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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 347494

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In the Matter of the Estate of
MARY TERESA MAIURI,
Deceased.

BRIEF OF APPELLANTS,
Jay A. Maiuri and Marcus M. Maiuri

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INTRODUCTION

Mary Teresa Maiuri died on December 24, 1995, and her will of 1987 was admitted to probate shortly thereafter. (CP1-10) Mary's will named two of her three sons co-personal representatives, Michael Maiuri and Robert Maiuri; letters testamentary issued to them. (CP13) In the petition for probate of Mary's will, her grandsons (petitioners below; appellants here), Jay Maiuri and Marcus Maiuri, were not named, despite their position as named beneficiaries of Mary's will.

Contrary to the terms of the will, certain real property was distributed to Michael Maiuri, which property should have been placed in trust for the benefit of a third brother, Charles Maiuri. (CP5-7; Ex. 15)

Administration of the Mary Teresa Maiuri estate was closed on October 29, 1996, with the filing of a declaration of completion of probate. (CP25-26) No notice of the filing of the declaration of completion of probate was given to Jay Maiuri or

Marcus Maiuri. Moreover, no notice of the pendency of the probate of the Mary Teresa Maiuri estate had been given to them.

Several years passed, and Jay and Marcus petitioned to reopen their grandmother's estate. (CP36) Their petition was granted on grounds that the declaration of completion of probate was void for lack of notice, as well as apparent extrinsic fraud. (CP62-66)

After a trial to determine whether Jay and Marcus were entitled to recover property and monetary damages from Michael Maiuri, the trial court "re-closed" the estate. The "re-closure" of the estate was based on the trial court's ruling, *sua sponte*, that Marcus Maiuri and Jay Maiuri had waited an unreasonable amount of time before challenging the void declaration of completion of probate. (CP202) As a result of this decision, the will of Mary Teresa Maiuri was thwarted and Jay and Marcus were deprived of a share of her estate to which they were entitled. The trial court should be reversed and the case remanded to rectify the maladministration of the estate.

**ASSIGNMENTS OF ERROR, ISSUES PERTAINING
THERE TO AND STANDARD OF REVIEW**

Assignments of Error

1. The trial court erred in its order that the Mary Teresa Maiuri estate be “re-closed,” thereby reinstating a declaration of completion of probate that had been properly set aside as void. (CP202,223)

2. The trial court erred in its ruling that the petition to reopen the Mary Teresa Maiuri estate by Jay Maiuri and Marcus Maiuri was time-barred. (CP202)

3. The trial court erred in appointing Michael Maiuri as personal representative after it had reopened the Mary Teresa Maiuri estate on grounds that he and the co-personal representative had failed to name Jay Maiuri and Marcus Maiuri beneficiaries, had failed to give them adequate notice, had acted in a manner permitting an inference of extrinsic fraud and had procured a void declaration of completion of probate. (CP62-66)

4. The trial court erred in failing to require Michael Maiuri to disgorge estate assets and pay damages.

5. The trial court erred in making finding of fact number fourteen (CP201), specifically:

Both chose in April of 2003 to accept the cash distribution, keep the peace, and do nothing to challenge the handling of their grandmother's estate. (CP201)

6. The trial court erred in its implicit ruling that Jay Maiuri and Marcus Maiuri waived any right to challenge the handling of Mary Teresa Maiuri's estate. (CP201-202)

7. The trial court erred in denying the motion by Jay Maiuri and Marcus Maiuri for attorney fees and expenses.

Issues Pertaining Thereto

1. Whether the trial court erred in its order that the Mary Teresa Maiuri estate be "re-closed," thereby reinstating a declaration of completion of probate that had been properly set aside as void. (CP202)

2. Whether the trial court erred in its ruling that the petition to reopen the Mary Teresa Maiuri estate by Jay Maiuri and Marcus Maiuri was time-barred. (CP202)

3. Whether the trial court erred in appointing Michael Maiuri as personal representative after it had reopened the Mary Teresa Maiuri estate on grounds that he and his co-personal representative had failed to name Jay Maiuri and Marcus Maiuri beneficiaries, had failed to give them adequate notice, had acted in a manner permitting an inference extrinsic fraud and had procured a void declaration of completion of probate. (CP62-66)

4. Whether the trial court had erred in failing to require Michael Maiuri to disgorge estate assets and pay damages.

5. Whether the trial court erred in making finding of fact number fourteen.

6. Whether the trial court erred in its implicit ruling that Jay Maiuri and Marcus Maiuri waived any right to challenge the handling of Mary Teresa Maiuri's estate. (CP201-202)

7. Whether the trial court erred in denying the motion by Jay Maiuri and Marcus Maiuri for attorney fees and expenses.

Standard of Review

As to the fundamental legal issue of timeliness under CR 60(b), the standard of review is de novo. As to the issues of the appointment of Michael Maiuri as personal representative, and the award of attorney fees and expenses, the standard of review is abuse of discretion. As to the challenge to finding of fact number fourteen (CP201), the standard of review is substantial evidence. As to the issues of disgorgement and damages, the standard of review is de novo, because those issues concern what conclusions of law should be drawn from essentially undisputed facts. *Mid-Town Partnership v. Preston*, 69 Wn.App. 227,232, 848 P.2nd 1268 (1993) On the same authority, the issue concerning the implicit ruling that the right to challenge the administration of the Mary Teresa Maiuri estate was waived by Jay Maiuri and Marcus Maiuri should be reviewed de novo.

STATEMENT OF THE CASE

Nature of the Case

The appellants, Jay Maiuri and Marcus Maiuri, challenged the administration of the Mary Teresa Maiuri estate. They petitioned to reopen the estate, to appoint successor personal representatives and for other relief. (CP36) Ultimately, their petition was dismissed as time-barred by CR 60(b). Thus, the claims of Jay and Marcus that the co-personal representatives, Michael Maiuri and Robert Maiuri, were recreant to their trust, thereby depriving Jay and Marcus of estate assets to which they are entitled, were avoided. (CP196, 202, 223)

Course of Proceedings

The estate of Mary Teresa Maiuri was closed with a declaration of completion of probate on October 29, 1996. (CP25) Jay and Marcus Maiuri, grandsons of Mary Teresa Maiuri and named beneficiaries of her estate (CP7), were given no notice of

the pendency of the probate and no notice of the declaration of completion of the probate. (CP63,64)

The petition of February 18, 2015, by Jay and Marcus to reopen the Mary Teresa Maiuri estate resulted in findings of fact, conclusions of law and an order on show cause. (CP62-66; Appendix) Among the findings of fact were:

7. The petitioners [Jay Maiuri and Marcus Maiuri] were among the named beneficiaries of the will of Mary Teresa Maiuri. (CP63)

8. The petition for probate of the will of Mary Teresa Maiuri did not name the petitioners as beneficiaries. (CP63)

9. The notice of pendency of probate proceedings was not served on the petitioners. (CP63)

10. The Declaration of Completion of Probate filed on the 29th day of October, 1996, was not served on the petitioners. (CP64)

11. The petitioners had a vested, future interest in certain property in the estate of Mary Teresa Maiuri, subject to the power of the testamentary trustee to invade the corpus of the trust for the needs of the lifetime beneficiary. (CP64)

From the foregoing findings, the trial court reached several conclusions of law including:

2. The circumstantial evidence in this case, *i.e.*, failure to name the petitioners as beneficiaries, absence of adequate notice to petitioners, permits an inference of extrinsic fraud, and is sufficient reason to reopen the estate. (CP64)

3. The Declaration of Completion of Probate filed herein on the 29th day of October, 1996, should be set aside as void for lack of proper notice to the petitioners. (CP64)

Contrary to the petitioners' request, the trial court reappointed Michael Maiuri as personal representative. (CP64) Robert Maiuri was held in default. (CP65) No challenge to or appeal of these findings and conclusions has been made.

A bench trial on February 8 and March 9, 2016, followed the order on show cause. The trial court issued a letter decision filed on June 3, 2016. (CP196; Appendix) Although the trial court made additional findings and conclusions based on the evidence at trial, it denied all relief to Jay and Marcus Maiuri and "re-closed"

the estate. (CP202, 223) Motions for attorney fees and expenses by both sides (CP216, 233) were denied. (CP221)

Statement of Facts

Mary Teresa Maiuri died on December 24, 1995, and her will was admitted to probate on December 29, 1995. (CP1,10) Two of her sons, Robert Maiuri and Michael Maiuri, were appointed co-personal representatives. (CP11) The petition for probate of Mary Teresa Maiuri's will by Robert and Michael was silent as to Jay and Marcus (CP1-2)

In addition to Robert and Michael Maiuri, Mary Teresa named her son Charles Maiuri and her grandsons, Jay Maiuri and Marcus Maiuri, as beneficiaries of her estate. (CP55-57) Mary's son Charles Maiuri was a developmentally disabled adult who lived with his mother along with Michael Maiuri. (RP8-11) Jay and Marcus Maiuri are the sons of Robert Maiuri. (CP7, 37) The Mary Teresa Maiuri estate consisted of real property, commonly known as 408 Offner Road, Walla Walla, and 429 S.W. 12th Street,

College Place. (CP22) Mary Teresa Maiuri's home was located on the 12th Street property and was the residence of Michael and Charles. (RP12,37) The estate also held several thousand dollars in cash and certificates of deposit. (CP23-24) The total value of estate assets was, according to the co-personal representatives, \$300,000. (CP21)

The issues in this case arise from the failure to establish, manage, terminate and disburse a testamentary trust for Charles Maiuri. The Offner Road property was specifically devised to Robert Maiuri, and the petitioners do not question that disposition. (CP4-5) Other estate assets, primarily the 12th Street property, were improperly handled and distributed, to the injury of Jay and Marcus. (RP48-50)

By her will, Mary Teresa Maiuri devised her home on 12th Street, as well as one acre of land surrounding that home, in equal shares to Michael Maiuri, and Robert Maiuri, as trustee of Charles Maiuri; Charles was permitted to live in the home for his life, with the remainder in the home and surrounding acre to Michael. (CP5-

7) The rest of the 12th Street property (approximately four acres) was devised to Michael Maiuri, Robert Maiuri and Robert Maiuri as trustee for Charles. On the death of Charles, the trust was to be terminated, and the corpus was to be distributed to Robert, Michael, Jay and Marcus in equal shares. (CP7)

Robert Maiuri and Michael Maiuri failed to administer the Mary Teresa Maiuri estate in accordance with her will. The one-acre parcel of land on which Mary's home is located was conveyed to Michael subject to a life estate in Charles. (Ex.14) All the rest of the 12th Street property was conveyed to Michael Maiuri. (Ex.15) No trust for Charles Maiuri was established.

Charles Maiuri died in 2002 and some cash was distributed to Jay and Marcus. (Ex.8,9) No real property was then distributed to anyone. Robert and Michael kept all of it. Michael remains the sole owner of the approximate four-acre parcel on 12th Street. (RP15,17)

Both Jay and Marcus Maiuri signed receipts that purported to be for their "full distributive share" of the Mary Teresa Maiuri

estate. (Ex.9,10) Those receipts were signed in April, 2003. They pertain only to the Mary Teresa Maiuri estate. No receipts concerning the Charles Maiuri trust property that should have been distributed to Jay and Marcus were signed or presented. Yet, both Michael Maiuri and Robert Maiuri acknowledged payment of their full share from the trust created by Mary Teresa Maiuri's will for the benefit of Charles Maiuri. (Ex.11,12)

The main estate asset in which Jay and Marcus had a vested interest was that part of the 12th Street real property which should have been held in trust. (CP5-7) Without proper notice, without an accounting, Jay and Marcus signed unspecified receipts in 2003, (CP8,9), long after the estate was closed in 1996. (CP25) As stated above, they never acknowledged receipt of any assets from the Charles Maiuri trust to which they were entitled. Thus, Jay and Marcus were deprived of their vested interest in real property worth tens of thousands (RP40), as well as rent. (RP43)

At the initial show cause hearing in this case, this colloquy occurred between the Court and counsel for Michael Maiuri:

THE COURT: So let's assume right now that they didn't get any notice when this probate was commenced, that they did not get a copy of the will, that they did not get notice of closure of the estate. And they got a letter in the mail along with a check and it said – I know this is the way I used to do it in my office – here is the receipt. Sign off on this before you cash the check. Here is the return envelope, and they sign off on the receipt. And if what your position is that if they didn't bother to check the file and ask for an accounting, or check the numbers, and do those sorts of things to make an investigation, it's their fault. You don't sign the receipt, you do sign the receipt, that's it folks. Is that basically what your position is? I'm just trying to know.

MR. WITTLAKE: Basically Your Honor, that's it. And it's based on the same logic on the reverse, against the personal representative. That if a person is there and knows their grandmother passed away and they know the case is in court and they know their father is administering the estate and he doesn't hand them a piece of paper saying he is administering the estate, then they have some rights to come back and say, you didn't give me proper notice.

THE COURT: Well, isn't that a game of catch me if you can? Is that the way we should be operating? (RP21-22)

Jay and Marcus assert that the answer to Judge Lohrmann's rhetorical question is an emphatic "No."

Disposition Below

Michael Maiuri's own testimony confirms that he and his co-personal representative deeded land to himself that should have been held in trust for the benefit of Charles Maiuri, and, ultimately, for the benefit of Jay and Marcus Maiuri. (RP100:5-12) Nothing in the record casts doubt on this transaction. (Ex.15) This larcenous transaction, as well as all other allegations by Jay and Marcus, are admitted by co-personal representative Robert Maiuri, by reason of his default. (CP65)

Notwithstanding the evidence showing that the co-personal representatives, Michael and Robert Maiuri, breached their fiduciary duties and contravened their mother's will, the trial court concluded that the petition to reopen the estate by Jay and Marcus was time-barred. (CP202) The estate was closed without remedy. (CP223) This appeal ensued. (CP226)

ARGUMENT

I. BY CONCLUDING THAT THE PETITION TO REOPEN THE ESTATE WAS TIME-BARRED, THE TRIAL COURT ACTED CONTRARY TO LAW, THWARTED THE WILL OF MARY TERESA MAIURI AND DEPRIVED THE PETITIONERS OF THEIR SHARE OF HER ESTATE.

A. Where, as here, a declaration of completion of probate is void for lack of notice, it must be set aside.

Where, as here, reasonably ascertainable heirs are not given notice of a declaration of completion of probate, that declaration is void. *Pitzer v. Union Bank of Calif*, 141 Wn.2nd 539,551, 9 P.3rd 805 (2000) Inarguably, Jay and Marcus, as named beneficiaries of Mary's will, were entitled to notice.

A declaration of completion of probate in, as here, a nonintervention probate is the functional equivalent of a judgment. Like a void judgment, an unnoticed declaration of completion of probate may be "attacked at any time." *In re the Estate of Little*, 127 Wn.App. 915,921, 113 P.3rd 505 (2005), citing *Pitzer, supra*. Although, CR 60(b) contains some time limits, they should apply

only to motions under CR 60(b)1,2 and 3. Clearly, the time limits do not apply to attacks on void judgments or void declarations of completion under CR 60(b). *In re Marriage of Leslie*, 112 Wn.2nd 612,620, 772 P.2nd 1013 (1989) Indeed a trial court has no discretion except to set aside a void judgment. *Scott v. Goldman*, 82 Wn.App. 1,6, 917 P.2nd 131, *review denied*, 130 Wn.2nd 1004 (1996)

The trial court correctly set aside the declaration of completion of probate in this case as void. (CP64,65) That ruling and the findings on which it is based have not been challenged. The trial court's *sua sponte* reversal of itself is erroneous.

B. Where, as here, the trial court allowed the Mary Teresa Maiuri estate to be closed after proof that estate assets were distributed contrary to her will, the legal principles governing the interpretation of wills and the duties of personal representatives were contravened.

Axiomatically, “[t]he right to dispose of one’s property by will is valuable right that is protected by statute.” *In re Meagher’s Estate*, 60 Wn.2nd 691,692, 375 P.2nd 148 (1962) Courts must

enforce a will as written. *In re Estate of Price*, 75 Wn.2nd 884,886, 454 P.2nd 411 (1969) Personal representatives have a fiduciary obligation to execute a will in accordance with its terms. *In re Estate of Wilson*, 8 Wn.App. 519,527, 507 P.2nd 902 (1973).

Here, the personal representative Michael Maiuri took estate property to which he was not entitled. He breached his fiduciary obligation. Moreover, he deprived Jay and Marcus Maiuri of assets to which they are entitled. The trial court should be reversed and the case remanded for determination of issues of disgorgement and damages.

**II. BY APPOINTING MICHAEL MAIURI
PERSONAL REPRESENTATIVE
AFTER A SHOWING THAT HE HAD
BEEN RECREANT TO HIS TRUST,
THE TRIAL COURT ABUSED ITS
DISCRETION.**

Where, as here, the personal representative Michael Maiuri has been shown to be recreant to his trust, the trial court should have replaced him as personal representative pursuant to RCW 11.68.070. A lack of faith to his trust and the conveyance of trust

property to himself are adequate grounds for his removal. *State ex rel. Smith v. Superior Court*, 142 Wash. 300,305, 252 Pac. 932 (1927) While the removal of a personal representative is left to the discretion of the trial court, the trial court here abused its discretion. The reappointment of Michael Maiuri as personal representative is “manifestly unreasonable or based upon untenable grounds or reasons.” *Davis v. Globe Machine*, 102 Wn.2nd 68,77, 684 P.2nd 692 (1984) Therefore, the trial court should be reversed and the case should be remanded for appointment of a qualified personal representative to administer the estate in the course of proceedings on remand.

III. GOVERNING LEGAL PRINCIPLES SHOW THAT NEITHER JAY MAIURI NOR MARCUS MAIURI WAIVED THEIR RIGHT TO BE TREATED AS BENEFICIARIES OF THE MARY TERESA MAIURI ESTATE NOR THEIR RIGHT TO CHALLENGE THE MALADMINISTRATION OF THAT ESTATE.

Implicit in the trial court’s finding of fact number fourteen is the notion of a waiver by Jay and Marcus:

Both chose in April of 2003 to accept the cash distribution, keep the peace, and do nothing to challenge the handling of their grandmother's estate. (CP201)

There is little or no evidence from Marcus of a "choice" of any kind, particularly of a choice that must be shown to establish a waiver. There is no evidence of a choice actually made by Jay.

The affirmative defense of waiver is authoritatively articulated in *Mid-Town Partnership v. Preston*, 69 Wn.App. 227,233, 848 P.2nd 1268 (1993):

Waiver is the intentional abandonment or relinquishment of a known right. It must be shown by unequivocal acts or conduct showing an intent to waive, and the conduct must also be inconsistent with any intention other than to waive.

As an affirmative defense, Michael Maiuri has the burden of proving waiver. *Fulle v. Boulevard Excavating*, 20 Wn.App. 741,744, 582 P.2nd 566 (1978), *review denied*, 91 Wn.2nd 1018 (1979) Evidence of waiver is wholly lacking in this case.

Other affirmative defenses to the claims of Jay and Marcus have no factual basis in this case. Doctrinally, those defenses are

unavailing to Michael Maiuri. “Estoppel and laches require some injury, prejudice or disadvantage to the defendant resulting from allowing the relief sought by the plaintiff.” *Fulle, supra*. No qualifying prejudice or disadvantage was or can be shown by Michael Maiuri.

Where, as here, there was neither a meeting of minds concerning a contractual matter nor contractual consideration, there can be no accord and satisfaction. *Kibler v. Garrett & Sons, Inc.*, 73 Wn.2nd 523,525, 439 P.2nd 416 (1968)

Although this case actually turns on a single error, *i.e.*, an erroneous interpretation of CR60(b)(5), there is no basis for affirming the decision below on other nonerroneous grounds. Therefore, the trial court should be reversed and this case should be remanded for administration of the Mary Teresa Mauri estate in accordance with her will.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING JAY MAIURI AND MARCUS MAIURI THEIR ATTORNEY FEES AND EXPENSES.

Jay and Marcus Maiuri, on their own undertaking, proved that the co-personal representatives have been recreant to their trust. All beneficiaries of the estate have been involved. Proceedings initiated by Jay and Marcus were needed to rectify the co-personal representatives' maladministration of the Mary Teresa Maiuri estate. Thus, the estate has benefited and the petitioners (appellants here) should be awarded their attorney fees and expenses. *In re Estate of Watlack*, 88 Wn.App. 603,612, 945 P.2nd 1154 (1997) Where, as here, attorney fees and expenses are denied on untenable grounds or for untenable reasons, the trial court should be reversed. *In re Estate of Black*, 116 Wn.App. 476,489, 66 P.3rd 670 (2003)

**V. JAY MAIURI AND MARCUS MAIURI
SHOULD BE AWARDED THEIR
ATTORNEY FEES AND EXPENSES.**

On the basis of the authorities cited in the foregoing section, Jay Maiuri and Marcus Maiuri should be awarded their attorney fees and expenses incurred in the instant appeal.

CONCLUSION

On the basis of the foregoing argument, the trial court should be reversed. This case should be remanded to the trial court for instructions to rectify the maladministration of the Mary Teresa Maiuri estate. The appellants, Jay A. Maiuri and Marcus M. Maiuri, should be awarded their attorney fees and expenses.

Dated this 3rd day of March, 2017.

Respectfully submitted,


Michael E. de Grasse WSBA #5593
Counsel for Appellants

APPENDIX

WILL OF MARY TERESA MAIURI (CP4)

LAST WILL AND TESTAMENT

95 4 00208 9

OF

MARY TERESA MAIURI

Mary Teresa Maiuri

276 100

KNOW ALL MEN BY THESE PRESENTS, That I, MARY TERESA MAIURI, of the County of Walla Walla, State of Washington, being of legal age and of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament:

I.

I hereby revoke all former Wills and codicils by me made.

J

II.

I do direct that all my just debts be paid and discharged, including the expenses of my last sickness and burial and expenses and charges of administration upon my estate, as soon as there are funds available therefor. I direct that upon my death my burial shall be in the Catholic Cemetery, Walla Walla, Washington.

III.

I give, devise and bequeath the following described real property (which I inherited from my father Augustine Torretta) subject to any mortgage existing thereon, which property is situated on Offner Road in Walla Walla County, State of Washington:

Beginning at a point in the west line of Section 30, Township 7 North Range 36 EWM, said point being 288.4 feet north, measured along the said west line, from its point of intersection with the Original northerly line of the U. S. Military Reserve, and run thence North 61° 08' East, parallel to the said Original U.S. Military Reserve line, 544.2 feet; thence North 26° 24' West 294 feet to a point in the southerly right-of-way line of the Walla Walla Valley Railroad; thence Westerly, along the said southerly right-of-way line, 362 feet to a point in the west line of the aforesaid Section 30; thence South, along the said west line 430.48 feet to the point of beginning; excepting therefrom, however, the west 15 feet lying in Offner Road. Containing 3.4 acres.

to my son, ROBERT MAIURI.

IV.

I give, devise and bequeath my home with its contents located on the following described real property situate in the County of Walla Walla, State of Washington:

Beginning at a point which is 1639.3 feet South and 672.9 feet East of the center of Section Thirty-five (35) in Township Seven (7) North, of Range Thirty-five (35) East of the Willamette Meridian; thence North 14° 48' West 68.3 feet; thence North 2° 21' West 116.0 feet; thence North 11° 22' West 107.5 feet to a point which is 1356.3 feet South and 636.9 feet East of the center of said Section 35; thence North 61° 34' East 183.0 feet; thence North 78° 27' East 237.0 feet; thence South 79° 06' East 100.00 feet; thence South 61° 19' East 202.2 feet; thence South 00° 02' East 9.00 feet; thence South 89° 47' East 279.0 feet; thence South 1° 00' East 143.3 feet; thence South 88° 30' West 254.6 feet; thence North 00° 03' West 81.5 feet; thence South 71° 19' West 680.2 feet, more or less, to the point of beginning.

as well as one (1) acre of said real property surrounding my home in equal shares one-half to my son, MICHAEL MAIURI, and one-half to ROBERT MAIURI as Trustee for my son, CHARLES MAIURI, subject to the right in my son, CHARLES MAIURI, to live in said home rent-free so long as he is capable of so doing.

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V.

It is my intention that all joint accounts and joint certificates with my name on them become the property of the surviving joint tenant designated thereon.

VI.

All the rest and residue of the property, real and personal, which I may own at the time of my death I give, devise and bequeath in equal shares to ROBERT MAIURI, MICHAEL MAIURI and ROBERT MAIURI as Trustee for CHARLES MAIURI.

VII.

The Trustee is to hold and administer the property, real and personal, left to him in trust for the exclusive use, enjoyment and benefit of my son, CHARLES MAIURI, according to the following provisions:

a) The Trustee shall exercise his discretion in the administration of said trust and shall utilize the rents, issues and profits thereof for my said son, CHARLES MAIURI.

b) The Trustee may in emergencies invade or delve into the corpus of the trust estate to the end that my son, CHARLES MAIURI, shall be protected, supported and maintained in reasonable comfort and security.

c) The Trustee may accept property from other sources into the trust estate.

d) Upon the death of CHARLES MAIURI, any interest in my home, its contents and the one (1) acre of realty surrounding it that remains in the trust estate shall be distributed to MICHAEL MAIURI and any other property, real and personal, remaining in the trust estate shall be distributed in equal shares to my sons, ROBERT MAIURI and MICHAEL MAIURI, and my grandsons, JAY MAIURI and MARC MAIURI, or the survivors of them.

VIII.

If my son, ROBERT MAIURI, is unable to act or to continue to act as Trustee, then and in that event I designate my son, MICHAEL MAIURI, as substitute or successor Trustee.

IX.

I hereby nominate and appoint my sons, ROBERT MAIURI and MICHAEL MAIURI, Co-Executors of this my Last Will and Testament. Should either of my said sons be unwilling or unable to act or to continue to act as Co-Executor, then and in that event I appoint the one who is willing and able to so act as sole Executor of this my Last Will and Testament. I direct and request that no bond be required of said Co-Executors in the discharge of said trust, and that they settle my estate without the intervention of any probate or other court insofar as legally they may.

REQUEST BY TESTATRIX

The undersigned, being the person who signed and executed the attached Last Will and Testament and declared it to be her Will, requests that the sworn statements of the two witnesses attesting the same to be accepted by the Judge of the Court having jurisdiction to admit this Will to probate as testimony of the witnesses as if it had been taken before the Court at the time the Will is offered for probate.

Mary Teresa Maiuri
MARY TERESA MAIURI

SUBSCRIBED AND SWORN to before me this 4 day of
November, 1987.

Lucina Zucca
Notary Public in and for
the State of Washington,
residing at Walla Walla,
My appointment expires: 5/10/89

APPENDIX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON SHOW CAUSE (CP62)

7/21 file

FILED
KATHY MARTIN
COUNTY CLERK

2015 MAR 23 P 3: 59

WALLA WALLA COUNTY
WASHINGTON

BY *Adamer*

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SUPERIOR COURT OF WASHINGTON – WALLA WALLA COUNTY

In the Matter of the Estate of
MARY TERESA MAIURI,
Deceased.

No. 95 4 00208 9

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER ON SHOW
CAUSE

THIS MATTER having come before the Court on the order to show cause issued by this Court on the 18th day of February, 2015, pursuant to the petition of Jay A. Maiuri and Marcus M. Maiuri and directing the respondents, Robert Maiuri and Michael Maiuri, to appear and show cause with respect to certain issues concerning their administration of this estate, and the Court having conducted a hearing on the 9th day of March, 2015, and the Court having heard certain testimony and the Court having considered the probate file in this matter as well as the submissions of the petitioners and the respondent Michael Maiuri (the respondent Robert Maiuri having submitted nothing), and the Court having been fully advised in the premises, the Court now makes the following findings of fact, conclusions of law and order.

39

FINDINGS OF FACT

1 1. The petitioner Marcus M. Maiuri is a resident of the County of Walla Walla,
2 State of Washington, and, at all times material hereto, has been competent and of legal age.

3 2. The petitioner Jay A. Maiuri is a resident of the County of Umatilla, State of
4 Oregon, and, at all times material hereto, has been competent and of legal age.

5 3. The respondents, Michael Maiuri and Robert Maiuri, are residents of the
6 County of Walla Walla, State of Washington.

7 4. The respondent Robert Maiuri has not participated in this case following the
8 petition of Jay A. Maiuri and Marcus M. Maiuri, and, therefore, is in default.

9 5. The respondents, Michael Maiuri and Robert Maiuri, were named co-personal
10 representatives of the estate of Mary Teresa Maiuri to act with nonintervention powers in
11 administering her estate pursuant to her will which was admitted to probate on the 29th day of
12 December, 1995.

13 6. The respondents acted with nonintervention powers in administering the estate
14 of Mary Teresa Maiuri.

15 7. The petitioners were among the named beneficiaries of the will of Mary
16 Teresa Maiuri.

17 8. The petition for probate of the will of Mary Teresa Maiuri did not name the
18 petitioners as beneficiaries.

19 9. The notice of pendency of probate proceedings was not served on the
20 petitioners.

10. The Declaration of Completion of Probate filed on the 29th day of October, 1996, was not served on the petitioners.

11. The petitioners had a vested, future interest in certain property in the estate of Mary Teresa Maiuri, *subject to the power of the testamentary Trustee to invade the corpus of the trust for the needs of the lifetime beneficiary.*

12. The co-personal representatives *allegedly* transferred certain estate assets, including real property, to themselves which assets should have been held in trust for the benefit of Charles Maiuri, another beneficiary of the estate of Mary Teresa Maiuri.

13. The assets *allegedly* transferred by the co-personal representatives to themselves *may have been* among the assets in which the plaintiffs had a vested interest *per ¶ 11 above.*

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter.
2. *i.e., failure to name petitioners as beneficiaries; absence of adequate notice to Petitioners,* The circumstantial evidence in this case *permits an inference of extrinsic fraud, and is sufficient reason to reopen the estate.*

3. The Declaration of Completion of Probate filed herein on the 29th day of October, 1996, should be set aside as void for lack of proper notice to the petitioners.

~~4. Certain estate assets have been wrongfully distributed to Michael Maiuri and Robert Maiuri.~~

5. The administration of this estate *should* be reopened and the former co-personal representatives, Michael Maiuri and Robert Maiuri should be reappointed as personal representatives.

6. If Robert Maiuri is unable or unwilling to serve as co-personal representative, then Michael Maiuri may serve as sole personal representative.

7. If both Michael Maiuri and Robert Maiuri decline or fail to submit letters
1 testamentary to the clerk within ten days from March 11, 2015, then the petitioners will be
2 appointed co-personal representatives.

3 8. Within 45 days of March 11, 2015, Robert Maiuri and Michael Maiuri should
4 submit an accounting of their administration of the estate of Mary Teresa Maiuri, including a
5 description and documentation of the disposition of any real property of the estate and/or
6 testamentary trust.

7
8 9. Robert Maiuri should be held in default.

10 ORDER

11 On the basis of the foregoing findings of fact and conclusions of law, Now,
12 Therefore,

13 IT IS HEREBY ORDERED that:

14 1. The Declaration of Completion of Probate filed on the 29th day of October,
15 1996, is set aside;

16 2. The administration of this estate is reopened;

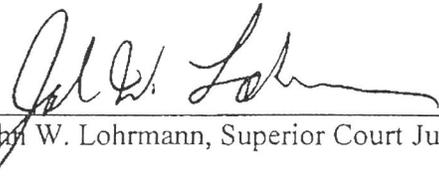
17 3. Michael Maiuri and Robert Maiuri are reappointed co-personal representatives
18 of this estate subject to the requirements set forth in the foregoing conclusions of law; and

19 4. Michael Maiuri and Robert Maiuri shall within 45 days of March 11, 2015,
20 submit an accounting of their administration of the estate of Mary Teresa Maiuri, including a
21 description and documentation of the disposition of any real ^{or personal} property of the estate and/or
22 testamentary trust. (U)
23 (D)

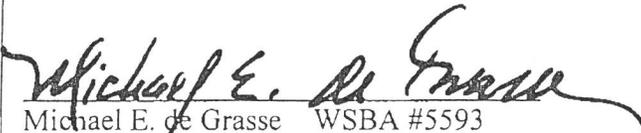
24 5. Robert Maiuri is in default.

25 6. *If Robert Maiuri takes no action to be reappointed, then Michael Maiuri
is appointed as sole personal representative.*

Done by the Court this 23rd day of March, 2015.


John W. Lohrmann, Superior Court Judge

PRESENTED BY:


Michael E. de Grasse WSBA #5593
Counsel for Petitioners

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APPENDIX

LETTER DECISION (FILED 6/3/16; CP 196)

WALLA WALLA COUNTY SUPERIOR COURT

Judge John W. Lohrmann
KATHY MARTIN
COUNTY CLERK

315 West Main Street Fl 3
PO Box 836 2016 JUN -3 A 11: 21
Walla Walla, Washington 99362 WALLA WALLA COUNTY Fax: (509) 524-2777

Phone: (509) 524-2790

June 1, 2016

BY: 

Mr. Michael E. de Grasse, Esq.
PO Box 494
Walla Walla, WA 99362

Mr. Leonard C. Wittlake, Esq.
P.O. Box 1233
Walla Walla, WA 99362

RE: Estate of Mary Teresa Maiuri
Walla Walla County Superior Court No.: 95-4-00208-9

Dear Counsel:

Please accept this letter as the Court's decision following trial of this matter. Trial occurred over two days, February 5, 2016, and March 9, 2016.



In a letter dated March 11, 2015, the Court summarized the factual background and procedural context, which is repeated here as follows:

The Last Will and Testament of Mary Teresa Maiuri was admitted to probate in this cause on December 29, 1995. It named two of her sons, Robert Maiuri and Michael Maiuri, as non-intervention co-personal representatives. Along with other provisions it specified that certain property, including some real estate, would be distributed to Robert Maiuri, as trustee for Charles Maiuri, another son of the decedent. The Will further provided that upon Charles's death the trust property would be distributed equally among Robert Maiuri, Michael Maiuri and decedent's grandsons, the Petitioners, Jay Maiuri and Marcus Maiuri. (First names will be used henceforth for clarity; no disrespect is intended.) The original petition for probate filed with the Will (Clerk's 1) did not identify Jay and Marcus as beneficiaries, although it is clear from the face of the Will that they had a vested future interest in at least some of the real property identified to Charles's trust. The Notice of Pendency of Probate Proceedings was not served on Jay and Marcus (Clerk's 5 and 7). Upon completion of the probate on October 29, 1996, the Declaration of Completion of Probate was not served on Jay and Marcus (Clerk's 10 and 12).

0-000000196

This matter came before the Court on March 9, 2015, for a hearing on an order requested by the Petitioners, Jay and Marcus, requiring the co-personal representatives, Robert and Michael, to appear and to show cause as to: (1), why this estate should not be reopened; (2), why the Declaration of Completion filed October 29, 1996 should not be set aside; (3), why they should not be removed as co-personal representative; (4), why the Petitioners should not be appointed as successor or co-personal representative; (5), why they should not submit an accounting of their administration of the estate; (6), why they should not disgorge estate assets that they have unlawfully received; (7), why they should not compensate the estate for assets they have wasted; and (8), why they should not be taxed with attorney fees and costs. Michael appeared personally and by his attorney, Mr. Wittlake. Robert accepted service of the Petition and was present at the hearing, although he did not participate nor did he enter a written appearance, either pro se or by an attorney. He is considered to be in default; the Court will have continuing jurisdiction to include him as appropriate regarding any future orders within the scope of the Petition.

Some brief testimony was taken at the show cause hearing. Michael professed ignorance more or less of the contents of the Will generally. He assumed, because he had always farmed the land in question and always treated as his, and because he lived there, that both the house and the property around it should be his. He relied on legal counsel as to how things should go in the estate. Although Robert was named as Charles's trustee, Michael testified that it was he who took care of Charles and resided in the house with him. He testified that he was on Charles's bank account, and after Charles's death some years later he made a cash distribution of the account to Jay and Michael, in exchange for which he received from each a receipt dated in April, 2003. Each receipt provided that the beneficiary "hereby acknowledges receipt of his full distributive share of the above entitled estate." Clerk's 18 and 19.

Court's Decision Letter dated March 11, 2015 (Clerk's #32). The Court then went on to summarize the parties' positions as follows:

Both sides seem to rely somewhat on legal niceties. Michael cites to several possible statutes of limitations: RCW 4.16.110 (one-year limitations on actions by an heir against an executor or administrator for alleged malfeasance); RCW 11.96A.250 (action must be brought before discharge of the personal representative); and RCW 4.16.070 (five-year limit on action to recover real estate sold by an executor or administrator).

The Petitioners, on the other hand, point out that the co-personal representatives were required by law to serve each "heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause." RCW 11.28.237. At the conclusion of a non-intervention probate, the co-personal representatives are required to file a

declaration of completion and mail it to “each heir, legatee or devisee of the decedent.” RCW 11.68.110(3). The co-personal representatives in this case wholly failed to fulfill these obligations, and apparently compounded their omission by transferring out of the estate and/or testamentary trust title to property other than as directed in the Will. The Petitioners rely on *Pitzer v. Union Bank*, 141 Wn.2d 539 (2000), which summarizes the applicable law as follows:

While the interest of finality is of paramount concern, it is not absolute. We recognize that in limited circumstances it must yield to concerns of justice and fairness. Our cases have historically recognized only two instances in which this will occur. First, we have allowed an estate to be reopened upon a showing of extrinsic fraud. . . . Second, when a decree of distribution is void we will decline to give it force. For instance, if there is a failure to give notice to a reasonably ascertainable heir entitled to notice, there will be a “jurisdictional defect inherent in the decree of distribution.” . . . This is no more than an expression of the rule that only “decrees of distribution made . . . upon due notice as provided by statute are final adjudications having the effect of judgments”

These historical rules are set against the fact that the law of reopening estates is derived from the law of vacating judgments. . . . With the advent of CR 60, additional justifications upon which to reopen an estate may exist. Specifically, CR 60(b)(4) allows the court to vacate a judgment procured through “[f]raud . . . , misrepresentation, or other misconduct of an adverse party.” Of course, a “void” judgment is also unenforceable. CR 60(b)(5). In all cases, a motion under CR 60 must be brought within a “reasonable time.” CR 60(b).

Pitzer, 141 Wn.2d at 551-52 (some internal citations omitted).

Both sides also rely on equitable considerations. Michael points out that the case of *Hesthagen v. Harvey*, 78 Wn.2d 934, 942 (1971), cited by the *Pitzer* court, explains that through passage of time equitable considerations based on changes in circumstances might impact the type of relief available. Michael also relies on the fact that the Petitioners had some actual information regarding their grandmother’s estate because of the receipts that they signed, distinguishing cases such as *In re the Estate of Little*, 127 Wn. App. 915 (2005), which holds that “When heirs show notice was not provided to them, a completed estate will be reopened unless the executor demonstrates that the names and addresses of heirs were not reasonably ascertainable through the exercise of due diligence.” *Id.* at 916. The Petitioners, on the other hand, simply rely on *Pitzer*.

Court's Decision Letter dated March 11, 2015 (Clerk's #32). The Court then set aside the Declaration of Completion filed herein, which normally would have the same effect as a final decree, because of the inference of extrinsic fraud raised by the circumstantial evidence (CR 60(b)(4)); *compare Francon v. Cox*, 38 Wn.2d 530 (1951)). The Court found that the Declaration should be deemed void as a final decree for lack of proper notice to the Petitioners both at the beginning and at the conclusion of the probate (CR 60(b)(5)), and for equitable reasons arising from the wrongful distribution (CR 60(b)(11)).

The Court then ordered the estate to be reopened with Michael still serving as personal representative and being required to submit an accounting of the administration of the estate of Mary Theresa Maiuri by him and Robert. Robert did not enter an appearance and was held in default, so Michael served as sole representative. Following the accounting which was obviously made difficult by the passage of time and transfer of assets, the Court found that a trial was necessary "to address the equitable issues and to determine whether and to what extent the additional relief requested by the Petitioners is appropriate." *Court's Decision Letter dated March 11, 2015 (Clerk's #32).*

The Court now makes the following additional findings as a result of the testimony and evidence presented at trial:

1. Marcus (Marc) Maiuri, who with his brother Jay Maiuri (first names will be continued to be used hereinafter for clarity; again no disrespect intended) petitioned to reopen this estate, is a real estate broker experienced in stating opinions about values of real estate in Walla Walla County. He testified that he has appraisers call him regularly to discuss his thoughts and opinions. He has done a number of land developments and processed through land use changes. He is very familiar with the property in question. He testified that the current value of the house built by Michael (Mike) together with one acre of the property in dispute would be over \$400,000. His suggestion is that Mike should obtain a reverse mortgage on the one parcel in order to pay to Jay and Marc their share of the value of the land that was never properly distributed to them.
2. Marc is employed by the Walla Walla office of Adamas Realty whose main branches are in Bellevue and in Vancouver, Washington. He has worked as a realtor since 2004. He graduated in 1989 from DeSales High School in Walla Walla, and in 1995 obtained a teaching certificate and bachelor's degree in multiple areas of study including physical education, history, social studies, health, and traffic safety. He obtained his Masters in teaching in 2002. From then until 2004 he worked as a teacher, returning to Walla Walla to farm in the summer of 2003. When his grandmother, the decedent, Mary Teresa Maiuri died December 24, 1995, Marc was substitute teaching in the Walla Walla valley, teaching drivers education, and coaching football.
3. Marc obtained his license to be a real estate broker in 2004. He is familiar with the real estate market for this land in 2000 to 2003 because of the historical work that he does on the development of properties, and estimated the value even back then as about \$100,000 per acre. He testified that his uncle Mike always mentioned that if Marc wanted to acquire the property he should be prepared to pay \$300,000, that being \$100,000 for each of the three acres apart from Mike's home and one acre.

4. Marc testified repeatedly that his grandmother always told him that he would receive land: "My grandma always said that we got an acre each." Marc also believed that she held cash in her safety deposit box at Baker Boyer Bank in Walla Walla. He testified that Mike removed funds "hoping to get the state or welfare to pay for my grandmother in case it was a long term going into the nursing home, so they were trying to drain her accounts so they wouldn't lose the money, let alone the properties." He also testified that his grandmother "also kept large cash amounts at home. And like many of the depression era folks they would keep coffee cans of \$5-\$20,000 at home."
5. He further testified "that there was money set aside for everybody, my grandmother always thought an acre of land and a little house, that was your grandfather's land it's yours. Here is your set up money. It's not, we are poor immigrants, but that's what you have. So she always left that out there. As our understanding."
6. Notwithstanding his understanding of what he should have received from his grandmother's estate, Marc acknowledged signing a receipt on April 11, 2003, acknowledging receipt of his full distributive share of the estate.
7. The Court examined Marc at trial resulting in the following questions and answers:

Question: Did you ever ask your father or your uncle, hey, grandma always said we would each get a little cash and an acre. Where is, what's happening with her estate? Did that ever occur to you to ask that question?

Answer: I know I asked my father Robert. And I know, I'm pretty sure that there were discussions, co- discussions with my uncle Mike. ...

Question: Did you ever speak to Mr. Monahan [the attorney for the personal representatives]?

Answer: There was probably a phone conversation at the end. ... Dick, Mr. Monahan basically said this is what you get, there is no ground to distribute. Mike took it. Your dad signed for it. Mike signed for it. There is nothing for you to get other than this little bit of money. Do you want the money or do you want to go get an attorney? This is all you get as your share. Period. Sign the paper or don't.

Question: Sign the paper or go get an attorney?

Answer: Yeah. ...

Question: Did you sign the receipt at his office?

Answer: No. I believe it was mailed to me in Bonnie Lake, Washington.

8. Jay was present at the trial but did not testify. Charles did not appear or testify.
9. The Estate was opened as a non-intervention probate. Instead of keeping a tight accounting the co-personal representatives simply went on taking care of Charles without allocating funds for that purpose or tracking expenses relating thereto. No testamentary trust was formally established for Charles. When Charles died in 2002, there was no probate of Charles's estate because any funds that Charles owned were jointly held with Mike and/or Robert with right of survivorship.
10. There is no single accounting that correlates with the Inventory and Appraisal filed in the Estate. Exhibit 3. There is no separate itemization of Estate debts and expenses, although it is evident that the co-personal representatives paid them. By the time of Charles's death in 2002, the real estate had already been divided between Mike and

Robert. It can be inferred from at least the last three pages of Exhibit 18 that following Charles's death Mr. Monahan realized that Jay and Marc were interested parties with whom there needed to be a settlement. His note on the last page reads: "Mike will come up with funds to pay them off - so we need to figure out what each is owed." The mathematical calculation following the note indicates that two accounts were liquidated and added together, Sterling Bank account #49990646283 for \$11,743.54 and Washington Mutual #179-185-1449-2 for \$42,808.93. This sum was then divided between Jay, Marc, Robert, and Mike, and signed receipts were obtained from each. Exhibits 8, 9, 10, and 11.

11. The Estate of Mary Teresa Maiuri was closed October 29, 1996, by Declaration of Completion of Probate (Exhibit 4), and with the concurrent filing of Receipts signed by Mike, Robert and Charles. Exhibits 5, 6, and 7. No receipts were signed at the time by Jay or Marc.
12. Mr. R.F. "Dick" Monahan was attorney for the personal representatives. Mr. Monahan died several years ago.
13. Ms. Geri Lyons, Mr. Monahan's longtime secretary, identified documents from Mr. Monahan's legal file on the Estate. She testified that it would be the attorney's responsibility to identify the beneficiaries for purpose of notice requirements. While the law firm at the time did some probate work, Mr. Monahan's work was primarily in litigation and neither she nor Mr. Monahan did very much probate work.
14. The Court's impression from the testimony is that Marcus is a highly educated and sophisticated businessman. He is particularly knowledgeable regarding land and real estate development. He was aware of his grandmother's death on December 24, 1995. He was aware of his grandmother's wishes as expressed to him. He was aware of the extent of her assets, those being the subject real estate as well as cash assets, both on hand and in the bank. When he was offered payment of over \$13,000 after Charles's death in 2002 he was aware that his grandmother's estate had been probated and that he had the option to consult an attorney about challenging the handling of his grandmother's estate. From Jay's silence at trial while present and represented by counsel the court infers that his knowledge was approximately the same as his brother Marc's. Both chose in April of 2003 to accept the cash distribution, keep the peace, and do nothing to challenge the handling of their grandmother's estate.
15. The Court's impression from the testimony is that Michael is not sophisticated and to some extent is not even literate. He relied to a great extent on his brother, Robert, and on his attorney, Mr. Monahan, as is evident from his deposition testimony, published and introduced as substantive evidence per CR 32(a)(2). Marc perceived him to be a "bully" because of his belligerent, defensive and stubborn attitudes when he tried to discuss the issues with him.

From the facts as set forth above the Court concludes as follows:

1. The mention of the real property in the Last Will and Testament was not in the form of a specific devise, instead it was in the context of the distribution of a remainder interest.
2. The rather obvious mistakes that were made in the handling of this Estate were not the result of extrinsic fraud but were rather the result of ignorance on the part of the co-personal representatives combined with overreliance on their attorney to fulfill their

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duties and to give effect to their mother's directions as set forth in her Last Will and Testament.

3. This estate was closed in 1996 and receipts were signed by all beneficiaries in 2003 following the death of the life beneficiary.
4. While not provided formal notice of the pendency of the Estate, by 2003 Jay and Marc had actual notice that an estate had been opened and that they had an interest in the estate. While the Court is particularly concerned about the noncompliance with the notice requirements of the statute the Court is equally concerned about the passage of time since then. Even the *Pitzer* case in the above quotation recognizes that while not absolute, "the interest of finality is of paramount concern." According to CR 60(b), even when a judgment was procured by fraud (whether intrinsic or extrinsic), misrepresentation or other misconduct (Subsec.(4)), or when a judgment is void (Subsec. (5)), a motion to set aside the judgment "shall be made within a reasonable time." CR 60(b); *See Pitzer*, 141 Wn.2d at 551-52. Thirteen years is not a reasonable time.

The Court in its earlier decision ordered the estate to be reopened in order that a trial could be held "to address the equitable issues and to determine whether and to what extent the additional relief requested by the Petitioners is appropriate." *Court's Decision Letter dated March 11, 2015 (Clerk's #32)*. Having heard the testimony and reviewed the evidence adduced at trial, and based upon the extent to which the Petitioners already had knowledge of the defects in the handling of the estate but chose to do nothing about the problem in 2003, the Court's decision is that this estate should be re-closed and the petition dismissed with prejudice.

Sincerely,

WALLA WALLA COUNTY SUPERIOR COURT



John W. Lohrmann, Judge

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

In the Matter of the Estate of
MARY TERESA MAIURI,
Deceased.

No. 347494

PROOF OF SERVICE OF
BRIEF OF APPELLANTS

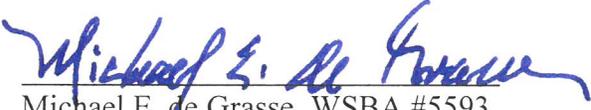
Michael E. de Grasse under penalty of perjury pursuant to the Laws of the State of Washington, RCW 9A.72.085, states as follows:

I am counsel for the appellants, Jay A. Maiuri and Marcus M. Maiuri, in the above-captioned cause.

I served a copy of the brief of appellants in this case on the Respondent, Michael Maiuri, personal representative of the estate of Mary Teresa Maiuri, by posting a copy of the same in this case on the 3rd day of March, 2017, first class postage prepaid, addressed to Lenard L. Wittlake, Attorney at Law, P.O. 1233, Walla Walla, WA 99362. Mr. Wittlake is the counsel for Michael Maiuri, the respondent.

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Dated this 3rd day of March, 2017.



Michael E. de Grasse WSBA #5593
Counsel for Appellants,
Jay A. Maiuri and Marcus M. Maiuri