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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

NO. 317579

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In Re The Estate of:

MARGARET WIMBERLEY,

Deceased.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Margaret Wimberley's (hereinafter "Margaret")[1] intent was clear: upon her death she 1) wanted James Wimberley (hereinafter "Jim") to receive the property known as the "Fromherz Road Property" and the assets contained in the Yakima Federal bank account known as the "Building Fund Account," and 2) she wanted Jim to receive those assets without any corresponding offset to Wes Wimberley (hereinafter "Wes"). In responding to this matter, Wes and Northwest Trustee Service (hereinafter "Successor Trustee") accept that this was her intent, but ignore important facts and law that allow this court to fulfill her last wishes. It is the duty of the Court to fulfill the intent of the testator where there is a legal pathway to do so. Here, there is such a pathway, and Margaret's intent must be upheld.

II. REPLY TO FACTS

A. The Important Facts of the Case are Undisputed.

There is no dispute that in December 2009 Wes took Margaret to the bank on two separate occasions and oversaw her withdrawal of $306,000 from the Building Fund Account, transferring $26,000 to him and his wife, and placing the remaining assets in a non-trust account. Wes admits this under oath in interrogatory answers. Clerks Papers ("CP") at 211-13. It is

[1] First names are used for purposes of clarity given the common surnames of those parties involved. No disrespect is intended and none should be inferred.

further undisputed that at the time the transfers were made, Margaret 1) had resigned as trustee and 2) had made the trust irrevocable through the 2008 Amendment. CP at 187-89. This transfer substantially altered the final accounting and proposed distribution of trust assets in Wes' favor.

There is no dispute that Margaret intended for Jim to receive the Fromherz Road Property and the assets in the Building Fund Account. First, the written documents clearly indicate Margaret's intent. [2] In both the the July 18, 2007, Amendment (hereinafter "2007 Amendment." CP at 179-80) and Margaret's August 31, 2006, letter to her attorney Rich Greiner (CP at 221), she indicates that she wants Jim to receive the Fromherz Road Property as a specific bequest without offset to Wes. Further reinforcing Margaret's written intent is the sworn testimony of the drafting attorney Mr. Greiner (CP at 195 ¶ 6-9) and the social worker Kristyan Calhoun who conducted a geriatric assessment of Margaret in early 2010. Ms. Calhoun stated in her sworn declaration that, "[Margaret] stated that the home was to [sic] Jim's when she passed away but it was hers for now." CP at 203. Mr. Greiner, who is a well-respected attorney who has been practicing law for 30 years, stated in his sworn declaration that "Margaret wanted to ensure

[2] The Respondents' position is that Jim should get 75 percent of the home because it was Margaret's intent that Jim receive all of her 50 percent share, but that C.W. controlled the other 50 percent of the home and split his share equally between Jim and Wes, thus leaving Jim with all of Margaret's share and half of C.W.'s share.

that James would have the house, free from any interest by Wesley." CP at 195 ¶ 7. With regard to the Building Fund Account he stated, "Margaret wanted those funds to be James' fund to finish the house and to be James' inheritance, free from Wesley's share of the trust." CP at 195 ¶ 8. All of this unrebutted evidence shows that Margaret intended for Jim to get the Fromherz Road Property and Building Fund Account without offset to Wes.

Both Wes and the Successor Trustee (hereinafter referred to jointly as "Respondents"[3]) accept that Jim should receive as much interest in the Fromherz Road Property as Margaret was legally permitted to distribute. *Respondent Carroll Wesley Wimberley's Brief* at 27. Even Marcus Fry,[4] an attorney who met with Margaret in early 2010, states that the unambiguous language of the 2007 Amendment, which amendment was drafted at a time when there was no question of Margaret's capacity or vulnerability to undue influence, would give the property to Jim without corresponding offset:

> I explained to her that in my opinion her trust as written did not carry out this plan [referring to offset for Wes] and that

[3] Unless otherwise specifically noted, "Respondents" refers to both Wes Wimberley and the Successor Trustee because both parties join in defense of this appeal and present generally the same arguments. This term is used merely for convenience of reference.

[4] The Declaration of Marcus Fry is heavily relied upon by Respondent Wes as allegedly carrying "equal, if not greater weight," than the declaration of Richard Greiner. *See Respondent Caroll Wesley Wimberley's Brief* at Footnote 6 pg. 23-24. In 2010, Wes took Margaret to see Markus Fry hoping that she would agree to modify her trust. For a short period of time Mr. Fry was acting as Margaret's attorney. Mr. Fry never helped Margaret to complete the modifications of the trust because Margaret lacked the necessary capacity to do so at that time.

the house and funds in a designated account came off of the top before being divided.

Declaration of Marcus Fry at CP 321 ¶5 (emphasis added).

As evidenced by the above, there is no genuine issue of material fact as to Margaret's intent to give the Fromherz Road Property and the Building Fund Account to Jim without offset to Wes when she executed the 2007 and 2008 amendments.

The Respondents have not disputed the trust account and asset values as described in the *Appellant's Opening Brief*, which were used to calculate Margaret's share of trust assets.[5] All of the values are supported by account statements showing the precise assets held in each account at relevant times. This applies to values at C.W. Wimberley's (hereinafter "C.W.") date of death as well as the date the Building Fund Account became irrevocable on April 3, 2008. As such, the values described in Appellant's Opening Brief, and herein, should be accepted by this Court.

III. REPLY TO LEGAL ARGUMENTS

A. Standard of Review

Wes repeatedly refers to "factual findings" made by the trial court that should be reviewed under an abuse of discretion standard. *See Respondent Caroll Wesley Wimberley's Brief* at 2-3,13-14, 31, 34. He even

[5] Respondents generally dispute the legal theory behind the final calculations, but not the values themselves.

states that this is "an appeal of factual findings regarding Margaret and her husband's intentions with regards to their assets found in the trial court's letter opinion." *Id.* at 14. Summary Judgment decisions do not need to be supported by findings (CR 52 (a)(5)(B)), and the trial court's order approving the accounting does not contain a single factual finding. *See* CP at 344-46. Furthermore, nothing in the transmittal letter of the trial court constitutes a finding of fact. CP at 347. As a result, there are no findings of fact for this Court to review or even consider under an abuse of discretion standard.

Where a trust is unambiguous on its face, which is the case here, interpretation is a question of law to be reviewed *de novo*. *In re Estate of Curry*, 98 Wn. App. 107, 112-13, 988 P.2d 505 (1999). As described *supra*, there is little dispute with regard to the material facts of this case, and this Court has all the necessary facts and authority to grant Jim's requested relief upon *de novo* review.

B. Margaret Had Authority to Control the Distribution of the Fromherz Road Property and the Building Fund Account, and Her Specific Bequests to Jim Must be Honored.

1. Strict compliance with the Trust terms is not required in this case.

The Respondents argue that Margaret's failure to strictly comply with the provisions of the Trust regarding the establishment of sub-trusts

resulted in an automatic placement of 50 percent of the Fromherz Road Property into C.W.'s share of trust assets. *See Respondent Caroll Wesley Wimberley's Brief* at 19-20. However, the Respondents provide no legal authority to support this position, and strict compliance is not necessary where a trustor substantially complies with the terms of a trust. *Williams v. Bank of Cal., N.A.*, 96 Wn.2d 860, 639 P.2d 1339 (1982).

Here, Margaret substantially complied with the terms of the trust when she executed the 2007 Amendment. Through the 2007 Amendment Margaret selected those assets of the trust over which she would retain control. C.W.'s interests were not harmed by the decision not to fund sub-trusts because Margaret did not exert control over C.W.'s share of assets beyond what was permitted under the terms of the Trust.[6] This is evidenced by the fact that when Margaret died in 2010, C.W.'s share of trust assets was the same size as when he died in 2002. Stated differently, Margaret's decision not to fund sub-trusts did not cause her to exercise control over a larger portion of trust assets than she would have otherwise exercised control had the sub-trusts been funded. The only effect of Margaret's 2007 Amendment was to designate those assets over which she would retain control, and to direct how those assets would be distributed upon her death.

[6] Among other powers, Margaret was authorized to receive all the net income from Decedent's Trust, as well as so much discretionary payments of principal as the trustee determined to be necessary or advisable. C.P. at 148, *Trust* pg. 38.

Such powers were specifically reserved to the Surviving Trustor by the terms of the Trust (CP at 139), and Margaret substantially complied with the terms of the Trust when she executed the 2007 Amendment.

The trust document itself did not specify any particular method for Margaret to divide and allocate the assets into the sub-trusts, and she had ample statutory authority to divide the assets by whatever method she chose. *See* RCW 11.98.070(15).[7] Margaret's 2007 Amendment was an effective application of her power under the Trust - made under the advice of an experienced estate planning attorney - to select the Fromherz Road Property and Building Fund Account as her share of the Trust.[8]

There is no dispute that Margaret had authority to dispose of those Trust assets over which she had elected to retain control.[9] The Respondents merely argue that because Margaret did not strictly comply with the terms of the trust as to the manner in which her election was made, her election

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[7] A trustee has authority to, "Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocation to any beneficiary and without any obligation to make an equitable adjustment;" RCW 11.98.072 (15).

[8] The Trust gives Margaret authority to elect which assets she would retain in the Survivors Trust: "The Surviving Trustee shall have the sole discretion to select the commonly owned, community and quasi-community assets or the proportionate share of any such assets which shall be included in the Decedent's Trust B and Trust C." CP at 139.

[9] "Survivor's Trust A shall remain revocable by the Surviving Trustor during the life of the Surviving Trustor." CP at 138 (*Trust*, pg 28). "The Surviving Trustor retains the right to change the beneficiaries of Trust A." CP at 144 (*Trust*, pg. 34)

failed. *Respondent Caroll Wesley Wimberley's Brief* at 21. Such a requirement would put form over function and would result in a complete disregard for the clear intentions of both Margaret and C.W.

2. To require strict compliance would subvert the primary intent of Margaret and C.W. in creating the Trust.

Margaret and C.W. entered into this trust in 1999 with the intent of limiting estate taxes, not the intent of limiting the survivor's control over his or her estate after the death of the first trustor. The trust was established at a time when the federal tax exclusion for decedents ("the unified credit") was only $650,000, thus placing a much higher priority on incorporating tax reduction strategies into estate planning. A substantial portion of the language of the trust is devoted to such tax planning. Thus, the primary purpose of the trust was to reduce estate taxes while continuing to give Margaret and C.W. as much authority and control over Trust assets as possible during their lifetimes. Margaret specifically acknowledges this intent in the 2007 Amendment drafted by counsel:

> A. Given the changes to the Federal Estate Tax laws, the Surviving Trustor/Trustee elects to not fund trust assets into what would be a "decedent's trust". As such the "Specific Provisions for Settling Estate" located at page 26 and implemented at page 28 of the Trust shall be ignored. The Surviving Trustor shall have full use and control over all trust assets.

CP at 178.

Margaret believed she had authority to ignore the provisions of the Trust regarding the establishment of sub-trusts. By 2007 the unified credit had risen to $2 Million. After communicating with counsel, she believed that because estate taxes were no longer a concern, the provisions regarding sub-trusts were no longer necessary. As a result, Margaret ignored the sub-trust provision and executed the 2007 Amendment with specific bequests of the Fromherz Road Property and Building Fund Account to Jim.

3. Margaret acted under the advice of an experienced estate planning attorney when she made her revisions.

If Margaret misinterpreted the provisions of the Trust regarding establishment of sub-trusts, she must be forgiven for this misinterpretation because it was made under the advice of counsel. The declaration of her attorney, Rich Greiner, explains that she sought his assistance in arranging to give the Fromherz Road Property and the Building Fund Account to Jim as a specific bequest without any corresponding offset to Wes. CP at 194-98. However, instead of exercising her undisputed right to establish sub-trusts and designate which property would remain under her unrestricted control in the Survivors Trust, Margaret's attorney drafted the 2007 Amendment and she signed the document with the understanding that it accomplished her intent.

This Court has the duty and authority to uphold Margaret's intent. RCW 11.12.230; *see* RCW 11.96A.020. "When called upon to construe a will, the primary duty of the court is to give effect to the testator's intent." *Matter of Estate of Bergau*, 103 Wn.2d 431, 435, 693 P.2d 703 (1985). "It has been declared a fundamental maxim, the first and greatest rule, the sovereign guide, the polar star, in giving effect to a will, that the intention of the testator as expressed in the will is to be fully and punctually observed so far as it is consistent with the established rules of law." *In re Elliott's Estate*, 22 Wn.2d 334, 351, 156 P.2d 427 (1945). This rule is equally applicable to testamentary trusts. *Matter of Griffen's Estate*, 86 Wn.2d 223, 226, 543 P.2d 245 (1975). Margaret's intent is clear, and this Court should use its authority to ensure that form is not placed above function and Margaret's last wishes are not needlessly cast aside.

C. Margaret and C.W. Did Not Intend for the Trust to Limit the Community Property Agreement's Control Over Non-Trust Property.

1. The express provisions of the Trust apply only to the property placed into the Trust by C.W. and Margaret.

The Respondents argue that Margaret's share of the trust was insufficient for her to make specific gifts of the Fromherz Road Property and Building Fund Account to Jim as described in the 2007 Amendment. However, this argument lacks merit. Respondents erroneously rely on the Trust's "Letter of Intent" to support their assertions that Margaret and

C.W.'s 1967 community property agreement was revoked. They argue that with such revocation, non-trust assets at C.W.'s date of death went into the trust by virtue of his pour-over will rather than directly to Margaret as her separate assets through the community property agreement. If this were the case, they argue, Margaret would have a right to control only 50 percent of the total estate assets existing at her date of death. Yet their argument that the agreement was invalid ignores the key restricting language contained in the Letter of Intent, to wit, the revocation of any community property agreement and the creation of commonly owned property applies only to "all property held by the undersigned **in the Trust**." Clerks Papers ("CP") at 175 (emphasis added).

The Letter of Intent states as follows, with the important provisions, that have been ignored by Respondents, underlined in bold:

> As part of our estate plan, we have established a Revocable Living Trust. **We have transferred property into the Trust and in the future we will take property out and put it into the Trust as we desire**. It is our intent that all property **held in the Trust** be our commonly owned or community property, subject to the laws governing joint ownership. In confirmation of this intent, we make the following declaration:
>
> 1. All property held by the undersigned **in the Trust** known as: The Wimberley Family Trust, dated January 15, 1999, C.W. Wimberley and Margaret Wimberley, Trustor and/or Trustees is the commonly owned or community property of the said Trustors unless otherwise designated by writing in the Trust documents, or in the manner in which

title is held in the Trust.

2. All property which is the separate property of either Trustor has been and will be so designated in writing and signed by the Trustors.

3. Any property **in the said Trust** which had its origin as separate property, or which cannot be traced as to its origin, is the commonly owned or community property of Trustors. If any question should arise, it is the intent of each of the Trustors to gift, in consideration of their mutual love and affection, so much of any disputed property to the other as is necessary to create joint ownership in both Trustors. This gift is intended and made as and when any asset **is placed into the Trust**.

4. Any previous community property agreement entered into between the undersigned shall no longer be applicable to, and is hereby revoked with respect to, all property held by the undersigned **in the Trust** known as: The Wimberley Family Trust, dated January 15, 1999, C.W. Wimberley and Margaret Wimberley, Trustor and/or Trustees.

CP at 175 (emphasis added).

The intent of C.W. and Margaret is clearly stated in the above Letter of Intent. The first paragraph of the Letter of Intent specifically contemplates transferring assets into and out of the trust. The four paragraphs that follow very explicitly apply only to those assets which have been transferred into the trust. The fourth paragraph explicitly recognizes that C.W. and Margaret have a prior community property agreement, and that the community property agreement is only revoked as to "all property held by the undersigned in the Trust." CP at 175 (emphasis added). Courts

will not *imply* wholesale termination of community property agreements, and here such a wholesale termination was not intended by C.W. and Margaret. *See In re Estate of Bachmeier*, 147 Wn.2d 60, 64, 67-68, 52 P.3d 22 (2002). Revocation of the Community Property Agreement applied only to property placed into the Trust by C.W. and Margaret, and did not invalidate the agreement as to property held outside the trust.

2. Margaret's own actions demonstrate the couple's intent that the community property agreement control non-trust assets.

Margaret's actions after the death of C.W. also reinforce the couple's intent that non-trust assets be subject to the community property agreement. After C.W. died, Margaret used the 1967 Community property agreement to transfer C.W.'s interest in non-trust real property directly to herself through the use of a Community Property Survivorship Affidavit. CP at 238-39 ("That all of the real and personal property owned by my husband and me at the time of his death constituted community property under the laws of the State of Washington. We provide for the disposition thereof under a community property agreement which was recorded on August 22, 1967 under Yakima County Auditor's File No. 2141646."). Margaret's use of the community property agreement to transfer property after C.W.'s death is evidence of her belief that the agreement was still valid and enforceable. Nowhere in their respective briefing do the respondents

mention this important information – and for good reason: It does not fit their flawed theory.

Margaret and C.W. affirmatively chose which assets would be controlled by the trust. It is clear that they contemplated transferring assets into and out of the trust and that they understood the legal effects of such transfers. Indeed, no party has suggested that Margaret and C.W. did not know the legal effect of choosing to place specific items of property either into or out of the trust. Likewise, every paragraph of the Letter of Intent that discusses the creation of joint property and revocation of community property agreements specifically limits such actions to assets contained in trust. It must be presumed that Margaret and C.W. understood the legal effect of such limitations and intended that all assets outside of trust at the time of C.W.'s death pass directly to Margaret by virtue of the 1967 community property agreement.

3. The community property agreement notwithstanding, Margaret still controlled sufficient assets to fulfill her intended distributions to Jim.

Even if it were assumed that the community property agreement was invalid and that Margaret only controlled 50 percent of the trust assets at her date of death, Margaret still had sufficient assets to make specific gifts of the Fromherz Road Property and Building Fund Account to Jim. Margaret's 50 percent share of the $944,499 in trust assets at the time of her

death is $472,249.50, which is sufficient to fulfill her specific bequests to Jim totaling only $396,739.87. While the community property agreement was valid and enforceable at the time of C.W.'s death, it is not necessary for this court to rule on its validity to find that Margaret controlled sufficient trust assets to fulfill her bequest to Jim.

D. The Trustee's Accounting Must Account for the Invalid Transfers of Assets out of the Building Fund Account.

The responses of both Wes and the Successor Trustee attempt to focus attention on alleged misconduct by Jim that occurred after Margaret's death, and has no relevance to the legal questions before this Court. However, Wes is the party who committed financial exploitation of Margaret while she was alive, and it is such exploitation that is the root cause of the issues currently before this Court. Wes does not dispute that he took Margaret to the bank and oversaw her withdrawal of $306,000 from an account that was to pass to Jim as a specific bequest. At the time this action occurred, Margaret was vulnerable, was incapacitated, and, as the former trustee of an irrevocable trust, lacked legal authority to transfer the Trust assets. Yet this invalid transfer of funds is not accounted for in the Successor Trustee's accounting and proposed distribution. The result is a substantial modification of the intended distribution under the Trust.

1. Margaret lacked legal authority to withdraw the funds because she was not trustee and the trust was irrevocable.

The Respondents have failed to provide a response as to why the Successor Trustee should not account for the $306,000 of assets which were illegally removed from the Building Fund Account just prior to Margaret's death. Despite using significantly less than the 50 pages allowed under RAP 10.4(b), both respondents completely ignore the arguments raised in the Appellant's Opening Brief concerning the invalid transfers.

First, Respondents do not address the argument that Margaret lacked authority to remove the funds because she had resigned as trustee under the 2008 Amendment.[10] Only a trustee has authority to control trust assets. RCW 11.98.070. Margaret was not the trustee in December 2009 when Wes took her to the bank and oversaw her removal of $306,000, transferring $26,000 directly to Wes and his wife. As a matter of law this attempted transfer was invalid and must be reversed prior to calculating the final Trust distributions.

Second, Respondents fail to address the argument that Margaret lacked authority to make the transfers because she had made the trust irrevocable.[11] Removing the assets from the Building Fund Account altered

[10] *See Appellant's Opening Brief* at pg. 38.
[11] *See Appellant's Opening Brief* at pg 38.

the bequest to Jim which Margaret had made irrevocable under the 2008 Amendment. The removal also caused trust assets to be removed from the trust at a time when such action was prohibited under the 2008 Amendment. An irrevocable trust cannot be revoked or amended, and, as a matter of law, the attempted December 2009 transfers are invalid. RCW 11.103.030 ("Unless the terms of a trust expressly provide that a trust is revocable, the trustor may not revoke or amend the trust.").

Even if the Court declined to rule as a matter of law that the transfer was invalid based on the above, there is substantial evidence that Margaret lacked capacity and was unduly influence by Wes into making the December 2009 transfers. Again, the Respondents fail to address this argument in any detail despite the significant effect such lack of capacity and undue influence had on the final distribution of trust assets. Given the declarations of Richard Greiner (CP at 194-98) and Kristyan Calhoun (CP at 200-209), this Court should at the very least determine that there are significant questions of fact with regard to Margaret's incapacity and the undue influence exerted upon her by Wes in December 2009 which demand a trial.

2. The acts of Jim as Trustee after Margaret's death were appropriate, but are irrelevant to the issues before this Court.

Instead of addressing the legal issues regarding why the December

2009 transfers must be reversed and accounted for in the Trustee's accounting, the Respondents attempt to divert attention to the alleged improper acts of Jim as trustee after Margaret's death. The alleged wrongful acts, however, are all related to the legal position Jim has taken in the present dispute, and, if his legal position is adopted by this Court, his acts as Trustee after his mother's death must be determined to have been appropriate. In contrast to Jim's actions, there is no legal theory that supports the actions of Wes where he financially exploited his vulnerable mother.

Jim's actions as trustee were in accord with his position that the Fromherz Road Property and assets from the Building Fund Account belonged to him by virtue of the 2007 and 2008 Amendments. If the house and the account belonged to him, it was appropriate for him to transfer the home into his own name and not pay rent, which were the primary reasons he was removed as trustee. CP at 4-8. The Respondents' reliance on *In re Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) is misplaced because that case involved a situation where the beneficiary was only given a percentage of the home, not the entire property as a specific bequest. Here, Jim received a 100 percent interest in the Fromherz Road Property as a specific bequest and there was no legal duty for him to pay rent. Respondents' repeated references to the alleged breaches of fiduciary duty for failure to pay rent

are merely intended to divert attention away from the real issues on appeal and Wes' bad acts.

E. All Issues Are Properly Before This Court for Review.

Respondents argue that certain issues presented to the trial court but not specifically addressed in the trial court order, are not properly before this court for review. *See Respondent Carroll Wesley Wimberley's Brief* at pg. 38. However, these issues go directly to the trial court's erroneous decision to approve the accounting, and the issues were presented to the trial court in briefing and oral argument prior to entry of the order being appealed. First, the question of appealability has already been decided by this Court, as Commissioner Wasson issued a ruling on August 13, 2013, that these issues were appealable as a matter of right. Second, the trial court order approved the Successor Trustee's accounting, which calculated the final distribution of trust assets. However, the Successor Trustee and the trial court made errors in the basic legal premises upon which the accounting is based. One of the issues being appealed is the trial court decision to deny a trial on the issues that present a question of fact - specifically issues of financial exploitation, repayment of loans, division of personal property, and fees and expenses of Trustees and attorneys. *See Response to the Trustee's Preliminary Accounting and Request for Instructions* at CP 100-04. These issues are properly before this court and

should be decided in favor of Jim. At the very least, these issues contain questions of fact that should be remanded for trial.

IV. CONCLUSION

Margaret wanted Jim to have the Fromherz Road Property and the assets in the Building Fund Account as specific bequests without any corresponding offset to Wes. She had legal authority to achieve this goal and sought the advice of counsel to assist her with planning. The Respondents urge this court to issue a decision contrary to law and reason: They ask this Court to put form above function and overrule Margaret's wishes in favor of a draconian adherence to their interpretation of the terms of the Trust. The intent of Margaret is paramount, and her intent is clear. But for a decision not to fund sub-trusts, which was based on the advice of counsel, and the unscrupulous actions of Wes in directing Margaret's removal of $306,000 from the Building Fund Account, Margaret's intent would have been fulfilled. Fortunately, this Court has the power to correct these wrongs and to uphold Margaret's last wishes.

Respectfully submitted this 19th day of May, 2014.

HELSELL FETTERMAN LLP

By _____

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CERTIFICATE OF SERVICE

I, Kacie M. Coselman, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman, LLP, 1001 4th Avenue, Suite 4200, Seattle, WA 98154.

3. In the appellate matter of the Estate of Margaret Wimberley, I did on the date listed below, (1) cause to be filed with this Court the foregoing document; and (2) to be delivered via email to Cam McGillivray, Northwest Trustee & Management Services, PO Box 18969, Spokane, WA 99228; and via Email and US mail to Linda Sellers, Sara Watkins, Halverson Northwest Law Group P. C., 405 E. Lincoln Ave, Yakima, WA 98901.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: May 19, 2014

Kacie Coselman

Kacie M. Coselman