

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON

Petition for review 13.4 (d) ~~2-3~~

CLERK SUPREME COURT NO.101307-8 Court of Appeals No.36798-3

III

IN THE SUPREME COURT STATE OF WASHINGTON

Nathon May Respondent
Brian Doyle

v.

Ricky Andrews Appellant

PETITION FOR REVIEW

Brian Doyle
c/o heavy shultz &
Davis
2415 West Falls
Avenue Kennewick
WA 99336

Ricky Andrews
249126 e hover road
Kennewick WA 99337

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A. IDENTITY OF PETITIONER

Ricky Andrews Appellant, ask the Courts to accept review of the decision issued August 30 2022

Council resigned on August 11 th after giving Appellant courts Ruling ,Motion for reconsideration was not done. *ORDER DENYING motion*
Dec 18 2019.

The courts a determining extension of time to file petition for discretionary review to October 31 2022

c issues presented for review

Supreme court is asked to review new evidence , and evidence within Superior Court, evidence within the appealant court Help determine, what decision can be made when Evidence is withheld. evidence, that could harmed the clients opportunity to become personal representative for the estate of Lawrence c Andrews, present council augued,Council for Appeallant client not happy,cp 39 VRP 5 LINE 1 to 13,Heir letter ,Tara Paverse Introduced 8 15 2018 asking for Nathon May Step down, evidence Was withheld that could have changed The decision of the Trial court 8 15 2018 (VRP 12) (CP 44) a copy of the email was filed with the court on the day of the Hearing. (CP 40 at 225). the Letter concerning the personal representative withweld until Letter until after the courts signed Letters of 11.28.020 Administration. The letter from Jim and Cindy Dykens Cp 41 that raised grave concern with the admisistration of the estate and requesting the removal of Mr may (VRP 12)(Llne 12 court record.cp. 44 (C p 39)motion

Indicating that three of the heirs as of August 15 ,
2018 wished Mr May to Be Removed. Tera Paverse
Daughter of Lawrence C Andrews Cp42 Cp 43

Nathon step down was held until after Letters of
admistration where signed by the courts, Letter was
Introduced Motion to Sale Real Property.

STATEMENT OF THE CASE

Lawrence c Andrews passed away on Dec 1 st 2017 at
the time of his death the decedent had been operating
an Upholstery Business assets of his upholstery
buisness included aprox 500 rolls of leather, Vinyl,
cloth and other materials. also included number of
Vintage and classic Automobiles. All the vehicles and
assets were taken, Ricky Andrews initiated A TEDRA
action to return the property to the estate, Decendent
wishes, Prior to his Death was to have His Son Ricky

Andrews Purchase the House and Continue the business. Nathan may cp 266 January 31 2018 but failed to have letters of administration signed until August 18 2018 under extreme protest by the heirs! Prior to the Estate Sale approximately 500 rolls of Uphostery was sold for just over a Dollar a Roll. For years prior the council has requested inventory pictures of the Estate of Lawrence c Andrews Estate, Evidence was withheld then finally, Cp 112. CP219 Declaration of Nathan may Pictures are Deleted from Camera and Home computer,

ARGUMENT ,any person interested in a will may object in writing, to letters of testamentary to person named as

executor, Shall be determined by the Courts 11.28.020

c

ARGUMENT a

The Estate of Lawrence C Andrews involves issues, Of Obstruction of Justice, With holding Evidence,

August 6 2018 Council Letter Verifies 100.000
apendix 082 100.000 ,Separate appraisels 150,000 to
167,000 cp 22 8/13/2018 Coldwell Banker comp
Analysis Range 160.00 to 170.000 after
approximately 6 months no water,under protest by
council Three Profesional seperate Appraisels, Givin to
the Courts, The property Minimum sale was Raised to
150.000 property sold in a few days for 163.400 The
three Appraisals never recorded by council, Council
Notfied Pr and oppoising council stepping down
8/15/2018 cp 325 correction of scrivener's error was
completed.

Page 2 Mr May Sold remaining assets Upholstery for
Business for 600.000 approximately 500 rolls of
upholstery was sold for 600.00 few days before the
estate sale. cp 60 cp 61 2/14/2019 Farrel Andrews.

Mr Andrews requested inventory January 2019 Mr may
provided legar from the estate sale only ! cp 90 January
16 th cp 92 cp 93 933.58 total. Wood Splitter cp 332
Inventory picture, Approximately 100 items missing

from Inventory

April 17 Cp 58 2019 Mr Andrews petition for removal of Mr May

Mr Andrews alleged Mr may had removed irrigation from the estates real property ,causing trees and lawn to die, cp 62 Artistic Trees 46 trees dead beause of lack of water 8/22/2018 cp 177 cp 178 Declaration Paul Snyder The last Paragraph all the sprinklers and hoses were sold .Mr Andrews Previously attempted to remove Mr May

as Personal representative. The Letters of administration was granted 8/15/2018 under protest from four of the hiers cp 42 cp 43 Tara Paverse ask Mr may step down return Vehicles to estate. Giving to the courts Motion to sell real property. VRP 14 line11 to 25 cp 41 Letter from Jim and Cindy Dykens asking remove Mr may viewed By council cp 115 8/15/2018 also Giving to the courts after letters of administration issued,cp 27 VRP vrp. 12 line 12 Motion to sell property.

Rcw 11.28.020 any person interested in a will may file objections in writing to the granting of letters the objection shall be heard and determined by the court.

Motion to sell 100.000 cp 27_ attempted to sell the estates property for Half its value, The Appraisal of 170.000 was issued 8/13/2018 after trees and grass dead from lack of water. estate sold in a few days 164.400 30 days maybe would have brought 200.000 sold the assets of Lawrence c Andrews Upholstery for

Market Value. cp 60 ,61 cp NA One roll vintage upholstery sold ebay 350.00 cp WTF few yards for sale X ebay

Mr Andrews offered 5000 for Uphostery cp 177_178 P-2 Paul Snyder Declaration Nathon May estate was in the state of disrepair.

Declaration of Nathon May cp 219 6/4/2020

Cp172,173 no. 3 Took pictures Vickies Andrews living there,line 3 Nothing was taken cp 330 1/10/2018 Go out to starage unit almost all the stuff in there estate

property.

while I do not recall deleting the pictures, unable to find any pictures of estate assets, lone 4 I never printed any pictures related to the estate, cp 332 3/7/2018 text Ricky picture of wood splitter.

Pictures would have proven condition of the estate and condition and amount of upholstery for appraisal.

Page 3 This Declaration also included an allegation that Mr May attempted to find the automobiles cp 65 Track down Vehicles Alleged to be taken from the Decedent by certain family members !cp 42cp 43 Bring Vehicles back . Tera parverse email to Nathon May Dated May 7 Intoduced 8/15/ 2018 email legar CP 324 ledger Declaration CP 256 CP 258 Lawrence Andrews Jr. 1940 cherry automobile taken by Steve Andrews, Value 30.000 cp 109 9/27/2018 10/3/2018 Vehicle title Steve Andrews one of the Executors of the the will, Tedra Action sighned back the House to Larence C Andrews estate cp _____ vehicle titling, 10/3/2018 See apendix A ppd/ten + Title Signature See cp _____ House

Signature Larry Andrews. Titles cp_____

cp 323 9/11/2018 Cp328 4/24/2018 cp324 5/8/2018

Cp 328 4/24/2018_____ Rcw 10.79.050

Restoration of the stolen properties, Concealed or
Embezzled Property. Rcw 11.92.185 Courts Shall have
the authority to bring before it any person or persons
having in there possession concealed or embezzled
property of the estate of the Decedent's Estate.

Prescribed by Rcw. 11.48.070. Slayer and abuser shall
Not benefit from death Rcw 11.84.020

Page 4 Email from agent To Whom sold the
uphostery after he was told of Ricky Andrews
intentions to continue The Decencent Business Cp332
Date 3/28/18 Met Mr Ziemer, At house.

At a hearing on April 17 th probate court denied Mr
Andrews Petition. It found insufficient evidence, Mr
May with held audio and video pictures of the estates
assets. Thus denying a Chance for true and corrected
appraisal of the upolstery.And condition of the estate
Trees ground etc.cp 219 JUNE 4 2020

Mr Andrews complained about Videos and Photos Taken by Mr May of the estate property, claimed the photos and Videos would have supported his allegations. inventory as per Rcw 11.44.015 three months filed to the courts Rcw 11.18.200 must give copy inventory and appraisal within ten days of written request to any heir.

Mr Andrews had not Moved pwe have ,properly for such and order. January 30 petition for inventory , Council Viewed evidence Audio Videos Cp 115 _____ b cp 131 132 VRP 4 -line 19 request for inventory , April 17 th Petition to remove PR . VRP 73 line 6 to line 25 VRP 74 Line 1 to Line 20 pictures and Videos Provide what ever we have, Approximately 17 months and 26 days Later Cp 219 pictures are gone cp 332 3/7/2018 picture of wood splitter inventory sent to MR Andrews, Cp 330 1/10/18/ asects returned form starage unit Vickie Johnson Declaration cp 252 cp255 _____ Took pictures of the estate and shop. Court statue Mr Andrews should have recieved true and correct inventory upon request whether hand written or video

and pictures. Jan Mr Andrews Filed for inventory
After sending estate pictures of inventory wood splitter
Cp330_ _____ and And dozens of request By
Heirs ,and through the courts, PR could not recall
disposing of them. Cp 115 cp219_ inventory two
pages Cp___ VRP___line yet .20 time to review
evidence Per Rickys request for evidence up coming
court date of Jan

Request for inventory and Appraisement .

Mr Andrews Know appeals the order denying his
petition to remove Mr May as the estate's personal
representative.

ANALYSIS Page 5 and 6

The evidence is applied solely to the cases decided on
merits

RAP 2.3 (b) The courts may grant dicrestionary review
only in the following circumstances

(1) The Superior Court have committed an obvious

error which would render further proceeding useless

(2) The Superior Court has committed probable error and decision of the superior courts substantially alters the status quo or substantially limits the freedom of the part to act. A. with holding evidence and courts

misguided rullings. 8/15/2018. 2.3 Missing evidence does Discontinue the Action

Page six Mr Andrews Never Raised the issues of spoliation or conflict of interest, cp 169 to cp 180 petition to revoke letters of Testimony under RCW 11.44.050 June 10 2020 Sept 15 th 2021 Motion to Remove PR and Council filed Superior Courts,

Mr May allegally withholding photos and Videos of the estate real property! Cp 115 _cp219 Within the motion to revoke letters ____ Cp See Rictor Appendix

Mr Andrews Never Aurgued Alleged taken of the vehicles Cp 43 bring the Vehicles Back MrAndrews Hired Council to bring House And Vehicles back to The Estate

Tara Pavers May 7 8/15/2018 . Lawrence c Andrews
Declaration cp 256 257 1940 olds taken by Steve
Andrews_ Ricky Andrews cp 48 VRp L-6 motion to
withdraw Vehicles stolen vehicles.

Feb 2021 Mr Andrews Paid \$10,000.00 to council to file
for discovery, get receipts on upholstery , get the
vehicles back to the estate, Get a ruling on spoliation,
get sanctions for upholstery value, Adverse
inference. Use Farrell Andrews, Declaration for Values.

RAP 10.3 (a)(6) argument in support of issues
presented for review RCW 11.28.250. RCW 11.68.070
page 7

before the probate court cp 62 8/22/18
Cause of Death is Due To Lack of Water During extreme
Weather, Trees planted by Lawrence C Andrews, Judicial
notice, management breach of Fiduciary Duties. _____

Pictures of Estate Approximately Aug to Sept Black/White

Selling Approximately 500 Rolls of Upholstery for just a
little over a Dollar a Roll

Roll New Evidence shows Upholstery and pristine condition appendix B Upholster Judicial Notice.

Mr May failure to Faithfully execute trust responsibilities Killed 46 trees planted and Watered Lawrence c Andrews. estimated \$ 15.070 caused by selling sprinklers not water the estate obvious Mismanagement and Waste. Rcw 11.68.070 Rcw 11.28.250

page 7 MR Andrews Never presented competent evidence, cp 60 february 14 2019 Farrell Andrews worked with Lawrence c Andrews for forty years, Valued upholstery between Fifteen thousand and twenty Thousand. Pictures of the estate clearly show mismanagement . In cp 58 Petition for Orders to issues Citation Remove Personal Representative.

March 332 3/28/2018 picking up the items from the pics of heirs. Mr Andrews Met Jeff Zeimer , Introduced By Nathan may Stated Ricky wants by shop upholstery etc, continue Fathers business, After he Left Mr May And Mr Andrews Had A verbal Aurgument over

done. The court is determining extension of time to file this petition for discretionary review to October 31 2022

B. COURT OF APPEALS DECISION

This case is about removing a Personal Representative for Breaching, RCW 11.28.250 and RCW 11.68.070 and trying to prove the case which was based on Audio and Video inventory, After year of petitions, motions for the PR to release evidence, Pr declaration stated Possible deleted, Appealant Court had Just granted one two motions for extensions of time, to recover audio Video pictures of the estate assets to the Value of the Upholstery and Condition of the estate of Lawrence c Andrews. This Courts should accept review to correct the Court of Appeals' Mistaken reading of the statutes in question that wrongly granted Moneys paided to Council under rule 3.4 RPC 1.6 (b) (7)

2. Spoliation/Destruction of evidence

The appellant, in his various motions primarily in his Motion to Reconsider provided the hearing court with ample evidence by sworn testimony which clearly establishes sufficient evidence calls into question the court's non removal of the PR. CP The superior court must have valid grounds for removal and these grounds must be supported by the record. In re Estate of Beard, 60 Wash.2d. 127, 132 (1962). Here, the PR had within his exclusive control the evidence that would have supported Appellant position on removal. Furthermore, these pictures were apparently shared with the estate's attorney. CP

The PR was successful in his non-removal by destroying or concealing the records necessary to support an heir's attempt to remove him. Here the PR was acting on his own personal behalf and not that of the estate or its heirs. This violated R.C.W. 11.28.250 and should have led to his removal.

In re the seminal case of Henderson v. Tyrel, 80 Wn. App. 592, (1996) then Washington Court of Appeals set forth the following test for evaluating spoliation claims. Initially, the alleged spoliation claim must be in some way be connected to the party against whom the sanction is sought. If the connection can be sought, the court will apply a two-part test evaluating: 1) the importance of the missing evidence; and 2) the culpability of the offending party.

Here, the destruction of the pictures was essential in allowing the Appellant to establish the amount and quality of the sold upholstery especially in light of the failure of the PR to get an appraisal. The second part of the spoliation test requires culpability of the offending party. First, the party seeking sanction, here removal, can establish that the offending party acted in bad faith.

This can be done by showing there is no innocent explanation for why evidence was destroyed. Here the

PR never explains where the photos went or what if any efforts, he made to retrieve them. CP 112

Culpability can be presumed in case where a specific duty is owed. The fiduciary duty of the PR to the beneficiary of the estate cannot in good faith be argued. See, Cook v. Tarbet Logging Inc. 190 Wn. App. 48 (2016).

The fiduciary duty to the heirs and beneficiary of the estate is one of the laws highest duties which is required by a Personal representative.

Unfortunately, the existence of the pictures was only revealed when both the PR and Attorney for the estate provided the court with their request for fees. Reviewing the billing records of both, apparently the non-existent pictures were taken by the PR and reviewed by the attorney. Statements in the sworn affidavit were misleading at best and false at the worst.

Representative or not, the attorney was aware of the after review of his billing records and yet he did not act to maximize the value of the estate.

Various states have different views on who the client is when representing a Personal representative. Some suggest the allegiance is solely to the PR, others to the beneficiaries and some a hybrid position of owing a duty to both depending on the particular state of facts. Representation Involving Fiduciary Entities: Who is the Client. 62 Fordham L. Rev. 1319 (1994).

The Washington Supreme Court has adopted the position that an attorney's fiduciary duty run not only to the personal representative but also to the heirs. Estate of Larson, 103 Wn.2d 517, 694 P.2d 1051 (1985). This places the attorney in a quandary as he owes his client the highest duty and good faith. Perez v. Pappas, 98 Wn2d. 835, 659 P.2d 475 (1983).

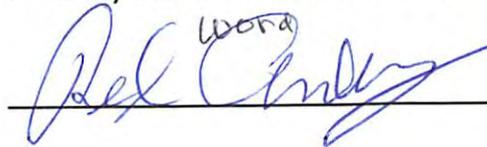
The rule of professional conduct R.P.C. 1.6 (b)

Conclusion

The Appellant, Ricky Andrews ask the courts To Reverse the Decision to Attorney fees. Asking the Courts to Remove Personal Representative and his Council for failure to obey thier Fiduciary Oblligations to the beneficiaries of the estate. Their action and lack of actions diminished the value of the estate to the Detriment of the beneficiaries

Dated this 31 st Day of October 2022

I herby state said documents contains 20 pages + Cover

 Po Se Appellant

Ricky Andrews

CERTIFICATE OF SERVICE

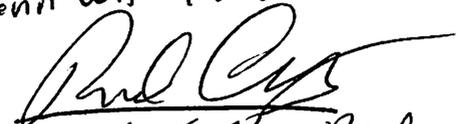
On ~~October 31~~, 2022 I certify under penalty of perjury under the laws of the State of Washington that I served the foregoing via Regular U.S. Mail to the following:

Name	Address
Lawrence C. Andrews Jr	P.O. Box 133 Plymouth, WA. 99346
Vicki Andrews	212503 E Bryson Brown Road No address provided Kenn WA 99337 sent via: Brian C. Doyle
Steve Andrews	10046 S. Averdeen Cir. South Jordan, UT 84009
Cindy Dykens	2945 Rawhide Drive Kingman, AZ 86401
Tara Pavese	108 N. 4th Ave Pasco, WA 99301
Rick Andrews	Personal Delivery and via email.

And via email to the following:

Bryan C. Doyle
Supreme Court,
Temple of Justice,
Petition For Review

bdoyle@tricitylaw.com
2415 W Falls Ave
Kenn WA 99336

X 
249126 E Howland.
Kenn WA 99337

RICKY ANDREWS - FILING PRO SE

October 31, 2022 - 2:11 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: In re the Estate of Lawrence C. Andrews (367983)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_Plus_20221031135300SC473682_7246.pdf
This File Contains:
Certificate of Service
Motion for Discretionary Review of Court of Appeals
The Original File Name was 2022031 Andrews Ricky Petition for Review.pdf
- DCA_Other_20221031135300SC473682_3469.pdf
This File Contains:
Other - Motion to Allow Additional Evidence
The Original File Name was 20221031 Andrews Ricky Motion for Additional Evidence.pdf

A copy of the uploaded files will be sent to:

- bdoyle@tricitylaw.com
- rjt@robertjthompsonlawoffice.com

Comments:

Sender Name: Ricky Andrews - Email: rickstertime45@outlook.com
Address:
249126 e hover rd
Kennewick, WA, 99337
Phone: (509) 572-5449

Note: The Filing Id is 20221031135300SC473682

FILED
AUGUST 30, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Estate of:)	No. 36798-3-III
)	
LAWRENCE C. ANDREWS,)	UNPUBLISHED OPINION
)	
Deceased.)	

PENNELL, J. — Ricky Andrews appeals a probate court order denying his petition to remove Nathan May as the personal representative of his father’s estate. We affirm and award attorney fees and costs to the estate.

FACTS

Lawrence C. Andrews died testate, leaving his estate to his six children. One of the children, Ricky Andrews (Mr. Andrews), initially served as personal representative. However, after a dispute arose, Mr. Andrews was succeeded as personal representative by Nathan May. Mr. May retained Brian Doyle as an attorney for the estate.

As part of his personal representative duties, Mr. May sought to sell the estate's real property. In pursuit of this goal, Mr. May retained an appraiser who valued the property at \$100,000. Mr. May sought court permission to sell the home to the highest bidder, but for at least \$100,000. The valuation proposed by Mr. May caused concern amongst Mr. Andrews and the other heirs, who arranged for a separate appraisal of the property. That appraisal valued the property at approximately \$150,000. The probate court subsequently established a minimum sale price of \$150,000. Mr. May ultimately sold the property for \$163,000. Mr. May also sold the remaining assets of Lawrence Andrews's upholstery business for \$600 through an agent at an estate sale.

In January 2019, Mr. Andrews requested an inventory of the estate from Mr. May. Mr. May provided Mr. Andrews an inventory.

In April 2019, Mr. Andrews petitioned for removal of Mr. May as the estate's personal representative.¹ Mr. Andrews alleged Mr. May had:

¹ Mr. Andrews previously attempted to remove Mr. May as personal representative for breach of fiduciary duty after the probate court granted a motion by Mr. May for issuance of letters of administration. The probate court's August 15, 2018, order on this motion is included in the record on review. *See Clerk's Papers (CP)* at 39. Mr. Andrews moved in this court for discretionary review of the August 2018 order, but review was denied as the probate court had been given no opportunity to hear and enter appropriate findings on any breach of fiduciary duty claim. Ruling Den. Review, at 2, *In re Estate of Andrews*, No. 36323-6-III (Wash. Ct. App. Mar. 4, 2019).

No. 36798-3-III
In re Estate of Andrews

- removed irrigation equipment from the estate's real property, causing trees and the lawn to die, thus devaluing the estate by \$40,000 to 50,000;
- attempted to sell the estate's real property for one-half its value;
- sold the assets of Lawrence Andrews's upholstery business for below market value; and
- neglected to tell Mr. Andrews of any pending sale of the upholstery business assets, after Mr. Andrews claimed he offered \$5,000 for the same materials.

Mr. Andrews also presented to the probate court e-mails from two siblings and Lawrence Andrews's brother wherein they stated they felt the upholstery business assets were worth more than Mr. May sold them for.

In response, Mr. May presented:

- A declaration² from himself averring the real property was in a state of disrepair at the time he became personal representative; and that Mr. Andrews never offered to buy the upholstery business assets;

² This declaration also included an allegation that Mr. May attempted to find automobiles alleged to have been removed from the estate by family members. *See* CP at 65.

- E-mails from two more of Mr. Andrews's siblings, stating that the lawn and trees on Lawrence Andrews's property were dying even while Lawrence Andrews still occupied the property;
- An e-mail from another of Mr. Andrews's siblings stating Lawrence Andrews's upholstery business assets were in poor condition; and
- An e-mail from the agent who sold the upholstery business assets stating the materials were in poor condition and difficult to sell; and that Mr. Andrews never made an offer to the agent to purchase these assets prior to the assets being sold for \$600.

At a hearing on April 17, the probate court denied Mr. Andrews's petition. It found insufficient evidence of waste, and that Mr. May sold the real property and upholstery business assets at fair market value. Mr. Andrews later moved for reconsideration of the court's decision, but the motion was denied as untimely.

At the April 2019 hearing and after the court made its ruling on his petition, Mr. Andrews complained he had not received photos and videos taken by Mr. May of the estate property. Mr. Andrews claimed the photos and videos would have supported his allegations about Mr. May. Mr. Andrews requested the court order Mr. May to produce these photos and videos as part of the estate's inventory, and to delay its decision on his

petition to remove Mr. May as personal representative. The court declined to do so as Mr. Andrews had not properly moved for such an order. Mr. May would later declare that he could not find the photos and videos at issue, despite being unable to recall disposing of them.

On December 18, 2019, the probate court entered a formal written order denying Mr. Andrews's removal petition. The order included findings consistent with those made orally during the hearing in April.

Mr. Andrews now appeals the order denying his petition to remove Mr. May as the estate's personal representative.

ANALYSIS

Ricky Andrews argues the trial court should have removed Nathan May as the estate's personal representative because Mr. May and his attorney, Brian Doyle, breached fiduciary duties owed to the estate, concealed evidence, and had a conflict of interest. Mr. May responds that the trial court's order is not appealable as of right, and that it fails on the merits. We decline to address whether the petition is appealable as of right, as it is readily apparent Mr. Andrews's appeal fails on the merits.

Many of the arguments raised in Mr. Andrews's appeal fail because they have not been preserved. "Generally, arguments or theories not presented to a [probate] court will

not be considered on appeal.” *Morales v. Westinghouse Hanford Co.*, 73 Wn. App. 367, 370, 869 P.2d 120 (1994) (citing RAP 2.5(a)). “This rule affords the [probate] court an opportunity to rule correctly upon a matter before it can be presented on appeal.” *New Meadows Holding Co. v. Wash. Water Power Co.*, 102 Wn.2d 495, 498, 687 P.2d 212 (1984). This court reviews decisions of a probate court. RAP 2.2, 2.3.

The only arguments Mr. Andrews advanced before the probate court as part of his petition to remove Mr. May as the personal representative were those concerning the sale and condition of the estate’s real property, and the sale of the upholstery business assets. Mr. Andrews never raised the issues of spoliation or conflict of interest. While Mr. Andrews did complain about Mr. May allegedly withholding photos and videos of the estate’s real property, he never asserted this as a reason to remove Mr. May as personal representative. Likewise, Mr. Andrews never argued the alleged taking of automobiles from the estate as a reason Mr. May should have been removed.³ As there are no decisions of the probate court concerning spoliation or a conflict of interest, this court has nothing to review. Because Mr. Andrews failed to raise these arguments in the probate

³ Furthermore, Mr. Andrews failed to support his argument concerning the removal of automobiles with any citation to the record, as required by RAP 10.3(a)(6). Where a party fails to cite to relevant portions of the record, an appellate court will not search for the applicable portion of the record in support of that party’s argument. *State v. Brousseau*, 172 Wn.2d 331, 353, 259 P.3d 209 (2011).

court, we decline to review them, and review only the waste arguments that were actually presented before the probate court.

Going to the merits of Mr. Andrews's preserved arguments, a personal representative may be removed from their duties for reasons such as breach of fiduciary duty, failure to faithfully execute trust responsibilities, and mismanagement or waste. Former RCW 11.68.070 (2010); RCW 11.28.250. A probate court's determination about whether a personal representative has engaged in misconduct is a factual matter. *See, e.g., In re Estate of Jones*, 152 Wn.2d 1, 10, 93 P.3d 147 (2004). We review a probate court's factual findings for substantial evidence. *Id.* at 8.

Here, substantial evidence supports the probate court's findings that Mr. May had not engaged in misconduct or waste of estate assets. With respect to the condition of the estate's real property, the probate court correctly observed that Mr. Andrews never presented any competent evidence of waste regarding dead trees or a dead lawn, or a resulting reduced sale price. The evidence in the record indicates the trees on the estate property were dying during Lawrence Andrews's occupancy of the property, and that the estate property sold for a sum above the appraised value. As for the claim that Mr. May sold the upholstery business assets for less than market value and refused to sell the business assets to Mr. Andrews for \$5,000, the probate court reviewed the competing

factual claims and ruled in favor of Mr. May. The court was not required to accept Mr. Andrews's proffered evidence. Because the probate court was presented with sufficient evidence to resolve the factual dispute in favor of Mr. May, we defer to this assessment. We affirm the probate court's order denying the petition to remove Mr. May as personal representative.

APPELLATE ATTORNEY FEES AND COSTS

Mr. May requests an award on behalf of the estate of attorney fees and costs on appeal pursuant to RAP 18.1 and RCW 11.96A.150. He argues Mr. Andrews has filed a meritless appeal costing the estate time and money, and that the appeal has prevented the estate from closing, preventing assets from being distributed to rightful heirs.

RAP 18.1(a) allows a party to recover attorney fees or expenses incurred on appeal, so long as applicable law permits such a recovery. RCW 11.96A.150(1) provides an appellate court broad discretion to award costs, including reasonable attorney fees, in estate litigation. *See In re Estate of Mower*, 193 Wn. App. 706, 729, 374 P.3d 180 (2016).

As the estate has successfully defended Mr. Andrews's attempt to reverse the probate court's decision denying the petition to remove Mr. May as personal representative, an award of attorney fees and costs on appeal to the estate is appropriate.

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We therefore award the estate reasonable attorney fees and costs from Ricky Andrews, subject to the estate's compliance with RAP 18.1(d).

CONCLUSION

The probate court's order is affirmed. The estate is awarded reasonable attorney fees and costs, to be paid personally by Ricky Andrews. If Mr. Andrews has not satisfied this fee and cost award prior to the estate's closing, those fees and costs may be deducted from Mr. Andrews's share of the final estate distribution.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

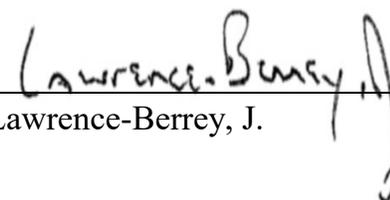


Pennell, J.

WE CONCUR:



Siddoway, C.J.



Lawrence-Berrey, J.

Tristen L. Worthen
Clerk/Administrator

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*The Court of Appeals
of the
State of Washington
Division III*



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August 30, 2022

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CASE # 367983
In the Matter of the Estate of Lawrence C. Andrews
BENTON COUNTY SUPERIOR COURT No. 174005198

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

A handwritten signature in blue ink that reads "Tristen L. Worthen".

Tristen L. Worthen
Clerk/Administrator

TLW:btb
Attachment

c: **E-mail** Honorable Joseph M. Burrowes