

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

No. 42402-9-II

In re the Estate of Bryan W. Johnson

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

Brief of Appellant

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I. INTRODUCTION

Bryan W. Johnson (Bryan) died without spouse or issue on April 14, 2006 a resident of Clallam County, Washington; leaving property in that County subject to probate.

Will Proponent Christine Spirz (Spirz, Doodine) submitted for Probate a two page handwritten document (“the Doodine Will”) bearing Bryan’s Decedent’s signature dated March 16, 2006; which names herself as Executrix and primary beneficiary. The Doodine Will was admitted to probate by the Trial Court’s Order dated May 17, 2006.

By Petition dated September 13, 2006, Douglas M. Johnson (Doug) acting pro se commenced this Will Contest to invalidate the March 16, 2006 will of Bryan W. Johnson upon grounds which included undue influence.

The Decedent was survived by four siblings, including Will Contestant Douglas M. Johnson, brother Ivan Johnson, sister (and Will Proponent) Christine Spirz, and sister Shirley Tehan.

The remaining Estate consists of approximately \$200,000.00 in cash.

At the request of Will Proponent Spirz and over the Doug Johnson’s objection, Estate funds in the approximate amount of \$55,000.00 have been paid to Spirz’ attorney for legal services in defense of this Will Contest.

Following a bench trial before The Honorable Superior Court Judge George L. Wood February 28 through March 2, 2011, the Court entered a Memorandum Opinion (CP 161) on March 22, 2011 which denied Petitioner's requested invalidation of the "Doodine Will". This Appeal follows.

There are two Parties to this proceeding. They are Will Proponent Christine Spirz (nicknamed "Doodine") and Will Contestant Douglas M. Johnson. Of the other two surviving siblings of Bryan W. Johnson, brother Ivan Johnson has attempted to disclaim his interest in the Estate, and sister Shirley Tehan has assigned (but later rescinded) the entirety of her interest in the Estate as heir, devisee, or claimant to her brother Doug.

There are no other parties.

II. UNCONTESTED FACTS

The following facts are established for purposes of this proceeding by the trial record, Certified Statements, and deposition testimony.

A. During his hospitalization for cancer surgery at Virginia Mason Hospital in Seattle on January 20, 2006, Bryan Johnson executed a handwritten will in the presence of two (2) subscribing and three (3) other witnesses, which Will named Doodine as Executrix provided that his entire Estate be divided equally among his four surviving siblings. (CP 485, 536 Paragraph 11).

B. Following his Virginia Mason hospitalization, Bryan Johnson returned to Port Angeles in late January of 2006; where he

resided until his death on April 14, 2006 in his house located across the street from the home of his sister, Doodine. (RP day 1, page 126).

C. During that entire time, Spirz was the only one of the four surviving siblings who had regular access to and interaction with Decedent Bryan Johnson. The other three siblings resided, and currently reside, in San Fidel, New Mexico (Doug), San Diego, California (Shirley), and Australia (Ivan).

D. Doodine and her brother Bryan had and maintained a “confidential” or “fiduciary” relationship of mutual trust and reliance both before, during, and after the Deceased’s hospitalization in January, 2006. Their relationship included the placement of each other’s names as co-owners of their respective real properties, bank accounts, automobiles, and insurance.

E. During Bryan’s last illness, and less than one month before Bryan Johnson’s death, Doodine was regularly involved with Bryan, and provided him with a book and other items regarding wills before his execution of the challenged Will on March 16, 2006 (the Doodine Will) favoring her and naming her as Executrix. Doodine participated in the execution of that Will by driving her brother Bryan to the Port Angeles office of Olympic Title on that date with the Will to have it executed and witnessed by two Olympic Title employees.

F. Bryan's brother Ivan Johnson and nephew (Doodine's son) Mark Johnson were both present with Doodine at Bryan's execution of the January 20, 2006 "Hospital" Will in Seattle and were aware, together with Doodine, that the Hospital Will provided for an equal division of Bryan's Estate between the four surviving siblings. Ivan Johnson returned to Australia with the only copy of that Will, and for reasons best known to himself, destroyed it.

G. Although he never saw the second (March 16, 2006) "Doodine" Will, Ivan Johnson understood it also provided for an equal division of the Estate among the four siblings. In fact the later Doodine Will left virtually the entire (86%) Estate to Doodine. (CR 702).

H. Proponent Doodine was named Executrix in both Wills. (CR 716, 536).

I. Decedent Bryan W. Johnson was in failing health by reason of terminal cancer on March 16, 2006; and in fact died of the disease less than one month later on April 14, 2006.

J. The relationship between the Bryan and Doodine, besides being of a confidential, trusting, or fiduciary nature, was of a special nature because of their being the eldest brother and the eldest sister of the five Johnson siblings.

K. Will Proponent Spirz (Doodine) has declared under oath that she does not need or want any of the money left in the Estate; and that if she does win this Will Contest and receives any of those funds, they will

not be divided among her younger sibling “kids”; but will all be donated to Children’s Hospital.

L. Doodine has personally received proceeds from the sale of Estate property, including a Toyota Tundra truck and the proceeds of a yard sale, together amounting to approximately \$45,000.00; and has paid from Estate funds attorney fees and costs for her benefit in defense of this Will Contest in the additional approximate amount of approximately \$55,000.00.

III. ASSIGNMENTS OF ERROR

A.

Will Contestant Doug Johnson claims the lower Court erred in one or more of the following particulars:

1. By accepting over objection self-serving testimony of Doodine concerning statements, conversations, and transactions involving Bryan’s actions and statements of intent; as to which she is disqualified as an interested party witness by Washington law (the “Deadman” Statute).

2. By accepting over objection inadmissible evidence favorable to Proponent Spirz to which Contestant Doug made timely objections.

3. By making assumptions and conclusions favorable to Spirz which were not supported by either admissible evidence or Washington law.

4. By totally ignoring and disregarding unchallenged courtroom testimony of the only qualified and disinterested non-party Johnson family witness (Jayne Johnson) concerning Byran's condition and often-stated dispositive intent, his sister Doodine's exercise of undue influence upon him; and the presence of Jayne's then-husband Mark Johnson at the Bryan's residence caring for him and witnessing the Bryan-Doodine interaction during the time in question. All of Jayne Johnson's disinterested testimony came in unchallenged and was received by the Trial Court without any suggestion of impeachment. The Trial Court in arriving at its opinion favoring Doodine erroneously failed to consider or address all of the evidence; particularly that most credible and critical to determining the Doodine Will's validity.

5. By departing from a line of controlling Washington decisions regarding the "strong presumption" of undue influence incident to fiduciary or confidential relationships (including a named Executor) wherein one of the parties is interested and stands to benefit from a gift or bequest. The Washington cases include Dean v. Jordan (1938); Estate of Guy L. Smith (1966); McCutcheon v. Brownfield (1970); In re Burkland's Estate, (1972); White v. White (1982) (Cited below).

6. By improperly assuming from soil delivery receipts of Anjo's Soils that there was no soil upon and no soil deliveries to Bryan's home prior to March 16, 2006; when in fact soil was present; and concluding therefrom that Mark Johnson could not have been present

moving dirt in Bryan's yard with Bryan's tractor on March 16, 2006; the date the Doodine Will was executed.

7. By concluding that Mark Johnson's incidental memory glitch regarding Bryan's use of a "wheelchair" on March 16, 2006 instead of the "wheeled chair" walker device Bryan actually used at the time rendered all of Mark's testimony not credible; without finding or articulating any reason or motivation for Mark to lie.

8. By failing to address or consider the comparative positive and negative motivations of Doodine and her son Mark Johnson to lie about the Doodine Will.

9. By concluding that virtually the entire Estate (86%) going to Doodine alone did not represent an "unusually large or unnatural" amount of Bryan's assets as contemplated by the line of Washington cases identified in No. 5 above.

10. By assuming that because Hospice personnel visiting Bryan Johnson beginning on March 21st did not recall observing Mark Johnson working in the yard or present in the home on some (but not all) of their brief visits to Bryan's home, Mark was not there caring for Bryan on March 16th during Bryan's last illness.

11. By failing to recognize or consider the evidence that on March 16, 2006 Mark had no vehicle with which to leave Bryan's home, and in fact had nowhere else to go and stay.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

B.

1. Should the Memorandum Opinion of the Trial Court be reversed, either on the merits or reversed and remanded for further proceedings before another Judge elsewhere in Clallam County?
2. What is the legal effect of the “strong presumption” of undue influence mandated by Washington law; what is Doodine’s burden of producing offsetting rebuttal evidence; and was that burden met?
3. Where a Trial Court undertakes and states at the outset of trial that he will make his own objections and rulings upon “Deadman Statute” disqualifications as an alternative to granting a preliminary motion thereon in limine; and the Court thereafter fails to either make or rule upon any Deadman objections, as a result of which pivotal disqualified witness testimony comes in upon which the Court’s Opinion is based; has there been prejudicial error?
4. When the Trial Court totally ignores and fails to acknowledge or consider either the presence or the relevant and critical courtroom testimony of the only disinterested family witness in this Will Contest proceeding, has there been prejudicial error?
5. Was the Will Contestant prejudiced or harmed by one or more of the lower Court’s assigned errors?

V. STANDARD OF REVIEW

The issues presented for review in this case involve what are

termed “mixed questions” of fact and law. Purely factual issues are generally reviewed by a “clearly erroneous” or “substantial evidence” standard, with deference to the Trial Court’s factual findings; whereas purely legal determinations are reviewed de novo, without deference. In this case the lower Court’s decision involved questions and determinations of both law and fact, or mixed questions of law and fact. The questions and issues in this case are “mixed” in nature because the lower Court’s trial conduct and opinion involved both the analysis and application of statutory law (Deadman Statute) decisional law (presumptions shifting the burden of proof, the required level of rebuttal evidence) and the Court’s legal duty to review, consider and address all the evidence before rendering a decision or opinion.

A recent Washington Court of Appeals decision (Division III) has held that appellate review of such “mixed” questions of law and fact in Washington is de novo, for correctness and “without deference” to the lower Court’s determinations. The “clearly erroneous” standard of review does not apply to a trial Court’s determination of legal questions or conclusions also involving findings of fact. The applicable standard of review in this case is accordingly for correctness or de novo; without deference.

The general statement of this principal is found in Am Jur 2nd Appellate Review at Sec 631:

The trial court’s resolution of a mixed question of law and fact is, according to some authorities (including

Washington, footnote 1) reviewable as a question of law, which is to say, freely and without deference to the ruling below

The footnote 1 reference for this general Am Jur 2d statement is to the Washington case of Sardan v. Moford, 51 Wa App 908, 756 P2d 174 (WA App Div 3, 1988). That decision contains the following statement:

However, the “prevailing party” determination is at best a mixed question of law and fact, which is reviewed under the error of law standard (i.e., de novo) (Emphasis added)

Kansas has adopted a similar standard of review in such cases to that of Washington. That State’s Supreme Court has explained its position as follows:

The appellate court generally reviews mixed questions of law and fact de novo, as it is in as good of a position as the district court to reach a conclusion based on an objective view of the facts. State v. Gallegos, 286 Kan. 869, 190 P.3d 226 (2008).

The “clearly erroneous” standard which applies to the review of purely factual determinations provides protection (i.e., a shield) for a trial judge whose decision could have gone either way because there was “substantial” or even merely “some” evidence to support his decision. In other words, the Trial Court’s decision need no be supported by even a preponderance. That significant protection may however be lost in such cases if the court excludes or ignores the relevant and material testimony of a competent witness.

A general statement of this American principal appears at Am Jur 2d Appellate Review, Sec. 642:

Where the trial court prejudices the credibility of witnesses, rejects that credibility as insufficient to sustain the plaintiff's burden, and excludes the witnesses' testimony, the court's findings are not entitled to the protection of the "clearly erroneous" standard. Furthermore, while a trial court has discretion in eliminating cumulative testimony, where the court's action in cutting off testimony on a key issue deprives it of an opportunity to be persuaded to one party's view of the facts, its findings are entitled to less weight than they would be had the testimony been allowed. (Emphasis added)

In its Memorandum Opinion (CP 161) the Trial Court apparently prejudged and did not take into consideration in its findings or ruling the 3-day presence and critical testimony of the only disinterested Johnson family witness, Jayne Johnson. That testimony concerned her interactions and observations with Bryan Johnson and Doodine during Bryan Johnson's last illness, and the presence and activities of Jayne's then-husband Mark Johnson at Bryan's home during the critical month of March, 2006. By ignoring that testimony, the Court deprived itself of "an opportunity to be persuaded" to the Contestant's view of the facts, and thereby forfeited any protection otherwise available to the Court and its conclusions through the "clearly erroneous" standard of review. That is the law, even where the only issue involved is purely one of fact. Under Washington law the standard of review in this case involving mixed issues of fact and law is de novo, for correctness and without deference; whether the issues are considered either purely factual or a mixture of fact and law. The standard of review is the same, in either event; de novo, for correctness, and without deference.

POINT I:

DEADMAN STATUTE

Doug Johnson was aware that the only evidence Doodine could produce in support of the challenged Will was from herself, and that it would necessarily involve her testimony regarding statements and transactions of and with Bryan made inadmissible by the Deadman Statute. Since she stood to benefit as an interested party from such testimony and was disqualified as a witness by the Statute (RCW 5.60.030, formerly Rem Rev Stat; Sec. 12-11) Doug moved at the commencement of trial for a blanket order in limine precluding any such testimony by her. Judge Wood declined to grant that Motion, and in doing so, made the following peculiar statement:

So I think what we'll do is just, I mean I'm not going to grant the motion in limine at this point, we'll just see how the testimony comes in and at what point and I'll just try to make objections and make rulings at that time, OK? (RP day 1 Page 15, Line 19)

According to the Record the Judge undertook to make both objections and rulings himself, later. Thereafter and throughout Doodine's testimony, the Judge made no objections or rulings regarding her Deadman Statute disqualification. He did however make another strange remark regarding the Statute:

"She can answer questions about a transaction but she cannot talk about conversations". RP day 2, Page 51, Line 13

The statutory language is actually:

A party in interest shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person: PROVIDED FURTHER, that this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action. (Emphasis added).

What makes the Court's remark strange (and erroneous) is that the Statute disqualifies a witness for "transactions or statements. It appears the Trial Court has misconstrued the difference between the two, if any, and merely allowed all evidence proffered by Ms. Spirz, in contravention of the statute.

Despite Doodine's disqualification, the Judge received the inadmissible testimony from her, and relied upon that testimony in finding for her. In doing so, the Court ignored Doug's blanket objection and its own undertaking to "make objections and rulings". Those material but inadmissible statements by Doodine the Court accepted included the following:

1) When I did that I went back in and Bryan said Doug's not coming. (RP day 2, Page 33, Line 12)

2) This is what was recorded at Olympia Title on the day that we, Bryan showed us his Will and asked me to take him there. (RP day 2, Page 53, Line 7)

3) Bryan and I agreed (RP day 2, Page 54, Line 7)

4) The 15th (of March) that evening I called him and asked if he was okay and that's when he told me he wrote the Will. He said he wanted to get the house deeded over to me and get the Will witnessed. (RP day 2, Page 68, Line 11).

5) QUESTION: Do you recall what vehicle you drove with Bryan? ANSWER: Uh, his Toyota Tundra (R Day 2, Page 76, Line 12)

6) And I did the same thing (provided care, added) for Bryan (RP day 2, Page 78, line 5)

7) QUESTION: Was there a walker that was in Bryan's home at all? ANSWER: No. (RP day 2, Page 79, Lines 7-8)

8) I said it (the Doodine Will) is what Bryan wanted (RP day 2, Page 110, Line 15)

9) I called him that night to remind him or whatever and he said on the phone "I wrote a new Will" (RP day 2, Page 139, Line 15).

Bryan, if alive, could have denied any or all of those statements of Doodine, all of which were allowed into evidence by the Court over Doug's objection; but Bryan was dead. All of those statements supported Spirz' defense of the Doodine Will; from which she of course benefits as a party in interest.

POINT II:

CLAIMS AND DEFENSES

The primary objective of any Will Contest is to determine and give effect to the testator's intent. In this case that can only be done by

considering through admissible and credible evidence what Bryan said and did regarding the disposition of his Estate before he died.

It is, uncontested that Bryan's first or "Hospital" Will of January 20, 2006 bequeathed the bulk of his Estate to his four surviving siblings equally; and that the challenged second or "Doodine" Will of March 16, 2006 (less than two months later) left virtually all of the Estate to its Executrix and Proponent, Doodine. Something obviously happened during that short interim period which radically changed Bryan's disposition from an equal treatment of his surviving siblings to a gift of virtually his entire Estate to Doodine, alone. Doodine is the only person who claims that such was Bryan Johnson's wish and intent, was the only sibling with exclusive and regular access to Bryan Johnson during March, and was the only witness to testify in support of the Doodine Will. Without Bryan Johnson's availability to dispute her testimony, and without being prevented by proper application of the Deadman Statute; she was left free to fabricate a sequence of apparently legitimate events leading to the Doodine Will without fear of contradiction from the only person who could dispute first-hand her version of the facts. Her self-interest in promoting such a fabricated version of the facts is not only obvious but significant; 86% of \$275,000.00 = \$236,000.00, more or less. (RP day 3, Page 51-2, Ln 23).

The Will Contestant's evidence comes primarily from Doodine's own son Mark Johnson and her former daughter-in-law Jayne Johnson. Mark Johnson testified by Certified Statement (CP 485, 536) and

deposition that he moved in with Bryan Johnson after Bryan Johnson's return from the hospital in Seattle, and remained there caring for Bryan Johnson and working in the yard throughout the Month of March and until after Bryan Johnson's death on April 14, 2006. During that time, Mark Johnson testified that he had several conversations with his Uncle Bryan concerning Bryan's intent, and witnessed significant actions and statements of Bryan and Doodine before and after execution of the Doodine Will on March 16, 2006. Mark Johnson's Certified Statement and courtroom sworn testimony included the following:

1. He moved in with Uncle Bryan at some time after Uncle Bryan got home from the hospital. (RP day 1, Page 97, Line 21).
2. Bryan Johnson told Mark Johnson on more than one occasion it was his wish and intent that upon his death his house was to be sold and the proceeds "split up" among the siblings, with Doodine to get the Toyota Tundra truck. (RP day 1, Page 103, Line 15; CP 485, 536 Paragraphs 14, 16).
3. During the time he stayed at Bryan Johnson's home, he was there all but a couple of nights. (RP day 1, Page 106, Line 20).
4. Mark bathed and changed Bryan Johnson's diapers regularly as Bryan's condition deteriorated. (RP day 1, Page 108, Line 1).
5. The outcome of the Will Contest would not affect him financially, (RP day 1, Page 111, Line 6).

6. He had read the Hospital Will and knew it appointed Doodine as Executrix and provided that Bryan Johnson's property was to be sold and divided among the siblings. (RP day 1, Page 116-7, Line 20; CP 485-435 Paragraph 11).

7. He thought both Doodine and Bryan had signed the equal-division Hospital Will. (RP day 1, Page 118, Line 6).

8. He had moved in with Bryan Johnson at Doodine's request after Ivan left Port Angeles, to care for his Uncle Bryan and avoid Uncle Bryan's being placed in a nursing home by Doodine. (RP day 1, Page 123-4, Line 21).

9. Mark Johnson was administering and logging Bryan Johnson's morphine during the last weeks of Bryan's life. (RP day 1, Page 127-8, Line 21).

10. Bryan told Mark on several occasions after returning to Port Angeles that he always intended there to be an equal split among his siblings. (RP day 1, Page 132, Line 11).

11. After execution of the March 16 "Doodine" Will, Bryan Johnson told Mark Johnson that the Doodine Will wasn't what he wanted to do, but he had to do what Doodine said and "trust mom" (Doodine) to "do the right thing". (RP Day 1, Page 134, Line 8; CP 485, Paragraph 23).

12. The day the Doodine Will was executed "mom and him (Bryan) went into the bedroom and they worked it out together and then they went and got it signed". (RP day 1, Page 138, Line 13).

13. At the request of Spurz' attorney Mr. Tulloch, Mark Johnson was willing to submit to a lie detector test over his statements. (RP day 1, Page 142, Line 6).

14. He (Mark Johnson) had suffered severe head injuries in a beating and motorcycle accident that caused him to have "trouble with dates". (RP day 1, Page 143, Line 16).

15. His mother Doodine had read the Hospital Will in the hospital "at the same time" that her son Mark read it and therefore knew Bryan's wishes before procuring the Doodine Will. (RP day 1, Page 148, Line 12).

16. Bryan Johnson had consistently told Mark Johnson both before and during his last illness that if anything happened to him it was Bryan's intent that "the house gets sold, and it gets 'split up' among his siblings", (RP day 1, Page 150, Line 13) and that it (the Doodine Will) "wasn't what he really wanted to do but he 'had to trust mom to do the right thing'". (RP day 1, Page 151-2, Line 22).

17. Before the Doodine Will was signed (on March 16) "mom came over in the morning and said 'I have to get Bryan nailed down on this Will, I have to get this straightened out'". (RP day 1, Page 156, Line 11).

18. While Mark provided most of Bryan Johnson's care through April 14 by bathing and cleaning up Bryan's bowel accidents

even in “the middle of the night”, Doodine didn’t provide any of Bryan’s hygienic care at all. (RP day 1, Page 159, Line 4).

19. Doodine told Mark (falsely) that the Hospital Will was only good for one day and without a new will “the state would take everything”. (RP day 1, Page 160, Line 10).

20. On March 16 Christine came to Bryan’s house and stated there again to Mark that “she had to get Bryan nailed down on this Will”; after which she went into Bryan’s bedroom and remained alone with him for a “couple of hours”; after which she “came out and let me know they were done and that they were getting ready to go. (RP day 1, Page 162, Lines 3-17).

21. After being gone “a few hours” Doodine and Bryan returned, and she said to Mark “they’d got everything done, its all taken care of”. (RP day 1, Page 163, Line 7-14).

22. Later that same day (March 16) and referring to her siblings Ivan, Doug, and Shirley; Doodine told Mark that she “really screwed them good this time”. (RP day 1, Page 163, Line 20).

23. That evening or the next day, in the kitchen of Bryan Johnson’s house Doodine told Mark “with a snicker” that she “fucked them (her siblings) good this time”. (RP day 1, Page 164, Line 18 – Page 165, Line 6).

24. After getting the Will done, Doodine told Mark that Bryan had “wanted to give Shirley, Ivan and Doug 10 or 20 thousand dollars

each” and that she “jewed him down to 5” which is what the Doodine Will gives them each. (RP day 1, Page 166, Line 20; CP 732).

25. On another occasion while discussing the siblings with her son Mark Johnson, Doodine held up her middle finger and again stated “I fucked them good this time --- I’m not sending nothing to nobody --- they don’t deserve it” (RP day 1, Pages 167-8, Lines 12-3).

26. After Mark came forward with his testimony and Doodine learned what he had to say, she made a threat by telling her son Mark to “be careful what I say because there’s more than one will at stake for me”. (RP day 1, Page 170, Line 14).

27. His mother “procured” the Doodine Will from Bryan on March 16 after spending a “couple of hours” alone with Bryan in his bedroom on that same day. (RP day 1, Page 172, Lines 10-18).

28. No other family member than Doodine participated in obtaining or procuring the Doodine Will. (RP day 1, Page 178, Lines 1-11) Mark believed from his observations that his mother “exerted an undue influence over Bryan in the preparation of the Doodine Will”. (RP day 1, Page 178-9, Lines 14-7).

Mark’s quoted testimony, if credible, would mandate invalidation of the Doodine Will and result in an equal distribution among the siblings; which would be essentially what the Hospital Will provided. Therefore, the only defense of the Will available to Doodine was to attack the

credibility of her own son. This she attempted to do by claiming he is brain damaged by alcohol and drug abuse, and that he “lies 90% of the time”. (RP day 2, Page 18, Lines 15-16) She never suggested any motive for him to testify falsely against the Doodine Will. In fact, any selfish motivation he might have would be to testify in support of the Doodine Will because it gave him a bequest of \$25,000.00; whereas the Hospital Will and intestacy would both give him nothing. For those reasons there was no motive for Mark Johnson to testify falsely in opposition to the Doodine Will. On the other hand, there was an apparently irresistible motive for her to lie in support of the Doodine Will. The Hospital Will and intestacy gave her a mere 25%; whereas the Doodine Will she procured from Bryan Johnson gives her a full 86%. That is more than sufficient motivation to deviate from the truth in a \$275,000.00 estate.

The only in-Court witness who testified to Mark Johnson’s lack of credibility was his mother Doodine. Her only hope of success was to persuade the Judge that her son Mark was not worthy of belief because of brain damage not from his head injuries but from “drugs and alcohol abuse”; no matter what he said. This she tried to do by showing that her son Mark was “mixed up” on some dates, had some confusion concerning which vehicle she used to take Bryan to Olympic Title; and whether it was a wheelchair or a wheeled walker with a seat he loaded into the vehicle. Her efforts to discredit him also included offering delivery receipts for soil

from Anjos subsequent to March 16; suggesting without evidence that there was no soil at Bryan's house that Mark was moving with Bryan's tractor previously. In fact the large yard was all dirt.

In support of his opinion favoring Doodine and the Doodine Will, the Trial Judge essentially rejected all of Mark Johnson's testimony as not credible, and accepted all of Doodine's contrary but inadmissible and self-serving testimony. In other words, the Trial Court rejected Mark Johnson's financially disinterested testimony in favor of testimony from a very financially interested Doodine.

What the Trial Court needed to resolve the conflicting accounts of Mark Johnson and his mother impartially and fairly was therefore the input of a Johnson family witness who was personally disinterested in the outcome and had personal knowledge of the pertinent events; and whose credibility was beyond doubt. Will Contestant Doug Johnson produced such a witness in the person of Jayne Johnson, who was married to Mark Johnson during Bryan's last illness in Port Angeles; and had personal knowledge of the events from her interactions with Mark, Bryan, and Doodine both before and after the Doodine Will as executed on March 16, 2006. Jayne attended the entire trial, and testified more than once.

Unfortunately for the parties, the Trial Judge did not take note of Ms. Johnson's presence and testimony in arriving at his Memorandum Opinion. Her testimony was not acknowledged, discussed, considered, or for that matter discredited by the Trial Judge in any way. It was ignored.

Because Jayne Johnson's testimony was the only evidence from either side provided by an informed, disinterested, and unimpeached Johnson family witness, one would expect an unbiased Judge to at least make some mention of Jayne's presence and testimony in arriving at an opinion. Instead of that, Jayne Johnson's presence and testimony was completely ignored.

What should Jayne Johnson's testimony have contributed to a fair and unbiased consideration of all the evidence as was the Trial Court's obligation to consider before arriving at an opinion? Jayne Johnson's critical courtroom testimony included the following:

1. She was married to Mark from February 14, 2005 to July 3, 2009. (RP day 1, Page 183, Lines 7-20).
2. Of her five Johnson sibling in-laws, she was closest to Bryan Johnson. (RP day 1, Page 184, Line 19).
3. After Bryan came home from the hospital, she witnessed a conversation in Spirz' kitchen between Doodine and Mark in which Doodine "was telling Mark in my presence that uncle Bryan had to have extensive care; either he was going to be put into a nursing home or that he (Mark) needed to come and take care of him (Bryan) because "she couldn't deal with it". (RP day 1, Page 187, Line 1).
4. Doodine "was a very domineering person, that she did control the family and how it should have been ran her way, and uncle

Bryan basically went along with most of what she had to say”. (RP day 1, Page 185, Line 10).

5. Mark moved in with Bryan on February 24, 2006 and lived there with Bryan until after Bryan’s death on April 14, 2006, with Jayne visiting regularly. (RP day 1, Page 188-9, Lines 1-22).

6. During the week following March 16 she, Mark, and Bryan had a conversation on Bryan’s back porch with Bryan seated in a wheeled walker with a seat. (RP day 1, Page 191, Line 10) Bryan complained that “nobody was listening to him” (Page 194, Line 6) Jayne told him she would listen, and Bryan proceeded to state that he “didn’t want the (Doodine) Will that way; he wanted everything to be split up between his brothers and sisters”. Jayne then made Bryan a promise that she would “tell somebody his wishes if it came down to it” and Bryan replied “thank you. I want that. I need that”. (RP day 1, Page 196, Lines 1-25).

7. When told that Doodine claimed in her deposition that her son Mark “lies 90% of the time” Jayne’s response was “it’s the reverse, she lies 90%of the time”. (RP day 1, Page 197, Line 22).

8. After the Doodine Will was executed but before Bryan’s death, Jayne heard Doodine say concerning Bryan’s house that because of a recent appraisal after Bryan’s death she (Doodine) “was going to get a pretty penny out of it”.

9. After her divorce from Mark, Jayne received a call from Doodine’s attorney Mr. Tulloch that she took as an improper attempt on

Doodine's behalf to get Jayne to change her testimony:

I get a call from Mr. Tulloch and the phone and he's all giggly and giggy and going, "hee, hee, now that you're divorced, hee, hee, do you want to recant your testimony or would you like to do something different, hee, hee, hee." and I was just very appalled that he had the nerve to call me. I thought it was very rude. It was his manner on the phone I didn't appreciate. (RP day 1, Page 200, Lines 2-12)

Jayne replied that there was nothing she was going to recant and "don't call me again". (Line 11).

10. Because of his head injuries, Mark struggled with dates and times, but did better with events. (RP day 1, Page 201, Lines 11-17).

11. Jayne recalled an event during Bryan's last illness in Bryan's bedroom with Doodine on the phone speaking with their brother Doug, during which Jayne heard Doodine tell Doug that "he was not wanted, he was not needed, and he was not coming around. Don't even bother coming". (RP day 1, Page 203, Lines 1-7) Bryan cried. (Line 13).

12. After their depositions, Jayne overheard a phone conversation between Mark and his mother:

He had called her up on the phone to you know, try to talk to her because you know he still loves his mom and wants to try to keep that relationship but she has nothing, no desire for that. She was screaming over the phone at him that he was disinherited, he was no longer her son and don't ever call her again. She was just mad about us doing the deposition and stuff and what we had said and she couldn't believe Mark would ever defy her in this way. (RP day 1, Page 205, Lines 3-8)

13. Mark stayed with Jayne at her daughter Heather's house in

Joyce for three days, not three months, before moving into Bryan's house Port Angeles on February 24, 2006 and resided there with Bryan from February 24th until after Bryan's death on April 14th. (RP day 1, Page 211, Line 12).

From the above thirteen (13) examples it can be seen that Jayne Johnson's testimony was entirely consistent with Mark Johnson's, and entirely contrary to that of Doodine. Any unbiased consideration of all the evidence would necessarily include Jayne's entire testimony and give it considerable weight because of her unquestioned disinterest. It was impossibility for Doodine to discredit either Jayne's testimony or Jayne herself as a witness, and there was no impeachment even attempted. Given that this evidence was not considered in the Findings of Fact or Conclusions of Law and apparently not given any weight by the Trial Judge, this alone is sufficient ground for reversal.

POINT III:

CREDIBILITY

Where, as here, there are radically different accounts of the same series of events, in reaching the truth the relative interests and motivations of the witnesses must be considered. It is undisputed that Mark Johnson had memory difficulty with dates and times secondary to his head injuries. As to his financial self-interest and potential motivation to lie, it would be against his interest to testify in opposition to the Doodine Will because it gave him \$25,000.00; whereas he would receive nothing through intestacy

should the Doodine Will be invalidated. His uncle Doug and Aunt Shirley have agreed that Mark would receive his \$25,000.00 Doodine Will bequest even if that Will was invalidated. The outcome of the case was (and is) therefore a matter of financial indifference to him. He had (and has) no conceivable motivation to lie. His only motivation is to tell the truth.

Jayne Johnson had no motivation not to tell the truth, for at least three reasons: 1) No outcome could affect her financially; 2) she had promised Bryan Johnson that she would speak out the truth about his wishes if and when the time came; 3) as an ex-wife to Mark Johnson, any motivation to not tell the truth regarding Mark Johnson and his testimony would naturally be to discredit him and his account, unless she knew he was telling the truth. In other words, Jayne Johnson had no motivation whatever to not tell the truth, and her testimony supported both Mark's credibility and his account of the events she also witnessed.

Doodine, on the other hand, had every motivation to fabricate. A convincing series of fabrications would produce for her a return in excess of \$225,000.00, and preserve her dominant position in the family. Until her son Mark Johnson came forward with information concerning the Hospital Will, Doodine denied knowledge of its content (Certified Statement of Christine Spirz filed October 18, 2006; CP 678, Paragraph 2). When she "helped" Bryan Johnson write the Doodine Will, she had Bryan include a \$25,000.00 gift to Mark (five times what anyone else

received), in what might appear to have been an attempt to silence or “buy him off”. She apparently did not expect that Mark would pass up that much money to get the truth out. Once she learned Mark had come forward with the truth through his Certified Statement (CP 485); to preserve her anticipated 86% of the Estate, she had no choice but to try to discredit Mark and come up with another story about Bryan’s wishes and his preference for her over all the other siblings. That is what she did, and it worked; but only with the Trial Court’s assistance in misapplying the Deadman Statute, the strong presumption of undue influence, and Jayne Johnson’s entire testimony. It is obvious that as between Mark and Doodine, one of them is not telling the truth. Will Contestant Doug Johnson suggested in closing that to resolve the conflict, the Trial Court should simply disregard the opposing testimonies of both Mark Johnson and Doodine, and pay attention to that of Jayne Johnson as the only disinterested, and unimpeachable, Johnson family witness. The Trial Judge chose to ignore the most credible evidence he had available

POINT IV:

**UNDUE INFLUENCE
CONFIDENTIAL RELATIONSHIP
BURDEN OF PROOF**

In Washington there is a sizable body of decisional law addressing the burden of proof in cases of gifts or wills involving claims of undue influence.

It is elementary that a gift or will contestant claiming undue

influence bears the burden of proving undue influence by evidence that is “clear, cogent, and convincing”. An exception to that rule arises where a special relationship of trust or confidence (i.e., a “confidential” or “fiduciary” relationship) exists. Where that relationship is shown to exist, under Washington law the burden of proof shifts to the Proponent to produce evidence sufficient to convince the Court that the gift or testamentary disposition of the Proponent was not a product of undue influence. In other words, Washington law automatically produces a rebuttable “presumption” of undue influence where a “confidential or fiduciary” relationship of trust exists. See Estate of Tresidder and the other cases cited below.

In this case, the existence of such a relationship is undisputed; having been clearly admitted by the Will Proponent under oath in her deposition of September 23, 2008. Page 24, Lines 14-20 (published at Trial) as well as acknowledged by all other witnesses at different times during the trial.

The earliest Washington case which recognized a shifting of the burden of proof in such cases is Estate of Tresidder 70 Wash.17 (1912). In that case there was a similar provision in the contested Will (that the Proponent (Executrix) “provide --- as I have requested”), similar to a provision in the “Doodine” Will that “she (Christine Spriz) will carry out

my wishes as we have discussed previously” (Will, CP 732). The obvious danger of allowing a will containing such a provision to stand was articulated by the Tresidder Court:

---it’s meaning depends upon oral evidence which it is impossible to reveal, for it lies in the conscience of the sole legatee. Dangerous indeed would be the doctrine that would sustain a will of that kind. (At page 22)

Regarding the burden of proof, the Tresidder Court held:

While ordinarily the burden of proof is upon the contestant of a will claiming undue influence, sufficient is shown to put the executor to his proof that there was no undue influence. In our judgment that burden has not been sustained. (Emphasis added, at 24)

The “sufficient” showing in Tresidder included several elements of the present case, such as prior wills, which in Tresidder included a later-disinherited son; involvement of the Proponent in “procurement” of the challenged will, and admitted attachment and concern of the deceased for her “disinherited” son (or, as in this case, siblings).

The landmark Washington decision in this area is the 1938 case of Dean et. al. v. Jordan, 194 WA 661 (1938). In that case the Court describes a seven-element test it calls “rules” to determine whether a relationship is of such a “suspicious nature” as to raise the presumption of undue influence and shift the burden of proof to a Proponent:

The most important of such facts are (1) that the beneficiary occupied a fiduciary or confidential relationship to the testator; (2) that the beneficiary actively participated in the preparation or procurement of the will; (3) that the beneficiary received an unusually or unnaturally large part of the estate. Added to these may be other considerations, such as; (4) the age or condition of

health and mental vigor of the testator; (5) the nature or degree of relationship between the testator and the beneficiary; (6) the opportunity for exerting an undue influence, and (7) the naturalness or unnaturalness of the will. The weight of any such facts will, of course, vary according to the circumstances of the particular case. Any one of them may, and variously should, appeal to the vigilance of the court and cause it to proceed with caution and carefully to scrutinize the evidence offered to establish the will.

The combination of facts show by the evidence in a particular case may be of such suspicious nature as to raise a presumption of fraud or undue influence and, in the absence of rebuttal evidence, may even be sufficient to overthrow the will. In re Beck's Estate, Wash. 331, 10 Pac. 340.

Considering the matter in the light of these rules, we believe and hold that the facts in this case did raise a presumption of undue influence, and that the presumption was of such strength as to impose upon the proponent the duty to come forward with evidence sufficient at least to balance the scales and restore the equilibrium of evidence touching the validity of the will. (Emphasis added)

Where any (or where, as here, all) of the enumerated suspicion-raising factors exist, this decision requires the Court to “carefully scrutinize the evidence”, which of course means all the evidence. The Court in this case instead completely ignored the most credible evidence available to it – the Jayne Johnson testimony.

The 1966 Washington decision in Estate of Guy L. Smith 66 Wn. 2d 15 (1966) re-affirmed and clarified the earlier Dean decision, holding that:

A presumption of undue influence is raised where a beneficiary who received an unusually or unnaturally large part of an estate, occupied a fiduciary relation to the testator, and actively participated in the preparation of the

will; and such presumption, which if unrebutted may be sufficient to overthrow the will, imposes a duty upon the proponents of the will to come forward with evidence sufficient to balance the scales and restore the equilibrium of evidence touching the validity of the will. (Emphasis added, at 145, 153)

Similar holdings appear in Washington undue influence cases involving gifts, as well as wills. A bequest is in reality a gift, and the dangers of undue influence are identical. McCutcheon v. Brownfield, 2 Wn App 348; 467 P 2d 868 (Wa 1970) involved a challenged gift to one having a “confidential relationship” with the donor:

The burden of proving the absence of undue influence when a confidential relationship exists between parties is upon the defendant (i.e., the proponent). The existence of undue influence is a factual question. If a confidential relationship exists between mother and daughter, then evidence to sustain the gift between such persons must show that the gift was made freely, voluntarily, and with a full understanding of the facts...If the judicial mind is left with doubt or uncertainty as to exactly what the status of the transaction was, the donee must be deemed to have failed in the discharge of his burden and the claim of gift must be rejected. (Emphasis added, at 357)

The 1972 Washington case of In re Burkland’s Estate, 8 Wn App 153, 504 P.2d 1143 involved two wills, the second of which was radically changed to favor a Proponent less than ten (10) months after execution of what the Court describes as a “natural” will as opposed to the “unnaturalness” of the second will. In the present case, the dramatic change from the “naturalness” of the “hospital” will to the “unnaturalness” of the “Doodine” will occurred in less than two (2), and not the ten (10) months the Burkland Court considered a “surprisingly short” period for

such a radical change of mind to have occurred without undue influence. (at Page 160). Here the abrupt turn around occurred in one-fifth that time.

Burkland involved a confidential relationship and included most of the Dean factors considered necessary to shift the burden of proof. Dean held that all those factors are to be considered, but that not all are required. After enumerating those elements, all of which are presented by the instant case, the Burkland Court held:

There can be no doubt whatsoever that the facts in this case raised a strong presumption of undue influence sufficient to require the proponents of the will to come forward with evidence sufficient at least to balance the scales and restore equilibrium of evidence touching the validity of the will. The trial court's views as to the extent which the proponent has met that burden are set forth just prior to his denial of alternative motions for reconsideration or new trial.

It is my feeling and my finding based upon all of these facts that I have recited, together with the law providing that the proponents have the burden of coming forward with some evidence to explain this, which I feel was not met, that I will make a finding that the will therefore should be denied. (Emphasis added, at 160, 161)

As indicated, a testamentary bequest is actually a gift. The quantum of proof required to rebut the presumption of undue influence in a bequest to a fiduciary should therefore be the same.

The Washington decision in Doty v. Anderson 17 Wn App 464, 563 P.2d 1307 (1977) elevates the shifted burden of rebuttal proof in such undue influence cases to a level beyond a mere "preponderance" to the level of "clear, cogent, and convincing". The Doty Court held:

A person in a confidential relationship with a donor must prove by clear, cogent, and convincing evidence that a transfer was a gift and that undue influence was **not** involved, (Emphasis added, at 464)

The 1982 case of White v. White 33 App 364, 655 P.2d 1173

(1982) then held that:

Where the donee occupied a fiduciary relationship to the donor – the donee bears the burden to prove lack of undue influence (by clear, cogent, and convincing evidence). (Emphasis added, at 368)

The 1992 case of Pederson v. Bibroff, 64 Wn App 720, 828 P.2d 1113 (1992) subsequently held that the Doty level of “clear, cogent, and convincing” evidence required to rebut the “strong presumption” of undue influence was in fact the law in Washington:

When a donor and donee of property maintain a confidential relationship, the donee has the burden of proving by clear, cogent, and convincing evidence that the transfer was intended as a gift and was not the product of undue influence. The donee must show that the gift was made freely, voluntarily, and with a full understanding of the facts. (Emphasis added, at 710)

In other words, the rebuttal evidence required must be clear, cogent, and convincing. That seems logical, since the presumption satisfies the challenger’s initial burden of clear, cogent, and convincing evidence. The enhanced rebuttal level of “clear, cogent, and convincing” evidence would only restore “balance” and “level the playing field”.

The most recent Washington case addressing these issues is Matter of Estate of Lint, 957 P.2d 755 (Wash. 1998); that case approves and applies the Dean formula which, when even some of the elements are

present, raises a “strong presumption” of undue influence in a will contest. In Lint, the Proponent failed to produce rebuttal evidence that was clear, cogent, or convincing. In response to the Proponent’s argument that the lesser level (i.e., a preponderance) of rebuttal evidence he did produce was sufficient to overcome the presumption, the Lint Court held:

In sum, although the appellant did present evidence in an effort to rebut the so-called suspicion-raising factors, we are satisfied that the trial court’s findings constitute clear, cogent, and convincing evidence of undue influence. Appellant concedes that Christian occupied a confidential and fiduciary relationship with Estelle and he does not argue against the trial court’s determination that Christian had a “perfect opportunity for exerting undue influence”. Conclusion of law 6, CP at 2327. Although appellant does claim that he rebutted the trial court’s determination that he, in essence, procured the will by hiring Kearney Hammer to prepare Estelle’s will and attending meetings where Hammer and Estelle discussed her new estate plans, we are satisfied that the trial court’s findings support this conclusion.

We are satisfied in the final analysis that there is clear, cogent, and convincing evidence in the record to support the trial court’s conclusion that Christian procured Estelle’s 1995 will by undue influence. (Emphasis added, at 764)

In this case Doodine had a “perfect opportunity for exerting undue influence”, and took full advantage of the opportunity.

By reason of these Washington decisions and the uncontested facts of this case, there is legally a “strong presumption” of undue influence by Proponent Doodine, which may only be rebutted by clear, cogent, and convincing evidence that the second or “Doodine” Will was not a result of undue influence. Proponent Spirz is the only possible source of such evidence, which could only come through her testimony concerning

conversations, statements, and transactions between herself and Bryan Johnson. Because she is a “person of interest” who stands to profit from such testimony and her testimony can no longer be controverted by her brother Bryan. Doodine should not have been allowed to testify concerning those matters under Washington law. With her accepted but inadmissible testimony, there has been no admissible rebuttal evidence to the law’s “strong presumption” of undue influence; let alone a rebuttal rising to the required level of “clear, cogent, and convincing” evidence.

It has been said, and is generally believed, that the first person to accuse another of dishonesty is the one most likely to be inclined toward dishonesty himself. The German Philosopher Friedrich Wilhelm Nietzsche put it in these words:

No one is such liar as the indignant man.

Geneology of Morals, essay (1887).

In the trial of this case, Will Contestant Doug Johnson was careful to avoid suggesting that Proponent Doodine was being untruthful; even when it appeared obvious that she was. On her side, she was not only willing, but apparently anxious to accuse both her son Mark Johnson, and her former daughter-in-law Jayne Johnson of repeated and outright lies, even though Doodine herself was the only witness with any motivation to be untruthful. She may have considered a good offense to be the best defense. Her accusations of lying on the part of her disinterested relatives opposing the Doodine Will total an amazing 39 times during the Trial

alone. They appear in her trial testimony at pages 16, 17, 18, 26, 28, 34, 50, 77, 78, 79, 80, 82, 86, 88, 89, 126, 127, 128, 129, 131, 133 and 134. All her accusations of lying in those pages of the record are against witnesses having no motivation to lie, and ironically come from the only one who does!

The Trial Court's Memorandum Opinion makes no mention of this remarkable fact; and accepts all of Doodine's self-serving but inadmissible testimony as absolute truth.

In either event, the lower Court's complete disregard of the testimony of both disinterested witnesses, and its complete acceptance of their accuser's self-serving inadmissible testimony, suggest an analysis completely devoid of neutrality and proper evaluation.

Doodine effectively isolated Bryan by "dis-inviting" Bryan Johnson's brothers Doug Johnson and Ivan Johnson from coming or remaining in Port Angeles during Bryan's final illness. Her reason for doing that is now obvious. It gave her exclusive access and a perfect opportunity to manipulate Bryan and his assets to her advantage.

Finally, there are strong indications that the Doodine Will is of her composition, even if in Bryan's handwriting. It is undisputed the Bryan executed the previous Hospital Will on January 18 or 20, 2006. The Doodine Will (CP 732) recites:

--with no prior wills having been made at any time.

Bryan Johnson knew he had made the Hospital Will less than two months earlier, and Doodine knew of the Hospital Will but denied knowledge of its contents until after her son Mark Johnson came forward with his Certified Statement (CP 536). Bryan would not have made the statement himself, because he would have known it was untrue. It would however be to Doodine's advantage to include the false statement, as that would lessen the likelihood that the Hospital Will disposition would come to light. On March 16, 2006 only Bryan, Ivan, Mark and Doodine had knowledge of the prior will. Bryan would soon (in four weeks) be dead, Ivan was back in Australia, and Mark was the only one besides Doodine who could disclose Bryan's Hospital Will intent to divide things equally among his siblings. Such disclosure would not serve Doodine's interest, and she was of course not about to voluntarily disclose anything. So, she first denied knowledge of the disposition. That left Mark Johnson as the only possible information leak that could invalidate the Doodine Will. That is part of what makes this case remarkable - a son testifying against his Mother for no financial gain and in fact financial detriment.

Of course, to prevent that from happening, Doodine included a gift of \$25,000.00 to Mark in the Doodine Will; which she undoubtedly expected to keep him quiet about the Hospital Will, which gave him nothing. It was a courageous and commendable thing Mark Johnson did to come forward; and likely an unsettling surprise to Doodine.

These two items alone are clear indications that Christine Spirz (“Doodine”) and not Bryan Johnson was the author of the Doodine Will.

VI. CONCLUSION

The Trial Court failed to either acknowledge, address, consider, or discredit the pivotal testimony of the only disinterested Johnson family witness, thereby depriving itself of any possibility of being persuaded to the Contestant’s view of the facts. Since there was no credibility challenge to witness Jayne Johnson or any admissible rebuttal of her testimony; the only way for the Trial Court to achieve a preferred outcome was to simply ignore Jayne’s entire testimony, which the Court did.

The Trial Court misapplied the Deadman Statute and failed to disqualify Doodine from testifying regarding her claimed conversations, statements, and transactions with Bryan; despite the Contestant’s blanket objection and the Court’s undertaking to both make objections and rulings upon offered Deadman Statute testimony. By making no objections or rulings at all, the Court received and acted upon inadmissible evidence from Proponent Spirz favorable only to her.

The Trial Court failed to comply with controlling Washington decisional law regarding presumptions of undue influence and the level of rebuttal evidence required. There was no admissible rebuttal evidence at all, and certainly none rising to the required level of “clear, cogent, and convincing”.

By rejecting the testimony of Mark Johnson wholly as being non-credible despite corroboration by the only disinterested Johnson family witness, the Trial Court failed to render a fair, informed, and impartial opinion after full consideration of all the admissible evidence.

Doodine had exclusive access to Bryan Johnson at the expense of all other siblings in the weeks before Bryan's death. Doug lived in New Mexico, Shirley in California, and Iva in Australia. It created the perfect opportunity to exercise undue influence for her own benefit, and she clearly did so.

The Trial Court failed to consider or address the motivation (or lack of motivation) of any witness to testify falsely. Doodine had the only motivation to do so.

Because the Trial Court's opinion and this appeal involve mixed questions of law and fact, Washington law requires that this Court's review be de novo, for correctness, without deference to the opinions, actions, or decisions of the lower Court.

Under Washington law and the admissible evidence the "Doodine" Will of March 16, 2006 must be considered to have been a product of undue influence by Will Proponent Christine Spriz, and declared invalid.

DATED this 23 day of January, 2012.

/W. Tracy Codd/
W. Tracy Codd WSNB 16745
Attorney for Will Contestant
Douglas M. Johnson

DECLARATION OF MAILING

The undersigned attorney W. Tracy Codd, being first duly sworn, on oath states:

On January 23, 2012, I mailed and emailed, postage prepaid, a true and correct copy of this brief to the Clerk of the Court and to the following attorney:

Robert Tulloch
Greenaway, Gay and Tulloch
829 East 8th Street
Port Angeles, WA. 98362

I SWEAR UNDER PENALTIES OF PERJURY AND UNDER THE LAWS OF WASHINGTON STATE THE FOREGOING IS TRUE AND CORRECT. I HAVE PERSONAL KNOWLEDGE OF THE FACTS SET FORTH AND I AM COMPETENT TO TESTIFY.

DATED this 23 day of January, 2012 at Seattle, WA.

W. Tracy Codd /
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Douglas M. Johnson