

**FILED
Court of Appeals
Division III
State of Washington
11/13/2018 12:54 PM**

COA NO. 35737-6-III

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

**IN RE ESTATE OF REUGH, K. WENDELL,
JoLynn Reugh-Kovalsky, Mark Reugh, and Jim Reugh,**

Appellants.

**AMENDED REPLY BRIEF
OF APPELLANT BENEFICIARIES
JOLYNN, JAMES, AND MARK REUGH**

MARY SCHULTZ
Mary Schultz Law, P.S.
2111 E. Red Barn Lane
Spangle, WA 99031
Tel: (509) 245-3522

Attorney for Appellant Beneficiaries

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i-ii
TABLE OF AUTHORITIES	iii
I. REPLY SUMMARY	1
A. The standard of review is de novo	2
B. Jurisdiction: A judicial proceeding is “commenced” by a petition. The Superior Court had no subject matter jurisdiction without the “commencement” of a judicial proceeding as a new action.	3
1) The Beneficiaries’ petition for invalidity did not create general probate jurisdiction over any type of controversy.....	6
a) The Revocable Trust Act’s RCW 11.103.050 requires a petition	8
b) TEDRA’s RCW 11.96A.090 requires the commencement of a <i>new</i> action	9
c) INWCF failed to comply with either RCW 11.68.070’s petition requirement or TEDRA’s petition requirement and failed to invoke the court’s jurisdiction.	10

2)	The consolidation order under the invalidity petition action does not modify the non-intervention order	10
3)	Even though the lack of subject matter jurisdiction cannot be waived, jurisdiction was plainly a disputed issue because the trial court made findings on its jurisdiction	13
4)	Substantial compliance cannot vest subject matter jurisdiction.....	13
C.	Standing: A “beneficiary” has no standing under RCW 11.68.070 to bring a removal action; standing is also jurisdictional in a removal action.	14
D.	The Personal Representatives had no fiduciary duty to INWCF, as it is not a trust beneficiary of the trust	15
E.	INWCF has failed to show waste, embezzlement, or similar disqualifying behavior.....	19
F.	Successor processes do not evaporate after one successor.	20
G.	NWTS is not a neutral third party.....	22
H.	INWCF applies testamentary trust law when this trust is a revocable <i>living</i> trust	24
I.	Attorney Fees	25
	CERTIFICATE OF SERVICE	26

TABLE OF AUTHORITIES

CASES:

<i>Angelo Prop. Co., LP v. Hafiz</i> , 167 Wn. App. 789, 274 P.3d 1075 (2012)	13
<i>Buehl (In re Adoption of)</i> , 87 Wn.2d 649, 555 P.2d 1334 (1976)	5
<i>Carlsbad Tech., Inc. v. HIF Bio, Inc.</i> , 556 U.S. 635, 129 S.Ct. 1862, 173 L. Ed.2d 843 (2009)	4-5
<i>City of Seattle v. Pub. Employment Relations Comm'n</i> , 116 Wn.2d 923, 809 P.2d 1377 (1991)	7
<i>Cole v Harveyland, LLC</i> , 163 Wn. App. 199, 209, 258 P.3d 70 (2011)	4
<i>Deaconess Hosp. v. Washington State Highway Comm'n</i> , 66 Wn.2d 378, 403 P.2d 54 (1965)	6
<i>Dolan v. King County</i> , 172 Wn.2d 299, 258 P.3d 20 (2011)	2
<i>Dougherty v. Dep't of Labor & Indus. for State of Washington</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003)	2, 4, 5, 14
<i>Edwards v. Edwards</i> , 1 Wn. App. 67, 459 P.2d 422 (1969)	24
<i>Estate of Beard (In re)</i> , 60 Wn.2d 127, 372 P.2d 530 (1962)	12
<i>Estate of Ehlers (In re)</i> , 80 Wn. App. 751, 911 P.2d 1017 (1996)	19

<i>Estate of Taylor Griffith</i> , 2018 WL 3629458 (Div. I, July 30, 2018).....	15, 20
<i>Estate of Jones (In re)</i> , 152 Wn.2d 1, 93 P.3d 147 (2004).....	5, 7, 20
<i>Estate of Jones (In re)</i> , 116 Wn. App. 353, 67 P.3d 1113 (2003).....	12
<i>Estate of Larson (In re)</i> , 103 Wn.2d 517 (1985).....	15
<i>Estate of Rathbone (Matter of)</i> , 190 Wn.2d 332, 412 P.3d 1283 (2018).....	<i>Passim</i>
<i>Hearst Commc'ns, Inc. v. Seattle Times Co.</i> , 154 Wn.2d 493, 115 P.3d 262 (2005).....	16
<i>Lee v. Metro Parks Tacoma</i> , 183 Wn. App. 961, 335 P.3d 1014 (2014).....	14
<i>Manary v. Anderson</i> , 164 Wn. App. 569, 265 P.3d 163 (2011), <i>aff'd</i> , 176 Wn.2d 342 (2013).....	18
<i>Marley v. Dep't of Labor & Indus.</i> , 125 Wn.2d 533, 886 P.2d 189 (1994).....	5, 6
<i>Marriage of McDermott</i> , 175 Wn. App. 467, 307 P.3d 717 (2013).....	4
<i>Skagit Surveyors & Engineers, LLC v. Friends of Skagit Cty.</i> , 135 Wn.2d 542, 958 P.2d 962 (1998).....	13
<i>State v. Chipman</i> , 176 Wn. App. 615, 309 P.3d 669 (2013).....	11

<i>Trujillo v. Nw. Tr. Servs., Inc.</i> , 181 Wn. App. 484, 498, 326 P.3d 768 (2014), <i>as</i> <i>modified, rev'd in part</i> , 183 Wn.2d 820 (2015)	17
<i>Trujillo v. Nw. Tr. Servs., Inc.</i> , 183 Wn.2d 820, 355 P.3d 1100 (2015).....	2, 17, 18, 22-23
<i>Washington State Dep't of Revenue v. Fed. Deposit Ins. Corp.</i> , 190 Wn. App. 150, 359 P.3d 913 (2015).....	16
<i>Young v. Clark</i> , 149 Wn.2d 130, 65 P.3d 1192 (2003).....	6

STATUTES:

RCW 4.96.020	14
RCW 11.02.005(15).....	18
RCW 11.11.010(8).....	18
RCW 11.11.020(1).....	18
RCW 11.12.250	24
RCW 11.68.070	<i>Passim</i>
RCW 11.68.110	7, 11
RCW 11.68.120	11, 12
RCW 11.96A.020.....	14
RCW 11.96A.050.....	14
RCW 11.96A.080.....	9
RCW 11.96A.090.....	1, 9, 10, 11
RCW 11.103.050	6, 7, 9

RCW 11.104A.005.....18

COURT RULES:

Washington Civil Superior Court Rule (CR) 3.....7

Fed. R. Civ. Proc. 3.....7

I. REPLY SUMMARY

The Superior Court has limited authority to intervene in a non-intervention estate.¹ Authority in a non-intervention estate is regained for each type of controversy by the specific statute allowing the limited authority for that relief. This regained limited authority must be invoked by petition in accord with the controlling statute, and it remains narrow and limited to the relief requested. The first clear mandate of RCW 11.68.070 relief is thus the commencement of an action by a petition. The second mandate is a party with the statutory standing to obtain that relief. Northwest Trustee Services, LLC now brings out the third mandate—TEDRA’s limitations—which also require the commencement of a judicial proceeding by petition, but add that the petition must be filed as a *new* action. *RCW 11.96A.090*. Inland Northwest Community Foundation (INWCF) failed to comply with any of these statutory mandates. The Superior Court thus never regained the limited authority necessary to determine the removal controversy. Respondents’ ask for an exception to the trial court’s deficiency of subject matter jurisdiction, but there are no such exceptions, and this jurisdiction cannot be waived. The response briefing confirms the necessity of reversal.

¹ *Matter of Estate of Rathbone*, 190 Wn.2d 332, 339, 412 P.3d 1283 (2018).

Second, Northwest Trustee Management and Services, LLC (NWTS) now acknowledges the difference in trust language between Mr. Reugh's intended family beneficiaries and his default provision naming INWCF, but it then attempts to hammer INWCF's "administrator" peg into a "beneficiary" hole. Its efforts are in direct violation of *Trujillo v. Nw. Tr. Servs., Inc.*, which involved a trust management entity that similarly tried to maneuver document ambiguities into dollars for another institutional entity.² Even the "ambiguities" that could conceivably exist here cannot properly be construed to result in a beneficiary status for INWCF.

Jurisdiction fails, and the responses show only Respondents' joint pleas for exceptions to this state's law.

A. The standard of review is de novo.

Respondents ask that deference to be accorded the trial court on review. Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Dougherty v. Dep't of Labor & Indus. for State of Washington*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). INWCF's cite to *Dolan v. King County*, 172 Wn.2d 299, 310, 258 P.3d 20 (2011) is inapposite, as the latter involves credibility determinations between

² *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 355 P.3d 1100 (2015)

witnesses. Here, there are no witnesses. This trial court made its primary decisions “on the face of the trust document.” *CP 826, findings 7-13, 16.*

B. Jurisdiction: A judicial proceeding is “commenced” by a petition. The Superior Court had no subject matter jurisdiction without the “commencement” of a judicial proceeding as a new action.

Respondents offer no credible explanation for why INWCF failed to simply follow the petition requirements of RCW 11.68.070. Instead, they offer a myriad of reasons why the statute doesn’t matter. But statutory compliance with the petition requirement of RCW 11.68.070 is mandatory to allow the superior court to regain limited jurisdiction over a removal controversy. “[O]nce a court declares a nonintervention estate solvent, the court has no role in the administration of the estate except under narrow, statutorily created exceptions that give courts limited authority to intervene. The court can regain this limited authority only if the executor or another person with statutorily conferred authority properly invokes it.” *Rathbone, 190 Wn. 2d at 339.* INWCF simply failed to follow the statutes and that failure led to a lack of subject matter jurisdiction.

INWCF cites to *Rathbone’s* note 4 for its proposition that “RCW

11.68.070 is not jurisdictional.” This theory purports to justify its failure to follow the statute, and to support a claimed “waiver” of the lack of jurisdiction. But the assertion fails. Note 4 states only that courts have used the term “jurisdiction” where the better term is “statutory grant of authority to decide the issue.” But it notes that “[I]n this sense jurisdiction and authority are synonymous.” *Id* at 340. In other words, the statutory grant of authority is synonymous with subject matter jurisdiction, because the authority to adjudicate the type of controversy involved in an action has always meant subject matter jurisdiction. *In Marriage of McDermott*, 175 Wn. App. 467, 480-81, 307 P.3d 717 (2013), as an example, the Court holds that “Generally, a court has subject matter jurisdiction if it has authority to adjudicate the type of controversy involved in the action.” In *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 209, 258 P.3d 70 (2011), it is noted that “The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy.” In *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d at 316, the court confirms that the “type of controversy” refers to the nature of the case or the relief sought.

This is consistent with the federal law, which holds that “Subject matter jurisdiction defines the court's authority to hear a given type of case.” *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639, 129 S. Ct.

1862, 173 L. Ed.2d 843 (2009), *quote source omitted*.

Rathbone confirms this jurisdictional requisite, but does so using the synonymous phrase “authority.” It confirms that “the superior court’s authority when dealing with nonintervention wills is statutorily limited.” 190 Wn.2d at 339, citing *In re Estate of Jones*, 152 Wn.2d 1, 9, 93 P.3d 147 (2004). It reiterates that “[O]nce a court declares a nonintervention estate solvent, the court has no role in the administration of the estate except under narrow, statutorily created exceptions that give courts limited authority to intervene.” *Id.* It makes clear that the court can “regain this limited authority only if the executor or another person with statutorily conferred authority properly invokes it.” *Id.* This is subject matter jurisdiction, consistent with *Dougherty*, 150 Wn.2d at 316, and *Marley v. Dep’t of Labor and Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). INWCF’s claim that RCW 11.68.070 “is not jurisdictional” is flatly wrong.

This superior court never regained the limited authority to intervene for removal relief because it failed to comply with the statute in any respect. Because of this, its order is void. “[J]urisdiction over the subject matter of an action is an elementary prerequisite to the exercise of judicial power.” *In re Adoption of Buehl*, 87 Wn.2d 649, 655, 555 P.2d

1334 (1976). The lack of jurisdiction over the subject matter renders the superior court powerless to pass on the merits of the controversy brought before it. *Deaconess Hosp. v. Washington State Highway Comm'n*, 66 Wn.2d 378, 409, 403 P.2d 54 (1965). When a court lacks subject matter jurisdiction in a case, dismissal is the only permissible action the court may take. *Young v. Clark*, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003). A judgment entered by a court that lacks subject matter jurisdiction is void. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d at 541.³ This trial court order is void, and it must be reversed.

1) **The Beneficiaries' petition for invalidity did not create general probate jurisdiction over any type of controversy.**

NWTS argues that INWCF was not required to comply with RCW § 11.68.070's petition requirement because the Beneficiaries' petition for trust invalidity under RCW 11.103.050 "Invoked the Trial Court's Jurisdiction to Hear the Motion to Remove." This contravenes *Rathbone*. Each action must be brought under its own statute, as each statute confers the limited jurisdiction necessary for that specific form of relief. *Rathbone* makes clear that "After the enactment of TEDRA, we held...that the

³ Superseded by statute on other grounds in *Birrueta v. Dep't of Labor & Indus. of the State of Washington*, 186 Wn.2d 537, 549, 379 P.3d 120 (2016).

nonintervention statutes grant superior courts limited authority to address the specific issue through the remedy specified in that statute.” 190 Wn. 2d at 341, citing *In re Estate of Jones*, 152 Wn.2d 1. *Rathbone* holds, as an example, that RCW 11.68.110 gives the superior court only a narrow and limited authority to determine that statute’s relief—approval of fees or an accounting. 190 Wn.2d at 340. This is also seen in the various separate statutory forms of very specific relief, all of which necessitate a petition for each specific relief via each’s specific statutory process. See e.g. RCW 11.68.070 (*petition for removal of a personal representative*); RCW 11.103.050 (*petition for invalidity of the trust*); RCW 11.68.110(2) (*petition for approval of fees*).

The petition process is important, because a judicial proceeding is “commenced” by a petition or a complaint. Civil Rule (CR) 3 defines the “commencement of an action” as service of a copy of a summons together with a copy of a complaint. Federal Rule of Civil Procedure, Rule 3, entitled “Commencing an Action,” also states, “A civil action is commenced by filing a complaint with the court.” This commencement by petition invokes jurisdiction. *City of Seattle v. Pub. Employment Relations Comm’n*, 116 Wn.2d 923, 929, 809 P.2d 1377 (1991)(requiring a petition to invoke the jurisdiction of the Superior Court when reviewing an

administrative decision, as the Superior Court “is acting in its limited appellate capacity, and all statutory procedural requirements must be met before the court's appellate jurisdiction is properly invoked.”) *Rathbone* makes this unequivocal, stating that “Filing a petition under RCW § 11.68.070 allows heirs to invoke a superior court's authority to remove or restrict the powers of a personal representative...” 190 Wn. 2d at 342.

In fact, when NWTS thereupon details the Beneficiaries’ proper invocation of jurisdiction against INWCF, it only shows how strict compliance to invoke jurisdiction is done, and thus a comparison of the Beneficiaries’ invocation of jurisdiction is indeed important to make the point.

- a) The Revocable Trust Act’s RCW 11.103.050 requires a petition.

The Beneficiaries’ petition for invalidity cited the Revocable Trust Act, which requires a petition, because it requires the commencement of a judicial proceeding: “(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death...” *RCW 11.103.050*. The Beneficiaries thus properly “commenced a judicial proceeding” by filing their petition. *CP 28*.

The Beneficiaries then realized that while they commenced their

judicial action by petition in compliance with RCW 11.103.050, they had petitioned within the existing probate action. In other words, they arguably did not bring it as a new proceeding. This leads to TEDRA.

- b) TEDRA's RCW 11.96A.090 requires the commencement of a *new* action.

TEDRA supplements other Title 11 procedures and provisions. *Rathbone*, 190 Wn.2d at 344, citing RCW 11.96A.080. TEDRA suggests limitations on procedures. *Id.* Here, TEDRA is entirely consistent with RCW 11.103.050's petition requirement in requiring the commencement of a judicial proceeding, but TEDRA also requires that "(2) [A] judicial proceeding under this title must be commenced *as a new action*," and then "consolidated with an existing action." *RCW 11.96A.090(2),(3)*. The Beneficiaries caught the potential jurisdictional problem, and commenced a new action by independent petition under new Superior Court cause number 17-4-00311-7. *CP 64 (consolidation order referencing such at ¶¶ 1-5), and CP 124:15-19*. In compliance with TEDRA's RCW 11.96A.090(3) statute, the Beneficiaries then consolidated their independent petition for relief into "an existing action," which at that time was the non-intervention probate. *Id.* The Beneficiaries' processes thus vested jurisdiction in the Superior Court to hear and consider the very

specific trust invalidity relief they requested under RCW 11.103.050's narrow, statutorily created exception, and under TEDRA's limitations. *Rathbone*, 190 Wn.2d at 339. In all respects, the Superior court was accorded the limited jurisdiction to grant trust invalidity relief to the Beneficiaries. But that was the extent of its jurisdiction.

- c) INWCF failed to comply with either RCW 11.68.070's petition requirement or TEDRA's petition requirement, and thereby failed to invoke the court's jurisdiction.

In direct violation of statute, INWCF neither complied with RCW 11.68.070's petition requirement, nor with TEDRA's RCW 11.96A.090 petition and new action requirements. The Superior Court never regained the narrow and limited jurisdiction allowed under RCW 11.68.070 to determine INWCF's removal controversy.

- 2) **The consolidation order under the invalidity petition action does not modify the non-intervention order.**

Because of INWCF's failure to comply with RCW 11.68.070, NWTS is left argues that the trial court's consolidation order altered the existing non-intervention order in the probate, and gave it general jurisdiction over "all matters probate." First, that is not what the orders

say. Compare CP 18-19, *Non-Intervention Order*, with CP 64-65, *Consolidation Order*. In general, a subsequent order within the same proceeding does not modify an earlier order preexisting order unless the new order says so, even where entered under the same general incident and part of the same prosecution of an action. See *State v. Chipman*, 176 Wn. App. 615, 621–22, 309 P.3d 669, 672–73 (2013). Here, the non-intervention probate remains “an existing proceeding” under RCW 11.96A.090(3). But in probate matters, this is quite specific. In fact, a personal representative may obtain orders and decrees throughout their course of administration of the estate without waiving their non-intervention powers. *RCW 11.68.120*.

Second, the argument ignores RCW 11.96A.090. The latter specifically allows for the consolidation of new actions within existing actions after the new specific and limited relief is initiated as a new action by petition. The legislative intent is to keep each action separate under the terms of its own individual petition, and not thereby disrupt non-intervention powers. *Rathbone* holds that “the authority invoked under the nonintervention statutes, such as RCW 11.68.110 and .070, is limited to resolving issues provided under each statute.” *Id.*, 190 Wn.2d at 335. Again, this is how orders and decrees may be obtained throughout the

course of administration of the estate without waiving non-intervention powers. *RCW 11.68.120*.

Third, the argument ignores *Rathbone*. Each new action does not reinvest the trial court with subject matter jurisdiction over all statutory processes under Title 11. To the contrary, each petition for specific relief allows the Superior Court to regain only the limited jurisdiction necessary to decide the merits of that specific and limited controversy. *190 Wn. 2d at 340*.

NWTS then argues that removal of a personal representative can be done by a trial court “even in the absence of a petition by an interested party.” *NWTS Brief at 19*, citing *In re Estate of Beard*, 60 Wn.2d 127, 132-133, 372 P.2d 530 (1962). That is not what *Beard* says. The personal representative in *Beard* “did not have nonintervention powers, because the prerequisite decree of solvency was never entered.” See *In re Estate of Jones*, 116 Wn. App. 353, 370, 67 P.3d 1113 (2003), *rev'd on other grounds*, 152 Wn.2d 1 (2004), discussing *Beard*. Here, a non-intervention order requires that a petition be filed to regain limited jurisdiction over the type of relief requested.

3) **Even though the lack of subject matter jurisdiction cannot be waived, jurisdiction was plainly a disputed issue because the trial court made findings on its jurisdiction.**

INWCF asserts that the Beneficiaries waived any jurisdictional argument by rejecting an “option for a final hearing on the merits.” Lack of subject matter jurisdiction cannot be waived. *Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 808, 274 P.3d 1075, 1085 (2012). Moreover, the Beneficiaries “agreed” to proceed with oral argument only for purposes of their dismissal request. *CP 110-111, 128. (Response to Motion for Removal requesting dismissal); RP of Dec. 8, 2017, at pp. 6: 20 – 7: 3.* The jurisdictional issue was plainly disputed and before the court because INWCF presented findings and conclusions to the court on its purported jurisdiction. *CP 825, ¶¶ 1-4.*

4) **Substantial compliance cannot vest subject matter jurisdiction.**

INWCF and NWTS argue that INWCF “substantially complied” with the removal statute, as the trial court found. *CP 825, ¶ 2.* Substantial compliance is not satisfactory to invoke the subject matter jurisdiction of the Superior Court. *Skagit Surveyors & Engineers, LLC v. Friends of*

Skagit Cty., 135 Wn.2d 542, 555–56, 958 P.2d 962 (1998); *and see Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 967, 335 P.3d 1014 (2014)(holding that substantial compliance may be deemed satisfactory only for “procedural requirements,” not for substantive rights). In *Lee*, the court concluded that substantial compliance was sufficient to comport with RCW 4.96.020—the tort claim statute—but only because the statute says so. The statute mandates liberal construction and states, “substantial compliance will be deemed satisfactory.” *RCW 4.96.020(5)*. There is no similar language in RCW 11.68.070.⁴ The latter statute plainly requires a petition, with no liberal construction, no substantial compliance, and no exception.

C. Standing: A “beneficiary” has no standing under RCW 11.68.070 to bring a removal action; moreover, standing is jurisdictional in a removal action.

Neither INWCF nor NWTS are able to support INWCF’s statutory standing as an heir, devisee, or legatee under RCW 11.68.070. Instead, Respondents seem to claim that INWCF is a “beneficiary,” and thereby

⁴ TEDRA in fact explicitly distinguishes its processes from procedural rules, applying “procedural rules of court” only to the extent they are consistent with TEDRA. *RCW 11.96A.090(4)*. The court “may order otherwise” only where the title is “inapplicable, insufficient, or doubtful,” *RCW 11.96A.020*, or where a venue change is sought, per *RCW 11.96A.050*. *RCW 11.96A.090(4)*. This is because venue is not jurisdictional. *Dougherty*, 150 Wn.2d at 315.

has standing. *NWTS/INWCF Response at 14, 30*. RCW 11.68.070 does not allow a “beneficiary” to bring a removal petition.

INWCF and NWTS thus both argue that any dispute with INWCF’s lack of standing was waived at the trial court level. But standing is jurisdictional under RCW 11.68.070. It is a mandatory part of the statutorily conferred authority necessary for subject matter jurisdiction. Again, per *Rathbone*, the court can regain its limited authority to decide the removal controversy “only if the executor or another person *with statutorily conferred authority* properly invokes it.” 190 Wn.2d at 339, *emphasis added*. Standing for removal is a requisite to subject matter jurisdiction.

D. The Personal Representatives had no fiduciary duty to INWCF, as it is not a beneficiary of the trust.

Even were jurisdiction to exist, which it does not, a personal representative stands in a fiduciary relationship only to those beneficially interested in the estate. *Estate of Taylor Griffith*, 2018 WL 3629458 (Div. I, July 30, 2018), at *15, quoting from *In re Estate of Larson*, 103 Wn.2d 517, 521 (1985). Respondents thus argue that INWCF is a “beneficiary” of the living trust. The trial court erroneously concluded that the Beneficiaries are making “competing claims to funds that would otherwise

be distributed to INWCF...” *CP 826, ¶ 12*. But the plain meaning rule applies to contracts. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 502, 115 P.3d 262 (2005). INWCF is simply not a beneficiary of the trust under the living trust’s residuary clause. Where Mr. Reugh intended a beneficiary, he used the word “gift,” including the use of the term “pre-residuary gifts.” He also used the term “bequest” to mean gift, including his “General Pecuniary Bequests,” thereafter defined specifically as “the following pecuniary gifts.” *CP 142, Articles VI (B) and (C)*. His Living Trust’s Article VI (G) default residuary clause does not use the word gift or bequest as to INWCF. *CP 45*. The use of gift language in the gift instance, and different language in the default endowed fund language, mean a difference in intent. *Washington State Dep’t of Revenue v. Fed. Deposit Ins. Corp.*, 190 Wn. App. 150, 162, 359 P.3d 913 (2015).

NWTS now concedes there is no *gift* to INWCF, because it has modified INWCF’s approach. In response, NWT argues instead that Wendell Reugh made a “gift to the trust,” not a “gift to INWCF.” *NWTS Brief, p. 38*. This evolution implicitly acknowledges the trial court’s error in equating equal status to the family beneficiaries and to INWCF. Yet NWTS still attempts to salvage beneficiary status by creative definitional

work. It argues that the default clauses “to hold as” language intends INWCF to be an administrator of the trust remainder, and that an administrator is a “beneficiary.” *NWTS at 26*. First, the fact that NWTS has to segue into this definitional reach shows, at best, its own belief in the document’s ambiguity. A trustee cannot rely on ambiguous phrases in a document to impute ownership, verses “holder” rights, verses beneficiary status, and its doing so gives rise to a breach of the agreement claim and supports the elements of a Consumer Protection Act (CPA) claim. *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d at 826–27. The appellate court ruling in *Trujillo*, untouched by the Supreme Court, confirms that the words “owner” and “holder” mean different things. *Trujillo v. Nw. Tr. Servs., Inc.*, 181 Wn. App. 484, 498, 326 P.3d 768 (2014), as modified, *rev’d in part*, 183 Wn.2d 820 (2015)(noting that “the UCC states that these terms are not synonymous.”). In the specific statutory act at issue in *Trujillo*, a statute simply *allowed* those two terms to operate as equivalents--an “actual holder” could suffice as proof of “ownership” for that relief. But even then, the declaration remained ambiguous, and NWTS could not lawfully rely on an ambiguous declaration to prove that its favored institution, Wells Fargo, was an “owner” of the note. 183 Wn.2d at 833. NWTS is doing the same thing here. It acknowledges the ambiguity of

INWCF's position in the document, and thus seeks to reinvent the term "beneficiary." It cites Black's Law Dictionary, claiming that a beneficiary is a party entitled to enforce the trust. *NWTS brief at 27*. But INWCF is not entitled to enforce the trust, because it serves only at the grace of the PRs. *CP 137, Article IV(D)*. NWTS offers a different definition a page earlier, where it cites RCW 11.104A.005 of the Washington Principal and Income Act, claiming that a beneficiary is a "remainder beneficiary," which is a person "entitled to receive principal..." But INWCF is not "entitled to receive principal," because that phrase means receipt of the owner's interest—that is, receipt of ownership of the principal. *See e.g., Manary v. Anderson*, 164 Wn. App. 569, 575–76, 265 P.3d 163 (2011), *aff'd*, 176 Wn.2d 342 (2013) (discussing how it is the owner's interest that is transferred to a "beneficiary," e.g., RCW 11.11.020(1), RCW 11.02.005(15), and RCW 11.11.010(8)). INWCF receives funds here only to hold under the Reugh family's name as an endowed fund. NWTS does not and cannot dispute the Beneficiaries' position that actual owners of endowed funds are given the principal and income from the principal to use for their *own* purposes, and that is not the case here. INWCF was not given an endowed fund. It received only the administration role of the family's endowed fund. And even in that vein, it served only at the grace

of the PRs. *CP 137, Article IV(D)*.

In sum, the trial court's order finding that INWCF was a trust beneficiary, and that the personal representatives had a fiduciary duty to INWCF as a trust beneficiary of equal status to that of Mr. Reugh's heirs, is plain error.

E. INWCF has failed to show waste, embezzlement, or similar disqualifying behavior.

The findings made by the court do not support waste, embezzlement or similar disqualifying behavior, and Respondents make little effort to support such a conclusion beyond injecting hyperbole into the instances cited—the certain checks that concededly issued under a lawyer's directive, and the personal representatives joining the trust litigation in progress. But a petitioning beneficiary “must demonstrate that removal is clearly necessary to save the trust property.” *In re Estate of Ehlers*, 80 Wn. App. 751, 761, 911 P.2d 1017 (1996). These instances show no threat to the trust property, because there is no trust property. Respondents fail to dispute that even if the trust is ultimately deemed valid, the same distributions used by the trial court as evidence of bad faith would be made *in any event* before INWCF could receive anything. The findings made by the court cannot be legitimately spun into waste,

embezzlement or similar disqualifying behavior, and are insufficient for removal.

Similarly, there is no breach of a fiduciary duty where personal representatives engage in litigation. *Estate of Taylor Griffith*, 2018 WL 3629458. To the contrary, the PR has a fiduciary duty to “pursue and maximize the estate’s most valuable assets.” *Id.* at 19. Here, as in *Griffith*, the personal representatives of the estate followed all statutory procedures, and were in the process of determining claims, settling claims, and pursuing lawsuits—all as part of the very duties of the PR to the estate they manage. *Griffith* at 17-19.⁵

Notably, in *Griffith*, the court points out that a disqualifying conflict for a PR is one that would contravene the rights of the *beneficiaries*, and result in a waste of the estate. *Id.* at 21, citing *In re Estate of Jones*, 152 Wn.2d at 19. Again, INWCF is neither a beneficiary, nor an heir. There is no disqualifying conflict.

F. Successor processes do not evaporate after one successor.

The reasoning regarding Respondents’ refusal to comply with the estate and trust successor processes is frivolous. First, NWTS argues that a court has the statutory duty to appoint a successor trustee. But this duty

⁵ Indeed, NWTS is engaging in the litigation now against the heirs, and in favor of an interloper, yet it claim proper PR status.

does not mean that it may do so randomly at its discretion. There is no inconsistency between the court exercising its statutory duty to appoint, while still following the trust and state document processes. Second, NWTS argues that a “successor” can only happen once. Successors are successors, regardless of how many there may be. Third, INWCF argues that the judicial removal of the original personal representative/ trustee somehow voids the documents’ succession processes. To the contrary, judicial removal fits right into the language--a judicial removal renders a trustee “unable” to serve per the will’s Article IV(A)(2), which then triggers the document’s succession process. *CP 46, and see CP 59, ¶ B of the Trust.* Fourth, INWCF argues that the children forfeited the trust’s succession process by not submitting a proposed replacement. They did not. The Beneficiaries specifically rejected NWTS, pointing out that NWTS had interaction with, and ties to, INWCF, and to the original drafter, “Mr. Culbertson.” *RP 67-68; and see CP 71* (where Beneficiary counsel states, “Respectfully, Your Honor, we believe that all three of those entities (proposed by INWCF) have connections to Inland Northwest.”); and *see CP 769* (wherein NWTS actively listed its connectivity with INWCF’s lawyers and with Mr. Culbertson). The Beneficiaries rejected NWTS in concert with actively appealing the

court's decision removing the PRs, and asked the court to stay the proceeding. *RP 55: 8-10*. The trial court could easily have denied the stay, and required a selected representative consistent with the trust. The Reugh children are specifically allowed to select the successors in each event. *CP 46, 59*. The children are alive, and able to perform the duty assigned to them. Instead, the court ignored the objection, and the documents' processes for a successor. Finally, NWTS argues that this Court should sustain the trial court anyway because it is now the Trustee, and if it remains so, if this matter is remanded to the trial court, then it will again move to remove the prior personal representatives, because it has already decided the merit of the case. *NWTS Response at 29-30*. It says this while elsewhere arguing that a trustee taking such positions violates their obligation of neutrality. These reasons for the court ignoring the documents' successor processes are frivolous.

G. NWTS is not a neutral third party.

NWTS argues that a trustee must remain impartial and protect the interests of all "parties." In fact, that duty goes only to the beneficiaries, as discussed above, and INWCF is not a beneficiary—it is an interloper in this family's estate. But NWTS seems predisposed to front for its institutional entities, regardless of propriety. see, e.g., *Trujillo v. Nw. Tr.*

Servs., Inc., 183 Wn.2d 820. NWTS is openly antagonistic to *explicit* trust beneficiaries—Wendell Reugh’s adult children—while prostrating itself before INWCF. NWTS rails against the family beneficiaries, calling their defense of their own father’s family oriented desires “absurd,” (p. 14); “frivolous,” (pp. 15, 40); “spurious,” (p. 23); “indefensible,” (p. 20); “shocking dereliction,” (p. 23); “groundless,” (p. 20); “clearly erroneous,” (p. 7 (twice); p. 35); “tortured,” (p. 27); “meritless,” (pp. 29, 39); “blatant, self-serving,” (p. 35); and “ridiculous,” (p. 38). Conversely, NWTS exhorts non-beneficiary INWCF’s “unassailable defenses,” (p. 23), and its lawyer’s “correct counter arguments,” (p. 35). It prejudices the Beneficiaries’ pending petition for validity as “meritless,” and says that if this Court doesn’t uphold the removal of the former personal representatives because of the lack of subject matter jurisdiction, it will use whatever limited role it may be left with, if any, to ensure that they are again removed. NWTS has proved itself to be the name-calling little brother fronting for INWCF, and entirely unsuitable for any role as a trustee or representative of this family’s estate, and its actions here are similar to those condemned in *Trullijo*. It is not a neutral third party.

H. INWCF applies testamentary trust law when this trust is a revocable *living* trust.

Finally, Respondents jointly extend their indifference to this state's law by conflating a testamentary trust with a revocable living trust. They do this because revocable living trusts must be funded during the Settlor's lifetime to be valid, whereas a testamentary trust is not so funded. *Edwards v. Edwards*, 1 Wn. App. 67, 459 P.2d 422 (1969). INWCF's lead-in "statement of the case" thus states that Mr. Reugh executed a "standard pour-over will which calls for Mr. Reugh's entire estate....to be directed into the Trust at Mr. Reugh's death," citing to the Uniform Testamentary Additions to Trust Act, RCW 11.12.250. Calling this a "standard pour-over will" and citing to the Testamentary Trust Act is a deception. Only Mr. Reugh's residuary estate was to pass post-mortem, *CP 46, Will Article III*. His revocable living trust was to already be operative, and was not dependent for its existence on either Wendell Reugh's death, or the later post-death appearance of a residuary estate. *CP 51, Article II*. Respondents make deliberate efforts to miscast a living trust as a testamentary trust to avoid this living trust's obvious invalidity,

and this as well shows NWTS's unsuitability to be anywhere near this family's estate.

I. Attorney Fees.

Respondents make no secret of their antagonism to Reugh family beneficiaries, nor of their alignment in refusing to honor the plain language of statutes, or the plain language of Mr. Reugh's will and living trust in favor of his family. The beneficiaries restate their request for reimbursement.

Respectfully submitted this 13th day of November, 2018.

MARY SCHULTZ LAW, P.S.

/s/Mary Schultz, WSBA #14198

Attorney for Appellant Beneficiaries

Mary Schultz Law, P.S.

2111 E. Red Barn Lane, Spangle, WA 99031

Tel: (509) 245-3522/Fax: (509) 245-3308

E-mail: Mary@MSchultz.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on the 13th day of November, 2018, she electronically filed the foregoing document with the Court of Appeals, Division III, and thereby served a copy to the following individuals:

SERVICE LIST	
Peter A. Witherspoon James McPhee Witherspoon Brajcich McPhee, PLLC 601 W Main Ave Ste. 714 Spokane, WA 99201-0677 <i>Attorneys for Inland Northwest Community Foundation.</i>	<input checked="" type="checkbox"/> <u>E-Mail vi ECF:</u> pwitherspoon@workwith.com ; jmcphee@workwith.com
Nicholas S. Marshall Maximillian Held Ahrens Deangeli Law Group, LLP P.O. Box 9500 Boise, ID 83707-9500 <i>Attorneys for Northwest Trust Management LLC</i>	<input checked="" type="checkbox"/> <u>E-Mail via ECF:</u> nmarshall@adlawgroup.com mheld@adlawgroup.com
Amber R. Myrick Amber R. Myrick, P.A. P.O. Box 7363 Boise, ID 83707 <i>Attorney for Estate/Former Personal Representatives JoLynn Reugh-Kovalsky and Steven T. Gill</i>	<input checked="" type="checkbox"/> <u>E-Mail via ECF:</u> amyrick@myricklawoffice.com ;

SERVICE LIST	
<p>Phil Talmadge Talmadge/Fitzpatrick/Tribe 2775 Harbor Avenue, SW Third Floor, Ste. C Seattle, WA 98126-2138</p> <p><i>Attorney for Estate/Former Personal Representatives JoLynn Reugh- Kovalsky and Steven T. Gill</i></p>	<p><input checked="" type="checkbox"/> <u>E-Mail via ECF:</u> phil@tal-fitzlaw.com;</p>

DATED this 13th day of November, 2018.

/s/Mary Schultz

Mary Schultz, WSBA # 14198

Attorney for Appellant/Beneficiaries

Mary Schultz Law, P.S.

2111 E. Red Barn Lane, Spangle, WA 99031

Tel: (509) 245-3522/Fax: (509) 245-3308

E-mail: Mary@MSchultz.com

MARY SCHULTZ LAW PS

November 13, 2018 - 12:54 PM

Transmittal Information

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Appellate Court Case Title: In re the Estate of K. Wendell Reugh
Superior Court Case Number: 15-4-00471-1

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- pwitherspoon@workwith.com
- rclayton@workwith.com

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Sender Name: Mary Schultz - Email: Mary@MSchultz.com

Address:

2111 E RED BARN LN
SPANGLE, WA, 99031-5005

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