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## I. STATEMENT OF THE CASE

This appeal arises out of an action brought by Nadene Sammann following a rejection of identical Creditor's Claims filed by Nadene Sammann and her mother, Marguerite Sammann, in the Estate of Robert White. Robert White was a disabled veteran who passed away on April 21, 2013. On January 27, 2009 he had been declared incompetent when the court entered an order appointing guardian of his person and estate. Commencement Bay Guardianship Services, through attorney Robin Balsam, was appointed as his guardian. (CP 528-547) Marguerite Sammann is Robert White's sister and Nadene Sammann is Marguerite Sammann's daughter.

Both Marguerite Sammann and Nadene Sammann were aware of the guardianship proceeding and they filed a joint request for special notice of proceedings in the guardianship before a guardian was appointed for Robert White. (CP 527). During the guardianship proceedings of Robert White, Nadene Sammann and Marguerite Sammann repeatedly filed frivolous motions in the trial court and appealed trial court rulings to the Washington State Appellate and Supreme Court. Ultimately, attorney's fees were entered against Nadene Sammann and Marguerite Sammann

jointly and severally for \$83,276.66 for frivolous motions and appeals they filed in the guardianship. (CP 231-235).

After Robert White's death Nadene Sammann filed a Creditor's Claim in his estate for \$118,397.38. (CP 196-207). Of the \$118,397.38, \$83,276.66 was a request for reimbursement of the judgments entered against Nadene Sammann for bringing frivolous actions in the guardianship proceeding of Robert White and \$21,000 was a request to reimburse the interest on those judgments. The rest of the creditor's claim was based upon costs and expenses for attorney's fees, copying, transcripts, legal research, certified copies, transportation and filing fees expended by Nadene Sammann in connection with frivolous motions she had brought that resulted in the judgments against her. Ms. Sammann's theory as to why she should receive a judgment against the estate for the amount of the judgments entered against her with interest and costs was based upon a document prepared by Nadene Sammann and signed by Robert White in June of 2009 after Mr. White was declared incompetent and was under guardianship. (CP 246-265). That document says in the document:

I am asking that my niece, Nadene Sammann, ask the VA to conduct an investigation into the disappearance of

my cash. I make this claim for the return of all my cash. I want my valuables returned to me and I want to get out of here. (CP 178).

Nadene Sammann argued before the Court that the document signed by Robert White in June of 2009 while he was under guardianship was a contract that entitled Nadene Sammann to be paid for "services" that she provided to Robert White in the amount of the judgments entered against her for bringing frivolous actions in the Courts in the guardianship and interest on the judgments entered against her together with \$13,730.72 she spent for legal services, attorney's fees, filing fees, costs, copying, postage, preparation of Clerk's papers and transcripts, legal research, legal supplies and transportation costs she incurred bringing the actions in the guardianship proceeding that the Court found to be frivolous.

Anna Armstrong as Personal Representative of the estate of Robert White, moved for summary judgment dismissing the complaint brought by Nadene Sammann against her as Personal Representative. Nadene Sammann did not timely respond to the summary judgment motion. Instead, on June 19, 2014 she filed "Plaintiff's Motion for Extension of Time to File for Summary Judgment". CP 130-132. She then filed her own motion for

summary judgment (CP 156), a memorandum supporting that motion (CP 170), and two declarations supporting the motion on July 1, 2014. (CP 608, 172). Without obtaining an order shortening time, she asked the Court to hear her motion for summary judgment on ten days' notice but the Court denied her request to have her motion heard on July 11, 2014. (RP August 1, 2014, page 8). The Court granted the motion for summary judgment brought by the estate dismissing Nadene Sammann's complaint. Thereafter the Personal Representative of the decedent's estate moved for an award of attorney's fees against Nadene Sammann. (CP 612). That request was supported by an affidavit setting for the fees expended. (CP 620). Defendant amended its motion for fees by a motion filed July 21, 2014. (CP 636). Defendant Sammann filed a motion for reconsideration dated July 21, 2014. (CP 637). The Court heard the motion for reconsideration and the request for attorney's fees on August 1, 2014 and the Court took its ruling under advisement. The Court later entered final orders denying the motion for reconsideration and granting the attorney's fees on November 14, 2014 and November 15, 2014, respectively. (CP 1354 and 1356). This appeal followed.

Nadene Sammann has made very limited assignments of error before the Court. She does not assign error to the dismissal of her claim. Instead, she alleges that the trial court erred by:

1. Failing to enter Findings of Fact and Conclusions of Law in connection with the order granting Defendant's motion for summary judgment;

2. Entering findings of fact supporting an award of attorney's fees against her when it found:

- a. That Ms. Sammann brought this action to delay execution on the judgments entered against herself and her mother and in a meritless attempt to team set off against the judgments that have been entered against her.
- b. That Ms. Sammann's action for payment due for services she claims to have performed under a contract she alleges she had with Robert White was not well grounded in law because it is legally impossible for Robert White to have entered a contract at a time when he was under guardianship and not legally competent to contract.
- c. That Ms. Sammann's action for payment due for services she allegedly performed under a contract she had with Robert White was not well grounded in existing law or a good faith argument for alteration of existing law because the document she relies on as a contract is

not a contract between herself and Robert White.

d. That, when analyzed under lodestar the attorney's fees incurred in defending the estate were reasonable.

3. By awarding a judgment for \$13,035.00 in favor of the estate of Robert White against Nadene Sammann.

4. By failing to enter findings of fact and conclusions of law in connection with its order denying reconsideration of the order granting summary judgment.

5. By failing to enter Findings of Fact and Conclusions of Law in connection with the order denying the motion for reconsideration of the award of attorney fees.

Ms. Sammann's issues related to the Assignments of Error claim that Anna Armstrong, as Personal Representative of the Estate of Robert M. White should have, in the guardianship action, had the judgments entered against her reduced or vacated because the Supreme Court and Court of Appeals had denied an award of attorney's fees against her in proceedings before that Court.

Ms. Sammann's brief thereafter goes into extensive arguments not raised in the trial court below, not supported by

evidence in the record and irrelevant to the decision.

## II. ARGUMENT

### STANDARD OF REVIEW

Nadene Sammann argues first in her brief that the standard for review for an order granting summary judgment is de novo. *Wilson v. Steinbach*, 98 Wn. 2d 434, 656 P.2d.1030 (1982). Anna Armstrong does not contest that the standard of review is de novo.

### THE TRIAL COURT'S REFUSAL TO ENTER FINDINGS OF FACT IN CONNECTION WITH THE SUMMARY JUDGMENT AND MOTION FOR RECONSIDERATION WAS NOT ERROR

Nadene Sammann argues, without authority, that the Court should have entered Findings of Fact and Conclusions of Law in connection with the order granting summary judgment and in connection with the motion for reconsideration and she also argues that the Court should entertain review under the standard of *Lobdell v. Sugar and Spice*, 33 Wn.App. 881, 658 P.2d 126 (1983). Washington law is clear that findings of fact and conclusions of law are not necessary on a summary judgment and if made are superfluous and will not be considered on appeal. *Concerned Coupeville Citizens v. Town of Coupeville*, 62 Wn.App. 408, 814 P.2d 243 (1991). The trial court's refusal to enter findings of fact and in connection with the summary judgment order was not error.

*Lobdell, supra* deals with standard of proof necessary to reverse a finding of fact by the trial court after trial. It has no application to the instant case. The standard of review of an order granting summary judgment is de novo. *Smith v. Safeco Ins. Co.*, 150 Wash. 2d 478, 78 P.3d 1274 (2003). The Court should conduct a de novo review.

**NADENE SAMMANN'S CLAIM FOR DAMAGES ALLEGING  
THAT THE PERSONAL REPRESENTATIVE FAILED TO  
RECOVER FEES PREVIOUSLY APPROVED IN THE  
GUARDIANSHIP IS FRIVOLOUS**

Nadene Sammann dedicates paragraphs 8 through 23 of her appellate brief claiming that, as Personal Representative of the Decedent's estate, Anna Armstrong had a duty to recover fees from Robert White's guardian that were awarded "in defiance of" the Supreme Court's order of March 1, 2011 (CP 268) and the Court of Appeals of April 4, 2011. (CP 270). (See Opening Brief, Paragraph 11 at page 23, Paragraph 21, page 30). She repeats that argument in Paragraphs 30, 35 and 37 of her brief when she argues that the trial court in this case should not have awarded attorney's fees against her because her claim that she may recover damages from the Personal Representative for the Personal Representative's failure to object to fees previously approved by the court in annual

accountings in the guardianship at the time of the final accounting of the guardianship was not completely without merit. The assertion by Nadene Sammann that she has a cause of action against the Personal Representative for the Personal Representative's failure to object to attorney fees that had been approved by the court's in the guardianship proceeding prior to the death of Robert White is both legally and factually frivolous.

Nadene Sammann's claim for damages based upon the Personal Representative's failure to object to fees previously approved by the trial court in the guardianship proceeding is based upon her assertion that the trial court awarded the guardian fees in the guardianship "in defiance of" the Supreme Court order of March 1, 2011 and the Court of Appeals order of April 4, 2011. A review of the record before this court regarding the April 4, 2011 Court of Appeals ruling regarding attorney's fees demonstrates (1) that the judgment entered by the trial court on remand from the Court of Appeals was identical to the ruling of the Court of Appeals and (2) that there is no evidence in the record that the court in the guardianship proceeding approved payment from the guardianship estate of the \$38,601.25 in fees incurred by the guardian that

resulted in a judgment in that amount against Nadene Sammann and her mother.

The award of attorney's fees by the Court of Appeals argued by Nadene Sammann to have been improperly approved by the trial court in the guardianship proceeding is contained in the Order Denying Motion to Modify issued by the Court of Appeals . (CP 271). The judgment entered on remand in the guardianship proceeding against Nadene Sammann and her mother's is identical to the amounts set by the Court of Appeals in that order. (CP 232). Nadene Sammann's argument that a judgment was entered against herself and her mother that was contrary to the ruling of the Court of Appeals and that Anna Armstrong as Personal Representative should have objected to that judgment at the time of the final accounting in the guardianship is factually frivolous.

Nadene Sammann's claim for damages against the Personal Representative alleging that the Personal Representative failed in her duty to object to the payment of those \$38,601.25 in attorney's fees out of the guardianship estate during the term of the guardianship also fails because she has no evidence that those fees were actually paid to the guardian from the ward's funds.

The argument that Nadene Sammann has a claim against the Personal Representative for refusing to object to fees previously denied by the Supreme Court is also factually frivolous. The order of the Supreme Court denying a request by the guardian for fees against Nadene Sammann and her mother is in the record. (CP 268). That order denies the request of the guardian for an award of attorney's fees against Nadene Sammann and Marguerite Sammann in connection with the Petition for Review to the Supreme Court that Nadene Sammann and Marguerite Sammann had filed. Nadene Sammann makes two claims related to the attorney's fees incurred by the guardianship estate that the Supreme Court refused to impose against Nadene Sammann and her mother. First she claims that it was error for the trial court in the guardianship to approve payment of those fees from the guardianship estate to the guardian and that after death Personal Representative, Anna Armstrong, had a duty to object to previous years' final accountings and order approving payment of the fees after Robert White died. Second, Nadene Sammann claims that the trial court imposed those fees in a later judgment against herself and her mother and that at the hearing on the final accounting, the Personal Representative had a duty to object to the judgments that

had been entered against Nadene Sammann prior to the death of Robert White. The argument fails for several reasons. First, it fails because there is no evidence in the record to support a claim that the attorney's fees that were denied by the Supreme Court in its ruling (CP 268) were ever ordered to be paid to the guardian in a guardianship proceeding. The entire factual basis filed by Nadene Sammann in response to the motion for summary judgment is two declarations of Nadene Sammann, one 2 pages in length, and the other 2 pages in length with approximately 346 pages of documents attached. Neither of the declarations establishes either that the guardian was paid attorney's fees denied by the Supreme Court or that those fees were included in judgments against Nadene Sammann or her mother. (See declarations at CP 608, 172). Those declarations do not claim that the Personal Representative failed to recover fees improperly paid to the Guardian and there is no evidence of such failure in the record. Nothing in the evidentiary response to Defendant's motion supports the defense to summary judgment argued by Ms. Sammann on appeal.

Even if it is true the court in the guardianship proceeding ordered payment to the guardian of the attorney's fees incurred in defending a petition to review by Nadene Sammann and her

mother, the simple answer to Nadene Sammann's argument is that the fact that such attorney's fees were not imposed against herself and her mother for bringing a frivolous petition for review to the Supreme Court does not mean that the guardian cannot be paid from the guardianship estate for the attorney's fees incurred in defending the petition to the Supreme Court. The attorney's fees incurred in the successful defense of the petition for review to the Supreme Court brought by Nadene Sammann and her mother were a legitimate guardianship expense and if those fees were ever awarded to the guardian by the court in the guardianship proceeding that award was not improper.

In addition to the fact that Ms. Sammann's argument that attorney's fees denied by the Supreme Court were improperly awarded against her in the guardianship proceeding is not supported by evidence in the record, she is not entitled to reversal of the trial court for additional reasons. First, in her brief in Paragraphs 11-20, Nadene Sammann cites several statutes which, she argues, would allow the Personal Representative to have appeared at the hearing of the Guardianship final accounting and objected to previously approved fees in annual accountings approved by the Court. Ms. Sammann did not cite any of those

statutes before the trial court in response to the motion for summary judgment. The Court will not address issues related to them for the first time on appeal. RAP 2.5. This Court should not review these arguments brought for the first time on appeal.

Even if Ms. Sammann had raised the statutes cited in her brief in the trial court below concerning the attorney's fees incurred by the guardianship in defending the petition to review to the Supreme Court's, none of those statutes allow the Court to, at a final hearing in a guardianship proceeding, allow the Personal Representative of the Decedent's estate or any other interested party to re-litigate the appropriateness of attorney's fees awarded by the Court after notice in prior annual guardianship orders. Ms. Sammann's reliance on those statutes is completely unsupported.

Ms. Sammann also states, at Paragraphs 21 and 22 of her appellate brief that the final report of the Guardian of the Person and Estate of Robert White asked the Court to approve all of her fees for the Second, Third, Fourth Accounting and Final Report. There is no evidence in the record that supports that claim. It is not true. Nadene Samman's appeal on that ground is meritless.

Finally, Nadene Sammann has presented the Court with no legal basis upon which she would have a right to recovery against

Anna Armstrong even if Anna Armstrong had a legal duty as Personal Representative of the Estate of Robert M. White to object to previously ordered fees in the White Guardianship. Nadene Sammann is not an heir to the Estate of Robert M. White. She has no standing to bring any claim against the Personal Representative for failing to ask the Court in the guardianship proceeding of Robert M. White to reverse previous awards of attorney's fees. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). See also, RAP 3.1. All of her claims that the Personal Representative of the Estate of Robert White should have taken action for the return of fees granted to the guardian in the guardianship are meritless and should be rejected.

#### **TORTIOUS INTERFERENCE IS NOT BEFORE COURT**

In Paragraph 24 and 25 of her brief, Nadene Sammann discusses the tort of tortious interference with a gift or inheritance. Ms. Sammann's brief is the first time that issue has been raised at any time in this case. There is no evidence supporting the claim in the record and the matter was not discussed by the trial court. The Court should not review that issue. RAP 2.5. Further, because the issue was not raised below, no assignments of error relate to the

claim for tortious interference. The issue should not be addressed by the Appellate Court.

**AWARD OF ATTORNEY'S FEES WAS PROPER**

Nadene Sammann argues that attorney's fees were improperly awarded against her by the trial court under Civil Rule 11 and RCW 4.84.185. In Washington a claim under CR 11 may be successful on either of two grounds. They are filings made for improper purposes or baseless filings that are either not well grounded in fact, or not warranted by existing law or a good faith argument for alteration of existing law. *Stiles v. Kearney*, 168 Wn.App. 250, 277 P.3d 9 (2012). In this case, the trial court found that CR 11 was violated both because the complaint was a baseless filing, and because the suit was filed for an improper purpose. That the complaint was filed for an improper purpose is clear by the relief requested in Ms. Sammann's complaint. The relief she requested in this case was reimbursement of the judgments entered against her for her frivolous actions in the guardianship proceeding together with the out-of-pocket costs she incurred in bringing the actions in the guardianship proceeding of Robert M. White that resulted in those judgments. The trial court correctly found that Nadene Sammann brought this suit to "set off"

against the judgment entered against her so she would not be required to pay the judgments. That satisfies the "improper purposes" requirement for a CR 11 award of attorney's fees. In her opening brief Nadene Sammann does not argue that the trial court erred in finding that she brought the action for improper purpose. She also fails to identify any legal theory under which she could recover in a claim against Robert White, as damages, the frivolous action attorney's fees entered against her in a guardianship proceeding. The trial court's award of attorney's fees was appropriate.

The award of attorney's fees below was also appropriate under CR 11 and RCW 4.84.185. It is appropriate under CR 11 because Nadene Sammann's claims were not warranted by existing law or a good faith argument for extension of existing law. They are appropriate under RCW 4.84.185 because, under that statute, a lawsuit is frivolous when it cannot be supported by any rational argument on the law and facts. *Stiles, supra*. In the instant case, the Court properly found that Ms. Sammann's claims are not supported by any rational argument on the basis of the law or facts.

When arguing the award of attorney fees by the trial court should be reversed, Nadene Sammann argues both that her claim

against the Personal Representative for failing to object to fees and her claim of a right to reimbursement for the judgments entered against her together with the out-of-pocket costs she incurred in that litigation are claims that are justified by "a reasonable investigation and existing law". Neither theory has any merit.

That Nadene Sammann's claims against the estate of Robert White arising out of the Personal Representatives failure to object to previously court approved fees in the guardianship are not warranted by existing law and are not supported by any rational argument on the basis of law or facts is set forth in part III of this brief, and will not be repeated here. The claims that the Guardian received fee awards from the trial court in the guardianship in defense of the Supreme and Appellate Court orders or that those amounts were improperly paid by the guardianship are frivolous. An award of fees for a frivolous action was proper.

Nadene Sammann also argues that her complaint sets forth a basis for a claim under a "contract" she had with Robert White that has sufficient merit to avoid CR 11 attorney's fees. That argument fails for the following reasons.

- 1. THE DOCUMENT FILED BY NADENE SAMMANN IN SUPPORT OF HER CLAIM ON A CONTRACT THEORY IS NOT A CONTRACT.**

The document Plaintiff relies on as a "contract" with Robert White is, in fact, a statement in support of claim that was allegedly signed by Robert White several months after he was placed under guardianship of his person and estate. (CP 178). That document is not a contract contract between Robert White and Nadene Sammann. It is not signed by anyone else other than Robert White. Its only reference to Nadene Sammann is a reference near the end of the document where it states:

The total value of all my cash valuables was more than \$400,000 before I was taken from my home. Now, a court appointed guardian claims my assets are less than \$6,000. I am requesting that my niece, Nadene Sammann ask the VA to conduct an investigation into the disappearance of my cash. I make this claim for the return of all my cash. I want my valuables returned to me and I want to get out of here.

While the document purports to request Nadene Sammann to ask the VA to conduct an investigation, it is not signed by Nadene Sammann and she was not bound to undertake any legal responsibilities based on Mr. White's signing the document that happens to contain Nadene Sammann's name.. Since the document was not signed by Ms. Sammann and because was not

bound to undertake any duties is not an enforceable agreement.

*Zuver v. Airtouch Communications*, 153 Wash. 2d 293, P.3d 753

(2004). There the court said, at page 317:

... Washington courts have long held that mutuality of obligation means both parties are bound to perform the contract's terms – not that both parties have identical requirements. See *Metro. Park District of Tacoma v. Griffith*, 106 Wash.2d 425, 434, 723 P.2d 1093 (1986). ("A supposed promise is illusory when its provisions make its performance optional or discretionary on the part of the claimed promisor.")

In the instant case, there could be no mutuality of obligation.

Nadene Sammann was not bound to do anything because she never promised performance by signing an agreement. The document relied on by Nadene Sammann is not a contract and it may not be enforced by her.

Even if the document Nadene Sammann relies on were signed by her in an attempt to create a contract, her duties and the amount to be paid to her under the contract are so indefinite that it could not be enforced. *Sandeman v. Sayres*, 50 Wash. 2d 539, 314 P.2d 428 (1957). In that case the parties entered into an employment contract that provided that a suitable bonus would be decided upon after the first 3 months of the company's marketing of

products. The employee sued alleging he was entitled to a bonus. The trial court granted the bonus in an amount of 2 1/2% of his sales. The Supreme Court reversed saying, at page 541 and 542:

If an offer is so indefinite that a court cannot decide just what it means and fix exactly the legal liabilities of the parties, its acceptance cannot result in an enforceable agreement.

A supposed promise may be illusory because it is so indefinite that it cannot be enforced, or by reason of provisions contained in the promise which in effect makes its performance optional or entirely discretionary on the part of the promisor.

An agreement for an agreement, or, in other words, an agreement to do something which requires a further meeting of the minds of the parties and without which it would not be complete is unenforceable. (Citations omitted)

In this case, Nadene Sammann was not bound to do anything by the written document she relies upon. It would be impossible for Robert White to sue her for breach of that agreement because the document says nothing other than that he is requesting Nadene Sammann to ask the VA to conduct an investigation. Performance by her was entirely optional and the terms of what she was required

to do and what if anything she was to be paid are so indefinite that the contract is not enforceable.

**2. THE ACTS FOR WHICH NADENE SAMMANN IS REQUESTING PAYMENT ARE NOT PERFORMANCE UNDER ALLEGED CONTRACT**

Even if the document relied on by Nadene Sammann were a contract signed by her with specific terms so that it was enforceable, her claim in this case fails. None of the acts for which Ms. Sammann is requesting payment involve asking the VA to investigate the disappearance Robert White's cash, the only thing the document she relies on as a contract asks her to do. Instead, she is asking to be paid her expenses for opposing the guardianship and the actions taken by the guardian and to reimburse her for the judgments for attorney's fees entered against her for pursuing her frivolous claims. Her declaration filed July 1, 2014 attaches her creditor's claim that itemizes the "damages" she claims she is entitled to recover in this action as follows:

Judgments:

\$22,000.00
\$12,001.25
\$ 250.00
\$38,601.25
<u>\$10,414.26</u>
\$83,276.66

Interest on Judgments	\$21,000.00
Recording Fees Remove Judgments	\$ 390.00
Legal services, attorney's fees, filing fees, copy costs, postage, clerks papers, transcripts, legal research, certified copies, transportation, legal supplies	<u>\$13,730.72</u>
	\$118,397.38

(CP 196)

The request for reimbursement of those judgments is unrelated to asking the VA to conduct an investigation regarding the disappearance of funds belonging to Mr. White. Even if the document relied on by Nadene Sammann was a contract, the damages she is requesting in her complaint have nothing to do Nadene Sammann asking the VA to investigate missing funds belonging to Robert White. There is no legal basis for an award equal to the judgments entered against her or for reimbursement of the expenses she claims she incurred in prosecuting her frivolous claims in the guardianship action. Her action should be dismissed.

**3. MR. WHITE WAS UNDER GUARDIANSHIP AND COULD NOT ENTER CONTRACT**

Ms. Sammann's contract claim also fails because at the time he signed the document she relies on as a valid contract, Mr. White

was under a guardianship of his person and estate and was incompetent to contract. Ms. Sammann does not contest that Washington law requires 3 elements to be met before a person under guardianship can be bound under contract he or she entered into. In order to have a valid contract entered into with a person under guardianship Washington law requires (1) that the guardian has substantially abandoned the guardianship; (2) that the ward is competent or has a lucid interval at the time the contract is entered; and (3) that the contract is entered with a person unaware of the existence of the guardianship. *United Pacific Insurance Company v. Buchanan*, 52 Wn.App. 836, P.2d 23 (1988). While Ms. Sammann alleges that Robert White was competent when he signed the form requesting an investigation by the VA into the disappearance of his cash, it is not disputed that the guardianship was never abandoned and Ms. Sammann had appeared in the guardianship proceeding before the document she claims is a contract was signed. Mr. White could not validly contract with her in those circumstances. Her claim for relief is utterly meritless legally because it is impossible for Robert White to have entered a valid contract with Nadene Sammann while he was incompetent because he was a under guardianship.

The Court properly found that the claims pleaded by Nadene Sammann are frivolous both because they are not well grounded in fact, or warranted by existing law or good faith argument for extension of existing law. It is simply not possible for Robert White to have contracted for the services for which Nadene Sammann requested compensation because he was under guardianship at the time of the alleged contract. Ms. Sammann knew of the guardianship and therefore cannot claim a valid contract. Second, the damages she claims for breach, the judgments entered against her and interest on those judgments, as a matter of law are not collectible as damages for breach of the "contract".

Finally, the document relied on by Ms. Sammann is not a contract and therefore does not allow recovery by Ms. Sammann as she has requested in her complaint. The Court properly found a basis for attorney's fees under CR 11 and RCW 4.84.

Nadene Sammann argues in paragraphs 35 and 36 of her opening brief that the trial court should not have awarded attorney's fees because, as she claims, the Personal Representative breached her fiduciary duties by failing to collect back from the guardian fees paid during the guardianship proceeding. In support of that argument she cites RCW 11.48.210. This argument is raised

on appeal for the first time and should not be considered by the appellate court. RAP 2.5. Even if the Court were to consider the argument, it has nothing to do with the issue before the court which is an award of attorney's fees against Nadene Sammann under CR 11 and RCW 4.84.185. RCW 11.48.210 applies to payment for acting as Personal Representative of an estate. This is not the probate proceeding and no award of attorney's fees to Anna Armstrong has been made. The statute cited by Nadene Sammann has nothing to do with the award of attorney's fees against her for bringing a frivolous action.

Nadene Sammann argues that the trial court abused its discretion in awarding \$13,035 in attorney's fees against her under CR 11 and RCW 4.84.185. The attorney's fees were requested based on a lodestar analysis multiplying the number of hours worked by the hourly rate for the attorney for the Personal Representative. (CP 620). Washington appellate courts have adopted the lodestar analysis as a proper method of awarding fees. *Absher Const. Co. v. Kent Sch. Dist. No. 415*, 79 Wn. App. 841, 846, 917 P.2d 1086, 1089 (1995). The Court's order granting fees expressly states that the court considered the lodestar analysis and

that the hours expended were reasonable. (CP 1356). This Court should affirm the attorney's fees awarded below.

### III. ATTORNEY'S FEES

Anna Armstrong also requests an award of attorney's fees on appeal to be entered against both Nadene Sammann and Marguerite Sammann, jointly and severally, for the two pending appeals before this court. The basis for the judgment is that the appeals are frivolous and fees are awardable under Civil Rule 11. Just as happened in the trial court, this appeal is both factually and legally meritless. Baseless filings that are either not well grounded in fact, or not warranted by existing law or a good faith argument for alteration of existing law are subject to sanctions under Civil Rule 11. *Stiles v. Kearney, supra*. An award of fees on appeal is appropriate.

The award of attorney's fees should be entered jointly against Nadene Sammann and her mother, Marguerite Sammann. They filed virtually identical actions in the trial court the same day making the same claims. Both pleadings claim that the plaintiff is entitled to relief under a "contract" with Robert White. Where two parties agree to accomplish a purpose not itself unlawful but by

unlawful means they are both responsible for damages under a theory of civil conspiracy. *Sterling Business Forms v. Thorpe*, 82 Wn.App. 446, 918 P.2d 531 (1996). In such case the parties responsible are jointly and severally liable for the obligation. In that case the court said, at page 454:

The liability of conspirators is joint and several. That is, each is liable for all acts committed by any of the other parties, either before or after their entrance, in furtherance of the common design.

In this case, Nadene Sammann and her mother conspired to bring identical actions for the purpose of delaying the closing of the estate and the enforcement of judgments against them and to attempt to force a set off against those judgments. A judgment jointly and severally against both for all of the fees incurred in defending both cases should be entered against both parties. This Court should enter a judgment against Nadene Sammann for the full amount of all fees incurred in both cases.

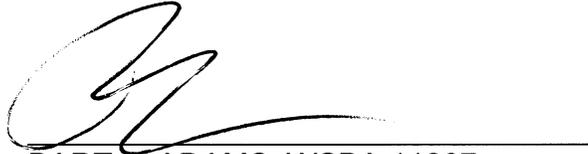
#### **IV. CONCLUSION**

This Court should affirm the order granting summary judgment issued by the trial court and award attorney's fees to Anna Armstrong in an amount to be determined following

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conclusion of the appeal.

**RESPECTFULLY SUBMITTED** this 26 day of  
March, 2015.

A handwritten signature in black ink, appearing to be 'B. Adams', written over a horizontal line.

BART L. ADAMS, WSBA 11297  
Attorney for Anna Armstrong,  
Respondent

