97124-2

Appellate No.777408
SUPREME COURT
OF THE STATE OF WASHINGTON
Superior court No. 16-4-00659-4

In Re: Estate of Margaret Rai-Choudhury:
Deceased

Stephanie Inslee, Steven Avery, Shepherd and Allen,
Respondent,
V.
Khashon Haselrig, Petitioner,

Petition for Review

Khashon Haselrig
809 NW 153rd Terrace
Edmond Oklahoma 73013
405-618-2722

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SUPREME COURT OF THE STATE OF WASHINGTON

In The Matter of the Estate of MARGARET RAI-CHOUDHURY	No 77740-8 Petition for Review May 6, 2019

1. Identify of Moving Party
Khashon Haselrig, appellant asks for the relief designated in Part 2.

2. Statement of Relief Sought
Vacate judgement of Court admitting the copy of a lost or destroyed will without notice, hearing, or evidence. Vacate the judgement disinheriting the heir to 98% of probate assets and only blood relative of the decedent named in her currently probated will. App A.

3. Facts Relevant to Petition

Margaret Raichoudhury died November 25, 2016 CP(9). Roughly one year before her death she altered previous will after becoming paranoid someone was tampering with it, according to police report CP(234), after being admitted to the hospital for infection.

Remade will had 3 beneficiaries, Mr. Haselrig, UBC, and Linda Borland. 98% of assets were left to Mr. Haselrig because UBC's portion was deducted by receipt of non-probate assets CP(13) which made up the majority of the decedent's assets. Linda Borland entitled to $10,000 or roughly 2% of the probate assets CP(13, 153). It also named Stephanie Inslee as personal representative, though she has never met decedent.

Steven Avery, the lawyer that drafted Margaret's last known and now missing will did not inform any family members of her death, that the will he drafted for her could not be found, nor the contents of that missing will. Mr. Avery admitted a copy of the lost or destroyed will to probate without notice to any interested party Dec 19, 2016 CP(28). Stephanie Inslee, then represented by Mr. Avery, avoided acting as a moving party to prove her lost will was not intentionally revoked as required by statute and common law, further established in Estate of Bowers, 132 Wn. App. 334, 343 (Wash. Ct. App. 2006). She received non intervention powers for a lost/destroyed will without a hearing or bond. Mr. Haselrig pointed out anomalies in valuation and disposal of assets to the probate court, including allowing a cat to be killed and unwanted cremation CP(437).

Steven Avery did not inform Indira Raichoudhury that only a copy will existed and that the original will had been lost. Steven Avery did not apprise any interested parties of their rights given the circumstances in this case were of a lost will before he already admitted the copy to probate CP(201). No documentation exists or was provided that Steven Avery informed anyone the original will was lost or destroyed ***prior*** to admitting it to probate ex parte on Dec 19, 2016 CP(28, 35, 39).

The Feb 10, 2017 Probate Court, when asked if it was a "…final hearing" stated "No…" SA(Feb 10, 2017 pg 25). Stephanie Inslee never

acted as moving party as a proponent of the copy of the lost/destroyed will SA(Feb 10, 2017 pg. 15-16, 19) CP(138, 352) App (L, M) and no finding of fact occurred CP(56) with respect to revocation of the lost or destroyed will now being probated. Mr. Haselrig does not take any financial benefit if the copy of the lost or destroyed will is not probated CP(13).

Mr. Haselrig brought a second motion because the issue of notice wasn't specifically addressed following his initial motion in the Feb 10, 2017 order (and Armstrong v. Manzo 380 U.S. 545, 550 (1965) required the motion be granted). Stephanie Inslee sought to disinherit Mr. Haselrig after that second motion, despite the fact he was the only blood heir in the will and bequeathed with nearly 100% of assets CP(13).

Will incorrectly names Mr. Haselrig as a minor and offers provisions for higher education CP(14), at the time the will was *drafted* in 2015 he was a college graduate and employed as an airline pilot. Counsel for Stephanie Inslee falsely asserted to the Court a hearing took place prior to Feb 10, 2017. This is incorrect, Mr. Haselrig acted as the moving party the first time argument of any kind was presented to the Court, and that was on Feb 10, 2017 SA(Feb 10, 2017 pg. 15) CP(56).

4. Grounds for Relief and Argument

A. Issues Presented for Appeal

Did the Court err in determining a party proffering a lost/destroyed will does not ever need to act as a moving party or in any way participate in a fact finding hearing to prove their will was unintentionally lost or destroyed, thus departing from all previous published decisions? (Pg. 5-10)

Did the court err in ignoring the precedent set by Armstrong v. Manzo 380 U.S. 545, 550 (1965) by determining a motion which is not granted can substitute for legal notice or a requisite hearing, such that it departs from the decision of the U.S. Supreme Court? (Pg. 5-10)

Did the Court err in ignoring the precedent set by Armstrong v. Manzo 380 U.S. 545, 550 (1965) by determining the burden of proof can be reversed from statute and established standards found in Estate of Bowers, 132 Wn. App. 334, 343 (Wash. Ct. App. 2006), thus conflicting with the U.S. Supreme Court and Division I? (Pg. 6-8)

Did the Court err denying the voidability of decisions that fail to adhere to statutorily defined notice, such that it conflicts with Division 1 in Estate of Little and Estate of Hesthagen? (Pg. 10-14, 17-20)

Did the Court err in concluding that a will contest can occur without a finding of fact as to the reason for a lost/destroyed will's disappearance or touching any of the provisions outlined in RCW 11.24.010, thus departing from Division I in Estate of Little, 127 Wn. App. 915, 922 (Wash. Ct. App. 2005)? (Pg. 10-14)

Did the Court err in concluding an in terrorem clause can be applied to Mr. Haselrig for correcting a statutory failure without finding he acted in bad faith or made any false statements, thus damaging public policy? (Pg. 14-20)

Argument

Mr. Haselrig's understanding of the Court's decision is as follows, and it is by this understanding he seeks redress. The Court considers Mr. Haselrig to have attempted a will contest and that this case is not comparable to In re Estate of Little, 127 Wn. App. 915, 920, 113 P.3d 505

(2005) because the complaint has been initiated while the probate is open. It is unclear if the Court believes Steven Avery somehow gave statutorily required notice since he never conducted the required hearing under RCW 11.20.070 and 11.96A.110, or if it believes the motion to correct the notice defect on Feb 10, 2017 cured the infirmity in due process. Either way the Court regards the Feb 10, 2017 motion as a will contest hearing which it finds generally similar to other will contests.

B. "[I}f a party contests the admission of the will to probate, generally that same party may not file a later will contest."

Generally this is true, but this is a special case, possibly of first impressions in Washington. The opposition seeks to argue "that whatever constitutional infirmity resulted from the failure to give the petitioner notice had been cured by the hearing subsequently afforded to him upon his motion to set aside the decree. 371 S.W.2d, at 412." Armstrong v. Manzo 380 U.S. 545, 550 (1965) The Supreme Court finds "We cannot agree." Id at 551. In Armstrong the petitioner in that case failed to appeal the denial of his motion against defective notice but got a separate hearing at a later date to call witnesses and give depositions Id at 548, not even that occurred here. Here the Feb 10, 2017 motion initiated by Haselrig was (apparently) expected to produce all relevant declarations and testimony at that moment, to be judged with burdens of proof reversed from statute.

Generally the party presenting a lost or destroyed will utilizes the correct procedure set forth in RCW 11.96A.110/ 11.20.070, which Steven Avery failed to do here. “Instead, the petitioner was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge, based upon a finding of […]another judge.” Armstrong v. Manzo 380 U.S. 545, 551 (1965). On Feb 10, 2017 Mr. Haselrig, joined by Indira, motioned the Court recognize the copy of the missing/destroyed will was admitted without hearing or notice on Dec 19, 2016 CP(56). He also motioned the Court to recognize that Mr. Avery’s Dec 19, 2016 petition stating only “The original will has not yet been located” CP(29) App (I) was not commensurate with the standards of proof found in Bowers at 343 (Wash. Ct.App. 2006). Thus Haselrig motioned that the Dec 19, 2016 order be vacated and the estate proceed intestate as a matter of law until legally proven otherwise CP(56).

It is an incontrovertible fact that Stephanie Inslee has never acted as the moving party SA(Feb 10, 2017 pg 15-16, 18) CP(138, 352) App (L, M) nor has she been required “to prove [a lost or destroyed will] was not revoked” Bowers 343. “Had the petitioner been given the timely notice which the Constitution requires, the [respondents], as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed. See Jones v. Willson, 285

S.W.2d 877; Ex parte Payne, 301 S.W.2d 194."Armstrong v. Manzo 380 U.S. 551. In this case 20 days prior notice required in RCW 11.96A.110 was reduced to not even 24 *hours* as spurious claims were made at the Feb 10, 2017 proceeding SA(pg 14) and heirs and beneficiaries did not even have time to prepare declarations which could have challenged assertions, because the theory of unintentional destruction required by statute and confirmed in Bowers at 343 was never given Transcript Feb 10, 2017 pg. 10. Only affidavits of execution were given App (I). Nor were such documents appropriate at a motion concerning a basic matter of law.

Likewise the burden of proof for lost or destroyed wills was reversed as though the copy of the missing will had already been legally proven. Instead of adhering to established case law in Bowers at 343 "the statute requires the proponent of a lost or destroyed will to prove it was not revoked" the Feb 10, 2017 Court instead found "[n]o evidence has been submitted to this Court that the . . . Will was lost or destroyed under circumstances *such that the loss or destruction had the effect of revoking the will*…"(emphasis added) CP(138). "The burdens thus placed upon the petitioner were real, not purely theoretical. For 'it is plain that where the burden of proof lies may be decisive of the outcome.' Speiser v. Randall, 357 U.S. 513, 525. Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution."

Armstrong at 551 (1965). A person doesn't first prove they are innocent, and people don't first prove a missing will is revoked, both are assumed by law. Affidavits of execution don't explain *why* the will is missing.

"A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner *only by granting his motion to set aside the decree and consider the case anew*. *Only* that would have wiped the slate clean. *Only* that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the *first place*. ***His motion should have been granted***." Armstrong v. Manzo380 U.S. 545, 551 (1965)(emphasis added)

i. Why This is Not a General Case

The Court correctly notes "[I}f a party contests the admission of the will to probate, generally that same party may not file a later will contest." However it is not *generally* required to have a proceeding to correct a due process failure, prior to the actual finding of fact required to admit a lost or destroyed will to probate under the RCW, as was attempted here. In Estate of Black153 Wn. 2d 152, 159 (Wash. 2004) they examined witnesses and whether or not they remembered meeting the decedent, same with In re Hall's Estate 34 Wn. 2d 830 (Wash. 1949), that didn't

happen on February 10, 2017 or ever with respect to will destruction and revocation. Even in Armstrong v. Manzo they set a later hearing after the motion to call witnesses and take depositions, but that was *still* ruled unconstitutional. *Generally* the hearing admitting a lost will is a finding of fact directly concerning the submitted copy and the proponent of a lost or destroyed will is the moving party Bowers at 343, that wasn't the case here CP(56). At the same time, generally there is likely not a specific statement by the presiding judge that the proceeding is not final as occurred in this case App (N).

Transcript February 10, 2017 page 25

MS. COPPINGER CARTER: You feel the burden was met by -- I just want to clarify because, obviously, this is not the final hearing.

THE COURT: **No. I understand you'll be back on a TEDRA or something.**

It is not reasonable to disregard the statement of that same Court that the decision is not final while also accepting its ability to nullify notice statutes and reverse burdens of proof.

The problem is the lost or destroyed will was admitted by *avoiding* the required hearing at the point of admission on Dec 19 2016 CP(28, 39, 35-36), and the first time interested parties appeared in court it was in a motion on Feb 10, 2017 to alert the Court to the failure of due process in

admitting the lost or destroyed will without a hearing or evidence, not to find fact as to whether the will was destroyed with intent to revoke or not CP(56). The statement of Stephanie Inslee's counsel at that proceeding:

"So first, they have presented no declarations, no affidavits, no facts to support their arguments and their pleadings." SA (Feb 10, 2017 pg 10)

"…there is no dispute and they've not even tried to argue that this is not her last will that was executed…"SA (Feb 10, 2017 pg 17)

Inslee states in her appellate response pg. 27 "Haselrig provided no evidence or argument that the copy filed was not a true and correct copy of the original."

Without a finding of fact there can be no will contest, if a contest occurs, it must still comply with the burdens set forth by statute, anything less leaves "a jurisdictional defect as to [beneficiaries], rendering the decree of distribution void." Hesthagen v. Harby 78 Wn. 2d 934, 942 (Wash. 1971)(internal citations omitted).

C. Finch Compared to Little

Let us first examine In re Estate of Finch, 172 Wn. App. 156, 162, 294 P.3d 1 (2012) and the points relevant to the Court as well as any other salient characteristics.

In Finch a doctor directly attacked the will based on testamentary capacity of the executor to draft a will Id(162-164), Haselrig did not. In Finch that doctor directly attacked the execution of a will by stating necessary witnesses were never there Id at 162-164, Haselrig did not. In Finch the same doctor was not a beneficiary of the will Id at 162-164, Haselrig is CP(13). In Finch the doctor stood to profit by invalidating the will Id at 163, Haselrig does not. In Finch three separate examples are given where the will is directly attacked Id at 162-164, here there is not even one. In Finch it would prevent a malpractice suit against the will challenger Id at 163, while Mr. Haselrig stands to gain nothing *if* the lost or destroyed will is not proven according to statute and the common law standard in Estate of Bowers, 132 Wn. App. 334, 343 (Wash. Ct. App. 2006). Haselrig didn't try to say the execution witnesses *never* validated the will like in Finch, he said that execution affidavits don't preclude destruction and presumption of revocation afterwards based on statute Bowers at 343. Finch occurred during an open probate but that wasn't relevant to concluding it was a will contest. The Court specifically declined to address timing at all. "[W]e need not address the timing issue." Id at 164.

In re Estate of Little, 127 Wn. App. 915, 920, 113 P.3d 505 (2005) the personal representative failed to notify heirs according to statute, the

same applies here CP(No documents prior to ex parte lost will admission Dec 19, 2016). In Little beneficiaries wanted to restart the probate so it could proceed *fairly* according to law Id at 919, the same applies here CP(56). In Little they sought to replace the personal representative Id at 919, the same applies here CP(56). In Little no finding of fact occurred as to whether the testator destroyed and revoked a will Id at 919, the same applies here CP(No documents of any fact finding hearing explaining why will was missing). Unlike Little this matter is brought prior to close of the probate, but Mr. Haselrig does not see where that is given as the actual reason Little does not consider the complaint a will contest, and no specific statement from Little appears to support that inference. Likewise Finch didn't conclude the doctor was attacking the will because it was "prior to the closure of probate, so his motion must be considered a will contest." Court opinion (Feb 25, 2019) App (F). Otherwise RCW 11.24.010 could be rewritten more simply as "Attempts to invalidate a will are any complaints prior to close of a probate." It doesn't appear any case law is present to support that inference.

i. Will Invalidations and Contests

Looking at what constitutes invalidating a will under RCW 11.24.010 "Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the

last will and testament under restraint or undue influence or fraudulent representations…" The common thread is that all attacks or attempts to invalidate a will require a finding of fact directly concerning the will. Once found true it would require the impossible redrafting of a will after the testator is already dead to correct, invalidating it. In the case at bar, the lost or destroyed will could be admitted after removal from probate because the defect is *not* in the copy will or its drafting CP(56) but in the failure of due process in the probate Court itself. Failure to force "the proponent of a lost or destroyed will to prove it was not revoked" Bowers at 343 CP(56). It's a complaint about admission method, not the copy will.

No finding of fact with respect to the revocation or validity of the will or testator was considered in Little or the case at bar, ergo neither can be will contests. "The court said, "all I'm going to do is appoint the [personal representative] . . . and you go where you will go from there." Little at 919.

In Finch specific arguments were quoted to prove intent to invalidate Finch at 162-164. Here there is no direct citation of argument proving Mr. Haselrig attacked any items under RCW 11.24.010, and multiple statements that declarations are not even present at an alleged fact finding hearing SA(Feb 10, 2017 pg 10), and overt statements the copy is not itself under attack SA(Feb 10, 2017 pg. 17), yet Haselrig is accused of

attempting to contest a lost/destroyed will only because his complaint occurred during an open probate. This is outside the scope defined by RCW 11.24.010, and no argument is made in Finch or Little that a will contest is defined as a complaint carried out during an open probate.

After Feb 10, 2017 Res judicata was incorrectly invoked CP(352) to prevent any finding of fact as to whether or not the will was destroyed with intent to revoke, a point which was not and has never been argued. No proof a finding of fact took place with respect to revocation has been provided, and Stephanie Inslee has never acted as a moving party or had to act as "the proponent of a lost or destroyed will to prove it was not revoked." Bowers at 343. If a will contest may somehow legally occur without following statute, certainly a will contest cannot have occurred without a fair finding of fact and without determinations of credibility of witnesses or theories of unintentional destruction. If it can Mr. Haselrig is not aware of any such case law besides the precedent this case will set.

D. Public Policy

Public policy can be defined as the general principles by which a Government is guided that operate to benefit the general welfare or the individual welfare. Acts are against public policy if they intend to promote breach of the law, the policy behind the law, or to harm the state or its citizens.

Asking the Court to force compliance with the law is not in itself a will contest, but even if this Court finds it is, then allowing that to trigger an in terrorem clause stands in direct contravention to the public policy principles of enforcing the laws as written and upholding due process.

The Washington State Constitution states that the US Constitution is the "Supreme Law of the Land" and mandates that justice shall be administered "openly." Section 32 of the Washington Constitution states, "A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of a free government." Mr. Haselrig would ask this Court recognize the case of Parker v. Benoist 160 So. 3d 198, 204 (Miss. 2015) which references both Washington case law and numerous other jurisdictions some of which have adopted the Uniform Probate Code. It gives an extremely comprehensive thesis on the rights of beneficiaries and the roles of in terrorem clauses.

> "If they are forced to remain silent, upon penalty of forfeiture of a legacy or devise given them by the will, the court will be prevented by the command of the testator from ascertaining the truth, and the devolution of property will be had in a manner against both statutory and common law. Courts exist to ascertain the truth and to apply it to a given situation, and a right of devolution which enables a testator to shut the door of truth and prevent the

observance of the law is a mistaken public policy." Citing South Norwalk Trust Co. v. St. John, 92 Conn. 168, 101 A. 961, 963 (1917)

"Allowing a good-faith and probable-cause exception would impose no higher burden on chancery courts to ascertain the truth and intentions of the parties. Additionally, '[t]o protect and enforce property rights is the object of equity....' For a court of equity to protect and enforce property rights, it must be able to hear disputes regarding those rights. Without a good-faith exception to forfeiture clauses, the testator's will would frustrate the very object of equity. This cannot be allowed." Parker v. Benoist 160 So. 3d 198, 204 (Miss. 2015) (internal citations omitted). Based on Parker v. Benoist which references Chappell's Estate, (1923) we can identify two intertwined concepts, good faith and probable cause.

i. Good Faith

"The plaintiff presented no evidence of bad faith. Filing the suit was not "a mere vexatious act" but was based on honest conviction." Parker v. Benoist 160 So. 3d 198, 207 (Miss. 2015)(internal citation omitted). Mr. Haselrig once more points out no discernible argument has yet been made that he acts in bad faith. No statements he has provided have been demonstrated to be false. He objectively loses money if he succeeds and the missing or destroyed will is not proven according to law.

What possibly is the argument for Mr. Haselrig to in bad faith confound payment to *himself* as nearly sole heir CP(13) under the lost/destroyed will? Stephanie Inslee neither argued nor supported any issue of bad faith against Haselrig.

"A forfeiture provision that acts regardless of a will contestant's good faith would frustrate the right of that citizen to access the courts and have a court determine whether he was injured and whether he is entitled to a remedy." Parker v. Benoist 160 So. 3d 198, 206 (Miss. 2015)

ii. Probable Cause

A judgement will be vacated and beneficiaries who know they received bequests unfairly (without *statutorily* required notice to all interested parties specifically) hold their assets, even years after probate closure Little at 919, in trust as third persons. In this case Mr. Haselrig's bequests would be endangered if Indira, the decedent's daughter, or any other interested party reclaimed their constitutional rights as manifested in statute.

"Where a fiduciary in violation of his duty to the beneficiary transfers property or causes property to be transferred to a third person, the third person, if he gave no value or if he had notice of the violation of duty, holds the property upon a constructive trust for the beneficiary." Hesthagen v. Harby 78 Wn. 2d 934, 945 (Wash. 1971)

"In light of Hesthagen, there would be "a perpetual cloud on the property inherited by the four heirs who did participate in the administration." Walker, 10 Wn. App. at 930. We directed the reopening of the estate so that the 16 legatees could have an opportunity to challenge the order of distribution. Walker, 10 Wn. App. at 931-32." Little at 922.

Mr. Haselrig is compelled by Hesthagen at 942. "Since plaintiffs were not notified in conformity with the mandatory provisions of the statutes and rule, and were not otherwise timely informed of the probate proceedings, they were denied procedural due process. Such a deprivation amounts to a jurisdictional defect as to them, rendering the decree of distribution void."(internal citations omitted)

A ruling that is further compounded by the Supreme Court ruling "The Texas Court of Civil Appeals[…]held, in accord with its understanding of the Texas precedents, that whatever constitutional infirmity resulted from the failure to give the petitioner notice had been cured by the hearing subsequently afforded to him upon his motion to set aside the decree. 371 S.W.2d, at 412. We cannot agree." Armstrong v. Manzo 380 U.S. 545, 551 (1965). Even where the corrective motion's failure was not appealed and resulted in a completely separate fact finding hearing, it was still ruled that hearing was unconstitutional by virtue of reversing moving and nonmoving parties. Just as occurred here CP(138)

App (G), without even having a fact finding hearing separate from the Feb 10, 2017 corrective motion.

> "The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." Id 552

Since there is by obvious observation of the record no notice prior to the copy of the lost/destroyed will being admitted to probate on December 19, 2016 CP(28), and also no hearing CP(35, 39), and RCW 11.20.070 and 11.96A.110 plainly require 20 days prior notice of a hearing wherein proponents of a lost/destroyed will act as moving parties, a reasonable person might ascertain "[interested parties] were not notified in conformity with the mandatory provisions of the statutes and rule, and were not otherwise timely informed of the probate proceedings, they were denied procedural due process." Hesthagen at 942. The well established laws of due process and notice being a requisite part of legal finality as affirmed by the Supreme Court in Armstrong and in the state of Washington in Little, and Hesthagen, it would lead a reasonable person to expect an error which either deleted an otherwise required fact finding

hearing or reversed moving and non-moving parties and the burden of proof CP(138) App (G) to be vulnerable to harsh correction at any time.

The Supreme Court decision in Armstrong v. Manzo sets a clear distinction that notice failures are unique and cannot shift to adequate notice as a fact of the case merely by hearing the complaint, because notice failures specifically create jurisdictional defects and *void* judgements Hesthagen at 945. To consider otherwise is to allow gamesmanship to overthrow a fundamental tenet of law and fairness, the antithesis of public policy.

"[I]t logically follows that in the event of a later challenge based on lack of notice, the executor will have the burden of showing that he used reasonable diligence to discharge his duty. Otherwise […]sense of fiduciary duty might easily give way to a temptation to conduct a superficial search or none at all." Estate of Little at 925

"[I]n limited circumstances the interest of finality "must yield to concerns of justice and fairness." Pitzer, 141 Wn.2d at 551." Id at 920.

May 6, 2019

Respectfully submitted,

Khashon Haselrig
Signature

Khashon Haselrig, pro se
809 NW 153rd Terrace
Edmond Oklahoma 73013
405-618-2722

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Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Estate of	No. 77740-8-I
MARGARET RAI-CHOUDHURY	UNPUBLISHED OPINION
	FILED: February 25, 2019

APPELWICK, C.J. — Khashon Haselrig argues the trial court erred when it determined he violated a no contest clause in his grandmother's will. As a result, he was disqualified from inheriting from her estate. We affirm.

FACTS

In July 2015, Margaret Rai-Choudhury met with attorney Steve Avery to prepare a will and other estate documents. She was 82 years old and recently had filed for dissolution from her husband, Prosenjit Rai-Choudhury. Margaret executed her will on July 21, 2015. It was attested by two witnesses. Both witnesses declared that Margaret appeared to be of sound mind and under no duress or undue influence.

The will declared that it was Margaret's intention to leave none of her property to Prosenjit or to their only child, Indira Rai-Choudhury. Instead, she made a specific bequest of $10,000 to Linda Borland. Of the probate estate residue, she left half to the University of British Columbia and half in trust for her grandson, Khashon Haselrig. She also included a no contest provision in her will, whereby a beneficiary who contests the will loses his or her interest in the estate. Margaret named Stephanie Inslee, a professional guardian, as her personal representative. Margaret had no later contact with

Avery to modify or revoke her will or other estate planning documents. The combined value of her assets was approximately $1,877,000. The bulk of her assets were nonprobate assets.

Margaret died on November 25, 2016. Inslee arranged for the body to be cremated, and the cremation was performed on December 6. The same day a neighbor notified Indira of Margaret's death. Khashon was at dinner with Indira when she found out. Indira called Avery on December 8, 2016. Avery informed her that he did not have the original will and would be filing the probate soon. Upset about the cremation and perceiving inaction on the estate, she began e-mailing with Avery and Inslee.

Unable to locate Margaret's original will, Avery filed a copy with Whatcom County Superior Court. He and the two witnesses to the will attested that it was a true and correct copy. On December 19, 2016, the court admitted the will to probate and appointed Inslee as personal representative.

On January 4, 2017, Avery e-mailed Indira asking for Khashon's address and telephone number. Indira responded that Khashon lived with her and that she would show him the e-mail. The will and probate documents were sent to Khashon by e-mail on January 7 and by mail on January 18, 2017.

On January 25, Khashon filed a motion for removal of the personal representative, appointment of a new personal representative, and revocation of testate probate. He argued that the will copy should not have been admitted to probate. He argued Inslee violated RCW 11.20.070, because she failed to prove that the will was not intentionally revoked and failed to provide required notice to interested parties before admitting the will to probate. Indira joined the motion.

At the hearing on February 10, 2017, Khashon's counsel argued that Inslee "need[s] to prove that she didn't intend to revoke her will. The will is lost, the law is clear on it, it's presumed to be revoked." Khashon's counsel further argued that "according, again, to the statute and to case law . . . Khashon was entitled to notice[prior to admitting the lost will to probate] so that they can bring to the court the issue that there was a lost will." The court denied the motion. The order stated that "[n]o evidence has been submitted to this Court that the . . . Will was lost or destroyed under circumstances such that the loss or destruction had the effect of revoking the will. . . . [It] should be admitted to probate." Khashon did not request reconsideration or appeal this order.

On June 19, 2017, Khashon filed a "motion to void fraudulent admission of copy will, removal of personal representative, obtain full accounting and impose sanctions." (Formatting omitted.) On August 22, 2017, he filed a "motion to strike defendants' responses and receive default judgment in favor of plaintiff's motion to void fraudulent admission of copy will, removal of personal representative, obtain full accounting and impose sanctions." (Formatting omitted.) On August 25, 2017, the court denied the relief that Khashon sought in both motions, because "[t]hat issue was raised earlier in front of the Court at the appropriate time, and the Court made findings with respect to . . . the issues related to notice." Khashon moved for discretionary review, which was denied.

On September 20, 2017, Inslee filed a motion for judicial determination, arguing that Khashon's actions violate the no contest provision in Margaret's will and bar him from receiving any property from her estate. The trial court granted Inslee's motion for judicial determination on November 3, 2017, barring Khashon from inheriting from Margaret's estate. Khashon appeals.

DISCUSSION

Khashon appeals the judicial determination barring him from inheriting under Margaret's will. Khashon also argues that the trial court erred in admitting the will to probate under RCW 11.20.070. He contends that his probate court litigation was procedural, so it did not violate the will's no contest provision.

"[P]roceedings where a will is being challenged are equitable in nature and are reviewed de novo upon the entire record." In re Estate of Black, 153 Wn.2d 152, 161, 102 P.3d 796 (2004). An interested person may contest the validity of a probated will within four months following the probate by filing a will contest petition with the court. RCW 11.24.010. Generally, no contest clauses in wills are enforceable in Washington. In re Estate of Mumby, 97 Wn. App. 385, 393, 982 P.2d 1219 (1999). The no contest provision in Margaret's will is expansive:

> If a beneficiary named under this Will or one of my beneficiaries at law shall in any manner contest or attack this Will or any of its provisions, then in such event any share or interest in my estate given or passing to such contestant is hereby revoked. . . . This paragraph shall not be construed to apply to any action brought in good faith to interpret a provision of this Will which may be unclear or ambiguous.

Khashon's argument that RCW 11.20.070 was violated and that the will was improperly admitted to probate was considered by the trial court and rejected in its February 10, 2017 order. "[I]f a party contests the admission of the will to probate, generally that same party may not file a later will contest. The party's only remedy is to appeal the order admitting the will." Black, 153 Wn.2d at 170. Khashon did not appeal that order. It became final. "A final order from which no appeal is taken becomes the law of the case." Tornetta v. Allstate Ins. Co., 94 Wn. App. 803, 809, 973 P.2d 8 (1999). We

therefore decline to consider Khashon's arguments that the will was improperly admitted to probate.[1]

On June 19, 2017, Khason filed a "motion to void fraudulent admission of copy will, removal of personal representative, obtain full accounting and impose sanctions." (Formatting omitted.) Khashon argues his pleadings were merely procedural and not a will contest.

"A court may treat a motion as a will contest, even where the petitioner styles it otherwise." In re Estate of Finch, 172 Wn. App. 156, 162, 294 P.3d 1 (2012). In Finch, a personal representative sued a physician for medical malpractice. Id. at 159. The physician moved to dismiss the suit on the basis that the will appointing the personal representative was fraudulent, and was granted leave to intervene in the probate. Id. at 159, 161. This court reversed the order granting the physician leave to intervene, reasoning that the physician lacked standing to bring a will contest. Id. at 167. "These allegations—that Finch lacked the capacity to make a will . . . that he had not signed the will, and that the will was not properly witnessed—are precisely what a court considers in a will contest under RCW 11.24.010." Id. at 163. Khashon's pleadings were a challenge to the admission and validity of the will. Under Finch, Khashon cannot circumvent the no contest provision by styling his attack on the validity of the will as a procedural motion.

Khashon cites In re Estate of Little, 127 Wn. App. 915, 920, 113 P.3d 505 (2005) in support of his argument that he did not initiate a will contest. In Little, unnamed heirs

[1] Khashon makes several additional assignments of error, but fails to support those with argument in the brief. "An appellate brief should contain argument in support of every issue presented for review, including citations to legal authority and references to the relevant parts of the record." Farmer v. Davis, 161 Wn. App. 420, 432, 250 P.3d 138 (2011). "Lacking either, we will not consider this issue." Id.

who were not notified of the decedent's death moved the court to appoint a new administrator six years after the estate was closed. Id. at 918-19. The appellate court declined to apply the limitations period in the will contest statutes, reasoning that this action was more akin to the law of vacating judgments. Id. ("The heirs have not yet brought a will contest and the trial court has therefore had no occasion to apply the law that governs will contests."). But, this case is more like Finch than Little. Like the physician in Finch, Khashon sought to invalidate a lost will prior to the closure of probate, so his motion must be considered a will contest regardless of its label.[2]

The trial court did not err in concluding that that "[t]he pleadings filed by, and arguments made by, Khashon Haselrig, repeatedly contested and attempted to invalidate the Decedent's Last Will and Testament. . . . [They] violate the No Contest provision of Decedent's Last Will." Khashon makes no allegation that the will contest provision is unclear or ambiguous.

We affirm.

WE CONCUR:

[2] Khashon also cites three Washington cases that examine whether no contest clauses are operable where an individual brings an action in good faith, or on public policy grounds: In re Estate Chappell, 127 Wash. 638, 221 P. 336 (1923); In re Estate of Kubick, 9 Wn. App. 413, 419, 513 P.2d 76 (1973); In re Estate of Primiani, No. 34200-0-III, slip op. at 11-15 (Wash. Ct. App. May 2, 2017)(unpublished), http://www.courts.wa.gov/opinions/pdf/342000_unp.pdf. But, Khashon does not make a discernable argument why he falls within safe harbor provision of the no contest clause, nor does he propose a public policy ground on which he attacks the will.

e. Declaration of Steve Avery, filed February 7, 2017;

f. Second Affidavit of Amanda Dykstra – Attesting Witness, filed February 7, 2017; and,

g. Second Affidavit of Melissa Sophusson – Attesting Witness, filed February 7, 2017.

02. No evidence has been submitted to this Court that the July 21, 2015, Will was lost or destroyed under circumstances such that the loss or destruction had the effect of revoking the will.

03. The July 21, 2015, Last Will and Testament of Margaret Rai-Choudhury should be admitted to probate.

04. The Letters Testamentary, granted to Stephanie Inslee on December 19, 2016, should not be revoked.

05. There is no cause shown for removal of Stephanie Inslee as Personal Representative of the Estate.

06. The further relief requested in the motion should be denied.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Haselrig's Motion for Removal of PR of Estate, Appoint New PR; Revocation of Testate Probate; and Issue Order, be, and hereby is, denied.

DONE IN OPEN COURT THIS 10 day of February 2017.

HONORABLE JUDGE MONTOYA-LEWIS

SHEPHERD AND ALLEN
ATTORNEYS AT LAW
2011 YOUNG STREET, SUITE 202
BELLINGHAM, WASHINGTON 98225
TELEPHONE: (360) 733-3773 ♦ FAX: (360) 647-9060
www.saalawoffice.com

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2016 DEC 19 AM 9:33
WHATCOM COUNTY
WASHINGTON
BY_____

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

In re the Estate of: MARGARET RAI-CHOUDHURY, Deceased.	No. 16 4 00659 4 ORDER: 1. APPOINTING PERSONAL REPRESENTATIVE; 2. ADJUDICATING ESTATE TO BE SOLVENT; AND 3. DIRECTING ADMINISTRATION WITHOUT COURT INTERVENTION AND WITHOUT BOND. Judge Deborra E. Garrett

Petitioner STEPHANIE INSLEE has filed with the Court a Petition for an Order Appointing Personal Representative, Adjudicating Estate to be Solvent, and Directing Administration Without Court Intervention and Without Bond. The Court, being fully advised in the premises, finds as follows:

1. MARGARET RAI-CHOUDHURY (hereinafter "Decedent") died a resident of Whatcom County, Washington, on November 25, 2016 leaving property in Whatcom County subject to probate.

AVERY ELDER LAW, P.S.
4200 Meridian St., Ste. 103
Bellingham, Washington 98226
(360) 325-2550 www.averyelderlaw.com

2. Decedent executed her Last Will and Testament on July 21, 2015, naming STEPHANIE INSLEE as Personal Representative of her estate. The original will has not yet been located. However, the Affidavit of Witnesses of Steven D. Avery, Amanda Dykstra and Melissa Sophusson, dated December 13 and 16, 2016 constitutes all of the testimony submitted in support of the Last Will and Testament of Decedent.

The offered Will of Decedent should be established as Decedent's Last Will and Testament and should be admitted to Probate.

4. Pursuant to RCW 11.28.120(2)(e), the Court finds that Petitioner is willing and qualified to act as Personal Representative of Decedent's estate. Petitioner shall be appointed to serve without bond.

6. Decedent was survived by the following heirs, legatees, and devisees:

Name and Address	Relationship	Age
Khashon Haselrig University of British Columbia	Grandson	Adult
Linda Borland	Friend	Adult

7. The assets of the estate exceed its liabilities, and the estate is fully solvent.

8. Decedent's estate is entitled to be administered without court intervention pursuant to RCW 11.68.011(1).

Based on the foregoing Findings, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

1. The offered Will is established as Decedent's Last Will and is admitted to probate;

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that list to conform to RCW 11.12.260 as a consequence of which the property listed thereon shall pass in accordance with such list.

ARTICLE 2
GIFTS

2.1 SPECIFIC BEQUESTS:

I give to LINDA BORLAND of Bellingham, Washington ten thousand dollars ($10,000.00).

2.2 ESTATE RESIDUE: I give, devise and bequeath the rest, remainder and residue of my estate, of whatsoever nature and wheresoever situated to the following:

Fifty percent (50%) shall pass to the Univeristy of British Columbia (UBC) to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor.

Fifty percent (50%) shall pass to the then-trustee of the KHASHON HASELRIG Grandchild's Trust for the benefit of my grandson KHASHON HASELRIG to be distributed pursuant to Article 3 below. If KHASHON HASELRIG does not survive me, his share shall pass to the Univeristy of British Columbia to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor. .

Accordingly, only for the purposes of determining the residuary distribution, if a beneficiary receives an amount outside of probate through a nonprobate distribution, that amount will be added to the total assets in my probate estate and that beneficiary's distribution of probate assets will be proportionately smaller than those beneficiaries who did not receive a nonprobate distribution. For example, in the event I had a life insurance policy of $10,000 naming "A" as a beneficiary and "A" and "B" were equal beneficiaries under my residuary clause with a net probate estate of $90,000, then "A" would receive the life insurance of $10,000 plus $40,000 from the probate estate and "B" would receive $50,000 from the probate estate.

ARTICLE 3
GRANDCHILD'S TRUST

3.1 GRANDCHILD'S TRUST: I give, devise and bequeath the rest, remainder and residue of my estate, of whatsoever nature and wheresoever situated, to STEPHANIE INSLEE of Inslee, Maxwell & Associates, as Trustee, *in trust*, under the terms and conditions and uses and purposes herein set forth.

A. The Trustee shall hold the trust estate as a separate trust for KHASHON HASELRIG so long as KHASHON HASELRIG is living. From the income and principal of the Trust, the Trustee may make discretionary distributions for the support, health and education of the minor beneficiary named herein.

B. Notwithstanding the above directions, within the limitations of the funds available and considering the requirements of the other beneficiaries and descendants, the Trustee is authorized to assist each beneficiary, regardless of age, in acquiring a college or trade school, and if desired, a professional education; provided that all distributions to or for any beneficiary for educational benefits exceeding the ordinary four year college course or its equivalent shall be charged without interest as an advancement against such beneficiary's share of any subsequent division of the trust as described in subparagraph C. below.

C. The Trustee shall distribute five percent (5%) of the principal and interest of the trust to KHASHON HASELRIG each year on January 1, or as soon thereafter as possible, until such time as no funds remain in the trust.

D. The following administrative provisions shall apply to this Trust:

1. Unequal Benefits. The Trustee need not apportion discretionary distributions and benefits equally, but may consider all individual circumstances.

2. Beneficiaries Statements. The Trustee may request and rely upon written statements from the beneficiaries, their parents or guardians, as to income resources and the other considerations identified above, and suspend benefits during any period a requested statement is not furnished.

will is still in effect, I don't understand. There were directions to the personal representative and to the agent, before she was appointed as a personal representative, to dispose of her body in the manner that she deemed appropriate. There's no argument that somehow a cremation is not appropriate.

And then to stand in front of you and say they've been fighting over the ashes to be returned, I believe I can represent the Court, and if you want to ask the PR who is here, the ashes have been returned to the family after the request was made known they were taken. I believe that our instruction to the law offices of opposing counsel.

So they have no evidence that this is not her will or her intent and that she didn't intend this to be the last will. And the Court probably knows better than I, you probate copies of wills every day in this court. If the Court has any questions for me, we've listed all the declarations that have been provided on our behalf supporting this will.

THE COURT: Mm-hmm.

MR. SHEPHERD: We can't list any evidence that they've provided, whatsoever. And I hope the Court is troubled by the fact that the person that's the moving party gets nothing if this motion is granted. There's

two, "No evidence has been submitted to this court that the July 24th, 2015 will was lost or destroyed under circumstances such that the loss or destruction had the effect of revoking the will." He says it in there, the lost will is lost. It is presumed revoked, and they provide no evidence to the contrary.

The evidence that they have provided actually supports our notion that it was revoked because she had no contact with any of the parties and didn't preserve her will and take good care. She would have put it in a safe deposit box or put it someplace safe.

THE COURT: Well, I mean she did have contact with her attorney. And it appears, based on the declarations, pretty significant conversations about the content of the will.

MS. SAAR: A year and four months prior when she was angry going through a divorce.

THE COURT: Mm-hmm.

MS. SAAR: And since that time, she's had no contact with him, whatsoever.

THE COURT: Okay.

MS. SAAR: Nor did she ever have any contact with the named PR.

MS. COPPINGER CARTER: If I may, real briefly, I want to address one thing in case it was misread by

MS. COPPINGER CARTER: Due to the lack of declarations?

THE COURT: Yes. Well --

MS. COPPINGER CARTER: You feel the burden was met by -- I just want to clarify because, obviously, this is not the final hearing.

THE COURT: No. I understand you'll be back on a TEDRA or something.

MS. COPPINGER CARTER: And so I want to make sure we understand.

THE COURT: Yeah. So on the basis of the declarations that were submitted to the Court with respect to, particularly Mr. Avery's declaration with regard to the conversations he had with her, the Court concludes that there is enough evidence both to find that the will is not a lost or destroyed will under that portion, and also that section two has been met.

MR. SHEPHERD: Thank you.

MS. COPPINGER CARTER: Okay.

THE COURT: All right. I've signed the order to that effect. All right. Thank you.

(End of requested transcript.)

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Declaration of Mailing for PETITION FOR REVIEW appellate no. 777408

By mail:
Shepherd and Allen
2011 Young St, Suite 202
Bellingham, WA 98225

By mail:
Steven Avery
Avery Elder Law
Pacific Harbor Building
801 Samish Way
Suite 202 Bellingham, WA 98229

By mail:
Stephanie Inslee
2638 East Smith Rd
Bellingham, WA 98226

By mail:
Linda Borland
726 Fuschia Loop
Bellingham, WA 98226

By mail:
Christopher C. Lee Esq.
Aiken, St. Louis & Siljeg, P.S.
801 2nd Avenue, Suite 1200
Seattle, WA 98104

By mail:
University of British Columbia
Office of University Counsel
500-5950
Vancouver, BC V6T 1Z3

May 6, 2019
Dated

CERTIFICATE OF MAILING
I certify under penalty of perjury under the law of the State of Washington that I mailed or caused to be personally served a copy of PETITION FOR REVIEW for appellate case 777408 to the parties listed, postage prepaid on or by May 12, 2019.

Khashon Haselrig

Khashon Haselrig

809 NW 153rd Terrace

Edmond, OK 73013

405-618-2722

KHASHON HASELRIG - FILING PRO SE

May 06, 2019 - 8:55 AM

Filing Motion for Discretionary Review of Court of Appeals

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Edmond, OK, 73013
Phone: (405) 618-2722

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