

No. 470136

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re Estate of:

DONALD C. MULLER,

Deceased.

RICHARD J. PETERSEN AND KAREN A. PETERSEN

Defendants/Appellants,

v.

KRISS MULLER  
Plaintiff/Respondent

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BRIEF OF RESPONDENT

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December 4, 2015

Christina Mitchell, Case Manager  
Washington State Court of Appeals, Div. II  
950 Broadway, Ste. 300  
Tacoma, Washington 98402-4454

RE: Scrivener's Errors, Response Brief, In re Estate of Donald Muller  
Court of Appeals No. 47013-6-II.

Dear Christina Mitchell, Honorable Commissioner, and Honorable Justices,

My apologies as the Response Brief contains several scrivener's errors. Although I find no RAP addressing scrivener's errors, in my appellate experience it is common practice in federal appellate practice to correct such errors by way of a letter to the applicable the Court of Appeals or the United States Supreme Court. Such letter contains the scrivener's error and the proper correction. Accordingly, please find the following scrivener's errors contained within the Appellee's Response Brief and their corrections:

1. Microsoft Word's auto-format function was used to cite authority within the Table of Authorities. Unfortunately, an unexpected scrivener's error resulted when the first ten pages (starting at the cover page) of the Response Brief containing the Table of Contents and Table of Authorities was (by error) auto-formatted from pages "i" to "x" to "1" to "10."

Consequently, the Table of Contents reflects proper citation, but the Table of Authorities is approximately 10 pages off when citing authority within the Response Brief.

To correct this scrivener's error upon review, please simply add approximately 10 pages to the page citation following each case. For example, when a case is stated in the Table of Authorities to be on page 2 of the Response Brief, please look to page 11, 12, or 13 of the Response Brief to find the cited case, and it will be found there.

2. On page 37, footnote 8, at the first paragraph on that page it reads:

See In re Melter, 167 Wash. App. 285, 316, 273 P.3d 991, 1009 (2012) (stating, "I then disagree [with the majority's statement that] .

. . . “when a challenged factual finding was required to be proved at trial by clear, cogent, and convincing evidence, we incorporate that standard of proof in conducting substantial evidence review. . . . [Rather,] *substantial evidence* was produced to support findings that *in turn* support the conclusion [of] undue influence [by clear, cogent, and convincing evidence].”).

This should instead read:

See *In re Melter*, 167 Wash. App. 285, 316, **318**, 273 P.3d 991, 1009 (2012) (stating, “I then disagree [with the majority’s statement that] . . . “when a challenged factual finding was required to be proved at trial by clear, cogent, and convincing evidence, we incorporate that standard of proof in conducting substantial evidence review. . . . [Rather,] *substantial evidence* was produced to support findings that *in turn* support the conclusion [of] undue influence [by clear, cogent, and convincing evidence].”) **(emphasis added)**).

3. On page 38, footnote 8, at the first paragraph on that page it reads:

evidence—*in totality*—that is clear, cogent, and convincing (as opposed evidence in totality that only convinces the trier of fact by a preponderance). Id.

This should instead read:

evidence—*in totality*—that is clear, cogent, and convincing (as opposed **to** evidence in totality that only convinces the trier of fact by a preponderance). Id.

4. On page 38, footnote 8, at the first full paragraph on that page it reads:

The out of state case law *In re Sego* cites, i.e., *Supove v. Densmoor*, 225 Or. 365, 358 P.2d 510 (1961) and *State v. Blubaugh*, 80 Wash.2d 28, 491 P.2d 646 (1971), are in accord with the foregoing analysis and not *In re Melter*’s majority conclusion.

This should instead read:

**The case law *In re Sego* cites, i.e., *Supove v. Densmoor*, 225 Or. 365, 358 P.2d 510 (1961) and *State v. Blubaugh*, 80 Wash.2d 28, 491 P.2d 646 (1971), are in accord with the foregoing analysis and not *In re Melter*’s majority conclusion.**

//

5. On page 38, footnote 8, at the second full paragraph on that page it reads:

“Stated another way, no Supreme Court has undersigned counsel has found, nor In re Sego. . . .”

This should instead read:

“Stated another way, **no Supreme Court case** undersigned counsel has found, nor In re Sego. . . .”

6. On page 38, footnote 8, at the third full paragraph on that page it reads:

Division 1 appears to agree with both the foregoing analysis and that it would not follow In re Melter. See In re Welfare of Kier, 21 Wash. App. 836, 839 & n.1, 587 P.2d 592, 594 (1978) (holding “Because we cannot envision any means of applying the Sego “high probability test” without inexorably passing upon the quality of the evidence, we have chosen to follow the traditional substantial evidence quantitative rule as clearly supported by the rationale of the opinion).

This should instead read:

Division 1 appears to agree with both the foregoing analysis and that it would not follow In re Melter. See In re Welfare of Kier, 21 Wash. App. 836, 839 & n.1, 587 P.2d 592, 594 (1978) (holding “Because we cannot envision any means of applying the Sego “high probability test” without inexorably passing upon the quality of the evidence, we have chosen to follow the traditional substantial evidence quantitative rule as clearly supported by the rationale of the opinion.”).

7. On page 39 at the top of the page it reads:

Moreover, an attorney drafted and consulted with the testator, specifically noting reasons why the testator wanted to disinherit the will contestants and why the testator wanted a particular testamentary scheme. Id. at 292-93. Finally, the testator was “excellent[ly]” taken care of by the accused. Id. at 293.

This should instead read:

Moreover, an attorney drafted and consulted with the **testatrix**, specifically noting reasons why the **testatrix** wanted to disinherit the will contestants and why the **testatrix** wanted a particular testamentary scheme. Id. at 292-93. Finally, the **testatrix** was “excellent[ly]” taken care of by the accused. Id. at 293.

8. On page 42 under Section J, it reads:

This reality was succinctly stated in Koppang v. Hudon some forty years ago:

This should instead read:

This reality was succinctly stated in Koppang v. Hudon some **thirty** years ago:

Respectfully submitted this 4<sup>th</sup> day of December, 2015



---

Drew Mazzeo  
Attorney for Respondent  
WSBA # 46506

## Certificate of Service

I, Drew Mazzeo, certify under penalty of perjury under the laws of the State of Washington that I served:

1. Letter Regarding Scrivener's Errors

on the following Parties:

Appellants, Richard and Karen Petersen, US mail, postage prepaid, at 2236 Heine Road, Chewelah, WA 99109 and via email at [petersenx4@hotmail.com](mailto:petersenx4@hotmail.com) on December 4th, 2015.

Signed this 4th day of December, 2015, at Tumwater, Washington, by:



---

Drew Mazzeo  
Attorney for Respondent

CC: Co-Counsel John Stanislav,  
Opposing Party Richard and Karen Petersen  
Client

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## I. INTRODUCTION

Donald Muller lost his long-time significant other at an age and condition that was devastating to him. His health took a major turn for the worse, ending up first in intensive care then a nursing home. He could no longer read. The Petersens took on a fiduciary and confidential relationship, sold his jewelry to pawn shops, and kept money received for themselves. Unemployed, and Mr. Petersen with a major gambling addiction, they pressured Donald Muller against medical advice to leave the nursing home and execute the Will at issue. They procured it unlawfully, and it devised Donald Muller's entire estate to them.

They promised to take care of him around the clock, prevented others from doing so, and failed to care for him in an egregious fashion. All the while they forged his signature onto checks and took tens of thousands of dollars from him—once while he was hospitalized, in a state of psychosis, and hallucinating. This one transaction ends this appeal.<sup>1</sup>

On the day Donald Muller died, Mr. Petersen's priority was to quickly cash the check he wrote to himself and signed from Donald Muller's Timberland Bank account—while Donald Muller was hallucinating—and use that money to help pay his gambling debt.

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<sup>1</sup> (See Section IV. 4.4.4.F, *infra*).

In their Opening Brief, the Petersens make new arguments that are utterly unsupported by the record. These new arguments should not be heard by this Court, and even if they were—they are of no help to the Petersens.

## **II. RESTATEMENT OF THE ISSUES**

1. “Whether the Court erred in which version of the evidence It believed. . . .?”
2. “Whether the court erred in upholding The Dead Man Statute by not allowing the Petersens to defend themselves [by testifying as to conversations and transactions with Donald Muller]?”
3. “Whether the court erred in [entering] its Findings of Fact and Conclusions of Law?”

## **III. STANDARD OF REVIEW**

Arguments not raised before the trial court are stricken or not considered on appeal. Harrison v. Cty. of Stevens, 115 Wash. App. 126, 132 & fn 3, 61 P.3d 1202, 1205 (2003); Buck Mountain Owner's Ass'n v. Prestwich, 174 Wash. App. 702, 714, 308 P.3d 644, 651 (2013). There is a presumption in favor of the trial court's findings. Prestwich, 174 Wash. App. at 714. “The appellant must present argument . . . why specific findings of fact are not supported . . . and must cite to the record . . .” or findings become verities. Id.; Matter of Estate of Lint, 135 Wash. 2d 518, 533, 957 P.2d 755, 762 (1998), as amended (July 9, 1998).

Challenged conclusions of law are reviewed de novo. Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002). However,

unchallenged conclusions of law “become[] the law of the case.” Detonics .45 Associates v. Bank of California, 97 Wash. 2d 351, 353, 644 P.2d 1170, 1172 (1982); State v. Slanaker, 58 Wash. App. 161, 165, 791 P.2d 575, 578 (1990); Millican of Washington, Inc. v. Wienker Carpet Serv., Inc., 44 Wash. App. 409, 413, 722 P.2d 861, 864 (1986).

Furthermore, the Court does not weigh evidence or judge witness credibility; “that is the exclusive province of the trier of fact.” Ives v. Ramsden, 142 Wn.App. 369, 382, 174 P.3d 1231 (2008). “Where there is conflicting evidence, the court needs only to determine whether the evidence viewed most favorable to respondent supports the challenged finding.” Matter of Estate of Lint, 135 Wash. 2d at 533.

Additionally:

An appellant who wishes to challenge the sufficiency of the evidence needs to outline the evidence in its brief, point to the deficiencies it contends exist, and cite to relevant authority. A bare conclusory allegation that the evidence is insufficient will not suffice, in that the appellate courts are not in the business of searching the record in an effort to determine the nature of any alleged deficiencies to which the challenger may be referring, and then to search the law for authority to support those same alleged deficiencies.

Mavroudis v. Pittsburgh-Corning Corp., 86 Wash. App. 22, 39-40, 935 P.2d 684, 693 (1997). Finally, “error without prejudice is not grounds for reversal.” Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc., 178 Wash. App. 702, 728-29, 315 P.3d 1143, 1156 (2013) review denied sub nom. Mut.

of Enumclaw Ins. Co. v. Gregg Roofing Co., 180 Wash. 2d 1011, 325 P.3d 914 (2014). “An error will be considered not prejudicial and harmless unless it affects the outcome of the case.” Id.; see also Havens v. C & D Plastics, Inc., 124 Wash. 2d 158, 169-70, 876 P.2d 435, 441 (1994).

#### **IV. ISSUE #1 RESTATED**

“Whether the Court erred in which version of the evidence believed. . . .?”

##### **4.1. Issue #1 Restatement of the Facts**

Prior to 2012, Donald Muller had a registered domestic partner named Beatrice Powell, commonly known as “Carmen.” (FF 1; 1RP at 181-84; 4RP at 55-67, 97; Ex 375, b.1109-11).<sup>2</sup> He relied on Carmen to handle his finances and facilitate his medical care. (FF 10-11; 1RP at 181-84; 4RP at 55-67, 97; 5RP at 293; 6RP at 590-91; Ex 266, b.598). Prior to her, Donald Muller’s mother handled much of his affairs. (6RP at 590-91).

In the spring of 2012, Carmen passed away. (FF 19-20; 1RP at 189). Donald Muller’s primary care physician had also passed. (2RP at 23; Ex 267, b.602). His health took a major turn for the worse. (FF 29; 1RP at 62-91, 107-120, 129; 2RP at 25, 32, 97, 122, 127, 138, 182). He had a host of

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<sup>2</sup> There were eight transcripts provided by the Petersens: (1) September 3 = 1RP. (2) September 4 = 2RP. (3) October 30 = 3RP. (4) November 5 = 4RP. (5) November 5-7 = 5RP. (6) November 12-13 = 6RP. (7) November 13 = 7RP. (8) April 1 = 8RP. Additionally: Exhibit = Ex, Bates Stamp Page # = b., Clerk’s Papers = CP, First Supplemental Clerk’s = 1SCP, Second Supplemental Clerk’s Paper = 2SCP, FF = Findings of Fact, CL = Conclusion of Law, OB = Opening Brief.

medical problems, could not read or drive a car, had trouble making phone calls, and was sedentary to a point of developing severe ulcers on his backside. (FF 33, 99-103, 130, 135, 357, 360; 2RP at 25-29, 38-43, 66-95, 116; Ex 269, b.610; Ex 269, b.612; Ex 276, b.630; Ex 277, b.632-33). The Petersens resided in Chewelah, Washington, but, nevertheless, became Donald Muller's caregivers. (FF 23; 2RP at 60, 78, 101, 108; 4RP at 111; 6RP at 559, 56-64; Ex 318, b.852).

Donald Muller signed a power of attorney document during this time. (FF 36-37; 5RP at 245-47, 283, 285; Ex 374, b.1103-07). No attorney was involved, and the document was procured, downloaded, and drafted by the Petersens. (FF 38-41; 1RP at 143; 5RP at 245-80, 283-285; totality of the testimony and evidence). It named Mrs. Petersen as attorney in fact, and Mr. Petersen as an alternate. (FF 42-43; Ex 374, b.1103-07). It did not allow gifting of Donald Muller's assets. (FF 45; Ex 374, b.1103-07). It required a regular accounting. (Ex 44; Ex 374, b.1103-07). The Petersens did not keep an accounting. (See Section V, 5.3.5.A, infra).

Donald Muller became dependent on the Petersens. (FF 31, 76, 118, 136, 159, 209, 347; e.g., 1RP at 86-87, 190-94; 2RP at 60, 78, 101, 108, 123-24; 4RP at 67-76; 5RP at 318; 6RP at 567-68; 570; Ex 422; Ex 296, b.748; Ex 326, b.876; Ex 345, b.958). Mr. Petersen collected unemployment during much of the time and borrowed money to gamble at casinos. (FF 52-

54, 68-71, 90, 133, 228-29, 237, 245, 249, 253, 258, 365; 4RP at 108-173; Ex's 236-259). Based upon the large amounts of cash withdrawn from ATM's at or close to casinos, his testimony and tax returns, and the status of his BECU Line of Credit, Mr. Petersen lost significant amounts of money while gambling. (FF 70, 72, 85, 86, 97, 165, 205, 207-08, 212-14, 225, 236, 240, 244, 248, 252, 257, 267, 278, 281, 284-85, 288-89, 296, 299, 312, 330-31, 340, 365, 368; 4RP at 108-173; Ex's 236-259; Ex 431). Mrs. Petersen was also unemployed and had no income. (FF 365; 4RP at 140). He spent some time at the Muller Farm. (2RP at 60, 78, 101; 4RP at 111; Ex 318, b.852). She spent far less time there. (FF 23; 6RP at 559, 563-64, 579).

Katherine Green testified that she knew of and personally handled a large amount of fine jewelry at the Muller Farm. (FF 15; 4RP at 55-67, 97). Some of this jewelry was present at the Muller Farm in three large cases in the summer of 2012. (Id.).

Richard Petersen sold jewelry to pawn shops consistent with the description of the jewelry Katherine Green described as belonging to Donald Muller. (FF 57-67; 4RP at 55-81, 97, 198-213; 5RP at 219-20; Ex 176, b.222; Ex 201, b.285-88; Ex 402; Ex 415; Ex 423; Ex's 424-31). Mr. Petersen was paid partially with a check and partially with cash when he sold the jewelry to South Hill Rare Coins on May 30th, 2012. (FF 57; 4RP at 55-81, 97, 198-213; 5RP at 219-20; Ex 415; Ex 423; Ex 431). Within

days of that transaction, he sold more jewelry to Pounder's Jewelry in Spokane and was paid by check. (FF 61; 4RP at 198-213; 5RP at 219-20; Ex 201, b.285-88; Ex 402; Ex's 424-31). The check from South Hill Rare Coins, for \$9,900.00, was first deposited in the Petersens' Bank of America account. (FF 59; 4RP at 199; Ex 201, b.285-88; Ex 431). Then Mr. Petersen deposited that same amount, \$9,900.00, as a cashier's check, into Donald Muller's Timberland bank account. (FF 60; 4RP at 198-213; 5RP at 219-20; Ex 176, b.222; Ex 201, b.285-88; Ex 423; Ex 431).

The \$6,200.00 in cash received from South Hill Rare Coins was never paid to Donald Muller. (FF 57-58; 4RP at 55-81, 97, 198-213; 5RP at 219-20; Ex 415; Ex 423; Ex 431). The \$9,905.00 check from Pounder's Jewelry was deposited into the Petersens' Bank of America account, and never paid to Donald Muller. (FF 61, 65-66, 365; 4RP at 198-213; 5RP at 219-20; Ex 201, b.285-88; Ex 402; Ex's 424-31).

Mr. Petersen sold jewelry on several other occasions to Pounder's jewelry. (FF 61; 4RP at 198-213; 5RP at 219-20; Ex 201, b.285-88; Ex 402; Ex's 424-31). Each time, he was paid by check and cashed and/or deposited those checks into the Petersens' Bank of America account. (FF 61; 4RP at 198-213; 5RP at 219-20; Ex 201, b.285-88; Ex 402; Ex's 424-31). None of this money was paid to Donald Muller. (FF 365; 4RP at 198-213; 5RP at 219-20; Ex 201, b.285-88; Ex 402; Ex's 424-31).

An employee of Pounder's Jewelry testified that when Mr. Petersen was selling the jewelry, Mr. Petersen stated that he "was the representative of an estate and had the authority to sell it." (FF 62; 4RP at 44). Mr. Petersen testified that he has only been the representative of one estate, Donald Muller's. (FF 63; 4RP at 99). The Petersens' inventory of Donald Muller's Estate does not account for the jewelry Katherine Green saw in the summer of 2012. (1SCP at 310).

At the end of June 2012, Donald Muller was admitted to St. Peter's intensive care unit in Olympia Washington. (FF 74; 2RP at 25-31; Ex 268, b.606; Ex 269, b.609). He should have been taken to the hospital by the Petersens weeks beforehand. (FF 76-77; 2RP at 78; 5RP at 331, 439). Mr. Petersen lied to hospitals and told them he was Donald Muller's son. (FF 78, 262-64; 4RP at 100-101).

While Donald Muller was in the intensive care unit, Mr. Petersen redeemed over \$50,000.00 worth of Donald Muller's savings bonds at Timberland Bank. (FF 91-93; 2RP at 190-94; Ex 88, b.12-21). He deposited them in Donald Muller's Timberland Bank account and then over the next year and one-half, he and Mrs. Petersen wrote to themselves over \$45,000.00 in checks from Donald Muller's account. (FF 94; 5RP at 245-80; Ex 431). They practiced and forged Donald Muller's signature on each of the bonds and all of these checks. (FF 47, 56, 83, 92, 161, 163, 201, 203,

216, 220, 222, 226, 238, 259, 265, 282, 297, 310, 313, 328, 361, 371; 5RP at 247-51, 261). The Petersens also wrote and signed checks paying for Donald Muller's bills. (See 5RP at 245-80; Ex's e.g., 85-86, 90-94, 96, 98, 102-06). Donald Muller did not write or sign any checks from the summer of 2012 until he died in December of 2013. (See 5RP at 245-80; Ex 431).

Mrs. Petersen wrote a \$5,000.00 check to a third party, Michelle Whipple, when Donald Muller was in the intensive care unit at St. Peters. (FF 83; 5RP at 254-55; Ex 87, b.10; Ex 431). It was cashed. (FF 84; 5RP at 254-55; Ex 87, b.10; Ex 431). Mr. Petersen was gambling immediately before, during, and after Donald Muller's stay in the intensive care unit. (FF 72, 85-86, 97; 4RP at 131, 137, 140; e.g., Ex 241, b.475-78; Ex 243, b.485-88).

Donald Muller was admitted to a nursing home in the beginning of July 2012. (FF 88; 2RP at 39-41, 44, 47, 56-57, 79; Ex 279, b.637). He was ordered to be there ninety days for extensive rehab and treatment. (2RP at 39-41, 44, 47, 56-57, 79; Ex 279, b.637). Grieving over the loss of Carmen, Donald Muller was depressed, frequently tearful, and stated numerous times he was not ready to go home. (FF 110-12; 1RP at 108-20, 128-29; 2RP at 47-54, 62-67; Ex 282, b.688, 692, 694; Ex 283, b.700; Ex 286, b.711-12; Ex 287, b.714; Ex 295, b.741). The Petersens pressured him against medical advice to go home early and a nurse practitioner ordered an adult protective

service investigation. (FF 111; 1RP at 65-91, 108-20, 128-29; Ex 279, b.645). That investigation did not happen. (FF 113). Richard Petersen wanted Donald Muller to execute a will written while Donald Muller was in the nursing home. (FF 183; 1RP at 140).

Donald Muller was released sixty-days early from the nursing home contingent on the Petersens providing “24/7” care. (FF 127-29, 146, 350; e.g., 1RP at 65-91, 108-20, 128-29; Ex 281, b 684-85, Ex 285, b.707; Ex 287, b.716-17; Ex 288, b.719; Ex 289, b.726). The Petersens did not give Donald Muller 24/7 care and Donald Muller never regained his independence. (FF 350-57; 2RP at 97-102; Ex 302, b.776-80). The Petersens did not take Donald Muller to follow up doctor’s appointments, and were otherwise derelict in their care for Donald Muller. (FF 131, 243, 256, 350-57, 369; 2RP at 78; 5RP at 331, 439).

Two weeks before Donald Muller executed the Will and healthcare power attorney he was in terrible condition. (FF 134-58; 1RP at 190-94; 2RP at 80-88; 4RP at 67-76; Ex 298, b.756-59; Ex 422). The Petersens had an agreement with a visiting nurse that no one would visit Donald Muller unless the Petersens were present. (FF 147, 351; 2RP at 80-88; 4RP at 67-76; Ex 298, b.756-59).

Donald Muller never consulted with an attorney. (FF 167, 182; 1RP at 143; 5RP at 224-80, 282-285). The Petersens procured, downloaded, and

drafted the Will and power of attorney documents. (FF 166; Section V, 5.3.5.C, infra). The witnesses to the Will as well as the notary were not known to Donald Muller, but were friends of the Petersens. (FF 168; 1RP at 133-35, 152-53). They traveled about two hours to help execute the Will. (FF 170; 1RP at 133-35, 152-53). Donald Muller was asked yes or no questions regarding the Will and Healthcare Power of Attorney. (FF 190; 1RP at 141, 163). No discussion of his assets, estate, or potential beneficiaries was had. (FF 185-86; 1RP at 141, 161-62). There was no mention of disinheriting anyone. (FF 188; 1RP at 141, 161-62). The notary summarized the Will, but thought the word “estate” referred to real estate. (FF 189; 1RP at 161; 174-76). Provisions of the healthcare power of attorney were initialed by someone other than Donald Muller. (FF 197; 1RP at 165; 5RP at 244-46, 282-285; Ex 411, b.1231).

One of the witnesses to the Will described Donald Muller as “a broken, hunched, tired man” on the day it was executed. (FF 179; 1RP at 139-40). He further described Donald Muller as being “recalcitrant.” (1RP at 139). He told Mr. Petersen he should get an attorney before the Will was executed. (FF 182; 1RP at 143, 160).

The Petersens, over the next year and one-half, continued to write checks to themselves, remained largely unemployed, and Mr. Petersen gambled often. (4RP at 108-173; 5RP 224-80). The few times Donald

Muller was taken to a doctor he was described as fatalistic, having suicidal ideations. (FF 234, 291, 358; 2RP at 111-12, 128-29; 5RP at 303; Ex 305, b.789-91; 314, b.815-18). He had to consult with Mr. Petersen before a personal care provider/housekeeper was hired. (FF 263-64; 5RP at 438-439; 6RP at 553; Ex 309, b.801; Ex 310, b.803; Ex 311, b.805; Ex 312, b.807; Ex 366, b. 1079; Ex 367, b.1081; Ex 370, b.1087; Ex 371, b.1089). The bills for such services were sent to the Petersens' home in Chewelah. (FF 263-64; 5RP at 438-439; 6RP at 553; Ex 309, b.801; Ex 310, b.803; Ex 311, b.805; Ex 312, b.807; Ex 366, b.1079; Ex 367, b.1081; Ex 370, b.1087; Ex 371, b.1089).

Donald Muller, perhaps as early as the summer of 2012, but no later than the fall of 2012, developed an antibiotic resistant strain of pseudomonas pneumonia. (FF 235; 307; 1RP at 86, 108; 2RP at 25-29; 67-68, 72-80, 97-102, 105-130; 5RP at 303-04, 318-19, 321-22, 326, 331, 418-19, 439; Ex 269, b.610; Ex 288, b.722; Ex 295, b.738-42; Ex 296, 744-51; Ex 302, b.776-80; Ex 303, b.782-84; Ex 304, b.786-87; Ex 305, b.789-91; Ex 306, b.793; Ex 307; Ex 314, b.815-18; Ex 326, b.876; Ex 329; Ex 332, b.898-901; Ex 345, b.958; Ex 398, b.1174; Ex 399, b.1176). It could only be treated with certain intravenous antibiotics. (FF 235; 235; 2RP at 67-68, 105-130; 5RP at 303-04; Ex 288, b.722; Ex 303, b.782-84; Ex 304, b. 786-87; Ex 305, b.789-91; Ex 307; Ex 398, b.1174; Ex 399, b.1176). However,

it was not recognized until December of 2013 because the Petersens failed to take him to regular or follow up doctors' appointments. (FF 256, 357, 369; e.g., 5RP at 439).

In the last month of Donald Muller's life, the Petersens wrote themselves \$16,000 in checks from his Timberland Bank account. (FF 312-13, 328, 367; 2RP at 142-46, 151-52, 171-72, 195-97; 4RP at 195-98, 204-05; 5RP at 224-80, 275-77, 436-37; Ex 158, b.161; Ex 160, b.165; Ex 164, b.173; Ex 353, b.1020-21; Ex 354, b.1023; Ex 431). In that same month, Mr. Petersen had a conversation with a hospital social worker and said he was concerned that Donald Muller was running out of money, and that he could no longer care for him. (FF 325, 366; CL 30; 2RP at 171-72; 5RP at 436-37; Ex 353, b.1020-21; Ex 354, b.1023). The last check, for \$6,000.00, was written and signed by Mr. Petersen while Donald Muller was hallucinating in a state of psychosis. (FF 326, 327; CL 30; 2RP at 142-46, 151-52; 5RP at 437). Mr. Petersen went gambling at a local casino that same day. (FF 330, 340, 365, 368; CL 30; 4RP at 131, 137, 139, 140; Ex 259, b.565-68).

Mrs. Petersen, without authority to do so, changed Donald Muller's Physician's Order for Life Sustaining Treatment ("POLST") form from intermediate measures to comfort care measures only. (FF 322, 338, 369, CL 8; 5RP at 334-39; Ex 380, b.1125). This expressly prevented healthcare

professionals from providing C-PAP and BI-PAP to help Donald Muller breath. (FF 323; 2RP at 143-44; 5RP at 334-39). Donald Muller, including days earlier, stated he wished to have C-PAP and BI-PAP to help him breath. (FF 98, 338, 369; 2RP at 29, 169, 176; 5RP at 314, 316, 320, 333-38; Ex 275, b.627-28). He also had agreed with his primary care physician that he should not change his POLST form. (FF 318; 1RP at 86-87, 108; 2RP at 25-29, 67-68, 72-80, 97-102, 105-30; 5RP at 324-30; Ex 338, b.922-23).

Donald Muller died less than two weeks later from respiratory distress. (FF 335; 5RP at 339; Ex 356, b.1029). The day that he died, Mr. Petersen cashed the final check for \$6,000.00 (he wrote while Donald Muller was hallucinating) within a couple hours. (FF 339; 2RP at 188-205; 4RP at 197-98; 5RP at 276-77; Ex 164, b.173; Ex 431). He then deposited the proceeds of that check into his BECU account that he testified was primarily used for gambling. (FF 340; 2RP at 188-205; 4RP at 197-98; 5RP at 276-77; Ex 164, b.173; Ex 431). Days after Donald Muller passed, and before they were appointed co-personal representatives, the Petersens transferred several thousands of dollars from Donald Muller's saving account to his checking account. (FF 342; Ex 195, b.260; Ex 431).

At trial, Mr. and Mrs. Petersen testified as adverse witnesses. Mr. Petersen was impeached based on statements regarding his unemployment

and work history. (FF 49-51; 4RP at 108-173). The court found them both evasive in their answers and Mr. Petersen not credible. (FF 49-51; 4RP at 108-173; 7RP at 296-98).

Witnesses to the Will and those called to testify by the Petersens had no knowledge of the financial relationship between the Petersens and Donald Muller. (FF 172-74, 272, 360, 370-71, 1RP at 135-37, 155-56, 6RP at 468, 490, 523-24, 549, 565). One friend of Donald Muller recommended assisted living for him. (6RP at 486). No one but the witnesses to the Will knew of the Will until after he passed. (FF 192, 358; 6RP at 462, 469, 490, 523-24, 541, 565). Another friend identified a picture of Donald Muller being taken in the spring of 2012. (6RP at 542). No friends had much knowledge of his medical conditions. (FF 171, 177, 350, 353-54, 359-60, 370-71; 1RP at 136, 157-78; 6RP at 458, 469-70, 476, 527, 549, 572-73).

#### **4.2. Issue #1 Relevant Procedural History**

Plaintiff filed an Amended Will Contest including a claim for financial exploitation in the summer of 2014. Trial began in September and then continued and finished in November. The court held the Petersens were financial abusers, liable for conversion, and that the Will was the product of undue influence and the unauthorized practice of law.

On appeal, the Petersens appear to make five claims regarding the sufficiency of the evidence: First, “the accounting expert could not trace

[cash] to our accounts.” (OB at 6). Second, the evidence admitted at trial did not support a finding that they sold Donald Muller’s jewelry. (OB at 6). Third, “the expert accountant couldn’t confirm Donald’s money was used for [gambling].” (OB at 6). Fourth, Mr. Petersen’s testimony was credible. (OB at 6). Finally, that clear, cogent, and convincing evidence did not support financial exploitation or undue influence. (OB at 4).

#### **4.3. Issue #1 Summary of the Argument**

First, the Petersens have waived these assignments of error, under Bosley,<sup>3</sup> Smith,<sup>4</sup> and Mester,<sup>5</sup> when they did not argue and cite case law in their Opening Brief. Second, the Petersens have not adequately briefed these claims, under Hiatt,<sup>6</sup> and this Court should simply decline to decide them. Third, the Petersens have not complied with Rules of Appellate Procedure and this Court has every reason, under State v. Olsen,<sup>7</sup> to not reach the perceived merits of their appeal. Finally, arguments not raised below should be struck or not heard, and even if this Court reaches the merits—the trial court’s Findings and Conclusions are well supported by the record.

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<sup>3</sup> See Section IV, 4.4.1, infra.

<sup>4</sup> See Section IV, 4.4.1, infra.

<sup>5</sup> See Section IV, 4.4.1, infra.

<sup>6</sup> See Section IV, 4.4.2, infra.

<sup>7</sup> See Section IV, 4.4.3, infra.

#### 4.4. Issue #1 Argument

##### 4.4.1. *The Petersens Have Waived these Claims by Not Arguing Legal Authority*

A party waives an assignment of error when they do not argue and cite legal authority in their opening brief. Cowiche Canyon Conservancy v. Bosley, 118 Wash. 2d 801, 809, 828 P.2d 549, 553 (1992); Smith v. King, 106 Wash. 2d 443, 451, 722 P.2d 796, 801 (1986); Puget Sound Plywood, Inc. v. Mester, 86 Wash. 2d 135, 142, 542 P.2d 756, 761 (1975).

In Bosley, Smith, and Mester, the Supreme Court, en banc, held that the plaintiffs' assignment of errors were waived because they did not present adequate argument or cite case law. Bosley, 118 Wash. 2d at 809; Smith, 106 Wash. 2d at 451; Mester, 86 Wash. 2d at 142. Here, the Petersens have done the same as the plaintiffs in Bosley, Smith, and Mester. Their Opening Brief is void of an argument section, and simply states:

We believe Judge F. Mark McCauley committed an error of 'Abuse of Discretion' with the way he misinterpreted evidence and the version of the evidence he chose to believe.

(OB at 10). Even if this Court liberally interpreted the Petersens' Opening Brief, the Petersens provide no citation to case law, do not argue case law, and do not cite preserved errors from the record. (OB at 6-9). Furthermore, the Petersens cannot cure this defect in their Reply. See Bosley, 118 Wash.

2d at 809. Accordingly, the Petersens have waived these assignments of error.

*4.4.2. The Petersens Have Not Adequately Briefed these Claims*

The Court may refuse to consider an argument when the Appellant does not provide “adequate briefing.” Hiatt v. Walker Chevrolet Co., 120 Wash. 2d 57, 64, 837 P.2d 618, 622 (1992) (citing RAP 12.1(a); State v. Mayes, 20 Wash.App. 184, 194, 579 P.2d 999, review denied, 91 Wash.2d 1001 (1978)). In Hiatt, the Supreme Court, en banc, “decline[d] to determine the elements of a claim for religious discrimination in employment based on the law of this state” because the “issue was not adequately briefed.” Id.

Here, the Petersens’ appeal is not adequately briefed just like the appeal in Hiatt. Similar to the issue of waiver, as stated infra, it literally has no argument section, does not argue or cite case law, and is inadequate for consideration. See RAP 12.1(a); Hiatt, 120 Wash. 2d at 64. At best, it inaccurately states testimony from Lonnie Rich and Patricia Abbot. (See Section IV, 4.4.4.B). It cites no other testimony, and makes new factual assertions nowhere supported in the record. See Motion to Strike. It attempts to state Dr. Payal Shah’s testimony was not credible—when the trial court explicitly found the opposite. (OB at 8; FF 27).

4.4.3. *The Petersens Have Not Complied with the Rules of Appellate Procedure*

In State v. Olsen, the Supreme Court provided guidance on reaching the merits when a party does not comply with the Rules of Appellate Procedure: (1) Whether the nature of appeal is clear, (2) whether relevant issues are argued and citations supplied, (3) whether the court is greatly inconvenienced, and (4) whether the respondent is prejudiced. 126 Wash. 2d 315, 323-24, 893 P.2d 629, 633 (1995); RAP 1.2(a); RAP 10.3(a). Applying that test, it was significant that the nature of the appeal was clear and that the appellee could sufficiently respond. Id.

Here, this Court should not reach the merits. First, the nature of the appeal is not clear. The Petersens state the “court erred in which version of the evidence he believed,” but do not articulate any defect in the court’s decision making. (OB at 8). The Petersens only “basis of issues set forth . . . in their brief. . . .” is that the court erred in “comparing” the “testimony” of allegedly “estranged” witnesses with “those who saw him on a regular basis.” (OB at 4). However, comparing testimony and evidence is what a trial court does. See Ives, 142 Wn.App. at 382. Moreover, the Petersens do not state, let alone argue, what witnesses were “estranged,” which witnesses “saw him on a regular basis,” why any such testimony would be “believed,” or not, or where in the record such testimony can be found.

Second, the Petersens’ Opening Brief requires this Court to enter into “the business of searching the record in an effort to determine the nature of any alleged deficiencies . . . and then . . . search the law for authority to support those same alleged deficiencies.” See Mavroudis, 86 Wash. App. at 39-40. This Court should decline this invitation.

Third, this Court would be greatly inconvenienced. See Olson, 126 Wash. 2d at 323-24. This trial lasted nearly a week, had a complex evidentiary hearing and complaint, there were twenty-seven witnesses, four experts, and over 430, sometimes voluminous, exhibits. If there ever was a case where this Court should decline to enter into “the business of searching the record . . . for . . . alleged deficiencies”—this is it. See Mavroudis, 86 Wash. App. at 39-40.

Fourth, deciphering the Petersens’ conclusory claims on appeal is speculative, and Plaintiff cannot “sufficiently” respond. See Olson, 126 Wash. 2d at 323-24. Their arguments and statements raised for the first time should be struck or not heard. See Motion to Strike. Plaintiff is stuck in a catch 22, choosing either to make the other side’s, perceived arguments, or to choose to see what this Court does sue sponte—risking losing the appeal. This is prejudicial to Plaintiff and the modest estate.

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4.4.4. *If this Court Reaches the Merits—the Petersens’  
Claims Still Fail*

Here, the trial court was very clear that the evidence weighed heavily in favor of the Plaintiff. (7RP at 694, 702-03; 8RP at 3-4, 9-10). Its findings are well supported by the evidence and testimony at trial. (See Appendix A). This is regardless of whether those findings are treated as verities, which they should be because none are “specifically” challenged. See Matter of Estate of Lint, 135 Wash. at 533. This is also regardless of whether the Conclusions of Law are treated as “the law of the case,” which they should be because none are “specifically” challenged. See Bank of California, 97 Wash. 2d at 353; Slanaker, 58 Wash. App. at 165; Wienker Carpet Serv., Inc., 44 Wash. App. at 413.

*A. The Trial Court “ruled, basically one hundred percent in favor of the Plaintiff and recommended that the Petersens be prosecuted”*

The Honorable Judge Mark McCauley, who has twenty-plus years on the bench, provided the most succinct summation of what the Petersens did to Donald Muller:

I ruled totally in favor of the Plaintiff . . . [his attorneys] were very detailed in their support of the[ir] theories, and I ruled, basically one hundred percent in favor of the Plaintiff and recommended that the Petersens be prosecuted. . . . [I]t was just a gross violation of any kind of fiduciary duty, and it was just a terrible situation.

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I was disgusted, frankly, with what was done to Mr. [Donald] Muller in this case. . . .

(8RP 3-4, 9-10). As to whether there was clear, cogent, and convincing evidence to prove Plaintiff's case—the trial court could not have been more adamant:

There's no way I could find anything but by clear, cogent, and convincing evidence that [Donald Muller] was exploited financially.

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I have the benefit of having heard all the testimony and evidence. And the extreme circumstance of this case where Mr. [Donald] Muller was taken advantage, clearly, by the Petersens, and frankly, tens of thousands of dollars were taken, I don't know how to say it other than stolen from him. And, I know the tremendous effort that the Plaintiffs had to go through to get this case together in a relatively quick fashion. . . .

(Id. at 24-25).

I find that [Donald Muller] was by clear, cogent, and convincing evidence . . . signed [his Will] that wasn't properly drafted without knowing all what had been going on or what was to go on in the future where he could have—if he would have found out about this and really understood it, I'm sure he would have changed his will. . . . [T]his is a clear case where he was exploited because he was vulnerable and sick and the amount of money that was spent without any kind of accounting makes it an easy case in the sense of what I have to decide. It doesn't make it easy, because it's a sad case.

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[I]t's a sad case in the sense that the people he trusted took advantage of him financially like this.

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I'm not a medical person, but when I heard the doctor and the medical providers, I wonder if [Donald Muller] would have gotten good regular care, where they could have recognized this pneumonia earlier . . . maybe an assisted living situation with medications given by regular caregivers that have experience . . . I wonder if he could have beat that pneumonia for a period of time

and lived a much more healthy life rather than coughing to the point where he thinks . . . the coughing caused hernias is what he reported to one physician.

(7RP at 694, 702-03). Moreover, because this Court “do[es] not weigh evidence or render judgments regarding witness credibility,” this appeal has no merit. See Ives, 142 Wn.App. at 382; Matter of Estate of Lint, 135 Wash. 2d at 533; Estate of Esala, 16 Wn.App 764, 770, 559 P.2d 592 (1977); Bland v. Mentor, 63 Wash. 2d 150, 154, 385 P.2d 727, 730 (1963); In re Martinson’s Estate, 29 Wn.2d 912, 920-21, 190 P.2d 96 (1948); (see also CL’s).

*B. Donald Muller’s “Cash” was Willfully Taken by the Petersens*

The Petersens claim “the accounting expert could not trace [cash] to [their] accounts.” (OB at 6). This is puzzling. Lonnie Rich’s expert report was admitted into evidence. (4RP at 181-182). Within that Report, it clearly states: “I noted three checks totaling \$8,000 written from Donald Muller’s Timberland Bank checking account made payable to cash that were cashed at Timberland Bank by Richard Petersen.” (Ex 83, 119, 156; Ex 431 at 6). He also testified that those checks were cashed by Richard Petersen. (4RP at 184-85).

Combined with Rob Floberg’s expert testimony that the Petersens practiced and “forge[d]” Donald Muller’s name on such checks—it uncontested that Mr. Petersen willfully took this money from Donald

Muller. (5RP at 247-79). Lois Vessey confirmed that similar checks were deposited in the same bank account number as the Petersens. (2RP at 188-205; e.g., Ex 203). Moreover, Lonnie Rich testified that when Mr. Petersen deposited a large check payable to Donald Muller, he only deposited a portion of the check and took the remainder as cash for himself. (4RP at 187-89, 195-98; Ex. 166; Ex. 431 att.3).

*C. Donald Muller's Jewelry was Willfully Taken by the Petersens*

The Petersens point to Mrs. Petersen's mother's testimony in an attempt to distance themselves from the sale of Donald Muller's jewelry. (OB at 6). Their reliance on this testimony is misplaced. Not only was the testimony vague and unconvincing, but the record clearly demonstrates Richard Petersen sold Donald Muller's jewelry and pocketed the majority of the proceeds. First, Katherine Green testified that she knew of and previously handled a large amount of fine jewelry present at the Muller Farm in the summer of 2012. (4RP at 56-81, 97). The Petersens had access to the jewelry and were motivated to take it because they were unemployed and losing thousands of dollars gambling. (e.g., FF 365).

Second, the jewelry sold to pawn shops matched the description of the jewelry that Katherine Green described. (e.g., FF 57-67; 4RP at 55-81, 97, 198-213). The close temporal connection between each of the sales shows Mr. Petersen was simply selling the jewelry at two different pawn

shops. (e.g., FF 57-61). Mr. Petersen depositing a portion of the proceeds into Donald Muller's Timberland Bank account clearly shows the jewelry was Donald Muller's. (FF 60; 4RP at 198-213; 5RP at 219-20; Ex 176, b.222; Ex 201, b.285-88; Ex 423; Ex 431).

Third, Mr. Petersen expressly testified that he has only been the representative of one estate, Donald Muller's. (FF 63; 4RP at 99). And a Pounder's Jewelry employee testified that Mr. Petersen represented to her that he "was the representative of an estate and had the authority to sell it." (FF 62; 4RP at 44).

Finally, in the Petersens' own inventory of Donald Muller's Estate, they do not account for Donald Muller's jewelry seen by Katherine Green during the summer of 2012. (1SCP at 312).

*D. Mr. Petersen Spent Donald Muller's Money Gambling at Casinos*

The Petersens claim that "the expert accountant couldn't confirm Donald's money was used for [gambling]." (OB at 6). This doubles-down on ignoring the record. Lonnie Rich testified about the \$6,000.00 check written and signed by Mr. Petersen on December 20, 2013, when Donald Muller was hallucinating, in induced psychosis. (2RP at 188-205; 4RP at 197-98; 5RP at 276-77; Ex 164, b.173; Ex 431). He stated:

that . . . \$6,000, it was cashed at Mr. [Donald] Muller's Timberland account on December 23rd of 2013. I noted two \$3,000 ATM

deposits on that same day made into [the Petersens'] Boeing Employees Credit Union check account. And then on December 26th, 2013, I saw a payment for \$4,061.64 made payable to Visa, and then a payment of \$1,000.00 was made on the BECU line of credit from that checking account as well.

(4RP at 197-98). Moreover, Lonnie Rich traced other such checks cashed and/or deposited by the Petersens. (4RP at 184-85, 188-89, 195-98, 205).

*E. Richard Petersen's Testimony was "anything but frank and open and honest"*

The Petersens claim Mr. Petersen's testimony was credible. (OB at 6). This appears desperate. Mr. Petersen was dishonest about how often he worked and dishonest about receiving unemployment compensation. (FF 49-51; 4RP at 108-173). He attempted to obfuscate when discussing his BECU account, primarily used for gambling. (*Id.*). And he perjured himself stating he didn't know what car he was driving two years prior. (FF 49-51; 4RP at 141, 162).

*F. The Petersens Have No Credible Argument to Refute the Finding that They Financially Exploited Donald Muller*

Gradinaru v. State Dep't of Soc. & Health Servs., is dispositive that the Petersens financially exploited Donald Muller. 181 Wash. App. 18, 24, review denied, 181 Wash. 2d 1010 (2014) (holding "Financial exploitation extends to the illegal or improper use of a vulnerable adult's property to further a goal of the person who took that property."); RCW 11.84.010(3). There, taking a vulnerable adult's medicine was determined to be financial

exploitation. Gradinaru, 181 Wash. App. at 24. Here, the Petersens took far more than Donald Muller’s medicine, kept no accounting, forged checks to themselves and a third party (Michelle Whipple), and it was gross financial exploitation. RCW 11.84.010(3); see also In re Estate of Palmer, 145 Wash. App. 249, 264, 187 P.3d 758, 766 (2008) (holding implicit duty to account by the attorney-in-fact).

*G. The Petersens’ Best Possible Case Law Defending Against Undue Influence Fails Them.*

As to undue influence, In re Melter is likely the best case law the Petersens could cite in support of their defense.<sup>8</sup> 167 Wash. App. 285, 273

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<sup>8</sup> Division 3 was divided, there, as Justice Sweeney reluctantly, only, concurred as he expressed serious concerns as to the standard of review recited by the majority requiring the court of appeals to determine the persuasiveness of the evidence, i.e., whether it was clear, cogent, and convincing, presented at trial. See In re Melter, 167 Wash. App. 285, 316, 273 P.3d 991, 1009 (2012) (stating, “I then disagree [with the majority’s statement that] . . . “when a challenged factual finding was required to be proved at trial by clear, cogent, and convincing evidence, we incorporate that standard of proof in conducting substantial evidence review. . . . [Rather,] *substantial evidence* was produced to support findings that *in turn* support the conclusion [of] undue influence [by clear, cogent, and convincing evidence].”).

As far as undersigned counsel can find, the Supreme Court has never applied the standard espoused by the majority of In re Melter in undue influence cases. (See CL’s; fn 9-10). In fact, In re Melter acknowledges “the evidence and all reasonable inferences must be viewed in the light most favorable to the prevailing party.” In re Melter, 167 Wash. App. at 300. This means the evidence supporting each factual finding must be viewed in that same light. See *id.* Where In re Melter’s majority errs is how it interprets the very Supreme Court case, In re Seago, 82 Wash. 2d 736, 739, 513 P.2d 831, 833 (1973), that it cites to support *its contention that each finding of fact must be supported by clear, cogent, and convincing evidence*. This is not so: In re Seago clearly holds “We are firmly committed to the rule that trial court’s findings of fact will not be disturbed on appeal if they are supported by substantial evidence.” In re Seago, 82 Wash. 2d at 739 (internal quotation omitted). It then goes on to hold the “*ultimate fact in issue*”, e.g., whether undue influence was committed, or In re Seago “whether an order permanently depriving a parent of the care, custody and control of his children” should be “sustain[ed],” must be supported by

P.3d 991, 1000 (2012). There, the trial court relied on non-credible testimony<sup>9</sup> from the accused and suspicious circumstances. Id. at 302 & n.5. Further, it had difficulty citing “positive evidence”<sup>10</sup> of undue influence. Id.

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evidence—*in totality*—that is clear, cogent, and convincing (as opposed evidence in totality that only convinces the trier of fact by a preponderance). Id.

The “highly probable” standard, In re Sego also cites, is in accord with foregoing analysis as well. This standard is applied to the “ultimate fact at issue” as well, and not to each specific finding of fact. See id. (stating “whether there is substantial evidence . . . in light of the highly probable test.”). The out of state case law In re Sego cites, i.e., Supove v. Densmoor, 225 Or. 365, 358 P.2d 510 (1961) and State v. Blubaugh, 80 Wash.2d 28, 491 P.2d 646 (1971), are in accord with the foregoing analysis and not In re Melter’s majority conclusion.

Stated another way, no Supreme Court has undersigned counsel has found, nor In re Sego, supports the proposition that clear, cogent, and convincing evidence *must support each finding of fact*. (See also CL’s). Rather, substantial evidence must support each finding and the “ultimate” fact/issue/elements of law to be proved must be supported—*in totality*—by clear, cogent, and convincing evidence. Consequently, Justice Sweeney is correct, and Division 2—not to put too fine a point on it—has also subsequently erred to the degree it found In re Melter’s standard of review persuasive in Kitsap Bank v. Denley, 177 Wash. App. 559, 570, 312 P.3d 711, 717 (2013) (citing In re Melter). Division 2 should follow the foregoing interpretation of In re Sego instead. 82 Wash. 2d at 739.

Division 1 appears to agree with both the foregoing analysis and that it would not follow In re Melter. See In re Welfare of Kier, 21 Wash. App. 836, 839 & n.1, 587 P.2d 592, 594 (1978) (holding “Because we cannot envision any means of applying the Sego “high probability test” without inexorably passing upon the quality of the evidence, we have chosen to follow the traditional substantial evidence quantitative rule as clearly supported by the rationale of the opinion).

<sup>9</sup> In re Melter, citing Dyer v. MacDougall, 201 F.2d 265, 269 (2d Cir. 1952), appears to also hold credibility determinations are not evidence in favor of the truth or falsity of a matter asserted, i.e., cannot help satisfy the burden of production; however, Division 2 has not ruled on this issue. In re Melter’s reasoning is flawed because where a matter is either true or false, and no other explanation is possible, a finding that a witness is not credible on particular matter is “positive evidence” of the truth or falsity of the matter asserted: it allows the court to determine whether the existence of a fact is more or less clear, and, thus, helps satisfy both the burden of production and the burden of persuasion.

<sup>10</sup> “Positive evidence,” originally referred to in Dean v. Jordan, 194 Wash. 661, 673, 79 P.2d 331, 336 (1938), is, at a minimum, circumstantial or direct evidence in favor of the truth or falsity of a matter asserted. See e.g., In re Kessler's Estate, 35 Wash. 2d 156, 162, 211 P.2d 496, 499 (1949) (circumstantial evidence can prove undue influence); Matter of Esala's Estate, 16 Wash. App. at 771 (circumstantial can evidence prove undue influence); Bland, 63 Wn.2d at 155 (circumstantial evidence can prove fraud); Myers v. Little Church by the Side of the Road, 37 Wn.2d 897, 903, 227 P.2d 165 (1951) (circumstantial evidence can prove negligence); Sears v. Int’l Bhd. Of Teamsters, et al, 8 Wn.2d 447, 452, 112 P.2d 850 (1941) (circumstantial evidence can prove conspiracy); State v. Delmarter, 94 Wn.2d

at 302. Moreover, an attorney drafted and consulted with the testator, specifically noting reasons why the testator wanted to disinherit the will contestants and why the testator wanted a particular testamentary scheme. Id. at 292-93. Finally, the testator was “excellent[ly]” taken care of by the accused. Id. at 293.

Here, the facts are inapposite. A plethora of suspicious circumstances, testimony, and evidence supports the Petersens’ exploitation, neglect, and undue influence of a vulnerable, dependent, Donald Muller in his last year of his life. (See Section 4.1., infra; FF’s; Appendix A).

*H. The Petersens’ Strongest Colorable Legal Argument Defending Against Undue Influence Fails Them*

The strongest, colorable, legal argument defending against undue influence—that such influence must be “tantamount to force or fear” fails the Petersens. See In re Adams’ Estate, 120 Wash. 189, 195-96, 206 P. 947, 950 (1922).<sup>11</sup>

On the day of the Will signing, a witness to the Will testified that Donald Muller was “recalcitrant.” (IRP at 139). Merriam Webster’s dictionary defines “recalcitrant” as “obstinately defiant of authority.”

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634, 638, 618 P.2d 99 (1980) (circumstantial evidence has the same weight as direct evidence).

<sup>11</sup> This standard has been rejected sub silentio. (See Section IV, 4.4.4.J, infra).

Merriam-Webster Online Dictionary. 2015. (30 Nov. 2015). It also defines “authority” as “the power to give orders or make decisions: the power or right to direct or control someone or something.” Id. Thus, someone who is recalcitrant is being “forced” or “directed” by someone in control to do something they do not want to. See State v. Johnson, 79 Wash. 2d. 423, 429, 462 P.2d 933, 937 (1969) (holding “the court, of course, vindicates its authority over recalcitrant witnesses . . . by employing its contempt powers”).

Here, the way the Petersens secured Donald Muller’s estate was indeed “tantamount to force or fear” because it would make no sense that Donald Muller was “recalcitrant,” e.g., “defiant” against his own “authority,” on the day of the Will signing. Rather, the Will witness’ testimony reasonably infers that Donald Muller was “resistant” to the “authority” present around him trying to get him to sign the Will. That authority was the Petersens, who procured the Will and arranged its execution. Thus, direct evidence supports the fact that Donald Muller was “recalcitrant” to the Will’s execution, i.e., the level of undue influence against him was “tantamount to force or fear.”

Furthermore, the Petersens destroyed or “constrained” Donald Muller’s “free agency” by taking over his financial life and controlling and isolating him from any medical professionals or persons that could provide

competent 24/7 care for him. See In re Adams' Estate, 120 Wash. at 195-96; (Section IV, 4.4.4.J, infra).

*I. "Washington courts long have consistently applied [the Restatement Second] in contract, will, and gift situations involving allegations of undue influence"*

"Undue influence involves unfair persuasion that seriously impairs the free and competent exercise of judgment." See Kitsap, 177 Wash. App. at 570; In re Estate of Jones, 170 Wash. App. 594, 607, 287 P.3d 610, 616 (2012) (citing Dean, 194 Wash. at 661). Anything else would be contradictory. See Thilman v. Thilman, 30 Wash. 2d 743, 765, 193 P.2d 674, 685 (1948) (holding valid wills and other agreements require same level of capacity).

In Kitsap, this Court found no undue influence because (1) there was no confidential or fiduciary relationship, (2) no evidence that the accused received an unnaturally large portion of the estate, (3) the accused did not take part in disputed transactions, and (4) rebuttal evidence demonstrated that the decedent acted independently in regards to those transactions. 177 Wash. App. at 573, 576, 588.

Here, the facts are utterly inapposite of Kitsap. The Petersens took over every part of Donald Muller's life. They transferred the majority of Donald Muller's money to themselves and a large amount to a third party, Michelle Whipple, without his knowledge. They broke the law and violated

their fiduciary duties doing so, kept no accounting, failed to show Donald Muller acted independently, and took his entire estate via the Will he was “recalcitrant” in signing.

Thus, under Kitsap, they unduly influenced Donald Muller.

*J. “Tantamount to force or fear,” e.g., Coercion, in Undue Influence Cases Has Been Rejected Sub Silentio*

Policy wise, a standard of “force or fear,” e.g., coercion, has zero place in modern society. Further, it has been rejected sub silentio. This reality was succinctly stated in Koppang v. Hudon some forty years ago:

In discussing undue influence, the older cases speak of coercion. . . . The later cases do not. . . .

36 Wash. App. 182, 186, 672 P.2d 1279, 1281 (1983). This is undoubtedly correct; times have changed as Judge Green made clear:

The question presented in this case [of an attorney-in-fact allegedly exploiting a vulnerable adult by gifting the principal’s assets to him or herself] is **a troublesome** one and, with the numbers in the **aging population increasing**, will recur in the future. . . . **It is an area for legislative consideration and action.** Perhaps, transfers of this kind should be approved by a court. It might be appropriate to require that **where all or substantially all of a person’s property is transferred to one in the position of fiduciary**, the transfer should be voided unless approved by a court. In any event, resolution of **the issue** of gift in this area **under existing legal principles** affords little protection to either party and **is ripe for legislative action.**

Koppang, 36 Wash. App. at 193 (dissenting) (emphasis added).

The Vulnerable Abuse Statute, implicitly responding to Judge Green a year later, codified law to protect against his concerns. RCW Chapter 74.34. Liability does not require evidence “tantamount to force or fear”; rather, only evidence of “improper” action and under this lesser standard a will can be invalidated. See RCW §§ 11.84.010(3), 11.84.020; RCW §§ 74.34.020(1); 74.34.020(2); 74.34.020(2)(c); 74.34.020(2)(d) (explicitly distinguishing “undue influence” from “an act of force”; 74.34.020(6)(a)-(c); 74.34.020(12); 74.34.020(15). This is because undue influence and exploitation can be two sides of the same coin; both can involve substituting a vulnerable adult’s judgment and decision-making with that of the accused. Neither require proof of anything “tantamount to force or fear” because “the policy of this state [is] that no person shall be allowed to profit by his or her own wrong, wherever committed.” See RCW 11.84.900.

Finally, RCW 11.94.050 is often at issue in undue influence and exploitation cases. See e.g., In re Estate of Palmer, 145 Wash. App. at 264; Estate of Lennon v. Lennon, 108 Wash. App. 167, 183, n.32, 29 P.3d 1258, 1267 (2001), as amended on denial of reconsideration (Oct. 2, 2001). It prevents a principal’s agent from gifting property without written authority. RCW 11.94.050. It does so because what matters is whether there was a “fair . . . and competent exercise of judgment” not whether someone was “force[d]” to do something out of “fear.” See Kitsap Bank, 177 Wash. App.

at 570. In sum, modern authority overwhelmingly supports expressly disavowing the “tantamount to force or fear” standard.<sup>12</sup>

*K. Practical Realities Support this Court expressly Disavowing the “tantamount to force or fear” standard*

Practical realities, especially in the often economically impoverished communities of Division 2, support this Court expressly disavowing the “tantamount to force or fear” standard. Here, Rob Floberg’s expert testimony—twenty years combating elder abuse—demonstrates that justice requires private actions such as will contests and claims of financial exploitation be encouraged, not discouraged. (SRP at 228-29, 265-66). Law enforcement lacks the resources to investigate exploitation of vulnerable adults. (*Id.*) Thus, to protect ever increasing “numbers” of an “aging population” this onerous standard should be discarded once and for all. See Koppang, 36 Wash. App. at 193 (dissenting).

**V. ISSUE #2 RESTATED**

“Whether the court erred in upholding The Dead Man Statute by not allowing the Petersens to defend themselves [by testifying as to conversations and transactions with Donald Muller]. . . .”

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<sup>12</sup> A similar evolution in the law took place in regards to domestic violence. At first these claims were nearly impossible to prove. See Jane H. Aiken, Evidence Issues in Domestic Violence Civil Cases, 34 Fam. L.Q. 43-65 at 44 (2000) available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1301&context=faepub>. Now the law recognizes the difficulty in proving these claims and relaxes governing legal standards to protect victims. RCW 10.99; RCW 26.50. Exploited vulnerable adults are no less victims than assaulted family members.

### **5.1. Issue #2 Restatement of the Case: Facts and Relevant Procedural History.**

The Petersens were counseled about the alternative trial strategies of choosing to utilize the protections of the Deadman's Statute<sup>13</sup> or choosing not to and defending themselves on the merits. (2RP at 208-09).

On October 30, 2014, a hearing was held to discuss the Deadman's Statute. (3RP). The Petersens argued they could bar their own testimony. (3RP at 5, 17-21, 31; 2SCP \_\_ (Sub No. 105 filed 12/02/15). Plaintiff argued that he could at least elicit testimony for the sole purpose of impeachment without invoking or waiving the protections of the Deadman's Statute. (3RP at 4, 12-17, 22-23). The key cases at issue were Hampton<sup>14</sup> and Boetcher.<sup>15</sup> The trial court made no ruling. (3RP at 27).

The parties' counsel discussed the admissibility of ER 1006 summaries at trial. (Id. at 24-29). Each party had competing summaries. Each summarized the Petersens' expenses, e.g., bills and bank statements, that they allegedly incurred as Donald Muller's caregiver. (Id. 24-26). Plaintiff argued that, in theory, ER 1006's could be admitted as documentary evidence. (Id. at 24-29). Under Wildman documents kept in the normal course of business are admissible as an exception to the

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<sup>13</sup> RCW 5.60.030.

<sup>14</sup> Hampton v. Gilleland, 61 Wash. 2d 537, 379 P.2d 194 (1963).

<sup>15</sup> Boettcher v. Busse, 45 Wash. 2d 579, 277 P.2d 368 (1954).

Deadman's Statute. (3RP at 24); Wildman v. Taylor, 46 Wash. App. 546, 553, 731 P.2d 541, 545 (1987). An ER 1006 summary (properly utilizing ER 904 and a disinterested witness to prepare the summary) should be admissible as well. (3RP at 24-29). It would merely summarize already admissible business documents. See Erickson v. Robert F. Kerr, M.D., P.S., Inc., 125 Wash. 2d 183, 189, 883 P.2d 313, 317 (1994).

However, Plaintiff stated that he would object at trial, under Wildman, if the *Petersens* attempted to *testify about* their ER 1006 Summary or the underlying documents. (3RP at 24); Wildman, 46 Wash. App. at 553.

Plaintiff also argued that the Petersens' summary was defective. (3RP at 25). It included summations of documents that were not admitted as ER 904 exhibits and since no one but the Petersens could have authenticated those documents—the Deadman's Statute, in that way—would bar their summary from coming into the record. (Id. at 25). He was also concerned about who would authenticate their summary because the Petersens could not as interested parties.<sup>16</sup> (Id. at 24-25).

The trial court made no ruling on the admissibility of the ER 1006 summaries. (Id. at 27-29). Notably, however, the Petersens' counsel stated

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<sup>16</sup> Plaintiff's ER 1006 suffered from no such defects, as all documents were ER 904 and an expert witness, Lonnie Rich, would testify to the authentication of Plaintiff's ER 1006 summary.

he was not going to attempt to admit their ER 1006 summary at trial if the court barred Plaintiff's ER 1006 summary, as his position was that neither parties' ER 1006 summary was admissible. (Id.).

At trial, the court provided guidance as to its decision regarding whether the Petersens could object under the Deadman's Statute. (4RP at 4-6). It ruled the Petersens could object and prevent their own testimony, under Hampton. (Id.). The court made no ruling as to Plaintiff's argument under Boetcher. (Id. at 7 -8).

Mr. Petersen was the first "party of interest" under the Deadman's Statute to testify, as an adverse witness. (Id. at 98). When asked a question by Plaintiff that potentially regarded a conversation or transaction with Donald Muller—he invoked the Deadman's Statute. (4RP at 133-34, 156-57, 159-60). Plaintiff either struck the question before any ruling or the objection was sustained. (Id.). Plaintiff, as a part of his own trial strategy, then elected not to attempt any impeachment under Boetcher.

On cross examination, the Petersens' counsel attempted to have Mr. Petersen read documentary evidence into the record that had to do with conversations and transactions with Donald Muller. (Id. at 165-66). Plaintiff's counsel objected, and was sustained. (Id.).

Plaintiff subsequently attempted to admit his ER 1006 summary, and the Petersens objected. (Id. at 206-07). The court sustained the

objection, reasoning that there was no way to demonstrate the expenses, outlined in the summery, and incurred by the Petersens were—or were not—connected with Donald Muller. (4RP at 211-12; 5RP at 219-220). The court also expressed concerns regarding the Deadman’s Statute, given the Petersens had already asserted its protections. (4RP at 211-12; 5RP at 219-220). Later, the Petersens never attempted to admit their ER 1006 summary.

Mrs. Petersen was the next “party of interest” to testify, as an adverse witness. (5RP at 282). She invoked the Deadman’s Statute. (Id. at 284). The objection was sustained. (Id.). Mrs. Petersen was not cross-examined by her own counsel. Mr. and Mrs. Petersen chose not to testify during their case in chief.

On appeal, the Petersens now claim the trial court erred in not allowing them to testify, at all and/or over their own objections, as to three categories of conversations and/or transactions with Donald Muller: First:

There were several times we purchased things for Don or the farm and paid for these things on our credit card. We could not provide that evidence due to the Deadman’s Statute and we were accused of not keeping an accounting of the money coming in and going out. We most certainly did but were not able to present it.

(OB at 6). Second:

We were accused of taking money from Don that we actually gave to him as he liked to keep cash on the farm. We were not able to explain that due to the Deadman’s Statute.

(Id.). And third:

Karen only admitted in her testimony to downloading a template for the will and a form for the POA. . . . What she couldn't talk about because of the Dead Man Statute was that the Will template was on Don and Carmen's computer from when they did a will before and Don asked her to download the forms and they would complete them together.

(Id.).

## **5.2. Issue #2 Summary of the Argument**

First, the Petersens have waived these assignments of error, under Bosley, Smith, and Mester, when they did not argue and cite case law in their Opening Brief. Second, the Petersens have not adequately briefed these claims, under Hiatt, and this Court should simply decline to decide them. Third, the Petersens have not complied with Rules of Appellate Procedure and this Court has every reason, under State v. Olsen, to not reach the perceived merits of their appeal.

Fourth, the Petersens, not Plaintiff or the court, prevented themselves from testifying as a part of their trial strategy. The court did not err in allowing them to object and/or choose not to testify. Moreover, they failed to preserve these claims, their arguments should be struck, and even if this Court finds an error—the Petersens induced it and cannot raise it on appeal. Finally, on the merits, the Petersens' testimony (proffered in their Opening Brief for the first time on appeal) would have been harmful to their defense, not helpful, and it would have been harmless error not to admit it.

### **5.3. Issue #2 Argument**

#### *5.3.1. The Petersens Have Waived these Claims by Not Arguing Legal Authority*

The Petersens have provided no legal argument or citation to case law and have waived these arguments. (See Section IV, 4.4.1, supra).

#### *5.3.2. The Petersens Have Not Adequately Briefed this Issue.*

The Petersens do not provide this Court, or Plaintiff, any guidance as to their theory on appeal in regards to the application of the Deadman's Statute. (See Section IV, 4.4.2, supra).

#### *5.3.3. The Petersens Have Not Complied with the Rules of Appellate Procedure.*

This Court should not reach the merits. (See Section III, 4.4.3. supra). First, the nature of the appeal is not clear; the Petersens appear to be arguing that they should have been allowed to testify over their own objections at trial. This makes no sense. Second, relevant "issues" are not laid out in the brief; rather, the Petersens make factual statements nowhere supported in the record that should be struck or not considered. See Motion to Strike. Third, this Court would be greatly inconvenienced attempting to decipher the Petersens' claims. Finally, Plaintiff cannot "sufficiently" respond.

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5.3.4. *Even if this Court Liberally Interprets the Rules of Appellate Procedure, the Petersens Have Nothing to Complain About on Appeal.*

First, an error not preserved cannot be considered on appeal. Trueax v. Ernst Home Ctr., Inc., 124 Wash. 2d 334, 340, 878 P.2d 1208, 1210 (1994) (holding “we consider the content of the objection at the time of trial and the context in which it was taken, but do not consider statements made in the motion for a new trial, on reconsideration, or on appeal.”); Krenov v. W. Coast Life Ins. Co., 48 Wash. 2d 180, 187, 292 P.2d 209, 213 (1956) (holding where objection made at trial is on a ground different from that urged upon appeal, court will not consider); Olmsted v. Mulder, 72 Wash. App. 169, 183, 863 P.2d 1355, 1362 (1993) (holding if it is not clear from the record that an issue was properly preserved, the appellate court will ordinarily decline to review the claimed error).

Second, wishing you adopted a different trial strategy is not grounds to appeal. See Navin v. Hall, 59 Wash. 2d 9, 10, 365 P.2d 594, 595 (1961) (holding a party may not complain on appeal on the basis that his or her chosen trial strategy—as opposed to an alternative strategy he or she elected not to follow—was unsuccessful); State v. Thomas, 71 Wash. 2d 470, 472, 429 P.2d 231, 233 (1967) (holding decision to elicit witness testimony or not is “a matter of judgment and trial strategy” and is not grounds for a new trial).

Third, “a party who induces a trial court to commit error may not successfully complain about that error on appeal.” State v. Turner, 3 Wash. App. 948, 950, 478 P.2d 747, 748 (1970); State v. Siverly, 140 Wash. 58, 248 P. 69 (1926); State v. Gottstein, 111 Wash. 600, 191 P. 766 (1920); State v. Blaine, 64 Wash. 122, 116 P. 660 (1911).

Fourth, Washington’s Deadman’s Statute, RCW 5.60.030, reads in relevant part as follows:

[I]n an action or proceeding where the adverse party sues or defends . . . as deriving right or title by, through or from any deceased person . . . then a party in interest . . . shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased. . . .

The “purpose” of the statute is to “prevent interested parties from giving self-serving testimony about conversations or transactions with the decedent.” Erickson, 125 Wn.2d at 189. An interested party called to testify as an adverse witness may object to testifying as to conversations or transactions with the decedent. Hampton, 61 Wash. 2d at 541. This includes a personal representative that is also a beneficiary in a will contest because such personal representative is an interested persons under the statute. In re Shaughnessy's Estate, 97 Wash. 2d 652, 653-56, 648 P.2d 427, 427-28 (1982). Importantly, “[o]nce a party invokes the protection of the statute that party must respect the invocation, himself.” Zvolis v. Condos, 56 Wash.

2d 275, 277, 352 P.2d 809, 811 (1960); Johnston v. Medina Imp. Club, 10 Wash. 2d 44, 60, 116 P.2d 272, 278-79 (1941).

Finally, while the statute bars interested parties from testifying, it does not prohibit the interested party from introducing documents. Wildman, 46 Wash. App. at 553. However, the interested party may not testify about the meaning of those documents. Id.

*A. The Petersens Failed to Preserve Any Deadman’s Claim During Mr. Petersen’s Adverse Direct Examination.*

Here, Mr. Petersen chose to object when asked anything remotely close to a question regarding a conversation or transaction with Donald Muller. (4RP at 133-34, 156-57, 159-60). His objections were sustained or the questions were struck, and the trial court did not err. Hampton, 61 Wash. 2d at 541. Moreover, since *the Petersens objected and were sustained*—and now raise a new objection on appeal, i.e., that they should have been allowed to testify over their own objection—they did not preserve this issue. See Trueax, 124 Wash. 2d at 340; Krenov, 48 Wash. 2d at 187; Olmsted, 72 Wash. App. at 183. Even if the Petersens could show an error, they induced it and cannot appeal. See Turner, 3 Wash. App. at 950.

*B. No Error was Committed by the Trial Court During Mr. Petersen’s Friendly Cross Examination.*

Here, Mr. Petersen’s counsel attempted to have him read documentary evidence into the record that had to do with a conversation or

transaction with Donald Muller. (4RP at 166-169). Plaintiff's counsel objected, and was sustained. (Id.). This is the only objection, regarding the Deadman's Statute, for which there is an issue preserved for appeal. Case law is clear the trial court did not err. See Wildman, 46 Wash. App. at 553; Zvovis, 56 Wn.2d at 277; Johnston, 10 Wn.2d at 60.

*C. The Petersens Failed to Preserve Any Deadman's Claim During Mrs. Petersen's Adverse Direct Examination.*

Here, Mrs. Petersen's counsel chose to object to prevent her testimony from entering the record. (5RP at 284). Once again, the objection was sustained, and trial court did not err. See Hampton, 61 Wash. 2d at 541. The Petersens now raise a new objection on appeal, they did not preserve this issue, and any error they induced.

*D. The Petersens Failed to Preserve Any Deadman's Claim by Not Calling Mr. or Mrs. Petersen to the Stand During their Case in Chief.*

Here, neither Mr. nor Mrs. Petersen was called to the stand during their case in chief. They never attempted to admit any "accounting" or their ER 1006 summary. They never attempted to elicit testimony regarding "cash" on the Muller Farm, and they never attempted to elicit testimony regarding the drafting or procurement of Donald Muller's Will. They cannot raise these new objections on appeal, they failed to preserve these issues, and any error they induced.

5.3.5. *If the Court Reaches the Merits—the Petersens’ Deadman’s Claims Still Fail.*

A. *The Non-Existent “Accounting”*

The Petersens state they were not allowed to present an accounting at trial. (OB at 6). These statements are not supported by the record. See Motion to Strike. Regardless, even if the Petersens could have gone through each expense they now allege they incurred caring for Donald Muller—it would have done them no good. This fact is made obvious because the Petersens did not even attempt to admit their ER 904 evidence, or their ER 1006 summary, both of which contained those alleged expenses. (See 1SCP at 431-35). Stated another way, the Petersens objected to the admission of Plaintiff’s ER 1006 summary and did not attempt to admit their own summary, or their ER 904 evidence, because all of which harmed their defense.

Furthermore, Plaintiff offered, and the court admitted, every check and bank statement from Donald Muller’s account, as well as the Petersens’ Bank of America and BECU bank statements. (1SCP at 453-71). Not a single witness for the Petersens attempted to go through these statements or checks; the Petersens did not attempt to justify the massive amount of money—“stolen” as the trial court explained it—from Donald Muller. (8RP at 24-25). If any error be found, it was harmless.

*B. The Non-Existent “Cash” at the Muller Farm.*

The Petersens claim they were barred from explaining that Donald Muller liked to keep cash at the Muller Farm. (OB at 6). Even if the Petersens could have testified that Donald Muller “liked to keep cash on the farm,” no evidence supports that contention. Donald Muller’s bills were paid by check, and the Petersens’ own witness, Rebecaa Paulson, testified there was no more than \$10.00 to \$15.00 at the Muller Farm at any given time. (6RP at 566-67). Moreover, the Petersens admitted in their own supplemental inventory of the estate that there was no cash on hand. (1SCP at 310). If any error, it was harmless.

*C. The Petersens’ Procurement of the Will and Unlawful Practice Of Law*

The Petersens state that Mrs. Petersen was barred from testifying that she and Donald Muller “download[ed]” and “complete[d]” his Will and power of attorney document “together.” (OB at 7). Even if the Petersens could have testified that Mrs. Petersen drafted his Will with him—that testimony would have bolstered Plaintiff’s case—because it would have constituted a blatant admission to the unlawful practice of law. See GR 24; State v. Janda, 174 Wash. App. 229, 233-35, 298 P.3d 751 (2012). It would have also bolstered Plaintiff’s proven point that the Petersens had undue control over Donald Muller, e.g., they gave him unauthorized legal advice

with the self-serving goal of securing an instrument that left them his entire estate.

Furthermore, comparing Donald Muller’s 1986 Will with the circumstances surrounding the 2012 Will, the Petersens were not only playing self-serving doctor—by promising to provide 24/7 supervision and care for Donald Muller and then not providing that care nor taking him to follow up appointments with his physicians—but they were also playing self-serving lawyer by copying the 1986 Will almost verbatim and replacing Carmen’s name as beneficiary with theirs. (See Ex 35; Ex 393). Any error was harmless.

## **VI. ISSUE #3 RESTATED**

“Whether the court erred in [entering] its Findings of Fact and Conclusions of Law?”

### **6.1. Issue #3 Relevant Facts and Procedural History**

In its oral ruling the court ordered detailed findings to be drafted. (7RP at 685). Subsequently, proposed findings and conclusions—pinpoint citing exhibit page numbers, testimony at trial, and legal authority—were provided to the Petersens’ counsel as well as the court. (1SCP at 481-82). This happened well ahead of the court’s entering of those findings and conclusions. (Id.). The Petersens’ counsel did not attempt to work with Plaintiff’s counsel in drafting those findings, whatsoever. (Id. at 480-81).

Rather, they gave a “shot gun” objection to the findings and conclusions 36 hours before the presentation hearing. (8RP at 3-4, 7). Then stated they were withdrawing from the case. (Id. at 2).

Plaintiff argued the objections were inappropriate. (Id. at 6-9). The court gave opportunity to narrow the number of challenged findings or conclusions to be discussed. (Id. at 10-12). The Petersens’ counsel expressly stated “we are not going through [every finding] today, and I understand that.” (Id. at 13). She then did not object to the signing of the Findings and Conclusions, stating “that’s fine.” (Id.).

#### **6.2. Issue #3 Summary of the Argument**

The Petersens have waived this assignment of error, not adequately briefed it, and failed to comply with the Rules of Appellate Procedure. (See Section IV, 4.4.1-4.4.3). On the merits, deciding not to go through each of the Petersens’ counsels’ “shot gun” objections was well within the court’s discretion and is presumed proper on appeal. Regardless, because they did not object at the presentation hearing and then never moved the trial court under CR 60—they have not preserved this claim.

#### **6.3. Issue #3 Argument**

It is presumed that a judge “perform[s] his functions regularly and properly and without bias or prejudice.” Kay Corp. v. Anderson, 72 Wash. 2d 879, 885, 436 P.2d 459, 463 (1967). A party claiming bias of a judge

must show evidence thereof. State v. Carter, 77 Wash. App. 8, 11, 888 P.2d 1230, 1232 (1995). Court Rule 60(b) provides that “[o]n motion . . . the court may relieve a party . . . from a final judgment, order, or proceeding. . . for. . . mistakes . . . or irregularity in obtaining a judgment or order.”

Here, the Petersens have not provided any evidence nor legal argument of bias, prejudice, or anything improper done by the trial court and this claim has no merit. See Kay Corp., 72 Wash. 2d at 885; Carter, 77 Wash. App. at 11. Moreover, they did not object at the presentation hearing and have never moved the trial court under CR 60; therefore, they have not preserved this claim for appeal. See CR 60; Trueax, 124 Wash. 2d at 340.

## **VII. ATTORNEY’S FEES**

Pursuant to RAP 18.1, Plaintiff requests to be awarded attorney fees and expenses for responding to this appeal. The Revised Code of Washington Section 11.96A.150 permits any court on an appeal, in its discretion, to order costs, including reasonable attorneys' fees, to be awarded to any party from any party to the proceedings.

Here, the Petersens appeal is totally without merit to the point of being frivolous. It is frivolous because the Petersens have (1) failed to cite error to the trial court’s findings of fact or conclusions of law, (2) failed to supply citations to case law, and (3) failed to even cite evidence at trial—

instead they cite their trial counsel's failed closing arguments. Accordingly, attorney's fees on appeal are warranted because, as, the trial court stated:

I know darn well that [Donald Muller's] estate is never probably going to be made whole because of the Petersens. I doubt, [they] will ever have the resources to pay all the moneys back that they stole and through their greed and deception took from Mr. [Donald] Muller.

(8RP at 25).

### VIII. CONCLUSION

Based on the foregoing, the trial court should be affirmed and attorneys' fees on appeal be awarded to the Plaintiff.

RESPECTFULLY SUBMITTED this 2nd of December, 2015,



\_\_\_\_\_  
Drew Mazzeo WSBA No. 46506  
Attorney for Plaintiff/Respondent/  
Appellee



\_\_\_\_\_  
FOR: John Stanislav No. 12174  
Attorney for Plaintiff/Respondent/  
Appellee

1 **APPENDIX A**

2 **(Testimony and Evidence Supporting Trial Court’s Findings of Fact)**

3 Finding of Fact number followed by citations to the record:

- 4 1. Ex 412, b. 1236
- 5 2. Ex 281, b. 685
- 6 3. Ex 266, b. 598
- 7 4. 1RP at 179-83, 199-200; 6RP at 502-03, 583
- 8 5. 5RP at 286; 6RP at 502-03, 583
- 9 6. In Passim
- 10 7. 1RP at 178-79; 6RP at 502-03, 583
- 11 8. Ex 268, b. 605-06; Ex 316, b. 823-24; Ex 353, b. 1020
- 12 9. 1RP at 181-84; 4RP at 55-67, 97; Ex 375, b. 1109-11
- 13 10. 1RP at 181-84; 4RP at 55-67, 97; 5RP at 293; 6RP at 590-91; Ex 266, b. 598
- 14 11. 1RP at 181-84; 4RP at 55-67, 97; 5RP at 293; 6RP at 590-91; Ex 266, b. 598
- 15 12. 2RP at 25-29; Ex 269, b. 610
- 16 13. 2RP at 23; Ex 267, b. 602
- 17 14. 2RP at 24-25; Ex 266, b. 598
- 18 15. 4RP at 55-67, 97
- 19 16. 2RP at 190-94; Ex 88, b. 21
- 20 17. 2RP at 189-90; Ex 168, b. 181; Ex 171, b. 210; Ex 431
- 21 18. 1RP at 181-84; 4RP at 86-87; 5RP at 293; 6RP at 590-91
- 22 19. In Passim, e.g., 1RP at 189
- 23 20. 4RP at 279-80

1 21. 1RP at 179-83, 199-200; 6RP at 502-03, 583; Ex 266, b. 598; Ex 412, b. 1236

2 22. 6RP at 486

3 23. 2RP at 60, 78, 101; 4RP at 111; 6RP at 559, 563-64, 579; Ex 318, b. 852

4 24. 4RP at 140

5 25. Judicial Notice

6 26. In Passim, e.g., 2RP at 60, 78, 101, 108

7 27. 2RP at 21-22

8 28. 4RP at 182; Ex 431

9 29. 1RP at 62-91, 107-120, 129; 2RP at 25, 32, 97, 122, 127, 138, 182

10 30. In Passim, e.g., 1RP at 190-94; 4RP at 67-76; Ex 422

11 31. In Passim, e.g., Ex 32; Ex 33; Ex 329

12 32. 2RP at 123-24; 6RP at 570; Ex 296, b. 748; Ex 326, b. 876; Ex 345, b. 958

13 33. 1RP at 86-87; 5RP at 318; 6RP at 567-68; Ex 296, b. 748; Ex 326, b. 876

14 34. Ex 176, b. 222

15 35. 5RP at 230-43

16 36. Ex 374, b. 1103-07

17 37. 5RP at 245-47, 283, 285

18 38. 1RP at 143; 5RP at 245-80, 283-285

19 39. 1RP at 143; 5RP at 245-80, 283-285

20 40. 1RP at 143; 5RP at 245-80, 283-285

- 1 41. 1RP at 143; 5RP at 245-80, 283-285
- 2 42. Ex 374, b. 1103-07
- 3 43. Ex 374, b. 1103-07
- 4 44. Ex 374, b. 1103-07;
- 5 45. Ex 374, b. 1103-07
- 6
- 7 46. In Passim, e.g., 2RP at 188-205; 5RP at 245-80; Ex 431
- 8 47. 5RP at 251-52; Ex 84, b. 4; Ex 431
- 9 48. 5RP at 251-52; Ex 84, b. 4; Ex 431
- 10 49. 4RP at 98-173; 5RP at 282-85
- 11 50. 4RP at 108-140, 141, 142-173; Ex 243, b. 485; Ex 259, b. 565
- 12 51. In Passim, e.g., 4RP at 98-173
- 13 52. 4RP at 98-173; Ex 200, b. 280-83; Ex 201, b. 285-88
- 14 53. Ex's 236-264
- 15 54. 4RP at 98-173
- 16 55. Ex's 236-259
- 17 56. 5RP at 245-80
- 18 57. 4RP at 55-81, 97, 198-213; 5RP at 219-20; Ex 415; Ex 423; Ex 431, Attachment 3
- 19 58. 4RP at 55-81, 97, 198-213; 5RP at 219-20; Ex 415; Ex 423; Ex 431
- 20 59. 4RP at 199; Ex 201, b. 285-88; Ex 431
- 21 60. 4RP at 198-213; 5RP at 219-20; Ex 176, b. 222; Ex 201, b. 285-88; Ex 423; Ex 431
- 22
- 23
- 24

1 61. 4RP at 198-213; 5RP at 219-20; Ex 201, b. 285-88; Ex 402; Ex's 424-31

2 62. 4RP at 44

3 63. 4RP at 99

4 64. 6RP at 496-97; Ex 427

5 65. 4RP at 55-81, 97, 198-213; 5RP at 219-20; 6RP at 496-97; Ex 201, b. 285-88; Ex 402; Ex  
6 415; Ex 423 to 431; Ex 431, Attachment 3

7 66. 4RP at 55-81, 97, 198-213; 5RP at 219-20; 6RP at 496-97; Ex 201, b. 285-88; Ex 402; Ex  
8 415; Ex 423 to 431; Ex 431, Attachment 3

9 67. 4RP at 55-81, 97, 198-213; 5RP at 219-20; 6RP at 496-97; Ex 201, b. 285-88; Ex 402; Ex  
10 415; Ex 423 to 431; Ex 431, Attachment 3

11 68. 4RP at 108-09, 113, 127; Ex 201, b. 285-88

12 69. 4RP at 131, 137, 140

13 70. 4RP at 131, 137, 140

14 71. 4RP at 202-03; Ex 431

15 72. 4RP at 131, 137, 139, 140; Ex 241, b. 475-78

16 73. 1RP at 62-91, 107-120, 129; 2RP at 23; Ex 267, b. 602; Ex 279, b. 637

17 74. 2RP at 25-31; Ex 268, b. 606; Ex 269, b. 609

18 75. 2RP at 25-31; Ex 268, b. 606; Ex 269, b. 609

19 76. 1RP at 62-91, 107-120, 129, 190-94; 2RP at 25, 32, 78, 97, 12, 127, 138, 182; 4RP at 67-  
20 76; 5RP at 331, 439; Ex 32; Ex 33; Ex 329; Ex 422

21 77. 1RP at 62-91, 107-120, 129, 190-94; 2RP at 25, 32, 78, 97, 12, 127, 138, 182; 4RP at 67-  
22 76; 5RP at 331, 439; Ex 32; Ex 33; Ex 329; Ex 422

23 78. 4RP at 100-101

- 1 79. 2RP at 26, 49-50, 65; Ex 269, b. 610-12
- 2 80. Ex 269, b. 610-12; Ex 288, b. 723-24
- 3 81. 2RP at 25-31, 38, 78; 5RP at 331, 439; Ex 268, b. 606; Ex 269, b. 609; Ex 272, b. 621; Ex
- 4 279, b. 637
- 5 82. 2RP at 35; Ex 270, b. 616
- 6 83. 5RP at 254-55; Ex 87, b. 10
- 7 84. 5RP at 254-55; Ex 87, b. 10
- 8 85. 4RP at 131, 137, 139, 140; Ex 241, b. 475-78
- 9 86. 4RP at 131, 137, 139, 140; Ex 241, b. 475-78
- 10 87. 2RP at 38; Ex 272, b. 621
- 11 88. 2RP at 39-41, 44, 47, 56-57, 79; Ex 279, b. 637
- 12 89. 2RP at 39-41, 44, 47, 56-57, 79; Ex 279, b. 637
- 13 90. 4RP at 108-09, 113, 127; Ex 202, b. 290-93; Ex 203, b. 295-98
- 14 91. 2RP at 190-94; Ex 88, b. 12-21
- 15 92. 2RP at 190-94; 5RP at 247-51; Ex 88, b. 12-21
- 16 93. 2RP at 38, 190-94; Ex 88, b. 21; Ex 272, b. 621
- 17 94. 2RP at 190-94; 4RP183-89; 5RP at 224-80; Ex 177, b. 224; Ex 194, b. 258
- 18 95. 1RP at 62-91, 107-120, 129; 2RP at 23, 25-31, 35, 38-41, 44, 47, 49-50, 56-57, 65, 78-79,
- 19 190-94; 4RP at 101-01, 108-09, 113, 127, 131, 137, 139, 140, 183-89, 202-03; 5RP at 224-
- 20 80, 331, 439; Ex 87, b. 10; Ex 88, b. 12-21; Ex 177, b. 224; Ex 194, b. 258; Ex 201, b. 285-
- 21 88; Ex 202, b. 290-93; Ex 203, b. 295-98; Ex 241, b. 475-78; Ex 267, b. 602; Ex 268, b.
- 22 606; Ex 269, b. 609-12; Ex 270, b. 616; Ex 272, b. 621; Ex 279, b. 637; Ex 288, b. 723-24;
- 23 Ex 431
- 24 96. Ex 177, b. 224

1 97. 4RP at 131, 137, 139-40; Ex 241, b. 475-78

2 98. 2RP at 29, 169, 176; 5RP at 314, 316, 320, 333-38; Ex 275, b. 627-28

3 99. 2RP at 38-43, 66-95, 116; Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33

4 100. 2RP at 38-43, 66-95, 116

5 101. 2RP at 38-43, 66-95, 116

6 102. 2RP at 38-43, 66-95, 116

7 103. 2RP at 38-43, 66-95, 116

8 104. 2RP at 123-24; 5RP at 224-80; 6RP at 570; Ex 89, b. 23; Ex 296, b. 748; Ex 326, b. 876;  
9 Ex 345, b. 958; Ex 431

10 105. 2RP at 123-24; 5RP at 224-80; 6RP at 570; Ex 89, b. 23; Ex 296, b. 748; Ex 326, b. 876;  
11 Ex 345, b. 958; Ex 431

12 106. 1RP at 65-91, 108-20, 128-29; Ex 278, b. 635

13 107. 1RP at 108-20, 128-29; Ex 280, b. 674

14 108. 1RP at 65-91, 108-20, 128-29; Ex 13

15 109. 1RP at 65-91; Ex 278, b. 635

16 110. 1RP at 108-20, 128-29; 2RP at 47-54, 62-67; Ex 282, b. 688, 692, 694; Ex 283, b. 700;  
17 Ex 286, b. 711-12; Ex 287, b. 714; Ex 295, b. 741

18 111. 1RP at 65-91; Ex 279, b. 645

19 112. 1RP at 108-20, 128-29

20 113. 1RP at 65-91; Ex 280, b. 675

- 1 114. 1RP at 65-91, 108-20, 128-29; 2RP at 47-54, 62-67; Ex 13; Ex 278, b. 635; Ex 279, b.  
2 645; Ex 280, b. 674-75; Ex 282, b. 688, 692, 694; Ex 283, b. 700; Ex 286, b. 711-12; Ex  
3 287, b. 714; Ex 295, b. 741
- 4 115. 2RP at 40-41, 47-48, 57-59, 70, 94, 110, 128; Ex 279, b. 639-40, 643
- 5 116. Ex 288, b. 721
- 6 117. 1RP at 108-20, 128-29; Ex 282, b. 688, 692, 694; Ex 283, b. 700; Ex 286, b. 711-12; Ex  
7 287, b. 714; Ex 295, b. 741.
- 8 118. 1RP at 62-91, 86-87, 107-20, 129, 190-94; 2RP at 25, 32, 97, 122-24, 127, 138, 182; 4RP  
9 at 67-76; 5RP at 318; 6RP at 567-68; 6RP at 570; Ex 32; Ex 33; Ex 296, b. 748; Ex 326,  
10 b. 876; Ex 329; Ex 345, b. 958; Ex 422
- 11 119. 1RP at 62-91, 86-87, 107-20, 129, 190-94; 2RP at 25, 32, 38-43, 66-95, 97, 116, 122-24,  
12 127, 138, 182; 4RP at 67-76; 5RP at 318; 6RP at 567-68; 6RP at 570; Ex 32; Ex 33; Ex  
13 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 296, b. 748; Ex 326, b. 876; Ex 329;  
14 Ex 345, b. 958; Ex 422
- 15 120. 1RP at 108-20, 128-29; 2RP at 25-31, 40-41, 47-54, 57-59, 62-67, 70, 74, 94, 110, 128;  
16 Ex 268, b. 606; Ex 269, b. 609; Ex 279, b. 639-40, 643; Ex 282, b. 688, 692, 694; Ex  
17 283, b. 700; Ex 286, b. 711-12; Ex 287, b. 714; Ex 295, b. 741
- 18 121. 2RP at 74; Ex 296, b. 745
- 19 122. 2RP at 57; Ex 282, b. 692
- 20 123. 1RP at 38-43, 62-95, 86-87, 107-120, 128-29, 190-94; 2RP at 25-32, 38-43, 47-54, 57-  
21 59, 62-95, 70, 74, 78, 94, 97, 110, 116, 122-24, 127-28, 138, 182; 5RP at 318; 4RP at 67-  
22 76, 331, 439; 6RP at 567-68, 570; Ex 32; Ex 33; Ex 268, b. 606; Ex 269, b. 609, 612; Ex  
23 276, b. 630; Ex 277, b. 632-33; Ex 278, b. 635; Ex 279, b. 639-40, 643; Ex 282, b. 688,  
24 692, 694; Ex 283, b. 700; Ex 286, b. 711-12; Ex 287, b. 714; Ex 295, b. 741; Ex 296, b.  
745, 748; Ex 326, b. 876; Ex 329; Ex 345, b. 958; Ex 422
124. In Passim, e.g., 2RP at 128
125. In Passim, e.g., 2RP at 47-48, 113-114
126. 2RP at 60-61; Ex 282, b. 696

- 1  
2 127. In Passim, e.g., 1RP at 65-91, 108-20, 128-29; Ex 281, b. 684-85, Ex 285, b. 707; Ex  
3 287, b. 716-17; Ex 288, b. 719; Ex 289, b. 726  
4  
5 128. In Passim, e.g., 1RP at 65-91, 108-20, 128-29; 2RP at 44; Ex 281, b. 684-85; Ex 285, b.  
6 707; Ex 287, b. 716-17; Ex 288, b. 719  
7  
8 129. 1RP at 65-91, 108-20, 128-29; 2RP at 44-45, 60-61, 67; Ex 288, b. 719-24  
9  
10 130. 2RP at 38-43, 66-95, 116; Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33  
11  
12 131. 2RP at 67-68, 105-30; 5RP at 303-04; Ex 288, b. 722; Ex 303, b. 782  
13  
14 132. 5RP at 318-19; Ex 288, b. 723-24  
15  
16 133. 4RP at 108-09, 113, 127; Ex 203, b. 295-98  
17  
18 134. 2RP at 75; Ex 296, b. 748  
19  
20 135. 1RP at 108-20, 128-29; 2RP at 69-72; Ex 290, b. 728  
21  
22 136. 2RP at 72-80; Ex 295, b. 738-42; Ex 296, 744-51  
23  
24 137. 2RP at 72-80; Ex 295, b. 738-42; Ex 296, b. 749-50  
138. 4RP at 105  
139. Ex 292, b. 732; Ex 297, b. 753-54  
140. 2RP at 67-68; 105-08; 5RP at 417-19; Ex 293, b. 734; Ex 298, b. 759  
141. 2RP at 67-68; 105-08; 5RP at 417-19; Ex 293, b. 734; Ex 298, b. 759  
142. Ex 293, b. 734  
143. Ex 295, b. 740; Ex 297, b. 753; Ex 334, b. 908  
144. 1RP at 190-94; 2RP at 80-88; 4RP at 67-76; Ex 298, b. 756-59; Ex 422

- 1 145. 1RP at 108-20, 128-29, 190-94; 2RP at 38-43, 66-95, 116; 4RP at 67-76; Ex 288, b. 719;  
2 Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 290, b. 728; Ex 298, b. 756-59;  
3 Ex 422
- 4 146. 1RP at 108-20, 128-29, 190-94; 2RP at 38-43, 66-95, 116; 4RP at 67-76; Ex 288, b. 719;  
5 Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 290, b. 728; Ex 298, b. 756-59;  
6 Ex 422
- 7 147. 1RP at 108-20, 128-29, 190-94; 2RP at 38-43, 66-95, 116; 4RP at 67-76; Ex 288, b. 719;  
8 Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 290, b. 728; Ex 298, b. 756-59;  
9 Ex 422
- 10 148. 2RP at 67-68, 105-30; 5RP at 303-04; Ex 288, b. 722; Ex 298, b. 756-59; Ex 303, b. 782
- 11 149. 2RP at 80-88
- 12 150. 1RP at 62-91, 107-120, 128-29, 190-94; 2RP at 25, 32, 38-43, 66-97, 105-30, 138, 182;  
13 4RP at 67-76; 5RP at 303-04; Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 288,  
14 b. 722; Ex 290, b. 728; Ex 293, b. 734; Ex 295, b. 740; Ex 297, b. 753; Ex 298, b. 756-  
15 59; Ex 303, b. 782; Ex 334, b. 908; Ex 422
- 16 151. 1RP at 62-91, 107-120, 128-29, 190-94; 2RP at 25, 32, 38-43, 66-97, 105-30, 138, 182;  
17 4RP at 67-76; 5RP at 303-04; Ex 269, b. 612; Ex 276, b. 630; Ex 277, b. 632-33; Ex 288,  
18 b. 722; Ex 290, b. 728; Ex 293, b. 734; Ex 295, b. 740; Ex 297, b. 753; Ex 298, b. 756-  
19 59; Ex 303, b. 782; Ex 334, b. 908; Ex 422
- 20 152. 1RP at 190-94; 2RP at 87; 4RP at 67-76; Ex 298, b. 756-59; Ex 422
- 21 153. 1RP at 62-91, 107-120, 128-29, 190-94; 2RP at 25, 32, 38-43, 66-95, 80-88, 97, 105-30,  
22 122, 127, 138, 182; 4RP at 67-76; 5RP at 303-04; Ex 269, b. 612; Ex 276, b. 630; Ex  
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No. 470136

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re Estate of:

DONALD C. MULLER,

Deceased.

RICHARD J. PETERSEN AND KAREN A. PETERSEN

Defendants/Appellants,

v.

KRISS MULLER  
Plaintiff/Respondent

---

CERTIFICATE OF SERVICE

---

By:

Drew Mazzeo

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Attorneys for Respondent

I, Drew Mazzeo, certify under penalty of perjury under the laws of the State of Washington that I served:

1. Second Supplemental Designation of Clerk's Papers
2. Motion to Strike
3. Response Brief

on the following Parties:

Appellants, Richard and Karen Petersen, US mail, postage prepaid, at 2236 Heine Road, Chewelah, WA 99109 and via email at [petersenx4@hotmail.com](mailto:petersenx4@hotmail.com) on December 2nd, 2015.

Signed this 2<sup>nd</sup> day of December, 2015, at Tumwater, Washington, by:



---

Drew Mazzeo  
Attorney for Respondent

CC: Co-Counsel John Stanislav,  
Opposing Party Richard and Karen Petersen  
Client