

FILED

JUL 26 2016

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

NO. 33613-1 III  
Consolidated with  
No. 340481

STATE OF WASHINGTON, COURT OF APPEALS  
DIVISION III

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IN THE MATTER OF THE ESTATE OF  
LESTER J. KILE, Deceased

CODY KENDALL,

Respondent,

vs.

JEANNIE KILE,

Petitioner.

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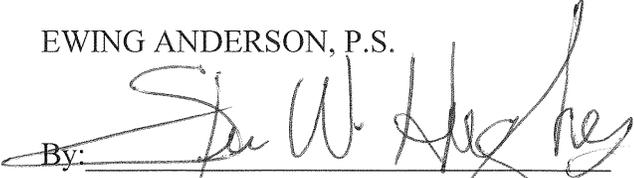
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RESPONDENT'S RESPONSE BRIEF

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EWING ANDERSON, P.S.

By: 

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## **I. INTRODUCTION**

This TEDRA case involves a family farm in Whitman County owned by Lester J. Kile (“Lester<sup>1</sup>”), an elderly farmer who wanted his grandson, Cody Kendall (“Cody”) (Respondent herein), to follow in his footsteps. Lester died in 2012. His daughter, Jeannie Kile (“Jeannie”) (Appellant herein), was named as his Personal Representative and Trustee of the Kile Family Farm Trust.

Jeannie refused to pay Cody his two-third percentage under the Trust; comingled trust and estate funds with her own; engaged in gross self-dealing; retaliated against Cody, her own son; maintained at least 18 bank accounts and transferred funds indecipherably between them; and showed nothing but total contempt for Cody.

This appeal is an attempt by the Appellant to explain away her egregious misconduct and breach of her fiduciary duties.

## **II. STATEMENT OF THE CASE**

### **A. Dissolution Trial**

In 2011, Jeannie (the mother of Cody) filed an action to dissolve her marriage to Gordon B. Kendall (“Gordon”) (the father of Cody) in

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<sup>1</sup> First names are used herein and no disrespect is intended.

Spokane County, Washington. In her dissolution, tried before the Honorable Maryann Moreno, Jeannie submitted a pleading entitled “Declaration of Lester Kile” dated January 4, 2012, (Ex. P31 at 2) to support her position that Gordon, her husband, had no rights in the Whitman County farm owned by her father, Lester. Lester declared the following:

Approximately three years ago, my grandson, Cody Kendall, moved with his family into my former residence on the farm. I now live in Spokane with my wife. **Cody had worked part-time on the farm prior to moving into the old farmhouse, and has now worked full-time on the farm for the past three years.**

(Emphasis added.)

The Lester’s Declaration further declared the following:

**I am essentially requesting that my daughter turn over the farming operation to my grandson, Cody Kendall.... I believe that Cody Kendall is ready, willing, and able to perform all of the farming responsibilities, and I am willing to renew the lease to Jeannie Kile on the basis that Cody becomes the primary operator of all farming operations involving my farm. Id.**

(Emphasis added.)

Lester died on March 30, 2012, and his Will transferred his farm into trust. Ex. P1. It named Jeannie as Personal Representative and Trustee, and Cody, who was farming the property, as the alternate.

Jeannie, in her dissolution action, filed a “Reply Declaration” dated July 3, 2012, (Ex. P32 at 2) just after the death of Lester. She declared the following under oath:

**As administrator of my father’s Last Will and Testament, and as trustee of the trust that he has established, it is clear that my father’s wishes were to have Cody farm his property.** That, in fact, is what is occurring.

**The transfer of all farming responsibility to Cody has been seamless.** As the court can note from previous declarations, **Cody was essentially operating the farm prior to this dissolution.** Id.

(Emphasis added.)

The dissolution court accepted the declarations of Lester and Jeannie into the court file. 2 RP 112-114.

## **B. Probate**

The Last Will and Testament of Lester was filed in the Spokane County Superior Court. Ex. P1. The Will left Lester’s farmland in trust and named Jeannie as Trustee, with Cody as the alternate. On page 4 of the Will, it says as follows:

The income from the trust, after payment of expenses, including reasonable reserves for taxes, insurance, equipment and improvement needs, and a reasonable period of operating costs, shall be distributed on a periodic basis, at least annually to Jeannie Kile. If however, Cody Kendall operates the farm at any time, then he shall be entitled to

two-thirds of such income and Jeannie Kile shall be entitled to one-third. Id. at 4.

(Emphasis added)

On page 5, section E, of Lester's Will, he states:

The Trust shall be terminated and the property sold only in the event that Jeannie Kile and Cody Kendall are both unable or unwilling to serve as Trustee and manage the farm and there are no beneficiaries under this Will who are willing to farm such farm property. Id. at 5.

(Emphasis added)

Jeannie refused to pay two-thirds of the crop proceeds to Cody (3 RP 220), who was farming the land, and attempted to coerce Cody to sign an "At-Will Employment Contract." Ex. P10; P11. Jeannie kept all crop proceeds and gave Cody a small wage. Cody refused and was "fired." Ex. P12. Jeannie filed an Unlawful Detainer Action and forcibly evicted Cody, his 7-month pregnant wife, and 2-year old son from the farm property. Ex. P15. Cody had been receiving \$500 a month from Lester to live on the farm and remodel the house. 2 RP 65. After the TEDRA was filed, Jeannie entered into a 10-year lease to have the property farmed by a non-family member, who was not a beneficiary of Lester's Will, in violation of the Trust. Ex. P17.

Jeannie, as Personal Representative/Trustee, also committed the following:

(1) Failed to provide notice of the probate to Cody, a named beneficiary under the Will. 2 RP 67-68, 124-125.

(2) Refused for over a year to fund the Trust or transfer real estate into the Trust. 3 RP 212-213.

(3) Failed to provide a Trust accounting (RCW 11.106.020).

(4) Failed to pay creditors of the Kile Farm operation, who in turn refused to provide goods and services to facilitate farming conducted exclusively by Cody. 2 RP 96-99.

(5) Retained farm proceeds, comingled the Trust funds with her own, and had no knowledge if the farm was profitable or not. 3 RP 212-213; 2 RP 129-130.

(6) Filed and prosecuted an unlawful detainer action against Cody to remove him from the residence on the Kile Trust property provided by Lester. Ex. P15.

(7) Paid her own legal fees from the probate estate. CP 640-649.

**C. TEDRA - Motion for Partial Summary Judgment**

A TEDRA petition was filed by Cody in Spokane County Superior Court to determine his rights in the Will of his grandfather, Lester, and Testamentary Trust. Jeannie argued that under the terms of the Farm Service Administration definitions, she was the intended “operator” of Lester’s farm, since she paid the bills. 2 RP 164-166. Cody argued that although Lester’s Will was silent on who was named “to operate” the farm, Lester’s Will, read in its entirety, evidenced his intent that Cody continue to farm the land.

On October 29, 2014, the Honorable Harold Clarke III entered a partial summary judgment ruling that the term “operate,” as used by Lester in his Will, was ambiguous as a matter of law. CP 111-113.

**D. TEDRA Trial**

This matter was tried before the Honorable Michael Price without a jury from March 2, 2015 to March 5, 2015. Judge Price, upon a motion in limine, ruled that Jeannie was judicially estopped from denying her prior testimony in her dissolution trial that it was clear Lester wanted Cody to “operate” the Kile farm property. CP 514-516. In the trial, however, Jeannie testified that in fact “she,” and not Cody, was the intended

operator under Lester's Will. 4 RP 22. The court found her testimony had changed 180 degrees. Moreover, Jeannie, when questioned by the judge, testified nonsensically and inconsistent with Lester's Will that: 1) to be an operator of the farm one must have a lease for the property; 2) Cody had no such lease; 3) only she, as Trustee could give Cody a lease, and she had not done so; 4) she actually had no lease for the farm herself; but 5) she was the operator of the farm. 4 RP 26-28; 2 RP 167-179. The Will requires no such lease for Cody to farm.

Jeannie admitted she used at least 18 bank accounts for farm monies (4 RP 20-26), deposited \$76,000 in the wrong account to her benefit (Id.), and admitted she did not know whether or not the farm (and thus the Trust) had made a profit since Lester died (2 RP 129-130).

Brian Madison, CPA, testified for Cody that he examined the limited books and records provided by Jeannie for Kile Farms, Inc., the Kile Estate, and the Kile Farm Testamentary Trust. 3 RP 206. He testified that funds were comingled between the Trust and Estate accounts and Jeannie's own farm. 3 RP 221-222. Further, it was impossible to identify funds of the Trust, trace expenses, determine profits/losses, or to quantify how much Cody was damaged by the refusal of Jeannie to pay him his

two-thirds share of the farm profits, as required by the Will. *Id.*, *Id.* at 239-240, Ex. P24.

The court ruled that: 1) Lester intended Cody to operate the farm and receive two-thirds of the profits; 2) Jeannie be removed as Personal Representative and Trustee and Cody be appointed; 3) a forensic accountant be appointed to review the records to be turned over by Jeannie to determine Cody's damages at a later hearing; 4) a farm management firm be appointed to assist in the transition; 5) the 10-year lease with a non-beneficiary be terminated after the present crop was harvested; 6) Cody be awarded his reasonable attorney fees and costs after conducting a detailed Lodestar analysis. CP 204-264.

**E. Damage Trial**

Following an investigation by the agreed-upon forensic certified public accountant, Renee Grandinetti, a damage trial was conducted before the Honorable Michael Price on December 7, 2015. Ms. Grandinetti is a certified public accountant with 29 years of experience. Forty percent of Ms. Grandinetti's practice involves farming businesses. 6 RP 8-9.

Ms. Grandinetti reviewed all documents, financial records, income tax returns, and grain receipts from Jeannie, Kile Farms, Inc., and the Kile

Estate and Trust farmland. Id. at 12-15. She concluded that between 2012 and 2014 Jeannie comingled income and expenses of her farm, the Estate, and Trust. Id. at 16. She determined that the total farm income was \$465,225, and Cody should have received two-thirds of that amount, which would equate to \$310,150. Id. That was only from farm income.

The court also heard the testimony of Allen Hatley, a farm manager and consultant, and Todd Carlson, CPA. Following the conclusion of the damage hearing, a supplemental declaration dated December 14, 2015, was filed by Renee Grandinetti, CPA, to address questions raised by the court. Ms. Grandinetti stated that Jeannie paid \$20,993 for her own legal services related to the TEDRA litigation which were not proper expenses of the Estate, and these amounts should be reimbursed in addition to the farm income. CP 640-649.

On January 22, 2016, the Honorable Michael Price entered an order regarding damages. CP 718-722. The court concluded that Cody was entitled to unpaid crop proceeds while he operated the farm from 2012 through 2014 in the amount of \$310,150. The court deducted \$26,000 that Cody was paid as salary. The court also awarded damages to Cody for the loss of the farm house provided by Lester to Cody, along with \$20,993 in

legal fees paid by the Estate for Jeannie, and the forensic accounting fees in the amount of \$18,285. The total damage award was \$340,928. CP 723-724.

### **III. LEGAL ARGUMENT**

#### **A. The Court Properly Exercised Its Authority To Declare Rights And Legal Relations Of The Parties To This TEDRA Matter**

RCW 11.96A.020, entitled General Power of Courts – Intent - Plenary Power of the Court, reads, in pertinent part, as follows:

- (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
  - (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and
  - (b) All trusts and trust matters.
- (2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that matters be expeditiously administered and settled by the court.

No Washington case law has been found that sets forth precisely the standard of review applicable to a court's decision in a TEDRA proceeding. The court in In re the Matter of the Estate of Fitzgerald v. Mountain-West Resources, Inc., 172 Wn.App. 437, 294 P.3d 720 (2012), reiterated the broad statutory grant of authority to a trial court in a TEDRA matter, including plenary power to settle all estate and trust matters. Therefore, courts of appeal should accord significant deference to the trial court. Id. at 448.

**B. The Court Did Not Commit Error When It Considered Extrinsic Evidence To Interpret The Will**

Judge Price did not commit error by admitting extrinsic evidence to determine Lester's intent, because Judge Clarke had previously ruled on cross-motions for summary judgement that the term "operate," as used in the Will of Lester, was ambiguous. CP 111-113. Lester's Will did not define "operator." The Will stated that Cody was to receive two-thirds of the farm profits when he operated the farm. Ex. P1 at 4.

Washington court cases commencing with Webster v. Thorndyke, 11 Wash. 390, 39 P. 677 (1895), have consistently adhered to the rule that if the intent of the testator can be gathered from the Will, it is the duty of the court to see that such intention is given effect. However, when a

provision, phrase, or word in a Will is subject to two possible constructions, the provision does not clearly express the intent of the testator, because it has more than one possible meaning. In other words, it is ambiguous. The court has ruled that the term “operate” as used by Lester in his Will was ambiguous as a matter of law. CP 111-113.

Where a Will is ambiguous, the court will go outside it to determine its intended meaning. See Carney v. Johnson, 70 Wn.2d 193, 422 P.2d 486 (1967). In the Carney case, it was argued that a will and a codicil regarding the distribution thereunder were patently and latently ambiguous. The court in Carney defined a patent ambiguity as one which is apparent on the face of the instrument. A latent ambiguity is one that is not apparent on the face of the instrument alone, for example, where it is sought to identify the property or the beneficiaries. Id. at 195. The trial court in Carney noted that “the nature of a latent ambiguity is such that it is not discoverable without extrinsic evidence.” Id. at 196. That is the case here with respect to the term “operate.”

Under Washington law, a Will speaks at death. See In Re Levas’ Estate, 33 Wn.2d 530, 206 P.2d 482 (1949). The intent of the testator, however, is determined at the time he/she executed the Will. See In Re

Drown's Estate, 60 Wn.2d 110, 372 P.2d 196 (1962). In determining what is meant by a certain provision, the court will look to the circumstances as they existed at the time of the execution. In re Hamilton Estate, 73 Wn.2d 865, 441 P.2d 768 (1968).

In the present case, Lester executed his Will in March 2010, at which time Cody was living on the farm and farming the property. 2 RP 59. Those facts were still true at the death of Lester in March 2012. The sworn Declaration of Lester, filed in the dissolution proceeding by Jeannie, stated his intent was for Cody to operate the farm going forward. This Declaration was filed in January 2012, approximately two months before his death. We also have the prior sworn testimony of Jeannie, as Trustee, that, "...it is clear that my father's wishes were to have Cody farm his property. That, in fact, is what is occurring....Cody was essentially operating the farm prior to this dissolution." Ex. P31.

Jeannie argued that Lester used the term "operates" to mean "operate" as under the Farm Service Agency of the Department of Agriculture. 2 RP 164-166. Jeannie must concede that the term "operate" was a latent ambiguity in the Will since Lester's Will makes no reference to any U.S. Department of Agriculture Farming Services.

At trial, the testimony was undisputed that under a standard crop share agreement, the one who farms the land receives two-thirds of the crop proceeds. 3 RP 220. Cody was to receive two-thirds to “operate” the farm. Ex. P1 at 4.

Judge Price did not commit error here. A latent ambiguity existed in the Will with respect to the term “operate,” and the court admitted extrinsic evidence, including Jeannie and Lester’s own sworn testimony, to determine Lester’s true intent. The court also took evidence of the circumstances as they existed at the time Lester executed his Will.

**C. The Court Did Not Commit Error When It Invoked The Doctrine Of Judicial Estoppel**

The court’s decision to apply judicial estoppel is properly reviewed for an abuse of discretion. See Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 160 P.3d 13 (2007). Jeannie has cited Taylor v. Bell, 185 Wn.App. 270, 281, 340 P.3d 951 (2014), for the proposition that judicial estoppel may only be applied in the present case if there was a benefit to Jeannie, by her testimony, in the prior dissolution proceeding. In fact, Taylor made it clear that judicial estoppel may also apply if the prior testimony “was accepted by the court.” Id. at 282.

Arkison v. Ethan Allen, Inc. reiterated that judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a trial court proceeding and later seeking an advantage by taking a clearly inconsistent position. The court, on page 15, declared the following:

Three core factors guide a trial court's determination of whether to apply judicial estoppel doctrine: (1) whether a party's later position is clearly inconsistent with its earlier position; (2) whether judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

Judicial estoppel as defined in Skinner v. Holgate, 141 Wn.App. 840, 173 P.3d 300 (2007), states on page 849, "the rule is intended to prevent a party's improper use of judicial machinery, and is therefore an equitable doctrine a court may invoke at its discretion."

In the TEDRA trial, Jeannie pleaded and testified that it was the intent of her late father, Lester, that she, Jeannie, and not Cody, was his intended operator. 4 RP 22. In their declarations, both Lester and Jeannie filed in her dissolution action, used the term "operate" to mean actual farming not acting as trustee. This court properly found that Jeannie's prior testimony was diametrically opposed to the testimony she provided

in the TEDRA action, and that she either attempted to mislead the dissolution court or the TEDRA court. The court properly applied judicial estoppel.

In summary, although Judge Price ruled that Jeannie was judicially estopped from denying her prior testimony, she was still allowed to testify regarding Lester's intent. *Id.* She was simply not credible.

The court did not abuse its discretion with respect to its application of judicial estoppel in the TEDRA matter.

**D. The Court Did Not Commit Error When It Removed Jeannie As Trustee And Personal Representative**

The court in the Estate of Ehlers, 80 Wn.App. 751, 911 P.2d 1017 (1996), sets forth the obligations of any trustee under Washington law by declaring the following:

All parties agree that a trustee is a fiduciary who owes the highest degree of good faith, diligence and undivided loyalty to the beneficiaries. [Cites omitted] A trustee's duties and powers are determined by the terms of the trust, by common law and by statute.

RCW 11.98.200 imposes limitations on the power of a trustee who is also a beneficiary, such as Jeannie under the Kile Testamentary Trust. This statute declares the following:

Due to the inherent conflict of interest that exists between a trustee and a beneficiary of a trust, unless the terms of a trust refer specifically to RCW 11.98.200 through 11.98.240 and provide expressly to the contrary, the powers conferred upon a trustee who is a beneficiary of the trust, other than the trustor as a trustee, cannot be exercised by the trustee to make:

(1) Discretionary distributions of either principal or income to or for the benefit of the trustee, except to provide for the trustee's health, education, maintenance, or support...

(3) Discretionary distributions of either principal or income to satisfy a legal obligation of the trustee.

There existed a glaring conflict of interest between Jeannie as trustee/beneficiary, and Cody, also a beneficiary. Jeannie made discretionary distributions of farm income for the benefit of herself in violation of RCW 11.98.200. Ex. P24 at 3.

The Washington Supreme Court, in the case of In Re LeFevre, 9 Wn.2d 145, 113 P.2d 1014 (1941), held that certain breaches of trust by a trustee as a fiduciary result in strict liability. These include comingling of trust property and failure to properly earmark trust property. Id. at 157-158.

Jeannie, as personal representative/trustee, engaged in the following conduct: Failed to provide a Trust accounting or inventory until after the

lawsuit was filed (RCW 11.106.020); refused for over a year to fund the Trust or transfer real estate into the Trust (Ex. P24 at 2); failed to pay Cody two-thirds of the net farming income (3 RP 220); retained farm proceeds and comingled the Trust funds with her own to the extent that a forensic CPA could not untangle her books (Ex. P24 at 2, 3); deposited estate, trust, and her own funds into at least 18 separate bank accounts (4 RP 20-26).

Jeannie, who did not know if the farm was profitable (2 RP 129-130), additionally attempted to coerce Cody, a beneficiary, to enter into an “at will employment agreement” with Kile Farms, Inc. (Ex. P10, 11); entered into a long-term farm lease with individuals to farm the Trust property who are not named as beneficiaries under the Last Will and Testament (Ex. P17), in violation of the express terms of Lester’s Will (Ex. P1); and filed and prosecuted an unlawful detainer action against Cody to remove him from the residence on the Kile Family Farm provided to Cody by Lester. Ex. P13-15.

Washington courts have long held that a trustee may be removed and a successor appointed for reasonable cause, RCW 11.98.030, which may include conflict of interest between trustee beneficiary and other trust

beneficiaries. The court in Fred Hutchinson Cancer Center v. Holman, 107 Wn.2d 693, 716, 732 P.2d 974 (1987), held that bad will generated by litigation is sufficient cause for removal of a trustee.

Judge Price stated in his oral decision that the testimony Jeannie gave concerning her son Cody “could best be described as a wholesale attack on every aspect of Cody Kendall’s person.” 4 RP 461. Jeannie called Cody a liar, a thief, a cheat, unscrupulous, manipulative, and a prescription medication user. She criticized his farming ability and stated Cody was a “huge disappointment to his mother in every way...” Id. at 462. In the present case, the court not only found that Jeannie breached her fiduciary duties, but also demonstrated nothing but ill-will toward her son Cody, a trust beneficiary. The court committed no error.

**E. The Court Did Not Commit Error When It Awarded Damages to Cody**

The trial court awarded Cody two-thirds of the farm proceeds, as provided for by Lester’s Will but retained by Jeannie. CP 204-264. The court deducted the wages Cody received; added his loss of residence, which he was required to inhabit while he farmed by Lester; required Jeannie to reimburse her own legal fees, which she paid from the Estate; and assessed the cost of the forensic accountant. Id.

Under Price v. Kitsap Transit, 125 Wn.2d 456, 886 P.2d 556 (1994), the court stated the standard of review with respect to a damage award. Beginning at page 465, the court stated:

Appellate review of this issue (damage award) is also limited to whether the findings of fact are supported by substantial evidence and whether the findings of fact support the trial court's conclusion of law and judgment. [Cite omitted.] And "substantial evidence" is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise.

The court heard testimony from an experienced forensic certified public accountant, whose practice involves farming operations. 1 RP 8-16. The forensic CPA determined and quantified the amount of the net two-thirds to which Cody was entitled, and the court based its decision on the expert's testimony. *Id.* Judge Price's damage award was supported by substantial evidence, and no error was committed.

**F. The Court Did Not Commit Error When It Awarded Attorney Fees And Costs**

RCW 11.96A.150 states it empowers the superior court or the court on appeal to "order costs, including reasonable attorneys' fees to be awarded to any party..." The court in Estate of Cooper, 81 Wn.App.79, 913 P.2d 393 (1996), citing the above statutory provision declared the following at page 92:

A trust beneficiary who establishes a breach of fiduciary duty by the trustee, is entitled to recover attorneys' fees against the trustee personally.

Here, Judge Price found that Jeannie had breached her fiduciary duty as trustee and, therefore, did not commit error by awarding attorney fees and costs to Cody. Judge Price engaged in a detailed Lodestar analysis of the attorney fees and costs sought by Cody's counsel. CP 557-562. Jeannie's counsel was allowed to object and to provide an affidavit of an "independent attorney" (former partner of Jeannie's principal counsel in the TEDRA trial). CP 517-534. The court rendered a decision as to the reasonable hours expended on behalf of Cody and multiplied the same by a reasonable hourly rate. No error was committed.

**G. Respondent Is Entitled To His Reasonable Attorney Fees On Appeal**

Rules of Appellate Procedure 18.1(a) allows the Court of Appeals to award attorney fees and costs on appeal "if applicable law grants to a party the right to recover reasonable attorney fees or expenses." In general, where a prevailing party is entitled to attorney fees below [trial court], they are entitled to attorney fees if they prevail on appeal. Richter v. Trimberger, 50 Wn.App. 780, 786, 750 P.2d 1279 (1988) (citing West

Coast Stationary Eng'rs Welfare Fund v. City of Kennewick, 39 Wn.App. 466, 477, 694 P.2d 1101 (1985)).

The court had authority and did award reasonable attorney fees in the TEDRA trial. Similarly, this Court has authority to award reasonable attorney fees to Cody.

**H. Jeannie Argues, Without Factual Basis Or Legal Support, That The Findings Of Fact And Conclusions Of Law Were Unsupported By Substantial Evidence**

Many of Jeannie's arguments are not within the scope of the Notice of Appeal, constitute mere "commentary," and only divert the Court's attention. These assignments of error attempt to argue that Cody was not a "beneficiary" of Lester's Will, for example, and other misstatements of fact and faulty reasoning. The Findings of Fact and Conclusions of Law that were actually found by the court are supported by substantial evidence.

**IV. CONCLUSION**

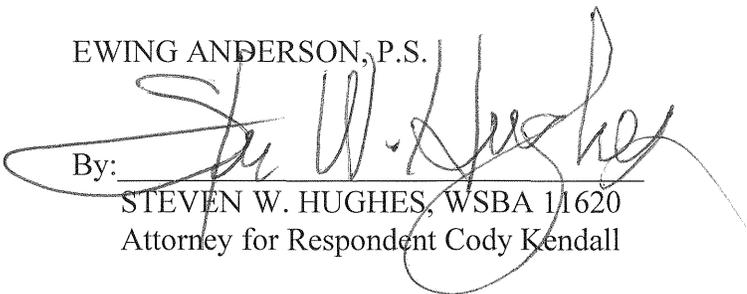
Judge Price properly exercised the court's discretion in determining the intent of Lester's Will, and rendered judgment and reasonable attorney fees to Cody based upon facts presented and expert testimony. The

Findings of Fact and Conclusions of Law are solidly supported by the testimony and exhibits admitted at trial.

This Court is respectfully requested to affirm Judge Price's decision and to award Cody his reasonable attorney fees and costs incurred herein.

DATED this 25th day of July 2016.

EWING ANDERSON, P.S.

By: 

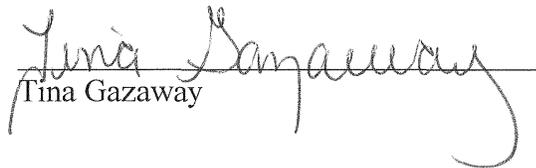
STEVEN W. HUGHES, WSBA 11620  
Attorney for Respondent Cody Kendall

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 2016, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

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