

No. 45069-1-II

IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION II

IN RE THE ESTATE OF:
EVA JOHANNA ROVA BARNES,

Deceased.

VICKI ROVA MUELLER, KAREN BOW, MARSHA ROVA, AND
JOHN ROVA,

Respondents,

v.

MICHELLE WELLS and DENNIS WELLS,

Appellants.

BRIEF OF APPELLANT

LAW OFFICES OF
DAVID P. HORTON, INC. PS

David P. Horton,
WSBA 27123
3212 NW Byron Street, Ste 104
Silverdale, WA 98383
(360) 692-9444

MASTERS LAW GROUP, P.L.L.C.

Kenneth W. Masters,
WSBA 22278
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033

Attorneys for Appellants

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INTRODUCTION

By all accounts, Eva Barnes was an intelligent, strong-willed woman. But Eva was estranged from her nieces and nephew, the Rovas.¹ She felt ostracized by them and did not trust them. The Rovas themselves conceded that during the last two years of Eva's life they were estranged.

Eva wanted to live out her days in her Poulsbo home, where she happily lived for many years with her husband and daughter. After a fall in 2009, the ninety-three-year-old wanted to return home as soon as she could. But the Rovas thought she should live in an assisted-living facility. This widened the rift.

Michelle Wells was Eva's mail carrier and friend. After her fall, Eva relied on Michelle to check on her, shop with her, and help her get by on her own. Their mutual friendship grew. As her physical health deteriorated, Eva came to rely on Michelle and her family for support and companionship.

After an explosive meeting at her attorney's office, Eva first changed her power of attorney from her niece Vickie to Michelle. Several months later, Eva changed her will. Eva's lawyer, Jeff

¹ The "Rovas" are the respondents Vicki Mueller, Karen Bow, Marsha Rova, and John Rova. First names are used for clarity.

Tolman, with 35 years' experience, took extraordinary steps to ensure his client's will was not a product of undue influence. He was sure that Eva had capacity to make her will.

Eva's will is presumed valid. But because of the close relationship between Eva and Michelle, a rebuttable presumption of undue influence arose. The Wells rebutted that presumption with evidence of independence and capacity from Eva's lawyer, friends, and others. The Rovas then failed to provide clear, cogent, and convincing evidence of undue influence.

The trial court erroneously relied on the rebuttable presumption. It presumed that because the will change was "unnatural," it must be a product of undue influence. But the presumption was rebutted, and the Rovas were required to prove undue influence by clear, cogent, and convincing evidence. They failed to do so, and no findings say that they did. This Court should reverse and dismiss.

ASSIGNMENTS OF ERROR

1. The trial court erred in concluding that the evidence produced at trial was insufficient to overcome the rebuttable presumption of undue influence. CP 1115-16 (C/L 21, 22) (Findings & Conclusions attached as App. A).

2. The trial court erred in concluding that because the will was “unnatural” (C/L 20) it must have been a product of undue influence. CP 1115.
3. The trial court erred in concluding that Michelle participated in the procurement of Eva’s will. CP 1114 (C/L 13).
4. The trial court erred in ruling that clear, cogent, and convincing evidence established Eva’s will was the product of undue influence. CP 1113, 1115-16 (C/L 11-22).
5. The trial court erred in entering judgment against the Wells and awarding them costs. CP 1156-57.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err in ruling that the Wells presented insufficient proof to rebut the *Dean* presumption of undue influence?
2. Did the trial court err by not requiring proof of undue influence apart from the presumption?
3. Did the trial court fail to make proper findings to support a conclusion that the Rovas proved undue influence by clear, cogent, and convincing evidence?
4. Is driving a person to her lawyer’s office and attending one mediation “participating in the procurement” of her will?

STATEMENT OF THE CASE

A. Eva lost her daughter and her husband of nearly 70 years in 2004 and 2005.

Eva Rova Barnes was born in 1916. FF 1, CP 1090. She was married to Ray Barnes for almost seventy years, until his death in 2005. FF 2, CP 1091. They had a daughter, Karolyn, who died in 2004. *Id.* The loss of her husband and their child so close in time was a major blow to Eva. *Id.*

Eva's brother, Victor Rova, died in 1993. RP 27. Victor had four children, Marsha Rova, Vicki Rova Mueller, John Rova and Karen Bow. RP 27-28; FF 3, CP 1091. The nieces and nephew ("the Rovas") were the will contestants and are the respondents here.

For most of her life, Eva lived on property in Poulsbo to which she moved with her family in 1918. FF 4-5, CP 1090-91. Her estate included this property, along with a one-half interest in the adjacent property once owned by her parents. She co-owned that property with the Rovas after Victor died. FF 4-5, CP 1091-1092.

After Eva's husband and daughter died, she executed a will that named Vicki Mueller as her personal representative and left her estate to the Rovas. FF 8, CP 1092.

B. Eva grew close to Michelle.

Michelle Wells was Eva's rural mail carrier since 1997. FF 39, CP 1099; RP 625-26. After Mr. Barnes and Karolyn died, Michelle and Eva grew closer, becoming friends. FF 39, CP 1099. They "clicked" and loved each other. RP 630.

Initially, they would spend time chatting on Eva's front porch. RP 626-28. Michelle took Eva places and they did things together – family holidays and parties. RP 629. By 2009, they did something together every weekend. RP 634.

C. When Eva fell in 2009, the Rovas wanted to put her in a facility, causing a rift.

On March 26, 2009, Eva fell in her kitchen. FF 13, CP 1093. She was unable to get up on her own and was unable to summon help. *Id.* She laid helpless on her kitchen floor for two-and-a-half days before she was discovered. *Id.* An ambulance took her to the hospital. RP 637-38. She was discharged after three days and admitted to Martha & Mary for recovery. FF 15-16, CP 1094.

Eva recovered fairly quickly. FF 16, CP 1094. As she became hydrated and rested, her strength returned. *Id.* She wanted to return home as soon as possible, despite the strong recommendations of her doctor and the Rovas. FF 19, CP 1095; RP 48.

The Rovas wanted to place Eva in an assisted-living facility. FF 32, CP 1097. Eva had a desperate fear of not being able to return home. FF 34, CP 1097-98. This caused her to be suspicious of the Rovas. *Id.* Nevertheless, because Dr. Kina believed that Eva was competent to make her own decisions, he reluctantly allowed her discharge. FF 20, CP 1095; RP 662.

D. Eva returned home and recovered with Michelle's help, but the rift with the Rovas worsened.

Eva did well upon her return home, thanks to her strong will and Michelle's efforts. FF 37, CP 1098. Michelle became increasingly involved in Eva's affairs, and Eva became increasingly dependent on Michelle for her care. FF 38, CP 1098. Michelle visited her once or more a day. *Id.*

Eva stopped driving in May 2010, and Michelle became her primary source of transportation. RP 745-46. This included driving Eva to doctor and lawyer appointments. FF 51, CP 1103. While Eva grew closer to Michelle during the last few years of her life, she became less involved with the Rovas. FF 39, CP 1099. This was Eva's choice. *Id.* Eva felt ostracized by them. FF 44, CP 1100.

Eva was a hoarder, and her home was filled with piles of newspapers, magazines, and other items. FF 27, CP 1096. This

caused great concern after her fall. FF 25-28, CP 1096. The Rovas and Michelle therefore pitched-in to clean the home before Eva's return. FF 28, CP 1096; RP 135-36, 346. Items were discarded. *Id.*

Upon her return home, Eva was angry that her things had been thrown away. RP 59, 142, 179, 314-15. She focused most of that anger on John and Marsha, blaming them for throwing her address book away. *Id.* The trial court found that the Rovas did not destroy the address book, but that it may have been lost or destroyed. FF 31, CP 1097.

E. Eva changed her will for carefully documented reasons.

On November 17, 2010, Eva met with Vickie at the office of her attorney, Jeff Tolman. FF 48, CP 1102. Tolman has been an attorney for 35 years, with the last 10 focused on estate planning. RP 558-59. Prior to Mr. Barnes' death, he did the couples' estate planning in 2004 or 2005. RP 559. Tolman had called the meeting because Eva wanted to remove Vicki as her power of attorney and Tolman wanted to try to "mediate" the differences. FF 48-49, CP 1102; RP 574-575. Eva was angry at Vicki and "ranted" about the ways the Rovas had wronged her. FF 49, CP 1102. Michelle drove Eva to the meeting and participated in some of it. FF 50, CP 1103. She told

Tolman how the Rovas had thrown out the address book, upsetting Eva. *Id.*

During the failed “mediation” at his office, it was clear to Tolman that Eva did not want Vicki to manage her day-to-day affairs any longer, and Vicki agreed. RP 577. On December 10, 2010, Eva executed a new power of attorney, naming Michelle her attorney-in-fact. FF 52, CP 1103. Eva also told Tolman that she wanted to change her estate plan. RP 577-581.

While Tolman moved quickly in changing the power of attorney, he wanted to move slowly and deliberately regarding the estate planning. RP 580-82. He delayed carrying out Eva’s wishes for several months, allowing for a “cool[ing] off” period. RP 582.

Nonetheless, on March 3, 2011, Eva executed a new will naming the Wells as her beneficiaries. FF 60, CP 1105; FF 63, CP 1106. This will was a “radical departure” from her previous wills because it made no provision for the Rovas as previous wills had. FF 63, CP 1106.

Tolman prepared a memo documenting Eva’s reasons for changing her will. FF 62, CP 1106; Ex 88, p. 5 (copy attached as App. B). Tolman had never before done this type of memo. *Id.* His memo detailed the reasons for the changes (App. B; RP 585):

1. It is clear Michelle has been a good friend and helper to you over the past few years.

2. You have had a falling out with your nieces and nephews over the past couple of years, believing they (1) tried to get a (unwarranted) Guardianship over you, (2) tried to move you off your property into assisted living (which you did not want), (3) tried to get rid of tenants against your wishes on the property you co-own with them, and (4) you feel they have treated you badly (though I know from our meeting with them they would disagree).

Tolman's memo concludes (App. B):

Eva, you and I have spoken often about this situation over the past year or so. I believe you know the members of your family, the nature and extent of your property and that it is your wish to put Michelle and her husband in your Will as your heirs. I also believe you understand that your biological family will likely feel Michelle somehow influenced or coerced you into placing her in your Will. If there is a Will contest I can not be involved, as I would likely be a witness. And I do, after my discussions with you, alone, [believe] that you are aware of these things and the change in your Will is your free and voluntary choice.

F. Eva fell again, but did not recover, passing away a few weeks before her 95th birthday.

On May 25, 2011, Eva fell outside her home. FF 74, CP 1109.

She refused to go to the hospital and was soon in hospice care. FF 74-76, CP 1109. On June 27, 2011, Eva died in her home at 94 years of age, just a few weeks before her 95th birthday. FF 1, CP 1090.

G. Procedural history.

Eva's will naming the Wells as her beneficiaries was admitted to probate on July 1, 2011. CP 3-6. The respondents filed a will contest on October 13, 2011, alleging that Eva lacked testamentary capacity and undue influence. CP 9-10.

Trial lasted five days in February 2013. RP 815. The trial court did not find that Eva lacked capacity, but invalidated the will based on undue influence. App. A, CL 7, CP 1112; CL 22, CP 1115-16. Specifically, the court concluded that the Rovas had established a presumption of undue influence; that the Wells did not put forth sufficient evidence to rebut the presumption; and that – based on the presumption – clear, cogent, and convincing evidence established undue influence. App. A, CL 11, CP 1113; CL 22, CP 1115-16.

More specifically, the trial court's conclusions of law 8 through 21 set out the evidence and conclusions that support the trial court's finding that the *Dean* presumption applied. App. A, CP 1112-15. Illustrative of the trial court's flawed analysis is the court's discussion of the nature of the estate property at issue (RP 871):

I cannot conceive of her disinheriting her nieces and nephews from, at least, the property that they owned jointly with her and leaving that one-half interest to a non-family member. This property had been homesteaded by her parents. The nieces and nephews are the direct lineal descendants of the

homesteaders. I cannot imagine Ms. Barnes making this absolutely radical and unnatural change in her estate plan unless she was subjected to the influence that the testimony suggests she was vulnerable to.

This oral finding is reflected in FF 5, and in CL 20. App. A, CP 1091-92, 1115. The court apparently relied on assumptions and presumptions to obviate the requirement that the Rovas prove undue influence by clear and convincing evidence.

As argued below, this exhibits the trial court's fundamental misunderstanding of the contestants' ultimate burden to prove undue influence. The court essentially found that the only way Eva would disinherit the Rovas was if she was subject to undue influence. The court then concluded, without making any factual findings to support the conclusion, that the Wells failed to produce evidence sufficient to overcome the presumption. App. A, CL 21, CP 1115. The trial court relied solely on the presumption to establish that clear and convincing evidence supported a finding of undue influence. See App. A, FF 22, CP 1115-16.

The court entered a judgment for statutory costs. CP 1156-57. The Wells timely appealed. CP 1124; CP 1158.

ARGUMENT

A. Eva's will is presumptively valid, and the Rovas always bear the burden of proof.

Eva's will is presumed valid:

[W]here a will, rational on its face, is shown to have been executed in legal form, the law presumes that the testator had testamentary capacity and that the will speaks his wishes.

In re Estate of Bottger, 14 Wn.2d 676, 685, 129 P.2d 518 (1942).

To overcome this strong legal presumption, cogent and convincing evidence is required. See, e.g., *In re Estate of Johanson*, 178 Wash. 628, 629-30, 35 P.2d 52 (1934); *In re Estate of Reilly*, 78 Wn.2d 623, 646, 479 P.2d 1 (1970).

In certain circumstances, such as the close personal relationship between Eva and Michelle, a rebuttable presumption of undue influence may arise. *Dean v. Jordan*, 194 Wash. 661, 671-72, 79 P.2d 331 (1938). *Dean* sums up its presumption as follows:

[C]ertain facts and circumstances bearing upon the execution of a will may be of such nature and force as to raise a suspicion, varying in its strength, against the validity of the testamentary instrument. The most important of such facts are: (1) that the beneficiary occupied a fiduciary or confidential relation to the testator; (2) that the beneficiary actively participated in the preparation or procurement of the will; and (3) that the beneficiary received an unusually or unnaturally large part of the estate. Added to these may be other considerations such as the age or condition of health and mental vigor of the testator, the nature or degree of relationship between the testator and the beneficiary, the opportunity for exerting an undue influence, and the

naturalness or unnaturalness of the will. The weight of any of such facts will, of course, vary according to the circumstances of the particular case. Any one of them may, and variously should, appeal to the vigilance of the court and cause it to proceed with caution and carefully to scrutinize the evidence offered to establish the will.

194 Wash. at 671-72. But mere suspicion is not enough:

Mere suspicion of undue influence is not enough, although we have recognized that in a particular case the facts may be of such a suspicious nature as to raise a presumption of fraud or undue influence, and that unless this presumption is met by evidence to the contrary, it may suffice to overthrow the will.

Bottger, 14 Wn.2d at 703.

And the rebuttable **Dean** presumption never shifts the ultimate burden of proof from the will challenger (e.g.):

The existence of the presumption imposes upon the [will] proponents “the duty to come forward with evidence sufficient at least *to balance the scales and restore the equilibrium of evidence touching the validity of the will*”; it does not, however, relieve the contestants from the duty of establishing their contention by clear, cogent, and convincing evidence.

In re Estate of Smith, 68 Wn.2d 145, 154, 411 P.2d 879 (1966) (emphasis original) (quoting **Dean**, 194 Wash at 672). That is, once evidence rebutting the presumption is presented, the burden of proof remains on the will contestants to prove undue influence by clear, cogent, and convincing evidence. *Id.*; **Bradley v. S.L. Savidge, Inc.**, 13 Wn.2d 28, 42, 123 P.2d 780 (1942).

Generally speaking, presumptions “are the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.” *In re Indian Trail Trunk Sewer*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983) (internal quotes and citation omitted). “A presumption is not evidence and its efficacy is lost when the other party adduces credible evidence to the contrary.” *In re Marriage of Akon*, 160 Wn. App. 48, 62, 248 P.3d 94 (2011) (quoting *Indian Trial*, 35 Wn. App. at 843). A presumption serves in the place of evidence “only until *prima facie* evidence has been adduced by the opposite party”; but “*the presumption should never be placed in the scale of evidence.*” *Bradley*, 13 Wn. 2d at 42 (citing *Scarpelli v. Wash. Water Power Co.*, 63 Wash. 18, 114 Pac. 870 (1911)) (emphasis original).

More specifically, our Supreme Court has held that some of its early cases overstated the quantum of proof necessary to rebut the *Dean* presumption:

We are not convinced that, by the standards established in those cases, a presumption of fraud or undue influence arose here, but even if it be assumed that it did and that as a consequence the burden of going forward with the evidence shifted to appellant, **we are still convinced that the evidence to the contrary is not only sufficient to rebut the presumption, but actually goes further and by a preponderance establishes the absence of fraud or undue influence.** [Citations omitted; emphasis altered.]

Bottger, 14 Wn.2d at 703-04 (citing, *inter alia*, **In re Estate of Schafer**, 8 Wn.2d 517, 521, 113 P.2d 41 (1941); **Foster v. Brady**, 198 Wash. 13, 19, 86 P.2d 760 (1939); **In re Beck's Estate**, 79 Wash. 331, 140 Pac. 340 (1914)). The emphasized portion makes clear that not a preponderance of evidence – but just *prima facie* to “balance the scales” – is sufficient to rebut the **Dean** presumption. **Estate of Smith**, 68 Wn.2d at 154; **Bradley**, 13 Wn. 2d at 42.

Here, the Wells conceded that the Rovas produced sufficient evidence to trigger a presumption of undue influence. CP 49; RP 842. But “the existence of [a question] does not relieve the contestants of the duty to establish ... undue influence by clear, cogent, and convincing evidence.” **In re Trust & Estate of Melter**, 167 Wn. App. 285, 299, 273 P.3d 1991 (2012) (citing **Reilly**, 78 Wn.2d at 663 and **In re Estate of Lint**, 135 Wn.2d 518, 535, 957 P.2d 755 (1998)). As discussed above and below, the Wells put on substantial evidence that Eva’s will was not the product of undue influence. The trial court erred by concluding that the evidence adduced at trial was insufficient to rebut the presumption under **Dean**, **Bottger**, and their progeny.

At that point, the burden should have remained with the Rovas to prove undue influence by clear, cogent, and convincing evidence.

Dean, 194 Wash. at 669. The burden is heavy:

To vitiate a will there must be something more than mere influence. There must have been an undue influence at the time of the testamentary act, which interfered with the free will of the testator and prevented the exercise of judgment and choice.

Id. at 671. That is, the Rovas had to prove that Michelle “controlled the volition of the testator, interfered with h[er] free will, and prevented an exercise of h[er] judgment and choice.” ***In re Estate of Lint***, 135 Wn.2d 518, 535, 957 P.2d 755 (1998) (quoting ***Bottger***, 14 Wn.2d at 700). They had to show “influence tantamount to force or fear which destroys the testator's free agency and constrains [her] to do what is against [her] will.” *Id.*

The trial court could make no such findings. It instead relied upon the presumption of undue influence. This was error.

A trial court's conclusions regarding undue influence present a mixed question of fact and law. ***Melter***, 167 Wn. App. at 300. The Court's inquiry here is whether the supported and uncontested findings amount to undue influence. *Id.* at 301. The Court reviews challenged findings of fact for substantial supporting evidence, but there are no challenged findings here, and the unchallenged findings

are verities. See, e.g., *id.* at 301; **Cowiche Canyon Conservancy v. Bosley**, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). Legal conclusions are reviewed de novo. **Wenatchee Sportsmen Ass'n v. Chelan Cnty.**, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

B. The trial court improperly concluded that the rebuttable *Dean* presumption went un rebutted.

While the trial court correctly found that the evidence supported a presumption of undue influence, as the Wells conceded, it failed to recognize that the presumption was rebutted. This was error.

1. The Wells presented substantial evidence rebutting the *Dean* presumption.

Ample evidence rebutting the presumption was presented, much of it conceded by the Rovas. To summarize:

- Eva was strong minded;
- lawyer Tolman carefully ensured against undue influence;
- Michelle was a good friend and caretaker of Eva;
- the Rovas became estranged from Eva;
- Eva did not trust the Rovas and was upset with them because (a) they wanted her to live in a nursing home, (b) threw away her belongings without her consent, and (c) confronted the tenants of their shared property without her knowledge or consent.
- Eva felt ostracized from the Rovas and was treated poorly by them.

a. Eva was strong minded.

By all accounts, Eva was a strong minded individual. App. A, FF 19, CP 1095. John described her as “a force.” RP 202. Vickie admitted that Eva was

[f]iesty. Strong willed. Independent. She always knew best and, even in the end, when she didn't know best, she thought she knew best.

RP 37. She was “always in charge.” RP 111.

Eva always thought that “the way she wanted [it] was the way it should be.” RP 112. Karen testified that Eva “was used to getting her own way her whole life.” RP 198.

This evidence shows that Eva was not likely susceptible to undue influence, always had a mind of her own, and had very strong opinions about what was right for her.² This evidence directly contradicts the Rovas' argument that Michelle's influence was so strong that it overbore Eva's own desires. Indeed, the Rovas' own expert, Dr. Meharg, admitted that these personality traits are inconsistent with someone who would be unduly influenced. RP 272.

² The evidence cited here shows only that the Wells produced the evidence necessary to balance the scales. The Rovas could cite other evidence that qualifies or seemingly contradicts the assertions made throughout section B. That other evidence would be relevant only if the Wells bore the burden of proof. But as discussed above, the Wells just had to balance the scales: the burden of proof always remains on the Rovas.

b. Attorney Tolman documented the reasons Eva changed her will, as the Rovas largely agreed.

The Wells also put on substantial evidence that Eva had a sufficient motivation – absent undue influence from Michelle – to change her will. Attorney Tolman documented her reasons in a memorandum he had Eva execute at the same time as her will. App. A, FF 62, CP 1106; App. B.

Each item is significant because it 1) is independent evidence of a rationale for changing her will; 2) was contemporaneous with Eva's new will; and 3) was at least partially agreed to by the Rovas:

- **“Michelle has been a good friend and helper to you over the past few years.”** (App. B)

It was undisputed that Michelle was a good friend who took care of Eva. John agreed that Michelle was “real helpful” to Eva. RP 339. Vickie admitted that Michelle was a good friend and helper for the past two years. RP 122. Even the Rovas' expert, while opining that conditions were ripe for undue influence, admitted that “there is nothing in the record to suggest Ms. Wells was anything but benevolent in her care.” RP 268. There was a “team effort” by the Wells family to care for Eva. RP 377.

The APS caseworker assigned to Eva noted that, in contrast to the Rovas, Michelle had come to her home every day, checked on

her, befriended her, and helped her. CP 527. In sum, it is undisputed that this reason for her changing her will, expressed in writing, and witnessed by her lawyer outside the presence of Michelle, was true.

➤ **“You have had a falling out with your nieces and nephews over the past couple of years.”** (App. B)

It was undisputed that when the will was made, the Rovas were estranged from Eva. The trial court made a finding that Eva purposely became less involved with the Rovas after her first fall, as Michelle became more involved. App. A, FF 39, CP 1099. Vickie admitted the falling-out with Eva, John and Marsha. RP 123.

The relationship was “strained” and a rift formed. RP 116, 159. Vickie admitted that Eva was angry at her nieces and nephew, which is why they were not active in her care. RP 97-98. Vickie testified that it got to the point that Eva was angry “all the time.” RP 110.

Marsha testified that she stopped talking to and was estranged from Eva about a year after her first fall. RP 161. From the time Eva was released from Martha and Mary until her death, Marsha saw her ten times or less. RP 159.

Even before her first fall, John conceded that his relationship with Eva was “not real good.” RP 206. The breakdown was not one-sided: he admitted that after Eva returned home from Martha and Mary,

he did not want to speak with her. RP 314-15, 317. This was in stark contrast to his “frequent[]” visits earlier in life. RP 328.

John acknowledged that Michelle did not prevent him from seeing Eva, but rather encouraged it. RP 337; 338. This was consistent with other testimony. Jerilee Swearingin, another relative, testified that Michelle encouraged her to visit Eva. RP 359, 378. Barbro Wasbrekke testified that Michelle never prevented her from seeing Eva. RP 392:10-11. This is in stark contrast to the Rova’s seeming allegation that Michelle intentionally isolated Eva. Vickie admitted that her visits dropped off. RP 115. When she would visit, Michelle usually would not be there. RP 115-16.

Because the Rovas’ visits dropped off after 2009 (RP 97-98, 116, 159-60, 314-15, 317) Eva felt ostracized from the Rovas. App. A, FF 44, CP 1100. She told this not only to Michelle, but to Adult Protective Services (APS). *Id.*; CP 527.

Vickie admitted that Eva did not trust the Rovas. RP 98. Eva expressed these same sentiments to APS. CP 527. This was in contrast to Michelle, who was there to help Eva, responding when she was needed. CP 545. This estrangement gave Eva a motive, independent of Michelle, to change her will.

Eva's ninetieth birthday party is a perfect example of the estrangement. Eva celebrated her 90th birthday at Marsha's home. App. A, FF 12, CP 1093. The Rovas and their families were present. *Id.* The trial court found that, "[b]y all accounts, the birthday celebration was large and successful." *Id.* Vickie described Eva's birthday party as "great and fun." RP 40.

But Norma Bailey, a friend of Eva's for 35 years who brought her to the party, saw it differently. RE 537, 543-44. Eva did not feel welcome in Marsha's home. RP 544. Bailey saw the poor relationship first hand. RP 554. The Rovas were not there to help Eva. RP 541. Eva complained to her about the Rovas and their actions. RP 541-42.

Based on these complaints, Bailey suggested that Eva change her will. RP 544-45. But Bailey did not solely rely on Eva. RP 556. She saw first-hand how badly the Rovas treated Eva. RP 554.

That Eva was estranged from the Rovas was well established by substantial evidence – most of which is undisputed. This, in itself, is sufficient motivation for a change in estate planning. The trial court erred in failing to conclude that the **Dean** presumption was rebutted.

- **They “tried to move you off your property into assisted living.”** (App. B)

Central to Eva's will – in both the personal and documentary senses – was the Rova's desire to move her into assisted living. As the trial court found, Eva was “desperately afraid” of being put in a nursing home. App. A, FF 34, CP 1098.

The Rovas had strong feelings about how and where Eva lived after her first fall. They looked into an assisted living facility, discussing it with her. RP 112-13. They thought it was unsafe for her to go home. RP 163-64. But Eva wanted to go home. RP 112, 158. She was adamant. RP 140.

The Rovas nonetheless did not think she should go home. RP 112-13. John conceded that Eva was angry about them wanting to put her in an assisted living facility. RP 335-36.

Eva lived at home in reasonably good health despite the Rovas' fears. App. A, FF 37, CP 1098. This was due, in part, to Michelle's help. *Id.* This evidence too contradicts undue influence.

- **They “tried to get a (unwarranted) Guardianship over you.”** (App. B)

While the Rovas never started a guardianship proceeding, they did look into it. RP 187, 319-20. And they did commence an APS

investigation. *Id.* The Rovas' allegations alone were sufficient to justify Eva's decision to change her will.

After the "mediation" at attorney Tolman's office, the Rovas hired an attorney to protect their inheritance. CP 597; RP 88, 575. While the Rovas never formally sought a guardianship, their lawyer suggested that they do so. RP 319. Instead of initiating a guardianship, they contacted APS with concerns about her living at home. RP 89-90, 334. APS conducted an investigation of which Eva was aware. CP 523, 559-686.

This investigation is plainly substantial evidence rebutting the presumption. Investigator Boyce testified that Eva had the ability to make her own decisions; she was not concerned that Michelle was improperly influencing Eva because she saw no evidence of it during their interview. CP 527-528. APS ultimately found the Rova's allegation of Eva's self-neglect unsubstantiated. CP 529.

The distinction between an APS investigation and a guardianship proceeding might be lost on a lay person like Eva. See, e.g., RP 319-20. Be that as it may, the Rova's allegation of self-neglect was sufficient reason for Eva to change her will. Again, the trial court erred in concluding that the Wells failed to balance the scales.

- **They “tried to get rid of tenants against your wishes . . .”** (App. B)

Marsha admitted that on Halloween 2010, she went to evict a tenant they shared with Eva, without first consulting Eva. RP 160-61. This may have been an honest misunderstanding, and Eva’s reaction may even have been unreasonable. But Marsha’s unilateral actions unquestionably led to Eva’s desire to change her will. RP 718.

- **“You feel they have treated you badly”** (App. B)

This reason, of course, encompasses much of the above, but it also relates to a few other things. One was Eva’s belief that the Rovas had taken, thrown away, or otherwise destroyed her possessions, such as her address book, when they cleaned her home after her first fall. RP 59, 142, 314-15. The court found Eva’s anger unreasonable. FF 31, CP 1097. But this incident was another reason that Eva wanted, independently, to change her will: Eva conveyed her concerns about her destroyed address book directly to attorney Tolman. RP 601.

Just days after returning home, Eva started calling John, blaming him for destroying her things. RP 314-15. He believed that Eva was alienated from him because she believed that he destroyed the address book and mismanaged the farm. RP 325. The Rovas admitted that they did discard many items and that they did not first

check this with Eva. RP 159. They did not have her permission. RP 336-37. Scott Morgan (Marsha's husband) admitted he removed Eva's possessions without her permission. RP 354. John admits that Eva changed her will due to this unauthorized activity. RP 157.

Eva told other relatives that she was angry at the Rovas for tidying up and removing her address book. RP 371. When APS interviewed her, Eva related the same story: Eva thought the Rovas were trying to "take over her life." CP 526. It made her angry. CP 527. They had "violated her home, taken her things without her permission and attempted to curb her independence." CP 545.

The trial court plainly did not believe that the Rovas did anything wrong or destroyed anything intentionally. But Eva could change her will for any reason – even a bad one. Post-mortem judgments about who was in the right are irrelevant. No matter who was being reasonable or unreasonable, the testator's will is presumed valid, and her reasons – good or bad – are sufficient, so long as her independence was intact.

2. The trial court erred in failing to conclude that the Wells balanced the scales.

The situation in *Melter, supra*, is strikingly similar, where the court confronted the testator's arguably illogical dislike of relatives:

A prejudice or dislike that a testator might have for a relative is not ground for setting aside a will unless the prejudice and dislike cannot be explained on any other ground than that of an insane delusion in the sense of an unsound condition of the mental faculties, as distinguished from a process of reasoning from evidence, however imperfect the process may be or illogical the conclusion.

Melter, 167 Wn. App. at 312. Here, the trial court specifically concluded that Eva had testamentary capacity, making no finding of “insane delusion” or unsound mental faculties. App. A, C/L 4, CP 1111-12. Moreover, Eva’s dislike was based on the estrangement, the APS investigation, the assisted living facility idea, and so forth. Even if the estrangement had been Eva’s fault, and even if her decision to stay out of assisted living was risky, it was her choice. They provide no basis to set aside her will.

And there is no evidence that this dispute was created by Michelle. Even if she “fanned the flames” as the trial court said, there was no evidence – and no finding – that she started the fire. Even the Rovas admitted that Eva was the author of her own dislikes.

“Fanning the flames” is not undue influence. “[S]uch things as advice, arguments, persuasions, solicitations, suggestions, or entreaties are not enough to establish undue influence.” **Melter**, 167 Wn. App. at 313. Much more is required. For Michelle’s persuasions (if any) to be unfair, and thus undue, the question is *whether the*

result was produced by means that seriously impaired the free and competent exercise of judgment. *In re Estate of Jones*, 170 Wn. App. 594, 607, 287 P.3d 610 (2012). But there is no evidence of any means that seriously impaired the free and competent exercise of judgment.

Nor did Michelle even instigate Eva's actions, but rather it was Norma Bailey who suggested that Eva change her will due to Eva's complaints about the Rovas. RP 545. Michelle was not present during those conversations. RP 542. Eva told relatives that she was thinking about leaving her house to Michelle. RP 371.

After the long, considered process attorney Tolman followed in assisting Eva to change her will, he was not concerned with undue influence. RP 591. He never saw Michelle trying to manipulate Eva. *Id.* Tolman's care, testimony, and memo alone provide ample evidence rebutting the presumption.

But taken together with all of the other evidence discussed above, it is not tenable to rule that the Wells failed to balance the scales and put the Rovas to their proof. The burden thus remained with the Rovas. As discussed below, they failed to meet it.

C. The trial court's presumption analysis was flawed, and it failed to make sufficient findings of undue influence.

Because the above evidence was presented to rebut the presumption, the burden remained on the Rovas to present evidence, not just the presumption. The court thus had to find something beyond the *Dean* presumption, something more than mere influence. Rather, it had to find influence “which, at the time of the testamentary act, controlled the volition of the testator.” *Bottger*, 14 Wn.2d 700. The influence must have “interfered with [her] free will.” *Id.* The influence must have “prevented an exercise of [her] judgment and choice.” *Id.* The court had to find facts sufficient to support “*influence tantamount to force or fear which destroys the testator's free agency and constrains [her] to do what is against [her] will.*” *Id.* (emphasis in original).

The court did not make any such findings. Rather, the court concluded that clear, cogent, and convincing evidence “**supports a presumption** that the will . . . was the product of undue influence. . . .” App. A, CL 11, CP 1113 (emphasis added). As discussed above, the Wells conceded that the *Dean* presumption applied, yet the trial court entered lengthy conclusions about it, erroneously ruling that the Wells failed to overcome the presumption. App. A, CL 10-22, CP

1113-15. But it entered *no* findings or conclusions that – assuming the Wells balanced the scales – the Rovas proved undue influence. App. A. This Court should reverse and reinstate Eva's will.

Again, this case is similar to *Melter*. There, the appellate court found no proof of the key elements normally found in cases of undue influence. 167 Wn. App. at 308. No facts proved that the testator was kept secluded, had limited funds, had communications monitored, or that others procured the will. *Id.* at 308-09. The same is true here.

For instance, the trial court concluded that because Michelle drove Eva to her attorney's office and "participated" in one of the meetings, she "procured" the will. App. A, CL 13, CP 1114. Michelle was Eva's only transportation and drove her to Tolman's office, but she would wait in the lobby while Eva met with her attorney. CP 583. Michelle's only "participation" was in the "mediation" with Vickie in Tolman's office, and when Tolman spoke to Michelle about changing the power of attorney. RP 575, 580-81, 711-12. Tolman confirmed that during the other meetings between Tolman and Eva, Michelle stayed in the waiting area. RP 577-78.

As in *Melter*, Eva did nothing more significant than drive Eva to her attorney's office. *Melter* 167 Wn. App. at 309. As *Melter*

pointed out, this is in stark contrast to the beneficiaries in *Lint*, who directly participated in making the will. *Id.*

Similarly, there is no evidence that Eva was isolated by Michelle. This is a key element of an undue influence claim. *Melter*, 167 Wn. App. at 308-09 (citing *Lint*, 135 Wn.2d at 538; *In re Estate of Bussler*, 160 Wn. App. 449, 469, 247 P.3d 821 (2011)). Nothing justifies its application here. To the contrary, each of the Rovas went to see her, and Michelle never prevented them from seeing her. RP 125, 162, 193-195, 338. Eva saw friends and family. CP 362, 375, 390-92, 539-40.

APS investigator Boyce did testify that it was hard to obtain a meeting with Eva. RP 527-28. But after meeting with Eva, she realized that Eva had been responsible for this, not Michelle. CP 556-557.

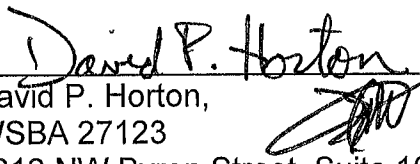
In sum, there was no evidence Michelle directly or indirectly unduly influenced Eva, caused the estrangement, isolated Eva, or procured the will. The Rovas were required to prove undue influence by clear, cogent, and convincing evidence. They did not. No findings support the trial court's conclusion, and no law supports its flawed legal analysis. This Court should reverse and dismiss.

CONCLUSION

For the reasons stated, the court should reverse the judgment invalidating the will and dismiss the petition.

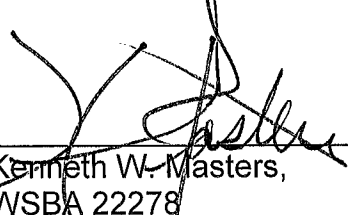
RESPECTFULLY SUBMITTED this 27th day of January, 2014.

LAW OFFICES OF
DAVID P. HORTON, INC. PS



David P. Horton,
WSBA 27123
3212 NW Byron Street, Suite 104
Silverdale, WA 98383
(360) 692-9444

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters,
WSBA 22278
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANTS** postage prepaid, via U.S. mail on the ^{27th} day of January 2014, to the following counsel of record at the following addresses:

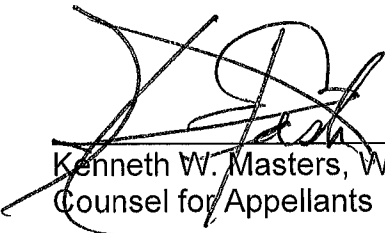
Counsel for Respondents

John F. Mitchell
Kevin Cure
Sanchez, Mitchell & Eastman
4110 Kitsap Way, Suite 200
Bremerton, WA 98312-2401

Howard M. Goodfriend
1619 8th Avenue North
Seattle, WA 98109-3007

Co-counsel for Appellants

David P. Horton
Law Offices of David P. Horton, Inc. PS
3212 NW Byron Street, Suite 104
Silverdale, WA 98383


Kenneth W. Masters, WSBA 22278
Counsel for Appellants

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3 DAVID W. PETERSON
4 KITSAP COUNTY CLERK

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF KITSAP

9
10 In re the Estate of:

NO. 11-4-00455-3

11 EVA JOHANNA ROVA BARNES,

COURT'S FINDINGS OF FACTS
AND CONCLUSIONS OF LAW

12 Deceased.

(As Proposed by Petitioners)

13
14 This matter was tried before the undersigned Court, commencing on February
15 11, 2013. The matter was tried without a jury. The Petitioners Vicki Rova Mueller,
16 Karen Bow, Marsha Rova, and John Rova appeared at the trial and were represented
17 by Kevin W. Cure of Sanchez, Mitchell and Eastman. The Respondents Michelle
18 Wells and Dennis Wells appeared at trial and were represented by David P. Horton of
19 The Law Office of David P. Horton, Inc. P.S.

20
21 I. FINDINGS OF FACT

- 22 1. Eva Johanna Rova Barnes ("Ms. Barnes") was born on July 17, 1916, in
23 Bellingham, Washington. She died on June 27, 2011 at her home at 94
24 years of age, just a few weeks before her 95th birthday. Ms. Barnes' will was

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-1

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 478-3000

CP 1090

Appendix A

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1 admitted to probate on July 1, 2011. Michelle Wells was appointed personal
2 representative and given nonintervention powers. The Court granted
3 Petitioners' motion to remove Michelle Wells as personal representative
4 and she was replaced by her husband, Dennis Wells.

5 2. Ms. Barnes' husband, Ray Barnes, died at the age of 96 in 2005. Their only
6 daughter, Karolyn, passed away in 2004 at the age of 48. The loss of her
7 husband and child so close in time was a major blow to Ms. Barnes. She
8 was treated for depression in 2006 and there were indications of depression
9 from that date going forward.

10 3. Ms. Barnes was survived by her brother Victor's wife, Marian Rova. Marian
11 Rova's children are the Petitioners in this case. The Petitioners are Marsha
12 Rova, Vicki Mueller, John Rova and Karen Bow. After the death of Ray and
13 Karloyn, Ms. Barnes' close family consisted of the Petitioners.

14 4. The Petitioners are adults with families of their own. The Petitioners grew
15 up in Poulsbo near Ms. Barnes, and spent a significant amount of time at
16 Ms. Barnes' property. Ms. Barnes' residence is located on Rova Road in
17 Poulsbo, Washington, and has been known for decades locally as the Rova
18 Property.

19 5. The Rova Property consists of acreage, Ms. Barnes' residence, and a small
20 rental house. Ms. Barnes owns a one half interest in the rental property
21 and the other one half interest is owned by the Petitioners. The Rova
22 Property was homesteaded by Ms. Barnes' parents and Ms. Barnes resided
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-2

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-8000

1 there from 1918 until the time of her death. The Petitioners are direct
2 lineal descendents of the homesteaders.

3 6. On March 4, 2004, Ms. Barnes executed her first known will. At the time
4 this will was made, Ray and Karolyn were still alive. Under this will Ms.
5 Barnes' estate was to be distributed upon her death as follows: (1) her
6 entire estate to her husband, Ray; (2) If Ray predeceased Ms. Barnes,
7 then her entire estate to her daughter, Karolyn, in trust, to be managed
8 by Vicki Mueller, as trustee; (3) If both Ray and Karolyn predeceased Ms.
9 Barnes, her entire estate was to be divided in four equal shares, one
10 share to each of the Petitioners.
11

12 7. On March 4, 2004, Ms. Barnes and Ray executed a durable power of
13 attorney. Ms. Barnes and Ray were named as each other's primary
14 attorney in fact. Vicki Mueller was named as the alternate attorney in
15 fact for both Ms. Barnes and Ray.

16 8. On September 26, 2005, after both Ray and Karolyn had passed away,
17 Ms. Barnes executed a second will. This will provided that upon her
18 death, her entire estate was to be distributed in four equal shares, one share
19 to each Petitioner. This will nominated Vicki Mueller to serve as Ms.
20 Barnes's personal representative, and Marsha Rova as the alternate
21 personal representative.
22

23 9. On September 26, 2005, Ms. Barnes executed an individual durable
24 power of attorney, which was effective immediately. Ms. Barnes named

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-3

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-8000

1 Vicki Mueller as her attorney in fact, and Marsha Rova as the alternate
2 attorney in fact.

3 10. On April 29, 2006, Ms. Barnes had a bowel obstruction surgery at
4 Harrison Medical Center ("HMC") in Bremerton, Washington. This was a
5 major medical event. The medical professionals that treated Ms. Barnes
6 during this time suspected that she was suffering from depression. Ms.
7 Barnes' physician, Dr. Kina, prescribed an antidepressant medication for
8 her.

9 11. On May 8, 2006, Ms. Barnes was discharged from HMC and admitted to
10 a nursing home, Martha & Mary, to recover from the bowel obstruction
11 surgery. She was discharged from Martha & Mary on May 23, 2006, and
12 returned to her home.

13 12. On July 17, 2006, Ms. Barnes celebrated her 90th birthday. The
14 celebration occurred at Marsha Rova's home and each of the Petitioners
15 and their respective families were present. By all accounts, the birthday
16 celebration was large and successful.

17 13. On March 26, 2009, Ms. Barnes fell in the kitchen of her home. She was
18 unable to get up off the floor on her own, and she was unable to summon
19 help. Ms. Barnes laid helpless on her kitchen floor for two and a half days
20 before she was discovered. It is unknown how she fell.
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FINDINGS OF FACT AND
CONCLUSIONS OF LAW-4

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 14. On March 29, 2009, 911 was called. Ms. Barnes was found on her kitchen
2 floor by emergency responders and was rushed to HMC. Ms. Barnes was
3 severely dehydrated and was in critical condition.

4 15. Ms. Barnes was hospitalized at HMC for three days. During her stay at
5 HMC, the medical professionals noted observations of Ms. Barnes'
6 cognitive impairment. These observations were charted in Ms. Barnes'
7 medical records relating to her stay at HMC during this time.

8 16. On April 1, 2009, Ms. Barnes was discharged from HMC and admitted to
9 Martha & Mary for recovery. From a physical standpoint, Ms. Barnes
10 recovered fairly quickly from her fall. As she became hydrated and
11 rested, her strength returned.

12 17. Ms. Barnes spent approximately twelve days recovering at Martha & Mary.
13 During Ms. Barnes' stay at Martha & Mary, the medical professionals
14 noted their observations of her cognitive impairment and physical
15 limitations. These observations were charted in Ms. Barnes' medical
16 records relating to her stay at Martha & Mary during this time.

17 18. All the medical professionals that treated Ms. Barnes during her stay at
18 Martha & Mary agreed that Ms. Barnes was not strong or healthy enough
19 to return home. The medical professionals, including her physician, Dr.
20 Kina, concurred that Ms. Barnes needed additional time to recover and it
21 would be in her best interest to temporarily reside at some kind of assisted
22 living facility. The Petitioners, who visited her regularly during her stay at
23
24

1 Martha & Mary, also agreed that she was not ready to return home and
2 advocated that she remain in an assisted living facility until she could fully
3 recover.

4 19. Ms. Barnes was a strong minded individual. Despite the recommendations
5 of the medical staff at Martha & Mary, Dr. Kina, and the Petitioners, Ms.
6 Barnes demanded that she be allowed to return home.

7 20. Dr. Kina did not feel he could deny Ms. Barnes' request to return home or
8 force her to do something different. On April 13, 2009, Dr. Kina reluctantly
9 discharged Ms. Barnes from Martha & Mary.

10 21. On April 13, 2009, John Rova and Marsha Rova drove Ms. Barnes to her
11 home from Martha & Mary.

12 22. Ms. Barnes' medical records relating to her treatment at Martha & Mary
13 are not only helpful in understanding what was happening from a medical
14 perspective, but also shed light on what was happening between Ms.
15 Barnes and her family.

16 23. A social worker at Martha & Mary described the Petitioners as being
17 "desperate" to help Ms. Barnes and noted their grave concerns about Ms.
18 Barnes returning home. Ms. Barnes' medical records reflect that the
19 Petitioners were extremely concerned about Ms. Barnes during this time.

20 24. A social worker at Martha & Mary recommended the Petitioners make a
21 referral to Adult Protective Services ("APS") based on the condition of Ms.
22 Barnes' home.
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-6

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 25. The emergency responders that had rescued Ms. Barnes from her kitchen
2 floor on March 29, 2009, indicated that the condition of Ms. Barnes' home
3 was so extreme that the fire department would not allow her to return
4 home unless changes were made. As members of the fire department,
5 they were in a position to keep Ms. Barnes from returning home as they
6 did not feel it was safe for her to return in its present condition.

7
8 26. As a result of the condition of Ms. Barnes' home, the Petitioners,
9 primarily John Rova, with the assistance of Michelle Wells, frantically
10 tried to make Ms. Barnes' home safe for her return. There was very little
11 time to accomplish this.

12 27. Ms. Barnes's home was filled with piles and stacks of newspapers,
13 magazines and other things that she had hoarded. Ms. Barnes'
14 belongings were stacked from floor to ceiling and left only narrow
15 pathways throughout the house. Some of the stacks of magazines and
16 papers were near heat sources including the baseboards and wood stove.
17 The condition of her home at the time of her fall was not safe.

18 28. John Rova, Michelle Wells and others, did the best they could to make
19 Ms. Barnes' home suitable for her return. Old newspapers and magazines
20 were discarded in the process.

21
22 29. On April 13, 2009, when Ms. Barnes returned home from Martha and
23 Mary, she appeared to do fairly well in the succeeding months. But, in
24

1 terms of Ms. Barnes' relationship with the Petitioners, her return home
2 was decidedly the beginning of the end.

3 30. Ms. Barnes felt her privacy had been invaded by John Rova's attempt to
4 make her home suitable for her return. For some reason, Ms. Barnes
5 singled out John Rova and the Petitioners and seemed to ignore the fact
6 that Michelle Wells was also involved in the cleaning of her home.

7 31. Ms. Barnes alleged that the Petitioners had deliberately destroyed her
8 address book. This allegation was untrue. The address book may have
9 been misplaced or destroyed by mistake, but there is no evidence that the
10 Petitioners had a motive to destroy it.

11 32. Ms. Barnes also believed that the Petitioners were committed to
12 removing her from her home and placing her in a nursing home for the
13 rest of her life. This belief was also untrue. The Petitioners and all the
14 medical professionals that treated her after her fall in March 2009
15 recommended that Ms. Barnes transition from Martha & Mary to an
16 assisted living facility until she could regain full mental and physical
17 strength and return home safely.

18 33. There is no evidence that the Petitioners, or anyone, recommended that
19 Ms. Barnes be resigned to a nursing home or assisted living facility for
20 the rest of her life.

21 34. Ms. Barnes' fear of not being able to return home or being removed from
22 her home to a nursing home or assisted living facility is understandable.
23
24

1 It is very common. She was desperately afraid of being put in a nursing
2 home or assisted living facility. Ms. Barnes's fear in this regard
3 developed into paranoia and caused her to be suspicious of the
4 Petitioners.

5 35. After Ms. Barnes' discharge from Martha & Mary until the time of her
6 death, she met with Dr. Kina on approximately nineteen different
7 occasions. Dr. Kina found Ms. Barnes to be a capable reporter of her
8 health status and that she was usually in good humor.

9
10 36. Throughout the course of his treatment of Ms. Barnes, Dr. Kina's records
11 reflect his observations of Ms. Barnes' gradual mental deterioration, but
12 at no time did he diagnose her with dementia. Starting in 2009, the term
13 "mild cognitive impairment" is used throughout Ms. Barnes' medical
14 records.

15 37. Against all odds, Ms. Barnes was able to maintain reasonably good
16 health after she returned home. This was perhaps due in part to her
17 strong will and determination, but also in part due to the efforts of
18 Michelle Wells.

19 38. After Ms. Barnes returned home on April 13, 2009 and until the time of
20 her death, Michelle Wells became increasingly involved with Ms. Barnes.
21 Michelle Wells visited Ms. Barnes once or more every day and Ms.
22 Barnes became increasingly dependent on Michelle Wells.
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-9

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 39. Michelle Wells first came to know Ms. Barnes through her employment
2 as a rural mail carrier for the United States Postal Office. Her
3 relationship with Ms. Barnes began as a professional and friendly one.
4 After Ray and Karolyn died, Michelle Wells and Ms. Barnes became
5 friends. In the last couple years of Ms. Barnes' life, Michelle Wells
6 became increasingly involved in Ms. Barnes' care and her life.
7 Ultimately, Michelle Wells became Ms. Barnes' caretaker. And while that
8 was happening, Ms. Barnes became less and less involved with
9 Petitioners. It was not the Petitioners' choice to be less involved with Ms.
10 Barnes, but it was Ms. Barnes' choice.
11

12 40. Michelle and Dennis Wells are not related to Ms. Barnes. Michelle Wells
13 is 51 years younger than Ms. Barnes. Michelle Wells was convicted of
14 Theft in the Third Degree in Mason County District Court on June 29,
15 2009. Between 2009 and the time of Ms. Barnes' death, Michelle and
16 Dennis Wells were financially struggling.
17

18 41. In April 2010, Ms. Barnes began writing checks from Ms. Barnes' account
19 payable to Michelle Wells and Michelle Wells' family members. The
20 checks were for various services and for reimbursement for various
21 expenses. During this time, the gap between Ms. Barnes and the
22 Petitioners was widening.

23 42. In 2010, Ms. Barnes stopped tending to her business related to the rental
24 property. Historically, the Petitioners and Ms. Barnes enjoyed a good

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-10

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 working relationship regarding their respective interests in the rental
2 property. Ms. Barnes had always managed the jointly owned rental.
3 Among other things, Ms. Barnes always paid the taxes and insurance
4 and collected the rent from the tenants. Once she had collected the rent
5 she would divide it appropriately and distribute it among herself and the
6 Petitioners. Ms. Barnes was always fastidious, organized, responsible,
7 and prompt with the business and financial matters relating to the rental
8 property.
9

10 43. In 2010, the Petitioners' share of the rental income was not being
11 forwarded to them as it had in the past. The property taxes for the rental
12 property were not being paid and it was difficult to determine if the
13 rental property was insured. The Petitioners did not know who the
14 tenants were or if there even were tenants. The Petitioners assumed the
15 current tenants were not paying rent because their share of the rental
16 income was not being forwarded to them as it had in the past. All of these
17 changes were a significant departure from Ms. Barnes prior reliability in
18 that regard.

19 44. On July 31, 2010, Karen Bow's daughter was married. This was a major
20 family event. Ms. Barnes was invited and attended, but was not very
21 involved with her family at that time. The Petitioners felt Ms. Barnes'
22 lack of involvement was her choice. Ms. Barnes later told Michelle Wells
23 that she felt ostracized by her family at the wedding. The evidence
24

1 indicates that the Petitioners tried to involve Ms. Barnes in the wedding
2 festivities, but Ms. Barnes showed no interest, and isolated herself from
3 her family by sitting by herself. After the wedding, the gap between Ms.
4 Barnes and the Petitioners continued to
5 grow.

6 45. On October 30, 2010, Marsha Rova and her husband Scott, went to the
7 rental property. The Petitioners assumed the current tenants, if any,
8 were not paying rent because Ms. Barnes had not forwarded the
9 Petitioners their share of the rental income for a significant amount of
10 time. When Marsha and Scott arrived at the rental property, they were
11 shocked to discover that the current tenants were known to them. They
12 had been tenants of the rental property in the past and had always paid
13 rent on time. Marsha and Scott learned that the current tenants had in
14 fact been paying rent to Ms. Barnes, but Ms. Barnes was not passing it
15 through to the Petitioners as she had in the past.
16

17 46. The tenants informed Scott and Marsha that they were frustrated with
18 Ms. Barnes. Ms. Barnes had accused them of not paying rent and of
19 stealing items. Ms. Barnes had sent Michelle Wells to the rental property
20 to confront the tenants about not paying rent. Michelle Wells told the
21 tenants that the Petitioners intended to evict them so they could sell the
22 land, develop the properties, and become millionaires. Michelle Wells told
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-12

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 the tenants that she would go to court to fight for Ms. Barnes because the
2 Petitioners were greedy villains.

3 47. Immediately after the meeting with the tenants, Marsha drafted an
4 email that summarized their conversations with the tenants and sent it
5 to her siblings. The court cannot find any reason that Marsha would say
6 anything but what she understood to be the truth in this email. The
7 statements that Michelle Wells made to the tenants of the rental
8 property were not true and acted to further poison Ms. Barnes'
9 relationship with the Petitioners.
10

11 48. On November 17, 2010, a meeting was held at Ms. Barnes' attorney's
12 office. Ms. Barnes was represented by Jeff Tolman. Ms. Barnes desired to
13 remove Vicki Mueller as her attorney in fact and name Michelle Wells in
14 her place. Mr. Tolman invited Vicki Mueller to attend the meeting with
15 Ms. Barnes. Ms. Barnes was told that Vicki Mueller would be present at
16 the meeting, but expressed shock and anger when she discovered Vicki
17 Mueller was present.
18

19 49. At the meeting, Mr. Tolman attempted to mediate the differences
20 between Ms. Barnes and the Petitioners. Ms. Barnes made it clear that
21 she wanted nothing to do with any type of reconciliation with Vicki
22 Mueller and/or any of the Petitioners. Ms. Barnes was demonstrably
23 angry with Vicki Mueller and ranted at her about all the ways she
24 believed the Petitioners had done her wrong.

1 50. Michelle Wells was also present at the November 17, 2010 meeting at Mr.
2 Tolman's office. She had provided Ms. Barnes with transportation to the
3 meeting and was invited by Mr. Tolman to participate in some of the
4 meeting. During the meeting, Michelle Wells told Mr. Tolman, in the
5 presence of Ms. Barnes and Vicki Mueller, that the Petitioners had
6 thrown out Ms. Barnes' address book. This comment further upset Ms.
7 Barnes and Ms. Barnes continued to direct her anger toward Vicki
8 Mueller.
9

10 51. In May 2010, Ms. Barnes stopped driving. As a result, Ms. Barnes was
11 solely dependent on Michelle Wells for transportation. From May 2010 to
12 the time of her death, Michelle Wells provided Ms. Barnes with
13 transportation to every meeting Ms. Barnes had with Mr. Tolman and
14 Dr. Kina. From this time forward, Dr. Kina never met with Ms. Barnes
15 outside the presence of Michelle Wells.

16 52. On December 10, 2010, Ms. Barnes met with Mr. Tolman at his office.
17 Michelle Wells provided Ms. Barnes with transportation to the meeting.
18 There, Ms. Barnes executed a new durable power of attorney. The new
19 durable power of attorney named Michelle Wells as Ms. Barnes' attorney
20 in fact. Ms. Barnes did not list an alternate attorney in fact. From this
21 point on, Michelle Wells was Ms. Barnes' attorney in fact.
22

23 53. In 2010 and 2011, Ms. Barnes was writing letters to the Petitioners,
24 other family members, and friends. The handwritten letters began

1 reasonably well organized and rational, but became increasingly
2 incoherent, illegible and irrational. In her writings, Ms. Barnes' thoughts
3 were scattered and contained irrational rants where she would call the
4 Petitioners horrible names and accused them of horrible things, none of
5 which were true.

6 54. In January 2011, Michelle Wells began assisting Ms. Barnes by writing
7 Ms. Barnes' checks. Michelle Wells signed some of the checks as Ms.
8 Barnes attorney in fact.

9 55. March 1, 2011, Ms. Barnes saw both Dr. Kina and Mr. Tolman.

10 56. Dr. Kina's records from Ms. Barnes' March 1, 2011 visit note Michelle
11 Wells' presence and refer to her as Ms. Barnes' guardian. Dr. Kina's
12 records from this visit did not note anything remarkable about Ms.
13 Barnes mental condition. Dr. Kina testified that on March 1, 2011, Ms.
14 Barnes appeared reasonably well both mentally and physically.

15 57. On March 1, 2011, immediately following her meeting with Dr. Kina, Ms.
16 Barnes met with Mr. Tolman. The purpose of the meeting was to execute
17 her new will. Michelle Wells provided her transportation to this meeting.
18 Mr. Tolman believed that Ms. Barnes was not feeling well as she had just
19 come from Dr. Kina's office and had received an injection of some kind.
20 Ms. Barnes acknowledged that she was not feeling well. Mr. Tolman
21 testified that Ms. Barnes could not remember one of her niece's names.
22 Mr. Tolman asked her to come back another day when she was feeling
23
24

1 better. Ms. Barnes did not execute her new will or any other documents
2 and left with Michelle Wells.

3 58. March 3, 2011, Ms. Barnes saw both Dr. Kina and Mr. Tolman.

4 59. Dr. Kina testified that he did not recall anything unusual about Ms.
5 Barnes mental status on that day that would have made him question
6 her capacity. Dr. Kina's records from that visit indicate that Michelle
7 Wells was present and requested that Dr. Kina prescribe a medication to
8 help Ms. Barnes with her memory problems. Dr. Kina prescribed Aricept.
9 Dr. Kina's records from this visit listed "mild cognitive impairment" as an
10 active problem and as the reason for the visit.
11

12 60. On March 3, 2011, immediately following her meeting with Dr. Kina, Ms.
13 Barnes returned to Mr. Tolman's office to execute her new will. Michelle
14 Wells had provided Ms. Barnes transportation to the meeting. The new
15 will had been prepared by Mr. Tolman at Ms. Barnes' request. Mr.
16 Tolman engaged Ms. Barnes in a significant colloquy about her new will.
17 After the colloquy, Ms. Barnes executed her new will.

18 61. The March 3, 2011 will appeared to be validly executed and in proper
19 format. It was witnessed appropriately by Mr. Tolman and his assistant,
20 Susan Peden. Michelle Wells did not accompany Ms. Barnes to the
21 conference room where the will was signed by her. Mr. Tolman did not
22 video tape the will signing or consult with Dr. Kina prior to the will
23 signing.
24

1 62. Mr. Tolman was extremely careful in his representation of Ms. Barnes.
2 Contemporaneous to the preparation of the will, he prepared a
3 memorandum for Ms. Barnes' signature which set forth what he believed
4 to be Ms. Barnes' reasons for what can only be described as a radical
5 departure from her prior estate plans. This was the first time Mr. Tolman
6 had taken this extra precautionary step in more than thirty years of
7 practice.

8
9 63. The March 3, 2011 will was a radical departure from Ms. Barnes' prior
10 wills. Unlike each of her previous wills, it contained no provision for the
11 Petitioners. The new will completely disinherited the Petitioners and
12 named Michele Wells and her husband as the sole beneficiaries. The
13 March 3, 2011 will also named Michelle Wells to act as personal
14 representative, and her husband as the alternate.

15 64. Dr. Kina and Mr. Tolman testified that on March 3, 2011, Ms. Barnes
16 appeared to have the necessary capacity to make her will.

17 65. Ms. Barnes saw Dr. Kina next on March 7, 2011. In Dr. Kina's medical
18 records from this visit, he again noted mild cognitive impairment. Dr.
19 Kina testified that he believed Ms. Barnes continued to have sufficient
20 capacity on this day to make her will.

21
22 66. On March 22, 2011, the Petitioners wrote a letter to Ms. Barnes about
23 the rental property. The letter described what the Petitioners had
24 discovered in regard to the current tenants and their concerns about the

1 insurance, the sharing of rental income, and the payment of property
2 taxes. The letter demonstrated an attempt by the Petitioners to reach out
3 to Ms. Barnes and reestablish, at the very least, a workable business
4 relationship with Ms. Barnes. The letter ended as follows: "Please let us
5 know of anything that we may help you with. We love you, and want to
6 help you as much as we can. Love, John, Karen, Marsha & Vicki."

7
8 67. By March 22, 2011, the Petitioners were aware that Ms. Barnes had
9 executed a new durable power of attorney, but it is not clear whether
10 they were aware of Ms. Barnes' new will.

11 68. It is unknown whether Ms. Barnes ever saw the March 22, 2011 letter.
12 The letter expresses the sentiments of the Petitioners toward Ms. Barnes
13 as of late March 2011.

14 69. After Ms. Barnes' fall in March of 2009, she became increasingly difficult
15 to reach either by telephone or in person. Her friends and family would
16 call and the phone would often ring continuously without being
17 answered. Michelle Wells had changed Ms. Barnes' long distance calling
18 plan. This isolated Ms. Barnes from her family and long time close
19 friends.

20
21 70. APS visited Ms. Barnes' residence on numerous occasions. Often there
22 would be no answer at the door and their phone calls would not be
23 returned. The only person close to Ms. Barnes on a consistent basis
24 during this time was Michelle Wells.

1 71. On May 2, 2011, Michelle Wells drove Ms. Barnes to Ms. Barnes' church,
2 First Lutheran Church, in Poulsbo, Washington. At the church, a church
3 member interviewed Ms. Barnes for the purpose of recording the history
4 of the church and of its members. The interview was recorded and a wide
5 range of topics were discussed. During the course of the interview, Ms.
6 Barnes was often confused. The recorded statements made by Ms. Barnes
7 and her notable confusion suggest that she was significantly impaired on
8 May 2, 2011. Had Ms. Barnes executed her last will on this day, the
9 evidence would have been clear, cogent, and convincing that she lacked
10 testamentary capacity.
11

12 72. During the recorded interview, there was substantial involvement from
13 Michelle Wells. Michelle Wells filled in numerous blanks in Ms. Barnes'
14 memory and appeared to speak for Ms. Barnes at certain times. In the
15 presence of Ms. Barnes, Michelle Wells made comments about the
16 Petitioners to the interviewer. Michelle Wells told the interviewer that
17 her nephew, John Rova, had tried to throw Ms. Barnes under the bus a
18 couple times, and that the Petitioners were trying to put Ms. Barnes in a
19 nursing home. Michelle Wells' statements were not true and acted to
20 further poison Ms. Barnes's relationship with the Petitioners.
21

22 73. The comments made by Michelle Wells at the November 17, 2010
23 meeting at Mr. Tolman's office, the comments she made to the tenants of
24 the rental property, and the comments she made to the interviewer on

1 May 2, 2011 made it easier for Ms. Barnes to believe all the horrible
2 things she had said about the Petitioners. Michelle Wells' comments
3 fanned the flame and operated to perpetuate Ms. Barnes' anger toward
4 the Petitioners.

5 74. On May 25, 2011, Ms. Barnes fell on the sidewalk outside of her home.
6 This was the beginning of end in terms of Ms. Barnes' physical well
7 being. Ms. Barnes refused to go the hospital or to see Dr. Kina at his
8 office. From May 25, 2011 to the date of her death, Ms. Barnes was
9 unable to walk.
10

11 75. On May 25, 2011, Dr. Kina made a house-call and examined Ms. Barnes.
12 During this visit, Dr. Kina noted in his records that Ms. Barnes "has had
13 long-standing mild cognitive impairment. This seems to be gradually
14 progressing. Probably early Alzheimer's dementia."

15 76. Ms. Barnes remained at her home until the time of her death. On June
16 22, 2011, Dr. Kina made a certification of terminal illness and believed
17 hospice care was appropriate as Ms. Barnes' end was likely near. Ms.
18 Barnes consented to in-home hospice care.

19 77. On June 25, 2011, Michelle Wells wrote a check in the amount of
20 \$2,641.94 from Ms. Barnes' personal bank account. The check was made
21 payable to Chase Financial and was made to pay Michelle Wells' personal
22 house payment. This represented the first time any expenditure of that
23 kind had been made exclusively for the benefit of Michelle Wells and it
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-20

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 was done at a time when Ms. Barnes was in, or very close to being in, a
2 coma. The payment to Chase Financial posted on June 27, 2011.

3 78. Ms. Barnes died on June 27, 2011.

4 79. The Petitioners' medical expert, Dr. Meharg, provided a retrospective
5 analysis on whether Ms. Barnes had dementia or impaired cognitive
6 ability as of the date of the signing of the March 3, 2011 will.

7 80. Dr. Meharg never met Ms. Barnes or had the opportunity to examine her.
8 Dr. Meharg relied on objective evidence of Ms. Barnes' physical and
9 mental condition, her ability (or lack thereof) to perform certain tasks,
10 and collateral source information regarding third party observations of
11 Ms. Barnes.
12

13 81. However, the evidence is inconclusive as to Ms. Barnes' condition at the
14 time of the March 3, 2011 will signing. Specifically, those individuals who
15 are professionals and who were expressly charged with observing Ms.
16 Barnes' condition did not note substantial impairment. This included
17 attorney Mr. Tolman, witness Susan Peden, and Dr. Kina.

18 82. The testimony is very conflicting. There is substantial evidence that
19 raises questions about Ms Barnes' mental competency, but there is not
20 clear and convincing evidence that as of the will signing on March 3,
21 2011, that Ms. Barnes suffered from dementia and thus lacked
22 testamentary capacity.
23
24

1 83. Dr. Meharg testified that Ms. Barnes was highly vulnerable to influence
2 at the time of the will signing due to her physical and mental
3 impairments and total dependence on Michelle Wells for basic care. Dr.
4 ~~Meharg also testified that Ms. Barnes lacked the ability to form~~
5 ~~independent thoughts sufficient to overcome the influence of Michelle~~
6 ~~Wells.~~

7
8 Based upon the foregoing Findings of Fact, the Court makes the following:

9 **II. CONCLUSIONS OF LAW**

- 10 1. The right to dispose of one's property by will is not only a valuable right,
11 but is one assured by law. *Points v. Nier*, 91 Wn.2d, 28, 157 P.44 (1916); *In*
12 *re Murphy's Estate*, 98 Wash. 548, 555, 168 P. 175, 178 (1917); *In re*
13 *Tiemens' Estate*, 152 Wash. 82, 88, 277 P. 385-387 (1929).
- 14 2. To exercise that right one must, of course, possess testamentary capacity.
15 To have testamentary capacity, a testator must have sufficient mental
16 functioning to understand the transaction in which she is engaged, to
17 recollect the objects of her bounty, and to recall in general the nature and
18 extent of her estate.
- 19 3. Petitioners have the burden of proving testamentary incapacity and they
20 must meet their burden by clear, cogent and convincing evidence.
- 21 4. There is not clear, cogent, and convincing evidence establishing that Ms.
22 Barnes lacked testamentary capacity when she signed the will on March 3,
23 2011. The evidence was inconclusive that Ms. Barnes had dementia at the
24

1 time of the will-signing and thus there is no inference that she was
2 sufficiently cognitively impaired at the time of the will signing to invalidate
3 the will for lack of capacity. The testimony of lay witnesses, was
4 inconsistent and inconclusive, and did not clearly and convincingly
5 establish that Ms. Barnes did not have sufficient mental capacity to
6 understand the will that she signed on March 3, 2011.

7
8 5. The March 3, 2011 will was a radical departure from Ms. Barnes' prior
9 wills which created an inference that it was the product of an unsound
10 mind. This inference, alone, is not sufficient to overcome the clear, cogent,
11 and convincing standard of proof.

12 6. There was significant amount of evidence regarding Ms. Barnes' cognitive
13 impairment, but the Petitioners did not meet their burden in establishing
14 that Ms. Barnes lacked testamentary capacity on March 3, 2011.

15 7. The will that Ms. Barnes executed on March 3, 2011 is not invalid because
16 she lacked testamentary capacity.

17 8. A beneficiary's exercise of undue influence over a testator who otherwise
18 possesses testamentary capacity operates to void a will. The influence
19 must, at the time of the testamentary act, have controlled the volition of the
20 testator, interfered with his or her free will, and prevented an exercise of
21 his or her judgment and choice. *In re Estate of Lint*, 135 Wn.2d 518, 535,
22 957 P.2d 755 (1988).
23
24

1 9. The evidence necessary to establish undue influence must be clear, cogent
2 and convincing. This burden can be met with circumstantial evidence.

3 10. A presumption of undue influence can be raised by showing certain
4 suspicious facts and circumstances. In *Dean v. Jordan*, 194 Wn. 661, 79
5 P.2d 371 (1938), the court identified several facts which may give rise to a
6 presumption of undue influence. A presumption of undue influence can
7 arise where (1) the beneficiary was the decedent's fiduciary; (2) the
8 beneficiary participated in the preparation or procurement of the will; and
9 (3) the beneficiary's share of the estate was unnaturally large. Added to
10 these may be other considerations, such as the age or condition of health
11 and mental vigor of the testator, the nature or degree of relationship
12 between the testator and the beneficiary, the opportunity for exerting
13 undue influence, and the naturalness or unnaturalness of the will. *Id.* at
14 672.
15

16 11. Clear, cogent, and convincing evidence supports a presumption that the
17 will executed by Ms. Barnes on March 3, 2011 was the product of undue
18 influence by Michelle Wells.

19 12. Michelle Wells was Ms. Barnes' fiduciary. She was her attorney in fact and
20 her caregiver at the time the March 3, 2011 will was signed. This was not
21 disputed by Michelle Wells.
22
23
24

1 13. Michelle Wells participated in the procurement of the March 3, 2011 will.

2 Michelle Wells provided Ms. Barnes with transportation to the last four
3 meeting she had with Mr. Tolman and participated in one of the meetings.

4 14. The March 3, 2011 will gave Michelle Wells an unnaturally large share of
5 Ms. Barnes' estate. Michelle Wells and her husband are unrelated to Ms.
6 Barnes and it gave them the entire estate.

7 15. Ms. Barnes was also extremely vulnerable to undue influence due to
8 physical limitations, some degree of cognitive impairment, and the fact that
9 Michelle Wells was Ms. Barnes' primary caregiver.

10 16. All of the "other considerations" listed by the court in *Dean* support a
11 finding that the will executed by Ms. Barnes on March 3, 2011 was the
12 product of undue influence by Michelle Wells.

13 17. There is no dispute that Ms. Barnes was elderly. She died just weeks shy of
14 her 95th birthday. The evidence supports the fact that Ms. Barnes' health
15 began deteriorating both physically and mentally after her fall in March of
16 2009. Ms. Barnes required more and more care involving her activities of
17 daily living, including the handling of her business and finances affairs.

18 18. Ms. Barnes' mental vigor was borderline when she executed her March 3,
19 2011 will.

20 19. Michelle Wells and Dennis Wells were unrelated to Ms. Barnes. Michelle
21 Wells' daily involvement and Ms. Barnes' dependence on her created the
22 opportunity to exert undue influence over Ms. Barnes. Ms. Barnes was
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-25

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 isolated from family and friends and completely dependent on Michelle
2 Wells.

3 20. The unnaturalness of the March 3, 2011 will was a critical factor for this
4 Court. The March 3, 2011 will was a radical departure from all of Ms.
5 Barnes' prior wills. Ms. Barnes' estate consisted of homesteaded property
6 that had been in the Rova family since the early 1900's. The Court cannot
7 conceive of Ms. Barnes disinheriting the Petitioners and making this
8 absolutely radical and unnatural change to her prior wills unless she was
9 subjected to undue influence that the evidence suggests she was vulnerable
10 to.
11

12 21. Michelle Wells did not produce evidence that this Court finds sufficient to
13 "at least to balance the scales and restore the equilibrium of evidence
14 touching the validity of the will." *In re Estate of Burkland*, 8 Wash.App.
15 153, 158-59, 504 P.2d 1143 (1972), review denied, 82 Wash.2d 1002 (1973).
16 Clear, cogent and convincing evidence establishes that the will signed by
17 Ms. Barnes on March 3, 2011 was the product of ongoing undue influence
18 by Michelle Wells.
19

20 22. The evidence that was presented on behalf of Ms. Wells was not sufficient to
21 overcome the presumption of undue influence, based not only on the fiduciary
22 relationship, the active participation in procuring the Will and the unnatural
23 disposition, but on all of the other considerations that the Supreme Court says are
24 appropriate to consider, age, health, incapacity, mental vigor, nature and degree

1 of relationships, opportunity for influence and the unnaturalness of the
2 disposition. The will that Ms. Barnes executed on March 3, 2011 is invalid
3 because it was the product of undue influence by Michelle Wells.

4 23. The letters testamentary of the current personal representatives shall be
5 canceled, and Vicki Rova Mueller shall be appointed in his place.

6 Based on the foregoing, the Court ORDERS, ADJUDGES AND DECREES as follows:

7 **III. ORDER**

- 8 1. The relief requested in the Petition to Contest Will shall be and hereby is
9 GRANTED.
- 10 2. The will signed by Ms. Barnes on March 3, 2011 and admitted to probate
11 on July 1, 2011 shall be and hereby is declared invalid, and the probate of
12 the March 3, 2011 will is hereby revoked.
- 13 3. Clerk's Action Required: Dennis Wells is removed as personal
14 representative and letters testamentary issued to him are hereby
15 CANCELED.
- 16 4. Vicki Rova Mueller is hereby appointed to serve as personal representative
17 of the estate, with non intervention powers, and to serve without bond.
- 18 5. Dennis Wells shall not be discharged as personal representative except
19 upon court approval, after notice, of his account of his actions as personal
20 representative. His account shall identify all probate assets of which he
21 took possession and all probate liabilities, as of the date of death, shall
22 itemize all receipts and disbursements in respect of such assets and
23
24

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-27

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

1 liabilities and in respect of the administration of the estate, and shall state
2 the balance of probate assets and liabilities delivered to their successor.

3 DATED: June 5, 2013

5 CLALLAM COUNTY SUPERIOR COURT

7 By: 

8 The Honorable Brooke Taylor
9 Superior Court Judge

10 6. Dennis Wells' accounting as required above shall be
11 submitted to counsel for petitioners within 30 days
12 from June 5th, 2013. Petitioners shall have 30 days
13 from the date it recerret of Mr. Wells Accounting to
14 object. If the ~~probate~~ petitioners fail to timely
15 object, Dennis wells shall be discharged as
16 personal representative.
17
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DJL
KWC

FINDINGS OF FACT AND
CONCLUSIONS OF LAW-28

SANCHEZ, MITCHELL & EASTMAN
Attorneys at Law
4110 Kitsap Way, Suite 200
Bremerton, Washington 98312-2401
Telephone (360) 479-3000

To: Eva Barnes
From: Jeff Tolman
Re: Changing your Will
Date: 3-1-11

Eva:

You are here to change your Will from the Rova kids (your nieces and nephews) to Michele Wells, your friend, and her husband. I have gone over with you what I perceive are the goods and bads of the change.

1. It is clear Michelle has been a good friend and helper to you over the past few years.
2. You have had a falling out with your nieces and nephews over the past couple of years, believing they (1) tried to get a (unwarranted) Guardianship over you, (2) tried to move you off your property into assisted living (which you did not want), (3) tried to get rid of tenants against your wishes on the property you co-own with them, and (4) you feel they have treated you badly (though I know from our meeting with them they would disagree).
3. In 2009 or 2010 you requested and I drafted documents to change your Powers of Attorney from your nieces to Michelle.
4. I told you there is a possibility, as always exists when a family member puts non-family members who they have only known for a short period of time in their Will, that a Will contest is possible. Eva, you and I have spoken often about this situation over the past year or so. I believe you know the members of your family, the nature and extent of your property and that it is your wish to put Michelle and her husband in your Will as your heirs. I also believe you understand that your biological family will likely feel Michelle somehow influenced or coerced you into placing her in your Will. If there is a Will contest I can not be involved, as I would likely be a witness. And I do, after my discussions with you, alone, that you are aware of these things and the change in your Will is your free and voluntary choice.

I have read this and understand the information and advice Jeff Tolman has given me. It is my free and voluntary wish to change my Will to make Michelle Wells and her husband my sole heirs and to eliminate my nieces and nephews from any inheritance from me.

Eva Johanna Barnes

Eva Barnes

Jeff Tolman
Jeff Tolman

MASTERS LAW GROUP

January 27, 2014 - 3:03 PM

Transmittal Letter

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