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COURT OF APPEALS NO. 56536-6-II

SUPREME COURT
OF THE STATE OF WASHINGTON

ELIZABETH BARTLETT, an individual

Petitioner,

v.

ESTATE OF ROBERT PARMAN,

Respondent

PETITION FOR REVIEW

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I. Tables

A. Table of Contents

APPENDIX

B. Table of Authorities

Cases

Statutes

II. Identity of Petitioner

Appellant Elizabeth Bartlett asks this Court to accept review of the Court of Appeals decision terminating review designated in Part III of this petition.

III. Court of Appeals Decision

Opinion in *Elizabeth Bartlett v. Estate of Robert Parman*, No. 56536-6-II, filed November 15, 2022, and subsequent denial of motion for reconsideration, filed January 12, 2023. A copy of the decision is in the Appendix at pages A-1 through A-19. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at page A-20.

IV. Issues Presented for Review

1. Whether the Court of Appeals, Division II erred by not recognizing the exception to filing a creditor's claim within the 2-year period in the non-claim statute embodied in RCW 11.44.051(1)(c) for claims to specific property, such as an unjust enrichment claim seeking an equitable lien against specific property of a decedent, an exception recognized by Supreme

Court case law.

2. Whether the Court of Appeals, Division II effectively announced new standards (i) for what constitutes a frivolous claim under RCW 4.84.185 and (ii) for awarding attorney's fees under that statute, and whether the Supreme Court should accept review to clarify and modify those effective new standards before adverse impacts arise.

3. Whether the policy implications of the Court of Appeals, Division II decision will cause a chilling effect among practitioners – particularly plaintiff's attorneys – who because of the ruling may be reluctant to pursue equitable claims upon grounds for relief that may be found within the interstices of case law or based on reasoning where even courts may disagree.

V. Statement of the Case

A. Underlying Facts.

Elizabeth purchased the 7.1-acre Renata Lane property in 1997 with $117,000 received as an early inheritance from her parents. CP 377. Over the course of the next fifteen years or so,

she spent another $143,000 of her separate property on barns, fencing, a riding arena and other permanent and valuable improvements, along with many hours of her physical labor. CP 391 ¶ 52, CP 392 ¶ 57.

To obtain a construction loan to build a house on the property, Elizabeth and her husband Shawn quitclaimed the Renata Lane property to his parents, Robert and Ruth, who ultimately obtained a loan secured by the property. CP 384-385. The house was built, and Shawn and Elizabeth lived upstairs, while Robert and Ruth lived downstairs in a walk-in basement apartment. CP 409 at 9.

The quitclaim deed to Robert and Ruth was premised on the understanding that Elizabeth and Shawn would each receive one-half of the property upon the deaths of Robert and Ruth. CP 672 ¶¶ 13-14. The parallel wills of Robert and Ruth executed in October of 2004 made that disposition. CP 675-682. Robert died about five months later in February of 2005. CP 390 ¶ 51.

Over the next twelve years or so, Elizabeth continued

paying one-half of the monthly mortgage payment and one-half of the taxes, insurance and utilities. CP 392 ¶ 56. The arrangement among the parties was to live together under one roof, share costs and thereby reduce living expenses. CP 378 ¶ 17.

Shawn and Elizabeth divorced in 2017. CP 393 ¶ 59. Despite oral promises to Elizabeth that Elizabeth should "trust" Ruth to will 50% of the property to Elizabeth, Ruth changed her will in the latter part of 2017 to remove Elizabeth and leave all her property to Shawn. CP 390-1 ¶ 51.

Before the instant lawsuit, Elizabeth filed a lawsuit in 2018 against Ruth and Shawn in Thurston County Superior Court (the "2018 lawsuit") alleging various theories of recovery including unjust enrichment, breach of contract, breach of a joint venture agreement, and tortious interference with contract/business expectancy. CP 11-18.

Ruth died in 2019, and her estate was substituted for her in the 2018 lawsuit against Ruth and Shawn. In 2020, Shawn

filed an intestate probate of Robert's estate in King County Superior Court, having taken no action with respect to Robert's estate for the previous fifteen years. Given this timing, Elizabeth construed the initiation of the probate of Robert's Estate in 2020 as a basis for Shawn's arguments in the 2018 lawsuit to reduce the scope of her unjust enrichment claim to a period after Robert's death.

Accordingly, upon receiving notice of the probate, Elizabeth filed a creditor's claim in Robert's probate case. After it was rejected, she filed a lawsuit against Robert's estate in 2020 including similar claims in her 2018 lawsuit. Elizabeth's complaint asserted a claim of unjust enrichment against the Estate of Robert Parman based on the significant value of improvements and her labor she had contributed to the property over a fifteen-year period. CP 8-9, § V; CP 9 ¶ 5.4. She further asserted that she was "entitled to an equitable lien or constructive trust to protect her interest in the Renata Lane property." Complaint, ¶ 5.4. CP 546. The goal was to have the two cases

consolidated so that the trier of fact could resolve all of the issues together. See Section V B, entitled "Procedural Background" below.

Ultimately, Shawn as the personal representative of Robert's Estate, moved to dismiss all of Elizabeth's claims against Robert's Estate on the grounds that she did not file a creditor's claim within two years of Robert's death in 2005, as generally required by the non-claim statute, RCW 11.44.051(1)(c). The trial court treated the motion as one for summary judgment.

At the hearing on the motion, the trial court acknowledged Elizabeth's claim of "unjust enrichment or it gives rise to an equitable lien." VRP (Oct. 22, 2021) at 21. However, the trial court treated Elizabeth's claims as tied to "an alleged joint venture and partnership agreement between the four parties and seeking some kind of enforcement against those claims." *Id.* at 22. Accordingly, the trial court treated all of Elizabeth's claims as claims against the decedent and therefore coming within the

2-year non-claim statute. *Id.* The trial court dismissed all of Elizabeth's claims on summary judgment on that basis. CP 510-11.

The trial court's error was ignoring the effect of Elizabeth's unjust enrichment claim seeking the remedy of an equitable lien. Case law has treated such a claim as a claim for specific property, which is exempt from the 2-year non-claim statute. *Slough v. Calderbank*, No. 68155-9-I (Wash. Ct. App. Dec 23, 2013) (unpublished) (citing binding precedent for the holding that a person asserting unjust enrichment claim seeking an equitable lien against specific property not required to file a creditor's claim). The Court of Appeals here made the same error as the trial court: it ignored Elizabeth's unjust enrichment claim and the equitable relief sought under that claim and treated the case as one solely of a joint venture or partnership.

After the trial court's dismissal of the instant case, the trial court awarded a judgment of $15,934.10 in attorney's fees and costs against Elizabeth on the basis that her lawsuit against

Robert's estate was "frivolous" and advanced without reasonable cause under RCW 4.84.185. CP 709-712. Elizabeth superseded the judgment (CP 726) and timely filed a notice of appeal. CP 714.

Elizabeth asserts that she made a "rational argument" in support of her unjust enrichment claim seeking the remedy of an equitable lien, when her argument fell exactly within the holding and opinion of Judge Cox in *Slough*, which was predicated on Supreme Court case law in recognizing an exception to the non-claim statute when a claim to specific property is made.

B. Procedural Background.

The instant case originally hails from the King County Superior Court and was filed by the appellant/plaintiff, Elizabeth Bartlett ("Elizabeth"), in 2020 under case no. 20-216689-8 KNT. CP 5-10. As noted above, Beth alleged a claim of unjust enrichment, among other claims. CP 8-9, § V.

While venued in King County Superior Court, respondent/defendant, Estate of Robert Parman, filed a motion to

dismiss the case. CP33-45. Judge Allred denied the motion to dismiss and in the same order granted Elizabeth's motion to transfer venue of the case to Thurston County. CP 246-248. The purpose of the venue transfer was to consolidate the instant case with the 2018 lawsuit venued in Thurston County Superior Court. *Id.*

On October 22, 2021 (after the instant case had been transferred to Thurston County Superior Court), respondent Estate of Robert Parman again moved to have the instant case dismissed on summary judgment. CP 356-370. This time the trial court granted the Estate's motion. CP 510-511.

The Estate moved for attorney's fees and costs, arguing for the first time that Elizabeth's action was frivolous, among other arguments, as bases for the court to award fees and costs. CP 512-520. On November 22, 2021, the trial court ruled on the motion, entering an order awarding attorney's fees and costs

against Elizaeth "under the authority of RCW 4.84.185."[1] CP 667.

Meanwhile, on November 1, 2022, Elizabeth filed a motion for reconsideration of the trial court's order of dismissal. CP 577-585. The trial court denied Elizabeth's motion for reconsideration on November 22, 2022. CP 665-66.

Finally, on December 17, 2021, the trial court entered findings that Elizabeth's "complaint was frivolous and advanced without a reasonable basis because there is no rational argument that can be advanced, nor were there any rational arguments made[.]" CP 711, ¶10.

Beth timely appealed the trial court's orders on December 20, 2021. CP 714-725.

The Court of Appeals issued its unpublished opinion on

[1] RCW 4.84.185 sets forth that "the court . . . may, upon written findings by the judge that the action . . . was *frivolous and advanced without reasonable cause*, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys . . . " [italics added].

November 15, 2022, affirming the trial court's orders and awarding attorney's fees and costs in favor of Robert's Estate on appeal under RCW 11.96A.150.[2] The Court of Appeals did not determine that the appeal was frivolous. Elizabeth filed a motion for reconsideration. The Court of Appeals denied the motion on January 12, 2023.

VI. Argument

A. The Court of Appeals Decision is in Conflict with Supreme Court Precedent. RAP 13.4(b)(1).

The Court of Appeals decision does not recognize an exception to the non-claim statute under RCW 11.44.051(1)(c) for unjust enrichment claims against specific property of a decedent, an exception that is recognized by the Supreme Court.

The basis for the Court of Appeals decision is its view that the two-year non-claim statute applicable under RCW 11.44.051(1)(c) was strictly construed and absolute, and even though Elizabeth's claim did not ripen until twelve years after

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2 The Court of Appeals has not yet ruled on the amount of attorney's fees to be awarded.

Robert's death in 2005, her failure to file a creditor's claim within a two-year period was fatal to her claim.

The Court of Appeals decision failed to recognize an exception to the non-claim statute, where an unjust enrichment claim seeking the remedy of an equitable lien or constructive trust is asserted against specific property.[3] *See*, *Slough v. Calderbank*, No. 68155-9-1 (Wash. Ct. App. Dec. 23, 2013) (unpublished), which concluded that the Supreme Court cases of *Olsen v. Roberts*, 42 Wn.2d 862, 865, 259 P.2d 418 (1953) and *Smith v. McLaren*, 58 Wn. 2d 907, 909, 365 P.2d 331 (1961) "are binding precedent that this court must follow." *Slough* at 19. The *Slough* court went on to conclude:

> Both cases [*Olsen* and *Smith*] establish that Slough was not required to file a creditor's claim in this case. That is because he asserted *an equitable lien claim to specific property of the estate*, his wife's home. The matter was not one of "claimed indebtedness."

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[3] Elizabeth also recorded a notice of lis pendens against the property based on her asserted claim of equitable lien. CP 182. Shawn's motion to cancel the lis pendens was denied. CP 405-6.

[Italics added.] *Slough* at 19. *Slough* holds directly and squarely that a claim of unjust enrichment seeking the remedy of an equitable lien on specific property is a claim to specific property which does not come within the non-claim statute, RCW 11.44.051(1)(c). [4, 5]

Elizabeth's equitable unjust enrichment claim seeking the remedy of an equitable lien on specific property, i.e., the Renata Lane property, is not a claim of debt Robert incurred in his lifetime. Again, it is a claim to be paid out of specific property

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[4] The Court of Appeals in *Slough* thus overruled the arbitrator's determination that any equitable lien that Slough had was barred because he failed to timely file a creditor's claim. *Slough* at 4. A court commissioner had previously determined that Slough's deceased wife's house was her separate property, as it was acquired before her marriage. *Slough* at 3.

[5] It may be noted that Judge Cox, who authored the opinion in *Slough*, also concurred two years earlier in the opinion in *Estate of Earles*, 164 Wn. App. 447, 262 P.3d 832 (2011), which articulated that a claim against a decedent "includes claims arising out of obligations that the decedent incurred during his or her lifetime but are not due at the time of the decedent's death or at the expiration of the creditor's claims filing period." *Earles*, 164 Wn. App. 447, 449.

encumbered by an equitable lien.[6]

"Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it." *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008). The trial court erroneously ignored Elizabeth's unjust enrichment claim, strictly construed the two-year non-claim statute, then applied that statute to all of Elizabeth's claims in dismissing them. The Court of Appeals essentially did the same thing.[7]

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[6] If Elizabeth had asserted a claim for unjust enrichment seeking a damage remedy only, and not an equitable lien, then her claim would not be against specific property, but would be a "claim against the decedent" within the meaning of RCW ch. 11.40. *Porter v. Boisso*, 188 Wn. App. 286, 297, 354 P.3d 892 (2015).

[7] The Court of Appeals also improperly engaged in fact finding. *Edwards v. Morrison-Knudsen Co.*, 61 Wn.2d 593, 598-99, 379 P.2d 735 (1963) ("The function of ultimate fact finding is exclusively vested in the trial court."). It noted that Shawn and Elizabeth did not list the Renata Lane property in their bankruptcy schedules, and therefore they cannot later pursue a claim against the property, citing *Bartley-Williams v. Kendall*, 134 Wn. App. 95, 98-99, 138 P.3d 1103 (2006). However, later cases have undermined that conclusion. *Arp v. Riley*, 192 Wn. App. 85, 92-93, 366 P.3d 946 (2015), *review denied*, 185 Wn.2d 1031, 377 P.3d 722 (2016) ("[a] party's nondisclosure of

Unjust enrichment allows a plaintiff to recover the value of a benefit retained by the defendant but without any promise or contractual relationship between the parties. *Bircumshaw v. Wash. State Health Care Auth.*, 194 Wn. App. 176, 205, 380 P.3d 524 (2016). Accordingly, Elizabeth is not required to prove that Robert made a promise to her about leaving her 50% of the Renata Lane property. She is not required to prove that a contract existed between her and Robert.

To prove unjust enrichment, Elizabeth need only demonstrate that (1) Robert's estate received a benefit, (2) the benefit was at Elizabeth's expense, and (3) the circumstances make it unjust for Robert's estate to retain the benefit with no payment. *Puget Sound Sec. Patrol, Inc. v. Bates*, 197 Wn. App.

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a claim in bankruptcy does not automatically lead to estoppel in a future suit," especially where a party lacks knowledge or has no motive to conceal the claims"). Also, Elizabeth spent over $100,000 in improvements *after* the bankruptcy filing, for which she could assert an equitable lien. CP 392 ¶ 57. In addition, the trial court did not reach the bankruptcy and other issues because of its ruling dismissing Elizabeth's complaint. VRP (Oct. 22, 2021) at 23.

461, 475, 389 P.3d 709 (2017) (citing *Young*, 164 Wn.2d at 484-85).

These requirements are satisfied here. (1) Elizabeth conferred a benefit upon Robert's estate by purchasing the 7.1-acre Renata Lane property and making permanent, valuable improvements to the real property over more than fifteen years. CP 377, ¶ 14; CP 401-402.

(2) Robert was aware of the benefit, because he was living on the property at the time many of the improvements were made, and even assisted in making some of them. CP 418, ¶ 48; CP 391 ¶ 52; CP 391-92 ¶ 55. Elizabeth also made many permanent improvements after Robert's death in 2005, and Ruth and Shawn, who were named as executors of Robert's estate in Robert's will, were aware of Elizabeth's improvements because Ruth and Shawn were living on the property at the time the improvements were made. CP 392 ¶ 57; CP 681. The improvements substantially increased the value of the Renata Lane property. CP 392 ¶ 52.

(3) Robert's Estate retained the benefit of Elizabeth's expenditures without paying their value, such that it is unjust for the estate to retain the benefits without paying for them. Of course, the estate's retaining the benefits without paying for them became *unjust* only after Ruth decided not to pay for the benefits and changed her will in 2017 to leave Elizabeth out of the will.

B. The Court of Appeals Decision Substantially Alters the Standard Set by Supreme Court Precedent for What Constitutes a Frivolous Claim. RAP 13.4(b)(1).

The decision also conflicts with Supreme Court precedent by effectively announcing new standards for what constitutes a frivolous claim under RCW 4.84.185 and for awarding attorney's fees under that statute.

Under RCW 4.84.185, a prevailing party in a civil action is entitled to seek fees for defending a frivolous action.

"An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Tiffany Family Trust v. City of Kent*, 155 Wn. 2d 225,

241, 119 P.3d 325 (2005). “[A]ll doubts as to whether the appeal is frivolous should be resolved in favor of the appellant.” *Id.*

As to whether an action is frivolous, "[t]he action or lawsuit is to be interpreted as a whole." *Biggs v. Vail*, 119 Wn.2d 129, 136, 830 P.2d 350 (1992). Where three of four claims are judged to be frivolous but the fourth claim is not, the action as a whole is not frivolous and it is improper to grant attorney fees under RCW 4.84.185. *Biggs*, 119 Wn.2d at 137.

Elizabeth had a rational basis to argue that her claim for unjust enrichment seeking an equitable lien on specific property did not fall within the non-claim statute. Elizabeth’s unjust enrichment claim comes directly within the scope of *Slough* based on Supreme Court case law. Elizabeth’s case as a whole is therefore not frivolous. The trial court’s awarding of attorney’s fees under RCW 4.84.185 was an abuse of discretion.

If a court opinion that has not been reversed is on point and supports an argument, then it cannot be said that such argument has no rational basis, unless the judge writing the

opinion has no rational basis for his or her decision, a conclusion that is not likely. Accordingly, since Elizabeth relied upon the *Slough* decision to base her argument, this Court should not find that argument frivolous. *Slough* was cited to the trial court (CP 605) and to the Court of Appeals in Elizabeth's motion for reconsideration.

C. The Petition Involves an Issue of Substantial Public Interest that Should Be Determined by the Supreme Court. RAP 13.4(b)(4).

A predictable consequence of the Court of Appeals' ruling is the chilling effect that will be felt among members of the Bar – particularly plaintiff's attorneys – who, because of the ruling, may be reluctant to pursue equitable claims upon grounds of relief that are often found within the interstices of case law or in areas where even courts disagree upon matters such as what is a claim against a decedent (undefined in the statute), what constitutes a claim to specific property, when and whether a claim arose after the decedent's death and similar issues.

The standards implied by the Court of Appeals Division II

for what constitutes a frivolous claim under RCW 4.84.185 and for awarding attorney's fees significantly move the goal posts for practitioners and are likely to cause widespread confusion among litigation attorneys. The Supreme Court should accept review to modify and clarify the adverse and unintended impacts from such a change.

VII. Conclusion

Elizabeth requests reversal of the trial court judgment imposing attorney's fees and costs on Elizabeth as the result of an allegedly frivolous claim. Elizabeth also seeks reversal of the decision of the Court of Appeals upholding the trial court's dismissal of Elizabeth's unjust enrichment claim, with a remand to the superior court for further proceedings on that claim. Elizabeth further seeks reversal of the award by the Court of Appeals of attorney's fees in favor of the Estate of Robert Parman on appeal under RCW 11.96A.150, if this Court reverses the Court of Appeals on any issue or reverses the trial court on any issue.

RESPECTFULLY SUBMITTED this 13th day of February, 2023.

I certify that under RAP 18.17(b) this brief contains 3,523 words.

Law Offices of Dan R. Young

By 

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Filed
Washington State
Court of Appeals
Division Two

November 15, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ELIZABETH BARTLETT, an individual, Appellant, v. ESTATE OF ROBERT PARMAN, Respondent.	No. 56536-6-II UNPUBLISHED OPINION

LEE, J. — Elizabeth Bartlett appeals the superior court's order dismissing Elizabeth's[1] complaint against the Estate of Robert Parman (Robert's Estate) as untimely, along with the superior court's denial of a motion to reconsider its order of dismissal. Elizabeth also appeals the superior court's order granting fees and costs to Robert's Estate on the basis of frivolousness under RCW 4.84.185.

Because any potential claims Elizabeth may have against Robert's Estate have expired, we affirm the superior court's order dismissing Elizabeth's complaint and denial of reconsideration. And because Elizabeth's continued litigation against Robert's Estate is frivolous, we also affirm the superior court's award of costs and fees based on frivolousness.

FACTS

Elizabeth Bartlett and Shawn Parman married in 1986. Shawn's parents were Robert and Ruth Parman, both now deceased.

[1] We refer to the parties by their first names for clarity. No disrespect is intended.

In 1997, Elizabeth and Shawn bought a 7.1-acre property in Olympia, Washington, known as the Renata Lane Property. Elizabeth intended to construct a horse ranch on the property. She asserts that she bought the property with separate gift money from her parents, but she deposited the funds into a joint checking account she had with Shawn and used the funds from that account to purchase the property.

Robert and Ruth moved in with Shawn and Elizabeth in 1997. In 1998, Robert, Ruth, Shawn, and Elizabeth agreed to build a home together on the Renata Lane Property where both couples, along with Shawn and Elizabeth's young sons, would live. According to Elizabeth, the agreement was a joint venture between the two couples. The agreement was not put into writing at the time.

In 2000, Shawn and Elizabeth conveyed the Renata Lane Property to Robert and Ruth via quitclaim deed. They also executed a Joint Venture and Joint Venture Dissolution Agreement. The Joint Venture and Joint Venture Dissolution Agreement stated:

> Shawn Parman and Elizabeth Parman have insufficient funds to contribute anything further to the joint venture agreement and, accordingly, are unable to continue to participate therein.
>
> . . . .
>
> . . . [I]t is agreed that this joint venture shall be terminated and in exchange for completing the property and funding the same to completion, and holding Shawn and Elizabeth Parman harmless from any financial responsibility, Shawn and Elizabeth Parman will quit claim all right, title and interest in the subject property to Ruth and Robert Parman as their sole and separate property and this joint venture will then be dissolved.

Clerk's Papers (CP) at 281-82.

Elizabeth asserts that the Joint Venture and Joint Venture Dissolution Agreement obligated Robert and Ruth, upon their death, to convey one-half of the property to her and one-half of the property to Shawn.

In 2001, Shawn and Elizabeth filed a Chapter 7 bankruptcy, for which they received a discharge. They did not list the Renata Lane Property as an asset.

In 2004, Robert and Ruth executed parallel wills that conveyed their interest in the Renata Lane Property to one another, and then 50% of the property to Elizabeth after the last to die. In 2005, Robert passed away. Despite having no ownership interest, Elizabeth continued to make improvements to the property over the next several years.

In 2016, Shawn and Elizabeth separated, and in 2017, they divorced. Neither Shawn nor Elizabeth listed the Renata Lane Property as an asset in their divorce decree. Following Shawn and Elizabeth's divorce, Ruth updated her will to convey 100% of her interest in the Renata Lane Property to Shawn.

In 2018, Elizabeth filed a complaint[2] in Thurston County against Ruth and Shawn, alleging (1) a joint venture/partnership, (2) estoppel, (3) unjust enrichment, (4) negligent/intentional misrepresentation, and (5) tortious interference with contract/business expectancy. Elizabeth sought a judgment against Shawn and Ruth in the value of expenditures and contributions Elizabeth made to the Renata Lane Property. Ruth passed away in 2019 and Ruth's estate was substituted for her in the 2018 lawsuit.[3]

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[2] *Parman v. Parman*, Thurston County Superior Court Cause No. 18-2-03269-34.

[3] When Elizabeth filed this appeal, her action against Shawn and Ruth's estate was still pending.

In September 2020, Shawn probated Robert's estate in King County and was appointed as personal representative. Robert's original will was not presented, and he was presumed to have died intestate.[4] On September 26, as personal representative for Robert's Estate, Shawn quitclaimed Robert's interest in the Renata Lane Property to Ruth's estate.

In October 2020, Elizabeth filed a creditor's claim in accordance with RCW 11.40.070 in King County against Robert's Estate for $375,000. Robert's Estate rejected Elizabeth's claim, and in November 2020, she filed a complaint against Robert's Estate, alleging (1) joint venture/partnership, (2) estoppel, (3) unjust enrichment, and (4) inequitable conduct. Robert's Estate filed a motion to dismiss under CR 12(b)(6) and CR 56(c). The King County Superior Court denied Robert's Estate's motion to dismiss and ordered that venue be transferred to Thurston County Superior Court. The King County superior court judge stated:

> The resolution of Elizabeth's lawsuit against Ruth's estate (Thurston Co.) and Elizabeth's lawsuit against Robert's estate (King Co.)—which both implicate *claims against Ruth's and Robert's marital community*—involve numerous, common issues of fact and of law. It would be a waste of the parties' resources, and judicial resources, to litigate those issues twice. More important, the parties agree that if the Court makes a substantive ruling here, the parties will then argue to [the Thurston County Superior Court judge] about what the King County ruling means, or should mean, in the Thurston County case (e.g., claim or issue preclusion). Rather than going through that whole exercise, it is far more effective

[4] After the superior court dismissed Elizabeth's suit against Robert's Estate, Elizabeth presented a copy of Robert's will as an attachment to her declaration in support of her motion for reconsideration and in opposition to Robert's Estate's motion for attorney fees. After this appeal was filed, Robert's Estate moved to strike a portion of Elizabeth's declaration and to seal the copy of Robert's 2004 will attached to the declaration. Allegedly, Dan Young, Elizabeth's attorney, contacted Althauser Rayan & Abbarno, LLP, the custodian of Robert's will, and identified himself as an attorney for Robert's estate and requested Robert's will. Althauser Rayan & Abbarno emailed a copy of the will to Young. Elizabeth's declaration stated that she had obtained Robert's will from John Turner, Robert's estate attorney in 2004, who has since retired and who has not been in communication with any of the parties. The superior court granted Robert's Estate's motion to strike.

> and efficient for [the Thurston County Superior Court judge] to make all the substantive rulings as to both estates and as to Ruth's and Robert's marital community. . . . The proper administration of justice is best served by transferring venue for this case to Thurston County.

CP at 247-48 (emphasis in original).

Once the venue for Elizabeth's action against Robert's Estate transferred to Thurston County, Robert's Estate again filed a motion to dismiss pursuant to CR 12(b)(6) and CR 56(c). The superior court granted Robert's Estate's motion on the basis that Elizabeth was time-barred from filing a creditor's claim under the statute of limitations pursuant to RCW 11.40.051(c). The superior court stated:

> [W]hile there is a request for equitable relief, the claim is tied to an argument based upon an alleged joint venture and partnership agreement between the four parties and seeking some kind of enforcement against those claims. So to the extent there is an effort in this case by Elizabeth Bartlett against the estate of Robert Parman, it's based upon some form of allegation that Robert Parman breached a joint venture or partnership agreement that's alleged. And given that characterization, . . . it makes this a claim against the decedent, and . . . under the statutes and the case law interpreting the statutes, that makes the claim subject to either 24 months from the death of Robert or three years with the most generous. In either case, it's not timely.

Verbatim Report of Proceedings (Oct. 22, 2021) at 22. After dismissal of Elizabeth's complaint against Robert's Estate, Shawn closed probate of Robert's estate.

In November 2021, Elizabeth moved for reconsideration, which the superior court denied. Based on Robert's Estate's motion, the superior court awarded Robert's Estate attorney fees and costs pursuant to RCW 4.84.185, which provides fees to a prevailing party if the non-prevailing party advances a frivolous claim. In support of its award of attorney fees and costs to Robert's Estate, the superior court made, in part, the following findings of fact:

4. Under RCW [11.40.051], claims, whether contingent, known, or unknown, must brought against a decedent's estate within two years of the decedent's death or are forever barred.

5. Elizabeth as a creditor is permitted to commence a probate for the purpose of perfecting a creditor claim against a decedent. RCW 11.28.120(6).

6. This limitations period cannot be waived.

7. The foregoing points of law are so ingrained in Washington law that they appear in both the Washington State Bar Association's 2005 and 2020 Probate Deskbooks.

8. If Elizabeth was not aware of the law when she filed and served her Complaint in October 2020, she was made aware of it on November 24, 2020, when Shawn Parman filed and served a Motion to Dismiss.

9. On December 1, 2020, Shawn notified Elizabeth that he intended to seek attorneys' fees based on the lawsuit being frivolous, but also based under RCW 11.96A.150, which relates to attorneys' fees in estate litigation.

10. Elizabeth's Complaint was frivolous and advanced without reasonable cause because there is no rational argument that can be advanced, nor were there any rational arguments made, to support a claim against Robert Parman more than fifteen years after he died.

CP at 710-11.

Elizabeth appeals.

ANALYSIS

A. DISMISSAL OF COMPLAINT

Elizabeth appeals the superior court's dismissal of her complaint on summary judgment and the superior court's denial of her motion for reconsideration. Specifically, Elizabeth argues that summary judgment was improper because her claim against Robert's Estate is for "specific property" and "specific performance," and is, therefore, not subject to the statute of limitations under RCW 11.40.051(c). Br. of Appellant at 24-25 (italics omitted). We disagree.

1. Legal Principles

Appellate courts review summary judgment decisions de novo. *Shanghai Com. Bank Ltd. v. Kung Da Chang*, 189 Wn.2d 474, 479, 404 P.3d 62 (2017). Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). Courts construe all facts and inferences in favor of the nonmoving party. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). A genuine issue of material fact exists when reasonable minds could reach different conclusions. *Id.* "Mere allegations or conclusory statements of facts unsupported by evidence do not sufficiently establish such a genuine issue." *Discover Bank v. Bridges*, 154 Wn. App. 722, 727, 226 P.3d 191 (2010).

We review a denial of a motion for reconsideration for abuse of discretion. *Dynamic Res., Inc. v. Dep't of Revenue*, 21 Wn. App. 2d 814, 824, 508 P.3d 680 (2022). A superior court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. *West v. Dep't of Licensing*, 182 Wn. App. 500, 516, 331 P.3d 72, *review denied*, 181 Wn.2d 1027 (2014). Additionally, "an appellate court can sustain the trial court's judgment upon any theory established by the pleadings and supported by the proof, even if the trial court did not consider it." *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, *cert. denied*, 493 U.S. 814 (1989).

2. RCW 11.40.051(c)

Elizabeth argues the trial court erred because her claim is for specific performance or recovery of specific property, which is a "well-recognized and long-established exception" to the filing of a creditor's claim and its statute of limitations in RCW 11.40.051(c). Br. of Appellant at 22.

Chapter 11.40 RCW prescribes the form and manner of claims a creditor may make against a decedent and his or her estate. RCW 11.40.051 provides time limits for claims:

> (1) Whether or not notice is provided under RCW 11.40.020, a person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim . . . within the following time limitations:
> . . . .
> (c) If notice was not provided under this chapter or chapter 11.42 RCW, the creditor must present the claim within twenty-four months after the decedent's date of death.

Washington's creditor statute "encompasses every species of liability a personal representative can be called upon to pay out of the estate's general funds." *Hines REIT Seattle Design Ctr., LLC v. Wolf*, 164 Wn. App. 447, 448, 262 P.3d 832 (2011). The statute applies to obligations, or debts, that the decedent incurred during his or her lifetime, but that are not due at the time of death or even at the expiration of the creditor's claims filing period. *Id.*

When the claim is one for property in which the claiming party has an *existing* property interest that is not a debt, it is not a claim against the decedent and chapter 11.40 RCW does not apply. *See O'Steen v. Estate of Wineberg*, 30 Wn. App. 923, 934, 640 P.2d 28, *review denied*, 97 Wn.2d 1016 (1982) ("[T]he claim was for a specific percentage of stock in a corporation that William Wineberg held for plaintiffs as a trustee. . . . The nonclaim statute does not apply."); *Witt v. Young*, 168 Wn. App. 211, 218, 275 P.3d 1218, *review denied*, 175 Wn.2d 1026 (2012) ("[A] claim for property as a tenant in common is not a creditor's claim and that a complaint claiming rights in the property as a tenant in common is not an action by a creditor of the estate."); *Porter v. Boisso*, 188 Wn. App. 286, 296, 354 P.3d 892, *review denied*, 184 Wn.2d 1022 (2015) ("Mr. Porter's claims for specific performance and declaratory judgment asserted his property interest as

vendee under an alleged real estate contract. . . . Mr. Porter's claims for specific performance and declaratory judgment were not claims against a decedent within the meaning of the nonclaim statute.").

Elizabeth argues that her action against Robert's Estate "relate[s] to claims for the recovery of *specific property* . . . and are not governed by time limits contained in the nonclaim statute." Br. of Appellant at 25 (emphasis in original) (underlining omitted). But Elizabeth's argument is not supported by the record.

Here, the record shows Elizabeth does not have any existing interest in or right to the Renata Lane property. She and Shawn conveyed the property to Robert and Ruth by quitclaim deed in 2000. She and Shawn did not list the Renata Lane property as an asset on their bankruptcy petition in 2001, nor did they list any interest in the Renata Lane property. Debtors who fail to list claims, including unliquidated and contingent claims, during bankruptcy proceedings cannot later pursue those claims. *Bartley-Williams v. Kendall*, 134 Wn. App. 95, 98-99, 138 P.3d 1103 (2006).

Furthermore, neither Elizabeth nor Shawn listed the Renata Lane property as a marital asset in their divorce decree, nor did they list any interest in the Renata Lane property. There is no evidence that Robert was a trustee of the Renata Lane property for Elizabeth's benefit. And Elizabeth at no point became a tenant in common with Robert or Ruth. Moreover, Elizabeth did not have any outstanding real estate contract with either Robert or Ruth.

Elizabeth's assertions that the time limits of RCW 11.40.051 do not apply because she has a claim to specific property or specific performance,[5] along with the case law she cites, are entirely

[5] Elizabeth conflates "specific property" and "specific performance."

premised upon an ownership right that Elizabeth does not possess, and in fact, voluntarily signed away in 2001. Conclusory statements that Elizabeth has an interest in the property do not create a genuine issue of material fact. *See Discover Bank*, 154 Wn. App. at 727.

Elizabeth's claim against Robert's Estate is that Robert incurred a debt during his lifetime, based on a purported breach of an alleged joint venture. Elizabeth's complaint seeks "[j]udgment against defendant Estate of Robert Parman in the amount of the value of all expenditures and contributions [Elizabeth] has made in connection with acquiring and improving the Renata Lane property." CP at 546. Elizabeth's claim, then, is a claim against the decedent. *Hines REIT Seattle Design Ctr., LLC*, 164 Wn. App. at 448. Therefore, RCW 11.40.051 and its two-year statute of limitations applies.

Robert passed away in 2005. Elizabeth filed a creditor's claim in 2020. Because Elizabeth filed a claim 15 years after Robert's death, and not within the two-year claims period required by RCW 11.40.051, Elizabeth's claim was untimely. The superior court did not err in dismissing Elizabeth's claim on summary judgment for untimeliness, nor did the superior court err in denying Elizabeth's motion for reconsideration.[6]

[6] To the extent Elizabeth argues that RCW 11.40.070(4) applies and any statute of limitations does not apply to her equitable claims, her argument is not persuasive. Elizabeth does not have a viable claim against Robert's Estate. Elizabeth concedes that "Robert Parman was never in breach of his promise and is completely blameless, so Elizabeth had no claim whatsoever against Robert Parman personally at the time of his death, or even now." Br. of Appellant at 3-4. To the extent that Elizabeth has a claim, that claim is against Ruth's estate and is already being litigated in another case. Duplicate claims must be dismissed. *See Hurley v. Port Blakely Tree Farms LP*, 182 Wn. App. 753, 769-70, 332 P.3d 469 (2014), *review denied*, 182 Wn.2d 1008 (2015).

B. ORDER GRANTING ATTORNEY FEES AND COSTS FOR FRIVOLOUS LAWSUIT

Elizabeth argues the superior court erred when it determined that her lawsuit against Robert's Estate was frivolous and when it awarded attorney fees and costs in favor of Robert's Estate. Elizabeth challenges the superior court's findings of fact (FOF) 4-10 in the order granting fees and costs as they relate to a finding of frivolousness. We affirm the superior court's award of costs and fees based on frivolousness.

RCW 4.84.185 provides, "[T]he court having jurisdiction may, upon written findings by the judge that the action . . . was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys." The purpose of the statue is to discourage frivolous lawsuits. *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn. App. 376, 386, 149 P.3d 427 (2006). An action is frivolous if it cannot be supported by any rational argument. *See id.* "The decision to award attorney fees as a sanction for a frivolous action is left to the discretion of the trial court," and this court reviews a trial court's award of attorney fees under RCW 4.84.185 for abuse of discretion. *Jeckle v. Crotty*, 120 Wn. App. 374, 387, 85 P.3d 931, *review denied*, 152 Wn.2d 1029 (2004); *Dave Johnson Ins. v. Wright*, 167 Wn. App. 758, 786, 275 P.3d 339, *review denied*, 175 Wn.2d 1008 (2012).

Appellate courts review findings of fact under a substantial evidence standard and conclusions of law de novo. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). "Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

"A conclusion of law erroneously described as a finding of fact is reviewed as a conclusion of law." *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). Likewise, a "finding of fact erroneously described as a conclusion of law is reviewed as a finding of fact." *Id.*

1. Finding of Fact 4

FOF 4 states, "Under RCW [11.40.051], claims, whether contingent, known, or unknown, must be brought against a decedent's estate within two years of the decedent's death or are forever barred." CP at 710. Elizabeth's challenge to FOF 4 is that is it an erroneous conclusion of law.

Elizabeth is correct that FOF 4 is a conclusion of law, not a finding of fact as labelled. Accordingly, we review FOF 4 de novo. *Willener*, 107 Wn.2d at 394.

Elizabeth argues that FOF 4 is erroneous because it "does not accurately account for the exceptions which apply to the application of the nonclaim statute." Br. of Appellant at 45. But FOF 4 is an accurate statement of the law. RCW 11.40.051 does not list any exceptions; it either applies or it does not. *See Witt*, 168 Wn. App. at 218 (holding that the nonclaim statute does not apply to a person filing a claim on their own community property interest); *Baird v. Knutzen*, 49 Wn.2d 308, 310, 301 P.2d 375 (1956) ("An action for specific performance of a contract is not within the purview of the [nonclaim] statute."). Elizabeth does not cite to any provisions within the statute that list exceptions. The superior court did not err in its entry of FOF 4.

2. Finding of Fact 5

FOF 5 states, "Elizabeth as a creditor is permitted to commence a probate for the purpose of perfecting a creditor claim against a decedent" under RCW 11.28.120(6). CP at 710. RCW 11.28.120(6) provides that should a personal representative of a decedent's intestate estate decline or be unable to administer the estate, a creditor is entitled to commence probate.

Elizabeth argues that FOF 5 "is really another conclusion of law" and is erroneous because her designation as a creditor of Robert's Estate is not applicable. Br. of Appellant at 45-46. Elizabeth is again correct that FOF 5 is a conclusion of law. Therefore, we review FOF 5 de novo.

Elizabeth's claim is that Robert incurred a debt during his lifetime, based on a purported breach of a joint venture, making her a creditor under the nonclaim statute. *Hines REIT Seattle Design Ctr., LLC*, 164 Wn. App. at 448. However, Elizabeth contradicts herself by stating, "Robert never breached the agreement, so could not be liable, if at all, for *Ruth*'s subsequent breach until the time of her death." Br. of Appellant at 46 (emphasis added). Elizabeth's reasoning highlights the frivolousness of her argument: she asks to be treated as a creditor but then disavows her creditor status and the applicability of the statute she filed a claim under. Because Elizabeth does not possess any interest in the Renata Lane property, the superior court properly treated Elizabeth as a creditor because she sought recovery of funds from Robert's Estate (i.e., a debt). Thus, FOF 5 is an accurate statement of the law. The superior court did not err in its entry of FOF 5.

3. Finding of Fact 6

FOF 6 states, "This limitations period cannot be waived." CP at 711. Elizabeth argues that the superior court erred in entering FOF 6 because it "is really another conclusion of law" and "the limitations period simply does not apply due [to] a long-standing and well-recognized exception." Br. of Appellant at 47. She also argues that the nonclaim statute does not preclude her estoppel argument because under RCW 11.40.070(4), the statute does not limit application "of the doctrines of waiver, estoppel, or detrimental claims or any other equitable principle." RCW

11.40.070(4). Because FOF 6 is actually a conclusion of law and Elizabeth makes a legal challenge, we review FOF 6 de novo.

Regardless of whether an equitable claim affects the applicable limitations period, Elizabeth does not have a viable estoppel claim against Robert's Estate. Elizabeth concedes that "Robert Parman was never in breach of his promise and is completely blameless, so Elizabeth had no claim whatsoever against Robert Parman personally at the time of his death, or even now." Br. of Appellant at 3-4. Thus, to the extent Elizabeth has any claim, it is against Ruth's estate, which is being litigated in another case. Therefore, any alleged erroneous entry of FOF 6 is harmless.

4. Finding of Fact 7

FOF 7 states, "The foregoing points of law are so ingrained in Washington law that they appear in both the Washington State Bar Association's 2005 and 2020 Probate Deskbooks." CP at 711. Elizabeth asserts the superior court erred in entering FOF 7 because it is an "inaccurate argumentative assertion not based on or supported by . . . the law." Br. of Appellant at 47. Relying on the 2005 and 2020 Washington State Bar Association Probate Deskbooks, Elizabeth argues that "[b]oth deskbooks list numerous exceptions which significantly undermine the points of law that are allegedly so 'ingrained.'" Br. of Appellant at 48.

The crux of Elizabeth's assignment of error to FOF 7 is that the "ingrained" law provides for numerous exceptions to the nonclaim statute that are applicable to her claims. Elizabeth's repeated attempts to assert that the exceptions to the nonclaim statute precludes application of the two-year statute of limitations fails because Elizabeth does not possess any interest in the Renata Lane property. Accordingly, her purported claim is against Robert's Estate and the limitations period in the nonclaim statute applies to her.

Elizabeth also argues that *Runkle v. Bank of California*, 26 Wn. App. 769, 614 P.2d 226, *review denied*, 94 Wn.2d 1018 (1980), a case cited in both deskbooks, precludes a finding of frivolousness. In *Runkle*, the plaintiff appealed a summary judgment dismissal of a complaint that sought specific performance of a contract. 26 Wn. App. at 771. There, the court held the nonclaim statute was inapplicable because the claim arose after the decedent's death. *Id.* at 773. However, *Runkle* has since been criticized:

> The court in *Runkle* ignored the Supreme Court authority establishing that the nonclaim statute applies to a claim which arises out of a contractual obligation incurred during the decedent's lifetime, and the court's conclusion is contrary to this authority. Further . . . the *Runkle* court's analysis is contrary to the structure of the Probate Code, which suggests that a claim must be filed or it will be barred, even where the claim is not yet due. *Runkle* is inconsistent with controlling Supreme Court authority and was wrongly decided.

Hines REIT Seattle Design Ctr., LLC, 164 Wn. App. at 457.

Elizabeth's reference to *Runkle* is inapposite. First, the facts of *Runkle* are different than the facts here—in *Runkle*, there was an actual contract claim. Elizabeth does not make a clear breach of contract, or will contract, claim anywhere in her briefing. While *Runkle* has not been overturned, *Runkle* is inconsistent with controlling Supreme Court authority. Further, citation to a case that happens to be referenced in a deskbook does not preclude a finding of frivolousness.

Elizabeth's arguments that the superior court erred in concluding that the points of law made in FOF 4-6 appear in both deskbooks because they are ingrained in Washington law are unpersuasive. The superior court did not err in entering FOF 7.

5. Finding of Fact 8

FOF 8 states, "If Elizabeth was not aware of the law when she filed and served her Complaint in October 2020, she was made aware of it on November 24, 2020, when Shawn Parman

filed and served a Motion to Dismiss." CP at 711. Elizabeth argues that the superior court erred in entering FOF 8 because her awareness of the law and "recognizing the circumstances under which it should be applied are two different things." Br. of Appellant at 49. She asserts that FOF 8 assumes a single interpretation of the nonclaim statute which does not recognize "exceptions." Br. of Appellant at 49.

Again, RCW 11.40.051 does not list any exceptions. Like with Elizabeth's challenge to FOF 7, her challenge to FOF 8 is merely a repeat of her argument that exceptions to the nonclaim statute apply to her claims. Again, there are no exceptions to the nonclaim statute that apply to her claims. And because Elizabeth does not possess any interest in the Renata Lane property, her claim is against Robert's Estate and the nonclaim statute applies to her. Therefore, there is no rational argument Elizabeth can make that the two-year statute of limitations of RCW 11.40.051 does not apply.

Elizabeth also argues that in light of the King County superior court's denial of Robert's Estate's motion to dismiss, Robert's Estate now asks a different court to make a different ruling. Elizabeth misconstrues the King County superior court's denial of Robert's Estate's motion to dismiss. The King County superior court denied Robert's Estate's motion in order to transfer venue to Thurston County, stating, "It would be a waste of the parties' resources, and judicial resources, to litigate those issues twice." CP at 247. Contrary to Elizabeth's representations, the King County superior court did not deny Robert's Estate's motion because it found issues of material fact nor did it make any substantive rulings on the issues raised in Robert's Estate's motion to dismiss. The superior court did not err in entering FOF 8.

6. Finding of Fact 9

FOF 9 states, "On December 1, 2020, Shawn notified Elizabeth that he intended to seek attorneys' fees based on the lawsuit being frivolous, but also based under RCW 11.96A.150, which relates to attorneys' fees in estate litigation." CP at 711. Shawn's counsel sent a letter to Elizabeth on December 1, 2020, to this effect. Elizabeth argues the superior court erred in entering FOF 9 because the "'notice'" of frivolousness Elizabeth received was actually "an offer in compromise" and, therefore, is inadmissible under ER 408. Br. of Appellant at 50. Accordingly, Elizabeth asserts that the letter was "not a proper basis upon which to award attorney's fees." Br. of Appellant at 50.

Under ER 408, evidence of offers or attempts to compromise are inadmissible to prove liability for or invalidity of a disputed claim. However, a compromise offer may be admissible for other purposes. ER 408.

Here, the superior court did not rely on FOF 9 to support its frivolousness ruling. Rather, the superior court relied on the letter merely to support its finding that Elizabeth had notice that Robert's Estate considered her claims frivolous and would seek attorney fees if she pursued her claims. Elizabeth does not dispute that she received the letter. Because the superior court relied on the letter to find notice rather than as evidence that Elizabeth's claims were frivolous, the superior court did not err in entering FOF 9.

7. Finding of Fact 10

FOF 10 states, "Elizabeth's Complaint was frivolous and advanced without reasonable cause because there is no rational argument that can be advanced, nor were there any rational arguments made, to support a claim against Robert Parman more than fifteen years after he died."

CP at 711. Elizabeth challenges FOF 10 as "another conclusion of law" and asserts that her argument that an exception exists for "specific performance or recovery of *specific property*" is "rational." Br. of Appellant at 51 (emphasis in original). Elizabeth is correct that FOF 10 is a legal conclusion. Therefore, we review FOF 10 de novo.

Again, RCW 11.40.051 does not list any exceptions. Elizabeth's repeated attempts to assert that the exceptions to the nonclaim statute preclude application of the two-year statute of limitations fail because Elizabeth does not possess any interest in the Renata Lane property, which means her claim is against Robert's Estate and the nonclaim statute applies. And, by her own admission, Elizabeth has "no claim whatsoever against Robert Parman." Br. of Appellant at 4. Therefore, the nonclaim statute applies, and Elizabeth cannot advance any rational argument that she can bring a suit against Robert's Estate 15 years after Robert's death. Accordingly, the superior court did not err in entering FOF 10.

C. ATTORNEY FEES ON APPEAL

Robert's Estate requests attorney fees on appeal pursuant to RAP 18.1, RCW 11.96A.150(1)(a), and RCW 4.84.185. In the alternative, Robert's Estate requests fees under RAP 18.9.

RAP 18.1 provides a party the "right to recover reasonable attorney fees or expenses on review" before this court, so long as the party requests the fees and "applicable law" grants the right to recover. RAP 18.1(a). We award appellate attorney fees to the prevailing party "'only on the basis of a private agreement, a statute, or a recognized ground of equity.'" *Tedford v. Guy*, 13 Wn. App. 2d 1, 17, 462 P.3d 869 (2020) (quoting *Equitable Life Leasing Corp. v. Cedarbrook, Inc.*, 52 Wn. App. 497, 506, 761 P.2d 77 (1988)).

Chapter 11.96A RCW pertains to trust and estate dispute resolution and allows the prevailing party to be awarded costs and fees. RCW 11.96A.150(1)(a) provides, "Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party. . . [f]rom any party to the proceedings." Robert's Estate is the prevailing party in this appeal, and we award Robert's Estate costs and fees of this appeal.

CONCLUSION

We affirm the superior court's dismissal of Elizabeth's complaint on summary judgment, its denial of her motion for reconsideration, and its order for attorney fees under RCW 4.84.185. We also award Robert's Estate its attorney fees on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Glasgow, C.J.

Cruser, J.

Filed
Washington State
Court of Appeals
Division Two

January 12, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ELIZABETH BARTLETT, an individual, Appellant, v. ESTATE OF ROBERT PARMAN, Respondent.	No. 56536-6-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Elizabeth Bartlett, filed a motion for reconsideration of this court's unpublished opinion filed on November 15, 2022. After consideration, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT: Jj. Lee, Glasgow, Cruser

LEE, JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, on this day, I caused a copy of the foregoing Petition for Review to be served via the Washington State Appellate Court's Portal upon the following counsel for respondent:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: February 13, 2023, at Seattle Washington.

Camille Minogue

LAW OFFICE OF DAN R. YOUNG

February 13, 2023 - 4:12 PM

Filing Petition for Review

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