Washington State Court of Appeals
Division One

99312-2

Docket No. 80284-4-I

DONALD HOTH,

Petitioner-Appellant,

v.

EDWARD HOTH, as Trustee,

Respondent.

PETITION FOR REVIEW

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A. Identity of Petitioner.

Petitioner is Donald Hoth. Hoth was the petitioner in the underlying action, Hoth v. Hoth, Whatcom County Cause No. 19-4-00342-37. Hoth was the appellant in the Court of Appeals, Division One, under Cause No. 80284-4-I.

B. Citation to Court of Appeals Decision.

Petitioner seeks review of the unpublished decision of the Court of Appeals in this matter, dated November 9, 2020. A copy of the decision is attached in the Appendix.

C. Issues Presented for Review.

This case presents the following issues for review:

1. Whether a trial court may deny a TEDRA litigant dispute resolution without determining expressly whether "good cause" to do so exists under RCW 11.96A.300(2)(d).

2. What is the standard to be applied for "good cause" for the denial of Trust Beneficiary's request for mediation with the Trustee under RCW 11.96A.300?

3. May a trial court approve a Trustee's accounting for the trust estate when the Trustee has failed to provide requested supporting documentation either to the court or to the beneficiary?

D. Statement of the Case.

The facts, which are largely not in dispute, are as follows:

Petitioner Donald Hoth is one of the beneficiaries of the Living Trust of Carl L. and Ruth L. Hoth, dated May 9, 1986, and as Amended July 2, 2013 (the "Trust"). [CP 72]. Petitioner's brother, Edward Hoth, is the Trustee and a beneficiary of the Trust. *Id.*

Several disputes arose between the petitioner Beneficiary and the Trustee with regard to the administration of the Trust, and with regard to its final accounting. On June 14, 2019, petitioner

filed a *pro se* Petition under the Trust and Estate Dispute Resolution Act (TEDRA), Chapter 11.96A RCW. [CP 1] Concurrently, petitioner filed a *pro se* request for mediation under RCW 11.96A.300. [CP 5]

On June 28, 2019, the Trustee resisted mediation [CP 104] and sought approval of his final accounting of the Trust. [CP 6] The Trustee's submissions were noteworthy in that neither of them contained *any* statutory authority or case law in support of the Trustee's requests, and were submitted with no effort to apply the applicable legal standards.

The Whatcom County Superior Court, Judge Deborra E. Garrett, conducted a short hearing on the parties' submissions on July 5, 2019, during the court's regular civil motion calendar for that day. Petitioner represented himself at the hearing. During the hearing, Beneficiary confirmed that he had "asked for documents so that he could enforce the Trust," that he had not received the documents, and that the Trustee had not really responded to document requests for three years. [RP 11] Counsel for the Trustee confirmed that only the Trustee's accounting had been provided to the Beneficiary, with no source documentation. [RP 17] Thus, it is undisputed that the Beneficiary was provided only the Trustee's own work, with no documents from which that work could be substantiated or verified.

Despite the lack of source documentation, the court proceeded *first* to conduct a hearing on the adequacy of the accounting. The court opined that it "looked like" the accounting was correct [RP 21], and ruled as follows:

> What's before the court is whether the Trust assets have been dealt with by the Trustee consistently with the terms of the Trust, and it appears they have been.

[RP 27]

Following the ruling on the merits, the court turned to the request for dispute resolution under TEDRA. At the request of the Trustee, in order to avoid any "loose ends," the court approved an order denying mediation. [RP 32] The court did so without any express analysis of the standards for the "good cause" denial of mediation under RCW 11.96A.300(2)(d).

At the conclusion of the hearing, Judge Garrett signed the Trustee's proposed order denying mediation [CP 123] and the order approving the final accounting [CP 125]. The Beneficiary retained counsel [CP 137] and timely appealed the court's orders pursuant to RCW 11.96A.200. [CP 128]

Petitioner timely appealed the orders to the Court of Appeals, Division One. The court of appeals affirmed the trial court in an unpublished opinion dated November 9, 2020. Petitioner now seeks review in the Supreme Court.

E. Argument.

The Supreme Court should accept this case to confirm both the procedures and the substantive requirements for TEDRA mediation under RCW 11.96A.300. In this case, the trial court conducted an analysis of the case which was procedurally backward: under TEDRA, the court should have decided issues regarding dispute resolution first, instead of handling them in order to tie up "loose ends." Second, the court failed to even consider the standard of "good cause" for the denial of dispute resolution to even evaluate whether the court's approach was appropriate. The Supreme Court should establish the proper procedures for mediation requests going forward.

As to the merits of the dispute, the Supreme Court should determine whether it is appropriate for a court to confirm a trust accounting when the record was admittedly incomplete. The responsibilities of trustees and the rights of trust beneficiaries rely on thoughtful and meaningful review of trust matters. Requiring a complete record for trust accounting approval would serve both

of those interests. The Supreme Court should accept this case to provide guidance in how TEDRA cases are to be administered.

1. The Lower Courts Erred in Denying Dispute Resolution.

The petitioner Beneficiary filed this action under the Trust and Estate Dispute Resolution Act (TEDRA), Chapter 11.96A RCW. The Legislature enacted TEDRA to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. TEDRA also provides for judicial resolution of disputes *if other methods are unsuccessful*. RCW 11.96A.010 (emphasis supplied). Indeed, TEDRA is intended to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed *first* with mediation and then arbitration before formal judicial procedures may be utilized. RCW 11.96A.270. Because the petitioner Beneficiary caused this matter to be presented for mediation and then arbitration as provided under RCW 11.96A.260 through RCW 11.96A.320, judicial resolution of the matter was available to the Trustee only by complying with the mediation and arbitration provisions of the statute. *See* RCW 11.96A.280; RCW 11.96A.100(8).

The Trustee in this case resisted the Beneficiary's request for dispute resolution. By statute, the court was required to allow the mediation to proceed except for "good cause shown." RCW 11.96A.300. TEDRA does not provide a specific definition of "good cause." The trial court made no effort to define good cause, to evaluate the good cause standard, or otherwise to determine whether there had been statutory compliance. In other contexts, a party substantially complies with a statute when the party satisfies the substance essential to its purpose. Humphrey Industries, Ltd. v. Clay St. Assocs, LLC, 170 Wn.2d 495, 504, 242 P.3d 846 (2010). Thus, substantial compliance requires "actual compliance in respect to the substance essential to the statute's reasonable

objectives." *Id.* (finding no substantial compliance with provisions of the LLC Act.) The party attempting to comply with a statute must make a bona fide attempt to comply with the statute and must actually accomplish its purpose. *Id.*

Here, the Trustee made no effort to comply with the statute and provide good cause for circumventing the dispute resolution process. While it is true that under RCW 11.96A.100(8), an initial hearing may result in resolution of all issues of fact and law, that is only the case when not requested otherwise by a party in a petition. Here, the trustee circumvented the dispute resolution provision. In doing so, the Trustee did not afford the trial court the opportunity to apply the good cause standard for dispute resolution. Moreover, the court could not have effectively determined good cause when no source documentation was even provided for the trial court to consider.

The court of appeals deftly side-stepped the issue altogether. First, the court determined that the *pro se* litigant had somehow waived the argument at the *initial hearing*. Opinion, p. 5. Then, the court denied consideration of petitioner's argument by determining that the dispute resolution statute does not require "express" findings of good cause. *Id.*

The Supreme Court should accept the case to articulate the requirements of substantial compliance with the dispute resolution requirements of TEDRA, particularly what showing of "good cause" is necessary for a Trustee to escape the clear legislative mandate that cases are to be resolved through dispute resolution before litigation options may be considered.

2. **The Supreme Court Should Confirm The Requirements for Approval of a Trustee's Accounting under TEDRA.**

At the initial hearing of this TEDRA action, the trial court approved the final accounting submitted by the Trustee. [CP 127]. The court did so despite the fact that the record before the court was incomplete.

There is no reasonable dispute that the Beneficiary had asked for documents so that he could enforce the Trust, that he had not received all of the documents, and that the Trustee had not adequately responded to document requests for three years. [RP 11] Petitioner's request for records was made pursuant to the Trustee's notification that the beneficiaries could inspect records. [CP 112] The Petition itself enumerated some of these prior requests. [CP 1] Counsel for the Trustee confirmed that only the Trustee's accounting had been provided to the Beneficiary, with no source documentation. [RP 17] Thus, it is undisputed that the Beneficiary was provided only the Trustee's own work, with no documents from which that work could be substantiated or verified. Both the Beneficiary and the court were essentially asked to take the Trustee's word for it that the accounting was appropriately done.

Based on that record, the court made a rather equivocal determination that the accounting was accurate. The court opined that it "looked like" the accounting was correct [RP 21], and ruled as follows:

> What's before the court is whether the Trust assets have been dealt with by the Trustee consistently with the terms of the Trust, and it appears they have been.

[RP 27]

While the court has the authority to determine the adequacy of an accounting at a preliminary hearing in some settings (RCW 11.96A.100(8)), the court's action here was error. The *pro se*

Beneficiary could not reasonably have been expected to provide a meaningful objection to the accounting without access to the source materials. Even if the Trustee was legitimately uncertain what documents the Beneficiary wanted to review, it was still incumbent upon the Trustee to provide the court with sufficient documentation for a meaningful judicial review. The court's equivocal remark that the accounting "appeared" to be proper, and guessing generally that the figures provided "looked right," does not satisfy the Trustee's obligation to demonstrate the accuracy of the accounting.

In both the trial court and in the court of appeals, much was made of the issue of whether all of petitioner's requests for documents were germane to the trust accounting itself, or whether some of them were pointed the documents from other prior trusts involving the parties. *See, e.g.,* Court of Appeals Opinion, p. 8. Lost in that debate was the admission by the Trustee that only the Trustee's accounting had been provided to the Beneficiary, with no underlying source documentation. [RP 17] Thus, there were no documents from which that work could be evaluated or verified. The lack of full disclosure of all relevant information for the trust accounting before the court should have resulted in a denial of its approval. At the very least, the trial court should have conducted an evidentiary hearing to resolve the objections of the beneficiary before the accounting was confirmed.

The Supreme Court should accept the case to confirm the standards for summary approval of trust accountings in the context of objections raised by a trust beneficiary, and in what circumstances an evidentiary hearing should be required. Such an opinion would provide guidance to lower courts as they resolve trust matters under TEDRA.

F. Conclusion

This case presents important issues concerning the administration of trust estates under TEDRA. The Supreme Court should accept review to confirm the proper procedures and grounds for consideration of mediation under RCW 11.96A.300(2)(d). The Supreme Court should also provide guidance on the circumstances under which an evidentiary hearing is required for the final approval of a Trustee's accounting in the administration of Washington estates.

Dated this 9th day of December, 2020.

Respectfully submitted,

Bryan D. Lane, WSBA No. 18246
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 9, 2020, I caused a true and correct copy of the foregoing, to be served upon the following person(s) in the following manner:

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APPENDIX

UNPUBLISHED COURT OF APPEALS DECISION

FILED
11/9/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DONALD HOTH, Appellant, v. EDWARD HOTH, Respondent.	No. 80284-4-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — Donald Hoth, a beneficiary of the Living Trust of Carl L. and Ruth L. Hoth (Trust), petitioned for approval of an accounting of the Trust. He sought review of the actions of his brother Edward Hoth as trustee of the Trust, as trustee of two unrelated trusts, and in accordance with Edward's[1] power of attorney for their mother Ruth. He also petitioned for mediation under the Trust and Estate Dispute Resolution Act (TEDRA). In response, Edward produced declarations, an affidavit, and an accounting; but did not provide documents Donald sought and objected to mediation. At an initial hearing, the trial court approved the accounting and denied mediation. Donald appeals. We affirm.

BACKGROUND

Donald and Edward are brothers and beneficiaries of the Trust along with two other siblings. Their parents, Carl and Ruth, created the Trust to support themselves and acted as its trustees. Upon Carl's death, Ruth became the sole

[1] For clarity, we use the family members' first names. We intend no disrespect.

trustee. During this time, Edward gained power of attorney over Ruth's affairs and sold some of her assets. After Ruth died in June 2016, Edward was appointed as successor trustee of the Trust as well as two other family trusts.

In August 2016, Edward made final distributions from the two other trusts. Each sibling received an equal share, and they signed receipt and release forms waiving any claims against Edward in relation to those trusts. Only the Trust—which is at issue in this case—remained open.

In November 2017, Edward tried to dispense final distributions of the Trust in the amount of $33,880 per beneficiary in exchange for signed receipt and release forms. All siblings except Donald signed the form and received their final distribution. The only funds remaining in the Trust were Donald's share. On advice of counsel, Edward distributed half of Donald's share to him, retaining the other half plus an extra $800 for tax purposes. Edward planned to wait for Donald to sign the receipt and release form before distributing the remaining funds.

In June 2019, Donald petitioned the trial court to approve an accounting of the Trust; he sought to enforce the Trust by gaining access to source documents. Donald contended that Edward breached his fiduciary duty because he refused to provide financial documents about the Trust. Donald also sought review of Edward's actions as trustee of the two terminated trusts and when he had power of attorney for Ruth. He attached a declaration seeking documents, including

ledgers, from Edward.[2] Donald also petitioned for mediation under TEDRA to "reconcile financial accounting" of the Trust.

The court noted an initial hearing for July 5, 2019.

Edward responded, providing declarations, an affidavit, and an accounting of the Trust. But Edward did not give Donald any of the documents the latter requested. Edward also objected to mediation in a separate response.

At the hearing, Edward was represented by counsel and Donald represented himself. Donald complained that he had not received the documents that he had sought. The trial court asked him multiple times what information he was seeking. Donald did not identify what information about the Trust he was missing; he focused instead on issues relating to Edward's actions when he had power of attorney for Ruth. Following this exchange, the trial court approved Edward's accounting. The trial court also ordered that Edward's attorney fees arising from the petition be paid from the Trust assets. Edward then requested that the trial court enter an order denying Donald's petition for mediation, which request the trial court granted at the same hearing.

Donald appeals the order approving accounting and the order denying mediation.

ANALYSIS

A. Appeal of Denial of Mediation

Edward says RCW 11.96A.300 prohibits an appeal of the trial court's denial of mediation. We disagree.

[2] Only one of the six requests involves the Trust.

"Our fundamental goal in statutory interpretation is to 'discern and implement the legislature's intent.'" O.S.T. v. Regence BlueShield, 181 Wn.2d 691, 696, 335 P.3d 416 (2014) (quoting State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007)). "If a statute's meaning is plain on its face, we 'give effect to that plain meaning as an expression of legislative intent.'" O.S.T., 181 Wn. 2d at 696 (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9–10, 43 P.3d 4 (2002)).

"The meaning of a statute is a question of law reviewed de novo." State ex rel. Citizens Against Tolls v. Murphy, 151 Wn.2d 226, 242, 88 P.3d 375 (2004).

Edward claims that RCW 11.96A.300(3) prohibits an appeal of the order denying mediation. But the plain language of the statute includes no such prohibition:

> If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. *Such order* shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(Emphasis added.) Under the statute, a party may not appeal an order approving mediation. But the statute does not bar appeals of orders denying mediation.

B. Order of Rulings

Donald says the trial court erred by ruling on accounting before ruling on mediation.[3] We disagree.

We review de novo issues of statutory interpretation. Murphy, 151 Wn.2d at 242.

As mentioned above, RCW 11.96A.300 states: "If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings." Nothing in the statute requires that the *ruling* denying mediation must precede any other ruling. Notably, the rulings occurred at the same hearing. And Donald cites no case law to support his contention.

C. Explicit Finding of Good Cause

Donald says that the trial court erred in denying mediation without expressly considering whether there was good cause to do so.[4] Edward says that Donald waived this argument and, nevertheless, that the trial court did not err in so ruling. We agree with Edward.

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[3] Donald did not assign error on this issue in violation of RAP 10.3. But because Donald's briefing makes his claim sufficiently clear, we have decided to address it. See Richardson v. Dep't of Labor & Indus., 6 Wn. App. 2d 896, 904–05, 432 P.3d 841, review denied, 193 Wn.2d 1009, 439 P.3d 1069 (2019) (considering the merits of an appeal, despite a failure to assign error, where the appellant's claims were clear in the briefing); RAP 1.2(a) ("[t]hese rules will be liberally interpreted to promote justice").

[4] Donald also says that Edward failed to substantially comply with TEDRA by not showing good cause. Donald did not assign error to this claim nor did he raise it below. See RAP 10.3, RAP 2.5. Thus, we decline to address this argument.

RAP 2.5(a) provides that we may decline to address a claim of error not raised in the trial court. During the trial court hearing, Donald did not raise good cause. Donald does not respond to Edward's claim of waiver. We thus conclude that he waived this argument.

But even assuming no waiver, we conclude that the trial court did not err in not making an express good cause determination.

Again, we review de novo issues of statutory interpretation. Murphy, 151 Wn.2d at 242.

RCW 11.96A.300(3) states that "the court shall order that mediation proceed except for good cause shown." Nothing in the statute or case law requires a trial court to expressly find good cause before it can deny mediation. The statute simply provides that a court may deny a request for mediation for good cause "shown."[5]

D. Accounting

Donald says that the trial court erred in approving Edward's accounting of the Trust, because the trial court based its decision on incomplete information. Edward responds that five out of Donald's six requests sought information

[5] In any event, the record shows good cause to dispense with mediation. Edward submitted documents demonstrating why mediation would not have succeeded. Correspondence between the parties show a combative relationship and that Donald does not trust Edward or his attorneys. Donald wrote to the Washington State Bar Association that Edward's lawyer's firm might have a policy of "bribing" or "paying some thugs" to intimidate any lawyer who tries to oppose them. Donald also accused Edward's attorney of being used by Edward in a scheme to intentionally breach his fiduciary duties. In doing so, he threatened the attorney with negative reviews, harassment, and more bar complaints.

unrelated to the Trust at issue and that he did provide the court with sufficient information to make a ruling. We agree with Edward.

The court in In re Estate of Fitzgerald noted that "TEDRA gives the trial court 'full and ample power and authority' to administer and settle all estate and trust matters . . . 'all to the end that the matters be expeditiously administered and settled by the court.'" 172 Wn. App. 437, 447–48, 294 P.3d 720 (2012) (quoting RCW 11.96A.020(1), (2)) (citing In re Irrevocable Trust of McKean, 144 Wn. App. 333, 343, 183 P.3d 317 (2008) (recognizing that TEDRA grants plenary powers to the trial court)). Noting this "broad grant of power" under TEDRA, the court in Fitzgerald applied an abuse of discretion standard to a trial court's denial of a continuance for discovery. 172 Wn. App. at 448. The Trustees Accounting Act states: "the court . . . after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees . . . and shall render its decree either approving or disapproving the account." RCW 11.106.070. This indicates that the decision to approve an accounting is a discretionary one and must be reviewed as such. See also In re Estate of Mower, 193 Wn. App. 706, 727, 374 P.3d 180 (2016) (reviewing for abuse of discretion a trial court's award of attorney fees under TEDRA). Thus, we apply an abuse of discretion standard here. A trial court abuses its discretion if its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Barton v. Dep't of Transp., 178 Wn.2d 193, 215, 308 P.3d 597 (2013) (quoting Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 684–85, 41 P.3d 1175 (2002)).

The trial court did not abuse its discretion in approving Edward's accounting of the Trust. Edward provided the court with an accounting on which the court could rule. He submitted declarations, an affidavit, and exhibits explaining the background of the family dispute and context about the two other trusts, which were terminated before this action arose. The accounting documents the incoming and outgoing funds, the closing of certain accounts, and detailed descriptions of each line item. The trial court noted that the expenses were those typical to a trust post-death (for example, burial expenses and final house bills). Edward also offered a detailed receipt regarding attorney fees. Based on the record, the trial court did not act unreasonably in approving the accounting.

Donald says that because Edward did not provide him, or the court, with the documents he sought in his petition, the court erred by ruling on an incomplete record. Donald stresses that the accounting Edward provided was Edward's own work and did not include source documents to corroborate the work. But most of the documents Donald sought were irrelevant for purposes of his petition. Five of the six requests concern the two trusts that had been closed or Edward's power of attorney for Ruth; only the second request—seeking source documents—concerned the Trust. And Donald cites no authority to support his argument that Edward was required to produce the requested documents, in the procedural circumstances of this case, before the trial court could approve the accounting. Nor does he raise any specific issue with the accounting that could be resolved by the production any of such documents.

Nothing in the record, aside from Donald's contentions, shows that Edward's accounting is untrustworthy.

Finally, Donald's conduct during the hearing appeared to show that even he does not believe the accounting of the Trust to be incomplete or untrustworthy. The trial court asked Donald what information he was seeking that was not already in the accounting. Donald responded that he was looking for information about Edward's actions from before their mother's death and before Edward was appointed as trustee of the Trust. The trial court explained that Edward's actions before he was appointed as trustee were not before the court and that the focus was on accounting for the remaining Trust. Donald then responded that he was not "really complaining about that." The trial court asked Donald again what information he was looking for, to which he responded by asking the court how to get the issue of Edward's discharge of his duties under power of attorney before the court. The court explained it could not give legal advice and tried to refocus on the issue of the Trust. Donald responded that he did not "really want to waste that much time on that issue."[6]

We conclude the trial court acted within its discretion in approving the accounting.

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[6] Donald says that because he represented himself, he could not have been expected to provide a "meaningful objection" during the hearing. This argument suffers because he could articulate what information he was seeking in relation to Edward's power of attorney. Donald could have easily formed a similar objection to a lack of information about the Trust. See also Matter of Estate of Little, 9 Wn. App. 2d 262, 274 n.4, 444 P.3d 23, review denied sub nom. In re Estate of Little, 194 Wn.2d 1006, 451 P.3d 335 (2019) ("We hold a pro se litigant to the same standard as an attorney.").

E. Attorney Fees

Edward requests an award of attorney fees on appeal under RAP 18.9, or under RAP 18.1 along with RCW 11.96A.150. Donald responds that we should not award Edward attorney fees under RAP 18.9 because his appeal was not frivolous. Donald does not respond to Edward's request under RAP 18.1 and says that we should award Donald attorney fees under RCW 11.96A.150. We grant Edward's request under RAP 18.1.

Under RAP 18.1(a) we may award a party—who so requests—attorney fees if applicable law provides for such an award. Mower, 193 Wn. App. at 729. RCW 11.96A.150(1) states:

> The court may order . . . 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 . . . trust involved.

This section applies to appellate courts. Mower, 193 Wn. App. at 729. We may order that the fees be paid by any party to the proceedings or the assets of the trust involved. Id.

Though not an explicit requirement of RCW 11.96A.150, courts generally consider whether a party seeking attorney fees prevailed in the proceeding. See Foster v. Gilliam, 165 Wn. App. 33, 58, 268 P.3d 945 (2011) (awarding attorney fees because the party prevailed); In re Guardianship of Lamb, 154 Wn. App. 536, 549, 228 P.3d 32 (2009), aff'd, 173 Wn.2d 173, 265 P.3d 876 (2011) (denying attorney fees because the party did not prevail). Courts will generally

deny attorney fees if the litigation did not benefit the estate or trust. See Matter of Marital Tr. of Graham, 11 Wn. App. 2d 608, 615, 455 P.3d 187, review denied sub nom., 195 Wn.2d 1026, 466 P.3d 778 (2020). Courts may also consider whether a case presented "novel or unique issues." In re Estate of Stover, 178 Wn. App. 550, 564, 315 P.3d 579 (2013) (quoting Lamb, 173 Wn.2d at 198).

Edward has prevailed on appeal. Also, this litigation did not benefit the Trust. Finally, this litigation does not raise novel or unique issues, the resolution of which added benefit to the appeal. We award Edward reasonable attorney fees subject to his compliance with RAP 18.1(d).[7] We deny Donald's request for fees.

We affirm.

Chun, J.

WE CONCUR:

[7] Because we award Edward attorney fees under RAP 18.1, we do not address his request for fees under RAP 18.9.

LANE LAW FIRM PLLC

December 08, 2020 - 1:29 PM

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