

FILED

NOV 04 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 293483

Stevens County Cause No. 094000242

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

In re the Estate of Robert D. Washburn:

Keith C. Washburn

Respondent

v.

Melody A. Radezky
Appellant

RESPONDENT'S BRIEF

David E. McGrane
Attorney for Respondent
McGrane & Schuerman, PLLC
298 South Main, Suite 304
Colville, WA 99114
509 684-8484

TABLE OF CONTENTS

I. INTRODUCTION -1-

II/III. ASSIGNMENTS OF ERROR and ISSUES PERTAINING
THERE TO -1-

ISSUE NO. 1 -1-

A. It was appropriate for the trial court to apply the
Family Settlement Agreement Doctrine to the facts and
circumstances of this case. -1-

B. There is substantial evidence in the record to support
the trial court's ruling. -1-

ISSUE NO. 2 -1-

A. It was proper for the trial court to refuse to admit into probate
as a valid last will and testament, a document that was not
signed by the testator and which bore no witness signatures.
..... -1-

B. Not being a valid will admitted into probate, it was
proper for the trial court to not interpret the document as a
valid will. -2-

IV. STATEMENT OF THE CASE -2-

V. ARGUMENT -12-

ISSUE NO. 1 -12-

A. It was appropriate for the trial court to apply the
Family Settlement Agreement Doctrine to the facts and
circumstances of this case. -12-

B. <u>There is substantial evidence in the record to support the trial court's ruling.</u>	-13-
ISSUE NO. 2	-19-
A. <u>It was proper for the trial court to refuse to admit into probate as a valid last will and testament, a document that was not signed by the testator and which bore no witness signatures.</u>	-19-
B. <u>Not being a valid will admitted into probate, it was proper for the trial court to not interpret the document as a valid will.</u>	-19-
ISSUE NO. 3	-24-
A. <u>The Respondent should be awarded reasonable attorney fees on Appeal.</u>	-24-
VI. CONCLUSION	-25-

TABLE OF AUTHORITIES

Arnold v. Sanstol, 43 Wn.2d 94, 98 (1953). -14-

Bering v. Share, 106 Wn.2d 212, 220 (1986) -13-

Collins v. Collins, 151 Wn. 201 (1929) -14-

Conrad v. Conrad, 36 Pa. Super. Ct. 154 (1908) -15-

In re Brown's Estate, 101 Wash. 314 (1918) -20-

In Re Witte's Estate, 25 Wn.2d 487, 498 (1946) -14-

Stender v. Twin City Foods, Inc., 82 Wn.2d 250, 254 (1973) -15-

Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 575 (1959)
..... -13-

RCW 11.12.020 -19-

RCW 11.96A -10-, -25-

RCW 11.96A.150 -24-, -25-

I. INTRODUCTION

In a situation where both parties acknowledge that they had reached an agreement as to the distribution of their father's estate, the Appellant has not established that the trial judge misapplied the law nor has Appellant shown that the trial judge made any factual findings not supported by substantial evidence.

II/III. ASSIGNMENTS OF ERROR and ISSUES PERTAINING THERETO

ISSUE NO. 1

A. It was appropriate for the trial court to apply the Family Settlement Agreement Doctrine to the facts and circumstances of this case.

B. There is substantial evidence in the record to support the trial court's ruling.

ISSUE NO. 2

A. It was proper for the trial court to refuse to admit into probate as a valid last will and testament, a document that was not signed by the testator and which bore no witness signatures.

B. Not being a valid will admitted into probate, it was proper for the trial court to not interpret the document as a valid will.

IV. STATEMENT OF THE CASE

Robert D. Washburn (hereinafter “decedent”) passed away on April 28, 2004. (RP 27) He was survived by two children, Keith C. Washburn (hereinafter “Respondent” and/or “Keith”) and Melody A. Radezky (hereinafter “Appellant” and/or “Melody”)(RP 371-372)

When the decedent died, his estate consisted of 160 acres of land and improvements. The decedent called his real property “the Char-Mel Ranch”. (RP 52, 93) The 2004 tax assessed value of the real estate and improvements totaled \$176,300. (Ex 011, RP 289) The decedent also held a Charles Schwab 401K account having a value of \$16,523.05, a Horizon Credit Union account with a balance of \$58,945.45, and a Bank of America account of \$4,000.89. (Ex 014) The decedent also had a number of vehicles including a 1998 Chevrolet Pickup, a 1999 Toyota Corolla, a 1986 Dodge one-ton truck, a 1952 GMC one-ton truck, a 1937 restored antique Ford

Pickup, a 1946 Willy's Jeep, a 1974 boat and trailer, a 1980 16' car hauler trailer, a 1973 snowmobile trailer, a 1989 Ford motor home, and a Ford tractor. (Ex 020) The decedent also had silver collectable coins (Exs 019 and 020) and several firearms (Ex 018).

After his death, a will executed by Robert D. Washburn on April 19, 1972 was found in his personal papers. (RP 377-378, 426) This will had numerous handwritten delineations on its face. The will was executed prior to Robert D. Washburn's divorce from his then wife, Charleen F. Washburn. Charleen F. Washburn's name was scratched from the document. A new date of February 7, 1984 was placed on the document but the will was not re-executed. (CP 7-9)

Found at the same time was a four-page handwritten document prepared in Robert D. Washburn's handwriting that was unsigned and undated except for the following: " ___ day of _____, 2004." (hereinafter "the handwritten will") (Ex 101, CP18-21, RP 379 Appellant Brief Appendix 1) The handwritten will stated:

If my son survives me for the space of four
Calendar Months, then in that event, I give,

devise and bequeath to my son Keith C.
Washburn All Real Estate property Sec 21 Twp
35 Rge 40 N/W1/2 -SW1/4 As his Sole And
Separate Property-the Char-Mel Ranch

To my Special Friend Dorothy M. Sphuler I,
bequeath Ten Thousand Dollars

The Remaining Assets of my Estate I, bequeath
to my Daughter Melody Ann Radezky I, Leave
it up to my Son and Daughter to provide for my
Grand Children. (CP 19-20)

Both Keith and Melody recognized the document as being in
their father's handwriting. (RP 30, 93, 94, 113, 392-393) On its face
the handwritten will is legible.

After the death of their father and the discovery of both the
1972 will and the handwritten will, Keith and Melody met on several
occasions.

At the church after the funeral, Melody told Kim Wilson,
Keith's former spouse about a meeting she had the day before and
that they had found a will that gave Dorothy \$10,000, the real
property to Keith and the rest of the assets to Melody, and that
Melody was fine with this result. (RP 70-71)

Troy Washburn, Keith's son, testified that shortly after
decedent died, in his presence Keith and Melody agreed to follow the

handwritten will wherein Keith would receive the real property and Melody would receive the balance of the estate after Dorothy Sphuler was paid \$10,000. (RP 39, 457). Keith testified that he and his sister agreed to follow the handwritten will wherein he would receive the real estate and Melody would receive the balance of the property after Dorothy was paid \$10,000. (RP 93)

Approximately two weeks after the decedent's death, Melody and Mark Radezky were advised by legal counsel of their own choosing that an agreement could be reached with Keith as to how the estate could be divided. (RP 362, Ex 111)

On May 30, 2004 a meeting occurred between Keith and Melody testified to by Melody and Mark Radezky, her husband. Mark had prepared a "worksheet" for both Keith and Melody to fill out to set forth their understandings as to the meaning of the handwritten will and the 1972 will (Ex 16, RP 219). Keith was non-communicative at that meeting (RP 221), however Melody did fill out the worksheet in her own handwriting as to what she thought the handwritten will meant (RP 221). She also read her responses out loud to Keith (RP 225). In filling out the work sheet as to her

understanding of the handwritten will Melody wrote that Keith would receive "the house with land", "all real estate", "the Char-Mel Ranch", that Dorothy would receive \$10,000, and that Melody would receive "all remaining assets". (Ex 16. RP 328, 434-435) In that same worksheet (Ex 16) Melody further wrote down her understanding that under the 1972 will, the estate assets would be split equally on a 50/50 basis. Melody then placed a check mark in the box that stated: "I would like to have things distributed according to the handwritten will". (Ex 16, RP 392) Mark Radezky testified that both parties agreed to this division of the estate at that time (RP 228).

There was no discussion prior to the this meeting or at the meeting about dividing the real estate (the Char-Mel Ranch) into two separate parcels, nor was there any discussion of legal descriptions nor was there any review of any maps. (RP 94, 333-334, 362, 370, 436-437, 442-443) After the agreement in 2004, and for more than four years thereafter until February 2009, the parties never had any discussions about the legal description of the real estate, and never discussed dividing up the Char-Mel Ranch in any way. (RP 445)

Two days after this meeting, on June 2, 2004 Melody filed the handwritten will with the Stevens County Superior Court Clerk to affirm the agreement reached with Keith. (RP441-442, CP 18-21)

Subsequent to reaching their agreement, there is no dispute that the parties did the following:

- Melody paid Dorothy Sphuler \$10,000 (RP 53, 96, 235, 274, 409);

- Melody took possession of all of the vehicles (RP 40, 96, 184, 209, 410);

- Keith signed over to Melody his interest in all bank accounts and Melody received the assets in the Charles Schwab 401k account (RP 41,96, 233, 398, 444);

- Keith listed his home in Colville for sale and in the summer of 2004 he moved onto the Char-Mel Ranch and has resided there since (RP 46,47,95);

- From April of 2004 until approximately August, 2004, Melody had full access to the house and all its contents with the full understanding that she could remove all contents and take any items (RP 41, 430).

After she had received the bulk of the personal property items she was entitled to and about the time that Keith moved permanently onto the real property, in the summer of 2004 Melody stated to

Gordon Tharaldson, the current husband of her mother, that she had received everything that she was entitled to and was happy with her agreement. (RP 184)

Sometime in October 2004, Mark Radezky prepared a document bearing a date of May 30, 2004 entitled "Waiver to Accept Present Written Will" (Ex 007, RP 239). The purpose of preparing this document was to confirm the agreement between Melody and Keith (RP 240). Melody wrote to Keith on October 17, 2004, (Ex 022, pp. 2, 3) enclosing the "Waiver" which she described as documenting an "agreement" and "mutual understanding". (Ex 022, p.2) The "Waiver" was signed by both parties and dated and notarized on November 11, 2004 affirming their understanding and agreement. (RP 334, Ex 007)

After the agreement was reached, a proposal was discussed to trade some of Keith's real estate for some of the vehicles and money that Melody had received (RP 97-98, 324-326, 440-441). Keith did not accept this proposal (RP 45,98, 326-327, 441). In a follow-up letter to Keith dated 9-21-07 (Ex 022, p. 4, RP 242), Melody again brought up the subject of a possible exchange of some of her assets

for some of Keith's land (RP 337-338) Again a similar letter suggesting an exchange was sent by Melody to Keith on November 15, 2007. (Ex 022, p. 5, RP 243) Keith did not accept any of these proposals to exchange any of his land for Melody's assets. (RP 243, 337-338)

Since 2004 Keith has been in continuous possession of all of the real property known as the Char-Mel Ranch, has lived thereon, has paid all real property taxes, and has paid all insurance and utilities. (RP 98-99, 339) In 2006 Keith logged the property (RP 99) and sold \$3,364.75 of timber to Columbia Cedar (Ex 025) and from 2006 to 2008 he sold timber valued at \$66,946.55 to Vaagan Bros. Lumber Company (Ex 024). Respondent kept all logging proceeds. Keith also leased the pasture over six years (RP 167-168) and made improvements to the land.

Since the time of the decedent's death, there had been no formal transfer of title to the real property into the name of Keith. (RP 49) In February 2009 Troy Washburn, being concerned about the deteriorating health of his father, contacted Melody for the purpose of transferring title to the real property into Keith's name.

(RP 51, 75) At an initial meeting, Melody, primarily communicating through her husband Mark, requested reimbursement for one-half of the funds paid to Dorothy Sphuler, one-half of the funeral expenses, and payment for money asserted to have been loaned by the decedent to Keith, all sums totaling approximately \$18,000. (RP 52, 76, 351) A couple of days later on February 11, 2009 at a follow-up meeting called by Melody at Troy Washburn's home, Mark indicated that he had conferred with an attorney. (RP 356) At this meeting, for the first time Melody claimed a right to some non-described portion of the real estate. (RP 57, 79, 357-358)

On February 27, 2009, Melody petitioned the court for an Order Probating Will; Appointing Personal Representative; Adjudicating Estate to be Solvent; Directing Administration. (CP 1-6) Keith filed a Petition to Declare Rights (TEDRA RCW 11.96A et al) on March 10, 2009. (CP 12-22) On March 12, 2009, the Court entered a stipulated order reading as follows:

4. It is ordered that the parties acknowledge their agreement to honor the last wishes of their father as contained in the unsigned handwritten Will filed June 2, 2004, Case Number 2004 4 00041 1 as set forth in Waiver to Accept Present Will for division of the Estate of Robert D.

Washburn, dated November 11, 2004. (CP 30-31)

On January 28, 2010, the Court issued an Order Denying Motion to Accept Present Handwritten Will as Last Will and Testament of Robert D. Washburn. (CP 185-189) In the order, the Court ruled that while the unsigned will could not be admitted to probate, the parties could enter into an agreement (i.e. a family settlement) and that they agreed to honor the last wishes of their father as stated in the hand written Last Will and Testament, as set forth in the Waiver to Accept Present Will for Division of Estate of Robert Washburn dated November 11, 2004.

A trial was held on April 14 and April 15, 2010 before Judge Allen C. Nielson to determine the agreement of the parties. (RP 1-530) Subsequent to the trial, the court prepared its own Findings of Fact, Conclusions of Law and Ruling, which were entered at a presentment hearing on June 14, 2011. (CP 291-304)

After two days of trial and weighing all testimony and evidence, the court ruled that the parties had entered into an agreement to follow the wishes of their father (CP 294-5), that both

Keith and Melody read and understood the handwritten Will as giving all real property to Keith (CP 295), and that the agreement of Keith and Melody was further formalized by the “Waiver” that each of them signed on November 11, 2004 (CP 295).

The Court concluded that the agreement that Keith and Melody had entered into as to the division of their father’s estate was permissible under the “Family Settlement Doctrine”. (CP 297) The court ruled that the clear terms of the agreement, and all acts subsequent to their agreement by the parties, were consistent with their agreement that Keith receive “all real property” of the estate. (CP 298) The Court further ruled that Melody’s interpretation of the hand written will is not reasonable. (CP 299)

V. ARGUMENT

ISSUE NO. 1

A. It was appropriate for the trial court to apply the Family Settlement Agreement Doctrine to the facts and circumstances of this case.

B. There is substantial evidence in the record to support the trial court's ruling.

The trial court found that the Appellant and the Respondent entered into an agreement as to the division of the estate of their father. Both sides testified that they entered into an agreement to divide their father's estate in a manner other than dividing all assets on a 50/50 basis.

In its Findings of Fact, Conclusions of Law and Ruling, the court found that the parties agreed that Keith would receive all real estate, Dorothy Sphuler would be paid \$10,000 and the rest of the assets would go to Melody. (CP 291-304) There is overwhelming evidence in the record, submitted by both sides, to support the court's finding. The trial court's ruling should be upheld as being supported by substantial evidence.

A finding of fact will not be overturned if it is supported by substantial evidence. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575 (1959). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Bering v. Share*,

106 Wn.2d 212, 220 (1986). "Substantial evidence" does not mean uncontradicted evidence, but rather "that character of evidence which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed". *Arnold v. Sanstol*, 43 Wn.2d 94, 98 (1953).

The Appellant claims that it was an error for the trial court to apply the principles of the "Family Settlement Doctrine" to the facts of this case. Washington courts have long recognized the right of family members to enter into an agreement for the disposition of an estate upon a plan different from that provided for under a will or the laws of decent and distribution. *Collins v. Collins*, 151 Wn. 201 (1929). Such agreements are favored in the law. *Collin, supra*. at 215, The *Collin's* court specifically observed that the agreement could be oral, and did not have to be in writing. *Collins, supra*, at p.212. The justification for the doctrine is stated in *In Re Witte's Estate*, 25 Wn.2d 487, 498 (1946) as follows:

The settlement by compromise of will contests and family disputes, being calculated to avert contentions, adjust doubtful rights, contribute to peace and harmony, protect the honor of the family, and avoid litigation, is not in contravention of public policy, and, when fairly

arrived at, is favored both in law and in equity.
(at. 498)

Under facts very similar to the facts of this case, the Family Settlement Doctrine was held to allow heirs at law to enter into a contract providing for distribution of an estate in accord with an unsigned will. *Conrad v. Conrad*, 36 Pa. Super. Ct. 154 (1908)

At the trial of this case, the court heard testimony over two days from several witnesses. Both Melody and Keith testified that they had an agreement to divide their father's estate in a manner other than by a 50/50 division of all assets. Since there was no dispute that the parties had in fact entered into an agreement, the sole issue for the trial court to determine was: **What did the parties agree to when they entered into their agreement?**

In determining the intent of the parties to the agreement, the court properly viewed the agreement as a whole, the subject matter and objective of the agreement, all the circumstances surrounding the making of the agreement, the subsequent acts and conduct of the parties to the agreement, and the reasonableness of the respective interpretations advocated by the parties. *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254 (1973). (See Conclusion of Law B)

The court found that the parties agreed that Keith would receive all the real estate, that Dorothy Spuler would be paid \$10,000, and Melody would receive the remaining assets of the estate.

The Statement of the Case previously set forth contains specific references to the report of proceedings, the clerk papers and the exhibits to establish the following as fact:

-Both Melody and Keith testified that they reached an agreement to divide their father's estate in something other than a 50/50 split of each of the assets therein.

-Both Melody and Keith agreed to follow their understanding of the wishes of their father set forth in the handwritten will.

-The wording of the handwritten will had meaning to the parties.

-Melody told Kim Washburn shortly after the funeral that a will was found and that Keith was to get the real property, Dorothy Sphuler was to receive \$10,000, and the rest of the assets in the estate were to go to Melody.

-Keith testified that he agreed with Melody to divide the estate as he understood the handwritten will to read, which was that he would receive all real property, Dorothy Sphuler would receive \$10,000, and the rest of the assets in the estate were to go to Melody.

-Troy Washburn testified that he was present when Keith and Melody agreed that Keith would receive the real property, and Melody would receive the rest of the assets after Dorothy Sphuler was paid \$10,000.

-Melody filled out a work sheet prepared by her husband where she set forth her understanding of the hand written will. She wrote and orally recited to Keith that Keith would receive "all real property" "the Char-Mel Ranch", Dorothy Sphuler would receive \$10,000, and Melody would receive "all remaining assets". Melody specifically checked the box that she wanted to divide the estate according to the handwritten will.

-Both Melody and Keith signed a "Waiver" document prepared by Melody where they both agreed to follow the provisions of the handwritten will in dividing the estate.

-Neither prior to the 2004 agreement nor at any time up until February 2009, did Melody or Keith ever discuss dividing the real property. There was never any discussion about legal descriptions or maps relating to the real property.

-After the agreement, Melody paid Dorothy Sphuler \$10,000.

-Melody took possession of all motor vehicles, all cash in the bank accounts, and a 401k account owned by the decedent.

-Keith sold his home in Colville and moved onto the real property and has lived there since. He has paid all taxes, utilities and expenses associated with the real property, and has logged and pastured the property and exclusively retained all proceeds generated there from.

-After the agreement, Melody offered to exchange some of the assets for some of the real property. Keith rejected this proposal.

-It was not until February 2009, almost five years after the death of the decedent, that Melody first made a claim to some non defined portion of the real estate.

On the facts before it, it was not error for the trial court to conclude that the parties had entered into a family settlement

agreement. In determining what the parties had agree to in their family settlement, the trial record contains more than adequate "substantial evidence" to affirm the finding of the trial court that the parties agreed that Keith was to receive all real estate, and that Melody would receive the remaining assets.

ISSUE NO. 2

A. It was proper for the trial court to refuse to admit into probate as a valid last will and testament, a document that was not signed by the testator and which bore no witness signatures.

B. Not being a valid will admitted into probate, it was proper for the trial court to not interpret the document as a valid will.

Appellant in her brief argues that the trial court erred in not correctly "interpreting" the unsigned, unwitnessed, and not notarized handwritten document prepared by Robert Washburn during his lifetime. (Appendix 1 to Appellant's Brief; Ex 101)

RCW 11.12.020 provides:

Every will shall be in writing signed by the testator or by some person under the testator's

direction in the testator's presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will,... (Emphasis Added)

The requirements for the execution of a valid last will and testament is well settled in the State of Washington and elsewhere. Washington does not recognize holographic wills even when signed by the testator because they are not witnessed. *In re Brown's Estate*, 101 Wash. 314 (1918).

It is therefore well settled law that the handwritten will is not a valid will. Two weeks after decedent's death Melody was advised by her own attorney that the handwritten will was not a valid will. (RP 362, Ex 111) The court expressly rejected the probate of the handwritten will in a pretrial order. (CP185-189) Not being a valid will, and not having been admitted to probate, it was proper for the trial court not to interpret it.

While the handwritten will is certainly a relevant document which provides some evidence for the court in determining the substance of the family settlement agreement entered into by Keith and Melody, legal rules of construction as to the interpretation of

wills generally are not relevant to this case. It was proper for the trial court not to "interpret" the handwritten will as a legal and valid testamentary will.

The Appellant argues that Keith and Melody in 2004 only agreed to "accept" the will of their father, but that they didn't at that time agree to any terms of what their agreement was. Apparently according to this argument, the terms of what they agreed to were to be determined at some future indeterminate time and by some indeterminate manner. Five years later, she argues, when Melody reviewed the handwritten will more closely, suddenly Melody discovers a new understanding of what their agreement was.

The trial court specifically rejected this argument (Conclusion of Law B.5) The Appellants argument ignores the clear provision in the handwritten will that Keith receive "All Real Estate Property". Melody herself read this provision in 2004 to mean that Keith would receive "the house with land", "all real estate", "the Char-Mel Ranch" (Ex 16). Since 2004 the parties had divided the property consistent with their agreement and had lived their lives in a manner consistent with their understanding for almost five years. The trial

court characterize Melody's present interpretation of the handwritten will as "not reasonable". (Conclusions of Law, B.5)

The Appellant sets forth several sub-issues questioning the interpretation the court gave to the handwritten will. The point is that the trial court did not "interpret" the handwritten will because the intent of Robert Washburn is not the issue in this case. The issue in this case is the intent of Keith and Melody in 2004 when both agree they entered into an agreement to divide up their father's estate in something other than a 50/50 division.

As to Sub-issue A, the "Waiver" (Ex 7) merely affirms what both parties testified to---that they had an agreement to divide their father's estate differently than a 50/50 division. The waiver does not set forth the terms of agreement except that the agreement would be grounded in what the parties understood their father to mean. The court made findings as to what Keith and Melody did in fact agree upon based upon their own testimony, the testimony of other witnesses, Keith's and Melody's actions before, during and after entering into their agreement, and all the facts and circumstances of the case. The handwritten will, while relevant, does not constitute

the substance of the agreement that the siblings entered into on their own. There was no need to "interpret" it.

As to Sub-issue B and Sub-issue C, again the job of the trial court was not to try to glean the intent of Robert Washburn from a "flawed legal description" in a not signed document. The job of the court was to determine how Keith and Melody understood this document and what they agreed to, recognizing that they were both aware of the handwritten will. Keith and Melody both read the handwritten will. Melody put down in writing what her understanding of the document was--that is, that Keith would receive the real estate and she would receive the balance of the other assets. (Ex 16) There was no discussion between the parties as to the ambiguous legal description contained in the handwritten will until almost five years after Robert Washburn's death, and almost five years after Keith took exclusive possession of all real estate and Melody took possession of the other assets. There was no need for the court to attempt to interpret a flawed legal description that was never discussed by the parties in 2004, when all the evidence

supports that in 2004 the parties agreed that "All Real Estate Property" would go to Keith.

Likewise, as to Sub-issue D, the court properly made findings of fact as to the agreement of Keith and Melody, supported by all the evidence before it. Again, the trial court's job was not to discern the intent of Robert Washburn, but rather to decide, from all the facts presented, what Keith and Melody had agreed to.

It was not error for the court not to admit the unsigned and undated "handwritten will" into probate as a valid and legal will. It was further proper for the trial court not to "interpret" the meaning of the "handwritten will" as if it were a legal will.

ISSUE NO. 3

A. The Respondent should be awarded reasonable attorney fees on Appeal.

The Respondent, Keith Washburn, requests an award of attorney fees on appeal pursuant to RCW 11.96A.150, which reads as follows:

- (1) Either the superior court or any court on an appeal may, in its discretion, order costs,

including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, 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.

This is an action brought under TEDRA, RCW 11.96A et. al. (CP122). Attorney fees can be awarded on appeal under RCW 11.96A.150. If Respondent prevails on this appeal, he should be awarded attorney fees and any costs of appeal as a judgment against the Appellant.

VI. CONCLUSION

The "Family Settlement Doctrine" was appropriately applied under the facts and circumstances of this case, and there is substantial evidence to support the findings of the court as to what the parties agreed. It was proper not to interpret as a will an

unsigned and not witnessed document that was properly not admitted
to probate. The decision of the trial court should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. McGrane", written in a cursive style.

David E. McGrane, WSBA #8064
Attorney for the Respondent