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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 333159

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

CARMEL TRAVIS,

Respondent

vs.

BETTY TRAVIS,

Defendant

and

LETA TRAVIS,

Appellant

BRIEF OF APPELLANT LETA TRAVIS

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I. INTRODUCTION

Respondent Carmel Travis (“Carmel”) filed a verified petition under Washington’s TEDRA statutes alleging that her mother, Betty Travis (“Betty”), had mishandled the Trust of which Carmel was a beneficiary. Carmel’s verified petition also made specific allegations against petitioner, Leta Travis (“Leta”), who is also a beneficiary of the Trust, and Carmel’s sister. In summary, Carmel stated under penalty of perjury that Leta had manipulated and/or exploited their mother, Betty, and was the cause of Betty’s acts or omissions alleged in Carmel’s petition.

In prior litigation with Carmel, and in the TEDRA dispute, Betty repeatedly denied that she was exploited or manipulated by anybody, and disputed Carmel’s allegations about Betty’s management of the Trust in the TEDRA action. During the TEDRA proceedings, Carmel produced no evidence to support her allegations against Leta, whom she dislikes and whom she had previously harassed through the legal system. After Carmel voluntarily dismissed her petition, Leta filed a motion pursuant to CR 11 and RCW 4.84.185 to recover her attorney’s fees.

The Trial Court denied *Leta’s* motion because of the allegations against *Betty*. The Trial Court also suggested that Leta should have filed a responsive pleading requesting fees, and ignored the undisputed evidence of Carmel’s hostility towards Carmel.

II. ASSIGNMENTS OF ERROR

1. **Leta Travis's intervention in the TEDRA action did not prevent her from recovering attorney's fees.**
2. **The Trial Court's refusal to award attorney's fees to Leta Travis pursuant to CR 11 was based on untenable grounds and was for untenable reasons.**
3. **The Trial Court's refusal to award attorney's fees to Leta Travis pursuant to RCW 4.84.185 was based on untenable grounds and was for untenable reasons.**

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. If the Trial Court denied Leta Travis's Motion for Fees because she intervened in the TEDRA action, did the Trial Court misperceive the TEDRA statutes and the status of the proceedings? (Assignment of Error Number 1).
2. Did the Trial Court err when it denied Leta Travis's Motion for Fees pursuant to CR 11, thereby ignoring the absence of evidence supporting Carmel's allegations against Leta? (Assignment of Error Number 2);
3. Did the Trial Court err when it denied Leta Travis's request for fees pursuant to CR 11 in reliance upon Carmel's allegations against Betty Travis? (Assignment of Error Number 2);
4. When the Trial Court denied Leta Travis's Motion for Fees pursuant to CR 11, did the Trial Court err to the extent it suggested that Leta Travis was required to request fees in a

pleading responsive to Carmel Travis's petition? (Assignment of Error Number 2).

5. Did the Trial Court err when it denied Leta Travis's request for fees pursuant to CR 11, thereby ignoring Carmel's hostility towards Leta and her ongoing harassment of Leta? (Assignment of Error Number 2).
6. Did the Trial Court err when it denied Leta Travis's request for attorney's fees pursuant to RCW 4.84.185 because Leta did not request them in a pleading responsive to Carmel's petition? (Assignment of Error Number 3).
7. Did the Trial Court err when it denied Leta Travis's request for fees pursuant to RCW 4.84.185 in reliance upon Carmel's allegations against Betty Travis? (Assignment of Error Number 3).

IV. STATEMENT OF THE CASE

This appeal is the aftermath of a TEDRA petition filed in December 2013 by respondent Carmel Travis ("Carmel") regarding a testamentary trust established by Randall W. Travis, her father. CP 270 at ¶ 1.0.

Carmel is a daughter of Randall and Betty Travis ("Betty"). *Id.* Betty is Randall's widow; a beneficiary of the Trust; and also the Trustee. CP 271 at ¶ 1.3. Leta Travis ("Leta") is the other child of Randall and Betty; Carmel's sister and a beneficiary of the Trust. CP 271 at ¶ 1.2.

In her TEDRA petition Carmel alleged that Betty was “unable or unwilling to independently and fairly perform her fiduciary duties as Trustee.” CP 271 at ¶ 2.1. The petition describes Carmel’s antagonistic relationship with Betty, referring to Betty’s prior court actions for orders of protection against Carmel. CP 271 at ¶¶ 2.2; 2.3. Carmel alleged that these two legal actions demonstrated Betty’s “ill-will and hostility to Carmel,” and compromised Betty’s ability to act as Trustee with “undivided loyalty, impartiality, and fairness.” CP 271 at ¶ 2.4.

Carmel also listed specific acts or omissions whereby Betty supposedly violated Washington statutes regarding Trust Administration. See, generally, CP 272-76.

Carmel’s hostility towards Betty (and Leta) dates back years before Carmel filed her TEDRA petition. Carmel’s relationship with Betty was so strained that in December 2012 and September 2013, Betty filed petitions in Garfield County Superior Court seeking restraining orders against Carmel. CP 68 at ¶ 4.1; 70, at ¶ 6.1. In each of those petitions, Betty accused Carmel of harassing her about Betty’s finances. CP 85-6; 134. In her second petition, Betty wrote that she had been contacted by APS on three occasions about her relationship with Leta. CP 134. Betty affirmatively stated that she was doing well and was living independently. CP 134.

Betty filed a response denying the allegations of Carmel’s TEDRA petition, including those against Leta. CP 261-64. Betty affirmatively alleged that “[e]very exercise of any power, authority, judgment or discretion by Trustee [Betty] has been independently made by the Trustee relying on her own knowledge and the expertise of professionals engaged to provide sound advice to Trustee and made free from undue influence of

others.” CP 263. Betty verified her response to Carmel’s petition, stating under penalty of perjury that its contents were “true and correct.” CP 264.

In June 2014 Betty sent Carmel a declaration that more specifically addressed the allegations of Carmel’s TEDRA petition. In her declaration Betty affirmatively stated that she managed her own personal finances, monitoring her income and expenses and deciding how to spend and invest money. She made all the decisions about her social calendar, and managed the Trust accounts. Betty expressly denied that she was controlled or manipulated by Leta. CP 175.

Thus, in the two proceedings for protective orders, and in the TEDRA litigation, Betty repeatedly denied that she was being manipulated by Leta.

Carmel’s verified TEDRA petition also made specific, factual allegations against Leta. Carmel alleged that Leta was the attorney-in-fact for Betty and “exerts substantial influence over Betty’s actions adverse to those of Carmel, as a result of her confidential relationship with Betty, which Leta uses to her advantage, Betty has a conflict with Carmel in the administration of the Trust.” CP 273 at ¶ 2.10. Thus, Carmel alleged under penalty of perjury that Leta instigated or orchestrated Betty’s alleged acts or omissions. Carmel also alleged that Betty’s purported efforts to rescind a previous agreement between the three of them were “likely the result of Leta’s influence over Betty.” CP 276 at ¶ 4.4. Carmel requested injunctive relief including a mandate that “Betty act independently without pressure from Leta.” CP 277 at ¶ 5.3.

Carmel’s petition was not the first time she made such allegations against Leta. In a letter dated December 12, 2012, a year before Carmel filed her TEDRA petition, one of Carmel’s lawyers accused Leta of misusing Betty’s power of attorney to exploit Betty to the detriment of

Carmel. CP 202-6. Leta denied those accusations, characterizing them as “groundless.” CP 207. Within months, similar allegations against Leta were made to Adult Protective Services (APS). After an investigation, APS concluded in March 2013 that those allegations were “unsubstantiated,” and “more likely than not did not occur.” CP 208. Thereafter, the same accusations were again reported to APS, but at a different office. In November 2013 APS concluded that Carmel’s allegations that Leta financially exploited Betty “more likely than not” “did not occur” and the second complaint was “not substantiated.” CP 209.

Carmel unequivocally denied under penalty of perjury that she made the complaints about Leta to APS, (CP 72 at ¶ 8.1), but that denial was false. Early in the TEDRA proceedings Carmel's attorney signed an agreed order permitting Betty’s attorney to obtain complete copies of APS’s files pertaining to Betty. CP 257-8. The identity of a person who makes a complaint to APS is privileged. If Carmel made the complaints, she had to give her permission to APS to disclose its files to Betty, but her permission was not otherwise necessary. RCW 74.34.035(9). Furthermore, in the prior litigation between Betty and Carmel over protective orders, Carmel filed a pleading stating under penalty of perjury that she *had* reported Leta to APS. CP 34. At that time (November 2013) Carmel was represented by the same counsel who submitted her sworn declaration in the TEDRA action denying she had complained to APS. CP 35 (“Carmel is presently in a legal dispute with Betty on the Randall Travis Testamentary Trust. Carmel has retained attorney Gary J. Libey to represent her in this dispute with Betty.”) Carmel’s pleading also accused Leta of undue influence and stated that this “will be one of the subjects of the TEDRA claim.” CP 35.

When confronted with conclusive evidence of her untruthful denial, Carmel finally admitted at the hearing giving rise to this appeal that she made at least one of the complaints. RP 25, ll. 12-16.

The APS complaint Carmel admitted to making was investigated by Ms. Roxi Boolean of APS. By letter dated November 18, 2013, Ms. Boolean stated that Carmel's allegations were "not substantiated." CP 209.

Because Carmel's verified TEDRA petition contained specific, factual allegations against Leta, and because the relief sought by Carmel affected Leta's interests as a beneficiary under the Trust, Leta intervened by agreed order. CP 200 at ¶ 13; 2-12 at ¶ 3; 210-11.

Thereafter Leta propounded a brief set of discovery requests to Carmel. CP 212 at ¶ 4; 5; CP 220-34. The questions were intended to confirm the details of Carmel's prior litigation history, including her APS complaints against Leta. The discovery requests also sought the factual bases of Carmel's allegations against Leta. For example, Carmel was asked to state each act by Leta constituting substantial influence over Betty's actions as alleged in paragraph 2.10 of Carmel's petition. CP 224. Carmel also was asked to disclose each fact upon which she based her contention that Betty's efforts to rescind a 2001 agreement pertaining to the Trust resulted from Leta's influence. CP 225.

The discovery requests were served on November 14, 2014. CP 234. The parties' subsequent attempts to settle the TEDRA litigation failed because Carmel refused to provide Leta with a general release. CP 72 at ¶ 7.5. Without answering the discovery requests, Carmel dismissed her petition without prejudice pursuant to CR 41(a)(1)(B) by order entered December 14, 2014. CP 254-6. Because the petition was dismissed "without prejudice," Carmel could resume her harassment of Leta in another lawsuit. At the hearing giving rise to this appeal, Carmel admitted

that she dismissed her TEDRA petition to avoid answering Leta's discovery requests. RP 22, ll. 6-8.

After Carmel dismissed the TEDRA petition, Leta filed a timely motion for an award of attorney's fees pursuant to CR 11 and RCW 4.84.185. CP 186-90. (Leta also argued for an award of fees pursuant to RCW 11.96A.150, but is not pursuing that argument on appeal).

In opposition to Leta's motion, Carmel submitted numerous pleadings to the Court, including declarations from her and her attorneys.

Carmel's declaration discusses at least some of the events that occurred before she filed the TEDRA petition, and some that occurred during its pendency. CP 63-73. Carmel's declaration confirms the antagonism between Betty and her resulting in Betty's requests for protective orders. CP 68 ¶4.1; 70 ¶ 6.1. However, Carmel's declaration contains no specific facts which support her accusations against Leta. In contrast, Betty had stated in her petitions for protective orders that she was living independently, and Betty had affirmatively alleged in her response to the TEDRA petition that she was making independent decisions about the Trust, with the assistance of professionals. By the time Betty served her verified response, APS had twice concluded that Leta was not manipulating Betty.

In opposition to Leta's motion, Carmel also submitted the declaration of Mr. Tim Esser, an attorney with whom she consulted about her TEDRA lawsuit. CP 148-54. Mr. Esser's declaration suggests that the consultation took place in August 2013 (CP 149 at ¶ 2.2), but this is erroneous. Mr. Esser states that he reviewed the pending TEDRA litigation and the strategy of Carmel's counsel of record, Gary J. Libey. CP 149 at ¶ 2.2. However, the TEDRA petition was filed in December

2013 (CP 270) and could not have been a “pending matter” with “counsel of record” in August 2013, two months before it was filed.

Mr. Esser stated that he had known Carmel for over 15 years, and knew there was “outright animosity” between Leta and her. CP 149 at ¶¶ 2.1; 3.2.3.

Mr. Esser suggested that Carmel was concerned that her mother had been influenced by Leta. CP 150 at ¶ 3.3 However, the hearsay remarks he attributed to Carmel are not contained in Carmel’s declaration (CP 63-73), and Carmel’s declaration contains no facts upon which she based her allegations against Leta. Thus, the totality of Carmel’s opposition merely repeated the same baseless contentions she leveled against Leta in the TEDRA petition.

The Trial Court issued its written decision on April 13, 2015. CP 1-4. The Trial Court denied Leta’s request for fees pursuant to CR 11 because the TEDRA complaint focused primarily on allegations that the Trustee (Betty) had “stonewalled” Carmel, failing to provide Carmel with information or accountings about the Trust and distributions made from the Trust. CP 2. The court wrote that “[i]t is difficult to assess fees pursuant to CR 11 against a party on the basis their claims may have been misinformed when the gravamen of the petition relates to a total lack of access to information regarding the Trustee’s activities with Trust distributions and interactions with other Trust beneficiaries.” CP 2. Thus, the Trial Court suggested that Carmel’s allegations against *Betty* justified or excused Carmel’s baseless allegations against *Leta*. The Court’s statement also implicitly concedes that Carmel lacked evidence about Betty’s interactions with Leta despite Carmel’s very specific allegations about what Leta supposedly did.

The Trial Court suggested that it denied Leta's motion for fees pursuant to RCW 4.84.185 because Leta had not filed a response to the TEDRA petition that requested fees. CP 3. In addition, the Trial Court again suggested that Carmel's allegations against *Betty* may have been meritorious and, accordingly, *Leta* was not entitled to fees. CP 3.

V. ARGUMENT

A. Standard of Review.

A Trial Court's order granting or denying motions for fees pursuant to CR 11 or RCW 4.84.185 is reviewed for an abuse of discretion. *Building Industries Assn. of WA vs. McCarthy*, 152 Wash. App. 720, 745-6, 218 P.3d, 196 (2009); *Eller v. East Sprague Motors & R.V.'s Inc.*, 159 Wash. App. 180, 189, 191, 244 P.3d 447 (2010) (standard of review for CR 11 and RCW 4.84.185 is abuse of discretion).

"A Trial Court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds." *Magana v. Hyundai Motor America*, 167 Wn.2d 570, 582, 220 P.3d 191 (2009) (citations omitted). "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 could take.'" *Id.* at p. 583 (citations omitted).

B. Leta Travis was a necessary party to the TEDRA petition and her intervention did not prevent her from recovering her attorney's fees.

In its opinion the Court wrote that it was "worthy of note that the

original TEDRA petition named only Betty Travis as a respondent.” CP 2. The significance of these remarks to the Court’s ultimate decision is unclear, because the Court also acknowledged that “Leta Travis had a right to intervene, and indeed it appeared prudent to do so under the circumstances” CP 3.

If the Court was suggesting that Leta was not entitled to fees because she did not need to intervene, the Court misperceived the TEDRA statutes. Leta was a necessary party who had to be joined, and arguably was a party before intervening by agreed order.

As a beneficiary of the Trust, Leta was a “party” and “an interested party” under the TEDRA statutes who had to be joined. RCW 11.96A.030(5)(e); 030(6). The allegations against Leta in the body of the petition might have joined Leta even though Carmel did not name Leta with Betty in the caption box of the petition. “Notice must be provided by summons only with respect to those parties who were not already parties to existing proceedings.” RCW 11.96A.100(2). Arguably, Leta, Betty and Carmel were already parties to the pending proceedings for reasons including their 2001 agreement filed with the Trial Court. CP 75-76.

Before appearing through counsel, Leta was aware of the petition and its allegations against her, and it was because of those allegations that she retained counsel. CP 200 at ¶ 12; CP 212 at ¶ 2; 3; 215-7. Leta might have been a party to existing proceedings over the Trust, and had actual notice of Carmel’s allegations in the TEDRA petition. Accordingly, she might have been bound by Trial Court findings even if she did not actively participate in the TEDRA litigation.

Carmel’s allegations against Leta were serious. Carmel alleged that Leta was Betty’s attorney-in-fact, and as such, Leta owed fiduciary duties to Betty. The allegation that Leta was using her confidential relationship

with Betty to Leta's advantage implied that Leta had violated her fiduciary duties and/or had financially exploited Betty in violation of RCW 74.34.020(6). As the Trial Court acknowledged, adverse findings on these allegations could have had profound implications for Leta.

Carmel did not need to make her baseless allegations against Leta to litigate her grievances about Trust management against Betty. Carmel simply could have alleged that Leta was an interested party as a Trust beneficiary. The baseless allegations of exploitation and breach of fiduciary obligations were not necessary to join Leta; the baseless allegations were gratuitous.

Thus, if the Trial Court's decision implied that Leta was not entitled to her fees because she voluntarily or unnecessarily intervened, then the Trial Court's decision misperceives the TEDRA statutes and the gravity of the allegations against Leta. If the Trial Court's comments were part of its suggestion that Leta could not recover fees because she did not file a responsive pleading requesting them, then the Court erred. See §§ IV C1; IV D, *infra*.

C. The Trial Court's refusal to award attorney's fees to Leta Travis pursuant to CR 11 was based on untenable grounds and was for untenable reasons.

Court Rule 11 was designed to reduce legal costs and permits an award of expenses and fees to a litigant whose opponent acts frivolously or in bad faith in instituting or conducting litigation. 3A K. Tegland, *Washington Rules Practice* at p. 230 (5th Ed. 2006).

Washington Courts have defined two types of sanctionable filings: (1) those that are not well grounded in fact and warranted by law (frivolous and baseless filings); and (2) those that are interposed for an

improper purpose such as harassment or unnecessary delay (bad faith filings). *Id.* at p. 233 (citing *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 829 P.2d 1099 (1992)). These two categories are considered alternative violations, and either one can result in sanctions. *Id.* (citation omitted).

1. Carmel's allegations against Leta were baseless.

The Trial Court's refusal to award fees to Leta was based on untenable grounds for two reasons. First, Carmel did not submit any facts which supported the specific allegations she made against Leta in her verified TEDRA petition. Carmel alleged that it was Leta who instigated or orchestrated Betty's acts, but provided no factual support for these accusations. Carmel's accusations were suspicions based on speculation. *See, e.g.*, CP 157, ll. 10-16. Carmel admitted that she dismissed her petition to avoid answering Leta's discovery requests which highlighted the baseless character of her allegations against Leta.

Second, when the Trial Court relied upon the allegations against Betty when deciding *Leta's* motion for fees, the Trial Court misperceived the proper legal standard. The Trial Court should have considered the factual support for allegations against Leta without reference to the allegations against Betty.

In *Doe v. Spokane and Inland Empire Blood Bank*, 55 Wn. App. 106, 780 P.2d 853 (1989), the plaintiff brought suit against numerous parties including Spokane and Inland Empire Blood Bank ("Spokane") and Whatcom Pathology Laboratory and Blood Bank ("Whatcom"). The plaintiff alleged that he contracted AIDS as a result of the collection, processing and distribution of blood products by numerous defendants including Spokane and Whatcom. However, the plaintiff admitted in

depositions that he never had any contact with blood products supplied by either Spokane or Whatcom.

The Trial Court denied the requests of Spokane and Whatcom for fees and costs, and they appealed. The Court of Appeals reversed and remanded because the record was “silent” as to what pre-filing inquiry was undertaken by the plaintiff’s attorney. *Id.* at p. 111. The Court also instructed the Trial Court to decide whether appellants were entitled to a remedy under RCW 4.84.185. Thus, the Court of Appeals concluded that an award of fees to two of eleven defendants would be appropriate regardless of potentially meritorious claims against the other defendants.

More recently, the Court of Appeals held in *Eller*, 159 Wash. App. 720, that the Trial Court should have considered whether to award CR 11 sanctions to one of two defendants. In *Eller* plaintiffs brought suit against several parties arising out of plaintiffs’ purchase of a vehicle from a dealer. One of the named defendants was a notary public who notarized copies of some of the documents from the transaction file in response to plaintiffs’ request. The notary had no involvement in the underlying transaction, and was dismissed on summary judgment. Thereafter, the notary filed a motion for sanctions and fees citing both CR 11 and RCW 4.84.185. The Trial Court denied the motion, and the notary appealed. Meanwhile, the notary’s co-defendants settled with plaintiffs for more than \$12,000.

The Court of Appeals held that the Trial Court had erroneously denied CR 11 sanctions because the claim against the notary was not interposed for an improper purpose. *Eller, supra*, at p. 187. The Court of Appeals reversed the Trial Court’s decision because the Trial Court had misapplied the law; CR 11 sanctions are appropriate when filings are not well grounded in fact or when they are interposed for any improper

purpose. These grounds are alternative, but the Trial Court's decision did not treat them as such. *Id.*, at p. 191. As in *Doe, supra*, meritorious claims against other defendants did not excuse or justify baseless or bad faith filings against the notary. As in *Eller, supra*, and *Doe, supra*, the Trial Court in this matter erred when it relied upon Carmel's allegations against Betty to deny Leta's motion for fees.

In the context of its discussion of RCW 4.84.185, the Trial Court's denial of Leta's request for fees focused on whether Leta requested them in a responsive pleading. If asserted with respect to CR 11, this suggestion would conflict with the plain language of the rule. Court Rule 11 says that if a *pleading*, motion or legal memorandum violates CR 11 "the court *upon motion* or upon its own initiative" may impose a fee upon the person who signed it, a represented party, or both. CR 11(a) (emphasis added). Thus, CR 11 expressly states that a motion is the proper procedure to request fees under CR 11. The text of the rule also states that the predicate for Rule 11 is an improper pleading such as Carmel's petition, not a responsive pleading by the aggrieved party.

Finally, Leta's response was not due until five days before the hearing, (RCW 11.96A.100(3)), which was January 13, 2015. CP 251-2. It is erroneous to fault Leta when her deadline for a responsive pleading had not run when Carmel dismissed her TEDRA petition.

2. Carmel's allegations against Leta were for an improper purpose.

The Trial Court's decision essentially ignored the undisputed evidence of Carmel's animosity towards Leta, and Carmel's ongoing harassment of Leta through the legal system. Accordingly, the Court's refusal to award fees to Leta was an abuse of discretion.

In a letter dated December 12, 2012, one of Carmel's lawyers accused Leta of misusing Betty's power of attorney to exploit Betty to Carmel's disadvantage. CP 202-6. Within months, Carmel made similar allegations Leta to Adult Protective Services. APS investigated and concluded those allegations were unsupported. CP 208. Undeterred, Carmel made the same accusations to APS for a second time, but to a different office. CP 209. For the second time APS concluded that Carmel's complaint was unsubstantiated, and it took no action. Within weeks of APS's decision on Carmel's second complaint, Carmel filed her verified TEDRA petition, reiterating the same allegations that had been refuted. CP 270.

Meanwhile, Betty consistently denied that she was being manipulated or exploited by anyone. For example, in her second petition for a restraining order against Carmel, Betty wrote that she was doing well and was living independently. CP 134. In her verified response to the TEDRA petition, Betty denied that she was the subject of undue influence and alleged that she was exercising her own judgment or discretion in administering the Trust. CP 263. Thereafter, in June 2014 Betty sent Carmel a declaration in which she affirmatively stated that she managed her own finances, monitored her income and expenses, and decided how to spend and invest her money. Betty confirmed that she made all the decisions about her social calendar and managed the Trust accounts. She specifically denied that she was controlled or manipulated by Leta. CP 175. Despite this body of information, Carmel persisted with her allegations against Leta.

In her motion for fees, Leta contended that it was Carmel who had initiated the APS investigations of Leta. Carmel unequivocally denied under penalty of perjury that she made those complaints. CP 72 at ¶ 8.1.

This denial was false. In a verified pleading she filed in response to one of Betty's actions for a protective order, Carmel stated under penalty of perjury that she had requested an APS investigation because of Leta's alleged undue influence over Betty. CP 30; 34-35. In a letter dated July 27, 2013 to Ms. Boolen, the APS investigator, Carmel reiterated her allegations against Leta. CP 52-55. Carmel sent Ms. Boolen a copy of the December 12, 2012 letter from one of Carmel's lawyers, stating that it "outlines some of our concerns." CP 54. But by that time, Betty had repeatedly denied that she was being exploited or controlled by Leta; Leta had denied the allegations in the letter; and APS had finished its first investigation of Leta, concluding that the allegations of personal and financial exploitation "more likely than not ... did not occur."

In her letter to Ms. Boolen, Carmel accused Leta of intercepting Betty's mail, including correspondence from Betty's lawyer. CP 55. Carmel also speculated that Leta was threatening Betty with a nursing home if Betty did not "comply with Leta's wishes." CP 55. Thus, not only did Carmel trigger the APS investigation, she actively fomented it. Nevertheless, Ms. Boolen concluded that the allegations were "not substantiated," and APS took no action. CP 209. Despite this conclusion, Carmel filed her petition in December 2014.

In her opposition to Leta's motion for fees, Carmel did not deny her hostility towards Leta. To the contrary, some of her pleadings actually confirmed her animosity towards Leta. For example, Timothy Esser, one of Carmel's attorneys, stated in his declaration that there was a "long history (perhaps ten years) of outright animosity between Leta and Carmel." CP 149 at ¶ 3.2.3.

In spite of the undisputed evidence establishing Carmel's harassment of Leta, the Trial Court's decision did not consider that

Carmel's TEDRA allegations against Leta were for an improper purpose. Accordingly, when the Court denied Leta's motion for an award of costs and fees, the Court abused its discretion.

D. The Trial Court's refusal to award attorney's fees to Leta Travis pursuant to R.C.W. 4.84.185 was based on untenable grounds and was for untenable reasons.

For two reasons the Trial Court abused its discretion when it denied Leta's request for fees pursuant to RCW 4.84.185.

First, the Trial Court incorrectly considered whether Leta had requested fees in a pleading responsive to Carmel's TEDRA petition. RCW 4.84.185 authorizes a request for fees incurred in defense of an action that is frivolous and advanced without reasonable cause. The determination of whether to grant fees "*shall be made upon motion by the prevailing party* after a voluntary or involuntary order of dismissal" RCW 4.84.185 (emphasis added). Thus, the Trial Court misapplied the law; fees are requested in a motion, not a responsive pleading. In addition, Leta's response to the TEDRA petition was not due until five days before the hearing, which was January 13, 2015. RCW 11.96A.100(3); CP 259. Carmel dismissed her petition on December 14, 2014. The Court compounded its error by suggesting that a responsive pleading was due when Carmel dismissed her petition.

The second reason advanced by the Trial Court was that Carmel's TEDRA petition focused on Betty's alleged breaches of fiduciary duty and general failure with regard to her statutory obligations. The Court held the TEDRA petition was not frivolous because Betty "made no affirmative request for relief on the grounds that the petitioner's claims were wholly baseless and frivolous" within the meaning of RCW 4.84.185. CP 3.

Again, the Trial Court misperceived the mechanism whereby fees are requested, which is a motion and not a responsive pleading. Furthermore, the Court erroneously held that Carmel's claims against *Betty* somehow excused or justified baseless allegations against *Leta*. This misstates the law, and was an abuse of discretion. *Eller, supra*.

In *Eller, supra*, the notary who was dismissed on summary judgment subsequently filed a motion for fees under both CR 11 and RCW 4.84.185. The Trial Court denied the motion, and the notary appealed. On appeal the plaintiffs argued that the Trial Court properly denied fees to the notary under RCW 4.84.185 because the Trial Court could only award fees if the lawsuit in its entirety, including claims against all other defendants, was advanced without reasonable cause. *Id.* at p. 192.

In reversing the Trial Court order denying fees, the Court of Appeals held that RCW 4.84.185 must be applied on a party-by-party basis. The Court of Appeals specifically rejected the argument that colorable claims against one defendant excuse or justify frivolous claims against another defendant:

[W]ithin the context of the statute, and given the purpose of RCW 4.84.185, the only reasonable reading of the statute is that a defendant drawn into an action without reasonable cause and subjected to claims against it that, considered as a whole are frivolous, may be awarded expenses under RCW 4.84.185, ***regardless of the merit of the plaintiff's claims against other defendants.***

Id. at p. 194. (emphasis added). According to *Eller, supra*, the Trial Court erred when it denied fees to *Leta* because of Carmel's allegations against *Betty*.

Carmel's evidence before the Court and the Trial Court was undisputed. The allegations against *Leta* were frivolous, and the Trial

Court should have awarded fees to Leta. Whether Carmel acted in bad faith or for an improper purpose is not relevant to RCW 4.43.185. *Eller, supra*, at p. 194.

E. Leta Travis is entitled to an award of fees incurred in this appeal.

In addition to an award of her fees incurred in the Trial Court proceedings, Leta also requests an award of attorney's fees incurred in this appeal in accordance with RAP 18.1.

“In Washington, a prevailing party may recover attorney fees authorized by statute, equitable principles, or agreement between the parties. If such fees are allowable at trial, the prevailing party may recover fees on appeal as well.” *Landberg v. Carlson*, 108 Wn. App. 749, 758, 33 P.3d 406 (2001) (rev. den. 146 Wn.2d 1008 (2002)) (citations omitted).

Both CR 11 and RCW 4.84.185 authorize an award of fees to Leta by the Trial Court.

RCW 4.84.185 expressly states that because Carmel voluntarily dismissed her TEDRA petition, Leta was the prevailing party, and as such, could request her costs and fees. See also RCW 4.84.060 (“In all cases where costs and disbursements are not allowed to the plaintiff, the defendant should be entitled to have judgment in his favor for the same.”); and *Hawk v. Branjes*, 97 Wn. App. 776, 780, 986 P.2d 814 (1999) (quoting *Walji v. Candyco, Inc.*, 57 Wn. App. 284, 288, 787 P. 2d 946 (1990)) (“At the time of a voluntary dismissal, the defendant has ‘prevailed’ in the common sense meaning of the word.”)

RCW 4.84.185 was enacted to discourage abuses of the legal system by providing for an award of expenses and legal fees to parties forced to

defend themselves from meritless claims asserted for harassment, delay, nuisance or spite. *Suarez v. Newquist*, 70 Wn. App. 827, 855 P.2d 1200 (1993). A lawsuit is “frivolous,” and the prevailing party is entitled to recover attorney’s fees and costs, when the lawsuit cannot be supported by any rational argument on the law or facts. *Tiger Oil Corp v. Dept. of Licensing*, 88 Wn. App. 925, 946 P.2d 1235 (1997).

Similarly, CR 11 was designed to reduce legal costs and permits an award of expenses and fees to a litigant whose opponent acts frivolously or in bad faith. *3A K. Tegland, supra*, at p. 230.

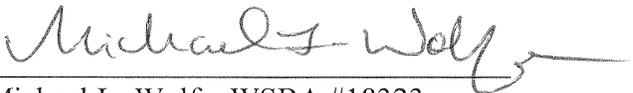
An award of Leta’s fees on appeal is specifically authorized by statute and court rule, and such an award is consistent with the stated policy underlying each of them. Leta’s fees at the Trial Court level are itemized in the record. See CP 211-13; 235-51; CP 8-11. Leta will provide the Court with an itemization of fees incurred on appeal in accordance with RAP 18.1(d).

VI. CONCLUSION

When the Trial Court denied Leta's request for attorney's fees pursuant to CR 11 and RCW 4.84.185, it abused its discretion. The Court of Appeals should reverse the Trial Court order denying fees to Leta and either award Leta her fees, including those incurred on appeal, or remand the matter to the Trial Court with instructions to award fees to Leta for the Appellate and Trial Court proceedings.

DATED this 21 day of August, 2015.

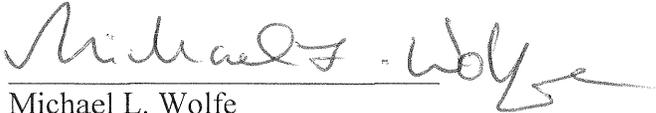
RANDALL | DANSKIN, P.S.

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on the 21th day of August, 2015, addressed to the following:

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<p><u>Attorneys for Defendant Betty</u> <u>Travis:</u> Ms. Kimberly R. Boggs Nealey & Marinella P.O. Box 7 Dayton, WA 99328</p>	<p><input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Email Transmission</p>


Michael L. Wolfe