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Court of Appeals No. 355004
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Estate of MARTHA D. BOOHEISTER,

Deceased.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR PEND ORIELLE COUNTY

The Honorable Allen C. Nielson, Judge

APPELLANT'S REPLY BRIEF

SPRINKLE LAW FIRM
S. CHARLES SPRINKLE, WSBA No. 16090
417 Mineral Avenue, Suite 3
Libby, MT 59923
(406) 293-1071
Attorney for Appellant

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I. APPELLEE KRAUSE RAISES THE ISSUE OF LACK OF PERSONAL SERVICE UNDER R.C.W. 11.24.010 FOR THE FIRST TIME ON APPEAL AND IN CONTRADICTION TO THE MOTION TO DISMISS FILED ON DECEMBER 7, 2016.

Appellee Alisha Krause filed her Motion and Memorandum to Dismiss on December 7, 2016. In the Conclusion to that Memorandum Appellee Krause alleges that “Petitioner filed the Will Contest, pursuant to R.C.W. 11.24.010... portion deleted... Petitioner failed to request a Citation... portion deleted... and failed to issue a Summons... Petitioner failed to serve the Personal Representative with either.” CP#19, p.6.

That Memorandum did not mention any concern or issue about personal service of the Will Contest Petition. In fact, as was cited above, the CONCLUSION to Appellee’s Motion to Dismiss states, at the outset, that “**Petitioner filed the Will Contest, pursuant to R.C.W. 11.24.010 on August 19, 2016.**”

That does not sound like an objection to the service of the Will Contest Petition. In fact, that sentence is an admission that the Will Contest Petition was filed and served properly pursuant to R.C.W. 11.24.010.

The net result should be that the Court on Appeal should disregard this Claim as not having been raised at the level of the lower Court. The Appellee Alisha Krause simply **did not** raise the issue of service of the Will Contest Petition at the lower Court and on that basis her claim should be denied.

II. THE NOTE FOR HEARING WAS, IN THIS CASE, THE FUNCTIONAL EQUIVALENT OF A CITATION/SUMMONS

The Appellee Alisha Krause has conceded that the Will Contest Petition was filed and served as discussed above. The Note for Hearing is clearly the functional equivalent of a Citation/Summons due to the fact that the Appellee responded to the Note for Hearing and filed the Motion to Dismiss which is the basis upon which the lower Court dismissed this case.

However, the Appellee Alisha Krause fails to state facts that would suggest that the Note for Hearing was **not** the functional equivalent of a Citation/Summons. *In Re Estate of Palucci*, 810 P.2d 970, 61 Wn.App. 412 (Wash.App., 1991).

It should be noted that the Court in the Palucci Case, *supra*, did not recite any facts supporting Appellee's interpretation of that decision. Appellee suggests that the Court concluded that the Note of Hearing was accepted as the functional equivalent of a Citation based upon a previously filed but dismissed Citation. If Appellee's claim can be accepted, then there should have been no need to identify the Note for Hearing as the "functional equivalent of a Citation". Furthermore, it was never really distinguished whether the reference to the Citation referred to the service of the Citation and the Petition to Contest the Will which would have been served with the Citation or whether it referred to the Citation by itself. The reference in the decision is made to the Note for Hearing as the functional equivalent of the Citation/Summons to obtain jurisdiction.

III. R.C.W. 11.96A.100(2) EXCEPTION MAY APPLY IN THIS CASE DUE TO THE FACT THAT THE PETITION TO CONTEST THE WILL WAS PROPERLY SERVED AND THE ONLY CONCERN THEN HAD BY APPELLEE WAS THE FACT THAT A NOTE OF HEARING WAS SERVED RATHER THAN A SUMMONS

The Case cited by Appellee, Kordon 157 Wash. 206, addressed that Statute in connection with lack of service of both the Petition to Contest the Will and the Summons. Again, in this case, the Petition to Contest the Will was properly served and such service has been acknowledged. The Court may very well find that R.C.W. 11.96A.100(2) does, in fact, apply in this case due to the fact that the Petition to Contest the Will was served.

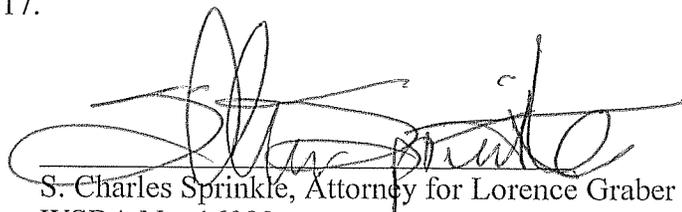
IV. APPELLANT CONCEDES THAT APPELLEE ALISHA KRAUSE HAD NO DUTY TO INFORM APPELLANT LORENCE GRABER THAT A JURISDICTIONAL ISSUE EXISTED. HOWEVER, APPELLEE ALISHA KRAUSE HAD A DUTY OF CANDOR TOWARD THE TRIBUNAL. WASHINGTON R.P.C. 3.3.

Appellee requested a continuance from the Lower Court for the alleged purpose of discovery. No discovery documents were ever filed with the Court after the date of the Motion for that very purpose. However, Appellee obtained a consent to a continuance based upon a specific claim of a desire to engage in discovery. Rather than engage in discovery Appellee waited until such time as a Motion to Dismiss could be filed due to the alleged claim of lack of jurisdiction. In the Motion to Continue the reason given, that being for discovery, was not correct, no discovery was done, and the Appellee instead used the time gained by the consent of opposing Counsel to simply wait out and exploit the claim of lack of service of Summons to obtain a dismissal. Had the Appellee approached the tribunal with candor about the reason for continuance, then, as had been stated previously, the issue with jurisdiction would have been resolved.

CONCLUSION

Appellant submits that the lower Court obtained jurisdiction over this Cause, that the Order of Dismissal should be set aside and this matter remanded to the lower Court for further proceedings.

DATED this 7th day of July, 2017.



S. Charles Sprinkle, Attorney for Lorence Graber
WSBA No. 16090
Attorney for Lorence Graber
SPRINKLE LAW FIRM
417 Mineral Avenue
P.O. Box 795
Libby, MT 59923

DECLARATION OF MAILING

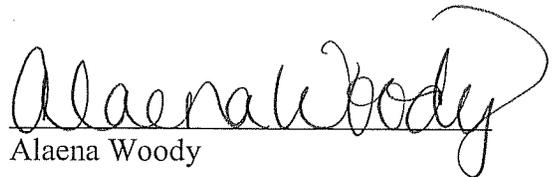
I, Alaena Woody, being first duly sworn on oath deposes and says:

That I am a citizen of the United States of America and the State of Montana, over the age of eighteen years and not a party to this action; that on the 7th day of July, 2017, I served the following people with the Appellant's Reply Brief by placing said copies in the United States Mail with postage prepaid, at Libby, Montana and addressed to:

Andrew Mitchell
Lake City Law
1710 N. Washington Street, #200
Spokane, WA 99205

BETTY LAPP
515 Riverside Park Rd.
Bismarck, ND 58504-5373

JOAN STAFFORD
10253 S 4422
Locust Grove, OK 74352-6091


Alaena Woody