

FILED

NO. 34545-9-III  
COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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In re the Estate of

ANNE MARIE ROE, Deceased:

WILLIAM J. ROE,

Respondent, and

KATHLEEN ROE BENNIS,

Appellant / Cross Respondent

vs.

GERALD F. ROE, Personal  
Representative of the Estate of  
ANNE MARIE ROE, Deceased,

Respondent / Cross Appellant.

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REPLY BRIEF OF RESPONDENT / CROSS APPELLANT  
Gerald F. ROE, Personal Representative  
of Estate of ANNE MARIE ROE, Deceased

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**A. REPLY TO BENNIS RESPONSE OF ESTATE'S CROSS APPEAL**

In her brief filed herein entitled "REPLY AND RESPONSE TO CROSS APPEAL" on pages 13 through 24, contrary to her misrepresentations in so arguing, there is absolutely no question that Ms. BENNIS was on notice that CR 11 sanctions were requested during the course of the proceedings. This fact is borne out by her own acknowledgment within the brief (see pages 14-15).

In connection with its Motion to Strike the Declarations of Kathy Bennis and Brian Bennis [CP 132-33], the ESTATE further requested the assessment of fees when it was required to respond with additional briefing after the Trial Court granted Ms. BENNIS' Motion for Reconsideration, which was subsequently denied. [CP 226-33; CP 318-24].

Ms. BENNIS is entirely disingenuous when suggesting that her untenable arguments before the Superior Court did not amount to a classic case of a CR 11 violation. By the same measure, even now she continues on pages 15 through 18 of her Reply/Response Brief to willfully distort the facts and circumstances of this TEDRA proceeding by refusing to acknowledge that the "Stipulated Facts" were binding on all parties in

terms of a final resolution to the controversy.

Moreover, even after having been put on notice that the Estate was seeking terms in its Motion to Strike the Declarations of Ms. BENNIS and her son in support of the Motion for Reconsideration [CP 132-33], Ms. BENNIS further attempted to obfuscate a proper resolution of the matter by filing her additional Declaration [CP 140-66] and making specific reference therein literally ‘out of the blue’ to alleged circumstances associated with her Chapter 13 Bankruptcy having no bearing whatsoever on the underlying TEDRA matter.

Even more telling in terms of her baseless opposition to the ESTATE’s cross-appeal over the Trial Court’s denial of fees under RCW 11.96A.150 and CR 11, Ms. BENNIS cites the provisions of RPC 1.5(a) on page 24 of her Reply/Response Brief. While RPC 1.5(a) certainly supports the imposition of fees, Ms. BENNIS and her attorney were masters of this continuing controversy and used tactics which were clearly subject to question. Under the twelve (12) factors set forth in RPC 1.5(a), as well as taking into consideration the “Lodestar” method of determining an appropriate amount of a fee award, the ESTATE was and certainly remains fully entitled to recover fees and costs associated with its having been needlessly forced to defend against this unrelenting and unjustified

tenacity in prosecuting baseless claims and irrelevant accusations. See, Target National Bank v. Higgins, 180 Wn.App. 165, 181-95, 321 P.3d 1215 (2014).

Contrary to Ms. BENNIS' beleaguered suggestion that the amount of fees to be awarded should be somehow reduced after taking into account the amount in controversy, the ESTATE notes that justified and documented fees should not be reduced where one party's overly litigious nature has no end or reasonable limitation in terms of cost and expense. See, e.g., Target id.; Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 149-50, 859 P.2d 1210 (1993); Berryman v. Metcalf, 177 Wn.App. 644, 312 P.3d 745 (2013).

TEDRA is an over-arching statute governing the resolution of disputes in probate granting to the courts "...full and ample power and authority...that controversies in connection with the administration and settlement of Estates and Trusts...be expeditiously administered and settled by the court", RCW 11.96A.020.

While the well-reasoned opinion of Target, supra (Div. III) related to an attorney fee award under the Small Claims Settlement Statute – RCW 4.84.250, it specifically pointed out that the purpose of the statute in question (here, TEDRA) should be taken into account in determining the

amount of fees to be awarded without regard to the amount in controversy. The filing of Declarations setting forth many immaterial matters outside of the Stipulated Facts that were presented to the Trial Court at Summary Judgment prevented this estate dispute from being settled in an expeditious manner. Upon remand, the Trial Court can and should carefully review the itemized request for fees and expenses in order to ensure that no padding has been attempted. Such is the true measure and touchstone of a setting of fees under Lodestar.

Simply put, the arguments raised by Ms. BENNIS on reconsideration were entirely misplaced, frivolous in its totality, and thus devoid of any merit whatsoever. Thus, the imposition of terms and sanctions was fully warranted under not only CR 11 and in addition its statutory counterpart, RCW 4.84.185. Fees are recoverable under RCW 4.84.185 upon a showing – as here – that the opposing party should have realized she had no realistic chance of prevailing. Highland School Dist. No. 203 v. Racy, 149 Wn.App. 307, 202 P.3d 1024 (2009). Such futility went to the heart of Ms. BENNIS’ Motion for Reconsideration amounting to nothing short of unadulterated tenacity. [CP 168-69].

In its letter ruling of April 15, 2016 addressing Ms. BENNIS’ Motion to reopen the case by asking the Trial Court to reverse its earlier

decision on Summary Judgment, the Court denied the ESTATE'S request for fees on the basis that the issue of loan forgiveness required additional briefing. Nevertheless, the Trial Court refused to consider the supplementary evidence presented by Ms. BENNIS that was not already contained in the Stipulated Facts which were jointly submitted by the attorneys for each competing party. Specifically, the Trial Court noted that the Stipulated Facts were binding on the parties and contained sufficient information for the court to determine if loan forgiveness had occurred. [CP 258-59].

Thus, the decision of the Superior Court denying the ESTATE's request for an award of fees [CP 258-259; CP 264-266] constituted a manifest abuse of discretion and should now be reversed. RAP 12.2. In this vein, the court misapplied the law governing the imposition of terms and sanctions, or simply chose to ignore such law. See, generally, Gordon v. Gordon, 44 Wn.2d 222, 226-27, 266 P.2d 786 (1954); State v. Robinson, 79 Wn.App. 386, 396-97, 902 P.2d 652 (1995); In re Marriage Tang, 57 Wn. App. 648, 654, 789 P.2d 118 (1990).

Suffice it to say, the failure to award terms against Ms. BENNIS in light of her misconduct was not fair or equitable to the interests of the other heirs of the ROE ESTATE. Such denial resulted in the net effect of

decreasing the amount of their inheritance and beneficial interests in the Estate.

**B. RENEWAL OF REQUEST FOR APPELLATE ATTORNEY FEES**

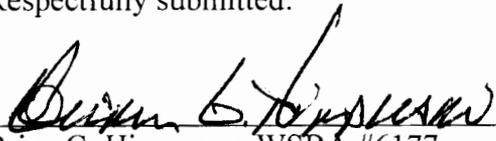
Once again, in accordance with RAP 18.1(b), the ESTATE in having been forced to incur costs and expenses on this appeal, respectfully requests the entry of an award by this court for the same, including a reasonable attorney fee, be imposed as previously requested and on the basis cited on pages 20 through 22 of its opening brief, Part F., filed herein on November 16, 2016.

**C. CONCLUSION**

Based upon the foregoing points and authorities, the ESTATE requests that the Appellate Court order this matter remanded to the Superior Court for a determination as to a proper award of fees and expenses in connection with its successful effort opposing Ms. BENNIS' motion to essentially overturn the Trial Court's Order on Summary Judgment, and further that the Appellate Court allow the ESTATE such fees herein as permitted by RCW 11.96A.150.

DATED this 10<sup>th</sup> day of January, 2017.

Respectfully submitted:

  
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Brian G. Hipperson, WSBA #6177  
Attorney for the ESTATE OF  
ANNE MARIE ROE (Respondent/Cross  
Appellant)

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**DECLARATION OF MAILING**

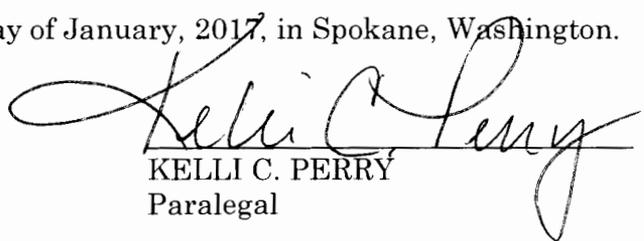
The undersigned declares, under penalty of perjury pursuant to the laws of the State of Washington: That I am over the age of 18, not a party to this action, and otherwise competent to be a witness in the matter, and that on this 16<sup>th</sup> day of November 2016, I both electronically mailed and deposited in the U.S. Mail, with proper postage affixed, an envelope addressed to the following:

Rodney Reinbold  
Attorney for Kathy Bennis  
P.O. Box 751  
Okanogan, WA 98840  
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Gregory L. Decker  
Attorney for William J. Roe  
Decker Law Offices  
1919 N. 3<sup>rd</sup> Street  
Coeur d'Alene, ID 83814  
greg@deckerlaw.com

The envelope contained a copy of the following document: REPLY BRIEF OF RESPONDENT / CROSS APPELLANT, Gerald F. Roe, Personal Representative of the Estate of ANNE MARIE ROE, Deceased.

Signed this 10<sup>th</sup> day of January, 2017, in Spokane, Washington.

  
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KELLI C. PERRY  
Paralegal