

No. 73209-9

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

In re: The Richard C. Sweezey Trust of 1990

RAE ANN ENGDAHL, Personal Representative of the Estate of
Richard H. Sweezey

Appellant,

v.

DAVID SWEEZEY and PAUL SWEEZEY, as Co-Trustees of the
Richard C. Sweezey Trust of 1990 and
MICHAEL VRANIZAN, Trustee of Gary Sweezey Trust

Respondents

ON APPEAL FROM KING COUNTY SUPERIOR COURT
(Hon. Douglass A. North)

JOINT BRIEF OF RESPONDENTS

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I. INTRODUCTION

The trial court found this TEDRA action to be a “meritless attack” against the Richard C. Sweezey Trust of 1990 and its beneficiaries. It is. The intent and purpose of the Trust is undisputed: upon Dick Sweezey’s death, the Trust would provide for his wife June during the remainder of her life and, upon her death, its residue would be distributed equally to his four sons “then living” or their living “descendents.” One of Dick’s sons, Rick, died before June. He had no children. Under the clear terms of the Trust, Rick’s Estate is not entitled to a distribution.

Rick’s Estate filed suit, however, claiming that it is entitled to a distribution under the terms of a TEDRA Agreement the parties entered into before June’s death. The Estate argued that the Agreement manifests the parties intent to give Rick’s heirs an “absolute” right to payment whether or not Rick satisfied the Trust’s survivorship requirement. The trial court easily rejected the Estate’s strained interpretation of the TEDRA Agreement as contrary to its plain language and context—and so should this Court. The judgment and attorneys’ fee award should be affirmed.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the trial court properly conclude that the parties’ TEDRA Agreement did not give Rick or his Estate a right to payment from Trust assets or otherwise modify the Trust’s survivorship requirement? **Yes.**

2. Did the trial court properly reject the Estate's promissory and equitable estoppel claims because there was no evidence that Rick detrimentally relied on a promise or representation other than the contractual obligations contained in the TEDRA Agreement itself? **Yes.**

3. Did the trial court properly exercise its equitable discretion in awarding the Trust and Gary Family Trust their reasonable attorneys' fees on the grounds that the Estate's claims were "meritless?" **Yes.**

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background

The Sweezey Family. Richard C. Sweezey ("Dick") was married to June Sweezey ("June") until his death in 1992. Dick and June had four sons: Richard H. Sweezey ("Rick"), Paul Sweezey ("Paul"), David Sweezey ("David"), and Gary Sweezey ("Gary"). Rick married Appellant Rae Ann Engdahl ("Rae Ann") in 1985. CP 263 (¶ 1). Although Rae Ann had two children from a previous marriage, Rick never adopted them nor did he ever have any children of his own. *Id.* Rae Ann is the personal representative of Rick's estate ("Rick's Estate" or the "Estate"). *Id.*

Dick's Trust. Before Dick died, he established the Richard C. Sweezey Trust of 1990 (the "Trust"). CP 400-415. The Trust provided, among other things, that if Dick died before June, Dick's assets would be

used to provide for June for the rest of her life, at which point the remaining assets would be distributed as follows:

3.4 Balance of Property. Trustees shall allocate the rest of Trustor's estate as follows:

* * *

(b) If Trustor's wife is not then living, Trustees shall distribute all of the trust property in equal shares as follows:

(i) one share to each son of Trustor who is then living; ...; and

(ii) *one share by right of representation to the descendants then living of any of Trustor's sons who are deceased;*

CP 303-304 (emphasis added). Even though Dick established the Trust after Rick married Rae Ann and began caring for her children as his own, to receive a distribution, the Trust required that a son must either survive June or, if deceased, have living "descendants." A subsequent amendment to the Trust retained this survivorship requirement. CP 417-18. There is no dispute that Rae Ann's children do not qualify as Rick's "descendants."

June's TEDRA Petition. Following Dick's death, June and Paul served as co-trustees of the Trust, but were later succeeded by Rick, David and Paul. CP 396 (¶ 3). The bulk of the Trust's corpus was held in the form of shares of various closely-held family businesses. *Id.* (¶ 6). In November 2004, Rick, David and Paul, as co-trustees of the Trust, and June, as co-trustee of a separate trust established for the benefit of Gary

and his family (the “Gary Family Trust”), executed a “Joint Action and Consent” that, among other things, appointed Rick, David and Paul as directors and officers of the family businesses. CP 429-34. The parties did not, however, modify the Trust’s survivorship requirement. *Id.*

In January 2009, June filed a TEDRA petition seeking replacement of the three co-trustees with a professional fiduciary, claiming that Rick, David and Paul had breached their fiduciary duties to the Trust. CP 436-446. June complained that Rick, David and Paul (not just David and Paul as Rae Ann suggests, *see* Op. Br. at 8) had paid themselves excessive salaries and bonuses from companies owned by the Trust, thereby improperly depleting the Trust’s assets. *Id.* June’s allegations, if successful, would have resulted in a return of funds to companies owned by the Trust—not an immediate payment to June or any other beneficiary. CP 446 (“This Court should set a trial on the merits of Petitioner’s ... claims so that these disputed amounts ... may be returned as soon as possible.”). Rick did not file a claim in connection with June’s petition, nor did he seek any payment from the Trust’s assets.

The TEDRA Agreement. On June 26, 2009, after two mediations, June, Rick, David and Paul agreed to settle June’s claims. CP 396 (¶ 7). The parties’ agreement (“TEDRA Agreement”) replaced Rick, David and Paul as co-trustees with a corporate trustee, and called for the new trustee

to determine whether they should continue as directors and officers of the family businesses. CP 448-53. Union Bank was selected and appointed to serve as successor trustee. CP 455. Consistent with the nature of the dispute, June released the claims she had against Rick, David and Paul, but they did not release any claims they had against each other. CP 451.

The Agreement also created a mechanism, by way of arbitration, to quantify the “amount of distributions” each brother had received to date for purposes of equalizing possible future distributions under the Trust:

G. Equalizing Distributions to Four Brothers

Within three months of the three brothers signing this Agreement, Rick, David and Paul will participate in an arbitration before Steve Scott to determine the amount of distributions that the brothers have received to date. ... To the extent the distributions are unequal, they shall be equalized by the New Corporate Trustee upon June’s death. ... Once those equalizing distributions are made, the remaining assets would be divided between the four brothers equally.

CP 452 (the “Equalizing Distribution Provision”). While the Equalizing Distribution Provision addressed *how* the Trust’s corpus would be distributed at the time of June’s death to fulfill Dick’s desire for equality, it did not change *who* was entitled to receive such a distribution; nothing in the TEDRA Agreement—and, in particular, its Equalizing Distribution Provision—expressly modifies the Trust’s survivorship condition, *i.e.*, that

the brothers or their “descendants” survive June’s death. *Id.* The TEDRA Agreement was subsequently approved by the superior court. CP 337-39.

The Arbitration. Rick, David and Paul thereafter arbitrated the issue of how much unearned Trust assets each had received to date. CP 396-97 (¶ 8). As required by the Equalizing Distribution Provision, the arbitrator’s award did not order a distribution to Rick or any brother, but rather quantified how much “advanced distributions” each had received to date, so that these amounts could be taken into account in any future distribution to “remainder beneficiaries” as defined by the Trust:

Richard H. Sweezey, David R. Sweezey, Paul C. Sweezey and Gary Sweezey have received the following ***advanced distributions as remainder beneficiaries*** under the Richard C. Sweezey Trust of 1990:

Richard H. Sweezey	\$0
David R. Sweezey	\$829,490.94
Paul C. Sweezey	\$679,062.31
Gary Sweezey	\$0

CP 462 (“Arbitration Award”) (emphasis added). The award was thereafter confirmed by the superior court, as was a supplementary award of attorneys’ fees in favor of Rick. CP 464; 597-98. Other than fees, neither the Arbitration Award nor the confirmation order purported to give Rick or his heirs a claim or judgment against the Trust in the form of a right to distribution or otherwise. *Id.*

Rick Dies Before June. Rick was declared dead in July 2012, nearly two years before June died in April 2014. CP 397. June's death set in motion the final distribution of Trust assets to Dick's sons "then living" or their "descendants." CP 303-04. But before that could happen (the assets had to be valued or liquidated), Union Bank filed a TEDRA petition (an action separate from this one) seeking to resign as trustee. CP 348. Rick's Estate opposed the resignation, and claimed to be a creditor of the Trust under the TEDRA Agreement. CP 349. For their part, David and Paul sought appointment as co-trustees, noting that "[n]either the TEDRA [Agreement] nor the Arbitration Award changed the terms of the Trust that a Beneficiary of the Trust survive June in order to take." CP 351-58.

The superior court granted Union Bank's motion and appointed David and Paul co-trustees of the Trust, provided they execute a deed of trust on the assets of the Trust to secure any claim Rick's Estate may have had as a creditor. CP 360-67. Union Bank also was permitted to resign as trustee of the Gary Family Trust, to be succeeded by Michael G. Vranizan ("Vranizan"). *Id.* As required, David and Paul, as co-trustees of the Trust, executed the deed of trust in favor of Rick's Estate. CP 166-74.

B. Procedural Background

On August 1, 2014, Rae Ann, as personal representative of Rick's Estate, filed the TEDRA petition at issue. CP 1-16. Rick's Estate argued

that, notwithstanding the Trust's survivorship requirement, the TEDRA Agreement created an "absolute payment obligation" in Rick's favor, and that obligation inured to the benefit of his heirs. *Id.* Rick's Estate also claimed that the Trust was precluded from denying the validity of the claim on the grounds of promissory and/or equitable estoppel. *Id.* David and Paul, on behalf of the Trust, and Vranizan, on behalf of the Gary Family Trust, separately opposed the petition, arguing that Rick's Estate was not a creditor or beneficiary of the Trust. CP 111-25; CP 126-44.

After the ex parte department certified the matter for trial, CP 210-11, the Trust and Rick's Estate cross-moved for summary judgment. CP 250-62; CP 368-90; CP 603-19; CP 620-39. The Trust also asked the trial court to strike certain statements contained in and exhibits attached to Rae Ann's declaration because they were inadmissible. CP 605-06. The Gary Family Trust filed a separate response to the parties' motions, requesting that the court grant the Trust summary judgment and dismiss the Estate's petition. CP 488-500; CP 640-44. Notably, no party submitted any extrinsic evidence showing that the parties intended the TEDRA Agreement to displace or modify the Trust's survivorship requirement.

At the summary judgment hearing, the trial court granted the Trust's motion to strike and, after hearing argument from the counsel for Rick's Estate, granted the Trust's motion for summary judgment:

... I will grant summary judgment to the respondents. I think it is quite clear that you have to construe all of these agreements together - - the trust as well as the - - TEDRA agreement, and it is clear that this related to a right Rick had as an expectancy, which is ... if he survived his mother, June, and he didn't, and so there's nothing to be paid out here.

Tr. at 10. The court also found that both the Trust and the Gary Family Trust were entitled to an award of reasonable attorneys' fees. *Id.* at 11.

The trial court entered a written order granting the trust summary judgment, concluding among other things that the "TEDRA Agreement ... did not create a stand-alone payment obligation to any of June and Dick's sons that was separate and distinct from a final Trust distribution." CP 657-60. In addition, the court expressly found the Estate's petition to be a "meritless attack," and concluded that equity required Rick's Estate to pay the Trust's fees and costs. CP 659. After further briefing and submission of fee affidavits, CP 661-73; CP 674-733; CP 734-46, the court entered orders awarding both the Trust and the Gary Family Trust reasonable attorneys' fees and costs to be paid by Rick's Estate. CP 788-94.

Rick's Estate appealed. CP 781-87. It asks this Court to reverse the summary judgment and fee award in favor of the Trust and Gary Family Trust, and to order the trial court to enter summary judgment and award fees in favor of the Estate. Brief of Appellant at 5. Rick's Estate

challenges the trial court's decision to award fees against it—but not the amount or reasonableness of the fees actually awarded. *Id.* at 2, 41-46.

IV. ARGUMENT

The trial court properly granted summary judgment to the Trust. This Court reviews summary judgment *de novo*, engaging in the same inquiry as the trial court and viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 501, 115 P.3d 262 (2005). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c); *Hearst*, 154 Wn.2d at 501.

A. **The TEDRA Agreement Did Not Give Rick Or His Estate An “Absolute” Right To A Distribution From The Trust.**

Under TEDRA, so long as all interested parties agree, trust beneficiaries may settle a dispute over a trust by modifying its terms, even if the result is contrary to the testator's original intent. RCW 11.96A.220 (agreements are “binding and conclusive on all persons interested in the estate or trust.”). As Rick's Estate points out, Op. Br. at 18-19, 36-37, in this way, TEDRA reflects the “family settlement doctrine,” which permits trust beneficiaries to contractually adjust their rights under a trust. *Collins v. Collins*, 151 Wash. 201, 275 Pac. 571 (1929). From this straightforward

proposition, the Estate boldly claims “TEDRA require[s] a court to ignore [the] trustor’s intent when interpreting a TEDRA agreement” and, instead, “must interpret it as a stand-alone contract.” Op. Br. at 17, 23. Wrong.

TEDRA settlement agreements are contracts and, as such, must be construed like any other contract. *In re Estate of Bernard*, 182 Wn. App. 692, 697, 709-713, 332 P.3d 480 (2014). Under the “context rule,” the parties’ intent is determined by viewing the contract as a whole, the objective of the contract, the contracting parties’ conduct, and the reasonableness of the parties’ respective interpretations. *King v. Rice*, 146 Wn. App. 662, 670-71, 191 P.3d 946 (2008) (citing *Berg v. Hudesman*, 115 Wn.2d 657, 667-68, 801 P.2d 222 (1990)). A court can consider extrinsic evidence to ascertain the meaning of words and terms so long as it does not “show an intention independent of the instrument’ or ‘vary, contradict or modify the written word.’” *Hearst*, 154 Wn.2d at 502-03.¹

The underlying Trust, the parties’ dealings and the dispute giving rise to the TEDRA Agreement are all proper context evidence that this

¹ The TEDRA Agreement’s “merger clause” does not change the analysis. Op. Br. at 30-32. The “context rule” applies whether or not a contract contains a merger clause. *King*, 146 Wn. App. at 671. Such a clause prevents courts from considering extrinsic evidence that would modify, vary or contradict the terms of a contract, not from considering evidence that, as here, confirms its plain meaning. *Id.* If anything, the integration clause provides yet another reason why the trial court properly rejected the Estate’s estoppel claims based on alleged (but unsupported) “promises” that contradict the TEDRA Agreement’s express terms.

Court must consider when interpreting the Agreement. Indeed, the TEDRA Agreement cannot be interpreted as a “stand-alone” contract; its purpose was to resolve disputes arising under the Trust. Not surprisingly, the TEDRA Agreement cites to the Trust throughout, and most of its terms would be nonsensical without reference to the terms of the Trust.² At bottom, the issue is not whether the TEDRA Agreement could modify the Trust’s survivorship requirement to give Rick or his Estate a right to a distribution, but whether the parties manifested an intent to do so. Both the Agreement’s plain language and its context show that they did not.

1. The Equalizing Distribution Provision Reflects An Intent To Ensure Equal Distributions To Beneficiaries Who Satisfy The Trust’s Survivorship Requirement.

Dick’s goal was clear: only his sons “then living” or with living “descendants” should receive a distribution upon June’s death, and those distributions should be equal. CP 303-304. The TEDRA Agreement does not disturb that goal. On the contrary, its unambiguous terms reflect the parties’ intent to fulfill Dick’s desire for survivorship and equality:

² This includes terms that specifically incorporate provisions of the Trust (CP 449 (Section III.A.2)), and those that don’t (CP 450-51 (Section III.B & C)). Indeed, the Equalizing Distribution Provision’s references to a “distribution ... upon June’s death” plainly refers to a distribution of Trust assets, even though it does not say so specifically. If the TEDRA Agreement were intended to “stand-alone” as Rick’s Estate urges, the Court would be left asking the question: “A distribution from what?”

To the extent the distributions are unequal, they shall be equalized by the New Corporate Trustee upon June's death. ... Once those equalizing distributions are made, the remaining assets would be divided between the four brothers equally.

CP 452. The Equalizing Distribution Provision identifies what will be paid, a "distribution" from the Trust, when it will be paid, "upon June's death," and what amount will be paid, "equal." All three things mirror and implement the Trust's survivorship and equal distribution requirements, if not its precise terminology. See CP 404 (Trust, Art. 3.4(b): upon June's death, "Trustees shall *distribute* all of the trust property in *equal* shares") (emphasis added)). In short, for there to be "distribution" under the TEDRA Agreement, there must first be a "distribution" under the Trust.

The Estate can point to no language in the TEDRA Agreement that confers Rick with an "absolute" right to payment or reflects an intent to alter the Trust's survivorship requirement. There is none. The Equalizing Distribution Provision does not say that Rick (or any brother) was entitled to a "payment" or "judgment" if the arbitrator later found that one or more of them had received advanced distributions; it says that "upon June's death," the "distributions ... shall be equalized." CP 452. Contrary to the Estate's argument, Op. Br. at 23-24, the word "shall" tells the trustee *when* and *how* to calculate an "equalized distribution," not *who* will receive one; the Trust answers that question. Indeed, the use of the term "would be,"

rather than “shall,” in the last sentence reflects the future timing of the “distribution” and the contingent status of the Trust’s beneficiaries. *Id.*

The parties’ intent to preserve the Trust’s survivorship requirement is further evidenced by the Arbitration Award entered six months later. Rick and his counsel participated in the arbitration, in which the arbitrator found that David and Paul, but not Rick or Gary, had received distributions to date. CP 462. Tellingly, the arbitrator did not award Rick anything, or find him entitled to a payment in the future. Rather, using language that accurately reflected the intent and effect of the Equalizing Distribution Provision, the Award quantified the “advanced distributions” each had received “as remainder beneficiaries.” *Id.* Here, again, Rick’s right to an “equalizing distribution” under the TEDRA Agreement turned on his status as a “beneficiary” under the Trust. Rick did not object to the Arbitration Award and only sought recovery of his fees. CP 464.

The Estate’s interpretation of the TEDRA Agreement is not only contrary to its plain language, it ignores the context of the parties’ dispute. June filed the TEDRA action against Rick, David and Paul—alleging they mismanaged the Trust and paid themselves excessive compensation. CP 436-46. June did not seek to modify the Trust, re-define its beneficiaries, or recover damages on behalf of herself or any other beneficiary; she sought only the removal of Rick, David and Paul as co-trustees and

restitution to the Trust of any unearned compensation. *Id.* None of June's allegations, even if true, and none of her claims for relief, even if successful, would have entitled Rick to damages, or a payment from Trust assets or a change in his status as a contingent beneficiary. The object of the TEDRA Agreement was to resolve June's claims, not to give Rick the right to a payment he did not seek and to which he was not entitled.

Indeed, the TEDRA Agreement's release confirms that the parties did not intend to give Rick an "absolute" right to payment. June released her claims against Rick, David and Paul, but "the beneficiaries of the Sweezey Trust other than June do not release, waive, or discharge any claims they may have against the co-Trustees for breach of fiduciary duty." CP 451. If the parties intended to compromise a claim Rick had against David or Paul or compensate Rick for such a claim, then Rick too would have been party to the release. But he wasn't—because Rick was not harmed by his brothers' alleged depletion of Trust assets and wouldn't be harmed unless he survived June and was entitled to a distribution under the Trust. The TEDRA Agreement resolved June's restitution claim and restored Dick's desire for "equal shares," but did not give Rick or any other beneficiary a right to a distribution they would not otherwise have.

2. The TEDRA Agreement’s “Inurement Clause” Did Not Give Rick’s Estate Rights That Rick Did Not Have.

The TEDRA Agreement’s “inurement clause” does not remotely support the Estate’s “absolute” payment argument either. Like many if not most contracts, the TEDRA Agreement contains a provision which states that the agreement is “binding on and inures to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each” party. CP 452. Rick’s Estate argues that this generic language gives it the “right to enforce Rick’s right” to a distribution from the Trust because Rae Ann, Rick’s Estate or the beneficiaries of Rick’s will are “personal representatives” or “heirs.” Op. Br. at 25. Not so.

The Estate’s reliance on the “inurement clause” fails because, by its unambiguous terms, it does not give a “personal representative” or “heir” any additional rights that the TEDRA Agreement does not already confer upon the agreement’s signatories. CP 452. Thus, if the Equalizing Distribution Provision did not give Rick a right to a payment from Trust assets—and, as explained above, it didn’t—then neither Rick’s Estate nor his heirs have such a right. Put differently, the “inurement clause” may allow others to benefit from the “matters set forth” in the Agreement, but the clause does not confer a right in and of itself. Rick was not entitled to

an “equalizing distribution” because he did not survive June, so his Estate has no such right by virtue of the inurement clause either.³

The Estate’s reliance on *Butts v. Lawrence*, 919 P.2d 363 (Kan. App. 1996), is clearly distinguishable for this reason. There, three will beneficiaries entered into a family settlement agreement that gave one beneficiary an option to purchase a future interest in land belonging to the other two. When the first beneficiary died, his estate attempted to exercise the option, and the two other beneficiaries objected on the grounds that “[a]n option created by will confers a right that is personal to the recipient and does not survive the death of the recipient.” *Id.* at 366. On appeal, the court concluded that this rule did not apply because the option was created by the beneficiaries’ contract, not the will. The court then held that, by virtue of the contract’s inurement clause, the contractual right to exercise the option passed to the first beneficiary’s estate. *Id.* at 366-67.

³ For the same reasons, this Court can reject the Estate’s argument that the general survival statute, RCW 4.20.046, independently supports its claim. Op. Br. at 34-35. The statute allows a personal representative to assert an action on behalf of the decedent, but it does not give the personal representative any additional rights; he or she simply stands in the shoes of the decedent. *See White v. Johns-Manville Corp.*, 103 Wn.2d 344, 356-59, 693 P.2d 687 (1985) (“RCW 4.20.046 does not create a separate claim for the decedent’s survivors; ... it merely preserves the causes of action that a person could have maintained had he not died”). Because the TEDRA Agreement did not give Rick the right to a distribution during his life, the survival statute does not give his Estate any such right after his death.

The difference between *Butts* and this case is patent. In *Butts*, as the court found, the parties' agreement gave the first beneficiary a "clear and unambiguous" right, and it was that contractual right that inured to the benefit of his estate. *Id.* at 367. The inurement clause was not the source of rights. Here, by contrast, the Equalizing Distribution Provision did not give Rick a right to a distribution (only the Trust did that) and, thus, the TEDRA Agreement's inurement clause cannot independently confer any such right. Like everything else, the Estate's argument collapses when the Equalizing Distribution Provision is properly interpreted to satisfy the Trust's goal of equalized distribution upon survivorship, not to abrogate it.

Perhaps recognizing that the inurement clause itself does not give the Estate a right Rick never had, Rick's Estate also argues that the parties would not have used the words "personal representatives" or "heirs," and that they are meaningless, if the Equalizing Distribution Provision forbids distributions to anyone other than a living son or descendant. Op. Br. at 26-28. No such intent can be gleaned from those words. To begin with, there is no evidence that the parties ascribed any particular meaning to the inurement clause, much less that they intended it to modify the Trust and Equalizing Distribution Provision; it is pure boilerplate. Notably, the parties' 1993 TEDRA agreement used similar language. CP 422 ("This Agreement ... shall be binding on the parties and their heirs and assigns").

In any event, the words plainly do have meaning if the TEDRA Agreement is interpreted to preserve the Trust's survivorship requirement, as it must. The Agreement covers many subjects, most of which are unrelated to distribution of Trust assets: appointment of an independent trustee and the duties the trustee was tasked to carry out; memorialization of certain oral leases and a loan to Paul; sale of certain family businesses; procurement of health insurance for Rick, David, Paul, Gary, June and their spouses; and release of June's claims. CP 448-54. The inurement clause ensures that, were any of the parties to die or transfer their rights, their representatives, heirs and assigns could both enforce the signatories' rights under these various provisions and be bound by them.⁴

The fact that Rick's "personal representative" or "heirs" could not benefit from the TEDRA Agreement's Equalizing Distribution Provision if Rick were to die before June did not render the inurement clause's use of those words meaningless in all ways to all parties. They still had teeth in all other circumstances. Indeed, even as to the Equalizing Distribution Provision, the words still could have had meaning for Rick. For example,

⁴ Not surprisingly, Rick's Estate ignores that the inurement clause does not just allow others to "benefit" from the TEDRA Agreement, it also binds them to its terms. CP 452. Thus, the Equalizing Distribution Provision "is binding" on Rick's "personal representative" and "heirs"—that is to say, Rick's Estate has no claim to an "absolute" right to payment because Rick had no such right under the Agreement.

Rick could have survived June but died before the Trust assets were distributed; in that case, his “personal representative” and/or “heirs” would have had a right to an “equalized distribution” pursuant to the Trust and TEDRA Agreement. For this reason too, the “inurement clause” does not alter the substantive terms of the TEDRA Agreement, which did not give Rick a right to receive a distribution unless he survived June.

3. The TEDRA Agreement Is Not An Assignment.

Rick’s Estate also argues that the TEDRA Agreement is actually an “assignment”—but can’t quite settle on what kind of assignment it was supposed to be. It was either an assignment by David and Paul to Rick of a “vested remainder interest” in the Trust or, alternatively, an assignment by June to Rick of her “rights to recover Unlawful Distributions.” Op. Br. at 32-34. It was neither. Regardless, and as a threshold matter, because the Estate did not make this argument below, it should not be permitted to raise it for the first time on appeal. *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008); RAP 9.12 (“On review of an order granting ... a motion for summary judgment the appellate court will consider only ... issues called to the attention of the trial court.”). This Court should reject the Estate’s “assignment” theory for this reason alone.

It doesn’t fare any better on the merits in any event. The TEDRA Agreement has no language suggesting that June, David or Paul intended

to give Rick an assignment; the terms “assignment” or “transfer” are not used. CP 448-53; *see Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 208, 194 P.3d 280 (2008) (while no particular words are required, language must show “the owner’s intent to transfer and invest property in the assignee”). Indeed, for the reasons discussed above, the Agreement’s plain terms show that the parties did not intend to give Rick an “absolute” right to anything. June “release[d] ... all claims she had against ... Paul and Dave”; she did not assign those claims to Rick. Conversely, Rick did “not release ... any claims” he may have had against David and Paul, which he would have done if they had assigned their “remainder interest” to him. CP 451. Both before and after the TEDRA Agreement, Rick’s right to a distribution was subject to the Trust’s survivorship requirement.

Moreover, the Estate’s suggestion that June intended to assign part of her “vested life income interest” to Rick—even if she could do so—is inconsistent with her TEDRA claims, and the relief she sought.⁵ As noted, June did not claim that her sons had failed to use the Trust to make net

⁵ It is doubtful—even in the absence of an express spendthrift clause—that June could voluntarily assign her right to income payments for support and maintenance as a lifetime beneficiary. *See Seattle First Nat. Bank v. Crosby*, 42 Wn.2d 234, 244, 254 P.2d 732 (1953) (“The trust is one for support from income only and the beneficiary has no interest in the income which he can assign.”); *see* CP 421 (stipulation amending the Trust to clarify that “[i]t was intended that this trust be the principal source of support, maintenance and benefit for June L. Sweezey”).

income (or principal) distributions to her for her maintenance and support, only that their alleged “unearned compensation” had depleted Trust assets; she likewise did not pray for additional income or distributions payable to her personally, only that the co-trustees (including Rick) make restitution to the Trust itself. CP 436-446. Why would June assign Rick a right to distribution she was not owed and did not seek? She wouldn’t.

The Estate’s theory that David and Paul assigned their interests to Rick is equally implausible. When the TEDRA Agreement was signed, there was no determination that (had he survived June) Rick would benefit from an “equalizing distribution”; the arbitration occurred months later. Indeed, it was uncertain that David or Paul would receive a distribution from which an equalizing payment could be made; they, like Rick, could die before June and get nothing. If Rick believed he was due a payment from David or Paul, why would he settle for an assignment of a contingent right that could amount to nothing? He wouldn’t. In the end, the Estate’s assignment theory fails for the same reasons as its other arguments: the TEDRA Agreement did not give Rick a right to receive a distribution.

B. The Trial Court Properly Rejected The Estate’s Unsupported Claims Of Promissory And Equitable Estoppel.

Rick’s Estate also argued that the Trust must recognize its claim under the doctrines of promissory or equitable estoppel. CP 259-60. While framed as alternative bases for relief, both theories depended on the

success of the Estate's contract claim; that is, the only "promises" upon which Rick allegedly relied were the terms of the TEDRA Agreement itself. *Id.* at 259 ("The TEDRA Agreement shows that David and Paul promised Rick a distribution equal to theirs"); *id.* at 260 ("in the TEDRA Agreement, David and Paul agreed Rick ... would receive an amount equal to what they had taken"). Rick's Estate proffered no evidence to suggest that Rick relied on some other promise or representation regarding the meaning or effect of the TEDRA Agreement when he agreed to it (nor did the Estate allege fraudulent inducement or misrepresentation).

The trial court correctly recognized that its rejection of the Estate's erroneous interpretation of the TEDRA Agreement also required dismissal of the Estate's estoppel arguments. CP 658-59.⁶ In short, because there was no evidence that David or Paul made representations to Rick outside the express terms of the TEDRA Agreement, and the Trust complied with those terms, then, as a matter of law, there was no broken promise or justifiable reliance—elements common to both promissory and equitable estoppel. The trial court's dismissal of these claims must be affirmed.

⁶ Rick's Estate did not reference the dismissal of its promissory or equitable estoppel claims in its assignments of error or statement of issues. Op. Br. at 1-4; RAP 10.3(a)(4). Because the Estate addressed these issues in its argument, however, Respondents assume this was an oversight.

Promissory Estoppel. This Court can and should reject the Estate’s promissory estoppel claim for the same reason it must reject its contract claim. Promissory estoppel is an alternative theory based on the *absence* of an enforceable contract. *Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 130, 857 P.2d 1053 (1993); *Farm Crop Energy, Inc. v. Old Nat’l Bank*, 38 Wn. App. 50, 53, 685 P.2d 1097 (1984), *rev’d on other grounds*, 109 Wn.2d 923 (1988). Thus, the doctrine does not apply where a contract controls. *Id.*; *Spectrum Glass Co., Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 129 Wn. App. 303, 317, 119 P.3d 854 (2005) (*citing Klink v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 261 n. 4, 616 P.2d 644 (1980)). Put differently, if the alleged promise at issue is contained in the terms of an express contract, the claim is for breach of those terms; and if there is no breach, there is no broken promise. *Id.*

This rule applies here. Promissory estoppel requires a “clear and definite promise” that manifests “an intention to act or refrain from acting in a specified way.” *Wash. Educ. Ass’n v. Wash. Dep’t of Ret. Sys.*, 181 Wn.2d 212, 225, 332 P.3d 428 (2014) (citations omitted). Rick’s Estate claims there was a “promise among the parties that Rick ... would receive a distribution equal to what David and Paul had given to themselves.” Op. Br. at 40. But beyond the terms of the TEDRA Agreement itself, which does not require a distribution to Rick or his heirs, the Estate produced no

evidence that such a promise was ever made. *See* CP 263-367. In the absence of any proof of a separate “clear and definite promise,” the trial court was required to grant summary judgment. *Tacoma Auto Mall, Inc. v. Nissan N.A., Inc.*, 169 Wn. App. 111, 129, 279 P.3d 487 (2012); *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 520, 84 P.3d 1241 (2004).

Not only is there no evidence of any extra-contractual “promise” made to Rick, the Estate’s bald assertion that Rick “alter[ed] his rights, and delay[ed] his distribution” in reliance thereon is likewise unsupported by facts and, indeed, defies common sense. As discussed above, June accused Rick and his brothers of breaching their fiduciary duties and sought the return of any unearned compensation to the Trust. CP 436-446. Had June pressed her claims to trial, rather than settle, Rick would have received nothing—even if he were vindicated of wrongdoing. Restitution would have flowed solely to the Trust, not to its remainder beneficiaries. Rick did not give up a right to an immediate distribution in exchange for the TEDRA Agreement because he never had such a right to begin with.

Equitable Estoppel. The Estate’s equitable estoppel claim fails for the same reasons. Equitable estoppel allows a court to hold a party to a representation when harm would result to another party who justifiably relied on the representation. *Colonial Imports, Inc. v. Carlton Northwest, Inc.*, 121 Wn.2d 726, 734, 853 P.2d 913 (1993). The doctrine is not

avored and, thus, must be proved by clear, cogent, and convincing evidence. *Robinson v. City of Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318 (1992); *Colonial Imports*, 121 Wn.2d at 737 (“the facts relied upon to establish an equitable estoppel must be clear, positive, and unequivocal in their implication”). There was no clear, cogent and convincing evidence.⁷

Rick’s Estate argues the Trust should be estopped from enforcing the TEDRA Agreement to fulfill an alleged “promise [David and Paul] made to allow Rick’s Estate to receive” a distribution. *Op. Br.* at 38; *id.* at 39 (Rick was “guaranteed an equalizing payment”). Here, too, the Estate failed to produce any evidence outside the four-corners of the TEDRA Agreement showing that David or Paul represented anything to Rick regarding distributions from the Trust, much less a “clear, positive and unequivocal” statement they intended the TEDRA Agreement to modify the Trust’s survivorship requirement. They didn’t—a fact confirmed in the parties’ subsequent arbitration; as noted, the Arbitration Award

⁷ Rick’s Estate suggests that the trial court also should have granted equitable relief under RCW 11.96A.020. *Op. Br.* at 38. But the Estate did not make this argument or cite RCW 11.96A.020 below. CP 259-60; 635-37. To the extent the Estate argues that RCW 11.96A.020 provides additional grounds for relief, that argument is waived. RAP 9.12; *Brundridge*, 164 Wn.2d at 441. In any event, Rick’s Estate does not claim the analysis under RCW 11.96A.020 would differ than that applicable to its estoppel claims or lead to different result. It wouldn’t.

expressly tied the sons' respective rights to an equalizing "distribution" to their status as "remainder beneficiaries" under the Trust. CP 462.

The trial court also easily rejected the Estate's plea to disregard the TEDRA Agreement and simply pay Rick's heirs to make up for David and Paul's alleged "ill-gotten gains." Op. Br. at 39. Rick was no victim. His Estate studiously ignores the fact that June's TEDRA petition accused Rick of breaching his fiduciary duties and causing damages to the Trust by, among other things, authorizing excessive compensation paid to his brothers. CP 436-446; see *Top Line Builders, Inc. v. Bovenkamp*, 179 Wn. App. 794, 815, 320 P.3d 130 (2014) ("a party with unclean hands may not assert equitable estoppel"). In response, Rick agreed to step down as co-trustee and June released her claims against him without a finding of wrongdoing. CP 449-53. To be sure, the arbitrator's determination that David and Paul, but not Rick, received "advanced distributions" did not absolve Rick of culpability; it was merely an accounting. CP 462.

Moreover, the Estate's suggestion that the advanced distributions paid to David and Paul came at his expense is flat wrong. June sought a return of advanced distributions to the Trust—not a payment to her or Rick. Nor did Rick assert any claims or seek damages of his own. Even if David and Paul had breached their fiduciary duties by receiving unearned compensation, Rick would have received nothing in June's case—and,

indeed, any award to him would have violated the Trust. In sum, the TEDRA Agreement did not guarantee a payment to Rick or his Estate; it guaranteed “equalized distributions” to beneficiaries who satisfied the Trust’s survivorship requirement—which Rick did not do. The trial court found the Estate’s claim “meritless” for good reason.

C. The Trial Court Properly Exercised Its Discretion Under TEDRA In Ordering Rick’s Estate To Pay The Reasonable Attorneys’ Fees Of The Trust And The Gary Family Trust.

After finding the petition “meritless,” the trial court ordered Rick’s Estate to pay the Trust and the Gary Family Trust their attorneys’ fees and costs. CP 659; CP 790-91; CP 793-94. Rick’s Estate does not appeal the reasonableness of the fees awarded, Op. Br. at 2-4 (Assignment of Error 6; Issues 6 & 7), but does challenge the underlying basis for the award on the grounds that it was not supported by adequate findings and conclusions, and/or it was an abuse of discretion to order the Estate to pay fees absent a finding of fault. Doubling down, Rick’s Estate also argues that the trial court “should have awarded the Estate its attorney fees regardless of how it decided the case.” *Id.* at 41-45. Rick’s Estate is wrong on all three counts. The fee award was both procedurally and substantively proper.

1. The Trial Court Properly Articulated The Basis For Its Attorneys’ Fee Award With Findings And Conclusions.

Rick’s Estate repeatedly quotes the judge’s *oral* remarks—“I think an award of attorney’s fees is appropriate”—to disingenuously suggest

that the trial court provided no reasoned basis for its fee award. Op. Br. at 15, 42 (citing Tr. at 11). But it did. The court's *written* summary judgment order, which the Estate fails to excerpt in its brief, extensively details its findings and conclusions on the issue of attorneys' fees:

Under the Trust and Estate Dispute Resolution Act (RCW 11.96A.150), this Court has discretionary authority to award costs, including reasonable attorneys' fees, to any party from any party to the proceedings, to be paid in such amount and in such manner as the Court determines equitable. The Court finds that the Estate's Petition caused the co-trustees to incur attorneys' fees and costs in their defense of the Trust and its remainder beneficiaries from an unsuccessful and meritless attack by the Estate of Richard H. Swezey. The court finds that it is equitable to AWARD the Trust its reasonable attorneys' fees and costs incurred, in an amount to be set by the Court in further proceedings, and that such fees and costs should be paid by the Estate of Richard H. Swezey or its distributees. . . .

CP 659. The trial court's follow-on orders setting the amount of fees, also ignored by Rick's Estate, likewise reiterated that "[t]he Court has rejected the Estate's Petition in its entirety, finding it 'meritless,'" CP 791, and added that, "[t]he Court also determines that this case does not involve claims that are particularly novel or legally challenging, so as not to justify an award of attorneys' fees and costs." CP 794.

To be sure, a court must make an adequate record of a fee award to allow meaningful review. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). But findings and conclusions are required primarily to ensure that, in calculating the amount of a fee, the trial court does "not simply

accept unquestioningly fee affidavits from counsel.” *Id.* Where, as here, the only issue is the *basis* for a fee award under TEDRA, not its *amount*, it is sufficient if the court identifies the “factors that it deems to be relevant and appropriate.” RCW 11.96A.150. The trial court plainly did that here, finding—after considering the parties’ extensive briefing on the fee issue, *see* CP 261, CP 389, CP 497-98, CP 616, CP 638—that the petition was “a meritless attack” involving claims that were not “novel or legally challenging.” CP 659, CP 791; CP 794. Nothing more was required.

2. The Trial Court Did Not Abuse Its Discretion In Ordering Rick’s Estate To Pay Attorneys’ Fees For Its “Meritless Attack” Against The Trust.

TEDRA gives courts wide discretion to award fees “to any party ... [f]rom any party” “in such manner as the court determines to be equitable.” RCW 11.96A.150(1). “In exercising this discretion ..., the court may consider any and all factors that it deems to be relevant and appropriate[.]” *Id.* An appellate court cannot “interfere with a trial court’s fee determination unless there are facts and circumstances clearly showing an abuse of the trial court’s discretion.” *In re Estate of Black*, 153 Wn.2d 152, 173, 102 P.3d 796 (2004) (internal quotation marks omitted); *see also In re Guardianship of Lamb*, 173 Wn.2d 173, 198, 265 P.3d 876 (2011) (“The express language of RCW 11.96A.150 leaves attorney fee awards ... to the court’s discretion.”). A trial court abuses its discretion only if its

decision to award fees under RCW 11.96A.150 is manifestly unreasonable or based on untenable grounds or reasons. *Black*, 153 Wn.2d at 173.⁸

There was no manifest abuse of discretion here. The trial court specifically found that it was equitable for Rick's Estate to reimburse the Trust and Gary Family Trust for the fees they were forced to unnecessarily incur defending the Trust's assets from the Estate's "meritless attack." Washington courts have repeatedly found that TEDRA supports a fee award against an unsuccessful claimant where, as here, the claim lacks merit. *Anderson v. Dussault*, 177 Wn. App. 79, 95, 310 P.3d 854 (2013) ("As Anderson's claims ... lack merit, we grant their request for costs and attorney fees"), *rev'd on other grounds*, 181 Wn.2d 360 (2014); *In re Estate of Fitzgerald*, 172 Wn. App. 437, 454, 294 P.3d 720 (2012) ("the Estate has once again been forced to incur attorney fees to defend against Mountain-West's meritless claims"). This case is no different.

Moreover, in finding the Estate's petition "meritless," the trial court properly rejected its argument that a fee award "punishes the innocent party and rewards David and Paul for breaching their fiduciary

⁸ This Court can easily reject the Estate's suggestion that the trial court erroneously applied a "prevailing party" standard. Op. Br. at 42. The court's written findings properly identified RCW 11.96A.150(1) and recited its equitable standard. CP 659 ("this Court has discretionary authority to award costs, including reasonable attorneys' fees, to any party from any party to the proceedings, to be paid in such amount and in such manner as the Court determines equitable.").

duty.” Op. Br. at 45-46. Just the opposite. The trial court *vindicated* David and Paul’s refusal to recognize Rick’s Estate as a creditor or beneficiary of the Trust; if anything, they would have breached their fiduciary duty to the real beneficiaries—in particular, the Gary Family Trust—had they depleted the Trust’s assets by acceding to the Estate’s invalid claim. Nor was there ever any finding that David or Paul breached a fiduciary duty to the Trust in connection with June’s TEDRA petition. Indeed, June accused David, Paul *and Rick* of misconduct, which they resolved through settlement, *i.e.*, the TEDRA Agreement. CP 436-446.

By the same token, it was entirely within the trial court’s discretion to reject the Estate’s argument that a fee award was improper given the supposedly “novel” nature of the dispute. *See* Op. Br. at 43. The Estate’s petition did not raise a novel issue; the effect of the TEDRA Agreement on the Trust turned entirely on routine principles of contract interpretation. And, that is precisely what Rick’s Estate told the trial court before losing summary judgment. CP 620 (“all that is required of the Court is to simply apply the rules of contract interpretation and ascertain the intent of the parties”). The trial court agreed, and properly considered and cited this factor in its award. CP 794 (“The Court also determines that this case does not involve claims that are particularly novel or legally challenging, so as not to justify an award of attorneys’ fees and costs.”).

And, even if the Estate's claim was somehow unique, nothing in RCW 11.96A.150 would preclude the trial court from awarding fees. This Court squarely rejected the Estate's argument (and reliance on *In re Estate of Stover*, 178 Wn. App. 550, 315 P.3d 579 (2013)) to the effect that TEDRA fee awards are improper in cases involving novel issues:

Sloans argues that attorney fees may not be awarded under RCW 11.96A.150 in a case where novel questions of statutory construction are at issue. Her argument is a misreading of *In re Stover* Whether a case involves novel or unique questions is a factor that a court may deem relevant in its consideration of a request for attorney fees under RCW 11.96A.150, and in *Stover*, we did deem it relevant. But we did not hold that it is always dispositive or even always relevant.

In re Estate of Berry, --- P.3d ---, 2015 WL 4726882, *6 (Aug. 10, 2015).

In short, whether or not the Estate's claim raised a novel issue, the nature of the parties' arguments was simply one of many factors the trial court could consider as "relevant and appropriate." RCW 11.96A.150. The trial court did consider that factor, *see* CP 794, and acted well within its discretion in finding that the Estate's claim—novel or not—amounted to a "meritless attack" that needlessly drained Trust assets. CP 659; CP 791.

Finally, this Court can reject the Estate's suggestion that RCW 11.96A.150 permits a fee award against a party only upon proof of his or her misconduct. Op. Br. at 43-44. Courts *may* award fees on this basis, *e.g.*, *In re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004), but the

statute does not make proof of misconduct a prerequisite nor promote that factor over “any and all” other factors it can consider “relevant and appropriate.” RCW 11.96A.150(1).⁹ Not surprisingly, courts routinely award fees against parties in cases not involving misconduct, breach of fiduciary duty or the like. See *In re Fitzgerald*, 172 Wn. App. at 454; *Kwiatkowski v. Drews*, 142 Wn. App. 463, 500-01, 176 P.3d 510 (2008); *Villegas v. McBride*, 112 Wn. App. 689, 697, 50 P.3d 678 (2002); *In re Estate of Kerr*, 134 Wn.2d 328, 344, 949 P.2d 810 (1998) (decided under former RCW 11.96.140). There was no abuse of discretion.

3. The Trial Court Properly Denied The Estate’s Request That The Trust Pay The Attorneys’ Fees It Incurred Unsuccessfully Pursuing A Claim For Its Sole Benefit.

Rick’s Estate argues that “the trial court should have awarded the Estate its attorney fees regardless of how it decided the case.” Op. Br. at 45. But in both moving for and opposing summary judgment, Rick’s Estate did not ask for an award of attorneys’ fees against the Trust (or anyone) in the event it lost—only in the event it won. CP 261; CP 638. Nor did Rick’s Estate make such a request at the hearing, or in its brief

⁹ That proof of misconduct is not required under RCW 11.96A.150 is obvious when the statute is compared to RCW 11.24.050, which permits attorney fee awards against will contestants only if the contestant did not act “with probable cause and in good faith.” RCW 11.96A.150 contains no such qualifier and, indeed, expressly states that it “shall not be construed as being limited” by RCW 11.24.050. RCW 11.96A.150(2).

opposing the amount of the award. Tr. at 10-12; CP 734-46. The Estate cannot raise this issue for the first time on appeal. RAP 9.12; *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008).

Even if this issue were sufficiently raised below, it is clear that the trial court did not abuse its discretion in refusing to order the Trust to pay Rick's Estate for pursuing a "meritless" claim. In general, attorneys' fees may be awarded against a trust "only where the litigation results in a substantial benefit to the trust." *Bartlett v. Bellach*, 136 Wn. App. 8, 22, 146 P.3d 1235 (2006) (citing *In re Estate of Niehenke*, 117 Wn.2d 631, 648, 818 P.2d 1324 (1991)). So, for example, a "benefit to the trust" can be found in litigation that exposes a trustee's breach of fiduciary duties ... or permits the continued operation of a trust[.]" *In re Boris V. Korry Testamentary Marital Deduction Trust for Wife*, 56 Wn. App. 749, 756, 785 P.2d 484 (1990) (internal citations omitted).

On the other hand, Washington courts uniformly recognize that there is no benefit to the trust, and no abuse of discretion in denying fees payable by the trust, "when, as here, the litigation was unsuccessful and primarily prosecuted for personal benefit." *Id.* (citing *v. Pacific Nat'l Bank*, 99 Wn.2d 394, 407, 663 P.2d 104 (1983)); also *In re Estate of Moi*, 136 Wn. App. 823, 835, 151 P.3d 995 (2006) ("Nelson's attempt to take a larger share of the estate did not benefit the estate, and so we decline to

award him attorney fees.”); *In re Estate of Ehlers*, 80 Wn. App. 751, 764, 911 P.2d 1017 (1996) (“Where the beneficiaries ... primarily pursue the action for their own benefit, the court does not abuse its discretion in denying them attorney fees.”). As noted, when such is the case, it is well within the trial court’s discretion to order the unsuccessful claimant to pay the trust’s fees. *In re Estate of Kerr*, 134 Wn.2d at 344.

That is precisely what the trial court did here. Rick’s Estate sought only a pay-out for itself, not a benefit to the Trust or any other beneficiary, and its claim resulted only in a depletion of Trust assets to the detriment of its legitimate beneficiaries. Any award of fees to Rick’s Estate from the Trust assets would have rewarded the Estate for its “meritless attack” and only further diminished those assets. This is not a case where litigation among beneficiaries helped ascertain each parties’ respective rights for the benefit all; *all* the Trust’s beneficiaries—David, Paul and the Gary Family Trust—were unified in their opposition to the Estate’s claim. Indeed, the Estate did not and could not claim to be a beneficiary of the Trust at all—just a creditor. There was no abuse of discretion on this basis either.

D. The Trust And The Gary Family Trust Are Entitled To Their Reasonable Attorneys’ Fees On Appeal.

For all the above reasons, this Court likewise should award the Trust and Gary Family Trust their attorneys’ fees on appeal, and deny the Estate’s request for the same. *See* RAP 18.1(a). TEDRA permits an

award of attorneys' fees on appeal "in such amount and in such manner as the court determines to be equitable." RCW 11.96A.150(1). Just like its underlying claim, the Estate's appeal is without merit, does not benefit the Trust and has further depleted the Trust's assets. This Court has exercised its discretion to award fees against unsuccessful claimants on appeal in similar circumstances. *In re Estate of Fitzgerald*, 172 Wn. App. at 453-54; *Villegas*, 112 Wn. App. at 696-97. It should do so here as well.

RESPECTFULLY SUBMITTED this 1st day of October, 2015.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury as permitted by RCW 9A.72.085 that the following is true and correct:

On October 1, 2015 she caused a true and correct copy of the foregoing to be sent in the manner indicated below addressed to the following notice parties:

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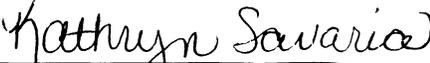
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