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WASHINGTON STATE  
SUPREME COURT

No. 92773-1

SUPREME COURT OF THE STATE OF WASHINGTON  
[Court of Appeals No. 69214-3-I]

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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.

Petitioner

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**PETITION FOR REVIEW OF CALVIN H. EVANS, JR.**

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## **I. IDENTITY OF PETITIONER**

Petitioner is Calvin H. Evans, Jr. (“Cal JR”), son of the decedent, Calvin H. Evans, Sr. (“Cal SR”).

## **II. COURT OF APPEALS DECISION**

Cal JR seeks review of the decision of the Court of Appeals, Div. 1, No. 69214-3-I, filed December 21, 2015 (Appendix A). The Court of Appeals affirmed a decision applying the recent extension of the Slayer Statute to financial elder abuse, to abrogate Cal SR’s valid will by totally disinheriting Cal JR. This presents issues of substantial public importance involving risk of harm to the judicially-protected right of free testamentary disposition. No motion for publication or reconsideration has been made.

## **III. ISSUES PRESENTED FOR REVIEW**

1. Are standards and safeguards to protect the right of free testamentary disposition under the recently expanded Slayer Statute an issue of substantial public interest that should be decided by this Court?
2. Should the Court of Appeals enforce the following safeguards to protect the right of free testamentary disposition:
  - (a) clear, cogent, and convincing evidence that financial abuse is willful, RCW 11.84.160(1)(b), and unlawful, RCW 11.84.010(1) (*App. B*);
  - (b) clear, cogent, and convincing evidence that financial abuse occur “at the time” that the decedent was a vulnerable adult, *id.* §.160(1)(a); and
  - (c) provisions permitting ratification by the elder of the use of his/her resources, *id.* §.170(1), and equitable moderation of the extreme penalty of total disinheritance, *id.* §.170(2) (*App. B*)?
3. What is the standard for waiver under RAP 2.5(a) for: (a) issues that are an essential part of Respondent’s burden of proof; and (b) issues that implicate fundamental justice?

#### **IV. STATEMENT OF THE CASE**

##### **A. Statement of Facts**

###### **1. Calvin H. Evans SR**

Calvin H. Evans, Sr. was born on March 8, 1933. He was divorced and had four children, including Sharon Eaden and Calvin H. Evans, Jr. CP 186 (FF#3). Cal SR had polycythemia, a thickening of the blood, which predisposed him to stroke. He suffered strokes in 2000, March 2005, and November 2006. CP 186-87 (FF #7), CP 190 (FF #35), 2 RP 60-61/15-2. Most of the events upon which the financial elder abuse findings were based occurred in 2004-2006. CP 190-194; *App. A* at 2-4.

On December 28, 2005, Sharon Eaden filed a petition alleging that Cal SR was incapacitated and needed a guardian. CP 194 (FF #82). An order placing Cal SR in limited guardianship was not entered until June 25, 2008. Ex. 35. Even then, the order specifically allowed Cal SR a lot of decision-making authority. Ex. 35, p.7. After Sharon was appointed guardian, Cal SR was moved to Kent, then back to his Sultan ranch, then permanently removed from his ranch in 2009. CP 202 (FF #140), CP 204 (FF #163); 3 RP 274/7-10, 279/7-9, 288-89/1-6.

Cal SR was angry at Sharon about the guardianship. CP 195 (FF #83). He made a will on March 7, 2006, that left the Sultan ranch and his

Cessna airplane to Cal JR, gave Sharon only \$25,000, and divided the rest of his property between his other children and grandchildren. CP 195-196 (FF ##87-94). The trial court upheld the will, but found that Cal JR financially abused his father, and was deemed to predecease Cal SR under the Slayer Statute. 14 RP 1961-2000. It found that Cal SR demonstrated overall knowledge of the extent of his assets, 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 concluded that Cal SR had testamentary capacity when he executed his will. CP 209 (CL #2).

According to the GAL, Cal SR was independent and didn't want Sharon or anyone else in his business. 2 RP 45-46/6-3. Based on meetings from January to April 2006, 2 RP 45/1-5, the GAL found: "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 to assess the need for a guardianship. CP 197 (FF #101). Her 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). But these problems were not very noticeable to a layman. 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). “[O]n subjects of greater interest to him, such as airplanes, ranches, and land values,” Cal SR “spoke knowledgeably, articulately and cogently . . .” 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, “As Dad went on, his memory deficit grew, but he was very fun to talk to right up to the day he left [in 2009].” 8 RP 1228/8-10. Likewise, Chuck Diesen, Cal SR’s attorney of 35 years, described him on January 25, 2006 as “a very confident, in-charge guy ....” 6 RP 736/12-15. On March 7, 2006, when he executed his will, Cal SR was “upright, bright eyed and bushy tailed, clean shaven, clothes in good repair, and talking to [Diesen] like we have talked for years.” 11 RP 1695/1-7.

The trial court found that, although Cal SR understood the basics of transactions, he was vulnerable 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).

Cal SR had his second stroke in March 2005, and not another until November 2006. CP 190; 2 RP 60-61/15-2. Dr. Eisenhower testified 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. On August 22, 2005, Sharon Eaden went over Cal SR’s finances with him, then noted in her diary 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.

## **2. The Sultan Ranch**

In 2003, Cal SR purchased a ranch in Sultan for \$887,500. CP 188-89 (FF ##23, 25, 26). Cal SR told the seller that he wanted his son Cal JR to move to the ranch, that he intended to go into business with Cal JR, and that when he died he would leave the ranch to Cal JR. CP 189 (FF#28). Cal JR was living in Idaho with his wife Debbie and four children. CP 188 (FF #24); 7 RP 939-40/17-8, 941/5-12.<sup>1</sup> In December 2004, Cal SR telephoned Cal JR and asked him to move to the ranch to take care of him and the ranch in exchange for ultimately becoming the ranch owner. CP

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<sup>1</sup> 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.

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 ranch 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. After wrapping up his ongoing construction projects and selling his house and some business equipment, Cal JR moved to Sultan 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**

When Cal JR arrived in Sultan he opened an account and deposited \$225,000 derived from sale of his Idaho home and business property, 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. A Decree of Dissolution in the divorce between Cal JR and Debbie, 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 . . . 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) (emphasis added).

In this action, Cal JR presented substantial additional evidence of labor and money that he and Debbie invested in the Sultan ranch, all detailed at pages 14-21 of the Brief of Appellant. *See App. C.* This work

was done with Cal SR's knowledge and often enthusiastic consent,<sup>2</sup> using a combination of Cal SR's and Cal JR's funds, as well as Cal JR's labor.<sup>3</sup>

All this work benefitted Cal SR in the following ways:

- It enhanced the value of property that he owned, and prevented it 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.
- It made Cal SR happy; he loved horses, machinery, and his ranch.

After Cal SR was removed from the ranch by Sharon in 2009, Cal JR began putting Cal SR's social security checks in a kitchen drawer. 5 RP 663/15-17. In late 2009, Cal JR and Chuck Diesen took Cal SR 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 in a new account in his own name, and then in 2010 he used the \$4,685 to purchase hay and alfalfa to feed the horses belonging to himself and Cal SR. CP 207 (FF #191); CP 208 (FF #194); 5 RP 666-68/10-15. Cal JR also spent \$30,000 of his own money feeding Cal SR's horses. 11 RP 1571/17-25.

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<sup>2</sup> CP 191 (FF #46); 8 RP 1151/4-12, 1159/18-24, 1159/1-13; 9 RP 1315/12-14, 1317/9-11, 1822/3-6; 10 RP 1341-42/7-10, 1344/7-11, 1344-45/21-5, 1345-46/14-3, 1409/14-18.

<sup>3</sup> 7 RP 1028-29/16-2; 8 RP 1146/20-24, 1148/8-22, 1149/11-19, 1151/13-21, 1153/16-20, 1219-20/15-25, 1221/4-6, 1221-22/23-3; 9 RP 1328/11-22, 1329/9-23, 1330/7-23.

Replacement checks were later issued by the government, and Cal JR was required to repay the Social Security Administration. CP 207 (FF #192).

#### **4. 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. CP 187 (FF ##9, 11, 12). In June 2004, Cal SR sold the plane to Cal JR. 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 falsely convinced Cal SR that the engine was defective, tricking Cal SR into paying \$24,000 for a new engine. CP 188 (FF #17). The evidence supporting this finding was testimony by Dave Eaden in the Petitioner's rebuttal case, 12 RP 1726-55, too late for Cal JR to get his own rebuttal witnesses despite diligent efforts. CP 275-76 ¶¶2-3.

On Motion for Reconsideration, Cal JR introduced a declaration of aircraft mechanic Benjamin D. Tuttle, stating that his "compression check . . . in August of 2004 found the compression of the R/H #1 cylinder to [be] below the requirements of the FAA &TCM SB03-3." CP 284 ¶3. Mr. Tuttle stated that a normal cylinder tests between 60/80. CP 283 ¶2. Results of a subsequent compression check also confirmed that the #1

cylinder on the right-hand engine tested at 44. CP 286. The objective evidence demonstrates that Cal JR was telling the truth.

**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 July 14, 2011, Petitioners led by Sharon Eaden brought this TEDRA action to declare that Cal SR's will was invalid due to lack of competency and undue influence, and to declare Cal JR a financial abuser under the Slayer Statute, RCW 11.84.020. CP 731-39. The matter was tried from March 13 to 28, 2012, in Snohomish County Superior Court. Cal JR was represented by Richard W. Swanson, WSBA 4777, a lawyer who has been suspended twice, once in 2007 and once in 2014, for reasons that included (each time) violations of RPC 1.3 (Diligence) and 1.4 (Communication). *WSBA Online Lawyer Directory*. According to the Court of Appeals, Mr. Swanson's arguments in this matter were not sufficient to preserve many key issues. *App.* A at 7-8 (willfulness of alleged abuse not preserved); *id.* at 12-13 (effect of oral agreement for care of ranch on elder abuse not preserved); *id.* at 14-15

(Cal SR's ratification of Cal JR's actions not preserved); *id.* at 15 (discretion to impose lesser sanction not preserved).<sup>4</sup>

Judgment was entered on May 31, 2012, including attorney fees and costs totaling \$85,536.27 against Cal JR. CP 182-185. The effect was much more draconian: Cal JR was totally disinherited of the Sultan ranch on which he had labored so hard and invested so much – the ranch his father, Cal SR, intended to bequeath to him. Division One affirmed on December 31, 2015, *App. A*, and this Petition followed.

## **V. ARGUMENT FOR ACCEPTANCE OF REVIEW**

### **A. Widespread Disruption of Testators' Intent is an Issue of Substantial Public Importance**

Cal JR seeks review under RAP 13.4(b)(4). The danger under the expanded Slayer Statute of disinheritance of adult children who attempt to care for elderly parents, following the parents' directions and using a combination of their own and the parents' resources, presents an issue of substantial public importance that should be decided by this Court. *Id.*

According to the Census Bureau, the population of Washington as of July 1, 2015, was 7,170,351, of which 14.1% are 65 or older. In raw numbers, there were 1,011,019 Washingtonians 65 or older as of that date, and the number of elderly is growing faster than the population as a

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<sup>4</sup> As argued in §V(D), *infra*, under RAP 2.5(a), "willfulness" and "unlawfulness", as essential elements of plaintiff's burden, RCW 11.84.010, .160(1)(b), cannot be waived.

whole.<sup>5</sup> Another 382,087 Washingtonians were between 60 and 64 years of age in 2010.<sup>6</sup> Abuse protections apply to elders 60 years or older who have some inability to care for themselves. RCW 74.34.020(17)(a). No one knows exactly how many of the roughly 1.4 million Washingtonians 60+ years of age this might cover, but the number is clearly significant.

Until this case, an elder's testamentary plan was sacrosanct:

“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)). The record is undisputed that Cal SR appeared cogent, well-spoken, and lucid on many occasions. The Court of Appeals acknowledged evidence that Cal SR was informed of, and consented to, all the expenditures made by Cal JR. *App. A* at 14 n.8. It also assumed Cal JR was correct to argue:

(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

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<sup>5</sup> <http://www.census.gov/quickfacts/table/PST045215/53,00> (accessed Jan. 16, 2016).

<sup>6</sup> Census data downloaded, *App. D*.



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. Eisenhower.

*App. A* at 9. Nonetheless, simply because there was enough evidence of incapacity to support “the trial court’s finding that Cal SR was unable to care for himself” at some unspecified time, the Court of Appeals affirmed total disinheritance under the expanded Slayer Statute. *Id.*

This lax standard ushers in a troubling new era in which **nobody’s testamentary plan is safe**. There is hardly an elder who will not, at some point, demonstrate some arguable “functional, mental, or physical inability to care for himself or herself . . .,” RCW 74.34.020(17)(a). When that happens, the vultures will pounce. Under the decision of Division One it is open season on any adult child compassionate or foolish enough to try to care for their aging parent’s person or property.

**B. Correct Application of “Willful” and “Unlawful” Present Issues of Substantial Public Importance**

The legislature built safeguards into the expanded Slayer Statute that the Court of Appeals failed to apply. The definition of “abuser” under the Slayer Statute requires financial abuse to be “willful and unlawful.” RCW 11.84.010(1) (*App. B*). Under RCW 11.84.160, “In determining whether a person is an abuser for purposes of this chapter, the court must

find by clear, cogent, and convincing evidence that: . . . (b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.” *Id.* The words “for purposes of this chapter” and use of the highest civil evidentiary standard of “clear, cogent, and convincing”, mean that financial abuse under the expanded Slayer Statute requires a different and more rigorous showing than financial abuse for purposes of the Abuse of Vulnerable Adults Act, chapter 74.34 RCW. This makes sense because ch. 74.34 is essentially protective, whereas the Slayer Statute is fundamentally punitive.

According to Washington Practice, in the section titled “Intentional torts – Act and intent requirements”:

Common to all intentional torts is the requirement that the defendant commit a voluntary act and that the harm suffered by the plaintiff be the result of the defendant's intentional conduct...

The “intent” element requires proof that the defendant acted *with a purpose to achieve the result of his act, or that he believed that the consequences were substantially certain to result from it.* Intent is broader than a desire to bring about physical results. Rather, it is *an intent to bring about a result that will invade the interests of another in a way that the law will not sanction.*

16 D. DeWolf & K. Allen, *Washington Practice – Tort Law and Practice* §14.2 (2014) (footnotes omitted; emphasis added). Therefore, the proper interpretation of the Slayer Statute is that the adult child must be shown by clear, cogent and convincing evidence to be intentionally using the parent’s resources for the purpose of achieving an unlawful result, or

knowing such a result was substantially certain, such as by failing to use the funds to care for the elder or his/her property. The trial court must find, with respect to any alleged instance of financial abuse, that the adult child did not merely use the parent's assets, but that in the context of the care provided such use was done to willfully cause injury. *It is the willful causing of injury, not just the willful use of the elder's resources, that constitutes financial exploitation.* The definition of financial "abuser" under the Slayer Statute makes this clear: "'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); accord, RCW 74.34.020(6) (financial exploitation must be for the "illegal or improper" profit of the exploiter). An adult child paying bills for a parent, or using parental funds to maintain the parent's property, acts willfully in using those funds, but surely is not automatically turned into an abuser and financial exploiter by doing so. It is only when the intention shifts from protective action to the causing of injury, that the acts become "unlawful" and the extreme penal consequences of the Slayer Statute might apply.

The Court of Appeals rejected this argument: "By its own terms the statute does not expressly require a finding of intent to cause injury to the victim's property." *App. A* at 7. The public interest requires that this

Court quickly provide guidance on the meaning of the words “willful and unlawful” in RCW 11.84.010(1), and “willful action or willful inaction causing injury to the property of the vulnerable adult” in RCW 11.84.160(1)(b). This Court should act before hundreds of testamentary plans are set aside by failing to apply the safeguards the Legislature built into the expanded Slayer Statute.

The “willful and unlawful” requirements have particular application here. First, the nature of Cal SR’s impairments were such that they would not have been obvious to a layperson. Cal JR was a loyal son who is skilled at construction, repairing machinery, and all the many hard jobs that are needed to run a horse farm, but who (like most people) cannot be expected to be an expert in psychology or geriatrics. When his apparently competent father consented or even directed that he do certain work on the father’s Sultan ranch, or that he purchase items for him, Cal JR – like any loyal child – complied. This Court needs to accept review to lay down guidelines for adult children throughout the State who have to make difficult decisions for the care of aging parents and their property. The decision of the Court of Appeals puts a wedge between adult children and their aging parents, forcing them to “infantilize” their parents by

treating them as incompetent at the slightest sign of incapacity. That is terrible public policy, not required by a properly enforced Slayer Statute.<sup>7</sup>

Second, this Court should accept review to clarify application of the expanded Slayer Statute to an agreement to care for the elder and his property. When does performance of such a contract become “unlawful” under RCW 11.84.010(1)? What is the effect of the long hours of labor and (at least) \$174,000 of his own money that Cal JR invested in the Sultan ranch, on the required showing of “clear, cogent, and convincing” evidence of willful financial abuse under RCW 11.84.160(1)(b)? An agreement to make a will in exchange for care is a legal contract, recognized in many 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). The Court of Appeals’ holding that the labor performed and funds invested by Cal JR in the Sultan ranch were not a benefit to Cal SR because not intended to benefit him, *App. A* at 13-14, misconstrues such contracts. Every bit of performance was consideration flowing to Cal SR, and thus a legal benefit to him. *Bentzen v. Demmons, supra*, 68 Wn. App.

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<sup>7</sup> The Court of Appeals erroneously treated this as an argument that “some of the evidence regarding Cal SR’s abilities was disputed,” and applied the familiar rule that a dispute in the evidence does not mean the trial court’s findings are inadequately supported. *App. A* at 11. That totally misses the legal issue of whether expenditures in accord with an apparently competent elder’s wishes can constitute “willful” abuse.

at 347-48. Even making the ranch as profitable as possible was part of what Cal SR bargained for and received in exchange, to better ensure 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.

**C. This Court Should Grant Review to Enforce other Safeguards Built into the Expanded Slayer Statute**

The legislature built other safeguards into the expanded Slayer Statute that were not applied here. First, “[i]n 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). Here, where most of the abuse found by the trial court occurred during 2004-2006, prior to the third stroke and during a time in which Cal SR displayed significant periods of lucidity, it was incumbent on the trial court to be more careful with its findings about time. This is likely to be a recurrent theme in litigation under the expanded Slayer Statute, since elders do not simply have an “on/off switch” that changes overnight from “functional, mental, or physical” ability to “inability to care for” themselves, RCW 74.34.020(17)(a), and then stays that way. In the real world, elders experience variable abilities and inabilities that ebb and flow over time.

That is why the requirement of “clear, cogent, and convincing” evidence of inability “at the time” of the alleged exploitation is so important. RCW 11.84.160(1)(a). This Court should accept review to enforce this rule.

The legislature also expressly allowed inheritance where 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.” RCW 11.84.170(1). This should apply here to ratify all the alleged misconduct prior to Cal SR’s competent March 2006 will. The only arguable “financial exploitation” after that was using social security checks to feed his father’s horses. Should the son who labored hard to care for his father and father’s property be disinherited of a property worth close to \$1 Million, solely because he used \$4,685 in checks to buy feed for his father’s horses without getting prior consent? Not according to RCW 11.84.170(2) (*App. B*), which creates broad discretion to tailor the remedy to fit the offense. *The legislature did not intend complete disinheritance over relatively minor offenses that did not cause significant harm to the elder.* But because this was not specifically argued by Mr. Swanson, it was deemed waived. *App. A* at 14-15.

**D. Standard for Waiver of Issues Not Raised Below**

“A jury consists of twelve persons chosen to decide who has the better lawyer.” This quote, attributed to Robert Frost, makes a good joke,

but terrible jurisprudence.<sup>8</sup> RAP 2.5(a) expressly permits a party to raise for the first time on appeal “failure to establish facts upon which relief can be granted ....” RAP 2.5(a)(2). In *Gross v. City of Lynnwood*, 90 Wn.2d 395, 583 P.2d 1197 (1978), this Court found that there was no waiver of the age limits of RCW 49.44.090 (ages 40 through 65), though they had not been pleaded or argued below, because a statutory limitation of class of persons entitled to assert age discrimination “operates to define the specific facts upon which relief may be predicated.” *Id.* at 400. Likewise, without proof of willful and unlawful conduct under 11.84.010(1) and 11.84.160(1)(b), relief cannot be granted under the Slayer Statute. The waiver decision of the Court of Appeals conflicts with *Gross v. City of Lynnwood*, *supra*, and it should be reviewed under RAP 13.4(b)(1) & (4).

This Court should also accept review to clarify the application of the “fundamental justice” exception to rote invocation of waivers by the Court of Appeals. RAP 2.5(a) is phrased in terms of “*may* refuse to review,” so imposing a waiver is *discretionary*. *Obert v. Environmental Research and Development Corp.*, 112 Wn.2d 323, 333, 771 P.2d 340 (1989). “Washington courts have allowed issues to be considered for the first time on appeal when *fundamental justice so requires*.” *State v. Card*, 48 Wn. App. 781, 784, 741 P.2d 65 (1987) (emphasis added); *accord*,

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<sup>8</sup> <https://www.goodreads.com/quotes/100333-a-jury-consists-of-twelve-persons-chosen-to-decide-who> (accessed January 18, 2016).



*Greer v. Northwestern Nat'l Ins. Co.*, 36 Wn. App. 330, 338-39, 674 P.2d 1257 (1984); 1 WSBA Appellate Deskbook § 17.5(4) (3d ed. 2011).

“Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the parties if the parties ignore the mandate of a statute or an established precedent. A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it.”

*Greer, supra*, 36 Wn. App. at 339 (quoting, *Maynard Inv. Co. v. McCann*, 77 Wn.2d 616, 623, 465 P.2d 657 (1970)). Especially here, where the decision involves destruction of the testamentary plan of a competent testator, the shortcomings of counsel should not dictate the outcome. This is reviewable under RAP 13.4(b)(1) (conflict with *Maynard Inv. v. McCann, supra*, and *In re Kinssies' Estate, supra*, 35 Wn.2d at 734), and under RAP 13.4(b)(4).

## VI. CONCLUSION

Review should be granted. RAP 13.4(b)(1) & (4).

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of January, 2016.

*Michael T. Schein*

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Michael T. Schein, WSBA #21646

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ATTORNEYS FOR PETITIONER CALVIN H. EVANS, JR.

**CERTIFICATE OF SERVICE**

I, Jennifer Marroquin, Legal Assistant at Sullivan Law Firm, hereby certify that on the date set forth below I caused a copy of the within PETITION FOR REVIEW to be served 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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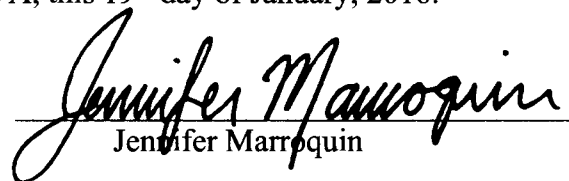
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DATED at Seattle, WA, this 19<sup>th</sup> day of January, 2016.

  
Jennifer Marroquin

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# APPENDIX A

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

IN THE MATTER OF THE ESTATE )  
 )  
 OF )  
 )  
 CALVIN H. EVANS SR., Deceased. )  
 )  
 SHARON EADEN, VICKI SANSING, )  
 AND KENNETH EVANS, )  
 )  
 Respondents. )  
 )  
 v. )  
 )  
 CALVIN H. EVANS JR., )  
 )  
 Appellant )

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No. 69214-3-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: December 21, 2015

2015 DEC 21 AM 9:59  
COURT OF APPEALS  
STATE OF WASHINGTON

SPEARMAN, C.J. — In a proceeding under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, the trial court found that Calvin Evans Jr. had financially abused his father, Calvin Evans Sr. and thus precluded him from inheriting any of his father’s property. Calvin Evans Jr. appeals, claiming the trial court erred because the evidence was insufficient to find that he willfully intended to inflict injury to his father’s property or that his father was a “vulnerable adult” at the time of the acts alleged to constitute the abuse. He also claims the trial court failed to consider his contributions and improvements to his father’s property and failed to apply RCW 11.84.170 which allows a financial abuser to inherit the property of the abused person under certain circumstances.

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Finally, he claims the trial court erred when it denied his motion to reconsider.

We find no error and affirm.

### FACTS

Calvin H. Evans, Sr. (Cal Sr.) was born on March 8, 1933. He owned and operated a successful excavation construction business. At the time of his death, Cal Sr. was no longer married and had four children: Kenneth Evans, Vicki Sansing, Sharon Eaden (Sharon), and Calvin H. Evans Jr. (Cal Jr.). Cal Sr. suffered from a medical condition called polycythemia, a thickening of the blood, which predisposed him to stroke. He suffered his first stroke in 2000.

In 2003, Cal Sr. purchased a 40-acre ranch in Sultan, Washington. Soon after, he purchased another 70-acre parcel nearby. In June 2004, Cal Sr. sold his twin engine Cessna 310C airplane to Cal Jr. for \$80,000. Cal Jr. paid \$20,000 down and gave a promissory note for the remaining \$60,000. The note provided for monthly payments of \$1000. After purchasing the plane, Cal Jr. convinced Cal Sr. that the plane had mechanical problems and that Cal Sr. should be responsible for purchasing a new engine. Cal Sr. paid \$24,000 for a new engine, while Cal Jr. paid \$8,000 for the installation of the new engine and an unknown amount of money for other improvements. Cal Jr. made no payments on the note and in June 2005, suggested that he and his father create an LLC for the ownership of the plane, with sixty percent in Cal Sr. and forty percent in Cal. Jr.

In December 2004, Cal Sr. asked Cal Jr. and his family to move to the ranch to take care of him and manage the ranch activities. Cal Sr. had previously stated his intention to Cal Jr. and others that if Cal Jr. agreed to do so, that Cal

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Jr. would inherit the ranch property. In early 2005, Cal Jr. and his family moved from Idaho to the Sultan ranch. While they lived on the ranch, Cal Jr. and his family provided little personal care for Cal Sr., with the exception of some meals provided by Cal Jr.'s then wife.

Upon his arrival, Cal Jr. assumed responsibility for the ranch operations. His intention was to establish the ranch as a first class horse facility because it would provide him a greater income. Cal Jr. performed work on the ranch such as leveling the ground, cutting blackberries, burning trash, grading trails, fixing the barn floor and plumbing, painting the barn, leveling and compacting the indoor arena, and adding an outdoor arena. Cal Jr. also claimed to have built a road on the east side of the barn. In March 2005, Cal Sr. suffered another stroke after which his health continued to decline.

In June 2005, Cal Jr. convinced Cal Sr. to purchase a dump truck for \$20,000. Cal Jr. registered the truck in the name of Calvin H. Evans, with no other designation. That summer he also installed a heat pump using \$8,613 of Cal Sr.'s funds. Around the same time, Cal Jr. borrowed \$75,000 from Cal Sr. to make improvements to the ranch. Sharon insisted that Cal Jr. document the \$75,000 loan and prepared a draft promissory note. After Cal Jr. revised Sharon's draft, he and Cal Sr. signed it.

In 2005, Cal Jr. used \$15,000 of Cal Sr.'s money to purchase a park model mobile home. He also purchased a new stovetop for the house, using Cal Sr.'s funds. Cal Jr. also convinced Cal Sr. to enter into a contract to add onto the barn, including 18 new stalls, for \$75,000. The contractor did not finish the work

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and Cal Jr. withheld \$12,000 of the borrowed \$75,000.

On December 28, 2005, Sharon filed a guardianship petition alleging that Cal Sr. was incapacitated. Charles Diesen, Cal Sr.'s attorney since 1970, was appointed to represent him. On December 28, 2005, Erv DeSmet was appointed guardian ad litem for Cal Sr.

On January 28, 2006, Cal Sr. underwent a medical examination to assess his need for a guardian. Psychologist Dr. Eisenauer diagnosed him with dementia secondary to stroke. The doctor found that he had memory impairment, mild disorientation, disturbances in executive functioning, and impaired judgment and insight.

In early 2006, Cal Jr. and his wife helped Cal Sr. prepare a will that designated Diesen as the personal representative and left the Sultan ranch and this Cessna airplane to Cal Jr.<sup>1</sup> This will reduced Sharon's share of the estate to \$25,000; gave approximately 77 acres of pasture land to Vicki and Ken; gave Cal Sr.'s personal effects to Cal Jr., Vicki, and Ken, and created a trust for the benefit of Cal Jr., Vicki, Ken, and Cal Sr.'s grandchildren. On March 7, 2006, Cal Sr. executed the will. At the time, Diesen and his law partner, Carol Johnson, believed Cal Sr. had testamentary capacity.

Cal Sr. had another stroke in November 2006. He was placed in limited guardianship in June 2008, with Unlimited Guardianship Services of Washington (UGS) appointed as guardian. Under the guardianship, Cal Jr. was allowed to

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<sup>1</sup> There was an earlier will that Cal Sr. had executed on May 18, 2004, that divided the estate equally among his four children.

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remain on and operate the ranch as long as Cal Sr. wanted him to, and Cal Jr. was ordered to pay the taxes and insurance on the ranch and manage the property so that it maintained its value. Cal Jr. did not pay any taxes or insurance and, during the pendency of the guardianship, liquidated ranch assets and kept the proceeds. Cal Jr. also received six or seven of Cal Sr.'s social security checks, which he deposited into his own account and used the funds for his own purposes. Cal Jr. was required to reimburse the funds.

UGS petitioned for dismissal as Cal Sr.'s guardian in spring 2010, after which Sharon was appointed successor guardian. Cal Sr. was receiving full time home care when he died on April 5, 2011. His 2006 will was filed for probate on April 29, 2011. On July 14, 2011, petitioners Sharon Eaden, Ken Evans, and Vicki Sansing (collectively, Eaden) brought a TEDRA petition seeking a declaration that the will was invalid due to lack of competency and undue influence, and seeking to declare Cal Jr. an "abuser" under RCW 11.84.010.<sup>2</sup>

A trial on the petition was heard in March 2012. At the conclusion of the trial, the court upheld Cal Sr.'s 2006 will, concluding that at the time Cal Sr. signed the will he had the testamentary capacity to do so. The court also found, however, that as early as 2004, Cal Sr. was a vulnerable adult because he was over 60 years of age and lacked the functional, mental, and physical ability to care for himself. The court concluded that Cal Jr. had financially exploited his

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<sup>2</sup> Sharon Eaden also filed a separate petition for a declaration of rights on September 7, 2012, seeking **not** to apply the anti-lapse statute to Cal Sr.'s estate. The trial court denied the petition and this court affirmed in In the Matter of the Estate of Evans, 181 Wn. App. 436, 326 P.3d 755 (2014).



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father and, pursuant to RCW 11.84.030, .040, deemed him to have predeceased Cal Sr. Judgment was entered against Cal Jr. on May 31, 2012, in the amount of \$85,536.27, including a discretionary award of attorneys' fees and costs. Cal Jr.'s motion for reconsideration was denied.

He appeals.<sup>3</sup>

### DISCUSSION

We review the superior court's findings for substantial evidence. Scott v. Trans-Sys., Inc., 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).<sup>4</sup> We defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); Burnside v. Simpson Paper Co., 123 Wn.2d 93, 108, 864 P.2d 937 (1994) (citing State v. O'Connell, 83 Wn.2d 797, 839, 523 P.2d 872 (1974)). We review questions of law de novo. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). It is also well settled that "[w]e will not review an issue, theory, argument, or claim of error not presented at the trial court level." Lindblad v. Boeing Co., 108 Wn. App. 198, 207, 31 P.3d 1 (2001) (quoting

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<sup>3</sup> Cal Jr. appeals the trial court's denial of his motion for reconsideration and for a new trial under CR 59(a)(4), (7), and (9), and for relief from judgment under CR 60(b)(1), (3), (4) and (11). Id. He argues that the trial court failed to consider the effect of his contributions to the property, and the fact that Cal Sr. benefited from these contributions. Id. This court reviews the denial of a motion for reconsideration for abuse of discretion. Lilly v. Lynch, 88 Wn. App. 306, 321, 945 P.2d 727 (1997). Cal Jr. fails to meet any of the stated grounds for reconsideration, relief from judgment, or a new trial.

<sup>4</sup> Cal Jr. argues for some higher standard based on the requirement that the trial court make findings of clear, cogent, and convincing evidence. Substantial evidence is still the standard on review; 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." In re Detention of Labelle, 107 Wn.2d 196, 209, 728 P.2d 138 (1986).

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Demelash v. Ross Stores, Inc., 105 Wn. App. 508, 527, 20 P.3d 447 (2001)). If an issue raised for the first time on appeal, however, is “‘arguably related’ to issues raised in the trial court,” a reviewing court may exercise its discretion to consider it. Lunsford v. Saberhagen Holdings, Inc., 139 Wn. App. 334, 338, 160 P.3d 1089 (2007).

Here, for the first time on appeal, Cal Jr. argues that the trial court erred when it found that he financially abused his father because there was no clear, cogent, and convincing evidence that he willfully intended to inflict financial injury on Cal Sr. as required by RCW 11.84.160(b). That statute provides that in determining whether a person is an abuser the court must find by clear, cogent and convincing evidence that “[t]he conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.” By its own terms the statute does not expressly require a finding of intent to cause injury to the victim’s property. Nonetheless, Cal Jr. argues that proof his “willful” conduct caused injury to Cal Sr.’s property is insufficient to show he is an abuser. He now contends it must be shown that he “intentionally” caused the injury.

Cal Jr. argues that he preserved this issue for appeal because, in his trial brief, he noted that one of the legal questions presented for trial was whether “Calvin Evans Sr. (sic) was an abuser of Calvin Evans Sr. as set forth in RCW 11.84?” Clerk’s Papers (CP) at 627. He also observed that “RCW 11.84.160 gives evidence factors for determining an abuser....” CP at 637. And he attached a copy of the statute. But Cal Jr. cites to no place in the record where he argued

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to the trial court that it was required to find that he intentionally caused injury to Cal Sr.'s property. Cal Jr. also argues that he may raise this issue on appeal for the first time because "willfulness is an essential element of [Sharon]'s burden... and therefore raised." Reply Br. at 4, n.2. We reject this argument. That the trial court made findings regarding Cal Jr.'s willful action, does not preserve Cal Jr.'s right to raise a new argument about whether the trial court was also required to find that he intentionally caused injury to Cal Sr.'s property. Because the issue was not properly preserved below, we decline to consider it on appeal. "We do not review the trial court's actions as to questions not brought to its attention." Kane v. Smith, 56 Wn.2d 799, 806, 355 P.2d 827 (1960).

Cal Jr. next contends that the findings of fact regarding his father's status as a vulnerable adult are not supported by clear, cogent, and convincing evidence and are too vague as to the time period. Insofar as is relevant here, a vulnerable adult is a person who is "[s]ixty years of age or older who has the functional, mental, or physical inability to care for himself or herself[.]" See RCW 11.84.010(6) and RCW 74.34.020(21).<sup>5</sup> Cal Jr. concedes that Cal Sr. was well over 60 year old during the time period the trial court found the financial exploitation occurred, 2005 through Cal Sr.'s death in 2011. But he claims the evidence showed that Cal Sr. was capable of caring for himself "at least until his third stroke in November 2006." Br. of Appellant at 38. In support of this assertion he cites evidence that:

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<sup>5</sup> Subsections of RCW 74.34.020 were renumbered in 2015 but the text is unchanged; therefore, we will cite to the current subsection.

(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. Eisenhower.

Br. of Appellant at 37.

But the cited evidence does not contradict the trial court's finding that Cal Sr. was unable to care for himself. That Cal Sr. was not subject to a guardianship or in licensed home care are relevant considerations but do not in themselves establish he was able to care for himself.

Cal Jr. also seems to argue that because Cal Sr. was competent to attest to a will he was also functionally, mentally or physically able to care for himself. But one does not necessarily establish the other. "The possession of testamentary capacity involves an understanding by the testator of the transaction in which he is engaged, a comprehension of the nature and extent of the property which is comprised in his estate, and a recollection of the natural objects of his bounty." Dean v. Jordan, 194 Wash. 661, 668, 79 P.2d 331 (1938). One could, as the trial court found, satisfy this test but still be unable to care for oneself.

Nor does the fact that Cal Sr.'s daughter, Vicki, borrowed money from him or an isolated observation by his other daughter, Sharon, undermine the trial court's finding that Cal Sr. was unable to care for himself. The trial court heard considerable evidence on the issue. Sharon testified that during the 2004

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Thanksgiving holiday, Cal Sr. was unable to find his way to and from her home to his motel. She also observed that Cal Sr. "was confused," that "[h]is short term memory was not tracking," that he "would tell the same stories over and over again." Verbatim Report of Proceedings (VRP) (03/14/12) at 156. He also had "trouble eating" and "couldn't find his keys." Id. Sharon further testified that prior to 2004 "there were signs of him being unable to balance his checkbook and keep track of his checkbook because his neat and tidy marks in the 2004 check register suddenly turned into stuff you just couldn't recognize." VRP (3/19/12) at 516. She concluded that "he was deteriorating at the end of 2004, but he continued to deteriorate all the way through the end of 2005 and beyond." VRP (3/15/12) at 370. In addition, in 2005 Sharon observed that Cal Sr. was unable to start the backhoe even though it was a piece of equipment that he had operated for years. "It was very, very apparent that he was kind of lost." VRP (3/14/12) at 137.<sup>6</sup>

Many of Sharon's observations were substantiated by the evaluation performed by Dr. Eisenhauer in January 2006, well before Cal Sr. suffered his third stroke. She reported that Cal Sr. suffered from dementia, which appeared in the form of "memory impairment, mild disorientation, disturbances in executive functioning and impaired judgment and insight." Respondent's Exhibit 47 at 2. Dr. Eisenhauer concluded that because of Cal Sr.'s impaired executive functioning, he was **"vulnerable to make decisions and take actions that will harm him without recognizing the possible consequences;"** Resp. Ex. 47 at 6, "that due

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<sup>6</sup> Finding of fact 69 erroneously attributes this testimony to Cal Jr. instead of Sharon.

to his impoverished cognitive functioning that he **needs financial assistance;**” that he was **“vulnerable to undue influence”** Id. at 8, and that he was **“unable to live independently without support.”** Id. at 9. With regard to financial matters, such as signing contracts, the doctor concluded: Cal Sr. “would not be able to sufficiently understand it to act knowledgeably. Furthermore, he does not have sufficient appreciation of his deficits to know these limitations. He needs assistance from an informed neutral party who does not have a stake in his assets.” Id.

Cal Jr. seems to argue that the trial court erred in finding that Cal Sr. was a vulnerable adult because some of the evidence regarding Cal Sr.’s abilities was disputed. But the mere fact that evidence is disputed does not establish that the trial court’s findings are inadequately supported. Where the testimony and evidence is conflicting, we defer to the trial court to resolve issues of credibility and weight. Niemann v. Vaughn Community Church, 154 Wn.2d 365, 377-78, 113 P.3d 463 (2005). We reject Cal Jr.’s challenge to the trial court’s finding that Cal Sr. was a vulnerable adult because it is amply supported by substantial evidence.<sup>7</sup>

Cal Jr. also challenges the trial court’s finding that he financially exploited his father. “Financial exploitation” is defined as the “improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable

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<sup>7</sup> Finding of fact 203 appears to be a clerical error; the trial court found that the GAL recommended “an order for a less restrictive alternative” that was “entered by the Court in the guardianship proceeding in lieu of establishing a guardianship.” VRP (4/19/12) 1972. No finding was made of a limited guardianship.

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adult by any person or entity for any person's or entity's profit or advantage" other than for the vulnerable adult's profit or advantage." RCW 11.84.010(3) and RCW 74.34.020(7). Financial exploitation includes but is not limited to:

- (a) "[t]he use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
- (b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or
- (c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds. Id.

Cal Jr. first claims that his actions were proper because he had a legal contract with Cal Sr. to care for the ranch and the improvements were "consideration flowing to Cal SR" in exchange for Cal Jr.'s inheritance. Br. of Appellant at 42. In support of this argument, he cites his own testimony that "[Cal Sr.] said that Debbie and I could move onto the property. We could have the house. He would take over the apartment above the garage. He said that he had plenty of money. I didn't have to worry about money again." Reply Brief at 19. He contends that a reasonable person would understand Cal Sr.'s statement as an oral contract that "Cal SR would fund most of the ranch expenses" and provide Cal Jr. "an expected minimum income of \$3000 per month. . . ." Id. He cites to no other evidence of an oral agreement.

But again, because this issue was not presented to the trial court, it cannot be raised for the first time on appeal. Despite Cal Jr.'s claim that he raised the issue in closing argument and on reconsideration, the only references found in the record are to an agreement that Cal Sr. would receive \$3,000 per month from the ranch tenant and that Cal Jr. knew he did not have title to the ranch when he made improvements. On appeal, our review is limited to determining "whether there exists the necessary quantum of proof to support the trial court's findings." Bentzen v. Demmons, 68 Wn. App. 339, 347, 842 P.2d 1015 (1993) (quoting In re Sego, 82 Wn.2d 736, 740, 513 P.2d 831 (1973)). Because the trial court did not have the opportunity to make findings regarding this issue, we decline to consider it on appeal.

Next, Cal Jr. argues that even if there were no oral agreement, the trial court erred when it concluded that Cal Sr. did not benefit from Cal Jr.'s investment of time and money in the ranch. According to him, the trial court erred when it failed "to weigh Cal JR's personal financial contributions to Cal SR's property when considering the question of willful financial abuse." Reply Br. at 10. He disputes several of the trial court's findings of fact related to circumstances surrounding the promissory note, the work on the ranch, the accounting of ranch expenses, the purchases he made, and the construction of the new road. We disagree. Cal Jr.'s argument fails because he is trying to offer apples to offset oranges. Any alleged benefit to Cal Sr. did not arise from Cal Jr.'s improper conduct. Cal Sr. may have arguably benefited from Cal Jr.'s investment of time and money into the ranch, but none of Cal Jr.'s improper



conduct was undertaken for Cal Sr.'s benefit or advantage. Cal Jr. fails to cite to any authority or make a convincing argument as to why his financial contributions should offset his financial exploitation or abuse.

Cal Jr. next argues that his conduct was not improper because Cal Sr. consented to all of the expenditures and improvements.<sup>8</sup> Again, these are apples offered to offset oranges. Even if Cal Sr. had consented to the improvements, there is still sufficient evidence in the record to support the trial court's findings related to Cal Jr.'s financial exploitation of his father, including the conversion of Cal Sr.'s social security checks, the registration of vehicles in Cal Jr.'s name, the sale of Cal Sr.'s personal property and keeping the proceeds, and other notes and loans to Cal Jr. for which there was no accounting.

Cal Jr. argues that the trial court failed to conduct the required statutory analysis that would have allowed him to inherit even if he did financially exploit his father. Cal Jr. argues that Cal Sr. knew of the exploitation and subsequently ratified his intent to transfer by consenting to expenditures and later making a will that left the ranch to Cal Jr. But again, we conclude that Cal Jr. waived this

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<sup>8</sup>Cal Jr. testified that Cal Sr. wanted the fencing to be redone and that the barn needed to be repaved for the new horse trainers. He testified he "happened to walk in the house one day, and Dad says, "I'm going to buy a motorcycle." VRP (3/31/12) at 1028-29. According to him, Cal Sr. purchased a scooter. Cal Jr. testified that he had discussions with Cal Sr. about the heat pump and that it provided heating and cooling to Cal Sr.'s living area. He testified that he discussed buying a hay baler. He testified that Cal Sr. bought the new dump truck, because he wanted to help out a lady he knew, and that he put the truck in Cal Jr.'s name. Cal Jr. also testified that they discussed the purchase of the mobile home and the stovetop. He testified that it was Cal Sr.'s idea to clean the ranch, including taking out stumps, cleaning up bushes, completing the driveways, and painting the riding area. According to his testimony, there was "never a time when dad wasn't consulted about changes." *Id.* at 1318. He testified that he and Cal Sr. had discussions about all the money Cal Jr. spent, and that he passed every decision by Cal Sr. and he had no displeasure.

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argument because he failed to bring it before the trial court. Cal Jr. argues that he raised the issue of consent in his trial brief, and that suffices to preserve his ratification argument. We disagree. RCW 11.84.170 requires the trial court to find whether clear, cogent, and convincing evidence supports knowledge and ratification of intent. Because Cal Jr. did not raise this issue at trial, there are no findings to review.

Finally, Cal Jr. argues that the trial court failed to exercise its discretion under RCW 11.84.170 to allow him to inherit as a matter of equity. RCW 11.84.170(2) permits, the trial court to allow an abuser to acquire or receive an interest in property or other benefit in any manner that it deems equitable. In determining what is equitable, the court may consider the various elements of the decedent's dispositive scheme, his or her likely intent given the totality of the circumstances, and the degree of harm resulting from the financial exploitation. Id. Cal Jr. cites nothing in the statute that requires the trial court to address this issue even though it was not raised by a party. Because Cal Jr. did not raise this issue below, we decline to consider it here.

Both parties request an award of reasonable attorneys' fees and costs on appeal pursuant to RCW 11.96A.150(1) and RAP 18.1(a). RCW 11.96A.150(1) allows for a discretionary award of attorney fees to any party, against any party or against the estate, on both the trial and appellate court levels. We deny Cal

No. 69214-3-1/16

Jr.'s request for fees and grant the respondents' their reasonable attorneys' fees and costs incurred in defending this appeal.

Affirmed.

WE CONCUR:

Spears, C.J.

Dunne, J.

Appelquist, J.

# APPENDIX B

## **APPENDIX B – KEY STATUTES**

### **RCW 11.84.010 – Definitions.**

As used in this chapter:

(1) "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 11.84.160 - Abuser determination— Evidence factors.**

(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 11.84.170 - Abuser— When entitled to property interest.**

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.

# APPENDIX C

**APPENDIX C  
EXCERPT – pp.14-21**

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

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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

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**BRIEF OF APPELLANT CALVIN H. EVANS, JR.**

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Attorneys for Appellant

**(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. Work on the farmhouse

**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

# APPENDIX D



## **Census 2010 Demographic Profile for Washington, Readme Washington State Office of Financial Management, Forecasting Division**

### **Introduction**

The tables included herein have been created from the U.S. Census Bureau 2010 Demographic Profile Summary File for Washington state. The demographic profile data includes information on age and sex distributions, race, Hispanic or Latino origin, household relationship and type, the group quarters population, and housing occupancy and tenure

Census 2010 data and map products can be accessed from a variety of locations. You may wish to verify whether your regional or local government has put together summary tables that more closely target your specific area of interest or provide additional information not presented here.

[2010 Census Demographic Profiles, U.S. Census Bureau](#)

[2010 Census TIGER/Line Shapefiles, U.S. Census Bureau](#)

[American FactFinder, U.S. Census Bureau](#)

[OFM's Census 2010 website, OFM](#)

[OFM's GIS Data website, OFM](#)

Data users interested in obtaining a demographic profile in tabular format, with counts and percentages are encouraged to visit American Factfinder:

[American FactFinder](#)

Information that used to be collected via the decennial census long form are now collected by the American Community Survey (ACS). Please see the Census Bureau's ACS website, OFM's ACS website, or your regional or local government's website for more information.

[American Community Survey, U.S. Census Bureau](#)

[OFM's ACS website, OFM](#)

### **Notes**

1. Other Asian alone, or two or more Asian categories.
2. Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.
3. One of the four most commonly reported multiple-race combinations nationwide in Census 2000.
4. In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.
5. This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."
6. Spouse represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."
7. Family households consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.
8. The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.
9. The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units for rent by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source for notes: U.S. Census Bureau (2011, May). Profile of General Population and Housing Characteristics: 2010.

### **Suggested Citation**

U.S. Census Bureau, 2010 Census Demographic Profiles Summary File.

**Census 2010 Demographic Profile for Washington, State Summary**  
**Washington State Office of Financial Management, Forecasting Division**

Name	Geoid	Total Population, 2010	Population, Under 5 Years, 2010	Population, 5 to 9 Years, 2010	Population, 10 to 14 Years, 2010	Population, 15 to 19 Years, 2010	Population, 20 to 24 Years, 2010	Population, 25 to 29 Years, 2010	Population, 30 to 34 Years, 2010
Washington	0400000US53	6,724,540	439,657	429,877	438,233	462,128	461,512	480,398	453,383

Population, 35 to 39 Years, 2010	Population, 40 to 44 Years, 2010	Population, 45 to 49 Years, 2010	Population, 50 to 54 Years, 2010	Population, 55 to 59 Years, 2010	Population, 60 to 64 Years, 2010	Population, 65 to 69 Years, 2010	Population, 70 to 74 Years, 2010	Population, 75 to 79 Years, 2010	Population, 80 to 84 Years, 2010
448,607	459,698	492,909	495,296	453,078	382,087	270,474	186,746	142,068	111,118

Population, 85 Years and Over, 2010	Male Population, 2010	Male, Under 5 Years, 2010	Male, 5 to 9 Years, 2010	Male, 10 to 14 Years, 2010	Male, 15 to 19 Years, 2010	Male, 20 to 24 Years, 2010	Male, 25 to 29 Years, 2010	Male, 30 to 34 Years, 2010	Male, 35 to 39 Years, 2010
117,271	3,349,707	225,088	219,702	224,717	237,577	238,131	245,014	229,863	226,850

Male, 40 to 44 Years, 2010	Male, 45 to 49 Years, 2010	Male, 50 to 54 Years, 2010	Male, 55 to 59 Years, 2010	Male, 60 to 64 Years, 2010	Male, 65 to 69 Years, 2010	Male, 70 to 74 Years, 2010	Male, 75 to 79 Years, 2010	Male, 80 to 84 Years, 2010	Male, 85 Years and Over, 2010
232,587	246,507	245,997	221,321	186,378	131,064	88,760	64,325	45,743	40,083

Female Population, 2010	Female, Under 5 Years, 2010	Female, 5 to 9 Years, 2010	Female, 10 to 14 Years, 2010	Female, 15 to 19 Years, 2010	Female, 20 to 24 Years, 2010	Female, 25 to 29 Years, 2010	Female, 30 to 34 Years, 2010	Female, 35 to 39 Years, 2010	Female, 40 to 44 Years, 2010
3,374,833	214,569	210,175	213,516	224,551	223,381	235,384	223,520	221,757	227,111

Female, 45 to 49 Years, 2010	Female, 50 to 54 Years, 2010	Female, 55 to 59 Years, 2010	Female, 60 to 64 Years, 2010	Female, 65 to 69 Years, 2010	Female, 70 to 74 Years, 2010	Female, 75 to 79 Years, 2010	Female, 80 to 84 Years, 2010	Female, 85 Years and Over, 2010	Median Age (Years), 2010
246,402	249,299	231,757	195,709	139,410	97,986	77,743	65,375	77,188	37.3

Median Age (Years), Male, 2010	Median Age (Years), Female, 2010	Population 16 Years and Over, 2010	Population 16 Years and Over, Male, 2010	Population 16 Years and Over, Female, 2010	Population 18 Years and Over, 2010	Population 18 Years and Over, Male, 2010	Population 18 Years and Over, Female, 2010	Population 21 Years and Over, 2010	Population 21 Years and Over, Male, 2010
36.2	38.3	5,327,767	2,634,593	2,693,174	5,143,186	2,539,505	2,603,681	4,860,559	2,393,714



Population 21 Years and Over, Female, 2010	Population 62 Years and Over, 2010	Population 62 Years and Over, Male, 2010	Population 62 Years and Over, Female, 2010	Population 65 Years and Over, 2010	Population 65 Years and Over, Male, 2010	Population 65 Years and Over, Female, 2010	Total Population, 2010	Population of One Race, 2010	Population of One Race, White, 2010
2,466,845	1,047,310	476,759	570,551	827,677	369,975	457,702	6,724,540	6,411,614	5,196,362

Population of One Race, Black or African American, 2010	Population of One Race, American Indian and Alaska Native, 2010	Population of One Race, Asian, 2010	Population of One Race, Asian, Asian Indian, 2010	Population of One Race, Asian, Chinese, 2010	Population of One Race, Asian, Filipino, 2010	Population of One Race, Asian, Japanese, 2010	Population of One Race, Asian, Korean, 2010	Population of One Race, Asian, Vietnamese, 2010	Population of One Race, Asian, Other Asian, 2010 [1]
240,042	103,869	481,067	61,124	94,198	91,367	35,008	62,374	66,575	70,421

Population of One Race, Native Hawaiian and Other Pacific Islander, 2010	Population of One Race, Native Hawaiian and Other Pacific Islander, Native Hawaiian, 2010	Population of One Race, Native Hawaiian and Other Pacific Islander, Guamanian or Chamorro, 2010	Population of One Race, Native Hawaiian and Other Pacific Islander, Samoan, 2010	Population of One Race, Native Hawaiian and Other Pacific Islander, Other Pacific Islander, 2010 [2]	Population of One Race, Some Other Race, 2010	Population of Two or More Races, 2010	Population of Two or More Races, White; American Indian and Alaska Native, 2010 [3]	Population of Two or More Races, White; Asian, 2010 [3]	Population of Two or More Races, White; Black or African American, 2010 [3]
40,475	5,861	9,746	13,110	11,758	349,799	312,926	66,769	83,994	51,624

Population of Two or More Races, White, Some Other Race, 2010 [3]	White Alone or in Combination, 2010 [4]	Black or African American Alone or in Combination, 2010 [4]	American Indian and Alaska Native Alone or in Combination, 2010 [4]	Asian Alone or in Combination, 2010 [4]	Native Hawaiian and Other Pacific Islander Alone or in Combination, 2010 [4]	Some Other Race Alone or in Combination, 2010 [4]	Total Population, 2010	Hispanic or Latino (of Any Race), 2010	Hispanic or Latino (of Any Race), Mexican, 2010
34,488	5,471,864	325,004	198,998	604,251	70,322	400,896	6,724,540	755,790	601,768

Hispanic or Latino (of Any Race), Puerto Rican, 2010	Hispanic or Latino (of Any Race), Cuban, 2010	Hispanic or Latino (of Any Race), Other Hispanic or Latino, 2010 [5]	Not Hispanic or Latino, 2010	Total Population, 2010	Hispanic or Latino, 2010	Hispanic or Latino, White Alone, 2010	Hispanic or Latino, Black or African American Alone, 2010	Hispanic or Latino, American Indian and Alaska Native Alone, 2010	Hispanic or Latino, Asian Alone, 2010
25,838	6,744	121,440	5,968,750	6,724,540	755,790	319,558	10,439	15,134	5,433

Hispanic or Latino, Native Hawaiian and Other Pacific Islander Alone, 2010	Hispanic or Latino, Some Other Race Alone, 2010	Hispanic or Latino, Two or More Races, 2010	Not Hispanic or Latino, 2010	Not Hispanic or Latino, White Alone, 2010	Not Hispanic or Latino, Black or African American Alone, 2010	Not Hispanic or Latino, American Indian and Alaska Native Alone, 2010	Not Hispanic or Latino, Asian Alone, 2010	Not Hispanic or Latino, Native Hawaiian and Other Pacific Islander Alone, 2010	Not Hispanic or Latino, Some Other Race Alone, 2010
1,692	337,961	65,573	5,968,750	4,876,804	229,603	88,735	475,634	38,783	11,838

Not Hispanic or Latino, Two or More Races, 2010	Total Population	Population in Households	Population in Households, Householder, 2010	Population in Households, Spouse, 2010 [6]	Population in Households, Child, 2010	Population in Households, Child, Own Child Under 18 Years, 2010	Population in Households, Other Relatives, 2010	Population in Households, Other Relatives, Under 18 Years, 2010	Population in Households, Other Relatives, 65 Years and Over, 2010
247,353	6,724,540	6,585,165	2,620,076	1,288,849	1,846,348	1,418,356	349,280	123,390	50,602

Population in Households, Nonrelatives, 2010	Population in Households, Nonrelatives, Under 18 Years, 2010	Population in Households, Nonrelatives, 65 Years and Over, 2010	Population in Households, Nonrelatives, Unmarried Partner, 2010	Population in Group Quarters, 2010	Population in Group Quarters, Institutionalized Population, 2010	Population in Group Quarters, Institutionalized Population, Male, 2010	Population in Group Quarters, Institutionalized Population, Female, 2010	Population in Group Quarters, Noninstitutionalized Population, 2010	Population in Group Quarters, Noninstitutionalized Population, Male, 2010
480,612	34,160	20,470	200,704	139,375	57,844	39,052	18,792	81,531	46,199



Population in Group Quarters, Noninstitutionalized Population, Female, 2010	Total Households	Family Households (Families) [7]	Family, Households, With Own Children Under 18 Years, 2010	Family Households, Husband-Wife Family, 2010	Family Households, Husband-Wife Family, With Own Children Under 18 Years, 2010	Family Households, Male Householder, No Wife Present, 2010	Family Households, Male Householder, No Wife Present, With Own Children Under 18 Years, 2010	Family Households, Female Householder, No Husband Present, With Own Children Under 18 Years, 2010	Family Households, Female Householder, No Husband Present, With Own Children Under 18 Years, 2010
35,332	2,620,076	1,687,455	762,444	1,288,849	534,541	124,402	65,903	274,204	162,000

Nonfamily Households, 2010 [7]	Nonfamily Households, Householder Living Alone, 2010	Nonfamily Households, Householder Living Alone, Male, 2010	Nonfamily Households, Householder Living Alone, Male, 65 Years and Over, 2010	Nonfamily Households, Householder Living Alone, Female, 2010	Nonfamily Households, Householder Living Alone, Female, 65 Years and Over, 2010	Households with Individuals Under 18 Years, 2010	Households with Individuals 65 Years and Over, 2010	Average Household Size, 2010	Average Family Size, 2010 [7]
932,621	711,619	331,357	68,342	380,262	159,455	836,791	597,620	2.51	3.06

Total Housing Units, 2010	Occupied Housing Units, 2010	Vacant Housing Units, 2010	Vacant Housing Units, For Rent, 2010	Vacant Housing Units, Rented, Not Occupied, 2010	Vacant Housing Units, For Sale Only, 2010	Vacant Housing Units, Sold, Not Occupied, 2010	Vacant Housing Units, For Seasonal, Recreational, or Occasional Use, 2010	Vacant Housing Units, All Other Vacants, 2010	Homeowner Vacancy Rate (Percent), 2010 [8]
2,885,677	2,620,076	265,601	72,112	4,877	41,417	7,623	89,907	49,665	2.4

Rental Vacancy Rate (Percent), 2010 [9]	Occupied Housing Units, 2010	Owner-Occupied Housing Units, 2010	Renter-Occupied Housing Units, 2010	Population in Owner-Occupied Housing Units, 2010	Population in Renter-Occupied Housing Units, 2010	Average Household Size of Owner-Occupied Units, 2010	Average Household Size of Renter-Occupied Units, 2010
7.0	2,620,076	1,673,920	946,156	4,363,398	2,221,767	2.61	2.35