

No. 43282-0-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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KITSAP BANK, a Washington Financial Institution,

Respondent,

v.

BANK OF AMERICA, a Washington Financial Institution;  
CHARLENA M. LANTERNO,

Respondents,

and

GAIL DENLEY, as Personal Representative of the  
CONSOLIDATED ESTATES OF HELEN M. CORRELL  
AND JAMES F. CORRELL,

Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR KITSAP COUNTY  
THE HONORABLE LEILA MILLS

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BRIEF OF RESPONDENT

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DAVIES PEARSON, P.C.

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## I. INTRODUCTION

In this lawsuit, decedent Helen Correll's niece and Personal Representative, Gail Denley, is entrenched in a dispute with Helen's longtime friend, Charlena Lanterno. Helen and Charlena were very close friends for more than a decade and Helen considered Charlena to be her family.<sup>1</sup> Despite Helen's clear written and verbal instructions to Kitsap Bank, Ms. Denley refuses to accept that Helen properly designated Charlena as the payable on death beneficiary of her checking account.

The trial court granted summary judgment in favor of Charlena because it determined that there were no facts in dispute and that, as the properly designated payable on death beneficiary of Helen's checking account, Charlena was entitled to the funds in that account as a matter of law. The trial court awarded Charlena her reasonable attorney fees. This court should affirm the trial court and should further award Charlena her reasonable appellate attorney fees.

## II. STATEMENT OF FACTS

### A. *Helen and Charlena maintained a close, longtime friendship.*

Charlena began working at Washington Mutual, now Chase Bank, in Bremerton, Washington in 1993. CP at 69. Shortly after she began working there, Charlena met Helen, who was a regular customer. CP at

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<sup>1</sup> Because of the close, familial relationship between Ms. Correll and Ms. Lanterno, the author hereinafter refers to them by their first names, intending no disrespect.

69. Charlena and Helen maintained a friendship through most of the 1990s. CP at 69. Their relationship became much closer in 1999, when Charlena's husband was diagnosed with cancer and, shortly thereafter, passed away. CP at 69. Helen had lost her husband earlier and provided much-needed support and comfort for Charlena during that difficult time. CP at 69.

The comfort and support that Helen provided Charlena strengthened their friendship and the two became very close. CP at 69. Although they had originally met through Charlena's work at the bank, between 1999 and 2011, Helen and Charlena frequently visited in each other's homes. CP at 69. During these visits, they shared many hobbies, including Helen's passion for making dolls and doll clothes, and watching television. CP at 69. Throughout the twelve-year period of their close, familial friendship, Helen and Charlena shared many meals together, including dinner at least once a week and lunch on most weekends. CP at 69.

*B. Helen designated those friends with whom she had a close, familial relationship as POD beneficiaries of accounts at Kitsap Bank.*

In November 2010, Helen telephoned her banker at Kitsap Bank, April Ihde, to review her various accounts and their beneficiary designations. CP at 93. In that conversation, Helen informed Ms. Ihde that she wanted to add payment on death (POD) beneficiaries to her accounts at Kitsap

Bank and Ms. Ihde informed Helen of the required process and documents necessary to do so. CP at 93. In that conversation, Helen also informed Ms. Ihde that “she wanted to make sure that the . . . money in her accounts was left to . . . friends, because her friends were her family.” Clerk’s Papers (CP) at 93. Helen explained that “her friends were her family and she wanted to make sure that her ‘friends’ . . . would receive these funds.” CP at 93.

On occasion, Charlena helped Helen with her affairs, at Helen’s request. *See* CP at 69-70. For example, on December 15, 2010, Charlena delivered a check drawn on Helen’s Chase Bank account to Kitsap Bank for deposit along with a folder of other documents at Helen’s request. CP at 70. Charlena did as Helen asked and neither inquired about nor reviewed those documents. CP at 70, 101.

Unbeknownst to Charlena, the documents she delivered to Kitsap Bank at Helen’s request were deposit slips, a check drawn on Helen’s Chase Bank account for \$400,000, and POD beneficiary designations. CP at 70. Helen designated four of her friends, including Charlena, as POD beneficiaries of four of her accounts at Kitsap Bank. CP at 7-8, 70, 99.<sup>2</sup>

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<sup>2</sup> In addition to designating Charlena as a POD beneficiary of her checking account, Helen also designated her friends Mark Jensen, Karen Porter, and Linda Delorme as POD beneficiaries of her certificate of deposit accounts. CP at 7-8, 99. Helen made each of these designations at the same time, in December 2010. *See* CP at 93-99. Curiously, in

In accordance with Ms. Ihde's instructions on properly designating a POD account beneficiary, Helen sent a letter to Kitsap Bank setting forth specific information on Charlena, including her name, birth date, address, phone number, and social security number. CP at 93,-94, 100. Although the letter was fairly standard and did not cause her any alarm, after receiving it, Ms. Ihde telephoned Helen to confirm her instructions. CP at 93-94.

During that conversation, Ms. Idhe concluded that Helen was of sound mind and she reiterated her desire to designate her friends as her POD beneficiaries. CP at 94. Helen again stated that "she wanted to make sure that none of her family members received her money, and she wanted to make sure that it was left for her friends that [*sic*] ha[d] been there for her." CP at 94. Helen, thus, designated her friends as the POD beneficiaries of her Kitsap Bank accounts, both in writing and verbally. CP at 7-8.

At Helen's request, Ms. Ihde called Charlena during her workday at Chase Bank and asked Charlena to deliver a signature card for a Kitsap Bank account to Helen. CP at 94-95. Charlena did so. CP at 95. In assisting Helen with the signature card, Charlena filled out Helen's

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this suit, Appellant Ms. Denley does not appear to challenge Mark's, Karen's, or Linda's POD beneficiary designations.

driver's license information and Helen signed it. CP at 70. Charlena then returned the signature card to Kitsap Bank. *See* CP at 95.

After delivering Helen's signature card and documents, without knowing their contents, to Kitsap Bank in December 2010, Charlena had no further involvement with Helen's Kitsap Bank accounts. *See* CP at 95. Charlena never asked Helen to designate her as a POD beneficiary and did not realize that Helen had done so. CP at 71.

Charlena and Helen continued their close, familial friendship after these December 2010 transactions and through the end of Helen's life. CP at 69-70; *see also* CP at 96.

*C. After designating her friends as her POD beneficiaries, Helen executed a will.*

In early January 2011, Helen contacted her attorney to execute a simple will because she had misplaced the original copy of her then-existing will. CP at 114-15. In keeping with Helen's previous will, her 2011 will left the entire residue of her estate to her brother, Blaine Wiseman.<sup>3</sup> CP at 80, 82-83. In preparing and executing Helen's January 2011 will, her attorney spoke with her on the telephone and met with her in person. CP at 79-81. Her attorney concluded that Helen was "completely coherent [and that] she knew exactly what she was doing." CP at 81. At this time, her attorney also helped Helen execute a Durable

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<sup>3</sup> Mr. Wiseman is Personal Representative Ms. Denley's father.

Power of Attorney in which she appointed Charlena to serve as her attorney-in-fact. CP at 79-80, 115.

D. *After Helen's death, Kitsap Bank honored Helen's POD beneficiary designations.*

In mid-February 2011, Helen was hospitalized. CP at 71. Because of their close, familial relationship, Helen had appointed Charlena as her attorney-in-fact in her Durable Power of Attorney. *See* CP at 71, 79-80. Although they had been very close, this came as a surprise to Charlena, who did not know that she was named Helen's attorney-in-fact until Helen was hospitalized. CP at 71.

Charlena visited Helen in the hospital every day until Helen passed away on February 23, 2012. CP at 71. Charlena was grief-stricken. *See* CP at 95.

Because Charlena did not know that Helen had designated her as a POD beneficiary of any account, Charlena made no inquiries at Kitsap Bank or elsewhere. CP at 71. Then, in early April, Charlena saw Ms. Denley at Chase Bank while Ms. Denley was there to open an account for Helen's estate. CP at 71. At that time, Ms. Denley told Charlena that she "should contact Kitsap Bank because one of Helen's accounts named [her] as POD [beneficiary]." CP at 71. That was the first Charlena heard about Helen having designated her as a POD beneficiary. CP at 71.

Charlena then contacted Ms. Ihde at Kitsap Bank. CP at 71. Charlena met with Ms. Ihde at Kitsap Bank on April 8, 2012 and learned that Helen had designated her as the POD beneficiary of an account with a balance just over \$400,000. CP at 71, 96. Charlena was shocked, overwhelmed, and moved to tears. CP at 95.

During Charlena and Ms. Ihde's April 8 meeting, they completed all of the necessary documentation and paperwork. CP at 96. Then, in accordance with Helen's instructions and POD beneficiary designation, Kitsap Bank issued cashier's check for the funds in Helen's checking account to Charlena. CP at 10, 96.

*E. As Helen's Personal Representative, Ms. Denley contacted Kitsap Bank with bald allegations of fraud.*

Thereafter, as the Personal Representative of Helen's estate, Ms. Denley contacted Kitsap Bank and claimed that Helen's POD beneficiary designation for Charlena was fraudulent. CP at 9. Ms. Denley informed Kitsap Bank that her concerns were based on Charlena's employment at Chase Bank, where Helen had maintained accounts for years. CP at 9. Ms. Denley also notified Chase Bank and the Kitsap County Sheriff's Department of this alleged fraud. CP at 9.

In an abundance of caution, Kitsap Bank petitioned for a temporary restraining order preventing Charlena from transferring the funds from her

Bank of America account, where she had deposited the cashier's check, until further order of the court. CP at 1-5, 14-17. Kitsap Bank based this suit on RCW 30.22.210. CP at 3-5; *see also* CP at 22-23. Importantly, even though Kitsap Bank filed this lawsuit, it did so at Ms. Denley's request and Ms. Denley alone challenged Charlena's motion for summary judgment. *See* CP at 1-9, 111-13, 119-62.

The same week Kitsap Bank that filed this suit, all parties, including Charlena, filed a stipulation and order for a permanent restraining order that would prevent Charlena from transferring the funds from her Bank of America account until so allowed by the court. CP at 19-27. The court entered an order based on that stipulation on April 25, 2011. CP at 19-27.

*F. After Kitsap Bank brought suit and after the parties stipulated to a permanent restraining order, Ms. Denley failed to produce any evidence of fraud and the court granted summary judgment in favor of Charlena.*

For eight months after the court issued its restraining order, Ms. Denley failed to present any evidence to the court supporting her fraud allegation. *See* CP at 19-49. Thus, Charlena filed an answer to Kitsap Bank's complaint and moved the court for summary dismissal of that complaint. CP at 19, 37-42, 49-110.

In response to Charlena's motion, Ms. Denley argued that material questions existed as to whether Helen's signature on the POD beneficiary

designation was genuine or whether Charlena exerted undue influence over Helen.<sup>4</sup> CP at 125-29. Although not asserted in the complaint, Ms. Denley's undue influence allegation appeared to be based on Helen's age, Charlena's work with *Chase Bank*, even though Helen changed her POD beneficiary designation at *Kitsap Bank*, and Charlena having delivered the check and documents to Kitsap Bank. CP at 120.

Despite Ms. Denley's independent investigation and despite her filing claims of fraud with Kitsap Bank, Chase Bank, and the Kitsap County Sheriff's Department, the only evidence Ms. Denley produced in opposition to Charlena's summary judgment motion came from a forensic document examiner. *See* CP at 121. This forensic document examiner examined Helen's letter to Kitsap Bank in which she designated Charlena as the checking account's POD beneficiary and the \$400,000 check to Kitsap Bank. CP at 121. Ms. Denley's document examiner compared these records alongside known samples of Helen's writing. CP at 121.

Ms. Denley's forensic document examiner was not able to confirm or exclude Helen as the author of the POD beneficiary designation. CP at 121, 164. In examining this POD beneficiary designation, however, he

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<sup>4</sup> In proceedings below, Ms. Denley also argued that there were disputed facts regarding the identity of the person who wrote the text—other than the signature—of the \$400,000 check to Kitsap Bank, who delivered that check to Kitsap Bank, and the rationale behind Helen depositing \$365,000 into her Kitsap Bank checking account. CP at 125-29. On appeal, Ms. Denley abandons these irrelevant arguments. *See* Br. of Appellant.

did, however, find “characteristics in the signature and the cursive writing . . . [that] point to or suggest that they are genuine.” CP at 121, 164. Nor was Ms. Denley’s document examiner “able to determine whether the signature [on the check was] genuine.” CP at 121; *see also* CP at 164-65. Nonetheless, the document examiner did conclude that the other handwriting on the face of the check was not authored by Helen. CP at 121, 164.

Because Ms. Denley was able to produce only “suggestions and innuendos simply based on the fact that there was a relationship between” Helen and Charlena, the trial court granted summary judgment in favor of Charlena. Report of Proceedings (RP) (March 30, 2012) at 4; CP at 200-03. The court based its summary judgment order on RCW 11.11.070 and RCW 30.22.210. RP (March 30, 2012) at 3; *see also* CP at 60-64, 181-88. The trial court further awarded Charlena her attorney fees under RCW 11.96A.150.<sup>5</sup> CP at 281-82. Ms. Denley appeals. CP at 284. Even though Kitsap Bank was the original petitioner in this lawsuit, its petition was based on Ms. Denley’s allegation of fraud and all parties signed and

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<sup>5</sup>After Ms. Denley appealed, the trial court entered an order that again froze Charlena’s funds in her Bank of America account pending this appeal. CP at 279. In this order, the trial court also ordered Ms. Denley to establish a \$20,000 bond to supersede Charlena’s appellate attorney fees. CP at 279-80; RP (April 13, 2012) at 40-42.

entered a stipulation and order that the summary judgment in favor of Charlena was a final, appealable order. CP at 296-98.

### III. ARGUMENT

Although Ms. Denley was unable to produce any controlling authority or credible factual assertions supporting her claims below, she reiterates them on appeal. Ms. Denley argues that this court should reverse the summary judgment and attorney fees award in favor of Charlena. Br. of Appellant. This court should affirm the trial court.

#### A. *This court's review is de novo.*

Appellate courts review orders granting summary judgment de novo, performing the same inquiry as the trial court. *Aba Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). An appellate court will affirm a summary judgment order if it concludes there are no issues of material fact and the moving party is entitled to judgment as a matter of law. *Estate of Toland v. Toland*, -- Wn. App. --, ¶12, -- P.3d -- (2012), 2012 Lexis 2300; *see also* CR 56(c). Washington courts supplement the summary judgment standard of review where the nonmoving party has the burden of proving its case by clear, cogent, and convincing evidence. *In re Estate of Jones*, -- Wn. App.

--, ¶ 18, -- P.3d --, 2012 Lexis 2116 (2012). A party alleging undue influence must establish it by clear, cogent, and convincing evidence. *Jones*, -- Wn. App. at ¶18.

Although in reviewing a summary judgment motion Washington courts consider the facts in the light most favorable to the nonmoving party, the nonmoving party bears the burden of establishing that there are specific facts in dispute. *Seven Gables Corp. v. MGM/US Entm't Co.*, 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986). The nonmoving party cannot satisfy this burden with mere allegations, speculation, argument, or conclusory statements that material facts are in dispute. *Baldwin v. Sisters of Providence in Wash, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); *see also Seven Gables*, 106 Wn.2d at 13. Further, an appellate court may affirm summary judgment on any ground supported by the record on appeal. *Plese-Graham, LLC v. Loshbaugh*, 164 Wn. App. 530, 541, 269 P.3d 1038 (2011).

B. *This court should affirm summary judgment in favor of Ms. Lanterno because decedent Helen Correll properly designated her as the payable on death beneficiary of an account at Kitsap Bank.*

Because the basis of Ms. Denley's claim for relief below was unclear, Charlena argued in the alternative that: (1) Ms. Denley's claim was time-barred under RCW 11.11.070(3), (2) Ms. Denley lacked standing to challenge Charlena's ownership of the POD

account funds, and (3) Ms. Denley failed to show any factual dispute supporting her claim of fraud or undue influence. *See* CP at 60-64, 182-88. The trial court concurred with each of these arguments. RP (March 30, 2012) at 3-5. This court should affirm the trial court based on Ms. Denley's inability to present any material factual disputes that could conceivably call Charlena's ownership of the POD account funds into question.

1. *Ms. Denley has failed to establish any disputed material fact showing undue influence and Charlena is entitled to the funds as a matter of law.*

Under Washington law, a bank may establish POD accounts and proper designation of a beneficiary of any such POD accounts is governed by the contract of deposit. RCW 30.22.100(5); RCW 30.22.060. A contract of deposit must be in writing and must be signed by everyone who has a "current right to payment of funds" from the account, though a bank may require additional terms and conditions in a contract of deposit, if it so chooses. RCW 30.22.060. A designated beneficiary of a POD bank account legally owns any funds in the account upon the depositor's death. RCW 30.22.100(4).

Here, it is undisputed that Helen had a POD checking account at Kitsap Bank before December 2010. *See* CP at 94. It is also undisputed that Helen contacted Ms. Ihde at Kitsap Bank in November 2010 to review

her POD beneficiary designations and to get information on how to update those beneficiaries. CP at 94. It is undisputed that Helen told Ms. Ihde in November that she “wanted to make sure that none of her family members received her money, and she wanted to makes sure that it was left for her friends that have been there for her.” CP at 94.

In accordance with that statement, it is also undisputed that Helen sent a letter to Ms. Ihde at Kitsap Bank in December 2010 that stated: “As per my request, please remove . . . Blaine Wiseman as POD and make it POD Charlena Lanterno . . . .” CP at 95, 100. This letter went on to list Charlena’s date of birth, social security number, address, and phone number. CP at 95, 100. This is information is exactly the information Ms. Ihde had told Helen in November that Kitsap Bank required in order to update a POD beneficiary designation. CP at 94.

It is further undisputed that, after receiving this letter, Ms. Ihde telephoned Helen to confirm her instructions. CP at 94-95. During that conversation, Helen reiterated that she wanted to designate Charlena as POD beneficiary of her checking account because she wanted to make sure that her money went to her friends rather than her family. CP at 94-95.

Thus, according to the terms of Helen’s contract of deposit with Kitsap Bank, Helen followed all the proper procedures to designate

Charlena as the POD beneficiary of her checking account. Kitsap Bank, then, designated Charlena as the POD beneficiary of Helen's checking account. CP at 8. Since Charlena was the POD beneficiary of Helen's Kitsap Bank checking account, Charlena became the owner of the funds deposited in that account when Helen passed away as a matter of law in accordance with RCW 30.22.100(4).

Nonetheless, Ms. Denley persists in arguing that the POD designation is either not genuine or the result of undue influence.<sup>6</sup> CP at 125-29; Br. of Appellant at 12-17.

Undue influence results when a person imposes unfair persuasion on another that seriously impairs that other's "free and competent exercise of judgment." *Jones*, -- Wn. App. at ¶25. In evaluating whether undue influence occurred, "the ultimate question is whether the result was produced by means that seriously impaired the free and competent exercise of judgment." *Jones*, -- Wn. App. at ¶26 (*quoting* Section 177 of Restatement (Second) of Contracts, comment b).

A confidential relationship between the influencer and the person influenced *may* create a rebuttable presumption of undue influence. *Jones*, -- Wn. App. at ¶25. A confidential relationship exists if one person has

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<sup>6</sup>Although Ms. Denley persuaded Kitsap Bank to initiate this lawsuit by making allegations of fraud, she augmented her argument in opposition to summary judgment with allegations of undue influence. See CP at 1-9, 119-62. On appeal, Ms. Denley relies heavily on her undue influence allegations. See Br. of Appellant.

gained another's confidence and "purports to act or advise with the other person's best interest in mind." *Jones*, -- Wn. App. at ¶25.

However, the presumption of undue influence created by a confidential relationship may be rebutted by evidence presented by a party moving for summary judgment. *Jones*, -- Wn. App. at ¶25, ¶34. Indeed, "presumptions must give way in light of evidence." *Jones*, -- Wn. App. at ¶36. Evidence that the person who was allegedly subject to undue influence was competent and capable of making her own decisions rebuts the presumption of undue influence, even where a confidential relationship exists. *Jones*, -- Wn. App. at ¶¶28, 34-36.

Here, Helen and Charlena were longtime, very close friends with a familial relationship. Charlena also worked at Chase Bank, where Helen maintained several accounts. Even assuming, however, that Helen and Charlena had a confidential relationship giving rise to a rebuttable presumption of undue influence, Charlena presented evidence to rebut it.

In support of her summary judgment motion, Charlena presented undisputed evidence that: (1) Helen spoke with Ms. Ihde on two separate occasions, both before and after preparing the written POD beneficiary designation; (2) Helen was competent and capable during her conversations with Ms. Ihde; and (3) Helen executed a will and a durable power of attorney—in which she appointed Charlena as her attorney-in-

fact—shortly after she prepared her POD beneficiary designations and, after speaking with and meeting with Helen, her attorney concluded that she was “completely coherent [and] she knew exactly what she was doing.” CP at 81. Other than highlighting Helen’s age, Ms. Denley produced no evidence suggesting that Helen was unable to handle her own affairs. *See* CP at 128-29.

Accordingly, the undisputed and competent evidence given by uninterested parties that shows that Helen was competent and coherent rebuts any presumption of undue influence created by any confidential relationship between Helen and Charlena. Thus, the trial court correctly concluded that the evidence did not support Ms. Denley’s undue influence claim and properly granted summary judgment in favor of Charlena.

In an apparent attempt to bolster her undue influence argument or “create” a factual dispute Ms. Denley tries to call the authenticity of Helen’s signatures on the POD beneficiary designation and on the \$400,000 check to Kitsap Bank into question. *See* Br. of Appellant at 14-17. But, Charlena has presented undisputed evidence that she and Helen shared a longtime, familial friendship. CP at 71-19. Charlena also presented evidence that, although she assisted Helen as Helen requested, she: (1) never asked Helen to name her the POD beneficiary of any account, (2) did not realize that Helen had named her the POD beneficiary

of an account until almost two months after Helen's death, (3) and neither inquired about nor reviewed nor knew that the documents she delivered to Kitsap Bank included a letter designating her as a POD beneficiary and a sizable check. CP at 69-72.

Despite having a forensic document examiner analyze the records at issue here, Ms. Denley has not been able to present evidence that Helen's signature on the POD designation letter or the check to Kitsap Bank are not genuine. CP at 121-22. Importantly, Ms. Denley has failed to present any evidence whatsoever that Helen's statements to Ms. Ihde at Kitsap Bank did not accurately reflect her instructions. Instead, all Ms. Denley has presented is innuendo and conjecture that there must have been undue influence here because Helen was elderly and Charlena worked at a bank where Helen maintained accounts.<sup>7</sup> See Br. of Appellant.

These bare assertions are insufficient to create a genuine issue of material fact. The evidence presented below shows that Helen was competent, not subject to undue influence, and properly designated Charlena as POD beneficiary of her Kitsap Bank checking account. There are no material facts in dispute and Charlena is the owner of the funds in

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<sup>7</sup>Again, it is noteworthy that Ms. Denley perpetuated this fraud allegation by alerting an investigator at Chase Bank and by filing a police report with the Kitsap County Sheriff because, despite these multiple investigations, Ms. Denley has failed to produce any evidence that supports her bald allegations of fraud and undue influence. See CP at 9.

the checking account as a matter of law. Consequently, the trial court correctly granted summary judgment in Charlena's favor. This court should affirm.

2. *The trial court properly awarded Charlena's reasonable attorney fees under Title 11 RCW.*

Even though Kitsap Bank initially filed this suit under RCW 30.22.210, Title 11 RCW still applies. The legislature intended that Title 11 RCW would grant Washington courts the authority to settle "all matters" relating to estates, including transfers of nonprobate assets. RCW 11.96A.020(1)(a). A "matter" under this Title expressly includes "any issue, question, or dispute involving the determination of any . . . devisees, legatees, . . . or other persons interested in [a] . . . nonprobate asset, or with respect to any other asset or property interest passing at death." RCW 11.96A.030(2)(a). A POD account is a nonprobate asset as defined by statute. RCW 11.96A.030(3); RCW 11.02.005.

Here, this litigation began when Ms. Denley, as personal representative of Helen's estate, informed Kitsap Bank that she believed there was potential fraud underlying Helen designating Charlena as POD beneficiary of her Kitsap Bank checking account. CP at 1-9. The litigation expressly sought to clarify the ownership of the funds in Helen's Kitsap Bank POD checking account. CP at 1-36. Apparently, according

to Ms. Denley, Helen's 2010 designation of Charlena as POD beneficiary was ineffective and, thus, Helen's brother was entitled to those funds because he was the account's previously designated POD beneficiary.

This case, then, is a "matter" as defined by RCW 11.96A.030(2)(a). Because Washington courts can resolve all such "matters" under Title 11 RCW, the trial court did not err in concluding that Title 11 RCW applies. Since the trial court did not err in concluding that Title 11 RCW applies, the trial court had the authority to award Charlena her attorney fees under RCW 11.96A.150. Thus, this court should affirm the trial court's award of Charlena's attorney fees.

3. *This court should award Ms. Lanterno her reasonable appellate attorney fees.*

This court should award Ms. Lanterno her reasonable attorney fees on appeal in accordance with RAP 18.1. The estate should pay these fees from the bond ordered by the trial court. CP at 279-80. RAP 18.1 allows a party to recover reasonable attorney fees on appeal if there is a legal basis for such award. Under RCW 11.96A.150, both trial and appellate courts may award a party's reasonable attorney fees and costs as the court deems equitable, based on the factors it deems relevant. Washington courts have discretion to award attorney fees in all matters under Title 11. RCW 11.96A.150.

Here, as discussed above, this case is a “matter” as statutorily defined and Washington courts have authority to resolve all such “matters” under Title 11 RCW. Accordingly, RCW 11.96A.150 provides a statutory basis for this court to award Charlena her appellate attorney fees in accordance with RAP 18.1.

#### **IV. CONCLUSION**

As analyzed above, Ms. Denley has failed to show any question of material fact and Charlena is entitled to ownership of the funds from Helen’s Kitsap Bank checking account as a matter of law. Thus, the trial court properly granted summary judgment in favor of Charlena. The trial court also correctly awarded Charlena her attorney fees under RCW 11.96A.150 because it allows a court to award attorney fees in any matter under Title 11 and, even though Kitsap Bank filed its complaint pursuant to RCW 30.22.210, this is still a “matter” to which Title 11 RCW applies.

This court should affirm the trial court’s summary judgment and attorney fee orders. This court should also grant Charlena her attorney fees on appeal.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of October, 2012.

DAVIES PEARSON, P.C.



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in / s:\19xxx\196xx\19621\1\court of appeals action\pleadings\respondent lanterno's brief (october 2012).doc

**DECLARATION OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that I mailed, or caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT**, postage prepaid, via U.S. mail and via e-mail on the 26 day of October 2012 to the following:

Court

Court of Appeals, Division II  
Office of the Clerk  
950 Broadway Street, Suite 300  
Tacoma, WA 98402

Counsel for Appellants

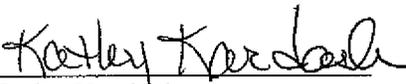
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DATED this 26 day of October 2012.

  
Kathy Kardash