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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

IN RE MARRIAGE OF:)	
)	Superior Court 15-3-00341-3
)	
THOMAS E DILLON,)	Court of Appeals No.
)	341585
)	
Appellant)	RESPONDENT'S BRIEF
)	
v)	
)	
DOROTHY A CLARK,)	
)	
Respondent)	

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Crockett v. Crockett,
27 Wn.2d 877; 181 P.2d 180 (1947).....3

Estate of Glen Curtis Carter,
14 Wn.App. 271; 540 P.2d 474 (1975).....4

In re Marriage of Himes,
136 Wn.2d 707; 965 P.2d 1087 (1998).....2

I. INTRODUCTION.

Appellant, Sandra Saffran, the Personal Representative of her father's estate, is attempting to convince this court that the underlying dissolution action has not abated with his death and she should be allowed to substitute herself into the dissolution action and see it through to finality. Her ostensible motive is so that her father would no longer have a "surviving spouse" (assuming entry of a Decree of Dissolution renders the Respondent to that of an ex-spouse) and therefore the Respondent would take nothing under the pre-nuptial agreement entered into between the parties.

Appellant's arguments fail in that the dissolution action must abate and Respondent is a surviving spouse, relegated to a probate action in order to obtain a fair and equitable division of the assets consistent with the terms of the prenuptial agreement.

II. STATEMENT OF THE CASE.

A. UNDISPUTED FACTS.

It is undisputed that the Appellant, Thomas Dillon (hereinafter Dillon) and the Respondent, Dorothy Clark (hereinafter Clark) entered into a valid Prenuptial Agreement (hereinafter Agreement) on or about May 6, 2008. CP 26. It is further undisputed that they married on December 15, 2008, separated in March of 2015, and Dillon filed for dissolution on April 3, 2015. CP 4. Dillon later died on May 12, 2015.

B. ARGUMENT.

The pivotal case relied upon by Appellant in her argument is In re Marriage of Himes, 136 Wn.2d 707; 965 P.2d 1087 (1998). Arguably, a general reading of Himes purports to support her position wherein the court concludes:

“We overrule the 1905 decision in *Dwyer v. Nolan* which established the principle that death of one party to a divorce or dissolution proceeding eliminates the subject matter of the action...”

The difficulty in accepting a general reading of that holding relates to the fact that a Decree had already been entered in Himes and many years later the courts were asked to “right a wrong” if you will as it relates to a rather large asset and fraud perpetuated upon the court and the wife in that action. Himes is easily distinguishable on those grounds alone.

In the instant action, there was no decree as the dissolution had just been filed a little more than a month prior to Dillon’s death. The personal nature of the dissolution abated, the subject matter in relation to entry of a Decree of Dissolution abated, however, in relation to the property to be divided and subject to the Agreement, this aspect has not abated and Appellant has a viable remedy within the probate action pending in Yakima County Superior Court. Likewise, Clark has a viable and instant ability to seek relief within the probate court as a creditor.

Appellant is also not allowed to substitute into the dissolution action, even when acting as a duly appointed personal representative of her father’s estate. Crockett v. Crockett, 27

Wn.2d 877; 181 P.2d 180 (1947) (...because the son was not a party to the divorce action, he was not a “proper party plaintiff”.) at 892.

Appellant cannot substitute in to Dillon’s dissolution action based upon an argument that she is a third party needing protection from abatement by this court as to her rights via-a-vis an inheritance. Estate of Glen Curtis Carter, 14 Wn.App. 271; 540 P.2d 474 (1975) (wherein protection from abatement does not exist as to a third party who’s rights to be protected include an expectation of an inheritance)

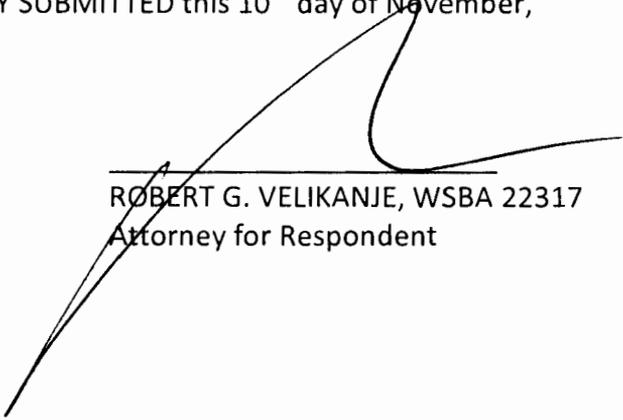
III. CONCLUSION.

Commissioner, Honorable Kevin Naught and the reviewing judge, Honorable David Elofson, did not err in their ruling that the underlying dissolution action abated upon Dillon’s death.

Appellant has ample remedy available to her within the probate proceedings that are charged with administering Dillon’s estate and the property before it. The attempt to do an “end around” the designation of Clark as that of a surviving spouse as opposed

to an ex-spouse are not well founded in fact and certainly not with existing Washington State law. The court should deny the requested relief sought and remand this matter back to Superior Court, allowing the probate department to resolve any claims raised by the parties, consistent with the Agreement.

RESPECTFULLY SUBMITTED this 10th day of November, 2016.



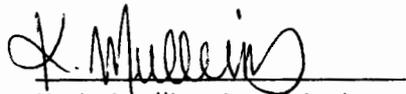
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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the 10th day of November, 2016, I caused a copy of the Respondent's Brief to be delivered by First Class US Mail and via e-mail to the following:

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A handwritten signature in black ink, appearing to read "K. Mullins", written over a horizontal line.

Katie Mullins, Legal Assistant to Robert G. Velikanje