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No. 53782-6-II

COURT OF APPEALS, DIV. II
OF THE STATE OF WASHINGTON

In re the Trust of
Lisa Dawn Lewis, a single adult.

Lisa Dawn Lewis and Douglas A. Schafer,
Appellants,

v.

Jennifer Mick as Trustee, Carol Rainey, and Hall & West, PS,
Respondents.

BRIEF OF APPELLANTS

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INTRODUCTION

Appellant Lisa Lewis, age 45, has a lifelong physical disability. She is alleged by some to be cognitively impaired, but has never been adjudicated as lacking legal capacity. Since her mother’s death in 2007, she has been receiving Social Security Disability Insurance (SSDI) benefits as an adult disabled since childhood and, as SSDI recipient, Medicare insurance coverage. In May of 2017 her father died in an accident, after which she became homeless. Her two sisters and attorneys for the father’s intestate estate pressured Ms. Lewis to consent to a special needs trust (SNT). Without advice of independent counsel and not fully understanding it, in August Ms. Lewis signed a page consenting to such a trust. The trust document made no reference to Ms. Lewis’s inheritance from her father’s estate. In April 2018, the superior court removed her unqualified friend as the trustee of the yet unfunded SNT, appointed a professional guardian as the trustee, and directed Ms. Lewis’s inheritance to fund that SNT. Ms. Lewis had never been served with a summons, citation, or other process to afford the court personal jurisdiction over her

or her inheritance rights.

In early 2019, attorney Douglas Schafer agreed to represent Ms. Lewis *pro bono*. After meeting with Ms. Lewis, reviewing the court records in the trust case and the estate case, inquiring of the trustee's counsel, the estate PR's counsel, and counsel for the initial trustee, Mr. Schafer filed a motion asserting that the court had lacked personal jurisdiction to fund the trust with Ms. Lewis's inheritance, so the SNT was void. He also objected to some of the trustee's actions.

Following two hearings on Mr. Schafer's motion, the Court denied it and awarded sanctions under CR 11 against Ms. Lewis and Mr. Schafer. They appeal.

The superior court record consists of:

Clerk's Papers, being 343 pages. (CP)

Transcript of hearing on April 27, 2018 (VRP1)

Transcript of hearing on May 10, 2019 (VRP2)

Transcript of hearing on June 27, 2019 (VRP3)

ASSIGNMENT OF ERROR & ISSUES

Assignment of Error #1: The superior court erred by denying Ms. Lewis's Motion to Terminate Trust.

Issue #1: Did the superior court have personal jurisdiction over Ms.

Lewis when its directed that her inheritance fund the trust?

Assignment of Error #2: The superior court erred in approving the trustee’s report and accounting, and her requested fees.

Issue #2: Should the superior court have approved the trustee’s reported actions and requested fees?

Assignment of Error #3: The superior court abused its discretion by ruling that Ms. Lewis and Mr. Schafer violated CR 11 and imposing sanctions.

Issue #3: Did the superior court abuse its discretion by ruling that Ms. Lewis and Mr. Schafer violated CR 11 and imposing sanctions?

STATEMENT OF THE CASE

Ms. Lewis, age 45, has had a lifelong physical disability—severe cervical spinal stenosis—that impairs various physical functions and significantly limits her employment opportunities. CP 112. Her mother died in 2007, and her father, Larry D. Low, died in May 2017 from a tragic accident. *Id.* She has two older sisters, Lana Prinz and Lorraine Bayless. *Id.* After her mother’s death, Ms. Lewis applied to the Social Security Administration (SSA) and began receiving “Social Security Disability Insurance (SSDI) for adults disabled since childhood” benefits based on her father’s work record. *Id.* SSA approved Ms. Lewis as capable

of managing her financial affairs so it pays her SSDI of approximately \$1,600 monthly directly to her. *Id.* Because she receives SSDI, she is covered by Medicare insurance. CP 113. Neither her SSDI nor her Medicare coverage require that she have limited resources or income. *Id.*

Before her mother's death, Ms. Lewis had been receiving Supplemental Security Income (SSI) from SSA and Medicaid (both being needs-based programs) but has not since she began receiving SSDI with Medicare insurance. CP 177, 187, 278.

Ms. Lewis had resided primarily in her father's residences, and after his death she became homeless. CP 64, 114 ¶8.

Shortly after their father's death, Ms. Lewis and her sisters met with lawyers Larry Hall and Paul Ferman of Hall & West, P.S., concerning their father's probate estate. CP 113. Ms. Lewis claims that at that meeting, Mr. Hall told her that she needed to have a trust and to pick a trustee or else she would not get anything from the estate. *Id.*

Concerning that first meeting, Mr. Ferman wrote (CP 161–62):

I have enough life experience, being married to a special education teacher and having worked with people with special needs, to quickly determine that Lisa had some sort of cognitive impairment and some emotional issues. Based on her questions, it was obvious she was having trouble following the discussion.

And Mr. Hall wrote (CP 159):

From my observations, (and my 45 years of practice), I believe

that Lisa has some sort of cognitive impairment and some emotional issues. I asked Lisa's sisters about her on multiple occasions. They confirmed that she had severe developmental delays since childhood, that she had some mental health issues and drug use history, that she had a criminal record (DUI, forgery) and a lot of fines, that she had children but had lost her parental rights, that she was getting food stamps and Medicaid, that she would lose her money each month at the casino very quickly, and that she was difficult and volatile. Based on this information, I contacted John Tracy to discuss the need to set up a special needs trust for Lisa's own protection.

And Mr. Ferman would later state to the Court (VRP2 11):

We had referred her to John Tracy because we had concerns about handing her a bunch of money given that she had creditors, given at the time she was receiving Medicaid. All these factors and what her sisters told us. We suggested she go see John Tracy.

Ms. Lewis asserts that Mr. Hall or Mr. Ferman later directed her to meet with lawyer John Tracy who they said would prepare a trust. CP 113. She did so in late July accompanied by her trusted friend, Michael Torrell. *Id.* Mr. Tracy asserts that he was asked by a Hall & West attorney to prepare a special needs trust for Ms. Lewis. CP 117. Mr. Tracy agreed to represent Mr. Torrell, who Ms. Lewis requested be the trustee of the trust. *Id.* A week later, Mr. Torrell and Ms. Lewis returned to Mr. Tracy's office and signed pages 9 and 10, respectively, of a 11-page trust document. CP 6–16. Ms. Lewis signed below a sentence reading “APPROVED by the Beneficiary on the 02 day of August, 2017.” Beneath her signature line she was identified as the “Beneficiary & Grantor” and she was so

identified in the first sentence of the trust document. CP 7, 15. Ms. Lewis later asserted, “I did not carefully read that document, but I saw that it named Michael as the trustee, and I trusted Michael. So I just went along with the lawyers’ directions. However, I never was directed to sign, and I never did sign, any document that assigned to that trust my inheritance rights in my father’s estate.” CP 114.

The trust document (CP 6–16) makes no reference at all to the Estate of Larry D. Low or specifically to Ms. Lewis’s vested property rights in that estate. Under its paragraph 1.1, titled “Trust Property,” it states “The Grantor may assign to the Trustee all right, title, and interest in any property at any time.” The document’s numbered paragraphs contain no reference to any “Schedule A” yet appended to it is an unnumbered eleventh page reading “Lisa Dawn Lewis Special Needs Trust, Schedule A, \$_____” with no amount or property shown. Neither the record in this trial court proceeding nor the record in the Estate of Larry D. Low, the trial court’s case no. 17-4-00501-0, contained any document by which Ms. Lewis assigned her inheritance property rights from that estate to this trust. CP 114.

On August 4, 2017, Mr. Tracy, on behalf of his client Mr. Torrell, commenced this judicial proceeding and filed a motion and declaration seeking court approval of the unfunded trust. CP 2. On August 11, 2017,

superior court Judge Kevin Hull heard that motion and entered an order stating, “the Special Needs Trust of LISA DAWN LEWIS is approved.” Ms. Lewis was not served with any summons, citation, or other process before that hearing, and did not attend it. CP 114.

By March 2018, it became known that Mr. Torrell had a past criminal conviction that disqualified him from serving as a trustee. CP 21. Mr. Tracy withdrew from the trust proceeding. CP 19. On March 22, 2018, certified professional guardian Jenifer Mick, represented by attorney Carol Rainey, filed a motion to remove Mr. Torrell and to appoint Ms. Mick as trustee of the trust. CP 20–30. The motion stated that the trust, as yet unfunded, had been created to receive Ms. Lewis’s inheritance of approximately \$65,000 from her father’s estate to preserve her eligibility to receive governmental benefits. CP 20–21. That motion was heard by superior court Judge Sally Olsen on April 27, 2018. CP 58–60.

Though Ms. Lewis was not served with a summons, citation, or other judicial process, she appeared at that hearing. CP 114. At the outset of the hearing, Ms. Lewis requested its continuance, stating, “I need legal representation, because I do not feel that I’m being treated fairly.” The court denied her request. VRP1 2–4.

Ms. Mick’s motion did not suggest that the trust document be restated (CP 20–21), nor was that suggested in the hearing (VRP1 2–7), but the

court entered Ms. Rainey’s proposed order with a finding that: “The Trust should be restated by the court this date so that the Successor Trustee has adequate and appropriate powers to execute her duties under the Trust.” CP 59. The Court then executed and filed a restated trust document (CP 48–57) that made no changes from the original trust document to the trustee’s powers and duties, but that changed its Schedule A to list “Inheritance from Estate of Larry Dean Low, Kitsap County Cause No. 17-4-00501-0.” The restated trust document continued to name Ms. Lewis as the trust’s “Grantor” on its cover page and initial sentence, but bore no signature of Ms. Lewis consenting to it. *Id.*

The newly appointed trustee, Ms. Mick, then assumed Ms. Lewis vested rights as an heir of her father’s estate and executed a TEDRA agreement approving its administration and proposed distributions. CP 126–132. On June 1, 2018, Ms. Mick received nearly \$61,000 from that estate as Ms. Lewis’s inheritance, thereby funding the trust. CP 85. The previous day, attorney Jaime Huff replaced Ms. Rainey as Ms. Mick’s counsel. CP 61.

In January 2019, Ms. Lewis sought legal representation by Mr. Schafer. CP 253. He reviewed some court files from the trust case and the estate case, met with her on February 6, and agreed to represent her *pro bono*. *Id.* On that date, he requested of Ms. Huff copies of her records

concerning the trust and the estate, and spoke by phone with her expressing his concerns about the court's jurisdiction. *Id.* Ms. Huff referred Mr. Schafer to the court files, but the next day emailed him a copy of an unfiled estate accounting that she had just received from Ms. Rainey. *Id.* Ms. Huff's law partner, Karen Richmond, responded to Mr. Schafer by a letter (CP 275–76) stating:

If you have an issue with how or why the special needs trust was created, it would be brought against the estate, not Ms. Huff or Ms. Mick. Neither of them can provide you with any information that might assist in such a claim, as they were not involved. Their sole responsibility is to see that the trust is properly administered, not to question its creation.

....

If you have an issue with the administration of the trust, which was not at all evident from any of your communications, please bring the appropriate petition. If not, please direct your inquiries or claims to those who actually can assist you, as we cannot. Please do not expect any further information from us unless you have brought an appropriate petition on matters for which we are responsible and discovery is ordered by the court.

After reviewing the court-filed documents and the accounting, on February 19 Mr. Schafer emailed Mr. Tracy (CP 277) to inquire (1) if he or any other lawyer had represented Ms. Lewis, (2) if she ever assigned her inheritance to the trust, and (3) if she was ever served with legal process for the trust case. Mr. Tracy replied by letter dated February 20 (CP 117), answering each item negatively. On February 22, Mr. Schafer emailed Mr. Tracy a follow-up message (CP 278–79) requesting what

information he was given, and by whom, indicating that a special needs trust (SNT) was appropriate for Ms. Lewis. He never responded. (CP 274)

Also on February 19, Mr. Schafer sent an email (CP 280–81) to Mr. Ferman requesting (1) if Ms. Lewis was ever served with legal process for the trust case, (2) if she was ever represented by counsel to advise her concerning the trust, (3) if she ever assigned her inheritance from her father’s estate to the trust, and (4) of any evidence that she was mentally incapacitated. Mr. Ferman responded the next day by email (CP 282–83) stating that Ms. Lewis herself had applied for court approval of the trust while being represented by Mr. Tracy. That claim was contrary to the court records (CP 2) and contrary to Mr. Tracy’s letter (CP 117). Mr. Ferman did not address Mr. Schafer’s other requested items except stating his understanding that Ms. Lewis has “some cognitive disability, for which she receives permanent disability benefits.” CP 283.

On April 23, 2019, Ms. Huff noted a hearing on May 10 for approval of Ms. Mick’s trust report and accounting, and on May 2 filed such a report and accounting. CP 83–88, 309–43.

On May 2, 2019, Mr. Schafer filed (1) a notice of appearance as counsel for Ms. Lewis, (2) a Motion to Terminate Trust, (3) a Declaration of Lisa Dawn Lewis, (4) an Objection to Trustee’s Accounting, (5) a note for hearing on May 10, and (6) proof of the service upon Ms. Huff of

those documents. CP 92–135. In the motion, Mr. Schafer argued that because Ms. Lewis had never been served with a summons, citation, or other judicial process, the court lacked personal jurisdiction over Ms. Lewis, so its rulings that placed her vested inheritance in trust under Ms. Mick’s and the court’s control were void. CP 96–97.

At the May 10 hearing, Mr. Schafer, Ms. Huff, and Mr. Ferman appeared. VRP2. Ms. Huff had not filed a response to Mr. Schafer’s pleadings, and twice stated that Ms. Mick does not take a position on whether the trust remains or not. VRP2 3–4. Mr. Schafer objected to Mr. Ferman’s participation because he represented no party and therefore lacked standing. VRP2 8. Mr. Schafer argued that the only parties to the case were his client and the trustee, Ms. Mick. VRP2 9. The Court admonished Ms. Huff for not having responded to Mr. Schafer’s pleadings and directed written responses by her, Mr. Ferman, Ms. Rainey, and Mr. Tracy. VRP2 12. The Court stated about Mr. Schafer’s pleadings, “He’s raising constitutional issues that concern me,” (VRP2 7) and stated to him, “And because the court has concerns about issues that you’ve raised in your very materials, is why I want this thoroughly briefed.” VRP2 13. The Court directed counsel then present to schedule a two-hour hearing, and they did so for June 17, 2019. VRP2 12, CP 137.

Ms. Rainey filed a response on June 7 arguing that Ms. Lewis had

consented to court's personal jurisdiction by signing her consent to the original trust document and by not raising a personal jurisdiction objection when she appeared at the April 27, 2018 hearing at which Ms. Mick was appointed. CP 138–140.

Ms. Huff on June 12 filed a response that addressed the personal jurisdiction issue by merely asserting that because Ms. Lewis had signed the original trust document she subjected herself to the jurisdiction of the court. CP 180–84. Ms. Huff also asserted that if the trust terminates, DSHS will require payment of a nearly \$42,000 Medicaid lien (CP 182), and filed a copy of an email to that effect from DSHS financial recovery revenue agent Kenneth Washington.¹ CP 193.

Hall & West, P.S. attorney Larry Hall on June 11 filed a Memorandum of Law² that addressed the personal jurisdiction issue. CP 145–57. He asserted (CP 145 n.1) that “By joining the petition as Grantor to establish a self-imposed special needs trust, Ms. Lewis invoked the court's jurisdiction, and cannot now claim otherwise.” But Ms. Lewis had not joined any petition or motion to the Court. CP 2, 20. Mr. Hall cited

¹ Mr. Washington later clarified by email to Mr. Schafer that “There is no law indicating that the client without a SNT would have to payback Medicaid if she received her inheritance however the client would be ineligible for Medicaid benefits if they were over the resource limit.” CP 285. Mr. Schafer asserts that if the SNT is ruled void, DSHS could not attempt to recover on its lien until Ms. Lewis's death. CP 205–06, 256–57.

² The next day, June 12, Mr. Hall filed a slightly edited version of his Memorandum of Law. CP 164–176. Citations are to the first Memo except for passages changed in the second Memo.

cases to support his argument that “Lisa consented expressly to the court’s jurisdiction by signing as Grantor and agreeing to and accepting the Special Needs Trust created for her benefit,” and that by appearing at the hearing on the appointment Ms. Mick and not objecting to the court’s jurisdiction, Ms. Lewis waived that objection. CP 152–53. Mr. Hall described Mr. Schafer’s pleadings as “frivolous” and “nonsense.” CP 146, 176.

Much of Mr. Hall’s Memorandum of Law was devoted to vilifying Ms. Lewis. “From their own observations, [attorneys Hall and Ferman] determined that Lisa certainly appeared to have some obvious cognitive impairment and mood disorder.” CP 147. “That Lisa has some sort of cognitive delay is obvious within minutes of talking to her.” CP 149. “It is the opinion of this attorney, and Lisa’s sisters, that Lisa straddles the border of competency, and would likely benefit from having a guardian appointed for her.” CP 174. “Lisa’s entire motion is factually supported by the written declaration of a mentally ill person previously convicted of forgery, who is entirely unreliable.” CP 175.

Messrs. Hall and Ferman on June 11, also filed their own Declarations³ (CP 158–60, 161–63), passages from which disparaging Ms.

³ Mr. Ferman’s Declaration was unsigned but bore a note that he would sign and file it upon his return from a trip. It referred to attached email messages, but none were attached. After the hearing on June 17, he filed a signed copy of his Declaration with the email messages attached. CP 225–37..

Lewis are quoted above, beginning at page 5. In addition, Mr. Hall wrote, “I told her sister, Lana (in front of Lisa) that I did not believe Lisa was competent to manage her affairs.” CP 160. Mr. Ferman wrote that he confirmed Mr. Hall made that comment and that “I would agree with his assessment.” CP 163.

On June 11, Mr. Hall also filed a Motion for Sanctions under CR 11 against Ms. Lewis and/or Mr. Schafer requesting they be ordered to pay Hall & West, P.S. attorneys’ fees for their time incurred in responding to the Motion to Terminate Trust. CP 143–44. The motion stated that an accounting of such time accompanied it, but no such accounting was filed. *Id.*

On June 14, Mr. Schafer filed a Reply to the multiple responses to the motion to terminate the trust. CP 197–217. He noted the contradiction in Messrs. Hall and Ferman asserting that Ms. Lewis was cognitively impaired and incompetent to manage her affairs, but nonetheless asserting that her signature on the original trust document constitutes her agreement to the court’s jurisdiction over her and her inheritance. CP 198–99. Mr. Schafer addressed the personal jurisdiction issue by distinguishing the five appellate cases that the respondents had cited, and asserted that his position was supported by eight appellate cases that he discussed. CP 199–205. Concerning Ms. Huff’s assertion of a Medicaid lien, Mr. Schafer

asserted that Federal and state law generally restricts recovery of Medicaid funds to only from the estates of deceased former recipients, though WAC 182-516-0120 permits recovery at the termination of a self-settled special needs trust. CP 205. However, if Ms. Lewis's trust was void (or its funding void) due to the jurisdictional defect, then that provision ought not apply. *Id.*

Concerning the actions of the trustee, Ms. Mick, in the Reply Mr. Schafer faulted her for failing to investigate and determine just what governmental benefits Ms. Lewis was receiving,⁴ since the trust document directed the to provide for Ms. Lewis' needs beyond those provided to her by governmental need-based programs. CP 206–09. Mr. Schafer observed that Ms. Mick's position was that some law barred her from paying for food or housing for Ms. Lewis, but that no such law appears to exist. *Id.*

Mr. Schafer's Reply opposed the Motion for Sanctions as plainly unwarranted. CP 210.

On June 17, 2019, Judge Olsen resumed the hearing on Ms. Lewis's Motion to Terminate Trust. VRP3. Following arguments by Ms. Huff, Mr. Ferman, Ms. Rainey, and Mr. Schafer, Judge Olsen denied the motion and

⁴ At n.1 on CP 207, Mr. Schafer speculated that Ms. Lewis' modest Medicare premiums and copays were being paid under a State-Funded Medicare Buy-in Program. He recently visited a DSHS office with her and confirmed that Ms. Lewis recognizes that she will lose eligibility for that state-funded program if she receives her inheritance, but is okay with that. If she invests most of her inheritance funds in exempt assets, such as a mobile home and vehicle, she may again become eligible for that state-funded program.

approved Ms. Mick's report and accounting. CP 238. Then Judge Olsen granted Mr. Hall's motion for sanctions ruling that the motion to terminate trust lacked merit and violated CR 11. CP 239–41. The sanctions order recited, incorrectly, that "Petitioner's counsel was advised prior to filing that this position has no basis in law or fact" and that "Petitioner's counsel was advised prior to filing his petition that the filing of the petition and the relief he sought could harm his client." CP 240. Nothing in the record supports those assertions. The sanctions order recited that the attorney for the trustee and attorneys of Hall & West had submitted records of their time and fees responding to the motion (*Id.*), though there is no evidence in the record of any such submissions. Instead, Ms. Huff, Mr. Ferman, and Ms. Rainey told Judge Olsen that their fees for responding to Mr. Schafer were \$4,670, \$4,013, and \$900, respectively. VRP3 33–34. Judge Olsen then ordered Ms. Lewis' trust to pay, as a CR 11 sanction, \$2,000 each to Ms. Huff and to Hall & West, and \$900 to Ms. Rainey. CP 240.

Ten days later, on June 27, Ms. Huff's law firm, Richmond & Richmond, Ltd., filed a Motion for Reconsideration (CP 245–50), joined by Mr. Ferman and Ms. Rainey, requesting that the court modify the CR 11 sanctions order to impose their requested attorney fees against Mr. Schafer rather than the trust. The motion alleged, wrongly (VRP3 33–36), that at the June 17 hearing the court initially had awarded all their attorney

fees against Mr. Schafer, but because he stated that he would be appealing such an award, the court cut their requested fees and awarded them against the trust. CP 246. The motion represented that the attorneys would defend any appeal without charge to the trust and would seek to collect their fees only from Mr. Schafer. *Id.* Richmond & Richmond also filed a separate declaration with that representation. CP 242. On July 3, Judge Olsen entered an order for Mr. Schafer to respond to the motion. CP 243.

On July 11, Mr. Schafer filed a response to the motion for reconsideration. CP 251–87. He denied opposing counsel’s colorful allegations that he had engaged in a tantrum and bullying-like behavior to reverse a sanctions award at the prior hearing. CP 251. Mr. Schafer asserted that the motion failed to meet the requirements under CR 59 for reconsideration. CP 252. He asserted that Mr. Hall, Mr. Ferman, and Ms. Rainey were not parties, but were fact witnesses who were ordered by the court on May 10 to respond to factual allegations, and thus not entitled to attorney fees. CP 252–53. As a non-party, Mr. Hall lacked standing to have filed his motion for sanctions. *Id.* Mr. Schafer detailed the steps he had taken to satisfy his CR 11 due diligence obligations prior to filing the motion to terminate the trust. CP 253–56. Mr. Schafer informed the court of DSHS revenue agent Washington’s confirmation that Ms. Lewis’s inheritance would not have been subjected to Medicaid recovery had she

received it directly, rather than to a SNT. CP 256–57. Mr. Schafer asserted that a ruling that the SNT was void would avoid Medicaid recovery. *Id.*

In the response to the motion for reconsideration, Mr. Schafer re-asserted that the court and trustee treated Ms. Lewis’s case, procedurally, the same as a guardianship and sometimes referred to it as such. CP 257. As further evidence, the case title on all opposing counsel pleadings and court orders subsequent to the July 17 hearing read “In re the Guardianship of: LISA DAWN LEWIS, An Incapacitated Person.” CP 242, 243, 245, 288.

On August 15, 2019, Judge Olsen entered an order modifying her July 17 sanctions order by ordering, for violating CR 11, Mr. Schafer, instead of the trust, to pay \$2,000 to Hall & West, and to pay \$900 to Ms. Rainey. CP 288.

On September 13, 2019, Ms. Lewis and Mr. Schafer filed a notice of appeal. CP 290–97. On October 1, Richmond & Richmond, counsel for the trustee, filed a notice of cross-appeal.

STANDARD OF REVIEW

The standard of review is de novo. Because a judgment or order is void if entered without personal jurisdiction, appellate courts review de novo whether a judgment or order is void. *Castellon v. Rodriguez*, 4 Wn.

App. 2d 8, 14, 418 P.3d 804 (2018); *ShareBuilder Sec. Corp. v. Hoang*, 137 Wn. App. 330, 334, 153 P.3d 222 (2007). And absent disputed facts, a claim of waiver of personal jurisdiction is also reviewed de novo.

Castellon at 15.

Appellate courts review a trial court's imposition of CR 11 sanctions for abuse of discretion. A trial court abuses its discretion if its order is manifestly unreasonable or based on untenable grounds or an erroneous view of the law. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993).

ARGUMENT

1. The superior court did not have personal jurisdiction over Ms. Lewis when it directed that her inheritance fund the trust.

A court lacks jurisdiction to adjudicate, alter, or revoke an individual's legal property rights unless the individual has been personally served with a summons or other judicial process. *Painter v. Olney*, 37 Wn.App. 424, 427, 680 P.2d 1066 (1984) ("First and basic to any litigation is jurisdiction. First and basic to jurisdiction is service of process.") An adjudication of the rights of an heir in a probate estate requires that the court have personal jurisdiction over that heir. In *In re Estate of Kordon*, 157 Wn.2d 206, 210, 137 P.3d 16 (2006), the unanimous court stated:

“A citation is equivalent to a civil summons, conferring personal jurisdiction over a party to a will contest. *See In re Estate of Wheeler*, 71 Wash.2d 789, 795, 431 P.2d 608 (1967). *See also In re Murphy’s Estate*, 98 Wash. 548, 553, 168 P. 175 (1917) (“A citation is the process designated by the statute in probate proceedings for bringing adverse parties into court. It is the counterpart of the summons in ordinary civil proceedings.”). **“Proper service of process is essential to invoke personal jurisdiction over a party.”** *In re Marriage of Markowski*, 50 Wash. App. 633, 635–36, 749 P.2d 754 (1988). Accordingly, under RCW 11.24.020, ***failure to issue a citation deprives the court of personal jurisdiction over the party denied process***”. [Emphasis added]

It is undisputed that Ms. Lewis never was served with a summons, citation, or other judicial process that would afford the superior court personal jurisdiction over her.

Ms. Lewis’s father owned real estate, and under RCW 11.04.250 it vested immediately upon his death intestate in her and her sisters as his heirs. Undeniably, Ms. Lewis possessed a legal property right to receive, directly, her rightful one-third share of her deceased father’s estate. The superior court’s rulings directed or authorized Ms. Mick to abrogate Ms. Lewis’s property rights and to *convert* her vested property into a trust under only Ms. Mick’s and the court’s control. Absent personal jurisdiction over Ms. Lewis, those rulings are void. ***Marley v. Dep’t of Labor & Indus.***, 125 Wn.2d 533, 541, 886 P.2d 189 (1994); ***Mid City Materials, Inc. v. Heater Beaters Custom Fireplaces***, 36 Wn.App. 480, 486, 674 P.2d 1271 (1984).

There is firmly established case law in Washington state that court proceedings approving guardianships, minors' settlements, and similar cases are *void* when the court has lacked personal jurisdiction over the individual whose property rights are affected. In *In re Teeters*, 1933, 173 Wash. 138, 21 P.2d 1032 (1933), the supreme court ruled void the trial court's appointment of a mother as guardian for her 16-year-old daughter because the court lacked personal jurisdiction over the daughter. *Teeters* has been consistently followed by our appellate courts. *In re Guardianship of McGill*, 33 Wn.App. 265, 654 P.2d 705 (1982)(minors' settlement was void); *In re Guardianship of Bouchat*, 11 Wn.App. 369, 522 P.2d 1168 (1974)(guardianship was void); *In re Guardianship of Whitish*, 47 Wn.2d 652, 289 P.2d 340 (1955)(minors' settlement was void); *Grady v. Dashiell*, 24 Wn.2d 272, 163 P.2d 922 (1945) (orders in guardianship case were void).

Courts have a nondiscretionary duty to vacate void orders or judgments. *Leen v. Demopolis*, 62 Wn.App. 473, 478, 815 P.2d 269 (1991), *review denied*, 118 Wash.2d 1022, 827 P.2d 1393 (1992); *In re Marriage of Markowski*, 50 Wn.App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wn.App. 517, 520, 731 P.2d 533 (1987).

In the lower court, respondents argued that Ms. Lewis waived her

personal jurisdiction claim by having signed the original unfunded trust document and by physically appearing at the April 23, 2018 hearing. In support, they cited several cases, all of which are readily distinguishable.

Respondents cited *Svatonsky v. Svatonsky*, 63 Wn.2d 902, 905, 389 P.2d 663 (1964), but that case involved no personal jurisdiction claim. Ms. Svatonsky claimed that in her earlier divorce the court had exceeded its jurisdiction by transferring certain marital property, pursuant to her and her former husband's stipulation, to her former mother-in-law. The supreme court held that the doctrine of estoppel precluded her attacking the divorce decree.

Respondents cited *In re Marriage of Steele*, 90 Wn.App. 992, 997-98, 957 P.2d 247 (1998), in which a party asserting a personal jurisdiction claim had previously joined his former wife in a petition to the court to modify its prior divorce decree. Because he had sought that affirmative relief, he waived his claim that the court lacked personal jurisdiction over him. That case is distinguishable for Ms. Lewis never filed or joined in any petition or motion to the court seeking affirmative relief.

Respondents cited *Ghebreghiorghis v. Dep't of Labor & Indus.*, 92 Wn.App. 567, 573, 962 P.2d 829 (1998), in which a woman sought surviving spouse benefits from the death of her former husband, claiming that the divorce decree that she had petitioned for was void because the

divorce court actually lacked of personal jurisdiction over her former husband. Among several other reasons, the appellate court applied the doctrine of estoppel to bar her attacking the divorce decree. This case plainly is distinguishable from Ms. Lewis's claim.

Respondents cited *NW Cascade, Inc. v. Unique Constr., Inc.*, 187 Wn.App. 685, 694, 351 P.3d 172 (2015). In that case "by failing to raise the personal jurisdiction defense in their answer and in their appearance at the hearing, the Rehes waived that defense and submitted themselves to the trial court's jurisdiction." Ms. Lewis did not file an answer or other pleading in which procedural court rules required her to assert or waive her personal jurisdiction defense.

In contrast to the foregoing cases cited by the opposing lawyers, ample case law indicates that Ms. Lewis' personal jurisdiction claim is well-founded. The well-established law recently was stated in *In re Estate of Tuttle*, 45917-5-II (Wn.App. August 11, 2015)(unpublished):

"First and basic to any litigation is jurisdiction. First and basic to [personal] jurisdiction is service of process." *Scott v. Goldman*, 82 Wn.App. 1, 6, 917 P.2d 131 (1996) (quoting *In re Marriage of Logg*, 74 Wn.App. 781, 786, 875 P.2d 647 (1994)).

Proper service of process has both constitutional and statutory elements. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). ...

Once Hicklin challenged the service of process, and consequently the trial court's personal jurisdiction over her, Anderson bore the burden of establishing proper service and the trial court's personal jurisdiction over Hicklin.

....

Actual notice is insufficient to confer jurisdiction on the trial court. *Logg*, 74 Wn.App. at 784; see *In re Estate of Harder*, 185 Wn.App. at 384. Indeed, accepting Anderson’s actual notice argument essentially eliminates the statutory service of process requirements, contradicting a long line of Supreme Court precedent, recently reaffirmed, that service of process has both constitutional and statutory elements. *Scanlan*, 181 Wn.2d at 847.

As stated in *Steele*, a person who files a motion seeking affirmative relief from a court cannot then claim that the court lacks personal jurisdiction over them. In *Kuhlman Equipment Co. v. Tammermatic, Inc.*, 29 Wash.App. 419, 628 P.2d 851 (1981), the court held that the defendant waived the of lack of personal jurisdiction by seeking affirmative relief from the trial court in the form of a permissive third party cross-claim. That appellate opinion quoted favorably the following passage from *Globig v. Greene & Gust Co.*, 193 F.Supp. 544, 549 (E.D.Wis. 1961):

“[A] party, when he counterclaims, cross-claims, or impleads a third party, is seeking affirmative relief and is thereby invoking the jurisdiction of the court. He cannot at the same time deny that jurisdiction.”

But the state supreme court in 1991 emphasized that a *waiver of personal jurisdiction* by requesting affirmative relief *only arises by filing an actual motion*. In *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234 (1991), the court held that the defendant, Morris, did not waive his

defense of lack of personal jurisdiction by having filed a memorandum of law in opposition to the French's motion for summary judgment, even though in that memorandum Morris asserted that he was entitled to a summary judgment of dismissal. The court found that not to be a waiver of his lack of personal jurisdiction defense, writing at 591:

“Here, as in *Meadowdale* [*Meadowdale Neighborhood Comm. v. Edmonds*, 27 Wash. App. 261, 616 P.2d 1257 (1980)], Morris requested dismissal of one of French's claims in response to French's motion. The record contains no written motion nor motion entry by the court clerk. There is no record of the arguments made at the hearing on French's motion. Thus, as the Court of Appeals correctly concluded, under *Meadowdale*, Morris's request for dismissal of French's CPA claim constituted neither a motion under CR 12 nor a waiver of the insufficient service defense.”

In *Lybbert v. Grant Cnty., State of Wash.*, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000), the state supreme court defined the doctrine of waiver as applied to a personal jurisdiction defense:

Under the doctrine, affirmative defenses such as insufficient service of process may, in certain circumstances, be considered to have been waived by a defendant as a matter of law. The waiver can occur in two ways. It can occur if the defendant's assertion of the defense is inconsistent with the defendant's previous behavior. *Romjue*, 60 Wash.App. at 281, 803 P.2d 57. It can also occur if the defendant's counsel has been dilatory in asserting the defense. *Raymond v. Fleming*, 24 Wash.App. 112, 115, 600 P.2d 614 (1979) (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1344, at 526 (1969)), review denied, 93 Wash.2d 1004 (1980).

At 44, the court described dilatory conduct that waives a personal

jurisdiction defense:

[T]he County failed to preserve the defense by pleading it in its answer or other responsive pleading before proceeding with discovery. Instead, it engaged in discovery over the course of several months and then, after the statute of limitations had apparently extinguished the claim against it, it asserted the defense. *French* does not remotely stand for the proposition that it is acceptable for a defendant to lie in wait, engage in discovery unrelated to the defense, and thereafter assert the defense after the clock has run on the plaintiff's cause of action.

And at 43, the court stressed that appearing in a case does not waive a personal jurisdiction defense:

It is also of no significance to our waiver analysis that the notice of appearance, filed by one of the attorneys for the County, included a statement that counsel was appearing "without waiving objections to improper service or jurisdiction." CP at 13. That is so because we have said that the mere appearance by a defendant does not preclude the defendant from challenging the sufficiency of service of process. *Adkinson v. Digby, Inc.*, 99 Wash.2d 206, 209, 660 P.2d 756 (1983); see also *Matthies*, 19 Wash.App. at 4, 573 P.2d 1332.

In *In re the Marriage of Markowski*, 50 Wn.App. 633, 749 P.2d 754 (1988), the court applied this established law to a father's claim that a judgment entered a year earlier was void for lack of personal jurisdiction:

Mrs. Markowski argues even if service was technically improper, Mr. Markowski should be deemed to have waived his defense of lack of jurisdiction. She maintains he consented to jurisdiction, and should now be estopped from denying that jurisdiction. We find her argument without merit. ***His "living with" the void decree for 1 year, payment of his court-ordered child support, and attempts to visit his children pursuant to the court-ordered visitation, do not rise to the level of consent to or waiver of jurisdiction.*** While it is true one may waive the jurisdictional

argument by proceeding to argue a case on its merits without asking for an immediate ruling on jurisdiction, *In re Marriage of Maddix*, 41 Wash.App. 248, 251, 703 P.2d 1062 (1985), this rule has no application here where Mr. Markowski did not appear and defend. It is also true that even though a decree is void, a party who procures such a decree or consents to it is estopped to question its validity where he has obtained a benefit therefrom, or has concurrently invoked the court's jurisdiction in order to gain affirmative relief. *Svatonsky v. Svatonsky*, 63 Wash.2d 902, 389 P.2d 663 (1964); *Livingston v. Livingston*, 43 Wash.App. 669, 672, 719 P.2d 166 (1986); *Bauer v. Bauer*, 5 Wash.App. 781, 792-94, 490 P.2d 1350 (1971). This rule also does not apply here. ***Mr. Markowski cannot be said to have consented to entry of the decree; nor did his challenge to Mrs. Markowski's attempts to limit his visitation rise to the level of consent or waiver.*** We hold the default judgment void; it was error to deny Mr. Markowski's motion to vacate. [Emphasis added.]

And a recently published case, *Castellon v. Rodriguez*, 4 Wn. App. 2d 8, 14, 418 P.3d 804 (2018), specifically addresses conduct that does not waive of a party's personal jurisdiction defense:

[¶ 15] The Castellons argue that, regardless of the validity of service, Mr. Rodriguez has waived this issue. Under the superior court civil rules, a defendant will waive the defense of personal jurisdiction if it is not raised in a responsive motion or pleading. CR 12(h)(1). However, ***waiver does not occur merely by virtue of a defendant's voluntary appearance in court.*** CR 4(d)(5); *Kuhlman Equip. Co. v. Tammermatic*, 29 Wn.App. 419, 422, 628 P.2d 851 (1981) (court rules "have abolished the distinction between special and general appearances"). In addition to the waiver standards set by court rule, Washington courts recognize common law waiver if a defendant acts in a manner inconsistent with a jurisdictional defense or is dilatory in asserting the defense. *Lybbert v. Grant County*, 141 Wn.2d 29, 39, 1 P.3d 1124 (2000). ...

[¶ 16] Here, Mr. Rodriguez never waived his personal jurisdiction defense pursuant to the terms of the court rules. Although Mr. Rodriguez made two court appearances prior to

entry of judgment, he never filed a responsive pleading or motion. Mr. Rodriguez first raised his personal jurisdiction defense in his motion to vacate judgment. Prior to that time, **Mr. Rodriguez never sought any form of substantive relief from the court** or any other party. Given these circumstances, the court rules permit Mr. Rodriguez to assert a personal jurisdiction defense.

[¶ 17] The record also lacks evidence of common law waiver. **Mr. Rodriguez never took any action inconsistent with his personal jurisdiction defense, such as making a request for affirmative relief.** When Mr. Rodriguez appeared in court in September 2016, he merely requested an interpreter and responded to the court's inquiries. This conduct was responsive, not affirmative. Waiver does not occur in such circumstances. *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234 (1991) (memorandum filed in response to motion for summary judgment in which defendant claimed to be entitled to dismissal was insufficient to waive personal jurisdiction); *Negash v. Sawyer*, 131 Wn.App. 822, 826-27, 129 P.3d 824 (2006) (limited appearance with no request for affirmative relief was insufficient to waive personal jurisdiction defense). **Nor was Mr. Rodriguez particularly dilatory in asserting his personal jurisdiction defense.** The concern regarding dilatory conduct is that a defendant will lie in wait and mask the problems with service of process until after expiration of the statute of limitations. *Lybbert*, 141 Wn.2d at 40, 1 P.3d 1124. Such concerns are not present here. Mr. Rodriguez is a monolingual Spanish speaker. **During the period prior to his assertion of lack of personal jurisdiction, Mr. Rodriguez was unrepresented by counsel.** The Castellons have not pointed to any tactical advantage Mr. Rodriguez could have gained by delaying his personal jurisdiction defense. Given these circumstances, Mr. Rodriguez should not be prohibited from raising his personal jurisdiction claims by the doctrine of common law waiver. [Emphasis added.]

Based on the foregoing case law, Ms. Lewis's claim that the court lacked personal jurisdiction over her and her vested inheritance is valid, and Court's orders are void.

Respondents contend that Ms. Lewis's signature on page 10 of the original trust document constitute her legally binding consent to the superior court's jurisdiction over her. But she signed that under duress without advice of independent counsel or fully understanding it its effect. In her declaration under penalty of perjury she asserted (CP 113), "**Mr. Hall told me that I needed to have a trust and to pick a trustee or else I would not get anything from the estate.**" Obviously, that alleges that her signature on that page 10 was the result of coercion or duress from the lawyer handling her father's estate. It is well established under the law that an alleged consent caused by coercion or duress is not a valid consent. *E.g.*, Unif. Adoption Act (1994) §§ 3-704, 2-409. Trusts established under duress or coercion are voidable. 1 Scott & Ascher on Trusts §4.6.2; 4 Scott on Trusts § 333.3. Under RCW 26.33.160(3) a consent to adoption may be revoked if caused by duress. Under RCW 11.98.108, a beneficiary's consent to a trustee actions is valid only if the beneficiary knew their rights and all the relevant facts. Property agreements between persons contemplating marriage, or even after marriage, that are tainted with coercion or duress are routinely ruled void. In fact, our case law generally requires each such party to be advised by their own independent counsel concerning their rights and the effect of such a property agreement. *E.g.*, ***In Re Marriage of Matson***, 107 Wn.2d 479, 730 P.2d

668 (1986). These public policies ought to apply to an heir who is coerced into signing a consent to a special needs trust receiving her own vested inheritance. During the hearing on May 10, both Ms. Huff and Mr. Ferman appeared to recognize that Ms. Lewis should have been advised by her own counsel when presented with the trust, because they both then asserted, *mistakenly* however, that she was then being represented by Mr. Tracy. VRP2 7, 13. Accordingly, Ms. Lewis's signature on the original unfunded trust document should not defeat her claim that the court, when directing her inheritance into the trust, lacked personal jurisdiction over her.

2. The superior court should not have approved the trustee's reported actions and requested fees.

Ms. Lewis timely objected (CP 107) to Ms. Mick's report and accounting by asserting that she wrongfully assumed control and custody of Ms. Lewis's inheritance, and that in doing so she failed to protect Ms. Lewis's interest. CP 206–07. Ms. Lewis faulted Ms. Mick for failing to investigate and determine exactly what, if any, needs-based benefits Ms. Lewis was receiving or entitled to, yet refusing to pay for Ms. Lewis's food or shelter on the unfounded belief that doing so would disqualify her from significant benefits. CP 208–09.

The trust document directed the trustee to provide for Ms. Lewis's needs over and above those paid for by governmental agencies, yet she has failed to do so because she failed to investigate the relevant facts and law.

The superior court should have held the trustee accountable for her failings.

3. The superior court abused its discretion by ruling that Ms. Lewis and Mr. Schafer violated CR 11 and imposing sanctions.

Superior Court Civil Rule 11 provides that parties and their counsel, by filing a pleading, are certifying "that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law." For a pleading that violates the rule, a court "may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing."

The rule allows a sanctions award to a party. Here, Hall & West and Ms. Rainey were not parties to the trust action. They were fact witnesses, so the rule, even if applicable, ought not benefit them.

In *Bryant v. Joseph Tree*, 119 Wn.2d 210, 829 P.2d 1099 (1992), the court stated, “The fact that a complaint does not prevail on its merits is by no means dispositive of the question of CR 11 sanctions.” and “The court should inquire whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified.”

Washington case law directs courts to apply CR 11 sanctions *only in the most blatant cases* and only if an offending party had been put on notice that their actions violate the rule. The case law was summarized in *Fletcher v. State*, 73456-3-I (unpub., Wn.App., May 2, 2016) as follows:

Because CR 11 sanctions may have a chilling effect, the court should impose CR 11 sanctions “only when it is patently clear that a claim has absolutely no chance of success.” *Skimming v. Boxer*, 119 Wn.App. 748, 755, 82 P.3d 707 (2004).

“Both practitioners and judges who perceive a possible violation of CR 11 must bring it to the offending party’s attention as soon as possible. Without such notice, CR 11 sanctions are unwarranted.” *Biggs v. Vail*, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). The notice requirement exists to give fair warning to pleading violators and to deter violations as early as possible. *Biggs*, 124 Wn.2d at 198. But proper notice of possible CR 11 sanctions must be meaningful. “[W]ithout prompt notice regarding a potential violation of the rule, the offending party is given no opportunity to mitigate the sanction by amending or withdrawing the offending paper.” *Biggs*, 124 Wn.2d at 198. Otherwise, CR 11 would be “simply another weapon in the litigator’s arsenal.” *Biggs*, 124 Wn.2d at 199 n.2. Absent meaningful notice, an untimely CR 11 motion is impermissible. *See, e.g., North Coast Elec. Co. v. Selig*, 136 Wn.App. 636, 649-50, 151 P.3d 211 (2007).

In this case, it is not “patently clear” that Ms. Lewis’s Motion to

Terminate had “no chance of success” based upon the undisputed facts and the applicable law or good faith argument for extension of the law concerning guardianship procedures and consents under duress. Just last month, in *Kilduff v. San Juan County*, __ Wn.2d __, (No. 95937-4 ¶43), 453 P.3d 719 (Dec. 19, 2019), the state supreme court stated about CR 11:

[T]he rule is not intended to chill an attorney’s enthusiasm or creativity in pursuing factual or legal theories.” *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). This includes advocacy “ ‘on behalf of individuals seeking to have the courts recognize new rights.’ “ *Id.* (quoting *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1363 (9th Cir. 1990)).

And clearly neither Ms. Lewis nor Mr. Schafer were given a “fair warning” by a party or the Court that the Motion to Terminate Trust violated CR 11. At the hearing on May 10, the Court, having read the Motion to Terminate Trust and the Lewis Declaration, demanded a response from the trustee, stating “I want answers to his brief. He’s raising constitutional issues that concern me.” VRP2 7.

The sanctions order (CP 239–400) recited, incorrectly, that “Petitioner’s counsel was advised prior to filing that this position has no basis in law or fact” and that “Petitioner’s counsel was advised prior to filing his petition that the filing of the petition and the relief he sought could harm his client.” CP 240. Nothing in the record supports those recitals. No warning, or even a hint of one, was given by the Court or any

lawyer that Mr. Schafer's pleadings were subject to possible CR 11 sanctions. The first suggestion that CR 11 could apply was made by fact-witness Mr. Hall filing his Motion for Sanctions on June 11, 2019.

The superior court abused its discretion by ruling that CR 11 was violated by Ms. Lewis and her counsel, Mr. Schafer.

REQUEST FOR ATTORNEY FEES AND COSTS

Under RCW 11.96A.150 the court has discretion to award attorney fees and costs. Because Mr. Schafer agreed to represent Ms. Lewis pro bono, he seeks no fees or costs from her or from her trust. If the court, in its discretion, considers it appropriate to award him fees and costs from any other party or counsel, he requests that it do so.

Respectfully submitted this 30th day of January, 2020.

/s/ Douglas A. Schafer

Douglas A. Schafer, Attorney for Appellants
(WSBA No. 8652)

APPENDIX CONTENTS

CP 6 –CP 16 Original Trust Document
CP 48–CP57 Restated Trust Document

RECEIVED AND FILED
IN OPEN COURT
AUG 11 2017
DAVID W. PETERSON
KITSAP COUNTY CLERK

The LISA DAWN LEWIS

17 4 00646 6

Special Needs Trust

LISA DAWN LEWIS, Grantor

By and through the Superior Court of Kitsap County

MICHAEL WILLIAM RORELL, Trustee

DATED: August 3, 2017

THIS Trust is established by the Kitsap County Superior Court for LISA DAWN LEWIS (the "Grantor"), and MICHAEL WILLIAM ROSELL (referred to hereinafter as the "Trustee") for the benefit of LISA DAWN LEWIS ("LISA" or the "Beneficiary").

This Trust is created with the understanding that the Trust will allow LISA to preserve or obtain government benefits to which she is or may be entitled. This Trust is being established to receive proceeds that LISA would otherwise receive directly by gift, inheritance, or other source. This Trust is established for the sole benefit of LISA, in accordance with the requirements of 42 U.S.C. 1382e(5), 42 U.S.C. Sec. 1396p(c)(2)(B)(iv) and WAC 182-513-1365(1)(e) & (4), so that the transfer of assets to the Trust shall not cause the imposition of a period of ineligibility for Supplemental Security Income (SSI) and Medicaid. Further, for purposes of SSI and Medicaid eligibility, the Trust corpus shall not be deemed a resource available to LISA because the Trust meets the requirements set forth at 42 U.S.C. 1382b(e), 42 U.S.C. Sec. 1396p(d)(4)(A) and WAC 182-516-0100(5)(a).

I. TRANSFER OF PROPERTY:

1.1 Trust Property: The Grantor and the Kitsap County Superior Court hereby establish the Trust as an irrevocable Trust. The Grantor may assign to the Trustee all right, title, and interest in any property at any time, the receipt of which shall be acknowledged by the Trustee. The Trustee shall hold the property in Trust for the purposes and on the conditions set forth in this Agreement, and at no time shall such property become available to LISA or be placed in her possession, except as otherwise provided herein. This Trust shall be known as the "LISA DAWN LEWIS SPECIAL NEEDS TRUST".

1.2 Additional Property: The Grantor has the right to add to the corpus of the Trust, and any property so added shall be held, administered and distributed as provided in this document. With the prior written consent of the Trustee, any other person may add to the corpus of the Trust.

1.3 Restraint on Alienation: No right, title, interest or equity in any of the Trust estate or the income or increase thereof shall vest in LISA until actual payment to her by the Trustee, and no part of either principal, interest, or increase shall be liable for the debts, past, present or future, of LISA or shall be subject to the right on the part of any of her creditors to seize or reach the same under any writ or by any proceeding at law or in equity. LISA shall not have any power to give, grant, sell, convey, mortgage, pledge, or otherwise dispose of, encumber or anticipate the principal, income or increase of said Trust estate.

1.4 Irrevocability: The Trust shall be irrevocable, and the Beneficiary shall have no right or power to alter, amend, revoke or terminate the Trust, or any of its terms, or to designate the persons who shall possess or enjoy the Trust property or the income therefrom. The Grantor and Beneficiary intends to and does relinquish absolutely and forever all possession and control of the Trust estate.

1.5 Tax Status: The Grantor retains the unlimited right to reacquire any Trust property at any time by substituting property of equal value. For federal income tax purposes, this Trust shall be treated as a "Grantor Trust" pursuant to Sections 671 to 679 of the United States Internal Revenue Code of 1986.

II. DISTRIBUTIONS:

2.1 Distributions for the Benefit of Beneficiary: The Trustee shall hold, administer and distribute the Trust estate for the sole benefit of LISA. LISA was born on August 17, 1974 and is now forty-two years of age. In making distributions for the benefit of LISA, the Trustee shall be governed by the following standards:

a. The express purpose of the Trust is to provide for LISA's extra and supplemental care. This can include supplemental care, support, education and activities, provided it is over and above the benefits LISA otherwise might receive or is receiving as a result of need, or disability, from any local, state, or federal government program, or from any private or charitable agency, which might provide services or benefits to persons with disabilities or who are in financial need. It is the express intent of the parties to this agreement that the Trust estate shall be used primarily to supplement other benefits that would ordinarily be received by or are being or will be received by LISA. No disbursement shall be made for LISA that will inappropriately jeopardize eligibility for, or permanently limit, the type of assistance available to her under local, state or federal benefit programs that provide financial or medical benefits to low-income or disabled persons. In applying the Trust estate for the supplemental benefit of LISA, it is specifically directed that provision be made for her needs over and above those paid for by the Department of Social and Health Services of the State of Washington, the Social Security Administration, and/or any other local, state or federal agency or department.

b. This is a discretionary Trust and the Trustee shall have the absolute and sole discretion to determine the amount and nature of any disbursements for the benefit of LISA.

c. If a change of law causes the terms of the Trust to jeopardize ongoing eligibility, the Trustee has discretion to utilize funds in any way necessary to retain or allow eligibility for needs-based programs such as Supplemental Security Income, Medicaid or state funded hospital care. If necessary and appropriate, as determined in the sole discretion of the Trustee, the Trustee may terminate the Trust and distribute any remaining principal and income to the residual beneficiaries of the Trust.

2.2 Termination of Trust:

a. The Trust shall terminate at the earlier of the following:

i. The distribution of all principal and income;

ii. The death of LISA and the distribution of the corpus as directed herein;

iii. The end of the disability.

b. Upon the death of LISA, and before distribution to any residual beneficiary of this Trust, any remaining Trust property shall first be used to defray the costs to the Washington State Department of Social and Health Services, or any successor agency, of Title XIX Medical Assistance benefits, or other similar benefits, paid on behalf of LISA, as required by 42 U.S.C. Sec.1396p(d)(4)(A) as amended, WAC 182-513-1365(1)(e)&(4), or any other legally applicable provision of Federal or State law.

c. If any Trust assets are remaining after payment and distribution of the sums set forth above, the remaining assets in the Trust estate shall be distributed to her heirs at law.

d. LISA retains a testamentary power of appointment, to change the residual beneficiaries of this Trust with respect to both accumulated income and principal. This power shall be exercised by special reference to the power in LISA's Last Will.

e. Prior to any distribution upon termination authorized herein, the Trustee may pay all costs and fees of administering and closing the Trust.

III. TRUSTEE:

MICHAEL WILLIAM RORELL shall serve as Trustee of this Trust. The Beneficiary cannot serve as Trustee or appoint a successor Trustee. Any interested party may petition

the Superior Court where the Beneficiary resides to seek the removal of a Trustee for good cause shown and appointment of a successor Trustee.

IV. ADMINISTRATIVE PROVISIONS:

In the Trustee's administration of this Trust, the following provisions shall apply:

4.1 Accounting: The Trustee shall submit an annual accounting to LISA or her designated agent and to the Court. The accounting shall include a summary of all transactions, assets, investment activity, and interest earned on Trust assets during the prior accounting year.

4.2 Accounting of Prior Trustee: A Successor Trustee may accept a predecessor's accounting without independent review or audit upon the assumption of duties and shall not be liable for any loss sustained during or attributable to the period in which a predecessor served as Trustee.

4.3 Trustee's Powers: Except as otherwise provided herein, the Trustee shall have all rights, powers and duties given by law, including those set forth in the Washington Trust Act, which Act is incorporated herein by this reference. In addition, the Trustee shall have full power and authority:

a. To determine what is principal or income and what charges are allocable to either, which authority shall specifically include the right to make any adjustments between principal and income for premiums, discounts, depreciation or depletion. In making such determination the Trustee may, but shall not be required to, apply the Washington Principal and Income Act;

b. To employ agents, depositories, and attorneys in the administration of this Trust, without liability for their omissions or neglect, but using reasonable care in their selection;

c. To invest and reinvest the Trust assets as the Trustee shall determine to be prudent under circumstances then prevailing. Investments do not need to comply with the statutory requirements of RCW 11.92.010 et seq., provided that all investments are prudent;

d. To amend the terms of this Trust, provided that any such amendment does not make the Trust revocable, in order to carry out the intention of the parties to this Agreement in the event that the laws or regulations concerning benefit programs change in the future or in order to make technical amends to this Trust to enable the Trustee to administer the Trust in accordance with the intention of the parties as expressed herein.

4.4 Uniform Trustee's Accounting Act: The Trustee shall not be required to comply with the Uniform Trustee's Accounting Act or any amendment to that Act.

4.5 Distribution of Assets: Upon the termination of the Trust as provided in paragraph 2.2 above, the Trustee may distribute assets in kind, including undivided interests therein, and may do so without regard to the income tax basis of specific property allocated to any beneficiary.

4.6 Significant Non-Routine Transactions: The Trustee is hereby relieved from the duty to obtain an independent appraisal and from the duty to sell in an open market transaction, as might otherwise be required by law or by the provisions of RCW 11.100.140, as amended; provided, however, the Trustee shall comply with the other requirements of such statute.

V. MISCELLANEOUS:

5.1 Law Governing Trust: The situs of this Trust shall be in Washington State and all questions pertaining to the administration of the Trust or the construction or validity of this Trust shall be governed by the laws of the State of Washington.

5.2 Gender and Number: Unless some other meaning and intent is apparent from the context, the plural shall include the singular and vice versa. Masculine, feminine, and neuter words shall be used interchangeably.

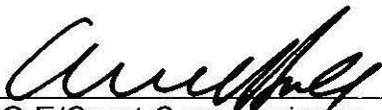
EXECUTED by JOHN S. TRACY on the 3rd day of August, 2017.



JOHN S. TRACY

Established By and Through the Kitsap County Superior Court

DATE: August 11, 2017



J U D G E / Court Commissioner

Judge **KEVIN D. HULL**

EXECUTED by the Trustee on the 02 day of 08-August, 2017.

Michael W. Torell
MICHAEL WILLIAM RORELL
Trustee

State of Washington)
)SS
County of Kitsap)

On Aug. 02, 2017, before me, personally appeared MICHAEL WILLIAM RORELL, Trustee, acknowledged the foregoing instrument to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.



Debra L. Bergman
NOTARY PUBLIC, in and for the
State of Washington, residing at:
Bremerton
My commission expires: 8-9-2018

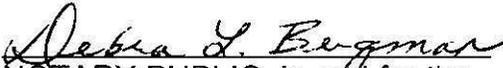
APPROVED by the Beneficiary on the 02 day of August, 2017.


LISA DAWN LEWIS
Beneficiary & Grantor

State of Washington)
 :SS
County of Kitsap)

On Aug. 2, 2017, before me, personally appeared LISA DAWN LEWIS, and acknowledged the foregoing instrument to be her free and voluntary act and deed for the uses and purposes mentioned in this instrument.




NOTARY PUBLIC, in and for the
State of Washington, residing at:
Bremerton
My commission expires: 8-9-2018

The LISA DAWN LEWIS

Special Needs Trust

Schedule A

§ _____

Kitsap County Cause No. 17-4-00646-6

RECEIVED AND FILED
IN OPEN COURT

APR 27 2018

KITSAP COUNTY CLERK
ALISON H. SONNTAG

RESTATEMENT OF THE

The LISA DAWN LEWIS Special Needs Trust

UPON APPOINTMENT OF SUCCESSOR TRUSTEE

LISA DAWN LEWIS, Grantor

By and through the Superior Court of Kitsap County

JENIFER MICK, Trustee

DATED: APRIL 27, 2018



THIS Trust was established by the Kitsap County Superior Court for LISA DAWN LEWIS (the "Grantor") by order entered in Kitsap County Cause No. 17-4-00646-6 on August 11, 2017 for the benefits of LISA DAWN LEWIS, hereinafter referred to as "LISA" or the "Beneficiary." MICHAEL WILLIAM TORELL was appointed Trustee initially, however he is not qualified to serve as Trustee and by order dated April 27, 2018 MR. TORELL was removed as Trustee and JENIFER MICK was appointed Successor Trustee, hereinafter referred to as the "Trustee". This Restatement of the Trust was ordered by the Court to provide the necessary powers to JENIFER MICK, Trustee.

This Trust is created with the understanding that the Trust will allow LISA to preserve or obtain government benefits to which she is or may be entitled. This Trust is being established to receive proceeds that LISA would otherwise receive directly by gift, inheritance, or other source. This Trust is established for the sole benefit of LISA, in accordance with the requirements of 42 U.S.C. 1382e(5), 42 U.S.C. Sec. 1396p(c)(2)(B)(iv) and WAC 182-513-1365(1)(e) & (4), so that the transfer of assets to the Trust shall not cause the imposition of a period of ineligibility for Supplemental Security Income (SSI) and Medicaid. Further, for purposes of SSI and Medicaid eligibility, the Trust corpus shall not be deemed a resource available to LISA because the Trust meets the requirements set forth at 42 U.S.C. 1382b(e), 42 U.S.C. Sec. 1396p(d)(4)(A) and WAC 182-516-0100(5)(a).

I. TRANSFER OF PROPERTY:

1.1 Trust Property: The Grantor and the Kitsap County Superior Court hereby establish the Trust as an irrevocable Trust. The Grantor may assign to the Trustee all right, title, and interest in any property at any time, the receipt of which shall be acknowledged by the Trustee. The Trustee shall hold the property in Trust for the

purposes and on the conditions set forth in this Agreement, and at no time shall such property become available to LISA or be placed in her possession, except as otherwise provided herein. This Trust shall be known as the "LISA DAWN LEWIS SPECIAL NEEDS TRUST".

1.2 Additional Property: The Grantor has the right to add to the corpus of the Trust, and any property so added shall be held, administered and distributed as provided in this document. With the prior written consent of the Trustee, any other person may add to the corpus of the Trust.

1.3 Restraint on Alienation: No right, title, interest or equity in any of the Trust estate or the income or increase thereof shall vest in LISA until actual payment to her by the Trustee, and no part of either principal, interest, or increase shall be liable for the debts, past, present or future, of LISA or shall be subject to the right on the part of any of her creditors to seize or reach the same under any writ or by any proceeding at law or in equity. LISA shall not have any power to give, grant, sell, convey, mortgage, pledge, or otherwise dispose of, encumber or anticipate the principal, income or increase of said Trust estate.

1.4 Irrevocability: The Trust shall be irrevocable, and the Beneficiary shall have no right or power to alter, amend, revoke or terminate the Trust, or any of its terms, or to designate the persons who shall possess or enjoy the Trust property or the income therefrom. The Grantor and Beneficiary intends to and does relinquish absolutely and forever all possession and control of the Trust estate.

1.5 Tax Status: The Grantor retains the unlimited right to reacquire any Trust property at any time by substituting property of equal value. For federal income tax purposes, this Trust shall be treated as a "Grantor Trust" pursuant to Sections 671 to 679 of the United States Internal Revenue Code of 1986.

II. DISTRIBUTIONS:

2.1 Distributions for the Benefit of Beneficiary: The Trustee shall hold, administer and distribute the Trust estate for the sole benefit of LISA. LISA was born on August 17, 1974 and is now forty-two years of age. In making distributions for the benefit of LISA, the Trustee shall be governed by the following standards:

a. The express purpose of the Trust is to provide for LISA's extra and supplemental care. This can include supplemental care, support, education and activities, provided it is over and above the benefits LISA otherwise might receive or is receiving as a result of need, or disability, from any local, state, or federal government program, or from any private or charitable agency, which might provide services or benefits to persons with disabilities or who are in financial need. It is the express intent of the parties to this agreement that the Trust estate shall be used primarily to supplement other benefits that would ordinarily be received by or are being or will be received by LISA. No disbursement shall be made for LISA that will inappropriately jeopardize eligibility for, or permanently limit, the type of assistance available to her under local, state or federal benefit programs that provide financial or medical benefits to low-income or disabled persons. In applying the Trust estate for the supplemental benefit of LISA, it is specifically directed that provision be made for her needs over and above those paid for by the Department of Social and Health Services of the State of Washington, the Social Security Administration, and/or any other local, state or federal agency or department.

b. This is a discretionary Trust and the Trustee shall have the absolute and sole discretion to determine the amount and nature of any disbursements for the benefit of LISA.

c. If a change of law causes the terms of the Trust to jeopardize ongoing eligibility, the Trustee has discretion to utilize funds in any way necessary to retain or allow eligibility for needs-based programs such as Supplemental Security Income, Medicaid or state funded hospital care. If necessary and appropriate, as determined in the sole discretion of the Trustee, the Trustee may terminate the Trust and distribute any remaining principal and income to the residual beneficiaries of the Trust.

2.2 Termination of Trust:

a. The Trust shall terminate at the earlier of the following:

- i. The distribution of all principal and income;
- ii. The death of LISA and the distribution of the corpus as directed herein;
- iii. The end of the disability.

b. Upon the death of LISA, and before distribution to any residual beneficiary of this Trust, any remaining Trust property shall first be used to defray the costs to the Washington State Department of Social and Health Services, or any successor agency, of Title XIX Medical Assistance benefits, or other similar benefits, paid on behalf of LISA, as required by 42 U.S.C. Sec. 1396p(d)(4)(A) as amended, WAC 182-513-1365(1)(e)&(4), or any other legally applicable provision of Federal or State law.

c. If any Trust assets are remaining after payment and distribution of the sums set forth above, the remaining assets in the Trust estate shall be distributed to her heirs at law.

d. LISA retains a testamentary power of appointment, to change the residual beneficiaries of this Trust with respect to both accumulated income and principal. This power shall be exercised by special reference to the power in LISA's Last Will.

e. Prior to any distribution upon termination authorized herein, the Trustee may pay all costs and fees of administering and closing the Trust.

III. TRUSTEE:

JENIFER MICK shall serve as Trustee of this Trust. The Beneficiary cannot serve as Trustee or appoint a successor Trustee. Any interested party may petition the Superior Court where the Beneficiary resides to seek the removal of a Trustee for good cause shown and appointment of a successor Trustee.

IV. ADMINISTRATIVE PROVISIONS:

In the Trustee's administration of this Trust, the following provisions shall apply:

4.1 Accounting: The Trustee shall submit an annual accounting to LISA or her designated agent and to the Court. The accounting shall include a summary of all transactions, assets, investment activity, and interest earned on Trust assets during the prior accounting year.

4.2 Accounting of Prior Trustee: A Successor Trustee may accept a predecessor's accounting without independent review or audit upon the assumption of duties and shall not be liable for any loss sustained during or attributable to the period in which a predecessor served as Trustee.

4.3 Trustee's Powers: Except as otherwise provided herein, the Trustee shall have all rights, powers and duties given by law, including those set forth in the Washington Trust Act, which Act is incorporated herein by this reference. In addition, the Trustee shall have full power and authority:

- a. To determine what is principal or income and what charges are allocable to either, which authority shall specifically include the right to make any adjustments between principal and income for premiums, discounts, depreciation or depletion. In making such determination the Trustee may, but shall not be required to, apply the Washington Principal and Income Act;

b. To employ agents, depositories, and attorneys in the administration of this Trust, without liability for their omissions or neglect, but using reasonable care in their selection;

c. To invest and reinvest the Trust assets as the Trustee shall determine to be prudent under circumstances then prevailing. Investments do not need to comply with the statutory requirements of RCW 11.92.010 et seq., provided that all investments are prudent;

d. To amend the terms of this Trust, provided that any such amendment does not make the Trust revocable, in order to carry out the intention of the parties to this Agreement in the event that the laws or regulations concerning benefit programs change in the future or in order to make technical amends to this Trust to enable the Trustee to administer the Trust in accordance with the intention of the parties as expressed herein.

4.4 Uniform Trustee's Accounting Act: The Trustee shall not be required to comply with the Uniform Trustee's Accounting Act or any amendment to that Act.

4.5 Distribution of Assets: Upon the termination of the Trust as provided in paragraph 2.2 above, the Trustee may distribute assets in kind, including undivided interests therein, and may do so without regard to the income tax basis of specific property allocated to any beneficiary.

4.6 Significant Non-Routine Transactions: The Trustee is hereby relieved from the duty to obtain an independent appraisal and from the duty to sell in an open market transaction, as might otherwise be required by law or by the provisions of RCW 11.100.140, as amended; provided, however, the Trustee shall comply with the other requirements of such statute.

V. MISCELLANEOUS:

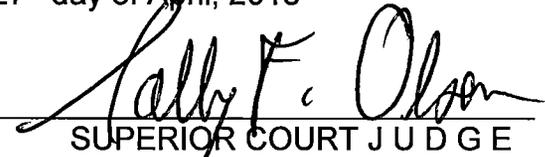
5.1 Law Governing Trust: The situs of this Trust shall be in Washington State and all questions pertaining to the administration of the Trust or the construction or validity of this Trust shall be governed by the laws of the State of Washington.

5.2 Gender and Number: Unless some other meaning and intent is apparent from the context, the plural shall include the singular and vice versa. Masculine, feminine, and neuter words shall be used interchangeably.

Established By and Through the Kitsap County Superior Court August 11, 2017.

Restatement upon appointment of Successor Trustee:

Signed in Open Court this 27th day of April, 2018


SUPERIOR COURT J U D G E

SALLY F. OLSEN

EXECUTED by the Trustee on the 27th day of April, 2018



JENIFER MICK
Trustee

State of Washington)
 :ss
County of Kitsap)

On April 27, 2018, before me, personally appeared JENIFER MICK, Trustee, acknowledged the foregoing instrument to be her free and voluntary act and deed for the uses and purposes mentioned in this instrument.



NOTARY PUBLIC, in and for the
State of Washington, residing at:
Bremerton
My commission expires: 05-10-2021

The LISA DAWN LEWIS

Special Needs Trust

Schedule A

Inheritance from Estate of Larry Dean Low
Kitsap County Cause No. 17-4-00501-0

Proof of Service

I certify that this evening I served a copy of this Brief of Appellants on the following counsel by email, as indicated:

Jaime S. Huff
Richmond & Richmond Ltd
jaime@rrlaw.pro

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Hall & West, P.S.
llhall@handwps.com

J. Paul Ferman
Hall & West, P.S.
jpferman@handwps.com

Carol Horan Rainey
carolrainey@aol.com

Date: January 30, 2020 /s/ Douglas A. Schafer
Douglas A. Schafer, Attorney for Appellanta
(WSBA No. 8652)

SCHAFFER LAW FIRM

January 30, 2020 - 8:45 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53782-6
Appellate Court Case Title: In Re The Trust of: LISA DAWN LEWIS
Superior Court Case Number: 17-4-00646-6

The following documents have been uploaded:

- 537826_Briefs_20200130204059D2838616_6639.pdf
This File Contains:
Briefs - Appellants
The Original File Name was AppellantsBrief537826.pdf

A copy of the uploaded files will be sent to:

- jaime@rrlaw.pro
- jpferman@handwps.com
- karen@rrlaw.pro
- lauren@rrlaw.pro
- lhall@handwps.com
- ron@rrlaw.pro

Comments:

Proof of Service is the last page.

Sender Name: Douglas Schafer - Email: schaffer@pobox.com
Address:
1202 S TYLER ST
TACOMA, WA, 98405-1134
Phone: 253-431-5156

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