

NO. 70210-6-I (Consolidated with Nos. 70193-2-I and 70317-0-I)

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SHARON EADEN, VICKI SANSING, AND KENNETH EVANS,

Appellants,

vs.

ESTATE OF CALVIN EVANS, SR.; LINDSEY EVANS; CORY
EVANS; JESSE EVANS AND CALVIN EVANS, III,

Respondents.

RESPONDENTS' BRIEF

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I. INTRODUCTION

Respondents Lindsey Evans, Cory Evans, Jesse Evans, and Calvin Evans III submit this brief in opposition to the appeal by the Estate of Calvin Evans, Sr. of the trial court's award of attorney fees and costs. The Estate's appeal is limited to the issue of whether the trial court abused its discretion in awarding attorney fees and costs to these respondents and to the TEDRA petitioners pursuant to RCW 11.96A.150. Respondents argue that the trial court did not abuse its discretion and that the award of attorney fees and costs in favor of these respondents against the Estate should be affirmed. Respondents did not appeal the trial court's award of attorney fees to the TEDRA petitioners, nor the trial court's denial of the Respondents' motion for award of their attorney fees against the petitioners.

Respondents accept the Statement of The Case in the appellant's brief.

II. ARGUMENT

Appellant correctly notes that the award of attorney fees and costs in this TEDRA proceeding is entirely within the trial court's discretion under RCW11.96A.150. Also, the appellant correctly states the standard of review on appeal to be whether the trial court exercised its discretion in a manner that is manifestly unreasonable, on untenable grounds, or for

untenable reasons. See, appellant's brief at p.5, citing *In re Estate of Niehenke*, 117 Wn.2d 631, 647, 818 P.2d 1324 (1991).

Respondents Lindsey, Cory, Jesse and Calvin Evans, III are the children of Calvin Evans, Jr. and are the grandchildren of the decedent, Calvin Evans, Sr. They successfully opposed the TEDRA petition of Sharon Eaden, Vicki Sansing and Kenneth Evans which sought to make an exception to the state's anti-lapse statute and to disinherit them. Respondents then moved for award of reasonable attorney fees and costs against the TEDRA petitioners Eaden, Sansing and Evans or against the Estate. Respondents argued they should be awarded fees because the cost of defeating the TEDRA petition and establishing their inheritance rights should not diminish their distributive share, because they were the prevailing parties on the petition, and because the litigation was of benefit to the Estate. CP 285-287.

The statute, RCW 11.96A.150(1) states that fees, if awarded, are "to be paid in such amount and in such manner as the court deems to be equitable." The trial court "may consider any and all factors that it deems to be relevant and appropriate ..." but "whether the litigation benefits the estate..." does not control the question. *Id.*

The Estate argues it "is merely a stakeholder in the probate", that this was "essentially a controversy between two rival claimants" and thus

“there is no basis for awarding fees against the Estate.” Appellant’s brief at pp. 9-11. However, beneficiaries may recover attorney fees against an estate for determining their entitlement to receive a portion of the assets. *In re Estate of Elmer*, 91 Wn.App. 785, 792, 959 P.2d 701 (1998). The trial court may award attorney fees for all parties to be paid by the estate so that all beneficiaries bear the cost of the proceedings. *In re Estate of Black*, 116 Wn.App. 476, 491, 66 P.3d 670, *review denied*, 150 Wn.2d 1020, 81 P.3d 119 (2003)(“...the trial court may order costs and fees to be chargeable against the estate so that all the contesting parties bear the costs of the proceedings...”); *Bartlett v. Bellach*, 136 Wn.App. 8, 22, 146 P.3d 1235, *review denied*, 162 Wn.2d 1004, 175 P.3d 1092 (2007)(“Fees may be awarded to both parties where all of the beneficiaries are involved and where the litigation affects the rights of all the beneficiaries”).

Finally, the Estate argues it should not pay the respondents’ attorney fees because it “supported their position throughout the TEDRA proceeding.” Appellant’s brief at p.12. Whether a party prevailed or lost may be considered, but it does not control the discretionary award of attorney fees under the statute.

III. CONCLUSION

Respondents Lindsey Evans, Cory Evans, Jesse Evans and Calvin Evans, III request that the trial court’s decision awarding attorney fees be

affirmed because the court did not abuse its discretion under the standards
of RCW 11.96A.150.

DATED this 13 day of September, 2013.

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CERTIFICATE OF SERVICE

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STATE OF WASHINGTON
COURT OF APPEALS, DIVISION I
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I, Daina K. Gray, certify under penalty of perjury under the laws of the State of Washington that on September 13, 2013, I caused to be served on the persons below, via first class mail, postage prepaid, true and correct copies of the following:

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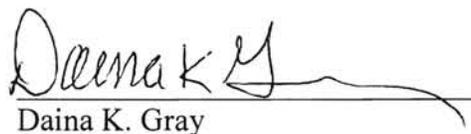
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