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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

NO. 69214-3-I

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CALVIN EVANS, JR.,

Appellant,

vs.

SHARON EADEN, VICKI SANSING, AND KENNETH EVANS,

Respondents.

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BRIEF OF RESPONDENTS

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## I. INTRODUCTION

Cal, Jr., presents a number of factual and legal arguments on this appeal. He asserts first that a petitioner in a case claiming financial abuse must establish a specific intent by the abuser to harm the victim. There is no such language in the financial abuse statutes, and no other authority for his position. The imposition of a requirement of intent to harm the vulnerable adult would not in any event advance the purpose behind the financial abuse statutes, and Cal, Jr.'s argument should be rejected.

Cal, Jr., then contends that the trial court was required to correlate the period of Mr. Evans' statutory vulnerability with the acts of financial abuse by year. The findings of fact here amply support a period of statutory vulnerability in Mr. Evans by and after 2006, when much of the financial abuse occurred. Consequently reference to prior years is not necessary to support the judgment. Those findings in any event do support the existence of such vulnerability as early as 2004, and Cal, Jr.'s argument is without merit.

Cal, Jr., also asserts that he had a right, as consideration for a contract under which he would care for Mr. Evans in exchange for the devise of the ranch to Cal, Jr., to expend Mr. Evans' funds to improve the ranch. There is, however, no evidence of a promise by Mr. Evans to provide such funding on

which Cal, Jr., could claim to have relied in moving to the ranch. What the findings actually establish is that the agreement was simply that Cal, Jr., move to the ranch to care for his father, and that Mr. Evans intended to leave the ranch to Cal, Jr. They also establish that Mr. Evans was a vulnerable adult by the time that he began ostensibly consenting to such expenditures.

Cal, Jr., next argues that it was incumbent upon the trial court to raise the issue of ratification under RCW 11.84.170, and to make a determination whether or not Mr. Evans ratified Cal, Jr.'s devise despite Cal, Jr.'s financial exploitation of his father. *See* Brief of App. at 44. Cal, Jr., neglected to raise this issue at the time of trial, and it is therefore waived. Moreover, the statutes defining financial exploitation and providing the elements to be proved by a petitioner in establishing "abuser" status do not include an element of the lack of ratification. Clearly it is not the province of the court to produce evidence of any ratification that would have occurred, if at all, after the financial exploitation. Therefore it can only have been the burden of Cal, Jr., to come forward with evidence of, and to assert, ratification. He failed to do so, and cannot prevail in such a position now.

Cal, Jr., also appeals from the denial of his motion for reconsideration. He failed, however, to preserve the legal issues presented by raising them first before the trial court. Further, he did not demonstrate

that the additional factual testimony contained in declarations submitted in support of his motion could not have been timely procured and offered at trial. The motion for reconsideration was properly denied.

Lastly, both parties request attorneys' fees on appeal pursuant to RCW 11.96A.150(1). Cal, Jr., requests such an award either from the opposing party, or from the Estate, and the Respondents Sansing request such an award from Cal, Jr.

## II. ARGUMENT

### A. Cal, Jr., was an "Abuser" Under RCW 11.84.160 Whether or Not He Specifically Intended to Harm His Father.

Cal, Jr., argues that he was not an abuser for purposes of RCW 11.84, *et seq.*, because he did not intend to inflict financial injury on his father. *See* Brief of App. at 32-33. He did not present this issue to the trial court, however, *see, e.g.*, Memorandum of Authorities of Cal, Jr., CP 625; *see also* closing argument of Cal, Jr., VRP 1903-29, and it was therefore waived. Maziar v. Washington State Dep't of Corr., 180 Wn. App. 209, 227 at n. 11, 327 P.3d 1251, *rev. granted*, 337 P.3d 326 (Nov. 2014) (citing Fuqua v. Fuqua, 88 Wn.2d 100, 105, 558 P.2d 801 (1977)). Even if the issue has been preserved, the statute does not support Cal, Jr.'s position.

In determining that a person is an "abuser" under Chapter 11.84

RCW, the court must find that "[t]he conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult." RCW 11.84.160(1)(b) (2009). The word "willful" in the statute is repeated before each of the terms "action" and "inaction". *Id.* It is not repeated, in contrast, prior to the phrase "causing injury to the . . . vulnerable adult". Nor is there any language in the statute requiring a specific intent to harm, such as "willful action or willful inaction *intended* to cause harm."

Cal, Jr.'s citation to Brown v. State DSHS, 145 Wn. App. 177, 185 P.3d 1210 (2008), *see* Brief of App. at 32, is unhelpful here. The court in Brown found that the restraint by a caretaker of an agitated and physically threatening vulnerable adult resident of a care facility, *id.* at 180-81, was protective of other residents and staff, *id.* at 183, and "not injurious or ill-intended. . . ." *Id.* Consequently those actions were warranted and hence could not have been abusive. *Id.* at 183.

The financial exploitation statutes do not purport to protect the vulnerable adult, but rather address the consequences to the abuser of such exploitation: the policy of those statutes is that "[n]o person shall be allowed to profit by his or her own wrong, wherever committed." RCW 11.84.900 (amended 2010). One such wrong under the statutes is financial exploitation

through the use of a vulnerable adult's property. The term "financial exploitation", pursuant to 11.84.010(1), *see* App. 4,

means the illegal or improper use, control over, or withholding of the property, income, resources or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

RCW 74.34.020(6) (amended 2013). Financial exploitation includes

using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income resources or funds.

RCW 74.34.020(6)(c) (amended 2013). The latter statute thus does not even require actual knowledge by the abuser that the victim lacked the capacity to consent, much less a specific intent to harm. The question whether the accused intended to harm the vulnerable adult is consequently irrelevant to a determination of financial exploitation under RCW 74.34.020(6). In Gradinaru v. State, DSHS, 181 Wn. App. 18, 325 P.3d 209 (2014), for example, the court found financial exploitation where a care giver used morphine belonging to a vulnerable adult in the care giver's suicide attempt. Gradinaru at 20. There was no inquiry whether the act was intended to harm the victim.

The courts "will not read into a statute matters which are not

there. . . ." Dominick v Christensen, 87 Wn.2d 25, 27, 548 P.2d 541 (1976). The plain language of RCW 11.84.160(1)(b), requires intentional action or inaction constituting the "illegal or improper use, control over, or withholding of the property, income, resources or trust funds of the vulnerable adult . . .", RCW 74.34.020(6). It does not require a specific intent to cause harm.

B. The Evidence of Mr. Evans' Vulnerability and of His Financial Exploitation at the Hands of Cal, Jr., During and After 2006, Is Sufficient to Sustain the Judgment in this Case.

Cal, Jr., urges that there was insufficient evidence of his father's vulnerability under RCW 74.34.020(17), *see* App. 12, at the time of Mr. Evans' financial exploitation in 2004-05, to support the contention that he was an "abuser" for purposes of the chapter. Brief of App. at 36. Even if Cal, Jr., were correct in this assertion as to the years 2004-05, it does not entitle him to relief. The findings of fact of Cal Evans Sr.'s vulnerability as it existed from 2006 to 2011, together with the uncontested findings of financial exploitation during the same period, are more than adequate to sustain the judgment here.

By the beginning of 2006, Cal Evans, Sr. (or "Mr. Evans"), was undeniably a "vulnerable" adult within the meaning of 74.34.020(17)) and RCW 11.84.010(6). His first stroke had occurred back in 2000. FF 7, CP 186. Afterward, he had to ask for help from his children. FF Nos. 12,

CP 187 and 32, CP 189. By 2004 and 2005, Mr. Evans was incapable of staying current on his bills, and had to have someone else write the checks with which to pay them. FF 68, CP 193. Mr. Evans then had a second stroke in March of 2005. FF 35, CP 190. By the end of that year, he was the subject of a guardianship petition, *see* FF 82, CP 194, filed by his daughter, Sharon Eaden. FF 3, CP 186. Cal, Jr., had himself by that year noticed forgetfulness and memory loss in his father, FF 65, CP 193, and he found Mr. Evans unable to operate machinery. FF 69, CP 194. It is true that Cal, Jr., assigned error to Finding of Fact No. 69, *see* Brief of App. at 3, but he presented no argument in his brief as to that assignment. *See generally* Brief of Appellant. Consequently any alleged error is abandoned. Dickson v. U.S. Fidelity & Guaranty Co., 77 Wn.2d 785, 787, 466 P.2d 515 (1970).

By January of 2006, Mr. Evans' then attorney, Charles Diesen, couldn't get Mr. Evans to understand the differences between two earlier wills that Diesen had prepared for him. FF 96, CP 196. Diesen's observations were borne out in an examination of Mr. Evans in the same month, by psychologist Dr. Eisenhauer. FF 101, CP 197. Dr. Eisenhauer diagnosed Mr. Evans with dementia. FF 103. She also reported on extensive impairments to Mr. Evans' cognitive and executive functioning. *See, e.g.*, FF Nos. 107, 109, 110, and 113, CP 197-98.

On March 7, 2006, and within a few weeks of the examination by Dr. Eisenhower, Mr. Evans executed his last will. FF 97, CP 196. Although Mr. Evans was later found to have been competent at the time to have made that will, *see* C of L 2, CP 209, testamentary capacity requires only that the person understand the transaction at hand, the general nature and extent of his estate, and the natural objects of his bounty. In re Estate of Bussler, 160 Wn. App. 449, 461, 247 P.3d 821, 827 (2011). Such capacity cannot therefore control whether the person is a "vulnerable adult" under RCW 74.34.020(17)(b) because he or she is incapacitated under RCW 11.88.010(1)(a) (inability to adequately provide for nutrition, health, housing or physical safety), *see* App. 9, or 11.88.010(1)(b) (inability to adequately manage property or financial affairs). Nor does it control whether a person is vulnerable because he is over age 62 and lacks "the functional, mental or physical inability to care for himself or herself." RCW 74.34.020(17)(a), App. 11. Mr. Evans' capacity on March 7, 2006, to make a will was not dispositive of his status in 2006, as a vulnerable adult. Notably, at the time he made the will he could not remember having executed a will one week previously. FF 91, CP 196.

Any argument over Mr. Evans' capacity was in any event rendered moot in May of 2006, when in response to Sharon Eaden's petition for guardianship, the parties stipulated to facts sufficient to establish a

guardianship over both the person and estate of Mr. Evans. *See* FF Nos. 133, CP 201, and 202, CP 208. *See also* Order for less restrictive alternatives, Ex. 82 at p. 6 (showing entry in May of 2006). The definition of a vulnerable adult under RCW 74.34.020 includes those found to be incapacitated under Chapter 11.88 RCW. *See* RCW 74.34.020(17)(b). App. 12. The findings established that by 2006, if not before, Mr. Evans lacked at least the functional and mental, if not physical, capacity to care for himself. *See* RCW 74.34.020(17)(a), App. 12. He was thus was a vulnerable adult under RCW 11.84.020. *See* App. 5. Moreover, he was a vulnerable adult by May of that year by reason of the stipulation alone.

Cal, Jr., nevertheless assigns error to FF 120, Brief of App. at 3, in which the court found that Mr. Evans had continued to decline after his examination by Dr. Eisenhauer. *See* FF 120, CP 199. That argument was foreclosed by the stipulation of the parties in May of 2006, FF Nos. 133, CP 201, and 202, CP 208, but there are in any event unchallenged findings of fact that establish Mr. Evans' decline. *See, e.g.*, FF 134, CP 201 (Mr. Evans did not transfer his assets into the revocable trust); and FF 139, CP 202 (Mr. Evans thought he owned the home being purchased by his daughter). He also suffered yet another stroke in November of 2006. FF 138, CP 202. By May 1, 2007, when Dr. Eisenhauer again examined Mr. Evans, *see* Guardian

Ad Litem Report of June 6, 2007, Exh. 8, she found that he had deteriorated further over the preceding fifteen months. *Id.* at p. 5, ll. 13-23. By the following year, when the order for less restrictive alternatives was replaced by a limited guardianship, FF 143, CP 202, some \$30,000 of assets of his assets were missing. FF 142, CP 202.

Thus in addition to the stipulation of the parties to facts sufficient to establish Mr. Evans' incapacity under Chapter 11.88 RCW, *see* FF Nos. 133, CP 201, and 202, CP 208, there are extensive findings as to facts that arose in and after 2006. Those findings readily support the trial court's Conclusion of Law No. 5, which established that Mr. Evans was a vulnerable adult within the meaning of RCW 11.84.010(6), CP 210 or 516, from 2006 on, if not before.

The Findings of Fact also detail the financial exploitation that occurred from 2006 to the date of Mr. Evans' death on April 5, 2011. FF 163, CP 204. Significantly, Cal, Jr., did not assign error to virtually any of the findings of fact regarding Cal, Jr.'s use of his father's money or resources. *See, e.g.*, FF Nos. 153-54, 159-60, 161, 162, 163, 171, 176, 179, 183, 184-188, and 189-191, CP 203-07. Those findings detail examples of the financial exploitation that occurred in and after 2006. Further findings established that Cal, Jr., deposited six of the Social Security checks that had

been ordered in in the guardianship proceedings in 2008, FF 143, CP 202, to be made available to Mr. Evans for spending money, FF 146, CP 203, and 189, CP 207, into his own account. FF 190, CP 207. He then wrote a check on the account for his own purposes. FF 191, CP 207. Although those checks were later reimbursed by Cal, Jr., to Social Security because of Sharon Eaden's investigation, FF 192, CP 207, Mr. Evans had in the meantime been deprived of his monthly spending money. *Id.*

Cal, Jr., also converted other funds belonging to Mr. Evans. For example, he sold a truck and other equipment belonging to Mr. Evans and kept the money. *See* FF 178, 179, and 185-88, CP 206-07. It is true that Cal, Jr., assigned error to Finding of Fact No. 178. *See* Brief of App. at 3. That finding documents the source of funds used to purchase the truck, and also indicates that the purchase was made at a time when Cal, Sr.'s executive functioning was impaired. *See* Brief of App. at 3. There is no argument in Cal, Jr.'s brief regarding the fact of the purchase using Cal, Sr.'s monies, however, so at least that portion of the finding is a verity on appeal. Dickson at 787. Cal, Jr., was allowed by the court to remain on the ranch during the guardianship proceedings, provided that he paid the bills, including taxes and insurance. FF 145, CP 202. He thereafter collected income from the ranch, *see* FFs 153 and 154, CP 203, but did not account for that income. *See* FF

Nos. 154, CP 203, and 184, CP 207. In the meantime the guardianship was forced to pay the taxes and insurance that Cal, Jr., failed to pay. FF Nos. 159 and 161, CP 204.

The court entered findings of fact as to Mr. Evans' statutory vulnerability as defined in RCW 74.34.020(17), App. 12, and as to his financial exploitation as defined in RCW 74.34.020(6), App. 11, by 2006, and thereafter, FF Nos. 205-07, CP 209, at the hands of his trusted son. FF 204, CP 209. Conclusions of Law Nos. 5 and 6, CP 210, to the effect that Cal Evans, Sr., was a "vulnerable adult" at the time of his financial exploitation by his son, are fully supported by those findings of fact, both as to Mr. Evans' condition by 2006, and as to events of abuse that occurred during and after that year. Reference to financial exploitation in prior years is unnecessary to the validity of the judgment here.

C. The Findings of Fact Also Establish that Mr. Evans was a Vulnerable Adult in 2004 and 2005, and that He Suffered Financial Exploitation During Those Years

The trial court record in any event contains findings of fact that Mr. Evans was a vulnerable adult in 2004, and that he was financially exploited in 2004 and 2005, by his son, Cal Evans, Jr. Mr. Evans suffered from the blood disease, polycythemia, FF 7, CP 186, and "from 2004 forward displayed memory impairment, mild disorientation, disturbances in executive

functioning, and impaired judgment and insight". FF 105, CP 197. By 2004 he could no longer manage his finances independently, FF 128, CP 200, and "lacked the functional, mental and physical . . . ability to care for himself". FF 200, CP 208. As examples of his disabilities, he could not, after the 2000 stroke, do outside work, FF 8, CP 187, or work on his airplane. FF 12, CP 187. By early 2000-01 Mr. Evans was asking his daughter for help. *Id.* He also couldn't pay his bills by himself. FF 68, CP 193. By the end of 2004, Mr. Evans had significant visual scanning difficulties. FF 119, CP 199.

Cal, Jr., assigns error to certain of these findings. Brief of App. at 3. He makes a number of arguments, some without citation to the record. He urges, for example, that there was no guardianship and no licensed in-home care for Mr. Evans until 2008. *See* Brief of App. at 37. His arguments are unpersuasive. The law does not require, as a condition to a determination of vulnerability under RCW 74.34.020, proof that in-home care was necessary; proof of an inability to consent to financial transactions, *see* Brief of App. at 36; or even the production of medical evidence. All the statute requires is proof that the victim was over 62 years of age and lacked the functional, mental or physical ability to care for himself. RCW 74.34.020(17)(a). App. 12.

Nor were the findings in this case negated by the mere fact that Mr.

Evans verbalized assent to expenditures. *See* Brief of App. at 33-34, There is extensive evidence of the deficits that left Mr. Evans, in 2004, unable to functionally or mentally care for himself, and the trial court's Findings of Fact 105, CP 197, 128, CP 200, and 200, CP 208, support the determination that Mr. Evans was, as early as 2004, a "vulnerable adult" under RCW 74.34.

Mr. Evans' condition declined overall in 2005. Even Cal, Jr., who by early 2005 had moved to the ranch, FF 34, CP 190, quickly noticed his father's forgetfulness. FF 56, CP 192. Mr. Evans was so incapacitated that he couldn't find the starter on his own equipment. FF 69, CP 193. He was not adequately caring for himself: his teeth had begun falling out and he lost substantial weight. FF 66, CP 193. He then had another stroke. FF 35, CP 190. Clearly Mr. Evans lacked the functional, mental or physical ability to care for himself. RCW 74.34.020(17)(a). App. 12.

Cal, Jr., finally argues that Conclusions of Law 5 and 6, *see* Brief of App. at 37, and in turn Findings of Fact Nos. 105, 114-115, 117, 120, 123-130, 173-175, 177-178, 180-181, and 200, *see* Brief of App. at 2-3, were entered in error, because he asserts that they are based on deficits not identified by Dr. Eisenhauer until 2006. *See* Brief of App. at 39-40. Regardless of the nomenclature employed by the trial court, however, its conclusion that Cal Evans, Sr., was a vulnerable adult when he was

financially exploited by Cal, Jr., is amply supported by the trial court's findings, discussed above, as to Mr. Evans' condition from 2004 forward.

Cal, Jr., also argues, in support of his assignment of error to both Finding of Fact Nos. 173 and 174, that they were entered in error because the improvements made to the ranch were, as a matter of law, legal consideration for a contract to make a will. *See* Brief of App. at 41-42. That argument is addressed in section D below.

The court's Conclusion of Law 6, CP 210, that Cal, Jr., financially exploited his father, is also supported by the evidence of Cal, Jr.'s conduct, not just after 2006, but before. Significant events of exploitation occurred in 2005 and 2006, but the record also reveals that the abuse began as early as 2004.

In that year, Cal, Jr., convinced Mr. Evans to spend \$24,000 of Mr. Evans' own money to purchase a new engine for the Cessna that Cal, Jr., had already purchased from his father. FF 17, CP 188. The airplane had recently been certified as airworthy, FF 14, CP 187, *id.*, by his brother-in-law, Dave Eaden, a certified airplane mechanic. FF 11, *id.* It had performed so well on the delivery flight with Cal, Jr., that Dave Eaden and Cal flew back from their Spokane destination to pick up Cal, Jr.'s wife in another city and then return to Spokane. FF 16, *id.* The new engine that Cal, Jr., convinced his father to

pay for, after the sale of the plane had been concluded, FF 17, CP 188, because of purported engine problems, *id.*, was not necessary to the airworthiness of the plane. FF 18, *id.* Nor did the new engine appreciably increase the market value of the plane. FF 20, *id.*

Cal, Jr., who had not made the payments on the promissory note for the purchase of the airplane, FF 41, CP 190, then suggested to Mr. Evans that an LLC be formed for the ownership of the airplane. *Id.* Under the LLC to which ownership of the plane was transferred, Cal, Jr., obtained a 40% interest. FF 42, *id.* He did so although he had paid only the \$20,000 down payment, FF 21, CP 188, representing 25% of the \$80,000 sale price for the airplane. FF 13, CP 187.

In addition, in 2004 Mr. Evans was receiving a monthly income from stall rentals at the ranch of \$3,000. FF 39, CP 190. He just wanted to enjoy the ranch. FF No. 38, *id.* Cal, Jr., in contrast, wanted to create a "first class horse facility for first class people", FF 36, *id.*, in order to produce income for himself. *Id.* Those plans were different than what Mr. Evans had envisioned for his final years on the ranch. FF 37, *id.* He just wanted to be a "gentleman . . . rancher". FF 38, *id.*

Cal, Jr., however, borrowed \$75,000 from his father in 2005 to pay for barn repairs and improvements. FF Nos. 75 and 76, CP 194. Some

\$12,000 of that amount was never repaid. FF Nos. 173 and 175, CP 205. The barn renovations were made to increase the income potential of the ranch, FF 173, *id.*, both at that time, and after Cal, Jr.'s inheritance of the ranch. FF 174, *id.* The highest gross monthly income after the renovations was \$21,000, FF 168, *id.*, but none of the ranch income and expenses were ever accounted for by Cal, Jr. FF 176, CP 206.

The evidence of the duration of the financial exploitation demonstrates that the relevant period over which the vulnerability of Cal Evans, Sr., is to be measured runs not just from 2006, but in fact all the way from 2004 through his death in 2011. Although reference to 2004 and 2005 is not necessary to support the judgment here, there is clear, cogent and convincing evidence in the court's findings of vulnerability and of financial exploitation throughout all those years. The court's conclusions of law are fully supported by those findings.

D. The Improvements Made to the Ranch by Cal, Jr., With Mr. Evans' Money Were Not Bargained For, Were Not Necessary to Mr. Evans' Care on the Ranch, Did Not Result in Better Care for or Benefit to Mr. Evans, and Did Not Account for Other Instances of Financial Exploitation.

Cal, Jr., argues that Findings of Fact Nos. 173, 174, and 206, CP 205 and 209, were entered in error because Mr. Evans and his son purportedly entered into a contract to make a will, Brief of App. at 41, such that "every

single thing . . . [Cal, Jr.] . . . did to maintain and improve the ranch was consideration flowing to Cal, SR, and thus a legal benefit to him." Brief of App. at 41-42. This argument was not presented to the trial court, and as such is waived on appeal. RAP 2.5(a). *See also* Ainsworth v. Progressive Cas. Ins. Co., 180 Wn. App. 52, 322 P.3d 6 (2014). The argument fails in any event, because Mr. Evans did not, as part of any agreement with his son, authorize the diminution of his cash estate by Cal, Jr.; because Mr. Evans' care did not require the expenditures actually made; and because the care was not in fact fully provided.

RAP 2.5(a) states in part that the "appellate court may refuse to review any claim of error that was not raised in the trial court." RAP 2.5(a) (amended 1985). Thus a party's failure to "inform the court of the rules of law it wishes the court to apply and . . . [to] . . . afford the trial court an opportunity to correct any error", Ainsworth at 81, (citations omitted), "precludes raising the error on appeal." *Id.* Cal, Jr., did not argue to the trial court that as a matter of law he was entitled, as part of a contract to make a will, to expend his father's cash resources as additional consideration for caring for Mr. Evans, and any such argument is waived.

The evidence at trial showed that Mr. Evans bought the ranch with a horse boarding business in place, and that he wanted to continue, as a

"gentleman . . . rancher, FF 38, CP 190, with the same or a similar operation. FF 30, CP 189. In late 2004, Mr. Evans asked Cal Jr., to move to the ranch to take care of him. FF 32, *id.* Mr. Evans had earlier indicated to a neighbor that Mr. Evans intended to establish a business relationship with Cal, Jr., and would leave the ranch to Cal, Jr., when Mr. Evans died. FF 28, *id.* Cal, Jr., did move with his family to the ranch in early 2005. FF 34, CP 190.

Cal, Jr., now argues, based on these uncontested findings of fact, that he had an enforceable contract to make a will, and that everything Cal, Jr., did to maintain or improve the ranch was consideration flowing to Mr. Evans. There is simply no evidence in the record, however, to support Cal, Jr.'s contention that he relied, in moving to the ranch, upon any promise of Mr. Evans that in addition to inheriting the ranch, Cal, Jr., could expend Mr. Evans' funds to improve the ranch. There was no such promise, and indeed it was not until after Cal, Jr., moved to the ranch that he began demanding more than just the inheritance of the ranch in exchange for his willingness to stay. *See, e.g.*, FF 48, CP 191 (Cal, Jr., in June of 2005, demanded that his father leave him not just the ranch but also 1/4 of everything else in the estate.) On the contrary, Mr. Evans was not seeking additional income from boarding operations. FF 30, CP 189. He simply wanted to enjoy the ranch as his "playground", FF 38, and to live there as long as possible. FF 164, CP

204. In 2004, and in 2005 when Cal, Jr., moved in, FF 34, CP 190, the barn was filled with horses, FF 39, *id.*, and the boarding operations netted \$3,000 per month. *Id.* While some repairs to the barn were necessary, the ranch "was capable of producing \$3,000 a month income, as is, without significant improvements." FF 40, *id.*

Mr. Evans and Cal, Jr., did later document their expectations for Cal, Jr., in a lease executed under the supervision of Charles Diesen, in 2006. FF 57, CP 192. The intent of that lease was for Cal, Jr., to receive a monthly income from running the horse boarding operations at the ranch of \$3,000 per month. FF 58, *id.* Cal, Jr., was thus to live with his family on the ranch, rent-free, and to receive an income of \$3,000 per month from running the boarding operation. *Id.* Cal, Jr., may have determined to create a "first class horse facility for first class people", FF 36, CP 190, using his father's funds, but he did not bargain for such a right. Nor did Mr. Evans benefit from those expenditures. Cal, Jr., had already agreed to care for his father in exchange for the inheritance of the ranch.

The improvements were not necessary to Mr. Evans' care. He was not seeking additional income from boarding operations. FF 30, CP 189. He simply wanted to enjoy the ranch as his "playground", FF 38, CP 190, and to live there as long as possible. FF 164, CP 204. In 2004, and in 2005 when

Cal, Jr., moved in, FF 34, CP 190, the barn was filled with horses, FF 39, *id.*, and the boarding operations netted \$3,000 per month. *Id.* The ranch was producing \$3,000 a month income without significant improvements. FF 40, *id.* Mr. Evans did not require and was not seeking additional income.

Cal, Jr., did not in any event, even after improvements were made, fully provide for Mr. Evans' care. Despite Cal, Jr.'s move to the ranch, Mr. Evans continued to mostly cook and care for himself. FF 62, CP 192. While Cal, Jr., assigns error to this finding, he provides no argument as to that assignment in his brief, and any error is therefore waived. Dickson at 787. Mr. Evans was not very effective at caring for himself. His teeth were falling out, and he lost substantial weight. FF 66, CP 193. He was not, in 2006, properly taking his medications, FF 123, CP 200, and it was Sharon Eaden rather than Cal, Jr., who had to see that Mr. Evans received dental attention. FF 73, CP 193. Cal, Jr., was collecting, until 2007, FF 169, CP 209, up to \$21,000 in income per month from the horse boarding business, FF 168, *id.*, without accounting for the excess over the \$3,000 income agreed upon, FF Nos. 153, 154, CP 203, 176, CP 206, and 183, CP 206. In the meantime, it was Mr. Evans' funds that were used to pay for a care-taker for him. FF 137, CP 201.

Ultimately, Sharon Eaden was appointed Mr. Evans' guardian. FF 156, CP 203. At the time of his death in April of 2011, Mr. Evans was receiving 24-hour care in the home of Sharon Eaden, paid for by the guardianship estate, rather than by Cal, Jr., FF 163, CP 204. In the meantime Cal, Jr., had converted to his own benefit numerous pieces of personal property of Mr. Evans. *See, e.g.*, FF Nos. 179, and 183-189, CP 206-07. Cal, Jr., had converted Mr. Evans' Social Security checks to his own use. FF 192, CP 207. He also continued to reside at the ranch without paying for the expenses, such as taxes and insurance, in contravention of the order of the Snohomish County Superior Court. FF 159, CP 204.

Cal, Jr., was not entitled, based on a contract to make a will or otherwise, to invade the liquid assets of his father's estate. Those assets had in 2005, totaled over \$1 million. FF 172, CP 205. Yet by the time the guardianship was imposed, it was necessary to sell Mr. Evans' other real properties, which had been specifically devised to other children of Mr. Evans, *see* Last Will and Testament, CP 742-43, in order to pay for care for Mr. Evans. FF 158, CP 204.

Even had Cal, Jr., been entitled to consume some amount of cash assets to improve the ranch, there is other compelling evidence of the financial abuse at his hands. No contract to make a will accounts, for

example, for Cal, Jr.'s conversion of the Social Security checks, FF Nos. 190-91, CP 207, or his conversion of items of Mr. Evan's personal property. *See, e.g.*, FF Nos. 185-188, *id.* There was no common profit or advantage, RCW 74.34.020(6), App. 11, to Mr. Evans in Cal, Jr.'s expenditures or conversions, and the trial court's Findings of Fact Nos. 173, 174, and 206, should stand.

E. Cal, Jr., Waived Any Argument Regarding Ratification by Not Presenting the Argument to the Trial Court and In Any Event Cannot Meet His Burden of Clear, Cogent and Convincing Evidence of Ratification.

Cal, Jr., did not assert any claim of ratification under RCW 11.84.170, *see* App. 7, before the trial court in this case. His argument is therefore waived on appeal. Ainsworth, 180 Wn. App. at 81. Even had such a claim been preserved, it would fail. Cal, Jr., bears the burden of proof of ratification by clear, cogent and convincing evidence, and cannot meet that burden here.

RCW 11.84.170 provides as follows:

**RCW 11.84.170 Abuser** — When entitled to property interest.

Notwithstanding the provisions of this chapter:

(1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:

- (a) Knew of the financial exploitation; and
  - (b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.
- (2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In determining what is equitable, the court may consider, among other things:
- (a) The various elements of the decedent's dispositive scheme;
  - (b) The decedent's likely intent given the totality of the circumstances; and
  - (c) The degree of harm resulting from the abuser's financial exploitation of the decedent.

*See* RCW 11.84.170 (2009). Contrary to the urging of Cal, Jr., *see* Brief of App. at 45, nothing in the statutory language imposes a duty on the court to make findings as to whether or not ratification occurred: there is no mandatory phrase, such as the "court shall determine. . . ." Nor is there any language in the statute imposing on the petitioner an element of proof of the absence of ratification. There is also no case law construing 11.84.170. Consequently "[t]he question whether the burden of proof rests with a plaintiff or defendant may be determined by ascertaining which party without evidence will be compelled to submit to an adverse judgment on the pleadings." Coffman v. Spokane Chronicle Pub. Co., 65 Wash. 1, 8-9, 117

Pac. 596, 600 (1911).

Ratification is a determination factually independent of the determination of financial abuse, for proof of it can only arise out of facts occurring, if at all, after the exploitation has occurred. RCW 11.84.170, App. 7. Thus a petitioner can establish financial exploitation without reaching the issue of ratification. Absent proof of additional facts in support of ratification, therefore, the abuser "will be compelled to submit to . . . [the] . . . adverse judgment . . .", *id.*, of financial exploitation, with all its consequences. The burden of proof of ratification must therefore fall on the abuser. Certainly the court has no obligation to establish the non-existence of ratification as part of a judgment on the petition. Cal, Jr.'s argument fails because he did not assert and prove ratification before the trial court.

Cal, Jr.'s argument would also fail even if he were allowed to submit such evidence on appeal. The fact that the trial court determined that Mr. Evans had testamentary capacity when he made his will in 2006, *see* C of L 2, CP 209 or 515, for example, does not establish by any evidence, much less clear, cogent and convincing evidence, that Mr. Evans knew he had been subjected to financial abuse in 2004 and 2005. In particular it cannot establish that Mr. Evans ratified, by reason of the making of a will, subsequent instances of financial exploitation that occurred from 2006

through 2010. *See, e.g.*, FF Nos. 189-194, CP 207-08 (conversion of Social Security checks); and 183-188, CP 206–07 (conversion of equipment worth thousands of dollars); 161, CP 204 (failure to pay taxes and insurance on the ranch or to reimburse the estate for those expenses). There was no error here.

F. The Court's Denial of the Motion for Reconsideration Was a Proper Exercise of Discretion Where Cal, Jr., Did Not Substantiate Any of the Grounds For Reconsideration.

A trial court's determination on a motion for reconsideration is reviewed for abuse of discretion. Landstar Inway Inc., v. Samrow, 181 Wn. App. 109, 120, 325 P.3d 327 (2014) (citations omitted). Cal, Jr., fails to substantiate any such abuse in his argument on appeal.

Cal, Jr., urges first that the trial court failed to consider the legal effect of the monetary contributions he made to the ranch. *See* Brief of App. at 48. The trial court did enter findings that generally confirmed the fact of such contributions. *See* FF 199, CP 208. (Understandably it did not adopt the findings as to contributions that were made by the judge in Cal, Jr.'s dissolution action, *see* Ex. 98, to which the petitioners here were not a party.) As to the asserted legal effect of such contributions, however, Cal, Jr., cannot show that any such argument was presented to the trial court. Having failed to do so, he cannot raise the issue for the first time by motion: CR 59 provides for reconsideration only if the error in law occurred at the trial, and

was "objected to at the time by the party making the application." CR 59(a)(8). *See* App. 1. Cal, Jr., made no showing on reconsideration that he had preserved the issue by arguing his theory of the legal effect of his monetary contributions at trial. His assertion that because of his contributions to the ranch there was "no reasonable inference for the . . . [trial court's] . . . decision", *see* Motion for Reconsideration at 2, CP 322, was properly rejected by the trial court.

The trial court made no finding in any event of benefit to Mr. Evans by reason of Cal, Jr.'s contributions. *See generally*, Findings of Fact and Conclusions of Law, CP 186. It did find that Cal, Jr., had made no accounting to the estate of his own funds or of the value of time he had invested. FF 199, CP 208. It also specifically rejected the testimony of Cal Evans, Jr., that he had created the road on the east side of the barn. FF 196, CP 208. Even had the court found a benefit, moreover, there is no authority for Cal, Jr.'s proposition that a benefit as to one asset will compensate for and negate the consequence of financial exploitation as to other assets.

Cal, Jr., next argues that there were evidentiary bases for his motion for reconsideration. He apparently relies for that assertion on declarations submitted with his motion. *See* Brief of App. at 29 (summarizing testimony from declarations submitted in support of the motion for reconsideration).

*See also* Brief of App. at 48-9 (arguing, without citation to the record, that there was "hard evidence . . . showing insufficient pressure check in one valve of the Cessna aircraft . . .", and "detailed testimony . . . that he built a new road on the east side of the property"). New evidence forms a basis for reconsideration, however, only if the moving party "could not with reasonable diligence have discovered and produced . . . [it] . . . at trial. CR 59(a)(4). *See* App. 1. Cal, Jr., failed in his motion to substantiate that the evidence submitted in the declarations was newly discovered and could not have been timely discovered and produced at trial. Cal, Jr., could not therefore demonstrate that he was entitled to relief under CR 59(a)(4). *See* App. 1.

Finally, Cal, Jr., argues that substantial justice has not been done, so as to entitle him to relief under CR 59(a)(9). He asserts that the trial court did not apply a "legal test of benefit", Brief of App. at 49, and that it improperly rejected the testimony of Cal, Jr., as to the airplane engine and the east driveway. *Id.* As discussed above, however, Cal, Jr., did not argue the "legal benefit" theory before the trial court, and any such theory was waived. With respect to the testimony of Cal, Jr., at trial, appellate courts will not "reweigh or rebalance competing testimony and inferences even if . . . [the court would have] . . . resolved the factual dispute differently." Bale v. Allison, 173 Wn. App. 435, 458, 294 P.3d 789 (2013), *reconsid. granted* (March 2013)

(citations omitted). This is particularly true "when the trial court finds the evidence *unpersuasive*." *Id.* [Emphasis in the original.] Substantial justice was afforded by the trial court's decision in this case, and its denial of reconsideration was a proper exercise of discretion and should be upheld.

G. The Respondents Received An Award of Their Reasonable Attorneys' Fees at Trial Pursuant to RCW 11.96A.150 and Should Similarly Receive an Award on This Appeal.

"Where a statute . . . allows an award of attorney fees at trial, an appellate court has authority to award fees on appeal." Bloor v. Fritz, 143 Wn. App. 718, 753, 180 P.3d 805 (2008). Chapter 11.96A.150 RCW permits the court to award fees to any party, from any party.

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

RCW 11.96A.150(1) (2007). Respondents Sansing received an award of their attorneys' fees and costs at trial. *See* Amended Judgment, CP 182. Pursuant to RAP 18.1, the Respondents request that they receive an award of

their reasonable attorneys' fees and costs on this appeal, pursuant to RCW 11.96A.150(1).

### III. CONCLUSION

The record here contains extensive findings of fact documenting financial exploitation by Cal, Jr., that occurred at times when Mr. Evans was a vulnerable adult. The willful action required of an abuser under RCW 11.84.160(1)(b), does not require an intent to inflict injury, and the judgment of the trial court should be affirmed. The Respondents should further receive an award of their reasonable attorneys' fees and costs on this appeal against Cal Evans, Jr.

Respectfully submitted this 5<sup>th</sup> of February, 2015.

NEWTON ♦ KIGHT L.L.P.

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## **APPENDIX 1**

### **RULE CR 59**

#### **NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS**

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial. (2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors; (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial; (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice; (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property; (7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law; (8) Error in law occurring at the trial and objected to at the time by the party making the application; or (9) That substantial justice has not been done.

## **APPENDIX 1 A-1**

CR 59(a)(8)

## **APPENDIX 2**

### **RAP 2.5**

#### **CIRCUMSTANCES WHICH MAY AFFECT SCOPE OF REVIEW**

(a) **Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

**APPENDIX 2  
A-2**

RAP 2.5

## **APPENDIX 3**

### **RAP 18.1**

#### **ATTORNEY FEES AND EXPENSES**

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

**APPENDIX 3**  
**A-3**

RAP 18.1

## **APPENDIX 4**

RCW 11.84.010

As used in this chapter:

(1) "Abuser" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult.

...

(6) "Vulnerable adult" has the same meaning as provided in RCW 74.34.020.

**APPENDIX 4**  
**A-4**

RCW 11.84.010

## **APPENDIX 5**

RCW 11.84.020

Slayer or abuser not to benefit from death.

No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

**APPENDIX 5**

**A-5**

RCW 11.84.020 (amended 2009) (prior: 1965)

## **APPENDIX 6**

### RCW 11.84.160

#### Abuser determination – Evidence factors.

- (1) In determining whether a person is an abuser for purposes of this chapter, the court must find by clear, cogent, and convincing evidence that:
  - (a) The decedent was a vulnerable adult at the time the alleged financial exploitation took place; and
  - (b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.
- (2) A finding of abuse by the department of social and health services is not admissible for any purpose in any claim or proceeding under this chapter.
- (3) Except as provided in subsection (2) of this section, evidence of financial exploitation is admissible if it is not inadmissible pursuant to the rules of evidence.

## **APPENDIX 6**

### **A-6**

## **APPENDIX 7**

### RCW 11.84.170

Abuser – When entitled to property interest.

Notwithstanding the provisions of this chapter:

(1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:

- (a) Knew of the financial exploitation; and
- (b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.

(2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In determining what is equitable, the court may consider, among other things:

- (a) The various elements of the decedent's dispositive scheme;
- (b) The decedent's likely intent given the totality of the circumstances; and
- (c) The degree of harm resulting from the abuser's financial exploitation of the decedent.

**APPENDIX 7**  
**A-7**

RCW 11.84.170

## **APPENDIX 8**

RCW 11.84.900

Chapter to be construed broadly.

This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed.

**APPENDIX 8**  
**A-8**

RCW 11.84.900

## APPENDIX 9

### RCW 11.88.010(1)

Authority to appoint guardians — Definitions — Venue — Nomination by principal.

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

- (a) For purposes of this chapter, a person may be deemed incapacitated as to person when the superior court determines the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.
- (b) For purposes of this chapter, a person may be deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.

**APPENDIX 9**  
**A-9**

RCW 11.88.010(1)

## **APPENDIX 10**

### RCW 11.96A.150(1)

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

## **APPENDIX 10**

### **A-10**

RCW 11.96A.150(1) (amended 2007)

## APPENDIX 11

### RCW 74.34.020

#### Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

...

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

- (a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;
- (b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or
- (c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

## APPENDIX 11 A-11

## APPENDIX 12

### RCW 74.34.020

#### Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

...

- (17) "Vulnerable adult" includes a person:
- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
  - (b) Found incapacitated under chapter 11.88 RCW; or
  - (c) Who has a developmental disability as defined under RCW 71A.10.020; or
  - (d) Admitted to any facility; or
  - (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
  - (f) Receiving services from an individual provider; or
  - (g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

\

**APPENDIX 12**  
**A-12**

RCW 74.34.020(17)

COURT OF APPEALS, DIVISION 1  
SEATTLE, WASHINGTON

In the Matter of the Estate of: ) NO. 69214-3-I  
)  
CALVIN H. EVANS, SR., )  
)  
Deceased. )  
\_\_\_\_\_) CERTIFICATE OF  
) SERVICE BY MAIL  
CALVIN EVANS JR., )  
)  
Appellant. )  
)  
vs. )  
)  
SHARON EADEN, VICKI )  
SANSING, AND KENNETH )  
EVANS, )  
)  
Respondents. )  
\_\_\_\_\_) )  
STATE OF WASHINGTON )  
) SS.  
COUNTY OF SNOHOMISH )

2016 FEB -9 AM 9:38  
COURT OF APPEALS  
STATE OF WASHINGTON  
W

VALETA G. KING, being first duly sworn on oath, deposes and  
states:

CERTIFICATE OF SERVICE BY MAIL - 1.  
EvansTrAppeal3.cos.wpd  
2/5/15

**NEWTON • KIGHT L.L.P.**  
ATTORNEYS AT LAW  
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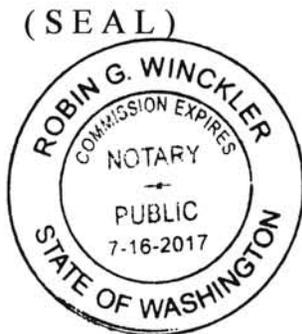
I am over the age of twenty-one years and a resident of the County of Snohomish, State of Washington.

On February 6, 2015, I caused the Brief of Respondents to be served on Appellant, Calvin Evans, Jr., by depositing in the United States mail at Everett, Washington, an envelope with first-class postage prepaid, by regular mail, addressed to the following:

Michael T. Schein  
Sullivan Law Firm  
701 5th Avenue, Suite 4600  
Seattle, WA 98104-7068

Valeta G. King  
VALETA G. KING

SUBSCRIBED AND SWORN TO before me this 6<sup>th</sup> day of February, 2015.



Robin G. Winckler  
Print Name: Robin G. Winckler  
NOTARY PUBLIC in and for the  
State of Washington.  
My Commission Expires: 7-16-2017

CERTIFICATE OF SERVICE BY MAIL - 2.  
EvansTrAppeal3.cos.wpd  
2/5/15

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