

NO. 36000-4

COURT OF APPEALS - DIVISION II  
STATE OF WASHINGTON

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IN RE THE ESTATE OF ROBERT F. PLATTE

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REPLY OF APPELLANT

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VANDER STOEP, REMUND, BLINKS & JONES  
Rene J. Remund, WSBA #2928  
Of Attorneys for Appellant  
345 N.W. Pacific Avenue  
PO Box 867  
Chehalis, WA 98532  
Tel: (360) 748-9281

SMITH KOSANKE & WRIGHT, P.L.L.C.  
Gregory L. Kosanke, WSBA #8936  
Of Attorneys for Appellant  
105 Fifth St., #201  
PO Box 632  
Lynden, WA 98264  
Tel: (360) 354-4482

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## I. REPLY ARGUMENT

Respondent argues that Robert intended that non-probate assets be included in his general estate for payment of creditor claims. Even assuming that argument is correct, it is nevertheless an incorrect analysis of Washington law on Abatement. Appellant replies as follows:

### **A. ABATEMENT OF A NON-PROBATE ASSET (A PAYABLE ON DEATH ACCOUNT) DOES NOT OCCUR UNTIL ALL RESIDUARY GIFTS HAVE BEEN EXHAUSTED.**

The following statements of fact and conclusion of law are undisputed on appeal:

- Robert directed that his just debts be paid out of his general estate.
- The Respondent ("Kit"<sup>1</sup>) is a residuary beneficiary of Robert's last will and testament.
- Robert's last will and testament provided for three specific bequests totaling \$150,000.00.
- Appellant ("Catherine") has a valid creditor claim against Robert's estate for \$93,462.00.
- Catherine received non-probate assets (POD accounts) having a value in excess of her creditor claim.

Considering the above verities, the outcome on Appeal is controlled by Washington's statutory scheme for abatement of

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<sup>1</sup> In the appeal brief filed by Appellant, the surviving spouse was referred to as Kathleen Platte. Counsel for Kathleen Platte refers to her as "Kit" in his response brief. Accordingly, this writer shall refer to Kathleen Platte as "Kit".

assets in probate proceedings. Washington law is clear: residual gifts must be exhausted before non-probate assets are applied for the payment of creditor claims. Kit, a residual legatee, objects because the application of Washington's law of abatement subjects her inheritance to the payment of Catherine's creditor claim.

RCW 11.10.010 states in pertinent part as follows:

(1) Except as provided in subsection (2) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

- (a) Intestate property;
- (b) Residuary gifts;
- (c) General gifts;
- (d) Specific gifts.

Respondent correctly argues that Robert was presumed to have known the law at the time he executed his will. In re Estate of Patton, 6 Wash.App 464, 471, 494 P.2d 238 (1972). As such, it is presumed that Robert knew at the time that he executed his will that the assets in his estate would abate pursuant to RCW 11.10.010. Therefore, Robert was aware the lawful debt to his mother would be paid first from his estate, and not from non-probate assets. Kit, a residual legatee, seeks to ignore the expressed intent of Robert.

**B. EVEN ASSUMING THAT THERE ARE INSUFFICIENT RESIDUARY ASSETS WITHIN THE ESTATE, A PAYABLE ON DEATH ACCOUNT IS TO BE CONSIDERED A SPECIFIC BEQUEST FOR PURPOSES OF ABATEMENT.**

The trial court did not entertain any evidence on whether the estate had sufficient assets to pay Robert's debt to his mother. Rather, the trial court disregarded all probate assets and incorrectly ruled that Catherine's claim was paid when she received the POD accounts. Even assuming, for purposes of argument, that there are insufficient assets in the residual estate (a matter for the trial court to determine if a factual question exists), then the specific bequests would abate pro rata.<sup>2</sup> RCW 11.10.010 (5) states "If required under RCW 11.10.040, non-probate assets must abate with those disposed of under the will and passing by intestacy."

RCW 11.10.040 provides in pertinent part as follows:

11.10.040. Non-probate assets

(1) If abatement is necessary among takers of a nonprobate asset, the court shall adopt the abatement order and limitations set out in RCW 11.10.010, 11.10.020, and 11.10.030, assigning categories in accordance with subsection (2) of this section.

(2) A nonprobate transfer must be categorized for purposes of abatement, within the list of priorities set out in RCW 11.10.010(1), as follows:

(a) All nonprobate forms of transfer under which an identifiable nonprobate asset passes to a beneficiary or beneficiaries on the event of the decedent's death, such as, but not limited to, joint

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<sup>2</sup> There are neither intestate assets nor general gifts in Robert's estate.

tenancies and **payable-on-death accounts, are categorized as specific bequests.**

(b) With respect to all other interests passing under nonprobate forms of transfer, each must be categorized in the manner that is most closely comparable to the nature of the transfer of that interest.

(3) If and to the extent that a nonprobate asset is subject to the same obligations as are assets disposed of under the decedent's will, the nonprobate assets **abate ratably with the probate assets, within the categories set out in subsection (2) of this section...**

The proper approach for the trial court, and ignored by Respondent in their analysis, would have been for the court to rule that all non-probate assets are exempt from abatement until such time that abatement of non-probate assets is necessary. If necessary to consider non-probate assets, then Catherine's POD accounts should have been categorized as a specific bequest and abate prorata with the other three specific bequests made by Robert. No such finding has occurred. In fact, the estate has sufficient probate assets within the general residual estate to pay Catherine's lawful creditor claim.

**C. PAYMENT OF A LAWFUL DEBT DOES NOT CONSTITUTE UNJUST ENRICHMENT.**

The Respondent makes a single sentence allegation that Catherine would be unjustly enriched should the estate pay her lawful claim. (Respondent's brief, page 12). This assertion is without citation to legal authority and is contrary to established Washington law. A testator is presumed to know the law. Patton, *supra*. As such, Robert intended that the estate pay his lawful debt to his mother.

**D. PREJUDGMENT INTEREST SHOULD BE AWARDED IF THIS MATTER IS REVERSED.**

Plaintiff argued in its opening brief that Catherine's claim is liquidated. (Brief of Appellant, page 14). This is not contested by Respondent. Accordingly, should this court reverse the trial court, this court should order that the creditor claim of Catherine is a liquidated debt which shall bear interest at 12% per annum from and after November 2, 2005.

**II. CONCLUSION**

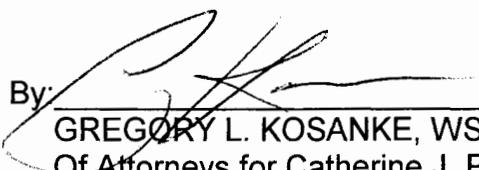
The trial court committed error when it ruled that Catherine's payable on death accounts satisfied a lawful creditor claim prior to the exhaustion of the residual estate. The decision of the trial court should be reversed. The creditor claim of Catherine should be satisfied from the residual estate of Robert Platte. Only in the event that the residual estate is insufficient to pay the claim would the non probated assets be used to discharge the obligation (and then only prorata within the class of specific bequests). This matter should be remanded for entry of judgment against the estate for \$93,462 with interest at 12% per annum from and after November 2, 2005.

Finally, Catherine should be awarded her costs and reasonable attorney fees incurred in this matter.

Dated this 21 day of June, 2007.

Respectfully Submitted:

SMITH KOSANKE & WRIGHT, P.L.L.C.

By:   
GREGORY L. KOSANKE, WSBA #8936  
Of Attorneys for Catherine J. Platte

VANDER STOEP, REMUND, BLINKS & JONES

By:   
RENE J. REMUND, WSBA #2928  
Of Attorneys for Catherine J. Platte

DECLARATION 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 June 25<sup>th</sup>, 2007, I arranged for service of the foregoing Reply of Appellant, by U.S. Mail, postage prepaid, to the parties listed below:

James Lawler, Attorney at Law  
Olsen, Althausen, Lawler & Samuelson  
PO Box 210  
Centralia, WA 98531

John O. Linde, Attorney at Law  
PO Box 668  
Friday Harbor, WA 98250

DATED at Chehalis, Washington this 25<sup>th</sup> day of June, 2007.

