

No. 35845~~2~~³-III

FILED

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

MAY 23 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

FRANK PRIMIANI

Appellant

v.

THE ESTATE OF MARIE PRIMIANI

Respondent

APPEALED FROM SPOKANE COUNTY
SUPERIOR COURT CAUSE NO. 15-4-00097-9
THE HONORABLE ANNETTE PLESE

APPELLANT'S BRIEF

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INTRODUCTION

Appellant, Frank Primiani, appeals the judgment of the trial court that he acted with bad faith and without probable cause in filing his Petition for Determination of Claims of the Estate Against Anna and Michael Iliakis, for an Accounting and Removal of Personal Representative and Partition for Acreage, thereby enforcing the no-contest provision of the Last Will and Testament of Maria Primiani and limiting his share of the Estate to one dollar. The trial court made certain findings of fact which are unsupported by the evidence, and initially applied the wrong legal standard, depriving the Appellant of the opportunity to submit evidence in accordance with the correct standard. Consequently, the decision of the trial court should be reversed and Mr. Primiani's share of the Estate should be restored.

ASSIGNMENTS OF ERROR NO. 1

Findings of Facts and Conclusions of Law Re: No Contest Clause and Good Faith.

1. The trial court erred in entering Finding of Fact No. 7 which reads:

In order to find that the will contest was made in good faith, the Court needs to review the Petitioner's basis for the will contest. (CP 365)

2. The trial court erred in entering Finding of Fact No. 8 which reads:

Petitioner claimed the will was invalid due to the undue influence on Maria Primiani by Anna Iliakis and Michael Iliakis.

3. The trial court erred in entering Finding of Fact No. 15 which reads:

The court finds the will contest was not filed in good faith [or with probable cause]. As already explained above, the Court, also, finds this entire case was vetted in issues of bad faith. First, not filing the will contest properly, not serving it properly, asking the court to be okay with “substantial compliance, [“] not serving paperwork timely, trying to add additional briefing after argument and prior to a court ruling and last, trying to bypass the rules in gaining medical records even in the face of a clear objection by the Estate. (CP 367)

4. The trial court erred in entering Conclusion of Law No. 9 in that it recited the wrong standard for determining good faith and probable cause, and that it held the Appellant had a duty to provide relevant and admissible evidence of his claims in order to show that he acted in good faith and with probable cause when he filed his Petition. (CP 369)

5. The trial court erred in entering Conclusion of Law No. 11 in holding that “Frank Primiani did not act with good faith and lacked probable cause to contest his mother’s will.” (CP 370)

6. The trial court erred in entering Conclusion of Law No. 12 in that it found that Appellant “did not act with good faith and lacked probable cause to contest his mother’s will.” (CP 370)

7. The trial court erred in entering Conclusion of Law No. 13 in that it ordered Appellant to pay the reasonable attorney fees and costs of the Respondent. (CP 370)

ASSIGNMENTS OF ERROR NO. 2

Opinion on Reconsideration

1. The trial court erred in entering its conclusion that Appellant “did not rely on advice of his co-counsel when pursuing (sic) the will contest and was not candid in his disclosures to his co-counsel regarding the undue influence claims.” (CP 394)

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1:

Whether the Court applied the correct legal standard to determine whether Appellant acted in bad faith and without probable cause in order to enforce the no-contest provision of the Will.

ISSUE NO. 2:

Whether the Court’s initial failure to apply the correct legal standard essentially deprived Appellant of the opportunity to gather and present relevant evidence of good faith and probable cause.

ISSUE NO. 3:

Whether the Court's finding on reconsideration that Appellant did not rely on advice of his counsel and was not candid in his disclosures to his counsel is supported by evidence in the record.

ISSUE NO. 4:

Whether, regardless of what standard was applied, there is evidence in the record sufficient to support the trial court's holding that Appellant acted in bad faith and with probable cause.

ISSUE NO. 5:

Whether Appellant should pay reasonable fees and costs as ordered by the trial court.

STATEMENT OF FACTS

Maria Primiani ("Maria") had two children, Frank Primiani ("Frank") and Anna Iliakis ("Anna"). (CP 76-77). When she passed away, Maria Primiani's Last Will and Testament essentially split the estate between Frank and Anna, and named Anna as Personal Representative and Frank as the successor Personal Representative. (CP 1-2).

Upon Maria's death in 2015, Frank had concerns about the depletion of her Estate in the latter years of her life by Anna and her husband, Michael Iliakis. He also had disagreements with Anna during the probate of the Estate over the division of property. (CP 7). On August 19, 2015, Frank

filed a Petition for Determination of Claims of the Estate Against Anna and Michael Iliakis, for an Accounting and Removal of Personal Representative and for Partition of Acreage (“the Petition”). (CP 5-8). The Petition reserved the right to “allege details of undue influence in the making and execution of the Will and Quit Claim Deed and in the exclusive management of the property of the Decedent.” (CP 7). The Petition included a request for mediation and arbitration under TEDRA (RCW 11.96A) to handle Frank’s concerns, and did not request any specific relief related to an undue influence or will contest claim. (CP 8).¹ The Petition was never subsequently amended to allege details of undue influence regarding the will.

The claims raised by the Petition moved slowly, and the Respondents did not file an Answer until November 18, 2015. (CP 19-25). When Frank attempted to secure various records and documents through discovery shortly thereafter, the Estate filed a motion to seek a protective order, and dismiss the Petition and enforce the no-contest clause of the Will. (CP 33-46). From that point forward (January 8, 2016), the entirety of the case became about whether the case should be dismissed and whether the

¹ It is undisputed that Anna was battling stage 4 brain cancer at this time, and Frank was reasonably worried about her ability to handle the position of permanent representative. This was the primary motivation for the request of her removal as personal representative. Anna has since passed away as a result of that illness

no contest clause should be enforced. Discovery essentially stopped. No depositions were taken, none of Frank's subpoenas were enforced, and the case proceeded solely on the evidence collected up until that date, which was very little.

On March 10, 2016, the trial court issued its opinion on the Estate's motion to dismiss the case and enforce the no contest clause. (CP 128-135). The court dismissed the Petition due to a procedural error in service, and without any findings of fact as a basis, it enforced the no contest clause and stripped Frank of his share of the Estate. (CP 135). That ruling was appealed by Frank's counsel at the time, and while this Court affirmed the dismissal of the Petition, it remanded for fact finding to determine if Frank had acted in good faith and with probable cause when he filed the Petition. *In the Matter of the Estate of: Maria G. Primiani*, 198 Wn. App. 1067 (Ct. App. Div. 3 2017).

Upon remand, the Estate submitted proposed Findings of Fact and Conclusions of Law, which Frank objected to and filed his own proposed Findings and Conclusions. (CP 139-147). Frank also requested the opportunity to present additional evidence, as was indicated to be necessary by the Court of Appeals decision. (CP 139); *In the Matter of the Estate of Maria G. Primiani*, 198 Wn. App. 1067 at pg 7 of Opinion. Frank's counsel cited *In re Estate of Mumby* for the proposition that if one "initiates an

action on the advice of counsel, after fully and fairly disclosing all material facts, she will be deemed to have acted in good faith and for probable cause as a matter of law.” 97 Wn. App. 385, 982 P.2d 1219 (2008). (CP 141).

On June 22, 2017, the trial court held a hearing on both sides’ proposed Findings and Conclusion. (RP 3-27). Frank’s counsel argued that the trial court would need more evidence presented to determine whether Frank acted with good faith and probable cause. (RP 6-8). He also argued that the question is not what Frank knew after the case was dismissed, but what Frank knew at the time the Petition was filed. (RP 8). The trial court ruled that to avoid the enforcement of the no contest clause, Frank needed to file written materials which included admissible and relevant evidence to prove undue influence related to the will. (RP 25).

On July 6, 2017, Frank filed multiple declarations and a legal brief with the trial court. (CP 205, 211, 217, 223, and 237).² Again, Frank cited *In re Estate of Mumby* and argued that to prove good faith and probable cause, he need only prove that he acted on advice of counsel after fully and fairly disclosing all material facts. 97 Wn. App. 385 (1999) (CP 252). Nevertheless, most of Frank’s argument was focused on just what the trial

² The court is urged to review the Declaration of Frank Primiani On Remand. (CP 223-235). This Declaration is a clear picture of Frank’s motivations and concerns at the time of filing the Petition. Most of the factual recitations in this declaration are uncontested by the Estate, and therefore constitute evidence of Frank’s good faith belief that he had probable cause to bring the Petition.

court had ordered in the June 22 hearing: evidence that would prove a claim for undue influence. On July 14, 2017 the Estate filed its response. (CP 254). The Estate did not dispute the application or reading of the *Mumby* citation in Frank's materials. (CP 254-270).

On August 14, 2017, Frank submitted a reply brief on this matter. (CP 290). In that reply brief, Frank noted that the case was dismissed before the completion of discovery and that no additional discovery had been allowed after the remand from the Court of Appeals, and again reminded the trial court that the relevant timing is what Frank believed at the time the Petition was filed. (CP 291). But again, the majority of the brief was dedicated to addressing the trial court's direction to produce admissible and relevant evidence of undue influence. (CP 290-303).

On October 2, 2017, the trial court issued Court's Opinion (on Good Faith). (CP 304). In that Opinion, the trial court noted again that it expected Frank to produce relevant and admissible evidence of undue influence. (CP 307-308). The trial court found that Frank's submitted evidence falls short of proving two of the factors to show undue evidence by a clear, cogent and convincing standard. (CP 311-312). It went on to find that "the evidence presented was not relevant or admissible to show clear, cogent and convincing evidence to defend his 'good faith' belief in a will contest." (CP

315). As a direct result, the trial court ruled that “the will contest was not filed in good faith” and enforced the no contest clause. *Id.*

On October 24, 2017, the trial court entered Findings of Fact and Conclusions of Law re: No Contest Clause and Good Faith. (CP 358). In Finding of Fact No. 7, the trial court stated that to determine whether the will contest was made in good faith, it would have to review the basis for the contest. (CP 365). In Findings of Fact Nos. 12 and 13, the trial court held that Frank failed to prove two factors that show undue influence. (CP 366-367). In Finding of Fact No. 15, the trial court found that the will contest was not filed in good faith or with probable cause, and based this on the failure of Frank’s counsel to file and serve the will contest properly, the failure to serve paperwork timely, attempts to add briefing after a deadline, and obtaining medical records outside of the rules of procedure.³ (CP 367).

In Conclusion of Law No. 9, the trial court held that the evidence submitted by Frank to show undue influence did not rise to the level of “probable cause, let alone clear, cogent and convincing evidence sufficient

³ None of these things go to Frank’s state of mind or intent at the time he filed the Petition, and therefore none of them can possibly show that he filed the Petition in bad faith or without probable cause. Further, Frank’s later acquisition of his mother’s medical records was not illegal by HIPPA (Health Insurance Portability and Accountability Act of 1996) standards; 45 CFR 164.510(b)(5) allows disclosure to family members who were involved in the decedent’s care prior to death. Frank had a Power of Attorney for his mother prior to her death, and he qualified to receive her medical records under HIPPA. As a result, his acquisition of those medical records outside of formal discovery cannot be said to show bad faith.

to contest the will.” (CP 369). In Conclusions of Law Nos. 12 and 13 the trial court held that Frank acted in bad faith and without probable cause and ordered him to pay reasonable attorney fees and costs. (CP 370). Nowhere in the Findings of Fact and Conclusions of Law does the trial court make any reference to the standard set forth in *In re Estate of Mumby*.

On November 3, 2017, Frank filed a Motion for Reconsideration on the basis that the trial court failed to apply the *Mumby* standard to determine good faith and probable cause. The Estate filed a response which suggested that *Mumby* is not the correct standard, and that instead the issue is whether the will contestant can show a prima facie case of his claim. (CP 381-386). In doing so, the Estate relied on *Estate of Kessler*, 95 Wn. App. 359, 977 P.2d 591 (1999). But as Frank pointed out in his Reply, *Kessler* was about the imposition of attorney fees, and did not apply the standard to the enforcement of a no contest clause. (CP 388).

On December 28, 2017, the trial court filed its Opinion on Reconsideration in which it denied Frank’s motion. (CP 391). In that Opinion, the trial court mentioned for the first time that Frank was himself a licensed attorney (something which the Estate had never raised as an element of its arguments). (CP 392). The trial court agreed that *Mumby* was the correct analysis and then stated that in fact it had previously applied the *Mumby* analysis, although no previous decision had mentioned it. The

trial court concluded that Frank did not rely on the advice of his counsel when pursuing the will contest and that he was not candid in his disclosures to his counsel regarding the undue influence claims. (CP 394). In making this ruling, the trial court did not reference anything in the record to support its conclusions, except for the fact that Frank is himself an attorney.

STANDARD OF REVIEW

Where an order of a trial court is based entirely on documentary evidence and affidavits, the correct standard of review is de novo. See *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 695-696, 994 P.2d 911 (2000). When a trial court considers matters outside of the pleadings on a motion to dismiss for lack of jurisdiction, the Court of Appeals reviews the trial court's ruling under the de novo standard of review for summary judgment. See *Columbia Asset Recovery Group, LLC v. Kelly*, 177 Wn. App. 475, 483, 312 P.3d 657 (2013). The standard of review on an appeal of a summary judgment order is de novo. See *Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d 221, 86 P.3d 1166 (2004). An appellate court reviewing a summary judgment places itself in the position of the trial court and considers the facts in a light most favorable to the nonmoving party. See e.g. *Del Guzzi Constr. Co. v. Global Northwest Ltd.*, 105 Wn.2d 878, 719 P.2d 120 (1986).

This matter was treated most like a summary judgment motion, or a motion to dismiss with evidence considered from outside the pleadings. As a result, the Court should review the trial court's Findings of Fact and Conclusions of Law, and the Opinion on Reconsideration, de novo.

ARGUMENT

A. The Trial Court Applied the Wrong Standard to Determine the Application of the No Contest Clause

In its prior decision on this matter, the Court of Appeals examined three cases on the issue of no contest clauses: *In re Chappell's Estate*, 127 Wash. 638, 221 P. 336 (1923); *In re Estate of Kubick*, 9 Wn. App. 413, 513 P.2d 76 (1973); and *In re Estate of Mumby*, 97 Wn. App. 385, 982 P.2d 1219 (1999). *In the Matter of the Estate of Maria G. Primiani*, 198 Wn. App. 1067 (Ct. App. Div. 3 2017). All three of these cases examine, to some degree, the application of a no contest clause in a will. This Court noted that *Chappell* held a no contest clause to be inapplicable where a will contest was based on public policy grounds, in good faith and with probable cause. The no contest clause in *Kubick* was held inapplicable where the clause itself contained a safe harbor provision for actions brought in good faith and with probable cause. Finally, the court in *Mumby* held more broadly that a no contest clause would not be enforced where the will challenge was brought in good faith and with probable cause. *Id.*

The *Mumby* decision is significant not only because it applies the good faith and probable cause standard to all will contests, whether brought on public policy or personal grounds, but it is also the only court opinion which explains how to determine if a will contest was made with good faith and probable cause. In *Mumby*, the court held that a will contest is brought in good faith and with probable cause where the challenger acted on advice of counsel after fully and fairly disclosing all material facts to said counsel. *In re Estate of Mumby*, 97 Wn. App. at 393.

There is no case which provides a substantially different determination of what amounts to good faith and probable cause; in fact, there is no case on point which even discusses such an analysis. *Mumby* stands alone, and remains uncontested in Washington case law.

Just as important, there is no case which requires a will contestant to provide admissible and relevant evidence to prove his case to avoid the application of a no contest clause. Yet that is precisely what the trial court in this matter required Frank Primiani to do. Neither the trial court's October 2, 2017 Opinion, nor its October 24, 2017 Findings of Fact and Conclusions of Law even mention the *Mumby* analysis, but both clearly hold that Frank's burden was to prove with relevant and admissible evidence that Maria Primiani's will was the product of undue influence.

Frank's counsel attempted to argue that the true analysis of good faith and probable cause is that set forth in *Mumby*, but the trial court effectively ignored these attempts, and instead continually refocused the parties on the task of proving undue influence. The trial court's position was that if Frank could not have prevailed upon his claims at trial, then he had pursued the will contest in bad faith. This is a standard of analysis that is not supported by any precedent in Washington law.

B. The Trial Court's Analysis of Good Faith and Probable Cause is Fundamentally Unfair and Prevented Appellant from Gathering and Presenting Evidence Pursuant to *Mumby*

Not only is there no precedent for the trial court's approach to the determination of good faith and probable cause, it is also incredibly unfair to the heir of an estate. That unfairness is most demonstrable in the current case. First, it is clear from the content of Frank's Petition that he was not at that time alleging undue influence or making a will challenge. The Petition simply reserved the right to amend it at a later time to pursue a claim of undue influence, not only as to the will, but also as to Anna's management of Maria's assets and inter vivos gifts from Maria to Anna, specifically including a quit claim deed.

Thus, at the time Frank filed the Petition, he made no claims of facts arising to undue influence, but put the Estate on notice of his suspicions and

his intention to pursue such a claim if he discovered supporting evidence. This is further made plain from the content of the Petition's prayer, which is devoid of a request to have the will deemed invalid. The Petition's primary goal was to resolve disagreements between Frank and Anna, and to allow Frank the ability to inquire into Anna's management of their mother's assets both prior to and after Maria Primiani's death.

It is easy to discern from the content of the Petition that at the time it was filed, Frank had good faith concerns with Anna's proposed division of property and her management of Maria's assets. As later filings would make clear, these concerns were based on his personal perceptions of fairness and suspicions raised by third parties whom Frank had reason to trust, hence Frank's notice to the Estate that he would not hesitate to pursue an undue influence claim if the evidence turned out to support it.

The second and perhaps even more concrete example of the unfairness of the trial court's analysis is that discovery in the case was never completed. Unlike the will challenges in *Chappell*, *Kubick* and *Mumby*, this case was dismissed early in the process on procedural grounds. Discovery was still in its early stages; no depositions had been taken, and Frank's attempts to seek records relevant to his claims were thwarted by the Estate's Motion to Dismiss. In spite of this, the trial court expected Frank to prove the elements of undue influence to avoid the enforcement of the no contest

clause. Most often, if a plaintiff or petitioner is asked to prove her case prior to completion of discovery, she would fall short. That is the commonly acknowledged purpose of discovery: to gather evidence to support each parties' claims and defenses. But that is precisely what the trial court expected of the Appellant; he was to present admissible and relevant evidence that would prove the elements of undue influence, or else lose his share of the Estate.

At no point did the trial court ask for evidence concerning whether Frank relied on the advice of his counsel in filing the Petition, nor did it inquire as to whether Frank gave his counsel all of the relevant facts and information known to him prior to filing the Petition. Instead, the trial court focused the parties on proving undue influence, which has nothing to do with the analysis in *Mumby*. As a result, the evidence presented complied with the trial court's direction and simply reflected only that information which Frank had at his disposal at the time he filed the Petition which gave rise to his concerns.

The trial court's failure to apply the *Mumby* analysis of good faith and probable cause, and to instead require admissible and relevant proof of undue influence, is a material error of law which requires a reversal of the trial court's order disinheriting Frank Primiani from his mother's estate.

C. The Trial Court's Application of *Mumby* in its Opinion on Reconsideration is Not Supported by Evidence in the Record.

The focus by the parties on the trial court's direction to provide evidence of undue influence effectively prevented the parties from submitting any evidence on the issue of whether Frank relied on the advice of counsel after fully and fairly disclosing all material facts. Therefore, on Reconsideration, when the trial court realized it had failed to apply the correct analysis, the record was limited in relevant evidence. However, Frank submitted a declaration in which he testified that he only filed the Petition after seeking advice of counsel, and that he disclosed to his counsel all information he believed was relevant at the time. (CP 377). The Estate did not challenge this declaration. In fact, the Estate never submitted any evidence that Frank failed to act on the advice of counsel, nor that he failed to fully and fairly disclose all material facts. As a result, the evidence pointed to Frank meeting the *Mumby* standard and avoiding the enforcement of the no contest clause.

In its Opinion on Reconsideration, however, the Court did not reference Frank's declaration either to say it was considered or not considered. Instead, the Court relied entirely on the fact that that Frank was himself a licensed attorney. While providing no analysis of why that matters under *Mumby*, the trial court implied that as an attorney it was

impossible to believe that Frank could have relied on another attorney for advice. The trial court does not address whether Frank had previous experience in probate litigation or with TEDRA, nor whether Frank, as a college instructor, even actively practices law in any area to any degree. The trial court does not address why Frank bothered to hire and pay another attorney to handle the majority of the case, including all court appearances and arguments. The trial court does not examine what kind of a precedent might be set by declaring a lawyer who hires another lawyer can never be said to truly rely on the other lawyer's advice.⁴

The trial court's Opinion on Reconsideration did list other items, but none of them went to the question of whether Frank relied on his counsel's advice, nor did they go to the question of what information Frank gave his counsel prior to filing the Petition. In fact, some of the trial court's observations only back up this argument on appeal. As the trial court points out, Frank "did not rush into court and file a direct will contest action." Instead, he sought to resolve his disputes with his sister through other, less

⁴ Lawyers depend on other lawyers on a regular and routine basis. A lawyer who does primarily commercial transactions would not be expected to be able to handle his own complex divorce. A lawyer who does primarily tax work would not be expected to represent herself in a boundary line dispute. The examples are numerous, and they clearly undermine the trial court's supposition that a lawyer need never rely on the advice of another lawyer in a personal legal matter. Even where a lawyer is co-counsel with another attorney, it is common and expected for those two attorneys to rely on each other's advice and ideas; if that were not the case, then there would be no real point in having a co-counsel.

drastic means. That hardly speaks of bad faith; if anything, it shows a good faith desire to resolve the issues short of full blown undue influence litigation.

The trial court also found that Frank “wanted more than his share of his mother’s estate and specifically wanted to take over as executor.” Neither of these things are necessarily evidence of bad faith, and have nothing to do with the *Mumby* analysis. Challenges to personal representatives are common place, and often successful, and do not automatically indicate bad faith. Further, if Frank had truly just wanted “more than his share of his mother’s estate” he would have challenged the will from the very beginning.

While the trial court’s Opinion on Reconsideration purports to apply *Mumby*, it does so without reference to any evidence of the two relevant factors. There is nothing in the record that supports the trial court’s conclusion that Frank acted without advice of counsel, or that he failed to disclose all material information to his counsel. The only thing in the record on point is Frank’s own declaration, and there is nothing that contradicts him. The trial court should have considered the evidence and all reasonable inferences therefrom in a light most favorable to the nonmoving party, which in this case was Frank Primiani. See generally *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). If it had

done so, the trial court would have inferred that Frank relied on the advice of his counsel after disclosing all material information.

The trial court's holding on Reconsideration is not supported by the evidence, and like its previous ruling, it should be reversed and Frank should have his share of his mother's estate reinstated.

D. The Evidence Supports a Finding of Good Faith and Probable Cause.

Even if, for some reason, the *Mumby* analysis were not applicable to the case at hand, there is no basis in the record to find that Frank acted with bad faith and without probable cause when he filed the Petition. Frank's reliance on his own knowledge and understanding of the circumstances, along with the allegations and assertions of Gina McGlaughlin (CP 217), Lucia Stewart (CP 211), and Maria Tiberio (CP 205), was completely reasonable.

Common sense dictates that the question of good faith and probable cause must be examined at the time the Petition was filed. The question is not whether good faith and probable cause existed at the time of dismissal on procedural grounds, it is about the state of mind of the Petitioner when deciding to contest the will.

The Petition does not really amount to a will contest at all, since it only attempts to preserve the claim and was never amended to allege facts

amounting to undue influence. But even if it was a true will contest, Frank's concerns were well founded. That he was never able to conduct full discovery on the issue, and that what evidence he had at the time of filing was determined to be inadmissible under the evidence rules, does not amount to bad faith.

The evidence does not support the trial court's conclusion, under any standard, that Frank acted with bad faith and without probable cause at the time he filed the Petition. This is also true for the analysis of whether attorney fees should be assessed. As a result, the trial court's decision enforcing the no contest provision of the will and assessing attorney fees should be reversed.

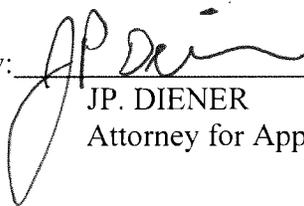
CONCLUSION

The trial court applied the wrong standard to determine whether the Appellant acted with good faith and probable cause in reserving his right to challenge the will. Further, the standard which the trial court did apply (relevant and admissible evidence of undue influence) is not supported by case law and is fundamentally unfair under the circumstances of this case, where the Appellant was never allowed to complete discovery on his Petition. Even when the court claimed to apply the correct standard from *Mumby* on Reconsideration, the court did so without any facts in the record to support its conclusions. The Appellant, Frank Primiani, respectfully

requests that this Court reverse the ruling of the trial court and allow Mr. Primiani his share of the estate under the will without having to pay any other party's attorney fees and costs.

DATED this 23 day of May, 2018.

FELTMAN EWING, P.S.

By:  _____
JP. DIENER
Attorney for Appellant

FILED

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DECLARATION OF SERVICE

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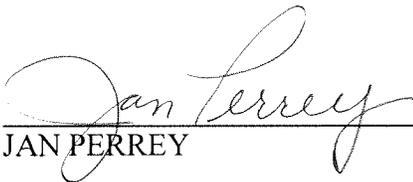
I, JAN PERREY, am a citizen of the United States and a resident of the State of Washington; I am over the age of eighteen (18) years; I am competent to be a witness in a court of law; and I am not a party to the within-entitled action.

On the 23rd day of May, 2018, I sent via the method indicated below, to the party listed the following pleadings:

- **Brief of Appellants**
- **Declaration of Service**

Mr. Brant L. Stevens Attorney at Law 222 W. Mission, Suite 25 Spokane, WA 99201	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile
--	--

DATED this 23rd day of May, 2018.



JAN PERREY