

72307-3

72307-3

NO. 72307-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Estate of: VERNON D. HANNAH, Deceased.

T. BERNELL HANNAH,

Appellant,

v.

CHRISTINE CHAN, Personal Representative of the
Estate of Vernon D. Hannah,

Respondent.

BRIEF OF RESPONDENT

Peter W. Goddu
WA State Bar No. 11833
GODDULANGLIE
P.O. Box 460
Friday Harbor, WA 98250
(360) 378-2181
Attorneys for Respondent Christine Chan

Scott E. Feir
WA State Bar No. 28192
Kara Kalenius Novak
WA State Bar No. 39559
MONTGOMERY PURDUE
BLANKINSHIP & AUSTIN PLLC
5500 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7096
(206) 682-7090
Attorneys for Respondent Christine Chan

~~FILED~~
APR 11 2012
CLERK OF COURT
COURT OF APPEALS
DIVISION I
SEATTLE, WA

TABLE OF CONTENTS

	<i>Page</i>
I. INTRODUCTION.....	1
II. COUNTER-STATEMENT OF THE ISSUE.....	2
III. COUNTER-STATEMENT OF THE CASE	2
A. VERNON D. HANNAH’S ESTATE PLAN, TO WHICH BERNELL CONSENTED, REQUIRES ALL OF VERNON’S ASSETS TO BE HELD FOR BERNELL’S SOLE BENEFIT DURING HER LIFE.	2
B. CHRISTINE WAS APPOINTED AS PERSONAL REPRESENTATIVE OF VERNON’S ESTATE WITHOUT OBJECTION FROM BERNELL.....	5
C. THE SUBSTANTIALLY ILLIQUID NATURE OF VERNON’S ASSETS HAS RESULTED IN DISTRIBUTIONS TO BERNELL IN AN AMOUNT LESS THAN SHE DESIRES.	5
D. BERNELL FILED HER PETITIONS FOR A BASIC AND INCREASED AWARD IN THE PROBATE CAUSE NUMBER ON APRIL 11, 2014 WITHOUT PAYING A FILING FEE.	6
E. DESPITE INSTRUCTION TO THE CONTRARY BY CHRISTINE’S COUNSEL, ON MAY 5, 2014, BERNELL AGAIN FILED HER PETITIONS IN THE PROBATE CAUSE NUMBER WITHOUT PAYING A FILING FEE.	7
F. BERNELL FILED HER PETITIONS IN A NEW CAUSE NUMBER AND PAID THE FILING FEE AFTER THE MAY 5, 2014 DEADLINE.....	8
G. THE SAN JUAN COUNTY SUPERIOR COURT CORRECTLY DISMISSED BERNELL’S MAY 7 PETITIONS.	8
IV. SUMMARY OF ARGUMENT.....	9
A. STANDARD OF REVIEW; PLAIN LANGUAGE INTERPRETATION OF STATUTES.....	10
B. THE PLAIN LANGUAGE OF RCW 11.54.010 AND CHAPTER 11.96A RCW REQUIRED THE MAY 7 PETITIONS TO BE FILED IN A NEW ACTION AND A FILING FEE PAID WITHIN EIGHTEEN MONTHS OF THE DECEDENT’S DEATH.....	11

1. PETITIONS FOR SPOUSAL SUPPORT AWARDS UNDER RCW 11.54, GENERALLY.	11
2. CHAPTER 11.54 RCW ESTABLISHES AN EIGHTEEN-MONTH DEADLINE TO FILE A PETITION FOR AN AWARD FROM THE PROPERTY OF THE DECEDENT, AND REQUIRES SUCH A PETITION TO BE BROUGHT PURSUANT TO CHAPTER 11.96A RCW.	11
3. CHAPTER 11.96A REQUIRES A PROCEEDING UNDER TITLE 11 RCW TO BE COMMENCED AS A NEW ACTION BY FILING A PETITION.	12
4. RCW 36.18.020 REQUIRES THE PAYMENT OF A FILING FEE WHEN A NEW ACTION IS FILED.	12
5. READ TOGETHER, THE PLAIN LANGUAGE OF CHAPTERS 11.54 AND 11.96A RCW REQUIRED BERNELL TO FILE THE MAY 7 PETITIONS AS A NEW ACTION AND PAY A FILING FEE BY MAY 5, 2014.	12
C. THE USE OF “FILE” IN RCW 11.54.010 AND RCW 11.96A.090 IS NOT AMBIGUOUS.	13
D. THE MAY 7 PETITIONS ARE CONSIDERED FILED WHEN THE FILING FEE WAS PAID ON MAY 7, 2014, AFTER THE EIGHTEEN-MONTH DEADLINE EXPIRED.	14
E. THE EIGHTEEN-MONTH DEADLINE IN RCW 11.54.010 IS A JURISDICTIONAL REQUIREMENT WHICH IS “MORE THAN A STATUTE OF LIMITATIONS;” SERVICE ON CHRISTINE DOES NOT TOLL THE DEADLINE.	16
1. THE LANGUAGE OF RCW 11.54.010 IS SIMILAR TO JURISDICTIONAL LANGUAGE IN OTHER STATUTES.	16
2. BECAUSE THE EIGHTEEN-MONTH DEADLINE IS JURISDICTIONAL, RCW 4.16.170 DOES NOT APPLY.	19
3. BECAUSE RCW 11.24.010 IS A STATUTE OF LIMITATIONS, REVISIONS TO RCW 11.24.010 ARE INAPPLICABLE TO RCW 11.54.010’S JURISDICTIONAL DEADLINE.	20
F. RCW 11.96A.100 REQUIRES FILING, NOT SERVICE, TO COMMENCE A JUDICIAL PROCEEDING UNDER RCW 11.96A.090.	21
1. THE PLAIN LANGUAGE OF RCW 11.96A.100 ESTABLISHES THAT ONLY FILING CAN COMMENCE A TEDRA ACTION; CR 3 DOES NOT APPLY.	22
2. THE PLAIN LANGUAGE OF RCW 11.96A.100 SIMILARLY CONTROLS OVER RCW 4.16.170.	23

3. THE LEGISLATIVE HISTORY AND COMMENTARY SHOW THAT SERVICE CANNOT COMMENCE A TEDRA ACTION.....	25
G. IT IS IMPOSSIBLE TO “SUBSTANTIALLY COMPLY” WITH A STATUTORY DEADLINE; BERNELL’S LATE COMPLIANCE IS FATAL TO BERNELL’S CLAIM.	26
H. WHILE WASHINGTON LAW FAVORS SPOUSAL SUPPORT AWARDS, UPHOLDING THE EIGHTEEN-MONTH DEADLINE IS CONSISTENT WITH THE STRICT CONSTRUCTION OF DEADLINES IN THE PROBATE CONTEXT, AND THE REASONS TO FAVOR SUCH AWARDS DO NOT APPLY HERE.....	28
1. WASHINGTON LAW REQUIRES ESTATES TO BE ADMINISTERED AS QUICKLY AS POSSIBLE, AND PROBATE DEADLINES ARE STRICTLY CONSTRUED.....	28
2. WHILE WASHINGTON LAW FAVORS AWARDS IN LIEU OF HOMESTEAD, THE PURPOSE FOR SUCH POLICY DOES NOT APPLY IN THIS CASE.	30
I. BERNELL’S REQUEST THAT THIS COURT ORDER AN AWARD IN LIEU OF HOMESTEAD SHOULD BE DENIED, BECAUSE THE SUPERIOR COURT DID NOT REACH THE MERITS OF THE MAY 7 PETITIONS.	32
J. BERNELL’S REQUEST FOR AN ATTORNEY FEE AWARD FROM THE ESTATE SHOULD BE DENIED.	33
V. CONCLUSION.....	34
APPENDIX.....	36

TABLE OF AUTHORITIES

	<i>Page</i>
Cases	
<i>Anderson v. Dussault</i> , 333 P.3d 395 (2014).....	23
<i>Buecking v. Buecking</i> , 179 Wn.2d 438, 316 P.3d 999 (2013)	10
<i>City of Seattle v. Pub. Employment Relations Comm'n</i> , 116 Wn.2d 923, 809 P.2d 1377 (1991)	26
<i>Cloud ex rel. Cloud v. Summers</i> , 98 Wn. App. 724, 991 P.2d 1169 (1999)	28
<i>Davis v. Nielson</i> , 9 Wn. App. 864, 515 P.2d 995 (1973)	17
<i>Department of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, 43 P.3d 4 (2002)	10
<i>Hall v. Jeffers</i> , 795 S.W.2d 135 (Tenn. Ct. App. 1990)	31
<i>Holland v. Holland</i> , 267 Ga. App. 251, 599 S.E.2d 242 (Ga. Ct. App. 2004).....	31
<i>Hunter v. Hunter</i> , 256 Ga. App. 898, 569 S.E.2d 919 (Ga. Ct. App. 2002).....	31
<i>In re Estate of D'Agosto</i> , 134 Wn. App. 390, 139 P.3d 1125 (2006)	33
<i>In re Estate of Garwood</i> , 109 Wn. App. 811, 38 P.3d 362 (2002)	30
<i>In re Estate of Jones</i> , 152 Wn.2d 1, 93 P.3d 147 (2004)	10
<i>In re Estate of Kordon</i> , 157 Wn.2d 206, 137 P.3d 16 (2006)	passim
<i>In re Estate of Stover</i> , 178 Wn. App. 550, 315 P.3d 579 (2013)	22, 29, 33
<i>In re Estate of Toth</i> , 138 Wn.2d 650, 981 P.2d 439 (1999)	27, 28, 29
<i>In re Pers. Restraint of Hoisington</i> , 99 Wn. App. 423, 993 P.2d 296 (2000)	16, 17, 18, 21
<i>In re Scheldt's Estate</i> , 13 Wn. App. 570, 536 P.2d 4 (1975)	30

<i>In the Matter of the Estate of Crane,</i> 15 Wn. App. 161, 548 P.2d 585 (Div. 2 1976).....	15
<i>Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.,</i> 113 Wn. App. 142, 53 P.3d 44 (2002)	18
<i>Margetan v. Superior Chair Craft Co.,</i> 92 Wn. App. 240, 963 P.2d 907 (Div. 1 1998).....	14, 15, 16
<i>Meresse v. Stelma,</i> 100 Wn. App. 857, 999 P.2d 1267 (2000)	32
<i>Nickum v. City of Bainbridge Island,</i> 153 Wn. App. 366, 223 P.3d 1172 (2009)	17, 18
<i>State v. Watson,</i> 146 Wn.2d 947, 51 P.3d 66 (2002)	14
<i>Wells Fargo Bank, N.A. v. Dep't of Revenue,</i> 166 Wn. App. 342, 271 P.3d 268 (2012)	26
<i>Wilson's Estate v. Livingston,</i> 8 Wn. App. 519, 507 P.2d 902 (1973)	27

Statutes

Chapter 11.54 RCW	passim
Chapter 11.96A RCW	passim
Chapter 36.18 RCW	14
RCW 10.73.090	17
RCW 10.73.140	17
RCW 11.24.010	passim
RCW 11.28.030	5
RCW 11.40.051	29
RCW 11.48.010	28
RCW 11.54.010	passim
RCW 11.54.010(3).....	11, 18
RCW 11.54.010(3)(a)	1, 8, 16, 29
RCW 11.54.020	11
RCW 11.54.030	33
RCW 11.54.040	11
RCW 11.54.050	33
RCW 11.54.050(1).....	11, 30
RCW 11.54.090	12, 13, 25

RCW 11.96A.070(3).....	28
RCW 11.96A.080.....	12, 13
RCW 11.96A.090.....	passim
RCW 11.96A.090(2).....	1, 12, 15
RCW 11.96A.100.....	passim
RCW 11.96A.100(1).....	12, 13, 22, 23
RCW 11.96A.110.....	12
RCW 11.96A.150(1).....	33
RCW 11.96A.200.....	12, 13
RCW 36.18.005(2).....	14
RCW 36.18.020	12, 13
RCW 36.18.020(2)(a)	12, 15, 18
RCW 36.70C.040.....	18
RCW 36.70C.040(2)	17
RCW 36.70C.040(3)	17
RCW 4.16.170	passim
RCW 6.13.030(2).....	11
Title 11 RCW	12, 13, 23

Other Authorities

H. Judiciary Comm., H.B. Rep. S.B. 5196 (1999).....	25
Karen R. Bertram & Tiffany R. Gorton, <i>Solving Problems in Estate and Trust Administration, The Trust and Estate Dispute Resolution Act</i> , in PROBATE & TRUST ADMINISTRATION FUNDAMENTALS: EFFECTIVE REPRESENTATION OF ESTATES, PERSONAL REPRESENTATIVES, AND TRUSTEES, 3-1, 3-6 (2013).....	26
Laws of 2008, Ch. 6, § 916	25
Scott A.W. Johnson & Karolyn Hicks, <i>Estate Disputes</i> , in WASHINGTON PROBATE DESKBOOK, 9-1, 9-7 (Wash. State Bar Assoc. 2005).....	26

Rules

CR 3	9, 21, 22, 23
RAP 2.4(a)	32

I. INTRODUCTION

Appellant T. Bernell Hannah (“Bernell”)¹ failed to timely file, as a separate action, her petitions for a basic and increased award from the property of her deceased spouse, as required by RCW 11.96A.090(2). Finding that Bernell’s petitions were not filed by the eighteen-month deadline established in RCW 11.54.010(3)(a), the San Juan County Superior Court properly dismissed the petitions.

A surviving spouse seeking an award from the property of the deceased spouse must meet three requirements for the surviving spouse’s petition to be timely filed within eighteen months of the deceased spouse’s death, if a personal representative has been appointed. The surviving spouse must (1) file the petition with the court clerk, (2) in a separate action, and (3) pay a filing fee. In this case, Bernell’s petitions were delivered to the court clerk prior to the expiration of the deadline, but they were not filed in a separate action or accompanied by the required fee prior to the deadline. The San Juan County Superior Court correctly recognized that untimely filing violated the plain language of the statute, so that it lacked jurisdiction to hear the merits of Bernell’s petitions. The

¹ The parties are referred to by their first names for the sake of clarity, and no disrespect is intended.

San Juan County Superior Court's order dismissing Bernell's petitions should be affirmed.

II. COUNTER-STATEMENT OF THE ISSUE

1. Did the San Juan County Superior Court correctly dismiss Bernell's petitions for failing to timely file them as a new action, and for failing to pay the required fee?

III. COUNTER-STATEMENT OF THE CASE

A. Vernon D. Hannah's Estate Plan, to which Bernell Consented, Requires all of Vernon's Assets to be Held for Bernell's Sole Benefit During her Life.

Vernon D. Hannah ("Vernon") died November 5, 2012, leaving Bernell and a son by a previous marriage. Vernon and Bernell did not have children together. CP 7; CP 11. Ten years prior to his death, and upon the advice of independent legal counsel, Vernon created the Vernon D. Hannah Trust (the "Trust") to hold certain separate property assets during the remainder of his life, and to govern the distribution of his estate following his death. CP 17-36. The Trust Agreement for the Vernon D. Hannah Trust was executed on February 14, 2002, and was subsequently amended three times (the "Trust Agreement"). CP 24; CP 33; CP 35; CP 36. As trustor of the Trust, Vernon retained the right to revoke and amend the Trust during his life. CP 18. Vernon was the sole trustee of the Trust, and remained sole Trustee until his death. CP 17. While the Trust

originally owned only Vernon's separate property assets, Bernell also signed the Trust Agreement in 2002 to evidence her consent to the separate property nature of the contributed assets and to the terms of the Trust. Specifically, Bernell consented and agreed "to all of the provisions" of the Trust Agreement (underline added). CP 18; CP 26.

As is customary with a revocable trust, Vernon retained the sole right to income and principal from the Trust during his life. CP 18-19. Following Vernon's death, the Trust Agreement requires all Trust assets to be held for the sole benefit of Bernell for the remainder of her lifetime. Specifically, the Trust Agreement grants to Bernell the following: (1) the rent-free use of the residence owned by the Trust for as long as Bernell wishes to reside there, (2) payment of any mortgage, utilities, real estate taxes, insurance, and maintenance costs from Trust income, and from principal if income is exhausted and Bernell's other assets are insufficient, and (3) mandatory quarterly distributions of any remaining income to Bernell for the remainder of her lifetime. CP 32.

The Trust Agreement names Peter W. Chan ("Peter") and Christine M. Chan ("Christine")² as remainder beneficiaries of the Trust after

² As described below, Christine is now the personal representative of Vernon's estate, the successor trustee of the Trust, and the respondent in this matter. For ease of reference, Christine is referred to by her first name in this brief when acting in her fiduciary capacity.

Bernell's death, identifying Peter and Christine as "Trustor's friends." CP 32. Peter and Christine are Vernon and Bernell's long-time neighbors, and regularly assisted Vernon with farm and other property maintenance. Vernon was particularly close to Peter and Christine's children.

Peter and Christine have no right to distributions of Trust assets during Bernell's life, and it is incorrect for Bernell to imply that Peter and Christine received a substantial outright distribution of assets as a result of Vernon's death.³ Appellant's Brief 5. Christine is named as successor trustee of the Trust after Vernon's death, with Peter as alternate successor trustee if Christine is unable or unwilling to serve. CP 17; CP 35. These provisions were included in the original 2002 Trust Agreement to which Bernell expressly consented. Bernell has not challenged the Trust Agreement.

Vernon's Will dated November 1, 2005 and Codicil dated September 23, 2010 leave the residue of Vernon's estate to the Trust. CP 12. Christine is named as personal representative, with Peter as alternate. CP 11. The Will identifies Christine and Peter as Vernon's

³ Bernell's brief describes Christine as "greedy" and "unscrupulous." Appellant's Brief 31. These mischaracterizations are unsupported by the record, untrue, and irrelevant to the issues on appeal.

“good friends.” CP 11. Bernell has not challenged Vernon’s Will or Codicil.

B. Christine was Appointed as Personal Representative of Vernon’s Estate without Objection from Bernell.

Following Vernon’s death, Bernell had the right to be appointed as personal representative over her and Vernon’s community property under RCW 11.28.030. Bernell did not seek such appointment. After the forty-day period provided in that statute expired, Christine filed Vernon’s Will and Codicil and sought appointment as personal representative of his estate. The San Juan County Superior Court appointed Christine as personal representative with nonintervention powers on December 18, 2012 under San Juan County Superior Court cause number 12-4-05075-7. CP 190-192. Bernell did not object to Christine’s appointment, and collaborated with Christine to identify Vernon’s assets and on other aspects of the estate administration process. CP 111-114.

C. The Substantially Illiquid Nature of Vernon’s Assets has Resulted in Distributions to Bernell in an Amount Less than She Desires.

Unfortunately, by the date of Vernon’s death, the Trust assets had become substantially illiquid with limited sources of income, in part due to loans requested by and made to Bernell’s family members which became uncollectible. CP 108-110; CP 112. As a result, while Christine has complied with all provisions of the Trust Agreement and has distributed

available funds to Bernell, the Trust does not have sufficient income at this time to make distributions to Bernell in the amount she desires. CP 111-114; CP 7.

D. Bernell Filed her Petitions for a Basic and Increased Award in the Probate Cause Number on April 11, 2014 without Paying a Filing Fee.

Christine kept Bernell fully informed about the progress of the estate administration. To date, no creditor's claims have been filed against the estate. Early in the administration process, as assets were still being identified and prior to the sale of many assets, Christine's counsel conveyed Christine's openness to a "TEDRA Agreement to provide a reasonable family allowance." CP 113. However, Bernell's counsel did not actively pursue the issue until nearly one year later. CP 115.

On April 11, 2014, Bernell, through counsel, filed a "Petition for Award in Lieu of Homestead and Declaration in Support" and a "Petition for an Order Increasing the Award in Lieu of Homestead and Declaration in Support" in San Juan County Superior Court cause number 12-4-05075-7, the probate cause number (these filings are referred to collectively as the "April 11 Petitions"). The April 11 Petitions sought a basic award of \$125,000 from Vernon's estate, and an increase to that award, for a total award of \$600,000. CP 8. Bernell did not pay a filing fee. Copies of the

April 11 Petitions were served upon Christine's counsel, but not upon Christine personally. CP 168.

E. Despite Instruction to the Contrary by Christine's Counsel, on May 5, 2014, Bernell Again Filed Her Petitions in the Probate Cause Number without Paying a Filing Fee.

On April 30, 2014, Christine's counsel notified Bernell's counsel by letter that Washington statutes prohibited the filing of the April 11 Petitions in the existing probate, instead requiring a separate action to be filed. CP 172-173.

Despite the instruction to file in a separate action by Christine's counsel, on May 5, 2014, exactly eighteen months after Vernon's death, Bernell's counsel filed a "Petition for Award in Lieu of Homestead and Declaration in Support – TEDRA" and a "Petition for an Order Increasing the Award in Lieu of Homestead and Declaration in Support – TEDRA" in the probate cause number, San Juan County Superior Court 12-4-05075-7 (these filings are referred to collectively herein as the "May 5 Petitions"). Bernell did not pay a filing fee. In filing the May 5 Petitions in the probate cause number and failing to pay a filing fee, Bernell's counsel acted at the direction of the San Juan County court clerk. CP 80. Christine was personally served with the May 5 Petitions and a summons that day. CP 167.

F. Bernell Filed Her Petitions in a New Cause Number and Paid the Filing Fee After the May 5, 2014 Deadline.

On May 6, 2014, the court clerk notified Bernell's counsel that the May 5 Petitions were in fact required to be filed in a separate cause number with a filing fee. CP 81. On May 7, 2014, Bernell's counsel filed a "Petition for Award in Lieu of Homestead and Declaration in Support – TEDRA" and a "Petition for an Order Increasing the Award in Lieu of Homestead and Declaration in Support – TEDRA" in new cause number 14-4-05030-3 and paid the required filing fee. CP 3-36. These filings are referred to collectively herein as the "May 7 Petitions."

G. The San Juan County Superior Court Correctly Dismissed Bernell's May 7 Petitions.

On May 21, 2014, Christine filed a Request to Dismiss Petition for Spousal Award, arguing that the May 7 Petitions had been filed after the expiration of the eighteen-month deadline for such petitions established in RCW 11.54.010(3)(a). CP 39-79. A hearing was held on June 6, 2014, which was continued for additional briefing by the parties. CP 157-166; CP 182-186. At a hearing on June 20, 2014, the San Juan County Superior Court dismissed the May 7 Petitions as untimely filed. Findings of Fact and Conclusions of Law were entered on July 28, 2014. The court did not reach the merits of the May 7 Petitions. CP 124-128. Bernell has appealed the Findings of Fact and Conclusions of Law. CP 135.

Bernell filed a motion for reconsideration on July 7, 2014, which was denied on September 26, 2014. CP 82-123; CP 187-189.

IV. SUMMARY OF ARGUMENT

The plain language of the statutes governing the May 7 Petitions, RCW 11.54.010 and Chapter 11.96A, established an eighteen-month deadline, expiring on May 5, 2014, for Bernell to file the May 7 Petitions in a separate action with payment of a filing fee. Bernell's May 7 Petitions were untimely under the plain language of these statutes, and the statutes are not ambiguous. The failure to timely pay the filing fee is in itself fatal to Bernell's case.

While Bernell argues that service on Christine on May 5, 2014 causes the May 7 Petitions to be deemed timely under RCW 4.16.170 and CR 3, this argument fails. The eighteen-month deadline in RCW 11.54.010 is a jurisdictional deadline, and not a statute of limitations subject to RCW 4.16.170. Even if RCW 11.54.010 is held to be a statute of limitations, RCW 11.96A.100 does not permit commencement of an action by service.

Because the eighteen-month jurisdictional deadline is strictly construed, Bernell's argument that she substantially complied with RCW 11.54.010 is inapplicable. Washington courts require strict compliance with deadlines in the probate context. Additionally, a ruling in Christine's

favor does not violate this state's policy favoring spousal support awards, because such policy is inapposite in this case. Bernell's appeal should be denied.

A. Standard of Review; Plain Language Interpretation of Statutes.

Questions of statutory construction are reviewed de novo. *Buecking v. Buecking*, 179 Wn.2d 438, 444, 316 P.3d 999 (2013).

Washington courts first look to the plain language of a statute when engaging in statutory interpretation. *Buecking v. Buecking*, 179 Wn.2d 438, 444, 316 P.3d 999 (2013). "Where a statute is unambiguous, the court assumes the legislature means what it says and will not engage in statutory construction past the plain meaning of the words." *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.3d 147 (2004). The plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

B. The Plain Language of RCW 11.54.010 and Chapter 11.96A RCW Required the May 7 Petitions to be Filed in a New Action and a Filing Fee Paid within Eighteen Months of the Decedent's Death.

1. Petitions for spousal support awards under RCW 11.54, generally.

Chapter 11.54 RCW allows a surviving spouse to petition the court for an award from the property of the deceased spouse. RCW 11.54.010. Under RCW 11.54.020, the amount of the basic award is the homestead exemption (\$125,000), as set forth in RCW 6.13.030(2). The surviving spouse can petition for an award in excess of the homestead exemption under RCW 11.54.040. RCW 11.54.050(1) also grants the court discretion to reduce the award below the homestead exemption amount if the surviving spouse is entitled to receive other property by reason of the decedent's death.

2. Chapter 11.54 RCW establishes an eighteen-month deadline to file a petition for an award from the property of the decedent, and requires such a petition to be brought pursuant to Chapter 11.96A RCW.

RCW 11.54.010(3) establishes an eighteen-month deadline for a petition to be filed, measured from the date of the decedent's death if a personal representative has been appointed within twelve months of the decedent's death. Specifically, RCW 11.54.010(3) provides as follows:

The court may not make this award unless the petition for the award is filed before the earliest of:

(a) Eighteen months from the date of the decedent's death if within twelve months of the decedent's death...a personal representative has been appointed.
(underline added)

RCW 11.54.090 provides that the petition and the hearing “must conform to RCW 11.96A.080 through 11.96A.200. Notice of the hearing on the petition must be given in accordance with RCW 11.96A.110.”

3. Chapter 11.96A requires a proceeding under Title 11 RCW to be commenced as a new action by filing a petition.

RCW 11.96A.090(2) states, “[a] judicial proceeding under this title must be commenced as a new action” (underline added). RCW 11.96A.100(1) provides, “[a] judicial proceeding under RCW 11.96A.090 is to be commenced by filing a petition with the court” (underline added).

4. RCW 36.18.020 requires the payment of a filing fee when a new action is filed.

RCW 36.18.020(2)(a) requires the payment of a filing fee by the party filing the first or initial document in a civil action at the time the document is filed.

5. Read together, the plain language of Chapters 11.54 and 11.96A RCW required Bernell to file the May 7 Petitions as a new action and pay a filing fee by May 5, 2014.

RCW 11.54.090 specifically requires a petition for an award in lieu of homestead or for the increase of such award to “conform to RCW

11.96A.080 through 11.96A.200,” which prescribes that such a proceeding be commenced as a new action. Even if RCW 11.54.090 did not establish this requirement, RCW 11.96A.090’s “new action” mandate applies to all proceedings under Title 11 RCW. Accordingly, in order to receive the superior court’s consideration, the May 7 Petitions were required to meet three requirements: (1) they must be filed with the clerk, (2) as a separate action, and (3) with payment of a filing fee.

The May 7 Petitions are petitions under RCW 11.54.010. Accordingly, the plain language of RCW 11.54.010, RCW 11.96A.090, and RCW 36.18.020 required Bernell to file the May 7 Petitions as a new action and pay a filing fee by May 5, 2014, the eighteen-month deadline established in RCW 11.54.010. Bernell’s filing prior to that date in the probate proceeding did not effectively commence the proceeding under RCW 11.96A.090. Bernell’s filing in a separate action and payment of the filing fee on May 7, 2014 was untimely.

C. The Use of “File” in RCW 11.54.010 and RCW 11.96A.090 is Not Ambiguous.

Bernell incorrectly argues that the term “file,” as used in RCW 11.54.010 and RCW 11.96A.090, is ambiguous, and should be interpreted as “commenced.” Such an interpretation would render RCW 11.96A.100(1) nonsensical, requiring a judicial proceeding under

RCW 11.96A.090 to be *commenced by commencing* a petition with the court. Moreover, there is no need to consider “file” to mean anything other than what the legislature has expressly defined it to mean: “the act of delivering an instrument to the auditor or recording officer for recording into the official public records.” RCW 36.18.005(2). This definition applies to filings with the court clerk. *See Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 244-45, 963 P.2d 907 (Div. 1 1998).

Legislative definitions of terms are controlling, and a dictionary is only used in the absence of a statutory definition. *See State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). Bernell’s reliance on alternate dictionary definitions of “file” is unnecessary, and results in a tortured reading of the statute.

D. The May 7 Petitions Are Considered Filed When the Filing Fee was Paid on May 7, 2014, After the Eighteen-Month Deadline Expired.

Under Washington law, a petition commencing a new action is not filed until a filing fee is paid. *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 963 P.2d 907 (Div. 1 1998). In *Margetan*, the plaintiff delivered his complaint to the clerk’s office prior to the expiration of the statute of limitations, but did not pay the filing fee until after the statute of limitations expired. The court considered the provisions of Chapter 36.18 RCW defining “filing” as delivering an instrument to a recording officer,

and requiring a county clerk to collect a fee when a new lawsuit is commenced (“[t]he party filing the first or initial paper in any civil action...shall pay, at the time the paper is filed, a fee of one hundred ten dollars”). *Id.* at 245, quoting RCW 36.18.020(2)(a) (appears revised). Under these statutes, “a document is not filed for recording into the official public record until the filing fee is paid.” *Id.* at 246. The plaintiff’s lawsuit was time-barred.

While *In the Matter of the Estate of Crane*, 15 Wn. App. 161, 164, 548 P.2d 585 (Div. 2 1976) held that failure to pay a fee when filing a will contest petition did not violate the four-month deadline in RCW 11.24.010 (the will contest statute), that case is distinguishable. At the time *Crane* was decided, RCW 11.24.010 did not require a will contest petition to be a new TEDRA action. It permitted a will contest to be filed in the probate cause number. In contrast, *Margetan* involves a new action commenced by filing a complaint, which is the situation under review here.

Margetan’s explanation of the meaning of “filing” in a new action applies to the May 7 Petitions. RCW 11.96A.090(2) required the May 7 Petitions to be commenced as a new action, just as the complaint in *Margetan* commenced a new lawsuit. Bernell delivered other petitions to the San Juan County Superior Court Clerk on April 11, 2014 and May 5, 2014, but did not pay a filing fee until May 7, 2014. The May 7 Petitions

were not “filed,” as required by RCW 11.54.010, RCW 11.96A.090, and *Margetan*, until after the eighteen-month deadline had expired.

E. The Eighteen-Month Deadline in RCW 11.54.010 is a Jurisdictional Requirement which is “More than a Statute of Limitations;” Service on Christine does not Toll the Deadline.

As discussed above, RCW 11.54.010(3)(a) provides that “[t]he court may not make this award unless the petition for the award is filed before...[e]ighteen months from the date of the decedent’s death if within twelve months of the decedent’s death...[a] personal representative has been appointed” (underline added). This language does not prohibit a person from filing a petition after a particular date; it restricts the court’s authority to act. Where similar statutory language is used, Washington courts have held such language to be jurisdictional, and not a statute of limitations. Accordingly, RCW 4.16.170, which tolls a statute of limitations for ninety days when service occurs within the statute of limitations and prior to filing, does not apply.

1. The language of RCW 11.54.010 is similar to jurisdictional language in other statutes.

Washington courts recognize the difference between jurisdictional requirements and statutes of limitation. *See, e.g., In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 431, 993 P.2d 296 (2000) (time limit on collateral attack was a statute of limitations and not a jurisdictional bar). In *Hoisington*, the court distinguished between the statute of limitations in

RCW 10.73.090 (“no petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final”) and the jurisdictional language in RCW 10.73.140 (“[i]f a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition” except in certain circumstances) (underline added). *Hoisington*, 99 Wn. App. at 431. The former statute establishes a time limit for a *party* to act; the latter statute restricts the *court* from acting. Under *Hoisington*, a restriction on the court’s authority is “clearly jurisdictional.” *Id.*; *see also Davis v. Nielson*, 9 Wn. App. 864, 876, 515 P.2d 995 (1973) (a statute of limitations is an affirmative defense, not a bar to an action).

Washington courts also confirm that a filing deadline may be a jurisdictional requirement if the statute establishing the deadline limits the court’s ability to consider a late-filed petition. *See, e.g., Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 380-383, 223 P.3d 1172 (2009). In *Nickum*, the plaintiffs filed their Land Use Petition Act appeal after the twenty-one day deadline established in RCW 36.70C.040(3). RCW 36.70C.040(2) provides that a land use petition “is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served...” (underline added). The court held that the twenty-one day deadline “controls access to the trial court’s jurisdiction over LUPA

appeals,” and was not a statute of limitations. *Nickum*, 153 Wn. App. at 381. The court stated that although RCW 36.70C.040 “does not use the word ‘jurisdiction,’ the legislature’s use of the phrases ‘is barred’ and ‘may not grant review’ demonstrate the legislature’s intent to prevent a court from considering untimely filings.” *Id*; see also *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 113 Wn. App. 142, 153-154, 53 P.3d 44 (2002) (filing fee requirement was jurisdictional under statutory language stating that a Growth Management Hearings Board appeal “shall be instituted” only if the appellant files a petition and pays a filing fee).

RCW 11.54.010(3)’s provision that the court “may not make” an award in lieu of homestead or order an increased award unless the petition is timely filed is similar to the restrictions on the court’s authority in the statutes considered in *Hoisington* and *Nickum*.⁴ Like the phrase “the court may not grant review” at issue in *Nickum*, RCW 11.54.010’s use of “the court may not make this award” indicates the legislature desired to prevent the court from considering late-filed petitions. The eighteen-month deadline in RCW 11.54.010(3) is a jurisdictional requirement, and not a

⁴ Like the statutes considered in *Hoisington* and *Nickum*, RCW 11.54.010(3) does not expressly require a filing fee, though a filing fee is required in a new action under RCW 36.18.020(2)(a), discussed above. In contrast, the statute at issue in *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 113 Wn. App. 142, 153-154, 53 P.3d 44 (2002) specifically mandates payment of a filing fee.

statute of limitations. Because Bernell's May 7 Petitions were filed after the eighteen-month deadline expired, the court lacks jurisdiction to grant an award.

2. Because the eighteen-month deadline is jurisdictional, RCW 4.16.170 does not apply.

RCW 4.16.170 provides as follows:

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first....[i]f the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed...the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations. (underline added)

By its plain language, RCW 4.16.170 is limited to tolling a statute of limitations. It has no effect on a jurisdictional requirement. Here, although Bernell served the May 5 Petitions on Christine within the eighteen-month deadline, the failure to comply with RCW 11.54.010's jurisdictional filing requirement is fatal. RCW 4.16.170 does not apply to toll the statute of limitations for ninety days, because the eighteen-month deadline is not a statute of limitations. Further, the plain language of RCW 11.54.010 requiring filing shows that RCW 4.16.170 is inapplicable.

3. Because RCW 11.24.010 is a statute of limitations, revisions to RCW 11.24.010 are inapplicable to RCW 11.54.010's jurisdictional deadline.

Bernell incorrectly assumes that amendments to RCW 11.24.010, the will contest statute, are relevant to this Court's consideration of RCW 11.54.010's jurisdictional filing deadline. Bernell's argument fails to acknowledge the differences between the plain language of RCW 11.24.010 and RCW 11.54.010. RCW 11.24.010 provides that if any "person interested in any will shall appear within four months immediately following the probate...thereof, and by petition to the court...contest the validity of said will...he or she shall file a petition containing his or her objections and exceptions to said will." After *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006) was decided, the legislature added a paragraph to RCW 11.24.010 stating that "[f]or the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative."

Bernell erroneously argues that the legislature's amendment to RCW 11.24.010, a statute of limitations, should control this court's interpretation of RCW 11.54.010, a jurisdictional requirement. As noted above, RCW 11.54.010 restricts the court from making an award on a petition for award in lieu of homestead if the petition is not timely filed.

RCW 11.24.010 prescribes the time limit for a contestant to challenge a will, but does not limit the court's authority to act. Additionally, as amended after *Kordon*, RCW 11.24.010 specifically describes the four-month time limit as a "limitations period." No such language is present in RCW 11.54.010. The differences between RCW 11.24.010 and RCW 11.54.010 are strikingly similar to the statute of limitations and jurisdictional requirement contrasted in *In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 431, 993 P.2d 296 (2000), discussed above. As in *Hoisington*, the distinction is a meaningful one. Because RCW 11.24.010 is a statute of limitations, it is irrelevant to this court's interpretation of RCW 11.54.010's jurisdictional filing requirement.

F. RCW 11.96A.100 Requires Filing, not Service, to Commence a Judicial Proceeding under RCW 11.96A.090.

Even if the eighteen-month deadline in RCW 11.54.010 is not a jurisdictional requirement as required by analogous case law (it is in fact jurisdictional), RCW 4.16.170 and CR 3 do not apply to permit commencement of the action by service, rather than filing. As noted above, RCW 4.16.170 provides that for purposes of the statute of limitations, an action is commenced by filing of the complaint or service of a summons, whichever occurs first. CR 3 provides that "a civil action is commenced by service of a copy of a summons together with a copy of

a complaint, as provided in rule 4 or by filing a complaint.” Bernell erroneously argues that Chapter 11.96A RCW (the Trust and Estate Dispute Resolution Act, or “TEDRA”) permits an action under that chapter to be commenced by service, rather than filing, because CR 3 and RCW 4.16.170 allow commencement of an action by service. This is incorrect.

1. The plain language of RCW 11.96A.100 establishes that only filing can commence a TEDRA action; CR 3 does not apply.

RCW 11.96A.100(1) requires a proceeding under RCW 11.96A.090 “to be commenced by filing a petition with the court,” unless “rules of court require or this title provides otherwise, or unless a court orders otherwise.” Because a TEDRA action is a special proceeding, Chapter 11.96A RCW controls over any inconsistent provisions of the civil rules. *See In re Estate of Stover*, 178 Wn. App. 550, 561-62, 315 P.3d 579 (2013).

CR 3 allows plaintiffs two options for commencing a lawsuit – either by serving a summons, or by filing a complaint. In contrast, the plain language of RCW 11.96A.100(1) does not provide a menu of choices to a TEDRA litigant. Instead, the statute mandates a single method for commencing a TEDRA action – filing a petition with the court as a separate action. The only exceptions are if court rules require, Title

11 RCW provides otherwise, or if a court orders otherwise. In order for a court rule to “require otherwise,” it would have to establish an alternative exclusive method for commencing an action. For example, if CR 3 required all lawsuits to be commenced by service and not by filing, it would “require otherwise” than RCW 11.96A.100(1). CR 3 does not do so, and Title 11 RCW similarly does not provide otherwise. No court has issued a contrary order in this case. Accordingly, CR 3 does not apply.

2. The plain language of RCW 11.96A.100 similarly controls over RCW 4.16.170.

As noted above, RCW 11.96A.100 provides three exceptions to the rule that a TEDRA action must be commenced by filing: if court rules require, Title 11 provides otherwise, or a court orders otherwise. While RCW 4.16.170 allows civil actions to be commenced by service or filing, statutes other than Title 11 are not a permitted exception to the RCW 11.96A.100(1) filing requirement. Additionally, RCW 11.96A.100, as the later and more specific statute applicable to TEDRA proceedings, controls over RCW 4.16.170, a prior statute, to the extent of any inconsistencies. *See Anderson v. Dussault*, 333 P.3d 395 (2014).

Bernell incorrectly maintains the legislature’s amendments to RCW 11.24.010, the will contest statute, following *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006), show that RCW 4.16.170 applies to

petitions brought under RCW 11.96A.100. This argument misunderstands the problem posed by *Kordon*. *Kordon* concerned whether the failure of a party to issue a citation for two years after the filing of a will contest deprived the court of jurisdiction. *Kordon*, 157 Wash.2d at 209. The party argued that TEDRA eliminated the citation requirement. The court concluded that because the citation (the “equivalent to a civil summons”) was not issued within the four-month statute of limitations, the will contest was barred. The court lacked personal jurisdiction to hear the will contest. *Id.* at 210, 213. TEDRA’s separate notice provisions did not supersede RCW 11.24.010’s citation requirement. *Id.* at 212.

Following *Kordon*, the legislature revised RCW 11.24.010 to provide that “[f]or purposes of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative.” Further, the legislature removed the citation requirement, instead requiring notice of a will contest to comply with RCW 11.96A.100. In other words, the post-*Kordon* changes to RCW 11.24.010 brought will contest procedures into conformity with TEDRA.

The amendment to RCW 11.24.010 was narrowly designed to address the specific issue posed by the facts in *Kordon* and the inconsistency of having varying notice requirements for different types of

petitions in the probate context. The problem in *Kordon* was an apparent conflict between Chapter 11.96A RCW and the will contest statute, but there is no such conflict between Chapter 11.96A and Chapter 11.54 RCW. In contrast, RCW 11.54.090 required a petition under RCW 11.54.010 to be filed under TEDRA prior to the *Kordon* decision. *Kordon* and the subsequent legislative amendments are simply irrelevant to petitions brought under RCW 11.54.010, which has never been in conflict with TEDRA.⁵

3. The legislative history and commentary show that service cannot commence a TEDRA action.

The legislative history of RCW 11.96A.100 corroborates the plain language of the statute, and commentators agree with this interpretation. The House Bill Analysis for S.B. 5196 (1999), the enactment of which resulted in TEDRA, clarifies that filing must precede service:

Unless otherwise provided by statute or by the court, judicial proceedings must be commenced by filing a petition with the court. A summons must then be served on any interested party, the form of which is provided. H. Judiciary Comm., H.B. Rep. S.B. 5196 (1999) (underline added) (reproduced in the Appendix at A-1 to A-6)

⁵ Bernell's brief notes that RCW 11.54.010 was amended in 2008. Appellant's Brief 24. The amendment's sole purpose was to allow registered domestic partners to also file a petition under RCW 11.54.010, as part of a global effort to extend the rights of spouses under Washington law to registered domestic partners. Laws of 2008, Ch. 6, § 916. The amendment has no relevance to the present matter.

Commentators agree that only filing, and not service, commences a TEDRA action. *See, e.g.*, Scott A.W. Johnson & Karolyn Hicks, *Estate Disputes*, in WASHINGTON PROBATE DESKBOOK, 9-1, 9-7 (Wash. State Bar Assoc. 2005) (reproduced in pertinent part in the Appendix at A-7 to A-10); Karen R. Bertram & Tiffany R. Gorton, *Solving Problems in Estate and Trust Administration, The Trust and Estate Dispute Resolution Act*, in PROBATE & TRUST ADMINISTRATION FUNDAMENTALS: EFFECTIVE REPRESENTATION OF ESTATES, PERSONAL REPRESENTATIVES, AND TRUSTEES, 3-1, 3-6 (2013) (reproduced in pertinent part in the Appendix at A-11 to A-14).

G. It is Impossible to “Substantially Comply” with a Statutory Deadline; Bernell’s Late Compliance is Fatal to Bernell’s Claim.

Washington courts consistently reject the argument that late compliance with a statutory time limit is substantial compliance. On the contrary, “it is impossible to substantially comply with a statutory time limit....It is either complied with or it is not. Service after the time limit cannot be considered to have been actual service within the time limit.” *City of Seattle v. Pub. Employment Relations Comm’n*, 116 Wn.2d 923, 928-929, 809 P.2d 1377 (1991); *see also Wells Fargo Bank, N.A. v. Dep’t of Revenue*, 166 Wn. App. 342, 362, 271 P.3d 268 (2012) (bank’s failure

to file its action within Administrative Procedure Act filing deadline prevented court from exercising original appellate jurisdiction).

Washington courts also strictly construe deadlines in the probate context, such as the deadline to file a will contest or a creditor's claim. With respect to the four-month deadline to file a will contest, "[t]here are no exceptions to the rule and no equitable doctrines to afford any flexibility. If the Will contest is not filed prior to the expiration of the four-month period, the contest will be absolutely barred." *In re Estate of Toth*, 138 Wn.2d 650, 656, 981 P.2d 439 (1999), quoting Bruce R. Moen, Nat'l Bus. Inst., Inc., *Washington Probate: Beyond the Basics* 171 (1996); see also *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006). As for creditor's claims, "[e]quitable considerations may not mitigate the strict requirements of the statute where a timely claim has not been filed by the creditor...". *Wilson's Estate v. Livingston*, 8 Wn. App. 519, 525, 507 P.2d 902 (1973).

Here, Bernell's filing of the May 7 Petitions in a separate action and payment of the required fee after the May 5, 2014 deadline does not cure the untimeliness of the earlier April 11 and May 5 filings. Bernell cannot argue that her late filing is substantial compliance with the eighteen-month jurisdictional deadline, because substantial compliance

with such a time limit is impossible and is not permitted for comparable probate deadlines.

H. While Washington Law Favors Spousal Support Awards, Upholding the Eighteen-Month Deadline is Consistent with the Strict Construction of Deadlines in the Probate Context, and the Reasons to Favor such Awards do not Apply Here.

1. Washington law requires estates to be administered as quickly as possible, and probate deadlines are strictly construed.

The legislature has repeatedly emphasized Washington’s policy in favor of prompt resolution of probate matters. *See, e.g.*, RCW 11.48.010 (personal representative has duty to settle estate “as rapidly and as quickly as possible”); RCW 11.96A.070(3) (legislature confirms “long-standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates”). As a result, deadlines in the probate context are strictly construed, even when it may appear inequitable.⁶ *See, e.g.*, *Cloud ex rel. Cloud v. Summers*, 98 Wn. App. 724, 738, 991 P.2d 1169 (1999) (lawsuit by abuse victim against abuser’s estate was time-barred for failure to file probate creditor’s claim, even though complaint was filed within four-month period); *In re Estate of Toth*, 138 Wn.2d 650, 656-57, 981 P.2d 439 (1999) (will contest filed three days after expiration of four-

⁶ There is no inequity in this case, since Vernon’s entire estate is held in trust for Bernell’s sole benefit during her life.

month deadline was time-barred). As noted in *Toth*, “factual inequities do not justify circumventing a clear rule articulated by the Legislature.” *Id.* at 656.

The same policy considerations requiring strict construction of the probate creditor’s claim and will contest deadlines are at issue here. When a personal representative has been appointed, RCW 11.54.010(3)(a) allows a surviving spouse eighteen months from the decedent’s date of death to file a petition for an award from the property of the decedent. The statute grants substantially more time to a surviving spouse than to a will contestant under RCW 11.24.010 and many classes of creditors under RCW 11.40.051 (some classes of creditors are given up to two years to file claims). However, the personal representative’s duty remains to administer the estate as quickly as possible. Upholding the eighteen-month deadline in RCW 11.54.010 is consistent with legislative policy and with how Washington courts interpret deadlines in the probate context. As stated recently by this Court in *In re Estate of Stover*, 178 Wn. App. 550, 559, 315 P.3d 579 (2013), strict construction of deadlines “furthers the timely and efficient resolution” of probate matters.

2. While Washington law favors awards in lieu of homestead, the purpose for such policy does not apply in this case.

Washington law favors awards in lieu of homestead “for the protection of the surviving spouse and as a measure of fairness.” *In re Estate of Garwood*. 109 Wn. App. 811, 814, 38 P.3d 362 (2002). As described in *Garwood*, the traditional purpose “of the homestead statute has been to protect the homesteader and his dependents [from creditors] in the enjoyment of a domicile.” *Id.* at 813. The family support award statute “provide[s] a means by which after a death has occurred, the family can be maintained, some property exempted from certain creditor’s claims, and modest estates can often be settled expeditiously and economically.” *In re Scheldt’s Estate*, 13 Wn. App. 570, 572, 536 P.2d 4 (1975). In other words, the award extends the protections of the deceased spouse’s own homestead exemption from creditors to the surviving spouse, so that the surviving spouse receives an award “in lieu of” the deceased spouse’s homestead exemption.

No Washington court has indicated that an award under Chapter 11.54 RCW is appropriate when the deceased spouse leaves his entire estate to a trust for the benefit of the surviving spouse, but the surviving spouse would prefer to receive assets outright. *See* RCW 11.54.050(1) (court may decrease basic award below homestead exemption amount if

the surviving spouse has received property by reason of the death of the deceased spouse).⁷

Courts in other states have noted that a family support award is intended to assist the surviving spouse in adjusting to a change in lifestyle after the deceased spouse's death, and is not intended to be a method for distributing the estate, or to compensate the surviving spouse for personal sacrifices made during marriage. *See, e.g., Hall v. Jeffers*, 795 S.W.2d 135 (Tenn. Ct. App. 1990) (purpose of award is to allow surviving spouse to adjust to change in standard of living); *Hunter v. Hunter*, 256 Ga. App. 898, 899, 569 S.E.2d 919 (Ga. Ct. App. 2002) (surviving spouse's years caring for decedent did not entitle her to award); *Holland v. Holland*, 267 Ga. App. 251, 254, 599 S.E.2d 242 (Ga. Ct. App. 2004) (award not intended to support the surviving spouse for years to come or to be a method for distributing estate).

In this case, Vernon's own estate planning protects Bernell in the enjoyment of her domicile, as the Trust Agreement gives Bernell the right to continue to live at her residence rent-free, to have real estate expenses paid from Trust income and principal, and to mandatory distributions of

⁷ Bernell's brief emphasizes the medieval origins of spousal support awards, which are irrelevant to the issue at hand. Appellant's Brief 12-14. There are plenty of modern cases explaining the historical purposes of such awards, cited herein.

any excess Trust income. Neither Christine, nor any member of her family, has any right to a distribution from the Trust while Bernell is alive. No party has filed a creditor's claim against Vernon's estate; the creditor protection purpose of spousal support awards is inapplicable here. The Trust Agreement already fulfills the purpose of Chapter 11.54 RCW, as it grants Bernell the exclusive right to benefit from her husband's property for the remainder of Bernell's life. In a case such as this, upholding the eighteen-month deadline to file the May 7 Petitions in a separate action and pay the filing fee will not erode Washington's policy favoring such awards. On the contrary, Bernell's petitions attempt to exploit such policy in order to undo Vernon's estate planning. Bernell's petitions are a challenge to Vernon's Will and Trust under another name.

I. Bernell's Request that this Court Order an Award in Lieu of Homestead Should be Denied, because the Superior Court did not Reach the Merits of the May 7 Petitions.

Bernell's brief impermissibly asks this Court to order an award in lieu of homestead. Appellant's Brief 33. This Court should refuse to make such an award, because the superior court did not rule on the merits of the May 7 Petitions. *See, e.g.,* RAP 2.4(a); *Meresse v. Stelma*, 100 Wn. App. 857, 867, 999 P.2d 1267 (2000) ("an appellate court generally will not review a matter on which the trial court did not rule"). In particular, the superior court has not had the opportunity to make the findings

required for an award under RCW 11.54.030, or to consider whether the award should be decreased under RCW 11.54.050 due to the substantial benefits Bernell receives pursuant to Vernon's Trust Agreement. Bernell's request should be denied.

J. Bernell's Request for an Attorney Fee Award from the Estate Should be Denied.

Bernell's brief requests an attorney fee award from Vernon's estate. This request should not be granted. RCW 11.96A.150(1) gives this Court broad discretion to award attorney fees

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.

Washington courts frequently deny fee requests when the case involves unique issues of statutory construction. *See, e.g., In re Estate of Stover*, 178 Wn. App. 550, 564, 315 P.3d 579 (2013), *In re Estate of D'Agosto*, 134 Wn. App. 390, 402, 139 P.3d 1125 (2006) (fee awards denied for cases involving novel issues of statutory construction).

The instant case involves novel issues of statutory construction, including whether the eighteen-month deadline in RCW 11.54.010 is a jurisdictional requirement or a statute of limitations. Bernell's request for an attorney fee award should be denied.

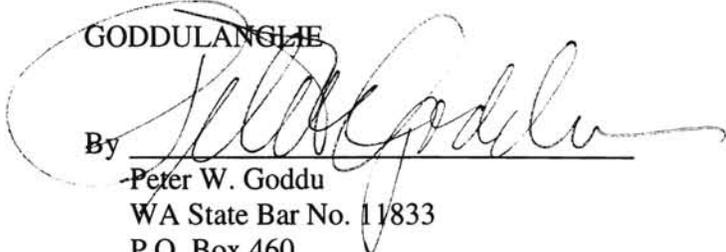
V. CONCLUSION

Washington law requires the timely filing of a petition for a spousal support award in a separate cause number with payment of a filing fee. Bernell did not timely comply with these requirements, which deprived the superior court of jurisdiction over her petitions. Time limits in the probate context such as the one at issue here are strictly construed, and the unambiguous intent of the legislature cannot be overcome through the application of equitable exceptions such as substantial compliance.

Moreover, the entirety of Vernon's estate is presently being held in trust for the sole benefit of Bernell during her lifetime. This Court should recognize Bernell's petitions for what they are: an expression of her disappointment with her husband's estate planning decisions and with the diminished value and illiquid nature of his assets at the time of his death. While Bernell's frustration may be justified, it should not cause this Court to overlook the plain meaning of the applicable statutes.

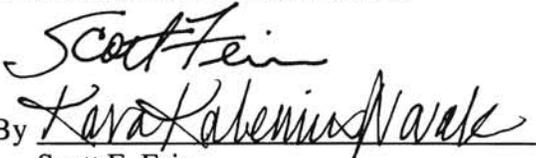
RESPECTFULLY SUBMITTED this 9th day of December,
2014.

GODDULANGLIE

By 

Peter W. Goddu
WA State Bar No. 11833
P.O. Box 460
Friday Harbor, WA 98250
(360) 378-2181
Attorneys for Respondent Christine Chan

MONTGOMERY PURDUE
BLANKINSHIP & AUSTIN PLLC

By 

Scott E. Feir
WA State Bar No. 28192
Kara Kalenius Novak
WA State Bar No. 39559
5500 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7096
(206) 682-7090
Attorneys for Respondent Christine Chan

APPENDIX

HOUSE BILL ANALYSIS

SB 5196

Title: An act relating to trust and estate dispute resolution.

Brief Description: Resolving trust and estate disputes.

Sponsors: Senators Johnson, Kline and Winsley.

Brief Summary of Bill

- Clarifies that the superior courts have jurisdiction over matters involving trusts and estates regardless of the amount in controversy.
- Allows more flexibility in the establishment of venue for proceedings involving trusts and estates.
- Allows more flexibility for a court in proceedings involving trusts and estates.
- Codifies the doctrine of virtual representation.
- Allows parties in proceedings involving trusts and estates to enter mediation and arbitration proceedings.
- Changes statutes of limitations relating to special representatives and trusts created before June 10, 1959.

HOUSE COMMITTEE ON JUDICIARY

Staff: Jim Morishima (786-7191).

Background:

I. Jurisdiction and Venue

The superior courts have original jurisdiction over disputes involving trusts or estates.

Venue for proceedings involving a trust is the superior court of the county in which the situs of the trust is located; *i.e.*, the superior court of the county in which the trust is principally administrated. Venue for proceedings involving a testamentary trust is the superior court of the county in which letters testamentary were granted to a

personal representative or any place letters testamentary could have been granted for a will.

Venue for proceedings involving wills and estates depends on several factors. If the decedent was a resident of Washington state at the time of death, venue is the superior court of the county in which the decedent was a resident. If the decedent was not a resident of the state, venue is the superior court of the county in which decedent died. If the decedent did not die in the state, then venue is the superior court of the county in which any part of the estate may be. If there are no assets subject to probate administration, then venue is the superior court of the county in which any nonprobate asset may be.

II. Judicial Proceedings

In exercising their jurisdiction over disputes involving trusts and estates, the superior courts have the power to issue and enforce orders, judgments, citations, notices, summons, and other writs and processes. A person desiring to commence an action must file a petition with the appropriate court and provide notice to all interested parties. At the hearing on the petition, the court may have broad discretion to determine the procedures to be followed in each individual situation. However, a 1990 decision of the Washington Court of Appeals implies that the initial hearing on the petition is a preliminary screening hearing in which the court has little discretion.

III. Nonjudicial Dispute Resolution

If the required parties to a dispute come to an agreement, they must evidence that agreement in writing. The agreement may be filed with a court having jurisdiction over the dispute. Unless a party objects within 30 days of the filing, the agreement becomes binding.

A required party to the dispute may petition the court for a special representative who will represent a required party who is incapacitated, a minor, unborn, or unknown. The special representative must be a lawyer or an individual specially trained in the administration of trusts and estates. The special representative must have no interest in the dispute. The special representative may enter into a binding agreement on behalf of the party or parties he or she represents. Once the written agreement is executed, the special representative is discharged of all duties and obligations with respect to the trust or estate.

IV. Statutes of Limitation

An action against a trustee for breach of fiduciary duty must be brought within three years from the earlier of the time the breach was discovered, the discharge of the trustee, or the time of the trust's termination. There is no statute of limitations for

actions against express trusts created before June 10, 1959. An action against a personal representative, including a special representative, must be brought before the personal representative is discharged.

Summary of Bill:

I. Jurisdiction and Venue

It is clarified that the superior court has original jurisdiction over all matters relating to trusts and estates regardless of the amount in controversy.

Venue for proceedings involving a trust is the superior court of the county in which the situs of the trust is located. If the situs of the trust is not located in the state, then venue is the superior court of any county. Venue for proceedings involving testamentary trusts is either the superior court of the county in which letters testamentary were granted to a personal representative or the superior court of the county in which the situs of the trust is located.

Venue for proceedings involving estates is the superior court of any county in Washington. A party may have venue moved for several enumerated reasons so long as the motion for change of venue is brought at least four months before the commencement of the action. If the motion is brought less than four months before the commencement of the action, the court may grant the motion at its discretion. If venue is moved, any actions by the previous court are still valid.

II. Judicial Proceedings

The procedural rules of the bill govern over any inconsistent provisions of the Civil Rules of Court. Also, the procedural rules of the bill govern over any inconsistent provisions of the procedural rules of court unless otherwise provided by statute or by the court.

★ [Unless otherwise provided by statute or by the court, judicial proceedings must be commenced by filing a petition with the court. A summons must then be served on any interested party, the form of which is provided. The clerk of the court then sets a date for the hearing on the petition. The answer to the petition must be filed within five days of the hearing, and the answer to the answer must be filed within two days of the hearing.] ★

The hearing must be a hearing on the merits unless a party requests otherwise. Testimony of any witness may be by affidavit. A party may move the court for an order relating to a procedural matter, including discovery and summary judgment, at any time. If the initial hearing does not resolve the matter, the court may enter an

order as it deems proper. Such an order may resolve issues the court deems proper, determine the scope of discovery, and set a schedule for further proceedings.

The common law doctrine of virtual representation is codified. A party or parties may virtually represent his or her similar class members or future successors in interest. In other words, the judicial resolution of a trust or estate matter involving the virtual representative is binding on the representative's similar class members or future successors in interest. However, if the virtual representative has a conflict of interest with a party or parties regarding the matter, the judicial resolution of the matter will not be binding on that party or parties.

If notice to creditors is given in the probate of a Washington resident's estate, that notice must be published in the county of the decedent's residence.

III. Nonjudicial Dispute Resolution

A. Binding Agreements

All parties, including a virtual representative, may enter into binding agreements outside of judicial proceedings. At the election of any party, the agreement may be filed with the court. Filing the agreement creates the same effect on the parties as a court order would create.

A trustee or executor may request the court to appoint a specific individual as special representative. The special representative is discharged upon execution of the agreement or upon the expiration of six months from the special representative's appointment. A special representative may present the written agreement of the parties to the court for approval. A special representative is not required if a party is represented through the doctrine of virtual representation.

B. Mediation

Any party may invoke the mediation process unless the court rules otherwise for good cause shown. If the court finds that mediation is not appropriate, it may order a judicial hearing, arbitration, or other judicial proceedings.

The parties subject to mediation must select a mediator. If the parties cannot agree, the court must choose a mediator. The mediator must either be an attorney or a person with special training in the administration of trusts and estates.

The mediation must last at least three hours. If the parties come to an agreement as a result of the mediation, their agreement must be evidenced in writing in the same manner as any other nonjudicial binding agreement.

If a party fails to follow the mediation procedures above, another party can seek a court order compelling them to do so. The costs of obtaining such an order may be awarded to the moving party.

C. Arbitration

Arbitration is only available to a party if the party has first sought mediation, the court has ruled that mediation is not necessary, the court has ordered arbitration, or all parties agree to proceed directly to arbitration. A party can proceed to arbitration without court authority unless there has already been a judicial hearing on the matter.

Once a party has moved for arbitration, the court must order arbitration unless the court finds for good cause shown that arbitration will not serve the best interests of the parties. If the court decides not to order the parties into arbitration, it may decide the issues itself or order further judicial proceedings.

After being ordered into arbitration, the parties must select an arbitrator. If the parties cannot agree, they may petition the court to select an arbitrator. The arbitrator must be an experienced attorney or other individual with special training or skill with respect to the matter. The arbitrator may be the same person as the mediator. The arbitrator must be compensated by agreement of the parties.

During the arbitration, the rules of evidence and discovery applicable to all civil cases apply unless the parties agree otherwise. Once the arbitrator has reached a decision, the decision must be filed with the court. The decision can be appealed within 30 days of the filing. If the decision is not so appealed, it becomes binding upon the parties. An appeal of an arbitration decision will be heard de novo. Costs of the appeal will be awarded to the moving party.

If a party fails to follow the arbitration procedures above, another party can seek a court order compelling them to do so. The costs of obtaining such an order may be awarded to the moving party.

IV. Statutes of Limitation

An action against a special representative must be brought before the earlier of (a) when a court approves a nonjudicial dispute resolution agreement or (b) three years after the representative's discharge. The statute of limitations regarding actions against a trustee for breach of fiduciary duty applies to trusts created before June 10, 1959, beginning after the year 2002.

Fiscal Note: Available.

Effective Date: The bill takes effect January 1, 2000.

Office of Program Research

KING COUNTY

JAN 23 2006

LAW LIBRARY

**WASHINGTON
PROBATE
DESKBOOK**



Continuing Legal Education
WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330

**KING COUNTY LAW LIBRARY
W621 COUNTY COURT HOUSE**

OWNER: _____

© Copyright 2005
Washington State Bar Association
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
(206) 727-8202
(800) 945-9722

All rights reserved. Permission is hereby granted for the copying of pages or portions of pages in this book by a photocopying or similar process, or by manual transcription, by or under the direction of licensed attorneys, for use in the practice of law.

NO OTHER USE IS PERMITTED that will infringe the copyright without the express written consent of both the Washington State Bar Association and the author or authors of the chapter or chapters involved.

This deskbook should be cited as:
WASHINGTON PROBATE DESKBOOK
(Wash. State Bar Assoc. 2005)

ISBN No. 0-88129-316-4

IMPORTANT NOTICE: Washington State Bar Association Continuing Legal Education publications are designed to help attorneys maintain their professional competence. Although all material herein is reviewed prior to publication, in dealing with specific legal matters, attorneys should research original sources of authority. The views and conclusions expressed herein are those of the authors or editors and are not necessarily those of the Washington State Bar Association or any division or committee thereof.

CHAPTER 9

ESTATE DISPUTES

Scott A. W. Johnson

Karolyn Hicks

Summary

- §9.1 Scope of Chapter
- §9.2 Overview of TEDRA Procedures
 - (1) Procedural Rules
 - (2) Commencing an Action
 - (3) Statute of Limitations

Scott A.W. Johnson is a shareholder at Stokes Lawrence, P.S., and focuses his practice on complex business and commercial litigation, including intellectual property disputes, estate and trust disputes, and claims involving fiduciaries and professional negligence. He obtained his law degree, magna cum laude, from American University, Washington College of Law in 1985 where he served as Notes and Comments Editor of the *American University Law Review*. Mr. Johnson received his B.A. in Business Administration (Accounting) from the University of Washington in 1980. Following law school, he served as Law Clerk to Senior Circuit Judge Wilson Cowen of the U.S. Court of Appeals for the Federal Circuit. He is admitted to the Washington State Bar, U.S. Supreme Court, U.S. Courts of Appeals for the Federal and Ninth Circuits, U.S. District Courts for the Western and Eastern Districts of Washington, and the U.S. Claims Court. Mr. Johnson has been a frequent speaker on probate litigation, mediation and settlement of estate and trust disputes, and trial skills.

Karolyn Hicks is associated with the law firm of Stokes Lawrence, P.S., where she practices general business and commercial litigation with an emphasis on trust and estate disputes. Ms. Hicks obtained her law degree from American University, cum laude, in May 2000, where she was Notes and Comments Editor of the *American University Law Review*. She is admitted to the Washington State Bar, Western District of Washington, and the U.S. Court of Appeals, Ninth Circuit.

The authors would like to thank Mark Maynes for his contributions to the initial outline of this chapter, and Karen Bertram, Gail Mautner, and Deborah Phillips for allowing the authors to draw on related materials that they had published through continuing legal education seminars.

Estate Disputes / §9.2(2)

the Superior Court Civil Rules and the provisions of TEDRA, special proceedings rules may apply. *See, e.g.,* SPR 98.08W; SPR 98.10W; SPR 98.12W; SPR 98.16W; SPR 98.20W. Each county also may have local civil rules or local special rules that apply to the matter.

(2) Commencing an action

An action involving a trust, an estate, or nonprobate assets may be brought as a regular civil action under the Washington Superior Court Civil Rules or in a proceeding under TEDRA. *See* Comments to the TRUST AND ESTATE DISPUTE RESOLUTION ACT §302 (1999), available at <http://www.wsbarppt.com/comments/tedra99.pdf>. "A judicial proceeding under TEDRA may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust, estate or nonprobate asset." RCW 11.96A.090(2). The action may be brought under the existing cause number or a separate cause number. A regular civil action is commenced either by serving a summons and copy of the complaint or by filing the complaint. CR 3. Commencing a regular civil action by either service or filing tolls the applicable statute of limitations, at least for a period of time. *See* RCW 4.16.170. Filing a petition with the court under TEDRA commences a judicial proceeding. RCW 11.96A.100(1). TEDRA does not permit tolling a statute of limitations simply by serving the petition without also filing the petition.

Once commenced, a TEDRA action may be consolidated with an existing civil proceeding or, upon "good cause shown," converted to a separate action upon the motion of a party, or by the court on its own motion. RCW 11.96A.090(3). TEDRA does not define "good cause shown." The drafters' Comments, however, address "good cause shown" as follows:

§505 (RCW 11.96A.300) - Mediation Procedure.

This provision allows any interested person to use the mediation and arbitration process and directs the court to order the use of mediation unless the court finds "for good cause shown" that mediation *will not serve the best interests of the affected parties*. If the court finds that mediation is not appropriate, the court may decide the matter at the hearing, may require arbitration, or may direct other judicial proceedings. *It is not intended that one party's unwillingness to participate alone will constitute "good cause shown."*



WSBA - CLE • The Innovator in Legal Education®

Probate & Trust Administration Fundamentals: Effective Representation of Estates Personal Representatives, and Trustees

August 1, 2013 | Seattle, WA

Sponsored by

Washington State Bar Association
Continuing Legal Education

In Cooperation with

WSBA RPPT Section

CHAPTER THREE

SOLVING PROBLEMS IN ESTATE AND TRUST ADMINISTRATION, THE TRUST
AND ESTATE DISPUTE RESOLUTION ACT

August 2013

Karen R. Bertram

Tiffany R. Gorton

**Kutscher Hereford Bertram Burkart
PLLC**

**Kutscher Hereford Bertram Burkart
PLLC**

705 2nd Ave Ste 800
Seattle, WA 98104-1711

705 2nd Ave Ste 800
Seattle, WA 98104-1711

Phone: (206) 382-4414 EXT 248
E-mail: kbertram@khbbllaw.com

Phone: (206) 382-4414
E-mail: kbertram@khbbllaw.com

KAREN R. BERTRAM is a founding member of the firm of KUTSCHER HEREFORD BERTRAM BURKART PLLC in Seattle, Washington. Her practice focuses on trusts and estates. Part of her practice emphasizes standard estate planning for estates of all sizes, as well as probate administration and preparation of federal estate tax returns. She serves as a fiduciary for trusts and estates, and has substantial litigation experience in trust and estate disputes. Ms. Bertram also serves as a mediator and arbitrator in trust and estate litigation matters. She is listed in Best Lawyers in America, has been named a Top Lawyer by Seattle Magazine, has been designated by her peers as a Super Lawyer every year since 2000 and has been named one of the top 50 women lawyers in Washington by Washington Law & politics.

TIFFANY R. GORTON is an associate with the firm of Kutscher Hereford Bertram Burkart in Seattle, Washington. Her practice focuses primarily on the areas of trust and estate litigation and estate planning. Ms. Gorton received her BA degree from Palm Beach Atlantic University and JD and LL.M. (taxation) from Thomas M. Cooley Law School. She is a member of the Washington and Michigan State Bars. Ms. Gorton is a frequent lecturer and author on estate planning, trust and probate issues. Ms. Gorton serves as the Treasurer of the Washington State Bar Association Tax Section; member of the Estate and Gift Tax Committee of the Washington State Bar Association; serves as the Vice President of the board of the People's Memorial Association and is a member of the planned giving board of the Seattle Humane Society.

particular question or dispute. The interest must be the same interest or a share of the same interest. RCW 11.96A.120(7).

(c) **First Contingent Beneficiary Representing a More Contingent Beneficiary.** A living contingent beneficiary can represent the interests of future or more remote contingent beneficiaries, even remote contingent beneficiaries that are not then living. RCW 11.96A.120(8). The exception to the doctrine of virtual representation is that a person receiving notice does not virtually represent another party if a conflict of interest is known to exist between the notified person and that other party. If there is a question whether a conflict of interest exists, it would be appropriate to seek the appointment of either a Special Representative or Guardian ad Litem.

f. Special Representatives

Minor, incapacitated (and without an appointed guardian of his or her estate) or unascertained parties may be represented by Special Representatives. Special Representatives are court appointed legal representatives and are considered parties for notice and due process considerations. RCW 11.96A.030(4)(k).

A Special Representative is expressly authorized to sign binding nonjudicial agreements on behalf of the party he or she represents. A Special Representative therefore is appointed in situations, such as mediations or informal negotiations, where the matter is to be resolved by the signing of a binding nonjudicial agreement. RCW 11.96A.250(1)(c). Special Representatives cannot represent parties in arbitration or judicial proceedings. A duly appointed guardian ad litem can represent the interests of parties in a judicial proceeding subject to the court's administrative policies and any local rules, including the policy that the guardian ad litem be chosen from the court's registry.

Any party or the parent of a minor or unborn party may petition the court to appoint a Special Representative to represent one who is: a minor, incapacitated without an appointed guardian of his or her estate, or an unascertained party. RCW 11.96A.250(1)(a). The statute provides a form petition and order. RCW 11.96A.250(1)(c). Once appointed, a Special Representative must file a declaration of the court stating that he or she meets all the requirements for servings as a Special Representative. RCW 11.96A.250(2).

A Special Representative cannot have an interest in the matter, or be related to a person who has an interest in the matter. In addition, the Special Representative must either be a lawyer or "an individual with special skill or training in the administration of estates or trust." RCW 11.96A.250(3).

A Special Representative is discharged within six months of court appointment (unless the court provides otherwise) or upon execution of the binding nonjudicial agreement, whichever occurs earlier. RCW 11.96A.250(4). If desired, a Special Representative has 30 days after the execution of the agreement to petition the court for approval of the agreement. Court approval of the agreement releases the Special Representative from liability as of the date the court approves the agreement.

II. Judicial Resolution

a. Commencing a TEDRA Action

An action involving a trust, an estate or nonprobate assets may be brought as a regular civil action under the Washington Superior Court Civil Rules or in a proceeding under TEDRA. A judicial proceeding under TEDRA may be commenced as a new action or as an action incidental to an existing judicial proceeding relating to the same trust, estate or nonprobate asset. RCW 11.96A.090(2). The action may be brought under the existing cause number or a separate cause

number. Filing a petition with the court under TEDRA commences a judicial proceeding. RCW 11.96A.100(1). TEDRA does not permit tolling a statute of limitations simply by serving the petition without also filing the petition.

Once commenced, a TEDRA action may be consolidated with an existing civil proceeding or, upon "good cause shown," converted to a separate action upon the motion of a party for good cause shown, or by the court on its own motion. RCW 11.96A.090(3). TEDRA does not define "good cause shown."

b. Notice Requirements

In order to commence judicial proceedings, mediation or arbitration, all parties (or their virtual or special representatives) must receive notice. In TEDRA proceedings that require notice, notice must be personally served on or mailed to all parties at least 20 days' before the hearing on the petition, unless a different period is provided by statute or ordered by the court. RCW 11.96A.110(1). The date of service is determined under the Superior Court Civil Rules. RCW 11.96A.110(1). CR 5(b)(2)(A) provides that service by mail is deemed complete "upon the third day following the day upon which they [papers] are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday following the third day."

One exception to the notice provision in TEDRA provides that a court may appoint a guardian ad litem at an *ex parte* hearing without notice, or the court may order a hearing with notice. RCW 11.96A.160(3).

Proof of service or mailing is required by affidavit or declaration filed at or before the hearing. RCW 11.96A.110(2).

A person may waive notice of the hearing in writing. RCW 11.96A.140. A person also may waive notice by appearing at the hearing without objecting to the lack of proper notice or personal jurisdiction. RCW 11.96A.140. The waiver may apply either to a specific hearing or to all hearings and proceedings, in which event the waiver is of continuing effect unless subsequently revoked. RCW 11.96A.140. Revocation is made by filing a written notice of revocation of the waiver and mailing a copy to the other parties. RCW 11.96A.140.

If a person interested in an estate or guardianship matter has filed a request for special notice of proceedings under RCW 11.28.240 or RCW 11.92.150, they are entitled to notice of judicial proceedings under RCW 11.96A. RCW 11.28.240(1)(k). Nothing in TEDRA eliminates the requirement to give notice to a person who has requested such special notice. RCW 11.96A.130.

c. Service of Process

In a TEDRA action, a summons must be served in accordance with chapter 11.96A RCW and, where not inconsistent, the procedural rules of court. RCW 11.96A.100(2). The summons must be served on all "parties," not just the individuals against whom relief is sought. RCW 11.96A.100(1); RCW 11.96A.030(4).

Notice in a TEDRA proceeding may be personally served on or mailed to all parties. RCW 11.96A.110(1).

If a TEDRA proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust, estate or nonprobate asset, a summons need only be served on those parties who are not already parties to the existing judicial proceedings. RCW 11.96A.100(2).

d. Answer, Counterclaim and Reply

The answer to a TEDRA petition, and any counterclaims or cross-claims, must be served on the parties and filed with the court at last five days before the date of the hearing. RCW 11.96A.100(5). All replies to the counterclaims and cross-claims must be served on the parties

12/11/2014 16:03 FAX 2066259534

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

In Re the Estate of:
VERNON D. HANNAH,
Deceased.

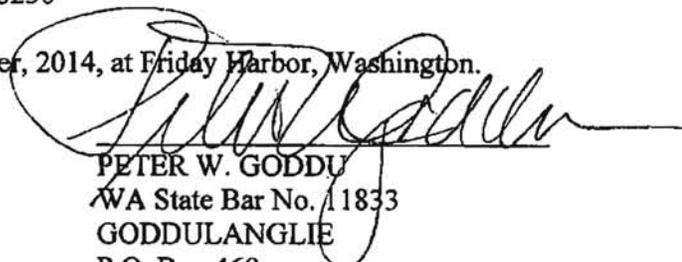
NO. 72307-3
CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the date written below, I personally delivered to Jamie Grifo, one of the attorneys for Petitioner, at the office of Higginson Beyer, 175 Second Street North, Friday Harbor WA, a true and correct copy of Brief of Respondent addressed to:

Carla J. Higginson
Higginson Beyer
175 Second Street North
Friday Harbor, WA 98250

DATED this 11th day of December, 2014, at Friday Harbor, Washington.



PETER W. GODDU
WA State Bar No. 11833
GODDULANGLE
P.O. Box 460
Friday Harbor, WA 98250

FAX COVER SHEET

MPBA

Attorneys/Seattle

Date:	December 9, 2014	Pages (incl. cover):	2
To:	Court of Appeals, Division I	Fax:	(206) 389-2613
From:	Kara Kalenius Novak	Tel:	(206) 682-7090
Re:	Fax Filing - Court of Appeals Case No. 72307-3	Fax:	(206) 625-9534

Please call Brianne Mora at (206) 682-7090 if problems occur with transmission.

For filing in: Court of Appeals Case No. 72307-3

Case Caption: In Re the Estate of Vernon D. Hannah, Deceased.

Document Title: Certificate of Service (1 page)

Filed by:
 Montgomery Purdue Blankinship & Austin PLLC
 701 Fifth Avenue, Suite 5500
 Seattle, WA 98104-7096
 Phone: (206) 682-7090

**SENT ON DECEMBER 9, 2014
 VIA FAX FOR FILING IN COURT OF APPEALS, DIVISION I**

*ORIGINAL LOCATED IN THE OFFICES OF
 MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC*

MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC

The information contained in this message is intended only for the addressee or addressee's authorized agent. The message may contain information that is privileged, confidential, or otherwise exempt from disclosure. If the reader of this message is not the intended recipient or recipient's authorized agent, then you are notified that any dissemination, distribution or copying of this message is prohibited. If you have received this message in error, please notify the sender by telephone and return the original and any copies of the message by mail to sender at the address to the right. Thank you.

5500 COLUMBIA CENTER
 701 FIFTH AVENUE
 SEATTLE, WA 98104-7096
 (206) 682-7090 TEL
 (206) 625-9534 FAX