STATE OF MICHIGAN

COURT OF APPEALS

In re DOROTHY MARIE TALANDA TRUST.

CAMILLE FATH, DOROTHY TALANDA, and KATHLEEN TALANDA POTTS,

Appellees,

v

LARAINE GOETTING, MICHELE KRAFT, DANIEL BROXUP and ANNETTE TALANDA BRENNAN,

Appellants,

and

TIMOTHY J. WAALKES, Trustee of the DOROTHY MARIE TALANDA TRUST,

Other Party.

UNPUBLISHED
June 29, 2023

No. 360789
Kent Probate Court
LC No. 20-207551-TV

In re EDMUND TALANDA TRUST.

CAMILLE FATH, DOROTHY TALANDA, and KATHLEEN TALANDA POTTS,

Appellees,

v

LARAINE GOETTING, MICHELE KRAFT, DANIEL BROXUP and ANNETTE TALANDA BRENNAN,

No. 360790
Kent Probate Court
LC No. 20-207552-TV

Appellants,

and

TIMOTHY J. WAALKES, Trustee of the EDMUND TALANDA TRUST,

Other Party.

Before: GLEICHER, C.J., and RICK and MALDONADO, JJ.

PER CURIAM.

In Docket No. 360789, appellants, Loraine Goetting, Michelle Kraft, Annette Talanda Brennan, and Daniel Broxup, appeal as of right the probate court's order granting a petition to approve trust accountings submitted by trustee Timothy J. Waalkes in relation to the Dorothy Marie Talanda Trust. In Docket No. 360790, appellants appeal an identical order that was issued in relation to the Edmund Talanda Trust.[1] Appellants raise four claims of error: (1) the probate court erred by denying their request for a jury trial, (2) the probate court misinterpreted the parties' settlement agreement by concluding that Brennan must reimburse the trust for all expenses relating to the sale of property owned by the trust, (3) the probate court erred by awarding sanctions for discovery requests served on Waalkes, and (4) the probate court erred by determining that appellees Camille Fath and Edmund Talanda were not responsible for legal fees related to litigation involving the cottage until January 11, 2021. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

The claims in this appeal relate to the issues that this Court considered in two prior appeals: *In re Dorothy Marie Talanda Trust*, unpublished per curiam opinion of the Court of Appeals, issued May 12, 2022 (Docket No. 356293), and *In re Edmund Talanda Trust*, unpublished per curiam opinion of the Court of Appeals, issued June 23, 2022 (Docket No. 358074).

During their lifetimes, Edmund Talanda[2] and Dorothy Talanda both established revocable living trusts: the Edmund Talanda Trust and the Dorothy Marie Talanda Trust. Both served as the initial trustee of their respective trusts until their deaths. Dorothy died in December 2017, and Edmund Talanda died in March 2019. With the exceptions of successor trustee Waalkes and attorney Broxup, the parties are siblings who are beneficiaries of their parents' trusts: Goetting, Kraft, Brennan, Fath, Edmund, and Kathleen Potts. Susan Minehart is also a sibling-beneficiary;

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[1] This Court consolidated these appeals "to advance the efficient administration of the appellate process." *In re Dorothy Marie Talanda Trust; In re Edmund Talanda Trust*, unpublished order of the Court of Appeals, entered April 5, 2022 (Docket Nos. 360789 and 360790).

[2] We will hereafter refer to the deceased Edmund Talanda as "Edmund Talanda" and the living Edmund Mark Talanda as "Edmund."

however, she is not a party to this appeal. Fath and Brennan acted as cotrustees of the trusts after their parents' deaths; however, disagreements regarding the distribution of assets arose, which made it impossible to finalize the administration of the trusts. This dispute resulted in a rift developing between the siblings with Fath, Edmund, Potts, and Minehart on one side, and Brennan, Kraft, and Goetting on the other. The parties tried to resolve their disagreement by participating in mediation to determine the disposition of the trust's assets.

After a long mediation, the parties consented to the mediator making a proposal for the resolution of the remaining issues, and that proposal became a settlement agreement. As part of that agreement, Fath and Brennan agreed to resign as cotrustees, and Waalkes then took over as successor trustee.

One pertinent portion of the settlement agreement concerned a home located on Horizon Heights Drive in Kalamazoo (Horizon Heights home). According to the agreement,

> The home on Horizon Avenue will be purchased by Annette and Jeff Brennan at the price of $295,000, They will assume and pay all utilities, maintenance, fees, taxes, insurance, and all related costs commencing as of the date of this agreement, customary pro rations where appropriate. No beneficiary or anyone acting on their direction will make any public statements about the condition of the Horizon Avenue property or home.[3]

Another pertinent portion of the settlement agreement addressed the distribution of a lakefront cottage (the cottage). The agreement provided:

> The interest of the Estates and Trusts in the Gourdneck Lake cottage property will be assigned to Ed Talanda, Camille Fath, Susan Talanda, and Kathleen Potts for the agreed upon price of $60,000. Ed Talanda, Camille Fath, Susan Talanda, and Kathleen Potts will take immediate and exclusive possession and pay all costs, fees, etc. Ed Talanda, Camille Fath, Susan Talanda, and Kathleen Potts have until November 28, 2019 to notify the Trust whether they want to consummate the transaction. In the event they decline, then the property will be immediately listed for sale on such terms as the Trustee of the Trust determines.

The subject cottage was located on Gourdneck Lake in Vicksburg, Michigan. It was landlocked by Prairie View Park, which is owned and maintained by Kalamazoo County. The Edmund Talanda Trust owned a $^1/_2$ interest in the cottage, while another family owned the other $^1/_2$ interest. The cottage has been the subject of extensive litigation. Essentially, there was a 1963 agreement, which provided Kalamazoo the right of first refusal in the event that the property was sold.

[3] The nondisclosure provision was apparently included because the home had a mold infestation.

Fath, Edmund, and Potts filed a petition to enforce the settlement agreement, arguing that Brennan and Goetting attempted to renegotiate or undermine several of the agreement's provisions, which prevented the final administration of the trust. Goetting and Kraft opposed the petition, and they filed a counterpetition to enforce the settlement agreement and a petition to void the sale of lakefront property that Fath purchased from the trust. Moreover, Goetting and Kraft asserted that Fath and Edmund failed to provide notice that they were exercising their option to purchase the cottage before the deadline.

The parties eventually filed cross-motions for summary disposition under MCR 2.116(C)(10). After conducting a hearing, the probate court granted summary disposition in favor of Fath, Edmund, and Potts regarding both the lake lot and the cottage. The written order specified that Fath and Edmund gave timely notice to the trust that they intended to accept interest in the cottage as provided in the settlement agreement. However, the order stated that it was not a final order with respect to any assignment of the cottage, and no determination had been made as to whether the county was entitled to enforce its alleged contractual right of first refusal.

Later, Waalkes filed a petition to approve the first annual trust accountings. The accounting listed the trust assets as well as income and expenses. Such expenses included payment for repairs to the Horizon Heights home, including replacement of the roof, new septic system, "junk" removal, and carpet cleaning. Appellees filed objections to the accounting. After a hearing during which Waalkes testified, the probate court granted the petition with certain modifications. First, Brennan was required to reimburse the trust for repair costs related to the purchase and later sale of the Horizon Heights home. Second, Goetting, Kraft, and Broxup were ordered to reimburse the trust for fees incurred by Waalkes for having to respond to overbroad discovery requests. Third, Fath and Edmund were responsible for legal fees related to the cottage litigation beginning on January 11, 2021. This appeal followed.

II. STANDARDS OF REVIEW

This Court reviews the probate court's interpretation of statutes and court rules de novo. *Bint v Doe*, 274 Mich App 232, 234; 732 NW2d 156 (2007).

The interpretation of a contract is reviewed de novo, *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 474; 986 NW2d 427 (2022), as is the language used in a trust instrument, *In re Stillwell Trust*, 299 Mich App 289, 294; 829 NW2d 253 (2012).

The probate court's findings of fact are reviewed for clear error. *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). "A finding is clear error when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed." *Id*.

The probate court's discretionary decisions are reviewed for an abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Ronnisch Constr Group, Inc v Lofts On the Nine, LLC*, 306 Mich App 203, 208; 854 NW2d 744 (2014).

This Court reviews the probate court's decision whether to award attorney fees and the determination of the reasonableness of the fees for abuse of discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). "A trial court's finding that an action is frivolous is reviewed for clear error." *John J Fannon Co v Fannon Prods LLC*, 269 Mich App 162, 168; 712 NW2d 731 (2005) (quotation marks and citation omitted). Discovery sanctions are included among those decisions reviewed for abuse of discretion. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 87; 592 NW2d 112 (1999).

III. JURY TRIAL

Appellants argue that the probate court erred by denying their request for a jury trial. We disagree.

The probate court held that appellants did not have a right to a jury trial because the issues in dispute pertained to the trustee's prudence, and whether a trustee acted prudently is a question for the court. See *In re Messer Trust*, 457 Mich 371, 383; 579 NW2d 73 (1998). However, we do not need to review the probate court's decision that appellants had no right to a jury trial because we can resolve this issue on simpler procedural grounds. MCR 5.158 governs the right to demand a jury trial during contested proceedings in the probate court:

> (A) Demand. A party may demand a trial by jury of an issue for which there is a right to trial by jury by filing in a manner provided by these rules a written demand for a jury trial within 28 days after an issue is contested. However, if trial is conducted within 28 days of the issue being joined, the jury demand must be filed at least 4 days before trial. A party who was not served with notice of the hearing at least 7 days before the hearing or trial may demand a jury trial at any time before the time set for the hearing. The court may adjourn the hearing in order to impanel the jury. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.
>
> (B) Waiver. A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury. A jury is waived if trial or hearing is commenced without a demand being filed.

Fath, Edmund, and Potts assert on appeal that the request for a jury trial was waived because it was untimely. According to MCR 5.158(A), the written demand for a jury trial must be filed within 28 days "after an issue is contested." In this case, Waalkes filed the petition seeking the approval of the first annual accounting on August 24, 2021. Fath, Edmund, and Potts filed their objections to the petition on October 8, 2021, but they did not demand a jury trial. Goetting, Kraft, and Brennan filed their responses to the objections and their demands for a jury trial on January 7, 2022. As a result, the demand for a jury trial was not timely filed, and Goetting, Kraft, and Brennan therefore waived their right to a jury trial. See Const 1963, art 1, § 14 (providing that in a civil case, the right to a jury trial shall be waived "unless demanded by one of the parties in the manner prescribed by law").

It is true that Fath, Edmund, and Potts did not raise this challenge to the jury demand in the probate court, and the probate court did not deny the demand on this basis. However, we may affirm a trial court's decision for other reasons. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 82; 592 NW2d 112 (1999).

Therefore, the probate court did not err by concluding that the parties' disputes arising from the first annual accounting were not subject to a jury trial.

IV. EXPENSES FROM HORIZON HEIGHTS HOME

Appellants argue that the probate court erred by ordering Brennan to reimburse the trust for expenses incurred in connection with the Horizon Heights home. We disagree.

This issue pertains to $44,669.71 in expenses relating to the Horizon Heights home; these expenses were originally paid by the Dorothy Talanda Trust, but the probate court ordered Brennan to reimburse the trust for these expenses. The final settlement statement from the sale of the house to Brennan, which was entered into on June 22, 2020, included $28,360.21 worth of expenses from roof replacement, furnace replacement and repairs, deck railing replacement, critter control, and property taxes that were credited against the final sale price of 295,000.[4] The August 24, 2021 trust accounting included an additional $16,309.50 worth of expenses from the septic system, carpet cleaning, and junk removal.[5] In their objections to the petition to approve the trust accounting, appellees argued that the post-mediation settlement agreement mandated that Brennan bare these costs, and the probate court agreed.

Resolution of this issue requires interpretation of the parties' post-mediation settlement agreement. The object of contractual interpretation "is to determine the intent of the parties." *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007). "[T]his Court construes contractual terms in context, according to their commonly used meanings." *Zwiker*, 340 Mich App at 475. "If the contractual language is unambiguous, courts must interpret and enforce the contract as written" because "an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *In re Smith Trust*, 274 Mich App at 285 (quotation marks and citation omitted).

The dispute regarding the Horizon Heights home revolves around paragraph six of the settlement agreement, which provides:

> The home on Horizon Avenue will be purchased by Annette and Jeff Brennan at the price of $295,000, *They will assume and pay all utilities, maintenance, fees, taxes, insurance, and all related costs commencing as of the date of this agreement,* customary pro rations where appropriate. No beneficiary

[4] The exact breakdown of these expenses was as follows: $11,191.20 for roof repairs, $3,000 to replace deck railing, $452.64 for boiler repairs, $8,000 to replace the boiler, $3,100 for critter control, $693.41 for 2020 summer taxes, and $4,069.29 for 2020 winter taxes.

[5] The exact breakdown of these expenses was as follows: $13,340 for "septic," $1,691.50 for "carpet cleaning and pump septic," and $1,278 for junk removal.

> or anyone acting on their direction will make any public statements about the condition of the Horizon Avenue property or home. [Emphasis added.]

Appellees argue, and the probate court agreed, that the italicized portion mandated that the Brennan bears these costs.

Appellants raise several arguments in favor of their position that the probate court erred, none of which have merit.

A. MEDIATOR'S INTERPRETATION

Appellants argue that the parties' mediator, Frederick Dilley, lacked the authority to make a binding post-mediation ruling pertaining to the interpretation of paragraph six. Prior to closing, the parties emailed Dilley inquiring into, among other items, whether Brennan or the trust would be responsible for the cost of replacing the house's roof. On December 2, 2019, Dilley provided the following reply, in relevant part:

> I believe paragraph 6 of the Settlement Agreement makes clear that the Brennan's were to take the Horizon Heights property at the price of $295,000. It provides further "they will assume and pay all utilities, maintenance, fees, taxes, insurance, and all related costs commencing as of the date of this agreement . . . ." The buyer assumed the referenced costs and there isn't any specific agreement, or even discussion, to exclude a $20,000 estimated repair to the roof. Accordingly, it is included in the purchase price. [Ellipses in original.]

The probate court ruled that his email was "part of the parties' mediation agreement . . . and is binding on the parties." We need not address whether Dilley's interpretation of the settlement agreement was binding because the interpretation of the agreement is subject to de novo review, see *Zwiker*, 340 Mich App at 474, and for the reasons discussed below, we agree with Dilley's interpretation.

B. PRE-MEDIATION AGREEMENT

Appellants argue that there was a pre-mediation agreement providing that the trust would pay for the inspections and repairs to the roof and furnace. This argument stems from emails that were exchanged between Fath and Brennan, who were then serving as co-trustees, in October 2019.

> [This email was sent from Stephen Van Stempvoort, counsel for Brennan, to Sara Fazio, counsel for Fath, on October 15, 2019.]
>
> Sara—
>
> In the interest of ensuring that no pipes, etc., burst in the Talandas' home over the winter, Annette [Brennan] tentatively plans to do the following on behalf of the Trust:

1. Bel-Aire Heating and Cooling are scheduled to do a visual inspection of the boiler at the home on October 30, 2019. The cost is $75.00. If there is any maintenance to be done, there will be an additional charge.

2. The heat will be kept on through the winter at a temperature of at least 58 degrees to prevent pipes from bursting and because the family may be distributing personal property from the home over the next few months (per the arrangements being tentatively sketched out by Mark and Camille).

3. Water, electricity, and all current utilities will be kept on.

* * *

[This email was sent from James Schipper, counsel for all three appellees, to Van Stempvoort and Fazio on October 16, 2019.]

Steve:

Jim Vandenberg of Vandenberg Plumbing and Heating . . . did a service call last year. He replaced a burst radiator valve, and reported that additional valves required replacement. You might consider having him do the work this year given his familiarity with the system.

Whatever contractor is chosen, the inspection should include the radiator valves and the entire heating system. Failure of the valves would have potentially severe consequences, particularly since the house is unoccupied.

Additionally, the roof of the home has had leaks in the past which should also be inspected/repaired.

Your second two points are acceptable as proposed.

* * *

[Finally, this email was sent from Brennan to Fath on October 17, 2019.]

I already followed through with the instructions I received yesterday from Jim Schippers and have a roofer coming out as well as a heating person. Schippers asked to contact Jim Vandenberg so I tried. Unless you forward me accurate contact information I will keep the Bel-Aire appointments. Sheriff-goslin is coming to inspect the roof.

On appeal, appellants refer to these emails as a "Pre-Mediation Agreement" and assert that, through these emails, the parties "agreed that the Trusts would pay to have the property's roof and furnace inspected and, if necessary, repaired . . . ." Appellants argue that nothing in the settlement agreement supersedes this "Pre-Mediation Agreement." We believe referring to these emails as a "Pre-Mediation Agreement" is simply not accurate. This exchange, which occurred approximately eight months before the sale of the home to Brennan closed, was simply a discussion about how

to protect the home during the impending winter months. Indeed, Brennan's attorney opened the email exchange by describing its purpose as "ensuring that no pipes, etc., burst in the Talandas' home over the winter . . . ." The response obtained from appellees' attorney merely suggested a contractor for inspecting the furnace and recommended also procuring an inspection of the roof; he did not agree to anything. There was no indication that the furnace or roof would be replaced entirely and, accordingly, no suggestion that the trust would foot the costs of such replacements.

Because there was no pre-mediation agreement, appellants' argument is without merit.

C. VALIDITY OF PARAGRAPH SIX

Appellants argue that paragraph six of the settlement agreement was null because it purported to impose duties upon Jeff Brennan, who was not a party to the agreement, and because the sale of the home did not close within a reasonable time following the execution of the settlement agreement. These arguments are each without merit.

1. INCLUSION OF NONPARTY

Paragraph six of the settlement agreement provides that the home "will be purchased by Annette *and Jeff* Brennan for $295,000." [Emphasis added.] Appellants argue that "Mr. Brennan was not a party to the Settlement Agreement, which means that Section 6 was unenforceable and a nullity." However, appellants have provided no authority in support of the remarkable assertion that a contractual provision seemingly imposing a shared duty upon a party and a nonparty is inherently nullified by virtue of its inclusion of a nonparty. Therefore, we decline to review this argument. See *In re Warshefski*, 331 Mich App 83, 87; 951 NW2d 90 (2020) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." (quotation marks and citation omitted)).

2. PASSAGE OF TIME

Appellants also argue that paragraph six was nullified by the passage of time because contracts for the purchase of real property must close within a reasonable time. This argument is without merit for two reasons. First, appellants rely on *Zurcher v Herveat*, 238 Mich App 267, 295; 605 NW2d 329 (1999) to support the proposition that a contract to purchase real property is nullified if the parties to the contract fail to close the sale within a reasonable amount of time; appellants' reliance on *Zurcher* for this proposition is misplaced. In that case, this Court was responding to an argument that the failure to specify a closing date in a written agreement to purchase real property renders the contract unenforceable. *Id.* This Court disagreed, reasoning that when the closing date is not specified in the purchase agreement then courts should presume that the parties' intent was that closing would occur "within a reasonable time after the purchase agreement was signed." *Id.* Therefore, this Court concluded "that the absence of a closing date on the purchase agreement did not render it unenforceable." *Id.* In other words, *Zurcher* simply stands for the assertion that a purchase agreement remains enforceable if the agreement does not specify a closing date, and we know of no authority supporting appellants' contention that a purchase agreement that does not specify a closing date is nullified if closing does not occur within a reasonable time.

Moreover, even if we were to assume *arguendo* that appellants' premise is accurate, they have nevertheless failed to establish that the sale did not close within a reasonable time. The settlement agreement was executed on October 29, 2019, and the sale of the Horizon Heights home closed approximately eight months later, on June 22, 2020. Appellants do not even attempt to explain why the passage of eight months between the execution of the settlement agreement and the closing of the sale was so unreasonable under the circumstances of this case as to nullify the agreement. Instead, appellants summarily assert that "it is clear that Section 6 of the Settlement Agreement contemplated an immediate, or at least prompt, sale of the Horizon Heights Property to the Brennans." We do not agree that this was clear; all that is clear to us is that the parties contemplated that the property would be sold to the Brennans. Nothing in the contract or the record suggests that there was an anticipated timeline of the sale. Moreover, given the circumstances surrounding the purchase agreement, it is not surprising that several months passed before the sale was finalized. Following the execution of the settlement agreement, the parties needed to proceed with the disposition of numerous assets such as the Horizon Heights home, the cottage, the lake lot, and the Florida condo. All these tasks overlapped with an ongoing feud amongst the siblings. Furthermore, it appears that one of the reasons the sale took as long to complete as it did was because the Brennans wanted to complete the repairs before closing to facilitate their efforts to deduct the prices of the repairs from the final sale price.

For these reasons, appellants' argument that paragraph six was nullified by the passage of time is without merit.

3. LANGUAGE OF PARAGRAPH SIX

Finally, appellants argue that the plain terms of paragraph six support their position that the repairs were to be paid for by the trust.

The settlement agreement provides that the Brennans would pay, among other items, for "maintenance" and "related costs" pertaining to the Horizon Heights home. On appeal, appellants argue that "[t]he complete replacement of a roof or appliance does not constitute 'maintenance.' " This assertion is not supported by any binding authority; rather, appellants rely on two cases from other states: one from Pennsylvania and one from California.[6] Regardless, these cases lack persuasive value because they are distinguishable. In *Borough of Youngwood v Penn Prevailing Wage Appeals Bd*, 596 Pa 603, 610; 947 A2d 724 (2008), the Pennsylvania Supreme Court concluded that " 'milling' and repaving of road surfaces" went beyond maintenance and was instead "repair or construction" in the context of determining whether the project was subject to the state's Prevailing Wage Act. In *ASP Props Group, LP v Fard, Inc*, 133 Cal App4th 1257, 1272 (2005), a California appellate court concluded that a lessor of real property's duty to maintain the premises did not include replacing "an old, dilapidated roof with a new roof at tenant's expense." Therefore, we do not view these cases as instructive.

[6] Cases from other jurisdictions are not binding on this Court, but they may be considered for their persuasive value. *Farmland Capital Solutions, LLC v Mich Valley Irrigation Co*, 335 Mich App 370, 381 n 8; 966 NW2d 709 (2021).

In the context of these facts as viewed through Michigan law, we conclude that replacing the roof did constitute "maintenance" as the term was used in the settlement agreement. Contrary to appellants' arguments, we do not view the terms "maintenance" and "repair" as inherently being mutually exclusive. The *Merriam-Webster's Collegiate Dictionary* (11th ed), defines "maintenance" as "the upkeep of property or equipment" and "repair" as "to restore by replacing a part or putting together what is torn or broken." The upkeep of property that one owns will sometimes require replacing some of its parts. Indeed, it is well-understood among homeowners that roofs and furnaces have shorter useful lives than the houses to which they are affixed, and thus, keeping a house in working condition will inevitably require replacing its roof and furnace. Therefore, we conclude that appellants' argument that replacing a roof or furnace is not "maintenance" as the term is used in this specific context to be without merit.

Moreover, appellants do not address whether the replacement of a roof or furnace would be considered "related costs" for the purposes of the settlement agreement. As used in the settlement agreement, the term "related costs" appears to have been intended to serve as a catchall phrase meant to encompass the expenses accompanying homeownership that are of the same kind as those preceding it in the list. Therefore, we conclude that the settlement agreement was written to impose on Brennan liability for all costs arising from ownership of the Horizon Heights home in addition to the $295,000 purchase price. Appellants argue that the terms of the agreement also did not require Brennan to pay for other expenses such as septic system repairs, deck railing repairs, junk removal, and carpet cleaning. For the reasons discussed above, this argument is likewise without merit because such expenses constitute both maintenance and related costs.

Therefore, appellants argument that the terms of the settlement agreement did not require that Brennan pay for the expenses in dispute is without merit.

In conclusion, the probate court did not err by concluding that Brennan was responsible for the costs of the roof replacement, furnace replacement, and other expenses noted in the trust accounting.

V. DISCOVERY SANCTIONS

Appellants argue that the probate court erred by ordering them to reimburse the trust for fees incurred for Waalkes responding to their discovery requests. We disagree.

Probate court proceedings are governed by Chapter 5 of the Michigan Court Rules, and MCR 5.131 provides that "the discovery rules in subchapter 2.300 apply in probate proceedings . . . ." MCR 2.302(G) provides in relevant part:

> (3) The signature of the attorney or party constitutes a certification that he or she has read the . . . [discovery] request . . . and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry:
>
> * * *
>
> (b) the discovery request is:

(*i*) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(*ii*) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(*iii*) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(4) If a certification is made in violation of this rule, the court, on the motion of a party or on its own initiative, may impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

The court, on motion from the party, may issue an order "that the discovery not be had" if doing so is necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ." MCR 2.302(C).

The court sanctioned appellants for a September 15, 2020 subpoena demanding that Waalkes do the following:

1. Produce all communications between Camille Fath and Tim Waalkes.

2. Produce all communications from Camille Fath that Timothy Waalkes is copied on.

3. Produce all communications from Timothy Waalkes that Camille Fath is copied on.

4. Produce all communications to Camille Fath that Timothy Waalkes is copied on.

5. Produce all communications to Timothy Waalkes that Camille Fath is copied on.

6. Produce all communications between Timothy Waalkes and Ron Ryan.

7. Produce all communications to or from Timothy Waalkes that Ron Ryan is copied on.

8. Produce all communications to or from Ron Ryan that Timothy Waalkes is copied on.

9. Produce all communications between Timothy Waalkes and Michelle Marquardt.

10. Produce all communications to or from Timoty Waalkes that Michelle Marquardt is copied on.

11. Produce all communications to or from Michelle Marquardt that Timothy Waalkes is copied on.

12. Produce all communications and other documents relating to the property located at 10910 James Way, Portage, Michigan.

13. Produce all communications and other documents relating to the property located at 899 East U. Avenue, Vicksburg, Michigan.

14. Produce all communications and other documents Timothy Waalkes has sent to or received from any beneficiary in the above-referenced case.

15. Produce all records you created and/or maintained in connection with your position as Trustee of the above-referenced Trusts.

On September 25, 2020, Waalkes moved for a protective order, asking that the discovery requests filed by Goetting and Kraft be limited to communications and documents related to the cottage or the lake lot. The probate court ruled that discovery would be limited to issues involving the cottage and the lake lot, including communications with attorney Ronald Ryan, who represented the trust in litigation with Kalamazoo County, concerning the deed to the cottage.

In their October 8, 2021 objections to the trust accounting, appellees requested that Goetting and Kraft be required to reimburse the trust for trustee and attorney fees arising from these discovery requests because they "were interposed for improper purposes . . . ." The probate court concluded that the discovery requests went far beyond the scope of the issues before the court or were completely unrelated. The court observed that there were two issues in dispute: the sale of the lake lot and the assignment of the cottage, and the requests were not properly tailored to those issues. In addition, the court believed that some of the requests were meant to harass or embarrass Fath. As a result, the court awarded Fath's request for attorney fees for having to respond to the requests. Similarly, the court ordered that Goetting, Kraft, and Broxup were responsible for reimbursing the trust for fees incurred by Waalkes filing the motion for the protective order.

Given the incredible breadth of these requests, we cannot say that the probate court abused its discretion by imposing sanctions. As the probate court observed, the issues in this case, at least initially, concerned the sale of the lake lot and the assignment of the cottage. MCR 5.131 concerns discovery in probate court actions, and MCR 5.131(B)(3) provides that "[d]iscovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court." Nonetheless, almost all of the requests went beyond issues pertaining to the cottage or the lake lot, and none of the requests were limited to a specific point in time. Out of 15 document requests, only two requests were specifically related to the cottage or the lake lot. In any event, only a small portion of the requests were pertinent to the resolution of the issues before the probate court. Recovering and producing virtually all correspondence Waalkes had ever engaged in over his then 11 months as trustee would have been incredibly burdensome, time-consuming, and expensive, but it would have provided little value to appellants with respect to this litigation.

Therefore, we conclude that the probate court did not err by imposing discovery sanctions.

VI. COTTAGE LEGAL FEES

Finally, appellants challenge the probate court's conclusion that Fath and Edmund were responsible for legal fees concerning the cottage as of January 11, 2021. Appellants contend that Fath, Edmund, Potts, and Minehart (those with the option to purchase the cottage) were responsible for those fees immediately following the settlement agreement. We disagree.

After the probate court granted the motion for summary disposition in favor of Fath and Edmund concerning the cottage, the court clarified that they were the only beneficiaries with an interest in the cottage. The court issued a stipulated order concerning the responsibility for payment of costs related to the ongoing litigation with Kalamazoo County. In pertinent part, the order provided:

> The Court instructs the trustee to relinquish to the Interested Beneficiaries the authority to oppose the claim of Kalamazoo County regarding the Property. Such opposition shall be at the personal expense of the interested Beneficiaries and not at the expense of the Trust. All fees and costs incurred by the Trust with respect to the Property, including the claim of Kalamazoo County regarding the Property, shall be assessed against only the Interested Beneficiaries and shall not be assessed against the other beneficiaries of the Trust, effective January 11, 2021.

This was a stipulated order that was signed by the parties' attorneys, including Broxup. "It is elementary that one cannot appeal from a consent judgment, order or decree." *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958) (citation omitted). In fact, "neither party can complain of a consent order, for the error in it, if there is any, is their own, and not the error of the court." *Id.* (quotation marks and citation omitted). Therefore, Goetting, Kraft, and Brennan cannot now dispute the stipulated order that clearly stated that Fath and Edmund are responsible for attorney fees as of January 11, 2021.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado