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~~No 91704-0~~
91074-0

THE SUPREME COURT OF WASHINGTON STATE

Guy Mettle Appellant, Pro Se Beneficiary v.	Supreme Court Case No. 91704-0
	Court of Appeals Cases No. 38243-1-II, 38603-8-II, 38733-6-II, 41463-5-II, 42213-1-II, 44244-2-II
Gregg M. Mettle Respondent Personal Representative/Trustee	Pierce Co. Superior Court No. 03-4-01245-1 (consolidated with No. 08-4-00411-5)
	2ND SHORTENED PETITION FOR REVIEW
In the Estate of Dorothy P. Mettle Deceased on 12/10/2002	

2ND SHORTENED PETITION FOR REVIEW

Filed by Appellant:
Guy Mettle
Pro Se
Beneficiary
Son of Dorothy P. Mettle

ORIGINAL

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STANDARD OF REVIEW

Standard of review is de novo on the entire record including discovery (Estate of Black,[1] Neumann v. Albright [2]), and extends to the whole controversy (Hutchinson Cancer Research Center [3]). Findings, which are actually mixed findings of fact and conclusions of law are reviewed de novo" (Estate of Olson.[4]). Findings of fact are reviewed under a substantial evidence standard." *In re Riddell,* 138 Wn.App. 485, 491, 157 P.3d 888 (2007), at HN1.

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[1] In re Estate of Black, *Wash Court of Appeals,* 116 Wn. App. 476, 483, 66 P.3d 670 (2003), *aff'd,* 153 Wn.2d 152, 102 P.3d 796 (2004), Supreme Court Of Washington. Review de novo on the entire record. *Black,* 116 Wn. App. at 483,.

[2] Alan Neuman Productions v. Jere Albright, U.S. Court of Appeals, 862 F.2d 1388; 1988 U.S. App. LEXIS 16762, at HN3.

[3] In re Fred Hutchinson Cancer Research Center, Supreme Court Of Washington, 107 Wn.2d 693; 732 P.2d 974; 1987 Wash. LEXIS 1036, at HN8

[4] In re the Estate of John J. Olson, Wash Court of Appeals, 2004 Wash. App. LEXIS 850, at HN5

STATEMENT OF FACTS

In 1997, widow Dorothy P. Mettle, while in unchallenged good health, executed a Will (CP 212 – 215) and revocable living trust (Appendix 10 in Supreme Ct 91074-0, Appendix 39 in COA 44244-2-II), which appointed Guy as her personal representative and trustee. Dorothy's Will was a pour over will bequeathing her residence and personal effects (CP 227 – 231) to her revocable living trust. Dorothy's trust contained about $900,000 and consisted of a brokerage account at Merrill Lynch and a brokerage account at Charles Schwab, (CP 3 – 15). The trust bequeathed everything in equal shares to her three sons, Gregg, John, and Guy.

Dorothy died in December 2002. Then, Gregg claimed to have a change to the will which appointed Gregg to replace Guy as the personal representative. In 2008, six years after Dorothy's death, Gregg claimed to have an amendment to the Trust with appointed Gregg to replace Guy as the trustee. However, However, Gregg never presented the amendment in court, so Gregg is a self-proclaimed replacement trustee. In 2008, Gregg filed the first trust accounting (CP 3 – 5). Footnote #3 in the accounting revealed that Dorothy's Charles Schwab account was missing $50,000, because it contained only $12,368.25. Back in year

2000, Guy personally witnessed that the Charles Schwab account contained over $62,000 and that Dorothy froze the account to prevent Gregg from manipulating it. So self-proclaimed trustee Gregg stole $50,000, which is still missing. For 13 years (2002 – 2015), Gregg has refused to reveal the initial balance in the account and to back it up with bank statements, because that would prove Gregg's theft and perjury, which has been the central point of this case for 13 years.(COA 38243-1-II, COA 38603-8-II, COA 38733-6-II, COA 41463-5-II, COA 42213-1-II, COA 44244-2-II, Supreme Ct #84705-3, Supreme Ct #84648-1, Supreme Ct #85871-3, and Supreme Ct #86961-8.)

On 10/26/2012, Superior Court approved a final accounting for the trust. (CP 1751 – 1754.) On 6/24/2014, COA 44244-2-II "Unpublished Opinion" denied all of beneficiary Guy's request for relief. On 11/03/2014, COA 44244-2-II order denied Guy's motion to publish. The Supreme Court never granted an interlocutory review

LIST OF ISSUES

ISSUE – [1] Does A Beneficiary Have A Constitutional Right and fundamental liberty to Inheritance? [2] Were delays in distribution (2002-2008, and 2002-2015) a violation of beneficiaries' constitutional rights? [3] Is the trustee's extended litigation such a violation? [4] Does

indigent beneficiary have a constitutional right to waiver of court fees and costs? [5] What other beneficiary rights are affected by this constitutional right? [6] Do nonresident aliens have more constitutional rights than U.S. citizens, for example does the nonresident alien have a constitutional right to inheritance while a U.S. citizen does not?

ISSUE – [7] Are beneficiaries entitled to proof of how much money was in a testamentary trust when the trustee took control of the trust? [8] Does a beneficiary of have the right to inspect the subject matter, accounts, and vouchers of a testamentary trust, including professional accounting paid for by the trust?

ISSUE – [9] Does RCW 11.48.10 requirement to "settle the estate as rapidly and as quickly as possible," apply to testamentary trusts (RCW 11.02.005(10) ? [10] Was it extortion for trustee to withhold distributions for years (2002-2008) while demanding that beneficiaries sign a waiver of liability for the trustee? [11] Particularly so, when trustee secretly stole $50,000 from the trust?

ISSUE – [12] Should the estate/trust bear the cost of litigation that is intended to benefit all of the beneficiaries? [13] Should the estate/trust pay litigation costs of the beneficiaries as they occur? [14] Can the

Superior court tax beneficiaries with the trustee's attorney fees after they were denied by appellate courts during appeal?

ISSUE – [15 Does GR 34 apply to indigent beneficiaries? Is receipt of food stamps solely sufficient to waive court fees? [16] Is income less than 125% of federal poverty level? Is Guy to be refunded Court fees and costs since Guy's applications for indigency in Superior Court and COA?

ISSUE – [17] Should a self proclaimed replacement trustee (Gregg) be removed because he never filed documentation that he is the replacement trustee**?** [18] Should a trustee as antagonistic as Gregg towards beneficiary Guy be replaced? For 15 years (2000 – 2015), trustee Gregg only communicates through attorneys, hid his address, and has not been seen by beneficiary Guy. [19] Is that reason to replace self-proclaimed trustee Gregg?

ISSUE – [20] Can the court grant a motion for an overlength brief, and then limit the length of brief? [21] Without explaining cause for the new length limitation?

ISSUE – [22] When can a beneficiary present Interlocutory Issues to the Supreme Court? It has been 13 years without a terminating case.

ISSUE – [23] Can the trustee refuse to provide annual accounting (for 6 years) by claiming there was no activity in the trust? [24] Even though

$50,000 is missing from the trust? [25] Is the burden of proof on the trustee to prove his claimed inactivity?

ISSUE – [26] Does the beneficiary have to commence a separate judicial proceeding in order to conduct discovery? [27] Must cause be shown for discovery?

ISSUE – [28] Does the act of appeal give the appellant unclean hands? [29] Is the trustee obligated to implement interlocutory court orders? [30] Can a party subject to a court order refrain from implementing the court order indefinitely, or forever, just because order did not contain a deadline date for implementation?

ISSUE – [31] Can the court force a party to withdraw a motion over the moving party's objections? [32] When doing so, is the Court declaring a nonsuit? Do nonsuit criteria apply? [33] Must moving party's request for relief be fulfilled before the court can force withdrawal of a motion? [34] Is the burden of proof of nonsuit on the opposing party that seeks to force a motion to be withdrawn against the moving party's wishes? [35] On appeal of the forced withdrawal of a motion, does the Appellant Court have to assume the moving party's statements are true? [36] Can the moving party raise new facts on appeal? [37] Is an opposing party's request to force the withdrawal of a motion the same as a motion for

summary judgment? [38] Must the court recognize that the opposing party waived his right to nonsuit defense?

ISSUE – [39] Is the Second Step of The Lodestar Method required before approving attorney fees? Can fee statements be stripped of all information needed to conduct a lodestar analysis? [40] Can line item descriptions be redacted from fee statements? [41] Must trustee's attorney fees be returned to the trust when denied by the court?

ISSUE – [42] Does the PR/Trustee have standing to oppose a beneficiary's petition for indigency status? [434] Must attorney fees for said opposition be returned to the trust?

ISSUE – [44] Are the estate and the trust separate and distinct legal entities? [45] Is the estate required to provide a separate accounting from the trust, and vice versa? [46] Do estate attorney fees have to be separated from trust attorney fees for lodestar analysis and payment?

ISSUE – [47] Is it unconstitutional and unequal protection under the law (14th Amendment) to pay trustee's legal expenses and not to pay equal fees per hour to an indigent beneficiary forced to litigate pro se to defend his inheritance? [48] How is the pro se beneficiary to be compensated for 13 years of litigation, pain, suffering, emotional distress, foregoing a career and family time in order to litigate a defense of his

stolen inheritance? [49] What damages and compensation accrue to beneficiaries' children deprived of parental attention and a better lifestyle due to trustee's failure to distribute inheritance resulting in 13 years of litigation?

ISSUE – [50] Should the PR/Trustee pay prejudgment interest to the beneficiaries in this 13-year case? [51] Post judgment interest?

ISSUE – [52] Do the trustee, his attorneys, and the judges comprise a racketeering gang that steal from estates and fleece beneficiaries? [53] Has this case been a 13-year cover-up of a $50,000 theft by said gang? [54] Should treble damages be imposed for Criminal Profiteering? [55] How can the gang be stopped, and emulation by others prevented? [56] How do CR 11, CJC 3, and criminal statutes apply? [57] If the judges, trustee, and his attorneys are not a criminal racketeering gang, how can beneficiaries be protected from trustee's vexatious litigation that cover up his theft and prevent distribution of funds?

ISSUE - [58] If court order does not name the motions being denied, is that an abuse of discretion (e.g. via failure to exercise discretion)?

ISSUE – [59] Can court orders determine substantive issues that were never filed nor pleaded in court? [60] Can the court enter an order

regarding an issue on which there was no justiciable controversy (e.g. an unopposed distribution)?

ISSUE – [61] Does a nonintervention clause free the PR from giving special notice and accountings requested by beneficiaries?

ISSUE – [62] Can a supersedeas bond be required to stay a court ordered distribution? [63 Can the trustee stay a distribution without a showing of cause in court?

ISSUE - [64] Is discovery, that commenced before an appeal, then stopped by the appeal of an interlocutory order? [65] Do CR 26, 27, 34, and 37 perpetuate production of documents during said interlocutory appeal? [66] Can the trustee block discovery if he failed to move for protection from discovery within 10 day of receiving a discovery request? [67] Does the sequence of discovery methods allow discovery to be blocked by a subsequent interlocutory appeal, e.g. the beneficiary started with a request for production of documents before proceeding with depositions?

ISSUE – [67] Can the courts fine a litigator without stating the cause, purpose, or corrective measure required? COA 38243-1-II and 44244-2-II fined indigent Guy $2,000 without stating the cause, purpose, or correction. [68] Can the court force an indigent to pay the fine before he

can file anymore motions? [69] Is that a violation of constitutional rights, due process and equal protection (e.g. under the 14th Amendment).

ARGUMENTS

ISSUE – Can a party subject to a court order refrain from implementing the court order indefinitely, or forever, just because order did not contain a deadline date for implementation? COA 44244-2-II said yes:

> "Further, the judicial order Guy cites is the trial court's granting of Gregg's motion to make a distribution, an order which does not require a distribution in any particular timeframe."

Guy opposed because that is new law and new doctrine, which invalidates all court orders that do not carry an implementation deadline. It contradicted RCW 11.02.005(10), RCW 11.48.10, Estate of Wind,[5] and Folsom v. County of Spokane.[6]

ISSUE – What is the terminating case in testamentary trusts? Should the Supreme Court consider interlocutory issues excluded by COA 44244-2-II page limitations? Once the court allows an overlength brief, can the court arbitrarily limit the length thereby limiting the issues? Is the judiciary in league with local attorneys that form a racketeering gang which steals from estates? COA 44244-2-II determined that court orders give the trustee permission to make a distribution, but the trustee does not have

[5] Estate of Wind v. Hendrickson, Wash. Supreme Ct., 32 Wn.2d 64
[6] Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988)

to do so. Therefore, COA 44244-2-II is not the terminating case because future distributions, lack of distributions, and attorney fees are subject to litigation. The reason there are so many issues is that lower court judges are corrupt racketeers intent on protecting their elected jobs and their criminal cronies including other judges, trustees, and trustee's attorneys. Corrupt judges sacrifice the law to protect other judges from the career threatening embarrassment of being reversed. Corrupt judges protect racketeering, larceny, and money laundering by trustees and trustee attorneys in exchange for election support and future jobs, business, and fees from big law firms. Judges denied every legal avenue pursued by Guy to find out the bank account balances of the trust when Gregg took over as trustee, and hence they denied Guy's constitutional right to know the true amount of his inheritance. The result was that corrupt judges violated dozens of statutes and rules, and overturned hundreds of precedent cases, which resulted in the long list of issues above. Washington State Supreme Court justices have shown themselves to be supporting members of the racketeering judges because they protect systematic theft from estates

All of the listed issues were pleaded by Guy in the interlocutory COA cases as evidenced by Guy's pleadings in Clerk's Papers and by Guy's

initial petition for review in Supreme Court 91074-0 that was 345 pages long (mailed 12/02/2014). Case COA 44244-2-II recognized cause for Guy's overlength brief, but forced Guy to reduce his brief to 125 pages (order dated 6/26/2013), Once the Court accepts an overlength brief or motion, then the Court should not limit the number overlength of pages.

> Case: "We note that this court gave Garrett permission to file his overlength brief; thus, terms for the length of the brief would be inappropriate, in any event."
> In re Samuel Christopher Garrett, 1997 Wash. App. LEXIS 640

COA 44244-2-II's arbitrary page length limitation gave no rationale for 125 pages and forced Guy to omit many interlocutory issues, arguments, statutes, cases, and evidence from the case. In the six previous Supreme Court cases in the Estate of Mettle, the Supreme Court did not grant any interlocutory review. Now, Supreme Ct 91704-0 is the latest case and the court is again denying Guy the right to present interlocutory issues which were arbitrarily excluded by COA 44244-2-II's 125 page limitation.

However, the following rules and cases that require the court to try the issues on the merits rather than on page length.

> RAP 1.2 INTERPRETATION AND WAIVER OF RULES BY COURT (a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.

> Weeks v. Chief of the Washington State Patrol, in the Supreme Court Of Washington 96 Wn.2d 893; 639 P.2d 732; 1982 Wash. LEXIS 1247
> Reichelt v. Raymark Industries, 52 Wn. App. 763; 764 P.2d 653; 1988 Wash. App. LEXIS 614

COA 44244-2-II and Supreme Court contradicted cases that require the court to allow Guy to present all interlocutory issues:

> "Upon appeal from a final judgment, however, any interlocutory order will be reviewed pursuant to Rule on Appeal 17, 34A Wn. (2d) 24." Maybury v. City of Seattle, 336 P. 2d 878 - Wash: Supreme Court, 1st Dept. 1959

- Estate of Spahi, 107 Wn. App. 763; 27 P.3d 1233; 2001 Wash. App. LEXIS 1740 at HN22
- Humphrey Industries v. Clay Street Associates, Wash. Supreme Court, 176 Wn.2d 662; 295 P.3d 231; 2013 Wash. LEXIS 141
- Greene v. Rothschild, 68 Wn.2d 1; 414 P.2d 1013; 1966 Wash. LEXIS 696
- National Bank of Washington v. Equity Investors, Wash. Supreme Ct., 83 Wn.2d 435; 518 P.2d 1072; 1974 Wash. LEXIS 92
- Schroeder v. Excelsior Management Group, 177 Wn.2d 94; 297 P.3d 677; 2013 Wash. LEXIS 152

The Supreme Court 91074-0 is not bound by law of the case to perpetuate its own error in prohibiting Guy from presenting interlocutory issues excluded by COA 44244-2-II's arbitrary page length limitation.

> RAP 2.5 *Prior Appellate Court Decision*. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review. 86 Wn.2d 1152.

This common sense formulation of the doctrine assures that an appellate court is not obliged to perpetuate its own error.¶*First Small Bus. Inv. Co. of Cal. v. Intercapital Corp. of Or.*, 108 Wn.2d 324, 333, 738 P.2d 263 (1987). The Supreme Court should rule on every issue to prevent repetition and emulation of corrupt court procedures that habitually steal estates and inheritance. (Miller v. Badgley, 51 Wn. App. 285, 753 P.2d 530 (1988); MacDonald v. Korum Ford, 80 Wn. App. 877, 912 P.2d 1052 (1996).; Madden v. Foley, 83 Wn. App. 385, 922 P.2d 1364 (1996)

ISSUE – Do resident aliens have a constitutional right to inheritance, and U.S. citizens do not? COA 44244-2-II said resident aliens do and U.S citizens do not per Colbert's Estate.[7] Guy opposed and said that U.S. citizens have a constitutional right to inheritance per Yang v. Kay.[8]

ISSUE – Are beneficiaries entitled of copies of all bank statements, checks, vouchers, trust documents, and to know the amount of their inheritance when the trustee took over? COA 44244-2-II said no. Guy said yes per Estate of Brown.[9]

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[7] Colbert's Estate, Supreme Court of Montana, 44 Mont. 259; 119 P. 791; 1911 Mont. LEXIS 95

[8] Ying v. Kay, Supreme Court of Wash, 174 Wash. 83; 24 P.2d 596; 1933 Wash. LEXIS 72

[9] Estate of Brown, Supreme Court, 20 Wn.2d 740; 150 P.2d 604; 1944 Wash. LEXIS 375, at HN2

ISSUE -Does the beneficiary have to commence a completely separate case in order to conduct discovery in the case currently before the court COA 44244-2-II said yes. Guy said no per RCW 11.96A.115(1), CR 26, CR 27, CR 34, CR 37, Cook v. King County,[10] more cases than can be listed.

ISSUE – Is a beneficiary entitled to discovery? COA 44244-2-II said no. Guy said yes per RCW 11.96A.115(1), CR 26, CR 27, CR 34, CR 37, Cook v. King County,[11] *Estate of* JACK DELGUZZI,[12] and more cases than can be listed.

ISSUE - Should the estate/trust bear the cost of litigation that is intended to benefit all of the beneficiaries? COA 44244-2-II said no. Guy said yes per Estate of Black. [13] (See beneficiary John's declaration, CP 901 – 903[14]).

ISSUE - does income less than 125% of federal poverty level or receipt of food stamps qualify a litigant as indigent and waive court fees per GR 34? COA 44244-2-II said no. Further Supreme Court 85871-3 said inheritance is not a fundamental liberty interest worthy of a waiver of court fees. Guy said yes per Jafar v. Webb.[15] And Supreme Court 91074-0 order said

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[10] Cook v. King County, Wash. Court of Appeals, 9 Wn. App. 50, 510 P.2d 659 (1973)
[11] Cook v. King County, Wash. Court of Appeals, 9 Wn. App. 50, 510 P.2d 659 (1973)
[12] Estate of Jack DelGuzzi, 2009 Wash. App. LEXIS 1626

[13] Estate of Black, 153 Wn.2d 152; 102 P.3d 796; 2004 Wash. LEXIS 920
[14] CP 901 – 903, Declaration of John Mettle, filed 12/01/2009
[15] Jafar v. Webb Case No. 87009-8, WA S.Ct., May. 23, 2013

yes, because it declared that Guy should proceed with his petition for review and that Guy's motion for GR 34 indigency was moot. Supreme Court 91070-0 should decide these issues in its published opinion.

ISSUE - Can Superior court tax beneficiaries with the trustee's attorney fees expended during interlocutory appeals, even though said fees had been denied by COA's interlocutory orders? Superior Court Order (CP 1751 – 1754) and COA 44244-2-II said yes and deducted $24,430.87 from Guy's distribution. Guy said no per Brown's Estate.[16]

ISSUE – Can the court ignore the second step required by the Lodestar method of determining attorney fees? COA 44244-2-II said yes and awarded $137,000 in trustee attorney fees through 2012 (CP 497 – 498, [17] CP 1751 – 1754.[18]) PR/Trustee's attorney merely added up the number of hours billed and multiplied by his billing rates. That contradicted Bowers v. Transamerica,[19] Dunn v. Rainier Nat'l Bank,[20] Guardianship of Cosby,[21] and Estate of Larson,[22] Estate of Leona Fuller,[23] and

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[16] In re Brown's Estate, 93 Wash. 324, 160 P. 945 (1916).
[17] CP 497 – 498, Order and Decree Approving Trustee's Interim Accounting, filed 6/27/2008.
[18] CP 1751 – 1754 Order And Decree Approving Trustee's Final Accounting, filed 10/17/2012
[19] Bowers v. Transamerica Title, 100 Wn.2d 581; 675 P.2d 193; 1983 Wash. LEXIS 1919
[20] Dunn v. Rainier Nat'l Bank, 44 Wn. App. 795, 723 P.2d 1161 (1986)
[21] In re the Guardianship of: Larry K. Cosby, 2000 Wash. App. LEXIS 882 at HN5

Guardianship of Loren Stamm.[24]

ISSUE – Are the estate and the trust separate legal entities? Is the estate required to provide a separate accounting from the trust, and vice versa? Do estate attorney fees have to be separated from trust attorney fees for lodestar analysis and payment? COA 44244-2-II said no. Guy said yes per Estate of Genevieve McCuen.[25]

ISSUE – Should the PR/Trustee pay prejudgment and post judgment interest to the beneficiaries. On 6/27/2008, Superior Court ordered distribution of $375,000 to the beneficiaries, but said distribution has not been made. COA 44244-2-II said no prejudgment and post judgment interest to beneficiaries. Guy said yes per Estate of Leona Fuller v. Donna Taylor, 2006 Wash. App. LEXIS 1278 at HN1.

ISSUE – Can the court impose sanctions without stating their cause or purpose? Is that an abuse of discretion? COA 44244-2-II forced indigent Guy to pay the $1,000 sanction before Guy could file motions and briefs, does that violate due process of the 14th amendment? COA 42213-1-II on

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[22] Estate of Carl Larson, Supreme Court Of Washington, 103 Wn.2d 517; 694 P.2d 1051; 1985 Wash. LEXIS 1063 at HN5.]

[23] Beneficiaries of the Estate of Leona Fuller V. Donna Taylor 2006 Wash. App. LEXIS 1278

[24] In re the Guardianship of Loren Stamm v. Guardianship Services of Seattle, 2005 Wash. App. LEXIS

[25] HN1 in Estate of Genevieve McCuen vs. Fred Schoen, 2007 Wash. App. LEXIS 294.

1/04/2012 and COA 44244-2-II on 10/1/2012, both, imposed $1,000 sanctions on indigent beneficiary Guy without disclosing the cause, purpose, or method of correction. It was an abuse of discretion, because it is an abuse of discretion when the court fails to exercise its discretion (Saldivar v. Momah[26], State v. Grassman[27]). Sanctions violated Guy's absolute privilege to present his evidence and reasons in pleadings. (Abbott v. Thorne,[28] McNeal v. Allen,[29] Oppe v. Atwood.)[30]

ISSUE – Does a replacement trustee have to prove his appointment? Gregg did not. When a testamentary trustee is antagonistic towards beneficiaries, should he be replaced? COA 44244-2-II said no. Guy said yes per Estate of Edgar Blodgett.[31] For 13 years (2002 – 2015), trustee Gregg conducted vexations litigation rather than reveal the initial amount in the trust. Gregg keeps his residential address secret even from his attorneys and communicates with beneficiaries only through attorneys.

Guy requests review per RAP 13.4(b)(1),(2),(3),&(4).

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[26] Saldivar v. Momah, 145 Wn. App. 365; 186 P.3d 1117; 2008 Wash. App. LEXIS 1488
[27] State v. Gassman, Wash. Supreme Court, 175 Wn.2d 208; 283 P.3d 1113; 2012 Wash. LEXIS 587 at HN3
[28] Abbott v. Thorne, Wash Supreme Ct, 34 Wash. 692; 76 P. 302; 1904 Wash.LEXIS 403
[29] McNeal v. Allen, 95 Wn.2d 265, 267, 621 P.2d 1285 (1980)
[30] Angela M. Oppe v. The Law Offices of Sarah L. Atwood, 2012 Wash. App. LEXIS 2391).
[31] Estate of Edgar Blodgett, Wash. Supreme Court, 67 Wn.2d 92; 406 P.2d 638; 1965 Wash. LEXIS 651

Unsworn Declaration
I, Guy Mettle, declare, under penalty of perjury, under laws of Washington State, that the foregoing is true to the best of my knowledge and belief.

Guy Mettle

_____ Date: ____June 1, 2015_____

Guy Mettle
P.O. Box 2491
Westerville, OH 43086-2491
614-432-6000

PARTIES

Appellant

Guy Mettle, P.O. Box 2491, Westerville, OH 43086-2491 Tel. (614) 432-6000
Guy Mettle is pro se.
Appellant in the Supreme Court
Appellant in the Court of Appeals
Beneficiary to the Estate of Dorothy P. Mettle, in Superior Court.

Respondent
Gregg M. Mettle
Personal Representative / Trustee
David Petrich, attorney
Eisenhower and Carlson LLP
1201 Pacific Avenue, #1200
Tacoma, WA 98402

CERTIFICATE OF SERVICE

I, Guy Mettle, certify that on the ____June 1, 2015_____, I served a copy of the following document(s)

2ND SHORTENED PETITION FOR REVIEW

by U.S. Mail, postage paid, to the following person(s):

David Petrich, attorney
Eisenhower and Carlson
1201 Pacific Avenue, #1200
Tacoma, WA 98402

Unsworn Declaration -- I, Guy Mettle, declare, under penalty of perjury, under laws of Washington State, that the foregoing Certificate of Service is true to the best of my knowledge and belief.

_____ Date: ___June 1, 2015_____

Guy Mettle
P.O. Box 2491
Westerville, OH 43086-2491
614-432-6000

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To: OFFICE RECEPTIONIST, CLERK
Subject: Supreme Ct 91074-0 Second Shortened Petition for Review

Appellant: Guy Mettle
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Attachments:
Supreme Ct 91074-0 Second Shortened Petition for Review

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Estate of:	No. 44244-2-II
DOROTHY METTLE,	UNPUBLISHED OPINION
Deceased.	

BJORGEN, A.C.J. — Guy Mettle appeals the trial court's denial of various motions related to his challenge to the probate of his mother's will and the administration of her trust. Guy appealed portions of this case to our court before, and our opinion in that appeal resolved many of the issues he now raises against him. Among the new issues Guy now raises are claims that the trial court erred in denying his motions to compel discovery, denying his motion to recuse, denying his motion for indigency, and withdrawing his motion for an accounting and disclosure of billing information related to the trust. He also moves to recuse the judges that denied his first appeal. We affirm.

FACTS

Dorothy Mettle executed a will devising all of her property to a trust benefitting her three sons, Guy, John, and Gregg Mettle.[1] Originally she designated Guy as her personal representative (PR), but later revoked this designation in favor of Gregg. Dorothy also designated Gregg as the trustee of the trust receiving her property after her death.

Dorothy died on December 10, 2002, and significant litigation over her will and the distribution of the trust's assets followed. When Gregg, as PR, moved to complete probate, Guy objected and moved for an accounting. Similarly, when Gregg moved to approve the accounting for the trust's activities between the years 2002 and 2008 as a first step to winding up the trust, Guy again objected and sought both an accounting and discovery related to the trust and estate's finances. Over Guy's objections, the trial court approved the final accounting for the estate and the interim accounting for the trust in 2008.

The 2008 approvals for the trust and estate accountings triggered Guy's first appeal to our court, which we decided in 2011. We resolved every issue Guy appealed against him, and awarded attorney fees to the trust and estate to be paid from Guy's distribution from the trust if he could not pay the award himself.

After filing the notice of appeal in 2008, Guy filed motions in the trial court to compel the production of documents, perpetuate testimony, and require the posting of a supersedeas bond. We refused to consider these issues on appeal given the timing of their filing, and the trial court ultimately denied all of these motions and an additional one asking the trial court judge to recuse himself.

[1] For simplicity's sake, we refer to members of the Mettle family by their first names. We intend no disrespect.

In 2010, Guy sought an order of indigency for purposes of appeal. Guy's motion alleged that Gregg had "stolen" his inheritance through "kidnapping, elder abuse, extortion, civil fraud, bank fraud, check fraud, and perjury." Clerk's Papers (CP) at 905. To support his claim of indigency, Guy submitted evidence that he received food stamps from the State of Ohio. The trial court denied Guy's motion without making any findings related to his financial status.

In 2011, Guy sought an accounting and attorney billing information related to the trust and estate and attorney fees for his pro se work in drafting the motion. At the hearing related to the motion, Guy acknowledged the PR and trustee had provided him with the information he sought. The trial court determined that events had rendered Guy's motion moot and entered an "Order Recognizing Guy Mettle's Withdrawal of his Motion for Accounting and Billing Information" over his objections. CP at 1185-86.

In 2012 Gregg sought judicial approval to wind up the trust. Gregg's petition sought approval of his final accounting; approval of fees incurred, including attorney fees; and the reduction of Guy's final distribution reflecting the award of fees and costs. The trial court approved Gregg's petition.

Guy then filed a second notice of appeal. This notice explicitly appealed several trial court orders we affirmed in our opinion resolving his first appeal. After we accepted review, Guy also filed a "Motion to Prevent the Repetition of 10 [Court of Appeals] Lies of Fact and to Recuse the Judges that Filed Those Lies." *In re Estate of Mettle*, No 44244-2-II (Wash. Ct. App. July 13, 2012). Our commissioner accepted this motion only to the extent that it sought recusal of the judges who heard Guy's first appeal and stayed a decision on recusal pending assignment

of the panel that would hear the present appeal.[2] July 23, 2013 Ruling by Commissioner Schmidt, *In re Estate of Mettle*, No. 4244-2-II at 1 (Wash. Ct. App.).

ANALYSIS

Guy's brief raises 11 issues and nearly 100 assignments of error. Generally, these issues and assignments of error include claims that the trial court erred in (1) denying Guy's attempts to engage in discovery, (2) refusing to compel Gregg to make distributions and approving the deduction of attorney fees awarded to the trust and estate from distributions to Guy, (3) approving Gregg's administration of the trust and estate and his accountings for each, (4) refusing to require the estate to post a supersedeas bond after approving a delay in a distribution, (5) "forc[ing]" Guy to withdraw his motion to compel certain documents, (6) denying Guy's motion for indigency, and (7) denying Guy's motion for recusal. Br. of Appellant at 73.

We review de novo the trial court's decisions regarding trust and estate matters, although we defer to a trial court's factual findings. *See In re Riddell Testementary Trust*, 138 Wn. App. 485, 491-92, 157 P.3d 888 (2007); *In re Estate of Black*, 116 Wn. App. 476, 483, 66 P.3d 670 (2003). We review Guy's claims of error in the award of attorney fees for an abuse of discretion. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 593, 220 P.3d 191 (2009). We also review the trial court's denial of Guy's motion to recuse for an abuse of discretion. *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 136, 252 P.3d 406 (2011).

We note also that the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, gives the trial court "full and ample power and authority" to "administer and settle" all

[2] Judges Armstrong, Quinn-Brintnall, and Penoyar heard Guy's first appeal. Judges Armstrong and Quinn-Brintnall had left the bench by the time we heard Guy's second appeal, and Judge Penoyar retired soon after.

estate and trust matters. RCW 11.96A.020(1). Where TEDRA does not specifically authorize a trial court's actions, "the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper." RCW 11.96A.020(2). Bearing this in mind, we turn to the merits of Guy's claims.

I. LAW OF THE CASE

Our first opinion in this case decided many of the issues Guy raises in this appeal in Gregg's favor. Gregg contends that either the law of the case doctrine or collateral estoppel precludes Guy from litigating these issues again. We agree.

The law of the case doctrine provides that "'questions determined on appeal, or which might have been determined had they been presented, will not again be considered on a subsequent appeal if there is no substantial change in the evidence at a second determination of the cause.'" *Folsom v. County of Spokane*, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988) (quoting *Adamson v. Traylor*, 66 Wn.2d 338, 339, 402 P.2d 499 (1965)). Although application of the law of the case doctrine is discretionary, we generally will only reconsider an earlier opinion if a party demonstrates that it was "clearly erroneous." *Folsom*, 111 Wn.2d at 265-67; *Greene v. Rothschild*, 68 Wn.2d 1, 6, 414 P.2d 1013 (1966).

Application of the law of the case doctrine is warranted here. Guy's briefing simply re-raises many of the same issues he raised during his first appeal. He does not argue that we decided those issues in a clearly erroneous manner or provide analysis that might allow us to understand the basis of any error. He does not cite new evidence or any change in the law that might require a different outcome for his appeal. In the interest of judicial economy, we decline to reconsider the claims we have already rejected and therefore do not address any of Guy's

claims related to the accounting for or administration of the estate, the accounting for or administration of the trust between the years 2001 and 2008, the need for accountings where the trust and estate have engaged in no activity, discovery requests that we have already reviewed, bad faith by Gregg or the trust's or estate's counsel, removal of Gregg as PR or trustee, termination of representation by the trust's or estate's attorney, the refusal to award fees to Guy based on any of these matters, or the award of fees to the trust and estate based on Guy's litigation.

II. DISCOVERY

Guy contends that the trial court erred in denying his motion to compel production of documents and perpetuate testimony related to Gregg's alleged concealment of estate assets. Because Guy does not meet the criteria for permitting discovery under TEDRA, we affirm the trial court.

Civil Rules 26-37 allow a party to engage in wide ranging discovery, including, among other methods, taking depositions or requiring other parties to produce documents. However, TEDRA restricts discovery in controversies involving trusts or estates. TEDRA provides that

> In all matters governed by this title, discovery shall be permitted only in the following matters:
>
> (1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or
>
> (2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court.

RCW 11.96A.115. A "[m]atter" within the meaning of TEDRA includes "[t]he direction of a personal representative or trustee to do or abstain from doing any act in a fiduciary capacity" or

"[t]he determination of any question arising in the administration of an estate or trust . . . relating to . . . an accounting from a personal representative or trustee; or . . . the determination of fees for a personal representative or trustee." RCW 11.96A.030.

The discovery provisions of TEDRA bar Guy from compelling production of the documents he seeks. Guy is seeking information related to the accountings for the trust and estate, "matters" within the meaning of TEDRA's limits on discovery. Guy cannot obtain discovery under RCW 11.96A.115(1) because the record does not show that he "commenced" a judicial proceeding controverting specific issues as required by that provision. Nor can Guy obtain discovery under RCW 11.96A.115(2) as he cannot show good cause for such discovery. His motion to compel production of documents and to perpetuate testimony related to issues that both we and the trial court resolved against him. Because he failed to satisfy TEDRA's criteria for allowing discovery, the trial court did not err by denying his motion.

III. DISTRIBUTIONS

Guy also appeals several orders denying his motions for distributions. Guy alleges that Gregg delayed distributing money to him in order to frustrate his ability to pursue his claims of wrongdoing on Gregg's part. We affirm the trial court's denial of these motions for two reasons.

First, Guy repeatedly, but incorrectly, alleges that Gregg violated statutory law and judicial orders by delaying distributing the assets of the trust. For statutory support, he cites RCW 11.48.010, which requires a PR to "settle the estate 'as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate.'" Br. of Appellant at 67. Guy cannot claim this imposes a duty on Gregg as a trustee to make distributions as quickly as possible. As Guy repeatedly argues, the estate and the trust are separate entities. *See* RCW 11.12.010-.260 (wills);

RCW 11.48.010-.210 (PR); RCW 11.98.002-.930 (trusts and the trustee). The duty imposed by law on the PR does not transfer to the trustee simply because the same person, Gregg, holds both positions. Further, the judicial order Guy cites is the trial court's granting of Gregg's motion to make a distribution, an order which does not require a distribution in any particular timeframe. Guy does not show any violation of this order.

Second, the trial court had the authority to allow a delay in distributions given Guy's continued litigation. The trial court noted that Guy caused the delays in distribution that he now complains of with his appeals to this court. Guy's attempts to obtain equitable relief through an order to distribute assets required that he satisfy the requirements of equity. *See Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 814, 854 P.2d 1072 (1993) (injunctive relief is equitable). One requirement is that "those 'who come[] into equity must come with clean hands.'" *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 581, 304 P.3d 472 (2013) (quoting *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 949, 640 P.2d 1051 (1982)) (alteration in original). The trial court found that Guy caused the delays in distributing trust assets with his litigation, and we defer to this finding. Guy lacked clean hands with regard to any delay and could not invoke the trial court's equitable powers to order distributions because of Gregg's ostensible delays.

IV. SUPERSEDEAS

Guy next alleges that the trial court erred in denying his motion for a supersedeas bond. A supersedeas bond operates to stay execution on a judgment. *Ryan v. Plath*, 18 Wn.2d 839, 855-56, 140 P.2d 968 (1943); RAP 8.1(a). Guy points to no judgment entitling him to collect from the trust; indeed, he explicitly denies that his entitlement to a distribution from the trust

derives from a judgment. CP at 693 ("[t]he assets to be distributed to Guy Mettle do not result from a judgment, and Guy Mettle's inheritance is not reversible."). The trial court did not err in refusing to require a bond to stay execution of a nonexistent judgment.

V. THE WITHDRAWAL OF GUY'S MOTION FOR AN ACCOUNTING

Guy next alleges the trial court erred by designating his motion for an accounting for the trust for 2010 and billing information for the trust and estate for 2008-2010 as withdrawn. We agree that the trial court erred in how it characterized its resolution of Guy's motion, but find the error did not prejudice Guy because the trustee had mooted the motion by disclosing the requested information.

At the hearing on his motion, Guy acknowledged that the trustee had provided him with the information about the administration of the trust and estate he sought with his motion. As a result, the trial court repeatedly referred to the motion as moot when deciding how to rule on it, ultimately entering the order "withdrawing" the motion over Guy's objections. CP at 1225-26.

Where the court "can no longer provide effective relief," a motion becomes moot. *See Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005); *see Ferguson Firm, PLLC v. Teller & Assoc., PLLC*, 178 Wn. App. 622, 630 n.4, 316 P.3d 509 (2013). Because Guy had the information he sought through the motion, the trial court could no longer provide effective relief, and his motion became moot. Assuming that the trial court erred in the nomenclature it used to dismiss the motion, it did not prejudice Guy with this error as dismissal was appropriate. *See Ferguson*, 178 Wn. App. at 630 n.4; *see also Price v. Price*, 174 Wn. App. 894, 902, 301 P.3d 486 (2013).

Guy argues that the motion was not moot because he sought attorney fees and the trial court could grant him relief in that form. A pro se litigant, however, may not obtain attorney fees subject to an exception not relevant here. *In re Marriage of Brown*, 159 Wn. App. 931, 938-39, 247 P.3d 466 (2011). Since Guy filed the motion pro se, he cannot obtain fees. The trial court could grant him no relief related to the motion and correctly dismissed it as moot.

VI. INDIGENCY

Guy next contends that the trial court erred in denying his motion for an order of indigency, claiming that the court erred in not entering findings about his financial status in determining that he was not indigent, and in not recognizing that his appeal involved a constitutional right which entitled him to a fee waiver on appeal.[3] We agree that the court erred in not entering findings about his financial status, but find the error harmless as Guy had no constitutional or statutory right to public assistance with his appeal, meaning the trial court properly denied his motion for indigency.

There is no right to appeal in civil cases under either the Washington or federal constitutions. *Hous. Auth. v. Saylors*, 87 Wn.2d 732, 740-41, 557 P.2d 321 (1976); *Ortwein v. Schwab*, 410 U.S. 656, 660, 93 S. Ct. 1172, 35 L. Ed. 2d 572 (1973). However, once a state allows for appeals, it may not "arbitrarily depriv[e] a litigant of access to the appellate system" due to poverty. *In re Grove*, 127 Wn.2d 221, 239, 897 P.2d 1252 (1995). This principle requires the State to provide indigent litigants appointed counsel and funding for appellate fees in limited circumstances. *M.L.B. v. S.L.J.*, 519 U.S. 102, 113-16, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996);

[3] The only information related to Guy's financial status found in the record is that he receives food stamps from the state of Ohio and that he received a $200,000 distribution from the trust in 2004.

Grove, 127 Wn.2d at 240. First, a civil litigant may receive assistance in the form of appointed counsel or fee waivers where the legislature has provided for such assistance. The legislature possesses the power of the purse and may allocate funds to help those needing assistance in accessing the appellate system. *Grove*, 127 Wn.2d at 240; *Saylors*, 87 Wn.2d at 740. Second, a civil litigant may also receive assistance with appellate costs where a constitutional right requires such assistance. This constitutional right to assistance in civil cases is narrow and encompasses only those cases involving fundamental rights, specifically cases involving the appellant's physical liberty or "[c]hoices about marriage, family life, and the upbringing of children." *M.L.B.*, 519 U.S. at 116. Reflecting the limits of the right to public assistance in civil cases, our Supreme Court has held that

> there is no constitutional right to appeal at public expense in civil cases in which only property or financial interests are threatened. Where there is no constitutional or statutory right to counsel at public expense and where there is no constitutional or statutory right to a waiver of fees and payment of costs, there is no right, simply because of the fact of indigency, to appointment of counsel on appeal or to waiver of fees and payment of costs.

Grove, 127 Wn.2d at 240.

The scope of public assistance in civil appeals is in reflected in RAP 15.2, which governs motions for indigency and public assistance with appellate costs. RAP 15.2(a) provides that "[a] party seeking review in the Court of Appeals or the Supreme Court partially or wholly at public expense must move in the trial court for an order of indigency." As probate and trust matters do not fall within the enumerated list of cases covered by RAP 15.2(b)(1), RAP 15.2(c) controls Guy's appeal. It provides that

> [i]n cases not governed by subsection (b) of this rule, the trial court shall determine in written findings the indigency, if any, of the party seeking review. The party must demonstrate in the motion or the supporting affidavit that the

> issues the party wants reviewed have probable merit and that the party has a constitutional or statutory right to review partially or wholly at public expense.

RAP 15.2(c).

Guy correctly argues that the trial court failed to make findings about his indigency or lack thereof when denying his motion. The error is, however, harmless, given that Guy could not have obtained review at public expense, because, as we discuss below, he lacked constitutional or statutory authorization for assistance with his appeal.

Guy does not have a statutory right to review at public expense. While Guy claims a right to public assistance under RCW 11.96A.200, that provision simply allows for an appeal in trust or estate matters; it does not provide a substantive right to public assistance. Guy offers no other code provision that might provide a right to public assistance, and research on the issue discloses none that does.

Nor does Guy have a constitutional right to public assistance. Guy's motion for indigency alleged that "[his] inheritance was stolen by the Personal Representative/Trustee, who converted it to his own use and retains it." CP at 905. Guy thus alleged a deprivation of property. Under *Grove*, Guy's allegation of property deprivation by Gregg did not entitle him, constitutionally, to review at public expense.

Guy nevertheless argues that the constitution requires public assistance for his appeal for two different reasons. First, he claims that inheritance is a fundamental right entitling him to public assistance in obtaining his distributions from the trust. He cites *In re Colbert's Estate*, 44 Mont. 259, 119 P. 791 (1911), and claims it supports his argument. As Gregg correctly notes, the passage Guy cites was a quote from the appellant's brief in Colbert's estate. The *Colbert* court stated that inheritance was, in fact, a statutory right, and only discussed the constitution in

the context of an equal protection challenge to a statute that disinherited nonresident aliens. *In re Colbert's Estate*, 44 Mont. 259; *see* RCW 11.04.015.

Guy also cites *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) and its progeny and claims that these cases show his entitlement to public assistance. These cases hold that where the State monopolizes the means to alter fundamental human relationships, it cannot deny an appellant access to the courts due to indigency. While Guy's appeal touches on family life, it does not involve a state monopoly on methods for altering fundamental human relationships. Instead, it is, as discussed above, simply a dispute about money. Guy cannot avail himself of the *Boddie* line of cases' mandatory waiver of appellate fees.[4]

The failure to allege a statutory or constitutional right to public assistance, as required by RAP 15.2(c), necessitated denial of Guy's motion for indigency, and we affirm the trial court's decision.

VII. RECUSAL

Guy next argues that Judge Larkin erred in declining to recuse himself. Guy alleges that several of the trial court's rulings evidence bias against him. Again, we disagree and affirm the trial court's denial of his motion.

Considerations of due process, the appearance of fairness, and judicial ethics require impartial judges. *West*, 162 Wn. App. at 136-37. A judge who harbors bias against a party, or a

[4]Further, *Boddie* requires that the State monopolize the means to alter the liberty interest at issue. Even if Guy's right to receive inheritance were a fundamental liberty interest, parties need not pass assets through probate. *See Manary v. Anderson*, 176 Wn.2d 342, 353, 292 P.3d 96 (2013) (discussing nonprobate assets that pass through means other than wills). Guy's contention that Washington has monopolized probate is thus irrelevant.

judge whose impartiality might reasonably be questioned, must recuse her or himself from hearing a matter. *West*, 162 Wn. App. at 136-37. However, we begin with the presumption that a trial court acts "without bias or prejudice" and the party seeking recusal must "support the claim with evidence of the trial court's actual or potential bias." *West*, 162 Wn. App. at 136-37. We test whether a party's allegations overcome the presumption of impartiality by looking to whether a reasonable person who knew and understood all the relevant facts would believe the judge might have a bias against the party. *West*, 162 Wn. App. at 137.

Guy alleges that Judge Larkin demonstrated bias against him by denying motions that he made and by assessing fees against him. While a pattern of erroneously denying motions might indicate bias, trial court rulings "consistent with applicable law" show the opposite. *State v. Turner*, 143 Wn.2d 715, 728, 23 P.3d 499 (2001). We have already affirmed many of the rulings Guy alleges justify recusal, including the fee awards related to the trust and estate litigation through 2008, and our opinion here affirms the remainder. The trial court correctly applied the law, and we find no bias in its decision to do so. We find no abuse of the trial judge's discretion in his decision not to recuse himself.

VIII. MOTION TO RECUSE JUDGES ARMSTRONG, QUINN-BRINTNALL, AND PENOYAR

Finally, Guy filed a motion with our court "to prevent repetition of 10 [Court of Appeals] lies of fact and to recuse the judges that filed those lies." Spindle, Motion to Prevent Repetition, *supra*. Our commissioner denied the motion to prevent the repetition of lies as we do not recognize such motions, but he stayed the decision on the motion for recusal until the panel that would hear Guy's second appeal was determined. July 23, 2013 Ruling by Commissioner Schmidt, *In re Estate of Mettle*, No. 4244-2-II at 1 (Wash. Ct. App.). Because none of the judges

who sat to hear Guy's first appeal took part in hearing this appeal, we deny his motion as moot. Even if not moot, an objective look at the record does not show any bias on the part of Judge Penoyar, the one judge from the original panel remaining on the bench at the time we heard Guy's appeal, and there is no cause to recuse him.

IX. ATTORNEY FEES

As discussed, we have previously affirmed the trial court's award of fees to the trust and estate, and we decline to revisit that decision despite Guy's request that we do so. Guy also seeks reversal of fees awarded by the trial court in the interim between his first and second appeal, but we find no abuse of the trial court's discretion and affirm the fee awards.

In addition, Guy seeks fees on appeal. He appeared pro se and his suit has not benefitted the estate. Accordingly, we reject his request for fees. *In re Marriage of Brown*, 159 Wn. App. at 938-39; RAP 18.1; RCW 11.96A.150(1). The trust and estate also seek fees based on RCW 11.96A.150(1), RAP 18.1, and RAP 18.9. Because we reject Guy's claims, and because we do not believe that his claims benefitted the trust or the estate, we award fees to the trust and estate. As with our first opinion in this matter, we authorize the deduction of the fee award from any distribution due to Guy.

CONCLUSION

We find no abuse of discretion or error of law in the trial court's decisions. We affirm its orders and fee awards, deny Guy's request for attorney fees on appeal, and grant the request of the trust and estate for an award of attorney fees on appeal. The awards of attorney fees

approved by this opinion may be deducted from any distribution due to Guy.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Bjorgen, A.C.J.
BJORGEN, A.C.J.

We concur:

Hunt, J.
HUNT, J.

Maxa, J.
MAXA, J.