

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

3 Filing Date: NOVEMBER 19, 2014

4 **NO. 32,600**

5 **SOPURKH KAUR KHALSA,**  
6 **SHAKTI PARWHA KAUR KHALSA, and**  
7 **EK ONG KAR KAUR KHALSA,**  
8 **Trustees of the Yogi Bhajan Administrative Trust,**

9           Plaintiffs/Counter-Defendants-Appellees,

10 v.

11 **INDERJIT KAUR PURI,**

12           Defendant/Counter-Plaintiff-Appellant,

13 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

14 **Sarah M. Singleton, District Judge**

15 Sanders & Westbrook, P.C.

16 Maureen A. Sanders

17 Albuquerque, NM

18 Wray & Girard, P.C.

19 Jane Katherine Girard

20 Katherine Wray

21 Albuquerque, NM

22 for Appellees

23 Modrall, Sperling, Roehl, Harris & Sisk, P.A.

24 Emil J. Kiehne

25 Albuquerque, NM

1 The Soni Law Firm  
2 Surjit P. Soni  
3 Pasadena, CA  
4 for Appellant

1 **OPINION**

2 **FRY, Judge.**

3 {1} This case involves a dispute over the division of the community estate of  
4 Harbhajan Singh Khalsa Yogiji, more commonly known as Yogi Bhajan, deceased,  
5 and his wife, Defendant Inderjit Kaur Puri, whom the parties refer to as Bibiji. Yogi  
6 Bhajan was a spiritual and religious leader of the Sikh religion in the United States.  
7 Before Yogi Bhajan’s death, the spouses’ assets were titled in a trust for the benefit  
8 of both spouses. When Yogi Bhajan died, Plaintiffs Sopurkh Kaur Khalsa, Shakti  
9 Parwaha Kaur Khalsa, and Ek Ong Kar Kaur Khalsa<sup>1</sup> ultimately became trustees of  
10 two successor trusts—one for the distribution of Bibiji’s half of the community estate  
11 and one for the distribution of Yogi Bhajan’s half. Bibiji claimed that the trustees  
12 breached their fiduciary duties to her in a number of ways such that she was entitled  
13 to a reallocation of part of Yogi Bhajan’s half of the community estate. Following  
14 years of litigation and a five-day trial, the district court rejected Bibiji’s claims and  
15 concluded that the trustees had not breached any duties owed to Bibiji. For the  
16 reasons that follow, we affirm.

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17 <sup>1</sup>Because Plaintiffs and several witnesses share the same last name, we refer to  
18 them by their first names in this Opinion.

1 **BACKGROUND**

2 **The Estate Plan**

3 {2} The present controversy springs from the estate plan developed for Yogi  
4 Bhajan and Bibiji by attorney Kate Freeland in 1979 or 1980. For this estate plan,  
5 Freeland prepared wills for each spouse and a living trust. After the tax laws changed  
6 in 1986, Freeland prepared an amendment and restatement of the initial living trust,  
7 and the spouses executed that document in 1987. We refer to this document as the  
8 Living Trust.

9 {3} Under the Living Trust, Yogi Bhajan and Bibiji were the trustors, and Yogi  
10 Bhajan was the sole trustee. The Living Trust gave Yogi Bhajan broad powers as  
11 trustee, including the power, within his discretion, to invest or reinvest the properties  
12 comprising the trust estate; to make loans; to sell, lease, exchange, or make contracts  
13 concerning real or personal property; to develop real estate; to “continue to hold,  
14 operate, sell or liquidate any business enterprise”; and to “borrow money and to  
15 encumber or hypothecate trust property.”

16 {4} The Living Trust provided for a plan of distribution upon the death of either  
17 trustor. If Yogi Bhajan predeceased Bibiji, Bibiji’s community property interest in  
18 cash or cash equivalents would be held in a separate trust for her benefit, which we  
19 call the Survivor’s Trust. In addition, the Living Trust’s interest in certain real

1 properties would continue to be held in trust (the Property Trust) for Bibiji during her  
2 lifetime, and the Living Trust's interest in two other real properties would be  
3 distributed to Siri Singh Sahib of Sikh Dharma Brotherhood. The remaining Living  
4 Trust assets would first be used to pay taxes and the expenses associated with Yogi  
5 Bhajan's last illness and funeral and then to fund a trust to be paid to Yogi Bhajan's  
6 assistants designated in a separate written instrument.

#### 7 **The 2004 Amendment to the Living Trust**

8 {5} In 2004, at Freeland's urging, the spouses amended the Living Trust in three  
9 ways pertinent to this appeal. First, the amendment changed the disposition of real  
10 property such that, if Yogi Bhajan predeceased Bibiji, (a) the Living Trust's interest  
11 in real property in India and Los Angeles, California, would go to Bibiji's share of  
12 the trust; (b) real property in Espanola, New Mexico, had "already been donated to  
13 charity, subject to the right of [Bibiji] and Yogi Bhajan to live there for their lives";  
14 and (c) as a result of the preceding, there would be no Property Trust. Freeland  
15 testified that the Los Angeles property was part of the community estate and that she  
16 believed the property in India was Yogi Bhajan's separate property. Thus, the  
17 amendment provided that, if Yogi Bhajan predeceased Bibiji, Bibiji would receive not  
18 only her half interest in the Los Angeles community real property but also Yogi

1 Bhajan’s half interest in that property, and she would receive Yogi Bhajan’s interest  
2 in his separate real property in India.

3 {6} Second, the amendment provided that “[Bibiji’s] community property interest  
4 in royalties, royalty agreements, patents, licenses, and other intellectual properties”  
5 would be treated the same as cash or cash equivalents. In other words, if Yogi Bhajan  
6 predeceased Bibiji, Bibiji would receive her one-half community property interest in  
7 these intellectual properties. The previous version of the Living Trust had not made  
8 any provision for Bibiji to receive her community property interest in royalty  
9 payments, which had increased dramatically after the Living Trust was first amended.

10 {7} Third, the amendment stated that Yogi Bhajan and Bibiji agreed that upon Yogi  
11 Bhajan’s death, his community interest in the trust assets (apart from the real property  
12 in Los Angeles and India, which would go to Bibiji) would be distributed as he would  
13 direct in a separate written document. Yogi Bhajan and Bibiji further agreed that the  
14 successor co-trustees, upon the death of either spouse, would be Shakti, Sopurkh, and  
15 Kamaljit Kur Kohli. Shakti and Sopurkh worked as Yogi Bhajan’s assistants for  
16 many years. Kamaljit is the daughter of Yogi Bhajan and Bibiji.

17 {8} Several months after executing the 2004 amendment, Yogi Bhajan executed a  
18 written document entitled “Direction for Distribution of Yogi Bhajan’s Share of  
19 Trust,” which provided that, upon Yogi Bhajan’s death, all of his interest in YB

1 Teachings, LLC, would be donated to the non-profit Kundalini Research Institute,  
2 and that all of his remaining interest in the Living Trust's assets (apart from the Los  
3 Angeles and India properties) would be distributed as follows: (1) to make up the  
4 difference between \$125,000 and what Yogi Bhajan had already gifted to an  
5 education savings plan for a young child, Dharam Dev Kaur Khalsa; and (2) to an  
6 LLC organized for the purpose of distributing specified income percentages to fifteen  
7 named individuals, including Shakti and Sopurkh. The fifteen individuals would be  
8 members of the LLC and would be required to maintain a lifestyle consistent with  
9 Yogi Bhajan's teachings and values. Upon the death of a member, the member's  
10 share would be paid to the Legacy of Yogiji Foundation. The LLC contemplated by  
11 this document (the Staff LLC) was created in the fall of 2004. The parties refer to  
12 this trust, created to benefit Yogi Bhajan's staff, as the Administrative Trust.

### 13 **Events Following Yogi Bhajan's Death**

14 ¶9) Yogi Bhajan died on October 6, 2004. Harijot Kaur Khalsa, the bookkeeper  
15 for the Living Trust since its inception, immediately closed down the bank accounts  
16 and opened two new accounts—one for the Survivor's Trust and one for the  
17 Administrative Trust. Freeland, who had been hired as legal counsel by the successor  
18 trustees, and the trustees met with members of Yogi Bhajan's family and members of  
19 the Staff LLC to discuss distribution of the Living Trust's assets. Relying on the

1 records Harijot had kept for the previous twenty to thirty years, the trustees assembled  
2 the assets and distributed Bibiji's interest to the Survivor's Trust. Most of the assets  
3 had been distributed either to Bibiji or to the Administrative Trust by the end of 2004.  
4 {10} In May 2005, Bibiji's attorney wrote to Freeland and asserted that Yogi Bhajan  
5 had made charitable contributions from 1996 to 2004 without Bibiji's knowledge or  
6 consent. The letter went on to request a credit in half the amount of these  
7 contributions and asked for information regarding charitable contributions made prior  
8 to 1996 and regarding intellectual property owned by the Living Trust. In light of  
9 Bibiji's claims, Freeland and Bibiji's attorney agreed that it would be inappropriate  
10 for Bibiji's daughter, Kamaljit, to remain as a trustee of the Administrative Trust and  
11 for Shakti and Sopurkh to continue as trustees of the Survivor's Trust. Kamaljit was  
12 replaced by Ek Ong Kar Kaur as the third trustee of the Administrative Trust. Shakti  
13 and Sopurkh resigned as trustees for the Survivor's Trust. We refer to Shakti,  
14 Sopurkh, and Ek Ong Kar Kaur as the Trustees.

### 15 **Initiation of Litigation**

16 {11} Freeland, on behalf of the Trustees, requested backup information for Bibiji's  
17 claims. In the ensuing months, the Trustees continued to request explanations for and  
18 details of Bibiji's claims, but they did not receive any. The Trustees made no further  
19 distributions of estate assets in light of Bibiji's claims. The Trustees ultimately filed



1 the present action seeking a judgment declaring what, if anything, was owed to Bibiji  
2 beyond what had already been distributed to her. Bibiji filed a counterclaim seeking  
3 an accounting, removal of certain Trustees, and damages for breach of the trust and  
4 breach of fiduciary duties. After nearly two years of litigation, the district court  
5 dismissed the Trustees' complaint for declaratory relief due to lack of controversy.  
6 The case then proceeded to trial on Bibiji's counterclaim.

7 {12} The district court heard five days of testimony and received over 500 exhibits.  
8 Bibiji did not testify. After taking the matter under advisement, the district court  
9 found in favor of the Trustees on all claims and dismissed "all claims which have  
10 been or could have been brought by [Bibiji] in this case." It further found that  
11 "[j]ustice and equity require that [Bibiji] pay the reasonable attorney fees incurred by  
12 [the Trustees]." The amount of attorney fees was to be determined at a later time.  
13 This appeal followed.

#### 14 **DISCUSSION**

15 {13} Bibiji raises nine issues on appeal, which we consolidate into three issues.  
16 First, Bibiji maintains that the district court erred in finding that the Trustees did not  
17 breach their fiduciary duties to her as a beneficiary of the Living Trust in a variety of  
18 ways. Second, she claims that the district court made several procedural errors.

1 Third, she contends that the district court erred in determining that the Trustees were  
2 entitled to recover their reasonable attorney fees.

3 **1. The Trustees’ Alleged Breaches of Fiduciary Duties**

4 {14} Bibiji argues that the Trustees breached their fiduciary duties by (a) failing to  
5 investigate and inventory the Living Trust’s assets, (b) improperly managing assets  
6 and conspiring to deprive Bibiji of income from a license of trademarks, (c) ignoring  
7 conflicts of interest, and (d) failing to reallocate trust assets to account for Yogi  
8 Bhajan’s alleged improper dissipation of community property. While the last two  
9 issues include discrete questions of law, the thrust of Bibiji’s claims related to the  
10 Trustees’ alleged breaches of duty concern whether substantial evidence supports the  
11 district court’s findings that no such breaches occurred. We reject Bibiji’s contention  
12 that these issues involve mixed questions of fact and law requiring de novo review.

13 {15} Substantial evidence is “relevant evidence that a reasonable mind could accept  
14 as adequate to support a conclusion.” *Deutsche Bank Nat’l Trust Co. v. Beneficial*  
15 *N.M. Inc.*, 2014-NMCA-090, ¶ 7, 335 P.3d 217 (internal quotation marks and citation  
16 omitted), *cert. granted sub nom. Deutsche Bank v. Johnston*, 2014-NMCERT-008,  
17 334 P.3d 425. In reviewing a substantial evidence argument, “[t]he question is not  
18 whether substantial evidence exists to support the opposite result, but rather whether  
19 such evidence supports the result reached.” *Las Cruces Prof’l Fire Fighters v. City*

1 of *Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177. “[W]e will not  
2 reweigh the evidence nor substitute our judgment for that of the fact finder.” *Id.* “We  
3 consider the evidence in the light most favorable to the prevailing party and disregard  
4 any inferences and evidence to the contrary.” *Deutsche Bank*, 2014-NMCA-090, ¶ 7.

5 {16} Before turning to Bibiji’s specific claims, we clarify that the Trustees did not  
6 become trustees until Yogi Bhajan died. Until that point, all of the assets in the  
7 Living Trust were administered by Yogi Bhajan as the sole trustee. Once Yogi  
8 Bhajan died, two trusts came into existence: the Survivor’s Trust, of which Bibiji was  
9 the sole beneficiary, and the Administrative Trust, of which the Staff LLC and the  
10 Legacy of Yogiji Foundation were the beneficiaries. Trustees Shakti and Sopurkh  
11 owed duties to the beneficiaries of both trusts until 2005, when they resigned as  
12 trustees of the Survivor’s Trust in light of Bibiji’s claims. After their resignation,  
13 they owed duties only to the beneficiaries of the Administrative Trust.

14 {17} The Living Trust contained provisions guiding the actions of the Trustees in  
15 administering the Administrative Trust. The Living Trust granted the same broad  
16 powers of administration to the Trustees that Yogi Bhajan had enjoyed as the sole  
17 trustee of the Living Trust during his lifetime. These powers included the power to  
18 invest and reinvest the trust estate; to make loans; to sell, exchange, or lease property;  
19 to hold securities; to improve real estate; to employ attorneys, accountants, and other

1 agents; and to budget the trust’s estimated annual income and expenses “in such  
2 manner as to equalize, as far as practical, periodic income payments to beneficiaries.”

3 {18} Underlying all of Bibiji’s claims against the Trustees is the undisputed legal  
4 premise that the Trustees had the obligation to administer the trusts “in good faith”  
5 and “in accordance with [their] terms and purposes and the interests of the  
6 beneficiaries.” NMSA 1978, § 46A-8-801 (2003). Because the trusts had more than  
7 one beneficiary, the Trustees were required to “act impartially . . . giving due regard  
8 to the beneficiaries’ respective interests.” NMSA 1978, § 46A-8-803 (2003). The  
9 Trustees had the duty to “administer the trust[s] as a prudent person would, by  
10 considering the purposes, terms, distributional requirements and other circumstances  
11 of the trust[s]” and “exercise reasonable care, skill and caution.” NMSA 1978, § 46A-  
12 8-804 (2003). In addition, the Trustees had the obligation to “take reasonable steps  
13 to take control of and protect the trust property.” NMSA 1978, § 46A-8-809 (2003).

14 {19} To clarify, upon the death of Yogi Bhajan, the then-trustees owed these  
15 fiduciary duties to Bibiji as a beneficiary of the Living Trust’s assets to ensure that  
16 Bibiji received all of the assets that the Living Trust directed to be placed in the  
17 Survivor’s Trust. Once these assets were transferred to the Survivor’s Trust, the then-  
18 trustees’ fiduciary duties to Bibiji continued because, at least initially, they were the  
19 trustees of the Survivor’s Trust. However, once Shakti and Sopurkh resigned as

1 trustees of the Survivor’s Trust in August or September 2005, they no longer owed  
2 Bibiji any fiduciary duties. At that point, they were trustees of only the  
3 Administrative Trust, and their fiduciary duties were owed to the beneficiaries of that  
4 trust—the members of the Staff LLC and the Legacy of Yogiji Foundation.

5 {20} With all of this in mind, we turn to Bibiji’s claims.

6 **a. Duties to Investigate and Inventory Trust Assets**

7 {21} Bibiji argues that the Trustees breached their duties to investigate and  
8 inventory trust assets because they admitted that they did not investigate whether the  
9 Living Trust or Yogi Bhajan had owned any assets other than those listed in the  
10 records maintained by Harijot. Bibiji claims that she identified eighteen categories  
11 of assets not reflected in Harijot’s records, including real estate, jewelry, swords,  
12 minerals, books published by Yogi Bhajan, video lectures, trademarks, trade secrets,  
13 formulas, recipes, and paintings by Yogi Bhajan.

14 {22} The district court made numerous findings of fact regarding Bibiji’s assertions  
15 in this regard. The court found that Yogi Bhajan initially hired Harijot to prepare a  
16 general ledger for the Living Trust in 1982 and that from 1982 until Yogi Bhajan’s  
17 death, “Harijot had spent decades ensuring that all of Yogi Bhajan and Bibiji’s  
18 community property and separate assets were properly transferred to and titled in the  
19 Living Trust, and inventoried on the Living Trust’s general ledgers.” Harijot was

1 assisted in this endeavor by Freeland and by Shakti, who was Yogi Bhajan's  
2 executive secretary, all of whom communicated regularly over the years in order to  
3 ensure that all assets were transferred and titled in the Living Trust during Yogi  
4 Bhajan's lifetime. The district court also found that the intellectual property at issue  
5 had been properly inventoried and that Bibiji's share of this property had been  
6 appropriately distributed.

7 {23} Substantial evidence through the testimony of Harijot and Freeland and through  
8 exhibits supported these findings. Both Harijot and Freeland testified that they  
9 regularly strived to ensure that all new assets were transferred to the Living Trust.  
10 As for the broad categories of assets that Bibiji argues were overlooked, Freeland  
11 testified that she was aware that "Yogi Bhajan was a prolific author, creator of  
12 recipes, trademarks, business assets and the like" and that she attempted to ensure that  
13 those assets were listed as part of the Living Trust estate. The estate tax return  
14 included detailed schedules listing the Living Trust's real estate; stocks and bonds;  
15 mortgages, notes, and cash; life insurance; miscellaneous property, which included  
16 the name and likeness of Yogi Bhajan, royalty contracts, business interests, vehicles,  
17 jewelry, furs, and personal effects; and annuities. As for weapons and paintings,  
18 Freeland testified that she understood that these were gifts to Yogi Bhajan in his  
19 capacity as head of the church, which would make them separate property, and they

1 were placed in the church archives. The district court made a finding to this effect  
2 based on this testimony.

3 {24} The Trustees' expert CPA testified that the records he reviewed reflected a  
4 professional and complete accounting of the community's assets, and that all of the  
5 assets of the Living Trust properly made their way into the Survivor's Trust and the  
6 Administrative Trust after Yogi Bhajan's death. All of this testimony supports the  
7 district court's view that, in accordance with Section 46A-8-804, the Trustees  
8 conducted the inventory and transfer of Living Trust assets as a prudent person would  
9 and in a reasonable manner. Given Harijot's careful record keeping over the years,  
10 there would be no reason for the Trustees to believe that additional assets might exist.  
11 Viewing the record in the light most favorable to the Trustees, as our standard of  
12 review requires us to do, we conclude that substantial evidence supports the district  
13 court's determination that the Trustees did not breach any fiduciary duties in their  
14 investigation of assets.

15 **b. Management of Assets**

16 {25} Bibiji claims that the Trustees breached various duties in their management of  
17 the licensing of trademarks. During Yogi Bhajan's lifetime, the Living Trust had  
18 entered into a licensing agreement with Golden Temple of Oregon, Inc. (Golden  
19 Temple), for the use of trademarks for the name and likeness of Yogi Bhajan on

1 specified cereals, teas, and body care products. Under the agreement, Golden Temple  
2 agreed to pay to the Living Trust royalties of between 0.10 percent and 3.5 percent  
3 of Golden Temple's gross sales. When Yogi Bhanan died, Harijot told Golden  
4 Temple to divide its royalty payments and pay one-half to the Survivor's Trust and  
5 one-half to the Administrative Trust because the license agreement was community  
6 property. In about 2008, Golden Temple discontinued use of Yogi Bhanan's name  
7 and likeness but continued to use the names "Yogi" and "Yogi Tea." It stopped  
8 paying royalties.

9 {26} There was a similar licensing agreement between the Living Trust and  
10 Amalgamated Sales Corp., Ltd. for the use of Yogi Bhanan's name and likeness on  
11 teas distributed in northern Africa and Europe. Like Golden Temple, Amalgamated  
12 stopped paying royalties in about 2008. The Trustees did not sue Amalgamated  
13 because there were no funds coming into the Administrative Trust, which could not  
14 afford to take on another lawsuit in light of the present litigation. Instead of suing,  
15 the Trustees entered into a tolling agreement with Amalgamated, which provided that  
16 the Trustees would not sue during a specified period of time and that the delay would  
17 not count toward the applicable statute of limitations. The Trustees believed they  
18 were protecting the continuation of the Administrative Trust by entering into this  
19 agreement. At some point, Amalgamated transferred its assets to Golden Temple,



1 which meant that a successor tolling agreement regarding the trademarks licensed to  
2 Amalgamated was between the Trustees and Golden Temple.

3 {27} As for the trademarks initially licensed to Golden Temple, the Trustees sent a  
4 letter of default to Golden Temple, and Golden Temple then resumed royalty  
5 payments. Bibiji, as half owner of the trademarks, pursued Golden Temple by way  
6 of an arbitration to determine ownership of the “Yogi” trademarks, and she suggested  
7 that the Trustees participate. The Trustees declined, seemingly in part because they  
8 thought that the term “Yogi” was a generic term rather than a trademark and in part  
9 because they did not feel the Administrative Trust had the funds to take on any more  
10 litigation, given the continuing litigation in the case now before us. Bibiji’s  
11 arbitration was successful, and the arbitrators determined that Golden Temple had no  
12 right to the “Yogi” trademarks and that it had infringed the trademarks. They  
13 awarded Bibiji her half interest in the royalty payments that Golden Temple should  
14 have paid.

15 {28} After the arbitration award, Golden Temple sought to negotiate a new license  
16 of the trademarks. Initially, the Trustees and Bibiji took the position that they were  
17 willing to grant Golden Temple a non-perpetual, non-worldwide license. Golden  
18 Temple offered to pay a flat 3 percent royalty, with a minimum royalty payment of  
19 \$2 million and a maximum of \$4 million per year, an offer to which both Bibiji and

1 the Trustees objected. Negotiations then broke down, but the Trustees alone  
2 continued to negotiate with Golden Temple.

3 {29} Ultimately, the Trustees, representing the Administrative Trust's half interest  
4 in the Yogi, Yogi Tea, and other trademarks, entered into an interim licensing  
5 agreement with Golden Temple in October 2011. The agreement provided that  
6 Golden Temple would pay back royalties to the Administrative Trust as calculated  
7 in the arbitration award to Bibiji and future royalties calculated according to the same  
8 formula applied in the arbitration award. The agreement was to remain in effect until  
9 either (a) the execution of an agreement whereby Golden Temple would purchase the  
10 Administrative Trust's interest in the trademarks or (b) the agreement was terminated  
11 by either party upon 180 days prior written notice. Under the agreement, Golden  
12 Temple was required to offer the same terms to Bibiji for her half interest in the  
13 trademarks, but Bibiji rejected the offer. The agreement further provided that Golden  
14 Temple would indemnify the Administrative Trust from any damages resulting from  
15 claims by Bibiji arising from the Administrative Trust entering into the agreement.

16 {30} Future royalties under the agreement would be paid by Golden Temple at the  
17 same rate that was payable under the 2004 license agreement, which was 3.5 percent,  
18 stepping down to 0.5 percent on sales exceeding \$25 million. This was lower than  
19 the flat 3 percent rate Golden Temple offered during negotiations when Bibiji was

1 participating. The Trustees agreed to accept the lower royalty rate because there was  
2 concern about Golden Temple having a deadline to its use of the trademark, and the  
3 Trustees were very interested in keeping the trademark viable with a company that  
4 had experience with selling Yogi Tea under the trademark. If the district court  
5 approved of a sale, the Trustees planned to sell the Administrative Trust's undivided  
6 half interest in the trademarks to Golden Temple for \$9.7 million, and the sale  
7 proceeds would be distributable to the Staff LLC.

8 {31} At some point prior to the execution of the interim licensing agreement, the  
9 Trustees learned that Bibiji believed she had the opportunity of licensing the  
10 trademarks for 6 percent. The Trustees asked for more information about this  
11 prospective licensee, but they never received that information from Bibiji or her  
12 attorney.

13 {32} As we understand Bibiji's arguments, she claims that the Trustees mismanaged  
14 trust assets when they failed to seek advice from a trademark expert as to who owned  
15 the Yogi trademarks and when they declined to enforce the Administrative Trust's  
16 contract rights when Golden Temple and Amalgamated suspended royalty payments.  
17 Bibiji further contends that the Trustees did not have the power to enter into the new  
18 licensing agreement with Golden Temple because the trademarks were never made  
19 assets of the Living Trust.

1 {33} We first observe that Bibiji’s arguments regarding the trademarks apparently  
2 challenge the Trustees’ compliance with their fiduciary duties even though the actions  
3 at issue occurred long after Shakti and Sopurkh resigned as trustees of the Survivor’s  
4 Trust. At the time Golden Temple and Amalgamated stopped making royalty  
5 payments, the Trustees oversaw only the Administrative Trust, and their duties  
6 therefore ran to the beneficiaries of that trust, not to Bibiji. The district court  
7 appreciated this distinction. In its written decision, the district court stated that  
8 “[p]rior to the transfer to Bibiji of her one-half interest in the [intellectual property]  
9 rights, the Trustees did hold that interest in trust for Bibiji, but that interest was  
10 transferred in December 2004. Once that transfer was accomplished, the Trustees’  
11 fiduciary duties as to that interest ended.”

12 {34} Bibiji’s arguments apparently rest on her claim that she is entitled to more than  
13 half of the trademark rights. This claim in turn springs from her assertion that she is  
14 entitled to a reallocation of Yogi Bhajan’s half of the community property due to his  
15 alleged excess expenditure of community funds prior to his death. Bibiji’s claim for  
16 reallocation cannot be characterized as a beneficiary’s claim against the Trustees  
17 because the trustee/beneficiary relationship between the parties ended in 2005 when  
18 Shakti and Sopurkh resigned as trustees of the Survivor’s Trust. Rather, Bibiji’s  
19 claim to reallocation can be characterized as the claim of one spouse against the estate

1 of the other for alleged misappropriation of community property. This is what the  
2 district court properly concluded. *Fernandez v. Fernandez*, 1991-NMCA-001, ¶¶ 18-  
3 19, 111 N.M. 442, 806 P.2d 582 (explaining that a gift made by one spouse in breach  
4 of his or her fiduciary duty may result in the wronged spouse’s recovery of his or her  
5 community share of the gift from the spouse who made the gift).

6 {35} To the extent that Bibiji is arguing that the Trustees failed to accurately  
7 inventory and distribute her half interest in the trademarks, the district court found  
8 that all of “Yogi Bhajan’s intellectual property interests were properly inventoried  
9 and, in accordance with the Living Trust’s 2004 amendment, 50 [percent] of Yogi  
10 Bhajan’s intellectual property was distributed to Bibiji.” The district court further  
11 found that the intellectual property interests that were the subject of the pre-death  
12 licensing agreements with Golden Temple and Amalgamated “were inventoried on  
13 the [estate tax return] Form 706 by the contracts themselves, and are specifically  
14 listed on the contract exhibits.” And the district court found that “all [intellectual  
15 property] interests to which Bibiji was entitled were properly and promptly  
16 distributed to her, most especially the [Golden Temple] and Amalgamated royalties  
17 interests intended to provide Bibiji a stable source of income.” These findings were  
18 supported by the evidence summarized above and in the preceding section of this  
19 Opinion.

1 {36} To the extent Bibiji is claiming that the Trustees’ interim licensing agreement  
2 with Golden Temple and its tolling agreement with Amalgamated somehow  
3 negatively impacted her half interest in the Yogi trademarks, the district court viewed  
4 the relationship between the parties regarding the trademarks as co-owners. We  
5 observe that because Bibiji and the Administrative Trust each owned a one-half  
6 interest in the trademarks, this contention of negative impact on Bibiji’s trademark  
7 interest is in the nature of a claim of trademark infringement by one co-owner against  
8 the other, not a claim of breach of fiduciary duty in the trust context. Since the only  
9 claims Bibiji asserted against the Trustees were claims of breach of fiduciary duty,  
10 these infringement claims seem to be misplaced. Nonetheless, because the parties  
11 litigated these claims without objection and because the district court decided them,  
12 we address them.

13 {37} The district court relied on case law stating that “[a]n owner does not infringe  
14 upon his co-owner’s rights in a trademark by exercising his own right of use.  
15 Likewise, he does not dilute those rights by exercising his own right of use.”  
16 *Derminer v. Kramer*, 406 F. Supp. 2d 756, 759 (E.D. Mich. 2005). This is legally  
17 correct, according to a leading treatise on the subject. “When parties are co-owners  
18 of a mark, one party cannot sue the other for infringement. A co-owner cannot

1 infringe the mark it owns.” 2 *McCarthy on Trademarks & Unfair Competition* §  
2 16.40 (4th ed. 2014).

3 {38} To the extent Bibiji had any claim that the Trustees had any additional duty to  
4 her regarding the trademarks, the district court put that claim to rest when it found  
5 that “[t]he Trustees’ decision to enter into the [i]nterim [l]icensing [a]greement . . .  
6 with [Golden Temple] was fiscally sound and preserved the marks’ financial  
7 potential.” The district court explained that if the Trustees had not entered into the  
8 agreement, “[Golden Temple] would have been forced to re-brand, which would have  
9 greatly diminished, and potentially destroyed,” the potential financial value of the  
10 trademarks. These findings are supported by the evidence summarized above. Given  
11 the cost of the present litigation to the Administrative Trust, it made sense for the  
12 Trustees to preserve the value of the trademarks through the interim licensing  
13 agreement and the tolling agreement rather than to expend additional trust funds to  
14 pursue litigation against Golden Temple and Amalgamated. We therefore reject  
15 Bibiji’s claim that the district court erroneously failed to find that the Trustees  
16 mismanaged assets.

17 **c. Alleged Conflicts of Interest**

18 {39} Bibiji claims that Sopurkh and Shakti had a conflict of interest as soon as Bibiji  
19 requested reallocation of the community assets because they were beneficiaries of the

1 Administrative Trust who would benefit if Bibiji's claims failed. Sopurkh and Shakti  
2 indeed withdrew as trustees of the Survivor's Trust when Bibiji asserted her claim.  
3 But Bibiji appears to contend that they were also required to withdraw as trustees of  
4 the Administrative Trust. Again, we note that Sopurkh and Shakti's fiduciary duties  
5 to Bibiji ended when they withdrew as trustees of the Survivor's Trust. Because  
6 Bibiji was not a beneficiary of the Administrative Trust, she could not assert a claim  
7 that Sopurkh and Shakti remaining as trustees of the Administrative Trust constituted  
8 a breach of their fiduciary duties. Furthermore, Bibiji's reallocation claim was a  
9 claim of one spouse against the estate of the other spouse, not a claim asserted in the  
10 context of a trust relationship.

11 {40} To the extent Bibiji is contending that Sopurkh and Shakti's status as  
12 beneficiaries by itself constituted a conflict of interest, we affirm the district court's  
13 findings to the contrary. The district court found that the Living Trust itself required  
14 that only one trustee be independent and not a beneficiary of the Administrative  
15 Trust. Ek Ong Kar Kaur is not a beneficiary of the Administrative Trust and,  
16 therefore, the Living Trust's requirements are satisfied. These findings are supported  
17 by the specific provisions of the Living Trust, which was introduced into evidence,  
18 and by other evidence at trial. In addition, the district court found that Sopurkh



1 recused herself from participating in any decisions related to Golden Temple, of  
2 which she had once been president. This finding, too, was supported by the evidence.

3 **d. Reallocation of Community Property**

4 {41} Bibiji’s primary contention in the district court and on appeal is that Yogi  
5 Bhajan made gifts and charitable contributions of community property during his  
6 lifetime without Bibiji’s knowledge and consent and that, as a result, Bibiji was  
7 entitled to a portion of Yogi Bhajan’s half of the community estate in order to make  
8 up for these unauthorized dispositions. Bibiji relies on *Roselli v. Rio Communities*  
9 *Service Station, Inc.*, 1990-NMSC-018, 109 N.M. 509, 787 P.2d 428, for the  
10 proposition that if a spouse manages community property in a way that violates his  
11 or her fiduciary duty to the other spouse, “the aggrieved spouse may have recourse  
12 first against the other spouse’s property, and then against the donee of the property.”  
13 Thus, Bibiji claims, the Trustees had the obligation to reallocate portions of Yogi  
14 Bhajan’s half of the community estate, which ended up in the Administrative Trust,  
15 to Bibiji, and the Trustees’ failure to do so constituted a breach of their fiduciary duty  
16 to her.

17 {42} In order to assess Bibiji’s claims, we consider the sparse New Mexico case law  
18 on the issue. *Roselli* involved a husband who named his son from a prior marriage  
19 as the beneficiary of two community-purchased life insurance policies without his

1 wife’s knowledge. 1990-NMSC-018, ¶ 2. In a dispute after the husband’s death, our  
2 Supreme Court reversed summary judgment in favor of the wife on the disposition  
3 of the insurance proceeds because issues of fact remained to be resolved. *Id.* ¶ 24.  
4 In doing so, the Court established certain legal principles to guide the district court  
5 on remand. The Court first acknowledged that by statute, “either spouse alone has  
6 the power to manage, control, or dispose of the entire community personal property,  
7 unless one spouse is otherwise designated.” *Id.* ¶ 18 (citing NMSA 1978, § 40-3-14  
8 (1975)). The Court then reviewed the law in other community property states and  
9 established what it called the “best rule” as follows:

- 10 (1) each spouse has the power to manage and dispose of the  
11 community’s personal property;
- 12 (2) subject to a fiduciary duty to the other spouse; and
- 13 (3) absent intervening equities, a gift of substantial community  
14 property to a third person without the other spouse’s consent may be  
15 revoked and set aside for the benefit of the aggrieved spouse.

16 *Roselli*, 1990-NMSC-018, ¶ 23.

17 {43} A subsequent case shed additional light on the matter. In *Fernandez*, our  
18 Supreme Court suggested factors that could inform the *Roselli* rule, including whether  
19 the managing spouse’s action furthered “the common benefit of both members of the  
20 community[,]” 1991-NMCA-001, ¶ 12, and whether the objectionable gift or  
21 expenditure constituted a “substantial portion of the community property.” *Id.* ¶ 21.

1 {44} We distill the following principles from *Roselli* and *Fernandez*. First, either  
2 spouse may dispose of community property unless the disposition violates the  
3 spouse’s fiduciary duty to the other spouse. Second, the fiduciary duty in question  
4 involves the assessment of the equities of the particular circumstances. Third, in  
5 assessing the equities, a court should consider whether the disposition furthers both  
6 spouses’ common benefit and whether the disposition amounted to a substantial  
7 portion of the community property.

8 {45} The district court in the present case found guidance in the law of Texas, which  
9 is also a community property state, and on which our Supreme Court relied in *Roselli*.

10 The district court noted that the applicable Texas law is summarized as follows:

11 In the absence of fraud on the rights of the other spouse, a spouse  
12 has the right to control and dispose of community property subject to his  
13 sole management. . . . The managing spouse has the burden to show that  
14 his disposition of the property was fair.

15 The court will consider three primary factors of ‘fairness’ in  
16 reviewing one spouse’s claim of constructive fraud against the other.  
17 The factors to be considered are the size of the property disposed of in  
18 relation to the total size of the community estate; the adequacy of the  
19 estate remaining to support the other spouse after the disposition; and  
20 the relationship of the parties involved in the transaction or, in the case  
21 of a gift, of the donor to the donee.

22 *Massey v. Massey*, 807 S.W.2d 391, 401-02 (Tex. App. 1991) (citations omitted).

23 These factors are similar to those we have distilled from *Roselli* and *Fernandez*.

1 {46} The district court went on to analyze whether Yogi Bhajan breached his  
2 fiduciary duty to Bibiji under the framework of three questions: (1) whether the gift  
3 was a reasonable one for just cause; (2) whether the property given was excessive  
4 compared to the value of the entire community estate; and (3) whether the gift was  
5 “in discharge of a legal, moral or civic obligation.” The district court derived the first  
6 question from Texas law, as stated in *Kemp v. Metropolitan Life Insurance Company*,  
7 205 F.2d 857, 863 (5th Cir. 1953) (stating that “Texas recognizes the right of the  
8 [spouse] to make moderate gifts for just causes”). We interpret the notion of “just  
9 cause” to be a fair extension of the concept of a gift for the community’s common  
10 benefit, as stated in *Fernandez*. The second question is consistent with the precepts  
11 stated in *Roselli* and *Fernandez*. We find little support in the case law for the third  
12 question, so we eliminate it from our consideration.

13 {47} Because the assessment of these factors involves balancing the equities  
14 presented by a particular set of circumstances, we review the district court’s  
15 determination for abuse of discretion. *See Romero v. Bank of the Sw.*, 2003-NMCA-  
16 124, ¶ 28, 135 N.M. 1, 83 P.3d 288 (explaining that “the issue of how the district  
17 court uses its equitable powers to provide an appropriate remedy is reviewed only for  
18 abuse of discretion” (internal quotation marks and citation omitted)).

1 {48} Having established a framework for assessing the district court's findings on  
2 the issue of reallocation, we turn to the gifts and charitable contributions that Bibiji  
3 found objectionable. It is notable that Bibiji herself never testified at trial and, as a  
4 result, information about her objections was supplied indirectly.

5 {49} Bibiji's expert accountant, David Hinton, testified about how he calculated  
6 which gifts and charitable contributions were objectionable. He prepared a report  
7 listing the amounts of charitable contributions made by the marital community  
8 annually for the years 1981 to 2004 and compared those contributions to the income  
9 reported for those years on the spouses' joint income tax returns. Hinton testified that  
10 Bibiji would have agreed to 15 percent of total income as an acceptable level of  
11 contribution. He calculated that 15 percent of total income for the twenty-three years  
12 at issue was \$2,248,877 and that actual contributions totaled \$5,109,554. Subtracting  
13 the former from the latter yielded the sum of \$2,860,677. Hinton also provided a list  
14 of other gifts of which Bibiji apparently did not approve, totaling \$576,260. Adding  
15 together Bibiji's half interest in the charitable contributions exceeding 15 percent and  
16 in the unapproved gifts yielded the sum of \$1,819,950, which Bibiji claimed she was  
17 entitled to receive via a reallocation of Yogi Bhajan's half of the community estate.

18 {50} The district court rejected Bibiji's claim for reallocation for a number of  
19 reasons. On the issue of gifts, the court first found that the list of challenged gifts was

1 taken from the Living Trust's accounting entry for non-deductible disbursements, and  
2 some of those items were not actually gifts. These non-gift items included a trip that  
3 Bibiji herself took to Africa, payments to family members (including Kamaljit, the  
4 daughter of Yogi Bhajan and Bibiji), expenses incurred during visits with Indian  
5 guests, medical expenses for Yogi Bhajan and members of the Sikh community, and  
6 payments for religious services. Harijot's testimony supported these findings of fact.

7 {51} Also in connection with gifts, the court found that the Trustees were simply  
8 unable to accept the contention that Bibiji did not know about and would have  
9 objected to them. This was in part because Bibiji's list of unapproved gifts varied  
10 from year to year during the course of this litigation, in part because the list contained  
11 clearly non-objectionable gifts beneficial to the community, as detailed above, and  
12 in part because Bibiji failed to provide specifics regarding her claimed lack of  
13 knowledge or consent, despite repeated requests for such information. These findings  
14 were also supported by the evidence.

15 {52} In regard to charitable contributions, the district court found that Bibiji's expert  
16 accountant "gave no credit for years in which the contributions were less than 15  
17 percent nor any credit for contributions in excess of 15 percent that Bibiji expressly  
18 approved (such as the donation of the ranch in Espanola, to which Bibiji admitted she

1 consented).” The court also found that the expert “failed to account for the tax  
2 benefits received by the community as a result of the charitable contributions.”

3 {53} The evidence supported these findings. Hinton testified that for years where  
4 charitable contributions were less than 15 percent, he simply noted a zero rather than  
5 a negative number, and he never considered the overall effect of using zero in five of  
6 the years in question. He also testified that Bibiji approved the donation of the  
7 Espanola ranch, valued at \$745,000, in 1995, which was more than the total income  
8 for that year. However, he did not account for this approved donation in his straight  
9 mathematical calculation that any contribution above 15 percent of income was a  
10 non-approved contribution. The Trustees’ expert accountant testified that the  
11 charitable contributions in excess of 15 percent of income resulted in a federal tax  
12 savings to the community of \$1,118,892 and a state tax savings of \$220,543.

13 {54} In light of these findings regarding gifts and charitable contributions made  
14 during Yogi Bhajan’s lifetime, the district court then applied the legal analysis of  
15 whether the gifts or contributions were reasonable and for just cause and whether the  
16 property given was excessive compared to the value of the entire community estate.  
17 With respect to gifts, the court found that many of the gifts “were small in comparison  
18 to the community estate[,]” that “[i]n the aggregate, the gifts did not violate [Bibiji’s]  
19 rights[,]” and that “Yogi Bhajan did not breach his spousal fiduciary duty to Bibiji in

1 making the gifts.” Given that many of the objectionable gifts actually benefitted the  
2 community and the children of Yogi Bhajan and Bibiji, we cannot say that the district  
3 court abused its discretion in so finding.

4 {55} As for the charitable contributions, the district court made several relevant  
5 findings, including:

- 6 • “Many of the donations were made to non-profit organizations that were  
7 involved in the couple’s spiritual mission.”
- 8 • “Bibiji gave implied, if not express, consent to the charitable contributions,  
9 particularly in view of the course of conduct of the public life of the couple.”
- 10 • “The Living Trust’s charitable donations, while sizeable, were reasonable in  
11 light of the marital community’s life mission and for just causes; the donations  
12 . . . were not excessive compared to the community estate; and the donations  
13 did not leave Bibiji without the means to sustain herself.”

14 {56} Again, these findings were supported by substantial evidence. A cursory  
15 review of the charitable contributions made over the years reveals that the vast  
16 majority were made to non-profits affiliated with the Sikh religion, including various  
17 Sikh Dharma organizations, 3HO Foundation, and the Kundalini Research Institute.  
18 Bibiji was the Bhai Sahiba for Sikh Dharma and its affiliates, which meant that she  
19 was the authority on the proper practice of the Sikh religion. She was also on the



1 boards of Sikh Dharma Educational Institute and 3HO Foundation and “had a strong  
2 interest in promoting the mission of 3HO in the world arena.” And, in the opinion  
3 of Freeland, Bibiji “has been directly involved in the charitable activities that those  
4 [charitable] contributions support. She in turn receives, directly and indirectly,  
5 tangible and intangible benefits from her association with the organizations.”

6 {57} The district court’s finding that Bibiji impliedly consented to the majority of  
7 charitable contributions is further supported by evidence that she and Yogi Bhajan  
8 made it their life’s mission to support and enhance the Sikh community they had  
9 established in the United States after they emigrated from India. Bibiji stated in a  
10 letter to the Sikh community:

11 My husband and I have built the organization and given millions of  
12 dollars of contributions over the years. More than money, we have  
13 dedicated our entire lives to these organizations. My husband and I  
14 donated the Ranch in Espanola and several other properties we own to  
15 the Sikh Dharma.

16 In addition, Trustee Ek Ong Kar Kaur testified that she was present innumerable  
17 times from the early 1970s until Yogi Bhajan’s death when donations and charitable  
18 giving were discussed in Bibiji’s presence. Bibiji signed all of the income tax returns  
19 that listed charitable donations. And, because Bibiji sat on the board of many of the  
20 donee charitable organizations, including 3HO and the Sikh Dharma Educational  
21 Institute, she would have had access to information about the funding of those

1 organizations. Bibiji and Yogi Bhajan subscribed to the tenet of Das Vandh, which  
2 is tithing at 10 percent of base income. But 10 percent was a baseline rather than a  
3 ceiling for charitable contributions. Yogi Bhajan and Bibiji “encouraged giving by  
4 their example, not only to one organization, but over and above Das Vandh, and to  
5 other organizations and to help people and other communities that needed help.”

6 {58} The evidence also established that Yogi Bhajan’s estate was valued at  
7 \$6,061,254 and that Bibiji’s half of the community property totaled \$3,021,632  
8 Bibiji received an additional \$706,000 from Yogi Bhajan’s half of the community  
9 assets, including Yogi Bhajan’s half interest in certain real properties and Yogi  
10 Bhajan’s separate real property in India. Thus, there was substantial evidence that  
11 Bibiji’s share of the estate, which amounted to more than half, was sufficient to  
12 sustain her. Furthermore, Bibiji’s half of the objectionable charitable deductions,  
13 which were arbitrarily calculated at anything in excess of 15 percent of annual  
14 income, totaled \$1,430,339 over a period of time exceeding twenty years, while the  
15 tax savings attributable to charitable deductions in excess of 15 percent of income  
16 totaled \$1,141,435.

17 {59} While Bibiji presented evidence contrary to the evidence summarized above,  
18 “when there is a conflict in the testimony, we defer to the trier of fact.” *Buckingham*  
19 *v. Ryan*, 1998-NMCA-012, ¶ 10, 124 N.M. 498, 953 P.2d 33. “The question is not

1 whether substantial evidence exists to support the opposite result, but rather whether  
2 such evidence supports the result reached.” *Las Cruces Prof'l Fire Fighters*, 1997-  
3 NMCA-044, ¶ 12. There being considerable evidence supporting the district court’s  
4 decision under the *Roselli-Fernandez* framework discussed above, we cannot say that  
5 the district court abused its discretion in declining to order reallocation of Yogi  
6 Bhajan’s half of the community assets.

7 **2. Alleged Procedural Errors**

8 {60} Bibiji claims that the district court made several procedural errors, including:  
9 (a) entry of a collateral estoppel order, which precluded full litigation of Bibiji’s  
10 claims; (b) entry of an overly broad judgment dismissing all claims that have been or  
11 could have been brought by Bibiji; and (c) allowing the Trustees to rely on advice of  
12 counsel when they failed to assert this theory as an affirmative defense. We are not  
13 persuaded.

14 **a. Collateral Estoppel Order**

15 {61} This claim asserted by Bibiji is entangled with a prior opinion of this Court in  
16 related litigation, *In re Estate of Yogiji*, 2013-NMCA-104, 311 P.3d 1224, *cert.*  
17 *denied sub nom. Puri v. Khalsa*, 2013-NMCERT-010, 313 P.3d 250. At some point  
18 in the long history of the present litigation, more than four years after Yogi Bhajan’s  
19 death, Bibiji filed a proceeding in the district court seeking probate of Yogi Bhajan’s

1 will and the appointment of a personal representative. *Id.* ¶ 2. The gist of Bibiji's  
2 claim in the probate proceeding was that she wanted a personal representative to  
3 investigate what assets Yogi Bhajan owned at the time of his death in an effort to  
4 determine whether any assets actually belonged to her. *Id.* ¶ 7. The district court  
5 probated the will, appointed a personal representative, and directed the personal  
6 representative to determine whether there were any assets other than those that had  
7 been identified and distributed by the successor trustees of the Living Trust, the  
8 Survivor's Trust, and the Administrative Trust. *Id.* ¶ 8. The district court then  
9 limited the personal representative's investigation to assets specifically identified by  
10 Bibiji as having questionable title. *Id.* ¶ 9. When the personal representative's  
11 investigation revealed no previously unidentified assets, the district court closed the  
12 probate proceeding. *Id.* ¶ 13.

13 {62} The district court in the present case entered its findings of fact and  
14 conclusions of law after the district court in the probate case had closed the case  
15 before it. Consequently, the district court in the case before us entered the following  
16 conclusions of law:

17 LL. Bibiji is precluded by the judgment entered in the [p]robate  
18 [c]ourt from litigating whether there were any assets belonging to  
19 Yogi Bhajan on the date of death, October 6, 2004, which were  
20 not identified and distributed by the Trustees.

21 . . . .

1 NN. Bibiji is precluded from litigating a claim that the Trustees failed  
2 to locate and identify property that was owned by Yogi Bhajan at  
3 the time of his death . . . because the [p]ersonal [r]epresentative  
4 investigated the list of alleged assets that Bibiji provided and  
5 found no evidence to support Bibiji’s ownership claims regarding  
6 other assets.

7 {63} Following entry of the findings and conclusions in this case, this Court filed  
8 an opinion reversing the district court’s ruling in the probate case. In that opinion,  
9 we analyzed a specific section of the Probate Code and concluded that the district  
10 court had interpreted it too narrowly. We stated that “[o]n remand, the personal  
11 representative may conduct a complete investigation and inventory of assets in which  
12 [Yogi Bhajan] had an interest at the time of his death” and that the personal  
13 representative could “confirm title to any assets that are properly in the possession of  
14 a devisee, and he may inventory the assets that were properly identified as residue for  
15 transfer to the trust.” *Id.* ¶ 31. We expressly held that Bibiji’s claim for reallocation  
16 of assets was off limits in the remanded probate proceeding because that claim was  
17 the subject of the case now before us. *Id.*

18 {64} Bibiji now contends that the district court’s conclusions LL and NN  
19 “effectively ratified [the] Trustees’ determination of what assets [Yogi Bhajan] owned  
20 at his date of death and [the] Trustees’ distribution of those assets.” She further  
21 maintains that this Court’s reversal of the determination in the probate proceeding in  
22 *Estate of Yogiji* “has made clear that there has been no appropriate comprehensive

1 investigation of [Yogi Bhajan]’s assets and the [d]istrict [c]ourt’s . . . findings and  
2 conclusions are erroneous.”

3 {65} We disagree with Bibiji’s arguments. If the personal representative conducts  
4 an investigation of assets, which our opinion in *Estate of Yogiji* by no means required,  
5 and if the personal representative finds assets that were overlooked by the Trustees  
6 in their inventory—a matter of sheer speculation at this point—then those assets will  
7 be distributed in accordance with the instructions in the Living Trust. Any newly  
8 discovered assets that are determined to be community property will be distributed  
9 half to Bibiji and half to the Administrative Trust. The likelihood that any new assets  
10 will be discovered seems remote because, as the Trustees note in their brief, Bibiji  
11 had approximately five years during the course of the present litigation to conduct her  
12 own investigation through the discovery process, and she was unable to produce  
13 evidence of any asset that had been overlooked in the Trustees’ inventory.

14 **b. Overly Broad Judgment**

15 {66} Bibiji next claims that the district court exceeded its jurisdiction in its  
16 judgment, which dismissed “all claims which have been or could have been brought  
17 by [Bibiji] in this case, including all claims related to the transactions and occurrences  
18 that are the subject matter of the claims alleged in this case.” Bibiji contends that  
19 there are pending disputes between her and the Trustees in California federal court

1 regarding “new breaches of duty in the management of trust assets and the trademarks  
2 and [intellectual property] which were not assets of the [Living Trust].”

3 {67} We do not understand Bibiji’s argument. She cites no authority for the  
4 proposition that the district court lacked jurisdiction to dismiss Bibiji’s claims, and  
5 we therefore assume there is no such authority. *In re Adoption of Doe*, 1984-NMSC-  
6 024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (stating that where a party cites no authority  
7 to support an argument, we may assume no such authority exists). The language  
8 Bibiji objects to does no more than describe explicitly the normal preclusive effect  
9 of any judgment entered after litigation. *Pielhau v. State Farm Mut. Auto. Ins. Co.*,  
10 2013-NMCA 112, 314 P.3d 398. If Bibiji believes the judgment in the present case  
11 does not preclude litigation of issues or claims raised in the California court, she can  
12 present that view in that court, presumably in response to motions that may be filed  
13 by the Trustees in that court.

14 **c. Defense of Advice of Counsel**

15 {68} Bibiji challenges several of the district court’s findings that mention the fact  
16 that the Trustees hired Freeland to advise them as they administered the transfer of  
17 assets from the Living Trust to the two successor trusts and as they attempted to  
18 address Bibiji’s claims. Bibiji contends that these findings establish that the Trustees  
19 raised an “advice of counsel” defense without having first pleaded the defense and

1 that by allowing this to occur, the district court permitted the Trustees to “sandbag  
2 Bibiji and deprive her of the opportunity to engage in discovery and properly prepare  
3 her case for trial.”

4 {69} Again, we do not understand Bibiji’s argument. As authority, she relies on  
5 *Gingrich v. Sandia Corp.*, for the proposition that “when the advice of counsel  
6 defense is raised, the party raising the defense must permit discovery of any and all  
7 legal advice rendered on the disputed issue.” 2007-NMCA-101, ¶ 24, 142 N.M. 359,  
8 165 P.3d 1135 (internal quotation marks and citation omitted). *Gingrich* is inapposite  
9 because it involved waiver of attorney-client privilege when the client was relying on  
10 its attorney’s advice as a defense. Here, the briefs raise no issues involving attorney-  
11 client privilege. In addition, there is no suggestion that the Trustees raised advice of  
12 counsel as a defense. Instead, they consulted with an attorney to advise them in  
13 administering the trusts, as they are permitted to do under NMSA 1978, Section 46A-  
14 8-807(A)(1) (2003) (stating that “[a] trustee may delegate duties and powers that a  
15 prudent trustee of comparable skills could properly delegate under the circumstances”  
16 providing the trustee “exercise[s] reasonable care, skill and caution in . . . selecting  
17 . . . agent[s]).”



1 **3. Attorney Fees**

2 {70} The Trustees asked for an award of attorney fees pursuant to NMSA 1978,  
3 Section 46A-10-1004 (2003), which provides:

4 In a judicial proceeding involving the administration of a trust, the  
5 court, as justice and equity may require, may award costs and expenses,  
6 including reasonable attorney fees, to any party, to be paid by another  
7 party or from the trust that is the subject of the controversy.

8 In its judgment, the district court stated that justice and equity supported an award to  
9 the Trustees of their reasonable attorney fees in accordance with this statute. The  
10 amount of the award would be determined after appropriate evidence had been  
11 submitted. In this appeal, we are not concerned with the amount of fees awarded but  
12 only with the fact that an award was made.

13 {71} Bibiji argues that the district court erred in determining that the Trustees were  
14 entitled to an award of attorney fees because (1) they waived such an award by failing  
15 to ask for it in their pleadings, (2) justice and equity do not require this award, and (3)  
16 the award violated Bibiji's due process rights because she did not have the  
17 opportunity to brief the issue.

18 {72} While there is no New Mexico case law interpreting Section 46A-10-1004,  
19 generally speaking, an award of attorney fees is a matter for the district court's  
20 discretion. *See Lenz v. Chalamidas*, 1991-NMSC-099, ¶ 2, 113 N.M. 17, 821 P.2d  
21 355 ("Award of attorney fees rests in the discretion of the trial court and this [C]ourt

1 will not alter the fee award absent an abuse of discretion.”); *see also Garwood v.*  
2 *Garwood*, 2010 WY 91, ¶ 38, 233 P.3d 977, 986 (Wyo. 2010) (stating that under the  
3 Uniform Trust Code, “[o]nce it has been determined that authority exists to award  
4 fees and costs, a trial court has extremely broad discretion to rule on the amount of  
5 such an award”).

6 {73} We are not persuaded by Bibiji’s argument that the Trustees waived their claim  
7 for an award of attorney fees or that she was denied the opportunity to brief the issue.  
8 Bibiji has not cited any authority in support of the proposition that a request for  
9 attorney fees is waived unless it is pleaded. The Trustees asked for an award in their  
10 closing argument brief, and Bibiji could have responded to this request in her closing  
11 argument reply brief but failed to do so. Moreover, Bibiji responded in depth to the  
12 Trustees’ actual motion for attorney fees, which was filed after the judgment was  
13 entered. While Bibiji claims that she “might have made different procedural choices  
14 or otherwise amended her litigation strategy” if she had known earlier about the  
15 Trustees’ claim for attorney fees, she does not provide any examples of the alleged  
16 prejudice she sustained. We decline to speculate regarding what Bibiji failed to  
17 demonstrate.

18 {74} On the merits, Bibiji disputes the district court’s finding that justice and equity  
19 require an award of the Trustees’ attorney fees. She maintains that the Trustees’

1 claim for declaratory judgment was dismissed long before trial, thus making Bibiji  
2 the prevailing party, and that the Trustees’ “successful defense against Bibiji’s claims  
3 merely makes this a split result.” While she cites cases in which courts have declined  
4 to award attorney fees under such circumstances, those same cases reiterate that the  
5 decision whether to award fees rests in the trial court’s discretion. *See, e.g., Hedicke*  
6 *v. Gunville*, 2003-NMCA-032, ¶ 28, 133 N.M. 335, 62 P.3d 1217 (explaining that “if  
7 each party prevails on one claim and loses on one claim, the trial court could and may  
8 conclude that neither is ultimately a prevailing party on those claims”); *In re Estate*  
9 *of Foster*, 1985-NMCA-038, ¶ 43, 102 N.M. 707, 699 P.2d 638 (stating that an award  
10 of attorney fees, “being equitable[,] depends on the facts of the case and the exercise  
11 of equitable power must be used with discretion”). Given the many years of litigation  
12 over issues on which Bibiji failed to present any direct evidence to support her claims  
13 and in light of the Trustees’ overall success in defending these claims, we cannot say  
14 that the district court abused its discretion in determining that justice and equity  
15 required an award of the Trustees’ reasonable attorney fees.

16 **CONCLUSION**

17 {75} For the foregoing reasons, we affirm the district court’s judgment.

1 {76} **IT IS SO ORDERED.**

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**CYNTHIA A. FRY, Judge**

4 **WE CONCUR:**

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6 **MICHAEL D. BUSTAMANTE, Judge**

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8 **MICHAEL E. VIGIL, Judge**