

Circuit Court for Anne Arundel County  
Case No. C-02-CV-19-001325

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1668

September Term, 2019

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VINCENT D. CLEARY, JR.,

v.

SHIRLEY A. CLEARY, TRUSTEE

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Beachley,  
Wells,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Wells, J.

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Filed: December 21, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2011, Vincent D. Cleary Sr. (“Vincent Sr.”) and his wife, Appellee Shirley A. Cleary (“Shirley”), created a revocable living trust (“the Trust”). Appellant, Vincent D. Cleary, Jr. (“Vincent Jr.”)<sup>1</sup> and Shirley were appointed co-trustees of the Trust. The purpose of the Trust was to benefit Vincent Sr. during his lifetime by providing for his health, maintenance, and support. [R.E. 21-22]. After his death, the Trust was to benefit Shirley and the couple’s children, including Vincent Jr. [R.E. 24-25]. The Trust was funded by interest in Cantwell-Cleary Co., Inc. (“Cantwell”), a packaging and shipping company that Vincent Sr. owned.

When Vincent Sr. died in early 2013, Shirley became the sole trustee. The Trust was then divided into three separate sub-trusts (collectively still referred to as “the Trust”) and thereafter became irrevocable per the Trust’s terms. Also, upon Vincent Sr.’s death and Shirley’s transition to sole trustee, Vincent Jr. and his brother, William Cleary (“William”) became the first successor and second successor trustees, respectively.

In 2018, Shirley dismissed Vincent Jr. from employment with Cantwell. Vincent Jr. soon formed his own company, Cleary Packaging, LLC (“Cleary Packaging”), and was the sole owner. Cleary Packaging performs the same type of business as Cantwell and employs several of Cantwell’s former employees. Soon after Vincent Jr. formed the new company, Shirley filed separate lawsuits against Vincent Jr. and the former Cantwell employees who had become Cleary Packaging employees. In Shirley’s suit against her son

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<sup>1</sup> Because of shared last names by the parties involved, we refer to parties by their first names for clarity purposes. We mean no disrespect to the parties.

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individually, Vincent Jr. counterclaimed, alleging that Cantwell owed him approximately \$300,000 in back pay and commissions.

In 2019, Shirley filed a petition in the Circuit Court for Anne Arundel County to modify the Trust to have Vincent Jr. removed as a successor trustee and to have William become the first successor trustee and appoint her daughter, Therese Cleary (“Therese”) as the second successor trustee. After a hearing and over his objection, the circuit court removed Vincent Jr. as first successor trustee. Vincent Jr. now appeals.

On appeal, Vincent Jr. raises two questions for our review, each of which we have slightly rephrased for clarity:<sup>2</sup>

1. Did the trial court err in finding that the petition to modify the Trust presented a present conflict of interest and a change in circumstances and thus was ripe for adjudication?
2. Did the trial court err in removing Vincent Jr. as first successor trustee based on its conclusion that a present conflict of interest and a change of circumstances existed that was not contemplated by Vincent Sr. as settlor of the Trust?

For the reasons that follow, we hold first that Shirley’s petition to remove Vincent Jr. as a successor trustee was timely made and thus ripe for adjudication. Specifically, we

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<sup>2</sup> Vincent Jr.’s verbatim questions read:

(1) Did the trial court err in finding that the petition to modify the trust was ripe for adjudication?

(2) Did the trial court err in removing Vincent Jr. as first successor trustee based on hypothetical allegations of potential future harm to the trust?

conclude that a conflict of interest existed that was a change in circumstances from Vincent Sr.’s last modification of the Trust. Therefore, we answer Vincent Jr.’s next question regarding the merits of the appeal. Here, and for similar reasons, we conclude that the trial court’s basis for removing Vincent Jr. as first successor trustee was not a possible future harm, but rather an existing conflict of interest. As such, we determine that the trial court did not err and affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The following facts are undisputed. The only dispute is that Vincent Jr. characterizes certain facts as “hypothetical” while Shirley characterizes them as “extant” and “present.” [Apx. Br. 1].

Vincent Cleary Sr. created the Trust at issue on February 11, 2011, naming himself and his wife, Shirley Cleary, as co-trustees. [R.E. 21-22]. The Trust was created to benefit Vincent Sr. during his lifetime, and after his death, the Trust was to primarily benefit Shirley but also to benefit Vincent Sr.’s and Shirley’s children. [R.E. 21-22, 24-25]. The Trust was funded by stock that Vincent Sr. and Shirley held in Cantwell. [R.E. 10, 24, 31]. On January 2, 2013, approximately one month before Vincent Sr.’s death, he modified the Trust so that the Clearys’ son, Vincent Jr., would serve as first successor trustee. [R.E. 45]. When Vincent Sr. died on February 13, 2013, the Trust became irrevocable. [R.E. 10, 39].

For approximately the next five years, Shirley continued in her role as sole trustee of the Trust while Vincent Jr. remained first successor trustee. However, in 2018, disputes arose between Vincent Jr. and Shirley. According to Shirley, Vincent Jr. tried to force her

to sell her stake in Cantwell to him. If she refused, Vincent Jr. threatened to leave the company, take important employees with him, and start a competing company that he allegedly claimed would destroy Cantwell. Not only did Shirley balk, she also terminated Vincent Jr.'s employment with Cantwell. **[R.E. 11-12, 50]**.

The week following his termination, Vincent Jr. formed Cleary Packaging, a company that now directly competes with Cantwell, doing the same type of business and serving the same geographical area as Cantwell. **[R.E. 12]**. Mere weeks after filing the articles of incorporation, Vincent Jr. signed a lease to rent a warehouse from which to operate Cleary Packaging. **[R.E. 51-52]**. Additionally, a number of employees working for Cantwell left the company to join the rival Cleary Packaging.

The next year, 2019, Cantwell and Shirley brought suits against Vincent Jr. and three other employees who left to join Cleary Packaging. The suits against the former Cantwell employees alleged breaches of restrictive covenants on employment. The suit against Vincent Jr. alleged a breach of restrictive covenant, misappropriation of trade secrets, inducement to employees to breach their restrictive covenants, misappropriation of property, breach of fiduciary duties, and engagement in conspiracy. Vincent Jr. counterclaimed, alleging Cantwell owed him \$300,000 in back pay and commissions.

Also, in 2019, Shirley, as sole trustee, petitioned to remove Vincent Jr. as first successor trustee. **[R.E. 9]**. Shirley petitioned the trial court to make her other son, William, first successor trustee and appoint her daughter, Therese, as second successor trustee. **[R.E. 9]**. Shirley alleged that Vincent Jr. intended to harm Cantwell by starting a

competing business and by breaching a fiduciary duty of good faith and loyalty, among other things. **[R.E. 11-13]**.

Before the circuit court, as he does here, Vincent Jr. argued that the petition should be dismissed because it was not ripe for adjudication. Specifically, Vincent Jr. argued that Shirley’s attempt to remove him as successor trustee was not based on facts but on hypothetical circumstances that would ultimately be determined by the verdict in Shirley’s lawsuit against him. The trial judge agreed with Shirley; the conflict was real, not hypothetical, and that circumstances existed that were completely different from when Vincent Sr. created the Trust. Accordingly, the trial judge removed Vincent Jr. as first successor trustee. **[R.E. 133-141]**.

## **DISCUSSION**

### **I. THE ISSUE OF WHETHER TO REMOVE VINCENT JR. AS FIRST SUCCESSOR TRUSTEE WAS RIPE FOR ADJUDICATION**

#### **A. The Parties’ Contentions**

Prior to analyzing the merits of this appeal, we must first consider the issue of ripeness. In his brief, Vincent Jr. accuses Shirley of requesting “that the trial court rule on her Petition [to remove Vincent Jr. as first successor trustee] even though [the petition] was admittedly based on hypothetical future assumptions that may never occur.” **[App. Br. 10]**. Specifically, Vincent Jr. asserts that any potential conflict of interest will be decided by the outcome of the lawsuit with Shirley, and thus the trial court should have waited until the conclusion of that litigation to consider the merits of Shirley’s petition to remove him as first successor trustee. Vincent Jr. argues that because “the possibility exist[s] for

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Vincent Jr. to prevail completely in the [employment] Litigation as to both his claims and Cantwell’s, including the breach of the fiduciary claim[,]” then the trial court “could not simply assume that Cantwell would prevail at trial or that conflicts of interest would exist at the time Vincent Jr. might exercise his election to be appointed [first] successor Trustee.” **[App. Br. 10].**

In making this argument, Vincent Jr. points us to section 14.5-411(a)(1)-(2) of the Estates and Trusts (“E&T”) Article, Annotated Code of Maryland (1974, 2017 Rep’1 Vol.), which reads:

(1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust.

(2) To the extent practicable, the modification described in paragraph (1) of this subsection shall be made in accordance with the probable intention of the settlor.

Vincent Jr. asserts that for cases brought under section 14.5-411’s change of “circumstances not anticipated by the settlor” prong, the existence of “evidence of what those circumstances are when adjudicating the claim” is required, which he equates to ripeness. **[App. Br. 11].**

Because, according to Vincent Jr., “the allegations and requested relief in [Shirley]’s Petition were based on events that are future, contingent, and uncertain,” Vincent Jr. argues *first* that the trial court erred by failing to grant his motion to dismiss and, *second*, that the trial court erred by failing to stay the proceedings pending the resolution of the employment litigation between himself and Shirley. **[App. Br. 12].** In short, Vincent Jr. bases the outcome of this claim entirely on the outcome of the employment litigation. He believes

that if he were to prevail in the employment litigation with a conclusion that “the trial court could well find that Cantwell leveled false allegations against Vincent Jr. and withheld his commissions in a bad-faith effort to generate a dispute that would disqualify him from serving as a successor Trustee[,]” then there is no basis for Shirley’s removal of him as first successor trustee. **[App. Br. 12]**. However, he concedes that if he “is found liable under certain claims, then the trial court may have a basis to find a conflict exists such that it should modify the future administration of the Trust.” **[App. Br. 12]**.

Shirley counters by arguing that the outcome of the employment litigation between herself and Vincent Jr. is irrelevant to the of her removal of Vincent Jr. as first successor trustee. Shirley asserts that the trial court’s decision was not based on hypothetical scenarios but instead on actual circumstances that now exist since Vincent Sr., as settlor, made Vincent Jr. the first successor trustee.

Shirley contends the litigation between her and Vincent Jr., and the reasons why he filed suit, satisfies the “circumstances not anticipated by the settlor” element required under E&T section 14.5-411. **[Apx. Br. 4]**. In other words, Shirley would have us find that because Vincent Jr. filed a \$300,000 counterclaim against Cantwell, Vincent Jr. “has taken action that would deplete the assets of the trust, which . . . is an essential, extant, non-hypothetical fact for purposes of this case” and thus that the case was correctly dismissed and, even if it were not dismissed, that the case should not be stayed pending the employment litigation. **[Apx. Br. 6]**. Finally, Shirley notes that appellate precedent from other jurisdictions has held that merely a “‘real possibility’ of a conflict of interest” is enough to remove a successor trustee prior to appointment as a trustee. **[Apx. Br. 6 (citing**



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*Rodriguez-Tocker v. Estate of Tocker*, 35 Kan. App. 2d 15 (2006)].

### **B. Standard of Review**

Two separate standards of review apply here because Vincent Jr. makes two similar but distinct arguments: *First*, the trial court erred by declining to dismiss Shirley’s petition, *second* and alternatively, that that the trial court erred by declining to stay Shirley’s petition until a final decision was reached in the outcome of their employment litigation. Regarding Vincent Jr.’s primary argument, we review grants and denials of motions to dismiss by analyzing “whether the trial court was legally correct.” *Blackstone v. Sharma*, 461 Md. 87, 110 (2018), *reconsideration denied* (Oct. 3, 2018) (quoting *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018)). Because motions to dismiss involve a defendant asserting that a plaintiff is not entitled to relief as a matter of law even if their factual allegations were found to be true, courts examine “only the sufficiency of the pleading” and “assume the truth of all well-pleaded relevant facts as alleged in [the] appellant’s complaint and all reasonable inferences drawn therefrom.” *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 704 (2002) (quoting *Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312, 322–23 (1996)) (internal citations omitted).

Regarding grants and denials of motions to stay, “appellate courts review the ultimate decision whether to grant or deny the stay for abuse of discretion.” *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 546 (2013) (citing *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (2011)). As such, the trial court’s decision regarding the motion to stay will be upheld unless “no reasonable person would take the view adopted by the trial court.” *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md.

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534, 546 (2013) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 419 (2007)).

In sum, we review the trial court’s decision to deny dismissal based on whether the court’s decision was legally correct, and we review the trial court’s decision to deny a stay of the proceedings based on whether the trial court abused its discretion.

### **C. Analysis**

#### **1. Motion to Dismiss**

The dispute about ripeness largely comes down to Vincent Jr.’s and Shirley’s differing interpretations of the language in E&T section 14.5-411, previously cited. Both parties agree that the statute would allow Maryland courts, in certain situations, to modify or terminate the Trust. Vincent Jr. and Shirley disagree, however, whether the situation at the time of Shirley’s petition was encompassed by the statute’s “circumstances not anticipated by the settlor” language.

Neither Vincent Jr. nor Shirley dispute that a claim must be ripe to be decided by courts. “Where an issue is not ripe, the issue is not justiciable and, thus, a court will not entertain the claim.” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 592 (2014). In explaining ripeness, we have said that a “controversy is ripe when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded. The declaratory judgment process is not available to decide purely theoretical questions or questions that may never arise.” *Heritage Harbour*, 143 Md. App. at 711–12 (internal quotations and citations omitted). Moreover, a case “lacks ripeness if it involves a request that the court declare the rights of parties upon a state of facts which has not yet arisen, or upon a matter which is future,

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contingent and uncertain.” *State Ctr., LLC*, 438 Md. at 591 (internal quotation omitted).

Vincent Jr. broadly asserts that Shirley’s petition to remove him as the first successor trustee is not ripe “[b]ecause the allegations and requested relief in [Shirley]’s Petition were based on events that are future, contingent and uncertain[.]” [**App. Br. 12**]. He moreover claims that ripeness is lacking due to “potential conflicts of interest existing between Cantwell and [himself] at the time, if ever, when he may assume the role of successor Trustee to Ms. Cleary.” [**App. Br. 10**]. We understand Vincent Jr.’s argument to be that a conflict of interest might not exist depending on the outcome of the employment litigation, and therefore the case to remove him as first successor trustee was unripe. Specifically, Vincent Jr. argues that the trial court erred by failing to “assume that *any* scenario regarding the outcome of the [employment] litigation may occur, including that Vincent Jr. would prevail completely and that no conflict may exist at the time of any future appointment.” [**App. Br. 10-11 (emphasis in original)**].

Despite Vincent Jr.’s claim that the trial judge failed to take into account the present circumstances of the parties and instead based his decision on future or hypothetical facts, based on our review of the transcript, we disagree. An examination of the trial judge’s ruling reveals that he paid careful attention to what the current circumstances were.

I do think I’ve been convinced that the matter is ripe to be heard today for a couple of reasons. Number one, I find that the intent of [Vincent Sr.] speaks from the grave in a trust issue such as this. That’s in many ways a silent voice that’s present in the courtroom. And this Court has to evaluate whether the wishes of the person who established the trust are in any way whatsoever being compromised by the **present circumstances** that exist.

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So what I'm left with is the final point of analysis which is I do find . . . what controls in this case is **there are competing companies**. And even though they're not the only two players in the business . . . the point is, if you look at it from a zero sum game analysis, it's possible that at the point in time the successorship would pass to [Vincent Jr.] in this case that the assets in the trust would possibly be less borne of a competition of the businesses.

**[R.E. 98:13-100:18 (emphasis added)].**

Vincent Jr.'s ripeness argument hinges on the idea that because the employment litigation was ongoing and had not been concluded in his favor, there was no change in circumstances on which the trial court could modify the Trust. However, it appears to us that the ripeness of this case is not necessarily tied to the outcome of the employment litigation as Vincent Jr. believes. To us, the most important factor, and the one that the trial judge relied upon, was the fact that ongoing litigation existed between Shirley and Vincent Jr:

And I think there's a per se, almost a judicial notice, of course, that can be taken that there's now acrimony within the successorship that he established. There's acrimony within the family borne of the copious litigation that unfortunately now exists between family members and they just happen to manifest in this case as the lineage of successors or trustees[.]

And so, for that reason, I think, in part, that the ripeness issue is overcome.

**[R.E. 98:20-99:4].**

The trial judge was legally correct to consider the existence of litigation rather than its outcome in rejecting Vincent Jr.'s argument. Long-standing appellate precedent focuses on the existence of litigation, not its outcome, to determine whether the totality of the circumstances present a sufficient, timely, and justiciable controversy. *Polk v. Linthicum*, 100 Md. 615 (1905) (looking at the totality of circumstances the mere presence of litigation

involving the trustee negatively impacted the trust from a costs perspective and was sufficient to remove the trustee from her position).

The trial judge relied on existing facts—specifically the ongoing employment litigation between the parties—to determine that circumstances not anticipated by Vincent Sr. as settlor existed. The litigation between the parties qualifies as a sufficient change of circumstances. Because E&T section 14.5-411 requires a change in circumstances and *Polk*, 100 Md. 615, holds that the existence of the litigation can allow for removal of a trustee, we hold that Shirley’s petition was ripe for litigation. Consequently, the trial court was legally correct to refuse to dismiss Shirley’s petition.

## 2. Motion to Stay Pending the Employment Litigation

Alternatively, Vincent Jr. argues that the trial court should have stayed the case until an outcome was reached in the employment litigation. Vincent Jr.’s entire argument from his brief on this point reads:

In the alternative, in order to let the future uncertain events play out, at least in part, the trial court should have stayed the proceedings pending the resolution of the [employment] Litigation. If Vincent Jr. and/or Cleary Packaging is found liable under certain claims, then the trial court may have a basis to find a conflict exists such that it should modify the future administration of the Trust. If, however, Vincent Jr. prevails in the Litigation, there would be no basis for such a finding. Under that scenario, the trial court could well find that Cantwell leveled false allegations against Vincent Jr. and withheld his commissions in a bad-faith effort to generate a dispute that would disqualify him from serving as successor Trustee. As either of these scenarios could occur in the future, or any scenario in between these extremes, the trial court abused its discretion by not staying the proceedings pending at least the resolution of the Vincent Jr. Litigation.

**[Apx. Br. 12].**

Vincent Jr.’s argument to stay is essentially indistinct from his prior argument

seeking dismissal and warrants the same outcome here. We concluded in a prior section of this opinion that the more stringent “legally correct” standard of review was insufficient for Vincent Jr. to prevail. Reviewing the denial of the motion to stay under the less stringent “abuse of discretion” standard of review does not yield a different result. We have held that the trial judge was legally correct in concluding that the litigation between the parties was sufficient to show that a change in circumstances existed. As such, the outcome of employment litigation is effectively irrelevant for these present purposes. Given this irrelevancy of the employment litigation, we similarly conclude that the trial judge did not abuse his discretion in refusing to stay the proceedings until the employment litigation concluded.

## **II. THE TRIAL COURT DID NOT ERR IN MODIFYING THE TRUST BY REMOVING VINCENT JR. AS TRUSTEE**

### **A. The Parties’ Contentions**

We now consider Vincent Jr.’s contention that the trial court erred in granting Shirley’s petition to modify the trust and remove him as a substitute trustee. Vincent Jr. raises similar but distinct points. *First*, he asserts that the trial judge’s factual findings “were purely speculative as to what Vincent Sr. contemplated at the time the Trust was settled and what his probable intentions were.” [App. Br. 14]. Specifically, Vincent Jr. argues that the trial judge’s use of the terms “might” or “could” in his ruling illustrated that any conflict of interest was not in existence and only presented the possibility of a conflict

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of interest.<sup>3</sup> [App. Br. 14]. According to Vincent Jr., the trial judge’s use of such language resulted in findings that were factually and legally erroneous. [App. Br. 14]. Shirley responds by asserting, *first*, that Maryland law does not require a finding of actual wrongdoing or past harm and, *second*, that the trial court indeed relied upon its finding of a present conflict of interest that was not hypothetical. [Apx. Br. 7].

Next, Vincent Jr. argues that the trial judge erred in failing to consider “reasonable assumptions that could have been inferred by the record.” [App. Br. 14]. He specifies only one assumption in his brief: that it was Vincent Sr.’s probable intention “to have his eldest son who spent 29 years with the company to be his successor and carry on the family business.” [App. Br. 14]. Shirley counters that the trial judge “found that, based upon present circumstances, Vincent Jr. has a conflict of interest that disqualifies him from serving as a successor trustee” and that “[i]n terms of the ‘probable intention’ of [Vincent Sr.], the Circuit Court found that the ‘clear intent’ of [Vincent Sr. and Shirley], as original settlors, was that they ‘wanted the assets [of the Trust] to grow.’” [Apx Br. 11-12 (emphasis in original) (citing R.E. 115)].

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<sup>3</sup> See R.E. 138 (the factual findings “*could* create the appearance or temptation to act in an interest that’s favorable to [Cleary. . . which] *could* be antithetical to the interest of serving as a fiduciary even though it’s a successive fiduciary obligation that has not yet fully manifested”) (emphasis added) and R.E. 141 (the trial court’s finding that with “the litigation between the parties and the uncontroverted existence of two competing corporations that *could* affect the amount of assets within the present trust” and also the fact that “the successor trusteeship exists in its present form[,]” such facts “*could* affect the actions of the trustee that otherwise *might* be antithetical to the beneficiaries or *might* affect the interest of third parties that *might* respond and react and make business decisions that also contemplate that structure[,] which then also implicates a conflict of interest”) (emphasis added).

In Vincent Jr.’s final argument on the merits, he asserts that the trial court incorrectly reached its judgment based solely on the fact that disputes arose between himself and Shirley, and that this alone cannot be enough to justify the trial court’s decision to modify the Trust and remove him as first successor trustee because there was no fiduciary breach. **[App. Br. 15-16]**. In response, Shirley argues that these extant circumstances alone provided the trial court with a more than enough basis from which to conclude that “the present strife that exists between the families in the form of now two corporate entities that was not something contemplated by [Vincent Sr.] when he served as settlor of the trust.” **[Apx. Br. 11 (citing R.E. 133)]**.

More pointedly, Shirley notes that the trial court found that it was undisputed “that Vincent Jr. start[ed] a competing business that is inherently antithetical to the best interests of Cantwell (the largest asset in the trust), and further that [Vincent Jr.] is embroiled in litigation, in which he has filed a counterclaim against Cantwell.” **[Apx. Br. 12]**. Shirley argues that these facts alone provided the trial court with more than enough evidence to conclude that Vincent Jr. was hostile to the interests of the Trust and therefore the court properly removed him as first successor trustee. **[Apx. Br. 12]**.

### **B. Standard of Review**

The trial court made both factual and legal determinations. We review questions of fact under a clearly erroneous standard. This court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]” Md. R. 8-131(c). Findings by the trial court are “not clearly erroneous if there is competent or material evidence from the record to support the [trial] court’s conclusion.” *Brown v. State*, 234 Md. App. 145, 152



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(2017) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Under this standard, we do “not sit as a second trial court” but simply decide “whether the circuit court’s factual findings were supported by ‘substantial evidence in the record’” looking at that evidence “in a light most favorable to the prevailing party.” *L.W. Wolfe Enters., Inc. v. Maryland Nat’l Golf, L.P.*, 165 Md. App. 339, 343 (2008) (citation omitted) and *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 455-56 (2004) (citations omitted).

Legal conclusions, meanwhile, are reviewed under a *de novo* standard of review. *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007). As such, and unlike with factual findings, we accord no deference to the trial court in analyzing its legal conclusions. *L.W. Wolfe Enterprises, Inc.*, 165 Md. App. at 344.

### **C. Analysis**

#### **1. Hypothetical Findings Argument**

Vincent Jr. argues that the trial court’s factual and legal findings were in error because they were speculative. Vincent Jr. acknowledges that the trial court’s finding was based on “the present strife that exists between the families in the form of now two corporate entities[, which] was not something that was contemplated by [Vincent Sr.] when he served as settlor of the Trust.” **[App. Br. 13 (citing R.E. 133)]**. However, Vincent Jr. contends that any conflict of interest thereby, as it may affect his role as trustee is only hypothetical AND may never arise.. **[App. Br. 13]**. At the outset, we note that in making this argument, Vincent Jr. cites no statute, appellate precedent, or rule from Maryland nor any other jurisdiction. Moreover, we have been unable to find any authority to support Vincent Jr.’s argument on this point.

Significantly, we first observe that there is no requirement in E&T section 14.5-411(a)(1)-(2) that any modification be based on a present wrongdoing, as Vincent Jr. would have us find. *See id.* Rather, the trial court was required to find before it modified the Trust and removed Vincent Jr. as first successor trustee: (1) that the modification furthered the purpose of the Trust, (2) that Vincent Sr. did not anticipate the circumstances that had arose, and (3) that the modification was consistent with Vincent Sr.’s probable intention. *Id.* We discuss each of these requirements in turn.

With respect to the first element, that of furthering the purposes of the trust, the trial judge explained that “one thing that is absolutely clear to me, and this is not antithetical to any trust, the person [(Vincent Sr.)] who established it want[ed] the assets of the trust to crescendo, to grow, to prosper, to become even fuller, if you will, to be financially successful.” [R.E. 114-115]. Moreover, the trial court concluded that the goal of growing the Trust was not just to benefit Vincent Jr., but also the “five other beneficiaries.” [R.E. 117]. Therefore, in order to meet E&T section 14.5-411’s first requirement, the proposed modification would have to grow the Trust in a way that served the interests of all the beneficiaries.

We conclude that the trial court’s removal of Vincent Jr. as first successor trustee met the first element of E&T section 14.5-411 in that the modification benefited all the beneficiaries. A review of the Trust document makes this point clear. [R.E. 21]. The first page of the Trust document reveals that Vincent Sr. “is the owner of the cash and/or other property hereinafter referred to.... [H]e desires to establish the trust hereinafter expressed in respect to the same so that the same may be preserved and judiciously invested to insure

for himself and the persons hereinafter named the benefit thereof[.]” [R.E. 21]. Further, the Trust document shows that upon Shirley’s death, the beneficiaries include not only Vincent Jr. but also his five siblings. [R.E. 24-25].

Now that we have established that the trial court was correct in identifying the purposes of the trust, the next step in the analysis is determining whether the trial court’s modification furthered that goal or not. The trial court’s decision was based on the fact that after getting into a dispute over control of Cantwell with his mother Shirley, Vincent Jr. started a company that would directly compete with the main asset of the Trust, Cantwell. [R.E. 136-37]. In the words of the trial judge:

[B]ecause the present circumstances as it exists could indeed impact the beneficiaries of the trust but also cause the present trustee to act in a way that she might deem in a vacuum to be antithetical to the interest of the beneficiary . . . it’s reasonable for [the trial court] to conclude that the mere structure of the competing litigation and the mere structure of the competing corporate entities could cause the present trustee [(Shirley)] to act in a manner that she would otherwise not deem to be . . . in the best [interest] for the beneficiary.”

[R.E. 137]. The existence of Vincent Jr.’s company suffices as “competent” and “material evidence from the record [that] support[s] the [trial] court’s conclusion[.]” and thus we will not disturb the trial court’s factual finding as it is not clearly erroneous looking at the evidence “in a light most favorable to the prevailing party” (Shirley). *Brown*, 234 Md. App. at 152 (quotation omitted) and *Goss*, 157 Md. App. at 455-56 (citations omitted). We conclude that the trial court correctly identified the purposes of the Trust and properly concluded that modifying the trust to remove Vincent Jr. as first successor trustee furthered those purposes of the Trust.

Regarding the second element of E&T section 14.5-411, whether circumstances arose that the settlor did not anticipate, we find that the trial court’s factual finding was not clearly erroneous. The trial judge specifically stated that “the present strife that exists between [Vincent Jr. and Shirley] in the form of now two corporate entities was not something that was contemplated by [Vincent Sr.] when he served as the settlor of the trust.” **[R.E. 133]**. Both parties agree that the strife between Vincent Jr. and his mother did not occur until years after Vincent Sr.’s death, when Shirley fired Vincent Jr., over a dispute about who was going to control the company. Given that until Vincent Sr.’s death, Vincent Jr. had worked at Cantwell without any conflict, the trial court properly concluded that the circumstances leading to the modification came into existence well after Vincent Sr.’s death.

With respect to the third element of E&T section 14.5-411, we conclude that the trial court’s modification was consistent with Vincent Sr.’s probable intention. In analyzing the first prong of the statute, determining the Trust’s purpose, we explained that the Trust was set up (1) for growth (2) so that Shirley and her and Vincent Sr.’s children, including Vincent Jr., could financially benefit from the Trust. The trial judge related these purposes to the “clear intent” of Vincent Sr., stating that “looking in a present snapshot, it is clear that -- that's not a vague or ambiguous intent. That’s the clear intent . . . [that Vincent Sr.] wanted the assets [of the Trust] to grow.” **[R.E. 115]**. This factual determination by the trial court is supported by competent evidence from the record in the form of the Trust document, which states the Trust’s purpose and beneficiaries and was presented to the trial judge. **[R.E. 21]**. Given this evidence, the trial judge’s factual

determination cannot be considered clearly erroneous; we “will not set aside the judgment of the trial court.” *See Brown*, 234 Md. App. at 152; Md. R. 8-131(c).

Now that we have concluded the court’s factual findings met the statutory requirements, we must next examine what modifications the trial court made. Here, the trial judge removed Vincent Jr. as first successor trustee. Therefore, we must determine whether that particular modification was “made in accordance with the probable intention of the settlor.” *See* E&T section 14.5-411(a)(2). It is undisputed that Vincent Jr.’s company was created to directly compete with Cantwell, the Trust’s main asset. Such competition hinders the Trust’s ability to grow and benefit the beneficiaries. Money spent by Cantwell in litigation against Vincent Jr., and particularly his demand for \$300,000 is money that, if awarded to him, would never go to the Trust’s beneficiaries. Thus, given the existence of competition that Vincent Jr. has created and litigation in which he is embroiled, even under a *de novo* standard of review, we perceive no error by the trial court in removing Vincent Jr. as first successor trustee.

Turning now to Vincent Jr.’s hypothetical error argument, Vincent Jr. claims that the trial court’s use of “could” and “might” created a hypothetical ruling that should be overturned because the ruling was “not supported by any concrete facts in the record and [was] erroneous.” [App. Br. 14]. Despite Vincent, Jr.’s concern, we find no authority and see no reason to conclude that, despite meeting the statutorily mandated requirements for modification of a Trust, we should disallow such modification when, as here, litigation and corporate competition “could be antithetical to the interest of serving as a fiduciary.” [See R.E. 138 and 141].

Indeed, when analyzing the removal of a trustee from a trust, the Court of Appeals has made clear that actual conflict is not required: “A trustee is not permitted to place himself in such a position that the interest of the beneficiary and his own personal interest do **or may** conflict[.]” *McDaniel v. Hughes*, 206 Md. 206, 220 (1955) (citing *Mangels v. Tippett*, 167 Md. 290 (1934)) (emphasis added); *see also Schmidt v. Chambers*, 265 Md. 9, 35 (1972) (finding that the quoted passage from *Mangels* is “applicable to a trustee’s duty to his beneficiary and his accountability for benefits accruing to him as a result of his fiduciary position” and is “dispositive” of the issues in that case). Similar to removing a current trustee, when modifying the Trust to remove Vincent Jr. as first successor trustee, we perceive the trial court did not err in considering conflicts that may occur.

Although we conclude that removing a successor trustee through modification of a trust due to a potential conflict of interest would not run afoul of Maryland law, Vincent Jr.’s argument, that the trial court’s decision was based on hypothetical and non-concrete facts, is factually inaccurate. [**App. Br. 14**]. While Vincent Jr. highlighted the instances in which the trial judge used the words “could” or “might,” a fair reading of the judge’s ruling shows that it is based on extant facts. In discussing Vincent Sr.’s likely intent and the purpose of the Trust, the trial judge stated that he “looked at the trust” and that “looking [at the Trust] in a **present** snapshot . . . taking a **present** snapshot,” it became clear to him “that the success of Cleary Packaging in terms of how much money is in . . . that entity, is inversely proportional” to that of the Trust. [**R.E. 115 (emphasis added)**]. Later, the trial judge noted that he “can’t wrap [his] head around . . . how we don’t have a conflict because of the **present structure as it exists.**” [**R.E. 122 (emphasis added)**]. After his questioning

during the parties’ arguments when making his ruling, the trial judge noted that his “decision is predicated on the present landscape and the facts as they exist but not the outcome of those matters.” **[R.E. 130 (emphasis added)]**. Continuing, the trial court explained that the modification was made under E&T section 14.5-411 because of “the present strife that exists between the families in the form of now two corporate entities[, which] was not something that was contemplated by [Vincent Sr.] when he served as settlor of the trust.” **[R.E. 133 (emphasis added)]**.

This language shows that the trial judge was considering concrete facts. The judge’s use of the terms “might” or “could” was necessary to discuss how the effects of Vincent Jr.’s rival company and the ensuing litigation would likely have on Cantwell. As such, we cannot accept Vincent Jr.’s contention that the trial judge’s ruling was based on speculation, nor can we accept his contention that it would be an error to consider such facts regardless. We find the trial court’s decision was wholly in line with E&T section 14.5-411 because all three elements were met as the trial court found (1) that the modification furthered the purpose of the trust, (2) that circumstances had arisen that were unanticipated by Vincent Sr., and (3) that its modification was consistent with Vincent Sr.’s probable intention. For these reasons, we find no error.

## 2. Alleged Failure to Consider Reasonable Assumptions

In the previous argument, Vincent Jr. asserted error by the trial court by arguing that the trial court overly speculated on facts and relied on those assumptions in making its ruling. **[App. Br. 14 (the trial “court’s factual findings were clearly erroneous because they were purely speculative as to what Vincent Sr. contemplated at the time the Trust**

was settled and what his probable intentions were”)]. In this argument, Vincent Jr. seemingly asserts that the trial judge *was not speculative enough* “by failing to take into consideration certain facts and reasonable assumptions that could have been inferred from the record.” [App. Br. 14]. In examining his previous argument, we analyzed how the trial judge’s ruling appropriately aligned with the elements of E&T section 14.5-411. That analysis likewise disposes of his argument here as well. As we explained, the trial court’s modification (1) furthered the purposes of the Trust, (2) addressed circumstances not anticipated by Vincent Sr. as settlor, and (3) was consistent with Vincent Sr.’s probable intention. Therefore, the trial judge correctly modified the Trust and removed Vincent Jr. as first successor trustee.

Just as Vincent Jr. offers no authority nor have we found any to support his previous argument, he similarly offers no authority that suggests that the trial judge was required to expressly speculate “that the probable intention of Vincent Sr. at the time the Trust was created was to have his eldest son [(Vincent Jr.)] who spent 29 years with the company to be his successor and carry on the family business.” [See App. Br. 14]. As explained, the trial court satisfied all the elements of E&T section 14.5-411 when it modified the Trust by removing Vincent Jr. as first successor trustee. Therefore, in the absence of any authority to the contrary, we are unpersuaded that the trial judge was required to “infer from the record” that Vincent Sr. would have wanted Vincent Jr. to succeed him under the circumstances. Indeed, the opposite inference is more likely when the undisputed fact is that the heir apparent started a rival company to “destroy” Cantwell.



More importantly, this appeal is not about whether Vincent Jr. should be running Cantwell. Rather, this appeal concerns whether Vincent Jr. should remain as first successor trustee when he has established a rival company that puts the Trust in danger of failing by intentionally trying to ruin the Trust’s main asset. Similarly, “no findings about the underlying claims in the [employment] Litigation” needed to be made, contrary to Vincent Jr.’s argument. [*See App. Br. 14*]. As both this Court and the trial court have explained in detail, the outcome of the employment litigation is irrelevant; it is the existence of the employment litigation that matters. Therefore, it would have been inappropriate for the trial court to make findings on those underlying claims. And, even if this were the case, we still find no authority that suggests that the trial judge was required to expressly “infer[] from the record” these “certain facts and reasonable assumptions.” [*See App. Br. 14*].

In sum, we are not persuaded by language of the Trust nor by Vincent Jr.’s argument that the trial court committed error for failing to consider that Vincent Sr. possessed the probable intention that Vincent Jr. “be his successor and carry on the family business” in Cantwell. [*See App. Br. 14*]. As such, we here again reject Vincent Jr.’s argument that modification was in error.

### 3. Weight of Evidence Argument

In his final argument, Vincent Jr. contends that no evidence exists that he either has violated or would violate a duty owed to the Trust or its beneficiaries, and that without such a violation, the trial court “had no basis upon which to modify the Trust.” [*App. Br. 14*]. He further asserts that the trial court reached its conclusion solely on the fact that disputes arose between himself and Shirley. In making this argument, Vincent Jr. draws

support from *Mangels*, 167 Md. 290, which he claims was wrongly applied by the trial court.

Vincent Jr. correctly points out that, as the Court of Appeals found in *Mangels*, removal of a trustee cannot be justified simply because the parties “are not at present on the most pleasant terms” or that the parties “are unable to act harmoniously[.]” 167 Md. at 290. Consequently, were there merely the inability for Shirley and Vincent Jr. to act harmoniously with each other, then *Mangels* might control this case and prevent Vincent Jr.’s removal as first successor due to the modification of the Trust. However, much more than mere strife exists between Shirley and Vincent Jr. *First*, there is direct competition between Cantwell, that Shirley now owns, and Cleary Packaging, owned by Vincent Jr. This is significant because Cantwell is the most valuable asset of the Trust. Therefore, a serious conflict exists where Vincent Jr., should he succeed to the trusteeship, would be in charge of managing the Trust—meant to benefit all of his siblings and himself—with Cantwell as its main asset while he is simultaneously managing its competitor, Cleary Packaging—meant to benefit only Vincent Jr.

In addition to this corporate competition, the litigation between Shirley and Vincent Jr. creates another example of how the situation here is distinct from the situation in *Mangels*. In *Mangels*, the trustee was the secretary of the company that was the major asset of the trust there. 167 Md. 290. The trustee was not removed by the Court of Appeals, but because he had taken a salary from the company, he was required to reimburse the trust by 50% of the salary that he had taken. *Id.* Here, Vincent Jr. is no longer part of Cantwell but is instead actively engaged in litigation against it, including an approximately \$300,000

counterclaim. Indeed, we cannot reasonably understand this to qualify as merely not being “on the most pleasant terms” nor failing to “act harmoniously.” *See id.*

Instead, we find this case to be much more similar to that of *Polk*, 100 Md. 615. In *Polk*, family disputes after the death of the settlor led to litigation between the trustee and beneficiary. *Id.* Similarly, here the existence of litigation between the Trust’s major asset, Cantwell, and Vincent Jr. is currently serving to diminish the main asset of the Trust. Such diminishment of the Trust would only be magnified should Vincent Jr. prevail on his counterclaim. Just as removal of the trustee was justified in *Polk*, because of the competition and employment litigation, the removal of Vincent Jr. as first successor trustee is similarly justified.

For these forgoing reasons, we conclude that the trial court committed no error in modifying the Trust and removing Vincent Jr. as first successor trustee. The decision was ripe, was factually supported, met the statutory requirements, and complied with precedent. We, therefore, affirm.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR ANNE ARUNDEL  
COUNTY IS AFFIRMED.  
APPELLANT TO PAY THE COSTS.**