

No. 89788-3

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SUPREME COURT OF THE STATE OF WASHINGTON

RACHEL MARGUERITE ANDERSON
(formerly RACHEL M. RODGERS),

Appellant,

v.

WILLIAM L. E. DUSSAULT and JANE DOE DUSSAULT, husband and wife, and the marital community composed thereof; BARBARA J. BYRAM and JOHN DOE BYRAM, wife and husband, and the marital community composed thereof; YEVGENY JACK BERNER and JANE DOE BERNER, husband and wife, and the marital community composed thereof; WILLIAM L. E. DUSSAULT, PS, a Washington professional service corporation; the DUSSAULT LAW GROUP, a Washington corporation; RICHARD MICHAEL McMENAMIN and SHARI L. McMENAMIN, husband and wife, and the marital community composed thereof; McMENAMIN & McMENAMIN PS, a Washington professional service corporation; ANDREA DAVEY (fka ANDREA RODGERS) and JOHN DOE DAVEY, husband and wife, and the marital community composed thereof; and WELLS FARGO BANK, N.A., a foreign corporation,

Respondents.

RESPONDENT DUSSAULT'S SUPPLEMENTAL BRIEF

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I. IDENTITY OF THE RESPONDENTS DUSSAULT

William L. E. Dussault, Barbara J. Byram, Yevgeny Jack Berner, William L. E. Dussault, PS, and the Dussault Law Group, collectively “Dussault,” submit this supplemental brief on review.

II. ISSUES PRESENTED FOR REVIEW

A. Anderson’s Issues

1. Whether the Trustees’ Accounting Act (TAA), RCW ch. 11.106, bars a minor beneficiary's claims for breach of fiduciary duty 30 days after any trust accounting has been judicially approved, even when no guardian ad litem was appointed for the minor, as required by RCW 11.106.060, and as required by RCW 11.96A.070(4) to prevent the tolling of the statute of limitations on a minor's claims under the Trust and Estate Dispute Resolution Act (TEDRA), RCW ch. 11.96A?

2. Whether it is “equitable” to require the sole beneficiary of a trust to pay the appellate attorney fees of fiduciaries whose management of the trust she in “good faith” challenged, raising “legitimate concerns,” under the TEDRA fee statute, RCW 11.96A.150(1)?

B. Dussault’s Contingent Issues

If the Court agrees with Anderson’s arguments that the trial court was obliged to spend trust funds to hire a guardian ad litem to bring

finality to each accounting, the Court should rule on the following contingent issues:

1. **Dussault owed no duty to Anderson.** Dussault represented corporate trustee Wells Fargo Bank solely in the capacity of preparing and presenting annual reports to the superior court. Did Dussault have any duty to non-client Anderson?

2. **Judicial Estoppel.** Is Anderson judicially estopped from arguing that the Trust was mismanaged after accepting the benefits of the Trust's management?

3. **No Violation of the Trust Agreement.** Did Dussault or any other defendant violate the terms of the Trust, which permitted purchases for transportation, computers, and real property?

4. **No Damages.** Did Anderson even demonstrate she was damaged?

C. Attorneys' Fees

Dussault should be awarded attorneys' fees for responding to this Petition. Should the Supreme Court award Dussault his reasonable attorney fees and costs for defending against this Petition?

III. STATEMENT OF THE CASE

The Court of Appeals thoroughly and accurately set out the facts, and Dussault adopts those facts as its Statement of the Case. *Anderson v.*

Dussault, 177 Wn. App. 79, 83-86, 310 P.3d 854 (2013):

¶ 6 ... Wells Fargo hired Dussault to prepare its annual reports for court approval. Dussault filed his first report to the court on January 25, 2000. The first report detailed all investment activities and trust disbursements between the trust's establishment date (August 25, 1997) and August 31, 1999. Among other expenses, the report stated that trust funds were used for "vehicle expenses in the total of \$14,159.98" including the "purchase of a 1997 Mercury Tracer." 2 CP at 351. The superior court approved the report in its entirety. Dussault submitted the second report on February 12, 2001, which covered "all financial activity" from September 1, 1999 through August 31, 2000. 2 CP at 356. This report stated that "[d]isbursements from the Trust were in the total amount of \$41,461.86" and included the "purchase of real estate." 2 CP at 356. The superior court also approved this report in its entirety... .

....

¶ 9 ... Dussault delayed presenting the report for court approval while he "attempted to address Mr. Gay's concerns." 2 CP at 347. In July of 2002, McMenamain resigned from his voluntary position as a member of the [Trust Advisory Committee (TAC)] "when it became apparent that there were ongoing problems with the disgruntled non-custodian parent ([Anderson's] father)." 2 CP at 288. .

¶ 10 On December 6, 2002, Dussault submitted a two-year report for approval by the superior court. The report covered all financial activity undertaken by the trust between September 2000 and August 2002. The report noted that the "members of the TAC wish to dissolve the TAC and have the trustee assume all the functions designated to [the] TAC pursuant to the terms of the Trust." 2 CP at 372. The parties, including Gay, were notified that the trial court would hold a hearing related to the trustee report on July 11, 2003. Neither Gay nor his clients, Anderson's father and grandmother, appeared at the

hearing. At the hearing, after “having heard the presentation of counsel, [and] having considered the files and records” related to the report, the superior court approved Dussault’s report. 2 CP at 375. Additionally, the superior court dissolved the TAC and assigned Wells Fargo as the trustee “to carry out all of the duties of the TAC under the terms of the Trust Agreement.” 2 CP at 375. The trial court’s approval of the report was not appealed. .

¶ 11 From December 23, 2003 to December 4, 2009, the trial court approved four additional reports, none of which were objected to by any interested party. The last such report was approved by the superior court on December 4, 2009, when Anderson was 19 years old. The superior court requested that the next report be filed toward the end of 2011.

Idem.

IV. SUMMARY OF ARGUMENT

Anderson’s substantive issue on appeal does not address the Court of Appeals’ finding that her arguments against Wells Fargo and Dussault “lack merit.” Even if this court agrees with Anderson’s argument that the Superior Court should have spent trust assets to employ a guardian ad litem to bring finality to each accounting, she has not challenged the finding that as to Dussault and Wells Fargo, her claim lacks merit. Her claims against Dussault are unjustified, because Dussault had no duty to Anderson, did not participate in the decisions of which she now complains and was in no position to do anything about the expenditures even if they were in error.

Anderson's claims against Dussault were ill advised irrespective of the merits of her appeal. The Court of Appeals was justified in awarding Dussault his reasonable attorneys' fees. Dussault should receive his reasonable attorneys' fees for responding to this Petition for Review.

V. ARGUMENT

A. **Other than a review of attorneys' fees, Anderson has not requested review of the reasons for affirming Wells Fargo and Dussault's dismissal.**

Anderson has asked this court to allow her to challenge decisions made under the Trustee's Accounting Act and absolve her from paying the appellate attorney fees of the two parties who kept her money safe for almost two decades. RCW 11.96A.150 (1). But the Court of Appeals held, "Anderson's claims against Dussault and Wells Fargo lack merit." *Anderson v. Dussault*, 177 Wn. App. at 95. . Anderson does not challenge that finding in which the court resolved all the other issues involving Dussault and Wells Fargo against her. Anderson challenged the decisions made by the Trust Advisory Committee (TAC) composed of her mother and her attorney Richard McMenamin. These decisions included the purchase of a Mercury Tracer, an interest in Joe Lancaster's home and a computer. CP 211, 216, 229-33. Wells Fargo and Dussault were not involved in these decisions. CP 232-34.

Anderson's substantive issue for review is that RCW 11.06A.070

(4) should have tolled the statute of limitations. “Trustees are not entitled to the benefit of RCW 11.106.080's bar on claims when they failed to comply with RCW 11.106.060's requirement that a guardian ad litem *shall* be appointed for minor beneficiaries.” Pet. p. 10. Dussault, however, was not a trustee. Consequently, Anderson raises no issue concerning Wells Fargo's investment of her money or the accuracy of Dussault's periodic reports. This review does not address any claim against Wells Fargo or Dussault, only their claim of entitlement to reasonable attorneys' fees.

B. In the trial court, Anderson did not raise the issues she now asks this court to decide.

Anderson claims the Court of Appeals decision conflicts with this Court's decisions in *Schroeder v. Weighall*, 179 Wn.2d 566, 316 P.3d 482 (2014); *Gilbert v. Sacred Heart Med. Ctr.*, 127 Wn.2d 370, 900 P.2d 552 (1995); and *Merrigan v. Epstein*, 112 Wn.2d 709, 773 P.2d 78 (1989). She further claims error in the Court of Appeals interpretation of RCW 11.106.070.

“On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.” RAP 9.12 The defendants clearly raised the issue of the TAA and specifically RCW 11.106.070. CP 150-52, 334-35, 445. Anderson did not cite this statute in her response to the

defendants' motions for summary judgment. While Anderson addressed the limitation the Act raises to after-the-fact challenges, CP 89-91, she claimed the Act did not apply because the trust was not an express trust but one created by the court, and the Act did not apply unless a guardian ad litem were appointed. *Id. Gilbert* and *Merrigan* are not new or novel, but Anderson did not discuss these cases in the trial court or even the Court of Appeals. They have now become the cornerstone of her position on review. Pet. for Rev. 12-14.

Washington courts "do not generally consider on appeal issues not briefed or argued in the trial court." *Associated Gen. Contractors of Wash. v. King Con.* 124 Wn.2d 855, 859, 881 P.2d 996 (1994); see *Torres v. City of Anacortes*, 97 Wn. App. 64, 80, 981 P.2d 891 (1999). In her response to Dussault's motion for summary judgment, Anderson did not address several of Dussault's key arguments. CP 30-31.

Anderson did not address the problem that she was challenging a decree entered years before. Even if the statute of limitations was tolled, relief from an order or decree must be brought under CR 60 and must be brought within one year. Anderson was two years late. CP 448-50. She did not address that defense. CP 30, 83.

Dussault demonstrated that Washington law did not permit the Trust to collect rent from Joe Lancaster. CP 439. Anderson made no

response. This claim for rent and interest amounts to \$20,195 and is over a third of her damage claim. CP 83-93, 439. Perhaps even worse is that her damage calculations fail to credit the Trust for the profit made on sale of Lancaster's house which was supposedly wrongfully purchased with Trust money. CP 129 – 32. If we take Anderson's alleged damages of \$56,873 and deduct the \$20,195 that could not be collected because Lancaster was a joint tenant and credit the venture with the \$41,686 in net profit from the sale, CP 131, the Trust enjoyed a profit of \$5008. An argument can be made on Anderson's evidence she suffered no damages.

Anderson rested on her bare assertion that expenditures on the vehicle, the computer, and Joe Lancaster's home were inappropriate. CP 86. Dussault spent considerable time showing that these were authorized expenses and permitted by the Trust. CP 436-40. Anderson made no counter arguments and presented no applicable authority. CP 86, 436-40.

Dussault presented a detailed discussion explaining the discretion afforded a trustee, how the TAC and Wells Fargo appropriately followed the Trust, and Dussault's lack of participation in this process. CP 436-40. Anderson never ascribed any of the trust management to Dussault or explained how he was responsible for it. Her opening brief in the Court of Appeals only discussed this in relation to McMenamin and Wells Fargo. Brief 27-31. Anderson has abandoned her claims against Dussault

concerning trust management. Courts will not consider arguments not supported by citation to legal authority and the record. *Fishburn v. Pierce County Planning & Land Services Dept.*, 161 Wn. App. 452, 468, 250 P.3d 146 *review denied*, 172 Wn.2d 1012, 259 P.3d 1109 (2011).

C. Dussault owed no duty to Anderson.

Anderson's argument that Dussault owed some direct obligation to her ignores important facts that she does not dispute. William Dussault set out his firm's participation in this matter, and no one has taken issue with that. CP 345-48. Anderson does not claim anything was wrong with the Trust, only with its administration. Dussault's participation in its administration was the preparation and presentation of reports to which she also ascribes no fault. *Id.* Anderson claims the actions of the TAC in approving payments were not in accord with the Trust. Dussault never represented the TAC. CP 347. Anderson's claims against Dussault have no basis in the record.

This court has rarely upheld an action against an attorney by a non-client.

In *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994), this court expressly adopted a multifactor test to determine whether an attorney may be liable for malpractice to such a nonclient third party. The relevant factors are:

1. The extent to which the transaction was intended to benefit the plaintiff [that is, the third party suing the

attorney];

2. The foreseeability of harm to the plaintiff;
3. The degree of certainty that the plaintiff suffered injury;
4. The closeness of the connection between the defendant's [that is, the attorney's] conduct and the injury;
5. The policy of preventing future harm; and
6. The extent to which the profession would be unduly burdened by a finding of liability.

Trask, 123 Wn.2d at 843, 872 P.2d 1080. We explained that the first factor is the “primary inquiry” in determining an attorney’s liability to third parties. *Id.* at 842, 872 P.2d 1080. We further explained that “under the modified multi-factor balancing test, the threshold question is whether the plaintiff is an intended beneficiary of the transaction to which the advice pertained” and that “no further inquiry need be made unless such an intent exists.” *Id.* at 843, 872 P.2d 1080.

Stewart Title Guar. Co. v. Sterling Sav. Bank, 178 Wn.2d 561, 565-66, 311 P.3d 1, 3 (2013).

Only the first of the six *Trask* factors is arguably met in this case and for the purpose of this discussion we will assume that the first is met. No harm will come to the *cestui que* because Wells Fargo is a corporate trustee and financially capable of addressing any harm it might cause were it to mismanage Anderson’s Trust. CP 460, 473. Anderson’s allegation is little more than a claim that Dussault should have checked Wells Fargo’s work. But the cost of double-checking the work of a professional trustee

by the lawyers hired to submit required reports is self-defeating. Anderson was already complaining over the cost of this service. CP 502-03. For the same reasons, there is little likelihood of injury, its reoccurrence and future harm to trust beneficiaries.

A trustee may have very divergent interests from those of the beneficiary; the claim that the trustee's attorney has some duty to the beneficiaries of the trust rarely comes up. Where it has, however, the claim is not sustained.

“A trustee in the traditional sense has broad discretionary powers over the estate assets and must make difficult investment and distribution decisions. The attorney for the trustee must assist the trustee to make these discretionary decisions.” *Leyba v. Whitley*, 120 N.M. 768, 774, 907 P.2d 172, 178 (1995). *In Durham v. Guest*, 142 N.M. 817, 171 P.3d 756 (2007), *overruled on other grounds by Durham v. Guest*, 145 N.M. 694, 204 P.3d 19 (2009), the Supreme Court of New Mexico stated: “[A]n attorney has no duty to the nonclient beneficiary of a client fiduciary, even when the attorney represents the client in the client’s role as a fiduciary, if such a duty would significantly impair the performance of the attorney’s obligations to his or her client.” 142 N.M. at 823, 171 P.3d at 762. In *Leyba v. Whitley*, the Supreme Court of New Mexico recognized that an adversarial relationship can develop between an attorney’s client and a third party to whom the attorney’s client owes a fiduciary duty. *See* 120 N.M. at 771, 907 P.2d at 175. The Supreme Court of New Mexico stated: “[T]he estate and its beneficiaries are incidental, not intended, beneficiaries of the attorney-personal representative relationship.” 120 N.M. at 776, 907 P.2d at 180 (adopting the reasoning of the Supreme Court of Washington in *Trask v. Butler*).

Murphy v. Gorman, 271 F.R.D. 296, 313-14 (D. N.M. 2010). The *Murphy* court relied on *Trask*, which is the standard that New Mexico courts adopted.

Anderson's legal claims rest on the opinion she obtained from attorney Gary Colley. "There is little distinction in advising the guardian of the estate of an incapacitated individual and advising the trustee of a trust for an incapacitated individual." CP 140. But there is a large difference, as *Stewart Title* demonstrates. Colley must torture the English language to spit out his conclusion that "the attorneys advising the trustee when presenting the annual reports" breached their duty of care. CP 141. The sentence identifies the trustee as the person to be advised and thus the person to whom any duty of care and fiduciary responsibility is owed. Lawyers have fiduciary obligations to their clients, and "[t]he basic fiduciary obligations are two-fold: undivided loyalty and confidentiality." *Parker Drilling Co. v. Hughes, Thorsness, Gantz, Powell & Brundin*, 121 F.3d 716 (9th Cir. 1997). These are limited duties even for lawyers, and cases involving lawyers breaching these duties are rare. *Perez v. Pappas*, 98 Wn.2d 835, 659 P.2d 475 (1983).

The wrongness of Colley's opinion can be illustrated by assuming, hypothetically, Dussault advised Wells Fargo these payments were ill-advised. Dussault's fiduciary duty to Wells Fargo might preclude him

from disclosing that advice today, and Wells Fargo might be disinclined to waive the attorney-client privilege.¹ Creating additional duties to third parties would unduly and unnecessarily burden the legal profession in situations where attorneys such as Dussault are hired to perform discrete services for their clients or may give legal advice against actions that the client disregards, perhaps for other legitimate reasons. The attorney-client privilege precludes the result Anderson pressed on the lower courts.

Courts are reluctant to create new remedies because of policy considerations against adversely affecting an attorney's loyalty and confidences or dissuading attorneys from taking difficult cases. New remedies add new, not necessarily productive, litigation. Mallen & Smith, *Legal Malpractice* §6.32 (2014).

D. Judicial Estoppel barred Anderson's claims

Anderson has accepted the benefits of the Trust distributions and now wishes to complain of those benefits. Her position is opposed to that taken during the Trust administration and is barred by judicial estoppel. Washington recognized this doctrine. *Garrett v. Morgan*, 127 Wn. App. 375, 112 P.3d 531 (2002). A number of courts have applied the doctrine to situations such as this where a ward or beneficiary claims

¹ RPC 1.6 (b) (5) would probably permit an attorney to defend under such circumstances, but what client would want his attorney defending herself on the stand by saying, "I told them not to do it!" It is unlikely anything could burden the legal profession more.

mismanagement of a trust or settlement after accepting the benefits of the previous proceedings. “[M]inors having received the benefit of the sale are estopped to deny the judicial statements and admissions of their duly authorized legal representatives, who acted in good faith.” *Jackson v. United Gas Public Service Co.*, 196 La. 1, 29, 198 So. 633, 642 (1940). In *McKay v. Owens*, 130 Idaho 148, 937 P.2d 1222 (1997), the court bound a mother to her prior statements that a settlement over a medical malpractice claim brought for her ward was adequate when she brought an action against the attorney and guardian for her permanently disabled child. The court was so unimpressed with the change in position that it awarded the defendants terms under CR 11.

By 2009 Anderson had, with the help of her Trust, completed a two year degree in accounting. She was self-sufficient. CP 412-16. Anderson has now brought an action claiming those who were involved in her trust, including the attorney who obtained her settlement, have wronged her. She ought not be permitted to accept the benefits of their efforts and then complain about them. This is not a question of defalcation or waste, but the questioning of benefit decisions made long ago. Those decisions were reviewed by a court and should remain final.

E. The Court of Appeals properly awarded Dussault reasonable attorney fees; this Court should award Dussault reasonable attorney fees and costs on appeal.

1. Anderson's claims against Dussault lack merit.

When Anderson appealed the Superior Court's decision, she overlooked not having resolved anything against Davey, her mother. Doubtless, Anderson continues to ignore her because Davey is impecunious. Yet it was Davey who received the use of an inexpensive, used automobile, a double-wide, and a computer. If Anderson were injured and Davey benefitted, any semblance of justice would compel an action against Davey, not the other defendants. The law does not recognize a cause of action against another just because they have assets and happened to have been involved. Barring such well known grounds as *respondeat superior* or contractual situations such as insurance or bailment there are few exceptions to the necessity of finding a defendant committed some actionable conduct before liability attaches. *St. Paul Fire & Marine Ins. Co. v. Charles H. Lilly Co.*, 48 Wn.2d 528, 529, 295 P.2d 299 (1956). Dussault prepared accurate reports to the court, and the court approved them without exception. Was Dussault to question the court, his client, the TAC and take some contrary action?

Dussault was unconnected with the decisions of the TAC. If expenditures were inappropriate, Dussault could not have forced Lancaster

to sell immediately, because that would not have been economically prudent and might have put Anderson and her family on the street. He could not have repossessed the Mercury Tracer stranding Anderson and her mother on the Voice of America nine miles from town, and had he pried the cost of the computer out of Davey, he would have probably pried the food out of Anderson's mouth in the process. Dussault's position in this matter was always after the fact, and his ability to rectify anything would have been limited at best.

Anderson has not carefully thought out her assertions against the defendants and especially Dussault. Her appeal against Dussault lacked merit, as the Court of Appeals noted:

Dussault and Wells Fargo both request reasonable costs and attorney fees pursuant to RAP 18.1 and the Washington Trust and Estate Dispute Resolution Act ("TEDRA"), ch. 11.96A RCW. ... As Anderson's claims against Dussault and Wells Fargo lack merit, we grant their request for costs and attorney fees in an amount to be determined by our commissioner. RAP 18.1(f).

Anderson, 179 Wn. App. 94-95. The same applies to this petition. Dussault did nothing improper. He performed the duties he was employed to do. If the claims against him are not wholly frivolous, they are without merit. An attorney should be permitted to represent his client without the fear of being dragged into litigation that is propelled by nothing but a monetary dispute between his client and another.

Anderson does not address the lack of merit of her claim in her petition for review and did not address it in her appeal to the Court of Appeals. Her request for review only claims she ought to be permitted any claim if it is in good faith and the court should not exercise any discretion. She did not address the issue of attorneys' fees in her opening brief to the court of appeals, and in her reply she did not raise the "good faith" defense or even discuss issues relating to fees other than to claim it would be inequitable to award the Respondents fees, and this was not an equity action, just an action at law. CP 26, 35-36. It is an action covered by TEDRA because it involves the resolution of a dispute involving a trust. RCW 11.96A.010

2. Anderson did not act in "good faith."

Anderson's appeal to this Court contends that she "had the right to bring a good faith challenge to practices she believed were malpractice, and that involved breaches of fiduciary duty, including misuse of trust funds." Pet. at 17. Anderson sued Dussault to take his money away from him. Her complaint demanded "\$56,873.00 ... together with Rachel's reasonable lawyer fees and costs in accordance with applicable statutes and recognized grounds in equity." CP 474. In the middle of the Great Recession, Anderson's Trust had \$179,473.61 in it. CP 414. Anderson was 19 years old when she received this accounting in 2009, and the

Clallam County Superior Court approved the accounting when she was 19.² Anderson was perfectly capable of challenging any accounting issues as of that date, but she chose to file an independent action for breach of fiduciary duty and malpractice. Anderson did not bring this action for anything but money. She asked for no specific relief except money damages and fees. She lost.

The cases Anderson cites do not support her position. The trial court denied Dussault and Wells Fargo their fees and neither appealed that decision. Anderson's action did not seek to benefit the Trust but rather enrich her, so there would be little justification for awarding fees from the trust. Generally, attorney fees may be awarded against a trust "only where the litigation results in a substantial benefit to the trust." *Bartlett v. Betlach*, 136 Wn. App. 8, 22, 146 P.3d 1235 (2006) (citing *In re Estate of Niehenke*, 117 Wn.2d 631, 648, 818 P.2d 1324 (1991)), *review denied*, 162 Wn.2d 1004, 175 P.3d 1092 (2007). The entire statute has application here.

11.96A.150. Costs – Attorneys' fee

(1) Either the superior court or **any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party:** (a) From any party to the proceedings; (b) from the assets of the

² Anderson was born July 25, 1990. CP 476. Anderson received the report by early December 2009 and the approved report shortly after December 14, 2009. CP 410-24.

estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to **all proceedings** governed by this title, **including** but not limited to **proceedings involving trusts**, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).[emphasis added]

The legislature gave substantial discretion to the courts and the terms "reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings" leave no question that a beneficiary who brings litigation may be assessed attorneys' fees. Anderson's Trust was well maintained, supported her through college and this action ill-advised.

VI. CONCLUSION

Anderson's claims against Dussault are meritless and not well thought out. She has not articulated a good reason to torture the attorney client relationship and increase the cost of trust administration for no demonstrable benefit. She has not explained why she appealed against

Dussault after the trial court rejected her claims. She has not demonstrated that she has any damages.

This court should affirm the Court of Appeals in its entirety and should award Dussault his costs and reasonable attorneys' fees.

Respectfully submitted this 1st day of May 2014.

LEE SMART, P.S., INC.

By: 
Sam B. Franklin, WSBA No. 1903
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Of Attorneys for Respondents Dussault

DECLARATION OF SERVICE

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on the date indicated below, I caused service of true and correct copies of *Respondent Dussault's Supplemental Brief* in the manner indicated below to:

VIA FED-EX

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DATED this 1st day of May 2014 at Seattle, Washington.



Wendy A. Larson, Legal Assistant

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Cause No. 89788-3. Attached for filing with the Supreme Court, please find Respondent Dussault's Supplemental Brief. Thank you.

Wendy A. Larson | [VCard](#) | [Email](#)

Legal Assistant to: William L. Cameron

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