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SUPREME COURT OF THE
STATE OF WASHINGTON

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In RE ESTATE OF MARTHA D. BOOHEISTER, Deceased

LORENCE GRABER,
Appellant,

and

ALISHA KRAUSE, Personal Representative,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This lawsuit involves a will contest action improperly commenced by Appellant Lorence Graber. While Appellant Graber properly filed his petition for the action, he never personally served the petition on the personal representative and he never filed or personally served a summons or citation, all of which were required by the controlling statute. Instead, he filed a Note for Hearing with the petition and then mailed both pleadings to the personal representative, Respondent Alisha Krause.

Appellant Graber contends that filing and mailing these pleadings substantially complied with the service requirements of the will contest statutes and, specifically, that the Note for Hearing was the “functional equivalent” of a summons or complaint.

However, under the express language of the statutes at issue and the long standing case law in Washington regarding just these issues, the trial court correctly concluded that Appellant Graber did not properly commence his will contest action and, accordingly, the court did not have jurisdiction to decide the matter. Appellant Graber’s action was properly dismissed by the trial court and such dismissal should be affirmed on appeal.

II. ISSUE ON APPEAL

There is really only one assignment of error and issue raised on appeal: Did the trial court have jurisdiction over the will contest action where Appellant failed to personally serve the petition or any summons or citation pursuant to RCW 11.24.010 and 11.24.020?

Pursuant to both the statutes themselves and the controlling case law, the answer is no. The trial court's decision dismissing the will contest action for lack of jurisdiction should be affirmed on appeal.

III. SUPPLEMENTAL STATEMENT OF THE CASE

Appellant's Statement of the Case is short and concise – but also incomplete. A number of the relevant facts are either omitted or provided elsewhere (see Appellant's Introduction) and, thus, out of context. Respondent therefore offers this Supplemental Statement of the Case:

- The decedent, Martha Booheister, died testate on March 15, 2016 and her Will was admitted to probate by Order of the trial court on April 25, 2016. At the same time, Respondent Krause was appointed Personal Representative of the estate. CP 91.
- Appellant Graber is the sole surviving sibling of Ms. Booheister and an interested person under Ms. Booheister's Will. CP 91.
- Appellant Graber filed a will contest petition in the probate action on August 19, 2016. That same day, Appellant Graber also filed a Note for Hearing, attempting to set a hearing to have the will contest issues determined. CP 110.
- The Note for Hearing was addressed to the Clerk of the Court, Respondent Krause, and other parties, and contained the following information:
 - It confirmed a will contest petition was being filed therewith and was attached;

- It provided the date, time and location of a hearing on the will contest, including the name and address of the court where the action was filed. CP 110.
- The Note for Hearing did not instruct the receiving party that an answer must be filed in order to defend against or object to the will contest petition; it did not instruct that said answer must be in writing and filed and served within any time period or deadline; it did not advise that a default judgement might be entered absent filing an answer or explain what a default judgment is; it did not advise the receiving party to consult a lawyer; and it did not state it was issued under any statute or, specifically, the notice statute RCW 11.24.020; RCW 11.96A.100(3). CP 110.
- Appellant Graber also filed a Declaration of Mailing, attached to the Note for Hearing, stating that the will contest petition and the Note for Hearing were mailed to Respondent Krause on August 19, 2016. CP 111. No other declaration or affidavit establishing personal service of the pleadings was ever filed.¹

¹ Pursuant to RAP 2.5(a), Respondent is raising for the first time on appeal and as an alternative grounds for affirming the trial court the fact that Appellant Krause failed to personally serve the will contest petition on personal representative Alisha Krause as required by RCW 11.24.010. It was initially assumed Ms. Krause had received the Petition and Note for Hearing via personal service, but as the record before the trial court and now here on appeal confirms, the petition was only mailed to Ms. Krause – it was never personally served. The record is therefore sufficiently developed or complete on appeal for the court to consider this additional jurisdictional basis for affirming the trial court’s decision. RAP 2.5(a).

- Counsel for Respondent Krause appeared on September 22, 2016 and on September 28, 2016 filed a motion to continue the will contest hearing to afford time for discovery. CP 7-10. The motion to continue was heard on October 13, 2016 and at that time, the trial court entered an Order striking the hearing altogether because it had been improperly noted on the standard motion docket, instead of as a trial setting; the trial court recognized that the hearing on the will contest would require presentment of evidence and possible oral testimony and thus needed more time than afforded by the regular motion docket. CP 18; VRP 4-5. Thus, the hearing was not continued but struck altogether. CP 18.
- After the hearing was struck, Appellant Graber continued to engage in discovery, issuing a subpoena for records on or about November 10, 2016. CP 20. He did not re-note his hearing for a trial setting, as instructed by the trial court.
- Respondent Krause filed a motion to dismiss the will contest action on December 7, 2016, arguing lack of jurisdiction based on Appellant Graber's failure to ever file or personally serve a Summons or Citation as required by RCW 11.24.020. CP 21-26.
- Appellant Graber filed a Response opposing dismissal on December 19, 2016. CP 33-38. Respondent Krause's Reply in support of her motion to dismiss was filed on December 27, 2016. CP 67-74.
- The motion to dismiss came on for hearing before the trial court on December 29, 2016. VRP 1-2. After hearing argument of counsel, the

trial court deferred ruling and indicated a letter would be forthcoming, *nunc pro tunc*. VRP 8; CP 80.

- The trial court’s Hearing, Findings of Fact, Conclusions of Law and Ruling was entered on January 13, 2017 and granted Respondent Krause’s motion to dismiss for lack of jurisdiction, concluding Washington courts require strict enforcement of the requirements for commencing a will contest action and anyone commencing such an action “must” request and serve a citation or summons on the personal representative within 90 days of filing the petition, or the trial court lacks jurisdiction. CP 81-83.
- Appellant Graber’s Notice of Appeal was timely filed on February 9, 2017, seeking review of the trial court’s Conclusions and Rulings in its January 13, 2016 decision. CP 85.

Those are the relevant substantive and procedural facts regarding the limited issue raised in this appeal.

IV. ARGUMENT

The trial court’s conclusions and ruling in this matter should be affirmed because they are supported by the controlling law and the undisputed facts on record before the court. As the trial court correctly concluded, the controlling law in Washington requires strict compliance – not substantial compliance – with the statutory requirements for commencing a will contest action and, specifically, requires strict compliance with the statutory requirements that the party challenging the will must personally serve the petition AND must file and personally serve

a summons or citation on the personal representative within 90 days of filing the petition. RCW 11.24.010, 11.24.020; In re Estate of Jepsen, 184 Wn.2d 376, 358 P.3d 403 (2015); In re Estate of Kordon, 157 Wn.2d 206, 137 P.3d 16 (2006).

Appellant Graber failed to comply with these statutory requirements altogether. The petition was filed but never personally served and no summons or citation was ever filed or served on anyone. Thus, the court never obtained jurisdiction and the will contest action was properly dismissed. Id. The trial court's conclusions and ruling based on lack of jurisdiction should be affirmed.

A. Standard of Review

Appellant Graber has appealed the trial court's ruling dismissing this action for lack of jurisdiction. This court reviews jurisdiction rulings or decisions based on service of process de novo. Streeter-Dybdahl v. Nguyet Huynh, 157 Wn. App. 408, 412, 236 P.3d 986 (2010) (citing Pascua v. Heil, 126 Wn. App. 520, 527, 108 P.3d 1253 (2005)); In re Estate of Harder, 185 Wn. App. 378, 341 P.3d 342 (2015) (citing Kordon, 157 Wn.2d at 209).

Such ruling was based on the trial court's interpretation of the statutes governing commencement of a will contest action – which is a special proceeding governed entirely by statute. Jepsen, 184 Wn.2d at 380 (citing In re Estate of Toth, 138 Wn.2d 650, 653, 981 P.2d 439 (1999)). Thus, review by this court involves questions of statutory interpretation, which are also reviewed de novo. Jepsen, 184 Wn.2d at

379 (citing In re Marriage of Buecking, 179 Wn.2d 438, 443, 316 P.3d 999 (2013)).

B. Jurisdiction Under RCW Chapter 11.24

The trial court properly dismissed this action after concluding it lacked jurisdiction under the statutory requirements for commencing the action – specifically, RCW Chapter 11.24.

“Basic to litigation is jurisdiction, and first to jurisdiction is service of process.” Rodriguez v. James-Jackson, 127 Wn. App. 139, 143, 111 P.3d 271 (2005) (citing Dobbins v. Mendoza, 88 Wn. App. 862, 947 P.2d 1229 (1997)). “Proper service of process ‘is essential to invoke personal jurisdiction over a party.’” Kordon, 157 Wn.2d at 210 (quoting In re Marriage of Markowski, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988)); see also Streeter-Dybdahl, 157 Wn. App. at 412 (“Proper service of the summons and complaint is a prerequisite to the court obtaining jurisdiction over a party[.]” (quoting Woodruff v. Spence, 76 Wn. App. 207, 209, 883 P.2d 936 (1994)).

The party commencing the action has the burden to establish proper service. Streeter-Dybdahl, 157 Wn. App. at 412 (citing Gross v. Sunding, 139 Wn. App. 54, 60, 161 P.3d 380 (2007)). Absent evidence of proper service on the parties, the court is deprived of jurisdiction and dismissal of the action is appropriate. Kordon, 157 Wn.2d at 212, 214.

As noted above, a will contest action is a special statutory proceeding governed by RCW Chapter 11.24 – which expressly states the requirements for commencing the action, including proper service of

process. RCW 11.24.010, 11.24.020. “Washington courts have always strictly enforced the requirements for commencing will contest actions[.]” Jepsen, 184 Wn.2d at 381 (citing Toth, 138 Wn.2d at 656; State ex rel. Wood v. Superior Court, 76 Wn. 27, 30-31, 135 P. 494 (1913); In re Estate of Peterson, 102 Wn. App. 456, 463, 9 P.3d 845 (2000)).

Thus, the service requirements of RCW Chapter 11.24 must be strictly enforced and Appellant Graber had the burden of establishing compliance therewith. Appellant Graber failed to meet this burden. Thus, the trial court properly concluded it lacked jurisdiction based on failed service of process and dismissed the action. The trial court’s conclusion and ruling should be affirmed.

1. COURT LACKS JURISDICTION BASED ON LACK OF PERSONAL SERVICE UNDER RCW 11.24.010.

The trial court’s decision dismissing this will contest action for lack of jurisdiction should be affirmed because Appellant Graber failed to personally serve the will contest petition on Appellant Krause as required by RCW 11.24.010.

In interpreting and applying the language of a statute, the court’s inquiry starts with the statute’s plain language. Jepsen, 184 Wn.2d at 379-80; State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003); Dep’t of Ecology v. Campbell & Gwinn LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

For RCW 11.24.010, the Washington Supreme Court has concluded its inquiry “ends there” – at the plain, unambiguous language of the statute which requires no further construction. Jepsen, 184 Wn.2d at 379-80.

Thus, a “will contest petitioner must satisfy RCW 11.24.010’s requirements in order to commence a will contest action[.]” Id., at 379.

The express language of RCW 11.24.010 provides that a person commencing a will contest action “shall” file the will contest petition within four (4) months of the filing of the probate and “shall” personally serve the personal representative within ninety (90) days of filing the petition. RCW 11.24.010. These requirements are mandatory and absent strict compliance, the action is not properly commenced and the trial court lacks jurisdiction to proceed. Jepsen, 184 Wn.2d 376; Kordon, 157 Wn.2d at 211-212.

Probate in this matter was commenced by filing and court Order on April 25, 2016 and Appellant Graber timely filed his will contest petition on August 19, 2016. CP 91. Thus, the filing requirement under RCW 11.24.010 was met.

However, Appellant Graber never personally served the petition on Respondent Krause, the personal representative – and has never contended otherwise. Instead, he mailed the petition to Ms. Krause. CP 111. Mailing the petition failed to comply with the express language of RCW 11.24.010 requiring personal service of the petition. As noted by the Washington Supreme Court in Jepsen, this requirement of personal service is strictly enforced. Jepsen, 184 Wn.2d at 380. It never occurred and thus the action was never properly commenced. Id.

Absent personal service and a properly commenced action, the court concluded it lacked jurisdiction to proceed and appropriately granted

Respondent Krause's motion to dismiss. See Jepsen, 184 Wn.2d at 378 (holding that where the will contest petition was never personally served on the personal representative, the action was never "fully commenced and should have been dismissed.") The trial court's conclusions and ruling dismissing for lack of jurisdiction should be affirmed. RAP 5.2(a).

2. COURT LACKS JURISDICTION BASED ON FAILURE TO FILE OR PROPERLY SERVE SUMMONS OR CITATION UNDER RCW 11.24.020.

The trial court's conclusions and rulings should also be affirmed on appeal because Appellant Graber never filed or personally served a summons or citation as required by RCW 11.24.020.

It is well established law in Washington that proper service of a summons is required to confer jurisdiction on the courts and properly commence an action – and this is true under the will contest statutes as well. Streeter-Dybdahl, 157 Wn. App. at 412; Woodruff, 76 Wn. App. at 209; Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 324, 877 P.2d 724 (1994); RCW 11.24.020.

Notice without proper service is not enough. In re Marriage of Logg, 74 Wn. App. 781, 784, 875 P.2d 647 (1994). Yet that is exactly what Appellant Graber is contending and asking the court to accept – notice without filing or serving a summons or citation. This is the central issue that was argued to and decided by the trial court.

RCW 11.24.020 expressly provides that once the will contest petition is filed, "notice shall be given as provided in RCW 11.96A.100" to

the personal representative and all other interested parties. RCW 11.96A.100 then expressly provides a summons “must” be served in accordance with that chapter and the controlling procedural rules of the court, and details the language and information that needs to be contained in the summons. RCW 11.96A.100(2) & (3).

Thus, RCW 11.24.020 requires proper service pursuant to the court rules of a summons, containing specific information, as part of commencing a will contest action. Id.; accord In re Estate of Kordon, 157 Wn.2d at 209 (“A party contesting a will must request and serve a citation on the executor of the will.”) This is consistent with other general Washington case law requiring the same thing – the filing and proper service of a summons – to fully commence any other action in the state. Streeter-Dybdahl, 157 Wn. App. at 412; Woodruff, 76 Wn. App. at 209; Allstate, 75 Wn. App. at 324; Logg, 74 Wn. App. at 784.

Appellant Graber never filed or served a summons or citation in this action. His will contest action was therefore never properly commenced and the court lacked jurisdiction to proceed. Accordingly, the trial court properly dismissed the action for lack of jurisdiction. Kordon, 157 Wn.2d at 213-214. The trial court’s conclusions and decision should be affirmed.

i. Note for Hearing Lacked Required Language and Information of a Summons.

Appellant Graber attempts to get around this strictly enforced statutory requirement by arguing he substantially complied by filing a Note

for Hearing with the petition – and then mailing it to Respondent Krause. As the trial court correctly determined, this argument fails for two reasons.

First, the Note for Hearing lacked the language and specific information required under RCW 11.24.020 and RCW 11.96A.100(3) for the summons. As noted in the Supplemental Statement of the Case above, the Note for Hearing was directed to Respondent Krause and it did state a will contest was being filed and provide the name and address of the court. CP 110. However, all the other language and information required by RCW 11.24.020 via RCW 11.96A.100(3) was not included. Id.

Thus, the Note for Hearing was not the equivalent of a summons or citation and, more significantly, it did not contain the language or information that needs to be in there. RCW 11.24.020; 11.96A.100(3). Appellant Graber failed to meet the notice requirements of RCW 11.24.020, which is strictly enforced by the court for commencement of the will contest action, and thus failed to confer jurisdiction over the court. Jepsen, 184 Wn.2d at 381. His action was properly dismissed and the trial court’s decision should be affirmed.

ii. Note For Hearing was not Properly Served.

Second, the Note for Hearing was not properly served. Again, as with the petition, the Note for Hearing was mailed to Respondent Krause. RCW 11.24.020, via RCW 11.96A.100(2), requires service in accordance with the applicable court rules. Those applicable court rules require personal service. *See* CR 4(d)(2) (“Personal service of summons and other

process shall be as provided in RCW 4.28.080”); *see also* RCW 4.28.080(15) (“In all other cases, to the [party] personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.”) The Note for Hearing – like the petition – was not personally served.

The applicable court rules do provide for service by mail – but only per the procedures and requirements set forth in the rule, which were not followed here. Specifically, CR 4(d)(4) requires the filing of an affidavit to serve by mail, determination by the court that such service is likely to give actual notice, and issuance of an Order by the court for service by mail. Appellant Graber did not follow any of these requirements, or any of the other subsequent requirements under CR 4(d)(4) for completing and perfecting such service by mail if ordered by the court.

Thus, even if the Note for Hearing did contain all the information required in a summons (which it did not), Appellant Graber still failed to properly serve the Note for Hearing and thus failed to properly commence his action. The bottom line is Appellant Graber utterly failed to comply with the statutory and court rule requirements for proper notice for his will contest action – and such total failure to comply is not sufficient or acceptable. Kordon, 157 Wn.2d at 213-14.

The action was not properly commenced, the trial court lacked jurisdiction over the parties who were never properly served with the necessary pleadings, and dismissal was appropriate. Kordon, 157 Wn.2d

206; Jepsen, 184 Wn.2d 376. The trial court's conclusions and ruling should be affirmed on appeal.

iii. Palucci Does Not Apply.

Appellant Graber attempts to excuse his lack of proper service of a summons by relying on the case In re Estate of Palucci, 61 Wn. App. 412, 810 P.2d 970 (1991). However, such reliance is misplaced. Palucci is factually distinct from and does not legally support Appellant Graber's argument – and more significantly, Palucci does not contradict or conflict with the trial court's conclusions and ruling in this matter.

Palucci involved a will contest action. The will was admitted to probate and the deceased's daughter timely filed a petition contesting the will. Id., at 413. Under the precursor statute to RCW 11.24.020, the court issued the required citations and they were personally served, with the affidavits of service subsequently filed. Id. Thus, the will contest action in Palucci was properly commenced with filing and proper personal service of the petition and the citations. Based on those facts alone, the case is factually different and distinct from this matter and does not control the issues presented herein. Analysis should end there, but Appellate Graber relies on subsequent procedural facts to argue the case is controlling.

After the action in Palucci was properly commenced, it was dismissed. Id., at 414. Rather than start a new action – and thus have to issue and personally serve a new citation – the daughter moved to have the original action reinstated and the court eventually granted that motion. Id. Thus, the original citation, which had been properly personally served, was

reinstated and pursuant thereto, the Court issued an order requiring the other parties to appear at the determination of the will contest. Id. The Note for Hearing to determine the will contest was mailed to the relevant parties. Palucci, 61 Wn. App. at 416.

The rest of the decision in Palucci has to do with whether mail service of the Note for Hearing was proper service under RCW 11.96.100 – and in the end the court concluded that yes it was, because the Note for Hearing asked the parties to appear and “answer the original, reinstated citation.” Palucci, 61 Wn. App. at 416-417.

Thus, Palucci is not a case where a will contest action was commenced by filing and mailing a Note for Hearing instead of a citation or summons – as Appellant did and argues should be sufficient here. It is a case where the action was properly commenced, with personal service of the citation as required; the action was then dismissed, then reinstated, and then a Note for Hearing to determine the matter was mailed out under the original, personally served citation. Palucci, 61 Wn. App. 412.

Put another way, the personal representative and heirs in Palucci were arguing after the action was reinstated that a second citation had to be issued and personally served in that action, to establish the court’s jurisdiction over them again. Id. The court rejected that argument because the original citation, which was originally personally served and thus established jurisdiction already, was reinstated. Palucci, 61 Wn. App. at 416-418. Thus, the subsequent Note for Hearing *in the properly*

commenced action did not have to be personally served with a new or second citation. Id.

That is not what factually has happened here and thus Palucci is not applicable or controlling here. Here, no summons or equivalent containing the required information or language was ever filed or personally served. Accordingly, and unlike Palucci, the action was never properly commenced and there was no prior pleading or citation the court can fall back on to find jurisdiction, like the original citation in Palucci. The subsequent Note for Hearing in Palucci did not substitute for the original citation, it relied upon the jurisdiction established by the original citation. No such citation or summons exists here and both the content and the method of service for the Note for Hearing was insufficient under the current RCW 11.24.020 and RCW 11.96A.100(2) & (3). Palucci is not dispositive of this matter.

Thus, Appellant Graber's action was never properly commenced, the court never obtained jurisdiction, and dismissal was therefore appropriate. Kordon, 157 Wn.2d 206; Jepsen, 184 Wn.2d 376. The trial court's conclusions and ruling should be affirmed.

C. RCW 11.96A.100(2) Exception Does Not Apply.

Appellant Graber argues in the alternative that if his Note for Hearing was insufficient, he was not required to serve notice pursuant to RCW 11.24.020 based on the exception language in RCW 11.96A.100(2). However, the Washington Supreme Court directly addressed and rejected this argument in Kordon based on the express language of RCW Chapter 11.96A.

RCW 11.96A.100(2) provides that a summons must be served in accordance with that chapter and the applicable procedural court rules – EXCEPT if the proceeding is commenced in an already existing action relating to the same trust, estate or nonprobate asset, and then notice must only be provided by summons to those parties not already parties to the existing action.

This exception for service of a summons in RCW 11.96A.100(2) would negate the requirement for notice under RCW 11.24.020 if it were applicable to the latter statute. However, as the court in Kordon recognized, RCW 11.96A.080(2) expressly states that the provisions of RCW Chapter 11.96A *shall not* supersede or negate the provisions of RCW 11.24.020:

The provisions of this chapter shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter...11.24....

RCW 11.96A.080(2); quoted in Kordon, 157 Wn.2d at 212.

Thus, under the rules of statutory interpretation requiring consideration of the plain language of a specific statute within the context of the chapter as a whole, the summons and service exception in RCW 11.96A.100(2) does not apply to or supersede the notice requirement of RCW 11.24.020. Kordon, 157 Wn.2d at 212. “A party contesting a will must satisfy the RCW 11.24.020 citation requirement.” Id.

This alternative argument by Appellant Graber fails and the trial court’s conclusions and ruling should be affirmed on appeal.

D. No Other Legal Grounds to Reverse Decision.

Finally, Appellate Graber makes an argument regarding alleged conduct by counsel for Respondent Krause that has no legal authority or basis, but appears to either be an argument in equity or just an attempt to “poison the well.” Either way, the argument is not well taken and provides no legal grounds to reverse the decision of the trial court. See Kordon, 157 Wn.2d at 214 (recognizing that when a party totally fails to comply with the Notice requirements under RCW 11.24.020, the court has no jurisdiction to hear and determine the matter and “neither does the court of equity have power to entertain such jurisdiction.”) (citing Wood, 76 Wn. at 30-31; Toth, 138 Wn.2d at 653).

To address the factual allegations themselves, Appellate Graber contends his “continuance” of his hearing to determine the will contest was granted or agreed to in order for Respondent Krause to conduct discovery – which she never did, so it must have been a ruse. However, counsel for Appellant Krause never agreed to a continuance, which necessitated the filing of a motion to continue the hearing, and at the hearing on the motion to continue, the trial court struck Appellant Graber’s determination hearing after concluded it had been improperly noted on the wrong calendar; it needed a trial setting, not a motion docket setting. CP 9-18.

Thus, Respondent Krause’s motion to continue was technically not granted, the hearing was struck and not continued, and Appellate Graber could have but never did properly re-note his hearing on the trial schedule (assuming the court had jurisdiction to proceed – which it did not). Instead,

Appellate Graber engaged in further discovery himself. CP 20. Respondent Krause did nothing to prevent Appellate Graber from re-noting his hearing for trial and was under no obligation to notify him of the problems or deficiencies with his filings and service of process.

What is more, Respondent Krause waited just over three weeks after the ninety day deadline for personally serving the petition and filing and personally serving the summons to file her Motion to dismiss. CP 21, 91; RCW 11.24.010; see also Kordon, 157 Wn.2d at 213 (holding the deadlines set by RCW 11.24.010 for the petition also apply to the summons under RCW 11.24.020). Thus, her attorney did not delay and drag things out until the minute the deadline expired, and then rush to the courthouse to file before Appellant Graber recognized his mistake and had a chance to correct it. Respondent Krause waited more than the statutorily required time for Appellate Graber to properly commence this action, he failed to do so, and she then waited another three weeks to file her motion to dismiss.

There was no wrongdoing or lack of candor by Respondent Krause and such allegations provide no legal basis to excuse Appellant Graber's failure to comply with the strictly enforced requirements under RCW 11.24.010 and 11.24.020 to properly commence this action. The trial court's conclusions and ruling should be affirmed.

V. CONCLUSION

Pursuant to the facts and controlling law argued above, the conclusions and ruling of the trial court dismissing the will contest action

should be affirmed because the action was never properly commenced and thus the court lacked jurisdiction to proceed.

VI. REQUEST FOR ATTORNEYS FEES

Pursuant to RAP 18.1 and RCW 11.96A.150, Respondent Krause respectfully asks the court for an award of reasonable attorneys' fees and costs from Appellant Graber because Appellant Graber's appeal lacks merit. RAP 18.1; RCW 11.96A.150(1)(a); see also Anderson v. Dussault, 177 Wn. App. 79, 310 P.3d 854 (2013) (awarding attorney fees pursuant to RCW 11.96A.150 to Respondent because the Appellants' claims lacked merit).

The statutes and controlling case law in this matter are very clear on what must be done to properly commence a will contest matter, Appellant Graber failed to comply with those statutes on several fronts, and the one case he relies upon – Palucci – is factually distinct from and not controlling in this matter. The trial court's conclusions and ruling properly stated the applicable law underlying its decision, confirmed Palucci does not apply and why, and reached the correct ruling. Appellant Graber's conclusive argument on appeal is that the law does not state what it does, and such argument lacks merit.

Respondent Krause therefore respectfully asks the court to exercise its discretion under RCW 11.96A.150(1)(a) and award her reasonable attorneys' fees and costs from Appellant Graber for filing this appeal. RAP 18.1; RCW 11.96A.150(1)(a); Anderson, 177 Wn. App. 79.

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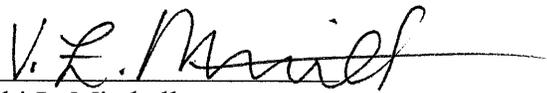
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CERTIFICATE OF SERVICE

I certify that on the 9th day of June, 2017, I caused a true and correct copy of this Brief of Appellants to be served on the following in the manner indicated below:

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