To be argued by
ADAM P. KARP

Washington Supreme Court

Supreme Court No. 89775-1

Ct. of Appeals Div. III Docket No. 303314

IN THE MATTER OF THE ESTATE OF WENDELL K. MILES,

OPPOSITION TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

Colville Valley Animal Sanctuary, through its attorney of record Adam P. Karp, opposes Joyce Tasker's petition for review pursuant to RAP 13.4(b)(2).

II. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals err finding that Joyce Tasker lacked standing to appeal on behalf of Dog Patch Group, Inc. ("DPG")?

III. STATEMENT OF THE CASE

The decedent Wendell Miles's passion for animals translated into generous benefaction to animal welfare organizations. In addition to bequests, before his death on Apr. 22, 2010, he included a specific, non-residuary devise of realty to the "Colville human society." Nearly one year to the day of his death, the estate filed an *Amended Petition for Distribution,* asking the court's permission to authorize sale of the realty and to distribute proceeds to the Red Cross, the residuary beneficiary, claiming that as no precise entity named "Colville Humane Society" existed, the gift lapsed to the Red Cross.

On Sept. 19, 2011, the trial court made findings of fact and conclusions of law. The unchallenged findings and conclusions serve as verities on appeal, and are incorporated by reference here. **CP 244-50**.

Five such findings and one unchallenged conclusion of law bear reprinting:

- On March 2, 2010, Wendell K. Miles executed his "Last Will of Wendell Kenneth Miles." He made specific bequests to seven individuals and two specific charities – "SPEA" or American Society for the Prevention of Cruelty to Animals, and "PETA," or People for the Ethical Treatment of Animals. A third charity was also specified – "Colville human Society my real estate" (doc. 2). He also designated that any "residual money to go to Red Cross" – American Red Cross (doc. 2). *Finding A.*

- At the time Mr. Miles executed his will, on March 2, 2010, Dog Patch Group, Inc. dba Dog Patch Humane dba Dog Patch, was no longer accepting animals from the general public – had not been broadly accepting animals since at least April, 2008. It had continued to accept and place dogs on a "personal level." It was located at 2307 Hickey Way, outside Colville city limits, but with a Colville mailing address. Dog Patch Humane, Inc., as of March 2010, was marketing a holistic methodology for treating humans and animals. The marketing was through a website. Local advertising using the word "humane" was mostly extant in the late 1990s's. Dog Patch Group, Inc. was listed in the yellow pages under humane societies and animal shelters in March, 2010, but the phone number was listed under Dog Patch Group, Inc. *Finding F.*

- In March, 2010, Colville Valley Animal Sanctuary, (Inc.) was located in Arden, south of Colville, with a Colville mailing address. It was formed in 2003. It used Colville Pet Refuge Humane Society, Inc., in business letters in late 2009. Since 2005, it had used the dba "The Refuge Humane Society" on business cards, thank you notes, promotional brochures, t-shirts and sweatshirts, and on parade banners. Its brochure defined "humane society" and its publication, "The Poochie Press," was put out under the dba "Colville Pet Refuge Humane Society." In 2010, it sheltered 202 cats and 103 dogs and adopted out 114 cats and 102 dogs. It also trapped and spayed/neutered 21 cats. *Finding H.*

- The testator uses smaller case letters for some proper nouns – "debbi Odion" and "Colville human Society," and "Eric olsen."

All designations are as to specific individuals, no designations are to a class. He has a clear intent to leave property to charitable organizations that protect and care for animals. This intention extends to all animals, not just dogs. And, the actual designation "Colville human Society" was singular (Doc. 2). *Finding I.*

- The responding charitable organizations in the Colville vicinity that protect and care for animals are, of course, "in existence." There is ambiguity as to which organization the testator intended to designate. He knew the names of the organizations; he knew they were not located within Colville City limits, but that they had Colville mailing addresses; and he knew of the basis services each organization was providing in March, 2010 (Doc. 2.) *Finding J.*

- ["The Refuge Humane Society" and "Colville Pet Refuge Humane Society"] were dba's of the Colville Valley Animal Sanctuary (inc.) in March, 2010. *Conclusion E.*

Despite granting Ms. Tasker's motion to strike portions of declarations (**CP 575-77**), the court nonetheless ruled that parol evidence illuminated Mr. Miles's intent to devise his realty to "The Refuge Humane Society" and the "Colville Pet Refuge Humane Society," fictitious business names of CVAS. **CP 250, Concl. E.**

On Sept. 23, 2011, less than 24-hours after receiving CVAS's *Notice of Discharge of Counsel,* counsel for Ms. Tasker sent a letter to CVAS's President Nancy Rose, threatening to appeal unless CVAS consented to sharing proceeds. **CP 740-41**.

Based on that threat, the limited time remaining to file a CR 59 motion, and the contested withdrawal of CVAS's attorney, CVAS moved under CR 59(a)(1,9) and CR 59(g) for a new trial to reopen the record to

admit additional evidence and to amend findings, a motion based on a serious procedural irregularity having the effect of depriving CVAS the chance to put on a good deal of its case and which resulted in an incomplete record to support the trial court's judgment on appeal. *See Motion to Reopen* (**CP 731-36**).

Ms. Rose, a nonlawyer and CVAS President, signed the pleadings, prompting Ms. Tasker's motion for sanctions. On Dec. 20, 2011, the trial court signed an amended order denying the motion to reopen, striking pleadings, and awarding CR 11 sanctions of $1100 to Ms. Tasker against Ms. Rose. **CP 824-26.** Ms. Rose timely cross-appealed that order.

Thereafter, on Feb. 3, 2012, the trial court canceled Ms. Tasker's *lis pendens* and awarded $600 to CVAS against Ms. Tasker, noting that Ms. Tasker could not individually represent DPG. **CP 857-58.** Ms. Tasker never appealed this order.

It cannot be overstated that DPG, the corporation ostensibly seeking Mr. Miles's devise at the trial level, never appealed. Instead, an individual who had, by all recent accounts, focused her energies on practicing human and nonhuman medicine without a license in a field that many regard as charlatanry, whose business has been run out of the State by the Washington State Department of Health, whose troubles with the Department followed several years of litigation involving a violent feud

with her neighbors, resulting in six-figure indebtedness, claims of frostbite, and hyperbolic allegations of living off Prego, i.e., Ms. Tasker – was the appellant.

Seizing upon the above incongruity, on Mar. 2, 2012, CVAS moved to dismiss Ms. Tasker's appeal under RAP 3.1 and a motion on the merits. The clerk did not authorize consideration of the latter pursuant to the Apr. 8, 2010 *General Order In re the Matter of Court Administration Re: Restrictions on Motion on the Merits Practice,* (2). Comm. Wasson denied the RAP 3.1 motion, characterizing it as made pursuant to RAP 18.9(c). CVAS moved to modify, which this panel rejected without explanation on Sept. 28, 2012. However, on Oct. 31, 2013, in an unpublished opinion, Division III correctly found that Ms. Tasker lacked standing and dismissed her appeal.

On Dec. 10, 2013, Division III denied Ms. Tasker's motion for reconsideration. On Jan. 8, 2014, Ms. Tasker filed a *Petition for Review* but did not pay the filing fee until Jan. 10, 2014.

IV. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

RAP 13.4(b)(2)– Conflict with Court of Appeals

This is the only ground upon which Ms. Tasker relies, viz., that *In re Miles* conflicts with *Germeau v. Mason County Sheriff's Office,* 166

Wash.App. 789 (II, 2012) or *Ahmad v. Town of Springdale,* 314 P.3d 729 (III, 2013). For the following reasons, it fails.

In *Germeau v. Mason Cy.,* 166 Wash.App. 789 (II, 2012), the Court found that Mr. Germeau, aside from his representative capacity of the Guild, had a "personal stake" in the information and to erect a "hypertechnical barrier" would frustrate the Public Record's Act's goal of 'liberal public records disclosure." *Id.,* at 804. Unlike *Germeau,* where Mr. Germeau made the actual public records request and was deemed the requestor, and as discussed in the Division III opinion, Ms. Tasker never had a "a personal stake in the outcome of a case" involving Mr. Miles's realty. *Germeau* does not in any way stand for the proposition that a nonlawyer may appear on behalf of a corporation, the real party in interest in this action. The holding of *Germeau* actually compelled dismissal of this appeal.

Ahmad v. Town of Springdale, 314 P.3d 729 (III, 2013), only bolsters the above analysis. Counsel for Ms. Tasker appeared in that case, for one day, on behalf of corporation Muslim America "for the sole purpose of filing Muslim America's refusal to be joined as a necessary party and the same day he withdrew." *Id.,* at 731. The reason Mr. Simeone appeared for Muslim America is the same reason he appeared for DPG – viz., nonlawyers may not represent corporations, a point that Ms. Tasker

realized when Judge Nielsen sanctioned her for filing a *lis pendens* on behalf of DPG.

While *Ahmad* does say that "a party waives a standing issue by not raising it at trial," and adds that "[t]he individual plaintiffs failed to argue standing below," context matters. Mssrs. Ahmad, Iman, and Hatem, plaintiffs in *Ahmad,* claimed they had standing to appear on behalf of Muslim America, a corporation, first by asking the town to pass an ordinance exempting Muslim America's property from the building code, then by filing a petition for a writ of prohibition and mandamus (again, on behalf of Muslim America). *Id.,* at 731. The town realized that the real party in interest was Muslim America, the owner of the property at issue. It then moved to join it as a necessary party. The individual plaintiffs opposed the motion for joinder and, as with Ms. Tasker, the court struck the pleadings of Mr. Ahmad by disqualifying him from representing Muslim America. Apparently, at the trial level, the individual plaintiffs failed to argue they had standing to apply for and act on behalf of Muslim America "in resisting its joinder as a necessary party." Standing was, as here, jurisdictional, for only Muslim America had grounds to petition for a writ. For that reason, the appellate court deemed the issue waived.

Ahmad, therefore, is consistent with the holding in this case. At the trial level, Ms. Tasker never argued that she had standing to appear on

behalf of DPG. This is likely because the trial court proceeded under the abiding impression that Ms. Tasker had no personal stake in the matter; rather, DPG was vying for the Miles property. When Ms. Tasker attempted to act on behalf of DPG by filing the *lis pendens,* the trial court held, as in *Ahmad,* that she had no standing to appear for DPG and could not represent it as a nonlawyer.

Nothing in *Ahmad* prevents the adverse party or the court from raising lack of standing as a sword even "for the first time on appeal" where standing is jurisdictional. *Local 1789,* 146 Wn.2d 207, 212 n.3 (2002). That the individual plaintiffs in *Ahmad* failed to challenge lack of standing merely prevented them from raising it as an error on appeal; it did not somehow nullify the Town's motion to join Muslim America as an indispensable party or void the trial court's refusal to issue the writs due to lack of standing, since standing was jurisdictional. By contrast, the reason why the Supreme Court refused to let the State argue lack of standing against criminal defendant Cardenas in *State v. Cardenas,* 146 Wn.2d 400, 404-405 (2002) was because standing was not jurisdictional. Instead of challenging whether the State was a proper plaintiff or Cardenas a proper defendant, standing pertained to whether Mr. Cardenas could bring a particular argument as part of his motion to suppress. "This burden [of establishing that his own Fourth Amendment rights were violated by the

challenged search] arises only if the defendant's standing to claim a privacy violation has been challenged. If the issue of standing is not raised to the trial court, it may not be considered on appeal." *Id.,* at 404-05. The State in *Cardenas* did not argue that standing was jurisdictional and capable of being heard for the first time on appeal under RAP 2.5.

Contrary to her argument, where jurisdictional, the question of standing may be raised at any time, even *sua sponte. International Ass'n of Firefighters, Local 1789 v. Spokane Airports,* 146 Wn.2d 207, 213 (2002), amended on denial of reconsideration, 50 P.3d 618 (Wash.2002)(because standing is jurisdictional, it may be raised for the first time in appellate court); *see also In re Recall of West,* 156 Wn.2d 244 (2006)(standing can be raised by appellate court *sua* sponte). Ms. Tasker asks this court to disregard the clear holdings of *Local 1789* and *High Tide Seafoods v. State,* 106 Wn.2d 695, 702 (1986) claiming that "challenges to standing were rebuffed by the appellate courts" and "in the courts below," yet the opinions do not suggest as much and Ms. Tasker fails to prove this assertion by pinpoint cite. *But see Local 1789,* at 213 fn.3 ("Although Airport raised the standing issue as an affirmative defense in its answer to Union's complaint, it failed to assert it on summary judgment. The Court of Appeals, however, correctly observed that standing is a jurisdictional

issue that can be raised for the first time on appeal."); *Local 1789,* 103 Wash.App. 764, 768 (2000)(accord).

Further, the timely and complete filing of the *Notice of Appeal* is jurisdictional. *Glass v. Windsor Navigation Co.,* 81 Wn.2d 726, 729 (1973) (though applying CAROA, states "[T]he timely filing of a written notice of appeal is now the only procedural step necessary to confer appellate jurisdiction upon this court and the Court of Appeals."); *see also Chaney v. Fetterly,* 100 Wash.App. 140, 151(II, 2000)(stating it is axiomatic that party must file notice of appeal when asking upper tribunal to review ruling of lower tribunal and exercise appellate jurisdiction). Ms. Tasker never had and does not presently state a claim of her own, and she cannot manufacture standing on appeal. That DPG did not file a *Notice of Appeal* is fatal to any possible claim DPG might have. And since Ms. Tasker never had or asserted her own claim, Division III properly dismissed the appeal with prejudice on jurisdictional grounds.

All other arguments raised by Ms. Tasker are immaterial to the RAP 13.4(b)(2) question.

V. CONCLUSION

This court should deny review.

Dated this Feb. 17, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Feb. 17, 2014, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

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