

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Supreme Court No. DA 24-0469

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IN THE MATTER OF THE POTTER  
EXEMPTION TRUST:

BETTY N. POTTER,

Petitioner and Appellant,

v.

CAITLIN WALL, AND JAMES STONE, as Co-Trustees  
of the Potter Exemption Trust, E BAR L RANCH, LLP,  
MARY POTTER VERO and WILLIAM S. POTTER,

Appellants and Respondents.

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POTTER EXEMPTION TRUST, CAITLIN WALL,  
and JAMES STONE,

Counter-Petitioners,

v.

BETTY N. POTTER, MARY POTTER VERO,  
WILLIAM S. POTTER, E BAR L RANCH, LLP,  
and John Does 1-10,

Counter-Respondents.

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**APPELLANT'S BRIEF**

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On Appeal from the Fourth Judicial District Court, Missoula County  
Cause No. DG-21-91  
The Honorable Shane Vannatta, Presiding

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## **INTRODUCTION**

Appellant Betty Potter (“Betty”), now 82 years old, has devoted her life to the conservation of approximately 4000 acres of pristine forest and ranch land near Greenough, Montana. Betty and her late husband, Orrin W. Potter (“Bill”), tended the land together for decades, creating the Potter Family Trust (“Family Trust”) in 2003 so that their land management practices and philosophy would continue when they could no longer serve as the land’s stewards. This appeal represents Betty’s effort to maintain her legal rights under the trust she created with Bill, in the face of an openly hostile trustee operating with a clear conflict of interest. The District Court overlooked critical facts and misapplied the law in allowing that trustee to effectively silence Betty in her twilight years and cut off access to information necessary to protect her rights as a beneficiary. The District Court should be reversed.

## **STATEMENT OF ISSUES PRESENTED FOR REIVEW**

1. Did the District Court correctly determine the trustees may withhold information from Betty, the sole current beneficiary and a co-settlor of the trust they were charged to administer, even when that information is relevant to the trust’s administration, necessary to protect Betty’s interests and to prevent or redress a breach of trust?
2. Did the District Court abuse its discretion by denying Betty’s petition to remove a trustee, despite the trustee’s clear conflict of interest and open hostility toward Betty?

3. If the District Court did not abuse its discretion by denying Betty's petition to remove a trustee, did the District Court abuse its discretion in denying Betty's alternative request to appoint a third trustee?
4. Did the District Court err in approving a lease agreement entered into by a trustee with an entity in which the trustee has a personal financial interest?
5. Did the District Court abuse its discretion in denying Betty's request for attorney fees?

### **STATEMENT OF THE CASE**

Betty initiated this action on September 27, 2021, by filing a Petition for Information and Removal of Co-Trustee after a newly-appointed trustee stopped giving Betty information she had always received, and after Betty and her accountant identified a number of red flags regarding trust administration. (CR 1.) On February 9, 2022, Betty filed an Amended Petition. (CR 14.) The Amended Petition sought information related to Betty's interest in the Potter Exemption Trust ("PET"), which was created from the Family Trust upon Bill's death. (CR 14.) The Petition also sought removal of Caitlin Wall ("Caitlin") as a Trustee of the PET. (CR 14.)

The trustees of the PET, Caitlin and Jim Stone ("Jim") (collectively, "Trustees") filed a Counter-Petition for Declaratory Relief, seeking court approval to continue serving as the only trustees after the death of the third trustee, George Hirschenberger ("George"). (CR 26.) They also sought approval of a lease agreement ("Five-Year Lease") they had entered into on behalf of the PET with

Caitlin’s employer, E Bar L Ranch, LLP (“E Bar L”), and a declaration to limit Betty’s rights as a trust beneficiary. (CR 19.1; CR 26.)

Bill’s children, contingent remainder beneficiaries Mary Potter Vero (“Mary”) and William S. Potter (“Spike”), filed a Response and Counter-Petition, challenging Betty’s efforts to remove Caitlin and asking the Court to assign their beneficial interest in the PET to Mary’s daughter, Juanita Vero (also an E Bar L partner). (CR 21.)

E Bar L filed an Answer and joined in the Trustees’ Counter-Petition on June 23, 2023. (CR 35.)

The parties moved for summary judgment on all claims and, on July 11, 2024, the District Court entered its Order. (CR 110.) Betty’s request for E Bar L’s financial information was denied. (CR 110.) So too was her request to remove Caitlin as a trustee or to appoint a third trustee. (CR 110.) Over Betty’s objections, the District Court approved the Five-Year Lease E Bar L had secured with the Trustees. (CR 110.) It also granted in part the Trustees’ petition for a declaration of Betty’s rights as an income beneficiary, severely curtailing her rights. (CR 110.) Finally, the District Court denied all parties’ requests for attorney fees. (CR 110.)

Betty filed a timely notice of appeal on August 8, 2024.

## STATEMENT OF FACTS

In the 1920s, Bill's family and other partners founded the E Bar L guest ranch on land historically owned by Bill's family. (CR 57, p. 2.) Betty began working for E Bar L in 1962, but stopped in 1984 after marrying Bill. (CR 57, p. 2.) Together, Betty and Bill logged, hayed, fenced, and irrigated the land, and worked toward its long-term conservation in accordance with their deeply shared land management philosophy. (CR 57, p. 2.) In the decades Betty worked on the land, she earned a reputation as a hard worker and skilled land steward in her own right. (CR 57, Ex. C, Ex. D.) Even at age 82, she still yearns to work on the land and would do so if not for E Bar L's prohibition against it (even restricting Betty from clearing snow on her own driveway). (CR 57, p. 6; CR 91 at Ex. C, ¶ 30.)

In 2003, after 19 years of marriage, Betty and Bill created the Family Trust. (CR 110, p. 5; CR 57, Ex. E; CR 74.) They transferred 4000 acres (the "Trust Land") into the Family Trust, as well as Bill's 26.7% partnership interest in E Bar L, and their financial accounts, equipment, machinery and vehicles. (CR 110, p. 5; CR 57, Ex. H.)

The Family Trust instructs that even after Betty and Bill have died, the trustees "shall manage the Trust assets in a manner consistent with an[d] supportive of the historic land management practices and philosophy of the Settlers." (CR 57, Ex. F, p. 8.) The Family Trust will continue "at a minimum" for

the lifetimes of Bill's two children from his first marriage, Mary and Spike, unless the trustees, with the permission of Mary and Spike (if still living<sup>1</sup>), determine termination would be "in the best interests of the stated purposes of this Trust and consistent with and supportive of the historic land management practices and philosophy of the Settlers." (CR 57, Ex. F, pp. 8-9.)

Upon termination, the trustees may distribute the trust's assets to Mary, Spike, or their heirs, or to the Lubrecht Experimental Forest, or they may sell the land to a buyer who "will care for and operate the property in a manner consistent with and supportive of the land management practices and philosophy of the Settlers." (CR 57, Ex. F, p. 9.) Any sale proceeds would be distributed in equal shares to: the University of Montana, the Nature Conservancy, and Bill Potter's descendants, per stirpes. (CR 57, Ex. F, p. 9.) As with all decisions made by the trustees, the Family Trust requires this decision to be unanimous. (CR 57, Ex. F, p. 19.)

The Family Trust also recognizes that Betty and Bill's home is located on land belonging to E Bar L and directs that the surviving settlor may continue to reside in the family home "regardless of any wishes or demands of [Bill's] children." (CR 57, Ex. F, pp. 4-5.)

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<sup>1</sup> Betty is close in age to Mary and Spike and may well survive them.

In 2008, after serving as the only trustees for approximately five years, Betty and Bill appointed Land Lindbergh, Jim Masar and Hank Goetz to serve with them as co-trustees. (CR 57, Ex. I.) Betty believed she would remain a trustee over Trust Land after Bill's death. (CR 57, p. 5, Ex. E, ¶ 15.) The Family Trust, upon Bill's death, divided into three new trusts: the PET, a Marital Trust, and a Survivor's Trust. (CR 57, Ex. F, p. 3.) The PET was funded with assets up to the amount exempt from federal estate tax, with the Marital Trust holding whatever other portion of assets was required to avoid federal estate tax. (CR 57, Ex. F, pp. 3-4.) Land Lindbergh, Jim Masar and Hank Goetz ("the Initial Trustees") were named to serve as trustees of the PET and Betty to serve as a trustee of the Marital Trust. (CR 57, Ex. F, p. 19.)

Betty's belief that she would remain a trustee over the Trust Land was well-founded because, at the time the Family Trust was created in 2003, the Trust Land's value dwarfed the federal estate tax exemption. As such, a portion of the Trust Land would fund the Marital Trust (of which Betty would be a trustee). (CR 57, pp. 5-6.) By the time of Bill's death in 2013, however, the exemption amount had increased substantially, which meant that no portion of the Trust Land was left to fund the Marital Trust, and Betty did not become a trustee over its

management. (CR 57, pp. 5-6.)<sup>2</sup>

After Bill's death, the Initial Trustees remained true to the Settlor's vision and valued Betty's insight and opinions on managing Trust Land, despite her not being a trustee of the PET. (CR 57, pp. 6-7; CR 84, pp. 9-10.) The Initial Trustees were open and honest with Betty, and shared financial information, including E Bar L's financials. (CR 110, p. 34; CR 74, ¶ 18; CR 84, Ex. D, p. 2; CR 91, Ex. C, ¶ 28.)

The Initial Trustees were also strong advocates for the PET's interests, having "real knock-down negotiations" with E Bar L regarding its lease agreement to use Trust Land. (CR 85, Ex. A, p. 4.) These negotiations would sometimes go on for months. (CR 85, p. 6, Ex. A, p. 4.) Land Lindbergh testified that when it came to E Bar L's lease payment, the Initial Trustees "were always trying to get more" for the PET, and E Bar L was "always trying to get less." (CR 85, Ex. A, p. 4.)

Because the PET holds a 26.7% interest in E Bar L, the Initial Trustees regularly received copies of E Bar L's tax returns and related financial documents, including profit and loss statements and balance sheets, and freely shared those with Betty. (CR 57, p. 7.) The Initial Trustees worked with Baiba Eastlick, a

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<sup>2</sup> In 2003, the federal estate tax exclusion was \$1 million, and in 2013, it was \$5,250,000. (CR 57, p. 5 (citing 26 U.S.C. § 2010(c).))

certified public accountant, to prepare the PET's tax return. (CR 57, p. 7.) Ms. Eastlick was also the accountant for both Betty and E Bar L, so she was able to make sure the transactions which flowed from E Bar L to the PET and then to Betty were accurate. (CR 57, p. 7.)

As the Initial Trustees aged into their 70s, they decided to retire. (CR 57, p. 7.) The Family Trust provided that each trustee should select a successor. (CR 57, Ex. F, p. 19.) In 2018, the Initial Trustees appointed Jim, Caitlin, and George as their successors. (CR 110, p. 6.) The appointment of Jim and George did not raise concerns, but Hank Goetz chose Caitlin, an E Bar L employee with a clear conflict of interest, without consulting the other Initial Trustees. (CR 57, p. 8, Ex. B, p. 2.)

The problem with Caitlin's appointment was immediately apparent not only to Betty, but to Initial Trustee Land Lindbergh and the Initial Trustees' attorney, Greg Shultz. (CR 57, p. 8; CR 84, Ex. C, p. 3.) Caitlin has been an E Bar L employee since 2007. (CR 91, p. 18.) She is currently the Assistant Ranch Manager, oversees 18 E Bar L employees, and lives on E Bar L property full-time. (CR 91, p. 18.) She is one of the "key" employees who receives E Bar L financial information. (CR 91, p. 18.) As an E Bar L employee, Caitlin depends directly on E Bar L's partners (including contingent remainder beneficiary Juanita Vero) for her employment. (CR 91, p. 18.) Caitlin believes that E Bar L, the source of her livelihood, could not exist without the Trust Land. (CR 91, p. 18.)

Despite this conflict, the Initial Trustees believed having more than two trustees was important because it allowed for a diversity of perspective. (CR 57, p. 8, Ex. B, p. 2; CR 60, Ex. C, p. 18, Ex. G, p. 24.) They were also unable to find an alternative to Caitlin. (*Id.*) Betty decided not to object to Caitlin’s appointment at the time because there were two other trustees in whom she had confidence, and Betty believed that if Caitlin acted improperly, she could be removed. (CR 57, p. 8; CR 74, ¶ 22.)

The Initial Trustees resigned at the end of 2018, at which time Caitlin, Jim and George assumed their roles. (CR 110, p. 6.) Soon thereafter, Betty began having difficulty obtaining information, particularly from Caitlin. (CR. 57, p. 8.) Betty’s accountant, Ms. Eastlick, testified that unlike the Initial Trustees, Caitlin was evasive and often avoided answering her questions. (CR 57, p. 8.) Ms. Eastlick, also a certified fraud examiner, identified several “red flags” in E Bar L’s financial documents at this time as well. (CR 57, Ex. J, pp. 7-8, CR 85, pp. 11-12, Ex. S, pp. 4, 7.) The new Trustees, along with E Bar L, soon moved the PET’s and E Bar L’s tax preparation to a new firm. (CR 57, p. 8.)

Around this time, Betty received a highly unusual beneficiary tax document from the PET. It showed “0” for Betty’s trust income, which was “completely different” and “really unusual” compared to the prior tax documents she had received. (CR 57, p. 8; CR 84, p. 12.) However, when Betty’s accountant

contacted the Trustees' new accountant to try to make sense of the document, the new accountant refused to provide the necessary information. (CR 57, p. 8.)

After the new PET trustee George Hirschenberger died unexpectedly in 2022, Jim became the only trustee with whom Betty could meaningfully communicate. (CR 57, p. 9; CR 74, ¶ 33.) To make matters worse, Caitlin opposed the appointment of a third trustee to replace George, despite the Initial Trustees having appointed her because they believed there should be more than two trustees, and despite that being the Settlers' original intent. (CR 60, Ex. C, p. 18, Ex. G, p. 24.)

Not only did the Trustees' new accountant not provide Betty the information that the Initial Trustees had freely shared with her in the past, but when Betty requested information directly from Caitlin and Jim, they largely refused to provide it. (CR 57, p. 8.) Betty finally ended up filing her tax return, but to this day does not know if the information on which she based it was correct. (CR 57, p. 9; CR 74, ¶ 28.) Even after agreeing to a confidentiality agreement during the course of this litigation, the Trustees still refuse to provide E Bar L's financial information, including its tax return, which Betty needs to verify the accuracy of the PET's distribution documents she uses for her own tax return. (CR 57, p. 9; CR 74, ¶ 29; CR 91, p. 12.)

Of the two remaining Trustees, Caitlin is the only one opposed to sharing this information with Betty. Jim admitted in his deposition that while objecting to providing E Bar L's financial information to Betty is the Trustees' legal position, he has no objection to doing so. (CR 57, p. 12.) He apparently has given way to Caitlin's position because, given the animosity between those affiliated with E Bar L and Betty, he tries to avoid conflict and be "Switzerland." (CR 57, Ex. L, p. 4.)

Apart from severing Betty's access to E Bar L's financial information, Caitlin has become hostile toward Betty in other ways. (CR 57, p. 9; CR 74, ¶¶ 21, 33 – 35.) She refuses regular meetings with Betty, saying her relationship with Betty has become "very hard and complicated and sad." (CR 57, p. 9.) On those rare occasions when she does interact with Betty, she insists that a third-party to be present. (CR 57, p. 9.)

To further restrict Betty's involvement, Caitlin moved the PET's office from Betty's home to Caitlin's own home. (CR 57, p. 9.) Having the office in Betty's home had previously facilitated information sharing and communication between Betty and the Initial Trustees, but Caitlin is not interested in communicating with Betty. (CR 57, p. 9; CR 74, ¶ 20.)

Unsurprisingly, Caitlin also supports restrictions imposed on Betty by Caitlin's employer, E Bar L, which include prohibiting Betty from working on Trust Land, clearing snow from her home, or having any interactions with E Bar L

employees or guests. (CR 57, p. 10; CR 91, Ex. C.) The same restrictions are not imposed on any other Trust beneficiary residing at E Bar L – only Betty. (CR 57, p. 11.) In addition to demonstrating Caitlin’s open hostility, these restrictions interfere with Betty’s use and enjoyment of her home, to which she is entitled under the Family Trust. (CR 57, Ex. F, pp. 4-5.)

Caitlin’s dual loyalties to the PET and E Bar L has benefitted E Bar L – and apparently Caitlin – greatly. Before Caitlin became a PET Trustee, E Bar L had paid the Trust as much as \$95,000 annually for its use of Trust Land. (CR 85, p. 7.) With the Five-Year Lease Caitlin pushed through in 2022, however, the lease payment is now only \$50,000 (with annual adjustments for inflation) – the same as it was in 2011. (CR 57, p. 12.) Even one of the Initial Trustees who has been reluctant to criticize Caitlin finds such a low amount “surprising.” (CR 57, p. 12.) This lease payment is the primary source of the PET’s income, and therefore is the primary source of any PET distribution Betty receives. (CR 57, p. 11, Ex. Q, ¶ 13; CR 84, p. 11.)

Absent court intervention, this unjustifiably low payment is likely to remain in place for many years. Although set to expire in 2026, the lease has an automatic renewal term for two consecutive five-year periods unless the parties affirmatively choose not to renew it. (CR 57, Ex. P, p. 2.) Furthermore, despite the importance of the lease payment to Betty’s beneficiary interest, and despite the Trustees’

admitting the lease payment is based, at least in part, on what E Bar L can afford to pay, the Trustees still refuse to provide E Bar L's financial information to Betty. (CR 57, p. 11-12.) Thus, she is precluded from assessing whether there is any basis for this unusually low payment. (CR 57, p. 11-12.)

Betty filed her Verified Petition for Information and for Removal of Co-Trustee on Sept. 27, 2021. (CR 1.) On July 11, 2024, the District Court denied her any relief. (CR 110.) In its Order on the parties' competing summary judgment motions, the District Court found Betty had not made the required showing entitling her E Bar L's tax returns, related schedules, and E Bar L's profit and loss statements. (CR 110, p. 12, 14-15.) And yet, the District Court acknowledged Betty cannot learn of possible mismanagement by the Trustees without E Bar L's financial documents. It thus placed the proverbial cart before the horse – placing the burden on Betty to first identify some evidence of mismanagement (and ignoring the evidence she did identify) before she could obtain the documents to further support that evidence. (CR 110, p. 13, fn. 1.) The District Court also denied Betty's request to remove Caitlin as a trustee, despite Caitlin's conflict of interest, and granted Caitlin and Jim's request for approval to continue as co-trustees without a third trustee. (CR 110, p. 24, 26.) The District Court also approved the current Five-Year Lease over Betty's request to withhold any

decision until she could review E Bar L's financial documents. (CR 110, p. 30-31.) For the reasons set forth below, the District Court should be reversed.

### STANDARDS OF REVIEW

“Summary judgment rulings are subject to de novo review for conformance with applicable M. R. Civ. P. 56 standards and requirements.” *Kostelecky v. Peas in a Pod LLC*, 2022 MT 195, ¶ 17, 410 Mont. 239, 518 P.3d 840 (citation omitted).

Likewise, because Betty's right to E Bar L's financial information is based on the interpretation of Montana statutes governing the duties of trustees and rights of trust beneficiaries, the question is subject to de novo review. *Hulstine v. Lennox Industries, Inc.*, 2010 MT 180, ¶ 16, 357 Mont. 228, 237 P.3d 1277.

The denial of Betty's request to remove Caitlin as a trustee is reviewed for an abuse of discretion, as is her request to appoint a third trustee. *In re Baird*, 2009 MT 81, ¶ 11, 349 Mont. 501, 204 P.3d 703; *Ruegsegger v. Welborn*, 237 Mont. 317, 321, 773 P.2d 305, 308 (1989).

The voidability of the 5-Year Lease implicates Montana's statutory framework involving a trustee's conflict of interest and is thus reviewed de novo. *Hulstine*, 2010 MT at ¶ 16.

A district court's grant or denial of attorney fees is reviewed for an abuse of discretion. *In re Guardianship & Conservatorship of A.M.M.*, 2015 MT 250, ¶ 18, 380 Mont. 451, 356 P.3d 474.

### **SUMMARY OF ARGUMENT**

Betty was forced to bring this lawsuit in an effort to live out the remaining years of her life in peace and dignity, with the rights granted to her as the sole current beneficiary under the Trust she and her late husband created. The Trustees and contingent remainder beneficiaries of the PET may find her continued existence to be an annoyance best dealt with by effectively silencing her, but such treatment is contrary to Montana law.

First, Betty is entitled to a broad scope of information “about the administration of the trust and of the material facts necessary for [her] to protect [her] interests,” which includes “any applicable income, estate, or transfer tax returns relevant to the administration of the trust.” Mont. Code Ann. § 72-38-813 (emphasis added). This necessarily includes E Bar L’s tax return and related financial information – which Betty always received until Caitlin arrived on the scene. The District Court erred in allowing Caitlin to withhold this information from Betty.

Second, Caitlin should be removed as Trustee, given her conflict of interest as an employee of E Bar L and her repeatedly demonstrated hostility toward

Betty. Betty is entitled to have a trustee with whom she can reasonably communicate and who will treat her fairly in relation to other potential beneficiaries under the trust Betty and her late husband created. The District Court abused its discretion in declining to remove Caitlin, and in also in denying Betty's alternative request to appoint a third trustee to mitigate the effect of Caitlin's animosity toward Betty.

Third, the District Court erred in approving the sweetheart lease agreement Caitlin secured for her employer in her capacity as Trustee. Given Caitlin's conflict of interest and the drastically reduced lease payment, the District Court should have determined the agreement is voidable by Betty and reserved ruling on its fate until E Bar L disclosed the financial information necessary to assess whether the lease payment is appropriate. For these and the additional reasons set forth below, the District Court should be reversed.

## **ARGUMENT**

### **I. THE DISTRICT COURT ERRED BY DEPRIVING BETTY OF ACCESS TO E BAR L'S FINANCIAL INFORMATION.**

The Montana Uniform Trust Code imposes a mandatory duty on trustees to inform and report to qualified beneficiaries of a trust. Mont. Code Ann. § 72-28-813. Nonetheless, the District Court found the Trustees were not required to share E Bar L's tax returns and related financial information with Betty, despite the

information's critical importance to the administration of the PET and to Betty's interests thereunder. (CR 110, pp. 12, 15.) This was error.

The mandatory statutory duty to inform and report is set forth in Mont. Code Ann. § 72-38-813, which provides, in relevant part, as follows:

(1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A trustee shall promptly respond to a qualified beneficiary's request for information that is reasonably necessary to enable the qualified beneficiary to enforce the rights of the qualified beneficiary under the trust or to prevent or redress a breach of trust.

...

(3) . . . A qualified beneficiary must also receive, upon request, copies of any applicable income, estate, or transfer tax returns relevant to the administration of the trust. . . .

(Emphasis added). This statute confirms Betty's entitlement to the subject information.

**A. The information is related to the administration of the PET and is necessary to protect Betty's interests.**

As it applies to E Bar L's tax return, Mont. Code Ann. § 72-38-813(3) does not limit a trustee's duty to provide tax returns to the returns of the trust itself. The statute explicitly includes "*any applicable*" tax return that is "relevant to the administration of the trust." *Id.* (emphasis added). Here, there can be no dispute E Bar L's tax return is "applicable" to the PET and "relevant" to its administration. After all, the PET is a partner in E Bar L and thus is a potential distributee of

income from E Bar L. E Bar L's lease payment to the PET is also the largest source of the PET's income. Concerningly, it appears the Trustees may not even be reviewing E Bar L's tax return to make sure the PET is receiving what it is entitled to. According to E Bar L's representative, E Bar L was willing to provide its tax return to the Trustees, but they had not requested it. (CR 91, p. 10.)

Given that E Bar L's tax return would reflect distributions to the PET and information affecting such distributions – which in turn affects the distributions that may be made to Betty – it necessarily follows the tax return is “relevant to the administration of the trust.” Mont. Code Ann. § 72-38-813(3). Caitlin's refusal to provide a copy of the return to Betty is a clear breach of her mandatory duty to inform and report.

Caitlin's breach is further underscored by the Official Comments to § 72-38-813(1), which elaborate on the breadth of a beneficiary's right to information: “Within the bounds of the reasonableness limit, this provision allows the beneficiary to determine what information is relevant to protect the beneficiary's interests.” Mont. Code Ann. § 72-38-813, Comment (emphasis added). The comments further note that “special circumstances may require that the trustee take affirmative steps to provide additional information.” *Id.* (citing Restatement (Second) of Trusts § 173, comment (d) (1959)). Here, those special circumstances include the fact that Caitlin is financially dependent for her livelihood on E Bar L,

and the PET's payments to Betty as a beneficiary are primarily funded by E Bar L's lease payments. Even if this obvious conflict does not bar Caitlin from serving as trustee (though it should), at the very least it necessitates transparency regarding E Bar L's finances, which relate to the determination of both its lease payment and partnership distributions to the PET.

The District Court reasoned that Betty is not entitled to E Bar L's financial information because she has not alleged she needs it to enforce her interests under the PET, which the District Court identified as the "net income distributions (and sums from principal distributions if net income is insufficient)." (CR 110, p. 13.) Yet that is precisely what Betty has alleged. Betty specifically argued, for example, that disproportionately generous payments to E Bar L employees (such as Caitlin) reduce E Bar L's net profit that otherwise could be distributed to the PET. (CR 84, p. 11.) Betty's former accountant testified that because of the complexity of E Bar L's distribution structure, Betty would have a reasonable concern that there could be "some distributions being made to the other partners [Caitlin's bosses] that the trust was not sharing in." (CR 57, Ex. J, p. 9.) Indeed, the District Court expressly recognized Betty's argument that without the requested information, she cannot verify whether the "Trust is getting its fair partnership distribution, which then affects the amount of income or principal she might receive." (CR 110, p. 12-13.)

The District Court also misunderstood the concerns that gave rise to Betty’s entitlement to the information. While her concerns were initially triggered by a “highly unusual” K-1 tax form she received from the Trustees, they were not narrowly focused on her ability to file her own tax return. Rather, they were based on her rights under Montana law to be “reasonably informed about the administration of the trust” and to protect her rights under the trust. Mont. Code Ann. § 72-38-813(1). (CR 57, p. 13.) While Betty could still technically file her tax return with a K-1, her larger concern was that she cannot fully protect her interest in the PET without E Bar L’s financial information. As her former accountant explained:

[Betty] needs the K-1s, and the E Bar L K-1 flows into the trust K-1, because – well, it flows into the trust return. And so if we’re questioning transactions in the trust, there’s no way of knowing whether there’s anything that comes through E Bar L to the trust that we should know about. In the past we’ve always had that, so we always also could counter – we could check everything and make sure everything reconciled and everything was balanced...and all of a sudden, that door was closed. Never really an explanation why, it just changed with the trustees.

(CR 57, Ex. J, p. 8.)

Despite these concerns, the District Court erroneously limited the scope of Betty’s interests in information related to the PET to her ability to file a tax return, even though Montana law grants a beneficiary much broader rights to information. Mont. Code Ann. § 72-38-813. Likewise, the District Court minimized Betty’s interests by concluding her efforts “to determine whether E Bar L’s lease payment

for the Trust land is reasonable and to verify whether the [Trust] is getting its fair partnership distribution” are solely “determinations for the Trustees to consider.” (CR 110, p. 13.) The District Court thus interpreted a beneficiary’s right to information too narrowly: while trustees have the sole authority to make trust decisions, Montana law grants beneficiaries the right to review the information relevant to such decisions. Mont. Code Ann. § 72-38-813. Montana law does not force beneficiaries to blindly rely on a trustee’s decision making; it instead explicitly provides an independent right to beneficiaries to obtain and verify trust information to protect their interests.

Although this right belongs to any trust beneficiary, it takes on particular importance in a case like this, when one or more trustees has a conflict of interest that may cloud their administration of the trust. Given these facts, the District Court unjustifiably trivialized Betty’s rights as a beneficiary in concluding her efforts represented a “fishing expedition.” (CR 110, p. 13, fn. 1.) The breadth of information to which a beneficiary is entitled under Montana law, particularly when coupled with Caitlin’s clear conflict of interest and the concerns identified by Betty and her accountant, provide more than sufficient support for Betty’s request for E Bar L’s financial information. The District Court erred by concluding Betty is not entitled to this information to protect her interests as the sole permissible current beneficiary of the PET.

**B. The information is necessary to prevent or redress a breach of trust.**

The District Court also overlooked Betty’s need for E Bar L’s financial information to prevent or redress a breach of trust. Despite the governing statute’s mandate that a qualified beneficiary be given access to any information “reasonably necessary” to enforce the beneficiary’s rights and “prevent or redress a breach of trust,” Mont. Code Ann. § 72-38-813, the District Court created a brand new requirement out of whole cloth—that a qualified beneficiary must first present a prima facie showing of “mismanagement” before gaining access to relevant information. (CR 110, p. 13, fn. 1 (“[A]bsent a credible indication of mismanagement, Betty does not get a fishing expedition to look[.]”).)

The District Court cited no legal authority for imposing this burden on a trust beneficiary. Nothing in the governing statute or its Comments suggests a beneficiary must first provide proof amounting to a “credible indication of mismanagement” before gaining access relevant to the trust’s administration. To the contrary, Mont. Code Ann. § 72-38-813 states a trustee “shall” keep a beneficiary informed and “must” provide requested information. The Official Comments also recognize what the District Court did not—that a failure to comply with the duty to inform “may make it impossible for the beneficiaries to protect their interests. It may also mask more serious violations by the trustee.” Mont. Code Ann. § 72-38-706, Comment (explaining why a trustee’s breach of

the duty to provide information is a particularly appropriate circumstance justifying removal.)

By requiring proof of mismanagement before allowing access to evidence of mismanagement, the District Court effectively shielded the Trustees from scrutiny and imposed an impossible burden on Betty. Not only was the District Court's interpretation not supported by Montana law, it represents potentially disastrous public policy that would allow trustees in this state to act with virtual impunity, withholding evidence that might tip off beneficiaries to a breach of trust by adopting a narrow interpretation of what is information is "relevant" or "applicable" to the beneficiary's interest.

Furthermore, even if the standard articulated by the District Court was correct (it is not), Betty met the standard by clearly articulating "a credible indication of mismanagement." As set forth more fully above, Betty presented evidence of Caitlin's conflict of interest and hostility, her failure to provide information or communicate with Betty, the highly unusual tax documents and other red flags identified by Betty's accountant, and of the surprisingly low lease fee Caitlin negotiated for E Bar L. Even assuming this evidence was insufficient to conclusively rule in Betty's favor as a matter of law, it at least presented genuine questions of material fact precluding summary judgment in the Trustees' and E Bar L's favor. Mont. R. Civ. P. 56.

Betty has an interest in the financial information of E Bar L as the income source of the trust of which she is a beneficiary. Even if more than that interest was required, Betty uncovered sufficient indications of mismanagement to entitle her to access the requested information. Caitlin's breach of Mont. Code Ann. § 72-38-813 makes it impossible for Betty to protect her interest and very well may mask more serious violations. *See* Mont. Code Ann. § 72-38-813(1), Comment. The District Court should be reversed on this point. This Court should direct that Betty be granted access to the information to which she is entitled under Montana law. *Id.*

## **II. THE DISTRICT COURT ABUSED ITS DISCRETION BY DECLINING TO REMOVE CAITLIN AS A TRUSTEE.**

A trustee must administer a trust “expeditiously and in good faith, in accordance with its terms and purposes and the interests of the beneficiaries.” Mont. Code Ann. § 72-38-801. A trustee, as a fiduciary, is held to a high standard of care and owes the trust's beneficiaries duties of loyalty and impartiality. Mont. Code Ann. §§72-38-802, 803. Accordingly, a court may remove a trustee for any one of four enumerated reasons, three of which apply here:

- the trustee commits a serious breach of trust;
- unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively or impartially; or
- a substantial change in circumstances.

Mont. Code Ann. § 72-38-706(2)(a), (c), (d).

The District Court denied Betty's request to remove Caitlin, as well as her alternative request for the appointment of an additional trustee. This was an abuse of discretion. Caitlin's conflict of interest due to her employment by E Bar L, which in turn causes her to be hostile toward Betty and to favor E Bar L and the E Bar L-affiliated beneficiaries over Betty, is an untenable situation that can be remedied only by her removal as Trustee or, alternatively, at least mitigated by the appointment of a third Trustee.

**A. Caitlin committed a serious breach of trust.**

As discussed above, the District Court erred when it determined Caitlin did not breach her duty to report and inform. Mont. Code Ann. § 72-38-813. It also overlooked that much of the information Caitlin did turn over – eventually – was provided only after Betty initiated legal action to obtain it. As a beneficiary, Betty should not have had to undertake such a costly effort to obtain information to which she is legally entitled. Caitlin's failure in this regard is a serious breach of trust which, combined with her failure to properly administer the Trust as described below, warrants her removal. *See In re Baird*, 2009 MT 81, ¶ 12, 349 Mont. 501, 204 P.3d 703 (finding a “serious breach of trust” can include “the repeated or flagrant failure or delay in providing proper information or accountings to beneficiaries”); (*see also* CR 57, Ex. Q, p. 8.)

**B. Caitlin failed to administer the trust effectively or impartially.**

A court may remove a trustee if: “because of unfitness, unwillingness or persistent failure to administer the trust effectively and impartially, the court determines that removal of the trustee best serves the interests of the beneficiaries.” Mont. Code Ann. § 72-38-706(2). Here, Caitlin’s conflict of interest in her capacities as Trustee and as an employee of E Bar L renders her unfit and has caused her to persistently fail to administer the PET effectively and impartially.

**1. Caitlin’s conflict of interest.**

A trustee must have an undivided duty of loyalty to administer the trust solely in the interests of the beneficiaries. Mont. Code Ann. § 72-38-802. A trustee must act with the utmost good faith towards the beneficiary and not in her own self-interest, or in the interest of a third person. *Wild W. Motors v. Lingle*, 224 Mont. 76, 82, 728 P.2d 412, 416 (1986). A trustee’s duty of loyalty to the beneficiary is “perhaps the most fundamental duty of the trustee.” Mont. Code Ann. § 72-38-802, Comment. The duty requires a trustee to renounce all self-interest and not deal with herself concerning trust funds for any purpose not connected with the trust. *Wild W. Motors*, 224 Mont. at 82, 728 P.2d at 416.

A trust must also be administered in accordance with the “settlor’s intent,” which is discerned from the trust agreement. *In re Charles M. Bair Family Trust*,

2008 MT 14, ¶ 32, 343 Mont. 138, 183 P.3d 61. Here, the trust agreement says nothing about ensuring E Bar L’s success or obtaining a lease agreement for Trust Land – which have proven to be Caitlin’s primary objectives. Instead, the Trust contemplates other uses for Trust Land, including a protected forest, while also emphasizing the importance of caring for Betty during her lifetime, keeping her in her home, and following her and Bill’s land management philosophy. (CR 57, Ex. F, pp. 8-9.)

Caitlin has been an E Bar L employee since 2007 and is currently the Assistant Ranch Manager. (CR 91, pp. 18-19.) She is considered a “key” E Bar L employee. (CR 91, pp. 18-19.) Her livelihood depends on maintaining the goodwill of her employers, who include contingent remainder beneficiary Juanita Vero, who has long-standing antipathy toward Betty.

The District Court determined Betty had not shown Caitlin’s employment with E Bar L is an actual conflict of interest or that Caitlin’s actions as Trustee have been contrary to the interests of the beneficiaries. It concluded that because Caitlin does not have an individual ownership interest in E Bar L, her personal interest as an employee is not of such a substantial nature that it might affect her judgment. (CR 110, p. 20.) Respectfully, under the facts of this case, this conclusion defies common sense.

It does not appear this Court has confronted this particular issue before, but other courts have found a trustee's employment by a lessee of trust property "is fraught with potential for abuse and should be avoided. Such a business relationship is on its face suspicious and, *from a fiduciary standpoint, intolerable.*" *Brown v. Batt*, 631 P.2d 1346, 1348 (Okla. Civ. App. 1981) (emphasis added). This is consistent with the fundamental principle in Montana and other jurisdictions that when a fiduciary is in a position potentially adverse to the trust or the beneficiary, the fiduciary has an impermissible conflict of interest. *See e.g., Holmes Trust*, 139 A.2d 548, 552 (Pa. 1958) (removal of trustee warranted due to the trustee's employment with a competitor of the family corporation that was a trust asset); *In Re the Eggebrecht Irrevocable Trust*, 1998 ML 52, 27 (Mont. Dist. Ct. Dec. 10, 1998) (trustees' personal financial interests in trust investment properties posed a conflict of interest that warranted appointment of successor trustee); *In re J.R.*, 2011 MT 62, ¶ 59, 360 Mont. 30, 252 P.3d 163 (conservator's purchase of ward's personal property to use in rental properties owned by conservator was "entirely improper"); *Quinn v. Central*, 104 F.2d 450, 453 (9th Cir. 1939) (breach of loyalty occurred when corporate trustee purchased bonds from itself); *Wild W. Motors*, 224 Mont. at 82 (trustee required to renounce all self-interest); *Hosey v. Burgess*, 890 S.W.2d 262, 267 (Ark. 1995) (trustees breached fiduciary duty by personally renting real property held in the trust).

The District Court also failed to consider Caitlin's own testimony and admissions regarding her dual roles. Caitlin acknowledged the PET and E Bar L's interests are not always aligned, but said she addresses this by including Co-Trustee Jim in decisions. (CR 57, Ex. K.) Caitlin also testified she deals with her divided loyalties by taking a "neutral" stance in matters involving E Bar L and the PET. (CR 57, p. 10, Ex. K.) Yet a trustee's duty of loyalty is not alleviated by the involvement of another trustee (especially one who avoids conflict with Caitlin) or taking a "neutral" stance between conflicting interests.

Caitlin's dependence on E Bar L for her employment gives her a personal financial incentive to favor E Bar L over the PET. Indeed, contrary to the position of the Initial Trustees, Caitlin believes anything that benefits E Bar L also benefits the PET. (CR 81, p. 14.) This is incorrect.

Take E Bar L's lease payments to the PET as an example. The PET receives 100% of the benefit from E Bar L's lease payments. However, if the lease payments are reduced – as they drastically were under Caitlin's watch – the PET, which has just a 26.7% interest in E Bar L, receives only a proportionate share of the benefit. This also assumes that proportionate benefit would pass through to the PET. As E Bar L's former accountant noted, the complexity of E Bar L's partnership distributions could cause the PET to not even receive its fair share. (CR 57, Ex. J, p. 9.) Additionally, any amount saved by E Bar L from a reduced

lease fee could be applied toward a higher salary or bonus for an employee – such as the unusually large one Caitlin received after becoming Trustee – to reduce the net profit available for distribution. (CR 57, p. 11.) Put simply, a trustee who cannot act solely in a trust’s best interests cannot administer the PET effectively and impartially. These facts, including Caitlin’s own admission that she tries to be “neutral,” demonstrate Caitlin cannot fulfill her role as PET Trustee.

If Caitlin were willing to address her conflict of interest in good faith, she would favor increasing the transparency of her actions. Instead, she personally supports eliminating the information Betty had previously received. Caitlin’s conflict requires her removal. Alternatively, these facts create a genuine issue for trial.

## **2. Favoritism to other beneficiaries.**

A trustee must act impartially when a trust has two or more beneficiaries. Mont. Code Ann. § 72-38-803. This case involves trust beneficiaries with a history of animosity. Yet, instead of administering the PET impartially, Caitlin has chosen a side: the E Bar L-affiliated contingent remainder beneficiaries, and especially the Vero family, one of whom is Caitlin’s boss. While Caitlin has refused Betty’s request for E Bar L’s financial information, Juanita Vero regularly receives such information because she is an E Bar L partner, and likely shares it with the other qualified beneficiaries who are her relatives, including her mother

and uncle. The ironic result is that Betty – who is both a settlor of the PET and its sole current beneficiary – gets the least information about it. The fact that Caitlin has no problem with this situation shows she cannot fulfill her duties impartially.

**C. A substantial change in circumstances requires removal.**

Another basis to remove Caitlin is the irreparably broken relationship between her and Betty, which represents a significant change in circumstances.

(CR 57, p. 17.) Mont. Code Ann. § 72-38-706(2)(d) provides that a trustee may be removed when:

[T]here has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

While Montana has few cases dealing with the removal of a trustee – and even less applying the current statutory framework – friction or hostility between the trustee and a beneficiary is a frequently-cited factor by courts in other jurisdictions for removal. *See, e.g., In re Gilmaker's Estate*, 371 P.2d 321, 325 (Cal. 1962) (finding the failure to remove a hostile trustee was an abuse of discretion); *Shear v. Gabovitch*, 685 N.E.2d 1168, 1193-94 (Mass. App. 1997) (“It is appropriate to remove a trustee when hostile feelings threaten to interfere with the administration of the trust”); *Walker v. Cox*, 531 So.2d 801, 805 (Miss. 1988) (finding hostility between trustee and beneficiary supported

removal); *Ackley v. Loughlin*, 406 So.2d 832, 833 (Ala. 1981) (finding hostility, conflict of interest, and delays in trustee's payments to widow required trustee's removal); *Brown v. Batt*, 631 P.2d 1346, 1347-48 (Okla. Civ. App. 1981) (removing trustee due to "state of extreme hostility" that existed between the trustee and beneficiary); *Estate of Berthot*, 2000 ML 5390, 2\* 75 (Mont. Dist. 2000) (removing trustee where "the relationship has degenerated to the point that a seething rage exists between the parties that shows no possibility of abatement").

The undisputed facts prove Caitlin has exhibited hostility toward Betty in a way that impairs the administration of the Trust and warrants her removal. Caitlin admits her relationship with Betty is "very hard and complicated and sad." (CR 57, p. 9, Ex. K, p. 2.). She admits Betty, as a beneficiary, should feel comfortable discussing her questions and concerns with either trustee, but that she and Betty are no longer capable of having a "pleasant" conversation. (CR 91, p. 17, Ex. F., p. 4) This undisputed breakdown in the relationship begs the question: Why Caitlin is fighting so hard to remain a Trustee?

Betty asserts her relationship with Caitlin is irreparable and that Caitlin is to blame for the breakdown in communication. (CR 57, p. 9, Ex. A, p. 7.) The undisputed facts support Betty's position. Caitlin refuses to meet with Betty regularly (CR 57, p. 9), requires a witness to be present in her limited interactions

with Betty (CR 91, p. 17), moved the Trustee office out of Betty's home to further isolate her and extinguish her involvement in PET matters (CR 57, p. 9), accused Betty of sabotage and stealing mail (CR 91, p. 16), delayed and/or refused to provide Betty with information about the PET (CR 57, Ex. E), and has continued to enforce E Bar L's rules that keep Betty isolated in her home (CR 57, p. 10; CR 91, Ex. C, p. 7).

In addition to glossing over these facts, the District Court did not acknowledge that Betty was forced to file this lawsuit and sign a confidentiality agreement to even receive the Trust's financial information for 2022 and a copy of the Five-Year Lease. (CR 91, p. 12.) Before Betty initiated litigation, Caitlin refused to even provide Betty information about the Trust itself, a wholly unsupportable position that underscores Caitlin's hostility toward Betty. (CR 91, p. 13.)

The District Court disregarded these facts and simply adopted Caitlin's unsupported and self-serving characterization of her relationship with Betty and its effect on the administration of the PET, determining that because *Caitlin* has not contended that her relationship with Betty is irreparable, then it must not be. (CR 110, p. 24.) However, even assuming the undisputed facts are insufficient to warrant judgment as a matter of law in Betty's favor – something Betty strongly disputes – they at least create factual disputes that may not be adjudicated under

Rule 56. Either way, granting summary judgment to Respondents on Caitlin’s removal was an abuse of discretion.

The District Court reasoned that any hostility Caitlin may have toward Betty is mitigated by the fact that Caitlin is not the sole decisionmaker for the PET – that both Trustees, Caitlin and Jim, must act unanimously. (CR 110, p. 24.) The mere fact that Jim provides a check on Caitlin (at least in theory) is far from sufficient to keep an openly hostile Trustee in charge. Moreover, Jim acknowledged he prefers to avoid conflict, so his ability to counteract Caitlin’s favoritism toward E Bar L and hostility toward Betty is limited, at best. (CR 57, p. 10, Ex. L, p. 4.)

The District Court also attempted to justify its wholesale adoption of Caitlin’s characterization of the facts by finding Betty had not shown the friction between her and Caitlin was caused by Caitlin, or that it interferes with the proper administration of the Trust. (CR 110, p. 24.). First, there is no requirement – under Mont. Code Ann. § 72-38-706(2)(d) or otherwise – that a beneficiary make such a showing. The question under Montana law is whether removal “serves the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust...” *Id.* The removal of an openly-hostile trustee in favor of an impartial trustee would serve the interests of all beneficiaries (rather than a select few) and would not be in any respect inconsistent with a material purpose of the PET.

The District Court determined that because Betty is the only beneficiary who objects to Caitlin continuing as Trustee, Caitlin's removal was not in the best interests of "all beneficiaries." (CR 110, p. 24.) With respect, this represents a tortured reading of the statutory requirement. It means that when a trustee is not acting impartially as required, removal is not warranted because the beneficiaries to which the trustee is bestowing favor will oppose removal. The "interests of all beneficiaries" should not be read to require unity from all beneficiaries on the question of removal, but on ensuring all beneficiaries are treated fairly and impartially.

Finally, with respect to the requirement that "a suitable cotrustee or successor trustee is available," Mont. Code Ann. § 72-38-706(2)(d), Betty identified two suitable successors. (CR 91, p. 17-18.) The District Court did not take issue with the suitability of Betty's proposed successor trustees, nor did Defendants nominate anyone else.

In summary, ample grounds exist for Caitlin's removal under either Mont. Code Ann. § 72-38-706(2) (a), (c) or (d). The District Court abused its discretion in failing to remove Caitlin as a Trustee.

### **III. ALTERNATIVELY, THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING BETTY'S REQUEST TO APPOINT A THIRD TRUSTEE.**

Despite all the evidence of Caitlin's conflict of interest and hostility toward Betty, the District Court allowed Caitlin and Jim to proceed as sole Trustees while denying Betty's request to appoint a third trustee. (CR 110, p. 26.) This not only leaves Caitlin in her position as Trustee, but allows her to retain the power and continued ability to torment Betty effectively unchecked.

The settlors of the Family Trust, Bill and Betty, appointed three Initial Trustees to administer the PET, none of whom were E Bar L employees. (CR 57, Ex. F, p. 19.) When the Initial Trustees retired, they appointed three successor Trustees who administered the PET until one of them, George, died in 2022. The District Court reasoned that because the Family Trust does not explicitly require the PET to have three Trustees, such appointment was within the Trustees' sole discretion. (CR 110, p. 26.) Unsurprisingly, Caitlin has used this discretion to prevent anything that might dilute her power.

As in the case of removal, the District Court overlooked undisputed facts, including Caitlin's conflict of interest, Caitlin's hostility toward Betty, her lack of transparency, and the changed circumstances. Add to this the inequity that Betty, a co-settlor of the PET and its sole current beneficiary, must deal with a Trustee who is beholden to E Bar L. (CR 57, Ex. F, p. 4.) Given these facts, a third trustee

should be appointed who is free from any conflict of interest and can administer the PET properly and protect the interests of all its beneficiaries. *See in Re Guardianship & Conservatorship of Elizabeth Saylor*, 2005 MT 236, ¶¶ 29, 32-34, 328 Mont. 415, 121 P.3d 532 (finding that although a conservator had not breached a duty so as to require removal, an equitable remedy was necessary to reform the lease arrangement at issue and subject it to “more searching scrutiny”). Such an approach is warranted both by equity and the Court’s statutory authority to order “any appropriate relief” to remedy a breach of trust. Mont. Code Ann. § 72-38-1001(j). It is “better to lance this boil than to let it fester” by appointing a third trustee. *Saylor* at ¶ 35.

#### **IV. THE DISTRICT COURT ERRED IN APPROVING THE FIVE-YEAR LEASE.**

Betty moved for summary judgment on the Five-Year Lease asking for two rulings: first, that the Five-Year Lease was voidable based on Caitlin’s conflict of interest, and, second, that the District Court refrain from issuing a final decision on the Five-Year Lease until Betty could review E Bar L’s financial information. Such information is critical for Betty and her expert to determine, among other things, whether the historically low \$50,000 lease payment is reasonable. (CR 57, pp. 18-19.) The District Court denied these requests and granted summary judgment to the Trustees and E Bar L instead. It approved the Five-Year Lease, even without the benefit of the information necessary to gauge its reasonableness.

**A. Caitlin’s conflict of interest renders the Five-Year Lease voidable.**

A transaction involving the management of trust property entered into by a trustee that is affected by a conflict of interest is voidable by a beneficiary. *See* Mont. Code Ann. § 72-38-802(2). Because the District Court erred in finding Caitlin did not have a conflict of interest, it also erred in determining the transaction she entered into with her employer, ostensibly as PET Trustee, was not voidable by Betty. The District Court failed to correctly apply Mont. Code Ann. §72-38-802(2).

**B. The District Court erred in approving the Five-Year Lease.**

As noted, Betty asked the District Court refrain from making a final determination on the Five-Year Lease until she and her expert could review E Bar L’s financial information. (CR 57, p. 19.) That information is crucial to an analysis of the appropriateness of the lease. (CR 57, p. 19; CR 108, ¶¶ 13-14.) Based on just the limited information she has been able to review to date, Betty’s expert was “astounded” the Trustees agreed to E Bar L’s demands in the Five-Year Lease. (CR 108, ¶ 9.) She discovered that the Five-Year Lease essentially treats work done on the Trust Land for E Bar L’s benefit to be considered as a benefit to the PET. (CR 108, ¶¶ 11-12.)

Nevertheless, the District Court relied on its prior determination that Betty was not entitled to E Bar L’s financial information to protect her interests or

enforce her rights under the PET. (CR 110, p. 31.) It also opined that Betty did not show E Bar L's financial information was necessary to ascertain whether the Lease fee was appropriate – that reasonableness of the fee is for the Trustees alone to decide. (CR 110, p. 32.) The District Court erred on both fronts.

As discussed above, the District Court's decision on Betty's entitlement to E Bar L's financial information was incorrect. Additionally, its opinion that Betty does not need the information to evaluate the Five-Year Lease is erroneous. Betty presented expert testimony on this very point. As noted above, her expert specifically opined that a review of E Bar L's financial documents was necessary to assess the reasonableness of the agreement. (CR 108, p. 7, Ex. I, ¶ 13.) Indeed, the Trustees have admitted the lease payment is based, at least in part, on what E Bar L can afford to pay. (CR 57, pp. 11-12.) Additionally, a former trustee testified that the low amount of the new lease fee was a "surprise." (CR 57, p. 12.) It is an undisputed fact that the fee is less than half what it was in the immediately preceding lease. (CR 85, p. 7.)

Despite these facts, the District Court not only refused to allow Betty access to the information she needed to meaningfully evaluate the Five-Year Lease, it went ahead and approved the agreement. Although required to view the evidence relating to the Trustees' and E Bar L's motion to approve the lease in the light most favorable to Betty, and to draw all reasonable inferences in her favor, the

District Court did the opposite. *Stricker v. Blaine Cnty.*, 2023 MT 209, ¶ 45, 414 Mont. 30, 538 P.3d 394. It disregarded the undisputed facts raising a genuine issue for trial on the reasonableness of the Five-Year Lease.

Furthermore, by denying Betty the ability to review E Bar L’s financial information, the District Court effectively handicapped her ability to prove the lease fee is disproportionately low and/or has resulted in a more favorable outcome to Caitlin. For example, Betty is unable to assess or determine whether E Bar L’s lease fee savings have resulted in an increase in Caitlin’s salary. At a minimum, approval of the Five-Year Lease at the summary judgment stage was inappropriate given the disputes between the parties’ experts regarding the factual information needed to properly analyze the issue.

**V. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING BETTY’S REQUEST FOR ATTORNEY FEES.**

“In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is subject of the controversy.” Mont. Code Ann. § 72-38-1004. The District Court determined Betty’s petition was “reasonably necessary for her to seek a Court decision regarding her rights as beneficiary,” but did not award attorney fees because Betty did not prevail on her claims. (CR 110, p. 34.)

For the reasons set forth above, the District Court's decision on fees was an abuse of discretion. Betty should prevail on her claims for relief, and there is substantial evidence of Caitlin's hostility towards Betty and conduct against her interests. Betty should be awarded her attorney fees to be paid by the Trust and E Bar L, in equal shares.

### CONCLUSION

This Court should re-affirm and enforce Betty's rights as a qualified beneficiary of the PET. It should reverse the District Court and:

- 1) Order that copies of E Bar L's tax returns and related financial information be provided to Betty;
- 2) Order that Caitlin be removed as a Trustee of the PET;
- 3) Alternatively, order an additional trustee of the PET be appointed from Betty's nominees;
- 4) Declare that the Five-Year Lease is voidable and instruct that it may only be approved (or not) after Betty receives E Bar L's financial information and is given an opportunity to be heard on the reasonableness of the agreement;  
and
- 5) Award Betty her attorney fees as the prevailing party.

Dated: January 17, 2025

BOONE KARLBERG P.C.

By: /s/ Julie R. Sirrs  
Julie R. Sirrs,  
Attorney for Appellant

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Opening Appellate Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced except for quoted and indented material, and contains approximately 9,939 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

Dated: January 17, 2025

BOONE KARLBERG P.C.

By: /s/ Julie R. Sirrs  
Julie R. Sirrs,  
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## CERTIFICATE OF SERVICE

I, Julie Rachel Sirrs, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 01-17-2025:

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