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SUPREME COURT
STATE OF WASHINGTON
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Court of Appeals No. 77684-3-I

Supreme Court No. 96874-8

**IN THE SUPREME COURT
STATE OF WASHINGTON**

ANDREW LEE BENJAMIN, SUCCESSOR ADMINISTRATOR OF
THE ESTATE OF LUE ALICE GREEN,

Appellant,

v.

DALYNNE SINGLETON and JOHN DOE SINGLETON, her husband,
and the marital community comprised thereof, and LAW OFFICE OF B.
CRAIG GOURLEY, PLLC, a Washington Professional Limited Liability
Company, d/b/a GOURLEY LAW GROUP,

Respondents.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The petitioner is Andrew Lee Benjamin, as Successor Administrator of the Estate of Lou Alice Green, appellant in the Court of Appeals, and the plaintiff in the King County Superior Court proceeding.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner Andrew Benjamin seeks review of the unpublished decision: Andrew Lee Benjamin, Appellant v. Dalynne Singleton, et al., Respondents, Case #77684-3-I, filed January 28, 2019 by Division I of the Court of Appeals. Petitioner will be referenced as successor personal representative. A copy of that decision is attached hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. Where, as in this case, a successor personal representative sues a negligent attorney for the probate estate in a probate proceeding, is the rationale of *Estate of Treadwell ex rel. Neil v. Wright*, 115 Wash.App. 238, 61 P.3d 1214 (2003) and *In re the Guardianship of Karan*, 110 Wn.App. 76, 38 P.3d 396 (2002) equally applicable to probate attorneys?

2. Should Washington follow the majority decisions of other sister states which hold that negligent attorneys for personal representatives should not be shielded from liability for their negligence simply because they are being sued by the successor personal representative?

3. Should Washington, in accordance with other sister states, hold that successor personal representatives have standing to sue negligent attorneys pursuant to CR 17(a)?

4. Should this Court, which has exclusive control over the practice of law, enunciate a ruling consistent with *Treadwell* and *Karan* that does not insulate probate lawyers from liability for their negligence?

5. When the state of Washington experiences over 50,000 deaths per year and a growing number of probates and probate administrations which far exceeds guardianship filings, does the protection of the public auger for a ruling in probate administration consistent with that in guardianships resulting from *Treadwell* and *Karan*?

IV. STATEMENT OF THE CASE

A. Factual Background

This is a complaint (Clerk's Papers "CP" 1-8) for legal malpractice and breach of fiduciary duty brought by the court appointed Successor administrator of the decedent. CP 1, ¶1.0. The decedent died intestate in King County, Washington on April 20, 2005. CP 2, ¶ 2.0. The decedent had nine children, eight of whom survived her. CP 2, ¶ 2.0. The major asset of the Estate was a home at 1425 East Union Street, Seattle, Washington 98122. CP 2, ¶ 2.1. There was a conflict between the court appointed Administrator and son of the decedent, Mr. Leonardo Monk,

and his siblings. CP 3, ¶ 2.3. A probate was filed in the King County Superior Court on June 16, 2016 for the decedent under King County Superior Court cause number 16-4-03707-8. CP 3, ¶¶ 2.4-2.5.

On August 2, 2016, the defendant attorney appeared as counsel for the Administrator Leonardo Monk and filed a petition for order authorizing and approving the sale of the primary asset, the real property on East Union Street. CP 3, ¶ 2.6. Defendant attorney knew, or in the exercise of reasonable diligence should have known, that one of daughters of the decedent, Ms. Arnita Green, was disabled and living in an assisted living facility. CP 3, ¶ 2.7; 54-57. The defendant attorney failed to seek appointment of a guardian ad litem for the disabled beneficiary. CP 3, ¶2.7. The defendant attorney negligently and contrary to the minimum standard of care and RCW 11.28.185 failed to have either a bond required for the Administrator whom she represented and/or to have the proceeds from the sale of the primary asset of the Estate be deposited into an interest-bearing trust account or other blocked account. CP 3, ¶ 2.8. Defendant lawyer's law firm's escrow subsidiary was the escrow agent for the sale of the East Union property. CP 4, ¶ 2.10.

The East Union property sold on November 10, 2016. The net proceeds of \$501,651.99 were placed into a Wells Fargo bank account over which the defendant attorney's client Administrator Leonardo Monk

had total unfettered control. CP 4, ¶ 2.9. As a result of the defendant attorney's negligence, the Administrator within five days of the closing of the sale commenced using the proceeds for his personal expenses. CP 4, ¶ 2.11. The probate court entered an order on November 22, 2016, which was specific as to the manner of disbursement of the sale proceeds. CP 4, ¶ 2.12. The Personal Representative, as a result of the defendant attorney's negligence, was able to misappropriate and steal the Estate monies and failed to distribute them in accordance with the order of November 22, 2016. CP 4, ¶ 2.12.

On December 16, 2016, the King County Superior Court issued Orders that: removed the Administrator; approved the immediate withdrawal of defendant attorney effective the previous day; appointed the Appellant, an attorney, as Successor Administrator for the Estate from which the funds have been stolen. CP 1-5. The Successor Administrator obtained a judgment against the former Administrator on March 22, 2017 in the amount of \$110,413.90 with interest thereon at 12% per annum. CP 4, ¶ 2.14. The judgment debtor/former Administrator is under criminal investigation and the judgment is uncollectible. CP 4, 2.14 – CP 5, ¶ 2.15. On February 1, 2017, the Honorable Ken Schubert, King County Superior Court Judge, entered an Order directing the Successor Administrator, the Appellant herein, inter alia, to do the following: to suspend payment of a

prior estate obligation to the defendant attorney; inform the defendant attorney that the court has canceled the order; and for the Successor Administrator to:

Investigate, and give notice of a potential claim, and retain counsel regarding a professional liability claim on behalf of the Estate and its beneficiaries against [defendant attorney] for failing to make banking arrangements that would protect the estate and its beneficiaries from improper withdrawals....

CP 5, ¶ 2.16; CP 84-85, ¶ 4. The foregoing order also retained jurisdiction before Judge Schubert. CP 85, ¶ 8.¹ The Successor Administrator, fulfilling Judge Schubert's order, filed a complaint for legal malpractice and breach of fiduciary duty on September 17, 2017 against the defendant attorney and her law firm.

B. Procedural Background

1. The Superior Court's Summary Judgment Ruling.

The defendants on October 3, 2017 filed a CR 12(b)(6) motion to dismiss positing the issue:

Whether under Washington law a Successor Administrator, who was never the client of an attorney, has standing to sue an attorney of a former administrator for malpractice and breach of a fiduciary duty, based on the former administrator's intentional actions in contravention of a Court order.

CP 19, § IV.

¹ Retained jurisdiction was released on December 28, 2018.

The Successor Administrator responded (CP 32-39) and proffered the Declaration of the Successor Administrator, attorney Andrew Lee Benjamin (CP 40-50). The Declaration of the appointed probate guardian ad litem, attorney Janet L. Smith, attorney for the disabled beneficiary Arnita Green, was also offered (CP 51-70).

The court heard oral argument on October 31, 2017. Report of Proceedings “RP” 1-19. The court chose to “...disregard those declarations [Andrew Lee Benjamin and Janet L. Smith], and as I said, I have not read them.” RP 4, ln 11-14. The court asked counsel for the parties if she should talk to Judge Schubert concerning his earlier order. RP 15-17. Successor Administrator’s counsel “welcom[ed] this Court’s discussing the matter with Judge Schubert.” RP 15, ln 19-21. Defense counsel rejected the court’s proposal. RP 16, ln 3-7. The court stated in part “...I will not talk to Judge Schubert. You know, this is one of those things where I wanted to get your input on that, and I’m going to read the two unpublished opinions because I didn’t know about those before today, and I’ll issue a letter ruling, okay?” RP 17, ln 10-15.

The court did not issue a letter ruling, but on November 2, 2017 granted Defendants’ CR 12(b)(6) motion noting that the court did not consider the attached declarations, which were stricken. CP 87, ln 22.

From that order of November 2, 2017, the Plaintiff/Successor Administrator has timely appealed.

2. The Court of Appeals Decision.

On January 28, 2019, Division I handed down its unpublished decision, which is attached as Appendix A. Division I, relying on *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994) and distinguishing *Estate of Treadwell ex rel. Neil v. Wright* and *In re the Guardianship of Karan* held that the trial court's grant of summary judgment holding, inter alia, to allow this lawsuit to proceed "...would create the risk of interfering with her duty of undivided loyalty to [the miscreant personal representative]." Court of Appeals Decision, p.7.

V. ARGUMENT

A. Summary of Argument

Attorneys representing guardians who are negligent resulting in harm to wards are not shielded from liability when they are negligent under the salutory rulings of *Treadwell* and *Karan*. The exact same ruling and ratio decidendi should apply to attorneys who are negligent in the representation of personal representatives in probate proceedings. As a matter of public policy it is improper to create a carve-out for probate attorneys who are negligent in the course of their representation of personal representatives. Where, as here, probate attorneys' sole duty is to

their client, the personal representative, and their negligence has allowed the personal representative to loot the probate estate; it is simply wrong under the ambit of *Trask* to shield those negligent attorneys from liability. Where, as here, suit is brought solely in the name of the successor personal representative CR 17(a) gives the successor personal representative standing to bring such a claim. *Trask* to the contrary notwithstanding.

This Court's sole and exclusive oversight over the conduct of lawyers should follow the decisions of the majority of other jurisdictions that recognize that *Trask* should not be an impediment from doing justice by insulating negligent probate attorneys from liability. Moreover, because of the greater numerosity of probate proceedings versus those in guardianships, this Court's following the ratio decidendi of *Treadwell* and *Karan*, which only this Court can do, is a matter of high importance.

For all of the above reasons, this Court should accept review under RAP 13.4(b)(2) and (4) and follow the appropriate and salutory reasoning of *Treadwell* and *Karan* and harmonize Washington law with the decisions of other states ruling on this precise issue that does not insulate probate lawyers from liability for their negligence.

B. Argument and Citation of Authority

1. The Ratio Decidendi of *Trask* and *Treadwell* Should Be Equally Applicable to Negligent Probate Attorneys.

In 2002, in *In re the Guardianship of Karan*, 110 Wn.App. 76, 38 P.3d 396, Division III of the Court of Appeals doing a *Trask* analysis as to the issue of standing held that a guardianship attorney owed a duty to the ward. It was alleged that the negligence of the guardianship attorney in not requiring a bond nor a blocked account allowed the ward's mother, the guardian, to loot the funds. The lawyer owed a duty to the ward or child and thereby allowed standing for the child to bring an action for malpractice. The reasoning and rationale a year later in *Estate of Treadwell ex rel. Neil v. Wright*, 115 Wash.App. 238, 61 P.3d 1214 (2003) likewise upheld standing against the guardian's attorney.

The case at bar, which was dismissed because of lack of standing, pursuant to a defense CR 12(b) motion, is no different from the facts and circumstances of *Treadwell* and *Karan*. Under the verities of Plaintiff's Complaint, the Defendant attorney's conduct was instrumental in allowing the personal representative to disobey a court order and steal money from the unblocked account which was in the personal representative's name only. There is no logical discernable difference in what the Defendant attorney did in the case at bar and the conduct of the attorneys for which standing was found in *Treadwell* and *Karan*.

The proximity of the attorney-client relationship and resultant fiduciary duty is direct between the negligent attorney and the personal representative as contrasted with the attorney-client relationship between the guardianship attorney and the guardian and the beneficiary ward. It is to be noted that the case at bar is brought solely and exclusively by the successor personal representative who stands in the shoes of the predecessor personal representative and their duties are precisely the same.

RCW 11.48.010 states, in relevant part:

It shall be the duty of every personal representative to settle the estate,... The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

2. The Majority of Other States Addressing Standing of Successor Personal Representatives for Legal Malpractice Actions Have Found Standing.

The personal representative's research has disclosed a number, believe to be the majority, of sister states that have addressed this issue and found standing.

In *Borissoff v. Taylor & Faust, et al.*, 33 Cal.4th 523, 15 Cal.Rptr.3d 735, 93 P.3d 337 (2004), the issue was framed by the California Supreme Court thusly:

This case raises the question whether the successor fiduciary of an estate in probate may assert a professional negligence claim against attorneys retained by a predecessor fiduciary to provide tax assistance for the benefit of the estate. We hold the successor fiduciary may do so.

Borissoff, supra, 338.

Indeed, *Borissoff* addressed this Court's holding in *Trask* at p.535 yet held that even though California law recognizes that the attorney owes the beneficiaries no duty of care that there was indeed standing.

Borissoff also stated most pointedly as it relates to the case at bar "Indeed, the successor fiduciary must have standing to sue the predecessor's attorney if there is to be an **effective remedy for legal malpractice that harms estates and trusts administered by successor fiduciaries.**" *Borissoff, supra*, 341. [Emphasis added].

Smith v. Cimmet, 199 Cal.App.4th 1381, 132 Cal.Rptr.3d 276 (2011) in addressing that Oregon law may not allow a successor representative to sue a prior attorney held California law controlled and would allow such a suit.

The Florida Court of Appeals, First District, in *Bookman v. Davidson*, 136 So.3d 1276, 39 Fla. L. Weekly D932 (2014) as to a successor personal representative suing for legal malpractice stated:

This case presents a question of first impression in Florida, that being whether a successor personal representative of an

estate may bring a cause of action for legal malpractice against an attorney hired by her or his predecessor to provide services necessary to the administration of the estate.

Bookman, supra, 1279. The Court of Appeals overturned the trial court's summary judgment of dismissal based primarily on a Florida Statute that gives the successor personal representative the same power and duty as the original personal representative. *Id* at 1279.

The Illinois Court of Appeals in *Estate of Hudson ex rel. Caruso v. Tibble*, 99 N.E.3d 105, 421 Ill.Dec. 105, 2018 IL App (1st) 162469 (Ill.App. 1 Dist. 2018) overturned a grant of summary judgment of dismissal wherein the trial court held that the estate could not maintain a cause of action for legal malpractice as the defendant attorneys were hired by and represented the former administrator of the estate and were not counsel for the successor personal representative. *Id* at ¶1. In this case, addressing both *Bookman* and *Borissoff*, the appellate court held that the summary judgment of dismissal should be overturned as standing was not contested below. *Id* at ¶¶29-30.

3. The Overwhelming Numerosity of Probate Proceedings As Opposed to Guardianship Proceedings Augers in Favor of a Trask Carve-Out as it Relates to Negligent Probate Attorneys.

As argued above, *infra* V(B)(1), there is no reasoned difference why guardianship attorneys could be liable to their ward for negligence

and negligent personal representative attorneys shielded from liability to successor personal representatives. This issue is even more compelling when one compares the frequency of probate filings versus guardianship filings. Attached hereto as Appendix B is the Civil Department Statistical Report for the King County Superior Court. This reflects in King County calendar year 2017 of probate filings of 6,418 versus 949 guardianship filings in the same period. In other words, probate filings are almost seven times greater than those of guardianships in King County. The statistics show similar weightings for probate versus guardianship for the previous two years of 2015 and 2016.

To follow the trial court's and Division I's adherence to *Trask* in derogation to *Treadwell* and *Karan* presents a hugely statistical safe harbor for negligent probate attorneys to escape liability while not insulating their sister and brother attorneys in guardianship proceedings. It is the successor personal representative's view that this shows, among other reasons, the compelling nature of this Court's need to address this inequality and injustice.

4. The Court of Appeals Was Mistaken That Successor Personal Representative Had Other Remedies.

The Court of Appeals held:

Benjamin also argues that denying him standing insulates negligent attorneys from liability. The Supreme Court

rejected this policy argument in Trask. The estate and its beneficiaries have a legal remedy. '[T]he personal representative owes the beneficiaries of an estate a fiduciary duty to act in the estate's best interest. If the personal representative's conduct falls below this standard, the estate beneficiaries may bring a cause of action against the personal representative for breach of fiduciary duty.' Trask, 123 Wn.2d at 843. Those harmed by a personal representative's mismanagement of an estate do not lack legal redress.

Court of Appeals unpublished decision, January 28, 2019, p.6.

Bearing in mind that this matter arose under CR 12(b)(6), that is mistaken as the Complaint states unequivocally "Judgment Debtor Leonardo Monk is under criminal investigation and the judgment entered against him is uncollectable and the burden of proof to prove collectability is an affirmative defense for the defendants herein." Plaintiff's Complaint, p.5, ¶2.15 (CP 5).

5. Lawyer Conduct Falls Exclusively Under the Control of this Court. This Court Should Exercise that Control to Protect the Public; Not as Here to Insulate Negligent Probate Attorneys from Liability.

In light of the superior court's decision relative to standing and the Court of Appeals upholding that decision based on *Trask*, it is solely and exclusively within the province of this Court to correct that injustice. *See e.g.*, Preamble and Scope to the Rules of Professional Conduct [12] and The Law of Lawyering in Washington, Andrews, Aronson, Fucile, and

Lackman, WSBA CLE, Chapter 3, *An Introduction to the Rules of Professional Conduct: Their Purpose and Limits*, 3-9 through 3-13.

VI. CONCLUSION

At bottom, in the case at bar, *Trask* should not serve as a barrier to insulate negligent probate attorneys. There is a direct attorney-client relationship and resultant fiduciary duty owed by the probate attorney to the personal representative. This Court's concern about conflicts of interest and divided loyalty does not exist in the case at bar. The Defendant lawyer owed that undivided fiduciary duty to the personal representative. She breached that fiduciary duty and standard of care by allowing, through her negligence, the personal representative to violate court orders and loot the estate. The successor personal representative stands in the shoes of his predecessor and, consistent with Washington probate law, has the CR 17(a) standing to sue the lawyer for negligence. This is a matter of statewide importance. To not address this issue gives safe harbor and immunity from liability for negligent probate attorneys. This important issue and Petition should be granted by this Court.

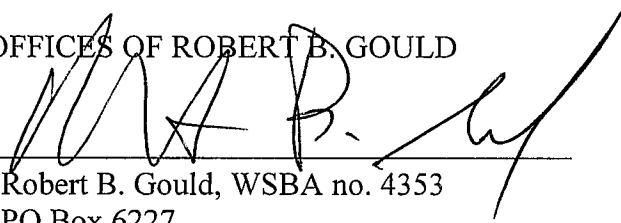
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DATED this 22 day of February, 2019.

Respectfully submitted,

LAW OFFICES OF ROBERT B. GOULD

By: _____


Robert B. Gould, WSBA no. 4353

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Attorney for Appellant Andrew Benjamin

DECLARATION OF SERVICE

On February 22, 2019, I caused to be delivered via electronic filing
a true and accurate copy of the attached document, to the following:

Rodney L. Umberger, Jr.
Daniel Velloth
Williams Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-1368
Attorneys for Respondents

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



Leona M. Phelan, Paralegal
LAW OFFICE OF ROBERT B. GOULD

APPENDIX A

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JAN 28 AM 10:07

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

| | | |
|------------------------------------------|---|-------------------------|
| ANDREW LEE BENJAMIN, |) | No. 77684-3-1 |
| as Successor Administrator of the Estate |) | |
| of Lue Alice Green, |) | DIVISION ONE |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | UNPUBLISHED OPINION |
| |) | |
| DALYNNE SINGLETON and JOHN DOE |) | |
| SINGLETON, her husband, and the |) | |
| marital community composed thereof, |) | |
| AND LAW OFFICE OF B. CRAIG |) | |
| COURLEY, PLLC, a Washington |) | |
| Professional Limited Liability Company, |) | |
| d/b/a GOURLEY LAW GROUP, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | FILED: January 28, 2019 |

ANDRUS, J. — Successor administrator Andrew Benjamin appeals the dismissal of his legal malpractice claim against Dalynne Singleton, the attorney for predecessor administrator Leonardo Monk. Because “neither an estate beneficiary nor a successor personal representative has privity of contract to bring a malpractice cause of action” against the attorney for a predecessor personal representative, Trask v. Butler, 123 Wn.2d 835, 847, 872 P.2d 1080 (1994), we affirm.

FACTS

Lue Alice Green died intestate on April 20, 2005. Green had eight children and three grandchildren entitled to inherit from her estate. The sole estate asset was a home located at 1425 East Union Street, in the Capitol Hill neighborhood of Seattle (the East Union Property). At the time of Green's death and until the probate was filed, some of Green's children lived in the East Union Property. Benjamin contends that the shared living situation ended when one of Green's sons, Monk, moved into the East Union Property with his girlfriend and his girlfriend's child, over the objection of other family members.

Monk filed a probate action in King County Superior Court on June 16, 2016. Attorney Julie Christenson originally appeared on behalf of Monk. With the apparent consent of the beneficiaries, the court appointed Monk administrator¹ of Green's estate without bond and granted letters of administration.

On August 2, 2016, Dalynne Singleton appeared on behalf of Monk. Singleton sought and obtained an order authorizing and approving the sale of the East Union Property. In mid-November 2016, Monk sold the East Union Property with net proceeds of \$501,651.99, which he placed into an unblocked Wells Fargo bank account. Monk then spent over \$110,000 of the proceeds for his personal use, violating a court order to disperse the proceeds to Green's beneficiaries.

Benjamin alleged that on December 16, 2016, the court removed both Monk and Singleton.² The court appointed Benjamin as successor administrator on

¹ The terms "administrator," "personal representative," and "successor administrator" may be used interchangeably. RCW 11.02.005(11).

² Singleton disputes this characterization of the December 16, 2016 order, contending that she voluntarily withdrew. The December 16, 2016 order is not a part of the record on appeal.

No. 77684-3-1/3

December 19, 2016. On February 1, 2017, the trial court found that Monk had illegally converted \$160,245.57 of estate assets and ordered him to repay this sum to the estate. The court also directed Benjamin to report the conversion of funds to the King County Prosecutor for the imposition of criminal charges. Furthermore, the court suspended payment of attorney fees to Singleton and to John Woodbery, the attorney hired by two of Green's beneficiaries, Edward and Freddie Lee Green. Finally, the court ordered Benjamin to "investigate, retain counsel regarding, and give notice of a potential professional liability claim on behalf of the Estate and its beneficiaries against Ms. Singleton for failing to make banking arrangements that would protect the estate and its beneficiaries from improper withdrawals."

Benjamin filed this action against Singleton and the law firm for which she worked, alleging legal malpractice and breach of fiduciary duty.³ Singleton moved to dismiss Benjamin's complaint under Civil Rule 12(b)(6), arguing that Benjamin lacked standing under Trask v. Butler. The trial court granted Singleton's motion to dismiss. Benjamin appeals.

ANALYSIS

We review a dismissal for failure to state a claim de novo. Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). Dismissal is appropriate only if it appears beyond doubt the plaintiff cannot prove any set of facts that would justify recovery. Id. In reviewing the record, we assume the plaintiff's allegations are true. Id. at 330.

³ Singleton was employed as an independent contractor by the law firm of Respondent Law Office of B. Craig Gourley, PLLC. We refer to the Respondents collectively as "Singleton."

Benjamin alleged Singleton breached the standard of care of a reasonable probate attorney by failing (1) to inform the probate court of the discord between Monk and the other heirs, (2) to require Monk to post a bond, (3) to seek the appointment of a guardian ad litem for a developmentally disabled heir, (4) to ensure the proceeds from the house sale were placed into a blocked or interest-bearing trust account, and (5) to disclose Monk's theft of proceeds to the court. Benjamin also alleged that Singleton owed a fiduciary duty to Benjamin and to the estate beneficiaries, which she breached through her acts of malpractice.

The facts of this case are analogous to those in Trask. In that case, Laurel Slaninka, the personal representative for the estates of her parents, Johanna and George Trask, breached her fiduciary duty in the management of the estate's real property, and the court removed her as personal representative of both estates. Trask, 123 Wn.2d at 838-39. Laurel's brother, Russell, was appointed as successor personal representative. Id. at 837, 839. Laurel and Russell signed a settlement agreement whereby Laurel gave Russell her share of the estate in exchange for a release of liability. Id. at 839. Russell then filed a malpractice suit against Laurel's attorney, Richard Butler, who had represented her in a quiet title action and the sale of the estate's real property, alleging Butler had negligently advised Laurel, resulting in a loss of \$90,000 from the estate. Id.

The Court recognized that traditionally, the only person who can sue an attorney for malpractice is the client. Id. at 840. After applying a six-factor balancing test, it held that an attorney representing a personal representative owes no duty of care to either the estate or estate beneficiaries because they are incidental, rather than intended, beneficiaries of the attorney-client relationship. Id.

at 845. The Court clearly held that a successor personal representative, on behalf of an estate, lacks the requisite privity of contract to bring a malpractice action against the predecessor personal representative's attorney. Id. at 847.

Like Laurel, Monk hired an attorney to assist him in probating his mother's estate, and the attorney assisted him in obtaining an order authorizing and approving the sale of Green's home. Like Laurel, Monk misused estate assets and was removed as administrator. Benjamin, like Russell, was appointed to succeed Monk as administrator. Benjamin has not demonstrated why he would be deemed an intended beneficiary of Singleton's legal services when the Supreme Court held that Russell was not. Benjamin argues he stands in a different position than Russell did in Trask v. Butler because he is not a beneficiary of the estate. But Benjamin brings this lawsuit in his representative capacity for the estate. His complaint seeks damages "caused to [the] Plaintiff Estate." It, thus, makes no difference whether Benjamin is a beneficiary of the estate. The Supreme Court's holding in Trask is clear: Singleton did not owe a duty of care to the estate.

Benjamin asserts standing under In re Guardianship of Karan, 110 Wn. App. 76, 38 P.3d 396 (2002) and Estate of Treadwell v. Wright, 115 Wn. App. 238, 61 P.3d 1214 (2003).⁴ Those cases, however, are distinguishable because both involved attorneys hired to establish guardianships where, as both courts explicitly said, the ward was the only intended beneficiary of the legal services the attorneys provided. See Karan, 110 Wn. App. at 78-79, 85-86 (attorney's failure to comply

⁴ Benjamin also relies on In re the Estate of Williams, 153 Wn. App. 1047, 2009 WL 5092865 (Div. 1, 2009). Because it was decided prior to 2013, it does not meet the requirements of General Rule 14.1, and we will not consider its applicability to this appeal.

with statutory requirements resulted in guardian mismanaging the ward's funds, giving successor guardian standing to sue attorney on behalf of ward because services were not performed for the benefit of anyone other than the ward); Treadwell, 115 Wn. App. at 241 (successor guardian had standing to sue on behalf of ward after attorney's omission of bond requirement in signed guardianship order resulted in issuance of letters of guardianship without restrictions, resulting in the guardian depleting the ward's assets). Both Karan and Treadwell are factually distinguishable because Singleton's legal services did not involve the creation of a guardianship. Her legal services were performed for the benefit of her client, Monk, and as in Trask, the estate and Green's heirs were incidental, not actual, beneficiaries of her services. The facts of Trask are more directly analogous.

Benjamin also argues that denying him standing insulates negligent attorneys from liability. The Supreme Court rejected this policy argument in Trask. The estate and its beneficiaries have a legal remedy. "[T]he personal representative owes the beneficiaries of an estate a fiduciary duty to act in the estate's best interest. If the personal representative's conduct falls below this standard, the estate beneficiaries may bring a cause of action against the personal representative for breach of fiduciary duty." Trask, 123 Wn.2d at 843. Those harmed by a personal representative's mismanagement of an estate do not lack legal redress.

The Trask court also recognized that, under Washington probate laws, estate beneficiaries have the ability to take a proactive role in the management of the estate and to seek court orders directing a personal representative's actions.

Id. at 844. The estate beneficiaries had the ability to take measures to protect their interests against possible malfeasance by Monk.

Finally, the Supreme Court determined that the “unresolvable conflict of interest that an estate attorney encounters in deciding whether to represent the personal representative, the estate, or the estate heirs unduly burdens the legal profession.” Id. at 845. It decided this policy concern trumped the possibility that estate beneficiaries would be unable to recoup money wrongfully converted by a predecessor personal representative. See also Parks v. Fink, 173 Wn. App. 366, 388-89, 293 P.3d 1275 (2013) (beneficiary of will lacked standing to sue decedent’s attorney for negligent preparation of will; imposing duty of care diminished attorney’s duty of undivided loyalty to client).

The same policy considerations exist here. Singleton owed an undivided duty of loyalty to Monk. Requiring Singleton to act in the best interest of the estate or all its heirs would create the risk of interfering with her duty of undivided loyalty to him. The risk of such interference outweighs the risk of harm to the other beneficiaries.

Affirmed.

Andrus, J.

WE CONCUR:

Chen, J.

Mann, A.L.J.

APPENDIX B

King County Superior Court

Civil Department Statistical Report

December 2017

Department of Judicial Administration
Prepared by: Shiquan Liao, Ph.D., Statistician

Release Date: January 20, 2018

Report #: CV-2017-12

Table 1. Monthly New Filings

| SEA | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Adj ⁽¹⁾ | Annual |
|-------------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|--------------------|--------|
| TOTAL - SEA | | | | | | | | | | | | | | |
| 2015 | 1851 | 1773 | 2084 | 1880 | 1795 | 1892 | 1884 | 1913 | 1918 | 1831 | 1595 | 1889 | (-97) | 22208 |
| 2016 | 1763 | 1907 | 2029 | 1942 | 1871 | 1978 | 1782 | 2009 | 1923 | 1703 | 1699 | 1721 | (-72) | 22255 |
| 2017 ⁽³⁾ | 1725 | 1833 | 2190 | 1928 | 2008 | 1968 | 1743 | 2056 | 1831 | 1895 | 1787 | 1746 | (-46) | 22664 |
| Domestic - SEA | | | | | | | | | | | | | | |
| 2015 | 349 | 356 | 390 | 407 | 380 | 370 | 385 | 423 | 409 | 394 | 325 | 338 | (-20) | 4559 |
| 2016 | 354 | 390 | 418 | 387 | 389 | 374 | 361 | 377 | 453 | 332 | 359 | 343 | (-3) | 4534 |
| 2017 ⁽³⁾ | 337 | 375 | 403 | 398 | 409 | 374 | 361 | 429 | 406 | 362 | 360 | 292 | (-1) | 4505 |
| Probate - SEA | | | | | | | | | | | | | | |
| 2015 | 435 | 390 | 466 | 341 | 397 | 405 | 366 | 360 | 361 | 362 | 319 | 408 | (+2) | 4612 |
| 2016 | 371 | 397 | 431 | 387 | 419 | 449 | 343 | 383 | 360 | 334 | 361 | 368 | (+1) | 4604 |
| 2017 ⁽³⁾ | 395 | 425 | 521 | 397 | 421 | 444 | 343 | 430 | 355 | 403 | 328 | 402 | (-2) | 4862 |
| Guardianship - SEA | | | | | | | | | | | | | | |
| 2015 | 50 | 29 | 57 | 57 | 49 | 35 | 52 | 45 | 61 | 43 | 43 | 56 | (-4) | 583 |
| 2016 | 49 | 43 | 60 | 49 | 60 | 51 | 52 | 68 | 36 | 54 | 45 | 51 | (+1) | 619 |
| 2017 ⁽³⁾ | 43 | 35 | 54 | 55 | 55 | 48 | 47 | 58 | 44 | 46 | 56 | 52 | (-1) | 592 |
| Adoption - SEA | | | | | | | | | | | | | | |
| 2015 | 23 | 30 | 34 | 24 | 32 | 27 | 35 | 18 | 27 | 25 | 26 | 29 | (-5) | 325 |
| 2016 | 30 | 40 | 30 | 19 | 29 | 30 | 23 | 18 | 35 | 25 | 28 | 31 | (-3) | 335 |
| 2017 ⁽³⁾ | 36 | 33 | 27 | 41 | 31 | 28 | 36 | 36 | 28 | 39 | 29 | 37 | (+1) | 402 |
| Paternity - SEA | | | | | | | | | | | | | | |
| 2015 | 27 | 32 | 30 | 40 | 19 | 36 | 24 | 26 | 17 | 28 | 24 | 18 | (-9) | 312 |
| 2016 | 18 | 24 | 17 | 24 | 28 | 17 | 21 | 25 | 14 | 21 | 22 | 17 | (-9) | 239 |
| 2017 ⁽³⁾ | 28 | 18 | 22 | 27 | 24 | 19 | 20 | 29 | 15 | 14 | 17 | 6 | (0) | 239 |
| General Civil ⁽²⁾ - SEA | | | | | | | | | | | | | | |
| 2015 | 964 | 924 | 1103 | 1110 | 916 | 1016 | 1008 | 1041 | 1039 | 979 | 857 | 1039 | (-62) | 11834 |
| 2016 | 940 | 1012 | 1068 | 1074 | 940 | 1056 | 975 | 1131 | 1022 | 934 | 883 | 909 | (-61) | 11883 |
| 2017 ⁽³⁾ | 885 | 946 | 1160 | 1009 | 1067 | 1055 | 936 | 1070 | 981 | 1029 | 994 | 955 | (-43) | 12044 |
| Asbestos Cases - SEA | | | | | | | | | | | | | | |
| 2015 | 3 | 2 | 4 | 1 | 2 | 3 | 14 | 0 | 4 | 0 | 1 | 1 | (+1) | 36 |
| 2016 | 1 | 1 | 5 | 2 | 6 | 1 | 7 | 7 | 3 | 3 | 1 | 2 | (+2) | 41 |
| 2017 ⁽³⁾ | 1 | 1 | 3 | 1 | 1 | 0 | 0 | 4 | 2 | 2 | 3 | 2 | (0) | 20 |
| KNT | | | | | | | | | | | | | | |
| TOTAL - KNT | | | | | | | | | | | | | | |
| 2015 | 1201 | 1054 | 1308 | 1336 | 1147 | 1326 | 1236 | 1296 | 1162 | 1389 | 983 | 1183 | (+48) | 14669 |
| 2016 | 1019 | 1103 | 1308 | 1271 | 1274 | 1345 | 1189 | 1268 | 1265 | 1161 | 1174 | 1145 | (+24) | 14546 |
| 2017 ⁽³⁾ | 1129 | 1040 | 1426 | 1258 | 1250 | 1323 | 1101 | 1455 | 1274 | 1253 | 1141 | 1255 | (-3) | 14902 |
| Domestic - KNT | | | | | | | | | | | | | | |
| 2015 | 256 | 283 | 270 | 271 | 261 | 275 | 257 | 265 | 258 | 233 | 197 | 207 | (+20) | 3053 |
| 2016 | 202 | 255 | 278 | 259 | 268 | 265 | 224 | 278 | 254 | 258 | 202 | 226 | (+9) | 2978 |
| 2017 ⁽³⁾ | 210 | 217 | 308 | 296 | 267 | 302 | 238 | 295 | 236 | 248 | 229 | 241 | (-16) | 3092 |
| Probate - KNT | | | | | | | | | | | | | | |
| 2015 | 129 | 103 | 129 | 144 | 110 | 130 | 118 | 117 | 100 | 126 | 88 | 116 | (0) | 1410 |
| 2016 | 118 | 133 | 136 | 113 | 113 | 119 | 109 | 129 | 130 | 110 | 130 | 122 | (+7) | 1469 |
| 2017 ⁽³⁾ | 134 | 134 | 174 | 127 | 136 | 120 | 133 | 135 | 105 | 128 | 96 | 131 | (+5) | 1556 |
| Guardianship - KNT | | | | | | | | | | | | | | |
| 2015 | 22 | 29 | 24 | 36 | 40 | 28 | 31 | 28 | 34 | 46 | 27 | 38 | (+3) | 386 |
| 2016 | 16 | 35 | 42 | 35 | 34 | 34 | 29 | 46 | 26 | 33 | 48 | 16 | (-5) | 389 |
| 2017 ⁽³⁾ | 26 | 34 | 36 | 17 | 33 | 41 | 18 | 28 | 30 | 27 | 32 | 31 | (+3) | 357 |
| Adoption - KNT | | | | | | | | | | | | | | |
| 2015 | 6 | 6 | 13 | 14 | 9 | 13 | 12 | 15 | 7 | 10 | 11 | 13 | (+6) | 135 |
| 2016 | 7 | 9 | 14 | 13 | 10 | 15 | 8 | 8 | 9 | 13 | 5 | 9 | (+3) | 123 |
| 2017 ⁽³⁾ | 7 | 13 | 17 | 10 | 10 | 12 | 7 | 16 | 13 | 11 | 8 | 21 | (+4) | 144 |
| Paternity - KNT | | | | | | | | | | | | | | |
| 2015 | 24 | 14 | 19 | 44 | 23 | 29 | 28 | 27 | 27 | 38 | 26 | 29 | (+10) | 338 |
| 2016 | 16 | 33 | 31 | 19 | 21 | 24 | 15 | 17 | 16 | 34 | 29 | 25 | (+9) | 289 |
| 2017 ⁽³⁾ | 17 | 21 | 25 | 27 | 37 | 17 | 12 | 39 | 21 | 31 | 23 | 28 | (0) | 300 |
| General Civil ⁽²⁾ - KNT | | | | | | | | | | | | | | |
| 2015 | 764 | 619 | 853 | 827 | 704 | 851 | 790 | 844 | 736 | 936 | 634 | 780 | (+9) | 9347 |
| 2016 | 660 | 638 | 807 | 832 | 828 | 888 | 804 | 790 | 830 | 713 | 760 | 747 | (+1) | 9298 |
| 2017 ⁽³⁾ | 735 | 621 | 866 | 781 | 767 | 831 | 693 | 942 | 869 | 808 | 753 | 803 | (+2) | 9453 |

Note: Table 1 presents total number of cases filed and designated to SEA and KNT. Modifications/Re-opened cases (under the original case number) are not included because SCOMIS currently lacks the capability in capturing re-opens and modifications.

- (1) "Adj" = adjustment made at year-end if necessary.
- (2) "General Civil" includes all civil actions (including RALJ), except "Matters Filed with Clerk" (Tax Warrants, Abstract of Judgment, Foreign Judgment, and Transcript of Judgment), Domestic, Probate, Guardianship, Adoption, and Paternity cases. Also, starting June 2004, asbestos cases have been separated out.
- (3) Reflects all documents received by 01/15/2018. Year-end adjustment may be needed to reflect data entered after the time of this monthly report.

LAW OFFICE OF ROBERT B. GOULD

February 22, 2019 - 10:39 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Andrew Lee Benjamin, Appellant v. Dalynne Singleton, et al., Respondents
(776843)

The following documents have been uploaded:

- PRV_Petition_for_Review_20190222103716SC618872_7889.pdf
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Filing on Behalf of: Robert B. Gould - Email: rbgould@nwlegalmal.com (Alternate Email:)

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Edmonds, WA, 98026
Phone: (206) 633-4442

Note: The Filing Id is 20190222103716SC618872