Supreme Court No. 101713-__
Court of Appeals No. 56536-6-II

SUPREME COURT
OF THE STATE OF WASHINGTON

ELIZABETH BARTLETT,

Appellant,

vs.

ESTATE OF ROBERT PARMAN

Respondent.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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A. INTRODUCTION

This Court should deny Elizabeth Bartlett's Petition for Discretionary Review ("Petition") because the Court of Appeals decision (the "Decision") meets none of the criteria for review.

Claims against an estate for the debt of a dead person must be brought within two years of death. RCW 11.40.051(c). There are no exceptions; only situations where the statute does not apply. *Id.* Bartlett argues that the Decision conflicts with *Olsen v. Roberts*, 42 Wn.2d 862, 259 P.2d 418 (1953) and *Smith v. McLaren*, 58 Wn.2d 907, 365 P.2d 331 (1961), which held that such a claim is not required when one is not seeking a "debt" of the decedent, but rather one's own property.

In contrast to *Olsen* and *Smith*, Bartlett did not have an interest in the property she claims. *See Bartlett v. Est. of Parman*, No. 56536-6-II, 2022 WL 16944991, at *9 (Wn. App. Nov. 15, 2022), stating:

> Elizabeth's repeated attempts to assert that the exceptions to the nonclaim statute preclude application of the two-year statute of limitations

> fail because Elizabeth does not possess any interest in the Renata Lane property, which means her claim is against Robert's Estate and the nonclaim statute applies.

Id.

Olsen and *Smith* are inapt. The Decision does not conflict with *Olsen* or *Smith*.

The Decision affirming the trial court's frivolous action attorney fee award also does not conflict with a decision of this Court. Bartlett argues she made a "rational" argument and so therefore her claim was not frivolous. Petition at 17. Her argument—that her lawsuit was for specific property in which she held an interest—was neither rational nor debatable because she did not have an interest in the property. She never articulated a remotely valid basis for such interest.[1] *See e.g.*,

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[1] Bartlett's claim against Robert Parman for unjust enrichment is a claim for damages, not for ownership. *See* Creditor Claim, CP 53.

Resp. Br. at 27, 47; *Bartlett v. Est. of Parman*, 2022 WL 16944991, at *9.

Finally, this case presents no substantial issues of public interest requiring determination. It is a private dispute between private parties. The Decision is unpublished and therefore not binding authority. The only "chilling effect" would be to dissuade others from commencing frivolous litigation, which is wholly consistent with RCW 4.84.185's purpose.

B. IDENTITY OF RESPONDENT

The respondent is Shawn Parman ("Shawn"[2]) in his capacity as the personal representative for the estate of his father, Robert Parman ("Robert").

C. COURT OF APPEALS DECISION

Shawn asks this court to deny the Petition to review the Decision which (i) affirmed the Thurston County Superior Court's dismissal and awarded attorney fees under RCW

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[2] First names are used for clarity. No disrespect is intended.

4.84.185; and (ii) awarded attorney fees on appeal under RAP 18.1.

D. COUNTERSTATEMENT OF ISSUES

Under RAP 13.4(b), the Petition presents the following issues:

1. Does the Decision conflict with *Olsen v. Roberts* or *Smith v. McLaren,* which held that claiming one's own property against an estate does not require the claimant file and serve a creditor claim under RCW 11.40 *et seq*?

ANSWER: No. Bartlett did not have a property interest in her father-in-law's home (the "Renata Lane property") There is no conflict.

2. Does the Decision conflict with this Court's standard for determining an action is "frivolous" under RCW 4.84.185 and *Biggs v. Vail*?

ANSWER: No. Bartlett's argument that she need not timely file a creditor claim because she was claiming property

she owned was neither rational nor debatable where it was abundantly obvious she had no interest.

3. Does the Decision involve issues of substantial public interest that this Court should determine?

ANSWER: No. This is a private dispute between private parties and Washington's frivolous action statute, RCW 4.84.185 is purposed to deter meritless lawsuits like this one, and is settled law.

4. Should this Court award the Estate attorney fees for answering the Petition?

ANSWER: Yes. Bartlett continues to rely on authority that would only apply if she had an interest in the Renata Lane property. But she has no interest. And she has not cited any authority, much less made a rational argument, that a time-barred unjust enrichment claim against a decedent (to whom she was never married) could ever create such an interest.

E. COUNTERSTATEMENT OF THE CASE

In September 2020 Petitioner sued the estate of her late former father-in-law,[3] Robert, on a theory of unjust enrichment. CP 5. In her complaint, she alleged that she paid for improvements to certain real property that Robert owned with his wife Ruth (referred in this case as the "Renata Lane property"). CP 6-7. Bartlett alleges she funded the improvements using separate property funds (and separate property labor) and should therefore recover the value of those improvements from Robert's estate. CP 7.

Bartlett's initial pleadings demonstrated that she did not understand Washington law governing claims against decedents. She thought that when a spouse dies, not only does the decedent spouse's property pass to the surviving spouse, but so do the debts, and thus equity would allow her to pursue

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[3] Shawn and Elizabeth were divorced in 2016. CP 100. Robert died in 2005. CP 5.

Robert's debts against his surviving spouse, Ruth. CP 6 (lines 14 through 16); CP 9. As Bartlett became educated on Title 11, and realized she was incorrect, she leveraged imprecision in her prior pleadings to try and assert an "alternate" claim to avoid Washington's non-claim statute. Her argument was no longer premised solely on a debt of *Robert*, but rather a claim to the property itself as if she were an owner. CP 465, 472; VRP 14 (Oct. 22, 2021). But, as noted by the Court of Appeals in its unpublished opinion, she did not have an ownership interest. *Bartlett v. Est. of Robert Parman*, 2022 WL 16944991 at *9. She had quitclaimed the property to her in-laws almost two decades earlier. CP 279.

The trial court was not persuaded. It dismissed her complaint and awarded the Estate attorneys' fees under Washington's frivolous action statute, RCW 4.84.185. CP 510, 667, 709.

The Washington Court of Appeals was also not persuaded. It affirmed the trial court, and awarded Shawn

appellate attorney fees under RAP 18.1 and RCW 11.96A.150. *Bartlett v. Est. of Parman*, 2022 WL 16944991 at *9.

Bartlett now petitions this Court for discretionary review.

F. THIS COURT SHOULD DENY REVIEW

This Court should deny the Petition because it does not satisfy any of the necessary criteria for this Court to accept review.

1. Legal Standard for Accepting Review.

This Court accepts review of Court of Appeals decisions that terminate review under Rule of Appellate Procedure 13.4(b), which provides:

> A petition for review will be accepted by the Supreme Court **only**:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Id. (emphasis added).

Bartlett has not established any of the necessary criteria for this Court to accept review.[4]

2. The Court of Appeals' decision does not conflict with any Supreme Court decisions.

The Decision does not conflict with *Olsen v. Roberts* or *Smith v. McLaren*.

Olsen and *Smith* are inapt. Those two cases each involved a surviving spouse's claim against the estate of their decedent spouse. In each case a creditor claim was unnecessary because the plaintiffs were not alleging a debt owed them by the decedent, but instead were laying claim to their own property. *See Olsen,* 42 Wn.2d 865-66; *Smith,* 58 Wn.2d at 909.

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[4] Bartlett does not argue any grounds under RAP 13.4(b)(3), and thus Shawn does not present argument under that subsection.

Here, Bartlett alleged a debt owed her by Robert; not a specific property interest. CP 5. Once she realized that Washington's non-claim statute has a strict two-year bar, she shifted her claim into one for ownership based on the improvements she alleged she made to the property. CP 465, 472; VRP 14 (Oct. 22, 2021). But she never articulated a basis for her ownership other than rote citation to *Olsen*, *Smith*, and their progeny.[5] CP 138, 474. The Court of Appeals decision therefore does not conflict with *Olsen* or *Smith*.

The Decision also does not conflict with any published Court of Appeals cases. *See* RAP 13.4(b)(2). While Bartlett does not identify any such cases, she cites one unpublished case, *In re Est. of Slough*, No. 68155-9-I, 2013 WL 6835212

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[5] In Washington a spouse can acquire a community property interest in her spouse's separate property by inputting labor and improvements. *See, e.g.*, *In re Carmack's Est.*, 133 Wash. 374, 380, 233 P. 942 (1925). But *Carmack* also does not apply. Bartlett was not married to her then father-in-law at the time she alleges that she improved his property.

(Wn. App. Dec. 23, 2013) which in turn relies on *Olsen* and *Smith*. *Estate of Slough* involved a surviving spouse's claim to his own community property against his wife's estate, and is therefore inapt. *Id.* at *9 (stating, that *Olsen* and *Smith* "establish that Slough was not required to file a creditor's claim … because he asserted an equitable lien claim to specific property of the estate, his wife's house.") (emphasis added); *see also*, note 5, *supra*. Bartlett was not claiming an interest in her husband's house but rather her father-in-law's house. *See* note 5, *supra*.

3. The Court of Appeals decision to affirm the trial court's attorney fees award does not conflict with any Supreme Court decisions.

Bartlett contends that her citation to *In re Est. of Slough*, cited *supra*, demonstrates that she had at least a "rational" argument for a property interest in the Renata Lane property vis-à-vis improvements she allegedly made to the Renata Lane property. That argument lacks merit for three reasons. First,

Bartlett never cited *Slough* in her briefing. App. Reply Br. at iv-vii (Table of Authorities); App. Opening Br. at vi-ix (Table of Authorities).

Second, *Estate of Slough* (and the authority upon which it relies) involved a surviving spouse's claim to his own property. 2013 WL 6835212 at *9. Here, Bartlett argued she was claiming "specific property" but *never* demonstrated an ownership interest, or articulated the basis for her claimed ownership. Instead, she just declared it so, calling it an "equitable lien" based on an allegation of unjust enrichment to Robert that was already time-barred. App. Reply Br. at 4. All the while she ignored the clear difference between *Olsen* and *Smith* (spouses with community property between them), and her case (father-in-law to whom Bartlett was never married). CP 489-91. In briefing to both courts below, Shawn stressed that Bartlett had never articulated a legal basis for her claimed ownership. *Id.*; Resp. Br. at 47-48. Rather than address Shawn's argument head-on, Bartlett ignored it, instead preferring rote

repetition of the holdings in *Olsen* and *Smith* as evidence the issue was "debatable" without ever supplying the debate. Nor could she, because there is no debating that Bartlett's fifteen-year-old claim against Robert Parman for unjust enrichment was time-barred. RCW 11.40.051(c).

4. The Court of Appeals decision does not involve issues of substantial public interest requiring determination.

The Decision does not involve a substantial public interest that requires determination. Bartlett and the Estate of Robert Parman are private parties. The Decision is unpublished, and thus not binding authority. GR 14.1.

Bartlett argues the Decision will chill plaintiff attorneys from pursuing "equitable claims" where courts "disagree upon matters such as what is a claim against a decedent." Petition at 19. This is wrong for three reasons.

First, Bartlett has not shown that courts have disagreed on "what is a claim against a decedent". *Id.*

Second, the Decision is unpublished. It binds no courts other than the trial court in this case (after the mandate issues). GR 14.1; RAP 12.5.

Third, attorneys and parties who charge hard with little heed to an adversary's defense *should* be chilled. The frivolous action statute, RCW 4.84.185, is specifically designed to *discourage* exactly what happened in this case. *See Biggs v. Vail*, 119 Wn.2d 129, 137, 830 P.2d 350, 354 (1992) ("[t]he frivolous lawsuit statute has a very particular purpose: that purpose is to discourage frivolous lawsuits and to compensate the targets of such lawsuits for fees and expenses incurred in fighting meritless cases."). Public policy favors denying the Petition and awarding Shawn attorney fees in connection with this Answer.

G. THIS COURT SHOULD AWARD ATTORNEY FEES

Under RAP 18.1(j) and RCW 11.96A.150, the Estate requests an award for the attorney fees incurred in answering

the Petition. The Estate informed her early-on that her lawsuit was frivolous. CP 512, 549, Resp. Br. at 59. Even now, she continues with her "specific property" gambit, and still has not demonstrated even *an argument* for her claimed ownership in the Renata Property (other than the time-barred "unjust enrichment" claim, which is a debt, not ownership). CP 472.

In Appellant's Opening Brief, she claimed the entire lawsuit was "simply part of a defensive measure" to have all her claims heard in one proceeding" App. Br. at 57. This so-called "defensive measure" now continues here, in this Court, and continues to cost the Estate attorney fees. Bartlett should recompense the Estate its fees for the same reasons discussed by the Court of Appeals. *Bartlett v. Est. of Parman*, 2022 WL 16944991, at *9.

Fees are also appropriate under RAP 18.9 because the Petition is frivolous. Washington appellate courts award fees on appeal to parties who have abused the appellate rules or filed frivolous appeals. *Millers Cas. Ins. Co. v. Biggs*, 100 Wn.2d 9, 665

P.2d 887 (1983); *Boyles v. Dep't of Retirement Sys.,* 105 Wn.2d 499, 716 P.2d 869 (1986).

> … [A]n appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187, *review denied,* 94 Wn.2d 1014 (1980).

The Petition presents no debatable issues, ignores the unambiguous nonclaim statute, relies on two cases that hinge on the claimant's ownership interest in property, yet she does not own the property. This is frivolous. This Court should award the Estate attorney fees for this Answer.

H. CONCLUSION

The Decision does not conflict with any decisions of this Court; and the Petition presents no public interest issues requiring determination. This Court should deny Bartlett's petition and award the Estate attorney fees under RAP 18.1 and 18.9.

This document contains 2,458 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 16th day of February, 2023.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington, that on this day served a true and correct copy of the foregoing by the method indicated below, and addressed to each of the following:

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DATED this 16th day of February, 2023, at Enumclaw, Washington.

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