

STATE OF MICHIGAN
COURT OF APPEALS

In re RUTH A. ADAMS TRUST

JACKIE LYNN HUGHES,

Appellant,

v

DAVID R. RUSSELL, Successor Trustee for
RUTH A. ADAMS TRUST, and HIGHPOINT
COMMUNITY BANK,

Appellees.

UNPUBLISHED

July 17, 2025

10:45 AM

No. 367207

Barry Probate Court

LC No. 2022-029341-TT

Before: FEENEY, P.J., and BORRELLO and LETICA, JJ.

PER CURIAM.

In this civil trust action, appellant appeals as of right the probate court’s order modifying a preliminary injunction that had previously frozen all assets of the Ruth A. Adams Trust. The probate court modified the preliminary injunction to allow use of trust assets to pay attorney fees. On appeal, appellant argues that this order violated the law-of-the-case doctrine, based on a previous holding from a panel of this Court related to the instant trust matter. Appellant also argues that her due-process rights were violated and that the probate court abused its discretion by failing to consider the reasonableness of the requested attorney fees. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This family dispute has a somewhat complicated history, with roots in a trust created by John R. Adams. John was married to Ruth A. Adams. Appellant, Jackie Lynn Hughes, is John’s daughter.

John created the John R. Adams Trust in 2005, naming himself and Ruth as trustees. Highpoint Community Bank (f/k/a Hastings City Bank), was designated to become the successor co-trustee, along with Ruth, upon John’s death. In ¶ 3.3(a), the John R. Adams Trust indicated that upon John’s death, the remaining trust property was to be divided into “Trust A” and “Trust

B” pursuant to a formula described in the trust document. Paragraph 3.3(b) of the trust document further directed that “Trustee shall distribute Trust A to my Spouse [Ruth], *free from trust.*” (Emphasis added.) Paragraph 3.3(c) designated Trust B as the “Family Trust” and stated in relevant part as follows:

Trustee shall hold Trust B for the following purposes:

(1) Income. Trustee in its discretion:

(A) shall pay net income

(i) first, to or for the benefit of my Spouse until death for my Spouse’s health care, education, support and maintenance in the manner which existed prior to my death;

(ii) second, to or for the benefit of one or more of my daughter . . . and her children (my grandchildren), to the extent Trustee, in its discretion, determines it necessary for their reasonable health care, education, support and maintenance (reasonable support and maintenance includes, but is not limited to, obtaining a residence, or becoming established or remaining in a business or profession);

(iii) third, to my Spouse or the beneficiaries identified in the preceding paragraph to the extent and in the proportions Trustee deems advisable to reduce the overall tax burden of the beneficiaries identified in the two preceding paragraphs and the Trust; or

(B) may accumulate all or any part of net income.

(2) Principal.

(A) If net income is insufficient for my Spouse to maintain the standard of living my Spouse and I enjoyed prior to my death, Trustee shall use those portions of principal necessary to enable my Spouse to maintain that standard of living.

(B) Trustee may distribute principal to or for the benefit of one or more of my daughter . . . and her children (my grandchildren), to the extent Trustee determines, in its discretion, that it is necessary for their reasonable health care, education, support and maintenance (reasonable support and maintenance includes, but is not limited to, obtaining a residence, or becoming established or remaining in a business or profession).

(3) Residue. At my Spouse’s death, Trustee shall distribute the remaining trust property, together with any income not distributed during my Spouse’s lifetime, under the provisions of Paragraph 3.4 below.

Under ¶ 3.3(d) of John’s trust, Ruth had “the right to disclaim all or any part of” of the spousal benefits provided in ¶ 3.3. Paragraph 3.3(d) further provided:

Any part of Trust A which is disclaimed shall become part of Trust B. Any part of Trust B which is disclaimed shall pass to the beneficiaries described in Paragraph 3.4 as if my Spouse had died. All disclaimers of an interest in Trust A must be “qualified disclaimers” under federal tax law. All disclaimers shall be delivered in writing to Trustee and shall be effective on the date received by Trustee.

The John R. Adams Trust also provided Ruth with an explicit “Spouse’s Right” to receive property “free from trust.” This provision, contained in ¶ 3.3(e), stated as follows:

(e) **Spouse’s Right.** My Spouse shall have the right to receive free from trust all or any portion of the property which otherwise would have been held by Trustee under this Agreement after my death, but only by filing, with the court which has (or would have had if my estate were probated) domiciliary jurisdiction of my estate, a writing evidencing exercise of that right. The writing shall make specific reference to this provision of this Agreement, be signed by my Spouse personally, and shall be filed with the court after my death and not later than 5:00 pm, current local time, one month prior to the initial due date for filing the federal estate tax return in my estate. Failure of my Spouse to file the writing shall constitute an irrevocable disclaimer of any rights under this paragraph.

My Spouse may exercise this right to receive property free from trust if, and only if, the property, or the remaining property, which Trustee is to continue to hold in trust under this Agreement would be free from federal estate tax in my Spouse’s estate if my Spouse were to die immediately after exercise of the right.

Paragraph 3.4 of John R. Adams Trust is also relevant to understanding the dispute in the present case. That paragraph provided in relevant part:

Distribution to Family. When my Spouse dies or when I die, whichever is later, Trustee shall hold the remaining trust property, including additions from any sources, in a single trust for the benefit of my daughter . . . and her children (my grandchildren). Trustee shall hold and dispose of the trust as follows:

(a) **Income and Principal.** Trustee shall pay to or for the benefit of one or more of the beneficiaries those portions of income and principal which Trustee determines necessary for the beneficiary’s reasonable health care, education, support and maintenance (reasonable support and maintenance includes, but is not limited to, obtaining a residence, or becoming established or remaining in a business or profession).

(b) **Residue.** When my daughter . . . dies, or if my daughter does not survive my Spouse and me, Trustee shall divide the remaining trust property into separate trusts, equal in value, one for each living child of my daughter. . . .

The dispute in the present appeal stems from how John's assets were handled after his death. In a prior matter involving John's trust, we set forth background facts that are also relevant to the present appeal involving Ruth's trust. For the sake of convenience, we repeat those pertinent background facts here:

John died on November 19, 2005, and was survived by his wife Ruth, as well as his daughter, [appellant]. Section 3.3(e) of John's trust granted Ruth, as the surviving spouse, the right to withdraw all trust assets if she filed written evidence exercising that right with the court having domiciliary jurisdiction of John's estate Section 3.4 of John's trust provided that upon his spouse's death, any remaining trust property would be held in trust and managed and distributed for the benefit of [appellant] and her children.

On April 11, 2006, Ruth timely sought to exercise the Spouse's Right by executing a document that provided the following:

I exercise my right to withdraw all of the property of the [John R. Adams] Trust, and I direct the Trustees to transfer the property to me or as I may otherwise direct. If I should die before the transfer has been completed, I direct the Trustees to transfer the property that was not transferred while I was alive to the Trustees of the Ruth A. Adams Trust No. 1 dated January 4, 2005.

Barry Probate Court was the court with domiciliary jurisdiction over John's estate. However, the executed document stated that Ruth was not filing the document with that court "because my lawyers have advised me that the Probate Court may not accept this for filing because no estate or trust proceedings are pending in that Court." Upon executing this document, Ruth and Highpoint, as co-trustees, transferred assets held in John's trust to Ruth, including three parcels of real property located in Ingham County. A letter dated April 12, 2006, was purportedly sent from Ruth's attorney to [appellant's] divorce attorney informing that Ruth was considering whether to withdraw all of the trust assets pursuant to section 3.3(e) and that "there does not appear to be any substantial tax advantage" to continuing John's trust.

Ruth died on October 21, 2019. She was unmarried and without children at the time of her death. Her sister, [Kristene] Morehouse, was appointed by the court to serve as personal representative of Ruth's probate estate. Morehouse was also trustee of the Ruth A. Adams Trust, as well as the primary beneficiary. Ruth's trust left \$5,000 to [appellant] and her children.

On January 8, 2020, [appellant] submitted a statement and proof of claim against Ruth's estate and trust for \$590,000, the alleged value of the three Ingham County real estate parcels transferred to Ruth from John's trust. Morehouse disallowed each claim.

On February 28, 2020, [appellant] filed a complaint against Morehouse in Ingham Circuit Court for allowance of a disallowed claim. [Appellant] alleged that, by failing to file a written document with the probate court as required by section 3.3(e), Ruth failed to properly exercise the Spouse's Right, and that she therefore committed a breach of trust by transferring property from John's trust to herself. [Appellant] sought return of the trust assets or the value thereof that had been distributed to Ruth.

On May 5, 2020, Highpoint filed a petition in Barry Probate Court seeking instruction regarding the disposition of the one remaining asset titled to John's trust, a parcel of real estate located in Nashville, Michigan. Highpoint specifically requested instruction from the probate court on the following questions regarding the Spouse's Right:

Whether despite its lack of filing with the Court, the Exercise of Spouse's Rights dated April 11, 2006 complies with Section 3.3(e) of the John R. Adams Trust that (i) the distributions from the John R. Adams Trust to Ruth A. Adams following his death were proper and (ii) the assets remaining in the John R. Adams Trust after the payment of expenses of administration ought to be distributed to Kristene Morehouse, as Trustee of the Ruth A. Adams Trust.

Morehouse and [appellant] received notice of the petition as interested persons and filed briefs in response to Highpoint's petition.

Back in the civil action, on June 9, 2020, Morehouse moved for summary disposition under to MCR 2.116(C)(7) (statute of limitations), (C)(8) (failure to state a claim), and (C)(10) (no genuine issue of material fact), in lieu of answering [appellant's] complaint. Morehouse asserted that the removal of property from John's trust was proper given that Ruth timely exercised the Spouse's Right and was acting on the advice of her legal counsel when she chose not to file a written document with the probate court. Morehouse also argued that [appellant's] complaint was untimely because the complaint was actually an action against a trustee and subject to a five-year limitations period, citing MCL 700.7905(3). She also argued that the complaint was barred by the doctrine of laches because [appellant] received notice of Ruth's exercise of the Spouse's Right through her attorney over 13 years ago. Alternatively, Morehouse requested that the complaint should be removed to the Barry Probate Court pursuant to MCL 700.1303(2) and (3) because of the petition regarding John's trust that was pending before that court.

In response, [appellant] requested summary disposition pursuant to MCR 2.116(I)(2) (nonmoving party entitled to judgment), asserting that there was no genuine issue of material fact that Ruth improperly took title to trust property because she did not file a written document with the Barry Probate Court as required by the Spouse's Right provision. [Appellant] also argued that her action satisfied the limitations period set forth in MCL 700.7905(3) and that laches did

not apply because she never saw the April 19, 2006 letter allegedly sent to her attorney. [Appellant] opposed removal of her action to Barry Probate Court.

The first hearing in the probate proceedings was held on June 10, 2020. As a preliminary matter, the probate court denied [appellant's] request that the case be transferred to Ingham Circuit Court and consolidated with her civil action. As to the question presented by Highpoint's petition, the probate court did not expressly discuss whether Ruth validly exercised the Spouse's Right given the failure to file a writing with the court. However, the court concluded that the real estate that remained titled to John's trust would be distributed to [appellant] according to the terms of the trust.

After additional briefing and a hearing on August 12, 2020, the probate court signed a final order that provided that the Nashville real property would "remain titled to the Trust to be held, managed, and distributed by Trustee pursuant to the Trust's terms" and that "[a]ny principal or income of the Trust that was distributed to or for the benefit of Ruth A. Adams during her lifetime, whether pursuant to Section 3.3(e) of the Trust or otherwise, shall remain with Ruth A. Adams to be hers free and clear of the trust."

In the civil action in Ingham Circuit Court, the parties submitted supplemental briefing regarding the status of the probate proceedings. On October 21, 2020, the circuit court issued an opinion and order declining to rule on Morehouse's motion for summary disposition and, concluding that the action would be simplified if the case were removed to the Barry Probate Court, it so ordered pursuant to MCL 700.1303(2) and (3).

On November 3, 2020, the Barry County Clerk sent [appellant] a letter notifying her that the case had been transferred and that she should address any new filings to the Barry County Clerk. The parties did not submit any new filings to the case and, on December 17, 2020, the Barry Probate Court dismissed the case because "defendant's attorney failed to pay the transfer fee of \$150.00 per MCR 2.223([C])(1) within 28 days of filing/transfer to the 5th Circuit Court." On January 14, 2021, the Barry Probate Court issued an order denying Hughes's motion to set aside the dismissal, reasoning that "[t]he dispositive issues in the Circuit Court case proposed for transfer have already been decided against plaintiff and appealed, therefore the late attempt to remedy plaintiff's late filing fee is again, Denied." [*In re John R Adams Trust*, unpublished per curiam opinion of the Court of Appeals, issued January 27, 2022 (Docket Nos. 354677 and 356119), pp 2-5 (third, twentieth, and last alterations in original).]

Both appellant and Morehouse appealed. *Id.* at p 1. This Court first held that the probate court erred by dismissing appellant's civil action for failure to pay a transfer fee because the removal to the probate court was discretionary, not based on a determination that venue in the Ingham Circuit Court was improper, and a transfer fee was therefore not required. *Id.* at pp 6-7. Next, this Court addressed the parties' competing arguments regarding the probate court's rulings on the disposition of the trust property, holding:

As noted, the Spouse's Right contained in section 3.3(e) of John's trust provided that Ruth would receive all trust property after John's death "but only by filing with the court which was (or would have had if my estate were probated) domiciliary jurisdiction of my estate, a writing evidencing exercise of that right." Section 3.3(e) further provided that "[f]ailure of my Spouse to file the writing shall constitute an irrevocable disclaimer of any rights under this paragraph."

Although Ruth executed a document in an attempt to exercise the Spouse's Right, she did not file a writing to that effect with the probate court as required by John's trust. And per the trust's unambiguous terms, this failure constituted "an irrevocable disclaimer of any rights under" section 3.3(e). Accordingly, Ruth had no right to receive trust property pursuant to this provision and her estate has no claim for any remaining trust property. We therefore affirm the probate court's ruling that any property remaining in John's Trust, i.e., the Nashville property, shall be distributed to [appellant] and her children according to the terms of the Trust. However, Ruth's failure to validly exercise the Spouse's Right compels us to reverse the probate court's ruling that trust property was properly distributed to Ruth during her lifetime pursuant to the Spouse's Right. Morehouse has provided no persuasive argument or authority as to how those distributions can be deemed proper given the lack of a court filing evidencing Ruth's exercise of the Spouse's Right. [*Id.* at p 8.]

We further concluded:

Because we are reversing the probate court's ruling that trust assets were properly transferred to Ruth during her lifetime, [appellant's] civil action based on those transfers is not precluded by the doctrine of collateral estoppel and therefore it shall proceed before the probate court, where it was removed before it was errone[ously] dismissed. We decline to address Morehouse's arguments that Hughes's claims are barred by the applicable statute of limitations and the doctrine of laches. Morehouse may raise those issues before the probate court to decide in the first instance. [*Id.*]

The probate court subsequently granted appellant a temporary restraining order and preliminary injunction ordering Morehouse and Highpoint Community Bank to preserve all trust assets and proceeds from trust assets.

Morehouse eventually filed a petition to resign as trustee of the Ruth A. Adams Trust. Morehouse argued that as a result of the preliminary injunction entered by the probate court, she was unable to access the assets of Ruth's trust to pay attorney fees and that she therefore could not fulfill her fiduciary duty as trustee to defend the trust. She also sought approval from the probate court to use trust assets to cover the \$91,463.13 in unpaid attorney fees that she had incurred throughout the litigation over the trust.

The probate court held a hearing and heard oral argument regarding the petition. The probate court ruled that Morehouse would continue as trustee and that up to \$150,000 of assets

would be unfrozen and made available to pay attorney fees. The court explained its ruling in relevant part as follows:

I am going to allow the trustee to continue. . . . I am going to free up to \$150,000 of the Ruth Adams Trust for use in defense of this trust. I think there's still issues that can legitimately be argued out there.

Like it or not, if Ruth Adams had properly filed a piece of paper with this Court and transferred the one asset that she failed or forgot to transfer, all of the assets could have went into the Ruth Adams Trust.

I just -- it seems to me that this case from the beginning with logical level heads should have just been resolved. But that's fine. We will have a trial on this matter, but I'm not going to do it without the -- with tying the hands behind the back of someone that's required to defend the trust.

Whether or not you feel, this is about principle and they should never have tried to take the assets in the first place, the fact is they could have taken them all if they did it the right way and actually filed the paper with the Court even though they said it was impossible. They certainly could have filed a trust action to -- to meet the criteria of the escape clause that was in the original trust.

So, as far as I'm concerned, everybody's getting what they deserve right now

The probate court entered an order consistent with this ruling, stating that was modifying the preliminary injunction to permit Morehouse, as trustee of Ruth's trust, to "access and spend up to \$150,000.00 of the remaining assets of the Trust to pay attorney fees and other administration expenses incurred by the Trustee going forward (and to pay unpaid attorney fees and administration expenses incurred prior to the entry of this order)." The order further provided that Morehouse immediately "shall pay \$91,463.13 from the \$150,000.00 of assets of the Trust referenced in Paragraph 1 of this order to Foster, Swift, Collins & Smith, P.C. for unpaid attorney fees and costs." Finally, the order authorized Morehouse to move the court for further modification of the preliminary injunction if she incurred or expected to incur "additional attorney fees and administration expenses" beyond the \$150,000 already authorized under the current order. After appellant's motion for reconsideration was denied, she appealed.

This Court stayed enforcement of the probate court's order modifying the preliminary injunction pending resolution of the instant appeal.¹ Morehouse's petition to resign as trustee was subsequently granted, and David R. Russell, who had been representing Morehouse as her attorney, was appointed successor trustee. Russell was also substituted as the successor trustee for Morehouse in this Court.

¹ *In re Ruth A Adams Trust*, unpublished order of the Court of Appeals, entered August 30, 2023 (Docket No. 367207).

II. LAW-OF-THE-CASE DOCTRINE

In her appeal, appellant contends that the probate court's decision to modify the preliminary injunction contravenes the established law of the case as articulated in this Court's opinion dated January 27, 2022, from which we have extensively quoted in our background analysis.²

The application of the law-of-the-case doctrine presents a question of law that is reviewed de novo. *Rott v Rott*, 508 Mich 274, 286; 972 NW2d 789 (2021). "Under the law of the case doctrine, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000) (quotation marks and citation omitted). This general rule also applies to lower tribunals on remand because "the tribunal may not take action on remand that is inconsistent with the judgment of the appellate court." *Id.* at 260.

"The law-of-the-case doctrine is a judicially created, self-imposed restraint designed to promote consistency throughout the life of a lawsuit." *Rott*, 508 Mich at 286. "The purpose of the doctrine is primarily to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Id.* at 286-287 (quotation marks and citation omitted). However, the doctrine applies "only to issues actually decided, either implicitly or explicitly, in the prior appeal." *Lopatin*, 462 Mich at 260. Moreover, the "law-of-the-case doctrine merely expresses the practice of courts generally to refuse to reopen what has been decided, *not a limit to their power.*" *Rott*, 508 Mich at 287 (quotation marks and citation omitted). "[T]he law-of-the-case doctrine should not be invoked to preclude appellate review of a contested question of law that was presumed but not decided against a party in an interlocutory appeal if doing so would deprive the party of their right to appeal an unfavorable trial court decision on that issue." *Id.* at 288.

In her appeal, appellant asserts that the probate court's order to modify the preliminary injunction infringes upon the law of the case as delineated in this Court's January 27, 2022 opinion. Additionally, while appellant contends that the probate court abused its discretion in modifying the preliminary injunction, this claim ultimately hinges on the argument that such modification was impermissible considering this Court's prior opinion. Consequently, appellant's argument serves as a reiteration of its law-of-the-case assertion. Appellant essentially reads that opinion to hold that *all* assets (or the value of those assets) that flowed to Ruth after John's death must be returned to John's trust. Appellant reads our prior opinion much too broadly. We merely held that Ruth had not properly invoked her right under ¶ 3.3(e) of John's trust. We did not decide the effect of that failure considering the other provisions of the trust; as we noted, ¶ 3.3(e) simply provided

² While appellant also claims that the probate court abused its discretion in altering the preliminary injunction, this assertion fundamentally rests on the premise that the court was barred from making such modifications due to the prior opinion from this Court. Therefore, this argument effectively reiterates appellant's law-of-the-case position.

that the failure “to file the writing shall constitute an irrevocable disclaimer of any rights *under this paragraph*.” *In re John R Adams Trust*, unpub op at 8. We did not decide that the failure to invoke the rights under ¶ 3.3.(e) constituted a disclaimer of all rights under John’s trust. Furthermore, we also expressly left open the possibility of litigating defenses to appellant’s claims that included laches and the statute of limitations. *Id.* We also did not hold that trust assets could not be used to pay attorney fees and administrative costs incurred by the trustee of Ruth’s trust in defending against appellant’s claims. The probate court did not violate the law-of-the-case doctrine. *Lopatin*, 462 Mich at 260.

III. DUE PROCESS

Appellant next argues that the probate court violated her due-process rights by modifying the injunction without giving appellant notice and an opportunity to brief the issue and be heard.

“Whether a party has been afforded due process is a constitutional question that we . . . review de novo.” *Zelasko v Bloomfield Charter Twp*, 347 Mich App 141, 150; 14 NW3d 441 (2023). “Due process is a flexible concept, the essence of which requires fundamental fairness.” *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). “The basic requirements of due process in a civil case include notice of the proceeding and a meaningful opportunity to be heard.” *Id.*

Although a trial court has authority to grant summary disposition, for example, sua sponte, the trial court has a “responsibility to provide . . . the opportunity to be heard on the issue” so as not to contravene a party’s due-process rights. *Id.* at 489. Complete absence in a moving party’s brief of an issue on which a trial court nevertheless decides a case can constitute a sua sponte decision in violation of due process. *Id.* at 488-489.

Here, Morehouse moved expressly to resign *and* access trust assets to pay incurred attorney fees. She indicated that she could not fulfill her fiduciary duties to Ruth’s trust and defend the trust against appellant’s claims without access to the trust assets to pay attorney fees and other administrative costs. In her requested relief, she added that she sought an order “directing Morehouse to (i) pay \$91,463.13 from the assets of the Trust to [the attorneys] for unpaid attorney fees and costs” from litigation while she was trustee. Although Morehouse did not appear to explicitly phrase her request as one for a modification of the preliminary injunction, this is exactly what her request necessitated considering the frozen assets. She acknowledged that the preliminary injunction was the purpose for her request to resign precisely because she could not pay attorney fees. Accordingly, she requested to resign to avoid additional fees, and she further requested to pay outstanding fees with trust assets.

Therefore, the issue of modifying the preliminary injunction to allow Morehouse to pay attorney fees was plainly in her motion, giving appellant notice and the opportunity to address the request in her response in writing and at the hearing on the motion. Therefore, appellant had notice and the probate court did not decide the issue sua sponte. See *id.* Appellant has not demonstrated that she was denied due process.

IV. REASONABLENESS OF ATTORNEY FEES

Finally, appellant argues that the probate court abused its discretion because it did not consider the reasonableness of the claimed attorney fees.

[W]ith respect to an award of attorney fees, we review underlying findings of fact for clear error, while questions of law are reviewed de novo. But we review the court's decision whether to award attorney fees and the determination of the reasonableness of the fees for an abuse of discretion. The court does not abuse its discretion when its decision is within the range of reasonable and principled outcomes. [*In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008) (citations omitted).]

Generally, "trusts are administered without judicial supervision absent a petition for review." *Id.* at 130. This general rule is set forth in MCL 700.7201(2), which provides:

A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee's fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.

Under MCL 700.7817, a trustee has the following powers relevant to our analysis:

(v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.

(w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

(x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify an action, claim, or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subdivision for the trustee's protection in the performance of the trustee's duties.

Hence, pursuant to these statutory provisions, so long as the trustee “acts as a reasonable and prudent person with respect to the trust,” the trustee “may retain counsel ‘to advise or assist the trustee in the performance of the trustee’s administrative duties,’ . . . and to defend a claim or proceeding in any jurisdiction . . .” *In re Temple Marital Trust*, 278 Mich App at 138. Moreover, under MCL 700.7904(2), “if a trustee participates in a civil action or proceeding in good faith, *whether successful or not*, the trustee is entitled to receive *from trust property all expenses and disbursements including reasonable attorney fees* that the trustee incurs in connection with its participation.” (Emphasis added.)

Pursuant to MCL 700.7207,

[o]n petition of an interested person, after notice to all other interested persons, the court may review the propriety of the employment of a person by a trustee including an attorney, auditor, investment advisor, or other specialized agent or assistant *and the reasonableness of the compensation of the person so employed* or the reasonableness of the compensation determined by the trustee for the trustee’s own services. The court may order a person who receives excessive compensation from a trust to make an appropriate refund. [Emphasis added.]

However, “[a]bsent a petition for review by an interested party, MCL 700.7201(2) places the administration of the trust, including ‘payment of a trustee’s fees and other trust obligations,’ *in the hands of the trustee without judicial intervention or approval.*” *In re Temple Marital Trust*, 278 Mich App at 137-138 (emphasis added).

Here, appellant did not make a timely request under MCL 700.7207 to review of the reasonableness of the attorney fees incurred by Morehouse as the trustee of Ruth’s trust. We therefore cannot conclude that the trial court abused its discretion. *Id.* at 128. Appellant does not cite any authority for the proposition that the probate court was required to raise this issue sua sponte, and appellant has thus abandoned this issue. “An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims.” *Id.* at 139.

Affirmed. No costs are awarded. MCR 7.219.

/s/ Kathleen A. Feeney
/s/ Stephen L. Borrello
/s/ Anica Letica