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No. 102190-9

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

AMELIA BESOLA,

Appellant,

v.

ERIC PULA, individually and as PERSONAL
REPRESENTATIVE OF THE ESTATE OF MARK L.
BESOLA, and ET AL.,

Respondents.

KELLY McGRAW'S ANSWER TO
AMELIA BESOLA'S PETITION FOR REVIEW

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ISSUES PRESENTED FOR REVIEW.....	11
III.	COUNTERSTATEMENT OF THE CASE.....	14
IV.	LEGAL ARGUMENT.....	15
	A. Amy Cannot Establish any Reason for this Supreme Court to Grant Review.....	15
	1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.....	15
	2. The decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals.....	16
	3. There is not a significant question of law under the Constitution of the State of Washington or of the United States.....	16
	4. Amy’s petition does not involve an issue of substantial public interest that should be determined by the Supreme Court of Washington.....	17
	a. The test for “substantial public interest.”.....	17
	b. There is no likelihood of future recurrence....	19
	c. The award of costs and fees was justified.....	21

V. CONCLUSION.....23

TABLE OF AUTHORITIES

CASES

Kelly-Hansen v. Kelly-Hansen, 87 Wn. App. 320, 328-29,
941 P.2d 1108 (1997).....8

State v. Beaver, 184 Wn.2d 321, 330-31,
358 P.3d 385, 390 (2015).....17, 18

STATUTES

RCW 11.96A.150.....13, 14, 21

COURT RULES

RAP 2.5.....22

RAP 13.4.....11, 14, 17, 23

I. INTRODUCTION

The Respondent, Kelly McGraw (“McGraw”) opposes the Petitioner, Amelia Besola’s (“Amy”)¹ Petition for Review. Amy seeks review of an unpublished 13-page opinion by the Court of Appeals affirming the trial court’s decision in a probate and estate matter with facts that are very unique to the parties involved. This appeal is actually very specific and limited – Amy having only raised one issue in this particular appeal. The Court of Appeals also DENIED Amy’s subsequent motion for reconsideration (although they did amend their decision to remove some immaterial comments complained of by Amy in her motion for reconsideration). Despite the simplicity of this matter, Amy continues a disturbing trend of ignoring court rules

¹ Amy and the Decedent have the same last name, so to prevent confusion throughout the duration of this matter, the Petitioner has been referred to by “Amy” or “Amelia” while the Decedent has been referred to as “Mark.” No disrespect is intended.

and focusing on immaterial and inadmissible alleged facts in an attempt to cure her failures in this case in front of the trial court. A brief procedural history is therefore appropriate given Amy's attempts to muddy the waters of this particular appeal.

A. Two Lawsuits

Amy commenced two lawsuits in Pierce County Superior Court related to Mark's estate.

TEDRA Action No. 1. The first TEDRA petition Amy filed did not name McGraw as a respondent, and focused mostly on Brandon Gunwall. While McGraw was not a respondent in this particular action, it is mentioned here because Amy spends the majority of her Petition for Review alleging that Mr. Gunwall and Ms. McGraw both were involved in some unproven conspiracy to defraud the estate, despite failing to seize the opportunity to raise and prove any such allegations in the underlying lawsuits (specifically in the re-opened trial

on the Will Contest discussed below). There was no evidence to support Amy's claims against Mr. Gunwall in this first TEDRA action and the trial court granted his motion for summary judgment to dismiss all claims against him. This is also relevant because Mr. Gunwall, as the prevailing party in the claims against him, obtained a judgment against Amy in the amount of \$154,986.34 (at 12% per annum), under RCW 11.96A.150.

Unsurprisingly, Amy appealed the trial court's decision to dismiss the claims against Mr. Gunwall (she failed to appeal the award of fees however). The Court of Appeals affirmed the trial court's decision and denied her subsequent motion for reconsideration and request that they publish their decision. Amy filed a petition for review to this Court in September of 2022, which petition was denied in January of 2023.

TEDRA Action No. 2. Amy filed a second TEDRA petition –the “Will Contest” – including claims

and allegations that (1) Mark lacked testamentary capacity; (2) Mark's will was the product of undue influence; (3) Mark's will was the product of insane delusion; (4) Mark's will was the product of fraudulent inducement; (5) Mark's will was not signed correctly; and (6) the beneficiaries of Mark's will should be disinherited for financial exploitation of a vulnerable adult. Amy named McGraw as a respondent in this second TEDRA action, along with five other parties.

McGraw brought a motion for summary judgment to dismiss any and all claims against her in the Will Contest based on Amy's complete failure to produce any evidence to support the very serious allegations she had raised against her. The trial court granted McGraw's motion for summary judgment on December 11, 2020. The dismissal of claims against McGraw, *with prejudice*, included allegations that McGraw was somehow guilty of fraud with regard to Mark's alleged December 6, 2018

will. The trial court also awarded McGraw her costs and fees' on December 31, 2020 (subject to a fee declaration). On January 15, 2021, the trial court entered a judgment against Amy in the amount of \$89,502.48, plus interest at 12% per annum.

Will Contest – Trial 1 and Trial 2. Other respondents named by Amy in the second TEDRA also sought and obtained summary judgment relief from her claims. Mr. Gunwall again had any and all claims against him dismissed. The then-personal representative (“PR”) of the estate also brought a motion for summary judgment to dismiss Amy’s claims for lack of evidence. The trial court granted the PR’s motion to dismiss all claims except two – namely, (1) that the will was not signed correctly and (2) that the will itself was a product of fraud – a forgery having not been signed by Mark at all (a contradictory new claim raised by Amy for the first time in response to the PR’s motion for summary

judgment). Despite allowing Amy to proceed with her claims on the technical signing and the alleged forgery against the estate and other respondents, *the trial court still granted the McGraw and Gunwall motions dismissing any and all claims against them.*

The Will Contest went to trial on this new theory that Mark's signature on the will was a forgery. Amy called McGraw as a non-party witness during this trial. The Will Contest failed, after a 4-day trial, in February of 2021. The trial court considered the testimony of many fact witnesses, as well as dueling expert witnesses regarding the signature on the will, and determined that Amy did not meet her burden to prevail on her claims. After the trial court rendered its decision, but before entering findings of fact and conclusions of law, Amy obtained documents from a non-party company – documents that were protected by federal privacy statutes and without the consent of the protected party. The trial

court granted Amy's motion to re-open the trial on the basis of these documents.

The re-opened trial ended in November of 2021. The trial court decided that the subject will was created after Mark's death and could not, therefore, have been signed by Mark. Importantly, at no time after Amy raised her new claim of fraud/forgery, after obtaining new documents, or as part of re-opening the trial on the Will Contest, did she seek to bring McGraw back into the lawsuit or otherwise amend the Will Contest to include McGraw as a potentially responsible party with respect to the alleged forgery. Claims on the fraud/forgery were litigated – twice – but Amy never brought the claims anew against the then-dismissed McGraw. Equally important is that Amy never appealed McGraw's dismissal from the Will Contest. Amy appealed many things, but never appealed the decision on summary

judgment to dismiss any and all claims against her.²

Notably, the period within which to file an appeal has now passed. Thus, all claims against McGraw that were made, or that could have been made including fraud and forgery, are now barred as to McGraw. Knowing this, Amy seeks to improperly interject these issues here on appeal. Amy knows this – having already failed in front of this very Court on similar arguments raised against Mr. Gunwall in her petition for review of the first TEDRA matter.

Will Contest – Post-Trial Activity. On December 17, 2021, Amy petitioned the trial court to vacate the judgment against her in favor of McGraw, or in the alternative, to shift her judgment to Eric Pula. Mr. Pula

² These claims are barred by res judicata, collateral estoppel, and applicable statutes of limitation. “When res judicata is used to mean claim preclusion, it encompasses the idea that when the parties to two successive proceedings are the same, the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the. Exercise of reasonable diligence should have been raised, in the prior proceeding.” *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 328-29, 941 P.2d 1108 (1997) (footnotes omitted).

was one of the parties that the trial court ultimately decided was responsible for the fraudulent will and Amy argued that, but for his actions, Amy would never have had to initiate litigation against anyone. The trial court denied Amy's motion to vacate, reasoning that while it may be true that litigation may not have been initiated absent Mr. Pula's actions, there truth remained that there was never any evidence to suggest that McGraw had done anything wrong and that Amy's scorched-earth litigation tactics justified the award of fees against her. Amy appealed the order denying her motion to vacate the judgment on March 3, 2022.

B. Improper Expansion of the Record on Review

Amy's pleadings, both to the Court of Appeals and before this Court, are replete with improper allegations and unsubstantiated "facts" which are outside the record on review. Amy utilizes her "Introduction" sections to spin fanciful tales of conspiracy and fraud – theories that

she failed to raise at the proper time and place or that failed entirely in front of the trial court.

The decision at issue here, and affirmed by the Court of Appeals, is a simple one – whether it was appropriate for the trial court to deny Amy’s request to vacate the judgment entered against her in favor of McGraw. The vast majority of Amy’s petition can, therefore, simply be ignored as the rumblings of a disgruntled litigant trying to improperly “backdoor” a claim of fraud or conspiracy against McGraw, Mr. Gunwall, and a number of other conspirators unknown. 22 of the 25 pages of Amy’s petition focus on matters that are completely irrelevant to the issue on appeal – namely, claims against McGraw and others, that Amy is now barred from raising before *any* court of law. Amy does not bother discussing why this Court should accept review until the bottom half of the 23rd page of her 25-page petition. Amy ignores, entirely, the record upon

which the trial court's decision to enter judgment against her was based. The decision was proper, and Amy has failed to identify any legal basis for this Court's review of that decision.

II. ISSUES PRESENTED FOR REVIEW

RAP 13.4(b) sets forth four reasons for which this Court will accept review of a case:

(1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;

(2) the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;

(3) a significant question of law under the Constitution of the State of Washington or of the United States is involved;

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

Amy fails to assert *any* of these grounds in her petition for review and this Court should simply deny her petition outright. At best, Amy's petition can be read to seek review on the grounds that it involves an issue of substantial public interest. The reality, however, is that Amy's arguments are better suited in a letter to her legislator than in a petition to this Court.

The issues before this Court therefore are very simple:

1. Whether the Supreme Court of Washington should accept review of a decision of the Court of Appeals (motion for reconsideration denied) affirming a trial court's equitable decision to award costs and fees against a litigant under RCW 11.96A.150, that is not in conflict with any Supreme Court Decision? No.
2. Whether the Supreme Court of Washington should accept review of a decision of the Court

of Appeals (motion for reconsideration denied) affirming a trial court's equitable decision to award costs and fees against a litigant under RCW 11.96A.150, that is not in conflict with a published decision of the Court of Appeals?

No.

3. Whether the Supreme Court of Washington should accept review of a decision of the Court of Appeals (motion for reconsideration denied) affirming a trial court's equitable decision to award costs and fees against a litigant under RCW 11.96A.150, where there is no question of law under the United States or Washington State Constitution? No.

4. Whether the Supreme Court of Washington should accept review of a decision of the Court of Appeals (motion for reconsideration denied) affirming a trial court's equitable decision to

award costs and fees against a litigant under RCW 11.96A.150, following almost two years of uniquely fact-based litigation involving private parties that does not involve an issue of substantial public interest? No.

III. COUNTERSTATEMENT OF THE CASE

The actual and relevant facts of this case are well described in the Court of Appeals opinion at pages 4-8 (as amended), which McGraw hereby adopts as her counterstatement of the case.

It is extremely telling that 22 of the 25 pages of Amy's petition focus on facts unrelated to the award of fees against her and unrelated to RAP 13.4(b). Amy now theorizes, despite having failed to timely and properly pursue these claims in the trial court, that McGraw and others were involved in a conspiracy to defraud Mark's estate. Amy's statement of the case boils down to buyer's remorse at having spent hundreds of thousands,

millions even, in costs and attorneys' fees, and to not have prevailed against each and every person that found themselves in the path of her scorched-earth litigation tactics. Amy complains that it is somehow not equitable that she be forced to pay an award of McGraw's costs and attorneys' fees incurred defending the very serious and very meritless claims that she raised against her. Amy's buyer's remorse, however, is not justification for granting review by this Supreme Court.

IV. LEGAL ARGUMENT

A. Amy Cannot Establish any Reason for this Supreme Court to Grant Review

Amy has failed to assert any of the four reasons for which this Court can accept review. Even if she had, however, there is nothing in her petition, or supported in the record, that would satisfy any of the same.

1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.

Amy does not assert that the Court of Appeals decision conflicts with a prior decision of this Court. The Court can therefore simply rule that it does not.

2. The decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals.

Amy does not assert that the Court of Appeals decision conflicts with a published decision of the Court of Appeals. The Court can therefore simply rule that it does not.

3. There is not a significant question of law under the Constitution of the State of Washington or of the United States.

Amy does not assert that the Court of Appeals decision raises any question, significant or not, under either the Constitution of the United States or the State of Washington. Further, RAP 13.4(c)(9) sets forth that her appendix should include copies of any statutes or constitutional provisions relevant to the issues presented for review. That no such appendix was included with

Amy's petition confirms that there is no such question of law. The Court can therefore simply rule that no significant question of law under either Constitution exists.

4. Amy's petition does not involve an issue of substantial public interest that should be determined by the Supreme Court of Washington.
 - a. The test for "substantial public interest."

To determine whether a case presents an issue of continuing and substantial public interest, three factors must be considered: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination for the future guidance of public officers; and (3) the likelihood of future recurrence of the question. *State v. Beaver*, 184 Wn.2d 321, 330-31, 358 P.3d 385, 390 (2015). Continuing and substantial public interest has generally been shown in cases dealing with constitutional interpretation, the validity of statutes or

regulations, and matters that are sufficiently important to the appellate court and it is not used in cases that are limited to their specific facts. *Id.* **None** of the three factors to be considered are present in this case and it is extremely telling that Amy fails to discuss any legal authority as to what constitutes continuing and substantial public interest in the limited 2 ½ pages devoted to why this Court should accept review.

This was a complicated, and very fact-specific case, that involved hotly disputed claims related to Mark and his family as well as the numerous respondents who were unlucky enough to find themselves in Amy's path of scorched-earth litigation tactics. Overwhelming evidence was submitted at various motions for summary judgment and at 2 separate trials, regarding Mark's life and all of the allegations raised by Amy. The circumstances surrounding Mark's health, drug abuse, and living arrangements are extremely unique and arose

out of a set of facts related to the private life of the Decedent and his friends. Despite the mountain of asserted evidence brought by Amy, mostly immaterial, there was a complete lack of evidence to implicate any wrongdoing by McGraw. This case involves no constitutional questions, nor does it involve the interpretation of any statutes. A decision here will not affect or provide any guidance whatsoever to any public officers.

b. There is no likelihood of future recurrence.

Being abundantly clear that this matter was clearly private in nature and has no implications for guidance to public officers, Amy hangs her hat on the 3rd factor of the test. Amy argues, without any factual or legal support, that this case presents a problem – new legal questions – that are “likely to increase in occurrence” due to the “popularity of online legal forms and probate forms in particular.” Amy presents no support for this assertion.

This is likely due to the fact that online legal forms, including probate forms, have been around for decades now. Amy asserts that the “heart” of this problem is evidenced by the Court of Appeals decision itself when it affirmed the trial court’s order because the fraud was never connected to McGraw. Amy ignores the fact that the fraud was, in fact, never connected to McGraw, because she had the opportunity to take the elementary steps of bringing McGraw back into the case and including her in the trial, and re-opened trial, on the question of fraud. Amy then makes the absurd recommendation that this Court should “announce a new rule’ that would allow her to re-litigate claims and dispositive motions against people like McGraw. This is not because Amy did not have her day in court – not because Amy did not have the chance to prove her claims against McGraw and others – but because Amy made a

mistake in litigating her claims in the trial court and wants this Court to give her a chance to cure it now.

It follows, that this Court cannot find that it is unconscionable for a victim of a conspiracy to pay the costs and attorneys' fees of another involved in the "common-effort litigation" in furtherance of the fraud, when no such conspiracy was proven as to McGraw.

c. The award of costs and fees was justified.

RCW 11.96A.150 allows the trial court to award costs and fees from any party and to any party. This is a discretionary award. As the Court of Appeals rightly understood, the question before the court was whether the award of fees to McGraw was proper *regardless of the outcome of the will contest*. Amy never brought McGraw back in nor did she amend her claims to include new claims of fraud against McGraw (McGraw having already been dismissed with an existing claim of fraud at the time of her dismissal). She could have, but she did

not. The trial court determined that even though the will was forged, Amy was not justified in her actions with respect to McGraw and the award of costs and fees was therefore still proper. It was the meritless claims that Amy litigated against McGraw that supported the award of costs and fees – not the claims regarding the fraudulent will – and the trial court upheld that award even after knowing of the fraud because Amy did not prove that McGraw had anything to do with it. Amy’s argument that McGraw had something to do with the fraud should fail here, just as they did in the Court of Appeals, because Amy failed to raise this argument before the trial court, it is waived on appeal pursuant to RAP 2.5(a). There is simply no evidence before this Court or in the record that the trial court abused its discretion in granting McGraw’s award of costs and fees.

Amy fabricates facts and arguments to support the assertion that there is a public interest in this case.

Simply stated - there is not.

V. CONCLUSION

Amy's petition fails to set forth any justification under RAP 13.4 for Supreme Court review. The decision of the Court of Appeals to affirm the trial court's award of costs and fees is not at odds with any Supreme Court decision or published opinion of the Court of Appeals. The decision of the Court of Appeals to affirm the trial court's award of costs and fees does not raise a question of law under the United States Constitution or that of the State of Washington. The decision of the Court of Appeals to affirm the trial court's award of costs and fees does not present an issue of continuing substantial public interest. This was a standard case in which McGraw defeated meritless claims raised against her by Amy that arose out of a unique set of facts arising out of the

administration of a decedent's estate. Amy appeals the trial court's decision to award McGraw's costs and fees, but not the decision to dismiss any and all claims against her with prejudice and therefore she has no recourse to now pursue claims against McGraw for fraud that would justify granting review. As such, Amy's petition for review should be denied.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing answer is typed in Times New Roman, 14 point, and contains 3,622 words, pursuant to RAP 18.17.

DATED this 14th day of August, 2023

LAW OFFICE OF ELIZABETH THOMPSON

/s/ Elizabeth C. Thompson _____
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CERTIFICATE OF SERVICE

I, Elizabeth Thompson, declare under the penalty of perjury of the laws of the State of Washington that on August 14, 2023, I caused a copy of KELLY MCGRAW’S ANSWER TO AMELIA BESOLA’S PETITION FOR REVIEW to be served via email, as follows:

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Dated this 14th day of August, 2023 at Ashville, North Carolina.

Elizabeth C. Thompsom _____,
Elizabeth C. Thompson

LAW OFFICE OF ELIZABETH THOMPSON PLLC

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