

No. 63993-5-I

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

WHITNEY HINES, former co-Attorneys-in-Fact for Carol Crull

Appellant,

v.

UNLIMITED GUARDIANSHIP SERVICES OF WASHINGTON,
Successor Trustee of the Ford Crull, Sr. Testamentary Trust and Successor
Attorney-in-Fact for Carol Crull

Appellee.

APPELLANT'S BRIEF

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I. IDENTITY OF RESPONDENT

The Appellant in this case, Whitney Hines, was one of the Respondents at the trial court level below. Her brother, Mr. Ford Crull, Jr., although a Respondent below, has not filed an appeal in this matter.

II. INTRODUCTION

Standards of review control the parameters by which this Court may review and critique decisions of trial courts below. An “abuse of discretion” standard of review admittedly affords this Court the least amount of room to reverse a trial court’s decision. In other words, a trial court that renders a decision, a decision that is subject to an abuse-of-discretion standard of review, is afforded the most discretion in rendering that decision. But an “abuse of discretion” standard is still a meaningful standard, and it requires this Court, sitting in judgment of a trial court’s decision, to determine whether or not the trial court’s decision was not erroneous or based on untenable grounds. It means that this Court must not only find something in the record below upon which the trial court could have based its decision, but that the “something” upon which the trial court so based its decision was reasonable.

There is no dispute that the trial courts of this state can and do treat verified petitions as evidence in proceedings before them. But including a bare allegation of fact or, worse yet, a mere conclusion of law in verified

petition gives the statement no more credibility or measure of truthfulness than if it appeared unverified in some other pleading. In other words, it does not matter if a statement such as “John defrauded Marc” appears in a verified petition, declaration or just as a bald statement in a pleading, the result is the same. Without evidence, the statement is nothing more than an unsupported conclusion of law. Verified or not, and even under an abuse-of-discretion standard of review, it is insufficient for a trial court to conclude that John, in fact, defrauded Marc. But it was this flawed reliance, however, upon which the trial court granted the Unlimited Guardianship of Washington’s Petition below (the “Petition”); and for the reasons set forth below, this reliance was misplaced. This Court should therefore reverse the trial court’s decision and remand this matter back to the trial court for further proceedings consistent with the arguments and authority below.

III. BACKGROUND

A. The Parties and the Properties.

Appellant Whitney Hines (“Hines”) is the daughter of Carol Crull (“Mrs. Crull”). Mrs. Crull is an incapacitated person and has been so since 2002. CP (Clerk’s Papers) 28-29. Prior to the fall of 2008, Hines and her brother, Ford Crull, Jr. (“Mr. Crull”), served as co-Trustees of a testamentary trust established by their late father for their mother, Mrs.

Crull (the "Trust"). CP 28-29, 30. Besides serving as co-Trustees of the Trust, Hines and Mr. Crull also served as co-Attorneys-in-Fact under Mrs. Crull's General Durable, and Medical Powers of Attorney. CP 28-29, 30. In these two (2) capacities, Hines and Mr. Crull, were responsible for taking care of their mother's physical, financial and mental needs, and for otherwise maintaining her in a manner of living to which she had grown accustomed.

By way of two (2) residence trusts (the "Residence Trusts"), Mrs. Crull and her late husband left two (2) pieces of real property to Hines and Mr. Crull. To their daughter Hines, Mrs. Crull and her late husband ultimately left a personal, beach-front residence located on Bainbridge Island, Washington (the "Island Home"). To their son, Mr. Crull, Mrs. Crull and her late husband left a personal residence located in the Madison Park neighborhood of Seattle, Washington (the "Seattle Home"). CP 28.

Besides the Island Home and Seattle Home, there is one other piece of real property pertinent to this appeal. That property is a small cottage located immediately adjacent to the Island Home (the "Cottage"). The Cottage is not part of the Island Home, but instead rests on its own separate lot/taxable parcel and, to this day, remains Mrs. Crull's sole and separate property. For years that home has been used as a rental as Mrs.

Crull has virtually spent no time residing there (that is at least until 2008), instead preferring to reside in the Island Home next door. CP 29.

The residence trusts by which Mrs. Crull and her husband left the Island Home and Seattle Home to Hines and her brother respectively were “qualified” residence trusts under Internal Revenue Code §2702(a). Consistent with that designation, the residence trusts provided that, even upon transfer of title to Hines, Mrs. Crull would be entitled to live in the Island Home as a tenant and in a manner to which she had grown accustomed. CP 29.

B. The Worsening Years.

Up until approximately the summer of 2008, Mrs. Crull resided at both the Island Home and the Seattle Home. CP 29. It is safe to state that Mrs. Crull spent a significant, if not the most significant, portion of her time residing at the Island Home during the summer and the fall. This is evidenced by the fact that Mrs. Crull’s primary care physician, Dr. Gregory Keyes (“Dr. Keyes”), was located on Bainbridge Island during this period of time, and also by the fact that Mrs. Crull continued to maintain her personal effects, including antique items and furniture, at the Island Home. CP 29. Dividing her time (albeit unequally) between the Island Home and Seattle Home, Mrs. Crull paid Hines rent to live at the Island Home, and she also was responsible for utilities and normal, related

expenses. Mrs. Crull resided at the Seattle home under the same conditions and circumstances. CP 29.

During the time Mrs. Crull was residing at both the Island Home and Seattle Home, and at the encouragement and advice of her physician Dr. Keyes, Hines and Mr. Crull served as co-Trustees of the Trust established for their mother by her late husband, as well as co-Attorneys-in-Fact under their mother's General Durable Power of Attorney and Medical Power of Attorney. CP 28-29. Although Mr. Crull was living in New York during this time (as he does now) and could not therefore participate in Mrs. Crull's daily care and support requirements, Hines was very much an active part of her mother's life on a day-to-day basis. Specifically, Hines spent a large amount of time arranging her mother's health care appointments, and making sure that she made it to those appointments as well as make sure that she took her medications as prescribed. She purchased groceries, clothes and personal effects for her mother's benefit and at her mother's request. Often on a daily basis, she spent time with her mother by taking her out to lunch and taking her to the places her mother wanted to go but could not get to on her own. Indeed, on a day-to-day basis, Hines, in conjunction with Mrs. Crull's daily caretakers (many of which have defrauded Mrs. Crull's estate by charging Mrs. Crull for caretaking they never provided, and otherwise neglected

Mrs. Crull on several occasions), provided her mother with all manner of assistance and support related to her mother's daily needs and desires. CP 28-33. Once again, Mr. Crull lived in New York and was incapable and unavailable to assist his mother with those daily needs and desires.

C. The Dispute.

Beginning in the spring/summer of 2008, certain disputed issues between Hines and Mr. Crull began to surface regarding their mother's continued care and well being. These issues revolved around the fact that Mrs. Crull's then-current caregivers were billing Mrs. Crull and her estate for care-giving services that were never provided. CP 29. It furthermore came to Hines' attention that on several occasions, Mrs. Crull's caregivers had left Mrs. Crull unattended at the Island Home, sedated and lying on the living room couch. CP 30-31. On one particular documented occasion, the Bainbridge Island police responded to a fire call at the Island Home. Arriving on scene, they found Mrs. Crull had been sedated and had lit a fire in the fireplace without first opening the flue. CP 31. These issues came to a head in the summer of 2008 when Mr. Crull filed a Petition in the King County Superior Court (Cause No. 08-4-04097-3SEA) to have his sister, Hines, removed as co-Trustee/Attorney-in-Fact. CP 30, 37-40. In response, Hines not only answered Mr. Crull's Petition, but cross-

petitioned to have Mr. Crull removed as co-Trustee and co-Attorney-in-Fact. CP 41-53.

Despite the extremely contentious dispute, Hines and Mr. Crull were able to resolve their dispute by way of a Non-Judicial Binding Agreement (the "NJBA"), which the trial court commissioner signed on July 31, 2009. By this NJBA, Hines and Mr. Crull resigned as co-Trustees/Attorneys-in-Fact for their mother, and agreed to appoint Unlimited Guardianship Services of Washington ("Unlimited") as their mother's Successor Trustee and Attorney-in-Fact in their place. CP 30.

Unlimited served as the successor trustee and attorney-in-fact for a relatively short time before it withdrew in July 2009. In this short time, Unlimited was by all measures ineffective in taking care of Mrs. Crull's needs. For example, despite Mrs. Crull's fraudulent billing practices and neglect, Unlimited refused to replace those caregivers, even when Hines presented Unlimited with a familiar, previously retained caregiver who could provide more comprehensive service and a significantly reduced cost to Mrs. Crull's estate. CP 31. Also, after eight (8) months following its appointment as successor trustee and attorney-in-fact, Unlimited still had failed to marshal Mrs. Crull's assets for her care. CP 30. During its tenure, Unlimited essentially sequestered Mrs. Crull in the Seattle Home, deciding to change her primary physician despite Mrs. Crull's wishes, and

threatening both Hines and Mr. Crull that it would simply put their mother in a nursing home unless they stepped up and contributed their own personal assets for her continued care and well being. CP 33. Despite the fact that Mrs. Crull possessed antiques in both the Seattle Home and Island Home appraised at perhaps over \$100,000.00, Unlimited never collected and sold those antiques to fund Mrs. Crull's care. In light of that, and in light of Unlimited's threats against Hines and Mr. Crull, Hines had no choice but to contribute her own time and resources to caring for her mother and, essentially, doing Unlimited's job. CP 30-33.

Instead of utilizing the assets and cost-saving measures Hines pointed out to Unlimited, and following up on its threat to hold Hines and her brother responsible for their mother's continued expenses, Unlimited petitioned the trial court to compel both Hines and Mr. Crull to reimburse Mrs. Crull's estate \$72,354.60 in funds it claimed the two of them misappropriated while serving as their mother's co-Trustees/Attorneys-in-Fact. CP 3-15. In the Petition Unlimited further requested that the trial court compel Hines to grant an easement over the Island Home property for the benefit of her mother's Cottage, and that the trial court compel both Hines and her brother to pay Unlimited, thus Mrs. Crull's estate, the costs and fees incurred in bringing the Petition. CP 3-15.

Although verified, Unlimited's Petition set forth nothing more than bare conclusions that, among other things, Hines had misappropriated funds belonging to her mother for her own use and benefit. CP 3-15. Unlimited submitted the Petition unaccompanied by any documentary evidence substantiating the accounts or amounts in question. It provided no third-party witness statements as to the specific use of the funds allegedly misappropriated and whether or not they were utilized for Mrs. Crull's benefit and/or at her request. In addition, the Petition provided no case law, statutes or administrative code sections to support its legal conclusion that Hines had unlawfully misappropriated her mother's funds. CP 3-15. In light of Unlimited's complete lack of supporting evidence, the trial court's decision to grant the Petition for reimbursement could have been based only on the fact that the money Hines used from her mother's account(s) was used to improve real property Hines owned. At no time did Unlimited address, or the trial court consider, the undisputed fact that Hines had expended those funds at her mother's request because her mother was, at the time, spending most of her time at the Island Home. CP 1-15, 33-36, 87-91. The trial court did not even consider the undisputed fact that, in most respects, Mrs. Crull continued to treat that home as her own. At no time did Unlimited address, or the trial court consider, the fact that, as Trustee and Attorney-in-Fact, Hines had the authority to expend

her mother's funds in that fashion if it was Mrs. Crull's wish and Hines believed that the expenditures would be in her mother's best interest. To be certain, Hines addressed these issues at length in her Response to the Petition and in her Declaration supporting that Response. CP 18-27, 28-36. But again, relying on nothing tangible in the record, the trial court concluded that Hines had violated her fiduciary duties to her mother and ordered Hines to reimburse her mother's estate in the amount of \$14,226.39. CP 93.

Regarding its request that the trial court compel Hines to grant an easement over her Island Home property for the benefit of her mother's Cottage, Unlimited provided the trial court with nothing more than the following statement, which was contained in its Petition:

The cottage property is adjacent to Whitney Hines' residence. The only access to the cottage is a driveway across the edge of the Whitney Hine's property. There is, however, no recorded easement across Whitney Hines' property in favor of the cottage property.

In order to make the cottage property marketable either as a rental property or for sale, Unlimited Guardianship Services of Washington has requested that Whitney Hines formalize the easement. Whitney has refused to convey an easement.

CP 10. Unlimited provided the trial court with no evidence demonstrating the nature of the Cottage in relation to the Island Home. It provided no

evidence demonstrating how its requested easement would situate upon the Island Home property. It provided no description or evidence supporting the type of easement it was asking for or even believed that it was entitled to (easement by necessity, etc...), nor any evidence as to what the legal requirements were for establishing its right of way easement. In addition, it provided neither argument nor evidence that an easement was otherwise appropriate or warranted in this case. Everything considered, the only argument Unlimited offered was that at the time of the Petition, no easement existed and that it needed one to be able to market the Cottage for sale or rent, which statement went unsupported by any evidence or analysis in the record. CP 3-15.

Although Unlimited provided no evidence to support its requests for reimbursement from Hines or an easement across her Island Home property, Hines nonetheless responded to the Petition in full by providing the Court with a lengthy and detailed Declaration. In her Declaration, Hines responded under oath to each particular bare allegation Unlimited set forth. Hines detailed the nature of the expenditures Unlimited alleged she had misappropriated, and how those expenditures were made at her mother's request and for her mother's benefit while her mother was residing at the Island Home. Hines highlighted to the trial court how Unlimited had failed to even point out the particular fiduciary duty she

was alleged to have breached much less the elements necessary to find a breach of that duty. She pointed out to the trial court the lack of any argument, element or standard in the Petition by which the trial court could reasonably decide that an easement of any type was warranted by law or by fact. CP 20-26.

Despite Unlimited's complete lack of controlling case law or statutes, and the absence of anything other than Unlimited's bare allegations of fact and conclusory statements of law, the trial court agreed with Unlimited and granted the Petition. In Unlimited's Order on the Petition (the "Order"), the trial court ruled that Hines was required to grant an easement across the Island Home property for the benefit of the Cottage, and Hines was required to reimburse her mother's estate in the amount of just over \$14,000. This is the Order of which Hines seeks review by virtue of this appeal.

IV. ISSUES PRESENTED

1. DID THE TRIAL COURT ERR BY GRANTING UNLIMITED AN IMPLIED EASEMENT OVER HINES' PROPERTY WHEN THERE WAS NO EVIDENCE IN THE RECORD THAT REASONABLY SUPPORTED THE EXISTENCE, NEED OR LAW APPLICABLE TO THE REQUESTED EASMENT? THE ANSWER IS YES.

2. DID THE TRIAL COURT ERR BY ORDERING HINES TO REPAY MONIES TO HER MOTHER'S ESTATE WHEN UNLIMITED OFFERED NO EVIDENCE INTO THE RECORD TO REFUTE HINES' SWORN STATEMENTS THAT MRS. CRULL DESIRED AND EVEN

INSTRUCTED HINES TO DISTRIBUTE THE FUNDS AS SHE DID?
YES, IT DID.

V. ARGUMENT

Appellant acknowledges that, under RCW 11.96A.020, trial courts have plenary power to adjudicate issues related to the operation of trusts and probates. This appeal is not about a trial court's general power to create an easement or order repayments from a former trustee, it is about the impropriety of a trial court doing so in a situation where there is no evidence to support findings consistent with those plenary powers. While the trial court may create easements or order the repayment of funds expended by a trustee then operating under RCW 11.96A.020, that does not mean that the trial court has free reign to do so. It does not mean that the trial court's decision becomes wholly insulated even when a petitioning party fails to meet its burden to prove the elements of an easement or that its alleged damages exist and are causally related to a respondent's conduct.

A trial court exceeds its authority under an "abuse of discretion" standard when it makes factual findings and issues orders that are not supported by evidence on the record. According to the Washington State Court of Appeals in *Coggle*, a trial court abuses its discretion when its decisions are "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Coggle v. Snow*, 56 Wn.App. 499, 784

P.2d 554, 559 (1990) (overturning the trial court's factual determinations and remanding a trial court's grant of summary judgment/denial of motion for continuance because the evidence in the record did not support such a decision and the error was clear and obvious) (citing *State ex rel. Carroll v. Junker*, 79 Wash. 2d 12, 482 P.2d 775 (1971) *superseded on other grounds*)). It is established precedent that Washington State appellate courts generally do not overturn a trial court's findings *so long as* those findings are supported by substantial evidence. *See Thorndike v. Hesperian Orchards, Inc.*, 54 Wn. 2d 570, 573, 343 P.2d 183, 185 (1959) (declining to overturn a trial court's factual findings when evidence was in stark contrast and contested because the evidence supporting the decision was substantial). "Substantial," as used in *Thorndike* and its successor cases, does not mean uncontested or overwhelming, but it requires the party shouldering the burden of proof provide a quantum of substance to the evidence propping up the trial court's decision. Even under an abuse of discretion, a trial court must be able to articulate the basis or bases of its decisions by pointing to substantial, meaningful evidence in the record before it. *See Meeker v. Howard*, 7 Wn. App. 169, 171, 499 P.2d 53 (1972) (affirming trial court's factual findings because the evidence on which the court relied provided a reasonable basis for the decision).

In the instant case, Appellant is not challenging the sufficiency of the evidence the trial court relied on—as is often the case when an appellant challenges the factual findings of a trial court. Here, Hines argues that the trial court’s decision to grant the Petition was improper because the trial court had no evidence before it, Unlimited offered none, to support its findings and conclusions in the Order.

A. Appellee failed to present any documentary or testimonial evidence to support its claim for the creation of an easement.

An easement by necessity is judicial mechanism long used in Washington State when a party has sufficiently demonstrated the relative necessity of an easement (usually for ingress and egress) over proposed burdened estate. In order to demonstrate the existence of an easement by necessity (presumably this is the type of easement Unlimited had in mind when it filed the Petition), Unlimited was required to prove three (3) elements by clear evidence: “(1) a landowner conveys part of his land and (2) retains part, usually an adjoining parcel; and (3) after the severance of the parcels, it is “necessary” to pass over one of them to reach a public street or road from the other.” *Hellberg v. Coffin Sheep Company*, 66 Wn.2d 664, 404 P.2d 770 (1965).¹ With respect to the particular easement Unlimited sought by its Motion, Unlimited was

¹ It is not clear from Appellee’s petition, or the trial court’s order, whether the ordered easement is to be based on a theory of implied easement or easement by necessity. In either case, no evidence is presented on any of the elements for either theory.

required to demonstrate through clear evidence the implied existence or necessity of the easement it requested. *See Lee v. Lozier*, 88 Wn.App. 176, 185, 945 P.2d 214, 219 (1997) (affirming the trial court's finding of an easement and description of the scope of the same by virtue of the proof before the trial court). There is nothing in the statute upon which Unlimited relied in the Petition for the easement - RCW 11.96A- that alleviated its burden to prove those elements. As far as this writer knows, there is no statute, court case or rule that allowed the trial court to grant an easement without first requiring Unlimited to satisfy with clear evidence each one of those elements.

Below, Unlimited submitted the Petition without any supporting documents, legal descriptions, declarations of any kind, or proper description of the history of the affected property. It utterly failed to offer any substantive evidence that would support a prima facie case for the establishment of an easement. It instead simply stated that an easement existed or should exist because it would make Mrs. Crull's cottage more "marketable." Again, the only statements, argument, evidence or otherwise Unlimited provided to the trial court on the record was the following conclusory allegations contained in the Petition:

The cottage property is adjacent to Whitney Hines' residence. The only access to the cottage is a driveway across the edge of the Whitney Hine's property. There is,

however, no recorded easement across Whitney Hines' property in favor of the cottage property.

In order to make the cottage property marketable either as a rental property or for sale, Unlimited Guardianship Services of Washington has requested that Whitney Hines formalize the easement. Whitney has refused to convey an easement.

See CP 10. Unlimited provided no evidence or legal support for the “formalization” of an easement based on the unsupported conclusions in the Petition. It wholly failed to properly articulate a theory, any theory, by which it believed the Court should establish an easement. As the Court can see in the above-cited statements and the record, Unlimited did not argue for an easement because one had been in use for a certain period of time (implied or prescriptive easement), or because a particular parcel of land was landlocked (easement by necessity). In the face of the evidence Hines provided to the Court, which was based on her sworn, first-hand knowledge of the properties and how they were used, it is extremely difficult to determine what exactly, if anything, the trial court relied upon when it ordered Hines to grant an easement.

Despite the total lack of evidence in the record relating to an easement, where it should be located, its potential scope and purpose, and a theory upon which the trial court should have created it, the trial court

inexplicably stated, in the Order which Unlimited drafted for the trial court that:

1.14 The Bainbridge Island cottage residence owned by the Ford Crull Sr. Testamentary Trust, of which Carol Crull is the lifetime beneficiary, is located adjacent to the Bainbridge Island home of Whitney Hines. The only access to the cottage is by way of a trail located on the edge of Ms. Hines' Property. Whitney Hines acknowledges that there is no access to the cottage property apart from the trail across the edge of her Bainbridge Island Property.

1.15 There is no recorded easement formalizing the access to the cottage residence across Ms. Hines' Bainbridge Island property, and Ms. Hines has declined to execute an easement across her property in favor of the cottage Residence.

1.16 Without a recorded easement or other recorded means of access to the cottage residence, the Trustee/Attorney in fact cannot realistically rent or sell the Trust's cottage property in order to raise funds for Carol Crull's costs of care.

.....

2.11 The proposal of Unlimited Guardianship Services of Washington to obtain and record an easement to formalize the driveway access across Whitney Hines' property to the Trust's Bainbridge Island cottage property is reasonable, justified, and in the best interests of Carol Crull.

.....

3.7 Whitney Hines is directed to provide a formal driveway or access easement across the edge of her Bainbridge Island property and in favor of the cottage property owned by the Trust...

See CP 88-89, 91, 93. It is readily apparent that the trial court simply signed the proposed Order Unlimited presented along with the Petition. Now under normal situations, Hines agrees that this Court would be limited in its review of what the trial court deemed reasonable. However, after this Court reviews the record the trial court had before it, this Court will see that there was no evidence to support the trial court's statements that the creation of an easement was reasonable. Even trial court decisions that can be overturned only upon a finding that they are manifestly unreasonable must be supported by some modicum of evidence. It would be a strained application of even that high standard of review to say that Unlimited's bare allegations of fact and conclusions of law, simply copied by the trial court in the final Order, constitute sufficient evidence. A standard of review based on that notion of what constitutes "sufficient evidence" is in actuality no standard at all.

In cases where Washington appellate courts have upheld the finding and creation of easements, they have at least acknowledged that the evidence in the record supported the finding of an easement. *See Hellberg v. Coffin Sheep Company*, 66 Wn.2d 664, 404 P.2d 770 (1965). It is implicit in the fact that there was "evidence," and not just allegations that supported the findings. In this case, the trial court has exceeded its authority and abused its discretion. There was no evidentiary hearing, nor

any documents otherwise submitted by Unlimited demonstrating prior usage or history of the affected property. In addition, there was no briefing on the legal theories pertaining to implied easements or easements by necessity. Nevertheless, regardless of Unlimited's lack of evidence, the trial court created an easement based solely on the allegations Unlimited set forth in the Petition.

If this Court affirms the trial court's decision to compel Hines to grant her mother's estate an easement, it will fundamentally change the way implied easements are established through the judiciary by eliminating the need for the party seeking such an easement to prove by clear evidence the three (3) elements that Washington jurisprudence has, for decades, required.

B. Appellee failed to present any documentary or testimonial evidence to support its claim reimbursement from Appellant.

The trial court's conclusion that Appellant violated her fiduciary duties to Mrs. Crull and that she was liable to Mrs. Crull in the amount of \$14, 226.38 is similarly unsupported by any admissible evidence, accounting, or documentation of any kind. The Order is an abuse of discretion where the trial court, per the case law presented above, did not articulate its reasoning based on evidence in the record.

In Paragraphs 3.6 – 3.17 of the Petition, Unlimited contends that Hines and Mr. Crull, not a party to this appeal, violated their fiduciary

duties and expended certain sums from the Trust. CP 5-7. It titles its allegations “Facts,” but fails to support them with any admissible evidence and/or documentation of any kind. Hines, in her sworn Declaration, outlined the necessity of the monies, which were allegedly misspent, and stated that it was Mrs. Crull who requested those expenditures and/or on whose behalf they were made. Again, these allegations went uncontested by any statements of witnesses with non-hearsay, first-hand knowledge of the expenditures or what the expenditures were for. Unfortunately, however, the trial seems to have wholly ignored this unconsidered evidence when it rendered its decision. CP 34-37.

For the same reasons necessitating reversal and remand on the easement issue, this Court should also reverse the decision of the trial court as an error and abuse of discretion. None of the trial court’s findings of fact or conclusions of law are supported by substantial evidence. *See* CP 87-91. This Court cannot permit the trial court to make factual determinations when there were no facts before it upon which it could have based its decision. Again, Hines recognizes that an “abuse of discretion” standard of review defers quite a lot to the trial court sitting in judgment at the time, but even a trial court decision subject to that standard must be based on something more than mere allegations of fact and conclusions of law contained in a petition.

C. Even if the Court considers the bare allegations contained in Unlimited's Petition "evidence," it cannot be said that the evidence is sufficient to support the trial court's orders.

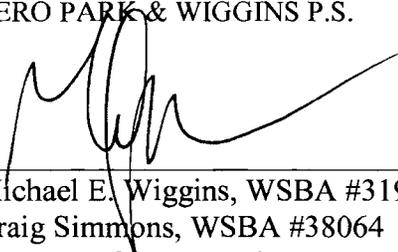
In the event that the Court considers the statements in the Petition as evidence, without any documentation or testimonial corroboration to support those statements at the time the trial court erred when it concluded that Hines had violated her fiduciary duties, that Unlimited had established the necessity of an easement, and that Unlimited was entitled to be reimbursement for monies Hines allegedly had misappropriated. The issue is not whether the trial court had the discretion to rule the way that it did, the question more appropriately posed as whether or not the trial court properly exercised that discretion in this case. It is true that someone could have had the same conclusions as did the trial court, but unless a *reasonable* person would have concluded as the trial court did, the trial court abused its discretion. Since there was no "evidence" in the record to support the relief Unlimited sought, it can hardly be said that a *reasonable* person would or could have reached the same conclusion the trial court did. *State ex rel. Carroll v. Junker*, 79 Wash. 2d 12, 482 P.2d 775 (1971) *superseded on other grounds* (holding that a trial court's factual determinations, if manifestly unreasonable or made on untenable grounds, will be reversed).

VI. CONCLUSION

For the reasons set forth above, Hines respectfully requests that this Court reverse and remand the trial court's Order which requires her to grant an easement across the Island Home property for the benefit of Mrs. Crull's cottage, and also requires her to reimburse her mother's estate the funds she, as trustee of the trust established for her mother's benefit and as her mother's Attorney-in-Fact, used without dispute at her mother's request and/or for her benefit. Although Unlimited verified its Petition, that does not alter the fact that the Petition consists solely of unsupported, undocumented, and uncorroborated contentions.. The Petition was the only pleading Unlimited offered the trial court to substantiate its requested relief; and even under an "abuse of discretion" standard, it was insufficient to support the trial court's Order granting an easement to Unlimited as well as requiring Hines to reimburse her mother's estate. For these reasons, this Court should reverse the trial court's erroneous Order and remand the matter back to the trial court for proceedings consistent with the arguments and authority set forth above.

Respectfully submitted this 11th day of November 2010.

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No. 63993-5-I

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

WHITNEY HINES, former co-Attorneys-in-Fact for Carol Crull

Appellant,

v.

UNLIMITED GUARDIANSHIP SERVICES OF WASHINGTON,
Successor Trustee of the Ford Crull, Sr. Testamentary Trust and Successor
Attorney-in-Fact for Carol Crull

Appellee.

CERTIFICATE OF SERVICE

Michael E. Wiggins, WSBA # 31921
ROMERO PARK AND WIGGINS P.S.
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ORIGINAL

I, Stephanie Heyde, am a citizen of the United States and a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action. I hereby Declare, under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. On Friday, November 12, 2010, I caused one copy of the following:

- A. Appellant's Brief; and
- B. This Certificate of Service.

to be sent via legal messenger delivery for same-day delivery to:

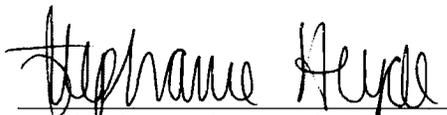
Michael J. Longyear
Reed Longyear Malnati & Ahrens, PLLC
801 Second Ave., Suite 1415
Seattle, WA 98104

And to be sent via facsimile and deposited with the U.S. Mail, first class postage pre-paid at the address listed below:

Richard L. Furman, Jr.
Aiken St. Louis & Siljeg, P.S.
801 2nd Ave., Suite 1200
Seattle, WA 98104
(206) 623-5764

RESPECTFULLY SUBMITTED this 11th day of November, 2010.

ROMERO PARK & WIGGINS P.S.



Stephanie Heyde, Legal Assistant