

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1648

IN RE SOUTHEASTERN EYE
CENTER-PENDING MATTERS

**ORDER ON OBJECTIONS TO
RECEIVER'S INTERIM REPORT
FOR JDPW TRUST**

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

1. **THIS MATTER** is before the Court on Intervenor James Mark McDaniel's Objection and Response to the JDPW Trust Receiver's Accounting (the "McDaniel Objection") and Defendant Doug Harris's Objection to the Receiver's Accounting Report for JDPW Trust (the "Harris Objection") (together, the "Objections").¹

2. On 19 September 2022, the Court ordered Gerald Jeutter, the Court-appointed receiver (the "Receiver") for JDPW Trust (the "Receivership"), to "file a further interim report containing additional information about the JDPW [R]eceivership consistent with the provisions of [N.C.G.S. §] 1-507.35(b) to the extent such information exists and is available to the Receiver" by 1 November 2022.² The

¹ (Intervenor McDaniel's Obj. and Resp. to the JDPW Trust Receiver's Accounting [hereinafter "McDaniel Objection"], ECF No. 1532; Def. Harris' Obj. to the Receiver's Accounting Report for JDPW Trust [hereinafter "Harris Objection"], ECF No. 1533.) While these two Objections were filed separately, they each challenge the same Receiver's report, and the Receiver responded to both in a single, unified response. The Court therefore elects, in the exercise of its discretion, to consider the two Objections together in a single order.

² (Order Requiring Receiver to File Interim Report Concerning JDPW Trust (Old Battleground v. CCSEA) [hereinafter "Report Order"], ECF No. 1507.)

Receiver timely filed the report on 1 November 2022.³ McDaniel and Harris filed their separate Objections on 1 December 2022.

3. The Court ordered briefing on the Objections on 5 December 2022, which is now complete.⁴ The Objections claim that the Receiver has engaged in various forms of misconduct in a conspiracy with the Receiver's attorneys.⁵ The Receiver has responded that McDaniel and Harris lack standing to lodge the Objections, and that the Objections are also inaccurate on the merits.⁶

4. After considering the Objection and the parties' briefs, the relevant evidence, and applicable law, the Court elects, in the exercise of its discretion, to resolve the Objections without a hearing pursuant to Business Court Rule 7.4 and concludes that the Objections should be overruled.

5. First, Harris lacks standing to lodge his Objection. This Court placed JDPW Trust (the "Trust") into receivership on 28 April 2016, and appointed the Receiver as its "quasi-trustee."⁷ Accordingly, Harris is merely a former trustee of the Trust. *See*

³ (Receiver's Report Regarding JDPW Trust [hereinafter "Receiver Report"], ECF No. 1516.)

⁴ (Order Setting Briefing Schedule, ECF No. 1515.) The Court also notes with disapproval that Harris and McDaniel both elected to ignore the Court's Order on Future Filings (ECF No. 1535) in their respective reply briefs by failing to identify the filing(s) to which their briefs were addressed. (*See* James Mark McDaniel's Reply to JDPW Receiver's Response to McDaniel Obj., ECF No. 1538; Def. Harris' Reply to the JDPW Receiver's Response to Harris' Objs. To the JDPW Accounting, ECF No. 1539.)

⁵ (*See generally* McDaniel Objection; Harris Objection.)

⁶ (*See generally* Resp. to McDaniel and Harris Objs. To Receiver's JDPW Report (Old Battleground v. CCSEA) [hereinafter "Receiver's Response"], ECF No. 1537.)

⁷ (*See generally* Order Approving Pls.' Mot. for Appointment of Receiver for JDPW Trust (Old Battleground v. CCSEA – Consolidated) (All Matters), ECF No. 472.)

Lowder v. All Star Mills, Inc., 91 N.C. App. 621, 625 (1988); *In re Se. Eye Ctr. – Pending Matters*, 2021 NCBC LEXIS 43, at *39 (N.C. Super. Ct. Apr. 26, 2021). He is not a beneficiary of the Trust and has no other legal relationship with the Trust. As a result, he lacks standing to sue to enforce the Trust’s terms or to seek redress for the Receivership’s general administration of the Trust. *See, e.g., Yost v. Yost*, 213 N.C. App. 516, 521–22 (noting that only a beneficiary may sue to enforce a trust or to seek redress for a breach of trust).⁸

6. McDaniel also lacks standing to seek redress for the Receiver’s general administration of the Trust for the same reasons. Like Harris, he is neither a beneficiary of the Trust nor in a legal relationship with the Trust and thus cannot maintain his Objection under applicable North Carolina law. *Id.*

7. The McDaniel Objection also consists almost entirely of invective concerned with non-report-related issues (with scarce citation to law or the evidentiary record) and challenges conclusions the Court has already reached. Virtually none of

⁸ This is a “bedrock rule” of law, *McHale v. Boulder Cap. LLC (In re 1031 Tax Grp., LLC)*, 439 B.R. 47, 65 (Bankr. S.D.N.Y. 2010), recognized by courts throughout the country. *See, e.g., Rock Spring Land & Timber, Inc. v. Lore*, 75 P.3d 614, 625 (Wyo. 2003) (“no one other than the beneficiary or one suing on his behalf can maintain a suit against the trustee to enforce the trust”); *Brotman v. E. Lake Creek Ranch, LLP*, 31 P.3d 886, 894–95 (Colo. 2001) (“Only a beneficiary or one suing on his or her behalf can maintain a suit against the trustee to enforce trust responsibilities or to enjoin or obtain redress for a breach of trust.”); *Weaver v. Wood*, 680 N.E.2d 918, 922 (Mass. 1997) (“In the case of a private trust, only a named beneficiary, or one suing on his or her behalf, can maintain an action to enforce a trust.”); *Sergeson v. Del. Tr. Co.*, 413 A.2d 880, 882 (Del. 1980) (“persons . . . who are not trust beneficiaries but would nonetheless obtain an advantage from enforcing [the trust] cannot maintain an action to assert trust duties”); *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 469 (Pa. 1979) (expressing “grave doubt” whether a “stranger [could] object to the waste of trust assets”); *Naversen v. Gaillard*, 831 N.Y.S.2d 258, 258 (N.Y. App. Div. 2007) (holding that “since the defendants were not beneficiaries of the [trust], they lacked standing to challenge the actions of the plaintiff as its trustee”).

McDaniel's Objection addresses the substance of the Receiver's report. The Court therefore overrules the McDaniel Objection both because McDaniel lacks a legal interest in the Receiver's general administration of the Trust, and because McDaniel has improperly attempted to use an objection to the Receiver's report to raise collateral issues unrelated to the report in question, and to re-litigate matters already decided by the Court, *see generally In re Se. Eye Ctr. – Pending Matters*, 2021 NCBC LEXIS 43.

8. **WHEREFORE**, based on the above and in the exercise of the Court's discretion, the Objections are hereby **OVERRULED**, and Harris's and McDaniel's concurrent requests for a hearing to examine the Receiver are hereby **DENIED**.

SO ORDERED, this the 9th day of March, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge