

WEDNESDAY, OCTOBER 5, 2005  
11:00 A.M.

NO. 3

#23525

IN THE MATTER OF MARVIN M. SCHWAN  
1992 GREAT, GREAT GRANDCHILDREN'S  
TRUST.

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(FOR APPELLEES, GUARDIAN AD LITEM  
LORRIE SCHWAN-OKERLUND, MARK D.  
SCHWAN, DAVID J. SCHWAN, and PAUL  
M. SCHWAN)

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(FOR APPELLEES, GUARDIAN AD LITEM  
LORRIE SCHWAN-OKERLUND, MARK D.  
SCHWAN, DAVID J. SCHWAN, and PAUL  
M. SCHWAN)

20-20-10

## STATEMENT OF THE ISSUES

**1. DID THE CIRCUIT COURT ERR IN ITS LEGAL CONCLUSION THAT THE SCHWAN FOOD COMPANY AND THE MARVIN M. SCHWAN FOUNDATION ARE AFFILIATED ORGANIZATIONS WHEN THE COURT FAILED TO RECOGNIZE THAT, AS PROVIDED BY STATUTE, THE POWERS OF TRUSTEE BELONG TO THE OFFICE AND ARE NOT PERSONAL?**

The Circuit Court concluded the Schwan Food Company and the Marvin M. Schwan Foundation are affiliated organization and that, therefore, the 3G Trust and the Marvin M. Schwan Foundation are affiliated organizations.

**2. DID THE CIRCUIT COURT ERR IN ITS LEGAL CONCLUSION THAT THE TRUSTEES DID NOT PROPERLY EXERCISE THEIR DISCRETION WHERE THE COURT CONDUCTED A *DE NOVO* REVIEW OF THE ISSUE FACING THE TRUSTEES RATHER THAN EXAMINING THE MANNER IN WHICH THE TRUSTEES EXERCISED THEIR DISCRETION?**

The Circuit Court concluded the Trustees' decision to pay one of the Trustees was not reasonable.