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No. 69214-3-I
COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION ONE

In the Matter of the Estate of:

CALVIN H. EVANS, SR., Deceased

SHARON EVANS, VICKI SANSING, and KENNETH EVANS,

Respondents

v.

CALVIN H. EVANS, JR.

Appellant

BRIEF OF APPELLANT CALVIN H. EVANS, JR.

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I. INTRODUCTION

In December 2004, Calvin H. Evans, Sr. ("Cal SR") asked his son Calvin H. Evans, Jr. ("Cal JR") to take care of him and his ranch in Sultan, in exchange for a promise to will the ranch to him. Cal JR accepted this offer, sold his business, moved his family to the ranch, and spent the next six years (until the death of his father) toiling day in and day out on the ranch, and putting all of his own money into it, as well as some of his father's money. Cal SR kept his word and, in March 2006, he made a will leaving the ranch to Cal JR. The trial court found that Cal SR was competent when he made this will, and that it was not the product of undue influence. Nonetheless, based on a TEDRA petition filed by Cal SR's other children, the trial court found that Cal JR's use of some of his father's resources in the ranch constituted willful financial exploitation of a vulnerable adult. Based on a 2009 amendment to the Slayer Statute to include financial exploitation as a basis for disinheritance, Laws of 2009, ch. 525 (codified in Ch. 11.84, RCW), the trial court concluded that Cal JR should be deemed to predecease his father, and should take nothing.

This appeal argues that there is no clear, cogent and convincing evidence of intentional financial abuse of a vulnerable adult, because (1) Cal JR made extensive contributions of labor and personal funds to maintain and improve the ranch; (2) Cal JR's contributions were

consideration for their agreement, benefitting Cal SR; (3) Cal SR's contributions were part of their deal; and (4) at the relevant times, Cal SR was not in fact a vulnerable adult, and was competent to consent to basic decisions about the use of his money and the work to be done on his ranch.

Second, this appeal argues that RCW 11.84.170(1), which permits a financial exploiter to inherit if there was knowledge and ratification, and the strong judicial policy in favor of carrying out the intent of a competent testator, requires that the trial court make findings about the testator's knowledge and ratification of the expenditures of his funds. Here, the fact that the will was executed ***after*** most of the challenged expenditures occurred is the strongest evidence of ratification.

Third, this appeal asks this Court to hold that the trial court needs to make findings on the application of RCW 11.84.170(2), which allows the court to find an equitable middle ground short of complete disinheritance, and that here it was an abuse of discretion not to consider a penalty commensurate with the value of the harm as a lesser alternative to completely setting aside an otherwise valid testamentary scheme.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments of Error

1. The trial court erred by entering judgment against Cal JR, including the award of attorneys' fees in favor of Petitioners.

2. The trial court erred in Findings of Fact 62, 69, 105, 114, 115, 117 120, 124, 125, 126, 127, 128, 129, 130, 173, 174, 175, 177, 178, 180, 181, 196, 199, 200, 203, 205, 206, 207, and 209.

3. The trial court erred in Conclusions of Law 5, 6, 7, 8, 9, 10.

4. The trial court erred by denying Cal JR's Motion for Reconsideration / New Trial.

B. Issues Pertaining to Assignments of Error

1. Did the trial court err in finding Cal JR to be a financial abuser because there is no clear, cogent and convincing evidence that Cal JR willfully intended to inflict financial injury on Cal SR?

2. Did the trial court err in finding Cal JR to be a financial abuser because the Conclusion of Law that Cal SR was a vulnerable adult at the time of the challenged expenditures is not supported by the Findings, and the Findings are not supported by clear, cogent and convincing evidence, and are too vague as to time period?

3. Did the trial court err in concluding there was no benefit to Cal SR from Cal JR's investment of time and money in Cal SR's ranch?

4. Did the trial court err in failing to make findings under, and failing to apply the requirements of, RCW 11.84.070(1), permitting inheritance by an alleged financial exploiter when the decedent knew of and ratified the challenged conduct; thus destroying the plan of distribution in a will made by a competent testator **after** most of the challenged expenditures?

5. Did the trial court abuse its discretion by failing to make findings under RCW 11.84.170(2), and by failing to consider any lesser alternative to complete disinheritance, in light of the relatively small "harm" (if any) to the estate in relation to the substantial benefits it received from Cal JR, and the overall value of the estate?

6. Did the trial court abuse its discretion by denying the motion for reconsideration?

7. Should this court reverse the award of attorney fees below, and award attorney fees to Cal JR on appeal?

III. STATEMENT OF THE CASE

A. Statement of Facts

1. Calvin H. Evans SR

Calvin H. Evans, Sr. was born on March 8, 1933. He owned and operated a successful excavation construction business. CP 186 (FF#1). He was divorced and had four children: Kenneth Evans, Vicki Sansing, Sharon Eaden, and Calvin H. Evans, Jr. CP 186 (FF#3).

a. Cal SR's Health and Competency

Cal SR suffered from polycythemia, a thickening of the blood, which predisposed him to stroke. He suffered his first stroke in 2000, CP 186-87 (FF #7), a second stroke in March 2005, CP 190 (FF #35), and a third stroke in November 2006. 2 RP 60-61/15-2.

On December 28, 2005, Sharon Eaden filed a guardianship petition alleging that Cal SR was incapacitated and needed a guardian. CP 194 (FF #82). Cal SR did not want a guardian, and was angry at Sharon for filing this petition. CP 195 (FF #83). Chuck Diesen, who had been Cal SR's trusted attorney since 1970, was appointed to represent Cal SR in the guardianship. CP 195 (FF #86); 5 RP 678/18-20; 6 RP 872/9-13; 11 RP 1625/15-20. The GAL, Erv DeSmet, met with Cal SR in January,

February, and April 2006, and issued his first report in April 2006. Ex. 6; 2 RP 45/1-5. According to the GAL, Cal SR was like a Montana man – proud and independent, he didn't want the government, Sharon, or anyone else in his business. 2 RP 45-46/6-3. The GAL's report states, "Having visited with Calvin Evans, Sr. on three occasions, I am also impressed with the degree to which he can manage his own life." Ex. 6 p.18.

On January 28, 2006, psychologist Dr. Eisenhauer met with Cal SR for the purpose of assessing the need for a guardianship. CP 197 (FF #101). She made her report on March 16, 2006. An addendum was later made, but both the report and addendum were based on the one examination made January 28, 2006. CP 197 (FF #102).

Dr. Eisenhauer's diagnosis in 2006 was dementia secondary to stroke. CP 197 (FF #103). Cal SR had memory impairment, mild disorientation, disturbances in executive functioning, and impaired judgment and insight. CP 197 (FF #104). Long-term memory was reasonably but not fully preserved, and short-term memory was significantly below the expected performance of intact elderly persons, but at the 57th percentile when compared with other persons with dementia. Overall functioning was significantly compromised when compared with persons without dementia, but in the 82nd percentile when compared with other persons with dementia. CP 197-98 (FF ##106-107).

Significantly (for purposes of analysis of **willful** financial exploitation), Dr. Eisenhauer found that, given Cal SR's intact attention skills, he would, on the surface, look more functional than he was. CP 198 (FF #109). What's more, "on subjects of greater interest to him, such as airplanes, ranches, and land values," Cal SR "spoke knowledgeably, articulately and cogently to Dr. Eisenhauer." CP 199 (FF #121). The doctor noted that "Mr. Evans was coherent and expressed himself in a linear manner. He used a good range of vocabulary. He was able to process simple questions at a normal rate and could answer them without needing repetition of the question." 4 RP 447/21-25.

Cal JR testified that his father "wasn't incompetent ever." 8 RP 1227/6-9. He added that, "As Dad went on, his memory deficit grew, but he was very fun to talk to right up to the day he left." 8 RP 1228/8-10. Likewise, Chuck Diesen, Cal SR's attorney for over 35 years, described him on January 25, 2006 as "a very confident, in-charge guy . . .." 6 RP 736/12-15. In November 2005, Diesen had no question about Cal SR's competency to make a will. 11 RP 1634/4-6. At the time he executed his will on March 7, 2006, Cal SR was "upright, bright eyed and bushy tailed, clean shaven, clothes in good repair, and talking to [Mr. Diesen] like we have talked for years." 11 RP 1695/1-7. He was totally competent to make a will on that date in Mr. Diesen's opinion. 11 RP 1647/8-18.

Indeed, Mr. Diesen testified that Cal SR was "always competent." 11 RP 1707/10-16, 1713/16-23, 1714/12-14.

The trial court agreed with respect to competency to make a will. It found that Cal SR demonstrated to Dr. Eisenhauer overall knowledge of the extent of his assets, and that he understood the natural objects of his bounty and the transaction in which he was then engaged. CP 196 (FF #97); CP 198 (FF #111). It thus concluded that Cal SR had testamentary capacity on March 7, 2006, when he executed his will. CP 209 (CL #2).

The trial court made several findings suggesting that, although Cal SR understood the basics of transactions, he was vulnerable to being misled and to undue influence. CP 199 (FF ##114, 117); CP 200 (FF ##124, 125, 127). The trial court found that **both** Sharon Eaden and Cal JR attempted to influence the contents of Cal SR's will. CP 194 (FF #80). Significantly, however, the trial court concluded that they failed to unduly influence Cal SR, and that the last will of March 7, 2006, was not the product of undue influence. CP 209 (CL #3).

According to Sharon Eaden's diary for August 22, 2005, which she spent with Cal SR making a balance sheet of his estate: "I felt that he was completely understanding everything we discussed. It was clear his health and mental endurance had improved." Ex. 51, p.9; 5 RP 586-87/17-8. Significantly, Cal SR had his second stroke in March 2005, and not

another stroke until November 2006. CP 190 (FF #35); 2 RP 60-61/15-2. Dr. Eisenhauer states that, "Subsequent to stroke, an individual is apt to show improvement during the first six months post-stroke with some continuing improvement for the next six months." 14 RP 1973/17-20.

One of the Petitioners, Cal SR's daughter Vicki Sansing, borrowed $30,000 from Cal SR in **November 2006** for a down payment on Vicki's new home. 3 RP 260-61/12-25, 371/4-6; 11 RP 1662/4-7. Chuck Diesen discussed this loan with Cal SR, and felt it was perfectly fine so long as it was documented. 11 RP 1662/9-18. Thus, at least one of the Petitioners and Cal SR's lawyer treated Cal SR as competent to decide what to do with his money as late as November 2006.

One part of Dr. Eisenhauer's exam suggests that Cal SR may even have been sharper than the good doctor. According to Dr. Eisenhauer's report, "In this same realm of executive thinking, [Cal SR] showed faulty judgment. Asked what he should do if he were the first person in a movie theater to see smoke and fire, he responded 'I would promptly yell "fire" and try to beat them all out.'" 4 RP 449/6-10. In January 2006, Cal SR demonstrated his sharp wit and poked a bit of fun at the guardianship process that he detested, thus showing he was fully in control.

b. Cal SR's Guardianship and Will

Although the guardianship was filed in December 2005, an actual order placing Cal SR in limited guardianship was not entered until June 25, 2008.[1] Ex. 35. Even then the order specifically allowed Cal SR a lot of decision-making authority, including the right to allow any of his children to live on the ranch rent free. Ex. 35, p.7.[2] A prior order on May 11, 2006 directed use of the lesser alternative of a revocable trust. CP 201 (FF #134); Ex. 82. That order states Cal SR "has cognitive deficits which are subtle and exist amid many intact cognitive abilities." Ex. 82 ¶1.6.

Cal SR was sufficiently angry with Sharon for the guardianship that he changed his estate plan. In the Fall of 2005, Chuck Diesen had drafted a will for Cal SR that left Cal JR the Sultan ranch, and divided the remaining property between the other three children, Ken, Vicki and Sharon. CP 194 (FF #78). But after the guardianship was filed, Cal SR executed a will that left the Sultan ranch and Cal SR's Cessna airplane to Cal JR, divided the remaining real estate between Ken and Vicki (but not Sharon), left Sharon only $25,000, and then provided annual bequests of

[1] Finding #203 says the guardianship was established in June 2007, but we challenge this scrivener's error because the order establishing guardianship, Ex. 35, was entered June 25, 2008. *See,* Appendix B. The oral decision agrees it was 2008. 14 RP 1978-79/24-1.
[2] Cal SR fought the guardianship through trial in June 2008, supported by his loyal son Cal JR. In their view, Cal SR was competent to make decisions for himself. Ex. 35; 3 RP 287/2-3; 6 RP 760/5-12; 8 RP 1227/6-9.

the remainder of his estate to the three children excluding Sharon, plus his grandchildren. CP 195-196 (FF ##87-94). Cal JR testified that he told his father that Sharon should share equally with the rest of the children in the 2006 will. 10 RP 1500/7-10. Chuck Diesen testified that reducing Sharon's share was Cal SR's idea. 11 RP 1652-53/12-4.

Cal SR lived mostly at the Sultan ranch until the guardianship was established in June 2008, then he moved back and forth for a year, until he moved full time to his daughter Vicki's house in Kent in June 2009. 2 RP 66/1-15, 3 RP 278-81/3-3; 5 RP 663/11-13. Kent was the first place where Cal SR was provided licensed home care, starting after June 2008. 3 RP 280/17-20, 409-10/22-12.

2. The Sultan Ranch

In the Fall of 2003, Cal SR sold his 100 acres in Duvall and purchased two pieces of property in Sultan: a 40-acre parcel known as the Sultan ranch, and a 70-acre parcel located about one mile down the road from the ranch. CP 188-89 (FF ##23, 25). The purchase price for the Sultan ranch was $887,500. CP 189 (FF #26). The Sultan ranch was purchased from Jack Choate. Cal SR told Mr. Choate that he wanted his son Cal JR to sell his Idaho home and business and move to the ranch, that he intended to establish a business relationship with Cal JR, and that when he died he intended to leave the ranch to Cal JR. CP 189 (FF#28). Cal SR

told Mr. Choate that he planned to leave the 70-acre parcel to his other three children, Ken, Vicki and Sharon. CP 189 (FF#29).

During this time, Cal JR was living in Post Falls, Idaho with his wife Debbie, daughter Lindsey, and three boys, Calvin III, Jesse and Cory. CP 188 (FF #24); 7 RP 939-40/17-8, 941/5-12. Like his father, Cal JR ran an excavation construction business. 7 RP 975-76/10-1. Cal JR began this work at about age 13, working at his father's side on a number of excavation projects. 7 RP 971/5-15, 8 RP 1218/7-24.

In December 2004, Cal SR telephoned Cal JR, told his son that he had only one year left to live, and asked Cal JR to move to the ranch to take care of him and the ranch in exchange for ultimately becoming the ranch owner. CP 189 (FF#32); 7 RP 986-88/22-2. Cal SR also telephoned Chuck Diesen that month, and told him he wanted to leave the horse farm to Cal JR. 5 RP 686/1-14. Cal JR met twice with Cal SR prior to accepting this offer. 7 RP 990/16-19. In those discussions, Cal SR said that Cal JR and his family could take over the main part of the house and that he would move to the large apartment over the garage, that he had lots of money so they wouldn't have to worry about money again, that Cal JR would receive "a business income from the operation of the ranch, which was expected to be in excess of $3,000 a month," and that Cal JR would run the ranch and ultimately get the ranch. CP 189 (FF#31); CP 205

(FF#170); 7 RP 991-92/21-2; 8 RP 1068/1-6; 9 RP 1287/3-6, 1290-91/19-4, 1298/6-15. After talking it over with his wife Debbie, Cal JR accepted his father's offer and moved his family from Idaho to the Sultan ranch in January 2005. Then, after wrapping up his ongoing construction projects and selling some of his business equipment, Cal JR followed on April 1, 2005. CP 190 (FF#34); 7 RP 990/4-6, 998-1000/14-9.

3. Labor and Money Invested by Cal JR in Cal SR's Property

Before leaving Idaho, Cal JR and Debbie sold their home for $134,000, and sold business property. 8 RP 1068-69/22-4. When Cal JR arrived in Sultan he opened an account at Coastal Community Bank and deposited $225,000 derived from these sales, plus work he had just finished up. 8 RP 1145/3-17. Both Debbie and Cal JR testified that a majority of that money went into the Sultan ranch. 8 RP 1093-94/9-12, 1094-95/21-3, 1095-96/24-3, 1146/14-18.

The trial court made two general findings about the work and money invested in the ranch by Cal JR:

> Cal, Jr., did perform work on the Sultan ranch to level the ground, cut back blackberries, burn trash, grade trails, fix the barn floor and plumbing, paint the barn, level and compact the indoor arena, and add an outdoor arena.
>
> Cal Evans, Jr., did invest funds from the sale of his business and home on improvements on the ranch. There has, however, been no accounting of his own funds invested in the ranch or

> for the value of the time he has expended in making these improvements while he was on the ranch.

CP 208 (FF##198, 199).

Respondent's Exhibit 98, admitted without objection, 10 RP 1402/8-20, is a Decree of Dissolution entered September 15, 2011 in the divorce between Cal JR and Debbie, which states:

> The court finds that the parties hereto made a substantial investment of not only funds but time and effort in the real property owned by Cal Evans, Sr. Their interest in that property is now the subject of litigation in the Estate of Calvin Evans, Sr. (Snohomish County Cause No. 11-4-00565-3) that is not before the Court and the outcome of which is uncertain. ***However, the Court does find adequate evidence that at least $174,000.00 of community funds were invested in this real property.*** . . .

Ex. 98, page 2 of Exhibit A to Decree, §I(Q) – Property Awarded to the Wife (excerpt attached as Appendix A to Brief) (emphasis added). Exhibit 98 includes an attached transcript of an oral decision given by Judge Linda Krese, which states, *inter alia,* that "it's absolutely clear" that "[s]ome of the funds from the sale of the property in Idaho . . . and income from that [Idaho excavating] business were invested in the [the Sultan ranch]." Ex. 98, Court's Oral Decision of July 19, 2011 (*Evans v. Evans,* Snohomish Superior No. 10-3-00876-6), at 14-15; *see also, id.* at 16.

In this TEDRA action, Cal JR presented the following evidence of labor and money that he and Debbie invested in the Sultan ranch:

(1) April, 2005 – General clean-up, including Cal SR's stuff in small metal barn. Immediately on arrival, Cal SR wanted Cal JR to get to work cleaning up stuff lying around the Sultan ranch that had been left by thirty years of prior owners. Cal JR spent weeks working on that. 9 RP 1301/7-10. Included in that job was the clean-out of two stalls in the smaller metal barn that Cal SR had stacked to the ceiling with garbage bags, and another stall filled with wadded up fencing wire that was very difficult to remove. 7 RP 1004-05/21-6.

(2) May-June, 2005 – Removing stumps. This was work Cal SR had started, but not gotten very far with. 9 RP 1303/12-19. When Cal JR moved to the ranch there were 38 horses, 11 belonging to Cal SR, plus Cal JR brought 7 more. 7 RP 1010/9-20. To protect them it was necessary to remove stumps in the horse paddocks, which took Cal JR about two months. 9 RP 1301-02/17-1, 1302-03/25-11, 1304/1-5, 1304/20-25. Cal JR was experienced in the use of large machinery for stump removal, and he used machinery he had brought with him from his Idaho construction company. 7 RP 971/5-15, 8 RP 1069/5-25; 9 RP 1307/1-7.

(3) July-August, 2005 – Construction of a drive-way along the east side to the big barn. At the time that Cal JR moved to the Sultan ranch, the big barn where the horse boarding/ training operation was conducted had 27 horse stalls. CP 190 (FF#39); 7 RP 1005-06/24-1. One problem

when Cal JR arrived was that there was no graveled or paved road all the way to the big barn, and people were driving up the blacktop driveway that Cal SR had put in, past the front of the house, and then across the fields, making a muddy mess and often getting stuck. 9 RP 1305/1-9, 12 RP 1814/16-25, 1818-19/24-2, 1822/3-6; Ex. 107. Cal SR didn't want that, and asked Cal JR to build a driveway on the east side of the property. 8 RP 1151/4-12. Cal SR and Cal JR walked the eastern side route of the new roadway and discussed it together. 9 RP 1822/3-6. It took Cal JR 45 days, beginning in July 2005, to build the new crushed gravel road along the east side of the property, avoiding the main house and going all the way to the big barn and riding arena. 9 RP 1307-08/22-3. The work involved clearing, stumping, burning the debris, then sod removal and leveling with Cal JR's laser-automated grader, hauling and redistributing the excess soil from the grading, and finally hauling and putting down crushed gravel. 8 RP 1157/7-14, 9 RP 1307/8-15, 1307-08/22-3. Cal JR redistributed soil to the very west side of the ranch to fill in ravines, in an area that later became the outdoor riding arena that Cal JR built. 9 RP 1307/16-19. Cal JR testified that he put $25,000 of his own money into building that 1000 feet of new roadway. 8 RP 1151/13-21.

(4) July-August, 2005 – Repairing, plumbing and painting the big barn. Next, Cal JR turned his attention to the big barn, which was close

to 50,000 square feet. He pressure washed the barn, using high lifts, purchased 400 gallons of paint with $18,000 of his own money, and hired two college girls to paint all summer long. 8 RP 1146-47/20-11, 9 RP 1309-10/24-17. While they were working, Cal JR repaired the horse stalls. There was a crawl space beneath the barn, and the many rotten or broken floor boards created a hazard for the horses, so Cal JR removed the boards and filled the crawl space with sand, all of which he hauled himself. 8 RP 1094-95/21-3, 1148/8-22; 9 RP 1311/1-5. Cal JR also replaced all the plumbing in the big barn at this time. 8 RP 1148-49/23-1. He had to hire 10-15 workers to help with this huge project. 8 RP 1149/21-25. Though he could not recall what he paid for the laborers, Cal JR testified to the following costs paid by his marital community that were associated with this work: $18,000 for paint, 8 RP 1146/20-24, $8,100 worth of sand ($300x27 stalls), 8 RP 1148/8-22, $8,000 to get the well up and running, and $6-7,000 for plumbing fixtures. 8 RP 1149/11-19. In addition, Cal JR put $6,500 of his own money into buying ten new tires for the used dump truck (purchased with Cal SR's money) that was needed because the other dump trucks were not safe for highway travel. 8 RP 1219-20/15-25, 1221/4-6, 1221-22/23-3. Cal JR used that truck to haul sand and gravel for the various projects on the ranch, thus saving Cal SR about 150 hauling loads at $100 per load, or $15,000. 8 RP 1224-25/10-

19. Subtotal investment of JR's money for improvement of the big barn (not counting hired labor): $46,000. Direct savings for hauling: $15,000.

(5) August-October, 2005 – Professional grading work. Cal JR has been in the excavation business all his life, and he learned a simple rule: the earth must slope away from all buildings, or there will be rot. But on the Sultan ranch the earth sloped towards some of the buildings. 8 RP 1156-57/15-2. So Cal JR used his laser-guided machine to spend weeks grading areas around the 10-stall barn and the big barn and riding arena, and balancing the topsoil. 8 RP 1157/3-25. He graded out to where a new barn addition was built by Sonny Sachs, working simultaneously with Mr. Sachs from the end of August 2005 to October 2005. 9 RP 1313/3-13, 1313-14/21-12. Like old times, Cal SR helped his son with about 5-6 hours of the grading work; all this work was discussed with Cal SR before it was done. 8 RP 1159/1-13, 9 RP 1315/12-14, 1317/9-11. The grading burned up diesel fuel and used up crushed rock paid for by Cal JR, as well as specialized equipment and labor supplied by Cal JR, but it didn't cost Cal SR one cent. 8 RP 1159/14-16, 9 RP 1314/13-25, 1315/8-11.

(6) Other work around the ranch in 2005.

Paving hallways: Cal JR put $6,000 to $7,000 into paving the hallways outside the newly-added horse stalls. This was required to bring the new addition up to the standards of the horse trainers. 7 RP 1028-29/16-2.

Outdoor arena: After finishing up all this grading work associated with the big barn expansion and trail building, Cal JR built a 200x300 foot outdoor arena. 9 RP 1317/13-24. According to horse trainer Bryan Wilding, Cal SR agreed to the building of the outdoor arena and all this other work; he was excited about it, and he would often come outside to sit there on his 4-wheeler and watch the work. 10 RP 1341-42/7-10, 1344/7-11, 1344-45/21-5, 1345-46/14-3. Cal JR finished the outdoor arena with fencing he built out of wooden rails that he had trucked in from Idaho using his own tractor-trailer. He put in four truckloads of posts and rails, of which Cal SR paid for 1500 posts and Cal JR paid for 3000 rails and 1500 posts. 9 RP 1328/11-22, 1329/9-23, 1330/7-23.

Horse trails: There were no horse trails on the Sultan ranch when Cal JR arrived, so he built a trail to the road, and then built another to tie together the 40-acre Sultan ranch with Cal SR's other 70-acre Sultan property. This work created a 1½ hour horse ride each way, without having to go onto pavement. 8 RP 1158/1-25. Cal JR discussed this with Cal SR before doing it, and it did not cost Cal SR anything. 8 RP 1159/18-24.

Replacing wire fencing and gates: Upon Cal JR's arrival he noted that the vinyl fencing out front was serviceable, but that the wire fencing out back was a problem because it could injure horses. 8 RP 1152/5-15. Using a load that Cal SR paid for but Cal JR trucked from Idaho, plus

three more loads of fencing purchased by Cal JR, Cal JR took out all the wire fencing and defective gates and replaced them with good horse fencing. 8 RP 1151-52/22-3, 1153/13-15. Cal SR agreed to re-doing the fencing to be better able to board horses. 10 RP 1344/7-11. The costs to Cal JR for fencing, without labor or hauling, was $18,000 in fence materials, $5,000 for hardware, and $12,000 for gates, for a total of $35,000. 8 RP 1153/16-20.

(7) Purpose of the Work. The immediate purpose of all this work was not only generalized improvement, but also to bring the horse barn up to the standards specified by Quinton & Danielle – two well-known horse trainers who would move their horse boarding and training operation to the Sultan ranch if it met their standards. 7 RP 1025-26/18-11. Cal SR was informed that Quinton & Danielle would be coming, and he was excited about it because he loved horses, and that was the reason he funded the $75,000 Sachs expansion contract. 9 RP 1320/19-24, 1321/4-7. Quinton & Danielle did come to the Sultan ranch in November 2005 and stayed until January 1, 2007, bringing many customers and other trainers to the ranch. 7 RP 1026/15-21. Including SR and JR's horses, there were about 70 horses at the Sultan ranch during that time. 7 RP 1026/22-25. Gross revenues jumped to about $15,000 per month while they were at the Sultan ranch. 8 RP 1186/1-8. But expenses were high

too, running at about $12,000 to $13,000 per month, 8 RP 1186/7-9, including such items as hay, grain, bedding ($18,000 worth, and ongoing at $500 per month for Cal SR's horses), stall cleaning ($2500 per month), and electricity ($700 per month). 8 RP 1186/10-16, 10 RP 1410-12/25-8, 1415/5-12. Cal JR spent $30,000 of his own money feeding Cal SR's horses. 11 RP 1571/17-25.

(8) Conclusion: While all this work benefitted Cal JR, it also benefitted Cal SR in the following ways:

- It enhanced the value of property that he owned.
- It prevented his property from going to waste.
- It made it possible for his son and family to support themselves so that they could do exactly what he requested – sell off a business and move to Sultan to live with and care for him and his property.

4. Cal SR's Money Spent During Cal JR's Work and Residence on the Ranch

a. <u>Work on the farmhouse</u>

2005 Heating system: The heating system was the same old coil system that had been in the house since it was built in 1972, which Cal SR said was too expensive to run because it sucked up electricity. The house was cold and damp, so shortly after moving in Cal JR re-did the system by putting in a heat pump that provides both heating and air conditioning to

the house. 7 RP 1002-03/24-3, 1033/3-6, 1033/9-12, 1034/1-3. The heat pump was paid for with $8,613 of Cal SR's money, but the trial court found that it was discussed with Cal SR and that Cal SR agreed. CP 191 (FF #46). Both Cal JR's family and Cal SR's apartment benefitted from the heat pump. 7 RP 1033-34/21-16.

2005 Stove top: The stove top that was there was thirty years old and rusted. Cal SR and Cal JR drove together to Redmond and bought a new one with Cal SR's money. Cal JR and his son Cory did the installation work. 10 RP 1409/7-13. This purchase was discussed with Cal SR and he agreed to it. 10 RP 1409/14-18. It benefitted Cal SR because Debbie was cooking for him on that stove top. 8 RP 1168/2-15; 10 RP 1409-10/19-1.

Other work: Cal JR did other work on the farmhouse that did not involve use of Cal SR's funds: (1) replacing all the downstairs plumbing with copper to avoid corrosion; (2) tearing out the rotten deck; (3) putting in the kitchen in the upstairs apartment, and the sink; (4) improving the downstairs fireplace so it heats the house better. 11 RP 1583/6-18.

b. The Sonny Sachs Contract to Expand the Big Barn

In 2005 Cal SR signed a $75,000 contract with Sonny Sachs to build a shop, tack room and other additions to the barn, which expanded it to 54 stalls by adding a 72x60 foot building. CP 194 (FF ##75, 77); 9 RP 1313-14/21-12; 10 RP 1355/19-23, 1356/20-24. After this contract was

already made, Sharon Eaden insisted that Cal SR and Cal JR sign a promissory note to document this as a $75,000 loan. CP 191 (FF #50). On August 27, 2005, Cal SR and JR signed a promissory note for $75,000, which specifies that it is to be paid by Cal JR from the income from stall boarding fees. Ex. 34; CP 191 (FF #47); 2 RP 182/6-11. Sonny Sachs did not finish the work, so Cal JR withheld $12,000 of the payment, and the trial court found that Cal JR never accounted for or repaid that $12,000 to Cal SR. CP 194 (FF ##75-76), CP 205-06 (FF #175). Cal JR testified that he "paid all the suppliers with the remainder of the money." 7 RP 1024/17-19. Cal JR also testified that it took more than $75,000 to finish the project, and that he put in $10,000 of his own money to finish it. 7 RP 1024-25/20-9. Even the principal TEDRA Petitioner, Sharon Eaden, testified that the $75,000 was used to improve Cal SR's property. 3 RP 345/16-25. There is no contrary evidence. Add to this the unknown value of the grading work that Cal JR put into the project, and there is no evidence to support any $12,000 "shortfall".

c. Social Security Checks

After Cal SR moved out for good in 2009, Cal JR began putting Cal SR's social security checks in a kitchen drawer. 5 RP 663/15-17. In September or October of 2009, Cal JR and Chuck Diesen went to see Cal SR, and took him out to dinner at Red Robin. 5 RP 663/16-25, 664/7-9,

664/15-17. Cal JR asked Cal SR what he wanted done with the checks, and SR said to put them in an account and just hold on to them for now. 5 RP 664-65/23-3. Cal JR did nothing for a while, but ultimately he deposited them (they were payable to "Calvin H. Evans" without designating "SR" or "JR") in a new account in his own name, and then in 2010 he used the money – $4,685 – to purchase hay and alfalfa to feed the horses belonging to himself and to Cal SR. CP 207 (FF #191); CP 208 (FF #194); 5 RP 666-68/10-15. Replacement checks were later issued by the government, and Cal JR was required to repay the Social Security Administration. CP 207 (FF #192).

d. Other Expenditures

1993 Kenworth Dump Truck: The trial court found that in June 2005, Cal JR "convinced" Cal SR to purchase a dump truck for $20,000 to haul sand and rock to the Sultan ranch, and that this was done at a time when Cal SR's "executive functioning and ability to meaningfully agree" was substantially impaired. CP 191 (FF #45); CP 205 (FF #177). Under "Labor and Money Invested" §IIIA-3(4) *supra*, we have already detailed the evidence showing the need for a roadworthy dump truck, the fact that Cal JR put $6,500 of his own money into tires, and the direct savings from hauling fees alone of $15,000 from this purchase. Cal SR was clearly aware of this purchase: he told his long-time companion Karen Herring

that he had bought a dump truck because JR needed it, and that it was a good deal. 6 RP 842/1-14, 869/23-25. Cal JR testified that the dump truck belonged to a lady whose driver was arrested, the truck was stuck on Rainier Avenue in Seattle, and that the lady "stole my dad's heart. He wanted to help out, so we bought the truck." 8 RP 1220/12-18. This was June 2005, well before the guardianship. CP 202 (FF ##141, 143); Ex. 35.

Park Model Modular Home: The trial court found that in the Fall of 2005, Cal JR spent $15,000 of Cal SR's money on a Park Model mobile home. CP 192 (FF #52). It further found that this was for the sole purpose of enhancing Cal JR's income, and that it was done at a time when Cal SR's executive functioning was substantially impaired, CP 206 (FF #181), and that Cal JR has not accounted for rental proceeds from this Park Model home, CP 206 (FF #183). The Park Model home was purchased for lodging a horse trainer named Bryan Wilding who had done substantial work at the ranch, and who had lived for the first six months with his girlfriend and son in his cramped horse trailer. 10 RP 1336-37, 1356/20-24, 1364/15-22; 10 RP 1406/19-24. It was Bryan Wilding who suggested to Cal SR that it be purchased, and it was intended for use by ranch help and was so used until after 2007, when the last ranch hand moved out because Cal JR and his sons took over al the work on the ranch. 10 RP 1405/1-6, 1405/11-13, 1408/15-21, 1409/3-6. Cal SR agreed to the

purchase. 10 RP 1407/8-10. Although they had been looking at a larger model, Cal JR saved his father money when he spotted this Park Model on a neighbor's property, negotiated a $15,000 price (approved by Cal SR), and then Cal JR and Bryan Wilding together moved it to the Sultan ranch and set it up. 10 RP 1407-08/11-13.

Other miscellaneous expenditures/dispositions of property: The trial court also found that Cal JR sold two Perkins diesel boat engines belonging to Cal SR for $600 (total); bought a hay baler with $6,000 of Cal SR's funds which he later sold during the pendency of the guardianship without permission of the guardian or accounting for proceeds; scrapped a piece of boom equipment called the "Northwest" without the knowledge or consent of the guardian; and scrapped a road grader previously valued at $5,000 by Cal SR without the knowledge or consent of the guardian. CP 207 (FF ##185-188). This equipment was all old, rusty, and non-functional. 10 RP 1429-33/7-17.

5. Cessna Airplane

Cal SR owned a Cessna 310C airplane registered in the name of Sharon's husband, Dave Eaden, a licensed pilot and aircraft mechanic, that he stopped working on after his first stroke in 2000. CP 187 (FF ##9, 11, 12). Cal SR was known to put property into someone else's name in an effort to avoid liability. CP 187 (FF #10).

In June 2004, the airplane was sold to Cal JR for $80,000, based on a promissory note with a $20,000 down payment, and payments due at the rate of $1,000 per month. CP 187 (FF #13); CP 188 (FF #21). Cal JR testified that there was a vibration on the initial flight in the summer of 2004, which led Cal SR to drive to Kennewick to inspect the plane, and then insist on paying for the new engine. 10 RP 1388-90/5-8. The trial court found, however, that Cal JR convinced Cal SR that the engine was defective even though it was not, which caused Cal SR to pay $24,000 for a new engine. CP 188 (FF #17). Most of the evidence upon which the trial court relied for this finding was given by Dave Eaden in the Petitioner's rebuttal case. 12 RP 1726-55.

On Motion for Reconsideration, Cal JR introduced a declaration of aircraft mechanic Benjamin D. Tuttle, stating, with documentary support:

> While I was working for Metro Helicopters under Jerry Trimble, the inspection and compression check done at the request of JR in August of 2004 found the compression of the R/H #1 cylinder to [be] below the requirements of the FAA &TCM SB03-3.
> A later inspection done by Tuttle Aviation found the following discrepancies (please see attached invoices, exhibit B).

CP 284 ¶3. Mr. Tuttle stated that the usual requirement is that the cylinder test between 60/80. CP 283 ¶2. Exhibit B shows the #1 cylinder on the right-hand engine testing at 44. CP 286. The objective evidence demonstrates that Cal JR was telling the truth.

In June 2005, Cal SR and Cal JR met in Chuck Diesen's office. Cal JR was having trouble making payments, so Cal SR wanted to create an LLC to protect himself from liability arising out of the airplane, and he wanted a greater than one-half interest in the plane. CP 190-91 (FF ##41-42); 6 RP 808/10-25, 10 RP 1396-97/8-15. They created an LLC to hold the plane, with Cal SR owning 60%, Cal JR owning 40%. Their intent was to create a novation with the LLC, by which the former promissory note was satisfied. 6 RP 812/1-9; 7 RP 891/19-21; 10 RP 1396-97/8-15.

B. Procedural Facts

Cal SR died on April 5, 2011. CP 721. His estate, as of September 2, 2009 (the last valuation in the findings) was worth $2,584,940, CP 203 (FF #151), although it went down due to expenses of medical care thereafter, CP 204 (FF #158). On April 29, 2011, Attorney Elston filed the March 7, 2006 will for probate. On July 14, 2011, Petitioners Sharon Eaden, Ken Evans, and Vicki Sansing, brought this TEDRA Petition seeking a declaration that the will was invalid due to testator lack of competency and undue influence, and further seeking to declare Cal JR an "abuser" under the Slayer Statute, RCW 11.84.020. CP 731-39. The matter was tried from March 13 to March 28, 2012, before the Hon. Thomas J. Wynne, Snohomish County Superior Court. Judge Wynne gave his oral decision on April 19, 2012, upholding the will but

finding that Cal JR was a financial exploiter of his father who would be deemed to have predeceased Cal SR under the Slayer Statute. 14 RP 1961-2000. Judgment was entered on May 31, 2012, including a discretionary award under TEDRA of attorney fees plus costs totaling $85,536.27 in favor of Petitioners against Cal JR. CP 182-185.

Cal JR's timely motion to reconsider was filed June 11, 2012, CP 321-489. Based on one ambiguous photograph (Ex. 99), the trial court had rejected Cal JR's extensive testimony, backed by a large, clear, framed photo of the work in progress (Ex. 107), showing that Cal JR built the driveway on the east side of the ranch. CP 208 (FF #196); 12 RP 1814/6-11, 1818-19/24-2. Among other issues, the motion to reconsider presented definitive evidence that Cal JR told the truth about the driveway work:

Declaration of Jack Choate – Mr. Choate was the previous owner of the Sultan ranch, with intimate knowledge of it, until he sold it to Cal SR in 2003. CP 301 ¶1. In 1990 he built barn/riding arena. In the process, he put down a layer of large round rock as a temporary measure so heavily laden trucks delivering trusses wouldn't get stuck in the undeveloped land/pasture. CP 301 ¶2. He planned to put in a driveway on east side of land for access to barn, **but he never did.** That area was not used as a driveway during his ownership. CP 301 ¶3. In the spring of 2005, Cal JR moved in and began to make improvements and clean up the property,

removing stumps & building materials, brambles, and he began work creating and did build a proper driveway on the east side. CP 302 ¶5.

Declaration of Rebekkah Moore – She is a neighbor who watched Cal JR make improvements on the property, including building a driveway on the east side. CP 308 ¶¶3-4.

Declaration of Dallas Larsen – Another neighbor who saw Cal JR building the driveway on the east side of the ranch. CP 310 ¶¶2-3.

Declaration of Olivier Peter-Contesse – Another neighbor who saw Cal JR building the driveway on the east side of the ranch. CP 312 ¶2. This witness even attached aerial photographs in support. CP 312 ¶3.

Declaration of Geraldine Rohlman – A horse-boarding customer who would not board at the Sultan ranch until the barn was fixed and a new driveway put in that "made it possible to get on and off the property and gain access to the barn / arena." CP 318 ¶¶2-3.

Nonetheless, Cal JR's motion for reconsideration was denied by order entered July 18, 2012. CP 180-81. This timely appeal was filed August 16, 2012. CP 135-179.

Sharon, Ken and Vicki brought a second TEDRA petition to test applicability of the Antilapse Statute under the circumstances in which a beneficiary is deemed to predecease under the Slayer Statute due to financial abuse. *In re Estate of Evans,* 181 Wn. App. 436, 441, 326 P.3d

755 (Div. 1 2014) ("Evans I"). The trial court found that the antilapse statute applies to save the will so that Cal JR's children would inherit the Sultan ranch. *Evans I,* 181 Wn. App. at 442. For various reasons, the appeal from the second TEDRA proceeded more expeditiously than this appeal, resulting in a decision of this Court affirming that ruling. *Evans I,* 181 Wn. App. at 446-50.[3] The net result of these rulings is that Petitioners retain an interest in their attorneys fee award, but the outcome of the Slayer Statute issue will determine whether the Sultan ranch and 60% of the Cessna goes to Cal JR as clearly intended by Cal SR, or whether this property instead passes directly to Cal JR's children.

IV. ARGUMENT

A. Overview and Standard of Review

Many of the issues raised in this appeal involve application of the untested provisions of the amended Slayer Statute. Such issues are reviewed *de novo. W. Telepage, Inc. v. City of Tacoma,* 140 Wn.2d 599, 607, 998 P.2d 884 (2000); *Brown v. State DSHS,* 145 Wn. App. 177, 182, 185 P.3d 1210 (Div. 3 2008).

However, the crux of this appeal turns on Cal JR's challenge to

[3] The panel observed in that decision that Cal JR had not appealed the decision against him. *Evans I,* 181 Wn. App. at 441, 445 n.3. Obviously, that is not accurate. *See, COA Docket,* No. 69-2143. This dictum at odds with the actual procedural posture of this appeal cannot control the outcome here.

Finding of Fact #209, which states: "The conduct of Calvin Evans, Jr., described above was committed willfully . . .." CP 209 (FF #209). If this Court overturns this finding of willfulness, it should enter judgment in favor of Cal JR without remand, because the very definition of an "abuser" under the Slayer Statute encompasses an element of willfulness:

> "Abuser" means any person who participates, either as a principal or an accessory before the fact, in **the willful** and unlawful financial exploitation of a vulnerable adult.

RCW 11.84.010(1) (emphasis added).

Due to the serious consequences of a finding of abuse under the 2009 amendments to the Slayer Statute, the Legislature has built in the highest civil standard of proof for all elements of the offense:

> (1) In determining whether a person is an abuser for purposes of this chapter, the court must find by **clear, cogent, and convincing evidence** that:
>
> (a) The decedent was a vulnerable adult **at the time** the alleged financial exploitation took place; and
>
> (b) The conduct constituting financial exploitation was **willful action or willful inaction** causing injury to the property of the vulnerable adult.

RCW 11.84.160(1) (emphasis added).

Where a statute mandates that findings be made on "clear, cogent and convincing" evidence, that is "the equivalent of saying that the ultimate fact in issue must be shown to be 'highly probable.'" *Douglas Northwest, Inc. v. Bill O'Brien & Sons Const., Inc.*, 64 Wn. App. 661, 678,

828 P.2d 565 (Div. 1 1992). This heightens the standard of review, so that "the evidence must be more substantial than in the ordinary civil case . . .." *In re LaBelle,* 107 Wn.2d 196, 209, 728 P.2d 138 (1986). In this case, therefore, findings can only be sustained if they are supported by "substantial evidence which the lower court could reasonably have found to be clear, cogent and convincing." *Id.*

In light of the substantial evidence of the overall agreement to have Cal JR primarily run the ranch, the substantial evidence of Cal SR's apparent competence during the crucial time-period of 2004-2006, and the substantial evidence of personal labor and money that Cal JR invested in the ranch, the trial court could not reasonably have found clear cogent and convincing evidence of willful financial exploitation of a vulnerable adult. Judgment should be entered by this Court restoring Cal JR's good name as a valued son, and as the primary beneficiary under Cal SR's will.

B. There is No Clear, Cogent and Convincing Evidence that Cal JR Willfully Intended to Inflict Financial Injury on Cal SR

"Abuse" has been interpreted under the Abuse of Vulnerable Adults Act (AVA), chapter 74.34 RCW, to "require a willful action to inflict injury." *Brown v. State DSHS,* 145 Wn. App. at 183 ¶12; *see also,* RCW 11.84.160(1)(b) (requires "willful action . . . causing injury to the property of the vulnerable adult."). Thus, there are two elements to

"abuse" even before the question of whether the victim was a "vulnerable adult" is reached: (1) were the actions "willful"; and (2) were they done to cause financial (or other) harm?

In the context of a caregiver who intervened with moderate physical force to restrain an out-of-control elderly patient, the Court of Appeals in *Brown* held that *protective actions are not abuse:*

> Ms. Brown properly intervened in the presence of danger to herself, her co-workers, and another vulnerable adult resident. Her actions were protective, not injurious or ill-intended, thus they were warranted and not abusive.

Id. According to the Court of Appeals, only "improper action" can constitute abuse. *Id.*

Cal JR's actions in using both his own money and labor, and the funds of his father, to feed the horses and to protect and enhance the value of Cal SR's Sultan ranch, were neither improper nor abusive. The heart of the agreement between Cal SR and Cal JR was that Cal JR would take over ranch operations because Cal SR was too elderly to handle the huge daily workload of a large horse farm. Cal SR told Cal JR at the outset that he wouldn't have to worry about money – that SR had plenty of money – thus indicating that his money would be available for necessary ranch maintenance and improvements. Cal JR obtained Cal SR's consent for all the major projects, and those projects were carried on with Cal SR's

knowledge. Furthermore, those projects were a normal part of maintaining the value of the property, avoiding waste, and staying competitive in the horse farm business.

Another flaw in the trial court's willfulness finding is that it fails to account for Cal SR's apparent functionality. Even Sharon Eaden's diary demonstrates that Cal SR clearly understood his property holdings and values and that he was very clear mentally in August 2005, which was right in the midst of the large-scale renovations of his ranch. Petitioner Vicki Sansing believed that their father was able to consent to a loan of $30,000 made to her in November 2006. Cal SR's trusted attorney of 35 years believed that Cal SR was always competent. In May 2006 the guardianship court found his cognitive deficits were "subtle ... amid many intact ... abilities." Ex. 82. The trial court found he was competent as late as March 2006, and able at that time to resist the efforts at undue influence coming at him from both Cal JR and Sharon Eaden. Dr. Eisenhauer found that Cal SR spoke well, and was especially able to handle questions about matters that were important to him – which the evidence shows included airplanes, ranches, horses and machinery. Cal SR was determined to fight the guardianship – as was his right – and it is contrary to this right to disinherit Cal SR's favorite son for refusing to treat him as if he was incapacitated long prior to the formal establishment of the guardianship.

The question of willfulness necessarily looks inside Cal JR's mind, or at least into the mind of a reasonable person in his place (such as Chuck Diesen). How was Cal JR – a loyal son and a farmer – supposed to know that his proud and independent father's "subtle" deficits meant he could not consent to the use of his money and property during 2004-2006, before the guardianship, when Cal SR's attorney treated him as competent, the doctor said he was lucid on the subjects of ranches, horses and airplanes, and Cal JR's siblings were treating Cal SR as competent? The short of it is that he could not, and that there was no clear, cogent and convincing evidence that Cal JR's permissive use of his father's resources for their common interest at the ranch constituted willful financial exploitation.

Cal JR's actions are not above criticism. The most glaring example is use of the social security checks for hay and feed for their horses – he should definitely have gotten the guardian's permission ahead of time (though he did repay that). Cal JR should also have stayed current with the taxes and insurance, rather than forcing Cal SR's estate to pay them. But this is not **willful financial exploitation** sufficient to require the complete disinheritance of Cal SR's most loyal and favored son.

There is no clear, cogent and convincing evidence of willful financial exploitation. Instead, there is clear, cogent and convincing evidence that two very similar men, Cal SR and JR, joined together at Cal

SR's request to run the Sultan ranch the same way Cal SR had always run everything – in a self-sufficient manner, through hard labor, using their combined resources, without regard for the dictates of outsiders.

C. The Conclusion That Cal SR was a Vulnerable Adult at the Relevant Time of "Financial Exploitation" is Not Supported

Conclusion of Law #6 states that Cal JR financially exploited Cal SR, and Conclusion of Law #5 states that Cal SR was a vulnerable adult within the meaning of RCW 11.84.010(6) and RCW 74.34.020(17), at the time that he was financially exploited by Cal JR. CP 210 (CL ##5-6). This Court reviews conclusions of law *de novo*. *Public Utility Dist. No. 2 v. Comcast of Washington IV, Inc.,* 336 P.3d 65, 78 (Div. 1 2014). "The appellate court will independently determine whether the findings of fact support the conclusions of law." II WSBA, Washington Appellate Practice Deskbook §18.7(10) at 18-18 (3rd ed. 2011).

A vulnerable adult is a person sixty years old or older, with "the functional, mental, or physical inability to care for himself or herself . . .," RCW 74.34.020(17)(a), or who has been "[f]ound incapacitated under chapter 11.88 RCW," RCW 74.34.020(17)(b). Cal SR could care for himself with respect to basic decisions over spending his money on the ranch in 2004-2006, and he was not adjudged incapacitated until long after the airplane transactions and the most of the ranch improvements were

finished. Nor do the other provisions regarding institutionalization or home care apply to Cal SR until mid-2008. RCW 74.34.020(17)(c)-(g).

One problem with the trial court's Conclusions ##5-6 is that they are based on instances of use of Cal SR's resources at times for which there is no clear, cogent or convincing evidence that Cal SR was even a vulnerable adult. Thus, the trial court bases most of the criticism of Cal JR on events from 2004 to 2006, despite the following evidence: (1) there was no guardianship put in place until June 2008, (2) there was no licensed home care until after June 2008, (3) Cal SR's trusted attorney believed that Cal SR was competent all this time; (4) the trial court itself found that Cal SR was competent and able to resist attempts at undue influence in March 2006 when he executed his will, (5) Petitioner Sharon Eaden's own diary demonstrates that Cal SR had mental clarity in August 2005, (6) Petitioner Vicki Sansing borrowed $30,000 from Cal SR in November 2006, and (7) no examination or medical evidence precedes the January 2006 evaluation performed by Dr. Eisenhauer.

The statute is clear: "(1) In determining whether a person is an abuser for purposes of this chapter, the court must find **by clear, cogent, and convincing evidence** that: (a) The decedent was a vulnerable adult **at the time** the alleged financial exploitation took place . . .. RCW 11.84.160(1)(a) (emphasis added). This is an important safeguard against

post-hoc and arbitrary attempts by rival family groups to thwart the testamentary plan of their elders. In these days of longer lives, many – perhaps even the majority – of people go through a period of gradual decline in mental functioning prior to death. Indeed, as the evidence suggests in this case, that "decline" may not be linear, but might involve periods of greater relative competency sandwiched between periods of lesser cognitive functioning. It is therefore important that, before such a stigmatizing and devastating label as "abuser" with its consequent disinheritance be attached to a family member (usually the one most directly involved in the care of the declining elder), there must be **clear, cogent and convincing evidence** not merely that the elder's resources were used, but that the elder was, **at the time,** a vulnerable adult unable to consent to the use. RCW 11.84.160(1)(a). Anything less operates to inadvertently infantilize elders, by treating them as if they don't know what they are doing, and cannot make their own decisions.

This Court should tread a middle line between protecting truly vulnerable adults from real exploitation, and upholding competent decisions by elders to favor one child over another. In this case, the evidence is strong that, at least in 2004, 2005, and well into 2006 (at least until his third stroke in November 2006), Cal SR was not a vulnerable adult, and had sufficient understanding of the things he really cared about

– airplanes, ranches, horses, property values, machines – that he was able to resist undue influence and make the decisions he wanted to make. The fact that those decisions included putting Cal JR in charge of the ranch and sharing some of his money with Cal JR to improve the ranch so that Cal JR could support his family there – and that the other children may not have liked that – falls well short of clear, cogent and convincing evidence of financial abuse.

The trial court painted with far too broad of a brush when it swept the airplane transactions of 2004 and all the extensive ranch improvements of 2005 into the findings to support the conclusion of financial abuse. *See,* CP 206 (FF ##177, 178, 180, 181), CP 209 (FF ##205-07). Other Findings are too vague to be of any use under RCW 11.84.160(1)(a), because they do not specify a particular time. CP 199-200 (FF ##114, 115, 117, 126, 127, 129). One finding that is particularly unsupported by the evidence is Finding #105, which states, "Cal Evans, Sr., **from 2004 forward** displayed memory impairment, mild disorientation, disturbances in executive functioning, and impaired judgment and insight." CP 197 (FF #105) (emphasis added); *see also,* CP 208 (FF #200). These conditions are the ones identified by Dr. Eisenhauer, but she did not even examine Cal SR **until January 28, 2006.** CP 197 (FF #101). Other findings, keyed to deficits alleged to exist in 2005, suffer from the same

problem. CP 200 (FF ##124, 125, 130); CP 205 (FF #173). The doctor's report, issued in March 2006, does not support the prior existence of these deficits back in 2004 and 2005 by clear, cogent and convincing evidence.

The Finding that Cal SR continued to decline "following his examinations by Eisenhauer," CP 199 (FF #120) is likewise too general – yes, of course he declined after the January 2006 exam because he had another stroke in November 2006, but that tells us nothing useful about most of 2006 prior to that stroke. Dr. Eisenhauer stated that, "Subsequent to stroke, an individual is apt to show improvement during the first six months post-stroke with some continuing improvement for the next six months." 14 RP 1973/17-20. Cal SR's previous stroke was in March 2005, so this suggests Cal SR *improved* throughout 2006 prior to his November stroke. Finding #199 is unsupported by the medical evidence and – again – just too vague to be useful under RCW 11.84.160(1)(a).

If the Court does not reverse outright on the issue of lack of intent, it should reverse and remand for entry of specific findings as to the time period(s) during which Cal SR was a "vulnerable adult", and the specific instances – with dates – of the alleged actions constituting "financial exploitation." RCW 11.84.160(1)(a).

D. As a Matter of Law, Cal SR's Investments and Cal JR's Labor and Investments in the Ranch Benefitted Cal SR

The trial court made repeated findings of fact stating that the money Cal SR and the money and labor Cal JR put into the ranch **only** operated to the benefit of Cal JR, because he was the recipient of the income from the ranch. CP 205 (FF ##173, 174); CP 209 (FF #206). Although styled findings, these statements are really conclusions of law, since they turn on the legal issues of ownership of property and consideration for a contract. "[T]he appellate court decides for itself whether the trial court has incorrectly labeled a finding or conclusion." II WSBA, Appellate Practice Deskbook §18.7(10) at 18-19.

An agreement to care for an elder and his/her property in exchange for making a devise of the property in a will is a legal contract, recognized in numerous cases. *E.g., In re Estate of Thornton,* 81 Wn.2d 72, 76, 499 P.2d 864 (1972); *Cook v. Cook,* 80 Wn.2d 642, 644, 497 P.2d 584 (1972); *Bentzen v. Demmons,* 68 Wn. App. 339, 347, 842 P.2d 1015 (Div. 1 1993). To suggest that the labor performed on the Sultan ranch only benefitted Cal JR overlooks the entire nature of such a contract. The evidence is undisputed that Cal SR asked Cal JR to give up his business and home in Idaho, and move his family to Sultan in order to run the ranch and care for him. Cal JR accepted by performing that contract. Every bit of

performance – every single thing he did to maintain and improve the ranch – was consideration flowing to Cal SR, and thus a legal benefit to him. *Bentzen v. Demmons, supra,* 68 Wn. App. at 347-48. Even making the ranch as remunerative as possible was part of what Cal SR bargained for and received in exchange, since that better ensured that Cal JR could stay, and Cal SR could continue to enjoy the company of his son and grandchildren and the meals cooked for him by Debbie.

Even if there had not been such a contract, however, if a stranger walks onto land and improves it in ways that add to its value, absent adverse possession that is a benefit to the owner – not to the stranger. *Ellenburg v. Larson Fruit Co., Inc.,* 66 Wn. App. 246, 250, 835 P.2d 225 (Div. 3 1992). While Cal JR had an expectancy in the Sultan ranch, he did not own it. Indeed, during the time that most of the work was done in 2005, Cal JR was not yet even named beneficiary in a will leaving the ranch to him. The ranch belonged to Cal SR until his death, and thereafter to his estate. All the improvements that added to its value and prevented waste therefore benefitted of the owner. As a matter of law, Cal SR's money and Cal JR's time and money invested in the Sultan ranch benefitted Cal SR.

It is not accurate that any additional benefit to Cal JR makes him a financial exploiter. At the relevant times, the applicable statute provided:

> (6) 'Financial exploitation' means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

RCW 74.34.020(6). This Court has recently held that any use of property or resources of a vulnerable adult to facilitate the user's goals fits within this definition. *Gradinaru v. State, DSHS,* 181 Wn. App. 18, 22, 325 P.3d 209 (Div. 1 2014) (use of vulnerable adult's morphine for a suicide attempt). But that case is distinguishable because there was no hint of a common benefit involved, and the use was clearly "illegal or improper". Here, by way of contrast, Cal JR's use of Cal SR's resources was **legal and proper** because it was done pursuant to the contract between Cal SR and Cal JR to engage in a common enterprise – running the ranch – using both of their resources. ***That is not "financial exploitation."***

A different interpretation could have dire results in the many similar cases in which adult children are asked to care for the person and property of their elder. If that is not deemed a "proper" purpose, then any mutually beneficial relationship (such as rent-free use of a room in the house) will suddenly be transformed into "financial exploitation." Clearly, that goes well beyond what the Legislature intended.

E. The Trial Court Erred in Not Applying RCW 11.84.070(1), and Abused its Discretion by Not Applying RCW 11.84.070(2)

Application of the newly-amended Slayer Statute to abusers should take into account the historical presumption in favor of respecting and protecting the decedent's testamentary plan:

> "The right of testamentary disposition of one's property as an incident of ownership, is by law made absolute. It is a valuable right, closely protected by statute and judicial opinion. If a will has been executed with all legal formalities requisite to the validity of the instrument, and has been admitted to probate, our statute [RCW 11.24.030] . . . imposes upon those who contest its legal force, the burden of proving invalidity by evidence that is clear, cogent, and convincing. [Citing cases.]"

In re Kinssies' Estate, 35 Wn.2d 723, 734, 214 P.2d 693 (1950) (*quoting, In re Martinson's Estate,* 29 Wn.2d 912, 913-14, 190 P.2d 96 (1948)). Especially in a case such as this, in which: (1) Cal SR was found to be competent and not subject to undue influence; and (2) there were obvious facts in the record supporting Cal SR's choice to lower the gift to Sharon in light of his anger at her, and to leave the ranch and airplane to Cal JR in light of all their common work together on both, that testamentary scheme should only be set aside as a last resort.

The Legislature recognized that financial exploitation, while serious, is nowhere near the magnitude of either outright slaying of the decedent, or even physical abuse. Therefore, in a special provision, the

Legislature provided for two ways in which a person found culpable for financial abuse can nonetheless inherit:

> Notwithstanding the provisions of this chapter:
>
> (1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:
>
> (a) Knew of the financial exploitation; and
>
> (b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.
>
> (2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In determining what is equitable, the court may consider, among other things:
>
> (a) The various elements of the decedent's dispositive scheme;
>
> (b) The decedent's likely intent given the totality of the circumstances; and
>
> (c) The degree of harm resulting from the abuser's financial exploitation of the decedent.

RCW 11.84.170.

The trial court totally failed to apply this statute, and made no findings or conclusions under its provisions. Instead, in its oral decision, it jumped directly from its finding that Cal JR was an abuser, to its finding that Cal JR shall be deemed to predecease Cal SR and shall take nothing. 14 RP 1996/7-11. That is reversible error.

In order to preserve Washington's longstanding practice of respecting the wishes of the testator, this Court should require the trial court to make findings under both RCW 11.84.170(1) and (2) prior to ordering complete disinheritance under RCW 11.84.020-.040.

In this case, there is clear, cogent and convincing evidence that Cal SR knew of, and ratified at a time when he was lucid and competent, most of the money spent and improvements made at the ranch, and on the airplane. ***Indeed, most of the expenditures upon which the trial court bases its conclusion of financial exploitation occurred in 2004-2005, prior to execution of the March 7, 2006 will!*** Accordingly, Cal JR was entitled as a matter of right to inherit under his father's will under RCW 11.84.170(1), and it was reversible error to hold otherwise.

Even if this were not the case, it would be an abuse of discretion to totally disinherit Cal JR from a significant share of an estate worth roughly two million dollars, over alleged mishandling of a $12,000 shortfall in the Sachs contract, $4,685 in social security checks used to feed the horses, repayment of the taxes and insurance paid by Cal SR's estate, $600 for some salvaged boat motors, and a few other items. It is an abuse of discretion to fail to exercise discretion. *Kucera v. State Dept. of Transp.*, 140 Wn.2d 200, 224, 995 P.2d 63 (2000). Under RCW 11.84.170(2), the trial court has discretion to allow a financial exploiter to receive an interest

in the estate in an equitable manner, taking into account the elements of the decedent's dispositive scheme, the decedent's likely intent given the totality of the circumstances, and the degree of harm resulting from the financial exploitation. But the trial court failed to exercise that discretion.

Here, it is very clear that Cal SR intended Cal JR to receive the ranch in exchange for moving his family there and taking care of it through endless hours of toil – and also because Cal SR and Cal JR shared a close bond. Furthermore, because all of Cal JR's efforts, including his own money and labor and the work funded by Cal SR, went into maintaining and improving Cal SR's ranch, the degree of "harm" (if any) was very little. Therefore, this is a prime case for exercising discretion to – at most – impose a small penalty on Cal JR as an offset against his inheritance. That would not only be just and equitable to Cal JR and the estate, but it would better serve the intent of the Legislature as expressed in RCW 11.84.170(2), and preserve and honor Cal SR's last will.

F. It was an Abuse of Discretion to Deny Reconsideration

Denials of reconsideration are reviewed for abuse of discretion. *Ma'ele v. Arrington,* 111 Wn. App. 557, 561, 45 P.3d 557 (Div. 2 2002).

> A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if

> the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "If the reasons for the trial court's decision on a motion for new trial involve a question of law, the standard of review is de novo." II WSBA, Appellate Practice Deskbook §18.7(9) at 18-17 (*citing, Cox v. Gen. Motors Corp.,* 64 Wn. App. 823, 826, 827 P.2d 1052 (1992)).

In this case, Cal JR raised both factual and legal grounds for reconsideration. On the legal side, Cal JR noted that the trial court had failed to consider the legal effect of the substantial monetary contributions to the property made by Cal JR's marital community, and reminded the court of the Ex. 98 Decree of Dissolution finding that Cal JR's community had contributed $177,000 to the Sultan ranch. CP 322. By asserting in a sworn declaration that he "was attempting to financially benefit [Cal SR] and his property in all the things that I did for him," Cal JR further raised the legal issue (discussed above) that benefit did flow to Cal SR. CP 324. Factually, the motion for reconsideration presented: (1) hard evidence in support of Cal JR's testimony, showing an insufficient pressure check in one valve of the Cessna aircraft, CP 283-86 (already discussed); and (2) overwhelming evidence to support Cal JR's detailed testimony – which

the trial court rejected based on one ambiguous old photograph – that he built a new road on the east side of the property (already detailed).

The cumulative effect of the material and arguments presented demonstrated that substantial justice had not been done, CR 59(a)(9), because the trial court failed to correctly apply the legal test of benefit, and erroneously believed that Cal JR was untruthful about the airplane engine and the east driveway. It was an abuse of discretion to deny this motion.

G. Attorney fees

TEDRA provides for a discretionary award of attorney fees at trial and in the appellate court from any party and/or the assets of the estate, based on equitable factors including (but not limited to) benefit to the estate. RCW 11.96A.150(1).

If this Court reverses any part of the judgment on the merits, Cal JR requests that the cost and fee award entered against him below be set aside. Likewise, because a successful outcome to this appeal benefits the estate by restoring the actual wishes of the testator, Cal JR requests an award of his costs and attorney fees on appeal, to be paid by Petitioners and/or the Estate.

V. CONCLUSION

It would be a sad day in the law if children could not take care of their aging parents and their property without fear of being smeared as

financial exploiters, subject to disinheritance. This could not have been the intent of the Legislature. This Court needs to enforce the safeguards placed on the extension of the Slayer Statute to the issue of financial exploitation, to ensure that every proper transaction between elder and child is not seized upon as a basis for future estate litigation, and that the valuable right of competent disposition of one's property is not lost in a rush to "protect" those elders who are not in need of protection.

For all the foregoing reasons, the judgment should be REVERSED outright; the designation of Cal JR as a financial exploiter VACATED; or alternatively the case should be remanded with instructions for more detailed findings and such further proceedings as are necessary; and costs attorney fees on appeal should be awarded to Cal JR.

DATED this 5th day of December, 2014.

Michael T. Schein, WSBA #21646

Sullivan Law Firm
701 Fifth Avenue, Suite 4600
Seattle, WA 98104
(206) 903-0504

Appendix A

FILED

2011 SEP 15 PM 3:30

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

CL15178389

Superior Court of Washington
County of SNOHOMISH

In re the Marriage of: DEBORAH L. EVANS **Petitioner,** **and** CALVIN H. EVANS, JR. **Respondent.**	**No.** 10-3-00876-6 **Decree of Dissolution (DCD)** **(Marriage)**

I. Judgment/Order Summaries

1.1 Restraining Order Summary:

Does not apply.

1.2 Real Property Judgment Summary:

[X] Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account numbers:
Snohomish County Tax Parcel Nos. 27080300400700;]
27080300401400;
27080300400300;
27080300401200;
27080300400100; and
27080300401300
commonly referred to as 35131 Mann Road, Sultan, Washignton.

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ORIGINAL

57

III. Decree

It Is Decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded the Husband

The husband is awarded as his separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

3.3 Property to be Awarded to the Wife

The wife is awarded as her separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

3.4 Liabilities to be Paid by the Husband

The husband shall pay the community or separate liabilities set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

Unless otherwise provided herein, the husband shall pay all liabilities incurred by him since the date of separation.

3.5 Liabilities to be Paid by the Wife

The wife shall pay the community or separate liabilities set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since the date of separation.

3.6 Hold Harmless Provision

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 Maintenance

Does not apply.

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3.8 Continuing Restraining Order

Both parties are restrained and enjoined from disturbing the peace of the other party.

Both parties are restrained and enjoined from going upon the property of the other party (except as required by court orders to accomplish the transfer of property subject to this Decree or as agreed in advance in writing).

3.9 Protection Order

Does not apply.

3.10 Jurisdiction Over the Children

Does not apply because there are no dependent children.

3.11 Parenting Plan

Does not apply.

3.12 Child Support

Does not apply.

3.13 Attorney Fees, Other Professional Fees and Costs

Does not apply.

3.14 Name Changes

The wife's name shall be changed to Deborah Lynn Jones.

3.15 Other

The Court's Oral Decision is appended hereto and incorporated fully herein by reference.

Dated: 9/15/2011

Linda C Hu

Judge/Commissioner

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EXHIBIT A

Evans Dissolution

Snohomish County Cause No. 10-3-00876-6

1. PROPERTY TO BE AWARDED TO WIFE

A. All bank, security or any other form of investment accounts currently in her name;

B. All pension, retirement, investment, Social Security, or other accounts, whether accrued directly or indirectly through her employment, currently in her name;

C. All policies of life insurance on her life, subject to any indebtedness thereon;

D. All clothing, jewelry, and personal effects currently in her possession;

E. All household furnishing and furniture currently in her possession, with the exception of the pool cues, which shall be returned to the Husband;

F. 2007 GMC Acadia

G. Bobcat (tracked) excavator with the following attachments:
   i. 2 buckets;
   ii. Coupler (needed to affix attachments);
   iii. Compactor;
   iv. FC 200 Flail Mower; and
   v. Bushwacker attachment.

H. Arctic Cat;

I. Horse trailer (approx. value $19,684);

J. Copy machine;

K. Computer and office supplies;

L. Saddles (approx. value $1,500);

M. Washer and dryer;

N. Any recovery on the claim for wages due before the date of separation (1/1/2010) from the estate of Calvin H. Evans, Sr., will be split 50-50 between Debbie Evans and Calvin H. Evans, Jr.;

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O. Any recovery for the livestock will be split on the same basis as H. above (50-50 before the date of separation, and after the date of separation will be awarded to Husband;

~~P. In addition to the award discussed below, the Court grants an equalizing award (with respect to the other non-ranch property from the Husband to the Wife in the amount of $12,508.00, to be secured by lien upon the real property (i.e., ranch) of the Husband. This lien shall bear interest at the rate of 6% per annum from the date of entry of the Decree.~~ Court awards $12,508 equalizing award to Wife to be secured by lien on real property of Husband. ~~Shall be enforceable upon sale.~~ JCC

Q. The court finds that the parties hereto made a substantial investment of not only funds but time and effort in the real property owned by Cal Evans, Sr. Their interest in that property is now the subject of litigation in the Estate of Calvin Evans, Sr. (Snohomish County Cause No. 11-4-00565-3) that is not before the Court and the outcome of which is uncertain. However, the Court does find adequate evidence that at least $174,000.00 of community funds were invested in this real property. The Court further finds it appropriate to award the entirety of the community investment ($174,000.00) to the Wife inasmuch as the Husband will still have more than $800,000.00 in value in the property or potentially the estate. The Wife shall have the right not to control but to participate as a party-in-interest in defending this claim in the estate litigation, the success of which will benefit both parties. The amount of this award shall constitute a lien upon the real property in question (in addition to any discussed in ¶ 1(P) above) but shall not bear interest until such time as the claim to the ranch is confirmed in the estate proceedings. In the event the Husband is not successful in prosecuting his right under the Last Will of Calvin Evans, Sr. to the "ranch" real property but shares in his father's estate by way of intestate succession or other manner if the Will is not the basis of probate, this Court retains jurisdiction over this cause and may reconsider the distribution of assets and other financial aspects of this case. The Court also reserves the right to re-visit the distribution awarded herein if the Husband is ultimately or is not required to repay the balance of the loan from his father for the twin-engine airplane (that the Husband contends was forgiven).

R. PJ Gooseneck Trailer, Charmac Cargo Trailer and hay equipment (approx., value $5,000);

~~S. Bobcat "Loader" with the following attachments;~~ JCC

i. ~~Sweeper~~
ii. Roller Compactor;
iii. ~~Dozer Blade;~~
iv. ~~Forks; and~~
v. ~~Mower.~~

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

DEBORAH EVANS, Petitioner, vs. CALVIN EVANS, JR. Respondent.	Cause No. 10-3-00876-6

COPY

COURT'S ORAL DECISION

BE IT REMEMBERED that on July 19, 2011, the above-entitled and numbered cause came on for hearing before JUDGE LINDA KRESE, Snohomish County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Petitioner:
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Anderson Hunter
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Everett, Washington 98206

For the Respondent:
MR. RICHARD SWANSON
Attorney at Law
5010 Grove Street
Marysville, Washington 98270

CLIENT'S COPY

COPY TO CLIENT 7-27

the ATVs. They are still used on the ranch.

The property they lived on in Idaho was apparently purchased in Ms. Evans' father's name, which was a lot and there was also a mobile home, apparently because of problems with their credit rating. I have to say I think the testimony is less than crystal clear on this point. The testimony was that all payments, the down-payment and all monthly payments, on both the real estate and the mobile home were made from community funds. Therefore, I would find that it was community property despite the fact it was titled in Mr. Jones' name, Ms. Evans' father. When it was sold, he provided the net from the sale to Ms. Evans in the form of a check made only to her. I don't think that changed the character of the property of the asset, which was community. Therefore, the assets from the sale were community.

Some of the funds from the sale of the property in Idaho and also from the sale of the community equipment used for excavating and income from that business were invested in the horse ranch. I think it's absolutely clear that that happened. Ms. Evans can document approximately $174,000, but believed something like $250,000 worth of community funds were invested in the ranch. Mr. Evans believes it was less. I think the Court is limited to what can be proven and will find that

$174,000 of community funds were clearly invested.

I think another difficulty here is that the community funds were used for a variety of things, buying vehicles, probably for living expenses, and it's somewhat difficult to trace all this. But there were clearly sufficient community funds available to have invested at least $174,000 in the ranch.

With regard to the Cessna, again, the community funds were used to invest in this. Therefore, the Court does find that that is a community asset, as well. The value has not been persuasively established at this time. The husband testified it was worth $60,000 to $80,000. I will note that he paid $80,000 for it seven years ago, and considerable work has been done since then, something like $65,000 or more has been invested in it since then. It is a little hard not to believe it is worth at least $60,000 now, although I gather it has been largely sitting unused and unworked on for years.

The Court's task here is to characterize the debts and assets and apportion them fairly and equitably between the parties. I don't think the Court on the record has actually determined the entire value of community and separate assets. There is not sufficient persuasive evidence to determine all the values.

In addition, I don't see a point in trying to determine

exactly 50 percent to the penny or somewhere close of all the debts and assets in relation to doing that. It is clear whatever apportionment the Court does will leave Mr. Evans with far greater value in separate assets assuming, of course, he inherits as anticipated. Then, Ms. Evans will have her share of community assets.

In addition, quite frankly, assuming Mr. Evans inherits the ranch, he will be left in a better position to make a living than Ms. Evans at this time. The ranch can generate income and does generate income, and he is apparently knowledgeable of the things that need to be done to do that, in addition to which he does have skills in doing the excavating work he was doing in the past.

So going through the character of the property. The horse ranch is the only real property and is the most significant asset at issue. This is assuming everything works out as planned or hoped, inherited by Mr. Evans as his separate property. However, there is, as already stated, a significant community investment in terms of money and labor in that property. Therefore, the Court finds the community property interest is at least $174,000 as the money invested and, of course, Ms. Evans also invested labor that I have no real way of valuing, but there was some expectation that is not being realized.

All the assets invested and the plane, as I said, are

Appendix B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

In Re the Guardianship of:	No. 05-4-01558-1
CALVIN H. EVANS SR.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER APPOINTING GUARDIAN
An Alleged Incapacitated Person.	

THIS MATTER having come for trial on the Petition of Sharon Eaden to establish guardianship of the person and estate of Calvin H. Evans Sr. and the Court having taken testimony and heard evidence and argument of counsel and being fully advised in the premises now makes the following findings of fact, conclusions of law, and order establishing guardianship;

FINDINGS OF FACT:

1. The Reports of Dr. Eisenhauer were offered into evidence as to the medical condition of the Alleged Incapacitated Person and the Court finds that Calvin H. Evans Sr. does suffer from dementia secondary to stroke related to his polycythemia condition which causes memory impairment, and sometimes causes mild disorientation and a significant disturbance in his executive functioning, impaired judgment and insight.

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DONE IN OPEN COURT this 24th day of June, 2008.

JUDGE ANITA L. FARRIS

Presented By:

NEWTON ♦ KIGHT L.L.P.

By
THOMAS L. COOPER, WSBA #8336
Attorneys for Sharon Eaden

Copy Received, Approved for Entry
Notice of Presentation Waived:

CHARLES F. DIESEN, WSBA #3548
Attorney for Calvin H. Evans Sr.

ERVIN A. DeSMET, WSBA #8105
Guardian ad Litem

DOUGLAS ELSTON, WSBA #10592
Attorney for Calvin H. Evans Sr.

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CERTIFICATE OF SERVICE

I, Michael T. Schein, Attorney for Appellant, hereby certify that on the date set forth below I caused a copy of the within BRIEF OF APPELLANT to be sent by U.S. Mail, first class postage prepaid, and by email, to counsel of record for Respondents and the Estate and to all interested parties at the following addresses:

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DATED this 5th day of December, 2014.

Michael T. Schein, WSBA 21646