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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

No. 49056-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Estate of Leeanna R. Mickelson

HEATHER MICKELSON,

Appellant,

v.

JAMES MICKELSON,

Respondent.

ON APPEAL FROM THE PIERCE COUNTY SUPERIOR COURT
Commissioners Karena Kirkendoll and Mary E. Dicke

BRIEF OF APPELLANT

Heather Mickelson
415 1st Avenue North
Unit 9504
Seattle, WA 98109
(253) 209-7434
hmickelson2003@gmail.com

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INTRODUCTION

On May 16, 2016, the Pierce County Superior Court signed an Order of Adjudication of Intestacy and Heirship memorializing that Leeanna Ruth Mickelson died in Pierce County on May 1, 2012 without a will. She was survived by her husband and four children. Shortly after Commissioner Kirkendoll signed the Order of Intestacy, rather than it be filed in open court, the order vanished from the Courthouse. There is billing evidence of contact between Luce & Associates, PC, an asset protection law firm, and the Pierce County Clerk's office circa the disappearance of the signed order. Luce & Associates, PC, Respondent's attorney, then spent substantial energy attempting to prevent the Court from entering any finding related to his wife's intestate death. Excessive efforts were taken to have the case dismissed without true resolution. We are here to correct the record below. There is no disagreement amongst the family of Leeanna Ruth Mickelson that she died intestate. The Court records reflecting this have been tarnished. This Court must respect the decedent's life and correct the record below.

A. ASSIGNMENTS OF ERROR

1. A signed ex-parte Commissioner Kirkendoll's order went missing and the Superior Court did not restore the document.
2. Commissioner Dicke signed a void order without authority to proceed with the hearing or to sign and enter the order.
3. The Respondent abandoned the statutory scheme in an attempt to thwart the judiciary of its duties to determine if a decedent died intestate.

Issues pertaining to assignments of error

1. A pro se heir petitioned the court for an Order of Adjudication of Intestacy and Heirship. The commissioner signed the order. Subsequently, the order went missing and the lower court has failed to restore the ruling that the decedent died intestate. Where the lower court has ruled that the decedent died intestate but the signed order goes missing is the ruling res judicata which the court should affirm?

2. A commissioner held a hearing that was not properly noted and signed an order which did not have Court of Appeals permission. Where a commissioner enters a void order should it be reversed by the Court of Appeals?

3. A respondent heir filed legal process in an attempt to thwart the court from the administration of its duties and was not sanctioned. Where the sole intended purpose of the filing of extensive legal process is to thwart the court of its duties of adjudicating facts, should the party taking these actions be sanctioned?

B. STATEMENT OF THE CASE

On May 16, 2016, appellant petitioned for an order of adjudication of intestacy and heirship for her mother, Leeanna Ruth Mickelson. (CR 17) The Pierce County Superior Court signed the Order of Adjudication of Intestacy and Heirship (RP 5/16/16, pg 5, line 23-25). According to the statutory scheme prescribed by RCW 11.28.340 "Order of adjudication of intestacy and heirship- final decree of distribution" the sole response to a request for adjudication of intestacy is the production of a valid will.

Rather than allow the Court to enter a final finding that the decedent died intestate, action was taken by Respondent to mute the Court in two counties from entering any finding about her death. There is no named executor and no administrator is necessary to be appointed to the

estate. In Pierce County, a motion was brought by Respondent's attorney without following the local rules to dismiss the probate without any true resolution. (CR 55-69) The motion went forward against the requirements of the local rules and the Court entered a void order. (CR 2829)

Since the sole statutory response to the request for adjudication of intestacy is the production of a valid will¹, the efforts of the Respondent in attempting to thwart the court from entering any finding of intestacy is worthy of sanctions. The Court is requested to respect the life of Leeanna Ruth Mickelson and restore the finding that she died intestate.

C. ARGUMENT

1. THE RIGHT TO HAVE THE COURT DETERMINE THE INTESTACY ORDER WAS LOST WHEN THE LOWER COURT FAILED AND REFUSED TO RESTORE A LOST ORDER.

Despite the loss of the signed court order (CR 25-26), the ruling of the case was that the decedent died intestate. (RP 5/16/16, p. 5, l. 23-25) The lower court did not do enough to preserve the probate record and this court must uphold and affirm the ruling that the decedent died intestate.

- a. The ruling made by the Superior Court that the decedent died intestate is the ruling of the case absent any showing of a will and should be affirmed.

Pursuant to RCW 11.28.340, the Petitioner filed a petition for adjudication of intestacy and heirship. (CR 1-7) On May 16, 2016, Commissioner Kirkendoll signed the order:

¹ There is no disagreement by any of the parties at this point that the decedent died without a will.

“Let’s file the amended declaration with the email from the attorney’s office and sign the order”. (RP 5/16/16, p. 5, l. 23-25)

Despite being signed by Commissioner Kirkendoll, the document never made it to be filed² and has not been restored in violation of law³. The Superior Court had numerous opportunities to restore the lost probate document but failed to restore the lost order. (CR 39-40).

Nonetheless, the finding that the decedent died intestate is the unopposed ruling of the Court, *res judicata*, and the record of the ruling should be restored to preserve the integrity of the Probate Court. At this point, only Division II has the authority to make or authorize the corrections by entering an Order affirming the original and undisputed finding of the Court that the decedent died intestate.

- b. RCW 5.48.060 requires for lost probate documents to be restored by the court.

Pursuant to RCW 5.48.060:

“[T]he judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons.”

The failure of the Superior Court to restore the ruling of Commissioner Kirkendoll sacrifices the integrity of the Court generally and should be corrected by the Court of Appeals.

² Because the probate document was lost, an appeal based on RAP 2.2(a)(3) was filed in attempt to restore the lost document.

³ Pursuant to RCW 5.48.060, “the judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons.” After numerous requests to restore the lost Order by Petitioner, the Court failed to replace the destroyed probate document.

2. THE LOWER COURT ENTERED A VOID ORDER
PURPORTING TO DISMISS THE PROBATE WITHOUT
TRUE RESOLUTION

The order of dismissal entered on June 17, 2016 is void for two reasons. The hearing was not authorized under local rules and the order was entered without Court of Appeals permission.

- a. The lower court did not have the authority to proceed with a motion which had not been properly noted and it should be reversed.

As part of their legal strategy to take all of the assets of the estate for their client, Luce & Associates, PC instigated a hearing which was not properly noted due to the fact that the parties were not served according to the rules leaving the Court with no real authority to have the dismissal hearing in the first place. Consequently, the order entered was void and meaningless. (CR 28-29)

According to the record, the only notice provided for this hearing was certified in open court by Respondent's attorney:

“For the record, Your Honor, I’m going to provide the
Petitioner that Notice of the Hearing on the 17th
(RP 6/8/16, p. 7, l.19-21)

The local rules require that all parties be notified of the motion and that a note for motion, motion and proposed order be served before the Court can proceed with the hearing.

Pursuant to Pierce County Local Rule 7(a) 4:

Failure to File or Serve - Sanctions. If the motion, supporting documents and Note for Motion Docket are not filed with the clerk, the court may strike the motion. No motion shall be heard unless proof of service upon the opposing party is filed or there is admission of such service by the opposing party. The court may also, in its discretion, impose terms upon the offending party.

Even though counsel for Respondent has made claims that he properly noted the motion, the transcript of proceedings wherein he claims to have made the proper notices reveals that this is not true and the order entered by the Commissioner is void. Luce & Associates failed to serve all heirs before the June 17, 2016. No valid Certificate of Service was filed with the clerk before the hearing (CP 35). Daughter of the decedent, Gale McArthur was never served notice of the hearing (CP 36).

- b. Even if respondent had properly noted the motion, the lower court did not have permission from the Court of Appeals to sign the order dismissing the probate without true resolution and it should be reversed.

A notice of appeal was filed on June 13, 2016 based on RAP 2.2(a)(3) (CR 17-24). Because the Court of Appeals had jurisdiction at this point, the Commissioner did not have permission to enter the void order dismissing the probate without true resolution.

On June 17, 2016, the Pierce County Superior Court then entered a void (CP 28,29) order⁴ purporting to dismiss the entire probate. Consequently, the Court of Appeals should determine that the probate was not dismissed and that the status of the case is that of a final finding of intestacy. It makes no sense to dismiss a probate if there is a decedent. The matter should be resolved and closed but not dismissed.

⁴ Subsequently, when the Pierce County Superior Court entered a void order dismissing the probate action and a second appeal was filed based on RAP 2.2(a)(1).

3. THE LOWER COURT FAILED TO SANCTION THE RESPONDENT FOR FILING PLEADINGS WHOSE PURPOSE WAS TO THWART THE COURT FROM ITS DUTIES AS SET FORTH IN RCW 11.28.340.

The statutory scheme outlined by RCW 11.28.340 provides for one single response, to wit: the production of a will. For an asset protection attorney's office to sign pleadings to disrupt the administration of justice and obstruct the entry of an undisputed fact that the decedent died intestate is sufficient for a grant of sanctions. Luce & Associates PC is filing pleadings with no real merit other than to distract the Court and attempt for some reason to hide the undisputed fact from the public⁵. There is no reason for the Court not to be able to enter a finding that the decedent died intestate if that is, in fact, the case as it is at the case at bar. Failure of the lower court to hear the motion for CR11 sanctions and to fail to sanction Luce & Associates PC for their meddlesome actions which have derailed the administration of justice and derailed the Court from entering a finding of intestacy which is undisputed.

D. CONCLUSION

The Pierce County Superior Court Order of Adjudication of Intestacy and Heirship is res judicata, despite the corrupt destruction of the same and this Court should uphold that ruling. Similarly, the Pierce County Superior Court order dismissing the probate is void and should be removed. The Court of Appeals should enter an order affirming the finding that the decedent died intestate and order the Superior Court to remove the void order entered without Court of Appeals permission.

⁵ On June 8, 2016, the Pierce County Superior Court entered an order restraining any party from doing anything with the probate assets "until further order of the court". These restraints remain untouched. (CP 16).

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SIGNATURE PAGE AND CERTIFICATE OF SERVICE

Dated this 15th day of February, 2017 in Seattle, Washington.

Respectfully submitted,

Heather Mickelson

Heather Mickelson, Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Brief was served on all parties of record via U.S. Mail postage prepaid on the date above mentioned.

Heather Mickelson

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