



Trust Modifications and Reformations In Texas

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Introduction

- Trust drafters often do not anticipate future events or legal changes.
- There are circumstances when parties need to file suit to modify or reform a trust.
- This presentation will attempt to address the main legal issues that arise when there is desire to modify or reform a trust.

Areas of Discussion

- Common-Law Basis for Modification
- Statutory Basis for Modification
- Statutory Basis for Reformation
- Special Needs Trusts Issues
- Case law on Modifications
- Standing
- Jurisdiction
- Parties
- Appellate Review
- Jury Trial Rights

Common-Law Basis To Modify

- Before the enactment of the Trust Code, courts derived authority to modify trusts under the "rule or doctrine of deviation implicit in the law of trusts." See *In re Troy S. Poe Tr.*, 646 S.W.3d 771 (Tex. 2022).
- Under this doctrine, a court had the power to "order a deviation from the terms of the trust if it appears to the court that compliance with the terms of the trust is impossible, illegal, impractical or inexpedient, or that owing to circumstances not known to the settlor and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purpose of the trust." *Id.*

Statutory Basis To Modify

- In enacting Section 112.054, the Legislature essentially codified the doctrine of deviation.
- Section 112.054, titled "Judicial Modification, Reformation, or Termination of Trusts," currently provides that "[o]n the petition of a trustee or a beneficiary, a court may order" certain changes to a trust. Tex. Prop. Code § 112.054(a).

Statutory Basis To Modify

- Before a court may exercise its discretion, one or more enumerated statutory predicates must be shown:
 - (1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;
 - (2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;
 - (3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;

Statutory Basis To Modify

- (4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or
- (5) subject to Subsection (d):
 - (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or
 - (B) the order is not inconsistent with a material purpose of the trust.

Statutory Basis To Modify

- The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order.
- A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary's interest under Section 115.013(c) has consented or if a guardian ad litem appointed to represent the beneficiary's interest under Section 115.014 consents on the beneficiary's behalf.

Statutory Basis To Modify

- If one or more of these predicates is established, a court is empowered to order "that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, [or] that the trustee be prohibited from performing acts required by the terms of the trust."
- But this statutory power is not unbounded. Section 112.054(b) requires a court to exercise its discretion to order a modification "in the manner that conforms as nearly as possible to the probable intention of the settlor."



Statutory Basis To Modify

- The court shall consider spendthrift provisions as a factor in making its decision whether to modify, terminate, or reform, but the court is not precluded from exercising its discretion to modify, terminate, or reform solely because the trust is a spendthrift trust.

Statutory Basis To Reform

- On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:
 - (1) reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;
 - (2) reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or
 - (3) reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.

Statutory Basis To Reform

- An order on scrivener's error may be issued only if the settlor's intent is established by clear and convincing evidence.
- The reformation of a trust is effective as of the creation of the trust.
- Additionally, if the ground for modification is "the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions," then a court can make that retroactive.
- The statute is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by the statute.



Special Needs Trust Issues

- A special needs trust (“SNT”) is a legal arrangement, typically set up by a parent or guardian.
- An SNT ensures that assets, often money or a life insurance policy, are held in an account and used to support the child.
- The funds belong to the trust, not your child, so they won’t be factored into the child’s government benefits eligibility.
- An SNT is intended to supplement the child’s government benefits.

Special Needs Trust Issues

- If a person with a disability holds more than \$2,000 in assets, he or she will not qualify for the Social Security Administration's Supplemental Security Income Benefits (SSI).
- In addition to providing the individual with a monthly stipend, SSI eligibility qualifies a person with a disability for other governmental programs, including Medicaid and food stamps.
- Since a person with a disability has no control over the money or assets in a special needs trust, the contents of the trust are not considered when calculating the individual's total assets.
- Special needs trusts thus ensure that persons with disabilities will remain eligible for governmental benefits, regardless of the actual value of their total assets.



Special Needs Trust Issues

- Special needs trusts are authorized and governed by the federal Omnibus Budget and Reconciliation Act (OBRA-93).
- The trust document for a special needs trust must contain certain language.
- Among other requirements, the trust document must state that it is intended to provide a person with a disability with supplemental and extra care over and above that which is provided by the government.
- The trust document must also name a trustee and enumerate the trustee's powers.



Special Needs Trust Issues

- The trust should be irrevocable or for revocable trusts, not revocable by the beneficiary.
- The trust should be fully discretionary and restrict the beneficiary from accessing the trust assets or exercising control over their use.
- There must be pay-back language that requires the trustee to use any funds upon the beneficiary's death to reimburse the state for all of the medical assistance paid on behalf of the individual under a state plan.



Special Needs Trust Issues

- There is a difference between self-settled (assets from the beneficiary) and third-party (assets from a non-beneficiary) SNTs.
- The pay-back language is only for self-settled or first-party trusts.
- The sole benefit rule applies to self-settled SNTs.
- The sole benefit rule provides that the trust must be established for and used solely for the benefit of the person with a disability.

Special Needs Trust Issues

- If the trust includes any provisions that:
 - Provide benefits to other individuals or entities during the lifetime of a person with a disability, or
 - Allow for termination of the trust prior to the individual's death and payment of the corpus to another individual or entity (other than the state or another creditor for payment for goods or services provided to the individual),
- Then that will result in disqualification for the special needs trust exception.



Special Needs Trust Issues

- If the trust document does not have all necessary language, then the trustee, beneficiary or other interested party may need to file suit to modify or reform the trust to include any necessary but omitted language.
- This may occur during a regular review of the document or may be prompted by a governmental concern about the trust's assets making the beneficiary not qualify for governmental benefits.

Special Needs Trust Issues

- Although any of the factors that allow a court to modify a trust may apply, there is a specific provision that addresses special needs trusts:
 - (4) the order is necessary or appropriate to achieve the settlor's tax objectives *or to qualify a distributee for governmental benefits* and is not contrary to the settlor's intentions
 - 2) reformation is necessary or appropriate to achieve the settlor's tax objectives *or to qualify a distributee for governmental benefits* and is not contrary to the settlor's intentions

Case Law

- In *Crossley v. Crossley*, a plaintiff filed suit requesting that the court determine whether he or his sister was the trustee, and in the alternative, he sought termination, modification, or reformation of the trusts. No. 08-23-00104-CV, 2024 Tex. App. LEXIS 3323 (Tex. App.—El Paso May 14, 2024, no pet.).
- The court of appeals first made a rather surprising holding regarding Texas Trust Code Section 115.001:
- “[Section 115.001] provides that “a district court has original and exclusive jurisdiction” over categories of cases, including those requesting that a court “construe a trust instrument,” but it does not itself provide for a cause of action. Because Garry asked the court to determine whether he is the trustee under the trust, we construe his claim as one for declaratory judgment brought under Chapter 37 of the Civil Practices and Remedies Code.”

Case Law

- The brother was the original trustee, and the sister argued that she was the successor trustee because she signed acceptance documents and because the brother ceased acting as trustee for a period of time.
- The court of appeals reversed summary judgment for the sister on this issue, holding that she never forwarded the acceptance document as required by the trust and that even if the brother did cease acting as trustee for a period, a court still had to appoint the sister as successor trustee.
- The court then turned to whether or not the trial court erred in granting summary judgment and dismissing plaintiff's claims for termination and modification.
- The court first looked at construing the trust and determining whether it should be terminated:
 - “We construe a trust according to the express language used... Both parties confuse a trust's purpose with a settlor's intent. A settlor's intent is not "necessary or controlling" to a finding of a trust's purpose. In determining a trust's purpose, courts look solely to the trust's language of how the trust is to be used and not why a grantor chose to transfer property via a trust instead of any other method.”

Case Law

- The court of appeals affirmed summary judgment for the sister dismissing the brother's claim to terminate two trusts:
 - It is these terms [of the trusts], and no external sources, from which we must derive the purposes of the Garry Trusts. Those purposes then are to make distributions to Garry, people or entities he may appoint, or his descendants. These purposes have not been fulfilled and it is necessary for the Garry Trusts to continue to achieve their purposes. Therefore, Karen met her burden and disproved two predicate grounds to terminate or modify a trust, § 112.054(a)(1) and (a)(5)(A), and summary judgment on those bases was properly granted.
- The court then looked at whether the trial court erred in dismissing the plaintiff's modification relief: "But Karen offered no evidence to disprove that the Garry Trusts could be modified (as distinct from terminated) consistent with their material purposes. Summary judgment on that basis was improper."
- Brother sought to modify or reform the trusts to name him as trustee or to remove sister's absolute discretion to make distributions.
- He claimed that these were administrative, nondispositive terms and that sister's failure to make distributions or withdraw the trusts from the partnership impaired the administration of the trust.

Case Law

- The court stated:
 - Karen's focus on Maxine's intent is misplaced. Maxine's intent may become an important factor after a predicate for termination or modification is established. Id. § 112.054(b) ("The court shall exercise its discretion to order a modification or termination . . . in the manner that conforms as nearly as possible to the probable intent of the settlor."). But intent does not help determine whether a term of a trust is administrative and nondispositive...
 - [Brother] relies on this language from the statute: "a court may order that the trustee be changed" . . . "if" . . . "modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration[.]"
 - Black's Law defines "administrative" to mean "Of, relating to, or involving the work of managing a company or organization, executive." But the word "administrative" is tied by a comma to the word "nondispositive" which means these are coordinate adjectives that modify the same noun. Any trust "term" must be both administrative and nondispositive for § 112.054(a)(3) to apply.

Case Law

- The court continued:
 - We find no dictionary definition for "nondispositive" but "dispositive" means "Being a deciding factor; (of a fact or factor) bringing about a final determination" and "of relating to, or effecting the disposition of property by will or deed." Adding "non" before the word dispositive would have it mean the opposite—not being a deciding factor or not effecting the disposition of property. And that is where Gary's theory of replacing the trustee under § 112.054(a)(3) stumbles.
 - Under the terms of the trust as written, the trustee has complete discretion to make distributions or not. The trustee is accorded broad powers, including to (1) take possession of trust property; (2) invest trust assets; (3) sell, lease or exchange trust property; (4) borrow on behalf of the trust; (5) administer mineral interest; (6) obtain, continue, and operate a business; (7) merge this trust with another trust; (8) employ professionals to assist the trustee; and (9) even change the jurisdiction under which the trust is administered.
 - With such complete discretion and authority vested with the trustee, we agree with Karen that the identity of the trustee is a dispositive term of this trust. Who gets to exercise the broad discretion and powers under this trust might in fact be its most determinative term.
 - Accordingly, Gary's theory under § 112.054(a)(3) fails because that provision can only apply to a "administrative [and] nondispositive" terms.

Case Law

- In *In re Poe Trust*, the court of appeals reviewed the trust modification decision by the trial court. 673 S.W.3d 395 (Tex. App.—El Paso, 2023).
- It determined that the trial court did not abuse its discretion in reviewing extrinsic evidence and in modifying the trust.
- The court held that the trial court could rely on extrinsic evidence to determine whether the modification predicates existed, i.e., whether the purposes of the trust had become impossible to fulfill and whether, because of changed circumstances not known or anticipated by the settlor, a modification would further the purposes of the trust.

Case Law

- The co-trustee contended the trial court was not permitted to rely on extrinsic evidence in determining the manner in which to modify the trust—at least to the extent the evidence contradicted or varied the express and unambiguous terms of the trust itself.
- The co-trustee argued that, in construing trust terms, a trial court is generally confined to ascertaining the meaning of the terms and the settlor's intent by reviewing the four corners of the document itself without resorting to extrinsic evidence.
- The other co-trustee argued that when a trustee or beneficiary seeks to modify trust terms under Section 112.054 due to changed circumstances, by the very nature of the proceeding, the court must consider evidence to not only establish whether changed circumstances exist but what modifications would most clearly conform with the settlor's "probable intention" and further the purposes of the trust.
- The court held: "Richard has not convinced us that the trial court erred in considering extrinsic evidence to determine how to modify the trust."

Case Law

- “The trial court added four new provisions to the Trust allowing the trustees to take into account several factors in making distributions: (1) authorizing payment of travel expenses for Troy and any needed assistants and travel companions; (2) making distributions that take into account the standard of living Troy enjoyed at the time of Dick's death; (3) recognizing that there will be an indirect benefit to Troy's caregivers and other family members in making distributions for Troy's benefit; and (4) giving primary consideration to Troy's needs without considering the interests of any vested or contingent remainder beneficiaries.”
- The court affirmed, concluding that “the record clearly supports a finding that Dick was fully aware that those who socialized with and traveled with Troy were receiving both a direct and indirect benefit from the various expenditures, and approved of such as it furthered Dick's goal of providing Troy with the best life possible given his limitations.”
- The court also noted that after the settlor's death, the co-trustees were embroiled in disputes regarding the caregiver's reimbursement requests and whether to approve disbursements to ensure Troy maintained the same standard of living he had prior to his father's death, and this disputes were interfering with trust administration that had a negative impact on Troy's well-being.

Case Law

- The trust provided that the settlor, his son Richard, and Bock would be co-trustees, that they would make decisions jointly, and that there was no provision to add any additional trustee upon the resignation of one of those three.
- The trial court modified the trust to add an additional trustee, allowed majority rule, and allowed Bock to appoint successor trustees.
- “Given the evidence of gridlock and delays, however, the trial court could have reasonably found that the unanimity provision was interfering with and would continue to interfere with the ability to accomplish the Trust's purposes. Based on the evidence, the trial court could have reasonably concluded that appointing a third trustee who was aware of and sensitive to Troy's needs was an appropriate way to modify the Trust to allow it to continue serving its purpose in accordance with Dick's probable intent.”

Case Law

- There was a dissenting justice, who stated:
 - Although § 112.054 of the Property Code empowers a trial court to order a modification, the court must still conform as nearly as possible to the probable intention of the settlor when doing so. See Tex. Prop. Code Ann. § 112.054(b). Here, as settlor of the Trust, Dick plainly stated he wanted trustees to make decisions "jointly," not by majority vote. Moreover, Dick further stated that any trustee has the right to serve without appointment of a successor if, for any reason, any of the trustees either fails or ceases to act as a trustee. If the last trustee fails or ceases to act, he stated he wanted a corporate successor trustee appointed as sole Trustee. Because the trial court contravened Dick's intent as was expressed in these terms, I would conclude it abused its discretion.

Case Law

- In *Conte v. Ditta*, a trial court abused its discretion in modifying the terms of a family trust and appointing a successor trustee after a daughter was removed as trustee because, while modification was necessary, the trial court erred by not exercising its discretion in a manner that conformed to the grantor's intent pursuant to Section 112.054(b). 312 S.W.3d 951 (Tex. App.—Houston [1st Dist.] 2010, no pet.).
- The trust stated that the settlor's wife had the right to select a successor trustee.
- The court held that that did not mean that her guardian had that right.

Case Law

- Where the wife was not able to exercise the right, the settlor's children had the right.
- The court held that the trial court erred in ignoring the children's right, and in appointing the successor.
- The court concluded:
 - Per the terms of the Trust, the power to appoint a successor trustee was left to "a majority of the adult Beneficiaries." The grounds for Susan's removal as trustee have no bearing on her rights as a beneficiary. The court should have allowed Susan and Joseph, Jr. to select a successor trustee and simply modified the Trust by restricting their choice of successor trustee to someone whom it had not previously removed. Such a restriction would address the problem recognized by the court, while still giving effect to the grantor's intentions. While we agree modification was necessary, the trial court erred by not exercising its discretion in a manner that conformed to the grantor's intent.

Case Law

- In *Swantner-Carter v. Frost Nat'l Bank*, an appellate court affirmed a trial court's order refusing to modify a trust. No. 13-06-00545-CV, 2008 Tex. App. LEXIS 5989 (Tex. App.—Corpus Christi, August 7, 2008, no pet.).
- According to the terms of a spendthrift trust, the beneficiary received a monthly payment.
- Later, the trust was modified to increase the amount distributed.
- The party then requested a subsequent modification to allow distributions from principal.
- There was testimony presented that the testator was aware of the beneficiary's medical problems when the trust was created.
- Moreover, the purpose of the trust was still being fulfilled.
- The appellate court rejected the argument that a prior modification created an entitlement to receive funds from the trust sufficient to meet the beneficiary's medical needs.

Case Law

- In *In re White Intervivos Trusts*, a court reversed a trial court's order modifying and terminating a trust. 248 S.W.3d 340 (Tex. App.—San Antonio 2007, no pet).
- Trustees filed suit to modify a trust to name themselves as beneficiaries, to terminate the trust, and to distribute the assets to themselves.
- At a hearing on the petition, the trial court heard the testimony of one of the grantors, who stated that he was confused about the nature of the trusts and that he intended the trustees to be the beneficiaries of the trusts.
- Other than this testimony and admission of the trust documents into evidence, no other evidence was offered in support of the petition.

Case Law

- The appellate court concluded that the record did not support a finding of circumstances not known to or anticipated by the settlor:
 - He did not testify that this "confusion" stemmed from any misrepresentations made to him, from a lack of legal advice, or from a lack of awareness regarding the terms of the trust documents. He did not testify that he never intended to establish four separate irrevocable trusts over a period of five years. And no one explained why almost fourteen years had to pass before the "mistake" was realized. We conclude that this record cannot support a finding of "circumstances not known to or anticipated by the settlor."

Standing

- The statute states that modification or reformation relief can be made “on the petition of a trustee or a beneficiary.”
- “Trustee” means the person holding the property in trust, including an original, additional, or successor trustee, whether or not the person is appointed or confirmed by a court.
- In *Alpert v. Riley*, an attorney who acted as a trustee, but was not a *de jure* trustee, did not have standing to seek to modify a trust. 274 S.W.3d 277 (Tex. App.—Houston [1st Dist.] 2008, no pet.).
- “Beneficiary” means a person for whose benefit property is held in trust, regardless of the nature of the interest.
- “Interest” means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.

Standing

- Statute does not include “interested person,” which is defined as “a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust.”
- Trust protector was not an “interested person” and did not have standing where the trust protector was not affected by trust administration, as he could only appoint, remove, and replace the trustee in accordance with trust agreements’ terms, and had no power to manage any aspects of the trust. *In re Macy Lynne Quintanilla Trust*, No. 04-17-00753-CV, 2018 Tex. App. LEXIS 8223 (Tex. App.—San Antonio Oct. 10, 2018, no pet.).

Jurisdiction

- Texas Trust Code Section 115.001 provides that a district court has jurisdiction over “all proceedings by or against a trustee and all proceedings concerning trusts.”
- The list of examples of actions does not expressly include modification or reformation.
- However, “the list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive.”
- “A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).”
- In addition to district courts, statutory probate courts and county courts at law may have jurisdiction.

Parties

- Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001.
- The only necessary parties to such an action are:
 - (1) a beneficiary of the trust on whose act or obligation the action is predicated;
 - (2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid;
 - (3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and
 - (4) the trustee, if a trustee is serving at the time the action is filed.
- (c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.

Appellate Review

- An appellate court reviews a trial court's determination regarding modification or termination of a trust for abuse of discretion.
- A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner, or without reference to any guiding rules or principles.
- Under this standard, an appellate court may not substitute its judgment for the trial court's judgment.
- Moreover, under an abuse of discretion standard, legal insufficiency of the evidence is not an independent reversible ground of error but is a relevant factor in assessing whether the trial court abused its discretion.

Trust Protector

- The Texas Trust Code began to recognize trust protectors in 2015. See Texas Property Code § 114.0031.
- The Texas Trust Code provides that a trust protector has only the power and authority granted to him by the trust terms, which may include:
 - (1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;
 - (2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and
 - (3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.
- So, where allowed by the trust document, a trust protector can potentially “modify” a trust by a non-judicial act.

Jury Trial Right

- In Texas, a jury's verdict has a "special, significant sacredness and inviolability."
- The Texas Constitution requires that the right to trial by jury remain inviolate. Tex. Const., art. I, § 15.
- Further, Article V, the Judiciary Article provides: "In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature." Tex. Const. art. V, § 10.
- Denial of the constitutional right to trial by jury amounts to an abuse of discretion for which a new trial is the only remedy.

Jury Trial Right

- However, a court, in its equitable jurisdiction, should determine whether an equitable remedy should be granted.
- The Texas Supreme Court stated:
 - Although a litigant has the right to a trial by jury in an equitable action, only ultimate issues of fact are submitted for jury determination. The jury does not determine the expediency, necessity, or propriety of equitable relief.
 - If contested fact issues must be resolved before a court can determine the expediency, necessity, or propriety of equitable relief, a party is entitled to have a jury resolve the disputed fact issues.

Jury Trial Right

- The Texas Trust Code and the Texas Estate Code do not create rights to a jury trial; rather, all rights to a jury are controlled by parties' constitutional rights. *In re Poe Trust*, 646 S.W.3d 771, 778 (Tex. 2022).
- The Bill of Right's provision does not allow a party a right to a jury trial in a removal action under the Estate or Trust Code as such would not have been allowed in equity in 1876.

Jury Trial Right

- In *In re Poe Trust*, the court of appeals held that the co-trustee defendant did not have a constitutional right to a jury trial in a trust modification case, and then affirmed the trial court's modification of the trust. 673 S.W.3d 395 (Tex. App.—El Paso, 2023).
- The court held that there was no right to a jury trial under the Texas Bill of Rights and also discussed the test for the Judiciary Article:
 - It defined a "personal action" as one "brought for the specific goods and chattels; or for damages or other redress for breach of contract or for injuries of every other description; the specific recovery of lands, tenements and hereditaments only excepted." In other words, a personal action encompasses a situation in which a party seeks a judgment against a defendant as a remedy for a violation of a personal right... [W]e find the ordinary-cause-of-action framework to be the correct framework or test by which to determine whether a proceeding can be considered a Judicial Article cause versus a special proceeding that falls outside its scope.

Jury Trial Right

- The court then held that a trust modification proceeding is more of a special proceeding and does not involve an ordinary cause of action:
 - Utilizing the ordinary-cause-of-action framework, we agree with Bock that a trust-modification proceeding does not have any of the attributes of a cause for which a Judicial Article jury-trial right exists; instead, its nature is that of a special proceeding for which no jury-trial right exists. As Bock points out, in a trust-modification proceeding, there is no plaintiff seeking a right of recovery or a judgment against a defendant who has committed some wrong.

Jury Trial Right

- The Supreme Court denied the petition for review without an explanation.
- However, three justices issued a concurring opinion that gave some insight on their thinking. *In re Poe Trust*, No. 23-0729, 2024 Tex. LEXIS 658, 2024 WL 3836556 (Tex. August 16, 2024) (concurring order).
- The concurring justices stated that they agreed with denying the petition because there was no showing of a fact issue that should have been presented to a jury.

Jury Trial Right

- The concurring justices stated:
 - The panel majority erred in choosing a different and much narrower common-law definition of "cause," which led it to depart improperly from several other binding precedents of this Court... Under these and other precedents, the court of appeals erred by adopting a binary view of the options for defining the scope of the Judiciary Article's jury-trial guarantee and selecting the narrower option. Instead, it should have followed the middle path charted by our cases (hodgepodge though they may be), proceeding to examine whether there is a "special reason" of the kind we have held sufficient to deny a jury trial even though this adversary equitable action otherwise falls within the broad meaning of "cause" in the Judiciary Article guarantee.



Conclusion

- There are many interesting and difficult issues that arise around the modification or reformation of a trust.
- This presentation was intended to provide guidance when a party seeks that type of relief.

Conclusion

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