No. 95861-1

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Estate of
TAYLOR GRIFFITH
Deceased.

KENNETH GRIFFITH and JACKIE GRIFFITH

Petitioners,

v.

BRADLEY J. MOORE,
in his capacity as personal representative,

Respondent,

and

MICHAEL B. KING;
CARNEY BADLEY SPELLMAN, P.S., *et al.*,

Lawyer Appellants/Petitioners.

LAWYER APPELLANTS' JOINDER IN MOTION FOR JOINT CONSIDERATION OF PETITIONS FOR REVIEW

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I. INTRODUCTION

Two petitions for review are pending in this Court, in two appeals that arise from the same litigation and mainly involve the same parties. Although Division One of the Court of Appeals issued its decisions in the two appeals on different dates, the appeals were heard back to back and were decided by the same panel. The appeals also share multiple common issues, including whether or when it is appropriate to distinguish between an estate and its appointed personal representative. The Court of Appeals decided that question inconsistently.

Michael B. King, Carney Badley Spellman, P.S., Jacquelyn A. Beatty, and Karr Tuttle Campbell ("Beatty and King") filed their petition for review in May 2018 (following an unsuccessful motion for reconsideration), seeking review of the decision in their appeal, issued in March 2018. Kenneth and Jackie Griffith joined that petition for review, which is presently set for consideration on September 4, 2018. The Griffiths then filed their petition for review on August 29, 2018, seeking review of the decision in their appeal, issued in July 2018.

The Griffiths have moved for joint consideration of the two petitions for review. Beatty and King now join that motion. Beatty and King request that this Court defer consideration of Beatty and King's petition so that the Court may consider the two petitions together and decide whether it should grant review in one or both appeals.

II. AUTHORITY AND ARGUMENT

As discussed in Beatty and King's Petition for Review, the issues in their appeal include whether they acted reasonably in distinguishing between the Estate of Taylor Griffith and the Estate's personal representative, Bradley Moore, for purposes of legal representation.

Beatty and King formerly represented the Estate's beneficiaries—the decedent's parents, Kenneth and Jackie Griffith—including in their effort to remove Moore as the Estate's personal representative for breaches of fiduciary duties and conflicts of interests. The trial court disqualified Beatty and King because they had announced in court that they represented the "Estate." The trial court ruled that Beatty and King's announcement could only be taken as meaning that they represented Moore and thus had a disqualifying conflict of interests.

Beatty and King appealed their disqualification. The Griffith Parents joined that appeal. In its published decision on the merits, the Court of Appeals held that it was "untenable" for Beatty and King to view Moore and the Estate separately for purposes of identifying their client:

> The appellants argue that the "estate" was their client but Moore was not. This argument is untenable. In probate, the attorney-client relationship exists between the attorney and the personal representative of the estate. *Trask v. Butler*, 123 Wn.2d 835, 840, 872 P.2d 1080 (1994). ***"There is no agency or individual other than the official 'personality' of the administrator or executor which can be pointed to as the 'estate.'"*** *In re Estate of Peterson*, 12 Wn.2d 686, 730, 123 P.2d 733 (1942).

Stefanie Harris, et al. v. Kenneth Griffith, et al., no. 75246-4-I, Slip Opinion at 9-10 (March 5, 2018) (published opinion by Becker, J., with Dwyer and

Shindler, JJ.) (emphasis added). The Court of Appeals thus held that one could not distinguish between the Estate and Moore as a personal representative for any purpose.

After disqualifying Beatty and King, the trial court denied the Griffith Parents' petition to remove Moore as the personal representative of their son's estate. The Griffith Parents appealed. The decision was affirmed by the same panel that decided Beatty and King's appeal. *In re Estate of Taylor Griffith*, no. 75440-8-I, Slip Opinion (July 30, 2018) (unpublished opinion by Schindler, J., with Dwyer and Becker, JJ.).

In deciding that Moore did not breach his fiduciary duty by threatening to sue the Griffith Parents, the Court of Appeals reasoned that Moore as personal representative was a "third part[y]"—separate and apart from the Estate itself—and could thus pursue contribution claims against the Griffith Parents premised on parental negligence, even though the doctrine of parental immunity would have barred the decedent himself from pursuing such claims if he were alive.[1] *Id.* at 20 ("Second, the parental immunity doctrine does not bar or limit the parents' liability to *third parties*." (Emphasis added.)).

The notion that Moore could be considered a third party with respect to the Estate conflicts with the Court of Appeals' holding in Beatty and King's appeal that it was "untenable" to distinguish between Moore and the

[1] *See Baughn by Baughn v. Honda Motor Co.*, 105 Wn.2d 118, 119-20, 712 P.2d 293 (1986) (disallowing contribution action by minor tortfeasor against parents for negligent supervision); *see generally Wooldridge v. Woolett*, 96 Wn.2d 659, 662-63, 638 P.2d 566 (1981) (recognizing that Washington's survival statutes do not create rights of action but rather preserve causes of action that the decedent could have maintained had he not died).

Estate. Among other things, the notion that Moore could be considered a third party with respect to the Estate also renders more than reasonable the belief of Beatty and King that they could claim to represent the Estate without representing Moore.

III. CONCLUSION

The Court of Appeals has issued decisions that are in conflict with each other on an issue that is fundamental in both appeals. This Court should consider the petitions for review in these two related appeals together.

Respectfully submitted this 30th day of August, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 30th day of August, 2018.

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August 30, 2018 - 11:31 AM

Transmittal Information

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