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No. 68222-9-I

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

IN RE THE MATTER OF THE ESTATE OF WILLIAM ROSS
TAYLOR,

Deceased.

PATRICIA CAIARELLI,

Respondent/Cross-Appellant,

v.

CHARLES E. TAYLOR II, REUBEN TAYLOR, JR., AND EMILY
TAYLOR, AND THE MARITAL COMMUNITY THEREOF, AND
ELIZABETH M. TAYLOR,

Appellants/Cross-Respondents.

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A. INTRODUCTION¹

This case is about the looting of William Taylor's estate by his brother and parents to the detriment of William's minor son. Charles complains that such an assertion, which colors the present matter before this Court, is somehow improper. But that assertion merely restates this Court's prior acknowledgment in *Taylor I*,² that the concerted and egregious conduct of Charles and his parents resulted in Charles's removal as William's personal representative, and the barring of the other Taylors' from that position. *See Taylor I* at *2-*3; Ex. 29. As this Court noted in *Taylor I*, while Charles served as William's personal representative, the Taylors improperly acquired hundreds of thousands of dollars and other items of value from William's estate to the detriment of William's child, his intended heir and beneficiary, A.C.T. *See Taylor I* at *2-*3.³ Charles

¹ While this reply is limited to addressing Charles's responses to Caiarelli's cross-appeal, a more comprehensive discussion of relevant facts is presented in Caiarelli's opening Brief of Respondent/Cross-Appellant.

² *In re Taylor*, 159 Wn. App. 1003, 2010 WL 5464751 (2010) ("*Taylor I*").

³ Charles admits that *Taylor I* is the law of the case, but contends without citation to any authority that this Court is not bound by the facts contained in that prior decision in this case. But an appellate court is bound by its prior decision in a case until such time as that decision is authoritatively overruled. *See State v. Worl*, 129 Wn.2d 416, 425, 918 P.2d 905 (1996) (law of case doctrine precludes appellate court from revisiting its prior decision in a case without first determining that the prior decision was clearly erroneous and worked a manifest injustice).

Further, while the jury in the present action was not aware of all the particulars of the history of this case as set forth in *Taylor I*, the trial court *was* aware of those facts and that is relevant, as discussed below, to the extent that the trial court focused on

and his parents prefer to spend hundreds of thousands of dollars in attorney fees, including those in bankruptcy court, to deprive William's child of assets.

For present purposes, regarding the dismissal of Reuben and Emily Taylor from the present case, the record establishes that William trusted the Taylors. RP (11-22-11 a.m.) at 97; RP (11-22-11 p.m.) at 24. Moreover, William had a confidential relationship with his brother and his parents as demonstrated by the fact that he designated them as primary and alternate personal representatives and trustees in his will, and as primary and alternate attorneys-in-fact in a durable power of attorney. Exs. 2, 56, 57. Also, William stayed in regular and constant contact with his brother and parents from at least the time of his divorce until his death. RP (11-22-11 p.m.) at 40-41; RP (11-21-11 p.m.) at 57; RP (11-22-11 a.m.) at 25. Additional facts are presented in the argument section below.

B. ARGUMENT⁴

- (1) The Trial Court Abused Its Discretion In Excluding Amy Ainsworth's Testimony And Rejecting Caiarelli's Exhibit 28

"balanc[ing]" the "equities" of the case in making its evidentiary decisions. RP (11-17-11 a.m.) at 16-17.

⁴ As a preliminary matter, Charles's response to Caiarelli's cross-appeal notes that he has filed a separate motion to dismiss Caiarelli's cross-appeal. He requests that this Court dismiss Caiarelli's cross-appeal for the reasons stated in his motion. Caiarelli has filed a response to Charles's motion; this Court should deny Charles's motion to dismiss for the reasons stated there.

(a) Ainsworth Testimony⁵

Charles argues that the trial court's exclusion of Ainsworth's testimony was appropriate because the timing of the disclosure was a willful violation of a court order and was prejudicial to the Taylors. Charles's Response to Cross-Appeal at 27. But as discussed below, there was no willful violation and any prejudice could have been ameliorated by an available alternative that the trial court acknowledged but refused to employ. Accordingly, the trial court abused its discretion in imposing the harshest sanction of excluding key witness testimony where there was no showing of a willful violation of a discovery order and a viable alternative to exclusion was available.

“[I]t is an abuse of discretion to exclude testimony as a sanction [for noncompliance with a discovery order] absent any showing of intentional nondisclosure, willful violation of a court order, or other unconscionable conduct.” *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.3d 1036 (1997) (internal quotation marks and citations omitted). Here, the trial court stated that it was “persuaded that there is a willful violation.” RP (11-17-11 a.m.) at 88. As explained below and in

⁵ While this Court reviews a trial court's decision to admit or exclude evidence for abuse of discretion, *Thomas v. Wilfac, Inc.*, 65 Wn. App. 255, 262, 828 P.2d 597 (1992), such discretion is abused when it is exercised on untenable grounds or reasons. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

Caiarelli's cross-appeal, that determination is untenable where Caiarelli's counsel did not know about the particular encounter that was the subject of Ainsworth's testimony, he had no reason to know of or suspect that the encounter had occurred, and he disclosed particulars about the encounter to opposing counsel as soon as Ainsworth disclosed such information to counsel.

As explained in Caiarelli's cross-appeal, Ainsworth was disclosed as a witness *long* before trial, but she did not reveal the specific content of a conversation that she had with Emily and Reuben at William's home shortly after William's death in which Emily revealed that she had daily, long telephone conversations with William from the time of his marriage dissolution until he died. RP (11-17-11 a.m.) at 4-9, 12; Ex. 67. When Ainsworth revealed the conversation to Caiarelli's trial counsel after the start of trial, he immediately disclosed the matter to opposing counsel and sought a ruling from the trial court on its admissibility. RP (11-17-11 a.m.) at 4-9. The trial court acknowledged that the testimony was vital to Caiarelli's case, and acknowledged that one available option was to permit opposing counsel to depose Ainsworth that evening and complete her testimony the next day. RP (11-17-11 a.m.) at 9, 11-13, 86-87. The trial court stated that it was concerned with "balanc[ing]" the "equities" of the case by permitting Caiarelli to present relevant and important evidence

that specifically addressed Emily's contacts with William during 2005, against the potential prejudice to defendants of not having an opportunity to prepare a responsive strategy to such evidence prior to trial. *Id.* at 16-17. But the result of the trial court's "balancing of equities" was untenable in light of this case's history. Indeed this was the same court that entered the order removing Charles as personal representative of William's estate and barring the other Taylors from that position as well. *See Exs. 28, 29.*

Given what the trial court knew about the case, it was an abuse of discretion to make an "equitable" decision in favor of the Estate's looters rather than in favor of having key evidence admitted at trial. As our Supreme Court observed in *Burnet*, "[T]he law favors resolution of cases on their merits." 131 Wn.2d at 498 (quoting *Lane v. Brown & Haley*, 81 Wn. App. 102, 106, 912 P.2d 1040, *review denied*, 129 Wn.2d 1028 (1996)). To the extent equity played a role in the trial court's admissibility decision, the larger equities of the case of A.C.T.'s appropriate interest in his father's probate and nonprobate assets weighed in favor of admitting Ainsworth's vital testimony. This is particularly so where a viable option was available of delaying Ainsworth's testimony to permit opposing counsel to first depose her and prepare for such testimony. The trial court, however, rejected that viable option.

Further, although the trial court's colloquy with trial counsel may meet the requirement of "findings" for purposes of excluding Ainsworth's testimony,⁶ the salient point is that the record does not support the trial court's finding of willfulness. An element of deliberate disregard of a court ruling is required. Willful means that the person knows what he is doing, intends to do what he is doing, and is free to so act. *Fiore v. PPG Industries, Inc.*, 169 Wn. App. 325, 348, 279 P.3d 972, review denied, 175 Wn.2d 1027 (2012). See also, *Anderson v. Mohundro*, 24 Wn. App. 569, 573, 575, 604 P.2d 181 (1979) (equating willful conduct with deliberate disregard of reasonable and necessary court orders, or deliberate refusal to obey a discovery order).

Here, as soon as he found out about it, Caiarelli's trial counsel disclosed that Ainsworth had a conversation with Emily that occurred after William's death. Not only was he previously unaware of that fact, but given the timing of the conversation in question and the family dynamics, he had no reason to suspect that such conversation ever occurred. Thus, he had no reason to inquire about it as the trial court says he should have.⁷

⁶ While oral findings are generally permissible, such findings regarding the *Burnet* factors "must be made on the record" and must still address the *Burnet* factors coherently. *Teter v. Deck*, 174 Wn.2d 207, 217, 274 P.3d 336 (2012). The trial court's findings here were inadequate.

⁷ The trial court ruled that it was "persuaded that there is a willful violation" because trial counsel "simply didn't ask the witness" about the conversation in question.

Here, there is no indication that counsel intended his disclosure to be late or deliberately ignored a court order. Moreover, counsel acted reasonably, disclosing information as soon as he obtained it. There is no indication of improper or dilatory conduct. There is no deliberate conduct or absence of reasonable excuse. Accordingly, there ~~is~~ simply no unconscionable, willful, or intentional conduct present here warranting the severe sanction of excluding the Ainsworth testimony.

Given the lack of willfulness, the equities involved, and the availability of a viable alternative to excluding vital testimony, the trial court's exclusion of Ainsworth's testimony was an abuse of discretion. *Burnet*, 131 Wn.2d at 494 (abuse of discretion to exclude testimony as a sanction absent any showing of intentional nondisclosure, willful violation of a court order, or other unconscionable conduct).

(b) Exhibit 28

Charles first contends that Caiarelli cannot challenge the exclusion of Exhibit 28 because Caiarelli did not make an appropriate offer of proof, citing ER 103(a)(2) and *Adcox v. Children's Orthopedic Hosp. and Medical Center*, 123 Wn.2d 15, 864 P.2d 921 (1993). Charles's Response to Cross-Appeal at 32. But the rule requires only that "the substance of the evidence was made known to the court" by offer or was apparent from

RP (11-15-11) at 88. That does not rise to the level of deliberate misconduct referenced *supra*.

the context within which questions were asked. *See* ER 103(a)(2). Here, the court was well aware of the substance of Reuben's deposition because that deposition was previously submitted and was part of the record as an attachment to Petitioner's (Caiarelli's) Response to Taylor's Motion For Summary Judgment Dismissing Emily Taylor and Elizabeth Taylor. CP 975-85, 1059-73. That pleading specifically noted the substance of Reuben's deposition, stating that during the time period of 2005, "William relied heavily on his parents for emotional and financial support," as evidenced by the depositions of Emily Taylor and Reuben Taylor. CP 977 (citing to the deposition of Reuben Taylor attached thereto). The trial court specifically acknowledged that it had considered that pleading in the order dismissing Emily, which was issued contemporaneously with the order rejecting Exhibit 28. CP 41-43, 753-54. Under these circumstances, where the trial court was aware of the substance and import of Reuben's deposition testimony, Caiarelli was not required to make an additional offer of proof regarding the import of Reuben's deposition.

Adcox does not require a different result. There, the issue on appeal was whether the trial court erred in failing to direct the jury to allocate fault among two doctors and a hospital regarding an award for brain damage injuries suffered by an infant while at the hospital under the doctors' care. The doctors settled prior to trial, suit was brought against

the hospital, and the hospital's theory at trial was that no one had been negligent, and the infant's injuries were caused by his sudden aspiration into his lungs of regurgitated infant formula. Only after the jury verdict, finding the hospital at fault, did the hospital assert that allocation of fault among itself and the treating doctors was required. Our Supreme Court held that because the hospital had produced no evidence of fault by another party, it could not complain that it had not been afforded allocation of fault. *Adcox*, 123 Wn.2d at 25-26. The Court noted that the hospital had not offered any evidence of the doctors' fault, nor had it made any offer of proof concerning fault. *Id.* at 26. Under these circumstances, the *Adcox* court held that "an offer of proof was required, for nothing in the context of the pretrial oral arguments on this issue gave the trial court any indication as to how the doctors might have been negligent or at fault in this case." *Id.* at 26.

The hospital nevertheless contended that a sufficient showing of proof had been made because the same trial judge had conducted the reasonableness hearings as to the settlement agreements between the plaintiffs and the two doctors, and during those hearings the parties presented evidence regarding the fault of the doctors' acts. *Id.* at 27. Our Supreme Court rejected that argument because the reasonableness hearings had occurred "years before" the trial, and thus "the trial judge

cannot be expected to remember the substance of evidence presented to him years earlier.” *Id.* at 28.

This case is distinguishable. Here, the trial court was made aware of the substance and import of Reuben’s deposition to Caiarelli’s case via counsel’s written argument in a pleading that cited to and attached Reuben’s deposition. The trial court acknowledged considering that pleading in an order on partial summary judgment entered on the same day as the order excluding Exhibit 28. CP 41-43, 753-54. Unlike the trial court in *Adcox*, which was “left entirely in the dark” because no mention of relevant evidence was timely made to that court, *Adcox*, 123 Wn.2d at 27, the trial court here had the substance and import of Reuben’s deposition explained to it in a written contemporaneous pleading. ER 103(2)(a) and *Adcox*, do not require more.

Charles next argues that Reuben’s deposition was not properly part of Exhibit 28. Charles correctly notes that Exhibit 28, offered by Caiarelli’s trial counsel, was among the exhibits related to the underlying probate action and conduct of Charles, which resulted in an order removing Charles as William’s personal representative and barring any of the Taylors from acting in that capacity. *See* Exs. 28, 29. Exhibit 28 contained multiple documents related thereto and included Reuben’s and Charles’s depositions. *See* Ex. 28. The fact that Reuben’s deposition

occurred after other pleadings included in Exhibit 28 is of no moment here. The salient point is that Reuben's deposition *was* included among the multiple documents in Exhibit 28 as proffered by Caiarelli's trial counsel to the trial court and the trial court rejected that submission. If the trial court had admitted Exhibit 28, Reuben's deposition included therein would have been evidence before the jury. As discussed at length in Caiarelli's cross-appeal, that document provided crucial evidence regarding Reuben's and Emily's ongoing contacts and close relationship with William.⁸ *See* Br. of Resp't/Cross-Appellant at 44-46.

As explained in detail in Caiarelli's brief, Reuben's deposition shows that he had significant contacts with William from 2003 until William's death in the fall of 2005. That deposition establishes that Reuben was heavily involved in William's financial affairs, loaning him money and negotiating terms of repayment. Reuben's deposition shows how Emily and Reuben worked together to assist William and, thus, that each parent's contacts with William could be properly imputed to the other. The information in Reuben's deposition establishes that both Emily and Reuben had extensive contacts and a confidential relationship with

⁸ As noted, Exhibit 28 included other crucial documents including Charles's deposition. Caiarelli has not challenged the exclusion of that document because she prevailed against Charles below.

William during the challenging final months of William's life. *See* Br. of Resp't/Cross-Appellant at 44-46 and discussion therein.

Charles dismisses the crucial information contained in Reuben's deposition, and Caiarelli's discussion of same in her cross-appeal, as "misrepresentations" and "slander." Charles's Response to Cross-Appeal at 33. But the language in Reuben's deposition speaks for itself.⁹ *See* Br. of Resp't/Cross-Appellant at 44-46 (quoting from and discussing Reuben's deposition).

As explained in Caiarelli's opening brief, the trial court's exclusion of evidence regarding Reuben's contacts with William that showed an ongoing confidential relationship from the time of William's marital troubles and divorce until his death in 2005 was particularly prejudicial as the trial court dismissed Caiarelli's undue influence claim against Reuben because Caiarelli allegedly failed to provide any evidence of Reuben's contacts with William in 2005. RP (11-23-11) at 102; RP (12-20-11) at 40. Under these circumstances, the trial court's exclusion of Exhibit 28 was an abuse of discretion.

(2) The Trial Court Erred In Dismissing Reuben and Emily From The Case

(a) Reuben Taylor

⁹ Nor does Caiarelli "slander" Charles or the other Taylors by correctly observing that Charles was removed for cause as William's personal representative, and the Taylors were barred from assuming that position by court order. *See* Ex. 29.

Charles argues that the trial court properly dismissed Reuben because “there is no evidence of Reuben advising William of anything during 2005 – or even at all during William’s adult life – a confidential relationship between Reuben and William cannot be proven.” Charles’s Response to Cross-Appeal at 36. Charles then lists evidence that was presented at trial that he says is “too weak” to support a finding of a confidential relationship between Reuben and William. *Id.*¹⁰ The evidence that Charles *acknowledges* is the parent-child relationship, the fact that William designated Reuben as alternate executor and trustee in his will, and alternate attorney-in-fact in a durable power of attorney. *Id.* *See also*, Exs. 2, 57. Charles also acknowledges that Reuben on one occasion declined to loan William funds regarding a real estate venture, but Reuben’s testimony shows that William sought out his father’s advice on the real estate venture and Reuben gave it. *See* Charles’s Response to Cross-Appeal at 36. *See also*, RP (11-22-11 a.m.) at 97-98. Charles further admits that Reuben and William negotiated a promissory note regarding repayment of moneys that Reuben and Emily had loaned William. Charles’s Response to Cross-Appeal at 36. The evidence in the light most favorable to Caiarelli shows that Reuben held William’s

¹⁰ As noted *supra*, Reuben’s deposition, of course, belies his present argument that he did not have extensive, ongoing communications with William.

confidence and trust. Reuben also admitted that he held his son's trust during his trial testimony. RP (11-22-11 a.m.) at 97.

In light of the evidence of such ongoing confidential relationship between father and son, the burden was upon Reuben to prove the absence of undue influence regarding William's inter vivos transfer of the Northwest Mutual Insurance policies to his father in the summer of 2005. When an inter vivos gift or transfer is made to a person in a fiduciary and confidential relationship, the donee (in this case, Reuben Taylor) must prove by clear, cogent and convincing evidence that the gift was made without undue influence.¹¹ *Lewis v. Estate of Lewis*, 45 Wn. App. 387, 389, 725 P.2d 644 (1986); *White v. White*, 33 Wn. App. 364, 368, 655 P.2d 1173 (1982); *McCutcheon v. Brownfield*, 2 Wn. App. 348, 357, 467 P.2d 868 (1970). Here, the evidence as presented at trial, as acknowledged by Charles in his Response, and as further discussed below, showed an ongoing confidential relationship between William and his parents from the time of his divorce until his death. At the very least, the evidence presented a jury question regarding whether Reuben had a confidential

¹¹ "Generally, one seeking to set aside an inter vivos gift has the burden of showing the invalidity thereof. The burden shifts, however, if the donor and donee shared a confidential relationship. The donee must then prove that a gift was intended and that it was not the product of undue influence." *Lewis v. Estate of Lewis*, 45 Wn. App. 387, 389, 725 P.2d 644 (1986).

relationship with William. Under these circumstances, the trial court's dismissal of Reuben from the case was error.

(b) Emily Taylor

Charles contends that the trial court properly granted partial summary judgment dismissing Emily from the case as an unnecessary party because Caiarelli sought to recover proceeds from the AIG insurance policies, the Fidelity IRA, and the Northwest Mutual life insurance policies and only Charles and Reuben received such proceeds. Charles's Response to Cross-Appeal at 38. But, as the trial court acknowledged, Caiarelli's theory at trial was twofold: (1) that William intended to designate his family members as beneficiaries of his assets in trust for his son, and (2) alternatively that William was unduly influenced to designate his family as beneficiaries, meaning transferring ownership of the Northwest Mutual policies to Reuben and naming Charles as beneficiary on the AIG and Fidelity IRA. *See* RP (11-16-11 8:59 a.m.) at 6, 8-9.

As a threshold matter, Emily, as a designated beneficiary (along with Reuben) on five of the Northwest Mutual policies, had an obvious interest in the proceeds of such policies. Ex. 101. She also had an interest in the transfer of ownership of those policies, as demonstrated by Reuben's action of designating himself as the sole beneficiary when

ownership of the policies was transferred to him.¹² *See* Ex. 101. Under these circumstances, as an interested party, she was a necessary party to the proper disposition of the case.¹³

Moreover, the record here clearly establishes Emily's confidential or fiduciary relationship with William as an alternate personal representative, trustee, and attorney-in-fact. Exs. 2, 56, 57. She was actively involved in William's affairs, seeking a guardianship over him and paying his attorneys, as she testified *after* her dismissal.¹⁴ The primary purpose of the guardianship was to control William and his assets. She attended the mediation session for William's dissolution. RP (11-21-11 p.m.) at 54-56. As discussed in Caiarelli's cross-appeal, this was a family affair in directing William's life, to A.C.T.'s disadvantage.

¹² The Northwest Mutual life insurance policies had the unusual feature of allowing the policy owner a time period of 60 days *after* the death of the insured to change the beneficiaries named in the policies. *See* Exs. 101, 102. Here, within the 60 day window following William's death, Reuben changed the beneficiary designation in the Northwest Mutual life insurance policies naming himself as the sole beneficiary. *Id.*

¹³ *See Cordova v. Holwegner*, 93 Wn. App. 955, 961-62, 971 P.2d 531 (1999), stating:

To determine whether a party is a necessary party to an action, the court must decide whether the party's absence from the proceedings would prevent the court from affording complete relief to the existing parties and whether the party's absence would impair that party's interest or subject any existing party to inconsistent or multiple liability.

¹⁴ Emily came to Seattle four times during William's dissolution, RP (11-21-11 p.m.) at 46; paid his attorney (Coombs), RP (11-16-11) at 75; helped him to buy a car, RP (11-22-11 a.m.) at 44; loaned him money by distributing Reuben's funds to him. RP (11-22-11 a.m.) at 41-42, 87-94. *See also*, CP 1072.

Further, the record also clearly establishes that Emily and Reuben acted in tandem in their dealings with William. As discussed in the previous sections, Ainsworth's omitted testimony and Reuben's deposition in Exhibit 28 show that Emily and Reuben had ongoing contacts with William and influence upon him until the time of his death. Such evidence shows that Reuben and Emily worked together as a community regarding matters concerning their son William. While the trial court erred in excluding that relevant evidence, even if this Court decides that such evidence was sustainably excluded, the trial testimony of Reuben and Emily alone is sufficient to establish their concert of action toward William and their ongoing confidential relationship with him.¹⁵

Emily testified at trial that she and Reuben ("We") gave William "financial assistance" in 2003 and into 2005. RP (11-22-11 a.m.) at 41-42. Emily testified that William would ask for money. *Id.* at 43. Emily said, William "specifically told me or my husband that a sum was needed . . . [for] COBRA coverage." *Id.* at 43. Emily testified, "I wrote a check . . . I either gave it to him [William] directly or I made a check to COBRA." *Id.* at 44. Emily testified that she loaned money to William for

¹⁵ Charles complains that some of the CP cites in Caiarelli's brief refer to documents that were not in evidence before the jury. *See* Charles's Response to Cross-Appeal at 36 n.4. But the CP cites that Charles complains about (CP 1067 and 1071) simply verify what is stated in or fairly implied from the trial testimony as discussed herein. *See* RP (11-22-11 a.m.) at 41-42, 87-94 (establishing that William's parents loaned him money).

many different items and needs. For example, she provided “quite a large sum for an automobile” and went with him to the dealership to help him purchase a car. *Id.* at 44.

Reuben’s trial testimony also shows that he and Emily worked in concert regarding their dealings with William. *See* RP (11-22-11 a.m.) at 87-94. Moneys were transferred to Emily from Reuben’s living trust while she was with William and given to him. Such moneys were used to pay for William’s many needs including his legal and professional fees. *Id.* at 91. Reuben acknowledged that one such transfer was for “\$85,000.” *Id.* at 91. Reuben testified that he loaned money to William and negotiated a promissory note with William addressing repayment. *Id.* at 93-94. Reuben also testified that he gave William business advice. *Id.* at 97-98.

Considered together, and in the light most favorable to Caiarelli, a reasonable jury could conclude that Reuben and Emily worked together as a community in their dealings with William and that Reuben’s and Emily’s interests and contacts could be imputed to each other. Those contacts include Emily’s multiple visits to Seattle to assist William (some with and some without Reuben) including four visits during William’s dissolution. RP (11-21-11 p.m.) at 46. In addition to her visits with William she had regular phone contact with him until he died. RP (11-21-

11 p.m.) at 57; RP (11-22-11 a.m.) at 25. As noted, Emily distributed Reuben's funds to William, RP (11-22-11 a.m.) at 41-42, 87-94. Likewise, because of Reuben and Emily's spousal relationship, and their coordinated and purposeful actions toward William to control his assets and affairs, any interest flowing to Reuben can reasonably be imputed to Emily as well.

Here, both parents had a confidential relationship with William and operated in tandem in a coordinated community of purpose to obligate William to his parents and thus influence him in the distribution of his assets so as to keep his assets within the Taylor family. As a result of that influence, William transferred ownership of the Northwest Mutual policies to one of his parents, Reuben, who was an integral part of that community of effort. That inter vivos transfer obligated Emily and Reuben, who had prompted such transfer, to show that the transfer was not due to undue influence. Emily, being an integral part of that community of effort, is thus obligated to show no undue influence as well.¹⁶ The trial court's dismissal of Reuben and Emily from the case on the basis that Reuben had no contacts with William and Emily had no interest is not supported by the record. The trial court erred in dismissing Emily and Reuben Taylor.

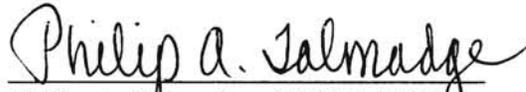
¹⁶ As noted in the previous section, a donee in a confidential relationship with the donor has the burden of proving by clear, cogent, and convincing evidence that an inter vivos gift was made without undue influence. *See Lewis*, 45 Wn. App. at 389; *White*, 33 Wn. App. at 368; *McCutcheon*, 2 Wn. App. at 357.

C. CONCLUSION

For the reasons discussed in Caiarelli's cross-appeal and reiterated in this reply, the trial court abused its discretion in excluding key evidence (Ainsworth's testimony and Reuben's deposition included in Exhibit 28), and then erred in dismissing Reuben and Emily Taylor based on lack of evidence, which the excluded evidence provided. Further, the evidence that *was* before the jury showed that Reuben and Emily had a confidential relationship with William and engaged in a community of effort to influence William and control distribution of his assets. The trial court erred in dismissing Reuben and Emily Taylor from this action.

DATED this 10th day of June, 2013.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Motion to Strike Portion of Charles Taylor's Reply and Reply Brief of Cross-Appellant in Court of Appeals Cause No. 68222-9-I to the following parties:

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Original sent by ABC Legal Messengers for filing with:

Court of Appeals, Division I
Clerk's Office
600 University Street
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 10, 2013, at Tukwila, Washington.


Paula Chapler
Talmadge/Fitzpatrick

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COURT OF APPEALS
STATE OF WASHINGTON