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Division II
State of Washington
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NO. 50915-0-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

TED SPICE, an individual,

Appellant

v.

ESTATE OF DORIS MATHEWS, DONNA DUBOIS as personal
representative of the Estate, Mark Dubois, a purported agent of the
Estate, DORIS ELAINE MATHEWS LIVING TRUST,

Respondents

AMENDED- RESPONDENTS' RESPONSE TO APPELLANT'S
OPENING BRIEF

Patrick M. Hanis, WSBA No. 31440
Hanis Irvine Prothero, PLLC
6703 S. 234th Street Suite 300
Kent, Washington 98032
(253) 520-5000
Attorney for Respondents

TABLE OF CONTENTS

A.	IDENTITY OF RESPONDENT	1
B.	STATEMENT OF THE CASE	1
	1. The long road of litigation.....	3
	i. Mr. Spice’s first lawsuit.....	3
	ii. Mr. Spice’s second lawsuit.....	4
	iii. Mr. Spice’s third lawsuit.....	5
	iv. Mr. Spice’s fourth lawsuit.....	5
	v. Mr. Spice’s fifth lawsuit.....	5
	vi. Mr. Spice’s bankruptcy lawsuit.....	5
	2. Trial court grants summary judgment.....	6
C.	ARGUMENT	6
	1. Summary judgment dismissal is appropriate.....	6
	a. Appellate standard and record on review.....	7
	2. All claims are barred by the bankruptcy discharge.....	8
	3. The bankruptcy court has jurisdiction of this matter.....	9
	4. Claims are barred by res judicata and/or collateral estoppel.....	11
	5. There was no fraudulent transfer/misrepresentation and this issue was not timely appealed.....	12
	6. There is no material issue of fact supporting a claim for waste.....	13
	7. The claims are barred by laches and/or are untimely.....	15
	8. There is no conflict by Hon. Kirkendoll and the claim of bias is moot.....	15

a.	There is no conflict by Hon. Kirkendoll.....	16
b.	The claim of bias is moot.....	18
9.	The March 31, 2017, order allowing transfer of assets was appropriate.....	19
10.	The Estate is entitled to an award of attorneys fees and costs.....	20
11.	Mr. Spice is a vexatious litigant.....	20
D.	CONCLUSION.....	21

TABLE OF AUTHORITIES

CASES

<i>Allstot v. Edwards</i> , 116 Wn. App. 424, 430, 65 P.3d 696 (2003).....	7
<i>Angelo Prop. Co. v. Hafiz</i> , 167 Wn. App. 789, 274 P.3d 1075, 1085 (2012).....	9
<i>Atherton Condo. Apartment Owners Ass'n Bd of Dirs. V. Blume Dev. Co.</i> , 115 Wn. 2d 658, 663, 958 P.2d 301 (1998).....	7
<i>Burnet v. Spokane Ambulance</i> , 131 Wn. 2d 484, 933 P.2d 1036 (1997).....	21
<i>In re Estate of Black</i> , 153 Wn.2d 152, 171-72, 102 P.3d 796 (2004).....	19
<i>In re Marriage of Dicus</i> , 110 Wash. App. 347, 40 P.3d 1185 (Div. 3 2002).....	11
<i>In re Marriage of Giordano</i> , 57 Wash. App. 74, 77, 787 P.2d 51 (1990).....	21
<i>In re Pers. Restraint of Haynes</i> , 100 Wash. App. 366, 388 n. 23, 996 P.2d 637 (2000).....	17
<i>In re St. Martins Estate</i> , 175 Wash. 285, 289, 27 P.2d 326 (1933).....	19
<i>Dillon v. Seattle Deposition Reporters, LLC</i> , 179 Wash. App. 41, 58-59, 316 P.3d 1119 (2014).....	7
<i>Eugster v. The Washington State Bar Association</i> , 198 WN. App. 758, 397 P.3d 131 (2017).....	11
<i>Espinosa v. United Student Aid Funds, Inc.</i> , 553 F. 3d 1193, 1205 n. 7 (9 th Cir. 2008).....	8
<i>Folsom v. Burger King</i> , 135 Wn.2d 658, 663, 958 P.2d 301 (1998).....	7
<i>Johns v. Johns</i> 64 Wash. 2d 696, 700, 393 P.2d 948 (1964).....	11
<i>King v. City of Seattle</i> , 84 Wash.2d 239, 243, 525 P.2d 228 (1974).....	12
<i>Kok v. Tacoma School District No. 10</i> 179 Wash.App. 10, 317 P.3d 481 (2013).....	18
<i>Lopp v. Peninsula School Dist. No. 401</i> , 90 Wash.2d 754, 759, 585 P.2d 801 (1978).....	15
<i>Pederson v. Potter</i> , 103 Wash. App. 62, 11 P.3d 833 (2000).....	11
<i>Schroeder v. 171.74 Acres of Land, More or Less</i> ,	

<i>318 F.2d 311, 314 (8th Cir. 1963)</i>	10
<i>Seven Gables Corp. MGM/UA Entm't Co.,</i> <i>106 Wn.2d 1, 12, 721 P.2d 1 (1986)</i>	6, 7, 14
<i>Smith v. Behr Process Corp.,</i> <i>113 Wash.App. 306, 54 P.3d 665 (2002)</i>	18
<i>Tatahm v. Rogers,</i> <i>170 Wash. App. 76, 96, 283 P.3d 583 (2012)</i>	17
<i>Yurtis v. Phipps,</i> <i>143 Wash. App. 680, 693, 181 P. 3d 849 (2008)</i>	20
<i>Woolworth v. Micol Land Co.,</i> <i>55 Wn. App 671, 780 P.2d 265, 267 (1989 Wash. App.)</i>	10

STATUTES/RULES/CONSTITUTION

Rules of Appellate Procedure 9.12.....	1, 7
Rules of Appellate Procedure 18.1.....	20
RCW 11.04.250.....	10
RCW 11.96A.150.....	6, 20
Washington Civil Rule 1.....	21
11 USC § 363.....	10
11 USC § 524.....	8
11 USC § 541.....	10
11 USC § 727.....	8
United States Constitution, Article 1, Section 8.....	9
Washington State Constitution, Article IV, Section 6.....	9

A. IDENTITY OF RESPONDENT

The Estate of Doris E. Mathews, through the personal representative of the Estate Donna DuBois, “Mark Dubois, a purported agent of the Estate, Doris Elaine Mathews Living Trust” are the Respondents (“Estate”).

B. STATEMENT OF THE CASE

This is an appeal by Mr. Spice of a motion to dismiss, treated as a motion for summary judgment, and award of attorneys fees granted to Respondents. Mr. Spice also appeals an order allowing for the transfer of the Estate’s interest in real property. Mr. Spice included in his appeal, several hundred pages of documents and reports of proceedings which were not part of the summary judgment, grant of attorneys fees, or the order allowing transfer of real property.

Pursuant to Rules of Appellate Procedure 9.12, Respondent submits that the following documents are most relevant to the issues on appeal:

Property transfer issue:

Motion allowing transfer of property: CP 559-565

Order Restoring non-intervention powers and allowing transfer or real estate: CP 1682-1684

Order on Motion for Reconsideration and Confirming March 31, 2017 Order: CP 1571-1573

Summary Judgment Dismissal:

Motion to Dismiss: CP 1256-1270

Declaration of Patrick Hanis in Support of Motion to Dismiss: CP 1701-1922

Response to Motion to Dismiss (9/11/17): CP 1292-1310

Declaration of Ted Spice: 1344-1437

Order Granting Motion to Dismiss in Part: CP 1674-1679

Court's Decision: CP 1680-1681

Order Granting Motion for Summary Judgment and Enjoining Ted Spice: CP 1687-1692

Attorney Fees:

Motion for Attorney Fees: CP 1591-1594

Declaration in Support of Fees: CP: 1595-1601

Response to Motion for Attorneys Fees: CP 1613-1622

Judgment; Order Granting Attorney's Fees: CP 1654-1655

This matter has been ongoing for many years with significant litigation, including a jury trial and two prior appeals before this Court. The most recent appeal was decided by this Court in December 2017. Appellant's Opening Brief, Appendix A. While that appeal was pending, Mr. Spice filed yet another lawsuit against the Respondents. CP 1768-1787.

This current appeal stems from a Motion to Dismiss filed on April 14, 2017, which motion was treated as a motion for summary judgment. CP 1256-1270; 1574; 1582. A “Claim Matrix” was provided as part of the Motion to Dismiss and may be helpful in understanding dates and claims asserted by Mr. Spice over the past nine years. CP 1270.

1. The long road of litigation.

This matter essentially begins on December 8, 2009, when Ms. Doris E. Mathews died. Probate commenced on January 8, 2010, and Donna E. DuBois, the decedents daughter, was appointed personal representative of the Estate. After creditor notices were published and sent to creditors, Mr. Spice filed a creditor's claim against the Estate for \$8,000,000.00, which claim was rejected. After the rejection, Mr. Spice brought his first of several lawsuits against the Estate.

i. **Mr. Spice's first lawsuit (Pierce County #10-2-11622-8):**

On August 2, 2010, Mr. Spice filed a lawsuit against "Donna E. DuBois, as personal representative of the Estate of Doris E. Mathews, deceased" under Pierce County Case #10-2-11622-8. CP 1704-1710. It included a claim of waste. CP 1707, ln. 9-12.

A jury trial was held and a verdict entered. CP 1712-1717. The jury verdict included a determination of the interests in various pieces of real property between Mr. Spice and the Estate. There was no finding of

waste, breach of contract, conversion, tortious interference or other claims made by Mr. Spice. *Id.* The Court entered Findings of Fact and Conclusions of Law. CP 1719-1724

Mr. Spice appealed the jury verdict to the Court of Appeals, Division II under Appellate Case No. 44101-2-II. On March 1, 2016, the Court of Appeals issued an unpublished opinion regarding that appeal, affirmed the trial court's orders, and denied Mr. Spice's appeal. CP 1727-1741.

ii. **Mr. Spice's second lawsuit (Pierce County 13-2-09887-9, Consolidated into Case #10-4-00037-5):**

On June 5, 2013, after the jury verdict, and well after any applicable creditor deadlines and other relevant statute of limitations, Mr. Spice filed a second lawsuit against the Estate. CP 1743-1750.

The Estate brought a motion for Summary Judgment that was granted and from which Mr. Spice appealed to this Court (Court of Appeals, Division II, Case No. 48458-7-II). In an unpublished decision dated December 12, 2017, this Court upheld the Motion for Summary Judgment, but reversed as to the issue of waste in light of a quasi-fiduciary relationship. Appellant's Opening Brief, Appendix A, pg 14.

iii. Mr. Spice's third lawsuit (Pierce County Case #14-2-08948-7).

Mr. Spice filed a third lawsuit against the Estate on May 20, 2014. CP 1752-1754. The lawsuit included a claim for waste. CP 1753. The case was voluntarily dismissed on March 16, 2015. CP 1755.

iv. Mr. Spice's fourth lawsuit (Pierce County Case #14-2-08947-9).

Mr. Spice filed a fourth lawsuit on May 20, 2014. CP 1761-1763. The case was voluntarily dismissed on March 16, 2015. CP 1765-1766

v. Mr. Spice's fifth lawsuit (Pierce County Case #17-2-06511-6; consolidated into Case #10-4-00037-5)

Mr. Spice filed a fifth lawsuit on March 27, 2017, during the pendency of the prior appeal. CP 1768-1787. The case was consolidated into the probate matter and is the subject of this appeal. Mr. Spice asserted the same claims asserted in prior litigation. CP 1270.

vi. Mr. Spice's bankruptcy lawsuit:

Mr. Spice filed a counterclaim against Mark and Donna Dubois on May 18, 2017, in the United States Bankruptcy Court for the Western District of Washington at Tacoma. CP 1797-1814. The lawsuit is nearly identical to the fifth lawsuit, and includes claims for waste. CP 1812, paragraph 105.

2. Trial court grants summary judgment:

Respondents brought a Motion to Dismiss, treated as a motion for summary judgment, of all claims by Mr. Spice, Mr. Pasyuk and Plexus Investments, LLC to the trial court. CP 1256-1270.

On October 27, 2017, the Court entered an Order Granting Motion to Dismiss In Part. CP 1574-1579. However, the court took under advisement the claims for fraud and waste, attorney fees, and whether or not Mr. Spice should be found a vexatious litigant. CP 1577.

On November 2, 2017, the trial court dismissed all remaining claims of Mr. Spice, including the claims for fraud and waste. CP 1582-1583. The trial court entered a final order on December 1, 2017, dismissing all claims by Mr. Spice, awarding the estate attorneys fees pursuant to RCW 11.96A.150, and found that Mr. Spice is a vexatious litigant. Id; CP 1687-1692.

Mr. Spice is the only party that appealed the trial court's order of dismissal.

C. ARGUMENT

1. Summary judgment dismissal is appropriate.

The motion to dismiss was treated as a motion for summary judgment. CP 1582. The purpose of summary judgment is to avoid a useless trial. *Seven Gables Corp. v. MGM/UA Entm't Co.* 106 Wn.2d 1,

12, 721 P.2d 1 (1986). Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). Any doubt as to the existence of a genuine issue of material fact is resolved against the moving party. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). But the existence of a material fact cannot be hypothetical. "The adverse party must set forth specific facts showing there is a genuine issue for trial or have the summary judgment, if appropriate, entered against them." *Seven Gables*. 106 Wn.2d at 12-13. "An appellate court may affirm the trial court's decision on any ground supported by the record." *Allstot v. Edwards*, 116 Wn. App. 424, 430, 65 P.3d 696 (2003).

a. Appellate standard and record on review.

The well-established standard of appellate review of a summary judgment order is de novo and the court engages in the same inquiry as the trial court. *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wash. App. 41, 58-59, 316 P.3d 1119 (2014). RAP 9.12 provides in part that on "review of an order granting or denying a motion for summary judgment,

the appellate court will consider only evidence and issues called to the attention of the trial court.”

2. All claims are barred by the bankruptcy discharge.

On May 3, 2016, while the parties were awaiting a decision of this court on the last appeal by Mr. Spice, “Mark L DuBois, Donna E DuBois aka Estate of Doris Mathews fka Donna Mathews” received a Chapter 7 Bankruptcy discharge. CP 1382-1383. The bankruptcy court order provides in part, “This order means that no one may make any attempt to collect a discharged debt from the debtors personally... Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. *Id.*

11 USC § 727 provides in part, that a “discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter.” If a creditor objects to a discharge, they must make a request for revocation of the discharge within one year after the granting of the discharge. 11 USC § 727(e).

Pursuant to 11 USC § 524, a discharge operates as an injunction against the commencement or continuation of an action to collect any debt as a personal liability of the debtors. The 9th Circuit has held, “A party who knowingly violates the discharge injunction can be held in civil contempt of court.” *See Espinosa v. United Student Aid Funds, Inc.*, 553

F. 3d 1193, 1205 n. 7 (9th Cir. 2008) (citing Renwick v. Bennett (In re Bennett), 298 F. 3d 1059, 1069 (9th Cir. 2002).

In this case, all of the claims arose prior to January 6, 2016, and therefore were discharged and must be dismissed with prejudice. Mr. Spice claims that certain claims are not dischargeable, but that argument must be brought before the bankruptcy court. In fact, Mr. Spice has asserted claims before the bankruptcy court. CP 1897-1814. This matter should be dismissed as a result of the bankruptcy discharge.

3. The bankruptcy court has jurisdiction of this matter.

The Washington State Constitution provides in part, “superior courts “have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.” *Wash. Const. art. IV, § 6.* “Lack of subject matter jurisdiction renders a trial court powerless to decide the merits of the case.” *Angelo Prop. Co. v. Hafiz, 167 Wn. App. 789, 274 P.3d 1075, 1085 (2012).* If the law vests jurisdiction exclusively in a non-Washington State court, that court has jurisdiction and the superior court is without power to decide the merits of the case.

Article 1, section 8 of the United States Constitution vests jurisdiction over bankruptcy exclusively with Congress, who is the only entity with the power to establish uniform bankruptcy law in the United

States. *Woolworth v. Micol Land Co.*, 55 Wn. App 671, 780 P.2d 265, 267 (1989 Wash. App.). Congress enacted 11 USC § 363 and § 541 which make all property in which the debtor has “legal or equitable interest” at the time of filing a petition in bankruptcy court, part of the bankruptcy estate and grants the bankruptcy trustee the right to sell bankruptcy estate property, including properties co-owned by a non-filing entity, and inherited property. 11 USC § 541(a)(5)(A).

RCW 11.04.250 provides that when “a person dies seized of lands..., her title shall vest immediately in his or her heirs or devisees... No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent”.

Because title of the Decedent vested “immediately” in Donna Dubois when Doris Mathews died on December 8, 2009, pursuant to RCW 11.04.250, and because Donna Dubois filed bankruptcy, the properties are under the subject matter jurisdiction of the bankruptcy court, which holds exclusive jurisdiction as granted by Congress and the U.S. Constitution, and venue is before the bankruptcy court. Mr. Spice consented to that jurisdiction and venue by the filing of a lawsuit

in the bankruptcy matter. CP 1797-1814. This matter should be dismissed due to lack of jurisdiction.

4. Claims are barred by res judicata and/or collateral estoppel.

Even if the bankruptcy didn't apply, the claims by Mr. Spice are barred by res judicata and collateral estoppel. The doctrine of res judicata, aka claim preclusion, is "but a manifestation of the recognition that endless litigation leads to chaos; that certainty in legal relations must be maintained; that after a party has had his day in court, justice, expediency, and the preservation of the public tranquility requires that the matter be at an end." *Schroeder v. 171.74 Acres of Land, More or Less*, 318 F.2d 311, 314 (8th Cir. 1963), see also *Eugster v. The Washington State Bar Association*, 198 WN. App. 758, 397 P.3d 131 (2017).

Res judicata applies to bar claims when there is the same 1) subject matter, 2) claim or cause of action, 3) persons and parties, and 4) the quality of the persons for or against whom the claim is made. *Pederson v. Potter*, 103 Wash. App. 62, 11 P.3d 833 (2000). Res judicata bars a party from relitigating not only issues that were previously litigated and resolved in a prior proceeding, but also issue that could have been litigated and resolved. *In re Marriage of Dicus*, 110 Wash. App. 347, 40 P.3d 1185 (Div. 3 2002). A person cannot withhold a claim or defense in one proceeding and then assert it in another. *Johns v. Johns* 64 Wash. 2d 696, 700, 393 P.2d 948 (1964).

Collateral estoppel differs from res judicata in that instead of preventing a second assertion of the same claim or cause of action, collateral estoppel prevents re-litigation of a particular issue in a later cause of action. *King v. City of Seattle*, 84 Wash.2d 239, 243, 525 P.2d 228 (1974), rejected by *City of Seattle v. Blume*, 134 Wash. 2d 243, 947 P.2d 223 (1997).

A “Claim Matrix” was prepared to show claims asserted in the instant lawsuit that were previously asserted and dismissed in prior lawsuits. CP 1270. In addition, the claims were previously addressed on appeal to this Court. CP 1868-1922. Mr. Spice appeals the dismissal of the claims for fraudulent transfer/misrepresentation, and waste. Each should be barred by res judicata and/or collateral estoppel. Those claims are discussed in further detail below.

5. There was no fraudulent transfer/misrepresentation and this issue was not timely appealed.

Mr. Spice repeatedly alleges that the Estate transferred real properties without authority in violation of a court order of March 2, 2015. CP 355; CP 1779-1782; 1857-1859. These are not new allegations, but were previously alleged in a prior lawsuit from December 2014 by Mr. Spice that was dismissed. CP 1746, lines 1-6; CP 1270.

In the March 2, 2015 Order, the trial court vacated transfers of the Estate’s interest in various pieces of real property from the Estate to

Donna DuBois. CP 1857-1859. The Order provides in part that there was “no finding of bad faith by the PR or by Creditor Ted Spice and she did not attempt to defraud creditors.” *Id.* The effect of the Order was to have the Estate’s title to the properties returned to the Estate, which was completed.

All of the claims related to property transfers were then dismissed on Summary Judgment on October 30, 2015, and not appealed in the prior appeal to this court. CP 1826-1828, 1868-1922; Appellant’s Opening Brief, Appendix A. As such, there is no basis to assert this claim yet again in the most recent litigation now before this Court.

Respondents acted consistent with the Court’s order, which is discussed in Section 9 below. It was because of the March 2, 2015, order, that the March 31, 2017, order was entered allowing the properties to be transferred from the Estate to Mrs. Dubois. CP 707-709.

6. There is no material issue of fact supporting a claim for waste.

The claims of waste by Mr. Spice are not new. He asserted a claim for waste in his first lawsuit resulting in no finding of waste; in his second lawsuit, with an Amended Complaint filed on December 16, 2014. CP 1745, ln 11-22; CP 1746, ln 8-22; CP 1747, ln 1-5. Mr. Spice brought a claim for waste in his third lawsuit filed on May 20, 2014, which claims were dismissed on March 16, 2016. CP 1753, 1758. All

of these claims were either voluntarily dismissed or dismissed on Summary Judgment on October 30, 2015. This Court reversed the summary judgment order on the issue of waste. Appendix A to Appellant's Opening Brief. However, the Estate is not precluded from seeking dismissal of the claim for waste, which dismissal was granted.

Under a motion for summary judgment, the nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). "[A]fter the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving part's contentions and disclose that a genuine issue as to a material fact exists." *Id.*

In response to the motion to dismiss, Mr. Spice offered no evidence of waste. CP 1344-1437. No pictures. No testimony. No documents. Mr. Spice simply offered no proof of waste to support such a claim. While the Court of Appeals remanded to the trial court to determine if there was a breach of the quasi-fiduciary relationship to support a claim for waste; the trial court, under a different judge, reviewed all evidence submitted by Mr. Spice to support his claim of waste, found no genuine issues of material fact establishing the claim for waste, and dismissed the claim. CP 1582-1583.

7. The claims are barred by laches and/or are untimely.

Under the doctrine of laches, a claim should be barred when there is "(1) knowledge or reasonable opportunity for discovery of the cause of action; (2) an unreasonable delay in commencing the action; and (3) damage to the defendant resulting from the unreasonable delay." *Lopp v. Peninsula School Dist. No. 401*, 90 Wash.2d 754, 759, 585 P.2d 801 (1978). Litigation has been ongoing for years.

Mr. Spice has been making claims of waste and fraudulent transfers for years. Mr. Spice has not been successful but persists in trying to relitigate their claims over and over again. While each of these claims are barred as discussed above, the claims are also untimely. There is no dispute that Mr. Spice had knowledge of the alleged claims brought more than seven years after death. The Estate has been prejudiced by the delay. Potential witnesses may have been lost and memories faded. The Estate remains in limbo years after the death, years after a jury trial, years after summary judgment dismissal of claims, and years after two prior appeals. All of the claims of Mr. Spice should be barred by laches, and or found to be untimely because handled in the prior appeal.

8. There is no conflict by Hon. Kirkendoll and the claim of bias is moot.

Mr. Spice makes a concerted effort to find that Judge Kirkendoll should have recused herself and that he was denied rights to disqualify Judge Blinn. In fact, there was no basis for recusal and Judge Blinn

honored the disqualification. Ultimately, Judge Ashcraft was assigned and reviewed all orders. Mr. Spice was not deprived of any rights.

a. There is no conflict by Hon. Kirkendoll

In order to move the probate proceeding along, the Estate received an order authoring the transfer of properties and restoring non-intervention powers, which order was granted on March 31, 2017. CP 1682-84. After the order was entered, Mr. Spice alleged that Judge Kirkendoll should recuse herself because her judicial assistant is the sister-in-law to a man that Mr. Spice sued in litigation completely unrelated to this matter. CP 814-924. The judicial assistant, Jennifer N. Bartelson, confirmed no knowledge of the issues raised by Mr. Spice. CP 925-934. The Court denied his motion on May 12, 2017. CP 987-988.

While the court found no basis for recusal, Judge Kirkendoll voluntarily recused herself on May 12, 2017. CP 987-988. Mr. Spice also filed a Motion for Reconsideration of the March 31 Order allowing the property transfer and Judge Kirkendoll ordered that motion transferred to another judge for a decision. CP 987.

Judge Kirkendoll did not need to recuse herself from this matter simply because a judicial employee is related to one of the parties in a different lawsuit, especially when the judicial assistant confirmed in her declaration under oath that she has no knowledge or involvement in that matter. CP 925-934. She also confirmed that there has been minimal

contact and no social or familial interaction for several years with the parties in the other lawsuit involving Mr. Spice. *Id.*

Recusal is based upon the bias of a judge, not staff members of a court. “A judicial proceeding satisfied the appearance of fairness doctrine if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.” *Tatahm v. Rogers*, 170 Wash. App. 76, 96, 283 P.3d 583 (2012). “The test for determining whether the judge’s impartiality might reasonable be questioned is an objective test that assumes that ‘a reasonable person know and understands all the relevant facts.’” *Id.* “The asserting party does not have to show actual bias; it is enough to present evidence of potential bias.” *Id.* at 95. “The party must produce sufficient evidence demonstrating actual or potential bias, such as personal or pecuniary interest on the part of the judge; mere speculation is not enough.” *In re Pers. Restraint of Haynes*, 100 Wash. App. 366, 388 n. 23, 996 P.2d 637 (2000).

The key to the issue of recusal relates to Mr. Spice having to show “actual or potential bias” of Judge Kirkendoll. No such bias exists. The court entered the March 31, 2017, Order without any knowledge of the “issue” later raised by Mr. Spice as to the judicial assistant being related by marriage to a party in a different lawsuit. No bias occurred and the order was appropriately not stricken. This position is further supported by case law.

In *Kok v. Tacoma School Dist. No. 10*, the spouse of the trial judge previously represented the school district on unrelated issues. The plaintiff requested recusal of the judge on that ground. The court found that recusal was not necessary because neither the judge or the judge's spouse had an interest in the outcome of the present case. *179 Wash.App. 10, 317 P.3d 481 (2013)*.

In another case, a trial judge had Easter dinner at the home of a consumer's home that was a party in a class action lawsuit being heard by the judge. *Smith v. Behr Process Corp., 113 Wash.App. 306, 54 P.3d 665 (2002)*. Neither the consumer or the judge discussed the case, and the consumer's connection with the case wasn't discovered until later. Recusal was not required.

b. The claim of bias is moot.

Even if recusal were required, the issue is moot. Judge Kirkendoll voluntarily recused herself and ordered that a motion for reconsideration be heard by a different judge. CP 987. Ultimately, Judge Ashcraft was assigned, who heard three motions brought by Mr. Spice related to the issue of whether or not the March 31, 2017 order allowing transfer of property should be reconsidered and vacated. CP 1571-1573. Judge Ashcraft denied Mr. Spice's motions.

Even if a bias had existed such that Judge Kirkendoll should have been recused and her prior order vacated, Mr. Spice's objections

to the order were heard and his request denied. He suffered no prejudice.

9. The March 31, 2017, order allowing transfer of the assets was appropriate.

In order for the probate to proceed, it's necessary to liquidate assets. Mrs. Donna Dubois is the personal representative of the estate and sole beneficiary of the estate assets. She is also subject to a bankruptcy as discussed above. The properties are subject to various secured financial encumbrances. Given the interplay between the estate and the bankruptcy, transferring the property to Mrs. Dubois so that the bankruptcy trustee can negotiate, sell, or otherwise address the encumbrances in a timely manner, is beneficial to the estate. A motion was brought to allow the transfer, which motion was approved. CP 559-565; 1682-1684.

“When a superior court exercises its discretion in a case where it had the right to exercise such discretion, we will not disturb the holding absent a clear showing of abuse of discretion.” *In re St. Martins Estate*, 175 Wash. 285, 289, 27 P.2d 326 (1933). “This is a rule of general application; thus, it extends to matters involving probate. *Id*; see *In re Estate of Black*, 153 Wn.2d 152, 171-72, 102 P.3d 796 (2004).

The trial court recognized the appropriateness of moving this probate towards conclusion after nearly eight years of litigation, and that the obligations of the estate must be recognized as part of the

transfer. CP 708-709. As such, the court required that “Any proceeds after cost of bankruptcy process will be an asset of the Estate.” *Id.* Such proceeds will then be subject to RCW 11.76.110, which provides for the order of payment of debts in case the estate is insolvent.

In addition, Mr. Spice is not harmed by the order. He has the right, and has in fact sought, relief before the bankruptcy court. CP 370-378.

Judge Kirkendoll’s order, reviewed and upheld by Judge Ashcraft, exercised appropriate discretion in allowing transfer of the properties. There was no abuse of discretion.

10. The Estate is entitled to an award of attorneys fees and costs.

RAP 18.1 provides for a right to recover reasonable attorney fees on review if allowed by applicable law. RCW 11.96A.150 allows an award of attorneys fees and costs for matters involving "decendent's estates and properties" as the court deems equitable. The trial court authorized an award of attorneys fees. CP 1654-1655. Respondents respectfully request an award of attorneys fees on appeal.

11. Mr. Spice is a vexatious litigant.

A trial court has the authority to enjoin a party from engaging in litigation upon a “specific and detailed showing of a pattern of abusive and frivolous litigation.” *Yurtis v. Phipps*, 143 Wash. App. 680, 693, 181 P. 3d 849 (2008). “An implicit requirement of access to the court

system is that the litigation must proceed in good faith and comply with the court rules.” *In re Marriage of Giordano*, 57 Wash. App. 74, 77, 787 P.2d 51 (1990). A court may, in its discretion, place reasonable restriction on any litigant who abuses the judicial process.” *Id.*

Mr. Spice has filed multiple lawsuits against the Respondents, filed three separate appeals, and filed the current lawsuit with claims that were previously dismissed. The trial court appropriately reviewed all facts in issuing its decision finding that Mr. Spice is a vexatious litigant. CP 1626, 1633-1634. The court found, “Mr. Spice has engaged in a pattern of abusive and frivolous litigation. This includes the filing of multiple lawsuits against the Defendants related to the Estate of Doris Mathews, as described above. Despite a jury trial and verdict sustained on appeal, and despite having brought other claims that were dismissed either voluntarily or by summary judgment, Mr. Spice filed yet another lawsuit asserting the same claims and causes of action he’s asserted previously. Mr. Spice has not acted in good faith and ignored a bankruptcy discharge.” CP 1633-1634. The court imposed fair restriction on Mr. Spice. CP 1634.

The trial court did not abuse its discretion in issuing the order.

D. CONCLUSION

Civil Rule 1 provides that the civil rules “shall be construed and administered to secure the just, speedy and inexpensive determination of every action.” “Litigation is not intended to be a life-long activity with

litigants returning endlessly to our courts.” *Burnet v. Spokane Ambulance*,
131 Wash.2d 484, 513, 933 P.2d 1036 (1997), dissent.

Mr. Spice has been endlessly litigating this matter since shortly after the death of Ms. Mathew on December 8, 2009. He has not been satisfied with the outcome all along the way and persists in his claims. It’s time for this to end. Mr. Spice failed to support his claims in response to the summary judgment motion despite years of litigation, discovery, court orders, jury trial, and numerous attorneys. His appeal should be denied and the Estate should be awarded attorneys fees and costs on appeal.

Respectfully submitted this 15th day of November, 2018.

HANIS IRVINE PROTHERO, PLLC



Patrick M. Hanis, WSBA No. 31440
Attorneys for Respondents

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the below date, I sent a true copy of this document, as follows:

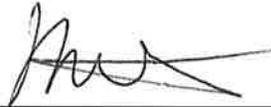
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Division II
Court Clerk
950 Broadway, Suite 300
Tacoma, Washington 98402-4454

(Online filing portal)

Jonathan Baner

(VIA EMAIL ONLY: johnathan@banerbaner.com;
assistant@banerbaner.com)

DATED this 15th day of November, 2018, at Kent, Washington.



Patrick M. Hanis, WSBA #31440

HANIS IRVINE PROTHERO, PLLC

November 15, 2018 - 1:10 PM

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Appellate Court Case Title: Estate of Doris Mathews
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