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SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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Washington State Supreme Court

In re the Estate of)	Reply Brief to Response
Constance Elaine Little)	to Petition for Review
Roxanne Trees, Respondent)	
)	Case no. 97480-2
v.)	
)	Title Page
Rena Robertson, Petitioner)	

Review of Court of Appeals, Division One, Case no. 78082-4-1
of
King County Superior Court No. 13-4-01099-0SEA

by

Petitioner

Rena Robertson
P. O. Box 222
Milton, WA 98354

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Washington State Supreme Court

In re the Estate of Constance Little)	Reply Brief of Appellant
)	
Roxanne Trees, respondent)	Case no. 97480-2
v.)	
)	
Renaë Roberson, Appellant)	
)	

Court of Appeals, Division One, No. 78082-4-1

Review from King County Superior Court No. 13-4-01099-0SEA

I, Renaë Roberson, hereby, present my reply brief per RAP 13.4(d) to the response brief of the respondent, regarding my petition for review of the denial of my appeal by Division One of the Court of Appeals of the order denying my motion for revision in the King County Superior Court, on hearing held January 26, 2018, which affirmed the Commissioner's ruling on December 28, 2017.

In reply to the response of Roxanne Trees, I present the following.

Reply to IV. Argument A. “The Court of Appeals adhered to the plain language of RCW 11.12.255 in holding that a will may incorporate a separate writing by reference.”

Roxanne argues Article III of the Will refers to a separate writing under RCW 11.12.255. Article III is merely the residuary beneficiary

provision in my mom's Will, including one percent to her sister under Paragraph A and the rest to my sister Roxanne and I, in equal shares. Article III refers to a gift list in Article II, and Article II specifically references the gift list under RCW 11.12.260. The canon of *expressio unius est exclusio alterius* applies to the interpretation of Wills. The expression of a gift described in the Will under RCW 11.12.260, bars implication of a writing under RCW 11.12.255. A court must interpret a will according to the language that the testatrix actually used, not according to what the court might guess that the decedent might have said if she had chosen the right words. Roxanne's contention that this is proof of another writing other than described in Article II violates the canon of *expressio*, since the expression of RCW 11.12.260, bars implication of RCW 11.12.255. The separate writing states it is for the disposition of tangible property per RCW 11.12.260, an identical match to the statute cited in the Will, barring any implication of RCW 11.12.255. CP 14 Therefore, there is no separate writing incorporated under RCW 11.12.255 in my mother's will.

Reply to IV Argument B. “The lower courts' application of RCW 11.12.255 did not deprive Roberson of due process because she had notice and opportunity to challenge the gift list.”

Under the Fourteenth Amendment to the U.S. Constitution, I am guaranteed due process of law in all actions and proceedings where my property rights are at stake. When my mother passed away my inheritance property rights in her estate were vested. Under Washington Statutes and case law, the court does not have jurisdiction to entertain a Will contest four months after the Will has been admitted to probate. RCW 11.24.010 All attempts to do so are without jurisdiction and deny interested parties Due Process of law. A court "has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." *State ex rel. Wood v. Superior Court*, 76 Wash. 27, 30-31, 135 P. 494 (1913). *See also In re Estate of Toth*, 138 Wn.2d 650, 653, 981 P.2d 439 (1999).

"Because Cleveland clearly failed to satisfy RCW 11.24.010, imposing the four month statute of limitations, we hold the trial court properly granted Duke's motion to dismiss for lack of jurisdiction." *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2005) The personal representative's failure to file the gift list (which increases her inheritance and decreases mine) cannot be admitted now as a matter of law, since it cannot be contested as a part of my mother's Will after four months from the admission of the Will to probate.

Likewise, a person cannot contest in probate what they do not have notice of within the probate contest period. Roxanne presented the separate writing to me thirty months after the Will was admitted to probate. *In the Estate of Kordon*, the Court characterized a three day late citation for contesting an estate as “unavailing”. 157 Wn.2d 206, 137 P.3d 16 (2005) The court was not persuaded to waive a three day late filing of a citation. Roxanne suggests that because she gave me the separate writing, albeit thirty months late, that I did get it, that she satisfied due process. Under RCW 11.24.010, due process requires a four month period to consider whether or not to contest the will or any of its parts thereof. Roxanne purposely withheld the separate writing by not filing it with the Will and presented it to me and all other interested parties after the four month time for filing and serving a citation to contest. The four months had long expired, knowing it was certain to spark a Will contest, thereby depriving me of due process and my right to a meaningful opportunity to be heard within four months of the will being admitted to probate as required by RCW 11.24.010 when the court had actual jurisdiction to hear the contest.

A gift list under RCW 11.12.260 is merely for tangible personal property, normally resulting in augmenting a beneficiary's inheritance with meaningful family personal items, like icing on a cake. Mom's separate

scheme, and the like, which are prime subjects for an estate contest, such as her reasoning why my inheritance should be decreased, resulting in Roxanne's inheritance be proportionately increased. I would have been allowed to challenge the writing based on undue influence or lack of mental capacity during a Will contest. Since this gift list writing was authored at a time frame where Roxanne assumed a roll as DPOA, Durable Power of Attorney and when she also accompanied my mother to her attorney's office and participated in the writing of the July 20, 2011 Will, it was presumptively authored under undue influence enriching Roxanne and was proper for a will contest. If a recipient has a confidential or fiduciary relationship with the donor, the burden shifts to the donee to prove that the gift was intended and not the result of undue influence. *Endicott v. Saul*, 142 Wn. App. 899, 922, 176 P.3d 560(2008) *Lewis v. Estate of Lewis*, 45 Wn. App. 387, 388-89, 725 P.2d 644 (1986) This is particularly true when the donor is elderly. *See C. Mitchell and F. Mitchell*, 26 Washington Practice: Elder Law and Practice § 5.42, at 547 (2d ed. 2004) ("Undue influence may exist when assets are transferred by a dependent elderly person to a caregiver or advisor. ... If a confidential relationship exists, the burden is on the caregiver or advisor to prove that no undue influence has occurred.").

Here, Roxanne acted in the capacity of DPOA with my mom during the time she authored the separate writing, which resulted in increasing Roxanne's inheritance and decreases mine. The withholding of this separate writing from being filed with the Will was contrary to the handwritten language written on the face of the separate writing in my mother's own handwriting, which reads "Attach to my will at Yakima County Court House". Roxanne did not attach it. I believe my mom wanted me to fight it because she knew Roxanne was up to no good but she was relying on Roxanne to take care of her in her final days. Regardless, since the time for contesting the Will has expired, the time for contesting any part of the Will that materially alters the disposition of the estate has also expired, so admission of the separate writing after the estate contest period violates my right to Due Process of Law under the Fourteenth Amendment to the United States Constitution.. U.S. Const. XIV Amend.

Therefore, the separate writing should not be admitted to probate or admitted to distribute the estate.

CONCLUSION

Therefore, the Supreme Court should order the decree of distribution of the estate according to the terms of the Will alone, dated July 20, 2011, without the effect of the disposition of the separate writing by disallowing its admission at the close of the estate. Per the Will in THIRD: “after the payment of all just claims against my Estate” my mother bequest one percent to my Aunt Judy, and the remaining ninety-nine percent, in equal shares to my sister, Roxanne and me, without further delays and unnecessary expenditures.

September 30, 2019.



Respectfully submitted,
Signature
Renae Roberson

Affidavit of Service to Parties is filed together with this Brief.

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SUPREME COURT
STATE OF WASHINGTON
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Washington State Supreme Court

In re the Estate of:
Constance E. Little, Deceased

Roxanne Trees, respondent

v.

Renae Roberson, Petitioner

Supreme Court No. 97480-2

Appellate Case No. 78082-4-1

King County Superior Court
Case No. 13-4-01099-0SEA

Declaration of Service of
Reply to Response of
Petition for Review

I, Renae Roberson declare that on September 30, 2019, via U.S. First Class Mail, I sent a copy of my Reply to the Response to my Petition for Review, to the following persons at their respective addresses.

YCTV
123 S. 2nd Street
Yakima, WA 98901

Renae Roberson
P.O. Box 222
Milton, WA 98354

Judith Fjellman
P.O. Box 1163
Ferndale, WA 98248

Ryan Trees
1402 N.E. 75th Street
Seattle, WA 98115

Victoria E. Ainsworth
1619 8th Ave. N.
Seattle, WA 98109-3007

Parker Youth Foundation
6 S. 2nd Street
Yakima, WA 98901

Yakima Valley Agriculture Museum
4508 Main Group
Union Gap, WA 98903

Perry Institute
2011 W. Washington Ave.
Yakima, WA 98903

Stacey Fataua
1769 Covey Run Dr., Apt. A
Forest Grove, OR 97116

Yakima Valley Museum
2105 Tieton Drive
Yakima, WA 98902

Meridian School Foundation
525 Beard Road
Lynden, WA 98264

Bruce R. Moen,
Attorney for Roxanne Trees
1325 Fourth Ave., Ste. 1025
Seattle, WA 98101

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Kent, (state) WA, on (date) Sept 30 - 2019.

Renae Roberson
Signature

Renae Roberson
Print or Type Name

RENAE ROBERSON - FILING PRO SE

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Transmittal Information

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- office@moenlaw.com
- sarah@moenlaw.com

Comments:

Sender Name: Renae Roberson - Email: affexion@aol.com
Address:
P.O. Box 222
Milton, WA, 98354
Phone: (253) 946-4646

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