

**FILED  
Court of Appeals  
Division II  
State of Washington  
3/28/2019 8:00 AM**

NO. 52026-5-II  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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In re the Estate of Robert Carlton Gilkey,  
Deceased

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APPELLANT'S REPLY BRIEF

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## TABLE OF AUTHORITIES

### Case Law

BIGGS v. VAIL, 119 Wash.2d 129 (1992).

### Statutes:

RCW 4.84.185

## REPLY TO CO-PERSONAL REPRESENTATIVES RESPONSE

A. The Superior Court erroneously closed probate when well documented evidence of mismanagement and fraud committed by the co-personal representatives were brought to the attention of the Court.

Scott Blinks, attorney for the co-personal representatives, continues to misrepresent the level of discretion awarded to the co-personal representatives with regards to the administration of the estate. Mr. Blinks falsely asserts that the co-personal representatives have “unfettered” discretion in administering the estate. The will in this case filed on

January 30, 2015, (CP 2-11) specifically dictates administration of the estate according to the terms of the Robert C, Gilkey Trust, which is specifically incorporated into the will by reference. (See, Will, Article Fourth, section B, CP 4-5). Mr. Blinks failed to file a copy of the trust documents in this case. The Appellant filed a copy of the trust documents with her May 30, 2017 Motion for Reconsideration in the trial court. (CP 76-111), Article 4<sup>th</sup> of the Will directs that the Trust be the guiding documents (even if the Trust does not exist at death). Article IV and V of the Trust is controlling. The co-personal representatives' powers are not unfettered.

The Will at ARTICLE THIRD, on page 3 states: "I give all my tangible personal property to the Trustee of the Trust more particularly described in ARTICLE FOURTH hereof, to be held, administered and distributed as provided in Article IV of such Trust."

The Will, beginning on page 3, under ARTICLE FOURTH, states:

Gift of Residue

As used below, "residue of my estate" means all property owned by me on the date of my death which remains after the payments specified in ARTICLE FIRST and the devises provided for in ARTICLE THIRD but shall not include property over which I have a general power of appointment.

A. Disposition of Residue of Estate. I devise and appoint all the residue of my estate to CRISTINA GILKEY and JOSEPH E. GILKEY, or their successors in trust, as Successor Co-Trustees of The Robert C. Gilkey Trust dated the same date hereof and

executed by me prior to my signing this Will, including any subsequent amendments thereto. I direct that all income and principal delivered by my Personal Representative to my Trustee shall be deemed income and principal, respectively, by my Trustee.

**B. Alternate Disposition. If the trust described in Paragraph A hereof is not in existence on the date of my death or if the gift to such Trustee shall be invalid, in whole or in part, I give the residue of my estate to the Trustee named in Paragraph A hereof, in trust, to be held, administered and distributed in accordance with the terms and conditions of that same Trust Agreement described in Paragraph A hereof, which Trust Agreement, as amended to the date of this Will, is incorporated herein by reference.**

*Emphasis added. See the Will filed in this matter on January 30, 2015.*

Mr. Blinks' and Joseph Gilkey both falsely claim that the Robert C. Gilkey Trust had been dissolved prior to his passing. However, even if their assertions were correct, the Alternate Disposition of Article Fourth, Section B (quoted above) still enforces the terms of the Trust.

The Trust governs the administration of the Estate, and the Trust does allow the discretion of the Trustee to be binding, "Unless made fraudulently, in bad faith, or in a grossly negligent manner. . ." See, CP 99, Section 6.08. The Co-Personal representatives' powers are not "unfettered."

#### B. Sanctions Erroneously Imposed by the Trial Court

The Superior Court erroneously sanctioned Victoria Gomes in the amount of \$2500 when her objections were well grounded in fact and law. Judge

J. Andrew Toyndbee ruled that my objections were “frivolous” and awarded attorney’s fees. However, my objections were all made in good faith, were all grounded in fact, and were in accordance with law. There was no violaiton of CR 11 nor were any of my objections and requests in violation of RCW 4.84.185. See BIGGS v. VAIL, 119 Wash.2d 129 (1992).

C. Request for Attorney’s Fees and Costs

Appellant requests an award of attorney’s fees and costs on Appeal.

Dated this 27<sup>th</sup> day of March, 2019.

/s/ Victoria M. Gomes

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Victoria M. Gomes, pro se.

**VICTORIA GOMES - FILING PRO SE**

**March 27, 2019 - 5:01 PM**

**Transmittal Information**

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