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Court of Appeals
Division III
State of Washington

No. 340511

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

In the Matter of the Estate of:

Kathryn Joyce Rathbone

ESTATE OF KATHRYN JOYCE RATHBONE, TODD RATHBONE,
Personal Representative,

Appellants,

VS.

GLEN L. RATHBONE

Respondent.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

This appeal raises fundamental questions regarding the jurisdiction of the court in non-intervention probate proceedings. Washington has long recognized the right of the decedent to appoint a Personal Representative and confer upon the Personal Representative the right to make all of the fundamental and important decisions in the administration of the probate without the interference of the court. In this case, the trial judge, without any jurisdictional basis, attempted to insert his view of how the estate should be administered thereby denying this estate its non-intervention rights.¹

Respondent, hereafter Glen Rathbone, argues that the substantive statutory non-intervention rights of RCW 11.68.110 and RCW 11.68.070 have been amended or repealed by RCW 11.96A et. seq, commonly known as Trust and Estate Dispute Resolution Act (TEDRA), a procedural statute that simply provides a vehicle for the determination of disputes for which the court has jurisdiction in the first instance. Glen Rathbone

¹ Decedent specifically set forth in her Will the following provision:

“5.4 NO CONTEST PROVISION. My Personal Representative and Trustee shall have the authority to construe this Will and trusts and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my Estate or any trust with the cost of a litigated proceeding to resolve questions of law or fact. (Emphasis added)

argues that this procedural statute confers substantive jurisdiction on the trial court in areas where probate courts have never had jurisdiction in the past. TEDRA does not confer additional substantive jurisdiction on the probate court and this court should reject the invitation to expand this procedural dispute resolution statute beyond its intended means.

Glen Rathbone argues that his petition for an accounting under RCW 11.68.110, which is not part of this appeal, would somehow confer jurisdiction on the probate court in this action to “construe the will.” Glen Rathbone was clear from the outset that his petition to construe the Will was separate and apart from his petition for an accounting. He has never argued to the trial court that the Petition to Construe the Will was in fact a petition for an accounting under RCW 11.68.110. Furthermore, RCW 11.68.110 is a separate and distinct procedure for an accounting of fees paid and does not, *sua sponte*, create some independent jurisdictional basis for a petition to “construe the Will” in a non-intervention probate.

Finally, Respondent mistakenly argues that RCW 11.68.070 provides some jurisdictional basis for the probate court to intervene and construe the Will. RCW 11.68.070 is a personal representative removal statute that provides for the removal of a defalcating personal representative. It gives the court the jurisdiction only to remove and replace the personal representative on a showing that the personal

representative has failed to execute his or her duties faithfully in cases where waste and embezzlement are established.² This Court should reject the argument that this statute confers on the probate court the authority to construe the Will in a non-intervention probate.

II. STATEMENT OF THE CASE

The Estate does not quarrel greatly with Glen Rathbone's counterstatement of the case. Most of his assertions are borne out in the record. However the Estate does take exception to Glen Rathbone's claim that the trial court made findings that are now verities on appeal. The hearing before the trial court was on a motion to dismiss the action by challenging jurisdiction as a matter of law. There was no hearing, no evidence was produced and the trial court lacked any authority to make findings of fact. The trial court's "findings" in its order are superfluous and should be disregarded by this Court. The probate court's attempt to discern the "intent" of the testator in this Will is a nullity. The probate court lacked any jurisdiction to interpret the Will and its interpretation is therefore void.

With regard to Glen Rathbone's argument that the matter before the Court was, in reality, an RCW 11.68.110 petition for accounting, the

² The hearing before the probate court was a summary motion to determine the question of jurisdiction. It was not an evidentiary hearing. Therefore, the question of waste and

Probate judge noted that the subject matter of Glen Rathbone's petition to construe the Will did not involve any request for an accounting nor did it concern a fee challenge. VRP, Page 8, Lines 5-8. The Court concluded properly that "[RCW 11.68.110] doesn't appear to [apply], based on the issue that's being raised, which is the interpretation of section 4.1.3." VRP, Page 8, Lines 13-15.

A review of the procedural history may be useful. The Petition for the Probate of the Will was filed in Spokane County on February 20, 2013. On that same date An Order admitting the Will to Probate, Order of Solvency and Order Granting Non-intervention Powers was entered.

On July 31, 2014 the court entered an Order for Change of Venue and the case was transferred to the Grant County Superior Court under Cause No. 14-4-00110-3. On December 23, 2014 a Notice of Filing a Declaration of Completion of Probate and a Declaration of Completion of Probate were filed. On January 20, 2015 Glen Rathbone filed a Petition for Order Approving Fees & Requiring an Accounting.

On January 22, 2015 Glen Rathbone filed a Petition for Order Construing Will under Grant County Cause No. 15-4-00010-5. (CP 1) On March 11, 2015 the Estate filed its Objection and Opposition to the Petition for Order Construing Will. (CP 7) Glen Rathbone filed his Reply

mismanagement was never before the probate judge. The probate judges attempt at

to Petition to Construe Will on March 17, 2015. (CP 11) On November 12, 2015 the Court held a hearing on the Petition to Construe Will. On January 8, 2016 the Court entered its Order Construing Will. (CP 32) A timely Notice of Appeal was filed on January 20, 2016. (CP 33)

III. ARGUMENT

A. Standard of Review

Glen Rathbone correctly states that the question before this court, i.e. jurisdiction, is purely a question of law. Where the issue is legal, not factual, the standard of review is the error of law standard and is reviewed *de novo*. *Grier v. Washington State Employment Sec. Dep't*, 43 Wn. App. 92, 95, 715 P.2d 534 (1986).

B. TEDRA does not independently confer jurisdiction on the court.

Glen Rathbone correctly acknowledges that once the probate court enters a solvency order in a non-intervention Will the probate court is divested of jurisdiction.³ This has been the law in Washington for generations. He then incorrectly argues that the TEDRA statute independently confers jurisdiction on the probate court to “construe a Will” in a non-intervention proceedings.

making any “findings of fact” in this regard are a nullity.

³ Respondent’s Opening Brief at 8.

TEDRA was enacted by the Legislature in 1999 with the overall purpose “to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW.” An additional purpose of TEDRA was “to provide nonjudicial methods” for the resolution of matters, such as mediation, arbitration, and agreement. RCW § 11.96A.010. While the statute specifically amended a number of existing probate statutes, it did not, in any manner, amend RCW 11.68.110 or RCW 11.68.070.⁴ The history of the statute makes it clear that TEDRA was an attempt to consolidate the procedures already existing in various statutes for the resolution of trust and estate matters into a single statute. After a seven year study the Real Property, Probate and Trust Section of the Washington State Bar recommended that “all procedures for resolving trust and estate disputes be consolidated into a separate section of the probate code.” The Final Bill report noted that “Centralization makes the procedures easier to

⁴ As noted in the session law this was AN ACT Relating to trust and estate dispute resolution; amending RCW 11.40.020, 4.16.370, 6.15.020, 11.12.120, 11.18.200, 11.28.240, 11.40.040, 11.40.140, 11.42.010, 11.42.040, 11.42.085, 11.54.080, 11.54.090, 11.68.065, 11.68.080, 11.92.140, 11.95.140, 11.98.039, 11.98.051, 11.98.055, 11.98.080, 11.98.110, 11.98.170, 11.98.200, 11.98.220, 11.98.240, 11.106.040, 11.106.050, 11.106.060, 11.108.040, 11.108.900, 11.110.120, 11.114.020, 36.18.012, 36.18.020, and 83.100.180; adding a new chapter to Title 11 RCW; creating new sections; repealing RCW 11.16.060, 11.16.070, 11.16.082, 11.16.083, 11.96.009, 11.96.020, 11.96.030, 11.96.040, 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100, 11.96.110, 11.96.120, 11.96.130, 11.96.140, 11.96.150, 11.96.160, 11.96.170, 11.96.180, 11.96.900, and 11.96.901; and providing an effective date. SB 5196, 1999.

locate and follow and would codify current practice in the area.” Final Bill Report SB 5196, C 42 L 1999. (Emphasis Added) See also, RCW § 11.96A.010 (The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW) The Final Bill Report is consistent with the court’s interpretation of TEDRA holding that it is supplemental to existing statutory procedures. The TEDRA statute specifically provides that “The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title. RCW § 11.96A.080. See also, *In re Estate of Harder*, 185 Wn.App. 378, 384, 341 P.3d 342 (2015); *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006)

Glen Rathbone admits that TEDRA is a supplemental statute but then argues that it should override the jurisdictional limitations of nonintervention Wills and independently confer jurisdiction on the probate court to intervene where RCW 11.68 et. seq. has specifically disallowed jurisdiction. He argues that “TEDRA is supplemental to the rest of the probate statute[s], and it explicitly provides additional procedures by which and authorized party may involve the court’s jurisdiction in a

probate matter.”⁵ However, If TEDRA provides “additional procedures” that confer new substantive jurisdiction on the court for non-intervention cases where none now exists the statute is not supplemental.

Pursuant to longstanding Washington law, once an order of solvency is entered and the court has granted nonintervention powers, the personal representative is entitled to administer and close an estate without further court intervention or supervision. *In re Estate of Ardell*, 96 Wn. App. 708, 715–16, 980 P.2d 771, 776 (1999) RCW § 11.68.050 makes it clear that nonintervention powers cannot be restricted by the court unless the restrictions are set forth in the Will. However, once an order of solvency is entered the court loses jurisdiction. *In re the Estate of Jones*, 152 Wn.2d at 9 (citing *In re Coates' Estate*, 55 Wn.2d 250, 347 P.2d 875 (1959))(Emphasis added)

Glen Rathbone essentially argues that TEDRA restores jurisdiction to the court that it has lost by virtue of the nonintervention statutes. He supports his argument by arguing that since the definitions section of the Act broadly defined “matters” it was the legislature’s intent to overrule years of case law regarding “nonintervention probates” and directly confer jurisdiction on the court for any “matter.” RCW 11.96A.030 broadly defines “matters” only to make it clear that if the Court otherwise would

⁵ Respondent’s Brief, p. 9.

have jurisdiction over the “matter” then the dispute resolution procedures of the Act would apply. The definitions section regarding “matters” includes reference to the construction of wills, the change of a personal representative, and accounting from a personal representative and the determination of fees for a personal representative. These are all matters that the Probate Code, Title 11, already address. Admittedly, if the probate court otherwise had jurisdiction over a dispute regarding the construction of a Will, the need to change a personal representative or an accounting then the provisions of RCW 11.96A would apply and set out the process of dispute resolution. It does not, however, confer jurisdiction on the court for those matters in the first instance.

Glen Rathbone argues that because TEDRA grants to the Court the power to make, issue and cause to be filed orders, judgments, citations, notices, summons and other writs “that might be considered proper or necessary in the exercise of jurisdiction or powers” given under TEDRA, that somehow TEDRA is converted from a supplemental dispute resolution statute to a statute that grants jurisdiction in the first place. This is a bootstrapping argument that would have the TEDRA resolution process overrule or nullify most of the substantive jurisdictional provisions of RCW 11.68 et. seq. The argument is without merit.

Glen Rathbone makes the argument that TEDRA must confer jurisdiction on the Court contrary to RCW 11.68 et. seq. because a stated purpose of TEDRA is to facilitate the prompt and early resolution of disputes. This is an argument *non-sequitur*. He gives the example that if Glen Rathbone wanted to restrict the personal representative's nonintervention powers, and RCW 11.68.070 would only allow him to remove the personal representative for reasons of waste or embezzlement (which it does), then TEDRA would confer some additional jurisdiction on the probate court to impose a less drastic remedy. Again, this is a complete non sequitur. RCW 11.68.070 provides a very limited exception to the personal representative's nonintervention powers in cases of waste and mismanagement. It confers upon the Court limited jurisdiction to remove the personal representative. TEDRA, a supplemental statute, was never intended to overrule or expand the court's limited jurisdiction under RCW11.68.070 if the petitioner wanted to impose a less drastic sanction that that which is allowed by RCW 11.68.070. Our legislature specifically denied the court jurisdiction to intervene and impose lesser sanctions in a nonintervention probate; Glen Rathbone is basically arguing that TEDRA overrides the entire scheme of RCW 11.68, instead of supplementing the resolution process. The argument is without merit.

Glen Rathbone next makes the dangerous argument that RCW 11.96A.020(2) gives the probate court unfettered jurisdiction to act in any way that it deems right and proper in administering the estate. This expansive reading of the statute is unwarranted. RCW 11.96A.020 is entitled General power of the Courts – Intent- Plenary powers of the Court and was intended to reaffirm the already existing powers of the Court, not to amplify them. It provides that if TEDRA is “inapplicable,” the Court still has the already existing full power to proceed to administer the probate in accordance with existing law. It does not confer on the Court the power to ignore the jurisdictional restrictions of the nonintervention statutes and do as it pleases. Glen Rathbone ingenuously argues that his “inapplicable” argument was recognized in *Estate of Jones*, 152 Wn.2d 1, 18, 93 P.3d 147 (2004) by quoting entirely out of context footnote 11 in that case. In *Estate of Jones*, our Supreme Court was reviewing the trial court’s ruling to remove the personal representative. The beneficiaries had sought an accounting under RCW 11.96.070. That statute provided for an interim reporting as part of the representative's fiduciary duty. However, this statute had been repealed with the adoption of TEDRA. The Supreme Court noted in footnote 11 that TEDRA, RCW 11.96A.080, read in conjunction with RCW 11.68.065 (giving beneficiaries a right to an accounting by the personal representative) allow the beneficiary to

petition the court for an accounting. If TEDRA granted the court that jurisdiction independently of RCW 11.68.065 the Supreme Court would not need to refer to both statutes. TEDRA is simply the vehicle in which the substantive accounting rights of RCW 11.68.065 are transported. If, as Glen Rathbone argues, TEDRA had the omnipotent power to grant any party the right to have a judicial proceedings for the declaration of rights or legal relations with respect to any matter that might arise in a probate, the legislature would have repealed all of the jurisdictionally restrictive nonintervention rights of RCW 11.68 et. seq.

TEDRA did not repeal the nonintervention powers and is merely a procedure to litigate the dispute. The Court does not acquire any independent jurisdiction over nonintervention probates through TEDRA. TEDRA did not repeal the jurisdictional restrictions created by RCW 11.68 et. seq. To the extent that the probate judge based jurisdiction in this case solely upon TEDRA, it has committed error.

C. Glen Rathbone’s separate petition for an accounting under RCW 11.68.110 does not invoke jurisdiction in this TEDRA action to construe a will in a nonintervention probate.

In an effort to overcome the obvious jurisdictional limitations of his TEDRA petition “to construe the Will,” Glen Rathbone incorrectly argues that the probate court obtained jurisdiction to hear his TEDRA petition by virtue of RCW 11.68.110. This statute permits an heir in a a

nonintervention probate to seek an accounting after a declaration of completion is filed. The TEDRA petition “to construe the Will” does not allege that it is based on this statute and does not seek an accounting. In fact, Glen Rathbone admits that he filed a separate petition for an accounting which has not been heard by the probate court and is not before this court. The trial court noted that a separate Petition for Accounting has been filed. VRP, Page 8, Lines 5-8.

Glen Rathbone argues that since he filed a separate Petition for Accounting that the separately filed petition somehow confers on the probate judge the jurisdiction to hear this TEDRA action seeking to “construe the Will” in a nonintervention probate. These are apples and oranges. Glen Rathbone cries no authority, nor is there any, that supports an argument that when a beneficiary files a RCW 11.68.110 Petition for an Accounting that a Court is then given jurisdiction to hear a Petition to Construe a Will.

Glen Rathbone claims that his novel argument is supported by *In re Estate of Harder*, 185 Wn. App. 378, 341 P. 3d 342 (2015). He is mistaken. *Estate of Harder* does not stand for the proposition that “TEDRA provides an additional, independent basis” to invoke jurisdiction of the court in a nonintervention probate. In fact, Glen Rathbone admits in his argument that instead of providing an “independent” basis for

jurisdiction, TEDRA “supplements and does not replace the requirements of otherwise applicable statutes.”⁶ He then goes on to make an inconsistent argument that TEDRA provides an independent basis for jurisdiction. This argument misconstrues the holding in *Estate of Harder*.

In *Estate of Harder* at 382-83 the Court held:

A superior court's jurisdiction over nonintervention probate proceedings is limited and depends on the “legislative scheme.” *In re Estate of Bobbitt*, 60 Wash.App. 630, 632, 806 P.2d 254 (1991). After the superior court declares that a nonintervention estate is solvent, the superior court loses jurisdiction unless the executor or another person with statutorily conferred authority properly invokes it again. *In re Estate of Jones*, 152 Wash.2d 1, 9, 93 P.3d 147 (2004); *Bobbitt*, 60 Wash.App. at 632, 806 P.2d 254. We hold that because Janet's notice of mediation did not substantially comply with TEDRA and, even if it did, none of the heirs filed a petition under RCW 11.68.110, Chris and David did not properly invoke the superior court's jurisdiction.

This holding makes it clear that the RCW 11.68.110 petition for an accounting is a matter clearly separate and apart from TEDRA.

Estate of Harder was a nonintervention probate. On August 13, 2012 the personal representative filed a declaration of completion of probate. The heirs had 30 days from that date to file a petition for an accounting pursuant to RCW 11.68.110 or the estate would be forever closed. Instead of filing a Petition for Accounting under RCW 11.68.110,

⁶ Resp. Brief at 15

the heirs filed a “Notice of Mediation” pursuant to TEDRA, RCW 11.96A.300. Six months later the heirs filed a notice for arbitration under TEDRA (RCW 11.96A.310). The personal representative objected to the TEDRA notice of arbitration and argued that the probate court lacked jurisdiction because the heirs did not properly invoke the superior court's jurisdiction by filing a “petition” pursuant to RCW 11.68.110 within 30 days of the personal representatives filing of the declaration of completion of probate. The probate court agreed that it lacked jurisdiction because the heirs failed to file an RCW 11.68.110 notice for an accounting. *Id* at 382. The Court of Appeals (Div. II) upheld the probate court’s ruling and specifically noted that regardless of the compliance with the TEDRA statute regarding mediation or arbitration, jurisdiction in this nonintervention probate was derived from compliance with RCW 11.68.110 not from compliance with the TEDRA dispute resolution options.⁷

The *Estate of Harder* Court specifically rejected the argument Glen Rathbone makes in this case; that TEDRA independently provides the Court with jurisdiction over probate matters. The *Estate of Harder*

⁷ Admittedly, Glen Rathbone could invoke the TEDRA dispute resolution options at the time he seeks a hearing on his RCW 11.68.110 accounting but that matter has not yet been considered by the trial court.

court, in a well-reasoned explanation worthy of extensive quotation, wrote:

. . . . Once the declaration of completion is filed, the estate closes and the personal representative is discharged automatically “*unless* an heir ... [petitions] the court to approve the fees or for an accounting.” *In re Estate of Ardell*, 96 Wash.App. 708, 714, 980 P.2d 771 (1999)

The legislature enacted TEDRA to provide for nonjudicial dispute resolution methods for probate matters. TEDRA provisions “ ‘shall not supersede, but shall supplement, any otherwise applicable provisions and procedures’ ” under Title 11 RCW. RCW 11.96A.080(2).

In *Kordon*, a party contesting a will filed a TEDRA petition but did not file a citation, as required by chapter 11.24 RCW, which governs will contests. *Kordon*, 157 Wash.2d at 208–09, 137 P.3d 16. Our Supreme Court held that the superior court lacked subject matter jurisdiction because the party had not filed a chapter 11.24 RCW citation and TEDRA did not affect that requirement. *Kordon*, 157 Wash.2d at 212, 137 P.3d 16.

The facts here are analogous. Janet filed a notice of mediation under TEDRA, but she did not comply with the requirement under RCW 11.68.110(2) by filing a petition for an accounting to challenge Phillip's fees. Chris and David now argue that the superior court's decision favored “form over substance” because the notice of mediation was the functional equivalent of a petition for an accounting. Br. of Appellant at 5. We disagree. The notice of mediation failed to petition the superior court to take any action and TEDRA does not affect the requirements in chapter 11.68 RCW. We note that reading both applicable provisions of chapters 11.68 and 11.96A RCW together, so that chapter 11.96A RCW supplements chapter 11.68 RCW, requires a party who gives notice of mediation in order to resolve a fee dispute under chapter 11.96A RCW to also file a petition to invoke the superior court's jurisdiction under

chapter 11.68 RCW. “ ‘Plain language does not require construction.’ ” *Kordon*, 157 Wash.2d at 212, 137 P.3d 16 (quoting *State v. Wilson*, 125 Wash.2d 212, 217, 883 P.2d 320 (1994)). The superior court properly ruled that it lacked jurisdiction to review the reasonableness of Phillip's personal representative fees. (Emphasis added)

In re Estate of Harder, at 384–85. The exact analysis applies in this case. Filing a TEDRA action, does not, by itself vest the court with jurisdiction. TEDRA is supplemental to the jurisdiction conferring provisions of Title 11. Likewise, filing of a Petition to Construe the Will is not the functional equivalent of filing a request for an accounting under RCW 11.68.110. Glen Rathbone knew that and that is why he filed a separate RCW 11.698.110 petition. An heir can file an action allowed by RCW 11.68 et. seq. and then seek to have the dispute resolved by one of the dispute resolution vehicles of TEDRA but the heir cannot file a “TEDRA” request for dispute resolution alone and obtain any jurisdiction in a nonintervention probate.

Glen Rathbone argues that he may be able to raise some of the same issues in the RCW 11.68.110 accounting proceedings that he attempts to raise here. That may or may not be true and this court does not have that issue squarely before it. The Court should follow *Estate of Harder* and hold that the probate court lacked jurisdiction to hear the “TEDRA” petition to construe the Will. The case can then be remanded

for further proceedings. If Glen Rathbone wants to challenge the personal representative's accounting under RCW 11.68.110, that matter can be resolved in due course but cannot be resolved in this appeal. The probate court did not have any jurisdiction to hear the petition to construe the Will.

D. The court's jurisdiction to hear the petition to construe the will was not invoked pursuant to RCW 11.68.070.

Glen Rathbone next argues that "having properly invoked the court's jurisdiction pursuant to TEDRA or RCW 11.68.110" (both false premises) no additional basis for jurisdiction is needed.⁸ He then argues that a third basis for jurisdiction is RCW 11.68.070, a statute that permits the court to remove a recreant personal representative in a nonintervention probate. However, Glen Rathbone has never filed a RCW 11.68.070 petition for removal and has never asked the court to remove Todd Rathbone.⁹ Glen Rathbone skips over the first and most important requirement of jurisdiction under this statute, which is the need to actually file a petition for removal.¹⁰ He seems to argue that his TEDRA petition

⁸ Respondent's Brief at 18

⁹ This is understandable since there is no allegation of waste, embezzlement, or mismanagement.

¹⁰ The statute provides in relevant part:

If any personal representative who has been granted nonintervention powers fails to execute his or her trust faithfully or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, upon petition of any . . . any heir, . . ., such petition being supported by affidavit which makes a prima facie showing of

to construe the Will is sort of like an 11.68.070 petition and therefore the court should sort of have jurisdiction by analogy.

He then argues that his petition to construe the Will set forth “numerous facts” that would support a restriction or removal of the personal representatives nonintervention powers under RCW 11.68.070. A review of the Petition belies this argument. The Petition (CP 1) indicates that it is “based upon RCW 11.96A et seq., [and] RCW 11.12.230” a statute that provides that the Testator’s intent should control when carrying out provisions of the Will. The Petition notes that the personal representative’s interpretation of the Will would increase Todd Rathbone and Doug Rathbone’s residual share, where the interpretation of the Will offered by Glen would dramatically increase his residual share of the Estate.¹¹ Glen Rathbone argues in the Petition that Todd Rathbone is self-dealing but offers no facts to support that claim. He argues that there

cause for removal or restriction of powers, the court shall cite such personal representative to appear before it, and if, upon hearing of the petition it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250 as now or hereafter amended, then, in the discretion of the court the powers of the personal representative may be restricted or the personal representative may be removed and a successor appointed.

¹¹ Under Glen’s interpretation of the Will both Todd and Doug’s share of the Estate are reduced to the benefit of Glen. It is no more proper to suggest that Todd Rathbone is “self-dealing” than it is to suggest that Glen Rathbone is “self-dealing.” They simple have competing interpretations of the Will based on what is meant by purchasing the real property “from the Estate.” The Testator clearly left the power to interpret the Will with her personal representative.

are reasonably two interpretations of the Will but his interpretation more closely comports with the intent of the testator. (CP 5.) He argues that Todd Rathbone, as personal representative, is in a fiduciary relationship with him (and also with Doug Rathbone, the other beneficiary). He argues that Todd Rathbone's interpretation of the Will is "strained and baseless" and "for his own personal benefit at the expense of another beneficiary of the Estate", i.e. Glen Rathbone. (Id) Glen Rathbone ignores the fact that Todd Rathbone also owes a fiduciary duty to Doug Rathbone as well. His conclusory arguments in the Petition to Construe the Will do not rise to the level of showing a prima facie cause for the removal or restriction of the personal representative's powers under RCW 11.68.070.

He simply argues in his Petition and in this appeal that Todd Rathbone's interpretation of the Will amounts to self-dealing and a breach of his fiduciary duty. Todd Rathbone's interpretation of the requirement that he purchase the property from the Estate and his decision to distribute the proceeds as residue of the Estate is a reasonable construction of the Will. The fact that Todd Rathbone is incidentally the beneficiary does not create an issue of mismanagement, embezzlement or waste. Todd's duty of fair dealing is owed to all beneficiaries including Doug Rathbone. Glen Rathbone's interpretation of the Will would directly affect Doug Rathbone's rights under the Will. Any fair reading of the TEDRA Petition

to Construe the Will makes it clear that the petition was simply an attempt to have the Court impose Glen Rathbone's interpretation of the Will on this Estate instead of the interpretation of the personal representative. It was nothing more. This is directly contrary to the very wishes of the Decedent who clearly stated in her Will:

“5.4 NO CONTEST PROVISION. My Personal Representative and Trustee shall have the authority to construe this Will and trusts and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my Estate or any trust with the cost of a litigated proceeding to resolve questions of law or fact. (Emphasis added)

The TEDRA Petition was not, and was never intended to be a RCW 11.68.070 Petition to restrict the powers of or remove the personal representative. Glen Rathbone has merely created this argument now in a desperate attempt to establish jurisdiction in this nonintervention probate.

E. The estate should be awarded attorney fees.

The Estate and Todd Rathbone respectfully request an award of attorney fees in this appeal pursuant to RAP 18.1. RCW 11.96A.150 grants the court discretion to award fees to the prevailing party in a TEDRA action. This TEDRA action was brought without sufficient basis or jurisdiction of the court in direct contravention to the wishes of the Decedent and the nonintervention restrictions of RCW 11.68 et. seq. The Court should vacate the trial court's order assessing fees against the Estate

and should grant the Estate its reasonable fees and costs incurred in bringing this appeal.

IV. CONCLUSION

The Decedent did not want Glen Rathbone to interfere with the amicable administration of her Estate. She specifically singled him out in the Will and directed that he not interfere. The nonintervention probate statutes, RCW 11.68 et. seq., make it clear that the probate court lost jurisdiction to intervene once the nonintervention order was entered, Despite these clear protections, Glen Rathbone is attempting to use TEDRA to get around both his mom's clear directions and the laws clear protections to create unnecessary strife in the administration of this probate. Glen Rathbone has not established any legitimate basis to give the probate court jurisdiction in this nonintervention probate. This Court should vacate the probate court's ruling and dismiss the TEDRA petition. The case should then be remanded to complete the probate with nonintervention.

RESPECTFULLY SUBMITTED this 15th day of August, 2016.

JERRY MOBERG & ASSOCIATES, P.S.



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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the document to which this is
affixed by US Mail, postage prepaid, to:

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DATED this 15th day of August, 2016 at Ephrata, Washington



RHIANNON FRONSMAN, Paralegal