

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Case No. DA 24-0469

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,

Appellees and Respondents.

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.

APPELLEE E BAR L RANCH, LLP'S ANSWER BRIEF

On Appeal from the Fourth Judicial District Court, Missoula County

Cause No. DC-21-91

The Honorable Shane Vanatta, District Judge, Presiding

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I. INTRODUCTION

This case is about the limits of a trust beneficiary’s rights and the proper role of trustees in administering a long-standing family trust. The District Court carefully weighed the Parties’ competing claims and, in a well-reasoned decision, reaffirmed that trustees owe beneficiaries a duty of loyalty, but not unfettered access to third-party financial records, nor a right to overrule trustee decisions or choose another trustee. That ruling should be affirmed.

At its heart, this case is *not* about mismanagement or self-dealing—because none was detailed. Instead, it is about a beneficiary’s dissatisfaction with decisions that are well within the trustees’ discretion. Appellant Betty N. Potter (“Betty”), the sole current income beneficiary of Potter Exemption Trust (“PET”), demanded financial records from Appellee E Bar L Ranch, LLP (“E Bar L”), an entity in which PET holds a minority interest and in which Betty holds no interest. When the co-trustees, Caitlin Wall (“Caitlin”) and James Stone (“Jim”) refused, citing their duty to protect the PET’s assets and maintain confidentiality, Betty framed it as a breach of fiduciary duty. The District Court rightly rejected that claim. The court also correctly upheld the co-trustees’ (collectively the “Trustees”) authority to manage the PET, finding no legal or factual basis for removing Trustee Caitlin, despite Betty’s insistence that her employment at E Bar L created an inherent conflict of interest.

Trust law does not empower courts to second-guess trustees simply because a beneficiary prefers a different course. As the District Court recognized, the Trustees are bound by fiduciary obligations to PET, not to any single beneficiary's preferences. Their decision to execute a long-term lease with E Bar L—an arrangement that provides financial stability and aligns with the trust's historical land management practices—was a reasonable exercise of their authority.

This Court should affirm. The District Court's opinion adheres to both the text of the PET and Montana law. It prevents an income beneficiary from expanding her role beyond what the trust contemplates, and it ensures the Trustees retain the discretion necessary to act in the best interests of the PET, not just its loudest voice.

II. STATEMENT OF ISSUES FOR REVIEW

E Bar L re-frames the issues for review as follows:

1. Did the District Court correctly determine Betty is not entitled to E Bar L's detailed financial information?
2. Did the District Court abuse its discretion by denying Betty's petition to remove Caitlin as trustee, having reasonably concluded that Betty failed to demonstrate either a disqualifying conflict of interest or hostility sufficient to warrant the trustee's removal?
3. Did the District Court abuse its discretion in refusing Betty's alternative request to appoint a third trustee of Betty's choosing, where such

appointment was neither mandated by the trust nor necessary for effective trust administration?

4. Did the District Court correctly approve a lease agreement between PET and E Bar L, where the evidence demonstrated the agreement's terms were fair, reasonable, and beneficial to the PET?

5. Did the District Court abuse its discretion when it denied Betty's request for attorney fees, concluding that Betty's unsuccessful litigation efforts did not entitle her to an award of attorney fees?

III. STATEMENT OF THE CASE

This case arises from Betty's attempt to recast the terms of a trust she helped settle by removing a trustee, invalidating a lease, and demanding access to confidential financial records of a private business in which the trust holds only a minority interest. Betty is the sole current income beneficiary of PET which holds a minority partnership interest in E Bar L. She is not a partner in E Bar L, holds no ownership interest in it, and has no legal right to its internal records.

In the District Court Betty petitioned for (1) the removal of Trustee Caitlin Wall based on alleged conflict of interest stemming from Caitlin's employment with E Bar L; and (2) an order compelling the PET's trustees to disclose E Bar L's confidential financial information; and (3) an order allowing her to appoint a third trustee even though none is required by the trust document itself. *See* Dkt. 14. The

PET's Trustees opposed Betty's petition and counter-petitioned for: (1) a declaration that the Trust could continue with two trustees; (2) a declaration Caitlin does not have a conflict of interest; and (3) judicial approval of the five-year land-use lease between the PET and E Bar L; and (4) clarification of Betty's rights as a beneficiary. *See* Dkt. 26.

E Bar L appeared to oppose Betty's request for is confidential financial records and to defend the enforceability of its lease—an agreement that ensures the continued operation of the ranch, supports PET income distributions, and provides housing for Betty herself. Dkt. 35.

The PET contingent beneficiaries, Mary Potter Vero and William “Spike” Potter, also appeared in support of the Trustees and opposed Caitlin's removal.

The Parties conducted extensive discovery. The case was then submitted on cross-motions for summary judgment. *See* Dkts. 56–57, 59–60, 64–65, 72, 79–81, 84–89, and 91. The District Court held oral argument on April 2, 2024. *See* Dkt. 96. At Betty's request, the court permitted supplemental briefing. *See* Dkts. 106–109.

On July 11, 2024, the District Court entered summary judgment in favor of the Trustees and E Bar L. *See* Dkt. 110. The Court held that:

- (1) Betty is not entitled to E Bar L's confidential financial records;
- (2) There is no basis for removing Caitlin as a trustee;

- (3) The land-use lease between the PET and E Bar L is valid and enforceable;
- (4) The Trust may continue to operate without appointing a third trustee of Betty's choosing; and
- (5) No party was entitled to attorneys' fees.

Betty now appeals. E Bar L appears as Appellee to preserve the District Court's judgment, protect its contractual rights and confidential information, and prevent disruption of a long-standing and carefully administered partnership with the PET.

IV. STATEMENT OF FACTS

For over a century, the E Bar L Ranch has operated on pristine forested land near Greenough, Montana. Dkt. 60 at 3, Ex. A: Dep. Potter: 14:6–17:15, 24:12–25:8, 66:24–68:10; Ex. B: Dep. Lindbergh 72:2–73:19. E Bar L has a parcel of its own, but for its entire history, it has also operated on 4,000 acres of adjacent land situated on the banks of the Blackfoot River. Dkt. 60 at 3, Ex. A: Dep. Potter 10:8–16, 14:6–17:15. This land is known as the Trust land. The Trust land was originally acquired by Orrin “Bill” W. Potter, Jr.’s family in the early 1910s. *Id.* By the 1920s, the family established the E Bar L Ranch, an enduring institution in western Montana. Mr. Potter, a lifelong conservationist, dedicated himself to protecting the Trust land’s ecological integrity, culminating in his 1998 decision to encumber the property with

a conservation easement in favor of The Nature Conservancy (“TNC”), ensuring that the land’s character would be preserved in perpetuity. Dkt. 60 at 3, Ex. B: Dep. Lindbergh 12:3–14:7; Ex. C: Dep. Goetz 15:10–17:14; Ex. D: The Easement §§ 5, 7–8. *See also* Dkt. 57 at 3.

In 2003, Mr. Potter and his second wife, Betty created the Potter Family Trust. Bill and Betty were co-trustees. Dkt. 60 at 4, Ex. A: Dep. Potter 20:24–21:3, 23:25–26:12, Ex. E: The Family Trust, Art. 2, Schedule A: Bill’s Property §§ 1, 5. Into the Family Trust, Mr. Potter transferred two significant assets: the Trust land itself and his 26.7% partnership interest in the E Bar L Ranch. *Id.* The Family Trust was structured such that, upon Mr. Potter’s death, the estate would be divided into three sub-trusts, including, PET, which was designated to hold both the Trust land and the E Bar L partnership interest. Dkt. 65, Ex. F, Art. II, Schedule A § 1; Ex. A at 20:24–19, 23:25–26:12. This structure restricted Betty’s control of the Trust Land and E Bar L, and was intended to preserve the long-term functioning of the E Bar L while fulfilling Mr. Potter’s desire that the Trust land be managed to preserve its unspoiled character. Dkt. 60, Ex. E; Dkt. 60, Ex. B, Dep. Lindbergh: 29:1–9; Ex. C, Dep. Goetz 14:18–15:7, 25:22–27:7.

Mr. Potter passed away in 2013. Dkt. 60 at 4, Ex. C: Dep. Goetz 25:9–11. Upon his death, the Trust operated as he intended: his partnership interest in E Bar L and the land transferred into the PET, and Betty transitioned from Co-Trustee of

the Potter Family Trust to beneficiary of the PET. Dkt. 60 at 4–5, Ex. A: Dep. Potter 32:19–33:17; Ex. B: Dep. Lindbergh 29:1–9; Ex. C: Dep. Goetz 14:18–15:7, 25:22–27:7. This shift carried significant legal implications. As the initial settlors and trustees, Bill and Betty were bound by fiduciary obligations to administer the Family Trust for the benefit of all beneficiaries, including the contingent beneficiaries, Bill’s children, Mary Potter Vero and William S. Potter. But upon Bill’s passing, Betty’s role changed as Bill intended, to income beneficiary of PET. Dkt. 60 at 5, Ex. B: Dep. Lindbergh 52:20–53:21; Ex. C: Dep. Goetz 41:2–5; Ex. E: The Family Trust, Art. 7(F). Management authority or decision-making power over PET transitioned to the trustees Mr. Potter chose, and Betty became a recipient of its benefits. *Id.* Despite this clear distinction, Betty sought the authority of a trustee—interfering with the management of the PET and attempting to exercise control over assets and decisions that were not hers to make. *Id.*

Betty’s actions in the years following Mr. Potter’s death demonstrate a troubling disregard for the PET’s fiduciary structure. Dkt. 65, Ex. B at 55:13–57:7, 61:6–62:5, 109:25–111:21. Betty began a relentless campaign to micromanage and obstruct E Bar L’s operations, criticizing everything from parking arrangements to how livestock were fed. Her complaints ranged from the trivial—demanding that vehicles not protrude an inch onto Trust land—to the symbolic, such as denying Juanita Vero, Mr. Potter’s granddaughter, permission to be married on the family

land. Dkt. 65, Ex. B at 111:15-114:15. Her objections were not rooted in concern for trust administration but in personal animus, particularly towards Mr. Potter's children from his first marriage, Mary Potter Vero and William "Spike" Potter. Dkt. 65, Ex. B at 55:6-58:3; Ex. D at 38:13-40:15. By her own admission, Betty's aim was to prevent Mr. Potter's descendants from receiving any benefit from the Trust. *Id.* In her words, she believed one way to accomplish that goal was to "have the Trust hold fewer assets." Dkt. 65, Ex. A at 274:16-24.

This statement alone lays bare Betty's unsavory motives. As an income beneficiary, Betty is entitled to receive income and information as specified by the PET, but she is not permitted to sabotage the PET's operations or undermine its value for the express purpose of disadvantaging other beneficiaries. Her conduct—marked by persistent interference, demands for control, and bad-faith accusations—reflects a misuse of her position and a failure to respect the rights and interests of others the Trust was designed to serve.

Meanwhile, the Trustees acted prudently and consistently with their fiduciary obligations. After Betty became a beneficiary, the original PET trustees—Land Lindbergh, Henry Goetz, and James Masar—worked in good faith to negotiate a long-term lease for the E Bar L's use of the Trust land. Dkt. 65, Ex. A at 78:11-16; Ex. D at 54:5-57:20, 62:5-64:11. Although those efforts were initially unsuccessful, the efforts were resumed by the successor trustees, Jim, Caitlin, and George

Hirschenberger (deceased) and a five-year lease (“Lease”) entered in April 2022.¹ Dkt. 70, Ex. 1. Betty takes issue with a five-year term, though she and Mr. Potter agreed to a five-year lease with E Bar L from 2010 to 2015. Dkt. 60 at 4, Ex. A: Dep. Potter 206:1–207:24; Ex. B: Dep. Lindbergh 23:2–22.

After a series of shorter-term leases between 2016 and 2021, co-trustee George Hirschenberger (deceased) negotiated in detail and at arm’s length, with E Bar L regarding Lease terms. Dkt. 108, Exs. E-H; Dkt. 65, Ex. H at 150:17-156:11; Ex. I Lease, April 7, 2022. Caitlin initially opposed entering a long-term lease with E Bar L, because she thought it was important that the successor trustees become experienced in their positions before entering any long-term commitments but ultimately agreed and signed off on it. Dkt. 65, Ex. G at 160:11-161:3, 162:5-24.

In addition to significant rent that increases over time, the Lease includes detailed safeguards: it restricts the ranch’s use of the land, enforces compliance with the Conservation Easement, preserves timber rights, requires an annual operating plan subject to Trustee approval, and mandates capital investment by the E Bar L. Dkt. 65, Ex. A at 63:18-74:4, Ex. H at 150:24-162:15; Ex. I at §§ 3, 5–6, 8–9. The

¹ The PET trustees have authority to designate their successors. Dkt. 60, Ex. E, Art. 15(A). The original trustees chose George Hirschenberger, James Stone, and Caitlin Wall, as their successors. Dkt. 60 at Ex. B, Dep. Lindbergh:83:12-25; 115:9–23; Ex. C: Dep. Goetz 67:2–24; 85:2–87:2. Upon George Hirschenberger’s death, only Jim and Caitlin remained as trustees.

Lease is a product of arms-length negotiations and reflects the Trustees' effort to balance economic sustainability, conservation, and intergenerational benefit. *Id.*

Betty has sought to disrupt that Lease through a variety of means, most notably by claiming Easement violations where none exist. Dkt. 65, Ex. A at 119:6-120:25, 123:12-137:20. Her concerns have been evaluated by TNC, the sole entity authorized to enforce the Easement. Dkt. 65, Ex. J. TNC officials, including its land steward, have found the E Bar L and the Trust to be in compliance. *Id.* Betty has conceded under oath that TNC's opinion, not her own, governs compliance. Dkt. 65, Ex. A at 131:19-132:7, 136:15-137:2. Nevertheless, she has persisted in these claims, creating unnecessary conflict and administrative burden for the Trust and E Bar L.

Betty has also sought confidential financial records from the E Bar L—records that the Trust, not Betty individually, is entitled to receive as a partner. Dkt. 65, Ex. H at 135:10-136:15; Dkt. 14, ¶¶ 48-50. As an income beneficiary, Betty receives the Trust's K-1. Dkt. 65, Ex. G at 175:8-176:7. This satisfies the Trustees' obligations under applicable trust law and gives Betty what she needs to complete her personal tax return. Dkt. 65, Ex. O, Betty's Resps. to E Bar L's Second Disc. Reqs., Resps. to Reqs. for Adm. Nos. 1-5, and compare Ex. A at 161:6-9; 217:1-9. Her demands for internal ranch documents and detailed financial records from E Bar L exceed her rights and reflect another example of her refusal to accept the limits of her current role.

On February 9, 2022, Betty filed a Verified Amended Petition seeking the removal of Trustee Wall and the production of confidential business records. Dkt. 14. In response, the PET, Ms. Wall, and Mr. Stone filed a Verified Counter-Petition for Declaratory Relief, asking the Court to affirm the Lease, uphold the Trustees' authority, and reject Betty's overreach. Dkt. 26 at 8.

This case is not a matter of trust mismanagement, but of a beneficiary who refuses to acknowledge the boundaries of her role and the structure of the Trust Mr. Potter intentionally created. The Trustees have acted with diligence and fidelity to their obligations. The Lease with E Bar L is valid and in the best interest of all beneficiaries. Betty's campaign to destabilize the Trust and devalue its assets—to the detriment of contingent beneficiaries—should be rejected. The law does not permit a beneficiary to substitute her personal animus for sound fiduciary governance.

V. STANDARDS OF REVIEW

This Court reviews the District Court's entry of summary judgment *de novo*. *Cole ex rel. Edgar C. Cole Revocable Trust v. Cole*, 2003 MT 229, ¶ 8, 317 Mont. 197, 75 P.3d 1280. In doing so, the Court undertakes the same analysis as the District Court—determining whether the undisputed material facts entitle the Trustees to judgment as a matter of law. *Edie v. Gray*, 2005 MT 224, ¶ 11, 328 Mont. 354, 121 P.3d 516.

Because the District Court’s summary judgment ruling involved adjudication of discretionary issues, those rulings are reviewed for an abuse of discretion. *Id.* This encompasses the District Court’s refusal to release E Bar L’s financials, to remove Caitlin as a Trustee, to appoint a third trustee of Betty’s choosing, to approve the Lease, or to award Betty her attorneys’ fees. See *In re Baird*, 2009 MT 81, ¶ 11, 349 Mont. 501, 204 P.3d 703; *United Nat. Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 2009 MT 269, ¶ 13, 352 Mont. 105, 214 P.3d 1260. “A district court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or in excess of the bounds of reason resulting in substantial injustice.” *St. Paul Fire*, ¶ 13.

VI. SUMMARY OF THE ARGUMENT

Betty Potter’s appeal seeks to rewrite trust law and upend a long-standing relationship between the PET and E Bar L Ranch, LLP—a private partnership in which the PET holds only a minority interest. The District Court correctly rejected every aspect of her overreach.

First, Betty is not entitled to E Bar L’s confidential financial records. She is not a partner, has no ownership stake, and has already received all trust-related information to which she is legally entitled. Her request would violate the PET’s fiduciary duties to E Bar L’s other partners and contradict well-established limits on a beneficiary’s right to information. Moreover, while Betty claimed she required E

Bar L's confidential financial information for her own tax purposes, she failed to prove as much.

Second, the District Court properly refused to remove Trustee Caitlin Wall. Betty's claim of conflict rests solely on Caitlin's employment with E Bar L—an arrangement that is longstanding, has no ownership interest, and is entirely unrelated to her role as trustee. The Trustees are required to make all decisions unanimously, and Betty offered no evidence of self-dealing, divided loyalty, or breach of fiduciary duty.

Third, the District Court correctly approved the PET's five-year lease with E Bar L. The Lease was negotiated and unanimously approved by all three Trustees, preserves the Trust's income streams, secures Betty's right to remain in her home, and aligns with the Trust's historical use of the land. Betty's suggestion that she should be allowed to void the Lease—without any showing of unfairness or conflict—is unsupported by law and contradicted by her own past approval of a five-year lease.

Finally, there is no basis to appoint a third trustee of Betty's choosing. The PET grants that authority to the sitting trustees—not to any beneficiary. Betty's proposed candidates were unwilling, unqualified, or aligned with her litigation goals, which are improper. Adding a third trustee would risk deadlock in a trust that currently functions as it was intended at the time of its creation.

The District Court’s decision is grounded in the trust’s terms, supported by the factual record, and faithful to Montana law. It should be affirmed in full.

VII. ARGUMENT

A. The District Court Properly Limited Betty’s Access to E Bar L’s Confidential Financial Information.

A trustee’s duty to provide information is clear, but it is not unlimited. Under Montana law, trustees must keep beneficiaries “reasonably informed” and provide information “reasonably necessary” to protect beneficiary interests or to redress breaches of trust. Mont. Code Ann. § 72-38-813(1). Yet, as the comments to § 72-38-813 emphasize, this obligation does not encompass disclosures that are “unreasonable under the circumstances” or expressly “forbidden by other law.” *See also* Restatement (Third) of Trusts § 82, cmt. e (noting courts may limit the extent of beneficiary requests for information from trustees by weighing the intrusiveness and privacy considerations involved).

Here, Betty’s demand for E Bar L’s detailed financial records clearly exceeds these statutory boundaries. First, the law expressly forbids the disclosure of E Bar L’s confidential tax returns and financial statements. Federal law strictly prohibits external dissemination of an entity’s tax returns absent specific legal authorization, which Betty lacks. *See* 26 U.S.C. § 6103 (“Returns and return information shall be confidential” and “no other person who has or had access to returns...shall disclose any return or return information obtained by him...”). Similarly, Montana

partnership law mandates fiduciary confidentiality obligations among partners, which preclude PET from disclosing sensitive internal financial information of E Bar L to external parties, including trust beneficiaries. *See* Mont. Code Ann. § 35-10-405(5); *see also Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 11, 390 Mont. 12, 17, 407 P.3d 692, 697 (recognizing that “fiduciary duties include honesty, good faith, fair dealing, loyalty, [and] *confidentiality...*”) (emphasis added). These legal boundaries alone justify affirming the District Court’s decision.

Betty is not merely seeking information from E Bar L to ensure effective trust administration; she is seeking literally every financial record it maintains on an extremely intrusive, granular level. Betty wants E Bar L’s QuickBooks files, the documents underlying E Bar L’s QuickBooks files, records of expenses, and profit and loss statements, among other things. Dkt. 48 at 10-11. She asks the Court to order the Trustees to provide her with the “information she has requested for tax purposes.” Dkt. 14 at 10. Her only other reasons for wanting the information were so she can “protect her interest in the Trust” and that she would just generally find it “interesting.” Dkt. 14, ¶¶ 48-49, Ex. A at 217:1-12. None of Betty’s reasons justify a Court order requiring E Bar L or the Trust to disclose E Bar L’s confidential financial and business information.

Second, Betty’s claim of necessity falls flat. She argues that detailed financial information is vital to monitoring PET’s distributions and protecting her beneficial

interests. Op. Br. at 17–19. But trustees’ informational duties are designed to ensure meaningful oversight, not to grant beneficiaries carte blanche access to confidential records of entities partially owned by the trust. *See Wallace v. Malooly*, 4 Ill. 2d 86, 95, 122 N.E.2d 275, 280 (1954) (recognizing that trustees may decline a beneficiary’s request for information when the request is merely to “gratify his curiosity or for a speculative or vexatious purpose[.]”); *see also Rollins v. Rollins*, 294 Ga. 711, 715, 755 S.E.2d 727, 731 (2014) (where a trust has a minority interest in a corporation, the trustee does not have “a duty to advance the interest of a beneficiary at the expense of the corporation and other outstanding stockholders’ interests.”).

Indeed, Betty has not demonstrated a single instance where her beneficial interest was jeopardized or compromised by withholding E Bar L’s sensitive financial details. On the contrary, PET’s discretionary distributions to Betty remain robust and even prompted Betty to request lower distributions. Dkt. 60 at 16–17. In short, the purported necessity of Betty’s request is undermined by her own documented conduct.

Third, Betty already receives comprehensive and sufficient information relevant to PET’s administration. This includes PET’s own tax returns, complete QuickBooks records, K-1 statements from E Bar L, and detailed monthly bank statements. Dkt. 81 at 5, 9. Courts routinely find such disclosures sufficient to fulfill

trustees' informational obligations. *See Taylor v. Nationsbank Corp.*, 125 N.C. App. 515, 521, 481 S.E.2d 358, 362 (1997) (stating that a trustee is not obligated to give a trust beneficiary information that is not "reasonably necessary" for the beneficiary to "redress a breach of trust").

Fourth, Betty's claim that she requires E Bar L's confidential financial records for her own tax purposes proved false. Dkt. 110 at 11-12. While Betty makes the unsupported argument that one K-1 she received from PET was "highly unusual", she admits she filed her tax returns for all relevant years. Dkt. 65 at 13-15; Opp. Br. at 20. Further, E Bar L's retained CPA expert opined a trust beneficiary, such as Betty, does not require the records she seeks to complete her taxes and rather may submit a form 8062 with the IRS if she believes something in PET's K-1 or the K-1 E Bar L issued to PET is incorrect. Dkt. 110 at 11-12. Betty did not and cannot demonstrate she requires E bar L's confidential financial information for her own tax purposes.

In sum, equity does not support Betty's broad request. Montana's trust laws explicitly integrate principles of equity, Mont. Code Ann. § 72-38-107, and courts have refused to condone excessive or burdensome demands for confidential information by beneficiaries. *Ruth Bronner & Zwi Levy Family Sprinkling Tr.*, 2016 NY Slip Op 30086(U), ¶ 22 (Sur. Ct.) (holding that the appropriateness of a beneficiary's request for information "must be determined in light of the circumstances, with the touchstone being fairness.").

Betty's approach typifies overreach: despite already receiving extensive disclosures and daily updates far exceeding statutory requirements, she contends that no piece of information is beyond her entitlement. Dkt. 57 at 13. This aggressive posture stands in stark contrast to Betty's contradictory position that other beneficiaries—Mr. Potter's heirs—should receive no information whatsoever. Dkt. 60 at 9–10.

In sum, the District Court properly recognized the clear legal and equitable limits on a beneficiary's informational rights. Betty's expansive demands for confidential business records of E Bar L exceed statutory obligations, breach confidentiality constraints, lack demonstrated necessity, and are inequitable under these facts. Accordingly, the District Court's decision to restrict Betty's access to confidential financial information should be affirmed.

B. The District Court Did Not Abuse Its Discretion by Refusing to Remove Caitlin as a Trustee

Montana law provides for the removal of a trustee only in narrow, statutorily defined circumstances. *See* Mont. Code Ann. § 72-38-706. A trustee may be removed for: (1) committing a “serious breach of trust,” § 706(2)(a); (2) persistently failing to administer the trust effectively and impartially, if removal is in the best interests of all beneficiaries, § 706(2)(c); or (3) a substantial change in circumstances, if removal would serve all beneficiaries and is not inconsistent with the trust's material purposes, § 706(2)(d). The District Court examined each of these statutory grounds

and correctly declined to remove Caitlin Wall as a Trustee. That ruling was not only consistent with the statutory text—it was firmly supported by the record.

1. No Serious Breach of Trust Justifies Removal under § 706(2)(a)

The only alleged “serious breach of trust” cited by Betty is the Trustees’ collective refusal to provide her with E Bar L’s confidential financial information. Dkt. 57 at 15–16; Op. Br. at 25–26. But because Betty is not entitled to that information, the Trustees’ decision to withhold it—made on the advice of counsel and in consideration of fiduciary obligations to E Bar L’s partners—was both reasonable and legally defensible. Dkt. 81 at 7–9.

Even assuming the Court were to conclude Betty is entitled to that information, removal is still not warranted. As this Court held in *In re Baird*, 2009 MT 81, ¶¶ 12–13, 349 Mont. 501, 204 P.3d 703, not every breach requires removal. Betty herself tacitly concedes the point—she seeks only Caitlin’s removal, not Jim’s, even though all decisions of the PET, including the decision to withhold E Bar L information, were unanimous.

The Trustees did not act with malice or self-interest. Rather, they sought judicial guidance to clarify the extent of their disclosure obligations. Dkt. 81 at 10–11. Betty offered no evidence that Caitlin’s conduct was independently motivated or improper. The District Court rightly declined to remove a Trustee for adhering to fiduciary caution and legal advice.

2. Caitlin Did Not Violate Her Duty of Impartiality under § 706(2)(c)

Betty argues that Caitlin should be removed because of her dual role as an E Bar L employee and Trustee, and for allegedly favoring other beneficiaries. Dkt. 57 at 16–17; Op. Br. at 26–31. The District Court carefully considered both arguments and rejected them for lack of evidence. Dkt. 110 at 16–22. That conclusion was sound.

i. Caitlin's Employment with E Bar L Does Not Constitute a Conflict of Interest

The Montana Uniform Trust Code does not—and should not—require removal of a trustee merely because that trustee is employed by an entity in which the trust owns an interest. Such a rule would render many commercial trusts unmanageable and ignore the real-world benefits of appointing fiduciaries who are intimately familiar with the trust's operating assets. As the District Court found, Caitlin Wall holds no ownership interest in E Bar L and has never exercised her fiduciary role to its advantage or the Trust's detriment. Dkt. 110 at 19–20. This Court should not endorse a per se rule that would penalize informed trusteeship.

Montana law imposes a duty of loyalty on trustees, requiring them to act “solely in the interests of the beneficiaries.” Mont. Code Ann. § 72-38-802(1). Transactions affected by conflicts between fiduciary and personal interests are generally voidable. Mont. Code Ann. § 72-38-802(2)–(3). But as the comment notes,

a conflict does not exist if the trustee demonstrates that their actions were unaffected by personal interests.

Caitlin made that showing. She works as an assistant ranch manager, supervising housekeeping and kitchen staff—hardly a key decision-making role. Dkt. 81 at 15, Ex. G: Dep. Knox 57:16–58:10, 66:20–67:3. Betty admits she has no evidence that Caitlin ever allowed her employment to influence her decisions as trustee. Dkt. 60 at 10.

Critically, the PET itself owns an interest in E Bar L and has historically leased land to it. E Bar L's continued existence supports PET objectives, including providing income for distributions, preserving Betty's right to reside on both land a home owned by E Bar L, and its philosophical alignment with preserving the ecological integrity of trust land. *See* Dkt. 60 at 14. In this context, the PET's relationship with E Bar L is not a conflict to be managed—it is a mutually beneficial fiduciary interest to be protected. *See* Mont. Code Ann. § 72-38-809.

Contrary to Betty's suggestion, case law does not compel removal under these facts. Betty, for example, relies on *In re Holmes' Trust*, 139 A.2d 548 (Pa. 1958) for the proposition that a trustee employed by a corporation in direct competition with another business in which the trust held an interest is conflicted. This case is hardly instructive on the facts of this case in which the PET itself owns an interest in E Bar L and E Bar L is not in competition with PET. Another case relied upon by Betty is

similarly inapposite, *Brown v. Batt*, 631 P.2d 1346 (Okla. Ct. App. 1981), which involved a trustee who approved a questionable lease and was later hired by the lessee. Here, Caitlin’s employment predates her trusteeship, involves no decision-making role, trustee decisions require unanimity, Caitlin does not stand to benefit from any decision she makes as trustee personally, and no self-dealing has occurred.

Indeed, the principle invoked in *In re Conservatorship of J.R.*, 2011 MT 62, ¶ 59, and other cases cited by Betty (e.g., *Quinn v. Central Co.*, 104 F.2d 450 (9th Cir. 1939); *Hosey v. Burgess*, 890 S.W.2d 262 (Ark. 1995))—that trustees cannot enrich themselves at the trust’s expense—is both sound and inapplicable. Caitlin is not acquiring trust assets, benefiting financially from trust transactions, or controlling any entity that does.

Courts decline to remove trustees for mere speculative conflicts. *See Anderson v. Intel Corp. Inv. Policy Comm.*, 579 F. Supp. 3d 1133, 1156 (N.D. Cal. 2022) (finding no breach of the duty of loyalty where plaintiffs failed to plausibly show that an investment committee’s actions improperly benefited a subsidiary at the expense of investors); *In re Betty A. Luhrs Trust*, 443 N.W.2d 646, 651 (S.D. 1989) (rejecting removal of a co-trustee based on “potential conflict of interest” absent evidence of abuse of trustee’s power). The District Court correctly found that Caitlin’s employment did not amount to a disqualifying conflict.

ii. *There Is No Evidence Caitlin Favored Other Beneficiaries*

Betty also claimed Caitlin favored other beneficiaries—specifically, that Mary and Spike may have received information from Mary’s daughter. But this theory was purely speculative. Betty offered no evidence that Caitlin played any role in this alleged information flow. Dkt. 110 at 21.

Worse, Betty’s own conduct undermines her appeal to equity. She testified that she alone should have a say in trust decisions and that Mr. Potter’s heirs—other PET beneficiaries—should receive no information. Dkt. 60 at 9–10. She has openly tried to install Trustees who would cut off distributions to Bill’s heirs upon her death. Dkt. 86 at 3–4. This kind of inequitable posture—and vindictive motive—weighs heavily against removal. *See* Mont. Code Ann. § 72-38-706(2)(c).

Indeed, even if Caitlin were shown to be partially biased, removal would still be inappropriate unless it “best serves the interests of all beneficiaries.” *Id.* Here, all other beneficiaries oppose Caitlin’s removal. Dkt. 86 at 8. Removal would advance only Betty’s personal preferences and unsavory motives—not the Trust’s collective good.

3. No “Substantial Change in Circumstance” Justifies Removal under § 706(2)(d)

Betty’s final argument is that the breakdown in her relationship with Caitlin constitutes a “substantial change in circumstances.” But interpersonal friction does not warrant removal unless it “impairs the proper functioning of the trust.”

Restatement (Third) of Trusts § 37, cmt. e(1). Courts routinely reject attempts to remove trustees based on hostility or communication breakdowns. *See Wolosoff v. CSI Liquidating Trust*, 500 A.2d 1076, 1082 (N.J. Super. Ct. App. Div. 1985) (finding that mere friction or hostility between the trustee and the beneficiary is not a sufficient ground for removing the trustee); relying on Restatement (Second) of Trusts, § 107. If this were not the case, a beneficiary who otherwise lacks sufficient grounds for removal of a trustee could nevertheless compel that removal simply by instigating a fight, which appears to be Betty's strategy here.

The record shows that Betty unilaterally cut off communication with Caitlin and insisted she resign. Dkt. 60 at 8–9. Caitlin has made repeated efforts to interact civilly, even during litigation. *Id.* at 8–9; Dkt. 88 at 6. Both parties expressed openness to reconciliation. Dkt. 60 at 8; Ex. A: Dep. Potter 138:7–140:9. That alone supports the District Court's refusal to find impairment.

Moreover, there was no showing that the friction impeded trust operations. Betty continues to receive distributions. Jim—her preferred Trustee—must approve all decisions, as the PET requires the Trustees act unanimously in all decision. And even if the Court found a sufficient breakdown, removal would still require a showing that it serves all beneficiaries and that a suitable replacement exists. Mont. Code Ann. § 72-38-706(2)(d). The District Court found no such showing. Dkt. 110 at 24.

C. The District Court Did Not Abuse Its Discretion by Refusing to Appoint a Third Trustee of Betty's Choosing

In her filings before the District Court, Betty sought the appointment of a third trustee—one of her own exclusive choosing. Dkt. 87 at 19–20. She proposed three individuals for the role: Scott Gordon, Curt Friede, and Baiba Eastlick. *Id.* The District Court correctly rejected this request, concluding that “Betty is not entitled to nominate successor trustees, nor are the Trustees required to designate Betty’s successor trustee nominations.” Dkt. 110 at 26. That ruling was consistent with the plain language of the PET, legally sound, and factually well-supported.

1. The PET Provides No Basis for the Appointment of a Trustee at Betty's Request

The PET’s plain language forecloses Betty’s request for appointment of a third trustee. Article 15(A) expressly vests the Trustees with sole and exclusive authority to designate successor trustees. The instrument does not authorize Betty—or any other beneficiary—to select, nominate, or require the appointment of a trustee. The District Court correctly held that there is no textual basis within the trust agreement that would support her demand.

Even assuming that Betty had some role in trustee selection, her proposed candidates provided ample justification for the District Court’s refusal:

- Scott Gordon unequivocally declined to serve. Dkt. 60 at 18–19.
- Curt Friede had previously been suggested by Betty but was unanimously rejected by the Initial Trustees, who concluded that he

lacked relevant experience and would likely “do whatever [Betty] wanted him to do.” *Id.* at 18.

- Baiba Eastlick, a retired CPA, expressed uncertainty about whether she would even accept the position and testified she would not consider serving unless the ongoing conflict between Betty and E Bar L was resolved—an outcome that remains speculative at best. *Id.* at 18–19; Ex. K: Dep. Eastlick 78:3–81:20.

These facts alone support the District Court’s decision. Courts are not required to install a trustee simply because a beneficiary offers names. *See In re Estate of Hunsaker*, 2016 MT 321, ¶ 9, 385 Mont. 361, 384 P.3d 749 (decisions regarding trust administration are reviewed for abuse of discretion and entitled to deference).

2. Appointing a Third Trustee Would Risk Deadlock and Disruption

The PET requires that all trustee decisions be made unanimously. Introducing a third trustee—particularly one handpicked by a litigant openly hostile to one of the current trustees and the other PET beneficiaries—would all but guarantee administrative dysfunction. It would increase the likelihood of gridlock, impair trust operations, and lead to further litigation over decision-making disputes.

Montana law recognizes that a trustee’s removal (or appointment) must promote the effective administration of the trust and the interests of all beneficiaries. *See* Mont. Code Ann. § 72-38-706(2)(b). Here, the appointment of a third trustee would have the opposite effect. The District Court properly recognized that

introducing a trustee aligned with Betty’s adversarial goals would destabilize a trust that otherwise continues to function for the benefit of all beneficiaries.

D. The District Court Correctly Approved the Lease

This appeal offers no basis for disturbing the District Court’s careful and well-reasoned approval of the Lease between the PET and E Bar L. Betty challenged the Lease and invoked Mont. Code Ann. § 72-38-802(2), arguing that she might seek to void the agreement due to an alleged conflict of interest involving Trustee Caitlin Wall’s employment at E Bar L. *See* Dkt. 57 at 18–19. Her theory was conditional: she would decide whether to void the Lease once she obtained the confidential financial information of E Bar L. Dkt. 57 at 19. The District Court properly rejected this speculative and procedurally backward approach.

1. There Is No Conflict of Interest—and Thus No Power to Void

As discussed above and reaffirmed by the District Court, Caitlin Wall’s employment with E Bar L does not constitute a conflict of interest under § 72-38-802(2). The statute contemplates voidable transactions only where there is a breach of loyalty. Betty offered no evidence—then or now—that Wall’s employment influenced her judgment as Trustee. *See* Dkt. 60 at 9–10, Ex. A: Dep. Potter 79:7–81:14, Ex. G: Dep. Stone 123:21–125:12. Without a qualifying conflict, Betty has no statutory power to void the Lease, and her argument ends at the threshold.

2. The Lease Is Fair, Tailored to the Trust, and Supported by the Record

The Lease was the product of arm's-length decision-making by all three Trustees—acting unanimously and in the best interests of the PET. Dkt. 60 at 4, 9; Dkt. 110 at 31. Its terms reflect a thoughtful and historically grounded agreement between the PET and the E Bar L, an entity that has operated on the Trust land for over a century. Key provisions include:

- Annual rent of \$50,000, subject to yearly increases. Dkt. 60 at 6–7, Ex. H §§ 3, 5–6, 8–9.
- Retention of PET revenue rights, including timber harvesting and block management income. *Id.* at § 4.
- Strict land use limits, restricting E Bar L to traditional guest ranch operations in compliance with an existing conservation easement. *Id.* at § 4.
- E Bar L's responsibility for all capital improvements, shielding the Trust from related costs. *Id.* at § 6(c).
- Annual operating plans, jointly developed by the parties, and the required hiring of a land manager. *Id.* at §§ 9, 12.
- Mandatory compliance and inspection rights, ensuring continued adherence to conservation obligations. *Id.* at §§ 8, 10.
- Guaranteed housing rights for Betty, allowing her to remain in the home E Bar L owns where she resided with her late-husband, consistent with the PET's express terms. Dkt. 60 at 9.

The Lease's structure mirrors longstanding land-use arrangements and balances preservation with practical stewardship. It limits E Bar L's activities to

grazing, pasturing, and ranch operations, all consistent with the Easement and the historical relationship between the Trust and the Ranch. Contrary to Betty's assertions, the Lease contains an annual plan requirement and built-in rent increases, and it preserves key income streams—including block management and timber rights—for the PET. Dkt. 60 at 6–7. Even Betty has admitted she has no evidence the Lease terms are unfair to the Trust. Ex. A, Dep. Potter 213:7–11. And the District Court noted that the continued existence of E Bar L is itself in the PET's financial interest. Dkt. 110 at 31 n.2. In short, the Lease bears all the hallmarks of a prudent fiduciary transaction—and none of the warning signs of a conflicted or self-dealing arrangement. Courts do not overturn such decisions, absent clear evidence of abuse and none exists here.

Most notably, Betty herself previously negotiated and approved a similar long-term lease between the E Bar L and the Family Trust when she was acting as trustee. Dkt. 60 at 4, Ex. A: Dep. Potter 206:1–207:24; Ex. B: Dep. Lindbergh 23:2–22. She offers no credible explanation for why a nearly identical arrangement is suddenly suspect now.

3. Lease Reasonableness Is Committed to Trustee Discretion

Betty now argues that the Lease payment *may* be unreasonable and that she and her former accountant, Baiba Eastlick, need access to E Bar L's confidential financial records to assess it. Op. Br. at 38–40. But Montana law entrusts the

trustees—not the beneficiaries or their retained accountants—with lease negotiations and fiduciary asset management. *See* Mont. Code Ann. § 72-38-801, *et seq.*

As the District Court correctly observed, “Whether the Lease fee is otherwise reasonable is for the Trustees to consider in administering the Trust and, at the time, all three Trustees did so unanimously.” Dkt. 110 at 31. The court also acknowledged the broader context: preserving the E Bar L’s continued operation may, in fact, be more beneficial to the Trust than extracting a marginally higher lease payment. *Id.* at 31 n.2.

Betty fails to engage this reasoning on appeal. Instead, she insists that she must access information to which she is not entitled, to evaluate a lease she has no legal power to void. This is not how trust governance works. The Trustees—acting in good faith, based on historical precedent, and with informed legal counsel—executed a Lease that benefits all the Trust’s stakeholders. Nothing in the record justifies second-guessing their judgment.

E. The District Court did not abuse its discretion in refusing to award Betty her attorney’s fees.

The District Court held no party is entitled to their attorneys’ fees. Betty seeks to overturn the District Court’s other holdings and argues its decision to deny her fees should therefore also be overturned. As demonstrated above, the District Court did

not abuse its discretion and should be affirmed, in all regards, including denial of Betty's attorneys' fees.

Further, the E Bar L, like the Trustees, should be awarded its attorneys' fees on appeal, pursuant to Mont. Code Ann. § 72-38-1004, which permits an award of attorneys' fees to "any party" in trust proceedings, "as justice and equity may require." *Id.*

VIII. CONCLUSION

Betty provided no factual or legal support for her demand for E Bar L's confidential financial records and the District Court's decision to deny her access to them should be affirmed. As the District Court correctly stated, "the [Trust] statute does not provide that a beneficiary is entitled to all information in order to discover whether there has been a breach of trust." Dkt. 110 at 15.

Concerning the District Court's decision to uphold the Lease, it correctly held the reasonableness of the Lease "is for the Trustees to decide." *Id.*, p. 31. The District Court's decision in that regard, should also be affirmed.

Likewise, the District Court correctly determined that Caitlin should not be removed as Trustee, Betty should not be allowed to appoint her own trustee, and Betty is not entitled to her attorneys' fees for pursuing these matters. The District Court's decision on those issues should also be affirmed.

DATED this 21st day of April, 2025.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief complies with Rule 11 of the Montana Rules of Appellate Procedure, in that it is printed with a proportionately spaced Times New Roman typeface of 14 points, is double-spaced, and the word count calculated by the word processing contains approximately 7,439 words, excluding the table of contents, table of citations, certificate of service, certificate of compliance, and any addendum.

DATED this 21st day of April, 2025.

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