

COURT OF APPEALS OF OREGON

Carter v. Smith

346 Or. App. 5 (2025) · No. A184191 · Decided December 24, 2025

SUMMARY

The Oregon Court of Appeals affirmed judgments resolving a dispute between beneficiaries of a living trust and dividing the trust’s real property. The court held that statutory partition under ORS 105.205 was unavailable because the trust, rather than multiple individuals, owned the property, but concluded that the trial court had properly distributed the property as a remedy for the trustee’s breaches under the Uniform Trust Code. The court also held that any error in awarding attorney fees under ORS 130.815 without a more specific pleading was not plain error.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Aoyagi, P. J.; Aoyagi, Presiding Judge; Kamins, Judge; Pagán, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 24, 2025
DOCKET	A184191
DISPOSITION	affirmed
PROCEDURAL POSTURE	Trustee appealed the general and supplemental judgments after the circuit court divided trust-owned real property between the trust's two beneficiaries as a remedy for breaches of trust, removed the trustee, and awarded attorney fees.
STANDARD OF REVIEW	The court reviewed the legal availability and characterization of the remedy de novo. The unpreserved attorney-fee challenge was reviewed for plain error under ORAP 5.45(1).
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jeffery George Smith, individually and as Trustee of the George and Sharon Smith Living Trust v. Glen Carter, individually and as Personal Representative of the Estate of Connie Marie Carter

TOPICS

- trusts
- trustee duties
- breach of trust
- attorney fees
- appellate procedure

PRACTICE AREAS

trusts

trust administration

real estate

attorney fees

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court could divide the trust's real property and impose an equalizing judgment when the trust, rather than multiple individuals as tenants in common, owned the property.
2. Whether the circuit court plainly erred by awarding Carter attorney fees when the complaint did not expressly plead a statutory entitlement to fees.

HOLDINGS

1. Partition under ORS 105.205 was unavailable because that statute applies when several persons hold real property as tenants in common, whereas the trust was the sole owner of the property. Nevertheless, the circuit court properly distributed the property as a remedy for Smith's breaches of trust under the Uniform Trust Code.
2. The attorney-fee award was not plainly erroneous because Carter did not completely fail to allege a right to attorney fees; he included attorney fees in the caption of his complaint. Whether that constituted a sufficient attempt to comply with ORCP 68 C(2)(a), and whether the pleading satisfied the applicable notice and prejudice requirements, was reasonably disputable under existing law.

KEY QUOTATIONS

“Our understanding, given all of the circumstances, is that what the court actually did was to take jurisdiction over a trust dispute and resolve that dispute.” (10)

“The court awarded two parcels to Carter and three parcels to Smith, with an equalizing judgment, as “the remedy” for Smith’s breaches of trust.” (10)

“It is reasonably disputable whether the complaint adequately alleged the facts providing a basis for fee entitlement, whether the inclusion of attorney fees in the caption fairly alerted Smith that fees would be sought, and whether Smith was prejudiced.” (15)

FACTUAL BACKGROUND

The George and Sharon Smith Living Trust owned five parcels of real property and provided for equal division of trust assets between Jeffery Smith and Connie Carter. After Connie Carter's death, Glen Carter, as personal representative and sole beneficiary of her estate, and Smith were unable to agree on an equitable distribution. Carter alleged and presented evidence that Smith had committed multiple breaches of his trustee duties. The circuit court divided the parcels between the beneficiaries, ordered an appraisal and equalizing judgment, removed Smith as trustee, and awarded Carter attorney fees.

PROCEDURAL HISTORY

Carter filed a complaint seeking declaratory relief and partition of trust property under ORS 105.205, as well as attorney fees, costs, and disbursements. Smith moved for summary judgment, arguing that statutory partition

was unavailable because the trust, rather than multiple individuals, owned the property; the circuit court denied the motion. After a trial at which the parties litigated the broader trust dispute without objection, the circuit court found seven breaches of trust, distributed five parcels between the beneficiaries with an anticipated equalizing judgment, removed Smith as trustee, and awarded Carter attorney fees. Smith appealed both judgments.

DISPOSITION

affirmed

CASES CITED

- Kittredge v. O'Keefe, 217 Or. App. 599, 177 P.3d 28 (2008)
- State v. Wyatt, 331 Or. 335, 15 P.3d 22 (2000)
- State v. Vanorum, 354 Or. 614, 317 P.3d 889 (2013)
- Mulier v. Johnson, 332 Or. 344, 29 P.3d 1104 (2001)
- Hawkins v. City of La Grande, 315 Or. 57, 843 P.2d 400 (1992)
- Bridgestar Capital Corp. v. Nguyen, 290 Or. App. 204, 415 P.3d 1095 (2018)
- Wedemeyer v. Nike Ihm, Inc., 319 Or. App. 781, 513 P.3d 610 (2022)
- Bruce v. Cascade Collections, Inc., 199 Or. App. 59, 110 P.3d 587 (2005), rev. denied, 339 Or. 66 (2005)
- Moyer v. Columbia State Bank, 315 Or. App. 728, 503 P.3d 472 (2021)
- Guzek v. Fhuere, 342 Or. App. 682, 577 P.3d 1175 (2025)