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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 70248-3-I

WASHINGTON STATE COURT OF APPEALS, DIVISION I

Estate of HOMER R. HOUSE (Deceased),
Respondent.

LINDA MCMURTRAY and LARRY PIZZALATO,
Petitioners,

v.

JANET CORNELL, ROBERT HOUSE, SUSAN TERHAAR and
JUDITH THEES,
Respondents.

ANSWER TO PETITION FOR REVIEW
OF JANET CORNELL,
Personal Representative of the Estate of Homer R. House

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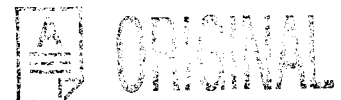


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I. IDENTITY OF ANSWERING PARTY

Janet Cornell, Personal Representative of the Estate of Homer R. House, is filing this Answer to the *Petition for Review*:

II. COURT OF APPEALS DECISION

The Court of Appeals, Division I, issued its opinion on December 22, 2014 and denied Petitioners' motion for reconsideration on January 30, 2015.¹ The Court of Appeals affirmed the trial court's decision that a 2005 Trust Termination Agreement was a global release of any and all claims relating to the estate or trusts of Homer R. House and that Agreement barred Petitioners' claim to oil and gas royalty interests that were unknown until 2011.

The Court of Appeals also affirmed the trial court's award of fees to Ms. Cornell and to the four children of Homer R. House and awarded fees on appeal. The Court of Appeals' Commissioner then awarded fees.² Ms. Cornell filed a Motion for Reconsideration of the Commissioner's Corrected Ruling Awarding Fees and Costs. Ms. Cornell's motion sought to correct a mathematical error in the commissioner's calculation of the fee award and to address the grounds for reducing the fees, as the stated

¹ Appendix A, B to *Petition for Review*.

² The Commissioner awarded all the requested fees on January 21, 2015. Her ruling is attached as Appendix A to this response. The Commissioner corrected her award on January 23, 2015, as she had not reviewed all the pleadings; that corrected award is attached as Appendix C to the *Petition for Review*.

basis was decided in favor of Ms. Cornell by the trial court, no error was assigned to the trial court's finding on this issue and that basis to challenge fees was not raised by Petitioners on appeal. Petitioners also filed a Motion for Reconsideration on fees. Both Motions for Reconsideration are pending with the Court of Appeals.

III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Where the trial and appellate court correctly applied uncontroverted legal standards to determine the scope of the release in a settlement agreement, does this unpublished opinion³ present any issues warranting review?

2. Where the trial court exercised its discretion, under the equitable authority granted by RCW 11.96A.020 and RCW 11.96A.040(3) to determine the distribution of an asset in probate, and the Court of Appeals found that discretion appropriately exercised, does this unpublished opinion present any issues warranting review?

3. Where the trial court appropriately exercised its equitable authority under RCW 11.96A.150 to award fees, and the Court of Appeals affirmed that decision, does this unpublished opinion present any issues warranting review?

³ Petitioners did not file a motion to publish this decision.

4. Where the Court of Appeals appropriately exercised its equitable authority under RCW 11.96A.150 to award fees, does this unpublished opinion present any issues warranting review?

IV. STATEMENT OF THE CASE

Petitioners have fundamentally misstated the trial court and Court of Appeal's decisions in presenting this *Petition for Review*. The underlying issue was how the court should distribute an interest in oil and gas royalties that were unknown until 2011, years after Homer R. House died and years after his surviving spouse, her two children and Homer R. House's four children entered into a settlement agreement waiving any further interest in his estate and two testamentary trusts. There were three primary issues resolved in the courts' decisions: (1) did a settlement agreement bar Petitioners' claims, (2) was it equitable to award the asset in dispute to the decedent's children and (3) was it equitable to award legal fees to the Personal Representative and to decedent's children. Each of these issues were resolved based on well-settled Washington law and this case does not present any issues warranting review under RAP 13.4(b).

Homer R. House passed away in 2004. His wife, Vera House, was named as personal representative under his will but she never opened a probate for his estate. CP 605. During their marriage, a second marriage

for each and one that took place after their children were adults, Homer and Vera House had created a trust that provided for the disposition of assets upon the death of either, with the survivor of the two serving as trustee and allocating assets between two trusts, a Survivor's Trust and the Decedent's Trust. CP 606 - 608.⁴

In October 2005, Vera House, her two children, and all four of Homer R. House's children executed a Trust Termination Agreement. CP 182 - 189. That Agreement terminated the "Decedent's Trust", waived any further interest in either of the trusts and waived any further interest of any of the parties in Homer R. House's estate. Vera House died in 2007.

In 2011, Homer R. House's children and Vera House's children learned that Homer V. House, Homer R. House's father, had, in 1924, sold property in Colorado and retained a "one-sixteenth part of all oil or gas, or both, produced and saved from the premises, except such amount as shall be necessary for . . . drilling operations on said land." CP 69.

In January 2012, Petitioners filed to open a probate in Washington, to have themselves appointed as personal representatives, and to have the royalty interests awarded to themselves. CP 1 - 7. The probate was

⁴ There was no document fully identifying the allocation of assets between the two trusts. In November 2004 Vera House distributed two houses to a Survivor's Trust, and immediately made a gift of those properties to her children. In February 2005, she then revoked that trust in its entirety and distributed unspecified assets to herself. CP 606 - 607.

opened, the court appointed Ms. Cornell, who was named under her father's will to serve, to serve as Personal Representative, and the distribution of the asset was set for a hearing. CP 59 - 61..⁵

In February 2013, Petitioners' motion for summary judgment was denied. CP 518 - 522. In the trial that followed, the court rejected Petitioners' claims, held the Trust Termination Agreement barred those claims and awarded the oil and gas royalty interests to Homer V. House's four children. The trial court also awarded fees to Ms. Cornell, as personal representative, and to Homer V. House's four children for the litigation.

A. The 2005 Trust Termination Agreement and the 2011 Discovery of the Unknown Oil and Gas Royalty Interest

In 2005, after Homer R. House's death, a settlement agreement between his surviving spouse, her children and Homer R. House's four children terminated his "Decedent's Trust", waived any further interest in any trusts and waived any further interest in Homer R. House's estate. Vera House, who was not a beneficiary of the Decedent's Trust, received \$100,000 under the that 2005 Trust Termination Agreement. Her two children and Homer R. House's four children received equal shares of a brokerage account that was the only identified asset of the Decedent's

⁵ An ancillary probate for Homer H. House is pending in Colorado. CP 63. A probate for the estate of his father, Homer V. House, is also pending in Colorado. CP 81 - 85.

Trust; without the settlement agreement they would not have received assets until after Vera House's death. CP 182 - 189.

In 2011, Homer R. House's children and Vera House's children learned that Homer V. House, Homer R. House's father, had, in 1924, sold property in Colorado and retained a "one-sixteenth part of all oil or gas, or both, produced and saved from the premises, except such amount as shall be necessary for . . . drilling operations on said land." CP 69. It was undisputed that Homer R. House had no knowledge of this prior to his death, and no party in this dispute had any knowledge of this until August 2011 when one of Homer R. House's grandchildren was searching for information about his family on Ancestry.com and received a response from someone looking for Homer R. House's heirs. CP 71 - 75.

Despite the 2005 Trust Termination Agreement, Petitioners claimed they were entitled as a matter of law and equity to the royalties. The trial court rejected both their legal and equitable claims. Affirming the trial court, the Court of Appeals carefully articulated the numerous terms in that 2005 Trust Termination Agreement which barred Petitioners from making this claim. That Agreement clearly states that Vera House ("The Trustee (as Trustee, Trustor, and individually as Vera J. House"), her two children and Homer R. House's four children, each agreed to

release and discharge each other from *any and all claims*, demands, actions or cause[s] of action, *known or unknown*, that any of them *may have or hereafter may acquire, arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or their respective rights on interests thereunder* . . . [T]he *sole* remaining right of the parties as regards each other shall be the right to enforce the performance of this Agreement.

Court of Appeals opinion; p. 6 (emphasis in original); CP 184. The Court of Appeals also noted Vera House's approval of the Trust Termination Agreement effectively eliminated any avenue by which Petitioners might find a back way via their mother's alleged interest to claim the previously unknown 1924 reservation of royalty rights.

B. Distribution of the Oil and Gas Royalty Interest by The Trial Court Based on Its Equitable Authority under RCW 11.96A.020 and RCW 11.96A.040(3)

In their *Petition for Review* Petitioners fail to discuss the affirmation by the Court of Appeals of the equitable authority granted to courts under RCW 11.96A.020 and RCW 11.96A.040(3), the trial court's exercise of that authority, and the affirmation of the trial court's decision. This independent basis for the courts' decisions here is another reason this case does not warrant review under any provision of RAP 13.4(b).

C. The Trial and Appellate Court's Award of Attorneys' Fees to the Personal Representative and to the Individual Beneficiaries Based on the Equitable Authority under RCW 11.96A.150

The trial court awarded fees to Janet Cornell, as Personal Representative of the Estate, and to Ms. Cornell and her three siblings, the beneficiaries to whom the asset will be distributed. The Court of Appeals affirmed the trial court's exercise of discretion in making that fee award, and also awarded fees on appeal to Ms. Cornell, as Personal Representative, and to Homer R. House's four children. The stated basis for the fee awards are consistent with the equitable authority articulated in many cases by this court and the courts of appeal. There is no conflict between the case law and this decision that warrants review under RAP 13.4(b)(4).

Petitioners' now transmogrify their challenge to the fee award into an alleged breach of fiduciary duty by a personal representative for presenting the dispute to the court and for incurring legal fees in doing so. A review of the briefing in the Court of Appeals shows that these arguments were never presented to that court, and that court's opinion understandably does not address them. The assignments of error and statement of Issues on Appeal in Petitioners' Court of Appeals briefing similarly does not present these claims. RAP 13.4(b) does not provide for review to permit parties to argue new theories on appeal.

V. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

A. Petitioners' Claim Is Barred by the 2005 Trust Termination Agreement

1. The Trust Termination Agreement and Court of Appeals' Application of That Agreement Does Not Present a Conflict with Other Decisions

The Court of Appeals carefully articulated the numerous terms in that 2005 Trust Termination Agreement which bar Petitioners from making this claim. That Agreement clearly states that Vera House ("The Trustee (as Trustee, Trustor, and individually as Vera J. House"), and the parties here, Vera House's two children and Homer R. House's four children, each agreed to

release and discharge each other from **any and all claims**, demands, actions or cause[s] of action, **known or unknown**, that any of them **may have or hereafter may acquire**, arising out of or in any way connected with the Family Trust, the Decedent's Trust, the Estate of Homer R. House, or their respective rights on interests thereunder [T]he sole remaining right of the parties as regards each other shall be the right to enforce the performance of this Agreement.

Court of Appeals opinion, p. 6 (emphasis in original); CP 184. The Court examined each phrase of this agreement, finding that individually and collectively, the 2005 settlement terms - from "any and all claims" to "known or unknown" claims to the description of claims "in any way

connected with” the named trusts or Homer R. House’s estate, clearly barred Petitioners’ claim made seven years after approval of the Trust Termination Agreement. The Court of Appeals also noted this Trust Termination Agreement was executed not only by Petitioners, but also by their mother, Vera House, eliminating any avenue by which they might find their way back to a claim by their mother, and then through her to them, to the previously unknown 1924 reservation of royalty rights.

In 2007, Petitioners had adopted that same construction of the 2005 Settlement Agreement in litigation over a brokerage account derived from assets owned by Homer R. House and Vera House at the time of Homer R. House’s death. There they contended that the Trust Termination Agreement “unequivocally released and barred any claim asserted by Homer’s Children here . . . “ and that

The document goes on to hammer in this point: “Upon execution of this Agreement, the sole remaining right of the parties as regards each other shall be the right to enforce the performance of this Agreement. It is nonsensical to argue that “Family Trust” does not include the Survivor’s Trust - the Trust Agreement created a Family Trust comprised of an Initial Trust, a Decedent’s Trust, and a Survivor’s Trust.”

CP 215 - 216.

The Court of Appeals decision is consistent with well settled law upholding and applying settlement agreements. *E.g. Toll Bridge Auth. V. Aetna Ins. Co.*, 54 Wn. App. 400, 404, 773 P.2d 906 (1989); *see Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 187, 840 P.2d 851 (1992); *Bennett v. Shinoda Floral, Inc.*, 108 Wn.2d 386, 395, 739 P.2d 648 (1987). Petitioners offer no argument why this comprehensive settlement agreement was incorrectly interpreted and applied by the Court of Appeals. This petition does not meet any of the criteria of RAP 13.4(b) to support review.

2. The Determination by a Washington Court of the Disposition of This Probate or Trust Asset Does Not Present a Conflict with Other Decisions

Petitioners have never contested the authority of the Washington court with regard to the primary administration of Homer R. House's estate in Washington. To the contrary, they invoked the jurisdiction of the court in Washington, claiming that the reserved royalty rights passed to them as the heirs under their mother's will. CP 1 - 7.⁶ They are now bound by the Washington court's decision rejecting their claim to this asset. *In re Marriage of Kowalewski*, 163 Wn.2d 542, 553, 182 P.3d 959

⁶ Their mother, Vera House, died in 2007, her estate was probated in King County, and probate was closed in 2008. CP 6. Nothing in that probate awarded this royalty interest to Petitioners.

(2008). As this court held in that case, rejecting a challenge similar to Petitioners' challenge here, the

. . . real complaint appears to be with the substance of the trial court's decision, not its jurisdiction. The pleadings show he brought the Polish real property to the court's attention, proposed a distribution, gave testimony on the value of the properties, and submitted new evidence in a motion for reconsideration. Thus, he asked the court to divide the parties' interest in the property and challenged its jurisdiction to do so only because he did not like the result.

Petitioners effort to suggest a conflict between the holding in *OneWest Bank, FSB v. Erickson*, 184 Wn. App. 462, 337 P3d 1101 (2014), *petition for review pending*, and the Court of Appeals' decision here is unpersuasive. The Court of Appeals denied Petitioners' motion for reconsideration based upon this same argument, and this Court should similarly deny review. As Division III noted about its own decision in *OneWest Bank, FSB v. Erickson*, that decision involved a Washington resident who had passed away, a residence encumbered by a reverse mortgage due upon his death and a dispute as to whether another state court had appropriately imposed a conservatorship over decedent. In its own words, the opinion addressed "the unique circumstances of an Idaho court authorizing an Idaho conservator to encumber a Washington

residence. . . . [T]he Idaho court lacked jurisdiction and . . . the order authorizing the encumbrance is invalid.” 184 Wn. App. at 464.⁷

Petitioners sweeping statement that Washington courts cannot determine the interests of the parties here in this probate proceeding involving a Washington decedent is simply inaccurate. They recognized that when they initiated this lawsuit and asked the trial court to award the royalty interests to them. On appeal, Petitioners did not assign error to the trial court findings that it had jurisdiction here or cite the authority they now present in this *Petition for Review*.

To the extent Petitioners rely upon *Brown v. Brown*, 46 Wn. 2d 370, 281 P.2d 850 (1955), a case they did not include in their Court of Appeals briefing, but which is cited by the court in *OneWest Bank, FSB v. Erickson*, this court, in *In re Marriage of Kowaleski, id.*, articulated the jurisdictional basis for a Washington court to determine the personal interests in the royalty rights here and explicitly discussed the holding in *Brown v. Brown*. As this Court explained the holding in *Brown*, it is clear that that case does not provide a basis for relief here.

The trial and appellate court’s decisions have appropriately answered the question posed by Ms. Cornell, as the Personal

⁷ The pending *Petition for Review* in that case focuses primarily on a “full faith and credit” argument focused on an Idaho court order, the import of which the parties dispute.

Representative⁸, and determined the interests in the royalty rights. The Colorado court will next enforce the decree in the open ancillary probate. There is no conflict between the jurisdictional basis for the Court of Appeal's decision here and prior decisions of this Court on the authority of Washington courts to act under these circumstances.

B. The Court of Appeals Correctly Affirmed the Trial Court's Exercise of Its Equitable Authority under TEDRA to Distribute the Estate's Asset

Petitioners' *Petition for Review* fails to discuss a key issue decided against them by the Court of Appeals. The determination as to who should receive this probate asset was based upon the equitable authority granted in all probate and trust matters. RCW 11.96A.020 provides,

(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:

(a) All matters concerning the estates . . . [of] deceased persons; and

(b) All trusts and trust matters.

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to

⁸ RCW 11.24.250 provides that title to property passes to "heirs or devisees". Homer R. House left a will, and the statute further provides ". . . no person shall be deemed a devisee until the will has been probated. The title and right to possession of such lands . . . shall be good and valid against all persons claiming adversely to the . . . devisees . . . excepting only the personal representative when appointed. . . ." "Ms. Cornell is the appointed personal representative under her father's will, and is charged with distributing the asset in his estate.

the administration and settlement of the matters listed in subsection (1) . . . 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.040(3) provides,

The superior courts may: . . . administer and settle the affairs and the estates of . . . deceased individuals, . . . and cause to be issued . . . any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under the section.

The Court of Appeals found Petitioners' authority to the contrary on the scope of this authority to be distinguishable and unpersuasive, or their arguments presented with no authority to support their position. *Slip Opinion, pp. 12 - 15*. The statutory equitable authority noted above fully supports the decision here and again demonstrates why this case does not warrant further review.

C. The Fee Award Was Appropriate and Based on Equitable Factors

1. RCW 11.96A.150 Provides for an Equitable Award of Fees

RCW 11.96A.150 unquestionably grants the courts the authority to award fees to any party from any party to the proceedings. "In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate. . . ." A trial court's award of

fees will be upheld on appeal absent a manifest abuse of discretion. The Court of Appeals both affirmed the trial court's award and awarded fees on appeal. There is nothing in those decisions that warrants review under RAP 13.4.

a. Fees Awarded by the Trial Court

From the first pleadings in this case, Petitioners aggressively pursued the matter, starting with their unsuccessful efforts to have the court appoint them as personal representatives rather than Ms. Cornell, named by her father to serve. CP 20 - 29. Petitioners sought the distribution of the asset entirely to themselves, to the exclusion of Homer R. House's children, and sought fees, requiring Ms. Cornell to respond and, as the named Personal Representative, to file a petition with the Court. CP 8 - 19. Petitioners sought summary judgment, unsuccessfully. They filed more than one hundred trial exhibits and advised the court trial would take days.⁹ At that point, the trial court reminded counsel of the fee provisions under TEDRA which permitted the court to assess fees where appropriate, and to consider the value of the asset in dispute.¹⁰ Petitioners

⁹ In response to the Personal Representative's submitting few exhibits, testimony by declaration, and proposing a single live witness, Appellant's trial counsel advised the court trial was "going to take quite a bit more time.", three days alone for witness testimony. RP March 25, 2013, 29 - 30; 32 - 33.

¹⁰ "Now, the reason I bring up that issue of - the length of trial and the need for witnesses is . . . we have a very modest . . . distribution on the table right now, and there may be more value in potential future distributions, but it's very modest. And that's a . . . lot of

later were required by the trial court to provide their own fee information which disclosed that their counsel had a 25% contingent fee agreement, with a maximum payment of \$50,000; he did not have any information for the court on the hours he had expended on the matter. CP 851 - 853.

In awarding fees after trial, the trial court noted that Petitioners' claim not to be bound by the Trust Termination Agreement had been rejected, the House Children's equitable claim to the asset that came down through their grandfather and father prevailed, the efforts required to litigate this matter were driven by the vigorous pursuit of the claims by Petitioners, and without an allocation of fees, the parties who would share in the Estate would bear all the litigation costs and Petitioners would bear none. CP 854 - 857.¹¹ Those are all appropriate factors that support the trial court's award of fees. *E.g.*, *Estate of Jones*, 152 Wn.2d 1, 20-21, 93 P.2d 147 (2004); *In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 345, 183 P.3d 317 (2008); *Villegas v. McBride*, 112 Wn. App. 689, 694, 50 P.3d 678 (2002) (fee award against petitioner as litigation deprived beneficiaries of part of their inheritance and estate was not a wealthy one.)

That vigorous pursuit of the claims at every stage of this matter was exemplified again in the fee request pleadings. The initial request for

attorney time. And TEDRA does allow the Court to assess the attorney's fees where it is appropriate to do so. . . . RP March 25, 2013 at 33 - 34.

¹¹ Despite the contingent fee agreement and the loss at trial, Petitioners paid their attorney \$12,500. CP 850 - 853.

fees generated a fourteen page opposition and eighty-three pages in declarations and exhibits; the proposed Findings of Fact and Conclusions of Law on the fee issue generated another five page objection. The trial court's fee award, like nearly every other ruling in the trial court and in the Court of Appeals, then generated a motion for reconsideration by Petitioners, requiring the Personal Representative to respond. CP 885 - 896, 898 - 900, 901 - 904.

The Court of Appeals upheld the trial court's exercise of discretion to award fees, finding the factors appropriate and the facts supportive of the fee award.

b. Fees Awarded by the Court of Appeals

In its own award of fees, the Court of Appeals relied upon those same factors to again award fees. The Trust Termination Agreement plainly barred the claim made here, making fees "manifestly appropriate" for the Estate being compelled to respond at trial and again on appeal. *In re Estate of Fitzgerald*, 172 Wn.App. 437, 453, 295 P.3d 720 (2012) (fees appropriately granted to estate at trial and on appeal to estate when claim brought clearly barred). Again, Petitioners' vigorous pursuit of this matter has continued on appeal, with a motion for reconsideration of the court's decision and a motion to reconsider the fees awarded. Petitioners argue against the fees incurred and awarded, now downplaying the value of the

royalty interests. Yet when they agreed to a contingent fee representation for trial, that fee agreement with trial counsel estimated the royalty interests could be worth as much as \$200,000. CP 851.¹² They object to the time spent by counsel on this appeal, yet never disclosed the time and fees they incurred on appeal.

The fee awards here, both after trial and on appeal, were consistent with well-settled case law.¹³ The principals governing the award of fees are not in dispute, nor are the basis for the award in conflict with other appellate decisions. Petitioners chose to pursue this litigation in a manner that compelled the Personal Representative, and the individual beneficiaries, to incur substantial legal expenses, and both the trial court and appellate court have appropriately allocated fees now that the matter has concluded. There are no issues here supporting review under RAP

13.4

2. There Is No Basis to Review Issues Never Presented to the Trial Court or the Court of Appeals

Petitioners have alleged in their *Petition for Review* that the this Court should accept review on claims of breach of fiduciary duty, alleging

¹² As of September 2011, Homer R. House's share of royalty payments was approximately \$66,000. CP 81. Wells in this area had a life expectancy of 30 years, plus or minus. CP 93 - 94.

¹³ While Petitioners contend the time spent on the appellate proceedings was excessive, they have never provided information about the time their own counsel has spent on this appeal.

various claims regarding the Personal Representative's fulfilling her duties by presenting the issues in this dispute to the trial court, being represented by counsel, incurring legal fees and seeking an allocation of those fees. *Petition for Review at 18.* There was no claim of breach of fiduciary duty in the trial court and Petitioners' brief in the Court of Appeals contains no assignment of error on this issue. There is understandably nothing in the Court of Appeals decision on these issues. Just as issues not raised in the trial court cannot be raised for the first time on appeal, issues never raised in the Court of Appeals cannot be presented for the first time in a *Petition for Review*. There is no basis for the vitriolic attacks on the Personal Representative, and no basis under RAP 13.4 to accept review based upon Petitioners' mischaracterization of the issues.

VI. CONCLUSION

For the reasons set forth above, Ms. Cornell requests that the Court not grant this petition for review. The well-reasoned decision of the Court of Appeals should control the disposition of this matter.

RESPECTFULLY SUBMITTED this 2 day of April, 2015.

Deborah J. Phillips

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CERTIFICATE OF SERVICE

I certify that on April 2, 2015, I caused the foregoing document to be served on the following parties via the method described below:

Via U.S. Mail

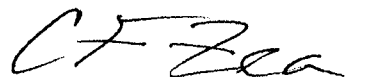
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: April 2, 2015.



Christine F. Zea, Legal Secretary

APPENDIX A

APPENDIX A

RICHARD D. JOHNSON,
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January 21, 2015

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CASE #: 70248-3-I
In re the Estate of: Homer R. House

Counsel:

Enclosed is the ruling of the Commissioner entered today in the above case.

In the event counsel wishes to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served . . . and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

enclosure

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

In re the Estate of)	
)	No. 70248-3-1
HOMER R. HOUSE,)	
)	COMMISSIONER'S RULING
Deceased.)	AWARDING ATTORNEY
)	FEEES AND COSTS
LINDA MCMURTRAY and LARRY)	
PIZZALATO,)	
)	
Appellants,)	
)	
v.)	
)	
JANET CORNELL; ROBERT HOUSE;)	
SUSAN TERHAAR; and JUDITH)	
THEES,)	
)	
Respondents.)	
)	

This is a TEDRA case. This Court issued an unpublished opinion affirming the trial court's decisions. In the opinion, this Court awarded attorney fees on appeal under RCW 11.96A.150 to the Estate of Homer R. House ("Estate") and respondents Janet Cornell, Robert House, Susan Terhaar, and Judith Thees (collectively "Homer Ray's Children") subject to compliance with RAP 18.1. This Court denied any fees relating to the Estate's motion to strike.

The Estate filed a declaration of counsel for attorney fees and a cost bill. The Estate requests attorney fees of \$50,736.50, expenses of \$2,676.49, and costs under RAP 14.3 of \$139.96, in the total amount of \$53,552.95. In her declaration, the Estate's counsel states that she did not include any time or fees

No. 70248-3-1

for the work done regarding the motion to strike.

Respondents Homer Ray's Children also filed a declaration of counsel for attorney fees on appeal, requesting attorney fees of \$19,390 and expenses of \$32.75 in the total amount of \$19,422.75.

Appellants Linda McMurtry and Larry Pizzalato (collectively "Vera's Children") did not file an objection to the Estate's cost bill under RAP 14.5 or to the Estate's and Homer Ray's Children's declarations of fees under RAP 18.1(e).

Although the costs allowed under RAP 14.3 are limited, RCW 11.96A.150 allows "costs, including reasonable attorneys' fees[.]"¹ I have reviewed the cost bill and declarations of counsel for fees. Each item of the cost bill is allowed under RAP 14.3. Both declarations of counsel comply with RAP 18.1(d), and I found the requested fees and expenses reasonable.

Therefore, it is

ORDERED that attorney fees of \$50,736.50, expenses of \$2,676.49, and costs of \$139.96, in the total amount of \$53,552.95 are awarded to the Estate. Appellants Vera's Children shall pay the total amount. It is further

ORDERED that attorney fees of \$19,390 and expenses of \$32.75 in the total amount of \$19,422.75 are awarded to respondents Homer Ray's Children. Appellants Vera's Children shall pay the total amount.

Done this 21st day of January, 2015.



Court Commissioner

¹ See RCW 11.96A.150(1).

COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2015 JAN 21 PM 12:25

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To: Zea, Christine (Perkins Coie)
Cc: Phillips, Deborah (Perkins Coie)
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Rec'd 4/2/15

From: Zea, Christine (Perkins Coie) [mailto:CZea@perkinscoie.com]
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Subject: McMurtray, et al. v. Cornell, et al., Court of Appeals Case No. 70248-3-I

Attached for filing in the above matter is the Answer to Petition for Review of Janet Cornell, Personal Representative of the Estate of Homer R. House.

Thank you,

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