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' REPLY IN SUPPORT OF MOTION FOR JOINT CONSIDERATION OF PETITIONS FOR REVIEW

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I. REPLY ARGUMENT

A. Petitioners ask this Court not to consolidate appeals, but merely to consider two petitions for review at the same time.

A premise of the Harris Creditors' answer is that the Petitioners in the two appeals ask this Court to "consolidat[e] review" of the Court of Appeals' decisions and that the Court of Appeals previously declined to consolidate the appeals.[1] That is not so.

In the Court of Appeals, Petitioners moved to "link" the two appeals "for purposes of oral argument."[2] Contrary to the Harris Creditors' assertion, the Court of Appeals did not "refuse[]" that request. Although the Court initially "denied" the motion on the basis that "[l]inking appeals for consideration is an internal decision of the Court,"[3] the Court ultimately set the cases for oral argument on the same day—precisely the relief Petitioners requested.[4]

Petitioners request similar relief now. They ask simply that this Court consider the petitions for review in the two appeals on the same day. Doing so makes sense for the same reasons it made sense for the Court of Appeals to hear oral argument on the same day: the cases involve essentially the same facts and overlapping issues.

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[1] Opposition at 2.

[2] Motion to Link (May 16, 2017).

[3] Letter Ruling Denying Motion to Link (August 7, 2017).

[4] Letters Setting Oral Argument in COA No. 75246-4-I and 75440-8-I (October 27, 2017).

B. The two appeals have common facts and issues.

The Harris Creditors are correct that the Court of Appeals decided different issues in the two appeals. But again, there is also significant overlap between the facts and issues in both. They involve essentially the same factual record. And the outcomes of the cases were, or should have been, interdependent. For instance, the Harris Creditors and Moore argued in both appeals that the Griffith Parents had a conflict of interests with their son's estate because the Estate supposedly had potential claims against them.[5] Thus, an issue of significance in both cases was whether Moore as personal representative had potential, non-frivolous claims to assert against the Griffith Parents. That issue is now before this Court in considering the petitions for review.

Moreover, as pointed out in the Motion and Joinder and pertinent to the determination whether to accept review, the Court of Appeals reached inconsistent conclusions as to whether Moore could ever reasonably be distinguished from the estate he represents.

Without explanation, the Harris Creditors deny that the Court of Appeals reasoned that Moore as personal representative was, unlike the Estate, a "third party" with respect to the Griffith Parents.[6] There is no other reasonable reading of the Court of Appeals' decision. In analyzing whether Moore breached fiduciary duties by threatening to sue the Griffith Parents, the court analyzed whether the parental-immunity doctrine would bar any

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[5] *See, e.g.,* Brief of Respondent Harris Creditors (75246-4-I) at 27-28; Brief of Respondent Harris Creditors (75440-8-1) at 25-27.

[6] Opposition at 5.

claim Moore as personal representative against the Griffiths for contribution. *Slip Op.* at 20. In finding that the doctrine would *not* bar such a claim, the Court reasoned that "the parental immunity doctrine does not bar or limit the parents' liability to third parties." *Id.*

Taylor Griffith indisputably could not seek contribution against his parents, *see Baughn by Baughn v. Honda Motor Co.*, 105 Wn.2d 118, 119-20, 712 P.2d 293 (1986), and his Estate has only the causes of action he could have maintained had he not died. *See Wooldridge v. Woolett*, 96 Wn.2d 659, 662-63, 638 P.2d 655 (1981). Thus, when it reasoned that a contribution action by the Estate against the Griffith Parents would not be barred because "the parental-immunity doctrine does not bar or limit the parents' liability to third parties," the Court of Appeals could only have been distinguishing between the Estate, which has no rights against the Griffith Parents, and Moore, a purported "third party."

As explained in the Lawyer Appellants' joinder, that conclusion conflicts with the Court of Appeals' conclusion in their appeal that it was "untenable" for them to distinguish between Moore and the Estate for purposes of representation.

II. CONCLUSION

This Court should defer consideration of the Lawyer Appellants' petition for review and consider the two petitions for review together.

Respectfully submitted this 31st 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 31st day of August, 2018.

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Patti Saiden, Legal Assistant

CARNEY BADLEY SPELLMAN

August 31, 2018 - 3:10 PM

Transmittal Information

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