

IN THE SUPREME COURT OF THE STATE OF NEVADA


IN THE MATTER OF: THE PAUL  
SUNDERLAND IRREVOCABLE  
TRUST, DATED JULY 27, 1981.

SHARON WATTS; NICKI ROHLOFF;  
AND JACILYN WATTS,  
Appellants,  
vs.  
LORI SUNDERLAND,  
Respondent.

No. 82322

FILED

DEC 16 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellants Sharon Watts, Jacilyn Watts, and Nicki Rohloff appeal from a district court order granting in part and denying in part respondent Lori Sunderland's motion for partial summary judgment and denying Sharon Watts's cross-motion for partial summary judgment. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

This appeal requires us to consider whether a company's "special dividend" distribution to a trust near the time of the company's merger, which resulted in the company becoming a subsidiary of another, is trust principal or trust income under Missouri law.<sup>1</sup> In 1981, Paul Sunderland established the Paul Sunderland Irrevocable Trust (the trust) for the benefit of his granddaughters, appellant Sharon Watts and respondent Lori Sunderland.<sup>2</sup> The trust is split into two equal subtrusts—

<sup>1</sup>Nevada has jurisdiction over this matter because Lori Sunderland resides in Clark County. On appeal, neither party disputes that Nevada has jurisdiction or that Missouri law governs the trust.

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

one for the benefit of Sharon and one for the benefit of Lori. Sharon and Lori are both beneficiaries and co-trustees of the trust. The trust requires Sharon and Lori, in their capacities as co-trustees, to periodically distribute trust income out of each respective subtrust. The trust was funded primarily with shares of the Ash Grove Cement Company (Ash Grove). Missouri law governs the trust.

In 2018, as part of a merger between Ash Grove and CRH, PLC (CRH), Ash Grove initiated a stock purchase agreement whereby CRH would purchase Ash Grove stock held by the company's shareholders. Ash Grove subsequently announced a special cash dividend (special dividend) for its shareholders. According to Ash Grove, the special dividend was paid out of its "accumulated cash on hand that [was] not necessary for the conduct of Ash Grove's business." It distributed the special dividend "in addition to the per share merger consideration," which would be paid upon the completion of the sale of Ash Grove.

Ash Grove subsequently distributed \$4,555,200 to the trust as the trust's pro rata share of the special dividend. The parties disagreed as to whether the special dividend constituted trust accounting income or trust principal. They therefore delayed distributing the special dividend to the trust's mandatory income beneficiaries (themselves).

Lori filed a petition in district court requesting that the court assume jurisdiction over the trust, and, as pertinent to this appeal, direct the distribution of the special dividend to Lori and Sharon as beneficiaries. The district court assumed jurisdiction of the trust, split the trust into the two subtrusts described above, and ordered that neither party withdraw the special dividend from their respective subtrust until they received further direction from the court. Thereafter, Lori moved for partial summary

judgment, requesting that the district court declare that the special dividend constituted trust income and compel distribution of the special dividend to herself and Sharon. Sharon opposed Lori's motion and filed a cross-motion for partial summary judgment arguing, among other things, that the special dividend constituted trust principal.

The district court granted Lori's motion for partial summary judgment in part and denied Sharon's cross-motion for partial summary judgment in its entirety. The court explained that Missouri law requires trustees to allocate money received from an entity as income unless otherwise provided by statute. It concluded that no statutory exception applied to the special dividend and, therefore, the special dividend "[could] only constitute trust accounting income and not principal, as a matter of law . . . ." The district court accordingly directed the parties, as co-trustees, to distribute equal shares of the special dividend to the mandatory income beneficiaries. Sharon timely appealed.<sup>3</sup> We affirm.

*Standard of review*

We review a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Issues of law, including statutory interpretation, are also reviewed de novo." *Mardian v. Greenberg Fam. Tr.*, 131 Nev. 730, 733, 359 P.3d 109, 111 (2015).

---

<sup>3</sup>Sharon has two daughters, appellants Jacilyn Watts and Nicki Rohloff. As beneficiaries of the trust, Jacilyn and Nicki participated in the proceedings below. Sharon, Jacilyn, and Nicki are represented together on appeal.

## *DISCUSSION*

Sharon argues that the district court erred in granting Lori's motion for partial summary judgment as to the classification of the special dividend because the special dividend constitutes trust principal under either Mo. Rev. Stat. § 469.423(3)(2) or § 469.423(3)(3). She additionally argues that Mo. Rev. Stat. § 469.423(6) provides a permissive exception, under which the trust may characterize the special dividend as principal. Lori counters that the district court did not err in characterizing the special dividend as trust income because the special dividend was not made in exchange for the trust's interest in Ash Grove, nor was it made in total or partial liquidation of the company.<sup>4</sup> She further argues that Mo. Rev. Stat. § 469.423(6) does not create a permissive exception to the general rule that money received from an entity is trust income.

The operative statute in this appeal is Missouri's Principal and Income Act, which reads in relevant part:

2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
3. A trustee shall allocate the following receipts from an entity to principal:
  - (1) Property other than money;
  - (2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
  - (3) Money received in total or partial liquidation of the entity; and

---

<sup>4</sup>In her answering brief, Lori also discusses three other family trusts. We decline to consider any discussion of the other trusts, and we need not look to actions taken by other trustees over those trusts to resolve this appeal.

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that such money is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt . . . .

6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Mo. Rev. Stat. § 469.423.

Summary judgment is proper if the pleadings and all other evidence on file demonstrate that there exists no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law. *Id.*; *see also* NRCP 56(a). The party moving for summary judgment must meet her initial burden of production to show there exists no genuine dispute of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Where the nonmoving party would bear the burden of persuasion at trial, the movant can satisfy her burden of production by "pointing out . . . that there is an absence of evidence to support the nonmoving party's case." *Id.* at 602-03, 172 P.3d at 134

(internal quotation marks and footnote omitted). The nonmoving party then must “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact.” *Id.* at 603, 172 P.3d at 134 (footnote omitted). Under Missouri law, where a statute’s terms are not defined, “the application of the plain and ordinary meaning of a statute’s words is the north star of statutory interpretation.” *Newton v. Mo. Dep’t of Corr.*, 572 S.W.3d 531, 538 (Mo. Ct. App. 2019) (internal quotation marks omitted).

*The special dividend does not constitute trust principal under Mo. Rev. Stat. 469.423(3)(2) because it was not distributed as part of a series of related distributions in exchange for the trust’s interest in Ash Grove*

Sharon argues the special dividend was part of a series of distributions made in exchange for the trust’s interest in Ash Grove and was thus principal. She explains that Ash Grove’s press release stated that receipt of the special dividend was contingent upon the completion of the merger and that shareholders would receive information “regarding the process for surrendering stock certificates and receiving payment of the merger consideration and special dividend.” Additionally, Ash Grove’s “Notice of Written Consent and Appraisal Rights and Information Statement” (information statement) stated that “[b]ecause of the relationship between the [special dividend] and the merger, the Company intend[ed] to treat the [special dividend] as additional cash consideration in the merger.” Sharon avers that the district court erred because it relied on the special dividend being paid out of Ash Grove’s excess cash on hand rather than by CRH—a legal basis not supported by Mo. Rev. Stat. § 469.423.

Lori counters that the special dividend was separate from, and paid in addition to, the merger consideration whereby the trust surrendered

its shares of Ash Grove stock. She argues that neither the temporal relationship between the special dividend and the merger, nor the fact that payment of the special dividend was contingent upon the merger, mean that the special dividend was paid in exchange for the trust's interest in Ash Grove. Finally, Lori argues that Ash Grove made the statement about the character of the special dividend for federal income tax purposes and therefore the statement is irrelevant to whether the special dividend is trust accounting income or trust accounting principal under Mo. Rev. Stat. § 469.423.<sup>5</sup>

Here, it is undisputed that the special dividend constituted “money received from an entity” under Mo. Rev. Stat. § 469.423. Because money received from an entity must generally be allocated as trust accounting income, Mo. Rev. Stat. § 469.423(2), Lori met her initial summary judgment burden by pointing out that there was an absence of evidence that the special dividend fell within one of Mo. Rev. Stat. § 469.423(3)'s mandatory exceptions, *see Cuzze*, 123 Nev. at 602-03, 172 P.3d

---

<sup>5</sup>Lori also argues that the district court's ruling is bolstered by the “Massachusetts Rule” which Missouri followed at common law. The Massachusetts Rule provides that “all cash dividends are income and all stock dividends are principal.” *Coates v. Coates*, 304 S.W.2d 874, 876 (Mo. 1957). However, we decline to consider Lori's argument because Mo. Rev. Stat. § 469.423 abrogates the Massachusetts rule by implication. *See Mika v. Cent. Bank of Kan. City*, 112 S.W.3d 82, 90 (Mo. Ct. App. 2003) (explaining that the common law remains valid unless a statute clearly abrogates it either expressly or by implication). For example, Mo. Rev. Stat. § 469.423(3)(3) would require a cash dividend to be allocated to principal if it was distributed in partial or total liquidation of the entity distributing it. *See Dividend*, *Black's Law Dictionary* (11th ed. 2019) (defining a liquidation dividend as “[a] dividend paid to a dissolving corporation's shareholders, [usually] from the capital of the corporation, upon the decision to suspend all or part of its business operations”).

at 134. The burden then shifted to Sharon to demonstrate a genuine dispute of material fact as to the nature of the special dividend. *See id.* at 603, 172 P.3d at 134.

Under Mo. Rev. Stat. § 469.423(3)(2), money received from an entity “in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity” must be allocated as trust principal. However, the evidence on which Sharon relies does not create a genuine dispute of material fact under Mo. Rev. Stat. § 469.423(3)(2). Although Ash Grove did state that the special dividend was contingent upon the merger closing, such contingency does not bring the special dividend within the plain and ordinary meaning of Mo. Rev. Stat. § 469.423(3)(2)’s “in exchange for part or all of a trust’s interest in the entity” language. Rather, the trust was entitled to the special dividend by virtue of its status as a shareholder in Ash Grove. *See Dividend, Black’s Law Dictionary* (11th ed. 2019) (“A portion of a company’s earning or profits distributed pro rata to its shareholders, [usually] in the form of cash or additional shares.”).

Sharon appears to rely on Mo. Rev. Stat. § 469.423(3)(2)’s “[m]oney received in one distribution or a series of related distributions” language for the proposition that if a series of distributions are related, each is made in exchange for a trust’s interest in an entity. However, the operative language of the statute is whether the distribution(s) were made in exchange for a trust’s interest in an entity—not whether multiple distributions were simply related. *See* Mo. Rev. Stat. § 469.423(3)(2). In other words, just because two distributions are related to one another does not necessarily mean that both are made in exchange for a trust’s interest in an entity. Ash Grove repeatedly stated that the special dividend was being paid “in addition to” the merger consideration—once in the proxy



statement and three times in the information statement. Accordingly, while the special dividend and the merger consideration were related, only the merger consideration was paid “in exchange for” the trust’s interest in Ash Grove. *See id.*

Additionally, Ash Grove’s statement that the special dividend was an “additional cash consideration in the merger” expressly related to characterizing the special dividend for federal income tax purposes. Sharon cites no relevant authority and does not cogently argue why Ash Grove’s characterization of the special dividend for the purposes of federal income tax has any bearing on the characterization of the special dividend under Mo. Rev. Stat. § 469.423. We therefore need not consider this argument. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority).

Regardless, we are unpersuaded by the argument on its merits. Mo. Rev. Stat. § 469.423(3)(4) provides that money received from certain entities may be allocated as trust accounting principal “if the money distributed is a capital gain dividend for federal income tax purposes.” The Missouri legislature could have included a similar provision relating to the way an entity characterizes a distribution for the purposes of federal income tax, but it did not. Because such language does not appear in Mo. Rev. Stat. § 469.423, we conclude the legislature did not intend for Ash Grove’s characterization of the special dividend for federal tax purposes to have any bearing on the trust’s allocation of the dividend to income or principal. *See Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 667 (Mo. 2010) (providing

that the Missouri supreme court “enforces statutes as they are written, not as they might have been written”).

Considering the forgoing, Sharon fails to demonstrate a genuine dispute of material fact as to whether the special dividend was distributed in exchange for the trust’s interest in Ash Grove. Accordingly, the district court did not err in determining that the special dividend did not constitute trust principal under Mo. Rev. Stat. § 469.423(2)(3).

*The special dividend does not constitute trust principal under Mo. Rev. Stat. § 469.423(3)(3) because it was not distributed in total or partial liquidation of Ash Grove*

Sharon next argues that because the special dividend was made pursuant to a merger, it was distributed in total or partial liquidation of Ash Grove, and therefore constituted trust principal. Lori counters that, under Missouri law, liquidation means “the winding-up of a business.” She explains that Ash Grove was simply made a subsidiary of CRH and still exists. Accordingly, she argues, the special dividend could not have been made in liquidation of Ash Grove.

Under Mo. Rev. Stat. § 469.423(3)(3) money received in total or partial liquidation of an entity must be allocated as trust principal. Money is received in partial liquidation only if either (1) the entity indicates that the distribution is made in partial liquidation or (2) the money received “is greater than twenty percent of the entity’s gross assets.” Mo. Rev. Stat. § 469.423(4). Sharon points to no evidence in the record implicating either of those situations, nor have we located any. Therefore, the special dividend could only be allocated as trust accounting principal if it was a total liquidation of Ash Grove. *See* Mo. Rev. Stat. § 469.423(3)(3).

Liquidation of a corporation is generally defined as “the winding up of the affairs of the corporation by reducing its assets, paying

its debts, and apportioning the profit or loss.” See 19 Am. Jur. 2d *Corporations* § 2334 (2022 update); see also *Manson v. Shepherd*, 116 Cal. Rptr. 3d 1, 14-15 (Ct. App. 2010) (explaining, in interpreting identical language under California’s Uniform Principal and Income Act, that “[l]iquidation of a corporation is defined as the operation of winding up its affairs by realizing its assets, paying its debts, and appropriating the amount of profit or loss.” (internal quotation marks and footnote omitted)). For its part, the Missouri Court of Appeals has applied a similar definition to “winding-up” and explained that winding up is also known as liquidation. *McCormick v. Cupp*, 106 S.W.3d 563, 568 (Mo. Ct. App. 2003).

Sharon invites us to rely on a passage from Fletcher Cyclopedia Corporations to conclude that the special dividend constitutes trust principal because the dividend was paid pursuant to a merger or plan whereby Ash Grove’s assets were acquired by CRH. However, the passage from Fletcher on which she relies does not discuss liquidation at all. It simply states that some states that have enacted language similar to the Uniform Principal and Income Act, as Missouri has, also have statutes that provide that distributions made pursuant to a merger are trust accounting principal. 12 William Meade Fletcher et. al., *Fletcher Cyclopedia of the Law of Private Corps.* § 5402 (2020). Sharon points to no Missouri statute that provides for distributions made pursuant to a merger to be allocated as trust accounting principal, nor have we located any.

Here, Sharon does not show that Ash Grove was winding up its business affairs or that the special dividend was paid to settle its debts. Therefore, Sharon has not demonstrated a genuine dispute of material fact as to whether the special dividend was paid in total liquidation of Ash Grove. Accordingly, the district court did not err in determining that the

special dividend did not constitute trust principal under Mo. Rev. Stat. § 469.423(3)(3).

*Mo. Rev. Stat. § 469.423(6) does not create a permissive exception by which the special dividend may be allocated as trust principal*

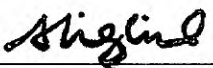
Lastly, Sharon points to Mo. Rev. Stat. § 469.423(6) which allows a trustee to “rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity’s board of directors . . . .” She argues this subsection permits the trust to allocate the special dividend as trust accounting principal because Ash Grove “repeatedly and consistently” described the special dividend as a return of capital. She argues that if an entity’s characterization of a distribution has no bearing on the trust’s characterization of it, then Mo. Rev. Stat. § 469.423(6) is rendered superfluous. Lori counters that Mo. Rev. Stat. § 469.423(6) does not create an additional basis on which a trust may allocate money received from an entity as trust accounting principal. Rather, Lori argues Mo. Rev. Stat. § 469.423(6) is a safe harbor provision which “provides [trustees] protection from having to investigate all elements of a business’ finances to determine the source of [a distribution’s] funds.”

The plain language of Mo. Rev. Stat. § 469.423(6) does not provide for the allocation of a distribution as trust principal based on a statement made by an entity’s board of directors. Mo. Rev. Stat. § 469.423(6) does not address distribution allocations. No language in the statute indicates that Mo. Rev. Stat. § 469.423(6) was intended as a permissive exception to the general rule that money received from an entity is trust accounting income. *See* Mo. Rev. Stat. § 469.423(6). And Mo. Rev. Stat. § 469.423(6) appears within the statute after the exceptions to the general rule are listed. *See* Mo. Rev. Stat. § 469.423; *see also State v. Payne,*

250 S.W.3d 815, 819-21 (Mo. Ct. App. 2008) (interpreting a statute based on the ordinary meaning of its words and its structure). We therefore decline to adopt Sharon's reading of the statute. See *Li Lin v. Ellis*, 594 S.W.3d 238, 242 (Mo. 2020) ("[The Supreme Court of Missouri] will not add words to a statute under the auspice of statutory construction.") (quoting *Macon Cty. Emergency Servs. Bd. v. Macon Cty. Comm'n*, 485 S.W.3d 353, 355 (Mo. 2016); *Turner*, 318 S.W.3d at 667. Accordingly, we affirm the district court's order granting in part and denying in part Lori Sunderland's motion for partial summary judgment and denying Sharon Watt's cross-motion for partial summary judgment.

It is so ORDERED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Herndon

cc: Hon. Gloria Sturman, District Judge  
Eleissa C. Lavelle, Settlement Judge  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Bryan Cave Leighton Paisner LLP/Kansas City MO  
Solomon Dwiggin & Freer, Ltd.  
Eighth District Court Clerk

---

<sup>6</sup>To the extent the parties' additional arguments are not addressed herein, we have reviewed those arguments and conclude they do not warrant a different result.