

FILED

FEB 23 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 355691

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

Spokane County Cause No. 16401072-7

AARON L. LOWE, Trustee and Beneficiary
of the Donald E. Lowe Trust

Plaintiff/Appellant,

v.

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

Defendant/Appellant.

REPLY BRIEF OF PLAINTIFF/APPELLANT

Aaron L. Lowe, pro se
Trustee/ Beneficiary
Plaintiff/Appellant
1408 W. Broadway
Spokane, Washington 99201
(509) 323-9000

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. Overview 1

II. The Issue of a Trust and Assets of a Trust Cannot be Identical to Probate a Will of the Second to Die when the First to Die had a Living Trust.. . . . 5

III. The Burden of Proof of Res Judicata is on the Litigant that introduces the doctrine. 7

IV. The Issue of the Trust Validity is an Independent Issue not Litigated in any Prior Action. 8

V. The Estate of Donald E. Lowe was Never Reopened to Include the Gold and Silver worth over a Half Million Dollars. 12

VI. Attorney’s Fees 15

VI. CONCLUSION 15

TABLE OF AUTHORITIES

CASES

<i>Alisho v. Department of Social and Health Services</i> , 122 Wash.App. 1, 91 P.3d 893 (2004)	12
<i>August v. U.S. Bancorp</i> , 146 Wash.App. 328, 190 P.3d 86 (2008)	13
<i>Bordeaux v. Ingersoll Rand Co.</i> , 71 Wash.2d 392, 429 P.2d 207 (1967)	8, 9
<i>C.I.R. v. Sunnen</i> , 333 U.S. at 591, 68 S.Ct. 715, 92 L.Ed. 898 (1948)	10
<i>Constantini v. Trans World Airlines</i> , 681 F.2d 1199 (9 th Cir. 1982)	10
<i>Daewoo Electronics America Inc., v. Opta Corporation</i> , 875 F.3d 1241 (9 th Cir. 2017)	10
<i>Expert Electric Inc. v. Levine</i> , 554 F.2d 1227 (2 nd Cir. 1977)	10
<i>Fortson-Kemmerer v. Allstate Insurance Company</i> , 198 Wash.App. 387, 393, 393 P.3d 849 (2017)	1, 7, 11
<i>Grider v. Cavazos</i> , 911 F.2d 1158 (5 th Cir. 1990)	11
<i>Harris v. Jacobs</i> , 621 F.2d 341, 343 (9 th Cir. 1980)	10
<i>Hiatt v. Walker Chevrolet Co.</i> , 120 Wash.2d 57, 66, 837 P.2d 618 (1992)	8
<i>Hisle v. Todd Pacific Shipyards Corp.</i> , 151 Wash.2d 853, 865, 93 P.3d 108 (2004)	7, 9, 12
<i>In re Estate of Betty Lowe</i> , No. 37551-6-III	2
<i>In re Estate of Lowe</i> , 191 Wash.App. 216	1

In re Estate of D'Agosto, 134 Wash.App. 390, 402, 139 P.3d 1125 (2013) 15

In re Estate of Haviland, 177 Wash.2d 68, 80, 301 P.3d 31 (2013) 13

In re Estate of Plance, 175 A.3d 249 (S.C. Penn., 2017) 14

In re Estate of Stover, 178 Wash.App. 550, 315 P.3d 579 (2013) 15

In re Peterson's Estate, 12 Wash.2d 686, 123 P.2d 733 (1942) 14

Kennedy v. City of Seattle, 94 Wash.2d 376, 617 P.2d 713 (1980) 5

Luisi Truck Lines, Inc. v. Washington Utilities and Transportation Commission, 72 Wash.2d 887, 435 P.2d 654 (1967) 6

Manary v. Anderson, 176 Wash.2d 342, 354, 292 P.3d 96 (2013) 3

Matter of Burley, 33 Wash.App. 629, 658 P.2d 8 (1983) 6

Matter of Heater's Estate, 547 P.2d 636, 637 (S.C. Ore., 1976) 14

Ofuasia v. Smurr, 198 Wash.App. 133, 142, 392 P.3d 1148 (2017) 7, 9

Osborne v. Osborne, 216 So.3d 1237 (Ala. 2016) 9

Rains v. State, 100 Wash.2d 660, 674 P.2d 165 (1983) 10, 11

Schibel v. Eymann, 189 Wash.2d 93, 399 P.3d 1129 (2017) 7

Seattle-First National Bank v. Kawachi, 91 Wash.2d 223, 588 P.2d 725 (1978) 8, 11

Stevens County v. Futurewise, 146 Wash.App. 493, 192 P.3d 1 (2008) 2, 6, 11, 13

Storti v. University of Washington, 181 Wash.2d 28, 330 P.3d 159 (2014) 7

<i>Venabliss v. Seattle First Nat. Bank</i> , 60 Wash.App. 941, 808 P.2d 769 (1991)	15
---	----

STATE STATUTES

RCW § 11.02.00	3
RCW § 11.02.05	4
RCW § 11.11.00	3, 4
RCW § 11.11.007	3, 7
RCW § 11.12.230	5
RCW § 11.97.00	3
RCW § 11.97.010	3
RCW § 11.98.00	3
RCW § 11.98.11	4
RCW § 11.98.14	4
RCW § 11.98.110	15
RCW § 11.100.00	3
RCW § 11.104A.00	3
RCW § 11.104A.030	3, 15
RCW § 11.106.00	3

OTHER

Cynthia J. Artura “ <i>Superwill to the Rescue? How Washington’s Statute Falls Short of Being a Hero in the Field of Trust and Probate Law.</i> ” 74 Wash. L. Rev. 799	4
Professor Phillip A. Trautman, “ <i>Claim and Issue Preclusion in Civil Litigation in Washington.</i> ” 60 Wash. L. Rev. 805 (1985)	5

ARGUMENT

Overview

Lonnie Lowe's reply brief, at page 1, contends that his father's handwritten trust is the same "transactional nucleus of facts" but cites no authority. The facts in this case are the trust in Donald Lowe's own handwriting. The issues to be determined is creation of the trust and whether the trust owns the by far the largest asset, the 22 silver bars weighing 55-67 pounds each and four bags of coins owned by Donald Lowe and his spouse. Donald Lowe died April 6, 2003. His estate was probated but the silver and gold was never inventoried. Betty Lowe died October 1, 2011. The litigation, *In re Estate of Lowe*, 191 Wash.App. 216, was in her probate on issues of removal of Lonnie Lowe as personal representative, construing her will and gifts by her to Lonnie Lowe. Donald Lowe's probate was not a party. Neither was Aaron Lowe as trustee of Donald Lowe's Trust. Division Three's own first impression case, *Fortson-Kemmerer v. Allstate Insurance Company*, 198 Wash.App 387, 393 P.3d 849 (2017) holds that res judicata did not apply to the same person as the "posture as to two claims" is a different 'quality' that prevents the claims from being identical." *Id.* at 395. "it prevents claim preclusion when a party's different posture as to two

claims makes it prejudicial for the claims to proceed in the same lawsuit.”
Id. at 406. *Stevens County v. Futurewise*, 146 Wash.App. 493, 192 P.3d 1
(2008), another Division Three case, rejects all of the required four factors to
apply res judicata. Lonnie Lowe, at page 1 of his brief, attempts to rely on *In*
re Estate of Betty Lowe, No. 37551-6-III, a case not yet final and concerns
only distribution. The brief never disputes the citations of authority in
Petitioner’s Opening Brief, pages 15-17. The opening brief establishes that
a living trust supercedes a will and avoids probate. At least one half of
Donald E. and Betty Lowe’s property passed in trust to Aaron Lowe as
trustee. The Trust superceded Donald E. Lowe’s probate estate. The
property never descended to Betty Lowe’s Estate. Three legal entities
existed. Donald E. Lowe, before he died, wrote a trust completely in his own
handwriting. It states:

Dear Boys,
Larry, Aaron & Lon

I just wanted to write down some of my thoughts
about after I’m gone.

I have asked Aaron to take responsibility in looking
after your mother. It may be necessary to sell what ever he
can to care for her. After she is gone, I want everything else
divided between you boys or sold and the money divided
between you.

I told Mike that he could live in the Napa house as long as he takes care of Kelsey.

My life was awfully short & I didn't do much.

You are three of the finest boys anyone could have & I'm so proud of you. I hope you can get along with each other.

Love dad
Don Lowe

The state legislature has enacted extensive trust laws in chapters RCW §§ 11.02, 11.11, 11.97, 11.98, 11.100, 11.104A and 11.106. It has instructed the courts at RCW § 11.97.010 that “If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control.” The trust law also instructs the courts that “A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.” RCW § 11.104A.030(a). In his opening brief a page 16, Aaron Lowe cites RCW § 11.11.007 that states “(a) This chapter is intended to establish ownership rights to non probate assets upon the death of the owner.” and *Manary v. Anderson*, 176 Wash.2d 342, 354, 292 P.3d 96 (2013) that states: “Homer and Eileen had beneficial ownership of the property- the right to live there rent free. When they died, their rights and

interests in the property were to pass under the Trust, a written instrument other than their wills. The Act requires no more.” *Id.* at 354. Cynthia J. Artura “*Superwill to the Rescue? How Washington’s Statute Falls Short of Being a Hero in the Field of Trust and Probate Law.*” 74 Wash. L. Rev. 799 (1999), states “Presently, every state recognizes the inherent validity of will substitutes as it means to dispose of assets at death.” *Id.* at 804. “First, revocable living trusts are the most flexible will substitutes because a donor has the ability to draft the dispositive and administrative provisions according to his wishes.” *Id.* at 805. Washington’s statutes, RCW ch 11.11 allow living trusts. RCW § 11.02.005(10) includes a “trust of which a person is grantor that becomes irrevocable only on the persons death.” A trust may be oral, RCW §11.98.014. No witness or attestation is necessary to create a trust. All that is required is capacity to create a trust, an intention to create it and beneficiaries. RCW §11.98.011. Aaron Lowe had a complete right to seek to establish the writing as a trust. Lonnie Lowe’s brief does not address the trust creation. Instead, Lonnie Lowe submits extensive facts from pleadings that never discuss validity of the trust raised by Aaron Lowe as trustee. Betty Lowe’s probate completely dismissed these issues on the merits even though neither Donald Lowe’s probate omitting well over half of

his estate was never litigated in the first death. Lonnie Lowe argues that the second death prevents opening the courthouse door to hear the issue of paramount importance in all testamentary dispositions; the intent of the testator is controlling. RCW § 11.12.230. The Petitioner's briefs in this case prove that res judicata, for many reasons, does not apply.

**The Issue of a Trust and Assets of a Trust Cannot be Identical
to Probate a Will of the Second to Die when the
First to Die had a Living Trust.**

Petitioner's complaint sought a declaratory judgment. Professor Phillip A. Trautman, "*Claim and Issue Preclusion in Civil Litigation in Washington.*" 60 Wash. L. Rev. 805 (1985) cites a declaratory judgment case, *Kennedy v. City of Seattle*, 94 Wash.2d 376, 617 P.2d 713 (1980) denying res judicata if it is manifestly unjust. Failure to uphold a deceased handwritten declaration on this reason alone prevents the doctrine. Trautman then states "There is a danger that in seeking to relieve the crowded dockets and backlog of litigation, courts will too readily turn to the rules of res judicata and collateral estoppel. It is critical to remember that the doctrines of claim and issue preclusion are court-created concepts. Accordingly, they can be adjusted to accommodate whatever considerations are necessary to achieve the final objective - doing justice." *Id.* at 842. The admonition was written

over 30 years ago when the courts were less crowded. The courts are the guardians of justice. To date, we reject the autonomous judges for these reasons. This attempt as the paragraphs that follow point out that courts must reject mass produced law.

Luisi Truck Lines, Inc. v. Washington Utilities and Transportation Commission, 72 Wash.2d 887, 435 P.2d 654 (1967) denies res judicata stating “the party asserting collateral estoppel has the burden of showing that issues are identical and that they were determined on the merits in the first proceeding.” *Id.* at 894. Aaron Lowe cited *Stevens County v. Futurewise*, 146 Wash.App. 493, 192 P.3d 1 (Div. 3, 2008) at page 20 of his Opening Brief. It was not reviewed in Lonnie Lowe’s brief. It held that there is no privity if claimants are “different in quality.” The issue must be “determined” even if raised in the prior adjudication. *Id.* at 507. Res judicata did not apply.

In the *Matter of Burley*, 33 Wash.App. 629, 658 P.2d 8 (1983) three previous maternity actions were brought against the defendant. Two prior actions were dismissed. They were not dismissed with prejudice. The court held that “there has not yet been an adjudication on the merits concerning paternity.” *Id.* at 640. There was a “lack of identity of parties which is necessary before the doctrine of res judicata could preclude Burley’s paternity

suit.” *Ibid.* at 640. Here, Aaron Lowe, as Trustee, had an absolute statutory right to bring suit under RCW § 11.11.007, an independent trust law. The issue has never been determined in any prior suit.

The Burden of Proof of Res Judicata is on the Litigant that introduces the doctrine.

“Allstate, as the party asserting claim preclusion, bears the burden of proof. *Hisle*, 151 Wash.2d at 865, 93 P.3d 108.” *Fortson-Kemmerer v. Allstate Insurance Company*, 198 Wash.App. 387, 393, 393 P.3d 849 (2017).

Lonnie Lowe, argues at page 18 of his brief, that no citation on burden was cited by Petitioner. This contention is proven wrong by pages 11 and 12 of Petitioner’s Opening Brief. *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wash.2d 853, 865, 93 P.3d 108 (2004), the same case cited above by Division Three in 2017. All the review is de novo. “The party asserting defense of res judicata bears the burden of proof.” *Ofuasia v. Smurr*, 198 Wash.App. 133, 142, 392 P.3d 1148 (2017). The cases are uniform. The burden is on Lonnie Lowe. *Storti v. University of Washington*, 181 Wash.2d 28, 330 P.3d 159 (2014) is cited stating: “Here, we consider de novo whether the trial court erred by concluding that U.W. had satisfied the CR 56 (c) standard.” *Schibel v. Eymann*, 189 Wash.2d 93, 399 P.3d 1129 (2017) is also cited by Petitioner. It states “We also review de novo whether collateral

estoppel applies to bar relitigation of an issue.” *Id.* at 98. Here, Lonnie Lowe filed a Motion to Dismiss. All facts are to be taken as true in favor of Aaron Lowe, Trustee. Lonnie Lowe’s citation at page 18, *Hiatt v. Walker Chevrolet Co.*, 120 Wash.2d 57, 66, 837 P.2d 618 (1992) is not a res judicata case.

The Issue of the Trust Validity is an Independent Issue not Litigated in any Prior Action.

Lonnie Lowe, at page 12, asserts that res judicata applies “to what might have been litigated.” This statement ignores *Seattle-First National Bank v. Kawachi*, 91 Wash.2d 223, 588 P.2d 725 (1978) cited by Aaron Lowe, extensively in his Opening Brief. *Kawachi* states

“While it is often said that a judgment is res judicata of every matter which could and should have been litigated in the action, this statement must not be understood to mean that a plaintiff must join every cause of action which is joinable when he brings a suit against a given defendant. CR 18(a) permits joinder of claims. It does not require such joinder. And the rule is universal that a judgment upon one cause of action does not bar suit upon another cause which is independent of the cause which was adjudicated. 50 C.J.S. Judgments s 668 (1947); 46 Am.Jur.2d Judgments s 404 (1969). A judgment is res judicata as to every question which was properly a part of the matter in controversy, but it not bar litigation of claims which were not in fact adjudicated.” *Id.* at 226.

The Court, at 225, quoted *Bordeaux v. Ingersoll Rand Co*, 71 Wash.2d 392, 429 P.2d 207 (1967), a case that a claim for workers compensation did not

bar a damage claim against the manufacturer for the injury. The facts were the same but the parties were different. Here, Aaron Lowe is trustee, a capacity never present in any prior litigation. *Bordeaux* held that only subject matter was the same. The required subject matter, cause of action were lacking. All four must occur for res judicata to apply. *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wash.2d 853, 93 P.3d 108 (2004) also applies. The case rejected res judicata. The case held that violation of a union contract on pay did not preclude a second suit on whether the state minimum wage act applied. The case involved different subject matter. *Id.* at 865. *Osborne v. Osborne*, 216 So.3d 1237 (Ala. 2016) gives a good illustration. The case rejected res judicata “Further, as pointed out in *Harrington*, supra, although an allegation of abuse, i.e., assault and battery, can be a basis for a divorce, a claim for a divorce and a claim alleging assault and battery are separate cause of action.” *Id.* at 1244.

The recent case of *Ofuasia v. Smurr*, 198 Wash.App. 133, 392 P.3d 1148 (2017) rejected res judicata on the basis that “arbitrators considered the adverse-possession issue but did not make a final decision on it.” *Id.* at 142. Here, none of the litigation ever even considered whether Donald Lowe’s handwritten document was a trust. The subject matter could not even be an

issue in Betty Lowe's Estate as it concerned Don Lowe's prior death. The subject matter, if considered, would direct the assets to a trust, not probate. Washington's joinder rule, CR 18(a) is permissible, not mandatory.

In *Daewoo Electronics America Inc., v. Opta Corporation*, 875 F.3d 1241 (9th Cir. 2017) the court held that where the recovery in the two actions were substantially different, the actions did not grow out of the same transaction. *Id.* at 1248. *Rains v. State*, 100 Wash.2d 660, 674 P.2d 165 (1983) is cited on the issue of the same "transactional nucleus of facts." *Id.* at 664. The case quoted the federal case of *Constantini v. Trans World Airlines*, 681 F.2d 1199 (9th Cir. 1982), that in turn quoted *Harris v. Jacobs*, 621 F.2d 341, 343 (9th Cir. 1980), relying on *Expert Electric Inc. v. Levine*, 554 F.2d 1227 (2nd Cir. 1977). That case relied on *C.I.R. v. Sunnen*, 333 U.S. at 597. *Id.* at 1234. *Harris, supra*, found that res judicata did not apply since *Harris*, in the first case, brought suit for inadequate medical care and the second suit was for Harris to be allowed to obtain his own medical provider. *Id.* at 344. *C.I.R. v. Sunnen*, 333 U.S. 591, 68 S.Ct. 715, 92 L.Ed 898 (1948) is the seminal case on res judicata. It states "But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." *Id.*

at 601. *Grider v. Cavazos*, 911 F.2d 1158 (5th Cir. 1990) applies, “This case illustrates the danger posed by a line of jurisprudence which, like Topsy, ‘just grew’ as the result of stacking one inapposite citation upon another until, in the aggregate, they take on the appearance of valid precedent.” *Id.* at 1164. “The highest form of judicial restraint is resistance of the temptation to cure inartfully drafted legislation by indulging in ‘judicial legislation’.” *Id.* at 1163. The cases “upon close analysis, simply do not support the propositions for which they are cited.” *Id.* at 1162.

Fortson-Kemmerer v. Allstate Insurance Company, 198 Wash.App. 387, 393 P.3d 849 (2017) cites *Rains v. State*, 100 Wash.2d 660, 674 P.2d 165 (1983) and makes the distinction that all of the four requirements must be met including quality, thereby overriding the nucleus of facts argument. The court followed *Seattle-First National Bank v. Kawachi*, 91 Wash.2d 223, 225-228, 588 P.2d 725 (1978) quoting that claims not in fact adjudicated are not banned. *Id.* at 394. *Kawachi* was extensively argued in Aaron Lowe’s Opening Brief, at pages 32-35, but not mentioned in Lonnie Lowe’s brief.

In *Stevens County v. Futurewise*, 146 Wash.App. 493, 192 P.3d 1 (Div. III, 2008) the party raised an additional issue, “But the fact remains that

the Board had never actually ruled on this issue.” *Id.* at 507. The subject matter was not identical and not a transactional nucleus of facts.

In *Alisho v. Department of Social and Health Services*, 122 Wash.App. 1, 91 P.3d 893 (2004) the rights were affected in different ways. They were not the same legal consequences. *Id.* at 8. In *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wash.2d 853, 93 P.3d 108 (2004) the subject matter was not the same as two different issues on pay were involved. *Id.* at 866. Here, common sense easily concludes that a handwritten trust by the first to die and contesting the personal representative and construing the will provisions of the second to die are not the same subject matter and the same facts are not present. All three documents seek to claim the assets. There is no privity for the reason that all seek different results.

The Estate of Donald E. Lowe was Never Reopened to Include the Gold and Silver worth over a Half Million Dollars.

Lonnie Lowe attempts to include Donald E. Lowe’s Estate into the Betty Lowe litigation. The gold and silver was omitted from the probate estate. No personal representative was appointed in Donald E. Lowe’s Estate to replace Betty Lowe. Regarding Donald E. Lowe’s probate estate, it is impossible to conclude that the assets were included because of the fiction that res judicata “might or should have been litigated.” Throughout none of

the litigation involved the personal representative of Donald E. Lowe's probate estate as there was none after the Estate was closed long before Betty Lowe died. Furthermore, even if the probate estate had a personal representative, he/she could not have represented Aaron Lowe as Trustee of Donald E. Lowe's Trust as "A party has privity with a non party if the party adequately represented the non party's interest in the prior proceeding." *Stevens County v. Futurewise*, 146 Wash.App. 493, 503, 192 P.3d 1 (2008). To achieve a distribution from an estate the asset must be inventoried. The gold and silver was not inventoried in Donald E. Lowe's probate. The action in Betty Lowe's Estate was premature. *In re Estate of Haviland*, 177 Wash.2d 68, 80, 301 P.3d 31 (2013) holds that if litigation is involved, until the probate has been completed, no inheritance occurs. Donald E. Lowe's Estate was missing its most valuable asset. *August v. U.S. Bancorp*, 146 Wash.App. 328, 190 P.3d 86 (2008) applies. Failure to discover, due to fraudulent concealment, tolls the statute of limitations. *Id.* at 347. "When an issue is not reached in the prior adjudication, that issue can have no preclusive effect in the second adjudication." *Id.* at 340. The *August* litigation involved the spousal estate of the father who died in 1996 and the mother who died in 2002. The litigation was commenced four years after the

decree of distribution in the father's estate. The court held that dismissal based on the statute of limitations did not bar a subsequent action. Here, Aaron Lowe brought suit as a beneficiary of Betty Lowe's Estate and not against Donald Lowe's probate estate. He brings this suit as Trustee. Collateral estoppel does not apply.

Lonnie Lowe, at page 17, states that 10 years have elapsed since Donald Lowe died and years later the Petitioner's Opening Brief, at page 27, cited *in re Peterson's Estate*, 12 Wash.2d 686, 123 P.2d 733 (1942) a probate that exceeded 18 years and four appeals. The case holds that res judicata does not apply to probates for the reason that the court, as the probate court, has the duty to administer estates, "Because of the peculiar position occupied by the probate court, it should accept direct responsibility for the proper administration of every estate." *Id.* at 722. The case imposed a constructive trust. If the attack is made on the same court in the original proceeding the attack is direct, not collateral. *Id.* at 726. The orders were not res judicata because the orders were not conclusive. *Id.* at 723. Res judicata does not apply to probate matters as the proceedings are ongoing. *In re Estate of Plance*, 175 A.3d 249 (S.C. Penn., 2017); *Matter of Heater's Estate*, 547 P.2d 636, 637 (S.C. Ore. 1976).

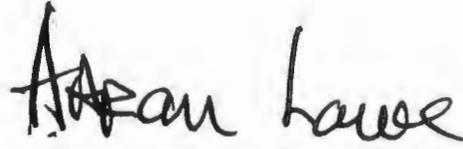
Attorney's Fees

Lonnie Lowe seeks attorney fees. Attorney fees cannot be sought from a trustee except from the trust assets. RCW § 11.98.110. Attorney's fees are determined under the Principal and Income Act, RCW § 11.104A.030(e). *Venables v. Seattle-First Nat. Bank*, 60 Wash.App. 941, 808 P.2d 769 (1991). Further suits by beneficiaries must result in benefit to the trust. The case is one of first impression so fees are not awarded. *In re Estate of D'Agosto*, 134 Wash.App. 390, 402, 139 P.3d 1125 (2006); *In re Estate of Stover*, 178 Wash.App. 550, 564, 315 P.3d 579 (2013). The Trust did not benefit. Lonnie Lowe seeks to have the Court approve the trial court's order. Donald E. Lowe knew how he wanted his estate handled and accurately designed a trust to appoint Aaron Lowe. Res judicata does not apply.

CONCLUSION

The decision must be reversed.

DATED this 23rd day of February, 2018.

A handwritten signature in black ink that reads "Aaron Lowe". The signature is written in a cursive style with a horizontal line underneath the name.

AARON L. LOWE, pro se
Trustee, Beneficiary Plaintiff/Appellant

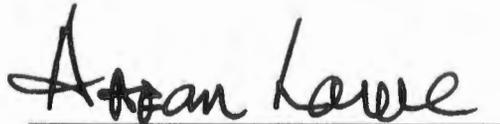
CERTIFICATE OF SERVICE

This is to certify that on February 23, 2018, a copy of the Reply Brief of Plaintiff/Appellant was served on Counsel for Defendant by hand delivery, addressed as follows:

William O. Etter
Witherspoon Kelley
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201

Greg M. Devlin/Tyler Whitney
Winston & Cashatt P.S.
601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201

DATED this 23rd day of February, 2018.

A handwritten signature in black ink that reads "Aaron Lowe". The signature is written in a cursive style and is positioned above a horizontal line.

AARON L. LOWE, pro se
Beneficiary Plaintiff/Appellant