

IN THE CHANCERY COURT, STATE OF WYOMING

2026 WYCH 12

*Anonymized trust-case order
published in accordance
with W.R.C.P.Ch.C. 5.2(b)*

In the Matter of the 2026 WYCH 12
Trust

Case No. Redacted

**ORDER GRANTING SUMMARY JUDGMENT IN PART TO MOVANT
(AND OTHERWISE IN FAVOR OF NON-MOVANT)
AND DENYING MOTION FOR JUDGMENT ON THE PLEADINGS**

[¶1] This trust dispute presents what has long been numbered among “the more troublesome construction problems,” namely: “whether a gift in trust for” “descendants” should be “distributed *per stirpes* or *per capita*.” Bogert, *The Law of Trusts and Trustees* § 182 (updated 2025).

[¶2] This construction challenge rears its ugly head in the administration of the 2026 WYCH 12 Trust. That trust directs that, upon the death of its surviving settlor, its assets are to be split equally between the settlors’ surviving children. And if one of those children predeceases the surviving settlor, that child’s share is to pass “to its descendants then surviving, equally share and share alike.”

[¶3] When the trust was executed, settlors had four living children and one deceased child (Child A). By time the second settlor died, three children remained: Child 1, Child 2, and Child 3. Child 4 predeceased second settlor.

[¶4] Trustee filed this case seeking an instruction directing a *per capita* distribution of its deceased sibling share. Trustee’s siblings, Child 2 and Child 3, contend the trust requires a *per stirpes* distribution. Child 4’s child, Grandchild 1, also argues for a *per stirpes* distribution.

[¶5] The case is at the dispositive motions stage. Child 2 has moved for summary judgment, and Grandchild 1 has moved for judgment on the pleadings. Child 1 and Child 3 filed no dispositive motions.

[¶6] The dispositive motions raise three primary issues: (1) whether the trust requires a *per stirpes* or *per capita* distribution; (2) whether Child A is excluded as a beneficiary; and (3) how costs should be allocated.

[¶7] As explained below, on the first issue, the court concludes that Wyoming law requires a *per capita* distribution of Child 4’s quarter share. On the second issue, the court finds no dispute among the parties and declares that Child A is not a beneficiary under the trust’s terms. And on the third issue of costs, the court finds that § 9(b) of the trust requires costs to be deducted from the trust’s assets before their distribution.

[¶8] The court denies Child 2’s motion in part, denies Grandchild 1’s motion in full, and as allowed by W.R.C.P.Ch.C. 56(f)(1), tentatively grants summary judgment to Child 1. This order provides notice of the reasons for that decision and provides the parties with an opportunity to respond as directed at its conclusion.

BACKGROUND

The Trust

[¶9] Settlers created a joint revocable trust in [date redacted]. That trust provided for creation of the 2026 WYCH 12 Trust, if so desired by the surviving settlor upon the death of the other settlor. The trust also instructs how costs should be taxed upon distribution of the 2026 WYCH 12 Trust:

If the surviving Settlor desires to keep the Trust [E]state, or any portion thereof, in [the] trust agreement such Trust Estate shall be held as a separate trust by the surviving Settlor/Trustee to be known as the **2026 WYCH 12 Trust**. The Trustee shall hold, manage, invest, reinvest, collect the income, deduct the costs and expenses and pay over the net income and distribute the principal of the **2026 WYCH 12 Trust**[.]

Pet., Ex. A, § 9(b) (emphasis in original). When the surviving settlor dies and the principal is distributed, the trust terminates under § 10.

[¶10] Section 9(b)(c)(i) governs distribution upon termination. At the surviving settlor’s death, the trustee is to divide the trust into four equal portions—one for each of the settlors’ children. If a child has predeceased the settlors, that child’s quarter share goes to its surviving descendants “equally share and share alike.”

[¶11] Section 9(b)(c)(i), in pertinent part, provides:

- c. Upon the death of the surviving Settlor the 2026 WYCH 12 Trust shall be distributed as follows:
 - (i) The Trustee shall divide the said 2026 WYCH 12 Trust, as the same shall then be constituted and remaining, into four (4) equal portions, or into as many equal portions as there are Settlers'

children, one each for each of Settlers' children; to be held, administered and distributed as follows.

One such equal portion shall be distributed outright, free of this Trust, to Child 4 as its sole and separate property. If it shall not survive Settlers, but it has descendants then surviving, to its descendants then surviving, equally share and share alike. If none, to Settlers' other surviving children or child, equally, share and share alike, outright, free and clear of this Trust; and if none, to those persons surviving at the time who shall be designated as Settlers' heirs by the laws of the State of Wyoming in effect at that time.

[¶12] Section 15, the trust's definitions section, provides some interpretative guidance. It defines "child/children," "issue," and sets forth a per-stirpes formula that applies "whenever a distribution to issue by per stirpes (representation) is called for by this Trust." Under § 15, the "following words shall have the following meanings:"

- (a) 'Child' or 'children' shall mean lawful blood descendants of the first degree of the parent designated.
- (b) . . .
- (c) The issue of a person means all lawful blood descendants of the ancestor designated.
- (d) Whenever a distribution to issue by per stirpes (representation) is called for by this Trust, the distributable assets are to be divided into as many shares as there are, at the time such assets are distributable, issue in the nearest degree of kinship and then deceased issue in the same degree who left then living issue, each then living issue in the nearest degree receiving one share and the share of each then deceased issue in the same degree being divided among its issue in the same manner.

[¶13] The main dispute concerns the interplay between § 9(b)(c)(i) and § 15(d). The parties disagree on whether § 9(b)(c)(i) calls for a stirpital distribution, thereby invoking § 15(d)'s formula, or whether § 9(b)(c)(i)'s command that descendants take "equally share and share alike" requires a *per capita* division among Child 4's surviving descendants.

[¶14] The joint revocable trust, and by extension the 2026 WYCH 12 Trust, is by its terms to be "governed and construed" according to Wyoming law. *Id.* at Ex. A, § 19.

Posture

[¶15] The procedural history is layered. To provide context for its ruling, the court summarizes the posture here and then outlines the petition, cross-petitions, dispositive motions, and parties' positions below.

[¶16] This case began with the trustee's petition in 2025 and service on all "interested persons" under Wyo. Stat. § 4-10-109(e). Service on the many "interested persons" delayed the case early. Most beneficiaries who were personally served or who accepted service opted not to participate. In January 2026, however, Child 2 filed a response and cross-petition.

[¶17] Eventually, the trustee achieved personal service on, or secured acceptance of service from, all "interested persons" except Grandchild 1. In February, the court extended the time for service under W.R.C.P.Ch.C. 4(w) to allow completion of service. Grandchild 1 appeared in the case on March 27. On April 6, the court amended the dispositive-motion and responsive-pleading schedules to ensure Grandchild 1 could meaningfully participate without delaying the previously set dispositive-motion hearing.

[¶18] Child 2 moved for summary judgment under the original deadline on March 30. Grandchild 1 followed by filing a response and counter petition to the trustee's petition on April 14, and Child 3 filed a response and counterclaim the next day.. A few days later, Grandchild 1 moved for judgment on the pleadings. The parties also submitted various responses and replies, all of which the court has reviewed. The court held a hearing on the two pending dispositive motions two weeks ago on May 14.

Pleadings and Motions Before the Court

Amended Petition

[¶19] Trustee's petition requested, among other things, a declaration that Child A is not a beneficiary of the trust and that, based on *In re Gilchrist's Estate*, 58 P.2d 431 (Wyo. 1936) (*Gilchrist I*), "the individuals entitled to receive distribution of an equal portion of the trust share set aside for the benefit of Child 4 under Section 9(b)(c)(i) of the 2026 WYCH 12 Trust Instrument shall consist of each and every lineal descendant (i.e. child, grandchild, great-grandchild, and so forth) of Child 4 who is lawfully related to Child 4 (by blood or adoption) and who was living on [date redacted]." In short, the trustee seeks an order sanctioning a *per capita* distribution.

Cross-Petitions

[¶20] Three beneficiaries filed responses and cross-petitions.

[¶21] Child 2’s cross-petition sought a declaration identifying the trust beneficiaries. It argues that Child A was expressly excluded from the trust and that Child 4’s descendants should take *per stirpes* under Wyoming law, resulting in only ten beneficiaries. It also seeks immediate distribution of the shares allocated to the settlor’s three surviving children and requests that administrative costs associated with determining the recipients of Child 4’s quarter share of the trust’s assets be charged solely to that quarter share.

[¶22] Grandchild 1’s cross-petition likewise seeks a declaration that distribution to its parent Child 4’s descendants will be *per stirpes* and that Child A is not a beneficiary of the trust. Grandchild 1 also requests that the trustee bear the costs associated with identifying Child 4’s descendants and seeks an independent accounting of certain trust funds held by Child 2. In addition, Grandchild 1 brings a claim of a breach of fiduciary duty for what it perceives as Child 1’s delay and waste in engaging new counsel and hiring a genealogical research company before bringing this judicial proceeding. It also asks that the court reject the trustee’s HeirSearch report as unreliable.

[¶23] Child 3 followed suit with its own response and cross-petition. It agrees with its fellow respondents that the trust directs a stirpital distribution for Child 4’s descendants and also seeks an order taxing administrative costs associated with identifying those descendants to the trustee. It also argues that Child A is not a beneficiary of the trust.

Motion For Summary Judgment

[¶24] Of the three respondents, Child 2 alone moved for summary judgment.

[¶25] The motion’s 56.1 statement of undisputed material facts relays the general background of the trust’s signing. Settlor’s created their revocable trust on [date redacted]. At that time, they had four living children and one deceased child, Child A. Settlor 1 died on [date redacted], and upon its death, Settlor 2 opted to maintain the trust’s assets in trust as described in § 9(b) of the trust. Settlor 2 died on [date redacted]. At that time, Child 4 was deceased but had left four children (three of whom were still living and one of whom, Grandchild 2, had died). Grandchild 2 had left four living children. No party disputed any of these facts.¹

[¶26] Child 2’s motion, like its cross-petition, advocates for a stirpital distribution of Child 4’s quarter share of the trust’s assets. It contends that the second sentence of

¹ In their Joint Proposed Case Management and Scheduling Order, Child 1 and Child 2 agreed that there is no factual controversy regarding the trust’s validity or its assets. They framed “the crux of the matter” as identifying beneficiaries, allocating percentages, and allocating administrative costs, while acknowledging a “need for legal interpretation by the Court” and did “not anticipate extensive, if any, discovery.” The court accordingly scheduled the case for disposition on motion and hearing. And at the May 14 hearing, Grandchild 1 stated that “the issues before the court are purely legal. All material facts are undisputed across every filing.” Child 3 did not respond to any dispositive motion.

§ 9(b)(c)(i)'s grants does not include a desired distribution pattern to the descendants. It notes that the trust did not define a *per capita* distribution, but did define a *per stirpes* distribution. Accordingly, it contends that § 15(d)'s definition governs and compels a stirpital distribution to Child 4's descendants in the first degree. In addition, the trust defines heirs as those who would take under Wyoming's intestate law, which uses a *per stirpes* distribution pattern.

[¶27] In the alternative, Child 2 proposes that those intestate laws could guide distribution if the trust's intent is unclear. Doing so would follow (and promote) the policy that most settlors would prefer that nearer relations receive their assets.

[¶28] The motion also notes that Child A was not given a share in § 9 and so it and its children were not intended to be beneficiaries of the trust.

[¶29] The motion closes by requesting charging of the administrative costs associated with identifying Child 4's descendants against its quarter share.

Motion For Judgment on the Pleadings

[¶30] Grandchild 1 moved for judgment on the pleadings, seeking judgment on its cross-petition. Like Child 2, Grandchild 1 argues that the trust's structure and the substitutional nature of the gift to Child 4's descendants (i.e. "dividing assets into equal shares for each child, then substituting descendants only if a child is deceased") require a stirpital distribution. It also relies on Wyoming's statute of descent. Unlike Child 2, Grandchild 1 contends that interpreting the second sentence of § 9(b)(c)(i)'s grants to require a *per capita* distribution would render § 15(d) meaningless. It thus argues that only a *per stirpes* distribution scheme would give effect to all provisions of the document.

Issues for Resolution

[¶31] Together, the dispositive motions present three issues for the court. First, whether the trust requires a *per stirpes* or *per capita* distribution. Second, whether Child A is excluded as a beneficiary. And, third, how costs should be allocated. Of the three, the main issue is determining the distribution scheme.

JURISDICTION AND LEGAL STANDARDS

[¶32] This case primarily requests instructions for the distribution scheme appropriate for the 2026 WYCH 12 Trust in accordance with Wyo. Stat. § 4-10-201(c). The court may hear and decide such cases. Wyo. Stat. § 5-13-115(b)(xiv).

[¶33] Summary judgment of a claim or defense is appropriate "if a movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." W.R.C.P. 56(a). The facts presented by the motion are reviewed in a light "most favorable to the party opposing the motion" with the

nonmovant receiving “the benefit of all favorable inferences that may fairly be drawn from the record.” *Skyco Res., LLP v. Fam. Tree Corp.*, 2022 WY 72, ¶ 14, 512 P.3d 11, 18 (Wyo. 2022). Courts interpret unambiguous trust agreements as a matter of law, and summary judgment is “appropriate” only if a trust agreement “is clear and unambiguous.” *Forbes v. Forbes*, 2022 WY 59, ¶ 31, 509 P.3d 888, 897 (Wyo. 2022); *Chesapeake Expl., LLC v. Morton Prod. Co., LLC*, 2025 WY 15, ¶ 29, 562 P.3d 1286, 1295 (Wyo. 2025). See also *Jackson as Tr. of Phillip G. Jackson Fam. Revocable Tr. v. Montoya*, 2020 WY 116, ¶ 16, 471 P.3d 984, 988 (Wyo. 2020).

[¶34] Judgment is due on the pleadings under Rule 12(c) only if the facts, reviewed in the light most favorable” to the nonmovant “dictate that judgment should be entered as a matter of law.” *Matter of Bruce F. Evertson Dynasty Tr.*, 2019 WY 84, ¶ 24, 446 P.3d 705, 711 (Wyo. 2019) (cleaned up).

[¶35] As shown by W.R.C.P.Ch.C. 12(d), the difference between summary judgment and judgment on the pleadings lies in whether matters outside the pleadings are material to the dispute. Here, where all parties agree on all material facts—facts that were raised in the pleadings—the distinction is inconsequential. This case turns on interpretation of an unambiguous trust, and the parties agree that only questions of law are presented here.

[¶36] Child 2 moves for summary judgment on its cross-petition. It therefore “bears the initial burden of establishing a *prima facie* case for summary judgment by showing that no genuine issue of material fact exists and that judgment should be granted as a matter of law.” *Alloway v. RT Cap., Inc.*, 2008 WY 123, ¶ 7, 193 P.3d 713, 715 (Wyo. 2008). Short of meeting that burden, the trustee “has no obligation to respond to the motion with materials beyond the pleadings.” *Chesapeake*, ¶ 69, 562 P.3d at 1302. Although Rule 56 “clearly contemplates a motion and full adversary proceedings before a summary judgment is granted” the rule requires “no defense to an insufficient showing[.]” *Chesapeake*, ¶ 72, 562 P.3d at 1303; 73 Am. Jur. 2d Summary Judgment § 25.

[¶37] Under W.R.C.P.Ch.C. 56(f), the court may grant summary judgment for a nonmovant after giving notice and a reasonable time to respond.

LAW

Interpretation of Trust Agreements

[¶38] Resolving the parties’ dispositive motions requires careful interpretation of the trust. A court interprets a trust’s terms in the same way it interprets a contract’s terms. *Montoya*, ¶ 16, 471 P.3d at 988. The “primary purpose is to determine the intent of the settlor” based first on “the plain language contained in the four corners” of the trust agreement. *Id.* The court takes that language as found and may not rewrite a trust agreement’s terms. *Wells Fargo Bank Wyoming, N.A. v. Hodder*, 2006 WY 128, ¶ 29, 144 P.3d 401, 411 (Wyo. 2006). The agreement is read “as a whole,

attempting to avoid a construction which renders a provision meaningless[.]” *Montoya*, ¶ 17, 471 P.3d at 988. The agreement’s structure and the relation of its part should be considered. *Eiden Constr., LLC v. Hogan & Assocs. Builders, LLC*, 2024 WY 138, ¶ 44, 561 P.3d 304, 318 (Wyo. 2024) (noting that contracts are interpreted “as a whole, reading each provision in light of all the others to find their plain meaning”) (cleaned up). When irreconcilable, general provisions yield to specific provisions. *Scherer, II v. Laramie Reg’l Airport Bd.*, 2010 WY 105, ¶ 11, 236 P.3d 996, 1003 (Wyo. 2010).

[¶39] Each term of a trust agreement is presumed to have a purpose, and the court should avoid interpretations that leave any terms conflicting or meaningless. *Schell v. Scallon*, 2019 WY 11, ¶ 15, 433 P.3d 879, 885 (Wyo. 2019). The “use of specific words in one part” of a trust agreement “and the omission of the language in another part is considered intentional.” *Evans v. Moyer*, 2012 WY 111, ¶ 29, 282 P.3d 1203, 1212 (Wyo. 2012). The court “will not torture words to import ambiguity where the ordinary meaning of the language leaves no room for ambiguity.” *Four B Props., LLC v. Nature Conservancy*, 2020 WY 24, ¶ 34, 458 P.3d 832, 842 (Wyo. 2020). Rather, the court must guard “zealously” the “clearly expressed intention” of the settlors. *Shriners Hosps. for Child. v. First N. Bank of Wyoming*, 2016 WY 51, ¶ 60, 373 P.3d 392, 410 (Wyo. 2016) (quoting *Poland v. Nalee (In re Estate of George)*, 2011 WY 157, ¶ 13, 265 P.3d 222, 225 (Wyo.2011) (in turn quoting *First Nat’l Bank & Trust Co. v. Brimmer*, 504 P.2d 1367, 1371 (Wyo.1973))).

[¶40] When a trust is “clear and unambiguous, the court looks only to the ‘four corners’ of the document in arriving at the intent of the parties.” *Adams v. ANB Bank*, 2026 WY 31, ¶ 22, 586 P.3d 78, 90 (Wyo. 2026). Absent ambiguity, the trust “will be enforced according to its terms because no construction is appropriate.” *Id.* The same goes for resort to Wyoming’s intestacy laws. Again, the settlors’ intention “as expressed” in the trust “must govern.” *In re Gilchrist’s Est.*, 50 Wyo. 153, 60 P.2d 364, 364 (1936) (*Gilchrist II*). Wyoming’s intestacy laws cannot guide interpretation if they conflict with the language used in the trust. *Id.*

Distributions Per Capita and Per Stirpes

The meaning of and distinction between per capita and per stirpes

[¶41] The central interpretive dispute here is whether class gifts are to be distributed *per capita* or *per stirpes*. The dispute is not unique. Class gifts in a trust are commonly distributed using one of these two approaches.

[¶42] *Per stirpes* is defined as “[p]roportionally divided between beneficiaries according to their deceased ancestor’s share.” *In re Est. of Fosler*, 13 P.3d 686, 688 n.4 (Wyo. 2000). *Per capita* means “[d]ivided equally among all individuals.” *Id.* n.5.

[¶43] The recipient’s status drives the difference between the two: “those who take in their own right as the intestate’s next of kin ordinarily take per capita, and those

who take as representatives of deceased ancestors ordinarily take per stirpes.” *Id.* at 692 (quoting C.R. McCorkle, Annotation, *Descent and distribution to and among cousins*, 54 A.L.R.2d 1009, 1033 (1957)). As the Wyoming Supreme Court explained in *Gilchrist I*: “The distinction” between “per stirpes or per capita depends on determining whether the phraseology of the will divides them into classes, in which the individuals of each class take equally, or establishes but one class, all the members of which take equally.” 58 P.2d at 437 (quoting *Doherty v. Grady*, 105 Me. 36, 72 A. 869, 873). In sum, the inquiry for ascertaining the correct approach is whether the trust creates one class whose members take equally in their own right (*per capita*) or instead establishes representative family shares (*per stirpes*).

Wyoming follows the traditional approach favoring per capita

[¶44] Wyoming has applied a traditional rule favoring *per capita* distribution absent language requiring distribution by representation. To determine “whether members of a class take per capita or per stirpes, the general rule is that a devise to named individuals in equal shares requires a per capita distribution, and that a devise to a class, such as ‘all my nephews’ and the like, likewise calls for a per capita distribution.” *Gilchrist I*, 58 P.2d at 436 (citing Ruling Case Law, 28 R.C.L. 267). *See also Byington v. Fuller*, 587 P.2d 636, 638 (Wyo. 1978). And “[t]he addition of the words ‘equally’ or ‘share and share alike,’ tends to strengthen this conclusion.” *Gilchrist I*, at 436. For gifts “to descendants equally, or to all the descendants of any person, or to the descendants simply, the rule has been said to be that all take per capita, unless the contrary intention appears.” *Id.* at 437. A gift to “any” or “each” within any described class conclusively takes per capita. *Gilchrist II*, 60 P.2d at 364–65.

The modern trend favors per stirpes

[¶45] Modern authorities have retreated from Wyoming’s traditional approach. As described by the Restatement, multi-generational class gifts to the descendants of a named individual are presumptively distributed by representation. Restatement (Third) of Property (Wills & Don. Trans.) § 14.4 cmt. b.² That presumption is overcome by an expressed contrary intent. Historically, that contrary intent was taken literally and resulted in a strict *per capita* distribution:

The transferor may direct that the distribution to the issue of the designated person is to be made on a per capita basis. The historical meaning of a per capita distribution as applied to a multiple-generation class is that all the beneficiaries are to receive equal shares, without regard to generation and without an implied requirement of survival to the date of distribution. Today, however, the preferred construction of a per capita disposition to a multiple-generation class is that it invokes the

² “A class gift can be created in a will, a trust, a will substitute, a deed of gift, a beneficiary designation in a life-insurance policy or a pension plan, or in a donative transfer of any other type.” Restatement (Third) of Property (Wills & Don. Trans.) § 13.1 (2011). Issue is synonymous with descendants. *Id.* § 14.4 cmt. a.

system of representation known as per capita with representation, as described in § 2.3, Comment *e*.

Id. at cmt. d.

[¶46] Illustration 3 of that Restatement section highlights the difference between the “archaic” and the “preferred” approaches:

Grantor transfers property by will to Trustee to hold in trust. Trustee is directed “to pay the income to Grantor's son S for life, then to distribute the trust property to S's issue on a per capita basis.” S has three children, C1, C2, and C3. C1 has two children, GC1 and GC2; C2 has three children, GC3, GC4, and GC5; and C3 has four children, GC6, GC7, GC8, and GC9. Grantor dies. S dies, survived by all of the children and grandchildren. Under the archaic construction, the trust property would pass to C1, C2, C3, GC1, GC2, GC3, GC4, GC5, GC6, GC7, GC8, and GC9, each receiving 1/12th of the trust property. Under the preferred construction adopted in this Restatement, the trust property passes to C1, C2, and C3, each receiving 1/3.

[¶47] The significance of the Restatement's discussion is not that it challenges Wyoming's traditional approach, but that it highlights the divergence between Wyoming's rule and modern interpretative preferences. Wyoming precedent controls this court.

Some methods of distribution combine approaches

[¶48] The Restatement is also noteworthy for recognizing that certain formulations combine inconsistent concepts and therefore create ambiguity about the method of distribution. A gift given “in equal shares per stirpes” is ambiguous “because the phrase is internally inconsistent: Those who take ‘per stirpes’ do not take equally.” *Id. at cmt. h.* The Restatement prefers to resolve that ambiguity “by construing the phrase ‘in equal shares per stirpes’ as meaning that the initial shares are equal but those equal shares are distributed on a stirpital basis.” *Id.*

[¶49] A per capita allocation of initial stirpital shares arises in a number of contexts. For example, Wyoming's statute of descent directs for distribution by representation “in equal parts.” See *Fosler*, 13 P.3d at 691 (discussing *Moralee v. Cadwell*, 26 Wyo. 412, 186 P. 499 (1920) (“The phrase ‘in equal parts’ applied to a per capita division to the root generation. The estate was divided by two—‘in equal parts’ (per capita) between the two members of the statutorily identified root generation (one-half to the deceased sister and one-half to the deceased brother). The phrase ‘the descendants, collectively, taking the share their parents would have taken if living’ dictated a per stirpes or proportional division to the descendants of the root generation.”). The same is true of Wyoming's anti-lapse statute, Wyo. Stat. § 2-6-106, which only applies to wills: “If a devisee . . . fails to survive the testator . . . the issue of the deceased devisee

take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take per stirpes.”

Despite these presumptions, the settlor’s intent as expressed in the trust controls

[¶50] Interpretive presumptions on this topic give way to a grantor’s intent. As stated by Ruling Case Law (cited in *Gilcrest D*), “[r]ules in regard to whether the beneficiaries take per capita or per stirpes are not conclusive, and are to be controlled by the general intention of the testator.” 28 R.C.L. 242. Put another way, default rules and interpretive presumptions remain subordinate to the settlor’s intent as expressed in the trust. If the settlor expresses a contrary intention, the presumption or default rule yields to that intention.

Systems of Distribution by Representation

[¶51] Representative distribution itself can take several forms. The Restatement outlines the main variations of stirpital distribution used across the country. Those include: strict per stirpes, per-capita-with-representation (modified per stirpes), per-capita-with-per-capita-representation (the 1969 uniform probate code system), and per-capita-at-each-generation (the 1990 uniform probate code system). Restatement (Third) of Property (Wills & Don. Trans.) § 2.3 cmts. d-g (1999). *See also* Samuel B. Shumway, *Intestacy Law - The Dual Generation Dilemma - Wyoming’s Interpretation of Its 130-Year-Old Statute of Descent - Matter of Fosler*, 13 P.3d 686 (Wyo. 2000), 2 WYO. L. REV. 641 (2002).

Trust Section 15 follows the Original Probate Code System, described as “per capita with per capita representation.”

[¶52] Trust § 15(d) follows the formula of representation included in the Original Uniform Probate Code of 1969, a model statute of descent adopted by various states around the country. *See* Restatement § 2.3 cmt. f; Shumway, *Intestacy Law*, 2 WYO. L. REV. at 650-51. Section 2-106 of that code provides:

If representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among its issue in the same manner.

Unif. Probate Code 1969 § 2-106. This version of stirpital distribution is known as the Original Uniform Probate Code system and can be thought of as “per capita with per capita representation.” Restatement § 2.3 cmt. f.

[¶53] The official comment to that section includes the following: “Under the system of intestate succession in effect in some states, property is directed to be divided ‘per stirpes’ among issue or descendants of identified ancestors.” The uniform code itself provides, for example, that an intestate’s estate can pass:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to its parent or parents equally;

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

Unif. Probate Code 1969 § 2-103.³

[¶54] Some states adopting the Original UPC’s definition of “representation” have statutorily established certain presumptions. For example, California’s probate code includes the Original UPC’s “per capita with per capita representation” and clarifies that a *per capita* multi-generation class gift is distributed *per stirpes*. Cal. Prob. Code §§ 240, 245.

Wyoming’s Statute of Descent resembles a strict per stirpes system

[¶55] Wyoming’s statute of descent, Wyo. Stat. § 2-4-101, is also based on representation but is more akin to a strict *per stirpes* system. *See* Restatement § 2.3 stat. n.3. *See also In re Est. of Fosler*, 13 P.3d 686, 693 (Wyo. 2000) (“we hold that the proper distribution of Ms. Fosler’s estate pursuant to § 2-4-101(c)(iii) is to the deceased ‘grandfather, grandmother, uncles, aunts’ per capita and to their descendants per stirpes”).

Summary of Relevant Principles

[¶56] The foregoing authorities and background establish principles relevant to the present dispute. Namely, Wyoming construes multi-generational class gifts to descendants as requiring distribution *per capita* unless the governing instrument calls for distribution by representation. This interpretive presumption yields to the settlors’ expressed contrary intent and does not override unambiguous trust language. Trust language such as “equally” and “share and share alike” strongly suggests the

³ The Restatement lists the following states whose statutes define “representation” based on the 1969 uniform code: Alabama: Ala. Code § 43-8-45; California: Cal. Prob. Code §§ 240, 6402; Idaho: Idaho Code § 15-2-106; Maine: Me. Rev. Stat. Ann. tit. 18-A § 2-106; Minnesota: Minn. Stat. Ann. § 524.2-106; Nebraska: Neb. Rev. Stat. Ann. § 30-2306; New Hampshire: N.H. Rev. Stat. Ann. § 561:1 (the enactment of the Original UPC omitted § 2-106, but the system prescribed by Original UPC § 2-106 was judicially adopted); New Jersey: N.J. Stat. Ann. § 3B:5-6; Oregon: Or. Rev. Stat. § 112.065; South Carolina: S.C. Code Ann. § 62-2-106. Restatement § 2.3 (1999).

settlor intended a *per capita* method of distribution. The court may not add words to, or delete them from, the trust or construe the trust in a way that renders any portion of it meaningless. And specific trust provisions trump general ones.

ANALYSIS

[¶57] The court now applies these principles to the three issues raised by the dispositive motions. First, what method of distribution does the trust require for Child 4’s quarter share. Second, whether Child A is properly excluded as a beneficiary. Third, whether administrative costs should be charged solely to Child 4’s quarter or to the trustee personally.

[¶58] The court finds, and the parties largely agree, that the material facts are undisputed. What remains are questions of law. The court addresses each in turn, beginning with the key dispute about the method of distribution.

Distribution Scheme: Per Capita or Per Stirpes

[¶59] The trust allows for multiple steps of distribution. It starts with a *per capita* distribution to the settlors’ four children. *Gilchrist II*, 60 P.2d at 364–65 (gift to “each” of a class requires a *per capita* distribution). The question raised here is about the next step. When one of those children (Child 4) predeceases the surviving settlor, how is that child’s quarter share distributed to its surviving descendants? Under the applicable rules of interpretation, Child 4’s descendants also take *per capita*.

Wyoming law presumes that a gift to descendants “equally share and share alike” is distributed per capita.

[¶60] The trust establishes but one class—surviving descendants—who are to receive Child 4’s share. *See Gilchrist I*, 58 P.2d at 437. And Wyoming follows the traditional rule that a *per capita* multi-generational gift goes to all beneficiaries in equal shares unless a contrary intention is expressed. Restatement (Third) of Property (Wills & Don. Trans.) § 14.4 cmt. d & Ill. 3; *Gilchrist’s Est. I*, 58 P.2d at 437; *Byington*, 587 P.2d at 638. The Restatement may consider that an “archaic” approach, but this court must follow Wyoming precedent. Absent a contrary intent, then, Child 4’s descendants must all take equal shares.

§ 9(b)(c)(i)’s grants do not call for distribution by representation.

[¶61] Section 15(d)’s definition of representation does not evidence a contrary intent. By the terms of that section, “per stirpes (representation)” must be “called for” by § 9(b)(c)(i) to invoke § 15(d)’s distribution scheme. Those parts of the Original Uniform Probate Code system that employed its definition of representation—on which § 15(d) appears to be based—did so expressly by employing the words “by representation” in distributive sections. *See, e.g.*, Unif. Probate Code 1969 § 2-103; Cal. Prob. Code § 240. Thus, when that system contemplated a section “calling for” distribution

by representation, it meant an active, express statement and not a presumptive implication. Here, the trust does not expressly require distribution by representation, and the court therefore concludes that § 9(b)(c)(i) does not “call for” it. As a result, § 15(d)’s definition does not apply to the second sentence of § 9(b)(c)(i)’s grants.

The court may not interpret or construe unambiguous terms.

[¶62] Respondents interpret § 9(b)(c)(i) to call for a stirpital distribution because Child 4’s descendants represent him by taking its quarter share of the trust’s assets on account of its death. Plus, because the gift was to Child 4’s descendants and not to its children—a term defined and used elsewhere in the trust—it was to a multi-generational class. Multi-generational class gifts are at times presumptively stirpital, with a *per capita* distribution to the root generation. And one could argue that the language “equally share and share alike” directs equality at the root generation. *See, e.g., Fosler*, 13 P.3d at 691; *Gilchrist I*, 58 P.2d at 438 (“The expression ‘share and share alike,’ standing alone, might refer to a division among classes as well as among individuals[.]”).

[¶63] These arguments might have been compelling had the trust been written differently. But any such interpretation or construction is foreclosed here by the trust’s unambiguous language. The Wyoming Supreme Court considered and rejected the same reasoning advanced here in *Byington v. Fuller*.

[¶64] The appellant in *Byington* had similarly argued that “[w]hen the distribution is between devisees or legatees of unequal degrees of relationship to the ancestor, the distribution should be made per stirpes (in such case the words ‘equally’ or ‘equally divided’ are used to indicate an equal division among a class).” 587 P.2d at 637. Without ambiguity in the grant, however, that argument was not even considered. *Id.* at 638 (“We agree . . . that paragraph Seventh is clear and unambiguous, thus leaving no room for judicial interpretation or construction. This means that there is no reason to consider the various other contentions of the appellant since they have to do with rules of construction only.”). And for that same reason, the Supreme Court could not look to Wyoming’s statute of descent. *Id.*

[¶65] The subject clause here is unambiguous. If Child 4 did not survive both its parents, its quarter share of the trust’s assets were to be distributed “to its descendants then surviving, equally share and share alike.” This language evidences even more intent by the settlors that Child 4’s descendants were to take *per capita* than the subject clause in *Byington*, which called for a division “equally” “to the said children then living in the proportions set out above.” As *Gilchrist I* directs, the words “equally” or “share and share alike” individually signal a *per capita* distribution. 58 P.2d at 436. The settlors here chose both. The court must zealously guard this “clearly expressed intention” of the settlors. *Shriners Hosps. for Child.*, ¶ 60, 373 P.3d at 410. Because Wyoming precedent governs construction of the trust, the court cannot reach the arguments that the document’s structure, the grant’s substitutional nature, or

the statute of descent suggest a stirpital distribution for the second sentence of § 9(b)(c)(i)'s grants.

Terms may not be rendered meaningless.

[¶66] Wyoming's interpretive rules also prevent § 15(d) from calling for a stirpital distribution for the second sentence of § 9(b)(c)(i)'s grants. In particular, § 15(d)'s formula internally calls for a *per capita* distribution to the issue in the nearest degree on kinship to the decedent: "the distributable assets are to be divided into as many shares as there are . . . issue in the nearest degree of kinship and then deceased issue in the same degree who left then living issue, each then living issue in the nearest degree receiving one share and the share of each then deceased issue in the same degree being divided among its issue in the same manner." The nearest generation would thus take equally under § 15 *without* § 9's direction that the descendants take "equally share and share alike." If—as respondents argue—§ 15(d) applies to the second sentence of § 9(b)(c)(i)'s grants, the phrase "equally share and share alike" could be deleted from that sentence without affecting the trust's distribution scheme.⁴

[¶67] The reverse is not true. Section 15(d) contains a stirpital scheme that differs from Wyoming's statute of descent. The fourth clause of § 9(b)(c)(i)'s grants directs distribution to "those persons surviving at the time who shall be designated as Settlers' heirs by the laws of the State of Wyoming in effect at that time." In that instance, Wyoming's statute of descent would direct which heirs would take, but not necessarily how much each heir would receive. *See Gilchrist I*, 58 P.2d at 436 ("Simply because the *class* of persons entitled to take must be in accordance with the statute of descent and distribution, it does not follow that the amount to which each of the class is entitled is the amount specified by that statute.") (emphasis in original). That question would be answered by § 15(d), which provides for a distribution scheme different from Wyoming's intestacy statute. Restatement (Third) of Property (Wills & Don. Trans.) § 2.3 n.3 & cmt. f. Under some circumstances, § 15(d) would require distribution of shares different from Wyoming's probate code. Not applying § 15(d) to the second sentence of § 9(b)(c)(i)'s grants does not render § 15(d) meaningless.

The court may not create ambiguity, and general yields to specific.

[¶68] The trust is unambiguous; the court also may not add words into the trust by finding that § 9(b)(c)(i) calls for distribution "by representation" "equally share and share alike." *See Four B Props.*, ¶ 34, 458 P.3d at 842; Restatement (Third) of Property (Wills & Don. Trans.) § 14.4 cmt. h. The definition found in § 15(d) does not apply to the second sentence of § 9(b)(c)(i)'s grants. And even if it did, it is a general definition applying to any part of the trust calling for distribution by representation. That general definition would yield to the more specific direction that the assets to be

⁴ *Fosler* and *Moralee* did not read "equally" out of Wyo. Stat. § 2-4-101. Unlike the 2026 WYCH 12 Trust, Wyoming's statute of descent does not define "representation."

distributed to Child 4's descendants "equally share and share alike." Child 4's descendants must all take equal shares.

Child A is not a Beneficiary

[¶69] As to the second issue, it is undisputed that Child A was not included as a beneficiary of the trust. Trust § 2 concludes with an ambiguous, incomplete sentence, but § 9 resolves the issue. Division into four shares, representing the four surviving children, "or into as many equal portions as there are Settlers' children, one each for each of Settlers' children" shows that settlors intended only the four surviving children named in § 2 and any children born or adopted after the trust's signing to be beneficiaries.

Cost Allocation

[¶70] The final issue is administrative costs. As the court noted at the outset, "[o]ne of the more troublesome construction problems has been whether a gift in trust for . . . descendants . . . is to be distributed to the members of that group per stirpes or per capita." Bogert, *The Law of Trusts and Trustees* § 182 (updated May 2025). This particular trust did the court and the parties few favors in discerning the settlors' intent under that troublesome area of the law. Although only one reading holds under Wyoming law, the issues addressed in this order were not remotely simple. Because the trust requires a *per capita* distribution to Child 4's descendants, the costs incurred for engaging new counsel and for genealogical research were reasonable costs under Wyo. Stat. § 4-10-805. Those costs should therefore not be taxed against the trustee individually. Rather, as directed by trust § 9(b), those costs should be deducted from the trust's assets before their distribution.

[¶71] The court further interprets trust § 9(b) to prevent taxing costs associated with identifying the recipients of Child 4's share of the assets to those recipients alone. That section unambiguously instructs the trustee to "deduct the costs and expenses" *from the estate* before distributing the trust's assets.

[¶72] That said, the court does not reach those portions of the counter-petitions claiming a breach of fiduciary duty for delay in distributing the trust, requesting expeditious distribution under Wyo. Stat. § 4-10-817, requesting an independent accounting of nominee funds held by Child 2, or seeking rejection of the trustee's Heir-Search report. Unknown material facts prevent judgment on those issues at this stage in the proceedings.

CONCLUSION AND DIRECTION

[¶73] The trust incorporated Wyoming law into its terms; under Wyoming's governing precedent, the 2026 WYCH 12 Trust unambiguously calls for a *per capita* distribution to Child 4's descendants. The court must apply the trust's provisions as written.

[¶74] In accordance with W.R.C.P.Ch.C. 56(f)(1), summary judgment is tentatively **GRANTED** in favor of the nonmovant trustee in accordance with § III and § VIII(A) and (C) of the amended petition. The respondents' interpretations of the trust's distribution methods run counter to Wyoming law. Child 2's request for summary judgment on that portion of its cross-petition seeking a declaratory judgment directing stirpital distribution is **DENIED** and Grandchild 1's motion for judgment on the pleadings is likewise **DENIED**.

[¶75] It is undisputed that Child A was not included as a beneficiary of the trust. Child 2's request for summary judgment in its favor excluding Child A as a beneficiary is **GRANTED**.

[¶76] The requests for taxing costs to the trustee, individually, or to Child 4's descendants are **DENIED**.

[¶77] Under W.R.C.P.Ch.C. 56(f), the respondents may respond to this order by June 18, 2026.

DATED: 5/28/2026

/s/ Benjamin M. Burningham
CHANCERY COURT JUDGE