

FILED
COURT OF APPEALS
DIVISION ONE
JUN 11 2015

NO 72643-9-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

BEVERLY YOUNG; BLAKE BOATMAN; BRADLEY BOATMAN;
BRENT BOATMAN; and WILLIAM BOATMAN,

APPELLANTS

v.

BRIAN BOATMAN, individually and as Attorney-in-Fact for Bojilina H.
Boatman; and THE ESTATE OF BOJILINA H. BOATMAN,

RESPONDENTS

MEMORANDUM OF AMICUS CURIAE
WASHINGTON ACADEMY OF ELDER LAW ATTORNEYS

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This amicus brief will focus on the issue of standing; namely, what recourse, if any, do beneficiaries of an estate have against a former attorney-in-fact, who is later appointed personal representative of the estate, for self-dealing and conversion during the period of service of the former attorney-in-fact.

The lower court's order, which held that the beneficiaries of an estate do not have standing to (a) demand an accounting from the decedent's prior attorney-in-fact, who is now the current personal representative; (b) demand discovery from the prior attorney-in-fact; or (c) bring an action for damages on behalf of the estate, is in error and could lead to an unhealthy precedent. This decision will provide guidance to persons who are looking to take advantage of vulnerable adults so that they can insulate themselves from exposure for their wrongful acts.

This ruling is contrary to the express language found in the Trust and Estate Dispute Resolution Act ("TEDRA"), which explicitly identifies beneficiaries as a "party" who has standing under the Act. In addition, the order sets an impermissibly high burden for removing a personal representative for wrongdoing. The beneficiaries of an estate should not be required to present a prima facie case against the personal representative before discovery is permitted.

Finally, when a former attorney-in-fact has engaged in self-dealing and financially abused a vulnerable adult, the beneficiaries always have standing under the Slayer Statute, RCW 11.84.020, to commence a TEDRA proceeding.

II. INTEREST AND IDENTITY OF AMICUS CURIAE

The Washington Academy of Elder Law Attorneys (“WAELA”) consists of Washington members of the National Academy of Elder Law Attorneys, a non-profit association of attorneys, who not only practice elder law, but are also especially aware of and concerned with the special issues pertaining to the practice of elder law in Washington State. Many of our members assist clients with guardianships, estate planning, planning for incapacity with durable powers of attorney for financial and health care decisions, Medicaid qualification, asset protection matters, and probates and related litigation. Our members are very concerned with protecting the rights of seniors and persons suffering from various incapacitating conditions, as well as providing guidance and support for their families and fiduciaries. The lower court’s decision will have a direct impact on how the members of WAELA are able to represent and serve their clients. WAELA has been granted amicus status before in *Raven v. Department of Social and Health Services*, 177 Wn.2d 804, 306

P.3d 920 (2013) and *In re Estate of Burns*, 131 Wn.2d 104, 928 P.2d 1094 (1997).

III. LEGAL ANALYSIS

A. Beneficiaries Have Standing under TEDRA to Commence a Lawsuit against the Decedent's Former Attorney-in-Fact and the Current Personal Representative of the Estate

The express purpose of TEDRA is to efficiently and effectively resolve a wide-range of disputes concerning trusts and estates. *See* RCW 11.96A.010¹. In furtherance of this purpose, RCW 11.96A.020 provides the court with wide plenary power to settle “[a]ll matters concerning the **estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney...**” (emphasis supplied).

The beneficiaries in this matter have alleged that the personal representative of the estate, who was the former attorney-in-fact for the decedent, breached his fiduciary duty and misappropriated the decedent's assets. Without expressing an opinion as to the truth of the allegations, amicus assumes for the purpose of the argument herein that the allegation

¹ Purpose. The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW. The provisions are intended to provide nonjudicial methods for the resolution of matters, such as mediation, arbitration, and agreement. The [This] chapter also provides for judicial resolution of disputes if other methods are unsuccessful.

are true to some degree. TEDRA expressly authorizes a beneficiary to commence “a judicial proceeding” to enforce their rights. RCW

11.96A.080 provides that:

Persons entitled to judicial proceedings for declaration of rights or legal relations.

(1) Subject to the provisions of RCW 11.96A.260 through 11.96A.320, **any party may have a judicial proceeding** for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030. (emphasis supplied)

TEDRA clearly defines a beneficiary as a party who has standing to commence a judicial proceeding against the personal representative or attorney-in-fact. RCW 11.96A.030 provides in relevant part, that:

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

* * *

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

When a beneficiary alleges that a personal representative, or an attorney-in-fact, has breached their fiduciary duty or engaged in any other wrongdoing, they have standing to commence a lawsuit under TEDRA.

Furthermore, there is nothing contained in TEDRA that requires a beneficiary to present a prima facie case before they are entitled to discovery of the actions taken by an attorney-in-fact.

B. Removal of a Personal Representative Should Not be a Condition Prerequisite to Commencing a Lawsuit on Behalf of the Estate

The lower court's order presents an unsettling paradox.

Essentially, the court foreclosed the beneficiaries from discovery because they were unable to present a prima facie case that the personal representative should be removed for wrongdoing. However, to present a prima facie for wrongdoing, the beneficiaries needed to obtain evidence through discovery, which is almost always in the personal representative's custody and control. Without the aid of discovery, beneficiaries will be unable to present the court with a prima facie case. In the vast majority of cases, including this matter, the court can use this lack of discovery to justify dismissing the petition. In many cases where an attorney-in-fact abuses their fiduciary duty and engages in self-dealing, they are able to isolate the vulnerable adult and conceal their overreaching, sometimes forever. The court should not allow an attorney-in-fact, regardless of whether they become the personal representative, to profit from their abuse. Regardless, beneficiaries should not be required to remove a personal representative before they are entitled to assert a claim.

RCW 11.96A.070(2), which governs statute of limitations in TEDRA actions, provides that "[e]xcept as provided in RCW 11.96A.250 with respect to special representatives, **an action against a personal**

representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.” (emphasis supplied).

Accordingly, not only may a beneficiary bring an action against a personal representative before they are removed, but they **must** bring that action before the court may discharge a personal representative. The court’s order that dismissed the beneficiaries’ petition for breach of fiduciary duties (and for other relief) without prejudice as to the request that the personal representative be removed is in conflict with RCW 11.96A.070(2) and should be reversed.

C. The Beneficiaries Have Standing under the Slayer Statute to Commence a Lawsuit Against the Personal Representative

Not only do beneficiaries of an estate have standing to bring suit against a personal representative under the express provisions of TEDRA, but they also have standing to bring suit pursuant to the Slayer Statute. *See* Chapter 11.84 RCW, et seq.

Chapter 11.84 RCW, titled Inheritance Rights of Slayers or Abusers, provides a cause of action against a person who slays a person or abuses a vulnerable adult. Specifically, RCW 11.84.020 provides that “[n]o slayer or abuser shall in any way acquire any property or receive any

benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.”

The beneficiaries’ allegations in this matter fall squarely within the framework of the Slayer Statute, which supplements the remedies available under TEDRA. *See* RCW 11.84.180². In fact, TEDRA provides that a cause of action under the Slayer Statute is a matter that may be decided in a TEDRA proceeding. Specifically, RCW 11.96A.030 defines a matter as:

(2) “Matter” includes any issue, question, or dispute involving:

* * *

(e) An action or proceeding under chapter 11.84 RCW;

In a recent Court of Appeals decision, *In re Estate of Evans*, 181 Wash.App. 436, 326 P.3d 755 (2014), several siblings commenced a TEDRA petition against their brother for financial exploitation of their father, a vulnerable adult, under the Slayer Statute. While the majority of the opinion concerns application of the Antilapse Statute³, it is evident that the beneficiaries of a will have standing under the Slayer Statute to seek redress from a person who financially abuses a vulnerable adult, like the

² Application — Relation to other laws. The provisions of this act are supplemental to, and do not derogate from, any other statutory or common law proceedings, theories, or remedies including, but not limited to, the common law allocation of the burden of proof or production among the parties.

³ *See* RCW 11.12.110.

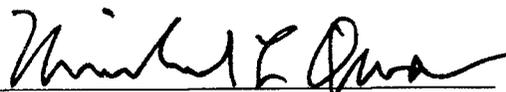
personal representative in this matter. Accordingly, even if this court finds that the beneficiaries lack standing to bring a suit against the personal representative for wrongdoing committed when they were the decedent's attorney-in-fact, it is clear that the beneficiaries have standing under the Slayer Statute.

IV. CONCLUSION

The Court of Appeals should overturn the lower court's order because the beneficiaries have standing under TEDRA and the Slayer Statute to proceed against the decedent's former attorney-in-fact, and current personal representative, and because from a public policy point of view, a decision upholding the order would insulate a former attorney-in-fact who becomes the personal representative from liability, and shield the financial abuse of the elderly.

Respectfully submitted this 11th day of June, 2015.

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