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Supreme Court of the State of Washington Case No. 997594
Court of Appeals Case No 52630-1-II

**SUPREME COURT
OF THE STATE OF WASHINGTON**

IN RE THE MATTER OF
THE GORDON AND FRANCES SALES FAMILY TRUST
MICA JEAN McLEAN (aka WRIGHT), LUKE G. SPRAGUE,
ZECHARIAH E. SPRAGUE,

Petitioners,

v.

ECHO MARIE SALES and BRUCE GORDON SALES, Co-Successor
Trustees of the GORDON AND FRANCES SALES FAMILY TRUST,

Respondents,

PETITION FOR REVIEW FROM THE
WASHINGTON STATE COURT OF APPEALS
Case No 52630-1-II

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

With respect, the statement of issues presented for review by Mica Jean McLean (aka Wright), et al. (herein “Wright”) mischaracterizes the Opinion and Order of the Court of Appeals. Without intending to introduce new issues subject to potential review, the Respondent believes the following are the issues presented by the Petition for Review:

1. Did the trial court act correctly by interpreting paragraph 3.1 of the Abstract of Trust, or did it err by extrapolating the missing terms of paragraph 3.3 of the Trust, when reaching its findings and conclusions?
2. Did the trial court err in finding the Trust irrevocable upon Gordon Sales’ death?

II. STATEMENT OF THE CASE

On or about January 10, 1994, Gordon R. Sales and Frances J. Sales, husband and wife, (herein also “Trustors” and “Grantors”) executed a document titled the “Gordon and Frances Sales Family Trust: Certificate of Trustee’s Power and Authority and Abstract of Trust” (identified above as the “Abstract of Trust” or “Abstract”) CP at 019-029. The document itself states that Gordon R. Sales and Frances J. Sales had executed, at or before the time of their execution of the Abstract of Trust, an original Trust Agreement for the Gordon and Frances Sales Family Trust. *Id.* On May

25, 1994, Gordon R. Sales and Frances J. Sales filed the Abstract of Trust under Clallam County Auditor's File No. 706567. *Id.*

According to the terms set forth in the Abstract of Trust, Gordon R. Sales and Frances J. Sales were both the Grantors and the initial Co-Trustees of the Trust. CP at 019. Soon after filing the Abstract of Trust, Gordon R. Sales and Frances J. Sales funded the trust by transferring, at the very least, two or more parcels of property to themselves in their capacity as the Trustees of the Trust. CP at 061-069.

On October 6, 2000 Gordon R. Sales died leaving Frances J. Sales as the sole remaining Trustee of the Trust. CP at 221 (Petition) and 157 (Response to Petition). Over the next few years, Frances J. Sales sold real estate out of the Trust and deposited the proceeds of those sales into her own separate accounts. Petitioners' Opening Brief, page 31, lines 21-22. Unknown to Echo Sales, Frances J. Sales had died August 22, 2017. CP at 221 (Petition) and 158 (Response to Petition).

On the death of Frances J. Sales, Echo Marie Sales and Bruce Gordon Sales (hereafter "Sales") became the Successor Trustees of the Trust. CP at 020. On January 12, 2018, Sales filed their Petition for Determination of Beneficiaries' Interest joining Mica Jean McLean (aka Wright), personally, and in her capacity as the Personal Representative of the Estate of France J. Sales, along with the other listed beneficiaries, Luke

G. Sprague and Zechariah E. Sprague. CP at 218-219. The petition was filed pursuant to RCW 11.96A.040 and the procedure set forth in Chapter 11.96A of the Revised Code of Washington, the Trust and Estates Dispute Resolution Act (“TEDRA”).

In their TEDRA petition, Sales requested the court interpret the Trust to establish the beneficiaries of the Trust, establish the terms and Trustee’s authority under the Trust, and apply those terms to the actions of the prior Trustees of the Trust, namely Gordon R. Sales and Frances J. Sales. CP at 219 (paragraph 3.1 of the Petition). Unfortunately, neither the Trust nor a copy of the Trust could be located. CP at 030-031 Sales assumed in their petition that the terms set forth in the Abstract of Trust were the same as that of the Trust. CP at 220-221. Sales requested that once the terms of the Trust were established, that the court find that any transfers made by Frances J. Sales out of the Trust were void under RCW 11.98.078, that Frances J. Sales had breached her fiduciary duties to the beneficiaries of the Trust, and that title to real property that is or was in the name of the Trust be quieted in the Trust. CP at 219-220. Prior to trial, and in anticipation of an appeal on a ruling regarding the applicability and interpretation of the Abstract, the trial court ordered, by stipulation, that the matters before the court be bifurcated with the parties trying those issues regarding establishing terms of the Trust and the status of the Abstract first and any

issues regarding breach of fiduciary duty and the assets of the Trust at a later date. CP at 109-112.

At trial, the only evidence before the court was the Abstract of Trust, Deeds purportedly transferring real estate into the Trust, those facts stipulated to at trial, and those facts admitted in the petition and response to petition. CP at 019-029, RP at 5-7, and CP at 156-159 (regarding facts admitted in pleadings).

The trial court concluded after oral argument that, while the Abstract was not clear on all matters regarding the Trust, the Abstract was a reliable expression of Gordon R. Sales and Frances J. Sales' intentions regarding their Trust with regard to those matters before the court. RP at 26, lines 12-13, and RP at 26-29. Reading the terms set forth in the Abstract of Trust, the court determined that Gordon R. Sales and Frances J. Sales intended to form a Trust, make that trust irrevocable at the first of them to die, and prevent the survivor from removing assets from the Trust after the first spouse died. *Id.* On October 12, 2018 the court entered Findings of Fact and Conclusions of Law and a Partial Order on Merits. CP at 011-029.

On or about November 13, 2018, Wright filed a Motion for Discretionary Review before the Court of Appeals, Division II. Sales joined in the motion, not out of doubt regarding the trial court's determination, but only based on the belief that the matter would inevitably be appealed at the

conclusion of litigation and an interlocutory appeal avoided undue delay. Answer to Motion for Discretionary Review, pp. 6-7. On March 5, 2019 the Court of Appeals, Division II granted review. The only claims on appeal was that the Abstract of Trust is not a proper document on which to find and enforce the terms of the Trust and the trial court had improperly used “the Trust Abstract to re-create missing Trust terms.” Petitioners’ Opening Brief, pp. 2-3

In its unpublished opinion, the Court of Appeals upheld the trial court’s findings and conclusions by stating

that the trial court did not err by interpreting the Abstract of Trust to determine the terms of a missing Trust Agreement, did not use a certification under RCW 11.98.075 to determine the terms of the missing Trust, did not err by re-creating the terms of the missing Trust by interpreting the Abstract, and did not err in the challenged findings of fact and conclusions of law.

In re the Matter of The Gordon and Frances Sales Family Trust, Case No. 52630-1-II, (Nov. 10, 2020) (Unpublished Opinion) p. 32.

Wright now petitions the Supreme Court of the State of Washington to review the Appeals Court’s decision on the narrow allegation that the trial court and Appeals Court did not interpret the Abstract of Trust but “extrapolated” terms of the Abstract that the Trust became irrevocable upon the death of Gordon Sales. Petition for Review, p. 1 (Issues Presented for Review). Of note is that Wright does not appeal that part of the Appeals

Court's decision that the Abstract of Trust contains terms of the Trust that are binding on the parties. Wright only alleges that the Court went beyond the terms set forth therein. Petition for Review, pp. 7-12.

III. ARGUMENT

Wright's Petition for Review is brought under RAP 13.4(b)(1) alleging the Court of Appeals' decision is in conflict with a prior Supreme Court decision, and RAP 13.4.(b)(4) alleging that the matter involves an issue of substantial public interest. Neither of these allegations are true. Sales requests the Petition for Review be denied and for an order awarding Sales their attorney's fees and costs of responding to the Petition for Review pursuant to RAP 18.1(j) and RCW 11.96A.150(1).

A. The Court of Appeals' Decision is Not in Conflict with the Holding in *Sea-Van Investments Assocs. v. Hamilton*

Wright erroneously asserts that Supreme Court review is necessary because both the trial court and the Court of Appeals decisions are in conflict with the holding in *Sea-Van Investments Assocs. v. Hamilton*, 125 Wn.2d 120, 129, 881 P.2d 1035 (1994). *Sea-Van Investments*, in part, holds that a court cannot read into a contract a material term. *Id.* The Court of Appeals' decision is entirely consistent with *Sea-Van Investments*. The Court interpreted a material term of the Trust as that material term appears in the Abstract of Trust. Based on the language in the Abstract itself, the

Court determined that the Trust became irrevocable at the death of Gordon Sales. Ironically, Wright's request to overturn the trial court's, and now the Court of Appeals', decision violates the holding in *Sea-Van Investments Assocs. v. Hamilton*, 125 Wn.2d 120, 129, 881 P.2d 1035 (1994). By intentionally ignoring the stated terms of the Abstract, Wright asks the Court to "read into" the Trust a material term that is simply not there. That Wright disagrees with a material term of the Trust is not a basis for appeal under RAP 13.4(b).

Wright correctly states that "the Abstract is not a complete agreement, and it can **only** be relied upon as a full statement **of those provisions that it contains.**" Petition for Review, p. 10. Acknowledging this fact Wright then goes on to entirely ignore the language actually in the Abstract itself. *Id.* Paragraph 3.1 states, in relevant part:

3.1 Power in Grantors During Lifetimes of Both Grantors.
Subject to paragraph 3.3 (Irrevocability on Death of First Grantor Spouse), Grantors reserve the right at any time or times to amend or revoke this Trust Agreement and the Trusts hereunder, in whole or in part, by an instrument in writing, signed by both Grantors and delivered in Grantors' lifetimes to Trustee[.]

...

If this Trust Agreement is revoked in its entirety, the revocation shall take effect upon delivery of the required writing to Trustee.

CP at 021. In their Petition for Review, Wright fixates exclusively on the fact that paragraph 3.3, titled “Irrevocability on Death of First Grantor Spouse”, is missing from the Abstract. Wright incorrectly assumes that the Court of Appeals and trial court found the Trust irrevocable at Gordon Sale’s death only because of the title of the missing paragraph. In doing so, Wright refuses to give effect to the rest of the language in paragraph 3.1.

Paragraph 3.1 must be read as a whole. Paragraph 3.1 did allow Frances Sales to revoke, but only “by an instrument in writing, **signed by both Grantors** and delivered **in Grantors’ lifetimes** to Trustee[.]” CP at 021 (emphasis added). Absent specific instances set forth in statute, “Where the trust instrument specifies the method of revocation, only that method can be used.” *In re Estate of Furst*, 113 Wn.App. 839, 842, P.3d. 664 (2002). By focusing only on the missing paragraph 3.3, Wright ignores the balance of paragraph 3.1. In it we find that a revocation instrument must be (1) in writing, (2) signed by both Grantors, and (3) delivered to the Trustee during both of the Grantors’ lifetimes, in order to revoke the Trust. Had the reference to paragraph 3.3 been absent from paragraph 3.1 of the Abstract altogether, the Court would have more than sufficient basis to find that the Trust would be irrevocable at the death of Gordon Sales. Since Gordon Sales died, he, as Grantor, could no longer sign a document of revocation.

Under the holding *In re Estate of Furst*, the trust could not be revoked without his signature. *In re Estate of Furst*, 113 Wn.App. at 842-843.

In their Petition for Review, Wright properly notes that “the court cannot supply those missing provisions and then enforce the terms that the court creates. *Sea-Van Investments Assocs. v. Hamilton*, 125 Wn.2d 120, 129, 881 P.2d 1035 (1994).” Petition for Review, p. 11. This does not mean, however, that a court is authorized to turn a blind eye to a provision that is properly before the court. A court’s primary duty when interpreting a trust is to give effect to the trustor’s intent. *In re Guardianship of Jensen*, 187 Wn. App. 325, 331, 350 P.3d 654 (2015). “When possible, we determine the settlor’s intent from the language of the trust instrument as a whole, giving effect to each part of the trust instrument.” *In re Wash. Builders Ben. Tr.*, 173 Wn. App. 34, 75, 293 P.3d 1206 (2013). By ignoring the stated requirements in the Abstract regarding revocation of the Trust, Wright is specifically asking the court to NOT give effect to “each part of the trust instrument.” *Id.*

Wright appears to argue that since the Court of Appeals did not have ALL of the Trust provisions regarding revocation of the Trust that the Court of Appeals cannot enforce ANY of the known Trust provisions regarding revocation. That is not the legal standard set by any of the cases cited by Wright in their Petition for Review. The standard is that a contract must

only be “definite enough on material terms to allow enforcement without the court supplying those terms.” *Sea-Van Investments Assocs. v. Hamilton*, 125 Wn.2d 120, 129, 881 P.2d 1035 (1994). The Abstract sets forth a method for revocation of the Trust. The original Grantors did not revoke the Trust prior to the first of them dying, eliminated the only means of revoking the trust. The Trust thus became irrevocable. *See*, RCW 11.103.030. The terms set forth in paragraph 3.1 satisfy the standard set forth in *Sea-Van Investments*.

Since the Court of Appeals’ decision regarding The Gordon and Frances Sales Family Trust is consistent with both the word and spirit of the holding in *Sea-Van Investments Assocs. v. Hamilton*, 125 Wn.2d 120, 881 P.2d 1035 (1994), Wright’s Petition for Review must be denied.

B. The Petition Does Not Involve an Issue of Substantial Public Interest

The list of those interested in the matters set forth in the Petition for Review begins and ends with the parties to the action. While the issue of whether an Abstract or Certificate of Trust may be relied upon in lieu of the original of the Trust agreement may be a novel matter, that is not the basis of Wright’s Petition for Review. Wright admits the Abstract can be “relied upon as a full statement of those provisions that it contains.” Petition for Review, p. 10. The only matter that could possibly be of public interest is

settled and no longer before the Court. The matter set forth in the Petition for Review hinges only on the language in one paragraph, paragraph 3.1, in the specific Abstract, regarding the terms of a single trust agreement. Its interpretation has no applicability beyond The Gordon and Frances Sales Family Trust. Without an issue of public interest, let alone a substantial one, the Petition for Review must be denied.

C. Request for Fees

Since the Court of Appeals awarded Sales their attorney's fees to be paid from the Trust, Sales respectfully requests award of their attorney's fees and costs incurred in answering the Petition for Review. RAP 18.1(j) states in relevant part:

If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review.

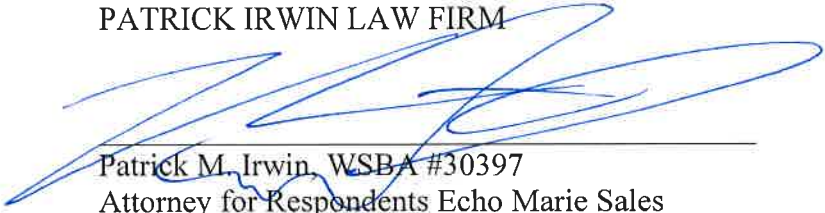
The Court of Appeals awarded Sales their attorney's fees and costs pursuant to RCW 11.96A.150(1). Wright did not challenge the award of Sales's attorney's fees and costs in the Petition for Review. The expense to answer the Petition is for the benefit of the Trust. The costs to answer should be borne by the Trust.

IV. CONCLUSION

Wright's appeal from the trial court to the Appeals Court did address an issue where there appears to be no direct caselaw. The issue was if an abstract or certificate of trust can be relied upon for those terms set forth in the abstract or certificate in lieu of the trust agreement itself when the full trust agreement is missing. Wright's Petition for Review to the Supreme Court of the State of Washington concedes that a court can rely on such a document to establish material terms of a trust based on the terms stated in the abstract or certificate. The Appeals Court read paragraph 3.1 of the Abstract and, by its expressed terms, found that the Trust became irrevocable on the death of Gordon R. Sales. According to each of the holdings cited by Wright in the Petition for Review, there is no basis under RAP 13.4(b)(1) or (4) for the Supreme Court to accept review of the Appeals Court's opinion and order.

Respectfully submitted this 7th day of June, 2020.

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CERTIFICATE OF SERVICE

I, Sheri Summers, certify and state as follows:


That on the 4th day of June, 2021, the undersigned caused the attached Respondents' Answer to Petition for Review in the above matter to be filed with the Supreme Court of the State of Washington and served on the attorneys of record via the Washington State Appellate Courts' Portal as follows:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this 4th day of June, 2021, at Port Angeles, Washington.


Sheri Summers

PATRICK IRWIN LAW FIRM

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