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BRIEF OF APPELLANT

INTRODUCTION

Appellant seeks review of the trial court's summary determination that Respondent Janice Parker was entitled to judgment as a matter of law regarding a joint account with right of survivorship she held for many years with her mother. The trial court had before it the uncontested testimony of a bank employee who provided evidence regarding the nature of the account and the bank's determination that this account was held by decedent, Myurlin J. Eussen, her daughter and son-in-law, Jade Parker. The trial court committed no error and its decision should be affirmed. Janice Parker should be awarded attorney's fees for having to defend this meritless appeal.

RESPONSE TO ASSIGNMENTS OF ERROR

- A. After considering all the evidence before it the trial court properly denied the Petitioner's Motion on the Merits and correctly determined that the KeyBank account opened in 2005 was held by decedent and her daughter and son-in-law in joint tenancy with right of survivorship. CP 155-158. The trial court's ruling should be affirmed.
- B. With no other assets possibly in the Eussen Estate over which the Appellant could exercise control the court properly dismissed the

TEDRA Petition and denied Appellant attorney's fees and costs.

CP 155-158. The trial court's ruling should be affirmed.

RESPONSES TO ISSUE PERTAINING TO ASSIGNMENT OF ERROR

- A. Reviewing all the evidence before it and making inferences favorable to the non-moving party as is required by CR 56 the trial court properly determined that the account in question was held as a joint account with right of survivorship.
- B. Applying RCW 30A.22.090 the court properly determined that the decedent's KeyBank account opened in 2005 by decedent and Janice Parker was held in joint tenancy with right of survivorship. The court reviewed the bank documents and properly determined the account was held in joint tenancy with the right of survivorship. The trial court properly declined to impose a constructive trust on the funds held by KeyBank.
- C. The testimony of Karen Dole was properly admitted with sufficient foundational testimony and documents supporting her opinion regarding the nature of the account. The records she provided were regularly kept business records held in the ordinary course of business and she had sufficient knowledge of these records to support their admission. CP 74-122; 128-132.

- D. Appellant failed to attend the deposition of Karen Dole despite having received notice of the deposition by two methods. CP 164-166 and 167-172 and RP at page 9-10. Respondent cannot complain that the opinions rendered and documents admitted should have been excluded. Appellant failed to provide any countervailing testimony to that of Karen Dole.
- E. Appellant himself had no personal knowledge of this account nor of its opening. Any opinion he might submit is purely speculative and could not have been considered by the court in appellant's own summary disposition motion.
- F. Respondent was not unjustly enriched. She had the legal authority to utilize the funds from an account in which she was both a signatory and a joint tenant with right of survivorship. Appellant offers no evidence that the decedent's expenses of last illness, funeral bills and other debts were not paid nor does he offer any evidence that he himself advanced any funds to pay any of the decedent's bills.
- G. Respondent should be awarded her reasonable attorney's fees against appellant at both the trial and appellate levels. This

Court upheld an award of attorney's fees in a similarly contested case in Kitsap Bank v. Denley, 177 Wn. App. 559, 312 P.3d 711 (Div. II 2013).

STATEMENT OF THE CASE

Pierce County, Washington, resident Myurlin J. Eussen (Eussen or the decedent) died March 4, 2015, without a will. CP 72. While she had no surviving spouse when she died, CP 2, she did have 3 surviving children and 7 grandchildren, progeny of her children. CP 15

In October, 2005, Myurlin Eussen opened KeyBank account, ending number 7102. CP 39. This account was opened and the signature cards reflect that other account holders were her daughter Janice Parker, and her husband, Jade Parker. CP 37. The account opening documents included the Account Express Plan and other bank documents. Deposition of Karen Dole, CP 74-122, at CP 87-91, deposition pages 13-17. Appellant provided no documents or testimony from any bank employee that contradicted the statements of Karen Dole. Appellant was not present when the account was opened, did not ever sign any bank documents nor did he ever put money in to this account. See Declaration of Janice Parker CP 135-138 and 153-154.

Following her mother's death Janice Parker as a signatory on the account utilized the funds to pay over \$4,000 of the decedent's bills. CP

11. That left \$126,152.22 in the accounts. CP 11. Respondent consulted with her siblings and waited to determine if any additional bills would be forthcoming. CP 11. She clearly communicated her intent to all of the other siblings including Appellant and received no objection. This was a reasonable step to take because the decedent had been residing with the Respondent for many years, the Respondent had been taking care of the decedent during those years and the decedent's financial affairs were handled in part by Respondent, not Appellant. See CP 71-72; 133-134. With the distribution of the only significant asset held by decedent and her daughter and son-in-law there was nothing remaining upon which a probate estate could be established or operate.

About 5 months after the death of Myurlin Eussen in July, 2015, Appellant filed a Petition for Letters of Administration and alleged that the estate was solvent in Pierce County Cause 15-4-01254-4. He also alleged that all of decedent's debts and expenses of last illness were paid. Because the KeyBank accounts were held as joint tenants with right of survivorship and there were no other assets the estate was not truly solvent. Nevertheless on September 3, 2015, Appellant was appointed administrator and obtained an order of solvency. Thereafter he never filed an inventory or list of assets. CP 12-25 and Responses to Interrogatories, CP 30-35. In that capacity he filed this TEDRA Petition seeking a

determination that the 2 KeyBank accounts were probate assets, that the Respondent return all funds from Key Bank accounts and that the TEDRA action be consolidated with the probate action. CP 12.

The appellant himself moved for a judgment on the merits. His motion was factually supported by his attorney's declaration and the briefing of his counsel. CP 26-64. He offered no competent evidence contrary to the sworn testimony of Karen Dole contained in CP 74-122. Omitted from this appeal's Clerk's Papers is the probate declaration of Mr. Eussen.

On November 18, 2016, Judge Frank Cuthbertson considered multiple declarations, deposition excerpts, the response to the TEDRA Petition, Respondent Parker's request that the TEDRA petition be dismissed and she be awarded her attorney's fees. The court denied both parties' requests for attorney's fees, declined to impose a constructive trust on the KeyBank accounts and dismissed Appellant's petition. CP 155-158. Mr. Eussen appealed.

ARGUMENT

1. STANDARD OF REVIEW

The Appellant sought summary disposition of his TEDRA Petition at the trial court. While the motion was couched in terms of a motion on the merits the court apparently treated it as a summary judgment motion

under CR 56. At the same time the Respondent sought dismissal of the TEDRA petition. CP 123-127, 128-132. Appellant sought relief under RCW 11.96A.010 which affords trial courts broad, plenary authority to decide issues arising in probate, trust and guardianship matters. As presented to the trial court there was no genuine issue as to any material facts and the Respondent was entitled to judgment as a matter of law. The trial court correctly granted Respondent's motion because all facts before the court construed in a light most favorable to the nonmoving party, here Janice Parker, merited this order. Anderson v. Weslo, 79 Wn. App. 829, 906 P. 2d 336 (1995), is cited by Appellant for the proposition that the appellate court reviews de novo questions of law. In this case the questions are both of law and fact. Appellant omits the balance of the standard wherein the facts are construed in a light most favorable to the non-moving party. 79 Wn. App. at 833. It was Jeffrey Eussen who sought disposition of this matter in summary fashion and accordingly all of the facts are construed in light most favorable to Janice Parker. This is precisely what Judge Cuthbertson's decision did. He analyzed all of the facts, not just the ones Mr. Eussen liked, in arriving at his finding that the account was a joint tenancy with right of survivorship. Appellant never claims he was present at any transaction with the decedent at the bank or with the decedent and the Respondent. The Appellant's declaration is not part of the record before this court nor would it have any significance on

the intent of the decedent, the bank records themselves or any other factor in this case. No testimonial facts were presented because Respondent had none. The trial court was correct, this court should affirm its decision.

2. READING ALL THE BANK DOCUMENTS TOGETHER THE DECECENT'S TWO ACCOUNTS WERE HELD JOINTLY WITH RIGHT OF SURVIVORSHIP

There is no evidence that Appellant was present when the decedent opened either account 7102 in 2005 or account 4589 in approximately April, 2005. CP 32. Appellant's documents demonstrate that he contributed nothing to either account, did not have any management or authority over the accounts, never withdrew any money from the accounts and was never named as a signatory on the accounts. Appellant is and for many years has been a resident of Colorado. By sharp contrast the Respondent is and for many years has been a resident of Pierce County, Washington. Her mother lived with her. CP 133-134, 135-138 and 153-154. The decedent trusted Respondent in financial matters as evidenced by the fact that Respondent was a signatory to both accounts held by KeyBank. CP 74-122.

Appellant's argument is not supported by the bank documents admitted and considered by the court. His position is not supported by the statutory language controlling these accounts. RCW 30A.22.030 (1)

provides that the statute is to be liberally construed and RCW 30A.22.020 describes the purposes of the law as providing a simple, uniform method of dealing with accounts. RCW 30A.22.040 (5) explicitly grants depositors the right to use these accounts. That statute makes no differentiation between persons who may have deposited some funds and those who may request a withdrawal or check. RCW 30A.22.040 (15). In this case Janice Parker is not merely an agent of the decedent but rather a co-holder of the account. At any time she could have withdrawn money by check or other means.

Appellant's argument also ignores RCW 30A.22.060 which provides that a financial institution may insert such additional terms "... it deems appropriate." Appellant fails to review all the terms of the agreements of the bank and the account holders. Appellant fails to acknowledge that the bank itself considered this to be a joint tenancy with right of survivorship.

The court had before it the uncontroverted testimony of Karen Dole, multiple bank records and the Declaration of Janice Parker. Appellant had no personal knowledge of the account. Based on all of this evidence the court concluded that these accounts were joint with right of survivorship CP 155-158, at page 3 of the order. CP 157

The uncontroverted testimony provided to the court demonstrates that the bank considered this to be a joint tenancy with right of

survivorship. CP 68-122. The appellant provided no countervailing testimony and the trial court was entitled to rely on this evidence in making its ruling. The list of evidence considered clearly demonstrates that the court considered all of the evidence before it. CP 155-158.

RCW 30A.22.170, formerly RCW 30.22.170, provides a defense shield to a bank which relies on the account documents in making disbursements to account holders. It would be inequitable and unjust to provide a shield to the bank when Respondent properly withdrew funds in reliance on the bank's documents but then allow Appellant to sue Respondent for this same act in reliance on the same documents. In the 10 years after the account was opened and before she died Myurlin Eussen reviewed her accounts but never changed the designations or account status. Respondent was entitled to rely on these actions or inactions as was the bank. Appellant makes no mention of any previous efforts by him to assist his mother in her banking arrangements or her financial affairs. He had no personal knowledge and cannot now reach conclusions about her financial affairs. He cannot change what the bank was explicitly entitled to do and did. Michak v. Transnation Title Ins. Co., 148 Wn. 2d 788, 64 P.3d 455 (2008), allowed the title company to correct the insured property description at the closing of a transaction to accurately reflect the easement insured. When the insured sued, the Supreme Court affirmed the trial court's grant of summary judgment because the insuring contract

had to correctly identify the land and the closing instructions both allowed the title company to do so even though it reduced the easement size. Here the bank's determination of the nature of the account is unchallenged by any facts from the Appellant and the trial court's decision must be affirmed.

3. RESPONDENT WAS ENTITLED TO THIS ACCOUNT ON
THE DEATH OF MYURLIN EUSSEN ABSENT ANY
EVIDENCE OF A CONTRARY INTENT
RCW 30A.22.100(3) provides that Respondent as the surviving

depositor is and was entitled to use this joint account with right of survivorship on the death of her mother unless there is presented clear and convincing evidence of a contrary intent. The law provides a conclusive presumption for the surviving account holders. In re: Estate of Fox, 51 Wn. App. 498, 754 P.2d 690 (1988). Appellant has presented NO evidence of a contrary intent let alone clear and convincing evidence of any such intent. Myurlin Eussen behaved in life in a way that supports the Respondent's position and actions. Ms. Eussen never created any account with Jeffrey Eussen between 2005 and her death. Instead she created 2 accounts with her daughter and son-in-law at the same bank. The decedent's acts, the bank's documents and the bank's statutory authority all combine to confirm the trial court's decision on this issue. Appellant failed to raise any factual issue before the trial court other than his speculation and greed.

This court may consider that the Appellant opened the door to Janice Parker's impressions about the nature and use of the account by challenging her use of it. The court in Estate of Lennon v. Lennon, 108 Wn. App. 167, 180, 29 P.3d 1258 (2001), made that very holding when discussing the impressions of contestants over bank accounts and stock certificates. The testimony of Karen Dole is appropriate because neither KeyBank nor Dole benefit from this transaction, there is no evidence that the documents admitted were invalid and the nature of the account is the very issue that Mr. Eussen raised. CP 164-166 and 167-172 demonstrate that Appellant's counsel was given notice of the planned deposition but failed to attend or seek a continuance of the deposition. No bank employee has testified differently.

4. NO EVIDENCE EXISTS THAT JANICE PARKER WAS UNJUSTLY ENRICHED WHEN SHE USED DECEDENT'S ACCOUNTS TO PAY DEBTS AND BILLS AND THEN DIVIDED MONEY AMONG THE HEIRS

RCW 11.48.010 and 11.18.200 both deal with the decedent's bank accounts at issue here. RCW 11.48.010 refers to the non-probate assets under a person's control and use by or for any probate estate. RCW 11.18.200 addresses the liability of the holder of a non-probate asset for the debts and liabilities of the decedent. In this case Respondent made sure that decedent's debts and liabilities were paid from the accounts at

issue. Appellant makes no argument that she did not do so and accordingly she was not unjustly enriched. From a purely legal standpoint she could have retained all of the funds in the accounts held by herself and her mother. She did not do so. Instead she shared equally the net assets with her brothers, grandchildren and herself and the children of her predeceased sister, Jackie Otto. Appellant deliberately ignores this fact because it does not suit his notion of how he should recover at the expense of the other heirs. CP 11. There is no showing that Respondent took more than her share of the nonprobate asset.

Despite having been apprised of the status of this nonprobate asset appellant never took the liberty of opening a probate until after the distribution had been made and he received his money. Had he believed that the funds were an actual probate asset he could have initiated a probate very quickly following his mother's death. He did not do so. Instead he waited until he received his check and essentially allowed Respondent to make the distribution in reliance on his silence and then made additional claims.

Appellant concedes this in his brief at page 3 when he acknowledges that his mother died March 4, 2015, and claims to have only learned of the proposed distribution July 8, 2015. There is no explanation why appellant could not have opened the probate himself in those

intervening four months if he reasonably believed that this was a probate asset. He did not do so and instead received and destroyed his check; he does not state to the court that he will return funds he received to the estate if his motion is granted. If the distribution was improper then all of the recipients must be joined to achieve full relief. He cannot seek equity if he himself is unwilling to behave equitably. If he is being truthful in his position then he would have deposited funds he received into the estate and enumerated those funds as an estate asset. He provided no evidence that he did so. CP 1-11, 12-25, 26-52 and 139-147.

Janice's Parker's disposition of the bank funds held in her name also followed the disposition that would have been followed under RCW 11.04.015. With no surviving spouse, no will, 3 surviving children and the children of one predeceased child the money would have been distributed approximately as she distributed it. Appellant fails to acknowledge that Respondent did not personally benefit beyond what she would have received were she to have opened a probate. The only difference would have been the additional expense which would have been shared by all heirs. Appellant emerged in better financial condition and sooner than he would have had

Respondent opened the probate and paid Mr. Gray to provide notice to creditors, await the 4 month creditor's window if published or 18 months if not published and then close the estate. Instead Appellant took the check and has not opened an estate account with what he or his own children received. CP 135-138 and 153-154.

Mihelich v. Mihelich, 7 Wn. App. 545, 500 P.2d 779 (1972), is easily distinguished from the present case. There the court found that a life estate for the father was appropriate because the son might have been unjustly enriched were the life estate not created. Among the significant differences between Mihelich and this case are the facts that the father had relied on his son to protect his interests and that there was no unjust enrichment in this case. The only person who would be unjustly enriched would be the Appellant. He contributed nothing to this account, paid none of his mother's bills, had no claim to the account and has no personal knowledge of the creation and management of the account. There is no evidence that the decedent relied on the Appellant; there is evidence that Myurlin Eussen relied on Respondent over the last 10 years of her life. Appellant seeks to poison the well here with references to RCW 11.48.060 through .090. That statute addresses alienation, concealment and/or embezzlement by agents of the decedent. No such facts were presented concerning Respondent, an owner of this account.

5. APPELLANT'S CONCLUSORY CLAIMS FAIL TO
ACKNOWLEDGE THE UNCONTRADICTED EVIDENCE OF
THE BANK'S DETERMINATION OF THE STATUS OF THE
ACCOUNTS

Appellant's arguments ignore the whole of the bank records, the bank's discretionary statutory authority to add language it deems appropriate, the uncontroverted testimony of Karen Dole and his mother's own actions in creating and managing accounts. Appellant cites only a portion of RCW 30A.22.100 and ignores subsection 3 of the statute and its interpretation in In re: Estate of Fox, supra, at 507-508. There is no evidence at all of any other intent by Myurlin Eussen and thus no "clear and convincing" evidence which would meet the legal requirement to change the trial court's decision. The statute and the Fox case provide a conclusive presumption for Respondent which has not been overcome and fully support the trial court's decision. It was and remains the Appellant's burden to demonstrate a different intent. He has not done so, the trial court must be affirmed.

Appellant cites Taufen v. Estate of Kirpes, 155 Wn. App. 598, 230 P.3d 199 (Div. III 2010) for the proposition that the court's determination of the account status is incorrect. That case is inapposite because the facts are markedly different and not present here. In Taufen there was affirmative evidence that the bank personnel checked the box as to the

account status. No such evidence exists here and the Appellant speculates about it. Appellant also ignores the provisions of RCW 30A.22.100 (3) which allows the bank to provide language “it deems appropriate.”

Taufen does not control in this case.

Karen Dole expressed the Bank’s practice and procedure. CP 88-89. No challenge as to her knowledge or capacity was made at the trial court. While Appellant sought exclusion of Dole’s testimony on one ground, RP at Page 3, he did not address her position and knowledge of the status of the account or the veracity of the records which demonstrated that the bank considered this a joint account with right of survivorship. Had the bank believed Respondent could not withdraw the money it would have prevented the withdrawal, that it did not do so is further confirmation of its determination of the account status. Respondent was entitled to rely on the bank’s actions in her disposition of the property and the court properly relied on this evidence in making its decision.

Tapper v. The Employment Security Dep’t, 122 Wn. 2d 397, 858 P.2d 494 (1993), involved an administrative appeal from a denial of unemployment compensation for willful misconduct. The Supreme Court deferred to the trial court’s factual findings in upholding the Department and the trial court. 122 Wn. 2d at 403. That case relied on the limited bases for reversing the administrative and lower court decisions. The

court would only reverse if there was an error of law, the decision lacked substantial evidence or was arbitrary or capricious. 122 Wn. 2d at 402. None of those factors are present in this case. The testimony of Mr. Dickson in his declaration is not evidence and the Tapper case does not here control.

6. THE TRIAL COURT PROPERLY DECLINED TO CREATE A CONSTRUCTIVE TRUST

Appellant's claim that the court erred when it declined to impose a constructive trust assumes several facts which the court did not find either explicitly or implicitly. The first fact Appellant assumes is that the account was not joint with right of survivorship even though the court accepted that evidence and explicitly found that the intent was to open a joint account with survivorship rights. CP 155-158, at page 3, lines 7-10. Once the court determined that the intent was to create an account of this type based on substantial evidence there should be no further inquiry and this finding of fact stands as a verity on appeal.

The second assumption the Appellant makes is that these funds were probate assets and belonged to the estate. This is entirely inconsistent with the fact found by the court. The third and fourth facts Appellant assumes are that Respondent "wrongfully appropriated" funds that were

“probate assets.” Nothing could be further from the truth. Having failed to demonstrate that the bank’s determination of the asset was incorrect there can be no wrongful appropriation and there is no probate asset here. Without those predicate facts there is no statutory or case law authority to impose a constructive trust.

Washington law supports Respondent’s position. While there is no will in this case, RCW 11.24.050 addresses the issue of costs and attorney’s fees in will contests. Where an heir or estate personal representative acts with probable cause and in good faith there is no basis for an award of costs or attorney’s fees. Respondent acted based on the status of the account on which she had been a signatory for 10 years, the bank’s position as to the account and in her good faith. She gave her siblings plenty of time to open a probate if they believed probate assets existed. None of the other heirs did so from the time of their mother’s death until after the distribution four months later.

Appellant cited Proctor v. Forsythe, 4 Wn. App. 238, 480 P.2d 511 (1971), in his claim that there was no gift or present delivery. The Proctor case dealt with deeds, gifts and transfers in an unlawful detainer action. The elements of transfer identified by the court included an intention to presently give personal property, a subject which was capable of delivery and actual delivery of the property. 4 Wn. App. at 240. That is precisely

what was done here. When the account was created both Janice and Jade Parker were also named as signatories and the account states it is a joint tenancy with right of survivorship. Either person could have written checks immediately on the account. Mr. Eussen has no facts based on his personal knowledge that contradict these facts. Moreover, whether the bank personnel checked the box determining the account type or the decedent did so makes no difference. For over 10 years this account nature remain unchallenged. Reading the account card in conjunction with RCW 30A.22.020, .030, .040 and .060 supports the trial court ruling in this matter.

Appellant claims that a constructive trust should be imposed on the bank funds. His claim fails to meet the standard for imposition of such a remedy. In oral argument before the trial court Appellant's counsel conceded that there was no evidence of undue influence, overreaching, fraud or other improper actions by Janice Parker. RP 7. Her testimony and that of her husband that the decedent lived with them, that they cared for her and had her full confidence is simply un rebutted. Appellant cites Baker v. Leonard, 120 Wn. 2d 538, 843 P.2d 1050 (1993), in his attempt to impose a constructive trust. The case construed a previous statute regarding joint tenancy with right of survivorship. Mr. Eussen has no evidence which would support imposition of this trust. The Baker court stated, 120 Wn. 2d at 547:

“Constructive trusts arising in equity or imposed when there is clear, cogent, and convincing evidence of the basis for impressing the trust.”

In denying the request for a constructive trust the court went on to hold, 120 Wn. 2d at 548:

“Unless an equitable base is established by evidence of intent, there must be “some element of wrongdoing” in order to impose a constructive trust.”

A constructive trust is not appropriate in this case in any event. In re: Bonness Estate, 13 Wn. App. 299, 535 P.2d 823 (1975), held that where either party had rights to the account as though solely owned survivorship and joint ownership were going to be presumed. Baker v. Leonard, 120 Wn. 2d 538, 843 P.2d 1050 (1993), held that equity did not require a constructive trust be imposed on an account held by joint owners. The court was correct in its ruling on this issue.

**7. APPELLANT WAS NOT ENTITLED TO ATTORNEY’S FEES
IN THE TRIAL COURT AND IS NOT ENTITLED TO
ATTORNEY’S FEES IN THIS COURT**

Appellant seeks attorney’s fees and costs in both the trial court and in this court. Both requests should be denied. RCW 11.96A.150 (1) authorizes a discretionary award of attorney’s fees and costs in trial and appellate courts. The trial court properly exercised its discretion and

denied Appellant's request. Appellant prevailed on none of his requests and instead cost Respondent attorney's fees and costs which she did not recover. Appellate courts uphold a trial court's discretionary fee award or lack of award unless the award is manifestly unreasonable or made on untenable grounds. Bale v. Allison, 173 Wn. App. 435, 461, 294 P.3d 789 (2013) Trial courts are granted considerable discretion in determining fee awards. Atkinson v. Hook, 193 Wn. App. 862, 374 P.3d 215 (Div. I 2016). Appellant identifies neither a manifestly unreasonable basis nor any untenable ground for this reversal request of the trial court's decision. Reversal is not warranted and should not be granted.

By the same token because Appellant ought not prevail on his request for reversal of the trial court's decisions on the merits of this case he ought not profit from his failed appeal. It would be unjust and inequitable to allow him to twice advance his claims, once at the trial and once here, be denied relief and then shift the cost of his efforts to his sister. His request for costs and fees on appeal must be measured in the sound discretion of this court. Denying his relief then granting him costs and fees would be manifestly unreasonable and under no tenable grounds. It does not benefit the decedent's estate, heirs or creditors, only him. His request should be denied.

8. THIS COURT SHOULD AWARD RESPONDENT HER APPELLATE COSTS AND ATTORNEY'S FEES UNDER RCW 11.96A.150 AND RAP 18.1

Respondent was denied her requested attorney's fees in the trial court but has not waived any request for costs and fees in this court. RCW 11.96A.150 authorizes this court to make an award of costs and fees. RAP 18.1 permits a request for costs and fees provided the requesting party's opening brief addresses this issue. Respondent requests an award of attorney's fees and costs in this court.

An award of attorney's fees at the appellate level is appropriate in this case. Kitsap Bank v. Denley, 177 Wn. App 559, 312 P.3d 711 (Div. II 2013), addressed and granted the Defendant's request for fees in the appellate court. The court held that a bank teller was the joint owner with right of survivorship of a decedent's account. The bank had brought suit against the teller on behalf of the bank and other claimants. The court granted those fees on appeal. 177 Wn. App. at 582, citing its discretionary authority.

Citing RCW 11.96A.150, the court granted appellate attorney's fees to a brother and sister in the appeal of a TEDRA action in In re: Estate of Mower, 193 Wn. App. 706, 374 P.3d 180 (2016). Janice Parker acted in good faith in all her actions, the Appellant was given plenty of time to

address her proposals and actions and she has had to incur the costs of defense. Janice Parker requests an award of appellate costs and fees.

CONCLUSIONS

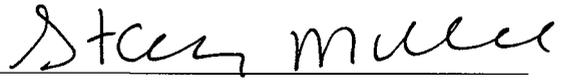
This court should affirm the trial court's decisions on all issues. The court had substantial evidence to support its discretion. Respondent should be awarded her costs and attorney's fees on appeal. RAP 18.1

DATED: April 6, 2017.


PETER KRAM WSBA 7436

I declare under penalty of perjury under the laws of the State of Washington and of the United States that the foregoing is true and correct.

Signed at Tacoma, Pierce County, Washington this 6th day of April, 2017.


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