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No. 84093-2

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

P. KOICHI YAGI, *Appellant*

v.

ESTATE OF ROBERT CHARLES CANNON, *Appellee*

**ON APPEAL FROM KING COUNTY SUPERIOR COURT
Motion for Discretionary Review in Washington State Supreme Court**

Treated as a [PETITION FOR REVIEW](#)

P. Koichi Yagi
19473 Military Rd. S.
SeaTac WA. 98188
206-551-4853

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**ASSIGNMENTS OF ERROR AND ISSUES PRESENTED FOR
REVIEW**

A. Assignments of error.

1. The Court erred in finding that the petition properly set forth that jurisdiction and venue were appropriate to make a determination under RCW 11.96A.030.

2. The Court erred in concluding that P. Koichi Yagi (Yagi) claimed no monies were ever paid by the decedent toward the real estate note and therefore the statute of limitations had run and the note was unenforceable.

3. The Court also erred on the amount of interest that was due.

4. The Court erred in concluding that bad faith had been demonstrated by Yagi.

5. The Court erred in awarding attorney fees.

6. The Court erred in removing the Lis Pendens.

B. Issues relating to the assignment of error.

1. Should the Appellee Henry J. Cannon (Henry) have been appointed as personal representative when a probate was pending in Thurston County?

2. Did the terms of the note require payments first be paid to the interest?
3. Did the terms of the note require the interest to be compounded annually?
4. Instead of showing that Yagi acted in bad faith, have the facts demonstrated that King County is biased in favor of Henry Cannon?
5. Are attorney fees authorized under RCW 11.96A.250?
6. In Washington, can a lis pendens be removed prior to the time when the appeals have run, especially when the Yagi has requested a stay?
7. Should the Yagi have been required to post an expensive bond to prevent the removal of a lis pendens when an appeal has been filed?

STATEMENT OF THE CASE

1. Yagi filed a probate in Thurston County on November 8, 2021. No case schedule was issued nor was there a judge assigned. (CP_____).

2. The instant action was filed in King County on November 10, 2021, with Henry J. Cannon being appointed as the personal representative for his deceased brother's estate, the Estate of Robert C. Cannon (the disputed Estate). (CP 1-5)

3. One of the main assets of the disputed Estate is the decedents residence located at 2017 Edmonds Ave. NE, Renton, WA 98056. (CP 40)

4. The Administrator of the disputed Estate listed the decedent's home for sale and procured a buyer. (CP 40).

5. Yagi has recorded a Deed of Trust on the property based upon a promissory note dated March 10, 2008. (CP 6-12, 15-18). The promissory note and Deed of Trust provide that payment in full was due on September 10, 2008. (CP 16)

6. Yagi claims that the principle amount due is \$45,000.00 and the interest from September 11, 2008, through March 10, 2022 in the amount of 376,804.59, plus \$7500 for attorney collection costs. (CP 14)

7. Yagi claims in his declaration that several payments have been made, but the interest was paid first as stated in the promissory note. (CP 81-83)

8. On April 1, 2022, over the objection of Yagi, the King County Superior Court assumed venue and dismissed all claims that Yagi had against the disputed Estate. (CP 67-73; 96-105).

9. On April 11, 2022, Yagi filed a timely motion for revision of the order based upon objections filed with the court. (CP 106-114).

10. On May 9, 2022, Judge Galvan denied the motion for the revision. (CP 115).

11. On May 10, 2022, the disputed Estate brought a motion to release the Lis Pendens, but noted it before Judge Galvan. (CP 118-119).

12. On May 26, 2022, Yagi filed a timely notice of appeal. (CP 137-141)

13. The motion to release the Lis Pendens was noted before the correct judge, which was the chief civil motions judge, for Friday, July1, 2022. (CP 146-147).

14. On June 15, 2022, a Motion for Stay was filed. (CP 165-172).

15. On June 22, 2022 the disputed Estate opposed the motion for a stay. (CP 173-176). The disputed Estate submitted declarations speculating that it would win attorney fees for the appeal and he would lose 15% of the purchase price on appeal. (CP 177-183).

16. On July1, 2022, Judge Ketu Shah issued an order granting the Motion for the Stay provided Yagi posted of a bond of \$237,000 by July 20, 2022., otherwise the Lis Pendens would be removed. (CP 184-187).

STANDARD OF REVIEW

Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment

as a matter of law. CR 56(c). *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wash.2d 217, 220, 802 P.2d 1360 (1991). The burden is on the party moving for summary judgment to demonstrate there is no genuine dispute as to any material fact and reasonable inferences from the evidence must be resolved against the moving party. *Lamon v. McDonnell Douglas Corp.*, 91 Wash.2d 345, 349, 588 P.2d 1346 (1979) (citing *Morris v. McNicol*, 83 Wash.2d 491, 494-95, 519 P.2d 7 (1974)). The motion should be granted only if, from all the evidence, a reasonable person could reach only one conclusion. *Lamon*, 91 Wash.2d at 350, 588 P.2d 1346 (citing *Morris*, 83 Wash.2d at 494-95, 519 P.2d 7). An appellate court engages in the same inquiry as the trial court when reviewing an order for summary judgment. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wash.2d 337, 341, 883 P.2d 1383 (1994).

ARGUMENT

INTRODUCTION

1. Summary of Introduction. The venue of King County was and is improper as the jurisdiction for this action. The disputed Estate Counsel's attempts to deny Yagi's ability to reply constitutes a violation of Yagi's right to due process. The disputed Estate Counsel has presented diversionary and knowingly baseless arguments in an attempt to deceive the Court, insult its intelligence, and offend the sanctity of due process. In

doing so, the disputed Estate Counsel seeks to perpetrate a fraud upon the Court and Yagi. Yagi accordingly and lawfully seeks dismissal and declaratory relief.

2. Categories of Facts and Issues of Law. Given that the disputed Estate Counsel attempted to conceal the relevant facts and issues of law within a “fog” of complexity and sophistry, two categories of facts are presented for the purpose of simplifying and deconstructing said concealment:

**A. THE CENTRAL FACT AND ISSUE OF THE CASE:
JURISDICTION AND VENUE.**

Yagi's right to proper venue is the sole and central issue of this case. Only if Yagi's right to proper jurisdiction is further denied does Yagi request a brief period to allow for discovery and other relief as requested in this venue as allowed by statute. The Counsel for the disputed Estate further seeks to deny Yagi's right to due process by unlawfully asking King County to intervene in the adjudication of Yagi's action in Thurston County, which is prohibited by law. No county superior court has the power to rule over another. Counsel for the Disputed Estate knowingly seeks to perpetrate a fraud and deny Yagi proper due process.

The King County Superior Court cannot lawfully control the action in Thurston County because one superior court exercise cannot overrule

jurisdiction of another Superior Court in Washington, where the action was filed first:

“The rank and authority of the courts are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply.” *Kline v. Burke Constr. Co.*, 260 US 226 - Supreme Court 1922.

Without citing to any authority, the Counsel for the disputed Estate and the King County Superior as well as the first division court of appeals demand exclusive jurisdiction and sanction Yagi for not agreeing to the unlawful usurpation of the proper jurisdiction.

"Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). In Washington, courts may assume that where no authority is cited, counsel has found none after search. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

The Ninth Circuit Court of Appeals has made similar rulings: See *Acosta Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992); see also *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *Meehan v. County of L.A.*, 856 F.2d 102, 105 n.1 (9th Cir. 1988).

Here, Respondent Yagi in this action, and as Petitioner in the Thurston action, has established that the first suit was filed in Thurston and has plausibly alleged that he cannot get a fair trial in King County. Under these circumstances, if the allegations are true, then the choice of Thurston County was by necessity and therefore the rule in *Kline supra* applies. If Henry wanted to have the case in Thurston dismissed, he should have brought his Tedra action in Thurston County or moved to have the action moved out of Thurston County.

The Alleged estate and the court of appeals held that since a personal representative was appointed in King County, a Tedra action was initiated in the same county, pursuant RCW 11.96A.030, RCW11.96.040, RCW 11.96A.060, RCW 11.48.010, RCW 11.48.030. Each of these statutes assume that Henry was lawfully appointed. However, under the reasoning of *Kline supra*, the proper venue for making this appointment was Thurston County.

A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate. *Columbia Power Trades Council v. United States Department of Energy*, 671 F.2d 325, 329 (9th Cir. 03/11/1982), *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159 (3d Cir. 08/05/2010).

The court of appeals and the alleged estate argued that since it was

possible for the superior court to have subject matter jurisdiction, then the county had subject matter jurisdiction. They cite to no authority that asserts that it can wrest subject matter jurisdiction from another county that already has jurisdiction.

Any party may raise the issue of lack of subject matter jurisdiction at any time. *Skagit Surveyors and Eng'rs, LLC V. Friends of Skagit County* 135 Wn.2d 542, 556, 958 P.2d 962 (1968).

Absence of subject matter jurisdiction may render a judgment void where a court wrongfully extends its jurisdiction beyond the scope of its authority. *Kansas City Southern Ry. Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (CA8)(1980) (citing *Stoll v. Gottlieb*, 305U.S. 165, 171, 83 L. Ed. 104, 59 S. Ct. 134 (1938)), cert. denied 449 U.S. 955, 101 S. Ct. 363, 66 L. Ed. 2d 220 (1980)

Since the King County Superior Court order was void, it is subject to collateral attack. *Picardo v. Peck*, 95 Wash. 474, 164 P. 65, *Cunnius v. Reading School District*, 25 S. Ct. 721, 198 U.S. 458 (U.S. 05/29/1905) citing 1 *Herman on Estoppel*, 64.

B. SECONDARY AND DIVERSIONARY ARGUMENTS AND ATTEMPTS TO DEFRAUD.

Every argument presented by Counsel for the Disputed Estate and ratified by the court of appeals is diversionary from the central legal issue

of this case as cited above. Without acknowledging the validity of the disputed Estate Counsel's arguments, however, Yagi presents responses to those diversionary arguments hereunder.

1. There is no factual basis for the claim that "Respondent (Yagi) claims that no monies were ever paid as he has claimed the entire principal sum."

In fact, in declaration he specifically presents evidence that payments were paid on several occasions based upon his own sworn testimony which went uncontroverted, in addition to further testimony offered by two additional parties. The court of appeals tried to sidestep the possibility of other witnesses because it claimed that :Yagi never stated what the testimony would show. However, Yagi presented a detailed offer of proof which stated that the witnesses were present when the moneys were paid and one witness would testify to the close relationship that the alleged estates proposed representative and various court officials including those in the ex parte department. (CP) The court of appeals claimed

Counsel for the disputed Estate engages in diversion and sophistry, falsely claiming that Respondent Yagi is not credible because he has "changed his story." The disputed Estate Counsel, however, cites this alleged issue of credibility without basis and presumes Respondent Yagi changed his testimony in bad faith. Disputed Estate Counsel presumes

intent and thus presumes bad faith. In the absence of discovery, and in the absence of Yagi's right under law to respond to such an allegation, bad faith may not be established. The court of appeals did not have adequate support for its finding that Yagi was not credible (CC(_____)_____)

Counsel for the disputed Estate alleges that the principal amount of the subject note has not changed even though Yagi testifies that payments have in fact been made. Yagi references the language of the note which stipulates that the unpaid principal "shall accrue interest at a rate of 18% annually until paid," and thus requires annual compound interest. There would have been no need for the word "annually" if it were simple interest. The disputed Estate's Counsel cites only to the fact that Respondent Yagi never changed the amount of the principal when he calculated the interest. The disputed Estate Counsel implies that there is something wrong with the date of the Decedent's initial payment in the Respondent Yagi's calculations. Respondent Yagi has established that the issue resulted from a typographical error which was corrected during the calculations. The payment originally referenced as having been made in 2000 rather than 2010 was obviously a typo, as the note originated in 2008. The precedents cited by disputed Estate's Counsel are not applicable because the note itself describes the interest as accruing annually and not just requiring payments annually as in *Cullen v.*

Whitman, 33 Wash. 366, 74 P. 581. The note also specifically states that all payments go first to the interest, not to the principal. Thus, Yagi has not changed his testimony.

Since the Decedent ratified the contract on several occasions when he made payments after the note became due, that restarted the statute of limitations. Thus, the statute of limitations never ran.

2. The trial court should have allowed discovery.

Henry demanded that the Court make all determinations at the most recent hearing on April 1st, but did not cite to any authority as to how this may be lawfully done after Respondent Yagi's answer placed several factual issues in dispute. Henry's own Petition, in fact, clearly stipulated that several factual issues are in dispute, including: A) whether Respondent Yagi may receive a fair trial in King County; B) the amount of money owed on the subject note; C) if any monies are owed on the subject note; and D) whether payments have been made on the subject note. Henry's own crystal-clear, incontrovertible written admission, concedes these are factual issues in dispute.

RCW 11.96A.115 grants the Court the power to allow for discovery once these issues have been raised. Counsel for the disputed Estate cites to no authority that allows for a grant of summary judgment at the first hearing before this discovery has been allowed. *In Estate of Michael J. Fitzgerald*

v. Mountain-West Resources Inc, 294 P. 3d 720, 725-726, 172 Wash. App. 437 addresses this issue and indicates that the standard for denying discovery on summary judgment is relevant. In such proceedings, where good reasons are established as to why the affidavit of a material witness cannot be timely obtained, the trial court must "accord the parties a reasonable opportunity to make the record complete before ruling on a motion for summary judgment." *Lewis v Bell*, 45 Wash.App. at 196, 724 P.2d 425.

By way of offer of proof, Respondent Yagi stated that there are at least two witness that will provide relevant testimony: The first is Brenda Alston who had a long term committed intimate relationship (CIR) with the Decedent of over approximately 30 years of which included 20 years of caring for the Decedent throughout his illness. The other witness is Isaac Palmer, the cosigner of the note. Respondent Yagi states that both Brenda Alston and Isaac Palmer were present when the payments were made. Respondent Yagi states that Brenda Alston will testify that the disputed Estate Administrator Henry Cannon had a working and personal relationships with many the judges in King County Superior Court for decades including roughly the past ten years of when he was retired. This includes several of the commissioners in the ex parte department. Ms.

Alston also testifies that Henry Cannon was employed as a King County Court Bailiff for several years.

The court of appeals

3. No attorney fees should be allowed. The alleged estate's counsel, in the record, only cited to RCW 11.96A.250 as a basis for attorney fees.

Conan's counsel's statutory reference is completely off-point, erroneous, irrelevant, and diversionary. Said statute is completely disconnected from this case, referencing procedures regarding the appointment of special representatives. No party has asked that an attorney be appointed as special representative. The cited statute only becomes applicable once a special representative has been requested, which has no application to this case and is a nonsensical reference. Counsel cites to no authority of law as to how Respondent Yagi can be ordered to pay for special representative when none has been requested nor would be applicable. The argument and reference is irrelevant as the price of tea in China, is knowingly fraudulent, and again factually establishes bad faith by Counsel for the disputed Estate. Inexplicably, and with no legal basis whatsoever, the Superior Court accepted this legally baseless and random argument, raising a fundamental issue as to whether the Court has read the briefing, relying on its own bias in favor of Henry as the basis for its ruling.

Similarly, the court of appeals used similarly baseless reasoning for its finding. It ignored Yagi's detailed offer of proof and then stated he did not give an adequate reason as to why he couldn't have obtained declarations earlier. However the record clearly indicates that Yagi complained about not being given enough notice of the motion. The clear implication of this complaint of lack of notice is that he did not have enough time to obtain the needed testimony

The court found that the alleged estate claimed the reference to the wrong statute was a scrivener's error, but there is nothing in the record that support this assertion. Yagi has been denied due process on this because he was never given notice either to the scrivener's error argument, and the actual statute was never raised at the trial court level and only in a response brief in the court of appeals.

CONCLUSION

According to RAP 13.4(b) Considerations Governing Acceptance of Review, 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. For the reasons given in this brief, Yagi argues that 1 and 3 are clearly met. Yagi also argues that 4 is met because the issue of a superior court wrongfully asserting venue and jurisdiction on behalf of an ex employer with insider connections is of broad public concern. Yagi therefore respectfully requests that this court accept review.

Dated this 24th day of May, 2023,

/S/ P. Koichi Yagi
P. Koichi Yagi

CERTIFICATE OF COMPLIANCE

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Dated this 24th day of May, 2023,

/S/ P. Koichi Yagi
P. Koichi Yagi

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/s/ P. Koichi Yagi _____
P. Koichi Yagi

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ESTATE OF ROBERT C. CANNON,

Respondent,

v.

P. KOICHI YAGI, AKA PETER YAGI,

Appellant.

No. 84093-2-I

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — P. Koichi Yagi appeals an order determining that his creditor’s claim against the estate of Robert Cannon (Estate) is time-barred and unenforceable. Yagi contends that the trial court erred by (1) asserting jurisdiction, (2) finding that no payments were made on a promissory note, (3) not allowing more time for discovery, (4) awarding attorney fees to the Estate, and (5) removing a lis pendens on the Estate’s property. Finding no error, we affirm.

I.

Henry Cannon is the sole surviving heir of his deceased brother, Robert Cannon. On November 10, 2021, Henry¹ was appointed as the administrator of the Estate and granted nonintervention powers in King County Superior Court.

On that same day, Yagi petitioned for letters of administration in Thurston County Superior Court. Yagi asserted that he was a secured creditor to the Estate based on his

¹ We use first names of Cannon family members when referring to them individually to avoid confusion and intend no disrespect.

ownership of a deed of trust related to a loan to Robert which was on file with the King County Recorder's Office. He also claimed that the Estate owed him \$386,971.18 as of September 2021, "with monthly interest accruing at \$5,804.57 or \$190.84 per day, in addition to collection costs and attorney's fees." Days later, Yagi filed a motion for order nunc pro tunc to correct the filing date of his petition for letters of administration to November 8, 2021. Yagi did not provide the Estate with notice of these filings and the Thurston County Superior Court did not enter any orders on Yagi's petition or motion.

On November 17, 2021, Yagi filed a pro se motion in the King County probate action to vacate Henry's appointment as the Estate's administrator. There, Yagi claimed that there was a conflict of interest or appearance of bias because Henry had worked for "the Courts of King County" for 30 years until his retirement. Yagi said that he was "a major creditor in the referenced estate." But he failed to properly note the motion for a hearing, and the trial court never heard or ruled on the motion.

One of the Estate's primary assets is a house in Renton, Washington. When Henry tried to sell the house in February 2022, he discovered that Yagi had recorded a deed of trust (deed) against the house securing a \$45,000.00 promissory note. The deed, made in March 2008 between Robert as grantor and Yagi as beneficiary, stated: "The entire balance of the promissory note secured by this Deed of Trust, together with any and all interest accrued thereon, shall be due and payable in full on September 10, 2008." A promissory note, also made in March 2008, required Robert to pay interest at a rate of 18 percent on any unpaid principal after the September 2008 due date.

On March 3, 2022, the Estate commenced the present action in King County Superior Court, seeking a petition under the Trust and Estate Dispute Resolution Act

(TEDRA)² to declare Yagi's claim to a promissory note secured by the deed time-barred under the six-year statute of limitations for written contracts and thus, unenforceable.

Around the same time, Yagi completed a "request for information" summarizing his claims of what the Estate owed as to the deed and promissory note as follows: (1) \$45,000.00 in principal; (2) \$376,804.59 in interest, accrued between September 11, 2008 and March 10, 2022; and (3) \$7,150.00 in attorney and collection costs. In total, Yagi claimed he was owed \$428,954.59. On March 16, 2022, Yagi filed a lis pendens notifying the public that he was a creditor of the Estate with interest in the Renton "property which may be subject to judgment and execution by reason" of the deed.³

On March 28, 2022, Yagi answered the Estate's petition and moved to dismiss.⁴ He claimed that King County Superior Court lacked subject matter jurisdiction and was not the proper venue because he had commenced competing probate proceedings in Thurston County Superior Court first. He continued asserting that King County Superior Court would be biased in favor of the Estate. He also alleged that he "never claimed" the principal amount remained \$45,000.00 and said Robert had made payments to him. Yagi attached a declaration to this answer, which shows a smattering of dates, interest rates, dollar amounts, and purported payments.

In the Estate's reply, Henry declared that he formerly worked for the King County Department of Adult and Juvenile Detention, retired in 2010, and had no relationship with any judicial officers of the King County Superior Court.

² Chapter 11.96A RCW.

³ A lis pendens may be filed "any time after an action affecting title to real property has been commenced." RCW 4.28.320.

⁴ He also filed a copy of this pleading on March 29, 2022. There is no discernable difference between the two pleadings.

On April 1, 2022, a trial court commissioner heard argument on the Estate's TEDRA petition.⁵ Initially, the commissioner rejected any notion of bias given that Henry had formerly worked for King County. The commissioner determined that Robert never paid Yagi any money and, thus Robert would have been in default of the promissory note as of September 10, 2008. And because Yagi did not file suit on or before September 10, 2014, the commissioner concluded that the promissory note and deed were time-barred and not enforceable. Finally, the commissioner awarded the Estate its attorney fees and costs "pursuant to RCW 11.96A.250" in an amount to be determined later and directed Yagi to dismiss the action he filed in Thurston County Superior Court.⁶

Yagi moved to revise the commissioner's ruling, but a trial court judge denied his motion in a May 2022 order. Yagi timely appealed the commissioner's ruling and the judge's order denying revision.

Meanwhile, in June 2022, Yagi moved to stay the trial court's order pending resolution of appeal and, separately, the Estate sought an order to release the lis pendens. In a July 2022 order, the trial court granted Yagi's request for a stay "conditioned" upon his "posting a supersedeas bond or cash with the King County Superior Court in the amount of \$237,000.00 on or before July 20, 2022, as required by RAP 8.1." It also ruled that, in the event the supersedeas bond or cash was not timely deposited, Yagi's motion for stay would be denied and the Estate would be able to sell

⁵ Yagi also filed a surreply that same morning but the commissioner did not consider it because such pleadings are "not allowed under the rules." See King County Local Civil Rule 7(b)(4)(E).

⁶ In compliance, Yagi subsequently dismissed the Thurston County action.

the property “free and clear” of the deed and lis pendens. Yagi did not appeal the lis pendens order and he failed to post a bond or other security.⁷

II.

Yagi raises several issues on appeal, which we address in turn.

A.

First, Yagi contends that the trial court’s TEDRA orders are void for lack of subject matter jurisdiction and improper venue. We disagree.

Whether a court has subject matter jurisdiction is a question of law reviewed de novo. In re Guardianship of Wells, 150 Wn. App. 491, 499, 208 P.3d 1126 (2009). “Subject matter jurisdiction refers to a court’s ability to entertain a type of case, not to its authority to enter an order in a particular case.” Buecking v. Buecking, 179 Wn.2d 438, 448, 316 P.3d 999 (2013). “The term ‘subject matter jurisdiction’ is often confused with a court’s ‘authority’ to rule in a particular manner.” In re Marriage of Major, 71 Wn. App. 531, 534, 859 P.2d 1262 (1993). “A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate.” Marley v. Dep’t of Lab. & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994).⁸ A court has subject matter jurisdiction where it has authority to decide “the type of controversy involved in the action.” Shoop v. Kittitas County, 108 Wn. App. 388, 393, 30 P.3d 529 (2001).

⁷ Instead, in August 2022, Yagi filed a motion in this court to stay removal of the lis pendens pending appeal, arguing that the trial court erred in requiring a supersedeas bond and speculating as to the bond amount. A commissioner of this court denied Yagi’s motion and explained the grounds for doing so. A panel of judges later denied Yagi’s motion to modify the commissioner’s ruling.

⁸ Marley was superseded by statute on other grounds as recognized by Birrueta v. Dep’t of Lab. & Indus., 186 Wn.2d 537, 549, 379 P.3d 120 (2016).

Superior courts in Washington “have original jurisdiction” in “all matters of probate.” WASH. CONST. art. IV, § 6. TEDRA also provides that the “superior court of every county has original subject matter jurisdiction over . . . the administration of estates,” and that they may “appoint personal representatives.” RCW 11.96A.040(1), (3). The courts’ subject matter jurisdiction “applies without regard to venue,” and “[a] proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action.” RCW 11.96A.040(4). TEDRA gives superior courts “full and ample power and authority” to “administer and settle” “[a]ll matters concerning the estates and assets of” deceased persons. RCW 11.96A.020(1)(a). Under TEDRA, a “matter” includes “any issue, question, or dispute involving” the determination of “any class of creditors . . . or other persons interested in an estate,” and “any question arising in the administration of an estate.” RCW 11.96A.030(2)(a), (c).

In view of this statutory framework, the trial court had subject matter jurisdiction to adjudicate the Estate’s TEDRA petition. Yagi counters, arguing that the trial court lacked subject matter jurisdiction because the Thurston County Superior Court obtained jurisdiction over the Estate first and at the exclusion of the King County Superior Court. But the record does not support this argument. On the same day that Henry was appointed as personal representative of the Estate in the King County action, Yagi filed a request for letters of administration in Thurston County. And beyond Yagi’s initial filings, the Thurston County Superior Court never entered any orders on those pleadings.

Here, the record establishes that probate proceedings of the Estate were first commenced in King County. And once letters “of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title must be had or made in the county in which such letters have been granted unless venue is moved.” RCW 11.96A.050(5). Venue of this TEDRA action therefore was proper in King County. Accordingly, Yagi’s jurisdiction and venue arguments fail.

B.

Next, Yagi challenges the trial court commissioner’s finding that Robert never made any payments on the promissory note. The commissioner found: Yagi “claims that no monies were ever paid as he has claimed the entire principal sum” of \$45,000.00 due on the promissory note. Yagi contends that there is no factual basis to support this finding. We disagree.

On revision, a superior court judge reviews the commissioner’s findings of fact and conclusions of law de novo based on the evidence presented to the commissioner. In re Estate of Wright, 147 Wn. App. 674, 680, 196 P.3d 1075 (2008). We then review the superior court’s decision, not the commissioner’s, for an abuse of discretion. Wright, 147 Wn. App. at 680; In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010). A court abuses its discretion by exercising its discretion on untenable grounds or for untenable reasons. Williams, 156 Wn. App. at 27.

In this case, Yagi admitted to completing a March 2022 request for information claiming that the “Unpaid Principal Balance” Robert owed on the promissory note was \$45,000.00. He contradicted this admission in his answer to the TEDRA petition, asserting that he “has never claimed that the principal amount is still” \$45,000.00 and

that “payments have been received.” And in support of this assertion, Yagi prepared a declaration saying Robert made four payments on the promissory note, including: \$1,000.00 in February 2000;⁹ \$500.00 in May 2013; \$500.00 in September 2016; and \$250.00 in March 2018. But when asked for proof at the hearing on the TEDRA petition, Yagi was not able to show the commissioner “any bank records or anything else” to show that Robert had made payments on the promissory note.

The weight accorded to competing evidence and credibility determinations are matters solely for the trier of fact and not subject to review. In re Marriage of Burrill, 113 Wn. App. 863, 868, 56 P.3d 993 (2002). The commissioner here rejected the assertions in Yagi’s declaration and accepted his admissions that the principal balance on the promissory note remained \$45,000.00. Because substantial evidence supported the commissioner’s finding, the trial court had tenable grounds on which to deny Yagi’s motion for revision.

C.

Yagi contends that he was entitled to more time to conduct discovery before the trial court ruled on the TEDRA petition. Again, we disagree.

We review a trial court’s discovery rulings in TEDRA proceedings for an abuse of discretion. In re Estate of Fitzgerald, 172 Wn. App. 437, 447-48, 294 P.3d 720 (2012) (deferring to the trial court’s refusal to grant a continuance to conduct discovery in a TEDRA action). Discovery in TEDRA cases is governed by RCW 11.96A.115, which states:

In all matters governed by this title, discovery shall be permitted only in the following matters:

⁹ Yagi says the “payment originally referenced as having been made in 2000 rather than 2010 was obviously a typo, as the note originated in 2008.”

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court.

A trial court “properly denies a continuance request” to conduct discovery under RCW 11.96A.115 where “the requesting party does not offer a good reason for the delay in obtaining the desired evidence” or “the requesting party does not state what evidence would be established through the additional discovery.” Fitzgerald, 172 Wn. App. at 448.

Here, at the hearing, Yagi informed the trial court that he had “two witnesses” from whom he had not “had time to get their complete testimony yet,” and orally requested “a delay of discovery to be able to do that.”¹⁰ Yagi did not offer a good reason why he had not been able to obtain declarations from his witnesses. Moreover, Yagi failed to inform the court what testimony the witnesses would offer in support of his claim. Absent these grounds, the trial court properly denied Yagi’s request for a continuance to conduct discovery. There was no abuse of discretion on this basis.

D.

Yagi challenges the trial court’s decision to award attorney fees to the Estate under RCW 11.96A.250. The Estate responds that the court’s order contains a

¹⁰ In a surreply filed on the morning of the hearing, Yagi identified two witnesses who were purportedly present when Robert made payments on the promissory note. However, the commissioner did not review the surreply.

scrivener's error and refers to RCW 11.96A.250 rather than RCW 11.96A.150(1).¹¹ We agree that there is a scrivener's error in the order but see no need to remand for correction because the issue is moot.¹²

An issue is moot if "a court can no longer provide effective relief." Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). The Estate concedes that it forfeited its right to attorney fees in the trial court when it did not file a motion within 10 days of entry of the April 1, 2022 order as required by CR 54(d)(2). Thus, we need not further address this challenge.

E.

Finally, Yagi claims that the trial court erred by removing the lis pendens. Because Yagi never appealed this order, the claims he asserts are not properly before us, and we decline to entertain them.

III.

The Estate requests its attorney fees on appeal under RCW 11.96A.150(1) and RAP 18.1(a). TEDRA authorizes this court to "order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but


¹¹ RCW 11.96A.250 concerns the appointment of special representatives for parties in TEDRA actions who are minors, incapacitated without an appointed guardian, yet unborn or unascertained, and whose identity or address is unknown. It does not govern attorney fees awards. RCW 11.96A.150(1), however, gives courts discretionary authority to award attorneys fees in a TEDRA action.

¹² A scrivener's error is a clerical mistake, which if amended, would correctly convey the trial court's intention as expressed in the record at trial. State v. Davis, 160 Wn. App. 471, 478, 248 P.3d 121 (2011). Here, the trial court found that Yagi acted in bad faith by "vastly overstat[ing] the amount due thereby causing [the Estate] to incur attorney fees and costs" to address his claim and court filings. It also found that the Estate was entitled to an award of attorney fees. The record is clear that the court intended to exercise its discretion under RCW 11.96A.150(1). The remedy for a scrivener's error is remand to the trial court for correction. State v. Makekau, 194 Wn. App. 407, 421, 378 P.3d 577 (2016).

need not include whether the litigation benefits the estate or trust involved.” RCW 11.96A.150(1). RAP 18.1(a) allows us to award attorney fees on appeal “[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review.”

We exercise our discretion and grant the Estate’s request for attorney fees on appeal, subject to compliance with RAP 18.1(d).

We affirm.



WE CONCUR:

