

47278-3-II

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

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DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

In re the Estate of CAROL COLLISTER,
Deceased.

ROCKY A. FELLER, Individually and as Personal Representative of the
Estate of Carol Collister,

Appellant,

v.

DONNA COLLISTER and BARBARA GUPTA,

Respondents.

BRIEF OF APPELLANT

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I. INTRODUCTION

Contrary to clear statutory law, and by broadly interpreting vague case law, the trial court entered an order in this matter in favor of Respondents, Donna Collister and Barbara Guta. The order not only disregards the general policy that life insurance proceeds are to be paid to the beneficiary named on the policy, but also disregards the Testamentary Disposition of Nonprobate Assets Act—Title 11.11 RCW—an act affectionately referred to as the “super will” statute by estate planners.

Despite the option to apply current and clear statutory law, the trial court instead chose to apply a vague interpretation of outdated case law to this matter, and by doing so the trial court completely disregarded the purposes promulgated in the super will statute, which the legislature created to specifically deal with issues such as this. The trial court wholly adopted Respondents argument that the life insurance proceeds contracted to be disbursed to Rocky Feller were the corpus of a testamentary trust and that Mr. Feller was listed as the beneficiary to the life insurance proceeds solely in his capacity as Personal Representative of the estate of Carol Collister (hereinafter “Ms. Collister” or the “decedent”), so he could receive these proceeds for the estate and in turn disburse these funds in accordance with the decedent’s will. The court drew this conclusion despite Mr. Feller having been named the life insurance pay-on-death beneficiary in 2009,

four (4) years before the decedent drafted her will or named a personal representative.

While the initial contemplations of the trial court were to honor the intent of the testator, what ultimately transpired resulted in an improper usurpation of judicial authority by the superior court. This set the groundwork for the ultimate unraveling of Title 11.11 RCW and the legislative purpose articulated therein. Accordingly, this Court should reverse the entry of the February 6, 2015 Order, find that Mr. Feller is the appropriate beneficiary of Carol Collister's life insurance proceeds, and award Mr. Feller his attorneys' fees on appeal.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered the February 6, 2015 Order requiring Rocky Feller to disburse the \$25,000 pay-on-death life insurance benefit proceeds, of which he was he was the beneficiary under the policy, to Respondents. CP 27.

III. STATEMENT OF ISSUES ON APPEAL

1. The trial court applied incorrect case law disregarding current and clear statutory law governing the correct disposition of life insurance proceeds.

Did the trial court err when it entered judgment in favor of Respondents, altering the recipient of the proceeds of Carol Colliser's life insurance policy, and thereby ignoring the Testamentary Disposition of Nonprobate Assets Act? **Yes.**

IV. STATEMENT OF THE CASE

A. Procedural History.

In 2009, five years after Mr. Feller and Ms. Collister divorced in 2004, *see* CP 17, Ms. Collister designated Mr. Feller to be the beneficiary of her life insurance policies. CP 19-21. In her designation of Mr. Feller as the pay-on-death beneficiary, Ms. Collister identified Mr. Feller in the capacity as an individual and as her friend. CP 19.

On October 3, 2013, Ms. Collister executed a will. In her will, Ms. Collister appointed Mr. Feller as personal representative with nonintervention powers and without bond. The named beneficiaries of the will were Respondents, Barbara Gupta and Donna Collister, and Rocky Feller. CP 3.

On May 23, 2014, Carol Collister died. *Id.* Her will was admitted to probate on June 11, 2014. *Id.* Consistent with the decedent's will, Mr. Feller was appointed Personal Representative.

A Declaration of Completion of Probate and Notice of Filing Declaration of Completion of Probate were filed on December 5, 2014. CP 4. Thereafter, on December 31, 2014, Respondents' filed their Petition for Judicial Proceedings for an Accounting on Specific Bequest (RCW 11.96A). CP 2.

On February 6, 2015, the trial court entered an order granting Respondent's Petition for Judicial Proceedings for an Accounting on Specific Bequest and requiring Mr. Feller to disburse \$25,000 of the decedent's life insurance policy proceeds to Respondents. CP 7-8.

B. Facts Relating to Entry Of Judgments.

Ultimately, one judgment is at issue. CP 7. On February 6, 2015, the trial court awarded the entirety of the \$25,000 life insurance policy proceeds to Respondents, and required Mr. Feller to disburse the policy proceeds in accordance with Ms. Collister's will, rather than the beneficiary designated in the life insurance policy. *Id.*

V. ARGUMENT

A. The Trial Court's Order Should Be Reviewed De Novo.

This Court should review the decisions of the trial court de novo. "Decisions based on declarations, affidavits and written documents are reviewed de novo." *In re Estate of Bowers*, 132 Wn. App. 334, 339-40, 131 P.3d 916, 918-19 (2006). "Courts have also recognized that probate proceedings are equitable in nature and reviewed de novo on the entire record." *Id.* at 340 (citing *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)).

The appellate court reviews the trial court's legal conclusions de novo. *In re Estate of Knowles*, 135 Wn. App. 351, 356, 143 P.3d 864 (2006). Findings of fact are typically reviewed by the appellate court for substantial evidence to support the findings. *Brin v. Stutzman*, 89 Wn. App. 809, 951 P.2d 291 (1998). However, in this case, as in *Estate of Black*, the entire record in this case should be reviewed de novo due to the equitable nature of a probate proceeding.

While certain orders to which error is assigned contain the language “finds and concludes,” the order in this matter fails to identify any findings of fact or conclusions of law. However, to the extent a finding of fact is mislabeled as a conclusion of law, it is still reviewed de novo because “a conclusion of law is a conclusion of law wherever it appears.” *Robel v. Roundup Corp.*, 148 Wn.2d 35, 59 P.3d 611 (2002). When there are mixed finding of fact and conclusions of law, the court reviews the factual components under a substantial evidence standard and the conclusions of law mistakenly characterized as findings of fact, de novo. *In re Estate of Haviland*, 162 Wn. App. 548, 255 P.3d 854 (2011).

This case was not tried. There is no record to examine for substantial evidence, there was no testimony taken, nor are there any findings of fact or conclusions of law in the order issued by the trial court. The lower court

simply drew an incorrect legal conclusion. Therefore, this Court's review should be de novo.

B. The Trial Court Erred When Applying The "Super Will" Statute To Carol Collister's Life Insurance Policy.

Ms. Collister's life insurance policy named her friend Mr. Feller as the pay-on-death beneficiary. In her will, however, Ms. Collister specified that the \$25,000 life insurance policy should be specifically distributed to Respondents. The will does not automatically operate to transfer the life insurance proceeds because the super will statute, does not apply. The purpose of Title 11.11 RCW, the super will statute, as promulgated by the legislature in 1998, and as described in RCW 11.11.003, is clear: (1) to enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills; (2) to provide simple procedures for resolution of disputes regarding entitlement to such assets; and (3) to protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator.

The Testamentary Disposition of Nonprobate Assets Act was adopted in 1998 as a vehicle for assuring an owner / decedent's "interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset..."

RCW 11.11.020(1). Nevertheless, there are specific exceptions to specific bequests of nonprobate assets in a testator's will. One such exception is life insurance policy proceeds, which the trial court disregarded when it entered its judgment against Mr. Feller on February 6, 2015.

1. **The Trial Court Erred When It Disregarded Title 11.11 RCW's Exceptions to Nonprobate Assets.**

Life insurance policies are specifically carved out of the definition of "nonprobate assets." RCW 11.02.005(10); RCW 11.11.010(7)(a) (a "super will" statute specifically incorporated the general provision definition of "nonprobate assets" found in RCW 11.02.005). Under Title 11 RCW, a nonprobate asset "does not include...[a] payable-on-death provision of a life insurance policy, annuity or similar contract, or of an employee benefit plan..." RCW 11.02.005(10).

In this case, the decedent included a section of her will where she specifically bequests her life insurance policy at issue to the Respondents. However, the decedent failed to change the beneficiary designation of the life insurance policy at issue to her estate so that the policy proceeds would not fall outside the purview of her will.

2. **Super Wills Cannot Alter Who Receives The Proceeds Of An Insurance Policy.**

The life insurance proceeds were contracted by decedent with the life insurance company to disburse the policy proceeds to Mr. Feller

individually. The decedent contracted for the policy proceeds to be disbursed to Mr. Feller in 2009—four (4) years before the decedent wrote her will in 2013. CP 12. Had the decedent left her life insurance policy proceeds to her estate, this change would allow Mr. Feller to disburse the policy proceeds pursuant to her will. Instead, the policy proceeds fall outside the purview of the super will statute and outside the application of case law.

As explained above, pursuant to RCW 11.02.005(15) and RCW 11.11.010(7)(a), certain provisions pertaining to nonprobate assets simply do not apply to life insurance policies, including the “super will” statute. The legal analysis should have ended here and in the favor of Appellant; however, Respondents argued inapplicable case law, of which the trial court was persuaded.

3. **The Trial Court Erred When It Applied Incorrect Case Law And Legal Analysis.**

Respondents rely on equitable doctrines and incorrect case law. The rule that Respondents rely on is clear; however, it is incorrectly applied to this matter: A testator may direct life insurance policy proceeds to pay the *debts* or last expenses of an estate, as long as the testator’s intent to do so is clear in the language of the will. *Woodard v. Gramlow*, 123 Wn. App. 522, 95 P.3d 1244 (2004) (emphasis added). Here, the life insurance policy

proceeds were not directed to pay the debts of the decedent's estate. Instead, the testator attempts to circumvent the super will statute by altering the beneficiary of the life insurance proceeds in her will.

The cases that Respondents rely on offer the incorrect legal analysis for the issue before the court: Whether the specific bequest in Ms. Collister's will effectuated a change to the pay-on-death beneficiary of the life insurance policy proceeds. Here, there is no language, let alone clear language that the testator intended her life insurance policy proceeds be used to pay the last *debts* and *expenses* of the decedent's estate. Neither *In re Towey's Estate*, 22 Wn.2d 212, 155 P.2d 273 (1945) or *In re Estate of Milton*, 48 Wn.2d 389, 294 P.2d 412 (1956) are applicable to this case. In *In re Towey's Estate*, the decedent specifically named the beneficiary of his life insurance policies as "the executors or administrators of the estate of the insured." 22 Wn.2d at 213. However, in this case, the decedent specifically named Mr. Feller as the beneficiary of the life insurance policy, and did so four years before writing her will and appointing Mr. Feller as her estate's administrator. Furthermore, in *In re Towey's Estate*, the decedent had actually effectuated a change in the beneficiary designation of his life insurance policies to designate his estate as the beneficiary. *Id.* This is not the case here, as Ms. Collister chose not to effectuate any changes in her beneficiary designations for her life insurance policies.

Additionally, *In re Estate of Milton*, informs *Woodard* and stands for the narrow proposition that a testator may appropriate exempt property to the payment of estate *debts*, but only if the testator's intent to do so is clear in the language of the will. 48 Wn.2d at 392 (emphasis added). Again, here we have the specific bequest of the life insurance policy proceeds in the decedent's will, which is in direct contention with the super will statute. Notably, both cases, *In re Towe's Estate*, 22 Wn.2d 212 (1945) and *In re Estate of Milton*, 48 Wn.2d 389 (1956) were decided and published before the Testamentary Disposition of Nonprobate Assets Act was written into legislation. RCW 11.11.003.

Finally, *Woodard v. Gramlow*, 123 Wn. App. at 1247-48, states that the rule from *Milton*, "allows exempt property, such as insurance proceeds, to pay the debts of the estate as long as the testator's intent to do so is clear in the language of the will or trust." Both *Woodard* and *Milton* involve proceeds from an insurance policy, which carries with it the presumption of exemption from creditor's claims. *Woodard*, 123 Wn. App. at 1247. Both courts in *Woodard* and *Milton* found that the proceeds of the insurance policies would be used for paying the final expense of the estate. *Id.* at 1248. In *Woodard*, any further bequest or distribution of monies outside the payment of the last expenses were not discussed at the trial court and were therefore beyond the scope of the appeal. *Id.*

As a result, case law has continually narrowly construed the rule from *Milton* to allow for only the payment of the debts of the estate, and only in the scenario where the intent of the testator is clear in the language of the will. Ms. Collister’s intent in her will is not for the payment of her last debts and expenses of her estate, as the rule in *Milton* articulates, but instead is an attempt to completely alter the beneficiary of her life insurance policy proceeds. Ms. Collister neither effectuated a change of the pay-on-death beneficiary of her life insurance policy to her “estate” or her “administrator” or to the Respondents, nor did she clearly state that she wanted the life insurance policy proceeds to be used to pay the debts of her estate. The final result of Ms. Collister’s will is that she attempted to alter the pay-on-death beneficiary of her life insurance policy proceeds, which is in direct contention with the Testamentary Disposition of Nonprobate Assets Act.

“Washington permits courts, acting in equity, to enforce attempted changes in beneficiaries.” *In re Estate of Freeberg*, 130 Wn. App. 202, 205, 122 P.3d 741 (2005). Therefore, the true issue is whether Ms. Collister’s attempt to change the beneficiary of the life insurance policy from Mr. Feller to Respondents can be given effect. The rule requires that there be an attempt to make the change:

“The general rule is this jurisdiction and elsewhere as to attempted changes of beneficiaries on an insurance policy is that courts of equity will give effect to the intention of the insured *when the insured has substantially complied with the provisions of the policy regarding that change.*” *Id.* (emphasis added) (quoting *Allen v. Abramson*, 12 Wn. App. 103, 105, 529 P.2d 469 (1974)).

“Substantial compliance requires that the insured has manifested an intent to change beneficiaries and done everything reasonably possible to make that change.” *Id.* at 205-06.

Several cases offer similar analysis: In *Allen v. Abrahamson*, the decedent purchased life insurance and named his girlfriend as beneficiary. 12 Wn. App. at 104. The insurance contract required the insured to submit a written request to change beneficiaries. He later delivered the insurance certificates to his parents and told them he was going to change the beneficiary designation to them. He died six weeks later without having made a written request to change beneficiaries or contacted the insurance company or his employer about making a change. The court rejected the parents’ claim, stating that Allen “never even attempted to comply with the policy requirement of written notification.” *Id.* at 108.

In *Rice v. Life Insurance Company of North America*, the decedent owned a life insurance policy naming his mother, brother, and sister as

beneficiaries. 25 Wn. App. 479, 480, 609 P.2d 1387 (1980). He later submitted a form supplied by his employer entitled “Request for Voluntary Accident Insurance” in which he named his fiancée as beneficiary. He died three days later. The court held that the evidence, including the form and the fiancée’s testimony, clearly established the decedent’s intent to make her the beneficiary. *Id.* at 481.

In this case, Ms. Collister’s actions do not meet the test for substantial compliance because she took no steps to comply with account requirements for a change of beneficiary. There are no facts asserted by Respondents of any attempt to take any action to contact the life insurance company to effect a change in beneficiary designations. Presumably, the decedent would have known that she had made no change in beneficiary. Again, there is no evidence she attempted to even obtain a change of beneficiary form.

Respondents will likely argue that Ms. Collister memorialized her intent to change beneficiaries in writing, specifically through her will. The will does indicate that Ms. Collister intended for Respondents to receive the \$25,000 in life insurance proceeds, and it appears likely that Ms. Collister believed her will would accomplish this goal. Unfortunately, in the absence of an actual effort to change the named beneficiary on the life insurance policy, the will alone does not meet the substantial compliance test. As a

result, this Court should reverse the order awarding the life insurance policy proceeds to Respondents and award the life insurance policy proceeds to Mr. Feller in his personal capacity.

C. Mr. Feller Should Be Awarded Attorneys' Fees On Appeal.

Mr. Feller requests attorneys' fees and costs pursuant to RAPs 18.1, 14.2, and 14.3. A party is entitled to attorneys' fees on appeal if the requesting party demonstrates entitlement to fees under applicable law. *Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wn. App. 702, 308 P.3d 644 (2013). RCW 11.96A.150(1) authorizes any court on appeal, in its discretion, to order costs, including reasonable attorneys' fees, to be awarded to any party from any party to the proceedings. The initial order was granted pursuant Respondents' initial petition in the trial court under RCW 11.96A. As such, Mr. Feller should be awarded his attorneys' fees pursuant to RAPs 18.1, 14.2, and 14.3, and RCW 11.96A.150(1) on appeal.

V. CONCLUSION

While the trial court's judgment disregards the general policy that life insurance proceeds are to be paid to the beneficiary named in the policy, it also disregards the Testamentary Disposition of Nonprobate Assets Act. For the reasons set forth herein, Appellant respectfully requests that this Court vacate the February 6, 2015 judgment entered and find that the life

insurance policy proceeds should be awarded to Mr. Feller in his individual capacity; and to award Mr. Feller's attorneys' fees below and on appeal.

Dated this 6th day of August, 2015.

Respectfully Submitted,

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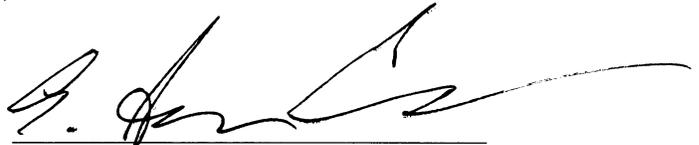
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Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury that a true and correct copy of the foregoing document was forwarded by email and send via first class postage, to the following:

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