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No. 333159

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

ESTATE OF RANDALL W. TRAVIS
CARMEL TRAVIS,

Respondent,

v.

BETTY TRAVIS,

Defendant,

and

LETA TRAVIS,

Appellant.

RESPONDENT'S BRIEF

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II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Before Carmel filed the Petition did she make reasonable inquiry regarding whether Leta engaged in acts alleged in the Petition? (Appellant's Assignment of Error Nos. 1, 2, 3)
2. When Carmel filed the Petition was there a reasonable basis for her to believe that Leta engaged in acts alleged in the Petition? (Appellant's Assignment of Error Nos. 1, 2, 3)
3. May a trial court award attorney's fees pursuant to CR 11 to a moving party who has failed to bring the alleged CR 11 violation to the attention of the other party against whom sanctions are sought at a time when the alleged CR 11 violation could have been cured? (Appellant's Assignment of Error No. 2)
4. Did the trial court abuse its discretion when it decided it would not impose CR 11 sanctions on Carmel? (Appellant's Assignment of Error Nos. 1, 2)
5. Is the amount of CR 11 fees requested by Leta in the trial court excessive for the reason that the fee request is not limited to services necessary to respond to the alleged CR 11 violation and includes fees generated before the action was commenced and before Leta intervened?
6. Is an action frivolous, within the meaning of RCW 4.84.185, as to a party who is properly a party to the action? (Appellant's Assignment of Error Nos. 1, 3)

7. May attorney fees be awarded to a party pursuant to RCW 4.84.185 if the action is not frivolous as a whole as to that party? (Appellant's Assignment of Error Nos. 1, 3)
8. Should attorney's fees and costs be awarded against Leta pursuant to RAP 18.9 and RCW 11.96A.150? (Appellant's Assignment of Error Nos. 1, 2, 3)

III. STATEMENT OF THE CASE

Leta Travis appeals the trial court's refusal to award her attorney fees pursuant to CR 11 and RCW 4.84.185. This was in a Trust and Estate Dispute Resolution Act (TEDRA) action pursuant to RCW 11.96A.010 et seq. The action was voluntarily dismissed two and one-half months after Leta¹ intervened in it.

Leta seeks fees not only for the period between her intervention and dismissal, but also for periods before she intervened and before the action was commenced. She seeks fees in the amount of \$2,532.50 incurred prior to December 5,

¹ The parties will be referenced by their first names only after the first mention of their full names because all parties have the same last name.

2013, (CP 245-51) and \$1,861.65 incurred between December 5, 2013, and September 26, 2014, (CP 241-44) when she intervened. Her fee request makes no effort to segregate between fees necessary to respond to the alleged CR 11 violation and fees for all services. (CP 9, 213)

On December 5, 2013, Carmel Travis commenced this action against Betty Travis. CP 270. Betty Travis is the trustee of a testamentary trust created by the Will of her husband, Randall W. Travis. Carmel and Leta are sisters and the daughters of Betty and Randall.

On September 26, 2014, Leta intervened in this action by Stipulated Order. CP 254. On December 8, 2014, the action was dismissed voluntarily pursuant to CR 41(a)(1)(B). CP 252. Carmel voluntarily dismissed the action because Betty substantially cured the breaches alleged in the TEDRA Petition. Carmel had achieved substantial success and did not wish to incur

further litigations expenses and risk. CP 71-72, 152-153, 161.

In her request for fees, Leta did not argue that the action was improper as to Betty. CP 191-96. Rather, Leta argued that Carmel had "provided no information supporting the allegations in her verified Petition establishing acts or omission by Betty Travis were the result of manipulation or undue influence." CP 195.

The allegations describing acts by Leta are as follows:

1.2 Leta Travis ("Leta") . . . is also a beneficiary of the Trust.

. . .

2.10 Leta is the attorney-in-fact for Betty, helps Betty on a daily basis with Betty's financial and personal needs, takes Betty to Betty's attorneys and doctors, is believed to attend meetings with Betty's attorneys and doctors, is paid to help Betty, exerts substantial influence over Betty's actions adverse to those of Carmel and, as a result of her confidential relationship with Betty, which Leta uses to her advantage, Betty has a conflict with Carmel over the administration of the Trust.

4.4 Betty's current efforts to rescind the Agreement are contrary to her fiduciary duties owing to Carmel and are likely the results of Leta's influence over Betty.

5.3 Carmel requests the Trust be administered consistent with the Agreement, for Betty to provide annual accountings, and for Betty to act independently without pressure from Leta.

6.4 Betty, and possibly Leta, have also paid their attorneys' fees from the Trust, which sums should be reimbursed to the Trust.

CP 273-79.

Before Carmel commenced this TEDRA action, she had spent a year, at least, trying to get information about the Trust. On November 29, 2012, Betty signed a Petition for Order of Protection - Harassment. CP 84-86. A protection order was sought in order to keep Carmel from "pressuring me about money, bills, or assets." CP 85.

On December 11, 2012, Carmel's attorney, Lisa Malpass Childress sent a five-page letter to Leta. CP 202-06. The letter was about the

"unnecessary control and dominion" Leta and her husband "exert over Betty J. Travis." CP 202. The letter conveyed numerous concerns, including Leta keeping Betty away from family and friends, not sharing medical information with Carmel (CP 202), restricting Betty from traveling to Arizona as she had been doing for 20 years, misusing Betty's money and property, misappropriating trust funds, concealing the Trust checkbook, using Betty's vehicle for Leta's own benefit, and breaching fiduciary duties as Betty's attorney-in-fact (CP 203).

On January 3, 2013, the date set for hearing, the restraining order proceeding was dismissed voluntarily. CP 68, 81. After the hearing Carmel, her attorney, Ms. Childress, Betty, and her attorney, David Gittins, met in a conference room. Carmel explained to Betty that she "was not trying to find out any of her personal financial matters and that [Carmel's]

only concern was keeping the Trust operating correctly." CP 68.

On January 10, 2013, Leta responded to Ms. Malpass Childress' letter by means of a one-page letter from her attorney, Donald K. Querna. CP 207. Mr. Querna wrote that he had "investigated" by talking to his client and reviewing unspecified materials from Betty and David Gittins (Betty's attorney). Mr. Querna wrote, "I have concluded that Mrs. Travis is capable of making her own decisions, does look to Leta Travis for input, but is not controlled by Leta Travis, and is and remains both engaged in and aware of both her financial resources and needs." Mr. Querna's letter did not address or deny the concern that Leta was breaching fiduciary duties to Betty arising from her position as Betty's attorney-in-fact.

Between February 16, 2013, and November 21, 2013, Carmel's attorneys wrote ten letters or emails to Betty's attorney seeking information

about the Trust and received five letters or emails in response. CP 88-119. Mr. Gittins provided some financial documents with his letter dated May 15, 2013. CP 105-07.

On July 23, 2013, Mr. Libey sent Mr. Gittins a ten-page letter analyzing documents and information provided by Mr. Gittins, requesting additional information from Mr. Gittins, and requesting distributions from the Trust totaling \$32,968.98. CP 90-99. The letter noted that cash withdrawals from the Trust's bank account began in 2012. The cash withdrawals itemized in the letter (CP 93) total \$12,277.40. The letter also noted about \$20,000 in credit card charges and that there were payments of about \$20,000 to Leta and her family. CP 96. The letter requested a copy of Betty's power of attorney. CP 98. Mr. Gittins did not respond to the July 23, 2013, letter. CP 88, 139, 176.

On December 5, 2013, when Carmel began this action, she knew several facts that gave her good

reason to believe that Betty had breached her fiduciary duties as Trustee. Carmel was never provided with an annual trust accounting. CP 71, 92, 96, 273-75. Betty never provided Carmel with annual information about the Trust. CP 71, 95, 274-75. Betty had ceased making distributions from the Trust to Carmel. CP 69, 71, 92, 275-77. Betty's attorney threatened litigation against Carmel if she would not agree to convert the Trust to a five percent unitrust. CP 69, 115-16. Conversion of the Trust to a five percent unitrust would have caused the Trust to incur a \$200,000 capital gain tax. CP 69. The only benefit of such conversion would have been to Leta. CP 69, 150.

When Carmel began this action, she knew several facts that gave her good reason to believe that Leta might have influence and involvement in Betty's breaches of her duties as trustee. As discussed in the previous paragraph, Betty, through her attorney, was proposing to

change the Trust in a way that would benefit Leta but not the other beneficiaries, and would cost \$200,000 in income tax. Carmel had documents showing that Betty incurred \$20,000 (or \$24,000) in credit card charges. CP 70, 96. Carmel found this amount "extraordinarily high for someone who doesn't drive, rarely leaves her own home, and does not shop online." CP 70. Documents indicated "payments of about \$20,000 to Leta and her family in 2012." CP 70, 96. Betty did not drive and depended on Leta for transportation to appointments with doctors and lawyers. CP 66. Leta was made Betty's attorney-in-fact by a Durable Power of Attorney dated December 16, 2009, which Carmel has seen. CP 65-66. Betty stated that Leta "is or claims to be [her] guardian or legal fiduciary" in a Petition for Vulnerable Adult Order for Protection Betty signed on September 19, 2013. CP 131. Leta had access to Betty's bank information concerning the Trust; Carmel did not. CP 67. Betty's

attorney's office always sent email to Carmel's attorney naming Leta Travis as the "subject". CP 14, 24. Betty was 88 years old (CP 65). Betty required assistance from Leta and other caregivers. CP 134. Leta's lawyer acknowledged in a letter that Betty "does look to Leta Travis for input" on "decisions." CP 207.

IV. ARGUMENT

A. The trial court exercised its discretion properly in denying CR 11 sanctions requested by Leta.

1. CR 11 standards.

To impose CR 11 sanctions a "court must make a finding that either the claim is *not* grounded in fact or law and the attorney or party failed to make reasonable inquiry into the law or facts, or the paper was filed for an improper purpose." *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994) (citing CR 11 and *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219-20, 829 P.2d 1099 (1992) (*italics in original*)). "Both practitioners and judges who perceive a possible violation of CR 11

must bring it to the offending parties as soon as possible. Without such notice, CR 11 sanctions are unwarranted." *Biggs, supra*, at 124 Wn.2d 198 (citing *Bryant, supra*, at 119 Wn.2d 224) (footnote omitted). A "trial court should impose sanctions only when it is patently clear that a claim has absolutely no chance of success." *Lee ex rel. Office of Grant County Prosecuting Attorney v. Jasman*, 183 Wn. App. 27, 71, 332 P.3d 1106 (2014) (citing *Skimming v. Boxer*, 119 Wn. App. 748, 755, 82 P.3d 707 (2004)). In deciding whether to impose CR 11 sanctions "[t]he court is expected to avoid using the wisdom of **hindsight** and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or legal memorandum was submitted." *Bryant, supra*, at 220 (citing Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. at 199) (emphasis in original).

2. Carmel made reasonable inquiry before filing the Petition containing allegations involving Leta.

Carmel did conduct a reasonable inquiry lasting about a year as shown by the record. Carmel discussed financial issues with Betty. Betty's response was a petition for a restraining order. CP 84-86. Carmel had a meeting with Betty and their respective attorneys. CP 68. Carmel's attorney wrote ten letters or emails to Betty's attorney seeking information about the Trust. CP 88-119. After reviewing documents provided by Betty's attorney, Carmel's attorney had questions about the affairs of the Trust (CP 90-99) that remained unanswered until this action was filed. CP 88, 139, 176, 272.

Carmel's attorney directed a letter to Leta seeking information from Leta about Leta's suspected role in Betty's decision-making. CP 202-06. In response, Leta's attorney sent a one-page letter providing no information other than his conclusion that Betty was "capable of making

her own decisions" and was "not controlled by" Leta, though Betty "does look to Leta" "for input." CP 207.

The record contains no facts or argument to the effect that Carmel could have and should have done more to investigate whether Leta was influencing Betty's performance of her duties as trustee in ways that favored Leta. Rather, Leta seems to suggest that no reasonable person could have believed that Leta was influencing Betty after receiving a conclusory assurance that this was not the case from Leta's attorney and after supposedly learning that state investigations had found no probable cause to believe Betty was being financially exploited. As pointed out by the trial court in its decision, the record contains "[n]o information related to those investigations other than the letters stating the outcomes and the arguments of counsel" CP 2.

There is nothing in the record to indicate that the state investigated whether Betty was properly discharging her duties as trustee or whether Leta influenced Betty in the performance of her duties as trustee. Rather, the March 29, 2013, letter says the investigation concerned a report that Leta "may have mistreated a vulnerable adult". CP 178. The Nov. 18, 2013 letter informed Leta that there had been an investigation of whether Leta "had financially exploited [her] mother." CP 179. Obviously, there is nothing in these letters to suggest that Adult Protective Services had investigated whether Betty had breached her duties as trustee and whether Leta was involved in such breach.

There is nothing in the record indicating that Carmel knew about the results of these state investigations when she signed the petition. To the contrary, there is a declaration from Leta's attorney to the effect that she sent copies of letters from the state to Carmel's attorney on

June 6, 2014. CP 172-73, 178-79. This was seven months after the petition was filed.

Leta argues that a declaration from Betty demonstrates that the petition was not well-founded. This argument is misguided because the declaration was provided on June 6, 2014, seven months after the petition was filed. CP 172-77.

CR 11 does not require that a party have proof of a claim or allegation before signing a pleading. It requires "that to the best of a party's or attorney's knowledge, information, and belief formed after an inquiry reasonable under the circumstances" the pleading "is well grounded in fact". CR 11(a). "Sanctions may be imposed only if the complaint lacks a legal or factual basis and if the attorney failed to conduct a reasonable inquiry." *Roeber v. Downey Aerospace Yakima*, 116 Wn. App. 127, 141-42, 64 P.3d 691 (2003) (italics in original) (citing *Bryant, supra*, at 119 Wn.2d 220).

"Whether or not a reasonable inquiry has been made depends on the circumstances of a particular case. Factors that the trial court may consider include the time that was available to the signer, the extent of the attorney's reliance upon the client for factual support, whether a signing attorney accepted a case from another member of the bar or forwarding attorney, the complexity of the factual and legal issues, and the need for discovery to develop factual circumstances underlying a claim." *Miller v. Badgley*, 51 Wn. App. 285, 301-02, 753 P.2d 530 (citations omitted) (quoted in *Bryant, supra*, at 220-21). Failure to establish a prima facie case does not establish that a complaint was totally without basis in law and fact. *Roeber* at 116 Wn. App. 142.

3. Carmel reasonably believed after reasonable inquiry that the allegations involving Leta were well grounded in fact.

After reasonable inquiry and before filing the Petition, Carmel knew that there were substantial, unexplained cash withdrawals from the Trust bank account (CP 93), substantial unexplained credit card charges incurred by Betty, and substantial payments to Leta and her family. CP 96. Carmel also knew that Betty was proposing to change the Trust in a way that would benefit Leta but not Carmel and would cause the Trust to incur a \$200,000 capital gains tax. CP 69, 150. Carmel knew that Betty did not drive and depended on Leta for transportation to doctors' and lawyers' appointments (CP 66) and was dependent on Leta and other caregivers (CP 134) and looked to Leta for "input" on "decisions". CP 207.

These circumstances were sufficient to warrant a reasonable belief by Carmel that Leta

might be influencing Betty to administer the Trust in a way that favored Leta over Carmel.

4. Carmel's Petition with allegations involving Leta was not filed for an improper purpose.

The trial court rejected Leta's argument that Carmel acted for an improper purpose. The trial court wrote, "[T]here has been an insufficient showing that any party to this litigation acted in bad faith." CP 4. Leta's argument is based on conjecture and speculation that Carmel could not have believed that Leta was involved in Betty's improper performance of her duties as Trustee and that, therefore, Carmel must have been motivated by spite rather than a sincere belief that the allegations of her Petition were accurate when she filed it. In so arguing, Leta ignores the reasonable inquiry that Carmel made, and her reasonable belief in the Petition's allegations, which are discussed above. The trial court properly rejected Leta's plea to ignore these reasons and speculate that

Carmel signed the Petition for an improper purpose.

5. CR 11 sanctions against Leta are precluded due to Leta's failure to give timely notice that she might request sanctions.

Leta gave no notice that she believed the Petition to have violated CR 11 and that she might file a motion for an award of attorney fees based on CR 11. There is no evidence in the record that Carmel and her attorney were notified a possible CR 11 violation, RCW 4.84.185 or other contention that her petition was frivolous, unfounded or otherwise improper was when the motion came in the mail. Mr. Wolfe's August 29, 2014, letter (CP 218) seeking a stipulation for Leta's intervention does not mention or suggest any assertion that the Petition's statements about Leta violated CR 11 or otherwise were improper.

CR 11 sanctions may not be imposed on a party unless the party has received notice from

the court or the adverse party that sanctions might be sought. *Biggs v. Vail*, 124 Wn.2d 193, 198, 876 P.2d 448 (1994). "Both practitioners and judges who perceive a possible violation of CR 11 must bring it to the offending party's attention as soon as possible. Without such notice, CR 11 sanctions are unwarranted." *Id.* (footnote omitted) (citing *Bryant*, 119 Wash.2d at 224). "[W]ithout prompt notice regarding a potential violation of the rule, the offending party is given no opportunity to mitigate the sanction by amending or withdrawing the offending paper. . . . Prompt notice of the possibility of sanctions fulfills the primary purpose of the rule, which is to deter litigation abuses." *Id.* (citations omitted).

Here, if Leta had given notice of a possible CR 11 motion, Carmel would have had an opportunity to consider whether allegations about Leta's involvement with Betty's performance as trustee were necessary and proper. Carmel would

have had the opportunity to eliminate the allegations Leta finds objectionable, to amend the Petition, and proceed with the litigation, including discovery concerning Leta's involvement in Betty's decisions about the Trust.

Leta's failure to give notice was not argued in the trial court. The record does show, however, that failure to give notice was considered by the trial court in its discussion of RCW 4.84.150. CP 3.

"While appellate courts are reluctant to reverse on a basis not raised in the trial court, a decision will be *affirmed* on any proper grounds. It is well established, and codified in RAP 2.5(a), that a party on appeal may present any ground for affirming a trial court decision as long as the record is sufficient to permit appellate consideration of the issue." 15A K. Tegland, *Washington Practice: Handbook Civil Procedure* § 88.2 (2014-2015 ed.) (citations omitted) (italics in original).

The record does contain a declaration from Mr. Wolfe describing the procedural history view of this case. (CP 211-12). It does not mention communication to Carmel of a possible CR 11 violation. It seems evident that Mr. Wolfe either did not view the petition as violating CR 11 at that time or that he elected to withhold notice for some reason.

The burden is on Leta to show a CR 11 violation and that sanctions should be imposed. *Biggs, supra* at 124 Wash. 2d 202. This burden cannot be satisfied in the absence of proof of timely notice. *Biggs, supra* at 124 Wn.2d 198.

6. Leta's CR 11 fee request improperly seeks fees for the entire action rather than limiting her request to fees incurred in specifically responding to the allegedly unfounded language in the Petition.

"Attorney fee sanctions [for violation of CR 11] should not exceed the amount expended by the non-offending party in responding to the sanctionable conduct." *MacDonald v. Korum Ford,*

80 Wn. App. 877, 892, 912 P.2d 1052 (1996) (citing *Biggs, supra*, at 124 Wn.2d 202). In *MacDonald* the appellate court remanded for recalculation of the amount of CR 11 sanctions. Remand was necessary because, the court explained:

First, it was not limited to those amounts attorney two reasonably expended in responding to specific sanctionable filings. Instead, it included attorney two's billable hours for acquainting herself with and organizing the file, initiating discovery, and preparing for trial. An award for those amounts appears to be a fee shifting mechanism rather than "the least severe sanction adequate to serve the purpose. *Miller*, 51 Wn. App. at 304, 753, P.2d 530.

Second, it appears that attorney two could have avoided or mitigated the fees reasonably generated in responding to specific sanctionable filings. For example, Korum Ford's first attorney notified Cain that he intended to seek CR 11 sanctions if Cain proceeded with a pending motion to amend the complaint and join an additional party. In response, Cain withdrew the motions. Had attorney two similarly notified Cain that she considered his continued pursuit of the case sanctionable, she might have deterred some of the litigation abuse.

MacDonald, at 80 Wn. App. 892-893.

Leta's CR 11 fee request suffers from the same defects as the CR 11 fee request in *MacDonald*. She does not limit her request to time reasonably spent responding to the allegedly unfounded pleading. She seeks fees for the entire action. Her request includes the amount of \$2,532.50 for representation prior to the commencement of the action. CP 245-51. In addition, she seeks \$1,861.65 for fees between commencement of the action and her intervention in it. CP 241-44.

B. Carmel Travis' Petition was not frivolous within the meaning of RCW 4.84.185.

1. There is rational argument to support the Petition.

"A frivolous action is one that cannot be supported by any rational argument on the law or facts." *Goldmark v. McKenna*, 172 Wn.2d 568, 582, 259 P.3d 1095 (2011) (citing *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82, rev. den., 113 Wn.2d 1001, 777 P.2d 1050

(1989). As argued above, there is rational argument to support the allegations in the Petition involving Leta.

2. The action cannot be deemed frivolous because Leta concedes that she was a proper party to the action.

"The lawsuit, as a whole, that is in its entirety, must be determined to be frivolous and to have been advanced without reasonable cause before an award of attorney's fees may be made under the statute [RCW 4.84.185]." Biggs v. Vail, 119 Wn.2d 129, 137, 830 P.2d 350 (1992). Leta argues that the action as a whole is frivolous as a whole as to her because, she argues, there was no basis to allege that she was involved in Betty's shortcomings as a trustee. Leta's argument (AB 18-20) on RCW 4.84.185 ignores that she elsewhere claims that she was a proper, and perhaps necessary, party to this action because she was a beneficiary of the Trust. Appellant's Brief 7, 11; CP 192, 200,

218-19; RP 5. Leta does not argue that the allegation is frivolous in Paragraph 1.2 of the Petition. CP 271. That allegation is: "Leta Travis ("Leta") . . . is the other daughter of Randall W. Travis, and is also a beneficiary of the Trust."

Fees under RCW 4.84.185 cannot be awarded unless all claims against a party are determined to be frivolous. *Biggs, supra*. There the Court held: "The trial court erred in awarding fees under the statute after having found only three of four claims for relief in the complaint to be frivolous." *Id.*

The cases argued by Leta are obviously distinguishable. In both *Eller v. East Sprague Motors & R. V.'s, Inc.*, 159 Wn. App. 180, 244 P.3d 447 (2010) and *Doe v. Spokane and Inland Empire Blood Bank*, 55 Wn. App. 106, 780 P.2d 853 (1989), fees were awarded in a multiple party case to a party who should not have been a party. Here, Leta concedes that she properly was a party.

3. The trial court did not abuse its discretion when it denied fees and costs to Leta.

The decision to award fees under RCW 4.84.185 or CR 11 "is left to the trial court's discretion and will not be disturbed in the absence of a clear showing of abuse. . . . Therefore, the question is whether the Court's conclusion was the product of discretion that was manifestly unreasonable or based on untenable grounds or reasons." *Tiger Oil Corp. v. Dept. of Licensing*, 88 Wn. App. 925, 937-38, 946 P.2d 1235 (1997) (citations omitted). There was no abuse of discretion by the trial court in this case for reasons argued above.

Respondent argues that the trial court denied fees for an untenable reason in that its Decision on Fees pointed out that "Leta Travis did not file any affirmative or reasonable pleading setting forth a claim for relief." CP 3. It is unclear from the context whether the trial court viewed such a pleading as a prerequisite to an award of fees pursuant to RCW 4.84.185.

Nonetheless, it is clear that the trial court relied on other reasons as well in determining that the Petition was not frivolous as a whole. The court noted elsewhere in its decision, "It is difficult to assess fees against a party on the basis of 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 (emphasis added).

The trial court reached the correct decision regarding fees under both RCW 4.84.185 and CR 11. The trial court's correct decision should not be reversed even though one of the reasons given may have been erroneous. *Ertman v. City of Olympia*, 95 Wn.2d 105, 107-08, 621 P.2d 724 (1980). In *Ertman* the court said, "We have held many times that where a judgment or order is correct, it will not be reversed merely because the trial court gave the wrong reason for its rendition." *Id.* (citing

Pannell v. Thompson, 91 Wn.2d 951, 603, 589 P.2d 1235 (1979); *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 552 P.2d 184 (1976)).

C. **Carmel Travis is entitled to an award of fees incurred in this appeal.**

1. **Leta's appeal is frivolous; attorney's fees and costs should be awarded pursuant to RAP 18.9(a).**

"An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal." *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998) (citations omitted).

Leta's appeal of the trial court's denial of her CR 11 motion is frivolous for several reasons. First, Leta ignores case law that establishes that her CR 11 motion was doomed from the start by her failure to give timely notice concerning the alleged CR 11 violation. Second, Leta ignores case law that establishes that a document is "well grounded in fact" if the signer has made "inquiry

reasonable under the circumstances" and thereafter continues to reasonably believe the document is well grounded in fact. Third, Leta's argument that the trial court abused its discretion in declining to find an "improper purpose" is based on speculation about Carmel's motives which the trial court was free to reject. Leta's speculative argument about "improper purpose" is assisted by ignoring the record concerning the origin, nature, and scope of Adult Protective Services' investigations and the time at which Carmel learned the results of the investigations. Likewise, Leta's argument about Betty's affidavit overlooks the fact that it could not have been considered when Carmel filed her Petition because the affidavit did not exist until seven months later. Fourth, Leta's CR 11 argument suggests that the trial court abused its discretion in not examining the factual basis for allegations about Leta. Actually, the trial court's decision shows that it was aware that 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.

Leta's appeal of denial of fees under RCW 4.84.185 is frivolous for two reasons. One, Leta ignores the rule that all claims against a party must be frivolous before an action can be considered as a whole. Two, the allegations in the Petition regarding Leta's involvement in Betty's administration of the Trust are well founded and based on rational argument.

2. Attorney's fees and costs should be awarded to Carmel pursuant to RCW 11.96A.150.

RCW 11.96A.150 allows an appellate court to award fees and costs in its discretion in any TEDRA case "as the court deems to be equitable." "[T]he court may consider any and all factors that it deems to be relevant and appropriate" *Id.*

An award of fees is appropriate in this case because Leta has forced Carmel to defend a

frivolous appeal. The appeal is frivolous for the reasons argued above.

Alternatively, if the appeal is not frivolous in the technical sense, the appeal has such little merit that success on appeal seems very unlikely. Leta made a molehill into a mountain by failing to make her objection to the Petition known at a time when it could have been addressed by amending the Petition. Once the trial court properly exercised its discretion in ruling against her, the case "should have been over." See, *Boyles v. Washington State Dept. of Retirement Systems*, 105 Wn.2d 499, 508, 716 P.2d 869 (1986) (awarding fees pursuant to RAP 18.9). Instead, Leta appealed. Under this circumstance it would be equitable for Leta to pay Carmel's fees and costs.

V. CONCLUSION

The trial court properly exercised its discretion in denying Leta's request for fees under RCW 4.84.185 and CR 11. Carmel conducted a reasonable inquiry before filing the Petition and

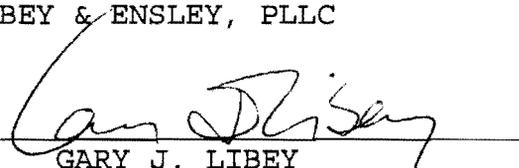
had a rational basis for believing in the truth of her Petition, including its allegations involving Leta. CR 11 fees could not have been awarded to Leta due to Leta's failure to give timely notice of the alleged CR 11 violation. RCW 4.84.185 fees could not have been awarded because Leta was properly made a party to the Petition and, therefore, the action could not have been deemed frivolous as a whole as to Leta.

The trial court should be affirmed and fees on appeal should be awarded to Carmel.

DATED this 25th day of September, 2015.

LIBEY & ENSLEY, PLLC

By



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Attorney for Respondent

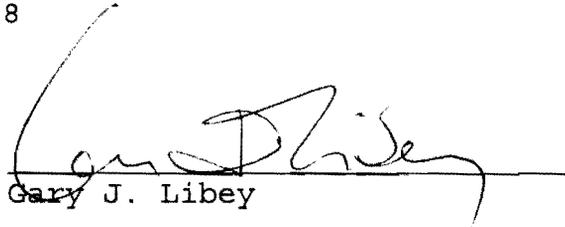
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ATTORNEY'S CERTIFICATE OF SERVICE

I certify that on September 25th, 2015, I caused a copy of this document to be mailed to:

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