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DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**DIVISION III COURT OF APPEALS  
STATE OF WASHINGTON**

No. 320511

**Spokane County Superior Court Case No. 11-4-001392-0  
The Honorable Linda Tompkins  
Superior Court Judge**

**In Re the Estate of Patrick Herrin, Deceased**

**GLORIA AGUILAR, APPELLANT**

**V.**

**PATRICK HERRIN, DECEASED**

**APPELLANT'S OPENING BRIEF**

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## I. Statement of Facts

On May 21, 2008, Ms. Aguilar filed a Complaint for Distribution of Assets and Liabilities of a Non-Marital (Meretricious) Relationship against Mr. Patrick G. Herrin. *CP81-85* Their relationship had ended in 2007 when they separated, therefore, although there was no three year statute of limitations issue for her claim against Mr. Herrin she satisfied current statutory limits. *Id.* In the complaint, Ms. Aguilar pled that there had been a meretricious relationship and sought equitable reimbursement for using her money, credit and return or payment for her property, the money spent, and her share of the items they shared in that relationship. *Id.* More specifically, Ms. Aguilar expended her personal funds from her pension to improve the real property purchased by the deceased during their relationship, and bought and left items which were still in the family home and shop upon Mr. Herrin's death. *CP42-43 & 81-85.* She simply wanted to recoup both her personal property that was hers and the moneys she expended on their ventures, primarily their family home. *Id.*

After receiving unofficial notice of Mr. Herrin's death from family members, Ms. Aguilar's counsel wrote a letter to Mr. Herrin's attorney, Craig Mason, basically asking him to inform her of any probate. *CP 43 & 73* He never notified her of any probate nor was she served with an actual notice. [There is no CP on this since it did not happen] The estate eventually did file a notice to creditors in a local newspaper that included language regarding RCW 11.40.051 and .060. *CP 13* Mr. Herrin's counsel never notified Ms. Aguilar of any probate, and Ms. Aguilar eventually researched SCOMIS in April 2012 and found the estate case filed in October 2011. *CP 1-3*

On April 17, 2012, Ms. Aguilar filed a “Notice of Creditor Claim” outlining her equitable claims against Mr. Herrin’s estate, referencing the entire meretricious case number and file. *CP 14* In the claim, filed April 17, 2012, Ms. Aguilar requested payment for “community interest”, in an amount to be determined, and “her share of any and all property acquired during her meretricious relationship (See Cause No. 08 2 02387 1, filed in this court).” *Id.*

After her claim was filed before 24 months had passed from Mr. Herrin’s death, the Personal Representative (herein after PR) never served her or her attorney with any rejection of her claim pursuant to statute. [See RCW 11.40.100 et seq.] *CP generally, there is nothing filed in this probate matter rejecting her claim.* With no rejection filed, if it were an actual claim the time frame for filing a cause of action against the estate was never triggered. *Id.* However, at the same time, her claim was an equitable claim for return and payment for her own property, so there was always a question whether it was actually a claim or was simply an objection to the distribution of her assets.

Even though the PR had never rejected Ms. Aguilar’s claim officially, on May 15, 2013 the PR filed a motion for an order approving payment of creditor claims and an order to close the estate, ignoring Ms. Aguilar’s claim that she wanted her money and property back from the estate. *CP 36-37* Ms. Aguilar’s was served notice of this motion and opposed the closing of the estate. *CP 38-39 & 72-83* The Presiding Judge heard argument and denied the motion to close the estate, assigned the probate matter to a judge for litigation over the claims, and also assigned the 2008 Meretricious/Equitable Reimbursement case to the same judge. *CP 45-47* A status hearing was held and trial was set on December 9, 2013 to deal with the claims. *CP 48-49.* At that status hearing for the

two cases, the new judge also heard Ms. Aguilar's motion under CR25 to substitute the estate in her meretricious case. Although the judge dismissed the meretricious part of the case, Ms. Aguilar's claim relating to her financial contributions for "community like" items was transferred and joined with the estate case, to be litigated, even citing the case number of 11-04-01392-0 in the order. *CP 94 [See also supplemental order from the '08 case referencing this case and ordering it to be joined and litigated]*. This decision to join the financial issues from the meretricious case with the probate was also memorialized in the later order on summary judgment; that order states: "The Dismissal Order filed in cause no. 08-2-02387-1 stated, 'Plaintiff's probate claim related to her contributions for improvements to the decedent's home will be litigated in the Patrick Herrin probate (no.11-4-01392-0)'" *CP 94 lines 18-21* Ms. Aguilar then began preparing for that trial to outline her losses, payments and what she should receive as her portion of those items purchased. *CP 72-85*

Ms. Aguilar's preparation and hopes were short lived, because after the status conference and in spite of the fact that the judge already ruled that Ms. Aguilar's claim for financial reimbursement survived the dismissal of her complaint and would be heard in the probate matter, on or about the date of August 7, 2013 the PR filed a motion for summary judgment, requesting that Ms. Aguilar's creditor's claim be dismissed. *CP 50* The PR still had not filed or served a rejection of her claim pursuant to RCW 11.40.100(1), and her claim was unique in that it was a request for equitable payment for moneys and property she put into their family home, and did not identify any amount certain. *CP 14.*

The PR's basis for the summary judgment request was that Ms. Aguilar's claim should be treated like any other claim, and should be dismissed for failure to follow the specification rules outlined in RCW 11.40.070. *CP 51-56* More specifically the PR indicated that it should be dismissed because (1) the claim did not include a dollar amount; (2) it only referenced the pending cause of action at 08 2 02387 1; (3) it was barred because it did not follow RCW 11.40.070(1) as the claim did not have an actual "statement of facts or circumstances constituting the basis of the claim", and its amount, and (4) a statute of limitations applied to her claim. *Id*

In response, the Appellant indicated that her claim should not be dismissed because of a lack of specificity. *CP 72-85* Never the less the court treated Ms. Aguilar's claim the same as any standard claim and dismissed it summarily because it did lack detail needed. However, this was a bit confusing since the court already ruled it needed to go to trial to determine what her losses would be. *CP 94 lines 18-21*

In terms of timing, it was admitted by the court in her oral ruling that the statute of limitations was three years. Again, as mentioned before Ms. Aguilar broke off her relationship with Mr. Herrin in 2007 and filed her complaint in 2008, thereby satisfying any new statute of limitations. From that point on, until the summary judgment dismissal of her claim, the financial issues related to their relationship had never been dismissed. And since the court joined those financial issues to be tried in the probate as a result of the CR 25 hearing and motion, the statute of limitations issue would have seemed moot and not a basis for dismissal.

Ms. Aguilar was confident when the facts were taken in a light most favorable to her, that there was still discovery to complete, and since this judge actually reserved all

of Ms. Aguilar's financial loss claims, the summary judgment would fail. However, the judge treated Ms. Aguilar's claim like any other claim and dismissed it for statutory violations of the creditor claims statute. *Id.* This again seemed strange since the judge even admitted that her equitable reimbursement claim was still alive and existed when she ruled. *RP 24 line 7-13.* However, she still dismissed the claim which had to be appealed to try and get it to trial. *CP93-96.* It is also interesting to note that the judge also misstated the statute of limitation timing in her final summary judgment order when she stated that Ms. Aguilar claim for this equitable relief began "accruing" as of the date she filed her meretricious/equitable reimbursement complaint. *See CP 95 lines 20-22* Ms. Aguilar has appealed this ruling.

## **II. Identification of Judicial Error**

The court in this matter made the following error in this case:

1. Failing to require that the estate first officially reject the claim by the Appellant, so she could file a more specific claim against the estate, before she dismissed the claim summarily;
2. Failure to follow the court's previous ruling reserving the equitable claims in the estate for reimbursement for claimant's moneys paid to the deceased to remodel the parties' family home;
3. Failure to find that not all of the meretricious case was dismissed, and that the equitable reimbursement claims remained, tolling any statute of limitations;
4. Failure to find that Ms. Aguilar's claim regarding her meretricious reimbursement should not be treated like any other creditor claim;
5. Dismissing the Appellant's claim for equitable relief.

### III. Law and Argument

A. Although it may not have mattered, Ms. Aguilar's claim was not substantially misleading.

As indicated, the judge in this case treated Ms. Aguilar's claim in this probate matter as a normal claim, governed by RCW 11.40.070 and indicated that it was misleading because it had no values in the claim for reimbursement. The issue of whether a claim is covered by the "substantially misleading exception" was addressed by the Court in *Villegas v. McBride*, 50 P.3d 678, 112 Wn.App. 689 (2001). In that case, the Court applied the plain meaning of the language and found that the discrepancy of \$35,504.32 between the amount stated in the original claim and the amount claimed later in the lawsuit was substantial misleading under RCW 11.40.070. *Id.* at 695.

In the present case, Ms. Aguilar did not exclude any information, nor was the information substantially misleading to the personal representative, it was simply not an exact amount because the case had not gone to trial yet. Research in the 2008 Superior Court case file noted in the claim as its basis would have clarified that the amount, which related to the purchase of the home, which was the primary piece of property of the estate, and its remodeling, was the key issue. The statute does not require detailed information, only enough information so that the personal representative is notified of the nature of the claim. (The PR obviously had access to the meretricious file since he filed a couple deposition excerpts from that case with his motion for summary judgment; *See CP 57-68.*) However, all of that may not matter; see later discussion on how to treat a claim from a meretricious claimant in an estate.

B. Ms. Aguilar was an easily ascertainable creditor, as such the personal representative and/or his attorney should have served her with notice of the probate, because they did not Ms. Aguilar had 24 months to file her claim.

RCW 11.40.020(1) (c) also states that specific creditors known to the estate may also serve notice on them personally, or by mail. In looking at the probate case there is no indication that the PR notified either Ms. Aguilar or her counsel's office, or the court. As such, Ms. Aguilar never learned of the probate to file a claim.

This lack of notice goes to the time limits for filing a claim, if the creditor was easily ascertainable. See RCW 11.40.051(b) (2). An ascertainable creditor is one that with reasonable diligence the PR should have discovered. RCW 11.40.040 et seq. In this case Ms. Aguilar was absolutely reasonably ascertainable. It was the major case in Mr. Herrin's life up until his death. He even took the case to the Supreme Court. *Id.* Once Ms. Aguilar is deemed reasonably ascertainable then she had 24 month to file her claim, as it stands, she filed her claim far short of the 24 months. And this was simply because her litigation attorney looked up the possibility of a probate claim on SCOMIS. Actually her claim was filed within two days of her newly found knowledge of the probate; this is even of greater significance since Mr. Herrin actually had an attorney in the meretricious case beyond the date for filing a claim (i.e. he did not withdraw until August 23, 2012, some 307 days after the probate was filed).

To further show her ascertain-ability, it should be noted that Mr. Herrin died August 2011, yet his attorney in this case filed a witness disclosure list for Patrick Herrin on October 5, 2011. (See sub#126) Although a letter was filed stating that Mr. Herrin has passed, it says nothing about a probate being filed. Additionally, this would bolster the thought that Ms. Aguilar is and was an easily ascertainable creditor.

C. The issue regarding the existence of a meretricious relationship between the decedent and Ms. Aguilar may have been dismissed, however, the unjust enrichment financial issues were not.

On July 26, 2013, a hearing was held in Spokane County Superior Court Case No. 08-2-2387-1 (the case regarding the meretricious relationship between Ms. Aguilar and Mr. Herrin), on Plaintiff's Motion for Substitution of Patrick Herrin's Estate as a Party in Interest, Pursuant to CR 25(a). The Court denied the motion to substitute the Estate in the meretricious matter, but in the order dated August 2, 2013, it provided that the plaintiff's probate claim related to her contributions for improvements to the decedent's home should be litigated under this case number, ostensibly joining that active matter with the probate for a trial in December 2014.

On May 21, 2008, Ms. Aguilar filed a Complaint for Distribution of Assets and Liabilities of a Non-Marital (Meretricious) Relationship against Mr. Patrick G. Herrin. *CP 81-85* In that complaint, Ms. Aguilar plead that there had been a meretricious relationship and also sought damages for "meretricious (joint) liabilities and debts, incurred on behalf of the relationship." *Id.* The complaint also discusses joint ventures and jointly owned property. *Id.* In their relationship, Ms. Aguilar expended her personal funds on joint property that allowed Mr. Herrin to obtain property and improve the real property purchased during their relationship. *Id.*

After the claim was filed Ms. Aguilar filed a motion to join the two causes of action via CR 25. As indicated the financial claims remained alive since they were joined into the probate claim by the same judge. *See e.g. CR 45-47* There was no time whatsoever that the claims by Ms. Aguilar, the Appellant, regarding financial relief were ever dismissed until the summary judgment order. Additionally, since the original

Equitable Relief complaint was filed within a year of their separation in 2008, and was still viable on the summary judgment hearing date, there is no way the statute of limitations applied, since it was admitted to have at least been three years by the judge herself. *See RP 24-27*. RCW 11.40 et seq requires that if a statute of limitations applies and the time has passed for filing a law suit has come and gone, the claim against the estate is not valid. However, and again, a claim from a former meretricious partner for reimbursement and/or return of her finances and/or property from the estate is not an actual claim, but a notice of objection or equitable claim. [This will be discussed later on in this brief.]

D. Even if the meretricious claim of Ms. Aguilar's 2008 case was dismissed, the transfer and joining of the remaining equitable financial issues into the estate by the assigned estate judge tolled any statute of limitations under RCW 4.16.170.

RCW 4.16.170 states that any cause of action is "tolled" after a complaint is filed on the defendant and served. *Id.* Counsel for the estate has indicated that the statute of limitations bars Ms. Aguilar's creditor claim. However, she filed and served her 2008 claim when there was no statute of limitations for meretricious relationship cases and the parties had separated only a year earlier. *CP 81-85* She included a request for moneys paid out for their home and things that Mr. Herrin received while they were together. *Id.* When the estate case was filed the claims made by Ms. Aguilar were alive and viable in her original 2008 complaint. Any claims in the meretricious relationship action survived Mr. Herrin's death and tolled the statute of limitations pursuant to RCW 4.16.170 and eventually CR 25 when the court joined her equitable claims in the probate matter. It did not matter that the claim that they had a meretricious relationship was dismissed, since

that was of no value to Ms. Aguilar when comparing the other issue in her complaint for unjust enrichment. *See supplemental order from the Meretricious/Equitable case*. As long as there was a Summons and Complaint, filed and properly serviced, the statute is deemed tolled up to the date of its dismissal. *See Nearing v. Golden State Foods Corp.*, 792 P.2d 500, 114 Wn.2d 817 (Wash. 1990). Once the Judge allowed the “equitable financial issues” to be dealt with and joined in the probate matter any statute of limitations as to those meretricious claims continued to be tolled. As they said in the *Nearing* case:

Thus, an action is tentatively commenced by service of a summons or the filing of a complaint and the statute of limitations is tolled pending filing of the summons and complaint within 90 days from the date of service. Insofar as it is inconsistent, *Matthies v. Knodel*, 19 Wash.App. 1, 3, 573 P.2d 1332 (1977) is modified. *See also Hansen v. Watson*, 16 Wash.App. 891, 559 P.2d 1375 (1977). Either of these acts will toll the statute of limitations as long as the summons and complaint are filed within 90 days. RCW 4.16.170. *Sterling v. County of Spokane*, 31 Wash.App. 467, 471, 642 P.2d 1255 (1982).

The statutory provision which governs the tolling of the statute of limitations and the court rule governing the commencement of actions are reconcilable. The statute, RCW 4.16.170, deals exclusively with tolling of the statute of limitations and requires a plaintiff to either file a complaint or serve the summons upon the defendant. The court rule, CR 3 requires service of the summons and complaint or filing a complaint in order to commence a civil action. Whenever there is a conflict between a procedural statute and a court rule, the court's rule making power is supreme. *Petrarca v. Halligan*, 83 Wash.2d 773, 776, 522 P.2d 827 (1974). Apparent conflicts between a court rule and a statutory provision should be harmonized, and both given effect if possible. *Emwright v. King Cy.*, 96 Wash.2d 538, 543, 637 P.2d 656 (1981). Golden State argues that in order to harmonize the rule and the statute the phrase "summons is served" in RCW 4.16.170 should require that the summons be served as required in CR 4(d) and that in order to toll the statute of limitations, the summons and complaint must be served together. We disagree. *Nearing v. Golden State Foods Corp.*, 792 P.2d 500, 114 Wn.2d 817 (Wash. 1990) at 502-503.

Because Ms. Aguilar filed the original case for financial repayment for their joint meretricious property purchased, with the “financial issues” of that relationship being

reserved in this probate matter, that action tolled the statute of limitations on that part of her causes of action. The claim by Ms. Aguilar is not time barred.

E. A review of a summary judgment ruling is de novo allowing this court to review it anew applying its own analysis as to the law that may be relevant to the court's decision at the time of the review.

A review of a summary judgment ruling is a de novo review. *Wiley v. Rehak*, 143 Wash.2d 339, 20 P.3d 404 (2001); *Green v. Normandy Park*, 151 P.3d 1038, 137 Wn.App. 665 (2007). It involves a de novo review of the facts in the case, along with an independent look by the court of appeals into the current case law on the subject. The case of *Campbell v. Board for Volunteer Firefighters*, 45 P.3d 216, 111 Wn.App. 413 (Wash.App. Div. 1 2002) outlined the definition of a "de novo" review in the following statement to illustrate and outline how such mixed questions of law and facts should be reviewed. They said:

The trial court relied on a 1981 decision of this court, *Vergeyle v. Employment Security*, 28 Wash.App. 399, 623 P.2d 736 (1981), overruled on other grounds by, *Davis v. Dep't. of Employment Security*, 108 Wash.2d 272, 737 P.2d 1262 (1987), for the proposition that de novo review includes a de novo review of the facts. *Vergeyle* states that a reviewing court has "inherent and statutory authority to make a de novo review" where there is a mixed question of law and fact. *Vergeyle*, 28 Wash.App. at 402, 623 P.2d 736 (citing *Weyerhaeuser Co. v. Department of Revenue*, 16 Wash.App. 112, 115, 553 P.2d 1349 (1976)). *Vergeyle* relied on *Weyerhaeuser* for its formulation of this standard of review. A year after *Vergeyle* was decided, the Supreme Court clarified what is meant by a de novo review of mixed questions of law and fact in *Franklin County Sheriff's Office v. Sellers*, 97 Wash.2d 317, 329-30, 646 P.2d 113 (1982). The Supreme Court addressed this issue to correct previous appellate decisions (including *Weyerhaeuser*) that had misconstrued the proper scope of review of mixed questions of law and fact. *Franklin*, 97 Wash.2d at 329, 646 P.2d 113. The court explained that "we are really referring not to the facts themselves, nor the law governing the situation, but to the law as applied to those facts." *Franklin*, 97 Wash.2d at 329, 646 P.2d 113. The court held that "it is not the province of the reviewing court to try the facts de novo when presented with a mixed question of law and fact." *Franklin*, 97 Wash.2d at 330, 646 P.2d 113. The court engaging in a de novo review of an administrative decision, determines whether the facts

found by the agency are supported by substantial evidence and then independently determines the law and applies it to those facts. Franklin, 97 Wash.2d at 330, 646 P.2d 113; Pechman v. Employment Security Division, 77 Wash.App. 725, 729, 893 P.2d 677 (1995). Accordingly in this case, the trial court erred by reviewing the facts de novo. (Emphasis added)

*Id.* at 218. In this case, there was a relatively new case that came out after Ms. Aguilar filed her creditor's claim that is on point in this matter and deals with a meretricious estate claim. When applying that case to the court's ruling in this matter de novo, or independently, it is clear that the judge in this matter erred by considering Ms. Aguilar's claim a "normal probate claim" governed by RCW 11.40.070. It is not a standard claim and it should have never been dismissed. *Witt v. Young*, at 275 P.3d 1218, 168 Wn.App. 211 (2012).

F. A "creditor's" claim in an estate by a former meretricious partner is not an actual RCW 11.40.070 claim that needs specificity to withstand summary judgment and therefore the Appellant's claim should not have been dismissed.

In the case of *Witt*, *supra* the former meretricious partner of a deceased man filed a creditor's claim for almost the exact same things as Ms. Aguilar request. Her claim was late under RCW 11.40.100 because it was filed after the required 30 days' time limit. The estate filed a summary judgment motion to dismiss her creditors claim for not strictly following the probate statutes at .070 and .100. However, the court denied the motion to dismiss the claim. Likening the ladies claim to a marital claim, they said,

*Smith v. McLaren*, 58 Wash.2d 907, 909, 365 P.2d 331 (1961), and *Olsen v. Roberts*, 42 Wash.2d 862, 865-66, 259 P.2d 418 (1953), establish that Witt's claim is not a "claim against the decedent" subject to the nonclaim statute based on Witt's alleged failure to comply with RCW 11.40.100(1). *Smith* and *Olsen* both hold that a claim for property as a tenant in common is not a creditor's claim and that a complaint claiming rights in the property as a tenant in common is not an action by a creditor of the estate. The court noted that these were not claims that the estate was indebted to the parties seeking relief and that the actions merely sought to establish the parties'

interests in specific property and to exclude that interest from the estates' inventories. *Smith*, 58 Wash.2d at 909, 365 P.2d 331; *Olsen*, 42 Wash.2d at 865-66, 259 P.2d 418. The Olsen court specifically stated,

To constitute a claim against the estate of a deceased person, an obligation must consist of a debt incurred by or for the decedent during his lifetime.

Where, on the other hand, the recovery of specific property is sought on the ground that such property is impressed with a trust for the benefit of the person claiming it, and the particular property is properly identified or traced, the matter is not one of claimed indebtedness but of an assertion that the particular property is no part of the general assets of the estate. No claim, therefore, need be presented in such case as a condition to action to recover the property or impress it with the trust. . . .

. . . We hold that instead of a creditor's claim subject to compliance with RCW 11.40.100(1) and the nonclaim statute, Witt's claim was not a claim against the decedent" within the meaning of RCW 11.40.010. Accordingly, the trial court did not err when it denied the Estate's summary judgment motion. (Emphasis added)

In this case the Judge and the estate treated Ms. Aguilar's claim as a "creditor's claim" when in fact it was not such a claim according to *Witt, supra*. In a summary judgment, the facts must dovetail with the law to require a responding party to such a motion to prove that the case should remain alive. *Campbell, supra*. When the facts do not dovetail or fit with the laws which form the basis of the summary judgment motion, dismissal cannot be ordered. Otherwise the law would be useless in such a decision. *Id.* Since Ms. Aguilar's "creditor's claim" is not technically a creditor's claim, she did not violate RCW 11.40.070 or .100, therefore, summary judgment dismissal because of those alleged violations should not have been ordered. The case should be remanded to trial on the issue of Ms. Aguilar's financial and equitable interest in the estate.

G. The law regarding a claim by a meretricious partner against that partner's estate is of substantive importance because it deals with the Appellant's right to bring her claim or action in the first place, therefore, the law on that issue may be brought to the court's

attention at any time in the process of reviewing a summary judgment dismissing that right.

As indicated previously, a summary judgment proceeding is reviewed de novo by the appeals court. This is undoubtedly because of the importance of reviewing the law on whether a person's claim should be precluded or not. Such is the nature of a "substantive right".

The estate may claim that the *Witt* case is a new argument and should not be allowed under the rule that new issues will not be heard on appeal. *See e.g. Washburn v. Beatt Equip. Co., 120 Wn.2d 246, 291, 840 P.2d 860 (1992)*. However, courts have the right and should consider argument on appeal that may support what was presented in the original argument, when the alleged new argument is "pertinent to substantive issues" in the case, such as whether the claim should be dismissed or allowed. *See Bennett v. Hardy, 784 P.2d 1258, 113 Wn.2d 912 (Wash. 1990)*. This is especially true when the "question raised affects the right to maintain the action" in the first place. *See e.g. Maynard Inv. Co. Inc. v. McCann, 77 Wash.2d 616, 621, 465 P.2d 657 (1970); New Meadows Holding Co. v. Washington Water Power Co., 102 Wash.2d 495, 498, 687 P.2d 212 (1984)*.

The central issue of this case is the Appellant's right to maintain her claim against the estate for equitable reimbursement of money and property spent on the property which is subject of the estate.<sup>1</sup> The *Witt* case, *supra*, which parenthetically came out after Ms. Aguilar filed her claim in this matter, specifically deals with the dismissal of a

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<sup>1</sup> [It could be said that Ms. Aguilar's attorney eluded to the general argument that her claim was not the same as a creditor's claim and should not be treated like one, when he argued that the claim did not have to be as specific as the PR suggested. Regardless of this, the *Witt* case helps this court see that Ms. Aguilar's substantive right to make a claim against the estate was absolutely appropriate and should not have been summarily dismissed.]

meretriciously generated claim against a former partner's estate for reimbursement, for not following the probate rules in filing her creditor's claim. Therefore, the argument that the court should not have dismissed Ms. Aguilar's claim and let it go on to trial was and is a substantive issue which is an exception to the "no-argument" rule. *Id.*

The *Witt* case clearly shows that the court should not have considered Ms. Aguilar's claim a "creditor's claim" governed by the specificity of the statutes and *Villegas (supra)* case standards. When that specificity rule is removed since it was not really a creditor's claim, and the order joining the equitable reimbursement issue with the claim pursuant to CR 25 continued to toll the statute of limitations, the summary judgment order should never have been signed. The Appellant asks that her claim be allowed and the case remanded back for trial as was anticipated.

#### **IV. Conclusion**

The Appellant properly filed a meretricious/equitable reimbursement case against the deceased in 2008, one year after they broke up. Ms. Aguilar was not notified by the estate of Mr. Herrin's death, even though she and her attorney requested this information due to a rumor of his passing from friends. Ms. Aguilar filed a creditor's claim referring the PR to their meretricious/equitable reimbursement case in the same county, by name and number. Eventually the meretricious case and probate were joined and to be heard by the same judge. That judge, although dismissing the meretricious issue, kept the equitable reimbursement issue alive by joining it with the probate by court order. This joining tolled the statute of limitations and the case was set for trial.

The PR filed a motion for summary judgment on the claim saying it violated the specificity requirements of the Probate statutes and the statute of limits had passed. The court dismissed the claim on both counts.

The dismissal should not have been granted since the statute was told by the joinder of the equitable reimbursement claims into the probate pursuant to CR 25, and the case law on meretricious equitable claims indicated that these types of claims are not governed by the creditor claim statutes and therefore no specificity is needed to have them go to trial. The summary judgment should not have been granted. The Appellant asks that the matter be remanded to the court for disposition as in the *Witt* case.

Respectfully submitted this 30<sup>th</sup> day of July 2014.



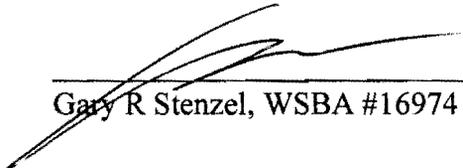
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#### Declaration of Mailing

I, Gary R Stenzel, declare under penalty of perjury pursuant to the laws of the state of Washington that I am now and all times hereinafter mentioned was a citizen of the United States and a resident of Spokane County, State of Washington, over the age of twenty-one years; that on July 30 2014 affiant enclosed in an envelope a copy of this Opening Brief addressed to: Rob Grangroth, Attorney at Law, 3021 S. Regal St., Ste. 101, Spokane, WA 99223.

Said address being the last known address of the above-named individual, and on said date deposited the same so addressed by regular mail with postage prepaid in the United States Post Office in the City and County of Spokane, State of Washington.



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Gary R Stenzel, WSBA #16974