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STATE OF WASHINGTON

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Supreme Court No. 86776-3

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JEFFREY MANARY,

Petitioner,

v.

EDWIN A. ANDERSON,

Respondent.

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SUPPLEMENTAL BRIEF OF RESPONDENT EDWIN A. ANDERSON

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Attorneys for Respondent

John M. Casey WSBA # 24187  
Andrea L. Schiers WSBA # 38383  
Curran Law Firm P.S.  
555 West Smith Street  
P.O. Box 140  
Kent, Washington 98035  
(253) 852-2345

ORIGINAL

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## **I. RESPONDENT'S STATEMENT OF THE CASE**

### **A. Introduction**

This case concerns dueling interests in residential property subject to both a revocable living trust and a last will. Homer Greene and his wife Eileen conveyed their residence to their living trust. Later, in his last will, Homer left the property to his longtime friend, Edwin Anderson, who is not a trust beneficiary. Washington law allows Homer's bequest to supersede the terms of the Trust.

After Homer died, the Trust beneficiary sought to quiet title to the residence in the Trust, arguing that the later-executed Will did not affect the terms of the Trust. The trial court agreed. The Court of Appeals reversed. That decision rested securely in a plain reading of the relevant statute and the terms of the Trust, was consistent with existing case law, and gave effect to Homer's last wishes. As such, Anderson asks this Court to affirm the Court of Appeals.

### **B. Facts**

#### **1. The Greene Living Trust.**

In 1995, Homer and Eileen Greene, a married couple, executed a revocable living trust. Clerk's Papers ("CP") 44-81. It named Homer and

Eileen<sup>1</sup> as Trustors and Co-Trustees. CP at Sections 1.02, 1.03. Both Homer and Eileen could amend, modify, or revoke the Trust in whole or in part during both their lifetimes. CP 46-47 at Sections 1.05, 1.06. When one of them died, the surviving spouse, as Trustee, was to “divide the Trust into two (2) separate trusts,” named the “Family Trust” and the “Survivor’s Trust.” CP 52 at Section 3.02. The Family Trust was to consist of the decedent spouse’s interest in community property and her separate property; this trust could not be altered, revoked, or amended after her death. CP 52 at Section 3.02; CP 47 at Section 1.06(d); CP 59 at Section 5.06.

Meanwhile, the Survivor’s Trust was to consist of the surviving spouse’s interest in community property and his separate property. CP 52 at Section 3.03. After the first spouse’s death, the surviving spouse retained his right to revoke, amend, or modify his community and separate property interests. CP 56 at Section 4.11 (“Survivor shall have, and shall retain, the powers of revocation, withdrawal, amendment, modification, beneficiary change, and the other powers ... with respect to the Survivor’s Trust”).

When they executed the Trust instrument, Homer and Eileen also quit claimed their community residence in Renton, Washington (“the Property”) to themselves as Trustees. CP 83.

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<sup>1</sup> Because Homer and Eileen shared the same last name, Anderson uses their respective first names only for clarity and intends no disrespect.

2. Eileen Greene passes away.

Eileen died in December 1998. CP 85. Homer did not create or fund either the Family or Survivor's Trust. CP 41 at ¶4.

3. Homer Greene amends the Trust and later conveys the Property to Anderson.

In August 1999, Homer amended the Trust to name Alice Manary, his sister, as the sole beneficiary, removing the three beneficiaries originally named in the Trust instrument.<sup>2</sup> CP 94-96.<sup>3</sup> He also named her as first successor Trustee, and his nephew Jeffrey Manary as second successor Trustee. *Id.*

By that time, Homer had been good friends with Anderson for more than two decades. CP 40 at ¶2. In or about 2002, Anderson began living at the Property. *Id.* He took care of the Property by doing yard work, and he assisted Homer by running errands for him and helping him with everyday tasks. CP 41 at ¶3.

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<sup>2</sup> Anderson disputes whether this amendment operated to change the beneficiaries of the entire Trust, or only as to Homer's interests in the Trust. However, the parties have not yet litigated this issue in the trial court proceedings and so it is not before this Court.

<sup>3</sup> This amendment is styled the "Second Amendment" to the Trust. The parties located a document entitled the "First Amendment" to the Trust purporting to remove one of the original beneficiaries. The Trust instrument provides it may be amended by a "duly executed instrument filed with the Trustee." CP 46 at Section 1.05. The parties never located a copy of the "First Amendment" document that was in any way initialed, signed, or dated by either Homer or Eileen, indicating that it was "executed." Without such indications, the purported amendment is invalid. *See In re Estate of Tosh*, 83 Wn.App. 158, 162-63, 920 P.2d 1230 (1996), *review denied*, 131 Wn.2d 1024 (1997).

On November 5, 2004, Homer executed a statutory warranty deed conveying a “co-ownership joint occupancy” interest in the Property to Anderson. CP 98-99. The same day, Homer executed a Last Will and Testament revoking any previous wills and codicils; in it, Homer left Anderson the Property and any vehicles registered in Homer’s name. CP 101.

Homer passed way on January 5, 2007. CP 105. Anderson was appointed personal representative of Homer’s estate. CP 107-08.

4. The Litigation.

In October 2008, Alice Manary, as the first successor Trustee, sued Anderson to, among other things, quiet title to the Property and eject him from it.<sup>4</sup> CP 7-14. Both parties sought summary judgment as to Anderson’s ownership of the Property.

The trial court denied Anderson’s motion and granted Manary’s. CP 241-45. Specifically, the trial court found that Homer failed to

either modify the Trust as to the Property or to acknowledge the Trust in either the Warranty Deed or his Will . . . [which] resulted in the Property remaining Trust property. As such, [Homer] had no right, title or interest in the Property to convey to Defendant Anderson in either the Warranty Deed or the Will. Both attempted transfers . . . were invalid.

CP 243 at ¶8.

Anderson appealed. The Court of Appeals reversed, finding that

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<sup>4</sup> Ms. Manary passed away during the litigation. Her son, Jeffery Manary, was later appointed the second successor Trustee of the Trust. CP 113, lines 15-18.

Homer satisfied the requirements of chapter 11.11 RCW, the Testamentary Disposition of Nonprobate Assets Act (commonly referred to as “the Super Will statute”), and effectively transferred his interest in the Property to Anderson via his Will. *Manary v. Anderson*, 164 Wn. App. 569, 265 P.3d 163 (2011).

Manary sought discretionary review by this Court; it accepted.

## **II. ARGUMENT**

Anderson is entitled to Homer’s interest in the Property by plain operation of the Super Will statute and the terms of the Trust. In upholding Homer’s conveyance to Anderson by his Will, the Court of Appeals applied the unambiguous language of that statute, tracked existing case law interpreting it, and confirmed Homer’s intentions about the Property. That decision is not disturbed by recent codifications of the common law regarding revocation of living trusts. The Court of Appeals should be affirmed.

### **A. The Standard of Review**

Appellate courts review orders of summary judgment *de novo*, performing “the same inquiry as the trial court.” *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068, *reconsideration denied* (2002). Summary judgment is appropriate if the papers submitted demonstrate that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(c). No material facts were in

dispute in the cross motions below; each party sought judgment as a matter of law. CP 34, 114.

**B. Homer's bequest to Anderson satisfies the Super Will Statute.**

A Washington court's paramount duty under these circumstances – in interpreting a will or a trust – is to give effect to the decedent's intent. *See* RCW 11.12.230; *Matter of Estate of Bergau*, 103 Wn.2d 431, 435, 693 P.2d 703, *reconsideration denied* (1985)(interpreting a will); *Old Nat'l Bank & Trust Co. of Spokane v. Hughes*, 16 Wn.2d 584, 587, 134 P.2d 63 (1943)(interpreting a trust).

In construing a statute, a court's "fundamental objective" is "to ascertain and carry out the legislature's intent." *Lake v. Woodcreek Homeowner's Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)(internal quotations and citation omitted). Interpreting a statute begins with its plain meaning. *Id.* Courts give effect to all the statute's "language, rendering no portion meaningless or superfluous." *Stroh Brewery Co. v. State, Dept. of Revenue*, 104 Wn. App. 235, 239-40, 15 P.3d 692, *review denied*, 144 Wn.2d 1002, 29 P.3d 718 (2001). "If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end." *Lake*, 169 Wn.2d at 526.

The Super Will statute aims to effectuate an individual's last wishes. It provides, under RCW 11.11.020(1), when the owner of a nonprobate asset

specifically refers to the asset in his will, the owner's interest in that asset "belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will."

The statute was designed to establish rights to nonprobate assets as between two people named to receive the asset, one named in a will and the other named in a will substitute, such as a revocable living trust. *See* RCW 11.11.007. That is, the Super Will statute was designed to address precisely the situation presented here. Homer did in his Will exactly what the statute allows: he named Anderson to receive the Property, a specific nonprobate asset, "notwithstanding the rights of any beneficiary designated before the date of the will." RCW 11.11.020(1). As a matter of law, therefore, Anderson is entitled to Homer's interest in the Property.

1. The Property is a nonprobate asset.

It is undisputed that Homer was the "owner" of the Property during his lifetime. *See* RCW 11.11.010(8) ("owner" is one whom, "during life, has beneficial ownership of the nonprobate asset."). It is also undisputed that Anderson is the "testamentary beneficiary." *See* RCW 11.11.010(10) ("testamentary beneficiary" is "a person named under the owner's will to receive a nonprobate asset[.]"). Although the parties disagree whether the Property is a "nonprobate asset," the plain language of that term's definition

resolves the dispute.

The Super Will statute, at RCW 11.11.010(7), defines a “nonprobate asset” as the term is defined in RCW 11.02.005. Nonprobate assets are “those rights and interests of a person having beneficial ownership of an asset that pass on the person’s death under a written instrument or arrangement other than the person’s will[.]” and include a “right or interest passing under a ...trust of which the person is grantor and that becomes irrevocable only upon the person’s death[.]” RCW 11.02.005(15); RCW 11.11.010(7)(a).

Here, the Property, once it was placed into the Trust, became a nonprobate asset because it was to pass on Homer and Eileen’s deaths under an instrument other than their wills. Moreover, the terms of the Trust provide that it was revocable as to Homer and Eileen’s interests during their lifetimes. *See* CP 46 at Section 1.06(b)(“The Grantors declare this Trust to be revocable during their joint lifetimes[.]”). It remained revocable as to Homer’s interests during his lifetime, after Eileen’s passing. *See* CP 47 at Section 1.06(d) (“The Survivor’s Trust shall remain revocable by the Survivor[.]”); CP 53-54 at Section 4.01 (“The rights of revocation, amendment, modification or withdrawal shall continue to apply to the Survivor with respect to the Survivor’s Trust.”); CP 56 at Section 4.11 (“The Survivor shall have, and shall retain, the powers of revocation, withdrawal, amendment, modification, beneficiary change ... with respect to the Survivor’s Trust.”).

Therefore, the Property meets the definition of a “nonprobate asset.” Homer named Anderson to receive it in Homer’s Will; the bequest satisfied RCW 11.11.020(1). Under the statute’s plain terms, Homer’s interest in the Property belongs to Anderson, and has since January 2007, when Homer died. *See* RCW 11.11.060 (“entitlement of the testamentary beneficiary to the nonprobate asset vest[s] immediately upon death of the owner.”).

2. The exclusions from the definition of “nonprobate asset” do not apply.

The statute carves out an exception, among others, from its definition of a “nonprobate asset” for “[a] deed or conveyance for which possession has been postponed until the death of the owner[.]” RCW 11.11.010(7)(a)(i). With this language, the Legislature intended to exclude future interest deeds from the statute’s purview. *See* Cynthia J. Artura, *Superwill to the Rescue? How Washington’s Statute Falls Short of Being A Hero in the Field of Trust and Probate Law*, 74 WASH. L. REV. 799, 813 (1999).

This exception does not apply here, as Homer did not transfer a future interest to the Trust, nor did he leave one to Anderson. The Property became a Trust asset when Homer and Eileen deeded it to the Trust, not at some future time. They had possession of the Property during their joint lifetimes, and Homer remained in possession of it after Eileen’s death until his own passing. That the bequest to Anderson took effect when Homer died does not

bring the asset within the exclusion pertaining to future interests. If it did, *any* nonprobate asset disposed of in a decedent's will would arguably fall within that exclusion. That scenario would render the entire statute meaningless. The definition – indeed, the very concept – of a nonprobate asset contemplates that possession of the asset, by anyone, will not occur until the owner dies. *See* RCW 11.02.005(15). The Property is a nonprobate asset.

3. The provisions designed to protect third parties do not apply.

Among other things, the Super Will statute is meant to “[p]rotect any financial institution or other third party having possession or control over [an asset that passes outside of a will] and transferring it to a beneficiary duly designated by the testator, unless that third party has been provided notice of a testamentary disposition as required by this chapter.” RCW 11.11.003(3).

To provide this protection, the statute requires a person named to receive an asset in the owner's will to notify a third party in possession of the asset of the will's designation before the third party transfers the asset according to the initial disposition. If the third party has already transferred the asset, the statute requires the person named in the will to seek redress in the courts within a certain time. Neither of these protections is necessary here because there is no third party in possession of the Property and there never has been.

a. *The notice provisions.*

To facilitate this protection of third parties in possession of nonprobate assets, RCW 11.11.040 provides, in relevant part, that

*In transferring nonprobate assets, a ... third party may rely conclusively and entirely upon the form of the nonprobate asset and terms of the nonprobate asset arrangement in effect on the date of death of the owner, and a ... third party may rely on information ... concerning the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, unless the ... third party has actual knowledge of the existence of a claim by a testamentary beneficiary.*

(emphasis added).

A “third party” is “a person, including a financial institution, having possession or control over a nonprobate asset at the death of the owner[.]” RCW 11.11.010 (11). To ensure the third party has the “actual knowledge” described above, one must notify the third party that the asset has been alternately disposed of pursuant to a will. RCW 11.11.050.

These provisions would apply if, for example, a bank held the Property pursuant to the Trust with instructions to transfer it to Manary when Homer died. The bank would have the right to rely on the terms of the Trust and to transfer the Property to him *unless* Anderson first notified the bank of Homer’s alternate disposition of the Property in his Will.

But that is not the case here. Anderson, the testamentary beneficiary, was in possession of the Property when Homer died, not a third party. The

house was never in a third party's possession, and so was never set to be transferred. As such, there was no one for Anderson to notify.

b. *The limitations period.*

The statute also allows a testamentary beneficiary "entitled to a nonprobate asset *otherwise transferred to a beneficiary not so entitled*" to seek relief in the superior court. RCW 11.11.070(2)(emphasis added). The testamentary beneficiary must seek relief within six months of the admission of the owner's will to probate or one year from the date of the owner's death, whichever is earlier. RCW 11.11.070(3).

This provision likewise does not apply here because the Property was not transferred to anyone following Homer's death; it was in the testamentary beneficiary's (Anderson's) possession at that time.

**C. The decision of the Court of Appeals, upholding the bequest to Anderson, is consistent with existing case law.**

In addition to satisfying the plain language of the Super Will statute, the decision below is consistent with existing court decisions interpreting the provision at issue here – RCW 11.11.020(1). Two divisions of the Court of Appeals have addressed that subsection. *See Estate of Burks v. Kidd*, 124 Wn. App. 327, 331-32, 100 P.3d 328 (Div. 2, 2004), *review denied*, 154 Wn.2d 1029, 120 P.3d 577 (2005); *In re Estate of Furst*, 113 Wn. App. 839, 843-44, 55 P.3d 664 (Div. 1, 2002).

In *Kidd*, the nonprobate assets at issue were payable-on-death accounts left to certain beneficiaries. *Kidd*, 124 Wn. App. at 328-29. In her later-executed will, the decedent left the residue of her estate to other beneficiaries and explained that she did not intend designations on “certain bank accounts” to be gifts. *Id.* at 329. Division Two acknowledged that the Super Will statute “allows a person to change the beneficiaries on payable-on-death accounts by specifically referring to the accounts and specifically naming the new beneficiaries.” *Id.* at 328. But the court found the decedent’s general reference to “certain bank accounts” did not suffice to change the beneficiary designations of her payable-on-death accounts under RCW 11.11.020(1) because her will did not “specifically refer to” those particular accounts. *Id.* at 331.

Here, by contrast, the relevant provision of Homer’s Will identifies “Real property, consisting of my home”, lists the Property by street address and tax parcel number, and bequeaths it “to Edwin A. Anderson.” CP 101. A more specific reference to the asset or the changed beneficiary would be difficult to imagine.

The facts of the other case, *Furst*, are nearly identical to those presented here, although the decisions rest on different legal principles. The decedent in *Furst* created a revocable living trust into which he transferred all his assets; he also executed a pour-over will concurrent with the trust. *Furst*,

113 Wn. App. at 840-41. Later, the decedent executed a new will revoking all former wills, “but did not mention or purport to revoke the trust.” *Id.* at 841. The new will disposed of “the rest, residue and remainder” of his estate in a manner that differed substantially from that described in the trust. *Id.*

Division One held the decedent’s later-executed will did not effectively revoke the trust because it did not mention the trust or otherwise purport to revoke it. *Id.* at 843. Nor did the will successfully change the beneficiary of the decedent’s trust pursuant to the Super Will statute because the bequest in the will was a *general* residuary gift. *Id.* The general gift implicated a different provision of the statute, RCW 11.11.020(2), which provides that a “general residuary gift in an owner’s will . . . does not entitle the devisees or legatees to receive nonprobate assets of the owner.” The court noted that RCW 11.11.020 “directs the manner of changing the beneficiaries of a nonprobate asset”, but that the decedent in *Furst* did not follow that process when he executed his later will. *Id.*

The key difference between *Furst* and this case is that Homer made a *specific* bequest of a nonprobate asset in his later-executed Will, not a general one. By doing so, he satisfied the requirements of RCW 11.11.020(1), and properly named Anderson to receive his interest in the Property.

The Court of Appeals concluded as much here. It noted that “under the plain language of RCW 11.11.020(1), upon Homer’s death, his interest in

the property vested in Anderson as a nonprobate asset.” *Manary*, 164 Wn. App. at 577. The court also explained why the revocation analysis in *Furst* is irrelevant to this case – because Homer satisfied the Super Will statute:

Manary argues that, as in *Furst*, Homer’s bequest of his interest in the property to Anderson is invalid because the last will neither mentions the trust nor revokes its provisions in accordance with the terms of the trust. But, unlike the *Furst* case, *this case does not involve revocation of the trust by Homer’s last will.*

Here, Anderson bases his claim on the provisions of the Act, not on common law principles regarding revocation of prior trusts by a will. Thus, *it is irrelevant that this will neither mentions the prior trust nor purports to revoke it. As we have already explained, unlike Furst, there is full compliance with the relevant provisions of the Act here. Because compliance with the Act is all that is required, Furst does not necessitate any different result here.*

*Manary*, 164 Wn. App. at 582 (emphasis added).

The bequest to Anderson comports with the statute and existing case law, and manifests Homer’s last wishes; it should be affirmed.

**D. Homer’s conveyance to Anderson remains undisturbed by the new provisions of Chapter 11.103 RCW.**

While this case was pending in the Court of Appeals, the Washington State Legislature passed a bill, Substitute House Bill 1051, relating to trusts and estates. Act effective January 1, 2012, 2011 Wash. Legis. Serv. Ch. 327 (West) (amending trusts and estates statutes). Among other things, the bill added a new chapter to Title 11 RCW pertaining to revocable trusts. *Id.* This

chapter, RCW 11.103, codified the existing common law “related to amending or revoking revocable living trusts[.]” F.B. Rep. on S. H. B. 1051, 62<sup>nd</sup> Leg., Reg. Sess. (Wash. 2011).

The new RCW 11.103.030 now governs the revocation or amendment of trusts. It provides that a trustor may not revoke or amend a trust unless “the terms of the trust expressly provide that the trust is revocable[.]” RCW 11.103.030(1). If it is, a trustor can revoke in several ways. One is by “substantial compliance with a method provided” in the trust. RCW 11.103.030(3)(a). Alternatively, if the trust does not provide a revocation method, or the method provided “is not expressly made exclusive,” the trustor can revoke by signing a “written instrument that evidences his intent to revoke, or by executing a “later will or codicil” that either 1) “expressly refers to the trust” or 2) “specifically devises property that would otherwise have passed according to the terms of the trust[.]” RCW 11.103.030(3)(b)(i). The new statute provides that the requirements of the Super Will statute “do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.” RCW 11.103.030(3)(b)(ii).

This new law does not affect the outcome of this case for two reasons. First, it became effective on January 1, 2012, and has no impact on actions taken before that date. Second, even if its provisions did apply here, they would still permit Homer’s conveyance to Anderson.

1. Chapter 11.103 applies prospectively.

Courts presume statutes run prospectively. *1000 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 584, 146 P.3d 423 (2006). A statute may apply retroactively “when it is (1) intended by the Legislature to apply retroactively, (2) curative in that it clarifies or technically corrects ambiguous statutory language, or (3) remedial in nature.” *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wn.2d 528, 536-37, 39 P.3d 984 (2002). None of these considerations supports a retroactive application of the new statute.

First, the language of the statute reveals the Legislature intended the new law to apply prospectively. On its face, the law applies to “all judicial proceedings concerning trusts commenced *on or after January 1, 2012*”. Act effective January 1, 2012, 2011 Wash. Legis. Serv. Ch. 327 § 40 (West) (amending trusts and estates statutes)(emphasis added). This lawsuit began in October 2008, more than three years before the new statute’s effective date. The statute also states that an “action taken before January 1, 2012, is not affected by this act[.]” *Id.* The parties and courts have taken all actions relevant to these proceedings well before that date.

Second, a statute is “curative only if it clarifies or technically corrects an ambiguous statute.” *1000 Virginia*, 158 Wn.2d at 584 (internal quotations and citations omitted). The new Chapter 11.103 RCW does not clarify or correct any statute. It simply codifies existing common law regarding

revocable trusts. Third, an enactment “is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). This new statute relates to no procedural or remedial matters; rather, it sets forth substantive rights and responsibilities regarding trusts. It applies prospectively.

2. Homer’s Will satisfies the revocation requirements of RCW 11.103.030.

Even if this Court were to apply the new statute retroactively, the outcome in this case would be the same because Homer’s bequest to Anderson satisfies its revocation requirements. First, as described above, the Trust here was expressly revocable as to Homer’s interest in the property, satisfying RCW 11.103.030(1).

Next, Homer substantially complied with the Trust’s method for revocation. That method is described in Section 1.06(b) of the Trust as follows:

The Grantors declare this Trust to be revocable during their joint lifetimes, and they reserve the right during their joint lifetimes, individually or jointly, to amend, modify or revoke this Trust, in whole or in part, *by a writing or writings signed and acknowledged by them, to be effective upon delivery to the Trustee[.]*

CP 46 (emphasis added).

Here, Homer was both the Grantor and the Trustee during his lifetime.

He signed a statutory warranty deed and his Will conveying an interest in the Property to Anderson; his execution of each of these writings constitutes “substantial compliance” with the revocation method quoted above. Either or both writing satisfies RCW 11.103.030(3)(a).

Finally, the devise in Homer’s Will complies with the new statute. Where, as here, a trust’s method of revocation is not expressly made exclusive, the trustor may, in his will, make a specific devise of property “that otherwise would have passed according to the terms of the trust.” RCW 11.103.030(3)(b)(i)(A); CP 46 at Section 1.06(b). Homer’s Will specifically devises the Property to Anderson, satisfying RCW 11.103.030(3)(b)(i)(A).

The new statute says the requirements of the Super Will statute do not apply to revocation of a trust under this latter provision. *See* RCW 11.103.030(3)(b)(ii). The legislative history is silent on what lawmakers intended by this mention of the Super Will statute, but a plain reading suggests that, beginning January 1, 2012, a trustor need not comply with chapter 11.11 RCW to effectively revoke a trust, but instead only with the new revocation provisions of chapter 11.103. In this case, Homer’s Will satisfies both statutes. If there is a distinction between the two enactments in this respect, it is without difference. Applying the plain language of either statute to this situation implements Homer’s last wishes about the person he wanted to leave his interest in the Property to – Anderson.

### III. CONCLUSION

The trial court erred as a matter of law when it ruled that Homer's specific bequest of his interest in the Property to Anderson was ineffective, despite having satisfied RCW 11.11.020(1). Although the court acknowledged its duty to effectuate a testator's intent "in every instance[,]"<sup>5</sup> it overlooked the provision in the Will clearly expressing Homer's intent. This is precisely what the drafters of the Super Will statute sought to prevent. *See Furst*, 113 Wn. App. at 843-44 ("The statute was intended to reduce or eliminate uncertainty regarding the effect of a subsequent will on the transfer of property pursuant to an inter vivos trust."). The Court of Appeals correctly applied that statute here. Its decision is consistent with the plain language of the Super Will statute, the existing case law interpreting it, and with the new statutory enactment regarding trusts. The decision below honors Homer Greene's final wishes. The decision should be affirmed.

Dated this 4<sup>th</sup> day of April 2012.



John M. Casey WSBA # 24187  
Andrea L. Schiers WSBA # 38383  
CURRAN LAW FIRM P.S.  
Attorneys for Respondent  
555 West Smith Street  
Kent, WA 98035  
(253) 852-2345

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<sup>5</sup> Report of Proceedings, May 28, 2010, at 3.

**CERTIFICATE OF SERVICE**

Kristina Church, being first duly sworn, on oath deposes and says:

I am over the age of 18 years and am not a party to the within cause. I am employed by Curran Law Firm P.S. and on this date I caused to be served by ABC Legal Messengers a true and correct copy of the above Supplemental Brief of Respondent Edwin A. Anderson on the following persons set forth below:

*Counsel for Petitioner:*

Thomas G. Burke  
Burke Law Offices Inc., P.S.  
612 South 227<sup>th</sup> Street  
Des Moines, WA 98198

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

DATED at Kent, Washington, this 5<sup>th</sup> day of April, 2012.

Kristina Church