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NO. 36554-9

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

MATT THOMPSON,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Matt Thompson financially exploited his mother, Janet, because he made multiple transfers out of her accounts for his own travel and pleasure without her prior knowledge or consent. He made these transfers for his own benefit while her assisted living facility rent was in arrears. The Board of Appeals appropriately found that Mr. Thompson breached his fiduciary duties to Janet and exerted an undue influence over her that allowed him to obtain and use her assets for his own purposes.

Mr. Thompson does not challenge the findings that he used Janet's money for his own purposes. These are verities on appeal. Instead, Mr. Thompson seeks to reverse the ruling of the Board of Appeals by suggesting a novel interpretation of RCW 74.34.020, not supported by its text, to allow him to use his mother's money for his own frivolous spending, so long as that spending was also intended to impoverish her so that she was financially eligible for public assistance. Such interpretation contravenes the plain language of the power of attorney Janet signed, as well as the law governing powers of attorney at the time. And where a vulnerable adult's resources are used improperly, and not for the vulnerable adult's benefit, financial exploitation occurs—whether or not the vulnerable adult receives an ancillary benefit from the spending, such as public assistance. Second, Mr. Thompson suggests that where a vulnerable adult ratifies conduct after

the fact, it is no longer exploitative. But, when that ratification is brought about by undue influence, as in this case, that conduct remains financial exploitation. Finally, Mr. Thompson attempts to excuse his conduct by arguing Janet's constitutional rights, which he does not have standing to raise, and which were not violated besides.

The Board of Appeals committed no reversible error under RCW 34.05.570(3), and it should be affirmed by the Court.

II. COUNTERSTATEMENT OF THE ISSUES

1. Whether Mr. Thompson's use of the vulnerable adult's resources for his own profit and advantage was "improper" despite his stated intent to preserve her Medicaid eligibility.
2. Whether Mr. Thompson's use of the vulnerable adult's resources for his own profit and advantage was "improper" despite the vulnerable adult's ratification of his spending after the fact.
3. Whether the Review Judge erred in entering facts reflecting his review of witnesses' answers to questions, rather than the demeanor of the witnesses, in reversing an initial order entered by an Administrative Law Judge.
4. Whether Mr. Thompson can defend against a finding of financially exploiting a vulnerable adult by asserting violations of his victim's constitutional rights.

III. COUNTER STATEMENT OF THE CASE

Janet,¹ a vulnerable adult,² signed a power of attorney appointing her son, Matt Thompson as her attorney-in-fact on January 14, 2014. Administrative Record (AR) 312-317. The power of attorney specifically imposed a fiduciary duty on Mr. Thompson as the attorney in fact: “All powers granted to the Attorney-in-Fact herein shall be exercised by the Attorney-in-Fact in a fiduciary capacity.” AR 314. Though Mr. Thompson’s authority as attorney-in-fact allowed him reasonable fees for his services, the power of attorney prevented him from transferring assets of the estate to himself: “Under no circumstances may the Attorney-in-Fact exercise any of the powers herein, directly or indirectly, for a transfer to themselves, their estate, their creditors, or the creditors of their estate.” AR 314.

Janet, at about 74 years of age, suffered a stroke in 2014. Report of Proceedings (RP) 196, l. 10; *see also* AR 4. Upon her release from the hospital, she was admitted to a rehabilitation facility. RP 196, ll. 12-17. She moved to an assisted living facility, Brookdale, in May 2014. RP 25, l. 14.

A. Unchallenged Verities on Appeal

¹ The vulnerable adult is referred to in the record by her first name to preserve confidentiality.

² The statute defines “vulnerable adult” to include, in relevant part, a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself or a person admitted to any facility. RCW 74.34.020(22)

A full description of the facts in this case can be found in the Review Decision and Final Order duplicated in the Administrative Record at pages three to twenty. This section is a summary of the facts as found by the Review Judge that have not been challenged by Mr. Thompson. *See generally* Br. of Appellant. After her stroke, Janet became eligible for long-term care services through the Department of Social and Health Services. AR 2; *see also generally* chapter WAC 388-106 (setting out functional eligibility standards for Medicaid-funded long-term care); *see also generally* chapter 182-513 WAC (setting out financial eligibility standards for Medicaid-funded long-term care). Janet received an income of about \$2,700 per month, which would automatically deposit into a banking account Janet held jointly with Mr. Thompson. AR 3. Janet used her income to pay a portion of the cost of her long-term care—between \$1,650 and \$1,800 per month. AR 3; *see also* WAC 182-513-1509 (determining a client's financial participation in the cost of care for long-term care authorized by home and community services). Janet had other expenses too "including TV, internet, storage facility, telephone, prescriptions, and 24/7 Oxygen." AR 3.

Janet owned a home, which she and Mr. Thompson decided to sell. AR 3. The proceeds of the sale were deposited into Janet's banking account. AR 4. Mr. Thompson proceeded to spend those sale proceeds "to pay for a

number of items which were used by [Mr. Thompson] and his family.” AR 3. He bought tires, car washes, and auto repairs for his own car. *Id.* He used \$700 to pay for his own telephone bill. *Id.* He spent Janet’s money for items exclusively for himself at numerous retail stores including Mirage Pool and Spa, Nordstrom, Sports Authority, Ace Hardware, Home Depot, and Lowes. *Id.* He bought hotel stays, fast food, and gas for the benefit of himself and his family. *Id.*

Even though these purchases explicitly contradicted the Durable Power of Attorney instrument Janet signed (AR 314), Mr. Thompson thought that he had Janet’s permission because she told him to use the money “as he saw fit.” AR 4. But, “[t]here was no evidence presented to indicate that Janet specifically approved any of these payments or purchases or that any of these purchases were meant as a gift to Mr. Thompson or his family by Janet.” *Id.* Mr. Thompson also said that his purchase benefited Janet because they kept her total assets under \$2,000, which was necessary so that she would be financially eligible for Medicaid. AR 4; *see also* WAC 182-513-1350(2)(a). Mr. Thompson learned this from Kathie Lloyd, Janet’s financial eligibility specialist. AR 5. She also told Mr. Thompson that “any expenditure of Janet’s assets must be for the sole benefit of Janet.” *Id.*

Sally Wilkins, an APS investigator, was assigned to investigate the allegation of financial exploitation.³ AR 5. When she interviewed Janet, she showed Janet copies of her bank records. *Id.* Janet said that Mr. Thompson “should not have spent that money.” *Id.*

B. The Challenged Portions of the Final Order and Evidence Related Thereto.

Mr. Thompson challenges substitutions of findings made by the Review Judge reweighing the evidence to base findings of fact made by the APS investigator instead of Janet’s testimony. Br. of Appellant at 3, 18, 30-32. Accordingly, the evidence relevant to that challenge is summarized here.

Janet testified that Mr. Thompson talked with her “one time” about spending the money from the sale of her home. RP 173, ll. 18-22. She never testified that she was aware of the purchases Mr. Thompson made out of her account either before they took place or contemporaneously. *Id.* When asked whether Mr. Thompson’s spending was for Janet’s benefit, she testified, “not always.” RP 176, ll. 8-10. Even at the time of hearing, Janet was not aware of the specific purchases Mr. Thompson had made out of her account. RP 182, ll. 3-4. When asked, “do you know what the allegations

³ Janet’s DSHS financial eligibility specialist referred the matter to APS. RP 74, ll. 12-13. APS first received Janet’s bank records from the financial eligibility worker. AR 165.

against Matt are?" Janet replied, "No, I don't." *Id.* Janet believed that Mr. Thompson was making sure her rent was paid. RP 170, ll. 7-9. He was supposed to "pay my bills, make sure I didn't get overdue on anything." RP 172, ll. 1-5. In fact, her rent was in arrears for over a year. AR 8, 205-08. A worker from her assisted living facility testified, "there's always been a balance on this account since May 2014 to October 2015. RP 87, ll. 17-18.

The APS investigator first met with Janet on June 6, 2016. AR 166. Janet told the APS investigator that "she is a 'giver' and wanted to have Matt protect her from that." AR 166, RP 94, ll. 10-12. The APS investigator asked Janet about the allegations, went through some of the financial documentation with her, and Janet expressed that she was "very distressed to think that Matt may be using her money for himself." RP 95, ll. 16-23, AR 167. The APS investigator noted, "Janet stated she is very upset and feels used and hated by her family." AR 168. At that meeting, Janet signed a consent so that the APS investigator could speak with Janet's doctor and also obtain more bank records from Umpqua bank. AR 168. At the time the APS investigator interviewed her, Janet had little knowledge about what her financial status was. RP 94, ll. 14-15. At the end of her first meeting with the APS investigator, Janet gave the APS investigator a hug and thanked her for coming and telling her about the issue. AR 168. Janet was so

distressed, however, that she was admitted to the hospital for five days thereafter. AR 170; RP 63, ll. 3-4; RP 111, ll. 21-22.

On June 7, 2016, the APS investigator obtained some of Janet's bank records from the person who made the referral to APS, Janet's DSHS financial worker, Kathie Lloyd. AR 170; RP 76, ll. 12-13. Mr. Thompson was the person who provided those bank records to Ms. Lloyd. AR 170. Ms. Lloyd testified that based on the records provided by Mr. Thompson she would either make a referral to APS for financial exploitation, or she would apply a penalty period to Janet's benefits and Janet would not be "covered for a while." RP 60-61.

On July 7, 2016, an Umpqua bank fraud investigator called the APS investigator and said the bank was closing Janet's account due to fraud. AR 171. The fraud investigator from the bank also told the APS investigator that he would provide "the remaining bank statements on the account once it is closed out." AR 171.

The APS investigator spoke with Mr. Thompson by telephone on August 9, 2016. AR 172. Mr. Thompson told her the reason for changing Janet's bank account was because "Janet was stressing out over" it. AR 172.

Two days later, Mr. Thompson came into the APS office to speak with the APS investigators. AR 173. During that meeting, Mr. Thompson admitted that he was the only one to use Janet's debit card. AR 174; RP 98,

ll. 3-4. At first, he told the APS investigator that Janet had signed the note for the \$9,000 loan. AR 174. When confronted with a comparison of the signatures, Mr. Thompson admitted to the APS investigator that he himself had signed the note. AR 174- 75. The APS investigator wrote in her notes:

I asked Matt if he used Janet's money for his own benefit and he said yes, he did on occasion, but he always paid Janet back by depositing money in her account. In fact he said he pretty much commingled his own money with Janet's in her account and in his own Bank of America account he has with his wife.

AR 175. The APS investigator testified that when she examined the bank records, she "did not see direct, um deposits to repay Janet any of the money he spent." RP 106, ll. 11-12. The APS investigator also asked Mr. Thompson "if he used [Janet's] debit card for himself on occasion and he said he did." AR 175. During that conversation, the APS investigator "went over most of the debit charges on the account." AR 176. Mr. Thompson admitted that he used the card for his own gas, for his pool, for charges at PetCo, tires, car washes, car repair, Beaverbark, AT&T, Nordstroms, and out of town travel including airfare, car rentals, and hotels. AR 176-77. The APS investigator also pointed out the overdraft charges to Mr. Thompson. AR 176. Mr. Thompson admitted that his actions had put Janet in the hospital. AR 177.

The day after the APS investigator's conversation with Mr. Thompson, Janet telephoned her. AR 177. Janet told the APS investigator that "if I was in front of her right now she would wring my neck for what I have done to Matthew." AR 177. The APS investigator explained to Janet that she "based [her] interview with Matthew on the facts that were in the bank statements [Janet] allowed [the APS investigator] to obtain [. . .]" AR 177. Janet then stated that "anything he has used, he had her permission to spend and she has seen the bank statements." AR 178.

The APS investigator relied on Janet's previous statements of surprise and dismay in making her finding that Mr. Thompson financially exploited Janet, determining the later statements to be less credible, since the APS investigator believed Mr. Thompson influenced Janet to change her story. RP 147-48. The investigator explained, "A person can have undue influence over a person by being a loved one and being in a trusted position." RP 149.⁴

⁴ The administrative hearing was contentious. The appellant's attorney was frustrated with the APS investigator, and continuously asked her questions about non-contested issues, stating, "some of my frustration is coming through." RP 131, ll. 15-16. His interruptions of the APS investigator's answers are well documented in the record. *See i.e.*, RP 130. The record speaks for itself as to the investigator's testimony.

IV. ARGUMENT

DSHS appropriately found that Mr. Thompson financially exploited Janet because he breached his fiduciary duties and exerted undue influence over her to obtain her assets and use them for his own purposes. His intent in committing these acts was irrelevant as both the law governing powers of attorney, and the power of attorney he acted under, prohibited him from transferring Janet's assets to himself. Despite his stated subjective intentions, his actions actually caused Janet to lose her Medicaid benefits for one month, and put her at risk of losing more benefits. In addition, Janet's ratification of his conduct after the fact was brought about by undue influence, as Mr. Thompson and Janet enjoyed a confidential relationship, and Mr. Thompson failed to meet his burden to show that Janet knowingly and intentionally gave Mr. Thompson the sums of money he took. It is an unchallenged verity on this appeal that Mr. Thompson presented no evidence that Janet approved the transfers when they were made or that she intended them as gifts. AR 4, Finding of Fact (FOF) 13. Finally, Mr. Thompson's constitutional arguments, which he does not have standing to raise in the first place, are meritless. The final order should be affirmed.

A. Standard of Review

This action is for judicial review of a final order of DSHS under the Administrative Procedure Act (APA), RCW 34.05. This Court's review is limited to review of the agency's Final Order. RCW 34.05.570(3); *Verizon Nw. Inc. v. Wash Empl. Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008) (citing *Tapper v. Empl. Sec. Dep't*, 122 Wn.2d 397, 404, 858 P.2d 494 (1993)). Here, the agency's final order is the Review Decision and Final Order of the DSHS Board of Appeals dated September 7, 2017. AR 1-15.

The burden of demonstrating the invalidity of agency action is on the party asserting invalidity. RCW 34.05.570(1). A court may reverse an administrative decision only if the party asserting invalidity demonstrates one of the factors in RCW 34.05.570. Courts have summarized these factors by stating that administrative decisions will be reversed only if: (1) the administrative decision was based on an error of law; (2) the decision was not based on substantial evidence when viewed in the light of the record as a whole; or (3) the decision was arbitrary or capricious. *Callecod v. Washington State Patrol*, 84 Wn. App. 663, 670, 929 P.2d 510 (1997) (citing *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 407, 914 P.2d 750 (1996)); *see also* RCW 34.05.570(3)(d),(e),(i) (2006). An administrative decision may also be reversed if it is based on a law that is unconstitutional on its face or as

applied. RCW 34.05.570(a). In such a case, the appellant has a heavy burden of showing the law is unconstitutional beyond a reasonable doubt. *Island County v. State*, 135 Wn.2d 141, 955 P.2d 377 (1998); *State v. Lusby*, 105 Wn. App. 257, 18 P.3d 625 (2001).

Mr. Thompson does not specifically assign error to any finding of fact. A petitioner challenging any findings of fact must show that the findings are clearly erroneous. *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991). Unchallenged administrative findings of fact are accepted as verities upon review. *Id.* In this case, Mr. Thompson has not assigned error to any of the findings of fact in the final order, so they are all verities on appeal. He assigns error to each substantive conclusion of law, instead, some of which contain mixed conclusions of law and findings of fact. *See generally* Br. of Appellant.

Reviewing courts do not overturn an agency decision even where the opposing party reasonably disputes the issues and evidence with equal dignity. *Ferry County v. Concerned Friends of Ferry County*, 121 Wn. App. 850, 856, 90 P.3d 698 (2004). The substantial evidence standard is highly deferential to the agency. *Premera v. Kriedler*, 133 Wn. App. 23, 32 (2006). On a sufficiency challenge, the court takes the agency's evidence as true, and draws all inferences in the agency's favor. *Ancier v. Dep't of Health*, 140 Wn. App. 564, 573, 166 P.3d 829 (2007). A court overturns an agency's

factual findings only if they are clearly erroneous and the court is “definitely and firmly convinced that a mistake has been made.” *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 588, 90 P.3d 659 (2004).

B. Mr. Thompson’s financially exploited Janet because he illegally transferred her assets to himself.

Financial exploitation includes, but is not limited to the breach of a fiduciary duty and the use of undue influence. RCW 74.34.020(7)(a), (b). The review judge appropriately found both in this case. AR 11-12, Conclusion of Law (COL) 15.

1. Mr. Thompson transferred Janet’s assets to himself in contravention of the power of attorney and the law, breaching his fiduciary duty.

The review judge’s conclusion that Mr. Thompson breached his fiduciary duty to Janet is supported by substantial evidence in the record. Mr. Thompson does not dispute that he had a fiduciary duty to Janet. Any subsequent ratification of Mr. Thompson’s self-gifting does not excuse his conduct. Such an argument ignores the plain language of the power of attorney under which Mr. Thompson spent Janet’s money.

The power of attorney specifically provided that Mr. Thompson was a fiduciary for Janet and states: “**Under no circumstances may the Attorney-in-Fact exercise any of the powers herein, directly or indirectly, for a transfer to themselves, their estate, their creditors, or the**

creditors of their estate.” AR 314 (emphasis added). Yet, Mr. Thompson admitted that he spent Janet’s money on himself and his family. RP 227, ll. 19-24.

The law governing powers of attorney at the time provided that agents “shall not have the power to [. . .] make any gifts of property owned by the principal.” RCW 11.94.050(1), repealed effective January 1, 2017. The power of attorney signed by Janet does not alter the statute’s prohibition on gifting—but reaffirms it. AR 312-17. Mr. Thompson argued that the transfers were gifts, but the law at the time prevented Mr. Thompson from making those gifts to himself. It is a verity on appeal that there was no evidence showing that the specific transfers were intended to be gifts. AR 4.

Powers of attorney are strictly construed. *Scott v. Goldman*, 82 Wn. App. 1, 6, 917 P.2d 131 (1996) (citing *Bryant v. Bryant*, 125 Wn.2d 113, 117-18, 882 P.2d 169 (1994)). “Accordingly, the instrument will be held to grant only those powers which are specified, and the agent may neither go beyond nor deviate from the express provisions.” *Id.* The power of attorney Janet executed appointing Mr. Thompson as her attorney-in-fact, therefore must be strictly construed. Mr. Thompson went beyond and deviated from its express provisions when he made transfers of Janet’s property to himself.

Washington state law also imposes duties on attorneys in fact to be able to account for the assets they manage. “Inherent in the fiduciary

relationship between principal and attorney in fact is the duty to account for the assets managed by the attorney in fact.” *In re Estate of Palmer*, 145 Wn. App. 249, 264, 187 P.3d 158 (2008) (citing *Crisman v. Crisman*, 85 Wn. App. 15, 22, 931 P.2d 163 (1997)).⁵

Exhibit 14, admitted at the administrative hearing, contains Mr. Thompson’s accounting of reimbursement and fees for services. AR 318-322. It contains no receipts, no explanation of time spent for work done, or any calculation of hourly rates as “reasonable compensation.”

The language of the power of attorney itself prevents Mr. Thompson from transferring assets of the estate to himself. His legal duty as an attorney-in-fact was to account for the assets. Reading those two duties together, if he wished to compensate himself for his work, he would have had to strictly account for the time and costs he expended on Janet’s behalf. He did not. Mr. Thompson admitted at the hearing that he did not keep track of his time or efforts. RP 221, ll. 5-8, RP 30, ll. 17-25. He further testified that he never formally compensated himself for services provided to his mother or reimbursed himself for his expenses related to his mother. RP 221, ll. 1-8.

⁵ The legislature later codified the duties of an attorney in fact to include a duty to “keep a record of all receipts, disbursements, and transactions made on behalf of the principal.” Laws of 2016, ch. 209, § 11(2)(d), codified at RCW 11.125.140(2)(d).

The Review Judge relied on *Bryant v. Bryant*, 125 Wn.2d 113 (1994), in determining that Mr. Thompson breached his fiduciary duty. In *Bryant*, a wife executed a power of attorney in favor of her husband who used the power of attorney to transfer their community property away from the community. The husband argued that his wife subsequently ratified the transfers. The Court in that case found that the general power of attorney did not authorize him to make gifts of community property. The Court further found that, though the couple briefly reconciled, she did not ratify those transfers. The Court ruled:

The rule of strict construction also flows from the fiduciary principles governing the agent spouse. The agent becomes a fiduciary upon acquiring dominion and control over the principals' property. *Moon v. Phipps*, 67 Wn.2d 948, 955, 411 P.2d 157 (1966). In handling the principal's property, the fiduciary is bound to act with the utmost good faith and loyalty. Any use of the principal's property in a manner inconsistent with the principal's instruction is a breach of the fiduciary duty. *Nelson v. Smith*, 140 Wash. 293, 294-95, 248 P. 798 (1926).

Bryant, 125 Wn.2d at 118-19. Because the power of attorney in this case instructed Mr. Thompson not to transfer Janet's property to himself, and he did so anyway without adequately accounting for any compensation to himself, the review judge properly found that Mr. Thompson breached his fiduciary duty to Janet and so financially exploited her. See RCW 74.34.020(7).

2. **Mr. Thompson exerted undue influence over Janet because they shared a confidential relationship and Janet did not specifically intend to make gifts to Mr. Thompson, nor did she have explicit knowledge of each transfer.**

Mr. Thompson argues that the financial exploitation definition in RCW 74.34.020(7) relates only to unauthorized appropriation. However, he fails to address the issue that the review judge identified, which was that the transfers were unauthorized at the time, breached Mr. Thompson's fiduciary duties, and were later only ratified through undue influence. The unchallenged findings of fact include a finding that there was no evidence that Janet specifically approved any of these payments or purchases, or that any of these specific purchases were meant as a gift to the Appellant or his family by Janet. AR 4, FOF 13. The Review Judge appropriately concluded that Mr. Thompson did not rebut the presumption of undue influence over Janet. The record supports the existence of the confidential relationship due to the fiduciary duties imposed on Mr. Thompson by the power of attorney. AR 11, Conclusion of Law (COL) 15. Accordingly, in order to show that Janet freely gifted her money to him, Mr. Thompson would have to show that any gift was made "freely, voluntarily, and with a full understanding of the facts." *Endicott v. Saul*, 142 Wn. App. 899, 922, 176 P.3d 560 (2008) (citing *McCutcheon*, 2 Wn. App. at 356). Because no such evidence was presented, and it is a verity on this appeal that there was no evidence Janet

intended the transfers as gifts, the Board's finding of financial exploitation should be affirmed.

The existence of undue influence is a factual question. *McCutcheon v. Brownfield*, 2 Wn. App. 348, 356, 467 P.2d 868 (1970) (citing 38 Am Jur2d Gifts § 108 (1968)), *review denied*, 78 Wn.2d 993 (1970). When the recipient of a gift has a confidential relationship with the donor, the burden shifts to the recipient to prove "a gift was intended and not the product of undue influence." *Endicott v. Saul*, 142 Wn. App. 899, 922, 176 P.3d 560 (2008); *see also Pederson v. Bibioff*, 64 Wn. App. 710, 720, 828 P.2d 1113 (1991); *Lewis v. Estate of Lewis*, 45 Wn. App. 387, 389, 725 P.2d 644 (1986); *White v. White*, 33 Wn. App. 364, 368, 655 P.2d 1173 (1982); *McCutcheon*, 2 Wn. App. at 356.

Here, the Review Judge specifically concluded that Mr. Thompson failed to rebut the presumption of undue influence on Janet. AR 11, COL 15. The Review's Judge's conclusion of undue influence is well supported by substantial evidence. "While parentage alone does not necessarily establish a confidential relationship between parent and child, the fact of parentage frequently furnishes the occasion for the existence of a confidential relationship." *Pederson*, 64 Wn. App. at 718 (citing *McCutcheon*, 2 Wn. App. at 357). A confidential relationship arises

between a parent and a child when the parent depends on the child for support and maintenance or for care or protection in business matters.

[T]he parent may become dependent upon the child, either for support and maintenance, or for care or protection in business matters as well, or for both, and the child, by virtue of factors of personality and superior knowledge and the assumption of the role of adviser accepted by the parent may acquire a status, *vis-à-vis* the parent, that will bring about the confidential relationship.

McCutcheon, 2 Wn. App. at 357.

In this case, Mr. Thompson was not only Janet's fiduciary under a power of attorney, but he also testified that his mother was reliant on him to meet her needs, social, medical, and material. Janet herself testified that she trusted Mr. Thompson to handle all of her finances, keep current on her rent, pay her bills, and qualify her for Medicaid benefits because she does not care to keep up with those matters.

Because a confidential relationship existed between Janet and Mr. Thompson, Mr. Thompson had the burden of showing that he did not unduly influence Janet. He would have had to present some evidence that the transfers were made "freely, voluntarily, and with a full understanding of the facts." *Endicott v. Saul*, 142 Wn. App. 899, 922, 176 P.3d 560 (2008) (citing *McCutcheon*, 2 Wn. App. at 356). He failed to do so. Janet testified she did not even know what the allegations against Mr. Thompson were. RP 182, ll. 3-4. Mr. Thompson testified that Janet was not aware of her

financial situation. RP 191, ll. 9-11. Without understanding what Mr. Thompson took, she could not have had a full understanding of the facts. “If the judicial mind is left in doubt or uncertainty as to exactly what the status of the transaction was, the donee must be deemed to have failed in the discharge of his burden and the claim of gift must be rejected.” *McCutcheon*, 2 Wn. App. at 356 (citing Am.Jur.2d Gifts § 106 (1968)).

Even when evidence of coercion is lacking, where evidence indicates that the grantor made a gift without “understanding the consequences of the act, at a time when [s]he did not intend to transfer ownership” it is sufficient to defeat an alleged gift. *Pederson*, 64 Wn. App. at 721 (citing *McCutcheon*, 2 Wn. App. 248). In this case, Janet testified that she discussed approving Mr. Thompson’s transfers only one time.

Q: [D]id Matt talk to you about spending the money?

A: Yes.

Q: Um - -

A: One time, yes.

RP 173, ll. 18-22. The Review Judge specifically relied on this exchange in concluding that Janet did not “freely, voluntarily, and with full understanding of the facts” make a gift of each of the payments to Mr. Thompson. AR 12, COL 16.

Given the number of transfers, Janet’s lack of understanding of the allegations against Mr. Thompson, and the period of time over which the

transfers occurred, the review judge could reasonably conclude that Janet did not understand the consequences of the transfers and did not intend to transfer ownership at the time each and every transfer was made.

In this case, given the confidential relationship and lacking evidence that Janet had a full understanding of all the transfers Mr. Thompson made at the time he made them, the law and substantial evidence support the review judge's conclusion Mr. Thomson exerted undue influence over Janet. Because Mr. Thompson used that undue influence to obtain possession of her money, and spend it for himself, he financially exploited her. RCW 74.34.020(7)(a).

3. Mr. Thompson's intent is irrelevant, and his actions in spending of Janet's money put her Medicaid benefits at risk, contrary to his stated intent.

Mr. Thompson's subsequent explanations of his subjective intent in taking his mother's money are irrelevant to an analysis of financial exploitation. Intent to harm the vulnerable adult is not an element of financial exploitation. *See* RCW 74.34.020(7). Respondent has found no published decision addressing whether intent is a required element of financial exploitation. However, Division I has considered this question in an unpublished opinion. *In re Estate of Calvin Evans, Sr. v. Calvin Evans, Jr.*, 191 Wn. App. 1048, not reported in P.3d (2015). The *Evans* court explained the financial exploitation "statute does not expressly require a

finding of intent to cause injury to the victim's property."⁶ This approach is correct because it squares with the express language of the statute. The statutory definition at issue here is:

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

RCW 74.34.020(7). Mr. Thompson argues that the financial exploitation definition in RCW 74.34.020(7) relates only to unauthorized appropriation. However, he fails to address the issue that the review judge identified, which was that the transfers were unauthorized at the time, breached Mr. Thompson's fiduciary duties, and were later only ratified through undue influence. And, Mr. Thompson failed to assign error to the finding that there was no evidence that Janet specifically approved any of his transfers or that any of the transfers were meant as a gift, which is a verity on this appeal. (AR 4, FOF 13).

Medicaid eligibility law provides that if an individual makes transfers for less than fair market value during the look-back period, she becomes ineligible for benefits. The federal Medicaid statute states: "the

⁶ Per GR 14.1, the unpublished decision in *Evans v. Evans* is attached hereto as Appendix 1. The decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.

State plan must provide that if an institutionalized individual [. . .] disposes of assets for less than fair market value on or after the look-back date specified [. . .] the individual is ineligible for medical assistance for services.” 2 U.S.C. §1396p(2). DSHS enacted rules implementing this federal law. One of those rules, WAC 182-513-1363(2), allows the agency to evaluate “all transfers for recipients of LTC (long-term care) services made on or after the month the recipient attained institutional status.” If the individual “does not receive adequate consideration for the asset,” the agency will establish a period of ineligibility for services. WAC 182-513-1363(3). The rule goes on to describe the excepted types of transfers, none of which Mr. Thompson has ever shown to apply. The record contains no evidence that Janet received adequate consideration (described by the rule as fair market value) for any of the transfers to Mr. Thompson in this case. *See* WAC 182-513-1363(3). Though Mr. Thompson argued the transfers benefitted Janet by keeping her eligible for the COPES program, the transfers did not benefit Janet at all because they exposed her to a penalty look back period, which would disqualify her from receiving Medicaid benefits. Janet’s financial worker testified that based on the nature of the transfers, she would either refer the matter to APS for financial exploitation, or disqualify Janet from receiving benefits for a time. RP 60-61.

Though Mr. Thompson argues that Janet's later ratification of his actions insulates him, such a reading of the act would create an absurd result, contrary to the purposes of the Abuse of Vulnerable Adults act (AVA), Chapter 74.34 RCW. The stated purpose of the AVA is to protect vulnerable adults from abuse, financial exploitation, and neglect. RCW 74.34.100; *Endicott v. Saul*, 142 Wn. App. 899, 919, 176 P.3d 560 (2008). Allowing an alleged perpetrator of financial exploitation to influence an alleged victim into later ratifying his acts defeats the protective intent of the AVA. An interpretation [of a statute] that is consistent with the spirit or purpose of the enactment is favored over a literal reading that results in unlikely or strained consequences. *Premera v. Kriedler*, 133 Wn. App. 23, 37, 131 P3d 930 (2006) , *citing State v. Day*, 96 Wn.2d 646, 648, 638 P.2d 546 (1981).

Janet appointed Mr. Thompson as her agent under a power of attorney specifically to protect her from giving away her assets. AR 166, RP 94, ll. 10-12. By giving her money to himself, and afterwards using his position as her son and fiduciary to influence her to approve the transfers, Mr. Thompson breached his duties to Janet. To allow such a consequence would defeat the protective purpose of the AVA.

If the Court adopts the argument that a transfer of a vulnerable adult's assets is not exploitative if made with intent to maintain Medicaid

eligibility for the vulnerable adult, it would have significant detrimental effect. It would incentivize financial exploitation at the expense of vulnerable adults and taxpayers. Under this theory, individuals would be allowed to take as much money as they liked from vulnerable adults, so long as those transfers were claimed to assist in maintaining the vulnerable adult's Medicaid eligibility. It would ignore the reality of the lookback penalty period, which creates an actual hardship for the vulnerable adult. It is an argument that would keep the vulnerable perpetually poor, requiring the state to step in to provide care while the relatives and fiduciaries of the vulnerable enjoy the lucre.

C. The review judge had the authority to make findings of fact based on a witness's answers to questions.

Mr. Thompson fails to identify how the ALJ's observation of witnesses would have affected any of the facts in this case. Regardless, the Review Judge had the authority to find whatever facts are supported by the record. The reviewing officer has the same decision-making power as the presiding officer and may therefore set aside the hearing officer's findings and conclusions. RCW 34.05.464(4); *see Kabbae v. Dep't of Soc. & Health Servs.*, 144 Wn. App. 432, 441-43, 192 P.3d 903 (2008). The only restriction on the reviewing officer's authority is the requirement that the reviewing officer must give "due regard" to the presiding officer's

opportunity to observe the witnesses. RCW 34.05.464(4). Likewise, the reviewing officer “cannot reject credibility determinations without substantial evidence to the contrary in the record.” *Chandler v. Ins. Comm’r*, 141 Wn. App. 639, 657, 173 P.3d 275 (2007). Therefore, so long as substantial evidence in the record supports the determinations in the final order, they remain undisturbed on review. Substantial evidence means that the court determines whether sufficient evidence exists to persuade a fair-minded person of the truth or correctness of the order. *Spokane County v. E. Wash. Growth Mgmt. Hr’gs Bd.*, 176 Wn. App. 555, 565, 309 P.3d 673 (2013), *review denied*, 179 Wn.2d 1015, 318 P.3d 279 (2014); *Mowat Const. Co. v. Department of Labor and Industries*, 148 Wn. App. 920, 925, 201 P.3d 407 (2009).

Reviewing courts do not substitute their judgment for that of the administrative decision-maker with regard to the credibility of witnesses or the weight to be given conflicting evidence. *Port of Seattle v. Pollution Control Hr’gs Bd.*, 151 Wn.2d 568, 588, 90 P.3d 659 (2004). Rather, in reviewing the entire record, courts will uphold the findings even if they would have made a different finding based on their reading of the record, so long as there are sufficient facts in the record from which a reasonable person could make the same finding as the agency. *Id.*

In this case, there was no evidence that Janet approved the transfers at the time, and there was no evidence that Janet meant the transfers as gifts to Mr. Thompson or his family. AR 4, FOF 13. This finding is a verity on appeal. In light of the finding, the language of the power of attorney, and the law against gifting at the time, the credibility determinations made by the ALJ (administrative law judge) had little bearing on the outcome of the matter. However, even if they did, the review judge had the authority to change those determinations if supported by substantial evidence in the record.

When an ALJ makes a finding of fact not based not on the demeanor of the witness, but the nature of the witness's answers to questions, it is not a credibility determination.

[W]e note that the ALJ rejected her testimony because it was inconsistent, not because her demeanor was untrustworthy or unreliable. Like the Review Judge, we can look at the record to determine whether her testimony was substantively consistent. As such, the ALJ was not making a true credibility determination.

Chandler, 141 Wn. App. at 650. In this case, the ALJ did not make true credibility determinations, rather made determinations based on the nature of the witnesses' answers to questions. And, because of the nature of these administrative proceedings, the review judge can make an independent evaluation based on the record testimony.

Here, the ALJ rejected the APS investigator's testimony because "she did not directly answer appellant's attorney's questions but was argumentative to justify her decision." AR 47. The record reflects that the appellant's attorney was frustrated with the APS investigator, and that he continuously asked her questions about non-contested issues. Appellant's attorney stated: "some of my frustration is coming through." RP 131, ll. 15-16. His interruptions of the investigator's answers are well documented in the record. *See, e.g.*, RP 130. Appellant's attorney spent seven pages of the transcript questioning the APS investigator regarding Janet's competency. RP 117-124. Towards the beginning of that line of questioning, the investigator answered, "I don't know how many different ways I can say it. She's competent." RP 118-119. Later in the questioning, the APS investigator stated Janet's "cognitive status was not the main issue here." RP 124, l. 3. The review judge could see from the record just how responsive the APS investigator was to questioning. Therefore, the review judge could reasonably conclude that the APS investigator was responsive not just to the tone, but also the substance of the questions.

With respect to the credibility determination the ALJ made regarding Janet, he stated "greater weight is given to her testimony at hearing under oath and subject to perjury. The vulnerable adult showed no evidence of dementia." AR 46. The ALJ also mentioned the "vulnerable

adult's reaction to the investigator at the hearing." AR 46. Even if Janet had provided any evidence that she specifically approved the transfers or that she meant the transfers as gifts, the review judge could reasonably decide to weigh Janet's earlier statements to the APS investigator more heavily. In a similar case involving a power of attorney who made gifts to herself, the Court of Appeals had to determine whether the trial court weighed contradictory testimony properly when it accepted earlier deposition testimony as more credible than trial testimony. *In re Estate of Palmer*, 145 Wn. App. 249, 266, 187 P.3d 758 (2008). In noting that the Court of Appeals does not make credibility determinations, it stated "[t]he trial court was entitled to weigh Duffy's contradictory testimony and decide which it found to be more credible." *Id.*

Janet's hostility to the APS investigator is well documented in the administrative record. *See* AR 17-78. The hostility appeared only after Janet understood her son, Mr. Thompson, could be in trouble. Previous to that, Janet thanked the APS investigator and wanted to give her a hug. AR 168. There was no corresponding hostility of the investigator towards Janet. The APS investigator testified, "I like spunky people." RP 116, l. 14. The review judge could reasonably conclude that Janet did not like and resented the APS investigator for making allegations against her son. The review judge also could reasonably determine that Janet's first reaction to the allegations

against her son, and her documented distress at the allegations, were more reliable than her later statements, which changed with her efforts to exonerate her son from culpability. The review judge could consider the fact that Janet loved and relied on Mr. Thompson for almost every aspect of her life, from social interaction to medical care.

Because there was substantial evidence in the record for the review judge to reject the ALJ's findings, the review judge had the authority to do so. Therefore, even if there was some evidence in the record that Janet approved the transfers at the time they were made or that she intended the transfers as gifts, the Review Judge had the authority to weigh that evidence independently.

D. Mr. Thompson lacks standing to assert his victim's constitutional rights.

As the perpetrator of financial exploitation of his mother, Mr. Thompson lacks standing to assert that DSHS violated his victim's rights in its attempts to protect her.

Standing is a question of law, which this Court reviews de novo. *In re Guardianship of Karan*, 110 Wn. App. 76, 81, 38 P.3d 396 (2002). Washington courts have repeatedly determined that a party lacks standing to assert the constitutional violation of another party or third person. *See State v. Glenn*, 115 Wn. App. 540, 62 P.3d 921 (2003); *Muma v. Muma*, 115

Wn. App. 1, 60 P.3d 592 (2002); *Adult Entertainment Center v. Pierce Cty* 57 Wn. App. 435, 788 P.2d 1102 (1990); *State v. Gutierrez*, 50 Wn. App. 583, 749 P.2d 213 (1988); *State v. Kent*, 87 Wn.2d 103, 549 P.2d 721 (1976); *Kitsap Cty v. City of Bremerton*, 46 Wn.2d 362, 281 P.2d 841 (1955).

Mr. Thompson does not argue that the statutes are unconstitutional as applied to him, but rather that DSHS violated his mother's constitutional rights by invading her privacy and failing to provide her with equal protection under the law. He lacks standing to do so.

Here, Mr. Thompson is not an aggrieved party of any such violation of privacy or failure to provide equal protection under the law. An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected." *Cooper v. City of Tacoma*, 47 Wn. App. 315, 316, 734 P.2d 541 (1987). Even if proceeding under the federal habeas corpus "next friend" analysis, a litigant must demonstrate the allegedly injured third party lacks the ability to vindicate his or her rights before a court may grant the litigant standing to act on the injured third party's behalf. *See, e.g., Whitmore v. Arkansas*, 495 U.S. 149, 163-64, 110 S.Ct. 1717, 109 L.Ed. 135 (1990); *Ludwig v. Department of Retirement Systems*, 131 Wn. App. 379, 385, 127 P.3d 781 (2006). Mr. Thompson does not argue that Janet lacks the ability to assert her own rights—indeed, he stresses Janet's

competency to make decisions for herself throughout his argument, and she testified at the proceedings on her own behalf. Therefore, because Janet could assert her own rights, Mr. Thompson may not escape the consequences of his behavior by asserting them for her.

1. Mr. Thompson cannot invoke his mother's right to privacy to hide his improper taking of his mother's money.

Even if Mr. Thompson had standing to invoke his mother's constitutional right to privacy, that right was not violated here. The law permits DSHS to use financial records in administrative proceedings regarding its finding under the Abuse of Vulnerable Adults Act. *See* RCW 74.34.220(4).⁷ Further, the record demonstrates that Mr. Thompson provided bank records to DSHS, and Janet signed a release for the APS investigator to obtain her financial records. AR 168, 170. Therefore, neither Janet nor Mr. Thompson could have an expectation that the State would not view them in investigating whether Mr. Thompson financially exploited her. Therefore, DSHS did not violate Janet's right to privacy when, pursuant to her consent, it obtained and used her financial records in making its finding that Mr. Thompson financially exploited her.

⁷ In criminal and quasi-criminal proceedings, the State requires permission or a warrant to intrude on a person's private financial affairs. *See, e.g., State v. Miles*, 160 Wn.2d 236, 156 P.3d 864 (2007). Administrative proceedings regarding DSHS's findings for abuse of vulnerable adults are not quasi-criminal in nature. *Kraft v. Department of Social and Health Services*, 145 Wn. App. 708, 716, 187 P.3d 798 (2008).

2. **Even if Mr. Thompson had standing to invoke his mother's state constitutional right to equal protection or her right to due process, those rights were not violated here.**

Mr. Thompson asserts an equal protection claim under article I, section 12 of the Washington Constitution. But article I, section 12 is not a state version of the federal Equal Protection Clause. It serves a different purpose. The federal Equal Protection Clause targets hostile discrimination and prohibits states from denying benefits that are generally available to others under the law. In contrast, article I, section 12 targets undue favoritism and prohibits a grant of special privileges and immunities that give persons or groups elevated status before the law. *See Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014). (“Whereas the Fourteenth Amendment was generally intended to prevent discrimination against disfavored individuals or groups, article I, section 12 was intended to prevent favoritism and special treatment for a few, to the disadvantage of others.”).

In a challenge under article I, section 12, the first step is to analyze whether the challenged law involves a privilege or immunity. If it does not, then article I, section 12 is not implicated. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 359-60, 340 P.3d 849 (2015) (citing *Ockletree*, 179 Wn.2d at 776). Mr. Thompson does

not identify or allege the existence of any privilege or immunity. Accordingly, if he had standing to bring an equal protection claim, it would be analyzed under the federal constitution. *Ockletree*, 179 Wn.2d at 776 n.4 (citing *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 608, 192 P.3d 306 (2008)).

Because no suspect classification or fundamental right is at issue, rational basis review applies. *Am. Legion Post No. 149*, 164 Wn.2d at 609. Rational basis review is “the most relaxed form of judicial scrutiny,” and is satisfied wherever there is (1) a legitimate state interest and (2) a rational connection between the interest and the means by which that interest is pursued. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 222-23, 143 P.3d 571 (2006). The legitimate state interest served in this case is the protection of vulnerable adults from financial exploitation. RCW 74.34.005.

a. Mr. Thompson’s arguments present an attempted facial challenge, which would fail even if he had standing to bring it.

Although Mr. Thompson characterizes his equal protection claim as an applied claim, it is not. His challenge is a facial challenge to the definition of “vulnerable adult” in RCW 74.34.020(22), arguing that the statute disparately treats elderly men and women based upon their residential preferences. Br. of Appellant at 28. Therefore, Mr. Thompson must show that there is no set of circumstances under which the statute

could be constitutionally applied. *City of Pasco v. Shaw*, 161 Wn.2d 450, 458, 166 P.3d 1157 (2007); *City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004) (same); see also *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008) (same).

Because Mr. Thompson is challenging the constitutionality of a statute, he must prove beyond a reasonable doubt that it is unconstitutional. *Island County v. State*, 135 Wn.2d 141, 955 P.2d 377 (1998); *State v. Lusby*, 105 Wn. App. 257, 18 P.3d 625 (2001).

Mr. Thompson bears the burden of showing beyond a reasonable doubt that the inclusive definition of “vulnerable adult” in RCW 74.34.020(22) is not rationally related to the legitimate state interest in protecting vulnerable adults from financial exploitation. He has not even attempted to make that showing.

“The Equal Protection Clause does not forbid classifications. It simply keeps governmental decision makers from treating differently persons who are in all relevant respects alike.” *Nordlinger v. Hanh*, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1982) citing *F.S. Royster Guano Co. V. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989 (1920). While defining the class is not an exact science, any equal protection analysis must begin by examining the statutory classification itself. Only

when legislation is shown to have an impact on the plaintiff that is substantial and disparate relative to a group of similarly situated persons may scrutiny continue. *Aleman v. Glickman*, 217 F.3d 1191, 1195-96 (9th Cir. 2000) (citing numerous cases).

Elderly men and women, those over the age of sixty, are classified as “vulnerable adults” only if they have “the functional, mental, or physical inability to care for himself or herself.” RCW 74.34.020(22)(a). Any adult, regardless of age, who resides in a facility such as an assisted living facility also meets the definition of a “vulnerable adult.” RCW 74.34.020(22)(d).

The record is clear in this case that Janet is reliant on others to meet her care needs. Not only does she live in a facility, but she also relied on Mr. Thompson to meet her needs. Mr. Thompson fails to show that the AVA creates a category for Janet that treats her differently from other individuals who are vulnerable because they are reliant on others for their care.

Age is just one factor in determining whether an individual is a “vulnerable adult” under the AVA. A ninety-year-old who is fully capable of meeting her own care needs and demonstrates this by living independently, without the need for services, is not a vulnerable adult. But a vulnerable adult could be an eighteen-year-old who resides in assisted living because he relies on others to meet his care needs. Including age as a factor in the analysis does not violate equal protection laws, so long as it is

rationality related to a state's legitimate interest. *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 83–84, 120 S. Ct. 631, 645–46, 145 L. Ed. 2d 522 (2000).

Mr. Thompson cannot show that the AVA discriminates between Janet and others reliant on care services. Even if he could, the court would apply a “rational basis” test to determine whether the State could legally discriminate.

- a. **The definition of “Vulnerable adult” is rationally related to the Legislature’s purpose in protecting the vulnerable.**

The rational basis test comprises an analysis of three factors.

The rational basis inquiry involves a three-part test: (1) Does the classification apply alike to all members within the designated class? (2) Does some basis in reality exist for reasonably distinguishing between those within and without the designated class? (3) Does the classification have a rational relation to the purpose of the challenged statute?

Equitable Shipyards, Inc. v. State, 93 Wn.2d 465, 478, 611 P.2d 396 (1980), citing *Yakima County deputy Sheriff’s Ass’n v. Board of Comm’rs for Yakima County*, 92 Wn.2d 831, 601 P.2d 936 (1979).

Mr. Thompson has failed to show that different vulnerable adults are treated differently under the AVA. He argues that Janet is treated differently because she is elderly and chooses to live in an assisted living facility even though she is mentally competent. Mental competence is not a necessary

factor to the definition of a “vulnerable adult.” A mentally competent person can be reliant on others and therefore vulnerable due to other infirmity.

The legislature made the following findings in enacting the AVA,

- (1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;
- [. . .] (4) A vulnerable adult may have health problems that place him or her in a dependent position;

RCW 74.34.020. These findings describe the basis in reality that exists for creating a classification of “vulnerable adult.” The definition of “vulnerable adult” accounts for a situation in which the adult is competent, but has other health problems that place them in a dependent situation. “The abuse of vulnerable adults act, chapter 74.34 RCW, was enacted in 1995 to provide protection and legal remedies to vulnerable adults living in the community but *dependent on others for their care.*” *Cummings v. Guardianship Servs. of Seattle*, 128 Wn.App. 742, 749, 110 P.3d 796 (2005) (emphasis added).

Because the definition of vulnerable adult in this case includes being reliant on others for care, and because the findings are that those reliant on others for care are more vulnerable, the rational basis test is satisfied. Mr. Thompson has not shown that DSHS treated Janet differently from other individuals who meet the definition of vulnerable adult.

b. Mr. Thompson's attempt to bring an as-applied challenge also would fail even if he had standing to bring it.

Even if Mr. Thompson had standing to claim an equal protection violation on behalf of his mother, and even if he had actually articulated an as-applied claim, that claim would fail. He would have to demonstrate that the definition of "vulnerable adult" in RCW 74.34.020(22) has both a discriminatory effect and a discriminatory purpose. *See Rosenbaum v. City & County of San Francisco*, 484 F.3d 1142, 1153 (9th Cir. 2007). To establish a discriminatory effect, Mr. Thompson must show that similarly situated individuals were treated differently. *Id.* (quoting *United States v. Armstrong*, 517 U.S. 456, 465 (1996)). To show discriminatory purpose, he must establish that "the decision-maker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* (quoting *Wayte v. United States*, 470 U.S. 598, 610 (1985)). He satisfied neither prong of this test.

3. Due Process.

Mr. Thompson intersperses into his equal protection claim references to "procedural due process rights afforded under Article 1, section 12." Br. of Appellant at 29. Under the Washington Constitution, the

right to procedural due process is guaranteed by article I, section 3, not article I, section 12.

But even if he had standing to raise a due process claim on behalf of his mother, a one-sentence procedural due process argument is inadequate to raise a constitutional issue for appellate review.

Parties raising constitutional issues must present considered arguments to this court. We reiterate our previous position: “naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” *In re Request of Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir.1970) [*cert. denied*, 401 U.S. 917, 91 S. Ct. 900, 27 L. Ed. 2d 819 (1971)]).

Health Ins. Pool v. Health Care Auth., 129 Wn.2d 504, 511-12, 919 P.2d 62 (1996) (quoting *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)). This Court should ignore Mr. Thompson’s “naked casting” of the due process issue.

V. CONCLUSION

Mr. Thompson financially exploited Janet. He misused Janet’s power of attorney to make transfers of Janet’s money to himself, even though the language of the power of attorney explicitly forbade such conduct. Moreover, he and Janet had a confidential relationship, and he failed to overcome the presumption that Janet’s subsequent approval of his transfers was due to undue influence. The review judge was entitled to

weigh the evidence and the nature of the testimony, and his findings should remain undisturbed because they are supported by substantial evidence in the record. Lastly, Mr. Thompson lacks standing to assert his mother's constitutional rights as a basis to avoid the consequences of his own actions. Even if he had standing, DSHS did not impermissibly intrude on Janet's privacy, nor did it treat her dissimilarly to other individuals in her same situation, nor is the statutory definition of "vulnerable adult" constitutionally suspect. This Court should affirm the review judge's decision and final order.

RESPECTFULLY SUBMITTED this 26th day of July, 2019.

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ATTACHMENT

191 Wash.App. 1048

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE WA R GEN
GR 14.1

Court of Appeals of Washington,
Division 1.

In the Matter of the ESTATE OF Calvin H. EVANS
Sr., Deceased.

Sharon Eaden, Vicki Sansing, Andkennethevans,
Respondents.

v.

Calvin H. Evans Jr., Appellant.

No. 69214-3-I.

Dec. 21, 2015.

Appeal from Snohomish Superior Court; Hon. Thomas J.
Wynne, J.

Attorneys and Law Firms

Lorna Sue Corrigan, Attorney at Law, M. Geoffrey G.
Jones, Attorney at Law, G. Geoffrey Gibbs, Anderson
Hunter Law Firm PS, Everett, WA, for Respondent.

Douglas W. Elston, Law Offices of Douglas W. Elston,
Mill Creek, WA, for Other Parties.

Opinion

SPEARMAN, C.J.

*1 In a proceeding under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, the trial court found that Calvin Evans Jr. had financially abused his father, Calvin Evans Sr. and thus precluded him from inheriting any of his father's property. Calvin Evans Jr. appeals, claiming the trial court erred because the evidence was insufficient to find that he willfully intended to inflict injury to his father's property or that his father was a "vulnerable adult" at the time of the acts alleged to constitute the abuse. He also claims the trial court failed to consider his contributions and improvements to his father's property and failed to apply RCW 11.84.170 which allows a financial abuser to inherit the property of the abused person under certain circumstances. Finally, he claims the trial court erred when it denied his motion to

reconsider. We find no error and affirm.

FACTS

Calvin H. Evans, Sr. (Cal Sr.) was born on March 8, 1933. He owned and operated a successful excavation construction business. At the time of his death, Cal Sr. was no longer married and had four children: Kenneth Evans, Vicki Sansing, Sharon Eaden (Sharon), and Calvin H. Evans Jr. (Cal Jr.). Cal Sr. suffered from a medical condition called polycythemia, a thickening of the blood, which predisposed him to stroke. He suffered his first stroke in 2000.

In 2003, Cal Sr. purchased a 40-acre ranch in Sultan, Washington. Soon after, he purchased another 70-acre parcel nearby. In June 2004, Cal Sr. sold his twin engine Cessna 310C airplane to Cal Jr. for \$80,000. Cal Jr. paid \$20,000 down and gave a promissory note for the remaining \$60,000. The note provided for monthly payments of \$1000. After purchasing the plane, Cal Jr. convinced Cal Sr. that the plane had mechanical problems and that Cal Sr. should be responsible for purchasing a new engine. Cal Sr. paid \$24,000 for a new engine, while Cal Jr. paid \$8,000 for the installation of the new engine and an unknown amount of money for other improvements. Cal Jr. made no payments on the note and in June 2005, suggested that he and his father create an LLC for the ownership of the plane, with sixty percent in Cal Sr. and forty percent in Cal Jr.

In December 2004, Cal Sr. asked Cal Jr. and his family to move to the ranch to take care of him and manage the ranch activities. Cal Sr. had previously stated his intention to Cal Jr. and others that if Cal Jr. agreed to do so, that Cal Jr. would inherit the ranch property. In early 2005, Cal Jr. and his family moved from Idaho to the Sultan ranch. While they lived on the ranch, Cal Jr. and his family provided little personal care for Cal Sr., with the exception of some meals provided by Cal Jr.'s then wife.

Upon his arrival, Cal Jr. assumed responsibility for the ranch operations. His intention was to establish the ranch as a first class horse facility because it would provide him a greater income. Cal Jr. performed work on the ranch such as leveling the ground, cutting blackberries, burning trash, grading trails, fixing the barn floor and plumbing, painting the barn, leveling and compacting the indoor arena, and adding an outdoor arena. Cal Jr. also claimed

to have built a road on the east side of the barn. In March 2005, Cal Sr. suffered another stroke after which his health continued to decline.

*2 In June 2005, Cal Jr. convinced Cal Sr. to purchase a dump truck for \$20,000. Cal Jr. registered the truck in the name of Calvin H. Evans, with no other designation. That summer he also installed a heat pump using \$8,613 of Cal Sr.'s funds. Around the same time, Cal Jr. borrowed \$75,000 from Cal Sr. to make improvements to the ranch. Sharon insisted that Cal Jr. document the \$75,000 loan and prepared a draft promissory note. After Cal Jr. revised Sharon's draft, he and Cal Sr. signed it.

In 2005, Cal Jr. used \$15,000 of Cal Sr.'s money to purchase a park model mobile home. He also purchased a new stovetop for the house, using Cal Sr.'s funds. Cal Jr. also convinced Cal Sr. to enter into a contract to add onto the barn, including 18 new stalls, for \$75,000. The contractor did not finish the work and Cal Jr. withheld \$12,000 of the borrowed \$75,000.

On December 28, 2005, Sharon filed a guardianship petition alleging that Cal Sr. was incapacitated. Charles Diesen, Cal Sr.'s attorney since 1970, was appointed to represent him. On December 28, 2005, Erv DeSmet was appointed guardian ad litem for Cal Sr.

On January 28, 2006, Cal Sr. underwent a medical examination to assess his need for a guardian. Psychologist Dr. Eisenauer diagnosed him with dementia secondary to stroke. The doctor found that he had memory impairment, mild disorientation, disturbances in executive functioning, and impaired judgment and insight.

In early 2006, Cal Jr. and his wife helped Cal Sr. prepare a will that designated Diesen as the personal representative and left the Sultan ranch and this Cessna airplane to Cal Jr.¹ This will reduced Sharon's share of the estate to \$25,000; gave approximately 77 acres of pasture land to Vicki and Ken; gave Cal Sr.'s personal effects to Cal Jr., Vicki, and Ken, and created a trust for the benefit of Cal Jr., Vicki, Ken, and Cal Sr.'s grandchildren. On March 7, 2006, Cal Sr. executed the will. At the time, Diesen and his law partner, Carol Johnson, believed Cal Sr. had testamentary capacity.

Cal Sr. had another stroke in November 2006. He was placed in limited guardianship in June 2008, with Unlimited Guardianship Services of Washington (UGS) appointed as guardian. Under the guardianship, Cal Jr. was allowed to remain on and operate the ranch as long as Cal Sr. wanted him to, and Cal Jr. was ordered to pay the taxes and insurance on the ranch and manage the property

so that it maintained its value. Cal Jr. did not pay any taxes or insurance and, during the pendency of the guardianship, liquidated ranch assets and kept the proceeds. Cal Jr. also received six or seven of Cal Sr.'s social security checks, which he deposited into his own account and used the funds for his own purposes. Cal Jr. was required to reimburse the funds.

UGS petitioned for dismissal as Cal Sr.'s guardian in spring 2010, after which Sharon was appointed successor guardian. Cal Sr. was receiving full time home care when he died on April 5, 2011. His 2006 will was filed for probate on April 29, 2011. On July 14, 2011, petitioners Sharon Eaden, Ken Evans, and Vicki Sansing (collectively, Eaden) brought a TEDRA petition seeking a declaration that the will was invalid due to lack of competency and undue influence, and seeking to declare Cal Jr. an "abuser" under RCW 11.84.010.²

*3 A trial on the petition was heard in March 2012. At the conclusion of the trial, the court upheld Cal Sr.'s 2006 will, concluding that at the time Cal Sr. signed the will he had the testamentary capacity to do so. The court also found, however, that as early as 2004, Cal Sr. was a vulnerable adult because he was over 60 years of age and lacked the functional, mental, and physical ability to care for himself. The court concluded that Cal Jr. had financially exploited his father and, pursuant to RCW 11.84.030, .040, deemed him to have predeceased Cal Sr. Judgment was entered against Cal Jr. on May 31, 2012, in the amount of \$85,536.27, including a discretionary award of attorneys' fees and costs. Cal Jr.'s motion for reconsideration was denied.

He appeals.³

DISCUSSION

We review the superior court's findings for substantial evidence. *Scott v. Trans-Sys, Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).⁴ We defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003); *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 108, 864 P.2d 937 (1994) (citing *State v. O'Connell*, 83 Wn.2d 797, 839, 523 P.2d 872 (1974)). We review questions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). It is also well settled that "[w]e will not review an issue, theory, argument, or claim

of error not presented at the trial court level.” *Lindblad v. Boeing Co.*, 108 Wn.App. 198, 207, 31 P.3d 1 (2001) (quoting *Demelash v. Ross Stores, Inc.*, 105 Wn.App. 508, 527, 20 P.3d 447 (2001)). If an issue raised for the first time on appeal, however, is “ ‘arguably related’ to issues raised in the trial court,” a reviewing court may exercise its discretion to consider it. *Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn.App. 334, 338, 160 P.3d 1089 (2007).

Here, for the first time on appeal, Cal Jr. argues that the trial court erred when it found that he financially abused his father because there was no clear, cogent, and convincing evidence that he willfully intended to inflict financial injury on Cal Sr. as required by RCW 11.84.160(b). That statute provides that in determining whether a person is an abuser the court must find by clear, cogent and convincing evidence that “[t]he conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.” By its own terms the statute does not expressly require a finding of intent to cause injury to the victim’s property. Nonetheless, Cal Jr. argues that proof his “willful” conduct caused injury to Cal Sr.’s property is insufficient to show he is an abuser. He now contends it must be shown that he “intentionally” caused the injury.

Cal Jr. argues that he preserved this issue for appeal because, in his trial brief, he noted that one of the legal questions presented for trial was whether “Calvin Evans Sr. (sic) was an abuser of Calvin Evans Sr. as set forth in RCW 11.84?” Clerk’s Papers (CP) at 627. He also observed that “RCW 11.84.160 gives evidence factors for determining an abuser....” CP at 637. And he attached a copy of the statute. But Cal Jr. cites to no place in the record where he argued to the trial court that it was required to find that he intentionally caused injury to Cal Sr.’s property. Cal Jr. also argues that he may raise this issue on appeal for the first time because “willfulness is an essential element of [Sharon]’s burden ... and therefore raised.” Reply Br. at 4, n. 2. We reject this argument. That the trial court made findings regarding Cal Jr.’s willful action, does not preserve Cal Jr.’s right to raise a new argument about whether the trial court was also required to find that he intentionally caused injury to Cal Sr.’s property. Because the issue was not properly preserved below, we decline to consider it on appeal. “We do not review the trial court’s actions as to questions not brought to its attention.” *Kane v. Smith*, 56 Wn.2d 799, 806, 355 P.2d 827 (1960).

*4 Cal Jr. next contends that the findings of fact regarding his father’s status as a vulnerable adult are not supported by clear, cogent, and convincing evidence and are too

vague as to the time period. Insofar as is relevant here, a vulnerable adult is a person who is “[s]ixty years of age or older who has the functional, mental, or physical inability to care for himself or herself [.]” See RCW 11.84.010(6) and RCW 74.34.020(21).⁵ Cal Jr. concedes that Cal Sr. was well over 60 year old during the time period the trial court found the financial exploitation occurred, 2005 through Cal Sr.’s death in 2011. But he claims the evidence showed that Cal Sr. was capable of caring for himself “at least until his third stroke in November 2006.” Br. of Appellant at 38. In support of this assertion he cites evidence that:

(1) there was no guardianship put in place until June 2008, (2) there was no licensed home care until after June 2008, (3) Cal SR’s trusted attorney believed that Cal SR was competent all this time; (4) the trial court itself found that Cal SR was competent and able to resist attempts at undue influence in March 2006 when he executed his will, (5) Petitioner Sharon Eaden’s own diary demonstrates that Cal SR had mental clarity in August 2005, (6) Petitioner Vicki Sansing borrowed \$30,000 from Cal SR in November 2006, and (7) no examination or medical evidence precedes the January 2006 evaluation performed by Dr. Eisenhauer.

Br. of Appellant at 37.

But the cited evidence does not contradict the trial court’s finding that Cal Sr. was unable to care for himself. That Cal Sr. was not subject to a guardianship or in licensed home care are relevant considerations but do not in themselves establish he was able to care for himself.

Cal Jr. also seems to argue that because Cal Sr. was competent to attest to a will he was also functionally, mentally or physically able to care for himself. But one does not necessarily establish the other. “The possession of testamentary capacity involves an understanding by the testator of the transaction in which he is engaged, a comprehension of the nature and extent of the property which is comprised in his estate, and a recollection of the natural objects of his bounty.” *Dean v. Jordan*, 194 Wash. 661, 668, 79 P.2d 331 (1938). One could, as the trial court found, satisfy this test but still be unable to care for oneself.

Nor does the fact that Cal Sr.’s daughter, Vicki, borrowed money from him or an isolated observation by his other daughter, Sharon, undermine the trial court’s finding that Cal Sr. was unable to care for himself. The trial court heard considerable evidence on the issue. Sharon testified that during the 2004 Thanksgiving holiday, Cal Sr. was unable to find his way to and from her home to his motel. She also observed that Cal Sr. “was confused,” that “[h]is short term memory was not tracking,” that he “would tell

the same stories over and over again.” Verbatim Report of Proceedings (VRP) (03/14/12) at 156. He also had “trouble eating” and “couldn’t find his keys.” *Id.* Sharon further testified that prior to 2004 “there were signs of him being unable to balance his checkbook and keep track of his checkbook because his neat and tidy marks in the 2004 check register suddenly turned into stuff you just couldn’t recognize.” VRP (3/19/12) at 516. She concluded that “he was deteriorating at the end of 2004, but he continued to deteriorate all the way through the end of 2005 and beyond.” VRP (3/15/12) at 370. In addition, in 2005 Sharon observed that Cal Sr. was unable to start the backhoe even though it was a piece of equipment that he had operated for years. “It was very, very apparent that he was kind of lost.” VRP (3/14/12) at 137.⁶

*5 Many of Sharon’s observations were substantiated by the evaluation performed by Dr. Eisenhower in January 2006, well before Cal Sr. suffered his third stroke. She reported that Cal Sr. suffered from dementia, which appeared in the form of “memory impairment, mild disorientation, disturbances in executive functioning and impaired judgment and insight.” Respondent’s Exhibit 47 at 2. Dr. Eisenhower concluded that because of Cal Sr.’s impaired executive functioning, he was “**vulnerable to make decisions and take actions that will harm him without recognizing the possible consequences;**” Resp. Ex. 47 at 6, “that due to his impoverished cognitive functioning that he needs financial assistance;” that he was “**vulnerable to undue influence**” *Id.* at 8, and that he was “**unable to live independently without support.**” *Id.* at 9. With regard to financial matters, such as signing contracts, the doctor concluded: Cal Sr. “would not be able to sufficiently understand it to act knowledgably. Furthermore, he does not have sufficient appreciation of his deficits to know these limitations. He needs assistance from an informed neutral party who does not have a stake in his assets.” *Id.*

Cal Jr. seems to argue that the trial court erred in finding that Cal Sr. was a vulnerable adult because some of the evidence regarding Cal Sr.’s abilities was disputed. But the mere fact that evidence is disputed does not establish that the trial court’s findings are inadequately supported. Where the testimony and evidence is conflicting, we defer to the trial court to resolve issues of credibility and weight. *Niemann v. Vaughn Community Church*, 154 Wn.2d 365, 377–78, 113 P.3d 463 (2005). We reject Cal Jr.’s challenge to the trial court’s finding that Cal Sr. was a vulnerable adult because it is amply supported by substantial evidence.⁷

Cal Jr. also challenges the trial court’s finding that he financially exploited his father. “Financial exploitation” is

defined as the “improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person’s or entity’s profit or advantage” other than for the vulnerable adult’s profit or advantage.” RCW 11.84.010(3) and RCW 74.34.020(7). Financial exploitation includes but is not limited to:

(a) “[t]he use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

*6 (c) Obtaining or using a vulnerable adult’s property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds. *Id.*

Cal Jr. first claims that his actions were proper because he had a legal contract with Cal Sr. to care for the ranch and the improvements were “consideration flowing to Cal SR” in exchange for Cal Jr.’s inheritance. Br. of Appellant at 42. In support of this argument, he cites his own testimony that “[Cal Sr.] said that Debbie and I could move onto the property. We could have the house. He would take over the apartment above the garage. *He said that he had plenty of money. I didn’t have to worry about money again.*” Reply Brief at 19. He contends that a reasonable person would understand Cal Sr.’s statement as an oral contract that “Cal SR would fund most of the ranch expenses” and provide Cal Jr. “an expected *minimum* income of \$3000 per month....” *Id.* He cites to no other evidence of an oral agreement.

But again, because this issue was not presented to the trial court, it cannot be raised for the first time on appeal. Despite Cal Jr.’s claim that he raised the issue in closing argument and on reconsideration, the only references found in the record are to an agreement that Cal Sr. would receive \$3,000 per month from the ranch tenant and that Cal Jr. knew he did not have title to the ranch when he made improvements. On appeal, our review is limited to determining “whether there exists the necessary quantum

of proof to support the trial court's findings." *Bentzen v. Demmons*, 68 Wn.App. 339, 347, 842 P.2d 1015 (1993) (quoting *In re Sego*, 82 Wn.2d 736, 740, 513 P.2d 831 (1973)). Because the trial court did not have the opportunity to make findings regarding this issue, we decline to consider it on appeal.

Next, Cal Jr. argues that even if there were no oral agreement, the trial court erred when it concluded that Cal Sr. did not benefit from Cal Jr.'s investment of time and money in the ranch. According to him, the trial court erred when it failed "to weigh Cal Jr.'s personal financial contributions to Cal Sr.'s property when considering the question of willful financial abuse." Reply Br. at 10. He disputes several of the trial court's findings of fact related to circumstances surrounding the promissory note, the work on the ranch, the accounting of ranch expenses, the purchases he made, and the construction of the new road. We disagree. Cal Jr.'s argument fails because he is trying to offer apples to offset oranges. Any alleged benefit to Cal Sr. did not arise from Cal Jr.'s improper conduct. Cal Sr. may have arguably benefited from Cal Jr.'s investment of time and money into the ranch, but none of Cal Jr.'s improper conduct was undertaken for Cal Sr.'s benefit or advantage. Cal Jr. fails to cite to any authority or make a convincing argument as to why his financial contributions should offset his financial exploitation or abuse.

*7 Cal Jr. next argues that his conduct was not improper because Cal Sr. consented to all of the expenditures and improvements.⁸ Again, these are apples offered to offset oranges. Even if Cal Sr. had consented to the improvements, there is still sufficient evidence in the record to support the trial court's findings related to Cal Jr.'s financial exploitation of his father, including the conversion of Cal Sr.'s social security checks, the registration of vehicles in Cal Jr.'s name, the sale of Cal Sr.'s personal property and keeping the proceeds, and other notes and loans to Cal Jr. for which there was no accounting.

Cal Jr. argues that the trial court failed to conduct the required statutory analysis that would have allowed him to inherit even if he did financially exploit his father. Cal Jr. argues that Cal Sr. knew of the exploitation and subsequently ratified his intent to transfer by consenting to expenditures and later making a will that left the ranch

to Cal Jr. But again, we conclude that Cal Jr. waived this argument because he failed to bring it before the trial court. Cal Jr. argues that he raised the issue of consent in his trial brief, and that suffices to preserve his ratification argument. We disagree. RCW 11.84.170 requires the trial court to find whether clear, cogent, and convincing evidence supports knowledge and ratification of intent. Because Cal Jr. did not raise this issue at trial, there are no findings to review.

Finally, Cal Jr. argues that the trial court failed to exercise its discretion under RCW 11.84.170 to allow him to inherit as a matter of equity. RCW 11.84.170(2) permits, the trial court to allow an abuser to acquire or receive an interest in property or other benefit in any manner that it deems equitable. In determining what is equitable, the court may consider the various elements of the decedent's dispositive scheme, his or her likely intent given the totality of the circumstances, and the degree of harm resulting from the financial exploitation. *Id.* Cal Jr. cites nothing in the statute that requires the trial court to address this issue even though it was not raised by a party. Because Cal Jr. did not raise this issue below, we decline to consider it here.

Both parties request an award of reasonable attorneys' fees and costs on appeal pursuant to RCW 11.96A. 150(1) and RAP 18.1(a). RCW 11.96A. 150(1) allows for a discretionary award of attorney fees to any party, against any party or against the estate, on both the trial and appellate court levels. We deny Cal Jr.'s request for fees and grant the respondents' their reasonable attorneys' fees and costs incurred in defending this appeal.

Affirmed.

WE CONCUR: DWYER and APPELWICK, JJ.

All Citations

Not Reported in P.3d, 191 Wash.App. 1048, 2015 WL 9274104

Footnotes

- 1 There was an earlier will that Cal Sr. had executed on May 18, 2004, that divided the estate equally among his four children.
- 2 Sharon Eaden also filed a separate petition for a declaration of rights on September 7, 2012, seeking not to apply the anti-lapse statute to Cal Sr.'s estate. The trial court denied the petition and this court affirmed in *In the Matter of the*

NO. 365549

COURT OF APPEALS FOR DIVISION III
STATE OF WASHINGTON

IN RE:

MATT THOMPSON,

Petitioner,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, DIVISION OF
AGING AND LONG-TERM SUPPORT
ADMINSTRATION,

Respondent.

DECLARATION
OF ELECTRONIC FILING AND
DISTRIBUTION

I, Valerie Hunter, declare as follows:

That she is now, and was at all times hereinafter mentioned, a citizen of the United States and of the State of Washington, over the age of majority, and not a party to this action.

On July 26, 2019, I filed the Department's original Response Brief on behalf of the Washington State Department of Social and Health Services, Aging and Long-Term Support Administration, with the Washington State Court of Appeals, Division III, via web portal, as follows, <http://ac.courts.wa.gov/index>.

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A copy of the same was provided to all involved parties or their counsel, as follows:

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Email: Andrea@zmlaw.com

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

DATED this 26 day of July, 2019.


VALERIE HUNTER, Declarant

WASHINGTON STATE ATTORNEY GENERAL

July 26, 2019 - 10:15 AM

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