

 ORIGINAL

No. 44246-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

THE ESTATE OF CATHERINE HENINGTON.

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERRORS AND STATEMENT OF ISSUES

1. The superior court erred when it ordered that the estate should be closed and final distributions made when the record does not support its finding of fact that “All amounts due to the Internal Revenue Service, according to the Personal Representative, have been paid.” (CP 70.)

2. The superior court erred when it ordered that the estate should be closed and final distributions made so that the Personal Representative remained personally liable to the Internal Revenue Service for outstanding fines, fees, penalties, interest, or taxes owed by the estate contrary to state law. (CP 70, 71; CP 134-35.)

3. The superior court erred when it ordered that the estate should be closed and final distributions made to, first, the Personal Representative for his fees and, second, the remainder distributed in equal shares to decedent’s sole beneficiary and decedent’s surviving husband when the estate is insolvent and distribution is governed by RCW 11.76.110. (CP 71; CP 134-35.)

4. The superior court erred when it ordered that “The creditor’s claims of Leonard Bradley are time barred as a matter of law in accord with RCW 11.40.051, RCW 4.16.080 and RCW 19.36.010,” (CP

71), on the basis of findings of fact that are not supported by the record. (CP 69, 70, 71.)

5. The record does not support the superior court's finding of fact that "All notices required by law have been given; there is good reason to close the estate and make final distributions." (CP 69.)

6. The record does not support the superior court's finding of fact that "Mr. Bradely's claims were based upon alleged oral promises prior to the decedent's date of death." (CP 70.)

7. The superior court erred when it entered an order of final distribution that did not occur on notice to all interested parties that their interests were jeopardy, and therefore, entry of the order did not comport with due process.

8. As a result of any one of the errors assigned above, the superior court erred by ordering that the estate be closed and requiring the Personal Representative to distribute the estate in the manner ordered by the court. (CP 71.)

9. In addition, Appellant seeks an award from this Court of (a) administrative fees and costs, and (b) attorney fees and costs, to be paid from the Estate of Catherine Henington, that have been incurred since the superior court's errors occurred.

II. STATEMENT OF THE CASE

Following the death of Catherine Henington on March 15, 2008, the King County Superior Court appointed her husband, Roy Henington, from whom she had been separated for several years, as the personal representative of her estate. (Order Granting Letters of Administration & Nonintervention Powers filed 3/27/08 in the King Cty Superior Court, as part of Record On Change Of Venue filed 4/21/08.¹) For a short period, Richard Wills acted as counsel for Mr. Henington in his capacity as personal representative. Mr. Henington caused notice to creditors to be published but did not follow up with any actual notice or additional requirements relating to possible creditors of the estate. (Affidavit of Publication from Ken Spurrell, filed 4/21/08 in the King Cty Superior Court, as part of Record On Change Of Venue filed 4/21/08; CP 53-54.) Meanwhile, the will of Catherine Henington, naming her then-minor daughter, Crystal Henington, as sole beneficiary, in trust, was admitted for probate in Pierce County upon the petition of Christine Crowe, the decedent's sister and the named personal representative and testamentary trustee in decedent's will. (Order Admitting Will to Probate & Granting

¹Citations to pleadings in the superior court record will be made by name and date of filing for those pleadings that are set forth in Appellant's Second Supplemental Designation of Clerk's Papers filed in the Pierce County Superior Court cause no. 08-4-00520-1 concurrent with this brief.

Letters Testamentary & Nonintervention Powers, entered 4/30/08; Last Will and Testament of Catherine A. Henington filed in Pierce Cty Superior Court 3/27/08.) Upon the request of Ms. Crowe, Mr. Henington had the venue of the probate moved to Pierce County. (See as part of Record On Change Of Venue filed 4/21/08 the Order Changing Venue to Pierce County, entered in King County Cause No. 08-4-02440-4 on 4/8/08.)

A few months after these initial activities, the superior court, upon the petition of Messrs. Henington and Wills, accepted the resignation of Mr. Henington as personal representative and, as a condition of Mr. Henington's resignation, appointed Mr. Wills as the Successor Personal Representative with nonintervention powers and ordered Letters of Administration with Will Annexed to be issued to him.² (Order Appointing Successor Personal Representative & Granting Nonint. Powers filed 8/15/08; *see also* Resignation of Personal Representative filed 7/28/08.) The court further ordered:

F. The prior Personal Representative, within seven days of his receipt of a certified copy of the *Order Appointing Successor Personal Representative*, shall pay and deliver to Richard Wills, as the successor Personal Representative, all money and property of every kind and all rights, credits,

²A. Colby Parks entered a Notice of Appearance on behalf of Roy Henington on April 17, 2009. (Not. Of Appearance, filed 4/17/09; *see also* Request for Special Notice, filed 4/20/09; Amended Not. of Appearance, filed 4/20/09.)

deeds, evidences of debt, and papers of every kind of the Decedent.

G. The prior Personal Representative, within twenty-eight days of his receipt of a certified copy of the *Order Appointing Successor Personal Representative*, shall prepare and file with this Court a report and account of his actions as Personal Representative.

(Order Appointing Successor Personal Representative & Granting Nonint. Powers filed 8/15/08.) Neither of these actions was taken by Mr. Henington. The information required of Mr. Henington in this order was necessary to Mr. Wills as the Successor Personal Representative for his administration of the estate including his handling of the estate's debts, creditors, and taxes. (*See* CP 54-56.) Of particular importance, it was not until years later at the end of the probate proceedings, when Mr. Henington provided Mr. Wills with the information required in order for Mr. Wills to complete and file estate fiduciary tax returns. (CP 14; CP 54-57; *see also* Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at pp. 2, 4 (requesting superior court to order Mr. Henington's cooperation); Clerk's Minute Report of 6/29/12.) This failure significantly hindered Mr. Wills's ability to undertake some of his duties as Successor Personal Representative. Mr. Wills repeatedly requested this information from Mr. Henington because, as he informed the superior court, he required this information before he

could file and pay the estate's federal fiduciary estate tax returns. (*See id.*) Despite these requests, Mr. Henington did not timely comply and it was not until the second half of 2012 that such information was provided to Mr. Wills. (CP 56-57; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 6-7.) Thereafter, Mr. Wills promptly filed the fiduciary tax returns. (*See* CP 56-57.)

In addition, in early 2010, Mr. Wills notified the heirs that the IRS had informed him that Ms. Henington had failed to file federal income tax returns and pay federal income taxes during her lifetime (and her marriage to Mr. Henington) for the years 2005-2008.³ (*See* Petition for Report of Affairs and Confirmation of Community Property, filed 3/24/10, Exhibit A; *see also* Status Report (With Will) (*ie*, Report of Affairs of Estate) & Declaration of Mailing, filed 5/5/10, at p. 8.) Mr. Wills attempted to engage Mr. Henington's cooperation in the completion of the tax returns, by filing the estate's fiduciary tax returns jointly with him, in order to decrease the estate's potential tax liabilities and encountered resistance. (PR's Response to Roy Henington's Pet. For Distribution, filed 9/2/10, at p. 2-3, 4; *see also* Verbatim Report of Proceedings ("VRP.B"), 11/16/12 at

³ Apparently, Mr. Henington likewise failed to file federal income tax returns for this period. (*See e.g.* Verbatim Report of Proceedings 11/16/12, 14:13-17.)

11:10-12 (“*The Court*: There have been several times that you’ve been here that’s been an issue, whether or not Mr. Henington was going to get off the mark and sign those”); *id.* at 13:1-6.)

As Mr. Wills explained to the heirs and to the superior court,

[In] May [2010], the estate paid the IRS a total of \$103,783.00 for Decedent’s unpaid income taxes for years 2005-08. This payment was reported to the IRS as jointly made by the estate & by Roy Henington, Decedent’s surviving spouse, as Colby Parks, representing Mr. Henington, had repeatedly told me that Mr. Henington wanted the income to be reported jointly, and not separately by the estate, for tax savings. Consequently, I as PR had the tax accountant prepare the returns as reported jointly & I reported them jointly & paid the tax based on their being reported jointly.

The problem with this, however, is that joint reporting requires the signature of the surviving spouse, I have repeatedly sent the joint returns to Mr. Parks to obtain Mr. Henington’s signature on them, & after months of waiting & of not having received them back with Mr. Henington’s signature, I eventually sent them to the IRS as joint returns but with only my signature on them as PR, without Mr. Henington’s signature, & with a letter explaining the situation. Exhibit 1. I have not received any response from the IRS regarding my filing of the joint returns with only my signature, about any penalties or interest due resulting from the returns having been filed years after they were due, or anything else. As shown in my accounting, for the last several months, the \$1,000 monthly checks paid to Mr. Henington have been paid to his order, mailed to Mr. Parks, & endorsed & cashed by Mr. Henington. Therefore, if Mr. Henington is able to endorse his monthly \$1,000 checks, he should be able to sign the joint Form 1040 returns that he specifically requested be prepared & submitted jointly.

...I have filed [the Form 1040 Returns] jointly but without the signature of Decedent's surviving spouse: Decedent's surviving spouse:

- Wants the Returns filed jointly, for tax savings.
- Won't sign & return the joint returns to me for filing.

...Lastly, the estate will need to remain open until Decedent's income tax (as well as the estate fiduciary income tax) returns are resolved & its tax liability is settled with the IRS.

(Status Report (With Will) #2 (*ie*, 2nd Report of Affairs of Estate) & Declaration of Mailing, filed 7/21/11, at p.3 [sic].)

Ultimately, Mr. Wills filed all of the required federal tax returns, with the assistance of a qualified certified public accountant, but without Mr. Henington's forthcoming cooperation. (CP 14; *see also* VRP.B 11:10-12, 13:1-6; PR's Reply to Response to 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 6/27/12; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 2, 4; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at p. 4 (requesting specific information be provided by Mr. Henington); Clerk's Minute Report filed 6/29/12.) As a result, the tax returns were late and it was expected that the estate would incur penalties and interest. (CP 14, 15, 16; PR's Reply to Response to 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet.

Therefor, filed 6/27/12; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 3-8; *see also* Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at pp. 3-4, 7; VRP.B 4:6-23, 10:12-17 (“the taxes alone are estimated to be \$150,000. We’ve already paid approximately \$125,000; and if Mr. Henington continues to refuse to sign the joint return, there will be further taxes because the individual taxes can’t be filed jointly. They’ll have to be filed separately resulting in increased taxes.”); *see also* CP 80-82.) In addition, because decedent’s personal income tax returns did not include Mr. Henington’s signature approving the joint returns, the taxes paid were less than the amount due based on the returns having been filed solely by the estate. (VRP.B 4:6-23, 9:5-23, 10:12-17; *see also* CP 14, 15, 16.) Therefore, it was expected that the IRS would make an assessment of increased taxes resulting from the deficiency, plus penalties and interest. All parties to this probate, and the court, had knowledge of these facts. (CP 15-17; VRP.B 4:6-23, 10:12-17; *see also* CP 11-13 (referencing the previously filed status reports); Status Report (With Will) (*ie*, Report of Affairs of Estate) & Declaration of Mailing, filed 5/5/10; Status Report (With Will) #2 (*ie*, 2nd Report of Affairs of Estate) & Declaration of Mailing, filed 7/21/11; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet.

Therefor, filed 5/1/12 at pp. 3-4, 7; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 3-8; PR's Reply to Response to 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 6/27/12; CP 80-82.)

As set forth above, Mr. Wills repeatedly informed the superior court and the heirs that he anticipated the IRS would assess additional taxes, penalties, and interest against the estate. Consequently, in his Final Report and related filings, Mr. Wills never represented that "All amounts due to the Internal Revenue Service... have been paid." (*Cf* CP 70 (Order on Final Report & Decree of Distribution); CP 4-49, 53-59, 63-68.) Instead, as expected, Mr. Wills received notice from the IRS that penalties were assessed and interest due on the late payments from the estate's fiduciary income tax returns for 2008-11.⁴ (CP 80-82; *see also* Interim Report & Account & Petition For Approval Thereof, For Costs, & For Engagement of Appellate Counsel, filed 1/18/13, at p. 4, #2.)

In addition to the amounts owed to the IRS, the estate owes a debt to Ms. Henington's father in the amount of \$13,746.12. (CP 1-3.) Upon

⁴ In order to prevent further penalties and interest, Mr. Wills has paid to the IRS from his personal assets and for the benefit of the estate \$6,000.00 in consideration for its release of Mr. Wills regarding his liability as personal representative of decedent's estate because he had placed the remainder of the estate assets in the registry of the court pending this appeal.

appointment as Successor Personal Representative, Mr. Wills intentionally chose not to further publish a Notice to Creditors in order to maximize the estate. (CP 54.) As a result, the two-year period for claims against the estate had to expire before the estate could be closed. (*See id.*; RCW 11.40.051.)

Almost immediately after decedent's death and well within the period to file claims against the estate, Leonard Bradley filed three claims for the total amount of \$13,746.12. (CP 1-3.) Following the running of the statutory period for creditors to make claims, Mr. Wills indicated that he intended to allow and pay the claims of Mr. Bradley. (Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at p. 5; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12, at 5-6, 7, 8; CP 6-7, 15, 16.) In entering its Order on Final Report and the Order on Motion for Revision, the superior court refused to permit Mr. Wills's allowance or payment of Mr. Bradley's claims against the estate. (CP 70, 71.)

In May 2012, Mr. Wills notified the superior court and the heirs that the estate appeared to be insolvent because the "aggregate value of the property in the estate" appeared to be less than "the aggregate face value of Creditor's Claims received, when added to the other debts and to the

taxes and expenses of greater priority under law.” (Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at pp. 2, 6-7; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 6-7; Notice of Apparent Estate Insolvency & Declaration of Mailing, filed 5/23/12.) The apparent insolvency of the estate is due in part to the outstanding debts owed by the estate to the IRS and Mr. Bradley and in part due to the partial distributions ordered by the superior court at the request of Mr. Henington during the pendency of the probate. Specifically, prior to entry of the superior court’s orders that are on appeal, Crystal Henington and Roy Henington had received partial distributions from the estate of approximately \$34,000 each. (CP 67; *see also* Agreed Order re Affairs & Confirmation of Community Property entered 4/8/2010 (ordering that the heirs each receive \$1,000 per month from the estate as a partial distribution towards their portions of the estate).) These distributions, combined with the income and fiduciary estate taxes due to the IRS, including penalties and interest that have increased as a result of time passing due in part to the resistance and reticence of Mr. Henington, have resulted in the estate having fewer assets remaining than amounts due to creditors. Considering these circumstances, the insolvency of the estate should have come as no surprise to the parties because the potential

for insolvency was raised as early as August 2008. (Prelim. Report of GAL, filed 8/14/08 at p. 3.)

Moreover, the administration of the estate was complicated because all of the estate assets were community property. Mr. Henington has a one-half interest in the estate as surviving spouse. However, the successor personal representative's ability to administer decedent's estate has been repeatedly hampered by Mr. Henington's actions throughout the probate. Mr. Wills had the duty to administer both the estate's and Mr. Henington's halves of the property, (RCW 11.02.070), but encountered resistance from Mr. Henington in handling tasks such as filing joint tax returns regarding his half, and had to respond to Mr. Henington's repeated petitions for distribution of community assets and his petition for family support, which he ultimately withdrew as time-barred. (*See* PR's Reply to Response to 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 6/27/12; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 2, 4; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at p. 4; Status Report (With Will) #2 (*ie*, 2nd Report of Affairs of Estate) & Declaration of Mailing, filed 7/21/11, at p. 3; Pet. For Award of Property filed 1/13/10; Report of GAL in Rsp to Father's Pet. Filed 2/3/10; *see also*

Verified Pet. For Report of Affairs and Confirmation of Community Property filed 4/16/12; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at pp. 2; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 2.) Similarly, when Mr. Wills sought to sell the community property home in order to pay the claim of the bank holding the mortgage, Mr. Henington's initial position was to refuse his consent and suggest that Mr. Wills sell the estate's one-half interest.⁵ (Pet. For Instructions re Disposition of Home, filed 5/29/09, at pp. 1, 5.) Facing opposition from Mr. Wills, Crystal Henington's Guardian ad litem, and other interested parties, Mr. Henington ultimately agreed to the sale of the home. (Report of GAL in Rsp to Pet. Filed 6/4/09; Rsp. To Pet.: Instruction Regarding Disposition filed 6/8/09 (by Evergreen Bank); Decl. Of Terrence Clayton Posey (counsel for L. Bradley, Crystal's grandfather) filed 6/3/09; Response To Petition filed 6/10/09; Order on Pet. For Instructions re Disposition of Home entered 6/12/09.) Mr. Wills then prepared and sold the home, which resulted in increased liquid assets held by the estate.

⁵ Although living in the house, Mr. Henington was not making utilities or mortgage payments, or paying for Crystal Henington's support (while she was a minor).

Once the statutory periods had run and the tax returns had been prepared and filed (despite still not having the cooperation and information needed from Mr. Henington), Mr. Wills sought an order from the superior court approving his final plan of distribution and closing of the estate because it appeared the estate was insolvent. (*See* CP 4-49 (“Final Report”).) In the Final Report, Mr. Wills acknowledges and accepts Mr. Bradley’s claims against the estate. (CP 6-7; *see also* 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/23/12 at pp. 7, 8; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at p. 6, 7.) “Decedent’s outstanding valid but unpaid claims are the three claims filed by Leonard E. Bradley (Decedent’s father), totaling \$13,746.12.” (CP 6.) Mr. Wills also, again, notified the heirs and the court that he had filed the income tax returns jointly at the request of Mr. Henington, and,

Joint reporting, however, requires the signature of the surviving spouse. The PR has sent the joint returns to Mr. Parks to obtain Mr. Henington’s signature on them but has not received from either Messrs. Parks or Henington Mr. Henington’s signed joint returns or notification that they have been filed with the IRS.

(CP 14.) Mr. Wills also reported that the estate taxes had been paid but not the penalties or fees expected to arise due to the late reporting of those tax

returns. (Id.; CP 15, 16; *see also* CP 54-57; CP 65, 67, 68; VRP.B 10:12-17.)

As is custom in probate, Mr. Wills sought an order approving his plan of distribution and ordering the estate closed subject to holding amounts in reserve to pay the creditors of the estate: the IRS and Mr. Bradley. Mr. Wills requested relief as follows:

A. Approve Petitioner's inventory of estate assets, his accounting of the estate's income & expenses, and his actions as Personal Representative of Decedent's estate as described in this Report & Account.

B. Approve the payment of \$44,144 to Petitioner Richard Wills for the balance of his fees & expenses as the successor PR of Decedent's estate.

C. Approve the reservation of the remaining funds in the estate's bank account for the determination & payment of any additional taxes, penalties, or interest to the IRS & for the reasonable expenses related to such determination and payment.

D. Order the payment from the reserve for those taxes, interest, penalties, and reasonable expenses.

E. Order that any remaining funds after such payment be paid to Leonard Bradley, in payment of his claims up to their total amount of \$13,746.12.

F. Order that any remaining funds after such payment be paid to Crystal Henington & Roy Henington in equal shares.

G. Order the prompt termination of the ongoing \$1,000 monthly payments to each of Crystal Henington & Roy Henington.

H. Order that after a Receipt is filed for each of the foregoing payments & distributions, Petitioner be discharged as Personal Representative, his Bond be exonerated, and this file be closed without any further act.

(CP 16 [sic].)

Mr. Henington objected to payment of any potential creditor, including the IRS, and, without reference to any supporting legal authority, asked that all remaining funds be equally distributed to Roy Henington and Crystal Henington. (CP 51-52; CP 61; CP 126-29.)

On October 24, 2012, the commissioner of the superior court entered an Order on Final Report and Decree of Distribution. (CP 69-72.)

The court made the following relevant finds of fact:

- All notices required by law have been given; there is good reason to close the estate and make final distributions.
- More than four (4) years have passed since the filing of creditor claims by Leonard Bradley and ... Mr. Bradley's claims were based upon alleged oral promises prior to decedent's date of death.
- All amounts due to the Internal Revenue Service, according to the Personal Representative, have been paid.

(Id.)

The order directs Mr. Wills to distribute, with specificity as to the amounts, the remaining assets of the estate and to close it without holding any amount in reserve to pay IRS liabilities or to pay Mr. Bradley's claims. (Id.) Upon motion for revision, which included information for the superior court that Mr. Wills had actually received "notice from the IRS that it has assessed penalties & interest due resulting from the late filing of the estate's fiduciary income tax returns," Judge Stolz refused to revise that order (except to increase the fee payable to Mr. Wills, as successor personal representative, and to correspondingly decrease the amounts to be distributed among those named in the decree of distribution). (CP 134-35; CP 81.) As finally entered, therefore, the superior court made the following, relevant orders:

- The creditor's claims of Leonard Bradley are time barred as a matter of law in accord with RCW 11.40.051, RCW 4.16.080 and RCW 19.36.010.
- The Personal Representative shall distribute, forthwith, the balance of the assets held by the Personal Representative as follows:

Richard Wills:	\$33,193.00
Roy Henington (in care of his attorney):	\$11,785.89
Crystal Henington:	\$11,785.89

- This estate is closed upon the filing of receipts consistent with the other relief ordered herein.

(CP 69-72; CP 134-35.)

On November 28, 2012, Mr. Wills filed a Notice of Appeal and he requests that this Court vacate the superior court's Order on Final Report and Decree of Distribution and the Order on Motion for Revision that amends the previous order. (CP 136-144.) Mr. Wills further requests that this Court remand the matter to probate for (a) final resolution of the claims and amounts due by the estate to the Internal Revenue Service and payment of the same from the estate; (b) allowance and payment of Mr. Bradley's claims; (c) an award of administrative fees and costs; (d) an award of attorney fees and costs for this appeal; (e) return of amounts distributed to Roy Henington and Crystal Henington pursuant to RCW 11.72.006, if necessary to satisfy the estate's outstanding debts and priorities of distribution; and, (f) distribution of the estate pursuant to RCW 11.76.110.

III. ARGUMENT

A. *Standard of Review.*

Probate proceedings are equitable in nature. The Court of Appeals' review of the superior court orders is, therefore, de novo. *In re Estate of Black*, 153 Wn.2d 152, 161, 102 P.3d 796 (2004); *In re Estate of Ney*, 183

Wn. 503, 505, 48 P.2d 924 (1935); *In re Estate of Black*, 116 Wn. App. 476, 483, 66 P.3d 670 (2003).

B. *The Successor Personal Representative has the power and duty to hold estate assets in reserve at the closing of the Estate in order to handle taxing authority liabilities and to pay creditors.*

1. The record before the superior court did not support the finding that “All amounts due to the Internal Revenue Service, according to the Personal Representative, have been paid.”

As laid out in detail in the Statement of the Case, Mr. Wills stated in the Final Report and in other filings with the superior court (that were referenced in the Final Report and part of the court record referenced and therefore considered by the superior court in making its orders) that he **anticipated** that the IRS would assess additional taxes, penalties, and interest against the estate and requested that the court delay final distribution until those debts were settled and paid. (CP 11-13, 15-17; Verbatim Report of the Proceedings, 10/24/12 (“VRP.A”) at 25:11-23; VRP.B at 4:6-23, 9:4-10:17, 11:10-12, 13:1-6; PR’s Response to Roy Henington’s Pet. For Distribution, filed 9/2/10, at p. 2-3, 4; Status Report (With Will) #2 (*ie*, 2nd Report of Affairs of Estate) & Declaration of Mailing, filed 7/21/11, at p.3; Status Report (With Will) #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 5/1/12 at pp. 3-4, 7; 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) &

Response to Pet. Therefor, filed 5/23/12 at pp. 3-8; PR's Reply to Response to 1st Amended Status Report #3 (*ie*, 3rd Report of Affairs of Estate) & Response to Pet. Therefor, filed 6/27/12.) At no time did Mr. Wills represent that "all amounts due...had been paid," or make any similar representation. (*See id.*; CP 4-49, 53-59, 80-82.) The only evidence before the superior court supporting this finding was Mr. Henington's unsupported statement made through his counsel in argument that, "All amounts due to the Internal Revenue Service, according to the Personal Representative, have been paid." (CP 61.) That argument is contradicted by the statement Mr. Henington immediately follows up with that, "*Any additional payments that may be necessary* should be paid from the amount requested for the Personal Representative's fee." (*Id.* (emphasis added).) Moreover, when the question of the IRS came up at the October 24, 2012 hearing before Commissioner Thomas Cena, the court sought to move on without further detail and then entered the finding of fact (drafted by Mr. Henington):

Mr. Wills: Okay. Your Honor. There's an elephant in the living room here that is the crux of where we are today.

The Court: There may be more than one.

Wills: And that is the taxes. And, frankly, I think what I'm asking for in fees is secondary in importance to the estate's tax liability, **which has yet to be resolved.**

Court: Wait a minute, wait a minute.

Mr. Parks: That's been paid.

Wills: No.

Court: Wait a minute. I didn't ask you about the tax liability. I asked you about the amount of money that you're asking for right now today for attorney fees or, pardon me, P.R. fees in this case.

Wills: Okay.

Court: So please address that.

(VRP.A at 25:11-25 (emphasis added).) The court never permitted the argument to return to the subject of taxes at the hearing. (VRP.A.) And, Mr. Henington offered no evidence supporting his statement that the tax liability had been paid and resolved. (Id.) Furthermore, the hearing was not an evidentiary hearing. (*See e.g.* VRP.A at 10:17-23.)

Additional discussion occurred at the November 16, 2012 hearing on Mr. Wills's motion for revision. As the court noted in that hearing, "There have been several times that you've been here that's been an issue, whether or not Mr. Henington was going to get off the mark and sign those [tax returns]." (VRP.B at 11:10-12.) Mr. Wills informed the court, "the taxes alone are estimated to be \$150,000. We've already paid approximately \$125,000; and if Mr. Henington continues to refuse to sign the joint return, there will be further taxes because the individual taxes can't be filed jointly. They'll have to be filed separately resulting in increased taxes." (Id. at 10:12-17; *see also* id. at 9:5-23; 13:1-6.) As to the estate taxes, the court was informed, "while it is true that the returns and estimated taxes, based on the tax accountant for the estate, have been paid,

that's necessary but not sufficient to resolve the tax issues, that the IRS has not accepted the tax that the – the estimated taxes; and the taxes that were paid have not been accepted by the IRS, and the estate has not been released from liability for payment of taxes....," (id. at 4:15-22), and "the amount of taxes paid as determined by the tax accountant, it's not been resolved....," (id. at 10:2-3). There is no evidence in the record disputing these statements. Despite this information, the court assumed the IRS would have responded by that time, and, therefore, refused to revise the commissioner's order. (Id. at 14:6-8; *see also* CP 134-35.) The record, however, demonstrates that the court was mistaken in its unsupported assumption. In addition to his representations to the court, Mr. Wills had informed the court that the IRS had responded and he had "received notice from the IRS that it has assessed penalties & interest due resulting from the late filing of the estate's fiduciary income tax returns." (CP 81 [sic].)

The superior court's finding of fact simply has no support in the record. (CP 4-68, 73-133.) Therefore, this Court should vacate the finding as well as the court's order based on that finding. *Bailie Communications, Ltd. v. Trend Business Sys., Inc.*, 61 Wn. App. 151, 161 n3, 810 P.2d 12(1991) ("the appellate court owes no deference to a trial court's determination which totally lacks evidentiary support"); *see also Shultes v. Halpin*, 33 Wn.2d 294, 306, 205 P.2d 1201 (1949) (where the sole

question on appeal concerns the proper conclusions to be drawn from practically undisputed evidence; in such situation, this court has the duty of determining for itself the right and proper conclusions to be drawn from the evidence in the case).

2. The Superior Court erred by refusing to permit Mr. Wills from holding Estate assets in reserve to pay the Estate's liabilities to the IRS contrary to state and federal law.

RCW 11.68.090 sets forth the powers of a personal representative under a nonintervention will. First Mr. Henington as the initial personal representative, and then Mr. Wills as successor personal representative, were appointed by the court with nonintervention powers. (Order Granting Letters of Administration & Nonintervention Powers filed 3/27/08 in the King Cty Superior Court, as part of Record On Change Of Venue filed 4/21/08; Order Appointing Successor Personal Representative & Granting Nonint. Powers filed 8/15/08.) 11.68.090(1) provides the powers and authority of a nonintervention personal representative, stating in part:

Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by

order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter.

RCW 11.68.090(1).

When the estate is ready to be closed, the personal representative may either apply to the court for a final decree under RCW 11.68.100 or file a declaration of completion under RCW 11.68.110. Mr. Wills chose the former route because the estate had become insolvent and it was proper to handle the matter through the court rather than outside it. (*See* CP 4-49.) Pursuant to RCW 11.76.030, under which a nonintervention personal representative pursuant to RCW 11.68.090(1) may act in his discretion, the personal representative may provide a final report and petition to the court in seeking to close the estate pursuant to RCW 11.68.100. In the final report and petition, the personal representative may inform the court, *inter alia*, of “the condition of the estate at that time,” and “give a particular description of all the property of the estate remaining undisposed of, and shall set out such other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative.” RCW 11.76.030. Mr. Wills’s Final Report satisfied these conditions and asked the court, pursuant to RCW

11.68.100, his nonintervention powers, and the priorities set forth in RCW 11.76.110, to enter an order that the estate may be closed upon the occurrence of certain events stated in the Final Report including (but not limited to) the holding in reserve of estate assets for the final determination and payment of penalties and interest to the IRS and distribution of the estate pursuant to RCW 11.76.110. (CP 16; *see also* CP 4-49.) RCW 11.76.110 provides,

After payment of costs of administration the debts of the estate shall be paid in the following order:

- (1) Funeral expenses in such amount as the court shall order.
- (2) Expenses of the last sickness, in such amount as the court shall order.
- (3) Wages due for labor performed within sixty days immediately preceding the death of decedent.
- (4) *Debts having preference by the laws of the United States.*
- (5) Taxes, or any debts or dues owing to the state.
- (6) Judgments rendered against the deceased in his or her lifetime which are liens upon real estate on which executions might have been issued at the time of his or her death, and debts secured by mortgages in the order of their priority.
- (7) All other demands against the estate.

At the time an estate is being prepared for closing, RCW 11.68.100 provides the court with limited authority.

- (1) When the estate is ready to be closed, the court, upon application by the personal representative who has nonintervention powers, shall have the authority and it shall be its duty, to make and cause to be entered a decree which either:

(a) Finds and adjudges that all approved claims of the decedent have been paid, finds and adjudges the heirs of the decedent or those persons entitled to take under his or her will, and distributes the property of the decedent to the persons entitled thereto; or

(b) Approves the accounting of the personal representative and settles the estate of the decedent in the manner provided for in the administration of those estates in which the personal representative has not acquired nonintervention powers.

RCW 11.68.100(1). It is statutorily authorized and has long been a proper practice in probate for a personal representative to seek a final order **subject to** further estate liability for taxes and associated monies due to government taxing agencies. RCW 11.68.114; *see also e.g. In re Larson's Estate*, 200 Wn. 318, 330-32, 340-41, 93 P.2d 431 (1939); *In re Peterson's Estate*, 12 Wn.2d 686, 701, 123 P.2d 733 (1942); 26B Wash. Practice 4.52 (2012) ("Before closing takes place, provision must be made for payment of all tax liabilities. The Personal Representative should hold back adequate funds to pay for any such additional expenses. A small, supplementary distribution may be made from any unused set-aside, after all such issues are resolved."). RCW 11.68.114(1), also relating to the closing of non-intervention probate estates, provides, in part, that,

The personal representative retains the powers to: Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such

determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve...

RCW 11.68.114(1).

The superior court, therefore, erred when it ignored Mr. Wills's nonintervention powers and ordered that the estate should be closed and final distributions made without holding any amount in reserve for the federal taxation liabilities that were expected to be and had been assessed or distributing the estate in accordance with RCW 11.76.110. By ordering that the remainder of the estate's assets be distributed equally to Roy Henington and Crystal Henington, the superior court denied Mr. Wills his power to hold an amount in reserve for taxation purposes in violation of RCW 11.68.114. Therefore, the orders should be vacated and Mr. Wills permitted to pay the tax penalties and interest out of the estate assets prior to distribution to the heirs.

Moreover, by entering its orders without permitting Mr. Wills to reserve estate assets for the final determination and payment of IRS penalties and interest, the superior court circumvented statutory and case law that designates the estate as the source for payment of such taxes. IRS

regulations require that a personal representative is personally liable for the payment of a decedent's and her estate's taxes, penalties, and interest, and that liability may not be avoided by a state court order. The United States Code provides that the IRS must be paid tax debts before beneficiaries receive distributions. 31 U.S.C. § 3713(b). A personal representative who pays an estate debt before paying debts due to the IRS "shall become answerable in his own person and estate" to the extent of the amount paid to preferred creditors. 26 U.S.C. § 6901. In addition, under Washington law, these taxes are to be paid by a personal representative **from the estate's funds**.

Administration expenses are a first charge against the estate. *In re Estate of Offield*, 7 Wn. App. 897, 903, 503 P.2d 767 (1972) ... The responsibility for payment of the state inheritance tax rests upon the personal representative, *In re Estate of Wilson*, 8 Wn. App. 519, 523, 507 P.2d 902 (1973), as does primary liability for payment of the federal estate tax. *Seattle-First Nat'l Bank v. Macomber*, 32 Wn.2d 696, 700-01, 203 P.2d 1078 (1949). **The federal estate tax is an expense of administration and, to the extent possible, shall be paid out of the residuary estate absent a contrary instruction by the decedent.** *In re Estate of Wilson, supra* 8 Wn. App. at 523.

In re Estate of Templeton, 37 Wn. App. 716, 717-18, 683 P.2d 224 (1984) (emphasis added); see also *In re Estate of Overmire*, 58 Wn. App. 531, 534, 794 P.2d 518 (1990) (supporting this holding from *In re Templeton*); *Seattle-First Nat'l Bank v. Macomber*, 32 Wn.2d 696, 701, 203 P.2d 1078

(1949) (it is a well set out rule that in the absence of statute, or in the absence of a contrary provision by the decedent, the federal taxes shall be paid out of the estate); RCW 83.110A.030 (“estate tax is apportioned ratably to each person that has an interest in the apportionable estate”). There is no law that permits the superior court to obviate the requirement that federal taxes are not to be paid from the estate but by the personal representative in his personal capacity. If such law existed or such decisions were made by superior courts, it would seriously prejudice any estate from enjoying the procedures and benefits that having a personal representative appointed affords to its administration. Few qualified persons would step forward to be personal representatives knowing he or she could become personally liable for a decedent’s unpaid taxes. This is the basis for the mandate that before final distribution is made to beneficiaries and heirs, the estate’s debts, taxes, and administrative expenses shall be paid or provided for. *See* RCW 11.76.110; *In re Estate of Templeton*, 37 Wn. App. at 717-18. Therefore, the superior court erred when it entered an order requiring final distributed of the estate’s assets without accounting for payment of tax penalties and interest, which the superior court knew had been assessed, from the estate and forcing the personal representative to take on personal liability for those payments.

Furthermore, even if the superior court had the authority to ignore Mr. Wills's nonintervention powers and close the estate under Chapter 11.76 RCW without deference to the nonintervention mandates, the superior court erred because its authority is limited by RCW 11.76.050. RCW 11.76.050 states, "The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, **to the end that such estates may be administered and distributed to the persons entitled thereto.**" *Id.* (emphasis added). While this granting of power to the superior court appears broad, it is limited by the language in the statute itself permitting administration and distribution only to persons who are entitled, and that limitation applies to this case. Because a portion of the estate assets were necessary to be held in reserve for federal tax purposes and because the claim of Mr. Bradley had to be paid, Roy Henington and Crystal Henington were not entitled to distribution of the assets of the estate of Catherine Henington as the distribution was set forth in the Court Commissioner's Order on Final Report and Decree of Distribution entered October 24, 2012 order, (CP 69-72), and revised by the Superior Court's Order on Motion for Revision entered November 16, 2012, (CP 134-35). RCW 11.76.110. Mr. Henington and Crystal Henington were not entitled because two outstanding debts existed that remained to be paid as set forth

in Mr. Wills's Final Report. (*See* CP 4-49.) Therefore, the superior court's orders should be vacated.

Because the superior court erred in failing to permit Mr. Wills from holding an amount of the estate assets in reserve to account for and pay the estate's tax liabilities, the court's orders should be vacated and the matter remanded for an order permitting Mr. Wills to hold in reserve from the estate amounts to pay the estate's tax liabilities. Simply put, as a matter of law and equity, the estate's tax liabilities should be paid out of the estate's assets.

C. *Mr. Bradley's claims should be paid by the Estate.*

1. There is no evidence in the record that Mr. Bradley's claims are based on oral promises.

There is no evidence in the record, and there was no evidence in the record at the time the superior court considered Mr. Wills's Final Report, that Mr. Bradley's claims were based on oral promises. (*See* CP 1-3; CP 52; CP 61; CP 126, 129; Exhibits To Previous Response filed 9/26/12; *see also* CP 4-49, 53-59, 63-68, 73-125, 130-133.) Instead, the only information before the commissioner that could support this finding came during argument when Mr. Parks, counsel for Mr. Henington, stated, "Leonard Bradley's claims are based solely on an oral promise to pay that he claims his daughter promised to pay him back money that he lent to her

well before she died to ...,” (VRP.A at 14:12-15), and, “We have no idea when the oral promise to pay was made originally. It could have been five years before Mrs. Henington died...,” (VRP.A at 20:23-25). Mr. Parks offered nothing to support the basis of his statements, not even that he learned this information from Mr. Bradley. (See CP 50-52; CP 60-62; CP 126-129; Exhibits To Previous Response filed 9/26/12; see also VRP.A; Verbatim Report of Proceedings, 11/16/12 (“VRP.B”).) Rather, his assertion is based on speculation. Nothing additional was presented to Judge Stolz for consideration at the hearing on Mr. Wills’s motion for revision. (CP 4-68, 73-133; VRP.B.) Nor is there any evidence in the record that “Mr. Bradley, obviously, has nothing in writing....” (VRP.B at 13:10-11 (comment by the court).)

On the basis of Mr. Parks’s speculative statements alone and no supporting evidence or information, the superior court entered a finding of fact that “Mr. Bradley’s claims were based upon alleged oral promises prior to the decedent’s date of death.” (CP 70.) Not only is this finding unsupported by any evidence, two of Mr. Bradley’s claims are, in fact, based on written instruments - checks he wrote on behalf of Ms. Henington in 2008 - and the third claim is for payment of closing expenses for the closing of a business in 2003, which according to the claim Ms. Henington had been actively paying down. (CP 1-3.) There is no evidence

in the record either way to prove the third claim was based on an oral or written contract. Therefore, this Court should vacate the finding as well as the court's order based on that finding. *Bailie Communications, Ltd.*, 61 Wn. App. at 161 n3 (“the appellate court owes no deference to a trial court's determination which totally lacks evidentiary support”); *see also Shultes*, 33 Wn.2d at 306.

2. No statutory limitation applies to bar Mr. Bradley's claims.

The superior court erred in entering an order that, “The creditor's claims of Leonard Bradley are time barred as a matter of law in accord with RCW 11.40.051, RCW 4.16.080 and RCW 19.36.010.” (CP 71.) RCW 4.16.200 provides that “[l]imitations on actions against a person who dies before the expiration of the time otherwise limited for commencement thereof are as set forth in chapter 11.40 RCW.” RCW 4.16.200. Therefore, the statutes of limitation for bringing an action under chapter 4.16 RCW does not run during the time an estate is in probate if a claim is timely made against the estate under chapter 11.40 RCW.

RCW 11.40.051 governs time limits for bringing claims against a decedent. Notice to creditors was published beginning April 2, 2008. (Affidavit of Publication from Ken Spurrell, filed 4/21/08 in the King Cty Superior Court, as part of Record On Change Of Venue filed 4/21/08.)

Creditors, however, were not given actual notice. (CP 53-54; CP 76.)

Therefore, RCW 11.40.051(1)(b) applies, and it states:

[A] person having a claim against the decedent is forever barred from making a claim or commencing an action against the decedent, if the claim or action is not already barred by an otherwise applicable statute of limitations, unless the creditor presents the claim in the manner provided in RCW 11.40.070 within the following time limitations:...

(b) If the personal representative provided notice under RCW 11.40.020 and the creditor was not given actual notice as provided in RCW 11.40.020(1)(c):

(i) If the creditor was not reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim *within four months after the date of first publication of notice*;

(ii) If the creditor was reasonably ascertainable, as defined in RCW 11.40.040, the creditor must present the claim *within twenty-four months after the decedent's date of death*....

RCW 11.40.051(1)(b) (emphasis added). Whether or not Mr. Bradley was a “reasonably ascertainable” creditor, he timely filed his claims against the estate. Decedent died on March 15, 2008 and Mr. Bradley filed his claims against the estate, within two months of her death, on May 15, 2008. (CP 1-3.) Mr. Bradley’s claims were timely presented and no statute of limitation has run. RCW 11.40.051; RCW 11.40.070(3); RCW 4.16.200.

Moreover, there is no evidence in the record to support a finding that any of Mr. Bradley’s claims are barred by RCW 4.16.080. RCW 4.16.080(3) imposes a limit of three years to the bringing of an action

“upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument.” Two of Mr. Bradley’s claims do arise out of written instruments – the checks he wrote in 2008. (CP 1-2.) There is no evidence in the record either way whether the third claim is or is not in writing or arises out of a written instrument.

In filing his claims, although Mr. Bradley did not provide all the information Mr. Henington apparently sought when he disputed Mr. Bradley’s claims, Mr. Bradley complied with the form required by RCW 11.40.070. A claim must be made as set forth in RCW 11.40.070. RCW 11.40.051; RCW 11.40.070. RCW 11.40.070(1) requires that:

The claimant... shall sign the claim and include in the claim the following information:

- (a) The name and address of the claimant; ...
- (c) A statement of the facts or circumstances constituting the basis of the claim;
- (d) The amount of the claim; and
- (e) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

Neither Mr. Bradley nor Mr. Wills had a further duty to explain the claim to a disputing party. “Failure to describe correctly the information in (c), (d), or (e) of this subsection, if the failure is not substantially misleading, does not invalidate the claim,” and “[a] claim does not need to be supported by affidavit.” RCW 11.40.070(1), (2). Mr. Bradley’s claims comply with these requirements. (CP 1-3.) Therefore, neither RCW

11.40.051 nor RCW 4.16.080 bar Mr. Bradley's claims. For these same reasons, the superior court erred in concluding as a matter of law that that the statute of frauds, RCW 19.36.010, bars Mr. Bradley's claims. There is no evidence suggesting that the debt was not based on a writing.

As a result, the superior court has erred in entering an order that, "The creditor's claims of Leonard Bradley are time barred as a matter of law in accord with RCW 11.40.051, RCW 4.16.080 and RCW 19.36.010." (CP 71.) This Court should vacate the superior court's order and remand this issue to the superior court for an order that permits Mr. Wills to pay Mr. Bradley's claims from the estate in order of distribution pursuant to RCW 11.76.110, (*see supra* at p. 26).

Mr. Wills did not reject Mr. Bradley's claims. Instead, he exercised his nonintervention powers and decided to hold the claim pending until the estate was ready to be closed and then accept and pay the claim. (CP 6-7, 15, 16; VRP.A at 17:10-21.) Mr. Henington sought, and the superior court agreed, to avoid payment of Mr. Bradley's claims. However, in order to avoid payment of Mr. Bradley's claims, rather than ordering distribution of the remainder of the estate equally between the heirs, as the superior court did, the claims must be rejected pursuant to RCW 11.40.100 which affords the claimant a process for disputing the decision, **or** the estate must have insufficient funds to pay the claims. *See* RCW 11.40.100; *see*

generally chapter 11.40 RCW; *see also* RCW 11.76.110. The superior court had no authority to distribute the estate contrary to 11.76.110. Therefore, the superior court erred in ordering distribution as it did and its order should be vacated. The estate remains liable to pay Mr. Bradley's claims, Mr. Wills has accepted the claims, and the claims should be paid in order of distribution pursuant to RCW 11.76.110. This Court should remand this issue for an order to this effect.

3. The Final Order and Order on Revision as to Mr. Bradley's claims are void for lack of jurisdiction.

To be jurisdictionally sound, an order of final distribution must comport with due process with notice to all potential parties in interest. *See Alaska Banking & Safe Deposit Co. v. Noyes*, 64 Wn. 672, 676, 117 P. 672 (1911) quoting *In Re Ostlund's Estate*, 57 Wn. 359, 106 P. 1116 (1910). Without proper notice, the final order "is absolutely void for lack of jurisdiction in the court to make such an order ex parte and without notice." *In re Peterson's Estate*, 12 Wn.2d at 719; *see also id.* at 722-23. The final order as to the distribution and closing of Catherine Henington's estate was made without notice to all interested parties, and therefore ex parte as to those parties who lacked notice. It is, therefore, void. This fact is not altered by the lack of objection or challenge by any interested party who did not receive notice. *Id.* at 719 ("The fact that the [party who did

not receive notice] has never questioned the fees allowed is of no avail to appellants, for if the order was void when entered, the [party]'s failure to object could not infuse life into it.”).

Mr. Bradley had notice of the estate's probate and had made three claims against the estate, even appearing through counsel during a portion of the probate pendency. (CP 1-3; Notice of Appearance [by Terrence C. Posey] filed 10/23/08; Request for Notice [by Terrence C. Posey] filed 10/23/08.) When Mr. Wills filed the Final Report and set it for hearing, he gave notice to all interested parties: Crystal Henington, Roy Henington, *Leonard Bradley*, Ford Motor Co., and the IRS. (Notice on Hearing filed 8/7/12; Affidavit of Publication filed 8/13/12.) In his report he stated that he would accept and pay Mr. Bradley's claims upon the court's approval. (CP 6-7, 15, 16.) Mr. Bradley, however, never received notice that any of his claims **were disputed** by Mr. Henington because Mr. Henington did not serve his response or supplemental response on Mr. Bradley or the other interested creditors. (CP 50-53; CP 60-62; Appendix 1 (Pierce Cty. Docket, cause no. 08-4-00520-1 (no declaration of service filed).) Yet it was only in Mr. Henington's response that the first indication that Mr. Bradley's claims were disputed was made. Given these circumstances, Mr. Henington, as the disputant, had the burden to notify Mr. Bradley that his claims were in dispute, and he failed to do so. Without notice of the

disputed claim, the commissioner entered the order barring Mr. Bradley's claims. (CP 69-72.) Mr. Wills then sought to revise the commissioner's order. (CP 73-125.) He again gave notice to Mr. Bradley that a hearing was set. (Decl. of Mailing re Mot. for Revision filed 11/5/12.) Again, Mr. Henington disputed Mr. Bradley's claims but failed to serve Mr. Bradley with his response and, therefore, notice of the dispute. (Appendix 1 (docket, no declaration of service filed with Henington's response 11/14/12).) Therefore, the superior court's orders are ex parte as to Mr. Bradley and void.

In addition, because Mr. Henington failed to afford Mr. Bradley notice of his intent to dispute Mr. Bradley's claims, the superior court erred in reaching its finding of fact that, "All notices required by law have been given; there is good reason to close the estate and make final distributions." (CP 69.) There is no evidence to support this finding. Therefore, this Court should vacate the finding as well as the court's order based on that finding. *Bailie Communications, Ltd.*, 61 Wn. App. at 161 n3; *see also Shultes*, 33 Wn.2d at 306.

Even if the order is not void, the order is, at best, unsound and voidable because it is subject to later challenge, modification, and the possibility of being vacated because interested parties did not receive notice. *In re Peterson's Estate*, 12 Wn.2d at 718-19. The order, therefore,

does not determine the title and rights of all interested parties with finality, in particular Mr. Bradley's claims, as well as those of the IRS. *In re Walker's Estate*, 10 Wn. App. 925, 931, 521 P.2d 43 (1974). In such cases as this, both the court and the personal representative should take steps that are necessary to correct any deficiencies in the entry of the final order to avoid inheritance that is not free of future collateral attack. *In re Walker's Estate*, 10 Wn. App. at 931; *In re Peterson's Estate*, 12 Wn.2d at 722-23 (the court is ultimately responsible for correcting errors in probate). The order, therefore, should be vacated and remanded for hearing with notice to all interested parties with claims.

D. *The Partial Distributions Made to the Heirs Should Be Returned To The Extent That Priority Claimants Are Paid By The Estate.*

Prior to entry of the superior court's orders, Crystal Henington and Roy Henington received partial distributions from the estate of approximately \$34,000 each. (CP 67; *see also* Agreed Order re Affairs & Confirmation of Community Property entered 4/8/2010 (ordering that the heirs each receive \$1,000 per month from the estate as a partial distribution towards their portions of the estate).) RCW 11.72.006 provides,

After the expiration of the time limited for the filing of claims and before final settlement of the accounts of the personal representative, a partial distribution may be decreed, with notice to interested persons, as the court may

direct. Such distribution shall be as conclusive as a decree of final distribution with respect to the estate distributed except to the extent that other distributees and claimants are deprived of the fair share or amount which they would otherwise receive on final distribution.

These distributions have resulted in the estate having fewer assets remaining than amounts due to creditors and were made at the request of Mr. Henington. The distributions have deprived the IRS and Mr. Bradley of the amount they would otherwise receive on final distribution. Therefore, this Court should direct the superior court on remand to consider these partial distributions and require return of the estate's assets from the heirs to the extent necessary to satisfy the priority distributions required by 11.76.110.

E. *Administrative and attorney's fees and costs should be awarded on appeal.*

Mr. Wills requests that this Court enter awards of (1) the personal representative's administrative fees and costs, and (2) attorney fees and costs, from the estate for the pursuit of litigation and this appeal. RCW 11.48.210 mandates an award of both types of fees and costs:

... The personal representative, when no compensation is provided in the will ... shall be allowed such compensation for his or her services as the court shall deem just and reasonable. Additional compensation may be allowed for his or her services as attorney and for other services not required of a personal representative. An attorney performing services for the estate at the instance of the personal representative shall have such compensation

therefor out of the estate as the court shall deem just and reasonable. Such compensation may be allowed at the final account; but at any time during administration a personal representative or his or her attorney may apply to the court for an allowance upon the compensation of the personal representative and upon attorney's fees.

Id. Catherine Henington's will does not provide for compensation for the personal representative, (Last Will and Testament filed 3/27/08; Order Admitting Will filed 4/30/08), therefore, compensation to Mr. Wills for the administration of the estate and for attorney fees incurred as part of the same must be awarded. RCW 11.48.210. In addition, pursuant to RCW 11.48.050 the personal representative "shall be allowed all necessary expenses in the care, management, and settlement of the estate." RCW 11.48.050. This allowance from the assets of the estate includes attorney fees arising from the personal representative's "faithful discharge of his duties and the expenses incurred in performing them." *In re Jennings' Estate*, 6 Wn. App. 537, 538, 494 P.2d 227, 228 (1972). Further, RCW 11.96A.150 permits both the superior court and the court of appeals to enter an award of costs, "including reasonable attorneys' fees," from the estate.

An award of attorney fees should be made when the estate substantially benefits. *In re Estate of Black*, 153 Wn.2d 152, 173-74, 102 P.3d 796 (2004). The estate substantially benefits in this case because the

appeal is brought to correctly establish the distribution of the assets of the estate to its creditors, beneficiary, and decedent's surviving spouse as to half the community property. *See id. citing In re Estate of Watlack*, 88 Wn. App. 603, 612, 945 P.2d 1154 (1997) (the estate benefits when all competing interests of all potential beneficiaries are resolved, regardless of the outcome).

This appeal is brought by the Successor Personal Representative to insure that the estate assets are properly paid out to the estate's creditors, namely the Internal Revenue Service and Mr. Bradley, before final distribution as required by law. RCW 11.48.010. Mr. Wills filed the Final Report with a request for an order discharging him and closing the estate subject to the payment of assets from the estate to these particular creditors pursuant to the regular and long-standing practice in probate. (CP 16); *see In re Larson's Estate*, 200 Wn. at 330-32, 340-41; *In re Peterson's Estate*, 12 Wn.2d at 701; 26B Wash. Practice 4.52. When the court entered a final order of distribution but failed to do so subject to these outstanding debts and without notice to all interested parties, the competing interests of all parties' interests in the estate were not resolved. Moreover, the order prevents Mr. Wills from fulfilling his statutory duty to settle the estate. RCW 11.48.010. In the final report, Mr. Wills requested approval for reservation of funds in the estate pending the

determination and payment of “additional taxes, penalties, or interest to the IRS & for the reasonable expenses related to such determination and payment.” (CP 16.) Mr. Wills further sought an order that “payment from the reserve for those taxes, interest, penalties, and reasonable expenses,” be entered. (Id.) Mr. Wills also accepted the claims of Mr. Bradley and sought to pay them from the estate assets. (Id.; CP 6.)

Instead of permitting Mr. Wills to satisfy his duties to the estate, the court’s orders left vulnerable the interests of those named by the court to receive distribution (namely, Crystal Henington, Roy Henington, and Richard Wills for his fees) to future direct and collateral attack. The resolution of the various issues set forth in this appeal is necessary for the proper administration and adjudication of Catherine Henington’s will and resolution of the competing interests in the estate. Therefore, the estate benefits from Mr. Wills’s appeal of the final orders. This is true whether or not Mr. Wills’s appeal prevails. *See e.g. Estate of Kvande v. Olsen*, 74 Wn. App. 65, 72, 871 P.2d 669 (1994) (a personal representative is obligated to pursue and present his position in a probate matter where there is a dispute as to distribution and fees from the estate are warranted in such cases). Both Mr. Wills’s administrative fees and costs, and his attorney’s fees and costs, should be awarded from the estate from the date

the Court Commissioner entered the Order on Final Report and Decree of Distribution on October 24, 2012 forward.

Moreover, a substantial benefit to the estate is not necessary in order for fees to be awarded from the estate. *See In re Estate of Black*, 116 Wn. App. 476, 490, 66 P.3d 670 (2003) *aff'd at* 153 Wn.2d 152, 174 (2004) *citing Estate of Kvande v. Olsen*, 74 Wn. App. 65, 71, 871 P.2d 669 (1994); *see also* RCW 11.96A.150 (“factors may but need not include whether the litigation benefits the estate”). The superior court’s errors have caused Mr. Wills to become personally liable for decedent’s tax penalties and interest; these are amounts that exist in large part because of the refusal of the heir, Mr. Henington, to cooperate. Similarly, the superior court’s errors arise from both the superior court’s refusal to carefully consider this complex estate in reaching its decision to close the estate, (*see e.g.* VRP.A 25:14-25), unsupported representations by Mr. Henington, (*see e.g.* *id.* at 14:12-15), and the superior court’s entry of orders prepared by Mr. Henington that included findings of fact that had no support whatsoever (CP 69-72 (e.g. “All amounts due to the Internal Revenue Service, according to the Personal Representative, have been paid.”). Therefore, this appeal was necessary to correct these errors and administrative fees and costs and attorney fees and costs should be awarded. *In re Peterson’s Estate*, 12 Wn.2d at 722-23 (the court is

ultimately responsible for correcting errors in probate and those errors should be corrected).

IV. CONCLUSION

The superior court's orders should be vacated because the findings of fact on which it relies, and discussed herein, are without any support in the record. Thus, the bases of the superior court's order do not exist. In addition, under federal law, the court's distribution would result in Mr. Wills being personally liable for tax consequences of the decedent despite the fault lying primarily with Mr. Henington. Instead, state law mandates in this case that the tax penalties and interest be paid out of the estate assets prior to distribution to the heirs. Furthermore, Mr. Bradley's claims are not time barred, and the order distributing the estate without proper notice to him is void, or at best voidable. The estate benefits from this appeal because it seeks to correct the superior court's orders and result in a remand that lawfully finalizes, distributes, and closes the estate.

Therefore, Mr. Wills requests that this Court vacate the superior court's Order on Final Report and Decree of Distribution and the Order on Motion for Revision that amends the previous order. (CP 136-144.) Mr. Wills further requests that this Court remand the matter to probate for (a) final resolution of the claims and amounts due by the estate to the Internal Revenue Service and payment of the same from the estate; (b) allowance

and payment of Mr. Bradley's claims; (c) an award of administrative fees and costs; (d) an award of attorney fees and costs for this appeal; (e) return of amounts distributed to Roy Henington and Crystal Henington pursuant to RCW 11.72.006, if necessary to satisfy the estate's outstanding debts and priorities of distribution; and, (f) distribution of the estate pursuant to RCW 11.76.110.

DATED this 30th day of April, 2013.

MCPHEE LAW OFFICE

/s/ Mona K. McPhee

MONA K. MCPHEE, WSBA No. 30305
Counsel for Appellant

No. 44246-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

THE ESTATE OF CATHERINE HENINGTON.

APPENDIX TO APPELLANT'S OPENING BRIEF

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APPENDIX

1. Court Docket; Pierce County Superior Court
Case No. 08-4-00520-1;

APPENDIX 1

Pierce County Superior Court Civil Case 08-4-00520-1

Case Title: ESTATE OF CATHERINE HENINGTON
Case Type: Estate
Access: Public
Track Assignment: Non PCLR
Jury Size:
Estimated Trial Length:
Dept Judge: **02 KATHERINE M. STOLZ**
Resolution: 04/30/2008 Pers Rep/Guardian Appointed
Completion: 10/24/2012 Judgment/Order/Decree Filed

Consolidated Related Cases**Litigants**

Name	Type	Status	Date of Death	Bar Number
HENINGTON, CATHERINE	Deceased		03/15/2008	
CROWE, CHRISTINE L	Petitioner			
WILLS, RICHARD	Personal Representative			
HENINGTON, ROY	Involved Party			
Attorney for HENINGTON, ROY	Type			Bar Number
ARTHUR COLBY PARKS	Atty for Involved Party			22508
BRADLEY, LEONARD	Involved Party			
EVERGREEN BANK	Involved Party			

Filings

Filing Date	Filing	Access	Pages	Microfilm
03/27/2008	ASSIGNED TO KATHERINE M. STOLZ	Public	1	
03/27/2008	CASE INFORMATION COVER SHEET	Public	1	
03/27/2008	FILING FEE RECEIVED \$200.00	Public		
03/27/2008	PETITION FOR PROBATE OF WILL	Public	3	
03/27/2008	LAST WILL AND TESTAMENT	Public	4	
03/31/2008	NOTE FOR COMMISSIONERS CALENDAR	Public	1	
04/08/2008	CLERK'S MINUTE ENTRY	Public	1	
04/21/2008	RECORD ON CHANGE OF VENUE	Public	20	
04/30/2008	ORDER ADMITTING WILL	Public	2	
05/15/2008	CREDITOR'S CLAIM LEONARD E BRADLEY	Public	1	
05/15/2008	CREDITOR'S CLAIM LEONARD E BRADLEY	Public	1	
05/15/2008	CREDITOR'S CLAIM LEONARD E BRADLEY	Public	1	
05/30/2008	MOTION RE PEMCO FUNDS/ACCOUNTS	Public	2	
05/30/2008	NOTE FOR COMMISSIONERS CALENDAR	Public	2	
06/12/2008	ORDER RE: PEMCO FUNDS	Public	2	
06/12/2008	CLERK'S MINUTE ENTRY	Public	1	
07/23/2008	ORDER APPOINTING GUARDIAN AD LITEM	Public	2	
07/25/2008	CREDITOR'S CLAIM FORD MOTOR CREDIT	Public	2	
07/25/2008	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
07/25/2008	CREDITOR'S CLAIM EVERGREEN BANK	Public	19	
07/28/2008	PETITION TO APPOINT SUCCESSOR PR	Public	6	
07/28/2008	NOTICE OF RESIGNATION	Public	1	
07/28/2008	NOTE FOR COMMISSIONERS CALENDAR	Public	2	
08/11/2008	REQUEST FOR NOTICE BY GAL	Public	2	
08/12/2008	AFFIDAVIT OF RICHARD NESS	Public	1	
08/12/2008	AFFIDAVIT OF CHRISTINE CROWE	Public	2	
08/12/2008	DECLARATION OF MAILING	Public	2	
08/14/2008	REPORT OF GUARDIAN AD LITEM	Public	4	
08/15/2008	ORDER APPOINTING SUCCESSOR PR W/BOND	Public	2	
08/15/2008	CLERK'S MINUTE ENTRY	Public	1	

Date	Description	Page Count
08/19/2008	OATH	Public 2
08/20/2008	BOND	Public 1
08/21/2008	LETTERS OF ADMINISTRATION	Public 1
08/26/2008	MOTION FOR REVISION	Public 1
09/22/2008	NOTE FOR COMMISSIONERS CALENDAR	Public 2
09/22/2008	PETITION TO APPROVE	Public 7
09/30/2008	CLERK'S MINUTE ENTRY	Public 1
10/07/2008	DECLARATION OF RICHARD WILLS	Public 2
10/07/2008	PETITION TO APPROVE WITHDRAWAL RE BLOCKED ACCOUNT	Public 3
10/08/2008	ORDER OF DEFICIENCIES	Public 1
10/17/2008	NOTE FOR COMMISSIONERS CALENDAR	Public 2
10/21/2008	PETITION TO APPROVE	Public 7
10/21/2008	NOTE FOR COMMISSIONERS CALENDAR	Public 2
10/23/2008	REQUEST FOR NOTICE	Public 2
10/23/2008	NOTICE OF APPEARANCE	Public 1
10/30/2008	REQUEST FOR NOTICE	Public 3
10/31/2008	ORDER APPROVING WITHDRAWAL	Public 2
10/31/2008	CLERK'S MINUTE ENTRY	Public 1
12/16/2008	NOTICE OF INTENTION TO PAY	Public 2
12/26/2008	NOTICE OF INTENTION TO PAY	Public 3
01/06/2009	CREDITOR'S CLAIM FORD MOTOR CREDIT	Public 2
01/06/2009	CREDITOR'S CLAIM FORD MOTOR CREDIT	Public 1
01/07/2009	NOTICE OF INTENT TO WITHDRAW	Public 1
03/04/2009	NOTICE OF INTENT TO WITHDRAW	Public 2
04/07/2009	INVENTORY AND APPRAISEMENT	Public 3
04/17/2009	NOTICE OF APPEARANCE	Public 2
04/20/2009	NOTICE OF APPEARANCE	Public 2
04/20/2009	REQUEST FOR NOTICE	Public 2
05/27/2009	PETITION FOR INSTRUCTIONS	Public 7
05/27/2009	NOTE FOR COMMISSIONERS CALENDAR PETITION FOR INSTRUCTIONS RE DISPOSITION OF HOME	Public 2
05/29/2009	NOTE FOR COMMISSIONERS CALENDAR	Public 2
05/29/2009	PETITION FOR INSTRUCTIONS	Public 7
06/02/2009	NOTE FOR COMMISSIONERS CALENDAR	Public 2
06/03/2009	DECLARATION OF TERRENCE CLAYTON POSEY	Public 2
06/04/2009	REPORT OF GUARDIAN AD LITEM	Public 5
06/08/2009	RESPONSE TO PETITION: INSTRUCTION REGARDING DISPOSITION	Public 3
06/10/2009	RESPONSE TO PETITION	Public 3
06/10/2009	RESPONSE WITH EXHIBITS	Public 10
06/11/2009	NOTICE OF ABSENCE/UNAVAILABILITY	Public 2
06/12/2009	CLERK'S MINUTE ENTRY	Public 1
06/12/2009	ORDER RE INSTRUCTIONS	Public 3
06/15/2009	DECLARATION NOTICE OF INTENTION TO PAY ESTATE EXPENSE	Public 2
06/19/2009	NOTICE OF WITHDRAWAL AND SUB OF COUNSEL	Public 2
01/13/2010	PETITION FOR AWARD OF PROPERTY	Public 12
01/13/2010	NOTICE OF FILING / DELIVERY	Public 2
01/13/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
01/15/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
02/03/2010	REPORT OF GUARDIAN AD LITEM	Public 19
02/05/2010	NOTICE OF INTENT TO WITHDRAW	Public 2
03/24/2010	PETITION FOR REPORT OF AFFAIRS	Public 20
03/24/2010	NOTICE OF FILING PETITION	Public 1
03/24/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
03/24/2010	AFFIDAVIT/DECLARATION OF DELIVERY	Public 2
04/08/2010	DECLARATION RE GR17	Public 8

04/08/2010	AGREED ORDER RE AFFAIRS & CONFIRMATION OF COMMUNITY PROPERTY	Public 4
04/28/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
05/05/2010	NOTICE OF REJECTION OF CLAIM - FORD	Public 2
05/05/2010	NOTICE OF INTENTION TO PAY EXPENSES #4	Public 2
05/05/2010	STATUS REPORT	Public 14
05/05/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
05/05/2010	COPY OF AGREEMENT	Public 8
06/18/2010	NOTICE OF ABSENCE/UNAVAILABILITY	Public 2
08/30/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
08/30/2010	AFFIDAVIT/DECLARATION OF DELIVERY	Public 2
09/02/2010	RESPONSE	Public 7
10/01/2010	NOTE FOR COMMISSIONERS CALENDAR	Public 2
10/04/2010	MOTION TO DISCHARGE GAL	Public 14
10/04/2010	NOTICE OF HEARING	Public 2
10/06/2010	AFFIDAVIT/DECLARATION OF SERVICE	Public 3
10/26/2010	AFFIDAVIT OF PUBLICATION	Public 2
10/26/2010	ORDER RE: GAL DISCHARGE/FEE AUTHORIZATION	Public 3
10/26/2010	CLERK'S MINUTE ENTRY	Public 1
04/25/2011	ORDER TO SHOW CAUSE	Public 1
06/14/2011	NOTICE OF ATTORNEY CHANGE OF ADDRESS	Public 2
07/21/2011	STATUS REPORT #2	Public 13
07/29/2011	ORDER SETTING ORIGINAL CASE SCHEDULE	Public 2
08/19/2011	ORDER SETTING ORIGINAL CASE SCHEDULE	Public 2
09/16/2011	NOTICE OF INTENT TO WITHDRAW	Public 3
02/10/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public 2
04/16/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 1
04/16/2012	PETITION FOR REPORT OF AFFAIRS	Public 27
05/01/2012	STATUS REPORT	Public 14
05/04/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 2
05/04/2012	DECLARATION OF MAILING	Public 2
05/11/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public 2
05/17/2012	COVER SHEET AND LETTER FROM CRYSTAL HENINGTON	Public 3
05/17/2012	DECLARATION OF MAILING	Public 2
05/21/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 2
05/23/2012	DECLARATION OF MAILING	Public 2
05/23/2012	1ST AMENDED STATUS REPORT & RESPONSE	Public 20
05/23/2012	NOTICE OF APPARENT INSOLVENCY	Public 2
06/06/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 2
06/07/2012	LETTER FROM CRYSTAL HENINGTON	Public 2
06/14/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 2
06/18/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public 2
06/18/2012	CLERK'S MINUTE ENTRY	Public 2
06/27/2012	RESPONSE RE 1ST STATUS REPORT	Public 4
06/27/2012	REPLY TO RESPONSE	Public 5
06/29/2012	CLERK'S MINUTE ENTRY	Public 1
08/07/2012	FINAL REPORT	Public 46
08/07/2012	NOTICE OF HEARING	Public 2
08/10/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 1
08/13/2012	AFFIDAVIT OF PUBLICATION	Public 1
08/29/2012	NOTICE OF CONTINUANCE OF HEARING	Public 2
08/29/2012	NOTE FOR COMMISSIONERS CALENDAR	Public 1
08/29/2012	NOTICE OF CONTINUATION OF HEARING	Public 2
09/11/2012	DECLARATION OF A. COLBY PARKS	Public 3

09/13/2012	ORDER OF CONTINUANCE	Public	3
09/17/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
09/24/2012	RESPONSE	Public	3
09/26/2012	PR'S REPLY TO RESPONSE	Public	7
09/26/2012	AFFIDAVIT/DECLARATION OF FEES & COSTS	Public	65
09/26/2012	OBJECTION TO SHORTENED TIME	Public	2
09/26/2012	EXHIBITS TO PREVIOUS RESPONSE	Public	5
09/26/2012	ORDER SHORTENING TIME	Public	6
09/26/2012	NOTE FOR COMMISSIONERS CALENDAR	Public	1
09/26/2012	CLERK'S MINUTE ENTRY	Public	2
09/27/2012	DECLARATION OF RICHARD WILLS RE PHONE CALL	Public	6
09/27/2012	DECLARATION OF A. COLBY PARKS	Public	9
09/27/2012	ORDER RE: DENIAL OF RELIEF/ NOTICE REQUIREMENT	Public	1
09/27/2012	CLERK'S MINUTE ENTRY	Public	1
10/12/2012	NOTE FOR COMMISSIONERS CALENDAR	Public	1
10/12/2012	NOTICE LIST	Public	1
10/12/2012	NOTICE OF CONTINUANCE	Public	2
10/22/2012	SUPPLEMENTAL RESPONSE TO FINAL REPORT	Public	3
10/23/2012	REPLY TO RESPONSE	Public	6
10/24/2012	ORDER OF FINAL REPORT / DECREE OF DISTRIBUTION	Public	4
10/24/2012	CLERK'S MINUTE ENTRY	Public	1
10/26/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
11/05/2012	NOTE FOR JUDGES MOTION CALENDAR	Public	1
11/05/2012	MOTION FOR REVISION	Public	53
11/05/2012	DECLARATION OF MAILING	Public	1
11/09/2012	DOCUMENTS SUBMITTED RE MOTION FOR REVISION	Public	151
11/09/2012	TRANSCRIPT OF HEARING RE REVISION MOTION	Public	32
11/14/2012	RESPONSE TO MOTION FOR REVISION	Public	4
11/14/2012	PR'S REPLY	Public	4
11/16/2012	ORDER RE: MOTION FOR REVISION	Public	2
11/16/2012	CLERK'S MINUTE ENTRY	Public	2
11/29/2012	NOTICE OF APPEAL WITH FEE	Public	9
11/30/2012	TRANSMITTAL LETTER COPY FILED	Public	1
12/05/2012	PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
12/10/2012	DESIGNATION OF CLERK'S PAPERS	Public	3
12/12/2012	STATEMENT OF ARRANGEMENTS	Public	3
12/12/2012	TRANSCRIPT OF HEARING	Public	3
12/18/2012	DECLARATION OF MAILING	Public	1
12/18/2012	DESIGNATION OF CLERK PAPERS	Public	3
12/19/2012	CLERK'S PAPERS PREPARED	Public	3
12/21/2012	2ND STATEMENT OF ARRANGEMENTS	Public	4
12/27/2012	CLERK'S PAPERS PREPARED ***AMENDED**	Public	3
12/28/2012	CLERK'S PAPERS SENT	Public	1
01/04/2013	RECEIPT(S) \$18034.78 FROM CATHERINE HENINGTON, ESTATE	Public	2
01/09/2013	NOTICE RE CASH DEPOSIT AS SUPERSEDEAS BOND	Public	1
01/10/2013	MEMORANDUM - COPY OF EMAIL TO RICHARD WILLS	Public	4
01/11/2013	VERBATIM REPORT TRANS TO DIV II *11/15/12*	Public	18
01/15/2013	TRANSMITTAL LETTER VRP COPY FILED	Public	1
01/18/2013	INTERIM REPORT & ACCOUNT	Public	13
01/18/2013	NOTE FOR COMMISSIONERS CALENDAR	Public	2
02/04/2013	RESPONSE TO INTERIM REPORT	Public	2
02/05/2013	REPLY TO RESPONSE	Public	2
02/06/2013	ORDER SHORTENING TIME	Public	1

Date	Description	Public
02/06/2013	NOTE FOR COMMISSIONERS CALENDAR	Public 1
02/06/2013	CLERKS MINUTE ENTRY	Public 1
02/13/2013	NOTICE OF FILING A VERBATIM REPORT *8/24/12*	Public 1
02/13/2013	VERBATIM REPORT TRANS TO DIV II *10/24/12*	Public 31
02/13/2013	ORDER RE: INTERIM REPORT & PETITION FOR APPROVAL	Public 7
02/13/2013	CLERKS MINUTE ENTRY	Public 1
02/15/2013	TRANSMITTAL LETTER VRP COPY FILED	Public 1
02/27/2013	MOTION FOR ORDER RE: NUNC PRO TUNC	Public 17
02/27/2013	NOTE FOR COMMISSIONERS CALENDAR	Public 2
03/13/2013	AGREED ORDER RE: REPORTS	Public 7



PURCHASE COPIES

Proceedings

Date	Calendar	Outcome
04/08/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Guardianship/Probate	Fail to Appear-Party(ies)
Scheduled By: CHRISTINE LANGLEY		
04/30/2008	C4 - EXPARTE CALENDAR Confirmed 1:34 Exparte Action	Held
05/30/2008	C4 - EXPARTE CALENDAR Confirmed 9:38 Exparte Action	Held
06/12/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Guardianship/Probate	Motion Held
07/22/2008	C4 - EXPARTE CALENDAR (Rm. 270) Unconfirmed 3:22 Exparte Action Mail	Ex-Parte w/ Order Held
08/15/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Supplemental	Motion Held
Scheduled By: Richard Wills		
08/19/2008	C4 - EXPARTE CALENDAR (Rm. 100) Unconfirmed 11:33 Exparte Action Mail	Ex-Parte w/ Order Held
09/18/2008	C4 - EXPARTE CALENDAR (Rm. 105) Confirmed 2:33 Exparte Action	Held
09/30/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Guardianship/Probate	Motion Held
Scheduled By: Richard Wills		
10/07/2008	C4 - EXPARTE CALENDAR (Rm. 105) Unconfirmed 11:39 Exparte Action Mail	Ex-Parte w/o Order Held
10/31/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Guardianship/Probate	Motion Held
10/31/2008	C1 - PROB/UNLAW DET/SUP PRO (Rm. 839) Confirmed 1:30 Guardianship/Probate	Motion Held
Scheduled By: Richard Wills		
06/11/2009	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Fail to Appear-Party(ies)
06/11/2009	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Supplemental	Fail to Appear-Party(ies)
Scheduled By: Richard Wills		

4/23/13

Pierce County Superior Civil Case 08-4-00520-1

Date	Case Description	Status	Time	Notes
06/12/2009	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Supplemental	Motion Held
Scheduled By: Richard Willis				
02/03/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
02/09/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Issue resolved
Scheduled By: ARTHUR PARKS				
04/08/2010	C4 - EXPARTE CALENDAR (Rm. 105)	Confirmed	1:32 Exparte Action	Held
04/14/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancelled/Stricken
Scheduled By: ARTHUR PARKS				
05/07/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
Scheduled By: ARTHUR PARKS				
05/21/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Issue resolved
Scheduled By: ARTHUR PARKS				
09/08/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Issue resolved
Scheduled By: ARTHUR PARKS				
10/26/2010	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Motion Held
Scheduled By: J. COX				
07/29/2011	DEPT 02 - JUDGE STOLZ (Rm. 214A)	Confirmed	1:30 Show Cause	Continued
08/19/2011	DEPT 02 - JUDGE STOLZ (Rm. 214A)	Confirmed	1:30 Show Cause	Held
02/10/2012	DEPT 02 - JUDGE STOLZ (Rm. 533)	Confirmed	9:00 Mandatory - Court Review Hrg	Held
05/07/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
Scheduled By: ARTHUR PARKS				
05/11/2012	DEPT 02 - JUDGE STOLZ (Rm. 323)	Confirmed	9:00 Mandatory - Court Review Hrg	Continued
05/23/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
Scheduled By: ARTHUR PARKS				
06/06/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
Scheduled By: ARTHUR PARKS				
06/15/2012	DEPT 02 - JUDGE STOLZ (Rm. 2-B)	Confirmed	9:00 Mandatory - Court Review Hrg	Held
06/15/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100)	Confirmed	1:30 Guardianship/Probate	Cancel via Web-Rescheduled
Scheduled By: ARTHUR PARKS				

06/29/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Motion Held
Scheduled By: ARTHUR PARKS		
09/06/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Fail to Appear-Party(ies)
Scheduled By: Richard Wills		
09/13/2012	C4 - EXPARTE CALENDAR (Rm. 105) Confirmed 9:28 Exparte Action	Held
09/13/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Cancelled/Stricken
Scheduled By: Richard Wills		
09/21/2012	DEPT 02 - JUDGE STOLZ (Rm. 214A) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
09/26/2012	C4 - EXPARTE CALENDAR (Rm. 105) Confirmed 2:05 Exparte Action	Held
09/27/2012	C4 - EXPARTE CALENDAR (Rm. 105) Confirmed 9:01 Exparte Action	Held
09/27/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Order Shortening Time-Hrg Set	Motion Held
10/24/2012	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Final Accounting	Motion Held
Scheduled By: Richard Wills		
10/26/2012	DEPT 02 - JUDGE STOLZ (Rm. 214A) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
11/16/2012	DEPT 02 - JUDGE STOLZ (Rm. 214A) Confirmed 9:00 Motion - Revision	Motion Held
Scheduled By: Richard Wills		
11/30/2012	DEPT 02 - JUDGE STOLZ (Rm. 214A) Confirmed 9:00 Mandatory - Court Review Hrg	Cancelled/Stricken
02/06/2013	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Motion Held
Scheduled By: Richard Wills		
02/13/2013	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Order Shortening Time-Hrg Set	Motion Held
03/13/2013	C4 - EXPARTE CALENDAR (Rm. 105) Confirmed 11:24 Exparte Action	Held
03/13/2013	C1 - PROB/UNLAW DET/SUP PRO (Rm. 100) Confirmed 1:30 Guardianship/Probate	Cancelled/Stricken
Scheduled By: Richard Wills		

Original Case Schedule Items

Event	Schedule Date
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Judgments

Cause #	Status	Signed	Effective	Filed
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This calendar lists Confirmed and Unconfirmed Proceedings. Attorneys may obtain access rights to confirm/strike selected proceedings. Currently, any proceedings for the Commissioners' calendars can be stricken, but only Show Cause proceedings for

Unconfirmed Proceedings will not be heard unless confirmed as required by the Local Rules of the Superior Court for Pierce County.

the Commissioners' calendars can be confirmed.

- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
- Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and Truancy.
- The names provided in this calendar cannot be associated with any particular individuals without individual case research.
- Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.

Created: Tuesday April 23, 2013 3:43PM

No. 44246-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

THE ESTATE OF CATHERINE HENINGTON, Appellant.

PROOF OF SERVICE OF APPELLANT'S OPENING BRIEF

Mona K. McPhee, WSBA# 30305
Co-counsel for Appellant

MCPHEE LAW OFFICE
2400 NW 80th STREET #295
SEATTLE, WA 98117
(360) 870-0769

I HEREBY CERTIFY, under penalty of perjury under the laws of the State of Washington, that on April 30, 2013, I caused to be served a true and correct copy of Appellant's Opening Brief on counsel for the Respondent and other interest parties by first class mail with courtesy copy by first email if an email address has been provided:

SERVED PERSONS:

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Ford Motor Credit Co.
c/o Weltman, Weinberg
323 W. Lake Ave
Cleveland, OH 44113

DATED this 30th day of April, 2013.

/s/ Mona K. McPhee
MONA K. MCPHEE

MCPHEE LAW OFFICE
April 30, 2013 - 3:52 PM

Transmittal Letter

Document Uploaded: 442469-Appellant's Brief~2.pdf

Case Name: In re: The Estate of Catherine Henington

Court of Appeals Case Number: 44246-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Anne Preston - Email: ampre@comcast.net