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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

64633-8-I 65132-3-I  
NO. ~~6433-8-1~~ and ~~6532-3-1~~  
(Consolidated)

IN RE THE ESTATE OF LLOYD W. FOSTER  
AND ALICE H. FOSTER

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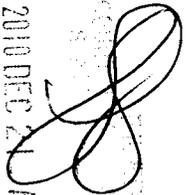
BRIEF OF RESPONDENT JENNIFER J. GILLIAM, SPECIAL  
REPRESENTATIVE (DISCHARGED)

RAP 10.3 (b)

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## I. INTRODUCTION

This case is about the failure two brothers, both of whom were fiduciaries, failing to properly execute their duties, resulting in beneficiaries under the age of 18 not receiving their entitled distributive shares of a family trust. The family trust was to be funded, in large part, by the net assets from the probate estate.

## II. RESTATEMENT OF THE CASE

This probate matter commenced in King County Superior Court on February 11, 2003 and continues through the present with this appeal. CP 1562-1576. There are approximately 390 pleadings on file, exclusive of pleadings and notices related to this appeal. CP 1562-1576. There were approximately thirty (30) lower court hearings in this matter, of which the Special Representative appeared at approximately nineteen (19). CP 1562-1576.

Many of these hearings were the result of delays, failure to comply with court orders and citations, failure to provide complete and accurate accountings, failure to make timely disclosures to the court as to the status of the estate and trust, and failure to provide evidence of the full funding of the distributive shares of the minor beneficiaries by Lloyd Alan Foster ("Alan") and Laurance Foster

("Laurance"), as specified throughout this response.

Lloyd W. Foster ("Lloyd") and Alice Foster ("Alice"), the decedents, were the parents of Alan and Laurance, the grandparents of several adult children of Alan and Laurance and the great grandparents of Alan's and Laurance's grandchildren. CP 1 and CP 845.

Lloyd and Alice executed reciprocal wills, CP 1-2 and CP 844-846, admitted to probate on June 11, 2003. CP 5-7. The wills are very simple and clear. There are **no individual beneficiaries** named in the wills. A Living Trust is **the sole beneficiary** named in both wills of any assets not previously transferred to the living trust. CP 1 and CP 845.

This living trust, known as the Foster Family Trust, was executed by Lloyd and Alice contemporaneously with their wills on November 25, 1992. CP 843-844. The trust named individual beneficiaries, including their great grandchildren, (CP 832) who were to receive a twenty percent (20%) share of the net trust assets following the death of the surviving spouse, to be used primarily for educational purposes. CP 836. The agreement named Alan as one successor co-trustee following the death of the surviving spouse, to

serve with either Kathy J. Rall or with Richard Vacca. CP 841. Both Richard Vacca and Kathy J. Rall declined to serve as successor co-trustee with Alan. CP 944-945; CP 946-948. The trust agreement was executed in the presence of a Washington State Notary (CP 844) and specifically stated that the powers and duties of the trustee are subject to the laws of the State of Washington. CP 840.

At the time of the death of the surviving spouse (Alice), the Foster Family Trust had a modest bank account (\$4,562.57) and real property located in Hawaii, sold in 2005 (\$322,135.97). CP 758 and 759. The gross probate estate was estimated to be \$682,000 at the time of the death of Alice. CP 767.

Alan was appointed as Personal Representative of the decedents' estate on June 11, 2003 (CP 5-7) and Letters Testamentary were issued by the Clerk of the Court on June 17, 2003. CP 8.

On December 16, 2003, the court appointed the Special Representative (CP 847) to represent the best interests of the great grandchildren who were minors, concerning an agreement entered into by Alan, Laurance and the adult grandchildren of the decedents, to split the administration of the trust as between Laurance and Alan.

CP 988-995. Shortly after the appointment of the Special Representative Laurance and some of the other adult beneficiaries of the trust withdrew their consents to the agreement and the Special Representative suspended all activity until further notice that an agreement was reached or litigation commenced. CP 988-995.

In May, 2004, the Special Representative learned that Laurance and Alan had petitioned the court for the appointment of Laurance as successor co-trustee (CP 949) and the court had approved the request on January 13, 2004. CP 847. This was without notice to the Special Representative. CP 988-995. After reporting these facts to the court (CP 988-995), on August 11, 2004, the court vacated the order appointing successor co-trustee and directed that the Special Representative represent the best interests of the minor great grandchildren in the probate estate and in the trust. CP 848-852. The court specifically asserted jurisdiction "over the probate and the decedent's wills" (CP 848) and jurisdiction over the trust. CP 848 and 849. The court scheduled a review hearing for October 20, 2004. Laurance and Alan both signed the order as having received a copy. CP 852. The court docket reflects that there was no motion for reconsideration, no motion for revision and no

appeal of this order sought by either Laurance or Alan. CP 1566.

The Special Representative requested specific information about the estate from Alan, which was not forthcoming. CP 998-1005. The review hearing scheduled for October 20, 2004 was continued to November 10, 2004, to determine if a Special Administrator and/or Interim Trustee should be appointed to administer the probate and the trust. CP 1006-1007. Prior to the November 10, 2004 hearing the Special Representative filed a petition and declaration recommending to the court that at the very least a Special Administrator and Interim Trustee be appointed. CP 1013-1022; CP 1023-1024. The court declined to do so. CP 1048-1049.

On January 26, 2005 the court appointed Laurance as co-trustee with Alan (CP 1073-1076), despite the reservations of the Special Representative set forth in her response and report of January 18, 2005, referencing evidence that Laurance withheld the more recent estate planning documents of the decedent, which included provisions for the minors, while demanding that he receive one-half of the estate. CP 1052-1066. The docket does not reflect that Laurance responded to the concerns and allegations of the

Special Representative, despite being provided with a copy of the report. CP 1050-1051; CP 1567. The court set a review hearing date of March 23, 2005, and required that a trust accounting and proposed distribution to the minors be provided. CP 1073.

On March 22, 2005 the court continued the review hearing to June 8, 2005. Alan's attorney submitted an interim report representing that the estate was continuing to be administered and would be completed shortly, with the minors' distributive shares to be satisfied. CP 1078-1093. On October 5, 2005 the court entered an Order To Show Cause why Alan and his attorney shouldn't personally appear before the court and why they shouldn't be required to provide an accounting at a new hearing set for November 9, 2005. CP 1094-1095. On November 9, 2005, another order of continuance was entered, next setting the hearing date for January 18, 2006. CP 1096.

Prior to the hearing scheduled for January 18, 2006, the Special Representative reported to the court that no accountings of the trust or of the estate had been provided pursuant to prior court orders and renewed her request to have a Special Administrator of the estate appointed, CP 1098-1120. At the January 18, 2005 hearing the court

removed but did not discharge Alan as Personal Representative and appointed a Special Administrator to conduct discovery concerning the probate estate and to provide the court with a report. CP 19. The court ordered **both** Laurance and Alan to cooperate with the Special Administrator. CP 19.

On January 20, 2006, the Special Representative learned that Alan distributed \$514,000 to the heirs "in accordance with the terms of the will and trust" on January 23, 2004. CP 21 and 22; CP 1141-1174. Laurance Foster provided an accounting of trust assets on January 13, 2006, including documentation that the minors had received distributions from the Foster Family Trust to individual trust accounts for the minors in the amount of \$377.00 each; the amount of the distributive share for each minor, based on the information then available from both the estate and the trust, was estimated to be \$15,481.54 each. CP 23.

On March 28, 2006, the Special Administrator prepared her first interim report to the court. CP 1141-1174. In her report she details the information gathered demonstrating Laurance's knowledge of the administration of the probate estate, the lack of cooperation from Laurance and his correspondence in his capacity as

co-trustee indicating that “the heirs have reviewed the final accounting of the estate and have approved it.” “The estate is closed ...” “We will not appear in court again...” and otherwise challenging the jurisdiction of the court. CP 1141-1174. The Special Administrator also submitted a declaration in support of the issuance of citations dated April 21, 2006, stating the lack of cooperation from Laurance and Alan since her March 28, 2006 report and attaching additional correspondence from Laurance indicating his refusal to cooperate. CP 1185-1211.

On May 26, 2006, the court entered an order allowing newly appearing counsel for Laurance and for Alan to assist them with accountings of the estate and the trust “as previously ordered” and set a new hearing date on the accountings for June 14, 2006. CP 1279-1282.

On May 31, 2006, the Special Administrator and Special Representative personally met with Laurance Foster and his newly retained counsel, and for the first time, Laurance disclosed that he had received an accounting from Alan as to probate assets, had approved the accounting, and had approved substantial distributions to Alan, to himself, and to other adult beneficiaries on January 23,

2004. CP 777-781. The accounting and receipt signed by Laurance as "Co-Trustee with Brother Alan" shows a distribution in the amount of \$102,800 to the minors with "Hold Back" designated next to this amount. CP 781. At this same meeting, Laurance provided documentation demonstrating that the individual minor trust accounts had been further funded with a portion of the funds from the sale of the Hawaii property held in the trust, bringing the minors distributions to a total of \$5,563.50 each. CP 50.

The June 14, 2006 hearing was again continued to August 23, 2006 for accountings to be provided. CP 1283 - 1286. A complete accounting of the estate was not provided by the deadline, and the Special Administrator asked that judgment enter against Alan in favor of the minors for a total of \$83,440. CP 52 and 53. The Special Representative also requested that her previously approved but unpaid fees be paid by Alan and reduced to judgment, as well as more recently accrued fees yet to be approved; approved and unapproved fees totaled \$12,985.02. CP 53.

On August 23, 2006 the court approved the more recently accrued fees and costs of the Special Representative and entered the judgments against Alan in favor of the minors and the Special

Representative as requested. CP 91-96. Laurance filed two pleadings again objecting to the court's jurisdiction over the trust and objecting to the assessment of fees against him or against the trust. CP 83-86; CP 88-89. While generally requesting the court to determine the reasonableness of the fees, Laurance raised no specific objections as to reasonableness of the fees requested by the Special Representative. CP 85.

Also on August 23, 2006, Alan was removed but not discharged as co-trustee, by separate order. CP 1299-1306. This same order directed Alan and his spouse to convey property to the trust, held in their names only, but that the Special Administrator had determined was purchased with estate or trust funds. CP 1299-1306.

On February 8, 2008, the Special Administrator filed her third interim report. CP 124 -202. She requested that an order to show cause be entered requiring Laurance to explain what steps he had taken as trustee to market and sell real property conveyed to the trust per the court's order in 2007, to explain what steps he had taken to collect the monies from Alan that were owed to the trust and why he should not be required to provide an accounting of trust assets. In her report the Special Administrator detailed her efforts to work

cooperatively with Laurance and his refusal to do so. CP 130 and 131; CP 167-168; CP 170; CP 201.

The Special Representative also submitted a report and response to the Special Administrator's petition. CP 203-220. Her report disclosed that judgments in favor of the minors had not been satisfied and there was no evidence that the minors had otherwise received their full distributive share. CP 206. The Special Representative also agreed with the assessment of the Special Administrator that Laurance had not cooperated in providing accountings, had not taken steps to fund the minors' proper distributive shares and clearly did not intend to do so. CP 207.

On April 7, 2008, the court approved the Special Administrator's interim report "in all respects" and also approved the report of the Special Representative. CP 268 and 269. The court also directed Laurance to provide a full accounting of all assets of the Foster Family Trust and the estate assets distributed to the trust or to individual beneficiaries of the trust. CP 268. The court also approved the Special Representative's fees and costs of \$5,349.24, accrued through February 19, 2006, and the source of payment was reserved. CP 269. The order was signed by counsel for Laurance as

“Approved as to Content and Form”. CP 270. The matter was put over for sixty (60) days. CP 269.

On May 6, 2008, Laurance filed an accounting. CP 276-431. On May 20, 2008 the court authorized the withdrawal of Laurance’s counsel, imposed sanctions against Laurance and directed him to produce a full accounting which addressed all objections raised by the Special Administrator and Special Representative. CP 1386-1390. The court also ordered that “failure to comply in full with this order shall result in findings of contempt as to Laurance Foster, with sanctions to include but is not limited to monetary judgments and jail time.” The order was signed by Laurance’s withdrawing attorney but not by his substituting attorney, who did not appear. CP 1390.

On May 22, 2008 an extensive Report, Petition and Objections of Special Representative to Accounting of Trustee was filed. CP 853-902. The Special Representative asserted that Laurance had breached his fiduciary duties to the minors in some very specific ways. CP 866 and 869. She recommended to the court that the court make some specific findings of fact concerning the date of death value of the probate estate, the distributive shares from the trust that each of the minors were entitled to, a finding that Laurance

had breached his fiduciary duties and that the previous judgments entered against Alan be amended to include the trust and Laurance as judgment debtors. The Special Representative also requested that her fees and costs approved on April 7, 2008 be reduced to judgment against Alan and Laurance and that Laurance be removed as trustee. CP 867-869.

Laurance filed an answer to the Special Representative's petition and report denying all allegations, asserting some affirmative defenses and requesting a jury trial. CP 503-510; CP 502. The Special Representative filed a reply to Laurance's answer asserting that Laurance had failed to substantively reply to the objections to his accounting, as ordered by the court on May 20, 2008, had failed to substantively respond to the allegations of breaches of fiduciary duties, had not provided legal authority in support of his affirmative defenses and that his denials of allegations were inherently contradictory to either his admissions in the answer or to his own accounting. CP 511-516.

The Special Administrator filed a Joinder and Reply to the Answer filed by Laurance on June 5, 2008. CP 1394-1441. Attached to her pleading is a letter from Laurance to the Special Administrator

dated May 5, 2006, asserting that:

“My brother and I have 60% of the inheritance. We each have three children. These six get 20% of the inheritance. That leaves 20% for the supposed ‘minors.’ If the adults who get 80% of the inheritance say they are satisfied, isn't that good enough?” CP 1417.

At the hearing on June 9, 2008, no order was entered due to a CR2A agreement entered into between Alan and Laurance that would satisfy the judgments in favor of the minors so that their individual trusts would be fully funded and the fees of the Special Administrator and Special Representative would be shared by Laurance and Alan. CP 1442.

The parties intended to enter into a more detailed and formal agreement to be approved by the court, but the efforts by the Special Administrator to prepare an agreement acceptable to Laurance failed and she filed a petition for an order to clarify the CR2A agreement on November 17, 2008. CP 1444-1523. The Special Administrator reported that the parties had failed to agree on operative terms of the agreement and had failed to carry out the requirements and intent of the agreement as made a part of the court record on June 9, 2008. CP 1444-1523. The Special Representative joined in the petition and further requested fees and costs of \$15,920.40 be approved and

allocated to Laurance and Alan jointly, together with the previously approved, but not allocated, fees of \$5,344.24. CP 570 – 573.

At the hearing on the petitions, the court entered orders approving another and different CR2A agreement between Laurance and Alan to satisfy the judgments in favor of the minors and to pay the fees and costs of the Special Administrator and Special Representative, also approved through December 31, 2008. The Special Administrator and Special Representative reserved their right to have their fees and costs reduced to judgment at a future time. CP 651 - 661. The order was approved as to both form and content by counsel for Laurance. CP 654.

The court, by separate order, also discharged the Special Representative, except as to duties related to the implementation of the terms of the order; the court also found that she had properly executed her duties. CP 648-650; CP 657. This same order specifically found the additional fees of the Special Representative in the amount of \$18,478.64 to be reasonable and they were approved; the order also ratified previously approved and unpaid fees of \$5,344.24. CP 649. This order was signed by counsel for Laurance as "Approved for Entry". CP 650. These fees were in addition to the

fees and costs of \$12,985.02 reduced to judgment against Alan on August 23, 2006 (CP 91-96).

The Special Representative petitioned the court in June, 2009 to have the approved fees and costs reduced to judgment against both Laurance and Alan and asserted they had both failed to comply with the terms of the court's order of December 31, 2009. CP 674-677. In the reply of the Special Representative to the response of Laurance, she renewed her prior request that the court make findings that Laurance breached his fiduciary duties and enter judgment against him in favor of the minors and for fees of the Special Administrator. CP 695-697. At the hearing on June 16, 2009, the court removed but did not discharge Laurance as trustee and appointed Thomas Keller as interim trustee to provide a forensic accounting as to trust assets. CP 918 – 919. The court also entered an amended order and judgment, at the request of the Special Representative, to include the Foster Family Trust as judgment debtors in favor of the minors and the Special Representative (previously only as against Alan). CP 734-743. The court specifically reserved the request of the Special Representative to amend the judgments to also include Laurance as a judgment creditor and

reserved the issue of whether or not Laurance had breached his fiduciary duties. CP 734-743.

Thomas Keller declined to serve as interim trustee. CP 920. On September 22, 2009 the court entered an order requiring Laurance to provide copies of a forensic accounting to the Special Administrator and Special Representative and set a status hearing on November 23, 2009. CP 1528. On November 4, 2009 Laurance submitted his accounting. CP 754-767. On November 17, 2009 the Special Representative filed a response to the accounting of November 4, 2009 and again asserted breaches of fiduciary duties based on the accounting and again requested the prior judgments in favor of the minors and the Special Representative be amended to include Laurance. CP 775-776. On November 23, 2009, the court entered the order as requested by the Special Representative, and is the subject of this appeal. CP 801-810.

At the request of the Special Administrator, the court entered a separate order on November 23, 2009 with similar although not identical in all respects, findings of fact as to breaches of fiduciary duties and/or misconduct by Laurance, the allocation of fees and costs against Laurance and a provision entitling the Special

Administrator and Special Representative to present petitions for additional fees and costs incurred from and after January 1, 2009. CP 788-797. This order was not included and attached to Laurance's notice of appeal, nor was the related separate order and judgment. CP 798-800; CP 1531-1542.

As authorized by the court on November 23, 2009, the Special Administrator and Special Representative petitioned the court for approval and allocation of fees and costs incurred by each of them since January 1, 2009. A hearing was held on January 27, 2010 and the court entered orders approving the additionally accrued fees and costs of both the Special Representative and the Special Administrator and allocated the fees against Alan, Laurance and the Foster Family Trust, jointly and severally. CP 926-928; CP 929-931. Both of these orders are the subject of this appeal.

### III. ARGUMENT

#### A. STANDARD OF REVIEW

The standard of review concerning the entry of judgments in favor of the minors is not de novo as argued by Laurance. RCW 2.24.050 provides for the process to revise the order of a court

commissioner. The standard for review by the superior court in the context of a motion for revision is de novo. However, If such revision is not sought, it becomes the final order and judgment of the superior court, and appellate review may be sought in the same fashion as review of like orders and judgments entered by the judge. RCW 2.24.050. The appellate court, when reviewing the orders and judgments of the superior court judge must give deference to the findings of fact, only disturbing those findings if not supported by substantial evidence.

However, even if this court determines that its review in this case is de novo, the uncontroverted evidence and relevant legal authority fully supports the court's entry of judgments in favor of the minors against Laurance and should be upheld, as specifically argued in the following sections.

The Special Representative agrees that the appellate court's standard of review of the allocation of the Special Representative's fees against Laurance is abuse of the court's discretion.

**B. LAURANCE FOSTER IS NOT ENTITLED TO A JURY TRIAL.**

The probate court is a court of equity. RCW 11.96A.020(1)

states:

“It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle: (a) All matters concerning the estates and assets of ... deceased persons, in accordance with this title; and (b) All trusts and trust matters.”

RCW 11.96A.020 (2) states:

“... the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.”

RCW 11.96A.060 authorizes the court to:

“make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.”

**Henley v. Henley**, 95 Wash. App 91, 974 P.2d 362 (1999)

says that the statute authorizing courts to do what is just and equitable in the circumstances gives courts the power to act in probate proceeding in situations where the provisions of the probate code are inapplicable, insufficient, or doubtful. The **Henley** court also stated that this power did not extend to ignoring the express language of another statute.

RCW 11.96A.170 states:

**“If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court on due notice, shall settle and frame the issues to be tried...”** (emphasis added).

King County Local Rule 98.14 (b) states that judicial proceedings shall first be assigned to the ExParte and Probate department and **“ If a need for an extended hearing arises,** the matter will be certified for trial.” (Emphasis added).

RCW 11.96A.100(7) states that “Testimony of witnesses may be by affidavit”.

In his Appellant’s brief, Laurance does not cite a statute which entitles him to a jury trial on the issue of breaches of fiduciary duties in a court of equity. The first case Laurance cites is **Endicott v. Icicle Seafoods, Inc.** 167 Wn.2d 873, 244 P.3d 761 (2010), a case involving negligence resulting in a personal injury, and whether the application of federal maritime law precluded the defendant’s right to a jury trial. The court held that it did not. This case is not applicable as it is not in the probate, court of equity context, nor does it involve breaches of fiduciary duties. The other case cited by Laurance, **Shoemake v. Ferrer,** 168 Wn.2d 193, 255 P.3d 990 (2010) is

similarly not applicable. That case concerns a legal malpractice action in which the defendant admitted liability; the issue on appeal was the determination of damages and specifically the amount on which prejudgment interest should attach.

There are court decisions in the probate context and in other contexts which clearly state there are instances in which there is no right to a jury trial, or at best, is discretionary with the lower court. In **In re the Estate of Frank S. Shaugnessy**, 97 Wash.2d 652, 648 P.2d 427 (1982), the court held that the contestants in a will contest proceeding did not have a right to a jury trial. In **Batten v. Abrams**, 28 Wash.App.737,626 P.2d 984 (1981), a case involving an action to quiet title, the court ruled that when both law and equity issues exist in the lawsuit, the trial court has wide discretion in granting or denying a jury trial. The Supreme Court of the United States, in a case in which the executor of an estate provided an accounting which was challenged by an adult beneficiary and a minor beneficiary through a guardian ad litem, ruled that in this context the court had the power to proceed with the settlement and distribution of the estate in accordance with equitable principles and procedure and was not the sort of proceeding in which the parties were entitled to a jury trial.

**McDonald v. Maxwell**, 4 S.Ct.497, 274 U.S. 91 (1927).

Laurance did not demonstrate to the lower court that breaches of fiduciary duties in a court of equity proceeding is a tort for which he is entitled to a jury trial. The court did not err in denying the request for a jury trial.

C. THERE ARE NO MATERIAL ISSUES IN CONTROVERSEY ENTITLING LAURANCE FOSTER TO A BENCH TRIAL OR FACT FINDING HEARING.

The lower court previously made findings of fact that the net probate estate that should have been distributed to the Foster Family Trust was approximately \$632,306 and that the amount each minor should had received, and did not, was \$10,430. CP 741. These findings were entered on June 16, 2009. The order specifically reserved findings of breaches of fiduciary duties and entry of judgments against Laurance. CP 734-743. This order was not appealed.

Laurance Foster repeatedly provided information and accountings demonstrating that he had directly received funds from the probate estate on behalf of himself and his adult children, both in his individual capacity and as a co-trustee of the Foster Family Trust. These documents are all part of the lower court record as referenced

below.

Laurance filed a declaration under penalty of perjury, both as an “heir and co-trustee of the Foster Family Trust,” on or about May 9, 2006, (and dated March 30<sup>th</sup> 2006) stating that “The Estate funds have been transferred to the trust Heirs in accordance with the terms of the Will and Trust. The Estate is Closed.” CP 1212-1213.

Laurance first disclosed to the Special Representative that he had received funds directly from the estate on May 31, 2006. CP 778-781.

Laurance later filed two accountings, the first on or about May 6, 2008. CP 276-431. The second accounting was filed on or about November 4, 2009. CP 754-768. They were similar in one critical respect. Laurance acknowledged receiving funds of at least \$129,900 from the estate and possibly as much as \$231,000 during a time when he served as co-trustee. CP 279 -280; CP 767. Laurance also received an additional \$40,000 from the Foster Family Trust to remedy a shortfall in funds that he believed he should have received from the estate, for a total of at least \$169,900. CP 759.

The Special Representative used these figures repeatedly provided by Laurance in his own pleadings to request that judgments

enter against him, not for the full amount of the \$169,000, (the lesser amount he received and clearly not in dispute), but for the amounts the minors should have received as beneficiaries of the trust and did not, a total of \$83,440. The amended judgments entered against Laurance reflect the total principal amount in favor of the minors totals \$83,440. CP 801-810.

The lower court did not err in not certifying this matter for a fact finding hearing in accordance with RCW 11. 96A.170 and King County Local Rule 98.14(b). There were no material facts in controversy, no credibility of witnesses to assess. Simply denying allegations by the Special Representative is not sufficient to place facts into controversy; specific facts must be set forth showing that there is a genuine issue for trial. **Overton v. Consolidated Ins. Co.**, 145 Wash.2d 417; 430 , 38 P.3d 322 (2002). The court reviewed Laurance's own pleadings and sworn statements and applied the law.

D. THE FINDINGS OF FACT WERE SUPPORTED BY SUBSTANTIAL EVIDENCE.

**Judgments in Favor of the Minors:**

Laurance argues that there was no substantial evidence in support of the findings of fact concerning the minors. As set forth

above, there was consistent evidence provided by Laurance that he received direct distributions from the estate in his individual capacity and as a co-trustee, contrary to the terms of the wills, naming the Foster Family Trust as the sole beneficiary of estate assets. CP 1-2; CP 845-846. As argued by the Special Representative at the November 23, 2009 hearing:

“So there was this accounting of probate assets that was accepted by Larry Foster. He accepted funds on his own behalf, he allowed his adult children to accept funds, he allowed Alan to accept funds, agreed to a holdback (referring to the funds for the minors) for no known reason. I’ve never, I’ve asked for reasons many times why did he accept that? No explanation. So is, it, you know, is that a breach of his duty or not? If it is, judgment should enter, it should enter today. If not, then not, and he’s off the hook.”  
VRP2, p.11 ll 11-21.

The court applied the case law cited in the reply of the Special Representative (as set forth below) and determined there were breaches of fiduciary duties.

A trustee owes to the beneficiaries of a trust the highest degree of good faith, diligence, fidelity, loyalty and integrity, and the duty to deal fairly and justly with them, and solely in their interests. **In re Parks’ Trust**, 39 Wash.2d 763, 238 P.2d 1205 (1951). There is no

exception to the rule that a trustee must administer the trust in the beneficiary's interests and must see that no advantage or profit accrues to himself or third persons. **Tucker v. Brown**, 20 Wash.2d 740, 150 P.2d 604 (1944). The trustee may not enrich himself at the expense of the trust estate simply because no one protests. **Thomas v. National Bank of Commerce of Seattle**, 187 Wash. 521, 60 P.2d 264 (1936).

In addition to the breaches of fiduciary duties found by the court based on Laurance's accountings, the court, although not clearly articulated, determined that funds received by Laurance from the estate that he should not have received, was in the nature of a constructive trust and that Laurance acted as a trustee. The Commissioner stated:

"He got money from the estate that he is not entitled to. It's like finding an extra million dollars in your checking account one day. You don't get to keep it because it's there. You have to give it back". VRP2, p. 18 ll 17-20.

The court, in **Pitzer v. Union Bank of Cal**, 141 Wash. 2d 539, 547-48, 9P.3d 805 (2000) states that:

"A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial

interest, equity converts him into a trustee.”

The court in **Baker v. Leonard**, 120 Wash.2d 538,548, 843 P2d 1050 (1993) stated that a court sitting in equity may impose a constructive trust where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.

Laurance next argues that even if he did improperly receive funds that ought to have been distributed to the trust, the minors would only be entitled to a 20% share of those funds consistent with the terms of the trust. This completely overlooks the fact that the minors did not receive one penny from the estate, that Laurance and his adult children received substantial distributions (possibly their full distributive shares) from the estate, to the detriment of the minors, and that the probate court is a court of equity with full authority to make the minors whole. RCW 11.96A.020.

**Allocation of Special Representative’s Fees:**

Laurance also argues there was no substantial evidence in support of the findings concerning allocation of attorney’s fees. In fact, there was substantial evidence in support of the findings of fact concerning allocation of Special Representative’s fees and entry of

judgments for fees against Laurance, and not just on the basis of the court's finding of breaches of fiduciary duties.

The lower court record is replete with instances, as set forth in the Restatement of the Case above, in which Laurance did not comply with citations and other court orders causing delays and orders of continuances, did not disclose critical information, refused to recognize the jurisdiction of the court, and in the words of the court (when referring to Laurance's accounting before the court on November 23, 2009):

"It's the same smoke blowing obfuscation that the um, that Larry Foster has been, most ably I might add, presenting through counsel." VRP2, p.23, ll 18-21.

The court additionally stated:

"All of these fees, all of these fees are accrued as a result of the bad behavior of Lloyd (referring to Alan, the prior Personal Representative )and Laurance and they just haven't resolved the problem here. Certainly Lloyd (referring to Alan) hasn't. We've got judgment against him already. Laurance, he knew what the game was and all he has done throughout is hold back, obfuscate, push responsibility off to someone else, attempt to avoid his obligations. His actions have created the unnecessary and unwarranted fees that have generated." VRP2, p. 25, ll 11-21.

On August 23, 2006, the court stated:

"The two Fosters have done everything they can to frustrate the administration of this estate. And it's their fault, quite

frankly and I don't care what it costs" (in reference to an issue the court thought needed to be briefed but later in the court's remarks concluded it did not). VRP1, p. 41, ll 8-11.

The interference of both Laurance and Alan has been set forth in the numerous pleadings and reports of the Special Administrator and Special Representative; some of those reports were approved by the court and those orders were not appealed, as referenced in the Restatement of the Case above. Perhaps the most comprehensive explanation of the activities, failure to comply with orders and interference of Lloyd and Laurance, is set forth in the various reports of the Special Administrator, beginning with her first interim report dated March 28, 2006(CP 1141-1174), second interim report dated May 24, 2006 (CP 1216-1278) and Third Interim Report, (CP 124 – 202,) including Exhibits C-E containing correspondence from Laurance demonstrating his willingness to continue to obstruct resolution of the estate and trust matters. CP 157-180. To a lesser extent, reports and other pleadings of the Special Representative also describe the lack of cooperation and level of interference from Laurance. CP 203 – 220. The third interim report of the Special Administrator and the report of the Special Representative dated February 19, 2008 were approved by the court on April 7, 2008. CP

267-270. This order was not appealed.

RCW 11.96A.250, the statute authorizing the appointment of a Special Representative does not specifically address the issue of fees and costs of the Special Representative. RCW 11.95 A.250(3) specifies that the Special Representative must be a lawyer or other person with special skills in administering estates or trusts.

RCW. 11.96A.150 (1) authorizes:

“Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorney’s fees, to awarded to any party: (a) From any party to the proceedings; ... The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.”

RCW 11.96A.150 (2) says this section applies to all proceedings governed by this title.

None of the several requests for approval of fees by the Special Representative have been challenged as to reasonableness until the most recent request of January 5, 2010, at which time Laurance asserted general and nonspecific objections to time spent on issues relating to the two CR2A agreements entered into by both Laurance and Lloyd intended to satisfy the judgments in favor of the minors and pay approved attorneys fees and costs. CP 1554-1561.

An order approving that fee request was entered by the court on January 27, 2010. CP 929-931. Prior orders made unchallenged findings that the requested fees and costs were reasonable. CP 17-18; CP 95; CP 269; CP 649; CP 658 -659.

There was substantial evidence to support the allocation of fees and costs.

E. THE COURT DID NOT ABUSE ITS DISCRETION IN ALLOCATING SPECIAL REPRESENTATIVE' FEES

An appellate court will not interfere with the decision to allow attorney fees in a probate matter absent a manifest abuse of discretion; discretion is abused when it is exercised in a manner that is manifestly unreasonable , based on untenable grounds, or when untenable reasons support the decision. In re Estate of Black, 116 Wash.App. 476; 489, 66 P.3d 119, (2003) amended, review granted, affirmed on other grounds 153 Wash. 2d 152, P.3d 796 (2004).

Laurance asserts that the Special Representative and Special Administrator asked that Laurance be responsible for more than his fair share of fees. Nowhere in the lower court record is there an assertion by Laurance as to what he believed to be his fair share of fees. He always denied that he should be responsible for any of the

fees and costs of the Special Representative yet did agree to share these costs with Alan pursuant to the two CR2A agreements; he never specifically challenged the reasonableness of the fees, only the allocation, and based primarily on his repeated position that he was entitled to a jury trial on this issue of breaches of fiduciary duties. CP503-510; CP749-751.

However, as argued in the previous section, the court did not base the allocation of fees against Laurance solely on the basis of breaches of fiduciary duties, but also on the basis of his extraordinary ability to obfuscate, shift blame, and conceal information, all of which drove up the fees in extraordinary amounts.

Laurance argues that much time was spent dealing with Alan only, Alan's breaches of fiduciary duties, and attempts to secure assets with which to satisfy the judgments. He also asserts that he had no knowledge of estate activity. These assertions ignore the record which shows that Laurance, by his own admissions, knew what was going on in the estate, failed to disclose the distributions and holdback occurring in 2004 until 2006 and otherwise continued to challenge the court's jurisdiction and authority of the Special Administrator and Special Representative.

His assertion also ignores the two CR2A agreements entered into by Laurance and Alan in which they were to work cooperatively to bring the matter to closure by satisfying the judgments in favor of the minors and sharing the fees and costs of the Special Administrator and Special Representative.

The activities of Alan and Laurance were so intertwined that it was perfectly reasonable for the lower court to allocate fees and costs against them, jointly and severally. The lower court did not abuse its discretion.

F. LAURENCE FOSTER WAS ON NOTICE FOR OVER A YEAR THAT THE SPECIAL REPRESENTATIVE WAS SEEKING TO HAVE JUDGMENTS ENTERED AGAINST HIM IN FAVOR OF THE MINORS AND FOR ATTORNEY'S FEES AND COSTS.

Laurance argues that he had insufficient notice of the request for entries of judgments against him.

The Special Representative first filed a report, petition and objections to Laurence's May 6, 2008 accounting on May 22, 2008, alleging that Laurance Foster had failed to provide accountings demonstrating that the minors had received their proper distributive share from the trust, that he had breached his fiduciary duties and requested that judgments against Laurance be entered. CP 853-902.

The report and petition were properly noted for hearing. CP 1391-1393. A response to the report was filed by Laurance, generally denying all allegations (including denials that were inherently contradictory to prior pleadings and statements filed by Laurance). CP 511-516; CP 511-516. At the hearing on June 9, 2008, Alan and Laurance entered into a CR2A agreement that would satisfy the judgments in favor of the minors and against Alan and provided that Alan and Laurance share the accrued fees and costs of the Special Administrator and Special Representative. The agreement was filed with the court. CP1442-1443. No order was entered on that day. The agreement was never implemented by Alan and Laurance, and the Special Administrator brought this to the court's attention by filing a petition on November 17, 2008. CP 1444-1523. The Special Representative filed a separate joinder and request for approval of fees and reducing the fees to judgment against Lloyd and Laurance.

A hearing was held on December 31, 2008, at which time another CR2A agreement was entered into by Alan and Laurance and incorporated into and attached to one of two orders entered by the court on that day. CP 651-661. The agreement was complicated, involving a survey of real property, a lot line adjustment,

obtaining a reverse mortgage on personal property and the sale of trust property, all with the objective of satisfying the minors judgments' plus accrued interest and paying the court approved fees and costs of the Special Representative and Special Administrator. The order also stated that "The Personal Representative and Trustees shall remain liable for any other claims not otherwise addressed by this order or any future order related to fiduciary duties and responsibilities." CP 659. The court also ordered status hearings every three months with Alan and Lloyd to provide status reports. The court additionally approved the reasonableness of attorney's fees requested by the Special Representative and Special Administrator and authorized them to bring a motion to reduce the fees to judgment against both Laurance and Alan at a later time. Laurance's attorney approved the content and form of the order. CP 654.

As of December 31, 2008, Laurance Foster remained a trustee of the Foster Family Trust, there was no finding that he had properly performed his fiduciary duties and Laurance's accounting of May 13, 2008 had not been approved.

On June 2, 2009, after no status reports were filed by Laurance and Alan, the Special Representative filed a petition to reduce her

previously approved fees and costs to judgment against both Alan and Laurance. CP 674-677. In this same petition the Special Representative reported to the court that there had been a failure of both Alan and Laurance to comply with the court's order of December 31, 2008. CP 675. Her petition was noted for a hearing on June 16, 2009. CP 1524-1526. The Special Representative's reply of June 11, 2009 again raised the issue of breaches of fiduciary duties by Laurance as previously set forth in her report of May 22, 2008 (CP 853-902), and Reply of June 4, 2008 (CP 511-516) and again asked for amended judgments against Laurance in favor of the minors. CP 695-696.

At the hearing on June 16, 2009, the court entered an order amending the prior judgments in favor of the minors against Alan to add the Foster Family Trust, amended the prior judgment for fees in favor of the Special Representative to add the Foster Family Trust and entered a new judgment for fees and costs of the Special Representative approved on December 31, 2008, against the Foster Family Trust. CP 734 – 743. The issue of whether judgment should enter against Laurance was specifically reserved, as were the findings of fact addressing his breaches of fiduciary duties. CP 740 –

742. This order was not appealed. By separate court order the court removed, but did not discharge Laurance as Trustee of the Foster Family Trust, and appointed Thomas Keller to conduct a forensic accounting. CP 918-919. Mr. Keller declined the appointment. CP 339.

On September 22, 2009, at a status review hearing, the court entered an order continuing the matter to November 23, 2009, and Laurance Foster was directed to provide copies of his forensic accounting. CP 1528. Laurance filed the forensic accounting (his second accounting) on November 4, 2009. CP 754-768. The Special Representative filed a response and objections to the accounting on November 17, 2010 which in all material respects was substantially the same as the objections raised to Laurance's first accounting filed in May, 2008. CP 773 – 776; CP 853-902. For the **third** time the Special Representative asked that an amended judgment be entered against Laurance in favor of the minors and for the **fourth** time requested that amended judgments for the fees and cost of the Special Representative be entered against Laurance.

The order entered on November 23, 2009 and which is the subject of this appeal, is **substantially the same order entered on**

June 9, 2009, as to form and substance, which reserved the issues of breaches of fiduciary duties and judgments against Laurance, ( in hand written deletions and additions) and which now included Laurance as a judgment debtor and as having breached his fiduciary duties. CP 801-810; CP 734-743. The only differences relate to fewer findings of fact as to breaches of fiduciary duties due to resolution of these issues by the court at prior hearings. CP 740-741; CP 807.

Laurance Foster had ample notice of the Special Representative's repeated requests for findings of breaches of fiduciary duties and entry of judgments against Laurance, commencing in May, 2008 and continuing to November 23, 2009. Since at least June, 2008, Laurance had notice of the exact form of the order that the Special Representative requested be entered. Laurance Foster had ample notice of the substantive objections and failed to respond in a substantive manner. As Commissioner Velategui stated at the hearing:

“I thought this was where we were going to end up all along, and I had hoped that there would be an accounting that was sufficiently accurate and more complete than the last thing that we received ...” “It's the

same smoke blowing obfuscation that Larry Foster has been most ably I might add, presenting through counsel.” “...he’s had plenty of notice, plenty of notice that the issue here is the return of money that he wasn’t supposed to get.” VRP2, p. 23, ll11-21.

The court did not err in entering judgments on the basis of lack of sufficient notice.

G. THE COURT CONSIDERED AND PROPERLY REJECTED THE STATUTE OF LIMITATIONS ARGUMENT.

Laurance argues that the request by the Special Representative is barred by the statute of limitations. Laurance attempts to shift blame to the Special Representative for lacking knowledge that Laurance had concerning distributions and receipt of funds from the estate, which he withheld from the court and from the Special Representative.

RCW 11.96A.070 states that an action for breaches of fiduciary duties of a trustee must be brought within three years from the earlier of the time the breach was discovered or reasonably should have been discovered. The Special Representative **first** learned on May 31, 2006 that Laurance, both in his individual capacity and while acting as co-trustee, received a minimum of \$169,900 on or about January 23, 2004. CP 777-779. The Special Representative’s first

petition alleging breaches of fiduciary duties and requesting judgments was filed on May 22, 2008, well within the statute of limitations. CP 853-902. Although Laurance has generally denied that this is when the Special Representative first obtained this information, there is nothing in the court record that reflects specific facts to controvert this. Laurance has not submitted any pleading that specifies at what point in time prior to May 31, 2006 he disclosed this material fact to either the Personal Representative, the Special Administrator or to the court.

Laurance suggests that the Special Representative should have subpoenaed bank records. The statute governing Special Representatives is RCW 11.96A.250, and typically the appointment is for the purpose of entering into a binding agreement on behalf of a minor, a person who is incompetent or disabled, who is yet unborn or unascertained or whose identity or address is unknown. RCW 11.96A.250(1)(a) and (1)(b). The initial appointment of the Special Representative was for that purpose. CP 9; CP 853-902. The statute does not contemplate that a Special Representative has authority to commence litigation and conduct discovery. The duties of the Special Representative in this matter were expanded by the court

on August 11, 2004, (CP 848-852) when it came to the court's attention that orders had been entered by Alan and Laurance without notice to the Special Representative or the attorney for Alan, including the order appointing Laurance as co-trustee entered on January 13, 2004. CP 988-995; CP 949; CP 847. The court did not authorize the commencement of litigation by the Special Representative or authorize discovery or the subpoenaing of bank records. In fact, at that hearing, Laurance, in a declaration under penalty of perjury, assured the court that "The administration of the estate is being accomplished according to the law without delay or expense to the trust." CP 950-987. This declaration was signed on July 27, 2004, nearly seven months after Laurance signed the acceptance of accounting by Lloyd, acknowledging the distribution of over \$500,000 to individuals rather than to the trust, and accepting at least \$169,900 on his own behalf and as co-trustee. This same declaration demonstrates Laurance's intimate knowledge of and involvement in the probate estate. Following the August 11, 2004 court hearing, the Special Representative contacted the Personal Representative to obtain specific information about the estate, which was not provided. CP 998-1005. Alan allegedly began experiencing

major health problems, as disclosed by Laurance and the Special Representative reluctantly requested a continuance of a hearing scheduled for October 20, 2004. CP 998-1005.

On October 20, 2004, the court granted a continuance to January 26, 2005 for the purpose of determining whether the probate and trust were being properly handled, who should serve as co-trustee, and the fees and costs of Alan's prior attorneys. CP 1006-1007. The court also set a hearing date of November 10, 2004 to determine whether a Special Administrator and/or Interim Trustee should be appointed to administer the probate and the trust. CP 1006-1007. Again, no authority was granted to the Special Representative to commence litigation, conduct discovery and subpoena records.

On October 27, 2004 the Special Representative filed a petition and declaration recommending to the court that a Special Administrator and Interim Trustee be appointed at the least, and that perhaps it was time to appoint a Successor Personal Representative and Successor Trustee to see matters to a conclusion. CP 1013-1022; CP 1023-1024. At the hearing on November 10, 2004, the court declined to do so. CP 1048-1049. Alan submitted a declaration

under penalty of perjury dated October 26, 2004, asserting that there was a combined total of \$800,000 in the estate and trust, that he knew it was his duty to complete the estate and transfer net assets to the trust for distribution to the minors. CP1009-1012. Both Alan and Laurance knew this declaration to be untrue, and that substantial distributions had been made directly from the estate to individuals, including to Alan, to Laurance and to the adult children of Laurance and not a penny to the minors. The Special Representative did not know and could not have reasonably known this was a false representation of the facts.

Alan submitted an additional declaration on January 19, 2005, in support of the appointment of Laurance as co-trustee, and once again assured the court that the estate was being properly handled, that once estate claims and fees were paid, funds would be distributed to the trust and the minors shares would be funded. CP1067-1072. Alan said "I do nothing without consulting with my brother." CP 1067-1072. Again, Laurance had the opportunity to disclose the true nature of the status of the estate and did not.

On June 8, 2005, the attorney for Alan submitted an interim report under penalty of perjury again assuring the court that

everything was just fine. CP1078-1093. This presented another opportunity for Laurance to disclose the disbursements to himself and to others the holdback of the minors' shares and he did not.

At the January 18, 2006 hearing counsel for Alan submitted a declaration in support of the appointment of Laurance as Special Administrator or Successor Personal Representative and said "I would advise the court that Lawrence (Larry) Foster has had continuous contact with me and we have both tried to work with the present Personal Representative to get the matter settled." CP 1121-1122. He further stated at the hearing: "Larry Foster has been working with his brother and does know most of, probably 90 percent of, the transactions..." VRP 4, p.9, ll 21-23. Laurance, who was present at that hearing stated: "Commissioner Watness, the only person that knows how to reconcile (inaudible) so what has been paid is me. I'm the only one who knows." VRP 4, p. 21, ll16-18. Another failure by Laurance to disclose what he knew about disbursements from the estate to individuals; however, Laurance did state: "There's no money left in the estate. The Attorneys are going to have it all. There's nothing left." VRP 4, p. 21, ll 23-25.

At this same hearing, the court specifically addressed the

duties of the Special Representative by stating:

“And there’s a probate estate, and she (referring to the Special Representative) is responsible in that to be sure that this probate gets wrapped up. And she is doing what she can. She’s not the personal representative. She can’t do the job herself.” VRP 4, p. 23, ll 9-13.

Alan was removed as Personal Representative on January 18, 2006 and a Special Administrator was appointed, who was authorized to conduct discovery. CP 19. Four months later, Laurance **finally** disclosed to the Special Representative that he had personally and as co-trustee received monies from the estate. CP 777-781.

The Special Representative could not have reasonably known that funds were disbursed to Laurance in 2004 given the sworn statements of Alan and Laurance and the deliberate concealment of necessary information.

The court ruled on December 31, 2008 that the Special Representative had properly performed her duties pursuant to prior court orders and RCW 11.96A.250. CP 649. This order was signed as approved for entry by Laurance’s attorney. CP 650. This order was not appealed. Laurance cannot now claim that the Special Representative somehow failed a duty to discover evidence withheld

by Laurance and Alan.

The lower court properly ruled that the petition of the Special Representative was brought within the time frame authorized by RCW 11.96A.070.

H. THE RECORD SHOWS THAT LAURANCE FOSTER ACTED AS DEFACTO TRUSTEE, IF NOT ACTUAL TRUSTEE AT THE TIME OF THE RECEIPT OF FUNDS.

Laurance argues that because the order appointing him as co-trustee on January 4, 2004 was later vacated, that he is absolved from the beaches of fiduciary duties that occurred prior to his re-appointment on January 26, 2005 under the principals of equitable estoppel. This defense on the basis of a vacated order, although raised in Laurance's response dated June 2, 2008 (CP 509), did not cite any legal authority and was not briefed by Laurance's counsel in his Memorandum of Law dated September 18, 2009. CP 749-751. The court, therefore, had no legal basis on which to make a ruling.

Laurance, for the first time, provides legal authority for this theory in his Appellant's Brief. Laurance cites **Sutton v. Hivonen**, 113 Wn.2d 1, 775 P.2d 488 (1989), a case involving a complaint for negligence and entry of a judgment against a party who was not properly a party defendant before the court, distinguishable from our

case. In this case, Laurance acted as at least a de facto trustee if not an actual trustee. A de facto trustee is a person who (1) assumed the office under a color of right or title and (2) exercised the duties of the office. **In re Irrevocable Trust of McKean**, 144 Wn.App. 333, 183 P.3d 317 (2008). A person assumes the office under color of right or title where the person asserts “an authority that was derived from an election or appointment, no matter how irregular the election or appointment might be.” A de facto trustee’s good faith actions are binding on third persons. **McKean**, 144 Wn.App. at 341. Under this line of reasoning, breaches of fiduciary duties would also apply to a de facto trustee.

In this case, Laurance petitioned the court, together with Lloyd, to be appointed co-trustee on January 13, 2004. CP 949. The request was granted and Laurance was appointed co-trustee with Lloyd on the same day. CP 847. Laurance proceeded to review the accounting presented by Lloyd, accepted substantial funds in his capacity as co-trustee but did not deposit the funds into the trust, and never explained why he accepted the holdback of funds for the minors or took steps to verify the funds were in the estate. CP 767. Laurance also had substantial involvement during this time with the

listing, marketing and negotiating the terms of a life estate interest in property located in Hawaii which was already a part of the trust during the lifetimes of the decedents. CP 1025-1047.

The court did not err in not considering a legal argument for which Laurance had not provided any supporting legal authority. Additionally, the record shows that at the very least Laurance was a de facto trustee and subject to the fiduciary duties of a trustee.

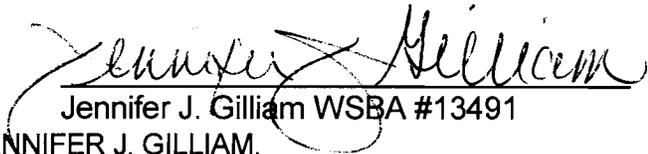
#### IV. REQUEST FOR ATTORNEY'S FEES AND COSTS FOR APPEAL

The Special Representative respectfully requests an award of her Special Representative/attorney's fees and costs against Laurance pursuant to RCW 11.96A.150 (1) (a) and RAP 18.1. The court did not err in its entry of judgments against Laurance in favor of the minors. The court did not abuse its discretion in its award of Special Representative's fees and costs against Laurance and entry of judgments.

#### V. CONCLUSION

The Special Representative respectfully requests that the lower court orders and judgments be affirmed in all respects.

RESPECTFULLY SUBMITTED this 20th day of December, 2010.

  
Jennifer J. Gilliam WSBA #13491

BRIEF OF RESPONDENT JENNIFER J. GILLIAM,  
SPECIAL REPRESENTATIVE (DISCHARGED) - 49

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**CERTIFICATE OF SERVICE**

I, **JENNIFER J. GILLIAM** certify that on 20<sup>th</sup> day of December, 2010, I arranged for the originals of the preceding Respondent's Brief and Certificate of Service to be filed in Division I of the Court of Appeals and further that a true and correct copy of the foregoing Respondent's Brief was served on the attorney of record for Appellant herein, and to the Special Administrator (discharged) by hand delivery via United States Postal Service, First Class Mail postage pre-paid, addressed to the following:

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**JENNIFER J. GILLIAM WSBA # 13491**