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STATE OF WASHINGTON
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CLERK Supreme Court No. _____ and Supreme Court No. 95861-1

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 75440-8-I (consolidated with 75840-3-I)
and No. 75246-4-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF TAYLOR GRIFFITH,
KENNETH AND JACKIE GRIFFITH,

Petitioners,

v.

BRADLEY MOORE, ET AL.,

Respondents.

MOTION FOR JOINT CONSIDERATION OF REVIEW

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TABLE OF CONTENTS

I. IDENTITY OF MOVING PARTY1

II. RELIEF SOUGHT.....1

III. FACTS RELEVANT TO MOTION1

IV. GROUNDS FOR RELIEF AND ARGUMENT6

A. The Court should grant review because the
difference in the standards governing removal of a
personal representative with and without
nonintervention powers is of substantial public
interest.....7

V. CONCLUSION.....7

TABLE OF AUTHORITIES

No table of authorities entries found.**Statutes**

RCW 11.04.105(2)(b).....5

RCW 2.44.0308

I. IDENTITY OF MOVING PARTY

Kenneth Griffith and Jackie Griffith (“the Griffiths”) seek joint consideration of review of the portion of the unpublished decision terminating review in *In re the Estate of Taylor Griffith*, No. 75440-8-I (consolidated with No. 75840-3-I) issued by Division I of the Court of Appeals on July 30, 2018, upholding the trial court’s refusal to remove Bradley Moore as personal representative of the Estate with the review of the published decision terminating review in *Harris v. Griffith*, 2 Wn. App. 2d 638, 413 P.3d 51 (2018), issued by Division I of the Court of Appeals on March 5, 2018, No. 95861-1. Petitions for review have been filed in both cases. The Griffiths filed a joinder in the Petition for Review of the March 5th decision and have filed a Petition for Review in No. 75440-8-I.

II. RELIEF SOUGHT

The Griffiths request that this Court delay consideration of the Petition for Review presently set for Department One on September 4, 2018 and consider it with the Petition for Review of No. 75440-8-I because of the commonality of parties and facts, and a common issue.

III. FACTS RELEVANT TO MOTION

Sixteen year old Taylor Griffith was killed in August 2014. His death was the result of a tragic accident in which a vehicle driven by Taylor Griffith collided head on with a vehicle driven by Steven Harris.

Taylor Griffith and Steven Harris died in the collision, and Margaret Harris (Steven's wife) was seriously injured. CP 32-42.

No probate action was initially filed following Taylor Griffith's death. Taylor died intestate, had virtually no assets, and his parents were his sole beneficiaries under RCW 11.04.105(2)(b). CP 24-25. The Griffiths saw no reason to commence a probate.

In December 2014, before any personal representative was appointed for Taylor Griffith's Estate, Margaret Harris and the Estate of Steven Harris filed a personal injury and wrongful death action against the Griffiths and the "Estate of Taylor Griffith." CP 32-37. The claim against the Griffiths was premised on the family car doctrine or negligent entrustment. The case was assigned to Judge Theresa Doyle, with trial set to begin January 4, 2016. No cross claims were asserted between the "Estate" and the Griffiths. CP 39-42.

In November 2015, nearly a year after the damages action was filed, the Harrises' counsel filed a petition to open a probate and appoint a personal representative for Taylor's Estate. The petition was signed by the Harrises' counsel David M. Beninger as well as a probate attorney. Mr. Beninger proposed that the personal representative be Brad J. Moore of Stritmatter Kessler Whelan -- who, like Mr. Beninger, is a well-known member of the plaintiff personal injury bar. CP 44-63.

The Griffiths, through defense counsel, opposed Mr. Moore's appointment and requested that either Kenneth Griffith (Taylor Griffith's father), or someone selected from the list of potential personal

representatives maintained by the King County Superior Court, be appointed as personal representative. CP 65-75. On December 8, 2015, at a hearing before Commissioner Henry Judson, Mr. Beninger asserted that Mr. Griffith was not a suitable representative *because Taylor Griffith's Estate might later pursue indemnity claims against the Griffiths*, giving rise to a conflict of interest. CP 78-81.

On December 15, 2016, the Griffiths filed a motion to revise the order appointing Mr. Moore as the personal representative of Taylor Griffith's Estate. CP 99-111.

Rather than benefit Taylor Griffith's Estate by seeking to minimize the damages award and preserve the right to a jury trial and appellate review, Mr. Moore as PR waived those rights on behalf of the Estate and began pursuing a course of action evidently intended to result in the maximum judgment against the Estate, while threatening to sue the only beneficiaries of the Estate, Kenneth and Jackie Griffith, for payment of that judgment.

On December 18, 2015, the trial court denied summary judgment to the plaintiffs on the Griffiths' liability in the personal injury case. CP 113-15. On January 5, 2016, the plaintiffs voluntarily dismissed their claims against the Griffiths without prejudice, leaving Taylor's Estate as the sole defendant. CP 121-27. That afternoon, Mr. Beninger and Mr. Moore announced an agreement to arbitrate the remaining issue of damages, with an arbitrator selected by Mr. Beninger. CP 130-31, 136-37. Mr. Moore entered into this agreement to have damages determined by an

arbitrator selected by Mr. Beninger without notifying or consulting counsel of record for Taylor Griffith's Estate or the beneficiaries of the Estate, Kenneth and Jackie Griffith. CP 379-402.

Mr. Moore echoed Mr. Beninger's original suggestion that the Estate would bring indemnity claims against the beneficiaries of Taylor's Estate, the Griffiths, stating in court, "*There is a potential claim that the estate may bring, could bring, and probably will bring against Mr. and Mrs. Griffith.*" CP 135.

On January 6, 2016, based on the agreement between Mr. Moore and Mr. Beninger, the trial court issued an order to arbitrate "all remaining issues" between Plaintiffs and the remaining defendant, Taylor's estate. CP 139. On January 7, 2016, the Griffiths filed a motion to stay the arbitration pending a full opportunity for the Court to evaluate the circumstances of Mr. Moore's appointment, including their motion for revision. CP 152-58.

On January 11, 2016, the arbitration was set for January 26, 2016, *before* any hearing on the Griffiths' motion to revise the order appointing Mr. Moore. CP 160-62. The motion to revise was timely filed on December 15, 2015, and originally noted for December 24, 2015, and was later re-noted. On January 13, 2016, after Mr. Beninger and Mr. Moore asserted that the Griffiths lacked standing to seek a stay because they had been dismissed, the Griffiths filed a motion to intervene to protect their rights. CP 164-76. On January 22, 2016, the Court granted the Griffiths' motion for stay, finding as follows:

[T]his Court...finding there are sufficient concerns regarding the circumstances that preceded the Agreement to Arbitrate on which this Court's Order to Arbitrate was based, to justify a stay until such time as the circumstances, which include the appointment of Brad Moore as personal representative of the Estate of Taylor Griffith, the pending Motion for Revision, and the Griffiths' petition for cancellation or in the alternative revocation under the Probate Code can be addressed.

CP 178-79. The Griffiths separately filed the TEDRA petition, through their counsel Michael King and Jacquelyn Beatty, to revoke Mr. Moore's Letters of Administration in addition to their motion to revise because of concerns as to whether the motion to revise must be decided solely on the record that was before the probate commissioner who appointed Mr. Moore, which did not include the significant additional information that came to light after his appointment, and, in particular, Mr. Moore's actions in the damages lawsuit. The TEDRA Petition and the Estate proceedings were subsequently consolidated. CP 194.

On March 31, 2016, with the hearing on Mr. Moore's status as personal representative set for April 29, Mr. Beninger filed a motion under RCW 2.44.030 to compel the Griffiths then counsel, Michael King and Jacquelyn Beatty, to "produce and prove their authority to act in these related matters, and to stay all proceedings by them pending proof of the propriety of their actions, and consideration of their disqualification, disgorgement and other damage relief." CP 518-20. Moore, through counsel, filed a joinder. CP 521.

After briefing, including supplemental briefs on RPC 1.9 at the trial court's request, the trial court disqualified counsel. CP 911-15. Mr. King and Ms. Beatty appealed their disqualification to Division I.

On May 26, 2016, the trial court heard and denied the TEDRA petition as well as the motion to revise, meaning that Moore remained personal representative. CP 921-22. The Order denying the TEDRA Petition incorporated the Court's oral ruling at the May 26 hearing. *Id.*

The Griffiths timely appealed the trial court's order denying the TEDRA Petition and a subsequent order and judgment awarding attorneys' fees and costs to Mr. Moore. Division I affirmed the trial court's order disqualifying counsel and the order denying the TEDRA Petition to remove Mr. Moore as personal representative but reversed the grant of attorneys' fees to Mr. Moore. The Lawyer Appellants filed a Petition for Review following denial of a motion for reconsideration by the Court of Appeals. The Griffiths joined in that Petition. In addition, the Griffiths have filed a separate Petition for Review with respect to the TEDRA Petition.

IV. GROUNDS FOR RELIEF AND ARGUMENT

The parties in both Petitions for Review are the same except that the Lawyer Appellants are only parties in No. 95861-1. The facts are the same in both appeals. One of the key issues in both appeals is whether the personal representative of the estate and the estate are distinct entities and whether the personal representative has rights distinct from those which Taylor Griffith possessed. In other words, is the personal representative a

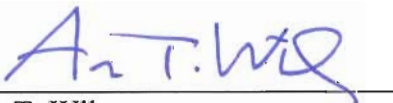
third party entitled to bring contribution and indemnity claims against the Griffiths as implied by the Court of Appeals in its July 30 Opinion even though such claims could not have been brought by Taylor himself under the parental immunity doctrine. *See Smelser v. Paul*, 188 Wn.2d 648, 653-54, 398 P.3d 1086 (2017). If the personal representative is a third party entitled to bring those claims, were the Lawyer Appellants subject to disqualification because one of them entered a notice of appearance for the “Estate” and both stated in open court that they represented the “Estate.”

V. CONCLUSION

This Court should grant this motion and consider the Petitions for Review because they present common issues of fact, a common issue of law, and parties.

RESPECTFULLY SUBMITTED this 29th day of August, 2018.

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