IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT NO. 98013-6

(Court of Appeals, Div. I, No. 78696-2-I)

(Whatcom County Court Case No. 17-2-00481-9)

INDIRA RAI-CHOUDHURY, Petitioner,

vs.

STEPHANIE INSLEE, Personal Representative of the Estate of Margaret Rai-Choudhury, Respondent.

PERSONAL REPRESENTATIVE'S RESPONSE TO INDIRA RAI-CHOUDHURY'S PETITION FOR REVIEW

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I – IDENTITY OF RESPONDENT

Respondent is Stephanie Inslee, in her capacity as Personal Representative to the Estate of Margaret Rai-Choudhury (Inslee).

II – RESTATEMENT OF THE CASE

A. Estate Planning and Dissolution History

On July 9, 2015, Margaret Rai-Choudhury (Margaret), age 82, filed for dissolution of her marriage to Prosenjit Rai-Choudhury (Prosenjit). Margaret was represented by attorney Gregory Kosanke (Kosanke). On April 4, 2016, her dissolution was final. On July 21, 2015, Margaret executed her Last Will (Will). CP 72-81. The Will was prepared by attorney Steven Avery (Avery). Margaret died on November 25, 2016. On December 19, 2016, a copy of the Will was filed for probate. Indira Rai-Choudhury (Indira) appeared in her mother's Probate, Whatcom County Cause Number 16-4-00659-4, on January 23, 2017.

The beneficiaries of the Will were Linda Borland (Borland), University of British Columbia (UBC) and Margaret's grandson Khashon Haselrig (Haselrig). Haselrig's pleadings and actions in the Whatcom County probate caused the trial court to determine, pursuant to the no contest clause in the 2015 Will, Haselrig was barred from receiving any property from Margaret's estate. On February 25, 2019, the Court of Appeals, Division 1, in cause number 77740-8-I, affirmed the trial court's

ruling that Haselrig was disqualified from inheriting from Margaret under the terms of her 2015 Will. This is the same Will that is the subject matter of Indira's appeal.

B. Procedural History of Appeal

On March 20, 2017, Indira filed her Whatcom County Superior Court Complaint in this matter. On March 24, 2017, Indira filed an Amended Complaint. On May 3, 2018, she filed a second Amended Complaint. CP 413.

On May 18, 2017, Inslee, as PR, moved for partial summary judgment dismissing Indira's causes of action to invalidate the 2015 Will, intentional interference with next of kin's rights under RCW 68.50.160 and tortious interference with a dead body. On June 30, 2017, the Honorable Judge Snyder entered an Order granting Inslee's motion for summary judgment on Indira's causes of action to set aside the will, intentional interference and tortious interference. The June 30, 2017, Partial Summary Judgment Order was not appealed and was not the subject matter of Indira's appeal.

On April 9, 2018, Inslee, as PR, filed and served her Motion for Summary Judgment on Remaining Claims. CP 1. Indira then moved to amend her Complaint a second time. CP 16. On April 20, 2018, Judge Snyder denied Indira's motion to amend the complaint a second time,

except as to Indira's claims of insane delusion and undue influence. CP 151. Indira filed a second Amended Complaint on May 3, 2018. CP 413.

On May 11, 2018, Judge Snyder heard argument on Inslee's second motion for summary judgment on Indira's remaining claims. Indira moved for a continuance to allow additional discovery. Judge Snyder entered an Order allowing additional discovery and continuing the hearing. CP 699. On June 15, 2018, Judge Snyder entered an Order Granting Inslee's Motion for Summary Judgment on Remaining Claim(s). CP 870.

C. Evidence Before the Trial Court

On March 19, 1933, Margaret was born in Vancouver, British Columbia, Canada. On November 25, 2016, she died in Bellingham, Washington. CP 69. On July 9, 2015, Margaret filed a petition for dissolution of her marriage to Prosenjit in Whatcom County Superior Court under cause number 15-3-00441-7. Margaret's marriage to Prosenjit was dissolved by the Whatcom County Superior Court on April 4, 2016. *Id.* Attorney Gregory Kosanke (Kosanke) represented Margaret in her dissolution. CP 126.

Margaret advised Kosanke she wanted to update her estate plans. Kosanke referred her to Attorney Avery. CP 128. In July of 2015, at the instruction of Margaret, Avery prepared Margaret's 2015 Will. CP 61.

On July 21, 2015, Margaret executed her Will shortly after she had filed her Petition for dissolution of her marriage to Prosenjit.

> 09. At all times relevant to the drafting of Exhibits 1-4, and at the time 2 of signing said documents, Margaret had recently filed for divorce. Her intent, expressed clearly to me, was that her soon to be ex-husband should have no portion of her estate, and should have no powers over her person or property during her lifetime. Those wishes were incorporated into Exhibits 1-4, and expressed therein.
>
> 10. At all times relevant to the drafting of Exhibits 1-4, and at the time of signing said documents, Margaret's intent, expressed clearly to me, was that her daughter, Indira Rai-Choudhury, should have no portion of her estate, and should have no powers over her person or property during her lifetime. Those wishes were incorporated into Exhibits 1-4, and expressed therein.
>
> . . . .
>
> 12. Margaret Rai-Choudhury informed me that she was adamant no family member of hers should have any powers over her Estate. I prepared her executed documents consistent with those wishes."

Dec. of Avery; CP 61, 68.

Margaret's 2015 Will contained the following provisions:

> **ARTICLE 2 GIFTS**
>
> **2.1 SPECIFIC BEQUESTS:**
> I give to LINDA BORLAND of Bellingham, Washington ten thousand dollars ($10,000.00).
>
> **2.2 ESTATE RESIDUE:** I give, devise and bequeath the rest, remainder and residue of my estate, of whatsoever nature and wheresoever situated to the following:
>
> Fifty percent (50%) shall pass to the University of British Columbia (UBC) to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor.

> Fifty percent (50%) shall pass to the then-trustee of the KHASHON HASELRIG Grandchild's Trust for the benefit of my grandson KHASHON HASELRIG to be distributed pursuant to Article 3 below. If KHASHON HASELRIG does not survive me, his share shall pass to the University of British Columbia to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor. . . .
>
> **5.2 NO CONTEST**: If a beneficiary named under this Will or one of my beneficiaries at law shall in any manner contest or attack this Will or any of its provisions, then in such event any share or interest in my estate given or passing to such contestant is hereby revoked and shall be disposed of in the same manner provided herein as if such contestant had predeceased me.

CP 61, Exhibit 1; CP 73; CP 79.

In her dissolution, Margaret was awarded substantial assets. Except for her home, Margaret's assets were invested and managed by an investment advisor, William Tuttle (Tuttle). CP 131. Margaret's instructions, oral and written, to Tuttle were to make UBC the paid on death beneficiary of her investment, non-probate assets. CP 543, 547-48. On her death, Margaret's estate exceeded $1,700,000.00. Three assets made up a substantial portion of Margaret's estate: her home, valued at more than $600,000.00, which was subject to probate; and, two investment accounts, which exceeded $1,000,000.00, which were not subject to probate.

Margaret's niece, Debbie Norrish (Norrish) was close to Margaret. CP 451; CP 960. In 2015, they spoke weekly on the phone and

fellowshipped together every two or three weeks. *Id.* She last spoke to Margaret, two days prior to her death. *Id.* At no time in 2015 did Norrish have any worries about Margaret's cognitive function.[1] Margaret shared with Norrish, many times, that she did not want Indira to have control over any money or assets. Margaret advised Norrish that Indira was not to be contacted upon Margaret's death. *Id.* In 2015, Margaret shared with Norrish fond memories of working at UBC. Margaret wanted her ashes spread on the campus of UBC. *Id.*

On May 1, 2018, the deposition of Norrish was taken.. CP 451. At Norrish's deposition, Indira learned the following about her mother: 1) Margaret always had money issues with Indira; 2) Margaret enjoyed her time at UBC; 3) Margaret was not leaving any money to Indira because she did not trust her; and, 4) Margaret, in Norrish's opinion, was of sound mind. CP 459.[2]

Linda Borland (Borland) exercised with Margaret four or five times a week. CP 960. When not exercising at the pool, they often met socially and travelled together. *Id.* Borland was aware of Margaret's

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[1] "Aunt Margaret kept her wits about her until her death. . . . At all times up until her death, Aunt Margaret was able to understand the nature of her assets, and was able to articulated (sic) her estate and end of life wishes." CP 960; CP 452.

[2] Q At Paragraph 8, you say, "At no time prior to her death did I have any concerns about cognitive impairment or cognitive function. Aunt Margaret kept her wits about her until her death," close quote; do you see that? I mean, did you say that?
A I don't see it, but I do remember it, yes, I do, because I felt that she was -- knew what was going on. She always seemed to. She knew what was going on around her. CP 459.

concerns about her former husband and daughter, Indira. *Id.* Margaret was living with Borland when Margaret executed her Will. Borland believed Margaret, on July 21, 2015, had capacity to sign her Will.

> During our friendship, including the time she lived with me, I had no concern for her capacity or cognitive abilities. Up until her death, Margaret was a very intelligent woman, and she did not exhibit any behaviors which caused me concern for her mental status or abilities. . . . Her choice to leave Indira nothing is also consistent with my conversations with her. She made it known to me on several occasions that she did not want Indira, nor her second grandson, to inherit any of her money.

Dec. of Linda Borland; CP 964.

Since 2011, Margaret was a client of investment advisor Tuttle. She was one of his first clients at Wells Fargo Advisors. CP 131-32. Over a period of years, they met often. *Id.* The last year of Margaret's life, Tuttle met with her at least monthly. *Id.* At all times, Tuttle found Margaret to be a sharp, independent woman, who studied the market, enjoyed discussing her investments and demonstrated an understanding of her investments. *Id.*

Prior to Margaret's dissolution, Tuttle was advised by Margaret to keep her investments separate from her husband, during the marriage, and away from Indira. *Id.* Margaret provided Tuttle with substantial reasons for not wanting anything to go to Indira. *Id.* At all times, Tuttle believed Margaret understood her finances, knew the nature and extent of her

investments and property, and acknowledged her difficult relationship with Indira. *Id.*

Margaret told Tuttle that Indira was not trustworthy, had addiction issues, and was vindictive. CP 545. Margaret told Tuttle that Indira was deceitful, manipulative and a liar. CP 552. At no time, including in 2015, was Tuttle concerned Margaret was insane, delusional or unduly influenced by anyone, including Inslee, attorney Avery or attorney Kosanke. *Id.* at 555. At all times when meeting with or talking to Tuttle, including in 2015, Margaret appeared and talked rationally and appropriately. *Id.* at 556.

On June 30, 2015, Kosanke first met Margaret. CP 126. Kosanke represented Margaret in her divorce and sent her to Avery for her estate planning. CP 128-29. Margaret told Kosanke her husband had transferred hundreds of thousands of dollars to Indira, without Margaret's permission. *Id.* Margaret advised Kosanke that she was not going to make any provision for Indira in her estate planning. *Id.* Any claim or allegation that Margaret was not of sound mind or delusional during her dissolution was "distinctly contradictory" to Kosanke's discussions and interactions with Margaret. *Id.* Kosanke believed, during his representation of Margaret, Margaret completely understood and partook in the difficult legal and

economic choices regarding the division of her substantial assets and liabilities:

> All I know is that Margaret expressed that her daughter was cruel to her, and I did not go into details. I did receive an email from her daughter that was addressed to me and not to Margaret. . . . It was abusive. Quite frankly, Chris, it was the worst email that I have received from a child to a parent or an attorney for a parent that I have ever received. . . I was stunned when I received it. . . .
>
> When you say 'cruelty,' I just want to say that Margaret felt that her daughter -- how do you say this kindly? I don't know if I can say it kindly in her words. I didn't say it. I'm trying to repeat it, and I feel less than -- less than confident to repeat her words after her death.
>
> But I know that she expressed a sadness about the relationship between her and her daughter. And to try to put words in Margaret's mouth after her death, I don't feel comfortable doing that. But Margaret was sad with the relationship between her and her daughter."

CP 126. CP 482, CP 485-490. Dep. of Kosanke.

Attorney Avery prepared Margaret's 2015 Will. He prepared it consistent with Margaret's wishes, which she last expressed to Avery on July 21, 2015, the day she executed the Will. CP 62. The Will was witnessed by Sophusson and Dykstra. Both declared under penalty of perjury that Margaret appeared to be of sound mind and under no duress or undue influence. CP 81. The other three documents were notarized by Avery, who stated under oath that Margaret's signature was her free and voluntary act. The other witnesses again declared that Margaret had the

appropriate capacity and was not acting under any duress or undue influence. CP 95; 107-108; CP 113-115.

Avery had no doubt Margaret had the mental and testamentary capacity to execute her 2015 Will. *Id.* Avery believed when he met with Margaret she was able to and did express her clear wishes regarding her estate, and that Margaret's mind "was quite sound."

> Q So let's see if we can just narrow this down to what this issue seems to be about. At the four times you met with Margaret Rai-Choudhury, did she say or do anything that would lead you to believe she lacked mental capacity?
> A No.
> Q The four times you met with her, two times to execute a Will, did she say or do anything that led you to believe she was unduly influenced by the University of British Columbia?
> A No. . . .
> Q During the four times you met with Margaret Rai-Choudhury, did she say or do anything that would lead you to believe she was under some type of insane delusion about who she was and who loved and who she wanted to leave her money to?
> A No.
> Q All right. During the four times you met with her, did she say or do anything that led you to believe that she lacked capacity to instruct you as to what to do with her assets that would be probated after her death?
> A No. . . .
> Q And all the documents you reviewed, were those consistent with your client Margaret Rai-Choudhury's wishes and instructions?
> A Yes.
> Q As we sit here today, is there any doubt in your mind that she had the capacity to give you those wishes and instructions?
> A No, there's no doubt.

CP 853; 857-859.

Indira seeks review of the Court of Appeals decision based on the incorrect assumption that Division 1 applied the wrong standard, and that the trial court denied a continuance. These arguments are inconsistent with the facts in this case. The trial court granted a continuance, and after a continuance was granted to allow Indira additional time, Indira still failed to present an issue of material fact which would preclude summary judgment. Consistent with the facts in this case, and the applicable law, Division 1 stated:

> When Indira first requested the continuance in May 2018, the court granted it for her to obtain medical records and depose Margaret's estate attorney. It, however, did not permit her to depose Margaret's neighbors, her counselor, or two people prepared to state that Indira and Jehan were not drug users. The court disallowed this discovery because it believed that this additional evidence would not "shed light on [Margaret's] condition at the time she was preparing and signing her will."
>
> Indira claims the additional discovery would show that the neighbor believed Margaret disinheriting Indira was contrary to Margaret's feelings, that Indira was not a drug user, and would provide information on Margaret's relationship with Indira before, during, and after May 2015. The court believed that the evidence would not have sufficient value for establishing an insane delusion or showing a link between that delusion and Margaret's disposition of her property. Given that the evidence would not shed light on Margaret's medical state or her beliefs regarding her will at the time she executed it, the court's determination was reasonable. Accordingly, the trial court did not manifestly abuse its discretion by denying Indira's motion for a continuance.

Rai-Choudhury v. Inslee, 10 Wn.App.2d 1048, 6, Not Reported (Div, 1, 2019).

Indira continues to argue her mother suffered an insane delusion when she disinherited her. However, there is no issue of material fact which precluded summary judgment as to Margaret's capacity at the time she executed her Last Will and Testament.

III – LEGAL AUTHORITY AND ARGUMENT

A. Standard to Accept Petition for Review.

> A petition for review will be accepted by the Supreme Court **only**:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) (emphasis added).

> [T]he petitioner must persuade [the Supreme Court] that either the decision below conflicts with a decision of this court or another division of the Court of Appeals; that it presents a significant question of constitutional interest; or that it presents an issue of substantial public interest that should be decided by this court.

In re Coats, 173 Wn.2d 123, 132-33, 267 P.3d 324 (2011).

B. The Court of Appeals Applied the Correct Standard.

In its decision, the Court of Appeals analyzed the trial court's decision de novo, under the correct summary judgment standard. Indira relies upon *Tiger Oil Corp. v. Yakima County,* 158 Wn.App. 553, 242 P.3d

936 (Div. 3, 2010). However, Indira ignores that *Tiger* clearly further supports the Court's finding summary judgment in this matter:

> When weighing summary judgment in a civil case in which the standard of proof is clear, cogent, and convincing evidence, the court determines whether a rational trier of fact could find from the evidence in the record that the nonmoving party satisfied this evidentiary burden. Where the law creates a presumption, summary judgment may rest on a presumption in the absence of prima facie evidence to overcome it. With these standards and burdens in mind, the issue is whether Tiger Oil created a genuine issue of material fact by presenting a prima facie case with clear, cogent, and convincing evidence that would overcome the presumed validity of the County's assessment.

Tiger Oil Corp. v. Yakima County, 158 Wn.App. at 562-63 (citations omitted). Indira created no issue of material fact which would present any prima facia case to overcome the presumed validity of Margaret's will, let alone the abundance of evidence of her capacity before the trial court.

C. Presumption of Capacity

"[W]here a will, rational on its face, is shown to have been executed in legal form, the law presumes that the testator had testamentary capacity and that the will speaks his [or her] wishes." *In re Bottger's Estate*, 14 Wn.2d 676, 685, 129 P.2d 518 (1942).

> **It is well settled that the law will presume sanity rather than insanity, competency rather than incompetency; it will presume that every man is sane and fully competent until satisfactory proof to the contrary is presented.** In Washington we have held that the standard of proof required to overcome this presumption, in civil cases, is that of clear, cogent and convincing evidence.

Grannum v. Berard, 70 Wn.2d 304, 307, 422 P.2d 812 (1967). (Emphasis added; internal citations omitted).

The above presumption is the strongest in law. Even when the testator has an agreed mental disorder, there can be lucid periods.

> [I]t is presumed that [her] will has been made during a time of lucidity. . . Thus a finding of lack of testamentary capacity can be supported only if the presumption of execution during a lucid period is overcome.'

Andersen v. Hunt, 196 Cal.App.4th 722, 727, 126 Cal.Rptr.3d 736 (Cal.App. 2011). (Internal citations omitted).

> But on the other hand, sanity and mental competency are presumed to have existed until the contrary is established by competent proofs. . . . We hold the view that the right to dispose of one's property by will is one assured by the law and is a valuable incident to ownership, and does not depend upon its judicious use.

In re Murphy's Estate, 98 Wash. 548, 554-55, 168 P. 175 (1971).

D. Indira's Arguments of Insane Delusion Were Not Supported by Admissible Evidence.

Indira argues this Court should take review and reverse the trial court and Court of Appeals because at their depositions, Kosanke and Tuttle were unable "to give any examples supporting the mother's negative views of her daughter." Indira then argues Avery's opinion only reflected Margaret's "false beliefs" regarding Indira. *Id.* at 7. Finally,

Indira argues her mother could not have intended to leave her nothing because Margaret loved her. *Id.* at 20.

These arguments are irrelevant. Margaret likely loved her daughter. Margaret did have negative views of Indira. Whether Margaret's love for, or concerns about Indira, were justified provides no basis to undo Margaret's testamentary plan. Indira makes irrelevant arguments, which fail to identify any meritorious legal theory which would support this Court accepting review. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 817, 826 P.2d 549 (1992).

The medical records, incorrectly relied upon by Indira, are not admissible. The late-filed "opinion" of Dr. Haq., lacked proper foundation. Indira's "arguments" are prohibited by the Dead Man's Statute. Indira stood before the trial court and stood before the Court of Appeals without any admissible evidence.

> A record of an act, condition or event, shall in so far as relevant, be competent evidence **if the custodian or other qualified witness testifies** as to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

RCW 5.45.020. (Emphasis added.)

Indira made no attempt to comply with RCW 5.45.020, yet she boldly complains about the trial court's rulings on foundation lacking for any of the records relied upon by Indira.

Indira attempts to provide, through Indira, evidence on how much her mother loved her. Not only is it irrelevant, it is inadmissible through Indira.

> No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: **PROVIDED, HOWEVER, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person**, or as deriving right or title by, through or from any deceased person, or as the guardian or limited guardian of the estate or person of any incompetent or disabled person, or of any minor under the age of fourteen years, **then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person,** or by any such minor under the age of fourteen years: PROVIDED FURTHER, That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action.

RCW 5.60.030. (Emphasis added).

Dr. Haq's attempted declaration was not only late, he claimed to be able to diagnose mental illness, on a specific date, without having seen Margaret and without any such diagnosis being contained in the medical

records. The trial court correctly determined the timing of, form of, and substance of Dr. Haq's "opinions" were not admissible.

> The trial court acts as a gatekeeper, determining whether a particular expert's testimony will assist the trier of fact and excluding evidence that does not meet this standard. City of Fircrest v. Jensen, 158 Wash.2d 384, 397, 143 P.3d 776 (2006).

Frausto v. Yakima HMA, LLC, 188 Wn.2d 227, 239, 393 P.3d 776 (2017).

E. There is no Evidence Margaret Suffered From Any Insane Delusion on July 21, 2015..

Indira provided no admissible evidence of insane delusion on July 21, 2015.

> The distinction between a mistake and an insane delusion is that a mistake, whether of fact or law, moves from some external influence which is weighed by reason, however imperfectly; while a delusion arises from a morbid internal impulse having no basis in reason, *Taylor v. McClintock*, 87 Ark. 243, 112 S.W. 405; and a belief which a rational person may entertain, however erroneous, is not an insane delusion.

In re Millar's Estate, 167 Kan. 455, 487, 207 P.2d 463 (Kan. 1949).

> A conviction which a testator arrives at by process of reasoning, however illogical, from existing facts, is not such an 'insane delusion' as would affect his capacity to make a will. *Knight v. Edwards*, 153 Texas 170, 264 S.W.2d 692.
>
> As the rule is stated in an annotation in 175 A.L.R. 964, even if there is evidence of an insane delusion of such a nature as to affect the will, if there is also evidence of some other and rational motive for the disposition made, the burden is upon the contestant to rebut or overcome the legal presumption of validity, by showing that the delusion, exclusive of rational motive, was the controlling cause.

In re Meagher's Estate, 60 Wn.2d 691, 693-94, 60 Wn.2d 148 (1962).

Indira relies on *In Re Klein's Estate*, 28 Wn.2d 456, 183 P.2d 518 (1947). Evidence of insane delusion must be established by clear, cogent, and convincing evidence. *Klein's Estate, supra,* at 457. "It is not ever insane delusions that will render a will invalid, but only such as enters into the product of the testamentary instrument." *Id.* at 472.

Indira then relies on a misreading of *In re Estate of Miller,* 10 Wn.2d 258, 116 P.2d 526 (1941). M*iller* does not support Indira's position or arguments in any way, and holds to the contrary:

> **Whether a will is natural or unnatural is a question to be determined in each case as warranted by the facts.** Mental incapacity on the part of a testator is not presumed on the theory that it was unnatural and unreasonable to execute a will giving all property to a stranger and cutting off one's kin. In the determination of the question what is unjust or unnatural the history of the testator's family is to be considered and the moral equities and obligations appearing therefrom. **A will is unnatural when it is contrary to what the testator, from his known views, feelings and intentions would have been expected to make. If the will is in accordance with such views it is not unnatural however much it may differ from ordinary actions of men in similar circumstances.**
>
> . . . .
>
> At best, the testimony of expert witnesses as to insanity, based on hypothetical questions skillfully framed to call for an answer favorable to the party in whose behalf it is asked, 'is evidence the weakest and most unsatisfactory.' When, as in this case, the opinions as to unsoundness of mind, including those of the intimate acquaintances, are based on facts which show neither morbid delusion nor total mental incapacity. . . .the evidence is wholly insufficient to establish the fact.
>
> In Points v. Nier, 91 Wash. 20, 28, 157 P. 44, 42, Ann.Cas.1918A, 1046, we said:

> 'We hold the view that the right to dispose of one's property by will is one assured by the law and is a valuable incident to ownership, and does not depend upon its judicious use. As to proof of the competency of the maker, it is stated in 14 Enc. of Evidence, p. 369: 'The testimony of attending physicians . . . may overcome the testimony of law witnesses if based on personal observation and knowledge, or that of experts based on hypothetical questions; but not that of an uncontradicted witness as to what testator actually did in connection with the preparation of the will, or that afforded by proof of success in business matters.'

In re Miller's Estate, 10 Wn.2d at 271-272 (emphasis added) (internal citations omitted).

IV – REQUEST FOR ATTORNEY FEES AND EXPENSES

Pursuant to RAP 18.1 and RAP 18.9(a), this Court may order a party who files a frivolous appeal to pay terms, sanctions or compensatory damages to any other party who has been harmed by said frivolous appeal. Inslee asks this Court to exercise its discretion in ordering Indira to pay attorney fees for Inslee's response to Indira's frivolous appeal. Indira's Petition for Review does not have any merit.

V – CONCLUSION

Inslee respectfully requests that Indira's Petition for Review be denied. Indira's petition does not raise any ruling by the Court of Appeals that is inconsistent with applicable case law. Indira's appeal and petition are frivolous and warrant an award of attorney fees to the Estate pursuant to RAP 18.1 and RAP 18.9(a).

Respectfully submitted this 13th day of February 2020.

SHEPHERD and ALLEN

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DECLARATION OF SERVICE

I, Heather Shepherd, declare that on February 13, 2020, I caused to be served a copy of the following document: **Personal Representative's Answer to Indira's Petition for Review** and, this **Declaration of Service**, in the above matter, on the following person, at the following address, in the manner described:

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Aiken, St. Louis & Siljeg, P.S.	( ) Fax
801 2nd Avenue, Ste. 1200	( ) Messenger Service
Seattle, WA 98104	( ) Email
lee@aiken.com	(X) COA Portal E-File/Delivery

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

DATED this 13th day of February 2020.

Heather Shepherd

SHEPHERD AND ALLEN

February 13, 2020 - 11:10 AM

Transmittal Information

Filed with Court:	Supreme Court
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