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NO. 51225-4-II

COURT OF APPEALS STATE OF WASHINGTON

In re the matter of: RAYMOND O. WALTERS, a vulnerable adult;

CLAY WALTERS, an individual,

Petitioner.

v.

CORBIN WALTERS, Individually and in his capacity as Attorney-in-Fact for Ray Walters and in his capacity as Trustee for the Trust of Raymond and Elaine Walters,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Corbin Walters is the brother of Clay Walters. For the purpose of clarity each will be referred to as Corbin and Clay. Corbin is the duly appointed trustee of the Ray and Elaine Walters' Trust (Walters' Trust) of which both parties were beneficiaries. CP 1-3, 37-39. The action was filed pursuant to the Trust and Estate Dispute Resolution Act, (TEDRA) RCW 11.96A, thus invoking the broad authority of the court to administer and settle such matters. The superior court properly exercised those powers in ordering the parties to execute a TEDRA agreement and then dismissing this case after Clay Walters failed to do so. Now Clay seeks to avoid the orders entered by the superior court under its TEDRA authority.

Because Clay fails to establish that the superior court abused its discretion when entering the orders of July 18, 2017 or November 17, 2017, this Court should affirm the superior court order dismissing the case with prejudice and ordering the Walters Trust to be distributed pursuant to its terms.

II. ASSIGNMENTS OF ERROR

Assignments of Error

Corbin Walters assigns no error to the superior court's decisions.

Issues Pertaining to Assignments of Error

Whether this court must affirm the superior court's order dismissing the case with prejudice and ordering the distribution of the Walters Trust pursuant to its terms because:

1. The superior court acted under plenary authority under the Trust and Estate Dispute Resolution Act, (TEDRA) RCW 11.96A;

2. The superior court had jurisdiction to enforce its own orders;

3. Clay failed to assign error to the merits of the order of November 17, 2017;

4. This court upholds superior court decisions for any reason supported by the record;

5. The order of November 17, 2017, mooted any error in the order dated July 28, 2017 approving settlement; and

6. Clay did not present any argument in support of assignment of error number two relating to his request for a continuance of the November 17, 2017 hearing.

III. STATEMENT OF THE CASE

A. Clay initiated a TEDRA action which invoked the plenary authority of the superior court.

As Clay concedes, he initiated a TEDRA action. CP 1-15. Corbin is the trustee of the Walter's Trust. CP 17. Corbin admitted that the court

had jurisdiction of the action under TEDRA, except of the tort claims asserted by Clay. CP 21.

B. Tort issues in the case had been dismissed on summary judgment and were not appealed.

Issues relating to Clay's tort claims had been dismissed on summary judgment, in orders dated November 4, 2016, and December 9, 2016, before the parties entered into settlement negotiations. CP[1]. Clay did not appeal or assign any errors to the orders dismissing the tort claims. CP 189-99.

C. The parties reached an agreement to settle.

On November 10, 2016, shortly after a mediation, Corbin made a written offer of settlement to Clay. CP 71-72, 76-78. The parties engaged in written and oral settlement negotiations between November 10, 2017 and November 22, 2016. CP 72. The negotiations culminated in an oral agreement on the terms between counsel while in consultation with their respective clients. The agreement was reached just before the Thanksgiving holiday and on the following Monday, November 28, Corbin's counsel notified Clay's counsel that she would began drafting the CR2A. CP 72-3, 81. There was no response indicating a full agreement had not been reached. CP 73-4, 81-88.

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[1] The page number for the Clerk's Papers is not available at the time this brief is filed.

Counsel for Clay suggested that he "file a notice of settlement so that we can have a little more breathing room to do the drafting and finalization." CP 80. One of the collateral issues was the confirmation of the amount of a creditor's claim to be sure that the TEDRA agreement reflected an accurate final balance of the Trust amounts. CP 86-87. On November 29, 2016, counsel for Clay wrote "We are going to file the notice of settlement this am. It is going to take some amount of time to finalize agreement and get signatures. I will keep the pressure on. As we discussed yesterday, we have an agreement on the number." CP 84-85. On Tuesday, November 29, Clay's counsel filed a Notice of Settlement, and on December 2, Corbin's counsel provided an initial draft CR2A to Clay's counsel and then a revised draft on December 6. CP 73, 89-92. The terms of the agreement incorporated provisions to address Clay's concerns about a cut-off date for releasing claims against other parties. CP 73. The corrected version sent on December 6, included the release of tort claims that had been inadvertently excluded from the first draft. CP 73, 94-96.

Both drafts contained the release language that included various individuals involved in the care of the Walters and administration of the Walters Trust, as well as the appointment of a mutually agreeable replacement trustee. CP 77-78, 91-92. There was no objection to those

drafts indicating that they did not encompass the correct terms of the parties agreement, nor did Clay amend or withdraw his notice of settlement. CP 73, 80-88. In fact, there was no communication at all from Clay that would contradict the fact that the CR2A constituted the parties' agreement. CP 73-74.

As part of the parties' agreement, Corbin agreed to forego his own share of the trust distribution, pay $87,500 to Clay, and appoint a mutually agreeable replacement trustee to finalize the administration of the matter in exchange for a broad release of the individuals listed in the CR2A agreement. CP 52-54, 72.

D. The superior court adopted Corbin's facts and argument when approving the CR2A agreement.

The hearing on the motion to approve settlement occurred on July 29, 2017. Verbatim Report of Proceedings (VRP) July 28, 2017 at 2. Clay's counsel argued that the parties had reached agreement on all but one aspect of the CR2A agreement. *Id.* at 2-3. Counsel for Corbin argued that there was an agreement and urged the court to use its authority under TEDRA to settle the matter. *Id.* at 3:17-25. The superior court adopted Corbin's argument and authorities and concluded that the matter was settled. *Id.* at 5. The superior court signed an order directing the parties to execute a TEDRA Agreement consistent with the CR2A Agreement

before August 4, 2017, and that the action would be dismissed, with prejudice, on or before August 4, 2017. CP 97-99.

The argument by Corbin, as adopted by the superior court, is contained in the Response to Clay Walter's Motion for Court Approval. CP 60-70. Corbin argued that the written communications between counsel were sufficient to establish a binding agreement because (1) the subject matter had been agreed on, (2) the material terms were stated in writing, and (3) the evidence supported the finding that the parties intended to be bound. CP 65-66. Alternatively, Corbin argued that under the authority granted by TEDRA, RCW 11.96A.020, the superior court had the authority to settle the matter on terms if deemed appropriate. CP 66-67. Corbin presented facts supporting why a broad release of third persons was necessary to protect the Walter's trust assets. CP 68.

E. The dismissal orders were properly entered.

Despite the superior court's order directing the parties to execute the TEDRA Agreement in accordance with the approved terms of settlement, Clay failed to sign the TEDRA Agreement or even to respond in any way. CP 111-112, ¶ 7. The superior court then dismissed the case. Although the superior court order of July 28, 2017, CP 97-99, stated that the case would be dismissed **with prejudice** on or before August 4, 2017,

the initial order of dismissal actually entered by the court was silent on whether the dismissal was with or without prejudice. CP 100.

To address the problem created by a court approved settlement, which Clay failed to execute, return or respond to, and the case having been dismissed, but not without prejudice, Corbin moved to invoke the jurisdiction of the court to correct that error. Corbin moved for an order seeking a dismissal with prejudice and for relief from the settlement approved by the court. CP 101-109. There was no brief in opposition to the motion which addressed the merits of the motion. CP 174-76. Rather, the only response came in the form of a Motion for Continuance. CP 177-180. The motion for continuance was denied. VRP November 17, 2017, at 8-9. The superior court entered the final order dismissing the case with prejudice and ordering that the Trust assets be distributed in accordance with the Trust terms. CP 187-88. The order also expressly relieved the parties of the obligations under the terms of the settlement agreement. *Id.*

IV. SUMMARY OF ARGUMENT

Clay admits that this matter was before the court as a TEDRA action, yet totally disregards the implications of the TEDRA statute in all his arguments. Despite Clay's own motion to approve the settlement, recognizing the broad authority of the superior court under TEDRA to settle disputes, CP 40, Clay relies on the wrong standard of review to

support his arguments under assignment of error number one. Review for abuse of discretion, rather than de novo review, applies to the decisions of the superior court in this action.

Clay's failure to assign error to the merits of the November 17, 2017 order, which dismissed the action with prejudice, or present any argument why it was erroneously decided, is fatal to the appeal. Not only did the superior court properly exercise its discretion approving the parties' settlement, but the unchallenged order of November 17, 2017, dismissing the case and directing the Walters Trust to be distributed under its terms, moots any argument based on the alleged error which Clay argues occurred when the superior court entered its July 28, 2017 Order, with which Clay ultimately failed to comply.

Clay misinterprets the cases discussing the jurisdiction of the court, and thus assignment of error number two is without merit. The superior court has inherent authority, and thus jurisdiction, to enforce its own orders at any time. The superior court enforced its own prior order when it entered the order of November 17, 2017.

Clay's assignment of error number three is based on the court's denial of the motion to continue the hearing of November 17, 2017, but Clay does not challenge the merits of that Order and devoted no argument

or citation of authority to support this assignment of error. Clay thus waived assignment of error number three.

Corbin is entitled to attorney fees on appeal.

The superior court did not err in any way. Accordingly, this court should affirm the superior court's dismissal, with prejudice, of the action.

V. ARGUMENT

A. The abuse of discretion standard of review applies to the orders approving settlement and dismissing the case. The issue of jurisdiction is reviewed de novo.

Clay suggests that the standard of review is de novo because Clay's argument focuses on whether the superior court should have approved the settlement. As discussed below, this issue is moot because the final order does not enforce the settlement agreement and thus the de novo standard of review is not relevant to the actual issues on appeal.

An order vacating a prior judgment is review for abuse of discretion. *City of Tacoma v. Cornell*, 116 Wn. App. 165, 168, 64 P.3d 674 (2003). Issues of law and statutory construction re reviewed de novo. *Estate of Jones*, 152 Wn.2d 1, 8–9, 93 P.3d 147 (2004).

However, in light of the legislature's broad grant of authority to the superior court under TEDRA, this court reviews procedural rulings for an abuse of discretion and accords significant deference to superior court decisions in TEDRA proceedings. *See In re Estate of Fitzgerald*, 172 Wn.

App. 437, 448, 294 P.3d 720 (2012) *rev. denied*, 177 Wn.2d 1014 (2013) ("even in the context of a summary judgment proceeding, we will not disturb a trial court's decision to deny a continuance absent a showing of a manifest abuse of discretion"). Moreover, in its July 28, 2017 ruling, the superior court expressly accepted Corbin's factual and legal position (VRP July 28, 2017 at 3-5), and in its oral ruling on November 17, 2017, the superior court made a number of factual findings upon which it based its denial of Clay's request for continuance. VRP November 17, 2017 at 5-8. Those findings have not been challenged. On review, unchallenged findings of fact are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

An appellate court will affirm challenged findings of fact and treat the findings as verities on appeal if the findings are supported by substantial evidence. *Miller v. City of Tacoma*, 138 Wn.2d 318, 323, 979 P.2d 429 (1999). Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding. *Id.* The standard of review for TEDRA hearings is whether there is substantial evidence to support the decision because the court makes factual determinations without hearing testimony. *Eussen v. Parker,* 1 Wn. App. 2d 1068, at *3 (2018)(unpublished decision, cited under GR 14.1) (in a TEDRA matter where competing documentary evidence must be weighed

and issues of credibility resolved by the trial court, the substantial evidence standard is appropriate).

None of the cases relied upon by Clay, to support a de novo standard of review, are TEDRA matters, and they did not consider the standard of review in light of the scope of the courts authority under TEDRA. Thus, as to all the assignments of error raised by Clay, other than the issue of court jurisdiction, the standard of review is for abuse of discretion.

B. This court may affirm a judgment on any basis supported by the record.

This court may affirm a superior court's summary judgment order on any basis supported by the record. RAP 2.5(a); *International Brotherhood of Electrical Workers v. Trig Electric Const. Co.*, 142 Wn.2d 431, 434-435, 13 P.3d 622 (2000); *State v. Carter*, 74 Wn. App. 320, 324, n. 2, 875 P.2d 1 (1994) *aff'd*, 127 Wn.2d 836, 904 P.2d 290 (1995) ("the appellate court has a duty to affirm on any ground supported by the record, even if it is not the ground relied on by the trial court"). *Carey v. Reeve*, 56 Wn. App. 18, 23, 781 P.2d 904 (1989) ("[w]e have held many times that where a judgment or order is correct, it will not be reversed merely because the trial court gave the wrong reason for its rendition. ... Further a trial court's disposition may be affirmed on any theory within the

pleadings and the proof."); *Ertman v. Olympia*, 95 Wn.2d 105, 108, 621 P.2d 724 (1980) (an order granting of a new trial can be upheld even if the superior court applied the wrong standard.) A superior court's evidentiary ruling should be affirmed even if the ground relied upon by the trial court is wrong. *State v. Huynh*, 107 Wn. App. 68, 74, 26 P.3d 290 (2001).

Here, the superior court has plenary authority to decide issues of fact and law as this is a matter in TEDRA. RCW 11.96A.020; RCW 11.96A.100. The superior court had authority to create its own terms for settlement in the order of November 17, 2017. The standard of review is for abuse of discretion, and the court of appeals accords significant deference to the superior court decisions in TEDRA proceedings. *See In Re Estate of Fitzgerald,* 172 Wn. App. at 448, (the appellate court will not disturb a trial court's decision to deny a continuance absent a showing of a manifest abuse of discretion). *Id.*

Clay failed to oppose the Corbin's Motion for Dismissal with Prejudice and Other Relief. CP 174-76. A superior court, faced with an unopposed motion, does not have authority to issue a ruling based on facts favoring Clay, when he failed to present it with a justiciable controversy. *West v Thurston County*, 169 Wn. App. 862, 867, 282 P.3d 1150 (2012)(superior court properly granted summary judgment in favor of defendant when plaintiff failed to oppose motion). Thus, this court can

affirm the superior court's order of November 17, 2017, on the basis that Clay failed to present a justiciable controversy when he failed to oppose the motion.

C. Court should not consider assignment of error three because Clay did not support it with argument.

Assignments of error not supported by legal argument are not considered on appeal. *Pannell v. Food Services of America*, 61 Wn. App. 418, 436, 810 P.2d 952, *amended*, 815 P.2d 812 (1991), *rev. denied*, 118 Wn.2d 1008, 824 P.2d 490 (1992); *Herring v. Dep't of Soc. & Health Servs.*, 81 Wn. App. 1, 13, 914 P.2d 67 (1996). Failure to present supporting argument of an assignment of error waives the assignment of error. *Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Here, Clay's third assignment of error states that the court abused its discretion when it denied Clay's motion for a continuance of the hearing of November 17, 2017. No portion of the Clay's brief addressed this assignment of error. Assignment of error three is therefore deemed waived. *Id.* Moreover, Clay failed to establish any abuse of discretion in the denial of the motion to continue. *Estate of Fitzgerald*, 172 Wn. App. at 448.

D. The superior court properly acted under its plenary authority under the TEDRA.

1. Clay failed to assign error to the merits of the order deciding this action.

Clay's emphasis on the superior court's order with regard to the CR2A misses the point. Clay fails to assign error to the substantive basis for the superior court's November 17, 2017, which order dismissed Clay's Petition with prejudice. App. Br. at 2; CP 187-88.[2] This failure is fatal to the appeal. When an Clay fails to raise an issue in the assignments of error in violation of RAP 10.3(a)(3), and fails to present any argument on the issue or provide any legal citation, the appellate court will not consider the merits of that issue. *State v. Olson*, 126 Wn.2d 315, 321, 893 P.2d 629 (1995). Clay failed present any legal argument, or citation to authority, addressing the merits of the order which dismissed the action with prejudice. Moreover, the unchallenged order was properly issued by the superior court. The superior court acted well within its plenary powers under Washington's TEDRA to reach its appropriate result. RCW 11.96A *et seq*. Accordingly, this court should affirm the superior court's decision to dismiss the action with prejudice.

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[2] Clay's only challenge to the superior court's November 17, 2017 order is his argument that the superior court lacked jurisdiction and denied a continuance. These issues are addressed below.

2. The superior court had plenary authority to decide facts and settle the matter in the manner it deemed just and proper.

TEDRA gives the superior court "full and ample power and authority" to administer and settle all estate and trust matters, RCW 11.96A.020(1), "all to the end that **the matters be expeditiously administered and settled by the court**." RCW 11.96A.020(2) (emphasis added); *see In re Irrevocable Trust of McKean,* 144 Wn. App. 333, 343, 183 P.3d 317 (2008) (noting that TEDRA grants plenary powers to the superior court).

Moreover, RCW 11.96A.020 provides that if TEDRA:

> should in any case or under any circumstances be inapplicable, insufficient, or doubtful with reference to the administration and settlement of [trusts and trust matters], the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper...

RCW 11.96A.020(2).[3]

Given this broad grant of power to superior courts by the legislature, an appellate court must give significant deference to a superior

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[3] The legislature confirmed those powers in RCW 11.96A.060: The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title. Unpublished opinion of *In re Estate of Kanyer*, 175 Wn. App. 1037 (July 8, 2013) (cited under GR 14.1).

court's decision. *In re Estate of Fitzgerald*, 172 Wn. App. at 448, (giving deference to a superior court's decision to deny a continuance to conduct discovery in a TEDRA proceeding).

Courts have exercised their plenary power under TEDRA in a number of ways that are consistent with the determination by the superior court below:

- TEDRA permitted superior court judge to weigh evidence on summary judgment and summarily decide the case without setting it for trial. *In re Estate of Jones*, 170 Wn. App. 594, 611, 287 P.3d 610 (2012).
- TEDRA provided separate grounds to permit superior court judge to summarily resolve estates that had been pending for four and seven years respectively, rather than let the case linger. *Id.*
- TEDRA's legislative grant of plenary power gave the superior court the authority to determine that a petitioner violated the terms of a lease by selling his section of land left to him and his siblings in his mother's will. *In re Estate of Hayes*, 185 Wn. App. 567, 605, 342 P.3d 1161 (2015)

Ultimately the superior court entered its November 17, 2017 order dismissing this case after over three years of litigation and multiple attorneys representing Clay because Clay failed to comply with the trial court's previous order to execute a TEDRA agreement within the time allotted. VRP, November 17, 2017, at 5:17-6:13. The extensive history of the case was before the superior court when it made the determination to deny a continuance, exercise its jurisdiction to enforce its previous July

28, 2017 order, and enforce that order accordingly by dismissing the case with prejudice.[4] November 17, 2017, VRP at 6-8. In doing so, the superior court properly exercised its plenary authority under TEDRA to administrate the matter at hand.

3. The superior court's July 28, 2017 order approving settlement should be affirmed under both TEDRA and contract law.

As demonstrated above, TEDRA expressly gives the superior court the authority to "**settle** all estate and trust matters." See RCW 11.96A.020(1). In exercising its authority approving settlement, the superior court considered that a negotiation after a full day mediation culminated in a verbal agreement on the terms between counsel while in consultation with their respective clients. CP 71-74. The superior court also considered the fact that after the Notice of Settlement was filed by Clay. Clay's counsel provided him with an initial draft CR2A and then a revised draft a few days later. CP 72-75. Both drafts contained the release language that Clay now argues was not agreed upon. CP 98-96. The superior court considered the fact that there was no response to those drafts communicating the position that the drafts did not encompass the correct terms of the parties' agreement, nor did Clay amend or withdraw

[4] The superior court's July 28, 2017 order provides that "this matter will be administratively dismissed WITH PREJUDICE and with each party bearing its own fees and costs within 7 days of this Order, or on or before August 4, 2017." CP 97-98.

his notice of settlement. CP 73-74. Ultimately there was no communication at all from Clay that would contradict the fact that the CR2A constituted the parties' agreement. *Id.*

Moreover, in addition to its proper use of its TEDRA authority, the superior court properly considered that despite the absence of an formal agreement executed by the parties, (1) the subject matter had been agreed upon, (2) the terms were all stated in the informal writings, and (3) the parties intended a binding agreement prior to the time of the signing and delivery of a formal contract. *Morris v. Maks*, 69 Wn. App. 865, 868–69, 850 P.2d 1357 (1993). Here, the parties had agreed on the subject matter of all material terms through counsel, the terms of their agreement were stated in the correspondence from November 23, 2016, through the following four months. CP 71-96. Through these communications, Clay demonstrated his intention to form a binding agreement pending the execution and presentation of a formal TEDRA agreement.

The facts in this action track those of *Morris v. Maks*, *supra*, wherein two attorneys, Miller and Irby, negotiated a settlement agreement in consultation with their respective clients. 69 Wn. App. at 867-8. The attorneys verbally confirmed the terms of the agreement by phone, and then Irby sent a July 19 confirmation letter to Miller. *Id.* Miller responded on July 25 stating that Irby's letter accurately reflected the terms of the

agreement, except for a few points which Miller said he viewed as "clarifying or supplemental points rather than conflicts [sic] with your letter." *Id.* Less than two weeks later, Miller's client learned that the tax consequences of his settlement were detrimental to him and attempted to terminate "settlement negotiations." The *Morris* court ultimately upheld the superior court's enforcement of the settlement agreement as had been set out in the July 19 and 25 letters between counsel. *Id.* at 872. The *Morris* court held that letters between counsel were sufficient to establish a binding settlement agreement because: (1) the subject matter was agreed on, (2) the material terms were stated in the letters, and (3) the evidence supports the finding that the parties intended to be bound by the letters. *Id.* Here, the superior court properly determined that the parties negotiated verbally through their counsel, counsel for Clay began performing the terms by obtaining a partial release of a creditor's claim, counsel for Clay filed a notice of settlement, and Clay received the CR2A and did not dispute its terms or withdraw its notice of settlement for four months. The superior court did not abuse its discretion, and at all times acted within the plenary authority of TEDRA, when it approved the TEDRA agreement on July 28, 2017. CP 97-99.

The cases relied on by Clay are not dispositive of his position. Clay argued that silence is not a proper method of acceptance. His reliance

on *Goodman v. Darden, Donan & Stanfford Associates*, 100 Wn.2d 476, 670 P.2d 648 (1983) is misplaced. There, the court stated that parties to a construction contract did not have a duty to correct the corporation promoter's mistaken interpretation of the law. *Id.* 483-483. There is no such issue raised here by Clay. The facts in *Am. Aviation, Inc. v. Hinds,* 1 Wn. App. 959, 961, 465 P.2d 676, 678 (1970) are distinguishable, so the holding is not helpful to Clay's argument. In *American Aviation*, the offeree took nine days to respond to the offer, and this period of silence was not deemed acceptance. In contrast, Clay was silent for four months. CP 43-44.

Clay acknowledged that silence can be interpreted as acceptance by citing Restatement of Contracts (Second) § 69. The fact that Clay's counsel filed the notice of settlement, CP 44, ¶ 2, is an act showing that the offeree is accepting the benefit of the offer, as established in subsection 1(a). Clay's counsel also admits taking steps consistent with an agreement, when he admits obtaining a reduction in an attorney fee bill and he obtained his clients signature on the appointment of the substitute trustee. CP 44, ¶ 4. Additionally, § 69 subsection 1(c) provides that an offeree's silence will be considered acceptance when, because of previous dealings, it is reasonable for the offeree should notify the offeror if he does not intend to accept. Here, there were regular communications between

counsel in November and December 2016 regarding the terms of the CR2A agreement. CP 60-63. No concerns about the settlement terms were raised until Clay moved for approval of the settlement, less one term, over four months after the CR2A agreement was sent to Clay for signature. CP 43-44. Based on the regular negotiations between counsel, it would be reasonable for Corbin's counsel to have expected to receive a timely communication from Clay's counsel that the CR2A agreement was not acceptable to his client. Given that this did not occur, Clay's silence would be deemed acceptance under § 69(1)(c).

Other cases cited by Clay, *Howard v. Dimaggio*, 70 Wn. App. 734, 855 P.2d 335 (1993), and *Condon v. Condon*, 177 Wn.2d 150, 298 P.3d 86 (2103) are distinguishable on their facts. Neither case was a TEDRA matter. In contrast to TEDRA matters, in *Condon* and *Howard* the courts did not have authority under TEDRA to settle estate matters. Additionally, in *Howard*, there was no act of plaintiff's counsel that was inconsistent with his claim that the plaintiff did not accept the settlement offer. *Howard*, 70 Wn. App. at 740. In contrast, here counsel for Clay admits that he took steps on behalf of his client to fulfill his client's settlement obligations. CP 44, ¶ 3 and 5. Thus, *Howard,* is not dispositive of the issue of whether the superior court in this case abused its discretion in approving the settlement. *Condon* interpreted the settlement agreement

under contract principles, and found error when the court enforced terms that were not implied in the agreement consisting of indemnity and hold harmless clause. *Condon,* 177 Wn.2d at 163. Moreover, Clay ignores the greater authority of the court to act in this case under TEDRA. Thus, *Condon* does not support an argument that the superior court abused its discretion in this case.

E. The superior court has jurisdiction to enforce its own orders.

Clay argues that the superior court lacked jurisdiction to hear Corbin's motion in November 2017, and thus erred entering the order of November 17, 2017, after the case had been dismissed without prejudice on August 8, 2017. This particular issue is a question of law which the court reviews de novo. *In Re Guardianship of Wells*, 150 Wn. App. 491, 499, 208 P.3d 1126 (2009). Clay ignores the rule that it is within the jurisdiction of the court, and within its power, to enforce its executory orders even though the order has become final. *Id.* at 495-96; *Goodsell v. Goodsell,* 38 Wn.2d 135, 138, 228 P.2d 155 (1951). In *Goodsell,* the court had jurisdiction to enforce an interlocutory property distribution order, which it had deemed a final order, against a lien foreclosure action initiated after the property distribution order. The court stated: "A court

not only has the right, but it is its duty to make its decrees effective to prevent evasions thereof." *Id.* at 138.

Here, on July 28, 2017, the superior court ordered that the parties execute the TEDRA Agreement and ordered the case would be administratively dismissed with prejudice. CP 97-99. Neither act ordered by the superior court was accomplished. Clay did not sign the TEDRA Agreement, CP 101-109, and the administrative dismissal was entered without prejudice. CP 100. Corbin's Motion for Dismissal and Other Relief, CP 101-09, moved for the superior court to accept jurisdiction for the purpose of hearing the Motion for Dismissal relating to Clay's failure to act as directed by the court, and to accomplish the dismissal with prejudice. CP 101. Given that Clay had not complied with the superior court order, the superior court not only had jurisdiction to review whether Clay had complied with the Order of July 28, 2017, it was its duty to do so. *Goodsell,* 38 Wn.2d at 138.

Clay's reliance on *Condon,* 177 Wn.2d 150, to support his argument that the superior court lacked jurisdiction to enter the order of November 17, 2017, is misguided. In *Condon,* the superior court was asked to enforce a settlement agreement, after the case has been dismissed with prejudice based on the party's belief that they had reached a binding settlement. *Id.* at 154. The superior court entered an order enforcing the

settlement and the plaintiff appealed, arguing that the superior court lacked jurisdiction to enforce the settlement after the case had been dismissed with prejudice. Contrary to Clay's reading of *Condon,* the court never concluded that the superior court lacked jurisdiction to hear the motion to enforce the settlement. Rather, *Condon* cited with approval the Fed. R. Civ. P. 60 (b)(3) and (6) which gives the court inherent authority to reopen a case in the interests of justice or other reason justifying relief. The court then proceeded to analyze the merits of the superior court's ruling approving the settlement. Thus, in *Condon,* the court necessarily held that the superior court did have jurisdiction to review the enforcement of a settlement agreement because the appellate court reviewed the decision of the superior court on the merits *Condon* did not hold that the superior court lacked jurisdiction to enforce the settlement. *Id.* at 161-62.

Condon is also distinguishable from the facts in this matter because the dismissal order at issue in *Condon* was with prejudice. Clay admits that the order entered on August 8, 2017, CP 100, was a dismissal without prejudice based on its lack of specific language stating it was with prejudice.

Clay recognized the inherent powers of the court in TEDRA as stated in RCW 11.96A.040 in his opening brief. Under TEDRA, the court has inherent powers to clarify orders at any time. *In re Campbell's Estate,*

46 Wn.2d 292, 297, 280 P.2d 686 (1955). Because Clay did not sign TEDRA Agreement, the trust estate was still open and the superior court could exercise its authority under TEDRA to reopen the case to revise the August 2017 order, CP 100, which had dismissed the case without prejudice.

The inherent authority under TEDRA, and the authority of the court under CR 60, together with the court's inherent authority to enforce its own orders, *Goodsell,* 38 Wn.2d at 138, and *see Guardianship of Wells*, 150 Wn. App. at 496-503, gave the superior court the jurisdiction necessary to hear Corbin's Motion to Dismiss. Thus, Clay's assignment of error number two is without merit.

F. The final dismissal order mooted the order approving settlement.

When the superior court entered the order of November 17, 2017, directing that the estate be distributed according to the terms of the trust, it also ordered that the parties were relieved of the terms of the settlement agreement. CP 187-88. The effect of an order vacating a prior order is that the prior order has not force or effect. The parties are left as if the prior order had not been entered. *Weber v. Biddle*, 72 Wn.2d 22, 28, 431 P.2d 705, 710 (1967). Thus, Clay's appeal focuses on an order that has no legal effect. Even if the superior court erred when approving the settlement,

there is basis for reversal because the error was nullified when Clay was relieved of the terms of the settlement. Errors contained in vacated orders are moot. This court generally dismisses cases that involve moot questions. *Client A v. Yoshinaka*, 128 Wn. App. 833, 841, 116 P.3d 1081 (2005).

G. Corbin is entitled to and hereby moves for an award of attorney fees.

Corbin moves for an award of reasonable attorney fees under RAP 18.9(a) on the grounds that Clay filed a frivolous appeal. An appeal is frivolous when the appeal presents no debatable issues on which reasonable minds could differ, and is so lacking in merit that there is no possibility of reversal. *Mahoney v. Shinpock*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987). An appeal is frivolous when it is based on a misunderstanding of the record. *Stiles v. Kearney*, 168 Wn. App. 250, 268, 277 P.3d 9 (2012).

Here, Clay has a basic misunderstanding of the record. The final order in the case, on November 17, 2017, did not enforce the settlement agreement. CP 187-88. The order specifically relieved the parties of the terms of the settlement. *Id.* Thus, the entire premise of Clay's first assignment of error, that the superior court erred in approving the settlement, is based on a moot order. The order approving settlement was

never enforced and was not in affect at the time Clay filed his notice of appeal.

A case is moot if a court can no longer provide effective relief. *Blackmon v. Blackmon,* 155 Wn. App. 715, 719, 230 P.3d 233 (2010). This court cannot give effective relief to Clay. Clay asks this court to reverse an order that is no longer in effect. The final order instructs that the trust proceeds be distribute based on the terms of the trust rather than the terms of the settlement. "This dismissal relieves the parties of the obligations under the terms of the settlement agreement and relieves Allstate of making any payment." CP 187-188. There is no effective relief which the court can give to Clay because he is not subject to any of the terms of the settlement agreement. When the issue appealed is moot, the appeal is frivolous. *Matter of Marriage of Greenlee*, 65 Wn. App. 703, 711, 829 P.2d 1120 (1992) (Clay conceded that issue was moot before appeal was perfected thus justifying the holding that the appeal was frivolous). It follows that Clay's attempt to reverse the July 28, 2017 order approving settlement, CP 97-99, is frivolous.

There is no merit to Clay's assignment of error number two, because the law relied on by Clay does not support his argument. Clay did not even argue assignment of error number three. It follows that Corbin is entitled to his attorney fees responding to the appeal.

Additionally, Corbin requests attorney fees from the trust estate under RCW 11.96A.150 which authorizes the court, at its discretion, to award attorney fees to any party from the assets of the trust. A trust which effectively defends a challenge may be awarded attorney fees. *In re Estate of Kerr,* 134 Wn.2d 328, 344, 949 P.2d 810 (1998). In *In re Irrevocable Tr. of McKean*, 144 Wn. App. at 345, the appellate court, awarded fees in favor of a trust and against a settlor who abused a trust created for his children, reasoning that "the Trust assets should not be further depleted by [the settlor's] continuing efforts to frustrate the purposes of the Trust he had established for his children". Similarly here, Clay has engaged in a continued pattern of taking contrary positions in what can only be designed to prolong litigation, expend trust fees when he is only a one-third beneficiary thereof, and ultimately frustrate the purpose of the Walters Trust. The Walters Trust should not be further depleted by this Appeal.

This appeal was no benefit to the trust, and thus the court should order Clay to pay the attorney fees incurred defending this appeal.

VI. CONCLUSION

Clay fails to establish any reversible error on the part of the superior court. The superior court did not abuse its discretion when

approving the settlement and did not lack jurisdiction to enforce its own order which intended to dismiss the case with prejudice.

Respondent, Corbin Walters, requests that this court affirm the final order of the superior court dismissing the TEDRA petition with prejudice based on the superior court's broad authority to decide and settle TEDRA matters. Finally, Corbin requests that the court order Clay to pay Corbin's reasonable attorney fees.

Respectfully submitted this 15th day of June, 2018.

LEE SMART P.S. INC.,

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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on June 15, 2018, I caused service of the foregoing pleading on each and every attorney of record herein by Electronic Filing and electronic mail:

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