Supreme Court No. 999511
Court of Appeals No. 809334-I

SUPREME COURT OF THE STATE OF WASHINGTON

Matter of the Estate of BOJILINA H. BOATMAN,

BRIAN BOATMAN, individually and as Trustee of the Brian Boatman Revocable Living Trust,

Petitioner,

v.

THE ESTATE OF BOJILINA H. BOATMAN,

Respondent,

and

BEVERLY YOUNG,

Appellant/Non-Party.

APPELLANT/CROSS-RESPONDENT BEVERLY YOUNG'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This appeal concerns the trial court's erroneous fees order against Beverly Young under TEDRA's attorneys' fees statute, RCW 11.96A.150 ("Fees Order").[1] The Fees Order required Ms. Young to personally pay attorneys' fees and costs for proceedings brought by the Estate of Bojilina Boatman ("Estate") against Brian Boatman. But Ms. Young was not a party to those proceedings. The claims were brought solely by the Estate and Ms. Young was acting in a fiduciary capacity as the Estate's personal representative ("PR").

The Court of Appeals correctly vacated that Fees Order as to Ms. Young personally. In doing so, the Court applied well-settled Washington law under which a personal representative cannot be ordered to pay attorneys' fees and costs personally absent a breach of his or her fiduciary duty to the estate or other inexcusable conduct as the PR. Here, there was not even any such accusation against Ms. Young—let alone any such finding or conclusion. To the contrary, Ms. Young had the Estate pursue

[1] "Fees Order" means the Order on Entry of Judgment for Attorney Fees and Costs, dated December 20, 2019 (Case #81000-6-I at CP 956-961). Court of Appeals Case Nos. 81000-6-I and 80933-4-I were consolidated under Case No. 80933-4-I after Ms. Young arranged Clerk's Papers to be submitted in Case No. 81000-6-I. We cite to the Clerk's Papers submitted in Case No. 81000-6-I herein.

those claims at the recommendation of a court-appointed, neutral interim PR who had reviewed the record and determined the Estate should do so.

While the Court of Appeals decision is personally significant to Ms. Young, it is an unremarkable application of RCW 11.96A.150 and established Washington trust and estate law. Indeed, the trial court itself tried to correct the error after the Fees Order was entered, but lacked jurisdiction to do so given pending appeals.[2]

Respondent Brian Boatman now asks this Court to review that Court of Appeals decision. He makes two arguments regarding why review is warranted under RAP 13.4(b). Both fail.

First, Brian rehashes his argument below that because Ms. Young is a beneficiary of the Estate and thus a "party" under TEDRA's broad definitional provision, the trial court could order her to pay Brian's attorneys' fees and costs for litigation between him and the Estate under TEDRA's separate fee-shifting provision in RCW 11.96A.150(1).[3] But the plain language of RCW 11.96A.150(1) authorizes courts to require fees to be paid only: "(a) from any party *to the proceedings*." (Emphasis added.) Ruling that Ms. Young should not have been ordered to personally pay Brian's attorneys' fees and costs for the Estate's litigation

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[2] *See* Section, II(G), *infra*.

[3] Brian Boatman is referred to herein by his first name for clarity, and by doing so we mean no disrespect.

against him when she was not a party to the proceedings does not somehow "conflict" with TEDRA; it is simply the correct application of the express language of TEDRA's fee-shifting statute in this case.

Second, Brian asserts that the Court of Appeals Decision conflicts with *In re Estate of Bernard*, 182 Wn. App. 692 (2014) and *In re Estate of Becker*, 177 Wn.2d 242 (2013). Those cases are inapposite. Neither involves the appeal of an attorneys' fees award under RCW 11.96A.150. To the extent these cases are relevant, they support the reasoning of the Court of Appeals here: the provisions of TEDRA relevant to the question at issue must be applied and read together based upon the claims and facts at issue in the case; TEDRA's definitional provision is not simply applied in isolation as the beginning and end of the inquiry.

The remainder of the Petition only reinforces the absence of any grounds for review. Brian attempts to re-cast Ms. Young as a bad actor whom he wants to make "pay" by including an incorrect and inflammatory discussion of purported facts and a highly misleading narrative regarding the Estate's substantive claims against him in the trial below. What Brian believes about his spending and the care of his late mother are not relevant to this appeal.

The Court should deny the Petition.

II. RELEVANT FACTS

A. The Prior Proceedings ("Phase I")

This action began in 2013 after Bojilina Boatman passed away. Ms. Young and four of her brothers (the "Siblings") discovered that Brian had used his attorney-in-fact power over their ill mother's assets to take or spend hundreds of thousands of dollars of her money. (CP 4-26.) The Siblings then filed suit against Brian for conversion, breach of fiduciary duty, and an accounting. (CP 4-26.) They also sought to remove Brian as the Personal Representative of the Estate. (*Id.*)

In response, Brian moved to dismiss the petition by arguing, among other things, that the Siblings "are not the party in interest, they are not representative of the party in interest, and have no standing to bring claims for breach of fiduciary duty or conversion prior to death". (CP 58:4-6, 113:2.) Brian asserted that as a matter of law, any claim against him as the attorney-in-fact belonged to his mother (Bojilina Boatman) personally and that, after her death, only the personal representative of the Estate (him) had the statutory right to bring an action against him. (CP 58:1-60:2, 97:4-5, 98:5-99:1-7, 286-300, cited as *Young v. Boatman*, 192 Wn. App. 1034, 2016 WL 513293 at *2 (Feb. 8, 2016) (discussing the arguments made at the trial court in this case).)

The trial court agreed. (CP 124-130.) The court found the Siblings had "no standing" to bring the claims asserted individually or on behalf of the Estate. (CP 127:16-128:9.) The Siblings appealed. (CP 131-139.)

B. The Court of Appeals Ruling that Only the Estate Can Assert the Claims at Issue

The Court of Appeals affirmed the dismissal of the Siblings' claims. (CP 286-300, *Young v. Boatman*, 192 Wn. App. 1034, 2016 WL 513293 (Feb. 8, 2016).) It held that the claims asserted in the TEDRA petition belonged solely to the Estate, and that "the beneficiaries d[id] not have standing to bring claims against Brian for breach of fiduciary duty and conversion while acting as attorney-in-fact." (*Id.* at CP 298; *7.)

The Court of Appeals also held that Brian, as the Personal Representative, had a conflict of interest regarding the Estate's pursuit of claims against him. (CP 298-300; *Young*, 192 Wn. App. 1034, 2016 WL 513293 at *7-8.) Accordingly, the Court of Appeals ordered that on remand, the trial court "shall appoint an interim personal representative to determine whether to pursue an action on behalf of the Estate against Brian as the attorney-in-fact for Bojilina from 2007 until her death in 2013." (CP 300; *Young*, 192 Wn. App. 1034, 2016 WL 513293 at *8.)

C. The Court-Appointed Interim PR's Recommendation that the Estate Pursue the Claims Against Brian

Following remand, the trial court appointed Lisa Saar, a Washington probate and estates attorney, to act as the Interim PR. (CP 333-337, 393-400, 549:23-24.) Ms. Saar was appointed to "serve[] as an officer of the court" to conduct an investigation and report to the trial court "her conclusions as to whether the Estate should advance any claim against Brian Boatman for his conduct as attorney in fact and/or his conduct as Personal Representative of the Estate of Bojilina Boatman." (CP 397:17-22, 398:16.)

The Interim PR reviewed several thousand pages of documents and financial records. (CP 402:24, 405-408.) Based upon her analysis, the Interim PR recommended "pursuit of an action on behalf of the Estate against Brian Boatman" for his actions as Bojilina's attorney-in-fact, and removal of Brian as Personal Representative of the Estate. (CP 402:25-28, 403:2-5, 403:14-18, 549:23-24 (finding the Interim PR "believed the Petition should go forward to trial.").)

D. Ms. Young's Appointment as Successor PR for the Estate

The Estate needed someone to act as its Personal Representative going forward. Bojilina Boatman's will provides that Brent Boatman is to serve in the event that Brian is removed. (CP 423:2-5.) However, Brent and his brothers concluded that instead, Ms. Young should serve as the

Estate's Personal Representative. (CP 423:7-9.) Ms. Young agreed to seek appointment as the Estate's PR, and upon her appointment, to "follow the mandate issued by the [Interim PR] by pursuing [the] claims on behalf of the Estate against Brian." (CP 428, ¶¶ 3-4.) Brian Boatman also agreed to Ms. Young's appointment. (CP 447:16-18, 458:16-18, 479.)

In November 2016, the trial court appointed Ms. Young as the "Successor Personal Representative of the Estate". (CP 482, 549:24-25.)

E. The Estate's Pursuit of Claims Against Brian ("Phase II")

After Ms. Young's court-appointment as Personal Representative, the court granted the Estate's motion for leave to assert the claims against Brian as recommended by the Interim PR. (CP 492-515, 535-536.). The Estate then filed a First Amended Petition against Brian on December 9, 2016, initiating the "Phase II" proceedings. (CP 516-534.)

The only parties to the Phase II proceedings were—and are—the Estate as the Petitioner, and Brian Boatman as Respondent.[4] (CP 516-534.). The Estate's claims against Brian went to trial, and the Estate lost.[5]

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[4] Brian Boatman was named as a respondent both in his individual capacity and in his capacity as trustee of a trust into which he had transferred certain property. (CP 516-534.)

[5] Although the evidence at trial established that Brian had transferred over $500,000 of his mother's assets to him or for his benefit, the court ruled

F. The Trial Court's Erroneous Fees Order

Brian then moved for entry of judgment on attorneys' fees and costs. (CP 874-898.) In that motion, Brian asked for an award of his attorneys' fees and costs incurred in *both* the Phase I proceedings *and* the Phase II proceedings against all of the Siblings, or in the alternative against Ms. Young in both her *individual capacity* and in her capacity as Personal Representative of the Estate in the Phase II proceedings. (*Id.*) Again, as ordered by the Court of Appeals, none of the Siblings were parties to the Phase II proceedings—including Ms. Young. (CP 516-534.)

On December 20, 2019, the trial court entered the Fees Order at issue in this appeal. (CP 956-961.) The Fees Order concerned an award of attorneys' fees and costs pursuant to RCW 11.96A.150 and RCW 4.84.030. (CP 957:15-17.) In it, the trial court correctly declined to award any attorneys' fees regarding the Phase 1 proceedings. (CP 957:21-24.) It also correctly declined to find that the other siblings were parties for the purposes of the attorneys' fees statute. (CP 958:11-14, 959:19-21.)

However, the trial court went on to erroneously impose attorneys' fees and costs against Ms. Young "individually and as Personal

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that these transfers were justified. (CP 549-565, Finding Nos. 54, 60-62, Conclusions Nos. 9, 19-20.)

Representative of the Estate of Bojilina Boatman, jointly and severally." (CP 958:1-14, 959:15-18, 960:17-21.) (Emphasis added).

G. The Trial Court's Erroneous Denial of Ms. Young's Motion to Vacate

Also on January 6, and after having retained separate counsel to represent her, Ms. Young filed a motion to vacate the Fees Order. (CP 994-1002). On January 21, the trial court denied that motion. (CP 1031-1035.) The same day, Ms. Young appealed the Fees Order. (CP 1020-1030.)

The next day, January 22, the trial court entered Findings/Conclusions and Order re Award of Attorneys' Fees and Cost and Judgment on Attorneys' Fees signed by Hon. Montoya-Lewis, *pro tem*. (CP 1036-1041, "January Order".) The January Order was for an amount different than the December Fees Order and was solely against the Estate and Ms. Young *in her capacity as Personal Representative*, "jointly and severally." (*Compare* CP 956-961 *with* CP 1036-1041.) This indicates recognition by the trial court that imposing fees and costs against Ms. Young individually was an error. (*Id.*). But because the trial court lacked jurisdiction when the January Order was entered, Ms. Young and the Estate proceeded with their appeals of the erroneous Fees Order.

H. The Court of Appeals Decision

The Court of Appeals issued its decision on May 10, 2021: *In re Estate of Boatman*, 17 Wn.App.2d 418 (2021). In it, the Court of Appeals: (1) vacated the Fees Order as to Ms. Young individually; (2) affirmed the award of attorneys' fees against the Estate; (3) directed the trial court to amend the judgment as to costs against the Estate; (4) rejected Brian's arguments that he was entitled to attorneys' fees and costs against all of his Siblings individually and for more than the amount he had sought; and (5) awarded Ms. Young the fees and costs she had personally incurred having to address the erroneous Fees Order.

Regarding the Fees Order against Ms. Young individually, the Court of Appeals started with the general rule in Washington that "each party in a civil action will pay its own attorney fees and costs" except that the trial court may award them "when authorized by contract, statute, or a recognized ground in equity." *In re Estate of Boatman*, 17 Wn.App.2d at 426.

The Court then discussed Washington law which provides that a personal representative of an estate acts in a representative capacity and is in a fiduciary relationship with those beneficially interested in the estate. *In re Estate of Boatman*, 17 Wn.App.2d at 427 (citing *In re Estate of Ehlers*, 80 Wn. App. 751 (1996); *In re Estate of Larson*, 103 Wn.2d 517

(1985)). The Court went on to discuss well-established Washington trusts and estates law under which the estate generally must bear the costs of litigation; a personal representative can be ordered to personally pay fees only if the litigation is necessitated by the personal representative's breach of fiduciary duty or inexcusable conduct as PR. *Id.* at 427-28 (citing *Allard v. Pac. Nat'l Bank*, 99 Wn.2d 394 (1983); *In re Estate of Jones*, 152 Wn.2d 1 (2004)).

The Court recognized that a fiduciary's statutory liability for costs is similarly limited. *In re Estate of Boatman*, 17 Wn. App.2d at 427-28 (quoting RCW 4.84.150, providing that "…costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense.").

The Court rejected Brian's argument that because RCW 11.96A.030 defines "party" to include "personal representatives", the trial court could impose a fees award against Ms. Young individually. *In re Estate of Boatman*, 17 Wn. App.2d at 428. There had been no finding that Ms. Young breached any fiduciary duty or engaged in any inexcusable conduct. Instead, Ms. Young had filed the petition on behalf of the Estate "because the court-appointed interim personal representative found that the 'pursuit of an action on behalf of the Estate against Brian Boatman'

was warranted." *Id.* Ms. Young was acting not in the capacity of a "party" in the proceedings, but rather in her appointed fiduciary capacity as PR of the Estate. *Id.* The Court thus held that "[c]onforming to general principals of Washington trust and estate law, Young should not have been ordered to personally pay attorney fees in relation to Estate litigation." *Id.*

III. ARGUMENT

A. The Court Should Deny the Petition for Review

1. The Court of Appeals Decision Does Not "Conflict" With TEDRA

Brian asserts this Court should review the Court of Appeals decision because it purportedly "conflicts" with TEDRA. (Petition at pp. 9-10.) He argues that ruling Ms. Young herself was not a party to the proceedings between the Estate and Brian "conflicts" with TEDRA's definitional section. (*Id.*). The Court should reject this argument.

Asserting that a ruling "conflicts" with a statute is not grounds for review under RAP 13.4(b). This is really an argument that Brian disagrees with how the Court of Appeals construed TEDRA's attorneys' fees statute. The Court should not grant review on this basis.[6] *See* RAP 13.4(b).

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[6] *N.b.*, even if this argument were relevant to the Court's decision regarding whether to grant review, Brian is judicially estopped from asserting it. *See Miller v. Campbell*, 164 Wn.2d 529, 539-40 (2008).

Regardless, the Court of Appeals correctly applied TEDRA's attorneys' fees statute, RCW 11.96A.150, and its ruling does not conflict with TEDRA's general definition section, RCW 11.96A.030.

To make his argument, Brian misquotes statutory language and avoids any discussion of TEDRA's attorneys' fees statute. (Petition at pp. 9-10.) He claims that "Attorney fees can be awarded from 'any party to a petition'" and cites RCW 11.96A.030(1) as purported support. (*Id.* at p. 9.) This argument ignores the operative statute.

RCW 11.96A.150 is the section of TEDRA that authorizes fee-shifting. RCW 11.96A.150(1) provides, in pertinent part:

> Either the superior court or any court on 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. (Emphasis added.)

Brian obtained dismissal of claims asserted by his Siblings by arguing that Ms. Young and her brothers could *not* be parties and could *not* assert claims against him because those claims belonged solely to the Estate. (Case #8100-6-I at CP 58:4-6, 110:23-25, 124-130.) The Court of Appeals affirmed that dismissal and held the Siblings did not have standing. (CP 286-300.) Brian is now making the exact opposite argument: that Ms. Young is somehow a party to the Phase II proceedings brought solely by the Estate. Brian is taking these directly opposing positions about who is a party in this case depending upon which would serve his immediate interests. Granting review based upon this argument would be fundamentally unfair.

The plain language of the statute only allows a trial court to order fees and costs be paid by those who were parties to the actual proceedings at issue, not anyone who might fit the broad definition of a "party" under the general definitions in RCW 11.96A.030.[7]

2. The Court of Appeals Decision Does Not "Conflict" With Any Washington Appellate Authority

Brian asserts that the Court of Appeals ruling conflicts with *In re Estate of Becker*, 177 Wn.2d 242 (2013) and *In re Estate of Bernard*, 182 Wn. App. 692 (2014). It does not. Neither case involves an appeal of a fee award under TEDRA.

In re Estate of Becker addressed whether a surviving spouse had the right to participate in the settlement of a will contest brought by the decedent's adult daughters. The Court of Appeals found that the spouse did not have a sufficient interest in the proceeding because she had not challenged the will and had no interest in the decedent's property. *See In re Estate of Becker*, 2012 Wn. App. LEXIS 878 (2012). The Court of Appeals concluded that as a result, the spouse did not have standing to participate in the settlement agreement proceedings. This Court reversed,

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[7] This limitation makes sense. For instance, a "creditor" of the Estate is a "party" under RCW 11.96A.030(1). Surely the trial court could not have required one of the Estate's creditors to pay Brian's fees incurred in litigation between him and the Estate. But Brian's argument would support this result.

holding the spouse did in fact have an interest in the subject of the will-contest settlement—she stood to inherit a portion of the estate if the will contest was successful—and thus had standing. *In re Estate of Becker*, 177 Wn.2d at 248-49.[8]

In re Estate of Bernard addressed whether certain beneficiaries had a sufficient interest in a revocable trust to require their signatures to create a TEDRA agreement. If so, the beneficiaries would have standing to participate in proceedings involving modification of the trust and will. The Court of Appeals held that because the trust at issue was revocable, the beneficiaries had no legally cognizable interest at the time the TEDRA agreement was made, and thus could not be parties to those proceedings.

If anything, these decisions show that the Court of Appeals was right to "acknowledge[d] that 'party' has different meanings in different sections of the statutory scheme." *In re Estate of Boatman*, 17 Wn. App. at 428.

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[8] In *In re Estate of Becker*, 177 Wn.2d at 248, the Washington Supreme Court looked to the Virginia Supreme Court for guidance regarding the standing issue before it. Notably, Virginia Supreme Court authority supports the Court of Appeals decision here. In *Reineck v. Lemen*, 792 S.E.2d 269 (Va. 2016), the court reversed a trial court's fee award against a representative of an estate personally for claims the estate had litigated on a nearly identical set of facts. This reinforces the absence of any ground for review here.

3. The Court of Appeals Decision Does Not Involve an Issue of Substantial Public Interest

Brian asserts the Court of Appeals ruling vacating the Fees Order "misinterpreted" TEDRA such that the decision raises a matter of substantial public interest warranting review under RAP 13.4(b). The Court should reject that argument.

There was no misinterpretation of TEDRA. As discussed above, the Court of Appeals correctly applied RCW 11.96A.150 to hold the trial court erred by ordering Ms. Young to personally pay for fees and costs that Brian incurred in the Estate's litigation against him (the Phase II proceedings).

Further, Brian's (erroneous) assertions about non-probate assets and the collectability of a judgment against the Estate are irrelevant arguments about the particular equities of this case—not any matter of public interest.

Even if "equity" provided a basis for review under RAP 13.4(b), which it does not, the Court of Appeals ruling is the equitable result. Ms. Young faithfully executed her duty to act as the Estate's personal representative, without compensation, and there is not even a suggestion otherwise. In doing so, Ms. Young followed the recommendation of the independent Interim PR—a court-appointed officer of the court—to cause

the Estate to pursue the claims against Brian in the Phase II proceedings. (*See*, Sections II(B)-(E) *supra*.). If successful, pursuit of these claims by the Estate would have resulted in a substantial benefit to it. That Brian was ultimately found not liable at trial for the hundreds of thousands of dollars of his mother's money that he took and spent changes none of this.

Brian then pursued a fees award against Ms. Young personally and over repeated objections that there was no authority for such an award. (*E.g.*, Case #8100-6-I at CP 874-898, 910:21-23, 913:9-914:19, 953:3-18.) He did so knowing full well that Ms. Young was not a party to the Phase II Proceedings, having strenuously argued she could *not* be a party when it served his interests to secure dismissal in Phase I. (*See* Sections II(A)-(B), *supra*.) Vacating the erroneous Fees Order was both legally correct and equitable.

4. Brian Makes No Argument Regarding the Other Issues He Raises

Finally, Brian includes a vague issue for review regarding the reasonableness of the purported amount of fees he incurred to defend himself and a broad assertion that the Court of Appeals ruling contradicts the trial court's findings of fact. (Petition at p. 2.) The Court should disregard these. It is unclear what in the Court of Appeals decision Brian

is even referring to and he includes no explanation of how the standard in RAP 13.4(b) is met as to those asserted issues.

B. The Court Should Award Ms. Young Her Fees and Costs Incurred in Answering the Petition

The Court of Appeals correctly awarded Ms. Young her fees and costs incurred in having to litigate the erroneous Fees Order against her. Brian has continued to doggedly pursue trying to make his sister personally "pay" without any legal basis to do so. Those efforts now include Ms. Young having to spend more in attorneys' fees on a Petition that fails to meet the requirements of RAP 13.4(b). Accordingly, Ms. Young respectfully asks the Court to award her reasonable attorneys' fees and costs incurred having to respond to the Petition pursuant to RAP 18.1(j).

IV. CONCLUSION

The Court of Appeals applied the plain language of TEDRA's attorneys' fees statute, RCW 11.96A.150 and well-settled Washington law to vacate an erroneous Fees Order. That ruling is in accord with and supported by precedent. There is no basis to review it under RAP 13.4(b) and the Court should therefore deny the Petition.

DATED: August 2, 2021.

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

DATED this 2nd day of August, 2021, at Seattle, Washington.

Nate Garberich

SAVITT BRUCE & WILLEY LLP

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