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STATE OF WASHINGTON  
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No. 333159

COURT OF APPEALS,  
DIVISION III  
OF THE STATE OF WASHINGTON

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ESTATE OF RANDALL W. TRAVIS  
CARMEL TRAVIS,

Respondent

vs.

BETTY TRAVIS,

Defendant

and

LETA TRAVIS,

Appellant

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**REPLY BRIEF OF APPELLANT LETA TRAVIS**

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## I. INTRODUCTION

In her Appellant's Brief, Leta Travis ("Leta") explained how the Trial Court erred when it denied her motion for fees. In her Respondent's brief, Carmel Travis ("Carmel") did not respond to some of these arguments; is incorrect about those which she did address; and has attempted to improperly raise new arguments on appeal that she did not make to the Trial Court.

## II. ARGUMENT

### A. Leta's status as a necessary party does not excuse or justify Carmel's frivolous claim against Leta.

In her opening brief Leta explained why the Trial Court erred to the extent that it suggested that Leta's intervention prevented her from recovering attorney's fees. In summary, as a beneficiary of her deceased father's Trust, Leta was a "party" and an "interested party" under the TEDRA statutes who had to be joined. See Appellant's Brief at p. 11.

Carmel does not dispute Leta's status as a necessary party. Rather, Carmel suggests that because Leta was a necessary party, the allegations against Leta could not violate RCW 4.84.185. See Respondent's Brief at pp. 26-8. Stated another way, Carmel suggests that a necessary party cannot request fees for frivolous claims due to their status as a necessary party. This argument is incorrect.

When it enacted the TEDRA statutes, the Washington State Legislature intended to give the Courts "full power and authority" to "administer and settle" Trust matters. RCW 11.96A.020(1); (1)(b). The TEDRA statutes are broadly written such that all interested parties can be joined to the TEDRA action so a Court can completely resolve any particular question or dispute. However, **nothing** in the TEDRA statutes

suggests that a petitioner must make allegations of misconduct or exploitation against Trust beneficiaries to join them to a TEDRA action. As Leta explained in her Appellant's Brief, Carmel did not need to make baseless allegations against Leta to litigate her grievances about Betty's trust management and to join Leta. It would have been sufficient and proper under TEDRA for Carmel to simply allege that Leta was an interested party as a Trust beneficiary. Carmel's allegations of exploitation and breach of fiduciary obligations against Leta were not required under TEDRA; they were gratuitous. It was the gratuitous allegations that violated CR 11 and RCW 4.84.185 and resulted in Leta's request for fees. After joining Leta, Carmel could have amended her pleading to add allegations of misconduct if they were supported by evidence obtained in discovery.

**B. The Trial Court did not find that Carmel's allegations against Leta were factually supported or that Carmel undertook a reasonable inquiry before making them.**

In her Appellant's Brief Leta explained how the Trial Court erred as a matter of law when it denied her motion for fees on the basis of Carmel's allegations against Betty. See Appellant's Brief at pp. 13-15; 18-20.

Carmel does not directly address this argument or attempt to explain, in the face of *Eller v. East Sprague Motor's R.V.'s, Inc.*, 159 Wn. App. 180, 244 P.3d 447 (2010), how the Trial Court decision was correct. Rather, Carmel appears to concede that the Court erred, but suggests that the Trial Court decision should be affirmed as the correct result because Carmel had a good faith basis for her petition and had conducted an adequate investigation into her allegations before filing the TEDRA petition. See Respondent's Brief at pp. 28-29.

But the Trial Court made no finding that Carmel's TEDRA petition was based upon an adequate investigation. In order to find that Carmel's allegations against Leta were based on a reasonable inquiry, the Court was obligated to consider factors including the time available to the attorney or client who signed the pleading; the extent of the attorney's reliance upon the client for factual support; whether the assigning attorney accepted a case from another member of the bar or forwarding attorney; the complexity of the factual legal issues; and the need for discovery to develop factual circumstances in the underlying claim. *Miller v. Badgley*, 51 Wn. App. 285, 301-2, 753 P.2d 530 (1988). The Trial Court did not consider those factors, or make any such findings, and it could not. See § C, *infra*. "[A]bsence of a finding will be taken as a negative finding on the issue." *Peoples Nat. Bank of WA v. Birney's Enterprises, Inc.*, 54 Wn. App. 668, 670, 775 P.2d 466 (1989).

Similarly, the Trial Court did not make findings or even discuss the factual basis of Carmel's allegations against Leta. To the contrary, the Trial Court appears to concede that there was no factual basis because it relied upon Carmel's allegations against Betty to deny Leta's motion for fees. CP 2. Furthermore, the Trial Court wrote that "The *fear* of [breaches of trust] is what led [to] the filing of the TEDRA petition in this case." CP 4. Thus, the Trial Court acknowledged that the allegations against Leta were based on unsubstantiated fear, not facts.

Because there were no findings about the sufficiency of Carmel's investigation before filing suit, and because the Court conceded that Carmel's allegations were based on fear rather than facts, the Court's denial of Leta's motion for fees was on untenable grounds and/or was based on untenable reasons.

**C. Carmel's allegations against Leta were frivolous, and were inadequately investigated.**

In its decision the Trial Court implicitly conceded that Carmel's allegations against Leta were unsubstantiated when it relied upon allegations against *Betty* to deny *Leta's* request for attorney's fees. CP 2. The Trial Court also conceded the baselessness of Carmel's allegations when it wrote that the TEDRA petition was based upon "fear" rather than specific facts. CP 4. Nevertheless, Carmel argues that her allegations had a factual basis which she attempts to explain.

After rehashing her accusations against Betty about Trust management, (Respondents' brief at pp. 5-9), Carmel then explains her *fears* about Leta, stating that Carmel "had good reason to believe that Leta *might* have influence and involvement in Betty's breaches of her duties as Trustee." Respondent's brief at p. 9. (emphasis added).

First, Carmel feared that Betty was proposing to change the Trust in a way that would have benefited Leta (but not Carmel), and which would have resulted in increased taxes to the Trust. Respondent's brief at pp. 9-10. In support of this suggestion, Carmel cites to her own Trial Court declaration (CP 69 at ¶ 5.2) and the declaration of Tim Esser, one of her numerous attorneys. (CP 150 at ¶ 3.2.8). In their declarations, Carmel and Mr. Esser jump to the conclusion that Leta was instigating the proposed change based solely on their contention that it would have benefitted her. *Id.* Thus, Carmel had suspicions or fears, but cites no facts establishing that Leta instigated the proposed change, which apparently did not occur, anyway. Meanwhile, throughout the TEDRA proceedings and in numerous prior legal actions, Betty repeatedly stated that she made her own decisions about her financial affairs, and about Trust

management. And before Carmel filed her TEDRA petition, APS twice concluded that Carmel's suspicions were unsubstantiated.

Second, Carmel refers to "documents" supposedly showing that Betty had incurred \$20,000 or \$24,000 in credit card charges. Respondent's Brief at p. 10, citing CP 70; 96. Carmel cites no facts suggesting that these charges were of any relevance to the Trust; impacted her personally; or that it was Leta who incurred the charges or instigated them. Carmel's citations to the record about the credit card charges are nothing more than questions she raised in her Trial Court declaration and which were contained in a letter dated July 23, 2013, from Mr. Libey, her lawyer. CP 70, ll. 1-4; 95-6. Carmel did not provide the Trial Court (or Leta) with the documents from which Carmel's questions were derived. Neither Carmel's declaration nor Mr. Libey's letter explain how or why Leta was involved in the transactions. At most, Carmel feared that Leta was involved in some fashion, but has presented no supporting facts.

Third, Carmel refers to "documents" suggesting payments of about \$20,000 by Betty to Leta and her family in 2012. Respondent's Brief at p. 10, citing CP 70; 96. As before, the "documents" Carmel cites are her Trial Court declaration and Mr. Libey's letter of July 23, 2013. The declaration and the letter raised questions, but contained no facts explaining whether or how Leta was involved. CP 70, ll. 1-4; 96. Carmel did not provide the Trial Court (or Leta) with the documents from which Carmel's questions were derived. Furthermore, Carmel did not explain how it was impermissible or unlawful for Betty to make use of her own funds in such a fashion; the reasons for the payments; or how Leta was involved. Once again, Carmel feared that Leta acted in some fashion, but has presented no supporting facts.

Finally, Carmel alleges that Leta is or was Betty's attorney-in-fact pursuant to a power of attorney. Respondent's Brief at p. 10. However, there is no such document in the record for the Court to review; Carmel cites only her declaration in which she claimed to have seen such a document. Respondent's Brief at p. 10; CP 65 ll. 25 – 66 ll. 1. The Court is left to speculate regarding the terms of the purported power of attorney and whether it is currently effective or becomes effective in the event of Betty's incapacity. Furthermore, Carmel identifies no transaction in which Leta purported to act as Betty's attorney-in-fact. Neither Carmel nor the Court has any basis to believe that Leta made use of any such document in connection with the transactions about which Carmel complained.

The record also refutes Carmel's argument that she or her attorney undertook an adequate investigation before filing her TEDRA petition.

Ms. Lisa Malpass, one of Carmel's numerous attorneys, wrote a letter to Leta dated December 11, 2012, (CP 202-6) accusing Leta of abusing and financially exploiting Betty. The acts of supposed exploitation included purported gifts by Leta to her family members with Betty's funds. (This accusation was made twice to APS, was contained in Mr. Libey's July 23, 2013 letter, and was repeated in the TEDRA petition. CP 205, 272; Exhibit A.) Leta's counsel responded to Ms. Malpass's letter, stating that "Mrs. [Betty] Travis is capable of making and does in fact make 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." CP 207.

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 one of her pleadings filed in response, Carmel outlined her questions about Betty's management of the Trust, attaching Mr. Libey's letter dated July 23, 2013. CP 125; 90-99. In his July 23<sup>rd</sup> letter, Mr. Libey questioned the transactions that Carmel also questions in her Respondent's Brief. CP 90-99; Respondent's Brief at p. 8. At least some of those transactions were questioned in Ms. Malpass's December 11, 2012 letter seven months earlier.

Carmel also questioned the transactions in a letter dated July 27, 2013, to Ms. Roxi Boolen whereby Carmel fomented the second APS investigation of Leta. CP 52-55. Carmel sent documents to Ms. Boolen including Ms. Malpass's letter of December 11, 2012 (CP 52; 202-6) and Mr. Libey's letter. CP 52. At all times Betty denied she was being manipulated or exploited, and despite Carmel's letter and its enclosures, APS concluded there had been no exploitation by Leta. CP 208; 209. Undeterred, Carmel filed her TEDRA petition in December 2013, making the same allegations, attaching and incorporating Mr. Libey's July 23, 2013 letter. CP 272 at ¶ 2.6, Exhibit A thereto. (CP 281-90).

In opposition to Leta's motion for fees, Carmel submitted her own declaration, the declaration of Mr. Esser, and declarations from her current attorney, Mr. Libey, but they do not explain what any of them did to investigate potential claims against Leta before filing the TEDRA petition.

Mr. Libey's declarations pertained to his fees and events that occurred after he filed the TEDRA petition, but they did not describe his investigation before filing the TEDRA petition with its specific accusations against Leta. CP 12-15 (events occurring after the TEDRA petition was filed); CP 25-28 (attorney's fees); CP 5-6 (attorney's fees).

Carmel's declaration discusses numerous subjects, including her prior disagreements with Betty about management of the Trust and decisions that were or might have been made regarding the Trust. However, Carmel's declaration does not describe her pre-filing investigation of Leta before she signed the verified TEDRA petition accusing Leta of exploitation of Betty and breaches of fiduciary duty. CP 63-73.

Mr. Esser's declaration discusses a meeting with Carmel that purportedly took place in August 2013 (CP 149 at ¶ 2.2), but this date appears to be erroneous. Mr. Esser's declaration states he and Carmel reviewed the "pending TEDRA litigation in Garfield County Superior Court Case No. 2200 and the litigation strategy of her counsel of record, Gary J. Libey." *Id.* 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's declaration recounts his conversation with Carmel and characterized Carmel's questions about Leta as "concerns." CP 150 at ¶ 3.3. This paragraph contains no supporting facts, and attorneys may not rely solely upon a client's assurance that facts exist or do not exist. *Miller v. Badgley, supra*, at p. 3. Furthermore, Mr. Esser's opinion is immaterial; the Trial Court must undertake its own review.

Finally, Mr. Esser's belief that the TEDRA allegations against Leta were appropriate overlooks the obvious point that Leta could have been joined as a party without the specious allegations of exploitation or breach of fiduciary duty. See § A, *supra*.

Carmel dismissed her TEDRA petition on December 5, 2014, almost one year after she filed it. CP 252-3, 270. Despite undertaking "a substantial amount of document discovery" in her TEDRA action (CP 161

ll. at 1-2; CP 158 ll. 17-19), Carmel submitted no evidence supporting her allegations against Leta that Carmel had obtained through discovery. At no time has Carmel even suggested that the allegations against Leta were confirmed by her “substantial discovery.” In response to Leta’s motion for fees and in response to this appeal, Carmel did nothing more than recycle the same baseless accusations which the Trial Court described as “fears,” not facts, and which date back at least to Ms. Malpass’s December 11, 2012 letter.

In conclusion, the Trial Court was correct when it wrote that Carmel’s petition was based on “fear” and not on facts. The Court did not and could not find that Carmel undertook a reasonable investigation before filing her petition.

**D. There is no dispute that Carmel’s petition was filed for an improper purpose.**

In her Appellant’s Brief Leta explained Carmel’s history of harassment of Leta culminating in Carmel’s TEDRA petition. See Appellant’s Brief at pp. 4-6. Leta also cited to statements by Mr. Esser who acknowledged Carmel’s animosity toward Leta. Appellant’s Brief at p. 9; CP 149 at ¶ 3.2.3.

Carmel does not deny or even acknowledge her animosity toward Leta. Rather, Carmel relies upon to the Trial Court’s decision which states that there was “an insufficient showing that any party to this litigation acted in bad faith.” Respondent’s Brief at p. 19 (quoting CP 4). However, the Trial Court’s statement ignored the undisputed evidence of Leta’s hostility toward Leta including the statement of Mr. Esser, Carmel’s own lawyer. Accordingly, the Court’s statement was manifestly unreasonable or based on untenable grounds.

Furthermore, Leta's argument about Carmel's improper purpose was based in part on Carmel's ongoing misrepresentations about her involvement in the APS complaints against Leta. Leta explained why she believed it was Carmel who made the APS Complaints, which were strikingly similar to letters from Leta's lawyers and other documents. CP 198-210. In opposition, Carmel submitted her declaration to the Trial Court denying that she instigated the APS investigations. CP 72, ¶ 8.1. Carmel's denial was the basis for her request for fees from Leta pursuant to CR 11. CP 168 ll. 21-169 ll. 3.

Carmel's denial contradicted her statement in her prior, sworn pleading, and she admitted as much at the hearing giving rise to this appeal. Appellant's Brief at pp. 16-17. Carmel's prior, sworn pleading was a Motion to Modify/Terminate Order for Protection (CP 53-6), and it was filed for Carmel by Mr. Libey. CP 70 at ¶ 6.3. In Carmel's subsequent TEDRA action Mr. Libey signed an "Agreed Order to Disclose *Reports*" whereby APS was authorized to disclose "complete copies of all *reports* and *investigations*" regarding Betty. CP 257-8. Carmel's consent to release the *reports* was necessary only if she was the person who made the *reports* to APS. RW 74.34.035(6); (9); RCW 74.34.040.

In her Respondent's Brief Carmel does not deny that her Trial Court declaration was false, and she does not deny that it was an attempt to mislead the Trial Court. Rather, in an apparent attempt to downplay her misconduct, Carmel implies that she did not know about the results of the APS investigations: "[t]here is nothing in the record indicating that Carmel knew about the results of these state investigations when she signed the [TEDRA] petition." Respondent's Brief at p. 15. This artful statement does not deny that Carmel knew of APS's conclusions, and is

reminiscent of her misleading argument to the Trial Court about making the APS complaints. Before she was confronted with her own verified pleading, Carmel argued to the Trial Court that Leta “presented no evidence to support her claims that Carmel filed Adult Protection Services complaints.” CP 156 ll. 24-26.

Furthermore, this argument—lack of knowledge about the results of the APS investigations—is a new argument not raised to the Trial Court, and appears to misstate the facts.

Certainly, Carmel was aware that APS took no action in response to the first APS complaint because nothing happened in response to it, and Carmel was very knowledgeable of the details of the first investigation before making the second APS complaint and long before filing the TEDRA petition.

The first complaint to APS against Leta concluded with a letter from Ms. Denise Diaz dated March 28, 2013 exonerating Leta. CP 208. The second complaint against Leta concluded in a letter from Ms. Roxi Boolean dated November 18, 2013 exonerating Leta. CP 209. Carmel has admitted that she instigated the second investigation conducted by Ms. Boolean. See Appellant’s Brief at pp. 6-7.

On July 27, 2013, about four months before Ms. Boolean’s November 18, 2013 closure letter, Carmel sent a letter to Ms. Boolean with extensive enclosures, the second of which was the “APS interview contact list.” CP 52. On the second page of her letter, Carmel described the “interview contact list” as including “names of people who were not interviewed in the initial 2013 APS investigation of mom,” (CP 53), a reference to the first APS investigation conducted by Ms. Diaz which concluded in March 2013. Thus, Carmel was aware of the details of the

first APS investigation, perceived it as incomplete, and provided materials or information from it to Ms. Boolean.

By the time Carmel filed her TEDRA petition in December 2013, she knew that Betty repeatedly denied any exploitation by Leta; that Leta denied any exploitation; and that APS twice investigated and took no action. Meanwhile, Carmel's own lawyer acknowledged Carmel's hostility toward Leta, and there is no question that Carmel used the legal system, including complaints to APS, to harass Leta even as Carmel was repeatedly told there was no basis for her accusations. Despite all this, Carmel filed her verified petition which made specific, factual accusations of exploitation against Leta. Carmel has never produced any evidence supporting her accusations despite her "substantial" discovery in the TEDRA proceedings.

**E. Carmel's argument about lack of notice pursuant to CR 11 is untimely and incorrect.**

It is disingenuous for Carmel to suggest that she was surprised by Leta's motion for fees. Carmel herself requested fees from Leta and Betty in her TEDRA petition (CP 279 ¶¶ 6.2-6.5), and Betty requested them from Carmel in her answer. CP 264, ¶ 2.

Carmel suggests that Leta is not entitled to an award of fees pursuant to CR 11 because Leta did not first warn Carmel that Leta might file a motion for an award of attorney's fees. Respondent's Brief at p. 20. Carmel admits that she did not raise this argument to the Trial Court. Respondent's Brief at p. 22. Typically, Courts of Appeals "will not" consider an issue raised for the first time on review. *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) ("RAP 2.5(a) states the general rule

for appellate disposition of issues not raised in the Trial Court: Appellate Courts will not entertain them.”) See also *Herberg v. Swartz*, 89 Wn.2d 916, 925, 578 P.2d 17 (1978) (“An issue, theory or argument not presented at trial may not be considered on appeal.”)

Carmel also suggests that because of “its discussion of RCW 4.84.150, [sic] CP 3,” The Trial Court’s decision was based in part on Leta’s perceived failure to give notice. Respondent’s Brief at p. 22. On that page of its decision, the Trial Court erroneously suggested that a pleading from Leta was necessary to trigger the right to recover fees under RCW 4.84.185. See Appellant’s Brief at pp. 15; 18. The Trial Court did not address lack of notice, so Carmel’s argument is based upon a misunderstanding of the Court’s ruling, which was erroneous, anyway.

Even if this Court is willing to consider Carmel’s argument for the first time on appeal, an award of attorney’s fees to Leta is appropriate.

Contrary to Carmel’s suggestion, lack of prior notice does not waive the right to request fees under CR 11. In *Biggs v. Vail*, 124 Wn.2d 193, 198, 876 P.2d 448 (1994) the Supreme Court wrote that “normally,” but not always, advance notice is required so the offending party has the opportunity to mitigate the sanction by amending or withdrawing the offending paper. The Court also wrote that neither laches nor waiver apply to CR 11 motions. *Id.* at p. 197. Thus, the Supreme Court held that a lack of notice was not an automatic bar or waiver, and that the purpose of the notice is to permit mitigation of the violation.

Carmel filed her petition on December 5, 2013. CP 270. After receiving a subpoena from Carmel for Leta’s deposition (CP 218), and concerned about the effect the lawsuit would have on her and her rights under the Trust (CP 200 at ¶ 12), Leta formally appeared on September 26, 2014. CP 254-5. Thereafter, the parties began to discuss how to

resolve the TEDRA petition informally. Leta insisted upon a complete release from Carmel because of Carmel's prior attacks on Leta and Leta's fear that without a general release, Carmel would renew her harassment even after the TEDRA action was concluded. CP 212 at ¶ 12. Carmel understood why Leta wanted the release, and refused to provide it. CP 72, ¶ 7.5.

Because the settlement discussions were not progressing, on November 14, 2014, Leta served Carmel with a brief set of written discovery requests which were intended to force Carmel to explain the factual basis (or lack thereof) of her allegations against Leta. CP 212 at ¶ 5; 220-32. Shortly before the responses were due, Carmel voluntarily dismissed the TEDRA petition without prejudice. CP 252. At the Trial Court 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. Because the petition was dismissed "without prejudice," Carmel can resume her harassment of Leta in yet another legal proceeding.

There is nothing in the record which suggests that advance notice from Leta about fees would have changed Carmel's behavior. Carmel's refusal to sign a general release and her dismissal of her TEDRA petition without prejudice, combined with her prior actions, strongly suggest that Carmel wants the option to harass Leta in the future. Allowing Carmel to escape the appropriate consequences of her baseless filings will not deter future misconduct, which is the purpose of CR 11. To the contrary, the record indicates that Carmel will be emboldened.

Furthermore, Carmel's argument about notice is illogical. In essence, Carmel is faulting Leta for not telling Carmel what Carmel already knew: Carmel was using the legal system to harass Leta to whom

she was hostile, and the allegations against Leta in her TEDRA petition were baseless. There is no credible argument that advance notice from Leta would have educated Carmel.

Finally, Carmel cites no authority for the proposition that prior notice is a predicate to a motion for fees pursuant to RCW 4.84.185. Because the allegations against Leta were frivolous, Leta is entitled to an award of her fees independent of CR 11.

**F. Carmel's argument regarding the amount of Leta's fees is untimely and incorrect.**

In her Respondent's Brief Carmel argues that the amount of Leta's fee request was too high because it included fees incurred before Carmel filed her petition. Respondent's Brief at pp. 23-25. Carmel did not raise this argument to the Trial Court (CP 159-69), so this Court should not consider it. RAP 2.5(a); *State v. Scott, supra*, at p. 12 and *Herberg v. Swartz, supra*, at p. 13.

The billing statements and the materials in the record explain that the reason Leta retained counsel was in response to Carmel's baseless allegations which dated back to Ms. Malpass's letter dated December 11, 2012, accusing Leta of financial exploitation and elder abuse. CP 202-6; 251. Leta hired counsel, who responded to Ms. Malpass, then known as Ms. Childress. CP 207; 251.

In his response Leta's counsel pointed out that "Mrs. [Betty] Travis is capable of making and does in fact make 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." CP 207. Carmel made the same allegations to APS and also in her TEDRA petition.

**G. Carmel's request for attorney's fees pursuant to RCW 11.96A.150 is untimely and incorrect.**

In the Trial Court Carmel argued for fees from Leta pursuant to CR 11 and RCW 4.84.185 based on Carmel's declaration falsely denying that she made the complaints against Leta to APS. CP 168 ll. 20 - 169. For the first time Carmel argues on appeal for an award of fees pursuant to RCW 11.96A.150. See Respondent's Brief at pp. 32-33. Accordingly, this Court should not consider this argument. RAP 2.5(a); *State v. Scott*, *supra*, at p. 12; and *Herberg v. Swartz*, *supra*, at p. 13.

It was Leta, not Carmel, who argued for fees pursuant to RCW 11.96A.150, but the Trial Court declined to award them because "it cannot be said that the Trust is substantially benefitted as a result of the actions of any of the parties to this litigation." CP 4.

RCW 11.96A.150 gives the Trial Court broad discretion to deny attorney's fees for any and all factors that it deems relevant and appropriate. RCW 11.96A.150. It cannot be said that the Trial Court's reason for denying fees pursuant to this statute was, or could be, an abuse of discretion regardless of who requested them.

**H. Carmel has no right to fees on appeal.**

In her Respondent's Brief, Carmel argues for an award of attorney's fees pursuant to RAP 18.9(a), suggesting that Leta's appeal is "frivolous" for four reasons. First, Carmel suggests Leta ignored case law requiring notice of perceived CR 11 violations in advance of a motion requesting them. Respondent's Brief at p. 30. However, Carmel's argument on this point is untimely and not properly before the Court. See

§ E, *supra*, at pp. 12-13. Furthermore, the argument overstates the holding of the cases cited by Carmel, and ignores the facts. See § C, *supra*, and § E, *supra*, at p. 13.

Second, Carmel argues that sanctions were improperly requested pursuant to CR 11 because she and her counsel undertook an adequate investigation before the TEDRA petition was filed. Respondent's Brief at pp. 30-1. To the contrary, the nature of any investigation by counsel is not in the record, and Carmel did nothing other than repeat accusations based on fear, not fact. Any investigation was inadequate because Carmel has yet to identify actual evidence supporting her allegations against Leta in the TEDRA petition. See Section C, *supra*. The Trial Court recognized this, basing its decision on the perceived merit of the allegations against Betty and holding that Carmel's allegations were based on "fear." CP 4. Carmel's "evidence" consists of nothing other than unsubstantiated accusations and speculation. See § C, *supra*.

Third, Carmel incorrectly characterizes the argument about her improper purpose as speculative. Respondent's Brief at p. 31. Carmel's hostility towards Leta was acknowledged by one of Carmel's own lawyers. CP 149 at ¶ 3.2.3. Leta also described Carmel's dislike of her, (CP 199 at ¶ 4), and Carmel does not deny it. Carmel systematically harassed Leta through the legal system including APS complaints and tried to mislead the Trial Court about them.

Carmel next argues that the Trial Court decision describes the factual basis for Carmel's allegations against Leta. In support of this suggestion, Carmel points to language in the Trial Court decision to the effect that Carmel's Petition arose from Carmel's lack of access to information regarding the Trustee's activities with Trust distributions and interactions with other Trust Beneficiaries. Respondent's Brief at p. 31-2.

Even if true, these miscommunications or omissions are attributable to Betty, who was the Trustee, not Leta. And even if there was a lack of communication about Trust administration is chargeable to Leta, that cannot be bootstrapped into allegations that Leta exploited or manipulated Betty.

### III. CONCLUSION

Respondent's Brief does not rebut the fact that the Trial Court abused its discretion when it denied Leta's request for attorney's fees pursuant to CR 11 and RCW 4.84.185. Leta renews her request that the Court of Appeals 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 within instructions to award fees to Leta for both the Appellate and Trial Court proceedings.

DATED this 22<sup>nd</sup> day of October, 2015.

RANDALL | DANSKIN, P.S.

By:   
Michael L. Wolfe, WSBA #18323  
Attorneys for Appellant Leta Travis

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on the 22<sup>nd</sup> day of October, 2015, addressed to the following:

<p><b><u>Attorneys for Respondent</u></b> <b><u>Carmel Travis:</u></b> Mr. Gary J. Libey Libey &amp; Ensley, PLLC 409 N. Main Street P.O. Box 619 Colfax, WA 99111-0619</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>
<p><b><u>Attorneys for Defendant Betty</u></b> <b><u>Travis:</u></b> Ms. Kimberly R. Boggs Nealey &amp; 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