

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: TRUST ESTABLISHED UNDER	:	IN THE SUPERIOR COURT OF
AGREEMENT OF SARAH MELLON	:	PENNSYLVANIA
SCAIFE, DECEASED, DATED MAY 9,	:	
1963	:	
	:	
	:	
APPEAL OF: DAVID ZYWIEC	:	
	:	
	:	No. 866 WDA 2025

Appeal from the Order Entered June 19, 2025
In the Court of Common Pleas of Allegheny County Orphans' Court at
No(s): 02-20-2506

BEFORE: McLAUGHLIN, J., KING, J., and BENDER, P.J.E.

MEMORANDUM BY KING, J.:

FILED: SEPTEMBER 23, 2026

Appellant, David Zywiec, personal representative of the estate of Jennie K. Scaife, appeals from the order entered in the Allegheny County Court of Common Pleas, Orphans' Court, granting partial summary judgment in favor of Appellees, PNC Bank, N.A. ("PNC") and the individual trustees ("Trustees") of the trust established under agreement of Sarah Mellon Scaife ("Settlor"), deceased, dated May 9, 1963.¹ We affirm.

The relevant facts and procedural history of this appeal are as follows.

In April of 1984, the 1963 Trust—which provided an initial charitable period of 21 years—began distributing its net

¹ In this case, the Orphans' Court's decision depended upon its interpretation of a trust agreement. Therefore, Appellant has established that this is an interlocutory appeal as of right. **See** Pa.R.A.P. 342(a)(4) (explaining: "An appeal may be taken as of right from the following orders of the Orphans' Court Division: ... An order interpreting, modifying, reforming or terminating a trust").

income to "Income Beneficiaries," defined as the grandchildren of Sarah Scaife, spouses of grandchildren, issue of grandchildren, spouses of such issue, and, in the Trustees' discretion, "Charity," with a capital "C." Sarah Scaife was to have just two grandchildren, Jennie and David N., who are the sole income beneficiaries of the 1963 Trust. Jennie remained unmarried and child-free until her death on November 29, 2018. David N. married in 1997 and had two children, David G. Scaife ("David G.") and Sarah G. Scaife ("Sarah G.").

Upon the death of their father, Richard Mellon Scaife ("Richard"), in 2014, Jennie and David became aware that their grandmother, Sarah Scaife,² had also created a Trust for the benefit of Richard ("1935 Trust"). Jennie and David also learned that they were residual beneficiaries of the 1935 Trust, and that all principal had been distributed by the Trustees to Richard during his lifetime. Jennie and David initiated litigation in Orphans' Court (the "1935 Trust Litigation"), alleging that the trustees of the 1935 Trust unlawfully distributed the entire principal to Richard. The parties reached a settlement in that case in December of 2020, shortly after the present litigation was initiated.

² Unless otherwise noted in this Opinion, any mentions of "Sarah Scaife" refer to the Sarah Scaife who created the 1963 Trust, not Sarah G. Scaife, the daughter of David N. Scaife.

In 1994, when PNC became Corporate Trustee of the 1963 Trust, the value of the Trust principal was approximately \$283 million. At the end of the accounting period (December 31, 2019), the Trust's market value reached nearly \$600 million.

Between 1994 and 2019, Trustees distributed over \$357 million of principal and over \$113 million in income to the Income Beneficiaries. The Trustees split these distributions evenly between Jennie and David N. until Jennie's death in November 2018, thus distributing approximately \$235 million to Jennie before her death.

In November 2004, Kirkpatrick & Lockhart,³ on behalf of Jennie and David N., requested that the Trustees increase

the amount of distributions in correspondence acknowledging "separate trusts" were "possible," but had not been created.

³ Now K&L Gates.

Beginning in 2013, [Appellant] acted as Jennie's representative with respect to "all matters related to" the 1963 Trust. Before acting as Jennie's representative for the 1963 Trust, [Appellant] administered trusts, which included working as a trust officer for a large financial institution.

In 2017, one of Jennie's Estate's lawyers in this case, Jay Freiberg ("Mr. Freiberg") began representing Jennie "in all matters related to" the 1963 Trust. Jennie retained Mr. Freiberg as counsel in 2015. [Appellant] and Mr. Freiberg attended portions of Trustees' meetings regarding administration of the 1963 Trust as Jennie's representatives.

Between 2005 and 2017, PNC communicated with Jennie and her representatives through correspondence regarding various issues related to the 1963 Trust. These communications between PNC, Jennie, and her representatives included requests that she receive increased distributions, that she and David N. be authorized to appoint a successor trustee, and that she receive information about PNC's investment role. PNC issued periodic written statements to Jennie and David N., or their representatives, during the accounting period reporting on the 1963 Trust's assets and distributions to them. None of these statements, financial reports, or correspondence referenced the existence of a separate trust for Jennie's benefit.

Jennie executed her Last Will and Testament ("Will") on October 22, 2015, witnessed by three individuals, including Mr. Freiberg. In Article First of the Will, Jennie references "any power of appointment that may hereafter be given to me by the Trustees upon the creation of a separate trust for my benefit pursuant to Article V of the [1963 Trust]." The same day Jennie executed her Will, she executed a Durable

Power of Attorney in favor of [Appellant²].

In March of 2017, Jennie and David N. considered requesting that Trustees terminate the 1963 Trust and distribute its assets to them. On March 7 and 8, 2017, [Appellant] (on behalf of Jennie) and lawyer Sanford Ferguson ("Mr. Ferguson") (on behalf of David N.) exchanged talking points for an upcoming Trustees' meeting for March 31, 2017. The draft talking points requested termination of the 1963 Trust and proposed distributing all assets "equally" from the 1963 Trust.

[Appellant] and Mr. Ferguson proposed terminating the 1963 Trust at the March 31, 2017 Trustees' Meeting. In an April 10, 2017 email, Mr. Ferguson told Mr. Freiberg that David N. "has decided to postpone exploring further the termination of the 1963 Trust."

On April 18, 2017, Jennie and David N., through their representatives, informed PNC that they were not requesting that the 1963 Trust be terminated.

On September 10, 2018, Mr. Freiberg and PNC representatives discussed "Tax Consequences of Trust Partition." Jennie died on November 29, 2018, less than three months after this discussion. On March 1, 2019, Michael Posner ("Mr. Posner"), counsel for the Estate, sent a letter to PNC directing Trustees to "pay to the Estate of Jennie K. Scaife" an unquantified "beneficial share" of the 1963 Trust. PNC responded on March 18, 2019 that neither Jennie nor her Estate had the authority to appoint any assets.

The Estate, via Mr. Posner, responded in a June 4, 2019 letter and asserted that the Trustees would have breached their fiduciary duties by not creating a separate trust for Jennie to have a power of appointment, and that the Trustees had, "in law and in fact," created a separate trust.

In February 2020, 15 months after Jennie's death,

² Additionally, Jennie's will named Appellant as her personal representative. (**See** Will, dated 10/22/15, at Article Eighth, ¶(A)).

[Appellant] created the Charitable Foundation that carries her name. On April 27, 2020, the Charitable Foundation and the Estate sued the Trustees in the United States District Court for the Western District of Pennsylvania alleging the Trustees breached their fiduciary duty to Jennie during her lifetime by failing to create a separate trust for Jennie comprising half of the 1963 Trust's assets. Among the assertions in the Estate's federal court complaint were that Jennie intended to give "her half" of the 1963 Trust to a charity of Jennie's choosing⁴ and that because Jennie and David N. were estranged from each other as well as their father, "the last thing Jennie would have wanted" was for "her share" of the Trust to go to her brother and his children.

⁴ Causes that Jennie supported include: services for women who have been victims of domestic violence, animal welfare, and resources for individuals facing addiction. **See** jkscharitablefoundation.org.

On September 21, 2020, the Estate filed objections to both the Accounting and the Petition for Adjudication. On September 25, 2020, Judge Lenihan filed a Report and Recommendation directing that this litigation proceed in Orphans' Court in Allegheny County rather than in federal court.

(Orphans' Court Opinion, filed 6/23/25, at 2-6) (internal citations omitted).

On August 15, 2022, PNC filed a motion for partial summary judgment. The Estate filed a memorandum in opposition to PNC's motion on October 31, 2022. The original jurist assigned to this case denied PNC's motion by order and opinion filed September 3, 2024. The original jurist subsequently retired, and the case was reassigned. Thereafter, PNC filed a motion for reconsideration, which the Trustees joined. On November 4, 2024, the court conducted oral argument and permitted reconsideration. Following additional briefing by the parties, the court granted the motion for partial summary

judgment on June 19, 2025.

On July 18, 2025, Appellant, as personal representative of Jennie's estate, timely filed a notice of appeal. The court ordered Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal on July 29, 2025. Appellant timely filed a Rule 1925(b) statement on August 18, 2025.

Appellant now raises five issues for this Court's review:

Did the Orphans' Court erroneously conclude that Jennie's exercise of the power of appointment in favor of the Scaife Family Foundation, a "Charity" that was "selected by the Trustees," was ineffective?^[3]

Did the Orphans' Court erroneously conclude that the trustees of a Separate Trust could not select each of Jennie's Foundations as a "Charity" after her death, when the definition of Charity allows for the selection of a charity at any time and from time to time?

Did the Orphans' Court improperly alter the terms of the Trust Agreement by holding that Jennie could only exercise her power of appointment with the "prior approval" of the Trustees, when the Trust Agreement does not mention any such requirement?

Did the Orphans' Court commit reversible error when it failed to determine that the Trust Agreement—including with respect to the definition of "Charity" (Trust § 1.02) and

³ In addition to the Charitable Foundation created in her name, Jennie appointed her share of the 1963 Trust to "charitable foundations created by me during my life." (Will at Article First, ¶(B)(II)). The articles of incorporation for the Scaife Family Foundation were executed on November 22, 1982, when Jennie was 19 years old. (**See** Appellee's Brief at 40). Although the Scaife Family Foundation is not mentioned by name in the relevant provision of Jennie's will, Appellant asserts that it was "the only foundation Jennie created in her lifetime." (Appellant's Brief at 9).

the exercise of the power of appointment (Trust § 5.03(b))—was not clearly in favor of Jennie’s interpretation or, at minimum, was ambiguous?

Did the Orphans’ Court err in granting partial summary judgment without allowing the Estate to develop the factual record through the completion of discovery, including the taking of depositions, concerning the meaning of the relevant terms of the Trust Agreement?

(Appellant’s Brief at 5-6).

Our role in cases involving a grant of summary judgment is as follows:

On appellate review, an appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion. But the issue as to whether there are no genuine issues as to any material fact presents a question of law, and therefore, on that question our standard of review is *de novo*. This means we need not defer to the determinations made by the lower tribunals. To the extent that this Court must resolve a question of law, we shall review the grant of summary judgment in the context of the entire record.

Valley National Bank v. Marchiano, 221 A.3d 1220, 1222 (Pa.Super. 2019) (quoting **Summers v. Certaineed Corp.**, 606 Pa. 294, 307, 997 A.2d 1152, 1159 (2010)). Our scope of review is plenary. **Pappas v. Asbel**, 564 Pa. 407, 418, 768 A.2d 1089, 1095 (2001), *cert. denied*, 536 U.S. 938, 122 S.Ct. 2618, 153 L.Ed.2d 802 (2002).

In reviewing a grant of summary judgment,

[w]e apply the same standard as the trial court, reviewing all the evidence of record to determine whether there exists a genuine issue of material fact. We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that

the moving party is entitled to a judgment as a matter of law will summary judgment be entered. All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party.

Motions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of [a] cause of action. Summary judgment is proper if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. In other words, whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, which could be established by additional discovery or expert report and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Thus, a record that supports summary judgment either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.

Upon appellate review, we are not bound by the trial court's conclusions of law, but may reach our own conclusions.

Chenot v. A.P. Green Services, Inc., 895 A.2d 55, 61 (Pa.Super. 2006)
(internal citations and quotation marks omitted).

Appellant's first four issues are related, and we address them together. Appellant insists that Jennie properly exercised her power to appoint trust assets through her will. Nevertheless, Appellant asserts that the Orphans' Court improperly interpreted the 1963 Trust Agreement to limit Jennie's power of appointment. Appellant contends that the court incorrectly incorporated the definition of "Charity" from Section 1.02 of the agreement into Section

5.03(b), which governed a beneficiary's power of appointment.⁴ While the court interpreted "Charity" as used in Section 5.03(b) to have the same meaning as the defined term in Section 1.02, Appellant complains that such a reading is contrary to Settlor's intent and renders the Trust Agreement ambiguous. Specifically, Appellant claims that "[t]he phrases 'shall be selected by the Trustees' and 'at any time and from time to time' in Section 1.02 cannot be reconciled with the mechanics of a testamentary power of appointment." (*Id.* at 38).

Appellant also argues that Jennie's appointment in favor of her chosen charities—the Scaife Family Foundation and the Charitable Foundation created in her name—was effective because she included a provision for such appointment in her will. Appellant avers that an appointment to the Scaife Family Foundation was valid under the 1963 Trust Agreement because the

⁴ As we will discuss *infra*, Section 1.02 defines "Charity," as "such public, charitable, religious, educational and scientific organizations, trusts, foundations or purposes as shall be selected by the Trustees at any time and from time to time[.]" (Trust Agreement, dated 5/9/63, at 2). Section 5.03(b) outlines a beneficiary's power of appointment in a separate trust:

In the event that any Separate Trust shall be in existence at the death of the Separate Beneficiary for whom such trust is created, he or she shall have the power by will to appoint the whole or any part of the then existing Trust Estate of such Separate Trust to any one or more of his or her Spouse, his or her Issue, the Spouse of his or her Issue **and to Charity.**

(Trust Agreement at 11) (emphasis added).

Trustees had “selected” it for purposes of Section 1.02; the 1963 Trust was the primary source of funding for the Scaife Family Foundation throughout the 1980s and 1990s. (*Id.* at 42). Even if Jennie’s attempted appointment to the Charitable Foundation is deemed invalid, Appellant maintains that Jennie’s appointment to the Scaife Family Foundation must be considered separately.

Further, Appellant argues that the Orphans’ Court “read new words into the Trust Agreement” by finding that a beneficiary exercising their power of appointment must seek the “prior approval” of the Trustees. (*Id.* at 34). Appellant contends that “[n]othing in Sections 1.02 or 5.03(b) limits the Trustees’ power of selection ‘at any time’ to only upon a request for ‘prior approval.’” (*Id.* at 46). Appellant posits that “the only reason why the Trustees could not select Jennie’s Foundations as Charities after her death was because of their breach of fiduciary duty in failing to create Separate Trusts.” (*Id.*)

Regarding Settlor’s intent, Appellant opines that the “plain language and overall structure of Section 5.03(b) clearly expresses that the Settlor intended to—and did—grant the power of appointment to Jennie, not to the Trustees.” (*Id.* at 51). Appellant relies on various documents uncovered during discovery, which purportedly “confirm that the Settlor intended to give her granddaughter Jennie the power to select the charity” for the appointment of trust assets. (*Id.* at 60). Even if this Court disagrees with Appellant’s proffered interpretations of the Trust Agreement, he submits that, “at a

minimum, the Trust is ambiguous as to the power of appointment.” (***Id.*** at 64). Appellant maintains that such ambiguity provides further support for the preclusion of partial summary judgment. Appellant concludes that this Court must reverse the grant of partial summary judgment entered in favor of Appellees. We disagree.

“It is still hornbook law that the pole star in every trust ... is the settlor’s ... intent and that intent must prevail.” ***Estate of Pew***, 655 A.2d 521, 533 (Pa.Super. 1994).

A settlor’s intent is to be determined from all the language within the four corners of the trust instrument, the scheme of distribution and the circumstances surrounding the execution of the instrument. Only if a settlor’s intent cannot be ascertained with reasonable certainty will a court apply canons of construction, to attribute a reasonable intention to the settlor in the circumstances.

Farmers Trust Co. v. Bashore, 498 Pa. 146, 150, 445 A.2d 492, 494 (1982).

We do not resort to other canons of trust construction where the language of the trust instrument is clear and articulates the settlor’s intent. ***In re Estate of Loucks***, 148 A.3d 780, 782 (Pa.Super. 2016). “A trust instrument that is unambiguous on a matter may not be superseded by extrinsic evidence of the settlor’s intent.” ***In re Estate of Field***, 953 A.2d 1281, 1288 (Pa.Super. 2008) (quoting ***Scalfaro v. Rudloff***, 594 Pa. 210, 216, 934 A.2d 1254, 1257 (2007)).

When weighing a beneficiary’s wishes against those of a settlor, this Court has held:

The estate of the beneficiary is wholly equitable. It can be enjoyed and controlled by him only in the manner and to the extent fixed by the settlor. This enjoyment and control may be limited to the income during his life, or may embrace a power of appointment, special or general, by will; but such power will not operate to enlarge his interest or control beyond that expressly defined by the settlor.

Patrick v. Smith, 2 Pa.Super. 113, 118 (1896). “It is the trust document, not the [beneficiary’s] preference, that controls the terms of the trust.” **In re Trust B Under Agreement of Richard H. Wells Dated September 28, 1956**, ___ Pa. ___, ___, 311 A.3d 1057, 1085 (2024).

Additionally, “a trust involves property transferred to one person, the trustee, to manage for the benefit of another, the beneficiary.” **Trust Under Will of Augustus T. Ashton, Deceased Dated January 20, 1950**, 669 Pa. 25, 39, 260 A.3d 81, 90 (2021). “Because the trustee stands in a fiduciary relationship to the beneficiary, the trustee is obligated to manage the property in the interests of the beneficiary, and not himself.” **Id.** “In the case of multiple beneficiaries the trustee is under a duty to deal impartially with them.” **Snyder v. Com., Dept. of Public Welfare**, 528 Pa. 491, 498 n.7, 598 A.2d 1283, 1287 n.7 (1991).

Instantly, the Trust Agreement provides definitions for various terms used throughout the document. The defined terms are preceded by a disclaimer, “The following terms, unless context clearly indicates otherwise, shall have the following respective meanings[.]” (Trust Agreement at 2). The relevant definitions are as follows.

Section 1.02. "Charity" shall mean such public, charitable, religious, educational and scientific organizations, trusts, foundations or purposes as shall be selected by the Trustees at any time and from time to time, but only if any such organization, trust, foundation or purpose shall at the particular time be of such character that it shall be exempt from federal income taxes and that gifts to it shall be deductible for federal income, estate and gift tax purposes under then existing internal revenue laws.

* * *

Section 1.04. "Separate Trust" shall mean each additional trust created pursuant to and in accordance with the provisions of Article V hereof. Each such trust upon being so created shall be known and designated by the name of the Income Beneficiary for whose benefit such trust is created.

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* * *

Section 1.05. "Separate Beneficiary" shall mean, with respect to any Separate Trust, the Income Beneficiary for whose benefit such Separate Trust has been created.

(Trust Agreement at 2-3).⁵

Additionally, the Trust Agreement details how a separate trust may be created.

⁵ The images of the Trust Agreement come from the version that is appended as Exhibit 14 to Appellant's motion in opposition to the individual trustees' motion to compel production of Jennie's tax returns, filed on March 19, 2021.

ARTICLE V
Separate Trusts

*6 kids could be
split w/ petition
from either Bone!*

Section 5.01. Creation. After the end of the Charitable Period, at any time and from time to time the Independent Trustees may create a Separate Trust or Trusts for any individual Income Beneficiary or Beneficiaries consisting of all or any part of the Trust Estate, but no one Separate Trust shall be for the benefit of more than one Income Beneficiary of the same generation and his or her Spouse and Issue, and such Income Beneficiary shall be the Separate Beneficiary thereof. In the administration and management of any Separate Trust the Trustees (or Independent Trustees or Corporate Trustee, as the case may be) shall have and may exercise all the powers, authorities and discretions vested in them by law or herein given to them with respect to the administration and management of the Trust.

(**Id.** at 9).

Within Article V, the Trust Agreement defines how and when a "Separate Beneficiary" might exercise their power of appointment.

(b) Power of Appointment. In the event that any Separate Trust shall be in existence at the death of the Separate Beneficiary for whom such trust is created, he or she shall have the power by will to appoint the whole or any part of the then existing Trust Estate of such Separate Trust to any one or more of his or her Spouse, his or her Issue, the Spouses of his or her Issue and to Charity. Such power of appointment and the exercise thereof shall be subject to the following terms, conditions and limitations:

(**Id.** at 11).

Finally, the Trust Agreement details the process of terminating a separate trust.

(c) Final Disposition. Each Separate Trust shall terminate (1) upon the death of the Separate Beneficiary or (2) twenty-one (21) years after the death of the survivor of the persons named in clause (b) of Article III hereof, whichever shall be earlier. At that time, the Trust Estate thereof, if any, as shall then be held by the Trustees (other than any part of the Trust Estate of the Trust with respect to which the power of appointment provided for in subsection (b) of this Section 5.03 has been exercised) shall be distributed as follows (without taking into account any discretionary distribution of income pursuant to Section 5.02, any discretionary distribution of corpus made pursuant to subsection (a) of this Section 5.03 or any partial exercise of the power of appointment provided for in subsection (b) of this Section 5.03):

(i) In the event the Separate Beneficiary for whom the Separate Trust is named shall be living, to such Separate Beneficiary;

(ii) In the event such Separate Beneficiary shall be deceased and there shall be Issue of such Separate Beneficiary living at the termination of the Separate Trust, to such Issue, per stirpes;

(iii) In the event that there shall then be living none of the Issue of the Separate Beneficiary, to the Trust, to be held by the Trustees as part of the corpus thereof and as such subject to all the terms and conditions hereof relating thereto, if the Trust is still in existence, and if the Trust shall not be in existence, to the Issue of the Donor then living, per stirpes; and

(iv) In the event that such Trust Estate shall not be distributable in accordance with the prior provisions of this subsection (c) to Charity.

(***Id.*** at 13-14).

Relying on these terms, Jennie's will attempted to exercise a power of appointment that would have been valid if the Trustees had created a separate trust:

B. I. I refer to that certain trust, created by Trust Agreement dated May 9, 1963, by and between Sarah Mellon Scaife, as Donor, Cordelia Scaife May, James M. Bovard, Alfred M. Hunt, Charles E. Ford and Richard M. Scaife, as Individual Trustees and Mellon National Bank and Trust Company (now BNY Mellon), as Corporate Trustee (the "Grandchildren's Trust Agreement"), and to any power of appointment that may hereafter be given to me by the Trustees upon the creation of a separate trust for my benefit pursuant to Section 5.01 of Article V of the Grandchild's Trust Agreement. (Hereinafter, (a) all of the property with respect to which I can exercise said power of

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appointment is called the "Grandchildren's Trust Appointive Property" and (b) the trustees who shall be acting under the Grandchildren's Trust Agreement at the time of my death are called the "Grandchildren's Trustees".)

II. I direct that, upon my death, the Grandchildren's Trustees shall pay all of the Grandchildren's Trust Appointive Property to such one or more (a) charitable foundations created by me during my life and (b) a charitable foundation that my Personal Representative shall, on or before the second anniversary of my death, establish and secure qualification as a Charity (which term, as well as certain other terms also used herein, is defined in Article TENTH hereof), and if to more than one thereof, in such proportions as my Personal Representative shall determine

(Will at Article First, ¶(B)(I)-(II)).

In reviewing the Trust Agreement and Jennie's will, the Orphans' Court determined that "Jennie's attempted exercise of a power of appointment to the Charitable Foundation—or any other of Jennie's Causes—was invalid. The plain and unambiguous language of the 1963 Trust Agreement compels this result." (Orphans' Court Opinion at 15). The court added:

[T]he 1963 Trust Agreement's definition of Charity—with a capital "C"—is plain and unambiguous and cannot be fairly interpreted to include any of Jennie's Causes. At no point in the 1963 Trust Agreement does the term "charity"—with a lowercase "c"—appear. Thus, the scope of "Charity," as defined in the 1963 Trust Agreement, is limited to organizations, trusts, foundations or purposes that the Trustees select, not entities that beneficiaries—or anyone else—select.

(***Id.*** at 17).

Regarding Appellant's argument that Settlor's intent confers a different meaning to the term "Charity" than what is defined Article I of the Trust Agreement, the court found:

The plain language of the 1963 Trust Agreement—the most

obvious vehicle for Sarah Scaife's intent—specifically defines Charity—with a capital “C”—as “such public, charitable, religious, educational and scientific organizations, trusts, foundations, or purposes **as shall be selected by the Trustees** at any time and from time to time[.]’ The phrase “as shall be selected by the Trustees” indicates that in order to be a valid charitable entity for appointment purposes, that entity **must** be selected by the Trustees. As both sides acknowledge, the Charitable Foundation was not selected by the Trustees, and the Estate does not provide any other expression of Sarah Scaife's intent to suggest otherwise.

(Orphans' Court Opinion at 20) (record citation omitted) (emphasis in original).

The court also disagreed with Appellant's contention that Jennie's appointment was a valid exercise of the powers granted by Section 5.03(b):

With respect to Section 5.03(b), the plain language of this provision notes that it only applies “in the event that any Separate Trust shall be in existence at the death of the Separate Beneficiary for whom such a trust is created.” Here, at the time of Jennie's death, there was no separate trust in existence for her benefit. The Estate's invocation of Section 5.03(b) is not applicable.

(***Id.*** at 18-19) (record citation omitted).

Finally, the court found that Jennie's estate would not have been better off, even if the Trustees had created a separate trust:

The 1963 Trust Agreement states that if the power of appointment is not validly exercised, the separate trust's corpus shall be returned to the Trust. As a result, any assets held in a hypothetical separate trust at Jennie's death would have been returned to the Trust.

* * *

Here, even if the Trustees had a fiduciary duty to create a

separate trust for Jennie, there was no loss to the trust because Jennie's attempted appointment of Trust assets to the Charitable Foundation was invalid, and the assets would have been returned to the Trust.

(**Id.** at 21) (record citations omitted).⁶ Our review of the record reveals no errors in the court's conclusions.

On appeal, Appellant repeatedly complains that the court incorrectly interpreted the Trust Agreement by applying the definition of "Charity" from Section 1.02. We emphasize, however, that the Trust Agreement unambiguously states that the meanings provided in Article I are to be used "unless context **clearly indicates** otherwise." (Trust Agreement at 2) (emphasis added). The Trust Agreement uses the word "Charity" throughout the document. Such uses include specifications for how the Trustees should make income distributions "to Charity," final distributions upon the termination of the trust being made "to Charity," and income from separate trusts going to "Charity." (**Id.** at 5, 8, 9). The context of each of these uses does not clearly indicate a meaning other than the one conferred by Section 1.02. Though Appellant claims further discovery is required to determine the

⁶ On this point, Appellees note that "Jennie's attempted exercise of a power of appointment still was not exercised in favor of a member of the permitted class of appointees as established in the Trust Agreement." (Appellees' Brief at 14). "[I]dentifying unspecified foundations to receive Trust assets ... does not comply with the requirements of the Trust Agreement." (**Id.** at 19). Thus, we agree with Appellees' assertion that "the Trust Agreement provided a readily comprehensible roadmap for Jennie to validly exercise the power of appointment for charitable purposes. The insurmountable problem, however, is Jennie did not follow it despite the opportunity to do so." (**Id.** at 20).

meaning of “Charity,” an unambiguous matter may not be superseded by extrinsic evidence of Settlor’s intent. ***See Estate of Field, supra.***

In response to Appellant’s argument that Settlor intended to provide the beneficiaries with the power to choose a charity rather than the Trustees, we reiterate the language of the Trust Agreement stating that charities “shall be selected by the Trustees[.]” (Trust Agreement at 2). Further, the Trust Agreement included a “Conclusiveness of Actions of Trustees” provision stating: “The determination in good faith by the respective Trustees ... shall be final and conclusive for any and every purpose and shall not be subject to question or exception[.]” (Trust Agreement at 17). Where the language of the Trust Agreement so clearly states Settlor’s intent, we do not delay in applying the language as defined. ***See Farmers Trust Co., supra.*** Though Appellant argues that reading the Trust Agreement to the detriment of Jennie renders it ambiguous, it is Settlor’s intent, not a beneficiary or their estate, that guides this Court’s review. ***See Pew, supra; Patrick, supra.***

Appellant’s argument that Jennie validly exercised her appointment power is also belied by the Trust Agreement itself. The power of appointment is confined to Article V, which deals with Separate Trusts. Therein, the “Power of Appointment” provision begins: “In the event that any Separate Trust shall be in existence at the death of the Separate Beneficiary for whom such trust is created....” (Trust Agreement at 11) (emphasis added). As the Orphans’ Court noted, no separate trust existed for Jennie’s benefit at the time of her

death. (**See** Orphans' Court Opinion at 19). We will strictly adhere to the Trust Agreement's language on this point. Absent any separate trust, neither Jennie nor her Estate could exercise appointment power. For these reasons, we decline to disturb the Orphans' Court's interpretation of the Trust Agreement, and we agree that a genuine issue of material fact did not exist.

See Chenot, supra.

In his final issue, Appellant contends the Orphans' Court granted partial summary judgment in favor of Appellees "before a single deposition had been taken." (Appellant's Brief at 71). Appellant maintains that the court's decision to grant partial summary judgment before the completion of discovery "deprived the Estate of the opportunity to develop evidence bearing on the Settlor's intent—an issue central to any question of trust construction." (***Id.*** at 72). Appellant acknowledges the Orphans' Court's conclusion that "no discovery was necessary because courts only consider extrinsic evidence if the instrument's language is not clear on its face," and the Trust Agreement is clear on its face as to Settlor's intent. (***Id.*** at 72-73) (internal citations omitted). Appellant insists, however, the Trust Agreement was ambiguous, the court should have considered extrinsic evidence to aid in its interpretation of the document, and "the Estate was entitled to complete discovery to fully develop the facts and circumstances to properly place the Orphans' Court 'in the Donor's armchair.'" (***Id.*** at 74). Appellant concludes that the Orphans' Court committed an error of law by prematurely granting summary judgment

in favor of Appellees. We disagree.

Our Rules of Civil Procedure govern the filings of summary judgment motions as follows:

Rule 1035.2. Motion

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2.

“Although parties must be given reasonable time to complete discovery before a trial court entertains any motion for summary judgment, the party seeking discovery is under an obligation to seek discovery in a timely fashion.”

Reeves v. Middletown Athletic Ass’n, 866 A.2d 1115, 1124 (Pa.Super. 2004). “Where ample time for discovery has passed, the party seeking discovery (and opposing summary judgment) is under an obligation to show that the information sought was material to their case and that they proceeded with due diligence in their attempt to extend the discovery period.” **Id.**

Instantly, Appellees filed their motion for partial summary judgment on

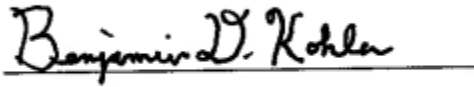
August 15, 2022, more than two years after the Charitable Foundation and Estate filed suit against the Trustees in federal court. During this period, the parties engaged in extensive litigation about discovery matters, which included Appellant's filing of multiple motions to compel further discovery responses from Appellees. Thus, even without additional discovery, the record for this appeal is already voluminous, and it provided the Orphans' Court with ample context for evaluating the circumstances behind Settlor's intent.

Absent more, we cannot say that additional information was material to Appellant's case, or that Appellant proceeded with due diligence in attempting to extend the discovery period. ***See id.*** Further, we continue to agree with the Orphans' Court's conclusion that the 1963 Trust Agreement is clear on its face as to Settlor's intent and power of appointment, such that "there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report." ***See*** Pa.R.C.P. 1035.2(1). Accordingly, Appellant is not entitled to relief on his final claim, and we affirm the order granting partial summary judgment in favor of Appellees.⁷

⁷ On May 12, 2026, Appellant filed an application for relief in this Court, which seeks to unseal the reproduced record. In his application, Appellant claims that Appellees cannot demonstrate a "good cause" for keeping the reproduced record under seal, especially where the certified record on appeal is publicly available. Appellees filed an answer with a counter-request for sanctions. Appellees maintained that Appellant's request to unseal "is intended only for purposes of harassment and to make an improper end run around sealing (*Footnote Continued Next Page*)

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/23/2026

determinations made” by the Orphans’ Court. (Answer, filed 5/28/26, at 2). Appellees add that this Court should sanction Appellant “and award Appellees their reasonable attorneys’ fees for the time spent having to respond to [Appellant’s] baseless application....” (*Id.* at 12). We subsequently permitted Appellant to file his opposition to the counter-request for sanctions. After reviewing these filings, as well as the certified and reproduced records, we deny Appellant’s application for relief. Likewise, we deny Appellees’ counter-request for sanctions.