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Clallam County Cause No. 13-2-01120-7

**In the Court of Appeals, Division II
For the State of Washington**

In Re:
Doreen Hunt, Co-Trustee of the ROBERT E. TUTTLE SR.
TESTAMENTARY TRUST u/w/d 11/17/1993,
Appellant,

vs.

Patricia Hicklin, Co-Trustee of the ROBERT E. TUTTLE SR.
TESTAMENTARY TRUST u/w/d 11/17/1993,
Appellees.

Respondent's Brief

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A. INTRODUCTION

Appellant Doreen Hunt, Co-Trustee (“Hunt”), takes a position that the Trial Court abused its discretion by arguing the following. “*No court rule exists upon which Hicklin could have relied would enable the Trial Court to issue its 2017 Order for more definite statement and then issue the Order dismissing Hunt’s claims in 2018.*” Appellant’s Brief, page 23.

Except a court rule does exist, and it’s not ambiguous. It states:

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

CR 12(e). The record shows Hunt was dilatory. Hunt created needless litigation, alleging vague allegations in a complaint, but really Hunt wanted to litigate about 2010-2011 logging of property owned by the Tuttle Family Limited Partnership (FLP) demanding to know what happened to logging proceeds paid to the now deceased Anita Tuttle. The

main problem was Hunt's brother, Robert Tuttle, already raised that claim.¹ So did the FLP in a separate lawsuit. By making vague claims, Hunt was trying to avoid dismissal, knowing she could not litigate about the logging. Robert Tuttle had alleged Hicklin breached her duty, yet Hunt made a strategic decision to decline to intervene in that litigation. FLP and Robert Tuttle both lost, so Hunt attempted to prosecute claims, knowing they had been dismissed, by being intentionally vague.

Hicklin got wise to Hunt's games, and in a plainly put and well-reasoned argument to the Trial Court, successfully obtained an order under CR 12(e) compelling Hunt to state what her claim really was about. Did it involve the 2010-2011 logging proceeds and the 2009 Power of Attorney (YES) or was it about some other actionable claim that occurred after Anita Tuttle's death specifically pertaining to the Robert E. Tuttle Trust? All Hunt had to do was within ten days of that May 22, 2017 CR 12(e) order was amend her complaint and show the Trial Court her actual claim. Except she didn't. Hunt sat on her hands, and after more than nine months (at that point the case was 4+ years), Hicklin obtained a dismissal. The Trial Court followed the plain language of CR 12(e) and did not abuse its discretion.

¹ The problem with Hunt's and Robert Tuttle's claims has always been that Anita Tuttle, while alive, was the sole income beneficiary of the Trust, thus all logging proceeds went to Anita Tuttle. When Anita Tuttle passed away, any income left over was to be paid to Anita Tuttle's estate, which Hunt and Robert Tuttle are not beneficiaries.

**B. RESPONSE TO STATEMENT OF ISSUES AND
ASSIGNMENT OF ERRORS**

The Trial Court did not err in dismissing the lawsuit with prejudice. Assignment of Error No. 1 and No 2 involves an interlocutory order of May 22, 2017. It was not a final order and was subject to review and reconsideration by the Trial Court. There is no good reason Hunt could not have obeyed the May 22, 2017 order. Hunt cannot show these orders should be reversed.

Assignment of Error No. 3 involves a discretionary order of April 24, 2018, and is reviewable for an abuse of discretion. There was no abuse of discretion given the history of the case and Hunt's dilatory actions. Assignment of Error No. 4 involves an order granting attorney fees under RCW 11.96A.150 and can only be reversed for an abuse of discretion. The only real appealable issues are in Assignment of Errors Nos. 3 and 4. These were well within the discretion of the Trial Court.

C. PROCEDURAL BACKGROUND

Hunt's leaves out key elements that pertain to Hicklin and the Trust and fails to clearly state the sequence of events leading to dismissal. Hunt skips around with events, failing to show how each progressive motion and order led to dismissal with prejudice. This Court has already heard one

appeal from some of the disinherited heirs of Anita Tuttle, In re Estate of Tuttle, 189 Wn. App. 1029 (2015) and then heard another appeal from the brother, Robert Tuttle, where it reviewed the factual background concerning the claims made regarding Anita Tuttle's Estate in Tuttle v. Estate of Tuttle, 49669-1-II, 2018 WL 2437294, (Wash. Ct. App. May 30, 2018). This is the third appeal stemming from the same estate.

1. **Robert Tuttle brings his claims.**

After Daisy Anderson, Doreen Hunt and Sharon Horan, all disinherited daughters of Anita Tuttle, filed a will contest (Tuttle, 189 Wn.App 1029), another disinherited heir, Robert Tuttle, filed a lawsuit in November 2013 against Anita Tuttle's estate; the FLP; the Robert Sr. Testamentary Trust; and Patricia and Sydney Hicklin, Sr., husband and wife. Tuttle v. Estate of Tuttle, 49669-1-II, at *3. This Court summarized the allegations in Robert Tuttle's complaint as (1) judgment quieting title to his claimed 22.5 acres, (2) accounting of the activities of the FLP and the Robert Sr. Testamentary Trust, (3) declaratory relief with respect to management and operation of the FLP and the Robert Sr. Testamentary Trust and (4) recovery of attorney's fees and costs incurred. Id.

2. Tuttle's claims about logging proceeds fail because Anita Tuttle was entitled to all the logging income paid to the Trust.

Robert Tuttle vaguely complained about activities by Anita Tuttle as Trustee, but in later declarations clarified it was the logging that occurred in 2010-2011 on FLP property while Anita Tuttle was alive. Robert Tuttle claimed logging proceeds were not properly accounted for and Hicklin, Anita Tuttle and the Trust co-conspired to deprive him of the moneys he claimed were due to him (CP 192 Case # 49669-1). Robert Tuttle alleged Hicklin used a 2009 Power of Attorney Anita Tuttle had granted Hicklin in a vaguely put "manner" depriving him of the 2010-2011 logging proceeds (CP 192 Case #49669-1). Tuttle appeared to claim Hicklin and/or Anita Tuttle should have held or preserved those logging proceeds that belonged to the Trust, owner of 749.19 shares of FLP (the actual title owner). Robert Tuttle, as Trust beneficiary, believed he was entitled "income" paid to the Trust. The problem with Robert Tuttle's (and now Hunt's claims) is that per the plain language in the Trust, Anita Tuttle was entitled to all income the Trust received while she was alive ("Trustee shall distribute the entire net income from this trust" Trust, Art. IV 4.3), thus Anita Tuttle had the right to take all the funds allocated to the Trust, including any 2010-2011 logging proceeds while she was alive (CP 531, 538-548). Upon Anita Tuttle's death, all income on hand was to be distributed to the Estate ("Any undistributed

income on hand at the time of the death of Trustor's spouse shall be distributed to the personal representative of her estate." Trust, Art. IV 4.3) (CP 531, 538-548). The Trust contradicts Hunt's position.

3. Hunt agrees that "income" belonged to Anita Tuttle and then the Estate upon Anita Tuttle's death, NOT the Trust and the record shows she knew about the logging when it happened.

Hunt actually agrees that "income" belonged to Anita Tuttle and should be paid to the Estate upon her death. "Patti is correct that the Trust provided that upon our mother's death, all 'Income' in the Trust is to be distributed to her Estate and all Assets are to be distributed to our parent's seven children." *Doreen Hunt* (CP 357). Robert Tuttle, Daisy Anderson, Doreen Hunt, and Sharon Horan have no claim to the Trust logging proceeds paid to Anita Tuttle. Yet, now the disinherited heirs are demanding Hicklin go back and account to them what Anita Tuttle may or may not have done with logging proceeds which she had the authority to take.²

Despite dancing around the issue, Hicklin believes Hunt's claims are really about the logging, because Hunt has stated: "Another issue which

² To get around this problem, these heirs will claim Anita Tuttle was not competent and couldn't handle her affairs, implying there was some undue influence by Hicklin as set forth in Sharon Horan and Hunt's declarations. But again the will contest was lost as there was no evidence that Anita Tuttle was not able to handle her affairs up until her death. Their mere speculation about what occurred prior to Anita Tuttle's death should not be allowed to move forward and is time barred.

I have not been able to determine is what happened to hundreds of thousands of dollars which were earned by the Tuttle Family LLP when it logged the family forests in 2010, 2011 and 2012.³ *Doreen Hunt* (CP 358). Yet, we know the disinherited heirs were paid their fair share of the proceeds when it happened. “All seven of mom and dad’s children owned a very small interest in the LLP, and in 2010, 2011 and 2012 we received K-1 reports of distributions from the LLP to each of us.” *Sharon Horan* (CP 345). Hunt and Sharon Horan they knew about the logging and received “income” from it. The purpose of the Schedule K-1 is to report their share of the partnership’s **income**, deductions and credits. However, in Court Hunt has denied the case is about the logging income. (RP 91)

4. Hicklin hires counsel. Hunt is made aware and doesn’t object.

Defending Robert Tuttle’s lawsuit, Hicklin retained counsel who filed a Notice of Appearance on Hicklin’s behalf in her individual and marital capacity and in her Co-Trustee capacity on December 5, 2013, a copy of which was sent to Hunt’s attorney, Barry Kombol (CP 452). Hicklin wrote to Hunt making her aware of the pending litigation by letter dated February 11, 2014 (CP 624⁴, 628,634). On February 12, 2014,

³ Robert Tuttle has stated, as the alleged owner (per his quiet title claim against FLP) the logging occurred in 2010-2011.

⁴ For unknown reasons the Trial Court record did not show a Declaration of Patti Hicklin had been filed, so the Trial Court gave permission to refile it at a later date.

Hicklin filed an answer in both her capacities, again copying Mr. Kombol (CP 453). Hicklin raised an affirmative defense that FLP owned the logged property, so Robert Tuttle demanded on February 18, 2015 that the FLP commence a lawsuit as per RCW 25.10.706(1). A copy of that letter was sent to Mr. Kombol (CP 630, 635). Hunt filed an Acceptance of Service of an amended complaint on February 28, 2014 (CP 453), but did not serve it on Hicklin. During that time period did Hunt did not object to Hicklin hiring counsel. The amended complaint was not filed until March 5, 2014 and was also not served on the original parties to the action (CP 453). Hicklin was not aware Hunt had been made a party to the original action, but Hunt knew of Robert Tuttle's claims and did not timely object to Hicklin hiring counsel.

5. FLP brings it claims. Hicklin successfully obtains dismissal.

In May 2014, the FLP, with Anita Tuttle's grandson, Eric Anderson, as its general partner, filed a lawsuit against Anita Tuttle's estate; the Robert Sr. Testamentary Trust; and Patricia and Sydney Hicklin, Sr., husband and wife. Tuttle v. Estate of Tuttle, 49669-1-II, 2018 WL 2437294, at *3. This was a separate cause of action in Clallam County Superior Court Case No: 14-2-00463-2 (herein "FLP case"). Robert Tuttle, Daisy Anderson, Doreen Hunt, and Sharon Horan are all limited partners of the FLP. It became clear in later filings that the logging occurred on FLP owned property 2010-2011,

and FLP was seeking an accounting of those specific activities. Different parties making claims, but all centering around the same nucleus set of facts—Hicklin’s alleged use of the 2009 Power of Attorney pertaining to the 2010-2011 logging that allegedly deprived the heirs of Anita Tuttle some share of those income proceeds.

This Court noted the procedural background in Tuttle, 49669-1-II, when the FLP dismissal was obtained on December 19, 2014, but there is a distinction that should be drawn. The Estate’s motion was for failure to timely comply with the probate claim statute. However, differently, Hicklin individually and as co-trustee, moved for dismissal of the FLP claims against Hicklin on the merits (probate statute would not apply). The Trial Court granted the motion and the dismissal was not appealed.

6. Hicklin moves for dismissal of Robert Tuttle’s Claims.

On October 19, 2015, Hicklin filed a CR 56 motion for summary judgment in the Robert Tuttle lawsuit—both personally and in her representative capacities. Tuttle v. Estate of Tuttle, 49669-1-II, at *4. Hicklin claimed that Robert Tuttle’s lawsuit should be dismissed under *res judicata* because of the resolution in the FLP case. Id. However, Hicklin also moved for dismissal on the merits. The FLP lawsuit and Robert Tuttle’s lawsuit against the Estate, Trust, and Hicklin personally were based

on the same alleged conduct concerning the 2010-2011 logging. The order dismissing Hicklin in all capacities was not appealed. As noted by this Court “Though he [Tuttle] named the Trust and Estate among the defendants in his lawsuit, he only appeals dismissal of his individual claim to quiet title against the FLP. Tuttle v. Estate of Tuttle, 49669-1-II at *8.

7. Hunt interferes delaying dismissal.

Hunt began participating in the litigation on November 12, 2015 by filing an objection to Hicklin’s pending CR 56 motions against Robert Tuttle, even though she was aware of the lawsuit in February 2014 (CP 527). Hunt contended she wasn’t notified of the motion and further contended Hicklin had not made her aware of any aspect of what was going on with the trust (CP 527⁵). Hicklin and the Estate were not aware she had been joined in the action (CP 453). On December 8, 2015, Hunt filed cross-claims against Hicklin in her capacity as Co-Trustee, vaguely alleging four cases of action. (CP 494). On February 22, 2016, the Trial Court held it would rule on Hicklin’s CR 56 motions against Robert Tuttle within fourteen days unless Hunt moved to intervene per CR 24. At that time the Trial Court believed Hunt was not a party due to Tuttle’s procedural

⁵ This has been shown to be false, as Hunt was made aware from the onset of Hicklin’s choice to hire counsel (CP 628,634) and the Trial Court specifically found Hunt was aware (CP 619).

mistakes (CP 483). In fact, the Court noted that “The fact remains that both the Trust and Co-Trustee Hicklin are parties to this action. Co-Trustee Hunt is not” -*Judge Melly*. The Court reconsidered this in the August 19, 2016 memorandum opinion (CP 452). Hicklin and the Trial Court didn’t know Hunt was in the litigation when the Tuttle CR 56 motion was served.

On March 7, 2016, Hunt filed notice that she declined to intervene in the CR 56 motions against Robert Tuttle (CP 476). Hunt informed the Court “Count I of the Cross Claim of Co-Trustee Doreen Hunt versus Co-Trustee Patricia Hicklin may therefore be stricken.” (CP 477). Hicklin relied upon that representation. Thereafter, Hicklin moved to dismiss Hunt’s December 8, 2015 pleading contending lack of standing (since she didn’t intervene), and under a theory of *res judicata*, because even though the pleadings were vague, it appeared Hunt’s claim were the same as Robert Tuttle about the 2009 Power of Attorney and logging. Hicklin requested sanctions (CP 458, 627-632). On August 19, 2016, the Court held that, no, in fact Hunt was a party, even though a proper CR 15 motion to amend had never been brought by Robert Tuttle adding Hunt to the case and even though Mr. Kombol never timely filed a notice of appearance alerting anyone back in the spring of 2014. The Trial Court held Hunt’s cross-claims were made between Co-Trustees of the Trust, independent of Hunt’s status as a beneficiary under the Trust, denying Hicklin’s motion to dismiss

(CP 452). The ruling appeared to hold that the Trial Court was only allowing Hunt's claims as a Co-Trustee, not as a beneficiary, since Robert Tuttle's beneficiary claims were dismissed.

8. Hicklin files a motion for a more definite statement under CR 12(e) and the court denies without prejudice Hunt's motion to compel.

The problem was, even though the Court stated these were claims between Co-Trustees, Hunt was prosecuting beneficiary claims like Robert Tuttle. On February 23, 2017, Hicklin filed a motion for a more definite statement per CR 12(e) (CP 438), because Hunt's requested discovery appeared to be pursuing substantially the same allegations previously dismissed in FLP and Robert Tuttle case (CP 199-224). Hunt's pleading was vague because it stated the claims were between Co-Trustees, but the focus in discovery pre-dated Hicklin being a co-Trustee, looking for information while Anita was alive (CP).⁶ Hunt wanted info and records of activities and income for the FLP 2010-2011 logging (CP 217-219, 223), tax returns filed while Anita Tuttle was alive, (CP 214), and records and information on the affairs of FLP (CP 211-212). Hunt wanted to know if

⁶ Thus to rebut and correct Hunt- "*Mrs. Hicklin has never argued to the Trial Court that any of Mrs. Hunt's Cross-claims were vague or ambiguous.*" Appellant's Brief, page 13. This statement is directly contradicted by the record and findings (CP 619).

Hicklin used a 2009 Power of Attorney for Anita Tuttle during her life to access Anita Tuttle's personal, business or medical records (CP 210). This discovery did not relate to Hunts vague December 8, 2015 claims against Hicklin as Co-Trustee. These were issues prior to Hicklin being a Co-Trustee, and already litigated in the FLP and Robert Tuttle claims that the 2009 Power of Attorney was used somehow to deprive FLP and/or Robert Tuttle the 2010-2011 logging proceeds. Hunt and Sharon Horan filed declaration about not being "involved" in the Trust administration, but what they really wanted were the logging proceeds Anita Tuttle received from the Trust (CP 345, 358). Hicklin need a more specific statement to verify if Hunt's claims were actually different than FLP and Robert Tuttle.

Hunt was using vague conclusions in her pleadings to crack open attorney client communications.⁷ Hicklin wanted to see if the claims were well-grounded in fact, or if they were brought for an improper purpose. CR 11. But to know this and respond, Hicklin needed Hunt to state the actual basis for the claims. Hunt already caused delay. The Trial Court granted Hicklin's CR 12(e) motion on May 22, 2017 because Hunt's pleading were

⁷ Hunt wanted to know sources of funds to pay Hicklin's counsel, access to bank records showing payments to counsel, and generally confidential communications (CP 205 207). Her entire argument was Hicklin "administered" the Trust without her knowledge, but the only action Hicklin had taken was moving for dismissal of Robert Tuttle's claims. Hunt had actual knowledge who Hicklin had hired as counsel to defend herself individually and as Co-trustee and said nothing until Hicklin filed her CR 56 motion. Hunt was given the opportunity to intervene, and she declined. The Trial Court held if she didn't intervene it would be taken as ratifying Hicklin's decision to hire counsel and move to dismiss.

vague and more particularity in Hunts pleadings would further the efficient economical disposition of the action. CR 12(e) (CP 263). Per Sharon Horan and Hunt's declarations one can infer they are very bitter about Anita Tuttle not including them in the will, and the disinherited heirs have been unsuccessfully litigating for almost five years. The Trial Court ordering Counts I, II, III and IV shall be re-filed with a more specific statement of the claims and the theories for recovery was the right decision. (CP 264).

The Trial Court also denied *without* prejudice Hunt's subsequently filed CR 37 motion to compel (CP 264). Hunts's CR 37 motion was "denied without prejudice to renew" (CP 264). Hicklin was to revisit the discovery request once the more definite pleading was filed (CP 264).

9. Hunt does nothing for more than nine months, so Hicklin moves to strike the pleadings under CR 12(e) and dismissal of claims.

Hunt has been in this litigation since February 2014. More than ten days passed without Hunt obeying the Trial Court's May 22, 2017 order (CP 264). Months had passed so Hicklin moved to strike the pleadings per CR 12(e) on February 28, 2018, (CP 449) and moving to dismiss the cross-claims made by Hunt (CP 256). CR 12(e) is unambiguous. It states in part:

If the motion is granted and the order of the court is not obeyed within ten days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

CR 12(e). The Trial Court has been very accommodating to Hunt, granting Hunt's motion to continue the pending motion to April 10, 2018, giving more time to respond. Hunt attempted to cure her dilatory actions by filing a new amended complaint March 15, 2018 with more salacious but vague allegations, and making unsustainable claims against Hicklin's counsel due to voluntarily submitted billing records⁸ (CP 233). Although part of the record on appeal, the Court should disregard the amended complaint filed March 15, 2018 (CP 233) because it was untimely and filed after the motion to dismiss. Hunt failed to timely obey the Court by filing and *servicing* a responsive brief on Saturday March 31, 2018 (CP 112-114). Hicklin amended her CR 12(e) motion, moving per CR 12(f) to strike Hunt's amended complaint and contending a new action under TEDRA should have been commenced (CP 115-119). On April 24, 2018, the Trial Court found Hunt did not timely obey the Court's May 22, 2017 order (CP 109, 619), finding Hunt's actions have been dilatory and prejudicial to Hicklin (CP 110, 619). The Trial Court struck the December 8, 2015 pleadings and dismissed for failure to state a claim (CP 110). Thereafter the

⁸ A voluntarily submitted billing record showing a discussion with Hicklin, who is both a beneficiary and a co-trustee about the Trust, has been used by Hunt to argue that Hicklin should give up confidentiality under RPC 1.6 and constitutes a conflict.

Trial Court awarded attorney fees, making findings laying out the procedural history of the case (CP 619).

D. ARGUMENT

10. The appeal is frivolous as it pertains to Assignment of Errors Nos. 1 and 2. The interlocutory order is well within the discretion of the trial judge.

The May 22, 2017 order requiring a more definite statement under CR 12(e) and simultaneously denying *without prejudice* the motion to compel discovery was not an abuse of discretion. It is the proper function of the Trial Court to exercise its discretion in the control of litigation before it. Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 777, 819 P.2d 370, 373 (1991). An interlocutory order is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits. Chaffee v. Keller Rohrback LLP, 200 Wn. App. 66, 76–77, 401 P.3d 418, 423–24 (2017) (citations to case omitted). Interlocutory orders are not appealable, as “permitting a trial court to correct any mistakes prior to entry of final judgment serves the interests of judicial economy.” Id. Indeed, the authority of trial courts to revisit interlocutory orders allows them to correct not only simple alleged

mistakes, but also decisions based on shifting precedent, rather than waiting for the time-consuming, costly process of appeal. Id.

It was not an abuse of discretion to be persuaded by competent argument that Hunt's claims needed to be more specific under CR 12(e), due to the history of the case. Hunt never filed for reconsideration of that order or made any other request of the trial judge to revisit it. Hicklin showed Hunt's discovery focused on the 2010-2011 logging activities and alleged actions of Hicklin using a 2009 Power of Attorney while Anita Tuttle was alive (CP 116-119, 324-328). These acts all occurred prior to Anita Tuttle's death, and thus Anita Tuttle was the sole Trustee at all times in question, Hicklin was not Co-Trustee then. (CP 324). Hicklin showed Mr. Kombol clarified Hunt was trying to prosecute actions Hicklin allegedly engaged in prior to Anita Tuttle's death and for some "unspecified" time after (Barry Kombol letter March 17, 2017 CP 330-338). Mr. Kombol confirmed Hunt's claim was related to the same 2009 Power of Attorney raised by FLP and Robert Tuttle (CP 331). Mr. Kombol confirmed that Hunt "believed" there was evidence that in the years prior to Anita Tuttle's death, Hicklin used the 2009 Power of Attorney for FLP and the Trust. (CP 330-331). Hunt claimed without any evidence that Anita Tuttle was unable to manage her own affairs prior to death, knowing that none of family initiated guardianship proceedings, but claiming Anita may

have been incompetent (CP 331). Hunt believed Hicklin used the 2009 Power of Attorney for her mother while alive for financial transactions, conducting activities for FLP and/or the Trust (CP 331). Finally, Hunt made clear that the reason for her claim was based upon 2010-2011 logging proceeds of approximately \$300,000.00 that she believes belongs to the Trust (CP 332). Both the Sharon Horan and Hunt declarations show that the real issue the disinherited heirs were after was the logging proceeds they contend are not “income,” but are “assets” of the Trust. Hicklin had addressed these issues in the CR 56 motion in the FLP case.⁹

Hicklin showed the Trial Court that it appeared Hunt was trying to prosecute Robert Tuttle’s dismissed claims after Hunt declining to intervene, but wouldn’t say so in her pleadings (CP 438). Hicklin reminded the Trial Court that Count I as originally pled couldn’t be correct (CP 442). The Trial Court had ruled not once, but twice, that failure of Hunt to intervene under CR 24 and oppose Co-Trustee Hicklin’s CR 56 motions to dismiss would be construed as ratification of that action (CP 452 & 479).

⁹ Hunt makes claims like “We know that Patricia Hicklin accessed bank accounts where funds belonging to the Robert E. Tuttle Sr. Trust were located.” (CP 332). Hicklin answered in discovery that she was not aware of a bank account in the Trust’s name. When Hunt cannot back up her speculation that an account exists, her method is to ask a judge to order Hicklin under CR 37 to produce a record of a non-existent bank account. If Hunt knows it exists, then she should have made a clearer statement, name of bank, branch, who, what, when, where, etc. She did not.

Hunt had already informed the Court in writing she intended to strike Count I (CP 477).

Hunt's Count II appeared to be made as a trust beneficiary, under RCW 11.98.072, not as a claim between Co-Trustees (CP 442-445). Hicklin as Co-Trustee, is not liable for actions taken prior Anita Tuttle's death, and these claims were time barred (CP 442). For claims post death per Count II, in FLP and Robert Tuttle's claims, the records showed: (1) On February 11, 2014, Hicklin sent a letter to Hunt responding to request for Trust records. No response from Hunt; (2) An accounting was provided by the Estate in the FLP case and also the bank statements of FLP showing the logging proceed; (3) On May 28, 2015 Hicklin wrote to Hunt informing her co-Trustee of all the assets in the Trust that Hicklin knew about, and; (4) On September 25, 2015, Hunt, per Mr. Kombol, sent Hicklin a letter acknowledging Hunt's access and opportunity to review Trust records on file with the CPA. Hunt stated "the only issue surrounding the final distribution is for the Trust to be free of any debts or liabilities." Hicklin took this to mean any administrative costs that might be charged to the Trust due to the Robert Tuttle litigation¹⁰ (CP 624, 630).

¹⁰ Hunt has never once shown the Trust has been charged anything by Hicklin in defending Robert Tuttle's claims. Hicklin filed a declaration stating she personally paid for her defense. The Trial Court did rule the Trust should pay a portion of the fees, but that is different than Hicklin charging the Trust with a fee bill.

These all occurred prior to Co-Trustee Hunt making her cross-claims on December 8, 2015 (CP 494). What new facts constituted a violation of a duty alleged in Count II? Hunt just saying a duty had been violated didn't meet the standard under CR 8. Hunt wouldn't say in her pleading what "missing" records existed and Hicklin denied in discovery she had Trust records she didn't share (CP 217-223).

Regarding Count III, the allegations again appear to be made by Hunt in her capacity as beneficiary, not as Co-Trustee (CP 445). The record is clear that Hunt had been given the information that Hicklin had concerning the Trust (CP 197 & 231). Count III was vague.

Count IV was the most perplexing to answer as pled. Hunt stated that Count I would be stricken. Hunt ratified Hicklin's action of moving for dismissal of Robert Tuttle's claims per the Trial Court's order when Hunt declined to intervene. Hunt knew Hicklin intended to defend herself and as Co-Trustee and knew of her choice of hiring counsel. Yet, Hunt concluded in Count IV Hicklin violated her duty of loyalty. Loyalty runs to the beneficiaries, not between Co-Trustees. RCW 11.98.078 permits the beneficiary to request the Court void the action violating loyalty if a conflict exists. Hunt's December 8, 2015 was not requesting that the Court void the action of obtaining the dismissal of the two lawsuits. It appeared Hunt really wanted was voiding whatever Anita Tuttle's did with the logging

proceeds. Hunt didn't make her pleading clear, but this couldn't be Hicklin's liability.

If a complaint states facts entitling the plaintiff to some relief, courts have allowed it to go forward, but it should adequately alert the defendant of the claim's general nature. See. Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C., 177 Wn. App. 828, 853–54, 313 P.3d 431, 442 (2013). Our courts have held a complaint is insufficient if it does not give the defendant fair notice of what the claim is and therefore a complaint must identify the legal theory upon which the plaintiff seeks relief. Id. Further, if Hicklin had not demanded a more definite statement, and let these vague pleadings go, then courts have held that any affirmative defenses Hicklin might have raised are waived unless they are affirmatively pleaded, asserted in a motion, or tried by the express or implied consent of the parties. Bernsen v. Big Bend Elec. Co-op., Inc., 68 Wn. App. 427, 842 P.2d 1047 (1993). For example, under CR 8(c) and CR 12(i), a defendant must plead nonparty fault as an affirmative defense. Gunn v. Riely, 185 Wn. App. 517, 528, 344 P.3d 1225, 1231 (2015). Hicklin couldn't tell what time period and exact causes of action were being alleged. The Estate may have been at fault, not Hicklin. Hunt needed to state the basis for her claims.

Had Hunt simply obeyed the CR 12(e) interlocutory order, she could have restated her claims, and Hicklin was obliged to revisit her discovery

answers. If the case was really about the logging, that had been decided. If it was something new between Co-Trustees, a TEDRA action was required.

11. Assignment of Error No. 3, the April 24, 2018 dismissal was not an abuse of discretion given the history of the case.

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously Doe, 117 Wn.2d at 778. Where the decision or order of the Trial Court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. Id.

The trial judge clearly recognized that this family had been fighting since Anita Tuttle's death and Hunt's lawsuit accomplished nothing. Robert Tuttle's quiet title action against FLP is still going forward, but not allegations about the logging. Dismissal is the toughest remedy but courts have upheld dismissal when there has been a willful or deliberate refusal to obey a discovery order, which refusal substantially prejudices the opponent's ability to prepare for trial. Associated Mtg. Invest. v. G.P. Kent Const. Co., Inc., 15 Wn. App. 223, 228–29, 548 P.2d 558, 562 (1976).

Peterson v. Cuff, 72 Wn. App. 596, 600, 865 P.2d 555, 558 (1994). As noted by this Court in Associated Mtg Invest, 15 Wn. App. at 228-29, “any violation of an explicit court order without reasonable excuse or justification must be deemed a willful act.” There was no excuse or justification for not obeying the May 22, 2017 CR 12(e) order.

12. Hunt cites to cases pertaining to dismissal under CR 12(b) and 12(c), and CR 56. The review standard here is different.

As citation to authority for her argument, Hunt cites to inapplicable cases. Hunt cites to Suleiman v. Lasher, 48 Wn. App. 373, 376, 739 P.2d 712, 714 (1987) (negative treatment of the case see P.E. Sys., LLC v. CPI Corp., 176 Wn.2d 198, 211, 289 P.3d 638, 645 (2012), but Suleiman deals with motions under CR 12(b) and 12(c), not 12(e). Hunt cites Yakima Fruit & Cold Storage Co. v. Cent. Heating & Plumbing Co., 81 Wn.2d 528, 503 P.2d 108 (1972), a case reviewed under CR 56, not CR 12. And Cutler v. Phillips Petroleum Co., 124 Wn.2d 749, 881 P.2d 216 (1994), a case dismissed under CR 12(b)(6). None of these cases addresses the issue here. Did the Trial Court, in reading the plain language of the rule, and given the ongoing dilatory actions by Hunt, abuse its discretion in dismissing?

**13. The language of CR 12(e) is unambiguous and clear, thus
Hunt's Assignment of Error 3 is incorrect.**

Hunt does not contend that CR 12(e) is ambiguous, rather she makes a novel argument on page 20 of her briefing that Hicklin did not cite any authority for the proposition that dismissal was an appropriate sanction in this case, and apparently states that Hunt intends to move for CR 11 sanctions because Hicklin argued the plain language of the rule. Hicklin's motion was not complicated. It stated:

Hicklin hereby moves the Court to strike Doreen Hunt's pleadings from the record, and having them struck, move for dismissal of the case for failure to state a claim and for dilatory actions in failing to abide by the Court's order (CP 438).

Hicklin based her motion upon the text of CR 12(e). Under CR 12(b) and 12(c), orders dismissing claims pursuant to these sections are reviewed de novo due to their correlation with CR 56. No such correlation exists in the plain language of CR 12(e), and this Court has held that review of a denial of a CR 12(e) motion is an abuse of discretion standard. Hough v. Stockbridge, 152 Wn. App. 328, 336,

216 P.3d 1077, 1082 (2009). Hunt agrees granting a CR 12(e) motion is reviewed for an abuse of discretion.¹¹

In Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 214, 829 P.2d 1099, 1101 (1992), a litigant made a CR 12(e) motion for a more definite statement in response to a complaint that the moving party failed to adequately identify certain assets. Subsequently, the trial judge granted a motion to dismiss when the moving litigant contended that the subsequently amended complaint had not complied with the court's order for a more definite statement. Id. The Bryant Court analyzed the appropriate test for CR 11 sanctions, but fittingly noted that "If the respondents violated a court rule, they violated CR 12(e), not CR 11. CR 12(e) requires attorneys to comply with a court's order for a more definite statement. Judge Huggins imposed the proper sanction under this rule when she dismissed the amended complaint without prejudice." Bryant, 119 Wn.2d at 223. The Supreme Court has recognized that dismissal without prejudice is an appropriate sanction under CR 12 (e).

FRCP 12(e) is substantially the same as Washington CR 12(e).

(e) ...if the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order

¹¹ This Court has noted that it will review a superior court's ruling on a CR 12(e) motion for a more definite statement for abuse of discretion. See GR 14.1 for unpublished cases. Erickson v. Port of Port Angeles, 49951-7-II, 2018 WL 3641894, at *13 (Wash. Ct. App. July 31, 2018). Hunt also cites abuse of discretion in her brief.

or within the time the court sets, the court may strike the pleading or issue any other appropriate order.
Fed. R. Civ. P. Rule 12

The U.S. Supreme Court stated in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 595, 127 S. Ct. 1955, 1988, 167 L. Ed. 2d 929 (2007) “Before discovery even begins, the court may grant a defendant’s Rule 12(e) motion.” And it’s a discretionary act of the trial court to grant or deny the motion for a more definite statement under Rule 12(e). Crawford-El v. Britton, 523 U.S. 574, 598, 118 S. Ct. 1584, 1596, 140 L. Ed. 2d 759 (1998) (the court may insist that the plaintiff “put forward specific, nonconclusory factual allegations”). As noted by the Supreme Court, simple conclusory allegations just won’t do. Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).¹²

Washington courts have similar standard about vague and ambiguous pleadings. A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along. Kirby v. City of Tacoma, 124 Wn. App. 454, 98 P.3d 827 (2004). Insufficient pleadings are prejudicial to the opposing party. Camp Fin., LLC v. Brazington, 133 Wn. App. 156, 162, 135 P.3d 946 (2006). Although inexpert pleading is

¹² The motion for dismissal under the corresponding Federal Rule, FRCP 12(e) can result in dismissal. See Steinberger v. Washington Dep’t of Corr., CV07-5404RBL, 2008 WL 2595478, at *1 (W.D. Wash. June 27, 2008).

permitted, insufficient pleading is not. Dewey v. Tacoma Sch. Dist. No. 10, 95 Wn. App. 18, 23, 974 P.2d 847, 850 (1999). See also Gunn, 185 Wn. App. at 528.

When the Trial Court struck Hunt's December 8, 2015 complaint per the text of CR 12(e), she failed to state a claim, CR 12(b)(6). Hunt's citation to authority under CR 12(b)(6) or 12(c) is wrong. There were no facts before the court that didn't violate CR 8. Hunt's position, the vague allegations in the amended complaint must be taken as true is inapplicable. Hunt's failure to obey the May 22, 2017 order resulted in the Court exercising its discretion, and the Trial Court was not required to assume the facts in the late filed March 15, 2018 amended complaint.

The next phrase of CR 12(e) "or make such order as it deems just" gives the trial judge latitude to employ equitable powers. In Bryant, dismissal without prejudice under CR 12(e) was deemed proper. Here the dismissal was with prejudice, but that is because Hicklin thoroughly demonstrated Hunt was dilatory, years had gone by and the claims looked like they were really about the logging. Dismissal with prejudice was appropriate because Hunt was given ample opportunity to prosecute her claims. Hunt was intentionally vague in her pleadings, not clearly stating her claim, and not supporting it with facts and as required by CR 8 and CR 11. Hunt was frivolous by trying to prosecute the 2010-2011 logging she

knew was dismissed. The delay was prejudicial to Hicklin (CP 110). Hicklin had raised statute of limitations issues, res judicata, and other defenses and the Trial Court was aware. The Trial Court's decision was not made for untenable reasons; it was made because the trial judge has the right to control their calendar, and it was clear Hunt's failure to obey the May 22, 2017 order showed her intent to not state her actual claims, and she was bringing needless harassing litigation that was time barred anyway.

14. The dismissal was with prejudice, not without, but the Trial Court was still correct in dismissing the case as it did.

Under Bryant, the normal remedy is likely a dismissal *without* prejudice, but given the facts and legal issue in this case, a dismissal *with* prejudice was correct. For a ruling to be manifestly unreasonable, it must fall outside the range of acceptable choices, given the facts and the applicable legal standard. State v. Dye, 178 Wn.2d 541, 548, 309 P.3d 1192 (2013). A dismissal with prejudice was an acceptable choice.

a. Hunt's claims were filed December 8, 2015. Her allegation appear to be more than three years prior.

Hunt alleges that Hicklin was the only person who had access to the Trust record prior to Anita Tuttle's death, vaguely claiming a breach of duty, which issues were raised in the FLP case and by Robert Tuttle. Any

claim of an action constituting a breach of a fiduciary duty by Hicklin as Co-Trustee that occurred prior to December 8, 2012 is barred under the three-year statute of limitations RCW 4.16.080(2). All the logging occurred in 2010-2011 and accounted for (CP 531, 534). Hunt speculates the proceeds taken by Anita Tuttle as Trustee must be in the Trust, despite no evidence of a bank account discovered by Hicklin when she became Co-Trustee and no actual bank account identified by Hunt¹³ (CP 358-359). Hunt's claims appear to be that Anita Tuttle and Hicklin, as her agent, had a duty to preserve those funds, but there is nothing more than speculation that Hicklin did anything with those funds. Claims against Anita Tuttle's Estate had to be brought in the time periods required by RCW 11.40.051.

b. Hunt's vague allegations while Anita Tuttle was alive against Hicklin, are Anita Tuttle's liability, not Hicklin's.

Even though Hunt would not clearly say so in her pleadings, her discovery and declarations show that she was focused on what Anita Tuttle did prior to her death in April 2013. Failure to make a proper claim under RCW 11.40.070 and RCW 11.40.051 bars a claim against Anita Tuttle's

¹³ Despite Hicklin's responses in the interrogatories that she never found a bank account in the Trust's name that she identified had Trust proceeds in it, Hunt speculates "the Trust must have funds or accounts *somewhere* at the time mom died." [emphasis in original] (CP 359). Anita Tuttle was entitled to all the logging income from 2010-2012. Upon her death, all remaining income was to be paid to the Estate.

Estate for actions she did as Trustee. All acts allegedly committed by Hicklin under the 2009 Power of Attorney that allegedly caused Hunt harm as a beneficiary of the Trust is the responsibility of Anita Tuttle. Hicklin cited Annechino v. Worthy, 175 Wash. 2d 630, 638, 290 P.3d 126, 130 (2012) to the Trial Court in the FLP and Robert Tuttle CR 56 motion as legal basis for why claims against Hicklin personally could not go forward. There was no facts alleged Hicklin knowingly made misrepresentations (and no evidence) in the December 8, 2015 complaint. Sharon Horan and Hunt clarified in their declarations and in discovery that it was about the logging. Even if Hicklin had used the 2009 Power of Attorney to help Anita Tuttle transfer funds in 2010-2011 (denied), the duty breached (if there was one) would be a duty that a fully competent Anita Tuttle breached to the Trust. But only if the logging proceeds were “assets” of the Trust, not “income,” which Anita Tuttle was fully entitled to. Except there is no evidence in the record that Hicklin did anything to make this alleged transfer occur. Mere allegations, argumentative assertions, conclusory statements, and speculation do not rise to the standard under CR 8 or CR 11. Hunt attempted to argue there must be Trust funds from the logging proceeds “somewhere,” but based upon what exactly? Regardless, it is the Estate that is liable, not Hicklin.

c. Hunt's claims about not having access to Trust records are conclusory allegations.

Regarding Hunt's claims after Anita's death, it was alleged Hicklin failed to notify Hunt of the litigation and that Hicklin is the only party that has access to the Trust's record, but the Trial Court clearly held that was not true. Hunt vaguely alleged breaches of a fiduciary duty by Hicklin. However, she appeared to ask the Trial Court for relief under RCW 11.98.075, to void the action. What exactly was she wanting voided? It seems Hunt wanted to void whatever Anita Tuttle did with 2010-2011 logging proceeds and speculated that Hicklin's 2009 Power of Attorney was used in some nefarious manner, but she didn't come out and just say so. Hunt claimed she didn't have access to Trust records, demanding Hicklin provide non-existent records in discovery and disclose communications with Hicklin's attorney, but these seemed to apply to Hicklin's defense, which Hunt ratified. Hunt had reviewed access to the CPA but keeps claiming Hicklin "administered" the Trust. How exactly? Hunt's ruse was identified and Trial Court was correct in ending the litigation as it did.

15. If this Court reverses the dismissal with prejudice, and holds it was more appropriately without prejudice, the claims are time barred now and therefore the appeal issue is moot.

A case is moot if a court can no longer provide effective relief. Blackmon v. Blackmon, 155 Wn. App. 715, 719–20, 230 P.3d 233, 235 (2010). Cases that involve only moot questions are normally dismissed, unless that case presents issues that are of substantial and continuing interest. Id. Per Hunt, the main concerns are the logging proceeds, but Hunt erroneously claims these were assets, not income to the Trust (CP 20-21). However, Hunt knew the logging occurred, as she readily admits to receiving a portion of payment as a limited member of the FLP and a K-1 (CP 18), likely reporting it as “income.” Sharon Horan knew about the logging when it occurred also as she received payment (CP 346-347).

A dismissal without prejudices simply allows Hunt to refile. Except that Hunt’s true claims will be time barred. In the original action, Robert Tuttle’s claims about the 2009 Power of Attorney and 2010-2011 logging have been dismissed and not appealed. (“...he only appeals dismissal of his individual claim to quiet title against the FLP.”) Tuttle v. Estate of Tuttle, 49669-1-II, at *8. Where an original action is dismissed, a statute of limitations is deemed to continue to run as though the action had never been brought. Logan v. N.-W. Ins. Co., 45 Wn. App. 95, 99, 724 P.2d 1059, 1062

(1986). Hunt's co-trustee claim vaguely alleging the same conduct surrounding the 2009 Power of Attorney and logging proceeds was also dismissed for failure to obey the May 22, 2017 CR 12(e) order. The statute of limitations had expired and continued to run during that time period.

16. Hunt should have brought a TEDRA action.

On top of this, Hicklin has been objecting since the inception that this should have been filed as a new TEDRA action (CP 116-117, 482).¹⁴ If Hunt's claim is something other than the logging proceeds, it should be a new TEDRA action between co-trustees. A judicial proceeding under this title must be commenced as a new action. RCW 11.96A.090(2) (CP 116). TEDRA applies to all Trust and Trust matters, RCW 11.96A020. Hunt resisted bringing a TEDRA action, and thus her claims are time barred.

17. Hunt's argument about the denial without prejudice of the CR 37 motion is frivolous.

What Hunt is asking of this Court is to step into the shoes of the trial judge and control the litigation. The entire argument in section 2 of Appellant's Brief is frivolous (pages 26-39), because the Trial Court did not

¹⁴ Early on Hicklin objected. "Hicklin suggests that Ms. Hunt has a remedy- file a TEDRA Action" (CP 482). However, the Trial Court declined to force Hunt to properly file her action. Later Hicklin again argued that this should be started as a new TEDRA matter (CP 117-116), with the Trial Court controlling the scope of discovery.

foreclose Hunt's ability to conduct discovery. The May 22, 2017 order stated "motion to compel under CR 37 is DENIED without prejudice to renew. Upon receipt of the cross-claim plaintiff's more particularized statement of claims, cross-claim defendant Hicklin shall revisit discovery requests and supplement as appropriate. Cross-Claim plaintiff may thereafter re-note motion to compel discovery if necessary." (CP 264). Hunt was not prejudiced in any way, because if Hunt had obeyed the order, Hicklin was required ("shall") to revisit the discovery answers and supplement them as appropriate. Hicklin filed the motion for a more definite statement on February 23, 2018, BEFORE Hunt brought a motion to compel on March 23, 2018. The hearing was continued until May 22, 2017. Hunt's tactic to avoid stating what her claims were really about was to confuse the issues by arguing the CR 37 motion.

Hunt had actual notice of the litigation and Hicklin's decision to hire counsel. Hunt objected to the CR 56 motion but chose not to intervene. Per the February 19, 2016 ruling, Hunt ratified Hicklin's action: "Should Co-Trustee Hunt decline to intervene, it is the Court's intention [to] treat the Co-Trustee's non-intervention as "formal approval" of the Co-Trustee Hicklin's action RCW 11.98.016(4)." (CP 483). Hunt did not object to the Court's ruling. Hunt "declined" to intervene. (CP 477). Yet, after filing this with the Court, which Hicklin relied upon, Hunt sent abusive discovery.

The Court only need to look to the nature and history of the conflict between the parties to see they are adverse and thus the problem with Hunt's discovery demand. The disinherited heirs of Anita Tuttle have drug Hicklin into Court several time. Robert Tuttle's claims were against Hicklin personally. Yes, Hicklin was named in her capacity as Co-Trustee, but the claims were really about the logging. Hicklin's communication with counsel concerning the Trust were inextricably intertwined with defense of the Hicklin community. Any information sought even prior to the filing of the lawsuit is a work product prepared in anticipation of litigation, not subject to disclosure. CR 26(b)(4). See Koenig v. Pierce Cty., 151 Wn. App. 221, 211 P.3d 423 (2009), as amended (July 20, 2009), as amended on denial of reconsideration (Oct. 26, 2009). Billing records related to the defense of the Trust have already been submitted to this Court and reviewed by the parties. Hicklin testified she personally paid for the defense.

The key test is whether there was an attorney acting for mutual benefit of both Hicklin and Hunt that allows Hunt access to attorney-client information. Hunt's vague claim that is really about the logging shows that "mutual benefit" of work for the Trust is not possible, thus attorney client privilege is not waived. An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of

professional employment RCW 5.60.060. A party is not entitled to discovery of information from privileged sources CR 26(b)(1). Dana v. Piper, 173 Wn. App. 761, 770, 295 P.3d 305, 310 (2013). Attorney-client privilege exists to encourage free and open attorney-client communication by creating an assurance to the client that his communications will not be disclosed to others. Dana, 173 Wn.App at 770. “Our Supreme Court has long recognized that ‘[t]o require the counsel to disclose the confidential communications of his client to the very court ... which are to pass on the issue which he is making, would end forever the possibility of any useful relation between lawyer and client’... [A]ny rule that interfered with the complete disclosure of the client’s inmost thoughts on the issue he presents would seriously obstruct the peace that is gained for society by the compromises which the counsel is able to advise.” Id.

These arguments were made to the Trial Judge (CP 311-321), and what the Court did was tell Hunt to go clarify your claims so we know what you are actually wanting to pursue. Hunt wants to argue the merits of the issues on appeal, but the issue really is Hunt dilatory actions and intentional failure to follow the order. The Trial Court did not foreclose discovery on May 22, 2017, thus it was not an abuse of discretion.

Finally to address Hunt’s argument that she needed discovery BEFORE should could make a more definite statement, Hunt clearly has

the rule backward. A party is not permitted to make a conclusory or speculative statement and claim it meets the requirements under CR 8, because CR 11 requires first that it be well grounded in fact. As noted above, a Trial Court has discretion to grant the CR 12(e) motion before discovery begins. The December 8, 2015 complaint, Count I, were shown to be false, which Hunt stated she would strike. Under Count II, Hunt never stated in the complaint what records she was missing and made conclusory statement that Hunt and the beneficiaries were not “reasonably informed,” without giving actual facts. Hunt’s conclusory statement never stated what damage she suffered or what the Trust lost. Count III claims Hicklin “administered” the Trust but never specifically states how, when, where, etc. all done in allegedly violation of RCW 11.102.020, which is a requirement for an itemized statement of receipts (none) and disbursements (none). Count IV alleged a violation of the duty of loyalty under RCW 11.98.078 for retaining counsel (which Hunt had notice of when it occurred, ratifying said choice), but never prayed for what action was to be “voided.”

On these very vague allegations, stating legal buzz words, citing to a statute but devoid of any actual facts, Hunt contends she must be permitted discovery, including confidential attorney-client information, to support her pleadings and so she could properly make a more definite statement. The trial court is given reasonable discretion in determining how far Hicklin

should be required to go in answering interrogatories. Weber v. Biddle, 72 Wn.2d 22, 29, 431 P.2d 705, 711 (1967). Further, Hunt is the Co-Trustee, who has substantially the same burden in obtaining records. See CR 33(c). Hicklin cannot make objections under CR 26 that the discovery is not relevant to the subject matter of the litigation if Hunt refuses to actually state what it's about. Hunt just saying Hicklin owes a duty and it was breached does not open the door of discovery to any and all matters. But that is what Hunt is trying to do. This Court should find compliance with CR 8 is required first, Hunt should have given an actual factual basis of a claim as required by CR 11, and then the Trial Court could have revisited her CR 37 motion to compel. Hunt is backwards on this issue.

18. Attorney fees should be sustained in the trial court and awarded on appeal.

Pursuant to RAP 18.1, Hicklin request attorney fees here and asks that Hunt be ordered to pay the attorney fees in the Trial Court. The Court may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party, from any party to the proceedings.” RCW 11.96A.150. In determining whether an award of attorney fees is appropriate, the trial court must consider whether the litigation and the participation of the party seeking attorney fees caused a benefit to the trust.

In re Estate of Wimberley, 186 Wn. App. 475, 512, 349 P.3d 11, 30 (2015), review denied, 183 Wn.2d 1023, 355 P.3d 1153 (2015); Allard v. Pac. Nat'l Bank, 99 Wash.2d 394, 407, 663 P.2d 104 (1983). Matter of Estate of Niehenke, 117 Wn.2d 631, 648, 818 P.2d 1324, 1333 (1991); And Matter of Estate of Morris, 89 Wn. App. 431, 434, 949 P.2d 401, 402 (1998). Nothing Hunt has done has benefited the Trust, only delayed the distribution to the beneficiaries.

The case doesn't necessarily have to be initiated under TEDRA for RCW 11.96A.150 to apply. See Kitsap Bank v. Denley, 177 Wash. App. 559, 312 P.3d 711 (2013), (an award of attorney fees affirmed in case that was initiated by Kitsap Bank under RCW 30.22.210, not under TEDRA.) Even though Hicklin maintains Hunt didn't properly bring a TEDRA action, the Trial Court was correct in applying RCW 11.96A.150.

To calculate a lodestar amount, a court multiplies the number of hours reasonably expended by the reasonable hourly rate. Bowers v. Transamerica Title Ins. Co., 100 Wash.2d 581, 597, 675 P.2d 193 (1983). In order to reverse an attorney fee award, an appellate court must find the trial court manifestly abused its discretion.

E. CONCLUSION

Hicklin contends that Hunts pleadings were intentionally unclear to engage in abusive discovery, but the focus of Hunt's claims appeared to be about the logging. This is not an inconsistent position. In Court, Hunt will say the case has never been about logging proceeds (RP 91¹⁵) but in letters and discovery demands, Hunt insisted on getting information pertaining to the logging and Hicklin must account to her for Anita's Tuttle's actions. By demanding a more definite statement, Hicklin was forcing Hunt to stop being coy, be honest about the claims so Hicklin could raise the appropriate affirmative defenses. The Trial Court did not err, and this Court should uphold the dismissal with prejudice. Hunt was given the opportunity by the trial judge to intervene in the pending Hicklin CR 56 motions dismissing Robert Tuttle's claims regarding the logging proceeds back in February 2016. Hunt could have preserved her claims then. She did not. Hunt could have clarified her claims as required by the May 22, 2017 order. She did not. Hunt should have filed a TEDRA action. She did not. Robert Tuttle brought his original claims on November 6, 2013, but Hunt did nothing.

¹⁵Mr. Kombol stated he would pay "\$100.00 for every time Mrs. Hunt has mentioned logging proceeds, for every \$10.00 that I've seen logging proceeds in the documents," (RP 91) going on to say, "logging proceeds are not our issue, never have been." (RP 91). In court it was shown that Hunt had raised the logging in briefing (RP 97). If the vaguely pled December 8, 2015 complaint is NOT about logging, why does Hunt focus on it?

The Trial Court found Hunt's actions were dilatory and prejudicial. The Trial Court did not abuse its discretion in controlling the litigation. Hunt's was intentionally being vague and knew if she came out and said her claims were about the logging, they were time barred. Hicklin request the dismissal be affirmed and attorney fees awarded on appeal.

Dated this 3rd day of December 2018.



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DATED this 3rd day of December 2018, at Poulsbo, Washington

/s/ Melissa S. Colletto
Melissa S. Colletto

CROSS SOUND LAW GROUP

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