

COURT OF APPEALS, DIVISION 1

STATE OF WASHINGTON

Case # 721933

Edwards vs. Mulvihill

The Honorable Judge William Downing

Superior Court of King County

Colleen Edwards, Appellant

vs.

Patrick Mulvihill, Respondent

Patrick Mulvihill, Pro Se Respondent
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I. PARTIES. Appellant - Colleen Edwards, Pro Se

Respondent - Patrick Mulvihill, Pro Se

II. STATEMENT OF CASE. Appellant Colleen Edwards and Respondent Patrick Mulvihill are siblings. Their mother, Marion Mulvihill, died in October, 2007. Her Will appointed Respondent as Personal Representative of her estate and Trustee for a Testamentary Trust benefiting Appellant. As the Personal Representative, Respondent completed a probate of the estate in 2008. No objections were filed. In re Marion Mulvihill, King County Cause # 07-4-05446-1 SEA.

According to the terms of the Will, Respondent funded a modest testamentary trust (The Colleen Edwards Trust), benefiting Appellant, in 2008. Since that time, Respondent has served as Trustee. From 2008 to 2011, Appellant was incarcerated and chose to cut off almost all contact with Respondent. Since that time, communication between the parties has been limited. In 2009, Appellant filed a lawsuit in King County against Respondent, alleging a Breach of Fiduciary Duties as both Personal Representative and Trustee. The bulk of the lawsuit's allegations pertained to administration of and distribution made under the terms of the Will. In September, 2010, the Honorable Judge Canova dismissed the suit. Ex. A to Appendix. Subsequent appeals of this decision were rejected. Ex B and C.

Despite the fact that Appellant's appeal of Judge Canova's

decision was still pending, Appellant attempted to challenge the probate again. VT page 13, 16-17. In 2011, Respondent was served with a confusing set of pleadings including; the original 2009 complaint marked as "refile" under the original cause number, discovery requests in that case, and two complaints in Kitsap County, one of which, the 'conversion case', is the subject of this appeal. In 2011, the Kitsap County Court declined jurisdiction and authorized transfer to King County. Ex. D.

Faced with an administrative dismissal, Appellant eventually filed this case in King County in December, 2013. In June of 2014, the Honorable Judge Downing dismissed the lawsuit, ruling that the subject matter of the lawsuit had been previously litigated. Ex E. Appellant has challenged that decision.

III. STATEMENT OF ISSUES.

1) Whether Appellant's lawsuit raises issues or alleges legal theory distinguishable from those resolved in prior legal actions.

2) Whether Appellant's claims and allegations presented in this lawsuit and previously dealt with in prior legal actions were properly dismissed by the trial court.

3) If this Appeal should fail, whether Respondent should be awarded attorney fees.

IV. ARGUMENT. In order to avoid confusion, this section addresses Appellant's assignments of error in the order presented.

1) The trial court properly dismissed Appellant's 'conversion' case. The critical document in this case is Appellant's "Complaint for Damages for Unlawful Conversion" Ex. F.

Filed in December, 2011, this complaint has never been amended, supplemented or altered in any way, despite numerous opportunities to do so. The complaint's 'background facts' pertain exclusively to Appellant's misguided belief that the probate failed to distribute funds to her or her trust, which Appellant believes she should have received as an inheritance. The cause of action simply alleges "Patrick Mulvihill willfully converted property plaintiff was entitled to without lawful justification". The complaint is factually vague and confusing, but it is clear that all the allegations relate to the Personal Representative's distribution of estate assets under the 2007 - 2008 Probate. Appellant's brief acknowledges that her cause of action in this lawsuit pertains to the distribution of assets under the probate and even accepts that these issues have been litigated before. Assignment of Error 2 in Appellant's Brief.

Appellant's lawsuit pertains exclusively to allegations against defendant in respect to his role as Personal Representative of the estate of Marion Mulvihill. RCW 11.96A.070(2) provides, "an action against a personal representative ... must be brought before discharge of the personal representative". Here, the Personal Representative was discharged in December, 2008. This limitation was specifically addressed in Judge Canova's ruling where the court found "no objections to the Declaration of Completion were filed Defendant is absolved of all liability as Personal Representative under RCW 11.68.114'" (emphasis added). Judge Canova's findings were not disturbed on Appellant's subsequent appeal(s) thereof.

In *Loveridge v. Fred Meyers Inc*, 125 Wn. 2d 759, 887, P.3d 108 (1995), this court described the purpose of the Doctrine of Res Judicata as to prevent relitigation of already determined causes and curtail multiplicity and frivolity of actions. Here Judge Downing properly concluded that Appellant's pleadings failed to raise any issue not previously determined by both the probate proceedings and/or the decision by Judge Canova. If the court assumed each and every factual allegation made by Appellant in this case, it would not alter the fact that these matters have been previously determined and are therefore barred by both the Doctrine of Res Judicata / Collateral Estoppel, and by pertinent statute of limitations.

Appellant also advances a vague allegation that this case should not have been dismissed due to "a lack of compliance with discovery". Appellant cites no authority for this argument, and fails to point out any instance in the record where this issue was raised or put before the court. Further, the alleged failure to respond, refers to discovery in the first King County case, dismissed by Judge Canova. Appellant fails to address how Respondent had an obligation to respond to discovery in a matter already dismissed.

2) The trial court properly dismissed this matter under summary judgment. Defendant's Motion to Dismiss was treated as a dispositive motion and evaluated under CR56 standards for summary judgment. Appellant received the benefits of this treatment; a longer preparation period (as opposed to a 12(b)(6) motion) and a greater burden on the moving party to support a dismissal.

Respondent met the burden of demonstrating that even if all Appellant's factual assertions were considered true, judgment would still fall in favor of Respondent as a matter of law. Defendant demonstrated that all of Appellant's factual allegations and theory of recovery were barred by pertinent statute of limitations and/or the doctrine of res judicata and/or collateral estoppel. Therefore, even assuming, arguendo, that all factual issues resolved in her favor, the case would necessarily fail as a matter of law.

The standard for review of a summary judgment is de novo, essentially the same inquiry as the trial court. *Trimble v. Washington State*, 140 Wn.2d 88, 993 P.2d 259 (2000). Here it is abundantly clear that as a plaintiff, this Appellant made no factual allegation or advanced any legal theory via complaint or by subsequent oral argument, to distinguish any of her claims from matters already determined by the proper court.

3) The trial court properly interpreted the effect of prior rulings on these matters.

Appellant alleges the trial court failed to understand prior rulings. Based on the history of the case, it is clearly Appellant who misunderstands the effect of a dismissal without prejudice. Appellant believes she was entitled to write 'amended refile' on the original complaint, which Judge Canova had dismissed and then resume that suit and pursue discovery, even while the matter was under appeal. VT page 13, 6-7. Appellant further believes that although her case was dismissed in one county, she is free to bring essentially the same case in another county. Apparently,

this Appellant believes that unless a case is dismissed with prejudice, the dismissal has no meaning. This position explains why Appellant felt she did not need to distinguish this complaint and legal action from her prior lawsuit, and now ignores the concept of Res Judicata, pertinent statutes of limitation, and probate law.

This argument by Appellant is nonsensical, illogical and condescending. It is not my place to explain why ignoring prior legal decisions is patently impermissible and illogical. Hopefully, it is sufficient to point out Appellant cites no authority for her position because no such authority exists.

4) The trial court properly awarded statutory attorney fees.

RCW 4.84.010(6) provides nominal fees for a prevailing party in a civil action. As the prevailing party, the court properly awarded attorney fees in the amount of \$200, as set forth by RCW 4.84. Appellant's argument on this point is nonsensical. This is not about equitable issues. This is a statutory provision and, considering the time and expense Appellant subjected Respondent to, the award was absolutely minimal. Appellant continues to mistake attorney fees awarded by the court with trustee's fees authorized by the terms of the Trust; although it has been explained to her several times. More importantly, that distinction is not an issue Appellant has put before this or any court.

5) Attorney Fees on Appeal. RCW 4.84.185 provides for an award of attorney fees and costs for defending a frivolous action. RAP 18.1 (2) extends this right to recovery to the Appellate

courts. This lawsuit was patently frivolous; ignoring pertinent statutes of limitation, the effect of prior decisions, jurisdictional basics, civil rules and procedures, etc. Worse, these very problems had already been pointed out in prior actions. It is hard to imagine a more frivolous case.

In the past, judges have refused to 'add to this Appellant's burden' by imposing attorney fees, despite what are clearly meritless actions. While this approach is well intentioned, it is wrong. First, it fails to properly regard the burden this Appellant places on Respondent, the court system, and even her own Trust. Second, it allows and even encourages this Appellant to bring the same purposeless, meritless argument over and over again. Since the trustee bills for time in litigation defense, this Appellant is draining her own resources. This court should provide a disincentive to continued frivolous litigation. An award of reasonable attorney fees would help accomplish that goal. An award of statutory attorney fees would be a minimal step in that direction. Finally, Respondent respectfully requests that any award includes language making payment of all attorney fees a prerequisite to any new legal action.

V. CONCLUSION. As Personal Representative, in respect to the 2007-2008 probate, Respondent followed the dictates of the Will accurately and carefully, even consulting with Appellant's own attorney. Appellant's continued allegations are damaging and distasteful. However, more importantly, that issue is no longer relevant; the probate closed in 2008 and Washington law is clear on the finality of that closure. Appellant attempted to relitigate

the probate in 2009 without success. Appellant has never identified a single valid reason to review either that probate or Judge Canova's decision and now fails to provide any rational reason to revisit Judge Downing's decision. Appellant dragged Respondent through a meritless lawsuit on this exact subject matter in 2009. When that suit was dismissed, she appealed to this court and later the Supreme Court. Before that court had even issued a ruling, Appellant filed this case in the wrong county. Appellant eventually moved the case to King County, where it was dismissed for the same reasons the 2009 case was dismissed; it advanced no actionable claims. Now this case is before the Appellate Court. Respondent respectfully requests that the Court dismiss this appeal and impose some sanctions, attorney fees, etc., which will at least be a step toward ending this wasteful and nonsensical cycle.

RESPECTFULLY SUBMITTED this 7th day of January, 2015.



PATRICK MULVIHILL, Respondent

APPENDIX

Exhibits	page
A. Judge Canova Decision	1
Dismissing Edwards v Mulvihill King County 09-2-41571-4 SEA	
B. Appellate Court's Termination of Review	1
C. Supreme Court Termination of Review	1
D. Kitsap Superior Court rejection of jurisdiction.....	2
E. Judge Downing's Decision	2
Dismissing _____	
F. Plaintiff's complaint	3

Statutes

- RCW 4.84.010 (6)
- RCW 4.84.185
- RCW 11.68.114
- RCW 11.96A.070 (2)

Ex A

ORIGINAL

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

COLLEEN M. EDWARDS,)	
)	NO. 09-2-41571-4 SEA
Plaintiff,)	
v.	)	JUDGMENT / ORDER GRANTING
	)	DEFENDANT'S MOTION DISMISSING
PATRICK MULVIHILL,	)	LAWSUIT AND AWARDING FEES
)	
Defendant.	)	(Clerk's action required)

This matter having come before the court on defendant's Motion for Dismissal under CR 12(b), and the court having considered both oral argument and the written materials of both parties, together with the files and pleadings herein, and the court having assumed for the sake of this motion that all facts alleged or hypothetical would be resolved in favor of plaintiff: The court finds plaintiff's complaint fails to establish jurisdiction over defendant in the necessary representative capacity, fails to state a claim upon which relief may be granted, and that plaintiff has failed to join a necessary party. Specifically the court finds as follows:

1) Plaintiff has been named and served in an individual capacity only; not as Trustee of the Colleen

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1 Edwards Trust and not as Personal Representative of the
2 Estate of Marion Mulvihill, King Co. Cause #07-4-054466 SEA.

3 2) The complaint provides no basis in fact, either
4 alleged or hypothetical for recovery against defendant in an
5 individual capacity, but only in a representative capacity,
6 either as a personal representative or as a trustee.

7 3) Defendant, as personal representative of the
8 estate of Marion Mulvihill, King Co. Cause #07-4-054466 SEA,
9 has complied with the probate requirements set forth under
10 RCW 11.68.114 and no objections to the Declaration of
11 Completion of Probate filed October 27, 2008 were filed in
12 the requisite time period. Defendant is absolved of any
13 liability as Personal Representative under RCW 11.68.114.

14 4) All allegations in this lawsuit related to probate
15 of the Marion Mulvihill estate, cause # 07-4-054466 SEA, are
16 barred by the cited statute and cannot form a basis for a
17 cause of action against defendant in either an individual or
18 representative capacity.

19 5) If defendant had been sued in a representative
20 capacity as Trustee of the Colleen Edwards Trust, this
21 action fails to establish any factual basis, either alleged
22 or hypothetical, from which a breach of duty by the trustee
23 may be inferred. In particular, plaintiff makes no
24 demonstration of any request for aid or services made to
25 trustee, nor does plaintiff allege any act or omission which
26 conflicts with the trustee's broad grant of discretionary
27 authority granted under the terms of the trust.

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3 6) Although the complaint fails under CR12(b) in many
4 respects and has resulted in voluminous pleadings, the court
5 declines to award terms, sanctions or reasonable attorney
6 fees at this time.

7 7) Plaintiff's request for CR 33 accommodations have
8 been met as has been necessary to reach and argue this
9 Dismissal and prior motions and proceedings.

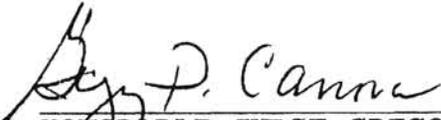
10 THEREFORE, IT IS HEREBY ORDERED AND DECREED as follows:

11 1) Defendant's Motion to Dismiss is granted, this
12 lawsuit is dismissed without prejudice;

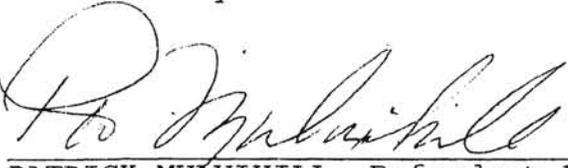
13 2) No sanctions, terms or costs shall be awarded at
14 this time;

15 3) Defendant shall be entitled to statutory attorney
16 fees of \$200.00 as a prevailing party under RCW 4.84.010(6).

17 RESPECTFULLY SUBMITTED this 27 day of September, 2010.

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19
20 
HONORABLE JUDGE GREGORY CANOVA

21 Presented by:

22
23 
24 PATRICK MULVIHILL, Defendant Pro Se

25 Approved by:
26
27

COLLEEN EDWARDS, Plaintiff Pro Se

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

COLLEEN M. EDWARDS,
Appellant,

v.

PATRICK M. MULVIHILL,
Respondent.

No. 66212-1-I
ORDER DENYING
MOTION TO MODIFY

Appellant Colleen Edwards has filed a motion to modify the court administrator/clerk's September 21, 2011 ruling dismissing the appeal. Respondent Patrick Mulvihill has filed a response, and appellant has filed a reply.

We have considered the motion to modify under RAP 17.7 and have determined that it should be denied. Respondent's request for an award of terms and costs is denied.

Now, therefore, it is hereby
ORDERED that the motion to modify the court administrator/clerk's ruling is denied, and the appeal remains dismissed. It is further

ORDERED that respondent's request for terms and costs is denied.

Done this 29th day of May 2012.

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2012 MAY 29 AM 9:38

Becker, J.

Palivella, J.

Sperman, A.C.J.

THE SUPREME COURT OF WASHINGTON

COLLEEN M. EDWARDS,
Petitioner,

v.

PATRICK M. MULVIHILL,
Respondent.

NO. 87601-1

ORDER

C/A NO. 66212-1-I

FILED
SUPERIOR COURT
2013 MAY -1 A 9:25
BY RONALD L. ...

Department II of the Court, composed of Chief Justice Madsen and Justices Owens, J. M. Johnson, Wiggins and Gordon McCloud, considered at its April 30, 2013, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 1st day of May, 2013.

For the court

Madsen, C.J.
CHIEF JUSTICE

661/170

RECEIVED AND FILED
IN OPEN COURT

JUN 29 2012

DAVID W. PETERSON
KITSAP COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

EDWARD

Plaintiff/Petitioner,

v.

MULVHILL

et al

Defendant/Respondent.

NO.

11-2-02773-4

ORDER

THIS MATTER having come on for hearing upon the application of the Plaintiff/Petitioner Defendant/Respondent agreement of the parties, and the Court being fully advised in the premises, it is now, therefore hereby

ORDERED that UPON DEFENDANT'S MOTION

TO DISMISS, THE COURT, HAVING REVIEWED
THE PLEADINGS AND ARGUMENTS THE
COURT AUTHORIZES TRANSFER TO THE PROPER
VENUE WHICH IS KING COUNTY WASHINGTON
THE COURT LEAVES THE ISSUE OF TERMS, COSTS
AND SANCTIONS TO THE KING Co. COURT AND SANCTIONS
ARE ASSESSED AS TO THE VENUE ISSUE.

DONE IN OPEN COURT this 29 day of June, 2012.

Pat Mulvihill

Pat Mulvihill

Print Name:
Attorney for Plaintiff/Petitioner Defendant
WSBA # _____

[Signature]

JUDGE/COURT COMMISSIONER

Colleen Edwards

Print Name: Colleen Edwards
Attorney for Defendant/Respondent Pro Se for Plaintiff
WSBA # _____

Ek E

FILED
KING COUNTY, WASHINGTON

JUN 09 2014

SUPERIOR COURT CLERK
BY DEBRA BAILEY TRAIL
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

COLLEEN M. EDWARDS,)	
	)	NO. 13-2-42296-4 SEA
Plaintiff,)	
	)	ORDER GRANTING
v.	)	DEFENDANT'S MOTION
	)	FOR SUMMARY
PATRICK MULVIHILL,	)	JUDGMENT
)	
Defendant.)	
_____)	

The matter comes before the Court on the defendant's motion for summary judgment. The Court has considered all of the submissions made in connection with the motion, the underlying pleadings on file and the oral argument presented in open court on Friday June 6, 2014. If necessary for appellate review, counsel should prepare and submit for entry an addendum to this Order cataloging the various submissions. Deeming itself fully advised in the premises, the Court now issues this brief memorandum opinion and Order.

Following the 2007 death of the mother of the parties, the defendant Mr. Mulvihill was appointed personal representative of the estate. He was also, pursuant to the decedent's will, appointed the trustee of a testamentary trust

benefitting the plaintiff Ms. Edwards. After the probate had closed, Ms. Edwards brought suit against her brother alleging negligence and breach of professional and fiduciary duties. That matter was dismissed and the dismissal was upheld on appeal. Thereafter, under this cause number, she instituted a new lawsuit against her brother, asserting a loosely drawn claim of "unlawful conversion."

The challenge for this *pro se* plaintiff is to state a claim that is cognizable in light of the 2008 closing of the probate without objection and the dismissal of the myriad claims brought in her earlier lawsuit. This is a challenge that the Court must conclude she has failed to meet. Neither in her written submissions nor in her oral presentation has she articulated a presently cognizable claim under a theory of conversion.

Accordingly, the defendant's Motion for Summary Judgment is GRANTED and this matter DISMISSED.

The Court does not intend to impose any additional financial burdens upon the plaintiff beyond an award of statutory attorney's fees. Absent further order to the contrary, full payment of any fees or costs imposed under this cause number and the earlier one (09-2-41571-4 SEA) shall be deemed a prerequisite to the filing of any new lawsuit by the plaintiff.

IT IS SO ORDERED.

DATED this 9th day of June, 2014.


HON. WILLIAM L. DOWNING

EX F

Hearing Date
12/22/2011

FILED
KITSAP COUNTY CLERK

2011 DEC 21 PM 2:58

STATE OF WASHINGTON
SUPERIOR COURT OF KITSAP COUNTY

Colleen Edwards)	
Plaintiff	)	COMPLAINT FOR
vs	)	DAMAGES FOR
Patrick M. Mulvihill, Individually	)	UNLAWFUL ONVERSION
Patrick Mulvihill, Personal Representative)	
of the Estate of Marion D. Mulvihill)	
Patrick Mulvihill, Trustee of the Colleen	)	11 2 02773 4
Edwards Trust)	
Patrick Mulvihill, Attorney At Law, Owner)	
Of the Law Offices of Patrick))	
Mulvihill)	
Defendant)	

COMPLAINT FOR DAMAGES FOR UNLAWFUL CONVERSION

Plaintiff Colleen Edwards alleges:

I. JURISDICITON AND VENUE

1. The court ha jurisdiction over this action because the action involves the right to title and possession of certain property located in the state of Washington.
2. Plaintiff Colleen Edwards is a resident of Kitsap County, Washington
3. Defendant Patrick Mulvihill is a resident of King County, Washington

II. BACKGROUND FACTS

4. That the last will and testimony of Marion D. Mulvihill specified the property described in her will to be divided by her two surviving son and daughter. And that the property is listed as
5. That the property is listed as an assett to be given to Colleen Edwards in the amount of 50 percent of its value or the value of
6. That on or after September 2008 the Colleen Edwards Trust was established.
7. That on or after 2008 the Declaration of Completion of Probate was filed.
8. That that asset was not given to Colleen Edwards nor was it given to the Colleen Edwards Trust.
9. That Colleen Edwards asked for a full accounting of the Colleen Edwards Trust and received it on

10. That Colleen Edwards identified that the property was not given to her nor was any proceeds from its transfer, sale or given to her.
11. That Colleen Edwards identified that the property was not given to the Colleen Edwards Trust nor nor was any proceeds from its transfer, sale or given to the Colleen Edwards Trust.
12. That Patrick Mulvihill converted the property for his own use during the years of 2008 to 2011.
13. On or about _____ defendant Patrick Mulvihill took for defendant's use and without plaintiff's authorization a describe property owned by plaintiff. At the time the subject property was rightfully in plaintiff's possession and had a fair market value of amount.
14. The plaintiff is entitled to half of the property's value. The remaining other half belongs to the other heirs.

III. CLAIMS AND CAUSES OF ACTION – WRONGFUL CONVERSION

7. Patrick Mulvihill willfully converted plaintiff's describe property without lawful justification and has deprived plaintiff of possession of the property.

IV. DAMAGES

Defendants wrongful and willful conversion of plaintiff's property has caused plaintiff's the following damages

- a) The Fair Market Value of the property of amount \$
- b) Economic loss due to the loss of the use of the property in an amount to be established at the time of trial.

V. REQUEST FOR RELIEF

Plaintiff Colleen Edwards requests that the court enter judgment against defendant Patrick Mulvihill as follows “

1. Awarding plaintiff damages for the fair market value of the property in an amount not less than \$ state amount. Fifty percent of the property's value.
2. Awarding plaintiff damages for consequential loss from the defendant's willful conduct in an amount not less than \$ specify>
3. Awarding plaintiff statutory costs and attorney fees incurred in this action.
4. Awarding plaintiff any further or additional relief which the court finds equitable, appropriate or just.

Dated: December 15, 2011