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# Frizzell v. DeYoung Appellant's Reply Brief Dckt. 44975

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## I. INTRODUCTION

This case raises issues of first impression in Idaho concerning the scope and availability of enforcement options for parties to a Trust and Estate Dispute Resolution Act (“TEDRA”) Agreement (“TEDRA Agreement”).<sup>1</sup> In its simplest terms, the disposition of this case will determine what remedies party to a TEDRA Agreement can seek when the other party breaches the agreement.<sup>2</sup>

In this matter, the district court chose simply to dismiss the action brought Donald Frizzell (“Frizzell”), a beneficiary of the Clifton and Marjorie Frizzell Family Trust (“Trust”), in its entirety based solely on the allegations in Frizzell’s complaint. The ruling left Frizzell with no remedy. While vaguely referencing the TEDRA statute’s “petition” language, the district court determined that Frizzell’s complaint concerning the TEDRA Agreement was not an appropriate “petition” as determined by the statute. Armed with the its plenary power and a statute that expressly provides “full power and authority to proceed with such administration and settlement [of a Trust dispute] in any manner and way that the court sees right

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<sup>1</sup> Idaho has adopted the same TEDRA statutory provisions as the State of Washington. Washington also does not have a case on point.

<sup>2</sup> Frizzell disagrees with the DeYoungs’ contention that the ruling on this case will “create confusing and/or unintended precedent,” as the circumstances facing the parties to this Agreement are unlikely to be unique. (*Respondents’ Brief, p. 1, fn. 1*).

and proper, all to the end that the matters be expeditiously administered and settled by the Court,” the district court dismissed Frizzell’s complaint based on a narrow reading of the statute and a construction of the TEDRA Agreement that ignored clear limitation language and remedies. I.C. § 15-8-102(2).

As a matter of law and policy, this Court should overturn the district court’s ruling and permit Frizzell to seek enforcement of the TEDRA Agreement under the broad terms of the TEDRA statute and the remedies available under the Agreement itself.<sup>3</sup>

## II. ARGUMENT

### A. THE COURT MUST APPLY A *DE NOVO* STANDARD OF REVIEW.

A district court’s dismissal of a complaint under I.R.C.P 12(b)(6) shall be reviewed *de novo*. *Coalition for Agriculture’s Future v. Canyon County*, 160 Idaho 142, 369 P.3d 920, 923 (2016) (italics in original).

Similarly, the Court “exercises free review” over issues of law decided by the district courts. *State v. Dep’t of Health & Welfare v. Slane*, 155 Idaho 274, 277,

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<sup>3</sup> The parties do not dispute the relevant facts or procedural history in this matter. (*Respondents’ Brief*, p. 1). They do dispute the scope of the TEDRA Agreement’s release and the district court’s ruling. For those reasons, Frizzell will not provide a restatement of the facts or the procedural poster of underlying the case as they have been fully briefed by both parties.

311 P. 3d 286, 289 (2013) (“*Slane*”). The interpretation of unambiguous contracts or statutes is a question of law subject to such free review. *Idaho Wool Growers Ass’n, Inc. v. State*, 154 Idaho 716, 302 P.3d 341, 345 (2012).

Despite the clear case law, the DeYoungs contend that because the TEDRA statute grants district courts broad discretion to administer trusts, this Court should “apply an abuse of discretion standard to the [district] court’s decision regarding the appropriate procedures for resolving trust disputes.” (*Respondents’ Brief*, p. 4). Neither the case law regarding I.R.C.P. 12(b)(6) nor the case law regarding appellate review of issues of law supports a review based on “abuse of discretion.” This Court must apply a *de novo* standard of review in this matter.

**B. FRIZZELL’S COMPLAINT IS AN APPROPRIATE METHOD FOR ENFORCEMENT OF THE TEDRA AGREEMENT.**

**1. Frizzell’s complaint was a petition to the district court to enforce the TEDRA Agreement.**

The TEDRA statute grants the district court “full and ample power and authority under this chapter to administer and settle...trust and trust matters.” I.C. § 15-8-102(1)(b). If the TEDRA statute is silent—or “inapplicable, insufficient or doubtful with reference to the administration and settlement of matters”—the district court can proceed in any way that it deems right and proper. I.C. § 15-8-

102(2). TEDRA explicitly permits a party to have a judicial proceeding relating to any case or controversy arising under the statute. I.C. § 15-8-201(b). TEDRA authorizes an action “incidental to an existing judicial proceeding” or as a new action. I.C. § 15-8-202. The nonjudicial resolution process, or TEDRA Agreement process, is a supplement to, not a derogation from, the provisions authorized by statute or common law. I.C. § 15-8-301. Parties to a TEDRA Agreement have an option to file the agreement with the court; however, filing is not required for the TEDRA Agreement to be binding and enforceable. I.C. § 15-8-303.

TEDRA is silent as to the procedural enforcement of binding nonjudicial agreements, should a party believe such an agreement has been breached. I.C. § 15-8-101, *et seq.* Frizzell, pursuant to I.C. § 15-8-201(b) and I.C. § 15-8-202, filed a complaint to enforce the parties’ TEDRA Agreement. The district court admitted that the TEDRA statute allows “for parties to seek enforcement of the TEDRA agreement by petition,” but determined that Frizzell’s complaint was not an appropriate “petition” in its ruling granting the DeYoungs’ motion to dismiss.

Petition is not defined in the TEDRA Statute. I.C. § 18-5-101, *et seq.* The statute permits a party to bring a new action, and a district court may consolidate that new action with the original action in exercise of its plenary powers. I.C. § 15-

8-202(3). Such consolidation is not required, as the legislature chose the word “may” over shall. *Id.* Frizzell’s complaint was a petition to the district court to enforce the TEDRA Agreement in the form of a complaint.

**2. Frizzell’s complaint was a TEDRA complaint.**

Contrary to the DeYoungs’ assertions, Frizzell did not need the district court to “convert” his complaint “into a TEDRA cause of action”—it was a TEDRA cause of action. (*Respondents’ Brief*, p. 16). The DeYoungs’ (and the district court’s) narrow view of Frizzell’s complaint is misplaced. (*Respondents’ Brief*, p. 16).

Idaho is a notice pleading state pursuant to I.R.C.P. 8(a)(1) (a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief”). As the DeYoungs rightly note, a party is not “slavishly bound to stating particular theories” of law in its complaint. *Seiniger Law Office, P.A. v. N.Pac. Ins. Co.*, 145 Idaho 241, 246, 178 P.3d 606, 611 (2009) (internal citations omitted). (*Respondents’ Brief*, p. 17). Pleadings are to be liberally construed. *Id.* A complaint is valid if the adverse party is put on notice of the claims being brought against it. *Gibson v. Ada County Sheriff’s Dep’t*, 139 Idaho 5, 9, 72 P.3d 845, 849 (2003).

“A complaint need not identify the statutory basis for relief nor include a formal statement of the cause of action...[but] there must be *some* indication of the theory of recovery.” *Brown v. City of Pocatello*, 148 Idaho 802, 808, 229 P.3d 1164, 1170 (2010) (*italics in original*). *Brown* is applicable, not as a bar to Frizzell’s complaint but as a boost. As in *Brown*, the eagle eyes of a “hyper-vigilant attorney” are not needed to see that the entirety of Frizzell’s complaint falls squarely within the four corners of the TEDRA statute. *Id.* at 1171-1172. While Frizzell’s complaint references damages as a remedy, the damages result from injuries suffered by Frizzell due to the DeYoungs’ administration of a trust and their breach of a TEDRA Agreement.

In fact, the word “trust” appeared nine times in just the first nine paragraphs of the complaint. (R. 6-7). A full eleven paragraphs were devoted solely to the terms of the parties’ TEDRA Agreement in the “Background” section of Frizzell’s complaint. (R. 8-11). The Frizzell Trust and the TEDRA Agreement were appended to the complaint as exhibits. (R. 36-93, Exs. A & B). Each cause of action, save the twelfth of thirteen, enumerated facts and legal allegations related exclusively to the DeYoungs’ administration of the Trust pursuant to the Trust’s

original terms and the TEDRA Agreement. (R. 11-34).<sup>4</sup> The acronym TEDRA appears on 17 of the complaint's 30 pages. (R. 6-35). Short of adding a flashing neon caption stating "TEDRA Complaint," or specific references to portions of the TEDRA statute, the DeYoungs could not have had any more notice of the causes of action underlying Frizzell's complaint.

All trust and estate disputes in Idaho are governed by TEDRA, *i.e. the Trust and Estate Dispute Resolution Act*. I.C. 15-8-101, *et seq.* Even if Frizzell had not referenced the "TEDRA Agreement" or the Frizzell trust explicitly—which he repeatedly did—the DeYoungs would be put on notice that Frizzell's complaint was a TEDRA action. It is either disingenuous or naïve for the DeYoungs' to assert that they did not know the complaint arose under the TEDRA statute. Either way, Frizzell satisfied Idaho's notice pleading requirements.

**3. Frizzell was permitted to file a complaint to enforce a contract, the TEDRA Agreement.**

A party to a contract can always seek judicial enforcement of the contract's terms by initiating a lawsuit in court with appropriate jurisdiction. A TEDRA Agreement is merely a settlement contract, which "stands on the same footing as

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<sup>4</sup> The twelfth cause of action is for punitive damages, which reference's Edwin DeYoung's conduct, but unlike the other causes of action does not explicitly use the word "Trust" or the phrase "TEDRA Agreement." (R. 32).

any other contract and is governed by the same rules and principles as are applicable to contracts generally.” *Vanderford Co. v. Knudson*, 150 Idaho 664, 672, 249 P. 3d 857, 865 (2011). A TEDRA Agreement, or binding nonjudicial resolution, must be in writing and signed by all parties. I.C. § 15-8-302. Once signed, the TEDRA Agreement is binding and conclusive upon all parties for the subject matter of the dispute. *Id.* The TEDRA Agreement is binding whether or not the parties thereto take the optional step to file it with the court. I.C. § 15-8-303.

*Black’s Law Dictionary*, ninth edition, defines a contract as “an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.” The Frizzell Trust TEDRA Agreement outlined the parties’ agreement to modify the terms of the Frizzell Trust, compelled certain actions by Frizzell and the DeYoungs, and defined its own breach. Specifically, “[e]ach party agrees to do all acts and sign all documents necessary to carry out the terms and provisions of this Agreement and acknowledges that any failure to do so will be considered a breach of this Agreement.” (R. 107). While the TEDRA Agreement did not identify a preferred enforcement mechanism or venue, it did provide for reimbursement and indemnification by the prevailing party for all costs and reasonable expenses “including without limitation court costs and reasonable

attorneys' fees.” (R. 107). The explicit reference to “court costs” indicated the parties considered the possibility of litigation to enforce the TEDRA Agreement in the event of breach.

The TEDRA Agreement did not reference or allude or outline any requirements for Frizzell and the DeYoungs to seek additional, nonjudicial remedies nor did it define how the parties should “petition” the court in addressing breaches. The Idaho legislature permits parties to pursue “an action upon any contract, obligation or liability founded upon an instrument in writing” within five years of breach. I.C. 5-216. Frizzell pursued this action for breaches occurring after his execution of the TEDRA Agreement in October 2014, by initiating a lawsuit in 2016. (R. 6).

**C. FRIZZELL DID NOT RELEASE DEYOUNG TO FREELY BREACH THE TEDRA AGREEMENT.**

The parties agreed that the TEDRA Agreement, like any other contract, must be construed as a whole, considering all parts. *Salfeety v. Seidman (In re Estate of Kirk)*, 127 Idaho 817, 827, 907 P.2d 794 (1995). The DeYoungs and the district court concurred with Frizzell that “a court’s primary objective is to discover the intent of the parties through viewing the document in its entirety.” *Bondy v. Levy*,

121 Idaho 993, 996, 829 P. 2d 1342 (1992). However, the district court and the DeYoungs ignored key limiting language that appears repeatedly in the TEDRA Agreement, providing a limitation to the waiver and release contained therein. Instead, the DeYoungs and the district court determined that Frizzell, and the express language of the TEDRA Agreement, permitted DeYoung to breach all his obligations under both the trust and the Agreement without limitation.

It is true that both Frizzell and the DeYoungs agreed to certain releases and indemnification language within the TEDRA Agreement. (R. 78-79, ¶¶5.5-7; R. 80-81, ¶9). However, those releases were not unlimited. The district court correctly noted that “[t]he parties executed the TEDRA agreement to resolve certain issues between the parties that had arisen prior to the execution of the TEDRA agreement, modify the trust, and subject resolution of Trust disputes to the provisions of Idaho Code § 15-8-101 *et seq.*” (R. 163). A court must construe any agreement “so as to give force and effect to every part of the agreement.” *Palomo v. J.R. Simplot Co.*, 131 Idaho 314, 317, 955 P.2d 1093, 1096 (1998).

Paragraph nine of the agreement releases DeYoung from “any claims...in his capacity as Trustee that” Frizzell now, ever, “may have had, or may there after have **from the inception of the Family Trust, Survivor’s Trust, Bypass Trust**

**and the QTIP Trust up to the date this Agreement is executed.**” (R. 80) (emphasis added). While the release included future claims (“may there after (sic) have”), the TEDRA Agreement limited the release of claims to those that Frizzell could have brought prior to the date the agreement was executed. By way of example, should Frizzell have discovered four months after he signed the TEDRA Agreement that DeYoung breached the terms of the original Trust in 2013, Frizzell would be barred from bringing claims related to that conduct. The TEDRA agreement barred claims that Frizzell knew about or should have known about that arose from conduct prior to the agreement’s execution. The very next sentence in the TEDRA Agreement made that clear: “Such **release is limited** to claims that were asserted or could have been asserted...” (R. 80) (emphasis added).

The next paragraph releases Frizzell from claims that DeYoung “brought or could have brought” in the original 2009 litigation. (R. 80). Again, the release was limited to those claims “as of the date of execution of the Agreement.” (R. 81). The date of execution of the Agreement provided a bright line between past conduct (barred claims) and future conduct (permitted claims).

The district court and the DeYoungs ignored repeated temporal limitation language (“as of the date of the agreement”) and the express release limitation

(“claims that were asserted or *could have been asserted...*”), and instead, construed the agreement as Frizzell’s acquiescence to DeYoungs’ *carte blanche* breach of the TEDRA Agreement. Removing those clear, unambiguous limitations changed the parties’ express written intent.

Frizzell waived his right to relitigate claims he had already asserted or could have asserted in the 2009 litigation up October 27, 2014. (R. 83). Frizzell did not waive his right to litigate DeYoungs’ fiduciary breaches of the express terms of TEDRA Agreement. Had any of Frizzell’s allegations concerned conduct prior to October 27, 2014, those properly could have been dismissed by the clear language of the TEDRA Agreement. However, the conduct alleged in Frizzell’s complaint occurred after the execution of the agreement and related to DeYoungs’ agreed to duties delineated in the agreement. The dismissal of those claims by the district court was improper, as it rendered portions of the parties’ TEDRA Agreement meaningless.

### III. CONCLUSION

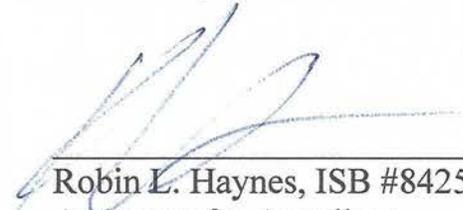
Neither the DeYoungs nor the district court presented sufficient legal reasons to dismiss Frizzell’s complaint. Facing a TEDRA complaint, governed by a broadly construed statute with explicit reference to the court’s plenary powers to

fashion trust dispute remedies, the district court simply declined to fashion any remedy. The district court could have: (1) deny the motion to dismiss and permit Frizzell the opportunity to prove or disprove his allegations through discovery and motion practice; (2) deny the motion and direct Frizzell to amend his complaint; (3) deny the motion and seek contempt remedies against the DeYoungs; (4) deny the motion and consolidate the new case with the 2009 action; or (5) deny the motion and direct the parties to amend their TEDRA Agreement. Instead, the district court granted the motion to dismiss by altering the specific terms of the TEDRA Agreement.

The district court erred in granting the motion to dismiss. This Court must reverse the district court's decision and remand this matter for further proceedings. This Court should also grant Frizzell his reasonable attorneys' fees in conjunction with this appeal.

DATED this 3<sup>rd</sup> day of September, 2017.

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**CERTIFICATE OF SERVICE**

I, Robin L. Haynes, hereby certify that on September 5, 2017, I have personally served two copies of the Appellant's Brief to the below person(s) in the manner(s) indicated below:

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