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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS DIVISION III

No. 358798

IN RE: THE ESTATE OF
HELEN LOUISE GORGIA GRIMSLEY OWEN,
Deceased.

Paul Grimsley,
Appellant.

v.

Karen Grimsley, Personal Representative,
Owen Grimsley Homestead,
Lorna Johnson and Douglas Barnes,
Respondents.

Other Parties:
Michael Grimsley, Beneficiary
Diane Grimsley, Beneficiary

**BRIEF OF RESPONDENTS
LORNA JOHNSON AND DOUGLAS BARNES
IN OPPOSITION TO BRIEF OF APPELLANT**

Lorna Johnson, Pro Se
Douglas Barnes, Pro Se
Lorna Johnson, Trustee Pro Se
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I. INTRODUCTION

Lorna R. Johnson and Douglas C. Barnes appear before this court in their marital community and shall submit the following brief as Pro Se to address the Assignment of Error and Issues on Appeal directed at them by the Appellant Brief of Paul Grimsley.

Lorna R. Johnson, Trustee Pro Se, shall also, with the consent of Douglas C. Barnes, address the Assignment of Error and Issues on Appeal that directly pertain to the Trustee of the Owen Grimsley Homestead by the Appellant Brief of Paul Grimsley.

II. STATEMENT OF THE ISSUES

1. Whether Lorna Johnson or Douglas Barnes committed Unlawful Drafting or Unlawful Practice of Law concerning Helen Owen's estate. (*Appellant's Issue #8 and Assignment of Error 6.*)
2. Whether Lorna Johnson, Trustee, is liable for misconduct under RCW 23B finding a specific injury on the Appellant. (*Appellant's Issue #9 and Assignment of Error 6.*)

III. STATEMENT OF THE CASE

The Trial Court concluded there was no colorable claim of any misdeeds in the establishment of the Owen Grimsley Homestead and that Helen Owen had the capacity to establish the Owen Grimsley Homestead on February 26, 2015. The Trial Court also concluded that Lorna Johnson did not engage in the unlawful practice of law by discussing the Will or the Owen Grimsley Homestead with Helen Owen, nor in typing these documents. The Trial Court also concluded that Paul Grimsley did not

incur any damages as a result of Lorna Johnson's, as Trustee, interpretation of a Massachusetts Trust. The trial courts conclusions should be affirmed on appeal.

IV. ARGUMENT

1. Whether Lorna Johnson or Douglas Barnes committed Unlawful Drafting or Unlawful Practice of Law concerning Helen Owen's estate

As per testimony of the trial, Lorna Johnson did type up from Helen Owen's notes her Last Will and Testament. *RP 346*. On February 26th, 2015, Helen Owen did sign under witness that Last Will and Testament.

On February 26, 2015, Douglas Barnes, as Creator, and Helen Owen, as Trustor, entered into a Declaration and Contract which established the Owen Grimsley Homestead in the form of a Massachusetts Trust. This Declaration and Contract was established by exercising the right to contract by both parties. Upon completion of this act, the Creator, Douglas Barnes, appointed Lorna Johnson as Trustee to the Owen Grimsley Homestead. As Trustee, Lorna Johnson exchanged the 20 Certificate Units with Helen Owen for the 3 parcels of land as directed in the Contract.

The trial court concluded that Lorna Johnson did not engage in unlawful practice of law by discussing the Will and Owen Grimsley Homestead with Helen Owen, nor the typing of those documents. The trial courts conclusions should be affirmed on appeal.

2. Whether Lorna Johnson, Trustee, is liable for misconduct under RCW 23B finding a specific injury on the Appellant.

On March 6, 2015, Lorna Johnson, as Trustee of the Owen Grimsley Homestead, applied to the secretary of the state of Washington for

registration as a Massachusetts Trust pursuant to provisions of RCW 23.90. The trust was accepted by the Secretary of State and issued a Declaration of Trust to Owen Grimsley Homestead on March 17, 2015.

On March 29th, 2015, Lorna Johnson presented a copy of the Declaration and Contract of the Owen Grimsley Homestead to each Paul, Michael, Karen and Diane Grimsley. Lorna Johnson explained the document and suggested that they read it and if they had any questions that they contact her by phone. Lorna Johnson had all four parties sign a statement titled Verification of the Reading of the Will of Helen Owen and Presentment of the Owen Grimsley Homestead Trust. This statement was then witnessed by four individuals in attendance as witnesses only, one of whom was Douglas Barnes. At no time following the presentment did Paul Grimsley contact Lorna Johnson with question concerning the Owen Grimsley Homestead Trust prior to his filing documents in a court of law.

During court proceedings and filing of documents Lorna Johnson acted and signed as Trustee, Pro Se. Inspection of the documents filed and testimony would show that Lorna Johnson was defending allegations made by Paul Grimsley against the actions of Lorna Johnson, Trustee. Once it was established that Paul Grimsley had no standing to file for the dissolution of the Owen Grimsley Homestead, all of the claims made were against Lorna Johnson, Trustee. In fact, the actions of Paul Grimsley insisting, through his counsel, to have legal representation provided for the Owen Grimsley Homestead has increased the cost of litigation unnecessarily since the Owen Grimsley Homestead is not in question.

Throughout the process Paul Grimsley, through his counsel, has had a misunderstanding and misrepresentation of what a Massachusetts Trust is and what laws it follows, even after being given documentation. Assumptions and misuse of terms exist throughout the process by Paul Grimsley, through his counsel. Paul Grimsley insists that Lorna Johnson

comply completely with RCW 23B, even though doing this would not be in compliance with the Declaration and Contract of the Owen Grimsley Homestead.

A contract in the form of a Massachusetts Trust is a private contract creating an unincorporated business association exercising the right to contract. The state of Washington passed the Massachusetts Trust Act of 1959 as an Act relating to creation, taxation, and regulation of the Massachusetts trust form of business association. Section 4, subsection (4) of this act is the issue which Paul Grimsley argues that as Trustee, Lorna Johnson, is not following the law. Section 4, subsection (4) reads:

“Any Massachusetts trust shall be subject to such *applicable* provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as related to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other *applicable* rights and duties existing under the common law and statutes of this state in a manner similar to those *applicable* to domestic and foreign corporations.” (*emphasis added*)

The word applicable is used three times within the context of Section 4 Subsection (4) above. If the term was not used then all of the requirements of domestic and foreign corporations would apply to Massachusetts Trusts.

There is no reference in the Declaration and Contract of the Owen Grimsley Homestead of shareholders, annual meetings, voting entitlement of shares or Corporations acquisition of its own shares. These are requirements that Paul Grimsley quotes from RCW 23B and alleged that Lorna Johnson as Trustee failed to perform. Because these

requirements of Corporations are not in the Declaration and Contract, they are not applicable. If these requirements were in the Declaration and Contract of the Owen Grimsley Homestead would be a 'partnership' and not a 'trust'.

In reference to Chicago-Kent Law Review, vol.38, issue 1, pg. 11, the article by Michael L. Weissman titled "The Common Law of Business Trust":

'A Massachusetts or "BUSINESS TRUST" is a commercial enterprise formed by a declaration of trust wherein property is conveyed to trustees to be held and managed by them for the benefit of such persons as may, from time to time, be holders of transferable shares issued by the trustees and evidencing their beneficial interests in the trust estate. In a true business trust, once the certificate holders have contributed money or conveyed property to the trust, the money or property becomes subject to the sole and exclusive control of the trustees. The trustees are free to deal with the trust assets as they see fit subject only to the limitations imposed upon them by the trust instrument.'

'Nonetheless, a distinguishing feature of the business trust continues to be the fact that it is wholly contractual in nature. Unlike a Corporation it is not dependent upon the laws of a state for its existence and validity.'

As shown in Schumann-Heink v Folsom, 159 N.E. 250 (1927), which is clearly significant in its definitive exposition of the nature of business trusts:

'In that case, the trustees themselves had authority to increase the number of trustees, to fill any vacancies among the trustees for whatever cause, to promulgate rules and regulations for the administration of the trust assets and to fix their own compensation

as well as that of any officer or employees of the trust. No rights were possessed by the beneficial owners other than the passive rights to receive dividends, declared at the discretion of the trustees, and to their proportionate share of the trust estate on winding up.'

In *Hecht v Malley*, 265 U.S. 144 (1924) once again the separation of trustee from beneficiary is evident which is a requirement for a proper business trust:

'It is distinguishable from other express trusts, and these trust organization instruments are held to create "pure trusts" if trustees are the principals and are free from the control of the certificate holders.'

Finally, in 13 Am Jur 2nd, page 379, Paragraph 51:

'One of the objectives of Business Trusts is to obtain for the trust associates most of the advantages of corporations, without the authority of any legislative act and with the freedom from the restrictions and regulations generally imposed by law upon corporations.'

All of the above references and many more were supplied to the court and counsel before trial when Lorna Johnson, as Trustee, realized that not everyone involved was familiar with the Massachusetts Trust law. These and other references were used in the closing arguments of Lorna Johnson.

Neither Lorna Johnson nor Douglas Barnes hold any personal interest in the Owen Grimsley Homestead. Lorna Johnson stands by her opening statement, testimony and closing argument as given in the trial court. *Opening statement RP at 236, Testimony RP at 322-470 and 764-790, Closing Argument RP at 833-839.* Douglas Barnes stands by his testimony as given in the trial court. *Testimony RP at 475-488.*

Lorna Johnson, Trustee has no personal interest in the Owen Grimsley Homestead. Lorna Johnson, Trustee has a fiduciary responsibility and duties as written within the Declaration and Contract and is committed to those responsibilities and duties.

The trial court concluded that Paul Grimsley did not incur any damages as a result of Lorna Johnson's interpretation of a Massachusetts Trust. The conclusion should be upheld on appeal.

V. CONCLUSION

The trial court was correct in the Conclusions of Law that Helen Owen had the capacity to execute her Will and establish the Owen Grimsley Homestead on February 26, 2015.

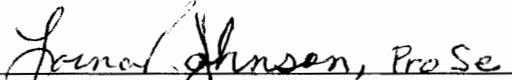
The trial court was correct in concluding that Lorna Johnson did not engage in the unlawful practices of law by discussing the Will and Owen Grimsley Homestead with Helen Owen, nor in typing those documents.

Douglas Barnes did not engage in unlawful practice of law by exercising the right to contract in establishing the Owen Grimsley Homestead with Helen Owen.

The trial court was correct in concluding that Paul Grimsley did not incur any damages as a result of Lorna Johnson's interpretation of a Massachusetts Trust, such as the Owen Grimsley Homestead.

Lorna Johnson, Douglas Barnes and Lorna Johnson, Trustee request that the Appellate Court uphold the Conclusion of Law and Judgment as set forth in the Trial Court pertaining to this Brief.

Respectfully submitted this 21st day of March, 2019


Lorna R. Johnson, Pro Se


Douglas C. Barnes, Pro Se


Lorna R. Johnson, Trustee, Pro Se

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CERTIFICATE OF SERVICE

Lorna Johnson certifies that on March 21st , 2019, a copy of Brief of Respondents Lorna Johnson and Douglas Barnes in Opposition to Brief of Appellant was served on the Appellant and Respondents through electronic mail:

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I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

Dated this 21st day of March, 2019.


Lorna R. Johnson, Pro Se