No. 89829-4

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF T. MARK STOVER, Deceased,

TERESA VAUX-MICHEL,

Petitioner,

v.

ANNE VICTORIA SIMMONS, as Personal Representative of the ESTATE OF T. MARK STOVER, Deceased,

Respondent.

ANSWER TO THE PETITION FOR REVIEW

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A. INTRODUCTION

Teresa Vaux-Michel claimed a relationship with the late Mark Stover. She also claimed that Stover made out a check to her in the amount of $150,000 as a gift causa mortis, leaving it in his desk.[1]

Vaux-Michel presented a creditor claim to the Estate of Mark Stover ("Estate") for the alleged gift, but the Court of Appeals determined that her creditor claim against the Estate was untimely and was properly rejected. Probate proceedings are "special proceedings" under CR 81(a) to which the civil rules do not apply particularly where, as here, the statute in question addresses time limits for presenting creditor claims. This Court has strictly construed time deadlines in the probate setting in numerous cases.

The Court of Appeals decision is sound and fully consistent with this Court's decisional law. Review is not merited. RAP 13.4(b).

B. ISSUES PRESENTED FOR REVIEW

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[1] Only belatedly, Vaux-Michel claimed Stover left *two* checks. She repeats that assertion in her petition at 2. That claim not credible. The Skagit County detective who claimed he found the second check never logged it into the Sheriff's Office and never made a copy of it. 1RP:89-91. He claimed he sent it to the Estate's personal representative, but no exclosure letter was ever prepared. *Id.* The personal representative denies ever having received it. 2RP:66-69. Most critically, Vaux-Michel's claim against the Estate only referenced *one check*, as did her complaint. CP 16, 19-25.

The Estate acknowledges Vaux-Michel's statement of issues, petition at 1,[2] but believes the issues are more properly formulated as follows:

> 1. Where the personal representative of an estate rejects a creditor claim and the creditor files an action on that claim against the estate pursuant to RCW 11.40.100, was the Court of Appeals correct in determining that the creditor's commencement of the action more than 35 days after the postmarking of the rejection of the creditor claim by the personal representative was untimely?
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> 2. Where there is no language in RCW 11.40.080 in any way exempting creditor claims handled under that statute from the time deadlines of RCW 11.40.100, was the Court of Appeals correct to conclude a lawsuit on a creditor's claim was not timely commenced?

C. STATEMENT OF THE CASE

The Estate believes the Court of Appeals opinion accurately sets forth the relevant facts in this case. Op. at 2-3.[3] Mark Stover was apparently murdered. CP 45. He died without a will. CP 45. Stover was not married or engaged at the time of his death. CP 7. Stover's sister,

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[2] Vaux-Michel's petition for review does not specifically raise issues regarding her cross-appeal in which she contended that there were two checks (*see* n.1 *supra*), or the Court of Appeals' decision to vacate the trial court's fee award to her and to permit the Estate to recover its trial court fees. Op. at 12-13. By failing to assert these matters as a basis for review by this Court in her petition, Vaux-Michel has *waived* any alleged error associated with them. RAP 13.7(b); *State v. Gossage*, 165 Wn.2d 1, 6, 195 P.3d 525 (2008), *cert. denied*, 557 U.S. 926 (2009) (Court refused to consider issue not raised in petition for review or answer); *State v. Korum*, 157 Wn.2d 614, 624-25, 141 P.3d 13 (2006) (same).

[3] The Estate supplements that factual recitation only where necessary to respond to Vaux-Michel's misstatements of the record, often based on rank hearsay.

Anne Victoria Simmons, was appointed personal representative of his intestate estate with nonintervention powers by the Skagit County Superior Court on January 7, 2011,[4] and she qualified by filing her oath. CP 9-10.

Teresa Vaux-Michel claimed a relationship with Stover. CP 14.[5] The record from non-hearsay testimony is to the contrary. As Simmons testified, however, she understood him to be dating other women as recently as August 2009. CP 78; 2RP:131. Vaux-Michel and Stover "slowed down" their relationship in 2009, but only allegedly reconciled prior to his death. CP 112-13. No engagement between Vaux-Michel and Stover was ever announced. 2RP:92. She did not have a wedding ring

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[4] Vaux-Michel asserts in her petition at 3 that Simmons was estranged from her brother. This is untrue. Simmons testified at trial that she and brother lived on opposite sides of the country and it would be inaccurate to describe their relationship as "not close." 1RP:18-19.

[5] The bulk of the testimony "documenting" this putative relationship was hearsay. *See* Reply br. at 24 n.15. The trial court did not address the Estate's motion to exclude such testimony. At the beginning of trial, the trial court heard the Estate's outstanding motion objecting to the declarations and testimony of Kradel, Hearon, and Vaux-Michel. 1RP:3-13. The trial court ruled that in the interest of time, it would hear all testimony and rule at the conclusion of the case determining what was admissible and what was inadmissible. 1RP:28. The trial court ruled that the Estate had a "continuing objection." 1RP:28. The Estate noted that its list of objections included references to Stover's statements to various witnesses as hearsay. 1RP:31. The trial court acknowledged that the Estate's "continuing objection touches all issues that were raised in [the Estate's] argument." 1RP:31-32. Throughout the trial, the Estate periodically reiterated its hearsay objection to witnesses' testimony about statements that Stover made to them, which the trial court acknowledged. *See* 1RP:74, 95, 106, 125, 131, 138; 2RP:6. *See also,* 2RP:16. The trial court's findings and conclusions, which contain its rulings on admissibility, do not mention hearsay. *See* CP 111-20. Instead, the trial court improperly relied on such inadmissible testimony.

and no witness testified to seeing one. 2RP:91-92. No wedding date was ever set. *Id.* Vaux-Michel testified that she did not have a key to Stover's house, and detectives had to let her into the house to get food for Stover's dog, 2RP:52-53; CP 79, a critical fact regarding the delivery element of an alleged gift in causa mortis.

In going through Stover's personal effects in his Anacortes home in early December 2009, Simmons and Leigh Hearon (a private detective hired by Jeffrey Kradel, Stover's legal counsel in a potential criminal case against Stover involving drugs) discovered a check for $150,000 made out to Vaux-Michel, but they never found any type of note from Stover explaining his intent. CP 15, 35; 2RP:8. Simmons found the check hidden in a desk drawer attached to Stover's checkbook; the police had not found it. 2RP:66-68; CP 80-81. Vaux-Michel claimed the check was a gift causa mortis. CP 15. However, Vaux-Michel had never mentioned any such gift to Simmons between the time of Stover's disappearance and Simmons' canvassing of Stover's home in early December, a period of many weeks. 2RP:67; CP 80-81.

Approximately two years after Stover's death, on September 16, 2011, Vaux-Michel filed a creditor's claim in this matter and mailed a copy to the Estate's counsel, claiming the Estate owed her $150,000. CP 7, 14, 41.

The Estate sent Vaux-Michel's attorney a formal rejection of the claim by certified mail on December 19, 2011. CP 18. It was filed with the trial court on December 20, 2011. CP 18. On January 23, 2012, Vaux-Michel filed the present petition seeking an order that her creditor's claim be paid. CP 19. In support of her petition, Vaux-Michel filed declarations from herself, Kradel, and Hearon, each of which related statements allegedly made by Stover. CP 27, 31, 35. The Estate responded, in part, that the petition was time-barred. CP 83. The Estate also filed a motion to strike the noted declarations for a variety of reasons, including that statements therein were not based on personal knowledge, or that such statements were hearsay (ER 801-02), they violated Washington's Dead Man Statute, RCW 5.60.030, or were barred by the attorney-client privilege. CP 92-95.

The trial court rejected the Estate's argument that the creditor claim was untimely and set the claim over for trial by an order entered on February 17, 2012. CP 76. The trial court did not rule on the Estate's motion to strike hearsay evidence in Vaux-Michel's supporting declarations, which was also set for the same day as the motion to find the creditor claim untimely. CP 58-61, 76; RP (2-17-12):3-15. The Estate sought discretionary review, which the Court of Appeals denied. CP 106-10.

The case was tried to the bench over 2 days. 1RP:3-140; 2RP:3-100. The trial court ruled in favor of Vaux-Michel, entering findings and conclusions on September 24, 2012 and an amended order on TEDRA on October 1, 2012. CP 111-21, 127-28. The trial court subsequently entered findings and conclusions and a judgment and an order on attorney fees on October 18, 2012. CP 186-91. The Estate filed a timely notice of appeal from the judgment. CP 196.

The Court of Appeals reversed the trial court judgment because Vaux-Michel's claim was untimely under RCW 11.40.100. Op. at 3-12.

D. ARGUMENT WHY REVIEW SHOULD BE DENIED

This case presents a straightforward question of statutory interpretation. This Court has repeatedly made clear that courts must effectuate the intent of the Legislature in enacting a statute and the courts must apply the plain language of the statute. *E.g., Dep't of Ecology v. Campbell & Gwinn LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

The Court of Appeals correctly ruled that Vaux-Michel's creditor claim was untimely under RCW 11.40.100, and that RCW 11.40.080(2) did not provide an alternate procedure for presenting creditor claims, permitting a creditor to circumvent the requirement of the filing of a timely lawsuit regarding the claim under RCW 11.40.100. Vaux-Michel fails to demonstrate how the Court's decision merits review by this Court

under RAP 13.4(b) where she offers an interpretation of RCW 11.40.080(2) and 11.40.100 that is contrary to their plain language, and she studiously *ignores* this Court's key decision on the application of the civil rules to probate matters.

(1) Vaux-Michel Did Not Timely File an Action on Her Creditor Claim under RCW 11.40.100

Under RCW 11.40.100,[6] the 30-day time period commences from the date of service of the rejection of Vaux-Michel's claim which is the date of the postmark.

It is *undisputed* that Vaux-Michel filed her claim on September 16, 2011, and that such claim was rejected by the Estate on December 19, 2011, when the rejection was mailed to Vaux-Michel's attorney by certified mail at the address listed on the claim. On its face, the declaration of service states that the rejection was mailed on December 19, 2011; the rejection specifically notified Vaux-Michel that she must bring suit in the proper court within 30 days after the notification of rejection, or her claim would be forever barred. CP 18.[7]

[6] RCW 11.40.100 is set forth in the Appendix.

[7] To be timely, any lawsuit had to be filed by Vaux-Michel under RCW 11.40.100 no later than January 18, 2012.

It is also *undisputed* in this case that Vaux-Michel commenced the present action for her creditor claim in the trial court on January 23, 2012, 35 days after the postmarking of the rejection. CP 19.

RCW 11.40.100 expressly identifies "the date of notification" for purposes of commencing calculation of the 30-day window in which a claimant must file suit against the personal representative or her claim will be "forever barred." RCW 11.40.100.[8]

Despite this clear language, Vaux-Michel seemingly argues that the Court of Appeals erred in calculating the 30-day period for filing a lawsuit on a creditor claim, citing *Van Duyn v. Van Duyn*, 129 Wash. 428, 225 P. 444 (1924), and *Robel v. Highline Public Schools, Dist. No. 401, King County*, 65 Wn.2d 477, 398 P.2d 1 (1965). Petition at 7-10. Neither case assists her.

Both cases arose under the predecessor to RCW 11.40.100 which did not contain the provision that defines when notification to a creditor occurs for purposes of the limitation period for suing on rejected creditor claims. Op. at 6 n.4. In *Van Duyn*, this Court provided that the time period commenced from the date the creditor received notification of

[8] RCW 11.40.100 spells out the requirements for service upon the claimant regarding the rejection of her claim, providing for personal service or certified mail, and the date of notification for each type of service, i.e. the date of the personal service, or the date of the postmark if service is by certified mail.

rejection in the absence of a statutory definition of notification. 129 Wash. at 431-32. *Robel*, pertaining to a teacher's notification of non-renewal of contract, is no different.

But RCW 11.40.100 was substantially rewritten into its present form in 1997. *See* Laws of 1997, ch. 252, § 16. *Van Duyn* predates that event by more than 70 years and *Robel* by more than 30 years. In the statutes discussed in those cases, there is no provision similar to RCW 11.40.100's direction that the notification date to the creditor is the postmark date. The Court of Appeals here observed that the statutory language of RCW 11.40.100 is plain and that "Vaux-Michel does not contend that RCW 11.40.100(1) is ambiguous." Op. at 6.

The time deadlines in the statute must be *strictly construed* according to this Court's long-standing precedent. Washington courts in the probate setting have treated time deadlines for filing creditor claims *strictly*. *In re Kruegers Estate*, 11 Wn.2d 329, 340, 119 P.2d 312 (1941); *King County v. Knapp's Estate*, 56 Wn.2d 558, 559, 354 P.2d 389 (1960) ("We have repeatedly held that this statute must be strictly construed, that its provisions are mandatory, and that compliance with its requirements is essential to recovery."). Such claim filing requirements are *mandatory*. *Rigg v. Lawyer*, 67 Wn.2d 546, 553, 408 P.2d 252 (1965). The statutory time deadline for filing creditor claims cannot be waived by the personal

representative. *Dillabough v. Brady*, 115 Wash. 76, 80, 196 Pac. 627 (1921).[9]

The Court of Appeals properly calculated RCW 11.40.100's 30-day window. The 30th day *after* the date of notification, December 19, 2011, is January 18, 2012, which is five days before Vaux-Michel filed her lawsuit. Vaux-Michel misleads the Court to the extent she asserts that the statute in place at the time of *Van Duyn* and *Robel* is the same as the present statute.

Vaux-Michel also contends that her action was timely under RCW 11.40.100 because CR 6(e)[10] allowed her 3 additional days upon which to act where the Estate's rejection was mailed to her. Petition at 10-15. Vaux-Michel's argument, relying on the general applicability of the civil

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[9] Contrary to Vaux-Michel's policy arguments for which there is no case law support, petition at 12-14, there are strong policy reasons for strict compliance with time deadlines in probate-related statutes. A strict interpretation of RCW 11.40.100, op. at 6-7, 10-12, is amply supported by cases arising in other facets of the Probate Code. The need for certainty in the closure of an estate has been an important consideration for the Legislature. Strict compliance affords a measure of certainty that looser standards for the compliance with deadlines in probate-related statutes will not. That is the reason that the court in *In re Estate of Peterson*, 102 Wn. App. 456, 9 P.3d 845 (2000), *review denied*, 142 Wn.2d 1021 (2001), rejected the application of the discovery rule to filing of an action under the will contest statute. *See also, Ruth v. Dight*, 75 Wn.2d 660, 670, 453 P.2d 631 (1969) (rejecting application of discovery rule to probate non-claim statute, RCW 11.40).

[10] CR 6(e) states:

> **Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

rules, *ignores* the express provisions of Title 11 that except from those rules any Title 11 "special proceeding" for which the Legislature has expressly provided procedures within Title 11. RCW 11.96A.090(1) specifically states: "A judicial proceeding under this title is a special proceeding under the civil rules of court.[11] *The provisions of this title governing such actions control over any inconsistent provision of the civil rules.*" (emphasis added). RCW 11.96A.090(4) also provides in relevant part: "The procedural rules of court apply to judicial proceedings under this title *only to the extent that they are consistent with this title.*" (emphasis added). *See also*, RCW 11.96A.100(2) ("A summons *must* be served in accordance with *this* chapter and, *where not inconsistent with these rules, the procedural rules of court....*" (emphasis added)).

Accordingly, the express procedural provisions of Title 11 prevail over any inconsistent civil rules in this context, as this Court ruled in *In re Estate of Toth*, 138 Wn.2d 650, 981 P.2d 439 (1999), a case Vaux-Michel

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[11] CR 81(a) provides that the superior court civil court rules "shall govern all civil proceedings," "[*e*]*xcept* where inconsistent with rules or statutes applicable to special proceedings." (emphasis added). Subsection (b) of CR 81 reiterates the exception, noting "*Subject to* the provisions of section (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict." (emphasis added). *See* CR 81(a) and (b). Vaux-Michel *concedes* that proceedings under RCW 11.96A.090 are special proceedings under the rule, petition at 12, but does not acknowledge the effect of the rule. She seemingly ignores the effect of CR 81 in arguing that the applicable statutes should give way to CR 6. Petition at 13-14.

neglects to address in any detail in her petition, although it was relied upon by the Court of Appeals. Op. at 10-11.[12]

In *Toth,* this Court noted the Court of Appeals determination that CR 6(e) does not apply to probate proceedings *generally*, because "[t]here is no controlling authority to support the ... position that CR 6(e) applies to probate proceedings." *Id.* at 656-57. The Court also addressed will contests *specifically*. A will contest, like any other Title 11 proceeding, is subject to RCW 11.96A.090(1). The *Toth* court addressed the timeliness of the commencement of a will contest, ultimately finding that the action was not timely filed under the will contest statute. RCW 11.24.010. The Court rejected the application of CR 6(e) to extend the period for a will contest, specifically noting that a will contest, like a creditor's claim, is a statutory proceeding, and the statutory provisions control. *Id.* at 653. The Court rejected applying CR 6(e) to the time periods for commencement of a will contest because nothing in RCW 11.24 contemplated such an extension. *Id.* at 654. This Court also acknowledged its strict interpretation of time deadlines for will contests. *Id.* at 656.[13]

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[12] Vaux-Michel references *Toth* in her petition at 6, but neglects to address the broader statement in this Court's opinion that CR 6 is inapplicable at all in the probate context.

[13] This policy of strict compliance for will contests also applies to RCW 11.40.100. *Campbell & Gwinn,* 146 Wn.2d at 11-12 (a court may look to other related statutes to determine legislative intent).

Applying *Toth*, Division III subsequently held that "[a] will contest is a purely statutory proceeding, and the court must be governed by the provisions of the applicable statute. The jurisdiction of the trial court is derived exclusively from the statute, and may be exercised only in the mode and under the limitations therein prescribed." *In re Estate of Kordon*, 126 Wn. App. 482, 485, 108 P.3d 1238 (2005), *affirmed*, 157 Wn.2d 206 (2006) (quotation marks and citations omitted). In affirming Division III, this Court opined: "A court has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." *Estate of Kordon*, 157 Wn.2d at 214 (internal quotation marks and citations omitted). The same is true for the statutory deadlines set forth in RCW 11.40.100, as discussed above.

No statutory language, and no case law, supports the argument advanced by Vaux-Michel that CR 6 should be imported into the calculation of time deadlines under RCW 11.40.100.

The principal authority cited by Vaux-Michel in support of her position are cases involving statutes that are not as complete as RCW 11.40.100. For example, Vaux-Michel cites an unlawful detainer case.

Canterwood Place v. Thande, 106 Wn. App. 844, 5 P.3d 495 (2001).[14] Petition at 14-15. In that case, the court chose to apply CR 6 to the statutory time deadlines under RCW 59.12 because the statute did not contain a complete rule regarding time deadlines. *Id.* at 848-49. Vaux-Michel also cites *Capello v. State*, 114 Wn. App. 739, 60 P.3d 620 (2002), *review denied*, 149 Wn.2d 1032 (2003) in her petition at 14, 15. There, the court agreed with the policy considerations in *Canterwood Place*, holding that the computation of time provisions of CR 6(a) would be applied in calculating the time for a hearing under RCW 71.09.040 (providing for a probable cause hearing within 72 hours for a person taken into custody as a sexually violent predator). That determination, like the determination in *Canterwood Place*, turned on the fact that the statue in question was "incomplete because it is silent on the issue of the computation of time." *Capello*, 114 Wn. App. at 749. RCW 11.40.100 does not have that failing.

But Vaux-Michel has no real answer to this Court's decision in *Christensen v. Ellsworth*, 162 Wn.2d 365, 173 P.3d 228 (2007), upon which the Court of Appeals properly relied in concluding that a statutory

[14] The Legislature promptly amended the summons period for unlawful detainer actions after *Canterwood Place*; Laws of 2005, ch. 130, § 1, effectively overruling it.

provision, properly construed, controls over a contrary civil rule provision in a special proceeding like an unlawful detainer. Op. at 6-7. *See also, Hall v. Feigenbaum*, ___ Wn. App. ___, ___ P.3d ___, 2014 WL 113407 ("...when the civil rules conflict with the unlawful detainer statute, the statute, as a 'special proceeding,' controls.") The Court of Appeals' analysis was also supported by *Johnston v. Van Houck*, 150 Wn. App. 894, 208 P.3d 548 (2009). That case supports the Estate's position here. The court stated: "RCW 11.40.100(1) . . . sets forth a sequence of events and a time period within which a claimant *must* sue." *Johnston*, 150 Wn. App. at 901 (emphasis added). The court further explained: "RCW 11.40.100(1) clearly contemplates a sequence in which a claimant will notify an estate of a claim, the estate will notify the claimant of the claim's rejection, and the claimant will then sue within 30 days or be forever barred from such action." *Id.* at 903. That is precisely what happened here. Vaux-Michel submitted a claim, the Estate rejected it, and 35 days after the rejection, she filed suit, but her claim is barred under RCW 11.40.100.

RCW 11.40.100 is complete. It defines when rejection of the claim by the personal representative is effective. It advises that claimants like Vaux-Michel that they must file their lawsuits to uphold a creditor

claim within 30 days of the personal representative's rejection of that claim. It deliberately does not provide for a mailing rule like CR 6.

The Court of Appeals below correctly ruled that the express language of RCW 11.40.100, strictly construed, required that Vaux-Michel file this case within 30 days of the rejection of her creditor claim. Op. at 7. RCW 11.40.100 provides that the personal representative's rejection was effective from the date that the personal representative put that rejection in the mail and CR 6 did not extend the statutory time deadlines. She had 30 days thereafter in which to file the lawsuit. She did not do so. The lawsuit was commenced more than 30 days after the rejection of her claim. Her lawsuit should have been dismissed as untimely, as the Court of Appeals properly ruled. Review is not merited. RAP 13.4(b).

(2) RCW 11.40.080(2) Does Not Create a Separate Statute of Limitations Apart from RCW 11.40.100

Vaux-Michel argues that RCW 11.40.080(2)[15] somehow creates a separate statutory sequence from that of RCW 11.40.100, allowing her to dispense with any obligation to follow the time deadlines of RCW 11.40.100. Petition at 16-18. The Court of Appeals properly rejected this erroneous reading of the plain language of the statute. Op. at 8-9. The

[15] RCW 11.40.080 is set forth in the Appendix.

language of RCW 11.40.080(2) does not support that argument. Vaux-Michel fails to cite any relevant case authority for her position.

Nothing in the statutory language of RCW 11.40.080(2) states that the time deadlines of RCW 11.40.100 no longer apply. Op. at 9. RCW 11.40.080(2) requires the personal representative to act on a creditor claim within the later of 4 months of the notice to creditors or within 30 days of the presentation of the claim by the creditor. If the personal representative fails to do so, the creditor may notify the personal representative that the creditor will petition the court to address the claim. Vaux-Michel served such a notice on October 19, 2011. CP 22, 41-42. Under RCW 11.40.080, the personal representative then has 20 days to address the claim and if he/she does not do so, the creditor may file a lawsuit on the claim.

As Division II noted in *Johnston,* RCW 11.40.080(2) establishes a process by which a claimant can commence an action in court with respect to a creditor claim where the personal representative of an estate does not timely act on such a claim. 150 Wn. App. at 901-02. But *nothing* in RCW 11.40.080(2), or in any cases provided by Vaux-Michel, would suggest that time limitations of RCW 11.40.100 no longer apply if the personal representative rejects the claim before the creditor commences a court action, as occurred here. In fact, the *Johnston* court discussed the

application of RCW 11.40.100 even in the context of a suit commenced pursuant to RCW 11.40.080(2). *See id.* at 898-904. This fact alone severely undercuts Vaux-Michel's position.

RCW 11.40.080(2) simply addresses the circumstance of a personal representative who will not make a decision about a submitted claim. As the Court of Appeals observed in its opinion at 8, the plain language of RCW 11.40.080(2) describes a permissive, tiered approach clearly intended to goad the personal representative into making a decision about a submitted claim. Where a personal representative does not respond to such promptings and fails to make any decision regarding a submitted claim, RCW 11.40.080(2) permits the claimant to then petition a court to make a determination on whether the claim should be allowed. *See* RCW 11.40.080(2). That is not the circumstance here.

In this case, Simmons *rejected* Vaux-Michel's claim. CP 18. That rejection triggered the application of RCW 11.40.100. "*If* the personal representative *rejects* a claim, in whole or in part, the claimant *must* bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred." RCW 11.40.100 (emphasis added). Nothing in RCW 11.40.080(2) negated Vaux-Michel's obligation to file her lawsuit within 30 days of the Estate's rejection of her claim as required by RCW 11.40.100. If the Legislature had intended the

interpretation of RCW 11.40.080(2) Vaux-Michel advocates, it could have said so expressly by excepting a situation covered by RCW 11.40.080(2) from RCW 11.40.100's time deadlines. Op. at 9. It did not do so.

In this case, the personal representative rejected Vaux-Michel's creditor claim on December 19, 2011, CP 18, and RCW 11.40.100 required Vaux-Michel to timely file her lawsuit to uphold her creditor claim. By waiting to commence this action until January 23, 2012, Vaux-Michel's action was simply not timely under RCW 11.40.100. The Court of Appeals correctly interpreted RCW 11.40.080(2) and RCW 11.40.100. Review is not merited. RAP 13.4(b).[16]

E. CONCLUSION

The trial court committed error in engrafting the time periods of CR 6(e) onto the statutory time deadlines for a creditor's claim against an estate under RCW 11.40.100 and the Court of Appeals properly reversed the trial court's order on timeliness. Vaux-Michel fails to demonstrate how any of the criteria of RAP 13.4(b) apply here. This Court should deny review.

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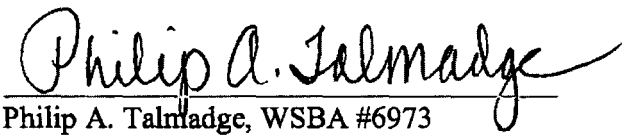
[16] If, and only if, this Court determines to grant review, it should also consider whether Vaux-Michel established a gift causa mortis, particularly the delivery element, by the requisite clear and convincing evidentiary standard, whether the trial court improperly relied on hearsay evidence as to Stover's and Vaux-Michel's relationship, and whether Vaux-Michel was entitled to fees under TEDRA. RAP 13.7(b); *Lewis River Golf, Inc. v. O.M. Scott & Sons*, 120 Wn.2d 712, 725, 845 P.2d 87 (1993) (party may raise issues conditionally).

DATED this 13th day of February, 2014.

Respectfully submitted,



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APPENDIX

RCW 11.40.080:

> (1) The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070. The personal representative may allow or reject a claim in whole or in part.
>
> (2) If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejected of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate.

RCW 11.40.100:

> (1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the

proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Estate of T. MARK STOVER, Deceased, TERESA VAUX-MICHEL, Respondent, v. ANNE VICTORIA SIMMONS, as personal representative of the ESTATE OF T. MARK STOVER, Deceased, Appellant.	NO. 69546-1-I DIVISION ONE PUBLISHED OPINION FILED: December 23, 2013

LAU, J. — When a claim against an estate in probate is rejected by certified mail, RCW 11.40.100(1) requires the claimant to file suit against the estate within 30 days after the postmark date. Because Teresa Vaux-Michel failed to file suit against T. Mark Stover's estate within 30 days after the postmark on her rejected claim, and because CR 6 does not apply to extend this time limitation, we reverse and remand to the trial court with instructions to vacate the judgment and fees and costs award, determine the

personal representative's request for trial fees and costs, and dismiss the action with prejudice. We decline to award the estate fees and costs on appeal.

FACTS

On September 16, 2011, Vaux-Michel filed a claim against Stover's estate. She alleged he had written a $150,000 check as a gift to her in anticipation of his death. When the personal representative failed to act on the claim, Vaux-Michel sent notice to the personal representative on October 19, 2011, that she intended to petition the court to allow the claim. On December 19, 2011, the personal representative rejected the claim. On January 23, 2012, Vaux-Michel petitioned the court to allow the claim. The trial court denied the personal representative's motion to dismiss the suit as untimely under RCW 11.40.100(1). A commissioner of this court denied the personal representative's motion for discretionary review. The case proceeded to a bench trial. After the close of evidence, the court ruled in Vaux-Michel's favor, entered judgment for $150,000, and awarded attorney fees and costs. The trial court entered the following unchallenged findings of fact and challenged conclusions of law relevant to the suit's timeliness:

> [Unchallenged findings of fact:]
> 30. Ms. Vaux-Michel presented and filed her claim pursuant to RCW 11.40.070 on September 16, 2011.
> 31. Respondent did not allow or reject Ms. Vaux-Michel's claim within thirty days from presentation of the same as required by RCW 11.40.080 ("The personal representative shall allow or reject all claims presented in the manner provided in RCW 11.40.070").
> 32. On October 19, 2011, Ms. Vaux-Michel served, via certified mail, written notice on Respondent that she would petition the court to have the claim allowed. RCW 11.40.080(2).
> 33. Respondent did not notify Ms. Vaux-Michel, within twenty days after her receipt of written notice, that she was either allowing or rejecting her claim. Id.

. . . .

[Challenged conclusions of law:]

2. Because Respondent failed to reject or allow, in part or in whole, Ms. Vaux-Michel's claim within thirty days of notice of the claim, RCW 11.40.100, and then failed to reject or allow, in part or in whole, Ms. Vaux-Michel's claim within twenty days after receiving notice that Ms. Vaux-Michel would petition the Court to allow the claim, RCW 11.40.080, Respondent no longer had statutory authority to reject Ms. Vaux-Michel's claim and, therefore, Ms. Vaux-Michel had a reasonable time within which to file her petition. RCW 11.40.080(2). The provisions of RCW 11.40.100 ceased to be applicable when Respondent failed to exercise her rights thereunder by her failure to reject or allow, in part or in whole, Ms. Vaux-Michel's claim within 20 days after receiving notice.

3. Ms. Vaux-Michel filed her petition within a reasonable time after notifying Respondent that she would petition the court.

4. Even if the thirty day period of RCW 11.40.100 were applicable, Ms. Vaux-Michel timely filed her petition. Respondent mailed her rejection on December 19, 2011, Ms. Vaux-Michel received notice on, and had thirty days after December 19, 2011, to file her petition. Thirty days after December 19, 2011 was Wednesday, January 18, 2012, with three additional days for mailing (CR 6(e)), the date to file fell on Saturday January 20, 2012, which put "the first day other than a Saturday, Sunday or legal holiday, following the third day," on Monday, January 23, 2012. CR 6(e).[1]

The personal representative appeals the order denying its motion to dismiss on time bar grounds and the final judgment.

ANALYSIS

This action under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, requires us to determine whether Vaux-Michel's suit is time barred under RCW 11.40.100(1), which requires a claimant to sue the personal representative within 30 days after notification of rejection by the personal representative. The following chronology of events is undisputed:

Sept. 16, 2011: Vaux-Michel notified the personal representative of her $150,000 claim.

[1] It appears the trial court meant to cite CR 6(a).

Oct. 18, 2011: Vaux-Michel notified the personal representative of her intent to petition the court to allow the claim.
Dec. 19, 2011: The estate postmarked its notification of rejection.
Jan. 23, 2012: Vaux-Michel petitioned the court to allow her claim.

The estate contends that Vaux-Michel's creditor claim is time barred under the plain language of RCW 11.40.100(1), regardless of the estate's noncompliance with RCW 11.40.080(2)'s time requirements. Vaux-Michel asserts, as she did below, two grounds as to why her suit is timely.[2] First, she argues that the estate's failure to timely accept or reject her claim within the time periods provided for under RCW 11.40.080(2) means her claim was ripe for adjudication, claim rejection no longer served a purpose, and she filed suit within a reasonable time. Second, she argues her suit is timely because CR 6(e) adds three extra days to the prescribed period.[3]

Whether Vaux-Michel timely sued the estate raises a question of statutory construction that we review de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). A court's objective in construing a statute is to determine the legislature's intent. Campbell & Gwinn, 146 Wn.2d at 9. "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." Campbell & Gwinn, 146 Wn.2d at 9-10. Plain meaning

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[2] Vaux-Michel also argues for the first time on appeal that her claim is timely under RCW 11.40.051's two-year time limitation. Resp't's Br. at 15-16. The appellate court may refuse to consider claims not raised in the trial court. RAP 2.5(a). "The purpose of this general rule is to give the trial court an opportunity to correct errors and avoid unnecessary retrials." Postema v. Postema Enters., Inc., 118 Wn. App. 185, 193, 72 P.3d 1122 (2003). Even if we assume this claim was properly preserved, it fails. This statute applies only when the estate fails to give notice to creditors through the statute's defined procedures. 26B CHERYL C. MITCHELL & FERD H. MITCHELL, WASHINGTON PRACTICE: PROBATE LAW AND PRACTICE § 4.31 (2012).

[3] Vaux-Michel also invokes CR 6(a)'s time computation rule, which calculates periods of less than seven days by excluding weekends and holidays.

is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. Campbell & Gwinn, 146 Wn.2d at 9-12. An undefined statutory term should be given its usual and ordinary meaning. Burton v. Lehman, 153 Wn.2d 416, 422-23, 103 P.3d 1230 (2005). Statutory provisions and rules should be harmonized whenever possible. Emwright v. King County, 96 Wn.2d 538, 543, 637 P.2d 656 (1981). If the statutory language is susceptible to more than one reasonable interpretation, then a court may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

> As a general matter, time calculation rules should be applied in a clear, predictable manner. "It is a well-accepted premise that [l]itigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights."

Christensen v. Ellsworth, 162 Wn.2d 365, 372, 173 P.3d 228 (2007) (quoting Stikes Woods Neighborhood Ass'n v. City of Lacey, 124 Wn.2d 459, 463, 880 P.2d 25 (1994) (alteration in original) (internal quotation marks omitted)).

RCW 11.40.100(1) and RCW 11.40.080(2)

RCW 11.40.100(1) provides:

> If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant

> must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

Vaux-Michel submitted her $150,000 creditor's claim to Stover's estate on September 16, 2011. The estate rejected this claim more than 30 days later, on December 19, 2011, by mailing notification of rejection to Vaux-Michel's attorney by certified mail. This notification informed Vaux-Michel that she "must bring suit in the proper court within 30 days after notification of rejection or the claim will be forever barred." Under RCW 11.40.100(1), quoted above, to be timely, Vaux-Michel was required to bring suit no later than January 18, 2012, 30 days after notification of rejection.[4] Vaux-Michel petitioned the court on January 23, 2012, 35 days after notification of rejection.[5]

Vaux-Michel does not contend that RCW 11.40.100(1) is ambiguous. Indeed, RCW 11.40.100(1) plainly states that a claimant like Vaux-Michel "must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred." In Christensen, our Supreme Court held that CR 6(a), the time computation rule that excludes weekends and holidays from periods of less than seven days, did not apply to RCW 59.12.030(3)'s three-day period for a landlord to commence an unlawful detainer action after serving notice. Christensen, 162 Wn.2d at 369. Applying the plain meaning rule to the statutory term "day," the court reasoned:

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[4] For notification of rejection by certified mail, "the postmark is the date of notification." RCW 11.40.100(1).

[5] Vaux-Michel mistakenly claims that the estate computes the 30-day period as commencing on the postmark date. But the record shows that both parties agree that the first day of the 30 day period begins on the day after notification of rejection.

> The statute [RCW 59.12.030(3)] does not specify whether "day" means a business day, court day, or calendar day. There are no time calculation provisions in chapter 59.12 RCW. The ordinary meaning of "day" is a 24 hour period beginning at midnight. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 578 (2002) (defining "day" as a "CIVIL DAY [ ] among most modern nations : the mean solar day of 24 hours beginning at mean midnight"); id. at 316 (defining "calendar day" as "a civil day : the time from midnight to midnight"); see also 74 AM.JUR.2d Time § 10 (2001) ("[a] 'day' generally means a calendar day"). Using the ordinary meaning of day, weekends and holidays would be included in the calculation of the three day notice period.

Christensen, 162 Wn.2d at 373 (alterations in original). As in Christensen, the statute here does not specify whether "day" means a business day, court day, or calendar day. Accordingly, we apply the ordinary meaning of "day," which includes weekends. "In the absence of a specific statutory definition, words in a statute are given their common law or ordinary meaning." State v. Chester, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). Vaux-Michel's suit is untimely because she petitioned the court to allow her claim 35 calendar days after notification of rejection.

This approach also furthers the timely and efficient resolution of claims against the estate because the statute establishes a clear bright line rule within which a claimant "must" bring an action on a claim. In Johnston v. Von Houck, 150 Wn. App. 894, 209 P.3d 548 (2009), Division Two of this court agreed with the personal representative's contention that RCW 11.40.100(1) is worded to bar untimely creditor claims:

> [RCW 11.40.100(1)] sets forth a sequence of events and a time period within which a claimant must sue. This sequence and the 30-day "window" are intended to further the timely resolution of claims against an estate. See Nelson v. Schnautz, 141 Wn. App. 466, 475, 170 P.3d 69 (2007) (intent of probate code is to limit claims against the decedent's estate, expedite closing the estate, and facilitate distribution of the decedent's property), review denied, 163 Wn.2d 1054 (2008); In re Estate of Krueger's, 145 Wn. 379, 381-82, 260 P. 248 (1927)

> (provision that suit shall be brought within 30 days after rejection was "undoubtedly to facilitate the handling and settling of estates").

Johnston, 150 Wn. App. at 901-02.

As noted above, Vaux-Michel asserts that the estate's noncompliance with RCW 11.40.080(2)'s time provisions, as a matter of law, dispensed with any obligation on her part to bring suit within RCW 11.40.100(1)'s 30-day deadline. But this argument is not supported by any relevant case authority and, as discussed above, is contrary to the plain meaning of the statute. Nor does she identify any provision in chapter 11.40's comprehensive scheme governing claims against the estate to support her argument.

RCW 11.40.080(2) states:

> If the personal representative has not allowed or rejected a claim within the later of four months from the date of first publication of the notice to creditors or thirty days from presentation of the claim, the claimant may serve written notice on the personal representative that the claimant will petition the court to have the claim allowed. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within twenty days after the personal representative's receipt of the claimant's notice, the claimant may petition the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part. If the court substantially allows the claim, the court may allow the petitioner reasonable attorneys' fees chargeable against the estate.

The statute's plain text provides a claimant like Vaux-Michel a permissive and simple mechanism intended to prompt a personal representative who fails to make a decision on a submitted claim. See Johnston, 150 Wn. App. at 901-02. In that circumstance, the claimant can notify the personal representative that she intends to petition the court to allow the claim unless the personal representative acts on the claim within 20 days. If the personal representative fails to act, the claimant may petition the court to allow the claim. Here, Vaux-Michel's notice to the personal representative of her intent to petition the court to allow the claim prompted the personal representative to make a decision on

the claim. Once the personal representative rejected the claim, RCW 11.40.100(1) required Vaux-Michel to "bring suit against the personal representative within thirty days after notification of rejection . . . ." See 26B CHERYL C. MITCHELL & FERD H. MITCHELL, WASHINGTON PRACTICE: PROBATE LAW AND PRACTICE § 4.33 (2012).

We are not persuaded by Vaux-Michel's unsupported contention that the personal representative's failure to reject her claim according to the time requirements in RCW 11.40.080(2) dispensed with any obligation to comply with RCW 11.40.100(1)'s time requirements. RCW 11.40.080(2) and .100(1) operate together to facilitate the prompt and efficient resolution of estate claims. See In re Pers. Restraint of Albritton, 143 Wn. App. 584, 593, 180 P.3d 790 (2008) ("The provisions of an act must be viewed in relation to each other and, if possible, harmonized to effect the act's overall purpose."). Nothing in RCW 11.40.080(2)'s or .100(1)'s text suggests that failure to comply with .080(2)'s time requirements excuses compliance with .100(1)'s time bar rule.[6] If the legislature had intended this result, it could have said so expressly. See In re Marriage of McLean, 132 Wn.2d 301, 307, 937 P.2d 602 (1997).[7]

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[6] RCW 11.40.080(2) is plain on its face. "If the language is unambiguous, we give effect to that language and that language alone because we presume the legislature says what it means and means what it says." State v. Costich, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). "Courts will neither read matters into a statute that are not there nor modify a statute by construction." Rushing v. ALCOA, Inc., 125 Wn. App. 837, 840, 105 P.3d 996 (2005).

[7] We also note that in addition to other provisions in chapter 11.40 RCW, section .051 contains comprehensive time limits within which a claim must be brought.

CR 6

As discussed above, Vaux-Michel contends in the alternative that CR 6(e) adds three extra days for mailing to the 30-day time requirement.[8] This argument depends on whether CR 6(e)'s time computation rules apply to RCW 11.40.100(1).

CR 6(e) provides:

> Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

(Boldface omitted.) Under CR 81(a), the civil rules apply to all civil proceedings "[e]xcept where inconsistent with rules or statutes applicable to special proceedings . . . ." TEDRA actions are special proceedings. RCW 11.96A.090(1) provides, "A judicial proceeding under [title 11] is a special proceeding under the civil rules of court. The provisions of [title 11] governing such actions control over any inconsistent provision of the civil rules."

But even assuming the civil rules applied, application of CR 6(e) to RCW 11.40.100(1)'s 30-day time requirement is contrary to the plain language of the statute. As discussed above, the legislature intended for the phrase "thirty days" to convey its ordinary meaning of 30 calendar days. Thirty calendar days is inconsistent with CR 6(e), which adds three days for mailing, and with CR 6(a), which extends this period by excluding weekends and legal holidays.

> Rule 6(e) was adopted in order to mitigate the effects of CR 5(b), which provides that service is complete upon mailing, rather than delivery, of the

[8] According to Vaux-Michel, since the thirty-third day falls on a Saturday, the period "runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday." CR 6(a).

> notice. 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1171, at 514 (2d ed. 1987) (Rule 6(e) is "a fair compromise between the harshness of measuring strictly from the date of mailing and the indefiniteness of attempting to measure from the date of receipt"). Rule 6(e) allows parties three additional days to respond in order to compensate for the transmission time when the notice is mailed.

In re Estate of Toth, 138 Wn.2d 650, 655, 981 P.2d 439 (1999). Unlike the policy concerns that drove the adoption of CR 6(e), RCW 11.40.100(1) provides a clearly-defined period within which a creditor must sue in court on his or her claim—30 calendar days after the claim rejection notice's certified mail postmark date.

Vaux-Michel relies on Canterwood Place L.P. v. Thande, 106 Wn. App. 844, 25 P.3d 495 (2001) (superseded by statute), and Capello v. State, 114 Wn. App. 739, 60 P.3d 620 (2002), to argue that CR 6(e) applies.[9] In Canterwood, we applied CR 6(a) to compute the return date on an unlawful detainer summons issued under former RCW 59.12.070. We applied CR 6(a) because, at the time of our decision, chapter 59.12 RCW contained "no method for computing time." Canterwood, 106 Wn. App. at 848. Similarly, in Capello, we applied CR 6(a) to compute the 72-hour period within which a probable cause hearing must be held under the sexually violent predator statute, chapter 71.09 RCW. We applied CR 6(a) because chapter 71.09 RCW was "silent on the issue of the computation of time" and contained no provision inconsistent with CR 6(a). Capello, 114 Wn. App. at 749. Unlike the statutory schemes at issue in Canterwood and Capello, chapter 11.40 RCW contains an express timing rule,

[9] Vaux-Michel acknowledges the absence of "controlling authority that Rule 6 applies to probate proceedings . . . ." Resp't's Br. at 24.

RCW 11.40.100(1), that addresses the precise issue raised by the parties.[10] Canterwood and Capello are unpersuasive.

Vaux-Michel also argues that applying CR 6(e) to RCW 11.40.100(1) "is sound public policy because litigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner . . . ." Resp't's Br. at 26. This argument is unpersuasive because the legislature has already spoken on this point. Our Supreme Court adopted CR 6(e) in 1967. See Order Adopting Civil Rules for Superior Court, 71 Wn.2d at xvii, xxxvii (1967). The legislature enacted RCW 11.40.100(1) in its present form 30 years later. LAWS OF 1997, ch. 252, § 16. We presume that the legislature enacts laws with full knowledge of existing laws. Thurston County v. Gorton, 85 Wn.2d 133, 138, 530 P.2d 309 (1975). Thus, we presume that the legislature enacted RCW 11.40.100(1) with full knowledge of the statute's inconsistency with CR 6(e). RCW 11.40.100(1) reflects the legislature's intent to "further the timely resolution of claims against an estate." Johnston, 150 Wn. App. at 901.

Attorney Fees

The estate requests trial and appellate attorney fees under TEDRA and RAP 18.1. Under TEDRA, courts have broad discretion to award attorney fees and costs in any proceeding governed by Title 11 RCW. See Wash. Builders Benefit Trust v. Building Indus. Ass'n, 173 Wn. App. 34, 84, 293 P.3d 1206 (2013) ("RCW 11.96A.150 provides both the trial court and this court with broad discretion to award attorney fees

[10] Vaux-Michel's citation to In re Estate of Van Dyke, 54 Wn. App. 225, 772 P.2d 1049 (1989) (remanding will contest petition for determination as to whether nonjoined legatees were indispensable parties under CR 19(b)) is unhelpful.

in a trust dispute."). Fees may be awarded to any party "in such amount and in such manner as the court determines to be equitable." RCW 11.96A.150(1)(c). We may "consider any relevant factor, including whether a case presents novel or unique issues." In re Guardianship of Lamb, 173 Wn.2d 173, 198, 265 P.3d 876 (2011); see, e.g., In re Estate of D'Agosto, 134 Wn. App. 390, 402, 139 P.3d 1125 (2006) (fees unwarranted because case involved "novel issues of statutory construction"); Bale v. Allison, 173 Wn. App. 435, 461, 294 P.3d 789 (2013) (fees unwarranted because case involved "unique issue").

The present case involves a novel issue of statutory construction—whether CR 6(e) applies to RCW 11.40.100(1). This issue was litigated both at trial and on appeal. We deny the estate's appellate fee and cost requests. Given our disposition, we likewise vacate Vaux-Michel's attorney fee judgment.[11]

CONCLUSION[12]

For the reasons discussed above, we hold that Vaux-Michel's suit is untimely under RCW 11.40.100(1) and CR 6 does not apply to this statute. The trial court erred when it denied the personal representative's motion to dismiss the claim and, after trial, entered judgment and awarded fees and costs to Vaux-Michel. We reverse and remand with instructions to vacate the judgment and fees and costs award. We decline

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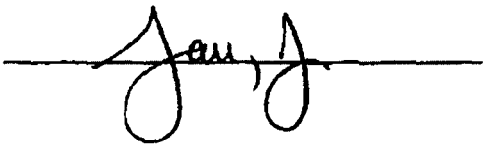
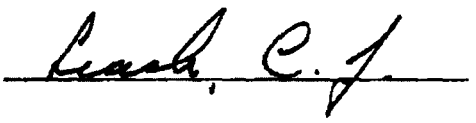
[11] We note that the trial court's findings of fact and conclusions of law supporting Vaux-Michel's fee award identified no statutory, contractual, or equitable justification for the award. "In Washington, attorney fees may be awarded only when authorized by a private agreement, a statute, or a recognized ground of equity." Labriola v. Pollard Group, Inc., 152 Wn.2d 828, 839, 100 P.3d 791 (2004).

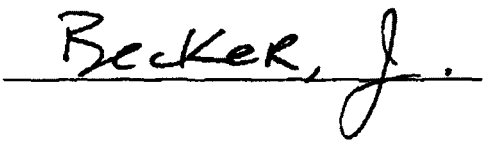
[12] Given our resolution, it is unnecessary to address Vaux-Michel's remaining contentions.

to award fees and costs on appeal. The personal representative's request for fees in the trial court may be taken up on remand.

WE CONCUR:







DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Answer to the Petition for Review in Supreme Court Cause No. 89829-4 to the following:

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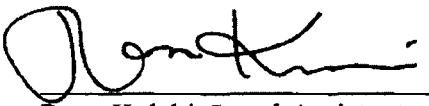
I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 13, 2014, at Tukwila, Washington.



Roya Kolahi, Legal Assistant
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OFFICE RECEPTIONIST, CLERK

From: TLG Assistant <assistant@tal-fitzlaw.com>
Sent: Thursday, February 13, 2014 9:47 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: jsherwood@prklaw.com; fahlinglaw@gmail.com
Subject: Answer to Petition for Review
Attachments: Answer to the Petition for Review.pdf

Good morning:

Attached please find the Answer to the Petition for Review, Cause No. 89829-4 for today's filing. Thank you.

Sincerely,

Roya Kolahi
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