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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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No. 34751-6-III

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

Spokane County Cause No. 2011-04-01394-6

AARON L. LOWE, Son of Decedent

Petitioner/Appellant,

v.

LONNIE D. LOWE, Individually and as
Personal Representative of the Estate of
Betty L. Lowe, Deceased,

Respondent/Appellee.

OPENING BRIEF OF PETITIONER

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I. INTRODUCTION

In 2009, the Washington Legislature amended RCW chapter 11.84 (ch. 525, 60th legislature, 2009 Regular Session S.H.B. No. 1103). “[T]he Legislature amended the slayer statutes to disinherit those who financially abuse vulnerable adults.” *In re Estate of Haviland*, 177 Wash.2d 68, 71, 301 P.3d 31 (2013).

Donald E. Lowe, who died on April 16, 2003, and his wife Betty L. Lowe, who died on October 1, 2011, had a sixty-year marriage. Petitioner, Aaron L. Lowe, and Respondent, Lonnie D. Lowe, are sons of the couple. In the 1980's, Donald and a friend sealed 22 silver bars, weighing 55 to 67 pounds each, and four bags of silver and gold coins in a fire place basement foundation in the family home. Lonnie D. Lowe secretly unsealed the hiding place. From 2003 to 2007, Lonnie systematically and exclusively removed his parent's gold and silver and took all of it to his home in Olympia. He always kept the property from his mother, doled some cash to her and also kept some for himself, all during his mother's remaining

lifetime. Litigation over Lonnie's right to the assets ensued. *In the Matter of the Estate of Betty L. Lowe*, 191 Wash.App. 216, 361 P.3d 789 (Div.III 2015), *rev. denied*, 185 Wash.2d 1019, 369 P.3d 500 (April 27, 2016). Prior to the trial, Petitioner Aaron L. Lowe, filed a Second Amended and Supplemental Petition. *Id.* at 223. The Petition alleged that Lonnie D. Lowe financially violated the abuser statutes and that Lonnie should not inherit as RCW § 11.84 applied. *Id.* at 224. The Motion was denied. *Id.* at 225-227. After the denial, Lonnie D. Lowe moved to close the Estate. Petitioner objected to the Final Report on August 18, 2016. The closing was set for August 26, 2016 and Petitioner sought a continuance. It was denied. At the hearing, Petitioner was contacted by telephone, however he was in attendance at a hospital in Palo Alto, California. Aaron L. Lowe's cell phone transmission was blocked at the hospital. Therefore, he could not hear the proceeding. Evidence was submitted by Rule of Evidence 902(d) Declaration that includes transcript of September 17-19, 2013 trial pages and some Exhibits. Lonnie D. Lowe was present at the hearing but did

not testify. VRP 5. No rebuttal by the Estate was presented. No findings of fact or conclusions of law were ever entered.

II. ASSIGNMENTS OF ERROR

ONE

The trial court erred by proceeding with the hearing even though Petitioner could not attend or hear by cell phone.

TWO

The trial court erred by refusing to set the issue of financial abuse of Betty L. Lowe by Lonnie D. Lowe for trial.

THREE

The trial court erred by not entering findings of facts and conclusions of law.

FOUR

The trial court erred by failure to reopen the Estate when the evidence proved that Lonnie D. Lowe financially abused Betty L. Lowe.

FIVE

The trial court erred by not concluding that Lonnie D.

Lowe profited personally from taking his parent's assets and keeping them under his exclusive possession and control.

SIX

The trial court erred by failing to find that Lonnie D. Lowe abused Betty L. Lowe by using her assets to fight Aaron L. Lowe.

SEVEN

The trial court erred by failure to find that Lonnie D. Lowe was the financial abuser of Betty L. Lowe. Therefore, Lonnie D. Lowe could not inherit from Betty L. Lowe.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ONE

Is Aaron L. Lowe, the objecting beneficiary, entitled to be personally present at the hearing on final account?

TWO

Is the denial of a continuance, coupled by failure of a cell phone connection allowing Aaron L. Lowe audio, a violation of due process that deprived Aaron L. Lowe, an estate beneficiary, from material participation?

THREE

Is the proof contained in the evidence submitted sufficient to find that Lonnie D. Lowe was the financial abuser of Betty L. Lowe and prohibiting him from inheritance from her?

FOUR

Do the cumulative procedural errors require a remand?

FIVE

Does the un rebutted evidence require that Lonnie D. Lowe's inheritance lapse?

IV. STATEMENT OF THE CASE

Lonnie D. Lowe told his brother Larry Lowe, "I won't let mom do anything he says and I will fight him with everything I have" in an email, dated August 14, 2006. CP 93. "Him" was Aaron L. Lowe. CP 93. Donald E. Lowe and Betty L. Lowe had three sons: Larry Lowe, Aaron L. Lowe and Lonnie D. Lowe. CP 11. The abuser amendment was not allowed in the September 17-19, 2013 trial. CP 42. Aaron L. Lowe testified that Lonnie D. Lowe controlled the finances of his mother as he had

signatory control on the accounts of his mother. Lonnie D. Lowe wrote himself checks, never accounted to anyone, took the silver and knew that his mother had mental issues. CP 42, 43. Aaron L. Lowe testified that Lonnie D. Lowe was the financial abuser of Betty L. Lowe. He always signed on Betty L. Lowe's bank accounts, he took the silver and other "hard stuff", and did not account to anyone during Betty L. Lowe's life. Lonnie D. Lowe totally controlled the assets of Betty L. Lowe, needed by Betty to live on. CP 44. Lonnie D. Lowe was the joint signer on Betty L. Lowe's bank accounts. CP 43. Lonnie D. Lowe sold approximately \$226,000.00 of the coins after his mother's death. CP 29. Lonnie D. Lowe, during the lifetime of his mother, sold at least one 1000 ounce silver bar. CP 26-7. Lonnie D. Lowe made sure that Bob Lamp redrafted Betty's instructions so that Lonnie received the gold and silver. CP 66, 104, 105. Lonnie D. Lowe intended to keep all this property as his personal assets. CP 24, 25, 43.

During her lifetime, Betty L. Lowe suffered from drug addiction. CP 45. Donald E. Lowe handled the couple's money

to prevent Betty L. Lowe from drug problems. CP 45. Donald E. Lowe died on April 16, 2003. CP 95. Betty L. Lowe would ask the same question two or three times in a five minute span and not remember asking the question or receiving the answer. CP 41. Betty L. Lowe forgot what time to serve Thanksgiving dinner on several occasions. CP 71. Larry Lowe, one of the three brothers, noted a rapid decline of Betty L. Lowe. Lonnie rejected Larry's conclusion. CP 69, 72. Larry Lowe taught Betty L. Lowe how to write checks. CP 70. Aaron L. Lowe collaborated the testimony of his brother, Larry Lowe, and emailed his brothers that something had to be done as Betty L. Lowe repeatedly asked the same questions and never waited for answers. He told his brothers that "because she just kept getting worse." CP 46. Betty L. Lowe had memory loss in 2007. CP 72. A nurse practitioner, Joni Marsh, treated Betty L. Lowe from 2002 until Betty's death. CP 74. Betty L. Lowe was born in 1931. CP 46, 102. She was in her 80's when she died. CP 46. Betty L. Lowe took sleeping medication and also narcotic pain medication. CP 75. The medication could affect

mental activity. Betty L. Lowe thought people were on her roof. CP 77. Pain and sleeping medication was stopped after that. CP 79. Betty L. Lowe declined medications due to cost. CP 78. Betty's family thought she appeared confused in April of 2010. CP 78.

Donald E. Lowe and Don Poindexter, a friend, hid 22 silver bars weighing 55 to 67 pounds each, and four bags of coins, 8x12 in size. One bag was full of gold Krugerrands. All were hidden in the fireplace foundation in the family home. CP 50, 52-54.

Donald E. Lowe, around 1969, paid \$50,000 to buy 22 silver bars and four sacks of gold and silver coins. CP 34-5.

Lonnie D. Lowe admitted that he removed silver bars and bags of silver from the basement of the family home over four years, three or four times from 2003-2007. CP 17-22. Lonnie D. Lowe stated that there were several bags of coins in canvas money bags, 8 to 10 inches wide, 12 to 16 inches long. CP 20. Lonnie D. Lowe never made a list at the time of what he removed. CP 22. Lonnie D. Lowe took all the silver bars and

coins he took from the fireplace hiding place to his home in Olympia, Washington and put them in his vault. CP 62-3. Lonnie D. Lowe told no one about the silver bars and coins except his wife. CP 23. Lonnie D. Lowe did not own the items he took from the residence. He testified that he kept the money for his mother. CP 27, 64. Betty L. Lowe told Aaron L. Lowe that "Lonnie's got my money." CP 44. Betty L. Lowe executed a Power of Attorney to Lonnie D. Lowe on September 15, 2003. CP 73, 110. The Power of Attorney did not allow gifting to the holder, Lonnie D. Lowe. The Power of Attorney was given to Lonnie D. Lowe after it was signed. It was effective immediately and was in effect from time of signature until Betty L. Lowe's death. CP 107. Lonnie D. Lowe testified that he received cash gifts from Betty L. Lowe over a period of time, from 2003 on, but no records were made of the gifts. CP 27. The Power of Attorney was admitted as an exhibit at the trial. Lonnie D. Lowe testified that from 2003 through 2011, he received cash gifts from Betty L. Lowe of "maybe three or four hundred dollars at a time." CP 64. Bob Lamp is the

attorney who interviewed Betty L. Lowe for the purpose of drafting her will a few months before the will was signed. Lonnie D. Lowe was present at the interview. Lamp testified that it appeared that Betty L. Lowe “knew the extent of her assets.” Both Lonnie D. Lowe and Betty L. Lowe omitted any mention to Lamp about any amount of gold and silver owned by Betty. CP 83, 84. If they had told Lamp about the gold and silver he would have included the gold and silver in Donald E. Lowe’s Estate. CP 84, 95-99.

Betty L. Lowe did not direct Bob Lamp to prepare written instructions that changed prior written instructions that would allow Lonnie D. Lowe to keep the gold and silver for himself. If not changed the instructions would not have the language “or to retain for himself.” CP 66, 104, 105.

Donald E. Lowe, prior to his death, in his own handwriting, appointed Aaron L. Lowe as Trustee to administer Donald E. Lowe’s property during the lifetime of his mother, Betty L. Lowe, from 2003 through 2011. CP 106. The gold and

silver taken from the family residence by Lonnie D. Lowe was never inventoried in the Estate of Donald E. Lowe. CP 95-99.

The transcript of the August 26, 2016 hearing indicates that Petitioner's attorney asked: "Your Honor, excuse me I believe the court asked that Aaron L. Lowe be connected by telephone." The Court responded "Okay. And we'll get him on the line. I'm perfectly happy to do that." VRP 5. Aaron L. Lowe's cell phone was dialed by Tuija, the court bailiff. Tuija replied "Your Honor, I got Mr. Lowe's voice mail." The Court stated "okay" and Tuija responded "And I left him a message." VRP 6.

V. SUMMARY OF THE ARGUMENT

Aaron L. Lowe, a beneficiary, objected to the inheritance of Lonnie D. Lowe and was prevented from attending or hearing the argument through no fault of his own. The denial violated due process and requires a rehearing.

Aaron L. Lowe, without opposition, a beneficiary of Betty L. Lowe's Estate, proved all the requisites necessary to prove

Lonnie D. Lowe was the financial abuser of Betty L. Lowe. Therefore inheritance by Lonnie D. Lowe lapsed.

VI. ARGUMENT

A. The Appeals Court has Jurisdiction of this Appeal

RAP 2.2(a)(1) and (3) generally allow an appeal from a written decision affecting a substantial right in a civil case that discontinues the action. Aaron L. Lowe is a beneficiary of the Estates of Donald E. Lowe and Betty L. Lowe, his parents, and is an aggrieved party for the reason that as residuary beneficiary he would receive a greater share of the estates if he prevails on this appeal. If the personal representative has mismanaged the estate or has failed to perform acts, the letters are revoked and someone else is appointed. The Court may add adjudication of heirs that the personal representative has omitted from the final distribution. RCW § 11.76.030. *In re Estate of Wood*, 88 Wash.App. 973, 947 P.2d 782 (Div. III 1997) upholds standing to appeal if the person is an heir. “As an heir, she has a pecuniary and personal interest in the administration of her mother’s estate. Thus, she qualifies as

an aggrieved party and has standing to bring this appeal.” *Id.* at 977. Children who were interested in the estate had a right to appeal where the personal representative neglected the estate. *In re Sutton’s Estate*, 31 Wash. 340, 71 P. 1012 (1903). “The appointment of respondent was asked by the children of the deceased, who are interested in the estate.” *Id.* at 343. An order appointing final account and decree of distribution is a final appealable order. *In re Halle’s Estate*, 29 Wash.2d 624, 632, 188 P.2d 684 (1948).

B. The Failure to Enter Findings and Conclusions Violated Court Rules.

Aaron L. Lowe disputed the final account. No motion disputing the account was necessary as RCW § 11.84.020 is self enforcing. The abuser shall not in any way obtain any property or receive any benefit as a result of the death of the decedent both before and after the death of the decedent. The forfeiture includes vulnerable adult financial exploitation under RCW § 74.34.020 and RCW § 11.84.010(3) and (6).

CR 52(a) requires findings and conclusions. LCR 52(a) requires “formal findings of fact and conclusions of law.” “Local rules apply when not inconsistent with other rules.” No waiver can be implied if a witness should have been called. *State v. Nogueira*, 32 Wash.App 954, 957, 650 P.2d 1145 (Div. I, 1982). The findings in *Nogueira* were insufficient and the case remanded. *Id.* at 958. Here, Lonnie D. Lowe was present, he could have testified. Where no findings are made to support the decision, a remand, especially in this case where Aaron L. Lowe could not appear, is necessary. Where findings on material issues were “non existent” and “the conclusions of law consisted of one sentence”, the case is remanded. *Bowman v. Webster*, 42 Wash.2d 129, 135, 253 P.2d 934 (Wash. 1953). *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wash.2d 413, 886 P.2d 172 (Wash. 1994) required remand. The court stated: “In this case, significant evidence was presented.” *Id.* at 423. “The court listed no facts to support this conclusion.” *Id.* at 421. “Contrary to the judge’s belief, findings must be made on all material issues in order to inform the appellate court as to

what questions were decided by the trial court, and the manner in which they were decided.” *Id.* at 422. (Internal quotes disregarded.) Insufficient findings of fact and conclusions of law require a remand. *Groff v. Department of Labor and Industries*, 65 Wash.2d. 35, 40, 395 P.2d 633 (Wash. 1964).

C. The Failure of an Audio Hook Up Allowing Petitioner to Hear the Proceeding Violates Due Process.

At the hearing, the Court allowed Aaron L. Lowe to participate by phone and requested the bailiff dial Aaron’s cell phone. The hospital where he was present blocked out the call. Due process was violated. RCW § 11.76.050 provides that any person who files objections to a final report and petition for distribution “may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as to it appears proper.” Petitioner had a cogent reason to continue the hearing. The Court denied the continuance but allowed him to participate by phone. The Court clerk dialed Petitioner’s cell phone but it did

not connect. The reason is that the hospital building at Palo Alto, California prohibited cell phone transmission. This result could not be foreseen. As a result, Petitioner was unable to participate in the hearing.

A final report is within the Superior Court's jurisdiction. Wash. Const. art. 4 § 6. *In re Estate of Little*, 127 Wash.App. 915, 921, 113 P.3d 505 (Div. 1, 2005) applies procedural due process to probate proceedings. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 491, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988) requires actual notice where the creditor is known. An interest in a probate is a protected property interest and is protected by due process of the Fourteenth Amendment. Failure of notice voids the hearing of final closing of an estate. *Hesthagen v. Harby*, 78 Wash.2d 934, 946, 481 P.2d 438 (1971).

In the case of *In re Marriage of Ebbighausen*, 42 Wash.App. 99, 708 P.2d 1220 (Div.III, 1985), the trial judge conferred with the attorneys of both parties in chambers and resolved the dissolution, including child custody, without

testimony. The Judge explained: "What I was able to convince the attorneys was, and they conceded, that if each of you had an opportunity to present your testimony we wouldn't be in any different position." *Id.* at 101. The due process rights of the husband were violated. "Thus Mr. Ebbinghausen was not afforded an opportunity to be heard before an impartial tribunal." *Id.* at 104. The court held that the fourteenth amendment of the U.S. Constitution and Article 1, Section 3 of the state constitution was violated. *Id.* at 102. The issue of waiver was not an element. The right to be present is absolute in Washington. In *Esmieu v. Schrag*, 88 Wash.2d 490, 563 P.2d 203 (1977) ex parte testimony, without notice to the beneficiary of the trust, was taken. At a later date, the attorneys presented argument on approval of trustees on exchange of real estate. No testimony was taken. The court held that all subsequent orders were void. "An order based on a hearing in which there was not an adequate notice or opportunity to be heard is void." *Id.* at 497. Failure to take a constitutional exception was excusable. All litigants, whether

civil or criminal, have a right to be present in the courtroom and to meaningfully participate in the process. *Lane v. Tennessee*, 315 F.3d 680, 682 (6th Cir. 2003). In *Rozbicki v. Huybrechts*, 589 A.2d 363 (Conn. 1991), the Plaintiff's attorney applied for a continuance that was denied. Jury selection was undertaken without the Plaintiff. After selection, the trial was continued. The trial court concluded that the attorney had waived his right to jury selection. *Id.* at 388. The opinion concluded that the absence was involuntary and not waived. The case held that the constitutional right to be present at all phases of a case was violated.

Through no fault of his own, Petitioner was deprived of a right to be heard at the hearing.

D. Lonnie D. Lowe was a Financial Abuser of Betty L. Lowe.

Betty L. Lowe, since before the death of Donald E. Lowe, had a functional inability to manage financial assets. Donald E. Lowe, both in his letter to his children and his Will, entrusted Petitioner Aaron L. Lowe to manage Betty L. Lowe's

financial matters. In an email dated August of 2006 to his older brother Larry Lowe, Lonnie D. Lowe, referring to Aaron L. Lowe, stated: "I won't let Mom do anything he says and I will fight him with everything I have." Lonnie D. Lowe purloined the assets and violated his fiduciary duty by taking precious metals of value estimated at over a half-million dollars and by keeping the property. *Gradinaru v. State, Dept. of Social and Health Services*, 181 Wash.App. 18, 325 P.3d 209 (Div. I, 2014) held that caretaker's personal use of medicine prescribed for a vulnerable adult constituted financial exploitation. "Financial exploitation extends to the illegal or improper use of a vulnerable adult's property to further a goal of the person who took that property." *Id.* at 24. Lonnie D. Lowe is a son and also was a beneficiary of Betty L. Lowe. Lonnie D. Lowe had exclusive control of her property and took it, both during Betty's life and after she died. CP 26, 29, 31, 105. Lonnie D. Lowe had her Power of Attorney. Betty L. Lowe was addicted to diet pills and exhibited loss of memory and hallucinations. All the financial abuser requisites were proven. Therefore,

RCW §§ 11.84.010 and 74.34.020 apply. The facts of *In re Estate of Haviland*, 177 Wash.2d 68, 301 P.3d 31 (Wash. 2013) closely parallel the Lowe estate facts. In *Havillard*, the case was returned to examine the abuser facts. *Id.* at 82. “The language plainly seeks to prevent a financial abuser from receiving any property or other benefit from a decedent’s estate.” *Id.* at 76. *In re Estate of Evans*, 181 Wash.App. 436, 326 P.3d 755 (Div. I, 2014), a first impression case, held that the applicable anti-lapse statute, RCW § 11.12.110, applies to the abuser statute, RCW § 11.84.030. *Id.* at 446. “Washington’s abuser statute prevents the abuser from controlling disposition of the Testator’s estate.” *Id.* at 447. As an abuser, Lonnie D. Lowe cannot distribute the estate to himself and possibly has to resign. *Gradinaru v. State, Dept. of Social and Health Services*, 181 Wash.App. 18, 325 P.3d 209 (Div. I, 2014) construes former RCW § 74.34.020(6), the same statute that would apply to Betty L. Lowe. “Former RCW 74.34.020(6) defines ‘financial exploitation’ as the illegal or improper use of the property, income, resources, or trust funds

of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." *Id.* at 22. From the time of removal through 2007, Lonnie D. Lowe took the valuable gold and silver, by far the most valuable assets of his mother, by removing bricks and mortar from the fireplace foundation of the family home. CP 16. He had to remove shelves, take out cinder blocks by hammer and chisel. He admitted that there was at least one 50 pound silver bar. CP 21. From the items removed, he got three or four hundred dollars at a time and also a \$10,000 check. CP 64. From 2003 on, Lonnie D. Lowe always had exclusive possession of his parent's gold and silver. CP 62, 63. Lonnie kept the possession secret. CP 67. Betty L. Lowe told Aaron L. Lowe "Lonnie's got my money," CP 44, she frequently asked Aaron L. Lowe for money, and Aaron gave it to her. CP 40. Aaron L. Lowe observed that his mother, after Donald E. Lowe died, was very forgetful and she would ask the same questions three times within five minutes even after it was answered. CP 41. Aaron L. Lowe summarized the conduct of

Lonnie D. Lowe that proved he was an abuser. Lonnie was a joint signer on Betty's accounts, wrote himself checks, took the silver and knew that Betty L. Lowe had mental issues. CP 42, 43. Betty L. Lowe stated she needed money to live on. CP 44. RCW § 11.84.020 denies an abuser from acquiring any property or receiving any benefit as the result of the death of decedent. The abuser law is to be "construed broadly." RCW § 11.84.900. RCW § 11.84.010(1) defines an abuser as one who participates in the willful and unlawful financial exploitation of a vulnerable adult and § 11.84.010(3) states that financial exploitation has the same meaning as provided in RCW § 74.34.020. RCW § 74.34.020(7)(a)(b) and (c) state:

(7) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) the use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources or

trust funds of the vulnerable adult of the benefit of a person or entity other than the vulnerable adult;

(b) the breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who know or clearly should know that the vulnerable adult lacks the capacity to consent to the release of use of his or her property, income resources or trust funds.

Lonnie D. Lowe's conduct fits all the definitions. Vulnerable adult includes a person who is over 60 and who cannot demonstrate the "functional, mental or physical inability to care for himself or herself." RCW § 74.34.020(21)(a). Betty L. Lowe was addicted to pain killer medication since the 1980's. She was unable to care for herself financially, and she had to obtain money to live on from her son, Aaron L. Lowe; Betty L. Lowe had to be taught how to write checks by another son and was also financially dependent due to the removal and control,

by Lonnie D. Lowe, of all her financial assets needed to live on. She also met the other definition of vulnerable adult at RCW § 74.34.020(10). RCW § 11.88.010(1)(b) states, she was “at significant risk of financial harm, based upon a demonstrated inability to adequately manage property or financial affairs.” A guardian would have kept her from dependency on her youngest son, Lonnie D. Lowe, who controlled her financial assets to a point where she had to ask another of her sons, Aaron L. Lowe, for money to live on. Secondly, her susceptibility to drugs, a condition known to Aaron L. Lowe, would have been sufficient for a guardianship. Authentication of the Trust, CP 106, if known to Aaron L. Lowe, would have resulted in appointment of Aaron L. Lowe as her guardian. “Financial exploitation extends to the illegal or improper use of a vulnerable adult’s property to further a goal of the person who took that property.” *Gradinaru v. State, Dept. of Social and Health Services*, 181 Wash.App. 18, 24, 325 P.3d 209 (Div. I, 2014). By his own email, Lonnie D. Lowe wanted to fight Aaron L. Lowe with “everything I have.” CP 93. He had Betty’s gold

and silver and fought Aaron for it. He had his father's handwritten trust appointing Aaron, but hid it from Don's probate attorney and Aaron. He used Betty L. Lowe as a tool to fight Aaron L. Lowe. Abuse includes "personal exploitation" of a vulnerable adult. RCW § 74.34.020(2), Personal exploitation includes exerting undue influence inconsistent with past behavior. RCW § 74.34.020(2)(d). Abuser means any person who participates in the willful and unlawful financial exploitation of a vulnerable adult. RCW § 11.84.010(1). The financial exploitation can occur anytime during the life of the vulnerable adult. RCW § 11.84.010(2)(b). Willful means "intentionally and designedly." *In re Estate of Kissinger*, 166 Wash.2d 120, 132, 206 P.3d 665 (2009) applies "willful" to an insane person. *Id.* at 122. Lonnie D. Lowe willfully and unlawfully committed a breach of fiduciary capacity and is an abuser as defined in RCW §§ 11.84.010, 020 and 74.34.020(b) by control over Betty L. Lowe's property. He was in a family position and had a power of attorney, therefore, was in a position of trust as stated in RCW § 74.34.020(7)(a). He

misused the power of attorney to transfer property. This conduct is prohibited by RCW § 74.34.020(7)(b). He removed property of Betty L. Lowe who had no ability to remove the property due to its hiding place and weight, thereby exerting control prohibited by RCW § 74.34.020(7). Betty L. Lowe, at said time, was a vulnerable adult as she was over sixty years of age and unable to manage the property due to its location, weight and hiding place. There is no indication she knew of the property hidden before Lonnie D. Lowe learned of the hiding place. Betty L. Lowe also qualifies as a vulnerable adult under RCW § 74.34.020(21)(a) as referenced to RCW § 11.88.010(1)(b) due to her functional inability to adequately manage finances. Lonnie D. Lowe factually is within the abuser statutes and laws of the state of Washington and cannot keep any property obtained during the life of Betty L. Lowe. Further, he cannot inherit or in any way profit from the estate of Betty L. Lowe. All property, proceeds from property, and property sold must be returned in kind to the Estate and

a deficiency judgment entered against Lonnie D. Lowe in favor of the Estate for assets sold and money spent.

VII. CONCLUSION

Lonnie D. Lowe is a financial abuser of Betty L. Lowe. He cannot keep any of the property obtained from his mother whether before or after her death. Alternatively the case should be remanded to remedy procedural errors.

DATED this 10th day of March, 2017.



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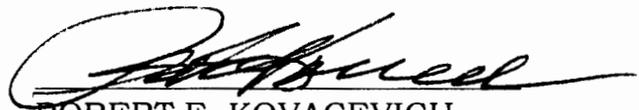
CERTIFICATE OF SERVICE

This is to certify that on March 10, 2017, a copy of the Opening Brief of Petitioner was served on Counsel for Plaintiff/Appellee by hand delivery, addressed as follows:

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