

Court of Appeals No. 70715-9-I

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION I

TRUDY C. NEUMANN,
Respondent,

v.

NICOLE WELLER, WILLIAM GRANT WELLER, JESSICA TICE, and
the ESTATE OF WILLIAM LYNN WELLER,

Appellants.

BRIEF OF APPELLANT NICOLE WELLER

By:

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COPIES TO COURT
DATE: 11/11/09
BY: [Signature]

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III. ASSIGNMENTS OF ERROR

1. The trial court erred in granting summary judgment in favor of respondent Trudy Neumann.
2. The trial court erred in denying Nicole Weller and Estate of William L. Weller's motion for summary judgment.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by failing to apply RCW 11.07.010 by analogy to void the beneficiary designation in favor of respondent for the proceeds of the accidental and dismemberment insurance policy issued to William L. Weller, deceased? (Pertains to Assignments of Error Nos. 1, 2).
2. Is appellant entitled to summary judgment declaring her to be the owner of the proceeds of the accidental and dismemberment insurance policy issued to William L. Weller, deceased? (Pertains to Assignment of Error No. 2).

V. STATEMENT OF THE CASE

A. FACTS

Appellant, Nicole D. Weller, is the daughter of William Lynn Weller, deceased. CP 126. Respondent, Trudy Neumann, was formerly in an intimate relationship with the decedent, William Lynn Weller. CP 110-12.

Trudy Neumann and William Weller began a relationship in approximately 1986 and maintained the relationship until 2002 or October 2003. CP 111. On April 25, 2005, the Superior Court of King County entered agreed Findings of Fact and Conclusions of Law and agreed Order re: Final Resolution. CP 110-12; CP114-15. The relationship between Trudy Neumann and William Weller was characterized as a meretricious relationship from about 1994 until October 2003. CP 111. The orders dissolved the relationship. CP 114. William Weller was awarded “...*all of the personal property, including...life insurance...in his name or in his possession.*” . CP 115.

On September 7, 1999, William Weller named Trudy Neumann as the beneficiary of an accidental death policy, the proceeds of which are at issue in this matter. CP 117-24. William Weller died on October 13, 2011, leaving property subject to probate and this insurance policy, a non-probate asset. CP 97.

William Weller's last will was executed in 1988. CP 126-29. The will named Trudy Neumann as executor and gave her William Weller's entire estate. CP 127. Trudy Neumann declined to serve as executor and declined to receive any share of the estate. CP 131. William Weller's estate was probated as an intestate estate.

Trudy Neumann, on her own behalf, and Nicole Weller, as an heir and as administrator of William Weller's estate, submitted claims for the BECU Financial Services accidental death insurance policy No. ADD-12961. The Hartford interpleaded the proceeds of said policy into the registry of the court. CP 1-14. Hartford was dismissed from the case on December 5, 2012. CP 31-37.

The Hartford policy provides that the proceeds are to be paid according to the beneficiary designation in effect at the time of death; otherwise in equal shares to survivors in descending classes, in this case, Decedent's children. CP 123.

B. PROCEDURAL HISTORY

On or about June 27, 2012, appellant Nicole Weller filed a notice of appearance in the interpleader action. CP 19-21. Trudy Neumann filed a notice of appearance on July 13, 2012. CP 26-27.

On January 23, 2013, Trudy Neumann filed a motion for summary judgment. CP 38-65. On January 30, 2013, Nicole Weller and the Estate

of William Weller filed a motion for summary judgment. CP 96-103. Those motions were heard on June 28, 2013. VRP 1-35. On June 28, 2013, the trial court entered an Order on Motion for Summary Judgment in which it declared Trudy Neumann to be the prevailing party and awarded her the funds interpleaded by Hartford into the court registry. CP 151-52; App. 1. In the order, the trial court wrote as follows: “*The court finds that it does not have the authority to extend RCW 11.07.010 to meretricious or other relationships.*” CP 151. On June 28, 2013, the trial court also entered an order denying Nicole Weller’s motion for summary judgment regarding the interpleaded funds. CP 149-50; App. 2. On July 25, 2013, Nicole Weller filed a notice of appeal from the trial court’s orders on summary judgment. CP156-162.

VI. ARGUMENT

A. The trial court erred in granting summary judgment for respondent.

1. Standard of review.

The standard of review for an appeal of an order granting or denying summary judgment is *de novo*, and the appellate court performs the same inquiry as the trial court. *Macias v. Saberhagen Holdings, Inc.*, 175 Wn. 2d 402, 407, 282 P.3d 1069 (2012).

The trial court's interpretation of RCW 11.07.010 is reviewed *de novo*. *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn. 2d 425, 430, 275 P.3d 1119 (2012).

2. The trial court erred in granting summary judgment for respondent.

Nicole Weller assigns error to the trial court's Order on Motion for Summary Judgment. CP 151-52; App. 1. The trial court's order rests upon its interpretation of RCW 11.07.010. App. 3 The proceeds of William Weller's accidental death and dismemberment policy qualify as a "nonprobate asset" under RCW 11.07.010 (2) (a) by virtue of the definition of that term in RCW 11.07.010 (5) (a):

As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:
(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

See Mearns v. Scharbach, 103 Wn. App. 498, 504, 12 P. 3d 1048 (2000).

The trial court concluded that it could not extend RCW 11.07.010 to meretricious or other relationships. CP 151. The trial court failed to recognize is that from the inception of the doctrine of committed intimate relationships, Washington courts have consistently looked to Washington statutes for guidance. *Matter of Marriage of Lindsey*, 101 Wn. 2d 299, 678 P.2d 328 (1984), the court adopted the rule that courts must examine the meretricious relationship and the property accumulations and make a just and equitable disposition of the property. 101 Wn. 2d at 304. The court cited RCW 26.09.080 in support of the new rule. 101 Wn. 2d at 304.

In *Connell v. Francisco*, 127 Wn. 2d 339, 898 P.2d 831 (1995), the court approved consideration of community property laws in dividing property in the termination of a meretricious relationship. “*As such, the laws involving the distribution of marital property do not directly apply to the division of property following a meretricious relationship. Washington courts may look toward those laws for guidance.*” 127 Wn.2d 349.

In *Warden v. Warden*, 36 Wn. App. 693, 676 P. 2d 1037, *rev. den.*, 101 Wn. 2d 1016 (1984), the court endorsed RCW 26.09.080 as a guide for distributing property in a dissolution of a committed intimate relationship. “*We believe the time has come for the provisions of RCW 26.09.080 to govern the disposition of the property acquired by a man and a woman who have lived together and established a relationship which is*

| *tantamount to a marital family except for a legal marriage.*” 36 Wn. App. at 698.

In *Foster v. Thilges*, 61 Wn. App. 880, 812 P.2d 523 (1991), the court found no error in the trial court’s application of the principles in RCW 26.09.080 to divide the property of parties in the termination of a committed intimate relationship. 61 Wn. App. at 886.

In *Zion Construction, Inc. v. Zion Const., Inc. v. Gilmore*, 78 Wn. App. 87, 895 P.2d 864 *review granted, cause remanded*, 127 Wn. 2d 1022, 904 P.2d 1157 (1995), the court held that when a trial court distributes property after the dissolution of a quasi-marital relationship, it applies RCW 26.09.080 by analogy. 78 Wn. App. at 91.

In *Kelly v. Moesslang*, 170 Wn. App. 722, 733, 282 P. 3d 12 (2012), the court recognized that while laws involving the distribution of marital property do not directly apply to the division of property following a committed intimate relationship, Washington courts may look toward those laws for guidance. 170 Wn. App. 733 (*Quoting Connell*, 127 Wn.2d at 349).

Lindsey, Connell, Warden, Foster, Gilmore and *Kelly* each approved the trial court’s consideration of a Washington statute, RCW 26.09.080, in making a just and equitable distribution of the property of parties in a committed intimate relationship. None of those cases prohibit

the court from considering other statutes such as RCW 11.07.010 in deciding issues as to ownership of property by persons formerly in a committed intimate relationship. Thus, it is consistent with *Lindsey, Connell, Warden, Foster, Gilmore* and *Kelly* to allow consideration of RCW 11.07.010 in deciding ownership of the insurance policy proceeds at issue in this case.

Application of RCW 11.07.010 to determine the ownership of insurance policy proceeds in this case will foster the legislative purposes underlying that statute. Note *Mearns v. Scharbach*:

By adopting RCW 11.07.010, the Legislature sought to accomplish several purposes. First, the Legislature codified the assumption that divorcing couples want to change the beneficiary designations on nonprobate assets upon dissolution or invalidity of their marriage. Of equal importance, the Legislature chose to accomplish this goal by adopting an automatic revocation mechanism patterned after the revocation provisions applicable to wills. By choosing this mechanism, the legislators demonstrated their understanding that life insurance and other nonprobate assets are widely used as essential parts of estate planning and should be treated accordingly. Additionally, the adoption of a bright-line rule triggered by the date of dissolution or invalidation of marriage evinces a legislative intent to encourage couples to resolve estate planning questions when terminating their marital relationship.

103 Wn. App. at 507.

The assumption that divorcing couples want to change the beneficiary designations on nonprobate assets upon dissolution or invalidity of their marriage is no less applicable to a dissolution than a committed intimate relationship. The Legislature's realization that life insurance and other nonprobate assets are widely used as essential parts of estate planning applies equally to the dissolution of a committed intimate relationship. Further, adopting a bright-line rule triggered by the date of dissolution of a committed intimate relationship to encourage the parties to resolve estate planning questions when terminating their relationship will also foster the legislative purpose in RCW 11.07.010. Thus, it is consistent with the legislative purposes underlying RCW 11.07.010 to consider it in deciding ownership of the insurance policy proceeds in this case.

Under RCW 11.12.051 (1), upon termination of a domestic partnership, the will of a testator is revoked as to a former domestic partner, unless the will expressly provides otherwise:

If, after making a will, the testator's marriage or domestic partnership is dissolved, invalidated, or terminated, all provisions in the will in favor of or granting any interest or power to the testator's former spouse or former domestic partner are revoked, unless the will expressly provides otherwise. Provisions affected by this section must be interpreted, and property

affected passes, as if the former spouse or former domestic partner failed to survive the testator, having died at the time of entry of the decree of dissolution or declaration of invalidity. Provisions revoked by this section are revived by the testator's remarriage to the former spouse or reregistration of the domestic partnership with the former domestic partner. Revocation of certain nonprobate transfers is provided under RCW 11.07.010.

RCW 11.12.051 (1) includes domestic partnerships. RCW 11.12.051 applies to the intimate relationship between William Weller and Trudy Neumann that was dissolved in 2005. CP 110-12; CP114-15. *See* RCW 11.12.051 (2) (“*This section is remedial in nature and applies to decrees of dissolution and declarations of invalidity entered before, on, or after January 1, 1995.*”).

In adopting RCW 11.12.051 (1), the Legislature obviously had in mind that it would operate in conjunction with RCW 11.07.010 to invalidate all testamentary transfers and beneficiary designations in nonprobate assets to a former domestic partner following dissolution of a domestic partnership, absent express consent: “*...Revocation of certain nonprobate transfers is provided under RCW 11.07.010.*” Therefore, construing RCW 11.07.010 to invalidate the beneficiary designation to Trudy Neumann in this case will foster the Legislative intent in RCW 11.12.051 (1) and RCW 11.07.010.

William Weller's death does not bar application of the doctrine of committed intimate relationships. In *Olver v. Fowler*, 161 Wn. 2d 655, 670-71, 168 P.3d 348 (2007), the court rejected the argument that the death of one or more of the parties to a committed intimate relationship terminated the interest of the surviving party in jointly acquired property. Moreover, both RCW 11.07.010 and RCW 11.12.051 contemplate the death of a party to a domestic partnership. Therefore, the doctrine of committed intimate relationships applies here, notwithstanding the death of William Weller.

In declining to apply RCW 11.07.010 to invalidate beneficiary designation in this case, the trial court felt constrained by *Henley v. Henley*, 95 Wn. App. 91, 974 P.2d 362 (1999). VRP 30. The trial court's reliance upon *Henley* was misplaced, as that case is distinguishable from the facts of the case at bar. In *Henley*, the court declined to apply RCW 11.07.010 to a Hong Kong divorce decree, as the statute at that time applied only to assets held at the time of entry by a superior court of this State of a decree of dissolution of marriage or a declaration of invalidity. *Henley*, 95 Wn. App. at 95-96 (*Quoting former Wash. Rev. Code Ann. § 11.07.010(1)*). The statute was amended in 2007, and the words "*by a superior court of this state*" were deleted. See Laws of Washington 2007, Ch. 475 § 2. The current version of RCW 11.07.010 (1) now differs

substantially from the statute as it existed in 1999 when *Henley* was decided.

Nor was the court in *Henley* called upon to address, nor did it address, whether, as here, RCW 11.07.010 applies to invalidate an insurance beneficiary designation following dissolution of a committed intimate relationship. Nor did the court in *Henley* address *Lindsey, Connell, Warden, Foster* or *Gilmore, supra*. Thus, both the facts and the legal issues in *Henley* were different from those here. The trial court therefore misplaced reliance upon *Henley*.

The trial court's refusal to invalidate the beneficiary designation in favor of Trudy Neumann is also in conflict with the Agreed Order Re: Final Resolution wherein the trial court awarded each party the insurance policies in their name or in their possession. CP 114-15. It is therefore unreasonable for either party to assume that they had a continuing interest in the other party's insurance policy after dissolution of their relationship.

B. The trial court erred in denying appellant's motion for summary judgment.

Nicole Weller assigns error to the trial court's Order Denying Nicole Weller's and Estate's Motion for Summary Judgment. CP 149-50; App. 2. The arguments and authorities in Paragraph VI A above apply equally here to compel the conclusion that Nicole Weller was entitled to summary

judgment in her favor on the invalidity of the beneficiary designation in favor of Trudy Neumann. Nicole Weller incorporates herein the arguments and authorities set forth above. In addition, William Weller's insurance policy provides that the proceeds are to be paid according to the beneficiary designation in effect at the time of death; otherwise in equal shares to survivors in descending classes, in this case, Decedent's children. CP 117-24. As the beneficiary designation in favor of Trudy Neumann is void, it follows as a matter of law that the policy proceeds belong to Nicole Weller and the Estate of William Weller.

C. Appellant requests attorney fees on appeal.

Nicole Weller invokes RCW 11.96A.150:

- (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.
- (2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts,

decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).

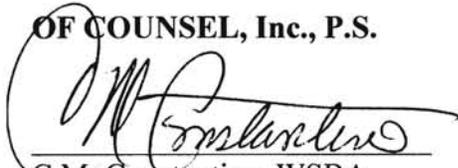
Trudy Neumann's actions in this case have forced Nicole Weller and the other heirs of William Weller's Estate to incur substantial attorney fees to defend their right to the insurance policy proceeds. It is unfair to force Nicole Weller and the other heirs to shoulder such costs. Therefore, under RCW 11.96A.150 (1) (a), it is appropriate for the Court to order Trudy Neumann to pay those attorney fees. *Estate of Jones*, 152 Wn. 2d 1, 20-21, 93 P. 2d 147 (2004). Nicole Weller is not required to show a breach of fiduciary duty by Trudy Neumann to support such an award of attorney fees. *Gillespie v. Seattle-First National Bank*, 70 Wn. App. 150, 178, 855 P. 2d 680 (1993). Alternatively, the Court may order that Nicole Weller's attorney fees be paid out of the Estate of William Weller. *Estate of Kvande v. Olsen*, 74 Wn. App. 65, 70-71, 871 P. 2d 669 (1974).

VII. CONCLUSION

In light of the foregoing, the Court should reverse the trial court's Order on Motion for Summary Judgment and Order Denying Nicole Weller's and Estate's Motion for Summary Judgment and grant Nicole Weller's motion for summary judgment. The Court should also grant Nicole Weller's request for attorney fees on appeal and order that such fees be paid by Trudy Neumann or, alternatively, the Estate of William Weller.

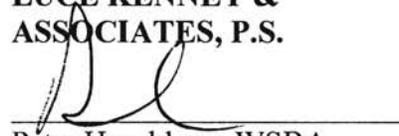
Respectfully submitted,

OF COUNSEL, Inc., P.S.



C.M. Constantine, WSBA
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Weller

**LUCE KENNEY &
ASSOCIATES, P.S.**



Peter Haroldson, WSBA
No. 35592
Of Attorneys for Appellant Nicole
Weller

VIII. APPENDICES

1. Order on Motion for Summary Judgment
2. Order Denying Nicole Weller's and Estate's Motion for Summary Judgment
3. RCW 11.07.010

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KING COUNTY
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KENT, WA

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

HARTFORD LIFE INSURANCE COMPANY,
Plaintiff in Interpleader

v.

TRUDY NEUMANN, NICOLE WELLER,
WILLIAM GRANT WELLER, JESSICA TICE
and THE ESTATE OF WILLIAM LYNN
WELLER

NO. 12-2-21306-2 KNT

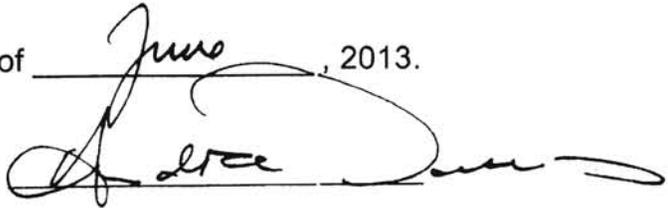
(Proposed) ORDER ON MOTION FOR
SUMMARY JUDGMENT

The court having reviewed the files and records herein, and heard argument
of counsel, *the court finds it does not have authority to extend RCW 11.67.070
to meretricious or other relationships.*
IT IS HEREBY ORDERED ADJUDGED AND DECREED:

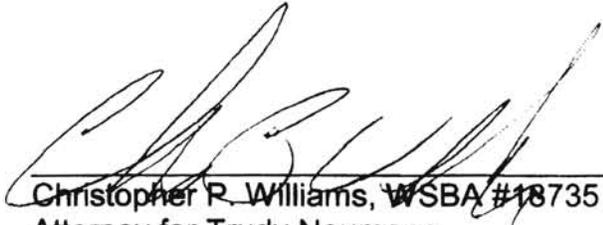
That Trudy Neumann is the prevailing party,

That funds interpleaded by Hartford Insurance Company in this matter are
hereby awarded to Trudy Neumann along with any interest and accumulations
thereto. *

DONE IN OPEN COURT this 28th day of June, 2013.



ORDER ON MOTION
FOR SUMMARY JDGMT - 1


Judge
Christopher P. Williams, WSBA #18735
Attorney for Trudy Neumann

approved as to form


Peter Haroldson, WSBA # 29878 *35592*
Attorney for Nicole Weller

- * *These have reviewed the E:*
- A) *declaration of Trudy Neumann*
 - B) *the Property settlement agreement*
 - C) *the will of William Weller*
 - D) *the declaration by Trudy Neumann of the will*
 - E) *the Hartford life insurance policy*

A

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

HARTFORD LIFE INSURANCE COMPANY,

Plaintiff-in-Interpleader,

v.

TRUDY C. NEUMANN, NICOLE WELLER,
WILLIAM GRANT WELLER, JESSICA TICE,
and the ESTATE OF WILLIAM LYNN
WELLER,

Defendants-in-Interpleader.

NO. 12-2-21306-2 KNT

Denying
ORDER ~~GRANTING~~ NICOLE
WELLER AND ESTATE'S MOTION
FOR SUMMARY JUDGMENT

[Proposed]

This matter came on regularly before the court on the motion for summary judgment filed by Nicole Weller and the Estate of William Lynn Weller. The court heard the argument of Peter D. Haroldson, counsel for Nicole Weller and the Estate of William Lynn Weller, and Christopher P. Williams, counsel for Trudy Neumann. The Court considered the pleadings and files herein, and:

1. Motion for Summary Judgment filed by Nicole Weller and Estate of William Lynn Weller. *and motion for SJ filed by Trudy Neumann.*
2. Declaration of Peter D. Haroldson *+ attachments*
3. Declaration of Nicole Weller *+ attachments*

- 1 4. Declaration of Trudy Neumann + attachments
- 2 5. ~~Order~~ Response to motion for summary judgment
- 3 by T. Neumann.
- 4 6. The court's oral ruling is incorporated herein.

5 And being otherwise fully informed in the matter,

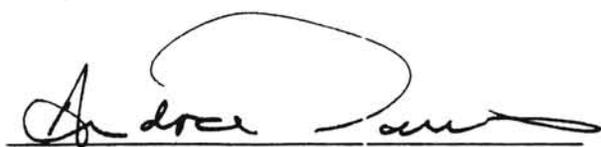
6 IT IS ORDERED, ADJUDGED, and DECREED:

7 Nicole Weller and the Estate of William Lynn Weller's motion for summary
8 judgment is ~~GRANTED~~ ^{Denied} Under the facts of this case, as a matter of law, an equitable
9 ~~remedy should lie to revoke a beneficiary designation of a non-probate asset in favor~~
10 ~~of a former participant in a meretricious relationship.~~

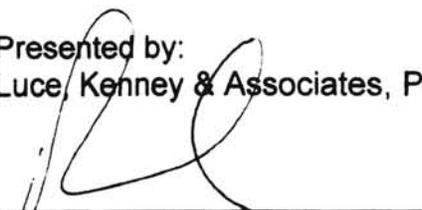
11 ~~Trudy Neumann is hereby revoked as the beneficiary of Hartford Insurance~~
12 ~~Policy ADD 12961. The surviving children of William Lynn Weller are the~~
13 ~~beneficiaries under the terms of the policy and are awarded the policy proceeds.~~

14 ~~The Clerk of the Court is authorized and directed to forthwith pay the funds~~
15 ~~interpleaded into the registry of the court, and any interest and accumulations~~
16 ~~thereon to Luce, Kenney & Associates, PS, for distribution to the surviving children of~~
17 ~~William Lynn Weller.~~

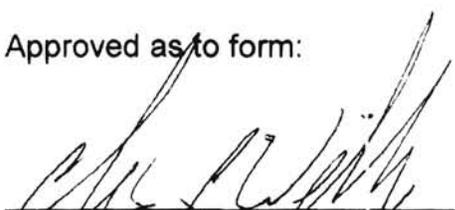
18 Dated this 28 day of ^{June} ~~February~~, 2013

19
20
21 
22 Judge

23 Presented by:
24 Luce, Kenney & Associates, PS

25 
26 Peter D. Haroldson, WSBA #35592
Attorney for Nicole Weller

Approved as to form:


Christopher P. Williams, WSBA #18735
Attorney for Trudy Neumann

11.07.010. Nonprobate assets--Dissolution or invalidation of..., WA ST 11.07.010

West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Annos)
Chapter 11.07. Nonprobate Assets on Dissolution or Invalidation of Marriage

West's RCWA 11.07.010

11.07.010. Nonprobate assets--Dissolution or invalidation of marriage or domestic partnership--Termination of domestic partnership

Effective: June 12, 2008

Currentness

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry of a decree of dissolution of marriage or state registered domestic partnership or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2)(a) If a marriage or state registered domestic partnership is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution, declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage or domestic partnership, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage or domestic partnership do not exist at the decedent's death;

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree, declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution, declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered

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domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is

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liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, “actual knowledge” means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse, former state registered domestic partner, or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent’s death of the nonprobate asset, received within a time after the decedent’s death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, “nonprobate asset” means those rights and interests of a person having beneficial ownership of an asset that pass on the person’s death under only the following written instruments or arrangements other than the decedent’s will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person’s death;

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a security, if such designations are authorized under Washington law;

(e) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

(f) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

(g) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

For the general definition in this title of “nonprobate asset,” see *RCW 11.02.005(15) and for the definition of “nonprobate asset” relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a “bank account” includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity

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entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Credits

[2008 c 6 § 906, eff. June 12, 2008. Prior: 2007 c 475 § 2, eff. July 22, 2007; 2007 c 156 § 13, eff. July 22, 2007; 2002 c 18 § 1; 1998 c 292 § 118; 1997 c 252 § 2; 1994 c 221 § 2; 1993 c 236 § 1.]

Notes of Decisions (22)

West's RCWA 11.07.010, WA ST 11.07.010

Current with 2013 Legislation effective through August 1, 2013

End of Document

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IX. CERTIFICATE OF MAILING

The undersigned does hereby declare that on October 10, 2013, the undersigned deposited a copy of BRIEF OF APPELLANT NICOLE WELLER filed in the above-entitled case into the United States mail, first-class postage addressed to the following persons:

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DATED this 10th day of October 10, 2013.

By: 
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