

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK J. FEELEY, AN INDIVIDUAL,  
Appellant,

vs.

WANDA G. FEELEY, AN INDIVIDUAL,  
AND AS BENEFICIARY AND  
SUCCESSOR TRUSTEE OF THE  
MARTHA E. FEELEY 1992 TRUST  
DATED OCTOBER 16, 1992, AS  
AMENDED SEPTEMBER 23, 2008,  
AND AS A BENEFICIARY AND  
SUCCESSOR TRUSTEE OF THE  
MARTHA E. FEELEY REAL ESTATE  
TRUST DATED OCTOBER 16, 1992, AS  
AMENDED SEPTEMBER 23, 2008;  
SHANNON A. FEELEY, AN  
INDIVIDUAL NAMED AS A  
BENEFICIARY IN (1) THE FIRST  
AMENDMENTS TO THE MARTHA E.  
FEELEY 1992 TRUST DATED  
SEPTEMBER 23, 2008, (2) THE FIRST  
AMENDED TO THE MARTHA E.  
FEELEY 1992 TRUST DATED  
SEPTEMBER 23, 2008; AARON S.  
FEELEY; DEANNA L. FEELEY;  
SHAWN C. FEELEY, INDIVIDUALS  
NAMED AS BENEFICIARIES IN (1)  
THE MARTHA E. FEELEY 1992 TRUST  
DATED OCTOBER 16, 1992, (2) THE  
MARTHA E. FEELEY REAL ESTATE  
TRUST DATED OCTOBER 16, 1992, (3)  
THE FIRST AMENDMENT TO THE  
MARTHA E. FEELEY REAL ESTATE  
DATED SEPTEMBER 23, 2008, AND (4)  
THE FIRST AMENDMENT TO THE  
MARTHA E. FEELEY 1992 TRUST

No. 71249

FILED

JUN 29 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

DATED SEPTEMBER 23, 2008; AND  
BRUCE KETCHEN, AN INDIVIDUAL,  
AND NAMED AS SUCCESSOR  
TRUSTEE OF THE SECOND  
AMENDMENT TO THE MARTHA E.  
FEELEY 1992 TRUST,  
Respondents.

### ORDER OF AFFIRMANCE

Clark J. Feeley appeals from a post-judgment order distributing the assets of two trusts. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

After briefing and multiple hearings, the district court entered an order adopting a distribution of the trusts' assets proposed by respondents Wanda, Shawn, and Shannon Feeley, which included adjustments per the district court's directives. The distribution provided, in relevant part, for payment from trust assets of various fees, including a New Hampshire law firm's fees and Wanda, Shawn, and Shannon's counsel's fees, and it included a deduction of \$35,845.00 from Clark's share for trust property he took and/or abandoned. This appeal followed.

As an initial matter, Clark argues that Nevada lacks subject matter jurisdiction over this case. Clark filed a prior appeal in this matter and, in that appeal, he also attacked subject matter jurisdiction. *See Feeley v. Feeley*, Docket No. 64896 (Order of Affirmance, January 20, 2016). In our order affirming the district court in that appeal, we determined that his arguments regarding subject matter jurisdiction failed. *Id.* As such, this determination is the law of the case and this issue cannot be revisited here, regardless of whether Clark's arguments are more focused and detailed in

this case. See *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975) (stating that “[t]he law of a first appeal is the law of the case on all subsequent appeals” and noting that the law of the case “cannot be avoided by a more detailed and precisely focused argument subsequently made”) (internal quotation marks omitted); *Wickliffe v. Sunrise Hosp., Inc.*, 104 Nev. 777, 780, 766 P.2d 1322, 1324 (1988) (stating that “[w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed . . . upon subsequent appeal”).<sup>1</sup> Therefore, Clark’s arguments in this regard necessarily fail.

Clark also contends the district court abused its discretion in providing for payment of a New Hampshire law firm’s fees from trust assets. The New Hampshire firm’s fees were charged for defending nonparty People’s United Bank and they were ordered paid from trust assets pursuant to a stipulation wherein the trust agreed to indemnify the bank. This stipulation was approved by the district court, and while Clark challenged the court’s approval of the stipulation in the prior appeal, we

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<sup>1</sup>While New Hampshire law governs the substantive issues relating to the trust documents due to a choice of law provision, as detailed in our order resolving the prior appeal, Nevada’s procedural law still controls in this proceeding. See *Feeley*, Docket No. 64896 (Order of Affirmance, January 20, 2016); cf. *Stone & Webster, Inc. v. Baker Process, Inc.*, 210 F. Supp. 2d 1177, 1187 (S.D. Cal. 2002) (recognizing that, in the federal courts, a choice-of-law clause generally incorporates a state’s substantive laws, but not its procedural laws); see also *Restatement (Second) of Conflict of Laws* § 122 (Am. Law Inst. 1971) (“A court usually applies its own local law rules prescribing how litigation shall be conducted even when it applies the local law rules of another state to resolve other issues in the case.”).

affirmed that determination in resolving that matter. *See Feeley*, Docket No. 64896 (Order of Affirmance, January 20, 2016). As such, the affirmance of the stipulation's approval is the law of the case and cannot be revisited in this appeal. *See Wickliffe*, 104 Nev. at 780, 766 P.2d at 1324. Since Clark's only argument against the payment of these fees relates to the enforceability of the stipulation, his argument in this regard fails and we affirm the distribution.

Clark further argues that the district court erred in providing for payment from trust assets of Shawn, Wanda, and Shannon's attorney fees. To the extent he argues spendthrift provisions prevent these payments, this argument is precluded by the law of the case doctrine since this court previously upheld the district court's determination that attorney fees could be paid from trust assets, concluding that Clark waived any spendthrift provision based arguments by failing to raise them in the district court. *Feeley*, Docket No. 64896 (Order of Affirmance, January 20, 2016); *Wickliffe*, 104 Nev. at 780, 766 P.2d at 1324. Further, to the extent Clark argues that the district court could not award fees that were incurred on appeal, the record indicates the district court did not provide for the payment of such fees. Additionally, Clark's argument that there was no statute, rule, or contract providing a basis to order payment of the fees from trust assets fails because a New Hampshire statute provides that a court, in a judicial proceeding involving the administration of a trust, may, as justice and equity may require, award attorney fees to any party to be paid from the trust. *See* N.H. Rev. Stat. Ann. 564-B:10-1004. We therefore affirm this distribution.

Lastly, Clark asserts that the district court erred in subtracting \$35,845.00 from his share of the trusts due to his taking of and/or abandonment of certain personal property. In presenting this issue, Clark first claims that this determination was made in error because he had authority to abandon such property as trustee pursuant to N.H. Rev. Stat. Ann. 564-B:8-816(12). However, even if his taking of or abandonment of the property was done in his role as trustee, as trustee, he had a duty to manage the trust as a prudent person would and to exercise reasonable care, skill, and caution. See N.H. Rev. Stat. Ann. 564-B:8-804. Further, N.H. Rev. Stat. Ann. 564-B:8-816(12) only allows the abandonment of property of no value or insufficient value to justify its continued administration. The property in question was determined to be worth \$35,845.00 by the district court and, implicit in the court's decision to deduct this value from Clark's share of the trusts is that the value of this property was sufficient to justify its continued administration.<sup>2</sup> As such, Clark's abandonment of the property was a violation of his duties and he could therefore be held liable for the value of the property, which the court did by reducing his share of

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<sup>2</sup>Clark did not provide the transcript from the hearing wherein the district court adopted Shawn, Wanda, and Shannon's proposed distribution and, since it was his responsibility to make an adequate record, we can presume that the missing transcript supports the district court's decision. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that the appellant is responsible for preparing an adequate appellate record and that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing [documents] support[ ] the district court's decision").

the trust by that amount. *See* N.H. Rev. Stat. Ann. 564-B:10-1001(a); 564-B:10-1002(a).

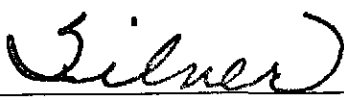
Clark further maintains that the deduction based on these assets was improper because there were no competent exhibits or testimony presented to support the amount that was subtracted. However, the district court was "in the best position to measure the persuasiveness and credibility of evidence" and its decision in this regard is reviewed for an abuse of discretion. *Rest. Operators, Inc. v. Jenney*, 519 A.2d 256, 259 (1986). Here, Shawn, Wanda, and Shannon presented an exhibit with their brief regarding their proposed distribution that contained a list of property they asserted Clark took or abandoned, along with their assessed values of that property, various pictures depicting some of the property and more specific information regarding a car and mileage on that vehicle. Clark never provided a list of property or specifically challenged this list or the value's assigned to the property; instead, he baldly asserted, without any documentary support, that the property was of little to no value and, with respect to the car, he asserted, again without any supporting documents, that he put more money into it than it was worth. In light of this record, we cannot say that Clark has shown that the district court abused its discretion in accepting Shawn, Wanda, and Shannon's assessment of the property instead of Clark's. *See id.*


We note that while it would have been preferable to have more detailed findings in the challenged order regarding the determination of the value of the property and any breach of duty by Clark as trustee in abandoning the property, Clark did not provide the transcript from the hearing wherein the district court adopted Shawn, Wanda, and Shannon's


proposed distribution. And since it was Clark's responsibility to make an adequate record, we presume that the missing transcript supports the district court's decision. See *Cuzze*, 123 Nev. at 603, 172 P.3d at 135 (explaining that the appellant is responsible for preparing an adequate appellate record and that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing [documents] support[ ] the district court's decision"). As Clark has failed to establish error by the court in regards to the deduction of \$35,845.00 from his share, we affirm that decision.

Accordingly, for the reason set forth above, we affirm the district court's order distributing the assets of the subject trusts.

It is so ORDERED.<sup>3</sup>

, C.J.  
Silver

, J.  
Tao

, J.  
Gibbons

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<sup>3</sup>We deny Clark's requests for an award of legal expenses and the imposition of sanctions.

cc: Hon. William D. Kephart, District Judge  
Clark J. Feeley  
Aaron S. Feeley  
Bruce Ketchen  
Deanna L. Feeley  
Shannon A. Feeley  
Shawn C. Feeley  
Wanda G. Feeley  
Eighth District Court Clerk