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SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 340511

Grant County Superior Court Cause No. 15-4-00010-5

In the Matter of the Estate of:

Kathryn Joyce Rathbone

ESTATE OF KATHRYN JOYCE RATHBONE, TODD RATHBONE,
Personal Representative,

Appellants,

vs.

GLEN L. RATHBONE,

Respondent.

**APPELLANTS' PETITION FOR REVIEW TO THE
WASHINGTON STATE SUPREME COURT**

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I. IDENTITY OF PETITIONERS

The Petitioners are the Estate of Kathryn Joyce Rathbone and its Personal Representative, Todd Rathbone. The Petitioners were Respondents in the trial court Trust and Estate Dispute Resolution Act (TEDRA) action and Appellants in the Court of Appeals.

II. CITATION TO COURT OF APPEALS DECISION

The Estate and Personal Representative are seeking review of the unpublished opinion of Division III of the Court of Appeals filed on February 9, 2017 (Appendix Ex. A) and the Court of Appeals Orders refusing to publish the opinion and denying the Estate and Personal Representative's Motion for Reconsideration filed on March 14, 2017. (Appendix Ex. B)

III. ISSUES PRESENTED FOR REVIEW

The Court of Appeals and the probate judge have made rulings that effectively eliminate the nonintervention rights provided in most probate actions. The filings are in conflict with a number of the decisions of the Supreme Court; are in conflict with a published decision of the Court of Appeals; and involve an issue of substantial public interest that should be determined by the Supreme Court.

Nonintervention powers are the single most effective way to control the costs of probating a will. Probates are on the rise and it is vital that we continue to control probate costs to provide the public the broadest access to the probate court at an affordable cost.¹ Washington and Texas² have been in lead in providing cost effective probate through a nonintervention process. The Court of Appeals ruling creates a new exception to nonintervention that, if upheld, will basically emasculate the right of nonintervention and return probate to the costly and burdensome

¹ Numerous commentators mention public hostility to probate because of its cost and lack of privacy. See Karen J. Sneddon, Karen J. Sneddon, Beyond the Personal Representative: The Potential of Succession Without Administration, 50 S. Tex. L. Rev. 449, 460–61 (2009) (“[P]ublic perception of probate remains negative. Individuals’ concerns about administration can be categorized as follows: (1) cost, (2) delay, and (3) privacy.”); John H. Martin, John H. Martin, Non-Judicial Estate Settlement, 45 U. Mich. J.L. Reform 965, 993 (2012) JOEL C. DOBRIS ET AL., ESTATES AND TRUSTS, CASES AND MATERIALS 46 (2d ed. 2002) (Testators seek to avoid the probate process because of its reputation sometimes but not always deserved for delay and expense.); Earl M. Bucci, Comm. on Admin. and Distribution of Decedents Estates, Clearing Titles of Heirs to Intestate Real Property, 10 REAL PROP. PROB. & TR. J. 454, 459 (1975) (describing administration as expensive and time-consuming); Susan N. Gary, Susan N. Gary, Transfer-on-Death Deeds: The Nonprobate Revolution Continues, 41 Real Prop. Prob. & Tr. J. 529, 531 (2006)(Many people choose to avoid the probate process, either because of concerns about delays and cost or because of a desire for privacy.); Adam J. Hirsch, Adam J. Hirsch, Inheritance Law, Legal Contraptions, and the Problem of Doctrinal Change, 79 Or. L. Rev. 527, 542 (2000) (describing probate as time-consuming and costly); Martin, Reconfiguring Estate Settlement supra note 1, at 48 (Delay, expense, and lack of privacy are three universal criticisms of probate.);

² Texas has the most developed nonintervention procedure referred to as unsupervised administration. Unsupervised administration, in various incarnations, has existed in Texas since 1843. See Karen J. Sneddon, Karen J. Sneddon, Beyond the Personal Representative: The Potential of Succession Without Administration, 50 S. Tex. L. Rev. 449, 466 (2009)

process that it is in many other states. Unhappy beneficiaries and others will be able to avoid nonintervention and start litigation in probate courts by simply filing a Petition for approval of fees under RCW 11.68.010 even though the statute simply permits beneficiaries to have the probate court approve fees for attorneys, accountants and appraisers and to have the estate account for the payment of those fees. The legislature never intended that the statute would confer general jurisdiction on the probate court to interpret wills or litigate other issues related to the nonintervention probate. This ruling is of great public importance and, if left standing, will significantly increase probate litigation and the costs of probate.

The probate judge erroneously ruled that the TEDRA statute (RCW 11.96A) independently confers general jurisdiction on the probate court to hear all matters related to a nonintervention probate, effectively invalidating the nonintervention statutes that since statehood have limited the court's jurisdiction to litigate probate matters. TEDRA is a supplemental statute that was adopted only to provide a mechanism to litigate matters that are otherwise allowed to be litigated under the exceptions to nonintervention. It was never intended to create jurisdiction. The probate judge's ruling will open the floodgate of probate litigation and significantly eliminate nonintervention powers.

Finally, the probate judge erroneously determined that RCW 11.68.070 (a statute that permits the removal of a personal representative for misfeasance) conferred upon the probate court general jurisdiction to hear an action to contest the will, even though no misfeasance was claimed or proved. Again, this ruling effectively neuters nonintervention powers.

These rulings significantly impact the public and will dramatically increase the costs of probates. Furthermore, the rulings are in direct conflict with a number of opinions of this Court and the Court of Appeals regarding nonintervention powers and the limited exceptions to nonintervention. The specific issues before this Court are:

- A. Did the Court of Appeals err in deciding that RCW 11.68.110, a statute that authorizes the probate court to review and approve attorney fees and accounting fees incurred in the probate, conferred general jurisdiction upon the probate court to interpret the provisions of a will in a nonintervention probate where the nonintervention statutes (RCW 11.68 et. seq.) specifically deny jurisdiction to the court to interpret the will?
- B. Did the probate judge err in ruling that the TEDRA, statute (RCW 11.96A et. seq.) independently confers upon the probate court general jurisdiction to interpret a will thereby invalidating the nonintervention statutes (RCW 11.68 et. seq.) and this Court's previous rulings that deny jurisdiction to the probate court in nonintervention probates?
- C. Did the probate court err in deciding that in this nonintervention probate RCW 11.68.070, a statute that permits the court to remove a personal representative for misfeasance, provided the court with jurisdiction to interpret the will, where the Beneficiary filed a

TEDRA action to interpret the will but had not claimed that RCW 11.68.070 applied, did not seek an evidentiary hearing to determine if there was misfeasance, and was not seeking to remove the personal representative?

IV. STATEMENT OF THE CASE

This is a nonintervention probate. Pursuant to the clear terms of the will and the nonintervention statutes, the Personal Representative alone had the authority to construe the will. Kathryn Joyce Rathbone died on January 31, 2013. In her will she named her son Todd Rathbone as the personal representative of the Decedent's estate. He was appointed to serve without court intervention. CP 24 (§2). The decedent was particularly concerned that her son Glen would interfere with the probate of her will. In an effort to ensure that Glen would not interfere the decedent's will specifically provided:

“5.4 NO CONTEST PROVISION. My Personal Representative and Trustee shall have the authority to construe this Will and trusts and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my Estate or any trust with the cost of a litigated proceeding to resolve questions of law or fact.

**** I specifically desire that my son, Glen, and his children, do not contest, challenge, or harass my Personal Representative and Trustees. The term “contest” identifies any action or activity originated (or caused to be originated) in a court of any jurisdiction without the permission of my Personal Representative or Trustee. . .”

(Emphasis added)(App. Ex. C)

The Personal Representative carried out his duties including construing the will regarding the purchase of some real estate from the estate. On December 23, 2014, the Estate issued out a Notice of Completion of Probate. On January 22, 2015 Respondent Glen Rathbone filed a Petition for an Accounting of Fees and Costs pursuant to RCW 11.68.110. (CP 115-16) This Petition for Accounting made no reference to any questions related to the interpretation of the will. Respondent sought only an approval or disapproval of the proposed fees or for an order requiring an accounting of the fees. (*Id*) The Petition was not noted for hearing and has not yet been heard.

On February 6, 2015 Respondent filed a Petition for Order Construing Will. The Petition stated that it was “based upon RCW 11.96A³ and RCW 11.12.230⁴.” (CP 1) In the petition the Respondent asked the probate judge to construe the will. (CP 8) The TEDRA petition did not claim that the previously filed Petition for Accounting was the jurisdictional basis for his TEDRA action. The TEDRA petition did not ask for a hearing on the accounting for fees and costs; did not set forth any

³ The TEDRA statute.

⁴ Which states, “All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.”

objection to the proposed payment of fees and costs; and did not challenge the proposed distribution of fees and costs. (CP 1-21)

A hearing was held on the TEDRA Petition to Construe the Will on November 12, 2015. The probate judge asked if this was a TEDRA action “challenging fees and for requesting an accounting” according to provisions set out in RCW 11.68.110. VRP, Page 7, Lines 14-17. Respondent represented that an accounting had been requested but was not part of this TEDRA proceedings. VRP, Page 7. The trial court specifically addressed the argument that RCW 11.68.110 would be an independent basis for jurisdiction of the TEDRA action and rejected the argument. (VRP 6:23 – 8:15) The trial judge stated:

THE COURT: The subject matter of this petition is not to ask about an accounting, per se, and it's not challenging fees. It's arguing about the interpretation of the statute. So, arguably, [RCW]11.68.110 doesn't apply.

THE COURT: Am I -- I mean you tell me if I'm wrong. Because I'm reading [RCW]11.68.110, and I'm trying to figure out if that applies or not. It doesn't appear to, based on the issue that's being raised, which is the interpretation of section 4.1.3 [of the will].

The probate judge did not base his jurisdiction to hear the TEDRA petition on RCW 11.68.110. Instead, he based his jurisdiction on RCW 11.68.070, the removal for misconduct statute. (VRP 43-44) In the alternative the trial judge ruled that that the TEDRA statute independently provided

jurisdiction to the court in this non-intervention Will. (*Id*) The Estate and its Personal Representative appealed the probate court's ruling.

On appeal, the Court of Appeals erroneously determined that the probate judge had jurisdiction to hear the TEDRA petition to construe the will based on the fee approval statute, RCW 11.68.110. This ruling is an unwarranted expansion of the authority of this statute and the Court of Appeals ruling is directly contrary to a number of cases from this Court regarding the probate court's jurisdiction in a nonintervention probate.

The Respondent's TEDRA petition was not based on RCW 11.68.070⁵, did not allege any specific fraud or mismanagement of the estate and did not seek to remove the Personal Representative. The probate judge did not hold any evidentiary hearing under the mismanagement statute and had no undisputed factual basis to decide this case under that statute.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A. THE COURT OF APPEALS ERRED IN DECIDING THAT RCW 11.68.110 CONFERRED GENERAL JURISDICTION UPON THE PROBATE COURT TO INTERPRET THE PROVISIONS OF A WILL IN A NONINTERVENTION PROBATE AND THIS RULING IS CONTRARY TO CASE

⁵ THE COURT: Do you think this is a matter under 11.68.070, which is the one that talks about --well, it talks about replacing a PR, but also talks about restricting their powers. Does this fall under that statute?

MR. FOWLES: Probably not. We're not asking for that kind of remedy. (VRP 8-9)

**LAW AND WILL HAVE SUBSTANTIAL IMPACT ON
THE COST OF PROBATES TO THE PUBLIC**

As early as 1898 our courts have recognized the right of a decedent to have her estate probated without the intervention of the court. Moore v. Kirkman, 19 Wash. 605, 54 P. 24 (1898) See also, State v. Superior Court of Pierce Cty., 21 Wash. 575, 578, 59 P. 483, 484 (1899) This Court has consistently ruled that once the superior court declares that a nonintervention estate is solvent, the superior court loses jurisdiction unless the executor or another person with statutorily conferred authority properly invokes it again. In re Estate of Jones, 152 Wash. 2d 1, 9, 93 P.3d 147 (2004) noted:

“[O]nce the decedent dies, the personal representative applies for an order of solvency, and the court has jurisdiction to grant or deny the order. However, once an order of solvency is entered the court loses jurisdiction. The court may regain jurisdiction only if the executor or another person with statutorily conferred authority invokes jurisdiction.” Id. at 9 (citing In re Coates' Estate, 55 Wash. 2d 250, 347 P.2d 875 (1959))

The decision of the Court of Appeals here is directly contrary to the time honored principle of nonintervention established by this Court. The Court of Appeals creates an entirely new exception to the nonintervention rule by misconstruing RCW 11.68.10.

RCW 11.68.110 provides in relevant part:

(2) Subject to the requirement of notice as provided in this section, unless an heir, * * * of a decedent petitions the court either for an order requiring the personal representative to obtain court approval

of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

This statute does not confer broad based jurisdiction on the court but only allows the petitioner to seek either an approval of the fees paid to personal representatives, attorneys, accountants and appraisers or seek an order from the court requiring the personal representative to account for the fees paid to personal representative, lawyers, appraisers, or accountants. The statute does not open the door for the probate court to rule on issues related to the personal representative's construction of a will in this nonintervention probate. There is no case law in Washington that would support an extension of jurisdiction of this fee accounting statute to broader issues like the interpretation of a will in a nonintervention probate. The Court of Appeals interpretation of this statute would basically invalidate the nonintervention powers and the case law in this state that grants the personal representative broad powers to manage a nonintervention estate.

This accounting statute RCW 11.68.110 has been cited in 10 reported Washington appellate cases and actually discussed in 7 of them. Not one of these cases suggests that RCW 11.68.110 would extend jurisdiction to the court to decide issues such as a will interpretation. All of the cases clearly deal only with matters of approval and accounting of fees and costs paid to a specific category of professional. See generally, Barros v. Barros, 26 Wash. App. 363, 364, 613 P.2d 547, 548 (1980); Judson v. Associated Meats & Seafoods, 32 Wash. App. 794, 796, 651 P.2d 222, 224 (1982); Estate of Carlson, 40 Wash. App. 827, 834, 700 P.2d 771, 776 (1985); In re Estate of Bobbitt, 60 Wash. App. 630, 806 P.2d 254 (1991)(Applying the statute to an heirs petition for court review of fees and expenses); Meryhew v. Gillingham, 77 Wash. App. 752, 754, 893 P.2d 692, 694 (1995)(Applying the statute to approval of any fees and/or request for an accounting); Key Bank of Washington v. Kuboth, 86 Wash. App. 1035 (1997); In re Estate of Ardell, 96 Wash. App. 708, 714–15, 980 P.2d 771, 775 (1999)(Applying the statute to review the personal representative's fees); In re Estate of Jones, 116 Wash. App. 353, 366, 67 P.3d 1113, 1119 (2003), rev'd, 152 Wash. 2d 1, 93 P.3d 147 (2004)(Applied to a right to petition for an accounting of the payment of fees at the end of the probate); In re Estate of Jones, 152 Wash. 2d at 18(In a RCW 11.68.070 removal for mismanagement action, the court noted that

the court could also order an accounting of fees under RCW 11.68.110 if the estate was still open); In re Estate of Harder, 185 Wash. App. 378, 384, 341 P.3d 342, 345 (2015)(When challenging fees paid to a personal representative a petition challenging the fees or request for accounting must be filed) No reported case has ever held that RCW 11.68.110 confers on the court general jurisdiction to resolve a dispute regarding construction of a will or any other dispute not involving fees in a nonintervention probate. If, as the Court of Appeals has ruled, the accounting statute conferred general jurisdiction on the probate court to review the actions of the personal representative it would emasculate the nonintervention powers and make every nonintervention probate subject to court hearing simply by filing a petition for approval of fees. The legislature never intended such a result and the case law does not support such a result.

The Court of Appeals ruling is even contrary to its own previous cases. In re Estate of Ardell, 96 Wash. App. at 716, this Court noted that the submission to the probate court of a single issue, like the approval or accounting of fees, does not invest the court with jurisdiction over the subject matter of the entire estate. As the Court noted in regard to a fee petition filed pursuant to RCW 11.68.110 in In re Estate of Ardell, to approve interim attorney fees:

“Accordingly, the settlement agreement and the [earlier] petition for approval of fees together indicate Mr. Chatham invoked the jurisdiction of the superior court **over the limited issue of fees**. See In re Coates' Estate, 55 Wash. 2d 250, 258, 347 P.2d 875 (1959) (the voluntary submission of a single issue by a nonintervention executor does not invest the court with jurisdiction over the subject matter of the entire estate).(Emphasis added)

In re Estate of Ardell, 96 Wash. App. at 716.

The *Ardell* court also noted that “Unlike petitions for orders regarding the settling of estate affairs, however, applications for approval or setting of fees generally invest the court with jurisdiction **over that issue**. In re Coates' Estate, 55 Wash. 2d at 258; In re Megrath's Estate, 142 Wash. 324, 328, 253 P. 455, aff'd, 142 Wash. 324, 256 P. 503 (1927).” In re Estate of Ardell, 96 Wash. App. at 717.(Emphasis added) In addition, the *Ardell* court held that “[T]he trial court may reassert jurisdiction over a nonintervention estate after the filing of the declaration of completion **in order to review the personal representative's fees under RCW 11.68.070** citing In re Estate of Bobbitt, 60 Wash. App. at 631–34. In re Estate of Ardell, 96 Wash. App. at 15. (Emphasis added) If, as the Court of Appeals has ruled, the filing of the accounting petition conferred broad jurisdiction on the probate court, the remainder of the *Ardell* opinion that painstakingly discusses jurisdiction would have been unnecessary. In re Estate of Ardell, 96 Wash. App. 708 not only did the petitioner seek a

review of the fees but also sought to have the personal representative removed under RCW 11.68.070.

The Court of Appeals ruling is clearly contrary to its own prior rulings and contrary to a number of rulings from this Court and the Court of Appeals. If this ruling is left to stand the nonintervention powers would be rendered useless. If any beneficiary wanted to challenge any decision of the personal representative, according to this ruling, he would only have to file a Petition for Accounting. This would then magically provide the probate court with jurisdiction to hear any issue related to the administration of the probate. This would be a dramatic change in current probate law and would invalidate the nonintervention statutes.

B. The probate court erred in concluding that the TEDRA statute (RCW 11.96A et. seq.) independently conferred upon the probate court general jurisdiction to interpret a will thereby invalidating the nonintervention statutes (RCW 11.68 et. seq.)

The probate court erroneously ruled that the TEDRA statute provided independent jurisdiction to the probate court to hear any matter related to the administration of a probate, including requests to construe a will. This ruling is directly contrary to the legislative intent of the TEDRA statute, is contrary to the opinions of this Court and the Court of Appeals and would effectively abolish any nonintervention powers provided by statute. The Court of Appeals recently affirmed that the

legislature enacted TEDRA to provide for non-judicial dispute resolution methods for probate matters. By its terms the legislature made it clear that TEDRA provisions “shall not supersede, but shall supplement, any otherwise applicable provisions and procedures’ under Title 11 RCW. RCW 11.96A.080(2).” See In re Estate of Harder, 185 Wash. App. at 384. TEDRA does not confer any new jurisdiction on the probate court, it only provides the probate court with procedural mechanisms to resolve disputes over which it has jurisdiction. In re Estate of Kordon, 157 Wash. 2d 206, 137 P.3d 16 (2006), as amended (July 24, 2006).

In Kordon, this Court addressed the issue of whether TEDRA trumped the need to file and serve a citation required by RCW 11.24.020 to invoke the Superior Court’s jurisdiction, a procedure that is no longer required. The trial court had “issued an order admitting the Will to probate, declaring the estate solvent, and appointing [the] personal representative to act without intervention of the court.” Id. at 208. One of the heirs initiated a will contest under chapter 11.24 RCW but neglected to issue a “citation” (then) required by RCW 11.24.020. Instead, the heir simply served her TEDRA petition on the personal representative. Two years later, the personal representative filed a motion to dismiss as a result of the heir’s failure to issue a citation. The trial court dismissed that action for lack of jurisdiction. At the time of appeal, the heir argued that

“the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, eliminates the requirement to issue a citation to parties to an existing probate proceeding.” *Id.* at 211. The Kordon court determined that “TEDRA expressly supplements chapter 11.24 RCW governing Will contests. See RCW 11.96A.080(2).” *Id.* at 211. However, this Court upheld the trial court’s dismissal for lack of jurisdiction holding that “While TEDRA applies to Will contests, it ‘shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title,’ including chapter 11.24 RCW. RCW 11.96A.080(2). A statute supersedes another statute by replacing it and supplements another statute by adding to it.” *Id.* at 212. The probate judge’s finding in the instant case is exactly contrary to Kordon. The probate court effectively ignored the longstanding jurisdictional limitations in nonintervention probates and superseded those requirements by “finding” jurisdiction within the TEDRA statute. To permit the probate judge’s ruling to stand would effectively have TEDRA supersede the nonintervention powers resulting in an elimination of the nonintervention powers.

C. The probate court erred in deciding that it had jurisdiction to interpret the will in this nonintervention probate pursuant to RCW 11.68.070, a statute that permits the court to remove a personal representative for misfeasance, where the Respondent filed a TEDRA action to interpret the will, had not claimed that RCW 11.68.070 applied, did not seek an

evidentiary hearing to determine if there was misfeasance, and was not seeking to remove the personal representative.

One of the ways for the probate court to regain jurisdiction in a nonintervention probate is set forth in RCW 11.68.070; and grants the court jurisdiction to intervene where a personal representative fails to execute his or her duties faithfully. The petition must specifically set forth the misfeasance. If misfeasance is established the probate court may remove the personal representative and appoint a new one. The reasons for removal are generally limited to such defalcations as waste, embezzled, mismanaged, or fraud upon the estate, or that the personal representative is incompetent to act, has wrongfully neglected the estate, or has neglected to perform any acts as such personal representative. In re Estate of Jones, 152 Wash. 2d at 10. Even though Respondent was not seeking a remedy under RCW 11.68.070 and the probate judge had not held any hearing to determine if any misfeasance existed, the probate judge felt that this statute conferred on him jurisdiction to construe the will. This ruling is contrary to the case law of this Court and the Court of Appeals and would invalidate the nonintervention powers in probate. The probate judge erroneously found jurisdiction under the “other reasons” language of RCW 11.28.250. This statute specifies a number of valid reasons for the probate court to assume jurisdiction and remove the

personal representative under RCW 11.68.070, including waste, embezzlement, mismanagement, fraud, incompetency, and neglect. It then provides “for any other cause or reason which to the court appears necessary.” The probate court erroneously interpreted this general language as a “catch all” permitting intervention. VRP 3, Lines 10-12. The probate judge’s analysis was specifically rejected by this Court In re Estate of Jones, 152 Wash. 2d at 9.

VI. CONCLUSION

The issues presented in this appeal will have a profound effect on the process and cost of probates in Washington. It will have a substantial impact on the public. The rulings of the Court of Appeals and the probate judge are directly contrary to the opinions of this Court and the Court of Appeals. It may be expedient to simply ignore the erroneous rulings on the theory that this is just one small estate. However, the ultimate impact on estates, large or small, will be enormous. This Court should grant review of the rulings.

RESPECTFULLY SUBMITTED April 13, 2017.

JERRY MOBERG & ASSOCIATES, PS



JERRY J. MOBERG WSBA No. 5282

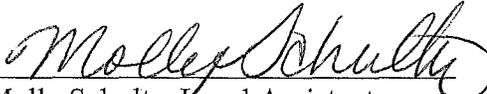
Attorney for the Estate and Personal Representative

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the document to which this is
affixed by legal messenger, postage prepaid, to:

Dwayne C. Fowles
Larson Fowles, PLLC
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DATED April 13, 2017 at Ephrata, Washington


Molly Schultz, Legal Assistant

APPENDICES

APPENDIX A

FILED
FEBRUARY 9, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Estate of)	No. 34051-1-III
)	
KATHRYN JOYCE RATHBONE,)	
)	
Deceased,)	
)	
GLEN L. RATHBONE,)	
)	
Respondent,)	UNPUBLISHED OPINION
)	
v.)	
)	
ESTATE OF KATHRYN JOYCE)	
RATHBONE, TODD RATHBONE,)	
Personal Representative,)	
)	
Appellant.)	

PENNELL, J. — As provided in the will of Kathryn Joyce Rathbone, Todd Rathbone exercised his option to purchase a specific parcel of property, the “Road K Property,” for \$350,000 in lieu of Glen Rathbone inheriting it. Instead of allocating the sale proceeds to Glen Rathbone, Todd Rathbone added the \$350,000 to the residue of the estate, which was to be divided equally between Kathryn Rathbone’s three sons, Todd,

No. 34051-1-III
In re Estate of Rathbone

Glen, and Douglas.¹ Finding it had jurisdiction under both RCW 11.68.070 and the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, the superior court construed this provision in the will to mean that when Todd Rathbone elected to purchase the property, Glen Rathbone should have received \$350,000. Todd Rathbone, also the personal representative of Kathryn Rathbone's estate, appeals the court's finding that it had jurisdiction to hear Glen Rathbone's petition for an order construing will. We affirm.

FACTS

Kathryn Rathbone died testate on January 31, 2013. Ms. Rathbone's nonintervention will left her estate to her three children, Todd, Glen, and Douglas, and named Todd as personal representative. The superior court found the estate to be solvent and ordered it be administered without court intervention.

The provision of Kathryn Rathbone's will pertinent to this appeal, Section 4.1.3, provides in relevant part:

Provided that he satisfies the conditions set forth in Section 1.3.2,² I leave the Road K Property to Glen, subject however to an option in favor of Todd to purchase the same from my estate for the sum of \$350,000 in cash, or for a portion of his share of the estate of equal value, paid at closing.

¹ Douglas Rathbone is not a party to this appeal.

² Section 1.3.2 of the will required Glen to sell all shares of his stock in Rathbone Sales Incorporated to the business.

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Clerk's Papers (CP) at 54. Section 4.1.3 continues:

In the event Glen does not satisfy the conditions of Section 1.3.2 (for any reason, including his having predeceased me), then the Road K Property shall pass with the residue of my estate. At Todd's option, it shall be allocated to his share of the residue, provided that if at a deemed value of \$350,000 it exceeds his share of the residue, he shall pay the estate the amount of such excess in cash upon conveyance of the property to him.

Id.

Todd Rathbone exercised his option to purchase the Road K Property, adding the \$350,000 sale proceeds to the residue of the estate, which was to be divided equally among Todd, Glen, and Douglas. Glen Rathbone noted his objection to this in a letter, indicating his belief that he should receive the \$350,000 in addition to his equal share of the residue. Todd Rathbone responded by letter, stating he alone had the authority to construe the terms of the will. Todd Rathbone further informed Glen Rathbone his letter came "precariously close" to a will contest in violation of the will's no-contest provision. CP at 17.

On December 23, 2014, Todd Rathbone filed a declaration of completion of probate. The notice of declaration of completion of probate informed the heirs that Todd Rathbone "[would] consider any objection to the Completion of Probate as a 'contest' of the Will." CP at 112-13. On January 20, 2015, Glen Rathbone filed a petition for order approving the reasonableness of fees and requiring an accounting based on RCW

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11.68.110. Two days later, on January 22, Glen Rathbone filed a verified petition for order construing will under TEDRA and RCW 11.12.230. Glen Rathbone's TEDRA petition in part alleged Todd Rathbone's proposed distribution of the estate constituted self-dealing and a breach of Todd Rathbone's fiduciary duty.

After a hearing on Glen Rathbone's TEDRA petition, the superior court found it had jurisdiction under RCW 11.68.070 and TEDRA. The court further concluded Todd Rathbone's interpretation of how to allocate the proceeds from the sale of the Road K Property was inconsistent with Kathryn Rathbone's intent, finding Kathryn Rathbone intended that Glen Rathbone receive either the Road K Property or the \$350,000.00 from its sale. The court also awarded Glen Rathbone a total of \$15,769.21 in attorney fees and costs, to be paid by the estate. Todd Rathbone appeals.

ANALYSIS

Todd Rathbone challenges the superior court's jurisdiction to hear Glen Rathbone's petition. This court reviews subject matter jurisdiction rulings de novo. *In re Estate of Harder*, 185 Wn. App. 378, 382, 341 P.3d 342 (2015).

A superior court has limited jurisdiction over nonintervention probate proceedings, and the extent of this jurisdiction depends entirely on statute. *Id.* Once the superior court declares a nonintervention estate solvent, it loses jurisdiction unless the executor or

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another person with statutorily conferred authority properly invokes jurisdiction again.

Id. Here, the superior court entered an order of solvency and Todd Rathbone did not subsequently invoke the court's jurisdiction. The question then is whether Glen Rathbone properly invoked the court's jurisdiction.

Under Washington law, an heir such as Glen Rathbone can invoke the court's jurisdiction over a nonintervention will by filing a petition to approve fees or for an accounting. RCW 11.68.065, .110. The petition must be filed within thirty days after the personal representative files a declaration of completion of probate. RCW 11.68.110. An heir may also invoke jurisdiction by claiming the personal representative failed to faithfully carry out their duties, is subject to removal, or has committed waste, embezzlement or mismanagement. RCW 11.68.070; 11.28.250.

Glen Rathbone filed a petition for an accounting under RCW 11.68.110 within thirty days after Todd Rathbone filed his declaration of completion. This was sufficient to invoke the superior court's jurisdiction. Once jurisdiction was in place, TEDRA could act as a supplement, and the trial court was enabled to assess the manner in which Todd Rathbone had allocated the proceeds from the purchase and sale of the Road K Property. While the superior court did not explicitly acknowledge it was acting under RCW 11.68.110, this is not a basis to disturb the court's ruling on appeal.

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ATTORNEY FEES

The parties both request an award of appellate attorney fees. We exercise our discretion not to award fees.

CONCLUSION

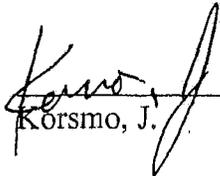
The order of the superior court is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Pennell, J.

WE CONCUR:



Korsmo, J.



Siddoway, J.

APPENDIX B

RECEIVED

FILED

MAR 14 2017

JERRY MOBERG
& ASSOCIATES

MAR 14 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

In the Matter of the Estate of)	
)	No. 34051-1-III
KATHRYN JOYCE RATHBONE,)	
)	ORDER DENYING MOTION
Deceased,)	FOR RECONSIDERATION AND
)	MOTION TO PUBLISH
GLEN L. RATHBONE,)	
)	
Respondent,)	
)	
v.)	
)	
ESTATE OF KATHRYN JOYCE)	
RATHBONE, TODD RATHBONE,)	
Personal Representative,)	
)	
Appellant.)	

THE COURT has considered appellants Todd Rathbone and the Estate of Kathryn Joyce Rathbone's motion for reconsideration of our February 9, 2017, opinion, the appellants' motion to publish the opinion, and the record and file herein.

IT IS ORDERED that the appellants' motion for reconsideration is denied.

IT IS FURTHER ORDERED that the appellants' motion to publish is denied.

PANEL: Judges Korsmo, Siddoway and Pennell

FOR THE COURT:

George Fearing

GEORGE FEARING
Chief Judge

APPENDIX C

13400251-7

WILL
OF
KATHRYN JOYCE RATHBONE

COPY
ORIGINAL FILED

FEB 20 2013

THOMAS R. FALLOQUIST
SPOKANE COUNTY CLERK

ARTICLE 1.
DECLARATIONS AND PERSONAL INFORMATION

1.1 DECLARATION. I, KATHRYN JOYCE RATHBONE, of Moses Lake, Washington, a citizen of the United States of America, declare this to be my Last Will and revoke all prior Wills and Codicils.

1.2 FAMILY. I am widowed. My family now consists of my three (3) children, whose names and dates of birth are: TODD W. RATHBONE, born December 16, 1954; GLEN L. RATHBONE, born January 6, 1957; and DOUGLAS D. RATHBONE, born February 12, 1964.

1.2.1 I have one (1) deceased child, ANNE HOLLOWAY, who was born on December 7, 1949. My daughter, ANNE HOLLOWAY, has two (2) children, whose names and dates of birth are: LISA DIANNE HOLLOWAY, born May 21, 1977, and SHEILA MARIE HOLLOWAY, born December 15, 1979.

1.2.2 All references to children and issue shall include:

- (a) adopted children and issue, but only if the adoption occurred before the child's twenty-first (21st) birthday; and
- (b) issue of my spouse and me born after the date of this Will.

Except as provided in this Will, I make no provision for any of my children who survive me, or issue of children who do not survive me, whether named herein or hereafter born or adopted.

1.3 SPECIAL INSTRUCTIONS.

1.3.1 Joint Tenancy Assets. It is my intent that all of my issue, by right of representation, share in the manner provided in this Will in the nonprobate assets of my estate, regardless of how said assets are titled, owned, or directed to pass outside this Will. Therefore, all nonprobate assets, as defined under Chapter 11.11 RCW, including, without limitation, all payables on death bank accounts, but not including retirement plans, life insurance and annuities, shall be distributed in the same manner as the residue of my estate.

1.3.2 Glen Rathbone's Gifts Conditioned on Sale of Stock. Glen Rathbone (hereinafter "Glen") owns shares of stock (hereafter "Stock") in Rathbone Sales Incorporated (hereafter "Corporation"). He has previously refused offers from the Corporation to purchase his

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-1-

Date 12-27-10

Stock. It is my belief that it is in the best interest of the Corporation and my family that Glen sell all of his Stock to the Corporation pursuant to the terms set forth below. As a result, it is my direction that all of Glen and his issue's gifts under this Will shall be conditioned on him selling all of his Stock to the Corporation pursuant to the terms set forth in this Section. If he does not sell such Stock, the dispositive provisions of this Will shall apply as if Glen and his issue have not survived me.

In order for Glen to avoid being disinherited, he must, within ninety (90) days of the date of my death, unconditionally offer in writing to my Personal Representative to sell all of his Stock, for a price of One Hundred Ninety Thousand Dollars (\$190,000.00), payable Ninety Thousand Dollars (\$90,000.00) cash down payment with the balance payable in sixty (60) equal monthly installments, including interest at the Mid Term Applicable Federal Rate on the date of my death under IRC 1274 et seq. If Glen's offer is accepted by the Corporation, Todd and Doug, the closing shall be within 9 months of the date of my death. The payment of the purchase price to Glen shall be evidenced by a promissory note secured by real estate owned by the Corporation and by Todd and Doug, and payment of the note shall be personally guaranteed by Todd and Doug and their spouses.

I determined the fair market value of his Stock to be Two Hundred Fifty Thousand Dollars (\$250,000.00), discounted from the proportionate share of the value of the Corporation's assets because it does not have a market and is minority stock. The purchase price of One Hundred Ninety Thousand Dollars (\$190,000.00) was computed by me subtracting from the Two Hundred Fifty Thousand Dollars (\$250,000.00) value a draw of Ten Thousand Dollars (\$10,000.00) from the Corporation and a Thirty Thousand Dollar (\$30,000.00) draw that he has received from me, and Twenty-Thousand Dollars (\$20,000.00) for the pick-up truck that he has received from the Corporation. I believe that the purchase price is reasonable, however it is my intention that said purchase price be binding regardless of whether it is a reasonable approximation of the fair market value of the Stock.

If Glen unconditionally agrees to these terms to sell all of his Stock to the Corporation, and is ready and willing to close, he shall have satisfied this condition, even if the Corporation, Todd or Doug does not accept his offer. This condition is deemed satisfied if Glen has sold all of his stock to the Corporation or to his brothers at the time of my death.

If Glen does not survive me, his son will have to satisfy this condition in order for him to receive the cash gift set forth in Section 4.1.5.

ARTICLE 2.
APPOINTMENT OF FIDUCIARIES

2.1 DESIGNATION OF PERSONAL REPRESENTATIVE. I appoint as Personal Representative of my Estate:

2.1.1 My son TODD W. RATHBONE or if he declines or is unable to serve as Personal Representative at any time, my son DOUGLAS D. RATHBONE shall be my Personal Representative.

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2.1.2 My Personal Representative named in this Will need not give bond in any jurisdiction.

2.2 DESIGNATION OF TRUSTEE. I appoint as Trustee of each of the trusts created under this Will TODD W. RATHBONE. If TODD W. RATHBONE is unable or unwilling to serve at any time, then DOUGLAS D. RATHBONE shall serve as Trustee.

ARTICLE 3.

DIRECTION FOR PAYMENT OF TAXES AND EXPENSES

3.1 TAXES; SOURCE OF PAYMENT. Except as provided elsewhere in this Will, all estate, inheritance and succession taxes imposed upon my taxable Estate and payable by reason of my death, with respect to property passing under this Will or otherwise, shall be equitably apportioned among the persons interested in my Estate to whom such property is or may be transferred or to whom any benefit accrues in the manner provided in RCW 83.110A.

3.2 ADMINISTRATIVE EXPENSES. Any portion of the residue of my Estate that qualifies for the charitable deduction shall abate last with respect to nondeductible debts, expenses, and taxes. My Personal Representative is authorized to apply the deductions allowable for claims, expenses, indebtedness, taxes, and losses, as contemplated by Sections 642, 2053, and 2054 of the Code to either income tax or estate tax in such manner as to minimize the total state and federal income and death taxes payable by my Estate or as a result of my death. Such allocation may be made regardless of whether such charges shall be charged to income or expenses.

ARTICLE 4.

DISPOSITION OF MY PROPERTY

4.1 SPECIFIC GIFTS.

4.1.1 Personal Effects. I give to those of my sons who survive me by thirty (30) days my personal effects (except motor vehicles and boats). This property, if two or more of them survive me by thirty (30) days, shall be divided among them by my Personal Representative, in as nearly equal shares as may be practicable, having due regard for their personal preferences. My Personal Representative may sell any of such property and distribute the proceeds to equalize the shares. In the event that there is a written list attached to this Will, signed by me and which describes certain items of personal effects and the recipients of such property, my personal effects shall be distributed as provided above except to the extent superseded by such list. My Personal Representative shall be discharged from distributing personal effects so given to any minor child when the child or any adult having custody of the child delivers a written receipt to my Personal Representative. Taxes shall not be apportioned to this gift. Glen shall not receive a share of my personal effects if he does not satisfy the condition in Section 1.3.2.

4.1.2 Real Property -- E Broadway Extended. I give in equal shares to my sons TODD W. RATHBONE and DOUGLAS D. RATHBONE any and all interest which I may own at the time of my death in the building located at 3860 East Broadway Extended, Moses Lake, Washington, including the surrounding seven-plus (7+) acres. If either of my said sons is not

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living at the time of my death, his share of this gift shall pass to his issue by right of representation, and, if he has no surviving issue, it shall pass to the survivor of said sons.

4.1.3 Real Property – Road K NE. I own approximately 1.88 acres of land which includes a home at 4982 Road K NE, Moses Lake, Washington. In addition, there is an contiguous parcel of pasture with a barn, which is approximately 38 acres. These two parcels together shall be referred to herein as the Road K Property. Provided that he satisfies the conditions set forth in Section 1.3.2, I leave the Road K Property to Glen, subject however to an option in favor of Todd to purchase the same from my estate for the sum of \$350,000 in cash, or for a portion of his share of the estate of equal value, paid at closing. Said option must be exercised no later than nine months after the date of my death, and the resulting purchase closed, no later than twenty four months after the date of my death.

In the event Glen does not satisfy the conditions of Section 1.3.2 (for any reason, including his having predeceased me), then the Road K Property shall pass with the residue of my estate. At Todd's option, it shall be allocated to his share of the residue, provided that if at a deemed value of \$350,000 it exceeds his share of the residue, he shall pay the estate the amount of such excess in cash upon conveyance of the property to him.

4.1.4 Stock in RATHBONE SALES, INC. I give in equal shares to my two sons, TODD W. RATHBONE and DOUGLAS D. RATHBONE, any and all interest which I may own at the time of my death in RATHBONE SALES, INC. If either of my sons is not living at the time of my death, his share of this gift shall pass to his issue by right of representation, and, if he has no surviving issue, it shall pass to the survivor of them.

4.1.5 Cash Gifts. I give to my granddaughters, LISA DIANNE HOLLOWAY and SHEILA MARIE HOLLOWAY, One Hundred Thousand Dollars (\$100,000.00) each. If either Lisa Dianne Holloway or Sheila Marie Holloway does not survive me, her gift shall pass instead to her issue by right of representation. . I also give to Glen's son One Hundred Thousand Dollars (\$100,000.00) , but only if Glen does not survive me and the condition in Section 1.3.2 is satisfied. If Glen does not survive me, this is the only share of my estate that Glen's son shall receive. These gifts shall be distributed outright except as provided in Section 4.3.

4.2 RESIDUE. The residue of my estate shall be allocated in equal shares to my sons then living, provided that if any son of mine that is not then living, but leaves issue then living, such issue shall take the share such deceased son would have taken if living, by right of representation. Each share shall be distributed outright unless required to be held in trust under Section 4.3 of this Will. No residual share shall pass to the children of my deceased daughter, Anne Holloway, or to the issue of Glen if he does not survive me. In addition, no share shall pass to Glen if he has not satisfied the condition set forth in Section 1.3.2 above.

4.3 CONTINGENT TRUST FOR CERTAIN BENEFICIARIES. A liquidating distribution upon termination of a trust or my Estate to any beneficiary (1) who has not attained the age of twenty-five (25) years (the "required age"), or (2) who may be otherwise incapacitated, may, in the sole and absolute discretion of my Personal Representative or the Trustee be held as a separate trust for the exclusive use

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and benefit of that person until such person shall attain the required age or until such person is no longer incapacitated. For so long as the trust shall exist, the Trustee shall hold, manage, and make distributions of income and principal to or for the support, maintenance, health, and education of the beneficiary. However, the Personal Representative or Trustee, may in their sole discretion withhold any distribution from the Estate or Trust to a beneficiary under the circumstances set forth in Section 5.3.4. Upon the death of the beneficiary, the trust shall terminate and be paid to the beneficiary's estate.

ARTICLE 5.
ADMINISTRATIVE PROVISIONS

5.1 PROTECTIVE PROVISIONS. Neither the income nor the principal of the trusts created by this Will shall be transferable for value by any beneficiary, whether income beneficiary or remainderman, either by assignment or by any other method, and the same shall not be subject to be taken by his creditors or by any representative thereof by any process whatsoever, including, but not limited to, proceedings in bankruptcy. This provision shall not limit the exercise of any power of appointment or the right to disclaim.

5.2 POWERS AND DUTIES OF THE TRUSTEE.

5.2.1 In addition to the duties, powers, and rights imposed and granted by law, my Personal Representative and the Trustee of every trust under this Will shall have the following duties, powers, and rights:

5.2.2 Determine the allocation of receipts and expenses between income and principal in accordance with the Washington Principal and Income Act; provided, there is reserved to the Trustee the power to make such equitable allocation as may nevertheless be contrary to the terms of the Act with respect to allocations relating to underproductive property, depreciation, bond premium and discount, corporate distributions, and the operations of a trade, business, or farm, except that Trustee may not take any action regarding such equitable allocation that may impair any marital deduction gift contained in this instrument.

5.2.3 Merge or combine any trust hereunder with a trust or trusts otherwise established for the same person or class of persons and with substantially the same provisions and purpose and thereafter to administer and distribute such combined estate as one.

5.2.4 Manage any business or other enterprise, including any farm or ranch interest, in any Trust governed by this instrument and in so doing shall have all powers, privileges, and authority with respect thereto that the Trustee has by law and this instrument in respect to business interests, specifically including the provisions of Subsections (21), (22), and (25) of RCW 11.98.070.

5.2.5 Take such action as it deems best to collect the proceeds of life insurance payable to the Trustee, paying the expenses of collection from the Trust Estate, but the Trustee need not enter into or maintain any litigation to enforce payment on any policy until indemnified to its satisfaction against all expenses and liabilities to which it might be subjected. The Trustee may

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release the insurance company from liability under any policy and may make any compromise that the Trustee deems proper.

5.2.6 Upon the written request of the Personal Representative of my Estate, the Trustee may, but shall not be required to, pay to such Personal Representative from my share of life insurance proceeds received by the Trustee, that amount which bears the same ratio to the total of all death taxes (including interest and penalties) due as the result of my death, as the value of my share of such life insurance proceeds bears to the value of my total gross Estate. The Trustee shall have no duty to determine the propriety of such request or to see to the application of the amount paid over. The Trustee need not withhold any distribution in anticipation of such a request.

5.2.7 Purchase securities or other property, real or personal, from the Personal Representative of my Estate or of the estate of any beneficiary, and also to make loans or advancements, secured or unsecured, to the Personal Representative, even though the Trustee is such Personal Representative.

5.2.8 Except to the extent fundamentally inconsistent with the provisions of my Will and my estate plan, to disclaim, in whole or in part, any devise or legacy or any interest in any trust provided for my benefit under the Will of any person or under any trust instrument in the manner provided by law. Specifically, I do not authorize a disclaimer of my share of my Husband's estate that would have the effect of depriving Glen (or his son) of his inheritance under this Will provided that he has satisfied the conditions of Section 1.3.2.

5.2.9 Except as provided in RCW 11.108.020, take any action and make any election to minimize the tax liabilities of any trust held under this instrument and its beneficiaries, to allocate the benefits among the various beneficiaries, and make adjustments in the rights of any beneficiaries, or between the income and principal, compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others, all of such powers being in the Trustee's absolute discretion.

5.2.10 Exercise the powers given the Trustee in this instrument and by law only in the Trustee's fiduciary capacity; and notwithstanding any other provisions of this instrument, the Trustee shall have no power under any such provision to enlarge or shift any of the beneficial interests under this instrument except as an incidental consequence of the discharge of the Trustee's fiduciary duties.

5.2.11 The Trustee may continue any trust beyond its termination for a time reasonably necessary to conclude the administration of the trust, to pay expenses of termination, and to distribute the trust property to those entitled thereto.

5.2.12 The Trustee and Personal Representative, in making or preparing to make a liquidating partial or final distribution, will have the authority to: (a) partition any asset or class of assets and deliver divided and segregated interests to the beneficiaries; (b) sell any asset or

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class of assets (whether or not susceptible to partition in kind) and deliver to the beneficiaries a divided interest in the proceeds of sale and/or divided or undivided interests in any note and security arrangement taken as part of the purchase price; and/or (c) deliver undivided interests in an asset or class of assets to the beneficiaries subject to any indebtedness which may be secured by the property.

5.2.13 A successor Trustee will have the authority vested in a Trustee by original appointment under this trust instrument. A successor Trustee will not be obligated to examine the accounts, records, and acts of the previous Trustee or Trustees nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

5.2.14 Trustee's Right to Designate a Successor Trustee. Any person who serves as Trustee by original appointment will have the authority to:

- (a) Appoint that person's successor as Trustee, which appointment will supersede the order of succession herein prescribed.
- (b) Appoint a different order of succession, which appointment will supersede the order of succession herein prescribed.
- (c) Provide that a designated successor, upon assumption of his, her, or its service as Trustee, will have the right to appoint his, her, or its successor as Trustee (or a different order of succession).
- (d) Provide such conditions prerequisite to service upon a successor Trustee (such as the requirement of bond) or that a designated successor as Trustee may do so as to any successor which he, she, or it selects.

To be binding and effective, a designation of successor Trustee must be in writing and must be acknowledged. The instrument of designation must be executed during the time that person is actually serving as Trustee and prior to the time that person ceases to serve as Trustee. If more than one Trustee is serving, this authority may only be exercised by all Co-Trustees acting jointly.

5.3 INDEPENDENT TRUSTEE.

5.3.1 Appointment. One Independent Trustee or Personal Representative may be appointed by an acting Trustee or Personal Representative for any Trust. Neither my spouse nor any descendant of mine, nor Beneficiary eligible to receive income and/or principal of the Trust, nor any person who or which is a related or subordinate party within the meaning of Code Section 672(c) with respect to any of the foregoing or to any appointing person, may serve as an Independent Trustee or Personal Representative hereunder. Once appointed, the Independent Trustee or Personal Representative may not be removed. An Acting Independent Trustee or Personal Representative shall have the same power to appoint successor or additional Independent Trustees or Personal Representatives in the manner provided above in 5.2.14.

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5.3.2 Authority. The Independent Trustee alone will have the sole discretion and authority as to the following matters:

- (a) Amending a Trust in order to accomplish its purposes.
- (b) Exercising the powers specifically referenced for the Independent Trustee in this Will.
- (c) Limit distributions as provided in Section 5.3.4.

5.3.3 Responsibility. No Trustee or Personal Representative shall be liable to anyone for anything done or not done by any other Trustee or by any Beneficiary. The Trustee shall not have any fiduciary responsibility to observe, monitor, or evaluate the actions of the Independent Trustee or Personal Representative and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over the Trust, even if an Independent Trustee may be guilty of a gross violation of fiduciary duties hereunder. The Independent Trustee or Personal Representative shall not have any fiduciary responsibility to observe, monitor, or evaluate the actions of the Trustee and shall not be liable to any party for the failure to seek to remedy a breach of trust, or in a recurring situation to request instructions from a court having jurisdiction over the Trust, even if a Trustee may be guilty of a gross violation of fiduciary duties hereunder. Each Trustee and Independent Trustee shall be fully indemnified by the Trust Estate against any claim or demand by any Trust Beneficiary or Trust creditor, except for any claim or demand based on such Trustee's willful misconduct or gross negligence proved by clear and convincing evidence.

5.3.4 Limitation on Distributions. If the Independent Trustee or Personal Representative shall, in the exercise of its discretion, determine that circumstances exist making it clearly contrary to the best interests of a Grandchild beneficiary to receive a distribution of principal or income which is otherwise required to be made hereunder, including a terminating distribution, the Independent Trustee or Personal Representative may refrain from making all or any part of such distribution until the Independent Trustee shall determine that such circumstances no longer exist. Circumstances in a Beneficiary's life which would justify exercising that discretion include, without limitation, being a defendant in serious litigation or being involved in bankruptcy proceedings or similar financial or matrimonial difficulties; or being physically, mentally, or emotionally unable to properly administer the assets to be distributed. Specifically, I desire that this provision apply to Jason Rathbone. This paragraph shall not apply to any trust which holds Subchapter S stock.

5.4 NO CONTEST PROVISION. My Personal Representative and Trustee shall have the authority to construe this Will and trusts and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my Estate or any trust with the cost of a litigated proceeding to resolve questions of law or fact.

As an exception to these rules, my Personal Representative or Trustee may originate a proceeding (including mediation and binding arbitration) to construe this instrument or to resolve any disputed claim

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or contest. My Trustee or Personal Representative may give written consent to any trust beneficiary or to any third party to originate a proceeding (including mediation and binding arbitration) to construe this instrument or to resolve any disputed claim or contest.

Except as above provided, any person, agency or organization who has, or who may have, a present, future, or contingent interest in this Will or any trust set forth herein or in the trust property, will by his contest (i.e., a contest, dispute or other legal proceeding commenced without the consent of my Personal Representative or Trustee) forfeit any interest which he, his issue has or may have. My Estate shall be distributed and any trust will continue thereafter as if the person, agency, or organization were deceased or dissolved. I specifically desire that my son, Glen, and his children, do not contest, challenge, or harass my Personal Representative and Trustees. The term "contest" identifies any action or activity originated (or caused to be originated) in a court of any jurisdiction without the permission of my Personal Representative or Trustee, including:

5.4.1 A petition to construe the trust instrument (including this no-contest restriction);

5.4.2 A claim to establish or enlarge a claimant's beneficial interest in my Estate or any trust or any property of the estate or trust, including rights to distributions of trust income and trust principal;

5.4.3 A petition to construe, dispute, or contest the Last Will and testament of any person who prescribes a testamentary contribution to the trust or another trust which prescribes a disposition of property to the trust;

5.4.4 A claim which seeks to impress a constructive or resulting trust upon this trust or its property, or to establish ownership under a theory of reimbursement.

5.5 DEFINITIONS.

5.5.1 Unless some other meaning and intent is apparent from the context, the plural shall include the singular and vice versa, and masculine, feminine, and neuter words shall be used interchangeably.

5.5.2 The term "incapacitated" shall mean incapacitated as to the person or estate under RCW 11.88.010 (in the opinion of the Personal Representative or Trustee based upon reasonable evidence).

5.5.3 The term "issue" shall have the meaning set forth in RCW 11.02.005.

5.5.4 The term "I.R.C." shall mean the Internal Revenue Code.

DATED this 27 day of December, 2010.


KATHRYN JOYCE RATHBONE

Initials GRG

Date 12-27-10

