72643-9

FILED
May 27, 2015
Court of Appeals
Division I
State of Washington

No. 72643-9-I

**IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

BEVERLY YOUNG, BLAKE BOATMAN, BRADLEY BOATMAN, BRENT BOATMAN, and WILLIAM BOATMAN,

Appellants

v.

BRIAN BOATMAN, individually and as Attorney-in-Fact for Bojilina H. Boatman; and THE ESTATE OF BOJILINA H. BOATMAN,

Respondents

APPELLANTS' REPLY BRIEF

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May 27, 2015

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I. INTRODUCTION

Through their Opening Brief, Appellants establishing that they have standing to pursue their claims for conversion and breach of fiduciary duty against Respondent Brian Boatman ("Brian") and Brian should be removed as the personal representative of the Estate of Bojilina H. Boatman (the "Estate"). For the most part, Respondents' Brief failed to address the arguments made in the Opening Brief.

In fact, without filing the required notice of cross-appeal or including the necessary assignments of error, more than half of the argument presented by Respondents inappropriately rehashed positions they asserted below which were resolved in Appellants' favor. All such arguments should be disregarded by this court. Additionally, for the reasons set forth in the Opening Brief and this Reply, this Court should reverse the dismissal below, as well as the trial court's failure to remove Brian as personal representative of the Estate.

II. ARGUMENT

A. Appellants' Have Standing to Pursue Their Claims against Brian.

For the reasons set forth in the Opening Brief, Appellants have standing to pursue their claim for conversion and breach of fiduciary duty against Brian.[1] In particular, Appellants established that: 1) because Petitioners have a real, present and substantial interest in assuring that the assets pilfered from their mother are returned for ultimate distribution to them as estate beneficiaries, they meet the general standard employed to determine a party's standing;[2] 2) the only two applicable Washington cases support standing in this instance;[3] 3) applicable provisions of the Trusts and Estates Dispute Resolution Act ("TEDRA") accord standing to Appellants as recognized "parties";[4] 4) substantial authority from other jurisdictions supports standing in this instance;[5] and 5) consistent with sound policy, standing should be granted to estate

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[1] Opening Brief at 11-17.

[2] Opening Brief at 11; *Walker v. Munro*, 124 Wn.2d 402, 879 P.2d 920 (1994)("*Walker*"); *Postema v. Snohomish County*, 83 Wn. App. 574, 922 P.2d 176 (Div. 1, 1996)("*Postema*"); *Primark, Inc. v. Burien Gardens Assoc.*, 63 Wn. App. 900, 907, 823 P.2d 1116 (Div. 1, 1992)("*Primark*").

[3] Opening Brief at 12-13; *Drain v. Wilson,* 117 Wn. 34, 200 P. 518 (1921) ("*Drain*"); *In re: Estate of Wheeler v. Monheimer*, 71 Wn.2d 789, 431 P.2d 608 (1967) ("*Wheeler*").

[4] RCW 11.96A.030, 11.96A.080.

[5] Opening Brief at 15-16; *Siegel v. Novak*, 920 So.2d 89 (Fla. App. 2006), *aff'd by, Siegel v. J.P. Morgan Chase Bank*, 71 So.3d 935 (Fla. App. 2011); *Priestley v. Priestley*, 949 S.W. 2d 594, 598 (1997); *Brooks v. Bank of Wisconsin Dells*, 161 Wis.2d 39, 467 N.W. 2d 187 (1991).

beneficiaries and heirs seeking recovery against estate personal representatives for financial misconduct performed while previously serving as the decedent's attorney-in-fact.[6]

Respondents' Brief provided nothing that contradicts Appellants' position. At most, they loosely strung together quotations articulating general standing doctrine drawn from cases that are either inapplicable or tangentially support standing with respect to Appellants' claims.[7]

For example, three cases cited by Brian also were cited by Appellants for the general proposition that a party must demonstrate that he or she has a stake or real interest in the subject matter of a lawsuit to be accorded standing.[8] The holding in each supports Appellants' standing in this instance. For example, in *Walker* and *Postema,* citizens at large were denied standing to challenge a particular statute, because they could not demonstrate a specific stake in the outcome of the litigation. By contrast, a prospective real estate buyer was accorded standing in *Primark* to

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[6] Opening Brief at 17.

[7] *See* Respondent's Brief at 9-12.

[8] *Walker* [standing denied on citizen suit seeking to challenge voter initiative]; *Postema* [citizen lacked standing to challenge Growth Management Act]; and *Primark*.

seek a declaration that a strip of property adjacent to the parcel the buyer sought to purchase constituted a county road. Because Appellants' stake in the outcome of this case is more direct and tangible than in any of these cases, including *Primark* where standing was granted, *Walker, Postema and Primark* all buttress Appellants' standing claims.[9]

The other cases cited by Brian are no more availing. In *Riverview Community Group v. Spencer & Livingston*,[10] for example, a landowners' association was granted standing to pursue claims against their developer for closing a golf course amenity. Appellants' interest in obtaining recovery of Estate assets in which they have a beneficial interest is at least as direct as plaintiffs' in *Riverview.*[11]

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[9] A fourth case cited by both parties, *Knight v. City of Yelm,* 173 Wn.2d 325, 267 P.3d 973 (2011), holding that an adjacent landowner has standing to contest a land use decision that would impact future development rights, also is consistent with Appellant's standing claim in this case.

[10] 181 Wn. 2d 888, 337 P.3d 1076 (2014) ("*Riverview*").

[11] *See also, National Organization for Women, Inc. v. Scheidler,* 510 U.S. 249 (1994) [standing for health care clinics asserting claims that anti-abortion groups conspired to induce staff to stop working and patients to obtain services elsewhere]; *Haberman v. Washington Public Power Supply System,* 109 Wn.2d 107, 750 P.2d 254 (1988) [no standing to assert hypothetical "rights" of third parties]; *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 312 P.3d 976 (Div. 1, 2013) [no standing to pursue bad faith claim against third-party insurer, absent claim assignment].

As a consequence, Respondent's Brief does not undermine Appellants' claim for standing to assert their claims against Brian. The dismissal of Appellants' substantive claims, accordingly, should be reversed.

B. Brian Should Be Removed as Personal Representative.

The Opening Brief established that, consistent with applicable law and the specific dictates of RCW 11.28.250, Brian should be removed as personal representative in light of his misconduct.[12] Among other bases, Brian's misconduct violated applicable provisions of RCW 11.28.250, because: 1) his misappropriation of Bojilina's assets constituted waste or mismanagement of estate assets;[13] and 2) his use of Bojilina's funds to purchase significant items for his own benefit without including those items in the Estate Inventory and Appraisement (the "Inventory") also amounts to a fraud on the estate.[14]

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[12] Opening Brief at 18-20.

[13] Although Brian quibbled over the extent of his misappropriation of Bojilina's assets, his skewed analysis ultimately could not account for the transfer of at least $30,077 worth of Bojilina's assets for Brian's personal benefit. *See, Infra.* at 12; CP 808.

[14] The items included a wood chipper, a Subaru automobile, furniture, appliances, recreational equipment and an interest in Brian's residential real

Aside from these transgressions, Brian also breached his fiduciary duty to collect and preserve the Estate assets he previously misappropriated from Bojilina.[15] If anything, the irresolvable conflict between this duty and Brian's individual interest to avoid personal liability provides an independent basis for removal.[16]

Additionally, Brian breached a separate personal representative's duty by paying himself a $5,500 creditor's claim without court approval. This resulting violation of RCW 11.40.140 serves as an additional basis for his removal under RCW 11.28.250.[17]

Respondent's Brief does not alter the conclusion that Brian should be removed as personal representative. Indeed, Brian failed to address RCW 11.28.250 and 11.48.140 or any of the

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estate by virtue of Bojilina's funds used to pay his mortgage and renovate to his property. *See,* Opening Brief at 7-9.

[15] This duty is specified in RCW 11.48.010 and acknowledged in several cases including: *In re Norman's Estate*, 53 Wn.2d 328, 333 P.2d 662 (1958) [personal representative breached fiduciary duty by not pursuing estate assets]; *In re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) [personal representative breached fiduciary duty through use and appropriation of estate assets]; *In re Estate of Novolich v. Adams*, 7 Wn. App. 495, 500 P.2d 1297 (Div. 2, 1972) [personal representative breached fiduciary duty by failing to disclose appraised value of real estate ultimately distributed to him].

[16] *See* Opening Brief at 19.

[17] *See* Opening Brief at 20.

arguments or additional authorities set forth in the Opening Brief.[18] None of the four cases Brian cited even mentions personal representative removal.[19]

Thus, Appellants' position that Brian should be removed as personal representative remains valid. The trial court's contrary order should be reversed.

C. Because of Their Failure to Cross-Appeal or Assign Error, Sections IV, B.1, B.2 and C of Respondents' Brief Should Be Stricken.

As established in the Opening Brief, the trial court denied Respondents' summary judgment on all issues except for standing and Brian's removal as Estate personal representative, specifically ruling that disputed issues of material fact existed with respect to Appellants' substantive conversion and breach of fiduciary duty claims.[20] Respondents numerous briefs filed in connection with the Initial Hearing below exhaustively argued all the substantive issues they now attempt to raise through Sections IV, B.1, B.2 and C of

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[18] *See* Respondent's Brief at 25-31.

[19] *Id. Shoulberg v. Public Util. Dist. No. 1 of Jefferson County*, 169 Wn. App. 173, 280 P.3d 491 (Div. 2, 2012), *review denied*, 175 Wn.2d 124, 291 P.3d 253 (2012); *Brown ex rel. Richards v. Brown*, 157 Wn. App. 803, 239 P.3d 602 (Div. 1, 2010); *Estate of Lennon v. Lennon*, 108 Wn. App. 167, 29 P.3d 1258 (Div. 1, 2001); *Jacobson v. Lawrence*, 6 Wn. App. 954, 497 P.2d 262 (Div. 1, 1972).

[20] Opening Brief at 9-10; CP 958-959, 1001.

their brief.[21] Yet, by denying summary judgment on Appellants' substantive claims, the trial court necessarily ruled against Respondents on each of these issues.

Appellants, nevertheless, devoted over half of the argument portion of their brief to these issues without filing a notice of cross-appeal or assigning error with respect to any of the trial court's adverse rulings.[22] Consistent with RAP 2.4(a), 5.1(d) and 10.3(b), this Court should disregard Sections B.1, B.2 and C of Respondents' Brief as raising issues not properly preserved for appeal.

Consistent with RAP 2.4(a) and 5.1(d), a respondent, such as Brian in this instance, may only seek affirmative relief "by modifying the decision which is the subject matter of the review"[23]

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[21] Specifically, Respondent's argued that: 1) Appellants could not maintain claims for conversion and breach of fiduciary duty, CP 161-162, 887-889, 928-929; Appellants were somehow barred because they received distributions for the separate Ritchey Trust, CP 214-217, or failed to object to the granting of nonintervention powers to Brian, CP 159, 217-219, 923-925; 3) selected statutes relating to the powers of an attorney-in-fact barred recovery, CP 212-214, 925-926; 4) Appellants were asserting a claim for interference with an inheritance expectancy, contrary to Washington law, CP 886-887; and 5) Appellants claims were barred by the unclean hands doctrine, CP 220-221, 905.

[22] Respondents also inappropriately failed to identify as separate issues any of the extrinsic matters raised through Sections IV, B.1, B.2 or C of their brief. *See* Section III of Respondents' Brief.

[23] RAP 2.4(a).

through a timely filed a notice of cross-appeal. In *Strother v. Capital Bankers Life Ins. Co.,*[24] for example, respondent Strother attempted to raise as an alternative theory for affirmance a Consumer Protection Act ("CPA") claim that had been dismissed by the trial court. Because Strother had not timely filed a notice of cross-appeal, the court applied RAP 5.1(d) to deny the right to review on her CPA claim, observing that:

> Strother is asking this court to affirm on an alternative theory which was explicitly rejected by the trial court. As such, RAP 5.1(d) requires Strother to file a notice of appeal in order to assign error to the trial court's conclusions.[25]

Courts have cited RAP 2.4(a) to reach the same conclusion.[26]

Consistent with *Strother* and comparable cases, Respondents could only seek affirmance by arguing for reversal of the trial court's denial of summary judgment on Appellants' substantive conversion and breach of fiduciary duty claims by

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[24] 68 Wn. App. 224, 842 P.2d 504 (Div. 1, 1992) ("*Strother*"), *rev'd on other grounds, Ellis v. William Penn Life Assur. Co. of America,* 124 Wn. 2d 1, 873 P.2d 1185 (1994).

[25] 68 Wn. App at 240, n. 37. *See also State v. Kindsvogel,* 149 Wn. 2d 477, 481, 69 P.3d 870 (2003) ("*Kindsvogel*"); *North Coast Electric Co. v. Selig*, 136 Wn. App. 636, 151 P.3d 211 (Div. 1, 2007) ("*North Coast*"); *In re Doyle v. Mutual of Enumclaw Ins. Co.*, 93 Wn. App. 120, 127, 966 P.2d 1279 (Div. 2, 1998).

[26] *See, e.g., State v. Sims,* 171 Wn. 2d 436, 443, 256 P.3d 285 (2011); *Kindsvogel.*

timely filing a notice of cross-appeal. Because they failed to do, the issues raised in Sections IV B.1, B.2 and C are not properly before this Court.

Similarly, consistent with RAP 10.3(b), appellate courts will not consider any issue unless it has been raised through an assignment of error in the party's brief.[27] In light of Respondents' failure to identify any of the issues set forth in Sections IV, B.1, B.2 and C of their brief through assignments of error, these portions of Respondents' Brief should be disregarded.

D. Denial of Summary Judgment on Appellants' Substantive Claims Was Warranty at any Rate.

Although this Court should not reach the propriety of the trial court's denial of summary judgment on Appellants' substantive conversion and breach of fiduciary duty claims, that ruling can withstand scrutiny at any rate. Indeed, factual disputes exist with respect each of these issues.

Under the guise of "facts", Brian argued, as he did below, that this matter should be dismissed, because he somehow was entitled to appropriate over $400,000 of his mother's money for his

[27] *See, e.g., Kindsvogel*; *Bank of Washington v. Burgraff*, 38 Wn. App. 492, 687 P.2d 236 (1984).

own personal benefit.[28] In addition to cash totaling in excess of $100,000, these transfers included such "big ticket" items as: $131,720 to pay Brian's mortgage;[29] $15,176 for a wood chipper; $27,888.97 for a new Subaru automobile; $13,848.05 for recreational equipment; $18,194.33 for home renovations; and $35,522.91 for utilities.[30]

Suffice it to say that the disagreement between Appellants and Brian over the proper characterization of pertinent transactions demonstrates the factual disputes on which the trial court properly relied to deny summary judgment with respect to Appellants' substantive claims. Unresolved factual disputes include: 1) the extent to which Brian's care for Bojilina may be used to offset damages; 2) the propriety of using Bojilina's funds to pay Brian's mortgage, property renovations and utilities; 3) the legitimacy of using Bojilina's funds to purchase a wood chipper for use in Brian's business; 4) the extent to which purchased food was consumed by Bojilina; and 5) the legitimacy of alcohol purchases given that

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[28] *See* Respondents' Brief at 1-7; CP 157-167, 828-885, 887, 890, 929.

[29] Opening Brief at 7. This is the first item listed in the spreadsheet on page 7 in which the word "mortgage" was erroneously deleted.

[30] *Id.* CP 330-795.

Bojilina never consumed alcohol.[31] Significantly, despite Brian's best efforts to skew these transactions in his favor, he ultimately had to admit that Appellants' claim nevertheless would total $30,077.[32]

Obviously, these factual disputes precluded summary judgment. None of Respondents' more specific arguments raised at trial and through Respondents' Brief undermines this conclusion.

1. No Statute of Limitations Categorically Bars Appellants' Claims.

Contrary to Respondents' assertions, the applicable three-year limitations period[33] does not bar Appellants' conversion and breach of fiduciary duty claims.[34] Under well-settled Washington law, a limitation period is tolled until a plaintiff knows or reasonably should have known of the claim.[35] In light of Bojilina's condition while Brian was acting as her attorney-in-fact, she would have

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[31] *See generally,* CP 317-152, 185-202, 290-326, 330-800, 807-835.

[32] CP 808.

[33] RCW 4.16.080(2).

[34] This issue was addressed by the parties below and accordingly ruled upon by the trial court. CP 161-162, 191, 297-298.

[35] *See, e.g., Rivas v. Overlake Hosp. Medical Center,* 164 Wn. 2d 261, 189 P.3d 753 (2008); *Crisman v. Crisman*, 85 Wn. App. 15, 931 P.2d 163 (1997); *Brougham v. Swarva*, 34 Wn. App. 68, 74-76, 661 P.2d 138 (Div. 1, 1983).

lacked capacity to assert these claims.[36] Evidence in the record further demonstrated that Appellants were denied access to information from which they reasonably could have known of Brian's misappropriation of assets until they received the Inventory on September 5, 2013.[37] As a result, the three-year period did not commence until September 5, 2013, approximately three months before Appellants initiated this action. At the very least, disputed issues existed as to when the action accrued, eliminating dismissal at this stage in the proceedings.

Respondents' remaining contention that Appellants are time-barred because they did not timely object to granting Brian nonintervention powers in connection with his appointment as personal representative is both not supported by the record and bogus.[38] Contrary to Brian's unsupported assertion and consistent with common practice, where, as here, the will grants nonintervention powers, this probate was opened utilizing the provision set forth in RCW 11.68.011 at an *ex parte* hearing for

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[36] *Id.*; RCW 4.16.190.

[37] CP 25-27, 304-326.

[38] Brian raised this "argument" below, CP 159, 217-219, 923-925.

which no beneficiary or interested party was given prior notice.[39] Thus, Appellants has no opportunity to object to granting nonintervention powers to Brian and did not have reasonable notice of a basis for their claims until they received Inventory on September 5, 2013, at any rate.

2. Appellants Have Asserted Viable Conversion and Breach of Fiduciary Duty Claims.

Respondents properly characterized conversion as:

> The act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of possession of it.[40]

Additionally, "Money, under certain circumstances, may become the subject of conversion."[41]

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[39] Brian cited no support for the false assertion that Appellants received notice of the hearing through which letters testamentary were issued to Brian, because none exists. Given the dismissal at the Initial Hearing, the trial court never addressed Appellants' request to consolidate the probate with this TEDRA proceeding. The probate accordingly remains separate and not technically part of the record in this matter. Although Brian bears the burden of providing support of his false assertion, this Court, nevertheless, could verify that Appellants were not given notice of the *ex parte* hearing at which Brian was granted nonintervention powers by accessing the record in *In re: Estate of Bojilina Boatman,* Whatcom County Superior Court, Case No. 13-4-002772, Docs. 1-5.

[40] Respondents' Brief at 14; *Brown ex rel. Richards v. Brown*, 157 Wn. App. 803, 817, 239 P.3d 602 (Div. 1, 2010) ("*Brown*"). Respondents also argued for dismissal of Appellants' conversion claim in the trial court. CP 161-162, 928-929, 887.

[41] *Pub Util. Dist. No. 1 of Lewis Cnty. v. Wash. Pub. Power Supply Sys.*, 104 Wn. 2d 353, 378, 705 P.2d 1195 (1985); *Brown,* 157 Wn. App. at 817.

Consistent with these principles, Appellants asserted a viable claim that Brian's unjustified appropriation of Bojilina's assets constituted a conversion. By arguing over whether these asset transfers could somehow be justified, Respondents simply confirmed the existence of factual disputes on this issue.

Similarly, Respondents properly appear to admit that Brian owed fiduciary duties to Bojilina to preserve her assets and not misappropriate them.[42] Indeed, to the extent Brian acted without authority or justification, his diversion of Bojilina's assets for his own benefit constitutes a clear breach of his fiduciary duty.[43] As with Appellants' conversion claim, any resulting dispute over justification foreclosed entry of summary judgment against Appellants.

3. Appellants Are Not Asserting a Claim for Interference with an Inheritance Expectancy.

Contrary to Respondents' contention, Appellants are not making a claim comparable to that asserted by the plaintiffs in *Grange Ins. Ass'n v. Roberts*[44] that Brian defamed or "bad

[42] Respondents' Brief at 14-17. They also asserted these arguments below. CP 162-167, 887-889, 929.

[43] *See supra.* at 5-7.

[44] 179 Wn. App 739, 760, 320 P.3d 77 (Div. 1, 2013).

mouthed" his siblings resulting in Appellants' disinheritance.[45] Indeed, Bojilina's Will distributed the residue of her estate in equal shares among all her living children, including Appellants. Rather, as Estate beneficiaries, Appellants claims sought inclusion into the Estate of the assets Brian previously appropriated from Bojilina.[46]

E. Respondents Should Not Be Awarded Attorneys' Fees.

Respondents' motion for award of fees associated with this appeal should be denied. Obviously, if Appellants prevail, resulting in reversal, no fee award would be appropriate.

Moreover, under well-settled law, where, as here, litigation involves novel issues, no attorneys' fees should be awarded under RCW 11.96A.150:

> Because this case involves unique issue – whether a quit claim deed gifting property must recite consideration – we conclude that an award of fees to either party is unwarranted.[47]

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[45] Brian asserted this "defense" in the proceedings below. CP 194, CP 886-87.

[46] Similarly unavailing was Brian's contention that distribution from the Richey Trust to Appellants somehow undermined their claims. Respondents; Brief at 18-19; CP 214-216, 886-887. Had Brian chosen to appropriate funds from the Richey Trust rather than Bojilina's assets held outside of trust, Appellants would have pursued a comparable claim against Brian as trustee. Ironically, however, in that event, Appellants' standing as trust beneficiaries would have been unassailable.

[47] *Bale v. Allison*, 173 Wn. App. 435, 461, 294 P.3d 789 (Div. 1, 2013); 123 Wn. App 435, 461, 315 P.3d 579 (Div.1, 2013). *See also In re Estate of Stover,* 178 Wn. App. 550, 564, 315 P.3d 579 (Div. 1, 2013); *In re Washington Builders Ben.*

Central to this appeal is the novel issue of whether Appellants will be accorded standing to pursue their claims against Brian. Although the holdings in *Drain* and *Wheeler* support Appellants' standing in this matter, no Washington case has directly addressed the issue.[48] Thus, because this appeal addressed novel issues, an award of attorneys' fees under RCW 11.96A.150 is inappropriate.

Respondents' fee motion additionally should be denied because their motions to dismiss provided no benefit to the Estate. Consistent with the specific provisions in RCW 11.96A.150, emphasizing the importance of establishing benefit to the estate, pertinent case law denies fees awards where, as is here, the litigation does not benefit the estate.[49] Appellants' Petition sought

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Trust v. Building Ind. Assoc. of Washington, 173 Wn. App. 34, 84, 293 P.3d 1206 (Div. 2, 2013)[cited in Respondents' Brief at 32]; *In re Estate of D'Agosto*, 134 Wn. App. 390, 402, 139 P.3d 1125 (Div. 1, 2006); *Estate of Burks v. Kidd*, 124 Wn. App. 327, 333, 100 P.3d 328 (Div. 2, 2004). In light of this principle, Appellants withdrew their previous fee award request through a pleading filed on April 6, 2015.

[48] The additional personal representative removal issue is both related to the novel standing issue. and in this context, a difficult or novel one.

[49] *See e.g., Niehenke v. Guske*, 117 Wn.2d 631, 648, 818 P.2d 1324 (1991)[fee award inappropriate because contests between rival claimants to an estate asset did not benefit the estate]; *Estate of Morris v. Morris*, 89 Wn. App. 431, 949 P.2d 401 (Div. 2, 1998) ("Morris"); *McDonald v. Moore*, 57 Wn. App. 778, 783, 790 P.2d 213(Div. 1, 1990)[fee award denied because contest over valuation of estate assets did not benefit the estate].

recovery from Brian personally seeking to restore the estate assets he converted from Bojilina while serving as her attorney-in-fact. Although such a remedy would benefit the Estate, Respondents' motions to dismiss would benefit Brian personally, to the detriment of the Estate.

As such, Respondents' motions were comparable to the defense asserted by the personal representative in *Morris* in response to fiduciary misdeed claims. Although the *Morris* personal representative prevailed on his substantive defenses, the court held that a fee award was inappropriate, because the defense only benefited the personal representative individually and provided no benefit to the estate.

Perversely, fees awarded to Respondents would penalize five of the six estate beneficiaries while rewarding Brian for declining to maximize estate assets in order to avoid personal liability. Appropriately, applicable case law does not support such an inequitable result.[50]

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[50] Additionally, in light of the inherent conflict between Brian's duty as the personal representative to collect and preserve Estate assets and Brian's contrary personal interest, no fees should be awarded to the Estate, at any rate. *See* CP 1022-1097.

III. CONCLUSION

As established above, and through the Opening Brief, Appellants have standing to pursue their claims against Brian, and he should be removed as Estate personal representative. Because Respondents did not preserve extraneous matters for review, this Court should not consider any of those additional issues raised in Respondents' Brief. As a consequence, the trial court orders dismissing Appellants' Petition and declining to remove Brian as personal representative should be reversed, and the matter remanded for further proceedings.

RESPECTFULLY SUBMITTED this 27th day of May, 2015

BRITAIN & VIS PLLC

BY:

JAMES E. BRITAIN, WSBA # 6456
Of Attorneys for Appellants Beverly Boatman, Blake Boatman, Bradley Boatman, Brent Boatman, and William Boatman

APPELLANT'S REPLY BRIEF
APPENDIX

A. *National Organization of Women, Inc. v. Scheidler*, 510 U.S. 249 (1994) ..... APP 48 - 55

B. RCW 4.16.080 ..... APP 56

C. RCW 4.16.190 ..... APP 57

D. RCW 11.48.010 ..... APP 58

E. RCW 11.68.011 ..... APP 59

114 S.Ct. 798
Supreme Court of the United States

NATIONAL ORGANIZATION FOR WOMEN, INC., etc., et al., Petitioners,
v.
Joseph SCHEIDLER et al.

No. 92–780. | Argued Dec. 8, 1993. | Decided Jan. 24, 1994. | Rehearing Denied March 21, 1994. | See 510 U.S. 1215, 114 S.Ct. 1340.

Women's rights organization and abortion clinics brought action against coalition of antiabortion groups alleging that defendants were members of nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity in violation of Racketeer Influenced and Corrupt Organizations Act (RICO). The United States District Court for the Northern District of Illinois, James F. Holderman, Jr., J., 765 F.Supp. 937, dismissed claims. Plaintiffs appealed. The Court of Appeals for the Seventh Circuit, Bauer, Chief Judge, 968 F.2d 612, affirmed. Certiorari was granted. The Supreme Court, Chief Justice Rehnquist, J., held that RICO does not require proof that either racketeering enterprise or predicate acts of racketeering be motivated by economic purpose.

Reversed.

Justice Souter filed a concurring opinion in which Justice Kennedy joined.

West Headnotes (4)

[1] **Federal Civil Procedure**
In general; injury or interest

Standing represents a jurisdictional requirement which remains open to review at all stages of litigation.

185 Cases that cite this headnote

[2] **Racketeer Influenced and Corrupt Organizations**
Business, property, or proprietary injury; personal injuries

Abortion clinics had standing to bring action against coalition of antiabortion groups alleging that groups conspired to use force to induce clinic staff and patients to stop working and obtain medical services elsewhere, injuring the business and/or property interest of clinics in violation of Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C.A. §§ 1961–1968.

317 Cases that cite this headnote

[3] **Racketeer Influenced and Corrupt Organizations**
Predicate acts in general

Racketeer Influenced and Corrupt Organizations
Enterprise

Racketeer Influenced and Corrupt Organizations Act (RICO) does not require that racketeering enterprise or racketeering predicate acts be accompanied by an underlying economic motive. 18 U.S.C.A. §§ 1961(1), 1962(c).

70 Cases that cite this headnote

[4] **Racketeer Influenced and Corrupt Organizations**
Predicate acts in general

Racketeer Influenced and Corrupt Organizations
Enterprise

Rule of lenity did not apply in determining whether Racketeer Influenced and Corrupt Organizations Act (RICO) required economic motive for racketeering enterprise or racketeering predicate acts where RICO was unambiguous. 18 U.S.C.A. §§ 1961(1), 1962(c).

125 Cases that cite this headnote

799 *Syllabus

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In this action, petitioner health care clinics alleged, among other things, that respondents, a coalition of antiabortion groups called the Pro–Life Action Network (PLAN) and others, were members of a nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity—including extortion under the Hobbs Act—in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) chapter of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961–1968. They claimed that respondents conspired to use threatened or actual force, violence, or fear to induce clinic employees, doctors, and patients to give up their jobs, their right to practice medicine, and their right to obtain clinic services; that the conspiracy injured the clinics' business and property interests; and that PLAN is a racketeering enterprise. The District Court dismissed the case pursuant to Federal Rule of Civil Procedure 12(b)(6). It found that the clinics failed to state a claim under § 1962(c)—which makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt"—because they did not allege a profit-generating purpose in the activity or enterprise. It also dismissed their conspiracy claim under § 1962(d) on the ground that the § 1962(c) and other RICO claims they made could not stand. The Court of Appeals ****800** affirmed, agreeing that there is an economic motive requirement implicit in § 1962(c)'s enterprise element.

Held:

1. The clinics have standing to bring their claim. Since their complaint was dismissed at the pleading stage, the complaint must be sustained if relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon v. King & Spalding,* 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59. Nothing more than the complaint's extortion and injury allegations are needed to confer standing at this stage. Pp. 802–803.

2. RICO does not require proof that either the racketeering enterprise or the predicate acts of racketeering in § 1962(c) were motivated by an economic purpose. Nowhere in either § 1962(c) or in § 1961's ***250** definitions of "enterprise" and "pattern of racketeering activity" is there any indication that such a motive is required. While arguably an enterprise engaged in interstate or foreign commerce would have a profit-seeking motive, § 1962(c)'s language also includes enterprises whose activities "affect" such commerce. Webster's Third New International Dictionary defines "affect" as "to have a detrimental influence on"; and an enterprise surely can have such an influence on commerce without having its own profit-seeking motives. The use of the term "enterprise" in subsections (a) and (b), where it is arguably more tied in with economic motivation, also does not lead to the inference of an economic motive requirement in subsection (c). In subsections (a) and (b), an "enterprise" is an entity acquired through illegal activity or the money generated from illegal activity: the victim of the activity. By contrast, the "enterprise" in subsection (c) connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed. Since it is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity. Nor is an economic motive requirement supported by the congressional statement of findings that prefaces RICO and refers to activities that drain billions of dollars from America's economy. Predicate acts, such as the alleged extortion here, may not benefit the protesters financially, but they still may drain money from the economy by harming businesses such as the clinics. Moreover, a statement of congressional findings is a rather thin reed upon which to base a requirement neither expressed nor fairly implied from the Act's operative sections. Cf. *United States v. Turkette,* 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246. The Department of Justice's 1981 guidelines on RICO prosecutions are also unpersuasive, since 1984 amendments broadened the focus of RICO prosecutions from those association-in-fact enterprises that exist "for the purpose of maintaining operations directed toward an economic goal" to those that are "directed toward an economic or other identifiable goal." In addition, the statutory language is unambiguous, and there is no clearly expressed intent to the contrary in the legislative history that would warrant a different construction. Nor is there an ambiguity in RICO that would suffice to invoke the rule of lenity. See *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 499, 105 S.Ct. 3275, 3286, 87 L.Ed.2d 346. Pp. 803–806.

968 F.2d 612, reversed.

REHNQUIST, C.J., delivered the opinion for a unanimous Court. SOUTER, J., filed a concurring opinion, in which KENNEDY, J., joined, *post,* p. 806.

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****801** 1993 WL 459719 (Resp. Brief)

1993 WL 459767 (Resp. Brief)

1993 WL 459805 (Resp. Brief)

Opinion

***252** Chief Justice REHNQUIST delivered the opinion of the Court.

We are required once again to interpret the provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) chapter of the Organized Crime Control Act of 1970 (OCCA), Pub.L. 91–452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. §§ 1961–1968 (1988 ed. and Supp. IV). Section 1962(c) prohibits any person associated with an enterprise from conducting its affairs through a pattern of racketeering activity. We granted certiorari to determine whether RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose. We hold that RICO requires no such economic motive.

I

Petitioner National Organization for Women, Inc. (NOW), is a national nonprofit organization that supports the legal availability of abortion; petitioners Delaware Women's Health Organization, Inc. (DWHO), and Summit Women's Health Organization, Inc. (SWHO), are health care centers that perform abortions and other medical procedures. Respondents are a coalition of antiabortion groups called the Pro–Life Action Network (PLAN), Joseph Scheidler and other individuals and organizations that oppose legal abortion, and a medical laboratory that formerly provided services to the two petitioner health care centers. [1]

Petitioners sued respondents in the United States District Court for the Northern District of Illinois, alleging violations of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. § 1 *et seq.*, and RICO's §§ 1962(a), (c), and (d), as well as several pendent state-law claims stemming from the activities ***253** of antiabortion protesters at the clinics. According to respondent Scheidler's congressional testimony, these protesters aim to shut down the clinics and persuade women not to have abortions. See, *e.g.*, Abortion Clinic Violence, Oversight Hearings before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 99th Cong., 1st and 2d Sess., 55 (1987) (statement of Joseph M. Scheidler, Executive Director, Pro–Life Action League). Petitioners sought injunctive relief, along with treble damages, costs, and attorney's fees. They later amended their complaint, and pursuant to local rules, filed a "RICO Case Statement" that further detailed the enterprise, the pattern of racketeering, the victims of the racketeering activity, and the participants involved.

The amended complaint alleged that respondents were members of a nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity including extortion in violation of the Hobbs Act, 18 U.S.C. § 1951. [2] Section 1951(b)(2) defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." Petitioners alleged that respondents conspired to use threatened or actual force, violence, or fear to induce clinic employees, ****802** doctors, and patients to give up their jobs, give up their economic right to practice medicine, and give up their right to obtain medical services at the clinics. App. 66, Second Amended Complaint ¶ 97. Petitioners claimed that this conspiracy "has injured ***254** the business and/or property interests of the [petitioners]." *Id.*, at 72, ¶ 104. According to the amended complaint, PLAN constitutes the alleged racketeering "enterprise" for purposes of § 1962(c). *Id.*, at 72–73, ¶¶ 107–109.

The District Court dismissed the case pursuant to Federal Rule of Civil Procedure 12(b)(6). Citing *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961), it held that since the activities alleged "involve[d] political opponents, not commercial competitors, and political objectives, not marketplace goals," the Sherman Act did not apply. 765 F.Supp. 937, 941 (ND Ill.1991). It dismissed petitioners' RICO claims under § 1962(a) because the "income" alleged by petitioners consisted of voluntary donations from persons

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opposed to abortion which "in no way were derived from the pattern of racketeering alleged in the complaint." *Ibid.* The District Court then concluded that petitioners failed to state a claim under § 1962(c) since "an economic motive requirement exists to the extent that some profit-generating purpose must be alleged in order to state a RICO claim." *Id.*, at 943. Finally, it dismissed petitioners' RICO conspiracy claim under § 1962(d) since petitioners' other RICO claims could not stand.

The Court of Appeals affirmed. 968 F.2d 612 (CA7 1992). As to the RICO counts, it agreed with the District Court that the voluntary contributions received by respondents did not constitute income derived from racketeering activities for purposes of § 1962(a). *Id.*, at 625. It adopted the analysis of the Court of Appeals for the Second Circuit in *United States v. Ivic*, 700 F.2d 51 (1983), which found an "economic motive" requirement implicit in the "enterprise" element of the offense. The Court of Appeals determined that "non-economic crimes committed in furtherance of non-economic motives are not within the ambit of RICO." 968 F.2d, at 629. Consequently, petitioners failed to state a claim under § 1962(c). The Court of Appeals also affirmed dismissal of the RICO conspiracy claim under § 1962(d).

***255** We granted certiorari, 508 U.S. 971, 113 S.Ct. 2958, 125 L.Ed.2d 659 (1993), to resolve a conflict among the Courts of Appeals on the putative economic motive requirement of 18 U.S.C. §§ 1962(c) and (d). Compare *United States v. Ivic, supra,* and *United States v. Flynn*, 852 F.2d 1045, 1052 (CA8), ("For purposes of RICO, an enterprise must be directed toward an economic goal"), cert. denied, 488 U.S. 974, 109 S.Ct. 511, 102 L.Ed.2d 546 (1988), with *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (CA3) (because the predicate offense does not require economic motive, RICO requires no additional economic motive), cert. denied, 493 U.S. 901, 110 S.Ct. 261, 107 L.Ed.2d 210 (1989).

II

[1] **[2]** We first address the threshold question raised by respondents whether petitioners have standing to bring their claim. Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 546–547, 106 S.Ct. 1326, 1333–1334, 89 L.Ed.2d 501 (1986). Respondents are correct that only DWHO and SWHO, and not NOW, have sued under RICO.[3] Despite the fact that the clinics attempted to bring the RICO claim as class actions, DWHO and SWHO must themselves have standing. ****803** *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 40, n. 20, 96 S.Ct. 1917, 1925, n. 20, 48 L.Ed.2d 450 (1976), citing *Warth v. Seldin*, 422 U.S. 490, 502, 95 S.Ct. 2197, 2207, 45 L.Ed.2d 343 (1975). Respondents are wrong, however, in asserting that the complaint alleges no "injury" to DWHO and SWHO "fairly traceable to the defendant's allegedly unlawful conduct." *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984).

***256** We have held that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 2137, 119 L.Ed.2d 351 (1992) (citations omitted). The District Court dismissed petitioners' claim at the pleading stage pursuant to Federal Rule of Civil Procedure 12(b)(6), so their complaint must be sustained if relief could be granted "under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984). DWHO and SWHO alleged in their complaint that respondents conspired to use force to induce clinic staff and patients to stop working and obtain medical services elsewhere. App. 66, Second Amended Complaint ¶ 97. Petitioners claimed that this conspiracy "has injured the business and/or property interests of the [petitioners]." *Id.*, at 72, ¶ 104. In addition, petitioners claimed that respondent Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic. *Id.*, at 68, ¶ 98(g). Paragraphs 106 and 110 of petitioners' complaint incorporate these allegations into the § 1962(c) claim. *Id.*, at 72, 73. Nothing more is needed to confer standing on DWHO and SWHO at the pleading stage.

III

[3] We turn to the question whether the racketeering enterprise or the racketeering predicate acts must be accompanied by an underlying economic motive. Section 1962(c) makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity

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or collection of unlawful debt." Section 1961(1) defines "pattern of racketeering activity" to include conduct that is "chargeable" ***257** or "indictable" under a host of state and federal laws.[4] RICO broadly defines "enterprise" in § 1961(4) to "includ[e] any individual, partnership, corporation, ****804** association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Nowhere in either § 1962(c) or the RICO definitions in § 1961 is there any indication that an economic motive is required.

The phrase "any enterprise engaged in, or the activities of which affect, interstate or foreign commerce" comes the closest of any language in subsection (c) to suggesting a need for an economic motive. Arguably an enterprise engaged in ***258** interstate or foreign commerce would have a profit-seeking motive, but the language in § 1962(c) does not stop there; it includes enterprises whose activities "affect" interstate or foreign commerce. Webster's Third New International Dictionary 35 (1969) defines "affect" as "to have a detrimental influence on—used especially in the phrase *affecting commerce.*" An enterprise surely can have a detrimental influence on interstate or foreign commerce without having its own profit-seeking motives.

The Court of Appeals thought that the use of the term "enterprise" in §§ 1962(a) and (b), where it is arguably more tied in with economic motivation, should be applied to restrict the breadth of use of that term in § 1962(c). 968 F.2d, at 629. Respondents agree and point to our comment in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 489, 105 S.Ct. 3275, 3281, 87 L.Ed.2d 346 (1985), regarding the term "violation," that "[w]e should not lightly infer that Congress intended the term [violation] to have wholly different meanings in neighboring subsections."

We do not believe that the usage of the term "enterprise" in subsections (a) and (b) leads to the inference that an economic motive is required in subsection (c). The term "enterprise" in subsections (a) and (b) plays a different role in the structure of those subsections than it does in subsection (c). Section 1962(a) provides that it "shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." Correspondingly, § 1962(b) states that it "shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." ***259** The "enterprise" referred to in subsections (a) and (b) is thus something acquired through the use of illegal activities or by money obtained from illegal activities. The enterprise in these subsections is the victim of unlawful activity and may very well be a "profit-seeking" entity that represents a property interest and may be acquired. But the statutory language in subsections (a) and (b) does not mandate that the enterprise be a "profit-seeking" entity; it simply requires that the enterprise be an entity that was acquired through illegal activity or the money generated from illegal activity.

By contrast, the "enterprise" in subsection (c) connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed, rather than the victim of that activity. Subsection (c) makes it unlawful for "any person employed by or associated with any enterprise ... to conduct or participate ... in the conduct of such enterprise's affairs through a pattern of racketeering activity...." Consequently, since the enterprise in subsection (c) is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity.[5] Nothing in ****805** subsections (a) and (b) directs us to a contrary conclusion.

The Court of Appeals also relied on the reasoning of *United States v. Bagaric*, 706 F.2d 42 (CA2), cert. denied, 464 U.S. 840, 104 S.Ct. 133, 134, 78 L.Ed.2d 128 (1983), to support its conclusion that subsection (c) requires an economic motive. In upholding the convictions, under RICO, of members of a political terrorist group, the *Bagaric* court relied in part on the congressional statement of findings which prefaces RICO and refers to the activities of groups that " 'drai[n] billions of dollars from America'seconomy ***260** by unlawful conduct and the illegal use of force, fraud, and corruption.' " 706 F.2d, at 57, n. 13 (quoting OCCA, 84 Stat. 922). The Court of Appeals for the Second Circuit decided that the sort of activity thus condemned required an economic motive.

We do not think this is so. Respondents and the two Courts of Appeals, we think, overlook the fact that predicate acts, such as the alleged extortion, may not benefit the protesters financially but still may drain money from the economy by

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harming businesses such as the clinics which are petitioners in this case.

We also think that the quoted statement of congressional findings is a rather thin reed upon which to base a requirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act. As we said in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 248, 109 S.Ct. 2893, 2905, 106 L.Ed.2d 195 (1989): "[T]he occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime."

In *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981), we faced the analogous question whether "enterprise" as used in § 1961(4) should be confined to "legitimate" enterprises. Looking to the statutory language, we found that "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." *Id.*, at 580, 101 S.Ct., at 2527. Accordingly, we resolved that § 1961(4)'s definition of "enterprise" "appears to include both legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does legitimate ones." *Id.*, at 580–581, 101 S.Ct., at 2527. We noted that Congress could easily have narrowed the sweep of the term "enterprise" by inserting a single word, "legitimate." *Id.*, at 581, 101 S.Ct., at 2527. Instead, Congress did nothing to indicate that "enterprise" ***261** should exclude those entities whose sole purpose was criminal.

The parallel to the present case is apparent. Congress has not, either in the definitional section or in the operative language, required that an "enterprise" in § 1962(c) have an economic motive.

The Court of Appeals also found persuasive guidelines for RICO prosecutions issued by the Department of Justice in 1981. The guidelines provided that a RICO indictment should not charge an association as an enterprise, unless the association exists " 'for the purpose of maintaining operations directed toward an *economic* goal....' " *United States v. Ivic*, 700 F.2d, at 64, quoting U.S. Dept. of Justice, United States Attorneys' Manual § 9–110.360 (1984) (emphasis added). The Second Circuit believed these guidelines were entitled to deference under administrative law principles. See 700 F.2d, at 64. Whatever may be the appropriate deference afforded to such internal rules, see, *e.g., Crandon v. United States*, 494 U.S. 152, 177, 110 S.Ct. 997, 1011, 108 L.Ed.2d 132 (1990) (SCALIA, J., concurring in judgment), for our purposes we need note only that the Department of Justice amended its guidelines in 1984. The amended guidelines provide that an association-in-fact enterprise must be "directed toward an economic *or other identifiable goal.*" U.S. Dept. of Justice, ****806** United States Attorney's Manual § 9–110.360 (Mar. 9, 1984) (emphasis added).

Both parties rely on legislative history to support their positions. We believe the statutory language is unambiguous and find in the parties' submissions respecting legislative history no such "clearly expressed legislative intent to the contrary" that would warrant a different construction. *Reves v. Ernst & Young*, 507 U.S. 170, 177, 113 S.Ct. 1163, 1169, 122 L.Ed.2d 525 (1993), citing *United States v. Turkette, supra*, 452 U.S., at 580, 101 S.Ct., at 2527, quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980).

[4] ***262** Respondents finally argue that the result here should be controlled by the rule of lenity in criminal cases. But the rule of lenity applies only when an ambiguity is present; " 'it is not used to beget one.... The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers.' " *Turkette, supra*, 452 U.S., at 587–588, n. 10, 101 S.Ct., at 2531, n. 10, quoting *Callanan v. United States*, 364 U.S. 587, 596, 81 S.Ct. 321, 326, 5 L.Ed.2d 312 (1961) (footnote omitted). We simply do not think there is an ambiguity here which would suffice to invoke the rule of lenity. " '[T]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' " *Sedima*, 473 U.S., at 499, 105 S.Ct., at 3286 (quoting *Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (CA7 1984)). [6]

We therefore hold that petitioners may maintain this action if respondents conducted the enterprise through a pattern of racketeering activity. The questions whether respondents committed the requisite predicate acts, and whether the commission of these acts fell into a pattern, are not before us. We hold only that RICO contains no economic motive requirement.

The judgment of the Court of Appeals is accordingly

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Reversed.

***263** Justice SOUTER, with whom Justice KENNEDY joins, concurring.

I join the Court's opinion and write separately to explain why the First Amendment does not require reading an economic-motive requirement into the Racketeer Influenced and Corrupt Organizations Act (RICO or statute), and to stress that the Court's opinion does not bar First Amendment challenges to RICO's application in particular cases.

Several respondents and *amici* argue that we should avoid the First Amendment issues that could arise from allowing RICO to be applied to protest organizations by construing the statute to require economic motivation, just as we have previously interpreted other generally applicable statutes so as to avoid First Amendment problems. See, *e.g., Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138, 81 S.Ct. 523, 530, 5 L.Ed.2d 464 (1961) (holding that antitrust laws do not apply to businesses combining to lobby the government, even where such conduct has an anticompetitive purpose and an anticompetitive effect, because the alternative "would raise important constitutional questions" under the First Amendment); see also *Lucas v. Alexander*, 279 U.S. 573, 577, 49 S.Ct. 426, 428, 73 L.Ed. 851 (1929) (a law "must be construed with an eye to possible constitutional limitations so as to avoid doubts as to its validity"). The argument is meritless in this case, though, for this principle of statutory construction ****807** applies only when the meaning of a statute is in doubt, see *Noerr, supra,* and here "the statutory language is unambiguous," *ante,* at 806.

Even if the meaning of RICO were open to debate, however, it would not follow that the statute ought to be read to include an economic-motive requirement, since such a requirement would correspond only poorly to free-speech concerns. Respondents and *amici* complain that, unless so limited, the statute permits an ideological organization's opponents to label its vigorous expression as RICO predicate acts, thereby availing themselves of powerful remedial provisions that could destroy the organization. But an ***264** economic-motive requirement would protect too much with respect to First Amendment interests, since it would keep RICO from reaching ideological entities whose members commit acts of violence we need not fear chilling. An economic-motive requirement might also prove to be underprotective, in that entities engaging in vigorous but fully protected expression might fail the proposed economic-motive test (for even protest movements need money) and so be left exposed to harassing RICO suits.

An economic-motive requirement is, finally, unnecessary, because legitimate free-speech claims may be raised and addressed in individual RICO cases as they arise. Accordingly, it is important to stress that nothing in the Court's opinion precludes a RICO defendant from raising the First Amendment in its defense in a particular case. Conduct alleged to amount to Hobbs Act extortion, for example, or one of the other, somewhat elastic RICO predicate acts may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 917, 102 S.Ct. 3409, 3427, 73 L.Ed.2d 1215 (1982) (holding that a state common-law prohibition on malicious interference with business could not, under the circumstances, be constitutionally applied to a civil-rights boycott of white merchants). And even in a case where a RICO violation has been validly established, the First Amendment may limit the relief that can be granted against an organization otherwise engaging in protected expression. See *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958) (invalidating under the First Amendment a court order compelling production of the NAACP's membership lists, issued to enforce Alabama's requirements for out-of-state corporations doing business in the State). See also *NAACP v. Claiborne Hardware Co., supra,* 458 U.S., at 930–932, 102 S.Ct., at 3434–35 (discussing First Amendment limits on the assessment of derivative liability against ideological organizations); *Oregon Natural Resources Council v. Mohla,* 944 F.2d 531 (CA9 1991) (applying a heightened pleading standard ***265** to a complaint based on presumptively protected First Amendment conduct).

This is not the place to catalog the speech issues that could arise in a RICO action against a protest group, and I express no view on the possibility of a First Amendment claim by the respondents in this case (since, as the Court observes, such claims are outside the question presented, see *ante,* at 806, n. 6). But I think it prudent to notice that RICO actions could deter protected advocacy and to caution courts applying RICO to bear in mind the First Amendment interests that could be at stake.

Parallel Citations

114 S.Ct. 798, 127 L.Ed.2d 99, 62 USLW 4073, RICO Bus.Disp.Guide 8470

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The other respondents named in the complaint include the following: John Patrick Ryan, Randall A. Terry, Andrew Scholberg, Conrad Wojnar, Timothy Murphy, Monica Migliorino, Vital–Med Laboratories, Inc., Pro–Life Action League, Inc. (PLAL), Pro–Life Direct Action League, Inc. (PDAL), Operation Rescue, and Project Life.

2 The Hobbs Act, 18 U.S.C. § 1951(a), provides: "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both." Respondents contend that petitioners are unable to show that their actions violated the Hobbs Act. We do not reach that issue and express no opinion upon it.

3 NOW sought class certification for itself, its women members who use or may use the targeted health centers, and other women who use or may use the services of such centers. The District Court did not certify the class, apparently deferring its ruling until resolution of the motions to dismiss. All pending motions were dismissed as moot when the court granted respondents' motion to dismiss. 765 F.Supp. 937, 945 (ND Ill.1991).

4 Section 1961(1) provides: " 'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering) ... (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States...."

5 One commentator uses the terms "prize," "instrument," "victim," and "perpetrator" to describe the four separate roles the enterprise may play in § 1962. See Blakey, The RICO Civil Fraud Action in Context: Reflections on *Bennett v. Berg,* 58 Notre Dame L.Rev. 237, 307–325 (1982).

6 Several of the respondents and several *amici* argue that application of RICO to antiabortion protesters could chill legitimate expression protected by the First Amendment. However, the question presented for review asked simply whether the Court should create an unwritten requirement limiting RICO to cases where either the enterprise or racketeering activity has an overriding economic motive. None of the respondents made a constitutional argument as to the proper construction of RICO in the Court of Appeals, and their constitutional argument here is directed almost entirely to the nature of their activities, rather than to the construction of RICO. We therefore decline to address the First Amendment question argued by respondents and the *amici.*

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RCW 4.16.080

Actions limited to three years.

The following actions shall be commenced within three years:

(1) An action for waste or trespass upon real property;

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his or her official capacity and by virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subsection shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his or her custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty, or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

[2011 c 336 § 83; 1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Notes:

Reviser's note: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;".

RCW 4.16.190

Statute tolled by personal disability.

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW 4.16.350.

[2006 c 8 § 303; 1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Notes:

Findings -- Intent -- Part headings and subheadings not law -- Severability -- 2006 c 8: See notes following RCW 5.64.010.

Purpose -- Intent -- 1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability -- 1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 80 § 76.]

Severability -- 1971 ex.s. c 292: See note following RCW 26.28.010.

Adverse possession, personal disability, limitation tolled: RCW 7.28.090.

RCW 11.48.010
General powers and duties.

It shall be the duty of every personal representative to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate. The personal representative shall collect all debts due the deceased and pay all debts as hereinafter provided. The personal representative shall be authorized in his or her own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

[1994 c 221 § 30; 1965 c 145 § 11.48.010. Prior: 1917 c 156 § 147; RRS § 1517; prior: Code 1881 § 1528; 1854 p 291 § 141.]

Notes:

Effective dates -- 1994 c 221: See note following RCW 11.94.070.

RCW 11.68.011

Settlement without court intervention — Petition — Conditions — Exceptions.

(1) A personal representative may petition the court for nonintervention powers, whether the decedent died testate or intestate.

(2) Unless the decedent has specified in the decedent's will, if any, that the court not grant nonintervention powers to the personal representative, the court shall grant nonintervention powers to a personal representative who petitions for the powers if the court determines that the decedent's estate is solvent, taking into account probate and nonprobate assets, and that:

(a) The petitioning personal representative was named in the decedent's probated will as the personal representative;

(b) The decedent died intestate, the petitioning personal representative is the decedent's surviving spouse or surviving domestic partner, the decedent's estate is composed of community property only, and the decedent had no issue: (i) Who is living or in gestation on the date of the petition; (ii) whose identity is reasonably ascertainable on the date of the petition; and (iii) who is not also the issue of the petitioning spouse or petitioning domestic partner; or

(c) The personal representative was not a creditor of the decedent at the time of the decedent's death and the administration and settlement of the decedent's will or estate with nonintervention powers would be in the best interests of the decedent's beneficiaries and creditors. However, the administration and settlement of the decedent's will or estate with nonintervention powers will be presumed to be in the beneficiaries' and creditors' best interest until a person entitled to notice under RCW 11.68.041 rebuts that presumption by coming forward with evidence that the grant of nonintervention powers would not be in the beneficiaries' or creditors' best interests.

(3) The court may base its findings of facts necessary for the grant of nonintervention powers on: (a) Statements of witnesses appearing before the court; (b) representations contained in a verified petition for nonintervention powers, in an inventory made and returned upon oath into the court, or in an affidavit filed with the court; or (c) other proof submitted to the court.

[2008 c 6 § 925; 1997 c 252 § 59.]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Application -- 1997 c 252 §§ 1-73: See note following RCW 11.02.005.

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BEVERLY YOUNG, BLAKE BOATMAN, BRADLEY BOATMAN, BRENT BOATMAN and WILLIAM BOATMAN, Appellants v. BRIAN BOATMAN, individually and as Attorney-in-Fact for Bojilina H. Boatman; and THE ESTATE OF BOJILINA H. BOATMAN. Respondents	NO. 72643-9-I (Superior Court No. 13-4-00568-2) **DECLARATION OF SERVICE**

I, Melody A. Love, under penalty of perjury under the laws of the State of Washington, hereby certify and declare that on May 27 10, 2015 I sent by hand delivery, a true copy of Appellant's Reply Brief to:

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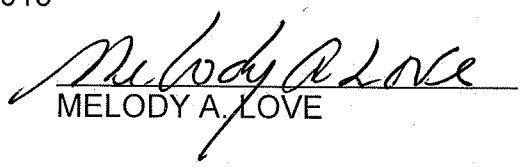
Signed this 27th day of May, 2015



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