FILED
SUPREME COURT
STATE OF WASHINGTON
9/25/2025 10:54 AM
BY SARAH R. PENDLETON
CLERK

Supreme Court No. 1044887 Court of Appeals No. 58577-4-II (Lewis County Superior Court No. 17-4-00179-21)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Matter of: The Gilbert Miller Testamentary Credit Shelter Trust and The Estate of Mary Evelyn Miller

THE HEIRS OF GILBERT MILLER and THE HEIRS OF MARY EVELYN MILLER,

Appellants

v.

RENE REMUND, Personal Representative of the Estate of Mary Evelyn Miller,

Respondent

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

KHBB LAW PLLC

Karen R. Bertram WSBA #22051 705 Second Ave, Suite 800 Seattle, WA 98104

Phone: 206-382-4414 Fax: 206-382-4412

Email: kbertram@khbblaw.com

Attorneys for Respondent Rene Remund, Personal Representative of the Estate of Mary Evelyn Miller

TABLE OF CONTENTS

| I. INTRODU | CTION1 |
|------------|--|
| II. ARGUME | ENT5 |
| A. | The Court of Appeals Did Not Alter the |
| | Status Quo, Limit the Freedom of a Party, or |
| | Deviate from Accepted and Usual Course of |
| | Judicial Proceedings5 |
| B. | Division Two Correctly Concluded that |
| | Substantial Evidence Supported the Trial |
| | Court's Decision that neither Gib nor Evelyn |
| | Intended to Benefit the Heirs6 |
| C. | Division Two Upheld the Primary Purpose |
| | of Constructive Trusts under Washington |
| | Law, which is to Prevent Unjust Enrichment |
| | with Clear, Cogent and Convincing |
| | Evidence10 |

| D. | Division I wo Correctly Held the Thai Court |
|-------------|---|
| | Erred When it Determined the Estate Did |
| | Not Sufficiently Request Relief and is Not |
| | Obvious Error13 |
| F. | Division Two's Ruling that the Trial Court |
| | Abused its Discretion When it Entered an |
| | Incomplete Judgment By Reserving a Key |
| | Issue for Further Proceedings Is Consistent |
| | with CR 5416 |
| G. | This Court Should Award the Estate's |
| | Attorney Fees Pursuant to RAP 18.1(j)19 |
| III. CONCLU | ISION19 |

TABLE OF AUTHORITIES

CASES

| Ames v. Ames, 184 Wn. App 826, 349 P.3d 232 (2014)7 |
|--|
| Baker v. Leonard, 120 Wn.2d 538, 843 P.2d 1050 (1993)9, 10 |
| Brundridge v. Flour Fed Servs., Inc. 164 Wn.2d 432, 191 P.3d |
| 879 (2008)15 |
| Consulting Overseas Mgmt., 105 Wn. App. 80, 18 P.3d 1144 |
| (2001)10 |
| Gronquist v. Dep'r of Corr., 177 Wn. App. 389, 313 P.3d 416 |
| (2013)17 |
| In re Dependency of C.J.J.I., 4 Wn.3d 520, 565 P.3d 891 (2025) |
| 5, 6 |
| Pitzer v Union Bank of California, 141 Wn.2d 539, 9 P.3d 805 |
| (2000)9, 10, 11 |
| Rose v. Fritz, 104 Wn. App. 116, 15 P.3d 1062 (2001)16, 17 |

| Williams v. Snow, 109 Wash 329, 186 P, 861 (1920)17 | |
|---|--|
| STATUTES | |
| RCW 11.12.2309 | |
| RCW 11.96.100(5)12 | |
| RCW 11.96A.15019, 20 | |
| RULES | |
| CR 5416 | |
| CR 54(a)17 | |
| CR 5915 | |
| CR 59(h)15 | |
| RAP 12.3(a)2 | |
| RAP 13.4(b)2, 3 | |
| RAP 13.5(b)5 | |

| RAP | 13.5(b)(2) | 3, 4 |
|-----|-------------|-------------|
| RAP | 13.5(b)(3) | 3, 4, 5, 20 |
| RAP | 18.1(j) | 19, 20 |
| RAP | 18.17(b)(2) | 20 |

TREATISES

Restatement (Third) of Restitution and Unjust Enrichment §556

I. INTRODUCTION

There is no basis for the Supreme Court to accept review of Division Two's decision affirming dismissal of the Heirs' equitable claim to impose a constructive trust over assets they were never legally entitled to. The Heirs were largely unknown to Gib and Evelyn Miller and are not named, personally or as a class of residual beneficiaries of the Miller's estate plan but are merely windfall beneficiaries under the intestate statute because the trust created under the Miller's estate planning documents lacked any provision for distribution of the trust assets after Evelyn died. Instead of being content with an award of almost half a million dollars remaining in the failed trust, counsel for the Heirs waged almost eight years of litigation against the estate attempting to seize assets that were never transferred to the trust and were always held in Evelyn's estate. In doing so, the Heirs' attorneys invaded assets owned by Evelyn's estate to pay for nearly a decade of litigation.

This matter comes before this Court on the Heirs' assertion that the outcome of this case is determined by, and all analysis stops, based on Evelyn's intent to fund a trust. Both the trial court and Division Two rejected that argument. As Division Two acknowledged, "the court sits as a court of equity and not as a court of law" in this case. (Appendix A to Petition for Review at 1, hereafter "App A"). In this setting, "constructive trusts arise to give effect to the decedent's intent."

Id. Because "Evelyn never intended to benefit the Heirs . . . a constructive trust benefiting the Heirs was not necessary to give effect to Evelyn's wishes." (App A at 24.)

The Heirs improperly seek discretionary review of
Division Two's opinion affirming the trial court's judgment
declining to impose a constructive trust. Division Two's
opinion on this issue is not an interlocutory decision but a
decision unconditionally terminating review of the trial court's
judgment declining to impose a constructive trust. RAP 12.3(a).
RAP 13.4(b), identifies the considerations governing

acceptance of this Court's review of an appellate court ruling terminating review. However, the Heirs put forth no arguments consistent with RAP 13.4(b). The Heirs only argue that the "Court of Appeals committed probable error which substantially alters the status quo" pursuant to RAP 13.5(b)(2). (Petition at 3.)

The Heirs also seek discretionary review of Division

Two's reversal of the trial court's judgment that "declined to reach remedial relief to the Estate and remand for the superior court to order an equitable accounting and for further proceedings ... that resolve all claims, rights and liabilities."

(App A at 2.) Pursuant to RAP 13.5(b)(3), the Heirs argue the Court of Appeals so far departed from the usual course of judicial proceedings because the Estate did not make a counterclaim to Petitioners' initial TEDRA petition and failed to present any evidence of damages at trial to support the claim for reimbursement. (Petition at 3-4.)

- 3 -

Division Two held that the trial court abused its discretion in determining the Estate failed to plead adequate request for relief and therefore erred when it entered an incomplete judgment. (App A at 31.) The Court of Appeals' affirmation of the trial court's decision does not substantially alter the status quo or limit the freedom of a party to act as required by RAP 13.5(b)(2), nor does the Court of Appeal's reversal of trial court's entry of an incomplete final judgment so far depart from the accepted and usual course of judicial proceedings to call for the exercise of revisionary jurisdiction of the Supreme Court as required by RAP 13.5(b)(3).

On the contrary, the Court of Appeals' decision held that the trial court abused its discretion when it entered a final judgment that failed to resolve all claims, rights, and liabilities. It is trial court's failure to enter a complete judgment that departed from the accepted and usual course of judicial proceedings. This does not require revisionary decision by the Supreme Court.

II. ARGUMENT

A. The Court of Appeals Did Not Alter the Status Quo, Limit the Freedom of a Party, or Deviate from Accepted and Usual Course of Judicial Proceedings.

The Supreme Court accepts discretionary review only in limited circumstances. RAP 13.5(b). To obtain discretionary review of an interlocutory order in the Supreme Court, a party must show that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings...as to call for the exercise of revisionary jurisdiction by the Supreme Court. RAP 13.5(b)(3), *In re Dependency of C.J.J.I.*, 4 Wn.3d 520, 523, 565 P.3d 891 (2025).

RAP 13.5(b) presumes the existence of an "accepted and usual course of judicial proceedings" and it requires "departure" from that course that is "so far...as to call for review or revision. *In re Dependency of C.J.J.I.*, 4 Wn.3d at 525. RAP 13.5(b) is not easily satisfied, and "a party must show the existence of a significant deviation, not merely a commonplace error." *Id.* The Supreme Court "appropriately intervenes prior to

a formal decision when the situation is significant enough to warrant interlocutory review." *Id.* at 526.

Here, the Heirs have not demonstrated any deviation from the acceptable and usual course of judicial proceedings, much less a significant deviation. The Court of Appeal's carefully drafted opinion addresses equitable, legal and procedural issues, all of which are supported by the Washington Supreme Court case law and the Washington Rules of Civil Procedure. There is no basis to grant discretionary review in this case.

B. Division Two Correctly Concluded that Substantial Evidence Supported the Trial Court's Decision that neither Gib nor Evelyn Intended to Benefit the Heirs.

The Heirs' contention that the Court of Appeals failed to apply the Restatement (Third) of Restitution and Unjust Enrichment §55 to establish a constructive trust is not consistent with Washington law. The Heirs argue that because Evelyn died believing she perfected a gift when the gift was ineffective requires restitution. (Petition at 14.) This is not the

basis to impose a constructive trust in Washington.

Constructive trusts are appropriate to give effect to a party's intent. *Ames v. Ames*, 184 Wn. App 826, 851, 349 P.3d 232 (2014). Division Two agreed with the trial court's finding that Evelyn did not intend to confer benefit on the Heirs. (App A at 12.)

The Heirs contend this Court should grant discretionary review of this issue because the Court of Appeals erred in considering Evelyn's intent under her Will to establish an equitable base when it should have only considered Evelyn's intent with respect to her interest in the property. (Petition at 11.) The Heirs argue this substantially alters the status quo because the prior remand required the Court of Appeals to consider evidence never considered at trial, and there was no evidence at trial to support the judgment. *Id*.

However, "the record shows that none of the [Heirs] had any expectation of receiving anything from Gib's or Evelyn's estates." (App A at 27.) The Heirs provide an example of what

Gib and Evelyn could have done when they prepared their Wills. (Petition at 15.) But this bit of fiction is not what occurred and has no relevance here.

The Heirs also falsely claim "the heirs of the Millers were, in fact, specifically considered in their Wills up until the eve of Evelyn's death." (Petition at 16.) As the Court of Appeals acknowledges, "the record shows that when Gib drafted his will, despite the provision regarding 'then living heirs' everyone assumed Leah would inherit both his and Evelyn's estates." (App A at 29.) Quoting the attorney who drafted the Wills, the Court of Appeals stated, "the language regarding the 'then living heirs' was boilerplate that Olsen had pulled from other estate plans." *Id*.

Nor did the Court of Appeals ignore Gib's intent, as alleged by the Heirs. (Petition at 19.) The Court of Appeals recognized Gib's intent was to benefit Evelyn, and then his daughter, Leah. (App A at 29-30.) Only when Leah predeceased Evelyn, did Evelyn execute a new Will benefiting the City of

Winlock. A testator's last will demonstrates their intent. RCW 11.12.230.

Division Two properly followed Washington precedent that recognizes "a constructive trust is an equitable remedy that courts may impose to compel the legal owner of a property to convey title to one who justly deserves it." Baker v. Leonard, 120 Wn.2d 538, 548, 843 P.2d 1050 (1993). If no equitable base exists, courts will not impose a constructive trust. Pitzer v Union Bank of California, 141 Wn.2d 539, 550, 9 P.3d 805 (2000). And where there is no wrongdoing, as is the case here, "there must be clear, cogent and convincing evidence of an equitable base to impose a constructive trust." Baker, 120 Wn.2d at 548. Division Two affirmed the trial court's conclusion that the Heirs failed to establish by clear, cogent and convincing evidence that Evelyn intended to benefit them or to receive assets from the Estate." (App A at 23.)

C. Division Two Upheld the Primary Purpose of Constructive Trusts under Washington Law, which is to Prevent Unjust Enrichment with Clear, Cogent and Convincing Evidence.

As consistently held by Washington courts, the primary purpose of constructive trusts is to prevent unjust enrichment. *Consulting Overseas Mgmt.*, 105 Wn. App. 80, 87, 18 P.3d 1144 (2001). Division Two disagreed with the Heirs that "Evelyn was unjustly enriched by her own property when she inadvertently neglected to convey it to the CST when doing so would have only benefitted herself." (App A at 28.)

The Heirs also argue that the Court of Appeals improperly applied the clear, cogent, and convincing evidentiary standard. As cited by Division Two, Washington law requires clear, cogent and convincing evidence of an equitable base to impose a constructive trust if there is no wrongdoing. *Baker*, 120 Wn.2d at 548; *accord*, *Pitzer*, 141 Wn.2d at 548. The Court of Appeals agreed there was no wrongdoing in this case. (App A at 28).

In *Pitzer*, the Washington Supreme Court declined to impose a constructive trust where, as is the case here, the evidence was clear that a decedent did not intend for the claimants, who were contingent beneficiaries, to share in the estate. *Pitzer*, 141 Wn.2d at 550. Likewise, the Court of Appeals found no clear, cogent or convincing evidence of Evelyn's or Gib's intent to benefit the Heirs.

The Court of Appeals properly held that Evelyn's intent to benefit the Heirs is necessary to impose a constructive trust.

(App A at 31.) In distinguishing the cases cited by the Heirs, the Court of Appeals stated, "Evelyn never articulated a specific intention to benefit the Beneficiaries. In fact, the record suggests that Evelyn did not wish to benefit the Beneficiaries at all." Furthermore, "the Beneficiaries were not identified until after Evelyn's death, thus Evelyn had no knowledge of who would actually take under the CST." (App A at 27.)

Because the record does not establish clear, cogent and convincing evidence that Evelyn intended to benefit the Heirs,

the Court of Appeals the Heirs failed to meet their burden of proof and the trial court's conclusion of law was supported by substantial evidence.

The Heirs assert that the Court of Appeals did not address the requirements of TEDRA. (Petition at 20).

According to the Heirs, the Estate was required to include a counterclaim and did not plead a cause of action in response to the initial petition. The Heirs cite RCW 11.96A.090(5) for this proposition, but no such statute exists. TEDRA did not require the Estate to file a counterclaim under RCW 11.96.100(5) as the Heirs assert. Nevertheless, the Heirs claim that the Court of Appeals provided no analysis of TEDRA provisions that control over civil rules when it concluded, the Estate's response requested:

- "B. Confirm one half ownership of the [Corner Property] in the Estate of Mary Evelyn Miller.
 - C. Require the trustee of the [CST] to account for all income and expenses since the discovery of the error and pay one half of the net proceeds to the Estate of Mary Evelyn Miller."

(emphasis added in original) (App A at 33.)

D. Division Two Correctly Held the Trial Court Erred When it Determined the Estate Did Not Sufficiently Request Relief and is Not Obvious Error.

The Court of Appeals also acknowledged that the "record also shows that as early as 2015, the parties contemplated a scenario in which the Estate would need to be compensated for one-half ownership in the Corner Property." *Id*.

The Heirs claim this is contrary to established case law and "deals with the required pleading standards" and therefore "has significant implications for virtually any civil case."

(Petition at 21.)

The Heirs argue the Court of Appeals so far departed from usual judicial proceedings to call for the exercise of revisionary jurisdiction because Division Two granted relief that the trial court was never asked to grant. On the contrary, Division Two held the trial court abused its discretion when it determined the Estate failed to plead an adequate request for

relief. The Court of Appeals found that the Estate's request for relief in its motion to dismiss was "a simple, concise statement that includes the relief sought—an equitable accounting and reimbursement to the Estate of its share of the CST proceeds." (App A at 33.) The Court of Appeals found "the record clearly shows that from the beginning of the current TEDRA action, and even prior, the Estate sought its share of the value of the CST" and put the Heirs "on notice of a claim for reimbursement. "(App A at 33-34.) Citing CR 8, the Court of Appeals held, "that is all that is required." (App A at 34.) The Court of Appeals also found that because the Estate properly pleaded a claim for equitable accounting and reimbursement, "there was no justification [for the trial court to require] the Estate to commence a new proceeding." (App A at 36.)

The Heirs contend the Estate never asserted its rights to property already titled in Evelyn's estate (Petition at 23.) The Heirs' accusation begs the question: What were the last eight

years of litigation about if not the ownership of the disputed property?

E. Division Two's Decision that the Trial Court Abused its Discretion When it Denied the Estate's Motion to Amend Judgment.

The Court of Appeals properly noted that a party may move to amend a judgement under CR 59 by filing a motion within 10 days from entry of the judgement, which the Estate timely filed. CR 59(h). "Appellate Courts review denial of a motion to amend a judgment for abuse of discretion."

Brundridge v. Flour Fed Servs., Inc. 164 Wn.2d 432, 454, 191 P.3d 879 (2008).

The Court of Appeals held that the trial court abused its discretion for denying the Estate's motion to amend judgment because "the final judgment here does not dispose of all the issues. (App A at 33.)

F. Division Two's Ruling that the Trial Court Abused its Discretion When it Entered an Incomplete Judgment By Reserving a Key Issue for Further Proceedings Is Consistent with CR 54.

Division Two accurately cited CR 54, which requires a final judgment to fully dispose of a case. The Estate argued that the trial court erred when it declined to include money damages in the final judgment and failed to compel the CST trustee to provide a complete accounting to determine the Estate's share of the CST proceeds. (App A at 31.)

In the February 2023 findings and conclusion, the trial court instructed the CST trustee to provide an accounting and reserved the issue of reimbursement to the Estate. However, the accounting was never completed. In May 2023, the trial court argued with the Estate that the judgment would not be final without a dollar amount owed to the Estate. Division Two acknowledged that the trial court's reasoning in May 2023 "comports with the legal principles underlying final judgments." *Rose v. Fritz*, 104 Wn. App. 116, 120, 15 P.3d 1062 (2001). The Court of Appeals then cited *Williams v. Snow*,

109 Wash 329, 331, 186 P, 861 (1920), which states "when the court is advised as to the facts in a case of which it has jurisdiction, it should apply the proper remedy, be it legal or equitable, since a party is not to be turned out of court if entitled to any relief under the pleaded facts." Citing *Gronquist* v. Dep'r of Corr., 177 Wn. App. 389, 397, 313 P.3d 416 (2013), the Court of Appeals held that "nothing should remain for the court but to execute that judgment. (App at 35.) But the trial court entered a final judgment that again reserved the issue of reimbursement for future proceedings. *Id*.

As cited by the Court of Appeals, a final judgment "is an order that adjudicat[es] all the claims, counts, rights and liabilities of all the parties." *Rose*, 104 Wn. App. at 120; CR 54(a). Division Two accurately concluded that the trial court's final judgment reserved a key issue for further proceedings. Because not all claims, rights and liabilities were adjudicated, the final judgment is incomplete. (App A at 36.)

The Heirs complain that the Court of Appeals did not and could not determine what relief would have been appropriate for the trial court to enter as a final judgment (Petition at 25.)

That is why the Court of Appeals remanded this issue to the trial court to "order an equitable accounting and for further proceedings consistent with an adjudication that resolves all claims, rights and liabilities" (App A at 36.) As the Court of Appeals noted multiple times throughout its opinion, the Estate is entitled to its one-half share of the CST, which has been in sole control of the CST trustee since this litigation began.

"Because the final judgment reserved a key issue for further proceedings, not all claims, rights and liabilities have been adjudicated." (App A at 36.) Therefore, the Court of Appeals appropriately reversed the trial court's entry of final judgment and remand for the trial court to order on equitable accounting and reimbursement. *Id*.

The Estate's money must be recovered as ordered by Division Two. It is long past time for this extraordinarily misguided litigation to be terminated.

G. This Court Should Award the Estate's Attorney Fees Pursuant to RAP 18.1(j).

The Court of Appeals awarded the Estate's attorney fees pursuant to RCW 11.96A.150. (App A at 36.) Because the Heirs' Petition for Discretionary Review should be denied, this Court should award the Estate the attorney fees incurred to answer the Heirs' Petition for Discretionary Review pursuant to RAP 18.1(j) and RCW 11.96A.150.

III. CONCLUSION

The Court of Appeals accurately concluded that a constructive trust is an equitable remedy based on a decedent's intent. The Supreme Court should not accept review of Division Two's well-reasoned opinion, which is consistent with longstanding Washington Supreme Court precedent. Review is not warranted under RAP 13.5(b)(2) because Division Two did

not commit probable error that alters the status quo or substantially limit the freedom of a party to act, or so far depart from the accepted and usual course of judicial proceedings or sanction such a departure by the trial court to call for the exercise of revisionary jurisdiction by the Supreme Court as required under RAP 13.5(b)(3).

This Court should award the Estate its attorney fees incurred to answer the Heirs' Petition for Discretionary Review pursuant to RAP 18.1(j) and RCW 11.96A.150.

This document contains 3,250 words, excluding the parts of the document exempted from the word count by RAP 18.17(b)(2).

/

/

/

/

/

RESPECTFULLY SUBMITTED this 25th day of September, 2025.

KHBB LAW PLLC

Karen R. Bertram, WSBA #22051

Hoge Building, Suite 800

705 Second Avenue Seattle, WA 98104

Phone: (206) 382-4414

Fax: (206) 382-4412

Email: kbetram@khbblaw.com Attorneys for Respondent Rene Remund, Personal Representative of

the Estate of Mary Evelyn Miller

CERTIFICATE OF SERVICE

I, Mirika Rayaprolu, hereby certify that on September 24th, 2025, I served a copy of the preceding document on the parties listed below in the manner shown:

Todd S. Rayan, WSBA No. 34090 (via E-Service) Althauser Rayan Abbarno, LLP 114 West Magnolia Street, P.O. Box 210 Centralia, WA 98531

Phone: 360-736-1301; Fax: 360-736-4802

Email: todd@centralialaw.com, Cc: Sheryl Fogarty, Paralegal

sheryl@centralialaw.com

Attorneys for the Heirs of Gilbert Miller

Larry W. Fagerness, WSBA No. 7795 (via E-Service) Attorney at Law

3508 Galvin Road, P.O. Box 88

Centralia, WA 98531

Phone: 360-736-7400; Fax: 360-330-5666

Email: <u>larry@fagernesslawoffice.com</u> Cc: Pam Shirer, Legal

Assistant: pam@fagernesslawoffice.com

Special Representative for the Heirs of Mary Evelyn Miller

Larry McGee (via USPS)
152 Ridgemont Road
Chehalis, WA 98532
Trustee of the Gilbert Miller Testament

Trustee of the Gilbert Miller Testamentary Credit Shelter Trust

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of September, 2025.

Mirika Rayaprolu, Legal Assistant

KHBB LAW PLLC

September 25, 2025 - 10:54 AM

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: 104,488-7

Appellate Court Case Title: In the Matter of: Gilbert Miller Testamentary Credit Shelter Trust and Estate of

Mary Evelyn Miller

Superior Court Case Number: 17-4-00179-7

The following documents have been uploaded:

• 1044887_Answer_Reply_20250925104911SC535584_8775.pdf

This File Contains:

Answer/Reply - Answer to Motion for Discretionary Review

The Original File Name was Answer to Petition For Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- larry@fagernesslawoffice.com
- pam@fagernesslawoffice.com
- sheryl@centralialaw.com
- todd@centralialaw.com

Comments:

Sender Name: Mirika Rayaprolu - Email: mrayaprolu@khbblaw.com

Filing on Behalf of: Karen R. Bertram - Email: kbertram@khbblaw.com (Alternate Email:

scartozian@khbblaw.com)

Address:

705 Second Avenue #800

Seattle, WA, 98104

Phone: (206) 382-4414 EXT 227

Note: The Filing Id is 20250925104911SC535584