

NO. 43280-3 II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

RACHEL MARGUERITE ANDERSON (formerly RACHEL M.  
RODGERS), an individual,

Appellants,

v.

WILLIAM L.E. DUSSAULT and JANE DOE DUSSAULT, husband and  
wife, and the marital community composed thereof; BARBARA J.  
BYRAM and JOHN DOE BYRAM, wife and husband, and the marital  
community composed thereof; YEVGENY JACK BERNER and JANE  
DOE BERNER, husband and wife, and the marital community composed  
thereof; WILLIAM L.E. DUSSAULT, PS, a Washington professional  
service corporation; the DUSSAULT LAW GROUP, a Washington  
corporation; RICHARD MICHAEL McMENAMIN and SHARI L.  
McMENAMIN, husband and wife, and the marital community composed  
thereof; MCMENAMIN & MCMENAMIN PS, a Washington  
professional service corporation; ANDREA DAVY (fka ANDREA  
RODGERS) and JOHN DOE DAVY, husband and wife, and the marital  
community composed thereof; and WELLS FARGO BANK, N.A., a  
foreign corporation,

Respondents.

**BRIEF OF RESPONDENTS**  
**RICHARD MICHAEL McMENAMIN,**  
**SHARI L. McMENAMIN and**  
**McMENAMIN & McMENAMIN PS**

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DIVISION II

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## I. INTRODUCTION

Rachel Marguerite Anderson (“Anderson”) claims that Richard Michael McMenamin, Shari L. McMenamin and McMenamin & McMenamin PS (“McMenamin”) breached fiduciary duties to her as the beneficiary of a special needs trust.

The special needs trust (“The Trust”) was created in conjunction with Anderson’s minor settlement of her tort claims that arose out of the injuries she sustained when she was kicked in the face by a horse at six years old. The Trust appointed McMenamin and Anderson’s mother, Andrea Davey (“Andrea”), as the Trust Advisory Committee (“TAC”) and Wells Fargo Bank, N.A. (“Wells Fargo”) as the Trustee.

The purpose of the Trust was to provide Anderson with extra and supplemental financial and service benefits in addition to the benefits she received as a result of her disabilities and in addition to the basic support provided by her parents. In order to achieve this purpose, the Trust expressly provided the TAC with absolute and unfettered discretion to determine when and if Anderson needed regular and extra supportive services.

The Trust was reviewed and approved by the Clallam County Superior Court. All of the annual reports related to the Trust were also approved by the Court, including the final report and petition for approval.

that was sent to Anderson when she reached the age of majority. Anderson raised no objection as to any of the matters contained in the report, and she did not object to, or appeal, the trial court's order approving the report in December 2009.

Anderson filed suit against McMenamin and the other parties nearly two years later alleging, among other things, that they breached their fiduciary duties in the administration of her Trust and distribution of her Trust funds and owed her damages. Anderson did not provide the testimony of a standard of care expert to support her claim against McMenamin. Instead, Anderson provided the expert testimony of R. Duane Wolfe ("Wolfe"), a certified public accountant, to opine on certain trust distributions. Wolfe did not present any testimony or legal analysis with respect to whether McMenamin breached any fiduciary duties in the administration Anderson's Trust causing her damages.

The trial court dismissed Anderson's breach of fiduciary duty claim against McMenamin as a matter of law. For the following reasons, McMenamin respectfully requests that this Court affirm the trial court's order.

## II. RESPONSE TO ASSIGNMENT OF ERROR

### A. Response

McMenamin assigns no error to the trial court's order granting summary judgment in his favor.

### B. Issues Pertaining to Assignments of Error

Whether the trial court properly dismissed Anderson's claim against McMenamin.

## III. STATEMENT OF THE CASE

### A. The Trial Court Approved the Trust which Provided the TAC with Unfettered and Absolute Discretion

The Trust at issue in this case was created for Anderson as part of a minor settlement so that she could receive additional financial and service benefits for the multiple severe injuries she sustained when she was kicked in the face by a horse at the age of six. CP 476-496. The Clallam County Superior simultaneously approved the Trust and Anderson's minor settlement on August 25, 1997. CP 286.

The Trust provided that the "sole responsibility for management and investment of the corpus and income of this Trust shall be vested in [Wells Fargo], as Trustee, with the use and distribution of such disbursements as from time to time may be needed from the Trust **subject to the sole direction, discretion and control of the [TAC].**" (Emphasis



added.) CP 480. In addition, the Trust stated that the TAC had the authority to:

[P]rovide such resources and experiences as will contribute to and make the beneficiary's life as pleasant, comfortable and happy as feasible. Nothing herein shall preclude the TAC from purchasing those services and items which promote the beneficiary's happiness, welfare and development, including but not limited to vacation and recreation trips away from places of residence, expenses for a traveling companion if requested or necessary, entertainment expenses, and transportation costs.

CP 82. In exercising its discretion, the TAC recommended to Wells Fargo that certain disbursements be made for Anderson's benefit and Wells Fargo prepared the annual reports seeking the trial court's approval of those disbursements. CP 321.

**B. The Trial Court Approved All of the Annual Reports**

Wells Fargo's attorney, William L.E. Dussault ("Dussault"), prepared and filed the Trust's first annual report on January 25, 2000.

CP 345. That report was approved by the trial court. *Id.*

The report identified disbursements in the amount of \$3,103.63 from August 18, 1997 – August 31, 1998 and \$18,799.80 from September 1, 1998 – August 31, 1999. *Id.* All of the disbursements were for Anderson's benefit in accordance with the Trust including, but not

limited to, the purchase of a new vehicle to take Anderson to her medical appointments. *Id.* This expense was related to Anderson's disability and supplemental to her parents' basic support obligations. *Id.* In addition, this expense, like many of the other expenses, were recommended and approved because Anderson's family had limited resources and could not adequately provide for her needs, which is specifically why the Trust was created in the first place. *Id.*

Dussault prepared a second annual report and filed it with the trial court on February 15, 2001. *Id.* That report was also approved. *Id.* The disbursements totaled \$41,461.86 and included the purchase of real estate, professional fees and expenses, taxes, purchase of a computer, travel expenses and vehicle expenses. *Id.*

Dussault also prepared a third annual report and sent it to Anderson's attorney for review and comment before it was filed.<sup>1</sup> *Id.* Anderson's attorney responded and identified several complaints, including the purchase of real property with trust funds, payments made to Anderson's mother for various expenses including a computer, vehicle, gifts, attorney fees and the lack of performance of the Trust investments. *Id.*

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<sup>1</sup> The third report was sent to Anderson's attorney because he previously complained about Trust disbursements on August 27, 2001. *Id.*

On December 6, 2002, Dussault presented this report, which addressed all of the trust activities over a two-year period, to the trial court for approval. *Id.* The report recommended that Wells Fargo be appointed sole Trustee and that the TAC be dissolved as McMenammin had resigned from the TAC earlier that year on July 19, 2002. *Id.* The trial court approved the report on July 11, 2003 and dissolved the TAC. *Id.* Wells Fargo then became the sole Trustee.<sup>2</sup> *Id.*

On November 30, 2009, Dussault forwarded a copy of the final report and petition for approval directly to Anderson as she had reached the age of majority. *Id.* She raised no objection as to any of the matters contained in the report and it was approved by the trial court on December 4, 2009. *Id.* Anderson also received a copy of the court's order on or about December 14, 2009 and she did not object to, or appeal, the court's determination. *Id.*

**C. The Trial Court Dismissed Anderson's Claim Against McMenammin**

On July 22, 2011, nearly two years after the final report was approved by the trial court without any objection, Anderson filed the present action against McMenammin and the other parties. CP 470. As to McMenammin, she alleged that he breached his fiduciary duties in the

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<sup>2</sup> The trial court also approved the next three reports which addressed trust activities from 2004-2006. *Id.*

administration of her Trust and distribution of her trust funds. *Id.* Specifically, she alleged that McMenamín failed to discharge his fiduciary and legal duties to the her as the beneficiary of the Trust “as more particularly set forth in the July 7, 2011 letter of R. Duane Wolfe, CPA ...” *Id.* The Wolfe letter states, among other things, that Wells Fargo, the TAC, and Dussault improperly approved the purchase of a minivan, computers and travel expenses, that they made unauthorized payments to Anderson’s mother and that they failed to collect rent for the Trust’s interest in a house. CP 497-504. However, all of the disbursements were approved by the trial court through Dussault’s annual reports. CP 345.

For the reasons stated herein, the trial court properly dismissed Rachel’s claim against McMenamín on February 28, 2012. CP 20.

#### **IV. ARGUMENT**

##### **A. Summary of the Argument**

The sole issue on appeal as it pertains to McMenamín is whether the trial court properly granted summary judgment in his favor.

The trial court’s order dismissing Anderson’s claim as a matter of law was correct for several reasons. Anderson’s claim is barred under the TAA and by the express terms of her own Trust. In addition, Anderson failed to establish a prima facie case against McMenamín for breach of fiduciary duty. McMenamín exercised his absolute and unfettered

discretion in accordance with the Trust and the trial court approved all of the annual reports without any objection so that certain disbursements could be made for Anderson's benefit.

**B. Standard of Review on Appeal**

In reviewing an order by a trial court granting summary judgment, this Court must engage in the same inquiry as the trial court. *Barr v. Day*, 124 Wn.2d 318, 324, 879 P.2d 912 (1994). Summary judgment is proper when, viewing all the evidence and reasonable inferences therefrom most favorably to the nonmoving party, the court concludes that: (1) there is no genuine issue as to any material fact; (2) reasonable persons could reach only one conclusion; and (3) the moving party is entitled to judgment as a matter of law. *Higgins v. Stafford*, 123 Wn.2d 160, 169, 866 P.2d 31 (1994); CR 56(c).

A moving party may meet its burden on summary judgment by showing there is lack of competent evidence supporting the nonmoving party's case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). Where a plaintiff fails to come forward with facts sufficient to establish the existence of elements essential to his or her claim, "there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.*

(quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). In the absence of a factual dispute, where a party shows he is entitled to judgment as a matter of law, summary judgment must be granted in his favor. *Geer v. Tonnan*, 137 Wn. App. 838, 843, 155 P.3d 163 (2007) (citing *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1260 (1991)).

**C. The Trial Court Properly Granted Summary Judgment in Favor of McMenamain**

**1. The trial court properly dismissed Anderson's claim against McMenamain because it is barred as a matter of law**

**a. Anderson's claim is barred under the Trustees' Accounting Act**

The Trustees' Accounting Act ("TAA"), RCW 11.106 *et seq.*, precludes a trust beneficiary from contesting any matter within a subject trust account once that account has been approved the court.

RCW 11.106.090; *see also Barovic v. Permberton*, 128 Wn. App. 196, 114 P.3d 1230 (2005). Section 11.106.070 of the TAA states:

**The court** without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the **account and the validity and propriety of all actions of a trustee or trustees set forth in the account, including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the account or any part of it.**

and surcharging the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

RCW 11.106.070 (emphasis added.) In addition, the TAA states that:

The decree rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal under RCW 11.106.090.

RCW 11.106.080 (emphasis added).

Under the TAA, a trustee must submit routine reports to the court for approval, and when the court approves the report, the decree is final and binding on all interested parties, including those who are incapacitated or otherwise not *sui juris*. RCW 11.106.060-.080. The Washington Supreme Court affirmed the adoption of this rule in *Feature Realty, Inc. v. Kirkpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wn.2d 214, 224, 164 P.3d 500, 505 (2007):

Having held against appellant's contention that the court had no jurisdiction of the action, the only question remaining is: Was the order approving the first triennial accounting an appealable order or, in other words, a final judgment as to the matters therein contained? An affirmative answer appears in the Uniform Trustees' Accounting Act. Rem.Supp.1941, § 11548-11, provides, inter alia: \* \* \* Court approvals or disapprovals of intermediate or final accounts shall be deemed final

judgments in so far as the right of appeal is concerned.

*In re Cooper's Estate*, 39 Wn.2d 407, 411, 235 P.2d 469, 471 (1951).

Almost identical language appears in the statute today. *See*

RCW 11.106.080. The express and unambiguous language of the statute renders its preclusive effect applicable to beneficiaries who were incompetent, and even unborn, at the time of court approval of the trust account. *Id.* This is consistent with the RESTATEMENT (SECOND) OF JUDGMENTS § 35 (1982) ("The lack of legal capacity of a person or organization named a party to an action does not prevent application of the rules of *res judicata* to the judgment therein unless the incapacity of the named party had a substantial adverse effect on the adequacy of the protection afforded his interests or the interests of others whom he represents.").

In this case, Wells Fargo submitted annual reports which were then approved by this Court. CP 345. Because the TAA clearly provides that the reports "shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries" Anderson is precluded from contesting the trial court's prior determination. RCW 11.106.080. And because neither Anderson nor any other interested party appealed the trustees' annual reports that were



approved by the court, those decrees are now final, binding, conclusive and cannot be undone. *See Barovic, supra*, 128 Wn. App. at 201-02 (stating that “the decrees were . . . ‘final, conclusive, and binding’ as to the propriety of [the trustee’s] actions and disposition of trust funds . . . . When [the beneficiary] failed to appeal, [he] relinquished his right to recover these losses and the trial court erred when it awarded interest on the reimbursed sums.”). Accordingly, Anderson’s claim against McMenamini is barred as a matter of law, and the trial court was correct in dismissing the claim on this basis alone.

**b. Anderson’s claim is also barred under the express terms of the Trust**

Article IV(h) of the Trust states that:

**The assent to the Trustee’s annual statement by the beneficiary or, if the beneficiary is not of full age and legal capacity, by a parent, legally appointed guardian, guardian ad litem, or other personal representative of the beneficiary, or the failure of such person to object to an account statement within 30 days of receipt thereof, shall operate as a full discharge of the Trustee by the beneficiary as to all transactions set for in such annual statement.**

CP 493. Neither Anderson nor any personal representative acting on her behalf ever objected to any of the annual reports that were submitted within the 30 day time limitation proscribed by the express terms of the Trust. CP 345. In fact, when Anderson reached the age of majority, she

was sent a copy of an annual report and petition for approval and she raised no objections. *Id.* The trial court, therefore, approved that annual report as it had with all of the other annual reports. *Id.* Thus, Anderson waived her right to final any sort of action against McMenamain and the other trustees and her claim was properly dismissed by the trial court.

2. **Even if Anderson's claim is not barred for the above-stated reasons, the trial court still properly dismissed her claim against McMenamain because Anderson failed to establish that McMenamain breached any fiduciary duties he owed to her as the beneficiary of the Trust**

Under Washington law, a trustee owes the highest degree of good faith, care, loyalty, and integrity to a trust beneficiary. *Allard v. Pacific Nat. Bank*, 99 Wn.2d 394, 563 P.2d 203 (1983) (citing *Esmieu v. Schrag*, 88 Wn.2d 490, 498, 563 P.2d 203 (1977) and *Monroe v. Winn*, 16 Wn.2d 497, 508, 133 P.2d 952 (1943)). The fiduciary duties of a Trustee to its *cestui que* are similar to those of an attorney to his client:

A trustee is a fiduciary of the highest order and is required to exercise a high standard of conduct and loyalty in the administration of the trust. The requirement of loyalty and fair dealing in good faith are at the core of every trust instrument, whether specifically stated or not. Trustees must act with good faith, loyalty, fairness, candor and honesty toward the trust beneficiaries. Indeed, under some authority, trustees must act with the utmost good faith, scrupulous good faith, the highest degree of fidelity and good faith,

absolute fidelity, or undivided or complete loyalty.

76 AM. JUR. 2d *Trusts* § 349.

In managing the trust assets, a trustee is required to adhere to the prudent investor rule. *In re Estate of Cooper*, 81 Wn. App. 79, 913 P.2d 393 (1996) (“Washington’s prudent investor rule requires a trustee to exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs. . . .” This exercise of judgment requires, among other things, “consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets . . . . A court’s focus in applying the prudent investor rule is the trustee’s conduct, not the end result.”) (citing RCW 11.100.020).

Additionally, a trustee has the duty to administer the trust in the interest of the beneficiaries. *Tucker v. Brown*, 20 Wn.2d 740, 768, 150 P.2d 604 (1944). The trustee further must diversify the trust’s assets in order to minimize the risk of large losses. *In re Estate of Cooper, supra*, at 88.

Anderson argues on appeal that McMenamin breached his fiduciary duty to her as a beneficiary of the Trust because the TAC allowed various trust expenditures that indirectly benefited Anderson’s

mother, Andrea. *Appellant's Brief*, at 8. According to Anderson, this amounted to a breach of fiduciary duty under the terms of the Trust which provided that, "if any distribution from Anderson's trust fund would bring a direct or indirect benefit to a member of the Trust Advisory Committee, that member was not allowed to discuss or vote upon the proposed distribution." *Id.* Where a TAC member was disqualified from discussing or voting on a proposed distribution, "then trustee Wells Fargo expressly became a member of the Trust Advisory Committee for the purpose of casting the deciding vote." *Id.* What Anderson fails to recognize, however, is that is what implicitly occurred in this case. Through its annual reports and recommendations to the trial court, Wells Fargo was in essence the deciding vote on whether certain distributions were to be made from Anderson's Trust. In addition, when the TAC was dissolved on July 11, 2003, the Trustee's report was accepted and approved by the trial court. CP 345.

Anderson has not presented any evidence, expert or otherwise, that McMenemy breached the duty of care in managing her Trust, or any evidence, expert or otherwise, that McMenemy's alleged acts or omissions caused her any damages. Anderson only provides a letter from Wolfe who is a CPA, not an attorney and not a standard of care expert,

and that letter does not opine on the breach of any fiduciary duties or any damages caused therefrom.<sup>3</sup> CP 497-504.

In addition, Anderson has not proved that she was damaged by McMenamín's alleged negligence in managing her Trust. The trial court approved all of the disbursements made under the Trust with the intent that those disbursements benefit Anderson.<sup>4</sup> Even more importantly, McMenamín's decisions with respect to the Trust were discretionary per its express terms. Thus, any indirect benefit to Anderson's mother cannot amount to any breach of fiduciary duty because of the TAC's discretion.

When the Trust was created, its stated purpose (as already referenced) was to provide Anderson with "extra and supplemental medical, health, and nursing care, dental care, developmental services, support, maintenance, education, rehabilitation, therapies, devices, recreation, social opportunities, assistive devices . . ." CP 481. To that end, the TAC was provided full authority to accomplish the stated goals,

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<sup>3</sup> If Wolfe's calculations are correct, then the discretionary distributions would have amounted to 37% of Anderson's initial settlement, but does not prove that Anderson was damaged.

<sup>4</sup> If Anderson's mother diverted any of the Trust funds for her own benefit rather than Anderson's benefit as alleged, that is not McMenamín's fault and does not establish that he breach any fiduciary duties. The intent was for certain disbursements to benefit Anderson and trial court approved all of the annual reports for that reason. The Trust does not then require that a trustee monitor the actions of the other trustees, like Anderson's mother, once the disbursements are made.

and was “solely responsible for determining what discretionary distributions shall be made from this Trust.” CP 488.

Further, the TAC was authorized to “provide such resources and experiences as will contribute to and make the beneficiary’s life as pleasant, comfortable and happy as feasible.” CP 482. The Trust expressly provided that “nothing herein shall preclude the Trust Advisory Committee from purchasing those services and items which promote the beneficiary’s happiness, welfare and development.” *Id.* The TAC therefore had “absolute and unfettered discretion to determine when and if Anderson needs regular and extra supportive services as referred to in the paragraphs above.” *Id.*

**a. The TAC had Unfettered and Absolute Discretion**

Section II (b) of the Trust provides:

(b) The Trust Advisory Committee shall have absolute and unfettered discretion to determine when and if RACHEL needs regular and extra supportive services as referred to in the paragraph above. The Trust Advisory Committee may direct the Trustee to make or withhold payment at any time and in any amount as the Trust Advisory Committee deems appropriate in the exercise of its discretion. The exercise by the Trust Advisory Committee of its discretion shall be conclusive and binding upon all persons. This Trust is explicitly intended to be a discretionary Trust and not

a basic support trust. The plain language of the Trust Agreement is that the TAC has “absolute and unfettered discretion” to determine whether Anderson needed extra supportive services and that discretion was “conclusive and binding upon all persons.” Thus, the TAC had broad authority to make decisions that benefitted Anderson and that authority cannot now be challenged absent an abuse of discretion.

CP 482.

When a trust gives the trustee discretion to carry out the trust’s objectives, a court may not control the trustee’s exercise of its discretion absent abuse. *Templeton v. Peoples Nat’l Bank of Wash.*, 106 Wn.2d 304, 309, 722 P.2d 63 (1986); accord RESTATEMENT (THIRD) OF TRUSTS § 87 (2007). “What constitutes an abuse of discretion depends on the terms and purposes of the trust, and particularly on the terms and purposes of the power and any standards or guidance provided for its exercise, as well as on applicable principles of fiduciary duty.” *Id.* cmt. b; see also *Waits v. Hamlin*, 55 Wn. App. 193, 201, 776 P.2d 1003 (1989) (citing RESTATEMENT (SECOND) OF TRUSTS § 187 cmt. d (1959)). “A court will not interfere with a trustee’s exercise of a discretionary power ... when that conduct is reasonable, not based on an improper interpretation of the terms of the trust, and not otherwise inconsistent with the trustee’s fiduciary duties.” RESTATEMENT (THIRD) OF TRUSTS § 87 cmt. b. A court should

not intervene “merely because the court would have differently exercised the discretion.” *Id.* A court should judge a trustee’s actions prospectively, not “from the vantage point of hindsight.” *Baldus v. Bank of California*, 12 Wn. App. 621, 633, 530 P.2d 1350 (1975) (quoting *In re Pate’s Estate*, 84 N.Y.S.2d 853, 858 (1948)).

In this case, Anderson has failed to provide any evidence that McMenamin abused his discretion in managing the Trust. Instead, she relies on a report submitted by Wolfe, who is not an attorney, which simply challenges several of the disbursements made under the Trust.<sup>5</sup> CP 497-504. However, that an accountant disagrees with a decision made by a trustee does not establish abuse of discretion, it merely shows that parties can differ in the discretion to be exercised. The trial court was, therefore, correct in dismissing Anderson’s breach of fiduciary duty claim against McMenamin.

**b. No expert testimony is necessary**

Anderson filed suit against McMenamin for breach of fiduciary duty in his capacity as a member of the TAC of Anderson’s Trust.

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<sup>5</sup> Anderson does not rely on the testimony of Gary R. Colley to support her breach of fiduciary duty claim against McMenamin. She only relies on that testimony to support her legal malpractice claim against Dussault.



*Appellant's Brief*, at p. 15.<sup>6</sup> In support of her claim, Anderson has provided the testimony of CPA, Wolfe, to opine on certain disbursements that were made from the Trust. This evidence by itself is not enough to establish a prima facie case against McMenamain for breach of fiduciary duty. Anderson is required to prove all of the necessary elements of a breach of fiduciary duty claim: duty, breach, causation and damages. 29 David K. DeWolf, *Washington Practice*, Washington Elements of an Action: Breach of Fiduciary Duties, § 11:1 at 313-14 (2011). Wolfe has not provided any testimony with respect to any of these essential elements. Thus, Anderson's argument as to McMenamain not providing an expert opinion to rebut the testimony of Wolfe is inapposite. *Appellant's Brief*, at 26.

## V. CONCLUSION

The trial court properly dismissed Anderson's breach of fiduciary duty claim against McMenamain. Anderson cannot establish that McMenamain breached any fiduciary duties in the administration of her Trust. McMenamain properly exercised his discretion under the terms of the Trust and Anderson benefitted from the Trust disbursements, which were all approved by the trial court through Dussault's annual reports.

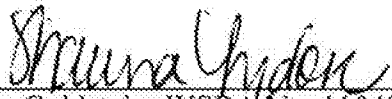
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<sup>6</sup>"Anderson is not suing McMenamain for any legal malpractice." *Id.*, at fn.8.

Anderson's claim against McMenamin also fails as a matter of law because it is barred by the express terms of the TAA and Anderson's own Trust. This Court should therefore affirm the trial court's order.

RESPECTFULLY SUBMITTED this 3rd day of August, 2012.

BETTS, PATTERSON & MINES, P.S.

By   
Steve Goldstein, WSBA No. 11042  
Shawna Lydon, WSBA No. 34238

Attorneys for Respondents McMenamin

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COURT OF APPEALS  
DIVISION II

2012 AUG -6 PM 1:19

STATE OF WASHINGTON  
BY DEPUTY

**CERTIFICATE OF SERVICE**

I, Denise Wolfard, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on August 6, 2012, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **Brief of Respondents Richard Michael McMenamin, Shari L. McMenamin and McMenamin & McMenamin PS**

Carl Lloyd Gay	<input checked="" type="checkbox"/>	U.S. Mail
Greenway, Gay & Tulloch	<input type="checkbox"/>	Hand Delivery
829 East 8th Street, Suite A	<input type="checkbox"/>	Telefax
Port Angeles, WA 98362	<input type="checkbox"/>	UPS
James R. Hennessey	<input type="checkbox"/>	U.S. Mail
Smith & Hennessey PLLC	<input checked="" type="checkbox"/>	Hand Delivery
316 Occidental Avenue South, Suite 500	<input type="checkbox"/>	Telefax
Seattle, WA 98104	<input type="checkbox"/>	UPS
Sam B. Franklin	<input type="checkbox"/>	U.S. Mail
William L. Cameron	<input checked="" type="checkbox"/>	Hand Delivery
Lee Smart, P.S., Inc.	<input type="checkbox"/>	Telefax
1800 One Convention Place	<input type="checkbox"/>	UPS
701 Pike Street		
Seattle, WA 98101-3929		

I declare under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.

DATED this 6th day of August, 2012.

  
Denise Wolfard