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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of MARGUERITE SAMMANN, ANNA J. ARMSTRONG, as Personal Representative of the Estate of Robert M. White, and BARBARA J. COSTER, Administrator of the Estate of Marguerite Sammann, Respondents, v. NADENE M. SAMMANN, as Personal Representative of the Estate of Marguerite Sammann, Appellant.	DIVISION ONE No. 81072-3-I UNPUBLISHED OPINION

DWYER, J. — Nadene Sammann appeals from a superior court order on revision adopting a commissioner's order in her mother's probate proceedings. We affirm.

I

Marguerite Sammann and her daughter Nadene Sammann have a long history of litigation related to Marguerite's[1] two siblings, Robert and Rosemarie White. Beginning in 2009, during guardianship proceedings for Robert, Marguerite and Nadene pursued litigious and frivolous filings that led the superior court to award attorney fees and monetary sanctions in favor of the personal

[1] Members of the Sammann and White families are referred to by their first names to avoid confusion. No disrespect is intended.

representative of Robert's guardianship estate, respondent Anna Armstrong.[2] Robert died in 2013. Since then, multiple courts have entered monetary judgments against Marguerite and Nadene for filing meritless lawsuits related to Robert's probate estate.[3] Rosemarie died in 2015. Nadene is the personal representative of Rosemarie's estate. Both Rosemarie's and Robert's estates are being administered in the Pierce County Superior Court.

Marguerite died on April 10, 2017, and her will was thereafter admitted to probate in the King County Superior Court. Nadene is the sole beneficiary of Marguerite's estate. Marguerite's estate is a beneficiary of both Robert's and Rosemarie's estates. Due to the various monetary judgments entered against Marguerite's estate, no distributions are expected from Robert's estate. Marguerite's estate has received a distribution of $45,000 from Rosemarie's estate. The only other asset in Marguerite's estate is its interest in Marguerite's real property in Seattle, a home in which Nadene currently resides.

Nadene was initially approved as the personal representative of Marguerite's estate and granted nonintervention authority. However, Armstrong

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[2] Courts have also issued orders precluding further filings from Nadene in various circumstances. Division Two of this court prohibited Marguerite and Nadene from filing further appeals of orders arising in Robert's guardianship proceeding. See Order Denying Motion to Modify and Prohibiting Petitioners From Filing Further Appeals, In re Guardianship of Robert M. White, No. 41149-1-II (Wash. Ct. App. June 16, 2011). Our Supreme Court has refused to entertain further filings from Nadene until she provides proof of payment of the sanctions it previously imposed. See Ruling Denying Review and Awarding Sanctions, In re Guardianship of Robert M. White, No. 86281-8 (Wash. Sup. Ct. Sept. 23, 2011).

[3] The parties have not provided exhaustive documentation about the various judgments. Relevant here, the King County Superior Court entered summary judgment against Marguerite's estate in favor of Robert's estate for $150,935.57 and attorney fees of $5,047.50 with 12 percent interest per annum. The superior court also calculated the interest to date in 2018 as $7,856.72. Respondent Armstrong informs us that this judgment "is based upon the total of 7 judgments entered against Marguerite." As of late 2019, Armstrong's counsel calculated the total judgments entered against Marguerite's estate to amount to approximately $196,000.

petitioned the superior court to remove Nadene as the personal representative because Nadene had failed to disclose the existence of the monetary judgments against Marguerite, rejected the valid creditor's claims of Robert's estate, and allegedly evaded service of legal documents. The superior court found that Nadene had misrepresented the solvency status of Marguerite's estate. Accordingly, the superior court granted the petition, removed Nadene as the personal representative of Marguerite's estate, and appointed respondent Barbara Coster as personal representative.

Title to Marguerite's property is clouded. When Marguerite's husband died in 1986, Marguerite transferred his community property interest in the property to herself. Marguerite then transferred her interest in the property into a trust with herself as trustee and Nadene as the beneficiary. Between 1987 and 2002, Marguerite recorded multiple quit claim deeds to transfer partial interests in the property from the trust to Nadene. After many, but not all, of these transfers, Nadene then transferred the partial interests she had received into a trust with herself as trustee and Marguerite as the beneficiary. Nadene also filed a document entitled "Declaration of Homestead" in 1999, but it is unclear whether she had any recognized ownership interest in the property at that time.

Nadene has also asserted conflicting claims about ownership. On appeal, she claims to own 100 percent of the property. But in 2017, Nadene filed a declaration in the Pierce County Superior Court that stated she owned half of the property and Marguerite owned the other half.

Based on the recorded documents, Marguerite's estate, Marguerite's trust, Nadene, and Nadene's trust may all have an interest in the property. If some or all of the transfers prove to be valid, it is possible that Marguerite's estate actually owns little to no interest in the property. Given the convoluted nature of the transfers, a quiet title action will likely be necessary to ascertain ownership of the property—unless all of the parties can negotiate an agreement.

Coster filed a petition for instructions in the King County Superior Court on August 30, 2019 and set a hearing for September 17, 2019. The petition requested that the court authorize Coster to (1) execute a quit claim deed that would transfer any interest Marguerite's estate may have in the property to Nadene, (2) use any remaining funds to partially satisfy the monetary judgments against Marguerite held by Robert's estate, and (3) close the estate.

Both Nadene and Armstrong objected to the petition. Nadene alleged that the petition suffered from various procedural defects and requested that Coster's requests be denied or modified. Because Robert's estate is a creditor of Marguerite's estate, Armstrong objected to closing Marguerite's estate prior to resolving the still-pending creditor's claim. Armstrong also requested that the court direct Coster to sell any interest that Marguerite's estate retained in the property to Robert's estate for $5,000.

Coster filed an amended request for relief on September 11, 2019. The amended request for relief urged denial of Armstrong's request that Marguerite's estate's interest in the property be sold to Robert's estate. Instead, Coster asked the court to enter an order that directed her to take one of three actions: (1)

transfer any interest in the property to Nadene as originally proposed, (2) transfer any interest in the property to Robert's estate to be set off against the monetary judgments that the estate owns against Marguerite, or (3) obtain a litigation title report concerning the property before taking further action. Coster recommended that the third option be ordered.

All parties appeared for a hearing on September 17, 2019 in front of a superior court commissioner. Prior to the hearing, the parties attempted to negotiate an agreement to resolve the various contested issues. Although the exact details of this negotiation are disputed, the record indicates that the parties reached an agreement as to the entry of a proposed agreed order. However, Nadene claimed that she wanted to consult with an attorney before signing the order. For their part, Coster and Armstrong did not want to further delay the proceedings. As a compromise, the parties agreed to include a provision that would provide Nadene a 30-day period to consult with an independent attorney about the order at her discretion and petition the commissioner to review the terms of the order.

On the record, the commissioner discussed the terms of the proposed order with the parties. The commissioner then asked whether Nadene had any questions about what she had heard. Nadene replied, "No. My only concern is the nine-month period to pay it off." To address her concern, Coster and Armstrong consented to an 11-month period for Nadene to satisfy the obligations set forth. The parties then agreed to draft the order and return for entry of the order by the commissioner.

After conferring, the parties drafted and reviewed the proposed order. The finalized order provided that Nadene "shall consult with an independent attorney at her discretion and may petition this court to review the terms of this order upon the filing of a proper notice of hearing within thirty (30) days of entry of this order." The commissioner entered the order that afternoon.

Nadene filed a "Petition to Vacate" the agreed order on October 17, 2019. Therein, Nadene argued that the order should be vacated on various grounds: (1) fraudulent inducement, (2) unconscionability, (3) violations of public policy, (4) lack of consideration, (5) breach of fiduciary duty, and (6) violations of the Consumer Protection Act, chapter 19.86 RCW.

The parties appeared before the same commissioner on November 4, 2019. During the hearing, the commissioner noted that the agreed order "was very unusual in [Nadene's] favor" because it gave her an additional 30 days to consult with an attorney to review the order's terms and "have effectively a do-over." Nadene appeared at the hearing pro se. She presented no evidence to the commissioner to demonstrate that she had either retained or consulted an attorney regarding the September 17 order. The commissioner found that there was no basis to vacate the September 17 order and denied Nadene's petition.

On November 14, 2019, Nadene sought revision of the commissioner's decision. Nadene filed multiple declarations in the superior court. Nadene also asserted, for the first time, that she had actually consulted with independent counsel. After oral argument on January 3, 2020, the superior court adopted the commissioner's decision as the decision of the court.

Nadene appeals.

II

"On revision, the superior court reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner." State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). The superior court cannot accept new evidence. RCW 2.24.050; In re Marriage of Lyle, 199 Wn. App. 629, 632, 398 P.3d 1225 (2017). In all other respects, a motion for revision is on equal footing to all other matters on the court's docket. Lyle, 199 Wn. App. at 632. We review the superior court's decision, not the commissioner's. Ramer, 151 Wn.2d at 113.

Unchallenged findings of fact are verities on appeal. In re Estate of Little, 9 Wn. App. 2d 262, 274, 444 P.3d 23 (citing In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004)), review denied, 194 Wn.2d 1006 (2019). We uphold challenged findings of fact when the findings are supported by substantial evidence. Jones, 152 Wn.2d at 8. "Substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding." Jones, 152 Wn.2d at 1. We review conclusions of law de novo. Jones, 152 Wn.2d at 8-9.

III

We must first address whether this appeal is properly taken. Respondent Armstrong asserts that Nadene is precluded from prosecuting this appeal by an order of Division Two of this court. But Armstrong does not cite to such an order. Instead, Armstrong cites to a declaration from counsel that contains similar

assertions, a letter from our Supreme Court, and statements uttered by Nadene during the superior court hearing. These references to the record do not establish the existence of an appellate court order that precludes Nadene from prosecuting this appeal, nor do they establish that this appeal falls within the scope of any such order.

Armstrong did not ask us to take judicial notice of the record in other proceedings to prove that the purported order exists. We note that the Rules of Evidence allow courts to take judicial notice of adjudicative facts on appeal, whether or not judicial notice is requested by a party, subject to the restrictions in RAP 9.11 on the consideration of additional evidence on review. See ER 201; Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 98, 117 P.3d 1117 (2005). "A judicially noticed fact is one that is not subject to reasonable dispute because it is either '(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" In re Adoption of B.T., 150 Wn.2d 409, 414, 78 P.3d 634 (2003) (quoting ER 201(b)). However, appellate courts are not permitted to take judicial notice of records in other proceedings that are "independent and separate," even if the proceedings are between the same parties. B.T., 150 Wn.2d at 415.

As the party seeking relief, it is Armstrong's burden to establish the existence of the order, its scope and effect, the factual basis for concluding that this appeal—or certain issues raised in this appeal—falls within the ambit of the

order, and (if relying on judicial notice) the applicability of ER 201. Armstrong's entreaty fails in all respects.

The request to dismiss this appeal is denied.

IV

Nadene contends that the agreed order was procedurally unconscionable because her lack of counsel and inability to evaluate yet-to-be-drafted documents put her in an unfair bargaining position and left her without meaningful choice. We disagree.

"Procedural unconscionability requires evidence of blatant unfairness in the bargaining process and a lack of meaningful choice," as determined in light of the totality of the circumstances. Riley v. Iron Gate Self Storage, 198 Wn. App. 692, 710, 395 P.3d 1059 (2017). Relevant factors include "(1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print." Riley, 198 Wn. App. at 710. Our Supreme Court has stressed that we should not apply these factors "'mechanically without regard to whether in truth a *meaningful choice* existed.'" Torgerson v. One Lincoln Tower, LLC, 166 Wn.2d 510, 519, 210 P.3d 318 (2009) (internal quotation marks omitted) (quoting Adler v. Fred Lind Manor, 153 Wn.2d 331, 345, 103 P.3d 773 (2004)).

Nadene chose to represent herself during these proceedings.[4] Before the September 17 hearing, the parties discussed a potential agreement to resolve the contested issues. Both parties made compromises to address other parties' concerns. During the hearing, the commissioner reviewed the proposed agreement on the record and provided Nadene an opportunity to ask questions. She had none. The parties then drafted the written agreed order together. Such circumstances do not indicate that Nadene lacked meaningful choice.[5]

Furthermore, the 30-day provision in the September 17 order explicitly provided a mechanism for Nadene to obtain review of the terms of the order after consulting with independent counsel.[6] Had Nadene shown that she consulted with an attorney—who raised specific concerns about the terms of the order—Nadene could have relied on this provision to seek to remedy those specific concerns. However, when Nadene filed her "Petition to Vacate," she failed to demonstrate that she had consulted with an attorney. Nadene made no such assertion in her petition, nor did she introduce any such evidence to the commissioner. She also appeared pro se at the November 4 hearing.

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[4] We hold pro se litigants to the same standards as attorneys. Little, 9 Wn. App. 2d at 274 n.4 (citing In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993)).

[5] Nadene also asserts that CR 2A supports vacating the September 17 order. Because CR 2A does not preclude enforcement of agreements that are made in writing or put on the record, we disagree. In re Marriage of Ferree, 71 Wn. App. 35, 40, 856 P.2d 706 (1993).

[6] Armstrong contends that Nadene's appeal should be dismissed because she failed to comply with the mandatory requirements of CR 60, which governs motions to vacate. But the 30-day provision was not superfluous. Instead, it provided a mechanism distinct from CR 60 that permitted Nadene to consult with an attorney about the terms of the order and—after doing so—petition the commissioner for review within 30 days. Because the 30-day provision provided a mechanism distinct from CR 60, Armstrong's claim is meritless. Respondents also assert that Nadene could only invoke the 30-day provision through counsel, not while pro se. Such a requirement is nowhere in the plain language of the order.

On appeal, Nadene contends that she consulted with independent counsel. She made a similar contention to the superior court in her motion for revision. However, new evidence is not permitted on revision, nor can new evidence be introduced on appeal. RCW 2.24.050; RAP 9.1(a); RAP 9.11. Only the evidence before the commissioner can be reviewed by the superior court judge or by us. Based on the evidence that Nadene actually presented to the commissioner, the superior court ruled that there was no basis to vacate the agreed order. Nadene does not demonstrate error in this ruling.

V

Nadene raises numerous other assignments of error.[7] Many of these alleged errors fall outside the limited scope of the superior court's decision on revision. In addition, many of Nadene's allegations rest on highly argumentative accounts of actions that took place during the prior history of litigation in related guardianship and probate proceedings, as well as conclusory assertions about the intent of the parties, attorneys, and judicial officers. She has not provided relevant citations to support the majority of her assertions.

The Rules of Appellate Procedure require parties to include a "fair statement" of the relevant facts in their briefs, with "[r]eference to the record . . .

[7] These assignments of error include that the superior court erred in adopting the agreed order because (1) respondent Armstrong has no standing, (2) Nadene herself owns 100 percent of the Seattle residence, (3) the order violates public policy, (4) respondents breached their fiduciary duties by acting for their own benefit, (5) respondents made fraudulent, deceptive, and coercive misrepresentations, (6) respondents violated the Truth in Lending Act, (7) the superior court did not enter written findings of fact and conclusions of law, and (8) the terms of the promissory note and deed of trust do not conform to the terms of the agreed order. We note that the superior court did not decide whether the terms of the promissory note and deed of trust comply with the agreed order. Although Nadene alleges discrepancies, that issue was not before the superior court and it is therefore not before us.

for each factual statement." RAP 10.3(a)(5). Parties must also include "citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Nadene has failed to identify evidence in the record supporting many of her factual allegations, and she has failed to provide citations to authority for many of her legal arguments. This precludes meaningful review of these alleged errors. An appellate court has no obligation to search the record to support a party's arguments. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Accordingly, we need not further review these assignments of error.[8]

VI

Nadene, despite proceeding pro se, requests an award of attorney fees on appeal, citing to RCW 11.96A.150 and RAP 18.9.[9] Armstrong also requests an award of attorney fees on appeal, citing to RAP 18.9. We decline both requests.

In estate matters commenced under Title 11 RCW, a court may exercise discretion to award attorney fees to any party. RCW 11.96A.150. On the other hand, "RAP 18.9(a) permits an appellate court to award a party attorney fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action." Advocates for Responsible Dev. v. W. Wash Growth Mgmt. Hr'gs Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010). An appeal is

[8] Nadene filed a "Motion and Declaration in Support of Corrected Reply Brief" on April 19, 2021. The motion is granted. In that brief, Nadene raises additional claims of error that were not raised in her opening brief, including that respondents breached their RPC 3.3 duty of candor. Because issues raised for the first time in a reply brief are too late to warrant consideration, we decline to consider them. See Cowiche Canyon Conservancy, 118 Wn.2d at 809.

[9] Nadene also cites to RCW 11.48.210 in her request for attorney fees. This provision provides for compensation to personal representatives and does not grant Nadene a right to recover attorney fees in this action. See RCW 11.48.210.

frivolous only if, considering the entire record, it "presents no debatable issues upon which reasonable minds might differ" and "is so devoid of merit that there is no possibility of reversal." Advocates for Responsible Dev., 170 Wn.2d at 580. Any doubts about whether the appeal is frivolous are resolved in favor of the appellant. Advocates for Responsible Dev., 170 Wn.2d at 580.

As to Nadene's request for an award of attorney fees, a pro se party can establish no such entitlement. Price v. Price, 174 Wn. App. 894, 905, 301 P.3d 486 (2013) (citing In re Marriage of Brown, 159 Wn. App. 931, 938-39, 247 P.3d 466 (2011)). Moreover, the response briefs filed by the respondents do not advance frivolous arguments. Finally, nothing about Nadene's position in this litigation merits a discretionary award in her favor. For all of these reasons, we deny her request.

As to Armstrong's request, Nadene's assertions on appeal did not totally lack merit. In particular, we disagree with Armstrong's assertions concerning whether this appeal was barred and whether CR 60 controlled the superior court's inquiry. We see no reason to award attorney fees.[10]

[10] Coster did not seek an award of attorney fees on appeal.

Affirmed.

WE CONCUR: