

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/17/2019 2:55 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 97813-1

No. 78411-1-I

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Estate of  
ESTATE OF GENEIVA TATE, Deceased.

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MONICA TATE,

Appellant/Petitioner,

and

PARTNERS IN CARE,

Respondent.

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ANSWER OF PARTNERS IN CARE  
TO MONICA TATE'S PETITION FOR REVIEW

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### **A. IDENTITY OF RESPONDENT**

Partners In Care, Personal Representative of the Estate of Geneiva Tate, Deceased (hereinafter referred to as "PIC" or "PR"), hereby Answers the Petition for Review of Monica Tate ("Ms. Tate") and asks this court to deny review of the unpublished Court of Appeals decision of September 30, 2019. This Answer raises no new, ancillary, or conditional issues for review. The PR does request an award of reasonable attorney fees and costs. RAP 18.1(j).

### **B. COURT OF APPEALS DECISION**

See Appendix to Petition. Portions of the opinion will be quoted below when relevant.

### **C. RESTATEMENT OF ISSUE PRESENTED FOR REVIEW**

Petitioner has identified no particular issue arising from the Court of Appeals's ruling. In fact, there is none. Rather, Petitioner seeks to reargue Judge Palmer Robinson's approval of the Estate's litigation settlement, which the Court of Appeals reviewed under the admittedly correct abuse-of-discretion standard and correctly affirmed in an unpublished decision.

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#### **D. STATEMENT OF THE CASE**

**1. Estate Administration; Heirs' Unanimous Desire to Retain All Real Estate.**

Geneiva Tate died on April 29, 2015. She was predeceased by her husband, Eddie Tate, on October 19, 2013. The Tates were survived by their four children, all adults. At the heirs' request, Partners In Care was appointed as successor PR of Geneiva Tate's Estate on October 9, 2015, and the Court granted PIC non-intervention powers.

Upon appointment as successor PR, Partners In Care was confronted with multiple parcels of real estate, ten of which were in tax foreclosure. CP 404. Some parcels were vacant; those that had been improved were generally in severely dilapidated condition. CP 405.

One overriding factor throughout the administration of the Estate has been the four heirs' unanimously expressed desire to retain every single parcel of real property owned by the Estate, and have them all distributed in kind, as a legacy from their parents. See, e.g., Motion by PR for Instructions, ¶6, CP 869.

Due to the myriad of challenges faced by the Estate and contentiousness among the heirs,<sup>1</sup> PIC requested that the Court revoke its non-intervention powers almost immediately after being appointed. Motion by PR to Revoke NPs, CP 402-410. PIC's intention was to maintain Court supervision of the probate both to resolve future disputes and protect the PR from dissatisfied heirs. The Court granted the request and revoked non-intervention powers on November 30, 2015. CP 593.

**2. Judge Robinson's May 16, 2016, Order Approving Settlement of the Briar Box Litigation.**

Briar Box II, LLC, sued Geneiva Tate and her husband Eddie Tate prior to their deaths, for specific performance of a Real Estate Purchase and Sale Agreement entered into in 2012, by the Tates as Sellers and Briar Box as Buyer, regarding property at 3014 East Howell Street in Seattle. CP 878. The litigation began in mid-2013 and was still pending in October 2015, when PIC became PR of the Estate. PIC and Briar Box settled at mediation on April 27, 2016, contingent on court approval. CP 879.

PIC filed a Motion for approval of the settlement on April 29, 2016. CP 877-884. The full Settlement Agreement was appended to the

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<sup>1</sup> The heirs were unanimous in wanting all real property preserved, but contentious on virtually every other issue.

Motion, CP 882-884, and PIC's reasoning for settling was laid out in the Motion. CP 880. The Court of Appeals quoted this reasoning extensively in its decision:

14. The Estate's heirs have repeatedly expressed to the PR [personal representative] their overriding concern for retaining the subject property (and all the properties belonging to the parents). While the Estate believes its defenses are very strong against any demand for specific performance, a loss at trial would not only lose the property but cause a judgment for damages and attorney fees, probably well in excess of \$300,000. Given the assets of the Estate, this would almost certainly necessitate sale of one or more other properties, in addition to the loss of the subject property in the lawsuit. As the PR's primary duty is to settle an estate "as rapidly and quickly as possible, without sacrifice," RCW 11.48.010, the definite risk of such a substantial loss is better avoided by paying an amount to compensate the Plaintiff for damages and fees.

15. This particularly is true given the second portion of Plaintiff's claim, for damages, which would not be automatically defeated even if specific performance were denied. Plaintiff's damages also include a potential for interest on liquidated amounts that substantially increases the magnitude of a loss at trial.

16. Finally, the Estate will receive the benefit of the development work done by Plaintiff. While this is not essential, it is at least some compensatory value to offset the amount of the settlement payment.

Slip op., p. 3, quoting CP 880 (brackets by the Court).

PIC followed the unanimous wish of the heirs to retain the real property against Briar Box's demand for specific performance. In order to retain the property, the Estate would pay Briar Box for (a) sunk costs the developer had incurred in pre-development planning and (b) damages for subsequent delays allegedly orchestrated by the parents prior to their deaths. PIC believed the settlement to be reasonable and that it would preserve significant value for the Estate against substantial risk of loss and expense, in addition to meeting the heirs' "overriding concern" that the Estate retain the property.

Ms. Tate was served with the Motion to approve the settlement. CP 1271; 885-886. She filed an Objection. CP 890-892. PIC served a Reply. CP 893-895; 1272.

The hearing occurred on May 16, 2016, before Judge Palmer Robinson. CP 896. Both in her written Objection and via counsel at the hearing, Ms. Tate offered her argument why the settlement should not be approved.<sup>2</sup> After hearing argument, Judge Robinson granted the Motion. Order Approving Settlement of Litigation, CP 897-901. As noted by the

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<sup>2</sup> As the Court of Appeals noted, even though Ms. Tate opposed the settlement, she does not dispute that she attended the pre-mediation family meeting and was part of the "unified refusal" of the heirs to consider selling the property. Slip op. at p. 8.



Court of Appeals, the report of proceedings of that hearing is not part of this record. Slip op. at p. 7, fn 9.

**3. Ms. Tate's Appeal Is of a November 30, 2017, Order That Makes No Mention of the Briar Box Settlement.**

Eighteen months later on November 30, 2017, at a hearing for approval of an interim report of the PR, Ms. Tate objected to various matters but made no argument attempting to revisit or attack the Briar Box settlement that had been approved in May 2016. The Court signed the PR's Order on November 30, 2017. CP 364-366.

Ms. Tate filed a Motion for Revision of the November 30, 2017, Order. CP 373-379. Judge Mary E. Roberts heard the Motion, consolidated with another Motion for Revision filed by Ms. Tate on an earlier Order approving payment of fees to her attorney from her share of the Estate. CP 380; RP 49-71. Again Ms. Tate made no mention of the Briar Box litigation, except in passing while discussing her attorney's fees. RP 61:14-19. She again made no argument challenging the settlement that had been reviewed and approved in May 2016.

The Court denied revision on January 17, 2018. CP 381-383. That Order made no mention of the Briar Box settlement, because that issue

was never raised by Ms. Tate. This is the Order which was appealed on February 16, 2018. CP 384-391.

**4. The Court of Appeals Addressed the Merits and Affirmed the May 2016 Briar Box Settlement.**

Although PIC raised estoppel arguments in the Court of Appeals,<sup>3</sup> the Court reached the merits. The Court of Appeals then reviewed Judge Robinson's decision on the merits and, correctly, affirmed.

The Court of Appeals correctly identified the standard of review as abuse of discretion. Slip op. at p. 7, fn 3. It noted that a fiduciary's settlement of litigation must be "fair and equitable," identified several related factors, reviewed the record, and concluded that Ms. Tate did "not show that the settlement was unreasonable." Id. at p. 8. The Court noted that all the heirs, including Ms. Tate, had attended a family meeting prior to mediation and unanimously agreed that the property be kept not only for

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<sup>3</sup> Ms. Tate's initial brief filed in the Court of Appeals on January 4, 2019, is the first time since the hearing on May 16, 2016, that she challenged or even mentioned the probate court's approval of the Briar Box settlement. Though PIC argued on appeal that Ms. Tate should be estopped from making the argument at this late date and after due notice and opportunity to be heard in May 2016, the Court of Appeals declined to address estoppel since it had not been raised below. Slip op. at p. 7, fn. 8. In fact, as described above, PIC had no opportunity to raise estoppel in the probate court concerning the Briar Box settlement, because Ms. Tate never raised that issue during the hearings on the November 30, 2017, Order currently under review.

economic reasons but as part of their parents' legacy to them. Id. The Court also noted that the litigation had already been pending for three years, and "the risks of an adverse outcome at trial were high." Id. The Court concluded, "[a]fter considering the evidence and the arguments of the parties, the court properly exercised its discretion in approving the settlement." Id. at 9.

The Court of Appeals awarded the Estate its reasonable attorney fees under RAP 18.1(d) and costs under RAP 14.2. Id. at 11.

**E. REVIEW SHOULD BE DENIED; CRITERIA OF RAP 13.4(b) ARE NOT MET**

The Court should deny review because Ms. Tate has identified no issue of substantial public interest for the Supreme Court to resolve. She makes no argument for a new rule, or even for clarification of an existing rule.

Ms. Tate's argument under RAP 13.4(b) is no more than a bare assertion of a public interest in probate courts' approval of settlements, "considering the amount of cases that flow through the probate court annually." Petition for Review at p. 4. The Petition does not identify anything to distinguish this case from the general run of probate cases that

are involved in litigation; nor does it explain why this case in particular has any factor that merits review.

This was a routine decision by the probate court, well within its discretionary authority under a well-settled rule for review and approval of litigation settlements, reviewed by the Court of Appeals on the proper abuse-of-discretion standard, and affirmed in an unpublished decision. The impact of the decision extends no further than the parties. RAP 13.4(b)(4) is not met.

Ms. Tate asserts that "the outcome of this case may determine how Washington citizens conduct their estate planning." *Id.* But the Petition give no explanation why that might be the case. In fact, this assertion is not true. There is no feasible connection between estate planning and a probate court's review of litigation settlements. It is difficult to conceive how anyone could or would provide in their Will or Trust for litigation that their estate might be involved in after their death. Certainly the decedents here, Geneiva and Eddie Tate, could not have anticipated that the Briar Box litigation would still be pending when they died. Nor could they have made any Will provision that would have helped their Estate in litigation, or altered the legal and factual issues at stake.

Ms. Tate argues that the Court of Appeals improperly (a) placed more weight on the fact the Estate had been involved in the litigation for over three years rather than "protecting the Estate's assets;" (b) did not address a "discrepancy" in how the PR valued the East Howell property; and (c) recognized that all the heirs wanted to retain the property but did not note that "the PR represented that the Estate's defenses were strong." Petition for Review at p. 3. This is a mischaracterization of the record,<sup>4</sup> but in any case is no more than an attempt to reargue the factors that Judge Robinson weighed in rendering her decision.

First, the slip opinion makes clear, and Ms. Tate agrees, that the appellate panel reviewed the record on the proper abuse of discretion standard. Slip op. at p. 7, fn 3, citing Werlinger v. Warner, 126 Wn.App.

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<sup>4</sup> PIC did not say that the Estate's defenses to the *entire* lawsuit were "strong." PIC said only that its defense was strong against any demand for *specific performance* and that, even if the Estate defeated specific performance, it would remain at significant risk of a substantial *damages and attorney fees* award in favor of Briar Box. CP 894-895; CP 880.

Similarly, there was no "discrepancy" in valuation. Ms. Tate is repeating a mischaracterization that was debunked in the Estate's briefing to the Court of Appeals. PIC knew the market value of the property at date of death, but also recognized that by the time of mediation a year later there had been significant appreciation and the benefit of that increase could only be realized by the heirs *if the property was retained*. See Brief of Respondent Partners In Care, p. 21; see also CP 894.

342, 349, 109 P.3d 22 (2005); Petition for Review at p. 2. The panel determined that "[a]fter considering the evidence and the arguments of the parties, the court properly exercised its discretion in approving the settlement." Slip op. at p. 9.

The Petition argues that Judge Robinson should have weighed the evidence *differently*, and that the Court of Appeals should have reversed in order to impose that different balance. But that is precisely what is protected by the abuse-of-discretion standard: the probate judge's review of all factors for and against the settlement, and her informed judgment as to whether or not the settlement should be approved. It is a case-by-case judgment call made within the correct legal framework. There is no basis for Supreme Court review of a routine decision by the Court of Appeals properly applying an abuse-of-discretion standard.

Second, recall also that Ms. Tate's Report of Proceedings for this appeal does *not* include the May 16, 2016, oral argument before Judge Robinson when the settlement was approved. The Supreme Court's review of this particular decision would be hampered by an incomplete record.

Finally, Ms. Tate failed to preserve her right to appeal the Briar Box settlement. An interim order in a probate that affects substantial rights

is appealable under RAP 2.2(a)(3). Cf. In re Estate of Wood, 88 Wn. App. 973, 975-976, 947 P.2d 782 (1997) (an order removing a PR affects sufficient substantial rights of the PR to make it appealable under RAP 2.2(a)(3)); cf. In re Million's Estate, 18 Wn.2d 824, 140 P.2d 560 (1943) (appeal of an interim order denying immediate payment to creditors). This authority was briefed to the Court of Appeals in the context of the estoppel argument that the Court of Appeals elected not to address. Like estoppel, it is an independent ground on the existing record that may be used to affirm the probate court's decision. RAP 2.5(a); see Adcox v. Children's Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 32, 864 P.2d 921 (1993) (trial court may be affirmed on any ground within the pleadings and supported by proof, even if not considered at trial). Generally, a notice of appeal must be filed within 30 days of decision. RAP 5.2(a). Here, the decision was on May 16, 2016, and this appeal was filed on February 16, 2018, twenty-one months later. It was clearly untimely. And, also as briefed, Ms. Tate had a full and fair opportunity to contest the settlement and she actively opposed the settlement at the May 16, 2016, hearing. She is estopped from further challenge.

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## F. CONCLUSION

Under the guise of Supreme Court review, Ms. Tate seeks to reargue her objection to a routine probate order approving a litigation settlement. That is not a basis for review under RAP 13.4(b). Moreover, the issue is raised in an untimely appeal, filed twenty-one months after the appealable order approving settlement, but which the Court of Appeals nevertheless reviewed on the merits and affirmed in an unpublished decision. Ms. Tate has identified no issue of public interest for the Supreme Court to address, and there is none.

This Court should deny Ms. Tate's Petition for Review and, because the Court of Appeals awarded fees and costs to the Estate, should award reasonable attorney fees and costs to the Estate per RAP 18.1(j).

Respectfully submitted,

DATE: December 17, 2019.

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**CERTIFICATE OF MAILING**

I certify that on December 17, 2019, I sent via email, and mailed,  
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