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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0791**

In re Harry Inge Baker and Jeanne C. Baker Trust Dated August 9, 1988.

Janet Baker Evans as Successor Trustee of the Harry Inge Baker and
Jeanne C. Baker Trust Dated August 9, 1988,
Respondent,

vs.

Marla B. Smith, individually and as Personal Representative
of the Estate of Jeanne C. Baker,
Appellant,

and

Jeanne C. Baker Revocable Living Trust,
Defendant.

**Filed March 9, 2015
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19HA-CV-10-1531

Thomas E. McEllistrem, Sarah J. McEllistrem, Collins, Buckley, Sauntry & Haugh,
P.L.L.P., St. Paul, Minnesota (for respondent)

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for
appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this appeal after remand in a trust-administration dispute, appellant asserts that the district court erred in the way in which it applied a stipulated payment that was made before the first appeal in this matter to the final judgment as amended after remand. We affirm.

FACTS

This matter is before us for a second time. A comprehensive discussion of the facts underlying this matter is set forth in *In re Baker Trust*, No. A13-0248, 2013 WL 3968782 (Minn. App. Aug. 5, 2013) (*Baker Trust I*), review denied (Minn. Oct. 15, 2013). In short, respondent Janet Evans, as successor trustee of the Harry Inge Baker and Jeanne C. Baker Trust (Baker Trust), filed an action against her stepsister, appellant Marla B. Smith, individually and as personal representative of the estate of Jeanne Baker (Smith's mother), and Jeanne Baker's separate trust alleging that Smith and Baker had misappropriated trust principal while serving as trustees of the Baker Trust. The district court found Smith, Jeanne Baker's estate,¹ and Jeanne Baker's trust jointly and severally liable for \$203,200 of trust principal that Smith admitted spending from 2006 through 2008. The district court also found that although \$253,053.74 of trust principal was unaccounted for in the time period when Jeanne Baker was the trustee (1994-2004), there was insufficient evidence to show that it had been taken and spent, and in any event, the

¹ For clarity, we refer to Marla B. Smith as personal representative of the estate of Jeanne C. Baker as "Jeanne Baker's estate" or "the estate."

doctrine of laches barred suit for pre-2004 lost principal. Including interest and fees, the district court entered judgment in Evans's favor in the amount of \$572,914.98.

In anticipation of the first appeal in this matter, the parties agreed that in lieu of a supersedeas bond, Smith, Jeanne Baker's estate, and Jeanne Baker's trust would deposit \$650,000 in Evans's counsel's trust account. Of this amount, \$500,000 was paid to Evans immediately, and post-judgment interest stopped running on that portion of the judgment. Upon receipt of this payment, Evans's counsel executed a partial satisfaction of judgment, which provided that the judgment entered by the district court on December 13, 2012, "in the amount of \$572,914.98 has been partially satisfied in the amount of \$500,000.00 and that the Court Administrator is hereby authorized to discharge that portion of the judgment of record."

The remaining \$150,000 was held in the trust account pending conclusion of the appeal process to be paid out "as partial or full satisfaction" of the "final amount due." The stipulation states that "[t]he 'final amount due' on the judgment owed by Defendants to Plaintiff is the total judgment amount finally awarded to Plaintiff after conclusion of the appeal process, plus interest, reduced by the \$500,000.00 payment which Defendants have made." The stipulation further provides that "Defendants shall remain liable to Plaintiff for the deficiency, if \$150,000.00 held in trust is not sufficient to fully satisfy the final amount due, as defined above."

Evans then appealed, and in *Baker Trust I*, we concluded that the district court erred by (a) rejecting Evans's attempts to recoup trust principal that was improperly spent between 1994 and 2004; (b) awarding attorney fees to Smith for her defense of the above

claim; and (c) reducing Evans's attorney-fees award because of her lack of success on the pre-2004 claim. We concluded that Smith is not liable in her individual capacity for the pre-2004 losses because Jeanne Baker was the trustee during that period. Instead, Jeanne Baker's estate and Jeanne Baker's trust are jointly and severally liable for those amounts. Smith did not cross-appeal the district court's ruling that, in her individual capacity, she is jointly and severally liable for damages related to improper distributions she made as trustee from 2006 through 2008.

On remand, the district court awarded pre-2004 lost principal plus lost-investment interest and statutory interest to Evans. The district court also reconsidered its earlier attorney-fees award to Evans as we directed. Smith opposed Evans's request for additional attorney fees, arguing in part that it would be futile because Jeanne Baker's estate and Jeanne Baker's trust are insolvent. In support of this argument, Smith filed an affidavit explaining that trust and estate assets had been liquidated to pay \$417,122.75 of the \$650,000 required by the parties' pre-appeal stipulation and that she had personally contributed the remaining \$232,877.25.

The district court rejected Smith's argument, noting that the only basis for the reduced attorney-fees award to Evans in the original judgment had been the "results obtained." In light of our reversal of the district court's ruling on Evans's pre-2004 claim, the district court amended its earlier award of attorney fees through trial to allow the entire amount claimed by Evans. Consistent with the assignment of liability for pre-2004 damages, the district court determined that Jeanne Baker's estate and Jeanne Baker's trust are jointly and severally liable for the additional attorney fees, but that

Smith in her individual capacity is not liable. The district court entered an amended judgment that reflected the additional award against Jeanne Baker's estate and Jeanne Baker's trust based on missing pre-2004 principal plus interest and attorney fees.

Shortly thereafter, we awarded appellate attorney fees to Evans, with Smith, Jeanne Baker's estate, and Jeanne Baker's trust jointly and severally liable for half the award and Jeanne Baker's estate and Jeanne Baker's trust jointly and severally liable for the remaining half. The parties appeared again before the district court in March 2014 on Evans's motion for attorney fees for posttrial district court proceedings and the parties' dispute over how to apply the \$650,000 payment to the judgment as amended on remand.

In ruling on posttrial attorney fees, the district court tracked our decision on appellate attorney fees, ruling that Smith, Jeanne Baker's estate, and Jeanne Baker's trust are jointly and severally liable for half the award, and Jeanne Baker's estate and Jeanne Baker's trust are jointly and severally liable for the remaining half. The district court determined that, including these additional attorney-fees awards, Smith, the estate, and the trust are jointly and severally liable for \$614,991.72 and the estate and trust are jointly and severally liable for an additional \$550,446.09. The district court entered second amended judgment accordingly.

With respect to the application of the \$650,000 payment made in lieu of a supersedeas bond, the district court found that it "was for partial satisfaction of the entire judgment awarded in this case after any subsequent amendments." Relying on the language of the stipulated order, the legislative intent behind joint and several liability, and Smith's affidavit regarding the sources of the funds for the \$650,000 payment, the

district court applied \$232,877.25 to the portion of the judgment for which Smith, the estate, and the trust are jointly and severally liable, and applied \$417,122.75 to the portion of the final judgment for which only the estate and trust are jointly and severally liable.

Smith, in her individual capacity only, now appeals the second amended judgment as well as a May 9, 2014 district court order that allocates the accrual of interest among the defendants consistently with the application of payments in the district court's order for second amended judgment.

DECISION

Smith argues, based on the language of the parties' stipulation, that any liability she has in this matter was satisfied by the \$650,000 payment made in lieu of a supersedeas bond. Much of Smith's argument turns on her contention that the original judgment is a distinct judgment from the amended and second amended judgments.

The district court rejected Smith's argument, determining that, "[w]hen a judgment is amended, the amended judgment becomes 'the judgment.' Thus, any references . . . to the judgment in the stipulation must be read as referring to the judgment as subsequently amended." The district court further determined that "the \$650,000 deposited in the trust account was not for the satisfaction of the judgment solely as it stood at the time the Stipulation was executed (i.e., the original judgment of \$572,914.98), but was for partial satisfaction of the entire judgment awarded in this case after any subsequent amendments." When the material facts are undisputed, appellate

courts review the district court's application of the law de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

Smith cites no legal authority for the proposition that an amended (or second amended) judgment is a distinct judgment from the original judgment in this context, and we are aware of none on point. Moreover, the stipulated order provides, "The 'final amount due' on the judgment owed by Defendants to Plaintiff is the total judgment amount finally awarded to Plaintiff after conclusion of the appeal process, plus interest, reduced by the \$500,000.00 payment which Defendants have made." The stipulation further provides that "Defendants shall remain liable to Plaintiff for the deficiency, if \$150,000.00 held in trust is not sufficient to fully satisfy the final amount due, as defined above." In light of this plain language, the district court properly concluded that the amended and second amended judgments are part of "the judgment" contemplated by the parties' stipulation.

Smith also argues that the stipulation caps the total liability of all defendants at \$650,000. Smith argues that by entering into the stipulation, Evans elected to recover the original judgment amount and no other, relying on *Power v. Baker*, 27 F. 396 (C.C.D. Minn. 1886). But *Power v. Baker* stands for the proposition that if a plaintiff sues multiple tortfeasors for the same damages in separate lawsuits, the plaintiff is entitled to only one full recovery but can elect which judgment to pursue. *Id.* at 397. It does not address the recovery of damages against multiple defendants in the same litigation, amendments to a judgment, judgments in which multiple defendants are liable for non-duplicative damages, or partial satisfaction of judgment based on a stipulation. *See id.*

We conclude that there is no merit to Smith's argument that Evans agreed in the stipulation that her recovery was limited to the amount of the original judgment or that amendments to the judgment after appeal were not contemplated.

Smith also argues that the district court erroneously inserted an interpretive provision into the stipulated order when it considered the source of the payments made under its terms. But the district court did not rely on Smith's affidavit to interpret the stipulated order, it relied on principles of joint and several liability to determine how to apply the plain language of the stipulated order. The district court reasoned that applying the original \$650,000 payment to the final judgment based on the source of the funds would "promote a more full recovery of damages," which is the legislative intent behind joint and several liability. The manner in which the district court applied the \$650,000 payment leaves an additional \$382,114.47 potentially collectible from Smith (as well as the apparently insolvent estate and trust) and an additional \$133,323.34 potentially collectible from the estate and trust alone. We discern no error in the district court's reliance on Smith's affidavit.

In its original order for judgment, the district court found that "Defendant Smith is liable, jointly and severally, for the missing [2006-2008] principal." Including interest, fees, and costs, the district court ruled that "judgment shall be entered against Marla Smith individually, jointly and severally with the other Defendant(s) herein, in the amount of \$572,914.98." Smith did not appeal this ruling. When damages are not apportioned, the rule of joint and several liability makes each defendant liable for the entire damages award. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 74 (Minn. 2012)

(stating that “a ‘jointly and severally liable’ defendant is responsible for the entire award”); *Rowe v. Munye*, 702 N.W.2d 729, 740 (Minn. 2005). Smith’s argument that the district court should have applied payments so as to minimize her contribution, as well as the total amount ultimately collectible, is unavailing. The district court’s second amended judgment creates no windfall for Evans—it merely decreases the shortfall that the trust will likely experience. We conclude that the district court did not err in how it applied funds paid under the terms of the stipulation in lieu of a supersedeas bond to the judgment as amended on remand.

Smith’s only challenge to the district court’s May 9, 2014 order is that its calculations are flawed because they are derived from the district court’s purported errors in applying the \$650,000 payment. Because we conclude that the district court did not err in applying this payment, we also conclude that the May 9 order is proper.

Affirmed.