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## **I. INTRODUCTION**

The trial court correctly concluded on summary judgment that petitioner's evidence did not create a genuine issue of material fact to support her claims against Riverview Community Bank ("Riverview"), and that Riverview was entitled to judgment as a matter of law. In reaching that decision, the trial court acted well within the scope of its discretion to allow Riverview to join in the motion for summary judgment that had been filed by co-defendant Carver and to submit a reply brief that addressed issues raised by petitioner in her response to the motions for summary judgment.

The trial court also acted properly and within the scope of its discretion in awarding Riverview reasonable attorney fees, an award which was appropriately supported by findings of fact and conclusions of law. The order of summary judgment and judgment in favor of Riverview should be affirmed in all respects.

## **II. RESPONSE TO ASSIGNMENTS OF ERROR**

1. Regarding Assignment of Error No. 2, the trial court acted correctly, and in accordance with applicable legal principles, in granting summary judgment in favor of Riverview, concluding that there were no genuine issues of material fact and that Riverview was entitled to judgment as a matter of law. The court also acted well within its

discretion in allowing Riverview to file a joinder to co-defendant Carver's motion for summary judgment and then allowing Riverview to address in its reply brief contentions raised by petitioner in her response to the motions for summary judgment.

2. Regarding Assignment of Error No. 3, the trial court properly denied petitioner's motion for reconsideration, acting within its broad discretion, where petitioner simply raised the same facts and arguments she had asserted in opposition to the motions for summary judgment.

3. Regarding Assignments of Error Nos. 6 and 7, the trial court acted well within its discretion in awarding Riverview reasonable attorney's fees under RCW 11.96A.150, and properly supported the ruling with appropriate findings of fact and conclusions of law.

### **III. STANDARD OF REVIEW**

Appellant correctly notes that the standard of review when a case has been dismissed on summary judgment is *de novo*, with the appellate court performing the same inquiry as the trial court. *See, e.g., Aba Sheikh v. Choe*, 156 Wn.2d 441, 447 (2006). The trial court's decision to consider defendant Carver's and Riverview's reply materials is reviewed under a manifest abuse of discretion standard. *See, e.g., State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 239 (2004).

With respect to the trial court's denial of petitioner's motion for reconsideration, petitioner accurately states that that ruling is reviewed for a manifest abuse of discretion. *See, e.g., Slijr v. Odell*, 156 Wn. App. 720, 734 (2010). A trial court only abuses its discretion if its ruling was manifestly unreasonable or based on untenable grounds. *Id.*

Regarding the trial court's award of attorney's fees to Riverview, the trial court's rulings are also reviewed under a manifest abuse of discretion standard. *See, e.g., Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 147-48 (1993).

#### **IV. STATEMENT OF THE CASE**

Riverview supplements petitioner's statement of the case as follows:

On or about September 8, 2014, defendant Carver filed a motion for summary judgment. CP 86-91. Carver argued that petitioner had "no admissible evidence to support her claims." CP 87. Carver pointed out that petitioner had only oral testimony, and no documents to support her claim. *Id.* Accordingly, Carver argued that RCW 5.60.030 rendered petitioner's testimony inadmissible. CP 88-89. Riverview filed a joinder to Carver's "no evidence" motion for summary judgment of dismissal. CP 92-94.

In response, petitioner filed hundreds of pages of documents. CP 95-456. She argued that there was evidence of a payable on death (“POD”) account agreement that was in writing, which named both petitioner and defendant Suy as beneficiaries, and which had been signed by Mr. Ridley. CP 96-97. She also argued that defendant Suy unduly influenced Mr. Ridley to execute a second agreement, naming only Suy as the beneficiary. *Id.* And petitioner claimed that Riverview then destroyed the first account agreement. CP 97.

Petitioner then set forth an exhaustive “statement of facts.” CP 99-109. She discussed Mr. Ridley’s estate planning, his various accounts with Riverview, the execution of account agreements, Riverview’s policies and procedures, and the transfers of funds between Mr. Ridley’s accounts. *Id.* Petitioner essentially relied upon the alleged execution of the first POD agreement and its subsequent destruction to support her claim and to oppose summary judgment

In light of this contention and claimed evidence, Riverview submitted its reply memorandum (CP 462-466) to again argue that petitioner’s evidence was insufficient to support her contentions or claims. *Id.* Riverview pointed out that there was no evidence that petitioner was a beneficiary on any existing POD account at the time of Mr. Ridley’s death, and that Riverview was therefore entitled under RCW 30.22.120 to

rely upon the signed POD account agreement that was in existence. CP 463-464. In response to petitioner's contentions regarding the transfers of funds between accounts and Riverview's policies and procedures, Riverview explained that petitioner was not entitled to rely on any of Riverview's policies and procedures because she was still not a named beneficiary on any existing POD account at the time of Mr. Ridley's death. CP 464. The arguments asserted by Riverview were all necessitated by petitioner's efforts to create a genuine issue of material fact.

After hearing oral argument on all the issues, including those argued in Riverview's reply brief, (RP 1-26), the trial court granted summary judgment in favor of Riverview. The court found that nothing had taken place which was procedurally prejudicial to petitioner. RP 25.

Thereafter, petitioner filed a motion for reconsideration. CP 560-575. In that motion, petitioner addressed Riverview's argument regarding RCW 30.22.120. CP 572-574. Petitioner also argued that the evidence before the Court created a genuine issue of material fact as to whether the second POD agreement was procured as the result of undue influence on the part of Ms. Suy. CP 572-574. Of note, however, petitioner did not contend that Riverview improperly raised new arguments in its reply brief. Both in oral argument and in her motion for reconsideration, petitioner

was afforded a full and fair opportunity to address all the issues that had been raised in support of summary judgment. The trial court denied petitioner's motion for reconsideration. CP 620-621.

The trial court then considered Riverview's motion for reasonable attorney fees pursuant to RCW 11.96A.150. CP 578-590. Petitioner opposed the motion, arguing that the trial court had "broad discretion" to deny the request for attorney's fees. CP 597. The trial court heard oral argument on the issue on January 4, 2015. RP 32-49. The trial court requested that defendants submit proposed orders, including findings and conclusions. Riverview submitted findings of fact and conclusions of law, to which petitioner filed no objections. CP 625-628. The trial court entered the findings of fact and conclusions of law, and a money judgment, on March 3, 2015. CP 653-658.

## V. ARGUMENT

### A. **The Trial Court Correctly Concluded That Riverview Was Entitled to an Order of Summary Judgment Where Petitioner's Evidence Did Not Create Genuine Issues of Material Fact and Where the Facts Before the Court Demonstrated that Riverview Was Entitled to Judgment as a Matter of Law.**

As discussed *supra.*, orders granting summary judgment are reviewed de novo, with the appellate court conducting the same inquiry as did the trial court. Summary judgment is appropriate where there is

no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56. The trial court properly concluded that this standard had been met, and the order granting summary judgment should be affirmed.

- 1. The trial court acted within its discretion in considering the arguments set forth in Riverview's reply brief where the arguments were made in response to assertions contained in petitioner's response to the motions for summary judgment and where petitioner had a full and fair opportunity to respond to the arguments.**

Petitioner contends that the trial court improperly considered Riverview's reply materials, and that petitioner had no opportunity to respond. Appellant's Brief, at 29-32. Petitioner fails to note, however, that she was able to present oral argument to the court regarding all of Riverview's contentions. RP 11-19. Furthermore, petitioner filed a motion for reconsideration in which she again had the opportunity to present argument to the court in opposition to Riverview's motion for summary judgment and all the arguments that had been made. CP 560-575. In short, petitioner had a full and fair opportunity to argue, both orally and in writing, in opposition to Riverview's contentions.

The general rule is that new issues may not be raised in reply materials submitted in support of a motion for summary judgment. *See, e.g., White v. Kent Medical Center, Inc., P.S.*, 61 Wn. App. 163, 168

(1991). However, a party may include in rebuttal documents materials “which explain, disprove, or contradict the adverse party’s evidence.” *Id.* at 168-69. *See also New Cingular Wireless PCS, LLC v. The City of Clyde Hill*, 187 Wn. App. 10, 219-20 n.5 (2015) (“Explaining why a respondent’s argument is incorrect is a proper subject for a reply brief”).

Here, Riverview’s reply materials addressed arguments and issues raised in petitioner’s opposition pleadings. Riverview argued that petitioner had insufficient evidence to create a genuine issue of material fact and that Riverview was entitled to summary judgment under the applicable law. These arguments were made to demonstrate that petitioner’s responsive materials were insufficient to defeat the motion for summary judgment. Riverview acted properly in that regard. *See, e.g., R.D. Merrill Co. v. State, Pollution Control Hearings Board*, 137 Wn.2d 118, 147-48 (1999); *Colwell v. Holy Family Hospital*, 104 Wn. App. 606, 616 (2001).

Finally, petitioner did not claim in her motion for reconsideration that the trial court improperly considered materials submitted in reply. Nor did petitioner move to strike any of the materials submitted by Riverview. As such, petitioner waived any argument that the trial court should not have considered the reply materials. *C.f. Turner v. Kohler*, 54 Wn. App. 688, 691 n.1 (1989).

The trial court properly found that nothing had been done procedurally which was prejudicial to petitioner. RP 25. Accordingly, there is no procedural basis for the order of summary judgment to be reversed.

2. **The facts were undisputed that Mr. Ridley's first POD agreement was destroyed at the request of Mr. Ridley, such that the only POD agreement existing at Mr. Ridley's death named only Ms. Suy as a beneficiary.**

In her opposition to the motion for summary judgment, petitioner submitted evidence that Mr. Ridley had directed Riverview to prepare paperwork to show both petitioner and Ms. Suy as POD beneficiaries on his checking account. CP 101-102. Riverview prepared the requested paperwork, and then took it to Mr. Ridley after a few days had passed. CP 102. Petitioner also presented evidence that, during the next meeting at Mr. Ridley's home, he instructed Riverview to change the paperwork so that only Ms. Suy was named as a beneficiary. CP 104. Acting on Mr. Ridley's instructions, Riverview prepared new paperwork naming only Ms. Suy as beneficiary, at which time the other POD agreement was destroyed. CP 104-105. Mr. Ridley then executed the second document.

Thus, the evidence was undisputed that there was only one POD account document in existence at Mr. Ridley's death, and that that document did not name petitioner as a beneficiary. Based upon that

undisputed evidence, Riverview properly paid the checking account funds to Ms. Suy as the owner of the funds upon Mr. Ridley's death. *See* RCW 30.22.100 (4).

Riverview was entitled to rely upon the terms of the contract of deposit, which named Suy as the sole beneficiary, and payment made pursuant to that contract of deposit operated as a release as to Riverview. *See* RCW 30.22.120<sup>1</sup>:

In making payments of funds deposited in an account, a financial institution may rely conclusively and entirely upon the form of the account and the terms of the contract of deposit at the time the payments are made. ...[A]ll payments made by a financial institution from an account at the request of any depositor to the account...shall constitute a complete release and discharge of the financial institution from all claims for the amounts so paid regardless of whether or not the payment is consistent with the actual ownership of the funds deposited in an account by a depositor and/or the actual ownership of the funds as between depositors and/or the beneficiaries of P.O.D. and trust accounts, and/or their heirs, successors, personal representatives, and assigns.

Riverview was entitled to rely on its customer's instructions in preparing the second POD agreement and destroying the prior document. It was also entitled to rely upon the terms of the only POD document that existed at the time of Mr. Ridley's death when it made payment to defendant Suy per the terms of that document. The trial court correctly ruled that Riverview

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<sup>1</sup> The statute was recodified on January 5, 2015 as RCW 30A.22.120.

was therefore immune from petitioner's claims pursuant to RCW 30.22.120.

**3. Petitioner did not submit evidence of influence, undue or otherwise, to create a presumption or genuine issue of material fact regarding the claim of undue influence.**

Although petitioner contends that the second POD document was procured as the result of the undue influence of Ms. Suy, she presented no evidence to support that contention.

While petitioner contends that Ms. Suy and Mr. Ridley had a "confidential relationship," she ignores her own contention that both petitioner and Ms. Suy had "an almost 30-year parent-child-like relationship with" Mr. Ridley. CP 96. She also ignores her admission that "Mr. Ridley remained alert through his final days." *Id.* This relationship does not support an inference of undue influence.

The entirety of the evidence of "undue influence" submitted by petitioner, indicates that Ms. Suy said she would take care of petitioner and that she could make the money grow more since petitioner was much older. CP 134-135. The evidence also showed that Ms. Tynan of Riverview confirmed with Mr. Ridley that he had changed his mind, and that he was certain he wanted to list only Ms. Suy as the POD beneficiary.

CP 262-263. This is hardly evidence of “undue” influence. As the court said in *In Re Estate of Lint*, 135 Wn.2d 518, 535 (1998):

The undue influence which operates to void a will must be something more than mere influence but, rather, influence

which, at the time of the testamentary act, controlled the volition of the testator, interfered with his free will, and prevented an exercise of his judgment and choice.

...influence tantamount to force or fear which destroys the testator's free agency and constrains him to do what is against his will.

*In Re Estate of Bottger*, 14 Wn.2d 676, 700 (1942).

Furthermore, undue influence must be established by clear, cogent, and convincing evidence. *Id.* The evidence petitioner placed before the trial court fell far short of that standard, and did not reflect “suspicious facts and circumstances” that can create a presumption of undue influence. *Id.*

This is not a case of undue influence, and petitioner did not submit competent evidence indicating undue influence to create a genuine issue of material fact. Indeed, the evidence before the court was that Mr. Ridley told Riverview that he had changed his mind about naming two beneficiaries. CP 262-264. It was only then that any conversation with Ms. Suy took place. CP 262. Under these circumstances, and given the evidence petitioner presented, the trial court correctly concluded that there

was no genuine issue of material fact regarding the claim of undue influence.

**4. In the absence of any genuine issue of fact concerning undue influence, the trial court properly ruled that former RCW 30.122.120 insulated Riverview from liability.**

Because petitioner failed to submit any evidence of undue influence on the part of Ms. Suy, RCW 30.22.120<sup>2</sup> operated to absolve Riverview of any liability to petitioner. That statute authorized Riverview to rely upon the second POD document, after Mr. Ridley changed his mind regarding the POD beneficiaries.

As Colette Tynan testified, Mr. Ridley was very clear that he wanted only Ms. Suy to be his POD beneficiary. At the time he signed the second POD document, Riverview had no knowledge of any dispute or adverse claim regarding the account. *See Estate of Brownfield v. Bank of American, N.A.*, 170 Wn. App. 553 (2012). Indeed, Ms. Prom had no standing to assert a claim or dispute; a bank customer is absolutely free to change or do away with his account beneficiaries.

Consistent with Mr. Ridley's decision and instructions, Riverview properly destroyed the first POD document. With only the second POD

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<sup>2</sup> *See supra*, at 10.

document being in existence, Riverview was entitled to rely upon the terms of that document in making payment to Ms. Suy. RCW 30.122.120.

**B. The Trial Court Acted Within Its Broad Discretion in denying Petitioner’s Redundant Motion for Reconsideration.**

An appellate court reviews a denial of a motion for reconsideration “to determine if the trial court’s decision is manifestly unreasonable or based on untenable grounds.” *Martini v. Post*, 178 Wn. App. 153, 161 (2013). In other words, the trial court’s decision is reviewed for an abuse of discretion. *See, e.g., Landstar Inway, Inc. v. Samrow*, 181 Wn. App. 109, 120 (2014). Here, there was no abuse of discretion.

In both her motion for reconsideration and in her opening brief, petitioner simply claims that the trial court abused its discretion in denying the motion for reconsideration, but in support simply restates or references her other arguments. *See* Petitioner’s Opening Brief, at 41. Just as the trial court properly granted summary judgment in favor of Riverview, it acted within its discretion in denying petitioner’s motion for reconsideration.

**C. The Trial Court Acted Within Its Discretion, With Appropriate Findings and Conclusions, in Awarding Reasonable Attorney’s Fees to Riverview.**

Petitioner accurately states that attorney fee awards are authorized under RCW 11.96A.150 and that the decision whether to award attorney’s

fees is discretionary with the trial court. *See* Petitioner’s Opening Brief, at 42. Here, the trial court’s decision to award attorney fees to Riverview was well within its discretion.

The award was also procedurally proper. Rather than simply and summarily granting the attorney fee award, the court entered detailed findings of fact and conclusions of law. CP 653-656. In particular, the court found that the time spent by Riverview’s counsel was reasonable, that the work was not wasteful or duplicative, and that the hourly rates were reasonable. CP 654. The court also listed six factors that supported the reasonableness of the attorney fee award. CP 654-655. Finally, the court concluded pursuant to the statutory requirements that it was “equitable” for Riverview to be awarded fees. CP 655.

As to the specific line items to which petitioner objects, she raised the same objections before the trial court. *Compare* CP 596 and Petitioner’s Opening Brief, at 46. The trial court considered and rejected these objections. That decision was within the trial court’s discretion. The award of attorney fees to Riverview should therefore be affirmed.

## **VI. REQUEST FOR ATTORNEY’S FEES ON APPEAL**

Riverview should be awarded reasonable attorney fees on appeal pursuant to RCW 11.96A.150. *See* RAP 18.1. Just as it was equitable for

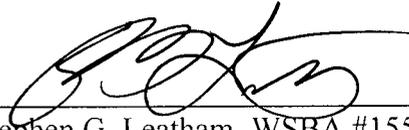
Riverview to be awarded attorney fees by the trial court, it would be equitable to award fees on appeal.

## VII. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's order granting summary judgment of dismissal to Riverview and in entering a money judgment in favor of Riverview.

DATED this 17 day of August, 2015.

HEURLIN, POTTER, JAHN, LEATHAM,  
HOLTMANN & STOKER, P.S.



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Stephen G. Leatham, WSBA #15572  
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**CERTIFICATE OF SERVICE**

I certify that I caused the foregoing BRIEF OF RESPONDENT RIVERVIEW COMMUNITY BANK to be served on the following:

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by sending as indicated above a true copy to the foregoing on the 17<sup>th</sup> day of August, 2015.

HEURLIN, POTTER, JAHN, LEATHAM,  
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Stephen G. Leatham, WSBA #15572  
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