

FILED  
Court of Appeals  
Division II  
State of Washington  
12/14/2018 4:25 PM  
NO. 52049-4-II

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

---

TERESA L'AMARCA,

Appellant/Petitioner,

v.

JOSEPH J. L'AMARCA, JR., A SINGLE MAN, AND JEANNIE A.  
L'AMARCA, A SINGLE WOMAN AND JEANNIE A. L'AMARCA AS  
PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH  
L'AMARCA, SR.,

Respondents.

---

BRIEF OF RESPONDENT  
JEANNIE A. L'AMARCA

---

Thomas P. Quinlan, WSBA #21325  
SMITH ALLING, P.S.  
1501 Dock Street  
Tacoma, WA 98402  
Telephone: (253) 627-1091  
Email: tom@smithalling.com  
Attorneys for Jeannie A. L'Amarca

**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. STATEMENT OF THE CASE.....4

III. ARGUMENT ..... 16

    A. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION ON WITNESS CREDIBILITY ..... 16

        1. Standard of Review ..... 18

        2. Jeannie L’Amarca was Credible ..... 18

        3. Testimony Concerning the Assignment’s Authenticity Was Not Credible..... 18

    B. DISMISSAL OF THE TEDRA PETITION IS SUPPORTED BY SUBSTANTIAL EVIDENCE ..... 19

        1. Standard of Review ..... 19

        2. Jeannie Did Not Breach Her Fiduciary Duties By Settling the Creditor Claim ..... 19

        3. The Detailed Creditor Claim Was Supported By Neutral Evidence..... 24

        4. Jeannie L’Amarca Did Not Perpetrate a Fraud ..... 28

        5. The Settlement Agreement Was Not A Fraudulent Transfer ..... 29

        6. There Was No Consecutive Trust Alleged ..... 30

    C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY FEES PURSUANT TO RCW 11.96A.150..... 31

1. Standard of Review .....	31
2. TEDRA Confers Broad Discretion Upon Court .....	31
3. A Finding of Fault is Not a Prerequisite .....	32
D. ATTORNEY FEES SHOULD BE AWARDED ON APPEAL .....	33
E. APPELLANT'S REQUEST FOR ATTORNEY FEES SHOULD BE DENIED .....	34
II. CONCLUSION .....	34

## TABLE OF AUTHORITIES

### CASES

<i>ARCO Prods. Co. v. Wash. Utils. &amp; Transp. Comm'n</i> , 125 Wash.2d 805, 812, 888 P.2d 728 (1995).....	19
<i>Austin v. U.S. Bank of Wash.</i> , 73 Wn. App. 293, 869 P.2d 404 (1994) .....	22
<i>Brown v. Underwriters at Lloyd's</i> , 53 Wash. 2d 142, 145, 332 P.2d 228, 230 (1958) .....	29
<i>Chadwick v. Nw. Airlines, Inc.</i> , 33 Wash. App. 297, 300, 654 P.2d 1215, 1217 (1982), <i>aff'd</i> , 100 Wash. 2d 221, 667 P.2d 1104 (1983).....	29
<i>Cook v. Brateng</i> , 158 Wn.App. 777, 795, 262 P.3d 1228 (2010) <i>citing</i> RCW 11.96A.150(1).....	32
<i>Cowles Pub. Co. v. State Patrol</i> , 44 Wash. App. 882, 888, 724 P.2d 379, 384 (Div. II 1986), <i>rev'd</i> , 109 Wash. 2d 712, 748 P.2d 597 (1988).....	17
<i>Delegan v. White</i> , 59 Wn.2d 510, 512-3, 368 P.2d 682 (1962) .....	33
<i>Diimmel v. Morse</i> , 36 Wn.2d 344, 218 P.2d 334 (1950) (dictum) .....	27
<i>Dobbin v. Pac. Coast Coal Co.</i> , 25 Wash.2d 190, 170 P.2d 642.....	29
<i>Fisher Props., Inc. v. Arden-Mayfair, Inc.</i> , 115 Wash.2d 364, 369-70, 798 P.2d 799 (1990).....	17
<i>Freeburg v. City of Seattle</i> , 71 Wash.App. 367, 371-72, 859 P.2d 610 (1993).....	17

<i>Gillespie v. Seattle-First Nat. Bank</i> , 70 Wn.App. 150, 177, 855 P.2d 680 (1993).....	32
<i>Haller v. Wallis</i> , 89 Wash.2d 539, 545, 573 P.2d 1302 (1978). .....	29
<i>Hallin v. Bode</i> , 58 Wn.2d 280, 362 P.2d 242 (1961).....	27
<i>Hesthagen</i> , supra at 941 [NEED CITE].....	24
<i>Hilltop Terrace Homeowner's Ass'n v. Island County</i> , 126 Wash.2d 22, 34, 891 P.2d 29 (1995).....	19
<i>Hubbard v. Medical Service Corp.</i> , 59 Wn.2d 449, 367 P.2d 1003 (1962) .....	33
<i>In re Estate of Black</i> , 153 Wn.2d 152, 173, 102 P.3d 796 (2004) .....	31
<i>In re Estate of Black</i> , 116 Wn.App. 476, 483, 66 P.3d 670 (2003) .....	31
<i>In re Estate of Ehlers</i> , 80 Wn. App. 751, 911 P.2d 1017 (1996) .....	23
<i>In re Marriage of Chandola</i> , 180 Wn.2d 632, 327 P.3d 644 (2014) .....	17
<i>In re Marriage of Katare</i> , 175 Wn.2d 23, 35, 283 P.3d 546 (2012) .....	19
<i>In re Marriage of Woffinden</i> , 33 Wn.A pp. 326, 330, 654 P.2d 1219 (1982).....	17
<i>Johnson's Wholesale Plumbing, Inc. v. Holloway</i> , 17 Wash. App. 449, 452–53, 563 P.2d 1294, 1297 (1977) .....	31
<i>Klein v. Delgado</i> , 180 Wash. App. 1043 (2014).....	30
<i>Lamden v. La Jolla Shores Club Dominion Homeowners' Ass'n.</i> , 980 P.2d 940, 944 (CA 1999).....	23

<i>Laue v. Estate of Elder</i> , 106 Wn.App 699, 25 P.3d 1032 (2001), reconsideration denied, as amended, review denied 145 Wn.2d 1036,43 P.3d 20 .....	34
<i>Leingang v. Pierce Cty. Med. Bureau, Inc.</i> , 131 Wash. 2d 133, 160, 930 P.2d 288 (1997) .....	21
<i>Lewis v. Kujawa</i> , 158 Wash. 607, 291 P. 1105 (1930) (dictum) .....	28
<i>Matthias v. Lehn &amp; Fink Prods. Corp.</i> , 70 Wash.2d 541, 424 P.2d 284 (1967) .....	31
<i>Newport Yacht Basin Ass’n of Condo Owners vs. Supreme NW, Inc.</i> , 168 Wn. App. 56, 64, 277 P.3d 18 (2012) .....	26
<i>Oroville Cordell Fruit Growers, Inc. v. Minneapolis Fire &amp; Marine Ins. Co.</i> , 72 Wn.2d 544, 434 P.2d 3 (1967) .....	33
<i>Para-Medical Leasing, Inc. v. Hangen</i> , 48 Wn. App. 389, 398, 739 P.2d 717, 723 (1987) .....	23
<i>Scott v. Trans-System, Inc.</i> , 148 Wn.2d 701, 709, 64 P.3d 1 (2003) .....	23
<i>State v. Garza</i> , 150 Wn.2d 360, 366, 77 P.3d 347 (2003) .....	17
<i>Sunderland Family Treatment Services v. City of Pasco</i> , 127 Wash.2d 782, 903 P.2d 986 (En Banc 1995) .....	19
<i>Sunnyside Valley Irrig. Dist. vs. Dickie</i> , 149 Wn.2d 873, 880, 73 P.3d 369 (2003) .....	26
<i>Swanson v. Solomon</i> , 50 Wash. 2d 825, 828, 314 P.2d 655, 657 (1957) .....	28
<i>Thompson v. Hanson</i> , 168 Wash. 2d 738, 744–45, 239 P.3d 537, 539 (2009) .....	30

<i>Trask vs. Butler</i> , 123 Wn.2d 835, 843, 872 P.2d 1080 (1994) .....	20
<i>Van Noy v. State Farm. Mut. Auto. Ins. Co.</i> , 142 Wash. 2d 784, 791, 16 P.3d 574 (2001) .....	21
<i>Vaughn v. Montague</i> , 924 F. Supp. 2d 1256, 1264 (W.D. Wash. 2013).....	22
<i>Wilson’s Estate vs. Livingston</i> , 8 Wn.App. 575, 578, 636 P.2d 505 (1981).....	21, 24
<i>Yakima Cement Prods. Co. v. Great Am. Ins. Co.</i> , 93 Wash.2d 210, 608 P.2d 254 (1980).....	16

**STATUTES**

RCW 11.44.015 .....	20
RCW 11.48.010 .....	24
RCW 11.68.090 .....	5, 21
RCW 11.96A.150.....	1, 16, 31, 32, 33
RCW 11.96A.150(1).....	32
RCW 11.96A.020(2).....	32
RCW 11.98.070 .....	5
RCW 11.100.020 .....	20
RCW 11.100.45 .....	20
RCW 19.40.041 .....	30
RCW 19.40.041(a)(1) and (2).....	29, 30

**COURT RULES**

CR 15 .....	9
CR 54(d).....	33
RAP 14.2.....	1, 34
RAP 18.1.....	33

## I. INTRODUCTION

Respondent, Jeannie L’Amarca, is the personal representative of the Estate of Joseph L’Amarca (hereinafter “Jeannie”). She submits this *Brief of Respondent* in response to Appellant Teresa L’Amarca's (the “Appellant”) *Opening Brief*. Jeannie requests that this Court affirm the Superior Court’s Dismissal of the Appellant’s Trusts and Estate Dispute Resolution (hereinafter “TEDRA”) Petition and further affirm its award of attorney fees and costs against the Appellant. In addition, Jeannie requests an award of attorney fees and costs incurred in this appeal, pursuant to RCW 11.96A.150 and RAP 14.2 and 18.1.

As Personal Representative, Jeannie faced a dilemma: she would be damned if she did not settle the probate creditor claim of Joseph J. L’Amarca Jr. (hereinafter “Junior”); or, invite litigation and thus be damned if she rejected it. Junior presented a detailed *Creditor Claim*, with referenced exhibits. Jeannie was confronted with the very real and serious threat of having to prosecute a breach of contract and specific enforcement action against Junior to confirm the estate’s purportedly assigned interest in a real property contract, while defending an action by Junior to quiet title to real property. But, the estate had little resources to engage in litigation.

Junior’s *Creditor Claim* had essentially two parts. First, it claimed monetary damages due to Joseph L’Amarca, Sr. (hereinafter “Senior”)

fraudulently representing himself to be Junior when he took out a July 2003 *Home Equity Line-of-Credit* (“HELOC”) through Washington Mutual Bank and secured payment with Junior’s property. Second, it invited a title to land dispute by questioning the validity of a *Deed and Assignment of Real Estate Contract* (hereinafter the “Assignment”), the authenticity of which Junior disputed.

In January 2017, Jeannie learned that Senior had delivered a Deed of Trust encumbering Junior’s real estate to Washington Mutual securing repayment of the HELOC. *RP 361: 10-12*. The HELOC was undeniably Senior’s personal debt. *CP 505-517*. Furthermore, there was no information or record that indicated that Senior had any title or interest to Junior’s real estate in July 2003.

The Appellant does not challenge the Superior Court’s finding of fact relating to Senior’s fraudulent conduct, including: “In July 2003, [Senior] fraudulently obtained a home-equity line of credit from Washington Mutual Bank by representing that he was the owner of the Property. There are no documents, testimony or other evidence to indicate that [Senior] had any right, title or ownership interest in the Property in July 2003.” And, the Appellant does not challenge the Superior Court’s finding of fact that Senior “drew at least \$28,000 from the HELOC; the outstanding balance of the HELOC is a debt of [Senior] and the estate...” *CP 509-517*.

The following additional findings of fact are verities because the Appellant does not dispute or challenge the Superior Court's findings of fact, to wit:

1. "On November, 9, 1988, [Junior] entered into a Real Estate Contact with Tony J. Trunk for the purchase of the Property."
2. "[Junior] purchased the Property from Tony Trunk by real estate contract dated November 9, 1998, the terms of which required [Junior] to pay \$49,500, with a down payment of \$1000, monthly installment payments of \$450 and a balloon payment principal \$4000 on May 1, 1989."
3. "[Junior] fully paid Tony Trunk for the Property in September 2006."
4. "Tony Trunk executed and delivered the Statutory Warranty (fulfillment) Deed dated September 29, 2006, which granted title to the Property to 'Joseph J. L' Amarca."
5. "Tony Trunk credibly testified that his intent was to deliver the Statutory Warranty (fulfillment) deed to [Junior] specifically and that the notation in the deed of 'Joseph J. L' Amarca' was an unintended clerical error on his part."
6. "During the initial years of [Junior's] ownership of the Property, he rented the Property to third parties under an arms-length negotiated lease arrangement for \$480.00. per month."

7. “At one point, [Junior] was forced to take eviction action and file a lawsuit for unlawful detainer against tenants who failed to pay rents pursuant to lease agreement.”

8. “In 1993, when [Senior] was legally separated from Linda Kartes, [Junior] allowed [Senior] to move on the Property and reside on the Property in exchange for [Senior’s] agreement to pay the \$450 per month installment payments to Tony Trunk, and real property taxes and insurance for the Property. [Senior] resided on the Property, until his death.

9. “The Agreement between [Junior] and [Senior] never changed, up until [Senior’s] death.” *CP 509-517*.

## **II. STATEMENT OF THE CASE**

Senior’s Last Will and Testament was admitted to probate on March 30, 2016. The Will identifies the Decedent’s heirs. *CP 1-4*. They are Jeannie, the Appellant, Junior and Anthony L’Amarca. However, the Will only provides for two devisees: the Appellant and Jeannie. *Id.*

The Will nominated the Appellant as personal representative. However, she was disqualified from serving because of her prior felony theft criminal conviction. As is demonstrated by the record, the Appellant nominated her mother, Linda Kartes (Senior’s ex-wife), to serve as personal representative, without notice to Jeannie or other heirs. *CP 562-598; CP 603-606; CP 607-612; RP 203:1-3*. Untimely, Jeannie learned of this

subterfuge and she was later appointed successor personal representative and after Kartes was removed. *CP 7.*

Senior's Will granted broad, non-intervention powers to the personal representative. It specifically conferred the "full power to sell, convey and encumber, without notice or confirmation, any asset of my estate... In such terms as my personal representative deems appropriate..." *CP 1-4.*

The powers conferred upon the personal representative in Senior's Will are supplemented by the law. A personal representative acting under non-intervention powers has broad powers to administer the estate. RCW 11.68.090. She may, without court order or notice, exchange or convey real property of the estate. RCW 11.98.070.

Jeannie had non-intervention powers when confronted with Junior's creditor claim. *CP 7.* While the estate was solvent, the estate was not liquid as its assets were primarily real property. *CP 230-31.* What little cash estate did have had been diluted by Linda Kartes, who had signed checks depleting substantially all of the estate's cash on-hand. The Appellant received the proceeds of nine (9) consecutively written checks, all of which were negotiated after the date of Linda Kartes' removal and the Superior Court issuing Letters Testamentary to Jeannie. In short, the estate had little or no funds in January 2017 to cover costs of administration, much

less creditor disputes, including the claim made by Junior. *RP 372: 7-12.*

This unfortunate situation was engineered by the Appellant and her mother.

Junior's creditor claim was timely presented on February 3, 2017. It came after Junior discovered the matter of Senior's HELOC and the Assignment recorded in October 2004. Junior had communicated with Jeannie about his claim and issues prior to retaining legal counsel and preparing and presenting his creditor claim. *RP 369: 17-20.*

In January 2017, Jeannie learned from Junior that in July 2003 Senior had taken out a HELOC through Washington Mutual Bank. *RP 361; 10-72* Senior had executed and delivered a Deed of Trust securing payment of the HELOC with Junior's real property, without Junior's knowledge or consent. The HELOC was undeniably a debt of the estate as it was Senior's legal obligation to pay it. *CP 517.* However, there was no information of record that indicated that Senior had any interest in the title to the real estate in July 2003.

Junior then provided Jeannie a copy of the Assignment and claimed that it was not authentic. While the Assignment was purportedly signed by Junior on October 20, 2004, it was recorded until October 13, 2006, nearly two (2) years later. *CP 627.* Its recording came at the same time as Tony Trunk's delivery of the Statutory Warranty Deed to Junior.

Junior was adamant that the signature on the Assignment was not his and that he had not contracted with Senior to assign the Trunk real estate contract to him. Jeannie believed Junior and trusted he was being truthful. Based on their past relationship and her belief in his honesty, she had no reason conclude that his assertions were not credible. *RP 365: 1-10.*

Nevertheless, Jeannie considered the circumstances then known to her. She participated in a January 2017 phone conversation between Junior and Doug Sulkosky. *RP 361: 15-22.* Sulkosky had notarized the signature on the Assignment. *CP 276.* At the time, Sulkosky was of no help to Jeannie in determining the efficacy of Junior's creditor claim. Sulkosky was then non-committal on the subject of whether the Assignment was truly that of Junior or whether the signature had been forged. *RP 45:18-20; 52:14-25; 60:1-16.*

Following the phone conversation, Sulkosky prepared a Declaration dated January 30, 2017, which Jeannie retrieved in person from him. *RP 362: 1-11.* The Sulkosky Declaration did not state that he had requested to see identification with regard to the notarizing of the Assignment. *RP 45:23-45:25; 46:1.* He admitted that his recollection was based solely on a calendar entry, which he had not produced. *RP 58:16-58:19; RP 59:8-59:10.* The Declaration was of little value in providing assurance of success in a title fight against Junior. The Declaration did not state that Junior

signed the Assignment. *CP 649*. Instead, the Declaration said that he, Sulkosky, notarized “Joey L’Amarca’s” signature, and then listed “aka’s” (i.e., “aka Joseph J. L’Amarca, aka Joseph J. L’Amarca, Jr.”). *CP 649*. Consequently, Sulkosky’s Declaration was not dispositive as to Junior’s intent to assign the Trunk Contract to Senior.

In February 2017, Junior presented his creditor claim to Jeannie. It was supported by a Declaration from Tony Trunk, which indicated his transaction was with Junior and not Senior. Mr. Trunk indicated that when delivering his 2004 Warranty Deed in fulfillment of the Real Estate Contract between him and Junior, he intended the recipient of the title through the deed to be in fact Junior. *Id.* There was no evidence to contravene that title to the property was vested in Junior.

Jeannie was confronted with the stark reality of the estate being illiquid. In the event of a lawsuit to seek declaratory relief to find the Assignment valid and to specifically enforce Junior’s obligation under it to deliver title to the estate, the estate may be rendered administratively insolvent. That reality had to be considered along with the uncertainty of victory and substantial costs of litigation. Jeannie was familiar with legal costs as she had incurred several thousand dollars in legal expenses that the estate had not repaid to her. *RP 372:7-10*. And, at the time of her decision to settle Junior’s creditor claim, Jeannie knew, as confirmed by the

testimony and documentary evidence at the TEDRA hearing, that Senior was known by several variations of his name, including Junior's name. *See, e.g., RP 336:2-336:4; CP 636.*

On March 28, 2017, two months after receiving and evaluating Junior's Creditor claim (and while represented by counsel) Jeannie signed a Settlement Agreement, which included a quitclaim deed that was recorded with the Pierce County Auditor on April 13, 2017. *RP 367:22-367:25; 368:1.* The Settlement Agreement acknowledged that the Washington Mutual line of equity was a debt of the estate. *RP 234:18-234:24.* Jeannie had determined that that the property was probably not an estate asset and if litigation was pursued could be confirmed to belong to Junior.

Jeannie was sued by the Appellant because of her election to settle Junior's creditor claim and forgo litigation with him<sup>1</sup>. It is under this lens that the Superior Court was asked to review Jeannie's decision to settle the creditor claim. The Superior Court correctly examined the facts and circumstances known to Jeannie at the time she resolved Junior's creditor claim. The testimony and evidence admitted at trial supported Jeannie's sound business judgment with regard to the handling of Junior's creditor claim.

---

<sup>1</sup> The TEDRA Petition did not allege a constructive trust; no CR 15 motion was made by Petitioner to amend her claims at any time.

The Superior Court observed and noted that the settlement of Junior's creditor claim went against her own self-interest, as a beneficiary of the estate. *RP 368:16-368:24*. Although the Appellant alleged that Jeannie and Junior colluded together, whereby Jeannie would benefit, no evidence was presented at the TEDRA hearing to support these allegations.

To the contrary, Sulkosky demonstrated that he had no recollection of the events surrounding his notary. Thus, his testimony was not the end-all that the Appellant expected. Sulkosky repeatedly admitted (as he had done in his prior deposition) that he had no recollection of the events surrounding the signing and notarizing of the Assignment. *RP 45:18-45:20; 51:8-51:14; 52:14-52:25; 53:1-5; 60:1-60:16; 62:3-62:25; 63:1*. He admitted that his files regarding the transaction had been destroyed. *RP 45:9-11*. He had no means to refresh his recollection. Although Sulkosky testified it was his usual practice to ask for identification when executing notarized documents, he had no recollection as to whether he did so, or saw an identification of the signor in 2004. *RP 63:7-63:17*. Thus, his stated usual practice is nothing more than rank speculation.

Sulkosky's second Declaration is dated May 11, 2017. It was provided at the instance of Appellant's lawyer after Jeannie had settled Junior's creditor claim. *RP 37:3-37:15; RP 41:22-41:2; RP 43:16-43:17; RP 57:21-25; 58:1-58:1*. Minimally different from his January 30, 2017

Declaration, it was provided after Jeannie had made her decision based on the risks of handling Junior's creditor claim. Ultimately, the trial court found that Sulkosky was not reliable, as he had no recollection of having notarized the signature on the Assignment and no recollection that the signer was in fact Junior. *CP 514, lines 8-11.*

The Trial Court's findings in this regard were supported by the uncontroverted testimony of Tony Trunk, the contract vendor of the real property, Junior, and longtime family friend Gregory Marks.

The Real Estate Contract was recorded under Pierce County Auditor file number 8811180297. *CP 633-634.* Its terms and Trunk's intent were fully substantiated at the evidentiary hearing. Trunk testified under oath that he entered into the Contract with Junior, not Senior. *RP 171:3-171:11.* Trunk verified, under oath, that his agreement to sell the property was expressly with Junior. *RP 179:22-179:24.* Trunk also testified that he knew both Senior and Junior; and, he intended specifically to sell the property to Junior. *RP 181:9-181:11; RP 170:21-170:25; 171:1-171:2.* Trunk testified that he signed a deed conveying title to Junior specifically. *RP 172:6-172:17.*

Junior also testified at the hearing under oath about the agreement with Trunk. *RP 272:13-272:19; RP 273:14-273:19.* He was adamant that the signature on the Assignment was not his and equally adamant that he

had given Senior permission to live on the property, but had no intent on giving title to it to him. *Id.*

Junior's testimony and exhibits concerning the history of ownership was compelling, substantial evidence supporting the findings of fact at issue. After purchasing the Property, Junior leased it to tenants to help with the payments. *RP 277:1-277:7*. Junior evicted tenants from the Property by filing an action for eviction in Pierce County Superior Court. *RP 278: 7-25; 279:1-279:9*. In the eviction complaint, Junior affirmatively stated that he was the owner of the real property. *Id.* Furthermore in the eviction proceeding, the Court found that Junior was the owner of the property. *RP 280:14-280:24*. In an Order of Default and Default Judgment, Junior, as the landlord and the owner of the Property, was awarded a judgment against the tenants. *RP 280:14-280:24*.

At the TEDRA evidentiary hearing, the eviction records and testimony provided incontrovertible evidence that refuted the Appellant's allegation that Senior had resided at the Property continuously from 1988 until his death in 2016. The eviction records, admitted as evidence, strongly corroborate Junior's contention that he, not his father, was the owner of the Property.

Senior's uncontroverted past dealings with Linda Kartes were additional supporting evidence. Senior had separated from his wife in the

1990s and Junior offered to let Senior live at the Property. *RP 305:11-305:19*. In exchange, Senior agreed to pay the Trunk contract payment, the property taxes and any other costs of maintenance associated with the Property. *RP 275:14-275:23; RP 305:11-305:19*.

After living at the Property for some time, Senior took advantage of the similarity in names with his son for his own benefit. In 2003, and unknown to Junior, Senior obtained the HELOC from Washington Mutual. *RP 283:21-283:25*. Senior defrauded the bank by using the Property as collateral for the loan, representing to Washington Mutual that Trunk was under contract to sell the Property to L'Amara Sr. *CP 636-641*.

At the TEDRA hearing, there was no dispute that Senior misrepresented the fact that he was not the owner of the Property to obtain the HELOC. *CP 509-517*. Furthermore, when serving as the personal representative of the Estate, Linda Kartes made payments on the loan, acknowledging it to be an obligation of Senior's estate. *VPR 254:21-254:25; 255:1*. It is undisputed that Senior was in fact not the owner of the Property at the time he obtained the HELOC. *CP 509-517*.

Senior was known to imply to third parties that he was Junior, if it suited or benefited him. *RP 341:1-3* Gregory Marks was like a family member to the L'Amarcas. *RP 346:2-13* He had grown up with Junior; and Senior was like a father to him. Mr. Marks credibly testified that Senior

would assume the identity of Junior, under circumstances that would benefit him. *RP 336:2-13.*

None of these undisputed facts were considered by Brian Forrest when examining the signature on the Assignment at the behest of the Appellant. To the contrary, Forrest was given limited information. Prior to opining that the Assignment was likely to have been executed by Junior, Forrest examined undated and unverified writing samples the Appellant told him contained Junior's signature. Forrest admitted his samples were undated. *RP 146:3-146:15.* And, he had not selected the samples; they were selected by the Appellant's counsel. *RP 155:18-155:25; 156:1-156:3.* Forrest admitted he had asked Appellant's counsel for more complete samples. He could not state why he used the samples he was given. *RP 156:8-156:25; 157:1-157:2.*

All but one of Forrest's samples were simply a first name and not a full signature. *RP 105:17-105:25; 106:1-106:4; 106:6-106:13; 154: 8-154-14.* Those samples were undated birthday cards signed as "Joey". *Id.* The single sample that included a full signature was from Junior's creditor claim, which was thirteen years after the execution of the Assignment. *RP 157:19-157:25; 158:1.* He admitted that a person's signature changes over time. *RP 152:1-152:25; 153:1-153-12.* Thus, signature analysis comparisons are inherently unreliable.

Ultimately, Forrest's opinion was based solely on a single full signature sample. *RP 157:19-157:25; 158:1* He also admitted that he failed to compare the more complete samples (provided later by Appellant's counsel following Junior and Jeannie filing Motions in Limine) to the original signature on the Assignment. *RP 169:6-169:18*. It was under these questionable circumstances the Superior Court found Forrest to lack credibility.

Forrest's lack of testimonial credibility was compounded by his lack of expertise and experience as a hand-writing expert, which further support there being substantial evidence to warrant dismissal. Over objections to his credentials and qualifications, the Superior Court found him minimally qualified to testify. *CP 514, lines 14-20*. His qualifications were scant. Forrest's training and education were not from an accredited school, but rather an online program. *RP 97:18-97:24; 98:10-98:20*. His apprenticeship was not in person. *RP 101:21-101:25; 102:1*. He had never previously been qualified as an expert. *RP 99:23-99:25; 100:1-100:2*.

Providing handwriting analysis was a more of a hobby for Forrest, who held no business licenses. *RP 101:12-101:15*. He does not belong to any professional associations. *RP 101:1*. And, he had neither written nor published any articles in his field. *RP 102:8-102:12*. In short, he was not qualified to render an opinion on a handwriting sample.

At the conclusion of the TEDRA hearing, the Superior Court awarded Jeannie the legal fees incurred in defending the TEDRA Petition. *CP* The Appellant did not challenge the reasonable amount of the fees awarded at the hearing for consideration of the fees. *CP* Rather, the challenge is to the award in total (in hopes of a complete reversal on appeal). The Superior Court based its award of fees against the Appellant upon RCW 11.96A.150.

### III. ARGUMENT

#### A. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION ON WITNESS CREDIBILITY.

##### 1. Standard of Review.

The term “credibility of witness” refers to how believable a witness is. Here, credibility was very much at issue given the question of the Assignment’s authenticity. Most of the evidence presented to the Superior Court consisted of witness testimony.

Unchallenged factual findings are verities for purposes of appellate review. *Yakima Cement Prods. Co. v. Great Am. Ins. Co.*, 93 Wash.2d 210, 608 P.2d 254 (1980). Review of the Superior Court's factual determinations is not de novo when the record includes a Superior Court’s assessment of witnesses' testimonial credibility or competency. *Cowles Pub. Co. v. State Patrol*, 44 Wash. App. 882, 888, 724 P.2d 379, 384 (Div.

II 1986), *rev'd*, 109 Wash. 2d 712, 748 P.2d 597 (1988). The appellate court rarely reevaluates the trial court's decision concerning the credibility of witnesses. *E.g.*, *In re Marriage of Chandola*, 180 Wn.2d 632, 327 P.3d 644 (2014). The appellate court defers to the trial court's credibility determination "because of a trial court's unique opportunity to observe the parties to determine their credibility and to sort out conflicting evidence." *In re Marriage of Woffinden*, 33 Wn.A pp. 326, 330, 654 P.2d 1219 (1982).

The standard of review requires this Court to accept the fact finder's view on credibility of the witnesses. *See, Freeburg v. City of Seattle*, 71 Wash.App. 367, 371–72, 859 P.2d 610 (1993). The trial court was in a better position to evaluate the credibility of witnesses and this Court should not substitute its judgment for that of the trial court when reviewing findings of fact. *Fisher Props., Inc. v. Arden–Mayfair, Inc.*, 115 Wash.2d 364, 369–70, 798 P.2d 799 (1990). Thus, the abuse of discretion standard is appropriate when a trial court is in the best position to make a factual determination. *State v. Garza*, 150 Wn.2d 360, 366, 77 P.3d 347 (2003).

## **2. Jeannie L'Amarca was Credible.**

The Superior Court found Jeannie to be "the most credible witness" who testified in the hearing. *CP 515*. Judge Serko observed and noted that,

as a legatee of the estate, Jeannie had nothing to gain personally and risked her own personal financial loss by entering into the settlement agreement regarding Junior's creditor claim. *Id.* As outlined above, there is substantial evidence to support the Superior Court's finding on her credibility. Conversely, there is not a scintilla of proof to conclude Jeannie colluded with Junior against the Appellant or the estate when entering into a settlement of Junior's creditor claim.

3. **Testimony Concerning the Assignment's Authenticity Was Not Credible.**

The Appellant relied upon Sulkosky and Forrest to (a) authenticate the Assignment and then (b) draw the conclusion there was malfeasance or fraud. As noted above, Sulkosky speculated that the notarized signature was authentic based upon a usual practice. He notably had no recollection of the events surrounding the notarization of the Assignment, much less witnessing the signature on it. *RP 45:18-45; 51: 8-14; 52: 14-25; 60: 1-16; 62: 3-25.* Forrest's scant experience and limited comparative examination of the signature on the Assignment could not reasonably support his conclusion that the signature on the Assignment "looks pretty much the same" as Junior's on the creditor claim, which was signed by Junior 13 years after the Assignment.

**B. DISMISSAL OF THE TEDRA PETITION IS SUPPORTED**

## **BY SUBSTANTIAL EVIDENCE.**

### **1. Standard of Review**

The Superior Court's findings of fact are treated as verities on appeal, if supported by substantial evidence. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). The substantial evidence standard is "highly deferential" to the fact finder. *See, ARCO Prods. Co. v. Wash. Utils. & Transp. Comm'n*, 125 Wash.2d 805, 812, 888 P.2d 728 (1995). Substantial evidence entails a relatively low threshold of proof and exists when there is "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *Hilltop Terrace Homeowner's Ass'n v. Island County*, 126 Wash.2d 22, 34, 891 P.2d 29 (1995). Under the substantial evidence standard of review, the Court of Appeals defers to the fact-finder's assessment of witness credibility. *Sunderland Family Treatment Services v. City of Pasco*, 127 Wash.2d 782, 903 P.2d 986 (En Banc 1995).

### **2. Jeannie Did Not Breach Her Fiduciary Duties By Settling the Creditor Claim.**

The Superior Court issued Letters Testamentary to Jeannie on September 16, 2016. CP 7. As noted above, Jeannie had non-intervention powers conferred upon her by Senior's Will and supplemented by statute. Effective on that date, Jeannie owed a fiduciary duty to all parties who have

an interest in the estate, including: (a) the decedent, (b) creditors of the estate, (c) legatees under the Will; and (d) the Court.

Her duties as Personal Representative included the following responsibilities. First that she was obligated to follow the *Prudent Person Rule*, by which she must “exercise judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs.” RCW 11.100.020. Second, she showed a *Loyalty to Beneficiaries* where she must look to the interests of the people interested in the estate, which include the decedent, the creditors and the court, and legatees. RCW 11.100.45. Third, she was to be guided by *Impartiality*, where she must act impartially in dealing with the different beneficiaries of the estate and act in a neutral and unbiased manner, unless the Will directs otherwise. RCW 11.100.045. And finally she was obligated to *Identify and Marshall Assets*, where she must search for, identify, and take control over all assets belonging to the estate. RCW 11.44.015.

A personal representative owes all parties-in-interest of an estate a fiduciary duty to act in the estate’s best interest. *Trask vs. Butler*, 123 Wn.2d 835, 843, 872 P.2d 1080 (1994). A personal representative’s duty is to exercise good faith and honest judgment, and utilize the skill, judgment and diligence of an ordinary cautious and prudent person when employing the

management of her own affairs. RCW 11.68.090; *see also E.g., Wilson's Estate vs. Livingston*, 8 Wn.App. 575, 578, 636 P.2d 505 (1981). There is substantial evidence to support the finding that Jeannie did not breach her fiduciary duties when she settled the creditor claim contrary to her self-interest as a beneficiary.

Good faith is a core fiduciary duty under Washington law. Probate fiduciaries have the same good faith obligation as has been analyzed in the many cases dealing in the context of insurance companies. The well-established fiduciary duty of good faith “implies more than the honesty and lawfulness of purpose.” *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wash. 2d 133, 160, 930 P.2d 288 (1997). The duty of good faith is fairly broad; a breach of the duty does not necessarily require bad faith or fraud. *Id.* In the insurance context, good faith requires giving equal consideration to the insured’s interest. *Van Noy v. State Farm. Mut. Auto. Ins. Co.*, 142 Wash. 2d 784, 791, 16 P.3d 574 (2001). In other words, good faith is a duty to refrain from engaging in any action which would demonstrate a greater concern for one’s own monetary interest. *Id.* Jeannie considered the risk and costs of litigation and decided it prudent to settle with Junior. Had she not and then lost in a separate action against Junior, she would be at risk of being damned for pursuing her self-interest in having a more valuable pool for distribution to legatees.

Courts have also analyzed the duty of good faith in the context of a trustee. A trustee commits a breach of her duty and abuses her discretion only when she acts “arbitrarily, in bad faith, maliciously, or fraudulently.” *Vaughn v. Montague*, 924 F. Supp. 2d 1256, 1264 (W.D. Wash. 2013) *citing*, *Austin v. U.S. Bank of Wash.*, 73 Wn. App. 293, 869 P.2d 404 (1994). In *Vaughn*, the trustor created a revocable living trust naming his daughter as successor trustee, giving her sole and absolute discretion over the trust. *Id.* at 1230. The trustee’s brother sued her, claiming she breached her fiduciary duty by failing to inform him that she was repairing the home and deferring her own compensation as trustee, rather than encumbering the house with debt to care for their father. *Id.* at 1232. The court held that the sister’s actions were routine practices to fulfill the trust’s primary purpose, and she did not breach her fiduciary duties. *Id.*

While there is no case directly on point in reviewing the asset management decisions of a personal representative, the fiduciary duties owed a corporate director or limited liability company manager are analogous. Both owe their companies and shareholder/members a fiduciary duty to act in good faith. Under the “business judgment rule,” management decisions are immunized from liability in a transaction where (1) the decision to undertake the transaction is within their power and the authority of management, and (2) there is a reasonable basis to indicate that the

transaction was made in good faith. *Scott v. Trans-System, Inc.*, 148 Wn.2d 701, 709, 64 P.3d 1 (2003)).

The common law business judgment rule has two components. First, it immunizes from personal liability those who act in accordance with its above requirements. Second, it insulates from Court intervention those management decisions which are made by decision-makers in good faith in what they believe is the organization's best interest. *Lamden v. La Jolla Shores Club Dominion Homeowners' Ass'n.*, 980 P.2d 940, 944 (CA 1999). The burden was on the Appellant to establish that Jeannie's conduct was fraudulent, dishonest, or incompetent. The Appellant failed to meet her burden.

In order to establish incompetence, the Appellant was required to establish that Jeannie's actions in settling Junior's creditor claim "were so egregious as to amount to no-win decision[s]" or amounted to the "carte blanche" execution of power. *Para-Medical Leasing, Inc., v. Hangen*, 48 Wn. App. 389, 398, 739 P.2d 717, 723 (1987).

The duty of diligence is foundational. It is a special duty required of the personal representative to exercise reasonable and ordinary skill in care and fulfilling her duties. *In re Estate of Ehlers*, 80 Wn. App. 751, 911 P.2d 1017 (1996); *Hesthagen v. Harby*, 78 Wn. 2d 934, 941, 481 P. 2d 438 (2000). The duty of diligence requires a personal representative to act in a

timely manner. She must “settle the estate ... as rapidly and quickly as possible, without sacrifice of the probate estate.” RCW 11.48.010. Thus, creditor’s claims should be administered and paid as promptly as possible. *See, Wilson’s Estate vs. Livingston, supra.*

**3. The Detailed Creditor Claim was Supported by Neutral Evidence.**

Jeannie was presented with a detailed *Creditor Claim*, with referenced exhibits, from Junior. Junior’s creditor claim stated that the property was his; and, that Senior had recorded an unauthorized Assignment. *CP 627-653*. Junior provided evidentiary support for his creditor claim, including the contract with Trunk and the HELOC secured by the Property. *Id.* Through the HELOC, Senior withdrew approximately \$28,000, thereby encumbering the property and clouding title. *Id.*

Also supporting Junior’s creditor claim was the Statutory Warranty Deed in fulfillment of the Real Estate Contract dated September 29, 2006, signed by Trunk and recorded as Pierce County Auditor File No. 200610130377. *Id.* A declaration from Trunk confirmed that he intended to transfer the property to Junior and not to Senior. This intent was confirmed by Trunk’s testimony. *RP 176:24-176:25; 177:1-177:2*. Trunk knew both Senior and Junior, stating: “[t]he distinction between the son and the father was known to me, and I unambiguously understood that the property was being sold to the son, Joseph J. L’Amarca, Jr., and not to his

father.” *Id.* Trunk also stated in the declaration that in 2006, the Real Estate Contract was paid in full and he signed and delivered a Statutory Warranty Deed dated September 29, 2006 in fulfillment of the Real Estate Contract. *Id.* He noted that it was his omission in the Statutory Warranty Deed to leave out the suffix “Jr.”. *Id.* He states that “[t]he grantee on the Statutory Warranty Deed should have correctly read ‘Joseph J. L’Amarca, Jr., a single man.’”. *Id.* He confirmed all of the above by his testimony at the hearing.

Jeannie was confronted with the very real and serious threat of having to commence an action to declare the Assignment valid and to compel Junior to deliver title of the realty to the estate, while also defending a quiet title counter-claim by Junior. She was bound to exercise sound business judgment and good faith in handling the resolution of Junior’s claim. She had nonintervention powers at the time the creditor’s claim was filed. Thus, Jeannie had the absolute power, under the statute and the provisions of the Will, to make discretionary the decisions she is under attack by the Appellant.

Pursuant to that fiduciary duty, when confronted with the creditor’s claim Jeannie was required to conduct herself in good faith and honesty in the conduct of what an ordinary prudent person would be with their own affairs. The facts as presented to Jeannie were that Trunk held title to the

property, until he delivered the fulfillment Deed in 2006 to Junior, when the payments were fully made. Accordingly, Trunk was the owner of the Property, until that time. By delivering the fulfillment Deed to Junior (as Trunk testified he did) in 2006, Trunk transferred his fee interest in the property to Junior. At the time the creditor's claim was filed, Jeannie knew, from Trunk himself, that the intention from the time the 1988 Real Estate Contract was entered into, was to convey the Property to Junior.

Courts construe deeds to give effect to the party's intent. *Newport Yacht Basin Ass'n of Condo Owners vs. Supreme NW, Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012). A court will determine the party's intent from the language of the deed as a whole, giving meaning to every word if reasonably possible. *Id.* If the language of a deed is ambiguous, extrinsic evidence may be considered to determine that intent. *Sunnyside Valley Irrig. Dist. vs. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). Extrinsic evidence includes the circumstances surrounding the making of the deed and its delivery. *See, id.* Here, Jeannie was informed that Mr. Trunk delivered the Deed with the intent of its recipient being Junior. Thus, title to the real property was vested by delivery of the deed in Junior.

The only evidence that dictated against Junior's ownership was the Assignment dated October 28, 2004. It conveyed the vendee's interest in the contract. *CP 650-651*. It in and of itself did not convey title to the

property to Senior, but made a commitment to do so. *CP 650-651*. Furthermore, there was no evidence that Trunk was informed of the Assignment.

Jeannie was informed the Assignment had not been signed by Junior and that it was a forgery. *RP 364:7-364:8; 364:17-364:22*. She coupled this fact with knowledge that her father had lied to Washington Mutual to obtain a HELOC – falsely when representing that he then owned the property when, in fact, he did not. *CP 636-641*. Senior’s misrepresentation of his ownership of the property in 2003 was not inconsistent with the idea that the Assignment had a forged signature.

An instrument dealing with real property is defective if its signature is forged. If the grantor's signature is forged, the instrument is void in the strict sense, which means that it not only passes nothing to the grantee, but is not of any effect even in the hands of a subsequent bona fide purchaser. *Hallin v. Bode*, 58 Wn.2d 280, 362 P.2d 242 (1961). Washington courts have been clear that a forged deed is void and of no legal effect, even in the hands of a bona fide purchaser. *Diimmel v. Morse*, 36 Wn.2d 344, 218 P.2d 334 (1950) (dictum); *Lewis v. Kujawa*, 158 Wash. 607, 291 P. 1105 (1930) (dictum).

The estate had little or no funds on-hand to cover costs of administration, much less creditor disputes. *CP 230-231*. After evaluating

Junior's claim (and while represented by counsel), Jeannie entered into a Settlement Agreement with Junior, which acknowledged that the line of equity was a debt of the estate and released Junior from a claim by the estate. *RP 234:18-234:24*. Jeannie determined that the property was not likely an estate asset and if litigation was pursued could be determined to belong to Junior. The Superior Court observed and noted that the settlement of Junior's creditor claim went against her own self-interest, as a beneficiary of the estate. *RP 368:16-368:24*.

**4. Jeannie L'Amarca did not Perpetrate a Fraud.**

In order to recover for fraud, the following must be proved: (1) a representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) her intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) her right to rely upon it; (9) her consequent damage. *Swanson v. Solomon*, 50 Wash. 2d 825, 828, 314 P.2d 655, 657 (1957).

In an unbroken line of Washington court decisions, the law has been that fraud is never presumed. It must be proved by clear, cogent and convincing evidence. *E.g., Dobbin v. Pac. Coast Coal Co.*, 25 Wash.2d 190, 170 P.2d 642. If, "when all the facts and circumstances are taken together,

they are consistent with an honest intent, proof of fraud is wanting.” *Brown v. Underwriters at Lloyd's*, 53 Wash. 2d 142, 145, 332 P.2d 228, 230 (1958).

Jeannie’s decision to settle junior’s creditor claim is consistent with her duties authorized by the Will and the law. There is not a scintilla of evidence to affirm that she intended to defraud the estate or the Appellant as a legatee by entering into the settlement agreement resolving Junior’s creditor claim. There is nothing fraudulent about a personal representative settling a creditor claim. It is well established settlements are strongly favored and are to be encouraged. *Haller v. Wallis*, 89 Wash.2d 539, 545, 573 P.2d 1302 (1978); *Chadwick v. Nw. Airlines, Inc.*, 33 Wash. App. 297, 300, 654 P.2d 1215, 1217 (1982), *aff'd*, 100 Wash. 2d 221, 667 P.2d 1104 (1983).

##### **5. The Settlement Agreement was Not a Fraudulent Transfer**

Washington's version of the UFTA is found at RCW 19.40.041(a)(1) and (2). In general, a fraudulent transfer occurs where an entity transfers an asset to another entity, with the effect of placing the asset out of the reach of a creditor, with either the intent to delay or hinder the creditor or with the effect of insolvency on the part of the transferring entity. Under the UFTA, a transfer is fraudulent if the debtor acted “[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor” or transferred “[w]ithout receiving a reasonably equivalent value in exchange for the transfer or

obligation.” *Thompson v. Hanson*, 168 Wash. 2d 738, 744–45, 239 P.3d 537, 539 (2009).

To prevail, the Appellant had to establish that Jeannie (a) transferred an estate assets to Junior (b) with actual intent to hinder a creditor’s ability to collect a debt, or (c) that Jeannie made the transfer assets for less than reasonably equivalent value while the estate was insolvent. RCW 19.40.041(a)(1); (a)(2); .051(a); *Klein v. Delgado*, 180 Wash. App. 1043 (2014).

Here, the plain and simple end all is that the estate is and remained solvent after Jeannie settled the creditor claim. Moreover, the Appellant was not a creditor of the estate. Even if she had been, Kartes had transferred the estate’s cash to her in 2016. The Appellant had not field any creditor claim. The UFTA does not apply to any of these facts. RCW 19.40.041.

**6. There Was No Consecutive Trust Alleged.**

Appellant’ TEDRA Petition is silent on the matter of an alleged constructive trusts. Moreover, the Appellant did not seek to obtain the Superior Court’s approval of an amendment of her Petition to include a constructive trust claim. Issues not raised at the trial court level cannot be considered on appeal. *Matthias v. Lehn & Fink Prods. Corp.*, 70 Wash.2d 541, 424 P.2d 284 (1967); *Johnson's Wholesale Plumbing, Inc. v. Holloway*, 17 Wash. App. 449, 452–53, 563 P.2d 1294, 1297 (1977)

**C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ATTORNEY FEES PURSUANT TO RCW 11.96A.150.**

**1. Standard of Review**

The Court of Appeals will not interfere with a trial court's fee determination, unless “there are facts and circumstances clearly showing an abuse of the trial court's discretion.” *In re Estate of Black*, 153 Wn.2d 152, 173, 102 P.3d 796 (2004).

**2. TEDRA confers broad discretion upon Court.**

TEDRA gives the courts “full power and authority” to proceed “in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.” *In re Estate of Black*, 116 Wn.App. 476, 483, 66 P.3d 670 (2003). In addition, RCW 11.96A.150(1) grants the court discretionary authority when making a fee award: “Either the superior court or any court on an appeal may, in *its discretion*, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any non-probate asset that is the subject of the proceedings. This court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable.”

In exercising its discretion under RCW 11.96A.150, the court may consider any and all factors that it deems to be relevant and appropriate, “which factors may need not include whether the litigation benefits the estate or trust involved.” *Cook v. Brateng*, 158 Wn.App. 777, 795, 262 P.3d 1228 (2010) *citing* RCW 11.96A.150(1).

**3. A finding of fault is not a prerequisite.**

The Court of Appeals has held that a finding of bad faith or self-dealing was not required to support an award of attorney fees. *Gillespie v. Seattle-First Nat. Bank*, 70 Wn.App. 150, 177, 855 P.2d 680 (1993). *Gillespie* confirmed that the statutory language does not require bad faith or self-dealing. Rather, fee awards are left to the discretion of the court. *Id.* at 177.

TEDRA was enacted to give the trial courts “full power and authority” to proceed “in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.” RCW 11.96A.020(2). Pursuant to TEDRA's unambiguous provisions and the case law interpreting it, a trial court is not required to make a finding of fault in order to award attorney fees and costs.

Where the trial court's findings of fact are supported by substantial evidence, they will be sustained on appeal. *Hubbard v. Medical Service*

*Corp.*, 59 Wn.2d 449, 367 P.2d 1003 (1962); *Oroville Cordell Fruit Growers, Inc. v. Minneapolis Fire & Marine Ins. Co.*, 72 Wn.2d 544, 434 P.2d 3 (1967) . The trial court is not required to make findings based on every bit of evidence offered, especially if it is undisputed. *Delegan v. White*, 59 Wn.2d 510, 512-3, 368 P.2d 682 (1962). In the present matter, the Appellant did not contest the amount of fees incurred by Jennie to defend the TEDRA Petition. Notwithstanding, the trial court had substantial evidence of the reasonableness of Jeannie’s fees. Good cause existed to grant Jeannie's motion pursuant to CR 54(d) and RCW 11.96A.150 because she was the prevailing party and the amount and rates of attorney fees requested were reasonable. *CP 523-525*.

**D. ATTORNEY FEES SHOULD BE AWARDED ON APPEAL.**

RAP 18.1 provides for the award of reasonable attorney fees or expenses incurred on review “[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses”. RAP 18.1. As was the case below, the applicable law is RCW 11.96A.150, which provides “...any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party...” In addition, “the party that substantially prevails on review” is entitled to an award of costs. RAP 14.2.

Since the trial court's award of attorney fees should be affirmed, Jeannie will have substantially prevailed in this appeal and is entitled to an

award of attorneys' fees on appeal. This is the correct result even if the case is remanded to the trial court for entry of additional findings and conclusions. *See Laue v. Estate of Elder*, 106 Wn.App 699, 25 P.3d 1032 (2001), *reconsideration denied, as amended, review denied* 145 Wn.2d 1036,43 P.3d 20.

**E. APPELLANT'S REQUEST FOR ATTORNEY FEES SHOULD BE DENIED.**

Assuming, arguendo, Appellant prevails and the trial court is reversed, The Appellant should nonetheless be denied an award of fees here. When beneficiaries are unsuccessful in litigation and primarily pursue the action for their own benefit, the court does not abuse its discretion in denying them attorney fees. *In re Estate of Ehlers*, supra, at 1017. Since Appellant unsuccessfully pursued this matter for her own benefit, she is not entitled to an award of attorney fees and her request for the same should be denied.

**IV. CONCLUSION**

Based on the foregoing, Jeannie L' Amarca respectfully requests that the Court of Appeals affirm the trial court's decision and award her attorney fees and costs incurred on appeal.

Respectfully submitted this 14<sup>th</sup> day of December, 2018.

SMITH ALLING, P.S.

*/s/ Thomas P. Quinlan*

---

Thomas P. Quinlan, WSBA #21325

Attorneys for Respondent Jeannie L'Amarca

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on December 14, 2018, I caused to be served the foregoing Brief of Respondent Jeannie A. L'Amarca to the Court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	Via: <input checked="" type="checkbox"/> E-file <input type="checkbox"/> First Class Mail <input type="checkbox"/> Overnight Mail
Kenyon E. Luce, Esq. F. Hunter MacDonald, Esq. Luce & Associates, P.S. 4505 Pacific Hwy E, Suite A Tacoma, WA 98424	<input checked="" type="checkbox"/> Email <input type="checkbox"/> First Class Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> ABC Legal Messengers
Elizabeth C. Thompson Morton McGoldrick, P.S. 820 "A" Street, Ste. 600 Tacoma, WA 98402	<input checked="" type="checkbox"/> Email <input type="checkbox"/> First Class Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> ABC Legal Messengers

Dated at Tacoma, Washington this 14<sup>th</sup> day of December 2018.

/s/ Jennifer Dravis Trettin  
Jennifer Dravis Trettin

**SMITH ALLING, P.S.**

**December 14, 2018 - 4:25 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52049-4  
**Appellate Court Case Title:** In The Matter of the Estate of: Joseph L'Amarca, Decedent  
**Superior Court Case Number:** 16-4-00578-3

**The following documents have been uploaded:**

- 520494\_Briefs\_20181214162419D2995452\_7441.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Response to Appellant Brief -FINAL.pdf*

**A copy of the uploaded files will be sent to:**

- ecthompson@bvmm.com
- hunter.macdonald@lucelawfirm.com
- jenn@smithalling.com

**Comments:**

---

Sender Name: Julie Perez - Email: julie@smithalling.com

**Filing on Behalf of:** Thomas Patrick QuinlanII - Email: tom@smithalling.com (Alternate Email: )

Address:  
1501 Dock Street  
TACOMA, WA, 98402  
Phone: (253) 627-1091

**Note: The Filing Id is 20181214162419D2995452**