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No. 73537-3-1

COURT OF APPEALS, DIVISION ONE

STATE OF WASHINGTON

ESTATE OF SADIE M RIVAS

EDWARD NICHOLAS RIVAS

APPELLEANT

VS

LEONARD E RIVAS AND JOSEPH RANDY RIVAS

RESPONDENTS

APPELLANT'S OPENING BRIEF
STATE OF WASHINGTON
2016 JAN 15 PM 3:58



APPELLANT'S OPENING BRIEF

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Jones vs Jones

(unpublished) No. 73951-0 Pg 8,9

Estate of Slough vs Calderbank

(unpublished) No. 98155-9-1 Pg 9

Estate of Servold

(unpublished) No. 58502-9-1 Pg 9

I. INTRODUCTION

This is a probate matter involving the Estate of Sadie M Rivas which began in 2007. Since the beginning a great deal of discrepancies have arisen due to bad faith negotiations, malice, abuse of process, and animus of the behalf of the co-representatives (co-prs) of the Estate. This appeal is relatively straightforward. The underlying issue is that due process and discovery were not allowed to be completed for the TEDRA process. The Court erroneously found that the appellants petitions and requests were frivolous. The Court's findings and conclusions were not supported by the evidence due to the fact that Hon. Monica Benton halted the depositions before they were concluded and before all discovery was made which eliminated crucial evidence.

The appellant therefore appeals the trial court's assessment and requests the TEDRA proceedings be reinstated to allow full discovery and a trial de novo.

All references to Clerk's Papers (CP) refer to the King County Superior Court's Index to Clerk's Papers submitted on

October 8, 2015. The papers are referred to by the Clerk's Sub No. There are also references to the Proceedings Index (PI) that was filed September 4, 2015.

II. ASSIGNMENTS OF ERROR

The trial court erred in the following:

1. The appellant's issues were ruled frivolous without merit in addition to dismissing the animus and malice by the respondents.
2. Denied due process and full discovery was not allowed for a trial as Commission Velategui ordered.
3. The parties should be allowed to follow the logical progression through the TEDRA process.
4. Respondent's were awarded attorney fees for an issue the appellant brought before the court due to the fact the co-PR's were not following the will.

III. STATEMENTS OF THE CASE

The co-prs of nonintervention estate that are also beneficiaries of the estate breached their fiduciary duty to other beneficiaries by possessing decedent's house after her death and using the house in an individual capacity before the estate closed. In addition to waste, mismanagement, comingling of funds and/or attempted fraud CP37 and PI3. They refused to sell real property one of the heirs per instructions of the will CP3 and CP39. Unlike the respondents contention that this is a frivolous case, it has never been deemed as such since they took Commissioner Velategui comments out of context CP102 and PI21, he made this comment regarding an unemployment claim in this case is:

“that is not a cognizable claim under any stretch of anybody's imagination, counsel. And – and – and I would be concerned that a claim that I was so busy attending to litigation that I became unemployed would – would be viewed as a frivolous claim, which would be subject not only to him but a lawyer purporting to argue that“ later in the transcript he also states: “I can see counsel doing her petition for a frivolous claim” along with his

final notes of: "I'm sending this case to trial, I'm not touching it. I cannot straighten out this mess" (see attached transcript notes).

This is the 3rd will drafted by the co-prs of which before my mother signed it includes a derogatory clause (see will) they created to cause determent to my inheritance setting the tone for the entire conflict, it should be noted that the co-prs knew my income and based on that and statements made by their attorney Anderson, they thought I could not afford to persue this matter (see paystub). As in the previous respondents motion to dismiss I outlined the bad faith nature and breach of fiduciary duty of the sale of real property at 3713 s 162nd in Seatac WA.PI 3 However, I will summarize in this brief the breach of fiduciary duty of the inheritance. Prior to my mother signing the will the co-prs had a meeting with all other beneficiaries excluding myself in particular of which I was informed by other beneficiaries I was not supposed to know about it. After the reading of the will the co-prs had continually tried to justify erroneous deductions from my inheritance based on the clause they created. (refer to accounting sheets that are on record). Working under the belief they had nonintervention powers they have a deduction on the sale of real property located at 3709 s

162nd st in Seatac to Robert Baca in the amount of \$10,000 from my inheritance. Robert refusing to acknowledge the validity of this deduction informed the co-prs that no such money was owed CP38. However, in their zeal to take what they could without justification presented a document for him to sign to put on record (see document on record) Essentially wanted Robert to commit perjury to the court for monies not owed. Realizing they were wasting estate funds on the contention of refusing to sell me the house on 3713 and their use of creative accounting to deduct from my inheritance I then brought the matter before the court of which Commmisioner Watness seized the account with estate funds and ordered the court intervening on the entire issues of the estate CP44, CP46 and PI3. In violation of Commmisioner Watness order to have all proceedings go through the court to be approved they went to the Kent Regional Justice Center to sue Robert Baca for the deduction of the erroneous amount they took. As to comingling of funds, please refer to the accounting records that are on file, putting estate money in their accounts, using 3713 for their own personal use (laundry, washing cars, etc) instead of using other reasonable alternatives open to selling real property (see estate of Jones vs Jones, unpublished, no. 73951-0).

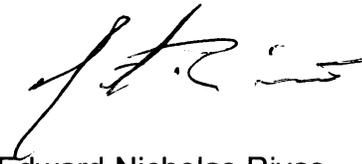
IV. ARGUMENT

In the Estate of Slough vs Calderbank (unpublished) no. 68155-9-1 the parties should follow the logical progression through the TEDRA process by remanding back to the lower court. In Jones vs Jones to further that contention that under TEDRA probate may remove a po or restrict nonintervention powers for waste, embezzlement, mismanagement of funds, fraud, or for any reason the court appears necessary. Also see Estate of Servold No. 58502-9-1 of which upheld the Superior Court jurisdiction over probate nonintervention probates only if the executor or another person with statutory conferred authority invokes jurisdiction. Pursuant to Wash Rev Code 11.68.070 beneficiaries may invoke a courts jurisdiction. When a person with statutory authority invokes jurisdiction the court has plenary power and authority over the probate of the estate. Both by constitution and by statue the superior court, a court of general jurisdiction and as part of that jurisdiction, has cognizance of all matters of probate with power to exercise all of the inherent functions of a court of general jurisdiction in disposing of such matters.

V. CONCLUSION

For the reason stated herein the appellant argues the court to remind back to the lower court for trial de novo, reinstate the deposition process, dismiss all of Judge Monica Benton's decisions based on interlocutory appeal and for a change of venue.

Respectfully submitted this 14th day of January 2016.

A handwritten signature in black ink, appearing to read 'E. Nicholas Rivas', written in a cursive style.

Edward Nicholas Rivas

Pro Se, Appellant

No. 73537-3-1

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing document, Appellant's Opening Brief, postage prepaid on January 14, 2016 to the following:

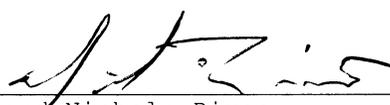
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