

87544-8

No. _____

(Court of Appeals No. 65578-7-1)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

F I V E D
JUN 27 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

In the Matter of the Estate of:

VIRGIL VICTOR BECKER, JR.,
Deceased.

CATHERINE JANE BECKER, CAROL-LYNNE JANICE BECKER,
AND ELIZABETH DIANE MARGARET BECKER,
Respondents,

v.

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

NANCY BECKER,
Petitioner.

PETITION OF NANCY BECKER FOR
DISCRETIONARY REVIEW TO THE SUPREME COURT

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I. IDENTITY OF PETITIONER

Nancy Becker files this petition. She was the petitioner in the Court of Appeals.

II. CITATION TO COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Nancy Becker seeks discretionary review of the following decision of the Court of Appeals, Division 1, terminating review: *In re Estate of Becker*, 2012 WL 1255160 (Div. 1, Apr. 16, 2012) (unpublished) (App. 1-15). The Court of Appeals filed its decision on April 16, 2012, and denied Nancy Becker's Motion for Reconsideration on May 22, 2012 (App. 51).

III. ISSUES PRESENTED FOR REVIEW

1. Where will contestants and the sole beneficiary under the will have proposed a settlement that would give the contestants a larger share of the estate than they would receive if they succeeded in invalidating the will admitted to probate:

(a) Does the decedent's surviving spouse have standing to object to the proposed settlement when the excess benefit to the will contestants would come out of her intestate share under the laws of intestate succession and the omitted spouse statute?

(b) Is the surviving spouse a necessary party to any such settlement, or is she excluded merely because she herself did

not file a will contest, such that the will contestants and the beneficiary may divide the estate however they please, in disregard of the surviving spouse's statutory interest as an intestate heir and omitted spouse?

2. Should the Court of Appeals have ordered a rehearing of the appeal before a new panel, where the Court first issued a decision signed by a judge who had withdrawn from participation before oral argument, and then withdrew the decision and issued a new, identical decision, signed by the judges who were present at oral argument?

IV. STATEMENT OF THE CASE

Virgil "Tory" Becker, M.D., J.D., was a practicing surgeon. He died on July 27, 2008, in an airplane crash. When he died, Tory had been married to the petitioner Nancy Becker ("Nancy") for 13 years. CP 37. Tory and Nancy together had one daughter, Barbara. Barbara was ten when her father died. CP 1, 37. She is now 14 and lives with her mother Nancy. CP 219.

Tory also had three children by his previous marriage to Linda Bulger: the respondents Catherine Jane Becker, Carol-Lynne Becker, and Elizabeth Diane Becker (the "Adult Daughters"). 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 executrix ("PR"). CP 219. There is no evidence that Tory had executed any other previous will during his marriage to Nancy.

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 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 medicine. Some of these assets were community and some were the separate property of one spouse or the other. *See, e.g.*, CP 39-43, 154, 156, 157. ¹

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

¹ The character of property as community or separate character is the subject of disagreement, and has not yet been litigated or decided.

an Order Appointing Guardian ad Litem, in which the court appointed Gail Crawford as Guardian ad Litem (“GAL”). CP 12-14. Ms. Crawford 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 related to the potential trust. CP 13-14. The Order limited the GAL’s fees “to a maximum of \$3,000 without further, prior court approval.” CP 13.

The Adult Daughters filed a will contest. CP 15-29. The Adult Daughters and their mother (together the “Bulger Parties”) also filed more than a dozen creditor’s claims. CP 568, 800. Nancy as PR rejected the creditor’s claims. CP 568. On January 29, 2009, the Bulger Parties filed an action on their creditor’s claims. 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 “CR 2A Settlement Agreement.” CP 825-31; App. 20-26. The GAL purportedly signed the CR 2A Agreement on behalf of Barbara, notwithstanding that the order appointing the GAL did not give her the authority to do so.² The CR 2A Agreement provided that the will contest and creditor’s claim actions

² The authority of the GAL to execute the CR 2A Agreement on behalf of Barbara is contested but has not yet been addressed at the trial court level.

would be settled, that the Bulger Parties would receive \$200,000 in attorney fees and \$400,000 in settlement of their creditor claims, and that the Adult Daughters would also together receive 50 percent of Tory's estate. CP 826, 818; App. 21. The CR 2A 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. 22.

The CR 2A Agreement, if enforced, would give the Adult Daughters well in excess of the amount to which they would be entitled from the estate under the laws of intestate succession should their will contest be successful. If the trial court were to invalidate the will and the estate were to pass by intestacy, Nancy, as the surviving spouse, would be entitled to receive all of her husband's interest in the community property, and one-half of her husband's separate property. RCW 11.04.015(1). (App. 53.) Her husband's surviving issue, Barbara and the Adult Daughters, would share the other half of the decedent's separate property, so that Barbara would receive one-eighth of the separate property, and the three Adult Daughters would together receive three-eighths of the separate property. If any will executed by the decedent before his marriage to Nancy were admitted to probate, Nancy would be presumptively entitled

to her intestate share of her husband's estate as an omitted spouse under RCW 11.12.095. (App. 54.)

Nancy did not believe that the proposed CR 2A Agreement was in the best interest 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, in anticipation of her motion for court approval of the CR 2A Agreement, 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 CR 2A 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. App. 55-56. *Id.* The Bulger Parties filed a memorandum supporting the motion. CP 204-08. Nancy filed opposition papers. CP 218-29, 191-97. The Successor PR filed a short declaration stating that she too would decline to execute the CR 2A Agreement, and that she agreed that Nancy Becker *did* have standing to participate in proceedings regarding the approval of the CR 2A 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 CR 2A Agreement of Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate ("Order Denying Standing"). CP 230-33; App. 16-19. The trial court ruled, among other things, that

Nancy Becker has no standing to participate as a party in the court's determination of whether a CR 2A 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; App. 18. The trial court also 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.*

On June 2, 2010, 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 opposed the motion. CP 247-274, 772-98.

At the hearing on June 11, 2010, the trial court did not rule on the Motion for Approval of CR 2A Agreement but, in an 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. 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 Nancy’s knowledge, no party has subsequently renewed their motion for approval of the CR 2A Agreement.³

Nancy timely filed a Notice of Discretionary Review of the Order Denying Standing, and subsequently filed a Motion for Discretionary Review, in the Court of Appeals, Division I. The Motion was granted on August 31, 2010.

The case was eventually fully briefed. By letter dated January 24, 2012, the Court set oral argument for February 23, 2012, at 9:30 a.m. The

³ Whether the trial court may approve and enforce a TEDRA settlement to which the PR does not subscribe is contested; the issue has not been decided by the trial court.

letter advised all counsel that the argument would be before Judges Grosse, Leach, and Dwyer. App. 27-28. On February 22, 2012, the day before the oral argument, the Court advised counsel by letter that the case would be the first to be heard on the calendar on the following morning, and that the panel would be Judge Dwyer, Judge Leach, and (in lieu of Judge Grosse) Judge Spearman. App. 29. At the argument the next day, the panel in fact consisted of Judges Dwyer, Leach, and Spearman.

On March 12, 2012, the Court issued its first unpublished opinion. App. 30-44. The opinion was signed by Judge Dwyer, Judge Leach, and Judge Grosse. The opinion was not signed by Judge Spearman. App. 44. The Court held, in essence, that because Nancy herself had not filed a will contest, she lacked standing in the will contest, and particularly lacked standing to object to the proposed settlement of the will contest, even though as an intestate heir (and potentially as an omitted spouse, if the will were to be invalidated and an earlier will admitted to probate), she has an interest in the estate that she can only protect if she has standing in the will contest. App. 39, 41.

On April 2, 2012, Nancy filed a timely motion for reconsideration. Among other things, Nancy called to the Court's attention the fact that Judge Grosse had signed the opinion and that Judge Spearman had not.

She proposed that the opinion be withdrawn and that the case be reargued before a new panel of three judges. App. 45-49 [excerpt].

Three days later, on April 5, the Court of Appeals entered an Order Withdrawing Unpublished Opinion. App. 50.

On April 16, 2012, the Court issued a second unpublished opinion. App. 1-15. The second opinion appears to be identical in all respects to the first, but is signed by Judges Dwyer, Leach, and Spearman.

Petitioner filed a timely motion for reconsideration, which the Court denied by Order filed on May 22, 2012. App. 51.⁴ The Court also denied petitioner's motion to publish. App. 52.

V. THIS COURT SHOULD ACCEPT REVIEW

A. **The Court of Appeals Decision Denies Petitioner the Ability to Protect Her Interest in Her Husband's Estate Under the Laws of Intestate Succession or Under the Omitted Spouse Statute if the Will Admitted to Probate Is in Fact Invalid, and the Decision Conflicts With Existing Washington Supreme Court Precedent.**

1. Introduction

Nancy did not believe that the will executed by her husband and admitted to probate was invalid, and she did not (and her attorneys ethically could not) file a will contest. The Adult Daughters were not so constrained and did file a will contest. They and the GAL then

⁴ The Order Denying Motion for Reconsideration is dated the "22nd day of March, 2012." App. 51. The date must be a typographical error. The order was filed on May 22, 2012. No motion for reconsideration was pending on March 22, 2012.

inexplicably entered into a settlement that would give the Adult Daughters more than they would be entitled to receive if they won the contest and the will were declared invalid. The excess that the Adult Daughters would receive if the CR 2A Agreement were ever implemented would come largely from the share that Nancy would take under the laws of intestate succession or the omitted spouse statute. To deny Nancy the right to protect that interest, the GAL, joined by the Adult Daughters, moved for and were granted the Order Denying Standing to Nancy.

The effect of the Order Denying Standing, which the Court of Appeals affirmed, is that: (1) fewer than all of the persons who are interested in the estate will be permitted to divide up the estate by agreement, in disregard of the statutory rights of Nancy, merely because Nancy believed the will to be valid and did not file a will contest; and (2) in the future, any person who might have an interest in an estate in the event of a successful will contest will themselves be forced to file a will contest prophylactically, to preserve their right to protect that interest, even if they have no facts to support the contest. The Court of Appeals' decision conflicts with earlier decisions of the Supreme Court holding that all interested parties in an estate must be parties to any agreement to divide up the assets of an estate in settlement, and raises an issue of substantial public interest, such that the Supreme Court should accept

discretionary review.

2. Nancy Has an Interest in the Estate and the Will Contest.

Nancy has standing, both under the Trust and Estate Dispute Resolution Act and under general principles of standing, in connection with any settlement that would impair her interest in the estate under the laws of intestate succession or the omitted spouse statute. Under TEDRA, “parties interested in the estate or trust” may “resolve matters” through written agreements. RCW 11.96A.210. Such written agreements bind “all persons interested in the estate or trust” if “signed by *all* parties.” RCW 11.96A.220 (emphasis added); App. 57. TEDRA defines a “party” as any of the “following persons who have an interest in the subject of the particular proceeding,” including “[a]n heir,” a surviving spouse with respect to her interest in the decedent’s property, and “[a]ny other person who has an interest in the subject of the particular proceeding.” RCW 11.96A.030(5)(d), (f), (i). “Persons interested in the estate or trust” means “all persons beneficially interested in the estate or trust.” RCW 11.96A.030(6). App. 55-56.

The Court of Appeals decision misapprehends the meaning of “interested in the estate” and “interest in the subject of the particular proceeding” because it concludes that a surviving spouse who is not

named in the will, does not otherwise satisfy RCW 11.96A.030(5)(a)-(h), and did not file a will contest does not have the requisite “interest” to obtain party status. App. 7-13. Yet nothing in TEDRA so circumscribes “interested in the estate” and “interest in the subject of the particular proceeding.” See *In re Estate of Kordon*, 157 Wn.2d 206, 210-11 (2006) (interpreting TEDRA according to its plain language). For one, TEDRA does not limit party status to those named in the will or to will contestants; rather, it defines a party as including “[a]ny *other* person who has an interest in the subject of the particular proceeding.” RCW 11.96A.030(5)(i) (emphasis added). And TEDRA requires only that a person have an “interest[] *in the estate*” to participate in a written agreement, and an “interest in the *subject* of the particular proceeding,” to be a party. RCW 11.96A.030(5), .210 (emphasis added). In other words, TEDRA defines a party based on her interest in the substance of the proceeding, not her procedural status.

A person who will gain financially if a will contest succeeds (like Nancy) is a “person interested” in the estate and will contest. See *In re O’Brien’s Estate*, 13 Wn.2d 581, 583 (1942). A “‘person interested’ is one who has a direct, immediate, and legally ascertained pecuniary interest in the devolution of the testator’s estate, such as *would be impaired or defeated* by the probate of the will *or benefited* by the declaration that it is

invalid.” *Id.* at 583 (emphasis added);⁵ *see also id.* at 584 (noting that “[p]ractically without exception, the courts have held that the heirs ... are authorized to wage a contest as persons interested in the putative will”).

Nancy is a party under TEDRA both because she is an “heir” and because she is an “other person” who has a pecuniary interest in the estate and in the “subject of the particular proceeding,” the CR 2A Agreement. RCW 11.96A.030(5)(d), (i). In the event the Adult Daughters successfully litigate the will contest, Nancy would either (1) claim her intestate share as an omitted spouse under any earlier will admitted to probate, *see* RCW 11.12.095; or (2) inherit her intestate share – all the community property and one-half of her deceased husband’s separate property. RCW 11.04.015(1). That is, Nancy would financially benefit if the will were declared invalid. This renders her a “person interested” in the estate, will contest, and CR 2A Agreement. *See In re O’Brien’s Estate*, 13 Wn.2d at 583; *Findley v. Findley*, 193 Wash. 41, 48 (1937).

If the CR 2A Agreement is implemented, Nancy’s financial interests in the estate will be impaired in at least two ways: (1) the

⁵ *See also Brissie v. Craig*, 62 S.E.2d 330, 333 (N.C. 1950) (“It is obvious that the statutory clause ‘any ... person interested in the estate’ includes a person who will share in the estate under the law governing intestacy in case a script which purports to be the will of the deceased is adjudged invalid as a testamentary document.”); *Chandler v. Fisher*, 120 N.E. 510, 514 (Ill. 1918) (statutory phrase “any person interested” “include[s] one who has a contingent interest, as such a person would ordinarily be said to be ‘interested’ in the will”); *In re Yung’s Estate*, 216 A.D. 595, 597 (N.Y. App. Div. 1926) (heir not named in will is “interested in the estate of decedent” if she would obtain an intestacy share upon will invalidation).

Agreement will extinguish Nancy's right to protect her entitlements under the omitted spouse and intestacy statutes; and (2) the Agreement will give the Adult Daughters over 50 percent of the entire estate, largely from what otherwise would be Nancy's intestate share, rather than the three-eighths of the decedent's separate property that they would receive in intestacy. RCW 11.04.015(1)-(2). These results also make Nancy a "person interested" in the estate, will contest, and CR 2A Agreement. *See In re O'Brien's Estate*, 13 Wn.2d at 583; *Findley*, 193 Wash. at 49 (voiding contract "where two heirs, by contract entered into between themselves, sought to take unlawfully property belonging to another heir").

Nancy would have standing in the will contest under traditional notions of standing as well. *See, e.g., Paris Am. Corp. v. McCausland*, 52 Wn. App. 434, 438 (1988) (a party has standing if that party has a distinct and personal interest in the issue being litigated).

3. The Court of Appeals Decision Is in Conflict with Decisions of the Washington Supreme Court, and the Case Involves an Issue of Substantial Public Interest.

This Court has set aside written agreements entered into without the participation of all heirs because such persons have an interest in the estate. For instance, in *Findley, supra*, the Court affirmed a decision vacating a contract that decedent's wife and brother executed, without decedent's half-brother, which purported to divide the estate, "regardless

of any will or testamentary disposition.” 193 Wash. at 48. The Court deemed the contract “void in that it attempted to take from [the half-brother, who did not sign the agreement,] whatever interest he had in his brother’s estate.” *Id.* at 48 (citing *Hunter v. Jordan*, 158 Wash. 539, 545 (1930) (holding void a contract to suppress a will where not signed by all interested parties)). The Court explained that the half-brother, who had intervened in the action, had “an interest in all of the estate and [was] entitled to have it probated and to then receive [his] proper share of the property.” *Id.* at 50. *See also Thomas v. Best*, 161 S.E.2d 803, 809 (Va. 1968) (disinherited heirs were necessary parties to agreement settling will contest because they stood to gain financially if will contest succeeded); *McFadden v. McFadden*, 257 P.2d 146, 150-51 (Kan. 1953) (disinherited heirs were necessary parties to will contest; judgment rendered without their participation improperly divested them of their interests).

The Court of Appeals opinion involves an issue of substantial public interest. The effect of the Court’s decision is that a beneficiary under a will admitted to probate and a will contestant may in effect divide the estate among themselves by agreement, without regard for the interests of persons who would take by intestacy or who would take under a previous will that would be revived if the will admitted to probate were deemed invalid. And the Court’s decision means that any such persons

who do not themselves file a will contest will lose the right to protect those interests. The opportunity for injustice to the right of such conditional heirs and beneficiaries, and to the intent of the testator, is clear. Where there is no valid will, or where a surviving spouse is omitted from mention in the decedent's will, the law of this state heavily favors the surviving spouse, presuming (conclusively, where the estate passes by intestacy in the absence of any will) that the decedent intended to leave his spouse all of the community property and (where the decedent had issue) one-half of his separate property.

But here, the proposed CR 2A Agreement completely upends this strong legal presumption in favor of the surviving spouse. And the impact of the legal premise underlying the Court of Appeals decision is not confined to the current set of facts. Suppose, for example, that a will is admitted to probate that leaves decedent's entire estate to a person who had recently insinuated himself into the graces of the decedent, and that the previous will leaves the estate to ten charities in equal shares. Under the reasoning of the Court of Appeals, if one charity contests the will, that charity and the suspect beneficiary would be the only interested parties to the will contest, and the only persons entitled to participate in a settlement agreement. The two entities could divide the estate equally among themselves by agreement, giving each more than the testator ever intended

either to have. The nine other charities would be silenced by the reasoning of the Court of Appeals decision in this case.

Surely the law does not permit this result. The Court of Appeals' conclusion that a surviving spouse who is not named in the will (and does not meet RCW 11.96A.030(5)(a)-(h)) must file a timely will contest to have the requisite "interest" to participate in settlement misapprehends TEDRA and the law of standing. This Court should accept review under RAP 13.4(b)(1) and -(4).

B. The Court Should Accept Review Because the Manner in Which the Court of Appeals Decided the Case Raises a Question Regarding Whether the Panel That Heard Oral Argument is the Same Panel That Decided the Case, and Potentially Undermines Trust in the Administration of Justice.

The Court of Appeals' first opinion (1) was signed by a member of the Court who had withdrawn from the case and did not sit for oral argument, and (2) was not signed by one of the judges who did sit for oral argument. After the first opinion was withdrawn, the Court of Appeals issued a second, identical opinion, signed by the three members of the Court who did sit for oral argument. This series of events creates a perception that the panel that heard argument may not have been the same panel that actually decided the case, or that the panel that heard argument did not engage in a joint deliberative process in deciding the case. *See Moles v. Regents of the Univ. of Cal.*, 32 Cal. 3d 867, 873 (1982)

(describing “collegial decision-making” process).

The normal deliberative process may affect or change a decision in unforeseeable ways, and in general is a salutary feature of the administration of justice in an appellate court. *See id.* at 872 (“This aspect of oral argument – the chance to make a difference in result – is extremely valuable to litigants.”). It is obviously not desirable that any litigant should actually know, or that the court should ever reveal, its deliberative process in any particular case. But it is important that every litigant and every citizen perceive that the administration of justice does in fact proceed properly. “If oral argument is to be more than an empty ritual, it must provide the litigants with an opportunity to persuade those who will actually decide an appeal.... [O]ral argument cannot provide this opportunity if the judges who hear the argument are not the ones who decide the case. If ‘those who hear’ are not ‘those who decide,’ oral argument is meaningless.” *Id.* (holding judge who did not participate in oral argument may not sign opinion under California law).

Because it is not desirable that the Court reveal its deliberative processes, the perception of the proper administration of justice may best be preserved here – indeed, may only be preserved here – if the Court of Appeals decision in this case is withdrawn and the case is submitted to and reargued before a new panel of three judges. This Court should accept

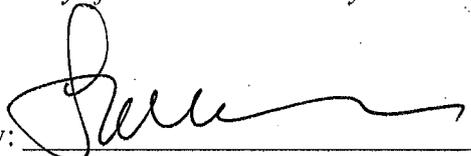
review because the manner in which the case was decided involves an issue of substantial public interest, within the meaning of RAP 13.4(b)(4), that should be determined by this Court.

VI. CONCLUSION

Petitioner respectfully requests that the Court accept discretionary review of this appeal pursuant to RAP 13.4, reverse the trial court and Court of Appeals, and determine that Nancy would be a necessary party to the CR 2A Agreement and has standing in the will contest to the extent necessary to protect her intestate and omitted spouse interests. If the Court limits relief to the issue described in Section V.B. hereof, petitioner requests that the Court remand to the Court of Appeals with direction that the appeal be reheard before a new panel.

Respectfully submitted this 21st day of June, 2012.

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DECLARATION OF SERVICE

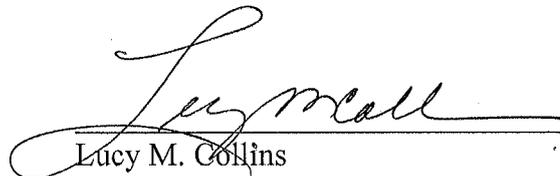
I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following counsel of record via the means indicated:

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Dated at Seattle, Washington this 21st day of June, 2012.



Lucy M. Collins

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:)	
)	DIVISION ONE
VIRGIL VICTOR BECKER, JR.,)	
)	No. 65578-7-1
Deceased.)	
)	
CATHERINE JANE BECKER,)	UNPUBLISHED OPINION
CAROL-LYNNE JANICE BECKER,)	
and ELIZABETH DIANE MARGARET)	
BECKER,)	
)	
Respondents,)	
)	
v.)	
)	
JENNIFER WHITE, in her capacity as)	
Personal Representative of the Estate)	
of Virgil Victor Becker, Jr.,)	
)	
Respondent.)	FILED: April 16, 2012
)	
NANCY BECKER,)	
)	
Petitioner.)	

DWYER, J. — Virgil Victor (“Tory”) Becker Jr. died in July 2008. His purported will, which leaves his entire estate to his minor daughter Barbara, was thereafter admitted to probate. Tory’s three adult daughters from a previous marriage challenged the will as fraudulent and asserted numerous creditors’ claims against the estate. Following mediation, Barbara’s guardian ad litem

(GAL) and the adult daughters entered into an agreement settling the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate.

Nancy Becker, Tory's wife and Barbara's mother, refused to sign the settlement agreement in her role as personal representative of the estate. After her removal from that role due to irreconcilable conflicts, she appeared in the action personally. Upon motion of the GAL, the trial court determined that Nancy—who is not a named beneficiary in the will admitted to probate—does not have standing to participate in proceedings regarding the settlement agreement.

Nancy filed a motion for discretionary review of the trial court's order, which we granted. We conclude that neither general principles of standing nor the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, confer upon Nancy standing to participate in the settlement agreement proceedings. Accordingly, we affirm the trial court's order.

Tory Becker died on July 27, 2008 when the private airplane in which he was a passenger crashed. At the time of his death, Tory was married to Nancy Becker, with whom he had a child, Barbara Becker. Barbara was born on November 28, 1997. She is currently 14 years old. Tory is also survived by three daughters from a previous marriage—Catherine Jane Becker, Carol-Lynne

Janice Becker, and Elizabeth Diane Becker.¹

On August 13, 2008, the trial court admitted to probate a will which left Tory's entire estate to Barbara. Pursuant to that will, Nancy was named as personal representative of the estate.

On December 12, 2008, the adult daughters filed a petition challenging the validity of the will and seeking to remove Nancy as personal representative based upon alleged conflicts of interest. Jennifer Rydberg was thereafter appointed to act as Barbara's GAL. The adult daughters and their mother—Linda Bulger, Tory's previous wife—additionally asserted 14 creditors' claims against the estate. Nancy, as personal representative, rejected each of the creditors' claims, and a civil action for the claims was filed against the estate on January 29, 2009.

On December 4, 2009, Rydberg, the adult daughters, and Bulger participated in a mediation to resolve the disputes. Following the mediation, they signed a "CR 2A Settlement Agreement."² The agreement stated that the petitioners—the adult daughters and Bulger—recognized the possibility that one or more of their creditors' claims might be dismissed by the court and that their will contest might be unsuccessful. Similarly, the agreement stated that the respondent—Barbara, as represented by GAL Rydberg—recognized the possibility that one or more of the creditors' claims might be granted by the court

¹ Catherine Jane Becker, Carol-Lynne Janice Becker, and Elizabeth Diane Becker are referred to collectively herein as the "adult daughters." The other Becker parties are referred to by their first names in order to avoid confusion.

² Nancy, as personal representative of the estate, was also present for part of the mediation. However, she was not involved in the drafting of the settlement agreement.

and that the will contest might be successful. Accordingly, pursuant to the agreement, the adult daughters and Bulger agreed to dismiss the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate. The agreement further recognized that "[t]he assets that are in the Estate as well as the characterization and value of those assets are in dispute." Clerk's Papers (CP) at 259. The agreement did not purport to determine those assets which made up the estate.

Nancy refused to sign the agreement in her role as personal representative of the estate. Rydberg and the adult daughters petitioned the court to appoint a co-personal representative for the limited purpose of approving the settlement agreement. Rydberg additionally filed a petition to remove Nancy as personal representative. On March 12, 2010, following a two-hour hearing, the trial court removed Nancy as personal representative of the decedent's estate. The court determined that Nancy had numerous direct, irreconcilable conflicts of interest that precluded her from acting in that role.

On April 8, 2010, following her removal as personal representative, Nancy appeared personally in this matter. Jennifer White was thereafter appointed as personal representative of the estate.

On May 10, 2010, Rydberg filed a motion with the trial court entitled Motion to Determine Standing of Nancy Becker Regarding CR 2A Agreement of Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate. Rydberg sought "an order identifying those parties who are entitled to participate in the June 11th court proceedings regarding the review and possible approval of

the pending CR 2A Agreement." CP at 173. Her motion asserted that the effect of the settlement agreement was solely to "apportion[] whatever assets end up in the Estate on a percentage basis between the Adult Children and Barbara"—not to "determine what assets are actually in or owned by the Estate, or whether the Estate has any claim to assets which [Nancy] now claims are hers alone." CP at 174. The motion further contended that Nancy lacked standing to participate in the proceedings based both on general principles of standing and, specifically, on the provisions of TEDRA that define who constitutes a "party" for purposes of that act. Thus, Rydberg asserted, Nancy has no legally cognizable interest in the subject matter of the agreement.

The adult daughters filed a response in support of the motion to determine Nancy's standing to participate in the review and approval process of the settlement agreement. They alleged that Nancy had incurred hundreds of thousands of dollars in legal fees in order to impede discovery and prevent the court from considering the settlement agreement and that Nancy's further involvement would continue to deplete the estate of resources. They also alleged that Nancy, who had purportedly mischaracterized the assets of the estate to her own benefit, was fearful that the adult daughters would assist Barbara in recovering the true value of the estate.

On May 20, 2010, the trial court granted the motion and entered an order determining that Nancy lacks standing to participate in judicial proceedings concerning the settlement agreement and its proposed resolution of the will contest and creditors' claims. In support of its ruling, the trial court entered the

following findings of fact:

1. On December 4, 2009, during a court-ordered mediation, the GAL for Barbara Becker, and the Petitioners entered into a written CR 2A Agreement that purports to resolve the will contest, resolve all of the creditors' claims brought by Petitioners against the Estate of Virgil Victor Becker, Jr., (the "Estate" herein), and distribute the Estate. The CR 2A Agreement does not affect the prosecution or distribution of proceeds from the wrongful death claim that arose from the circumstances of the death of Virgil Victor Becker, Jr. ("decedent" herein). The PR has not signed the CR 2A [Agreement].
2. Nancy Becker is the surviving spouse of the decedent.
3. Nancy Becker has no beneficial interest in any matters addressed by the CR 2A Agreement or in the Estate. 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.
4. Nancy Becker was removed as Personal Representative ("PR" herein) of the Estate on March 16, 2010, and is not presently the PR.
5. Nancy Becker is not a "real party in interest" as to the matters addressed by the CR 2A Agreement.
6. Nancy Becker is not a party under the Trust and Estates Dispute Resolution Act, RCW 11.96A, *et seq.*

CP at 231. The trial court also entered conclusions of law, ruling that:

1. Nancy Becker is not a real party in interest, nor is she a party under the Trust and Estates Dispute Resolution Act, RCW 11.96A *et seq.*
2. Nancy Becker has no standing to participate as a party in the court's determination of whether a CR 2A 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 Court.
3. Except for any proceeds that may in the future be obtained from a wrongful death action, Nancy Becker 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.

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

CP at 232.

On June 2, 2010, Rydberg and the adult children filed a motion for court approval of the CR 2A Agreement. The court thereafter stayed the motion for approval of the settlement agreement pending the resolution of issues to be presented to the minor settlement ex parte department.

On July 6, 2010, Nancy sought discretionary review in this court of the trial court's order determining that she lacks standing to participate in proceedings regarding the settlement agreement. On August 31, 2010, we granted discretionary review of that order. The adult daughters thereafter filed with this court a motion for the admission of additional evidence—specifically, a purported premarital agreement between Nancy and Tory that allegedly precluded the creation of community property interests during their marriage. Thus, both the trial court's order regarding Nancy's standing and the motion for additional evidence are before us.

II

Nancy contends that the trial court erred by determining that she does not have standing to participate in proceedings regarding the settlement of the will contest and creditors' claims. Because general principles of standing do not entitle Nancy to so participate, and because Nancy is not a "party" to this proceeding pursuant to TEDRA, we disagree.

Standing is a question of law subject to de novo review. In re Irrevocable Trust of McKean, 144 Wn. App. 333, 339, 183 P.3d 317 (2008). "A party has standing to raise an issue if that party has a distinct and personal interest in the issue." Paris Am. Corp. v. McCausland, 52 Wn. App. 434, 438, 759 P.2d 1210 (1988). That interest must be present and substantial, rather than "a mere expectancy, or future, contingent interest." Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992). "Standing requires that the plaintiff demonstrate an injury to a legally protected right." Sprague v. Sysco Corp., 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999). Consistent with principles of standing—although a doctrine distinct from standing—CR 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." See Sprague, 97 Wn. App. at 176 n.2. "The real party in interest is the person who possesses the right sought to be enforced." Sprague, 97 Wn. App. at 176 n.2.

TEDRA provides various methods for resolving disputes concerning wills and trusts. One such method is a "binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust." RCW 11.96A.210; see also RCW 11.96A.220-.250. The procedure is applicable to the resolution of any "matter," as defined by the act. RCW 11.96A.220.³ "If all parties agree to a resolution of any such matter, then the

³ See RCW 11.96A.030(2)(c) (defining "matter" as "any issue, question, or dispute involving . . . [t]he 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"); see also In re Estate of Kordon, 157 Wn.2d 206, 211, 137 P.3d 16 (2006).

agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust." RCW 11.96A.220.

Thus, pursuant to TEDRA, those persons whose agreement must be obtained in order to resolve by written agreement a dispute regarding a will are those "persons interested in the estate." RCW 11.96A.220; see also RCW 11.96A.210. TEDRA further defines who constitutes a "party" for the purposes of that statute. See RCW 11.96A.030(5). A "party" means each person listed within RCW 11.96A.030(5) "who has an interest in the subject of the particular proceeding." RCW 11.96A.030(5). The statute then lists numerous individuals who may constitute "parties" in a proceeding, including, as relevant here, "[t]he surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property." RCW 11.96A.030(5)(f).⁴ TEDRA

(holding that "[a] will contest presents a 'question arising in the administration of an estate,' and therefore is clearly a 'matter' subject to TEDRA").

⁴ RCW 11.96A.030(5) provides in full:

"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;

further provides that “[p]ersons interested in the estate or trust” means . . . “all persons beneficially interested in the estate or trust.” RCW 11.96A.030(6).

As the trial court determined, Nancy is not a “party” pursuant to TEDRA. The statute provides that the persons who constitute “parties” are those persons who are both listed within RCW 11.96A.030(5) *and* have “an interest in the subject of the particular proceeding.” RCW 11.96A.030(5). Moreover, a surviving spouse is a party only “*with respect to his or her interest in the decedent’s property.*” RCW 11.96A.030(5)(f) (emphasis added). Nancy has an interest neither in the subject of the settlement agreement proceeding nor in the decedent’s property. Nancy is not a named beneficiary in the will. Nor has Nancy challenged the validity of the will, as have the adult daughters, such that she has a beneficial interest in the resolution of the will contest. Indeed, having not challenged the will within the four-month statutory period, Nancy cannot now do so. See RCW 11.24.010 (requiring that will contests be filed within four months following the probate of a will).

Moreover, even if Nancy and Tory owned community property prior to his

(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.

death,⁵ “[a]t death, the community [was] dissolved and the former community property [became] the separate property of the decedent’s estate and of the surviving spouse.” In re Estate of Mell, 105 Wn.2d 518, 523, 716 P.2d 836 (1986) (quoting deNoskoff v. Scott, 36 Wn. App. 424, 426-27, 674 P.2d 687 (1984)). Nancy obviously has an interest in that portion of any such community property which, upon Tory’s death, became her separate property. She does not, however, have any interest in the separate property of Tory’s estate, regardless of whether any such property once constituted community property.⁶

Nevertheless, Nancy asserts that she has an interest in the will contest—and, thus, in the settlement of the will contest—because she would be entitled to inherit a part of the estate through intestacy were the will in probate determined to be invalid. She contends that if the will contest were successful, she, as an heir, would be entitled to an intestate share of the estate. Moreover, she asserts, in the event that the challenged will is invalid and an earlier-executed will is determined to be valid, she would be entitled to inherit as an omitted spouse.

⁵ Whether Nancy and Tory owned community property during their marriage is disputed. However, the settlement agreement at issue here does not purport to determine the characterization of any property within the estate. Thus, we need not determine whether any such community interest existed. Moreover, we note that any such determination is properly made by the trial court, not by an appellate court in the first instance. For these reasons, we deny the adult daughters’ motion to admit as additional evidence, for purposes of this review, the purported premarital agreement between Nancy and Tory precluding the creation of community property interests during their marriage.

⁶ Nancy asserts that she has standing to participate in the settlement agreement proceedings due to her interest in the community property within the estate. She contends that joint ownership of any property with the adult daughters would diminish the value of that property. Moreover, she asserts that community property in which she has an interest may be required to be sold due to the settlement agreement. However, as explained above, Nancy has no beneficial interest in the estate, even had some of that property been community property prior to Tory’s death. Speculation regarding the distribution of property within the estate does not confer upon Nancy standing to participate in the settlement agreement proceedings.

However, Nancy stands to benefit from the will contest—such that she has a beneficial interest in that matter—only if the will is invalidated, such that she could inherit a percentage of the estate through intestacy. But, as already noted, Nancy has not herself challenged the will. Rather, she has maintained throughout the proceedings that the will, which, acting as personal representative, she sought to have admitted to probate, is valid. RCW 11.96A.210, which authorizes parties to enter into settlement agreements such as that contemplated here, is a dispute resolution mechanism. Nancy is not involved in this dispute. The trial court did not err by determining that she is not entitled to participate in its settlement.⁷

Nancy is not a “party” pursuant to TEDRA such that she is entitled to participate in the settlement of the will contest and creditors’ claims, as she does not “[have] an interest in the subject of [this] particular proceeding.” See RCW 11.96A.030(5). Furthermore, although Nancy is the decedent’s surviving spouse, she has no “interest in the decedent’s property” that would confer upon her standing pursuant to TEDRA. See RCW 11.96A.030(5)(f). Finally, because Nancy has not demonstrated that she has a “distinct and personal interest in the issue,” general principles of standing do not confer upon her the right to participate in the settlement agreement proceedings. See Paris Am. Corp., 52 Wn. App. at 438.

⁷ The settlement agreement does not purport to determine what property is a part of the estate; nor does it purport to determine the character of any such property. The trial court’s order does not preclude Nancy’s participation in future proceedings in which she has a beneficial interest.

The trial court did not err by determining that Nancy is not entitled to participate in the settlement agreement proceedings.⁸

III

The adult daughters, Nancy, and Rydberg all request an award of attorney fees "on appeal."⁹ We decline to grant an award of fees to the adult daughters or to Nancy, but we determine that Rydberg is entitled to be paid for her services as Barbara's GAL.

TEDRA confers upon us broad discretion in granting an award of attorney fees. It provides that

any court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of 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, which factors may but need not include whether the litigation benefits the estate or trust involved.

⁸ Nancy additionally contends that the trial court erred by determining that she is not an "heir" to the estate. See RCW 11.02.005(6) (defining "heirs" as "those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate"). In so doing, she mischaracterizes the trial court's order, which states that Nancy "is not an heir or beneficiary of the Estate, and has no legal interest in the decedent's property, *in this estate action.*" CP at 231 (emphasis added). The trial court did not determine, as Nancy implies, that Nancy would not be entitled to inherit a portion of the estate through intestacy.

Nancy also requests that we vacate any trial court order entered in this matter subsequent to the standing order challenged herein. She asserts that any such order is "tainted" by the erroneous determination that she does not have standing to participate in these proceedings. Because the trial court did not err by determining that she does not have standing, we decline to vacate any subsequent orders.

⁹ This matter is not on appeal. Rather, this is a discretionary review proceeding. Nevertheless, the same standards apply with regard to resolving a request for an award of attorney fees for work performed litigating matters in this court.

RCW 11.96A.150(1).

Nancy requests that we order the adult daughters and Rydberg to pay her attorney fees for work done in this court on this matter. She contends that such an award is warranted because, she asserts, by seeking review she benefitted the estate by aiding the prevention of the approval of the settlement agreement. Because we determine that Nancy does not have standing to participate in proceedings regarding the settlement agreement, we decline her request for an award of attorney fees.¹⁰

The adult daughters request an award of appellate attorney fees to be paid personally by Nancy. They contend that such an award is warranted due to Nancy's failure to produce the purported premarital agreement in discovery, coupled with Nancy's appellate arguments that, they contend, contradict that agreement. However, the validity of the premarital agreement has not been determined. We decline to grant an award of fees on this basis.

Finally, Rydberg contends that she is entitled to be paid for her services as GAL pursuant to RCW 11.96A.160(4), which provides that "[t]he guardian ad litem is entitled to reasonable compensation for services . . . to be paid from the principal of the estate or trust whose beneficiaries are represented." There is no indication in the record that Rydberg has acted in bad faith or made unmeritorious arguments. Thus, we order that Rydberg be paid her reasonable fees incurred for work in this court, to be paid by the estate pursuant to RCW

¹⁰ Moreover, we note that the interests of the estate are represented by the personal representative of the estate—not by Nancy. Moreover, the approval of the settlement agreement is not at issue in this discretionary review proceeding.

No. 65578-7-1/15

11.96A.160(4), in an amount to be established by the superior court on remand.

RAP 18.1(i).

Deys, J.

WE CONCUR:

Leach, C. J.

Spencer, J.

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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

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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. ("decendent" herein). *The PR was not signed } doc*
10 *the CR 2A Agmt.*

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

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 decendent's property, *in this estate section,* doc

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~~
23 ~~material.~~

24 *JOC*
25
26
27 *Order Determining that*
28 *Nancy Becker Lacks Standing*
Page 2 of 4

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

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

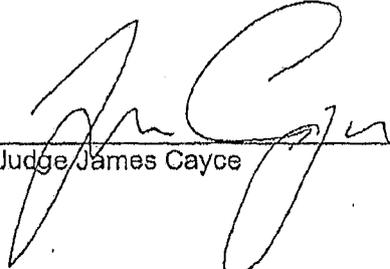
4
5 1. Nancy Becker is not a real party in interest, nor is she a party under the
6 Trust and Estates Dispute Resolution Act, RCW 11.96A *et seq.*

7 2. Nancy Becker has no standing to participate as a party in the court's
8 determination of whether ^{JDC 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.

19
20 
Judge James Cayce

21 Presented by:

22
23
24 Jennifer C. Rydberg, WSBA #8183
25 Guardian ad Litem

26
27 Order Determining that
28 Nancy Becker Lacks Standing
Page 3 of 4

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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:

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Dated at Renton, WA on May 17, 2010.

Jennifer C. Rydberg, WSBA #8183

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

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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 Rudge

On behalf of Carol-Lynne Janice Beck On behalf of Linda Rudge

Pursuant to Special Durable Power of Attorney Pursuant to Special Durable Power of Attorney

By Stanley Rudge 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

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

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January 24, 2012

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CASE #: 65578-7-I
Nancy Becker, App. v. Jennifer White, PR, Res.

**** Read this Notice Carefully ****
**** This is the only notice counsel will receive. ****

Counsel:

The Court of Appeals is committed to the timely and expeditious processing of cases on appeal. In order to facilitate that objective, and to ensure adequate advance notice to all parties, Division I has instituted changes in the oral argument calendaring process. Oral argument in this case has been scheduled for **February 23, 2012 at 9:30am** before Judges Grosse, Leach and Dwyer at the Court of Appeals. Pursuant to RAP 11.4(a), the court has scheduled 10 minutes per side for oral argument.

No. 65578-7-1-1/2

Because of the significant advance notice regarding the calendaring of this matter, continuances will ordinarily not be granted. Continuances will be granted only on a showing of good cause.

If counsel desires either additional time for oral argument, or a continuance, a written motion must be filed by February 3, 2012. Failure to file a written motion for continuances by the date identified will result in the case being heard on the scheduled date.

Counsel has sole responsibility for determining whether the proper record to review the appeal has been filed with this court. Counsel's failure to ensure the filing of a proper record necessary for review may result in the imposition of sanctions pursuant to RAP 18.9.

Counsel should acknowledge receipt of this letter. Please date and sign the attached copy of this letter and return it to the undersigned within five days of receipt.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Name: _____

Bar #: _____

Sign: _____

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

February 22, 2012

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CASE #: 65578-7-1

Nancy Becker, App. v. Jennifer White, PR, Res.

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on February 22, 2012:

This case will be called first at 9:30 am on February 23, 2012. The panel will be Judges Dwyer, Leach, and Spearman.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk
twg

DIVISION I
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TDD: (206) 587-5505

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:)	
VIRGIL VICTOR BECKER, JR.,)	DIVISION ONE
Deceased.)	No. 65578-7-1
CATHERINE JANE BECKER,)	
CAROL-LYNNE JANICE BECKER,)	UNPUBLISHED OPINION
and ELIZABETH DIANE MARGARET)	
BECKER,)	
Respondents,)	
v.)	
JENNIFER WHITE, in her capacity as)	
Personal Representative of the Estate)	
of Virgil Victor Becker, Jr.,)	
Respondent.)	FILED: March 12, 2012
NANCY BECKER,)	
Petitioner.)	

DWYER, C.J. — Virgil Victor (“Tory”) Becker Jr. died in July 2008. His purported will, which leaves his entire estate to his minor daughter Barbara, was thereafter admitted to probate. Tory’s three adult daughters from a previous marriage challenged the will as fraudulent and asserted numerous creditors’ claims against the estate. Following mediation, Barbara’s guardian ad litem

No. 65578-7-1/2

(GAL) and the adult daughters entered into an agreement settling the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate.

Nancy Becker, Tory's wife and Barbara's mother, refused to sign the settlement agreement in her role as personal representative of the estate. After her removal from that role due to irreconcilable conflicts, she appeared in the action personally. Upon motion of the GAL, the trial court determined that Nancy—who is not a named beneficiary in the will admitted to probate—does not have standing to participate in proceedings regarding the settlement agreement.

Nancy filed a motion for discretionary review of the trial court's order, which we granted. We conclude that neither general principles of standing nor the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, confer upon Nancy standing to participate in the settlement agreement proceedings. Accordingly, we affirm the trial court's order.

1

Tory Becker died on July 27, 2008 when the private airplane in which he was a passenger crashed. At the time of his death, Tory was married to Nancy Becker, with whom he had a child, Barbara Becker. Barbara was born on November 28, 1997. She is currently 14 years old. Tory is also survived by three daughters from a previous marriage—Catherine Jane Becker, Carol-Lynne

Janice Becker, and Elizabeth Diane Becker.¹

On August 13, 2008, the trial court admitted to probate a will which left Tory's entire estate to Barbara. Pursuant to that will, Nancy was named as personal representative of the estate.

On December 12, 2008, the adult daughters filed a petition challenging the validity of the will and seeking to remove Nancy as personal representative based upon alleged conflicts of interest. Jennifer Rydberg was thereafter appointed to act as Barbara's GAL. The adult daughters and their mother—Linda Bulger, Tory's previous wife—additionally asserted 14 creditors' claims against the estate. Nancy, as personal representative, rejected each of the creditors' claims, and a civil action for the claims was filed against the estate on January 29, 2009.

On December 4, 2009, Rydberg, the adult daughters, and Bulger participated in a mediation to resolve the disputes. Following the mediation, they signed a "CR 2A Settlement Agreement."² The agreement stated that the petitioners—the adult daughters and Bulger—recognized the possibility that one or more of their creditors' claims might be dismissed by the court and that their will contest might be unsuccessful. Similarly, the agreement stated that the respondent—Barbara, as represented by GAL Rydberg—recognized the possibility that one or more of the creditors' claims might be granted by the court

¹ Catherine Jane Becker, Carol-Lynne Janice Becker, and Elizabeth Diane Becker are referred to collectively herein as the "adult daughters." The other Becker parties are referred to by their first names in order to avoid confusion.

² Nancy, as personal representative of the estate, was also present for part of the mediation. However, she was not involved in the drafting of the settlement agreement.

No. 65578-7-1/4

and that the will contest might be successful. Accordingly, pursuant to the agreement, the adult daughters and Bulger agreed to dismiss the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate. The agreement further recognized that "[t]he assets that are in the Estate as well as the characterization and value of those assets are in dispute." Clerk's Papers (CP) at 259. The agreement did not purport to determine those assets which made up the estate.

Nancy refused to sign the agreement in her role as personal representative of the estate. Rydberg and the adult daughters petitioned the court to appoint a co-personal representative for the limited purpose of approving the settlement agreement. Rydberg additionally filed a petition to remove Nancy as personal representative. On March 12, 2010, following a two-hour hearing, the trial court removed Nancy as personal representative of the decedent's estate. The court determined that Nancy had numerous direct, irreconcilable conflicts of interest that precluded her from acting in that role.

On April 8, 2010, following her removal as personal representative, Nancy appeared personally in this matter. Jennifer White was thereafter appointed as personal representative of the estate.

On May 10, 2010, Rydberg filed a motion with the trial court entitled Motion to Determine Standing of Nancy Becker Regarding CR 2A Agreement of Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate. Rydberg sought "an order identifying those parties who are entitled to participate in the June 11th court proceedings regarding the review and possible approval of

No. 65578-7-1/5

the pending CR 2A Agreement." CP at 173. Her motion asserted that the effect of the settlement agreement was solely to "apportion[] whatever assets end up in the Estate on a percentage basis between the Adult Children and Barbara"—not to "determine what assets are actually in or owned by the Estate, or whether the Estate has any claim to assets which [Nancy] now claims are hers alone." CP at 174. The motion further contended that Nancy lacked standing to participate in the proceedings based both on general principles of standing and, specifically, on the provisions of TEDRA that define who constitutes a "party" for purposes of that act. Thus, Rydberg asserted, Nancy has no legally cognizable interest in the subject matter of the agreement.

The adult daughters filed a response in support of the motion to determine Nancy's standing to participate in the review and approval process of the settlement agreement. They alleged that Nancy had incurred hundreds of thousands of dollars in legal fees in order to impede discovery and prevent the court from considering the settlement agreement and that Nancy's further involvement would continue to deplete the estate of resources. They also alleged that Nancy, who had purportedly mischaracterized the assets of the estate to her own benefit, was fearful that the adult daughters would assist Barbara in recovering the true value of the estate.

On May 20, 2010, the trial court granted the motion and entered an order determining that Nancy lacks standing to participate in judicial proceedings concerning the settlement agreement and its proposed resolution of the will contest and creditors' claims. In support of its ruling, the trial court entered the

following findings of fact:

1. On December 4, 2009, during a court-ordered mediation, the GAL for Barbara Becker, and the Petitioners entered into a written CR 2A Agreement that purports to resolve the will contest, resolve all of the creditors' claims brought by Petitioners against the Estate of Virgil Victor Becker, Jr., (the "Estate" herein), and distribute the Estate. The CR 2A Agreement does not affect the prosecution or distribution of proceeds from the wrongful death claim that arose from the circumstances of the death of Virgil Victor Becker, Jr. ("decedent" herein). The PR has not signed the CR 2A [Agreement].
2. Nancy Becker is the surviving spouse of the decedent.
3. Nancy Becker has no beneficial interest in any matters addressed by the CR 2A Agreement or in the Estate. 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.
4. Nancy Becker was removed as Personal Representative ("PR" herein) of the Estate on March 16, 2010, and is not presently the PR.
5. Nancy Becker is not a "real party in interest" as to the matters addressed by the CR 2A Agreement.
6. Nancy Becker is not a party under the Trust and Estates Dispute Resolution Act, RCW 11.96A, *et seq.*

CP at 231. The trial court also entered conclusions of law, ruling that:

1. Nancy Becker is not a real party in interest, nor is she a party under the Trust and Estates Dispute Resolution Act, RCW 11.96A *et seq.*
2. Nancy Becker has no standing to participate as a party in the court's determination of whether a CR 2A 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 Court.
3. Except for any proceeds that may in the future be obtained from a wrongful death action, Nancy Becker 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.

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

CP at 232.

On June 2, 2010, Rydberg and the adult children filed a motion for court approval of the CR 2A Agreement. The court thereafter stayed the motion for approval of the settlement agreement pending the resolution of issues to be presented to the minor settlement ex parte department.

On July 6, 2010, Nancy sought discretionary review in this court of the trial court's order determining that she lacks standing to participate in proceedings regarding the settlement agreement. On August 31, 2010, we granted discretionary review of that order. The adult daughters thereafter filed with this court a motion for the admission of additional evidence—specifically, a purported premarital agreement between Nancy and Tory that allegedly precluded the creation of community property interests during their marriage. Thus, both the trial court's order regarding Nancy's standing and the motion for additional evidence are before us.

II

Nancy contends that the trial court erred by determining that she does not have standing to participate in proceedings regarding the settlement of the will, contest and creditors' claims. Because general principles of standing do not entitle Nancy to so participate, and because Nancy is not a "party" to this proceeding pursuant to TEDRA, we disagree.

Standing is a question of law subject to de novo review. In re Irrevocable Trust of McKean, 144 Wn. App. 333, 339, 183 P.3d 317 (2008). "A party has standing to raise an issue if that party has a distinct and personal interest in the issue." Paris Am. Corp. v. McCausland, 52 Wn. App. 434, 438, 759 P.2d 1210 (1988). That interest must be present and substantial, rather than "a mere expectancy, or future, contingent interest." Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992). "Standing requires that the plaintiff demonstrate an injury to a legally protected right." Sprague v. Sysco Corp., 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999). Consistent with principles of standing—although a doctrine distinct from standing—CR 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." See Sprague, 97 Wn. App. at 176 n.2. "The real party in interest is the person who possesses the right sought to be enforced." Sprague, 97 Wn. App. at 176 n.2.

TEDRA provides various methods for resolving disputes concerning wills and trusts. One such method is a "binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust." RCW 11.96A.210; see also RCW 11.96A.220-.250. The procedure is applicable to the resolution of any "matter," as defined by the act. RCW 11.96A.220.³ "If all parties agree to a resolution of any such matter, then the

³ See RCW 11.96A.030(2)(c) (defining "matter" as "any issue, question, or dispute involving . . . [t]he 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"); see also In re Estate of Kordon, 157 Wn.2d 206, 211, 137 P.3d 16 (2006).

agreement shall be evidenced by a written agreement signed by all parties.

Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust." RCW 11.96A.220.

Thus, pursuant to TEDRA, those persons whose agreement must be obtained in order to resolve by written agreement a dispute regarding a will are those "persons interested in the estate." RCW 11.96A.220; see also RCW 11.96A.210. TEDRA further defines who constitutes a "party" for the purposes of that statute. See RCW 11.96A.030(5). A "party" means each person listed within RCW 11.96A.030(5) "who has an interest in the subject of the particular proceeding." RCW 11.96A.030(5). The statute then lists numerous individuals who may constitute "parties" in a proceeding, including, as relevant here, "[t]he surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property." RCW 11.96A.030(5)(f).⁴ TEDRA

(holding that "[a] will contest presents a 'question arising in the administration of an estate,' and therefore is clearly a 'matter' subject to TEDRA").

⁴ RCW 11.96A.030(5) provides in full:

"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;

further provides that “[p]ersons interested in the estate or trust” means . . . “all persons beneficially interested in the estate or trust.” RCW 11.96A.030(6).

As the trial court determined, Nancy is not a “party” pursuant to TEDRA. The statute provides that the persons who constitute “parties” are those persons who are both listed within RCW 11.96A.030(5) *and* have “an interest in the subject of the particular proceeding.” RCW 11.96A.030(5). Moreover, a surviving spouse is a party only “*with respect to his or her interest in the decedent’s property.*” RCW 11.96A.030(5)(f) (emphasis added). Nancy has an interest neither in the subject of the settlement agreement proceeding nor in the decedent’s property. Nancy is not a named beneficiary in the will. Nor has Nancy challenged the validity of the will, as have the adult daughters, such that she has a beneficial interest in the resolution of the will contest. Indeed, having not challenged the will within the four-month statutory period, Nancy cannot now do so. See RCW 11.24.010 (requiring that will contests be filed within four months following the probate of a will).

Moreover, even if Nancy and Tory owned community property prior to his

(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.

death,⁵ "[a]t death, the community [was] dissolved and the former community property [became] the separate property of the decedent's estate and of the surviving spouse." In re Estate of Mell, 105 Wn.2d 518, 523, 716 P.2d 836 (1986) (quoting deNoskoff v. Scott, 36 Wn. App. 424, 426-27, 674 P.2d 687 (1984)). Nancy obviously has an interest in that portion of any such community property which, upon Tory's death, became her separate property. She does not, however, have any interest in the separate property of Tory's estate, regardless of whether any such property once constituted community property.⁶

Nevertheless, Nancy asserts that she has an interest in the will contest—and, thus, in the settlement of the will contest—because she would be entitled to inherit a part of the estate through intestacy were the will in probate determined to be invalid. She contends that if the will contest were successful, she, as an heir, would be entitled to an intestate share of the estate. Moreover, she asserts, in the event that the challenged will is invalid and an earlier-executed will is determined to be valid, she would be entitled to inherit as an omitted spouse.

⁵ Whether Nancy and Tory owned community property during their marriage is disputed. However, the settlement agreement at issue here does not purport to determine the characterization of any property within the estate. Thus, we need not determine whether any such community interest existed. Moreover, we note that any such determination is properly made by the trial court, not by an appellate court in the first instance. For these reasons, we deny the adult daughters' motion to admit as additional evidence, for purposes of this review, the purported premarital agreement between Nancy and Tory precluding the creation of community property interests during their marriage.

⁶ Nancy asserts that she has standing to participate in the settlement agreement proceedings due to her interest in the community property within the estate. She contends that joint ownership of any property with the adult daughters would diminish the value of that property. Moreover, she asserts that community property in which she has an interest may be required to be sold due to the settlement agreement. However, as explained above, Nancy has no beneficial interest in the estate, even had some of that property been community property prior to Tory's death. Speculation regarding the distribution of property within the estate does not confer upon Nancy standing to participate in the settlement agreement proceedings.

However, Nancy stands to benefit from the will contest—such that she has a beneficial interest in that matter—only if the will is invalidated, such that she could inherit a percentage of the estate through intestacy. But, as already noted, Nancy has not herself challenged the will. Rather, she has maintained throughout the proceedings that the will, which, acting as personal representative, she sought to have admitted to probate, is valid. RCW 11.96A.210, which authorizes parties to enter into settlement agreements such as that contemplated here, is a dispute resolution mechanism. Nancy is not involved in this dispute. The trial court did not err by determining that she is not entitled to participate in its settlement.⁷

Nancy is not a “party” pursuant to TEDRA such that she is entitled to participate in the settlement of the will contest and creditors’ claims, as she does not “[have] an interest in the subject of [this] particular proceeding.” See RCW 11.96A.030(5). Furthermore, although Nancy is the decedent’s surviving spouse, she has no “interest in the decedent’s property” that would confer upon her standing pursuant to TEDRA. See RCW 11.96A.030(5)(f). Finally, because Nancy has not demonstrated that she has a “distinct and personal interest in the issue,” general principles of standing do not confer upon her the right to participate in the settlement agreement proceedings. See Paris Am. Corp., 52 Wn. App. at 438.

⁷ The settlement agreement does not purport to determine what property is a part of the estate; nor does it purport to determine the character of any such property. The trial court’s order does not preclude Nancy’s participation in future proceedings in which she has a beneficial interest.

The trial court did not err by determining that Nancy is not entitled to participate in the settlement agreement proceedings.⁸

III

The adult daughters, Nancy, and Rydberg all request an award of attorney fees "on appeal."⁹ We decline to grant an award of fees to the adult daughters or to Nancy, but we determine that Rydberg is entitled to be paid for her services as Barbara's GAL.

TEDRA confers upon us broad discretion in granting an award of attorney fees. It provides that

any court on appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of 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, which factors may but need not include whether the litigation benefits the estate or trust involved.

⁸ Nancy additionally contends that the trial court erred by determining that she is not an "heir" to the estate. See RCW 11.02.005(6) (defining "heirs" as "those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate"). In so doing, she mischaracterizes the trial court's order, which states that Nancy "is not an heir or beneficiary of the Estate, and has no legal interest in the decedent's property, *in this estate action.*" CP at 231 (emphasis added). The trial court did not determine, as Nancy implies, that Nancy would not be entitled to inherit a portion of the estate through intestacy.

Nancy also requests that we vacate any trial court order entered in this matter subsequent to the standing order challenged herein. She asserts that any such order is "tainted" by the erroneous determination that she does not have standing to participate in these proceedings. Because the trial court did not err by determining that she does not have standing, we decline to vacate any subsequent orders.

⁹ This matter is not on appeal. Rather, this is a discretionary review proceeding. Nevertheless, the same standards apply with regard to resolving a request for an award of attorney fees for work performed litigating matters in this court.

No. 65578-7-1/14

RCW 11.96A.150(1).

Nancy requests that we order the adult daughters and Rydberg to pay her attorney fees for work done in this court on this matter. She contends that such an award is warranted because, she asserts, by seeking review she benefitted the estate by aiding the prevention of the approval of the settlement agreement. Because we determine that Nancy does not have standing to participate in proceedings regarding the settlement agreement, we decline her request for an award of attorney fees.¹⁰

The adult daughters request an award of appellate attorney fees to be paid personally by Nancy. They contend that such an award is warranted due to Nancy's failure to produce the purported premarital agreement in discovery, coupled with Nancy's appellate arguments that, they contend, contradict that agreement. However, the validity of the premarital agreement has not been determined. We decline to grant an award of fees on this basis.

Finally, Rydberg contends that she is entitled to be paid for her services as GAL pursuant to RCW 11.96A.160(4), which provides that "[t]he guardian ad litem is entitled to reasonable compensation for services . . . to be paid from the principal of the estate or trust whose beneficiaries are represented." There is no indication in the record that Rydberg has acted in bad faith or made unmeritorious arguments. Thus, we order that Rydberg be paid her reasonable fees incurred for work in this court, to be paid by the estate pursuant to RCW

¹⁰ Moreover, we note that the interests of the estate are represented by the personal representative of the estate—not by Nancy. Moreover, the approval of the settlement agreement is not at issue in this discretionary review proceeding.

No. 65578-7-1/15

11.96A.160(4), in an amount to be established by the superior court on remand.

RAP 18.1(i).

Dupri, C. S.

WE CONCUR:

Leach, A. C. J.

Grosse, J.

RECEIVED
COURT OF APPEALS
DIVISION ONE

APR 02 2017

NO. 65578-7-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In the Matter of the 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.

NANCY BECKER'S MOTION FOR RECONSIDERATION

Ladd B. Leavens, WSBA #11501
Rebecca Francis, WSBA #41196
Davis Wright Tremaine LLP

Attorneys for Petitioner Nancy Becker

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C. A Member of the Court Who Was Not Assigned to the Panel Signed the Opinion.

On February 22, 2012, the day before oral argument, Nancy received notice from the Court that Chief Judge Dwyer, Acting Chief Judge Leach, and Judge Spearman, would sit on the panel. This panel in fact heard oral argument. However, Judge Grosse, not Judge Spearman, signed the Court's Opinion.

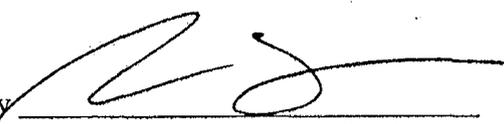
The fact the Opinion was signed by a member of the Court who was not assigned to the panel at oral argument (and not signed by one of the judges who was assigned to the panel) potentially permits a perception that the panel that heard argument may not have engaged in a joint deliberative process in deciding the case. *Cf. Moles*, 32 Cal. 3d at 873 (describing "collegial decision-making" process). Such a deliberative process may affect or change a decision in unforeseeable ways, and in general, is a salutary feature of the administration of justice in the appellate court. *See id.* at 872 ("This aspect of oral argument—the chance to make a difference in result—is extremely valuable to litigants."). It is obviously not desirable that any litigant should actually know, or that the court should ever reveal, its deliberative process in any particular case. But it is important that every litigant and every citizen perceive that the administration of justice does in fact proceed properly. "If oral

argument is to be more than an empty ritual, it must provide the litigants with an opportunity to persuade those who will actually decide an appeal.... [O]ral argument cannot provide this opportunity if the judges who hear the argument are not the ones who decide the case.” *Id.* (“oral argument is meaningless” otherwise; judge who did not participate in oral argument may not sign opinion under California law). The perception of the proper administration of justice may best be preserved here if the Opinion in this case is withdrawn and the case is submitted to and reargued before a new panel of three judges.

V. CONCLUSION

RESPECTFULLY SUBMITTED this 2nd day of April, 2012.

Davis Wright Tremaine LLP
Attorneys for Petitioner Nancy Becker

By 

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DECLARATION OF SERVICE

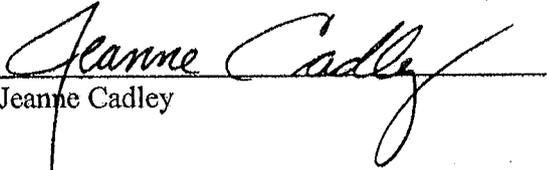
I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following counsel of record via the means indicated:

Bruce A. McDermott	()	By U.S. Mail
Teresa Byers	()	By Federal Express
Garvey Schubert Barer	()	By Facsimile
1191 Second Ave., 18 th Floor	()	By Messenger
Seattle, WA 98101-2939	(x)	By E-mail
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Dated at Seattle, Washington this 2nd day of April, 2012.



Jeanne Cadley

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:)
)
VIRGIL VICTOR BECKER, JR.,)
)
)
Deceased.)
)
CATHERINE JANE BECKER,)
CAROL-LYNNE JANICE BECKER,)
and ELIZABETH DIANE MARGARET)
BECKER,)
)
Respondents,)
)
v.)
)
JENNIFER WHITE, in her capacity as)
Personal Representative of the Estate)
of Virgil Victor Becker, Jr.,)
)
Respondent.)
)
NANCY BECKER,)
)
Petitioner.)

DIVISION ONE

No. 65578-7-1

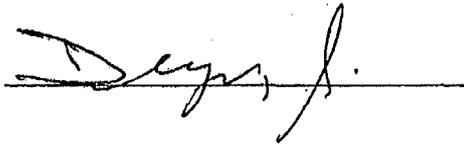
ORDER WITHDRAWING
UNPUBLISHED OPINION

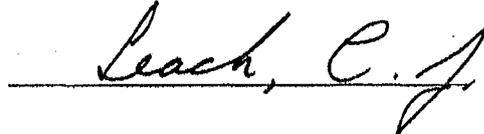
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STATE OF WASHINGTON
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A majority of the panel having determined that the unpublished opinion filed March 12, 2012, be withdrawn; now, therefore,

IT IS HEREBY ORDERED that the unpublished opinion of this court filed in the above-entitled action on March 12, 2012, be withdrawn.

Dated this 5 day of April, 2012.





IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:

VIRGIL VICTOR BECKER, JR.,

Deceased.

CATHERINE JANE BECKER,
CAROL-LYNNE JANICE BECKER,
and ELIZABETH DIANE MARGARET
BECKER,

Respondents,

v.

JENNIFER WHITE, in her capacity as
Personal Representative of the Estate
of Virgil Victor Becker, Jr.,

Respondent.

NANCY BECKER,

Petitioner.

DIVISION ONE

No. 65578-7-1

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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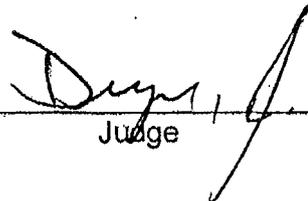
ORDER DENYING MOTION
FOR RECONSIDERATION

The petitioner, Nancy Becker, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 22nd day of March, 2012.

FOR THE COURT:



Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:
VIRGIL VICTOR BECKER, JR.,
Deceased.

CATHERINE JANE BECKER,
CAROL-LYNNE JANICE BECKER,
and ELIZABETH DIANE MARGARET
BECKER,

Respondents,

v.

JENNIFER WHITE, in her capacity as
Personal Representative of the Estate
of Virgil Victor Becker, Jr.,

Respondent.

NANCY BECKER,

Petitioner.

DIVISION ONE

No. 65578-7-1

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 22 PM 2:44

ORDER DENYING MOTION
TO PUBLISH

The petitioner, Nancy Becker, having filed a motion to publish opinion, and the hearing panel having considered its prior determination and finding that the opinion will not be of precedential value; now, therefore it is hereby:

ORDERED that the unpublished opinion filed April 16, 2012, shall remain unpublished.

DATED this 22nd day of May, 2012.

For the Court:



Judge

11.04.015 Descent and distribution of real and personal estate. The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his or her parents, or by one or more of the issue of one or more of his or her parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if

of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation:

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half:

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation. [2010 c 8 § 2001; 2007 c 156 § 27; 1974 ex.s. c 117 § 6; 1967 c 168 § 2; 1965 ex.s. c 55 § 1; 1965 c 145 § 11.04.015. Formerly RCW 11.04.020, 11.04.030, 11.04.050.]

Appropriation to pay debts and expenses: Chapter 11.10 RCW.

Community property

disposition: RCW 11.02.070.

generally: Chapter 26.16 RCW.

Escheats: Chapter 11.08 RCW.

"Net estate" defined: RCW 11.02.005(2).

Payment of claims where estate insufficient: RCW 11.76.150.

Priority of sale, etc., as between realty and personalty: Chapter 11.10 RCW.

Additional notes found at www.leg.wa.gov

11.12.095 Omitted spouse or omitted domestic partner. (1) If a will fails to name or provide for a spouse or domestic partner of the decedent whom the decedent marries or enters into a domestic partnership after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse" or "omitted domestic partner," the spouse or domestic partner must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(2) In determining whether an omitted spouse or omitted domestic partner has been named or provided for, the following rules apply:

(a) A spouse or domestic partner identified in a will by name is considered named whether identified as a spouse or domestic partner or in any other manner.

(b) A reference in a will to the decedent's future spouse or spouses or future domestic partner or partners, or words of similar import, constitutes a naming of a spouse or domestic partner whom the decedent later marries or with whom the decedent enters into a domestic partnership. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse or domestic partner who falls within the class.

(c) A nominal interest in an estate does not constitute a provision for a spouse or domestic partner receiving the interest.

(3) The omitted spouse or omitted domestic partner must receive an amount equal in value to that which the spouse or domestic partner would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's or domestic partner's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or settlement in a domestic partnership or other provision and provisions for the omitted spouse or omitted domestic partner outside the decedent's will.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW. [2008 c 6 § 911; 1994 c 221 § 10.]

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

Additional notes found at www.leg.wa.gov

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.

11.96A.210 Purpose. The purpose of RCW 11.96A.220 through 11.96A.250 is to provide a binding non-judicial procedure to resolve matters through written agreements among the parties interested in the estate or trust. The procedure is supplemental to, and may not derogate from, any other proceeding or provision authorized by statute or the common law. [1999 c 42 § 401.]

11.96A.220 Binding agreement. RCW 11.96A.210 through 11.96A.250 shall be applicable to the resolution of any matter, as defined by RCW 11.96A.030, other than matters subject to chapter 11.88 or 11.92 RCW, or a trust for a minor or other incapacitated person created at its inception by the judgment or decree of a court unless the judgment or decree provides that RCW 11.96A.210 through 11.96A.250 shall be applicable. If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust. The agreement shall identify the subject matter of the dispute and the parties. If the agreement or a memorandum of the agreement is to be filed with the court under RCW 11.96A.230, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing as provided in RCW 11.96A.230, and the discharge of any special representative who has acted with respect to the agreement.

If a party who virtually represents another under RCW 11.96A.120 signs the agreement, then the party's signature constitutes the signature of all persons whom the party virtually represents, and all the virtually represented persons shall be bound by the agreement. [1999 c 42 § 402.]