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NO. 63761-4-I

IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

IN RE THE ESTATE OF WILLIAM ROSS TAYLOR

BRIEF OF RESPONDENTS CHARLES TAYLOR AND REUBEN
TAYLOR IN RESPONSE TO OPENING BRIEF OF TEDRA
PETITIONER CAIARELLI

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	2
III. ARGUMENT	7
A. The Court Did Not Err In Ruling There Was No Genuine Issue of Fact Regarding the Ownership of the Fidelity IRA and the AIG Insurance Policies	8
B. The Court Did Not Err In Ruling There Was No Genuine Issue of Fact Regarding the Ownership of the Northwestern Mutual Insurance Policies	10
1. William Assigned Ownership of the Policies to His Father	10
2. Even if the Ownership of the Five Policies Had Not Been Transferred to Reuben Taylor, ACT Still has No Right to the Proceeds	11
C. The Court Did Not Abuse Its Discretion In Setting A New Trial Date.....	12
D. The Court Did Not Commit Error By Holding the Summary Judgment Hearing Sooner Than 28 Days After it Was Filed.....	13
E. The Court Did Not Err By Not Raising An Issue of Conflict of Interest.....	15
F. The Court’s Rulings Did Not Prejudice Caiarelli	16
G. Respondents are Entitled to Attorneys’ Fees on Appeal	16
IV. CONCLUSION	17

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Bishop v. Joy</i> , 116 Wn. App. 291, 65 P.3d 671 (2003).....	13
<i>Coggle v. Snow</i> , 56 Wn. App. 499, 784 P.2d 554 (1910).....	12
<i>Dean v. Jordan</i> , 194 Wash. 661, 668, 79 P.2d 331 (1938)....	7
<i>In Re the Guardianship of Ivarsson</i> , 60 Wn.2d 733, 375 P.2d 509 (1962).....	15
<i>McNulty v. Estrada</i> , 98 Wn. App. 717, 988 P.2d 492 (1999)	7
<i>State Ex Rel. Citizens v. Murphy</i> , 151 Wn. 2d 226, 236, 88 P.3d 375 (2004).....	14
<i>State v. Brune</i> , 45 Wn. App. 354, 363, 725 P.2d 454 (1986)	15
 <u>Court Rules</u>	
CR 56(c).....	6, 13
CR 56(f).....	13
RAP 18.1.....	17
 <u>Statutes</u>	
RCW 11.96A.150(1)(a)	17

I. INTRODUCTION

The primary issue on appeal is whether appellant Caiarelli raised a genuine issue of material fact at summary judgment with regard to the ownership of the proceeds of a Fidelity IRA, three AIG insurance policies and five Northwestern Mutual Insurance policies.

There is no dispute that William Taylor named his brother Charles Taylor as beneficiary on the Fidelity IRA and the AIG insurance policies. On summary judgment, the court ruled that there was no genuine issue of material fact with regard to the ownership of the proceeds of those non-probate assets and found Charles Taylor to be the rightful beneficiary. CP 583-84.

There is also no dispute that William never named his son (“ACT”) or a trust as primary beneficiary of any of the Northwestern Mutual policies, and no dispute that he assigned the ownership interest in those policies to his father Reuben Taylor. On summary judgment, the court ruled that there was no genuine issue of material fact with regard to the ownership of the proceeds of those policies and found that ACT had no ownership interest. CP 581-82.

Appellant Caiarelli, as guardian for ACT, contends that there are issues of fact with regard to the ownership of all the referenced non-probate assets because it is unclear what William’s intent was when he

executed the beneficiary designations. Her argument, however, is unsupported by any competent evidence.

II. STATEMENT OF THE CASE

Respondents set forth the following statement of the case to correct what they believe are errors in appellant's procedural history and statement of facts, and to add certain relevant facts.

William R. Taylor, a computer science engineer who had worked for Microsoft for 10 years, CP 1081, died as a result of a boating accident on Lake Washington on September 11, 2005. CP 1007. He left an estate in Washington subject to probate, and a probate was started on September 20, 2005. CP 21-22.

William Taylor was married to Patricia Caiarelli on November 24, 2001. They had one son, ACT, born May 5, 2002, who is William Taylor's only surviving child. Subsequently, Patricia Caiarelli filed for divorce. On May 2, 2004, during the divorce proceedings, William executed a will that was admitted to probate. CP 942-45. The will makes certain specific bequests and then gives the residue of his estate to ACT:

2.3 Remainder of Estate. I give the rest, residue, and remainder of my estate, including any real and personal property, to my son [ACT].

While the will is unclear with regard to the creation of a trust for ACT, there has been no argument made that William did not intend to create

such a trust if William were to die before ACT reached age 25. The will lists assets to be distributed to the trust ("Trust") in paragraph 2.5:

2.5 The trust shall consist of The Sablewood house located at 4711 117th Place NE, Kirkland, WA., 98033-8749, or its proceeds after sale. In addition, the Trust shall include all my monies and properties of Tailorized Industries, Inc. and Tailorized Properties, LLC., and from my Charles Schwab accounts (Schwab IRA's, Schwab One, etc.), my Fidelity accounts (401K, ESPP, etc.) and all other checking and savings accounts under my name.

CP 942-45.

William and Patricia's marriage was dissolved in February 2005 after a bitterly contested dissolution action. CP 1075. In the summer of 2005, William started work at a new job. CP 1078. At that time, he rolled funds into an IRA at Fidelity on which he named his brother Charles as beneficiary. CP 137. William also took out insurance with AIG on which he named his brother Charles as beneficiary. CP 137-38.

On September 20, 2005, pursuant to William's Will, Charles Taylor was appointed as William's personal representative with nonintervention powers. CP 1059. In the course of the probate, the personal representative identified both probate and nonprobate assets. CP 625-28. Among the nonprobate assets listed in the probate Inventory were the two IRAs, the one with Charles Schwab and the other with Fidelity, and the AIG insurance. *Id.*

On March 20, 2006, Caiarelli filed a TEDRA action seeking an order that declared ACT entitled to receive all proceeds from 401(k) Accounts, Individual Retirement Accounts, Investment Accounts, Option Accounts, and other nonprobate assets identified in decedent's will and owned by the decedent at death. CP 1006-19. After Caiarelli's attorneys withdrew from representation in the TEDRA action, a stipulation was entered in both the probate action and the TEDRA action, appointing a guardian ad litem ("GAL") for ACT. CP 946-48. On April 19, 2007, precipitated by inactivity on the part of Caiarelli over the preceding six to eight months, the GAL submitted a petition asking the court to approve the GAL's plan for litigation in the TEDRA proceeding. CP 949-56. The court issued an order on May 10, 2007 authorizing the GAL to actively pursue the TEDRA litigation, including but not limited to conducting discovery. CP 598-61. The GAL then pursued the litigation.

On June 26, 2008, the matter was certified for trial. CP 1054-55. The trial date was then continued to December 8, 2008 to allow the GAL to bring a partial summary judgment motion. CP 1069-70. That motion sought to have the proceeds from Schwab IRA account distributed to ACT under the legal theory that a provision in William's will superceded the beneficiary designation on the IRA account, which designation had been made prior to the will provision. CP 1056-69. The court issued an order

on November 21, 2008 agreeing with the GAL's position.¹ CP 661. The GAL did not seek to recover any other nonprobate assets for A.C.T. (the beneficiary designations on the remaining nonprobate assets were changed by William after the date of his will) and the matter was to proceed to trial on December 8, 2008.

Days before the trial date, attorney Madeline Gauthier appeared for Caiarelli, requesting that the court continue the trial date. CP 1132. Judge Jim Rogers retained jurisdiction of the matter, consolidated the probate and TEDRA actions, and entered an order continuing the trial date to April 20, 2009. CP 634-38.

Caiarelli's attorney issued subpoenas to financial institutions, including Northwestern Mutual Insurance Co. She also served Reuben Taylor with Requests for Admission, Interrogatories and Requests for Production related to the Northwestern Mutual policies. CP 1137-48, 1197-1218. There were six Northwestern Mutual policies. As of July 1, 2005, William was the owner of five. Reuben Taylor was the owner of one. CP 21-22. At that time, Reuben and Emily Taylor were the direct beneficiaries on five of the policies. Charles and Elizabeth Taylor were direct beneficiaries of one policy. CP 36-38, 41-42, 46-48, 55-57, 66-68,

¹ That ruling is being appealed under No. 63462-3-I.

77-79. Those beneficiary designations were not changed before William died. On July 13, 2005 William signed an Owner Designation form from Northwestern Mutual that assigned Reuben ownership of all the policies of which William had previously been the owner. CP 91. Northwestern Mutual acknowledged that Reuben was the owner of all the policies on the date of William's death. CP 93.

On Friday, March 13, 2009, The Taylors filed summary judgment motions seeking rulings that ACT had no ownership in the Fidelity IRA, AIG policies or Northwestern Mutual policies. The notes for motion set a hearing date for April 10, 2009, giving twenty-eight days notice as required by CR 56(c). CP 1256-59. The court moved the date for the oral argument up one week, to April 3, 2009, because of scheduling issues. By agreement of the parties, the briefs of the responding parties were still due on March 30, 2009, the day they would have been due if the original hearing date had not been moved forward. CP 177, 365. Also by agreement of the parties, the reply briefing was due April 2, 2009. CP 574. The court heard oral argument on April 3, 2009 and granted the summary judgment motions on April 10, 2009. CP 581-84.

III. ARGUMENT

Caiarelli believes that the trial court's rulings that ACT has no ownership interest in the Fidelity IRA, the AIG policy proceeds or the Northwestern Mutual policies is incorrect because it is inequitable. This belief is apparently based upon the fact that the amount of the nonprobate assets William left to his brother and father is greater than the amount of probate assets William left to his son. Caiarelli is asking the court to adopt her conclusion of what is equitable and overturn the trial court on that basis, despite the lack of evidence that William intended anything other than what the beneficiary designations and the assignment of the Northwestern Mutual policies show. The right to dispose of one's property by will or by quasi-testamentary instruments such as a beneficiary designation on IRAs or insurance policies is "not only a valuable right, but is one assured by law." *Dean v. Jordan*, 194 Wash. 661, 668, 79 P.2d 331 (1938) (discussing wills); *McNulty v. Estrada*, 98 Wn. App. 717, 988 P.2d 492 (1999). Caiarelli has presented no evidence raising a genuine issue of material fact that the ownership of the nonprobate assets at issue should be other than as designated by William. There is no basis to reverse the trial court.

A. The Court Did Not Err In Ruling There Was No Genuine Issue of Fact Regarding the Ownership of the Fidelity IRA and the AIG Insurance Policies.

When this TEDRA action was first filed in March 2006, Caiarelli's claims to the proceeds at issue were based on the provision in William's will that specifically named certain financial accounts, including Charles Schwab and Fidelity accounts, to go to a trust for ACT. CP 942-44, 1006-19. The GAL, who was authorized to litigate the TEDRA action on behalf of ACT, brought a successful motion seeking to have the Schwab IRA declared to be part of the trust. CP 661. He brought no motions with regard to the Fidelity IRA or the AIG insurance policies. The GAL raised no issues regarding William's mental capacity or any confusion about beneficiary forms.

In December 2008, several days before a trial was to resolve any remaining issues in the TEDRA action, Caiarelli appeared with a new attorney. It was only at this point that Caiarelli began to question William's intentions at the time he executed the beneficiary designations. Caiarelli adopted the premise that because the beneficiary designations resulted in money going to Charles rather than ACT, William could not have intended that result. CP 177-197. However, petitioner has searched in vain for evidence to support her premise.

Caiarelli acknowledges that William substantially complied with the procedures for designating Charles Taylor as the beneficiary of his Fidelity IRA and the AIG policies. Appellant's Brief at p. 12. However, Caiarelli asserts that there remains a genuine issue of material fact with regard to whether William intended to name his brother individually or as trustee of a testamentary trust for William's son ACT.

Caiarelli can present no evidence that at the time William signed the beneficiary designations, he did not understand that he was naming Charles Taylor as beneficiary, individually and not as trustee. She makes no claim that William Taylor lacked full mental capacity at the time he signed the beneficiary designations. CP 525-536. Nor does she make a claim that William Taylor was unduly influenced in making the beneficiary designations. *Id.*

The only evidence she relies upon is the will drafted by William some 18 months before the beneficiary designations were executed and comments made by Craig Coombs, who drafted the will.² However, William's intent at the time he signed his will is not the issue. The issue is

² To the extent Craig Coombs' testimony sheds any light on William's intent in 2005, he also testified in deposition that while he did not have a specific recollection of discussing the relationship of the will and beneficiary designations (that "beneficiary designation trumps the will") with William, it is his practice to do so and he would be surprised if he had not had that conversation with William in 2003. CP 546. He also stated that "Will had his own ideas about what he wanted...he was a pretty directive guy." CP 544.

William's intent at the time he signed the AIG and Fidelity beneficiary designations.

Caiarelli also suggests that William intended to name Charles as trustee but was confused by the Fidelity and AIG forms and made a mistake. No evidence whatsoever suggests that William was confused by these forms. Presumably, Fidelity and AIG have been using the same forms for years, for tens of thousands of people. No evidence is presented to indicate that **anyone** was ever confused by the forms. It is uncontested that William was a highly intelligent person. He had a master's degree and held at least three patents. CP 138. Petitioner's suggestion that William did not understand the beneficiary designation forms is pure speculation and does not raise a genuine issue of fact with regard to Charles Taylor's ownership of the Fidelity IRA and AIG proceeds.

B. The Court Did Not Err In Ruling There Was No Genuine Issue of Fact Regarding the Ownership of the Northwestern Mutual Insurance Policies.

1. William Assigned Ownership of the Policies to His Father.

The proceeds of the Northwestern Mutual policies do not belong to ACT. Caiarelli has provided no basis whatsoever for her claim that any of those proceeds belong to ACT. William assigned ownership of the policies to his father in July 2005. CP 91.

Caiarelli makes basically the same argument regarding the Northwestern Mutual policies that she makes with regard to the Fidelity IRA and AIG policies – that William loved his son; the assignment of ownership of the policies benefits his father rather than his son; therefore William must not have intended to make the assignment as he did.

Caiarelli, however, presents no credible evidence to support that position. The assignment document is clear on its face. Caiarelli makes no allegation that William was not mentally competent to make the assignment or that he was unduly influenced in making the assignment. Caiarelli's disbelief that William intended to do what is clear from the documentation does not create a genuine issue of fact.

2. Even if the Ownership of the Five Policies Had Not Been Transferred to Reuben Taylor, ACT Still has No Right to the Proceeds.

Even if petitioner could prove that the transfer of the ownership in the policies was invalid, ACT would still not be entitled to any of the proceeds as he had never been named as a direct beneficiary on any of the policies. CP 720-37. If the assignment was declared invalid, the beneficiaries named in the policies would then be entitled to the policy proceeds, not ACT.

Caiarelli asserts, without proof, that William did not personally fill in the beneficiary designations on the Northwestern Mutual policies. Even

if that could be proven, that alone would not raise a genuine issue of material fact regarding William's intent with regard to the beneficiaries of those policies. If William had intended for his son to be beneficiary, he could have made such a change. There is absolutely no evidence that he intended any change of beneficiary.

There is no genuine issue of material fact regarding the issue of whether ACT has any rights to the proceeds of the Northwestern Mutual policies, and the court should affirm the trial court's ruling that the proceeds of the Northwestern Mutual policies do not belong to ACT.

C. The Court Did Not Abuse Its Discretion In Setting A New Trial Date.

Caiarelli retained new counsel on December 6, 2008, two days before the December 8, 2008 trial date. CP 1132. New counsel moved for a continuance. Despite the fact that Caiarelli had previously been represented by two attorneys and that the GAL had been authorized to and did pursue the TEDRA litigation on behalf of ACT, and was prepared to go to trial, the court granted Caiarelli a four-month continuance, to April 20, 2009. CP 634-38.

Caiarelli apparently argues that four months was insufficient time and asserts that the court abused its discretion in granting only four months. Caiarelli's reliance on *Coggle v. Snow*, 56 Wn. App. 499, 784

P.2d 554 (1910) and *Bishop v. Joy*, 116 Wn. App. 291, 65 P.3d 671 (2003) is misplaced. Both those cases involve a trial court's denial of a motion for continuance of a summary judgment motion based on CR 56(f). Here, Caiarelli's motion was for a continuance of trial, and the court granted her motion, giving her an additional four months to prepare for trial.

Caiarelli provides the court with an unsubstantiated review of how her attorney spent her time during those four months but fails to address two critical points. First, Caiarelli never brought another motion for continuance. Her only argument is that the court abused its discretion by failing to grant her more than a four-month continuance pursuant to her December 2008 motion. Second, no trial took place. The remaining issues in the TEDRA case were decided on summary judgment. As there was no trial, the failure of the court to grant additional time for the trial is moot. Caiarelli's argument that the court abused its discretion when it granted a four-month trial continuance has no basis. The court should not reverse the summary judgment rulings on that basis.

D. The Court Did Not Commit Error By Holding the Summary Judgment Hearing Sooner Than 28 Days After it Was Filed.

The summary judgment motions were filed on Friday, March 13, 2009, setting a hearing date for April 10, 2009 and giving twenty-eight days notice as required by CR 56(c). CP 1256-59. The court moved the

date for the oral argument up one week, to April 3, 2009, because of scheduling issues. By agreement of the parties, the briefs of the responding parties were still due on March 30, 2009, the day they would have been due if the original hearing date had not been moved forward. CP 177, 365. Also by agreement of the parties, the reply briefing was due April 2, 2009. CP 574.

A court has discretion to shorten the 28-day period for a summary judgment motion. Deviation is permitted so long as there is ample notice and time to prepare. *State Ex Rel. Citizens v. Murphy*, 151 Wn. 2d 226, 236, 88 P.3d 375 (2004). In order to overturn a court's discretionary ruling to shorten the time for a summary judgment motion, the objecting party must show prejudice. *Id.* Prejudice is established on a showing of lack of time to prepare for the motion and no opportunity to submit case authority or provide countervailing oral argument. *Id.* In order to overturn the court's decision to shorten time, an appellate court must find a "manifest abuse of discretion." *Id.*

Here, Caiarelli cannot show any prejudice. She states in her brief that she was prejudiced because she did not have sufficient time to prepare a response. Caiarelli Brief at p. 29. However, she had the same amount of time to prepare her response to the motion as she would have had if the oral argument had not been moved up. Her briefing was extensive. CP

177-98; 365-84. She had ample time to make her oral argument. “Bare allegations [of prejudice] unsupported by citation of authority, references to the record or persuasive reasoning” do not establish prejudice on a more likely than not basis. *State v. Brune*, 45 Wn. App. 354, 363, 725 P.2d 454 (1986). The court did not abuse its discretion in moving up the hearing date.

E. The Court Did Not Err By Not Raising An Issue of Conflict of Interest.

Caiarelli asserts that the summary judgment motions should be reversed because the court failed to raise, *sua sponte*, an issue of conflict of interest. Caiarelli apparently argues that Jack Borland, attorney for Charles Taylor in his capacity as personal representative of the estate, somehow created a conflict of interest when he briefed and argued a partial summary judgment motion on the Schwab IRA, on agreed-upon facts. What asserted conflict of interest existed and how it adversely affected ACT is unclear. ACT was ably represented at that time by the GAL, who prevailed on the motion.

Caiarelli relies on *In Re the Guardianship of Ivarsson*, 60 Wn.2d 733, 375 P.2d 509 (1962) in support of her argument. The *Ivarsson* case stands for the proposition that an appeal by a ‘next friend’ involving the rights of a ward in a guardianship matter will not be dismissed because a

guardian ad litem had previously been appointed and could have appealed on behalf of the ward. That is not the case here. ACT's interests have been represented by several attorneys, by a GAL and now by Caiarelli's current attorney, Ms. Gauthier. There has been no evidence or suggestion that ACT has not been ably represented. Respondents fail to understand what Caiarelli thinks the court should have done, such that the failure to do so would be reversible error.

More critically, any conflict of interest that may have existed when Mr. Borland represented the personal representative of the estate was not present when the summary judgment motions at issue were brought. At that time, Charles Taylor had been removed as personal representative and respondents were represented by new counsel. Caiarelli's argument is frivolous.

F. The Court's Rulings Did Not Prejudice Caiarelli.

Caiarelli's argument that by "viewing the court's errors in combination" she was prejudiced appears to be an acknowledgment that she would need to prevail on all three of her arguments in order for the trial court to be reversed. Respondents stand by their previous arguments. No action or inaction by the trial court prejudiced Caiarelli.

G. Respondents are Entitled to Attorneys' Fees on Appeal.

Respondents are entitled to fees on appeal. RCW 11.96A.150(1)(a); RAP 18.1. No credible evidence has been presented by Caiarelli to indicate that William's intent with regard to the beneficiary designation was other than as shown on the designation forms or to indicate that William's assignment of the Northwestern Mutual policies was invalid. Further, even if the assignment had been invalid, ACT was never named as a beneficiary on the policies. There was no basis for arguing that any of the contested nonprobate assets belonged to ACT. Caiarelli's argument regarding the timing of the summary judgment hearing was based on a claim of prejudice when, in fact, she lost no time for preparation of her response. Her other claims on appeal are frivolous. Respondents should be awarded fees from Caiarelli for having to respond to her appeal.

IV. CONCLUSION

William's choice of beneficiaries for his Fidelity IRA and AIG policies and his assignment of ownership of the Northwestern Mutual policies to his father may seem puzzling to some. The fact that we cannot know why he made those choices does not lead to the conclusion that he

did not intend to do what is clear from the evidence. This court should affirm the trial court's summary judgment orders of April 10, 2009.

DATED this 8 day of February, 2010.

LAW OFFICE OF B. JEFFREY CARL



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the document to which this certification is attached was served via U.S. Mail, First Class, postage prepaid or by e-mail per agreement with counsel on this date on the following individual(s):

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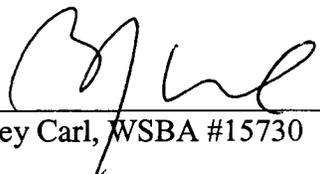
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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 8 day of February, 2010 at Seattle, Washington.



B. Jeffrey Carl, WSBA #15730