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No. 63761-4-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In the Estate of William Ross Taylor, Deceased

On Appeal From King County Superior Court
Cause No. 06-4-02116-6 SEA
HON. JAMES ROGERS

APPELLANT'S REPLY BRIEF

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I. The trial court erred by moving the summary judgment hearings forward 10 days when the Estate of Taylor was unrepresented and did not have any opportunity to respond.

Contrary to Respondent's protestations, moving the summary judgment hearings forward 10 days prejudiced the Estate of Taylor. The Successor Personal Representative ("SPR") of the Estate of Taylor—which had a substantial interest in the outcome of litigation—had less than 4 days to respond to the motion, request a continuance, or ask to be made a party to the action. The motion was not even served on the Estate since the Estate did not even have a representative when the motion was filed.

The summary judgment motions were filed on March 13, 2009, with the hearing originally scheduled for April 10, 2009. CP 100-101; 119-210. At the time the motions were filed, the Estate of Taylor did not have a personal representative acting on its behalf. The previous personal representative, Charles Taylor, son of Reuben Taylor, had already been removed by the trial court on March 5, 2009, and Michael Longyear was not appointed as SPR until March 27, 2009. CP 642-644. The trial court rescheduled oral argument from April 10, 2009, to April 3, 2009. CP 177. This left the SPR with less than 4 days to either respond to the motion or request a continuance. Notably, there is zero response from the Estate to the motions for summary judgment on appeal.

Furthermore, during this 4 day period the SPR did not even have access to any of the estate's files. The files were not transferred to his office until nearly two weeks after the summary judgment hearing was held. Even if the SPR had all the Estate files available to him at the time he was appointed SPR, allowing less than 4 days to respond to summary judgment motions was reversible error. Allowing less than 4 days to respond to the motions for summary judgment without access to the Estate's files was a reversible error of a greater magnitude. This summary judgment was too summary.

II. Allowing a nonparty to move for summary judgment was reversible error.

Reuben Taylor was not a party to the TEDRA petition and had no right to interject himself into the proceedings without asking for and being granted the right to intervene. Civil Rule 24; *River Park Square, L.L.C. v. Miggins*, 143 Wn.2d 68, 17 P.3d 1178 (2001). An individual simply does not have the right to file a motion for summary judgment in litigation to which he is not a party, regardless of his interest in the outcome of the proceedings. Prospective intervenors are not parties and do not have standing to seek any relief other than leave to intervene. *Miggins*, 143

Wn.2d 68. Civil Rule 24 requires that a prospective intervenor must file a motion to intervene prior to becoming a party to the proceedings.

Contrary to the rules, civil procedure, and Washington law, the trial court improperly treated Reuben Taylor as if he were a party to the litigation, even though he was unnamed in the TEDRA petition, no attorney had appeared on his behalf, and he had not requested permission to intervene. This was prejudicial to the Estate, denying it the full and fair opportunity to test the strength of Reuben's claims through the citation process. This was reversible error.

III. The personal representative of an estate must protect the estate assets, including appealing reversible trial court decisions.

Respondent overstates his claim that, "A personal representative... has no interest in the subject matter in [probate] disputes"

Respondent's brief at 5-6 (citing *In Re Tucker's Estate*, 116 Wash. 475, 478, 199 P. 765 (1921)). A personal representative should not take sides when it comes to final distribution. But prior to final distribution the personal representative has an affirmative duty to locate and take control of assets, prepare an inventory, and protect the assets of the estate. RCW 11.48.010; 26B WASH. PRAC., PROBATE LAW AND PRACTICE § 3.36 (2009). The probate proceedings in the Estate of Taylor have not been

completed and this is not a situation of final distribution. Consequently, the SPR has an affirmative duty to protect the assets of the estate, which includes appealing reversible trial court decisions. Respondent's argument that the SPR must passively accept reversible trial court errors is wrong.

IV. Court Should Award Estate Costs and Fees on Appeal

Pursuant to RCW 11.96A.150 and RAP 18.1, this Court "may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to [the Personal Representative]." Under the same statute, this Court may order that those fees be paid by any party to the proceedings, including the Taylors, or from the estate assets. See RCW 11.96A.150(1). This litigation is intended to benefit the Estate of William Ross Taylor, a factor this Court is entitled to and should consider in exercising its discretion under this statute. See RCW 11.96A.150.

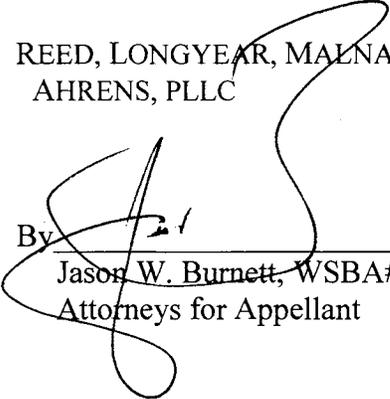
V. CONCLUSION

Charles Taylor served as the personal representative of the Estate of Taylor for over 3 years, until he was removed by the trial court. Eight days later, before a SPR was even appointed, Reuben Taylor, a nonparty, moved for summary judgment, which was heard less than 3 weeks later. The Estate was not even represented until less than 4 days before the expedited hearing. Even then the SPR did not have any of the estate records. Appellant respectfully requests this court reverse the trial court's

granting of summary judgments and award fees and costs to Appellant,
pursuant to RCW 11.96A.150 and RAP 18.1.

DATED this 10th day of March, 2010.

REED, LONGYEAR, MALNATI, &
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By 

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In re the Estate of William Ross Taylor,

Deceased.

CERTIFICATE OF SERVICE

I declare under penalty of perjury, under the laws of the State of Washington, that on 3/10/2010, I caused true and correct copies of the APPELLANT'S REPLY BRIEF, and this Certificate of Service, to be served to the parties and counsel of record as follows:

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