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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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APPEAL NO. 45917-5-II

COURT OF APPEALS OF WASHINGTON
DIVISION II

In re the Estate of ANITA D. TUTTLE, Deceased.

DAISY ANDERSON, et al, Appellants,

v.

PATRICIA HICKLIN, Personal Representative of the
Estate of Anita D. Tuttle, Respondent

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

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I. ARGUMENT

A. BACKGROUND

Doreen Hunt and Sharon Horan together, and Daisy Anderson individually (collectively referred to hereafter as “Petitioners”), are the petitioners in two separate will contests they undertook in the probate proceeding of the Estate of Anita D. Tuttle (the “Estate”), Clallam County Superior Court Cause Number 13-4-00204-3 (the “probate proceeding”).

Patricia Hicklin (“Respondent”) is the Personal Representative of the Estate, having been duly appointed in the probate proceeding. Respondent was successful in her motion to dismiss Petitioners’ will contest petitions, and it is from that action that this appeal was brought.

B. WILL CONTEST PROCEDURE

Chapter 11.24 RCW governs the procedure for contesting the probate or rejection of a will. RCW 11.24.010 provides in material part as follows:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, ... he or she shall file a petition containing his or her objections and exceptions to said will

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the

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

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

RCW 11.24.010 (emphasis added).

Under the plain language of the statute, a petitioner must commence an action contesting the probate of a will by filing a petition within the four month statutory limitations period after the will has been accepted for probate. Commencing the action then tolls the statute of limitations only if personal service on the personal representative is accomplished within ninety days of filing the petition. The action to contest the probate is deemed not to have commenced if the petitioner fails to personally serve the personal representative within ninety days after filing the petition. RCW 11.24.010.

In the present case, the will contest petitions were filed on September 23, 2013 (CP at 36; CP at 38), one day before the expiration of the statutory four-month period. However, neither petition was personally served on Respondent within the 90-day period for accomplishing personal service that expired on December 22, 2013. Proper service of process “is essential to invoke personal jurisdiction over a party.” *In re*

Estate of Kordon, 157 Wn.2d 206, 210, 137 P.3d 16 (2006) (internal quotation marks and citation omitted). Here, the failure to personally serve the will contest petitions on Respondent deprived the Superior Court of personal jurisdiction over Respondent. RCW 11.24.010; *Kordon*, 157 Wn.2d at 210.

In addition, pursuant to RCW 11.24.010, as proper service of the Petition was not made, Petitioners' respective actions are deemed not to have been commenced for purposes of tolling the statute of limitations. Since more than four months passed from the date the Will was admitted to probate, the will contest petitions could not properly have been heard by the trial court. "A court has no jurisdiction to hear and determine a [will] contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." *Kordon*, 157 Wn.2d at 214 (internal citations omitted).

In summary, Petitioners failed to serve their will contest petitions on Respondent in the manner and within the time required by RCW 11.24.010. Their will contests therefore were not timely commenced. Accordingly, the admission of the decedent's will to probate is deemed to be final, and Petitioners' will contest petitions were properly dismissed with prejudice.

c. “When the language of a statute is clear and unambiguous the meaning is derived from the words of the statute itself. When construing a statute [the court] read[s] the statute in its entirety. Each provision must be viewed in relation to other provisions and harmonized, if at all possible... . The court must also avoid constructions that yield unlikely, strange or absurd consequences.” *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001) (internal quotation marks and citations omitted). “[T]he courts must look at the entire statute and interpret the provisions to give meaning to all parts of it.” *Id.* at 279.

d. “Where two statutes are in apparent conflict, [the court] reconcile[s] them, if possible, so that each may be given effect. Statutes must be read together to achieve a harmonious total statutory scheme ... which maintains the integrity of the respective statutes.” *City of Lakewood v. Pierce County*, 106 Wn.App. 63, 71, 23 P.3d 1 (2001) (internal quotation marks and citations omitted).

Firstly, RCW 11.24.010 is clear and unambiguous, and so therefore does not require construction. “A statute which is plain needs no construction. The court will not read into a statute matters which are not there nor modify a statute by construction.” *King County v. City of Seattle*, 70 Wn.2d at 991. Secondly, RCW 11.24.010 and RCW 11.24.020 are not in conflict with each other. Service of notice is to be distinguished

from nature of notice and persons to whom notice shall be given. The former is governed by RCW 11.24.010; the latter is governed by RCW 11.24.020. The entire text of RCW 11.24.020 is as follows:

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

RCW 11.24.020.

This same statutory scheme is found at RCW 11.96A.100 and RCW 11.96A.110. RCW 11.96A.100(2) relates to the nature of notice and prescribes when a summons is required upon the commencement of a judicial proceeding under Ch. 11.96A RCW (“TEDRA”), and when other notice of the commencement of a judicial proceeding is a sufficient alternative to a formal summons:

A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court, however, if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset, notice must be provided by summons only with respect to those parties who were not already parties to the existing judicial proceedings.

RCW 11.96A.100(2).

RCW 11.96A.100 is silent as to the manner in which the notice shall be served. Rather, service of notice of a judicial proceeding under TEDRA is governed by RCW 11.96A.110, a statute that bears the subject title “Notice in judicial proceedings under this title requiring notice” and provides in material part that “in all judicial proceedings under [Title 11] that require notice, the notice must be personally served on or mailed to all parties or the parties’ virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court.” RCW 11.96A.110(1).

Notably, RCW 11.96A.110 is not mentioned anywhere in the will contest statutes, Ch. 11.24 RCW. The reference in RCW 11.24.020 to RCW 11.96A.100 relates only to whether a summons is required to be served along with the will contest petition, or whether a notice of the hearing on the will contest petition is sufficient notice. RCW 11.24.020 has nothing to do with the manner in which a will contest petition is to be served, and that statute is not at issue in the present case.

The plain language of RCW 11.24.010 is that a will contest petitioner shall personally serve the personal representative within the requisite time in order to toll the 4-month will-contest limitations period. If the Court were to accept Petitioners’ argument, the term “personally” would be rendered meaningless and superfluous. Moreover, if the

Legislature intended will contest procedure to be governed entirely by the procedural requirements of TEDRA, as Petitioners suggest, the procedural requirements in RCW 11.24.010 would be superfluous and of no effect. “Statutes must be construed so that all language is given effect with no portion rendered meaningless or superfluous.” *Keller*, 143 Wn.2d at 277.

Finally, it is worth noting that the personal service requirement in RCW 11.24.010 was adopted by the Legislature in 2007, one year after RCW 11.24.020 was amended to include the reference to RCW 11.96A.100. The Legislature “is presumed to enact laws with full knowledge of existing laws.” *Thurston County v. Gorton*, 85 Wn.2d 133, 138, 530 P.2d 309 (1975). It cannot be argued that the Legislature was not aware, when it imposed the personal service requirement in 2007, that, in 2006, it incorporated RCW 11.96A.100 into RCW 11.24.020. Nor may it be argued that, because of the reference to RCW 11.96A.100 in RCW 11.24.020, the Legislature did not intend to impose a personal service requirement when it amended RCW 11.24.010. Courts are “required to assume the Legislature meant exactly what it said and apply the statute as written.” *Roggenkamp*, 153 Wn.2d at 624.

D. WILL CONTEST TO BE BROUGHT AS A SEPARATE JUDICIAL PROCEEDING

Petitioners argue that, pursuant to RCW 11.96A.100, personal service on Respondent was not required because their will contest petitions were filed in an existing judicial proceeding. Petitioners ignore RCW 11.96A.090, which statute provides that a judicial proceeding under Title 11 RCW shall be commenced as a new action. RCW 11.96A.090(2). A will contest must, therefore, be commenced as a separate action from the probate proceeding and may not be pursued within the existing probate proceeding without leave of the trial court. RCW 11.96A.090(3). Even if, as Petitioners claim, RCW 11.96A.100 provided relief from the personal service requirement of RCW 11.24.010, Petitioners would not be availed of that relief in this case because of their failure to bring the will contest as a new action, as required in RCW 11.96A.090. The entire text of RCW 11.96A.090 is as follows:

(1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) A judicial proceeding under this title must be commenced as a new action.

(3) Once commenced, the action may be consolidated with an existing proceeding upon the motion of a party for good cause shown, or by the court on its own motion.

(4); The procedural rules of court apply to judicial proceedings under this title only to the extent that they are consistent with this title, unless otherwise provided by statute or ordered by the court under RCW 11.96A.020 or 11.96A.050, or other applicable rules of court.

RCW 11.96A.090 (emphasis added).

The requirement of proper service of process in a Title 11 judicial proceeding is particularly important when considered in light of the peculiar jurisdictional issues that arise in a probate proceeding. In the present case, Respondent was appointed Personal Representative upon an adjudication of the solvency of the Estate and was granted nonintervention powers. “[O]nce an order of solvency is entered the court loses jurisdiction. The court may regain jurisdiction only if the executor or another person with statutorily conferred authority invokes jurisdiction.”

In re Estate of Jones, 152 Wn.2d 1, 9, 93 P.3d 147 (2004) (citing *In re Coutes' Estate*, 55 Wn.2d 250, 347 P.2d 875 (1959) (emphasis added)).

The Washington Supreme Court summarized this principal as follows:

To make this clear, let us illustrate: (a) Mr. Peabody in his lifetime made a nonintervention will, but no court then had jurisdiction of his estate. (b) Mr. Peabody died. Still no court had jurisdiction of his estate until, after his death, by proper petition setting up the jurisdictional facts, filed in the superior court of the proper county, that court, by reason of that application to it, obtained jurisdiction of the estate. (c) When the order of solvency was properly entered, the further administration of the estate was by the statute relegated exclusively to the executors, and the probate court, which had before had jurisdiction, then lost

its jurisdiction of the estate. (d) Thereafter, in order for the court to regain jurisdiction of the estate, its jurisdiction must be again invoked by a proper application made by someone authorized by the statute so to do... .

In re Peabody's Estate, 169 Wash. 65, 70, 13 P.2d 431 (1932) (emphasis added).

Here, subsequent to the entry of the order of solvency and Respondent's appointment as Personal Representative, Respondent did not invoke the Superior Court's jurisdiction. Though Petitioners may be persons authorized by statute to re-invoke the court's jurisdiction in a will contest proceeding, they did not properly do so by merely filing their petitions. The court's jurisdiction over Respondent in this case could have been invoked only by a proper filing of the will contest as a new proceeding, and by personal service upon Respondent of Petitioners' will contest petitions.

Moreover, in every will contest, there will be an ongoing probate proceeding and a personal representative against whom the matter is brought. If Petitioners were correct in their assertion that a will contest may be brought in an existing probate proceeding, and may be perfected without personal service of the will contest petition, then the 2007 amendment to RCW 11.24.010 that requires personal service, and the requirement in RCW 11.96A.090 that a judicial proceeding be

commenced as a new action, would be entirely superfluous and without effect. As set forth above, this result cannot be read into the statutes.

Finally, TEDRA “explicitly disavow[s] any intention to alter the notice procedures in a will contest. While TEDRA applies to will contests, it shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in [Title 11], including chapter 11.24 RCW.” *Kordon*, 157 Wn.2d at 212 (citing RCW 11.96A.080(2)). TEDRA cannot eliminate the personal service requirement of RCW 11.24.010 without superseding that statute. “Furthermore, RCW 11.96A.100 explicitly does not apply if [Title 11] provides otherwise. And as Title 11 includes both chapters 11.24 and 11.96A RCW, it does indeed provide otherwise.” *Kordon*, 157 Wn.2d at 212 (internal quotation marks omitted). Accordingly, Petitioners’ argument that the procedural rules in TEDRA supersede the personal service requirement in RCW 11.24.010 is without merit.

E. JURISDICTIONAL DEFECTS NOT SUBJECT TO EQUITABLE REMEDIES

Petitioners point to RCW 11.96A.020 for the proposition that the Legislature’s grant of plenary authority to the trial court to determine matters under TEDRA constitutes a grant to the court to ignore the statutes of this state and the rules of civil procedure. Surely the Legislature did not

intend that result. And in any event, courts “are not permitted to simply ignore terms in a statute.” *In re Parentage of J.M.K.*, 155 Wn.2d 374, 393, 119 P.3d 840 (2005). Petitioners further argue that the trial court, sitting in equity, was authorized to forgive their critical procedural failures. However, a court “has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction.” *Kordon*, 157 Wn.2d at 214 (emphasis added). Regardless of whatever authority the trial court may have had, as a general matter, to weigh the equities in a judicial proceeding brought under our probate code, that authority simply does not apply in this case, where Petitioners failed properly to invoke the trial court’s jurisdiction.

F. CR 12 DEFENSES NOT WAIVED BY APPEARANCE AT INITIAL HEARING ON WILL CONTEST PETITIONS

Petitioners filed their respective will contest petitions in the probate proceeding on September 23, 2013. CP at 36; CP at 38. Ex parte orders were entered that day for the Superior Court Clerk to issue Citations to Respondent, directing Respondent to appear and show cause why Petitioners’ request to have the decedent’s will declared to be invalid should not be granted. CP at 32; CP at 34.

Respondent's responses to each petition were filed on September 25, 2013. In each response, Respondent affirmatively pleaded lack of subject matter jurisdiction and personal jurisdiction, insufficiency of process, and insufficiency of service of process, pursuant to CR 8 and CR 12(b), and she lodged her objection to the timing of the hearing on the petitions, as notice was not provided at least twenty days prior to the hearing as required in RCW 11.96A.110. CP at 27-28; CP at 30-31.

The show cause hearing was conducted on October 4, 2013. CP at 25. At the hearing, the Court Commissioner advised the parties that he was not in a position to address the merits of the claims raised in Petitioners' petitions, and that it would be his position that the matters should be set for trial. RP (Will Contest Hearing) at 2-4. The Commissioner ruled that he would "simply do nothing but let this matter be set for trial." RP (Will Contest Hearing) at 4.

Will contests are governed by Ch. 11.24 RCW and TEDRA, Ch. 11.96A RCW. *Kordon*, 157 Wn.2d at 211. A will contest is a special proceeding under the civil rules. *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 981, 216 P.3d 374 (2009) (citing *Kordon*). Accordingly, the Civil Rules govern will contest proceedings only to the extent the will contest statutes and TEDRA are silent. CR 81.

As discussed above, a will contest is commenced upon the filing of a petition contesting the validity of the will, and the action is perfected only if the petitioner personally serves the personal representative within ninety days of the filing of the petition. RCW 11.24.010. Notice of the filing of the petition is to be given pursuant to RCW 11.96A.100. RCW 11.24.020. Notice of the hearing on a will contest petition is to be provided at least twenty days before the hearing. RCW 11.96A.110.

For reasons not explained, Petitioners elected to summon Respondent into court by citation, presumably in misplaced reliance on the procedure that was prescribed in an earlier version of RCW 11.24.020. In any event, Petitioners did not provide Respondent the requisite twenty days' notice of the hearing on their petitions.

Petitioners argue that Respondent's objection to the timing of the hearing on their petitions was a CR 12(f) motion to strike, and that because Respondent did not at the same time move to dismiss on the basis of her CR 12(b) affirmative defenses, she waived those defenses.

The entire text of CR 12(f) is as follows:

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or

any redundant, immaterial, impertinent, or scandalous matter.

CR 12(f).

Waiver is governed by CR 12(g) and CR 12(h). A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived unless the party asserts it either in a responsive pleading or in a motion under CR 12(b). CR 12(h)(1); *French v. Gabriel*, 116 Wn.2d 584, 588-589, 806 P.2d 1234 (1991). If a party asserts a CR 12(b) defense by motion, all CR 12(b) defenses then available must be consolidated into a single motion and the party is barred from raising any omitted defense in a later motion. CR 12(g); CR 12(h)(1)(A); *French*, 116 Wn.2d at 589.

CR 12(f) has to do only with striking improper content in pleadings. It has no relation to the assertion of CR 12(b) affirmative defenses. And in any event, Respondent's objection to the timing of the hearing on Petitioners' will contest petitions was not, and could not have been, a motion to strike under CR 12(f). Despite the clear language of the rule, Petitioners rely on the notation in the Clerk's minutes (CP at 25) that Respondent's counsel "moves to strike today's hearing and have matter set for trial" in support of their theory that Respondent moved under CR 12(f) to strike the hearing on their petitions. In fact, the words "motion" and

“strike” were never used during the show cause hearing. The Court Commissioner on his own initiative declined to take any action on the petitions. RP (Will Contest Hearing) at 2-4.

Respondent’s objection to the timing of the hearing on the will contest petitions was not a motion under CR 12, and there was no CR 12(b) motion prior to Respondent’s motion to dismiss the will contest petitions. Accordingly, there is no issue of waiver of the CR 12(b) defenses asserted in Respondent’s response to the petitions. *Meadowdale Neighborhood Committee v. City of Edmonds*, 27 Wn.App. 261, 269, 616 P.2d 1257 (1980).

G. COMMON LAW WAIVER AND EQUITABLE ESTOPPEL THEORIES NOT APPLICABLE

For the first time on appeal, Petitioners advance the theories of common law waiver and equitable estoppel as bases for denying Respondent’s motion to dismiss their will contest petitions. “Failure to raise an issue before the trial court generally precludes a party from raising it on appeal. The reason for this rule is to afford the trial court an opportunity to correct any error, thereby avoiding unnecessary appeals and retrials. The same rationale requires parties to inform a court acting as trier of fact of the rules of law they wish the court to apply.” *Smith v Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983) (internal quotation

marks and citations omitted). *See also* RAP 2.5(a). “But if an issue raised for the first time on appeal is arguably related to issues raised in the trial court, a court may exercise its discretion to consider newly-articulated theories for the first time on appeal.” *Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn.App. 334, 338, 160 P.3d 1089 (2007) (internal quotation marks and citation omitted). Here, the equitable theories of waiver and estoppel were not before the Superior Court and are not related to issues raised in the Superior Court, and should not be considered on appeal. However, in the event this Court considers Petitioners’ arguments on those theories, Respondent provides the following analysis.

i. COMMON LAW WAIVER

Petitioners rely on *Raymond v. Fleming*, 24 Wn.App. 112, 600 P.2d 614 (1979), for the proposition that Respondent waived any defects in Petitioners’ service of process and that Respondent should be estopped from asserting the defense of insufficiency of process. *Raymond* is readily distinguishable from the present case. In that case, the defendant filed a timely notice of appearance on May 31, 1977, but failed to file an answer. The plaintiff repeatedly asked for an answer to the complaint, and the defendant repeatedly requested, and was granted, continuances. On January 23, 1978, the plaintiff moved for a default judgment. The plaintiff also moved to compel answers to interrogatories served on defense

counsel on October 5, 1977. The defendant requested and was granted two more continuances. On March 3, 1978, the defendant moved for dismissal based on insufficient service of process. The trial court granted the defendant's motion. *Raymond*, 24 Wn.App. at 114. The Court of Appeals reversed, holding that the defendant's conduct was both dilatory and inconsistent with the later assertion of insufficient service of process. *Id.* at 115.

A defendant may waive an affirmative defense if either (1) assertion of the defense is inconsistent with the defendant's prior behavior or (2) the defendant has been dilatory in asserting the defense. *Lybbert v. Grant County*, 141 Wn.2d 29, 39, 1 P.3d 1124 (2000). In *Lybbert*, the Supreme Court explained the basis for the rule as follows: "We believe the doctrine of waiver is sensible and consistent with the policy and spirit behind our modern day procedural rules, which exist to foster and promote 'the just, speedy, and inexpensive determination of every action.'" *Id.* (quoting CR 1). "The doctrine is designed to prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage." *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002).

In *Raymond*, the defense's conduct included repeatedly requesting more time, not responding to interrogatories, and seeking and obtaining two orders of continuance. *Raymond*, 24 Wn.App. at 115. The *Raymond* court found the defense's conduct to be both dilatory and inconsistent with the later assertion of insufficient service of process. Additionally, the court found no evidence that the additional time requested and allowed was for purposes of determining whether a defense existed. *Id.*

In the present case, Petitioners' will contest petitions were filed on September 23, 2013. CP at 36; CP at 38. Respondent filed her responses to both petitions on September 25, 2013. CP at 26; CP at 29. Both responses included Respondent's CR 12(b) affirmative defenses, including lack of personal jurisdiction and insufficiency of service of process. CP at 27; CP at 30. Unlike the defense in *Raymond*, Respondent timely answered Petitioners' petitions and raised her defenses before taking any other action of record. Respondent could not bring her dismissal motion until after the passing of the 90-day perfection period prescribed in RCW 11.24.010. That motion was filed on December 24, 2013 (CP at 19), 92 days after the petitions were filed and 90 days after Respondent's responses were filed. Petitioners had ample time to identify and cure the defects in their service of process, and failed to do so. The elements of

common law waiver of Respondent's CR 12(b) defenses are not met in this case.¹

ii. EQUITABLE ESTOPPEL

Petitioners rely on *Raymond* for the additional argument that Respondent is estopped from asserting the defense of insufficient service of process because her delay in bringing her dismissal motion gave her an unfair tactical advantage. "Equitable estoppel requires an admission, statement, or act, inconsistent with the claim afterwards asserted; action by the [other] party on the faith of such admission, statement or act; and injury to such other party arising from permitting the first party to contradict or repudiate such admission, statement, or act." *Raymond*, 24 Wn.App. at 115 (internal quotation marks and citation omitted).

Petitioners claim they were lulled into inaction after the initial hearing on their will contest petitions. They do not provide any explanation as to how Respondent is to blame for their failure to prosecute their case, and they do not provide any evidence to establish the required elements for estoppel. Specifically, Petitioners do not identify any act, statement or admission by Respondent that is inconsistent with her assertion of insufficiency of service of process and that they relied upon to

¹ Petitioners' reference to the declaration of process server Jim Fetter and their allegation that Respondent avoided service of process are improper and should be disregarded. The record on appeal contains no evidence that Petitioners attempted personal service of their will contest petitions, and this issue was never raised in the Superior Court proceeding.

their detriment. The elements required for relief based upon equitable estoppel are not present in this case.

H. ATTORNEY FEES

The Superior Court awarded attorney fees and costs to the Estate, in an amount to be determined, to be paid by Petitioners personally. CP at 12. The award of attorney fees and costs was not appealed by Petitioners. Pursuant to RAP 18.1, RCW 11.24.050 and RCW 11.96A.150, Respondent requests reasonable attorney fees and costs on appeal, to be awarded to the Estate of Anita D. Tuttle and against Petitioners personally.

According to RCW 11.24.050, in the event a will is sustained after a contest, the court may award costs against the contestant, as well as reasonable attorney fees unless the court determines the contestant acted with probable cause and in good faith. In the present case, an award of attorney fees and costs to the Estate is appropriate under RCW 11.24.050 on the basis of each Petitioner's complete failure properly to commence and prosecute her challenge to the probate of the decedent's will. Apart from the bare and unsupported allegations in each will contest petition, neither Petitioner has shown that she has probable cause to challenge the will as invalid, and each Petitioner's lack of initiative in pursuing her action indicates an absence of any good faith belief in the integrity of her claims. To the contrary, it appears that Petitioners' sole purposes in filing

their actions were to harass Respondent and delay the administration of the Estate.

Additionally, pursuant to RCW 11.96A.150, this Court may in its discretion order costs and reasonable attorney fees from Petitioners, to be paid in such amount and in such manner as the Court determines to be equitable. In making its determination as to the award of fees and costs, the Court may consider any and all factors that it deems to be relevant and appropriate. RCW 11.96A.150(1). Here, the unsuccessful will contests and the present appeal have delayed the administration of the Estate and have resulted in unnecessary expenses to the Estate that ultimately will be borne by the innocent beneficiaries of the Estate if fees and costs are not awarded against Petitioners.

II. CONCLUSION

The Superior Court's dismissal of Petitioners' will contest petitions should be affirmed, and reasonable attorney fees and costs incurred in connection with this appeal and the underlying will contests should be awarded against Petitioners.

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Respectfully submitted,

PLATT IRWIN LAW FIRM

By 

Simon Barnhart, WSBA#34207

Of Attorneys for Respondent Patricia Hicklin,
Personal Representative

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DIVISION II

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COURT OF APPEALS OF WASHINGTON
DIVISION II STATE OF WASHINGTON

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|--------------------------------|---|
| In re the Estate of |) |
| ANITA TUTTLE, |) |
| |) |
| Deceased. |) |
| _____ |) |
| |) |
| DAISY ANDERSON, et al, |) |
| |) |
| Appellants, |) |
| |) |
| vs. |) |
| |) |
| PATRICIA HICKLIN |) |
| |) |
| Personal Representative of the |) |
| Estate of Anita Tuttle, |) |
| |) |
| Respondent. |) |
| _____ |) |

APPEAL NO. 45917-5-II

CERTIFICATE OF MAILING

LAURELLA WHITE declares under penalty of perjury under the laws of the State of Washington that the following is true.

I am a resident of the State of Washington and over the age of 18 years. On the 15th day of August, 2014, I deposited in the United States Mail a properly stamped and addressed envelope containing the Brief of Respondent to the following:

Barry C. Kombol, Attorney
P.O. Box 100
Black Diamond, WA 98010

Washington State Court of Appeals
Division Two
Att'n David Ponzoha, Clerk/Administrator
950 Broadway, Suite 300
Tacoma, WA 98402-4454

SIGNED at Port Angeles, Washington on this 15th day of August, 2014.



Laurella White

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