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No. 65578-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ESTATE OF VIRGIL V. BECKER, Jr., deceased.

NANCY BECKER,

Petitioner,

v.

JENNIFER C. RYDBERG, as Guardian ad Litem for Barbara Becker, a
minor child, et al.,

Respondents.

AMENDED OPENING BRIEF OF PETITIONER

Ladd B. Leavens, WSBA #11501
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
(206) 622-3150

Attorneys for Petitioner Nancy Becker

ORIGINAL

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I. INTRODUCTION

Virgil V. Becker, Jr. and petitioner Nancy Becker were husband and wife. They had one child together, Barbara, who is now 12 years old. Virgil Becker died in the crash of a private plane on July 28, 2008. In his will he left his entire estate to Barbara. Much of his estate consists of community property.

Virgil Becker's children by a prior marriage filed a will contest. These children and their mother also filed actions on a number of rejected creditors claims. In December 2004, a Guardian ad Litem purported to enter into a written settlement agreement of the will contest and the creditors claims. The GAL agreed to give more than half of Virgil Becker's estate to the will contestants. Nancy, who was then personal representative, refused to sign the agreement. An independent successor personal representative likewise refused to sign.

In anticipation of filing a motion for court approval of the settlement agreement, the Guardian ad Litem sought an order of the trial court that Nancy did not have standing to participate in the motion for approval of the settlement agreement, the will contest litigation, or the distribution of Virgil Becker's the estate. The trial court granted the motion, entering a very broad order in which the trial court denied

standing to Nancy, held that she is not an “heir,” and held further that she is not a party under TEDRA.

Nancy sought discretionary review of the order. In the meantime the trial court heard motions without notice to Nancy, and in which Nancy was not allowed to participate, and entered orders or took actions that very plainly affected Nancy’s interests in the decedent’s property. In one instance the Guardian ad Litem gave Nancy notice of a motion, but in the same motion argued that Nancy did not have standing to oppose it. The trial court decided the motion without indicating whether or not it considered Nancy to have standing.

The result has been that Nancy has been sent to a kind of limbo, in which the parties sometimes do and sometimes do not give her notice of motions, and in which it is not clear, when notice is given, whether the trial court considers her to have standing, or whether or to what extent the trial court considers the papers that Nancy files. The order denying her standing at the same time plainly deprives her of the opportunity to be heard, with respect to both disputed issues in the probate and the will contest, where her interest in the decedent’s property, and her interest in his estate, are affected.

Nancy in this appeal seeks an order vacating the trial court’s order on standing, vacating orders entered thereafter, determining that she has

standing in the probate and the will contest, remanding the case for further proceedings consistent with this Court's ruling, and awarding attorneys' fees.

II. ASSIGNMENTS OF ERROR

Petitioner makes the following assignment of error:

1. The trial court erred in entering the Order Determining that Nancy Becker Lacks Standing to Argue any Issue Regarding the CR2A Agreement of Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate (CP 230-233; App. 1-4).¹

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Does Nancy Becker have standing under the Trust and Estate Dispute Resolution Act, RCW 11.96A *et seq.* ("TEDRA"), to be heard on the question whether the trial court has the authority to, and whether the trial court should, approve the CR2A Agreement, which neither Nancy nor the personal representative has signed?

2. Does Nancy Becker have standing to participate in, and is she a "party" within the meaning of RCW 11.96A.030 to, the will contest filed by Virgil Becker's adult daughters from a previous marriage, such that the will contest cannot be settled without her agreement?

¹ References to "App." are to the Appendix to this brief.

3. Is Nancy Becker an “heir” of the estate of Virgil Becker as that term is defined in RCW 11.02.005(6)?

4. Does Nancy Becker have standing, as the surviving spouse and an owner with her deceased husband of community property, to participate as a party in the trial court’s determination of any matter potentially affecting assets, and the disposition or distribution of assets, of the decedent in which Nancy Becker has or claims an interest?

IV. STATEMENT OF THE CASE

Virgil “Tory” Becker, M.D., J.D., was a practicing surgeon. He died on July 27, 2008, in the crash of a private plane in which he was a passenger. At the time of his death, Tory had been married to the petitioner Nancy Becker (also a doctor) for 13 years. CP 37. Tory and Nancy together had one daughter, Barbara. Barbara was born on November 28, 1997, and was 10 when her father died. CP 1, 37. She is now 12 (almost 13), and lives with her mother Nancy. CP 219.

Tory had previously been married to Linda Bulger, from whom he was divorced in 1993. Tory had three children by his previous marriage: Catherine Jane Becker, Carol-Lynne Becker, and Elizabeth Diane Becker. CP 1-2. All were adults when Tory died. CP 175.

Tory in his will (CP 1-11) left his entire estate to Barbara. He nominated Nancy as executrix. On August 13, 2008, the court admitted

Tory's will to probate, and confirmed Nancy as personal representative ("PR"). CP 219.

Tory's assets included an interest in a house in Auburn, Washington; interests in several bank and brokerage accounts; an interest in a limited partnership called Trident Trust; and an interest in Doctors Becker LLC, a limited liability company of which Tory and Nancy were the sole members. CP 153-60, 71-115. Doctors Becker LLC in turn owned residential waterfront property, improved with two houses, on San Juan Island, Washington; a residence on the Enumclaw plateau, where Tory, Nancy and Barbara lived together (and where Nancy and Barbara now live); and a partially constructed medical office building (now complete) in Enumclaw, Washington, where Nancy now practices in the areas of ear, nose and throat, allergy therapy, and facial plastic surgery. Some of these assets were community and some were separate property of one spouse or the other. *See, e.g.*, CP 39-43, 154, 156, 157.²

Paragraph 6 of the Will (CP 5-8) provides for the creation of a trust under some circumstances. On the same day that the court admitted the will to probate, the court (at the request of counsel for the estate) entered an Order Appointing Guardian ad Litem, in which the court appointed Gail Crawford as Guardian ad Litem ("GAL"). CP 12-14. Ms. Crawford

² The community versus separate character of the property is the subject of disagreement, and has not yet been litigated or decided.

was subsequently succeeded as GAL by Jennifer Rydberg. CP 30-31.

The order substituting Ms. Rydberg reconfirmed in every other respect the original order. CP 31. The Order Appointing Guardian ad Litem directed the GAL to report to the court, at a time to be determined, on three issues: whether the court should appoint Nancy as trustee of the trust, whether and to what extent the trustee should distribute funds to Barbara from the trust during the pendency of the probate, and the allocation of assets of the estate between the child's trust and Nancy as surviving spouse. CP 13-14. The Order limits the GAL's fees "to a maximum of \$3,000 without further, prior court approval." CP 13.

The three children of Tory and Linda Bulger (the "Bulger Daughters") filed a petition to contest the validity of Tory's will. CP 15-29. The three children and their mother (the "Bulger Parties") together also filed more than a dozen creditor's claims. CP 568, 800. Nancy as PR retained the law firm of Van Siclén, Stocks & Firkins to represent her. CP 568-69. She rejected the creditor's claims. CP 568. On January 29, 2009, the Bulger Parties filed an action on their numerous creditor's claims, under King County Cause No. 09-4-00469-0 KNT. CP 568.

The parties attended a mediation on December 4, 2009. At the mediation, the GAL and the Bulger Parties (but not Nancy, either individually or as PR) signed what they called a "CR2A Agreement."

CP 825-31; App. 5-11. The GAL purportedly signed the CR2A Agreement on behalf of Barbara, notwithstanding that the order appointing the GAL gave the GAL no such authority. The CR2A Agreement provided that the will contest and creditor's claim actions would be settled, and that the Bulger Parties would receive well in excess of 50% of the estate. CP 826, 818; App. 6. The CR2A Agreement provided that it was conditioned upon approval by the court or the PR, and further provided that the GAL and the Bulger Parties might seek the appointment of a special "Limited Purposes Co-PR" to approve the agreement if Nancy refused to do so. CP 827; App. 7.

Nancy did not believe that the proposed CR2A Agreement was in the best interests of her daughter, and declined to sign it. Nancy as PR brought a motion to remove the GAL. Nancy as PR also moved for summary judgment on all of the creditor's claims. The GAL in response brought a motion to remove Nancy as PR. The trial court granted the motion to remove Nancy as PR. CP 292. The trial court took Nancy's motion to remove the GAL and the motions for summary judgment off the calendar. CP 742-43.

Nancy then appeared personally (not as PR) in the probate action through undersigned counsel. CP 744-45. On April 9, 2010, the trial

court appointed Jennifer White, an Auburn attorney, as successor PR (“Successor PR”). CP 746-49.

On May 10, 2010, the GAL brought a Motion to Determine Standing of Nancy Becker Regarding CR 2A Agreement of Heirs to Resolve Will Contest and Creditor’s Claims, and Distribute Estate. CP 173-83. In the motion, the GAL argued, in essence, that the CR2A Agreement only disposed of the decedent’s assets, that Nancy did not have any interest in the decedent’s assets, and therefore that Nancy did not have standing, either under general principles of standing or under the TEDRA standing provisions set out in RCW 11.96A.030.³ *Id.* The Bulger Parties filed a memorandum supporting the motion.⁴ CP 204-08. Nancy filed a written opposition, supported in part by a declaration. CP 218-29, 191-97. The Successor PR filed a short declaration stating that she would decline to execute the CR2A Agreement, and that she agreed that Nancy Becker *did* have standing to participate in proceedings regarding the approval of the CR2A Agreement. CP 189-90; *see also* CP 806-07, 815-19.

On May 20, 2010, the trial court granted the motion and entered an Order Determining that Nancy Becker Lacks Standing to Argue any Issue Regarding the CR2A Agreement of Heirs to Resolve Will Contest and

³ RCW 11.96A.030 is set out in full at App. 12-13.

⁴ Both the GAL’s motion and the Bulger Parties’ supporting memorandum made *ad hominem* attacks on Nancy Becker, impugning her motives and integrity. These attacks had no bearing on Nancy’s standing at the time, *see* CP 215-16, and they do not now. Nancy will not further address them here, other than to deny the truth of the allegations.

Creditors' Claims, and Distribute Estate ("Order Denying Standing"). CP 230-33; App. 1-4. The trial court ruled very broadly that "Nancy Becker has no beneficial interest in any matters addressed by the CR2A Agreement or in the Estate" (CP 231); that "Nancy Becker is not an heir or beneficiary of the Estate, and has no legal interest in the decedent's property, in this estate action" (*id.*); that "Nancy Becker is not a party under the Trust and Estates Dispute Resolution Act . . ." (*id.*; *see also* CP 232); and that

Nancy Becker has no standing to participate as a party in the court's determination of whether a CR2A Agreement, that resolves the will contest and Petitioners' creditors' claims, and distributes the estate among the heirs, reached by the Petitioners and the GAL, or any variation thereof, should be approved by the trial court . . .

CP 232. The trial court ruled that Nancy "has no standing to participate as a party in the Court's determination of how the assets of the Estate shall be distributed among its heirs;" and that she "has no standing to participate as a party in the litigation and resolution of . . . the validity of the Will admitted to probate." *Id.*

Nancy Becker filed a timely Notice of Discretionary Review, and a Motion for Discretionary Review in this Court. The motion was argued, the Honorable Commissioner James R. Verellen presiding, on August 13, 2010.

On June 2, 2010, the GAL brought a Motion to Seal Confidential Interim Report of Guardian ad Litem and GAL's CR 2A Litigation Analysis. CP 234-39. Nancy was not given notice of the motion. CP 750-51. In this motion, the GAL sought leave of the court to file two documents, an Interim Report "that details the history of the case from the GAL's perspective that is intertwined with facts, law and her analysis thereof . . . ," and a Litigation Analysis Report "that summarizes the reasons why the GAL holds the opinion that the CR 2A Agreement is in the minor beneficiary's best interests." CP 235. The GAL apparently submitted these two reports directly to the chambers of the trial court, without filing them, with the intent that they would never be part of the public record, that they would not be available to counsel for the parties, and that they "be sealed as confidential and not subject to the review of any party to these proceedings or the public, and that any discussion between the GAL and the Court concerning these reports likewise be confidential." CP 234-35; *see* VRP 9-10. She did so on the theory that she "has a quasi-attorney-client relationship with the Court, and thus communications with the Court about her litigation strategy and analysis must be confidential." CP 242; *see also* VRP 12.

On the same day, both the GAL and the Bulger Parties filed motions for court approval of the CR 2A Agreement. CP 244-46; CP 752-

69. Nancy was not given notice of these motions. CP 770-71. The Successor PR, who had engaged Van Siclen, Stocks & Firkins to represent her (*see* CP 808), opposed the motion. CP 247-274, 772-98.

Both the GAL and the Bulger Parties objected to the Successor PR's engagement of the Van Siclen firm (which had previously represented Nancy as PR) asserting that the firm was in a position of conflict of interest. VRP 5, 9. A short time into the June 11 hearing, the trial court discussed whether, before addressing any other issue, it would first be necessary to determine whether the Van Siclen firm was in a position of conflict of interest. VRP 3. The trial court made it clear in its oral remarks that whether or not the Van Siclen firm was in a position of conflict of interest, the trial court did not want the firm to represent the Successor PR. VRP 18-20. After a recess, the Van Siclen firm requested permission to withdraw, which was granted. VRP 22-23.

During the course of the hearing, the GAL advised the trial court that she wanted clarification of her role:

MRS. RYDBERG: . . . Mr. Van Siclen has been taking the position that I do not have authority as . . . guardian ad litem.

I would appreciate it, since there has been so many things done in this case that are important and the court supported, you tackling that issue and addressing whether I have the duties and responsibilities of a TEDRA . . . GAL [T]hey are taking the

position my responsibilities in this case stand[] at writing a report on three minor issues.

VRP 16. The trial court initially responded that “[t]hey will need to file a motion if they object.” *Id.*

The GAL also advised the trial court that because she was “a sole practitioner without staff” she “need[ed] to have an attorney and the attorney needs to be paid by the estate.” VRP 20. Although no motion was pending on the issue, the trial court agreed with her: “I think you should have an attorney.” VRP 20-21.

In addition, the GAL advised the trial court during the hearing that she had accumulated nearly \$100,000 in unpaid fees (in addition to some \$25,000 that she *had* been paid) and asked that she be paid her fees. Again, although no motion on this issue was pending, the trial court agreed with her, stating that “a fair chunk of that needs to be paid. If it’s not agreed I’ll deal with it but you’re entitled to be paid.” VRP 32-33. At that point the following exchange occurred:

MR. LEAV[E]N[S]: I’m Ladd Leav[e]n[s],
I represent Nancy Becker.

May I be heard briefly, Your Honor?

THE COURT: No, but thank you.

VRP 33.

The trial court on the same day executed two orders, which were apparently agreed among the parties who were permitted to participate in the hearing: (1) an Order Sealing Redacted Interim Report of Guardian ad Litem and Guardian ad Litem's CR2A Litigation Analysis & Making Confidential the Unredacted GAL Report & Analysis ("Order Regarding Redacted Interim Report") (CP 279-82; App. 14-17) and (2) an Order Regarding Minor Settlement, Attorney Representation and Stay ("Order Regarding Minor Settlement") (CP 276-78; App. 18-20). No space was provided on the orders for approval of the form or substance of the orders by counsel for Nancy Becker. CP 278, 282.⁵ In its Order Regarding Redacted Interim Report, the trial court found that "all parties with standing have been given notice of this Order and an opportunity to be heard." CP 281. Although no party had made a motion regarding the authority of the GAL, the order provided that the GAL was "retained by the Court to represent the interests of the minor beneficiary" and that the "minor beneficiary . . . is the third-party beneficiary of this appointment." CP 280. The trial court in the order sealed the two redacted reports from the public. CP 281-82. The Order Regarding Redacted Interim Report provided that the original unredacted GAL report and litigation analysis "shall be returned uncopied to the GAL forthwith." CP 282. The order

⁵ The Successor PR agreed to these orders (CP 278, 282), but she was unrepresented, the attorney who had represented her at the beginning of the hearing having withdrawn.

placed no restrictions on the GAL's subsequent handling or retention of the original, unredacted reports.

The trial court did not rule on the Motion for Approval of CR2A Agreement, but, in the Order Regarding Minor Settlement, ordered that the will contest petitioners, the GAL and the Successor PR take the matter to the minor settlement ex parte department. CP 276-77.⁶ In the Order Regarding Minor Settlement, the trial court also observed that Mr. Van Siclen "has withdrawn" CP 276. The order also authorized the GAL to file a motion for approval of her fees without oral argument on a six day calendar. CP 277.

On July 8, 2010, the GAL filed a Motion and Declaration to Approve and Pay Counsel for Guardian ad Litem. CP 283-89. She sought court approval to hire lawyers from two different law firms to represent her. CP 284. She served counsel for Nancy Becker with the motion (CP 289), without explanation as to why she did so. Nancy Becker opposed the motion on the ground that there was no current need for a GAL; that there was no order authorizing the GAL to participate in the will contest or the creditor's claim action; that there was no authority under the statutes, rules or case law for the appointment of a lawyer for a

⁶ Later that same day, the Ex Parte and Probate Department declined to hear the matter, and referred it back to the trial court. CP 275. To the knowledge of Nancy Becker, no party has subsequently renewed their motion for approval of the CR2A Agreement.

GAL; and that the appointment of lawyers for the GAL would drain the assets of the estate. CP 893-900. In her reply, the GAL argued in part that Nancy Becker “is subject to the Court’s finding that she lacks standing in this probate.” CP 337. The GAL also characterized Nancy’s opposition as a “thinly veiled attempt[] to reargue the Court’s decision [at the June 11 hearing] that the GAL is entitled to legal counsel.” CP 338. The GAL also argued that in seeking the appointment of counsel she was merely complying with the trial court’s June 11 order. CP 338.

On July 23, 2010, the trial court granted the GAL’s motion. CP 342-350. The trial court signed the GAL’s proposed order, which stated that the trial court had considered “the responses and replies, if any,” (CP 342) but the trial court did not otherwise address whether it considered Nancy to have standing for purposes of the motion.

On July 15, 2010, Nancy filed Nancy Becker’s Motion to Nullify Actions of GAL and Terminate Appointment. CP 290-331. Nancy argued that the GAL had taken actions that exceeded the scope of her authority under the Order Appointing Guardian Ad Litem by (among other things) purporting to enter into the CR2A Agreement, that she had violated the Guardian ad Litem Rules, that the reversible actions that she had taken (including the execution of the CR2A Agreement) should be declared null and void, and that the GAL’s appointment should be terminated because

the purpose for which she had been appointed no longer existed, and because (in light of the appointment of the independent Successor PR) there was no current need for a GAL. *Id.* That motion has not been decided; this Court accepted review in this case, and trial court proceedings were stayed, before the motion came on for hearing.

On August 23, 2010, the GAL filed the Guardian Ad Litem's Motion for Fees and for Clarification of Powers Nunc Pro Tunc. CP 352-63. The GAL gave notice to Nancy Becker (CP 901-04), although again she did not explain why.⁷ She sought a *nunc pro tunc* ruling regarding the scope of her authority (the same issue that was the subject of Nancy Becker's earlier filed, still pending Motion to Nullify), and sought approval of fees for herself and her new attorneys. In support of both requests she specifically relied on the trial court's oral comments at the June 11 hearing, and on the trial court's two June 11 orders. CP 356, 367, 376, 378-86. Both the Successor PR and Nancy opposed the GAL's motion. CP 425-493. The Successor PR argued among other things that the estate had insufficient cash to pay the fees, and that if the motion were granted it would be necessary to liquidate assets. *See, e.g.*, CP 425, 449. Nancy argued among many other things that the motion was stayed

⁷ One day later, on August 24, 2010, the Successor PR brought her own motion for the approval of her PR fees and the fees of her counsel. CP 907-15. She did *not* give Nancy Becker notice of the motion. CP 905-06.

because this Court had accepted discretionary review on August 31, 2010.⁸
CP 474.

The trial court granted the GAL's motion for fees, awarding her \$128,524.72 (in addition to amounts previously paid), and awarding Ryan Swanson \$35,393.50. CP 503-05. The Successor PR moved for reconsideration, in the alternative seeking instruction regarding the sale of assets to fund the payments to the GAL and her lawyers. CP 506-39; 507. In the meantime, Nancy Becker filed an emergency motion in this Court to enforce the stay of RAP 7.2. This Court granted the motion on October 11, 2010, and vacated the trial court's order awarding fees to the GAL and her counsel. On November 10, 2010, the GAL moved to modify that ruling.

V. ARGUMENT

A. The Standard of Review is De Novo.

The trial court made no factual findings and resolved no factual issues in entering the Order Denying Standing, but treated the issue as an issue of law. Whether a potential party has standing is an issue of law. *See, e.g., Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994). Issues of law are reviewed de novo. *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 595, 70 P.3d 954 (2003). The Order Denying Standing also

⁸ Nancy had moved on shortened time in the trial court for an order enforcing the stay of RAP 7.2 after this trial court accepted discretionary review. CP 402-16. The trial court denied the motion. CP 500-02.

interpreted TEDRA. The interpretation of a statute is a matter of law subject to de novo review. *Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d 221, 224, 86 P.3d 1166 (2004).

B. The Trial Court Erred in Determining That Nancy Does Not Have Standing to Participate as a Party in the Determination of How Assets of the Estate Shall Be Distributed.

Nancy asserts that many of the assets that she and the decedent owned were community property. Nancy and the decedent each held – and Nancy and the estate now hold – an undivided one half interest in whatever property was community property. Nancy – like every surviving spouse – has standing in a probate administration with respect to the distribution of the decedent’s one-half of the community property, because the surviving spouse will be personally impacted by the distribution. If, for example, a residence is held as community property, the distribution of the decedent’s interest will affect the surviving spouse. If the decedent’s interest in the residence is distributed to beneficiaries who are hostile to the surviving spouse, the consequence of the distribution would be that the surviving spouse and the hostile beneficiaries would become joint owners of the residence. The value of the spouse’s interest would be diminished by the fact of joint ownership; and as a practical matter she might be forced by the practical circumstances or by her new co-owners to sell the house. She would be entitled to argue, again by way of example, that the

beneficiaries should receive some other asset as their share of the estate, so that the surviving spouse can retain 100% ownership of the house. Here (to continue the example), if the Bulger Daughters were (by virtue of a successful will contest) ever to become intestate heirs with Barbara, Nancy might want to argue that the house should be distributed to Barbara, and other assets to the Bulger Daughters. By way of further example, if the marital community's household furnishings and other tangible personal property are community property, the surviving spouse has an interest in being heard with respect to the determination of how those assets will be distributed. Otherwise, as the CR2A Agreement apparently contemplates, *see* App. 7, the estate beneficiaries would be able to divide up assets in which she has an interest, or perhaps require that they be sold. The PR would have the power to sell all of the community property to make distributions, because, under RCW 11.02.070, the whole of the community property, not just the decedent's one half share, is subject to probate administration.

Nancy's very real interest in how the community property is administered and distributed in the estate is easily sufficient to give her standing under common law standing principles. *See, e.g., Paris American Corp. v. McCausland*, 52 Wn. App. 434, 438, 759 P.2d 1210 (1988) (a party has standing if that party has a distinct and personal

interest in the issue being litigated). TEDRA recognizes that as a consequence of these considerations, a surviving spouse has standing with respect to the administration of and distribution of community property in a probate estate. RCW 11.96A.030(5)(f) provides that a surviving spouse of a decedent is a “party” – that she has standing, in other words – “with respect to his or her interest in the Decedent’s property” A surviving spouse like Nancy, with an interest in the decedent’s community property, therefore is a party and has standing, with respect to the distribution of that property. The Order Denying Standing provides, however, that she has no standing with respect to the distribution of *any* property, and is therefore in error.

C. The Trial Court Erred in Determining More Broadly That Nancy Is Not A Party Under TEDRA and Has No Beneficial Interest in Any Matters in the Estate.

As noted above, the Order Denying Standing is exceedingly broad. The Order states among other things that “Nancy Becker has no beneficial interest in any matters . . . in the Estate,” (CP 231) and that “Nancy Becker is not a real party in interest, nor is she a party under the Trust and Estate[] Dispute Resolution Act, RCW 11.96A *et seq.*” CP 232. The effect has been that even as to motions or actions other than for the approval or disapproval of the CR2A Agreement, and the distribution of

the assets of the estate among what the order calls the “heirs” (CP 232),⁹ Nancy has not been given notice and in some cases has been denied the opportunity to participate. When the GAL sent her lengthy Interim Report of Guardian ad Litem to the trial court chambers, and moved for leave to do so (and to deny the “parties” access to the report), she did not give Nancy notice. At the June 11 hearing, the parties felt free to insert provisions in the two orders that went well beyond the scope of the motion – for approval of the CR2A Agreement – that was on the calendar for oral argument that day. The Order Regarding Redacted Interim Report makes preliminary findings regarding the scope of the role of the GAL. CP 280. This issue was raised orally, *see* VRP 16, during the hearing in which Nancy was barred from participating. The issue of the scope of the GAL’s authority is hotly contested, however, and has been the subject of motions both by Nancy (CP 290-331) and the GAL (CP 352-65). *See also* CP 801-02. The same order authorizes return to the GAL of the unredacted reports, without making provision for retention somewhere of copies, even though the trial court spent some time reviewing the unredacted reports, and the trial court’s staff spent a considerably longer time reviewing them. VRP 10-11. The Successor PR did not give Nancy notice, for example, when she moved for authority to pay her and her attorneys’ fees. CP 905-

⁹ Nancy does not believe that any motion has yet been filed, or action taken, for the purpose of making a distribution of assets to any heir or beneficiary.

06, 907-15. When the GAL moved for authority to have two law firms represent her, she gave Nancy notice of the motion, but at the same time argued to the trial court that Nancy lacked standing to be heard.

Nancy's interests are directly affected by all of this activity. For just one example, the question of the extent of the GAL's authority, and the question whether and to what extent a GAL may hire and pay a lawyer, or lawyers, from estate assets, will affect the extent of financial resources available to the Successor PR, and will affect whether assets of the estate must be sold to pay the fees of the GAL and the lawyers. The Successor PR has already made clear that if the GAL and her lawyers must be paid these fees, assets will have to be sold. CP 506-10. The Successor PR's fees, and her attorneys' fees, may be payable in part out of community property, to the extent that the fees are incurred in connection with the administration of community property. The Successor PR administers community as well as separate assets, RCW 11.02.070, and may be forced to sell an asset in which Nancy has an ownership interest to pay fees. Yet Nancy is denied the right to be heard on these issues, and might also be denied the right to be heard on what assets should be sold, and for what price, under the broad language of the order.

Under TEDRA, as noted above, Nancy has standing to be heard on all issues that potentially affect her community property interest. Any

issue arising in a probate estate is decided under TEDRA, because TEDRA describes the broad authority of the court to decide issues arising in probate administration:

(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 deceased persons, including matters involving nonprobate assets

RCW 11.96A.020. RCW 11.96A.030 then provides:

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding . . . :

* * *

(f) The surviving spouse . . . of a decedent with respect to his or her interest in the decedent's property; [and]

* * *

(i) Any other person who has an interest in the subject of the particular proceeding

RCW 11.96A.030(5). By holding generally that Nancy is not a party under TEDRA, the trial court has in essence determined that there is *no* potential issue in the administration of the estate as to which she has standing. The Successor PR, the GAL and the Bulger Parties have so construed the order, with respect to several motions that plainly will

potentially affect the ability of the Successor PR to retain and not sell property that is community property.

The order in its breadth is pernicious for another reason. Even if there are some issues, like property characterization issues, as to which even the GAL and the Bulger Parties would probably concede that Nancy does have standing, the Order Denying Standing in effect lets adverse parties decide in the first instance whether to give Nancy notice. In addition, as happened on June 11, it permits them, at hearings, to exclude Nancy from participation in the execution of “agreed” orders that address issues beyond those raised in the motion pursuant to which the hearing was convened, and that directly impact Nancy’s interests in preserving her community property from dissipation or sale.

The trial court’s order was error, and has resulted in a situation where Nancy is deprived of notice and the right to be heard on issues that affect her. This right is a fundamental element of fairness and due process, no less in probate administrations than in any other proceeding.

D. The Trial Court Erred in Concluding that Nancy Lacked Standing in the Will Contest, and That She Lacked Standing to Be Heard With Respect to the Validity and Enforceability of the CR2A Agreement.

The trial court also erred in determining that Nancy was not entitled to participate in the question of whether the CR2A Agreement, which would compromise and settle the will contest, should be

“approved” by the trial court,¹⁰ and in excluding her generally from participating as a party in the will contest. Nancy Becker is not a beneficiary under the will admitted to probate, but she clearly has “an interest in the subject of the . . . proceeding” under RCW 11.96A.030(5)(j), and is therefore a “party” to the proceeding under TEDRA. If the will is invalidated, then she, like Barbara and the Bulger Daughters, would be intestate heirs. Nancy would then be entitled to receive, from her husband’s estate, all of the community property and one half of the separate property, under RCW 11.04.015(1). Alternatively, if the will were invalidated and another will preceding her marriage were offered for probate that did not mention her, she would be an omitted spouse under RCW 11.12.095, and her presumptive share would be her share as an intestate heir under RCW 11.04.015. Nancy is, in other words, in almost precisely the same position as the Bulger Daughters themselves. She is not a beneficiary of the estate, but is financially affected by the will contest. *See Thomas v. Best*, 209 Va. 103, 161 S.E.2d 803 (Va. S. Ct. 1968) (heirs who were not named in will are necessary parties to any settlement of will contest); *McFadden v. McFadden*, 174 Kan. 533, 257 P.2d 146 (Ka. S. Ct. 1953) (heirs not named in will are both proper and

¹⁰ There is no authority for the proposition that the trial court may approve and therefore force a settlement of a probate dispute over the objection of any party to the dispute, let alone over the objection of the PR. This appeal does not raise that issue, however.

necessary parties to will contest); *Gravier v. Gluth*, 163 Ohio St. 232, 126 N.E.2d 332 (Ohio S. Ct. 1955) (heirs not named in will are by statute necessary parties to will contest).¹¹

Nancy also has a very real financial interest in the settlement of the will contest, as the execution of the CR2A Agreement demonstrates. The Bulger Daughters may be depended upon to attempt to maximize their financial benefit from the will contest. If, however, they were to succeed in invalidating the will, and if the estate were then to pass by intestacy, they would be entitled to receive just three-eighths of the separate property, and none of the decedent's community property.

RCW 11.04.015. The Bulger Daughters are therefore motivated to enter into a settlement under which they avoid intestacy, and under which both they and Barbara would receive *more* than they would receive under the laws of intestate succession. The CR2A Agreement accomplishes this very goal for the Bulger Daughters. Under the CR2A Agreement they would receive (after payment of attorneys' fees to their lawyers) \$400,000

¹¹ Nancy believes, based on the facts of which she is aware, that the will admitted to probate is valid. Her current belief does not deprive her of standing, however, and does not change the fact that she is a "party" with an interest in the matter under RCW 11.96A.030(5). For one thing, new facts may come to light. Nancy may also choose, for the time being, to forego taking an active role, and to rely on the more active parties, particularly the Successor PR, to fully develop the facts and the law. Parties with standing in a TEDRA action – such as multiple residuary beneficiaries – commonly choose to forego active participation in an action and merely to monitor the course of the case, believing that other parties are effectively handling the matter. The fact that a person might adopt that strategy, temporarily or throughout the litigation, does not deprive them of standing.

in settlement of their creditors claims, and, from the residue of the estate under the will, a *minimum* of 50 percent of *all* of the decedent's property, both community and separate. By contrast, Nancy (who is an intestate heir of *most* of the estate) would receive nothing under the CR2A Agreement. This was precisely the concern that caused the Virginia Supreme Court in *Thomas v. Best, supra*, on petition of intestate heirs who had not been included in settlement negotiations, to vacate a decree approving a will contest settlement that allocated the decedent's estate between the beneficiary under the will and some of the intestate heirs at law, but that excluded the petitioning intestate heirs.

The statute governing the commencement of will contest actions expressly requires that notice of the petition be given "to all persons interested in the matter, as defined in RCW 11.96A.030(5)." RCW 11.24.020. Nancy is plainly interested in the matter, and is therefore a "party" under RCW 11.96A.030. Because she is a party, she is not only entitled to participate in the will contest; it cannot be settled if she does not execute the settlement agreement. RCW 11.96A.220 (parties to a TEDRA "matter" under RCW 11.96A.030 may enter into a nonjudicial dispute resolution agreement if "all parties" agree and enter into a written agreement signed by "all parties"). A will contest is a "matter" within the

meaning of TEDRA. *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006).

Nancy is a necessary and proper party to the will contest and the CR2A Agreement; without her agreement, the other parties cannot settle the will contest. The trial court's determination that Nancy has no standing to participate in the trial court's determination as to the validity of the CR2A Agreement, and that she has no standing to participate as a party in the litigation of the will contest, is error.¹²

E. The Trial Court Erred in Determining That Nancy Is Not an Heir.

The trial court erred in determining Nancy is not an "heir" of her late husband's estate. CP 231. RCW 11.02.005 defines an heir as a person, "including the surviving spouse . . . , who [is] entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate." Nancy is an heir as a matter of law, and cannot be deprived of that status by court order. In the event the decedent's will is invalidated, the order leaves room for an adverse party to contend that, since the trial court has declared that she is no longer an heir, she is not entitled to an intestate share of the estate under RCW 11.04.015. While Nancy doubts that the trial court intended that

¹² Nancy does not seek to participate as a party in the creditor's claim litigation, which the trial court also addressed in its Order Denying Standing. CP 232.

result, and believes it unlikely that the ruling would be so construed if the will were in fact invalidated, the trial court's order is nonetheless error and should be reversed.

F. The Court Should Vacate the Order Denying Standing, and All Orders Entered Thereafter, Because All Are Infected with the Error in the Order Denying Standing.

All of the trial court's orders entered after it entered the Order Denying Standing are infected with the error of not permitting Nancy to be heard, and should be vacated. Nancy was not given notice of the hearings noted for June 11, and her attorney was not permitted to speak at the hearing. The two orders entered on that day, and the oral comments of the trial court, were not only entered without Nancy's having the opportunity to participate, but also were the predicate based upon which all of the trial court's subsequent orders were entered. During the June 11 hearing, the trial court orally stated that the GAL was entitled to hire counsel at the estate's expense, and that she was entitled to be paid a substantial portion of her fees. In the Order Sealing Redacted Interim Report, the trial court ordered in writing that the GAL "was retained by the Court to represent the interests of the minor beneficiary," and that "the minor beneficiary of this Estate is the third-party beneficiary of this appointment." CP 280. The trial court in the Order Regarding Minor Settlement stated that it "will approve/appoint counsel for the GAL . . ." CP 277. In subsequent orders,

the trial court did in fact authorize the GAL to hire two lawyers, approve the fee arrangement, and direct the estate to pay the fees. CP 342-350. In her motion for appointment of attorneys, the GAL specifically relied on the trial court's orders and comments in the June 11 hearing, stating that she was merely following the trial court's order. CP 338.¹³

G. The Court Should Award Nancy Becker Her Attorneys' Fees Against the Guardian Ad Litem and the Bulger Parties in Connection With This Appeal.

The Bulger Parties, as will contestants, and as having supported the trial court's entry of the order denying standing, see CP 198-208, are clearly parties within the meaning of TEDRA. The GAL is likewise a "party" under RCW 11.96A.030(5)(g).

In a TEDRA proceeding,

(1) Either the superior court or any court on an 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 The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate,

¹³ The trial court also approved the PR's engagement of K&L Gates as her counsel, and approved her fees. Nancy Becker believes that the Successor PR, who was granted non-intervention powers by the trial court's order of April 9, 2010 (CP 747), had the authority to engage K&L Gates and to pay fees from the estate assets without a court order. Nancy Becker in any event does not object to those two orders.

which factors may but need not include whether the litigation benefits the estate . . . involved.

RCW 11.96A.150. Nancy Becker's Motion for Discretionary Review has benefited the estate; it will have aided in the prevention of the approval of the CR2A Agreement, and it will have ensured that the GAL may not in the future give away the estate for reasons known only to her. In addition, it will ensure that Nancy is entitled to be heard with respect to determinations that affect her interest in the community property under estate administration.

It is unusual, without doubt, for fees to be awarded against a GAL. This is an unusual situation. There is no justifiable reason why the GAL would want to exclude Nancy Becker, the mother of the 12-year-old girl who is the sole beneficiary of this estate, from even being heard with respect to a CR2A Agreement that gives the Bulger Parties by far more than they would ever receive if they were successful in their will contest. An award of fees is appropriate and the trial court should grant Nancy Becker her fees against both the Guardian Ad Litem and the Bulger Parties.

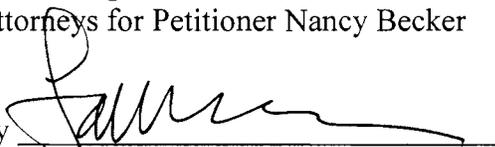
VI. CONCLUSION

For the foregoing reasons, Nancy Becker requests that this Court vacate the Order Denying Standing (CP 230-33), the Order Sealing

Redacted Interim Report (CP 279-82), the Order Regarding Minor Settlement (CP 276-78), and the Order Approving Counsel for Guardian ad Litem, Approving Fee, and Directing Estate to Pay Fees (CP 342-50), order that Nancy Becker is to be deemed to be a party within the meaning of RCW 11.96A.030 for all purposes in the probate action, including the will contest, and remand for further proceedings not inconsistent with this Court's ruling.

RESPECTFULLY RESUBMITTED this 7th day of December, 2010.

Davis Wright Tremaine LLP
Attorneys for Petitioner Nancy Becker

By 

Ladd B. Leavens
WSBA #11501
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Telephone: (206) 757-8082
Fax: (206) 757-7082
e-mail: laddleavens@dwt.com

DECLARATION OF SERVICE

I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following counsel of record via the means indicated:

Bruce A. McDermott	()	By U.S. Mail
Teresa Byers	()	By Federal Express
Garvey Schubert Barer	()	By Facsimile
1191 Second Ave., 18 th Floor	(x)	By Messenger
Seattle, WA 98101-2939	()	By Email
Fax: (206) 464-0125		
Email: bmcdermott@gsblaw.com		
Email: tbyers@gsblaw.com		

Lance L. Losey	()	By U.S. Mail
Ryan Swanson & Cleveland PLLC	()	By Federal Express
1201 Third Ave., #3400	()	By Facsimile
Seattle, WA 98101-3034	(x)	By Messenger
Fax: (206) 652-2956	()	By Email
Email: losey@ryanlaw.com		

Patricia H. Char	()	By U.S. Mail
K&L Gates LLP	()	By Federal Express
925 - 4 th Ave., Suite 2900	()	By Facsimile
Seattle, WA 98104-1158	(x)	By Messenger
Pat.char@klgates.com	()	By Email

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Dated at Seattle, Washington this 7th day of December, 2010.


Lucy M. Collins

APPENDIX

FILED
KING COUNTY, WASHINGTON
MAY 20 2010
SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

Superior Court of Washington
County of King

In re the Estate of:

No. 08-4-04979-2 KNT

Virgil Victor Becker, Jr.,
Deceased.

**Catherine Jane Becker, Carol-Lynne
Janice Becker, and Elizabeth Diane
Margaret Becker,**
Petitioners,

Order Determining that Nancy Becker
Lacks Standing to Argue any Issue
Regarding the CR 2A Agreement of
Heirs to Resolve Will Contest and
Creditors' Claims, and Distribute Estate

v.

**Jennifer White, in her capacity as
Personal Representative of the Estate of
Virgil Victor Becker, Jr.,**
Respondent.

The court having considered the Guardian ad Litem's ("GAL" herein) Motion to
Determine Standing of Nancy Becker Regarding CR 2A Agreement of Heirs to Resolve
Will Contest and Creditors' Claims, and Distribute Estate, the response of Nancy Becker

70C

Order Determining that
Nancy Becker Lacks Standing
Page 1 of 4

JENNIFER C. RYDBERG
Attorney at Law
8407 S. 25th, Suite 203
Kent, WA 98030-7536
Office: 425-235-5535
Fax: 253-857-0400
jerry@jcrlaw.com
www.jcrlaw.com

1 and the parties hereto, and the GAL's reply, the Court enters the following Findings of
 2 Fact and Conclusions of Law:

3 1. On December 4, 2009, during a court-ordered mediation, the GAL for Barbara
 4 Becker, and the Petitioners entered into a written CR 2A Agreement that purports to
 5 resolve the will contest, resolve all of the creditors' claims brought by Petitioners against
 6 the Estate of Virgil Victor Becker, Jr., (the "Estate" herein), and distribute the Estate. The
 7 CR 2A Agreement does not affect the prosecution or distribution of proceeds from the
 8 wrongful death claim that arose from the circumstances of the death of Virgil Victor
 9 Becker, Jr. ("decedent" herein). *The PR has not signed } JOC*
 10 *the CR 2A Agmt.*

11 2. Nancy Becker is the surviving spouse of the decedent.

12 3. Nancy Becker has no beneficial interest in any matters addressed by the CR 2A
 13 Agreement or in the Estate. Nancy Becker is not an heir or beneficiary of the Estate, and
 14 has no ^{legal} interest in the decedent's property, *in this estate action.* JOC

15 4. Nancy Becker was removed as Personal Representative ("PR" herein) of the Estate
 16 on March 16, 2010, and is not presently the PR.

17 5. Nancy Becker is not a "real party in interest" as to the matters addressed by the CR
 18 2A Agreement.

19 6. Nancy Becker is not a party under the Trust and Estates Dispute Resolution Act,
 20 RCW 11.96A, et seq.

21 7. Nancy Becker's involvement in the court's future determination of whether the court
 22 shall approve ^{the} CR 2A Agreement or otherwise resolve the issues it addresses is highly

JENNIFER C. RYDBERG
 Attorney at Law
 8407 S. 259th, Suite 203
 Kent, WA 98030-7536
 Office: 425-235-5535
 Fax: 253-852-0400
 jenny@jrlaw.com
 www.jrlaw.com

1 likely to result in the Estate and the GAL incurring substantial and needless attorney's
2 fees and expense. ^{↑ (NOT RELEVANT)} JOC

3 Accordingly, it is hereby Ordered, Adjudged, and Decreed that:

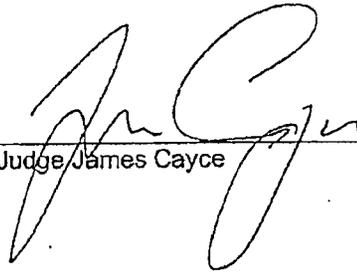
4
5 1. Nancy Becker is not a real party in interest, nor is she a party under the
6 Trust and Estates Dispute Resolution Act, RCW 11.96A *et seq.*

7 2. Nancy Becker has no standing to participate as a party in the court's
8 determination of whether ^{JOC a} the CR 2A Agreement, that resolves the will contest and
9 Petitioners' creditors' claims, and distributes the estate among the heirs, reached by the
10 Petitioners and the GAL, or any variation thereof, should be approved by the Court.

11
12 3. Except for any proceeds that may in the future be obtained from a wrongful
13 death action, Nancy Becker has no standing to participate as a party in the Court's
14 determination of how the assets of the Estate shall be distributed among its heirs.

15 4. Nancy Becker has no standing to participate as a party in the litigation and
16 resolution of creditor's claims made against the Estate, or the validity of the Will admitted
17 to probate.

18 Dated: May 18, 2010. ^{JOC}


Judge James Cayce

21 Presented by:

24 Jennifer C. Rydberg, WSBA #8183
25 Guardian ad Litem

27 Order Determining that
28 Nancy Becker Lacks Standing
Page 3 of 4

JENNIFER C. RYDBERG
ATTORNEY AT LAW
8407 S. 259th, Suite 203
Kent, WA 98030-7536
Office: 425-235-5535
Fax: 253-852-0400
jenny@jrlaw.com
www.jrlaw.com

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Declaration of Service

I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following counsel of record by e-mail:

Bruce A. McDermott, WSBA #18988
Kenneth L. Schubert, III, WSBA #27322
Teresa Byers, WSBA #34388
Garvey Schubert Barer
bmcdermott@gsblaw.com
tbyers@gsblaw.com
ldruss@gsblaw.com

Ladd Leavens, WSBA # 11501
Davis Wright Tremaine LLP
LaddLeavens@dwt.com

Jennifer White, WSBA #19111
jen@jenwhitelaw.com

Robert Van Sichen, WSBA #4417
VanSichen@VanSichen.com

Dated at Renton, WA on May 17, 2010.

Jennifer C. Rydberg, WSBA #8183

*Order Determining that
Nancy Becker Lacks Standing
Page 4 of 4*

JENNIFER C. RYDBERG
ATTORNEY AT LAW
8407 S. 253rd, Suite 203
Kent, WA 98030-7536
OFFICE: 425-235-5535
FAX: 253-852-0400
jenry@jorlaw.com
www.jorlaw.com

CR 2A SETTLEMENT AGREEMENT

Pursuant to CR 2A, this Settlement Agreement (this "Agreement") is entered into and is effective this 4th day of December, 2009 by and between the following parties: Linda Bulger ("Linda") (represented by her attorney-in-fact Stan Bulger), Catherine Jane Becker ("Jane"), Carol-Lynne Janice Becker ("Carol") (represented by her attorney-in-fact Catherine Jane Becker) and Elizabeth Diane Margaret Becker ("Diane") (represented by her attorney-in-fact Stan Bulger) (collectively "Petitioners"); and Barbara Becker ("Barbee"), as represented by her guardian ad litem, Jenny Rydberg ("Rydberg") (collectively and individually "Respondent").

Recitals

- A. "Estate" for the purposes of this Agreement is defined as the gross estate of Virgil V. Becker, Jr. The "Net Estate" is defined as the gross estate reduced for approved reasonable administrative expenses (including but not limited to funeral expenses, attorneys fees and costs, Guardian ad Litem fees and costs, accountants fees), approved creditors claims and income and estate taxes, if any.
- B. Petitioners filed creditors claims against the Estate in a lawsuit currently pending in Washington, King County Superior Court (the "Court") under Cause No. 09-4-00469-0 KNT.
- C. Petitioners take nothing and Respondent is the sole beneficiary under the Will submitted to probate by the Personal Representative. Petitioners have filed a Will contest in Washington, King County Superior Court (the "Court") under Cause No. 08-4-04979-2 KNT. Petitioners have not asserted any claims against Respondent personally.
- D. Respondent has not asserted any claims against Petitioners personally. Respondent has appeared in those matters and vigorously opposed Petitioners' claims.
- E. Petitioners and Respondent have incurred significant legal fees and costs in the respective pursuit and defense of those claims. To date, Respondent's legal fees and costs have been paid by the Estate. Petitioners' legal fees and costs have not.
- F. Petitioners have incurred legal fees and costs that have benefited the Estate.
- G. Petitioners and Respondent anticipate expending additional significant legal fees and costs in the further pursuit and defense of those claims.
- H. Petitioners recognize there is a possibility that one or more of their creditors claims may be dismissed by a Court. Respondent recognizes there is a possibility that one or more of Petitioners' creditors claims may be granted by a Court.
- I. Petitioners recognize that there is a possibility that their Will contest may be unsuccessful.
- J. Respondent recognizes that there is a possibility that Petitioners' Will contest may be successful.

K. The assets that are in the Estate as well as the characterization and value of those assets are in dispute.

L. The litigation of these matters has also been personally difficult and draining on Petitioners and Respondent.

M. On December 4, 2009, Petitioners and Respondent actively participated in a lengthy mediation with Stew Cogan.

N. Rydberg believes that settlement pursuant to the terms set forth below is in the best interests of Respondent.

O. Without admitting liability, Petitioners and Respondents desire to settle this dispute pursuant to the terms and conditions set forth herein.

Terms and Conditions

1. Settlement Percentage. Petitioners and Respondent agree that:

- a) Petitioners shall be entitled to attorneys fees of \$200,000, without waiving any right to claims for the payment of attorneys fees incurred in the future, in accordance with the covenants and warranties of this Agreement.
- b) Petitioners shall be entitled to \$400,000 in settlement of their cumulative creditors claims, subject to the timing provisions below in Section 2.
- c) Diane shall receive a twenty percent (20%) interest in the residue of the Net Estate.
- d) Carol shall receive a fifteen percent (15%) interest in the residue of the Net Estate.
- e) Jane shall receive a fifteen percent (15%) interest in the residue of the Net Estate.
- f) Respondent shall receive a fifty percent (50%) interest in the residue of the Net Estate.

2. Timing of Payment.

- a) Petitioners shall be entitled to immediate payment of Section 1(a) from the Estate and Respondent shall join Petitioners in seeking payment of those fees;
- b) The first \$1,000,000 of Estate distributions shall be distributed in accordance with the percentages in Sections 1(c)-(f);
- c) The second \$1,000,000 of Estate distributions shall be distributed sixty-five percent (65%) to Petitioners (subject as to between them to the proportions in Section 1(c)-(e) above, i.e., 40/30/30) and thirty-five percent (35%) to Respondent;

- d) The third \$1,000,000 of Estate distributions shall be distributed with fifty-five percent (55%) to Petitioners (subject as to between them to the proportions in Section 1(c)-(e) above, i.e., 40/30/30) and forty-five percent (45%) to Respondent; and
- e) The remaining Estate distributions shall be distributed in accordance with the provisions of Sections 1(c)-(f).

3. Allowance of Non Pro Rata Allocation. By agreement of the Petitioners and Respondent assets within the Estate may be subject to non pro rata distribution in accordance with the percentages listed in this Section 1. Failure to reach agreement pursuant to this provision shall be resolved in accordance with Section 18.

4. Ownership and Distribution of Life Insurance Policy on the life of Barbara MacIntosh. The life insurance policy on the life of Barbara MacIntosh (MetLife Policy #8748682) with a death benefit in the amount of \$1.2 million ("Policy") shall name Petitioners and Respondent as beneficiaries, and be owned by Petitioners and Respondent, in accordance with the percentages named in Section 1(c)-(f) and, upon the death of the insured, the death benefit shall be paid out in said percentages. All premiums on the Policy shall be timely paid from the Estate during the pendency of the probate. Upon close of the Estate, Petitioners and Respondent shall continue to timely pay their respective pro rata share of the premiums when due until the death of the insured. The form of said premium payments shall be determined by agreement of the Petitioners and Respondent subject to the provisions of Section 18, below. Notwithstanding the foregoing, failure to pay her proportionate share of any premium payment shall subject the non-complying beneficiary to an action for damages brought by the remaining beneficiaries of the Policy to the extent those beneficiaries pay from their personal funds the unfunded portion of the premium payment.

5. Distribution of Tangible Personal Property. Petitioners and Respondent shall compile a list of items of tangible personal property owned by the Estate and distribute those items of tangible personal property by mutual agreement. Failure to reach agreement pursuant to this provision shall be resolved in accordance with Section 18.

6. Court Approval of Settlement. This Agreement is contingent upon approval by the Court and/or a court appointed person as provided herein. Respondent and Petitioners shall ask Nancy Becker, the personal representative, to sign this agreement in the form of a Nonjudicial Binding Agreement under RCW 11.96A.250. In the event that Nancy Becker refuses to execute the Agreement, Respondent and Petitioners shall obtain court approval of this Agreement either directly from the court or via independent means approved by the court, including without limitation, the appointment of a Co-Personal Representative (or person with similar authority) for the Limited Purposes of (a) assessing the reasonableness of this Agreement and, if that person determines this Agreement to be reasonable, (b) executing it on behalf of Respondent ("Limited Purposes Co-PR"). The Limited Purposes Co-PR shall have no obligation to file income or estate tax returns, distribute assets from the Estate or pay the debts of the Estate.

7. Definition of "Claims." The term "Claims," as used herein, means any and all claims, counterclaims, actions, causes of action, and rights to damages, whether known or unknown, matured or unmatured, liquidated or unliquidated, choate or inchoate.

8. Release by Petitioners. Subject to Section 6 above, Petitioners agree to dismiss their Will Contest and their Creditors Claims. Petitioners do not release their claims against or relating to the Trident Trust or the wrongful death action arising from the plane crash which resulted in the death of Virgil V. Becker, Jr. ("Wrongful Death Action").

9. Release by Respondent. Subject to Section 6 above, Respondent agrees to release any claim against the Estate. Respondent does not release her claims relating to the Wrongful Death Action.

10. Representations and Warranties. Each of the parties hereby represents and warrants to those parties whom they are releasing from Claims in this Agreement that as to that party's Claims (a) no third party has any right to assert any of the Claims released, and (b) no Claim or portion of a Claim released herein by that party has been assigned or transferred, either voluntarily, involuntarily, or by operation of law, to any third person or entity.

11. Covenants and Obligations.

a) Petitioners.

Petitioners agree to work with Respondent to take whatever steps are necessary:

(1) to obtain court approval of this Agreement, including without limitation, the appointment of a Limited Purposes Co-PR.

(2) to determine the assets that are in the Estate as well as the characterization and value of those assets.

(3) to defend and preserve assets of the Estate.

(4) to ensure compliance with the terms of this Agreement, including the distribution of Estate's assets subject to the terms of Sections 1 & 2.

Petitioners will support Rydberg in seeking court approval of an independent professional trustee for Respondent and in securing the court's approval that Rydberg shall be Respondent's guardian in her guardianship proceeding until the Estate's distribution is complete. Upon completion of the Estate's distribution, Rydberg shall seek appointment of a professional guardian for Respondent. Petitioners will also support Rydberg in reforming the trust provisions in the Will to provide a trust objective of long-term growth, with no required distributions, until the earliest of: (1) Respondent obtains the age of 30; (2) Respondent dies; or (3) her mother dies.

b) Respondent.

Respondent agrees to work with Petitioners to take whatever steps are necessary:

(1) to obtain court approval of this Agreement, including without limitation, a Limited Purposes Co-PR.

(2) to determine the assets that are in the Estate as well as the characterization and value of those assets.

(3) to defend and preserve assets of the Estate.

(4) to ensure compliance with the terms of this Agreement, including the distribution of Estate's assets subject to the terms of Sections 1 & 2.

(5) to ensure all attorneys fees and costs incurred by Petitioners after the date of this Agreement in furtherance of the obligations assumed under this Agreement, including but not limited to reasonable fees and costs incurred in seeking to determine the character and value of Estate assets, and approval and enforcement of this Agreement, shall be paid by the Estate.

(6) to reform the Will, as necessary, to provide direct distributions to the Petitioners, not to a trust.

12. Binding Effect. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

13. Entire Agreement. This Agreement contains the entire understanding between all five of these parties and only all five of these parties in connection with the subject matter addressed herein. This Agreement supersedes and replaces any and all prior negotiations, agreements, discussions, representations, statements and promises, whether oral or written, relating to the terms or the subject matter hereof as between Petitioners (or any of them) on the one hand and Respondent on the other hand. Petitioners hereby acknowledge that no promise, representation or warranty whatsoever, express or implied, has been made by the Respondent or any agent or attorney of the Respondent to induce either of them to execute this document, other than the terms expressly stated in this written Agreement or incorporated in it by reference. Respondents hereby acknowledge that no promise, representation or warranty whatsoever, express or implied, has been made by any of the Petitioners or any agent or attorney of the Petitioners to induce any of them to execute this document, other than the terms expressly stated in this written Agreement or incorporated in it by reference.

14. No Admission of Liability. The parties are entering into this Agreement for the purpose of avoiding the risks, costs, and personal and business distractions inherent in the litigation process. By executing this Agreement, no party is admitting any liability or wrongdoing of any kind. Neither this Agreement nor any action undertaken to carry out this Agreement, is or may be construed as an admission or concession by any party on any point of fact or law.

15. Construction of this Agreement. The following shall govern construction of this Agreement:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- b) When used in this Agreement, terms such as "herein," "hereto," and "hereof" refer to the entire Agreement, and are not limited to any portion or portions of this Agreement.
- c) This Agreement has been reviewed by legal counsel for all parties, who have participated in its preparation and negotiation. The language of this Agreement, including without limitation any ambiguities, shall not be construed in favor of or against any one or more parties.
- d) If any portion or portions of this Agreement should be held to be invalid or unenforceable for any reason, such portion or portions shall be deemed stricken from this Agreement, and the remainder of this Agreement shall remain in full force and effect, and shall not be affected thereby.
- e) In any list of items set forth in this Agreement prefaced by the words "without limitation," the inclusion of some items is intended to be by way of example, and is not intended to exclude other items.

16. Counterpart Execution. This Agreement may be executed in counterparts, each of which when executed and delivered to the other parties hereto (or to the legal counsel for the other parties) will be deemed to be an original and all of which, taken together, will be deemed to be one and the same document.

17. Fax Execution. The parties agree that their signatures on this Agreement may be transmitted by facsimile machine and that, when so transmitted, such faxed signatures shall be fully operative and as valid and binding as if they were original signatures.

18. Dispute Resolution/Attorneys' Fees. If any portion of this Agreement or the covenants, representations, warranties, or obligations hereunder become the subject of dispute, the dispute shall be submitted to binding arbitration, without right of appeal, by Stew Cogan. The prevailing party in the event of any such dispute shall be entitled to a complete or partial award of reasonable attorneys' fees, costs, and arbitrator fees, but only upon a finding by Mr. Cogan of bad faith. In the event a party is determined to have breached this Agreement, it shall be liable to the injured party for damages incurred or sustained as a result of that breach.

19. Reading and Understanding of Agreement. Each party to this Agreement hereby represents and warrants to each of the other parties that he, she, or it has read this Agreement; has consulted with legal counsel of his, her, or its choice regarding the Agreement; and understands the terms and conditions of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK. ALL
SIGNATURES FOLLOW ON PAGE SEVEN]

Dated as of the day and year first set forth above.

By Catherine Jane Beck By Stanley Budge
On behalf of Carol-Lynne Janice Beck On behalf of Linda Budge
Pursuant to Special Durable Power of Attorney Pursuant to Special Durable Power of Attorney

By Stanley Budge By Jennifer C. Ryberg
On behalf of Elizabeth Diane Margaret Beck On behalf of guardian ad litem
Pursuant to Special Durable Power of Attorney Pursuant to for Barbara Becker

By Catherine Jane Beck

By Bruce A. McLeod
Attorney For Petitioners

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

11.96A.030 Definitions.

11.96A.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "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;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills,

trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

- (b) The trustee;
- (c) The personal representative;
- (d) An heir;
- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
- (f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;
- (g) A guardian ad litem;
- (h) A creditor;
- (i) Any other person who has an interest in the subject of the particular proceeding;
- (j) The attorney general if required under RCW 11.110.120;
- (k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;
- (l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
- (m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and
- (n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(8) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(9) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(10) "Trustee" means any acting and qualified trustee of the trust. [2009 c 525 § 20; 2008 c 6 § 927; 2006 c 360 § 10; 2002 c 66 § 2; 1999 c 42 § 104.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

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FILED
KING COUNTY, WASHINGTON
JUN 1 1 2010
SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

Superior Court of Washington
County of King

In re the Estate of: No. 08-4-04979-2 KNT

Virgil Victor Becker, Jr.,
Deceased.

Catherine Jane Becker, Carol-Lynne
Janice Becker, and Elizabeth Diane
Margaret Becker,
Petitioners,

v.

Jennifer White, in her capacity as
Personal Representative of the Estate of
Virgil Victor Becker, Jr.,
Respondent.

Redacted
Order Sealing Confidential Interim
Report of Guardian ad Litem and GAL's
CR 2A Litigation Analysis & making
Confidential the Unredacted
GAL Report & Analysis

JAC

Clerk's Action Required

JAC *Redacted* Clerk's Action Required

The Clerk of this Court is directed to Seal from the public
the Interim Report of Guardian ad Litem, dated June 1, 2010, and Guardian ad
Litem's CR 2A Litigation Analysis, dated June 2, 2010.

Redacted

JAC

Order Sealing Confidential Interim Report
of Guardian ad Litem and
GAL's CR 2A Litigation Analysis
Page 1 of 4

JENNIFER C. RYDBERG
ATTORNEY AT LAW
8407 S. 259th, Suite 203
Kent, WA 98030-7536
Office: 425-235-5535
Fax: 253-852-0400
jenny@jrlaw.com
www.jrlaw.com

Order

This matter having come before the court upon the Guardian ad Litem's Motion to Seal Confidential Interim Report of Guardian ad Litem and GAL's CR 2A Litigation Analysis, the Court having reviewed the Motion and Declaration submitted therewith, the Responses, and the Reply, Now, Therefore,

The Court finds that:

1. The GAL has offered information ^{to the court} ~~Redacted~~ contained in the Interim Report of Guardian ad Litem and the Guardian ad Litem's CR 2A Litigation Analysis ^{for the purpose of aiding the court in its} ~~Redacted~~ determine the adequacy of the CR 2A Agreement into which the Guardian ad Litem has entered and to ^{hand} give informed consent to the Guardian ad Litem as to whether to waive the confidentiality of ~~said~~ ^{the redacted unredacted} information, and ^{release to the parties the unredacted contents of these reports.}

JDC

2. The Guardian ad Litem was retained by the Court to represent the interests of the minor beneficiary of this Estate,

3. The minor beneficiary of this Estate is the third-party beneficiary of this appointment.

JDC

4. Revealing the contents of the ^{Redacted} Interim Report of Guardian ad Litem and the ^{Redacted} Guardian ad Litem's CR 2A Litigation Analysis to the public

JDC

JDC

is highly likely to cause permanent and substantial financial harm to the to the minor beneficiary's potential inheritance.

1 5. All parties with standing have been given notice ^{of this Order} and an opportunity to be
2 heard,

3
4
5 6. No remedy less than sealing these documents from all parties hereto and
6 the public will protect the financial interests of the minor beneficiary of the Estate.

7 7. Sealing the Interim Report of Guardian ad Litem and the Guardian ad
8 Litem's CR 2A Litigation Analysis, and preventing their review by

9 the public is permitted by SPR 98.16W.
10 8. As the Interim Report of Guardian ad Litem and the Guardian ad Litem's CR
11 2A Litigation Analysis discuss the potential inheritance of a minor child, revealing them
12 to the public may subject a vulnerable minor to financial exploitation.

13 9. The Interim Report of Guardian ad Litem and the Guardian ad Litem's CR
14 2A Litigation Analysis have compelling privacy and financial safety concerns that
15 outweigh the public interest,

16 in access to the
17 documents. ^{for the court to review the redacted portions}
18 10. The GAL's motion ^{of these reports is deferred for later consideration}
19 It is hereby Ordered that:

20 1. The following documents shall be sealed
21 not subject to the review or disclosure:

- 22 to the public.
23 1. Interim Report of Guardian ad Litem, dated June 1, 2010.
24 2. Guardian ad Litem's CR 2A Litigation Analysis, dated June 2, 2010.

25 * 11. Judge Cauce has spent very limited time ^(3 minutes) looking through
26 the unredacted GAL Report + litigation analysis.
27 Order Sealing Confidential Interim Report ^{for the purpose of identifying}
28 of Guardian ad Litem and ^{what it is, at a total of about}
GAL's CR 2A Litigation Analysis ^{250 pages of text.}
Page 3 of 4 12. The Estate objects to impermissible ex parte
contact with the Court.

JENNIFER C. RYDBERG
ATTORNEY AT LAW
6407 S. 259th, Suite 202
Kent, WA 98030-7536
Office: 425-235-5535
Fax: 253-652-0400
jenny@jcrlaw.com
www.jcrlaw.com

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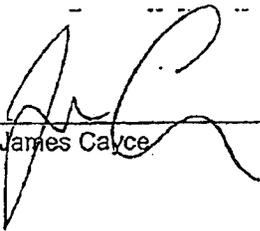
2. The Clerk of this Court is directed to seal the ^{Redacted} Interim Report of Guardian ad Litem, dated June 1, 2010 and the ^{Redacted} Guardian ad Litem's CR 2A Litigation Analysis, dated June 2, 2010, and shall not permit

the public to review or obtain copies of these documents.

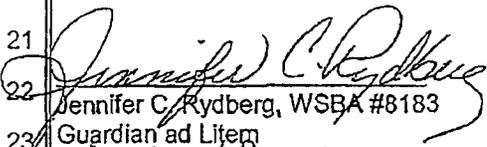
3. That ^{Redacted} portion of the GAL's motion pertaining to the Court's Ex-Parte review of her litigation analysis ^{Redacted} from her two reports is deferred for later consideration.

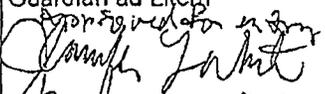
4. The court approves the parties' agreement that the original + working paper copies of the two GAL Reports submitted to the Court in sealed containment by the GAL shall be returned uncopied to the GAL forthwith.

Dated: June 11, 2010.


Judge James Cayce

Presented by:


Jennifer C. Rydberg, WSBA #8183

Guardian ad Litem

Parishd Rep. #19117
Bruce A. M.A.D.
Order Sealing Confidential Interim Report of Guardian ad Litem and GAL's CR 2A Litigation Analysis
Page 4 of 4

JENNIFER C. RYDBERG
ATTORNEY AT LAW
8407 S. 238th, Suite 203
Kent, WA 98030-7536
Office: 425-235-5535
Fax: 253-852-0400
jcryn@jcrlaw.com
www.jcrlaw.com

FILED
KING COUNTY WASHINGTON
JUN 11 2010
SUPERIOR COURT CLERK
BY STEPHANIE WALTON
DEPUTY

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Court Use only above this line.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re the Estate of:

Virgil Victor Becker, Jr.,

Deceased.

Catherine Jane Becker, Carol-Lynne Janice
Becker, and Elizabeth Diane Margaret
Becker,

Petitioners,

v.

Jennifer White, as Personal Representative of
the Estate of Virgil Victor Becker, Jr.,
Respondent.

No. 08-4-04979-2 KNT

ORDER REGARDING MINOR
SETTLEMENT, ATTORNEY
REPRESENTATION AND STAY

The Petitioners' Motion for Judicial Approval of CR2A Agreement, the GAL's Petition for Judicial Approval of CR2A Agreement and the Objection to Mr. Van Sicken's Notice of Intent to Withdraw and the responses and replies thereto having been presented to the Court, the Court enters the following ORDER:

1. Mr. Van Sicken has withdrawn and shall no longer represent any party to this proceeding or Nancy Becker.

2. Petitioners, GAL, and the Personal Representative of the Estate shall appear before the minor settlement ex parte department pursuant to LCR 98.16.

3. The Petitioner's Motion for Judicial Approval of the CR 2A Agreement and the GAL's Motion for Judicial Approval of CR 2A Agreement shall remain pending the outcomes

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1191 second avenue
Seattle Washington 98101-7030

ORDER :

1 of the issues with the minor settlement ex parte department.

2 4. Any claims between Petitioners and the Estate shall be stayed until further order,
3 except:

4 a. The PR is not stayed in its pursuit of claims against Nancy Becker; and

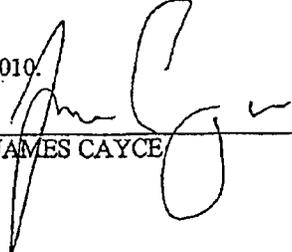
5 b. Minor settlement proceeding, and

6 c. The GAL may file a motion for approval of her fees without oral argument
7 and on a six day calendar.

8 5. The retention of the PR's counsel and the GAL's counsel is subject to judicial
9 approval and is therefore placed before the minor settlement ex parte department unless and
10 until a representative of that department refers the issue to this Court. The Court will
11 approve/appoint counsel for the GAL and PR, respectively, before lifting the stay and the stay
12 will remain in effect until further order of the Court.

13 6. Nothing in this Order shall preclude the parties from engaging in voluntary
14 mediation or settlement discussions.

15
16 DONE IN OPEN COURT this 11th day of June, 2010.

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JUDGE JAMES CAYCE

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1191 second avenue
Seattle, Washington 98101-3030

ORDER

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Presented By:

GARVEY SCHUBERT BARER

By: B. A. McDermott
Bruce A. McDermott, WSBA #18988
Kenneth L. Schubert, III, WSBA #27322
Teresa Byers, WSBA #34388
Attorneys for Petitioners

Approved as to form;

LAW OFFICES OF JENNIFER C. RYDBERG

Jennifer C. Rydberg
Jennifer C. Rydberg, WSBA #8183
GAL for Minor Barbara Becker

LAW OFFICES OF JENNIFER WHITE

Jennifer White
Jennifer White, WSBA #19111
Personal Representative of the
Estate of Virgil V. Becker, Jr.

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
eighteenth floor
1181 second avenue
Seattle Washington 98101-2010

ORDER