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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1663-21

IN THE MATTER OF THE
ESTATE OF MARY L. WILSON,
deceased.

Argued May 8, 2023 – Decided July 25, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No. P-
000521-20.

Kenneth A. Porro argued the cause of behalf of
appellant Frank Ryan Wilson (Chasan Lamparello
Mallon & Cappuzzo, PC, attorneys; Kenneth A. Porro,
of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

Appellant Frank Ryan Wilson appeals from the January 25, 2022 order of the Chancery Division dismissing his verified complaint alleging breach of fiduciary duty with respect to the administration of a testamentary trust. He also appeals the court's: (1) September 30, 2021 case management order barring his

expert's report; (2) November 12, 2021 order denying his motion for reconsideration of the September 30, 2021 case management order; and (3) November 12, 2021 order denying his motion for partial summary judgment. We affirm.

I.

Mary L. Wilson (decedent) died in 2002. She had executed a will in which she left the residue and remainder of her estate in trust for appellant, her grandson, until he reached the age of twenty-five, at which time the assets of the trust were to transfer to him. At the time of decedent's death, appellant was six years old.

The will designated defendant Carole Dulany, who was decedent's sister and appellant's great-aunt, as executrix of decedent's estate and trustee of the trust. The will provided that no formal account was required of Dulany in her capacities as executrix and trustee and that with respect to her appointment as trustee, she "shall not be subject to the 'Prudent Man' Rules set forth in the N.J. Statute."

The primary assets of the estate which became part of the trust were five properties: (1) a two-family residence on 21st Street in North Bergen; (2) a three-family residence in Jersey City; (3) a one-family residence in Lyndhurst;

(4) a three-family residence on Kennedy Boulevard in North Bergen; and (5) real property in Atlantic City. The will left Dulany a life estate in the 21st Street property and provided she was responsible for local property taxes, maintenance, and expenses for that parcel during her life estate. The residuary of the life estate would pass to the trust. Dulany authorized the sale of the Atlantic City property in 2003. She used the proceeds of the sale to satisfy the mortgage on one of the other properties. The remaining parcels were not subject to a mortgage.¹

Dulany retained the services of James Belveduto to perform bookkeeping and tax return preparation on behalf of the trust. Belveduto prepared tax returns for the trust from 2003 to 2019.

Appellant first learned of the trust and the assets it contained from Dulany when he was approximately eighteen years old. In August 2020, in anticipation of his upcoming twenty-fifth birthday, appellant, for the first time, requested information about the trust assets from Dulany. No information was provided in response to his request. By appellant's twenty-fifth birthday, the parties had engaged counsel who were exchanging communications with respect to the trust.

¹ The trust also included checking accounts, a money market account, savings bonds purchased in appellant's name, and certificates of deposit. These assets are not in dispute.

In September 2020, Dulany's counsel advised appellant's counsel that a turnover of records, assets, and materials relating to the trust could not take place until Dulany had completed a multiyear accounting. Her counsel advised that if appellant was prepared to proceed without an accounting, Dulany would agree if he signed a release of claims. Appellant turned down that offer. In October 2020, Dulany's counsel again advised appellant's counsel that Dulany was in the process of preparing a multiyear accounting of the trust. She again offered to proceed without an accounting if appellant signed a release of claims.

Appellant thereafter filed a verified complaint and order to show cause in the Chancery Division alleging that in her capacity as trustee Dulany wasted trust assets due to misfeasance, nonfeasance, and potentially malfeasance. He alleged four causes of action for breach of fiduciary duty and sought, among other things, removal of Dulany as trustee, a turnover of books and records in Dulany's possession, and compensatory and punitive damages for diminution of the value of the trust's assets.

Prior to the return date of the order to show cause, Dulany resigned as trustee, citing health reasons. The court appointed Richard Weiner, Esq., as substitute administrator of decedent's estate and as substitute trustee. In addition, the court appointed Ira C. Kaplan as guardian ad litem for Dulany. The

appointment of Kaplan was made at the request of Dulany's counsel, who advised that Dulany was suffering from a disability and was not physically or cognitively able to assist her counsel. Dulany thereafter filed an answer and counterclaim seeking recovery of statutory trustee commissions and the costs of litigation, including attorney's fees.

On May 27, 2021, Weiner filed an interim accounting report for the trust. He hired an accountant to conduct an analysis of the trust's banking records for the agreed upon period January 1, 2016 to March 31, 2021.² Weiner noted that Dulany's record keeping had no "rhyme or reason," and that many records were missing or scribbled on various pieces of paper, including illegible handwriting on the backs of envelopes. The records for all of the properties were intermixed in boxes in which they were stored without apparent order.

Weiner reported: (1) the sale of the Atlantic City property netted the trust \$44,180. While noting appellant's contention that the property had a fair market value of \$230,000 when Dulany sold it for \$130,999, Weiner reported that it was not possible to determine the validity of this assertion because the transaction was nineteen years old. He noted that Dulany likely sold the Atlantic City

² Believing she was required to retain records only for a seven-year period, Dulany destroyed older records. She also admitted that she lost some records.

property in order to pay off the mortgage on the 21st Street property, even though that property generated sufficient income to pay its mortgage; (2) the Lyndhurst property had a fair market value of \$375,000 and noted appellant's contention that Dulany incurred extraordinary expenses for the property; (3) the Jersey City property had a fair market value of \$600,000, and that Dulany was remiss in not raising rents at this property and allowed tenants to take rent credits on below market rents for completing chores at the property; (4) the Kennedy Boulevard property had a fair market value of \$500,000; and (5) Dulany improperly included the 21st Street property on the trust's income tax returns and took depreciation for that property on those returns during her life estate.

The only maintenance records maintained by Dulany were "several black and white composition notebooks wherein handwritten notes indicate that certain repairs were done on the subject properties." Ultimately, Weiner found that the lack of record keeping prevented him from undertaking "a meaningful analysis" of the trust's assets. Weiner reported that Dulany invested trust funds in low risk/low return investments, such as certificates of deposits and treasury bonds, in order to preserve assets for appellant.

Weiner found no unusual deviations in monthly rent deposits that would require further investigation. He noted an inordinate number of payments to

laborers for repairs at three of the properties. Weiner also reported that the potential for Dulany to have been misled by contractors concerning the need for repairs is a "very realistic possibility" but that it was "far-fetched" to suggest she intentionally diverted funds from the trust or acted in concert with vendors in a fraudulent fashion. With respect to checks made out to cash without a notation on the memo line explaining the expense, Weiner found many matched up with repairs made around that time frame. Weiner noted that appellant's allegation that Dulany spent more than necessary for repairs over the years likely has merit, but would need to be proven by appellant.³

Weiner raised concern over the extent to which Dulany used trust funds to pay local property taxes, utilities, and maintenance for the 21st Street property. However, he noted that Dulany produced proof she paid expenses for the 21st Street property out of her funds during 2020 and there was no evidence she paid expenses relating to the property from trust funds in other years.

Weiner noted that it appeared that none of the income-producing units at the trust properties remained vacant for an extended period of time while Dulany was trustee. She was diligent in locating new tenants when necessary. Finally,

³ Dulany routinely cashed rent checks in order to keep a reserve of cash on hand to pay maintenance costs at the subject properties. There were few records of those transactions.

Weiner found that the trust properties are "not significant money-makers" and, in fact, operated at a loss in some years.

Weiner advised appellant and his counsel that to the extent that he intended to pursue his claims, he should retain an accountant to analyze Dulany's records and opine on whether, and to what extent, her actions as trustee diminished the value of trust assets.

In a case management order, the court established August 31, 2021 as the deadline for submission of appellant's expert report should he elect to obtain one. He failed to meet that deadline. Appellant attempted to serve a report of Anthony S. Antinoro, an accountant, on September 21, 2021. Dulany refused to accept service because the August 31, 2021 deadline had passed.

In a September 30, 2021 case management order, the court found no basis on which to allow appellant to submit a late expert report. The court found that appellant "had more than sufficient time to provide an expert report and failed to do so in accordance" with the court-established deadline. The court found that late submission of the report would delay trial and prejudice Dulany. Nevertheless, the court reviewed Antinoro's report and found it contained a net opinion, was speculative, insufficient, and unlikely to assist the trier of fact.

Thus, the court concluded, even if it had been timely filed, the expert report and Antinoro's testimony would not have been admissible.

Appellant thereafter moved for reconsideration of the September 30, 2021 order. He argued that production of the expert report was delayed by Dulany's failure to promptly produce trust records and assets, spoliation of records, and poor record keeping.

On November 12, 2021, the court issued an oral opinion denying appellant's motion. The court found the expert had the trust's tax returns available to him in time to meet the filing deadline for his report. The court also found that permitting appellant to file a late expert report would delay the trial, given that it would be compelled to permit Dulany to retain an expert in response to appellant's late submission. Thus, the court concluded, the interests of justice did not warrant reconsideration of the September 30, 2021 order.

In addition, the court found no grounds for reconsideration of its conclusion that the expert report offered a net opinion. The court noted that the report was not accompanied by the expert's curriculum vitae, did not cite the sources on which he relied for various assumptions he applied in formulating his opinion, and did not explain the basis for his opinion. The court also denied appellant's request to have his expert testify at trial as a fact witness because

Antinoro did not have personal knowledge of material facts obtained outside of the preparation of his report. A November 12, 2021 order memorializes the court's opinion.

Appellant also moved for summary judgment on the issue of liability on counts three and four of the complaint. He argued that the undisputed facts establish that Dulany did not fulfill her fiduciary duty to appellant by mismanaging the trust assets. Dulany opposed the motion.

On November 12, 2021, the court issued an oral opinion denying the partial summary judgment motion. The court found that genuine issues of material fact existed with respect to whether Dulany paid expenses relating to the 21st Street property from trust assets. In addition, while expressing concerns about Dulany's record keeping and cash payments with no documentation, the court found that genuine issues of material fact existed with respect to whether she breached her fiduciary duties to appellant with respect to the management of trust assets. A November 12, 2021 order memorializes the court's opinion.

The court subsequently held a two-day bench trial at which appellant, Dulany, appellant's father, Belveduto, and John Trigo, an accountant hired by Dulany's counsel, testified. On January 25, 2022, the court issued a written

opinion rejecting appellant's claims. The court described appellant's claims as presented at trial in detail. The court found that appellant alleged Dulany:

(1) mismanaged the real property, resulting in excess of \$600,000 in damages to the value of the trust assets;

(2) misappropriated \$59,000 from the trust that she used to pay expenses for the 21st Street property;

(3) misappropriated \$30,000 in proceeds from the sale of the Atlantic City property;

(4) had poor record keeping practices that caused the court to appoint professionals who incurred fees of \$69,688.18, which have been paid from trust assets to appellant's detriment;

(5) improperly used trust assets to pay her attorney and Trigo a total of \$20,640; and

(6) caused or allowed improper and excessive depreciation to be deducted on trust tax returns in the amount of \$298,024.

Appellant alleged that as a result of these acts, the value of the trust assets was diminished by a total of \$896,017.

According to appellant, he incurred fees and costs, including legal fees of \$100,000, forensic accounting fees of \$4,000, court reporter fees of \$2,378, and

mediation fees of \$3,000, for which he sought reimbursement from Dulany. He alleged he suffered additional damages of \$188,000 based on: (1) Dulany's alleged failure to maintain rents at market value at the trust assets (\$50,000); (2) Dulany's failure to maintain and repair trust assets (\$25,000); (3) possible underground tank removal at the 21st Street property (\$10,000); (4) unaccounted for rents at the 21st Street property (to be determined); (5) anticipated additional legal and court fees (\$50,000); (6) estimated tax penalty due to excessive depreciation (\$10,000); and (7) a forgiven back rent judgment (\$3,000). Finally, the court found that appellant alleged Dulany did not segregate security deposits for rental units at trust assets, which he will be responsible to pay.

At trial, Dulany argued that she received no commissions due to her as trustee. She alleged she was entitled to statutory commissions of \$209,512.71, as well as reimbursement of \$80,000 for rental income from the 21st Street property that was mistakenly deposited into the trust's accounts.

The court concluded that decedent had the right to provide that Dulany would not be subject to the Prudent Investor Act (PIA), N.J.S.A. 3B:20-11.1 to -11.12. The court noted that a trustee is not liable to a beneficiary to the extent that she acted in reasonable reliance on express provisions of a will exempting her from the PIA. See N.J.S.A. 3B:20-11.2(b). The court concluded that the

standard governing Dulany's acts as trustee is whether she acted in good faith, with ordinary discretion, and within the scope of her authority and that the court would not order removal without "clear and definitive proof of fraud, gross carelessness or indifference." Braman v. Central Hanover Bank & Trust Co., 138 N.J. Eq. 165, 196-97 (Ch. 1946).

The court found that because appellant, whose expert report was precluded, "had no competent testimony to support his claims that [Dulany] mismanaged the real property, including, but not limited to, charging excess expenses, [he] was unable to show by a preponderance of the evidence" that she breached her fiduciary duties to him with respect to the overall management of trust assets.

The court found that "[n]o one can legitimately claim that [Dulany's] record keeping was the model of clarity" and that it was the state of Dulany's records that "caused the biggest challenge to understanding how the assets of the [t]rust were managed." However, the court found credible Belveduto's testimony that each year during her tenure as trustee, Dulany provided him with sufficient books and records to complete tax returns for the trust, including detailed information regarding rents and expenses at the subject properties. The

court found that there was no evidence in the record that Dulany misappropriated or obtained personal benefit from trust funds.

In addition, the court found no support for the proposition that Dulany was required to pay for maintenance at the properties by check. The court noted Dulany's testimony regarding her method of segregating cash from rental income in order to pay expenses for the various properties which, while not the industry standard, was not evidence of her misappropriation of trust assets.

The court also found credible Dulany's testimony that she deposited the proceeds of the sale of the Atlantic City property in trust accounts. Appellant, the court found, produced no credible evidence to the contrary.

With respect to the depreciation taken on trust tax returns, the court found that Belveduto credibly testified that he gave advice to Dulany on how to report depreciation and that she followed that advice. The court found that appellant produced no credible evidence to the contrary.

The court rejected appellant's claim to be entitled to damages for repairs that he will have to make to the trust properties. The court found that the structures on the properties were not new and that ongoing maintenance expenses are to be expected. The court found appellant did not prove Dulany's mismanagement caused any unusual need for maintenance at the subject

properties. The court found that appellant failed to prove entitlement to the additional damages he requested and concluded that those claims were speculative.

The court rejected appellant's claim with respect to non-segregated security deposits. It found credible Dulany's testimony that she deposited security deposits in trust accounts used to maintain the properties. Thus, the court concluded, appellant did not prove that those funds were misappropriated or would be unavailable to him to return to tenants.

The court found that the funds expended for Dulany's attorney and the accountant she hired were proper because at the time of retention Dulany anticipated providing an accounting. The court also rejected appellant's request for attorney's fees.⁴ A January 25, 2022 order memorializes the court's decision.

This appeal follows. Appellant argues the trial court: (1) abused its discretion when it denied his request to file an expert report after the deadline established by the court; (2) erred when it denied his motion for reconsideration; (3) erred when it denied his motion for partial summary judgment; (4) abused

⁴ The court rejected Dulany's request for statutory commissions and fees, noting her failure to maintain proper records was the cause of appellant initiating this action. The court ordered Dulany to pay Kaplan's fees as guardian ad litem and rejected her claim for reimbursement of rents from the 21st Street property. Dulany did not file a cross-appeal from those aspects of the trial court's decision.

its discretion by not permitting his expert to testify as a fact witness; (5) erred when it did not apply an adverse inference against Dulany due to her destruction of trust records; (6) issued findings of fact that were not supported by substantial, credible evidence in the record; (7) misapplied the law with respect to Dulany's fiduciary duties; and (8) erred when it denied his request for damages and attorney's fees.

II.

A.

We begin with the trial court's September 30, 2021 order barring appellant's expert opinion. We "normally defer to a trial court's disposition of discovery matters . . . unless the court has abused its discretion" Connolly v. Burger King Corp., 306 N.J. Super. 344, 349 (App. Div. 1997) (quoting Payton v. N.J. Tpk. Auth., 148 N.J. 524, 559 (1997)). Abuse of discretion occurs when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quotations omitted). "Under this standard, 'an appellate court should not substitute its own judgment for that of the trial court, unless the trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" Hanisko v. Billy Casper Golf Mgmt., Inc.,

437 N.J. Super. 349, 362 (App. Div. 2014) (quoting State v. Brown, 170 N.J. 138, 147 (2001)).

We see no mistaken exercise of discretion in the trial court's enforcement of the deadline it established for submission of appellant's report. Appellant was aware of the need to retain an expert to prove his claims of misfeasance, nonfeasance, and malfeasance. The need for an expert report to establish appellant's claims was highlighted in Weiner's interim report. There is sufficient support in the record for the trial court's conclusion that appellant's expert had access to adequate information prior to the filing deadline to draft a report expressing his opinion on the exercise of Dulany's fiduciary duties. In addition, the court did not abuse its discretion when it found that late submission of appellant's report would delay trial and prejudice Dulany.

The trial court's decision is bolstered by its determination that, even if appellant was permitted to serve a late expert report, the report would be inadmissible because it contained a net opinion. N.J.R.E. 703 requires an expert to ground his or her opinion in facts or data derived from: (1) the expert's observations; (2) evidence admitted at trial; or (3) data of "the type . . . normally relied upon by experts" in the relevant field. Townsend v. Pierre, 221 N.J. 36, 53 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008)). While

an expert must ground his or her opinion in fact, the opinion's evidential support is not limited to admissible evidence and may be based on information the expert learned through personal experience. Rosenberg v. Travorath, 352 N.J. Super. 385, 400 (App. Div. 2002) (citing Bellardini v. Krikorian, 222 N.J. Super. 457, 463 (App. Div. 1988)).

However, an expert may not provide the trial court with a "mere net opinion." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 372 (2011). Our Supreme Court described the net opinion rule as a logical extension of N.J.R.E. 703. See e.g., Townsend, 221 N.J. at 53 (quoting Polzo, 196 N.J. at 583); Davis v. Brickman Landscaping, Inc., 219 N.J. 395, 410 (2014); see also Buckelew v. Grossbard, 87 N.J. 512, 524 (1981) ("The 'net opinion' rule appears to be a mere restatement of the established rule that an expert's bare conclusions, unsupported by factual evidence, is inadmissible").

The rule requires an expert to "give the why and wherefore" of his or her opinion. Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 144 (2013) (quoting Pomerantz, 207 N.J. at 372). In other words, an opinion consisting of "bare conclusions" or speculative hypotheses "unsupported by factual evidence" is inadmissible. Rosenberg, 352 N.J. Super. at 401. This court has noted an expert who speculates "ceases to be an aid to the trier of fact and

becomes nothing more than an additional juror." Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996).

A trial court's decision to exclude expert testimony in a civil case is reviewed under "a pure abuse of discretion standard." In re Accutane Litig., 234 N.J. 340, 391-92 (2018) (citing Townsend, 221 N.J. at 52-53). Thus, the decision to exclude the appellant's proposed expert report as net opinion should not be disturbed until it was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg, 171 N.J. at 571.

We have reviewed appellant's proposed expert report and have identified no basis on which to conclude that the trial court mistakenly exercised its discretion when it found that the report contains a net opinion. The evidentiary or experiential basis for the conclusory opinion expressed in the report is not identified by the expert, whose qualifications are not attached to the report.

With respect to appellant's appeal of the November 12, 2021 order denying his motion for reconsideration, we note that the September 30, 2021 order is interlocutory. As the Supreme Court explained, "[b]y definition, an order that 'does not finally determine a cause of action but only decides some intervening matter pertaining to the cause[,] and which requires further steps

. . . to enable the court to adjudicate the cause on the merits[,] is interlocutory." Moon v. Warren Haven Nursing Home, 182 N.J. 507, 512 (2005) (second and third alterations in original) (quoting Black's Law Dictionary 815 (6th ed. 1990)); see also Wein v. Morris, 194 N.J. 364 (2008).

A trial court "has the inherent power, to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders at any time prior to the entry of final judgment." Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987). As Judge Pressler explained, "the strict and exacting standards of R. 4:50" do "not apply to interlocutory orders entered prior to final disposition." Ibid. Nor do the limitations of R. 4:49-2 apply to requests for relief from interlocutory orders. Sullivan v. Coverings & Installation, Inc., 403 N.J. Super. 86, 96 (App. Div. 2008). See also Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188-89 (App. Div. 2006); Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990). We review the denial of a motion for reconsideration of an interlocutory order for an abuse of discretion. Johnson, 220 N.J. Super. at 263-64.

We find no basis in the record to conclude that the trial court misapplied its discretion when it denied appellant's motion for reconsideration of the

September 30, 2021 order. There is ample support for the trial court's conclusion that appellant was provided sufficient time in which to produce an expert report, that permitting the late filing of his report would delay trial and prejudice Dulany, and that nothing submitted in support of reconsideration warranted altering its prior decision.

B.

We review the trial court's decision granting summary judgment de novo, using "the same standard that governs trial courts in reviewing summary judgment orders." Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998). Rule 4:46-2 provides that a court should grant summary judgment when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." "Thus, the movant must show that there does not exist a 'genuine issue' as to a material fact and not simply one 'of an insubstantial nature'; a non-movant will be unsuccessful 'merely by pointing to any fact in dispute.'" Prudential, 307 N.J. Super. at 167.

Self-serving assertions that are unsupported by evidence are insufficient to create a genuine issue of material fact. Miller v. Bank of Am. Home Loan

Servicing, L.P., 439 N.J. Super. 540, 551 (App. Div. 2015). "Competent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 426 (App. Div. 2009) (citations omitted). We review the record "based on our consideration of the evidence in the light most favorable to the parties opposing summary judgment." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523-24 (1995).

The trial court identified genuine issues of material fact that were unresolved at the time appellant moved for partial summary judgment. While recognizing Dulany's poor record keeping and unusual practices with respect to maintaining the properties in the trust, the court found that material issues remained unresolved with respect to whether Dulany's acts as trustee constituted a breach of fiduciary duties in light of the will's provision relieving her of liability under the PIA. We see no error in the trial court's decision.

C.

Turning to the trial court's January 25, 2022 order, our scope of review of the judge's findings in this nonjury trial is limited. We must defer to the judge's factual determinations, so long as they are supported by substantial credible evidence in the record. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474,

483-84 (1974). "Appellate review does not consist of weighing evidence anew and making independent factual findings; rather, [this court's] function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). Since the trial court "'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (alteration in original) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

Having carefully reviewed appellant's arguments in light of the record and applicable legal principles, we affirm the January 25, 2022 order for the reasons stated by the trial court in its thorough and well-reasoned written opinion. As the trial court found, appellant failed to prove by a preponderance of the evidence that Dulany breached her fiduciary duties to him as trustee through

misfeasance, nonfeasance, or malfeasance. Critical to the court's analysis was the absence of an expert report opining that Dulany mismanaged the trust's properties to such an extent that her actions constituted a breach of fiduciary duties.

In addition, there is sufficient support in the record for the trial court's conclusions that appellant did not prove Dulany: (1) engaged in misfeasance, nonfeasance, or malfeasance by keeping imperfect records or overspending on maintenance at the trust properties; (2) improperly diverted trust assets to pay expenses associated with the property at which she maintained a life estate or misappropriated funds from the sale of the Atlantic City property; (3) breached her fiduciary duties by following the advice of an accountant with respect to reported depreciation on tax returns; (4) caused unnecessary expenditures from the trust assets on professionals; or (5) was responsible for any of the other expenses claimed by appellant.

To the extent we have not specifically addressed any of appellant's remaining contentions, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION