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TERRY

No. 45098-4-II  
THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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**CHRIS & DAVID HARDER**

**Appellants**

**AND**

**PHILLIP HARDER**

**Respondent**

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**ON APPEAL FROM CLARK COUNTY SUPERIOR COURT**  
**Clark County cause No. 07-4-00949-4**

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**APPELLANTS' BRIEF**

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## **I. ASSIGNMENT OF ERROR**

- A. The trial court erred in entering the order on June 14, 2013 denying Appellants' a hearing on the remaining issues of a timely filed Motion for mediation.
- B. The trial court erred on the proper accounting and distribution of assets of the estate.
- C. The trial court erred by taking form over substance in refusing to hear appellants' request for mediation because it was entitled a petition instead of a motion.
- D. The trial court erred by denying the appellants' motion for arbitration because of jurisdictional issues.

## **II. ISSUES**

For purposes of RCW 11.96A.300 of the Trust and Estate Dispute Resolution Act (TEDRA). The Appellants Chris and David sought to resolve by mediation the reasonableness of fee's charged to the Estate.

## **III. STATEMENT OF THE CASE.**

Appellants Chris and David Harder's Father passed on November 27, 2007. Phillip Harder was named executor of the

estate. On December 26, 2007 there was an order for the petition of the Court to be solvent in this nonintervention estate (CP 1).

On November 6, 2009 the court received a motion for a non-judicial agreement. The court approved the order on November 13, 2009 (CP 16-18).

The declaration of completion of probate with will was filed on August 13, 2012 (CP 27). Chris and David filed a motion for mediation on September 12, 2012 (CP 29). This case was mediated by Judge Landly in Clark County February 13, 2013. After three hours of Mediation, the session ended without an agreement. Pursuant to Mediation Chris and David filed a motion for arbitration on March 4, 2013 (CP 30).

On June 5, 2013 the trial court ruled that the Chris and David did not have standing because the notice of mediation was not a petition to the court to the court. As a result the trial court ordered that it lacked jurisdiction to hear the matter on issues raised by Chris and David (CP 51).

#### **IV. ARGUMENT**

- A. On November 13, 2009 Judge John F. Nichols signed on the order approving the non-judicial agreement. He signed this order while the court was solvent (CP 23). Because of this order the

court is no longer solvent it is Chris and David's position that it still was not solvent when the court ruled June 5, 2013 that it had no jurisdiction to resolve the remaining issues raised by Chris and David.

B. Pursuant to RCW 11.68.065 and the case Re estate of Jones, 152Wn.2d 1,9, 93 P.3d 147 (2004) in a non-intervention estate, once an order of solvency is entered, the trial court loses jurisdiction. However, the trial court will regain jurisdiction if a petition seeking relief from the trial court is filed by a person with standing. RCW 11.96A.080(1) provides that any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 1196A.030. Therefore, Chris and David had standing to present to the court their request.

C. The motion for mediation under RCW 11.96A.300 (CP 29) was agreed upon by both parties. The heirs were asking the trial court for relief in this motion of mediation that is served as the functional equivalent of a petition for an accounting. Phillip Harder did not file an objection to mediation he signed it and agreed to mediation. Under the rule of RCW 11.96A.300 it states that unless a petition objecting to the motion is filed within the

twenty day period then any remaining issues will be settled at a court hearing.

- D. The notice of motion for arbitration (CP 30) was filed on March 4, 2013. This action was to be heard under TEDRA RCW 11.96A. Chris and David are still seeking that only reasonable and just fee is charged to the estate.
- E. Under RCW 2.08.010 subject matter jurisdiction is the authority of the court to hear and determine the actions to which a case belongs. Somers v. Snohomish county, 105 Wn App.937,941,21 P.3d 1165 (2005) Generally, the superior court has universal original subject matter jurisdiction, including jurisdiction in all cases in equity, in all cases at law which involve the title or possession of real property, in all probate matters, in all cases in which the demand or the value of the property in controversy exceeds three hundred dollars, and for such special cases and proceedings as are not otherwise provided for.
- F. Pursuant to RCW 11.96A.040 the superior court has the authority of jurisdiction. The superior court has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitations.

G. RCW 11.28.250 based on this statutory construction, the court finds that when a personal representative breaches his/her fiduciary duty to the beneficiaries.

- (9) An accounting from a personal representative or trustee RCW 11.96A.030(2)(c)(v))
- (10) The determination of fees for a personal representative or trustee RCW 11.96A.030(1)(c)(v)).

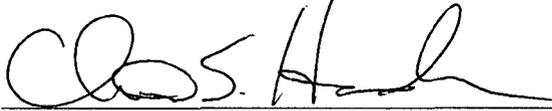
#### **V. CONCLUSION**

RCW 11.96A.300 squarely placed the burden of proof on Phillip Harder to dispute the facts from which the trial court could determine that he breached his fiduciary duties. Chris and David Harder were detrimentally affected by this breach. A notice of mediation is sufficient to invoke the jurisdiction of the court and is construed as a petition for an accounting and /or a mediation notice. It also serves as the functional equivalent of a petition for an accounting. A petition is simply “a document embodying a formal written request,” Webster’s Third New International Dictionary 1690 (1993). Whether titled a motion or a petition, therefore the motion of mediation suffices as a petition for a formal accounting. To hold otherwise would be to elevate form over substance. Phillip Harder suffered no prejudice by having the request named a motion instead of a petition. He had notice of the substantive

issues and the relief Chris and David were seeking and was on notice.

Chris and David request that the ruling by the court be reversed and remand.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of December, 2013

By: \_\_\_\_\_

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CERTIFICATE OF SERVICE

I, Chris S. Harder, hereby certify under penalty of perjury under the laws of the state of Washington that on the 3<sup>rd</sup> day of December, 2013. I deposited true and signed correct copies of entitled Appellants' Brief in the mails of the U.S. Postal Service, postage pre-paid dated December 3<sup>rd</sup>, 2013 to the counsel of record and to the court of appeals.



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