.); *see also Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) ("A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice." (Internal quotation omitted)); *State v. Kelly*, 2007-Ohio-6838, ¶ 15 (8th Dist.) (the law of the case doctrine is discretionary in application, and subject to exceptions, including when "the earlier decision is clearly erroneous and would work a manifest injustice").

{¶ 34} Here, we erred when we issued our remand order of December 30, 2025. Relying on the trial court's misstatement in its October 2025 entry denying Epstein's motion to stay, we cited to R.C. 5804.11(A) as the basis for our remand for the trial court to issue a final, appealable order. However, now that we have the full record, it is apparent—and the parties agree—that R.C. 5804.11(A) does not apply to this case because it requires the consent of the settlors, who are deceased. Instead, the statutory section that arguably applies to the trusts is R.C. 5804.11(B), which does not require the

consent of the settlors, and which the trial court cited in its January 2026 judgment entry.[4] If we leave our error uncorrected, it will work a manifest injustice on the parties by requiring several reversals, remands, and new appeals before we can reach the merits of the case. Rather than further increase the time and expense of this litigation, we find that it is appropriate for us to exercise our discretion to revisit our December 2025 order. Thus, we reconsider that order and find that we should have instructed the trial court to issue a final, appealable order under R.C. 5804.11(B).

{¶ 35} Despite the fact that our remand order was erroneous, under the mandate rule, the trial court did not have the discretion to deviate from our mandate. *Giancola*, 2018-Ohio-1694, at ¶ 15; *Manning*, 2005-Ohio-4764, at ¶ 32 (7th Dist.). Thus, we find that the trial court erred by issuing a final order under R.C. 5804.11(B) when we instructed it to issue the order under R.C. 5804.11(A). However, given that we have reconsidered our remand order, we find that the error was harmless. *See* Civ.R. 61 ("[N]o error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for . . . vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

[4] Contrary to Price's claim, we cannot say that the trial court's—and our own—citation to the incorrect statute was a "clerical error," because a clerical error is "a mistake or omission, mechanical in nature and apparent on the record which does not involve a legal decision or judgment." *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 100 (1996).

{¶ 36} Because the trial court's error in issuing its final order in violation of our mandate was harmless, Epstein's first assignment of error is not well-taken.

B. The trial court did not err in issuing its judgments.

{¶ 37} In his second assignment of error, Epstein argues that the trial court impermissibly modified the trusts. Under this assignment of error, he first argues that the trial court erred by appointing a special fiduciary and suspending the advisory committees without clear and convincing evidence of a breach of trust. Next, he argues that the trial court's September 2025 order was contrary to law because, under R.C. 5810.01, the trial court is only authorized to take corrective actions if it finds a breach of trust. Alternatively, he argues that R.C. 5804.11(B) expressly forbids modifying a trust to remove a trustee, which is essentially what the order did because an advisory committee member is treated like a trustee under the trusts. Third, he argues that the trial court failed to honor the settlors' intent because the trusts expressly forbid advisory committee members from invoking the jurisdiction of a court to modify the trusts or affect the way advisory committees act under the trust. Fourth, he argues that the court failed to determine under R.C. 5804.11(B) that its modifications are not inconsistent with a material purpose of the trusts. Finally, he argues that the beneficiaries' consent to the modification was improper.

{¶ 38} Price responds that the trial court properly modified the trusts. She contends that R.C. 5804.11 does not require a finding that a breach of trust has occurred or may occur. She claims that the modification was proper because it was not inconsistent with a material purpose of the trusts because it addressed a provision missing

from the trusts, i.e., a provision for removing a trust advisor when the advisory committees are dysfunctional and deadlocked. Price also contends that Epstein has raised issues that are not related to the true issue under this assignment of error, including his claims that advisory committee members cannot join in any action before a court or amend the trusts and his arguments about Peak's status as alleged trustee. Further, Price argues that the trial court properly appointed a special fiduciary in its February 2023 order. She claims that the trial court acted under its equitable powers and R.C. 5807.06(C) to provide relief during a pending proceeding to remove a trustee. Thus, she argues, the trial court did not have to find a breach of trust before appointing a special fiduciary. Finally, Price argues that the trial court did not remove Epstein from the advisory committees; it simply "provided a mechanism for the [advisory committees] to vote on their own membership."

1. The trial court properly appointed the special fiduciary and suspended the advisory committees.

{¶ 39} The first of the trial court's decisions that Epstein challenges is the February 6, 2023 judgment entry that appointed First Trust as special fiduciary for the trusts and suspended the advisory committees. In that entry, the trial court granted Glenmede's motion requesting a special fiduciary.

{¶ 40} In its motion, Glenmede relied on R.C. 5807.06 to support its request. That statute controls a probate court's ability to remove a trustee of a trust. Specifically, the statute provides:

> (A) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or the court may remove a trustee on its own initiative.

> (B) The court may remove a trustee for any of the following reasons:
>
> (1) The trustee has committed a serious breach of trust;
>
> (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
>
> (3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries.
>
> (C) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order any appropriate relief under [R.C. 5810.01(B)] that is necessary to protect the trust property or the interests of the beneficiaries.

R.C. 5807.06. Two of the remedies in R.C. 5810.01(B) are "[a]ppoint[ing] a special fiduciary to take possession of the trust property and administer the trust" and "[s]uspend[ing] the trustee[.]" R.C. 5810.01(B)(5)-(6).

{¶ 41} Notably, the trial court did not specify the authority that it relied upon when it appointed First Trust as special fiduciary for the trusts and suspended the advisory committees. To the extent the trial court may have relied upon R.C. 5807.06, as argued by Glenmede in its motion, the trial court erred. First, the request was not made by "[t]he settlor, a cotrustee, or a beneficiary[.]" R.C. 5807.06(A). Glenmede claimed in its motion that it was removed as trustee in 2019 and replaced with Peak. Thus, it clearly was not acting as a "cotrustee" at the time it moved for appointment of a special fiduciary, and it was neither a settlor nor beneficiary of the trusts. Price, however, filed a response to Glenmede's motion saying that she "agrees with and consents to" the motion, which is arguably a request by a beneficiary to suspend the advisory committees.

{¶ 42} However, assuming that Price's response was sufficient to constitute a request to suspend the advisory committees, the statute still does not apply because members of a trust advisory committee are not trustees. Epstein contends in his brief that "under the Trusts, [advisory committee] members are treated analogously to trustees[,]" so the advisory committees are "subject to the same statutory requirements governing" trustees. Although it is true that the trusts provide that the advisory committees have "rights and powers" as set forth in the trusts that "shall be held by the Advisory Committee[s] in a fiduciary capacity and shall be exercised in all respects as though the same were exercised by trustees . . . [,]"[5] Ohio law does not support Epstein's contention that advisory committee members and trustees are statutorily analogous.

{¶ 43} Ohio has two statutes that address trust advisors: R.C. 5808.08 and 5815.25.[6] R.C. 5815.25(C) limits liability for fiduciaries, including trustees, when "an instrument under which a fiduciary acts reserves to the grantor, or vests in an advisory or investment committee or in one or more other persons, including one or more fiduciaries, to the exclusion of the fiduciary or of one or more of several fiduciaries, any power . . . ."

{¶ 44} Under R.C. 5808.08(D),

> [e]xcept to the extent otherwise provided by the terms of a trust, a person other than a beneficiary who holds a power to direct, including, but

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[5] The trusts do not all have identical language for this provision, but the language used in each trust conveys the same basic idea. For example, three of the other trusts say, "[s]uch rights and powers shall be held by the Advisory Committee in a fiduciary capacity and shall be exercised by them for the benefit of the beneficiaries and others interested in the trust in all respects as though the same were exercised by trustees hereunder . . . ."

[6] The Ohio Legacy Trust Act contains a definition of "advisor," R.C. 5816.02(A), but the act (and its definitions) is inapplicable to the trusts in this case. *See* R.C. 5816.02(K).

> not limited to, a power to direct the modification or termination of a trust, is presumptively a fiduciary who, as a fiduciary, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

In other words, a person who is given power to direct the trust is presumed to be a fiduciary, unless the terms of the trust provide otherwise, and is required to act in good faith regarding the trust's purposes and beneficiaries' interests.

{¶ 45} This is different from the duties imposed on a trustee, which are outlined in R.C. Ch. 5808 and include the duties (1) to administer the trust in good faith, in accordance with its terms and purposes and in the interests of the beneficiaries, and in accordance with R.C. Ch. 5801 to 5811 (R.C. 5801.01); (2) of loyalty by administering the trust solely in the interests of the beneficiaries and by avoiding conflicts of interest (R.C. 5808.02); (3) of impartiality when a trust has more than one beneficiary (R.C. 5808.03); (4) to administer the trust as a prudent person would (R.C. 5808.04); (5) to incur only appropriate and reasonable costs (R.C. 5808.05); (6) to use any special skill or expertise the trustee has (R.C. 5808.06); (7) to take reasonable steps to take control of and protect trust property (R.C. 5808.09, 5808.12); (8) to keep adequate records and keep their property separate from trust property (R.C. 5808.10); (9) to take reasonable steps to enforce claims of and defend claims against the trust (R.C. 5808.11); and (10) to keep the beneficiaries reasonably informed about the administration of the trust and the facts necessary to protect their interest and promptly respond to their requests for information (R.C. 5808.13).

{¶ 46} Thus, a trustee is held to significantly different standards than a person who has the power to direct a trust (i.e., a trust advisor). Therefore, we conclude that the General Assembly did not intend to treat a trust advisor the same as a trustee under the Ohio Trust Code. Instead, a trust advisor is simply what R.C. 5808.08(D) says that it is: a presumed fiduciary (unless the terms of the trust provide otherwise) who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. Because that is the case, we cannot say that R.C. 5807.06—which provides a mechanism for removing a trustee—applies here.

{¶ 47} However, a probate court "has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code." R.C. 2101.24(C). Because this case was properly before the probate court, the court could use its equitable powers to fashion a remedy where the rights of the parties are not clearly established by law. *Aurora Loan Servs. v. Molter*, 2010-Ohio-3704, ¶ 27 (5th Dist.), quoting *Blackwell v. Internl. Union, United Auto Workers Local No. 1250*, 21 Ohio App.3d 110 (8th Dist. 1984), paragraph four of the syllabus ("'[W]here the rights of the parties are not so clearly delineated [by the law], the courts will apply broad equitable principles of fairness.'"); *see also State v. N.C.*, 2024-Ohio-5587, ¶ 11 (9th Dist.) (Equitable remedies "are designed to ensure fairness and justice in situations where legal remedies may be insufficient.").

{¶ 48} Here, the parties' rights regarding the requested suspension of the advisory committees are not clearly established by law. The trial court therefore acted within its

equitable authority in suspending the advisory committees and appointing a special fiduciary.

{¶ 49} When a court acts under its equity jurisdiction, it has considerable discretion to fashion a fair and just remedy. *Beatty v. Urbania*, 2019-Ohio-245, ¶ 36 (7th Dist.), citing *Winchell v. Burch*, 116 Ohio App.3d 555, 561 (11th Dist. 1996). Thus, "[a] determination rendered pursuant to the court's equity jurisdiction will not be reversed absent an abuse of discretion." *Berry v. Bowling*, 2019-Ohio-898, ¶ 23 (4th Dist.). Abuse of discretion means that the trial court's decision was unreasonable, arbitrary, or unconscionable. *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610 (1996). After reviewing the record, we cannot find that the court abused its discretion by appointing a special fiduciary and suspending the advisory committees. Therefore, we find no error with the trial court's February 2023 judgment entry.

2. The trial court made the findings required by R.C. 5804.11(B).

{¶ 50} Epstein also challenges the trial court's January 16, 2026 judgment entry. The trial court issued this decision under R.C. 5804.11(B), which provides that "[a] noncharitable irrevocable trust may be modified, but not to remove or replace the currently serving trustee, upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust."

{¶ 51} Epstein makes three arguments related to this judgment entry: (1) the trial court essentially removed a trustee, in violation of the express terms of R.C. 5804.11(B); (2) the trial court failed to determine under R.C. 5804.11(B) that its modifications are not

inconsistent with a material purpose of the trusts; and (3) the beneficiaries' consent was improper.

{¶ 52} As we have already explained, a trust advisor is not the equivalent of a trustee, so Epstein's argument that the trial court essentially removed a trustee is unavailing.

{¶ 53} Regarding Epstein's second argument, the trial court specifically found in its January 2026 entry that "the modification was with the consent of all beneficiaries and is not inconsistent with a material purpose of the trusts." The statute does not require anything more than that. Thus, we find that the trial court made the necessary findings under R.C. 5804.11(B).

{¶ 54} Finally, Epstein claims that the beneficiaries' consent was invalid based on a case interpreting R.C. 5808.17(C), which provides that "[a] release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent that it was induced by improper conduct of the trustee or that the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach." This statute and its interpretation have no bearing here. R.C. 5808.17(C) and R.C. 5804.11(B) concern fundamentally different circumstances and address different policy concerns: R.C. 5808.17(C) protects against invalid releases of existing claims against a trustee, while R.C. 5804.11(B) permits trust modifications upon the consent of all beneficiaries. There is nothing in either statute to suggest that the requirements for consent under R.C. 5808.17(C) should apply to a consensual trust modification under R.C. 5804.11(B).

{¶ 55} In sum, because the trial court properly used its equity powers to appoint the special fiduciary and suspend the advisory committees, all the beneficiaries consented to the trust modification, and the trial court made the necessary findings under R.C. 5804.11(B), we find that Epstein's second assignment of error is not well-taken.

III. Conclusion

{¶ 56} Although the trial court erred by disregarding our mandate on remand, after reconsidering our erroneous order, we find that the error was harmless. The trial court did not err by appointing a special fiduciary and suspending the advisory committees or by determining that Price met the requirements of R.C. 5804.11(B). Therefore, Epstein's assignments of error are not well-taken, and the judgment of the trial court is affirmed. Epstein is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.

JUDGE

Christine E. Mayle, J

JUDGE

Scot A. Stevenson, V.J. [7]
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.

[7] Judge Scot A. Stevenson, Ninth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.