FILED
Court of Appeals
Division II
State of Washington
4/6/2020 8:51 AM

Court of Appeals No. 53782-6-II
Trial Court No. 17-4-00646-6

**COURT OF APPEALS, DIVISION 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.**

RESPONDENTS' RESPONSE AND CROSS-APPEAL

KAREN E. RICHMOND WSBA 31618
JAIME S. HUFF WSBA 39378
RONALD D. RICHMOND WSBA 42438
Attorneys for Plaintiff
1521 SE Piperberry Way # 135
Port Orchard WA 98366
360-692-7201

TABLE OF CONTENTS

I. INTRODUCTION 5

II. ASSIGNMENT OF ERROR 6

III. STATEMENT OF THE CASE 7

IV. ARGUMENT 18

A. THE SUPERIOR COURT HAD PERSONAL JURISDICTION OVER LEWIS IN THE TRUST CASE 18

1. The dispersal of Lewis' inheritance occurred in the probate case 18
2. The Superior Court had personal jurisdiction over Lewis to create the trust because she requested its creation as grantor. 20

B. *THE SUPERIOR COURT CORRECTLY APPROVED THE TRUSTEE'S REPORT AND ACCOUNTING* 25

C. THE TRIAL COURT CORRECTLY IMPOSED SANCTIONS UPON SCHAEFER 28

1. Rainey and Ferman were "parties" under CR 11 who could be granted an award of attorneys' fees. 28
2. Schaefer's pleadings were without merit and harmful to his client, justifying a CR11 sanction. 30

D. THE SUPERIOR COURT WAS NOT JUSTIFIED IN REDUCING REASONABLE FEES BASED ON THREATS OF APPEAL. 33

V. REQUEST FOR FEES ON APPEAL 37

VI. CONCLUSION 38

TABLE OF AUTHORITIES

Cases

17 C.J.S. Contracts s 133(1) (1963) 23

Biggs v. Vail, 124 Wn.2d 193, 198, 876 P.2d 448, 452 (1994).....31

Brigade v. Econ. Dev. Bd. for Tacoma-Pierce Cty., 61 Wn.App. 615, 619, 811 P.2d 697, 699 (1991) 35

Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099, 1105 (1992) 33

Culinary Workers Local 596 Trust v. Gateway Cafe, Inc., 91 Wn.2d 353, 363, 588 P.2d 1334 (1979) 24

Demers v. Gerety, 85 N.M. 641, 515 P.2d 645 (NM. Ct. App. 1973)..... 23

Grannum v. Berard, 70 Wn.2d 304, 307, 422 P.2d 812, 814 (1967) ..23

Guillen v. Contreras, 169 Wn.2d 769, 238 P.3d 1168 (2010) 38

Harris v. Rivard, 64 Wn.2d 173, 390 P.2d 1004 (1964) 23

Hesthagen v. Harby, 78 Wn.2d 934 at 942, 481 P.2d 438 (1971) 22

Hough v. Stockbridge, 152 Wn. App. 328, 346, 216 P.3d 1077, 1087 (2009) 33

Page v. Prudential Life Ins. Co. of America, 12 Wn.2d 101, 120 P.2d 527 (1942) 23

Puget Sound Power & Light Co. v. Shulman, 84 Wn.2d 433, 442-43, 526 P.2d1210 (1974) 24

Recreational Equip., Inc. v. World Wrapps Nw., Inc., 165 Wn.App. 553, 568, 266 P.3d 924 (2011) 24

Retail Clerks Health & Welfare Tr. Funds v. Shopland Supermarket, Inc., 96 Wn.2d 939, 944–45, 640 P.2d 1051, 1054 (1982) 25

Rhinehart v. The Seattle Times, Inc., 59 Wn.App. 332, 341, 798 P.2d 1155 (1990) 35

Sherman v. State, 128 Wn.2d 164 at 184, 905 P.2d 355 (1995).....22

Skagit State Bank v. Rasmussen, 109 Wn.2d 377, 381, 745 P.2d 37, 39 (1987) .....

Skimming v. Boxer, 119 Wn. App. 748, 754, 82 P.3d 707, 710 (2004) 36

Suarez v. Newquist, 70 Wn.App. 827, 855 P.2d 1200 (1993) 30

W. R. Grimshaw Co. v. Nevil C. Withrow Co., 248 F.2d 896, 904 (8th Cir. 1957).....25

13 S. Williston, Contracts s 1606 (3d ed. W. Jaeger 1970).....25

Watson v. Maier, 64 Wn.App. 889, 896, 827 P.2d 311, 315 (1992)31, 35

Whitman Realty & Inv. Co. v. Day, 161 Wn. 72, 77, 296 P. 171 (1931) 25

Statutes

20 CFR 416.1102.....26

RCW 2.08.030 22

RCW 11.96A.020 29

RCW 11.96A.150 .....29, 37

RCW 11.97.010 27

RCW 11.98.070(1) 20

RCW 11.98.078 27

Court Rules

CR 11 ..... 5, 6, 28, 29, 30, 31, 33, 35, 36, 37

CR 11(a) 29, 33

CR 11(a)(2) 30

CR 60(b) 21

CR 60(b)(5) 21

CR 60(e)(2) 21

GR 11 22

GR 14.1 30

GR 33 22

GR 34 22

RPC 1.8 35

RAP 14.2 38

RAP 18.1 37

WAC 182-516-0105 26

WAC 182-516-0120 26

I. INTRODUCTION

This is an appeal and cross-appeal of some complexity, following a ruling of the trial court in a Special Needs Trust. The original grantor of the trust, Lewis, now seeks to have the trust undone, claiming lack of personal jurisdiction; while her attorney, Schafer, seeks the removal of CR 11 sanctions against him for bringing an action both wholly groundless and, if successful, only likely to harm his client. The Respondents are the court-appointed trustee, Mick; the attorney for the estate which prompted the establishment of the trust, Ferman, who became involved at the direction of the Court; and the former attorney for the trustee, Rainey, also involved at Court direction. The Respondents defend against the Appellant's arguments, and, further, seek review of the trial court's decision to reduce the reasonable fees awarded as a sanction based on Schafer's threaten to appeal the decision.

All citations to Clerk's Papers herein are based on the actual stamped pages, not on the index.[1] The sealed Clerk's Papers are appended to this brief under seal.

---

[1] Citations herein to Clerk's Papers are based on the file received by the undersigned from the Court via email. The undersigned has no record of being served with said Clerk's Papers, so had to call and request. The pagination stamped on those pages differs from the Corrected Index filed on December 2, 2019. The reason for the differences is unknown. The undersigned apologies in advance for any confusion. In addition, the sealed Clerk's Papers were never received, hence the Appendix.

II. ASSIGNMENTS OF ERROR

Appellant's Issues & Assignments:

1. Appellant assigns error to the Superior Court's denial of the Motion to Terminate Trust, raising an issue of personal jurisdiction. Appellant, in framing the issue, asks "Did the superior court have personal jurisdiction over Ms. Lewis when its [sic] directed that her inheritance fund the trust?" Respondent does not believe this correctly states the jurisdictional issue, but will save further comment for argument.

2. Appellant assigns error to the Superior Court's approval of the Trustee's Report and her fees, without elaboration as to the issue. The issue, then, is simply whether the Court erred in this regard.

3. Appellant assigns error to the Superior Court's imposition of CR 11 sanctions, without elaboration as to the issue. The issues apparent from Appellant's argument are as follows: (A) who does the Court have authority to award sanctions to, and (B) were sanctions appropriate?

Respondent's Issues & Assignments:

1. Respondent has one assignment of error: The Superior Court's decision, after its determination that CR 11 sanctions were appropriate, to significantly reduce the award of fees based on the threat of further litigation by Lewis's attorney. The issue is whether the Court abused its discretion in making such an adjustment in response to said threats.

III. STATEMENT OF THE CASE

Lisa Lewis was a beneficiary of the estate of her father, Larry Loy, who passed May 16, 2017.[2] Ms. Lewis' sister, Lana Prinz, represented by Paul Ferman, was appointed the administrator of that estate, with signed consent from Ms. Lewis.[3] On August 11, 2017, the Kitsap County Superior Court established the Lisa Dawn Lewis Special Needs Trust (hereinafter, the "Trust") on the motion of attorney John Tracy, representing the Trustee.[4] The Trustee was Michael Torell.[5]

The Special Needs Trust document (hereinafter, "SNT") references that Ms. Lewis is the Grantor through the Kitsap County Superior Court.[6] The SNT states that it will allow Ms. Lewis to preserve or obtain government benefits to which she is entitled.[7] Ms. Lewis affixed her notarized signature on the approval page of the SNT.[8] Ms. Lewis does not dispute that this is her signature.

On March 22, 2018, a Petition for Appointment of Successor Trustee was filed.[9] This Petition was filed at the request of Mr. Ferman by attorney Carol Rainey, who represented Ms. Mick, the proposed successor

---

[2] CP 112-113
[3] *Id.*
[4] CP 17-18
[5] CP 4-14 incorrectly spell Mr. Torell's surname as "Rorell." Subsequent pleadings make it clear that Torell is the correct spelling and the misspelling was a typo.
[6] CP 6-7
[7] CP 7
[8] CP 15
[9] CP 20-30

trustee.[10] The primary basis for the request appears to have been Mr. Torell's 2008 felony conviction from Cowlitz County, Washington.[11] Ms. Rainey served both Ms. Lewis and Mr. Torell with notice of the hearing on the Petition, set for April 27, 2018.[12]

The hearing was held on April 27, 2018, and the transcript of that hearing entered in this record as VRP1. Ms. Lewis was present at that hearing.[13] Ms. Lewis asked for a continuance to find legal representation.[14] The Court declined to grant a continuance.[15] Ms. Lewis asked to speak further, and was granted leave to do so.[16] Ms. Lewis then stated:

> "I don't want them as my trustee. I will find somebody that is legal. I don't want none of these people involved in my case, because the individual attorney that is – in his office was very rude to me, said that I was incompetent, and threatened me if I did not do this that they were going to put me in a mental institution through my sister, and I'm not going to put up with that. I do not put up with threats from anybody… it's not appropriate."[17]

---

[10] CP 21
[11] CP 21
[12] CP 33
[13] VRP1 p.1
[14] VRP1 p.2
[15] VRP1 p.4 ln.20-21
[16] VRP1 p.4
[17] VRP1 p.4-5

At the end of the April 27, 2018, hearing, the Court signed an order removing Mr. Torell as trustee and appointing Ms. Mick.[18] On May 24, 2018, Ms. Mick signed a TEDRA agreement purporting to settle the Larry Loy Estate.[19] On May 31, 2018, Ms. Mick changed attorneys from Ms. Rainey to Ms. Huff.[20] On June 1, 2018, Ms. Mick began receiving into the Trust monies from the Estate for Ms. Lewis.[21] Ms. Lewis maintains she never signed anything to assign her inheritance to the Trust.[22]

Ms. Mick filed a motion to approve her first annual Trustee's accounting on May 2, 2019.[23] Because appeal is taken as to the approval of this accounting, the actions of Ms. Mick as Trustee must also be recounted here. In her role as Trustee, Ms. Mick has communicated regularly with Ms. Lewis,[24] supplied Quicken printouts of Trust activity at Ms. Lewis' request,[25] and ensured that certain essential services were paid for.[26] Detailed notes on Ms. Mick's communication with Ms. Lewis appears in the sealed financial source documents.[27] Relevant communication highlights include:

---

[18] CP 58-59
[19] CP 126-132
[20] CP 61
[21] CP 85-86
[22] CP 114, ln.3-4
[23] CP 84-88
[24] CP 172, ln.21
[25] CP 175, ln.3
[26] CP 174, ln.8
[27] Appendix A, pages 8-34

- Repeated contact by Ms. Lewis and Mr. Torell prior to the Trust funding on June 1 regarding getting the funds into the Trust,[28] particularly the 5/23 stating "what is going on," and Ms. Mick having to inform Mr. Torell twice on 5/28 and 5/29 that she did not yet have the funds.
- Repeated emails / calls related to Ms. Lewis' homeless situation. *Id*., p 9-10 Notes indicate Ms. Lewis also stated that she is in a lot of debt as a result of choosing to be her own payee.[29]
- Communication related to Ms. Lewis sleeping in a vehicle, then being kicked out when she couldn't pay.[30] Then requests from Ms. Lewis and Ms. Prinz asking Ms. Mick to pay for a motel, with Ms. Mick advising to seek housing assistance through KCR.[31]
- June 20, 2018: Ms. Lewis emailing impatiently, saying she was going to get a different trustee.[32]
- Ms. Lewis emailed on July 12, 2018, asking to postpone the upcoming hearing on instructions (discussed further, infra), but not objecting to keeping it on that date as it saved her money and she

[28] *Id*., p.9-10
[29] *Id*., p 9-10
[30] *Id*., p.12-13
[31] *Id*., p.13
[32] *Id*., p.14

did not need to attend.[33] Email after the hearing to ask for copies of the paperwork and to ask who the judge was.[34]

- After several references to previous payments made on various tickets, Ms. Lewis informs Ms. Mick of $13K worth of tickets with a different collection company.[35]
- October 15, 2018: Ms. Lewis emails Ms. Mick asking her to go back to Court to revisit the ruling on paying for motel costs, and also asking for more copies of court orders she had been sent.[36]
- Ms. Mick also obtained information that Ms. Lewis had unpaid rent to Bremerton Housing Authority, a resource-based government benefit.[37]
- Ms. Mick advises Ms. Lewis twice that she will likely need a reliable payee to find someone to rent to her.[38]
- Ms. Mick recounts that Ms. Lewis fails to follow up on housing opportunities.[39]

---

[33] *Id*., p.16-17
[34] *Id*., p.17
[35] *Id*., p.25
[36] *Id*., p.26
[37] *Id*., p.32 (see also CP 173 ¶4)
[38] *Id.*, pp.9,13
[39] *Id*., pp.14

- Ms. Lewis also found and moved into a leased situation, where Ms. Mick paid first-month rent pursuant to court order,[40] but that lasted only two months.[41]

All of Ms. Mick's communication highlights listed above are unrebutted by Ms. Lewis in the record. There are also communication records which are contested by Ms. Lewis. Ms. Mick recounts that Ms. Lewis stated DSHS pays her Medicare premium.[42] Nowhere in the record does Ms. Lewis specifically state that she does not receive Medicaid benefits (such as payment of Medicare premiums), although she implies throughout her arguments that she does not receive any income- or resource-based benefits that would justify creating a Special Needs Trust.

When asked by Ms. Lewis to pay collection notices, purchase a vehicle, or pay for housing, Ms. Mick first sought specific court guidance in July 2018.[43] This petition for instructions was served on Ms. Lewis via email,[44] likely due to her transient housing situation.[45] The Court instructed Ms. Mick to pay past outstanding fines, to expend funds for a vehicle if Ms.

---

[40] *Id.*, p.21
[41] *Id.*, p.25
[42] *Id.*, p.8
[43] CP 63-66
[44] CP 67
[45] Ms. Lewis' housing situation is referenced at various points throughout the record. Ms. Mick refers to her homelessness, motel rooms, failed placements, and evictions. CP 65. Ms. Mick further refers to short-term arrangements she has been kicked out of (CP 174 ¶9), and her depression over homelessness while at the same time she was failing to pursue opportunities for housing (CP 175, ln.7-10). Ms. Mick's statements related to Ms. Lewis' housing situation are unrebutted in the record.

Lewis obtained a license, to not pay for temporary housing, but authorized payment of initial deposit and first month's rent.[46] Additional court guidance was sought in January, 2019, regarding further tickets as well as costs for obtaining a driver's license.[47] This was again served on Ms. Lewis via email.[48] The Court in January found insufficient evidence to order additional payments, and declined to make further authorization.[49]

In response to Ms. Mick's first annual accounting, Ms. Lewis filed an Objection,[50] as well as a Motion to Terminate Trust.[51] In that Motion, Ms. Lewis asked for her attorney's fees to be paid personally by either Ms. Mick or Ms. Huff.[52] With this filing was a declaration of Ms. Lewis, the sole testimonial submission by her in this case.[53]

Ms. Lewis offers a number of relevant facts in her declaration, some of which were later disputed by others. Ms. Lewis is 44 years old, has a disability, but is not legally incapacitated.[54] This is unrebutted. She receives SSDI benefits based on her father's work record, in an amount of approximately $1,600 monthly.[55] This is unrebutted. Ms. Lewis met with

---

[46] CP 69
[47] CP 72-73
[48] CP 74
[49] CP 79
[50] CP 107
[51] CP 93-99
[52] *Id.*
[53] CP 112-116
[54] CP 112 ¶1
[55] CP 112-113 ¶3

Mr. Ferman and his law partner, Mr. Hall, on June 2, 2017.[56] She states that Mr. Hall told her "I needed to have a trust and to pick a trustee or else I would not get anything from the estate." She does not state in this declaration that she felt intimidated or threatened.[57] [58] Ms. Lewis signed the Special Needs Trust document. She states she did not read it carefully, but saw that it named Mr. Torell as her Trustee, and she trusted him.[59] This is also unrebutted.

In response to Ms. Mick's first annual accounting, Ms. Lewis filed an Objection,[60] as well as a Motion to Terminate Trust.[61] In that Motion, Ms. Lewis asked for her attorney's fees to be paid personally by either Ms. Mick or Ms. Huff.[62] Hearing on the Accounting and motion was held May 10, 2019. At hearing, the Court expressed distress over having no response to the Motion to Terminate Trust.[63] After discussion on who should be the

---

[56] CP 113 ¶4

[57] *Id.*

[58] In unsworn statements made in Court on April 27, 2018, Ms. Lewis states that an attorney (appearing to refer to Mr. Ferman or Mr. Hall) threatened they would put her in a mental institution if she didn't do a trust. VRP1, p.5, ln.1-5. Mr. Hall does not dispute that he made the statement as recited in Ms. Lewis' declaration. He later clarifies and provides context for that statement, that he was concerned that without a Special Needs Trust, all of her money would go to creditors and to expenses otherwise covered by government benefits. CP 158 ¶4, CP 145-146. If this happened, she wouldn't see any of it.

[59] CP 113-114, ¶6

[60] CP 107

[61] CP 93-99

[62] *Id.*

[63] VRP2 p.3, ln.21-22

appropriate party, ultimately the Court set a special set hearing on the issue,[64] and directed that a number of pleadings be filed.[65]

The Court thus directed the following: a response from Ms. Mick (through her attorney, Ms. Huff) to the Motion to Terminate Trust, which was filed (both briefing and declarations) on June 12;[66] a declaration or legal memorandum from Ms. Rainey – she filed a responsive declaration on June 7.[67] The Court directed that "something" from Mr. Ferman be filed.[68] Mr. Ferman filed a memorandum of law, a motion for sanctions, and three supporting declarations on June 11.[69] The final document directed to be filed was a declaration from Mr. Tracy, which was filed June 14.[70]

Through the declarations in these responses, several additional facts appear, including the following: The notice and declaration of completion of the Low Estate were mailed out on June 7, 2018.[71] Ms. Lewis receives food stamps, a resource-based government benefit.[72] Ms. Lewis' Social Security money is gone very early in the month after trips to casinos.[73] She has numerous unpaid tickets and was continuing to drive without a license.[74]

---

[64] VRP2 p.12, ln.14
[65] VRP2 p.12
[66] CP 166-182
[67] CP 139-141
[68] VRP2 p.12, ln.9. This "something" was not defined by the Court.
[69] CP 142-165
[70] CP 206-207
[71] CP 197-198
[72] CP 163
[73] CP 164
[74] *Id.*

DSHS has a Medicaid lien against Ms. Lewis in the amount of $41,902.50.[75] No responsive declaration or additional evidence was submitted by Ms. Lewis to rebut any of these facts.

Hearing on these pleadings was held June 17, 2019. After arguments were heard on all sides, the Court ruled that Ms. Lewis signed and agreed to the Trust by her signature, thereby conferring jurisdiction on her, and that the argument on lack of personal jurisdiction was without merit.[76] The court further ruled that Ms. Lewis was subject to a Medicaid lien, and protecting her from that lien is an explicit purpose of a Special Needs Trust;[77] that the accounting was approved;[78] that the motion to terminate the trust was not brought in good faith and had no merit, and therefore sanctions for attorneys' fees would be awarded under CR 11;[79] The Court heard that attorneys' fees were as follows:

- Ms. Huff's additional fees pursuant to the Court's order to respond to Mr. Schafer's motion (not including the accounting) were $3,710.70.[80]
- Mr. Ferman's fees pursuant to the Court's order to respond to Mr. Schafer's motion were $4,013. [81]

---

[75] CP 179
[76] VRP3 p.32, ln.12-16
[77] VRP3 p.32, ln.17-21
[78] VRP3 p.33, ln.2-3
[79] VRP3 p.33, ln.4-6
[80] VRP3 p.34, ln.1-4
[81] VRP3 p.34, ln.6

- Ms. Rainey's fees were $900, although it is unclear how much of those were for initial representation and how much for responding to Mr. Schafer's motion. [82]

The Court then inquired what was the current balance of the Trust,[83] further indicating that the Court was pondering where the fees should be paid from.[84] In reaction to this remark by the Court, Mr. Schafer indicated that if the Court ordered sanctions against him personally, he would appeal the ruling.[85] The Court stated that it did not appreciate the threat, but then expressed concern that the threatened appeal would require a response, which would be an additional cost to the Trust.[86] The Court ordered Ms. Rainey's lower amount of fees paid in full by the trust, then reduced the fees for Ms. Huff and Mr. Ferman to $2,000.00 each – remarking that it was not, at least in so far as Ms. Huff was concerned, a reasonable amount to compensate for the work done, but that the Court hoped to work a cost savings by not levying the sanctions against Mr. Schafer.[87] The Court then signed orders to reflect these rulings.[88]

---

[82] VRP3 p.34, ln.9-10
[83] VRP3 p.34, ln.16-17
[84] VRP3 p.35, ln.4-5
[85] VRP3 p.35, ln.9-10
[86] VRP3 p.35, ln.18-22
[87] VRP3 p.36, ln.12-16
[88] CP 224-227

On June 27, 2019, a Motion for Reconsideration was timely filed by Ron Richmond (one of Ms. Huff's law partners) on behalf of Ms. Mick.[89] This Motion was joined by Ms. Rainey and Mr. Ferman, and supported by a brief declaration.[90] The Court allowed Reconsideration and ordered a Response.[91] After receiving the Response, on August 15, 2019, the Court granted Reconsideration and ordered Ms. Rainey's fees and Mr. Ferman's fees be paid by Mr. Schafer directly. Mr. Ferman's fees remained reduced. No mention was made of Ms. Huff's fees.

Appeal was filed by Ms. Lewis, and cross-appeal by Ms. Mick.

IV. ARGUMENT

A. THE SUPERIOR COURT HAD PERSONAL JURISDICTION OVER LEWIS IN THE TRUST CASE.

Lewis incorrectly frames the issue, or to the extent the issue is correctly framed, it is not properly before this Court.[92] This brief will consider both the issue as framed and the corrected issue.

1. The dispersal of Lewis' inheritance occurred in the probate case.

---

[89] CP 228-234
[90] *Id.*
[91] CP 235
[92] The argument was raised briefly at the Superior Court. VRP3 p.26-27, and also a factual inference at CP 95. The reason it is not properly before this Court is the action complained of took place in a different case, as discussed in the following argument.

Lewis' opening brief starts out with references to the court lacking jurisdiction to adjudicate, alter, or revoke an individual's legal property rights without personal service.[93] The Brief goes on to assert that the Superior Court's rulings directed or authorized the Trustee to abrogate Ms. Lewis' property rights and to convert her vested property into a Trust.[94] Lewis then states that, therefore, the rulings are void. She offers no legal argument or factual support for how the Superior Court's rulings made such direction or authorization.

Lewis correctly states to both Courts that the Trust document itself is silent as to where the funds may come from.[95] The Superior Court established the Trust on August 11, 2017,[96] then restated it on April 27, 2018.[97] The Superior Court issued no other orders in this case until after the Trust funded, which occurred on June 1, 2018.[98] There is no order in this case which directs Ms. Lewis' inheritance from the Larry Loy Estate to fund this Trust. The Trustee had the power and duty to accept proceeds tendered to her for the Trust, pursuant to the grant of power in Section 4.3 of the Trust, which is identical in both the original and restated copies.[99] This grant includes all the powers and duties set forth in the Washington Trust Act, an

---

[93] *Appellant's Brief*, p.19
[94] *Id*., p.20
[95] CP 94; *Appellant's Brief*, p.6
[96] CP 13
[97] CP 55
[98] CP 85
[99] CP 11, 53

extensive legislative scheme which includes an authorization for the Trustee to "receive property from any source as additions to the trust…"[100] Ms. Mick merely exercised that grant of power and duty when she received the check from the Personal Representative of the Loy Estate.[101] Ms. Mick did not write the check, had no authority to write the check, and no orders in this case addressed that. The issuance of inheritance funds to the Trust was an action of the Personal Representative in the Loy Estate, and any decision or authority to divert the inheritance to the Trust instead of to Ms. Lewis directly should appropriately be addressed in that case instead of in this Trust case.

Based on Lewis' arguments at both Superior Court and in the Appellant's Brief, it appears that the actual issue to be addressed herein is this:

2. The Superior Court had personal jurisdiction over Lewis to create the trust because she requested its creation as grantor.

Accordingly, the undersigned will address this issue instead.

It is undisputed by all parties that a Court ruling made while not having personal jurisdiction of the parties is void. Although misnamed, the

---

[100] RCW 11.98.070(1)

[101] It is also worth noting that, based on the repeated inquiries to Ms. Mick both by Ms. Lewis and on her behalf as to if the funds had arrived yet (See *Statement of the Case*, supra), Ms. Lewis likely may have had objections had Ms. Mick sent the funds back to the PR instead of accepting them into the Trust. This is, however, mere speculation.

Motion to Terminate Trust brought by Ms. Lewis on May 2, 2019, was essentially a Motion under CR 60(b)(5) to void the Trust. Indeed, in replying to concerns raised should the Trust terminate, Lewis argues that the Medicaid recovery provisions for termination of trusts would not apply were the Trust to be held void.[102] Motions under this subsection must be made within a reasonable time, but are not limited to the 12-month period which applies to other subsections.[103] Once a motion is made pursuant to this Rule, the Court must set a hearing and direct "all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted."[104] This supports the Court's May 10 instructions[105] for Ms. Huff, Ms. Rainey, Mr. Ferman, and Mr. Tracy to all submit materials responsive to the motion, as any or all of them may have been affected.

Personal jurisdiction is an essential concept in our jurisprudence, and one of the inherent Constitutional rights afforded to citizens of the State of Washington and of the United States. In Washington, this right stems from Section 3 of the State Constitution, which provides that "No person shall be deprived of life, liberty, or property, without due process of law." The fundamental requirement of due process is adequate notice and the

---

[102] CP 191
[103] CR 60(b)
[104] CR 60(e)(2)
[105] VRP2 p.12

opportunity to be heard.[106] Being denied this due process creates a jurisdictional defect, rendering subsequent action void.[107]

Also essential to our jurisprudence is an open and accessible judiciary. Courts are required to be open on all days except nonjudicial days.[108] Accommodations are made for persons of disability.[109] Interpreters are authorized for the hearing impaired or non-English speakers.[110] Fees and charges are waived in cases of indigency.[111] Every effort is made to ensure that all citizens have access to their Courts to plea their cases. Ms. Lewis did exactly that when she signed to have the Court establish her Trust

The record herein shows that after her father passed, Ms. Lewis attended a meeting with the attorneys for the Estate on June 2, 2017.[112] She was then referred to a different firm to help establish the Trust.[113] That firm, the office of John Tracy, met with her and her chosen Trustee.[114] She testifies that Mr. Tracy followed her wishes in selection of the Trustee.[115] She maintains vigorously that she has full legal capacity[116] and that she has

---

[106] *Sherman v. State*, 128 Wn.2d 164 at 184, 905 P.2d 355 (1995)
[107] *Hesthagen v. Harby*, 78 Wn.2d 934 at 942, 481 P.2d 438 (1971).
[108] RCW 2.08.030. "Nonjudicial days" is nowhere defined. See *Desk Manual for Superior Court Administrators*, §1.2. However, the same section serves to instruct that Courts are open except on legal holidays and weekends.
[109] GR 33
[110] GR 11
[111] GR 34
[112] CP 113 ¶4
[113] *Id.*
[114] *Id.*, ¶5
[115] *Id.*
[116] CP 112 ¶1

no mental health or substance abuse issues.[117] Although other sworn statements in the record dispute her mental acuity and use of drugs or alcohol,[118] the Superior Court made no findings on this dispute. For purposes of this argument, the undersigned will accept Ms. Lewis' statements listed in this paragraph as accurate.[119]

At Mr. Tracy's office on August 2, 2017, she was asked to sign the Special Needs Trust document. This document states clearly on the first page that Ms. Lewis is the Grantor of the Trust, "by and through the Superior Court of Kitsap County."[120] The top of the second page reiterates that the Superior Court is establishing this Trust for Ms. Lewis and appointing Mr. Torell as Trustee.[121] The Trust in §1.1 states that "[t]he Grantor and the Kitsap County Superior Court hereby establish the Trust as

---

[117] CP 115 ¶10

[118] CP 157-165

[119] Taking Ms. Lewis' statements as accurate in the absence of specific Court findings is consistent with Washington law on the nature of capacity. The Supreme Court has stated: "'The mental competency or capacity of an individual to execute an agreement, when challenged, presents a factual issue to be determined by the trier of the fact, with the test being whether the person in question, at the time of executing the contract, possessed sufficient mind or reason to enable him to understand the nature, the terms and the effect of the transaction. *Page v. Prudential Life Ins. Co. of America*, 12 Wn.2d 101, 120 P.2d 527 (1942); *Harris v. Rivard*, 64 Wn.2d 173, 390 P.2d 1004 (1964). This is true whether the questioned mental condition be the product of disease, age, alcohol, or drugs. 17 C.J.S. Contracts s 133(1) (1963).' It is well settled that the law will presume sanity rather than insanity, competency rather than incompetency; it will presume that every man is sane and fully competent until satisfactory proof to the contrary is presented." *Grannum v. Berard*, 70 Wn.2d 304, 307, 422 P.2d 812, 814 (1967), disapproved of by *Demers v. Gerety*, 85 N.M. 641, 515 P.2d 645 (NM. Ct. App. 1973).

[120] CP 6

[121] CP 7

an Irrevocable Trust."[122] On page 10 of the Trust, Ms. Lewis' notarized signature appears over her name, titling her as "Beneficiary & Grantor."[123] A fully competent person is required to know the nature and content of a document which they sign, and are responsible for any consequences incurred by signing.[124] On argument, Ms. Lewis asserts she was under duress by the attorneys for the Estate,[125] but her sworn statement to the trial court[126] lacks any statement that she felt intimidated or threatened. In addition, two months transpired before she signed the trust, and she did so in an entirely different place – Mr. Tracy's office – and she offers no testimony or argument that she felt threatened or coerced there, or in any way deprived from signing of her own free will.[127]

---

[122] CP 7

[123] CP 15

[124] Parties are generally charged with knowledge of the contents of the documents that they sign. *Recreational Equip., Inc. v. World Wrapps Nw., Inc.*, 165 Wn.App. 553, 568, 266 P.3d 924 (2011). One cannot, in the absence of fraud, deceit or coercion be heard to repudiate his own signature voluntarily and knowingly fixed to an instrument whose contents he was in law bound to understand. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37, 39 (1987)

[125] Appellant's Brief, p.29

[126] CP 112-116

[127] "To establish duress or coercion, there must be proof of more than reluctance to accept or financial embarrassment. The assertion of duress must be proven by evidence that the duress resulted from the other's wrongful or oppressive conduct. The mere fact that a contract is entered into under stress or pecuniary necessity is insufficient. *Culinary Workers Local 596 Trust v. Gateway Cafe, Inc.*, 91 Wn.2d 353, 363, 588 P.2d 1334 (1979); *Puget Sound Power & Light Co. v. Shulman*, 84 Wn.2d 433, 442-43, 526 P.2d 1210 (1974). See also *W. R. Grimshaw Co. v. Nevil C. Withrow Co.*, 248 F.2d 896, 904 (8th Cir. 1957); 13 S. Williston, Contracts s 1606 (3d ed. W. Jaeger 1970). Generally, circumstances must demonstrate a person was deprived of his free will at the time he entered into the challenged agreement in order to sustain a claim of duress. *Whitman Realty & Inv. Co. v. Day*, 161 Wn. 72, 77, 296 P. 171 (1931)." *Retail Clerks Health & Welfare Tr. Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944–45, 640 P.2d 1051, 1054 (1982)

The result of this analysis leads to but one conclusion: that Ms. Lewis availed herself of the Superior Court's jurisdiction to establish her Trust. Personal jurisdiction over Ms. Lewis was established based on her signed request to the Court to grant the Special Needs Trust for her.[128]

B. THE SUPERIOR COURT CORRECTLY APPROVED THE TRUSTEE'S REPORT AND ACCOUNTING.

Lewis's second assignment of error is that the superior court erred in approving the trustee's report, accounting, and requested fees. Her argument on this basis is remarkably terse and lacking entirely in legal authority or citation to any factual basis for her arguments, merely relying on her own pleadings. Further, the "Objection to Trustee's Accounting" filed below[129] did not raise any issues with the accounting or the actions of the trustee, but referred to the other documents filed simultaneously on the question of personal jurisdiction.

Lewis's Reply to Responses to Motion to Terminate Trust does question the trustee's actions in refusing to make expenditures that might jeopardize the status of the special needs trust,[130] but in doing so relies on

---

[128] It is worth noting that Lewis introduced into the record a letter from Mr. Tracy who states that there is no summons, citation, or other process involved. CP 117. Nowhere does Lewis provide any theory of what sort of process would be appropriate, or what one would serve on Ms. Lewis to somehow enhance her knowledge that they were establishing the Trust that she requested and signed off on.

[129] CP 107

[130] CP 194

what appear to be the results of a Google search[131] rather than any genuine understanding of the law on special needs trusts. In the appeal, she does not even bother to provide that much documentation of legal support for the position she is advocating.

The standard that requires that special needs trusts not be expended for food and shelter is based on the intersection of state and federal law.[132] The terms "available resource" and "income" are defined in federal regulations, which define income as including "[i]n-kind income[, which] is not cash, but is actually food or shelter, or something you can use to get one of these."[133] Thus, if distributions from the trust were used for food or shelter, the agency has the ability to consider those distributions as "income," and the trust as an available resource, defeating the trust and leaving it open to a lien.

Even if the entire trust were not undone, the "income" would reduce the benefits she otherwise might qualify for on the basis of income. Lewis has brought no evidence or argument for her assertion that she could have

---

[131] CP 194-195, which includes citations to, among others, nolo.com and rubinlaw.com, a law firm's posted article.

[132] The WAC which Lewis did manage to discover and cite below, WAC 182-516-0120, is only a tiny fraction of the rules regulating such trusts or the rules for determining what resources and income affect qualification for benefits, and those in turn are subject to the interpretation and application of agencies actually distributing benefits. All trusts under that chapter are also governed by WAC 182-516-0105, which references the ability of the agency to consider the trust an available resource or its distributions as income.

[133] 20 CFR 416.1102

received trust funds for basic needs without either jeopardizing her benefits or the special needs status of the trust.

Further, Lewis has not rebutted the evidence in the record that she in fact did receive needs-based benefits, including food stamps;[134] or her prior statement to Mick that Medicaid covered her Medicare premiums;[135] or evidence that she was, at some point, receiving housing assistance through the Bremerton Housing Authority.[136]

Lewis also does not provide any argument on what duty of the trustee was violated by the alleged failure of Mick to further investigate her benefits. There is no claim that this somehow benefitted Mick, thus violating the duty of loyalty.[137] There is no documentation that this violated her duty of good faith and honest judgment.[138] There is no basis given for the assertion that it is part of the duties of the trustee to thoroughly investigate the benefit status of a beneficiary or document the intricacies of benefit rules for the beneficiary's benefit. In fact, there is no showing or argument at all, just vague allegations.

The record does show that Mick used the trust funds to pay for expenses and debts of Lewis that were not being covered by federal or state

---

[134] CP 163
[135] Appendix A, p. 8
[136] Appendix A, p. 32; CP 173, para. 4
[137] RCW 11.98.078
[138] RCW 11.97.010

benefits,[139] and that when there was doubt as to the appropriate use of funds Mick sought and obtained court approval.[140] Lewis has not set forth any basis to establish why this use of trust funds for her benefit violated the duties of the trustee simply because she desired a different distribution.

C. THE TRIAL COURT CORRECTLY IMPOSED SANCTIONS UPON SCHAEFER

1. Rainey and Ferman were "parties" under CR 11 who could be granted an award of attorneys' fees.

Lewis contends that attorneys' fees should not be awarded for Rainey or Ferman because she considers them to be "witnesses" rather than "parties." While CR 11 and its accompanying case law have no clear delineation of which individuals may receive an award of attorneys' fees, it is stated that an "appropriate sanction" may be imposed upon the party or legal representative who signs a "pleading, motion [or] legal memorandum."[141] The rule goes on to state that sanctions "may" include an award to the other party or parties, but has no limiting language.[142]

---

[139] Appendix A, p.4.
[140] CP 63-66, 72-73
[141] CR 11(a)
[142] *Id.*

The superior court in this case[143]ordered both Rainey and Ferman to provide a response to the motion filed by Lewis.[144] Rainey submitted a declaration, which included legal argument.[145] Ferman submitted a memorandum of law with supporting declarations.[146]

Rainey and Ferman were required to make legal argument based on their respective roles in establishing the trust and obtaining appointment of the successor trustee, thus subjecting themselves to the possibility of being subject to sanctions.[147] As such, they incurred legal expenses and are entitled to reimbursement of the same when CR 11 sanctions are found to be appropriate.

2. Schaefer's pleadings were without merit and harmful to his client, justifying a CR11 sanction.

The relevant parts of Civil Rule 11(a) give the Court discretion to impose a sanction if a pleading, motion, or legal memorandum is signed and filed without being grounded in fact or warranted by existing law, or

---

[143] The superior court also has broad powers to take whatever actions seem necessary to adjudicate trusts. RCW 11.96A.020. This power includes the power to award attorneys' fees to "any party" from "any party to the proceedings…" RCW 11.96A.150. The lack of the terms "to the proceedings" following the first mention of "party" would seem to indicate that a person receiving the award does not necessarily need to be a party to the proceedings.

[144] VRP2 p. 12

[145] CP 139-141

[146] CP 142-165

[147] Had either Rainey or Ferman's submissions to the court proven to *not* be well grounded in law or fact, it stretches reasonable belief to think that Lewis would believe Rainey or Ferman were then exempted from CR 11 sanctions on the grounds that their participation was as "witnesses" rather than "parties."

for an improper purpose.[148] A trial court's ruling on a CR 11 motion is reviewed under the abuse of discretion standard.[149]

The Superior Court entered its sanctions order under CR 11 on June 17, 2019, making either nine or ten findings in support of its order.[150] The Appellant's Brief challenges #5[151] and #8, and also argues that lack of notice is fatal to a request for sanctions.[152][153]

Schafer contests that he never received actual notice either that his claims were invalid or that his prevailing might harm his client. While notice is recommended (though not expressly required by CR 11), it is merely one of the factors the trial court is to take into consideration in its award rather than an element in its own right: "evidence of such informal notice, or lack thereof, should be considered by a trial court in fashioning an appropriate sanction."[154] Evidently the court did take notice into consideration, and found that Schafer had adequate notice.

---

[148] CR 11(a)(2) also allows for good faith arguments for the extension, modification, or reversal of existing law or the establishment of new law. Lewis makes no such arguments at the Superior Court level or in this Appellate case.

[149] *Suarez v. Newquist,* 70 Wn.App. 827, 855 P.2d 1200 (1993).

[150] CP 225-226.

[151] *Id.*. Finding #4 is clearly crossed out. Finding #5 has markings on it, and may or may not be crossed out. Lewis on appeal takes issue with Finding #5. *Appellant's Brief*, p.33. For purposes of this argument, it will be assumed it was intended to be included.

[152] *Appellant's Brief*, p.32-33.

[153] In argument on CR11, Appellant's Brief cites at p. 32 to the unpublished decision in *Fletcher v. State* without appending the case to the brief pursuant to GR 14.1. Interestingly, at the trial level, Lewis' Reply at CP 187 took issue with the same oversight by opposing counsel.

[154] *Biggs v. Vail*, 124 Wn.2d 193, 198, 876 P.2d 448, 452 (1994).

While the record does not show every interaction between Schaefer and the other attorneys in the case, it does contain correspondence both from Ferman[155] and Mick's Counsel[156] prior to the filing of Lewis' motion indicating that the claims were groundless, supporting Finding of Fact #5.

Both Huff[157] and Ferman[158] referenced in oral argument informing Schafer of both the meritless basis and the potential harm, forming a valid basis for the court's decision on Finding of Fact #8.[159] Therefore, there is no reason to overturn the finding of fact by the court, who was in the position to review the entirety of the facts. "The determination of whether a violation of CR 11 has occurred is vested in the sound discretion of the trial court."[160] Schafer himself did not protest that he had not received notice until responding to the motion for reconsideration,[161] never raising it in his previous response to sanctions.[162]

The need of giving notice must also take into consideration that prior to the court's ruling on May 10, 2019,[163] it was unclear who, if

---

[155] CP268-269
[156] CP 261-262
[157] VRP3 p.22
[158] VRP3 pp.15-16
[159] Neither statement by Huff or Ferman at the hearing on June 17 (VRP3) was rebutted by Schafer that day, nor at all until at CP 245, in response to the Motion for Reconsideration.
[160] *Watson v. Maier*, 64 Wn.App. 889, 896, 827 P.2d 311, 315 (1992).
[161] See footnote 157.
[162] CP 196
[163] VRP2 p.12, ln.2-7.

anyone, had the responsibility to respond to Lewis' motion—and therefore also unclear who would have had standing to demand sanctions. Once ordered to respond by the court, Ferman in writing both requested sanctions[164] and clearly stated how the dismantling of the trust would harm Lewis.[165] The harm to Lewis was reiterated by Huff.[166]

Even after this notice, however, Schaefer continued to make the same arguments and continues to make them on appeal. Thus, it is entirely moot whether he received informal notice of the inappropriate nature of his claims earlier. That might be relevant if he abandoned his claims upon receiving notice and the other parties still pursued him for sanctions. But since clearly once he had received notice he still persisted in his course of action, and continues to make the same groundless arguments on appeal, he can show no harm even if the court was in error in its findings.

The imposition of sanctions under CR 11 is appropriate where a complaint lacks a factual or legal basis, and the court finds the attorney who filed it failed to conduct a reasonable inquiry into the factual and legal basis.[167] The court below found that such reasonable inquiry was not made. Here, Shaefer makes an argument on personal jurisdiction which was without basis because his client formed the trust that he seeks to undo.

---

[164] CP 142-143
[165] CP 155-156
[166] CP 168-169
[167] *Bryant v. Joseph Tree, Inc*., 119 Wn.2d 210, 220, 829 P.2d 1099, 1105 (1992).

Further, the undoing of the trust would act to the harm of his client[168] by making her funds subject to Medicaid recovery. Such actions were without merit under existing law and a reasonable inquiry into the law would have demonstrated that.

D. THE SUPERIOR COURT WAS NOT JUSTIFIED IN REDUCING REASONABLE FEES BASED ON THREATS OF APPEAL.

CR 11 exists to ensure that legal proceedings are used appropriately to accomplish their intended purpose. "Motions, pleadings, and other legal memoranda are not designed to harass another party, cause unnecessary delay, or needlessly increase another party's litigation costs."[169]

The Superior Court initially found that a sanction for Ferman's, Rainey's, and Huff's fees were all fully warranted because Lewis' motion lacked any merit,[170] and would be detrimental to Lewis.[171] When asked for clarification,[172] the Court expressed concern that an award of fees against the Trust would further harm Lewis. As the Court considered what to

---

[168] CP 226, specifically finding #7. Lewis does not challenge this finding on appeal. Furthermore, findings of fact are not reversed on appeal absent lack of supporting evidence in the record, which is also not alleged by Lewis.

[169] *Hough v. Stockbridge*, 152 Wn. App. 328, 346, 216 P.3d 1077, 1087 (2009), referencing CR 11(a).

[170] VRP3 p.32, ln.13.

[171] VRP3 p.32, ln.23.

[172] VRP3 p.33, ln.10-13.

do,[173] Schafer interjected that he absolutely would appeal if fees were awarded against him.[174] The court on the spot characterized these statements as "threats."[175]

The Court then went on to award fees against the trust, rather than against Schafer, and to minimize the damage to the Trust caused by Schafer's pleadings, the Court reduced fees to $2000 each for Ferman and Huff[176] even though reasonable amounts shown were more than twice this.[177] Rainey's fees of $900 were awarded in full.

The trial court expressly stated that the reason for awarding fees against the trust rather than Schafer was its concern that Schafer would appeal the ruling and the trust might incur further costs.[178] The reduction in fees was then considered necessary to protect the limited assets of the trust. The Court did not address the inherent conflict of interest in Schafer attempting to foist any sanction onto his client's fund instead of himself.[179]

---

[173] VRP3 p.35, ln.4-5

[174] VRP3 p.35 ln.6-12

[175] VRP3 p.35 ln.16

[176] CP 225-227

[177] VRP3 p.34-35

[178] VRP3 p.36, ln.15-16. "By not taking it from Mr. Schafer's firm, hopefully we don't incur further fees."

[179] RPC 1.8 prohibits an attorney from taking actions that conflict with their client's interests. Specifically, 1.8(b) prohibits use of any information related to representation to the detriment of the client. Here, Schafer used his knowledge of what was going on in the litigation to threaten further litigation if the award was against him instead of coming out of his client's Trust.

Mick's Counsel then filed a motion for reconsideration, with the firm pledging to defend any appeal without charging the Trust, deferring its fees for collection against Mr. Schafer.[180]

Upon considering this motion, the court shifted the burden to pay Rainey's and Ferman's fees to Schaefer personally rather than the trust. However, the Court erred by not setting the fees at their actual value or allocating the fees incurred by Mick's Counsel between those reasonably necessary to account for the trust and those wholly occasioned by Schafer's baseless motion.[181]

The Superior Court has discretion in its determination of whether a CR 11 violation has occurred. However, where a CR 11 violation is found, the court must impose appropriate sanctions.[182] The court then has discretion as to the scope of the sanctions to be awarded.[183] The appellate court, in reviewing such a determination, examines "whether the court's conclusion was the product of an exercise of discretion that was manifestly unreasonable or based on untenable grounds or reasons."[184]

Here, the court found a CR 11 violation and that awarding attorneys' fees against Schafer instead of against his client's Trust was the

---

[180] CP 228-234

[181] CP 274.

[182] *Brigade v. Econ. Dev. Bd. for Tacoma-Pierce Cty*., 61 Wn.App. 615, 619, 811 P.2d 697, 699 (1991); *Watson v. Maier*, 64 Wn.App. 889, 898, 827 P.2d 311, 316 (1992).

[183] *Rhinehart v. The Seattle Times, Inc.,* 59 Wn.App. 332, 341, 798 P.2d 1155 (1990).

[184] *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707, 710 (2004).

appropriate sanction.[185] The court accepted that the attorneys' fees requested were reasonable.[186] However, the court nevertheless refused to award the amount of fees found reasonable based solely on the concern that Schafer would appeal the ruling, further depleting the trust estate.[187]

The court's statements in making this ruling clearly demonstrate that this was not based on weighing the equities of the case or other reasonable basis, but simply because it feared Schafer taking further groundless action.

Far from furthering the purpose of CR 11, the court's actions were directly contrary to the purpose of CR 11. If litigants bringing groundless claims can get their sanctions reduced by threatening to litigate them further, the very behavior CR 11 is designed to reduce will be rewarded. The court's concern that the trust not be depleted by litigation is well-taken; however, the appropriate response is not to arbitrarily reduce the reasonable award of fees, but to award it against the party creating the situation, in this case Schaefer, instead of against the trust (other than the amount reasonably necessary for ordinary trust administration).

Because the court's reason for reducing the CR 11 sanction award of reasonable attorneys' fees was based on the untenable grounds of

---

[185] VRP3 p.33, ln.4-5.
[186] VRP3 p.36, ln.4-7.
[187] VRP3 p.35, ln.20-22.

permitting Schaefer to profit from his own threats of further groundless litigation, the lower court's ruling should be reversed and remanded for an award of all reasonable costs against Schaefer personally, except for that portion against the trust reasonably necessary for ordinary trust administration.

V. REQUEST FOR FEES ON APPEAL

In order to receive an award of fees on appeal, the party must make a request in its brief to the court.[188] Such award must be based on an underlying basis for fees. Respondents do hereby request fees based on CR 11 for the reasons cited above, as both the action below and this appeal are without basis. In the alternative, Respondents request fees under the discretionary power of both the trial and appellate courts as it relates to the adjudication of Trusts.[189]

As below, Respondents specifically request that, rather than deplete the limited resources of the Trust, fees be awarded entirely against Schaefer. As an attorney, Schaefer had the primary responsibility for analyzing the applicable law and advising his client as to the appropriateness of the remedy she sought. To pursue an action that would

---

[188] RAP 18.1
[189] RCW 11.96A.150.

act to the detriment of his own client even if he succeeded was particularly egregious.

Respondents also request that they be awarded costs for the entire case at the appellate level.[190] "A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review…"[191] A prevailing party is "any party that receives some judgment in its favor."[192]

VI. CONCLUSION

Lewis's claim was and remains groundless. She cannot claim lack of personal jurisdiction for a trust which she personally signed and helped establish. If she succeeded in undoing the trust, it would only be to subject her modest inheritance to the claims of creditors and the state instead of being available for her future needs. Her trustee has administered the trust in accordance with its terms. Her attorney who has persisted in pursuing this wrong-headed line of argument should face the full sanction for his actions, bearing the costs both below and for this appeal.

---

[190] RAP 14.2
[191] *Id.*
[192] See *Guillen v. Contreras*, 169 Wn.2d 769, 238 P.3d 1168 (2010).

RESPECTFULLY SUBMITTED this 5th day of April, 2020.

RICHMOND & RICHMOND LTD.

e/ Karen E. Richmond

_____

KAREN E. RICHMOND WSBA 31618
JAIME S. HUFF WSBA 39378
RONALD D RICHMOND WSBA 42438
Attorneys for Appellant
1521 SE Piperberry Way, Suite 135
Port Orchard WA 98366
360-692-7201

RICHMOND AND RICHMOND LTD.

April 06, 2020 - 8:51 AM

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_20200406085031D2673995_2853.pdf
  This File Contains:
  Briefs - Appellants/Cross Respondents
  The Original File Name was Court of Appeals Response and Cross Appeal .pdf

A copy of the uploaded files will be sent to:

- carolrainey@aol.com
- jaime@rrlaw.pro
- jpferman@handwps.com
- lauren@rrlaw.pro
- lhall@handwps.com
- ron@rrlaw.pro
- schafer@pobox.com

Comments:

Sender Name: Alyssa Kjormoe - Email: alyssa@rrlaw.pro
Filing on Behalf of: Karen E Richmond - Email: karen@rrlaw.pro (Alternate Email:)

Address:
1521 Piperberry Way
Suite 135
Port Orchard, WA, 98366
Phone: (360) 692-7201

Note: The Filing Id is 20200406085031D2673995