FILED
SUPREME COURT
STATE OF WASHINGTON
9/12/2019 10:37 AM
BY SUSAN L. CARLSON
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No. 97433-1

SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Estate of:

SASSAN SANAI, MD,

Deceased.

ANSWER OF RESPONDENT ASTRID SANAI TO PETITION FOR REVIEW

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A. INTRODUCTION

This case represents but the latest iteration of the conflict in the Sanai family generated by Cyrus Sanai and/or his brother.[1] Division I of the Court of Appeals resolved the statutory issues Cyrus[2] raised in a TEDRA will contest proceeding in an unpublished opinion. Division I's resolution of the service issue in a will contest there was entirely correct, and does not merit review. RAP 13.4(b).

RCW 11.24.010 mandates that will contestants "shall *personally* serve the personal representative within ninety days after the date of filing the petition." (emphasis added). As with matters pertaining to will contests generally, that statute is *strictly construed*. But Cyrus mailed and delivered his will contest petition to the law office of Sarah McCarthy, the attorney appointed as resident agent by the personal representative, Astrid Sanai. He also had another sister leave a copy of the pleadings on the

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[1] Cyrus and his brother Frederic have been involved in numerous interfamilial cases. For example, Cyrus, a California attorney, filed a *pro se* lawsuit and acted on behalf of his mother and sister in an action against his father Sassan Sanai, his father's business, his father's attorney and law firm, and an employee of that business that was dismissed for litigation misconduct. *Sanai v. Sanai*, 408 Fed. Appx. 1 (9th Cir. 2010).

Represented by Cyrus *pro hac vice*, Fredric was disbarred for actions arising out of those interfamilial disputes by this Court, *In re Disciplinary Proceedings Against Sanai*, 177 Wn.2d 743, 302 P.3d 864 (2013), *cert. denied*, 571 U.S. 1202 (2014), and the Ninth Circuit, *In re Sanai*, 653 Fed. Appx. 560 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 843 (2017). Proceeding *pro se*, Fredric was disbarred by the Oregon Supreme Court. *In re Sanai*, 383 P.3d 821 (Or. 2016).

[2] As did Division I in its opinion, op. at 2 n.1, this answer refers to the parties by their first names for the sake of clarity.

front desk of McCarthy's law office, 83 days after the mailing. Cyrus did not personally serve Astrid, as RCW 11.24.010 requires. The trial court, the Snohomish County Superior Court, dismissed Cyrus's will contest action as untimely.

Faithfully applying this Court's precedents, Division I rejected Cyrus's various arguments calculated to excuse his need to comply with the statutory requirement of personal service under RCW 11.24.010. Simply put, by its express terms, that statute requires personal service of pleadings initiating a will contest on the personal representative, but Cyrus neglected to obey the statute's directive.

Now, recognizing the weakness of his statutory argument, Cyrus essentially ignores RCW 11.24.010 in his petition and resorts to raising a baseless diversionary argument about the notice of McCarthy's appointment, as well as a half-baked constitutional argument for the first time in this case. This Court should not reach that constitutional argument.

Cyrus has failed to establish that any of the criteria of RAP 13.4(b) apply to justify review of Division I's thoughtful unpublished opinion. This Court should deny review, but it should award fees under TEDRA for Cyrus's baseless petition that only needlessly prolongs this interfamilial litigation. RCW 11.96A.150.

B. STATEMENT OF THE CASE

The recitation of the facts and procedure in Division I's opinion is clear and comprehensive. Op. at 1-3. Several points, however, bear emphasis. Dr. Sassan Sanai died on April 6, 2017, and he left a will. CP 129-39. That will was admitted to probate. CP 127-28. His daughter, Astrid Sanai, was appointed personal representative of her father's estate on May 3, 2017. CP 127-28. She lives in New York and she consequently appointed her lawyer Sarah McCarthy as resident agent in accordance with RCW 11.36.010(6). The notice of appointment and acceptance by resident agent was filed in the probate action on May 3, 2017. CP 123-24. A notice of pendency of probate proceedings was mailed to Cyrus on May 19, 2017. CP 84, 87, 126.

Cyrus filed his will contest petition in the Snohomish County Superior Court on August 31, 2017. He made no effort to personally serve Astrid. Instead, he mailed a copy of the summons and petition to McCarthy on the same day. He addressed the envelope to "Sarah McCarthy as Agent for Service of Process for Astrid Sanai, Anderson Hunter, 2707 Colby Ave., # 1001, Everett, WA 98201." CP 95. Cyrus also arranged for delivery of the will contest petition to McCarthy's law office on November 21, 2017. The delivery person, Cyrus's other sister, announced to the receptionist that she was delivering documents for

McCarthy, left the documents with the receptionist, and departed the lobby. The delivery person did not request to see McCarthy nor attempt to undertake personal service of the petition on McCarthy herself. CP 77-80, 97-98.

It is undisputed that Cyrus did not accomplish personal service on *anyone* within ninety days after he filed the will contest petition.

On January 16, 2018 the trial court, the Honorable George F.B. Appel, dismissed the will contest petition because Cyrus did not personally serve Astrid as the Estate's personal representative as required by RCW 11.24.010. CP 28-32.

A month after the trial court dismissed his petition, tacitly admitting his failure to personally serve Astrid as the Estate's personal representative or even McCarthy as the Estate's registered agent, Cyrus finally served McCarthy at her law office on February 15, 2018. CP 11. He filed an untimely "motion for reconsideration" of the dismissal of his will contest petition, arguing that "the only different fact will be proof of service on Sarah McCarthy which is being dispatched with the filing of this (motion)." CP 19. The trial court properly denied reconsideration. CP 12. Division I affirmed the dismissal of Cyrus's will contest petition in its unpublished opinion. Again, prolonging resolution of this case, Cyrus filed a motion for reconsideration; Division I denied that motion.

C. ARGUMENT WHY REVIEW SHOULD BE DENIED

(1) The Plain Language of RCW 11.24.010 Mandates Personal Service of a Will Contest Petition on an Estate's Personal Representative

RCW 11.24.010 is *unambiguous*. *See* Appendix. The statute imposes an express legislative mandate that the petitioner "shall *personally serve* the personal representative within ninety days." (emphasis added). The statute mandates dismissal as the consequence for lack of personal service: "If service is not so made, the action is deemed not to have been commenced for purposes of tolling the statute of limitations." It is undisputed that Cyrus did not personally serve Astrid after he filed the petition. Thus, Cyrus's will contest was not timely commenced and the trial court correctly dismissed it, as Division I determined. Op. at 8.

Generally, because a will contest is a special statutory proceeding defined by RCW 11.24.010, the statutory requirements pertinent to such a proceeding must be *strictly* met. *In re Estate of Toth,* 138 Wn.2d 650, 653, 981 P.2d 439 (1999) (rejecting application of civil rule to extend statutory 4 month period to timely file will contest petition); *State ex rel. Wood v. Superior Ct. for Chelan Cty.,* 76 Wash. 27, 135 Pac. 494 (1913) (statutory periods for will contests strictly enforced). Moreover, specifically in the case of service under RCW 11.24.010, its provisions,

too, are *strictly construed*. *In re Estate of Jepsen*, 184 Wn.2d 376, 379-81, 358 P.3d 403 (2015). Noting the rule that the requirements for commencing will contests are always strictly enforced in Washington, *id.* at 381, this Court in *Jepsen* held that e-mailing the petition to the personal representative's attorney was not *personal* service and rejected a dissent's arguments for a waiver of such a strict rule. In fact, the *Jepsen* court applied the amended version of RCW 11.24.010 in which the Legislature codified this Court's earlier decision in *In re Estate of Kordon,* 157 Wn.2d 206, 137 P.3d 16 (2006) where the Court had held that personal service on the personal representative "is essential to invoke personal jurisdiction over" that person. *Id.* at 210. Division I appropriately applied this Court's decision in *Jepsen*. Op. at 4.[3]

Hoping to evade the unambiguous language of RCW 11.24.010 and this Court's clear decision in *Jepsen,* Cyrus throws up a series of excuses for his failure to strictly comply with the personal service directive in the statute.

[3] Recent unpublished Court of Appeals opinions, citing *Jepsen*, also hold that mailed notice of a will contest petition does not satisfy the requirement for personal service under RCW 11.24.010. *See, e.g.*, *In re Estate of Booheister*, 3 Wn. App. 2d 1063, 2018 WL 2356645 (2018); *In re Estate of Primiani*, 198 Wn. App. 1067, 2017 WL 1655759 (2017); *In re Estate of Coaker*, 197 Wn. App. 1014, 2016 WL 7470071 (2016). These decisions document that this Court's interpretation of RCW 11.24.010 is clear and unambiguous.

For example, he asserts that RCW 11.36.010(6)[4] relating to the appointment of a registered agent trumps RCW 11.24.010's specific direction. Pet. at 10-12. Division I correctly reasoned that such an argument is wrong, given the specific basis in RCW 11.24.010 for *commencing* a will contest. Op. at 5.

Alternatively, he contends that the mere delivery of the will contest documents to McCarthy's office constituted "personal" service because "hand-to-hand" service was unnecessary. Pet. at 5. But mere delivery to an office does not accomplish personal service. RCW 4.28.080; *French v. Gabriel,* 57 Wn. App. 217, 225, 788 P.2d 569 (1990), *aff'd*, 116 Wn.2d 584, 806 P.2d 1234 (1991); *Dolby v. Worthy,* 141 Wn. App. 813, 817, 173 P.3d 946 (2007), *review denied,* 164 Wn.2d 1004 (2008). *See also, Weiss v. Glemp*, 127 Wn.2d 726, 903 P.2d 455 (1995) (leaving process on window sill did not constitute personal service).

A personal representative's appointment of her lawyer as a resident agent per RCW 11.36.010(6) does not eliminate the requirement of personal service under RCW 11.24.010. Op. at 6. Cyrus cites no legal authority for the notion that appointment of a resident agent eliminates the need for personal service of the will contest petition. Indeed, his argument makes no sense; the mandate of RCW 11.24.010 for *personal service* of

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[4] That statute is set forth in the Appendix.

the petition applies to all will contests regardless of whether the personal representative resides in Washington or has appointed a resident agent for service. Both statutes are unambiguous and there is no conflict between the explicit provisions of RCW 11.24.010 and RCW 11.36.010(6).

Cyrus also contends that *Scanlan v. Townsend,* 181 Wn.2d 838, 336 P.3d 1155 (2014) supports his theory that delivery of the documents to McCarthy's office was sufficient because she eventually "physically received" the documents. Pet. at 3-4. Cyrus is wrong, as Division I ruled. Op. at 8.

Scanlan is not a will contest case. The Court there held that actual *personal service* – not substitute service – could be accomplished by "any person" in the defendant's abode and proven by affidavit under RCW 4.28.080 and CR 4(c). The defendant in *Scanlan* did not dispute that personal service had been accomplished, and this Court approved "second hand" service on the defendant by her father. *Scanlan* is inapplicable because Cyrus concedes personal service on Astrid or McCarthy was never timely accomplished; and RCW 11.24.010 is strictly construed to require personal service.

Finally, Cyrus contends throughout his petition that principles of substantial compliance bound the trial court to accept service of notice on the receptionist for McCarthy's law firm, without personal service on

Astrid or McCarthy. For that proposition he cites various cases like *Thayer v. City of Edmonds,* 8 Wn. App. 36, 503 P.2d 1110 (1972), *review denied,* 82 Wn.2d 1001 (1973), and *Martin v. Triol*, 121 Wn.2d 135, 847 P.2d 471 (1993) that in some instances recognize that substantial compliance with service requirements will suffice. Pet. at 5, 8, 12. *Thayer* involved an alternate service agreement, for example. But the flaw in Cyrus's argument is just what Division I stated – will contests are different. Service in such a setting must be *strictly* accomplished. "The doctrine of substantial compliance is fundamentally inconsistent with this strict enforcement and cannot apply." Op. at 7.

This concept of strict compliance with statutes requiring a specific type of service has long been common in Washington law. For example, in *Union Bay Preservation Coalition v. Cosmos Development & Admin. Corp.*, 127 Wn.2d 614, 902 P.2d 1247 (1995), this Court addressed the Administrative Procedure Act's requirement of service on "parties of record" to initiate judicial review of an administrative agency's final decision. This Court held that service on those parties' attorneys, rather than the parties themselves, failed to comply with the statute. *Id.* at 619-20. The Court also rejected a substantial compliance argument in the face of unambiguous statutory language to the contrary. *Id.* at 620. *See also*, *Stewart v. Dep't of Emp't Security*, 191 Wn.2d 42, 419 P.3d 838 (2018)

(failure to timely serve agency mandated dismissal of APA judicial review petition; Court rejects waiver argument); *Clark Cty. v. Growth Mgmt. Hearings Bd.*, __ P.3d __, 2019 WL 3927449 (2019) (same).

In sum, Division I's opinion as to the application of RCW 11.24.010 is correct and fully supported by this Court's precedents. Review is not merited. RAP 13.4(b).

(2) This Court Should Not Even Consider Cyrus's Belated Constitutional Argument

Again hoping to justify his failure to comply with RCW 11.24.010, Cyrus attempts to divert the Court's attention from his failed service by arguing that he did not receive specific notice of certain information regarding McCarthy's appointment and the Estate was therefore estopped to claim it was not properly served. Pet. at 6. But the appointment of resident agent identified McCarthy by name and gave clear-cut contact data.[5] CP 123.

Division I correctly observed that the Estate complied with its statutory duties concerning the filing of the notice of McCarthy's appointment. Op. at 7. In any event, an estoppel argument does not help Cyrus here.

Cyrus cites *Hesthagen v. Harby,* 78 Wn.2d 934, 941, 481 P.2d 438

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[5] Cyrus claimed below that the notice only identified McCarthy's law firm. CP 31. That was untrue. CP 123.

(1971) for his estoppel argument, but *Hesthagen* was not a will contest, and the issue there was whether the personal representative's failure to give some heirs *any* notice of the probate proceedings rendered a final decree of probate distribution a denial of due process. Here, Cyrus was well aware of his father's probate proceedings. CP 84, 87, 126. *Hesthagen* does not support the application of estoppel as an exception to the requirement for personal service under RCW 11.24.010 to commence a will contest, as Cyrus contends.

Finally, it is noteworthy that *all* of the arguments Cyrus raises on estoppel are *unnecessary* had he merely complied with RCW 11.24.010 and served Astrid personally. Leaving a document on a receptionist's desk hardly constituted *personal* service on the Estate's registered agent, McCarthy, let alone personal service on Astrid as the personal representative.

Doubling down on his baseless estoppel argument, Cyrus apparently contends that he was deprived of due process because he did not receive specific notice of certain information about McCarthy. Pet. at 11-12.[6]

As this Court is fully aware, the normal rule is that our appellate

[6] Again, this argument is belied by the fact that Cyrus received notice of McCarthy's appointment. CP 84, 87, 126.

courts will not review an issue raised for the first time on appeal. RAP 2.5(a). Here, recognizing that Division I's interpretation of RCW 11.24.010 is correct, Cyrus turns to a constitutional issue for the first time in this case in his petition for review to this Court. Pet. at 2, 17-20. He never raised the issue, nor developed a record on it, either in the trial court or Division I.

While there is an exception to the policy of RAP 2.5(a) for "manifest errors affecting a constitutional right," that exception is *narrowly* applied. *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999). It is incumbent upon the party seeking to raise the issue to document that the issue is "manifest," and that it is truly of a constitutional dimension. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Cyrus did neither.

First, if the record of an issue is insufficient to determine the merits of the issue, any error is not "manifest" and review need not occur. *WWJ*, 138 Wn.2d at 602. Here, Cyrus made *no record* below on his belated constitutional claim.

Further, an issue must truly be of a constitutional dimension, that is, it must have a clear constitutional basis. *State v. Scott,* 110 Wn.2d 682, 688, 757 P.2d 492 (1988). Cyrus fails to establish that constitutional basis here. Cyrus knew of the commencement of the probate proceedings as to

his father's Estate, Astrid's appointment as the Estate's personal representative, and McCarthy's appointment. If he wanted to commence a will contest, he had to serve Astrid personally. He did not do that. The data he seems to want as to McCarthy was available to him, but he did not timely serve her personally either, assuming that she could be served personally in lieu of personal service on Astrid under RCW 11.24.010, as noted *supra*.

Ultimately, the key question is whether the Estate is properly served in a will contest, as the party that must defend the will. He fails to offer any authority indicating that *his* right to due process is somehow impaired by a statutory requirement that the Estate be given necessary notice of his intention to challenge the will by requiring him to personally serve its personal representative to commence the action.

This Court should deny review of Cyrus's belated, baseless, constitutional claim. RAP 13.4(b).

(3) The Estate Is Entitled to Fees under TEDRA

The Estate requests that the Court award the Estate its reasonable attorney fees in connection with Cyrus's petition. RAP 18.1; RCW 11.96A.150. *See* Appendix. The Estate recognizes that Division I exercised its discretion and declined to award fees in connection with its review, but that does not foreclose this Court from awarding TEDRA fees.

RCW 11.96A.150 authorizes a court in its discretion to award reasonable attorney fees for "any and all factors that it deems to be relevant and appropriate ..." and "in such amount and in such manner as the court deems to be equitable." Fees may be awarded on appeal in will contest proceedings. *In re Estate of Muller,* 197 Wn. App. 477, 490, 389 P.3d 604 (2016). Cyrus's present petition, including its newfound constitutional argument, is meritless.

As former Chief Justice Gerry Alexander observed in *Watson v. Maier*, 64 Wn. App. 889, 891, 827 P.2d 311, *review denied*, 120 Wn.2d 1015 (1992), while serving on the Division II bench:

> A famous lawyer once said: "About half of the practice of a decent lawyer is telling would be clients that they are damned fools and should stop." Consistent with this admonition, CR 11 allows courts to sanction lawyers who do not know when to stop.

It is no different here. Cyrus recognizes no boundaries to incessant litigation in this interfamilial dispute. Enough is enough. This Court should not tolerate Cyrus's further delays calculated to prevent the processing and winding up of the Estate's affairs. TEDRA allows this Court to impose fees against Cyrus in favor of the Estate, and the Court should do so here in connection with this baseless petition for review.

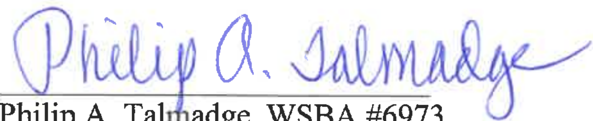
D. CONCLUSION

Cyrus has failed to analyze the criteria in RAP 13.4(b). Division I

correctly determined in its unpublished opinion that RCW 11.24.010 mandates dismissal of Cyrus's will contest where he failed to undertake personal service on Astrid, as the Estate's personal representative, within ninety days after filing the petition. The statute and controlling case authorities mandate *strict compliance* with the requirement of personal service on an estate's personal representative in a will contest and do not allow any of Cyrus's other excuses for departing from the statutory requirement of personal service. The trial court properly dismissed the will contest petition, as Division I ruled. This Court should deny review. RAP 13.4(b). Reasonable attorney fees should be awarded to the Estate.

DATED this 12th day of September, 2019.

Respectfully submitted,



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APPENDIX

FILED
4/29/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 APR 29 AM 9:35

In the Matter of the Estate of SASSAN SANAI, M.D.	No. 78121-9-I DIVISION ONE UNPUBLISHED OPINION FILED: April 29, 2019

LEACH, J. — Cyrus Sanai appeals the trial court's order dismissing his will contest petition due to insufficient service of process. RCW 11.24.010 requires personal service of the petition. The trial court correctly decided that leaving a copy of the summons and petition with a receptionist at the front desk of the probate attorney's law firm did not accomplish personal service of process on the personal representative of the estate. We affirm.

FACTS

Sassan Sanai executed a last will and testament on January 19, 2016. He died on April 6, 2017. On May 3, 2017, the court entered an order admitting the decedent's will to probate. The order also appointed one of his five adult children, Astrid Sanai, as personal representative.

Astrid lives in New York.[1] As required by RCW 11.36.010(6), Astrid appointed an attorney for the estate as her agent to accept service on her behalf. On May 3, 2017, the same date she started the probate proceeding, Astrid filed an "Appointment of and Acceptance by Resident Agent." It states,

> The undersigned Personal Representative hereby appoints Sarah O. McCarthy of THE ANDERSON HUNTER LAW FIRM P.S., as Resident Agent, whose address is 2707 Colby Ave., Suite 1001, PO Box 5397, Everett, WA 98206, in the above estate pursuant to RCW 11.36.010, as amended.

Also on May 3, the attorney signed and filed notice of the pendency of probate proceedings. A legal assistant at the attorney's law firm mailed the notice of probate to Sassan's four other surviving children.

Almost four months later, on August 31, 2017, Sassan's son, Cyrus Sanai, filed a petition to contest the validity of his father's will. Cyrus sent a copy of the petition by mail to McCarthy "as Agent for Service of Process for Astrid Sanai." Eighty-three days later, on November 21, 2017, Cyrus arranged for delivery of the summons and his petition to McCarthy's law firm's office. Daria Nuñez, who is presumably Sassan's daughter, brought the summons and petition to the front desk, announced that the documents were for McCarthy, handed them to the receptionist, and left the lobby. McCarthy was present in the office, but Nuñez did not ask to see McCarthy, speak to her, or serve her. The receptionist recorded the delivery on a log and placed the documents in McCarthy's in-box.

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[1] Several individuals involved in this appeal share the same last name. Where necessary to avoid confusion, we refer to those individuals by first name.

McCarthy retrieved the documents from her in-box about a week later when she returned from the Thanksgiving holiday.

On December 7, 2017, the personal representative filed a petition to dismiss the will contest petition based on the failure to serve process within 90 days of filing the petition as required by RCW 11.24.010. After a hearing, the trial court granted the motion. The court later denied Cyrus's motion for reconsideration. Then, on February 15, 2018, Cyrus personally served McCarthy with the summons and petition.[2] Cyrus appeals.

STANDARD OF REVIEW

We review a superior court's conclusion that service was insufficient de novo.[3] We also review questions of statutory interpretation de novo.[4] "In interpreting a statute, our fundamental objective is to ascertain and carry out the legislature's intent."[5] "Statutory interpretation begins with a statute's plain meaning."[6] We discern plain meaning from the ordinary meaning of the language at issue, the context of the statute that includes the provision, related provisions, and the statutory scheme as a whole.[7]

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[2] Cyrus claims that McCarthy "avoided service for weeks" and only accepted service after the court denied the motion for reconsideration. Nothing in the record substantiates the allegation that the attorney intentionally avoided service of process.

[3] Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014).

[4] In re Estate of Jepsen, 184 Wn.2d 376, 379, 358 P.3d 403 (2015).

[5] Manary v. Anderson, 176 Wn.2d 342, 350-51, 292 P.3d 96 (2013) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)).

[6] Manary, 176 Wn.2d at 352.

[7] State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009).

ANALYSIS

The provisions of chapter 11.24 RCW govern will contest proceedings.[8] A will contest petitioner must satisfy RCW 11.24.010's requirements to start a will contest action, and Washington courts strictly enforce the requirements.[9]

One who wishes to contest a will must file a petition within 4 months of the date the court admits the will to probate.[10] To toll the 4-month period, the person contesting the will must timely file the petition and must "personally serve" the personal representative within 90 days of the filing.[11] "If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations."[12] In such a case, the probate of the will is "binding and final."[13] Our court has held that RCW 11.24.010 is unambiguous and requires personal service of the summons and petition to start a will contest action.[14]

Cyrus argues that RCW 11.24.010 does not apply because Astrid, a nonresident personal representative, appointed an agent to accept service in accordance with RCW 11.36.010. Therefore, he contends that RCW 11.36.010, not RCW 11.24.010, controls.

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[8] Jepsen, 184 Wn.2d at 380.

[9] Jepsen, 184 Wn.2d at 379-81; In re Estate of Toth, 138 Wn.2d 650, 656, 981 P.2d 439 (1999).

[10] RCW 11.24.010.

[11] RCW 11.24.010.

[12] RCW 11.24.010.

[13] RCW 11.24.010.

[14] Jepsen, 184 Wn.2d at 380 & n.4 (will contestant did not personally serve personal representative or substantially comply with the statute by e-mailing the petition to the personal representative's probate attorney).

RCW 11.36.010 prescribes the "qualifications of personal representatives." With respect to the appointment of a personal representative who is not a resident of Washington, the provision states, in relevant part, "A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made."[15]

Because RCW 11.36.010(6) does not specify the manner of "service of all papers," Cyrus asserts that personal service is not required. The statutory scheme does not support this interpretation. RCW 11.36.010 concerns the qualifications and conditions under which individuals and certain entities may serve as personal representatives in probate matters. RCW 11.24.010, on the other hand, provides the exact requirements to start a lawsuit to contest a will. Cyrus ignores the context of the provisions. And he offers no logical reason why the jurisdictional requirements for will contest proceedings would differ depending on the identity and residency status of the personal representative.[16] Reading the statutes in context, and as a whole, we conclude that RCW 11.24.010 requires personal service, whether or not the personal representative appoints a resident agent under RCW 11.36.010(6).[17]

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[15] RCW 11.36.010(6).

[16] See Scanlan, 181 Wn.2d at 847 (proper service of the summons and complaint is essential to invoke personal jurisdiction over the defendant).

[17] Cyrus also claims that service on an attorney is governed by the provisions of CR 5, but those provisions apply only to pleadings "subsequent to the original complaint."

Alternatively, Cyrus contends that he accomplished valid personal service. In particular, he challenges the court's conclusion that there was no "effective valid service pursuant to RCW 4.28.08[0]." Cyrus asserts that the service of process statute, RCW 4.28.080, is not relevant to service of will contest petitions under RCW 11.24.010. But since RCW 11.24.010 does not define "personally serve," the court properly looked to the general definition of personal service in RCW 4.28.080 and to case law interpreting that provision. RCW 4.28.080(16) authorizes service on an individual by personal service, which the statute defines as delivery of a copy of the summons to the person.[18]

Although Cyrus suggests otherwise, RCW 4.28.080 does not prohibit the appointment of an agent, such as McCarthy, for the purpose of accepting service of process.[19] And the law is well settled that serving a person's employee is not effective personal service under RCW 4.28.080 unless the employee has express authority to accept service on the individual's behalf.[20] There was no evidence in this case that McCarthy authorized anyone to accept service on her behalf.

Cyrus also claims that he substantially complied with RCW 11.24.010 by mailing the petition to McCarthy and delivering the summons and complaint to

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[18] RCW 4.28.080(16) also authorizes substitute service—leaving a copy of the summons at "the house of his or her usual abode with some person of suitable age and discretion then resident therein." Substitute service is not at issue in this case.

[19] See French v. Gabriel, 57 Wn. App. 217, 225-26, 788 P.2d 569 (1990).

[20] See French, 57 Wn. App. at 226 (leaving summons and complaint with attorney's secretary was insufficient).

the receptionist at her office. But, as explained, our courts strictly enforce the statutory requirements to start a will contest action.[21] The doctrine of substantial compliance is fundamentally inconsistent with this strict enforcement and cannot apply.

Citing concepts of waiver and estoppel, Cyrus contends that the personal representative cannot challenge the sufficiency of service because she failed to serve him with notice of McCarthy's appointment as her agent. And because of the alleged inadequate notice of the agent's identity, he also claims that the time for filing the will contest petition was tolled until December 7, 2017, the date Astrid filed the motion to dismiss. We reject both arguments. The statute requires the personal representative to file the document appointing an agent.[22] Astrid filed the document appointing McCarthy, and the document included McCarthy's business address to facilitate service.

Hesthagen v. Harby[23] and RCW 11.28.237 do not advance Cyrus's claim of inadequate notice. These authorities establish that a personal representative must provide notice of probate to the deceased's heirs. Notice by mail satisfies RCW 11.28.237(1), and the record shows that the personal representative complied with the statute. The notice of probate was not somehow misleading because McCarthy signed it on behalf of the law firm. It is clear that Cyrus was, in fact, aware of McCarthy's identity and address because he mailed his petition

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[21] See Jepsen, 184 Wn.2d at 379-81; Toth, 138 Wn.2d at 656.
[22] RCW 11.36.010(6).
[23] 78 Wn.2d 934, 942, 481 P.2d 438 (1971).

to her and caused the delivery of the summons and petition to her business address. There are no facts here to support waiver, estoppel, or tolling, even assuming those doctrines could apply.

Finally, Cyrus argues service was valid because the record establishes "delivery and actual receipt." He relies primarily on Scanlan v. Townsend.[24] But Scanlan does not call into question the trial court's conclusion that "the documents ultimately winding up in the hands of the person to be served" fails to cure improper service. Scanlan involved hand-to-hand, but secondhand, service.[25] The defendant's father was "competent to serve" his daughter and "delivered a copy of the summons and complaint personally" to her when she visited him in person.[26] Here, by contrast, the receptionist simply left the documents in McCarthy's in-box and several days later, McCarthy found them.

Neither the delivery of summons and petition to the receptionist at the attorney's office nor the mailing of those documents to her accomplished personal service upon the personal representative's agent. Because Cyrus failed to accomplish valid service within 90 days of filing the will contest petition, the court properly dismissed his petition.

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[24] 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Cyrus also relies on Sunderland v. Allstate Indemnity Co., 100 Wn. App. 324, 995 P.2d 614 (2000) and Alvarez v. Banach, 153 Wn.2d 834, 840, 109 P.3d 402 (2005). These cases are inapposite and involve compliance with mandatory arbitration rules by filing proof that the opposing party received a copy of the request for trial de novo.

[25] Scanlan, 181 Wn.2d at 848-49.

[26] Scanlan, 181 Wn.2d at 848, 856.

The respondent requests fees on appeal, citing RAP 18.1 and RCW 11.96A.150(1). Exercising our discretion, we decline to impose fees.

We affirm.

Leach, J.

WE CONCUR:

Mann, ACJ

Dwyer, J.

RCW 11.24.010:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

RCW 11.36.010(6):

A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative must file a bond to be approved by the court.

RCW 11.96A.150:

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs,

including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).

DECLARATION OF SERVICE

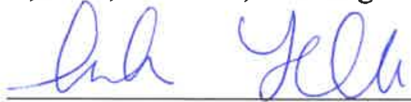
On said day below, I electronically served a true and accurate copy of the ***Answer of Respondent Astrid Sanai to Petition for Review*** in Supreme Court Case No. 97433-1 to the following:

Cyrus Sanai
433 North Camden Drive #600
Beverly Hills, CA 90210

Original filed with:
Supreme Court
Clerk's Office

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

DATED: September 12, 2019, at Seattle, Washington.



Sarah Yelle, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

September 12, 2019 - 10:37 AM

Transmittal Information

Filed with Court:	Supreme Court
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Appellate Court Case Title:	In the Matter of the Estate of Sassan Sanai, M.D.
Superior Court Case Number:	17-4-00826-1

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Answer of Respondent Astrid Sanai to Petition for Review

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