

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
JULIE WITT, Respondent
vs.
RONALD D. YOUNG, as the personal representative of the Estate
of Danny Merle Young and the ESTATE OF DANNY MERLE
YOUNG, Petitioner

No. 41641-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JULIE WITT, Respondent

vs.

RONALD D. YOUNG, as the personal representative of the Estate
of Danny Merle Young and the ESTATE OF DANNY MERLE
YOUNG, Petitioner

BRIEF OF APPELLANT

William Dunn
Attorney for Petitioner
P. O. Box 1016, Vancouver, WA 98666
(360) 694-4815; dunnwh@pacifier.com
WSBN 1649

TABLES

TABLE OF CONTENTS

ASSIGNMENT OF ERROR.7

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR 8

STATEMENT OF THE CASE 9

ARGUMENT 12

 1. Standard for Review: 12

 2. Nonclaim Statute Applies to Subject Claim 12

 3. The Statute Should Be Strictly Enforced: 14

 4. Application of Nonclaim Statute Is Necessary: . . . 15

 5. Is Not An Unreasonable Burden. 16

 6. This Is Not A Claim Against Specific Property: . . . 17

 7. Marriage and Committed Relationships Are Not
 Treated The Same: 17

CONCLUSION 21

TABLE OF CASES

Andrews v. Kelleher, 124 Wash. 517, 214 P. 1056 (Wash., 1923) 14

Griffin v. Warburton, 23 Wash. 231, 62 P. 765 (Wash., 1900) . 14

Barto v. Stewart, 21 Wash. 605, 59 P. 480 (Wash., 1899) . . 13, 14

Baumgartner v. Moffatt, 113 Wash. 493, 194 P. 392 (Wash., 1920) 15

Butterworth v. Bredemeyer, 89 Wash. 677, 155 P. 152 (Wash., 1916) 15

Compton v. Westerman, 150 Wash. 391, 273 P. 524 (Wash., 1928) 17

Continental Cas. Co. v. Weaver, 48 Wash.App. 607, 612, 739 P.2d 1192 (1987) 18

Crowe & Co. v. Adkinson Const. Co., 67 Wash. 420, 121 P. 841 (Wash., 1965) 14

Davis v. Shepard, 135 Wash. 124, 237 P. 21 (Wash., 1925). 14, 17, 18, 19.

Empson v. Fortune, 102 Wash. 16, 172 P. 873 (Wash., 1916) . 14

First Security & Loan Co. v. Englehart, 107 Wash. 86, 181 P. 13 (Wash., 1919) 14

Gray v. Palmer, 9 Cal. 636 13

Harvey v. Pocock, 92 Wash. 625, 159 P. 771 (Wash., 1916) . . 14

Hennessey Funeral Home, Inc. v. Dean, 64 Wn.2d 985, 395 P.2d 493 (Wash., 1964) 13

<i>Horton v. McCord</i> , 158 Wash. 563, 291 P. 717 (1930)	16
<i>Humphries v. Riveland</i> , 67 Wn.2d 376, 407 P.2d 967 (Wash.1965)	<u>20</u>
<i>In re Thornton's Estate</i> , 81 Wn.2d 72, 499 P.2d 864 (Wash.1972)	<u>20</u>
<i>Johnston v. Von Houck</i> , 150 Wn.App. 894, 209 P.3d 548 (Wash.App. Div. 2 2009)	<u>16</u>
<i>Judson v. Associated Meats & Seafoods</i> , 32 Wn.App. 794, 651 P.2d 222 (Wash.App. Div. 1 1982)	<u>18</u>
<i>Krueger's Estate</i> , 145 Wash. 379, 381-82, 260 P. 248 (1927) .	<u>18</u>
<i>Latham v. Hennessev</i> , 87 Wn.2d 550, 554 P.2d 1057 (Wash. 1976)	<u>20</u>
<i>Messer v. Estate of Shannon</i> , 65 Wash.2d 414, 415, 397 P.2d 846 (Wash., 1964)	<u>18</u>
<i>Minick v. City of Troy</i> , 83 N.Y. 514	<u>13</u>
<i>Nelson v. Schnautz</i> , 141 Wash.App. 466, 475, 170 P.3d 69 (2007)	<u>16</u>
<i>New York Merch. Co. v. Stout</i> , 43 Wash.2d 825, 827, 264 P.2d 863 (Wash., 1953)	<u>18</u>
<i>Northwestern & Pacific Hypotheek Bank v. State</i> , 18 Wash. 73, 50 P. 586 (Wash., 1897)	<u>13</u>
<i>O'Steen v. Wineberg's Estate</i> , 30 Wn.App. 923, 640 P.2d 28 (Wash.App. Div. 2 1982)	<u>20</u>
<i>Reid v. Pierce County</i> , 136 Wash.2d 195, 201, 961 P.2d 333 (Wash, 1998)	4, <u>12</u>

Roe v. Ludtke Trucking, Inc., 46 Wash.App. 816, 732 P.2d 1021 (1987) 18

Ruth v. Dight, 75 Wash.2d 660, 669, 453 P.2d 631 (Wash., 1969) 18

Safeco Title Ins. Co. v. Gannon, 54 Wn.App. 330, 774 P.2d 30 (Wash.App. Div. 1 1989) 13

Smith v. Fitch, 25 Wn.2d 619, 171 P.2d 682 (Wash. 1946) 20

St. Hilaire v. Food Services of America, Inc., 82 Wn.App. 343, 917 P.2d 1114 (Wash.App. Div. 3 1996) 13

Vasquez v. Hawthorne, 145 Wn.2d 103, 33 P.3d 735 (Wash., 2001) 16

Ward v. Magaha, 71 Wash. 679, 129 P. 395 (Wash., 1913) . . . 14

Western Community Bank v. Helmer, 48 Wn.App. 694, 740 P.2d 359 (Wash.App. Div. 3 1987) 13

TABLE OF STATUTES

RCW 11.40.010 8, 12
RCW 11.40.100 8, 9, 10, 16
RCW 26.09.140 18

TABLE OF RULES

CR 56c 8

ASSIGNMENT OF ERROR

The trial court erred in denying the motion for summary judgment made by the Defendant-Appellant to dismiss the complaint filed by the Plaintiff-Respondent alleging a claim for payment of a share of the decedent's estate based upon an alleged non-marital committed intimate relationship.

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Is a “claim for relief” of a person alleging a nonmarital or “meretricious”, or committed intimate relationship with the decedent and claiming an interest in estate property and compensation for contribution to value of estate property a “claim against decedent” within the meaning of RCW 11.40.010?
2. Where, after notice, a person files a creditor’s claim in an estate claiming a share of the property because of a “meretricious relationship”, or “committed intimate relationship” with the decedent, and the claim is rejected by the personal representative, by notice advising her of the deadline for filing suit on the claim, and she fails to timely file the action, is her claim barred by the Nonclaim Statute (RCW 11.40.100)?

STATEMENT OF THE CASE

Danny Merle Young died on September 26, 2009, a resident of Clark County. Estate proceedings were commenced in Clark County Superior Court on October 19, 2009. Case No. 02-4-00588

9. After due Notice to Creditors, Julie Witt filed a "Creditor's Claim" in the estate proceedings. (Exhibit 1, Creditors Claim, See RAP 9.12 Stipulation Document No. 1) The stated basis of the claim was that:

"Claimant had a 17 year quasi marital (meretricious) relationship with the Deceased and has an equitable claim on all real and personal property of the estate of the Deceased. . . See RAP 9.12 Stipulation Document No. 1 c. Amount of claim: Equitable and quasi community property share of estate, i. e. up to one half of the value the personal and real property of the estate. "

On March 29, 2010 the Personal Representative filed his Rejection of Claim (Exhibit 2, Rejection of Claim (See RAP 9.12 Stipulation Document No. 2) and, personally, on March 29, 2010, served the Rejection on the Attorney for the Claimant. (Exhibit 3, Certificate of Service, See RAP 9.12 Stipulation Document No. 3) The Notice to the Claimant stated, in accordance with the Statute (RCW 11.40.100, Exhibit 4, Statute) that, unless an action were filed within thirty days on the claim, it would be forever barred.

Thirty days after the service was April 24, 2010. No action on the claim was brought within the thirty days time limit.

A Complaint was filed in Clark County Superior Court on June 16, 2010 (Exhibit 5, Complaint, Clerks Papers (CP) #3), eighty three days later, alleging essentially the same cause of action as the Creditor's Claim previously filed. The Complaint was filed 261 days after the date of death and 240 days after probate was commenced. The Complaint did not allege specific property to be divided, but referred generally to all of the assets of the estate as being responsible to the claim. She demands an "equitable share of all of the real and personal property in the estate."

Based upon the fact that the statutorily prescribed time for filing the lawsuit had expired, the personal representative filed a Motion for Summary Judgment (Exhibit 6, Motion for Summary Judgment, CP 8) requesting that the complaint be dismissed as a matter of law because of the failure to comply with the Nonclaim Statute (RCW 11.40.100).

The matter was heard by the trial court on November 12, 2010. The court orally ruled that the motion would be denied. The court entered a written order denying the motion on December 17,

2010 (Exhibit 7, Order, CP 34). At that time the Court certified the case for discretionary review (Exhibit 7, Order on Motion for Summary Judgment, CP 34). Notice for Discretionary Review was filed on December 30, 2010, and the court commissioner granted review by order of March 15, 2011. This appeal follows.

ARGUMENT

The arguments apply equally to both issues pertaining to the assignment of error.

1. Standard for Review:

This court stands in the same place as the trial court when reviewing summary judgment motions. It reviews the evidence *de novo*, with all inferences taken in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wash.2d 195, 201, 961 P.2d 333 (Wash, 1998). Summary judgment should be granted only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56c.

2. Nonclaim Statute Applies to Subject Claim

The appellant, defendant below, contends that the Nonclaim Statute was designed to apply to claims such as those asserted by Plaintiff- Respondent.

The statute states:

“§ 11.40.010. Claims - Presentation - ...
A person having a claim against the decedent may not maintain an action on the claim unless . . . the claimant has presented the claim as set forth in this chapter.”

The question of what claims are covered by the nonclaim

statutes of the probate code has been frequently raised. The leading case appears to be *Barto v. Stewart*, 21 Wash. 605, 59 P. 480 (Wash., 1899). There, the court considered the issue of whether a surviving business partner was required to timely file a claim in the deceased partner's estate. The court held that the nonclaim statute applied and that the failure to timely perfect the claim barred the action for an accounting. The court set forth the reasons for the holding:

“The word 'claim,' in its ordinary use, has a broad meaning, and has been construed as synonymous with 'cause of action.' *Northwestern & Pacific Hypotheek Bank v. State*, 18 Wash. 73, 50 P. 586, 42 L. R. A. 33; *Minick v. City of Troy*, 83 N.Y. 514. In *Gray v. Palmer*, 9 Cal. 636, it is said: 'The word 'claim' is certainly a very broad term, when used in certain connections, and in reference to certain matters.'” At page 615.

Lest it be argued that *Barto* is outdated, the case has been favorably cited numerous times since it was handed down. See: *Hennessey Funeral Home, Inc. v. Dean*, 64 Wn.2d 985, 395 P.2d 493 (Wash., 1964); *St. Hilaire v. Food Services of America, Inc.*, 82 Wn.App. 343, 917 P.2d 1114 (Wash.App. Div. 3 1996); *Safeco Title Ins. Co. v. Gannon*, 54 Wn.App. 330, 774 P.2d 30 (Wash.App. Div. 1 1989).

3. The Statute Should Be Strictly Enforced:

In *Davis v. Shepard*, 135 Wash. 124, 237 P. 21 (Wash., 1925), the court emphasized the need for a strict application of the nonclaim statute, (at page 125 ff) :

“This statute has been strictly construed and held that it applies to claims of every kind and nature, both those established and those contingent, and under both intervention and nonintervention wills, and that a compliance with the statute is necessary in order for there to be a recovery, and that such compliance cannot be waived by an administrator or executor. *Barto v. Stewart*, 21 Wash. 605, 59 P. 480; *Griffin v. Warburton*, 23 Wash. 231, 62 P. 765; *Crowe & Co. v. Adkinson Const. Co.*, 67 Wash. 420, 121 P. 841, Ann. Cas. 1913D, 273; *Ward v. Magaha*, 71 Wash. 679, 129 P. 395; *Butterworth v. Bredemeyer*, 89 Wash. 677, 155 P. 152; *Harvey v. Pocock*, 92 Wash. 625, 159 P. 771; *Empson v. Fortune*, 102 Wash. 16, 172 P. 873; *First Security & Loan Co. v. Englehart*, 107 Wash. 86, 181 P. 13; *Baumgartner v. Moffatt*, 113 Wash. 493, 194 P. 392; *Andrews v. Kelleher*, 124 Wash. 517, 214 P. 1056.

“Many courts have said that the nonclaim statute is one to be more strictly enforced than general statutes of limitations; its object being to obtain early and final settlement of estates so that those entitled may receive the property free from incumbrances and charges which might lead to long litigation. That this was the purpose of the Legislature of this state in passing the statute is especially apparent. An examination of the provision discloses that each step taken has been in the direction of making the compliance with the statute more and more mandatory and the foreclosing of the assertion of claims after the statutory period more and (Page 132)

more absolute. In keeping with the legislative spirit, this court has made no exceptions to the statute, and to now do so on the theory of equitable estoppel would be to drive an entering wedge which will tend to confusion and delay. If fraud will prevent the bar of the statute being raised, there is no reason why infancy, nonresidence, insanity, and other disabilities may not have the same effect, and estates can never be closed and definitely distributed, for, years after the distribution, one who has been guilty of no laches may appear, with a claim based on fraud, etc., and establish his rights. Hardship is bound to result in some instances whichever rule is followed, but in the long run it would seem that a strict compliance with the statute, with no estoppel against its use as a bar, is the more safe and sensible rule. It is the rule which this court has applied to somewhat analogous provisions relating to the filing of claims against municipalities.”

4. Application of Nonclaim Statute Is Necessary:

The negative effect of a rule that absolved the claimant from the necessity of filing a creditors claim in order to obtain a share of the estate is that the title and right to the ownership of property distributed from the estate would be compromised by the possibility that a claim against that property would be made in the future. The administrator of an estate would have no way of becoming assured that the legitimate obligations of the decedent had been satisfied.

The claims of the person asserting an interest in the property inventoried would theoretically endure after the estate had been

closed.

In *Horton v. McCord*, 158 Wash. 563, 291 P. 717 (1930), the court held that a suit over an employment contract was subject to the nonclaim statutes.

The purpose of the nonclaim statute would be defeated if claims such as those arising from a meretricious relationship were not covered. See, *Johnston v. Von Houck*, 150 Wn.App. 894, 209 P.3d 548 (Wash.App. Div. 2 2009), where the court said:

"We agree that RCW 11.40.100(1) . . . sets forth a sequence of events and a time period within which a claimant must sue. This sequence and the 30-day "window" are intended to further the timely resolution of claims against an estate. See *Nelson v. Schnautz*, 141 Wash.App. 466, 475, 170 P.3d 69 (2007) (intent of probate code is to limit claims against the decedent's estate, expedite closing the estate, and facilitate distribution of the decedent's property), review denied, 163 Wash.2d 1054, 187 P.3d 752 (2008); *In re Krueger's Estate*, 145 Wash. 379, 381-82, 260 P. 248 (1927) (provision that suit shall be brought within 30 days after rejection was "undoubtedly to facilitate the handling and settling of estates")." (p. 901).

5. Application Of The Statute Is Not An Unreasonable Burden.

In numerous cases claimants alleging rights arising from committed intimate relationships have made claims against the assets of a decedent's estate.

In *Vasquez v. Hawthorne*, 145 Wn.2d 103, 33 P.3d 735

(Wash., 2001) the claimant had filed a claim against the estate alleging such a relationship and demanding a share of the estate.

6. This Is Not A Claim Against Specific Property:

It is important to note that Ms. Witt in the case at bar has made a generalized claim against all assets of the estate of the decedent. She does not separate a particular item of property and describe in detail what is her interest in that property.

In the case of *Compton v. Westerman*, 150 Wash. 391, 273

P. 524 (Wash., 1928), the court set forth as the usual rule that:

“The general rule is that the cestui que trust, for whom the defendant was in his lifetime a trustee, does not have to make a claim against the estate as long as the particular property he is claiming can be identified and is not in any way commingled with the assets of the estate; the theory being that he is not depleting the estate, and is not claiming anything which belongs to the estate. He is merely claiming his own property. Woerner, *American Law of Administration*, vol. 3, § 402. Many authorities approving the rule are quoted with approval in *Davis v. Shepard*, 135 Wash. 124, 237 P. 21, 41 A. L. R. 163.”

7. Marriage and Committed Relationships Are Not Treated The

Same:

Although there are significant similarities in the legal treatment of a marriage and a committed relationship, the two types of relationships are by not by any means treated identically.

In Connell it was pointed out that:

“. . . *Western Comm'ty Bank v. Helmer*, 48P 349 Wash.App. 694, 740 P.2d 359 (1987) (RCW 26.09.140, which permits an award of attorney fees in a marriage dissolution action, is inapplicable to an action to distribute property following a meretricious relationship); *Continental Cas. Co. v. Weaver*, 48 Wash.App. 607, 612, 739 P.2d 1192 (1987) (a person cohabiting in a non-marital relationship with an insured is not a member of the insured's "immediate family"); *Roe v. Ludtke Trucking, Inc.*, 46 Wash.App. 816, 732 P.2d 1021 (1987) (under the wrongful death statute an unmarried cohabitant is not included within the statutory category of "wife"). . . . As such, the laws involving the distribution of marital property do not directly apply to the division of property following a meretricious relationship.”

Further, it was stated in *Judson v. Associated Meats & Seafoods*, 32 Wn.App. 794, 651 P.2d 222 (Wash.App. Div. 1 1982):

“The trial court's holding conflicts with the long-standing policy that "the non-claim statute is one to be more strictly enforced than general statutes of limitation." *Davis* 135 Wash. at 131, 237 P.2d 21. The statute is mandatory, not subject to enlargement by interpretation, and cannot be waived. *Ruth v. Dight*, 75 Wash.2d 660, 669, 453 P.2d 631 (Wash.,1969); *New York Merch. Co. v. Stout*, 43 Wash.2d 825, 827, 264 P.2d 863 (Wash.,1953). Compliance with its requirements is essential for recovery. *Messer v. Estate of Shannon*, 65 Wash.2d 414, 415, 397 P.2d 846 (1964). . . . "Equitable considerations may not mitigate the strict requirements of the [nonclaim] statute where a timely claim has not been filed by the creditor" *In re Estate of Wilson*, 8 Wash.App. at 525, at 798, 507 P.2d 902.”

In the case of *Davis, supra*, p. 15, the plaintiff was the former wife of the deceased and sued the estate for a community property interest in specific property which she alleged had been fraudulently concealed from the court during the divorce proceedings. In holding that she was not required to file a claim in the probate proceedings to effect the recovery of her interest in specific property, the court was at pains to distinguish her case from that of cases requiring the filing of a formal claim. The essential difference is that she was suing to recover her interest in specific property that was community property and which should have been distributed in the divorce proceedings. The court points out that (p. 865)

“Where, on the other hand, the recovery of specific property is sought on the ground that such property is impressed with a trust for the benefit of the person claiming it, and the particular property is properly identified or traced, the matter is not one of claimed indebtedness but of an assertion that the particular property is no part of the general assets of the estate.

. . . On the other hand, presentation of a claim or demand has been held unnecessary in actions . . . for the recovery of specific property . . .

. . . The petition herein is not a claim for a debt, nor is the plaintiff a creditor. Plaintiff's complaint specifically lists each item of property in question, and prays for her share thereof. The action is in effect one for the partition of (Page 866) specific property. The result of the action for partition will be

to exclude from the inventory of the property of the estate the plaintiff's part of the specified property now held as tenants in common. . .We think the rule of *Smith v. Fitch*, 25 Wash.2d 619, 171 P.2d 682, applies to the instant case. It was an action by a trust beneficiary against a trustee wherein the court held that claims need not be filed in actions for specific property.

Similarly, see *O'Steen v. Wineberg's Estate*, 30 Wn.App. 923, 640 P.2d 28 (Wash.App. Div. 2 1982).

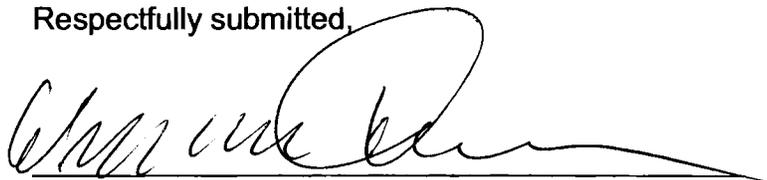
Counsel has not been able to discover a reported case in Washington where a person was awarded an interest in an estate based upon a committed intimate relationship who had not filed a creditors claim in the probate proceedings. In several cases the claimants had filed creditors claims, so there was no issue on that subject presented. *Latham v. Hennessev*, 87 Wn.2d 550, 554 P.2d 1057 (Wash. 1976); *In re Thornton's Estate*, 81 Wn.2d 72, 499 P.2d 864 (Wash.1972); *Humphries v. Riveland*, 67 Wn.2d 376, 407 P.2d 967 (Wash.1965),

CONCLUSION

This court is requested to reverse the order of the trial court denying the motion for summary judgment and enter an order granting the motion for summary judgment dismissing the complaint.

Dated: April 25, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William Dunn', is written over a horizontal line. The signature is cursive and somewhat stylized.

William Dunn (WSBN 1649) attorney for Appellant

APPENDIX

EXHIBIT 1
CREDITORS CLAIM

COPY

COPY ORIGINAL FILED

MAR 16 2010

Sherry W. Parker, Clerk, Clark Co.

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

In re: the Estate of:

NO. 09-4-00823-1

DANNY MERL YOUNG,

CREDITOR'S CLAIM
AGAINST ESTATE

Deceased.

1. CLAIM

- a. Claimant: Julie Witt
38004 NE 94th Avenue
La Center, WA 98629
- b. Statement of facts or circumstances constituting the basis upon which claim is submitted: Claimant had a 17 year quasi marital (meretricious) relationship with the Deceased and has an equitable claim on all real and personal property of the estate of the Deceased.
- c. Amount of claim: Equitable and quasi community property share of estate, ie; up to one half of the value the personal and real property of the estate.

DATED THIS 16 day of March, 2010.

Julie Witt

JULIE WITT, Defendant

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2. SERVICE

This Claim was served on the attorney for the Estate on March 16, 2010 by Faith Cagle.


FAITH CAGLE

DATED THIS 16 day of March, 2010.


BRIAN WALKER, WSBA#27391
Attorney for Claimant

EXHIBIT 2
REJECTION OF CLAIM

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 FOR CLARK COUNTY

8 In re the estate of:

9 DANNY M. YOUNG,
10 deceased.

NO: 09-4-00823-1

11 NOTICE OF REJECTION OF CLAIM OF
JULIE WITT

12 To: Julie Witt, Claimant.

13 And to: Brian A. Walker, Claimant's Agent or Attorney.

14 The undersigned personal representative of the estate rejects the claim
15 submitted by claimant in an unliquidated amount. Claimant must bring suit in the
16 proper court against the personal representative within 30 days after notification of
17 rejection, otherwise the claim will be forever barred. The date of postmark is the date of
18 notification by mail, if served by mail, and, the date of personal service if served by
19 personal service.

20 Dated: March 29, 2010.

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22 _____
23 William H. Dunn, WSBN 1649
Attorney for Personal Representative

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REJECTION OF CLAIM

EXHIBIT 3
CERTIFICATE OF SERVICE

EXHIBIT F

FILED

MAR 29 PM 2:23

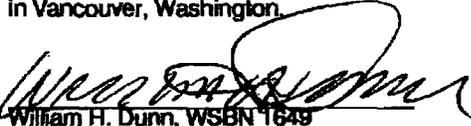
W. Parker, Clerk
Clark County

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

<p>In re the estate of: DANNY M. YOUNG, deceased.</p>	<p>NO: 09-4-00823-1 CERTIFICATE OF SERVICE</p>
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I certify that on March 25, 2010, I served a copy of the attached Rejection of Claim on the attorney for Julie Witt, Claimant, at the attorney's office address of record, in Vancouver, Washington.



William H. Dunn, WSBN 1649
Attorney for Personal Representative

Certificate of Service



EXHIBIT 4

STATUTE: RCW 11.40.100

Washington Statutes

Title 11. Probate and trust law

Chapter 11.40. Claims against estate

Current through Chapter 12, 2011 Regular Session

**§ 11.40.100. Rejection of claim - Time limits - Notice -
Compromise of claim**

(1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.

History. 1997 c 252 § 16; 1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.

Note:

Application -- 1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction -- Severability -- Effective date -- 1974 ex.s. c 117: See RCW 11.02.080 and notes following.

EXHIBIT 5
COMPLAINT

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY**

JULIE WITT,

Petitioner,

v.

RONALD D. YOUNG, as the personal
representative of the Estate of DANNY
MERLE YOUNG, Deceased and

The Estate of DANNY MERLE YOUNG,
Deceased,

Respondent.

NO.

SUMMONS

TO THE RESPONDENT: RONALD D. YOUNG, Respondent.

A lawsuit has been started against you in the above-entitled Court by JULIE WITT, Plaintiff. Plaintiffs claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within twenty (20) days after the service of this Summons, excluding the day of service if served upon you within this State, and within sixty (60) days after service of this Summons if served upon you outside of Washington, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiffs are entitled to what they ask for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the Plaintiffs file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon the person signing this Summons. Within fourteen (14) days after you serve the demand, the Plaintiffs must file this lawsuit with the Court, or the service on you of this Summons and Complaint will be void.

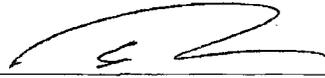
SUMMONS	Page 1 of 2	BRIAN WALKER LAW FIRM, P.C. 100 East 13 th Street, Suite 111 Vancouver, WA 98660 (360) 695-8886
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If you wish to seek the advice of an attorney in this matter, you should so do promptly so that your written response, if any, may be served on time.

This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED this 14 day of June, 2010.



BRIAN A. WALKER, WSBA # 27391
Attorney for Plaintiff

SUMMONS	Page 2 of 2	BRIAN WALKER LAW FIRM, P.C. 100 East 13 th Street, Suite 111 Vancouver, WA 98660 (360) 695-8886
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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY**

JULIE WITT,

Petitioner

v.

RONALD D. YOUNG, as the personal
representative of the Estate of DANNY
MERLE YOUNG, Deceased and

The Estate of DANNY MERLE YOUNG,
Deceased,

Respondent.

NO.

COMPLAINT FOR PARTITION OF
REAL AND PERSONAL PROPERTY

COMES NOW the Petitioner, JULIE WITT, by and through her attorney
of record, Brian A. Walker, and alleges and claims as follows:

PARTIES

1. JULIE WITT, Petitioner, is a resident of Clark County, Washington.
2. DANNY MERLE YOUNG was a resident of Clark County, Washington until the date of his death.
3. RONALD D. YOUNG, is the personal representative of the Estate of DANNY MERLE YOUNG, Deceased.

Jw

COMPLAINT FOR PARTITION OF REAL AND PERSONAL PROPERTY	Page 1 of 4	<u>BRIAN WALKER LAW FIRM, P.C.</u> 100 East 13 th Street, Suite 111 Vancouver, WA 98660 (360) 695-8886
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1 VENUE

2 2. Since all parties resided in Clark County, Washington at all times material to this
3 complaint, and since all acts which give rise to the cause of action herein occurred in
4 Clark County, Washington, venue properly lies in Clark County Superior Court.

5 STATEMENT OF FACTS

6 3. JULIE WITT and DANNY MERLE YOUNG met in 1992 and began dating
7 immediately.

8 4. JULIE WITT and DANNY MERLE YOUNG began residing together in 1992.

9 5. At the time JULIE WITT and DANNY MERLE YOUNG began residing
10 together, neither party owned any real property.

11 6. At the time JULIE WITT and DANNY MERLE YOUNG began residing
12 together, neither party owned any personal property of any significant value.

13 7. JULIE WITT and DANNY MERLE YOUNG resided together continuously in a
14 marital-like relationship for the 17 years prior, and up until, DANNY MERLE
15 YOUNG's death.

16 8. During their 17-year, marital-like relationship, JULIE WITT worked continuously
17 and contributed significantly to the quasi community estate she shared with DANNY
18 MERLE YOUNG.

19 9. DANNY MERLE YOUNG was disabled in a work related accident in 1972 and
20 was not able to be employed after that time, but received monthly disability income.

21 10. DANNY MERLE YOUNG died on September 26, 2009.

22 11. During their 17 year relationship, JULIE WITT and DANNY MERLE YOUNG
23 held themselves out to the public as a marital couple.
24

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JW

1 12. Within the year before DANNY MERLE YOUNG died, JULIE WITT and
2 DANNY MERLE YOUNG obtained a marriage license with plans to marry shortly
3 thereafter.

4 13. During their 17 year relationship, JULIE WITT and DANNY MERLE YOUNG
5 acquired interests in personal and real property which, had they been married, would
6 have been community property.

7 14. Among the property acquired and/or maintained by the parties was a home on 15
8 acres (a five bedroom home with common address of 38004 NE 94th Avenue, La Center,
9 Washington 98629); a significant number of working vehicles, including, but not limited
10 to, a 1968 Ford Mustang Mach I and a 1948 Plymouth Coupe; and numerous tools and
11 household furnishings.

12 15. As a member of quasi community with DANNY MERLE YOUNG, JULIE WITT
13 acquired a vested interest in all personal and real property acquired by either or both of
14 them both during their 17 year relationship.

15 16. JULIE WITT and DANNY MERLE YOUNG, at the time of his death, with the
16 exception of small items of personal property, were tenants in common in all personal
17 and real property acquired by them both during their 17 year relationship.

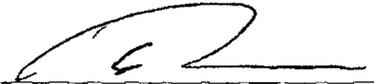
18 17. As a member of quasi community with DANNY MERLE YOUNG, JULIE WITT
19 is entitled to an equitable share of all personal and real property acquired by either or
20 them both during their 17 year relationship.

21 18. The real property, and substantially all of the personal property, owned by
22 DANNY MERLE YOUNG at the time of his death is now in the possession of the Estate
23 of DANNY MERLE YOUNG.
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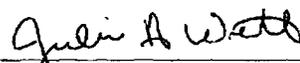
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1 WHEREFORE, JULIE WITT requests that this Court award her an equitable
2 share of all real and personal property in the Estate of DANNY MERLE YOUNG;
3 statutory attorney fees; and such other and further relief as the court deems equitable and
4 just.

5 DATED this 14 day of June, 2010.

7 
8 BRIAN A. WALKER, WSBA # 27391
9 Of Attorneys for Plaintiff

10 I am the Plaintiff in the above-entitled action. I have read the foregoing Complaint
11 for Damages, know the contents thereof and believe the same to be true.

13 
14 JULIE WITT

15 SIGNED AND SWORN to before me on this 14 day of June, 2010, by JULIE
16 WITT.

17 
18 NOTARY PUBLIC
19 Residing at Vancouver.

20 My Appointment Expires: 4/9/12

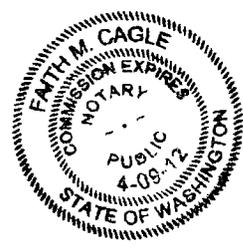


EXHIBIT 6

MOTION FOR SUMMARY JUDGMENT

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR CLARK COUNTY

9 JULIE WITT,

10 Plaintiff,

11 vs.

12 ESTATE OF YOUNG, ET AL..

NO: 10-2-02260-4

MOTION BY DEFENDANT FOR
SUMMARY JUDGEMENT

13
14 Defendant, Estate of Young, by its Personal Representative, Ronald D. Young
15 moves for summary judgment against the Plaintiff, Julie Witt, adjudging that her Claim
16 For Relief is barred by the Non-claim Statute of the State of Washington (RCW
17 11.40.010 ff) This motion is made on the grounds that no genuine issue of material
18 fact exists relative to this Defendant's defense and the Estate is entitled to judgment
19 against the Plaintiff dismissing her Complaint as a matter of law.

20 This motion is supported by the Declaration of William H. Dunn, Attorney at
21 Law, and by the accompanying Memorandum of Law

22 Dated: August 19, 2010.

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William H. Dunn
WSBN 01649
27 Attorney for the Estate of Young
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

<p>JULIE WITT, Plaintiff, vs. ESTATE OF YOUNG, ET AL., Defendants.</p>	<p>NO: 10-2-02260-4 DECLARATION OF WILLIAM H. DUNN</p>
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WILLIAM H. DUNN, under penalty of perjury, declares:

1. I am the attorney for the Personal Representative of the Estate of Young, and I make this declaration in support of the motion by such Personal Representative for summary judgment against the Plaintiff dismissing her Complaint.
2. The following facts are documented by the public filings in this case and in the Clerk's File of the probate of the Estate of Danny M. Young, Clark County Superior Court, Number 09-4-00823-1.
3. Danny M. Young, age sixty years, died intestate on September 26, 2009.
4. The brother of the Decedent, Ronald D. Young, on October 13, 2009, applied for and received Letters of Administration, appointing him as Personal Representative of the estate, and authorizing him to administer the estate without court intervention.
5. On December 21, 2009, the Personal Representative filed a Notice to Creditors and, on November 25, 2009, commenced publication of the Notice to Creditors in a local

1 newspaper, the Battle Ground Reflector, in accordance with law. The First Date of
2 Publication was November 25, 2009.

3 6. The last day upon which Creditor's Claims could be validly filed was, thus, March 25,
4 2009. (Four months after the date of first publication.

5 7. On March 16, 2010, Julie Witt, Plaintiff herein, filed her Creditors Claim in the estate file
6 and served a copy thereof on the Personal Representative.

7 8. On March 29, 2010, the Personal Representative filed a Rejection of Claim and
8 personally served a copy on the Attorney for Julie Witt. The Rejection of Claim stated, as
9 required by statute (RCW 11.40.100) that, unless suit was brought on the claim within
10 thirty days after service of the Rejection, the Claim would be forever barred.

11 9. Thirty days after the service of the Rejection was April 28, 2010.

12 10. No suit was brought against the estate on the Claim within the time limit of thirty days
13 after service of the Rejection.

14 11. On May 31, 2010, counsel for the Personal Representative filed motions with this Court
15 to Dismiss the Creditor's Claim and to Bar the Claim for a Share of the Estate.

16 12. On June 16, 2010, the Claimant filed a Complaint naming the Estate as the party
17 Defendant, and alleging the same factual basis for relief as the original Creditor's Claim.

18 13. The Estate has filed this Motion For Summary Judgment, requesting that the Claim be
19 dismissed for the reason that the Claim had been barred by the failure of the Claimant to
20 file suit within the time required by the Non-Claim Statute (RCW 11.40.100).

21 Dated at Vancouver, Washington on August 12, 2010.

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William H. Dunn, WSBA #1649
Attorney for Defendant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

<p>JULIE WITT,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ESTATE OF YOUNG, ET AL.,</p> <p>Defendants.</p>	<p>NO: 10-2-02260-4</p> <p>DEFENDANT'S MEMORANDUM OF LAW</p>
--	--

1. The filing of the Complaint is time-barred by the failure of the Plaintiff to commence the action within thirty days after notification of rejection of her claim

1 in the Decedent's Estate.

2 On March 16, 2010, the claimant filed a "Creditor's Claim" in the estate proceedings.
3 See Estate of Young, Clark County No. 09-4-00823-1. (Clerk's Papers 15). On March 29, 2010
4 the Personal Representative filed his Rejection of the Claim (Young Estate, CP 16), and,
5 personally served the Rejection on the Attorney for the Claimant. (Young Estate, CP 17) The
6 Notice to the Claimant stated, in accordance with the Statute (RCW 11.40.100) that, unless an
7 action were filed within thirty days on the claim, it would be forever barred. No action on the
8 Claim has been filed against the estate; more than thirty days elapsed after the Notice was
9 served; thus, the Claim is barred and, pursuant to the Statute, no action may now be brought on
10 that Claim for Relief.

11 RCW 11.40.100 provides, in pertinent part:

12 "§ 11.40.100. Rejection of claim - Time limits - Notice - Compromise of
13 claim.(1) If the personal representative rejects a claim, in whole or in part, the
14 claimant must bring suit against the personal representative within thirty days
15 after notification of rejection or the claim is forever barred. The personal
16 representative shall notify the claimant of the rejection and file an affidavit with
17 the court showing the notification and the date of the notification. The personal
18 representative shall notify the claimant of the rejection by personal service or
19 certified mail addressed to the claimant or the claimant's agent, if applicable, at
20 the address stated in the claim. The date of service or of the postmark is the date
21 of notification. The notification must advise the claimant that the claimant must
22 bring suit in the proper court against the personal representative within thirty days
23 after notification of rejection or the claim will be forever barred.

19 The purpose of the statute is to allow estates to be settled within a reasonable time. If this
20 rule did not exist, when an estate could be considered closed and the interested parties could rely
21 on the judicial determination would be left up in the air indefinitely. See, *Johnston v. Von Houck*,
22 209 P.3d 548 (Wash. App. Div. 2, 2009), where the court said:

23 "We agree that RCW 11.40.100(1) . . . sets forth a sequence of events and a time period
24 within which a claimant must sue. This sequence and the 30-day " window" are intended
25 to further the timely resolution of claims against an estate. See *Nelson v. Schnautz*, 141
26 Wash.App. 466, 475, 170 P.3d 69 (2007) (intent of probate code is to limit claims against
27 the decedent's estate, expedite closing the estate, and facilitate distribution of the
28 decedent's property), review denied, 163 Wash.2d 1054, 187 P.3d 752 (2008); *In re
Krueger's Estate*, 145 Wash. 379, 381-82, 260 P. 248 (1927) (provision that suit shall be
brought within 30 days after rejection was " undoubtedly to facilitate the handling and
settling of estates")."

1 Because the undisputed evidence establishes that the Claim for Relief was not timely
2 filed, the Defendant is entitled to Judgment Of Dismissal as a matter of law.

3 Respectfully submitted by:
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William H. Dunn #1649
Attorney for Defendant, Personal Representative
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EXHIBIT 7
ORDER DENYING MOTION

1 EXHIBIT A
2 (Conformed)

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4 IN THE SUPERIOR COURT OF WASHINGTON
5 FOR CLARK COUNTY

6 JULIE WITT, 7 8 Plaintiff, 9 vs. 10 RONALD D. YOUNG, ET AL., 11 Defendant.	12 No. 10-2-02260-4 13 14 ORDER DENYING MOTION FOR 15 SUMMARY JUDGMENT
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16 This matter came before the Court on defendant's motion for summary judgment
17 in favor of defendant dismissing the Complaint for not having been timely filed as
18 required by the Nonclaim Statute of the State of Washington (RCW 11.40.100).

19 The Court heard the arguments and representations of counsel for both parties,
20 examined the files and records of this proceeding and the proceedings in the matter of
21 the Estate of Danny Young, Clark County Clerk's file No. 09-4-00823-1. In particular,
22 the Court considered the following evidence, pleadings, records and documents:

- 23 1. Declaration of William H. Dunn
- 24 2. Creditor's Claim
- 25 3. Notice of Rejection of Claim
- 26 4. Declaration of Service of Notice
- 27 5. Complaint
- 28 6. (Handwritten by Judge Johnson) "All of the pleadings filed by the parties prior to
the date of the hearing on 11/12/10."

Even though the Plaintiff did not comply with the Nonclaim Statute (RCW
11.40.100), the Court is of the opinion that the statute does not apply to the claims

1 raised by the allegations of the Complaint.

2 It is, accordingly, Ordered:

3 The Motion for Summary Judgment of the Defendant is denied.

4 Dated: December 17, 2010.

5

6 SIGNED

Judge _____

7

8 Presented by:

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SIGNED

10 William H. Dunn, WSBA #1649
Attorney for Defendant

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/s/ Brian A. Walker

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(By Judge Johnson) "The motion for reconsideration is denied."

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28 ORDER DENYING MOTION FOR SUMMARY JUDGMENT

FILED

MAY 2 2011 10:09

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
BY _____

No. 41641-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JULIE WITT, Respondent

vs.

RONALD D. YOUNG, as the personal representative of the Estate
of Danny Merle Young and the ESTATE OF DANNY MERLE
YOUNG, Petitioner

CERTIFICATE OF SERVICE OF BRIEF OF APPELLANT

I certify that on May 2, 2011, I served a copy of the attached
Appellant's Brief on the attorney for the Respondent at the
attorney's office email address of record, by email per CR 5.



William H. Dunn, WSBN 1649
Attorney for Appellant

William Dunn
Attorney for Petitioner
P. O. Box 1016, Vancouver, WA 98666
(360) 694-4815; dunnwh@pacifier.com
WSBN 1649

CERTIFICATE OF SERVICE OF BRIEF OF APPELLANT