

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA
APPEAL NO. 31151

IN THE MATTER OF THE ESTATE OF JACK R. KARI,
Deceased,

Appeal from the
Fourth Judicial Circuit
Butte County, South Dakota
The Honorable Michael Day, Circuit Court Judge

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

For the convenience of the Court, Appellant, Jacob Kari will be referred to as "Jacob"; Decedent, Jack R. Kari will be referred to as "Jack," and personal representative, Kimberly Kari will be referred to as "Kimberly." Reference to the hearing transcript will be cited as "HT _____" followed by the appropriate page(s); and Documents from the Appendix are cited as "APP _____;"

JURISDICTIONAL STATEMENT

This is an appeal from an Order signed by the Court on June 18, 2025 with the Notice of Entry of Judgment filed on June 20, 2025. There were no Findings and/or Conclusions of Law and the Order was dispositive as to all claims raised by interested party, Jacob Kari and were final orders pursuant to SDCL § 15-26A-3(2). Notice of Appeal was filed in the Circuit Court on July 17, 2025. The referenced rulings are appealable and the present appeal is timely.

STATEMENT OF THE LEGAL ISSUE

Whether the Circuit Court Erred by not establishing one or more trust, to be managed and controlled per the intent and wishes of the decedent, Jack R. Kari?

1. SDCL § 55-1-1
2. *Johnson v. Markve*, 2022 SD 57
3. *In Re Florence Y. Wallbaum Revocable Living Trust*, 813 N.W.2d 111 (S.D. 2012)
4. SDCL § 55-1-11

STATEMENT OF THE CASE

This is an appeal of rulings from the Fourth Judicial Circuit, the Honorable Michael Day. Petitioner brought a Motion to Establish Trust and Transfer Assets of the Estate. Prior to his death, Jack Kari had attempted to establish several business trusts for the purpose of placing all of his assets. The trust did not meet South Dakota's legal

requirement for a trust and the property was placed with the Personal Representative of the Estate, subject to further Court order.

Because of Jack's intent as shown by the attempts to create the failed trusts and had also executed a Will, stating that he that all his property had been placed in trust, with Jacob (Kari) and his wife, controlling the same, Jacob Kari made a motion to establish one or more trusts and transfer Jack's assets into the same, as desired by Jack.

The Personal Representative objected to the Motion and after a brief hearing on the same, the Court denied the motion. This appeal followed.

STATEMENT OF THE FACTS

The facts of this case as not in dispute and derived mainly from the Court filings of the personal representative of the Estate, Jack's wife, Kimberly. Jack died, testate, on November 11, 2022. *See, Order Admitting Will to Formal Probate, Determination of Heirs, and Appointment of Personal Representative dated August 31, 2023; APP 7-8.* At the time of his death, Jack had statutory persons of interest included his wife, Kimberly, sons, Jacob and Jason and Daughter, Wendy. *Id.* Jack's handwritten Will simply stated:

Jacks' Last Will and Testament.

Since all of Jacks' properties are in trusts, with Jacob and other trustees (sic) controlling the trusts. Jack's only existing desire is to be buried at the Sundace (sic) ranch."

See, Last Will and Testament of Jack Kari attached as APP 9.

On September 12, 2024 the trial court held a hearing on the Motion of Kimberly Kari for Affirmation of Personal Representative's Authority and Determination of Estate Assets. An Order was issued on the motion on September 18, 2024 which order specifically found certain entities, namely the Considerate Towing Trusts to not be

legally formed business trusts and, as a placeholder, placed the assets which Jack had attempted to place in the trusts, under the control of the personal representative of the subject to further court order. *See*, Order and Judgment dated September 18, 2024 attached as APP 10-13.

In support of her Motion, Kimberly filed an affidavit dated August 14, 2024. *See*, Affidavit of Kimberly Kari attached as APP 14-34. In the affidavit, Kimberly testifies that the following, are true:

- a. "... Jack Kari created multiple business trust as an attempt to isolate liability and protect Jack's various assets...". *See*, Affidavit of Kimberly Kari ¶ 3 attached as APP 14-34.
- b. In support of the preceding statement, Kimberly relied, in part on previous sworn testimony of Jacob Kari ("Jacob"), where Jacob testified that it was Jack's intent that the trusts be used to take care of everyone in the family and protect the assets from a lawsuit. *See*, Affidavit of Kimberly Kari ¶ 3 attached as APP 14-34.
- c. That "... Jack had established or attempted to establish, at a minimum ..." certain business trust and limited liability companies, including Considerate Towing Trust, Considerate Towing Trust I, Considerate Towing Trust II, Considerate Towing Trust III, Considerate Towing Trust IV, Considerate Towing Trust V, Considerate Towing Trust VI, Considerate Towing Trust VIII, Considerate Towing Trust X, Considerate Towing Trust XII, XI, or X11, Considerate Towing Trust XIII, Considerate Towing Trust XV, Considerate Towing Trust XVI, Considerate Towing Trust MCMLX, Considerate Towing Trust MMXVI, Considerate Towing Trust MMXVII, Considerate

Towing Trust DCCLXXVII, Happy Wheels Trust, Heavenly Repairs, LLC and Kari' Properties LTD. *See, Affidavit of Kimberly Kari ¶ 7 attached as APP 14-34.*

d. The affidavit of Kimberly further set forth the property purportedly transferred into each trust by Jack. For ease of the record, those will not be fully set forth herein. *See, Affidavit of Kimberly Kari attached as APP 14-34.*

e. Kimberly's Affidavit also contained various exhibit including: Exhibit 40 – the Irrevocable Business Trust for Considerate Towing Trust I, identifying Jack as Settler (sic), Jacob as President and Amy Kari as Vice President; Exhibit 41 – the Irrevocable Business Trust for Considerate Towing Trust II, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 42 – the Irrevocable Business Trust for Considerate Towing Trust III, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 43 – the Irrevocable Business Trust for Considerate Towing Trust III, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 42 – the Irrevocable Business Trust for Considerate Towing Trust V, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 45.1 – the Irrevocable Business Trust for Considerate Towing Trust IV, identifying Jack as Settler (sic) and CEO, Jacob as President of Operations and Amy Kari as President of Accounting; and Exhibit 45 – the Irrevocable Business Trust for Considerate Towing Trust VI, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 47 – the Irrevocable Business Trust for Considerate Towing Trust X, identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; Exhibit 50 – the Irrevocable Business Trust for Considerate Towing Trust XV,

identifying Jack as Settler (sic) and CEO, Jacob as President and Amy Kari as Vice President; and Exhibit 66 – the Irrevocable Business Trust for Considerate Towing Trust DCCLXXVII, identifying Jack as Settler (sic), Jacob as President and Amy Kari as Vice President. *See*, Affidavit of Kimberly Kari attached as APP 14-34.

Based on the foregoing, Jacob petitioned the court to establish the trust(s) intended by Jack. He further requested that Jack's wishes that Jacob and his wife be trustees and that the trust be used for the benefit of all family members also be honored.

Kimberly filed an Objection to Jacob's Motion to Establish Trust and Transfer Assets of the Estate. *See*, Personal Representative's Objections to Jacob Kari's Motion to Establish Trust and Transfer Assets of the Estate attached as APP 35-37. The objection failed to contain a single argument that it was not Jack's intent to create trusts into which his assets would be placed and managed, but instead dealt with issues of judicial economy and challenged the trustee. *Id.* Jacob's evidence of Jack's intent, to establish multiple Trusts, were likewise not addressed.

Similarly, at the hearing on the motion, while Jacob argued the specific fact and evidence of Jack's intent, including Kimberly's affidavit stating "...Jack Kari created multiple business trust as an attempt to isolate liability and protect Jack's various assets...," Kimberly's argument was that it would be time consuming to transfer the assets into the trust and that she, in essence, had worked very long on getting the asset put in the name of the estate. *See*, HT dated June 17, 2025, pp. 5-6 attached as APP.

Despite no evidence that Jack did not intend to create one or more trusts, the court sustained the objection indicating that Jack could have created the trust during his

lifetime and failed to do so. See, HT dated June 17, 2025, pp. 8-9 The Court further found that Jack left no clear direction as to the trust. *Id.*

ARGUMENT AND AUTHORITIES

A. Standard of Review

The standard of review for determining the intent of a settlor in the context of an implied trust in South Dakota involves a *de novo* review of legal questions. Courts must ensure that the settlor's intentions are honored, and this is achieved by examining the facts and circumstances surrounding the transaction. *Noll v. Brende*, 318 N.W.2d 319, *Johnson v. Johnson*, 300 N.W.2d 865, *DFA Diary Fin. Servs., L.P. v. Lawson Special Trust*, 2010 SD 34.

B. Law Applicable to the Creation of a Trust by the Court.

The motion in the underlying action was based on the fact that though Jack may have failed in his attempts to create valid business trusts or otherwise properly transfer his interest into trust(s), the property may still be distributed to a trustee per SDCL §55-1 and Jack's wishes/intent.

SDCL § 55-1-1 provides that a trust may be created for any purpose for which a contract may be lawfully made. SDCL § 55-1-2 provides that a trust can be express or implied. With an expressed trust being an obligation arising out of personal confidence reposed in and voluntarily accepted by one for the benefit of another; and an implied trust, being one created by operation of law. SDCL § 55-1-3 and SDCL § 55-1-6.

Further, an expressed trust need not be in writing and are created by *words or acts* of a trustor indicating with reasonable certainty 1) an intention on the part of the trustor to

create a trust; and the subject, purpose and beneficiary (ies) of the trust (*emphasis added*). SDCL §§ 55-1-4 and 55-1-5.

South Dakota law provides that an implied trust arises by operation of law and is based on the facts and circumstances of a transaction. The court's role is to determine whether the evidence supports the existence of such a trust. The South Dakota Supreme Court has emphasized that the intent of the settlor is a critical factor, and courts may consider surrounding circumstances to ascertain this intent. For example, in cases where the trust instrument is ambiguous or unclear, courts may rely on extrinsic evidence to determine the settlor's true intention. *DFA Diary Fin. Servs., L.P. v. Lawson Special Trust*, 2010 SD 34, *Johnson v. Markve*, 2022 SD 57. Additionally, SDCL § 55-1-11 allows courts of equity to establish implied, resulting, or constructive trusts in cases where the facts and circumstances warrant such action, even if not explicitly enumerated in the statutes.

Finally, and it would be argued, most importantly, When the intent to establish a trust is clear, the court task is to ensure that the intentions and wishes of the settlor are honored. *In Re Florence Y. Wallbaum Revocable Living Trust*, 813 N.W.2d 111 (S.D. 2012). As it is the duty of the court to carry out the wishes of the trust creator. *In re Schwan*, 709 N.W.2d 849 (S.D. 2006).

C. Did the Circuit Court Err by not establishing one or more trust, to be managed and controlled per the intent and wishes of the decedent, Jack R. Kari?

The request made of the circuit court (and now of this Court) would be for the creation of the Jack R. Kari Trust. As indicated above, this request comes primarily from the written expressed intent of Jack. Beginning at the end, Jack clearly though he had

placed all of his assets in various trusts with Jacob and others as the trustees. To that end, the Will specifically states, in part:

“...Since all of Jacks’ properties are in trusts, with Jacob and other trustees (sic) controlling the trusts...”

See, Last Will and Testament of Jack Kari attached as APP 9.

The lower courts’ belief that Jack needed to establish legally valid trusts is not consistent with the courts powers to create a trust upon the showing of the settlor’s intent. Even Kimberly knew of Jack’s intent and state, in her affidavit “... Jack Kari created multiple business trust as an attempt to isolate liability and protect Jack’s various assets...” Again, in support of this statement she cites with approval the deposition testimony of Jacob, where Jacob testified that it was Jack’s intent that the trusts be used to take care of everyone in the family and protect the assets from a lawsuit.

The combination of the foregoing show, clearly and convincingly that Jack had intended to create multiple trusts in which he would place all of his asset, and which were to be managed by Jacob for the benefit of Jack’s family. With these acts, Jack has established an expressed trust as the same as defined in SDCL § 55-1-3 (i.e., an obligation arising out of a personal confidence reposed in and voluntarily accepted by one for the benefit of another). The words and acts of Jack also create an express trust under the provisions of SDCL § 55-1-4 as he has shown an intention to create a trust and has further expressed that the trust would protect the assets from litigation and be for purposes of providing for his family.

Should this Court determine that the above written documentation, together with the settlor’s expressed intention are insufficient, South Dakota law would require that this Court find the existence of a constructive trust. Under the normal circumstances,

constructive trust may be seen as being preventative to avoid unjust enrichment to the devisee. SDCL § 55-1-11 provides that the imposition of a constructive trust need not be punitive and, in fact, nothing in this section of the code excludes or prevents the application of an implied trust by a court of equity.

In this matter, while it is believed that an expressed trust is warranted, the court should also use its equitable powers equity in establishing an implied trusts which, for all practical purposes, would be operated under the same terms and conditions as expressed trust which, quite simply, would be to carry out the wishes of Jack.

In connection with the establishment of the trust, Jacob further sought an Order that he remain as trustee of the trust as expressly stated by Jack as being his intent (even though Jack used the term "president" in some documents, his Will expressly states that Jacob was the trustee). Request included the court to direct that Jacob registers the trust(s), obtains the appropriate tax identification number and operate the same as a fiduciary according to Jack's wishes.

Finally, Jacob, requested, as trustee of the various trusts trust are established, all properties identified in Kimberly's affidavit as previously being granted by Jack to the various Considerate Towing Trust Entities and Happy Wheels Trust, together with Jack's interest in Heavenly Repairs, LLC and Kari* Property LTD., be transferred to the Jack R Kari Trust. These are all consistent with Jack's expressed intent.

CONCLUSION

For the reasons stated, Appellants respectfully request this Court reverse the decision and issue an Order consistent with the arguments set forth herein.

REQUEST FOR ORAL ARGUMENT

Appellants hereby request oral argument.

[Signature Page to Follow]

Dated this 7th day of October, 2025.

LOOS, SABERS & SMITH, LLP

/s/ Courtney R Clayborne

Courtney R. Clayborne
2834 Jackson Blvd., Suite 201
Rapid City, SD 57702
(605) 721-1517
Attorneys for Jacob Kari

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of October, 2025 before, he electronically filed the foregoing documents with the Clerk of the Supreme Court Odyssey File and Serve portal, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

Kellen Willert
Bennett, Main, Gubbrud & Willert, P.C.
618 State Street
Belle Fourche, SD 57717

Ms. Shirley A. Jameson-Fergel
Clerk of the Supreme Court
State Capitol
500 East Capitol
Pierre, SD 57501

/s/ Courtney R Clayborne

COURTNEY R. CLAYBORNE

[Certificate of Compliance to Follow]

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), Courtney R Clayborne, counsel for the Appellants, does hereby submit the following:

The foregoing brief is 9 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 2,400 words, and 12,117 characters (no spaces) in the body of the Brief.

/s/ Courtney R Clayborne
COURTNEY R CLAYBORNE

APPELLANT APPENDIX

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Last Will and Testament of Jack Kari	9.
Order and Judgment dated September 18, 2024.....	10-13.
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SDCL § 55-1-3.....	42.
SDCL § 55-1-4.....	43.
SDCL § 55-1-5.....	44.
SDCL § 55-1-6.....	45.

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
) SS.)
COUNTY OF BUTTE) FOURTH JUDICIAL CIRCUIT
)
In the Matter of the Estate of) 09PRO23-000003
JACK R. KARI,)
)
DECEASED.)

ORDER

A hearing was held before the Court on June 17, 2025 on Jacob Kari's *Motion to Establish Trust and Transfer Assets of the Estate* that was filed on January 23, 2025. The Personal Representative's *Motion for Court Order Authorizing Liquidation of Estate Assets* that was filed on June 9, 2025 was also noticed for the hearing. The Personal Representative, Kimberly Kari, appeared personally along with the estate's attorney of record, Kellen B. Willert. Jacob Kari appeared personally along with his attorney of record, Courtney Clayborne.

The Court, having heard and received all of the evidence, having considered the arguments of counsel, and having issued orders from the bench at the hearing, which are fully incorporated herein as if fully set forth, enters the following Order:

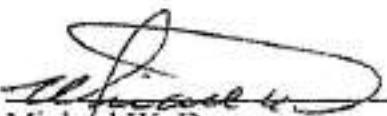
IT IS ORDERED that the Court sustains the objections raised in the *Personal Representative's Objections to Jacob Kari's Motion to Establish Trust and Transfer Assets of the Estate*; and it is further

ORDERED that Jacob Kari's *Motion to Establish Trust and Transfer Assets of the Estate* is DENIED; and it is finally

ORDERED that Personal Representative's *Motion for Court Order Authorizing Liquidation of Estate Assets* be held in abeyance and that, if the Parties agree, the Parties may ask the Court for a determination on said motion without further hearing (otherwise said motion may be noticed for another hearing).

BY THE COURT:

6/18/2025 9:15:49 AM


Michael W. Day
Circuit Court Judge

Attest:
Wynia, Becky
Clerk/Deputy



NO OBJECTION AS TO FORM BY COUNSEL

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 COUNTY OF BUTTE) FOURTH JUDICIAL CIRCUIT
3
4 _____)
5 IN THE MATIER OF THE)
6 ESTATE OF JACK R. KARI,) Motions Hearing
7 Deceased.) 09PRO23-03

BEFORE: THE HONORABLE MICHAEL DAY
Circuit Court Judge
Belle Fourche, South Dakota
June 17, 2025, at 10:00 a.m.

1.3 APPEARANCES:

15 FOR JACOB KARI: MR. COURTNEY CLAYBORNE
16 Attorney at Law
2834 Jackson Blvd., Ste. 201
Rapid City, South Dakota 57709

19 FOR KIMBERLY KARI: **MR. KELLEN WILLERT**
20 Attorney at Law
618 State Street
Belle Fourche, South Dakota 57717

1 **MR. WILLERT:** Thank you, Your Honor.

2 I'll do my best to try to be brief. We'll rely on our
3 objections to Jacob Kari's motion.

4 Your Honor, this motion brought by Jacob should have
5 been brought last September. Last September is when we
6 had -- excuse me. In September, the Court entered its
7 order and judgment, based on the motion for a court order
8 affirming the PR's authority and determination of estate
9 assets.

10 In that order and after the hearing, the Court
11 determined that all of these business trusts, which is a
12 business entity as opposed to a trust under Title 55, were
13 indeed assets of the Estate.

14 The Personal Representative has been working on
15 getting those assets transferred. And I'll represent to
16 the Court that there were many phone calls with the
17 Treasurer's Office in Pierre.

18 We just received a few of the titles as recently as
19 May 2nd, Your Honor. We're still missing one or two
20 trucks or a few items.

21 But this motion is not timely, Your Honor. It should
22 have been brought in September, if that is what Mr. Jacob
23 Kari wanted to do.

24 Also remind the Court that about a month after the
25 Court's order about the estate assets, the Personal

1 Representative was forced to ask the Court for an order to
2 show cause. We had a hearing on that in January. And
3 Jacob was found to be in contempt of the Court's order.

4 Next, Your Honor, this motion that we're hearing today
5 was filed in January after Jacob was held in contempt and
6 not noticed up until today, actually.

7 Your Honor, a business trust is similar to a
8 corporation or an LLC, a co-op.

9 A trust under Chapter 55 is an entirely different
10 beast.

11 And on that note, Your Honor, Jacob hasn't proposed
12 any terms for the trust they're asking the Court to
13 create. They haven't really pointed out who the
14 beneficiaries or alternate or successor trustees would be,
15 the terms, duration, or purpose of such a trust, Your
16 Honor.

17 And I'll also remind the Court that my client, in late
18 2023, filed her petition for an elective share, if needed.
19 We were still trying to sort out what was in the estate
20 and we still are to an extent.

21 But I think that doing this, especially at this
22 juncture, is a waste of efficiencies. It will cost all of
23 the parties more money, Your Honor, and we also have the
24 law of the case issue that I raised in the brief.

25 And then, lastly, in the event that the Court

1 acknowledge that Jack did not intend to set up trust. And
2 that is why we specifically asked for the language that
3 the Estate be a placeholder but the Court retain
4 jurisdiction over it.

5 Thank you.

6 **THE COURT:** Thank you.

7 Mr. Willert?

8 **MR. WILLERT:** I had something on my mind but now I forgot,
9 Your Honor.

10 Again, this should have been raised in September of
11 last year.

12 Most of these trucks, Your Honor, it's my
13 understanding that they're nonserviceable vehicles. It's
14 difficult to argue that keeping those in any trust would
15 be able to bring in income or benefit people. They should
16 be liquidated and the Estate should be settled up. And I
17 think we're getting close to being at that point, Your
18 Honor. Thank you.

19 **THE COURT:** Thank you.

20 The Court has reviewed the motion, the brief, and the
21 objections filed by the Personal Representative.

22 The Court is going to sustain the objections. The
23 Court already ordered that on — the judgment entered on
24 September 18th — this Court determined that any and all
25 assets purportedly held or owned are assets of the Estate

1 and also ordered that a list of vehicles purportedly owned
2 by the Trust are to be retitled into the assets -- or into
3 the Estate.

4 And so I am not going to form any trusts in this case.
5 They could have been done during the lifetime of Mr. Kari.
6 They weren't done. There's no clear direction in there.

7 And I am going to, like I said, sustain the
8 objections. Both parties will pay their own attorney
9 fees, if any.

10 I'll ask Mr. Willert to prepare an order.

11 **MR. WILLERT:** I will do that, Your Honor.

12 **THE COURT:** And then Mr. Clayborne raised the issue of
13 your motion for liquidation that was filed on June 9th.

14 **MR. WILLERT:** Yes, Your Honor.

15 It was within that 10-day window. If Mr. Clayborne
16 wants to object, that's fine. We can notice that for a
17 hearing on another day.

18 If he's not going to object, that's fine. Perhaps the
19 Court could give us five or ten minutes and see if we can
20 resolve that.

21 **THE COURT:** What do you want to do?

22 **MR. CLAYBORNE:** If I can have a couple of days and talk to
23 Kellen back and forth.

24 **THE COURT:** Sure.

25 **MR. CLAYBORNE:** If you go by the statute, weekends and

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
COUNTY OF BUTTE)) SS.
) FOURTH JUDICIAL CIRCUIT
In the Matter of the Estate of)) 09PRO23-000003
JACK R. KARI,))
DECEASED.))

ORDER ADMITTING WILL TO FORMAL PROBATE,
DETERMINATION OF HEIRS, AND APPOINTMENT OF PERSONAL
REPRESENTATIVE

Upon consideration of the Application for Formal Probate, the court finds:

1. The required notice has been given or waived, venue in this county is proper, and these proceedings were commenced within the time prescribed by SDCL 29A-3-108.
2. Decedent died on November 11, 2022.
3. The decedent was domiciled at the time of death in Butte County, South Dakota.
4. On or about February 13, 2023 Jacob Kari filed a purported holographic will dated November 2, 2022 with the Court. It is unknown where the original Will is.
5. The Will is valid, unrevoked, and is the last Will of the decedent.
6. The Will does not name any beneficiaries, does not make any bequests, and does not nominate a personal representative. Decedent's wife, **KIMBERLY KARI**, is entitled to appointment as personal representative.
7. Because the Will does not name any heirs or beneficiaries, the sole heir of the decedent is determined to be decedent's wife, **KIMBERLY KARI**, of 1520 Mill Street, Belle Fourche, South Dakota 57717.

IT IS ORDERED:

- A. The findings are made a part of this order.
- B. The Will of the decedent dated November 2, 2022 is declared to be valid and is admitted to formal probate.

C. The sole heir of the decedent is listed above.

D. **KIMBERLY KARI** is formally appointed as personal representative of the decedent's estate, and letters shall be issued to the personal representative to serve without bond.

Dated nunc pro tunc August 29, 2023 (which was the date of the hearing in this matter).

BY THE COURT:

8/31/2023 3:30:15 PM



Michael W. Day, Circuit Court Judge
Fourth Judicial Circuit



Attest:
Jensen, Alana
Clerk/Deputy

Jack's Last will and Testament.

Since all of Jack's properties are in trusts, with Jacob and other trustees controlling the trusts. Jack's only existing desire is to be buried at the Sundance Ranch.

Jack Kari 11-2-2022
Jack Kari

Witnessed by

Jawi Kari *gud- g Kari*
Amy Kari *Amy E Kari*

FILED

FEB 13 2023

SOUTHWEST UNITED JURISDICTION
4TH CIRCUIT CLERK OF COURT

By _____

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
)SS.)
COUNTY OF BUTTE) FOURTH JUDICIAL CIRCUIT
)
In the Matter of the Estate of) 09PRO23-000003
JACK R. KARI,)
)
DECEASED.)

ORDER AND JUDGMENT

A hearing was held before the Court on September 12, 2024 on the Motion for Court Order Affirming Personal Representative's Authority and Determination of Estate Assets ("Motion") filed with the Court on August 14, 2024. The Personal Representative, Kimberly Kari, appeared personally along with the estate's attorney of record, Kellen B. Willert. Jacob Kari appeared personally along with his attorney of record, Courtney Clayborne.

The Court having considered the pleadings and papers on file herein, the evidence presented to the Court, the arguments of counsel, and for good cause appearing therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to the "Happy Wheels" business trust, is hereby GRANTED, and the Personal Representative has the authority to continue or participate in the operations of the Happy Wheels business trust pursuant to SDCL § 29A-3-715(24); it is further

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to "Heavenly Repairs LLC", is hereby GRANTED, and the Personal Representative has the authority to continue or participate in the operations of the Heavenly Repairs LLC pursuant to SDCL § 29A-3-715(24); it is further

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to "Karis' Properties Ltd. Liability Co.", is hereby GRANTED, and the Personal Representative has the authority to continue or participate in the operations of the Karis' Properties Ltd. Liability Co. pursuant to SDCL § 29A-3-715(24); it is further

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to "CONSIDERATE TOWING TRUST", is hereby DENIED, and the Court adjudges that is CONSIDERATE TOWING TRUST and invalid and is not a legally formed business trust; it is further

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to:

- 1) Considerate Towing Trust I;
- 2) Considerate Towing Trust II;
- 3) Considerate Towing Trust III;
- 4) Considerate Towing Trust IV;
- 5) Considerate Towing Trust V;
- 6) Considerate Towing Trust VI;
- 7) Considerate Towing Trust VII;
- 8) Considerate Towing Trust X;
- 9) Considerate Towing Trust XI, X11, or XII;
- 10) Considerate Towing Trust XIII;
- 11) Considerate Towing Trust XV;
- 12) Considerate Towing Trust XVI;
- 13) Considerate Towing Trust MCMLX;
- 14) Considerate Towing Trust MMXVI;
- 15) Considerate Towing Trust MMXVII; and
- 16) Considerate Towing Trust DCCLXXVII.

is hereby GRANTED, and the Court adjudges the above-named business trusts in paragraphs 1-16 above as invalid and not legally formed business trusts (referred altogether along with CONSIDERATE TOWING TRUST as "17 Faux Trusts"), and any and all assets purportedly held or owned by any of the 17 Faux Trusts are assets of the Estate of Jack R. Kari (however, said assets are subject to further order of the Court); it is further

ORDERED, ADJUDGED and DECREED that no party, including the Personal Representative as well as Jacob Kari, may distribute, dispose of, or otherwise liquidate any of said assets purportedly held or owned by any of the 17 Faux Trusts without further Order of the Court or a written agreement between the Personal Representative, Kim Kari individually, Jacob Kari, Wendy Raber, and Jason Kari; it is finally

ORDERED, ADJUDGED and DECREED that any and all assets purportedly held or owned by any of the 17 Faux Trusts which are titled vehicles, shall be re-titled in the name of the "Estate of Jack R. Kari"; titled vehicles owned by the 17 Faux Trusts include, but are not limited to:

- 1) CONSIDERATE TOWING TRUST:
 - a. 2008 Dodge Ram 5500 truck, VIN 3D6WD78AX8G228559, SD Title No. 091801180;
 - b. 1989 Freightliner FLD120 truck, VIN 1FV820Y97KH346992, SD Title No. 091801117;
 - c. 2000 Ford F750 truck, VIN 3FDPX75A6YMA06524, SD Title No. 091801084;

- d. 1996 Kenworth T600B truck, VIN 1XKADR9X0TR676904, SD Title No. 091801160;
- e. 1998 Freightliner FL60 truck, VIN 1FV3GLBC6WH924748, SD Title No. 091801100;

- 2) Considerate Towing Trust I;
 - a. No known titled assets;
- 3) Considerate Towing Trust II;
 - a. No known titled assets;
- 4) Considerate Towing Trust III;
 - a. No known titled assets;
- 5) Considerate Towing Trust IV;
 - a. No known titled assets;
- 6) Considerate Towing Trust V;
 - a. No known titled assets, but there is indicia that there may be a "2011 Dodge Ram 5500 rollback" titled in the name of this business trust;
- 7) Considerate Towing Trust VI;
 - a. No known titled assets, but information indicates there may be a "2009 Dodge Ram 5500 Wrecker VIN 3D6WD78L99G555814" titled in the name of this business trust;
- 8) Considerate Towing Trust VIII;
 - a. 2007 Chevrolet K2500HD Silverado Pickup, VIN 1GCHK23D07F180143, SD Title No. 121790422;
- 9) Considerate Towing Trust X;
 - a. No known titled assets;
- 10) Considerate Towing Trust XI, X11, or XII;
 - a. 2007 Chevrolet Cobalt, VIN 1G1AK15F177136181, SD Title No. 161740864;
- 11) Considerate Towing Trust XIII;
 - a. 1993 Chevrolet CK30953 pickup, VIN 1GCHK39F0PE199344, SD Title No. 161740836;
- 12) Considerate Towing Trust XV;

- a. 2013 Landoll 440 VIN 1LH440WH7D1019730, SD Title No. 123620380;
- b. 2009 Dodge Ram 5500 tow truck, VIN 3D6WD78L99G555814, SD Title No. 130430037;
- c. 011 Dodge Ram 5500 tow truck, VIN 3D6WU7CL1BG594720, SD Title No. 150970048;

13) Considerate Towing Trust XVI;

- a. 1980 A M General M920 semi truck, VIN 0T58166011023, SD Title No. 131330671;

14) Considerate Towing Trust MCMLX;

- a. 1960 Ford F100 pickup, VIN F10J0P19204, SD Title No. 221880354;

15) Considerate Towing Trust MMXVI;

- a. 2016 Peterbilt tow truck, VIN 2NP2HJ7X2GM359205, SD Title No. 160620034;

16) Considerate Towing Trust MMXVII;

- a. 2018 Sundowner Sunlite 7x12 trailer, VIN 13SKK1220J1KB5207, SD Title No. 170971127; and

17) Considerate Towing Trust DCCLXXVII;

- a. No known titled assets.

As such, the South Dakota Department of Revenue shall search its database for South Dakota titles to locate any additional titled assets in the name of any of the 17 Faux Trusts and re-title any and all titled assets purportedly held by the 17 Faux Trusts including, but not limited to, the titled assets listed above, as being owned by "Estate of Jack R. Kari".

BY THE COURT:

9/18/2024 7:49:06 AM


Michael W. Day, Circuit Court Judge

Fourth Judicial Circuit



Attest:
Jensen, Alana
Clerk/Deputy

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
) SS.) FOURTH JUDICIAL CIRCUIT
COUNTY OF BUTTE)
)
In the Matter of the Estate of) 09PRO23-000003
JACK R. KARI,)
)
) DECEASED.)

AFFIDAVIT OF KIMBERLY KARI

STATE OF SOUTH DAKOTA)
) SS.
County of BUTTE)

KIMBERLY KARI ("Kim"), in her capacity as Personal Representative of the Estate of Jack R. Kari, being first duly sworn, deposes and states as follows:

1. I am the duly appointed Personal Representative of the Estate of Jack R. Kari.
2. This Affidavit is made in support of the Motion for Court Order Affirming Personal Representative's Authority and Determination of Estate Assets ("Motion") in this matter.
3. Jack Kari ("Jack") created multiple business trusts as an attempt to isolate liability and protect Jack's various assets, as Jacob Kari ("Jacob") testified to:

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1 Q And was the purpose of the trusts to be a way that
2 Jack could take care of everybody in the family?
3 A It was a way to protect everything from a lawsuit.
4 Q Okay. From a lawsuit from who?
5 A Anyone who might sue.

Transcript, 26:1-5. A copy of relevant portions of Jacob's deposition taken on October 31, 2023 is attached hereto as "Exhibit 101".

4. The Motion is primarily being made because Jacob is asserting that he has complete control of Jack's trusts and other enterprises.

5. Jacob has also attempted to restrict my access to information about the business trusts and Jack's other enterprises, and has even tried to deny me access to the house at the Wyoming property.

6. After Jacob refused to give me access to information about the various business trusts, I was forced to subpoena Jacob for information, and later had to obtain a Court Order before Jacob would produce the documents.

7. After obtaining documents from Jacob and deposing Jacob, it has become evident that Jack had established or attempted to establish, at a minimum, the following business trusts and limited liability companies:

- a. Considerate Towing Trust;
- b. Considerate Towing Trust I;
- c. Considerate Towing Trust II;
- d. Considerate Towing Trust III;
- e. Considerate Towing Trust IV;
- f. Considerate Towing Trust V;
- g. Considerate Towing Trust VI;
- h. Considerate Towing Trust VIII;
- i. Considerate Towing Trust X;
- j. Considerate Towing Trust XI, XI, or XII;
- k. Considerate Towing Trust XIII;
- l. Considerate Towing Trust XV;
- m. Considerate Towing Trust XVI;
- n. Considerate Towing Trust MCMLX;
- o. Considerate Towing Trust MMXVI;
- p. Considerate Towing Trust MMXVII;
- q. Considerate Towing Trust DCCLXXVII;
- r. Happy Wheels Trust;
- s. Heavenly Repairs LLC; and
- t. Karis' Properties LTD. Liability Co.

8. None of the business trust documents indicate who the beneficial owners to the various business trusts are or what should happen when Jack, as settlor of the

various trusts, passed away.¹ Many of the trusts do not have a governing document and/or any certificate of trust filed with the South Dakota Secretary of State, as is required by SDCL § 47-14A-43.

CONSIDERATE TOWING TRUST

9. In relation to Considerate Towing Trust:

- a. On or about April 22, 2009, Jack, myself, Jacob, and Wendy Kari ("Wendy") formed the "Considerate Towing Trust" as the trustees of the business trust. A copy of the Certificate of Declaration of Trust and the Application for Certificate of Trust are attached hereto as "Exhibit 33".²
- b. No governing instrument for Considerate Towing Trust was drafted or executed into by the trustees, no meeting minutes ever created, and there is nothing evidencing the identity of the beneficial owners.
- c. At a minimum, assets held by Considerate Towing Trust include: a 2008 Dodge Ram 5500 tow truck, a 1989 Freightliner FLD120 tow truck, a 2000 Ford F750 tow truck, a 1996 Kenworth T600B tow truck, and a 1998 Freightliner FL60 tow truck. Copies of the titles to these vehicles are attached hereto as "Exhibits 34-38".
- d. There is no series charter or other document providing for series business trusts as part of Considerate Towing Trust.
- e. I ask the Court to enter an Order affirming the Personal Representative's power to continue or participate in the operations of Considerate Towing Trust on behalf of the estate pursuant to SDCL § 29A-3-715(24).

CONSIDERATE TOWING TRUST I

10. In relation to Considerate Towing Trust I:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust I, and it was therefore never legally

¹ "Beneficial owner", any owner of a beneficial interest in a business trust, the fact of ownership to be determined and evidenced (whether by means of registration, the issuance of certificates or otherwise) in conformity to the applicable provisions of the governing instrument of the business trust...," SDCL § 47-14A-1(2).

² The same Exhibit numbers used during the depositions are used here to avoid confusion in the future.

formed.³

b. A document titled "Considerate Towing Trust I" purportedly created an irrevocable business trust. A copy of this document is attached hereto as "Exhibit 40". This document further indicated that it held certain assets – although no documents evidencing conveyance to Considerate Towing Trust I have been located. Jack created the document, and Jacob had no role in drafting the document.

c. The settlor of the Trust was Jack. No beneficial owners are listed. There are no known Bills of Sale or title transfers for the vehicles to Considerate Towing Trust I.

d. I am unaware of any other assets (beyond what is listed in Exhibit 40) purportedly held by Considerate Towing Trust I.

e. Because this business trust was never actually formed⁴, and because Jack was the settlor of the purported business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust I are in fact assets of the Estate.

CONSIDERATE TOWING TRUST II

11. In relation to Considerate Towing Trust II:

a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust II, and it was therefore never legally formed.

b. A document titled "Considerate Towing Trust II" purportedly created an irrevocable business trust, indicating that it held certain real property in Lawrence County, South Dakota ("Lot 8 Block 3 Town lots S , [sic] St. Onge, SD"). A copy of this document is attached hereto as "Exhibit 41". I have not located any deed conveying this real property to Considerate Towing Trust II.⁵

³ "Every business trust shall file a certificate of trust in the Office of the Secretary of State....A business trust is formed at the time of filing of the initial certificate of trust...." SDCL § 47-14A-43 (in part).

⁴ "A business trust is formed at the time of the filing...." SDCL § 47-14A-44 (in part).

⁵ There is a deed, however, conveying the property to Heavenly Repairs LLC, which is discussed below.

- c. The settlor of Considerate Towing Trust II was Jack, no beneficial owners are listed, and there are no known deed conveying said real property to Considerate Towing Trust II.
- d. I am unaware of any other assets purportedly held by Considerate Towing Trust II.
- e. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust II are in fact assets of the Estate.

CONSIDERATE TOWING TRUST III

- 12. In relation to Considerate Towing Trust III
 - a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust III, and it was therefore never legally formed.
 - b. A document titled "Considerate Towing Trust III" purportedly created an irrevocable business trust, indicating that it held certain real property in Lawrence County, South Dakota ("Lots 4 &5 [sic] Block 3 Town lots S, [sic] St. Onge, SD"). A copy of this document is attached hereto as "Exhibit 42".
 - c. The settlor of Considerate Towing Trust II was Jack, no beneficial owners are listed, and there are no known deed conveying said real property to Considerate Towing Trust III.⁶
 - d. I am unaware of any other assets purportedly held by Considerate Towing Trust III.
 - e. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust III are in fact assets of the Estate.

⁶ There is a deed, however, conveying the property to Heavenly Repairs LLC, which is discussed below.

CONSIDERATE TOWING TRUST IV

13. In relation to Considerate Towing Trust IV:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust IV, and it was therefore never legally formed.
- b. A document titled "Considerate Towing Trust IV" purportedly created an irrevocable business trust, indicating that it held certain real property in Crook County, Wyoming ("40 Acres 4.5 Miles south of Sundance, Wy [sic] on hwy 585"). A copy of this document is attached hereto as "Exhibit 43".
- c. Another document with the same title purports that Considerate Towing Trust IV holds as an asset the "SE 1/4 NW and the SW 1/4 NE 1/4 of Section 5, T50N, R62W of the 6th PM, Crook County Wyoming." A copy of this document is attached hereto as "Exhibit 45.1".
- d. The settlor of Considerate Towing Trust IV was Jack, no beneficial owners are listed, and there are no known deeds conveying said real property to Considerate Towing Trust IV.
- e. I am unaware of any other assets purportedly held by Considerate Towing Trust IV.
- f. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust IV are in fact assets of the Estate.

CONSIDERATE TOWING TRUST V

14. In relation to Considerate Towing Trust V:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust V, and it was therefore never legally formed.
- b. A document titled "Considerate Towing Trust V" purportedly created an irrevocable business trust, indicating that it held a "2011 Dodge

Ram 5500 rollback" as an asset. A copy of this document is attached hereto as "Exhibit 44".

c. The settlor of Considerate Towing Trust V was Jack, no beneficial owners are listed, and there are no known title or other document conveying said vehicle to Considerate Towing Trust V.

d. I am unaware of any other assets purportedly held by Considerate Towing Trust V.

e. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust V are in fact assets of the Estate.

CONSIDERATE TOWING TRUST VI

15. In relation to Considerate Towing Trust VI:

a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust VI, and it was therefore never legally formed.

b. A document titled "Considerate Towing Trust VI" purportedly created an irrevocable business trust, indicating that it held a "2009 Dodge Ram 5500 Wrecker VIN 3D6WD78L99G555814" as an asset. A copy of this document is attached hereto as "Exhibit 45".

c. The settlor of Considerate Towing Trust VI was Jack, no beneficial owners are listed, and there are no known title or other document conveying said vehicle to Considerate Towing Trust VI.

d. I am unaware of any other purportedly assets held by Considerate Towing Trust VI.

e. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust VI are in fact assets of the Estate.

CONSIDERATE TOWING TRUST VII

16. I was unable to locate any documents relating to a "Considerate Towing Trust VII".

CONSIDERATE TOWING TRUST VIII

17. In relation to Considerate Towing Trust VIII:

a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust VIII, nor is there any purported governing document for it, and it was therefore never legally formed.

b. The owner listed on the title for a 2007 Chevrolet K2500HD Silverado Pickup, VIN 1GCHK23DO7F180143 is "CONSIDERATE TOWING TRUST VIII TRUST [sic] JACK KARI TRUSTEE". A copy of the title is attached hereto as "Exhibit 46".

c. I am unaware of any other documents relating to a Considerate Towing Trust VIII.

d. I am unaware of any other assets purportedly held by Considerate Towing Trust VIII.

e. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.

f. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust VIII are in fact assets of the Estate.

CONSIDERATE TOWING TRUST IX

18. I was unable to locate any documents relating to a Considerate Towing Trust IX.

CONSIDERATE TOWING TRUST X

19. In relation to Considerate Towing Trust X:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust X, and it was therefore never legally formed.
- b. A document titled "Considerate Towing Trust X" purportedly created an irrevocable business trust, indicating that it held certain real property in Butte County, South Dakota ("Lot 37 of Mountain View Addition to the city of Belle Fourche, [sic] Butte County, South Dakota"). A copy of this document is attached hereto as "Exhibit 47".
- c. Jack conveyed his interest in above-described Lot 37 to Considerate Towing Trust X by a quitclaim deed recorded February 5, 2013. A copy of this deed is attached hereto as "Exhibit 59.1". Jacob had no involvement in this transfer.
- d. The settlor of Considerate Towing Trust X was Jack, no beneficial owners are listed, and there are no known deed conveying said real property to Considerate Towing Trust X.
- e. I am unaware of any other assets purportedly held by Considerate Towing Trust X.
- f. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust X are in fact assets of the Estate.

CONSIDERATE TOWING TRUST XI, X11, AND/OR XII

20. In relation to Considerate Towing Trust XI, X11, or XII:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust XI, X11, or XII, nor is there any purported governing document for it, and it was therefore never legally formed.
- b. The owner listed on the title for a 2007 Chevrolet Cobalt, VIN 1G1AK15F177136181 is "CONSIDERATE TOWING TRUST X11 [sic] TRUST [sic] JACK KARI TRUSTEE". A copy of the title is attached hereto as "Exhibit 48".

- c. I am unaware of any other documents relating to a Considerate Towing Trust XI, X11, or XII.
- d. I am unaware of any other assets purportedly held by Considerate Towing Trust XI, X11, or XII.
- e. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
- f. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust XI, X11, or XII are in fact assets of the Estate.

CONSIDERATE TOWING TRUST XIII

21. In relation to Considerate Towing Trust XIII:
 - a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust XIII, nor is there any purported governing document for it, and it was therefore never legally formed.
 - b. The owner listed on the title for a 1993 Chevrolet CK30953 pickup, VIN 1GCHK39F0PE199344 is "CONSIDERATE TOWING TRUST XIII TRUST [sic] JACK KARI TRUSTEE". A copy of the title is attached hereto as "Exhibit 49".
 - c. I am unaware of any other documents relating to a Considerate Towing Trust XIII.
 - d. I am unaware of any other assets purportedly held by Considerate Towing Trust XIII.
 - e. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
 - f. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by

Considerate Towing Trust XIII are in fact assets of the Estate.

CONSIDERATE TOWING TRUST XIV

22. I was unable to locate any documents relating to a Considerate Towing Trust XIV.

CONSIDERATE TOWING TRUST XV

23. In relation to Considerate Towing Trust XV

a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust XV, and it was therefore never legally formed.

b. A document titled "Considerate Towing Trust XV" purportedly created an irrevocable business trust, indicating that it held a "2012 Landoll 440 VIN 1LH440WH7D10J9730" (a semi trailer) as an asset. A copy of this document is attached hereto as "Exhibit 50". The settlor of Considerate Towing Trust XV was Jack, and no beneficial owners are listed.

c. A title matching the above-described VIN, but for a 2013 Landoll 440 trailer, lists the owner as "CONSIDERATE TOWING TRUST XV TRUST[sic] JACK KARI TRUSTEE". A copy of this title is attached hereto as "Exhibit 51".

d. A title for a 2009 Dodge Ram 5500 tow truck, VIN 3D6WD78L99G555814 lists the owner as "CONSIDERATE TOWING TRUST XV TRUST[sic] JACK KARI TRUSTEE". A copy of this title is attached hereto as "Exhibit 52".

e. A title for a 2011 Dodge Ram 5500 tow truck, VIN 3D6WU7C1BG594720 lists the owner as "CONSIDERATE TOWING TRUST XV TRUST". A copy of this title is attached hereto as "Exhibit 53".

f. I am unaware of any other assets purportedly held by Considerate Towing Trust XV.

g. Because this purported business trust was never actually formed,

and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust XVI are in fact assets of the Estate.

CONSIDERATE TOWING TRUST XVI

24. In relation to Considerate Towing Trust XVI:

- a.** No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust XVI, nor is there any purported governing document for it, and it was therefore never legally formed.
- b.** The owner listed on the title for a 1980 A M General M920 semi truck, VIN 0T58166011023 is "CONSIDERATE TOWING TRUST XVI TRUST JACK KARI TRUSTEE or JACOB KARI TRUSTEE". A copy of the title is attached hereto as "Exhibit 54". Jacob has the title for this vehicle.
- c.** I am unaware of any other documents relating to a Considerate Towing Trust XVI.
- d.** I am unaware of any other assets purportedly held by Considerate Towing Trust XVI.
- e.** There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
- f.** Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust XVI are in fact assets of the Estate.

CONSIDERATE TOWING TRUSTS XVIII THROUGH MCMLIX

25. I was unable to locate any documents relating to any Considerate Towing Trust series numbers XVIII through MCMLIX.

CONSIDERATE TOWING TRUST MCMLX

26. In relation to Considerate Towing Trust MCMLX:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust MCMLX, nor is there any purported governing document for it, and it was therefore never legally formed.
- b. The owner listed on the title for a 1960 Ford F100 pickup, VIN F10J0P19204 is "CONSIDERATE TOWING TRUST MCMLX TRUST [sic] JACK KARI TRUSTEE OR JACOB KARI TRUSTEE OR WENDY RABER TRUSTEE". A copy of the title is attached hereto as "Exhibit 56".
- c. According to Jacob's deposition, Jack's father gifted Jack the 1960 Ford F100.
- d. I am unaware of any other documents relating to a Considerate Towing Trust MCMLX.
- e. I am unaware of any other assets purportedly held by Considerate Towing Trust MCMLX.
- f. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
- g. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust MCMLX are in fact assets of the Estate.

CONSIDERATE TOWING TRUST MMXVI

27. In relation to Considerate Towing Trust MMXVI:
 - a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust MMXVI, nor is there any purported governing document for it, and it was therefore never legally formed.
 - b. The owner listed on the title for a 2016 Peterbilt tow truck, VIN 2NP2HJ7X2GM359205 is "CONSIDERATE TOWING TRUST MMXVI". A copy of the title is attached hereto as "Exhibit 57".

- c. I am unaware of any other documents relating to a Considerate Towing Trust MMXVI.
- d. I am unaware of any other assets purportedly held by Considerate Towing Trust MMXVI.
- e. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
- f. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust MMXVI are in fact assets of the Estate.

CONSIDERATE TOWING TRUST MMXVII

- 28. In relation to Considerate Towing Trust MMXVII:
 - a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust MMXVII, nor is there any purported governing document for it, and it was therefore never legally formed.
 - b. The owner listed on the title for a 2018 Sundowner Sunlite 7 x 12 trailer, VIN 13SKK1220J1KB5207 is "CONSIDERATE TOWING TRUST MMXVII TRUST [sic] JACK KARI TRUSTEE". A copy of the title is attached hereto as "Exhibit 58".
 - c. I am unaware of any other documents relating to a Considerate Towing Trust MMXVII.
 - d. I am unaware of any other assets purportedly held by Considerate Towing Trust MMXVII.
 - e. There are no documents evidencing the existence of any trustees other than Jack and that anyone other than Jack was a settlor of the business trust.
 - f. Because this purported business trust was never actually formed, and because Jack was evidently the settlor of the business trust, I ask the

Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust MMXVII are in fact assets of the Estate.

CONSIDERATE TOWING TRUST DCCLXXVII

29. In relation to Considerate Towing Trust DCCLXXVII:

- a. No Certificate of Trust was filed with the South Dakota Secretary of State for Considerate Towing Trust DCCLXXVII, and it was therefore never legally formed.
- b. A document titled "Considerate Towing Trust DCCLXXVII" purportedly created an irrevocable business trust, indicating that it held "Any and all properties left by Jack Kari that may have been not recorded in an individual trust." A copy of this document is attached hereto as "Exhibit 66".
- c. According to Jacob, this trust owns "...all of the small effects that [Jack] owned or he placed in the business..." including "[m]achines, tools, hand tools, power tools, everything." Transcript 147:12-19. According to Jacob, this includes 9 lathes, 5 mills, and various small tools. Transcript 147-148.
- d. Jacob also believes that any farm tractors and farm equipment are owned by this trust. Transcript 181:1-5.
- e. The settlor of Considerate Towing Trust DCCLXXVII was Jack, no beneficial owners are listed, and there are no known deed conveying any real property to Considerate Towing Trust DCCLXXVII.
- f. I am unaware of any other assets purportedly held by Considerate Towing Trust DCCLXXVII.
- g. Because this purported business trust was never actually formed, and because Jack was the settlor of the business trust, I ask the Court to enter an Order declaring that all assets purportedly held by Considerate Towing Trust DCCLXXVII are in fact assets of the Estate.

HAPPY WHEELS TRUST

30. In relation to the "Happy Wheels" trust:

- a. On or about February 22, 2011, Jack, Kim, Wendy (by that time going by the surname Raber), Amy Kari ("Amy", who is Jacob's wife), Jacob, and Jason Kari ("Jason", who is Jack and Kim's son) formed the "Happy Wheels" trust as the trustees of the trust. A copy of the Certificate of Declaration of Trust and Application for Certificate of Trust are attached hereto as "Exhibit 60".
- b. There is no series charter or other document providing for series business trusts as part of the Happy Wheels trust.
- c. A document dated February 22, 2011 titled "HAPPY WHEELS TRUST" purports to create an irrevocable business trust, and indicated that it held "Happy Wheels Towing" as an asset. A copy of this document is included with "Exhibit 60".
- d. The settlor of the Trust was Jack. No beneficial owners are listed. There are no known Bills of Sale or other transfers documents relating to Happy Wheels Towing.
- e. Happy Wheels Towing was registered as a d/b/a on March 3, 2011 (only a few weeks after the Declaration of Trust was filed for the Happy Wheels trust). A copy of a screenshot of the South Dakota Secretary of State's website regarding the d/b/a is attached hereto as "Exhibit 64". The documents on the South Dakota Secretary of State website are not available for download, likely because of their age.
- f. I am unaware of any other assets purportedly held by the Happy Wheels trust.
- g. I ask the Court to enter an Order affirming the Personal Representative's power to continue or participate in the operations of the Happy Wheels trust on behalf of the estate pursuant to SDCL § 29A-3-715(24).

HEAVENLY REPAIRS LLC

31. In relation to Heavenly Repairs LLC:

- a. On or about January 12, 2004, Jack organized "Heavenly Repairs LLC" by filing Articles of Organization with the South Dakota Secretary

of State. Copies of documents related to the filing of the Articles of Organization for Heavenly Repairs LLC are attached hereto as "Exhibit 5". Jack is the only organizer and only member listed in the Articles of Organization

b. There is no operating agreement for Heavenly Repairs LLC.

c. Jacob asserts that in 2004 the members of Heavenly Repairs LLC were Jack, Kim, Jacob, Wendy, and Jason:

13 Q Can you tell me the -- at this time, who were all of
14 the members of Heavenly Repairs, LLC, that would be
15 in January of 2004 at the time the first annual
16 report was signed?
17 A I'm not sure if there are any listed members.
18 Q Okay. But who were the members of the LLC?
19 A Jack was the member. There's no other listed
20 members.
21 Q Okay. You weren't a member at that time?
22 A Not listed with the state, no.
23 Q Okay. But I'm not asking who was listed as a member.
24 I'm asking who was an actual member of the LLC?
25 A Well, me and my brother, my sister and my mom were

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1 all parts of the LLC.
2 Q Okay. So were you all members of the LLC at that
3 time?
4 A I suppose it would be said so, yes.

Transcript, 52:13-53:4.

d. However, Jacob also claims that in November 2022 (the same month Jack passed away) that the only members of Heavenly Repairs LLC

were Jacob and Jack, even though there are no records or other documentation showing Kim, Wendy, or Jason had sold/forfeited/otherwise terminated their purported membership units with the company;

16 Q Who were the members of the company at that time in
17 November of 2022?
18 A Me and Dad. Me and Jack.
19 Q How many membership units did you own at that time?
20 A There are no membership units.
21 Q What was your interest in the LLC at that time?
22 A I was co-owner with Dad.
23 Q How much of the company did you own?
24 A There was no statement of ownership portions.
25 Q So if you were to sell the company on November 6th of

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1 2022 for \$100, how much of that \$100 would you have
2 received?

3 A I have no idea. We would have had to discuss that.

4 Q Okay. And you talked about your siblings and your

5 mom being members of the company prior to this time?

6 A Yes.

7 Q Are there any records or other documentation showing

8 them selling, forfeiting or otherwise terminating

9 their membership interest in the company?

10 A No.

11 Q So there's no meetings terminating their interests in

12 the company?

13 A Nothing written, no.

14 Q Okay. You say nothing written, so what do you mean

15 by that?

16 A They left the company.

17 Q What evidence do you have that they left the company?

18 A For Wendy and Jason, the only records would be that

19 they went and took jobs elsewhere.

20 Q Okay. But that doesn't equate to selling or

21 terminating your membership interest, does it?

22 A No.

Transcript, 63:16-64:22.

e. The apparent assets held by Heavenly Repairs LLC include two vehicles, real property in Lawrence County, South Dakota, and interest in a d/b/a:

i. The owner listed on the title for the title for a 1989 Ware 8x46 trailer, VIN 1A1B45215J1403961, is "HEAVENLY REPAIRS OR KARI, KIMBERLY". A copy of the title is attached

hereto as "Exhibit 8".

ii. The owner listed on the title for a 2011 Dodge Ram 5500 truck, VIN 3D6WU7CL6BG502047, is "HEAVENLY REPAIRS". A copy of the title is attached hereto as "Exhibit 13".

f. On or about March 23, 2021, Jack and Kim conveyed certain real property to Heavenly Repairs LLC⁷; Jack and Kim did this by virtue of two quitclaim deeds. Copies of the recorded quitclaim deeds are attached hereto as "Exhibit 68".

g. The Fictitious Name Registration for "Heavenly Machining LLC" was registered as a "Doing Business As (DBA)", naming two owners: 1) Heavenly Repairs, LLC and 2) Jacob J. Kari.⁸ A copy of the Fictitious Business Name Registration and receipt are attached hereto as "Exhibit 77".

h. I ask the Court to enter an Order declaring that Jack's sole ownership interest in Heavenly Repairs LLC is an asset of the Estate.

KARIS' PROPERTIES LTD. LIABILITY CO.

32. In relation to Karis' Properties LTD. Liability Co.:

a. On or about November 10, 2005, Jack organized "Karis' Properties LTD. Liability Co." in the state of Wyoming. A copy of the Certificate of Organization is attached hereto as "Exhibit 27". A copy of the 2007 Annual Report for the company is attached hereto as "Exhibit 28".

b. In October 2009, Jack caused Articles of Dissolution for this company to be filed with the Wyoming Secretary of State.

c. Despite Jack dissolving the entity in 2009, it appears that there are still assets in the name of this company, including:

i. SE 1/4 NW and the SW 1/4 NE 1/4 of Section 5, T50N, R62W of the 6th PM, Crook County Wyoming.

⁷ The properties conveyed are Lots 4, 5, and 8 in block 3 of the town of St. Onge, Lawrence County, South Dakota.

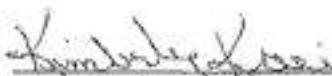
⁸ If Jacob were a member of Heavenly Repairs LLC, it begs the question why he would be listed separately as an owner of the d/b/a.

ii. 2023 Notice of Assessments from Crook County, Wyoming list the following assets on the Sundance Property: a 1967 Rushmore 12 x 60 mobile home, a 28 x 60 pole building, and a 1957 mobile home. Copies of these assessments are attached hereto as "Exhibit 78".

d. Jacob does not know who the members of Karis' Properties LTD. Liability Co. are. Transcript, 171:15-19.

e. I ask the Court to enter an Order declaring any assets held by Karis' Properties LTD. Liability Co. are assets of the estate.

DATED this 12th day of August, 2024.



KIMBERLY KARI

Subscribed and sworn to before me this 12th day of August, 2024.





Kellen B. Willert, Notary Public
My Commission Expires: 09/20/2025

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
)
)SS.)
COUNTY OF BUTTE) FOURTH JUDICIAL CIRCUIT
)
In the Matter of the Estate of) 09PRO23-000003
JACK R. KARI,)
)
DECEASED.)

**PERSONAL REPRESENTATIVE'S OBJECTIONS TO JACOB KARI'S
MOTION TO ESTABLISH TRUST AND TRANSFER ASSETS OF THE
ESTATE**

CASE POSTURE

Comes now, the Personal Representative of the Estate of Jack Kari, Kimberly Kari, by and through attorney Kellen B. Willert, and respectfully submits the *Personal Representative's Objections to Jacob Kari's Motion to Establish Trust and Transfer Assets of the Estate*.

On September 18, 2024 this Court entered an *Order and Judgment* based on the Personal Representative's *Motion for Court Order Affirming Personal Representative's Authority and Determination of Estate Assets*. Within a month after entry of the September 18, 2024 *Order and Judgment*, the Personal Representative was forced to bring forth her *Motion for Court Order Re: Possession and Control of Estate Assets*. Thereafter, the Court entered its *Order Re: Possession and Control of Estate Assets* on October 21, 2024.

Less than a month and a half after the October 21, 2024 *Order Re: Possession and Control of Estate Assets*, the Personal Representative was forced to ask for an Order to Show Cause in relation to Jacob's interference with the Personal Representative's execution of her duties.

A hearing was held on January 6, 2025, and Jacob was found to be in contempt of the Court's October 21, 2024 *Order Re: Possession and Control of Estate Assets*.¹

On January 23, 2025 Jacob Kari filed his *Motion to Establish Trust and Transfer Assets of the Estate* ("Jacob's Motion"). It is unclear why Jacob has waited so long to bring forth a hearing on Jacob's Motion.

¹ The Findings of Fact, Conclusions of Law, and Order of Contempt were entered on January 24, 2025.

OBJECTIONS TO JACOB'S MOTION

Jacob's Motion asks the Court to "...direct the formation of the Jack R. Kari Trust and directing that the personal representative transfer all assets intended [sic] by Jack Kari, into said trust. This motion is being made pursuant to SDCL § [sic] 55-1...."

Jacob also submitted his *Brief in Support of Motion to Establish Trust and Transfer Assets of Estate* ("Jacob's Brief"). Without citing any authority, Jacob asserts that "[t]his is [sic] motion based on the fact that though Jack may have failed in his attempts to create valid business trusts or otherwise properly transfer his interest into trust(s), the property may still be ultimately need [sic] to be distributed to a trustee per SDCL § [sic] 55-1." Jacob's Brief, p. 4. Although not entirely clear, it seems Jacob is asking the Court to create an express trust or, alternatively, create an implied trust. Jacob's Brief, p. 6.

It is important to distinguish a 'business trust' from what Jacob is asking the Court to do here.

A 'business trust' is a legal entity governed by SDCL Chapter 47-14A. Title 47 is titled "Corporations", and governs, among other things, corporations, professional corporations, business trusts, cooperatives, nonprofit corporations, and LLCs.

A trust pursuant to SDCL Chapter 55-1 is an entirely different beast.

Jacob asks the Court to create a trust pursuant to SDCL Chapter 55-1, which is not even found in the same title as a business trust. The Personal Representative objects to the articulation of what the law is in Jacob's Brief – for example, Jacob claims that "Implied trusts are imposed by the Court using a more equitable standard and are based on the factual circumstances of the transaction. SDCL § 55-1-6." Jacob's Brief, p. 4 (at ¶ 5). The law actually says the opposite – "[a]n implied trust is one which is created by operation of law. An implied trust arises in the cases described in §§ 55-1-7 to 55-1-10, inclusive." SDCL § 55-1-6 (emphasis added).

Jacob cites cases dealing with the Court interpreting express written trust agreements pursuant to SDCL Title 55. Jack intended to create numerous business trusts pursuant to SDCL Chapter 47-14A, not a unitary trust pursuant to SDCL Chapter 55-1.

LAW OF THE CASE

This Court entered oral Conclusions of Law at the January 6, 2025 hearing. The failure to appeal a Court's conclusion of law becomes the law of the case. *Gridley v.*

Engelhart, 322 N.W.2d 3, 6 (S.D. 1982); *see also, Red Fox v. Hettich*, 494 N.W.2d 638, 644 (S.D. 1993). Consequently, this Court's Conclusions of Law entered on this issue becomes the law of the case.

JUDICIAL EFFICIENCY

Certainly the Court would not seriously entertain a request to put all assets into a trust under the circumstances where the decedent had failed to form a valid business entity, such as a corporation, LLC, or business trust.

Nearly nine months ago, this Court made a determination in regards to the multiple flawed business trusts. Granting Jacob's Motion will hinder judicial efficiency. Most of the assets have been re-titled into the name of the Estate.

TRUSTEE APPOINTMENT

In the event that the Court determines that formulation of a trust is appropriate, the Personal Representative requests that she be appointed as Trustee or, alternatively, a third uninterested party be appointed.

Jacob requests that he be appointed trustee – but he has already interfered in this matter and has already been held in contempt of court. Jacob is not an appropriate fiduciary.

REQUEST FOR PERSONAL REPRESENTATIVE'S ATTORNEY'S FEES AND COSTS

The Personal Representative respectfully requests the Court award attorney's fees and costs related to responding to Jacob's Motion.

DATED this 9th day of June, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for the Personal Representative

By: /s/ Kellen B. Willert

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15-26A-3. Judgments and orders of circuit courts from which appeal may be taken.

Appeals to the Supreme Court from the circuit court may be taken as provided in this title from:

- (1) A judgment;
- (2) An order affecting a substantial right, made in any action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken;
- (3) An order granting a new trial;
- (4) Any final order affecting a substantial right, made in special proceedings, or upon a summary application in an action after judgment;
- (5) An order which grants, refines, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in court;
- (6) Any other intermediate order made before trial, any appeal under this subdivision, however, being not a matter of right but of sound judicial discretion, and to be allowed by the Supreme Court in the manner provided by rules of such court only when the court considers that the ends of justice will be served by determination of the questions involved without awaiting the final determination of the action or proceeding; or
- (7) An order entered on a motion pursuant to § 15-6-11.

Source: SDC 1939 & Supp 1960, § 33.0701; SDCL, § 15-26-3; SL 1971, ch 151, § 2; SL 1986, ch 160, § 2.

55-1-1. Purposes for which trust may be created.

Except as otherwise prescribed by chapters 42-6 and 43-25 relating to insafers, a trust may be created for any purpose for which a contract may lawfully be made.

Source: CivC 1877, § 1293; CL 1887, § 3916; RCivC 1903, § 1612; RC 1919, § 1199; SDC 1939 § 59.0104; SL 2017, ch 204, § 4.

55-1-11. Implied trust--Declaration by court of equity.

The construction in §§ 55-1-7 to 55-1-10, inclusive, of cases wherein an implied trust arises does not exclude or prevent the arising of an implied trust in other cases nor prevent a court of equity from establishing and decreeing an implied, resulting, or constructive trust in other cases and instances pursuant to the custom and practice of such courts.

Source: SDC 1939, § 59.0102.

55-1-2. Trusts classified.

A trust is either express or implied.

Source: SDC 1939, § 55.0(61).

55-1-3. Express trust defined.

An express trust is an obligation arising out of a personal confidence reposed in and voluntarily accepted by one for the benefit of another.

Source: SDC 1939, § 59.0101.

55-1-4. Creation of express trust--Words or acts of trustor.

An express trust is created as to the trustee and beneficiary by any words or acts of the trustor indicating with reasonable certainty:

- (1) An intention on the part of the trustor to create a trust; and
- (2) The subject, purpose, and beneficiary of the trust.

Any express trust that concerns real property shall also be evidenced in writing.

Source: SDC 1989, § 59.0103; SL 2017, ch 204, § 5.

55-1-5. Express trust created as to trustee--Words and acts of trustee.

An express trust is created as to the trustee by any words or acts of his, indicating with reasonable certainty:

- (1) His acceptance of the trust or his acknowledgment, made upon sufficient consideration, of its existence; and
- (2) The subject, purpose, and beneficiary thereof.

Source: SDC 1939, § 59.0105.

55-1-5.1. Express trust need not be for exclusive benefit of beneficiaries.

The terms of an express trust need not be for the exclusive benefit of its beneficiaries, whether or not the beneficiaries are ascertainable.

Source: SL 2017, ch 204, § 7.

55-1-6. Implied trust--Definition--Creation.

An implied trust is one which is created by operation of law. An implied trust arises in the cases described in §§ 55-1-7 to 55-1-10, inclusive.

Source: SDC 1939, §§ 59.0101, 59.0102.

55-1-6.1. Implied trust may not prejudice rights of real property purchaser or encumbrancer.

No implied trust may prejudice the rights of a purchaser or encumbrancer of real property for value and without notice of the trust.

Source: SL 2017, ch 204, § 6.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

APPEAL NO. 31151

IN THE MATTER OF THE ESTATE OF
JACK R. KARI,
Deceased.

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
BUTTE COUNTY, SOUTH DAKOTA

THE HONORABLE MICHAEL W. DAY
Circuit Court Judge

APPELLEE'S BRIEF

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NOTICE OF APPEAL WAS FILED JULY 17, 2025.

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PRELIMINARY STATEMENT

Decedent Jack R. Kari will be referred to as "Jack". The Estate of Jack R. Kari will be referred to as the "Estate". The Personal Representative for the Estate, Kimberly Kari, will be referred to as "Kim" or "PR". Appellant Jacob Kari will be referred to as "Jacob". The Circuit Court in Butte County, South Dakota, Judge Michael W. Day presiding, is referred to as "Trial Court".

References to the Clerk of Court's certified record are prefaced with "CR". References to specific pages in the Appendix attached to Appellant's Brief are prefaced with "A".

JURISDICTIONAL STATEMENT

This is an appeal of the *Order* entered by the Trial Court and filed on June 18, 2025 by the Honorable Judge Michael W. Day of the Fourth Judicial Circuit Court, Butte County, South Dakota. CR 352; A 1. *Notice of Entry of Order* was filed and served on June 20, 2025, CR 353-355. The *Notice of Appeal* was filed and served on July 17, 2025. CR 356.

LEGAL ISSUES

1. Whether Jacob is bound by the Trial Court's previous determinations in relation to the business trusts and his judicial admissions.

The Trial Court has entered previous orders regarding the validity of SDBTA entities, none of which Jacob's appealed.

Relevant Authority:

SDCL § 2-14-4.

SDCL § 47-14A-1.

Rosen's Inc. v. Juhnke, 513 N.W.2d, 575 (SD 1993).

In re Smeenk, 2024 S.D. 23, 6 N.W.3d 250.

2. Whether Jacob has waived and/or abandoned the issues raised in this appeal.

The Trial Court did not make a determination on this issue.

Relevant Authority:

Giesen v. Giesen, 2018 S.D. 36.

Kostel v. Schwartz, 2008 S.D. 85, 756 N.W.2d 363.

State v. Patterson, 2017 S.D. 64.

3. Whether the Trial Court abused its discretion when it declined recognizing an express trust.

The Trial Court declined recognizing an express trust.

Relevant Authority:

DFA Dairy Financing Servs. LP v. Lawson Special Trust, 2010 S.D. 34, 781 N.W.2d 664.

In re Wallbaum Revocable Living Trust Agreement, 2012 S.D. 18, 813 N.W.2d 111.

In re Schwan, 2006 S.D. 9, 709 N.W.2d 849.

4. Whether the Trial Court abused its discretion when it declined creating an implied trust.

The Trial Court declined creating an implied trust.

Relevant Authority:

SDCL § 55-1-6.

Grand State Prop., Inc. v. Woods, Fuller, Shultz, & Smith, P.C. 1996 S.D. 139, 556 N.W.2d 84.

Mach v. Connors, 2022 S.D. 48.

Giesen v. Giesen, 2018 S.D. 36.

5. Whether the Trial Court abused its discretion when it declined creating a Constructive Trust.

The Trial Court declined creating a Constructive Trust.

Relevant Authority:

SDCL § 55-1-11.

Stern Oil Co, v. Border States Paving, Inc., 2014 S.D. 28, 848 N.W.2d 273.

McFarland v. McFarland, 470 N.W.2d 849, 851 (SD 1990).

STATEMENT OF THE CASE AND FACTS

Case History

Kim initiated an informal Probate on behalf of the Estate of her deceased husband, Jack, by filing her *Application for Informal Appointment of Personal Representative in Intestate* on January 26, 2023. CR 1-3. Kim and Jack had been married for over 40 years. CR 70. The *Clerk's Statement of Informal Appointment of Personal Representative* as well as the *Letters of Personal Representative* were filed on January 26, 2023. CR 4-5. On February 13, 2023, Jacob (one of Jack and Kim's three children) filed a handwritten piece of notebook paper purporting to be Jack's Last Will and Testament, which did not nominate a personal representative, make any bequest or devise, or name any testamentary heirs. CR 12.

Jacob and his wife, Amy Kari, subsequently resisted the PR's attempts to obtain information and to take their depositions. CR 13-36.

On July 21, 2023, Jacob filed a letter to the Trial Court asking the Probate action to be terminated, alleging that ". . . all of the assets in the alleged estate of Jack Kari

were in Trusts" and asked the Court to hold trust documents "in Confidence if possible." CR 37. Jacob never noticed a hearing for his request to terminate the Probate. CR.

On August 14, 2023, Kim filed her *Application for Formal Probate*, as well as the PR filed the *Personal Representative's Motion Re: Subpoenas*. CR 40-44.

A hearing was held on August 29, 2023, and the Trial Court thereafter entered its *Order Admitting Will to Formal Probate, Determination of Heirs, and Appointment of Personal Representative*, which adjudicated in paragraph 7 that "[b]ecause the Will does not name any heirs or beneficiaries, the sole heir of the decedent is determined to be decedent's wife, KIMBERLY KARI...." CR 49-50. This was never objected to, challenged, or appealed by Jacob. CR. The Trial Court also entered its *Order Re: Subpoenas and Depositions* on August 31, 2023 overruling Jacob's objections, ordering Jacob and his wife to appear for the depositions, and ordering that " . . . Jacob must comply with the Subpoena Duces Tecum . . ." CR 47.

On August 14, 2024, the PR filed and served her *Motion for Court Order Affirming Personal Representative's Authority and Determination of Estate Assets*. CR 76-77. The Trial Court held a hearing on September 12, 2024 and entered its *Order and Judgment* on September 18, 2024, adjudicating that " . . . any and all assets purportedly held or owned by any of the 17 Faux Trusts are assets of the Estate . . ." CR 224-227. Jacob never appealed or challenged the September 18, 2024 *Order and Judgment*. CR.

Soon thereafter, the PR filed and served her *Motion for Court Order Re: Possession and Control of Estate Assets* ("October Motion") on October 2, 2024. CR 237-244. In response, Jacob essentially asserted that the Estate assets should be conveyed into a new trust created by the Trial Court. CR 250-251. Another hearing was held on

October 15, 2024, and on October 21, 2024 the Trial Court entered its written *Order Re: Possession and Control of Estate Assets* granting the PR's Motion and not granting Jacob's assertion regarding creation of a new trust. CR 257-259. Jacob never appealed or challenged the October 21, 2024 *Order Re: Possession and Control of Estate Assets*. CR.

The PR filed and served her *Personal Representative's Motion Requesting Order to Show Cause* on December 10, 2024. CR 270-271. The Trial Court entered an *Order to Show Cause* (and an *Amended Order to Show Cause* to fix a date/scrivener's error), scheduling a hearing on the matter for January 6, 2025. CR 285.

A hearing was held on January 6, 2025 on the Court's *Amended Order to Show Cause* and the Court ruled from the bench finding Jacob in contempt. January 6, 2025 Hearing Transcript 55:2 – 58:3; CR 323. On January 24, 2025 the Trial Court entered its written *Findings of Fact, Conclusions of Law, and Order of Contempt* that incorporated its oral findings made at the hearing, found Jacob in contempt of Court, and ordered how Jacob could purge himself of the contempt. CR 323-324. Jacob never appealed or challenged the January 24, 2025 *Findings of Fact, Conclusions of Law, and Order of Contempt*. CR.

Jacob filed his *Motion to Establish Trust and Transfer Assets of the Estate* on January 23, 2025 (one day prior to the Trial Court entering its January 24, 2025 *Findings of Fact, Conclusions of Law, and Order of Contempt*). CR 314-315. Jacob's *Motion to Establish Trust and Transfer Assets of the Estate* relies on the following assertion:

LAW APPLICABLE TO MOTION

1. This is motion based on the fact that though Jack may have failed in his attempts to create valid business trusts or otherwise properly transfer his interest into trust(s), the property may still be ultimately need to be distributed to a trustee per SDCL §55-1.

CR 319 (Jacob's *Brief in Support of Motion to Establish Trust and Transfer Assets of the Estate* at p. 4).¹ Jacob waited several months (until May 1, 2025) to notice his *Motion to Establish Trust and Transfer Assets of the Estate* for a hearing. CR 340.

A hearing was held on Jacob's *Motion to Establish Trust and Transfer Assets of the Estate* June 17, 2025, and Jacob did not present any new evidence in support of his *Motion to Establish Trust and Transfer Assets of the Estate*. CR. The Court entered its *Order* on June 18, 2025 sustaining the PR's objections and denying Jacob's motion. CR 352. Jacob had no objection as to form by counsel for the June 18, 2025 *Order*. CR 352; *see also* SDCL § 15-6-58(b). Jacob filed his *Notice of Appeal* on July 17, 2025, appealing the Trial Court's June 18, 2025 *Order*. CR 356.

Statement of Facts

While Kim does not necessarily agree with the Statement of Facts provided in *Appellant's Brief*, Kim will attempt to confine her Statement of Facts to facts that are relevant to the narrow issue presented in this appeal.²

During his lifetime, Jack attempted to create various business entities provided for in SDCL Title 47, including Limited Liability Companies pursuant to the Uniform

¹ This language used by Jacob in January, 2025 is almost verbatim the same as his assertion about a new Title 55 trust in his October 2024 Response to the PR's October Motion. CR 250-251 and 257-259.

² Kim's response to Jacob's Statement of Facts is made difficult due to his Statement of Facts being argumentative and, by and large, lacking citations to the Clerk's Record. Although Jacob cites to his own Appendix, he does not actually cite to the record and many of the sentences in his Statement of Facts have no citations at all. "As the [Appellant] has wholly failed to comply with the provisions of SDC 33.0735, the judgment of the trial court is affirmed." *J. R. Watkins Co. v. Beisel*, 103 N.W.2d 333, 335. Because Jacob's Brief lacks any of the required identification of particulars or citations to the record as required by SDCL § 15-26A-60(5), it is wholly insufficient for review and the Trial Court should be affirmed for that reason alone. *Id.*

Limited Liability Company Act and "Business Trusts" pursuant to the South Dakota Business Trust Act ("SDBTA"). CR 96-175; *see also* SDCL Chapters 47-34A and 47-14A, respectively. Throughout their marriage Jack and Kim had put many, if not most, of their assets into business entities; for example, Jack and Kim conveyed real property to an LLC. CR 168-169.

Jack passed away on November 11, 2022 leaving behind his wife of over 40 years, Kim, and their three adult children, Jacob, Jason Kari ("Jason"), and Wendy Raber ("Wendy"). CR 1 & 70. Jack died partially intestate, as his holographic Will dated only a few days prior to his death did not name any heirs or beneficiaries. CR 49; A 7-8. This matter started as an informal probate and was later moved to formal probate (and not a supervised probate). CR 4-5, 49-50.

While attempting to gather the assets of the Estate and perform her duties as Personal Representative, Kim sought and obtained adjudication from the Court in relation to various assets purportedly owned by the various SDBTA entities that were not valid or legally formed, to wit:

ORDERED, ADJUDGED and DECREED that the Motion, as it pertains to:

- 1) Considerate Towing Trust I;
- 2) Considerate Towing Trust II;
- 3) Considerate Towing Trust III;
- 4) Considerate Towing Trust IV;
- 5) Considerate Towing Trust V;
- 6) Considerate Towing Trust VI;
- 7) Considerate Towing Trust VIII;
- 8) Considerate Towing Trust X;
- 9) Considerate Towing Trust XI, XII, or XII;
- 10) Considerate Towing Trust XIII;
- 11) Considerate Towing Trust XV;
- 12) Considerate Towing Trust XVI;
- 13) Considerate Towing Trust MCMLX;
- 14) Considerate Towing Trust MMXVI;
- 15) Considerate Towing Trust MMXVII; and
- 16) Considerate Towing Trust DCCLXXVII.

is hereby GRANTED, and the Court adjudges the above-named business trusts in paragraphs 1-16 above as invalid and not legally formed business trusts (referred altogether along with CONSIDERATE TOWING TRUST as "17 Faux Trusts"), and any and all assets purportedly held or owned by any of the 17 Faux Trusts are assets of the Estate of Jack R. Kari (however, said assets are subject to further order of the Court); it is further

ORDERED, ADJUDGED and DECREED that no party, including the Personal Representative as well as Jacob Kari, may distribute, dispose of, or otherwise liquidate any of said assets purportedly held or owned by any of the 17 Faux Trusts without further Order of the Court or a written agreement between the Personal Representative, Kim Kari individually, Jacob Kari, Wendy Raber, and Jason Kari; it is finally

CR 225; A 10-13 (page 2 of the *Order and Judgment* entered on September 18, 2024).³

Jacob never appealed the *Order and Judgment*, including the part adjudging and decreeing that "... any and all assets purported held or owned by any of the 17 Faux Trusts are assets of the Estate . . ." CR. At this deposition on October 31, 2023, Jacob claimed that "[t]he trusts own themselves." CR 218 (Deposition Transcript: 152:19-22). Importantly, Jacob (through counsel) also "... agrees that these trusts don't exist";

³ Page 3 of Appellant's Brief asserts the Trial Court moved the assets "as a placeholder" – however, no such language is actually in the *Order and Judgment*, CR 224-227.

2 MR. CLAYBORNE: Thank you, Your Honor. One of the
3 issues here is everybody agrees that these trusts
4 don't exist. So how can you participate in the
5 management of something that doesn't exist? The other

September 12, 2024 Hearing Transcript 4:2-5.

Kim was forced to engage in various motions practice to gather assets that led up to an order to show cause hearing as to whether Jacob should be held in contempt of Court. CR 237-244, 257-258, 270-282, 285, 289-296. For example, after Jack died, Jacob moved multiple vehicles from Sundance, WY to his personal residence, then into a pasture without permission and then barred his brother Jason from helping Kim retrieve the vehicles owned by the Estate. CR. 273 (at ¶ 7), 277, and 278-280.

At the January 6, 2025 show cause hearing the Trial Court found Jacob in contempt. January 6, 2025 Hearing Transcript 55:3-57:24. By January 10, 2025, Jacob and Kim had each submitted their proposed findings of fact and conclusions of law (although Jacob's proposals did not conform to the Court's ruling from the bench). CR 300-308.

On January 23, 2025, Jacob filed his *Motion to Establish Trust and Transfer Assets of the Estate*, requesting: 1) the Court create the Jack R. Kari Trust pursuant to SDCL Chapter 55-1 (at CR 320), and 2) “Jacob would further seek that he remains as president of the trust” (at CR 321) (emphasis added).⁴

⁴ Note, Jacob did not request the Trial Court make him a Trustee, but instead asked to be “president”, CR 321. The request seems to have changed on appeal. Appellant’s Brief pp. 8-9.

The Trial Court entered its written *Findings of Fact, Conclusions of Law, and Order of Contempt* on January 24, 2025. CR 323-324. Jacob waited several months to notice his *Motion to Establish Trust and Transfer Assets of the Estate* for hearing. CR 340. At the June 17, 2025 hearing, the Trial Court stated:

4 And so I am not going to form any trusts in this case.
5 They could have been done during the lifetime of Mr. Kari.
6 They weren't done. There's no clear direction in there.

June 17, 2025 Hearing Transcript 9:4-6.

STANDARD OF REVIEW

Jacob's argument for the Standard of Review lacks any citations for the first sentence asserting that de novo review is applicable. Appellant's Brief p. 6. His second sentence for Standard of Review cites three cases: 1) *Noll v. Brende* (an opinion that doesn't even include the words "standard" or "review"), 2) *Johnson v. Johnson* (an opinion that used a standard of review for property division in a divorce proceeding), and 3) *DFA Dairy Financing Services, L.P. v. Lawson Special Trust* (which actually applied the abuse of discretion standard of review for equitable relief). Appellant's Brief p. 6.

Abuse of discretion is the applicable standard in this case: "[a] trial court's refusal to grant equitable relief is also reviewed under the abuse of discretion standard." *DFA Dairy Financing Services, L.P. v. Lawson Special Trust*, 2010 S.D. 34, ¶ 18, 781, N.W.2d 664. "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary or

unreasonable." *Flint v. Flint*, 2022 S.D. 27, ¶ 28, 974 N.W.2d 698 (internal citations omitted).⁵

ARGUMENT

The Trial court did not err or act arbitrarily or unreasonably by entering the June 18, 2025 *Order* sustaining the PR's objections and denying Jacob's *Motion to Establish Trust and Transfer Assets of the Estate*, CR 352; A 1. Aside from being unhappy with the result, Jacob does not point this Court to any specific arbitrary or unreasonable error he alleges the Trial Court committed in the June 18, 2025 *Order* that constitutes an abuse of discretion. See Appellant's Brief. Additionally, it should be noted that Jacob requests the Court create a unitary Title 55 "Jack R. Kari Trust" (see Appellant's Brief p.7); this clearly was not Jacob's intent, as he tried to create various business entities under SDCL Title 47 to isolate liability.⁶ CR 96.

The Trial Court should be affirmed for the following reasons: 1) Jacob is bound by the Trial Court's previous determinations in relation to the business trusts and his judicial admissions, 2) Jacob has waived and/or abandoned the issues raised in this appeal, 3) the Trial Court did not abuse its discretion when it declined to recognize an express trust, 4) the Trial Court did not abuse its discretion when it declined to create an implied trust, and 5) the Trial Court did not abuse its discretion when it declined to create a constructive trust.

⁵ The words "arbitrary" and "unreasonable" do not seem to appear in Jacob's Brief. See Appellant's Brief.

⁶ A court-created Jack R. Kari Trust also contradicts Jacob's position at the September 12, 2024 hearing, when he told the Trial Court "... I think the assets do not need to be retitled, but they need to be retitled to the owners." September 12, 2024 Hearing Transcript: 4:16-18.

1. **Jacob is bound by the Trial Court's previous determinations in relation to the business trusts and his judicial admissions.**

Jacob never appealed any of the orders in this matter prior to this current appeal.

CR. A formal testacy order is final. SDCL § 29A-3-412.

A 'business trust' is a term of art for a statutory business entity as provided for in the SDBTA – for which Jacob conducts no analysis on or even mentions. *See Appellant's Brief.* "Whenever the meaning of a word or phrase is defined in any statute such definition is applicable to the same word or phrase wherever it occurs except where a contrary intention plainly appears." SDCL § 2-14-4.

The SDBTA statutorily defines the term 'business trust' as "*an unincorporated association*" subject to other statutorily required formalities. SDCL § 47-14A-1 (in part). "Any such association heretofore or hereafter organized shall be a business trust and a separate legal entity." *Id.*

As early as August 2024, Kim argued that:

Because none of the 16 Faux Trusts have anything providing for identification of a beneficial owner, the only logical conclusion is that the settlor would be the sole beneficial owner (which would only matter if they were legally created entities). Jack was indisputably the "settlor" of the 16 Faux Trusts.

CR 83.⁷ Jacob has never contested this CR.

Jacob has judicially admitted Jack's SDBTA entities were not valid and did not legally exist. CR 190. "A judicial admission is a formal act of a party or his attorney in

⁷ *See also the Brief in Support of Motion for Court Order Affirming Personal Representative's Authority and Determination of Assets*, which is incorporated herein. CR 78-95.

court, dispensing with proof of the fact claimed to be true, and is used as a substitute for legal evidence at the trial." *Rosen's Inc. v. Juhnke*, 513 N.W.2d 575, 577 (SD 1993).

During the September 12, 2024 hearing, Jacob again judicially admitted that the business trusts were not valid and did not legally exist:

2 MR. CLAYBORNE: Thank you, Your Honor. One of the
3 issues here is everybody agrees that these trusts
4 don't exist. So how can you participate in the
5 management of something that doesn't exist? The other

September 12, 2024 Hearing Transcript: 4:2-5. Jacob further admitted:

8 But as far as settlor, if you don't have a trust,
9 there's no settlor. So those assets belong to
10 somebody. And that's the ultimate issue.

September 12, 2024 Hearing Transcript: 8:8-10. Toward the end of the hearing on September 12, 2024, the Trial Court stated: "And so I think that so that we can park these assets in a viable entity, we're going to park them in the Estate and let you guys determine, however you're going to do it, where the money came from due to tracing to figure this out." September 12, 2024 Hearing Transcript 11:18-22.⁸ The Trial Court thereafter entered its September 18, 2024 *Order and Judgment*, which Jacob did not object to or appeal. CR 224-227.

Jacob never appealed the prior, final orders in this matter. A formal testacy order is final. SDCL § 29A-3-412. "As it concerns final orders, unsupervised probate actions represent a special class of cases in the sense that a single action can contain multiple,

⁸ Jacob has provided no evidence in relation to tracing to prove what, if any of these assets, were paid for or provided by anyone other than Jack as sole settlor. CR.

discrete proceedings, each of which results in a final order.” *In re Smeenk*, 2024 S.D. 23, ¶ 23, 6 N.W.3d 250 (internal citations omitted).

Because Jack’s Will did not name any heirs or beneficiaries, the Estate was partially intestate. SDCL § 29A-3-411. On August 31, 2023, the Trial court entered its *Order Admitting Will to Formal Probate, Determination of Heirs, and Appointment of Personal Representative*, concluding that “[b]ecause the Will does not name any heirs or beneficiaries, the sole heir of the decedent is determined to be decedent’s wife Kimberly Kari” CR 49-50.⁹

Both the *Order Admitting Will to Formal Probate, Determination of Heirs, and Appointment of Personal Representative* as well as the September 18, 2024 *Order and Judgment* are final orders in this matter.¹⁰

Jacob further affirmatively acknowledged the Faux Trusts were different than, say, Title 55 trusts as follows: “[b]ecause of the failure to properly establish business trusts, the relationship between Jack, Jacob, and the trust assets fits within the definition of a partnership” CR 193. However, it now appears that Jacob has fully abandoned his partnership theory. CR.

Having abandoned his previous assertion that the trusts constituted a “partnership” (and perhaps admitting that Jack and Kim paid for all the relevant assets), Jacob now asks the Court to create a new Title 55 trust funded with assets formerly held by the 17 Faux Trusts *and even the various LLCs*. Appellant’s Brief, p. 9.

⁹ This is not a supervised probate proceeding pursuant to SDCL § 29A-3-501, et seq. CR.

¹⁰ Jacob must acknowledge this – otherwise he would have needed to seek an interlocutory appeal for his current appeal.

There is nothing in the record indicating anyone other than Jack acted as the purported settlor or paid for the 17 Faux Business Trusts' assets and Jacob does not contest this.¹¹ CR. Instead of producing tracing or other information to prove that a person or entity other than Jack paid for and owned the assets purportedly held by the 17 Faux Trusts, Jacob attempts to basically use his *Motion to Establish Trust and Transfer Assets of the Estate* to appeal and overrule the September 18, 2024 *Order*. Jacob could have appealed the September 18, 2024 *Order*, but didn't. CR.

Jacob is bound by the prior orders in this matter as well as his judicial admissions.

2. Jacob has waived and/or abandoned the issues raised in this appeal.

Jacob failed to brief any specific arbitrary or unreasonable error(s) were made by the Trial Court in sustaining the PR's objections, and provides no relevant supporting authority to articulate how and why the Trial Court erred in sustaining the PR's objections. Appellant's Brief. Jacob has waived and/or abandoned the issues raised in this appeal for: a) failure to raise, identify, or brief errors made by the Trial Court, and/or b) for failure to cite relevant supporting authority.

a. Jacob failed to raise, identify, and brief issues.

An issue initially asserted by an appellant is deemed abandoned when the appellant fails to brief the issue. *Giesen v. Giesen*, 2018 S.D. 36, at ¶ 23.

The Trial Court sustained the objections raised in the *Personal Representative's Objections to Jacob Kari's Motion to Establish Trust and Transfer Assets of the Estate*. CR 352; A 2. Jacob is simply not happy with the Trial Court decision, and he has

¹¹ The various failed business trust documents don't even name a trustee, but instead a CEO, President, and Vice President; they also name Jack as a sole settlor. CR 139-145, 147, 150.

abandoned said issues for appeal because he failed to brief the issues related to the sustained objections. *Giesen*, 2018 S.D., at ¶ 23. The Trial Court should be affirmed for this reason alone.

b. Jacob failed to cite relevant supporting authority.

“Failure to cite relevant supporting authority is a violation of SDCL § 15-26A-60(6) and is deemed a waiver,” *Kostel v. Schwartz*, 2008 S.D. 85, ¶ 34, 756 N.W.2d 363; *see also State v. Patterson*, 2017 S.D. 64, ¶ 31.

Jack attempted to create various SDBTA entities, which are creatures of statute under SDCL Chapter 47-14A. *Supra*. Despite this case being about SDBTA entities, Jacob does not point this Court to any relevant supporting authority for a SDBTA entity, never mentions SDCL Title 47, and relies exclusively on case authority that does not involve SDBTA entities. *See* Appellant’s Brief. The only authority cited in Jacob’s actual argument applying the facts of this case (Argument Section C of Jacob’s Brief) is SDCL §§ 55-1-3, 55-1-4 and 55-1-11. Appellant’s Brief, pp. 7-9.

Jacob has waived the issue he appealed because he has not pointed this Court to any *relevant supporting* authority for SDBTA entities or providing the relief he seeks (including funneling LLC interests into a Trust). Therefore, this case should be affirmed or Jacob’s appeal should be dismissed. *Kostel*, 2008 S.D. at ¶ 34; *see also State v. Patterson*, 2017 S.D. 64.

3. The Trial Court did not abuse its discretion when it declined recognizing an express trust.

Jacob argues that “. . . Jack has established an expressed [sic] trust as the same as [sic] defined in SDCL § 55-1-3” and that “. . . Jack also create [sic] an express trust under the provisions of SDCL § 55-1-4” Appellant’s Brief, p. 8. Jacob ignores the

fact that Jack attempted (and failed) to create *business entities* under SDCL Title 47, as well as Jacob's prior judicial admissions and acknowledgment that the "trusts don't exist":

2 MR. CLAYBORNE: Thank you, Your Honor. One of the
3 issues here is everybody agrees that these trusts
4 don't exist. So how can you participate in the
5 management of something that doesn't exist? The other

HT 9/12/24: 4:2-5. *Supra*, Jacob asks the Court to recognize an express trust after unequivocally admitting the trusts in fact do not exist.

Jacob even goes a step further and asks the Court to do the following in relation to the LLCs on appeal: "... together with Jack's interest in Heavenly Repairs, LLC and Karis' Property LTD., be transferred to the Jack R [sic] Kari Trust." Appellant's Brief, p. 9. This is a stunning request, given the fact that the Trial Court previously granted the PR's motion regarding her authority to continue or participate in the operations of these LLCs pursuant to SDCL § 29A-3-715(24). CR 224 (September 18, 2024 Order and Judgment). Jacob cites zero authority to support his request for an Estate's membership interest in a LLC to be funneled into an express trust that Jacob admits does not actually exist.

Jacob also admits "... there does not exist any governing instrument under which the trust property would be managed or operated. This is a requirement of South Dakota law in order to establish a valid trust."¹² CR 190. None of the cases cited by Jacob are

¹² Jacob acknowledges the statutory requirements of a governing instrument and a certificate of trust found in SDCL § 47-14A-1. CR 190. SDCL § 47-14A-1 is a specific statute that prevails over SDCL Title 55. See *In re Keystone XL Pipeline*, 2018 S.D. 44,

relevant or supporting. *Supra*. None of the foregoing cases cited by Jacob are applicable to this matter. Three of the six cases cited by Jacob relate to interpreting provisions in legally valid, written Title 55 trust agreements:

- 1.) "On June 10, 1993, Minnie and Irving Lawson (Irving) created the Lawson Family Living Trust (LFLT). The complicated fifty-six page trust document created several sub-trusts with governing powers and rules specific to each." *DFA Dairy Financing Servs. LP v. Lawson Special Trust*, 2010 S.D. 34, ¶ 2, 781 N.W.2d 664.¹³
- 2.) "Florence Wallbaum established the Florence Y. Wallbaum Revocable Living Trust (Trust) on June 17, 1991." *In re Wallbaum Revocable Living Trust Agreement*, 2012 S.D. 18, ¶ 2, 813 N.W.2d 111.¹⁴
- 3.) "Marvin M. Schwan (Schwan) was the founder and chief executive officer of Schwan Food Company (Schwan Food), formerly known as Schwan's

¹³ ¶ 18 ("terms of a statute relating to a particular subject will prevail over the general terms of another statute." (internal citations omitted)).

¹⁴ Jacob's argument citing the *DFA* case is as follows: "... in cases where the trust instrument is ambiguous or unclear, courts may rely on extrinsic evidence to determine the settlor's true intention." Appellant's Brief. There is no valid trust instrument in this case. Jacob's contentions also ignore the statutory requirements to form a valid SDBTA entity, which the Trial Court already adjudicated and entered a final order – and which Jacob never appealed, CR 78-85, and 224-227.

¹⁴ Jacob's argument citing the *Wallbaum* case is as follows: "... when the intent to establish a trust is clear, the court task is to ensure that the intentions and wishes of the settler [sic] are honored." The sentence after the citation in the *Wallbaum* case states "If the language of the trust instrument makes the intention of the settlor clear ..." *In re Wallbaum Revocable Living Trust Agreement*, 2012 S.D. 18, ¶ 20. There is no Title 55 trust instrument in this matter, and this case did not pertain to a SDBTA entity.

Sales Enterprises, Inc., a large frozen food company based in Marshall, Minnesota. Before his death, Schwan established a comprehensive estate plan which included a will, a revocable trust, and various other trusts." *In re Schwan*, 2006 S.D. 9, ¶ 2, 709 N.W.2d 849.¹⁵

Jacob does not rely on the *Noll v. Brende* case in support of any of these arguments, but only in his recitation of the standard of review (Appellant's Brief, p. 6), which related to a life insurance policy required under a divorce decree to list minor children as beneficiaries – however the decedent in *Noll* listed his sister as beneficiary for the children's benefit during their minority. *Noll v. Brende*, 318 N.W.2d 319, 319-320 (SD 1982). *Noll v. Brende* also did not address the standard of review (in fact, the words "standard" and "review" don't even appear in the opinion), and is not applicable to this matter.

Jacob only relies on the *Johnson v. Johnson* case to support his recitation of the standard of review. Appellant's Brief, p. 6. *Johnson v. Johnson* involved a divorce action, a gift to minors pursuant to the Uniform Gifts to Minors Act under Title 55-10, and a joint savings account that " . . . was apparently agreed between the litigants that this account was set up as an informal trust for their children." *Johnson v. Johnson*, 300 N.W.2d 865, 866-867 (SD 1980) (see also page 869 relating to the Uniform Gifts to Minors Act). *Johnson v. Johnson* also did not address the standard of review for trusts,

¹⁵ Jacob's sole citation to *Schwan* relates to the duty of the court to carry out the wishes of the trust creator; the next three sentences in *Schwan* state: "In order to do so, we look to the language of the trust instrument. *Id.* In interpreting a trust instrument, we must first attempt to ascertain and give effect to the settlor's intention. Thus, we must interpret the instrument as written." *In re Schwan*, 2006 S.D. 9, ¶ 12, 709 N.W.2d 849. There is no valid trust instrument – nor is there any evidence of intent to create a unitary Title 55 trust. This case does not pertain to a SDBTA entity already adjudicated to be invalid.

but instead for property division in divorce (*Id.* at 867-868), and the case is not relevant to this matter.

Jacob's single cite to the *Johnson v. Markve* case is in support of his contention that “[f]or example, in cases where the trust instrument is ambiguous or unclear, courts may rely on extrinsic evidence to determine the settlor's true intention.” Appellant's Brief, p. 7.¹⁶ The word ‘unclear’ only appears in *Markve* in relation to participation in preparing a deed and power of attorney. *Johnson v. Markve*, 2022 S.D. 57, ¶ 44. The words ‘ambiguous’ and ‘extrinsic’ do not seem to appear in the *Johnson v. Markve* case a single time, and the case is not relevant to this matter.

Even Jacob acknowledges the trusts don't exist, and the Trial Court should therefore be affirmed in relation to formation of an express trust. *Supra*.

4. The Trial Court did not abuse its discretion when it declined creating an implied trust.

Jacob's entire argument in relation to SDCL § 55-1-6 on appeal is the following ten words: “ . . . an implied trust, being one created by operation of law.” Appellant's Brief, p. 6. Jacob does not point to where or how the Trial Court erred by being arbitrary or unreasonable or how it abused its discretion in relation to an implied trust. CR.

Establishing conditions under any of the statutes SDCL §§ 55-1-7 to -10 is a statutory prerequisite before SDCL § 55-1-6 is applied. SDCL § 55-1-6. “An implied trust is one which is *created by operation of law*. An implied trust arises *in the cases described in §§ 55-1-7 to 55-1-10, inclusive.*” *Id.* (emphasis added).

¹⁶ Appellant's Brief did not cite to any particular page or paragraph number for the case.

Jacob did not raise any issues relating to SDCL §§ 55-1-7 to -10 to the Trial Court, and his failure to do so at the Trial Court level renders consideration of the issue inappropriate on appeal. *Grand State Prop., Inc. v. Woods, Fuller, Shultz, & Smith, P.C.*, 1996 S.D. 139, ¶ 19, 556 N.W.2d 84, 88. A party cannot raise an issue for the first time on appeal. *Mach v. Connors*, 2022 S.D. 48, ¶ 37. Therefore, consideration of these issues are inappropriate in this appeal. *Id.*

However, even if Jacob preserved issues relating to SDCL §§ 55-1-7 to -10, those statutes are not relevant or applicable in this matter because Jacob has not raised, argued, or briefed anything relating to those statutes.¹⁷ See Appellant's Brief. Bear in mind, that SDCL §§ 55-1-7 to -10 deal with multiple parties, wherein this case only involves, for all intents and purposes, one party – Jack's Estate. Jacob has waived the implied trust issue and application of SDCL §§ 55-1-7 to -10. See *Giesen v. Giesen*, 2018 S.D. at ¶ 23.

The Trial Court should be affirmed in relation to the issue of an implied trust.

5. The Trial Court did not abuse its discretion when it declined creating a constructive trust.

After juggling Jacob's argument that contradicts his judicial admissions, the Trial Court stated "... I am not going to create any trusts in their case. They could have been done during the lifetime of Mr. Kari. They weren't done. There's no clear direction in there." June 17, 2025 Hearing Transcript 9:4-6; A 6. Jacob's entire argument in relation to a court-created constructive trust is as follows:

Should this Court determine that the above written documentation, together with the settlor's expressed intention are insufficient, South Dakota law would require that this Court find the existence of a

¹⁷ In exercising our appellate function, it is elemental that the Supreme Court should limit review to the arguments that are raised and briefed. *State v. Spaniol*, 2017 S.D. 20.

constructive trust. Under the normal circumstances, constructive trust may be seen as being preventative to avoid unjust enrichment to the devisee. SDCL § 55-1-11 provides that the imposition of a constructive trust need not be punitive and, in fact, nothing in this section of the code excludes or prevents the application of an implied trust by a court of equity.

Appellant's Brief, pp. 8-9.¹⁸ Jacob ignores the fact that if Jack were still alive, the assets would simply go back to Jack as settlor and there is no unjust enrichment because an unjust enrichment requires more than one party, i.e. one party receives a benefit from another party. *See Stern Oil Co. v. Border States Paving, Inc.*, 2014 S.D. 28, ¶ 18, 848 N.W.2d 273.

Jacob solely relies on SDCL § 55-1-11 for his argument relating to a constructive trust, which states:

The enumeration in §§ 55-1-7 to 55-1-10, inclusive, of cases wherein an implied trust arises does not exclude or prevent the arising of an implied trust in other cases nor prevent a court of equity from establishing and declaring an implied, resulting, or constructive trust in other cases and instances *pursuant to the custom and practice of such courts.*

SDCL § 55-1-11(emphasis added). Jacob points this Court to zero authority showing it is the custom and practice of the Courts to create a constructive trust for a failed business entity formed under the Uniform Limited Liability Company Act or SDBTA. Failure to cite authority waives the issue on appeal. *Sigra.*

Additionally, Jacob has failed to make a showing of (or even allege) fraud or unconscionable conduct, which is a prerequisite before a Court can impose a constructive

¹⁸ Jacob does not point to what "... South Dakota law would require that this Court ..." do what he asks. Additionally, the word 'punitive' does not appear in SDCL § 55-1-11, and it's unclear why Jacob included the word. SDCL § 55-1-11. The phrase "unjust enrichment" seems to appear once in the record (at CR 321), but Jacob never advanced such a theory or even clarified to the Trial Court how such enrichment was present.

trust. This Court affirmed a Trial Court's decision to refuse creating a constructive trust when there was no showing of fraud or unconscionable conduct, articulating that "[b]efore a court can impose a constructive trust, there must be a showing of fraud or unconscionable conduct...." *McFarland v. McFarland*, 470 N.W.2d 849, 851 (SD 1990) (internal citations omitted). The factors of fraud or unconscionable conduct have never been raised by Jacob, and are inappropriate for appeal. CR; *Supra*. Jacob cannot raise fraud or unconscionable conduct issues in his reply brief. *Ellingson v. Ammann*, 2013 S.D. 32, ¶ 10, 830 N.W.2d 99 ("A party may not raise an issue for the first time on appeal, especially in a reply brief when the other party does not have the opportunity to answer." (internal citations omitted)).

The Trial Court should be affirmed in relation to formation of a constructive trust.

CONCLUSION

Jacob has alienated himself from his siblings and his own mother, and " . . . intentionally violated the order of the Court" *Supra, see also* January 6, 2025 Hearing Transcript 56:10-11. Jacob did not make his *Motion to Establish Trust and Transfer Assets of the Estate* until after he was found in contempt for interfering with the PR's administration of the Estate, and nearly two years after the Probate was initiated. Jacob never appealed any of the Trial Court's prior orders in this matter. CR.

The Trial Court should be affirmed for the reasons set forth herein, and the PR request this Court award costs and attorneys fees incurred in relation to this appeal.

[signature page to follow]

Dated this 30th day of October, 2025.

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CERTIFICATE OF COMPLIANCE

COME NOW, the Appellee, Kimberly Kari, by and through her attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota 57717, and pursuant to SDCL § 15-26A-66(4), hereby certifies that she has complied with the type volume limitation of SDCL § 15-26A-66(4) in that Appellee's Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 6,145 and a total character count of 36,121. The Appellee's Brief and all copies are in compliance with this rule.

Dated this 30th day of October, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Appellee

By: 

KELLEN B. WILLERT

[Certificate of Service and Filing to follow]

CERTIFICATE OF SERVICE AND FILING

I, Kellen B. Willert, attorney for Kimberly Kari, do hereby certify that on the 30th day of October, 2025. I caused a full, true, and complete copy of APPELLEE'S BRIEF to be served *electronically* through the eFileSD electronic filing system:

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I further certify that on the same day I caused the APPELLEE'S BRIEF to be filed *electronically* through the eFileSD electronic filing system and the original APPELLEE'S BRIEF to be filed by U.S. Mail with:

Shirley Jameson-Fergel
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Email: SClerkBriefs@ujs.state.sd.us

by depositing said copy in envelope securely sealed with first class postage thereon fully prepaid in the U.S. Mail in Belle Fourche, South Dakota, and addressed as shown above.

Dated 30th day of October, 2025.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Appellee

By: /s/ Kellen B. Willert
KELLEN B. WILLERT

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA
APPEAL NO. 31151

IN THE MATTER OF THE ESTATE OF JACK R. KARI,
Deceased.

Appeal from the
Fourth Judicial Circuit
Butte County, South Dakota
The Honorable Michael Day, Circuit Court Judge

APPELLANT'S REPLY BRIEF

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PRELIMINARY STATEMENT

For the convenience of the Court, Appellant, Jacob Kari will be referred to as "Jacob"; Decedent, Jack R. Kari will be referred to as "Jack," and personal representative, Kimberly Kari will be referred to as "Kimberly." Reference to the hearing transcript will be cited as "HT _____" followed by the appropriate page(s); and Documents from the Appendix are cited as "APP _____;"

ISSUES RAISED BY APPELLEE AND RESPONSES

In their brief, Appellee's raise several issues which are addressed as follows:

1. The Proper Standard of Review.

After a review of Appellee's arguments, Appellant would submit that the appropriate standard of review would be as expressed in *DFA Diary Financial Services, L.P. v. Larson Trust*, 781, N.W.2d 666 (SD 2010), 2010 SD 34, which provides:

"...A trial court's refusal to grant equitable relief is reviewed under the abuse of discretion standard. If facts plainly exist to warrant equitable relief and no facts exist to disentitle a party to such relief, then a trial court is not free simply to ignore the remedy in the name of discretion. An appellate court will examine the entire record to see whether reasons and facts exist to support or refute the trial court's discretionary choice."

Id.

In the underlying matter, Jacob Kari sought to have the lower Court use its equitable powers granted under SDCL § 55-1 and existing caselaw, to create the trust(s) that Jack Kari had intended to create during his lifetime. In support of that request, Jacob offered the exhibits including the affidavit of Kimberly Kari, where she specifically states "... Jack Kari created multiple business trust as an attempt to isolate liability and protect Jack's various assets..." and "...Jack had established or attempted to establish, at a minimum ..." certain business trusts, listing them by name. APP 014-015. She stated that

the trusts were established for the purpose of providing for Jack's family. *Id.* It was based (at least in part) on these representations that the motion was made.

The motion specifically stated that "...Though Jack may have failed in his attempts to create valid business trusts or otherwise properly transfer his interest into trusts(s) the property may still be ... distributed to a trustee per SDCL § 55-1-1..." specifically citing SDCL §§ 55-1-1, 55-1-2, 55-1-3, 55-1-4, 55-1-5, 55-1-6 and 55-1-11.

Also argued was 1) As a general rule, where a person devises property in reliance on an agreement or understanding with the devisee or legatee that they will hold the property in trust, that devisee or legatee also property upon constructive trust for the person devising the same and shall manage the same according to the agreement or understanding. *Olsen v. First National Bank*, 83 N.W.2d 842 (SD 1957); 2) When the intent to establish a trust is clear, the court task is to ensure that the intentions and wishes of the settler are honored. *In Re Florence Y. Wallbaum Revocable Living Trust*, 813 N.W.2d 111 (S.D. 2012); and 3) It is the duty of the court to carry out the wishes of the trust creator. *In re Schwan*, 709 N.W.2d 849 (S.D. 2006).

After consideration of the motion, the trial court simply stated:

"... I am not going to form any trusts in this case. They could have been done during the lifetime of Mr. Kari. They were not done. There's no clear direction there..."

See, June 17, 2025 HT 9:4-6.

This, it is contended, amounts to the trial court simply acting freely to ignore the equitable remedy in the name of discretion, and thus, leaves this court free to "... examine the entire record to see whether reasons and facts exist to support or refute the trial court's discretionary choice."

2. Jacob is bound by the Trial Court's previous determinations in relation to the business trusts and his judicial admissions.

Contrary to the assertions and arguments of Kimberly, Jacob is not seeking to appeal or reverse any findings of the lower Court except those contained in the order specifically appealed in which the trial court declined to establish a trusts or trusts, which was contrary to the evidence and wishes of Jack Kari.

Kimberly continuously cites the lower court's order of September 18, 2024 as not having been appealed, however, a clear reading of the Order shows that the same is not a final disposition of the asset and specifically states "*... any and all assets purportedly held or owned by the by any of the 17 Faux Trusts are assets of the Estate of Jack R. Kari (however, said assets are subject to further order of the Court)...*" The motion to establish the trust, sought an order of the Court to deal with those assets.

Furthermore, in the Personal Representatives Objections to Jacob Kari's Motion to Establish Trust and Transfer Assets of the Estate (attached as APP 35-37 of Appellant's Brief), Kimberly does not even argue that the September 18, 2024 Order needed to be appealed. Instead, she argues "...Granting Jacob's Motion will hinder judicial efficiency..." The only mention of an appeal was that the failure to appeal created the "law of the case," without any indication of what law was created by the failure or how the same was applicable to the motion. *See, APP 34 to Appellant's Brief.*

As cited by Kimberly, litigants must present their arguments and objections at the trial level to ensure they are preserved for appeal and the failure to do so constitutes a waiver. *Sharp v. Sharp*, 422 N.W.2d 443 (SD 1988). Having not argued the appeals issue at the trial court level, that argument has been waived by Kimberly.

Kimberly also argues that Jacob has failed to articulate how the Court erred, however, the argument made by Jacob is simple and has been oft repeated and is supported, in large part, by Kimberly's own affidavit on file. As argued before the lower court, Kimberly admits that Jack "established or attempted to establish" certain trusts for the benefit of his family members. The fact that he failed to follow the appropriate legal steps to do so, does not change that intent.

It was also argued that further evidence of Jack's intent to create various trust is found in the Last Will and Testament of Jack Kari, (not even mentioned in Appellee's Brief), where Jack states "Since all of Jack's properties are in trusts, with Jacob and other trustees (sic) controlling the trusts..." *See, APP 009*. In this document, Jack expressed his desire, intent (and belief) that all his property is in trust with Jacob acting as trustee.

In the underlying action the court specifically found that there was no "clear direction" of Jack Kari's intent to create any trusts and further that he could have done so in his lifetime, this is a clear and obvious error.

This finding completely ignores that Jack went through the process of titling assets in the name of 17 different trusts and created paperwork associated with each trust. It also ignores the plain language of his Last Will and Testament, filed with the Court on February 13, 2023, that specifically states that all of his property had been placed in trust, with "Jacob and others" acting as trustee.

Finally, the finding ignores the affidavit of Kimberly wherein she specifically admits:

1. "...Jack Kari created multiple business trusts as an attempt to isolate liability and protect Jack's various assets..." *See, APP 14 to Appellant's Brief;*

2. That (as testified to by Jacob) that the purpose of the trust was to take care of everybody in the family by protecting the same from any lawsuits; *See, APP 14 to Appellant's Brief, and*
3. That "...it has become evident that Jack had or attempted to establish, at a minimum..." certain business trusts (listing 17 such trusts). *See, APP 15 to Appellant's Brief.*

As argued before the lower court, the above show that the intent to establish a trust is clear and it therefore became the court's task is to ensure that the intentions and wishes of the settler are honored. *In Re Florence Y. Wallbaum Revocable Living Trust*, 813 N.W.2d 111 (S.D. 2012). And also, it is the duty of the court to carry out the wishes of the trust creator. The failure to grant the equitable relief sought by Jacob and establish the trusts desired by Jack, was an abuse of discretion.

On review, it is submitted that, consistent with *DFA Diary Financial Services, L.P. v. Larson Trust*, 781, N.W.2d 666 (SD 2010), 2010 SD 34, the trial court has refused to grant the equitable relief sought by Jacob Kari despite the plain existence of facts which warrant the equitable relief and lack of any facts to disentitle a party to the relief. In fact, there are specific admissions of Jack's intent, made by Kimberly, which clearly show his intent to created various trusts. These taken together should entitle Jacob to the relief requested.

CONCLUSION

For the reasons stated, Appellants respectfully request this Court reverse the decision and issue an Order consistent with the arguments set forth herein.

RENEWED REQUEST FOR ORAL ARGUMENT

Appellants hereby request oral argument.

Dated this 25th day of November, 2025.

LOOS, SABERS & SMITH, LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of November, 2025 before, he electronically filed the foregoing documents with the Clerk of the Supreme Court Odyssey File and Serve portal, and further certifies that the foregoing document was also mailed via U.S. Mail, postage prepaid thereon, to:

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COURTNEY R. CLAYBORNE

[Certificate of Compliance to Follow]

CERTIFICATE OF COMPLIANCE

Pursuant to SDCL § 15-26A-66(b)(4), Courtney R Clayborne, counsel for the Appellants, does hereby submit the following:

The foregoing brief is 6 total pages in length. It is typed in proportionally spaced typeface in Times New Roman 12 point. The word processor used to prepare this brief indicates that there are a total of 1,449 words, and 7,094 characters (no spaces) in the body of the Brief.

/s/ Courtney R Clayborne

COURTNEY R CLAYBORNE