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SUPREME COURT OF THE  
STATE OF WASHINGTON

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IN RE THE MATTER OF THE ESTATE OF DAN McANALLY  
AND THE RISTE TRUST

Darrell Riste, beneficiary of the  
Estate and the Riste Trust

Appellant/Petitioner

v.

Baker Boyer Bank,  
the Personal Representative of the Estate of Dan McAnally, and  
the Trustee of the Riste Trust

Appellee/Respondent

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**ANSWER TO PETITION FOR REVIEW**

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Sean A. Russel (WSBA #34915)  
Erika Hartlieb (WSBA #33277)  
STOKES LAWRENCE VELIKANJE  
MOORE & SHORE  
120 N. Naches Avenue  
Yakima, WA 98902-2757  
(509) 853-3000  
Attorneys for Baker Boyer Bank

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## **I. INTRODUCTION**

Baker Boyer Bank (“Bank”) respectfully requests this Court deny review of the May 3, 2018, unpublished opinion of the Court of Appeals’ opinion in *In The Matter of the Estate of Dan McAnally*.

## **II. ANSWER TO ISSUES PRESENTED FOR REVIEW**

- a. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.
- b. The decision of the Court of Appeals is not in conflict with a decision of another decision of the Court of Appeals.
- c. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or of the United States.
- d. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by the Supreme Court.

## **III. STATEMENT OF THE CASE**

This appeal arises from the administration of the Estate of Dan McAnally. Mr. McAnally (“Decedent”) died testate. His Will, which designated the Respondent Bank as the Personal Representative, was admitted to probate on September 25, 2012. CP 1-20. There was no contest to the terms or validity of the Will.

The Will appointed the Respondent as Personal Representative to act with nonintervention powers. Notice of the Respondent’s appointment was provided as required by law. CP 1-20.

The Petitioner sought to add the Riste Trust (“Trust”), a testamentary trust, to this appeal. CP 613-615. The Court of Appeals found the issues relating to the Trust were not properly before the Court because the probate court decision related to the administration of the Estate and therefore the Trust was never a party to the probate proceeding. A-8.

The primary Estate asset was a collection of seven contiguous commercial real estate parcels located in Selah, Washington. CP 93-103. The real property is commonly referred to as the “Viking Village Shopping Center,” or just the “Shopping Center.” The Respondent received and accepted an offer to sell the Shopping Center for \$1,451,000.00 cash subject to a Level I environmental assessment and approval by the probate court. CP 95-103. The Petitioner did not want the Shopping Center sold (CP 91 Para 10), so out of an abundance of caution the Respondent petitioned the probate court to approve the sale and allow a forum for the Petitioner’s objections. A hearing was held on July 8, 2014. One of the Petitioner’s attorneys attended the July 8, 2014 hearing, but did not object to the sale. The probate court entered an order authorizing the Respondent to sell the property for \$1,451,000.00. CP 132-133.

A Level II environmental assessment was then performed on the Shopping Center property. The results of the Level II environmental assessment showed soil contamination primarily from an auto repair shop, which had operated on the property for many years. CP 229-246. The testing agency estimated the cleanup would cost approximately \$450,000.00.

A second appraisal was requested due to comments from local real estate brokers who thought the list price was too high. CP 522-523. The appraiser valued the property using a capitalization of income of the Shopping Center and arrived at a value of \$1,100,000.00 as of January 15, 2014. The second appraisal did not value the improvements and the land separately.

The Respondent considered petitioning the probate court again for approval, however, in the interim the Petitioner expressly authorized in an email the sale of the Shopping Center for \$1,100,000.00. CP 216-217, 521. The Shopping Center sold for \$1,100,000.00.

The Respondent filed a Declaration of Completion on September 8, 2016. CP 265-271. The Petitioner filed his objection to the Declaration of Completion on September 15, 2016. CP 272-306.

The probate court held a hearing on November 18, 2016. CP 545-549. The probate court issued several oral rulings and requested the

Respondent to prepare proposed findings of fact and conclusions of law to be presented in probate court. CP 545-549.

The probate court issued Findings of Fact and Conclusions of Law on January 26, 2017. CP 591-612. The Petitioner filed a timely Notice of Appeal. CP 613-638.

#### IV. ARGUMENT

**A. The Petition does not set forth any issues within the scope of RAP 13.4(b).**

Rule of Appellate Procedure (“RAP”) 13.4 provides a petition for review will only be accepted by the Supreme Court if one of four conditions are met: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals, (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved, or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The petition for review does not set forth any issue that falls within the scope of RAP 13.4(b).

**B. Issues that are not briefed are waived under RAP 10.3.**

RAP 10.3(a)(6) requires parties to provide “argument in support of the issues presented for review, together with citations to the legal authority and references to relevant parts of the record.”

A party waives an assignment of error not adequately argued in its brief. *State v. Motherwell*, 114 Wn.2d 353, 358 n.3, 788 P.2d 1066 (1990). Issues that are not correctly briefed should not be considered by the Supreme Court. *Sprague v. Spokane Valley Fire Dep’t*, 189 Wn.2d 858, 876, 409 P.3d 160 (2018). RAP 10.3; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808-09, 828 P.2d 549 (2002). Where no authority is cited in support of an appellant’s contentions, the Supreme Court will assume that none exists. *In re Disciplinary Proceeding Against Sanai*, 177 Wn.2d 743, 767, 302 P.3d 864 (2013); *Yeats v. Yeats’ Estate*, 90 Wn.2d 201, 209, 580 P.2d 617 (1978).

Several of the Petitioner’s issues for review are not correctly briefed and must not be considered. First, the Petitioner presents an issue which questions whether his due process rights were violated. *Petitioner’s Motion for Discretionary Review, Issue No. 1*. The Petitioner does not, however, present argument to support the issue and fails to cite any authority to support his assertion. Second, the Petitioner raises an issue relating to Laches, but fails to present argument or legal authority in



support. *Petitioner's Motion for Discretionary Review, Issue No. 8.*

Finally, the Petitioner raises the issue of whether a Petition for Removal can be brought at any time during administration, but again fails to present argument or legal authority to support the issues. *Petitioner's Motion for Discretionary Review, Issue No. 9.*

The Court should not consider these issues because the Petitioner failed to comply with RAP 10.3.

**C. The Court of Appeals correctly found the Personal Representative had the authority to sell the Shopping Center.**

The Petitioner misinterprets Washington law concerning the transferability of real property in this case. First, title to real property does not vest in a beneficiary upon the death of a decedent. Under RCW 11.04.250, title to real property vests at death *subject to probate*, and it vests against everyone *except the personal representative*. *Bickford v. Stewart*, 55 Wash. 278, 286, 104 P. 263 (1909) (title vests subject to administration and is not absolute until after administration). A-17.

Second, a personal representative acting with nonintervention powers, under RCW 11.68.090(1), has the authority to “sell” and “convey” real property. A-17. The Court of Appeals correctly found the Shopping Center was not a specific devise under the will, but rather it passed through the general residuary clause, which allowed the

Respondent to sell the asset. A-12. The Respondent was authorized to sell the Shopping Center in this case because it was an asset which passed under the residuary clause and the Respondent was appointed to serve as Personal Representative with non-intervention powers.

Despite the clear authority of RCW 11.68.090(1), the Respondent took an additional step to receive approval to sell the Shopping Center out of abundance of caution and to allow the Petitioner to object to the sale.

A-18. Counsel for the Petitioner was present at the hearing, but failed to object. The Court approved the sale of the Shopping Center. CP 132-133.

Finally, the Petitioner actually agreed to the sale of the Shopping Center (CP 216-217, 521) and signed a receipt acknowledging his full distributive share. CP 86-87, A-16.

**D. The Respondent had the sole authority to interpret the Will.**

Petitioner contends the Court of Appeals erred by not considering the decedent's intent regarding the sale of the Shopping Center.

Notwithstanding the Court of Appeals' analysis as to why the Respondent was legally entitled to sell the Shopping Center, the Petitioner's argument is unsupported and in conflict with *In re Estate of Rathbone*, 190 Wn.2d 332, 412 P.3d 1283 (2018).

*In re Rathbone* is dispositive on the issue of whether a Court may consider the decedent's intent when interpreting a will. The Court of

Appeals correctly found neither the probate court nor the Court of Appeals had the authority to interpret the Will. Under *Rathbone*, a personal representative with non-intervention powers has the sole authority to interpret the will. *Rathbone*, 190 Wn.2d at 345-46. A-13.

**E. The Court of Appeals correctly found the Personal Representative did not mislead the Petitioner or the Court.**

The Court of Appeals correctly found there was insufficient evidence to establish the Respondent provided misleading information to the Petitioner or the probate court. A-18. The Court of Appeals noted that the Petitioner failed to provide a sufficient citation to the record so the Court of Appeals could not discern the specific act or statements by the Respondent the Petitioner believed were misleading. A-19. The Court of Appeals further noted that if the purported misleading information related to the sale of real property or interpretation of the will those acts were appropriate. *Id.*

The Court of Appeals correctly found the Respondent's delay in providing some information was excusable and was not cause to remove the Respondent as Personal Representative. The record supports the Court of Appeals' decision. A-19. First, the Respondent eventually provided the Petitioner with a copy of the requested information. Second, the Petitioner never sought court action against the Respondent under

RCW 11.44.050 and did not timely object to the delay. Finally, upon receiving the information, the Petitioner did not challenge the validity of the information contained in the inventory and did not show any damages. A-19. In fact, the Petitioner waited for over two years to complain about the delay after receiving the information and waited until two days before the Respondent filed its declaration of completion to complain. A-19, CP 142-148.

**F. The Court of Appeals correctly found issues relating to the Riste Trust were not properly before the Court.**

The Court of Appeals correctly found the issues relating to the Trust were not properly before the Court because the probate court decision related to the administration of the Estate and therefore the Trust was never a party to the probate proceeding. A-8. Simply adding the Trust as a party to the appeal is incorrect when the Trust was not a party to the probate proceedings. The Court of Appeals also correctly found the Petitioner failed to brief the conflict of interest issue and therefore the argument was waived under RAP 13.4(c). A-14.

**G. The Court of Appeals correctly found removal of the Respondent as Personal Representative was unnecessary.**

The probate court has broad discretion to determine whether and for what grounds to removal a personal representative. *In re Estates of Aaberg*, 25 Wn. App. 336, 339, 607 P.2d 1227 (1980). The probate court

provided sound reasoning for why it did not remove the Respondent as Personal Representative. A-15. The probate court noted that many of the reasons the Petitioner sought to remove the Respondent related to the sale of the Shopping Center. A-16.

The Court of Appeals correctly considered the probate court's reasoning in detail. The Court of Appeals noted (1) the Petitioner agreed to the sale of the Shopping Center (A-16), (2) the Respondent had the right to sell the Shopping Center (A-17), and (3) the reason the Respondent decided to sell the Shopping Center was appropriate (A-18).

Finally, the Court of Appeals correctly identified the heightened "abuse of discretion" standard as set forth in *Estates of Aaberg* applies to the issue of whether the probate court correctly decided not to remove the Respondent as Personal Representative. The Court of Appeals correctly found the probate court's decision was "well supported by the record and the law," and that the decision "reflected a substantial amount of preparation and consideration." A-20.

**H. The Court of Appeals correctly found there was no conflict of interest and no breach of fiduciary duty relating to distributions.**

The record establishes the Respondent invested residual funds into a separate trust account, and the Petitioner received net income from the Trust funds. CP 453. Although the Petitioner's authorization to transfer

funds from the Estate to the Trust was not provided, the Petitioner's authorization was not required because he was not the Personal Representative of the Estate. The Court of Appeals correctly found there was no conflict of interest. A-13.

## V. CONCLUSION

For the reasons stated above, the Petitioner's petition for discretionary review should be denied.

s/Sean A. Russel  
Sean A. Russel (WSBA #34915)  
Erika Hartlieb (WSBA #33277)  
STOKES LAWRENCE  
VELIKANJE MOORE & SHORE  
120 N. Naches Avenue  
Yakima, WA 98901-2757  
Telephone: (509) 853-3000  
E-mail: sar@stokeslaw.com  
Attorneys for Baker Boyer Bank



**STOKES LAWRENCE VELIKANJE MOORE & SHORE**

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