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No. 74873-4-I

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

In re the Matter of the Estate of Edward William Coaker

WILLIAM P. COAKER, Bill,

and

ANGELA FEHR, Interested Party,

v.

MICHAEL COAKER,

and

PATRICIA COAKER, Respondents.

BRIEF OF APPELLANT

Dubs A.T. Herschlip, WSBA # 31652
Dubs Ari Tanner Herschlip, PLLC
627-5th St, Ste 203
Mukilteo, WA 98275
425-903-3505
Attorney for Bill, William P. Coaker

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I. INTRODUCTION

William Coaker (“Bill”) is a disabled and illiterate heir and devisee of the Estate of Edward Coaker that has been probated by his brother, Michael Coaker (the “personal representative”), whom failed to give Bill notice of the probate or to appoint a Guardian ad Litem despite Bill’s disability. Though Bill timely filed a will contest and gave the personal representative actual notice of his claims, the trial court failed to address any of Bill’s requests and dismissed Bill’s will contest, request for disability accommodation, request for appointment of a Guardian ad Litem, request for mediation under TEDRA and other claims on summary judgment based on the procedural requirements for commencement of will contests within four months of the purported will being admitted to probate. Bill asks this Court to determine that disability accommodations were warranted to protect his rights of access to courts.

II. ASSIGNMENT OF ERRORS

1. The trial court erred in failing to address Bill’s oral and written request for reasonable accommodations of his mental disability and illiteracy.

2. The trial court erred when it failed to make inquiry as to Bill’s allegations of disability per the American Disabilities Act (“ADA”) and GR

33.

3. The trial court erred when it dismissed and failed to make findings regarding Bill's disability.

4. The trial court erred when it failed to continue the matter for further court inquiry based on Bill's request for reasonable disability accommodation in writing per GR 33.

5. The trial court erred when it failed to exercise discretion amounting to an abuse of discretion.

6. The trial court erred when it failed to appoint a GAL pursuant to RCW 11.88.010(1).

7. The trial court erred when it failed to grant the opportunity to be heard on the issue of the Will Contest filed within the four-month statute of limitations from the date of the second forged will admitted to probate.

8. The trial court erred when it failed to grant the opportunity to be heard on the issue of the Bill's Petition to remove Michael E. Coaker as Personal Representative and to revoke the Letters Testamentary.

9. The trial court erred when it failed to grant the opportunity to be heard on the issue of the Bill's request that the P.R. provide an accounting.

10. The trial court erred when it failed to admit to Probate the intestate Estate of Edward W. Coaker.

11. The trial court erred when it failed to grant the opportunity to be

heard on the issue of the Bill's request to the appointment of a Successor Personal Representative based on fraud and the issuance of new Letters Testamentary.

12. The trial court erred when it failed to compel mediation.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. What are the standards of review for this Court reviewing the trial court's application of court rules regarding disability accommodation of claims wholly dismissed with prejudice on summary judgment? (Assignments of Error 1, 2, 3, 4, and 5.)

B. Do disabled litigants whom have constitutionally protected rights of access to the courts of this state? (Assignments of Error 1, 2, 3, 4, and 5.)

C. Did the trial court abuse its discretion by failing to make an inquiry and findings regarding the disability and the proposed accommodation? (Assignments of Error 1, 2, 3, 4, and 5.)

D. Did the court abuse its discretion by failing to make findings regarding a request under GR 33, and by failing to appoint a GAL for a mentally disabled person with interests in the settlement of an estate or obtaining a waiver of such requirement under RCW 11.76.080? (Assignments of Error 6 and 7.)

E. Did Bill substantially and timely comply with will contest and TEDRA procedures? (Assignments of Error 6, 7, 8, 9, 10, 11, and 12.)

F. Did the personal representative breach its fiduciary duties, such as giving notice of the probate to heirs under RCW 11.28.237(1), and therefore is not entitled to summary judgment under RCW 11.24.010 where RCW 11.96.070 controls claims against personal representatives for breaches of their fiduciary duties? (Assignments of Error 7, 8, 9, 10, 11, and 12.)

IV. STATEMENT OF THE CASE

A. Statement of Facts

1. Bill is mentally disabled.

Bill declared that he is the decedent's first-born son, is mentally disabled, has a limited ability to read and understand written words, and has been found to be mentally disabled by the Social Security Administration based on his inability to perform the daily activities needed for living such as reading, writing, and retaining information. CP 194-195. Bill attended special education classes the entire time he was in school. CP 196-201.

Bill's disability was confirmed by his doctor's diagnosis. CP 195, and school records, CP 194-195.

2. No Notice of Probate.

Bill, first born son and heir to his father's estate, did not receive notice from the personal representative of the probate proceeding personally or by mail as required by RCW 11.28.237. Failure to notify Bill is confirmed by the Declaration of Service. CP 332-333. Defendant states notice was given through the publication of the Notice to Creditors. CP 341. The publication of the Notice to Creditors does not meet the requirement and duty of the PR to notify all the heirs of the estate. Defendants, Michael Coaker and Patricia Coaker, then admitted the second will to probate on February 13, 2015. CP 315-317.

On June 11, 2015, Bill pro se timely filed and served by certified mail, return receipt requested, CP 204-205, to the PR's attorneys a note for calendar action, and petition to contest the wills in the form of a creditor's claim. Bill's petition was within four months of the admittance of the second purported will to probate. CP 300-301. However, Bill did not understand how to contest the will, or what was happening in the trial court, and made five attempts to note his motion to contest the will. CP 274-294. On the fifth occasion, the personal representative's attorney appeared to request sanctions against Bill in the form of attorney fees for having to respond to his requests. CP 268.

Bill first attempted to get his claim before the court on 6/15/15 by serving a note for calendar action, and then repeated his efforts to be heard

by the trial court by attempting to schedule hearings for 6/18/15, 6/25/15, 7/6/15, 7/23/15, and 7/31/15.

Counsel for the personal representative did not request any disability accommodation or Guardian ad Litem for Bill or for waiver of such requirements. CP 188-189.

At the 7/31/15 hearing, the Court threatened Bill pro se with attorney fees if he brought any further motions without following proper procedures. CP 189. Bill told the Court “I’m slow” and that he was receiving Social Security disability for his illiteracy and learning disability. CP 189.

The commissioner did not offer any accommodation for Bill’s disability, or inform him of the court’s procedures for requesting disability accommodation but instead told him to get legal counsel. CP 189. When Bill stated “I don’t have the money to do that,” the court commissioner told him to call the WSBA for help. CP 189. Upon calling the WSBA, Bill was told that he should check with any attorney directly to see if they would help to fulfill their pro bono hours. CP 189. Bill called many law firms for months, but was turned down by every one of them. CP 189.

3. Bill was notified of the probate by his newly discovered sister.

On about March 20, 2015, Bill found out his father had died when his previously unknown, half-sister located Bill at his trailer in Mill

Creek, and told him. CP 491.

B. Statement of Procedure

1. Bill's Substantial Compliance considering disability.

Bill filed a timely notice of will contest on June 11, 2015, (CP 300-301,) following the submission of the second will to probate which was entered on February 13, 2015. CP 315-317.

2. Bill orally notified the court of the need for accommodations.

Bill stated to the court, "I'm slow" and "I don't have money" for an attorney. CP 189.

3. Bill secured legal counsel then filed and served a Summons and Complaint for a will contest.

Bill was instructed by the court on July 31, 2015 to secure legal counsel.

Bill contacted his current legal counsel who appeared on his behalf in October, 2015. CP 265-266.

Bill's Counsel timely filed a summons and petition on November 30, 2015 and served the PR on December 2, 2015 with Bill's will contest, TEDRA petition, and associated claims. CP (2) 532-543. Thereafter the citations following statutory will contest procedures were issued, and served twice by 12/29/15, attempted service, CP 472, and actual service, CP 413.

All claims under both cause numbers—the probate and the will contest, TEDRA petition and petition for GAL, were consolidated. CP 158-159.

4. Bill submitted a written request, a petition, for a GAL and noted his disability to the court.

Bill petitioned for a court appointed Guardian ad Litem on February 2, 2015, (CP 163-164), but his petition was not heard. Bill informed the court of his disability on numerous occasions. CP 212-216; 188-203; 534.

5. Bill's issues were dismissed without being heard on the court's Summary Judgment.

The Personal Representative moved for summary judgment to dismiss all of Bill's claims based on lack of personal jurisdiction. CP 387-412. The trial court failed to make any findings, dismissing all claims on summary judgment. CP 39-42.

Bill requested that a GAL be appointed, and that the trial court accommodate his disability by tolling the four-month statute of limitations. CP 163-164; 45-46. The Court did not address Bill's requests but instead issued a summary judgment. CP 39-42.

V. ARGUMENT

A. STANDARD OF REVIEW

Bill seeks review of: (1) The trial court's failure to exercise its discretion regarding his request for disability accommodation violating his rights of access to the courts of this state under the Washington and United States Constitutions, the American with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq) (“ADA”), the Washington State Law Against Discrimination (RCW 49.60 et seq) (“WLAD”); (2) The trial court’s application of General Rule 33 (“GR 33”); And, (3) the dismissal of all his claims on summary judgment in favor of the personal representative whom had not issued statutory notice required under RCW 11.24.237(1).

1. Standard of Review for Right of Access to Courts

Right of access to courts is a fundamental right. *See Tennessee v. Lane*, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004); *Bullock v. Superior Court for King County*, 84 Wn.2d 101, 524 P.2d 385 (1974) and *see General Rule 33 (“GR 33”), comment 1*. It is within the inherent power of a court exercising common-law jurisdiction, which the superior court does, to make such orders as are necessary to protect rights to access to the judicial system. *Bullock*, 84 Wn.2d at 105, 524 P.2d at 387-388 (*citing O'Connor v. Matzdorff*, 76 Wn.2d 589, 600, 458 P.2d 154 (1969)).

Through its power under section 5 of the Fourteenth Amendment to the United States Constitution, Congress enacted Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 to guarantee,

among other things, equal access to, and the services of, the state court system by reason of their disabilities. *Lane*, 541 U.S. at 532-3, 124 S. Ct. 1978, 158 L. Ed. 2d 820. The right of access to the courts under the Fourteenth Amendment's due process clause calls for a standard of judicial review at least as searching, and in some cases more searching, than the standard that applied to sex-based classifications, which are subject to a heightened standard of judicial scrutiny. *Lane*, 541 U.S. at 521, 124 S. Ct. at 1992, 158 L. Ed. 2d at 841.

Constitutional challenges are questions of law that this Court reviews de novo. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wn.2d 48, 66, 331 P.3d 1147 (2014)

2. Standard of Review for Interpretation of Court Rules

GR 33 governs requests for disability accommodation in this state's courts. Courts are directed to make reasonable modifications in procedures for unrepresented parties to proceedings as appropriate to make the courts accessible to and usable by a person with a disability in accordance with the ADA and the WLAD. *GR 33(a) and (b)*.

The application of court rules to a particular set of facts is a question of law which this Court reviews de novo. *Buckner, Inc. v. Berkey Irrigation Supply*, 89 Wn. App. 906, 911, 951 P.2d 338, *review denied*, 136 Wn. 2d 1020, 969 P.2d 1063 (1998).

3. Standard of Review for Findings of Fact

RAP 9.12 provides that on review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. *Green v. Cmty. Club*, 137 Wn. App. 665, 678, 151 P.3d 1038, 1044 (Div. 1, 2007). All of the facts relevant to Bill's claims and his disability were brought to the attention of the trial court prior to entering its ruling on summary judgment. CP 40.

An appellate court reviews a trial court's decision following a bench trial by determining whether substantial evidence supports the trial court's findings of fact and whether those findings support the trial court's conclusions of law sufficient to persuade a rational, fair-minded person that a premise is true. *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 261, 337 P.3d 328, 331 (Div. 2, 2014).

An appellate court's role in reviewing a trial court's findings of fact is to determine whether the findings are supported by the record, not whether the trial court could have made other findings suggested by the party challenging the trial court's findings. *Deep Water Brewing, LLC v.*

Fairway Res. Ltd., 152 Wn. App. 229, 238, 215 P.3d 990, 996, (Div. 3, 2009).

Here, GR 33(d) and (e) as well as the ADA, WLAD, and RCW 11.76.080, all require findings of fact to support a grant or denial of disability accommodation or appointment of a GAL, but the trial court made no such findings as directed by this state's constitution, statutes, court rules and case law. CP 40.

An abuse of discretion occurs when the court's decision is manifestly unreasonable or is based on untenable grounds or untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

4. Standard of Review for Summary Judgment

Bill seeks review of the trial court's erroneous dismissal on summary judgment of his claims including a will contest, various claims of waste under RCW 11.24, his request for appointment of a GAL under RCW 11.76.080, and his request for mediation under TEDRA on the basis that such claims were time-barred by RCW 11.24.010. CP 206-207.

This court reviews rulings on pure questions of law "de novo." *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 172 322 P.3d 1219 (2014). Questions of law subject to de novo review include rulings on motions for summary judgment under CR 56. *Frizzell v. Murray*, 179 Wn.2d 301, 306, 313 P.3d 1171 (2013).

The “de novo” standard of review permits the appellate court to substitute its judgment for that of the decision maker whose decision is being reviewed. *Skamania County v. Columbia River Gorge Comm’n*, 144 Wn. 2d 30, 42, 26 P.3d 241 (2001).

Thus, this Court engages in the same inquiry as the trial court. *Wilson Court Ltd. P’ship v. Tony Maroni’s, Inc.*, 134 Wn.2d 692, 698, 952 P.2d 590 (1998).

Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. *CR 56(c); Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991).

All reasonable inferences from the evidence must be construed in favor of the nonmoving party. *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 349, 588 P.2d 1346 (1979).

B. RIGHT OF ACCESS

1. Constitutions Guarantee the Disabled Access to Courts.

Litigants have rights of access to courts that are a function of due process, amounting to the right of litigants to have a meaningful opportunity to be heard in judicial proceedings, *Boddie v. Connecticut*, 401 U.S. 371,

379, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971). Due process is protected by the Fourteenth Amendment to the U.S. Constitution and by the Washington State Constitution Article I, Sections 3, 10 and 12. Those rights of access are violated by less than meaningful access to the courts. *See Lane*, 541 U.S. 509, 124 S. Ct. 1978, 158 L. Ed. 2d 820; and *see Bullock*, 84 Wn.2d 101, 524 P.2d 385.

In *Lane*, the United States Supreme Court held that Congress had the power under section 5 of the Fourteenth Amendment to the United States Constitution to enact Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165. *Lane*, 541 U.S. at 513-514. In *Lane*, paraplegic litigants were denied physical access to, and the services of, the state court system by reason of their disabilities. *Lane*, 541 U.S. at 513, 124 S. Ct. at 1982, 158 L. Ed. 2d at 830.

Here, Bill is mentally disabled, rendering him illiterate, which disabilities denied him access to the courts. CP 268. A reader, or appointment of a GAL, or reference to a volunteer legal service organization during the four months from February 13, 2015, and June 12, 2015, may have enabled Bill to access the courts. *See GR 33*. Without such accommodations timely offered to Bill the only remaining reasonable accommodation would be the tolling of the statute of limitations for Bill to perfect his will contest filed on June 11, 2015. CP 300-301.

If *Lane* should be applied in this case, then *Lane* should be read in the light that Bill's circumstances reflect the incongruity between a fundamental right of access to the courts and a court system reliant upon fixed addresses, written communications, money, and mental acuity to someone suffering the homelessness, the illiteracy, the poverty, and the mental disabilities that Bill suffers.

6. Washington Uniquely Protects Access to Justice.

Access to justice is offered greater protections by the Washington State Constitution. *Wash. Const., Article I, Sections 3, 10 and 12.*

Under the Washington Constitution, Bill has been deprived of property he would have inherited without due process of law. *Wash. Const., Article I, Section 3.* Here, Bill's property interest is his inheritance from his father with whom Bill lived most of his life with his father's support. CP 534. This will contest alleges fraud on Bill by the personal representative, depriving Bill of his inheritance. CP 300-301.

The open courts clause of Article I, Section 10, protects a "right to a remedy for a wrong suffered." Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 24 (2002); *see, e.g., State v. Easterling*, 157 Wn.2d 167, 137 P.3d 825 (2006) (the right to open and accessible court proceedings). Article I, section 10 is more protective of access to justice than the federal constitution, as evidenced by the

analysis and results of the Washington cases establishing greater access to justice for the impoverished to access civil litigation.

In *Bullock*, Washington Courts protected rights of access for indigent plaintiffs in a divorce action resulting in a waiver of the clerk's fee for filing and in the sheriff to making service of process without fee. *Id.*, 84 Wn.2d 101, 524 P.2d 385. Bill is no less deserving of access to probate courts.

The special privileges and immunities clause of the Washington State Constitution was violated by the personal representative—a court-appointed officer, whom failed to give notice of the probate to Bill as devisee and heir under RCW 11.24.237(1) while defending on the grounds of insufficient notice. *Wash. Const., Article I, Section 12*. Bill has been treated unequal to the personal representative in the application of notice standards under the probate statutes.

Bullock and *Lane* stand for the authority that this Court may reverse trial court orders that violate rights to access the courts under the ADA, GR 33, and the Washington Constitution. The *Bullock* analysis to affirms that the disabled have fundamental rights to access the courts in a probate action.

C. The Trial Court Abused Its Discretion by Failing to Make Inquiry and Findings Regarding the Disability and Proposed Accommodation.

The ADA prohibits public entities from discriminating against qualified individuals with disabilities in public accommodations. *Lane*,

541 U.S. 509, 517, 124 S. Ct. 1978, 158 L. Ed. 2d 820. A public entity must provide a reasonable accommodation where necessary to provide meaningful access to individuals with disabilities, including “an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.” 28 C.F.R. § 35.160(b)(1) (2009); see *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999).

A person alleging a Title II violation must show that (1) he is a qualified individual with a disability; (2) he was excluded from participation in or denied the benefit of a public entity's services, programs, or activities, or the public entity otherwise discriminated against him; and (3) the exclusion, denial, or discrimination was by reason of his disability. *Duvall v. Kitsap County*, 260 F.3d 1124, 1135 (9th Cir. 2001).

Here, Bill provided proof of his mental disability. CP 194-201. Bill was excluded from participation in his father's probate by the failure of the PR to give him notice or to appoint a GAL for him, and by the commissioner refusing to hear his will contest claim, and by the trial court that dismissed his case. CP 39-42.

When a public entity receives a request for an accommodation—or when “the need for accommodation is obvious, or required by statute or regulation”—it must conduct a fact-specific investigation to determine the appropriate accommodation under the

circumstances. *Duvall*, 260 F.3d at 1139. No such inquiry was made by the trial court in its order on summary judgment. CP 39-42.

Similarly, the WLAD requires all places of public accommodation to provide people with disabilities an equal opportunity compared to people without disabilities. *Fell*, 128 Wn.2d at 631, 635. A plaintiff alleging disability discrimination must show that (1) he has a recognized disability, (2) the defendant operates a place of public accommodation, (3) the defendant discriminated against the plaintiff by providing treatment that was not comparable to the level of services enjoyed by persons without disabilities, and (4) the disability was a substantial factor causing the discrimination. *Fell*, 128 Wn.2d at 637. Bill has shown he has a disability; the courts are public; he was not given service comparable to his brother; and his mental disabilities cause him the discrimination.

The trial court's findings leave at least four material factual disputes unresolved. First, the superior court did not determine whether Bill is a person with a "disability" as the statutes define that term. *See* 42 U.S.C. § 12102(1); RCW 49.60.040(7). Second, the superior court did not determine whether Bill requested an accommodation for his disability or whether Bill's need for accommodation was "obvious" to the court. *See Duvall*, 260 F.3d at 1139. Third, the superior court did not decide whether

it failed to provide Bill with a level of service comparable to that enjoyed by non-disabled claimants or deliberately failed to accommodate Bill's disability so as to discriminate against him. *Duvall*, 260 F.3d at 1138-39; *Fell*, 128 Wn.2d at 639-40. Fourth, the superior court did not determine whether the tolling of RCW 11.24.010 would unduly burden the court or prejudice the personal representative. *See Randolph*, 170 F.3d at 858; *Fell*, 128 Wn.2d at 642.

The requested accommodation of tolling the four-month time-bar in RCW 11.24.010 is reasonable in light of the legislative history of RCW 11.24.010 and other generally applicable exceptions to statutes of limitations for mentally disabled litigants, and should have been considered when presented to the trial court.

Where Bill's requested accommodation was an exception to procedures including service of the will contest, the Washington Supreme Court stated that the method of service of the summons and complaint is to be decided by the superior court. *Ashley v. Superior Court*, 82 Wn.2d 188, 509 P.2d 751 (1973); *aff'd on rehearing*, 83 Wn.2d 630, 637, 521 P.2d 711 (1974). In *Ashley*, the Court expressed the discretion of the trial court:

[W]e think it is within the power and the discretion of this court and of the Superior Court to waive the particular provisions of a rule providing the method by which notice

is to be given upon the condition that another method, more reasonably calculated to effectively give notice, is utilized. Ashley, 83 Wn.2d at 637.

Here, the accommodation Bill proposed was tolling the statute of limitations on will contests until he could obtain legal counsel. CP ?? The trial court could have followed GR 33, which would have been an insignificant effort, compared to the linguistic leap that the court imposed on Bill, that is to learn to read—his learning disabilities resulted in illiteracy that acts as a barrier to access. GR 33.

Under these circumstances, Bill could not meaningfully access the courts without timely accommodations for his disability or tolling of RCW 11.24.010 and asks this Court to apply the Washington Constitution, article I, section 10 to provide Bill the same right of all other litigants under all other Washington statutes of limitations: the right of a disabled litigant to the tolling of the statute of limitations for incompetent individuals until their disability is cured by appointment or retention of counsel. Bill offered proof of his disability in the form of medical records, school records and Social Security records showing Bill suffers from mental disabilities including illiteracy. CP 188-203, 491.

Under the general law of statutes of limitations, disabled persons are protected by tolling the statute of limitations. *See RCW 4.16.190*. RCW 4.16.190 provides that if a person entitled to bring an

action is at the time the cause of action accrued incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, then “the time of such disability shall not be a part of the time limited for the commencement of action.” *RCW 4.16.190*. In the legislative history of that statute, the Legislature intended to allow for “necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability.” [1977 ex.s. c 80 § 1.] The tolling of the statute of limitations for the disabled is expressly provided for under other causes of action. *See Adverse possession, personal disability, limitation tolled: RCW 7.28.090*. Similarly, the claims bar was tolled for the disabled under prior versions of *RCW 11.24.010*, the will contest statute.

Sec. 1307 provided that:

If any person interested in any will shall appear within one year after the probate or rejection thereof, and, by petition to the superior court having jurisdiction, contests the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representation, or for any other cause affecting the validity of such will.
??

Section 1309 provided that:

If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed.
???

This Court has tolled the statute of limitations in RCW 11.24.010 as to non-disabled heirs who were not given notice of a probate. *See Hesthagen v. Harby*, 78 Wn.2d 934, 481 P.2d 438 (1971); *In re Estate of Walker*, 10 Wash.App. 925, 521 P.2d 43 (1974); and see *In re Estate of Little*, 127 Wn.App. 915, 113 P.3d 505 (Div. 1, 2005).

The Court has to grant an heirs' petition to reopen the decedent's estate where the executor failed to establish that he made a diligent effort to locate the heirs as required by RCW § 11.28.237 when the estate was initially opened. *In re Estate of Little*, 127 Wn. App. 915. The facts of the case of *In re Estate of Little* are similar to the facts in this case: When the executor went to probate the will, he did not give notice of the probate to the surviving heirs. *Ibid*. The heirs did not learn of the decedent's death until years later. *Id*. Under RCW § 11.28.237(1), the executor had an obligation to use diligence in attempting to locate the heirs. *In re Estate of Little*, 127 Wn. App. 915. The appellate court affirmed the motion to reopen the estate as evidence showing how the executor could have located the nieces and nephews was not a prerequisite

shall specify the reasons for the denial.

In probate proceedings, if an allegedly incapacitated individual is interested in an estate, the court must appoint a Guardian ad Litem, or may grant a motion by the personal representative to waive the appointment of a GAL for the allegedly incapacitated individual. *See RCW 11.76.080*. No such findings, nor motion for waiver of such requirement, were made. The failure to exercise discretion is an abuse of discretion. *State v. Pettitt*, 93 Wn. 2d 288, 296, 609 P.2d 1364 (1980). Here, the trial court did not make the required findings of fact, and therefore failed to exercise its discretion. CP 39-42.

The trial court erred when it failed to exercise discretion amounting to an abuse of discretion. *Bocutt v Delta N. Star Corp.* 95 Wn.App. 311, 321, 976 P.2d 643, 648 (Div. 3, 1999).

E. Bill substantially complied with will contest and TEDRA procedures.

If this Court determines that accommodation for Bill's disabilities and findings thereon are not warranted, then Bill still met the requirements to commence a will contest and TEDRA action under RCW 11.24.010 and RCW 11.96A.070 when Bill timely filed a will contest on June 11, 2015, and served by certified mail his will contest on the PR by mailing via certified mail to PR's Counsel, Roger Hawkes and Bruce

Moen on several occasions. CP 203-204. These facts warrant a different ruling as a matter of law on summary judgment.

Washington cases have held that the time period imposed by RCW 11.24.010 begins to run on the date the will is admitted to probate. *In re Estate of Barr*, 76 Wash.2d 59, 60-61, 455 P.2d 585 (1969); *In re Estate of Young*, 23 Wash.App. 761, 763, 598 P.2d 7 (1979).

The personal representative waived defenses he might have had for lack of personal jurisdiction in his initial objections to Bill's claims for a will contest, for accounting, waste and removal of the personal representative. CP 270-271. Further, the personal representative rejected Bill's claim of June 11, 2015 on November 18, 2015. CP 261-262.

Bill has substantiated his claim that the will(s) was forged based on opinion of an established questioned-document expert herein. CP 503-510. This probate risks proceeding on fraud of the grossest kind by forgery of the decedent's signature to documents purporting to be Edward Coaker's last wills and testaments. CP 349-351; 315-317. By alleging fraud by the personal representative, Bill is alleging breach of fiduciary duties under the probate statutes.

The personal representative was emboldened to perpetrate a fraud on the Court because he knew of his brother's disability and his knowledge that his brother would have limited ability to comprehend the

legal process and limited financial resources to object to the probate. CP 194-201. The personal representative had actual notice of Bill's will contest claims when he called Bill and stated that "You cannot fight me. I have more money than you." CP 216.

Bill also articulated concerns about waste where the personal representative and the primary beneficiaries, Mike and Patricia Coaker, have an interest in securing control over Estate assets that conflicts with the best interests of the heirs and creditors of the Estate. CP 490-491. The PR is personally responsible for an outstanding L&I tax debt through his business entities of \$656,605.11. CP 216. Similarly, the primary beneficiary and ex-wife of decedent has an outstanding L&I tax debt of \$509,796.92 as successor in interest to the personal representative's construction business. CP 217

Despite the fact that Bill was a named beneficiary in both purported wills, the personal representative failed to issue notice of his appointment as a personal representative to Bill as a legatee and devisee named in the will as mandated by RCW 11.28.237(1). CP 332-333. Given the failure of the PR to provide notice, BILL should be able to move to vacate the order of final distribution, and to assert his contest to the will given the PR's failure to notify him as an heir of probate. *See In re the Estate of Little.*

The personal representative's failure to notify heirs of the probate, failure to provide an accounting, alleged waste of estate assets, and failure to appoint a GAL or obtain a waiver, were all breaches of the personal representative's duties articulated by Bill in his petition, motions and declarations to the trial court. CP 188-203, 491, 534.

F. The personal representative breached his fiduciary duties such as giving notice of the probate to heirs under RCW 11.28.237(1), and therefore was not entitled to summary judgment based on the statute of limitations under RCW 11.24.010 where RCW 11.96A.070 controls.

In re Estate of Little, 127 Wn.App. at 924, holds that the PR has fiduciary duties to identify and notify heirs, and bears the burden of proof in showing the Court that it has done so. Specifically, the Court wrote:

Allocating the burden of proof to the executor is more consistent with the executor's role as an "officer of the court and a fiduciary for the heirs." (*citing Hesthagen*, 78 Wn.2d 934 at 941, 481 P.2d 438 (1971).) Because the executor has the fiduciary duty to identify and notify those who are statutorily entitled to receive notice, it logically follows that in the event of a later challenge based on lack of notice, the executor will have the burden of showing that he used reasonable diligence to discharge his duty. Otherwise, and especially where the executor of an estate has a beneficial interest in it, the sense of fiduciary duty might easily give way to a temptation to conduct a superficial search or none at all.
In re Estate of Little, 127 Wn.App. at 924. [Emphasis added.]

Here, the personal representative has only submitted the

declaration of a paralegal for his former attorney, Roger Hawkes, who only ran a simple Internet search and declared she could find nothing for Bill who had lived in Snohomish County all his life. CP 332-333. The PR failed to give Bill actual notice of the probate, but claimed that his publication of the notice of probate to creditor's publication was the notice to Bill. CP 341.

The personal representative submitted to probate a forged will on February 13, 2015. CP 315-317 As PR, Mike failed to timely issue notice within 20 days of his appointment as the PR to Bill who was entitled to such notice pursuant to RCW 11.28.237(1) as a legatee and devisee named in the will.

Mike failed to provide proof of due diligence to locate Bill by examining the decedent's personal effects and correspondence, not to mention his own knowledge of Bill's telephone number and whereabouts. The only proof provided was a declaration by a paralegal for the Hawkes firm alleging that she searched on the Internet and could find no record of Bill's whereabouts.

However, the PR had knowledge of Bill's whereabouts. Since moving out from his father's house and prior to the second will being admitted to probate, Bill lived in Mill Creek, Washington, at his girlfriend's house and at a construction site approximately one mile away.

CP 491. Bill was not difficult to locate as he was receiving mail, including Social Security disability checks at his address. Further, in about April or May, 2015, the PR called Bill on his cell phone to threaten him not to make a claim in the probate. CP 191.

This Court reviews the trial court's determination as to whether the personal representative established a prima facie affirmative defense of the statute of limitations based upon findings of fact showing the personal representative was entitled to judgment as a matter of law. *CR 56(c)*. However, the personal representative offers no evidence of notice of the probate to Bill, and relies entirely upon the actual notice given to Bill by his sister to foreclose Bill's ability to contest this forgery that has deprived him of his inheritance.

Further, RCW 11.96A.070 provides a three year statute of limitation from the date a fiduciary, such as a personal representative, adequately disclosed the existence of a potential claim for breach of its fiduciary duties to the beneficiary, expanding the time allowed for commencing a proceeding beyond the four-month statute of limitations in RCW 11.24.010. There is an additional limitation that any such action against a personal representative for alleged breach of fiduciary duty by an heir must be brought before discharge of the personal representative. *See RCW 11.96A.070*. Bill brought his action prior to the discharge of the

personal representative here.

RCW 11.96A.070(4) also infers the same policy of tolling statutes of limitations as to disabled litigants who do not have a GAL, guardian, or a special representative to represent the person during the probate proceeding.

VI. CONCLUSION

Clearly, the ADA, the WLAD and GR 33 apply to the facts presented in Bill's case. Clearly, Bill was entitled to notice of the probate from the personal representative, but did not receive such notice, and still managed to timely file a will contest pro se. However, the trial court's findings of facts are absent in regard to how these laws apply to these facts.

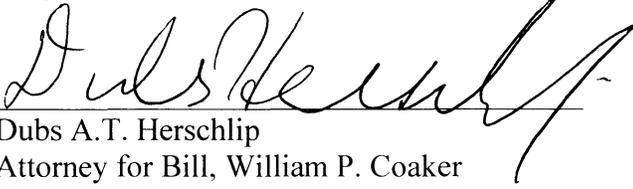
Bill presented evidence of his disability to the trial court. The trial court ignored his repeated attempts to obtain some sort of accommodation. When he finally found an attorney, Bill's counsel moved the court to accommodate his disability. The court declined without making any factual findings whatsoever as to his disability or lack thereof. This was an abuse of discretion far in excess of the the de novo and heightened constitutional scrutiny standards of review applicable here.

Bill respectfully request that this Court remand the case to the

trial court for further proceedings to determine the following facts: (1) Bill is a person with a “disability” as the statutes defined under *42 U.S.C. § 12102(1) and RCW 49.60.040(7)*; (2) Bill requested an accommodation for his disability or Bill's need for accommodation was “obvious” to the court; (3) The trial court failed to provide Bill with a level of service comparable to that enjoyed by non-disabled claimants; And, (4) that the tolling of RCW 11.24.010 would not unduly burden the court or prejudice the personal representative. Or, if the appellate court determines that there are sufficient facts to show that those four facts, then Bill requests that this Court remand the case for further proceedings regarding the estate, where the requested accommodation is granted in the form of tolling the four-month statute of limitations in RCW 11.24.010 until Bill was able to obtain legal counsel and that his efforts at filing and serving his will contest claim substantially complied with the requirements of commencing his action against the personal representative.

On this 23rd day of May, 2016,

Respectfully submitted,


Dubs A.T. Herschlip
Attorney for Bill, William P. Coaker
WSBA No. 31652