

No. 46441-1

**COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON**

THE ESTATE OF RAY MERLE BURTON, Deceased.

APPELLANTS' OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. Assignments of Error

1. The trial court erred in granting Defendant's Motion for an Order of intestacy by Order dated May 7, 2014.

2. The trial court erred in denying Plaintiff's Motion for Reconsideration by letter ruling dated May 30, 2014.

2. Issues Pertaining to Assignments of Error

(Assignment Nos. 1 and 2:)

1. Whether the trial court erred in refusing to find substantial compliance with the Statute of Wills in two original documents, each written by the testator expressing the same testamentary wishes regarding his estate, and each witnessed by a different witness on the same day, effectively executing a Will in counterparts.

2. Whether the typewritten portions of a pre-printed form on which one testamentary disposition was written should be disregarded where the testamentary provisions are clearly stated in a blank area of the form, and were signed and witnessed with the testamentary intent.

3. Whether strict compliance with RCW 11.12.020 requires a single document with both witness signatures on the same document, or if duplicate counterparts are permitted.

4. Whether strict compliance with statutory requirements is

required where to do so would silence the testator's voice and frustrate the testator's intent as clearly expressed in two documents witnessed by two different witnesses on the same day.

5. Whether one of the original testamentary documents is proved by the testimony of the witness to the document, where the testamentary document cannot be located.

6. Whether Respondent's hearsay objections require exclusion of any evidence presented to establish the testator's intent and plan, or fall within exceptions to the Deadman's Statute and/or the Evidence Rules.

B. STATEMENT OF THE CASE

1. Statement of Procedure

On April 25, 2014, Respondent, Richard Didriksen, filed a Motion for Order Declaring Estate to Be Intestate, asking the court to find there to be no valid Will and challenging the testamentary document and evidence submitted by Appellant. (CP 31-38). Appellant timely filed his opposition to Defendant's motion on April 30, 2014. (CP 39-45, 46-47). Didriksen filed a Reply Brief on May 1, 2014. (CP 50-56). Oral argument proceeded on May 2, 2014. (CT pp.1-15). Didriksen's motion was granted. (CP 111-112). Plaintiff timely moved for reconsideration by motion dated May 12, 2014. (CP 61-65, 66-83, 84-85). Didriksen filed his Response to

Appellant's Motion for Reconsideration on May 28, 2014. (CP 86-92). Appellant filed a Reply on May 29, 2014 (CP 93-97). The Motion for Reconsideration was heard on May 30, 2014 (CT, pp. 16-31), and denied. (CP 113-114).

On June 27, 2014, Appellant filed a Notice of Appeal from the Order Declaring Estate to be Intestate and the Order Denying Motion for Reconsideration. (CP 100-105).

2. Statement of Facts

Decedent, Ray Merle Burton executed a handwritten Will prior to his death and had a home health nurse witness it. (CP 14-15). The document was lost in the course of the day it was signed. (CP 46-47, p. 1, ll. 24-28 to p. 2, ll. 1-4) He wrote a second will later the same day. (CP46, p. 1, ll. 24-28). The testamentary provisions were written in a blank space in an Advanced Health Care Directive Form (CP13). The statement read, "Thank Victor White remain my caretaker 'til I go to sleep/die the transfer of Gold Mines Montecarlo & BlackHawk one, all my collector cars and real estate located at 36619 Mountain Hwy E Eatonville WA 98320. I wish all my worldly possessions to go to Victor White." He signed the document and had Shirley Outson witness it. Ms. Outson attested that she witnessed the Will and that Mr. Burton was asked specifically if he had any other family to whom he wanted to give his

possessions and he said “no.” (CP 11-12, p.1, l. 27 to p. 2, ll. 1-2). He executed two original documents and had two separate witnesses sign each original. Accordingly, he expressed the same wishes in the two documents and had two different witnesses sign on the same day, effectively executing his Will in counterparts. The original document that was lost is attested to by the witness who signed it. (CP 14-15). The testimony of that witness complies with the Lost Will statute. RCW 11.20.070(2).

It seems apparent that Mr. Burton was estranged from Didricksen and his cousins based upon his statement to Noel Povlsen that he was estranged from his relatives (CP 8-10, p. 1, ll. 23-25), and his statement to the hospice nurse that he had no family to whom he wished to leave his estate. (CP 11-13, p. 2, ll. 1-2). His home health nurse asked him if he had family and he said “no,” that he was on his own. (CP 14-15, p.2, ll. 3-6). In the two to three years that Mr. White spent with Mr. Burton, he never witnessed a call from Mr. Burton’s cousins, nor heard him talk about them. (CP 5-7, p. 1, ll. 25-26). Mr. White did not know Mr. Burton had cousins until hospice was being set up and Mr. White asked Mr. Burton if he had relatives that should be called. Mr. Burton said he had a couple of cousins, but they didn’t talk. (CP 5-7; p. 1, ll. 26 to p. 2, ll. 1-3).

Mr. Burton indicated his desire that his estate go to his friend, Victor White, on several occasions prior to his death, and prior to

executing his Will. (CP 14-15, p 2., ll. 1-3; CP 8-10, p. 2, ll.1-7, 13-16).

Mr. Burton also stated to Mr. Povlsen that if there were money involved, his cousins would “come sniffing around.” (CP 8-10, p. 1, ll. 26-28). Mr. Burton, with death imminent, made every attempt to make his testamentary intent known and asked two different nurses to witness the testamentary documents he prepared.

Mr. Burton made every attempt to make his testamentary wishes known and to document those wishes in writing before two witnesses. The testamentary record substantially complies with statutory requirements.

After Mr. Burton’s death, and prior to petitioning for probate of Mr. Burton’s Will, Mr. White sought to locate the missing handwritten counterpart signed by Lisa Erickson. (CP 46-47, p. 2, ll. 1-4) It could not be located and Lisa Erickson’s declaration was not able to be obtained prior to the initial hearing on Appellant’s Petition.

Subsequently, Respondent Didricksen moved for an Order declaring the estate to be intestate. Didricksen claimed that the testamentary document and declarations submitted by Petitioner, Victor White, did not comply with the Statute of Wills. (CP 31-38, 3-4). The court granted Respondent’s motion and denied a subsequent motion for reconsideration. (CP 11-112, 113-114).

C. ARGUMENT

1. The Standard of Review on Application of a Statute to the Facts Is De Novo.

The question presented is a question of law. Whether the trial judge's factual findings support his conclusion that the testamentary documents executed by Mr. Burton failed to constitute a Will or to satisfy the requirements of the Statute of Wills is a question of law. A review of the application of the Statute, and substantial compliance with the statute, requires de novo review. *State v. Hanson*, 138 Wn. App. 322, 157 P. 3d 438 (2007); *State v. Shepherd*, 110 Wn. App. 544, 550, 41 P.3d 1235 (2002).

In reviewing the motion *de novo*, the appellate court may consider all evidence and issues “called to the attention of the trial court.” Evidence and argument presented on a motion for reconsideration is “called to the attention of the trial court” and may be considered on appeal. *Hofsvang v. Estate of Brooke*, 78 Wn.App. 315, at 320, fn. 3, 897 P.2d 370(1995).

2. RCW 11.12.020 Does Not Proscribe Counterparts, But Requires Only That the Will Be In Writing and Witnessed. (Assignment of Errors Nos. 1 and 2; Issue 3)

To create a valid Will, RCW 11.12.020 requires only that “[e]very will shall be in writing signed by the testator ...and shall be attested by

two or more competent witnesses, by subscribing their names to the will..” Nothing in the statute proscribes executing a will in counterparts. The purpose of the statutory requirements regulating the execution of Wills is “to ensure that the testator has a definite and complete intention to dispose of his or her property and to prevent as far as possible, fraud, perjury, mistake and the chance of one instrument being substituted for another.” *Estate of Malloy*, 134 Wn. 2d 316, at 323, 949 P. 2d 804 (1998) citing Page on Wills §19.4, at 66.

This case appears to be one of first impression in seeking review of the validity of a will executed in counterparts. Executing a Will in counterparts fulfills the purpose of the statute where, as here, Mr. Burton’s complete intention is indicated by his writing his will not once, but twice. Each counterpart contained the same disposition of his estate and each was signed on the same day by the testator and each of the witnesses.

In construing a statute, courts look first to the plain language of the statute. *Cockle v. Labor & Industries*, 142 Wn. 2d 801, at 807, 16 P. 3d 583 (Wash. 2001). If there is no ambiguity, the statute is applied as written. *Ibid.* In the present case, the statute governing the making of a will requires only that the will be “in writing.” RCW 11.12.020. The comment to the Uniform Probate Code for Section 2-502 which contains the same “writing” requirement as RCW 11.12.020 states that “[a]ny

reasonably permanent record is sufficient. See Restatement (Third) of Property: Wills and Other Donative Transfers §3.1 cmt.i(1999).” As set forth herein at 3(B), there is no specific form or type of writing required. The statute is silent on the issue of duplicate originals or counterparts. The “writing” in the present case fulfills the purpose of the statute in reflecting the complete intention of the testator, an intention he took the time to write down twice before two witnesses.

If the goal is to honor the wishes of the testator and to fulfill his desire for his estate, the documents in the instant case satisfy the purpose of the statute and, if upheld as valid, would allow Mr. Burton’s wishes to be carried out.

3. **Mr. Burton Substantially Complied with the Statute of Wills.**
(Assignment of Error, Nos. 1 and 2; Issue 1, 2, and 4)

If the court determines the counterparts executed by the decedent do not strictly comply with RCW 11.12.020, Appellant contends they substantially comply with the statute and the purpose for the statute.

RCW 11.12.020 provides:

(1) Every will shall be in writing signed by the testator or by some other person under the testator's direction in the testator's presence, and shall be attested by two or more competent witnesses, by subscribing their names to the will, or by signing an affidavit that complies with RCW 11.20.020(2), while in the presence of the testator and at the testator's direction or request: PROVIDED, That a last will and testament, executed in the mode prescribed by the law of the place where executed or of the

testator's domicile, either at the time of the will's execution or at the time of the testator's death, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state.

(2) This section shall be applied to all wills, whenever executed, including those subject to pending probate proceedings.

Mr. White has produced a writing signed by the testator directing the disposition of his estate and signed by a witness, and a declaration of that witness attesting to her witnessing the Will of Mr. Burton. Mr. White has also provided the sworn testimony of a second witness who witnessed an earlier writing on the same day, written by Mr. Burton and signed by him, bequeathing his estate to Mr. White.

A. The Testator Need Not Sign In Front of The Witnesses, Nor Do the Witnesses Need to Sign in the Presence of Each Other.

The law with regard to execution of Wills in Washington does not require that the testator sign in front of the witnesses, or that the witnesses sign in the presence of each other. *Estate of Ricketts*, 54 Wn. App. 221, 225, 773 P. 2d 93 (1989); *Estate of Gardner*, 69 Wn. 2d 229, at 236, 417 P. 2d 948(1966). Accordingly, the fact that Shirley Outson signed a testamentary document after Lisa Erickson had signed a document and departed the house does not defeat the validity of the Will.

B. The Will Is Not Required To Be On a Blank Paper Where The Handwritten Statement Standing Alone is Clearly Testamentary.

RCW 11.12.020 does not require that the terms of the Will be written on a blank piece of paper that is devoid of all other writing, or on paper in any particular condition. The statute simply requires that it be “in writing.” Page on Wills provides that it is the intended effect of the instrument, not the name given to it that determines whether the document in question is a will, stating that “[t]he fact that the testamentary provisions form a very small part of the entire document, the bulk of which is not intended to operate as a will, does not make the few dispositive provisions of the instrument inoperative as a will.” William J. Bowe & Douglas H. Parker, 1 Page On The Law of Wills, §5.6 at 176. In the present case, the dispositive provisions written in the blank space on a pre-printed form are clearly testamentary.

Other jurisdictions have disregarded pre-printed information on a document that was clearly a testamentary disposition. *In Re Sayers' Will*, 76 N.Y.S.2d 788, 190 Misc.976(1948). In *Sayers*, the court upheld a will written on business letterhead, stating,

“Informality of the paper and looseness of its language is no bar to giving any directions contained therein testamentary effect if there can be gleaned from its language an intent on the part of the decedent that the paper should have such effect.”

In addition, those jurisdictions that permit holographic wills, which

require the entirety of testamentary dispositions be in the testator's handwriting, have disregarded any pre-printed information on the document, where the existence of a clear testamentary disposition was evident from the handwritten portions. *Estate of Baker*, 59 Cal. 2d 680, 31 Cal.Rptr. 33, 381 P. 2d 913 (1963) (the testator wrote his will on paper embossed at the top with "AAA, Approved, Hotel Covell and Modesto, California); *In re Schuh's Estate*, 17 Ariz.App. 172, 496 P. 2d 598 (1972) (handwritten material on stationery containing pre-printed "Bring's Funeral Home" and "My last will and testament."

The testamentary language in Mr. Burton's handwriting on the Advanced Health Care Directive is sufficient, standing alone, as a Will.

1. Mr. Burton Intended the Statement on the Hospice Form to Be His Will.

Mr. Burton was being placed in hospice care and was anxious to make his wishes known. The paper he had previously written and signed before one witness was not at hand and could not be located, so he wrote up another one and signed it in front of another witness. (CP 46-47, p. 1, ll. 24-28). From all the facts and circumstances, he clearly intended it to be a Will. The testimony of Shirley Outson and Lisa Erickson has been

filed with the Court, each attesting to Mr. Burton's intention that they witness his last Will. (CP 11-13, p. 1, ll. 19-21, CP 14-15, p. 2, ll. 7-12)

Ms. Outson witnessed his signature on a pre-printed Advanced Health Care Directive, that specifically instructed, in the testator's handwriting, "see attachment Hospice Notes witnessed by Shirley Outson." The testamentary provisions were written in a blank space in that Advanced Health Care Directive Form (CP13). The statement read, "Thank Victor White remain my caretaker 'til I go to sleep/die the transfer of Gold Mines Montecarlo & BlackHawk one, all my collector cars and real estate located at 36619 Mountain Hwy E Eatonville WA 98320. I wish all my worldly possessions to go to Victor White." He signed it and had Ms. Outson witness it. Ms. Outson and Ms. Erickson witnessed two documents expressing the same disposition of Mr. Burton's estate on the same date. Each was in the presence of Mr. Burton when they witnessed the documents.

Professor Atkinson writes that "the courts do not insist upon performance of the formalities in the most literal or exacting sense which construction of the statute permits. Substantial or reasonable compliance with each requirement should be enough. *Atkinson on Wills at 293; Restatement (Third) of Prop.: Wills and Other Donative Transfers §3.3(1998)*. This position is arguably approved by the court in *Estate of*

Ricketts, 54 Wn. App. 221, 773 P. 2d 93(1989), wherein the court analyzed the document before it for “substantial compliance” with the statute.

Strict compliance with legislatively mandated procedures is not always required. Washington courts have long upheld actions taken in substantial compliance with statutory requirements, where imperfections may exist. Substantial compliance requires "actual compliance in respect to the substance essential to every reasonable objective of [the] statute." *Kim v. Lee*, 102 Wn. App. 586, at 591, citing *City of Seattle v. Public Employment Relations Comm'n*, 116 Wn. 2d 923, 928, 809 P.2d 1377 (1991).

The reasonable objective of the statute of Wills is “to ensure that the testator has a definite and complete intention to dispose of his or her property and to prevent, as far as possible, fraud, perjury, mistake and the chance of one instrument being substituted for another.” *Estate of Malloy*, supra., at 323, citing Page on Wills §19.4, at 66.

Other jurisdictions have also considered the substantial compliance doctrine in the context of execution of Wills and have held in favor of fulfilling the intention of the testator. *In Re Will of Ranney* 589 A. 2d 1339, 124 N.J. 1 (NJ 1991). In *Ranney*, the testator’s will consisted of four pages and a fifth page containing a self-proving affidavit. The testator signed the fourth page, but no one else signed it. The witnesses

then signed the self-proving affidavit. The will was challenged for not strictly complying with the statute for execution of Wills. The appellate court ruled that the self-proving affidavit was part of the Will. The Supreme Court held that although the signatures on the self-proving affidavit failed to satisfy the statutory requirements, the Will could be admitted to probate if it substantially complied with the requirements. The *Ranney* court explained that “[s]ubstantial compliance is a functional rule designed to cure the inequity caused by the “harsh and relentless formalism” of the law of wills.”[citations omitted] Where the testator’s intent is clear, and the purpose of the statute of wills in ensuring there is testamentary intent is not frustrated, substantial compliance furthers the purpose of the statute in protecting the intent of the testator.

Further, Washington courts, in construing the statutory requirements for Wills, have looked to the totality of the circumstances and have adopted a presumption in favor of testacy. *Estate of Price*, 73 Wn.App. 745, 871 P. 2d 1080 (1994) (Will witnessed by one witness and signed by notary); *In Re Chambers Estate* 187 Wash. 417, 60 P. 2d 41 (1936) (no attestation clause and no indication to the witness that the document was a Will).

It is of note that the court in *Estate of Ricketts, supra.*, evaluated the case before it for substantial compliance with the statute, arguably

approving the doctrine of substantial compliance with regard to the execution of a will. The *Ricketts* court was faced with a Codicil signed by the Testator and accompanied by an affidavit of witnesses on a separate page. In reaching its decision, the *Ricketts* court evaluated several cases dealing with the issue of substantial compliance in the execution of Wills.

Although the *Ricketts* court ultimately held that the codicil accompanied by an affidavit of witness on a second page was not validly executed, the Washington legislature, in response to that decision, amended RCW 11.12.020 to allow self-proving affidavits to satisfy the subscription requirement without also requiring the witnesses to sign the Will. Accordingly, the legislature adopted a less strict standard than the *Ricketts* court. Substantial compliance exists in the present case.

In the present case, Mr. Burton expressed the same wishes to two witnesses on the same date with knowledge that he was terminally ill. He executed two original documents stating his wishes which were each signed by one of the two witnesses. His intention was clear and his desire to document and create a testamentary disposition cannot be doubted. That the documents were signed in counterparts substantially complies with the objective and purpose of the statute for execution of wills. The documents provide reliable evidence of the terms of the will and of Mr. Burton's testamentary intent.

Restatement (Third) of Property: Wills and Other Donative

Transfers § 3.3 (1999) recognizes that strict compliance with the statutory formalities has led to harsh results in many cases, the comments to the Restatement explain:

. . . the purpose of the statutory formalities is to determine whether the decedent adopted the document as his or her will. Modern authority is moving away from insistence on strict compliance with statutory formalities, recognizing that the statutory formalities are not ends in themselves but rather the means of determining whether their underlying purpose has been met. A will that fails to comply with one or another of the statutory formalities, and hence would be invalid if held to a standard of strict compliance with the formalities, may constitute just as reliable an expression of intention as a will executed in strict compliance.

....

The trend toward excusing harmless errors is based on a growing acceptance of the broader principle that mistake, whether in execution or in expression, should not be allowed to defeat intention nor to work unjust enrichment. (Restatement (Third) of Property, § 3.3 cmt. b (1999).)

The goal to be furthered is the fulfillment of the testamentary intent of the Testator. That Mr. Burton expressed the same intent to two different people and took the time to create and execute two documents with two different witnesses is a clear indication of his intention to dispose of his property in the manner indicated in the document submitted in this action, and in the document attested to by the second witness, Lisa Erickson. He substantially complied with the statutory requirements.

4. **Ms. Erickson's Testimony Regarding the Document She Witnessed Satisfies the Requirements of Proof For a Lost Will.**
(Assignment of Error Nos. 1 and 2; Issue 5)

The original document executed by Ms. Erickson has been unable to be located. (CP 46-47, p. 2, ll. 1-4). RCW 11.20.070 sets forth the required proof of a lost will, stating, "[t]he provision of a lost or destroyed will must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to . . . its contents . . ." RCW 11.20.070(2).

The statute requires the testimony of a single witness to the contents of the lost will and no longer requires proof that the lost will was in existence at the testator's death. *Estate of Black*, 153 Wn. 2d 152, 161-162, 102 P. 3d 796 (2004) The proof presented in this case consists of the declaration of Lisa Erickson, the witness executing the will, in which she attests to the content of the will she witnessed.

5. **The Evidence Presented by Appellant Is Admissible Under the Hearsay Rule and the Deadman's Statute**
(Assignment of Error Nos. 1 and 2; Issue 6)

Didricksen erroneously argued that the declaration of Lisa Erickson is inadmissible hearsay. (CP 16-18, 86-92, p. 3, ll.18-24) Although Didricksen concedes that admissions by a party opponent, including decedents, are admissible as an exception to the hearsay rule (CP 86-92, page 3, fn. 1), Didricksen then inexplicably argues that the "majority of the Erickson declaration does not consist of statements by the Decedent and is

thus inadmissible.” Ms. Erickson’s declaration recites several conversations she had with Mr. Burton in which he advised her of his intentions and future plans. (CP 14-15, p. 2, ll. 1-2) Such statements are not hearsay. ER 803(a)(3). His statements regarding his family were statements made when home health services were being established and were part of the information obtained for those services and were an expression of his state of mind. (CP 14-15, p. 2, ll. 3-5) ER 803(a)(3). The other portions of her declaration are her personal observations of actions that occurred when she was on the property. Her personal observations are not within the definition of hearsay.

In *In Re: Estate of Miller*, 134 Wn. App. 885, 143 P. 2d 315(2006), the *Miller* court cites *Tegland*, *Washington Practice and Evidence Rule 801(d)(2)* as excluding from the hearsay definition an admission by party opponents: “The death of a party opponent does not affect the admissibility of that party’s admissions under Rule 801, but under some circumstances the admissions may be barred by the dead man’s statute.” *Id.* at 895.

RCW 5.60.030, referred to as the Deadman’s Statute, sets forth the admissibility of conversations with a person since deceased, and provides in relevant part:

.....PROVIDED, HOWEVER, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased.....person [emphasis added]

In *Miller, supra.*, the court defined the purpose of the Deadman's Statute, and who would be considered a "party in interest:"

"The purpose of the dead man's statute is to prevent interested parties from giving self-serving testimony about conversations or transactions with the deceased. *McGugart v. Brumback*, 77, Wn. 2d 441, 444, 463 P.2d 140 (1969). A "party in interest" is a person who stands to gain or lose by the operation of the action or judgment in question. *Bentzen v. Demmons*, 68 Wn. App. 339, 344, 842 P.2d 1015 (1993).

Id., at 891. Lisa Erickson, Shirley Outson, and Noel Povlsen are not "parties in interest" as they have no interest in the outcome of the estate. Their testimony is not subject to exclusion under the Deadman's Statute.

In addition, statements of independent legal significance are not hearsay. *Cranwell v. Mesec*, 77 Wn. App. 90, 890 P. 2d 491 (1995). The *Cranwell* court, quoting Robert H. Aronson, *The Law of Evidence in Washington* 801-5 (Supp. 1989), explains that in determining whether a statement is hearsay, "[i]f the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of

anything asserted, and that statement is not hearsay . . .” *Cranwell, supra.* at 101 . The statements of a testator to the witnesses to the Will are part of the ultimate facts that must be established to prove a Will. Without admitting those statements of intention made to the witnesses, no Will would be admitted to probate. ER 803(a)(3) expressly excepts from the definition of hearsay statements as to the declarant’s state of mind as to his intent. There is no basis for excluding the testimony of Lisa Erickson, Noel Povlsen or Shirley Outson. Their testimony is offered as to the state of mind and intent of the testator and proves the ultimate fact of the execution of the document.

Didricksen also objected to Mr. White’s testimony as being violative of the Deadman’s statute and as being hearsay. Much of Mr. White’s testimony relates to his own personal observations that no phone calls came in to Mr. Burton from his cousins, and no one visited Mr. Burton, during the time Mr. White was with him. (CP 5-7, p. 1, ll. 25-28 to p. 2, ll. 1-2). Most of Mr. White’s two declarations speak to his own actions and observations while working and caring for Mr. Burton. (CP 5-7, 46-47).

C. CONCLUSION

The stated purpose of the statute governing execution of Wills is to ensure the testator has a definite and complete intention to dispose of his

property, and to prevent, as far as possible, fraud, perjury and mistake. Where Mr. Burton, with his death imminent, wrote out his wishes twice on the same day, with the intention that the writings be his last will and testament, and signed the documents before two separate witnesses, the purpose of the statute is met. Mr. Burton's two originals are "in writing" signed by him as testator and signed by two witnesses. Mr. Burton complied with RCW 11.12.020.

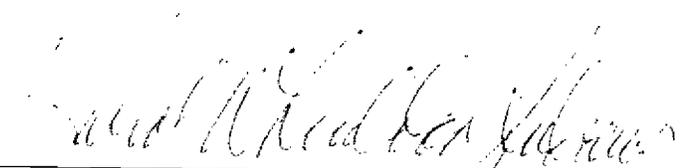
Further, the evidence of disinterested witnesses confirm Mr. Burton's testamentary intent and wishes. Lisa Erickson is a disinterested witness who had several conversations with Mr. Burton regarding his intentions. Finding compliance, or at the very least substantial compliance, with the statute governing execution of Wills will ensure that Mr. Burton's voice is not silenced and that his testamentary intent is carried out.

DATED: November 10, 2014

Respectfully submitted:

ANDREWS LAW OFFICE, PLLC

By:


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CERTIFICATE OF SERVICE

I hereby certify that I served Appellant's Opening Brief at the last known address of:

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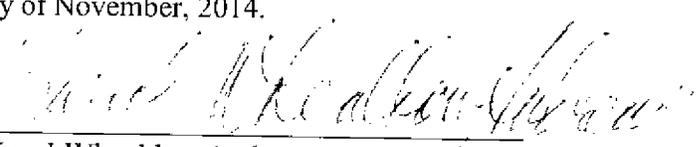
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Signed under penalties of perjury under the laws of the State of Washington at Tacoma, Washington and dated this 10th day of November, 2014.



Karol Whealdon-Andrews

ANDREWS LAW OFFICE PLLC

November 10, 2014 - 2:00 PM

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Reply to Response to Personal Restraint Petition

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