

No. 69175-9

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

In Re: The Probate Estate of
Ernest A. Howisey, Deceased

**RESPONSE TO AMENDED BRIEF OF APPELLANT
CAROL A. CARNAHAN**

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

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I. INTRODUCTION

This case involves a probate taking six years to complete. During the course of the probate there were three fiduciaries. The first Personal Representative was William Jaback, the Executive Director of Partners In Care. The second Personal Representative was appellant Carol Carnahan. She was appointed pursuant to a Settlement Agreement of February 6, 2008. Exhibit (“Ex”) 8. As part of that agreement William Jaback, as Personal Representative (“PR”) executed a promissory note in favor of Respondents Sinnett and Jensen. Ex 9. Ms. Carnahan was removed as PR at the hearing held on March 12, 2010. Report of Proceedings (“RP”) (3/12/2010) 15:18-20. At the same hearing a judgment was entered in favor of Ms. Hansen, one of the beneficiaries of the Howisey estate. RP (3/12/2010) 16:14. The trial court judge wanted to make sure she got paid if there was money to do it. RP (3/12/2010)16:15-16. Craig Coombs was subsequently appointed as a Successor PR. RP (3/12/2010) 18:12-13. With regard to Appellant's first appeal of this case pertaining to the 3/12/2010 order, the Successor PR was ordered to take a neutral and non-active role in the appeal. Clerk’s Papers (“CP”) 1180. In doing so he was not to take any positions or file any paperwork or pleadings in the appeal. CP 1180. The Successor PR was appointed to sell the Beaver Lake Cabin through private sale to any interested Howisey family member with a

minimum upset bid of \$105,000. RP (3/12/2010) 16:11-13. The Beaver Lake property did eventually sell but for a lesser amount, bringing the estate little more than \$20,000. RP (3/9/2012) 19:16-23. This amount was not enough to pay the cost of administration or allow for a distribution to heirs. CP 1307. The estate was closed pursuant to the June 29, 2012 Order Approving Final Report and Granting Decree of Dissolution. CP 1321-1322. Subsequent to the closing of the estate Carol Carnahan filed her Notice of Appeal. For the reader's ease of reference when reviewing this Response to Brief of Appellant (Amended), Appellant Carnahan's Orders for which Review is Sought, Assignments of Error ,and Issues Pertaining to Assignments of Error are identified below.

II. APPELLANT CARNAHAN'S ASSIGNMENTS OF ERROR

Orders for Which Appellant Seeks Review as Taken From Her Notice of Appeal

Appellant Carnahan seeks review of the decision or part of the decision of the trial court in the following Orders:

No. 1. Findings of Fact and Conclusions of Law and Judgment dated March 12, 2010.

No. 2. Order (1) authorizing Mr. Combs [sic] to retain counsel and establishing order of payment from R.E. Sale Proceeds.

No. 3. Order clarifying that Mr. Coombs is serving as P.R., waiving bond, and for letters of administration with will annexed.

No. 4. Order Issuing instructions on Sale of Realty.

No. 5. Order Approving PR Rates and Future PR and Attorney Advances.

No. 6. Order Defining Scope of PR's Duties and Involvement in Appeal signed December 1, 2010.

No. 7. Judgment Nunc Pro Tunc signed September 2, 2011.

No 8. Order re: Interim Report and Instructions signed March 9, 2012.

No. 9. Order Denying Modification of Finding of Fact and Conclusions of Law signed June 29, 2012.

No. 10. Order Approving Final Report and Granting Decree of Distribution.

Assignments of Error as Identified by Appellant Carnahan

Appellant Carnahan Identifies Assignments of Error As Follows:

No. 1. The Court erred in its implementation and management of a plan to sell the decedent's cabin to pay debt.

No. 2. The Court erred in removing Carol Carnahan as Successor PR and issuing a judgment against her.

No. 3. The Court erred in violating the Canons of Judicial Ethics and admitting findings of facts without substantial evidence: Finding of Fact No. 13, No 30, No 31, No 34, No. 35. No. 26. No. 27.

No. 4. The Court erred in treating the parties inequitably and in its assignments of fault.

No. 5. The court erred in denying a petition to clear the former Successor PR's name as well as Order on March 12, 2010, December 4, 2010, and March 9, 2012.

Issues Pertaining to Assignments of Error as Set Forth By Appellant Carnahan

Appellant Carnahan's five assignments of error are as follows:

No. 1. Is it an abuse of discretion to offer an estate property for sale at a price based upon estates debt, not value, and then waive RCW 11.56.090 which requires an appraisal for a court-ordered private sale. Should innocent family members of the decedent have been forced into litigation to keep their summer colony intact, when constraints to a successful sale were known in

advance and the majority of the findings of fact were not supported by substantial evidence?

No. 2. May the Court remove a Personal Representative without due process? Is it fair to punish the former PR, when the sale brings to benefit to the Estate, by greatly enlarging a judgment against her?

No. 3. Were the proceedings contaminated by bias and other violations of the Canons of Judicial Ethics when unusual numbers of findings of fact are shown to be without substantial evidence, is the overriding issue in error?

No. 4. May a Court assign fault while ignoring factors – such as a housing market crash – and actions of others that are out of the person’s control? Is it equitable for a party to have received 88% of their inheritance while other parties receive no inheritance, fees, or specific bequest?

No. 5. May a court deny a request for a change in a finding of fact or conclusion of law when the outcome down the road proves the finding and conclusion to be wrong?

III. ARGUMENT

The prior rulings of the trial court should not be overturned. A trial court’s decision will be reversed only if no reasonable person would have

decided the matter as the trial court did. *State v. Thomas*, 150 Wn.2d 821 (2004). The Appellant Carnahan, a Howisey family member with personal knowledge of the property cannot, in hindsight, complain about the effects of the negotiated CR 2A Settlement Agreement (“Settlement Agreement)(Ex 8) she signed on a pro se basis. No representations were made as to the value of the assets. Appellant Carnahan, by signing the Settlement Agreement, acknowledged that she had an independent opportunity to research and obtain valuation of the assets prior to signing. A pro se litigant is generally held to the same standard as an attorney. *Batten v. Abrams*, 28 Wash.App. 737, 739 n. 1, 626 P.2d 984, review denied, 95 Wash.2d 1033 (1981).

Appellant seems to complain about the sale of the Beaver Lake property at a low value or because there was no appraisal. Neither point is well taken. The accepted offer to purchase was \$30,000 before subtracting costs and outstanding obligations such as property taxes and water bills. RP (3/9/12) 19:16-23. The accepted Beaver Lake property value was low because it can’t be built upon, is in the middle of a family owned group of properties in a club, and is essentially a wooded area on the side of an easement. RP (3/9/2012) 27:21-25, 28:1-9. It is low because of the kind of property it is. One appraisal, without consideration of legal issues such as community club membership and title issues, was

for \$50,000. RP (3/9/12) 37:5. That value was deemed too high because it didn't take legal issues into account. RP (3/9/12) 37:6. The \$30,000 value was the only evidence of fair market value before the court at the time of sale. RP (3/9/2012) 28:22-24. The offer to buy for \$20,042.55 based upon a net value approach was proper.

It is submitted that the Court did not error. The Court, in places where appropriate, properly exercised its discretion. It is submitted that a reasonable person would have decided the matter as the trial court did, especially in view of the negotiated Settlement Agreement signed by Appellant. Responses to the five alleged errors as set forth by Appellant Carnahan are addressed below.

A. Response to Alleged Error Number One: Sale of Beaver Lake – Referred to by Appellant as the Black Heart of the Case – Was Proper

The Court did not abuse its discretion with regard to the sale of estate property known as Beaver Lake. The requirement of an appraisal was not waived. The value of the property was low. The property was encumbered by both title issues and the Howisey family agreement issues limiting a sale to only a Howisey family member. RP (3/9/12) 11:12. Due to these restraints this particular property could not be sold on the open market to third parties. RP (3/3/2010) 166:12-167:108; RP (3/3/2010) 168:17-169:5. Nevertheless, two appraisals were obtained. One was for

\$50,000 and one was for \$30,000. RP (3/9/2012)26:18-27:3; RP (3/9/12) 28:6-9. The record indicates the property was encumbered and too narrow to subdivide and the \$30,000 figure was stated to be probably too high. RP (3/9/12)27:1-3. Any buyer seeing the property as being worth \$30,000 and \$50,000 would have to discount it significantly because of the legal issues involved. RP (3/9/12)37:14-19. It was in the interest of the estate to accept the offer. RP (3/9/12)37:20-25. When queried by the Court whether or not the court should accept the offer, Appellant did not object and, instead, said “yes.” RP (3/9/2012)20:22-24. The Howisey family offer of \$30,000 before subtracting costs of outstanding obligations such as taxes and water bills was accepted. RP (3/9/12)19:16-23. The Court, in reviewing the proposed offer stated, quite bluntly:

“But what we got were two appraisals. One for \$30,000, one for \$50,000. And those were appraisals without the legal issues attached to it.

Any buyer outside the Howiseys would be buying a portion of a piece of land and a lawsuit, a very messy lawsuit.

But it’s instructive that we have two appraisals, that even without those legal issues, value it only as either \$30,000 or \$50,000. And certainly, any buyer seeing the property as worth something between 30 and \$50,000 would have to just discount it significantly more, given the legal issues involved.”

RP (3/9/12) 37:7-19.

Appellant may not retroactively complain about the ultimate valuation of the Beaver Lake Property when contrasted to the debt when she had earlier opportunities to further investigate asset values and failed to do so. She waived such rights pursuant to the terms of the Settlement Agreement (Ex 8). At page 4, of such Agreement, lines 9 through 16, it is stated:

4. Valuation of Assets.

William Jaback, Carol Carnahan, Marilyn Jensen and Anne Sinnett agree:

Each of the undersigned does hereby recognize and agree that there have been no representations made as to valuation of the assets. Each of the undersigned acknowledges that they have had an independent opportunity to research and obtain valuation of the assets. Each of the undersigned releases each other, their counsel and JDR from any liability as to the values as set forth herein. (Emphasis added).

Query: If the value of the Beaver Lake property was materially greater in value than originally contemplated by some the Howisey family signors to the Settlement Agreement resulting in a gain to the estate or Ms. Carnahan greater than anticipated, could they seek to be relieved of the benefit of their bargain? Answer: No. Howisey family signatories to the negotiated Settlement Agreement are all bound by it. They all had the right to legal counsel. There was no representation as to the value of the assets. They all had an opportunity to research and obtain the valuation of the assets if

they wished. Allowing any party to disregard the terms of the Settlement Agreement would render the agreement useless.

B. Response to Alleged Error Number Two: Removal of Appellant as Successor PR and Issuance of Judgment Against Her Was Proper

The court did not error in removing Carol Carnahan as Successor PR. She objects to written Findings of Fact Nos.30, 31, 32, 34, 35, and 36 with regard to the sale of the Beaver Lake Property. The other Findings of Fact were not objected to. As these issues were, in large part, previously dealt with in Appellant's first appeal to this Court under No. 65217-6-I so they will be only briefly discussed here. Findings of Fact which are not objected to are verities upon appeal. *In re Estate of Jones*, 152 Wn.2d 1,8, 93 P.3d 147 (2004). Review, where Findings of Fact and Conclusions of Law are entered following a bench trial, is limited to "determining whether the findings are supported by substantial evidence, and if so, whether the findings support the trial court's conclusions of law and judgment." *Sunnyside Valley Irr. Dist. v. Dickie*, 111 Wash. App.209, 214, 43 P.3d 1277 (2002) *aff'd*, 149 Wash.2d 873, 73 P.3d 369 (2003). If a rational fair minded person is convinced by such evidence the test is met. *In re Estates of Palmer*, 145 Wash.App.249, 265-66, 187 P.3d 758 (2008). Conclusions of law are reviewed de novo. *State v. Gatewood*, 163 Wash. 2d 534, 539, 183 P.3d 426 (2008).

Summaries of Findings of Fact which were not objected to by Ms. Carnahan and which support her removal and entry of judgment are set forth below:

1. Finding of Fact no. 13: Memorandum of Agreement (TEDRA Agreement based upon CR2A) filed with the court and not objected to by beneficiaries after notice given.
2. Finding of Fact no. 16: terms of promissory note and payments set out as well as the provision allowing for the payment of attorneys' fees if collection action by an attorney is necessary.
3. Finding of Fact no. 18: differences in opinion concerning the value of a Thunderbird vehicle thought to possibly be worth as much as \$15,000 but which was sold only \$200 according to transfer of title documents.
4. Finding of Fact no. 21: the Court having previously found that Appellant provided conflicting information about the availability of estate funds to pay all of the estate obligations orders Appellant to provide an accounting.
5. Finding of Fact no. 22: declarations and attached financial documents provided by Appellant show deficiencies and that she does not have a clear financial picture for the estate.
6. Finding of Fact no. 24: Appellant comingled estate assets with her own personal funds and used estate assets to pay personal expenses.
7. Finding of Fact no. 25. Appellant admits she cannot fully or clearly explain how she managed the estate and that she did not even understand it herself.

8. Finding of Fact no 26: Appellant based some of her actions upon a misunderstanding of the law and only followed the advice and guidance of counsel when it suited her purposes.
9. Finding of Fact no 27: Appellant cause financial harm to the estate by not wrapping it up in a timely manner.
10. Finding of Fact no. 28: Appellant has a poor memory, is confused about her own accountings and management of the estate . . . as is not a reliable witness.
11. Finding of Fact no. 36: Appellant was not able to say that she would be emotionally capable of transferring property to petitioners if required to do so as part of her responsibilities as Personal Representative.
12. Finding of Fact no. 38: Appellant put in substantial time preparing the Corliss property for sale but she did not immediately list it with a realtor and first attempted to sell it by word of mouth and flyers. The property sold for an amount less than which fully satisfied Petitioner's lien but what was fair market value.

CP at 1657-61.

An estate is to be administered as rapidly and as quickly as possible without sacrifice to the probate or non-probate estate. RCW 11.48.010. A Personal Representative is a fiduciary with a duty not just to beneficiaries but to creditors of an estate. *Estate of Larson*, 103 Wn.2d 517, 694 P.2d 1051 (1985), *Kerns v. Pickett*, 49 Wn.2d 770, 772-73, 306 P.2d 1112 (1957). A personal representative may be removed for any cause or reason which to the court appears necessary. RCW 11.28.250. *In*

re Borman's Estate, 50 Wn.2d 791, 314P. 2d 617 (1957). The court has broad discretion to remove a personal representative so long as the grounds for removal is valid. *In re Beard's Estate*, 60 Wn.2d 127, 372 P.2d 530 (1962).

In this case, the findings of the court support the removal of the Appellant Carnahan as personal representative and the entry of a judgment against her.

C. Response to Alleged Error Number Three: The Court did not Violate Canons of Judicial Ethics in Admitting Findings of Fact No. 13, No. 26, No. 27, No. 30, No. 31, No. 34, Without Substantial Evidence

1. Finding of Fact no. 13 was unchallenged at the trial court level. It is supported by substantial evidence. It cannot be challenged here. Respondents Jensen and Sinnett were creditors of the estate, not beneficiaries, because of the negotiated Settlement Agreement (Ex 8) which was also not objected to. There is no violation of the Canons of Judicial ethics.
2. Finding of Fact no. 26 pertains to failing to follow advice or guidance of counsel with regard to the administration of the estate as well as with other issues such as commingling estate funds with personal funds. This finding is supported

by substantial evidence. It is not a violation of the Canons of Judicial Ethics to comment upon the inadequacies of a Personal Representative.

3. Finding of Fact no. 27 pertains to the financial harm caused to the estate by not wrapping it up in a timely and efficient manner. This Finding is supported by substantial evidence. It is not a violation of the Canons of Judicial Ethics to comment upon the inadequacies of a personal representative.
4. Finding of Fact no. 30 is allegedly not supported by substantial evidence the gist of which appears to be because the “deeded property is not close to the waterfront,” “does not contain a cabin.” This is semantics. Finding of Fact no 30, in its entirety, reads “This property includes a cabin and is close to although not directly on the waterfront.” No violation of the Canons of Judicial Ethics is alleged with enough specificity to be responded to.
5. Finding of Fact no. 31 relates to the value of the property identified therein as the “Beaver Lake Cabin.” The value of the asset was valued at \$142,000 based upon Partners In Care’s Final Accounting and was believed available to

satisfy estate obligations. It is of note that the word “all” was struck from this finding. The asset, of whatever ultimate value, was available for satisfying, in whole or in part, estate obligations. When signing the Settlement Agreement (Ex 8) Appellant Carnahan, as well as Respondents, Marilyn Jensen, and William Jaback, former Personal Representative of the estate, acknowledged that there had been no representations made as to valuation of assets. They each acknowledged that they had an independent opportunity to research and obtain valuation of the assets. They each agreed to release each other, their counsel, and Judicial Dispute Resolution (“JDR”) for any liability as to the values set forth therein. At the time of the entry of the finding there was no other evidence as to value. No party chose to conduct any independent research. In view of the foregoing Finding of Fact no. 31 is supported by substantial evidence. No violation of the canons of judicial ethics is alleged with enough specificity to be responded to.

6. Finding of Fact no. 34 relates to Mr. Howisey historically paying a segregated portion of his property taxes, even

though it was not segregated, to the Howisey Family Club. This appears again to be semantics. Ms. Carnahan says he paid an equal share of taxes each year, along with his brothers and sisters, not a segregated portion. RP (3/3/2010) 165:2-9. She says the lot is undivided. It appears this characterization is a distinction without a difference. No violation of the Canons of Judicial Ethics is alleged with enough specificity to be responded to.

7. Finding of Fact no. 35 states, in abbreviated form, that there is evidence that the Beaver Lake Cabin may only be owned or transferred to members of the Howisey family and that similar parcels owned by the Howisey family have been transferred between members of the Howisey family. It is also stated that some of the transfers took place during time periods in which Ms. Carnahan served as an officer or President of the Howisey Family Beaver Lake Community Club. This Finding is also supported by substantial evidence. No violation of the Canons of Judicial Ethics is alleged with enough specificity to be responded to.

There were not unusual numbers of Findings of Facts which were entered without substantial evidence. It is respectfully submitted there were not

any. These proceedings were not contaminated by bias and other violations of the Canons of Judicial Ethics.

D. Response to Alleged Error Number Four: The Court did not Treat Parties Inequitably

Ms. Carnahan alleges the Court improperly assigned fault while ignoring factors such as a housing market crash and actions of others that are out of a person's control. As stated earlier the court has broad discretion when removing a personal representative so long as the grounds for removal is valid. *In re Beard's Estate, supra.* See, also, RCW 11.28.250.Unchallenged Findings (CP at 1657-61) supported Ms. Carnahan's removal and entry of a judgment against her. Findings and Conclusions related to penalizing a personal representative hampering the orderly administration of an estate will not be overturned unless arbitrary or capricious. *In re Blodgetts Estate*, 67 Wn.2d 92, 95, 406 P.2d 638 (1965). The Court did not act in an arbitrary or capricious manner. Antagonism towards creditors is a grounds for removal. *In re Wolfe's Estate* 186 Wn. 216, 218, 57 P.2d 1066 (1939), *In re Stotts' Estate*, 133 Wn. 100, 233 P. 280 (1925). Family contentiousness, even over items of small monetary value, is also grounds for removal. *In re Estate of Aaberg*, 25Wn.App. 336, 607 P.2d 1227 (1980).Ms. Carnahan, by comingling funds and causing harm to the estate by not wrapping it up in a timely

manner, brought her removal upon herself. The Court did not treat her inequitably. Ms. Carnahan's removal was within the broad discretion of the Court.

E. Response to Alleged Error Number Five: The Court did not Err in Denying a Petition to Clear to Former PR's Name as well as Orders on March 12, 2010, December 4 [sic] 2010, and March 9, 2012.

1. **Petition to Clear Name.** Appellant sought to have Finding of Fact no. 27 and Conclusion of Law no. 15 deleted or modified in an attempt to clear her name. They are set forth below for the convenience of the reader.

Finding of Fact no. 27: "She caused financial harm to the estate by not wrapping it up in a timely manner." (Previously unchallenged by Appellant).

Conclusion of Law no. 15: "RCW 11.28.250 specifically governs the removal of Personal Representatives. The Courts have long held that a Personal Representative may be removed for reasons other than those cited in the statute. *In re Stotts' Estate*, 133 Wn. 100, 233 P. 280 (1925); *In re Borman's Estate*, 50 Wn.2d 791, 314 P.2d 617 (1957). The Court has broad discretion to remove a Personal Representative so long as the grounds for removal is valid. *In re Beard's Estate*, 60 Wn.2d 127, 372 P.2d 530 (1962). Ms. Carnahan has been unwilling or unable to sell the Beaver Lake property to satisfy the balance of the amounts owing by this estate."

Beaver Lake aside, a Personal Representative has a duty to administer an estate "as rapidly and as quickly as possible." RCW 11.48.010. This did not happen. Naming a non-Beaver Lake example, for the sake of

illustration, the estate's Corliss property was in foreclosure. Ex 74. However, the property did eventually sell and fair market value was obtained. RP (3/12/2010) 10:24-25, 11:1-14. The Court found Appellant caused waste to the estate by not handling it in a proper or efficient manner. RP (3/12/2010) 13:16-17. Finding of Fact no. 27 should stand.

The propositions of law cited in Conclusion of Law 15 are accurate. In terms of clearing her name, presumably Appellant is referring to the last sentence which states, "Ms. Carnahan has been unwilling *or unable* to sell the Beaver Lake property to satisfy the balance of the amounts owing by this estate." (Emphasis added). For whatever reason Beaver Lake was not sold by her, whether unwilling "or unable" Conclusion of Law 15 is factual and should stand.

2. **Order of March 12, 2010.** The order of March 12, 2010 was entered after a trial before the Honorable Kimberley Prochnau. Appellant was represented by attorney Robert M. Bartlett of Cook & Bartlett. The alleged errors in that order are addressed in other sections of this brief.

3. **Order of December 1, 2010.** The order of December 1, 2010 is valid. The order sought relief 1) Authorizing Mr. Coombs to Retain Counsel and Establishing Order of Payment from R.E. Sale Proceeds; 2) Clarifying that Mr. Coombs is Serving as P.R., Waiving Bond, and for Letters of Administration with Will Annexed; 3) Issuing Instructions on

the Private Sale of Realty; 4) Approving PR Rates and Future PR and Attorney Advances; & 5) Defining Scope of PR's Duties and Involvement in Appeal. The trial court did not enter it erroneously. It is binding upon all parties including Appellant who had notice of such and appeared through counsel Robert Bartlett. The reasoning which was put forth in opposition to a request to modify such order was based in part upon *In re Krueger's Estate*, 11 Wn.2d 329, 119 P.2d 312 (1941) and *In re Merlino's Estate*, 48 Wn. 2d 494, 294 P. 2d 941 (1956). Both cases reject the general proposition that a party can seek to modify an earlier order of which they had notice. Although *Krueger* and *Merlino* involved modification at the final hearing the rationale applies to Ms. Carnahan's request. *In re Merlino* held:

“ . . . an interim Order made during the course of probate, after notice of the hearing, ***is final in its nature, and cannot, except upon a showing of extrinsic fraud, be attacked or re-litigated at the hearing on the final report.***” (Emphasis added).

In re Krueger discusses the issue too. It held:

“Therefore because the Gostina [a creditor] was present at the first report, ***the interim Order of approval estops them from objecting thereto at the final hearing.*** But Neff, [another creditor], on the other hand, is not precluded from objecting at the final hearing to the items and improper claims in the first report, ***since he was not present at the first hearing nor was notice thereof given.*** Furthermore, ***because an order is res judicata to one creditor of the estate, it does not follow that it is final as to another creditor of the estate who did not have his day in court.***” (Emphasis added).

The logic of the cases cited above is applicable here. Further, Ms. Carnahan has already had her day in court on the issue of the entry of the December 1, 2010 order. She provides testimony and a response to the petition upon which the order was based by way of affidavit presented by her counsel Robert Bartlett. CP 1162-1169. Respondents Sinnett and Jensen responded to Ms. Carnahan's responsive affidavit. CP 1170-1171. By way of Surreply "Howisey Family Respondents" then responded to the petition upon which the order was based and in strict reply to the "Jensen/Sinnett Reply." CP 1172-1173. Appellant Carnahan filed her own Surreply. CP 1174-1175. The court also considered PR's Reply to Reply to Responses Filed by Marilyn Jensen and Anne Sinnett, Howisey Family Respondents, and Carol Carnahan. CP 1119-1121. Additionally, the Response to the Petition for Order Instructing Personal Representative and Clarifying Estate Issues was considered (CP 1122-1133) as was the Declaration of James Howisey in Support of Response to Petition. CP 1134-1137. Based upon the forgoing the Court, without oral argument, entered its order of December 1, 2010. CP 1176-1182. The court was apprised of Ms. Carnahan's position by virtue of her Reply and Surreply. Appellant Carnahan did not and does not provide a basis for overturning the December 1, 2010 order. The court has "full power and authority to

proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.” See, RCW 11.96A.020(2).The court exercised its broad plenary authority to administer this estate in entering such order.

4. **Order of March 9, 2012.**The March 9, 2012 Order (CP 1299-1304) was in response to the PR’s Interim Report and Petition for Instructions Following Notice Re Sale. Appellant Carnahan was present in court and participated in the hearing on a pro se basis. CP 1301 21-25. At that hearing the PR was directed to accept the offer of \$20,047.55 for the Beaver Lake property submitted by James Howisey, et. al. CP 130019-22. Although present Appellant Carnahan did not have a motion that day. RP (3/9/2012) 13:17; 19:11-12. When questioned by the Court as to whether it should accept the Howisey family offer \$30,000, which would net a little over \$20,000 after subtracting costs and outstanding obligations (RP (3/9/2012) 19:16-23), she did not object. Instead, told the court she agreed RP (3/9/2012) 20:22-24. Appellant Carnahan cannot now complain about the entry of the March 9, 2012 order when she presented no motion, participated in the hearing, and when asked did not object to the court accepting the only offer received from any Howisey family member in the net amount of \$20,047.55.

Perhaps even more importantly, Appellant Carnahan did not directly respond to or object to the Petition for Order Approving Final Report and Closing as An Insolvent Estate.¹ CP 1304-1311. The June 29, 2012 Order Approving Final Report and Granting Decree of Distribution (CP 1321-1322) was entered without objection from Appellant Carnahan.

F. An Award of Costs and Fees Requested by Successor Personal Representative as Involvement in Probate and First Appeal was to Have Been Limited.

Mr. Coombs' main job was to sell the Beaver Lake property. RP (3/12/2010) 16:11-14. The intention of the Court was to limit the involvement of the Successor Administrator and keep administrative costs low. The Judge said "I want to make this as cheap as possible for Mr. Coombs to handle." RP (3/12/2010) 22:5-6.

Mr. Coombs, by Court order of December 1, 2010, was directed not to become involved in the first appeal, the appeal of the 3/12/2010 Order. The Court directed:

13. THAT the PR shall take a neutral and non-active role in the appeal of the 3/12/2010 order entered herein, THAT the PR is not a notice party in the appeal, and THAT the PR is not required to take any positions or file any paperwork or pleadings in that appeal. CP 1180

¹ Appellant Carnahan did file a Motion to Modify a Finding of Fact and Conclusion of Law and Other Relief (CP 1312-1318) to also be heard without oral argument on June 29, 2012, the same day as the court was going to consider the PR's petition regarding closure of the estate. The court denied Appellant Carnahan's petition by order of June 29, 2012. CP 1319-1320.

Recognition of the dearth of estate funds with which to pay costs of administration or heirs, was expressed again by the Court during the March 9, 2012 hearing with regard to the intertwined, sale limiting, Howisey Club interest.

“I’m not going to try and employ Mr. Coombs to try and sell the club interest on the open market even assuming, for the sake of argument, that this was - - that it is – that I would have the legal authority to do that. I see it as having no value except to family members or to whoever buys this piece of property and we would simply be put – throwing good money after bad to be paying administrative [sic] to do that.” RP (3/9/2012) 33:10-17.

In view of the foregoing, and given that the involvement of the Successor Administrator in this estate was supposed to be limited, including Ms. Carnahan’s first appeal, and since neither the Successor Administrator or his attorney Bruce Moen were fully compensated for their costs and fees incurred in winding down the estate, a request is made for costs and fees under 11.96A.150. An award of costs and fees seems especially appropriate as a result of the Successor PR having to become involved in Ms. Carnahan’s second appeal which deal with issues well beyond the scope of the limited appointment to sell the Beaver Lake property. RCW 11.96A.150 gives the court broad discretion to award fees in any manner and to any party it sees fit. *In re Estate of Black*, 116 Wash. App. 476, 66 P.3d 670 (2003).

IV. CONCLUSION

This estate ended up, unfortunately, without sufficient assets to pay costs of administration let alone heirs. Unfortunately, too, the Beaver Lake property had a low value. This was not because of the housing market crash in 2008. This was not because of any error by the Court. It was because of the restrictions on transfer of property ownership to only Howisey family members, lack of any real interest in purchasing the property by Howisey family members, and because of issues with title.²

The Court was bound to proceed taking into account the CR2A Settlement Agreement (Ex 8) negotiated by the parties themselves in mediation. The eventual sale of the Beaver Lake property, based upon a value taking into account two appraisals, the restrictions on sale, and the problems with title, was not in error. Ultimately, such sale was agreed to, at the price stated, by Appellant Carnahan. RP (3/9/2012) 20:22-24. Appellant Carnahan was not prejudiced by the Court's establishment of a minimum upset bid of \$105,000 for Mr. Coombs (RP (3/13/2010) 16:11-13) at the time of his appointment. This is because the Court abandoned

² Appellant Carnahan touches on the difficulties with sale, lack of marketability, and the unofficial rough value to use in the estate mediation given to her by Eastside Appraiser Mr. Arnold Pope. He thought such unofficial value to be in the area of \$41,000, ignoring lack of title and the fact it couldn't be sold on the open market. Ms. Carnahan stated that the cabins had no value under the highest and best use. CP 1164. Ms. Carnahan also commented upon her inability to timely sell the decedent's residence as she had hoped. CP 1164-1165. For the sake of argument it is respectfully submitted that these assertions, even if taken at face value, do not support her assignments of error.

the minimum upset bid requirement when it became apparent, in part based upon appraisals, the property was not worth \$105,000. No error has been shown.

The Successor PR requests that the all prior rulings of the Trial Court be affirmed and that the Successor PR be awarded reasonable costs and attorney fees pursuant to RCW 11.96A.150.

Respectfully submitted and dated this 6th day of May, 2013 at Seattle, Washington.

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CERTIFICATE OF SERVICE

I, Danielle U. Radice, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.
2. I am now and at all times herein mentioned employed by the Coombs Law Firm, 1715 114th Avenue SE, Suite 203, Bellevue, WA 98004.
3. In the appellate matter of In re the Estate of Ernest A. Howisey, I did on the date below: (1) cause to be filed with this Court the Response to Amended Brief of Appellant Carol A. Carnahan; (2) cause the Response to Amended Brief of Appellant Carol A. Carnahan; to be delivered via email and mail to Carol Carnahan, who is the Appellant; and (3) caused the Response to Amended Brief of Appellant Carol A. Carnahan; to be delivered by email and mail to Michael Olver.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: May, 6, 2013


DANIELLE U. RADICE