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COURT OF APPEALS, DIVISION I NO. 74201-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

In Re:

MARITAL TRUST B CREATED UNDER THE LAST WILL AND TESTAMENT OF FELECIA A. GRAHAM DATED OCTOBER 26, 1988 F/B/O FREDERICK A. GRAHAM,

BANK OF AMERICA,

Respondent,

Adv.

FREDERICK A. GRAHAM,

Appellant.

PETITION FOR REVIEW OF APPELLANT FREDERICK A. GRAHAM

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I. IDENTITY OF PETITIONER

Frederick Graham asks this Court to accept review of the decision designated in Part II.

II. COURT OF APPEALS DECISION

The Court of Appeals erred by refusing to rule on the request of Mr. Graham for a determination of the rights and legal relations of the parties interested in the Trust despite the clear and unconditional provisions of RCW 11.96A.080(1) and RCW 11.96A.030(2)(a) that entitle Mr. Graham to such a determination. In an unpublished decision filed November 28, 2016, Division One of the Court of Appeals upheld the grant of summary judgment by the trial court in favor of Bank of America, N.A. ("Trustee") as to the issue of distributions to be made to Mr. Graham from a trust established by his deceased mother ("Trust"). The Court of Appeals, however, declined to decide the issue of who owns the interests in the Trust affected by the distribution decision, concluding that resolution of the Trust ownership issue was "superfluous" to the distribution issue before the Court of Appeals and the trial court. The unpublished decision is in the Appendix at Appendix 1 – 17. On December 20, 2016 the Court of Appeals denied the motion of Mr. Graham for reconsideration of the opinion. A copy of the order denying the motion for reconsideration is in the Appendix at Appendix 18.

III. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err in not determining the rights and legal relations of the persons interested in a trust when a party interested in the

trust has requested such a determination pursuant to RCW 11.96A.080(1) and RCW 11.96A.030(2)(a), which statutes provide that any party interested in a trust under the Trust and Estate Dispute Resolution Act ("TEDRA") may have a judicial proceeding for a determination of trust interests?

IV. STATEMENT OF THE CASE

A. The Trustee's Petition for Instructions, Mr. Graham's Response and the Trustee's Reply.

Mr. Graham is the sole lifetime beneficiary of the Trust. The Trust directs the Trustee to pay Trust income to Mr. Graham and authorizes discretionary distributions of principal if the income payments are insufficient to provide for his "proper support in his...accustomed manner of living...." CP 13. Upon Mr. Graham's death, the Trust "shall be distributed as he shall appoint or provide by his will or, in the absence of such appointment or provision, to his estate." CP 17.

The income from the Trust proved to be insufficient to provide support to Mr. Graham in his accustomed manner of living. The Trustee, citing "the beneficial interest of the remaindermen of the Trust" among other factors, declined to distribute principal sufficient to support Mr. Graham as required. CP 53. Mr. Graham disputed the Trustee's assertion that the interest of the "remaindermen" is a separate and distinct interest from, and in conflict with, his own interests in the Trust. His position was, and is, that there can be no conflict between his current interest and the vested (future) remainder interest because he owns and controls both

interests. Mr. Graham controls the remainder interest since he has a testamentary general power to appoint the remainder to any person (or, if he makes no appointment, the remainder will pass to his estate, where the disposition of the assets of his estate will be decided by his will or by intestate succession pursuant to RCW 11.04.015.)[1] CP 1-2. Thus, the right of any person to receive any portion of the remainder interest in the Trust is subject to the control of the owner of that interest (Mr. Graham). At law such a person's "right to inherit" is a mere expectancy during the lifetime of the estate owner and is not a legally enforceable interest (present or future) in the property of the owner. *Estate of Wiltermood*, 78 Wn.2d 238, 242, 472 P.2d 536 (1970).

In September 2014, Mr. Graham and the Trust attempted to resolve the dispute over who controlled the remainder interest in a nonjudicial TEDRA agreement under RCW 11.96A.220. However, alleging that the remainder interest in Mr. Graham's estate "is separate and distinct from that of Mr. Graham," CP 2, the Trustee petitioned the King County Superior Court for appointment of a Special Representative to represent that interest for purposes of executing the nonjudicial agreement. CP 1–23.

[1] An owner's right to dispose of the assets of his/her estate has been the rule in the common law world at least since the 13th Century. Magna Carta, § 18 (1215). Intestate succession rules for the disposition of property in the estate of the owner have been in effect in Washington since before statehood. *See* Code of 1881, § 3302 *et seq*. Property ownership is "the right to possess, to exclude others, and to dispose of property." *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 829 P.2d 765 (1992); *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 787 P.2d 907 (1990); *Lange v. State*, 86 Wn.2d 585, 590, 547 P.2d 282 (1976) ("'Ownership' in property has long been conceived as a 'complex of rights' including the right to use and enjoy the thing owned and the 'right to consume, destroy or alienate the thing.'") P. Fitzgerald, *Salmond on Jurisprudence* 246047 (12th ed. 1966).

An *ex parte* order was granted on September 23, 2014, appointing William L. Fleming as Special Representative to represent the putative remainder interest. CP 24–25.

The negotiations were unsuccessful, and, pursuant to TEDRA, on October 1, 2014, the Trustee filed a Petition for Instructions. CP 26–51. Alleging that the estate of Mr. Graham held the remainder interest in the Trust, the Trustee argued that the remainder interest conflicts with Mr. Graham's current vested interests in the Trust and that the appointment of Mr. Fleming as guardian ad litem to represent the estate of Mr. Graham as the remainder interest in the dispute was required. CP 29-33. The Trustee specifically noted that it sought the appointment of a guardian ad litem to represent the remainder interest so that it could enter into a binding nonjudicial agreement with Mr. Graham under RCW 11.96A.220, which requires that all "parties" (defined in TEDRA to include any persons interested in a trust) execute the agreement. CP 28. Mr. Fleming agreed to serve in that capacity and to continue to serve as Special Representative for purposes of any future nonjudicial agreement regarding the Trust. CP 57–58.

Mr. Graham's Response to the Petition denied the existence of a remainder beneficial interest in the Trust separate, distinct, and in conflict with his own interests in the Trust and asked for a hearing on that issue. CP 59–100 at 63–64. In addition, Mr. Graham alleged that by advocating against him and in favor of a separate remainder interest not owned and controlled by Mr. Graham, and by refusing to allow his attorney's fees to

be paid by the Trust, the Trustee violated its statutory fiduciary duties of loyalty and neutrality between beneficiaries. CP 74-78.

In its Reply, the Trustee agreed that the nature of the remainder interest "is a threshold issue that determines the proper parties to this matter." CP 101–107 at 102. One obvious reason that the question is a threshold issue is that any nonjudicial agreement respecting the Trust, including one resolving a dispute between the Trustee and any beneficiary, must be signed by all parties. RCW 11.96A.220.[2] Also in its Reply, the Trustee denied that it had violated its duty of loyalty. CP 105.

After a hearing on December 5, 2014, Commissioner Nancy Bradburn-Johnson identified the threshold issue in dispute as "the nature, extent, and representation of the remainder interest" and she referred the issue to the trial court for a resolution. CP 108–10.

B. The Initial Cross-Motions for Partial Summary Judgment.

On January 9, 2015, Mr. Graham and the Trustee filed cross-motions for summary judgment. CP 111–43; 144-81. Mr. Graham's motion asked the trial court to determine that there is no remainder interest in the Trust separate from, and in conflict with, his own interests. CP 112. Mr. Graham argued there was no need or role for a GAL. *Id.* In its motion, the Trustee argued to the contrary that there are unascertained

[2] And, this issue continues to this day. How can a decision of the Court of Appeals be binding on the parties interested in the Trust if the court has refused to identify those parties and to afford them the opportunity to be heard before passing judgment on their interests? Similarly, no question of trust administration can be resolved (fees to the Trustee, early termination of the trust, different investment of trust assets, unitrust or greater trust payout, etc.) unless all parties interested in the Trust have received notice and been given the opportunity to be heard. *See* RCW 11.96A.110; CR 54.

remainder beneficiaries of the Trust with an interest independent from, and in conflict with, the interest of Mr. Graham. CP 152-55. It identified the unascertained interest holder as Mr. Graham's "Estate," while simultaneously acknowledging that his estate does not exist until Mr. Graham's death. CP 153. It asked the trial court to order that a vested Trust remainder interest exists and requires continuing independent representation by Mr. Fleming as Guardian ad Litem. CP 155.

By order dated February 10, 2015, the trial court denied Mr. Graham's motion and granted the Trustee's motion, making the express determination that "there is a separate remainder interest," which it referred to as the "unascertained remaindermen."[3] CP 340-44 at 342. However, in denying the Trustee's request for appointment of a GAL, the court found that "both the objective of the Trustor and the plan of distribution encompass the possibility that little or nothing will remain for the unascertained remaindermen when the life interest terminates." CP 342. For that reason, the court found no conflict between the remainder interest and Mr. Graham's interest as the lifetime beneficiary, holding that, "under such circumstances," Mr. Graham "may virtually represent the remainder interest." *Id.* However, it added, "If circumstances arise where there is a conflict between the parties, either

[3] There is nothing "unascertained" about the remainder interest in the Trust. It will go as Mr. Graham appoints in his will (an ownership right of disposition held by Mr. Graham); or it will go to the personal representative of the estate of Mr. Graham where it will be disposed of as directed by Mr. Graham in his will (an ownership right held by Mr. Graham) or by intestate succession (the state's "will" for the disposition of property owned by Mr. Graham.)

party may seek further relief from the Court, including appointment of a GAL." CP 342-43.

The order failed to resolve the threshold issue, leaving it for a future resolution and instead sought to give something to each side in the immediate dispute: It recognized a separate remainder interest but found that that interest is not in conflict with Mr. Graham's interest as to the issue of discretionary principal distributions, *Id*., despite the fact that principal distributions to him will result in "less remaining in the Trust for whoever will receive the remaining Trust assets after his death...." CP 228. Unfortunately, the order dodged the question of whether Mr. Graham alone owned and controlled the remainder interest. If Mr. Graham was determined to own the remainder interest, that determination would have negated the procedural question under RCW 11.96A.110 as to who could virtually represent the remainder interest since if Mr. Graham owned that remainder interest there would be no other owner of the interest and no one for either a GAL or Mr. Graham to virtually represent. The decision of who owned the remainder interest in the Trust would then be the rule of the case to be applied in all other Trust administration matters, including, and perhaps of paramount importance, the issue of whether Mr. Graham and the Trustee may enter into a nonjudicial agreement on any additional Trust issue that might arise without the necessity of once again securing the appointment, approval, and signature of a GAL.

In denying Mr. Graham's subsequently filed Motion for Reconsideration, the trial court elaborated on its earlier order, stating that it "agrees [with the Trustee's position that] there is a separate remainder interest," and that the Trust "creates unascertainable remainder beneficiaries as posited by the Trustee." CP 357-58. This ruling is incorrect because Mr. Graham and only Mr. Graham can contractually bind his own future decedent's estate and Mr. Graham's potential heirs or appointees have only a mere expectancy and not a legally protected interest. See *Estate of Wiltermood*, *supra*.

C. The Subsequent Cross-Motions Summary Judgment.

On September 4, 2015, the Trustee moved for summary judgment as to all remaining claims, asserting, *inter alia*, that Mr. Graham's claims for breach of fiduciary duty should be dismissed as a matter of law. CP 359-74. More specifically, it asserted that the trial court's earlier ruling agreeing with the Trustee that a separate remainder interest exists also fully "resolved" Mr. Graham's breach of fiduciary duty claim insofar as it related to the duty of impartiality. CP 364. The Trustee further argued that the earlier ruling approving the distribution methodology similarly and implicitly resolved the claim for breach of loyalty. *Id.* Finally, it argued that because it was statutorily authorized to petition the court for instructions, doing so adversely to Mr. Graham had not violated its fiduciary duty to its beneficiary, Mr. Graham. CP 367-70.

Mr. Graham opposed the motion and filed a cross-motion asking the court to determine the Trustee's liability for breach of fiduciary duty as

a matter of law, to require the Trustee to reimburse the Trust for its fees and attorney's fees which had been paid from the Trust, and to require it to pay Mr. Graham's attorney's fees. CP 375-409.

Based on oral findings and conclusions made at the October 9, 2015, hearing on the cross-motions, VRP 24-25, the trial court entered an order dismissing the remaining claims.[4] The court's determinative finding was that the Trustee had merely petitioned for a judicial determination as to the existence of a separate vested, future, remainder interest and what the Trustee's obligation to it was, distinguishing case law holding that where there are two competing beneficiaries, a trustee may not take a position in conflict with one of them. CP 428-29.

Mr. Graham then appealed this matter to the Court of Appeals. The first issue upon which Mr. Graham sought appellate review (and the only issue upon which Mr. Graham petitions this Court for review) was whether Mr. Graham owns the vested (future) remainder interest in the Trust. Unfortunately, the Court of Appeals declined to rule on this issue, deeming it "superfluous and unnecessary" to the trial court's summary judgment decision. As discussed below, the Court's opinion failed to grant Mr. Graham a ruling on the rights and relations of parties interested in the Trust, to which he expressly is statutorily entitled to receive under TEDRA.

[4] It did, however, subsequently enter two orders directing that Mr. Graham's attorney's fees should be paid from the Trust. Those orders were not appealed by the Trustee.

V. ARGUMENT

RCW 11.96A.080 states that "…any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any *matter*, as defined by RCW 11.96A.030…." (Emphasis added). In turn, RCW 11.96A.030(2)(a) provides that a "matter" includes "*[t]he determination of any* class of creditors, devisees, legatees, heirs, next of kin, or other *persons interested in* an estate, *trust*, nonprobate asset, or with respect to any other asset or property interest passing at death…." (Emphasis added). RCW 11.96A.030(5) provides that "party" means, among other things, a beneficiary—a definition which plainly includes Mr. Graham.

In accordance with the provisions of TEDRA, Mr. Graham sought a declaratory judgment requesting that the issue of the persons interested in the Trust be resolved in order to effect proper trust administration then and in the future. Specifically, Mr. Graham (and the Trustee) wished to ascertain the parties interested in the Trust so they could negotiate and enter into a potential nonjudicial agreement under TEDRA regarding the assets held in the Trust. Trust issues requiring the identity of the parties in order to obtain an enforceable TEDRA agreement or court ruling run the gamut from fees charged by the trustee to trust tax, distribution and termination issues.

By statute, for such an agreement to be effective, it must be signed by all "parties." RCW 11.96A.220. Since "party" is broadly defined by TEDRA to include "Any…person who has an interest in the subject of the

particular proceeding," and has been interpreted to mean anyone who has a legally cognizable interest in a trust, *In re Estate of Bernard*, 182 Wn. App. 692, 725, 332 P.3d 480 (2014), Mr. Graham and the Trustee both agreed to such a determination of who owned the interests in the Trust as necessary in order to reach a binding TEDRA agreement.

By declining to provide a declaration of rights and a definitive identity of the parties with such rights interested in the Trust, the Court of Appeals failed to identify who is required to sign a nonjudicial TEDRA agreement regarding the Trust in order for the agreement to be binding. The Court's decision thus entirely frustrates the ability of both Mr. Graham and the Trustee to negotiate and reach such an agreement (or effectively to litigate issues to a binding conclusion). The Court's failure to declare the rights and identity of the parties necessary to reach an enforceable nonjudicial agreement under TEDRA is contrary to the holding of the Washington Supreme Court in *In re Estate of Becker*, 177 Wn.2d 242, 249, 298 P.3d 720 (2013) and the Washington Court of Appeals in *In re Estate of Bernard*, 182 Wn. App. 692, 724, 332 P.3d 480 (2014).[5]

In *Becker*, various individuals claiming an interest in the decedent's estate attempted to enter into a nonjudicial TEDRA agreement. *Becker*, 177 Wn.2d at 245. However, the surviving spouse of the decedent

[5] Since the Court of Appeals opinion is in conflict with a decision of the Supreme Court and a published decision of the Court of Appeals, discretionary review is warranted under RAP 13.4(b)(1) and (2).

refused to sign the agreement. To determine whether the agreement was valid, the Court first had to determine whether the surviving spouse was a "party" under TEDRA. If she was, her signature was necessary for the TEDRA agreement to be effective. The Court ultimately ruled that the surviving spouse was a "party." Since she had not signed the purported TEDRA agreement, it was ineffective.

In *Bernard*, the Court of Appeals was similarly faced with the question of the identity of the necessary parties to a TEDRA agreement. *Bernard*, 782 Wn. App. at 723. The *Bernard* court determined that the individuals contesting the TEDRA agreement at issue in that instance were not "parties," and thus their signature was not required in order to enter into a binding agreement. Both courts clearly recognized the ability of the litigants and indeed the necessity of determining which individuals must execute a TEDRA agreement in order for it to be binding.

As with the parties in *Becker* and *Bernard*, Mr. Graham asked for a ruling declaring the identity of the parties interested in the Trust in order to determine who, if anyone, needed to be represented by a GAL in litigation or in signing a TEDRA agreement. The Court of Appeals apparently distinguished *Becker* and *Bernard* on the grounds that, in each, a TEDRA agreement had already been signed, whereas here, no agreement has been reached because Mr. Graham and the Trustee needed to first identify the necessary parties to such an agreement in an effort to prevent the agreement from being attacked in the future as not having been executed by all necessary parties. If this distinction was in fact the basis

for the Court of Appeals' opinion, Mr. Graham respectfully submits that the court erred in its reading of TEDRA.

As noted above, TEDRA plainly provides for an action for the "declaration of rights or legal relations" with respect to persons interested in a trust. RCW 11.96A.080. At oral argument before the Court of Appeals, counsel for the Trustee likened its Petition for Instructions, which sought a determination of the parties interested in the Trust, to "a declaratory judgment action." 13:10-11. The Trustee's counsel also stated: "We're seeking a declaration of the rights of the parties here." *Id.*, 13:11-12. It is impossible to reconcile the Court of Appeals' refusal to declare the identity of the parties interested in the Trust when this relief was requested by *both parties* before it and such relief is expressly provided for and allowed by TEDRA.

Unfortunately, the following statement in the Court of Appeals' opinion is both inaccurate and misconstrues the nature of a TEDRA petition for instructions:

> We decline to rule on whether "remainder beneficiaries" may attack a nonjudicial agreement in the future and whether future trust decisions will first require a determination of whether they require a GAL. These controversies have not arisen.

First, this statement is inaccurate because a controversy *had arisen* over whether a GAL was needed before Mr. Graham and the Trustee could enter into a nonjudicial agreement. It was that controversy that led the Trustee to file its Petition for Instructions and was explicitly one of the

reasons the petition was filed. Further, the statement misconstrues the nature of a TEDRA petition because, even if a controversy had not arisen, TEDRA clearly provides that parties may have an action for a declaration of rights as to who has an interest in a trust.

Ignoring the parties' request for a declaration of the ownership interests in the Trust for purposes of entering into a non-judicial agreement, the Court of Appeals instead narrowly focused on whether the issue of the ownership interests in the Trust was relevant to the separate issue of the proper amount of distributions to be made to Mr. Graham under the Trust. Indeed, the Court of Appeals asked at oral argument: "Why do we need to reach the issue of whether or not there are two interests to resolve this case?" The answer is clear: The Court needed to reach the issue because it was raised by the parties as a request for declaratory relief as provided for in TEDRA. Resolution of the issue is critical for proper trust administration including the beneficiary's ability to enter into binding nonjudicial agreements and for any binding judicial determination. The declaration of the identity of the necessary parties to such an agreement is *separate and apart* from the distribution plan issue. Counsel for the Trustee answered the Court's question as follows: "Because the trustee brought a petition for instruction seeking guidance from the trial court. It had been negotiating at length with Mr. Graham over twelve months" in an effort to reach a nonjudicial agreement. There was simply no basis for the Court of Appeals to decline to rule on the

declaratory relief requested by the parties and plainly provided for by TEDRA.[6]

VI. CONCLUSION

The Courts below erred in not resolving the issue of the nature, identity and ownership of the remainder interest. What persons are necessary to sign an enforceable TEDRA agreement or are to be bound by an adjudication involving the Trust remains unresolved.

RESPECTFULLY SUBMITTED this 19th day of January, 2017.

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[6] The Court of Appeals appears to have concluded that since the trustee voluntarily elected to disregard the remainder interest in the Trust in deciding on a distribution amount and/or methodology for distribution to Mr. Graham, the Court need not determine who owned the affected remainder interest. That position is wrong on three counts: (i) the trustee's conduct is voluntary, and it easily could reverse its position as to future distributions; (ii) one's rights in a trust are not lost simply because the trustee elects to ignore them; and (iii) Mr. Graham asked for a declaratory determination of the ownership of Trust interests independent of the distribution question.

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the below date, I caused a true copy of the foregoing document, to be delivered to counsel at their regular office address below in the manner indicated:

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Signed at Seattle, Washington this 19th day of January, 2017.

Mary Philomeno, Legal Assistant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the MARITAL TRUST B CREATED UNDER THE LAST WILL AND TESTAMENT OF FELECIA A. GRAHAM DATED OCTOBER 26, 1988, F/B/O FREDERICK A. GRAHAM. BANK OF AMERICA, N.A., Respondent, v. FREDERICK A. GRAHAM, Appellant.	No. 74201-9-I DIVISION ONE UNPUBLISHED OPINION FILED: November 28, 2016

LEACH, J. — Frederick Graham, the beneficiary of his mother's testamentary trust, appeals the trial court's approval of the trustee's distribution plan and dismissal of his claim that the trustee breached its fiduciary duty. He also challenges the trial court's statement that a "separate remainder interest" in the trust exists. Finally, he contends that the trustee violated its fiduciary duty by asserting in a pleading that this interest exists. But Graham does not challenge the trial court's decision that the trustee, Bank of America, N.A. (the Bank), did not abuse its discretion by creating the distribution plan. We decline to review the trial court's statement about a remainder interest because it is superfluous.

And because the Bank did not advocate for one beneficiary's share in a particular fund at another beneficiary's expense but rather advanced a position to protect the purposes of the trust, it did not breach its fiduciary duty. Accordingly, we affirm. As a result, we deny Graham's request that the Bank reimburse the trust for its trial court attorney fees. And because Graham's appeal does not benefit the trust, we deny his request for appellate fees and costs.

FACTS

Felecia Graham established a testamentary trust benefitting her husband, Donald Graham Jr. and giving a remainder interest to her two sons, Frederick and Donald III. Felicia died in 2001. In 2012, Donald Jr. relinquished his lifetime interest in the trust by agreement with his sons. The agreement divided the trust into two subtrusts, one for the benefit of each son. This appeal concerns the subtrust (hereinafter "the trust") for Frederick Graham.[1]

The trust directs the trustee to pay the trust income to Graham annually for the rest of his life. It also permits the trustee to make distributions from the principal in certain circumstances:

> If . . . in the judgment of the Trustee the aggregate income payable to any descendant, together with the other resources and income of such beneficiary which the Trustee deems to be reasonably available to him or to her for such purposes . . . shall be insufficient

[1] The appellant, Frederick Graham, is referred to here as "Graham." Other members of the Graham family are referred to by their first names. No disrespect is intended.

> to provide for the proper support in his or her accustomed manner of living . . . , the Trustee may distribute or expend for the benefit of such beneficiary such portion of the principal of [the trust] as the Trustee shall deem necessary for such purpose under the circumstances.

The trust also provides that when Graham dies, his interest "shall be distributed as he shall appoint or provide by his will or, in the absence of such appointment or provision, to his estate."

When the Bank became the trustee, it anticipated that the trust would generate about $200,000 in annual income. The Bank distributed the trust income annually to Graham. In late 2013, Graham requested that the Bank convert the trust from a net income trust to a four percent unitrust.[2] This would allow Graham to receive annually four percent of the trust's value—around $320,000—instead of the trust's annual income. The Bank agreed and began working on a nonjudicial agreement to make the requested change.[3]

Graham then began requesting increasing distributions of both income and principal, asserting that the income alone was not enough to support his "accustomed manner of living."[4] The Bank determined that it could not meet Graham's requests through a unitrust and that "further due diligence was required before making such significant decisions about discretionary

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[2] See RCW 11.104A.040. A "unitrust" is one "from which a fixed percentage of the fair market value of the trust's assets, valued annually, is paid each year to the beneficiary." BLACK'S LAW DICTIONARY 1748 (10th ed. 2014).

[3] See RCW 11.104A.040.

[4] Graham eventually requested $760,000 annually.

distributions." Noting that the trust permits it to consider Graham's other sources of income in making discretionary distributions, the Bank performed a stochastic analysis to determine how to provide sufficient distributions to support his living standard.[5] Seeking to apply the terms of the trust, the Bank considered numerous factors, including Graham's father's life expectancy, Graham's spending habits over the previous five years, market fluctuations, inflation, income taxation, trust administration expenses, and "prudent investment strategy."[6] The Bank concluded that $661,974 was an appropriate annual distribution that would permit Graham to receive distributions for 10 years—his father's life expectancy.

Graham did not agree. The parties attempted but failed to negotiate an agreement under the Trust and Estate Dispute Resolution Act (TEDRA).[7] The

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[5] "[S]tochastic analysis essentially takes the goal of the portfolio"—here, to provide distributions to Graham for the rest of his father's life—"and then runs thousands of hypothetical 'what-if' scenarios to generate a wide range of statistically-representative, possible future results." The Bank chose a plan "where 95% of the results generated by the 'what-if' scenarios resulted in a success, which maximizes annual disbursements with the greatest likelihood that the Trust will last Donald Graham, Jr.'s lifetime."

[6] While the Bank stated that it gave "due regard to the respective interests of [Graham] and the remaindermen," it chose the maximum amount it could distribute to Graham that would allow the principal to last for 10 years. Any principal left for a remainder interest would thus be incidental.

[7] Ch. 11.96A RCW. During these negotiations, the trial court granted the Bank's petition that it appoint William L. Fleming as a special representative for "yet unascertained vested remaindermen of the Trust." The trial court dismissed Fleming at summary judgment, finding the remainder's interests did not conflict with Graham's.

Bank then petitioned the trial court for guidance. The Bank asserted the propriety of its methods for determining the distribution amount. It also asserted that because the trust provides that the remainder of Graham's interest go to persons he appoints or to his estate, a separate remainder interest existed. The Bank reasoned that Graham had a conflict of interest with that remainder interest because distributions from the trust to Graham would inevitably reduce the amount left for Graham's estate or appointees. The Bank asserted that the remainder interest thus needed a guardian ad litem (GAL) to represent it. Both parties moved for summary judgment. Graham alleged that the Bank had breached its fiduciary duty by asserting a position adverse to his.

The trial court granted the Bank's motion and denied Graham's. The court approved the Bank's methods for developing its distribution plan and found that the Bank did not abuse its discretion as trustee. The court also noted that it agreed with the Bank that "there is a separate remainder interest" in the trust. It concluded, though, that Graham's interests do not conflict with those of the remainder because the trustor's intent and the Bank's plan "encompass the possibility that little or nothing will remain for the unascertained remaindermen when the life interest terminates." Finally, the trial court "reserve[d] ruling on whether," should a later conflict develop between Graham and the Bank, "virtual representation is appropriate, a GAL must be appointed, or other relief is

warranted." Graham appeals the trial court's grant of summary judgment for the Bank, denial of Graham's motion for summary judgment, and denial of reconsideration.

STANDARD OF REVIEW

We review an order granting summary judgment de novo, performing the same inquiry as the trial court.[8] We affirm summary judgment where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[9]

ANALYSIS

Remainder Interest

In Graham's challenge to the summary judgment order, he assigns error only to the court's statements that the trust includes "a separate remainder interest" held by "unascertained remaindermen."[10]

This court may affirm for any reason the record supports.[11] "[A] trustee presumptively has comprehensive powers to manage the trust estate and

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[8] Owen v. Burlington N. & Santa Fe R.R., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005).

[9] Owen, 153 Wn.2d at 787.

[10] The trial court "reserve[d] ruling on whether," should a later conflict develop between Graham and the Bank, "virtual representation is appropriate, a GAL must be appointed, or other relief is warranted."

[11] Wash. State Commc'n Access Project v. Regal Cinemas, Inc., 173 Wn. App. 174, 223, 293 P.3d 413 (2013).

otherwise to carry out the terms and purpose of the trust."[12] Where a trust gives the trustee discretion to carry out its provisions, courts review the trustee's exercise of those powers for abuse of discretion.[13]

Here, the parties agree that the trust gives the Bank discretion as trustee, directs the Bank to distribute annual income to Graham as the beneficiary, and permits the Bank to make distributions from principal where that income is, "in the judgment of the trustee[,] . . . insufficient to provide for the proper support in [the beneficiary's] accustomed manner of living."

Accordingly, Graham effectively concedes each of the rulings the trial court made on summary judgment. He does not contend that the Bank abused its discretion in reaching an annualized distribution of $661,974. Nor does he contend that the Bank's method in determining the proper distributions was not reasonable and prudent.

Instead, Graham and the Bank debate how to characterize the interest, if any, that the trust gives to the appointees of Graham's will or his estate. Graham asks this court to determine as a matter of law that no separate remainder interest exists and to reverse the trial court's statement to the contrary. If there is a remainder interest, Graham reasons, the trustee has a fiduciary duty to it. This

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[12] RESTATEMENT (THIRD) OF TRUSTS § 70 cmt. a (2007).

[13] Templeton v. Peoples Nat'l Bank of Wash., 106 Wn.2d 304, 309, 722 P.2d 63 (1986).

duty could interfere with future distributions to Graham. And, Graham suggests, if he and the Bank execute a nonjudicial agreement[14] in the future, such "remainder beneficiaries" may attack it.[15]

> The function of a summary judgment proceeding is to determine whether a genuine issue of material fact exists. It is not . . . to resolve issues of fact or to arrive at conclusions based thereon. Consequently, . . . findings of fact and conclusions of law entered [on summary judgment] are superfluous.[16]

We decline to decide the best way to characterize the interest that the trust creates in Graham's eventual estate because that determination was superfluous and unnecessary to the trial court's summary judgment decision. The trust provides for income to go to Graham during his lifetime and gives the trustee discretion to distribute principal when necessary to support his living standard. The parties and the trial court all acknowledge that the Bank used a reasonable method in determining distributions in accordance with the trust's terms. The overwhelmingly likely outcome of that method is that money will be

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[14] Under TEDRA, if all parties agree to a resolution of a matter related to a trust or an estate, the parties can settle the matter by signing a written agreement. RCW 11.96A.220. If the parties file the written agreement with a court, it becomes the equivalent of a final court order binding all interested parties. RCW 11.96A.230(2).

[15] The Bank asserts, as it did to the trial court, that a conflict exists between Graham and unascertained remainder beneficiaries. But the Bank does not cross appeal or assign error to the trial court's finding that there is no conflict of interest. We decline to reach that issue.

[16] Duckworth v. City of Bonney Lake, 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978) (emphasis omitted) (citation omitted).

left in the trust when Graham's father dies. That money will remain not because the Bank is saving it for holders of a remainder interest but because the Bank is saving it for Graham himself: the trust requires that the Bank must continue to ensure Graham's support throughout his life. The Bank cannot know when Graham's father will die and leave Graham, all the parties assume, a large sum.[17] Graham's father may die before the trust is exhausted. Under the terms of the trust, the leftover money will remain in the trust and go to Graham's appointees or the takers of his estate.

This possible remainder interest is not the reason for either the Bank's decisions or the trial court's order approving them. We decline to rule on whether "remainder beneficiaries" may attack a nonjudicial agreement in the future and whether future trust decisions will first require a determination of whether they require a GAL. These controversies have not arisen. Likewise, the effect that the trust's spendthrift clause would have on Graham's assertion that his is the only interest in the trust is, at this stage, "purely academic."[18] Accordingly, we affirm the February 12, 2015, summary judgment order and March 6 denial of reconsideration.

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[17] The Bank has consistently stated that this is the reason for limiting distributions as it has.

[18] See Grays Harbor Paper Co. v. Grays Harbor County, 74 Wn.2d 70, 73, 442 P.2d 967 (1968) ("Ordinarily if the question is purely academic, this court is not required to pass upon it and will not do so however much both parties desire such a determination.").

Breach of Fiduciary Duty

Graham also contends that the Bank breached its fiduciary duty to him by contending, in its TEDRA petition, that a "present beneficial remainder interest existed."

TEDRA provides for resolution of trust and estate disputes and related matters.[19] The statute allows a party to seek a "declaration of rights or legal relations with respect to any matter."[20] The definition of a "matter" is extremely broad and includes construction of a trust or a "direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity."[21]

A trustee has the power to initiate actions to defend trust property.[22] It is also a fiduciary for the trust's beneficiaries and owes them the "highest degree of good faith, care, loyalty and integrity."[23] "If a trust has two or more beneficiaries, the trustee must act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests."[24] A trustee thus cannot "'litigate the conflicting claims of beneficiaries'" by appealing orders

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[19] RCW 11.96A.010.
[20] RCW 11.96A.080(1).
[21] RCW 11.96A.030(2)(b), (c)(i).
[22] RCW 11.98.070(37).
[23] Esmieu v. Schrag, 88 Wn.2d 490, 498, 563 P.2d 203 (1977).
[24] RCW 11.98.078(8).

"'determining which beneficiaries are entitled to share in a particular fund.'"[25] But a trustee also has a duty to "protect the plan of the trustor and protect the trust itself" by taking "legitimate steps to uphold the testamentary instrument."[26]

Graham cites no authority indicating a trustee breaches its fiduciary duty by filing a TEDRA petition seeking instructions about whether a GAL is required, even if that petition argues for a position opposed to a beneficiary's. Graham relies on Northern Trust Co. v. Heuer.[27] In Heuer, the appellate court of Illinois held that the trustee breached its duty of impartiality by advocating for one beneficiary's interests at the expense of another. The trustee was arguing alongside one beneficiary that an equalization clause applied. That clause would increase the amount that beneficiary would receive from the trust at the expense of another beneficiary.[28] But the same court recently declined to apply the Heuer holding in a case that more closely resembles Graham's. The court in Laubner v. JP Morgan Chase Bank, NA,[29] noted that "Heuer involve[d] an

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[25] In re Estate of Bernard, 182 Wn. App. 692, 729, 332 P.3d 480 (quoting Estate of Ferrall, 33 Cal. 2d 202, 204, 200 P.2d 1 (1948)), review denied, 181 Wn.2d 1027 (2014).

[26] Bernard, 182 Wn. App. at 729-30 (holding that trustee did not violate its duties by appealing summary judgment that found trust amendment and will codicil void).

[27] 202 Ill. App. 3d 1066, 560 N.E.2d 961, 148 Ill. Dec. 364 (1990).

[28] Heuer, 202 Ill. App. 3d at 1069, 1072.

[29] 386 Ill. App. 3d 457, 465, 898 N.E.2d 744, 325 Ill. Dec. 697 (2008) ("[I]t can just as well be said that protecting the principal benefits plaintiffs; cost of living is sure to rise, and plaintiffs themselves state they expect to live another 30 years.").

instance of blatant favoritism on the part of the trustee for one beneficiary over the other." It contrasted that favoritism with the actions of the trustees in the case before it, who "adopted a conservative and responsible distribution plan that incidentally benefits the remaindermen by protecting the principal."[30] The court held that those trustees did not breach their fiduciary duty in doing so.

Here, the Bank was not displaying "blatant favoritism" like the trustee in Heuer. It did not even take a position that would reduce its distributions to Graham. Instead, like the trustee's plan in Laubner, the Bank's actions protected the principal primarily for Graham's benefit, as the trustor intended, to the incidental benefit of any remainder interest.[31] Whether or not a separate remainder interest existed, the Bank calculated its distributions to maximize the amount Graham would receive while ensuring that the trust could continue to provide for him until his father died. Thus, even if we look to Illinois case law as Graham urges, Laubner is more persuasive than Heuer.

Moreover, in In re Estate of Bernard,[32] this court cited with approval the rule that a trustee appealing a trial court decision only breaches its duty of impartiality when the appealed order "'determin[ed] which beneficiaries are entitled to share in a particular fund.'" This court held that, instead, a trustee has

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[30] Laubner, 386 Ill. App. 3d at 465.

[31] See Laubner, 386 Ill. App. 3d at 464-65.

[32] 182 Wn. App. 692, 729, 332 P.3d 480 (quoting Ferrall, 33 Cal. 2d at 204), review denied, 181 Wn.2d 1027 (2014).

a duty "to protect the plan of the trustor and protect the trust itself," which may require it to appeal orders that threaten that plan.[33] The same reasoning applies when, as here, the trustee files a TEDRA petition seeking to clarify its duties under the trust. Like the trustee in Bernard, the Bank was fulfilling its duty to "protect the plan of the trustor and protect the trust itself" by asking the trial court whether a conflict of interest existed between Graham and a remainder interest. The Bank did not need to be disinterested in seeking the trial court's opinion. Doing so was consistent with its responsibility to interpret and administer the trust document.[34]

This court's decision in Bernard recognized that as a policy matter, the duty of impartiality cannot prohibit a trustee from advocating a position "'to protect the trust against an attack that goes to the very existence of the trust itself,'" even if that position appears adverse to a beneficiary's.[35] This court recognized that if it found that such an action breaches the trustee's duties, then "'the trial court, when all beneficiaries consent, could completely disregard the provisions of the trust, even though there is no justification for a deviation from its

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[33] Bernard, 182 Wn. App. at 730.

[34] See RESTATEMENT § 87 cmt. b ("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.").

[35] Bernard, 182 Wn. App. at 729 (emphasis omitted) (quoting Ferrall, 33 Cal. 2d at 206).

terms.'"[36] Here, the trustor, Graham's mother, plainly intended that the trust support Graham's living standard through distributions of income and, where the trustee deems necessary, principal. The position Graham has advanced in this litigation would obviate that purpose by effectively mandating that the trustee distribute any amount Graham requests. The Bank violated no duty by taking a different position to protect the trust.

Attorney Fees

Graham contends that because the Bank breached its fiduciary duty, it must reimburse the trust for the attorney fees that both Graham and the Bank incurred at the trial level.[37] He also asks that the Bank or the trust pay his attorney fees for this appeal.

The Bank responds that the trust should bear the Bank's attorney fees as a cost of administration.[38] It agrees that the trust should pay for Graham's reasonable attorney fees, as well. Since it acknowledges that Graham's advocacy for his position helped the trial court reach the best result, the Bank agrees that the trust should pay Graham's attorney fees in those proceedings. But it contends that Graham's present appeal is not a reasonable expense as Graham has only depleted the trust in his efforts to get larger distributions from it.

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[36] Bernard, 182 Wn. App. at 729 (quoting Ferrall, 33 Cal. 2d at 205-06).
[37] See Allard v. Pac. Nat'l Bank, 99 Wn.2d 394, 407, 663 P.2d 104 (1983).
[38] See RCW 11.98.070(27).

This court "will not interfere with the decision to allow attorney fees in a probate matter, absent a manifest abuse of discretion."[39] Generally, a trust should pay reasonable expenses for good faith legal proceedings related to its administration.[40] TEDRA contains an equitable and flexible fee provision.[41] It gives courts broad discretion to award attorney fees and costs from parties or estate assets.[42] The trial court should consider "whether the litigation and the participation of the party seeking attorney fees caused a benefit to the trust."[43]

This court may grant an award of reasonable attorney fees on appeal to a party that requests them in its opening brief, so long as applicable law authorizes the award.[44] TEDRA authorizes appellate attorney fee awards based on factors this court deems appropriate.[45]

Here, the trial court ordered that the trust pay Graham's trial court attorney fees and costs. It denied Graham's request that it order the Bank to reimburse the trust for those expenses.[46]

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[39] In re Estate of Black, 116 Wn. App. 476, 489, 66 P.3d 670 (2003), aff'd on other grounds, 153 Wn.2d 152, 102 P.3d 796 (2004).

[40] Monroe v. Winn, 19 Wn.2d 462, 466, 142 P.2d 1022 (1943).

[41] RCW 11.96A.150.

[42] In re Wash. Builders Benefit Tr., 173 Wn. App. 34, 84-85, 293 P.3d 1206 (2013).

[43] In re Estate of Wimberley, 186 Wn. App. 475, 512, 349 P.3d 11, review denied, 183 Wn.2d 1023 (2015).

[44] RAP 18.1.

[45] RCW 11.96A.150.

[46] The Bank does not contest the trust's payment of reasonable attorney fees and costs to Graham.

The trial court did not abuse its discretion in making this ruling. Because the petition was reasonably necessary to determine the interests in the trust, the trial court did not abuse its discretion by ordering the trust to pay the Bank's attorney fees.[47]

Graham also asks this court to order the Bank to reimburse the trust for its own fees and Graham's because it breached its fiduciary duty. Because the Bank did not breach that duty, we decline to order the Bank to reimburse the trust.

Finally, we also deny Graham's request that the trust pay his attorney fees in this appeal. The "touchstone" for TEDRA attorney fee awards is "'whether the litigation resulted in a substantial benefit to the estate.'"[48] For instance, Division Two of this court recently awarded appellate fees from a trust where the appellant beneficiaries raised "a legitimate issue of statutory interpretation" and prevailed.[49] Graham raises no such issues and does not prevail in his appeal. His appeal does not substantially benefit the trust but only depletes it further.

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[47] See In re Estate of Evans, 181 Wn. App. 436, 452, 326 P.3d 755 (2014), review denied, 185 Wn.2d 1031 (2016).

[48] In re Estate of Mower, 193 Wn. App. 706, 728, 374 P.3d 180 (2016) (quoting Black, 116 Wn. App. at 490), petition for review filed, No. 93521-1 (Wash. Aug. 30, 2016).

[49] Estate of Mower, 193 Wn. App. at 729.

CONCLUSION

Because Graham concedes that the Bank did not abuse its discretion in creating a plan for distributing the trust, we affirm the trial court's summary judgment order approving that plan. We need not decide whether a separate remainder interest exists. Further, because the Bank did not advocate for one beneficiary's interests in a particular fund at the expense of another beneficiary, we also affirm the trial court's summary judgment dismissal of Graham's breach of fiduciary duty claim. Accordingly, we decline to order the Bank to reimburse the trust for trial court attorney fees. We also deny Graham's request that the Bank or the trust pay his appellate fees.

Leach, J.

WE CONCUR:

Trickey, ACJ

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the MARITAL TRUST B CREATED UNDER THE LAST WILL AND TESTAMENT OF FELECIA A. GRAHAM DATED OCTOBER 26, 1988, F/B/O FREDERICK A. GRAHAM. BANK OF AMERICA, N.A., Respondent, v. FREDERICK A. GRAHAM, Appellant.	)	No. 74201-9-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Frederick A. Graham, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 20th day of December, 2016.

FOR THE COURT:

Leach, J.
Judge

Rev. Code Wash. (ARCW) § 11.04.015

Statutes current through 2016 1st Special Session and 2016 General Election

Annotated Revised Code of Washington **>** ***Title 11 Probate and Trust Law*** **>** ***Chapter 11.04 Descent and Distribution***

11.04.015. Descent and distribution of real and personal estate.

The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of *RCW 11.04.250* and *11.02.070*, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation.

Rev. Code Wash. (ARCW) § 11.96A.030

Statutes current through 2016 1st Special Session and 2016 General Election

Annotated Revised Code of Washington **>** ***Title 11 Probate and Trust Law*** **>** ***Chapter 11.96A Trust and Estate Dispute Resolution***

11.96A.030. Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under *RCW 11.96A.100*. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under *RCW 11.96A.020* and *11.96A.060*, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust advisor or directed trustee of a directed trust under chapter 11.98A RCW;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital

deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by *RCW 6.15.020(6)*;

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under *RCW 11.96A.125*.

(3) "Nonprobate assets" has the meaning given in *RCW 11.02.005*.

(4) "Notice agent" has the meanings given in *RCW 11.42.010*.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under *RCW 11.110.120*;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in *RCW 11.96A.120*;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW;

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under *RCW 11.18.200*; and

(o) A statutory trust advisor or directed trustee of a directed trust under chapter 11.98A RCW.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Representative" and other similar terms refer to a person who virtually represents another under *RCW 11.96A.120*.

(8) "Trustee" means any acting and qualified trustee of the trust.

Rev. Code Wash. (ARCW) § 11.96A.080

Statutes current through 2016 1st Special Session and 2016 General Election

Annotated Revised Code of Washington **>** ***Title 11 Probate and Trust Law*** **>** ***Chapter 11.96A Trust and Estate Dispute Resolution***

11.96A.080. Persons entitled to judicial proceedings for declaration of rights or legal relations.

(1) Subject to the provisions of *RCW 11.96A.260* through *11.96A.320*, any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by *RCW 11.96A.030*; the resolution of any other case or controversy that arises under the Revised Code of Washington and references judicial proceedings under this title; or the determination of the persons entitled to notice under *RCW 11.96A.110* or *11.96A.120*.

(2) The provisions of this chapter apply to disputes arising in connection with estates of incapacitated persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter 11.20, 11.24, 11.28, 11.40, 11.42, or 11.56 RCW. The provisions of this chapter shall not apply to actions for wrongful death under chapter 4.20 RCW.

Rev. Code Wash. (ARCW) § 11.96A.110

Statutes current through 2016 1st Special Session and 2016 General Election

Annotated Revised Code of Washington **>** ***Title 11 Probate and Trust Law*** **>** ***Chapter 11.96A Trust and Estate Dispute Resolution***

11.96A.110. Notice in judicial proceedings under this title requiring notice.

(1) Subject to *RCW 11.96A.160*, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in *RCW 23B.01.400*.

Rev. Code Wash. (ARCW) § 11.96A.220

Statutes current through 2016 1st Special Session and 2016 General Election

Annotated Revised Code of Washington **>** ***Title 11 Probate and Trust Law*** **>** ***Chapter 11.96A Trust and Estate Dispute Resolution***

11.96A.220. Binding agreement.

*RCW 11.96A.210*through *11.96A.250* shall be applicable to the resolution of any matter, as defined by *RCW 11.96A.030*, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that *RCW 11.96A.210* through *11.96A.250* shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of *RCW 11.96A.240*, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under *RCW 11.96A.230*, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in *RCW 11.96A.230*, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under *RCW 11.96A.120* signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement.