

No. 94356-7

THE SUPREME COURT
FOR THE STATE OF WASHINGTON

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' SUPPLEMENTAL BRIEF

Jerry J. Moberg WSBA No. 5282
Jerry Moberg & Associates, PS
Attorney for Appellants
124 3rd Ave SW
P.O. Box 130
Ephrata, WA 98823
(509) 754 2356

TABLE OF CONTENTS

I. IDENTITY OF PETITIONERS1

II. CITATION TO COURT OF APPEALS DECISION.....1

III. ISSUES PRESENTED FOR REVIEW1

IV. STATEMENT OF THE CASE.....3

V. ARGUMENT7

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 probate7

**1. RCW 11.68.110 is limited to an approval of
fees paid to the personal representative and
others or an order requiring an accounting
of those fees paid.7**

**2. Even if RCW 11.68.110 provides for
a broader accounting it does not confer any
jurisdiction on the court to substitute its
judgment for that of the personal
representative on matters of discretion.....11**

B. The TEDRA statute (RCW 11.96A et. seq.) does not confer
upon the probate court general jurisdiction to interpret a will
thereby invalidating the nonintervention statutes.14

VI. CONCLUSION.....16

TABLE OF AUTHORITIES

Cases

<i>Davis v. Dep't of Licensing</i> , 137 Wash.2d 957, 977 P.2d 554 (1999).....	9
<i>Dean v. McFarland</i> , 81 Wash.2d 215, 500 P.2d 1244 (1972).....	9
<i>In re Estate of Ardell</i> , 96 Wn. App. 708, 980 P.2d 771 (1999).....	13
<i>In re Estate of Bobbitt</i> , 60 Wn. App. 630, 806 P.2d 254 (1991).....	13, 14
<i>In re Estate of Harder</i> , 185 Wn. App. 378, 341 P.3d 342 (2015).....	14
<i>In re Estate of Jones</i> , 152 Wn.2d 1, 93 P.3d 147 (2004).....	9, 13
<i>In re Estate of Kordon</i> , 157 Wn.2d 206, 137 P.3d 16 (2006).....	15
<i>Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.</i> , 159 Wn.2d 868, 154 P.3d 891 (2007).....	9
<i>Sloans v. Berry</i> , 189 Wn. App. 368, 358 P.3d 426 (2015).....	15

Statutes	
RCW 11.12.230	5
RCW 11.68.010	2
RCW 11.68.070	3, 7
RCW 11.68.100	8
RCW 11.68.110	2,5, 6, 7, 8, 13, 14, 15, 17, 18, 19, 20
RCW 11.69.110	17
RCW 11.96A.010.....	18
RCW 11.96A.080(2).....	18
RCW 11.96A.090 (2).....	6
Title 11 RCW.....	18

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 opinion effectively eliminates the nonintervention rights provided in most probate actions. 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. The Court of Appeals ruling creates a new exception

to nonintervention that, if upheld, will basically undermine the right of nonintervention and return probate to the costly and burdensome process that it is in many other states. Based on the Court of Appeals ruling an unhappy beneficiary would 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. 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.

The Court of Appeals erroneously concluded that:

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. (Empasis added)

The Court of Appeals was correct that the filing a petition for accounting invokes the court's limited jurisdiction to review the accounting regarding payment of attorney fees and appraiser fees. It was mistaken in concluding that the filing of the petition gave the superior court more general jurisdiction over issues regarding the interpretation of

the will. The Court of Appeals held that TEDRA was an appropriate process to follow to litigate the Petition for Accounting but use of TEDRA procedures cannot increase the court's jurisdiction in any substantive manner.¹ Furthermore, no TEDRA action was filed in regards to the Petition for Approval or fees or for an order on accounting. The issue that is squarely before this court is whether a Petition for approval of fees and for an accounting invokes the general jurisdiction of the Superior Court to construe the Will in a nonintervention probate.²

IV. STATEMENT OF THE CASE

Kathryn Joyce Rathbone died on January 31, 2013. In her will she named her son Todd Rathbone (Todd) 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 Rathbone (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:

¹ The Court does not have to reach the issue of whether TEDRA is a proper procedure to use in Petitions for Accounting because in this case Respondent did not file a TEDRA action for accounting. He filed a more traditional Petition.

² The Court of Appeals did not address the remaining issues of whether TEDRA can confer substantive general jurisdiction on the court or whether RCW 11.68.070 (the PR removal statute) confers general jurisdiction on the court to construe a will. Presumably the Court of Appeals determined that those claims lacked merit.

“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)

In addition the decedent made very specific provisions about GLEN’s right to inherit the real property that included two parcels collectively referred to as the “Road K Property. CP 25 (¶2). Section 4.1.3. of the Will provides, in pertinent part:

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.” * * * (Emphasis added). CP 25 (¶4).

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 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.” CP 25 (¶5).

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 TEDRA action for an Order Construing Will. The Petition stated that it was “based upon RCW 11.96A and RCW 11.12.230.” (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 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 7.³ The trial court specifically addressed the argument whether RCW 11.68.110 could 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.

³ The RCW 11.68.110 petition was filed as a petition in the probate court. RCW 11.96A.090 (2) requires that “[a] judicial proceeding under this title [TEDRA]

V. ARGUMENT

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.

1. RCW 11.68.110 is limited to an approval of fees paid to the personal representative and others or an order requiring an accounting of those fees paid.

RCW 11.68.110 establishes a summary procedure for closing nonintervention estates. If the Personal Representative elects to follow this streamlined procedure he must file a declaration regarding the estate.

RCW 11.68.110 provides, in relevant part:

- (1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

[(a) - (f) relate to matters that are not in dispute in this case]

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

must be commenced as a new action.” No new action was commenced.

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee 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.

(3) [Related to notice that is not an issue in this case]

If the personal representative does not seek court approval for the personal representative's fee, the attorney fees, appraiser fees or accountant's fees and files the declaration in the form proscribed then any heir has the right under section (2) to seek an order to require court approval or an accounting or both. The legislature, in limiting the court's jurisdiction to a review of fees or the ordering of an accounting, recognized the nonintervention powers of the personal representative on all other matters.

The Court of Appeals opinion seems to suggest that the part of the statute that permits "an accounting" would permit an entire review of the decisions made by the personal representative including his interpretation

of any will, trust or contract. The statute does not provide such a broad power. Arguably, it only permits an order of approval of the fees or an accounting of the fees.

The major focus of subsection (2) is the approval of fees paid to the personal representative, lawyers, appraisers and accountants. The legislature provided a procedure for beneficiaries to challenge these payments. The general rules of statutory construction make it clear that subsection (2) of the statute would apply to the approval of fees paid or the accounting of fees paid. The rule of *eiusdem generis* requires that general terms appearing in a statute in connection with specific terms are to be given meaning and effect only to the extent that the general terms suggest similar items to those designated by the specific terms. The specific terms modify or restrict the application of general terms, where both are used in sequence. *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.3d 147, 152 (2004)(The rule of *eiusdem generis* states that when general terms are in a sequence with specific terms, the general term is restricted to items similar to the specific terms) See also, *Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.*, 159 Wn.2d 868, 882, 154 P.3d 891, 899 (2007); *Davis v. Dep't of Licensing*, 137 Wash.2d 957, 970, 977 P.2d 554 (1999); *Dean v. McFarland*, 81 Wash.2d 215, 221, 500 P.2d 1244 (1972). Applying the rule to this case the more general term in the statute referring

to an accounting would be restricted by the more particular terms of the statute referring to payment of fees paid to the personal representative, attorneys, accountants or appraisers. Subsection (g) of the statute would read as follows:

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting [**of the fees**] to the court for approval.

Subsection (2) of the statute would read:

Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee 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 [**of the fees paid or to be paid to the personal representative, lawyers, appraisers or accountants**], 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.

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.⁴

2. Even if RCW 11.68.110 provides for a broader accounting it does not confer any jurisdiction on the court to substitute its judgment for that of the personal representative on matters of discretion.

If the Court determines that RCW 11.68.110 provides for an order for an accounting beyond fees paid, it certainly does not confer on the court jurisdiction to construe the will or make other decisions that are discretionary for the personal representative. Nonintervention powers confer on the personal representative the right to make all discretionary decisions related to the probate.

⁴ This is precisely the argument that Glen makes in his answer to the Petition for Review. He writes, "simply by filing a petition under RCW 11.68.110, every nonintervention probate is subject to court hearing, and the probate court has the jurisdiction to review the actions of the personal representative."

The Decedent gave Todd the authority to interpret the will. **She did so to avoid exactly the challenge that the Estate now faces from Glen.** The decedent specifically directed that “My Personal Representative and Trustee **shall have the authority to construe this Will . . . and to resolve all matters pertaining to disputed issues or controverted claims.**” (Emphasis added) The will provided that Todd had the right to purchase the property in question “from the Estate.” If he elected to allocate the property to his share of the residue then he was required to “pay the Estate” the value of the property. Todd determined that since the purchase was from the estate the proceeds should properly become part of the estate residue. The will did not provide any specific direction to the contrary and Todd had the complete authority to resolve this disputed issue. Furthermore, the will provided that at Todd’s option, he could allocate the property to his share of the residue, as long as he paid to the estate the established value of the property. Todd’s interpretation of the will was lawful and reasonable and well within the authority that he had as a nonintervention personal representative. His interpretation did not contravene any specific statutory mandate. This is exactly the type of decision that is contemplated by nonintervention rights.

The court lacked any jurisdiction to substitute its interpretation of the will for that of the personal representative. Under Glen’s theory a

request for an order for an accounting pursuant to RCW 11.68.110 would provide the court with jurisdiction to review and overrule every discretionary decision made by the nonintervention personal representative. If that were true the nonintervention statutes would be superfluous.

Case law makes it clear that invoking the authority of RCW 11.68.110 confers limited jurisdiction on the court to decide the matter of fees. *In re Estate of Bobbitt*, 60 Wn. App. 630, 634, 806 P.2d 254, 256 (1991) is instructive. The *Bobbitt* court made it clear that a RCW 11.68.110 petition to review fees granted the court very limited jurisdiction to review and approve the fees. The Court noted that before the adoption of RCW 11.68.110 the court had no jurisdiction in a nonintervention will except on a showing of faithlessness. RCW 11.68.110 expanded that jurisdiction slightly to review fees paid. *Id.* at 633. In accord, *In re Estate of Ardell*, 96 Wn. App. 708, 980 P.2d 771 (1999)(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. Applications for approval or setting of fees generally invest the court with jurisdiction over that issue); *In re Estate of Jones*, 152 Wn.2d 1, 9, 93 P.3d 147, 151 (2004)(Superior court jurisdiction over nonintervention probate is statutorily limited citing

In re Estate of Bobbitt); *In re Estate of Harder*, 185 Wn. App. 378, 384, 341 P.3d 342, 345 (2015).

If, as the Court of Appeals has ruled, the fee 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 decision of the Court of Appeals here is directly contrary to the time honored principle of nonintervention established by this Court.

B. The TEDRA statute (RCW 11.96A et. seq.) does not confer upon the probate court general jurisdiction to interpret a will thereby invalidating the nonintervention statutes.

Glen also argues utilizing the TEDRA procedures to obtain an order for an accounting under RCW 11.68.110 opens the door to a complete review by the Court of the decisions made by the nonintervention personal representative. He is mistaken. First of all, the issue is not squarely before the Court. It is undisputed in this record that Glen has not filed a TEDRA action in connection with his petition for an accounting of the fees. The TEDRA action makes no reference to the RCW 11.69.110 petition, seeks no relief under that statute and makes no

argument in regards to that statute. There is simply no TEDRA action filed in connection with the RCW 11.68.110 Petition.

Furthermore, TEDRA does not confer any substantive jurisdiction on the Court. TEDRA simply provides for nonjudicial methods to litigate probate matters over which court otherwise has jurisdiction. RCW 11.96A.010. TEDRA shall not supersede, but shall supplement, any otherwise applicable provisions and procedures under Title 11 RCW. RCW 11.96A.080(2). TEDRA does not independently 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 Wn.2d 206, 137 P.3d 16 (2006).

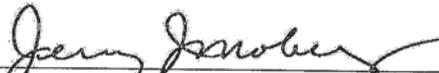
Glen argues that since TEDRA defines the term “Matter” to include among other things “the construction of wills” the statute magically confers independent jurisdiction on the court to hear its Petition to construe the will in this case, regardless of the jurisdictional limitations of nonintervention probates. This argument has been rejected by the courts. *In re Estate of Kordon* at 211; In accord, *Sloans v. Berry*, 189 Wn. App. 368, 374, 358 P.3d 426, 429 (2015)(TEDRA shall not supersede, but shall supplement, any otherwise applicable provision) TEDRA does not confer jurisdiction, it only provides a mechanism to litigate a dispute.

VI. CONCLUSION

This is a nonintervention probate. The personal representative was give explicit authority to interpret the will and resolve all disputes in order to avoid costly litigation in this estate. RCW 11.68.110 does not confer jurisdiction on the court to “interpret the will” or substitute its interpretation for that of the personal representative. TEDRA does not otherwise confer jurisdiction on the court where none previously exists. The decedent, Katherine Rathbone, was concerned that her son Glen would interfere with the probate of her estate resulting in costly litigation. She was prophetic. This court should uphold the nonintervention rule to avoid costly disputes like this in probates. The purpose of the nonintervention rule was to keep the courts out of the probate in order to keep the costs of probate reasonable. The Court should reverse the Court of Appeals and dismiss the TEDRA petition for want of jurisdiction.

RESPECTFULLY SUBMITTED September 1, 2017.

JERRY MOBERG & ASSOCIATES



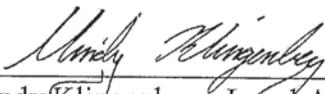
JERRY J. MOBERG WSBA No. 5282
Attorney for the Estate and Personal Representative

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the document to which this is
affixed by U.S. Mail, postage prepaid, to:

Dwayne C. Fowles
Larson Fowles, PLLC
821 E Broadway Ave, Ste 8
Moses Lake, WA 98837

DATED September 1, 2017 at Ephrata, Washington



Mindy Klingenberg, Legal Assistant

JERRY MOBERG & ASSOCIATES, P.S.

September 01, 2017 - 4:12 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94356-7
Appellate Court Case Title: In Re the Estate of: Kathryn Joyce Rathbone
Superior Court Case Number: 15-4-00010-5

The following documents have been uploaded:

- 943567_Briefs_20170901154648SC077981_0856.pdf
This File Contains:
Briefs - Appellants Supplemental
The Original File Name was Appellants Supplemental brief.pdf

A copy of the uploaded files will be sent to:

- deniese@larsonfowles.com
- dwayne@larsonfowles.com
- mrathbone@jmlawps.com

Comments:

Sender Name: Mary Rathbone - Email: mrathbone@jmlawps.com

Filing on Behalf of: Gerald John Moberg - Email: jmoberg@jmlawps.com (Alternate Email:)

Address:
PO Box 130
Ephrata, WA, 98823
Phone: (509) 754-2356

Note: The Filing Id is 20170901154648SC077981