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No. 39938-5-II

STATE OF WASHINGTON

Pierce County Cause No. 08-4-01752-7


DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

In re the Matter of:

LAURA KAY CONWAY, a married person,

Respondent,

v.

THE ESTATE OF SHIRLEY A. HALLMEYER, deceased,

Appellant.

BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION

Shirley A. Hallmeyer passed away on November 10, 2008. On November 20, 2008, Ms. Hallmeyer's Will was admitted to Probate in Pierce County Superior Court and her granddaughter, Melissa Anne Dowd, was appointed Personal Representative of the Estate.

On March 19, 2009 – the last day of the four-month limitation period imposed by RCW 11.24.010 for filing a Will Contest – Respondent Laura Conway filed a Petition to contest Shirley Hallmeyer's Will. Ninety-six days later, the process server hired by Ms. Conway served Melissa Anne Dowd with a Summons and a copy of the Will Contest.

Shortly thereafter, Ms. Dowd filed a motion to dismiss the Will Contest, arguing that the trial court did not have jurisdiction to hear the Will Contest because Ms. Dowd had not been personally served with a copy of the Will Contest within ninety days of its filing, as required by RCW 11.24.010. The trial court denied Ms. Dowd's motion. Ms. Dowd then brought a Motion for Reconsideration, but the trial court denied that motion as well. Consequently, Ms. Dowd filed a Motion for Discretionary Review with this Court, asserting under RAP 2.3(a)(1) that the trial court committed obvious error that rendered further proceedings useless when it failed to dismiss the Will Contest. The Court Commissioner agreed, and entered a Ruling Granting Review.

Ms. Dowd asks this Court to confirm that the trial court erred when it failed to dismiss the Will Contest, and to remand this case with instructions to dismiss the Will Contest with prejudice.

II. ASSIGNMENT OF ERROR

The trial court erred when it denied the Personal Representative's Motion to Dismiss the Will Contest where the Personal Representative was not personally served with a copy of the Will Contest within ninety days after the date the Will Contest was filed, as required by RCW 11.24.010.

III. ISSUES PRESENTED FOR REVIEW

1. Did the trial court have jurisdiction to adjudicate a Will Contest when the Personal Representative was not personally served with a copy of the Petition for Will Contest within ninety days after the date the Will Contest was filed, as required by RCW 11.24.010?

2. Did the trial court err by applying the doctrine of substantial compliance to extend the ninety-day limitation period for serving the Personal Representative with a copy of the Will Contest under RCW 11.24.010?

IV. STATEMENT OF THE CASE

Decedent Shirley A. Hallmeyer's Will was admitted to probate in Pierce County Cause Number 08-4-01752-7 on November 20, 2008. CP 11-13. That same day, Melissa Anne Dowd, Shirley Hallmeyer's granddaughter, was appointed as Personal Representative. CP 11-13.

On March 19, 2009 – the last day of the four-month limitations period for will contests under RCW 11.24.010 – Laura Kay Conway, one of Shirley Hallmeyer's daughters and Ms. Dowd's aunt, filed a petition contesting Shirley Hallmeyer's Will (the "Will Contest"). CP 15-127. Although there is no evidence in the record of such, Ms. Dowd

acknowledges that the day after the Will Contest was filed, a copy of the Will Contest was delivered to the offices of her attorneys, Vandeberg, Johnson & Gandara, LLP, in Tacoma. Neither the Summons nor the Citation was delivered at that time, as the Summons was not filed until June 10, 2009, and the Citation was not issued until June 11, 2009. CP 128, 129.

Two months later, on May 20, 2009, the process server hired by Ms. Conway began a series of attempts to personally serve Ms. Dowd with the Will Contest. CP 147-148. On June 12, 2009, the Summons that was filed on June 10th and the Citation that was issued on June 11th were added to the documents to be served on Ms. Dowd. CP 147.

In the course of attempting service, the process server hired by Ms. Conway visited Ms. Dowd's residence fifteen times before the 90-day service period ended. CP 147-148. On several occasions, the process server spoke with Ms. Dowd's boyfriend, Michael Erickson, at Ms. Dowd's residence, but Ms. Dowd was never present when the process server came to her house. CP 147-148; CP 137. On June 23, 2009, the process server left a copy of the Summons, the Citation, and the Will Contest (with exhibits) with Mr. Erickson. CP 135, 137, 147-148, 150. Mr. Erickson later delivered those documents to Ms. Dowd. CP 135, 137.

Ms. Dowd brought a Motion to Dismiss the Will Contest under the provisions of CR 12(b)(2), contending that the Will Contest was time-barred and that the trial court lacked jurisdiction to hear the Will Contest because Ms. Conway had failed to comply with the requirement of RCW

11.24.010 that a will contestant personally serve the personal representative within ninety days after the date of filing the Petition. CP 130-134.

In response, counsel for Ms. Conway argued that, even if Ms. Dowd had not been personally served within the 90-day period imposed by RCW 11.24.010, the process server's attempts to personally serve Ms. Dowd before that period had expired constituted "substantial compliance" with the service requirements of the statute and therefore the Court should not dismiss the Will Contest. CP 139-144. The trial court apparently agreed and entered an Order denying Ms. Dowd's Motion to Dismiss the Will Contest. CP 155-156. Ms. Dowd then brought a Motion for Reconsideration under CR 59. CP 157-164. The trial court denied that motion and affirmed its earlier ruling refusing to dismiss the Will Contest. CP 165-166. This appeal ensued. CP 167-170.

V. ARGUMENT

A. Standard of Review

An appellate court reviews a trial court's denial of a motion for reconsideration for abuse of discretion. *Meridian Minerals Co. v. King County*, 61 Wn.App. 195, 203-04, 810 P.2d 31, *rev. denied*, 117 Wn.2d 1017, 818 P.2d 1099 (1991). Abuse of discretion occurs when the trial court's decision rests on untenable grounds or untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Whether a trial court has jurisdiction to adjudicate a matter is a question of law subject to de novo review. *In re Estate of Kordon*, 157 Wn.2d 206, 209, 137 P.3d 16 (2006) (citing *State v. Squally*, 132 Wn.2d 333, 340, 937 P.2d 1069 (1997)).

B. The Trial Court Lacked Jurisdiction To Hear The Will Contest Because The Personal Representative Was Not Personally Served With A Copy Of The Will Contest Within Ninety Days After The Date The Will Contest Was Filed With The Court.

A will contest is governed by Chapter 11.24 of the Revised Code of Washington.¹ A party seeking to contest a will initiates the action by following the procedure set forth in RCW 11.24.010, which provides:

Contest of probate or rejection - Limitation of action - Issues

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For 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. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

¹ A copy of RCW 11.24 is attached hereto as Appendix "A."

Under these provisions, a party contesting a will must file a petition within four months of its probate. RCW 11.24.010. The four-month limitations period is tolled for up to ninety days after the petition is filed, provided the petitioner personally serves a summons and a copy of the petition on the personal representative within those ninety days. *Id.* If the petitioner fails to personally serve the personal representative within that period, however, the action is deemed not to have commenced. *Id.*

“A will contest is a purely statutory proceeding, and the court must be governed by the provisions of the applicable statute. The jurisdiction of the trial court is derived exclusively from the statute, and may be exercised only in the mode and under the limitations therein prescribed.” *In re Estate of Palucci*, 61 Wn.App. 412, 415, 810 P.2d 970 (1991) (quoting *In re Estate of Van Dyke*, 54 Wn.App. 225, 228, 772 P.2d 1049 (1989)).

Washington courts have strictly enforced the statutory period for filing will contest petitions under RCW 11.24.010:

The four-month period is absolute. There 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); *see also State ex rel. Wood v. Superior Court for Chelan County*, 76 Wash. 27, 135 P. 494 (1913) (dismissing will contest filed one day after the statutory period for filing a will contest); *In Re Estate of Lint*, 135 Wn.2d 518, 957 P.2d 755 (1998) (court refused to circumvent the Legislature’s time-limit

for filing will contests, in spite of allegations of fraud); *In re Estate of Toth*, 138 Wn.2d 650, 981 P.2d 439 (1999) (the four-month time period for contesting a will under RCW 11.24.010 cannot be extended by application of CR 6(e)); *In Re Estate of Peterson*, 102 Wn.App. 456, 9 P.3d 845 (2000) (citing additional cases).

This history of strict enforcement was continued in the most recent Washington Supreme Court case affirming the dismissal of a will contest where the petitioner had failed to comply with the time limits imposed by RCW 11.24. *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006). In *Kordon*, as in this case, the petitioner filed a will contest on the last day of the four-month limitation period. The petitioner did not issue a citation²

² Under the statutory procedure in place prior to 2006, a party contesting a will was required to file a petition in the court with jurisdiction over the will and then request and serve a citation (a counterpart of the summons in ordinary civil proceedings) on all executors, administrators, and legatees of the will. While the statute imposed no explicit statutory time limit on the issuance or service of a citation, the *Kordon* Court ruled that it implicitly adopted the requirements of the Superior Court Civil Rules and RCW Title 4 governing civil procedure. Thus, the *Kordon* Court concluded that a party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will contest or any time within 90 days of timely filing a petition contesting the will. *Kordon*, 157 Wn.2d at 213, 137 P.3d 16 (2006).

Washington's Legislature, in an apparent response to the Supreme Court's decision in *Kordon*, amended both RCW 11.24.010 and RCW 11.24.020 in order to clarify the service requirement for Will Contests under RCW 11.24. In 2006, RCW 11.24.020 was amended by replacing the citation requirement with a summons requirement under the provisions of TEDRA, RCW 11.96A.100(2). *See*, Washington Laws, 2006, Chapter 360, Section 9 (amending RCW 11.24.020, copy attached hereto as Appendix "B").

In 2007, the Legislature followed the *Kordon* Court's decision and amended the service requirement of RCW 11.24.010 by adding the following paragraph, which was borrowed in part from RCW 4.16.170:

For 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. The petitioner shall personally serve the personal representative within ninety days after the date of filing the

but did mail a copy of the petition to the personal representative's counsel. *Id.* at 208. More than two years after that petition was filed, the personal representative filed a motion to dismiss the will contest, and the petitioner issued a citation shortly thereafter. *Id.* at 209. Two months later, however, upon the personal representative's motion, the trial court dismissed the will contest for lack of jurisdiction. *Kordon*, 157 Wn.2d at 208-09.

The *Kordon* Court affirmed the trial court's dismissal of the will contest, holding that a "party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will contest or any time within 90 days of timely filing a petition contesting the will." *Kordon*, 157 Wn.2d at 213. According to the *Kordon* Court, the petitioner's failure to satisfy the RCW 11.24.010 statute of limitations was dispositive because a court "has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." *Kordon*, 157 Wn.2d at 213 (quoting *State ex rel. Wood v. Superior Court*, 76 Wash. 27, 30-31, 135 P. 494 (1913)).

In this case, the personal representative was not personally served with the Petition within ninety days after the date of filing the petition as

petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

See Washington Laws, 2007, Chapter, Chapter 475, Section 4 (amending RCW 11.24.010, copy attached hereto as Appendix "C"). At the same time, the Legislature amended the last paragraph of RCW 11.24.010 to read:

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

required by RCW 11.24.010. This fact is not disputed. Although numerous attempts were made to serve the Personal Representative within the 90-day period, actual service was not made until 96 days after the Petition had been filed. “Where the statute authorizes the contest of a will, and specifies the time within which such contest may be instituted, the court has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute.” *In re Estate of Toth*, 138 Wn.2d 650, 656, 981 P.2d 439 (1999). Because Ms. Conway failed to comply with the RCW 11.24.010 statute of limitations, the trial court erred when it refused to grant the Personal Representative’s motion to dismiss for lack of jurisdiction.

C. The Ninety-Day Period For Personal Service On The Personal Representative Under RCW 11.24.010 May Not Be Extended Under the Doctrine of Substantial Compliance Where No Actual Service Occurred Within That Period.

Despite her undisputed failure to meet the deadline imposed by RCW 11.24.010, Ms. Conway argued to the trial court that her efforts to personally serve Ms. Dowd constituted substantial compliance with the service requirement under RCW 11.24.020. CP 139-144 (citing *In re Estate of Kordon*, 157 Wn.2d at 213). The trial court appeared to agree and denied the Personal Representative’s Motion to Dismiss the Will Contest, despite the fact that the four-month limitations period had not been tolled because the personal representative had not been served within the ninety-day period set by RCW 11.24.010. Because failure to comply with a statutorily set time limitation cannot be considered substantial compliance with that statute, the trial court erred when it refused to dismiss the Will Contest.

As evidenced by the dicta in *Kordon* cited by Ms. Conway, the Washington Supreme Court has recognized that in some circumstances jurisdictional requirements may be satisfied by substantial compliance. See, e.g., *Crosby v. County of Spokane*, 137 Wn.2d 296, 971 P.2d 32 (1999); *Ruland v. State Dept. of Social and Health Services*, 144 Wn.App. 263, 182 P.3d 470 (2008); *Thayer v. Edmonds*, 8 Wn.App. 36, 503 P.2d 1110 (1972), review denied, 82 Wn.2d 1001 (1973). In reaching this conclusion, however, Washington courts have narrowly defined substantial compliance:

Substantial compliance is defined as *actual compliance in respect to the substance essential to every reasonable objective of a statute*. It is assessed on a case by case basis. Generally, noncompliance with a statutory mandate is not substantial compliance. *In cases where courts have found substantial compliance, there has been actual compliance with the statute, but with minor procedural faults.*

Ruland v. State Dept. of Social and Health Services, 144 Wn.App. 263, 274, 182 P.3d 470 (2008) (internal citations omitted) (emphasis added).

This narrow application was confirmed by the Washington Supreme Court in *Kordon* when it opined: “Substantial compliance with the RCW 11.24.020 citation requirement *within the RCW 11.24.010 statute of limitations* may be sufficient. A total failure to comply is not.” *Kordon*, 157 Wn.2d at 213 (emphasis added). Because Ms. Conway failed to actually comply with the time limitation imposed by RCW 11.24.010, her efforts to serve Ms. Dowd did not meet the definition of substantial compliance. Thus, to the extent it found that Ms. Conway’s efforts to

personally serve Ms. Dowd constituted substantial compliance with the statutory mandate of RCW 11.24.010, the trial court erred.

For the doctrine of substantial compliance to apply, there first must have been *actual* compliance with the relevant statute, because substantial compliance is “actual compliance” with the “substance” of a statutory requirement. *San Juan Fidalgo Holding Co. v. Skagit County*, 87 Wn.App. 703, 711, 943 P.2d 341 (1997) (emphasis in original). This is especially true where the substance of a statutory requirement is a time limit, such as the limitation period set forth in RCW 11.24.010. As the Washington Supreme Court has said:

It is impossible to substantially comply with a statutory time limit in the same way. 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. We therefore hold that failure to comply with a statutorily set time limitation cannot be considered substantial compliance with that statute.***

City of Seattle v. Public Employment Relations Commission, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991) (emphasis added).

At the hearings on Ms. Dowd’s Motion to Dismiss and the subsequent Motion for Reconsideration, counsel for Ms. Conway argued that the efforts that had been made by the process server to serve Ms. Dowd within the 90-day period set by RCW 11.24.010 constituted “substantial compliance” with that statute. The trial court seemed to agree, apparently concerned about inequities that would result from a strict application of the statute. Nonetheless, in the case of will contests, “factual inequities do

not justify circumventing a clear rule articulated by the Legislature.” *In re Estate of Toth*, 138 Wn.2d 650, 657, 981 P.2d 439 (1999). The trial court’s refusal to grant the Personal Representative’s Motion to Dismiss was contrary to Washington law and therefore should be reversed.

D. The Personal Representative Requests An Award Of Attorneys’ Fees And Costs On Appeal.

Pursuant to RAP 18.1, the Personal Representative hereby requests that, provided the Personal Representative prevails on this Appeal, this Court enter an order requiring Ms. Conway to reimburse the estate for the costs and reasonable attorneys’ fees incurred in bringing the earlier Motion for Discretionary Review and in prosecuting this Appeal. This request is based on RCW 11.96A.150, which provides, in pertinent part:

Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys’ fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys’ fees, to be paid 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.

This request is based on that fact that, but for Ms. Conway’s failure to personally serve the Personal Representative within the time period set by RCW 11.24.010, and her subsequent failure to acknowledge that such failure deprived the trial court of jurisdiction, the Personal Representative

would not have needed to seek Discretionary Review to correct the trial court's ruling. Ms. Hallmeyer's estate is relatively modest, and the costs of bringing the Motion for Discretionary Review and the subsequent appeal will have a substantial negative impact on the amounts that ultimately will be distributed to Shirley Hallmeyer's heirs pursuant to her Will.

Further, assuming that the Will Contest is dismissed as a result of this appeal, the Personal Representative will have benefited the estate financially and otherwise. First, the costs of litigating the Will Contest will not be incurred, resulting in a substantial savings to the estate. Second, and perhaps more importantly, the heirs will be spared from being parties to that litigation, which likely would be drawn-out and highly contentious, given the highly emotional subject matter, the relationships among the parties, the history of prior litigation involving Ms. Conway and her siblings, and the nature of the allegations contained in the Will Contest.

VI. CONCLUSION

Ms. Conway failed to personally serve Melissa Anne Dowd, the Personal Representative of the Hallmeyer Estate, within the 90-day period set by RCW 11.24.010. Ms. Conway's efforts to personally serve Ms. Dowd did not constitute substantial compliance with that time limitation. Thus, the trial court was without jurisdiction to adjudicate the Will Contest and should have granted the Personal Representative's Motion to Dismiss. Accordingly, the Personal Representative requests that this Court (1) reverse the trial court and order that the Will Contest be dismissed with

prejudice, and (2) enter an order requiring Ms. Conway to reimburse the estate for the costs and reasonable attorneys' fees incurred by the estate in bringing the earlier Motion for Discretionary Review and in prosecuting this Appeal.

RESPECTFULLY SUBMITTED this 8th day of March, 2010.

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APPENDIX A

RCW 11.24

Chapter 11.24 RCW - Will Contests

RCW Sections

- 11.24.010 Contest of probate or rejection -- Limitation of action -- Issues.**
- 11.24.020 Filing of will contest petition -- Notice.**
- 11.24.030 Burden of proof.**
- 11.24.040 Revocation of probate.**
- 11.24.050 Costs.**

11.24.010 Contest of probate or rejection — Limitation of action — Issues.

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For 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. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

[2007 c 475 § 4; 1994 c 221 § 21; 1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

Notes: **Severability -- 2007 c 475:** See RCW 11.05A.903.

Effective dates -- 1994 c 221: See note following RCW 11.94.070.

11.24.020 Filing of will contest petition — Notice.

Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in *RCW 11.96A.030(5).

[2006 c 360 § 9; 1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

Notes: *Reviser's note: RCW 11.96A.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (5) to subsection (6).

Clarification of laws -- Enforceability of act -- Severability -- 2006 c 360: See notes following RCW 11.108.070.

11.24.030 Burden of proof.

In any such contest proceedings the previous order of the court probating, or refusing to probate, such will shall be prima facie evidence of the legality of such will, if probated, or its illegality, if rejected, and the burden of proving the illegality of such will, if probated, or the legality of such will, if rejected by the court, shall rest upon the person contesting such probate or rejection of the will.

[1965 c 145 § 11.24.030. Prior: 1917 c 156 § 17; RRS § 1387.]

11.24.040 Revocation of probate.

If, upon the trial of said issue, it shall be decided that the will or a part of it is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will or part and probate thereof shall be annulled and revoked and to that extent the powers of the personal representative shall cease, but the personal representative shall not be liable for any act done in good faith previous to such annulling or revoking.

[1994 c 221 § 22; 1965 c 145 § 11.24.040. Prior: 1917 c 156 § 18; RRS § 1388; prior: Code 1881 § 1364; 1863 p 214 § 100; 1860 p 177 § 67.]

Notes: **Effective dates -- 1994 c 221:** See note following RCW 11.94.070.

11.24.050 Costs.

If the probate be revoked or the will annulled, assessment of costs shall be in the discretion of the court. If the will be sustained, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper.

[1965 c 145 § 11.24.050. Prior: 1917 c 156 § 19; RRS § 1389; prior: Code 1881 § 1366; 1860 p 177 § 69.]

Notes: **Rules of court:** SPR 98.12W.

APPENDIX B

**WASHINGTON LAWS, 2006
CHAPTER 360, SECTION 9**

Sec. 7. RCW 11.108.900 and 1999 c 42 s 631 are each amended to read as follows:

(1) This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96A RCW apply to this chapter.

(2) Sections 3 through 6, chapter — (this act), Laws of 2006 are remedial in nature and shall be liberally applied in order to achieve the purposes of this act.

Sec. 8. RCW 11.95.070 and 1985 c 30 s 37 are each amended to read as follows:

(1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) This chapter does not apply to the powers of a personal representative of the estate of a decedent when acting in the capacity of personal representative.

(3) Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication ~~((make[s])~~ makes those 1984 changes inapplicable.

Sec. 9. RCW 11.24.020 and 1965 c 145 s 11.24.020 are each amended to read as follows:

Upon the filing of the petition referred to in RCW 11.24.010, ~~((a citation shall be issued))~~ notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, ~~((and))~~ to all legatees named in the will ~~((residing in the state,))~~ or to their guardians if any of them are minors, or their personal representatives if any of them are dead, ~~((requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted))~~ and to all persons interested in the matter, as defined in RCW 11.96A.030(5).

Sec. 10. RCW 11.96A.030 and 2002 c 66 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative

APPENDIX C

**WASHINGTON LAWS, 2007
CHAPTER 475, SECTION 4**

Sec. 3. RCW 11.12.260 and 1985 c 23 s 4 are each amended to read as follows:

(1) A will or a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will or trust other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will or trust refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator or grantor, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will or trust and need not have significance apart from its effect upon the dispositions of property made by the will or trust. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will or trust itself, except that if any person designated to receive property in the writing dies before the testator or grantor, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and, in the case of a will, RCW 11.12.110 shall not apply to such lapse.

(3) The testator or grantor may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities.

Sec. 4. RCW 11.24.010 and 1994 c 221 s 21 are each amended to read as follows:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For 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. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person (~~shall appear~~) files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

Sec. 5. RCW 11.96A.150 and 1999 c 42 s 308 are each amended to read as follows:

(1) Either the superior court or (~~the~~) any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid 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.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This (~~statute section~~) section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(~~(9)~~) (10).

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

(1) RCW 11.05.010 (Devolution of property in case of simultaneous death of owners) and 1965 c 145 s 11.05.010;

(2) RCW 11.05.020 (Procedure when beneficiaries die simultaneously) and 1965 c 145 s 11.05.020;

(3) RCW 11.05.030 (Joint tenants—Simultaneous death) and 1965 c 145 s 11.05.030;

(4) RCW 11.05.040 (Distribution of insurance policy when insured and beneficiary die simultaneously) and 1965 c 145 s 11.05.040;

(5) RCW 11.05.050 (Scope of chapter limited) and 1965 c 145 s 11.05.050;

(6) RCW 11.05.900 (Application of chapter to prior deaths) and 1965 c 145 s 11.05.900; and

(7) RCW 11.05.910 (Construction of chapter) and 1965 c 145 s 11.05.910.

NEW SECTION. Sec. 7. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

Addressed as follows:

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To the law office of Timothy McGuinness, counsel for Respondent Laura
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Dated this 8th day of March, 2010, at Tacoma, Washington.


SCOTT D. WINSHIP, WSBA # 17047

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