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NO.53949-7-II

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Estate of:

GARY RAY BLAKEY

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BRIEF OF RESPONDENT

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Appeal from the Superior Court of Kitsap County,  
Cause No. 16-4-00372-8

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## I. INTRODUCTION

Keith Foris challenges the trial court's attorney's fees award on *purely procedural grounds*.<sup>1</sup> He admits the case is governed by the Trusts and Estate Dispute Resolution Act<sup>2</sup> (TEDRA). He does not dispute that the trial court has discretion to award attorney's fees under TEDRA.<sup>3</sup> Further, he does not assign error to the trial court's findings of fact that his actions were "frivolous and hostile," or that he breached his fiduciary duties to the estate. The only question is whether the trial court's award was manifestly unreasonable. Because Mr. Foris's actions as personal representative were hostile to the sole beneficiary of the estate; because he was not candid with the trial court; and because he delayed the administration of the estate for several years unreasonably; the trial court's fee award was reasonable.

And because Mr. Foris failed to raise the issues he raises here with the trial court, his appeal should fail.

The trial court did not abuse its discretion in ordering the appellant to pay for transcripts on appeal. Mr. Foris concedes he failed to comply with RAP 9.2 by failing to identify the issues he intended to raise in this appeal.

The portions of the record not arranged for by Mr. Foris relate to the issues

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<sup>1</sup> Brief of Appellant at 34. (Emphasis added).

<sup>2</sup> RCW 11.96A et. seq.

<sup>3</sup> Brief of Appellant at 37.

before the court. When he objected to paying for the additional transcripts, he failed to identify the issues he planned to raise. The trial court did not err.

## II. COUNTERSTATEMENT OF FACTS

Gary Ray Blakey executed a Will dated March 7, 2008 naming Mr. Foris as Personal Representative and Mr. and Mrs. Foris as beneficiaries.<sup>4</sup> On January 16, 2016, Mr. Blakey executed another Will.<sup>5</sup> The 2016 Will revoked the 2008 Will.<sup>6</sup> Mr. Divine was named as the Personal Representative and sole Beneficiary of the Estate.<sup>7</sup> Mr. Foris was named as the alternate.<sup>8</sup> The Will directed that the Personal Representative serve without posting a Bond and without the intervention of the Court.<sup>9</sup>

Mr. Blakey died on April 24, 2016.<sup>10</sup> The primary asset of the Estate is a property in Silverdale.<sup>11</sup> Mr. Divine lived there for about four and a half years.<sup>12</sup>

Although the 2016 Will revoked the 2008 Will, an attorney for Mr. Foris, naming himself as the purported attorney of the Estate and of Keith Foris, filed a Petition, seeking to admit the 2008 Will to Probate.<sup>13</sup> He wanted “to make some investigations into the 2016 will.”<sup>14</sup> Mr. Foris’s

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<sup>4</sup> CP 567. FF 2.2.

<sup>5</sup> Id. FF 2.1.

<sup>6</sup> Id. at 568. FF 2.4.

<sup>7</sup> Id. at 567. FF 2.1.

<sup>8</sup> CP 1.

<sup>9</sup> Id.

<sup>10</sup> Id. FF 2.3.

<sup>11</sup> Id. at 568. FF 2.3.

<sup>12</sup> Id. at 568.

<sup>13</sup> Id. FF 2.4.

<sup>14</sup> June 17, 2016 VRP at 10:12-13.

counsel candidly admitted Mr. Foris did not want Mr. Devine living next to him.<sup>15</sup> (Mr. Foris and Mr. Blakey were neighbors).<sup>16</sup>

Mr. Divine objected to the admission of the 2008 Will, acknowledged that he could not serve as PR for the 2016 Will, objected to Mr. Foris' appointment as the PR of the Estate and filed a Counter-Petition for the admission of the 2016 Will and appointment of a neutral person as personal representative.<sup>17</sup>

On June 10, 2016, Mr. Foris filed a TEDRA Petition seeking: to admit the 2008 Will to Probate; appointing Mr. Foris as PR; invalidating a Transfer on Death Deed; removing Mr. Divine from the property or requiring payment of rent for remaining on the property; removing Mr. Divine's counsel; allowing further fact-finding of the 2016 Will; and recovery of attorney's fees and costs.<sup>18</sup>

The trial court refused to admit the 2008 Will and admitted the 2016 Will to Probate.<sup>19</sup> In the order the trial court acknowledged that Mr. Foris had a right to challenge the 2016 Will.<sup>20</sup>

Mr. Foris was concerned that Mr. Blakey did not have capacity to make the 2016 Will.<sup>21</sup> In August, 2016, Mr. Foris served subpoenas on Harrison Hospital and Ridgemont Terrace seeking copies of all Mr. Blakey's

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<sup>15</sup> October 17, 2016 VRP at 40:3-8.

<sup>16</sup> CP 42.

<sup>17</sup> CP 568. FF 2.5.

<sup>18</sup> Id. FF 2.6.

<sup>19</sup> Id. FF 2.7.

<sup>20</sup> Id. FF 2.8

<sup>21</sup> October 17, 2016 VRP at 4:21-24; 6:11-15; 16:13-23.

medical records.<sup>22</sup> Although Mr. Foris received hundreds of pages of documents, there was no evidence of further investigation regarding Mr. Blakey's capacity, although there was ample time to do so.<sup>23</sup>

Over Mr. Devine's objection, in October 2016 Mr. Foris was appointed as Personal Representative. Mr. Devine's counsel warned the Court that Mr. Foris's motivation was to bury Mr. Devine in "attorney's fees and needless litigation."<sup>24</sup> Mr. Foris requested that Mr. Devine's attorney be disqualified. The trial court refused. During that hearing, counsel for Mr. Foris advised the Court it was unlikely he would file a challenge to the Will.<sup>25</sup> At that hearing, counsel for Mr. Foris talked about times the Forises (neighbors of Mr. Blakey) helped Mr. Blakey when he was short money – without disclosing that this "help" was the basis for later creditors' claims.<sup>26</sup>

Mr. Foris's counsel listed his "jobs" as Personal Representative. His first job was getting appointed.<sup>27</sup> Second, was conducting an inventory.<sup>28</sup> (This never occurred, as discussed below). Third was to determine known creditors.<sup>29</sup> Counsel stated, "we don't really know what these creditors are."<sup>30</sup> He said this without informing the court that the Forises were a creditor.

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<sup>22</sup> CP 568. FF 2.9.

<sup>23</sup> CP 568-569. FF 2.9.

<sup>24</sup> October 17, 2016 VRP at 40:3-13.

<sup>25</sup> CP 569. FF 2.10.

<sup>26</sup> October 17, 2016 VRP at 29:1-4.

<sup>27</sup> Id. at 34:7.

<sup>28</sup> Id. at 34: 8-10.

<sup>29</sup> Id. at 34:11-15.

<sup>30</sup> Id.

The trial court “expressed concern about the tension between Mr. Divine and Mr. Foris” and directed that the Estate should be moved along as stated in the Will.<sup>31</sup>

In February, 2017, Mr. Foris’ attorney filed a Motion to procure chimney, electrical and septic investigations; to require Mr. Divine to sign a lease; to evict Mr. Divine’s friend who was living on the property; to require the removal of the friend’s trailer from the property and to conduct an inventory.<sup>32</sup> Other than the Inventory request, Mr. Foris’s motions were denied. Later, the inventory inspection was made by Mr. Foris, but no written inventory was ever provided.<sup>33</sup>

At that hearing Mr. Foris’s attorney was asked about creditor claims:

THE COURT: I haven’t seen any indication, though, that there’s a long list of creditors out there.

MR. KAMBICH: Well, we haven’t – no. We have not heard -- we’ve only heard from two creditors, I think to date. We’re investigating two more plus the mortgage....<sup>34</sup>

He did not disclose the trial court that the Forises were the “only major creditor of the estate”<sup>35</sup> or that he intended to file creditor’s claims for over forty thousand dollars.

Mr. Foris then filed the following creditor’s claims:

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<sup>31</sup> CP 569. FF 2.10.

<sup>32</sup> Id. FF 2.11.

<sup>33</sup> Id.

<sup>34</sup> February 13, 2017 VRP at 12-17.

<sup>35</sup> September 23, 2019 VRP at 25:20-21.

- A claim for possession of a 1964 Pontiac LeMans from an alleged loan made to the Decedent in February 2008 for \$4,672.06. No documentation was submitted that any such loan was made.<sup>36</sup>

- A claim for alleged loans for \$17,263.34 from 2008 through 2010. No documentation was submitted with the claim that any such loans were made, nor any loan terms.<sup>37</sup>

The trial court found the statute of limitations to collect the alleged loans the Forises claim they made to the Decedent between 2008 and 2010 expired no later than 2013, and collecting the loans barred.<sup>38</sup>

Mr. Foris also submitted a creditor's claim to reimburse costs and attorney's fees for \$21,914.03. No invoices, time records, checks or other documentation accompanied the claim or otherwise were filed.<sup>39</sup> The trial court denied this claim.<sup>40</sup>

After Mr. Blakey's death the Forises stored personal property on the Estate's property with no right to do so.<sup>41</sup>

Mr. Foris or his attorney possessed Mr. Blakey's life insurance proceeds, a tax refund for the 2015 tax year and other funds from one or more accounts of Mr. Blakey. No accounting was provided by Mr. Foris.<sup>42</sup>

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<sup>36</sup> CP 570. FF 2.14 (a).

<sup>37</sup> Id. FF 2.14 (b).

<sup>38</sup> Id.

<sup>39</sup> Id. FF 2.14 (c).

<sup>40</sup> Id.

<sup>41</sup> Id. FF 2.15.

<sup>42</sup> Id. FF 2.16.

Over two years after the probate was filed, Mr. Foris’s counsel still was talking about a will contest, even though a will contest was barred by the statute of limitations.<sup>43</sup> The trial court noted that Mr. Devine’s counsel’s warnings regarding Mr. Foris’s motivations – that Mr. Foris sought to “bury Mr. Devine in attorney’s fee and needless litigation” was accurate.<sup>44</sup>

Mr. Foris violated the fiduciary duties he owed to Mr. Devine.<sup>45</sup> Mr. Foris made little if any effort to administer the Estate and caused needless waste.<sup>46</sup> Mr. Devine requested his attorney’s fees under TEDRA.<sup>47</sup>

### III. ARGUMENT

#### A. STANDARD OF REVIEW

As noted by Mr. Foris, the standard of review on an attorney’s fee award under TEDRA is a manifest abuse of discretion.<sup>48</sup> “Discretion is abused when it is exercised in a manner that is manifestly unreasonable, on untenable grounds, or for untenable reasons.”<sup>49</sup>

Because of the “almost limitless sets of factual circumstances that might arise in a probate proceeding,” the legislature “wisely” left the matter of fees to the trial court, directing only that the award be made “ ‘as justice may require.’ ”<sup>50</sup>

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<sup>43</sup> September 23, 2019 VRP at 6-7.

<sup>44</sup> Id. at 25:15-19. October 17, 2019 VRP at 40:3-13.

<sup>45</sup> CP 569. FF 2.11

<sup>46</sup> Id.

<sup>47</sup> January 17, 2020 VRP at 9:1-4.

<sup>48</sup> Brief of Appellant at 26.

<sup>49</sup> *In re Estate of Black*, 116 Wn. App. 476, 489, 66 P.3d 670, 677 (2003), aff'd on other grounds, 153 Wn. 2d 152, 102 P.3d 796 (2004) citing *In re Estate of Niehenke*, 117 Wn.2d 631, 647, 818 P.2d 1324 (1991).

<sup>50</sup> *Id.* citing *In re Estate of Burmeister*, 70 Wn.App. 532, 539, 854 P.2d 653 (1993) (quoting former RCW 11.96.140 (1994), repealed by Laws of 1999, ch. 42, § 637), rev'd on other grounds, 124 Wn.2d 282, 877 P.2d 195 (1994).

Further, because Mr. Foris did not assign error to the trial court's findings, they are verities on appeal.<sup>51</sup>

B. THE TRIAL COURT HAD BROAD DISCRETION TO AWARD ATTORNEY'S FEES UNDER TEDRA AND DID SO BECAUSE APPELLANT'S ACTIONS WERE FRIVOLOUS AND HOSTILE TO THE ESTATE'S SOLE BENEFICIARY.

There is no dispute that this case is governed by TEDRA. Appellant seeks fees under TEDRA on appeal.<sup>52</sup> It follows that the trial court had the authority under TEDRA to award fees. Appellant reasons, with no citation to authority, that because Mr. Devine's brief before the trial court, and the trial court's order did not reference RCW 11.96A.150, the statute "cannot properly be a basis for the court to award attorney fees...in this case."<sup>53</sup> Appellant is wrong. While it may not have been cited in his motion, Mr. Devine's attorney cited TEDRA as the basis for his fee request on the record in his argument.<sup>54</sup>

Further, a trial court has discretion to award any relief to which a party may be entitled. "Except in the case of a default judgment, every final judgment may grant the relief to which the prevailing party is entitled, *even if that party has not demanded such relief in his pleadings.*"<sup>55</sup>

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<sup>51</sup> *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 808, 828 P.2d 549, 553 (1992).

<sup>52</sup> Brief of Appellant at 25.

<sup>53</sup> *Id.*

<sup>54</sup> January 17, 2020 VRP at 9:1-3.

<sup>55</sup> *Hos Bros. Bulldozing v. Hugh S. Ferguson Co.*, 8 Wn. App. 769, 773, 508 P.2d 1377, 1380 (1973) citing CR 54(c). (Emphasis added).

“In exercising its discretion under [RCW 11.96A.150(1)], the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.”<sup>56</sup> There is no requirement in the statute or caselaw that a party’s conduct be sanctionable to trigger a fee award.

Further, RCW 11.96A.150 does not require that a party substantially prevail to be entitled to an attorney fees award. Instead, it expressly gives the trial court discretion to grant such an award to “any party.”<sup>57</sup> Where a will beneficiary prevails on a claim raised by an estate’s personal representative, an attorney fees award may be appropriate.<sup>58</sup>

Appellant concedes the decision will only be reversed if the trial courts decisions was manifestly unreasonable or based on untenable grounds.<sup>59</sup> “A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’ ”<sup>60</sup>

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<sup>56</sup> *Cook v. Brateng*, 180 Wn. App. 368, 374, 321 P.3d 1255, 1258 (2014) citing RCW 11.96A.150(1).

<sup>57</sup> RCW 11.96A.150(1).

<sup>58</sup> See *McDonald v. Moore*, 57 Wn.App. 778, 783, 790 P.2d 213 (1990).

<sup>59</sup> Brief of Appellant at 2.

<sup>60</sup> *Magana v. Hyundai Motor Am.*, 167 Wn. 2d 570, 583, 220 P.3d 191, 197 (2009) *Mayer*, 156 Wn.2d at 684, 132 P.3d 115 (internal quotation marks omitted) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

The facts relied upon by the trial court are verities. The legal standard is addressed above – the trial court has broad discretion in a TEDRA case to award fees to any party. Applying the standard to the facts the trial court did not abuse its discretion. Mr. Foris had a fiduciary duty to Mr. Devine. Instead of working to support that duty Mr. Foris was hostile Mr. Devine. He delayed the estate’s administration for his own benefit. When he was seeking appointment as the Personal Representative, he did not disclose that he claimed to be a major estate creditor – holding disputed claims that the trial court later found had not merit. He was ordered to do an inventory. He never did one.

No case law stands for the proposition that a court cannot award attorney fees under RCW 11.96A.150 as a result from responding to frivolous or harassing motions or that RCW 11.96A.150 is not the appropriate avenue for seeking such relief. The trial court awarded attorney fees only for time spent on matters deemed to be frivolous and hostile actions in carrying out Mr. Blakey’s will. The trial court was familiar with the case over three years and it became evident that Mr. Foris was not meeting his obligations to carry out Mr. Blakey’s wishes, but was acting in a frivolous and hostile manner towards the beneficiary. Cases where appellate courts denied attorney fees under RCW 11.96A.150 are dissimilar. They entailed non-frivolous claims or involved unique or novel issues.

For example, in *In re Washington Builders Ben. Trust*<sup>61</sup> the Master Builder Association sought attorney fees from the trial court under RCW 11.96A.150. Although the claims against Master Builder Association failed, the trial court denied its request for attorney fees finding that the claims made “were not frivolous.”<sup>62</sup> It reasoned that “because RCW 11.96A.150 vests broad discretion in the trial court to deny attorney fees for ‘any and all factors that [the trial court] deems to be relevant and appropriate,’ the trial court did not abuse its discretion by denying [respondent’s] request for attorney fees on that basis.”<sup>63</sup>

Similarly, in *In re Estate of Wright*<sup>64</sup> the prevailing party sought attorney fees under RCW 11.96A.150. In denying the request, this court found that “[w]hile we resolve the legal issues that [appellant] raises in favor of the personal representative, those issues are not frivolous [and t]he personal representative fails to articulate a convincing basis for an award of fees.”<sup>65</sup> See also *Estate of Burton v. Didricksen*<sup>66</sup> (court did not award attorney fees under RCW 11.96A.150 finding that the appeal was not “frivolous.”); *Bale v. Allison*,<sup>67</sup> (court denied attorney fees under RCW 11.96A.150 because case involved a unique issue); *In re Estate of Burks v.*

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<sup>61</sup> 173 Wn.App. 34, 293 P.3d 1206 (2013)

<sup>62</sup> *Id.* at 85.

<sup>63</sup> *Id.*

<sup>64</sup> 147 Wn.App. 674, 688 (2008).

<sup>65</sup> *Id.*

<sup>66</sup> 189 Wn.App. 630, 640 (2015).

<sup>67</sup> 173 Wn.App. 435, 461 (2013).

*Kidd*,<sup>68</sup> (court declined to award fees under RCW 11.96A.150 because of the unique issues in the case); *In re Estate of D'Agosto*<sup>69</sup> (court declined to award fees under RCW 11.96A.150 because case involved novel issues of statutory construction).

Here, there were no unique or novel issues. Mr. Foris's conduct as personal representative breached his fiduciary duties. He delayed the probate. His actions were hostile to the beneficiary.

The trial court's fee award was only for billed work performed in relation to Mr. Foris's frivolous and hostile actions relating to his breaches of fiduciary duties. The court was familiar with the parties and the history of the case. The trial court went through the billing statements provided by counsel and awarded only those fees that resulted from Mr. Foris's frivolous and hostile actions.<sup>70</sup> In limiting its award to fees in responding to Mr. Foris's frivolous and hostile acts, it cannot be said that the court's decision rested on unreasonable or untenable grounds.

C. BY NOT RAISING THE ISSUE IN THE TRIAL COURT, MR. FORIS HAS WAIVED THE ISSUE HERE.

Mr. Foris's challenge to fees is procedural. He claims that because Mr. Devine failed to identify the basis for his fee request, in writing, and that the trial court's order did not reflect the fees were awarded under TEDRA, the fee award is erroneous..

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<sup>68</sup> 124 Wn.App. 327, 333 (2004).

<sup>69</sup> 134 Wn.App. 390, 402 (2006).

<sup>70</sup> January 17, 2020 VRP at 40-43.

Mr. Foris did not raise the issue raised here in his response to Mr. Devine's motion for fees in the trial court.<sup>71</sup> To the contrary, Mr. Foris asked for *his* fees to be awarded for having to respond.<sup>72</sup> Ironically, in doing so Mr. Foris failed to cite a statutory (or other) basis for that request.<sup>73</sup> This is likely because there is broad understanding that trial court had broad authority to award fees under TEDRA. Nowhere in the record did Mr. Foris raise the issues he raises in the Brief of Appellant – that because the motion and order did not refer to RCW 11.96A.150, that statute “could not properly be a basis for the court to award attorney fees...in this case.”<sup>74</sup>

Generally, an appellate court will not address contentions not presented to the trial court. *See* RAP 2.5(a). This general rule reflects a policy to encourage the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.<sup>75</sup> Fundamental fairness also requires that the opposing party can respond to possible claims of error at the trial level.<sup>76</sup>

Although the trial court made it clear it was awarding attorney's fees, Mr. Foris did not claim that the award was improper without a citation to the statute. He did not ask for clarification or call any error to the court's

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<sup>71</sup> CP 501-509.

<sup>72</sup> CP 508-509.

<sup>73</sup> *Id.*

<sup>74</sup> Brief of Appellant at 25.

<sup>75</sup> *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988).

<sup>76</sup> *See State v. Avendano-Lopez*, 79 Wn.App. 706, 710, 904 P.2d 324 (1995).

attention. Mr. Foris's response stated his actions were not "hostile" or "frivolous."<sup>77</sup> But those findings are not challenged and are verities. Under the circumstances, Mr. Foris has failed to preserve any challenges to the trial court's attorney fee award for appellate review.

**D. THE TRIAL COURT PROPERLY ORDERED MR. FORIS TO PAY THE COST OF PREPARING THE RECORD.**

After filing his Notice of Appeal, under RAP 9.2, Mr. Foris filed a Statement of Arrangements.<sup>78</sup> In the Statement of Arrangements, Mr. Foris only arranged to transcribe one hearing.<sup>79</sup> RAP 9.2 provides that "[i]f a party seeking review arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review." RAP 9.2(c). Mr. Foris failed to do so.<sup>80</sup> Counsel for the Mr. Divine requested that Mr. Foris comply.<sup>81</sup> When he did not, in order to make sure the record was sufficient for appeal, Mr. Divine filed a Statement of Arrangements for the hearings not ordered by Mr. Foris.<sup>82</sup>

Mr. Divine requested Mr. Foris pay for the record.<sup>83</sup> Mr. Foris, again, did not respond.<sup>84</sup>

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<sup>77</sup> CP 682.

<sup>78</sup> CP 728.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> CP 732.

<sup>82</sup> CP 733.

<sup>83</sup> CP 739.

<sup>84</sup> CP 726.

Mr. Foris argues that because he only seeks review of the September 27, 2019 order, the only transcript required is the one where that order was entered. This argument is based on the false premise that the prior hearings do not pertain to that order. This is shown in Foris' Opposition to Motion for Foris to Pay for Additional VRP For His Appeal at pages 4-5 where they list every other hearing and state that the relevance to the appeal is “none.”<sup>85</sup> This mischaracterizes the nature of the September 27 order.

The September 27 order is based, in large part, on the prior hearings. It was based on Mr. Foris's litigation conduct throughout the proceedings. The order they appeal has findings of fact that recite the prior hearings – on June 17, 2016, July 1, 2016, October 17, 2016 and February 13, 2017. While Foris may believe these hearings lack relevance to the trial court's September 27 order, the Court believed them relevant enough to include in its order. To review the Court's September 27 Order, review of what transpired at those prior hearings is necessary.

Here, Mr. Foris violated the rule by not identifying what issues his appeal would raise. He concedes this.<sup>86</sup> The representation in the response to Mr. Devine's motion in the trial court that the prior hearings' relevance was “none” did not have to be taken at face value by the trial court. This is especially true because in their response to the motion Mr. Foris still *did not identify issue that would be raised.*<sup>87</sup> He only stated the issues were related

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<sup>85</sup> CP 743-744.

<sup>86</sup> Brief of Appellant at 33.

<sup>87</sup> CP 740-745.

to the September 27, 2019 hearing without stating what those issues were.<sup>88</sup> This is likely because raising the issue – that the written motion and order did not state the basis for the award was RCW 11.96A.150 – would have caused the trial court to clarify that the award was based on the TEDRA statute. This further bolsters the invited error argument made above. Mr. Foris did not comply with RAP 9.2’s requirement to identify the issues on appeal because he did not want the trial court to know what issues he intended to raise on appeal. The trial court did not abuse its discretion.

#### E. MR. DEVINE SHOULD BE AWARDED HIS FEES ON APPEAL.

Reasonable attorney fees are recoverable on appeal if allowed by statute, and the request is made under RAP 18.1(a).<sup>89</sup> Here, RCW 11.96A.150 provides for attorney’s fees on appeal at the discretion of the Court. Because this appeal is only necessary because Mr. Foris failed to raise the issue before the trial court, Mr. Devine should be entitled to his fees on appeal. This appeal is a continuation of the pattern of hostile and frivolous acts as found by the trial court. Mr. Devine should be awarded his fees on appeal under TEDRA.

#### IV. CONCLUSION

The trial court’s unchallenged findings establish that Mr. Foris engaged in a pattern of frivolous actions hostile to the beneficiary of the

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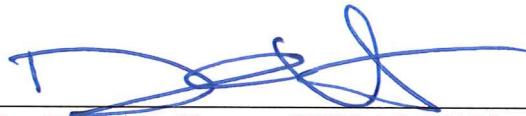
<sup>88</sup> Brief of Appellant at 33.

<sup>89</sup>*In re Guardianship of Wells*, 150 Wn. App. 491, 503, 208 P.3d 1126, 1133 (2009).

estate. His actions breached his fiduciary duties. Under TEDRA the trial court has broad discretion to award fees. It did so here. The trial court's orders awarding fees and requiring Mr. Foris to bear the costs of transcription on this appeal should be affirmed.

Dated this 24th day of July 2020.

TEMPLETON HORTON WEIBEL  
& BROUGHTON PLLC



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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day,, I provided a true and accurate copy of the document to which this declaration is affixed, entitled document to the following in the manner indicated:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Daniel J. Frohlich Attorney for Appellant Keith Foris Dickson Frohlich, P.S. 1200 East D Street Tacoma, WA 98421	Via: Court of Appeals ECR System And ViaEmail: <a href="mailto:dfrohlich@dicksonlegal.com">dfrohlich@dicksonlegal.com</a>

Dated this 24<sup>th</sup> day of July 2020 at Silverdale, Washington.

  
\_\_\_\_\_  
Tracey Hamilton-Oril  
Legal Assistant

**TEMPLETON HORTON WEIBEL PLLC**

**July 27, 2020 - 7:48 AM**

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**Superior Court Case Number:** 16-4-00372-8

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