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Court of Appeals  
Division III  
State of Washington

No. 317579

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

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IN RE THE ESTATE OF MARGARET WIMBERLEY

JAMES WIMBERLEY

Appellant,

v.

STEPHEN W. TREFTS, Northwest Trustee & Management; and  
CARROLL WESLEY WIMBERLEY,

Respondents.

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RESPONDENT CARROLL WESLEY WIMBERLEY'S BRIEF

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## I. INTRODUCTION

C.W. and Margaret Wimberley executed joint estate planning documents in 1999. Those documents included the Wimberley Family Trust and revocation of all prior community property agreements. It was outlined in the Trust that all property owned by the couple now or in the future would be considered community property and also Trust property. C.W. and Margaret also executed wills which distributed all of their individual assets at the time of their deaths into the Trust (commonly called “pour over” wills). C.W.<sup>1</sup> died in 2002. Margaret died in 2010, leaving her two sons as the beneficiaries of the estate and the Wimberley Family Trust—Jim<sup>2</sup> and Wesley.<sup>3</sup>

Jim had already been appointed the Trustee for the Wimberley Family Trust prior to Margaret’s death pursuant to a 2008 amendment. Margaret Wimberley<sup>4</sup> died August 2, 2010. Upon C.W.’s death, the Wimberley Family Trust created an “A,” “B,” and “C” Trust. Trust A consists of Margaret’s one-half share of the community assets and Trusts B and C consist of C.W.’s one-half share. As trustee, Margaret had a duty

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<sup>1</sup> C.W. Wimberley is referred to as “C.W.” in this briefing. No disrespect is intended.

<sup>2</sup> James Wimberley is referred to as “Jim” in this briefing. No disrespect is intended.

<sup>3</sup> Carroll Wesley Wimberley is referred to as “Wesley” in this briefing. No disrespect is intended.

<sup>4</sup> Margaret Wimberley is referred to throughout as “Margaret.” No disrespect is intended.

to fund the trusts. Margaret did not make any determination of how those Trusts were to be funded at the time of her husband's death in 2002. In fact the three separate trusts outlined in the Wimberley Family Trust were never properly funded as required by the Trust language. Due to C.W.'s death, Trusts B and C were irrevocable. Two Amendments were executed, in 2007 and 2008, which purport to change the Trust language. Margaret never, however, changed the language of her Last Will and Testament, executed at the same time as the Wimberley Family Trust.

Jim was removed from his position as Trustee on March 2, 2012 because he breached his fiduciary duties to Wesley. The court specifically found that he breached his fiduciary duties for failing to pay rent to the Trust, and charging the Trust for his personal utility bills and incidentals of occupancy. This Order removing Jim as trustee was not appealed. An independent successor trustee, Stephen Trefts, was appointed by the court.

Mr. Trefts provided a preliminary accounting of Margaret Wimberley's estate and the Wimberley Family Trust on February 1, 2013, after working diligently to account for all Trust assets despite Jim's refusal to timely cooperate with the accounting when questioned about assets. Mr. Trefts also requested instruction from the court regarding certain issues that arose during the accounting. The court approved the



preliminary accounting and gave instruction to Mr. Trefts in its June 4, 2013 order, which is now being appealed.

The court amended its June 4, 2013 order after a motion for contempt was brought by Wesley when Jim refused to return \$254,437.91 to the Trust. The court ordered that Jim make monthly payments of \$2,593.18 to the Trustee which covers both rent and a portion of the interest accruing on the \$254,437.91 that Jim refused to return. These changes to the June 4, 2013 order were made after the Notice of Appeal was filed.

Jim served as a fiduciary to the other beneficiary to the Trust and Estate—Wesley—during the time he was the trustee of the Wimberley Family Trust (including prior to Margaret's death). The successor trustee provided an accurate accounting of the Trust assets, and appropriately attributed an undivided one-half interest in all of Margaret and C.W.'s community assets to C.W.'s share of the trust. The court properly approved the preliminary accounting and provided other findings so that the Trust and estate administration can be completed. Judge McCarthy's June 4, 2013 Order Approving Preliminary Accounting and Petition for Instructions should be upheld. As this court will see from the evidence, Margaret could only change her sub-Trust. She never specifically

changed or altered assets in any of the other required sub-Trusts (C.W.'s share of the community property).

## **II. ASSIGNMENT OF ERROR**

### **A. Statement of Error**

Jim assigns error to all of the trial court's substantive determinations in its June 4, 2013 order. Jim also assigns error to the trial court's failure "to enter a finding or certify for trial the issue of whether Wes Wimberley should be disinherited...." The trial court made no findings or determinations on this issue because the issue was not before the trial court at the hearing on the June 4, 2013 order.

### **B. Re-Statement of the Issues Pertaining to Assignments of Error**

1. Should the trial court's June 4, 2013 order be upheld? This specifically includes the following questions:

a. Did the trial court properly accept the preliminary accounting, starting from the date of Margaret's death, provided by the successor trustee?

b. Was the trial court's legal interpretation of the Trust documents, as outlined in its letter opinion, correct?

c. Is the preliminary accounting accurate with regards to distribution of the 386 Fromherz home?

d. Did the trial court properly void the quit claim deed

Jim wrongfully issued to himself while he was trustee?

e. Did the trial court properly order Jim to pay rent to the Trust for his residency in the Trust asset from the date of death until the Trust is distributed?

f. Did the trial court properly order Jim to repay to the Trust \$254,437.19 of monies that he improperly distributed to himself while he was Trustee after Margaret's death?

g. Should the 1994 divorce decree requiring Jim to repay a debt to Margaret be considered in the distribution of Margaret's assets?

h. Should the successor trustee be able to amend the accounting and proposed distribution if additional information is gathered that would warrant amendment?

2. Whether claims for which there are no factual findings or legal conclusions should be reviewed on appeal. Specifically:

a. Whether a claim of financial abuse under RCW 11.84 is ripe for appeal when the trial court has heard no testimony, made no findings of fact, has not had oral argument, a motion for such relief has not been noted for hearing by Jim, and there have been no legal determinations on the issue from the trial court?

b. Whether the appellate court should address Margaret's transfer of \$300,000.00 into a different investment account when the transfer does not change Margaret's estate plan, the trial court has made no findings of fact, has not had oral argument, a motion for such relief has not been made to the court by Jim, and there have been no legal determinations on the issue from the trial court?

### III. STATEMENT OF THE CASE

Margaret and C.W. Wimberley jointly executed the Wimberley Family Trust in 1999 (hereinafter referred to as "Trust"). CP 111. Their joint estate plan was comprehensive, and Margaret and C.W. (the "Trustors") intended to put all of their assets into the Trust:

The Trustors intend this Trust to be the recipient of all their assets, including without limitation assets whether commonly owned, jointly owned, marital, deferred marital, community, quasi-community or separate. The Trustors intend this trust to be the named beneficiary of all interests of which either or both Trustors are, or may become, Beneficiaries.

CP 114. Further, the Letter of Intent and Declaration of Gift executed as part of the Trust documents, states:

1. All property held by the undersigned in the Trust... is the commonly owned or community property of the said Trustors unless otherwise designated by writing in the Trust documents, or in the manner in which title is held in the Trust.
2. All property which is the separate property of either Trustor has been and will be so designated in

- writing and signed by the Trustors.
3. Any property in the said Trust which had its origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of the Trustors. If any questions should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors. This gift is intended and made as and when any asset is placed into the Trust.
  4. Any previous community property agreement entered into between the undersigned shall no longer be applicable to, and is thereby revoked with respect to, all property held by the undersigned in the Trust known as: The Wimberley Family Trust....

CP 175 (emphasis added).

Upon the death of C.W. in 2002, Margaret became the sole Trustee of the Trust. CP 117. After the death of C.W., the Trustee was required to divide the Trust assets into two separate shares—Survivor's Trust A and Decedent's Marital Share. CP 138.

#### Survivor's Trust A

Survivor's Trust A shall consist of the Survivor's one-half (1/2) interest in the commonly owned property or community property, quasi-community property and all other property included in the Trust Estate as the separate property of the Surviving Trustor. Upon division into shares at the death of a Trustor, Survivor's Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor. Upon the death of the Surviving Trustor this share shall become irrevocable. Any property not allocated to the Decedent's Marital Share, or otherwise allocated by the provisions of this Trust at the death of the

first of the Trustors to die, shall be allocated to this Survivor's Trust A.

**Decedent's Marital Share**

Decedent's Marital Share shall consist of the Decedent's one-half (1/2) interest in the commonly owned property or community property of the Trust Estate, one-half (1/2) interest in the quasi-community property and all other property included in the Trust Estate as the Separate Property of the Decedent Trustor. Decedent's Marital Share shall be divided and allocated into Decedent's Trust B and C. Upon creation of such Trust shares, Decedent's Trust B and Trust C are irrevocable.

The Surviving Trustee shall have the sole discretion to select the commonly owned, community and quasi-community assets or the proportionate share of any such assets which shall be included in the Decedent's Trust B and Trust C. In no event, however, shall there be included in Trust C any assets or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and Trust C shall be reduced to the extent that it cannot be created with such qualifying assets. The Trustee shall value any asset selected by the Trustee for distribution in kind to the Decedent's share at the value of such asset at the date of distribution to the Decedent's share.

CP 138-139.

Both Decedent's Trust B and Trust C are irrevocable. CP 148 & 151. The Trust outlines how Decedent's Trust B and Trust C shall be held, administered and distributed as outlined in the Trust document. CP 148 & 151. In both cases, distribution of the sub-trusts is governed by the Trust section entitled "ALLOCATION AND DISTRIBUTION OF TRUST ASSETS." CP 150 & 155.

Upon the death of the Surviving Trustor, the Trustee shall allocate the balance of the Trust Estate as then constituted into equal separate shares to provide one (1) share each for Jim Keith Wimberley and Carroll Wesley Wimberley, the Primary Beneficiaries of the Trust Estate.

CP 161.

It was not until July of 2007, five years after C.W.'s death, that Margaret sought to amend the Trust. She executed Amendment 07-07 on July 18, 2007. CP 178-180. In such Amendment, she attempted to amend the entire Trust by giving herself the "full use and control over all trust assets," and admitted she did not fund the Trust's A, B, and C sub-Trusts as required by the Trust. CP 178. Amendment 07-07 also indicates that Margaret wished for the Trustee to distribute to Jim the home located at 386 Fromherz Drive, along with a bank account, referred to as the "Building Fund" for use "toward finishing the property."<sup>5</sup> CP 179. Amendment 07-07 goes on to state that the rest of the Trust should be divided in equal shares between the two brothers. CP 180.

In April of 2008, Margaret again sought to amend the Trust. She executed Amendment 04-08 on April 3, 2008. CP 187-189. In the Amendment she changed the character of the trust to irrevocable and appointed Jim the Trustee. CP 187. She also appointed a Trust Protector.

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<sup>5</sup> Jim states in his brief that the home construction is complete. *Appellant's Brief*, page 1.

CP 188. The Amendment did not purport to change any of the distribution provisions of the Trust or Amendment 07-07. CP 188.

In 2010, after concerns were raised by Wesley, and also by Margaret's attorney Marcus Frye, a Professional Plan of Care was drafted for the care of Margaret. CP 322 at ¶ 7. Kristyn Calhoun conducted interviews with both Jim and Wesley, and met with Margaret, to assess a proper care plan for her. CP 202-209. Ms. Calhoun inquired about Margaret's wishes after her death. CP 203. In those conversations, Margaret indicated that the house at 386 Fromherz should be distributed to Jim. CP 203. She stated that she wanted the possessions in the home, bank accounts and other things split equally between the two brothers. CP 203. Margaret also informed her attorney, Marcus Fry, that she wanted the Fromherz home to be part of Jim's one-half share of the estate. CP 321 at ¶ 5.

Margaret died on August 2, 2010. CP 217. Pursuant to the Trust Amendment 04-08, Jim had been serving as the Trustee of the Trust since April 2008. CP 187. Jim was living in the 386 Fromherz home at the time of Margaret's death, and for some time before her death. CP 202-209. Jim continued to reside in the Trust-owned home at 386 Fromherz after Margaret's death. CP 217. He did not pay any rent to the Trust. CP 217 & 1. He also used money from accounts held by the Trust for utilities and



other costs of occupancy after Margaret's death. CP 217 & 1. Jim deeded the property to himself on June 28, 2011. CP 52. On March 2, 2012, upon Wesley's motion, the court removed Jim as Trustee of the Trust, stating:

Jim K. Wimberley breached his fiduciary duties as Trustee for the Wimberley Family Trust by failing to pay rent while he lived in the Fromherz home, an asset of the Wimberley Family Trust.

Jim K. Wimberley breached his fiduciary duties as Trustee for the Wimberley Family Trust by failing to pay utilities and incidentals of occupancy of the home, while he lived in the Fromherz home, as asset of the Wimberley Family Trust.

These breaches also constitute a breach of his fiduciary duties as Personal Representative of the Estate of Margaret Wimberley.

CP 218 & 1-2. In its letter opinion, Judge McCarthy stated:

It is clear from the submissions, and essentially undisputed, that Jim resided in a house which was a significant asset of the trust and that he did not pay rent. Further, he used trust monies to pay the incidentals of occupancy, such as power bills, propane service and garbage collection. This is an obvious violation of his fiduciary duty, indistinguishable from the circumstances in Estate of Jones, 152 Wn.2d 1, 93 P.3d 147 (2004).

CP 1.

Jim was removed as Trustee and Personal Representative, and Stephen Trefts was appointed to serve as the successor trustee and successor personal representative in this matter. CP 218. Richard Greiner

was removed as Trust Protector due to a conflict of interest by the same court order. CP 218; CP 365-378.

Stephen Trefts moved forward with an accounting and to obtain the Trust assets for distribution. CP 28-37. As part of the March 2, 2012 decision, the trial court also ordered that Jim turn over all assets, account information and accounts to the successor trustee. CP 218. Stephen Trefts was ordered to do an independent accounting. CP 218-219.

As a result of the work done by Stephen Trefts to account for the Trust's assets, Trefts compiled a preliminary accounting and provided it to the trial court for approval, with a list of questions for further guidance from the court. CP 28-51. The accounting indicated that Jim over-distributed \$254,437.91 to himself during the time he was acting as Trustee. CP 31. The accounting also indicated that Jim did not timely respond to questions from the successor trustee regarding appropriateness of expenses and withdrawals made by him during his term as trustee. CP 31-32. Due to Jim's refusal to respond to the successor trustee's inquiries, questions were presented to the court. CP 33. After review, briefing and oral argument, the court provided instruction to the successor trustee, which is the basis for this appeal.

## IV. ARGUMENT

### A. Standard of Review

Trial courts have full authority under RCW 11.96A.020 to proceed in probate matters “in any manner and any way that to the court seems right and proper....” RCW 11.96A.020(2).

Whether equitable relief is appropriate, or whether the trial court should have modified the trust, is a question of law, which we review de novo.

But determining the parties’ intent in regard to a trust is a factual question. We review findings of fact under a substantial evidence standard, determining whether the evidence was sufficient to persuade a rational fair-minded person the premise is true. If this standard is satisfied, we will not substitute our judgment for that of the trial court even though we may resolve a factual dispute differently.

*In re Riddell*, 138 Wn.App. 485, 491-92, 157 P.3d 888 (2007). (internal citations omitted). Therefore, questions of law are reviewed de novo, while questions of fact are reviewed under a standard of substantial evidence. “Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004), citing *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

This is a case involving both the intent of the Trustors and the intent of Margaret Wimberley at the time of her death. The jointly executed Trust language is at the heart of this dispute.

In construing a will or trust, testamentary intent controls. Whenever possible, the intent of the settlors should be ascertained from the language of the instrument itself. Testamentary intent is a question of fact.

*Eisenbach v. Schneider*, 140 Wn.App. 641, 651, 166 P.3d 858 (2007).

The interpretation of an instrument is a question of law. *In re Estate of Sherry*, 158 Wn.App. 69, 77, 240 P.3d 1182 (2010).

Like the *Riddell* matter, the appeal by Jim involves both an appeal of the trial court's interpretation of the Trust, as well as an appeal of factual findings regarding Margaret and her husband's intentions with regards to their assets found in the trial court's letter opinion. This appeal contains questions of fact and law. The standard of review, therefore is mixed. The court should "give deference to the trial court's factual findings in regard to the trust" and review the trial court's equitable decisions regarding interpretation of the Trust language de novo. *Riddell, supra*, at 492.

**B. The trial court properly accepted the preliminary accounting and allocation of assets provided by the successor trustee, because it is based on the specific language of the Wimberley Family Trust and takes into account Margaret and her late husband's wishes with regards to their assets.**

The successor trustee reviewed the financial records provided by

the parties, as well as the specific language of the estate planning documents of C.W. and Margaret Wimberley executed in 1999. The successor trustee also reviewed the two amendments to the Trust executed by Margaret after C.W.'s death.

The Community Property Agreement does not dictate distribution of any of the Wimberley assets. Jim erroneously claims that "there is no evidence that the Community Property Agreement was ever modified or terminated." *Appellant's Brief*, page 8. However, the undisputed evidence shows that the 1967 Community Property Agreement was revoked by the 1999 Trust and the attached Letter of Intent and Declaration of Gift and that the Wimberleys intended for all of their assets to be transferred to their Trust.

The joint execution of the Trust and the Letter of Intent and Declaration of Gift unambiguously rescinded the community property agreement. Community property agreements are contracts, and therefore are interpreted under contract law when evaluating whether the community property agreement has been rescinded by the parties. *Stranberg v. Lasz*, 115 Wn.App. 396, 402, 63 P.3d 809 (2003).

To abandon a community property agreement, the parties must clearly demonstrate a mutually-manifested intention to abandon the agreement. To make this determination, courts will give great weight to evidence of the parties' intent by

examining the wording of the written agreement and the circumstances surrounding the transaction, including the subject matter of the transaction and the subsequent acts of the parties.

*Id.*, citing *Higgins v. Stafford*, 123 Wn.2d 160, 165, 866 P.2d 31 (1994).

A married couple's mutually expressed intent to terminate a community property agreement can be found in the language used by the couple and in the context in which the language was executed. *Estate of Bachmeier*, 147 Wn.2d 62, 66, 52 P.3d 22 (2002), citing *Higgins v. Stafford*, *supra*. Both the context and the express language used by the Wimberleys demonstrate their intent to terminate the community property agreement.

The Trust language stating "The Trustors intend this Trust to be the recipient of all their assets," and Letter of Intent revoke the prior Community Property Agreement. The Letter of Intent states specifically:

4. Any previous community property agreement entered into between the undersigned shall no longer be applicable to, and is thereby revoked with respect to, all property held by the undersigned in the Trust known as: The Wimberley Family Trust....

CP 175. The Trust and the pour over wills were part of a comprehensive estate plan to govern the distribution of all of their property. CP 359-364; CP 381-386; CP 111-176 Therefore, the Community Property Agreement of 1967 was revoked. It is not relevant to the matters in front of this Court

and does not dictate any aspect of distribution of the Trust or Margaret's estate.

Even if the community property agreement had not been revoked, at the time C.W. died, the Fromherz home was already titled in the name of the Trust and was not held or titled as community property. CP 52 and 86. The Fromherz property could never become the separate property of Margaret as urged by Jim because it was owned by the Trust. CP 7 at ¶ 4.

The Trust sets forth the precise method for distribution of the assets of the Trust. Upon the death of C.W., his will required all of his estate to be distributed to the Trust. CP 381. The assets of the Trust, which were all of the couples' assets based on C.W.'s will, the Trust language and the Letter of Intent and Declaration of Gift attached thereto, were to be immediately divided into the Survivor's Trust and the Decedent's Marital Share. The Decedent's Marital Share was then to be divided into two sub-Trusts, Trust B and Trust C. Trust B and Trust C were to be irrevocable and funded upon the death of the first Trustor, C.W. CP 148 & 151.

The testamentary intent of both Margaret and C.W. controls with regards to determining the meaning of the Trust. "In construing a will or trust, testamentary intent controls. Whenever possible, the intent of the settlors should be ascertained from the language of the instrument itself."

*Eisenbach v. Schneider*, 140 Wn.App. 641, 651, 166 P.3d 858 (2007)(*published in part*). If the language in a trust document provides a “clear and unambiguous directive,” the court must follow the intent of that language. *Id.* at 652. Courts primarily derive the intent of the Trustors “from the terms of the instrument—construing all the provisions together.” *Templeton v. Peoples National Bank of Washington*, 106 Wn.2d 304, 309, 722 P.2d 63 (1986), *quoting Old Nat’l Bank & Union Trust Co. v. Hughes*, 16 Wn.2d 584, 587, 134 P.2d 63 (1943).

Where the meaning of an instrument evidencing a trust is unambiguous, the instrument is not one requiring judicial construction or interpretation; if the intention may be gathered from its language without reference to rules of construction, there is no occasion to use such rules, and the actual intent may not be changed by construction.

*Id.* at 309, *quoting* 90 C.J.S. *Trusts* § 161, at 18-19 (1955).

A court must first evaluate the document alone and determine if there is any ambiguity requiring an examination of further evidence to resolve any issues created by the ambiguity. *Id.* at 309. Here, the trial court determined that the Trust language was clear and outlined the intentions of C.W. and Margaret Wimberley. The Trust unambiguously requires that three sub-trusts be funded upon the death of the first testator. The trusts “shall” be funded. CP 138 (“Upon the death of either Trustor the Surviving Trustee shall divide and allocate the Trust Estate into two



separate shares as described in the following section.”). The Decedent’s Marital Trusts (sub-Trust B and sub-Trust C) “shall be irrevocable.” CP 148 & 151. The language of the Trust is clear and unambiguous—Margaret was required to fund three separate trusts, two of which were to be irrevocable.

The trusts were to be funded as specifically set forth in the Trust.

Survivor’s Trust A was funded as follows upon the death of C.W.:

Survivor’s Trust A shall consist of the Survivor’s one-half (1/2) interest in the commonly owned property or community property, quasi-community property and all other property included in the Trust Estate as the separate property of the Surviving Trustor. Upon division into shares at the death of a Trustor, Survivor’s Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor. Upon the death of the Surviving Trustor this share shall become irrevocable.

CP 138.

Decedent’s Marital Share was funded as follows upon the death of C.W.:

Decedent’s Marital Share shall consist of the Decedent’s one-half (1/2) interest in the commonly owned property or community property of the Trust Estate, one-half (1/2) interest in the quasi-community property and all other property included in the Trust Estate as the Separate Property of the Decedent Trustor. Decedent’s Marital Share shall be divided and allocated into Decedent’s Trust B and C. Upon creation of such Trust shares, Decedent’s Trust B and Trust C are irrevocable.

CP 138-39.

The Trust language is unambiguous. The sub-trusts were to be funded. Margaret and C.W., during their lives, had essentially unfettered ability to do anything they wanted with any of the Trust assets. CP 127. However, upon the death of C.W., those unfettered powers were reined in with the requirement to place the decedent's one-half share of their estate into irrevocable trusts. CP 138-39. Margaret could choose how to fund those sub-trusts with the Trust assets that were part of the Trust at the time of C.W.'s death, within the terms of the Trust, but could not ignore the requirement that the trusts be funded with her husband's one-half of their estate.

Jim argues that the Trust language is so broad that she could manage, allocate and sell any of the Trust assets, regardless of the language requiring funding of sub-trusts. *Appellant's Brief*, page 29. While it is true that the Trust language on page 17 of the Trust (CP 127) gives broad authority to the trustees, this language must also be read in context with the other language found in the Trust—that C.W.'s share of the Trust was to be put aside and distributed equally to both sons.

The broad authority given to the trustees to manage the trust assets does not mean that the trustees can ignore their duty to distribute at the death of a Trustor. Based on the language, the trustees have full decision

making authority to manage the trust assets during their lives, but not the ability to revoke or amend the trust's distributions after one of the Trustors dies. Once either C.W. or Margaret died, the Trust changed into the three sub-trusts, which are governed by the subsequent language in the Trust document pertaining specifically to those trusts.

The Trust language is consistent with the intent of C.W. and Margaret at the time the Trust was entered because the Survivor's Trust allows the surviving Trustor to amend or revoke the Survivor's Trust and use its assets how he or she chose. The Decedent's trusts, on the other hand, are irrevocable. C.W.'s intention was that upon his death, his share of the Trust assets would be in sub-trusts, ultimately to be distributed equally to both of his sons.

When Margaret chose not to allocate specific assets to specific trusts, the Trust language dictates how the sub-trusts should be funded. Survivor's Trust A was automatically funded with ½ of the couples' interest in the community property which included the Fromherz road property. CP 138. Under the Letter of Intent and Declaration of Gift, all property owned or to be owned by C.W. and Margaret was considered community property. CP 175. Therefore, ½ of the interest in each of the assets was transferred to Survivor's Trust A. This includes ½ of the interest in the home, vehicles, bank accounts, and investment accounts.

Neither decedent had any separate property at the time of C.W.'s death. The Letter of Intent states that any separate property will be so designated in writing. CP 175. No such writings have been submitted to evidence at any time in these proceedings indicating that any property owned at the time of C.W.' death was separate property.

Decedent's Marital Share consisted of the other ½ of the interest in the couples' community property (including a ½ interest in the house, bank accounts, investments accounts and property). CP 175. The ½ interest in all of the property was then divided into two sub-trusts, Trust B and Trust C. CP 175. Trust B was intended to be funded up to the amount that could pass free of federal estate tax with the balance, if any, pled into Trust C. CP 141& 142. Margaret could have specifically determined which assets were to be included in each of these trusts at the time of C.W.'s death, but she did not do so. Regardless, ½ of the value of the couples' community property was put into Trust B and Trust C, and those two trusts were irrevocable and ultimately distributable in equal shares to Jim and Wesley. CP 138-39; CP 148 & 151.

The 07-07 Amendment to the Trust purports to amend the Decedent's irrevocable trust, but was unsuccessful because Margaret had no authority or right to amend the irrevocable trust. The Trust language dictates that the sub-trusts be funded upon the death of a Trustor and

become irrevocable at that time. Amendment 07-07 states:

Given the passing of C.W. Wimberley, the surviving spouse, Margaret V. Wimberley pursuant to her power to amend and revoke the trust as set forth in the trust agreement, now Amends the trust so as to fully comply with the Trust Laws of the State of Washington. Accordingly, the Trustor elects to make the following changes:

- A. Given the changes to the Federal Estate Tax laws, the Surviving Trustor/Trustee elects to not fund trust assets into what would be a 'decedent's trust'. As such the 'Specific Provisions for Settling Estate' located at page 26 and implemented at page 28 of the Trust shall be ignored. The Surviving Trustor shall have full use and control over all trust assets.

CP 178.

Margaret, however, did not have the authority under the Trust to amend or revoke the Decedent's trusts. The Trust is unambiguous that the sub-trusts were set up upon the death of a Trustor. The Trust set forth the default method of calculating what was in each sub-trust (1/2 of all assets into the Surviving Trust, and the remaining 1/2 into Trust B and Trust C). When Margaret didn't specify which assets were to be placed in which sub-trust upon C.W.'s death, the default provisions went into effect. She still could manage and access those assets under the terms of the trust, but the irrevocable sub-trusts were to be created and funded. Margaret could not simply do away with those Trusts. She had no authority to do so

under the unambiguous language of the Trust.<sup>6</sup>

Mr. Trefts took the language of the Trust and allocated the assets per the specific instructions of C.W. and Margaret. CP 51. Mr. Trefts also was required by the court's order to conduct an accounting for the trust assets starting at the date of C.W.'s death in 2002. CP 7 (paragraph 11). Mr. Trefts was hampered by Jim's failure to cooperate with the full accounting, and the incomplete records of how trust assets were used during the early years after C.W.'s death. CP 30-31. For that reason, Mr. Trefts asked the court to approve a different start date for his accounting.

C.W. died approximately eleven years prior to Margaret's death. CP 30. Since Margaret had access to the assets under the terms of the Trust, and had discretion as outlined therein, Mr. Trefts determined: "it would be costly and time-consuming for Petitioner to attempt to prepare an accounting for such a long period of time based upon incomplete evidence." CP 30. Based on these facts, the Court determined that the accounting could be done as of the date of Margaret's death, August 2,

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<sup>6</sup> Much is made of Richard Greiner's declaration testimony in Appellant's brief. However, it should be noted that Margaret sought independent legal advice from Marcus Fry, a respected elder law attorney in the Yakima area. Mr. Fry's declaration carries equal, if not greater weight. Mr. Greiner was removed by the court from his duties as Trust Protector due to his conflict of interest in being the Trust Protector and representing Jim Wimberley. CP 365-378; CP 344-346.

2010.

The preliminary accounting is as accurate as Jim allowed it to be, and therefore, the trial court's acceptance of it should be upheld. Under the trial court's order removing Jim as the trustee due to his breach of fiduciary duty, Jim was required to turn over all assets, account information, accounts and a list of assets previously distributed so that an independent accounting could be done. CP 56. Mr. Trefts did extensive work contacting Margaret's banks, investment bankers, and attorneys to determine the assets at the time of death. CP 30. On September 28, 2012, a preliminary initial accounting was sent to Jim with a letter requesting additional information from Jim. CP 31. The additional information included evidence regarding contested expenses found on the initial accounting. CP 31. On November 9, 2012, after receiving no response, Mr. Trefts sent Jim a letter indicating that unless Jim could prove otherwise, the initial accounting was going to be provided to the court for approval. CP 32. Jim never provided source documents for the contested amounts itemized in the initial accounting. CP 33.

Jim argues that the trial court committed error by approving the beginning date of the accounting as the date of Margaret's death. Jim claims that the accounting should relate back to the passing of C.W. so that the transfer of money by Margaret from the building account to a

different investment account can be evaluated. The change from a bank account to an investment account, held in either the name of the Trust or Margaret's name, has no bearing on the status of the funds or distribution. If the investment account is in the name of the Trust, then it is a Trust asset and will be distributed pursuant to the language of the Trust. If the investment account was in Margaret's name, then her pour over will automatically transfers the account to the Trust and it will be distributed pursuant to the language of the Trust. CP 359-364. There is no need to base the date of the accounting on a date other than Margaret's death.

Jim was the trustee of the Trust beginning in 2008 and failed to produce any evidence or an accounting prior to Margaret's death. He held all financial documents and had access to accounts and assets, yet failed to provide any information to the successor trustee when information was requested. Since evidence was not provided to the trial court regarding assets of the Trust prior to the date of Margaret's death, the court properly ruled that Margaret's date of death should be the starting date for the successor trustee's accounting.

The initial accounting provided to the court for approval outlines financial activity from the date of death as well as an expense allocation and a reconciliation of distributions. CP 39-51. The information was ascertained by the successor trustee after investigation and attempted



contact with both beneficiaries. When no further responses were being provided by Jim, Mr. Trefts brought the preliminary accounting to the court for approval, and, based on the evidence, the trial court properly approved the accounting.

The language of the trust, and therefore the intent of the Trustors, C.W. and Margaret, was followed by the successor trustee. Since the language of the Trust was followed in determining the preliminary accounting of assets, that preliminary accounting should be upheld by this Court.<sup>7</sup> The trial court was correct when it determined that “the trust documents manifest Mr. and Mrs. Wimberley’s intention clearly and inexplicably and it is those intentions which govern this proceeding.” CP 347. The trial court’s approval of the preliminary accounting and proposed distribution should be upheld.

**C. There is no dispute that Margaret wanted Jim to be distributed the 386 Fromherz property as part of his distribution from the Trust, but the Trust language requires that Wesley receive a distributive share, in money or other assets, for his percentage ownership of the home under the Trust language.**

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<sup>7</sup> It should be noted that the illustrative Appendices provided by Appellant are based on the erroneous belief that the Community Property Agreement executed in the 1960s by C.W. and Margaret somehow still controls how assets are to be distributed. Those appendices should not be considered by the Court.

Wesley has never disputed that Jim should receive, as part of his distributive share of the Trust, the home. What Wesley has argued, and what was properly determined by the trial court, is that Wesley had an undivided  $\frac{1}{4}$  interest in the home at the time of Margaret's death (or  $\frac{1}{2}$  of his father's  $\frac{1}{2}$  ownership). To give Jim 100% of the home, Wesley must receive other assets of equivalent value to his  $\frac{1}{4}$  interest in the home.

The preliminary accounting provided by Mr. Trefts is accurate. The Fromherz property was a trust asset on the date of C.W.'s death. As stated above, the Trust language required a split of the community assets into three sub-trusts at the death of C.W. One-half of the value of the home went into the Survivor's Trust, which could be used, allocated and distributed as Margaret wished, and the other half went into the Decedent's Marital Share (Trusts B and C), which was irrevocable. Distribution of the Decedent's Marital Share is dictated by the Trust, and is to be distributed equally to each beneficiary. CP 161.

Margaret indicated her desire to distribute the 386 Fromherz to Jim. In Amendment 07-07, she states:

The Trustor's primary residence located at 386 Fromherz Road, Yakima Wa. And all of the surrounding property, buildings, improvements and fixtures and supporting equipment used on that property shall be distributed unto Jim K. Wimberley as compensation time, labor and other resources in improving the property. This distribution shall not be subject offset against his share the residual trust.

CP 179 (grammatical errors in original). “It is axiomatic that a person cannot convey a greater interest in real estate than she owns.” *See v. Hennigar*, 151 Wn.App. 669, 674, 213 P.3d 941 (2009), *review denied*, 168 Wn.2d 1012, 227 P.3d 295 (2010); *citing Firth v. Lu*, 146 Wn.2d 608, 615, 49 P.3d 117 (2002). Margaret only controlled a one-half interest in the Fromherz home.

The language of the Trust outlining C.W.’s intent, coupled with Margaret’s desire to give Jim all of her interest in the property, results in Jim receiving a  $\frac{3}{4}$  interest in the property (Margaret’s Survivor’s Trust share of  $\frac{1}{2}$  plus a  $\frac{1}{4}$  interest in Decedent’s Trusts B & C). Wesley receives a  $\frac{1}{4}$  interest in the property through his  $\frac{1}{2}$  distribution of Decedent’s Trusts B and C.

Margaret did not specifically bequeath all of the interest in the home to Jim. Her language is clear that she wanted the home to be “distributed” to Jim as part of his inheritance. A trustee can choose to distribute certain trust assets to certain beneficiaries in satisfaction of their distributive share of the trust. RCW 11.98.070(15). Trustees are given broad authority under this statute to distribute individual trust assets as long as the trust is followed. *See In re Estate of Ehlers*, 80 Wn.App. 751, 757, 911 P.2d 1017 (1996). In the *Ehlers* case, the court held that a non

pro-rata distribution of estate property, even though the Trust stated that all of the beneficiaries were to be distributed “equal shares” of the Trust, was proper. *Id.* at 763; *see also* WAC 458-61A-202(2)(defining “nonpro rata distributions” for purposes of taxation).

Even if she wanted to bequeath to Jim 100% interest in the home without offset to Wesley, she did not have the authority to do so under the terms of the Trust because  $\frac{1}{2}$  of the home was held in Decedent’s Trusts B and C. She could only distribute to Jim the  $\frac{1}{2}$  share of the house found in her Survivor’s Trust A. The trustee is required by the language of the Trust to divide and distribute the Decedent’s Marital Share trusts equally between the two beneficiaries. Therefore, Jim is entitled to  $\frac{1}{2}$  of the  $\frac{1}{2}$  ownership interest in the house found in the Decedent’s Marital Share trust, or an additional  $\frac{1}{4}$  interest in the house. Jim was bequeathed  $\frac{3}{4}$  of the home under Margaret’s Amendment and the terms of C.W. and Margaret’s Trust.

In this case, the successor trustee has proposed distributing Jim the house, in total, as Margaret wished in her 07-07 Amendment and as allowed by RCW 11.96A.070(15). CP 51. To provide for a proper distribution, Wesley is provided a cash distribution of the value of  $\frac{1}{4}$  of the interest in the house—outlined by the Trustee to be \$75,000.00. CP 51. There is no argument from Jim that the value placed on the home

(\$300,000.00) is incorrect. Since the successor trustee must follow the Trust language as a whole, not only the 07-07 Amendment, and take into account both C.W. and Margaret's wishes, the successor trustee properly allocated the value of the home  $\frac{3}{4}$  to Jim and  $\frac{1}{4}$  to Wesley. The successor trustee also proposed a proper distribution by proposing to distribute 100% of the home to Jim, and distribute \$75,000.00 to Wesley to account for Wesley's  $\frac{1}{4}$  interest in the home. Similarly, the Building Fund can be distributed to Jim, with the funds in it as of the date of Margaret's death. Funds were removed from the building account by James and Margaret during the years 2008 through 2010 for work on the home and other purposes. The trial court's approval of the preliminary accounting with regards to the 386 Fromherz house and "Building Fund" is consistent with the language of the Trust and the intent of the Trustors, and should be upheld.

**D. The trial court's order voiding the Quit Claim Deed issued by Jim as Trustee to himself, and requiring Jim to return \$254,437.91 to the Trust due to his own over-distribution to himself should be upheld because Jim was found to have breached his fiduciary duties and was to return Trust assets to the successor trustee.**

The trial court properly voided the Quit Claim Deed executed by

Jim during his tenure as trustee, and properly required Jim to return Trust assets in the amount of \$254,437.91 to the Trust for proper distribution. The relief is necessary in order to protect and secure the trust assets until final distribution by the successor trustee. Jim executed the Quit Claim Deed, as Trustee of the Trust, on June 28, 2011, and recorded the deed on October 11, 2011. CP 52. Judge McCarthy determined that Jim had breached his fiduciary duties to the other beneficiary, Wesley, during the period of time that the deed was executed. CP 4-8. A successor trustee was appointed to evaluate the assets and actions of Jim during his tenure as trustee. CP 4-8. The successor trustee determined that Jim over-distributed himself significant cash resources from the Trust, \$254,437.91 according to the extensive accounting done by the successor trustee. CP 51. The successor trustee requested that the Quit Claim Deed be deemed null and void and the \$254,437.91 that Jim over-distributed to himself be returned to the Trust corpus, because Jim's distributions interfered with the successor trustee's ability to distribute the trust assets. Jim has subsequently represented to the trial court that he cannot return the money in a lump sum, which only increases the Trust's need to secure title to the Fromherz home.

Courts of equity have discretion to void a deed if it was improperly executed. *Rennebohm v. Rennebohm*, 153 Wash. 102, 108, 279 P. 402

(1929).

In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means, or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impress a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same; ... and a court of equity has jurisdiction to reach the property either in the hands of the original wrong-doer, or in the hands of a subsequent holder....

*Id.*, quoting *Pomeroy's Equity Jurisprudence*, § 1053.

The trustee owes to the beneficiaries of the trust the highest degree of good faith, diligence, fidelity, loyalty, and integrity, and the duty to deal fairly and justly with them and solely in their interests.

*Monroe v. Winn et.al.*, 16 Wn.2d 497, 508, 133 P.2d 952 (1943).

Here, Jim held a fiduciary position as trustee. "A trustee, as a fiduciary, owes beneficiaries the highest degree of good faith, care, loyalty and integrity." *Cook v. Brateng*, 158 Wn.App. 777, 785, 262 P.3d 1228 (2010), quoting in part *Esmieu v. Schrag*, 88 Wn.2d 490, 498, 563 P.2d 203 (1977)(quotation omitted). Jim distributed to himself 100% of the home without making a cash distribution to Wesley for ¼ of the value of the home. See CP 51. He also distributed to himself cash from bank accounts and paid for personal items, utilities, restaurant outings and other

non-Trust related items from Trust bank accounts, equaling an overpayment of \$254,437.91 to himself.

Jim was in a position of power with regards to the two brothers—the Trustee of the Wimberley Family Trust. He took advantage of his power by deeding himself the house (and making cash distributions to himself) and not providing any assets to Wesley. He had a heightened responsibility to Wesley. These facts justify the trial court's determination that the Quit Claim Deed should be null and void. The successor trustee should be able to properly distribute the assets of the Trust and the trial court's determination that the assets of the Trust be returned, including voiding the Quit Claim Deed should be upheld.<sup>8</sup>

**E. The trial court was correct in determining that Jim is required to pay rent to the Trust for his occupancy of the Trust-owned home until a proper distribution is made, pursuant to *In re Jones*.**

Jim improperly distributed the entire value of the Trust-owned property at 386 Fromherz to himself without providing for a distribution to Wesley of cash amounting to his ¼ share of the value of the home. Jim

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<sup>8</sup> It should be noted that there is no legal argument in Appellant's brief as to why the standard 12% rate of interest is improper, even though alleged to be incorrect in the Notice of Appeal. Since there is no legal briefing on this point, the Court should uphold the trial court's determination.



had been residing in the home during the course of his administration of the Trust and continues to reside in the home after he was removed from his role as Trustee for breaching his fiduciary duties, in part for residing in the home without paying rent. CP 7 (the facts found in that order and the court' decision were not appealed).

*In re Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) is instructive in this case. The *Jones* case involved similar circumstances. About one year after the death of his mother, Russell Jones (the personal representative) deeded himself the Jones home, in which he had lived for approximately 15 years prior to his mother's death. *Id.* at 12. At the time Russell Jones deeded himself the property, there was no agreement regarding distribution of the decedent's estate or agreement that Russell could live in the home rent free. *Id.* at 12. Russell did not offset his distribution by providing cash or other assets to the other three beneficiaries in an amount equal to their share of the home. *Id.* at 13. Russell used the property as his own without paying rent before the estate was closed for his personal benefit. *Id.* at 14. The court found that Russell breached his fiduciary duties for failure to pay rent, as well as his actions taken to transfer the property to himself without providing an offset. *Id.* at 12-13.

“[U]ntil the estate was closed, Russell had the rights of only an executor in the property. An executor is entitled to possess and control estate property during the

administration of the estate and has a right to it even against other heirs. However, as a general rule, an executor is accountable for his use of the deceased's real property. . . . If he chooses to use the house for his own benefit he must pay rent.

*Id.* at 14 (internal citation omitted).

Like the facts in the *Jones* case, title to the 386 Fromherz property was in the name of the Wimberley Family Trust, not Jim Wimberley. CP 232. Therefore, Jim could not own any portion of the home until a distribution is made. Until a distribution is made, rent must be paid for use of the Trust asset so that all beneficiaries' interests in the Trust are addressed.

Jim was the trustee of the Trust at the time of Margaret's death (and since 2008, two years prior to Margaret's death). He owed to Wesley the duty to deal fairly with him and in Wesley's interests with regards to all Trust assets, including the 386 Fromherz home, which was specifically deeded to the Trust. CP 232. Instead, he continued to live in the house and use Trust bank accounts to pay for utilities, garbage service, propane and other incidentals of occupancy, and, as a result, was removed as trustee for breaching his fiduciary duties. CP 7.

As successor trustee, Mr. Trefts now has an obligation to act in the best interest and deal fairly with both beneficiaries—Jim and Wesley. Since Jim has access to and is using a significant Trust asset, the 386

Fromherz home, and all of its improvements, fixtures, and personal property assets of the Trust found in the home, it is justifiable that Jim be required to pay \$800.00 per month rent to the Trust. The home has not been distributed yet, so Mr. Trefts is charged with maintaining the Trust assets for the benefit of both brothers. The trial court was correct in ordering that Jim pay rent to the Trust, from the date of Margaret's death until the property is properly distributed.

**F. The trial court was correct in allowing the successor trustee to amend its accounting with any newly discovered evidence because the successor trustee has a fiduciary duty to the beneficiaries to properly allocate and distribute the Trust assets pursuant to the Trust language.**

The trial court's order states that the successor trustee "has the right to amend his accounting to include newly discovered evidence, including without limitation the \$67,000 debt from Jim Wimberley to C.W. and Margaret Wimberley as indicated on Jim' dissolution decree." CP 345. As previously stated, the successor trustee owes a fiduciary duty to both Jim and Wesley to evaluate all Trust assets and make a proper distribution pursuant to the Trust language. The trial court's order does not tell the successor trustee that he has to account for the dissolution decree debt, but only that the successor trustee can amend his accounting

if newly discovered information about the Trust corpus emerges before final distribution. This allows the successor trustee to evaluate the debt and the legality of pursuing that debt, and amend the preliminary accounting if he finds it necessary.

Mr. Trefts has a fiduciary duty to the beneficiaries to explore and consider all assets and liabilities of the Trust corpus. He presented a preliminary accounting for approval by the court. The court then acknowledged his ability to amend the preliminary accounting prior to final distribution to ensure that the distribution to both beneficiaries is correct. This is a legitimate use of the trial court's discretion in this matter, and should be upheld.

**G. It is premature for the Court of Appeals to determine or consider issues for which there were no factual findings or legal conclusions made by the trial court.**

Jim attempts to supersede the trial court's authority to make decisions by bringing to the Court of Appeals issues that were not addressed in the trial court's order. Such issues are not within the scope of review of the Order Approving the Preliminary Accounting.

Jim asked for review only of the Order Approving Preliminary Accounting and Petition for Instructions. CP 348. The Notice of Appeal mentions nothing about his claims of financial exploitation, statute of

limitations arguments about Jim's divorce decree, challenges to money transfers to an investment account, or loans allegedly owed to the Trust by Wesley. The appellate court reviews the decisions that are designated in the notice of appeal. RAP 2.4(a). Only decisions that fall under subsections (b) through (f) are to be considered during the appeal even if they are not designated in the notice. RAP 2.4. Here, none of those subsections apply and the only issues before the Court are those specifically outlined in Judge McCarthy's Order Approving Preliminary Accounting and Petition for Instructions.

"With few exceptions, appellate review is limited to a consideration of matters ruled upon by the trial judge." *Snohomish County Builders Ass'n v. Snohomish Health District*, 8 Wn.App. 589, 593, 508 P.2d 617 (1973). Generally, courts decline to hear arguments on matters that were not considered at the trial court level. *See id.* "The function of ultimate fact finding is exclusively vested in the trial court." *Ewards v. Morrison-Knudsen Co.*, 61 Wn.2d 593, 598, 379 P.2d 735 (1963).

The following items discussed in Appellant's brief were not addressed in the trial court's Order:

1. Whether Wesley committed financial exploitation of his

mother and must be disinherited.<sup>9</sup>

2. Whether Margaret had the authority to transfer funds from one account to an investment account.

3. Whether Margaret's transfer of \$300,000 into a different investment account should be invalidated.

4. The amount that the successor trustee should value the "Building Account."

5. Whether Jim's debt outlined in the divorce decree is an enforceable debt.

6. Whether Wesley owes any money to the Trust due to loans made during Margaret's life.

These matters were not determined by the trial court, and no evidence was submitted by opposing parties because the issues were not properly before the court. The successor trustee's petition was filed on February 1, 2013 and provided to counsel. The hearing was set for May 24, 2013. Jim filed his response (CP 83-307) at 4:33 p.m. on May 21,

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<sup>9</sup> Wesley vehemently denies this allegation. Both Wesley and Jim have made claims against each other for abuse of their mother. Wesley filed a separate lawsuit regarding this issue in Yakima County Superior Court which is on hold pending the outcome of the accounting and now this appeal. There are extensive factual issues that need to be determined at trial (as can be reviewed in the Declaration of Marcus Fry, CP 320-343). If Jim wants the issue addressed, he should note it for trial.

2013, at the close of business three days before the hearing. Therefore, any substantive issues set forth in the Response were not properly noted for the court's review. As such, they also can not be considered as part of this appeal. Since the issues were not properly before the court, the trial court made no factual findings or legal conclusions on these issues. They are not within the scope of review in this appeal. RAP 2.4. The Court of Appeals should decline to make any determinations or decisions on the above-referenced issues.

## VI. CONCLUSION

The trial court, after hearing extensive argument and reviewing extensive briefing and documents, approved the preliminary accounting. It then issued instructions that the deed to 386 Fromherz should be voided, that the Trust assets Jim previously over-distributed to himself should be returned, that Jim owed the Trust money for rent due to his occupancy of the Trust-owned home, and that the successor trustee should be able to amend the preliminary accounting in the event additional evidenced warranted such amendment prior to final distribution.

Jim was removed as trustee after he breached his fiduciary duties to Wesley. The independent successor trustee investigated and provided an accurate preliminary accounting to the court. The court, after consideration and noting that the wishes of both C.W. and Margaret

Wimberley were outlined in their estate planning documents as a whole, instructed Jim to return Trust assets for proper distribution. The trial court's Order Approving Preliminary Accounting and For Instructions should be upheld.

**RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of April, 2014.

A handwritten signature in cursive script, appearing to read "Linda A. Sellers".

LINDA A. SELLERS, WSBA#

SARA L. WATKINS, WSBA#33656

Halverson Northwest P.C.

Attorneys for Carroll Wesley Wimberley, Respondent



**CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

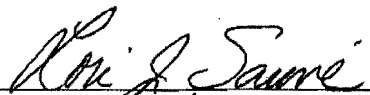
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**DATED** at Yakima, Washington, this 16<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
LORI J. SAUVÉ, Legal Assistant  
Halverson Northwest Law Group P.C.

**HALVERSON NORTHWEST LAW GROUP**

**April 16, 2014 - 10:52 AM**

**Transmittal Letter**

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Court of Appeals Case Number: 31757-9  
Party Represented: Respondent Carroll Wesley Wimberley  
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