

NO. 29153-7

STATE OF WASHINGTON, COURT OF APPEALS
DIVISION III

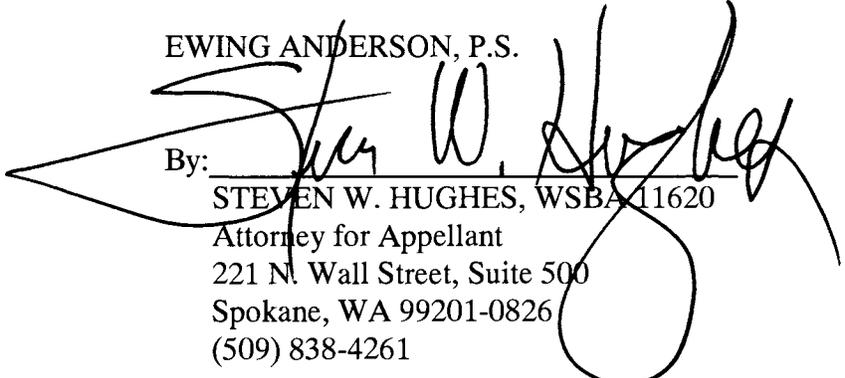
In re the Matter of the Estate of:

AUDREY P. BLESSING,

Deceased.

BRIEF OF APPELLANT, ESTATE OF AUDREY P. BLESSING

EWING ANDERSON, P.S.

By: 

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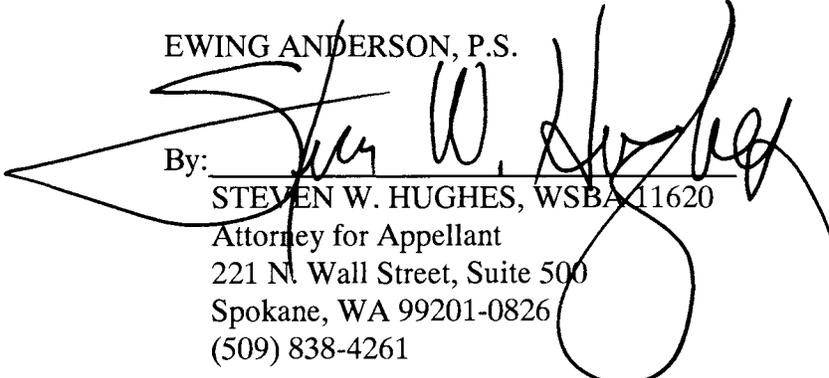
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I. INTRODUCTION

Washington's wrongful death statute creates a right of action for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death was wrongfully caused. The present appeal arises out of a court order that held that former stepchildren are stepchildren forever and, therefore, statutory beneficiaries under the wrongful death statute. The court's order disregards the requirement of a valid, current marriage between the parent and a non-parent for there to be a stepparent/stepchild relationship.

II. ASSIGNMENTS OF ERROR/ISSUES

A. Assignments Of Error.

1. The trial court erred in denying the Estate's motion, filed on April 13, 2010, for judgment (1) declaring that Petitioners are not "stepchildren" of Audrey Blessing, and therefore not her beneficiaries under the wrongful death statute; (2) dismissing Petitioners' TEDRA Petition; and (3) awarding the Estate its reasonable attorney fees and costs.

2. The trial court erred by entering Findings of Fact, Conclusions of Law, and Order on June 3, 2010, declaring the Petitioners to be

“stepchildren” of Audrey Blessing, and therefore her statutory beneficiaries under the wrongful death statute.

3. The Trial Court Erred by denying the Estate’s Motion for Reconsideration filed on June 4, 2010, with respect to the Court’s prior Order entered on June 3, 2010.

B. Issues Pertaining To Assignments Of Error.

1. Are adult children of a deceased former husband of Audrey Blessing still “stepchildren” of Audrey Blessing and, therefore, her statutory heirs under the wrongful death statute (RCW 4.20.020), despite the fact that Ms. Blessing subsequently remarried and outlived her next husband before being wrongfully killed? [Assignment of Error 1, 2, 3]

2. Are former stepchildren forever statutory beneficiaries under Washington’s wrongful death statute (RCW 4.20.020)? [Assignment of Error 1, 2, 3]

3. Does the fact that Audrey Blessing, now deceased, named her former stepchildren as residuary beneficiaries in her Will make said individuals “stepchildren” and, therefore, statutory beneficiaries under the Washington wrongful death statute? [Assignment of Error 1, 2, 3]

4. Does there need to be a valid, current marriage between the biological parent and a non-parent for there to be a “stepchild” and “stepparent” relationship in order to qualify as a statutory beneficiary under Washington’s wrongful death statute? [Assignment of Error 1, 2, 3]

5. Is the Estate entitled to its reasonable attorney fees and costs incurred in defending the Petitioners’ claim that they are “stepchildren” of Audrey Blessing, despite compelling authority which holds otherwise? [Assignment of Error 1, 2, 3]

III. STATEMENT OF THE CASE

A. Facts.

The Decedent, Audrey P. Blessing, was born on October 14, 1930, in Issaquah, Washington. (CP 134) Ms. Blessing was married to Alvin C. Hendricks from 1949 until they were divorced in 1964. (CP 134) Ms. Blessing and her husband, Alvin Hendricks, had three children, namely, Cynthia L. Hagensen, the Personal Representative in this action; Tamie L. Tate; and a third daughter, who is deceased. (CP 25; 134) Alvin Hendricks is still alive.

On or about December 24, 1964, the Decedent, Audrey P. (Blessing) was married to Carl Leo Blaschka. (CP 11; 25; 134) Mr. Blaschka and his

previous wife, Marion, had one child together, and Mr. Blaschka adopted three of Marion's children. (CP 11; 26; 134) The children of Mr. Blaschka and his previous wife Marion are the Petitioners in this present action. (CP 25) Their names are John Blaschka, Julie Ann Frank, Diana Estep, and Carla Blaschka. (CP 11; 25) The Decedent, Audrey P. (Blessing) never adopted any of the Petitioners herein. (CP 25; 134) Carl Blaschka, the Petitioners' father, died in approximately 1994. (CP 11; 25; 134) No children were born as issue of the marriage of Audrey P. (Blessing) and Carl L. Blaschka. (CP 25; 134)

In 2002, Audrey P. (Blessing) married Robert Blessing. (CP 25; 134) Robert Blessing had one adult child by a prior marriage. (CP 134) No children were born to Robert Blessing or the decedent, Audrey P. (Blessing), and Ms. Blessing never adopted Robert's adult daughter from his prior marriage. (CP 134) Robert Blessing died in 2005. (CP 134)

On September 27, 2007, Audrey P. Blessing died, allegedly as the result of an automobile collision occurring on or about June 22, 2007. (CP 5; 25) Audrey P. Blessing was unmarried at the time of her death. (CP 24; 26)

B. Procedure.

On October 23, 2007, an Order of the Spokane County Superior Court was entered admitting the Last Will and Testament of Audrey P. Blessing to probate, authorizing issuance of Letters Testamentary to her natural daughter, Cynthia L. Hagensen, and entering an Order of Solvency. Ms. Blessing's Will named the Petitioners as residuary beneficiaries of a portion of her estate. (CP 1-4; 5-6; 7)

Cynthia L. Hagensen, as the Personal Representative of the Estate of her late mother, Audrey P. Blessing, made claim for the wrongful death of her late mother against the "at fault" party who was driving the truck which rear-ended Audrey P. Blessing's vehicle, ultimately resulting in her death. (CP 12; 25) The wrongful death claim for Ms. Blessing now consists of an underinsured motorist claim against Ms. Blessing's own insurance carrier.

On or about November 5, 2009, a Petition was filed in the Spokane County Superior Court requesting judicial determination that the Petitioners, who are the adult children of Carl L. Blaschka, are beneficiaries in the Estate's wrongful death claim. The Estate denied the

allegations contained in the Petition by virtue of its response filed January 7, 2010. (CP 11-13)

On April 13, 2010, Cynthia Hagensen, as the Personal Representative of the Estate of her late mother, Audrey P. Blessing, deceased, filed a Motion for Judgment (1) Declaring that the Petitioners are not “stepchildren” for the purposes of the wrongful death statute; (2) dismissing the Petitioners’ TEDRA Petition; and (3) awarding the Estate its reasonable attorney fees and costs under RCW 11.96A.150. (CP 14-15; 16-23)

On or about April 23, 2010, the Petitioners filed a motion and memorandum in support of an order and judgment declaring the Petitioners “stepchildren” of Audrey P. Blessing under the Washington wrongful death statute. (CP 27-34)

The cross-motions were heard by the Honorable Michael P. Price, Spokane County Superior Court Judge, on May 7, 2010. Judge Price, in his Order filed June 3, 2010, denied the Estate’s motion to declare that the Petitioners are not stepchildren of Audrey P. Blessing, to dismiss the Petitioners’ TEDRA Petition, and to award the Estate its reasonable attorney fees and costs. (CP 30) The Court’s Order declared that the

Petitioners were “stepchildren” of Audrey P. Blessing and beneficiaries in any wrongful death claim brought by the Estate of Audrey P. Blessing, deceased.

On June 1, 2010, the Estate filed a motion for reconsideration of its decision declaring that the Petitioners are “stepchildren” for the purposes of the wrongful death statute. (CP 133-140) On June 4, 2010, the Honorable Michael P. Price, Superior Court Judge, entered an Order denying the Estate’s motion for reconsideration. (CP 156)

On June 18, 2010, the Estate filed its Notice of Appeal to the Court of Appeals, Division III.

IV. SUMMARY OF THE ARGUMENT

Washington law requires that there be a current, valid marriage between a biological parent and a nonparent in order for there to be a stepchild/stepparent relationship. The trial court erred by holding, without legal precedent, that the Petitioners in the present matter continued to be stepchildren despite the fact that their father had died, despite the fact that Audrey Blessing had subsequently remarried, and despite the fact that at the time of her wrongful death Audrey Blessing was unmarried.

The Estate is entitled to its reasonable attorney fees and costs in defending the Petitioners' claims, which has not benefited the Estate, and is without legal support.

V. ARGUMENT

A. Standard Of Review.

The court in In Re the Estate of Bowers, 132 Wn.App. 334, 131 P.3d 916 (2006), declared the following at page 340:

Decisions based on declarations, affidavits and written documents are reviewed *de novo*. In Re Estate of Nelson, 85 Wn.2d 602, 605-06, 357 P.2d 767 (1975) (where the trial court did not have an “opportunity to assess the credibility or weight of conflicting evidence by hearing live testimony,” appellate review of factual findings and legal conclusions is *de novo*). Courts have also recognized that probate proceedings are equitable in nature and reviewed *de novo* on the entire record. In Re Estate of Black, 153 Wn.2d 152, 161, 102 P.3d 796 (2004).

In the present case, the decision by the trial judge was based upon motions supported by affidavits and declarations. The facts of the present case involve competing motions under the TEDRA statute (RCW 11.96A.080) for a judicial determination of the meaning of the term “stepchildren,” and thus beneficiaries under the wrongful death statute.

This was a probate proceeding, and therefore equitable in nature. The standard of appellate review in the present case is *de novo*.

B. Legal Argument.

1. Court's Authority to Declare Rights and Legal Relations of the Parties to this Matter.

RCW 11.96A.020 entitled GENERAL POWER OF COURTS – INTENT – PLENARY POWER OF THE COURT reads, in pertinent part, as follows:

- (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
 - (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and
 - (b) All trusts and trust matters.
- (2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that matters be expeditiously administered and settled by the court.

RCW 11.96A.080 entitled PERSONS ENTITLED TO JUDICIAL PROCEEDINGS FOR DECLARATION OF RIGHTS OR LEGAL RELATIONS reads, in pertinent part, as follows:

...Any party may have a judicial proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030;...

RCW 11.96A.030 is the definitional provision of the TEDRA statute and reads, in pertinent part, as follows:

- (1) “Matter” includes any issue, question, or dispute involving:
 - (a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;
 - (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

In the present matter, the trial court had the authority to determine, upon request, whether or not the Petitioners are “stepchildren” and, therefore, whether or not they are statutory beneficiaries of any wrongful death recovery obtained by the Personal Representative of the Estate of Audrey P. Blessing, deceased. RCW 11.96A, known as TEDRA (Trust

Estate Dispute Resolution Act), is very broad, however, the appellate courts have made it clear that a trial court, when applying TEDRA, may not simply disregard the law. The court in Henley v. Henley, 95 Wn.App. 91, 974 P.2d 362 (1999), declared on page 97 the following:

The statute does not give courts the power to ignore the express language of a statute, such as RCW 11.07.010. Generally, “[i]n construing a statute, it is always safer not to add to, or subtract from, the language of the statute unless imperatively required to make it a rational statute.” [Cites omitted] “Courts cannot read into a statute words which are not there.” [Emphasis added]

In the present matter, the trial court improperly added the word “former” to the term “stepchild,” which is a category of statutory beneficiaries under the wrongful death statute.

2. Wrongful Death – Statutory Heirs.

RCW 4.20.010 entitled WRONGFUL DEATH – RIGHT OF ACTION, reads in pertinent part as follows:

When the death of a person is caused by the wrongful act, neglect or default of another, his personal representative may maintain an action for damages against the person causing the death; ...

The recovery for wrongful death, however, does not become an asset of the decedent’s estate. Under RCW 4.20.020 the action for wrongful

death is “for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death shall have been so caused.”

The words “including stepchildren” were inserted by the legislature in 1985. The statute’s language and legislative history are silent as to the definition of “stepchildren.”

3. Stepchildren.

Black’s Law Dictionary defines “stepchild” as: “The child of one of the spouses by a former marriage.”

Thus, a “stepchild” must be the natural (or legally adopted) child of one of the spouses. This definition does not say “ex-spouses” or “former spouses” but, rather, simply “spouses.” Therefore, by the plain language of this definition, once the marriage has ended, the “step” relationship also ends.

The Washington legislature has established this same definitional limitation in other areas of the law. According to the support of dependent children statute found at RCW 74.20A.020(8):

Step-parent means the present spouse of the person who is either the mother, father, or adopted parent of a dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205. [Emphasis added.]

A stepparent is the present spouse, not an ex-spouse or a former spouse. This statute states that the stepparent relationship terminates “upon the entry of a Decree of Dissolution, Decree of Legal Separation, or death.” RCW 26.16.205.

This Court, in the case of Strickland v. Deaconess Hospital, 47 Wn.App. 262, 735 P.2d 74 (1987), dealt with facts which are pertinent here. In 1982, Gilbert Strickland suffered cardiopulmonary failure and was admitted to Deaconess Hospital where he was placed on a respirator. Mr. Strickland’s physician entered a “No Code” order in Mr. Strickland’s medical chart, claiming he had permission, which was later disputed. Thereafter, James and Robert Weaver came to visit Mr. Strickland in the hospital. James and Robert were the sons of Joan Weaver, whose marriage to Mr. Strickland had previously been invalidated upon the discovery that she was still bound by a previous marriage. Neither James nor Robert Weaver were adopted by Mr. Strickland, and it had been many years since they had been members of the Strickland household.

Mr. Strickland ultimately recovered, and thereafter he, as well as James and Robert Weaver, brought an action against the hospital based on theories of negligence, lack of informed consent, and outrage. Later that

year, Mr. Strickland and Robert Weaver died. The hospital and the doctors involved moved for summary judgment of dismissal on the grounds that neither Mr. Strickland's nor Mr. Robert Weaver's causes of action survived their deaths, and the remaining Weavers lack standing as relatives to assert claims of emotional distress/outrage.

The Weavers contended that the closeness of the relationship, which developed during the years they were raised in Mr. Strickland's household, brought them within the class of "immediate family" entitled to sue for outrage. The Strickland court declared that "immediate family members" entitled to recover under a theory of outrage consists of those who are also permitted to bring wrongful death actions.

The Strickland court declared on page 269, in pertinent part, the following:

Under that statute (the wrongful death statute) the legislature has expressed the policy that recovery is available to spouses, children, step-children, parents and siblings. RCW 4.20.020. We conclude its limitation is reasonable and comports with Grimsby's reference to "immediate family"; and hold its rationale applies in an action for outrage.

The Court went on to declare:

Here, the Weavers are not included within the class of people categorized as immediate family members and therefore do not fall within the class of people entitled to bring this action. The Weavers were neither adopted, nor actual step-children of Mr. Strickland....

Here, the Weavers claim no blood relationship, either legitimate or illegitimate, nor do they come within the legally recognizable definition of step-child, which is “a child of one’s wife or husband by a former marriage.” [Emphasis added.]

The Strickland court dismissed the claims of the Weavers, finding that they were not stepchildren, since Mr. Strickland’s marriage to their mother, Joan Weaver, was invalidated.

In the present matter, the Petitioners are not “stepchildren” of Audrey Blessing, since Audrey Blessing’s marriage to the Petitioners’ father, Carl L. Blaschka, terminated in 1994 upon the death of Mr. Blaschka. The “step-relationship” between stepparent and stepchild requires a valid marriage to currently exist, and simply ends upon the termination of the marriage between the former stepparent and the child’s actual biological parent. Accordingly, Petitioners are not beneficiaries under the wrongful death statute.

A case from Michigan is in accord. In In Re Combs, the deceased's former stepchildren argued that they were beneficiaries under Michigan's wrongful death statute. 257 Mich.App. 622, 623, 669 N.W.2d 313, 314 (2003). Michigan's wrongful death statute included as beneficiaries "children of the deceased's spouse," i.e. stepchildren. See, Id. at 624. However, the Combs court explicitly noted that the deceased in that case had been a widow for several years before death, as the stepchildren's father and former spouse to the deceased passed away several years earlier. The Combs court ruled, at page 625, the following:

Applying the plain meaning of this provision to the facts of this case, we conclude that the appellants are not the "children of the deceased's spouse" because the deceased, Ellen Combs, had no spouse at the time of her death. A "spouse" is a married person. In this case, Arlie Combs, Ellen Combs' husband, had passed away several years earlier, and his death ended their marriage. For this reason, we conclude that the appellants are not entitled to a portion of the proceeds of the wrongful death action. [Emphasis added.]

The Combs court explicitly stated that a spouse's death legally ends a marriage. Id. at 625. In the present case, Audrey Blessing had no spouse at the time of her death in 2007. She therefore had no stepchildren.

Washington courts have long adhered to well established rules of statutory construction. The rules that are pertinent to this case are as follows:

1. When called on to interpret a statute, the courts give effect to the legislative intent. *State v. Hammock*, 154 Wn.App. 630, 635, 226 P.3d 154 (2010).
2. When interpreting a statute, the court first looks to its plain language. *Id.*
3. If the plain language is subject to only one interpretation, the court's inquiry ends. *Id.*
4. When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010).
5. When the words in a statute are clear and unequivocal, the court is required to assume the legislature meant exactly what it said and apply the statute as written. *Ralphs Concrete v. Concord Concrete*, 154 Wn.App. 581, 591, 225 P.3d 1035 (2010).
6. The courts may not add words where the legislature has chosen to exclude them. *State v. Delgado*, 148 Wn.2d. 723, 63 P.3d 792 (2003).
7. The court avoids reading the statute in ways that will lead to absurd or strange results. *Lane v. Harborview Medical Center*, 154 Wn.App. 279, 289, 227 P.3d 297 (2010).

In the present case, the rules of statutory construction do not support the trial court's judgment. The Petitioners have provided no evidence that the legislature intended to decree that once an individual is a stepchild, that individual is forever a stepchild for the purposes of the wrongful death statute. The wrongful death statute says "stepchildren," and does not say "former stepchildren." The statutory term "stepchildren" is undefined in the statute, however, *Black's Law Dictionary* defines a stepchild as "the child of one of the spouses by a former marriage." The trial courts may not add words where the legislature has chosen to exclude them. The court in Strickland, cited above, stated that there must be a valid marriage for there to be a stepchild.

To add the word "former" to the term "stepchildren," a category of statutory beneficiaries, as the trial court did in this case, leads to absurd or strange results. Audrey Blessing's first husband is still alive, and therefore, as a "former husband," he would still be listed as a statutory beneficiary under the wrongful death statute, although Audrey Blessing was married to two individuals after her marriage to him was dissolved. Additionally, Audrey Blessing's last husband, who died during their marriage, had an adult child from his previous marriage. That child would also be a

statutory beneficiary if “former stepchildren” are included. Moreover, if any of the three former husbands of Audrey Blessing had other children from prior relationships, they too would be statutory beneficiaries as “former stepchildren.” It would be absurd for the personal representative of Audrey Blessing to be required to publish notice to determine if there were any other “former” members of the list of statutory beneficiaries before proceeding to prosecute the wrongful death claim.

4. Legal Argument of Petitioners.

The Petitioners have referred generally to the case of In Re Bordeaux’s Estate, 37 Wn.2d 561, 225 P.2d 433 (1950), to support their argument that they are still stepchildren of Audrey Blessing. The Bordeaux case has nothing in common with the situation now before the Court, and the Bordeaux facts are clearly distinguishable. Subsequent Washington Supreme Court cases have refused to apply that law. See, In Re Smiths Estate, 49 Wn.2d 229, 299 P.2d 550 (1956) at 234.

The Bordeaux case cited above involved the marriage of Thomas Bordeaux and Sara Bordeaux in 1900. At the time of the marriage, Thomas Bordeaux had two minor children, Chester and Russell, ages 10 and 5 years, respectively. They were brought up in the home of their

stepmother entirely, and testified that “to all intents and purposes, she was our mother and we refer to her as such.” Id. at 561. Thomas Bordeaux, Chester and Russell’s father, died in 1934. Sara, his surviving spouse, inherited the community property accumulated during the marriage. Sara herself died in 1949. The bulk of her estate passed by virtue of her Will to Chester and Russell.

The issue for the court in Bordeaux was “into what class of beneficiaries Chester Bordeaux and Russell Bordeaux fall.” Id. at 561. The answer to the question would determine the amount of inheritance tax, which would be assessed against the property, which Chester and Russell inherited by Will.

The Bordeaux court discussed the distinctions between actual children and “stepchildren” for the purposes of their classification under the inheritance tax statute. The Bordeaux court concluded that Chester and Russell should be taxed at the same rate as they admittedly would have been taxed had their father or their half-brother survived their stepmother. This decision was based solely on the court’s reading of the inheritance tax statute.

The biological parent of the Petitioners in the present case not only died 16 years ago, but Audrey Blessing subsequently remarried. In the case at hand, the wrongful death statute, and not one's Will, determines exactly who are the statutory beneficiaries of a wrongful death claim. See, Wood v. Dunlap, 83 Wn.2d 719, 521 P.2d 1177 (1974) and RCW 4.20.020. The Bordeaux case is inapposite.

5. The Estate is Entitled to its Reasonable Attorney Fees and Costs in Opposing the Present Petition (RAP 18.1).

RCW 11.96A.150 entitled COSTS – ATTORNEYS' FEES reads, in pertinent part, as follows:

- (1) Either the superior court or the court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

In the present case, the Petitioners have continued to assert their claim that they are "stepchildren" of Audrey P. Blessing, despite the compelling controlling authority which holds otherwise. The principal determining factor for an award of attorney fees to the Estate is "whether the litigation

benefits the estate or trust involved.” See, generally, In Re Estate of Kerr, 134 Wn.2d 328, 949 P.2d 810 (1998). The Kerr case involved a dispute between two beneficiaries and an unsuccessful attempt to remove the personal representative. The Kerr court found that there was no substantial benefit to the estate or to its other beneficiaries, who indirectly bore the costs of litigation. Id. at 344. Therefore, the Kerr court awarded attorney fees to the estate.

Similarly, in the present, attorney fees and costs should be awarded to the Estate, which had to defend against the Petitioners’ claims without benefit to the Estate.

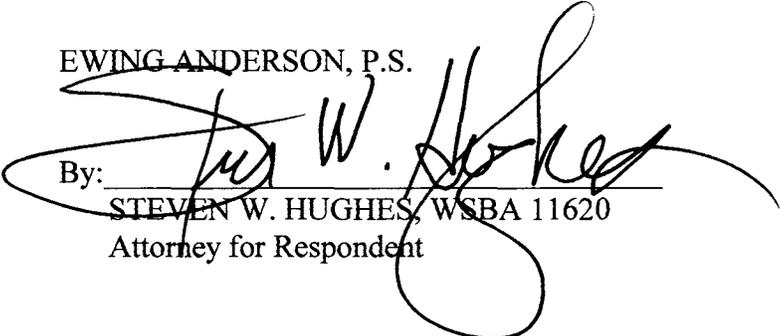
An award of attorney fees and costs is additionally warranted by the fact that the Petitioners’ claim is not well-grounded in law or fact. RCW 4.84.185. As previously stated, the law is arguably settled that the step-relationship ends upon the termination of the marriage. Thus, the Petitioners are not the “stepchildren” of Audrey Blessing. The marriage of the Petitioners’ father to Audrey Blessing ended 16 years ago, and Ms. Blessing thereafter remarried. The Petitioners claim that they continue to be the “stepchildren” of Audrey Blessing is meritless, and advanced without reasonable cause.

VI. CONCLUSION

The trial court erred by declaring that the Petitioners remain “stepchildren” of Audrey Blessing, deceased, for the purposes of the wrongful death statute. This Court is respectfully requested to reverse the trial court’s decision and enter judgment (1) declaring that the Petitioners are not “stepchildren” of Audrey Blessing, and therefore not her beneficiaries under the wrongful death statute; (2) dismissing Petitioner’s TEDRA petition; and (3) awarding the Estate its reasonable attorney fees and costs.

RESPECTFULLY SUBMITTED this 2ND day of September, 2010.

EWING ANDERSON, P.S.

By: 

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Attorney for Respondent