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No. 56725-3-II

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

Dr. AMELIA BESOLA, Administrator and Petitioner,

Appellant,

v.

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

Respondents.

PETITION FOR SUPREME COURT REVIEW

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TABLE OF CONTENTS

INTRODUCTION.....1

IDENTITY OF PETITIONER.....6

DECISION 6

ISSUES PRESENTED FOR REVIEW..... 6

STATEMENT OF THE CASE..... 7

GROUND FOR RELIEF REQUESTED 20

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..... 23

CONCLUSION 26

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Fred Hutchinson Cancer Research Center v. Holman</i> , 107 Wn.2d 693, 732 P.2d 974 (1987)	22
<i>Gander v. Yeager</i> , 167 Wn. App. 638, 647, 282 P.3d 1100 (2012).	24
<i>Gillespie v. Seattle First Nat'l Bank</i> , 70 Wn. App. 150, 855 P.2d 680 (1993)	22
<i>In re Estate of Black</i> , 153 Wn.2d 152, 172, 102 P.3d 796 (2004)	24
<i>In re Estate of Black</i> , 116 Wn. App. 476, 66 P.3d 670, 677 (Div. III 2003)	24
<i>Laue v. Estate of Elder</i> , 106 Wn. App. 699, 25 P.3d 1032 (2001)	22
<i>In re Estate of Niehenke</i> , 117 Wn.2d 631, 648, 818 P.2d 1324 (1991)	22

WASHINGTON STATUTES

RCW 11.96A.150	6, 8, 10, 22, 27
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APPENDIX

APENDIX A	6
APENDIX B	6
APENDIX C	2
APENDIX D	2

I. INTRODUCTION

This is the last appeal from the problem prone Estate of Mark Besola’s Pierce County TEDRA action. As this Court may recall, the trial court entered *Findings of Fact and Conclusions of Law* on November 17, 2021 that detailed the facts known in November 17, 2021, but unknown prior to June 2021. *See Appendix C*. The trial court found that the will filed on May 8, 2019 (the “Pula Will”) was a fake will created on April 19, 2019—more than four months after Mark Besola passed. *See Appendix D*. The trial court found that a conspiracy to commit fraud created the fake Pula Will and that Eric Pula, James Garrett, and Robyn Peterson were members of the conspiracy. The trial court, however, failed to include or exclude Brandon Gunwall and Kelly McGraw in the conspiracy, but rather found that “Robyn Peterson (possibly with the aid of others)” created the April 19, 2019 Will. The trial court never addressed the revisions between the three versions of the will (the original online form, the April 19, 2019 initial fake will, and the revised

fake will file on May 8, 2019) or went back or allowed the parties to look back at the accurate state of facts and narratives that actually existed when Mr. Gunwall and Ms. McGraw brought and prevailed on their motions. These two motions occurred when all the residents of Mark Besola's home (including Gunwall and McGraw) were busy telling a unified fake narrative and presenting a unified legal front to defend and further the conspiratorial efforts to take Mark's Estate.

The problems related to the fake narrative continued to plague this matter when Division II's Opinion in this matter repeatedly cited to the false fact that Dr. Amy failed to name her sister as a respondent in her TEDRA Petition. In fact, Dr. Amy did name her sister as a respondent in the TEDRA Petition. The Opinion seemed to suggest that Dr. Amy's failure to name her sister as a respondent in the TEDRA action suggested a confection of motives by Dr. Amy that justified the trial court ordering her to pay Ms. McGraw's attorney's fees (which order is the root of this appeal). The Court of Appeals corrected itself

with its June 13, 2023 Order in this matter that simply deleted the false statements from Division II's final Opinion.

The simple truth is that Dr. Besola is a Washington citizen who lost her brother to the actions and inactions of Mr. Brandon Gunwall and who was the victim of a conspiracy to commit fraud to take her brother's Estate by use of false narratives, false facts, the maintenance of a false Estate, and by an online probate form sold by FormSwift (Dropbox recently purchased FormSwift). The fake will and conspiracy to commit fraud were only discovered after the near-close of the initial trial, which occurred well after Ms. McGraw prevailed on her Motion for Summary Judgment to dismiss all claims against her. No court assessed whether Ms. McGraw's potential \$1.25M gift under the Pula Will or Ms. McGraw's status as a Trustee under the fake will was sufficient evidence to include her as a member of the conspiracy to commit fraud and no one had a chance to conduct discovery as to whether Ms. McGraw should be included in the conspiracy. Likewise, no court has even reviewed FormSwift's basic on-line

will form, the April 19, 2019 fake will, and the *revisions* between these various will versions and the filed Pula Will to assess whether the revisions to the three will documents militate in favor of finding that Ms. McGraw is a member of the known conspiracy to commit fraud. In particular, no court has looked at how each version of the fake will treats the various property interests of Julia Besola and the interest of the barely known Besola half-siblings, yet each fake will adroitly addressed these obscure facts with the base of knowledge only possible by one of the siblings or by a siblings' self-proclaimed best friend.

After the second trial on the fake will, the trial court affirmed its award of attorney's fees from Dr. Amy to Ms. McGraw in response to Dr. Amy's Motion to revise the prior order requiring Dr. Amy to pay Ms. McGraw's attorney's fees—and it ordered that Eric Pula, a penniless underworld drifter, also be jointly and severally liable for such fees along with Dr. Amy.

Under these facts, it's difficult to see how such an award could be reasonable and just under RCW 11.96A.150. The

award of fees forced a victim of a criminal conspiracy to steal an entire Estate by fraud to pay the attorney's fees of a person who fought to support the conspiracy to gain \$1.25M and who was even a trustee under the fake will. It's appalling. Justice should free the victim from such an obligation and hold only the members of the conspiracy liable to pay for Ms. McGraw's attorney's fees.

Hence, this is an appeal from the trial court's order requiring Dr. Amy Besola ("Dr. Amy" or "Petitioner") to pay \$89,502.48 in attorney's fees to Ms. Kelly McGraw. As noted in the filings before the Court of Appeals, Ms. McGraw fought to enforce the fake Pula Will even after it became known that it was created more than 4 months after Mark Besola's death. Under these circumstances, it is manifestly unreasonable and excessive to require Dr. Amy to pay for such attorney's fees. Petitioner now files this *Petition for Review* to the Washington Supreme Court under RAP 13.4, which provides Petitioner with 30 days

from the June 13, 2023 Order on the Motion for Reconsideration to file the *Petition for Review*.

II. IDENTITY OF PETITIONER

Petitioner, Dr. Amelia Besola, ("Dr. Amy" or "Petitioner") respectfully moves for the relief set forth below.

III. DECISION

Petitioner respectfully requests this Court to accept review of the decision entered by Division II of Washington Court of Appeals on February 7, 202 (Court of Appeals No. 56725-3-II) (the "Decision" or "Opinion") and the Order on Reconsideration entered by the same Court on the same matter on June 13, 2023. Attached hereto as **Appendix A and B**, respectively.

IV. ISSUES PRESENTED FOR REVIEW

Whether, under RCW 11.96A.150, it is reasonable for the trial court in a TEDRA action to order the victim of a conspiracy to steal an entire Estate, by use of a fake will, to pay the attorney's fees and costs of a TEDRA action respondent who

fought to enforce the fake will even after the trial court found the will to be fake, who stood to take \$1.25M from the fake will, and who was named a trustee under the fake will, especially when the litigation against the respondent in question provided absolutely no benefit to the brother's Estate.

Whether the discovery of a fake will in a TEDRA action should mandate discovery to determine the scope of the conspiracy related to the creation of the fake will and a reconsideration of any substantive orders dismissing parties or claims decided prior to the discovery of the conspiracy to commit fraud by use of a fake will so that all substantive claims and liabilities may be decided on an accurate state of facts and not decided on facts created by the underlying conspiracy.

V. STATEMENT OF THE CASE

The trial court's November 17, 2021, *Findings of Fact and Conclusions of Law* detailed what was known then about the conspiracy to commit fraud: Eric Pula, James Garrett, and

Robyn Peterson worked together to create and file a fake Mark Besola will on May 8, 2019. CP 125 at Paragraph 58. The trial court did not include Brandon Gunwall and Kelly McGraw in the conspiratorial group in its November 2021 *Findings*. It did however note that “Robyn Peterson (possibly with the aid of others) created the April 2019 Will and the December 2018 Will.” CP 125 at Paragraph 57. Notably, the trial court did not consider in its *Findings* whether the sealed documents subject to Appellate Court Cause # 56205-7-II provided evidence probative of Mr. Gunwall and Ms. McGraw’s involvement in the conspiracy to commit fraud identified in the underlying Besola TEDRA matter. These sealed documents are now before this Court at *Clerks Papers* 387-405.

Whether Ms. McGraw is involved in the underlying conspiracy to commit fraud is relevant here because her status relative to the conspiracy bears directly on whether the trial court abused its discretion in ordering the Petitioner, Dr. Amy Besola, to pay Ms. McGraw \$89,502.48 in attorney’s fees under RCW

11.96A.150. As stated in the Opening Brief, it is manifestly unreasonable to require Dr. Amy to be liable for the attorney's fees incurred by another's efforts to take \$1.25M under a fake Will for Dr. Amy's brother. This is true even if Ms. McGraw is innocent of the conspiracy to commit fraud. The members of the conspiracy should be liable for Ms. McGraw's attorney's fees and costs and not the victim of the fraud.

It is even more outrageous if Ms. McGraw was an active participant in the fraud. The Sealed Documents create the evidentiary basis for assessing whether the scope of the conspiracy expands to include Brandon Gunwall and Kelly McGraw. Comparing April 19, 2019 fake will set forth in the sealed documents (CP 390--CP 399) to the fake will filed on May 8, 2022 reveals revisions made to the fake Will during the 19 days between its creation on April 19 and its filing on May 8, 2022 ("Fake Will Revision Period").

The revisions to the fake Will reveal three things. The presence and operation of a criminal mind (maybe even a law

trained mind). The presence of a direct connection from Mr. Gunwall's January 25, 2019 hearing appearance to the fake will filed on May 8, 2019. And, the presence of someone with knowledge of factual details about the Besola family that would take years of close contact with the family to learn. Recall that of those involved in this matter, only Ms. McGraw knew both Besolas and their family history for more than 9 months. Ms. Robyn Peterson knew nothing about the Besola family. James Garrett knew only Mark Besola for weeks. Eric Pula and Brandon Gunwall only knew Mark Besola for months. Only Ms. McGraw knew both Dr. Amy and Mark Besola and their family history for decades. *McGraw's Appeal Response* at P. 3 ("Kelly has known the Besola siblings for decades."). Separate from the revisions to the fake will document, we also know that Ms. McGraw spoke with Mr. Gunwall for 134 minutes at 11:28 a.m. on April 28, 2019—right in the middle of the 19 days of the Fake Will Revision Period. When the sealed documents are finally unsealed there will be evidence that Ms. McGraw was a

participant in and not a victim of the fraud to take Mark Besola's Estate.

The revisions to the April 19, 2019 fake will directly tie Mr. Gunwall to the coconspirators trying to take Mark's Estate and nonprobate assets. In Mr. Gunwall's case, the evidentiary trail begins with his January 25, 2019 court appearance wherein the following happens:

- Mr. Gunwall tells the Court that Mark left him a life insurance policy so that he could care for the dogs and get a house with enough property to let 'em run. CP 266.
- The Court confronts Mr. Gunwall about his claim that Mark gave him the dogs and life insurance policy proceeds without supporting writing from Mark. The Court mentions that the Deadman Statute applies to preclude Mr. Gunwall's bare, verbal assertion of an oral agreement with Mark. CP 268.

Nothing in the April 19, 2019 fake will address the above issues. CP 393. This section, *The Directive for Pet Care*, of the April 19, 2019 fake will is silent as to an agreement between Mark and Mr. Gunwall for Mr. Gunwall to care for Mark's dogs as companion animals after Mark's death in exchange for being named the beneficiary of Mark's AVMA Group Health and Life

Insurance Trust. *Id.* The April 19, 2019 fake will is also silent about what happens if Mr. Gunwall breaches his “verbal contract” with Mark. *Id.* And finally, the April 19, 2019 fake will also fails to tie the Life Insurance Policy proceeds to whomever cares for the dogs. *Id.* This last point is key to Mr. Gunwall’s attempted ruse because if the Life Insurance Policy go to anyone who cares for the dogs, then one could believe that the inclusion of the Life Insurance Policy proceeds was driven out of concern for the dogs and not simply because Mr. Gunwall had already told the Court that the insurance proceeds had been given to him by Mark. This last point is evidence of Mr. Gunwall’s knowledge of his guilt.

Instead, someone revised the April 19, 2019 fake will to address all these issues in the fake will that was filed on May 8, 2019.

The following parties, and any and all animals that I may own at the time of my death, be given to Brandon Gunwall, presently residing at 5314 218th Ave E, Lake Tapps, Washington, 98391, we have made an agreement that he take and treat them as companion animals and is named beneficiary to my AVMA Group Health and Life Insurance Trust to take care of my animals.

If Brandon Gunwall is unwilling or unable to receive my animals, he is in breach of our verbal contract and its beneficiary of my Life Insurance becomes null and void and I give such animals to Eric Pula, presently residing at 5314 218th Ave E, Lake Tapps, Washington, 98391, with the same wish that he treat them as companion animals. In return he become beneficiary to my AVMA Group Health and Life Insurance Policy.

If Eric Pula is unwilling or unable to receive my animals, I request that KARE, located at PO Box 904, Silverdale, Washington 98382, whose telephone is 3606025717, and contact person is to receive my animals and ensure they are cared for and treated as companion animals, and if KARE is unable to receive my animals, my Executor shall select an appropriate person and I will give my animals to such person.

PET TYPE	PET NAME	VETERINARY NAME
Dog	Bulwinkle	Mark Besola
Dog	Angie	Mark Besola
Dog	Rory	Mark Besola
Dog	Hope	Mark Besola
Dog	Swampy	Mark Besola
Dog	Fancy	Mark Besola

I instruct my Executor to take my AVMA Group Health and Life Insurance Trust and give it to the person who shall accept my animals, and I wish and direct that these funds be used solely for the care and support of my animals.

(Underlines added).

Who but Brandon Gunwall would make these revisions to the April 19, 2019 fake will? These revisions only benefit Mr. Gunwall and costs other fact will beneficiaries over \$300,000. No one else would have an interest in making these changes. Mr. Gunwall had told the Court in January 25, 2019 that he had an agreement with Mark to take the dogs in exchange for him being the beneficiary of Mark's life insurance policy. The April 19, 2019 fake will directly undercut Mr. Gunwall's ("on the record") narrative to the Court because it omitted any reference to the

above agreement or oral contract and only tied \$300,000 to whomever cared for the dogs instead of the entire policy proceeds from Mark's Life Insurance Policy. Only Mr. Gunwall would revise the April 19, 2019 fake will to make these issues consistent with and supportive of his January 25, 2019 in-court statements. Thus Mr. Gunwall knew the will filed on May 8, 2019 was fake because these revisions were made during the Fake Will Revision Period. Yet Mr. Gunwall revised it anyway to bootstrap his claim to the Life Insurance Policy proceeds.

This conduct of using a fake filed will to bootstrap his claim to the nonprobate assets from the Life Insurance Policy shows he was aware of and participated in the conspiracy to commit fraud by revising the fake will after Mark's death and that he had guilty knowledge that his claim to the nonprobate asset was equally fake. Why would a rational person otherwise tie a legitimate claim to a nonprobate assets to a fake will?

Mr. Gunwall failed to anticipate that the fake will project would implicate his January 25, 2019 in-court claim to the dogs

and Life Insurance Proceeds. Mr. Gunwall had to make the fake will consistent with what he told the Court on January 25, 2019. This means that after the April 19, 2019 fake will was created, someone had to tell him about the fake will terms and then he had to either revise the fake will directly or coach someone through the revisions. This last fact makes the April 28, 2019 134-minute FB phone call between Mr. Gunwall and Ms. McGraw relevant and potentially material to whether Ms. McGraw was and is a coconspirator.

Rally called you

Duration: 1:34 minutes

Apr 28, 2019, 11:24 PM

Brandon Gunwall

If Mr. Gunwall was present when they created the fake will on April 19, 2019, the fake will would have included the terms from the filed fake will that benefited only Gunwall and his claim for the dogs and Life Insurance Policy proceeds. So there had to be communications between Gunwall and the creators of the fake will to make the “Gunwall Revisions.” The above call is

evidence that Mr. Gunwall and Ms. McGraw talked during the Fake Will Revision Period, when both the Gunwall and McGraw Revisions occurred.

The identified creators of the fake will suffered from a lack of knowledge about Mark's assets and his family history. The conspirators had only known Mark for about 9 months at the longest and lacked knowledge of his assets beyond the Lake Tapps house and Mark's Hoquiam property. None of the conspirators knew the extent of Mark's financial accounts or the existence and extent of his Lopez Island and Spokane property holdings. The partial exception is Ms. McGraw who would have known about the Lopez Island Properties and the Besola half-sisters who lived in Michigan and Oregon (curiously there is no mention in the first fake will of the bounty of the Besola half-brother who passed long ago). During the trial court discovery phase, Ms. McGraw repeatedly testified that she lacked any knowledge as to the extent and details of Mark financial and business dealings. Predictably, the details in both fake wills

reflect the extent and limits of what Ms. McGraw (based on her own statements) would know about Mark's life. Also, the first version of the fake will names Ms. McGraw as the Estate's Executor, Will Trustee, and Digital Executor. CPs 393-394. All of this is evidence of McGraw's involvement in the conspiracy to commit fraud.

Also, the following details from the fake wills and revisions evidence Ms. McGraw's input into creating the fake documents and involvement in the conspiracy:

- Inclusion of the Besola step-sisters but not step-brother in the April 19 fake will (CP 399);
- Inclusion of the Hoquiam House in the April 19 fake will (CP 391);
- Listing Ms. McGraw as the Estate Executor, Trustee, and digital Executor in the April 19 fake will (CPs 393-394);
- Removing Ms. McGraw as the Estate Executor and Digital Executor, but not as the Estate Trustee.
- Listing in the fake will filed on May 8, 2019 two properties owned jointly by Mark and his sister Julia; and
- Inclusion of the address for the family burial plots on Lopez Island in both fake wills (CP 391).

Last, the structure of the asset distribution from Mark's life has an evidentiary quality in and of itself. Of the parties and witnesses in the matter, only Ms. McGraw, Mr. Gunwall, and Mr. Pula lived at the house together from the end of March 2018 until after Mark's death. Any one of the three could have offered testimony that could have caused the entire conspiracy to fail. Mr. Pula took half of the estate, which is likely why he was substituted in as the Estate Executor and Digital Executor. Yet Mr. Gunwall and Ms. McGraw each were granted enough of the Estate to buy their silence and cooperation. Ms. McGraw fought for this effort even after it became clear that the filed Mark Besola will was fake. She fought for the conspiracy until the final bell. Ms. McGraw is no victim bereft of her agency. The evidence supports and is consistent with a finding that Ms. McGraw is a perpetrator and coconspirator. Requiring the Petitioner to pay the attorney's fees and costs Ms. McGraw incurred in her effort to support the common effort litigation in

furtherance of the fraud even after the fraud was exposed would be shockingly outrageous.

The most troubling aspect of the above is that no court, no discovery process, and no forensic investigation has even attempted to bring an accurate statement of facts before the trial court or any judge to reconsider Ms. McGraw's Motion for Summary Judgment on the actual existing facts at the time of Ms. McGraw's Motion for Summary Judgment. This is relevant here because during the McGraw Motions the trial court stated on the record that the fake will influenced its assessment of the motions before it because the fake will stood as a testament to Mark Besola's intent as if his intent were "carved in stone." In truth, we now know that the fake will was smoke and that Ms. McGraw's litigation benefited no estate but her own. In truth, the McGraw related litigation was simply part of the storm that washed away a sister's tears of mourning for her little brother. It was not a reasonable basis to order an award of attorney's fees

and costs under RCW 11.96A.150 from Dr. Amy to Ms. McGraw.

VI. GROUNDS FOR RELIEF REQUESTED

RCW 11.96A.150 provides the court with broad, equitable authority to award attorneys' fees and costs in TEDRA actions. An award of attorney's fees in a TEDRA action can be to make a party whole. *See, Gillespie v. Seattle First Nat'l Bank*, 70 Wn.App. 150, 855 P.2d 680 (1993). An award may be an attempt to put a party back to its position prior to the TEDRA action. *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 732 P.2d 974 (1987). The law favors fee awards made for the protection of beneficiaries. *Laue v. Estate of Elder*, 106 Wn.App. 699, 25 P.3d 1032 (2001).

The touchstone of an award of attorney fees in a Will contest lawsuit is whether the litigation resulted in a substantial benefit to the estate. *In re Estate of Niehenke*, 117 Wash.2d 631, 648, 818 P.2d 1324 (1991). Here, it is undisputed and no one even claims that the underlying litigation benefited any estate.

No one claims the fee award at issue protects any estate beneficiary. The best that can be said about the underlying award of fees from Dr. Amy to Ms. McGraw is that it requires the victim of a conspiracy to commit fraud to pay the fees incurred by one who attempted to further the fraud even after she learned that the filed will was fake. More realistically and based on the assessment of both of the fake wills, Ms. McGraw may likely be found to be a coconspirator in the underlying group effort to commit fraud. The assessment of Ms. McGraw's status in the underlying matter may not begin until the currently sealed documents are unsealed. The exception to this reality is this Court using its inherent authority to examine and assess the sealed documents put before this Court in the designated clerk's papers.

This Court's review of the record before it will reveal that the current award of fees from the Petitioner, Dr. Amy, to Ms. McGraw fails to meet the minimum requirements for such awards—namely, that the trial court abused its discretion in

making the underlying fee award from the Petitioner Dr. Army to Ms. McGraw.

The standard of review for a trial court's discretionary decision to award attorney's fees and the reasonableness of any attorney fee award is for an abuse of discretion. *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012). A superior court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *In re Estate of Black*, 116 Wn.App. 476, 66 P.3d 670, 677 (Div. 3 2003), *In re Estate of Black*, 153 Wn2d 152, 102 P.3d 796, 807 (2004).

As stated above, it is manifestly unreasonable to have a victim of a conspiracy to defraud a sibling's estate pay another's attorney's fees and related costs incurred in an effort to further the fraud, especially when that effort continued well after the fraud became known to all involved. The Petitioner lost her brother and the effort to defraud his estate robbed her of her time to mourn, to process, and to grieve. We now have evidence from

the sealed Formswift Documents that is consistent with and supports a determination that Ms. McGraw was part of the effort to defraud the brother's estate. What could be more untenable than requiring the victim of a fraud to pay the attorney's fees of one of her attackers who incurred such fees while trying to further the fraudulent effort? Ms. McGraw wanted her \$1.25M so bad that she kept fighting for it even after everyone learned that the filed will was fake. This type of conduct is not innocent.

VII. WHY REVIEW SHOULD BE ACCEPTED

The Supreme Court should accept review because the Opinion involves unique facts and new legal questions that are both likely to increase in occurrence over the next few years given the popularity of online legal forms and probate forms in particular. The heart of the problem is evidenced by Division II of the Court of Appeals itself when it affirmed the trial court's order on Ms. McGraw's attorney's fee award by stating that fraud was never connected to Ms. McGraw without the appellate court realizing that it two had adopted a true facts from the fake

will narrative. *Opinion* a P. 2. The appellate court's adoption of these fake facts from the conspiratorial narrative reveals the dangerous nature of evidence and narratives generated by such conspiracies. The fake facts and false narratives invade every aspect of the adjudicative process. Hence, the Supreme Court has an opportunity to announce a new requirement that whenever a court discovers a conspiracy to commit fraud in the context of a TEDRA action involving a fake probate document that the court should grant discovery rights to the aggrieved and a reconsideration of any material Motions, especially those that dismissed parties or claims. This type of rule would be consistent with the principal that all matters should be decided on their merits on the facts actually existing when any motion was heard or decided. Decisions on the merits are preferred to decisions on false facts and false narratives.

The Supreme Court also ought to take review of this matter because it's unconscionable to have a victim of a conspiracy to steal her brother's estate ordered to pay the

attorney's fees and costs of another when those fees and costs were incurred in the common-effort litigation in furtherance of the fraud even after the fraud was exposed. It is difficult, if not impossible to see how such an order to pay such attorney's fees and costs is reasonable and proper under RCW 11.96A.150. By reviewing this matter, the Supreme Court could announce a rule to the effect that when a conspiracy to commit fraud is involved in a TEDRA action that only the conspirators may be found liable for paying the attorney's fees and costs of those involved in the TEDRA action.

The two rules suggested by this Petition for Review are needed in Washington to address the growing popularity of such online probate forms and the growing threat rising from hacked or faked online probate forms.

Requiring the Petitioner to pay the attorney's fees and costs Ms. McGraw incurred in her effort to support the common-effort litigation in furtherance of the fraud even after the fraud was exposed would be shockingly outrageous. If these new rules

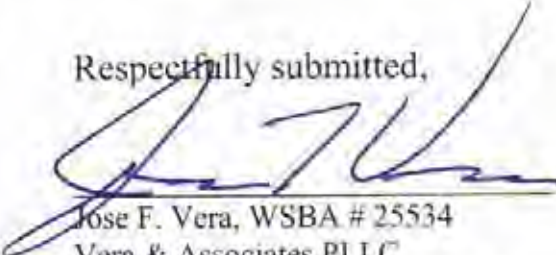
were announced and adopted, they will have a chilling effect of bad actors who may be tempted to steal entire estates by using hacked or faked online probate documents.

VII. CONCLUSION

Based on the foregoing, Petitioner respectfully requests the Supreme Court to accept review of this matter.

Submitted July 13, 2023.

Respectfully submitted,

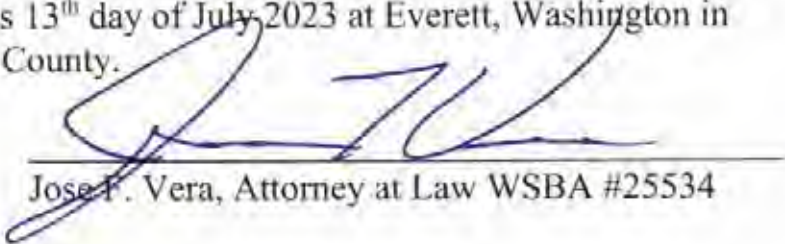


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CERTIFICATE OF WORD COUNT

The undersigned certifies that the foregoing Reply is 14 point, New Times Roman font and contains 4460 words.

DATED this 13th day of July 2023 at Everett, Washington in Snohomish County.



Jose F. Vera, Attorney at Law WSBA #25534

CERTIFICATE OF SERVICE

I hereby certify that on 13th day of July, 2023, I served a true and correct copy of the foregoing document upon counsel of record, via the methods noted below, properly addressed as follows:

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DATED this 13th day of July, 2023.

/s/ Lisa Lefebvre
Lisa Lefebvre, Legal Assistant

APPENDIX A

February 7, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of:

MARK L. BESOLA,

Deceased.

No. 56725-3-II

UNPUBLISHED OPINION

VELJACIC, J. — Amelia Besola contested a last will and testament (Will) purportedly signed by her brother Mark Besola in December 2018. In her petition contesting the December 2018 Will, Amelia asserted claims against beneficiaries under the Will, including against Kelly McGraw, based on undue influence, fraud, unauthorized practice of law, and financial exploitation. The trial court granted summary judgment dismissal of Amelia's claims against McGraw and ordered Amelia to pay McGraw attorney fees. After this grant of fees, Amelia ultimately was successful in invalidating the Will on the basis of fraud, though not by McGraw. Amelia then moved to vacate the award of attorney fees to McGraw under CR 60(b)(3) and (4), newly discovered evidence and fraud, as well as RCW 11.96A.150. Amelia argued that, because she prevailed in the will contest, the award of attorney fees should be vacated. The trial court denied the motion to vacate, but modified previous orders to make Eric Pula, one of the proponents of the fraudulent Will, jointly and severally liable for the award of fees to McGraw.

Amelia appeals the denial of her motion to vacate the award of attorney fees to McGraw. She argues that the victim of a fraudulent will should not be required to pay fees to a beneficiary of that same will, and she contends that the trial court's reasoning is insufficient to sustain the

award of fees to McGraw. But, because the fraud was never connected to McGraw and McGraw remained the prevailing party on summary judgment regarding the claims against her personally, we hold that the trial court did not abuse its discretion in refusing to vacate the award of attorney fees. We affirm.

FACTS

I. FACTUAL BACKGROUND

In January 2019, Mark Besola died leaving a \$5 million estate. Mark¹ had two sisters, Amelia Besola and Julia Besola-Robinson. After his death, Amelia was appointed personal representative.

At the time of Mark's death, Mark had various housemates living at his home on Lake Tapps. Kelly McGraw lived in a mother-in-law unit at the house. Brandon Gunwall and Eric Pula also lived at the property in exchange for caring for Mark and doing odd jobs at the property.

Four months after Mark's death, in May 2019, Pula and Robyn Peterson filed a Will purportedly signed by Mark in December 2018. Peterson was one of the witnesses to the Will. In September 2019, the trial court admitted the December 2018 Will to probate at Gunwall's request.

The Will named Mark's sister Julia, McGraw, Pula, and two charities as beneficiaries.² Gunwall was named as a beneficiary under a section of the Will outlining directives for the care of Mark's pets. Amelia was not a beneficiary under the Will.

¹ For clarity, after the first reference, we refer to the Besola siblings by their first names. No disrespect is intended.

² The beneficiary names are taken from the Trust and Estate Dispute Resolution Act (TEDRA) petition filed by Amelia. The Will is not in the record before this court.

II. PROCEDURAL HISTORY

In October 2019, Amelia filed a Trust and Estate Dispute Resolution Act (TEDRA) petition contesting the Will. Amelia claimed that the Will was invalid based on (1) lack of testamentary capacity, (2) undue influence, (3) insane delusion, (4) fraud, (5) unauthorized practice of law, (6) lack of a signature and improper execution, and (7) financial exploitation by the individual beneficiaries—Pula, Gunwall, and McGraw. Amelia did not sue Julia.

In March 2020, McGraw and Pula filed their answer, counterclaim, and cross-claim. In their answer, McGraw and Pula argued that Amelia had submitted no admissible evidence in support of her claims.

A. December 2020 Summary Judgment Dismissal and Attorney Fee Award

In December 2020, McGraw joined Pula's motion for summary judgment dismissal of the will contest. The trial court granted the motion as to McGraw, dismissing all Amelia's claims against McGraw.

On December 31, 2020, the trial court granted McGraw attorney fees and costs, in an amount to be determined, pursuant to RCW 11.96A.150. The trial court found:

1. Respondent Kelly McGraw is a prevailing party in this case with regard to the Petitioner's claims having obtained a dismissal of all claims against her.

2. Based upon the facts and circumstances of this case, including the fact that the claims brought by the Petitioner against Kelly McGraw have been dismissed with prejudice upon summary adjudication, it is equitable to award attorneys' fees and costs to the prevailing party.

.....
4. The complexity of this matter and the "scorched earth" litigation tactics pursued by Petitioner Amelia Besola made it even more costly to litigate this matter and for Respondent Kelly McGraw to defend against the claim brought by the Petitioner.

Clerk's Papers (CP) at 462-63.

In January 2021, the trial court entered its judgment and order granting McGraw attorney fees and costs in the amount of \$89,502.48 pursuant to RCW 11.96A.150. The trial court stated that the fees and costs reasonably and fairly compensated McGraw for defending against “the claims brought against her by [Amelia], which claims were found by the Court to be meritless.” CP at 470.

B. November 2021 Will Contest Ruling

After a truncated bench trial on Amelia’s remaining challenges to the validity of the Will, the trial court determined that the Will was the product of fraud. In November 2021, the trial court entered its findings of fact and conclusions of law. The trial court’s findings included that Peterson created the Will with the possible assistance of others; Pula, Garrett, and Peterson knew the Will was false, and they intended that it deceive the court; and the false Will harmed the true beneficiaries of Mark’s estate as well as the beneficiaries under the Will who were innocent of wrongdoing.

C. December 2021 Motion to Vacate

In December 2021, Amelia moved to vacate the order and judgment granting attorney fees to McGraw, arguing that the order should be vacated because the Will was fraudulent. Amelia based her motion to vacate on CR 60(b)(3) and (4), newly discovered evidence and fraud. Amelia also argued that the trial court had the authority under RCW 11.96A.150 to vacate its prior orders and reallocate any attorney fees and costs to Pula, who was the cause of the entire will contest.

The trial court issued an order to show cause why the order and judgment for attorney fees should not be vacated. McGraw responded, arguing that she had prevailed in her motion for summary judgment. McGraw argued that the validity of the Will had no bearing on whether the claims brought by Amelia against McGraw were unsubstantiated.

In February 2022, the trial court heard the motion to vacate. Amelia first asked the court to “vacate the judgment itself, and we offer to the Court as a secondary option, if there [are] issues as far as equity goes because having—Ms. McGraw was really it appears to [sic] have been dragged into this thing by Mr. Pula or whoever drafted that will; that, secondarily, the fees could be shifted to Mr. Pula under the TEDRA statute.” Report of Proceedings (RP) at 5. McGraw responded that the judgment against Amelia stemmed solely from the claims that she had brought against McGraw and the recently discovered evidence of fraud did nothing to implicate McGraw. She contended that there was no basis for vacating the judgment or shifting the fees to Pula.

The trial court agreed with McGraw that the claims brought against her by Amelia did not depend on whether fraud had occurred, rather, the earlier dismissed claims remained unfounded.

The trial court stated:

The thing that’s interesting about this is that my order granting summary judgment for all those things, like the idea that Dr. Mark Besola was incompetent, that he was under undue influence in seeing delusions and all kinds of other things all turned out to be accurate [sic]. None of those things happened because somebody fraudulently created this will. Dr. Mark Besola didn’t sign it, so he couldn’t have signed it under all those conditions, right? And, yet, I remember specifically a fairly—what’s the right word?—indignant Ms. Thompson talking about all the horrible things that [were] said about Ms. McGraw in the course of all this stuff, all of which turned out to be not true.

The issue is whether or not Dr. Amelia Besola’s claims with respect to all of those matters justified an award of attorneys’ fees to the prevailing parties. With respect to Ms. McGraw in particular, I think that’s true. The fraud that was ultimately discovered had nothing to do with Kelly McGraw.

RP at 10.

Amelia’s counsel asserted that McGraw may have assisted in the creation of the fraudulent Will; however, the trial court responded that no such evidence existed.

[COUNSEL]: And Ms. McGraw being in her unique position where she was occupying the house, she was there during the December time period that was relevant to all of this. She was there afterwards.

THE COURT: Sure. But as it turns out, there was essentially no evidence that she did any of those things.

So it turns out not only did she not [create the Will], she couldn't have done it; and, yet, here she's left with all these legal fees.

RP at 11-12.

The trial court then issued its oral ruling:

Here's my view. The judgment should not be vacated, but I do think it's not unreasonable to make Mr. Pula jointly liable for it since he's the one that initiated all this. If he hadn't done that, then Amelia Besola wouldn't have brought that claim. I don't think it's unforeseeable that Amelia Besola brings these kinds of claims against the beneficiary, although not against Julia, interestingly. Sure, Julia wasn't living there, but there was some reason to think that at least some point within reasonable proximity to the execution of the will that [Julia] and [Mark] were communicating by email. I know at one point she blocked him from social media. But wasn't it as late as October before the December will, the fraudulent will that they were communicating via email? I don't know. So there could have been other communications too.

I don't think Julia Besola-Robinson had anything to do with a fraudulent will either. Don't get me wrong. But she didn't get sued. Anyway, I will grant an order that makes Mr. Pula jointly liable with Amelia Besola on this, but I'm not going to vacate the judgment.

RP at 12-13.

The trial court entered an order denying Amelia's motion to vacate the order and judgment of attorney fees in favor of McGraw. The trial court also modified its earlier orders by making Pula jointly and severally liable with Amelia for McGraw's attorney fees.

Amelia appeals the trial court's order denying her motion to vacate.

ANALYSIS

Amelia contends that the trial court abused its discretion by requiring Amelia, the victim of a fake will, to pay the attorney fees of a beneficiary of the same fake will. She argues that this is in violation of RCW 11.96A.150, which grants the trial court the equitable power to award attorney fees and costs. In her reply brief, Amelia also argues that evidence supports that McGraw

engaged in fraud and should be considered by this court when it makes its decision. We disagree with Amelia and affirm the trial court.³

I. DENIAL OF THE CR 60(b) MOTION TO VACATE

Pursuant to CR 60(b), a trial court is permitted to grant relief from a final judgment or order “[o]n motion and upon such terms as are just.” The bases for relief from judgment relevant to his appeal include:

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

CR 60(b)(3), (4).

“In considering whether to grant a motion to vacate, a trial court ‘should exercise its authority liberally, as well as equitably, to the end that substantial rights be preserved and justice between the parties be fairly and judiciously done.’” *Vaughn v. Clung*, 119 Wn.2d 273, 278-79, 830 P.2d 668 (1992) (internal quotation marks omitted) (quoting *Criggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979)). Further, this court limits its review of a denial of a CR 60(b) motion to the propriety of the denial and does not review the impropriety of the underlying order. *In re Dependency of J.M.R.*, 160 Wn. App. 929, 938 n.4, 249 P.3d 193 (2011).

³The trial court’s order denied the motion to vacate the award of attorney fees in favor of McGraw, but modified the court’s earlier orders and made Amelia jointly and severally liable with Pula for the attorney fees and costs. At one point in her briefing, Amelia appears to contest the addition of Pula. Amelia’s argument as a whole, however, and specifically her conclusion, support that she is not contesting the addition of Pula.

A motion to vacate is left to the sound discretion of the trial court. *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013). A trial court abuses its discretion if its decision is manifestly unreasonably or exercised on untenable grounds or for untenable reasons. *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 423-24, 138 P.3d 1053 (2006).

The trial court based its award of attorney fees on RCW 11.96A.150, which provides:

Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party. . . . The court may 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 need not include whether the litigation benefits the estate or trust involved.*

(Emphasis added.)

Amelia frames the issue on appeal as whether the trial court's award of attorney fees to McGraw now violates RCW 11.96A.150 in light of the Will being ruled invalid.

But the issue before the trial court was whether Amelia's original claims justified an award of fees to the parties prevailing on those claims, irrespective of the validity of the Will. The trial court determined that the original award of fees remained justified, because McGraw had never been linked to the wrongful creation of the fraudulent Will. The trial court also determined that invalidation of the fraudulent Will did not undermine the original dismissal of Amelia's claims against McGraw! Amelia's litigation of her baseless claims against McGraw continued to provide an equitable basis justifying fees to McGraw under TEDRA. Further, the trial court observed that Julia was also a beneficiary under the Will. Amelia, however, did not sue Julia.

The trial court's reasoning is supported by the record. In its original December 2020 order granting fees, the trial court found that McGraw was a prevailing party on the motion for summary judgment, which dismissed Amelia's claims against her. The trial court also stated in its January

2021 order that it had found Amelia's claims meritless—the very claims that formed the basis for the award of fees. Amelia chose to sue McGraw, but did not sue Julia. Because the fraud at issue in this case was never tied to McGraw and was in any event immaterial to the original meritless claims brought by Amelia, the trial court did not abuse its discretion in denying the motion to vacate.

II. MCGRAW'S ALLEGED INVOLVEMENT IN CREATION OF FRAUDULENT WILL

In her reply brief, Amelia asks us to consider evidence that McGraw and Gunwall were involved in the conspiracy to commit fraud. Amelia argues that the trial court “did not consider in its *Findings*⁴ whether the sealed documents . . . provided evidence probative of . . . Ms. McGraw’s involvement in the . . . fraud identified in . . . Besola[s] TEDRA matter.” Reply Br. of Appellant at 1. She asserts that the referenced sealed documents “support[] a determination that Ms. McGraw was part of the effort to defraud [Mark’s] estate.” Reply Br. of Appellant at 18. Amelia continues that McGraw’s possible participation in fraudulent conduct is material to our determination of whether Amelia should be required to pay attorney fees to McGraw under RCW 11.96A.150.

Pursuant to RAP 2.5(a), the failure to raise an argument before the trial court results in the waiver of that argument on appeal. *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005). And while we are reviewing the trial court’s denial of Amelia’s motion to vacate for an abuse of discretion, that review does not include the underlying November 2021 findings of fact regarding the will contest. Further, at the hearing on the motion to vacate, Amelia provided no argument to

⁴ The findings referenced by Amelia are those included in the trial court’s November 17, 2021 order in which the trial court held the Will was fraudulent.

the trial court specific to McGraw's involvement in the creation of the Will based on the evidence she now asks us to consider.

Because we are limited in our review to determining whether the trial court properly denied the motion to vacate, we decline to make any factual determinations regarding McGraw's involvement in the creation of the Will. We also decline to consider this argument because Amelia failed to raise it before the trial court.

ATTORNEY FEES

McGraw requests attorney fees on appeal, arguing that this appeal is baseless and meant to harass her. She contends that she has once again been forced to incur attorney fees and costs in order to respond to this appeal.

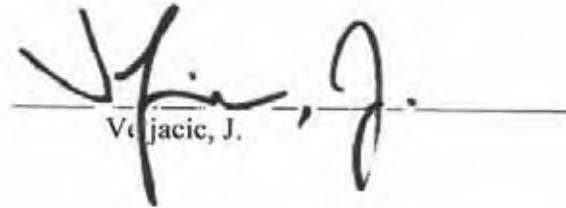
RAP 18.1(b) requires "[a]rgument and citation to authority" as necessary to inform the court of grounds for an award, not merely "a bald request for attorney fees." *Hudson v. Hapner*, 170 Wn.2d 22, 33, 239 P.3d 579 (2010) (quoting *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998)).

Here, McGraw requests attorney fees on the grounds that this appeal is baseless. McGraw, however, fails to inform us of the specific grounds or the authority on which she relies when seeking an award of fees.⁵ Because McGraw fails to inform us of the specific grounds on which she requests attorney fees, we deny the request.

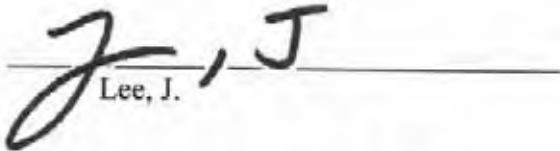
We affirm.

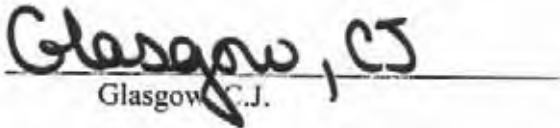
⁵ In her conclusion, McGraw cites to RAP 18.1 as the basis for fees. In the specific section on fees, there is no citation to authority to support an award of fees. It remains unclear on what grounds McGraw asks us to enter an award.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Vojacic, J.

We concur:


Lee, J.


Glasgow, C.J.

APPENDIX B

June 13, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of:

MARK L. BESOLA,

Deceased.

No. 56725-3-II

**ORDER DENYING MOTION FOR
RECONSIDERATION AND
AMENDING OPINION**

Appellant, Amelia Besola, moves this court to reconsider its February 7, 2023 opinion. After consideration, this court amends its opinion as follows, but otherwise denies the Appellant's motion:

The last sentence of the first full paragraph on page 3 that reads: "Amelia did not sue Julia." is deleted.

The last paragraph of the first full block quote on page 6 that reads:

I don't think Julia Besola-Robinson had anything to do with a fraudulent will either. Don't get me wrong. But she didn't get sued. Anyway, I will grant an order that makes Mr. Pula jointly liable with Amelia Besola on this, but I'm not going to vacate the judgment.


is deleted and replaced with the following:

I don't think Julia Besola-Robinson had anything to do with a fraudulent will either. . . . Anyway, I will grant an order that makes Mr. Pula jointly liable with Amelia Besola on this, but I'm not going to vacate the judgment.

The last line of the fourth full paragraph on page 8, that reads: "Further, the trial court observed that Julia was also a beneficiary under the Will. Amelia, however, did not sue Julia," is deleted.

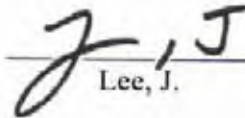
The first full sentence on page 9, that reads: "Amelia chose to sue McGraw, but did not sue Julia." is deleted.

It is SO ORDERED.

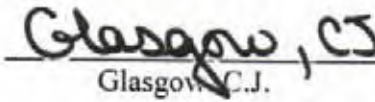


Veljovic, J.

We concur:



Lee, J.



Glasgow, C.J.

APPENDIX C



19-4-00016-6

LAST WILL AND TESTAMENT

OF

MARK LESTER BESOLA

FILED
IN COUNTY CLERK'S OFFICE

MAY 08 2019

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

RECITAL

I, Mark Lester Besola, a resident of Pierce County within the State of Washington, make, publish and declare this to be my Last Will and Testament, thereby revoking any and all previous Wills and Codicils made by me.

RELATIVES

I, Mark Lester Besola, attest that I am single.

I do not have any children.

All references in this Will to the Descendants of any person shall mean their naturally born children and/or legally adopted children, unless otherwise indicated, as well as any of their children's naturally born and/or legally adopted children throughout the generations to come.

BURIAL

It is my request that my Executor make arrangements for my remains to be buried at Lopez Union Cemetery located at 311 Davis Bay Rd, Lopez Island, Washington 98261. I also request that I be buried in an Armani suit.

All costs and expenses associated with my burial requests shall be paid from the life insurance, if any, and/or proceeds of my estate.

DEBTS & EXPENSES

Any and all my debts due and payable, including funeral, memorial and burial expenses, the expenses of the administration of my estate, all estate, inheritance and similar taxes payable with respect to property included in my probate estate, including any interest and/or penalties thereon, shall be paid out of my estate pursuant with the laws of the State of Washington, without apportionment or right of reimbursement from any beneficiary herein named in my Will.

REAL PROPERTY

I bestow and bequeath any interest which I may have in my home, including the real property and

5/10/2019 8:10

5900
049
improvements, located at 5314 218th Ave E, Lake Tapps, Washington 98391 owned by me at the time of my death along with all insurance policies upon my home, subject to any loans, mortgages or other encumbrances pursuant to the attached Schedule - Beneficiary Designations.

5900
049
I bestow and bequeath any interest, including the real property and improvements, which I may have in any other real estate, owned by me at the time of my death, along with all insurance policies upon such real property, subject to any loans, mortgages or other encumbrances pursuant to the attached Schedule - Beneficiary Designations.

PERSONAL PROPERTY

5900
049
5102/010
I bestow all of my tangible personal property owned by me at the time of my death, including, without limitation, personal effects, clothing, jewelry, furniture, furnishings, household goods, automobiles and other vehicles, along with all insurance policies upon such tangible property, in accordance to those designated in the attached Schedule-Beneficiary Designations, and if any of them shall be under the age of eighteen(18)years,then it shall be held in trust until such time as (s)he becomes of age.

5900
049
5102/010
As per the attached Schedule - Beneficiary Designations to this Will, signed by me and identifying certain personal property which is to be bestowed upon the persons named therein, I direct my Executor to distribute such property in accordance with the terms and provisions contained herein.

5900
049
5102/010
The reasonable fee of delivering such property shall be paid by my Executor as an expense of my estate.

CASH, BANK ACCOUNTS, INVESTMENTS

5900
049
5102/010
I bestow and bequeath any interest which may belong to me at the time of my death in accordance to and in conjunction with the attached Schedule - Beneficiary Designations

RESIDUARY ESTATE

5900
049
5102/010
I bestow and bequeath all the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wherever located, including any inheritance I may be entitled to as well as any lapsed or void legacy or devise under this Will, that I own or am in any manner entitled to at the time of my death (collectively referred to as my "residuary estate"), to be divided among those as designated in the attached Schedule - Beneficiary Designations. If they are or if any of them shall be under the age of eighteen (18) years, then it shall be held in trust until such time as s/he becomes of age.

5900
049
5102/010
If there should be no living beneficiary under the above provisions to receive the assets in my residuary estate, then my residuary estate shall be distributed to the persons who would be entitled thereto under the laws of descent and distribution pursuant to the laws of the State of Washington,

as if I had died intestate at that time owning such property in fee simple, with exclusion of those descendants which may be listed in the attached Disinherit Schedule as disinherited.

TESTAMENTARY TRUST

Any property, assets or other distributions from my estate intended for a beneficiary under 18 years of age at the time of distribution is to be made, shall not be paid or distributed outright to such beneficiary, but rather shall be held in trust by my Trustee, or if I have not named a Trustee, by my Executor in the capacity of a Trustee, upon the following terms and conditions.

The Trustee shall hold, manage, invest and reinvest the property of such beneficiary in a separate trust and shall distribute to or for the benefit of the beneficiary so much or all of the net income or principal thereof as the Trustee, in the Trustee's sole discretion, shall deem necessary to provide for such beneficiary's health, education, maintenance and support, taking into consideration any other resources available to such beneficiary. Any net income not so paid shall be accumulated and added to principal at least annually and thereafter shall be held, administered and disposed of as a part thereof.

When such beneficiary reaches 21 years of age, the Trustee shall distribute 30% of the assets then held in trust to such beneficiary; and if and when such beneficiary reaches 25 years of age, the Trust shall automatically terminate and the Trustee shall distribute all remaining principal and income to such beneficiary. Notwithstanding any provisions herein to the contrary, my Trustee may determine it is in the best interests of the beneficiary to terminate the trust prior to such beneficiary reaching 25 years of age and distribute all trust assets directly to such beneficiary or into a custodial account established for such beneficiary, and my Trustee shall have no liability therefore.

If such beneficiary dies prior to receiving all of the assets in his/her trust, the principal and income in such beneficiary's trust shall be paid and distributed to such beneficiary's living Descendants, if any; and if none, then to my living Descendants, provided, however, that if any such Descendant is a beneficiary of another trust under this Will, such property otherwise distributable to such beneficiary shall be held in accordance with such trust. If I have no living Descendants, such property shall be distributed to the beneficiaries of my residuary estate as provided in this Will, or if there are none, to the persons who would be entitled thereto under the laws of descent and distribution of the State of Washington if I had died intestate at that time owning such property in fee simple.

AVOIDANCE OF CONSERVATORSHIP

If any property of my estate vests in absolute ownership in a minor or incompetent, my Executor, at any time and without court authorization, may:

01071
a) distribute the whole or any part of such property to the beneficiary;

b) hold such property in trust and use the whole or any part for the health, education, Maintenance and support of the beneficiary;

c) distribute the whole or any part to a guardian, conservator, committee or other legal Representative of the beneficiary;

595
d) distribute the whole or part to a custodian for the beneficiary under any gifts or transfers to minors act; or

e) distribute the whole or part to the person or persons with whom the beneficiary resides.

5410/2010
Evidence of any such distribution or the receipt therefor executed by the person to whom the distribution is made shall be a full discharge of my Executor from any liability with respect thereto, even though my Executor may be such person.

If such beneficiary dies before receiving all of the assets held in conservancy, the principal and income in such beneficiary's trust shall be paid and distributed to such beneficiary's living Descendants, if any; and if none, then to my living Descendants. If I have no living Descendants, such property shall be distributed to the beneficiaries of my residuary estate, as provided in this Will, or if there none, to the persons who would be entitled thereto under the laws of descent and distribution of the State of Washington as if I had died intestate at that time owning such property in fee simple.

SPENDTHRIFT PROVISION

The interest of any beneficiary of any trust created under this Will shall not be transferred, assigned or conveyed, and shall not be subject to the claims of any creditors of such beneficiary, or of any local, state or federal government or agency, or of any private agencies, and the Trustee, or if I have not named a Trustee, by my Executor in the capacity of a Trustee, shall continue distributing trust property directly to or for the benefit of such beneficiary as provided for herein, notwithstanding any transfer, assignment, conveyance or action by creditors governments or agencies. If the Trustee is prevented by any transfer, assignment or conveyance or by any proceeding brought by any creditor, government or agency or by any bankruptcy, receivership or other proceeding, from distributing property directly to or for the benefit of any beneficiary, the Trustee shall hold and accumulate the property which would otherwise have been distributed until the Trustee is able to distribute such property directly to or for the benefit of such beneficiary, or until the death of such beneficiary, whichever first occurs; and on the death of such beneficiary any such property so held and accumulated shall become a part of the principal of the trust and shall be disposed of accordingly.

DIRECTIVE FOR PET CARE

Notwithstanding any other provisions of this Will, I further direct and request that:

The following pet(s), and any and all animals that I may own at the time of my death, be given to Brandon Gunwall, presently residing at 5314 218th Ave E, Lake Tapps, Washington, 98391, we have made an agreement that he take and treat them as companion animals and is named beneficiary to my AVMA Group Health and Life Insurance Trust to take care of my animals.

If Brandon Gunwall is unwilling or unable to receive my animals, he is in breach of our verbal contract and as beneficiary of my Life Insurance becomes null and void and I give such animals.. to Eric Pula, presently residing at 5314 218th Ave E, Lake Tapps, Washington, 98391, with th fesse wish that he treat them as companion animals. In return he become beneficiary to my AVMA Group Health and Life Insurance Policy

If Eric Pula is unwilling or unable to receive my animals, I request that KARE, located at PO Box 994, Silverdale, Washington 98383, whose telephone is 3606026717 and contact person is to receive my animals and ensure they are cared for and treated as companion animals, and if KARE is unable to receive my animals, my Executor shall select an appropriate person and I will give my animals to such person.

PET TYPE	PET NAME	VETERINARY NAME
Dog	Bullwinkle	MarkBesola
Dog	Angle	Mark Besola
Dog	Rory	Mark Besola
Dog	Hope	Mark Besola
Dog	Scamper	Mark Besola
Dog	Fancy	Mark Besola

I instruct my Executor to take my AVMA Group Health and Life Insurance Trust and give it to the person who shall accept my animals, and I wish and direct that these funds be used solely for the care and support of my animals.

APPOINTMENT OF EXECUTOR/TRUSTEE

I appoint Eric Pula, Friend and Caretaker, to serve as Executor of my Will. If my Executor is unwilling or unable to serve, I appoint Kelly McGraw, Best Friend, to serve as the Alternate Executor of my Will.

I do not wish for Amelia Besola, Sister, to serve as my Executor under any circumstances.

I appoint Kelly McGraw, Best Friend, to serve as Trustee of any trust created under this Will. If my Trustee is unwilling or unable to serve, I appoint Eric Pula, Friend And Caretaker, to serve as Alternate Trustee of any trust created under this Will.

I do not wish for Amelia Besola, Sister, to serve as my Trustee under any circumstances.

I appoint Eric Pula, Friend and Caretaker, to serve as Digital Executor of my Will. If my Digital Executor is unwilling or unable to serve, I appoint Kelly McGraw, Best Friend to serve as the Alternate Digital

501072019

Executor of my Will.

I do not wish for Amella Besola, Sister, to serve as my Digital Executor under any circumstances.

BONDS/AUDITS NOT REQUIRED

501072019

The term "Fiduciary" shall mean any Executor, Trustee or successor qualifying and serving under this Will.

No Fiduciary shall be required to file or furnish any bond, surety or other security in any jurisdiction, nor shall any Fiduciary hereunder be required to file any inventory or other reports with any court

No Fiduciary shall be required to inquire into or audit the acts or doings of any predecessor Fiduciary or to make claim against any such predecessor or their estate.

POWERS OF EXECUTORS/TRUSTEES

501072019

Any Executor or Trustee serving under this Will shall be a Fiduciary granted all the powers conferred by Washington laws, as amended. Any successor Fiduciary shall have and may exercise all of the powers, privileges, immunities and exemptions conferred upon the predecessor Fiduciary as fully and to the same extent as if such successor had originally been named as a Fiduciary. Any Fiduciary serving hereunder shall keep full accounts and shall make and furnish statements of all receipts and disbursements at least annually to each person then eligible to receive income from my estate or any trust created hereunder and shall at any time, upon reasonable request of such person, provide full information to such person as to the condition of my estate, including amounts received and disbursements made.

Any Fiduciary under this Will may resign without the order of any officer or court and without consent of any beneficiary of any provision of this Will by giving such Fiduciary's successor and all persons then entitled to receive income hereunder, or the guardians of such persons, thirty (30) days advance written notice of such intent to resign, or at any time resign by instrument in writing signed by such Executor or Trustee and delivered to the persons then entitled to the income from my estate or such trust. In the case of an Executor, the Fiduciary must also give notice to the Court having jurisdiction over the administration of my estate; and upon properly accounting for all estate property received and disbursed, shall be discharged from any and all further liabilities. In the case of a Trustee, the Fiduciary must deliver the trust property to the successor Trustee and upon properly accounting for all trust property received and disbursed, shall be discharged from any and all further liabilities.

If a successor Fiduciary is unable or unwilling to serve, they may appoint a second successor Fiduciary to serve in their place, by sending a signed instrument appointing a successor delivered to each living beneficiary under my Will making express reference to this power and the second successor Fiduciary may exercise powers upon a prospective and contingent basis until effective:

To compensate counsel and to employ other persons who may be deemed necessary for proper administration and to delegate authority when delegation is advantageous to the trust or estate.

To exercise and continue the power provided in this section notwithstanding the termination of the trust until all assets of the trust has been distributed.

The right to receive reasonable compensation for services rendered with regards to this Will, and to be exonerated from and to pay all reasonable expenses and charges of the estate and trust.

POWERS OF DIGITAL EXECUTOR

My Digital Executor shall have the power granted by law for proper administration to manage, distribute, handle, download, backup digital assets, convert my file format, access any and all devices necessary to manage digital assets, clear computer caches and distribute and dispose of my digital assets in accordance with this Will without order of court and without notice to anyone. In addition, the Digital Executor shall also have the rights, powers and authority as follows:

Standard of Care The customary "Standard of Care" shall include, but is not limited to, the distribution, management, or termination of digital assets, the exercising of care and judgment, under the circumstance then current and prevailing, of persons of cautiousness, acumen and good judgment in the exercise and management of their own affairs, with regards to the handling of their own personal digital assets, and taking into consideration the plausible safety of their digital assets.

Engage Professional Assistance The Executor shall have the appropriate power and mandate to hire, employ, or dismiss, and compensate any professional assistants deemed necessary, or to hire and employ any other persons which may become necessary in order to ensure the proper administration of this Will, as well as the power to delegate authority to another when such delegation would be deemed beneficial to the management and distribution of the estate and/or trust.

Extent of Power The Executor shall have the power and authority to implement and maintain the rights provided hereunder this Will, despite any dissolution or cessation of any trust which may be allocated herein, until such time as all assets of the trust have been distributed accordingly.

Compensation The right and authority to be exonerated from, to pay all reasonable expenses and charges of the estate and/or trust and to receive reasonable compensation for services rendered under and in accordance to this Last Will and Testament.

Informal Administration The herein named Digital Executor shall have all rights and authority to control and manage the digital assets, if any, to the extent allowable by law without any undue or unnecessary intervention or interference by the probate court.

APPOINTMENT OF DIGITAL EXECUTOR

Distributed digital assets, in accordance to this Will, shall include any and all files stored on my digital devices, including but not limited to, desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar digital device which currently exists or may exist as technology develops or such comparable items as technology may develop in the future. The term "digital assets" also includes but is not limited to emails, received and sent, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, DNS service accounts, web hosting accounts, tax preparation service accounts, online stores, affiliate programs, other online accounts and similar digital items which currently exist or may exist as technology develops or such comparable items as technology may develop in the future, regardless of the ownership of the physical device upon which the digital item is stored.

I appoint Eric Pula, of Lake Tapps, as Digital Executor. In the event that Eric Pula declines to serve for any reason, I then wish to appoint Kelly McGraw, of Lake Tapps, to serve as my Digital Executor.

SURVIVORSHIP

I direct that, for purposes of this Will, a beneficiary shall be deemed to predecease me unless such beneficiary survives me by more than thirty (30) days.

DISINHERITANCE

I have intentionally omitted to provide for and specifically direct that under no circumstances shall any property, part, share or interest of my estate vest in or be taken by those persons named on the attached Disinherit Schedule, including their respective spouses and children, heirs and assigns. I generally and specifically disinherit each and every person identified within the attached Disinherit Schedule pertaining to this paragraph, regardless of whether they are claiming to be or may be lawfully determined to be my heirs at law, notwithstanding anything to the contrary in this Will.

CONTESTS DISALLOWED

Should any beneficiary contest or initiate proceeding to contest the validity of this Will or to prevent any provision herein from being carried out in accordance with its terms (whether or not in good faith and with probable cause), then all the benefits provided for such contesting beneficiary in this Will, including their Descendants, shall be revoked and annulled.


0076 The share to which such contesting beneficiary would otherwise have been entitled shall be distributed to such persons and in such manner as if such contesting beneficiary and all of such beneficiary's Descendants had died immediately prior to such division without exercising any power of appointment which they might otherwise have under this Will.

0076 If all of the persons who are beneficiaries of this Will join in such contest or proceeding, my estate shall be distributed to any of those persons who are not contesting beneficiaries and who would otherwise be entitled thereto under the laws of descent and distribution of the State of Washington, as if I had died intestate at that time owning such property in fee simple.

0076 IN WITNESS WHEREOF, I have set my hand and seal on this date of 12-6-18.

TESTATION CLAUSE

The foregoing instrument was signed, sealed, published and declared by Mark Lester Besola, the above named Testator to be such Testator's Last Will and Testament in our presence, all being at the same time, and we, at such Testator's request and in such Testator's presence and in the presence of each other, have subscribed our names as witnesses on the aforementioned date above.



(First Witness Signature)
Robyn Peterson
900 29th St SE # E7
Auburn, WA 98002
2534551863



(Second Witness Signature)
James Garrett
5314 218th Ave E
Lake Tapps, WA 98391
2533553105

SELF-PROVING AFFIDAVIT

STATE OF WASHINGTON

COUNTY OF PIERCE

Before me, the undersigned authority, on this day personally appeared the Testator, Mark Lester Besola, and the witnesses, Robyn Peterson and James Garrett, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and all of said individuals being

0077

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5/10/2018

duly sworn, the Testator declared to me and to the witnesses in my presence that said instrument is the Last Will and Testament of the Testator and that the Testator had willingly made and executed it as the Testator's free act and deed for the purposes expressed therein. The witnesses, each on oath, stated to me in the presence and hearing of the Testator that the Testator had declared to them that the instrument is the Testator's Last Will and Testament and that the Testator executed the instrument as such and wished each of them to sign it as it as a witness; and under oath each witness stated further that the witness had signed the same as witness in the presence of the Testator and at the Testator's request; that the Testator was of sound mind and body. I had a near death experience recently. If it had not been for Eric Pula, I would not be here today. I owe him my life and therefore leaving him 55% of my estate.

_____ (Testator Signature)

_____ (First Witness Signature)

_____ (Second Witness Signature)

Sworn to and subscribed before me by the Testator, Mark Lester Besola, and witnesses, Robyn Peterson and James Garrett, on this date of _____

Public Signature)
Expires _____

(Notary
My Commission

SCHEDULE - BENEFICIARY DESIGNATIONS

BENEFICIARY NAME	RELATIONSHIP	BEQUEATHED INHERITANCE	INHERITANCE PERCENTAGE
KellyMcGraw	BestFriend		25%
Eric Pula	Friend/Caretaker		55%

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5/20/2019

BENEFICIARY NAME	RELATIONSHIP	BEQUEATHED INHERITANCE	INHERITANCE PERCENTAGE
KellyMcGraw	BestFriend		25%
Eric Pula	Friend/Caretaker		55%
Julia Besola- Robinson	Sister	My Share and interest of 1713 MacKaye Harbor Rd Lopez Island & 3427 E 26th Ave Spokane	
UC Davis Veterinary Catastrophic Need Fund	Charity		10%
KARE Kitsap Animal Rescue & Education	Charity		10%

I wish for ALL of my Assets- Property, Personal and Real, Cash, Bank Accounts and Investments that are not mentioned above to be sold, closed and/or cashed out. After all debts and bills are paid the remainder distributed per schedule above.

Mark L. Besola
(Testator Signature)

DISINHERIT SCHEDULE

NAME OF DISINHERITED INDIVIDUAL RELATIONSHIP TO TESTATOR

Amelia Besola (Sister) has stolen over 1 million from me
Jeffrey Swenson (Friend) has stolen tens of thousands from me

APPENDIX D

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

In the matter of the Estate of MARK LESTER BESOLA, <i>Deceased.</i>	No. 19-4-01902-9 CONSOLIDATED WITH No. 19-4-01945-2
AMELIA BESOLA, individually, <i>Petitioner,</i> v. ERIC PULA, individually and as Personal Representative of the Estate of Mark L. Besola; et al., <i>Respondents.</i>	FINDINGS OF FACT AND CONCLUSIONS OF LAW
AMELIA BESOLA, <i>Petitioner,</i> v. BRANDON GUNWALL, et al., <i>Respondents.</i>	

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1) TRIAL

Date: Petitioner Amelia Besola's will contest claim was adjudicated at a bench trial on February 22, 2021 – March 2, 2021, and November 1 - 2, 2021.

1 Appearances: Petitioner Amelia Besola was represented by her attorneys
2 C. Tyler Shillito, Andrea H. Brewer, Stuart Morgan, and Jose Vera. Respondent
3 Michal B. Smith, as Personal Representative of the Estate of Mark Besola was
4 represented by his attorneys Kathleen Pierce and Daniel Walk during the
5 February through March portion of the trial, and Neil Dial and Samuel Dart
6 during the November portion of the trial. Respondent Eric Pula was
7 represented by his attorney, Kevin Steinecker, Respondent Kelly McGraw was
8 represented by her attorney, Elizabeth Thompson. Respondent Julia Besola-
9 Robinson was represented by her attorney Quentin Wildsmith. Respondents
10 UC Davis Veterinary Catastrophic Need Fund and KARE Kitsap Animal Rescue
11 & Education were represented by their attorney, Karen Bertram, although they
12 did not participate in the November portion of the trial.

13 Presiding Judge: The Honorable Bryan Chushcoff.

14 The Court has reviewed all the exhibits admitted at trial, heard the
15 arguments of counsel, and heard the testimony of the following witness on
16 behalf of the parties:

- 17
- 18 1. Brandon Gunwall
- 19 2. Robyn Peterson
- 20 3. James Garrett
- 21 4. Eric Pula
- 22 5. Kelly McGraw
- 23 6. Brett Bishop

1 5. In September 2013, Mark Besola employed attorney Richard
2 Perednia to draft a will. That Will is not the subject of these proceedings.

3 6. At the time of his death, Mark Besola's estate was worth
4 approximately \$5,000,000 and Mark Besola was aware of the extent of his
5 wealth.

6 7. Mark Besola had significant health problems. By 2018 he often
7 depended on a wheelchair for mobility.

8 8. For some time prior to his death, Mark Besola surrounded himself
9 with people who moved into his home located on Lake Tapps in Pierce County
10 and who relied on Mark Besola for their housing and other financial needs.

11 9. Kelly McGraw lived in one of the two mother-in-law units at Mark
12 Besola's Lake Tapps home in 2018. She had been living there since 2015. She
13 regularly paid rent to Mark Besola.

14 10. Brandon Gunwall, James Garrett (also a renter at the house) and
15 Eric Pula moved into Mark Besola's Lake Tapps house during 2018.

16 11. Eric Pula agreed to be a caregiver to Mark Besola in exchange for
17 room and board in Mark Besola's Lake Tapps house.

18 12. Brandon Gunwall agreed to do landscaping, clean cars and other
19 chores at the Lake Tapps house for Mark Besola and his dogs, in exchange for
20 room and board in Mark Besola's Lake Tapps home.

21 13. People living at the home would have had access to Mark Besola's
22 electronic devices and financial information throughout 2018 and early 2019.

1 14. In the last year of his life, Mark Besola became increasingly
2 isolated from his family and became increasingly hostile toward his sisters and
3 they toward him. In late 2018, Mark Besola instituted legal proceedings against
4 his sister.

5 15. In August 2018, Amelia Besola obtained a temporary restraining
6 order to protect herself and her child from Mark Besola.

7 16. Julia Besola-Robinson blocked Mark Besola from contacting her
8 electronically.

9 17. On December 1, 2018, two men entered Mark's Lake Tapps home
10 and battered Mark Besola and other residents with a baseball bat. Eric Pula
11 shot and killed one of the intruders and wounded the other.

12 18. Mark Besola experienced a medical emergency. Mr. Gunwall
13 transported Mr. Besola to the Auburn Medical Center where he was admitted
14 on December 30, 2018. He remained in the hospital until his death on January 1,
15 2019. Despite his history of medical conditions, Mark Besola's death was not
16 expected.

17 19. Eric Pula, Eric Pula's girlfriend Lisa Herrera, Brandon Gunwall,
18 James Garrett and Kelly McGraw continued to occupy Mark Besola's Lake
19 Tapps home for some time after Mark Besola's death.

20 20. Among other things, Mark Besola owned a large safe that was in
21 his Lake Tapps home at the time of his death. Amelia Besola had the
22 combination for the safe's lock.

1 21. Amelia Besola was appointed personal representative of Mark
2 Besola's estate on January 3, 2019.

3 22. Amelia Besola, as personal representative, sought access to Mark
4 Besola's Lake Tapps house in January and February 2019 to gather the Estate's
5 financial information and records.

6 23. When Amelia Besola, as Personal Representative of Mark Besola's
7 estate, attempted to access the Lake Tapps home in January and February of
8 2019, neither James Garrett nor any other resident indicated that Mark Besola
9 had a will or that James Garrett had ever witnessed Mark Besola sign a will
10 disinheriting Amelia Besola.

11 24. On February 16, 2019, Amelia Besola accessed, by a court order,
12 Mark Besola's Lake Tapps House for a second time. Mark Besola's safe was
13 present during this visit, but someone had already cut an opening in the back
14 of the safe and removed its contents. The opened safe did not contain a will.

15 25. Amelia Besola, as personal representative of Mark Besola's estate,
16 served eviction notices to the occupants of Mark Besola's Lake Tapps house on
17 or about April 4, 2019.

18 26. The Court issued an Order to Show Cause Why Writ of
19 Restitution Should not be Issued on April 9, 2019, ordering Kelly McGraw, Eric
20 Pula, and Brandon Gunwall to appear and show cause on April 24, 2019 why the
21 court should not deliver possession of Mark Besola's Lake Tapps House to the
22 personal representative of his estate (the "Order to Show Cause").

1 27. Eric Pula and Kelly McGraw were present in court when the April
2 9, 2019 Order to Show Cause was issued.

3 28. The Order to Show Cause was mailed to Brandon Gunwall, Kelly
4 McGraw, Eric Pula, Sarah Martin, Megan Doe, and all other occupants at the
5 Lake Tapps address, and to Kelly McGraw's North Mullen Street address on
6 April 10, 2019.

7 29. www.formswift.com is a legal forms website on which customers
8 can purchase customized estate planning materials, including Last Wills and
9 Testaments ("FormSwift").

10 30. FormSwift's templates are personalized based on the user's
11 response to questions. FormSwift provides a PDF and Word version of the
12 document created based on the user's answers that may be exported to and
13 edited by the user.

14 31. FormSwift stores the initial form created based on the user's
15 response to the questions. FormSwift's system identifies and tracks such
16 created legal forms by the date and time such forms are created, by the type of
17 form created, and the user account id and email that created the form.

18 32. An account was created on the website www.formswift.com
19 through the use of Robyn Peterson's email, sugarbelle7771@gmail.com on April
20 19, 2019 at 07:57 Greenwich Mean Time ("GMT") (the "FormSwift Account").

21 33. Robyn Peterson's Visa card was used to pay for the FormSwift
22 Account on April 19, 2019 at 10:10 GMT which required both Ms. Peterson's

1 credit card number and also the CVV number on the back of her card. Creation
2 of the account resulted in a charge of \$1.95 to Robyn Peterson's Visa card.

3 34. A document titled Last Will and Testament of Mark Lester Besola
4 was created on the FormSwift Account on April 19, 2019 at 10:23 GMT, (the
5 "April 2019 Will").

6 35. A document titled Living Will of Mark Lester Besola was created
7 on the FormSwift Account on April 24, 2019 at 13:57 GMT. This document list
8 both Eric Pula's name and his cell number active in late April 2019, including
9 on April 24, 2019.

10 36. The eviction hearing was held on the afternoon of April 24, 2019
11 to evict Eric Pula, Brandon Gunwall, and Kelly McGraw from Mark Besola's
12 Lake Tapps home.

13 37. After speaking with James Garrett on the telephone, Eric Pula met
14 Robyn Peterson at the Pierce County Superior Court to file a will dated
15 December 6, 2018 with the Superior Court Clerk's office on May 8, 2019 (the
16 "December 2018 Will").

17 38. Eric Pula represented to the court at a May 14, 2019 hearing
18 regarding his continued residency that he was still residing at the Lake Tapps
19 house. If true, he could not have found the December 2018 Will on his "last day
20 at the Lake Tapps house" because he had already filed it on May 8, 2019.

21 39. On September 16, 2019 Brandon Gunwall, as the beneficiary of
22 Mark Besola's dogs, petitioned for the December 2018 Will to be admitted to
23 probate.

1 40. On September 26, 2019, the December 2018 Will was admitted to
2 probate.

3 41. The signatures appearing on the December 2018 Will purporting
4 to be witnesses are those of James Garrett and Robyn Peterson.

5 42. The substantive contents of the December 2018 Will are strikingly
6 similar to the April 2019 Will from the FormSwift Account including the name
7 "Mark Besola."

8 43. No innocent explanation has been offered for why Ms. Peterson
9 would attempt to "recreate" Mark Besola's Will after his death. It is unlikely Ms.
10 Peterson would have been able to recreate it in such detail given her testimony
11 of being relatively unfamiliar with Mark Besola or his private affairs and of
12 having cursorily looked at the Will. Nor has an explanation by provided for
13 who, why or how someone in April 2019 would have been able or motivated to
14 impersonate Ms. Peterson's email and credit card accounts to discredit the
15 December 2018 Will.

16 44. The December 2018 Will has two different sets of font types and
17 has a variety of formatting inconsistencies. Different pages of the December
18 2018 Will were printed using two different printers.

19 45. The April 2019 Will had the same spelling error of a dog's name
20 which belonged to Mark Besola, misspelling the name as Angle instead of
21 Angel. This misspelling was carried over to the December 2018 Will.

1 46. The April 2019 Will listed Lisa Herrera as a witness, however, her
2 name was removed and replaced with Robyn Peterson on the December 2018
3 Will.

4 47. Lisa Herrera was the live-in girlfriend of Eric Pula and, in April
5 2019, was 8 months pregnant with his child.

6 48. The April 2019 Will appears to be a draft of the December 2018
7 Will.

8 49. Eric Pula claims to have found the December 2018 Will in Mark
9 Besola's safe on the last day he was at Mark Besola's Lake Tapps home before he
10 was evicted (between April 24, 2019 and May 8, 2019), then waited several days
11 before filing the December 2018 Will.

12 50. Eric Pula referenced the December 2018 Will at the eviction
13 hearing on May 14, 2019 to stop the eviction and retain possession of the Lake
14 Tapps house, claiming he was still residing at the Lake Tapp's home.

15 51. At least one pen stroke of the signature on the Beneficiary
16 Schedule is inconsistent with Mark Besola's genuine signature. This is either
17 evidence of someone other than Mark Besola having applied the signature or
18 possibly the product of a known phenomenon - an optical illusion - observed
19 in 2 dimensional photos of three-dimensional objects (here the object is the ink
20 applied to the paper) in which case a mistake is made in determining which of
21 crossing lines of aqueous ink has crossed over/under the other line.

22 52. A "ghost" L appears on the December 2018 Will. This is evidence
23 of a tracing of the alleged signature of Mark Besola,

1 53. The alleged signature of Mark Besola on the December 2018 Will
2 is better than other of his contemporary exemplar known signatures. That is,
3 less degeneration or tremor related to health or age infirmities is apparent in
4 the pen strokes of the alleged signature. This is an indicator of a simulated
5 signature.

6 54. The alleged signature of Mark Besola on the December 2018 Will
7 is simulated and was not made by Mark Besola.

8 55. The December 2018 Will could not have been signed by Mark
9 Besola because it was created more than four months after Mark Besola died
10 and backdated.

11 56. The December 2018 Will and its Beneficiary Schedule is not a valid
12 testamentary document.

13 57. Robyn Peterson (possibly with the aid of others) created the April
14 2019 Will and the December 2018 Will.

15 58. Eric Pula, James Garrett, and Robyn Peterson who created, signed,
16 or filed the December 2018 Will knew it was a false, simulated document and
17 created, signed, or filed the December 2018 Will with an intention to deceive.

18 59. The testimony of Eric Pula, James Garrett, and Robyn Peterson
19 was not credible, especially with respect to James Garrett and Robyn Peterson
20 being execution witnesses to the December 2018 Will.

21 60. Eric Pula's representation that he found the December 2018 Will in
22 Mark Besola's safe is false. That fact was material to this case because it made
23 credible the claim that the December 2018 Will had been executed during Mark

1 Besola's lifetime. Eric Pula knew that the fact was false and intended for the court
2 to act on that fact.

3 61. The December 2018 Will did in fact deceive this Court as
4 evidenced by the Order admitting it to probate.

5 62. The December 2018 Will harmed the true beneficiaries of the
6 estate of Mark Besola as well as the innocent beneficiaries of the December
7 2018 Will.

8 63. The original TEDRA Petition contesting the December 2018 Will
9 sought to invalidate the will based upon (1) lack of mental capacity, (2) undue
10 influence, (3) insane delusion, (4) Fraud, (5) Unauthorized practice of law, (6)
11 that Mark Besola had not signed the December 2018 Will, (7) certain
12 beneficiaries were disinherited for financial exploitation, and (8) the imposition
13 of a constructive trust. Most of these claims were dismissed on summary
14 judgment.

15 64. Any conclusion of law in this section shall be properly treated as
16 such.

17 **3) CONCLUSIONS OF LAW**

18 1. The Court has jurisdiction over the parties and the subject matter
19 of this action; venue is proper in Pierce County, Washington.

20 2. The burden of proof in this matter is by clear, cogent, and
21 convincing evidence.

22 3. Petitioner has established by clear, cogent, and convincing
23 evidence that the December 2018 Will is invalid because it is not signed by Mark

1 Besola or anyone else at his direction and the December 2018 Will is the product
2 of fraudulent conduct.

3 4. Any Finding of Fact in this section shall be properly treated as such.

4 5. The Order Admitting the December 2018 Will to Probate should be
5 vacated, the letters testamentary issued in favor of Michael Smith shall be
6 revoked upon proper application to the court, and Michael Smith shall make an
7 accounting and final report to the court of his affairs prior to his discharge.

8 6. The Pleadings should be/are amended to conform to the proof
9 offered at trial.

10 DATED: November 16, 2021.

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15

16 Judge BRYAN CHUSHCODE

16 cc: Pierce County Clerk for filing
17 under above cause number

18
19 Elizabeth Thompson
20 Neil Dial
21 Samuel Dart
22 Quentin Wildsmith
23 Stuart C. Morgan
24 Karen Betram
25 C. Tyler Shillito
26 Andrea H. Brewer
27 Jose F. Vera
28 Kevin T. Steinacker



29
30

SMITH ALLING, P.S.

July 13, 2023 - 3:35 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 56725-3
Appellate Court Case Title: In Re the Estate of Mark Lester Besola
Superior Court Case Number: 19-4-01902-9

The following documents have been uploaded:

- 567253_Petition_for_Review_20230713153422D2733617_6665.pdf
This File Contains:
Petition for Review
The Original File Name was Petition for Supreme Court Review.pdf

A copy of the uploaded files will be sent to:

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- andrea@smithalling.com
- ddklawoffice@gmail.com
- dianne@nwkare.org
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- grady@ledgersquarelaw.com
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- wildsmith@lasher.com
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