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No. 82527-5 -1

COURT OF APPEALS, DIVISION I
Of THE STATE OF WASHINGTON

SARA MAYNARD,

Petitioner,

v.

JOHN MAYNARD JR., et al,

Respondents.

AMENDED PETITION FOR PARTIAL REVIEW IN REGARD TO
SOLELY RESPONDENTS JAMES JACKSON AND RESPONDENT
ESTATE OF HELEN B. MAYNARD JR.

SARA MAYNARD
Petitioner
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A. IDENTITY OF PETITIONER

Petitioner Sara Maynard asks for partial review of the Court of Appeals decision in regard to solely Respondents James Jackson and Respondent Estate of Helen B. Maynard Jr. terminating review set forth in Part B.

B. COURT OF APPEALS DECISION

Division I of the Court of Appeals filed its opinion on November 14, 2022. A copy of that opinion is in the Appendix A attached herewith.

C. ISSUES PRESENTED FOR REVIEW

1. Can the Respondent Estate Helen B. Maynard Jr., who was named numerous times in the derivative lower court matter First Amended Complaint on about October 22, 2020, and who received Orders from the Court in said derivative matter against which Appellant Sara Maynard filed numerous Notices Appeal in regard to same on about April 12, 2021, and April 21, 2021, and April 27, 2021, and May 17, 2021 and more, and who was named again two (2) times in the Appellants Amended Opening Brief in the Court of Appeals Division I on about July 25, 2022 which

same was also supported by twenty-two (22) references to authorities, and also supported by forty-four (44) references to the derivative lower court CP (Clerks Papers), and supported by twenty-four (24) references to underlying lower court case CP (Clerks Papers) in said same Appellants Amended Opening Brief, and who was also named later again about fifty (50) times in the Appellant's Reply Brief in the Court of Appeals same matter on about August 15, 2022, and as such are Appellant Sara's claims against said Respondent Estate Helen Maynard Jr. allowed to be fully reviewed and fully considered in an Opinion by the Court of Appeals so as to determine Appellant Sara's claims against Respondent Estate Helen Maynard Jr. were erroneously dismissed under CR 12(b)(6) in the trial court ?

2. Can the Respondent James Jackson, who was named numerous times in the derivative lower court matter First Amended Complaint on about October 22, 2020, and who received Orders from the Court in said derivative matter against which Appellant Sara filed numerous Notices Appeal in regard to

same on about April 12, 2021, and April 21, 2021 and April 27, 2021, and May 17, 2021, and who was referenced as Et Al in the Appellants Amended Opening Brief in the Court of Appeals Division I on about July 25, 2022, which same was also supported by twenty-two (22) references to authorities, and also supported by forty-four (44) references to the derivative lower court CP (Clerks Papers), and also supported by twenty-four references to underlying lower court CP (Clerks Papers) in said same Appellant Amended Opening Brief, and who was named later again five (5) times in the Appellant's Reply Brief in the Court of Appeals same matter on about August 15, 2020, and as such are Appellant Sara's claims against said Respondent James Jackson allowed to be fully reviewed and fully considered in an Opinion by the Court of Appeals so as to determine that Appellant Sara's claims against Respondent James Jackson were erroneously dismissed under CR 12(b)(6) in the trial court ?

D. STATEMENT OF THE CASE

1) The Court of Appeals opinion sets forth the facts and procedure herein. Opinion pages 1 thru 18 at pg. 2 footnote 1.

However, that opinion omits reference to several critical facts that impact a portion of this Court's review decision regarding Respondents James Jackson and Respondent Estate Helen B. Maynard Jr.. Petitioner Sara's entire family suffers from the disease of Alcoholism and domestic abuse for about 50 years. Sara since childhood is the only clean and sober member of the family. Due in part to said fact, the east coast Superior Court had previously appointed Sara as the Administratrix for her godmother's estate, a separate and different matter, in order to attempt to curtail domestic violence (CP pgs. 1502 thru 1507).

2) The Appellant Sara Maynard is very appreciative of the work of the Court of Appeals in reviewing and considering Appellant Sara's appeal matter in regard to a portion of the Respondents named in same. However, Appellant Sara believes that a clerical oversight which occurred in one section of the Appellant's Amended Opening Brief regarding assignment of error and filed July 25, 2022, but which was simultaneously remedied twice in her conclusion section of same by fully naming Respondent Estate Helen Maynard Jr. twice, should not be used to allow dismissal of Respondent Estate Helen Maynard Jr. in said

matter. Additionally, the issue regarding Respondent Estate Helen Maynard Jr. was also remedied in the Appellant Sara's Reply Brief by fully naming Respondent Estate Helen Jr. about fifty (50) times in same, and which was filed August 15, 2022. Additionally, Respondent Jackson was also named five (5) times in said same Appellants Reply Brief filed August 15, 2022. (See Court Appeals No. 82527 Appellant Amended Opening Brief dated 7/25/2022; and Appellant Reply Brief dated 8/15/2022; and CP pgs. 1621 thru 1646; pgs. 1461 thru 1619; pgs. 308 thru 321).

3) Appellant Pro Se Sara Maynard does not have a law degree, and did not attend law school, and is not an attorney. Prior to Appellant Pro Se Sara's Amended Opening Brief filed July 25, 2022, Appellant Sara had not prepared an Appeals Court amended opening brief for an appeals court matter. Unfortunately, Appellant Sara's appeal counsel contracted Covid, causing Sara to file her amended opening brief Pro Se. Appellant Sara is a senior almost 75 years of age, and has severe physical medical illnesses, and has suffered with same for an extended time.

4) Appellant Sara's appeal has five (5) respondents. Accidentally, Pro Se Sara in her amended opening brief filed July 25, 2022, was focused on following prior instructions from the court clerk regarding multiple corrections required for her brief. Unfortunately, Appellant Sara due to clerical oversight inadvertently did not include all multiple references for the respondents Estate Helen B. Maynard Jr. (hereinafter "Estate Helen Jr.") and for respondent James Jackson (hereinafter "Jackson") in Pro Se Sara's Amended Opening Brief at all times, and believed the terminology "et al" previously used in said brief was meant to permanently include all Respondents throughout the opening brief.

5) Additionally, Appellant Sara had repeatedly named and fully discussed respondent Estate of Helen Maynard Jr. over fifty (50) times in Appellant Sara's Reply Brief filed August 15, 2022. Additionally, Appellant Sara had correctly named and discussed Respondent James Jackson over five (5) times in same. In said same Reply, Appellant Sara had referenced twenty-three (23) different

authorities to support Sara's claims against Respondent Estate Helen Maynard Jr., and Respondent Jackson, and all other respondents. Appellant Sara now requests the Court to review Sara's Reply Brief, which clearly demonstrated Appellant Sara's full and complete intent to include Respondents Estate Helen Maynard Jr. and Respondent James Jackson in Appellant Sara's appeal matter in the Court of Appeals. (See Appellants Amended Reply Brief dated 8/15/22).

6) Additionally, Appellant Sara had also repeatedly included respondents Estate Helen Maynard Jr.'s and respondent James Jackson's full names in all of her Notices of Appeal caption boxes, and also included the name of Respondent Estate Helen Maynard Jr. twice in the Conclusion section of Pro Se Sara's Amended Opening Brief, and had referenced Respondent Estate Helen Maynard Jr. about fifty (50) times in Appellant Sara's Reply Brief.

7) Over an extended period of time, Appellant Sara had received a number of written communiques from the clerks office of the Court of Appeals, and from the clerks office of the

King County Superior Court, which same referenced a number of different issues regarding her appeal matter. Said written communiqués simply signified only one defendant respondent's name or sometimes possibly two defendants' names such as "John Maynard Jr.", when referring to Appellant Sara's lower court and appeal court's matter. Said court clerks written communiques did not list all names of all five (5) respondents / defendants, when referencing the issues concerning Appellant Sara's matter. Pro Se Sara is very appreciative of the large amount of work of the clerks' offices, and believes all the clerk's offices need to receive more tax payer funding.

8) The above procedures and other procedures led Appellant Sara to believe that due to the large number of defendants / respondents in her matter, it was proper procedure to give the name of only one or two respondents, which would signify all respondents, when referencing issues regarding her court matter. As Appellant Sara was accustomed to this above-

discussed procedure on the part of the court clerks offices, Appellant Sara, due to an inadvertent clerical mistake did not include the names of literally all five (5) respondents, at all times in her appeal brief. As such, the names of Respondent Estate Helen Jr., and Respondent James Jackson were not listed along with the names of respondent John Maynard Jr., and John Holmes at all times in her brief. However, Appellant Sara believed the listing of the names of respondent John Maynard Jr. and respondent John Holmes signified this to mean all respondents, including John Maynard Jr., and John Holmes, and Estate Helen Maynard Jr., and James Jackson and Mary Maley jointly together. Additionally, Appellant Sara had also listed the name of respondent Estate Helen Maynard Jr. twice in her Conclusion section of her Amended Opening Brief filed July 25, 2022, and had simultaneously requested the Appeals Court to reverse all rulings made by the lower court regarding respondent Estate Helen Maynard Jr..

9) Appellant Sara did not intend, nor understand the Appeals Court to interpret her clerical error failure to list the

names of all five (5) respondents at all times, in all sections of Appellant Sara's brief meant that Pro Se Sara had in any way abandoned any respondent.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Pro Se Appellant Sara requests the Court to review Appellant Sara's Amended Brief filed July 25, 2022 in the Court of Appeals, and also review Appellant Sara's Reply Brief First Section A filed August 15, 2022 in the Court of Appeals, and the Court of Appeals Opinion dated November 14, 2020, and review all Clerks Papers previously submitted to the Court of Appeals by Appellant Sara, and reconsider same and partially reverse the Court of Appeals opinion dated November 14, 2022, only in part, and only in regard to solely respondents Estate Helen Maynard Jr. and respondent James Jackson in Appellant Sara's appeal matter, and reverse Judgments and Orders made by the lower court in the derivative lower court matter in regard to respondents Estate Helen Maynard Jr. and respondent James Jackson.

Appellant Sara's Amended Opening Brief filed July 25, 2022 in the Court of Appeals included references to Respondent Estate Helen Jr. through use of terminology "et al" on the cover page of same, and by naming respondent Estate Helen Maynard Jr.'s name twice in the Conclusion section, and included almost 22 references to authorities, and 44 references to the derivative lower court records CPs, and 24 references to the lower court records from the underlying actions in order to support Appellant Sara's claims, and which said references are predominately contained within the Argument section of her Amended Opening Brief. Additionally, Appellant Sara's Reply Brief First Section A filed August 15, 2022 in the Court of Appeals included over fifty (50) references to Respondent Estate Helen Maynard Jr., and included five (5) references to Respondent James Jackson, and almost 23 references to authorities, and 28 references to the derivative lower court records CPs, and 10 references to the Court's record from underlying actions in order to support Appellant Sara's claims against respondent Estate Helen Maynard Jr., and respondent James Jackson, and against all the respondents in her Amended Brief.

Standard of Review

An appellate court reviewing an order on Rule 12 motions to dismiss engages in the same inquiry as the trial court. *Marincovich v. Tarabochia*, 114 Wn.2d 271,274,787 P.2d 562 (1990). *All facts and inferences are considered in the light most favorable to the non-moving party.* *Yakima Fruit & Cold Storage Co. v. Cent. Heating & Plumbing Co.*, 81 Wn.2d 528, 530, 503 P.2d 108 (1992).

1. Statute Limitations

a) Due in part to a number of illegalities and improprieties on the part of John Jr. and John R. Holmes and Estate Helen Maynard Jr., and James Jackson continuing today, and discovered after both a hearing for Sara's mother's estate (Estate of Helen Maynard Sr., KCSC No. 16-4-05205-1), which improperly closed the said Estate in June 2019 based upon false and incorrect testimony at hearing, and also due in part to a number of illegalities and improprieties on the part of John Jr. and John R. Holmes and Helen Maynard Jr., and James Jackson

continuing today, and discovered after a hearing in the JCM Credit Trust, which the Court ruled was improperly filed by said Trust trustee / beneficiary John Jr. in July 2018 in violation of said trust's Trust Agreement (KCSC Case No. 18-4-03455-5), Sara as both the estate beneficiary and the trust beneficiary in both said litigations, and upon evidentiary documents, and upon well supported belief and upon good faith, and upon advice of advisory counsels, filed her initial Complaint on August 29, 2019, (KCSC Case No. 19-2-22827-0). (CP pgs. 1548 thru 1550)

b) Sara subsequently filed a motion to change the trial date and amend the case schedule. (KCSC Case No. 22827 docket sheets). Sara later filed her First Amended Complaint on October 22, 2020. (KCSC Case No. 22827, docket sheets).

c) The trial court erred in allowing Estate Helen Jr.'s, and James Jackson's Rule 12 motions to dismiss by applying the wrong date for tolling of statute of limitations. Sara's claims are based upon Sara's point of discovery of the damages that have been caused to her. Thus Sara timely filed her Complaint in August 2019, and timely filed her First Amended

Complaint in October 2020, and as such Sara's claims are not time-barred by the statute of limitations. *Kelley-Hansen*, 87 Wn. App. at 330-31. *The commencement, running, and tolling of the statute of limitations are factual determinations inappropriate to a dismissal under Rule (12)(b)(6). The evidence taken in the light most favorable to the nonmoving party creates a genuine issue of fact which must be resolved by a finder of fact.*

Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 452. *Fraudulent concealment of a cause of action tolls the statute of limitations.*

Janicki Logging v. Schwabe, Williamson, 109 Wn. App. 655, 661-662, 37 P.3d 309 (2001). *Under the continuing relationship doctrine, any claims against a fiduciary which arise during the relationship are tolled until the relationship is terminated.*

Burns v. McClinton, 135 Wn. App. 285, 297-98, 143 P.3d 630 (2008). *Continuous representation rule applies to accountant.*

2. Due Process Denied as Prevented Access to Evidence Needed to Oppose Motions to Dismiss

a) Sara is the wife of a disabled military officer, and is a California resident, but was residing in Washington in late 2019 and in 2020 in order to implement the above. Due to the Covid Pandemic, Sara was unable to travel and leave Washington in 2020. As a senior age 73 years, Sara does not have a computer nor an I-Phone. As a military dependent, all of Sara's evidentiary documents are stored in out-of-state secured storage, outside of Washington. During 2020 and 2021, due to the Covid Pandemic and due to Sara's pre-existing medical conditions and senior age, Sara was unable to travel and leave the State of Washington in order to obtain said evidentiary documents in out-of-state secured storage, which were needed for her First Amended Complaint.

b) Due to the above, during discovery for said First Amended complaint in December 2020 through March 2021, Sara was only able to produce the documents she had in her

possession in Washington at that time. During January 2021 through March 2021, the State of Washington age requirement for Covid vaccination was 75 years, but Sara was only 73 years of age at that time and was not allowed vaccination.

c) Later in 2021, the State of Washington lowered its age requirement for vaccination, but ran out of the Pfizer vaccine, which was required by Sara due to her pre-existing medical conditions. Sara was unable to be fully vaccinated in Washington before the hearing date on defendants motions to dismiss on April 2, 2021. Thus Sara was not able to participate fully in discovery for her First Amended Complaint, nor able to participate fully through use of her new counsel who lacked the vast majority of her documents needed to oppose Respondents Estate Helen Jr.'s and Jackson's motions to dismiss, which said hearing for same was held on April 2, 2021. The defendants had opposed Sara's motion continuance for said hearing scheduled on April 2, 2021, which would have enabled Sara to obtain her hard copy documents stored in out-of-state

secured storage, and which was needed by Sara for said hearing on April 2, 2021, and needed to support Sara's claims in discovery. As such, Sara was denied full participation in both discovery, and denied the ability to be fully able to handle hearing on defendants' motions to dismiss on April 2, 2021, and thus denied due process. The trial court erred when not considering that Sara was prevented access to the vast majority of her necessary evidentiary documents, as it pertains to Estate Helen Maynard Jr. and James Jackson during discovery and prior to hearing on motions to dismiss on April 2, 2021, and as such Sara was prejudiced in opposing said motions, and thereby Sara was prevented from due process. (CP pgs. 1461 thru 1620; pgs. 308 thru 321; pgs. 1621 thru 1646).

Unpublished Opinion of Division 2 Washington Court Appeals dated August 31, 2001, Estate Delguzzi v. Wilbert, No. 24860-3-II.

3. Judicial Prejudice

a) Sara's claims regarding Estate Helen Maynard Jr., and James Jackson were dismissed on April 2, 2021 at hearing on

defendants' Rule 12 motions to dismiss. At the initial start of said hearing, elderly Judge North of King County Superior Court demonstrated a predisposition of prejudice, and stated that Sara's supplemental filing in said matter, which was filed by Sara's new counsel prior to said hearing, would not make a difference for the outcome of the case in any event, but would only be kept as part of the record. (CP pg. 1818, Transcript Hearing on April 2, 2021). Demonstrating a predisposition, Judge North stated that as he had 300 cases pending before him, he did not want to spend additional time on the hearing for Sara's case. (CP pgs. 1818 thru 1819, Transcript Hearing).

4. Statute of Limitations

a) The statute of limitations for Sara is tolled until the Estate of Helen Maynard Sr. (Sara's mother) was incorrectly closed by the probate court based upon false documents provided by said Respondent Jackson and Helen Maynard Jr., and John Jr. at probate hearing on June 14, 2019. Sara filed her Complaint in August 2019, and filed her First

Amended Complaint in October 2020. The claims of beneficiary Sara are tolled by the Respondent Helen Jr.'s and Respondent James Jackson's concealment of claims against them.

Janicki Logging v. Schwabe, Williamson, 109 Wn. App. 655, 661-662, 37 P.3d 309 (2001).

Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 452.

5. Supported by Prior Rulings

a) The Court record in both the now closed Estate of Helen Maynard Sr. (Sara's mother, KCSC Case No. 16-4-05205), and in the JCM Credit Trust (KCSC Case No. 18-4-03455) both show a number of prior rulings by the trial court in Sara's favor, and thus Sara's First Amended Complaint is supported by prior rulings. (KCSC Case No. 05205, Dkt. No. 87); and (KCSC No. 03455, Dkt. No. 12, and No. 20, and No. 54).

6. Statute Limitations, and Prevention of Due Process, and Documents Concealed, and Fraudulent Document Produced, and Refusal to Produce Documents

a) The trial court's granting of the Rule 12 motions to dismiss, by Respondents Estate Helen Jr., and by Respondent

Jackson were in error and should be reversed. The presentation of a fraudulent exhibit to the probate court on the part of Estate Helen Maynard Jr., and by Jackson and others was discovered by Sara and her advisory counsel after the hearing in the Estate of Helen Maynard Sr. probate on June 14, 2019. A supposed Durable Power of Attorney supposedly signed by John Maynard Sr. (Sara's father) on July 28, 2000 is also fraudulent. Handwriting experts have determined both documents to be fraudulent. Father John Sr. was on his death bed on a 24-hour morphine drip system dying of lung cancer on that date. Sara and her husband Colonel Jurin were living at father John Sr.'s residence, and sat vigil at his death bed 24 hours daily taking turns. Father John Sr. was unconscious the majority of time, and unable to hold a pen, and unable to read or understand any document. This situation was repeatedly witnessed by Sara's attorney. (CP pgs. 301 thru 303).

b). Additionally among other numerous unethical acts Helen Jr., and John Jr. had concealed the fact that John Jr. and

Helen Jr. had forced Sara's mother to supposedly resign as Trustee of the JCM Credit Trust in 2011, and thereby prevented Sara from being able to protect her interests in same. This fact was not revealed to Sara until several years later during litigation.

c) Additionally, it has been recently discovered by Sara and her advisory counsel through research of the investment firm financial advisor expert, that there is over almost \$4,200,000 in interest income and 30% of the principal missing from the JCM Credit Trust, and unaccounted for by JCM Credit Trust trustee John Jr. and by the Financial Power Attorney of Helen Maynard Jr. and continuing as of today. As John Jr. and Helen Jr. had refused to abide by the prior Order of the probate court, and refused to produce numerous records in the said JCM Credit Trust it has taken extensive time to research the JCM Credit Trust's Merrill Lynch investments and other investments. (KCSC Case No. 03455, Dkt. No. 54); and (KCSC No. 22827, CP Sub No. 159, Exhibit pgs. 1493-1495,

and pages 1508-1511, and pgs. 1513-1514, and pgs. 1523-1525, and pgs. 1526-1535, and pgs. 1548-1550, and pg. 1569, and pgs. 1588-1589, and pgs. 1618-1620; and (KCSC No. 22827, CP Sub No. 170, pgs. 271-300).

Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 452. Fraudulent concealment of a cause of action tolls the statute of limitations.

Cawdrey v. Hanson Baker Ludlow Drumheller P.S., 129 Wn.App. 810, 816, 120, P.3d 605 (2005). In Washington the statutory limitation period applicable to a claim of breach of fiduciary duty is three years.

Green v. Am. Pharm. Co. 136 Wn.2d 87, 95, 960 P.2d 912 (1998). Cause of action does not begin to accrue until plaintiff knew or should have known the essential facts which give rise to the cause of action.

7. Hypothetical Facts and Standing In Claim Damages

a) When Respondents Estate Helen Maynard Jr. and Jackson cause damages to the Estate Helen Maynard Sr. or to

the JCM Credit Trust, thus Estate Helen Jr. and Jackson are in essence causing damages to Sara as a beneficiary of said estate and said trust. Additionally hypothetical facts of Sara's First Amended Complaint support Sara as claiming damages on behalf of herself as a beneficiary of both the estate and the JCM Credit Trust. As a beneficiary of both the Estate Helen Maynard Sr. and the JCM Credit Trust, Sara has standing to claim damages on behalf of herself.

b) The trial court erred in allowing Respondent Estate Helen Jr,' and Respondent Jackson's Rule 12 motions to dismiss when a number of facts, including hypothetical facts, in Sara's Complaint and First Amended Complaint preclude dismissal. (KCSC No. 22827, CP Sub No. 142, pgs. 85-110; and CP Sub No. 144, pgs. 111-270; and CP pgs. 1461 thru 1620).

The court "may consider hypothetical facts not included in the record". Tenore v. AT&T Wireless Serv., 136 Wn 2d 322, 330, 962 P.2d 104 (1998).

A dismissal is appropriate only if Sara cannot prove any set of facts that would justify recovery. See Ent. v. Wash. State Criminal Justice Training Comm'n, 174 Wn. App. 615, 621, 301, P. 3d 468 (2013).

8. CR 11 Sanctions

The trial court erred in granting CR 11 sanctions against Sara, as they pertain to Respondent Estate Helen Jr., and to Respondent James Jackson because:

a) Sara had signed no pleading or motion or legal memorandum required by CR 11 for imposition of sanctions according to the language of the Rule.

b) There was substantial support in both law and fact for all the allegations in the Complaint and other pleadings in the case.

c) There was no findings of fact and conclusions of law entered with regard to the CR 11 sanctions order that specifically identified the offending behavior of Sara.

d) The materials offered by Sara in opposition to the Rule 12 motions to dismiss of Estate Helen Jr. and of James

Jackson provided legal and factual support for allegations in Sara's operative pleadings that were made more than sufficient to defeat any finding of a violation of CR 11. (CP pgs. 1416 thru 1620).

9. R.C.W. 4.84.185 Sanctions

The trial court erred in granting R.C.W. 4.84.185 sanctions (for frivolity) against Sara, as it pertains to Respondents Estate Helen Jr., and James Jackson, because:

- a) The claims in Sara's Complaint and First Amended Complaint are not devoid of all merit.
- b) Any claims that Sara made were made in reliance upon the advice of her advisory counsel, and claims were made upon Sara's and her advisory counsel's eyewitnessing of actions and inactions on the part of Helen Maynard Jr.. (CP pgs 301 thru 303)
- c) There was no evidence of lack of diligence or bad faith on the part of Sara in the allegations in the operative pleadings.
- d) There was evidence offered by Sara that which was sufficient for reasonable persons to be convinced that

Respondent Helen Maynard Jr., and James Jackson had caused damages to Sara, establishing as factual and legal impossibilities any findings of “frivolity”. (CP pgs. 1461 thru 1620; pgs. 308 thru 321; pgs. 1621 thru 1646).

10. Breach Fiduciary Duty

a) The trial court erred in allowing Respondents Estate Helen Jr.’s, motions to dismiss while not considering clear evidence provided by Appellant / Plaintiff Sara supporting Sara’s Complaint and First Amended Complaint, and showing John Maynard Jr. and Helen Maynard Jr. had illegally and unethically breached their Financial Power Attorney fiduciary duty and withheld Sara’s inheritance, and trust funds, and had threatened Sara, and had demanded Sara must sign a release releasing John Jr. and all his attorneys Holmes and Jackson, and Helen Maynard Jr. from all liabilities etc. (KCSC Case No. 03455, Dkt. No. 12), and (KCSC No. 22827, CP Sub No. 159, pgs. 1515 thru 1522).

Patnode v. Edward N. Getoor & Assoc. Inc., 26 Wash. App. 463, 613 P.2d 804, review denied, 94 Wash, 2d 1014

(1980). To bring a claim for breach of fiduciary duty it is necessary to establish that: 1) a fiduciary relationship existed which gave rise to a duty of care on the part of the defendant to the plaintiff; 2) There was an act or omission by fiduciary in breach of the standard of care; 3) Plaintiff sustained damages; 4) Damages were proximately caused by the fiduciary's breach of standard of care.

11. Improper Billing for Legal Fees

a) The trial court erred in allowing Respondents Estate Helen Jr.'s, and Respondent James Jackson's motions for attorney fees and costs in regard to Sara's claims in Sara's First Amended Complaint. Additionally, R.C.W. 4.84.185 only permits recovery of attorney fees to parties who have incurred those expenses. Respondents Estate Helen Jr.'s and James Jackson's legal fees were paid by their insurance carrier, thus Estate Helen Maynard Jr., and James Jackson did not incur legal fees. (CP Pgs. 322 thru 326; and

pgs. 327 thru 342; and pgs. 1664 thru 1677; and pgs. 1786 thru 1791; and pgs. 1683 thru 1691).

Bowers v. Transamerica Title Ins Co. 100 Wn. 2d 581, 675 P.2d 193 (1983) *The documentation must inform the court of the number of hours worked and the type of work performed.*

12. Res Judicata and Statute Limitations and Denial of Due Process

The trial court erred in 2021 when dismissing Sara's claims, as they pertain to Estate Helen Maynard Jr., and James Jackson, and which said trial court dismissal relied in part upon false information obtained from the underlying Estate Helen Maynard Sr. probate hearing in June 2019, regarding a date in question of "2016", which was falsely being used at said hearing in regard to the decedent Helen Maynard Sr.. This said incorrect information regarding the date of "2016" received from both attorneys in part caused the probate court to incorrectly close the estate probate, and to incorrectly allow a number of incorrect estate distributions, and prevented all of Appellant Sara's additional issues regarding the estate probate from being heard.

a) Additionally at said probate hearing in June 2019, the probate court was not correctly informed that due to dementia, decedent mother Helen Maynard Sr. had been declared mentally incompetent by her physicians in 2014. (KCSC No. 22827, CP Sub No. 159, Page 1569). Due to dementia, and due to her age of 99 years in 2016, mother Helen Maynard Sr. was unable to walk or write or recognize family personal property items in 2016. As such, mother Helen Maynard Sr. did Not walk into a bank in 2016, and did Not recognize anything at a bank in 2016, and as such did Not write a note and place said note in her safety box in 2016, as falsely claimed by the Respondent James Jackson and Respondent Helen Jr.'s and John Jr.'s forged fraudulent note at said estate probate hearing in 2019. At a later date after said probate hearing in June 2019, it was discovered by handwriting experts that said document in question at said hearing was fraudulent. (CP pg. 1569).

b) Additionally, at said estate probate hearing on June 14, 2019, both Sara's new unknowing attorney and the Respondent James Jackson improperly concealed and negated to inform the probate court that Appellant Sara's pleading labeled "List of Entitlements" had been correctly and properly provided to the probate court by Appellant Sara pursuant to a prior probate Court Order dated April 11, 2018. (CP pgs. 1536 thru 1540). Minus said explanation, the probate court at said hearing in June 2019, was misled and became additionally disturbed by said same "List of Entitlement", due to lack of the above explanatory information, and as such incorrectly closed the estate probate.

c) As such, Sara was denied due process in said estate probate, and the Estate of Helen Maynard Sr. was incorrectly closed, thus Sara was in part caused to file her Complaint in August 2019, and file her First Amended Complaint in 2020 based in part upon Sara's above point of discovery of damages caused to her in said estate probate matter.

d) As such, Sara believes she has correctly met the statute of limitations for her Complaint and First Amended Complaint. Additionally, as said estate probate hearing on June 14, 2019 did not allow for Sara's additional estate issues to be considered, no other estate matters were considered during the estate probate. Accordingly, the issue of Res Judicata should not apply to Sara's First Amended Complaint in regard to Respondents Helen Maynard Jr. and James Jackson. Based upon the above, Appellant Sara believes the Appeal Court has erred in dismissing her First Amended Complaint in Appellant Sara's KCSC Case No. 22827 civil matter in regard to Respondents Estate Helen Maynard Jr. and James Jackson from which the appeal was derived. (KCSC No. 22827, CP Sub No. 23, pgs. 36-84; and CP Sub No. 142, pgs. 85-110).

Giraud v. Quincy Farm & Chem., 102 Wn. App. 443, 452. Fraudulent concealment of a cause of action tolls the statute of limitations.

Kelley-Hansen, 87 Wn. App. at 330-31. One cannot say that a matter should have been litigated earlier, if even though it could have been litigated earlier, there were valid reasons for not asserting it earlier.

F. CONCLUSION

In light of the above, Petitioner Pro Se Sara Maynard respectfully requests the Court to review the decision of the Court of Appeals and partially reverse its opinion dated November 14, 2022, only in part, and only in regard to solely Respondents Estate Helen Maynard Jr. and Respondent James Jackson, which was shown in footnote #1 on page 2 of the Court of Appeals opinion dated November 14, 2022. Appellant Pro Se Sara Maynard did not intend the Court of Appeals to interpret said same Respondents to be abandoned in the Appellant Sara's appeal. Petitioner Pro Se Sara respectfully requests the Court to grant review and reverse the derivative trial courts Judgments and Orders regarding Respondents / defendants Estate Helen Maynard Jr. and Respondent James Jackson in the derivative lower court matter.

CERTIFICATE OF COMPLIANCE WITH RAP 18.17

Petitioner is informed and believes this document exceeds 5,000 words. Petitioner believes this document contains 5,500 words, excluding the parts of the document exempted from the word count by RAP 18.17. Petitioner is filing an Amended Petition For Review which includes multiple Respondents and multiple issues, and requests to be allowed an over length on the word limit required for an Amended Petition For Review, and has filed a Motion to Accept Overlength Amended Petition for Review included herewith.

Dated: February 23, 2023

By: "/s/ [Sara Maynard]"

Sara Maynard
P.O. Box 1075
Sacramento, CA 95812
Phone: 916-347-8411
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Respectfully Submitted

Dated: February 23, 2023

By: "/s/ [Sara Maynard]"

Sara Maynard

Appellant

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APPENDIX A

FILED
11/14/2022
Court of Appeals
Division I
State of Washington

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SARA MAYNARD,

Appellant,

v.

JOHN MAYNARD JR., and MARY
MALEY MAYNARD, and ATTORNEY
JOHN R. HOLMES, and ATTORNEY
JAMES A. JACKSON, and ESTATE
OF HELEN B. MAYNARD by and
through Andrew Pollock McConnell III
in his capacity as Personal
Representative of the Estate of Helen
B. Maynard, Jr.,

Respondents.

No. 82527-5-I

DIVISION ONE

UNPUBLISHED OPINION

ANDRUS, C.J. — Sara Maynard appeals the dismissal of her claims against her brother, John Maynard Jr., who served as personal representative of their parents' estates, and John Holmes, an attorney who assisted their parents in setting up and administering several family trusts, provided legal advice to John Jr. in his role as trustee of these trusts, and represented John Jr. as personal representative of their mother's estate. She also challenges the trial court's award

Citations and pin cites are based on the Westlaw online version of the cited material.

No. 82527-5-1/2

of attorney fees and costs against her as sanctions under CR 11 and RCW 4.84.185.¹ We affirm in part and reverse in part.

FACTS

This appeal arises out of a dispute between Sara Maynard and her brother, John Maynard Jr. (John Jr.), regarding the handling of the estates of their parents, Helen Sr. and John Maynard Sr. (John Sr.), and his management of several family trusts that their parents established.

John Sr. and Helen Sr. had five children: Carey Maynard Moody, Sara, Helen Jr., John Jr. and Jared Maynard Lawson. According to Sara, her parents retained John Holmes to prepare their wills and to create several testamentary trusts. In July 2000, Holmes witnessed John Sr. execute his will. John Sr. passed away in August 2000. At that time, John Sr.'s will created several trusts, the primary of which being the John C. Maynard Credit Trust (JCM Trust), to which Helen Sr. was appointed trustee. Holmes represented Helen Sr. in her role as personal representative of John Sr.'s estate in 2000, and allegedly represented her in her role as trustee of the JCM Trust.

In 2006, Helen Sr. signed her last will and testament. Holmes also witnessed the execution of the will. In it, Helen Sr. appointed John Jr. to be her personal representative and the successor trustee to the JCM Trust. In 2011, Helen resigned as trustee of the JCM Trust, at which time John Jr. became the

¹ Because Sara and John have the same last name, we will refer to them by their first names for clarity. Because Sara's mother and sister are both named Helen, the parties refer to them as Helen Sr. and Helen Jr. We do the same for clarity. Sara, in her notice of appeal, identified trial court rulings relating to defendants James A. Jackson, and the Estate of Helen B. Maynard Jr. (the Helen Jr. Estate). But she subsequently assigned no error to any ruling relating to these defendants. We interpret her failure to do so to constitute an abandonment of any appeal regarding the dismissal of her claims against Jackson and the Helen Jr. Estate.

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successor trustee. Holmes advised John Jr. in his role as trustee of the trust and, Sara alleges, continues to do so to this day.

Helen Sr. passed away in 2016. John Jr. filed a petition to probate her estate in King County Superior Court No. 16-4-05205-1 (Probate Litigation) in August of that year. The court appointed John Jr. as the personal representative of her estate and, according to Sara, was represented by Holmes through at least December 2018.

Sara filed a creditor's claim in December 2016. After John Jr. rejected the claim, Sara filed a lawsuit against John Jr. in March 2018, under King County Superior Court No. 18-2-06779-1 (Creditor Claim Litigation). The court granted John Jr.'s motion for summary judgment and dismissed Sara's claims against him personally and as personal representative of Helen Sr.'s estate in October 2018 because her claims were time-barred under RCW 11.40.100(1).

In the Probate Litigation, Sara contested John Jr.'s proposed distribution of property under Helen Sr.'s will and alleged that her siblings, along with John Jr.'s attorneys—Holmes and James Jackson—conspired to deprive her of personal property her mother bequeathed to her. Sara also claimed that Holmes had received this personal property from her mother's safety deposit box in 2017, and refused to give it to her. Sara signed a receipt on June 30, 2017, acknowledging receipt of certain family jewelry distributed to her from her mother's safe deposit box. But she continued to maintain that Holmes was withholding additional personal property to which she was entitled.

Meanwhile, in November 2017, John Jr. notified Sara and his other siblings of his desire to make a partial distribution from Helen Sr.'s estate and from the

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JCM Trust. He sent proposed distribution agreements for the siblings to sign, which included releases of liability and indemnification provisions to which Sara objected.

In April 2018, the probate court approved John Jr.'s petition to approve his final report and the plan of distribution of Helen Sr.'s estate and denied Sara's request for an accounting. It did order the estate to provide Sara with tax records for 2016 and 2017 and required Sara to identify within 30 days the personal property she claimed she remained entitled to receive from the estate.

Shortly after the probate court entered this order, John Jr., as trustee of the JCM Credit Trust, filed a petition seeking court approval of his activities in managing that trust through April 30, 2018, under King County Cause No. 18-4-03455-5 (JCM Trust Litigation). At a July 10, 2018 hearing, the court informed John Jr. that he had no authority to require Sara to execute a release of liability as a condition of receiving what she was entitled to receive from the trust. The court "declined to use its authority under RCW 11.96A.020 to essentially bless the actions of the trustee for the past 8 years. Further, the trustee's demand that beneficiaries waive any and all claims and indemnify the trustee (and possibly each other) in order to receive a distribution to which they are entitled . . . is improper and [was] rightfully refused by Sara Maynard."²

According to Mary Maley, John Jr.'s wife, Sara filed a new lawsuit against John Jr. in July 2018 under King County No. 18-2-16613-6 but Sara subsequently

² The record in this appeal does not indicate the current status of the JCM Trust Litigation. Sara supplied a December 2019 court order under which Jackson, John Jr.'s attorney, was ordered to provide Sara with copies of all trust documentation from 2011 to 2019. We have no further information before us regarding the claims, if any, pending before the court in that litigation.

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dismissed that action voluntarily before effectuating service of process. We have no record of the claims Sara raised in that lawsuit.

In June 2019, the probate court entered an order approving the final decree of distribution of Helen Sr.'s estate and ordered Sara to pay \$7,000 in attorney fees to the estate for bringing baseless claims. Sara appealed that ruling to this court in *In re Estate of Helen Maynard*, No. 80179-1, an appeal Sara voluntarily dismissed in February 2020.

Sara then filed this lawsuit against John Jr., Mary Maley, and John Holmes in August 2019. In an October 22, 2020 first amended complaint, Sara added as defendants Jackson and the estate of her sister, Helen B. Maynard Jr. Her complaint alleged 19 causes of action related to the handling of the estates of her parents and the family trusts.

All of the defendants filed motions to dismiss under CR 12(b)(6). In their motions, the siblings explained Sara's long history of forcing her family to endure "acrimonious litigation." The defendants argued that her claims were time barred, barred by res judicata, barred by litigation immunity, improperly pleaded, not causes of action recognized under Washington law, or claims belonging to her parents' estates or the family trusts, which Sara lacked standing to prosecute. The defendants also requested sanctions and attorney fees under RCW 4.84.185 and CR 11.

The trial court granted each motion to dismiss with prejudice. The court also concluded the claims were frivolous in violation of CR 11 and RCW 4.84.185 and awarded each defendant attorney fees. Sara appeals.

ANALYSIS

Sara's appeal consists of convoluted and often repetitive assignments of error related to the trial court's dismissal of her claims against only two of the named defendants, John Jr. and Holmes. She also argues that the trial court denied her due process, the trial court was biased against her, and the trial court erred in awarding attorney fees under CR 11 and RCW 4.84.185. We affirm in part and reverse in part.

Standard of Review

We review a trial court's ruling to dismiss a claim under CR 12 (b)(6) de novo. *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove "any set of facts which would justify recovery." *Id.* The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. *Id.* at 330.

Deficiencies in Sara's Appeal Briefing

Sara alleges 21 separate assignments of error on appeal. Holmes asks this court to deem all of Sara's assignments of error waived based on deficiencies in her appellate briefs. We agree that Sara has failed to preserve many—but not all—of the errors she now raises in this court.

Under RAP 10.3(a)(6), an appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." "We do not consider conclusory arguments that are unsupported by citation to authority. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration."

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Brownfield v. City of Yakima, 178 Wn. App. 850, 876, 316 P.3d 520 (2014) (citations omitted). Arguments that are not supported by references to the record, meaningful analysis, or citation to pertinent authority need not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). "It is not the responsibility of this court to attempt to discern what it is appellant may have intended to assert that might somehow have merit." *Port Susan Chapel of the Woods v. Port Susan Camping Club*, 50 Wn. App. 176, 188, 746 P.2d 816 (1987).

Sara pleaded multiple claims against John Jr. and Holmes in her first amended complaint, many of which she fails to address in her briefing to this court. We will not review the dismissal of any claims other than her claims for breach of fiduciary duty against John Jr. and Holmes and the claim of legal malpractice against Holmes, as she has failed to provide any argument to support her other claims, has not cited to the record with regard to most of her arguments, and has provided us with no meaningful analysis of these claims.

As to Sara's assignment of error no. 15, in which she contends the trial court denied her rights to due process, and assignment of error no. 14, relating to the trial court's denial of her motion to amend her complaint, neither claim warrants our consideration under RAP 10.3(a)(6) because Sara does not provide any citation to authority or legal argument to support them.³ The same is true regarding assignment of error no. 4; Sara assigns error to the trial court's dismissal

³ Sara also raises this due process argument for the first time on appeal and makes no argument that the trial court committed manifest error affecting a constitutional right, as required for review of the issue under RAP 2.5(a)(3). " 'Manifest' in RAP 2.5(a)(3) requires a showing of actual prejudice." *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007). Sara has made no such showing. The claim is therefore also waived under RAP 2.5(a).

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of her claims with prejudice on the grounds that the court did not specify that it was dismissing with prejudice in its oral ruling and that the written order conflicts with the oral ruling. But she does not cite authority for her argument that when a trial court dismisses with prejudice, it needs to specify as much in its oral ruling, nor does she devote any argument to this assignment of error. It is therefore also waived under RAP 10.3(a)(6).

Finally, Sara alleges for the first time on appeal that the trial court judge “demonstrated a predisposition of prejudice” against her and did not spend enough time considering her allegations. An argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal. *Sourakli v. Kyriakos, Inc.*, 144 Wn. App. 501, 509, 182 P.3d 985 (2008). We thus decline to consider this argument under RAP 2.5(a). Additionally, Sara did not assign error or cite any authority in support of this argument. Her failure to do so under RAP 10.3(a)(6) precludes appellate consideration of this alleged error. *Escude ex rel. Escude v. King County Pub. Hosp. Dist. No. 2*, 117 Wn. App. 183, 190 n.4, 69 P.3d 895 (2003).⁴

Assignment of Error Nos. 1, 2 and 18 (Statute of Limitations)

Sara first argues the trial court erred in dismissing claims against John Jr. and Holmes as time barred by applicable statutes of limitations. She claims that

⁴ Additionally, at least three of Sara’s assignments of error (nos. 6, 7, and 8) address the trial court’s dismissal of her claims on standing grounds. But these assignments of error are based on a misunderstanding of the trial court’s order. The only time the defendants argued lack of standing below was with regard to Sara’s claim of “breach of duty to Estate of Helen B. Maynard.” Holmes argues on appeal that, to the extent that Sara is suing on behalf of a particular trust or estate, she lacks standing to do so. Sara argues on appeal, seemingly contrary to her claims below, that she is only suing on behalf of herself. The trial court never held that she does not have standing to sue Holmes and John Jr. for breach of duties they owed Sara as her counsel and trustee. Because Sara no longer argues she has standing to sue on behalf of Helen Sr.’s estate, her assignments of error regarding standing are moot.

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the court applied “the wrong date of tolling the statute of limitations,” that her “claims are based upon [her] point of discovery of the damages,” and that “[t]he commencement, running, and tolling of the statute of limitations are factual determinations inappropriate to a dismissal under Rule 12(b)(6).”

Sara appears to make two arguments. First, she contends the limitations period for her claims against John Jr. should be tolled while he continues to serve as trustee of the JCM Credit Trust, or for the period of time he served as personal representative of their mother’s estate. Second, she maintains that any claims against Holmes should be tolled by the “continuous representation rule.” She cites two cases to support these general arguments, *Janicki Logging & Constr. Co. v. Schwabe, Williamson & Wyatt*, 109 Wn. App. 655, 661-61, 37 P.3d 309 (2001), and *Giraud v. Quincy Farm & Chem.*, 102 Wn. App. 443, 452, 6 P.3d 104 (2000).

In *Giraud*, this court set out the law on the discovery rule: the limitations period for certain tort claims begins to run when the plaintiff’s cause of action accrues. 102 Wn. App. at 449. For negligence claims, the cause of action accrues when the plaintiff suffers injury or damage. *Id.* When there is a delay between an injury and a plaintiff’s discovery of it, the court may apply the discovery rule, provided the delay was not caused by a plaintiff sleeping on her rights. *Id.* “The discovery rule operates to toll the date of accrual until the plaintiff knows or, through the exercise of due diligence, should have known all the facts necessary to establish a legal claim.” *Id.* But to invoke the discovery rule, the plaintiff must show that she could not have discovered the relevant facts earlier. *Id.*

Sara provides no analysis as to how the discovery rule applies to her breach of fiduciary duty or legal malpractice claims and has not identified the date on which

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she discovered her alleged damages. From what we can discern from the amended complaint, Sara alleges her brother, John Jr., cheated her out of money she believes she should have inherited from her parents, or he diverted funds from family trusts to which she claims she was or is a beneficiary. Sara also alleges that Holmes, as attorney for the family trusts, somehow participated in this diversion of assets.

But many of the events Sara alleges date back to 2000, 2009 and 2013. Sara fails to explain what statute of limitations applies to each of her claims against John Jr. and Holmes, or why the applicable limitations period should be tolled for any particular period of time. We thus cannot determine how the discovery rule as laid out in *Giraud* applies to Sara's dismissed claims.

Sara's reliance on *Janicki* is similarly difficult to understand. In that case, this court held that under the continuous representation rule, a statute of limitations for a claim of legal malpractice is tolled until the end of an attorney's representation of a client in the matter in which the alleged malpractice occurred. 109 Wn. App. at 663-64. While Sara did plead a legal malpractice claim against Holmes in her amended complaint, she did not allege below that Holmes committed malpractice in any legal proceeding in which he represented her.

As a result, any claims arising out of alleged events before August 26, 2016 (three years before she filed this action) are time-barred under RCW 4.16.080 (three-year statute of limitations applies to claims of negligence), or RCW 11.96A.070 (three-year statute of limitations applies to claim against trustee for breach of fiduciary duty). The trial court did not err in concluding that any breach

No. 82527-5-I/11

of fiduciary duty or legal malpractice claims arising prior to August 26, 2016 are barred by the statute of limitations.

However, Sara also alleges that John Jr. and Holmes violated duties owing to her during the course of the Probate Litigation, the Credit Claim Litigation, and the JCM Trust Litigation, all of which occurred during the relevant three-year window. We must thus address the other bases on which the trial court dismissed her claims against these two defendants.

Assignment of Error Nos. 2, 5, 11, 16, 19, 20, and 21 (Res Judicata)

Sara contends the trial court erred in dismissing her fiduciary duty and legal malpractice claims under the doctrine of res judicata. We disagree as to claims Sara raised or could have raised in the Probate Litigation, but agree as to claims she has yet to prosecute relating to the JCM Trust.

Res judicata prohibits the relitigation of claims and issues that were litigated or could have been litigated in a prior action. *Pederson v. Potter*, 103 Wn. App. 62, 67, 11 P.3d 833 (2000). A threshold requirement of res judicata is a final judgment on the merits in the prior suit. *Matter of Rights to Use of Surface Waters of Yakima River Drainage Basin*, 198 Wn.2d 687, 706, 498 P.3d 911 (2021). We review whether res judicata applies de novo. *Matter of Recall of Fortney*, 199 Wn.2d 109, 124, 503 P.3d 556 (2022).

Sara contends there was no final judgment on the merits of any of her claims against John Jr. or Holmes in the Probate Litigation. We disagree. The probate court issued a final judgment on the merits of Sara's probate-related claims when that court issued an order approving John Jr.'s administration of the estate and rejecting Sara's claims. Sara attempted on three separate occasions to appeal

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rulings of the probate court. See *In re Estate of Helen B. Maynard*, No. 76464-1-I (Sara sought discretionary review of probate court orders; review denied); *In re the Estate of Helen B. Maynard*, No. 80179-1-I (Sara filed notice of appeal from various probate orders; voluntarily dismissed appeal in 2020); *In re Estate of Helen B. Maynard*, No. 81270-0-I (Sara again filed and later voluntarily dismissed appeal from probate rulings). The June 14, 2019 order became a final judgment on the merits of any claim that Sara raised or could have raised regarding Sara's right to receive property from the estate, John Jr.'s administration of the estate or Holmes's involvement in, or conduct during, the Probate Litigation, when she dismissed her last appeal.

Sara also contends that her claims here are different from the claims she asserted in the Probate Litigation. Res judicata applies when the two actions have identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made. *Hadley v. Cowan*, 60 Wn. App. 433, 441, 804 P.2d 1271 (1991). A probate action can have res judicata effect in a later tort action. *Id.* at 440.

Although not clear from Sara's complaint and her appeal, she appears to be raising two different types of claims—claims relating to her right to inherit from her mother and John Jr.'s management of the probate estate as the personal representative of that estate, and claims relating to her right to receive trust funds from the JCM Trust and John Jr.'s management of the JCM Trust as its trustee.

As to her inheritance-related claims, the subject matter of the Probate Litigation and this new lawsuit are the same and the people involved in both lawsuits are the same. John Jr. was personal representative of the estate and is

No. 82527-5-I/13

a defendant here. Although Holmes was not a party in the Probate Litigation, he was actively involved as counsel for John Jr.

To determine if there is identity of causes of action, we consider whether the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action, whether substantially the same evidence is presented in the two actions, whether the two suits involve an infringement of the same right, and whether the two suits arise out of the same transactional nucleus of facts. *Id.* at 441-42 (quoting *Constantini v. Trans World Airlines*, 681 F.2d 1199, 1201-02 (9th Cir.), *cert. denied*, 459 U.S. 1087 (1982)). We conclude that under these factors, Sara is precluded from raising a breach of fiduciary duty claim against either John Jr. or Holmes as to their administration of the probate estate, as that claim was one she did raise or could have raised in the Probate Litigation. To permit Sara to reopen the administration of her mother's estate through this type of collateral attack would impair the rights of the other beneficiaries.

Sara appears to contend that newly discovered evidence would establish that "the Estate [of] Helen Maynard Sr. probate was incorrectly closed in June 2019." But once a judgment is final, a court may reopen it only when specifically authorized by statute or court rule. *In re Marriage of Shoemaker*, 128 Wn.2d 116, 120, 904 P.2d 1150 (1995). Sara presents no argument that a statute or court rule

No. 82527-5-I/14

allows her to collaterally attack the finality of a judgment in a new lawsuit based on allegations of newly discovered evidence.⁵

The report of proceedings from the June 14, 2019 probate hearing and the pleadings Sara presented below demonstrate that she litigated or had the opportunity to litigate her inheritance-related claims in the Probate Litigation. Sara is barred by res judicata from relitigating these claims in this new lawsuit.

We cannot, based on the record before us, reach the same conclusion as to claims relating to her right to receive trust funds from the JCM Trust and John Jr.'s management of the JCM Trust as its trustee. According to a November 2017 letter from John Jr. to his siblings, as trustee of the JCM Trust, he was obligated to disburse its assets within a reasonable time following the death of their mother. At the time of this letter, the trust assets were valued at \$763,891. He proposed disbursing \$142,000 to each of the five beneficiaries and reserving \$53,891 for future tax preparation and legal fee expenses. These assets were not within Helen Sr.'s probate estate and thus were not within the scope of the probate court's final order of distribution. Sara raised allegations of mismanagement of the JCM Trust at various stages of the Probate Litigation, but it is not clear that the probate court had the authority to rule on any such allegations because they did not affect the distribution of assets from Helen Sr.'s estate.

While it is possible that Sara has raised or could have raised claims about John Jr.'s management of the JCM Trust in the JCM Trust Litigation, we have no

⁵ CR 60(b)(3) would have allowed Sara to file a motion to vacate the final order based on newly discovered evidence within a year of the final order. There is no indication in the record before us that she ever sought such relief from the probate court.

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indication that a final judgment on the merits has been entered in that proceeding. Res judicata thus does not bar Sara's claims against John Jr. or Holmes to the extent they relate to their management of the JCM Trust after August 26, 2016.⁶

Assignment of Error No. 13 (Litigation Immunity)

Next, Sara argues that the trial court erred in dismissing her claims against Holmes on the basis of litigation immunity. She contends the doctrine does not apply because Holmes did not file a notice of appearance in the JCM Trust Litigation. While Sara misunderstands the doctrine, as no notice of appearance was required for the doctrine to apply, we also do not see how it applies to her claims against Holmes.

It is an absolute defense to a claim of defamation that the allegedly libelous statements were made in the course of judicial proceedings. *Twelker v. Shannon & Wilson*, 88 Wn.2d 473, 475, 564 P.2d 1131 (1977). Such statements are privileged, even if false or defamatory. *Id.* This defense applies to lawyers who make statements in the course of representing their clients and to witnesses alike. *Id.* (doctrine applied to engineering expert who was retained to investigate cause of landslide). Thus, the fact that Holmes did not appear as counsel for John Jr. in the JCM Trust Litigation is not dispositive.

But the doctrine nevertheless does not apply here because Sara has not sued Holmes for defamation. Although Sara pleaded a claim of defamation in her

⁶ To the extent that the trial court dismissed any of Sara's claims regarding John Jr.'s or Holmes's management of the JCM Trust after August 2016 based on inadequate or defective pleading, we do not agree. A plaintiff claiming negligence or breach of fiduciary duty must establish duty, breach, causation, and injury. *Miller v. U.S. Bank of Wash., N.A.*, 72 Wn. App. 416, 426, 865 P.2d 536 (1994). She alleged these elements in her first amended complaint.

No. 82527-5-I/16

first amended complaint, she did so only as to John Jr. and the Estate of Helen Jr., the dismissal of which she has not raised on appeal.

Assignment of Error Nos. 3, 9, 10, 12 (Sanctions and Attorney Fees)

Sara finally challenges the trial court's award of attorney fees to Holmes and John Jr. under RCW 4.84.185 and CR 11.

RCW 4.84.185 authorizes a trial court to award reasonable attorney fees incurred in opposing an action deemed "frivolous and advanced without reasonable cause." The statute requires that a lawsuit, in its entirety, must be frivolous. *Biggs v. Vail*, 119 Wn.2d 129, 133, 830 P.2d 350 (1992). The trial court is not empowered to sort through a lawsuit, search for abandoned or frivolous claims and then award attorney fees based solely on isolated claims. *Id.* at 136. If one claim advances to trial, the lawsuit cannot be frivolous in its entirety and fees under RCW 4.84.185 are not appropriate. *State ex rel. Quick-Ruben v. Ver*, 136 Wn.2d 888, 904, 969 P.2d 64 (1998).

CR 11 allows sanctions in the form of an award of attorney fees when a litigant "fil[es] a claim for an improper purpose, or if the claim is not grounded in fact or law and the signing litigant failed to conduct a reasonable inquiry." *In re Recall of Piper*, 184 Wn.2d 780, 787, 364 P.3d 113 (2015). CR 11 differs from RCW 4.84.185 in that the court rule does not require the court to find that the entire lawsuit is frivolous. CR 11 is not a fee shifting mechanism but rather a deterrent to frivolous pleadings. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994).

We review sanctions awarded for frivolous actions or defenses or for pleadings filed for improper purpose for abuse of discretion. *Kilduff v. San Juan County*, 194 Wn.2d 859, 874, 453 P.3d 719 (2019).

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The trial court awarded attorney fees to the Estate of Helen Jr., to Jackson, and to Holmes. Although the trial court entered an order that awarded reasonable attorney fees and costs to “[a]ll other [d]efendants” under CR 11 and RCW 4.84.185, there is no separate monetary judgment in John Jr.’s favor in the record before us. Because there was no monetary award to John Jr. under either the statute or court rule, there is nothing for us to reverse on appeal.

As to the award of attorney fees and costs to Holmes, the court found that the complaint violated CR 11 and the action as a whole was frivolous under RCW 4.84.185. Because we reverse the CR 12(b)(6) dismissal of Sara’s legal malpractice claim as to Holmes’ actions after August 2016, we must also reverse the award of attorney fees under RCW 4.84.185. Although a trial court may on remand determine that the case against Holmes is frivolous in its entirety, we cannot make that determination at this stage. As for the imposition of sanctions under CR 11, we do not reverse the trial court’s finding that many of Sara’s allegations against Holmes are frivolous as they are clearly barred by the statute of limitations. But we reverse the award of CR 11 sanctions to allow the trial court to determine whether the amount of attorney fees awarded remains reasonable in light of this court’s decision.

Attorney Fees on Appeal

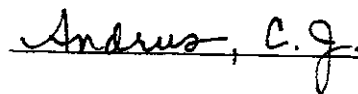
Both John Jr. and Holmes seek attorney fees under RAP 18.9(a), which permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action or fails to comply with the RAPs. *Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004); RAP 18.9(a). An appeal is frivolous if, considering the entire record,

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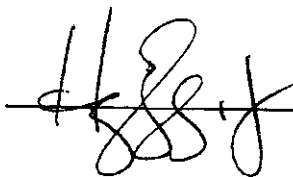
the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal. *Advocates for Responsible Devt v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). Sara's appeal was not so devoid of merit to warrant an imposition of attorney fees.

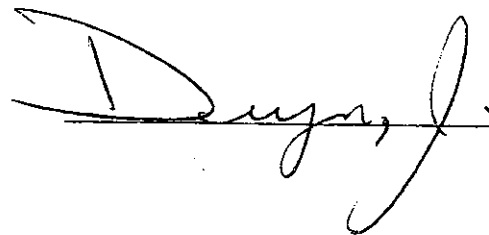
To be clear, we do not conclude that Sara's claim against John Jr. arising out of his management of the JCM Trust after August 26, 2016 is factually well-founded. Nor do we so conclude with regard to her legal malpractice claim against Holmes. Our ruling is narrow and based solely on the fact that these claims were erroneously dismissed under CR 12(b)(6). Sara must still produce evidence on remand to substantiate her allegations and her failure to do so may expose her once again to an assessment of legal fees and costs.

Affirmed in part; reversed in part.



WE CONCUR:





CERTIFICATE OF COMPLIANCE WITH RAP 18.17

Petitioner believes the copy of the Court of Appeals Unpublished Opinion dated November 14, 2022 attached herewith contains approximately 5,380 words, excluding the parts of the document exempted from the word count by RAP 18.17. Petitioner is filing an Amended Petition For Review which includes multiple Respondents and multiple issues, and was informed said copy of the Court of Appeals Unpublished Opinion was to be included with a word count for same.

Dated: February 23, 2023

By: “/s/ [Sara Maynard]”

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CERTIFICATE OF SERVICE

I hereby certify that on the date below I caused the attached foregoing "Amended Petition For Partial Review In Regard To Solely Respondents James Jackson And Respondent Estate Helen B. Maynard Jr." to be served on the parties as listed below by Email and by Court E Service:

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February 23, 2023 - 11:32 AM

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Appellate Court Case Title: Sara Maynard v. John and Mary Maynard, et al.

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