

64401-7

64401-7

NO. 04401-7-1

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

ESTATE OF MARY L. WICKS,
PLAINTIFF/RESPONDENT

v.
EDWARD R. HOWARD,
DEFENDANT/APPELLANT

APPELLANT'S OPENING
BRIEF

~~X~~ FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 AUG 17 AM 10:15

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V Cited Rev. WA. codes. Cited Supreme Ct of WA. Case no. 39235	

*Reported in 479 p. 2d 1.

I. IDENTITY OF APPELLANT

Edward R. Howard, appellant here in, respectfully requests the relief designated in Part II below.

II. STATEMENT OF RELIEF SOUGHT

The court of Appeals should review and reconsider decision made at the Superior Court of Washington on October 15, 2009, Case number 08-4-00261-1.

III. GROUNDS FOR RELIEF AND ARGUMENT

A. Inadequate representation by attorney for defendant

I believe that when Mr. Hall agreed to be my attorney it was reasonable for me to expect him to perform his duties to the best of his ability. Mr. Hall made no objections to such things as; unrereviewed, unsubstantiated evidence entered at trial, erroneous statements made against my character, accusations of mental and physical abuse on my part, Mr. Hall did not share information with me about how the mental capacity of my mother, would be called into question, His questions and demeanor was weak, and his defense was even weaker. Because of his actions evidence was not acquired, yet

available was not entered at trial. Evidence that would have restored my character, and competency to my mother's decisions.

B. Overwhelming evidence not made available at trial,

I was accused at trial of mental abuse and undue influence against my own mother. I wish to submit results of the Dept. of Social and Health Services' investigations made concerning this matter. These documents would have been available to Mr. Hall upon request. Five documents labeled exhibit A



Exhibit A

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

N31-B • Home & Community Services • 840 N Broadway Ste 330 • Everett WA 98201-1262

October 26, 2009

Mr. Edward Howard
19412 46th Ave. NE
Arlington, WA 98223

Subject: Request for Public Records – Edward Howard

Dear Mr. Edward Howard:

The Department of Social and Health Services (DSHS), Home and Community Services (HCS) division, received a public records request from you on Monday October 26, 2009. A copy of the "Request for Records" form is enclosed. This letter responds to your request under RCW 42.56.520 and WAC 388-01-090.

You asked for copies of DSHS records about yourself. Specifically, you requested a document from DSHS telling you the outcome of four (4) separate Adult Protective Services (APS) cases. The APS case numbers you provided were 53752, 70927, 72222, and 75308.

As you have verified your identity as the alleged perpetrator in each of the four cases numbered above, the Department is providing you a separate letter for each case telling you the outcome of the APS investigation. Because of the small number of pages, we will not charge you for copies under WAC 388-01-080.

If you have any questions, please feel free to contact me. Thank you.

Sincerely,

Jeremy A. Haas
Public Disclosure Coordinator

Department of Social and Health Services, Home and Community Services, Region 3
Phone: (425) 339 – 1872 / Fax: (425) 339 - 1885

Enclosures: "Request for Records" form
Courtesy AP Letter – case 53752
Courtesy AP Letter – case 70927
Courtesy AP Letter – case 72222
Courtesy AP Letter – case 75308

A



Exhibit A

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

N31-8 • Home & Community Services • 840 N Broadway Ste 330 • Everett WA 98201-1262

October 26, 2009

Mr. Edward Howard
19412 46th Ave. NE
Arlington, WA 98223

Dear Mr. Edward Howard:

In response to a report made to Adult Protective Services indicating you may have mistreated a vulnerable adult, an investigation was conducted (Case ID #75308). This letter is being sent at your request to notify you that the Department of Social and Health Services has completed its investigation.

APS was unable to determine whether the alleged financial exploitation occurred or did not occur on a more probable than not basis. The finding is inconclusive. You do not have a right to request a hearing to challenge this finding. As specified in WAC 388-71, an administrative hearing may be requested to challenge only a substantiated initial finding.

As specified in Chapter 74.34 Revised Code of Washington, neither the name of the alleged victim nor the reporter may be disclosed to you. If you have questions about this letter, please call at (425) 339 - 1872.

Sincerely,

Jeremy A. Haas
Public Disclosure Coordinator
Department of Social and Health Services, Home and Community Services, Region 3
(425) 339 - 1872





Exhibit A

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

11000 1st Avenue, Community Care Center - APS, Emanuel Street, Everett, WA 98201-3100

October 26, 2009

Mr. Edward Howard
19412 46th Ave. NE
Arlington, WA 98223

Dear Mr. Edward Howard:

In May 2007, Adult Protective Services (APS) received a report (Case ID #70927) alleging you may have mentally abused, exploited, and financially exploited a vulnerable adult. APS is charged with investigating abuse, abandonment, neglect, and financial exploitation of vulnerable adults pursuant to RCW 74.34. A preliminary investigation determined that the alleged victim in the matter was not a vulnerable adult as defined by RCW 74.34.020(15) or RCW 74.34.021 at the time of the alleged mental abuse, exploitation, or financial exploitation. APS was without legal authority to investigate further. Therefore, APS made no finding regarding the alleged mistreatment.

Sincerely,

Jeremy A. Haas
Public Disclosure Coordinator
Department of Social and Health Services, Home and Community Services, Region 3
(425) 339 - 1872



Exhibit A

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

NS1-B • Home & Community Services • 840 N Broadway Ste 310 • Everett WA 98201-1212

October 26, 2009

Mr. Edward Howard
19412 46th Ave. NE
Arlington, WA 98223

Dear Mr. Edward Howard:

In June 2007, Adult Protective Services (APS) received a report (Case ID #72222) alleging you may have mentally abused a vulnerable adult. APS is charged with investigating abuse, abandonment, neglect, and financial exploitation of vulnerable adults pursuant to RCW 74.34. A preliminary investigation determined that the alleged victim in the matter was not a vulnerable adult as defined by RCW 74.34.020(15) or RCW 74.34.021 at the time of the alleged mental abuse. APS was without legal authority to investigate further. Therefore, APS made no finding regarding the alleged mistreatment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy A. Haas".

Jeremy A. Haas

Public Disclosure Coordinator

Department of Social and Health Services, Home and Community Services, Region 3
(425) 339 - 1872

A



Exhibit A

STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

ND1-8 • Home & Community Services • 840 N Broadway Ste 330 • Everett WA 98201-1262

October 26, 2009

Mr. Edward Howard
19412 46th Ave. NE
Arlington, WA 98223

Dear Mr. Edward Howard:

In October 2005, Adult Protective Services (APS) received a report (Case ID #53752) alleging you may have exploited and financially exploited a vulnerable adult. APS is charged with investigating abuse, abandonment, neglect, and financial exploitation of vulnerable adults pursuant to RCW 74.34. A preliminary investigation determined that the alleged victim in the matter was not a vulnerable adult as defined by RCW 74.34.020(15) or RCW 74.34.021 at the time of the alleged exploitation or financial exploitation. APS was without legal authority to investigate further. Therefore, APS made no finding regarding the alleged mistreatment.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy A. Haas".

Jeremy A. Haas

Public Disclosure Coordinator

Department of Social and Health Services, Home and Community Services, Region 3
(425) 339 - 1872

C. Unsubstantiated Evidence From Plaintiff

My sister picked and chose random statements from random medical paper work, and submitted it as factual evidence of her mother's incompetency. She provided no directly from her health-care providers concerning this matter. I wish to submit statements about my mother's ability to make decisions concerning her possessions and her will, signed by her primary caregiver in Arlington and physician at Skagit Valley Hospital. These documents would have been available to Mr. Hall upon request. Four documents labeled Exhibit B,

Dictation and Reports

Accidental Injury Claim Form

10/26/2009

To whom it may concern letter

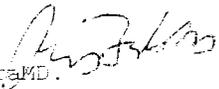
Addendum By: Philip G. Dylstra, M.D.
On: 10/26/2009 01:10:16 pm

To whom it may concern:

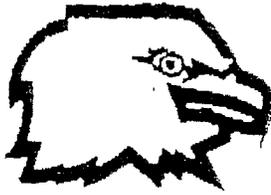
I last saw Mary 8/30/07 and would assume her mental status was similar just over a month later on 10/04/07.

She did have memory impairment; however, not severe; and she was able to express herself and answer questions; therefore I believe she should have been able to express her desires for her will and testament.

Sincerely,



Philip Dylstra MD.



AMERICAN PRINTERS

FACSIMILE COVER

Handwritten: 10/20/09 8:30 AM

Handwritten: Re: Mary Wilson

DATE: _____ TIME: _____ AM PM

FROM: Edward R. Howard

TO: Johnathon W. FISH M.D.

COMPANY: _____

RECEIVING FAX NUMBER: _____

TOTAL NUMBER OF PAGES (INCLUDING COVER): _____

COMMENTS: FAX TO REPLY TO LETTER

ASAP 360 653 6935

Thank you

Mr. Howard - I copied off my notes from her stay in the hospital. She did turn around and express more clear. I can say that my notes suggest this. Now it sounds as though you may need an attorney? Hope all goes well. JM 10/19/09.

16821 Smokey Point Blvd. • Arlington, WA 98223-8487

Phone (360)653-7982 Fax (360)653-6935

Exhibit B

DATE: 11/06/07 @ 0808
 USER: AUGIRS

SKAGIT VALLEY HOSPITAL
 List Patient Notes

PAGE 11

Patient: WICKS, MARY L.
 Account #: K0000357535 Unit #: N000095620

	Date	Time	By	Care Prov Type
Occurred:	10/08/07	0944	SAR SARAH A ROBERTS	SS
Recorded:	10/08/07	0951	SAR SARAH A ROBERTS	SS

Category: Social Services

MSW note
 Personal call with Chris McCarthy (416-7406). Per Chris, family will have conflict over this issue, if DPOA is not in chart it does not exist. If it is in chart, then validity should be determined by pt. mental status at time of DPOA authorization.
 MSW to f/u with pt.
 Sarah Roberts, MSW

 Addendum: 10/08/07 at 1000 by SARAH A ROBERTS

 CPS Chris McCarthy requests she be notified when pt. is d/c from hospital. Co. of DPOA naming son as DPOA as of 10/4 is now in chart. pt is alert, oriented, eating better, and currently away for x-ray
 Sarah Roberts, MSW

Note Type	Description	Date	Time	Add
No Link		10/08/07	0944	

	Date	Time	By	Care Prov Type
Occurred:	10/08/07	1112	LAC LUCIA A CULLUP	RN
Recorded:	10/08/07	1114	LAC LUCIA A CULLUP	RN

Category: Nurse

PAIN/ NUTRITION/ ACTIVITY
 PT C/O HIP PAIN VICODIN EFFECTIVE. ONLY TAKING 20% OF MEAL AND APPETITE REMAINS POOR. UP TO CHAIR WITH MAX ASSIST ONE PERSON TRANSFER. DOESNT BARE A LOT WT ON LEGS.

Note Type	Description	Date	Time	Add
No Link		10/08/07	1112	

	Date	Time	By	Care Prov Type
Occurred:	10/08/07	1142	SAR SARAH A ROBERTS	
Recorded:	10/08/07	1151	SAR SARAH A ROBERTS	

Category: Social Services

MSW note - Re:DPOA
MSW met with pt. and dtrs Cyndy and Ann. Pt. appeared alert and responsive. MSW reviewed with pt that she had made DPOA with son last week, that this document was now in chart, and that this meant he would make healthcare decisions on her behalf if she was unable. Pt. expressed understanding and stated that she

B

Exhibit B

DATE: 11/06/07 @ 0808
 USER: AUGIRS

SKAGIT VALLEY HOSPITAL
 List Patient Notes

PAGE 12

Patient: WICKS, MARY L
 Account #: K0000357535 Unit #: N000095620

Date	Time	By	Care Prov	Type (Continued)
Occurred: 10/08/07	1142	SAR SARAH A ROBERTS	SS	
Recorded: 10/08/07	1151	SAR SARAH A ROBERTS	SS	

Category: Social Services

→ remembered this, and was in agreement with this for now. MSW reviewed with pt that she could change this at any time, that it was important that she chose a person, even non-family member who she felt could represent her wishes the best. Pt. stated she would give it some thought.

MSW offered support as needed to pt. and family members.

Sarah Roberts, MSW

Note Type	Description	Date	Time	Add
No Link		10/08/07	1142	

Date	Time	By	Care Prov	Type
Occurred: 10/08/07	1144	SMH SHARON M HOOEY	CM	
Recorded: 10/08/07	1145	SMH SHARON M HOOEY	CM	

Category: Social Services

Case Management:

Referral to Sara R., MSW re: need for new DPOA? She will f/u with patient and daughters today. SS following.

Note Type	Description	Date	Time	Add
No Link		10/08/07	1144	

Date	Time	By	Care Prov	Type
Occurred: 10/08/07	2245	CRP CASSANDRA R PETERSEN	RN	
Recorded: 10/08/07	2248	CRP CASSANDRA R PETERSEN	RN	

Category: Nurse

PAIN

c/o pain in heels/coccyx, repositioned to good effect. heel boots in place. intermittent periods of dyspnea, esp. w/movement and pt states "when my heart goes fast". resolves when movement stops.

Note Type	Description	Date	Time	Add
Long-term Goal	RC: Maintain Optimal Oxygenation	10/08/07	2245	

Exhibit B

SKAGIT VALLEY HOSPITAL

PATIENT NAME: WICKS, MARY L MR#: N000095620 DOB:
10/06/1921
DATE: 10/02/2007
PHYSICIAN: JONATHAN W. FISH, MD

SUBJECTIVE: The patient tells me that she ate this morning, she is feeling good, she is not having any pain.

OBJECTIVE:

PHYSICAL EXAMINATION:

Vital signs: Temperature is 35.7, pulse is 89, respiratory rate is 16, blood pressure is 88/69. Pulse oximetry is 99%. General: She is awake, alert, pleasant, seems to be in no acute distress. Heart: Irregularly irregular, with a soft I/V systolic ejection murmur. We are awaiting echocardiogram. Lungs: Clear to auscultation bilaterally. Abdomen: Soft. There are no masses I can appreciate. Lower extremities: She has 1-2+ pitting edema. That is not a significant change since admission.

LABORATORY DATA: White blood cell count is 11,500, hemoglobin is 11.2, hematocrit is 33.7, platelet count is a little low at 78,000. Her INR today was 1.64. CMP shows BUN of 61, creatinine of 2.1, glucose 128, ALT of 23, total protein of 5.6, albumin 1.8. Chest x-ray has still not yet been overread by Radiology. She has greater than 100,000 per ml negative rods. Identification is still pending.

ASSESSMENT AND PLAN:

1. Atrial fibrillation with rapid ventricular response. Patient has been in the high 90's, low 100's. I have increased her Coreg to 6.25 mg twice a day. We will see how she tolerates that, both in terms of heart rate and blood pressure. She has received a dose of diltiazem.
2. Urinary tract infection. History of methicillin-resistant Staphylococcus aureus. I will continue the vancomycin until we have complete identification back. In the meantime, I will start Levaquin 500 mg x 1, and then 250 mg orally after that.
3. Congestive heart failure.
4. Aortic stenosis, awaiting echocardiogram.
5. Depression.
6. Very poor oral intake.
7. Atrial fibrillation.
8. Thrombocytopenia. Hold her heparin. We will continue Coumadin.

CODE STATUS: I did discuss with her code status. She specifically states that if her heart stops beating and she stops breathing, to "start me up again." Unfortunately, this poor lady who is not eating and failing rapidly, I just do not see how she can ask for us to treat her completely without her cooperating and eating herself. Anticipate discharge back to Life Care Center in 2 or 3 days.

Electronically Authenticated by:

JONATHAN W. FISH, MD 10/15/2007 17:52 JONATHAN W. FISH, MD

JF/fac D: 10/02/2007 9:21 A T: 10/02/2007 9:29 A Doc #:1090407
VS#000412083
cc: JONATHAN W. FISH, MD

SKAGIT VALLEY HOSPITAL
WICKS, MARY L

PATIENT NAME:

NOTE

B

MR#: N000095620
ADMIT DATE:

068

Date Range: Beginning - 11/06/07
 Age/Sex 86 F Attending: Fish, Jonathan W MD
 Unit: # N000095620 Account # K0000357535

WICKS, MARY L

Status DIS IN Admitted: 10/01/07 at 2337
 Location PCC Room/Bed: 2029-1

POC: SP, GEN/MED, PROB: SP, DYSPHAGIA, GOAL: SP, INCSPOZ, INT: 1804020
 Activity Occurred Recorded Sts Freq/Target Pri From
 Type Date Time By Date Time By Doc Units Change

POC: SP, GEN/MED, PROB: SP, OTEACH, GOAL: SP, DP/G, IZ
 Activity Occurred Recorded Sts Freq/Target Pri From
 Type Date Time By Date Time by Doc Units Change

1804020 SP: Dysphagia Treatment [A] [CP]
 Document 10/04/07 1433 CLW 10/04/07 1433 CLW
 Treatment Start Time 1120
 Treatment End Time 1145
 Patients Status Alert
 Up in Bed
 Follows 1 to 2 Step Directions Minimal Assistance
 Communication Comment
 Lung Sounds Clear
 Crackles
 Temperature Afebrile
 Diagnostic Procedures Reviewed
 Speech Consistency of Food Full Liquids
 Nectar Liquids
 Current Diet Comment
 Textures Presented Nectar Liquid
 Pureed Food
 Patient Demonstrated: Oral Phase Decreased Mastication
 Patient Demonstrated: Pharyngeal Phase Delayed Swallow
 Transfer Comment
 Therapeutic Interventions
 Textures Tolerated without Signs or Symptoms of Aspiration Nectar Liquid
 Stimulation
 Diet Texture Changed N
 If Yes to Diet Texture Change - Changed to
 Independence with Eating/Feeding Moderate Assistance
 Compensatory Strategies Small Bites/Sips
 Sit Upright
 Able to Follow Strategies Moderate Assistance
 Able to Follow Strategies Comment
 E-Stim (Vital Stim) Position
 E-Stim (Vital Stim) Intensity
 E-Stim (Vital Stim) Length of Time
 E-Stim (Vital Stim) PO Trials
 Comment/Other Foods Tried
 Swallow Treatment Charge (2015) 1.0
 Therapeutic Exercise Charge (TPEXER)
 Therapeutic Neuro-Reeducation Charge (TPNEURORE)

1804150 SP: Teaching, Assessment/Record [A] [CP]
 Document 10/04/07 1433 CLW 10/04/07 1434 CLW
 Diagnosis or Condition Topic Dysphagia
 Education Topic Compensation
 Diet Texture
 Liquids
 Aspiration Precautions
 Readiness to Learn Acceptance
 Teaching Recipient Patient
 Response to Teaching Reinforcement needed
 Teaching Methods One-on-One Instruction
 Comment

1804750 SP: Daily Pain and Assessment [A] [CP]
 Document 10/04/07 1433 CLW 10/04/07 1434 CLW
 Pain N
 Assessment UP AND ALERT, SMILING, EATING BETTER TODAY, LIKES THE WARM SOUP, TOLERATING FULL LIQUIDS/NECTAR THICK WITHOUT DIFFICULTY OR S/SX ASPIRATION, INCREASED PO WITH FULL LIQUIDS.

1800050 PT: General Exercise [A] [CP]
 Document 10/04/07 1442 KLB 10/04/07 1444 KLB
 Treatment Start Time 1330
 Treatment End Time 1400
 General Exercise Location Bilateral Lower Extremity
 Total Knee Exercise Position Supine
 Hip Therapeutic Exercise Type Isometric Exercise
 Active Exercise
 Active Assistive
 General Exercises UE/LE Wrist Flexion/Extension
 Pronation/Supination
 Elbow Flexion/Extension
 Shoulder Benchpress
 Shlder IR/ER
 Ankle Pumps
 Quad Sets
 Gluteal Sets
 Hip Flexion
 SAQ'S
 Knee Flexion/Extension
 Bridging
 # Repetitions of Therapeutic Knee Exercise Performed 10 reps
 Knee Therapeutic Exercise Tolerance Fair
 Exercise Tolerance Comment
 Neuromuscular Reeducation
 Balance Comment
 Exercise Charge (7011) (4007)-How Many 2.0
 Neuromuscular Re-Education (7012) (4005)-How Many

1800750 RT: Daily Pain and Assessment [A] [CP]
 Document 10/04/07 1442 KLB 10/04/07 1444 KLB
 Pain N denied pain
 Pain Location Body Site heels
 Pain Location Body Site Modifier Bottom
 Left
 Right
 Pain Description
 Pain Scale Used
 Adult Pain Scale (0-10)
 Pain Location Body Site Eye
 Pain Location Body Site Modifier Left
 Right
 Pain Description
 Pain Scale Used
 Adult Pain Scale (0-10)
 Pain Location Body Site Face
 Pain Location Body Site Modifier Medial
 Right
 Top
 Pain Description
 Pain Scale Used
 Adult Pain Scale (0-10)
 Assessment NO OOB ACTIVITY SECONDARY TO DIARRHEA, NURSING NOTIFIED.
 Tolerance to Treatment Good
 Progress Towards Goals/Potential Days to Next Level of Care...

Exhibit B

141

B

IV Evidence of my mother's intentions.

I wish to submit these documents from my mother which show clear intent, forethought, follow through and consistency on her behalf. It is my belief that these prove my mother's competency more than not. These papers were entered at trial by Mr. Hall but not supported by Mr. Hall at trial. The first doc. is my mother's letter of intent, written and signed by her before she entered a medical facility. The second a legal written will signed and dated by my mother, Dolores, and Adina. Also included a durable power of Attorney for health care, and an informed consent form signed by myself. These ten pages labeled exhibit C

My dear my dear

My home is to
 go to Sam & Brother
 & Ed you are to take
 take of my cat & dog
 as long as they live
 I love all all you so
 much But you did not
 me around to talk to because
 of things you did I want
 me to know about it when
 Don Dad in Love & Love
 my house is to have to
 Sam & they have a

Exhibit C

to live & go to school.
I saved all of a year
But you didn't care.
about me to help me when
your Dad left us a note
we could have help yet
But instead you turned on
each other. there so
after I need some help. But
no one cared I help no
one wanted to help I didn't
need money I need some
one to care me & you.
My house cars go
Sam & Father Ed

Exhibit C

I want ann + Daphna
to have dolls

- the only one who cared about
me was Ed + children
I now regret none of
the house is the only
thing I have now is
none home for boys
to self. I'm sorry
for so many things but
all I can do is love all
of you now much
Morn

Exhibit C

It is up to Ed what he
wants to do he can
do long as long as the boys
& Ed where they only come
to help sled of you wishing
to others just not to
help Ed where I leave the
chance & care to the
Sam + Brother & Dad Ed.
Jane Mathews
Mary Wickes
mother
Mary

Exhibit C

My Will for my thing (things?)

My home is to go to Sam and Brother and Ed and you are to take take (care?) of my cat and dogs as long as they live. I love all all you so much but you didn't want me aroung (around?) to talk to because of drugs. you did (not?) want me to now (know?) about it when Don died I'm lose (lost?) and lone (alone?) and my house is to go to Sam so they have a (place?) to live and go to school. I loved all of you but you didn't care about me to help me when your Dad left us a none (alone?). We could have help (illegible) but instead you turned on each other. Then so often after I need your help but no one called (to?) help no one worried(wanted?) to help I didn't need money I need some one to call (care?) me and you. My house cars go Sam and Brother and Ed. It up to Ed what he wants to do. I've been along (alone?) for long and the boys and Ed were the only ones to help instead of you working together and (feud?) not love and help each other. I leave the house and cars to the Sam and Brother and Dad Ed.

Love mother Mary Wicks Mother Mary

I want Ann and Cynthia to have dolls.

The only one who care about me whos (was?) Ed and children. I now (know?) right now is the house is the only thing I have now he need home for boys and self. I'm sorry for so many thing but all I now (know?) I've loved all of you now much. Mom.

C

EHK1TC

I Now with being of sound
mind and body I give to
my son Edward Howard the
House at 19412 46TH AVE. NE
and the vehicles being the
93 E.M.C. P.V. and the 91 CHRYSLER
these things are to go to
Edward Howard and Dona
Samuel and Alia Howard.
Date 19-4-07

Signed

Edna Howard
Arlene Knack 10-4-07
Doris Alia 10-4-07

C

Exhibit C

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Notice to Person Executing This Document

This is an important legal document. Before executing this document you should know these facts:

- This document gives the person you designate as your Health Care Agent the power to make MOST health care decisions for you if you lose the capability to make informed health care decisions for yourself. This power is effective only when you lose the capacity to make informed health care decisions for yourself. As long as you have the capacity to make informed health care decisions for yourself, you retain the right to make all medical and other health care decisions.
- You may include specific limitations in this document on the authority of the Health Care Agent to make health care decisions for you.
- Subject to any specific limitations you include in this document, if you do lose the capacity to make an informed decision on a health care matter, the Health Care Agent *GENERALLY* will be authorized by this document to make health care decisions for you to the same extent as you could make those decisions yourself, if you had the capacity to do so. The authority of the Health Care Agent to make health care decisions for you *GENERALLY* will include the authority to give informed consent, to refuse to give informed consent, or to withdraw informed consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. You can limit that right in this document if you choose.
- A Health Care Agent can only act under state law. "Mercy killing" is not allowed under Washington state law. A Health Care Agent will *NEVER* be allowed to authorize "mercy killing," euthanasia or any procedure which would actually speed up the natural process of dying.
- When exercising his or her authority to make health care decisions for you when deciding on your behalf, the Health Care Agent will have to act consistent with your wishes, or if they are unknown, in your best interest. You may make your wishes known to the Health Care Agent by including them in this document or by making them known in another manner.
- When acting under this document the Health Care Agent *GENERALLY* will have the same rights that you have to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.

1. Creation of Durable Power of Attorney for Health Care

I intend to create a power of attorney (Health Care Agent) by appointing the person or persons designated herein to make health care decisions for me to the same extent that I could make such decisions for myself if I was capable of doing so, as recognized by RCW 11.94.010. This designation becomes effective when I cannot make health care decisions for myself as determined by my attending physician or designee, such as if I am unconscious, or if I am otherwise temporarily or permanently incapable of making health care decisions. The Health Care Agent's power shall cease if and when I regain my capacity to make health care decisions.

2. Designation of Health Care Agent and Alternate Agents

If my attending physician or his or her designee determines that I am not capable of giving informed consent to health care, I Mary L. Wicks designate and appoint:

Name EDWARD R HOWARD Address 10412 46TH AVE
City ABINGTOWN State WA Zip 98003 Phone 360 409-0880

as my attorney-in-fact (Health Care Agent) by granting him or her the Durable Power of Attorney for Health Care recognized in RCW 11.94.010 and authorize her or him to consult with my physicians about the possibility of my regaining the capacity to make treatment decisions and to accept, plan, stop, and refuse treatment on my behalf with the treating physicians and health personnel.

In the event that _____ is unable or unwilling to serve, I grant these powers to

Name _____ Address _____

City _____ State _____ Zip _____ Phone _____

In the event that both _____ and _____

are unable or unwilling to serve, I grant these powers to

Name _____ Address _____

City _____ State _____ Zip _____ Phone _____

C

Your name (print) Mary L. Wicks

3. General Statement of Authority Granted.

My Health Care Agent is specifically authorized to give informed consent for health care treatment when I am not capable of doing so. This includes but is not limited to consent to initiate, continue, discontinue, or forgo medical care and treatment including artificially supplied nutrition and hydration, following and interpreting my instructions for the provision, withholding, or withdrawing of life-sustaining treatment, which are contained in any Health Care Directive or other form of "living will" I may have executed or elsewhere, and to receive and consent to the release of medical information. When the Health Care Agent does not have any stated desires or instructions from me to follow, he or she shall act in my best interest in making health care decisions.

The above authorization to make health care decisions does not include the following absent a court order:

- (1) Therapy or other procedure given for the purpose of inducing convulsion;
- (2) Surgery solely for the purpose of psychosurgery;
- (3) Commitment to or placement in a treatment facility for the mentally ill, except pursuant to the provisions of Chapter 71.05 RCW;
- (4) Sterilization.

I hereby revoke any prior grants of durable power of attorney for health care.

4. Special Provisions

~~_____

_____~~

DATED this 4th day of October, 2007
(Year)

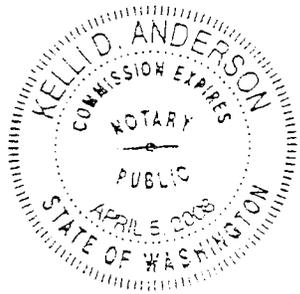
Mary Wicks
GRANTOR

STATE OF WASHINGTON)
(COUNTY OF Skagit))ss.

I certify that I know or have satisfactory evidence that the GRANTOR, Mary Wicks
signed this instrument and acknowledged it to be his or her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 4th day of October, 2007
(Year)

Kelli D Anderson
NOTARY PUBLIC in and for the State of Washington,
residing at Mt Vernon
My commission expires 4-5-08



K0000357535 N000095620
WICKS, MARY L
10/06/1921 85 F 10/01/07
Fish, Jonathan W MD
[Barcode]

Exhibit C

SKAGIT VALLEY HOSPITAL

1415 EAST KINCAID STREET
MOUNT VERNON, WA 98274

PNEUMOCOCCAL VACCINATION

INFORMED CONSENT

I acknowledge that I have received the patient information about the pneumococcal Vaccine. The pneumococcal disease and the pneumococcal vaccine has been satisfactorily explained to me and I have had the opportunity to have all of my questions answered. I understand the benefits and risks associated with the pneumococcal vaccine.

I authorize Skagit Valley Hospital to administer the pneumococeal pneumonia vaccine.

I decline administration of pneumococcal pneumonia vaccine

Patient signature

Jonathan W. Fish
(son)

Date

10-4-07

SC34
06/04/2007

K0000357535 N000095620
WICKS, MARY L
10/06/1921 86 F 10/01/07
Fish, Jonathan W MD



C



PNEUMOCOCCAL VACCINATION

IV Cited Revised Washington codes. Cited Supreme Ct. of Washington case no. 39235
* Reported in 479 p. 2d 1.

I wish to submit these documents, because I believe that their content supports my cause, which has always been "to uphold my mother's will. These papers were not provided by Mr. Hall, but researched by another attorney, and brought to my attention. I labeled these pages as Exhibit D.

6 of 32 DOCUMENTS

**In the Matter of the Estate of M. Josephine Reilly, Deceased. Frances
Reilly Estill et al., Respondents and Cross-appellants, v. Sisters of
Charity of the House of Providence et al., Appellants**

* Reported in 479 P.2d 1.

No. 39235

SUPREME COURT OF WASHINGTON

78 Wn.2d 623; 479 P.2d 1; 1970 Wash. LEXIS 339; 48 A.L.R.3d 902

December 31, 1970

SUBSEQUENT HISTORY: [***1] Petition for Rehearing Denied July 9, 1971.

SUMMARY:

Cross-appeals from a judgment of the Superior Court for King County, No. 176652. Frank D. James, J., entered July 25, 1966. *Affirmed in part; reversed in part.*

Probate proceedings. Appeals taken from a judgment substantially in favor of contestants of a will.

HEADNOTES

WASHINGTON OFFICIAL REPORTS
HEADNOTES

[1] Wills -- Validity -- Evidence -- Burden of Proof Contestants of a will who allege lack of testamentary capacity or undue influence, must establish these allegations by clear, cogent, and convincing evidence.

[2] Appeal and Error -- Findings of Fact -- Review -- Higher Degree of Proof -- Effect

Evidence might not constitute "substantial evidence" so as to support a factual determination on an issue which must be proved by clear, cogent, and convincing evidence, even though such evidence would support a finding when the degree of proof required was only a preponderance.

[3] Wills -- Validity -- Testamentary Capacity -- What Constitutes In order to validly execute a will, a testator must have sufficient mind and memory to intelligently understand the nature of the business in which he is engaged, to comprehend generally the nature and extent of the property which constitutes his estate and which he intends to dispose [***2] of, and to recollect the objects of his bounty. Testamentary capacity of a testator is presumed when a will, rational on its face, is executed in legal form.

[4] Wills -- Validity -- Undue Influence -- Factors In order for undue influence to vitiate a will, it must interfere with the free will of the testator and prevent the exercise of judgment and choice at the time of execution. The presence of certain factors may raise a suspicion of

undue influence, and undue influence can be shown by circumstantial evidence, but there must be *proof* beyond mere suspicion.

[5] Wills -- Validity -- Undue Influence -- Unnatural Will -- Exclusion of Kin A will is unnatural when it is contrary to what the testator, from his known views, feelings, and intentions, would have been expected to make. Whether or not a will is natural is to be determined on the facts of each case. A will can be natural and still exclude one's kin.

[6] Wills -- Evidence -- Opinion Evidence -- Expert Testimony -- Basis for Opinion of Competency Expert medical testimony as to a testator's mental condition bearing on competency to make a will is extremely weak, where the expert [***3] had no opportunity to examine the testator near the time of making the will and based his testimony merely on hypothetical questions.

[7] Appeal and Error -- Findings of Fact -- Review An appellate court may not substitute its factual findings for those of the trial court.

[8] Appeal and Error -- Findings of Fact -- Review -- When Based on Deposition An appellate court may disregard a trial court's findings relating to deposition testimony and enter its own findings, where the witness involved did not personally appear in the trial court and offered his testimony only by such deposition.

[9] Wills -- Validity -- Undue Influence -- Solicitation Advice, argument, persuasion, solicitation, suggestion, or entreaty is not, by itself, undue influence upon a testator; the questioned activity must be so importunate, persistent, or coercive as to make the will speak the intent and desire of one other than the testator.

[10] Executors and Administrators -- Compensation -- Defending Will Contest An executor is to take all legitimate steps to uphold a testamentary instrument: if he does so in good faith, he is entitled to an allowance out [***4] of the estate for his costs and reasonable attorney fees necessarily incurred by him, regardless of whether or not he is successful in his defense against the will contest.

COUNSEL: *Bogle, Gates, Dobrin, Wakefield & Long*, by *Thomas L. Morrow* and *William M. Gingery*, *Wetrick, Toulouse, Lirhus & Hove*, by *George J. Toulouse, Jr.*, and *Orly J. Sorrel* (of *Nicolai, Montgomery & Sorrel*), for appellants.

Ferguson & Burdell (*W. Wesselhoeft*, of counsel) and *John R. Stair*, for respondents and cross-appellants.

JUDGES: En Banc. Donworth, J. + Rosellini, Hale, Neill, and Stafford, JJ., concur. Finley, J. (dissenting). Hunter, C. J., and Hamilton, J., concur with Finley, J. Sharp, J. (dissenting).

+ Justice Donworth is serving as a justice pro tempore of the Supreme Court pursuant to Const. art. 4, § 2(a) (amendment 38).

OPINION BY: DONWORTH

OPINION

[*624] [**2] This is an appeal from a judgment entered July 25, 1966, by the superior court in a will contest in which the purported will of Miss M. Josephine Reilly executed [**3] May 8, 1964, was declared [***5] to be invalid because of lack of testamentary capacity and also undue influence.

In order to decide the important issues presented by this appeal, it is necessary to consider in some detail the background

Witnesses

CODICILS.

Where will and codicil presented for probate at same time, and will admitted to probate without mentioning codicil, proponents of codicil must contest validity of such omission within statutory period. *Bronson v. Bronson*, 185 Wash. 536, 55 P.2d 1075 (1936).

CONTESTS.

-- CAPACITY.

Evidence that testator was subject to occasional lapses of memory which would be common to persons of his age, did not support a finding of lack of testamentary capacity. *Schneider v. Campbell*, 57 Wn.2d 565, 358 P.2d 801 (1961).

Will may be contested for want of capacity on part of testator. *In re Rutherford's Estate*, 110 Wash. 148, 188 P. 27 (1920); *Dean v. Jordan*, 194 Wash. 661, 79 P.2d 331 (1938).

Testator's failure to understand instrument as executed may be grounds for contest. *In re Beck's Estate*, 79 Wash. 331, 140 P. 340 (1914).

-- COMMENCEMENT.

Will contest can be commenced only within period limited by this section. *Horton v. Barto*, 57 Wash. 477, 107 P. 191 (1910); *Estate of Hoscheid v. Bartholet*, 78 Wash. 309, 139 P. 61 (1914); *Davis v. Seavey*, 95 Wash. 57, 163 P. 35 (1917); *In re Peck's Estate*, 153 Wash. 687, 280 P. 87 (1929); *In re Zimmerli's Estate*, 162 Wash. 243, 298 P. 326 (1931); *Bronson v. Bronson*, 185 Wash. 536, 55 P.2d 1075 (1936).

-- CONTRACT NOT TO CONTEST.

Rescission of contract not to contest will may be withdrawn prior to rescission by other party. *Bayley v. Lewis*, 39 Wn.2d 464, 236 P.2d 350 (1951).

To be consideration for compromise agreement, forbore contest must be in good faith and based on reasonable grounds. *Collins v. Collins*, 151 Wash. 201, 275 P. 571 (1929); *In re Witte's Estate*, 25 Wn.2d 487, 171 P.2d 183 (1946).

-- CONTRARY TO TESTATOR'S INTENT.

A will is unnatural when it is contrary to what the testator, from his known views, feelings, and intentions, would have been expected to make; if the will is in accordance with such views, it is not unnatural however much it may differ from ordinary actions of men in similar circumstances. *In re Estate of Smith*, 68 Wn.2d 145, 411 P.2d 879 (1966), modified on other grounds, 68 Wn.2d 903, 416 P.2d 124 (1966).

-- FRAUD.

Even though facts were sufficient to establish a presumption of undue influence, they were not enough to establish "influence tantamount to force or fear." *Trimm v. Davis*, 95 Wn. App. 358, 977 P.2d 591 (1999).

In order for the will to be set aside, all the elements of fraud must be shown by clear, cogent and convincing evidence. *Trimm v. Davis*, 95 Wn. App. 358, 977 P.2d 591 (1999).

Within four months following probate of a will, an interested person may petition the court and claim the will was procured by fraud. If it can be shown that the will was induced by the fraudulent representation of a beneficiary, the will may be set aside. *Lint v. Murphy*, 135 Wn.2d 518, 957 P.2d 755 (1998).

Fraud in execution of will is grounds for will contest. *In re Zimmerli's Estate*, 162 Wash. 243, 298 P. 326 (1931); *Bottger v. Bottger*, 14 Wn.2d 676, 129 P.2d 518 (1942); *In re Dand's Estate*, 41 Wn.2d 158, 247 P.2d 1016 (1952).

Fraud in validity of will at time it was executed and fraud affecting probate are grounds for contest. *Estate of Hoscheid v. Bartholet*, 78 Wash. 309, 139 P. 61 (1914); *Nielsen v. Schulte*, 198 Wash. 124, 87 P.2d 298 (1939).

-- GOOD FAITH.

The lack of success of a will contest does not indicate bad faith or lack of probable cause in making the challenge. *Potter v. Pacific Nat'l Bank*, 9 Wn. App. 413, 513 P.2d 76, review denied, 83 Wn.2d 1002 (1973).

-- GROUNDS.

Section only permits questions to be raised in will contest or probate proceedings relative to (1) testamentary capacity (2) undue influence (3) fraud (4) any cause effecting genuineness or legal sufficiency of will under attack. *Richardson v. Danson*, 42 Wn.2d 149, 253 P.2d 954 (1953).

-- INSANE DELUSIONS.

To invalidate will on grounds that testator was laboring under insane delusions, the evidence must show that insane delusions materially affected dispositions made in will. *National Bank of Commerce v. Miracle*, 60 Wn.2d 691, 375 P.2d 148 (1962).

-- NEGLECTING RELATIVES.

Cutting off relatives in favor of charitable institutions may be basis for contest. *Bremer v. Old Nat'l Bank & Union Trust Co.*, 10 Wn.2d 258, 116 P.2d 526 (1941).

-- OBJECTIONS.

Interested party may object to admission to probate by raising issue that court lacks jurisdiction. *Gordon v. Seattle First Nat'l Bank*, 49 Wn.2d 728, 306 P.2d 739 (1957).

-- PARTICIPANTS.

One who acts on the advice of an attorney in contesting a will or a provision thereof is deemed to be acting in good faith and for probable cause only if all material facts have been fully and fairly presented to the attorney. *Potter v. Pacific Nat'l Bank*, 9 Wn. App. 413, 513 P.2d 76, review denied, 83 Wn.2d 1002 (1973).

The original petitioner for admission of a will for probate may not contest its rejection under the general will contest statute. *In re Estate of Rynning*, 1 Wn. App. 565, 462 P.2d 952 (1969), review denied. *In re Rynning*, 78 Wn.2d 992 (1970).

A person who had previously litigated the admissibility of a will as the original petitioner, and was thereby precluded from contesting the will's rejection under the will contest statute, could not relitigate the issue by bringing a will contest in a representative capacity where all rights and interests in the representative capacity were the same as in the individual capacity, and were fully liti-

gated and protected in the prior proceeding and involved in the decision. In re Estate of Rynning, 1 Wn. App. 565, 462 P.2d 952 (1969), review denied. In re Rynning, 78 Wn.2d 992 (1970).

This section may be invoked only by interested parties whose rights have not been determined and who appear for first time following determination of petition for probate. Miller v. Hall, 34 Wn.2d 830, 210 P.2d 406 (1949).

To contest will, one must have direct pecuniary interest. Lynch v. O'Brien, 13 Wn.2d 581, 126 P.2d 47 (1942); Romano v. Romano, 40 Wn.2d 796, 246 P.2d 501 (1952).

Executor named in will rejected in probate is not an interested person under this section. Lynch v. O'Brien, 13 Wn.2d 581, 126 P.2d 47 (1942); Romano v. Romano, 40 Wn.2d 796, 246 P.2d 501 (1952).

Executor has duty to take all legitimate steps to uphold contested will. In re Estate of Jolly, 3 Wn.2d 615, 101 P.2d 995 (1940); Redhead v. Lang, 28 Wn.2d 456, 183 P.2d 518 (1947).

Under this section, one who appears within six months after probate of will and contests its validity is a will contestant. In re Estate of Jolly, 3 Wn.2d 615, 101 P.2d 995 (1940).

Proponent of later will is contestant within meaning of this section. In re Estate of Jolly, 3 Wn.2d 615, 101 P.2d 995 (1940).

State seeking escheat may bring contest under this section. State ex rel. Pemberton v. Havens, 187 Wash. 183, 60 P.2d 19 (1936).

Right to contest will survives to heirs or personal representatives of testator's heirs. Drury v. Moulton, 70 Wash. 374, 126 P. 912 (1912); Ingersoll v. Gourley, 72 Wash. 462, 130 P. 743 (1913).

Widow who, without instituting will contest within prescribed time, makes settlement with her husband's executors as to will is estopped to question validity of will or probate. Rader v. Stubblefield, 43 Wash. 334, 86 P. 560 (1906).

Allegation that contestants believe they were legally adopted by testator does not show required interest. In re Renton's Estate, 10 Wash. 533, 39 P. 145 (1895).

-- PROCEDURE.

Although an individual timely filed her petition for a will contest, the petition was dismissed because the individual did not serve a citation as required by RCW 11.24.020 until two years after the petition was filed. In re Estate of Kordon, 157 Wn.2d 206, 137 P.3d 16 (2006).

Within six months after ex parte probate, any interested person may institute contest, whereupon all interested parties are required to be brought in. State ex rel. Pemberton v. Havens, 187 Wash. 183, 60 P.2d 19 (1936).

There shall be only one will contest under this section to avoid multiplicity of suits. State ex rel. Pemberton v. Havens, 187 Wash. 183, 60 P.2d 19 (1936).

-- SUBSEQUENT WILL.

The offer of a later will does not constitute a contest of a prior will within the meaning of the probate code. Day v. Maquire, 46 Wn.2d 292, 280 P.2d 686 (1955).

-- UNDUE INFLUENCE.

Mere suspicion, even when accompanied by opportunity and motive, is insufficient to raise a substantial inference of undue influence. In re Estate of Smith, 68 Wn.2d 145, 411 P.2d 879 (1966), modified on other grounds, 68 Wn.2d 903, 416 P.2d 124 (1966).

Where counsel makes no objection to the introduction of a will, and the pleadings raise no issue as to the validity of the will, it is an abuse of discretion for the court to adjudicate the issue of undue

influence and foreclose the right to contest the validity of the will on that ground. *Schamber v. Borman*, 50 Wn.2d 791, 314 P.2d 617 (1957).

Nature of relationship between testator and persons participating in preparing the will, and beneficiary's receiving disproportionately large share, are evidence of undue influence. *Dean v. Jordan*, 194 Wash. 661, 79 P.2d 331 (1938).

Employment by favored beneficiary of attorney to draft will for his grandmother is not illegal, against public policy, nor does it raise inference of undue influence. *Schirmer v. Nethercutt*, 157 Wash. 172, 288 P. 265 (1930).

Undue influence was not established where there was no propinquity or contact. *Dahmen v. Missionary Sisters of Sacred Heart*, 151 Wash. 436, 276 P. 86 (1926); *Wingate v. Gulstine*, 154 Wash. 675, 282 P. 920 (1929).

Will drafted by beneficiary is not void for undue influence, if it conforms to testator's desires. *Sellers v. Root*, 112 Wash. 379, 192 P. 887 (1920).

Wife privileged to solicit making of will in her favor. *Jasinto v. Hamblen*, 79 Wash. 590, 140 P. 677 (1914).

To vitiate will, influence must be shown which at time of testamentary act controlled testator's volition, deprived him of free will and prevented his exercise of judgment and choice. *Patterson v. McWhirk*, 68 Wash. 377, 123 P. 515 (1912); *Olson v. Lane*, 191 Wash. 257, 71 P.2d 47 (1937); *Dean v. Jordan*, 194 Wash. 661, 79 P.2d 331 (1938); *In re Estate of Schafer*, 8 Wn.2d 517, 113 P.2d 41 (1941); *Bottger v. Bottger*, 14 Wn.2d 676, 129 P.2d 518 (1942); *In re Estate of Martinson*, 29 Wn.2d 912, 190 P.2d 96 (1948).

Undue influence may consist of coercion, imposition, fraud, or influence impelling fear, desire for peace, or something testator could not restrain. *In re Tresidder's Estate*, 70 Wash. 70, 125 P. 1034 (1912).

Undue influence in execution of will need not be shown by direct evidence, but it is competent to show the relations of the parties, the surrounding circumstances, habits and inclinations of testatrix, and fact that provisions for son had been made in four or five wills previously executed. *In re Tresidder's Estate*, 70 Wash. 15, 125 P. 1034 (1912).

Influence exerted by means of advice, arguments, persuasions, solicitations, suggestions, or entreaties not generally undue influence unless so importunate, persistent, or coercive, or otherwise so operates as to subdue testator's will. *Patterson v. McWhirk*, 68 Wash. 377, 123 P. 515 (1912); *Smith v. Saint Sure*, 120 Wash. 189, 206 P. 947 (1922); *Eidinger v. Mamlock Zelinsky's Estate*, 130 Wash. 165, 227 P. 507 (1924); *Olson v. Lane*, 191 Wash. 257, 71 P.2d 47 (1937); *Bottger v. Bottger*, 14 Wn.2d 676, 129 P.2d 518 (1942); *In re Estate of Martinson*, 29 Wn.2d 912, 190 P.2d 96 (1948).

To vitiate will contestant must show undue influence, not just influence. *Converse v. Mix*, 63 Wash. 318, 115 P. 305 (1911); *Roe v. Duty*, 115 Wash. 313, 197 P. 47 (1921); *In re Seattle's Estate*, 138 Wash. 656, 244 P. 964 (1926); *Schoen v. Shields*, 163 Wash. 119, 300 P. 159 (1931).

-- VALIDITY OF WILL.

In will contest, court may not consider validity of dispositions made by will. *Richardson v. Danson*, 42 Wn.2d 149, 253 P.2d 954 (1953).

State's objection to executor's distribution of estate as unauthorized is not a will contest. *Wright v. State*, 35 Wn.2d 178, 211 P.2d 721 (1949).

In this section "validity" refers to genuineness or legal sufficiency of will, not its operative effect. *Frankfurt v. Elliott*, 22 Wn.2d 334, 156 P.2d 427 (1945).

Under this section only issue is validity of will. *Miller v. Miller*, 20 Wn.2d 76, 145 P.2d 893 (1944).

In will contest, court may not construe will. *Miller v. Miller*, 20 Wn.2d 76, 145 P.2d 893 (1944).

CONTRACTS.

Filing of petition to determine validity of mutual contract to make will is not will contest. *Krause v. Von Miller*, 173 Wash. 1, 21 P.2d 268 (1933).

Action to enforce contract to devise's not a will contest. *Perkins v. South Bend*, 133 Wash. 349, 233 P. 655 (1925); *McCullough v. McCullough*, 153 Wash. 625, 280 P. 70 (1929); *Krause v. Von Miller*, 173 Wash. 1, 21 P.2d 268 (1933).

COURT PROCEDURES.

A citation is the counterpart of a summons in ordinary civil proceedings. *In re Estate of Palucci*, 61 Wn. App. 412, 810 P.2d 970 (1991).

Contestant may take voluntary nonsuit any time before he presents his evidence. *In re Estate of Archer*, 36 Wn.2d 505, 219 P.2d 112 (1950).

Denial of jury trial in will contest is within trial court's discretion. *McCombs v. Palmer*, 164 Wash. 339, 2 P.2d 692 (1931), *aff'd*, 164 Wn. 368, 7 P.2d 1119 (1932).

Insufficient petition timely filed that is struck out with leave to amend may be refiled after period for initial contest. *Corcoran v. Carrau*, 40 Wash. 202, 82 P. 297 (1905).

Contestant may amend her complaint to conform to evidence and show her interest. *Richardson v. Moore*, 30 Wash. 406, 71 P. 18 (1902).

Upon will contest, court may protect interests concerned by stay of proceedings in probate. *State ex rel. Stratton v. Tallman*, 25 Wash. 295, 65 P. 545 (1901).

FEES.

Timely payment of superior court clerk's filing fee is not a jurisdictional requirement for commencement of a will contest. *In re Estate of Crane*, 15 Wn. App. 161, 548 P.2d 585 (1976).

FORFEITURE PROVISIONS.

A provision in a will working a forfeiture on any person challenging the will or any provision thereof, including the selection of executor, does not violate public policy when it does not apply to a challenge made in good faith and for probable cause. *Potter v. Pacific Nat'l Bank*, 9 Wn. App. 413, 513 P.2d 76, review denied, 83 Wn.2d 1002 (1973).

JURISDICTION.

-- IN GENERAL.

Chapter 11.96A RCW does not change the specific mandatory provisions of RCW 11.24.020, which requires a citation, and the language in RCW 11.24.020 remains effective; therefore, a citation was required for a will contest. *In re Estate of Kordon*, 126 Wn. App. 482, 108 P.3d 1238 (2005).

Where there is no valid question as to court's jurisdiction, probate application can't be made into an adversary proceeding and it is not abuse of court's discretion to so rule. *State ex rel. Perry v. Jordan*, 50 Wn.2d 93, 309 P.2d 383 (1957).

VI Conclusion.

For the above stated reasons, I respectfully request that this court review material that I have provided and reconsider the decision made on October 15, 2009 case no. 08-4-00261-1. It is my sincere wish that this court find that my mother was competent and restore validity to her will.
Dated August 15, 2010.

Respectfully

Edward Howard
8510-212th St #1



Certificate of Service

I, Edward R. Howard, do here by certify that on August 16, 2010, I deposited in the U.S. mail an envelope, containing a copy of the Plaintiff's Opening Brief prepared by myself to: C. Thomas Moser Attorney at Law, 411 Main St., MT, Vernon, WA. 98273-3837

Edward Howard

