

No. 65217-6-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In Re: The Probate Estate of:
Ernest A. Howisey, Deceased;

BRIEF OF APPELLANT

ORIGINAL

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None.

I. INTRODUCTION

Appellant Carol Carnahan (“Carnahan”) requested the undersigned to attach as part of the Appendix, at pp. 1-10, her November 14, 2008 statement to the Court as an appropriate introduction. That statement is found in the record at RP (11/14/08) 13:20-22:22.

II. ASSIGNMENTS OF ERROR

Assignments of Error

No. 1. The court erred as a matter of law when it used an incorrect legal standard to disregard the terms of a TEDRA settlement agreement entered into pursuant to RCW 11.96A.220, .230 & CR 2A.

No. 2. The court erred when it concluded as a matter of law that Respondents were creditors of the estate and therefore could recover against the estate as creditors instead of as beneficiaries of the estate.

No. 3. The court erred when it concluded as a matter of law that Respondents’ claims had a higher priority of payment over that of residual beneficiaries.

No. 4. The court erred when it concluded as a matter of law that Carnahan had personal liability in this case.

No. 5. The court erred when it entered Finding of Fact #9. App.,
p. 11.

No.6. The court erred when it entered Finding of Fact #15. App.,
p. 11.

No. 7. The court erred when it entered Finding of Fact #19. App.,
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No. 8. The court erred when it entered Finding of Fact #20. App.,
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No. 9. The court erred when it entered Finding of Fact #23. App.,
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No. 10. The court erred when it entered Finding of Fact #37.
App., p. 12.

No. 11. The Court erred when it awarded attorneys fees to
Respondents.

Issues Pertaining to Assignments of Error

No. 1. RCW 11.96A.220 and .230 allow parties to settle probate
disputes via written settlement agreement, the terms of which then become
binding as a “final court order.” May a court disregard the terms of such a

settlement agreement without following the standards of CR 60 which govern setting aside court orders? (Assignments of Error Nos. 1 & 4).

No. 2 Estate beneficiaries who had not received their specific bequests under the will were not parties to, and did not sign, a TEDRA Agreement entered into by other beneficiaries under RCW 11.96A.220 and .230. May beneficiaries who signed that agreement use it as the basis to claim they were transformed into estate creditors and thereby claim priority of payment over the non-signing beneficiaries? (Assignment of Error No. 2).

No. 3 Estate beneficiaries who had not received their specific bequests under the will were not parties to, and did not sign, a TEDRA Agreement entered into by other beneficiaries under RCW 11.96A.220 and .230. May residual beneficiaries who signed that agreement use it to transform their bequest into a specific bequest and, therefore, avoid the effect of Washington's abatement statutes, Ch. 11.10 RCW, which require payment of administrative expenses and creditor's claims out of residuary bequests before using specific bequests? (Assignment of Error No. 3).

No. 4 Is it error to award attorneys fees and costs in favor of a party to a TEDRA Agreement under RCW 11.96A.220 and .230 and against a party to that agreement when the terms of that agreement state

that no attorneys fees or expenses shall be awarded to or from each of the parties? (Assignment of Error No. 12).

No 5. Is a finding of fact not supported by substantial evidence when it fails to quote pertinent language from a TEDRA Agreement under RCW 11.96A.220 & .230 that the court is disregarding? (Assignment of Error No. 5).

No 6. Is a finding of fact which states a court order was an “agreed order” not supported by substantial evidence if there is no support in the record for the order being agreed? (Assignment of Error No. 6).

No. 7. Is a finding of fact that no notices were given by a personal representative who had signed a TEDRA Agreement supported by substantial evidence when the terms of that agreement stated the complaining party had no further interest in the administration of the estate? (Assignments of Error Nos. 7 & 8).

No. 8. Is a finding of fact that implies a beneficiary who signed a TEDRA Agreement is a creditor supported by substantial evidence when the terms of that agreement do not state the beneficiary is a creditor and the creditor’s claim period has lapsed? (Assignment of Error No. 9).

No. 9. Is a finding of fact that the personal representative failed to transfer Wyoming real property to the estate supported by substantial

evidence when, under the terms of the applicable will and a signed TEDRA Agreement, the personal representative is personally entitled to receive the residuary estate? (Assignment of Error No. 10).

III. STATEMENT OF THE CASE

A. The Murky Beginning. The initial will attempted to be probated in this case was dated June 30, 2003 (“1st Will”). Ex. 1, CP 13-15. Oddly, the 1st Will contains a notary stamp not in existence when the 1st Will was purportedly signed¹. CP 15. Another will notarized by the same person surfaced during these proceedings (“2nd Will”). CP 84-86. The notary stamp on the 2nd Will appears legitimate and presumably should have been the one affixed to the 1st Will. CP 86. A third and final will dated August 12, 2005 was also filed (“Final Will”). Ex. 3, CP 29-41.

Further muddying the validity of the wills is a Declaration of Scrivener’s Error filed September 20, 2007. CP 79-88. That document claims the 1st Will was actually signed in 2005, not 2003 as it states. CP 79:32. However, even if the 1st Will was executed in 2005 its notary stamp still could not have been in existence. RCW 42.44.060. Inherent

¹ Notary stamps are good for only 4 years; RCW 42.44.060. Given this stamp expired in 2011, it could only have been in existence since 2007. This acknowledgement was defective under RCW 42.44.090.

conflict arose regarding the numerous wills filed with the Court, and litigation ensued. CP 42-48; 49-52.

B. The Parties. Initially William Jaback, the executive director of Partners in Care (“PIC”), was appointed Personal Representative (“PR”) of this probate (CP 18); PIC was not granted non-intervention powers. CP 18-19. Carnahan was named PR under the Final Will (CP 31) and was its proponent. CP 42-45. Carnahan’s sister, Marilyn Jensen, and niece, Anne Sinnett (“Jensen-Sinnett”), contested the Final Will. CP 49-52. Jensen-Sinnett are the Respondents in this appeal.

As a result of the competing wills, the matter was set for trial to determine whether the Final Will should be admitted to probate. CP 70-71.

C. The Settlement Agreement & Agreed Court Order: The Parties Settled All Claims – Current & Future, Known & Unknown. Prior to trial PIC, Carnahan and Jensen-Sinnett signed the settlement agreement at issue in this appeal (“TEDRA Agreement”). Ex. 8, CP 1533-1542. No other beneficiaries or parties signed it. CP 1538. Notice of Filing of a Memorandum of the TEDRA Agreement was filed. CP 286-

288. The Memorandum of the TEDRA Agreement was also filed. CP 289-290. The parties then signed an agreed order further implementing the TEDRA Agreement. CP 317-324. At CP 324 it contains Jensen-Sinnett's attorney's signature noting that it was "approved."

That agreed Order contains the following finding of fact, among others:

"All parties executed a mutual and full release and discharge for all claims, etc. past, present and future;". CP 318:23-24.

Among others, the TEDRA Agreement itself contains the following terms at issue in this action:

1. Jensen-Sinnett and Carnahan Released and Waived **Any and All Current and Future Claims** Against Each Other. The TEDRA Agreement reads in pertinent part:

"Carol Carnahan, Marilyn Jensen and Anne Sinnett do hereby affirmative fully release one another from all liability related to this agreement, and the administration of the Estate of Ernest Howisey under King County Cause Nos. 07-4-04064-9SEA and 03-4-05875-8SEA. In exchange for the consideration set forth in this CR 2A Settlement (which William Jaback, Carol Carnahan, Marilyn Jensen and Anne Sinnett acknowledge is sufficient), Carol Carnahan, Marilyn Jensen and Anne Sinnett hereby release and discharge each other, William Jaback and Partners in Care, their agents, employees, partners and lawyers **from and against any and all claims, liabilities, actions, suits, debts, expenses, attorneys' fees, causes of action, and/or claims for compensation or damage of any kind or nature, whether known or unknown, whether**

existing now or arising at any time in the future, which arise from or related in any way to the administration of the durable power of attorney and **the estate of Ernest Howisey.**” (Emphasis added.)

CP 1537:1-16.

2. Carnahan Would be PR. The parties agreed Carnahan would be successor PR. CP 1535:7-11 & CP 1535:26-1536:8.

3. Jensen-Sinnett Took Cash and a Note as Their “Beneficial Interest” in the Estate & Disclaimed Further Involvement in Estate Administration. At CP 1535:14-24 the TEDRA Agreement specifically states:

“Marilyn Jensen and Anne Sinnett shall be paid \$200,000 as their beneficial share of the estate and **shall have no further interest or involvement in the administration of this estate.** Marilyn Jensen and Anne Sinnett specifically waive any ownership interest in any asset of the estate. William Jaback shall issue a check payable to Marilyn Jensen and Anne Sinnett, jointly, in the amount of \$100,000 within 7 days of this agreement and the remainder shall be secured by a note on the Corliss residence at 4% interest, due and payable on the sale of the Corliss residence or within one year of the date of this agreement, whichever occurs sooner.” (Emphasis added.)

4. “Final Will” Agreed Upon & Residuary v. Specific Beneficiaries. The parties also agreed the Final Will would be the will probated in this action. CP 1535:7-11. The Final Will states that Marilyn Jensen and Carnahan are residual beneficiaries following the payment of a

number of specific bequests including one to Anne Sinnett. CP 34-35. Under the TEDRA Agreement Jensen-Sinnett confirmed their status as residual beneficiaries, having waived any ownership interest in the estate. CP 1535:14-24.

Marianne Hansen (“Marianne”) is listed in the Final Will as a specific beneficiary (CP 34); at the time of trial her bequest had not been paid. RP (3/2/10) 205:24-206:1. Marianne, however, did not sign the TEDRA Agreement. CP 1538.

5. The Parties Agreed to Split the Value of a Thunderbird. The TEDRA Agreement contains a provision governing distribution of a Thunderbird. CP 1539, paragraph 2. It reads: “1/2% of T-Bird value, either appraisal or sale value, @ Carol’s option, within 60 days of her appointment as PR.” (Emphasis added.) By its terms the value to be used was appraisal or sale value at Carnahan’s option. Id.

D. The Corliss Residence Sells, but Not for Enough to Pay the Note. Carnahan marketed the Corliss residence. RP (3/3/10) 70:18-71:23; Exhibits 71 & 73. Ultimately the Corliss residence did not sell for a price sufficient to pay off Jensen-Sinnett’s promissory note. Exhibits 19 & 77; RP (3/3/10) 72:14-20. It is undisputed the house sale resulted in an

approximate \$28,000 shortfall on the note. Exhibits 19 & 77. At trial Carnahan provided evidence of the poor real estate market which she believes contributed to the lower than expected sales price. Exhibits 75 & 76; RP (3/3/10) 74:9-75:21.

E. Jensen-Sinnett Attack & Begin Breaching the TEDRA Agreement. In May, 2008 Jensen-Sinnett began a series of informal attacks on Carnahan's estate administration. Ex. 80. About the time the Corliss residence was selling (November, 2008), Jensen-Sinnett began a series of formal Court attacks on Carnahan's administration, which appeared to violate the release provisions of the TEDRA Agreement. CP 349-365. Those attacks are as follows:

1. Unsuccessful Motion to Remove Carnahan on November 14, 2008. CP 349-365. Commissioner Watness continued Jensen-Sinnett's motion to remove Carnahan and eventually they struck their motion. CP 404-405, 411, 415.

2. Unsuccessful Petition for Judgment Against PR Personally and Estate. Judge Barbara Mack revised a pro tem commissioner on this

petition thereby defeating Jensen-Sinnett a second time; Judge Mack's decision is found at CP 1065-1067.

3. Jensen-Sinnett's 3rd Attempt to Obtain a Personal Judgment, Remove Carnahan & For Other Relief Denied. Jensen-Sinnett tried to obtain a judgment and remove Carnahan yet again on November 2, 2009. CP 1240-1257. Via Commissioner's orders on November 18 (continuance) & December 4, 2009 those requests were again denied as the matter was set for trial. CP 1403 & 1490-1491.

F. Carnahan Requests Instructions from the Court to Help Close the Estate & Provides an Accounting. Following Jensen-Sinnett's unsuccessful attempt to remove her when the Corliss residence sale was pending, Carnahan petitioned the Court for instructions on how to deal with the lack of funds from that sale – especially about Marianne's specific bequest versus Jensen-Sinnett's residuary sums due on the note. CP 462-473. That petition for instructions was ultimately dealt with by Judge Mack's revision order at CP 1065-1067. Following the filing of her accounting papers, Carnahan again sought the Court's assistance in closing the estate. CP 1258-1277. Part of Carnahan's concern was that not all

specific bequests had been paid but that they were entitled to priority payment. CP 1266, last paragraph – 1267, 1st paragraph.

G. Judge Mack's Findings & Conclusions – No Priority Payment to Jensen-Sinnett. On July 2, 2009 Judge Mack reversed a pro tem commissioner's ruling that had entered a judgment against Carnahan. CP 1065-1067. Her order, at CP 1067:10-12, ruled the Commissioner could not advance Jensen-Sinnett's payment over other beneficiaries.

H. Commissioner Rules Orders are Interlocutory. On December 4, 2009, the case was set for trial. CP 1490-1495. During that hearing the Commissioner noted that all prior orders were interlocutory. RP (12/4/09) 6:10-12.

I. The Trial. Trial was then held from March 2 to March 4, 2010. CP 1654:12, 20-23.

1. Trial Testimony – Intent of the TEDRA Agreement. During trial PIC and Jensen-Sinnett testified about their intent of the TEDRA Agreement. PIC testified through William Jaback who confirmed the terms of the TEDRA Agreement accurately represented PIC's intent and

that no personal liability on the note was intended. RP (3/2/10) 47:2-23. Jensen-Sinnett, through Marilyn Jensen, testified the terms of the TEDRA Agreement accurately stated her intent. RP (3/2/10) 154:1-155:23. Carnahan's trial position was that the terms of the TEDRA Agreement control. CP 1526:22-44.

J. The Findings, Conclusions & Judgment. As a result of the bench trial the judge entered findings of fact, conclusions of law and a judgment (the "Ruling"). CP 1654-1666. In substance, the judge's Ruling almost completely disregarded all of the TEDRA Agreement terms; the exceptions being it allowed Jensen-Sinnett to recover the full \$200,000 agreed upon by allowing recovery of the note deficiency, and one-half the value of the Thunderbird. CP 1665:2-5. The Ruling disregarded the TEDRA Agreement release of all future claims (CP 1662:9-12), failed to consider that no creditor claim was perfected by Jensen-Sinnett, and thereby found the estate, and Carnahan personally, liable for the unpaid portion of the Jensen-Sinnett note (CP 1663:3-12) and for an amount due for the Thunderbird. CP 1663:22-23. The Ruling also found Jensen-

Sinnett's claim to be that of an estate creditor entitled to higher priority than a residuary interest. CP 1662:25-1663:2².

K. Attorneys' Fees Awarded. The Court also awarded Jensen-Sinnett their attorneys fees and costs. CP 1754-1756.

IV. SUMMARY OF ARGUMENT

The penultimate question in this case is:

“How binding is a TEDRA agreement that as a matter of legislative command carries the weight of a final court order?”

This appears to the undersigned to be a case of first impression regarding the binding nature of TEDRA agreements and the standard by which they can be set aside.

Carnahan's argument is that a TEDRA Agreement under RCW 11.96A.220 & .230 may only be set aside under the standards of CR 60, which governs setting aside of court orders.

Carnahan also takes issue with a number of factual findings as

² It violated the provision that Jensen-Sinnett waived any further ownership interest in estate assets by allowing them to bid on the Beaver Lake property, countermanded the provision by which Carnahan was to receive all non-Thunderbird personal property, obviated Carnahan's agreed-upon appointment as PR, and allowed Jensen-Sinnett to have a say in estate management. CP 1654-1666

being unsupported by substantial evidence.

V. AUTHORITY & ARGUMENT

A. Standard of Review. An appellate court reviews conclusions of law and questions of statutory interpretation de novo, as these are questions of law. *Bishop v. Miche*, 137 Wn.2d 518, 523, 973 P.2d 465 (1999); *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

On review, challenged findings of fact must be supported by substantial evidence. *Miller v. City of Tacoma*, 138 Wn.2d 318, 323, 979 P.2d 429 (1999). Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding. *Id.*

B. As a Matter of Law the TEDRA Agreement is a Final Court Order that Cannot Easily be Set Aside. Under RCW 11.96A.230(2) upon filing the Memorandum of the TEDRA Agreement that agreement became a “final court order” binding its signatories. That statute reads: “On filing the agreement or memorandum, the agreement will be deemed approved by the court and is equivalent to a final court order binding on all persons interested in the estate or trust.” (Emphasis added.)

As is well known a “final court order” is one that becomes appealable upon entry and is no longer interlocutory. See generally, RAP 2.2(a). In this case the TEDRA Agreement was not appealed. As a result, and in compliance with RCW 11.96A.230(2), it cannot be contested and its terms are fully binding on Jensen-Sinnett. Consequently, the TEDRA Agreement, by its very terms bars their claims. CP 1536:22-1537:16. The broad release language employed in the TEDRA Agreement and signed by Jensen-Sinnett defeats them in this action. Id. Their claims are discussed below:

1. All Claims for Personal Liability of Carnahan are Barred under the TEDRA Agreement. As quoted above, Jensen-Sinnett released and waived all current and future claims of personal liability against Carnahan when they signed the TEDRA Agreement. CP 1536:22-1537:16. As a result, their claims for a money judgment against Carnahan personally should be dismissed with prejudice. Claims of loss due to the promissory note and the sale of the Thunderbird are therefore barred.

2. Claims of Estate Mis-Management by Carnahan are Barred under the TEDRA Agreement. To the extent Jensen-Sinnett’s claims are

against Carnahan but do not involve a monetary claim against her personally, those claims are also barred by the TEDRA Agreement. CP 1535:14-24; 1536:22-1537:16. The same operative text quoted above precludes equitable and statutory relief such as Carnahan's removal, or contesting how she administered the estate. Id.

3. TEDRA Agreement not Signed by Marianne & Other Specific Beneficiaries. RCW 11.96A.220 specifically requires "all parties" to sign such an agreement. However, in this case the TEDRA Agreement was not signed by Marianne or other specific beneficiaries. CP 1538. As a result, they are not bound by the TEDRA Agreement. As seen below, this oversight creates a breach of Washington's abatement statutes, Ch. 11.10 RCW, if Jensen-Sinnett's claims are given priority over Marianne's claim.

4. Public Policy is to Settle Estate Disputes by Agreement; Jensen-Sinnett's Arguments are Against Public Policy. The public policy behind TEDRA and settlement agreements like the one at issue is clearly stated at RCW 11.96A.010. It reads:

RCW 11.96A.010 Purpose.

The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in

a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [this] chapter also provides for judicial resolution of disputes if other methods are unsuccessful.
(Emphasis added.)

The court was incorrect, and violated public policy, when it concluded as a matter of law that the terms of the TEDRA Agreement could be ignored and that the estate, and Carnahan personally, could be liable. Instead, as argued below, the Court should have applied the CR 60 clear, cogent and convincing evidence standard applicable to setting aside court orders as the trial standard.

C. The Broad Release Language is Valid under Washington

Law. Outside of the personal-injury context³, long-standing Washington law supports the enforceability of the broad release language used in this case. *Bakamus v. Albert*, 1 Wn.2d 241, 95 P.2d 767 (1939). The operative text in *Bakamus* reads:

. . .the parties of the first part and each of them do hereby forever release and discharge the parties of the second part and each of them from any and all claims, demands and causes of action now in existence or which may hereafter arise by reason of any matter, thing or transaction herein mentioned or referred to and by reason of any matter, thing or transaction of any kind or nature whatsoever from the beginning of the world to the date of this release; . . .

³ No personal injury claim exists in this action.

1 Wn.2d at 246.

The Bakamus court upheld the release and denied recovery to the plaintiff.

The same result should occur here under the TEDRA Agreement's strikingly similar text. CP 1536:22-1537:16. The broad release language, negotiated by Jensen-Sinnett with the assistance of able counsel, should have barred their claims as a matter of law unless set aside under the very high CR 60 standard.

D. Settlement Agreements are Analyzed as Contracts; the Intent of the Parties Controls. As is well known, settlement agreements, such as the TEDRA Agreement, are analyzed as contracts⁴. Evans & Son, Inc. v. City of Yakima, 136 Wn. App. 471, 149 P.3d 691 (2006); Morris v. Maks, 69 Wn. App. 865, 850 P.2d 1357 (1993). Contracts, of course, are interpreted to determine the intent of the parties and then construed to put that intent into legal effect. Berg v. Hudesman, 115 Wn.2d 657, 801 P.2d 222 (1990).

There is no doubt the trial evidence showed the TEDRA Agreement accurately reflected the parties intent. PIC, through the testimony of William Jaback, testified the TEDRA Agreement contained

⁴ This includes CR 2A agreements. Morris, supra. By its Recitals the TEDRA Agreement in this case is also a CR 2A Agreement. CP 1534:10-13.

the terms of their agreement and that no personal liability was intended by it. RP (3/2/10) 47:2-23. Jensen-Sinnett, through Marilyn Jensen, testified the TEDRA Agreement terms accurately represented her intent. RP (3/2/10) 154:1-155:23. Their intent, as expressed in the TEDRA Agreement, supports Carnahan's trial position. CP 1526:22-44.

Interpretation of the TEDRA Agreement is easy, at trial the other parties confirmed the document says what Carnahan urges it means. RP (3/2/10) 47:2-23 & 154:1-155:23. Construction is equally easy; under RCW 11.96A.220 the terms of the TEDRA Agreement are a final court order which is to be enforced.

Under a pure contract analysis Jensen-Sinnett's claim should have been dismissed. The written words mirror their intent and released all future claims. And, as discussed below, no fraud was proven by clear, cogent and convincing evidence.

E. Jensen-Sinnett's Standard – Fraud: Clear, Cogent & Convincing Evidence. Because the TEDRA Agreement carries the weight of a **final** (and here, unappealed) court order its terms can only be set aside under CR 60. The only applicable portion of CR 60 is CR

60(b)(4) which allows fraud to be the basis of setting aside a court order⁵. As with any fraud, the clear, cogent & convincing evidence standard applies under CR 60(b)(4). *Lindgren v. Lindgren*, 58 Wn. App. 588, 794 P.2d 536 (1990).

Basically, Jensen-Sinnett's claims are barred by the TEDRA Agreement unless they show, by clear, cogent and convincing evidence, that Carnahan used that agreement to somehow defraud Jensen-Sinnett to their detriment. The nine elements of common law fraud are stated in the footnotes.⁶

The trial judge erred as a matter of law by not applying the correct standard. Instead of applying the CR 60 clear, cogent and convincing fraud standard, it appears the trial judge applied a preponderance of the evidence negligence standard. CP 1663:7-11⁷. This was error.

⁵ CR 60(b)(1-3) are inapplicable as over 1 year had passed since the TEDRA Agreement Memorandum was filed; none of the other subsections appear applicable to the facts before the Court.

⁶ They are: a representation of an existing fact; its materiality; its falsity; the speaker's knowledge of its falsity; his intent that it shall be acted upon by the person to whom it is made; ignorance of its falsity on the part of the person to whom it is addressed; the latter's reliance on the truth of the representation; his right to rely upon it; and his consequent damage. *Howell v. Kraft*, 10 Wn. App. 266, 517 P.2d 203 (1973).

⁷ This conclusion of law discusses "fault" of Carnahan; "fault" is a negligence concept. See, RCW 4.22.015—"Fault" defined as encompassing "negligence".

F. Abatement Statutes Defeat Jensen-Sinnett's Attempt to Elevate their "Beneficial Interest" Over Specific Beneficiaries as a Creditor's Claim.

Jensen-Sinnett's trial position was that once the shortfall occurred from the Corliss house sale they were then entitled to a "superpriority" creditors claim payable ahead of specific beneficiaries. CP 1590:20-21. The Court then held they were estate creditors. CP 1662:25-1663:2. The TEDRA Agreement, however, only refers to their interest as a "beneficial share" not as estate "creditors." CP 1535:14. In fact estate creditors must follow a specific procedure to have claims allowed which starts by filing a creditor's claim. RCW 11.40.010. No such claim was ever made by Jensen-Sinnett.

Jensen-Sinnett's argument is defeated by Washington's priority schedule for the payment of estate obligations (RCW 11.76.110) and its abatement statutes (Ch. 11.10 RCW).

In a nutshell, RCW 11.10.010(1) states that specific gifts are given priority over residuary gifts after the estate pays administrative expenses and creditor's claims. In other words, the residuary estate is used up first before using up specific bequests to pay administrative expenses or creditor's claims. Under the Final Will Carnahan and her sister Marilyn

Jensen are residuary beneficiaries. CP 35. Via the TEDRA Agreement it appears Anne Sinnett agreed to the same status. CP 1535:14-24.

Washington's probate creditor payment priority statute is found at RCW 11.76.110. That statute sets forth the following payment schedule:

--1st—Administrative Expenses (i.e., attorneys fees, PR's fees & costs of managing/maintaining estate property);

--2nd—Priority Creditors (i.e., funeral, last illness, state and federal taxes, secured lifetime judgments); and then,

--3rd—All other creditors.

When the Court transformed Jensen-Sinnett into creditors it allowed them to "leapfrog" over the specific bequest beneficiaries who had not signed the TEDRA Agreement, nor been paid their bequests. This was an error of law.

1. Carnahan's Fees & Costs for Work as PR – a Priority Request.

Article II of the Final Will (CP 31) and RCW 11.48.210 allow Carnahan to be paid a fee for her work and to be paid her expenses in administering the estate. Carnahan testified about her efforts and expenses incurred and is entitled to be paid out of estate assets those expenses as an administrative expense under the priority set out in RCW 11.76.110. RP (3/3/10) 44:10-

89:25 (Describing generally her actions as PR.). In fact, the trial judge awarded Carnahan some of her administrative expenses. CP 1665:9. Carnahan's administrative expenses and the unpaid specific bequests take priority over Jense-Sinnett's residuary bequest.

G. TEDRA Agreement Terms Defeat Jensen-Sinnett's Creditor's Claim Argument – their Request is “Legal Legerdemain”⁸.

Jensen-Sinnett argued they were “creditors” of the estate by virtue of the promissory note “debt.” CP 1590:20-21. They asked the Court to ignore that the TEDRA Agreement states the promissory note is their “beneficial share” of the estate and to elevate them to the level of estate “creditors” entitled to preference over the specific beneficiaries. *Id.* The Court then did so. CP 1662:25-1663:2. This is a form of “legal legerdemain” that is unsupported by the terms of the TEDRA Agreement and which violates RCW 11.10.010(1) & 11.76.110.

The Court had no legal or factual basis to transform Jensen-Sinnett into estate creditors and then elevate their interest above the specific beneficiaries; Jensen-Sinnett remain residual beneficiaries.

⁸ Sleight of hand, magic tricks.

H. If TEDRA Agreement Set Aside, Jensen-Sinnett Must Return \$175,000 Received under its Terms. To no surprise, if Jensen-Sinnett successfully show the TEDRA Agreement is invalid then they must return the approximately \$175,000.00 plus the personal property awarded to them under that agreement. CP 1535-1542. In other words, if Jensen-Sinnett's position is that the TEDRA Agreement is invalid, then they cannot benefit from it and the funds and property they received under it must be returned to the estate for further administration. Because settlement agreements are construed as contracts, when a contract is fully rescinded the Court is to put the parties in the positions they would be in had no contract been entered into. *Krause v. Mariotto*, 66 Wn.2d 919, 406 P.2d 16 (1965). In this case, if the TEDRA Agreement is set aside the will contest as it existed in March, 2008⁹ must be revived.

I. Although Accounting Not Accepted, No Damage Found. Carnahan provided a financial accounting. Ex.'s 25 & 26. Although the Court did not accept that accounting, CP 1665:7, no factual finding of loss from that accounting was entered. See, CP 1654:25-1661:10 (findings of fact generally). In short, this appears to be a situation falling into the line

⁹ That was when the TEDRA Agreement was memorialized in the Court file. CP 1543.

of cases like *In Re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) in which a lack of proved loss results in a “no harm, no foul” approach. Because no finding of loss related to the accounting was entered, it cannot be the basis for liability on the part of Carnahan. *Jones, supra*.

J. PR’s Management Reasonable. Carnahan’s trial position was that her administration of the estate was reasonable. RP (3/3/10) 44:10-89:25 (Describing generally her actions as PR.) She testified about her efforts to make the Corliss home salable, her efforts to sell it in an awful real estate market and her efforts to ask the Court for direction on how to deal with the shortfall issues. *Id.* The Court made no factual or legal finding that Carnahan’s efforts were fraudulent; instead, it appears the judge found Carnahan negligent at best. CP 1663:7-11.

Simply put, Jensen-Sinnett should have had the burden to show that Carnahan’s actions were fraudulent under the CR 60 clear, cogent & convincing fraud standard before the Court disregarded the terms of the TEDRA Agreement.

K. Interlocutory Nature of Prior Orders. Jensen-Sinnett argued at trial that several pre-trial orders were somehow binding to the exclusion

of other pre-trial orders. CP 1604:11-24. The Court agreed, CP 1662:14-21, although it then had to fashion a “procedural” argument to ignore Judge Mack’s pre-trial order. CP 1664:12-14. It is important to point out that until a final judgment/order/decree is entered, all prior orders are interlocutory. This is due to the fact that:

The orderly administration of justice requires that the trial court, after having full opportunity to hear, consider, and decide all material questions of the case, will enter formal judgment resolving those questions. In managing the litigation, the trial court must have wide discretion and authority, including the power to issue interlocutory orders, upon every aspect of the case. These orders or rulings may be changed, modified, revised, or eliminated as the case progresses. The court’s final say on the merits is subject to revision at any time before final judgment. *Owens v. Kuro*, 56 Wn.2d 564, 354 P.2d 696 (1960). (Emphasis added.)

Snyder v. State, 19 Wn. App. 631, 635-636, 577 P.2d 160 (1978).

Simply put, except for the TEDRA Agreement, and the agreed order implementing it (CP 317-324), all pre-trial orders should have been treated alike as interlocutory orders. To elevate the pre-trial order dated November 18, 2008, which held Jensen-Sinnett’s claim to be that of an estate obligation (CP 1604:14-18), to one of finality was improper.

L. Challenged Findings of Fact Not Supported by Substantial

Evidence.

1. Finding of Fact #9. Finding #9, App., p.11, is not supported by substantial evidence because it is incomplete as stated. Conclusion of Law No. 6 obliquely refers to the waiver/release language in the TEDRA Agreement. CP 1662:9-12. However, no finding of fact addresses the waiver/release text. Instead that language (found at CP1536:22-1537:16) should have been included in Finding No 9 to make it accurate and Conclusion No. 6 meaningful. Finding No 9. Should have read as follows:

“Carnahan and Jensen-Sinnett agreed as follows:

Carol Carnahan, Marilyn Jensen and Anne Sinnett do hereby affirmative fully release one another from all liability related to this agreement, and the administration of the Estate of Ernest Howisey under King County Cause Nos. 07-4-04064-9SEA and 03-4-05875-8SEA. In exchange for the consideration set forth in this CR 2A Settlement (which William Jaback, Carol Carnahan, Marilyn Jensen and Anne Sinnett acknowledge is sufficient), Carol Carnahan, Marilyn Jensen and Anne Sinnett hereby release and discharge each other, William Jaback and Partners in Care, their agents, employees, partners and lawyers from and against any and all claims, liabilities, actions, suits, debts, expenses, attorneys’ fees, causes of action, and/or claims for compensation or damage of any kind or nature, whether known or unknown, whether existing now or arising at any time in the future, which arise from or related in any way to the administration of the durable power of attorney and the estate of Ernest Howisey.”

CP 1536:22-1537:16.

As entered by the Court, Finding of Fact No. 9 was not supported by substantial evidence due to it lacking the full text of the waiver/release of the parties. Miller, supra. A remand is the proper way to make adequate findings. Murray v. Murray, 28 Wn. App. 187, 622 P.2d 1288 (1981).

2. Finding of Fact #15. Finding #15, App., p.11, is not supported by substantial evidence because the 11/14/08 order was **not an agreed order**. RP (11/14/08) 25:10-31:14 contains the Commissioner's rulings from the 11/14/08 hearing; in particular RP (11/14/08) 30:6-9 shows the contested nature of the hearing and the Court's direction to prepare an order regardless of whether either party agreed with it. As a result of that directive the parties then acted as scriveners of the commissioner's decision. That order, CP 404-405, was the result and nowhere does it say it was an agreed order, only that both contesting parties presented it.

The attempt to elevate the 11/14/08 order (CP 404-405) to an agreed order is an attempt to get past the interlocutory nature of all pre-trial orders. For example, *See* RP (12/4/09) 6:10-12, wherein the Commissioner determined all pre-trial orders were interlocutory.

The lack of evidence in the record that this was an agreed order means it is not supported by substantial evidence. Miller, supra.

This finding should be stricken and no legal import derived from it.

3. Findings of Fact #19 & #20. Findings Nos. 19 & 20, App., p.12, are not supported by substantial evidence as follows. The TEDRA Agreement, at CP 1535:14-16, states in pertinent part: “Marilyn Jensen and Anne Sinnett shall be paid \$200,000 as their beneficial share of the estate and shall have no further interest or involvement in the administration of this estate.” Carnahan had a right to rely on the parties’ agreement that Jensen-Sinnett had no further interest in the estate; and, therefore, there was no need to provide any notices or reports to them. In other words, because she had no duty to provide notices under the terms of the parties agreement, Id., there was no factual or legal basis for entry of such findings.

These findings are not supported by substantial evidence by virtue of the terms of the TEDRA Agreement. Miller, supra.

4. Finding of Fact #23. Finding #23, App., p.12, is not supported by substantial evidence as follows. The text of Finding No. 23 implies that Jensen-Sinnett’s note balance was something other than the residuary “beneficial share” that it was. See, CP 1535:14. As noted above,

residuary bequests are paid after specific bequests (RCW 11.10.010(1)) and this finding is written from the standpoint that Jensen-Sinnett's interest was either that of an estate creditor or a specific beneficiary. Neither status was the result of the TEDRA Agreement. CP 1535:14.

Additionally, notice was not due Jensen-Sinnett under the terms of the TEDRA Agreement as argued in the immediately preceding section discussing Findings 19 & 20. By virtue of the terms of the TEDRA Agreement this finding was not supported by substantial evidence.

5. Finding of Fact #37. Finding No. 37, App., p.12, is not supported by substantial evidence as follows. Under the terms of the Final Will and the TEDRA Agreement, CP 35, 1535:14-16 & 1536:17-21, Carnahan was entitled to all property not otherwise disposed of. Under the terms of that Agreement Carnahan had no duty to transfer the Wyoming property into the estate. Trial testimony was that Carnahan was not personally on title to it. RP (3/3/10) 92:18-94:12. As a result this Finding is not supported by substantial evidence.

M. Jensen-Sinnett's Award of Attorneys Fees & Costs Should be Reversed. Carnahan's position is that because the legal basis for

finding liability was erroneous the award of fees and costs to Jensen-Sinnett is equally erroneous. The Court awarded attorneys fees and costs to Jensen-Sinnett under RCW 11.76.070, the terms of the promissory note and RCW 11.96A.150. CP 1664:20-24. However, the TEDRA Agreement, at CP 1537:8-12, specifically states the parties released and waived the right to recovery attorneys fees and expenses from each other.

Consistent with her prior arguments, the Court should have honored the terms of the TEDRA Agreement; in doing so no attorneys fees and costs should have been awarded against Carnahan personally.

N. Attorneys Fees and Costs Should be Awarded to Carnahan on Appeal as well as at the Trial Court Level. Under TEDRA, at RCW 11.96A.150, the trial and appellate courts are granted plenary authority to award attorneys fees and costs. It reads:

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 RCW11.68.070 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).
(Emphasis added)

This litigation benefited the decedent's estate because it determines the validity of the TEDRA Agreement and the ultimate administration of the estate. Assuming Carnahan prevails on appeal under RCW 11.96A.150 and Bartlett v. Betlach, 136 Wn. App. 8, 146 P.3d 1235 (2006) she is entitled to her attorneys fees and costs on appeal and at trial

Notably the TEDRA Agreement, at CP 1537:8-12, states that attorneys' fees and other expenses are not recoverable by any of its parties against **each other** arising from or in any way relating to this estate. This forecloses any party recovering attorneys' fees and costs **from each other**. However, RCW 11.96A.150 gives the Court plenary authority to award attorneys fees and costs to any party out of estate assets in any probate matter based on an equitable standard. To be consistent with the concept

of the primacy of the TEDRA Agreement any fee/cost award must be paid out of estate assets as an administrative expense.

1. RAP 18.1 Request. Carnahan should be awarded her reasonable attorneys fees and costs on appeal under RCW 11.96A.150 and Bartlett, supra. This request is made in compliance with RAP 18.1 which requires that a fee request must be made in a party's opening brief.

VI. CONCLUSION

Carnahan requests that Court of Appeals:

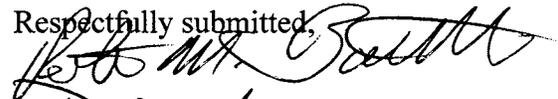
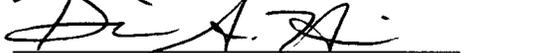
A. Uphold the TEDRA Agreement according to its terms and remand the case to the trial court with direction to dismiss Jensen-Sinnett's claims with prejudice based on the waiver/release language; alternatively,

B. The Court should remand the case to the trial court for re-trial using the CR 60 standard thereby requiring Jensen-Sinnett to prove fraud by clear, cogent and convincing evidence before the TEDRA Agreement can be disregarded;

C. Award to Carnahan her attorneys fees and costs both on appeal and at the trial court level; and,

D. Enter such other relief as deemed appropriate by the Court.

Dated this 26th day of August, 2010.

Respectfully submitted,



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VII. APPENDIX

13 COMMISSIONER WATNESS: Thank you. All right.

14 Response please.

15 MS. CARNAHAN: All right. This is such a complicated
16 thing but I should say -- oh, actually I have 25 copies of
17 that.

18 I would like to say that you are in error when you say
19 that a June 2005 will's admitted to probate --

20 COMMISSIONER WATNESS: You need to address your issues to
21 me.

22 MS. CARNAHAN: Sorry.

23 What's in probate and has been for 8 months is the June
24 2003 will. The attorney that executed that will filed a
25 declaration saying that all the dates were wrong and that

1 was actually a 2005 will. But nonetheless it's a 2003 will
2 that's been in probate until my August 15, 2005 will, the
3 will I held -- I shouldn't say my will -- replaced it in
4 mediation and then in further court action. And at that
5 same time I became successor personal representative.

6 Now, the settlement in the mediation was to my view
7 equitable. The interesting thing about all these wills is
8 -- because of the funds available any of these three wills
9 could have been used and my sister and niece and I would
10 have each received the same amount. So that's not really at
11 issue. The only difference is my father, in August 2005,
12 wrote bequests for his long time caregivers of four years,
13 my mother's elderly sister and her daughter. And those
14 total \$55,000.

15 So that's what would have been dealt with in the will
16 contest. In principal it's just that amount, \$55,000.

17 However the will contest was very detrimental to the
18 estate because it meant the house was locked up for 8 months
19 and the estate gave up something like \$33,000 just in fees
20 and administration during that time to the agency Partners
21 In Care.

22 In addition there were expenses for the house, see, their
23 expenses for the year were \$15,000. I'm not talking fees.
24 I'm just talking utility bill, property taxes. And I would
25 guess that about half of that was after my dad died and the

1 house was closed up. And it was burglarized. So there was
2 a lot of harm to the estate because this will contest was
3 under way. Also the reverse mortgage continues to add fees
4 every month.

5 But the worst thing that happened to the house is my dad
6 died in July 2007 at the peak of the market and then it
7 started to drop. It was appraised by the estate for the
8 inventory at the end of October. And at that point the
9 appraisal was \$415,000. We don't know what it would have
10 been, you know, a couple months earlier because there'd
11 already been some drops.

12 And I want to keep that \$415,000 thing on the table. So
13 I'll speak of that later.

14 So at any rate, in the settlement it was very difficult
15 because my father had or thought he had some jointly owned
16 vacation property at a place called Beaver Lake. Jointly
17 owned with all of his six siblings and, where they've died,
18 their heirs.

19 As a part of the inventory process Partners In Care ran a
20 title search and found that he didn't have any interest. I
21 did talk to the appraiser who had appraised the estates --
22 we have -- I should say we have four Howisey estates in
23 probate right this minute because our older generation is
24 dying off.

25 So I did talk to the appraiser who'd done those appraisals

1 on the very same lot, since it was jointly owned, and he
2 figured out for me -- and I didn't have him formally
3 appraise it -- that dad's share would probably be about
4 \$41,000 if it could be sold on the open market -- which it
5 can't, being jointly owned -- if it could be sold
6 separately, and most especially if we didn't have the goal
7 in our incorporation papers -- we're a nonprofit
8 organization -- that the property will be handed down to
9 successive generations. It won't be sold.

10 COMMISSIONER WATNESS: Would you tell me what this has to
11 do with the agreement and this particular property on the
12 note and deed of trust.

13 MS. CARNAHAN: Yeah. Okay. I'm trying to point out that
14 I got Beaver Lake, my sister got \$50,000 my niece got
15 \$50,000.

16 COMMISSIONER WATNESS: Okay.

17 MS. CARNAHAN: So as we left there we each had
18 approximately equal shares or we felt that way --

19 COMMISSIONER WATNESS: Thank you.

20 MS. CARNAHAN: There was the house to be sold. The house
21 had \$150,000 of equity then. Well large enough to satisfy
22 the note.

23 COMMISSIONER WATNESS: Okay.

24 MS. CARNAHAN: And in addition to that we thought I'd be
25 getting cash from Partners In Care of \$100,000. Judge

1 Carroll called the bank and everything. I ended up getting
2 \$64,000 because in the six weeks before the validation by
3 the Court about \$22,000 got used up just for fees and costs.
4 I don't know how much was used for electricity bills.
5 Nothing like that.

6 So that's where we stood at the time of the court
7 situation.

8 I set out to sell that house. I believed there'd be a
9 little bit of gain for me but not a whole lot. It was my
10 sister's and my childhood home. We had neighbors still
11 there, still living there, three sets of them at 55 years.
12 Very important to my father that they get a good neighbor.

13 The first -- I initially set the price at the appraised
14 value of \$415,000. This is my flier.

15 COMMISSIONER WATNESS: Okay.

16 MS. CARNAHAN: Because that would have paid off the note.
17 By that time, however, the price had dropped so much it took
18 me -- I didn't get it officially on the market until May 5th
19 because I had to get in there clean it out and restore it
20 and stuff. By that time there wasn't going to be any gain
21 for me but there was still going to be, you know, enough
22 money presumably to pay off the note.

23 I didn't just abandon the project because there wasn't any
24 gain for me as Mr. Olver implies. I busted a gut. I'll say
25 that. I busted a gut to sell the house.

1 The problem was the \$100,000 note. I tried all summer to
2 get Mr. Olver and their clients to work with me on that.
3 Finally the realtor realized that at this price she's
4 wasting her time. I set an appropriate price that Mr. Olver
5 said was appropriate too -- actually I set it higher than
6 that.

7 And I just put a contingency in the listing. The buyers
8 had to understand that the heirs Jensen and Senate would
9 have to sign off on the lien and if they didn't the sale
10 couldn't go through. That's where that \$100,000 note is
11 affecting my petition.

12 COMMISSIONER WATNESS: And I've read a letter that I
13 believe Mr. Olver sent to you indicating that they were
14 willing to do that.

15 MS. CARNAHAN: Well, I got one letter saying they were
16 willing to do that. It came stapled to a petition to
17 withdraw me, which had a peculiarity I need to ask you
18 about. I received it on October 28th, which was fine, for
19 the motion docket for today. But in the case file it wasn't
20 filed until November 5th.

21 COMMISSIONER WATNESS: Okay.

22 MS. CARNAHAN: So I don't know -- I'm not an attorney --

23 COMMISSIONER WATNESS: Okay.

24 MS. CARNAHAN: -- it appears to me it shouldn't even be
25 being heard today.

1 COMMISSIONER WATNESS: Okay.

2 MS. CARNAHAN: But anyway.

3 COMMISSIONER WATNESS: Well -- all right -- the point
4 though is on October 27th Mr. Olver wrote this letter
5 indicating that (INAUDIBLE).

6 MS. CARNAHAN: Yes. And if this was actuated what would
7 happen is the entire estate would have to go to Jensen and
8 Senate in order to fulfill this.

9 COMMISSIONER WATNESS: Okay.

10 MS. CARNAHAN: Now I'd like to respond a little bit here
11 if I may.

12 COMMISSIONER WATNESS: I'm going to allow you another
13 three or four minutes.

14 MS. CARNAHAN: Okay.

15 COMMISSIONER WATNESS: I've read all your paperwork --

16 MS. CARNAHAN: Okay.

17 COMMISSIONER WATNESS: And I'm going to end up I've got a
18 whole bunch of cases ready to go here and adoptions as well.

19 MS. CARNAHAN: I promise. Three minutes. Okay.

20 COMMISSIONER WATNESS: Thank you.

21 MS. CARNAHAN: He says I haven't kept the beneficiaries
22 informed. I have no (INAUDIBLE) requirement to do that it
23 says in the Washington Desk Book. However I did try. I
24 sent a letter every month on the instruction of my real
25 estate attorney who saw this problem coming.

1 At the time that we had the mediation the average days to
2 sale was 111 days. Right now the average is 11 months. I
3 sold the house in half that time.

4 COMMISSIONER WATNESS: Okay.

5 MS. CARNAHAN: There's a lot of character assassination in
6 here impugning motives to me. However I was very -- my
7 motive was to restore a beautiful house and get a good
8 buyer. That doesn't speak ill to me.

9 This flier went up in Northwest Hospital's cafeteria
10 where, you know, 10,000 people see it. Some of those might
11 not have been good neighbors but they had access.

12 Okay. Let's see.

13 COMMISSIONER WATNESS: Do you currently have a purchase
14 and sale agreement?

15 MS. CARNAHAN: Yes.

16 COMMISSIONER WATNESS: Okay. And when is that to close?

17 MS. CARNAHAN: Next Friday November 21st if this lien
18 release problem is resolved.

19 COMMISSIONER WATNESS: Okay.

20 MS. CARNAHAN: The issue of Mr. Jaback and the note is
21 really not an issue anymore. Except that now it's a problem
22 because the conveyance documents have him as personal
23 representative and so on.

24 Let's see. I already told you that I didn't get the
25 \$100,000 from Partners In Care. I got \$64,000. If I'd

1 gotten the full \$100,000 and had access to the house, I
2 didn't have to wait six weeks -- it was supposed to be done
3 in less than a month -- then, you know, I would have been
4 able to list it before the market just stopped dropping and
5 dropping and dropping.

6 I think I confused my sister -- the letter went to my
7 sister not to Mr. Olver as he represents. I think I
8 confused her by saying I distributed the amounts. What I
9 did was -- the beneficiaries got real scared when the
10 foreclosure letter came to them about their bequests. So I
11 took the money and put it in separate CD's and accounts, so
12 it would be sequestered. And, you know, I vowed not to
13 touch it. So even if it foreclosed they would get that.

14 And I think at one point in the letter I said I'm paying
15 the bills myself. I meant the household bills, like the
16 water bill, to try and protect that money. I thought there
17 would be a repair contingency for sure and then at that
18 point it would be safe to take some of their money and
19 that's what I've done. But I didn't touch it until then.

20 COMMISSIONER WATNESS: Okay.

21 MS. CARNAHAN: This -- the thing that amazes me about Mr.
22 Olver's pleading is, you know, I sold the house. He thought
23 it would go for \$350,000. I sold it for \$370,000 in less
24 than half the average time on the market.

25 You know, he says I have a duty to exercise good faith and

1 diligence. I've done that to the 9th degree for only a few
2 thousand dollars more than Partners In Care charged in the
3 six weeks interim for fees and costs. I restored a house,
4 marketed it, dealt with the collection agency, which is what
5 this trustee section really is. You know, I have really
6 worked hard.

7 COMMISSIONER WATNESS: Okay. Well --

8 MS. CARNAHAN: Let's see. It's not my fault we had a
9 global economic meltdown. It's just not my fault.

10 He refused to deal with me about this. People were not
11 lining up to buy the house. That I didn't find suitable
12 purchasers -- I only got the one offer. Let's see.

13 COMMISSIONER WATNESS: I appreciate that. I've read
14 everything that you've written here --

15 MS. CARNAHAN: Okay.

16 COMMISSIONER WATNESS: -- about your response to this.

17 MS. CARNAHAN: I'm done.

18 COMMISSIONER WATNESS: Thank you.

19 MS. CARNAHAN: Oh, except I want to point out something.
20 I asked my niece to send this fax telling me that I have not
21 given that bequest. Because Mr. Olver's accusing me of
22 doing that.

23 COMMISSIONER WATNESS: Thank you.

24 MR. LEE: Just a couple minutes, Your Honor?

25 JUDGE WANTESS: Brief response.

9. Under the Settlement Agreement, the Petitioners waived their beneficial interest under the 2005 will and any challenges to that will in favor of the competing will. In exchange, Petitioners would be paid \$200,000 as an obligation of the estate. Petitioners was to receive \$100,000 from the estate and the remaining balance was secured by a note and deed of trust on a residence owned by the Decedent (hereinafter "Corliss residence") bearing 4% interest, due and payable on sale of the Corliss residence or within one year of the date of the settlement, whichever was earlier. Petitioners would also receive certain specific items of personal property, and 1/2 the value of Decedent's 1966 Thunderbird, "either appraised or sale value, @ Carol's option, within 60 days of her appt. as PR."

CP 1655:22-1656:4.

15. On November 14, 2008, the Court issued an order that stated, *inter alia*:
"To the extent that the proceeds [of the sale of the property] do not satisfy the promissory note any unpaid portion of the Promissory Note remains an obligation of the Estate."

The form of the order on Petitioners' petition was an agreed order, presented by both Carol Carnahan and counsel for Petitioners.

CP 1657:10-14

Appendix, p. 11

19. Petitioners filed a Request for Notice of Proceedings on August 10, 2007 pursuant to RCW 11.28.240 that required Ms. Carnahan, as Personal Representative, to give Petitioners notice before she paid any attorneys' fees or claims of the Personal Representative against the Estate.

20. Ms. Carnahan has not filed an annual report since her appointment as Personal Representative.

CP 1658:5-10.

23. Ms. Carnahan paid attorneys' fees and distributed specific bequests without providing notice and before she had paid petitioner's note balance. She also preferred some legatees in favor of others paying 100% of the bequests due to Sita Gurung and Frework Alemayehu, while paying nothing to Marianne Hansen or the estate of G. Hansen. Although Ms. Hansen did not object to the TEDRA agreement, she did not waive her claims to the bequests due to her and her mother's estate.

CP 1658:17-22.

37. Ms. Carnahan transferred the Wyoming property to herself personally rather than transferring it into the estate.

CP 1661:4-5.

Appendix p. 12

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DATED this 26th day of August, 2010.


Erin A. Lutz

Subscribed and sworn to before me on this 26th day of August, 2010, by the above-named affiant.


Diana S. Hill
Notary Public, State of Washington,
residing at Shoreline, WA
My appointment expires 11/29/2013

