73629-9

73629-9

NO. 73629-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Estate of:

ELIZABETH K. WAGNER,
Deceased.

ELMER R. WAGNER, as beneficiary,
Appellant-Cross Respondent,

v.

JILL WRIGHT a/k/a "JILL ARCHER," as Personal Representative and as beneficiary to the Estate of Elizabeth K. Wagner, JILL WRIGHT a/k/a "JILL ARCHER," and JOHN DOE ARCHER and the marital community composed thereof,
Respondent-Cross Appellant.

REPLY BRIEF OF APPELLANT/CROSS RESPONDENT

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I. ARGUMENT

A. Unchallenged findings are verities on appeal.

Respondent/Cross-Appellant Jill Archer failed to challenge several findings of fact that are now verities on appeal.

As RAP 10.3(g) states:

> A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

A general assignment of error to the findings of fact is insufficient under the rule.[1] When the assignments of error to the Court's findings of fact do not comply with RAP 10.3(g), the trial court's findings become the established facts of the case.[2]

In her Assignments of Error section, Ms. Archer did not assign error to any of the trial court's findings of fact or conclusions of law, and as such, any finding and conclusion not challenged by Elmer in his Appellant's Brief should be treated as a verity on appeal.

Even if this Court were to generously read Ms. Archer's brief as incorporating challenges to the findings of fact in the body rather than in her Assignments of Error section as required by RAP 10.3, Ms. Archer can be found to have challenged few, if any, findings of fact as not supported by substantial evidence. Respondent did not challenge Findings of

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[1] *State v. Roggenkamp,* 115 Wn. App. 927, 943, 64 P.3d 92 (2003).
[2] *State v. Arreola,* 176 Wn.2d 284, 288, 290 P.3d 983 (2012); *Roggenkamp,* 115 Wn. App. at 943. *See also* RAP 10.3(a)(4); *Estate of Haviland,* 162 Wn. App. 548, 563, 255 P.3d 854 (2011) (unchallenged findings of fact are verities on appeal).

Fact 1.17 through 1.20 regarding Respondent's counterclaim that Elmer engaged in the unauthorized practice of law. Additionally, Respondent did not challenge Findings of Fact 1.21 through 1.23 regarding Respondent's undue influence counterclaim. As to the ownership of the Federal Way Property, Ms. Archer offered no argument as to why Findings of Fact 1.25 through 1.31 were not supported by substantial evidence.[3] Additionally, she did not assign error in any fashion to Findings of Fact 1.32 through 1.42.[4] Each of these findings should be treated as a verity on appeal.[5]

B. Ms. Archer brought a failed will contest and should be subject to the Will's disinheritance clause.

Ms. Archer's challenge to the validity of Elizabeth Wagner's Last Will and Testament (the "Will") was a will contest, regardless of how she now characterizes the counterclaim. Ms. Archer's counterclaim that the Will was the product of undue influence was not a required defense of Elmer's claims that Ms. Archer was not distributing his inheritance as required by the Will. Ms. Archer had the opportunity to make any such challenge in 2011 when Elizabeth[6] passed away, not in 2014 when she was being hauled into Court to account for her refusal to distribute assets to

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[3] *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004), *rev. denied*, 155 Wn.2d 1015 (2005) (Appellant waives an assignment of error if it fails to present argument or citation to authority in support of that argument).

[4] Ms. Archer also did not assign error to Findings of Fact 1.43 through 1.59, but neither party appears to be appealing the Court's findings and conclusions as they relate to the Tvedt/Murphy Trust, non-probate assets, and costs of the Estate.

[5] If Ms. Archer attempts to remedy her omission in her Reply Brief, Elmer asks this Court to not consider arguments raised for the first time in her Reply Brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) ("An issue raised and argued for the first time in a reply brief is too late to warrant consideration.").

[6] For clarity, this Reply refers to the Wagners by their first names and intends no disrespect.

Elmer. Ms. Archer brought a will contest more than three years after she admitted that the Will was valid and not the product of undue influence, and her counterclaims resulted in significant testimony and effort in briefing, trial testimony, and now appellate resources. This Court should hold that given the blatant frivolousness of Ms. Archer's will contest, the trial court erred in not enforcing the disinheritance clause.

1. *Ms. Archer's counterclaims for undue influence and the unauthorized practice of law constituted a will contest within the meaning of RCW 11.24.010.*

Because Ms. Archer repeatedly alleges that she did not bring a will contest, it is first necessary to establish that she did, in fact, attempt to commence a will contest and argue claims that could be brought only through a will contest. Despite Ms. Archer's repeated protestations that her argument to invalidate the Will due to undue influence is not a will contest, this Court is not bound by her opportunistic recharacterization of events. Claims of undue influence and the unauthorized practice of law are claims that can be brought only through a timely commenced will contest.

A trial court's interpretation of a probate statute is a question of law reviewed on appeal de novo.[7] Washington courts have always strictly enforced the requirements for commencing will contest actions.[8] A court may treat a challenge to a Will as a will contest even when the petitioner styles it otherwise.[9]

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[7] *Estate of Jones*, 152 Wn.2d 1, 8-9, 93 P.3d 147 (2004).
[8] *Miles v. Jepsen*, 184 Wn.2d 376, 381, 358 P.3d 403 (2015).
[9] *Cassell v. Portelance*, 172 Wn. App. 156, 162, 294 P.3d 1 (2012).

2. *Ms. Archer's undue influence counterclaim was an attempted will contest.*

In *Cassell*, the moving party argued that the will was "void" and "invalid" due to "technical difficulties," including that the decedent "was not of sound mind and body," had not really signed the will, and that the will was not properly witnessed.[10] The moving party denied that this challenge amounted to a will contest, but the trial court disagreed. On appeal, the Court of Appeals agreed with the trial court, holding that the allegations that the decedent lacked capacity, had not signed the will, and did not have proper witnesses for the will, "are precisely what a court considers in a will contest under RCW 11.24.010."[11]

Similarly, Ms. Archer's undue influence challenge is "precisely what a court considers in a will contest under RCW 11.24.010."[12] Ms. Archer argued in her trial brief that Elmer allegedly "drafted the decedent's [W]ill" and "prevailed upon the decedent to change her [W]ill,"[13] citing *Estate of Marks*,[14] which analyzed whether a will was the product of undue influence. The trial court allowed the testimony, stating that it "always assume[s] in these kind of cases is whether or not there was any undue influence."[15] Ms. Archer argued that Elizabeth's health and the proximity of her death to the Will's execution demonstrated undue influence. In closing statements, Ms. Archer's counsel framed the issue as

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[10] 172 Wn. App. at 162-63.
[11] *Cassell*, 172 Wn. App. at 163.
[12] *Cassell*, 172 Wn. App. at 163.
[13] CP at 375.
[14] *Estate of Marks*, 91 Wn. App. 325, 957 P.2d 235, *rev. denied*, 136 Wn.2d 1031 (1998).
[15] I VRP at 28.

one of undue influence: "Suppose he didn't write the will. Okay? We're still concerned here with undue influence."[16] Later on in his closing, Ms. Archer's counsel identified some of the elements of when a "will is the product of undue influence."[17] In her opening brief, Ms. Archer argues at length whether the Will was the product of Elmer's undue influence.[18] Whether a will was the product of undue influence is precisely what a court considers when determining a will contest under RCW 11.24.010. Ms. Archer's undue influence challenges were an attempt at a will contest.

Ms. Archer's argues, essentially, that she could bring an undue influence challenge by some other means than a will contest under Chapter 11.24 RCW, as if a will contest could be brought by as an affirmative defense instead of a separate, timely commenced action as required by statute.[19] Ms. Archer relies on the Trust and Estate Disputes Resolution Act, Chapter 11.96A RCW, and *Estate of Hayes*[20] to support this argument.[21] However, the equitable discretion afforded a trial court under RCW 11.96A.020 does not allow a court to disregard the strict requirements of RCW 11.24.010. "[B]oth TEDRA and RCW 11.96A.100(2) explicitly disavow any intention to alter the notice procedures in a will contest. While TEDRA applies to will contests, it 'shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained

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[16] III VRP at 399.
[17] III VRP at 405.
[18] *Respondent's Brief* at 19 – 21.
[19] *Respondent's Brief* at 27.
[20] *Estate of Hayes*, 185 Wn. App. 567, 606, 342 P.3d 1161 (2015).
[21] *Respondent's Brief* at 27 – 28.

in this title,' including Chapter 11.24 RCW."[22] TEDRA may not be used as an end run around the statutory bar to an untimely will contest. Consistent with this rule, *Estate of Hayes* did not involve the use of equitable discretion to save a time-barred will contest.[23] As the Supreme Court has held, once the four month period has passed without commencement of a will contest, a Will is final and binding.[24] Elmer is not limiting the scope of Ms. Archer's counterclaims, the Legislature and Supreme Court have. Being sued for withholding distributions to an heir does not restart the will contest limitations period or excuse her failure to initiate a new action. Ms. Archer's arguments about Mr. Wagner's alleged undue influence was a failed attempt at a will contest.

3. *Ms. Archer's unauthorized practice of law counterclaim was an attempted will contest.*

Ms. Archer's counterclaim to invalidate the bequest to Elmer based on his alleged unauthorized practice of law is also a will contest claim. A court will decline to reach a petitioner's unauthorized practice of law claim when the petitioner failed to initiate a will contest within the time limits of RCW 11.24.010.[25] In *Estate of Palmer*, the will was admitted to probate in 2004, and the motion and petition filed to disqualify a beneficiary were filed in November and December 2006, more than two years after the will was

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[22] *Estate of Kordon*, 157 Wn.2d 206, 212, 137 P.3d 16 (2006) (quoting RCW 11.96A.080(2)).
[23] 185 Wn. App. at 605 – 06.
[24] *Miles*, 184 Wn.2d at 382.
[25] *Estate of Palmer v. World Gospel Mission*, 146 Wn. App. 132, 138, n.8, 189 P.3d 230 (2008).

admitted to probate.[26] The petitioner moved under RCW 11.12.160 to disqualify World Gospel Mission, and later filed an amended petition arguing that the bequest was invalid because of the beneficiary's unauthorized practice of law.[27] Despite the argument from the petitioner that her argument was not a will contest, but a challenge to a testamentary trust, the Court held that the petition was time-barred by RCW 11.24.010.[28] As such, the Court declined to consider the unauthorized practice of law claim, despite the Court's significant concerns that the beneficiary had engaged in the improper conduct.[29]

Ms. Archer suggests that her counterclaims were simply necessary defenses raised to rebut Elmer's claims that she was not distributing his inheritance as required by the Will. She claims that without the undue influence claim, she was "defenseless."[30] This is incorrect. Ms. Archer raised and argued a number of other defenses and claims, including whether (1) she had an ownership interest in the Federal Way Property, (2) Elmer was entitled to an equitable lien on that home, (3) Elmer was entitled to

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[26] 146 Wn. App. at 137-38.
[27] *Estate of Palmer*, 146 Wn. App. at 135.
[28] *Estate of Palmer*, 146 Wn. App. at 137 – 38.
[29] *Estate of Palmer*, 146 Wn. App. at 138 n.8. An employee of the beneficiary, World Gospel Mission, gave a presentation to the decedents on charitable giving and estate planning, met with the decedents to discuss their estate planning goals, filled out World Gospel Mission's pre-printed estate planning form, and transmitted the form to a paralegal at World Gospel Mission's headquarters. The paralegal then completed the form wills, powers of attorney, and revocable living trust documents. *Estate of Palmer*, 146 Wn. App. at 134. World Gospel Mission's attorney reviewed the documents, which were then returned to employee, who reviewed and edited them with the decedents. *Estate of Palmer*, 146 Wn. App. at 135. The Court said that it had "very serious questions regarding World Gospel Mission's participation in the unauthorized practice of law" in this situation. *Estate of Palmer*, 146 Wn. App. at 138, n.8.
[30] *Respondent's Brief* at 27, 31.

reimbursement for services performed to ready the Federal Way Property for sale, (4) the proceeds from the Federal Way Property were appropriately distributed, (5) the Will created a trust for the oil and mineral deeds, (6) the Estate's costs could be attributed to Elmer, and (7) the oil and mineral royalties had been properly apportioned among the heirs. Ms. Archer was not defenseless. Additionally, in unchallenged Findings of Fact 1.17 and 1.21, the trial court characterized Ms. Archer's undue influence and unauthorized practice arguments as "counterclaim[s]" against Elmer, not merely defenses or affirmative defenses.[31] These characterizations are verities on appeal.

4. *Ms. Archer's requested remedy does not change the characterization of her counterclaims as an attempted will contest.*

Ms. Archer next argues that her will contest was not a will contest because she asked to invalidate the bequest to Elmer, not the entire Will.[32] This Court should reject this argument. A court may invalidate only the bequest to a party who exercises undue influence over a testator, rather than invalidating the entire will, where doing so gives effect to the testator's intent.[33] The *Marks* court invalidated the specific bequest to the party found to have engaged in the unauthorized practice of law and did not void the entire will because there "was no evidence warranting avoidance of the entire will."[34] *Marks* was a will contest case filed within four months of the

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[31] CP at 725.
[32] *Respondent's Brief* at 18 – 19.
[33] *Estate of Marks*, 91 Wn. App. at 336.
[34] 91 Wn. App. at 336.

will's admission to probate.[35] Ms. Archer's supposedly limited remedy has no bearing on whether she filed a will contest.[36]

Elmer asks that this Court hold that Ms. Archer attempted to bring a time-barred will contest when she alleged that the Will was the product of Elmer's alleged undue influence and unauthorized practice of law. There is no other way to characterize her claims and requested remedies. RCW 11.24.010 does not allow Ms. Archer's untimely attempt to challenge the Will's validity and no equitable exception exists to extend that deadline more than three years after the Will's admission to probate. Because Ms. Archer's will contest was filed so far beyond the limitations period, it was a bad faith claim that, as discussed further below, justifies her disinheritance.

5. *Even if the will contest was not time-barred, Ms. Archer's will contest was still brought in bad faith because no evidence was offered that suggests that Elmer engaged in the authorized practice of law.*

Substantial evidence supports the unchallenged findings of fact that Elmer did not engage in the unauthorized practice of law. Even if Ms. Archer's will contest were validly commenced, which it was not, Ms. Archer produced no evidence that Elmer engaged in the unauthorized practice of law.[37]

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[35] *See Estate of Marks*, 91 Wn. App. at 332, 336-37.

[36] As pointed out below, the only difference between Elizabeth's prior will and the Will admitted to probate was to grant Elmer a life estate in the Tvedt/Murphy Trust. By invalidating the bequest to Elmer under the Will, the trial court would have effectively reinstated the prior will absent any bequests to Elmer.

[37] Elmer's arguments in this section are also offered in response to Ms. Archer's attempt to cross-appeal the trial court's decision on this matter.

The unchallenged findings of fact on the practice of law issue are as follows:

> 1.17 Respondents counterclaimed against Petitioner asserting that Petitioner acted as Attorney-in-Fact drafting the Decedent's Will in violation of pursuant [sic] to Washington law and the Washington Rules of Professional Conduct for attorneys, and further, Respondents asked the Court to bar Petitioner from inheritance under the Will.
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> 1.18 The uncontroverted evidence at trial showed that the Decedent asked the Petitioner for his assistance in redoing her Will, that the Decedent edited the Will, that the Decedent sent a copy of the Will to Respondent Archer for her input, and that Petitioner acted only as a scribe for the Decedent as the Decedent drafted her Will.
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> 1.19 There was no evidence at trial to indicate that the Petitioner acted in any way other than as a scrivener for the Decedent when the Decedent drafted her Will.
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> 1.20 There was no evidence adduced at trial to support that the Petitioner acted as Attorney-in-Fact for the Decedent or that Petitioner drafted the Decedent's Will.[38]

These unchallenged findings are verities on appeal. Although Ms. Archer claims that Elmer's testimony about how Elizabeth drafted the Will is not credible,[39] this Court does not review the trial court's credibility determinations.[40] To get around the unforgiving credibility standard, Ms. Archer attempts to craft the issue of Elmer's role as an issue of law,[41] but it is unchallenged that the trial court found credible Elmer's explanation of events – that he simply typed what Decedent wrote. Ms. Archer offered

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[38] CP at 725.
[39] *Respondent's Brief* at 9, 13.
[40] *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).
[41] *Respondent's Brief* at 13.

no testimony to the contrary and Finding of Fact 1.19 is unchallenged. Elmer's role in Elizabeth's drafting of the Will was limited to typing what Elizabeth wrote up. Under Washington law, this does not constitute the unauthorized practice of law.

Based on its findings of fact, the trial court concluded that "Respondents' claim that Petitioner engaged in the unauthorized practice of law and thus should be barred from inheritance under Decedent's Will is denied."[42] Conclusion of Law 2.5 is supported by the findings of fact.

Acting as a testator's scrivener, with no additional factors, does not constitute the unauthorized practice of law. Given the weakness of Ms. Archer's evidence on this point, her claim was frivolous and brought in bad faith.

In *Perkins*, the Court engaged in a meticulous analysis of its precedent on the unauthorized practice of law by individuals who draft and fill in legal forms. The Court emphasized that it had historically found that completion of objective data tended not to constitute the unauthorized practice of law because of the unlikelihood that such action would significantly prejudice individuals' legal interests.[43] Objective data tended to include data entry of clerical-type information, such as filling in the names of parties, legal descriptions of parties, and other similar information.[44] By contrast, tasks that crossed the line to unauthorized

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[42] CP at 734 (Conclusion of Law 2.5).
[43] *Perkins v. CTX Mortg. Co.*, 137 Wn.2d 93, 103, 969 P.2d 93 (1999).
[44] *Perkins*, 137 Wn.2d at 104 – 105.

practice of law included drafting and inserting into a deed of trust a clause regarding mortgages or inspection contingency clauses, drafting escrow instructions, selecting forms the individual deemed appropriate for various transactions, drafting and completing promissory notes or deeds of trust, drafting earnest-money receipts, drafting clauses modifying form legal documents, and explaining to buyers and sellers the meaning and effect of the documents drafted.[45] Important in the cases in which the Court has found laypersons to have engaged in the unauthorized practice of law was that the individuals "went well beyond the mere inputting of data," noting that it had "never prohibited the mere clerical entry of data into a printed legal form."[46]

In *Estate of Marks*, the Court held that the respondents engaged in the unauthorized practice of law when they selected a will kit for the decedent, discussed the distribution of assets and whether it was fair, obtained an inventory of investments, typed the will, and arranged for the signing and witnessing of the will.[47]

In *Estate of Knowles*,[48] the Court held that the respondent's actions in adding provisions to a preprinted form will at the decedent's request did not constitute the unauthorized practice of law. The *Knowles* court distinguished the *Estate of Marks*, finding that there was "no evidence that

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[45] *Perkins*, 137 Wn.2d at 98 – 103.
[46] *Perkins*, 137 Wn.2d at 104.
[47] 91 Wn. App. at 335.
[48] *Estate of Knowles*, 135 Wn. App. 351, 143 P.3d 864 (2006).

[the respondent] did any more than fill in the will form as [the decedent] wanted." As the Court held, "[t]his falls short of practicing law."[49]

There was no evidence offered by anyone that Elmer selected the form that Elizabeth used to write her Will, discussed the bequests or the fairness thereof, conducted an inventory, or arranged for the Will's witnessing and signing. The only evidence offered, which was uncontested, was that Elmer typed up the changes that Elizabeth wrote. Ms. Archer did not offer testimony to contradict these claims, despite the fact that Elizabeth sent her a copy of the Will and discussed it with Ms. Archer prior to Elizabeth's death. Taking Findings of Fact 1.17 through 1.20 as verities, Elmer's conduct is more like *Knowles* than *Marks* and did not rise to the level of unauthorized practice of law. The trial court did not err in Conclusion of Law 2.5 in finding that Elmer did not engage in the unauthorized practice of law.

Ms. Archer seems to argue that this Court should hold that Elmer engaged in the unauthorized practice of law because Elizabeth's Will contained inconsistencies and would have been more consistent if drafted by a lawyer.[50] Ms. Archer points to no authority requiring an attorney to

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[49] *Estate of Knowles*, 135 Wn. App. at 364.

[50] *Respondent's Brief* at 6 – 7, 17. It is worth noting that many of the supposed inconsistencies are in both Wills. For instance, at the bottom of the first page in both Wills, there is language that states, "My premarital assets are as follows:" yet neither Will included a list of premarital assets. CP at 6, *Respondent's Brief,* Exhibit 2 at 1. Although Ms. Archer makes much of Elizabeth's bequests to Elmer from assets that might have been premarital assets, both the 2004 Will and the current Will made such bequests. For instance, both Wills gave Mr. Wagner a life Estate in the Federal Way Property and a one-quarter interest in the sales proceeds even though Elizabeth received that property prior to her marriage to Elmer. CP at 7, *Respondent's Brief,* Exhibit 2 at 2. Both Wills left Elmer all household effects, without specification as to whether they when they were acquired.

draft a will. Though this might be a best management practice,[51] the only requirements for drafting a will are that they are in writing, signed by the testator, and attested by two or more competent witnesses.[52]

6. *Even if the will contest was not time-barred, Ms. Archer's will contest was still brought in bad faith because overwhelming evidence supports the trial court's finding that the Will was not the product of undue influence.*

Elmer did not exert undue influence over his wife when she made a single change to the Will nearly a full year before she passed away. The evidence offered by Ms. Archer and Elmer overwhelmingly showed that Elizabeth was competent and able to exercise independent judgment when she executed the Will.[53]

When reviewing a will contest, the appellate court's function is to determine whether the trial court's findings are supported by substantial evidence.[54] The appellate courts defer to the trial court's determinations of the weight and credibility of the evidence.[55] Unchallenged findings are verities on appeal. When the trial court's factual findings are not disputed, the only question is whether the unchallenged facts support the trial court's

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CP at 7, *Respondent's Brief,* Exhibit 2 at 2. The only real difference between the two Wills is the life estate Elmer received in the Tvedt/Murphy Trust. Yet Ms. Archer has made no objection to the validity or consistencies of the 2004 Will.

[51] There is no guarantee that hiring an attorney would result in a clear, consistent will as Washington case law is replete with Courts trying to determine the testator's intent.

[52] RCW 11.12.020.

[53] Elmer's arguments in this section are also offered in response to Ms. Archer's attempts to appeal the trial court's decision on this issue. Additionally, Elmer's arguments regarding his motion in limine are not a request for a new trial, but to preserve his objection to the introduction of the evidence used to argue that he exerted undue influence over Elizabeth or that he engaged in the unauthorized practice of law.

[54] *Estate of Barnes*, ___ Wn.2d ___, ¶ 7, ___ P.3d ___ (Wash. S. Ct. January 28, 2016).

[55] *Barnes*, ___ Wn.2d ___, ¶ 7, ___ P.3d ___ (Wash. S. Ct. January 28, 2016).

conclusions of law. "Whether the facts rise to the level of undue influence that is sufficient to invalidate a will is a question of law that we review de novo."[56]

The unchallenged findings of fact support the trial court's conclusion that Elmer did not exert undue influence over Elizabeth in 2009 when she drafted her Will. The unchallenged findings of fact are:

> 1.10 Decedent executed a **valid** Last Will and Testament...on or about August 26, 2009, wherein she made specific bequests concerning separate property she owned during her lifetime.
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> ....
>
> 1.21 Respondents also counterclaimed against Petitioner asserting that Petitioner exerted undue influence over the Decedent, and further, Respondents asked that this Court bar Petitioner from inheritance under the Will pursuant to Washington law.
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> 1.22 The uncontroverted evidence at trial showed that at the time the Decedent wrote her Will, she was not impaired, was relatively healthy, appeared to be in complete control, and that Decedent wrote her Will approximately ten (10) to eleven (11) months before her death.
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> 1.23 Respondent Archer's uncontroverted testimony at trial was that the Decedent was "sharp as a tack," "strong willed," and "knew her mind" in 2009 when she wrote her Will.[57]

Ms. Archer does not explain how these findings of fact are not supported by substantial evidence, arguing only that Elmer was not

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[56] *Barnes*, ___ Wn.2d ___, ¶ 8, ___ P.3d ___ (Wash. S. Ct. January 28, 2016).
[57] CP at 724 – 26 (emphasis added).

credible.[58] This Court does not review credibility determinations. However, regardless, substantial evidence supports each of these findings.

Ms. Archer testified that Elizabeth maintained a good relationship with her children during the last few years of her life.[59] In 2009, Elizabeth was physically active, knew her mind, was mentally sharp, was not suffering from dementia, and was strong-willed and confident.[60] Ms. Archer lived in Chicago at the time that Elizabeth drafted her Will and did not have knowledge about the drafting process.[61] Todd Kulesza, Elizabeth's son, testified that the Will was valid.[62] A neighbor who knew the Wagners since the 1980s, testified that Elizabeth was strong-willed and that Elmer did not impose his will on Elizabeth.[63] Elmer testified that he typed up changes that Elizabeth wanted to make to her Will, but had no other role in the drafting or decision-making process.[64] Substantial evidence supports Findings of Fact 1.10 and 1.22 through 1.24.[65]

The factual findings support the conclusion of law that Elmer did not exert undue influence over Elizabeth.[66] Contrary to Ms. Archer's

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[58] *Respondent's Brief* at 20 – 21.
[59] II VRP at 290.
[60] II VRP at 299 – 300.
[61] II VRP at 207.
[62] II VRP at 309, 311.
[63] II VRP at 324.
[64] I VRP at 150 – 57.
[65] Finding of Fact 1.24, which Ms. Archer argues should be treated as a conclusion of law, states, "There was no evidence at trial to show that the Petitioner exerted undue influence over the Petitioner." CP at 726.
[66] As noted above, Ms. Archer does not assign error to any Conclusions of Law or factual findings in her Assignments of Error section as required. She does discuss some findings and conclusions in the Statement of the Case section of her brief, and mistakenly cites to Conclusion of Law 2.5 in discussing the trial court's decision on the undue influence counterclaim. *Respondent's Brief* at 3 – 4. Ms. Archer apparently meant Conclusion of

arguments, there was no evidence that Elmer participated in the Will's drafting, he did not receive an unusually large portion of the Estate, and the Will was not drafted in the last few months of her life.[67] In fact, all evidence submitted at trial, and the unchallenged findings of fact, directly contradicts these assertions.

Certain circumstances may raise a question about undue influence, including (1) a fiduciary or confidential relationship between the testator and the beneficiary, (2) active participation by the beneficiary in preparing or procuring the will, and (3) the beneficiary's receipt of an unusually or unnaturally large part of the estate.[68]

As the unchallenged findings of fact and uncontroverted testimony shows, Elmer had no role in drafting Elizabeth's Will, helping her allocate the bequests, or in determining the extent of her bounty. Elmer had no active participation in procuring or preparing the Will. Additionally, Elmer did not receive an unnaturally large part of Elizabeth's Estate. The only change between Elizabeth's 2004 Will and the Will admitted to probate is that Elmer received a life estate in one-quarter of the oil and mineral deeds.[69] Had Ms. Archer not violated the no contest clause, Elmer's Estate would not be entitled to any additional funds from the Tvedt/Murphy Trust after his passing, and the entire Trust would have passed to Elizabeth's children. Finally, the Will was not drafted in the "last months" of

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Law 2.6, which states, "Respondent's claim that Petitioner exerted undue influence over the Decedent in the drafting of Decedent's Will is denied." CP at 734.

[67] *Respondent's Brief* at 20 – 21.

[68] *Smith's Estate*, 68 Wn.2d 145, 153, 411 P.2d 879 (1966).

[69] *Compare* CP 6 – 9 and Exhibit 2 to *Respondent's Brief*.

Elizabeth's life. Elizabeth executed the Will in August 2009, and passed away in July 2010, approximately 11 months later.

Additionally, Ms. Archer offered no evidence that Elizabeth was dependent on Elmer when she drafted the Will. In describing the progression of Elizabeth's illness, Ms. Archer testified that Elizabeth "could get in a car and she could drive, and she could go – she loved to go places. She had – she couldn't stand to stay home. So she was always going. And she didn't want to be sick, so she would keep doing things."[70] Additionally, Elizabeth was not isolated from her family, having maintained good relationships with her children during her final years.[71] Ms. Archer suggests that Elizabeth changed her Will because she was unable to escape Elmer's grasp and was overly dependent on him,[72] but Ms. Archer herself testified that in 2009, Elizabeth was still independent enough to drive and frequently took trips out of the house. There is, as the trial court concluded, no evidence that Elmer exerted undue influence over Elizabeth in 2009 when she drafted the Will. Conclusion of Law 2.6 is supported by the facts.

Quite simply, Ms. Archer is trying to add additional requirements to making a valid will, such as that a person must consult an attorney or that a person's spouse must be able to justify why the decedent would have made a particular bequest.[73] She offers no authority for why Elmer or any other

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[70] II VRP at 288 – 89; *See also* II VRP at 299 ("Q But did you say that...she was always on the go, back in 2009? A Yes. Q She was always getting out of the house, driving her car places? A Often, yes.).
[71] II VRP at 290.
[72] *Respondent's Brief* at 20, 21, 32 – 33.
[73] *Respondent's Brief* at 20 – 21.

surviving spouse must offer this evidence, and the arguments should be rejected.[74]

Ms. Archer makes several unsupported aspersions on Elmer's character, suggesting that Elizabeth might have changed her Will because she was supposedly afraid of Elmer.[75] There is no evidence to support these character assassinations. If anything, the uncontroverted evidence shows that Elmer and Elizabeth were a happy couple, deeply in love, who complimented each other well, and never had significant arguments.[76] Elmer asks that these unsupported misrepresentations, offered without citation to the record, be stricken and disregarded.[77]

7. *Ms. Archer should be disinherited for her bad faith attempt at a will contest.*

Ms. Archer's will contest had long been time barred, and was a frivolous move designed to scare Elmer. Ms. Archer's will contest is the result of bad faith. Ms. Archer should be disinherited under Article VI, the Will's no contest clause. The trial court erred in not enforcing the no contest clause given the strong evidence that her attempted will contest was untimely and frivolous.

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[74] RAP 10.3(a)(6); *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290, *rev. denied*, 136 Wn.2d 1015 (1998) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration"); *West v. Thurston Cnty.*, 168 Wn. App. 162, 178, 275 P.3d 1200 (2012) ("We do not consider conclusory arguments that do not cite authority...In making bald assertions lacking cited factual and legal support, [an appellant] fail[s] to present developed argument for [the court's] consideration on appeal.").

[75] *Respondent's Brief* at 21.

[76] II VRP at 327 – 28.

[77] RAP 10.3(a)(5); *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

The no contest or forfeiture clause operates where the contest is brought in bad faith and without probable cause.[78] If a contestant initiates an action on the advice of counsel, after fully and fairly disclosing all material facts, she there is a presumption that she acted in good faith.[79] The presumption of good faith can be overcome by a showing that the contestant acted in bad faith. Bad faith has been defined as "'actual or constructive fraud' or a 'neglect or refusal to fulfill some duty...not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.'"[80]

Ms. Archer should not be permitted to hide behind the advice of counsel in avoiding application of the no contest clause. Ms. Archer's supposed bad advice from her first attorney was an issue that the trial court relied on to refuse to remove Ms. Archer as personal representative, even though Ms. Archer failed to investigate Elmer's claims to an equitable lien in the Federal Way Property, mischaracterized non-probate assets, refused to properly allocate and distribute proceeds from the Federal Way Property sale, paid Estate legal bills from Elmer's share of the oil and mineral proceeds, and attempted to force Elmer to waive his rights to the Estate. The result of Ms. Archer's wrongful conduct has been years of contentious litigation, the cost of which Elmer was forced to bear. Now, Ms. Archer has attempted to bring a completely frivolous will contest and denies that

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[78] *Estate of Mumby*, 97 Wn. App. 385, 393, 982 P.2d 1219 (1999).
[79] *Mumby*, 97 Wn. App. at 393 – 94 (Holding that because heir did not fully disclose all material facts to counsel, she "is not entitled to a presumption of good faith.").
[80] *Mumby*, 97 Wn. App. at 394.

she should suffer any penalty because she did so on the advice of counsel. Ms. Archer's behavior should not be allowed to continue unabated and without penalty simply because she is represented. Ms. Archer's actions demonstrate her goal – to penalize her stepfather and deny him as much inheritance as possible. The will contest was brought in bad faith and Elizabeth's no contest clause should be respected.

As demonstrated above, Ms. Archer's claims of undue influence and unauthorized practice of law were long barred by the time she asserted those claims. Additionally, Ms. Archer did not make any attempt to comply with the notice requirements to commence a will contest. Ms. Archer had also already conceded the validity of the Will in seeking appointment as the personal representative. Further compounding matters, Ms. Archer demonstrated no facts showing that Elmer exerted undue influence or that he engaged in the unauthorized practice of law. All witnesses asked about the issue, including Ms. Archer and her brother, testified that Elizabeth was of sound mind and body, independent, and strong-willed at the time she drafted the Will. Ms. Archer had no basis, regardless of her counsel's supposed advice, to bring the will contest. Her attempt to do so was frivolous and itself a basis for attorney fees. Ms. Archer's arguments resulted in significant resources being expended at trial and now on appeal. Ms. Archer's will contest was brought in bad faith and the trial court erred in not enforcing the Will's no contest clause.

C. The trial court did not err in concluding that title to the Federal Way Property did not vest in Ms. Archer during Elizabeth's lifetime because Ms. Archer never took delivery of the deed and the deed's plain language indicates an intent to gift the property to one grantee.

The trial court did not err in concluding that title to the Federal Way Property did not transfer to Ms. Archer prior to Elizabeth's death. Regardless of whether the deed that transferred the Federal Way Property to Elizabeth included Ms. Archer or not, the unrebutted evidence is that Ms. Archer never took delivery of the deed. As such, regardless of the language used to convey the deed, Ms. Archer never received title to the Federal Way Property. Additionally, even if Ms. Archer had taken delivery of the deed, which she did not, the deed conveyed title to either Elizabeth *or* Ms. Archer, not both.

As an initial matter, Ms. Archer did not assign error to any of the findings of fact relating to the Federal Way Property. As with other issues, in her brief, she obliquely seems to disagree with various findings, but does not assign error or explain how they are not supported by substantial evidence. This Court should treat those as verities.

Regardless of whether this Court treats the findings as verities, Findings of Fact 1.26 through 1.29 are supported by substantial evidence. The relevant findings of fact state:

> 1.26 On or about March 28, 1984, Decedent's parents quit claim deeded their one-half (1/2) interest in the Property to "Elizabeth Kulesza or Jill Wright.
>
> 1.27 The "or" contained in the March 28, 1984 quit claim deed cannot [be] interpreted as meaning or

> connoting "and,' thus the quit claim deed conveyed the Property to the Decedent, if she was alive and able to take, or if not, to Respondent Archer, if she was then alive and able to take."
>
> 1.28 The Decedent was alive and able to take at the time that the quit claim deeds were executed and recorded. There was no evidence at trial to show that Respondent Archer took delivery of the March 29, 1984 quit claim deed.
>
> 1.29 Respondent Archer has not lived in the property since at least 1980, never paid any property taxes at the residence, never made mortgage payments with respect to it, and never contributed to any improvements at the Property.[81]

Based on these findings, the trial court concluded that Ms. Archer never received title to the Federal Way Property.[82]

As shown by the evidence, on March 28, 1984, Elizabeth's parents, Phillip and Mabel Murphy, quitclaimed the Federal Way Property to "Elizabeth K. Kulesza or Jill R. Kulesza" ("1984 Deed").[83] Ms. Archer admitted that she never made payments on the mortgage for the Federal Way Property, paid property taxes, or paid for maintenance or upkeep.[84] Ms. Archer also testified that she never received delivery of the 1984 Deed that purported to transfer title of the Federal Way Property, which was

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[81] CP at 726.
[82] In Conclusion of Law 2.8, the trial court found "Title to the Federal Way Property is hereby quieted and the Court concludes that the Federal Way Property was, at all times pertinent to this action, wholly owned by the Decedent. Respondent Archer never held any ownership interest in the Federal Way Property." CP at 734.
[83] CP at 42 (capitalization omitted).
[84] II VRP at 239 – 40.

delivered to her mother.[85] Findings of Fact 1.26 through 1.29 are supported by substantial evidence.

The findings of fact support the trial court's conclusion that Ms. Archer did not receive title to the Federal Way Property from the 1984 Deed. Contrary to Ms. Archer's arguments, there is no evidence that the grantors intended to treat her and Elizabeth as tenants in common.[86]

The deed to the Federal Way Property was never delivered to Ms. Archer, thus she never received title. A deed, in order to be effective to pass title, must be delivered by the grantor to the grantee.[87] As Finding of Fact 1.28 states, and Ms. Archer testified, she never received delivery of the deed that purported to transfer title of the Federal Way Property, which was delivered to her mother.[88] Having never accepted delivery of the deed, which granted title to "Elizabeth K. Kulesza ***or*** Jill R. Kulesza,"[89] Ms. Archer did not receive title to the Federal Way Property. This Court should hold that the trial court did not err in holding that title to the Federal Way Property never vested in Ms. Archer.

Moreover, Conclusion of Law 2.8 is supported by the findings that granting title to "A **or** B" does not transfer title to "A **and** B."

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[85] II VRP at 258.
[86] Ms. Archer cites to no authority and no evidence that she was intended to be treated as a tenant in common under the 1984 Deed. These arguments should be disregarded. RAP 10.3(a)(5), (6).
[87] *Puckett v. Puckett*, 29 Wn.2d 15, 185 P.2d 131 (1947); *Martin v. Shaen*, 26 Wn.2d 346, 349, 173 P.2d 968 (1946).
[88] II VRP at 258.
[89] CP at 42 (capital letters omitted, emphasis added).

The construction of a deed generally is a matter of law for the court.[90] In construing a deed, the parties' intent controls, with particular attention paid to the grantor's intent when giving meaning to the entire language of the deed.[91] The intent must be ascertained from reading the deed as a whole, and the words are to be given their ordinary meaning.[92] "A deed or will that transfers land 'to *A* and *B*,' without further language, is sufficient to make them tenants in common, presumably in equal shares."[93]

Though there appear to be no cases in Washington interpreting the use of "or" in a quit claim deed, in other settings, Courts have consistently held that "or" is disjunctive absent clear evidence to the contrary.[94] In this instance, the intent behind the 1984 Deed is that it conveyed title to either Elizabeth *or* Ms. Archer.

The plain language of the 1984 Deed states that the grantees are Elizabeth "or" Ms. Archer, not "and." Additionally, the 1984 Deed was delivered to only one individual – Elizabeth. It appears that Elizabeth alone recorded the 1984 Deed, instructing the Auditor's Office to return the deed

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[90] *Donald v. Vancouver,* 43 Wn. App. 880, 719 P.2d 966 (1986).
[91] *Carr v. Burlington Northern, Inc.,* 23 Wn. App. 386, 597 P.2d 409 (1979).
[92] *McKillop v. Crown Zellerbach, Inc.,* 46 Wn. App. 870, 873, 733 P.2d 559, *rev. denied,* 108 Wn.2d 1015 (1987).
[93] 17 Stoebuck & Weaver, WASH. PRAC., Real Estate: Property Law, § 1.28.
[94] *Gray v. Suttell & Assocs.*, 181 Wn.2d 329, 339, 334 P.3d 14 (2014) (use of "or" is disjunctive unless there is clear legislative intent to the contrary); *HJS Dev., Inc. v. Pierce Cnty.*, 148 Wn.2d 451, 473, n.94, 61 P.3d 1141 (2003) ("Ordinarily, the word 'or' does not mean 'and' unless there is clear legislative intent to the contrary"); *Riofta v. State*, 134 Wn. App. 669, 682, 142 P.3d 193 (2006) ("or" is disjunctive unless there is clear legislative intent to the contrary)' *State v. Crist*, 80 Wn. App. 511, 516 n.1, 909 P.3d 1341 (1996), ("Unless the legislative history is contrary, the term "or" in a statute is presumed to be disjunctive").

to her after recording.[95] Ms. Archer did not know about the deed until later, and then only because Elizabeth told her about the deed. Elizabeth lived at the Federal Way Property, paying all mortgages and costs with her husband, Elmer, while Ms. Archer did not pay for any of the home's costs during Elizabeth's life. While the grantee's intent is not generally relevant, Elizabeth did not treat Ms. Archer as a co-owner, sharing none of the rents with Ms. Archer.[96] Elizabeth also paid no rent to Ms. Archer for Elizabeth's occupancy.[97] Additionally, Elizabeth's Will, and the 2004 Will, instruct that the "total net proceed of the sale [of the Federal Way Property] are to be divided equally between my husband and my children."[98] If Elizabeth believed that Ms. Archer was a co-tenant, she would not have been able to divide the "total net" sales proceeds equally among her heirs.

Notably, the 1984 Deed did not grant title to Elizabeth "until her death, and then to" Ms. Archer. Rather, the grant was to Elizabeth "or" Ms. Archer. The 1984 Deed's use of the word "or" and the delivery to only one grantee demonstrated an intent to transfer the Federal Way Property's title to one grantee not both. Elmer asks that this Court hold that the trial court did not err in concluding that title to the Federal Way Property did not vest in Ms. Archer through the 1984 Deed.

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[95] CP at 42 (Elizabeth's name is in the upper left-hand corner under "Filed for Record or Request of").
[96] II VRP at 181, 240.
[97] *Yakavonis v. Tilton*, 93 Wn. App. 304, 309, 968 P.2d 908, *rev. denied*, 93 Wn. App. 304 (1998) ("When an occupying cotenant ousts a non-occupying cotenant, the former begins to owe rent.").
[98] CP at 7, *Respondent's Brief*, Exhibit 2 at 2.

D. The trial court did not abuse its discretion in granting Elmer an equitable lien against the Federal Way Property and refusing to offset this amount by the value of rents not paid.

The trial court did not abuse its discretion in granting Elmer an equitable lien against the Federal Way Property and in refusing to give Ms. Archer and the Estate an offset for rent.

As an initial matter, Ms. Archer does not appear to challenge the existence or amount of Elmer's equitable lien in the Federal Way Property, only the trial court's refusal to offset that amount by an unpaid rental value. The unchallenged findings of fact demonstrate that Elmer had an equitable lien in the Federal Way Property in the amount of $52,143.00.[99]

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[99] The relevant findings are:

> 1.30 Petitioner lived with Decedent at the Property for many years during their marriage.
>
> 1.31 A mortgage existed on the Property during the course of Petitioner's marriage to Decedent, and Petitioner and Decedent made payments on the mortgage from their joint account with community funds.
>
> 1.32 In addition, Petitioner and Decedent also made improvements to the Property including remodeling their home. These improvements were also paid for from Petitioner and Decedent's joint account with community funds.
>
> 1.33 The value of the mortgage payments and improvements to the Property constitute a community/equitable lien in favor of Petitioner for which Petitioner is entitled to recover one-half (1/2) of the total value.
>
> 1.34 The evidence presented at trial demonstrates that the total value of the mortgage payments and improvements relative to the Property is $104,268.00. Consequently, Petitioner is entitled to recover $52,143.00 which sum represents his one-half (1/2) of the community/equitable lien.

CP at 727.

Additionally, for the first time on appeal, Ms. Archer is raising arguments about a community property agreement. Elmer asks that this Court disregard this argument.[100]

Ms. Archer does not dispute that Elmer and Elizabeth paid the mortgage during their marriage with funds jointly contributed to a joint bank account.[101] However, she believes that Elmer should have been charged rent for the time he lived in the house and had an offset for the period when he and Elizabeth rented out the home.[102] These arguments fail to show how the trial court may have abused its discretion in ruling on this issue.

An equitable lien is a remedy designed to protect a party's right to reimbursement.[103] Because a trial court is required to "do equity" in a dissolution proceeding, it must take into account all relevant circumstances in deciding whether a right to reimbursement has arisen.[104] Appellate courts review a trial court's decision to grant or deny an equitable lien only for abuse of discretion.[105]

In *Miracle*, the parties lived in a home that was the separate property of the wife during six years of their seven-year marriage.[106] The community made no improvements to the home. But both parties deposited their income—including the wife's separate rental income from another property she owned—into a joint account; from that account the wife made payments

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[100] RAP 2.5(a).
[101] *Respondent's Brief* at 12.
[102] *Respondent's Brief* at 12 – 13.
[103] *Marriage of Miracle v. Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984).
[104] *Miracle*, 101 Wn.2d at 139.
[105] *Miracle*, 101 Wn.2d at 139.
[106] 101 Wn.2d at 138.

of $124 to $151 a month toward her purchase contract for the home in which the parties lived. When the parties divorced, the husband asked for a right of reimbursement to the extent of real estate contract payments made from the joint account. The trial court refused, concluding that the payments were more than offset by a benefit to the community in the form of the $250 to $300 a month rental value of the home.[107] The outcome in *Miracle* turned on the abuse of discretion standard. The court held that "[t]he trial court *may* impose an equitable lien to protect the reimbursement right when the circumstances require it."[108] Given the offsetting benefit to the husband, it respected the trial court's exercise of its discretion not to impose a lien.

Unlike the parties in *Miracle*, Elmer and Elizabeth made substantial revisions to the Federal Way Property that improved its value.[109] These funds, like the mortgage payments, came from a joint account in which Elmer and Elizabeth commingled their income during their marriage.[110] Although Ms. Archer complains that the Estate was entitled to an offset because Elizabeth deposited rental income into the joint account that was used to pay the mortgage, so too Elmer deposited his separate rental income into this joint account.[111] There is no evidence that the Federal Way Property's mortgage was paid with its rental income instead of Elmer's salary or his separate rental income. Once combined into Elmer and Elizabeth's joint account, the funds became community funds, each dollar

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[107] *Miracle*, 101 Wn.2d at 138.
[108] *Miracle*, 101 Wn.2d at 139 (emphasis in original).
[109] I VRP at 71 – 72, 75 – 78; II VRP at 327; CP 727 (Finding of Fact 1.34).
[110] I VRP at 72 – 74; II VRP at 179 – 81.
[111] II VRP at 179.

indistinguishable from the other.[112] There is no evidence that the trial court abused its discretion in refusing the Estate an offset against Elmer's equitable lien for rent.

E. Ms. Archer does not dispute that her breaches of fiduciary duties justify her removal.

Elmer asked this Court to hold that the trial court abused its discretion in not removing Ms. Archer as personal representative because of her residency in Chicago and her many breaches of fiduciary duties.[113] In response, Ms. Archer argues that her residence in Chicago alone does not justify her removal as personal representative.[114] However, Ms. Archer's residence was not the sole basis justifying her removal. Ms. Archer's well-documented breaches of fiduciary duties also justified her removal. Ms. Archer's failure to submit argument on this issue should be a waiver of the issue.

F. The trial court abused its discretion in allocating to Elmer a portion of the cost of making him whole from the Estate.

Ms. Archer provided no reasoned response to the accounting issues to justify allocating to Elmer a portion of the cost to make him whole as a result of Ms. Archer's wrongful actions. As outlined in Elmer's Appellant's Brief, the trial court deducted a portion of the make-whole payment required by Ms. Archer's actions to Elmer. Elmer should not have been forced to bear the cost of his own equalizing payments.

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[112] *Marriage of Mumm*, 63 Wn.2d 349, 352, 387 P.2d 547 (1963).
[113] *Appellant's Brief* at 27 – 30.
[114] *Respondent's Brief* at 29 – 30.

G. Ms. Archer is not entitled to her attorney fees and Elmer is entitled to his fees and costs under TEDRA, RCW 11.24.050, and RAP 18.1.

Elmer asks that this Court decline to award attorney fees to Ms. Archer. Additionally, as demonstrated above, Ms. Archer did bring a bad faith will contest. Attorney fees under RCW 11.24.050 are appropriate. Elmer asks that this Court award his attorney fees at trial and on appeal under RAP 18.1, RCW 11.96A.150, and RCW 11.24.050. This award should be allocated from Ms. Archer, and not Elmer's portion of the Estate.

II. CONCLUSION

For the foregoing reasons, Elmer requests that this Court hold that Ms. Archer's will contest was brought in bad faith and that the trial court therefore erred in refusing to enforce the no contest clause of the Will. Additionally, the trial court abused its discretion in not removing Ms. Archer as the personal representative because she does not reside in Washington State, she has personal conflicts of interest with the Estate, and she has breached her fiduciary duties to Elmer. Elmer also asks that this Court remand for a revised accounting and distribution that does not require him to fund his own repayment. Finally, Elmer asks for an award of attorney fees at the appellate and trial level against Ms. Archer.

RESPECTFULLY SUBMITTED this 24th day of February, 2016.

LEDGER SQUARE LAW, P.S.

By:_____
Chrystina R. Solum, WSBA # 41108
Attorneys for Appellant/Cross-Respondent

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

J. Mills Law Office of J. Mills 705 S. Ninth St., Suite 201 Tacoma, WA 98405-4622	☐ U.S. First Class Mail, postage prepaid ☐ Via Legal Messenger ☐ Overnight Courier ☑ Electronically via email ☐ Facsimile

DATED this 19th day of February 2016 at Tacoma, Washington.

Amy Jean Shackelford, PLS
Legal Assistant to Chrystina R. Solum