



BASSFORD REMELE

# Building Trust

A Publication of the Bassford Remele Trust and Estate Litigators

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**Tortious Interference  
with Inheritance:**

Status of the Law  
in Minnesota

**To Be or Not to Be:**  
Your Client's Trustee

**A-List Assets:**  
Celebrity Trusts and  
Estates in the News





*Our attorneys help families, individuals, businesses, and non-profit organizations handle conflicts relating to trusts, wills, estates, guardianships, conservatorships, and protective arrangements.*

Nothing in this publication creates an attorney-client relationship between the reader and Bassford Remele, P.A. This publication is an advertising material that contains educational content, but this content is not to be construed as legal advice.

# Welcome to *Building Trust*

*Building Trust* is a quarterly publication of the Bassford Remele Trust and Estate Litigation Group designed to bring relevant and timely information to our clients and colleagues. Through *Building Trust*, we strive to provide insight into the everyday issues faced by attorneys, trust officers, financial advisors, CPAs, beneficiaries, and others that are involved in, or have an interest in, the transfer and administration of family wealth. Each issue will contain not only substantive legal content, but also an update on relevant case law and trust and estate stories in the mainstream news.

The transfer of family wealth can be a source of pride and legacy, but when issues and disputes arise, they present unique and difficult challenges. Our attorneys have years of experience resolving these challenges and helping professional fiduciaries, families, individuals, and non-profit organizations avoid issues and resolve disputes when they arise. We routinely manage disputes ranging from simple will contests to some of the most high-profile trust and estate cases in Minnesota. As always, our team is here to support you, your clients, and your practice.

This issue contains a review of tortious interference with inheritance under Minnesota law, what an attorney should consider before acting as a trustee of their client's trust, recent case law, and a section on "A-List Assets," which reports on celebrity trusts and estates in the news.

We have also summarized several recognitions our trust and estate practice group members recently received. These include Lawyer of the Year and Tier 1 in "2024 Bet-the-Company Litigation" and "Trusts & Estates Litigation" by *The Best Lawyers in America*®. Finally, we have highlighted some important upcoming events that may be of interest to our readers, including Bassford Remele's Annual Employment Law Seminar, which will have a mental health and legislative update component, our annual ethics seminar, which will discuss the challenges and benefits of Artificial Intelligence, and our Women's Leadership Summit — both women and men are welcome.

We hope you find the information contained in this First Edition of *Building Trust* useful. Thank you for your time and attention.

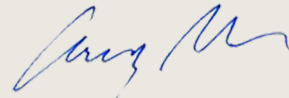
Best regards,



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# Recent Articles

## Tortious Interference with Inheritance: Status of the Law in Minnesota

By Casey Marshall and Kiralyn Locke

Money, while often a means to enhance life's comforts and opportunities, can also bring out the darker aspects of human nature. As professionals involved in the transfer of wealth from one generation to the next, we are all too aware of the actions some individuals will take to maximize their personal benefit to the detriment of others. When those actions are wrongful, the aggrieved party is often facing a difficult road to unwind transactions and vindicate the intent of their loved one. The Restatement and many State courts have recognized a claim for tortious interference with inheritance as an available tool. The Restatement (Second) of Torts § 774B states as follows:

One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift.

Although Minnesota courts routinely rely on the Restatement, tortious interference with inheritance has not been expressly recognized as a cause of action. This article explores Minnesota case law related to tortious interference with inheritance and whether it is a viable claim under Minnesota law.

### The Court of Appeals Refuses to Recognize Tortious Interference with Inheritance

In 2009, in *In re Est. of Stanley*, the Minnesota Court of Appeals confirmed that Tortious Interference with Inheritance is not a recognized tort in Minnesota and refused to recognize it. The Court did not analyze the merits of the claim, but rather reasoned that “[c]reating a new tort is a function reserved for the supreme court.” 2009 WL 4910852, at \*7 (Minn. Ct. App. Dec. 22, 2009). However, that is not the end of the story. The Court in *Stanley* also reasoned



that tortious interference with inheritance was not a valid claim because the Minnesota Supreme Court has recognized tortious interference with “prospective contractual relations,” but “ha[d] not yet recognized the broader claim of tortious interference with an economic expectancy.” The *Stanley* holding and reasoning suggested that an inheritance is an economic expectancy, and that tortious interference with such an expectancy could form the basis for a valid claim if the Minnesota Supreme Court were to recognize a claim for tortious interference with economic expectancy.

### Tortious Interference with Prospective Economic Advantage

In 2014, the Minnesota Supreme Court recognized a claim for tortious interference with prospective economic advantage. *Gieseke v. IDCA, Inc.*, 844 N.W.2d 210 (Minn. 2014). Under *Gieseke*, to state a claim for tortious interference with prospective economic advantage, a plaintiff must show:

1. The existence of a reasonable expectation of economic advantage,
2. The defendant's knowledge of that expectation of economic advantage,
3. That the defendant intentionally interfered with the plaintiff's reasonable expectation



of economic advantage and the intentional interference is either independently tortious or in violation of a state or federal statute or regulation,

4. That in the absence of the wrongful act of the defendant, it is reasonably probable that the plaintiff would have realized his economic advantage or benefit, and
5. That plaintiff incurred damages.

Since the *Gieseke* decision, no court has explicitly addressed whether tortious interference with inheritance is a viable claim in Minnesota. However, there are strong arguments that it is.

The *Stanley* court specifically declined to recognize a cause of action for tortious

interference with inheritance because there was no Minnesota cause of action for tortious interference with “economic expectancy.” However, the recognition of a valid claim for tortious interference with prospective economic advantage could open the door to such claims. Had the *Stanley* court ruled on the matter after the *Gieseke* court recognized a cause of action for tortious interference with prospective economic advantage, it is quite possible that the *Stanley* court would have reached a different conclusion.

Although tortious interference with inheritance has yet to be expressly recognized, attorneys in Minnesota have taken note and claims for tortious interference are becoming more common in the context of estate disputes and that trend is likely to continue.

## Case Law Summary

### Attorney Testimony Relevant in Determining Omitted Spouse Status; Spouse Entitled to *Select* Exempt Property

By Jessica Kometz

A decedent created a will in late 2020. One month later, the decedent married his long-time girlfriend. The decedent later married, did not revise his will to include his wife. Instead, the decedent named his new wife as the beneficiary of his retirement account and added her to the title of his car. After the decedent passed away, his wife filed a petition asking the district court to determine that she was an omitted spouse entitled to a share of the estate and ordering the personal representative to turn over possession of a pickup truck as exempt property. The district court denied both requests.

On appeal, the district court’s denial of the wife’s request to be treated as an omitted spouse was affirmed. The Court of Appeals credited the district court’s findings that the decedent provided for his wife outside of his will by making her the beneficiary of his retirement account and that the decedent’s

estate planning attorney credibly testified that the decedent consistently stated throughout the planning process that he intended to make his wife the beneficiary of his retirement account while leaving everything else to his sister. For these reasons, the wife was not to be considered an omitted spouse pursuant to Minn. Stat. § 524.2-301(a)(4).

However, the Court of Appeals reversed the district court’s finding as it related to exempt property. Specifically, the district court found that the transfer of the car on the decedent’s death satisfied the statutory provision allowing for one automobile. The Court of Appeals, however, found that because the wife was named on the title of the car, she became the sole owner of the Jetta on the decedent’s death and the Jetta never became a part of the decedent’s estate. Moreover, the Court of Appeals noted that a surviving spouse is entitled to “select” property from the estate to qualify as estate property. Because the wife was already the owner of the car, she did not select it for the purposes of claiming exempt property. *In re the Estate of Joseph Andre Reis*, No. A23-0413, 2024 WL 912625 (Minn. Ct. App. Mar. 4, 2024).

# Recent Articles

## To Be or Not to Be: Your Client's Trustee

By Casey Marshall and Kiralyn Locke

No one likes job hunting. Looking for a job can be like trying to find a parking spot at a mall during the holiday season. You circle endlessly, your patience wears thin, and just when you think you've found a spot, someone swoops in and snatches it away, leaving you to contemplate the meaning of life in a crowded lot.

As an attorney, it can often feel like the job hunt never stops as you seek to showcase your skillset and expertise, all in an effort to continuously attract new clients. Those efforts often involve taking on additional roles, including positions with bar associations, non-profit organizations, and other community service organizations. Some attorneys, whether they like it or not, even end up acting as informal therapists for their clients.

Occasionally, a client will ask their attorney to take on the role of serving as trustee of the client's trust. Before saying yes, an attorney should understand how their duties and obligations as an attorney interact with the duties and obligations of being a trustee. This article, while not a substitute for legal advice, will discuss what an attorney should consider before acting as a trustee of their client's trust.

### Trustee 101

A trust is a legal arrangement in which an owner of assets (the settlor) transfers ownership of the assets to another person or entity (the trustee), to hold in trust for a particular person or persons (the beneficiary or beneficiaries). When a trust is created, one of the most important decisions to make is determining who to name as trustee. Trustees manage the trust assets for the benefit of the beneficiaries. This could include investing assets, handling financial affairs, maintaining proper records of assets and transactions, and distributing assets in accordance with the terms of the trust.

Like attorneys, trustees have many fiduciary duties. A trustee owes a duty of loyalty to the trust beneficiaries. When there are multiple beneficiaries, a trustee also has a duty to treat the beneficiaries impartially. Finally, a trustee has a duty to administer the trust in a prudent manner. These are just some of the many fiduciary duties a trustee has.

### Why An Attorney May Be a Desirable Trustee

Clients often look to their attorneys to take on the role of trustee. A client might nominate their attorney as the trustee of their trust because the client trusts the attorney's legal expertise, discretion, and commitment to carrying out their wishes faithfully and responsibly. Moreover, attorneys are known for their ability to analyze situations critically and provide strategic solutions to problems.

### Why An Attorney May Decline an Appointment as Trustee

A settlor can nominate whoever they want to serve as trustee of their trust. However, for that nomination to take effect, the trustee must voluntarily agree to accept that role. There are many reasons why an attorney might decline to serve as trustee of a trust created by a client.

Dueling Fiduciary Duties. When an attorney acts as a trustee, the attorney must abide by their fiduciary duties as a trustee *and* their fiduciary duties as an attorney. In other words, the Rules of Professional Conduct still apply to attorneys acting as trustees. An attorney must be confident in their ability to abide by the





additional fiduciary duties that come along with being a trustee.

Conflicts. Conflicts can arise from an attorney's role as trustee. Under Rule 1.7 of the Minnesota Rules of Professional Conduct, a conflict arises when there is a significant risk

that the representation of one or more clients will be materially limited by the attorney's responsibilities to a third person. An attorney-trustee's duties to trust beneficiaries can materially limit their duties to existing clients. This could occur when the interests of a beneficiary are adverse to the interests of an attorney-trustee's client. Attorney-trustees must remain cognizant of how their relationship with trust beneficiaries might impact their relationship with their clients.

Cost. Trustees are typically paid a fee for their services, but this fee is often much lower than what an attorney charges for their legal services. Attorneys should not expect to receive their same attorney-compensation when acting as a trustee. In fact, attorneys in Minnesota have faced professional discipline for charging excessive fees when acting as a trustee.

Personal Liability. When a trustee acts improperly, the trustee can be held *personally liable* for their errors. Many attorneys are risk-averse and may want to avoid the potential of being personally liable for any mistakes that may arise in their role as trustee.

Time. Being an attorney is time consuming – as is being a trustee. While an attorney might want to help their client by acting as trustee, the attorney should ensure they have enough time to act as trustee while still being able to fulfill

their obligations as a lawyer and still allowing for a life outside of the law.

## Conclusion

Attorneys are permitted to act as the trustee of their client's trust. However, before doing so, an attorney must ensure that they are able to abide by all relevant duties and obligations imposed on them. Without considering the ethical ramifications of this dual role, an attorney is likely to find themselves in an ethically compromising position. *Trust us.*

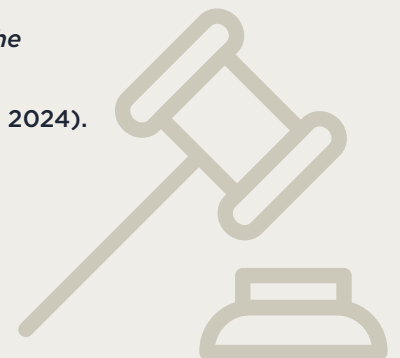
## Case Law Summary

### Trustee Removal: Trustee May Be Removed for a Series of Small Breaches

By Jessica Kometz

On January 17, 2023, the Court of Appeals issued its decision in *In the Matter of the Otto Bremer Trust*, 984 N.W.2d 888 (Minn. Ct. App. 2023). The Minnesota Supreme Court recently affirmed. The Supreme Court relied upon the official comments to the Uniform Trust Code in determining: "Under Minnesota Statutes section 501C.0706(b)(1) (2022), a district court may remove a trustee for a 'serious breach of trust,' which may involve a series of smaller breaches, none of which alone would justify removal, but which do justify removal when considered together." The Court went further and noted that the intent of the settlor does not prevent a court from removing a trustee for breaching its fiduciary duties.

*In re the Matter of the Otto Bremer Trust*,  
2 N.W.3d 308 (Minn. 2024).



# Summaries

Our Trust and Estate Litigation Team has been busy keeping the industry up-to-date on important issues.

## **Assessing Capacity: A Requirement that Extends Beyond Estate Planners, Attorney at Law, October 2023**

Steve Sitek and Kiralyn Locke

If you have never formally assessed your client's capacity, have no fear. It is likely that you have been assessing your client's capacity without even realizing it. And if you have not been assessing your client's capacity, this article provides some guidance on how to do so in the future.

## ***In Rem v. In Personam* Trust Proceedings: The Implications of *Swanson v. Wolf*, Minnesota State Bar Association Probate, Trusts, and Estates Section, November 2023**

Casey Marshall

For over 120 years, Minnesota District Courts acted with *in rem* jurisdiction to remove trustees in the vast majority of trust proceedings. Then, on January 30, 2023, the Minnesota Court of Appeals, in *Swanson v. Wolf*, held that "a district court cannot remove a trustee in an *in rem* proceeding. Rather, the district court must act in an *in personam* proceeding to remove a trustee." 986 N.W.2d 217, 223 (Minn. App. 2023). The *Swanson* decision left many practitioners scrambling to amend pleadings in removal actions and questioning the broader implications of *Swanson* moving forward.

## **Notes & Trends - Probate & Trust Law, monthly column author, Bench & Bar of Minnesota**

Jessica Kometz

*These articles can be accessed on the Trust and Estate Litigation Practice Group page at [bassford.com](http://bassford.com).*

# Presentations

***Helping Clients Manage Trust and Estate Disputes***, Twin Cities Estate Planning Council, September 2023 (Casey Marshall)

***Disclaimers and Privilege***, The Estate Planning, Probate & Trust Law 50, September 2023 (Casey Marshall)

***Ethics: Representing Clients with Diminished Capacity***, Probate, Trusts and Estates Section Conference, Minnesota Continuing Legal Education, July 2023 (Kiralyn Locke)

***Damages, Damages, Damages: Understanding the Possible Outcomes in Probate Litigation***, Minnesota State Bar Association, Probate, Trusts and Estates Law Section Conference, June 2023 (Casey Marshall and Jessica Kometz)

***Recent Developments in Trust Law of Interest to Litigators***, Minnesota State Bar Association, Probate, Trusts and Estates Law Section Conference, June 2023 (Alan Silver)

***Bassford Remele A Loss of Trust: What Trust and Estate Litigators Think Estate Planners Need to Know***, January 2023

- Hot Topics and Common Ethical Issues in Estate Planning (Kiralyn Locke, with Amy Morris Hess)
- Trends in Trust and Estate Litigation: What You Need to Know as an Estate Planner (Alan Silver, Norman Abramson and Jessica Kometz)
- Trust Modifications and Trustee Removals: What We've Learned Since Adoption of Minnesota's Version of the UTC (Steve Sitek and Casey Marshall, with Amy Morris Hess)





## A-List Assets | Celebrity Trusts and Estates in the News

### Does Beach Boys Co-Founder Need a Guardian? “God Only Knows.”

By Jessica Kometz

Following the death of his wife, Brian Wilson’s management team filed a petition to place him under conservatorship of his person (i.e., guardianship). According to the petition, Brian suffers from a “major neurocognitive disorder” and is “unable to properly provide for his own personal needs for physical health, food, clothing or shelter.” Documents from a psychiatrist that were filed in support of the petition state that Brian is “easily distracted, often even when aware of surroundings, and its purpose” and that he “often makes spontaneous irrelevant or incoherent utterances” and “has [a] very short attention span.”

Given the limited information available, it is hard to say what the court is going to do. In Minnesota, Brian’s management team would need to prove, among other things, that he is an “incapacitated person,” which is defined as “an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make personal decisions, and who is unable to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological and supported decision making assistance.” Minn. Stat. §§ 524.5-310(a)(1) and 524.5-102, subd. 6. This likely means presenting evidence regarding Brian’s day-to-day lifestyle. Who helps make sure that he is appropriately clothed? Does he have the ability to independently determine when he needs to see a doctor? Does he understand the advice given to him by his doctors? Is he following that



According to the petition, Brian suffers from a “major neurocognitive disorder” and is “unable to properly provide for his own personal needs for physical health, food, clothing or shelter.”

advice? Would he be able to provide for his own food and shelter if he did not have assistance?

All of this information would be relevant before a Minnesota court. However, we’ll have to wait and see how the California courts handle the petition in April!

Cite: <https://www.nbcnews.com/pop-culture/music/brian-wilson-suffers-neurocognitive-disorder-lawyers-say-conservatorsh-rcna139203>.

# Team Member Intro

## JESSICA KOMETZ

### Where are you from?

I was born in Lansing, Michigan while my parents were still in college. When I was very young, we moved to Minnesota and I have lived most of my life in the Twin Cities (with time away in North Dakota and Michigan).

### In 2019, you were named an Attorney of the Year by *Minnesota Lawyer*. Can you tell us about that award?

I received this award with my colleague (at the time), Amie Penny Saylor, for our work on a pro bono immigration case. We represented a professional runner that had come to the United States in 2018 to run a marathon. Before his visa ran out, people in our client's home community learned that he was gay and both our client and his family were threatened and even physically harmed. Amie and I (and others at our firm) worked tirelessly, after our client was detained by U.S. Immigration and Customs Enforcement, to obtain asylum for our client. The very same day as our client's trial, the immigration court granted him asylum. Since this case, I have continued to represent individuals needing asylum through the Advocates for Human Rights. This is an amazing organization, and I would encourage everyone to see what they can do to help.

### How would you describe your job to a five-year-old?

When people die and go to heaven, they sometimes leave money or special things behind for their family. Sometimes, families can get along. Other times, families fight over who should get what their loved one left behind. I help families ask a judge to award them certain property. Also, when a family member gets really sick and cannot take care of themselves anymore, I help family members or friends get the papers that they need to make sure that their family member is taken care of.

### What did you want to be when you grew up?

I was convinced when I was a child that I was going to grow up and be a doctor. During my college freshman year, I took an anatomy class with a lab component. Because the University of North Dakota had a medical school, the lab took place in the morgue. Our practice dummies were real corpses. After that class, my career path quickly changed course.

### What is the best superpower?

My mother was diagnosed with ALS (amyotrophic lateral sclerosis or Lou Gehrig's disease) at a young age. As part of her disease, she lost the ability to walk and talk. If I had a superpower, it would be the superpower to help people speak once they are no longer able.



### What's your favorite place you've ever visited?

In 2019 (before the world shut down), my husband and I took a trip with my parents to Ireland. We flew into Dublin, rented a car, and drove around the entire coast. My favorite place, however, had to be Galway. The atmosphere, the food, the music, the hospitality were amazing. I would definitely return.

### You can only eat one food for the rest of your life.

#### What is it?

PASTA! I am a pasta fiend. Any type of pasta (though I'm not a fan of spice). You can make pasta so many different ways with different sauces and ingredients that I don't think I would ever get tired of it.

### What is on your bucket list?

I want to travel! Growing up, I never travelled outside of the United States. My first international trip was to Mexico for my honeymoon. I'd love to travel to Australia, New Zealand, Fiji, Italy, France, Germany, Switzerland, Greece, pretty much anywhere in Europe!

### What is one thing that people would be surprised to learn about you?

Anyone who knows me knows that I am a HUGE Minnesota Wild hockey fan. My basement is a true sport's fan's paradise with autographed and game-used sticks, pucks, gloves, and even goalie pads.

# Wins and Accolades



**Alan Silver** was named the 2024 Minnesota Trusts and Estate Litigation Lawyer of the Year by *The Best Lawyers in America*. Only a single lawyer in each practice area and designated metropolitan area is honored as the “Lawyer of the Year,”

making this accolade particularly significant. Alan was selected based on impressive voting averages received during the peer review assessments. This is the second time Al has received this honor. He was also named to the Minnesota Super Lawyers and *Minnesota Monthly* Top Lawyers lists. Al is a fellow of the American College of Trust and Estate Counsel.



**Steve Sitek** was included in the 2024 edition of *The Best Lawyers in America*. Attorneys on *Best Lawyers* list are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional

expertise. Steve was also selected to the Minnesota Super Lawyers and *Minnesota Monthly* Top Lawyers lists. Steve is a Minnesota State Bar Association Certified Civil Trial Specialist, a certification awarded to less than 3% of trial attorneys in Minnesota.



**Norman Abramson** was named to the 2024 edition of *The Best Lawyers in America*. *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. It was founded with the purpose of recognizing extraordinary

lawyers in private practice through an exhaustive peer-review process.



**Bassford Remele** received a Metropolitan Tier 1 “2024 Bet-the-Company Litigation” ranking by *The Best Lawyers in America*.

**Bassford Remele** received a Metropolitan Tier 1 “2024 Trusts & Estates Litigation” ranking by *The Best Lawyers in America*.



**Casey Marshall** has been named as a Top Lawyer by *Minnesota Monthly*, a Super Lawyer by Minnesota Super Lawyers, an Attorney of the Year by *Minnesota Lawyer*, and to Best Lawyers: Ones to Watch. Casey is active in the Minnesota State Bar

Association and is on the Board of Directors of the Twin Cities Estate Planning Council.



**Tal Bakke and Jessica Kometz** were named to the Minnesota Rising Stars list. No more than 2.5% of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.



**Kiralyn Locke** serves as the vice chair of the Accountants, Fiduciaries and Financial Professionals Committee for the Professional Liability Defense Federation. She also authors a monthly article in *Attorney at Law* that focuses on legal issues for lawyers.



# Save the Date

## UPCOMING EVENTS

### Bassford Remele's The Work Week Annual Employment Law Seminar

Thursday, July 18, 2024

1:30-4:00 PM: Seminar

4:00-5:00 PM: Social

### Exploring the Ethical Labyrinth: Navigating *AI's Pitfalls and Promises in Your Practice*

Tuesday, August 20, 2024

11:30 AM-1:00 PM

(1.50 ethics CLE credits will be applied for)

### Women's Leadership Summit Thursday, September 26, 2024

3:00-4:30 PM: Summit

4:30-5:30 PM: Social

*Women and men are welcome*

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