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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 293483

Steven County Cause No. 094000242

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

In re the Estate of Robert D. Washburn:

Keith C. Washburn

Respondent

V

Melody A. Radezky

Appellant

APPELLANT'S OPENING BRIEF

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ASSIGNMENTS OF ERROR

Assignment of Error No. 1.

The Court erred in entering a decree quieting title to all the real property and improvements in the estate, namely parcel nos. 2667300 and 2666200 in the name Keith C. Washburn. (CP 299).

Assignment of Error No. 2.

The Court erred in only entering Judgment for the items of personal property, including silver bullion and coin sets unto Melody Radezky and no portion of the real property, namely parcel nos. 2666200 and 2667300. (CP 299).

Assignment of Error No. 3.

The Court erred in failing to determine if any silver bullion and coin sets are available to be given to Melody Radezky by Keith C. Washburn under the terms of the Will (Ex. 101). (CP 299).

Assignment of Error No. 4.

The Court erred in entering portions of the Conclusion of Law #A & B.

A. "The family settlement doctrine provides that the beneficiaries of an estate can reach agreement between themselves as to how estate assets will be distributed. Their agreement plan can be different from that provided in the Will..." "...Robert Washburn's only children, his son, Keith Washburn, and his daughter, Melody Radezky agreed to settle their father's estate as provided in the handwritten Will (Agreement)". (CP 297-298).

B. "The intent of the parties, Keith Washburn and Melody Radezky, is determined by viewing the Agreement (handwritten Will) "as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of the respective interpretations advocated by the parties. Stender

v. Twin City Foods, Inc., 82 Wn. 2d 250, 254, 510 P.2d 221 (1973)".

Assignment of Error No. 5.

The Court erred in entering portions of the Conclusion of Law #B2.

B2. The subject matter of the Agreement is the designation of different estate property and their division between brother and sister-with a payment to Robert Washburn's friend, Dorothy Sphuler. (CP 298)

Assignment of Error No. 6.

The Court erred in entering portions of the Conclusion of Law #B3:

B3. "The Agreement was arrived at in the months following Robert Washburn's death and formalized on November 11, 2004..." (CP 298)

Assignment of Error No. 7.

The Court erred in entering Conclusion of Law #B4:

B4. The parties' concurrent and subsequent acts and conduct showed clearly their respective understandings of the Agreement. Keith Washburn was to take all the real Property and the personal property included in the Char-Mel Ranch, namely household furnishings and farm equipment. Melody Radezky was to receive all remaining assets, or personal property, namely all liquid assets, most vehicles, most firearms, and other assets of particular value. (CP 298)

Assignment of Error No. 8.

The Court Erred in entering the portions of Conclusion of Law #B5.

B5. "The Agreement made for a practical separation of their personal & financial affairs – Keith Washburn with the real property and Melody with the remaining liquid assets and items of personal Property..." "...Melody Radezky's interpretation of the handwritten Will is not reasonable..." "...It would have them change their understanding of Robert Washburn's wishes after 5 years..." "...And, it would ignore the language "All Real Estate Property" and the flawed legal description-a description the parties to the Agreement only

learned might have a different reading in 2008.” (CP 299)
Assignment of Error No. 9.

The Court erred in entering the Conclusion of Law #C.

C. Melody Radezky is due certain items of personal property, namely the silver bullion and the coin collection sets. (CP 299)

Assignment of Error No. 10.

The Court erred in entering the portion of Findings of Fact B.

B. “...Footnote 2 – to the contrary, they understood their father wished Keith should receive all real property”. (CP 292)

Assignment of Error No. 11.

The Court erred in only entering the portion of Findings of Fact C,

C. “When Robert died, his estate consisted of ... ten firearms; coin sets collection; silver bullion bars; and household furniture (Exhibit 14)...”. (CP 293)

in deferring only to (Exhibit 14), the Court should have referred to All items of personal property (Exhibits 14, 17, 18, 19, 20).

Assignment of Error No. 12.

The Court erred in entering the portion of Findings of Fact E.

E. “...It mentioned a “mutual understanding” that Melody and Keith had reached in an earlier meeting in May, 2004 (Exhibits 14 and 22).” “...Keith was indifferent to his sister’s efforts, until he signed the Waiver in November...”. “He then thought the estate settlement was a done deal, and he didn’t want to see his sister or brother in law again.” (CP 294)

Assignment of Error No. 13.

The Court erred in entering the portions of Findings of Fact F.

F. “On May 30, 2004, Keith and Melody, along with her

husband, Mark, met at the Char-Mel Ranch. The Radezky's located, following directions given by Dorothy Sphuler, some silver bullion in the residence (Exhibit 14)..." "...Keith read the handwritten Will to give him all the real property, even though he did not want it...". (CP 295).

"... Melody read the handwritten Will to give her all remaining assets other than the real property, namely the vehicles, bank accounts, silver bullion, coin sets collection (Exhibit 20), tools, guns, furniture in house and equipment (Exhibit 6)..."(CP 295).

"...At this meeting they also discussed a possible trade of some of Keith's land for one of Melody's vehicles..." "...Their agreement was formalized on November 11, 2004, when the Waiver to Accept Present Written Will was acknowledged by Keith and Melody (Exhibit 7)..." "...At the time of formalization, the brother and sister read the handwritten will to devise all real property to Keith". "Footnote 3 – Keith was seriously injured in a 4 wheeler accident in 1989 as a result has poor recall and periodic seizures..." (CP 294).

Assignment of Error No. 14.

The Court erred in entering the portion of Findings of Facts H.

H. "...And, in the following months the Radezky's took possession of the 1989 Ford motor home..." (CP 295). "...Further, Keith signed his interest in the Horizon Credit Union account over to Melody; and deferred to his sister receiving the Charles Schwab 401 (K)-she was named the beneficiary." (CP 294-295). "The timber was all harvested from his land". (CP 295).

Assignment of Error No. 15.

The Court erred in entering the portion of Findings of Fact I.

I. "...Troy saw the necessity of putting the real property in his father's name and contacted the Radezky's. In response, the Radezky's undertook to negotiate with Troy..." "...The Radezky's, in turn, asked that Keith reimburse one half of the funeral expenses, reimburse one half of the money paid to Dorothy Sphuler, payment for part of the money loaned by Robert to Keith (Exhibit 17), and for certain items of personal property including a hutch and some remaining firearms..." "...At this meeting, for the first time, the

Radezky's broached the subject of real property..." (CP 296).

Assignment of Error No. 16.

The Court erred in failing to grant, and in denying Melody Radezky's Motion For Reconsideration, and entered judgment for Keith Washburn to receive all real estate and personal property items. (CP 311-312, 313-328, 334-335).

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Court Erred in concluding that the Family Settlement Agreement Doctrine applied to an oral agreement that provided for the division of Robert D. Washburn's Estate.
2. Whether the Court erred in interpreting the unsigned handwritten will of Robert Washburn.

STATEMENT OF THE CASE

Pleadings

Appellant Melody A. Radezky (hereinafter referred to as Radezky) filed a Petition to Probate her father's Will on 2-27-2009 with the Stevens County Superior Court (CP 1-6). Respondent Keith C. Washburn (hereinafter referred to as Washburn or Respondent) on 3-10-2009 filed a Petition to Declare Rights pursuant to TEDRA RCW 11.96 A et al (CP 12-22). Radezky a married woman answered the Petition to Declare Rights on 6-12-2009 (CP 32-44). Radezky also filed an Amended Notice of Hearing for a Preliminary Injunction against Washburn on 3-10-2009 (CP 27), accompanied by a Summons to Washburn 3-10-2009 (CP28-29). At about the same time Washburn's attorney, David McGrane filed a summons on 3-10-2009 (CP 10-11), along with a Motion to Declare Rights (see supra). This was brought into a hearing that was scheduled to hear the Motion for Preliminary

Injunction due to the fact that Washburn had made application to DNR under false pretense that the real estate was Washburn's and took timber without authorization, this land appeared to belong to Radezky as remaining assets according to the unsigned handwritten will (hereinafter referred to as "the Will") of the father Robert D. Washburn (Ex. 101). A Court Order was then handed down by Judge Neilson on 3-12-2009 (CP 30-31), stating that:

4. "that the parties acknowledge their agreement to honor the wishes of their father in his unsigned handwritten will (Ex. 101) that was filed on June 2, 2004 case # 2004 4 00041 as set forth in the Waiver to Accept Present Will (hereinafter referred to as the Waiver) (Ex. 7) and
3. "that each party maintain the status quo as to any property owned by Robert Washburn during his lifetime currently in their possession..."

Subsequent attempts were made by Radezky in the form of Declaratory Relief Motions starting on 10-16-2009 (CP 45), and going to 1-28-2010 (CP189) in order to avoid a costly trial to simply get a determination from the Court as to what the Will (Exhibit 101) said about the division of the property, because the Waiver (Ex. 7) had adopted the Will by written contract. On June 12, 2009 Radezky filed Petitioner's Answers to Petition To Declare Rights (CP 32-38). On November 20, 2009 Washburn filed a Declaration (CP 135-139), but this was denied by the Court (CP 153)

At trial on April 14 & 15, 2010. Washburn and witnesses (CP 292) gave oral testimony to alleged facts (which was objected to as hearsay) that:

- 1) Robert D. Washburn wanted Keith Washburn to have all the real estate and that Robert Washburn didn't want to split up the land (RP 39) (RP 46) (RP 56) (RP 79) (RP 09) (RP 104) (RP 488) (RP 489) (RP 491).

2) Washburn alleged a verbal agreement taking place in a meeting the day before the funeral on May 3, 2004 (RP 37) (RP 39) (RP 63) (RP 70) (RP 71).

This was collaborated (fabricated) by testimony from Troy Washburn Keith Washburn's son (and Ex-wife Kim Wilson). However neither were present at any meeting between Radezky and Washburn. The two day trial of April 14 & 15, 2010 brought this all out (CP 190-255). The Trial Court entered Findings of Fact & Conclusion of Law on 6-15-2010 (CP 291- 299). The Court entered a decree quieting title All real estate to Keith C. Washburn. Melody Radezky was awarded items of personal property including the silver bullion and coin sets to be delivered (CP 299). On 6-25-2010 Radezky filed a Motion for Reconsideration which was denied (CP 311-328, 334).

STATEMENT OF FACTS

On April 28, 2004 Robert Washburn suddenly passed away (RP 375) leaving a written will dated in 1972 (Ex. 5), and an unsigned handwritten will (hereinafter referred to as "the Will") (Ex. 101) that was drafted entirely in his own hand in March 2004 just before he died on April 28, 2004. It was not dated, signed or witnessed. The Will (Ex. 101) was filed in Stevens County Superior Court under case No 04-4-00041-1 on June 2, 2004. On April 29, 2004 Radezky, Washburn & Mark Radezky met out at their dad's ranch house to locate and secure important papers (Ex. 14) belonging to Robert D. Washburn now deceased. (RP 376-378). The Will was located on this date, but the parties did not read either document (RP 378). On the 29th and 30th of April, 2004 funeral arrangements were made (RP 375-382) to prepare for the funeral on May 4, 2004 (RP 382-384). There was no contact

between Radezky and Washburn between April 30, 2004 and May 4, 2004 (RP 379-384). On May 9th a Toyota car was borrowed as a result of a need, because Radezky's vehicle broke down (RP 384-385). This contact resulted in a preliminary meeting being set for May 30, 2004 (RP 383-386) (Ex. 14, 15, 16). As indicated by testimony and pleadings no other meetings took place until May 30, 2004 meeting which was attended by Radezky, Washburn and Mark Radezky (RP 383-386) (Ex. 15,16) (CP 294 Finding NO. F). This May 30, 2004 meeting was a preliminary negotiation meeting to discuss the two wills (Ex. 5 & 101), left by the decedent Robert Washburn. At the May 30, 2004 meeting Mark Radezky mediated the course of the meeting with the permission of Radezky and Washburn. Simple worksheet forms were distributed to Radezky and Washburn to provide questions that would precipitate open discussion between Radezky and Washburn (see Ex. 15, 16). The Waiver (Ex. 7), was an agreed mutual understanding to abide by the terms of the Will (Ex. 101). That the heirs, Radezky and Washburn recognized the Will as their father's Last Will and Testament in his own handwriting and to accept and honor those final wishes unconditionally and without any contest as to it's authenticity and provisions as written, as his Last Will and Testament (Ex. 101, P. 1&2).

In the following months Radezky tried exhaustively to communicate with Washburn by phone (Ex. 23) to try and get additional meetings set up to continue discussing and settle their father's estate (at least 15 attempts from May to October), but to no avail. Radezky sent a letter the end of September 2004, and again a certified letter October 17, 2004 (Ex. 22) referring to the preliminary meeting

May 30, 2004 and the discussion that transpired that resulted in an agreement known as the Waiver (Ex. 7). This Waiver was enclosed with this letter because no other forms of communication was successful. The signing of the Waiver was fully executed on November 11, 2004.

The estate remained unsettled due to Washburn's resistance to communicate. Radezky continued to try and communicate with Washburn with further attempts of correspondence (Ex. 22, 23) (RP 401-407) to work out the details in the Will (Ex. 101) as to the division of the remaining assets primarily the provisions of the real estate. Washburn refused and neglected to make any effort for any communication. Washburn unilaterally decided to move onto and take over the ranch (RP 402) and later decided to take logs (two times) from the property that the Will (Ex. 101) left to Radezky. Radezky attempted to communicate by letters again in September 21, 2007 and November 15, 2007 (RP 401-410) after a chance meeting at a mutual relative's wedding. Radezky believed that she was safe in her understanding from the Will (Ex. 101) that whatever did not pertain to the land she would be entitled to, and the land would be the last necessary issue for discussion and settlement. As a result over time (a year) Radezky made arrangements with Washburn (with much resistance) to get the vehicles (Ex. 20) that belonged to Robert Washburn. When Radezky tried to collect the silver that was in the house on November 6, 2004, Washburn reacted in anger throwing the 1998 Chevy pickup keys at her saying, that she was not going to get anything else from the property, in the house or otherwise (RP 406).

No other communication transpired except in February 9, 2009 when Radezky's nephew, Troy Washburn called out requesting that some land be transferred to his dad Keith Washburn (RP 415-417). Radezky invited Troy Washburn down and asked that Keith Washburn accompany him so the estate could be discussed and settled. Washburn again neglected and refused to show up and discuss the remaining details about the division of the real estate property (RP 417-423). Troy Washburn indicated that an attorney had been consulted, so Radezky consulted an attorney as well to receive any advice concerning the wills (Ex. 5 & 101), that is when Mr. Montgomery (counsel for Melody Radezky) disclosed his understanding that the bequeathment to Washburn was only a small portion of all the real estate. When Radezky discussed these findings with Troy Washburn on February 11, 2009, he immediately became angered because Radezky indicated that a good portion of the real estate was to be given to her according the Will (Ex. 101). This is when the battle began, Washburn retained attorney Mr. McGrane.

STANDARD OF REVIEW

Whether the findings is supported by substantial evidence. Kleinlein's Estate, 59 Wn.2d 111, 113, 366 P.2d 186 (1961). This involved a will interpretation. Consequently the trial should apply the "clear, cogent, and convincing" standard of evidence. In re Ney's Estate, 183 Wash. 503, 48 P.2d 924 (1935); In re McKachney's Estate, 143 Wash. 28, 54 P.455 (1927).

ARGUMENT

Introduction

Washburn's testimony has but one purpose and that is to predicate Washburn's whole case on the alleged fact that an alleged meeting took place in the middle of the afternoon the day before the funeral (May 3, 2004) of Robert Washburn, that meeting was allegedly attended by Keith Washburn, Troy Washburn, Melody Radezky & Mark Radezky. This alleged meeting supposedly established a "meeting of the minds" of Radezky & Washburn from an alleged verbal agreement that Mr. McGrane argues was formalized by the Waiver Agreement signed on November 11, 2004 by Washburn and Radezky. The "day before the funeral" meeting, is the only meeting that Washburn & witnesses wanted the court to consider. Their whole testimony is predicated on this alleged meeting to establish their alleged agreement.

Radezky and witnesses testimony denies that this meeting ever took place and was fabricated. Further testimony by Radezky & Dr. Mark Radezky revealed that in fact there was absolutely no possibility that the Radezky's could have attended such a meeting because they were treating 20-30 patients in the Spokane Valley (Ex. 26) (RP 253-255), (RP 387-384), (RP 429-430) at the exact time this meeting was alleged to have taken place under sworn testimony of Troy Washburn who claims to be a witness at the meeting, also confirmed by his mother (and ex-wife to Keith) Kim Wilson and Keith Washburn (Father). Radezky testifies that the only preliminary meeting where discussion of the wills (Ex. 5 & 101) took place was May 30, 2004 (Ex. 14, 15, 16). The testimony of Washburn and witnesses is so confusing that everyone was confused especially the court (RP 33-42).

ISSUE NO. 1. The Court Erred in concluding that the Family Settlement Agreement doctrine applied to an oral agreement that provided for the division of Robert D. Washburn's Estate.

This issue involves Assignments of Error numbers one(1), two(2), seven(7), ten(10), twelve(12), thirteen(13), sixteen(16). In Conclusion of Law No. A, the court concluded that the children of Robert Washburn, Radezky and Washburn agreed to settle their father's estate as provided in the unsigned handwritten will according to the family settlement doctrine. The Conclusions of Law contradicts the Will's provisions. The Findings of Fact contradict the Conclusions of Law.

In Collins v Collins, 151 Wn.201,215-16, 275 P. 571 (1929); Evidence showed that the heirs through many established letters written back and forth between one another and oral discussions, were threatening to contest a will that was probated. There was no real estate involved in this case, only cash and negotiable securities. The will was admitted to probate and the oral discussion turned into written letters that precipitated a written agreement that did get signed by almost everyone to consummate the agreement. In the Collins (Supra) case the Appellate Court declares that the parties minds certainly met because they were communicating verbally through numerous meetings and through writing numerous letters one the other. This precipitated an agreed upon contract corroborated by the letters (P.211, 213 of Collins). The oral contract was evidenced by the letters and eventually by a written contract. The Appellate Court indicated that this was a prerequisite to a meeting of the minds.

Here the only agreement between the heirs was to agree to the terms of the Will (Ex. 101). There was no articulated agreement as to who would get what as

required for the Family Settlement Doctrine to be held applicable. There was an agreement that the Will (Ex. 101) would be followed by the heirs.

In this case Washburn neglected, failed and never communicated with Radezky orally concerning the division of the estate testified to by Washburn (RP 113-120, 122, 130, 131, 147, 155, 157, 160-163*).

(RP 160-163): "A. And the vehicles should still be there until this thing was settled. You know, they sold a few. Q. (By Mr. Montgomery) Okay. So you're agreed then it's still not settled. It's still not settled, right? A. Why do you think we're here? Q. Okay. It's not just the land, it's everything, right? A. Well, I haven't Seen the vehicles. I haven't seen the money. They are probably Trashed anyway. Q. Well, is it your position you're entitled to Some of that? A. If she got it yes. The assets, that is what I Thought she got, and I got the real estate. Q. You don't consider Real estate to be an asset? A. The way dad wrote it I get the Char- Mel Ranch, all real estate. She gets the -- Q. And that's what you Took it to mean correct? Objection. Go ahead and answer. A. Yeah, I... A. She got her share. I got mine. Q. Okay. But Your shake, what you think you got was what you assumed you got, correct? A. That's what my dad wanted. Q. And you never discussed that with Melody, did you? A. About real estate or? Q. Yeah. A. No. She didn't discuss the vehicles and the money".

Radezky also testified that there was no discussion with Washburn (RP 393-395, 403, 405-408, 414, 415, 420, 421). Radezky and Washburn also testified that Washburn would not communicate in writing (RP 141-145, 147, 158, 403, 404), (Ex. 22). Radezky testified that Washburn would not communicate via the phone (RP 402-405, 407, 410-413), (Ex. 23). As a result of no communication there can be no meeting of the minds (RP 359, 360, 445, 448, 518,521, 524) (Page 213 of Collins) *supra*. This was argued before the trial court (RP 510-515) (CP 289, 321).

Washburn assumed and concluded that he was to get "all the real property" as the "Char-Mel Ranch" (RP 90, 93, 114, 115, 118, 120, 153, 162, 164, 165, 169). This idea was precipitated in "his own mind" (RP 93, 97, 98, 99, 113-115*, 118, 120, 131,

150-153*, 163-166, 169), and as far as he was concerned “it was a done deal” (RP 113, 114, 131), even though he did not discuss it with Radezky (RP 162-163) or communicate anything in writing.

“(RP 113, 114): Q. Okay. Now this is the handwritten Will of your Father that you’ve said in your testimony and the question, I Believe, was in his handwriting, right, the one you’re looking at? A. Yes, it is. Q. Okay. And you said that you did not discuss that With Mark and Melody at the first meeting. You just read it through, right? A. Right. Q. But you – in your testimony you said that you understood in your mind that you got the land, right? A. That’s my – my understanding was I was to get the land. Q. Right. Did you discuss that with Melody at that time? A. Well, it’s just cut and dry. I mean I thought it was a done deal. She had the existing assets. I got the land and the house. Q. That was—and you said twice in your record testimony that was in your mind, so I just want to make sure that’s what you decided, but you didn’t discuss that with Melody, did you? A. Well, It was just my--. Q. Just from reading this. A. On the original Will. Q. Okay then answer my question. Did you discuss your assumption with Melody? A. My Assumptions? I don’t follow you. Q. You said in your mind you thought you got all of the land. Did you discuss that with Melody, did you? A. Well, I didn’t discuss this with Melody. So I’m wanting to know--. A. Well--. Q. If you discussed that – I’m calling that an assumption. And when you say in my mind, okay, I’m calling that an assumption. So based on – did you discuss that with, the in my mind thought, did you discuss that with Melody? A. I can’t say for sure, you know. I mean but the way they were looking at that was in the safe stated that I get like Char-Mel Ranch, all real estate. Q. The one you just read, right, Exhibit 101? This one right here, right? A. This isn’t the one. Q. That’s not 101? A. No, this is not the one, the original that I read”.

In fact Washburn thought everything was his (RP 152, 153). Contrary to Collins supra Radezky and Washburn did not contest the Will that was not probated, but agreed to abide by every strict term written in the Will (Ex. 101).

In order for Washburn to claim that “all real estate property” was bequeathed to him from the provisions of the Will (Ex. 101), an alleged agreement was first spawned when Washburn’s counsel Mr. McGrane strategically argued that an alleged verbal or oral agreement was established and supported at an alleged

meeting that took place on the day before the funeral (May 3, 2004). (RP 500), (CP 191), (Ex. 22).

The alleged oral agreement was first mentioned by the Respondent's attorney Mr. McGrane in the 12-1-2009 hearing that was scheduled to hear a matter brought by a motion on the pleadings from Radezky for Declaratory Relief asking the Court to read, interpret and uphold the decedent's unsigned handwritten will (Ex. 101) (CP 48-55, 106-109, 115-122, 159-164*) according to the Court Order of March 12, 2009 (CP 30-31), because the heirs mutually agreed to live by the written Waiver agreement (Ex. 7) to honor and divide the estate according to the unsigned handwritten will (Ex. 101) without any court intervention. Washburn breached the Waiver agreement (Ex. 7) by initiating the request for a trial contrary to the Waiver agreement (Ex. 7) and the Will (Ex. 101, P.2) (RP 12, 13, 14 of the 1-12-2010 hearing), which would enable him to call many witnesses trying to substantiate the alleged fact (see Whiting v Armstrong 23 Wn.(2d) 290 (1945) P. 294-295) regarding unreliable witnesses testifying to facts that were inconsistent and testimony changed due to leading questions, this is exactly what happened with Washburn and witnesses) that his father (Robert Washburn) allegedly said, Keith Washburn was to get all the real estate (RP 23, 24, 25, 26, of the 12-1-2009 hearing) on the basis that Robert Washburn said he did not want the land split up (RP 38, 39, 46, 54, 56, 79, 98, 104, 173, 487-491) . Mr. McGrane alleges that he made this argument for the alleged oral agreement in the Petition To Declare Rights, paragraph 3.3 (CP 12-17). The Waiver (Ex.7) is attached hereto as Appendix No. 2.

Keith Washburn's Declaration alleges an oral agreement (CP 138) {which was a separate agreement (RP 24, 25, 26 of 12-1-2009 hearing)} allegedly giving Keith Washburn all the real estate from the alleged agreement that was established from an alleged meeting the day of the funeral (May 4, 2004) . (RP 25, 26, 12-1-2009 hearing). The substance of that alleged agreement {now alleged to have taken place on the day before the funeral May 3, 2004 (RP 36, 37, 63, 461, 462)}after reading and discussing (RP 92, 462) the Will (Ex. 101) was that Washburn was to allegedly get all the real estate property (RP 93, 113-115, 120, *152, 161-165, 168, 169). Mr. McGrane argued that the alleged agreement was first alleged in the Petition To Declare Rights, paragraph 3.3 (CP 13, 14) but was not, it only confirms that the Petitioner (Washburn) and Respondent (Radezky) agreed to adhere strictly to the terms of the decedent's wishes by the implementation of the Waiver (Ex. 7) that documented their (Radezky & Washburn) agreement (the only agreement, which was written not oral) from the May 30, 2004 meeting, and the written agreement (noted as an "agreement memo" or the "Waiver" in the Petition To Declare Rights) was signed on November 11, 2004. The Petition To Declare Rights also declares that this agreement was fully performed (CP 16). Radezky's Answer To Petition To Declare Rights supports & confirms the written agreement the Waiver (Ex. 7) to implement the wishes of the decedent in the division of his estate as set forth in the Will (Ex. 101), and admits the same for paragraph 3.4. (CP 33, 34). Mr. McGrane contradicts his initial argument that the alleged "verbal agreement" or "separate agreement" was first argued in the Petition to Declare Rights (which is not true), by stating that the "separate agreement" was started in the Declaration of

Keith Washburn(which is true), which the Court denied it's introduction into the Court proceedings, (RP 26, of 12-1-2009 hearing), (CP 135-139, 148-152, 155-159) due to the fact that Washburn's Declaration is an attempt to misdirect the Court and the merits of the case and claim alleged facts that do not exist through testimony based on parol extrinsic unsupported evidence (see above CP's). This was argued in (CP 201-203), this should apply to the alleged oral agreement:

"The parol evidence rule may be one of the most firmly established principles in the law of interpretation of writings, contractual and but it also remains as probably the least understood in otherwise, the field 40ALR 3d 1384, 1387§ 2. Professor Wigmore states the rule by referring initially to the "integration" of a jural act in a single memorial, and defines the rule thus "When a jural act is embodied in a single memorial, all other utterances of the parties on that topic are legally immaterial for the purpose of determining what are the terms of their act" see 9 Wigmore on Evidence § 2425. As thus stated, the rule, Professor Wigmore continues, "is not a rule of Evidence, because it has nothing to do with the probative value of one fact as persuading us of the probable existence of another fact. It is a rule of substantive law, because it deals with the question where and in what sources and materials are to be found the terms of a jural act" See 9 Wigmore or Evidence § 2425. The parol evidence rule as traditionally state in Washington, provides [P]arol or extrinsic evidence is not admissible to add to, subtract from, vary or contradict written instruments which are contractual in nature and which are valid, complete, unambiguous, and not affected by accident, fraud, or mistake. Buyken v Ertner, 33 Wn. 2d 334, 341, 205 P. 2d 628 (1949). It is not a rule of evidence but one of substantive law Barber v Rochester, 52 Wn 2d 691, 696, 328 P 2d 429 (1958). Thus prior to contemporaneous negotiations and agreements are said to merge into the final, written contract, and any evidence of these even if admitted without objection, is rendered incompetent and immaterial by operation of the rule Fleetham v Schneekloth, 52 Wn 2d 176, 179, 324 P 2d 429 (1958). In Hadley v Cowan, 60 Wn App 433, 804 P2d 1271 (1991), the agreement settle all issues concerning their loss of inheritance. In construing the contract, the court first looked to the language of the agreement, not expressions absent from the agreement. Moreover, the Parol Evidence Rule precluded such testimony where the agreement was unambiguous. "Washington adheres to the objective manifestation theory of contracts which imputes to a person an intention corresponding to the reasonable meaning of his words and acts" Weimerskirch v Leander, 52 Wn App 807, 813, 764 P 2d 663 (1988). Emrich v Connell, 105 Wn 2d 551, 555-56, 716 P. 2d 863 (1986): [P]arol or extrinsic evidence is not admissible to add to, subtract from, vary or contradict written instruments which are contractual in nature and which are valid, complete, unambiguous, and not

affected by accident, fraud, or mistake. Contemporaneous negotiations and agreements are said to merge into the final, written contract, and any evidence of these, even if admitted without objection, is rendered incompetent and immaterial by operation of the Parol Evidence Rule. *Buyken v Ertner*, 33 Wn 2d 334, 341, 205 P. 2d 628 (1949)".

It is crucial that this Court understand the differentiation between the key facts declared:

1) the alleged oral agreement (which is argued by Washburn as a separate agreement) was alleged to have been established from an alleged meeting on the day of the funeral (May 4, 2004) according to Keith Washburn's Declaration (CP 137), or the alleged oral agreement alleged to have been established from an alleged meeting the day before the funeral on May 3, 2004 (whichever event one wants to believe-neither being true), according to the sworn testimony of Keith (RP 92-96) and Troy Washburn (RP 37-46), and Kim Wilson (RP 71), that is allegedly confirmed and supported by the drafting and signing on November 11, 2004 of the Waiver to Accept Present Will (Ex. 7). Washburn's position is that the Waiver (Ex. 7) was to confirm the existence of the alleged oral agreement. There was no substantiating sworn testimony or evidence from Washburn and witnesses to corroborate anything regarding the Waiver's (Ex. 7) existence and implications to the alleged oral agreement, Whiting v Armstrong 23 Wn.(2d) 290 (1945) supra. This line of argument came only from Washburn's counsel Mr. McGrane as to its tie to the alleged oral agreement that never took place. (RP 504).

2) the contrary facts according to the testimony from Radezky and her witnesses, are, the written agreement known as the Waiver (Ex. 7) is the only agreement that existed between Radezky and Washburn that was precipitated from

the only preliminary meeting where discussion took place on May 30, 2004 (Ex. 15, 16) (RP 406-408), where Radezky & Washburn agreed to honor the decedent's Will (Ex. 101), affirming and confirming that agreement by drafting a written agreement, the Waiver (Ex. 7), (RP 379-382, 386, 392-395, 401, 406-409), (CP 33, 34, 37) (see Whiting v Armstrong 23 Wn.(2d) 290 (1945) supra. Rebuttal to the alleged meeting occurring on the day before the funeral (May 3, 2004) that Washburn and witnesses testified precipitated the verbal agreement between Radezky and Washburn.

Radezky denies emphatically any agreement other than the Waiver (Ex. 7) with contrary sworn testimony given by the Radezky's especially that no verbal agreement to give Washburn all the real estate was mutually understood and agreed to {Melody Radezky: (RP 377, 379, 381-386, 388, 394-396, 401, 408, 411, 413, 421, 422, 429-432, 437, 439, 440, 441-450, 452, 453), Mark Radezky: (RP 196-199, 203, 204, 209-218, 220, 224, 228, 229, 232, 233, 239, 242, 252*, 253, 255, 278, 293, 294, 304-307*, 309, 311-316, 333-335, 343, 345, 353, 357, 359, 360, 362, 363, 369, 370, 497*, 498*)}. Radezky also provided evidence that absolutely disproves any possibility that any meeting between early evening Friday April 30, 2004 until late morning the day of the funeral May 4, 2004 occurred, because Radezky was in or around Deer Park during this time frame (Ex. 23, 26) (RP 305-307, 309, 344, 345, 381-383), especially the day before the funeral when Washburn's witnesses emphatically testify with absolute certainty as being a witness, to that day being the agreement meeting.

In summary Keith Washburn used the Waiver (Ex. 7) to convince the court and confirm (through sworn testimony) that the alleged oral agreement was

synonymously equated to the "separate agreement" (RP 23, 24, 25, 26 of 12-1-2009 hearing) (argued by Mr. McGrane) to counter the written Waiver agreement (Ex. 7) and the Will (Ex. 101) (by preceding any other agreement) that was established from the preliminary meeting that occurred on May 30, 2004 (Ex. 15, 16), that precipitated the only agreement that was made, the written agreement, the Waiver (Ex. 7). In the same manner Mr. McGrane persistently alludes to this alleged oral agreement that is now misconstrued by the Court as an general agreement made by both parties in May 2004 (RP 503-505, closing arguments) that now stands for some alleged material fact that does not exist (RP 12, 13, 14, of 1-12-2010 hearing) not confirmed by Washburn's testimony. Radezky believes the court has adopted or somehow construed the verbal agreement as the Waiver agreement or that the verbal agreement constituted the Waiver, which could not be farther from the truth. The alleged meeting (known from the trial as the day before the funeral on May 3, 2004,) that Troy Washburn's sworn testimony said happened (RP 29, 34-36, 60-63) and Keith Washburn's sworn testimony said happened (RP 92, 93, 95, 96), didn't happen according to Mark Radezky and Melody Radezky's sworn testimony (RP 214, 215, 252-255, 307, 309, 381-383, 429, 430), to produce the alleged verbal agreement (RP 37, 39, 40, 41, 46, 55, 56, 60, 63, 459-462). There is no evidence before the Court that this alleged meeting occurred to precipitate Washburn's alleged oral agreement ever existing, except maybe in Washburn's own mind (RP 93, 97, 98, 99, 113-115*, 118, 120, 131, 150-153*, 162-166*), Whiting v Armstrong 23 Wn.(2d) 290 (1945) *supra*. Washburn testifies that he did not communicate by meeting and discussing the estate with Radezky (RP 113-120, 122, 130, 131, 147,

155, 160-163*) and Radezky testifies to the same (RP 393-395, 403, 405-408, 414, 415, 420, 421). Radezky testifies that Washburn did not communicate in writing (RP 141-145), or by phone (RP 402-405, 407, 410-413). According to Collins an agreement must be mutual (P. 214 of Collins) to establish a meeting of the minds confirmed by responding orally and in writing. This is not the case here, as indicated previously Radezky and Washburn testified that there was no communication except for the May 30, 2004 meeting which was a preliminary meeting that precipitated their written agreement to simply adhere fully, unconditionally, and without contest to the Will (Ex. 101) that was yet to be fully discussed and agreed upon. According to Whiting v Armstrong 23 Wn.(2d) 290 (1945) supra; to establish an oral contract to devise or bequeath property, the evidence must be conclusive, definite, certain and beyond all legitimate controversy. This is not the case here. Washburn offered no material evidence to the trial court to substantiate the alleged oral agreement with Radezky that bequeathed all the real estate to Washburn. As in Collins (Supra) and Whiting v Armstrong testimony of the parties and witnesses produced were not enough to secure supportive evidence needed to establish the credibility of an oral agreement. The rule stated above is contained in "Widman v Maurer, 19 Wn. (2d) 28, 141 P. (2d) 135.

This case is supported by: Resor v Schaefer, 193 Wash. 91, 74 P. (2d) 917; Wayman v Miller, 195 Wash. 457, 81 P. (2d) 501; Thompson v Weimer, 1 Wn. (2d) 598, 104 P. (2d) 487; Allen v Dillard, 15 Wn. (2d) 35, 129 P. (2d) 813; Dau v Pence, 16 Wn. (2d) 368, 133 P. (2d) 523".

Radezky's sworn testimony is evidenced in the subsequent acts and conduct of continual correspondence and attempts at communications made by Radezky to Washburn to proceed with ongoing discussions to settle the estate even

as late as February 2009 (Ex. 14, 15, 16, 22, 23, 29) (RP 401-424). On the contrary Washburn's actions did nothing to transfer the real estate into his name (if he believed all the real estate was his) even at the bidding of his son (Troy Washburn) and ex-wife Kim Wilson (RP 73-74) because Washburn was afraid of the outcome that Radezky would challenge him on the division of the real estate (RP 131).

In Collins (P.211) (Supra) there was much tergiversation as is in this case. This is primarily evidenced in the cross examination of Washburn and in the direct and cross examination of Troy Washburn. Collins (Supra) ruled on one heir's evasive answers and the inconsistencies constituted evidence that was unreliable, and the contradictory direct evidence of the husband and wife thoroughly refutes the testimony that was tergiversation. The testimony and the letters by the sibling that were deemed ambiguous and evasive and therefore unreliable and could not supercede the signed written contract that was precipitated by the accurate discussion and letter writing. This testimony was further refuted by the fact that this sibling signed the contract. This sibling's testimony is further refuted because they received a letter setting forth the substance of the contract. This sibling never gave notice to anybody that they did not desire to make such a contract. Collins supra stipulated that the Appellate Court is competent to judge the credibility and veracity of a party. The Appellate Court found that due to the inconsistencies the Appellate Court deemed this siblings testimony as inadmissible.

This is and should be the case here. In reviewing Washburn's cross examination testimony his pat response was "I can't recall" reiterated 27 times on many numerous important issues (RP 109, 111, 115-117, 124, 128, 129, 148-151,

155-160), such as meeting times and any personal interaction. Washburn can only remember the alleged meeting and agreement on the day before the funeral. The most revealing and accurate testimony may be (RP 158) what Washburn said, "I can't tell you exactly what I did when". Washburn became confused with simple questions in several instances and constantly made comments that were out of context, incoherent and came from no where (RP 93, 98, 103, 108, 110, 111, 114, *115, 117, *118, 119, 120, *128, 130, 131). There was much inconsistent and confusing testimony within the Washburn and witnesses camp (RP 28-39 & 455-463), in fact they admittedly testified they argued in their attorney's office (Mr. McGrane) as to the alleged verbal agreement between Radezky and Washburn and the day it transpired (RP 457), this is a significant contradiction. This contradicting testimony from Troy Washburn concerning events, like where the meeting took place rather in the living room when Troy Washburn says he sat in "grandpa's recliner" or in the dining room (RP 29, 30). Rather the meeting was 20 minutes or 1(one) hour long (RP 32, 33, 38). Rather Troy Washburn was at his dad's (Keith Washburn) house when the alleged call came from Radezky, or at his home. Rather Troy Washburn was present when the Will (Ex. 101) was discovered (RP 30, 31, 32, 59, 456), or whether the will was already found on April 30, 2004 {this also conflicts directly with testimony that the unsigned handwritten will was found on April 29, 2004 evidenced by (Ex. 14)} with only Radezky, Washburn and Mark Radezky present (RP 376-378), or that Radezky and Washburn discovered the Will together the day of the funeral (May 4, 2004) (CP 136), how bizarre is that?, on the day of the funeral. There are many more insignificant and some more significant

inconsistencies and contradictions that would take too much time and room in this brief that would support Radezky's position. This kind of testimony was dismissed in the Collins supra case, as well as in Whiting v Armstrong supra.

There is one more significant issue, that is the rehearsed testimony of Washburn and witnesses intent was to establish the alleged facts that: 1) an oral agreement existed between Radezky and Washburn; 2) Robert Washburn's intent was to give Keith Washburn all the real estate; 3) the real estate was never intended to be split up. This collaborated (fabricated) testimony was reiterate by all witnesses as to Robert Washburn's intent: Kim Wilson (RP 79); Keith Washburn (RP 98, 104); Charleen Tharldson (RP 173); Larry Vining (RP 487-491); Troy Washburn (RP 38, 39, 46, 54, 56). Larry Vining's testimony was found inadmissible by the trial court due to the fact that he was not an impartial witness (CP 29), and rightfully so. The testimony of Troy Washburn, Kim Wilson and Charleen Tharldson, and should also be deemed inadmissible for the same reason, for they are much more closely connected to Keith Washburn than Larry Vining as a friend. Washburn's testimony should be stricken regarding inconsistencies (Collins), and testimony regarding Robert Washburn's intent and the fabrication of an alleged oral agreement that was addressed in Whiting v Armstrong supra, stipulating that an oral contract to devise or bequeath property, the evidence must be conclusive, definite, certain and beyond all legitimate controversy. A second reason these testimonies should be inadmissible is because they are extrinsic evidence that is considered parol evidence, see argument set out in (CP 210-203), as well as the argument for the Dead Man's Statute (CP 204-205). Troy Washburn has a

significant interest because he stands to inherit Keith Washburn's interests upon his death. The Third reason these collaborated testimonies should be deemed inadmissible is for the reason the Appellate Court in Collins supra upheld it's decision and that was due to tergiversation as explained in preceding argument, as well as the relevant supporting case of Whiting v Armstrong that stipulated the prerequisites that oral contract should adhere to.

ISSUE NO. 2. Whether the Court erred in interpreting the Unsigned Handwritten Will of Robert Washburn.

The issue involves Assignment of Errors one(1), two(2), four(4), seven(7), eight(8), nine(9), eleven(11), twelve(12), thirteen(13). The Court concluded the *parties concurrent and subsequent acts and conduct showed clearly their respective understanding of the agreement.* Keith was to take all real property and the personal property included in the Char-Mel Ranch, namely household furnishings and farm equipment. Radezky was to receive all remaining assets or personal property, namely all liquid assets, most vehicles, most firearms, and other assets of particular value. A copy of the Unsigned Handwritten Will (Ex. 101) is attached hereto as Appendix No. 1.

The Court has relied on parol evidence [(see argument on page 18-19)

(Buyken v Ertner, 33 Wn. 2d 334, 341, 205 P. 2d 628 (1949); Barber v Rochester, 52 Wn 2d 691, 696, 328 P 2d 429 (1958); Fleetham v Schneekloth, 52 Wn 2d 176, 179, 324 P 2d 429 (1958); Hadley v Cowan, 60 Wn App 433, 804 P2d 1271 (1991); Weimerskirch v Leander, 52 Wn App 807, 813, 764 P 2d 663 (1988); Emrich v Connell, 105 Wn 2d 551, 555-56, 716 P. 2d 863 (1986)]

from Washburn and witnesses, primarily Troy Washburn to establish an alleged agreement that he witnessed at a meeting that he allegedly attended taking place

the day before the funeral (May 3, 2004) (RP 28, 29, 34-37), where Washburn and Radezky before family members (Troy Washburn) making an alleged oral agreement (RP 37, 39, 41) that gave Washburn all the real estate. This was a "done deal" as Washburn put it (RP 113). This would be true if this meeting took place and if Robert Washburn would have only put "all real estate" in the Will (Ex. 101) without any other verbiage following. That is not the case, yet the Court in it's determination proceeded to look at the term "all real estate property" and give it priority and predominance even though the Court has said that this term is ambiguous (RP 37, of 12-1-2009 hearing) as well as the "Char-Mel Ranch", unless this was all the land Robert Washburn owned then that would be the end of the matter.

It was argued that there was an alleged oral agreement (RP 25, 12-1-09 hearing) in the Petition to Declare Rights in section 3.3: 3 3 agreement "subsequent to the death of the decedent's family members and others who were close to the decedent met and discussed the wishes of the decedent. The Petitioner (Keith Washburn) and Respondent (Melody Radezky) agreed (Ex. 7-the waiver) that they wanted to implement the known wishes (Ex. 101) of the decedent in the division of his estate . While being fully aware that the written Will(Ex 101) was not properly executed [due to Ex. 111 from John Montgomery (RP 360-363)], the petitioner and the respondent nonetheless agreed (Ex. 7) that they would implement the terms of the decedent's written will(Ex. 101)". Section 3.4 confirmed the previous section (CP 13-14). It was recorded that the Respondent Keith Washburn acknowledged the Waiver agreement (RP 27, 12-1-09 hearing). At no place was an oral

agreement that was alleged in the Declaration of Keith Washburn (CP 35-139) (RP 25, 26, 28, 12-1-09 hearing) projected in the Petition to Declare rights (RP 33, 12-1-09 hearing). The family members that is purported to be at the meeting in the Petition to Declare Rights, coincides and documented with the Waiver (Ex. 7) that would have been the May 30, 2004 date (Ex. 14) (exclusively Radezky, Washburn and Mark Radezky), agreeing only to abide by the Will (Ex. 101), not as to how that division was to be carried forth.

The Answer to Petition to Declare Rights filed 6-12-2009 by Radezky denies family members being present at the May 30, 2004 meeting (CP 33). From this point forward Washburn has been declaring that the agreement that came forth from the very limited communication on May 30, 2004 is the alleged oral agreement (CP 136) (RP 27, 28, 12-1-09 hearing). The alleged agreement was contested (RP 26, 33, of the 12-1-09 hearing). The first time this oral agreement is compared to being the Waiver agreement (RP 26, of the 12-1-09 hearing), or to expand the agreement to include discussion that lead to an understanding that Washburn was to get "all the real estate" was at the 12-1-09 hearing. Washburn's attorney's strategy was to present this at trial proceedings (RP 30, of the 12-1-09 hearing), and they want this contract strategy to be presented so it can be argued as to what the parties agreed to (RP 499, 500).

Since the Trial Court offered the possibility to hear other motions to resolve this matter of interpreting the Will (Ex. 101), another motion was filed for Declaratory Relief to focus on the declaration of the Will to be specifically ordered by the Trial Court (CP 160-171). The response from Washburn once again indicates that his

issue is “what did the parties agree to between themselves as to what their father’s intent was when, shortly after their father’s death (this was brought out at the trial as the day before the funeral), they decided to divide the estate in a method that differed from standard intestate succession.” “... the substance of what each party thought their agreement to be is in dispute. Obviously the existence of this contested litigation affirms that each party has a different interpretation of what their agreement was.” (CP 176). This only applies to Washburn because by this time Radezky still insists on honoring (as she always has) their agreement to honor the Will (Ex. 101). After talking to Chris Montgomery (attorney for Melody Radezky) (RP 356-359, 448), she understood the Will (Ex. 101) divided the real estate between Radezky and Washburn with only a small portion bequeathed to Washburn. Washburn has never expressed his understanding of the Will (Ex. 101) to Radezky that he was entitled to all the real estate as alleged. Washburn unilaterally decided from his own conclusions that all real estate as well as a lot more personal property belonged to him (RP 152, 162, 163).

Radezky asked the court to specifically interpret the Will (RP 6,7, of the 1-12-2010 hearing) that both parties had agreed to honor through the Waiver (Ex. 7) through the Declaration of Rights (CP 16) and the Answer to the Declaration of Rights (CP 37), and the Order of 3-12-2009 (CP 31). In the Petition to Declare Rights Washburn sought relief from the court to convey all real estate property to him because the agreement Waiver (Ex. 7) was fully performed (CP 16). How was the conveyance of land performed? Whiting v Armstrong speaks to the oral agreement rules regarding evidence that must be conclusive, definite, certain and

beyond all legitimate controversy, this is not the case. Radezky sought relief to be awarded a respective distribution portion due to the Waiver (Ex. 7) that was agreed to by both parties based on the Will as the Last Will and Testament of Robert Washburn (CP 37). The court vacillated back and forth rather to agree with Radezky's attorney Chris Montgomery, or Washburn's attorney, David McGrane (RP 9, 1-12-2010 hearing).

Washburn's counsel (Mr. McGrane) vacillates back and forth trying to confuse the issues by saying that the Waiver (Ex. 7) gives effect and breathes life into the Will (RP 32, 12-1-09 hearing) (RP 5, 1-12-2010 hearing), but then contradicts this conclusion by saying the agreement Waiver (Ex. 7) gives the Will (Ex. 101) no legal effect (RP 24, 26, 12-1-09 hearing) (RP 4, 1-12-2010 hearing), but then in 80AmJur 2d Sec 1098 cited by McGrane (CP 193) that a written agreement can give authority to a void will. Washburn now refers to the Will generically as a "document of significance" and admits that it has legal significance and is a legal will (RP 11, 1-12-2010 hearing), because it is evidence of what the parties agreed to, even to the point of what the intent of the decedent is, which can only be interpreted according to interpretation rules of wills, and rightfully so.

As argued previously Washburn wants to interject this other alleged oral agreement (as established in Keith's Declaration) as a parallel agreement with substance or an expansion of agreement terms that go outside the agreement established by the waiver (Ex. 7). The Trial Court should have differentiated between the alleged oral agreement and the written agreement but failed to do so, missing the opportunity to settle this case by granting the Motion For Declaratory

Relief to Radezky. The court did error in interpreting the Will (Ex. 101). At this point the Court had all information from the pleadings to determine that the Will should control by the division of the Robert Washburn Estate as stipulated in the 3-12-2009 Order and the Court should be bound to follow through to honor this order.

In the Findings of Fact No. C (CP 293), under the personal property that is included in Robert Washburn's estate which includes: vehicles, bank and 401K accounts, coin sets collection, silver bullion bars, and household furniture, but does not include the farm equipment, tools, monies, papers, timber, etc. in the full accounting.

In the Facts of Finding No. F (CP 294-295), it states in part that Washburn read the Will on May 30, 2004 to give him all of the real property, even though he did not want it. There is no evidence nor testimony from Washburn or Radezky that would support this finding by the Court, nor is this consistent with the interpretation of the Will (Ex. 101) of Robert Washburn. Findings of Fact No. F, also states that Radezky read the will to give her all remaining assets, this is true, and this is consistent with the proper interpretation of the Will of Robert Washburn. It is not true that she read it to not give her any real property, nor is that interpretation consistent with provisions declared by the Will of Robert Washburn.

Findings of Fact No. I (CP 296), This is referring to the meeting in February 2009 when Troy Washburn met with Radezky. It states "... and for certain items of personal property including a hutch and some remaining firearms". This is not indicative of the whole picture. According to (Ex. 29) Question 23, it was also asked if Troy Washburn was aware that Washburn owes Radezky more assets, silver,

guns, antique clock, personal property assets, and real property, etc? Troy Washburn indicated no, but that's no problem, Radezky can have whatever belongs to her I have no problem with that. The whole picture was not portrayed in these Findings of Fact. This would not be consistent with what the Will of Robert Washburn, regarded as all remaining assets.

As we read the Conclusions of Law B4 (CP 298), we read that Washburn was to take all the real property which is contrary to what the Will of Robert Washburn provides for and goes on to include the personal property located in the house that the trial court says is the Char-Mel Ranch, namely household furnishings and farm equipment to be included in the Court's conclusions as to what Washburn is entitled to, this is very contrary to the provisions of the Will of Robert Washburn and is contrary to the next sentence that Radezky was to receive all remaining assets. Why is this? The Conclusion of Law continues to read, "...or personal property, namely all liquid assets, most vehicles, most firearms, and other assets of particular value". Radezky was to receive all remaining assets to include all personal property, and any real estate she maybe entitled to. This idea of "liquid assets" restricts the specificity of the unsigned handwritten will's intent, and "most" is not "all".

In Conclusion of Law B5 (CP 299) (Assignment of Error No. 8), there is yet another variation regarding Radezky's division according to the Will. "The agreement (the handwritten will) made for practical separation of their personal and financial affairs..." , Nowhere in the Will (Ex. 101) is there an inference of any such separation-this is contrary to the Will of Robert Washburn. Reading further, "... and

Melody with the remaining liquid assets and items of personal property". What happened to ALL remaining assets and ALL personal property? Nothing therein identifies "the remaining liquid assets" or "items of personal property" in Robert Washburn's Will (Ex. 101).

Finally in Conclusion of Law C (CP 299) (Assignment of Error No. 9), that reads, "Melody Radezky is due certain items of personal property, namely the silver bullion and the coin sets". Again this is not only contrary to other provisions in the Conclusions of Law and the Findings of Fact, but to the Will itself. These terms are carried forth from other sections relating to the Findings of Fact relating to the first mention of this in regards to the meeting between Melody Radezky and Troy Washburn in February 2009. Radezky is subjected from the Trial Court's decision to a hearing to determine if she is entitled to all remaining assets, due to Washburn's attorney's recommendation, this is prejudicial and is an abuse of the Court's discretion.

SUB-ISSUE A. Did the Court error in interpreting the unsigned handwritten will as an Agreement when the Waiver (Ex. 7) was the only agreement between the heirs.

This issue involves Assignment of Error four(4), five(5), six(6), seven(7), eight(8), thirteen(13). The Conclusion of Law B1,2,3,4,5 stipulates that the handwritten will is termed (Agreement) (CP297), the use of agreement in Assignment of Error No.13 (Cp 295) where it states, "... Their agreement was formalized..." and also contradicts the usage in Conclusion of Law B3 (CP 298) that states, "...the Agreement was arrived at in the months following Robert Washburn's death..."

This is very convoluted as to the Trail Court's understanding to differentiate between the (Agreement) that the court synonymously construed as the Will (Ex. 101) and the Waiver written agreement (Ex. 7), and the alleged oral agreement spoken of by Washburn's testimony. The Will (Ex. 101) was not an agreement and cannot be construed as an agreement because the parties did not have a hand in drawing it up, or did not have any input into it's creation. The only person that had a hand in creating the Will (Ex. 101) was Robert Washburn. No one had any knowledge that he was drafting the Will. The only agreement that can be identified is the Waiver to Accept Present Written Will (Ex. 7), as the Court found, and the evidence confirms the Waiver was agreed to by Radezky and Washburn at the only meeting that took place on May 30, 2004 and was formalized on November 11, 2004. To use the alternate term Agreement as in Conclusion of Law B3 is improper because it is actually referring to the Waiver agreement that was formalized on November 11, 2004.

SUB-ISSUE B. Did the Court error in interpreting the unsigned handwritten will to convey all real property to Keith Washburn.

This issue involves Assignment of Error one(1), seven(7), eight(8), ten(10), twelve(12), thirteen(13), fifteen(15). The Conclusions of Law B4, B5, and the Findings of Fact E, F, I, contradict the interpretation of the Will and the written agreement know as the Waiver (Ex. 7) when the Court states and quieted all real property was to Washburn.

This is a grave legal error by the Court and was an abuse of the Court's discretion. These Findings of Fact and Conclusions of Law and ultimately the Ruling were based primarily on parol testimony of Washburn and his witnesses. As

discussed under previous Issue No. 1. To recap, sworn testimony verified from Washburn and Troy Washburn who attended a meeting that Radezky allegedly called the day before the funeral (May 3, 2004) where Washburn and Troy Washburn read the Will and alleged to have made a verbal agreement with Radezky to give Washburn all real property (RP 3, 37, 62, 63) is preposterous . No testimony was given for any other meeting dates, and when confronted with the April 29, 2004 meeting testified by Melody & Mark Radezky (RP 196, 293, 294, 497) (RP 376, 377, 426) and evidenced by (Ex. 14, 15, 16, 22). This meeting was not contested but simply swept under the rug and Washburn's witness Troy Washburn testified as to when he first saw the Will (Ex. 101) at their April 30, 2004 meeting (RP 455). No evidence was offered by Washburn to verify or validate the alleged verbal agreement that was claimed to have taken place the day before the funeral (May 3, 2004). Whiting v Armstrong supra.

To recap further, Melody & Mark Radezky completely deny that these two(2) meetings (April 30, 2004 & the day before the funeral-May 3, 2004) never happened (RP 214, 215, 252-255, 307, 309, 344, 345) & (RP 381, 382, 383, 429, 430). The Court concluded that "their agreement" (Radezky & Washburn's) took place on May 30, 2004 (CP294-295) because they had a meeting of their minds that was evidenced by a "mutual understanding" {Findings of Fact E (CP 294)}, and was completely executed by a written agreement known as the Waiver (Ex. 7) on November 11, 2004 {Findings of Fact F (CP295)}. This written agreement was to honor the Will (Ex. 101) that was located on April 29, 2004 {Findings of Fact B (CP 293)} (Ex. 14), and rely on the Will to divide the property according to Robert

Washburn's last wishes (his last will and testament-the Will), authorized by the written Waiver agreement (Ex. 7). Not some alleged fabricated verbal agreement.

Since this evidence provides ample proof beyond a preponderance the Trial Court should have excluded Troy Washburn and Keith Washburn's testimony as hearsay and unreliable due to it's fabrication and resorted to interpreting the Will (Ex. 101) as it read (not how Keith Washburn alleged he read it), but the Court did not. Radezky is entitled to no less than all remaining assets that include all personal property, instead of the boiled down "certain items" {Findings of Fact C, E, F, I (CP 293-296)} and Conclusion of Law {B4, B5, C (CP 297-299)}. This certainly seems to be unjust. It appears the Court has abused it's discretion. I believe the Court Erred in conveying all the real property to Washburn based on the trial testimony of Washburn and witnesses to determine it's final ruling contrary to the Will (Ex. 101).

SUB-ISSUE C. Did the Court correctly rule as to the unsigned handwritten will in that the legal description was insufficient and or flawed, and the ambiguous terms "all real estate property" & "the Char-Mel Ranch" ruled as predominate.

This issue involves Assignment of Error one(1), eight(8), sixteen(16). The Conclusions of Law No. B5 is not supported by any Findings of Fact or testimony, but is only established as a theorized opinion of Respondent's attorney Mr. McGrane.

The Court's interpretation in regards to the paragraph awarded all real property to Keith Washburn also violates rules of contract and will interpretation. The first rudimentary rules of engagement would come from the rules of interpretation. There are rules that apply to contract interpretation, and rules that apply to will interpretation. The general rules that apply to both are:

- 1) Specific, unambiguous, and clear language will supercede and should not be modified or reconciled to, general, ambiguous, and unclear language or terms. The more specific, unambiguous, and clear language will be preferred.
- 2) The document will be interpreted by it's four corners or within itself as opposed to allowing extrinsic or outside evidence or testimony to interpret the document. Context need to be maintained, and every part of the document will be given effect or reconciling the general, ambiguous and unclear language and terms to the specific, unambiguous, and clear language.
- 3) Terms would carry their general or ordinary meaning unless clearly used otherwise.

Taken from the Washington Law of Wills & Intestate Succession by expert Mark Reutlinger, section A.2.n page 205. The full argument is recorded in (CP 316-321). The paramount duty of a court in construing a Will is to give effect to the testator's intent: In re Griffen's Estate, 86 Wn.2d 233, 543 P.2d 245 (1975). RCW 11.12.230 directs the duty of the court and requires [a]ll courts to preserve the intent of the testator.

The Trial Court established that there are four(4) terms that we need to be concerned with: 1) All Real Estate Property; 2) Sec 21 Twp 35 Rge 40 N/W ½ SW ¼ ; 3) Sole and Separate Property; 4) the Char-Mel Ranch. (Ex. 101) (CP 292).

The Char-Mel Ranch is a "NAME" that was created by Robert Washburn to identify him as a business man and as a person (Ex. 101) (CP 292, 294, 295, 297, 298), specifically (CP 297), Respondent's agree with this, "...he identified himself as the Char-Mel Ranch..." (RP 436, 437) because he used his checkbook for his general personal affairs and he engaged in business that was known as the Char-

Mel Ranch. (RP 436, 437). The "name" was derived from Melody Radezky's name and her mother's name "Charleen". (RP 388, 389).

This name was displayed as a sign over the driveway entry to Robert Washburn's house and outbuildings. (Ex. 12). The name given to the ranch was also confirmed by Washburn (RP 90, 126), and Larry Vining (RP 493, 494) put on display for the public to see. The sign was taken down and moved into a storage area before the death of Robert Washburn (RP 127, 390) (CP 297). The name Char-Mel Ranch was also used in connection with a business bank account that Melody Radezky was signatory on (RP 128, 390) as a (DBA). Keith Washburn also testified that he knew that the bank account of Robert Washburn had (DBA) the Char-Mel Ranch. (RP 128).

The sign also has identifying mark's known as the ranch brand "L-H" and "Washburns" was identified by Keith Washburn (RP 124, 126) and Melody Radezky (RP 389). Washburn went to great lengths to try and establish that the Char-Mel Ranch was identifying the real property of Robert Washburn (as to all the real estate). (RP 37, 39, 43, 44, 48, 67, 68, 90, 93, 114, 115, 118, 120, 162, 164, 165, 169, 487, 489, 491, 493). Nothing on the assessor's records show any connection between the real property and the Char-Mel Ranch (Ex. 9, 11), or on any deed (Ex. 1,2,3,4).

The Court under the Findings of Fact No. J (CP 297), indicated that the sign was erected and is now removed to the shop. The name "Char-Mel Ranch" was also present on a business checking account owned by Robert Washburn. No clear evidence was introduced connecting the name of the Char-Mel Ranch to the real

estate. The Court did conclude that the name Char-Mel Ranch was on a bank account and on the sign above the driveway located on the land North of SR 20 to the entrance of the house & outbuildings (Ex. 12).

On the sign, a brand along with the Char-Mel Ranch name was testified & identified by Washburn. (RP 126). The brand according to RCW 16.57.090 is identified as personal property of the owner, in this case Robert Washburn. In fact RCW 84.04.080 identifies what is personal property, enumerated is, "all goods, chattels (moveable property-Black's Law Dictionary 3rd edition page 317) that can be carried about with him from one part of the world to another (personal chattels), ... all property of whatsoever kind, name, nature & description...". According to WAC 458-12-005 under definitions of personal property this includes tangible and intangible personal property that are animate and inanimate objects. Under tangible the good & chattels include property that is moveable such as the sign with the name, Char-Mel Ranch. Personal property is also intangible under RCW 84.36.070, accounts under 2(a), and trademarks, trade names (as Char-Mel Ranch), licenses (DBA Char-Mel Ranch), good name or integrity of a business, section 2(c) are all considered personal property. When you look at RCW 84.04.090 (real property) there is no mention of these items so any usage of the name Char-Mel Ranch can only have a relationship to personal property not real property.

It would appear that the inanimate tangible object of the sign bearing the name: Char-Mel Ranch can only signify and identify the personal property of Robert Washburn, it has nothing to do with his real property. Therefore the name "Char-Mel Ranch" is not controlling in the identifying any part of Robert Washburn's

real estate. Because Radezky was the signer of the business account that bore the name "Char-Mel Ranch" she should also be given all rights and privileges that is held with license and business related existence. The only application that the Char-Mel Ranch can be given is, to identify the property that Robert Washburn intended Keith Washburn to have enumerated in the unsigned handwritten will (Ex. 101). This is expressed in Radezky's testimony (RP 388-391, 454).

Any suggestion that the Court regarded the Char-Mel Ranch as real estate is not controlling, and proves that the only evidence that was considered was testimony from Washburn and his witnesses. This would be contrary to the Will(Ex. 101) because it would strain the intent of Robert Washburn and actually rewrite the Will to distribute all of the real property in total favor of Washburn. This understanding would certainly not find Radezky's interpretation of the Will not reasonable (Conclusion of Law B5) (CP 299)}. It does not matter what the understanding was in 2004, because the only agreement was to honor the Will (Ex. 7 & 101), because she was not able to fully discuss this issue with her brother to come to any conclusion between Keith Washburn & Melody Radezky, and because there was no alleged verbal agreement (alleged to have been established by a meeting the day before the funeral [May 3, 2004]) to contradict the provisions of the heir's father's last wishes (Ex. 101).

Use of the term "all real estate property" is limited by it's own terms. The term was identified and acknowledged by the Court as being ambiguous (RP 37, 38, 40, 42, 12-01-2009 hearing). Yet the Trial Court awarded all real property to Keith Washburn. (RP 35-41, of 12-1-2009 hearing); (CP 178-184); (RP 12-13, of the 6-

8-2010 hearing); (RP 6-9, of the hearing of 7-20-2010 hearing); (RP 523-524 of trial); (CP 315).

Radezky testified that Washburn has never discussed in person his claim that he was entitled to all the real estate, especially on the meeting that occurred on May 30, 2004. (RP 395, 443, 445). Washburn did not discuss what the Will meant (RP 395). Washburn unilaterally decided to move into the house located on Robert Washburn's estate. (RP 403). Washburn did not talk about the land at all (RP 162, 163, 169, 414). Keith Washburn believed he got all the real estate because that was what was in his mind. (RP 113, 114). Radezky had no reason to believe that her father would not want her to have some of the land (RP 393). Radezky did not understand what "all the real estate" meant (RP 454). The Court indicates that Radezky wants to ignore the language "all real estate property". The truth of the matter is, Radezky wanted to incorporate "all real estate property" into the interpretation as an ambiguous but not irreconcilable term into what the Will declared & what Washburn would receive. (CP 206-209).

The third term that would be dealt with is the legal description, "Sec 21 Twp 35 Rge 40 NW ½ - SW ¼ ." (Ex. 101).

First of all it is clear according to testimony from Radezky and Washburn, the legal description definitely was not discussed at all between Radezky (RP 383, 391, 395, 437), and Washburn (RP 94). Radezky has established prior to this section that Washburn refused and failed to communicate with her (RP 413, 414) even as late as February 2009 (417, 421, 422). That is not what they agreed to (Ex. 7).

Whiting v Armstrong *supra*.

The Court has deemed this description as specific, clear, and unambiguous in earlier hearings (RP 36, 38, 40, 12-01-2009 hearing), (RP 13, 6-8-2010 hearing), (RP 475, 474). The Court contradicted itself by supporting the Respondent's theory that the legal description is "flawed" {Conclusion of Law B5, (CP 299)}. The theory arose from the Respondent's attorney, David McGrane (RP 501, 505, 507, 508) from his closing arguments that have no basis and is his own opinion. Mr. McGrane wants to expunge the legal description from everything (RP 513), because he is focused on one ambiguity "all real estate property". (RP 514, 515).

The Court said it well in a prior hearing that stipulated that if the only real estate that Robert Washburn owned was in section 21, then the legal description would be all inclusive and that would be the end of the matter. If there was other real estate beyond section 21 then it would be another matter all together. (RP 38, of the 12-01-2009 hearing). The court identified that the aerial map (Ex. 8, 10) that was in the possession of Robert Washburn clearly identifying the line between Sections 20 and 21 (Findings of Fact No. B) (CP 293) (RP 517). Due to that-unequivocal fact alone, that the Will (Ex. 101) does not even identify Section 20 in Keith Washburn's bequeathment, this would automatically pass at a minimum Section 20 to Radezky unto her as a remaining asset. It does not require a Philadelphia lawyer to figure this out once one has a minimal education on understanding and reading real estate legal descriptions.

In order to include Section 20, the drafter (Robert Washburn) would have to write another independent sentence to produce the description: Sec 20 Twp 35 Rge 40 E ½ SE ¼ (Ex. 4). As you review this Ex. 4, the first sentence identifies the

real property that was quit claimed back to Robert Washburn after his divorce from Charleen Washburn, and it says the same thing as the sentence that says: The East ½ of the Southeast ¼ , Section 20, Township 35, Range 40 E.W.M. The point is, Robert Washburn made no mistake in his deliberation as to what he bequeath to Keith Washburn. (RP 491). Robert Washburn either had some document possibly the Assessor's Notice (Ex. 11), or he just knew how to describe and cite land descriptions (RP 492). I am not sure why the Court would conclude that the legal description was "flawed" or insufficient to relay the correct nomenclature needed to define a piece of specific property {Conclusion of Law B5 (CP 299)} without any Findings of Fact to back it up, but it did, choosing to ignore specific or unambiguous language and upholding general or ambiguous terms (RP 517, 518). The Trial Court and Washburn contended the legal description was flawed.

There are two types of legal descriptions and different ways to express these sentences.

- 1) Tabular form: Which is found in (Ex. 11-Assessors notice of change of value). You will notice that to the right of Parcel # 2667300 the layout conforms as follows:

"Sec: 21 Twp: 35 Rng: 40
 21 35 40
 Less RD NW ¼ SW ¼
 SW ¼ SW ¼"

And then review (Ex. 11- parcel summary) located on the following page for parcel 2667300 also written in Tabular Form but written differently, the layout is as follows:

"Parcel number: 2667300 Sec/Twp/Rng: 213540
Site address: 691 Hwy 20 E, Colville
Legal Description: NW4 SW4; SW4 SW4, ls rd

Tax payer: Robert D. Washburn"

- 2) The narrative or written form: Which is found in (Ex. 3-Right of Way Easement).

"That portion of the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 21, Township 35 North, Range 40 E.W.M., lying North of the county road".

All three of these descriptions although written differently say the identical same thing, and identify the exact same piece of property. You will notice in the 3rd description terms have been combined. Anytime a description utilizes the same quarter within the same quarter you can refer to it as a half, analogous to a math equation $\frac{1}{4} + \frac{1}{4} = \frac{1}{2}$. So with the tabular form the description would be arranged in order as Section Township Range, this order precedes the specific legal description like this:

"Sec 21 Twp 35 Rng 40 W $\frac{1}{2}$ SW $\frac{1}{4}$ ". There are no comas or periods used with the tabular form because this can cause it to mean something else entirely different and the legal description in the tabular is read from right to left, no need to put the words "of the" between it is understood. The advantage of the tabular form allows the legal description to be shortened dramatically from the narrative written form. The legal description of the property is slightly separated from the identification of the Section, Township, and Range. For the most part the Section Township Range can be abbreviated (as Sec Twp Rng or S T R) and should be put in this order S T R or it can be arranged as T R S. You can see in the Summary of Assessors Parcel # 2667300 document (Ex. 11) (written in Tabular Form) that it is different than the Assessors Notice of Change of Value document (Ex. 11). Again displayed

in two different ways but they mean and read the exact same: Sec/Twp Rng:

213540 = Sec: 21 Twp: 35 Rng: 40.

There are a variation of ways to write legal descriptions, as long as the fundamental rules are observed and all the components are there. The different written ways can mean and identify the exact same piece of property, and provide an exact location as well without any contradictions. This is the case with the description that Robert Washburn wrote in his Will (Ex. 101). The only difference between the legal description that was used above as an example is that the an "N" (which stands for North) was inserted before the "W ½" and Robert Washburn added a slant line "/" between the "N" and "W ½". So it was written like this: "Sec 21 Twp 35 Rng 40 N/W ½ - SW ¼" (Ex. 101). Now this legal description could have been written in six (6) different ways as such without compromising it's ability to be correct:

1) Sec 21 Twp 35 Rng 40 N W½ SW¼; **2)** Sec 21 Twp 35 Rng 40 N½ W½ SW¼; **3)** Sec 21 Twp 35 Rng 40 W½ SW¼ the portion lying and being north of state road 20 (Ex. 28-Warranty Deed book 88); **4)** Sec 21 Twp 35 Rng 40 W½ SW¼ lying north of the county road; **5)** That portion of the West half of the South West quarter of Section 21, Township 35 North, Range 40 E.W.M., lying North of the County road, in Stevens county, Washington (Ex. 3); **6)** That portion of the W½ of the SW¼ Section 21, Township 35 North, Range 40 E.W.M., lying north of the county rd. (Ex. 3).

The "N" designates the portion that is North of the county road, because the west half is naturally divided by highway 20. As these legal descriptions are put together, the more describers (like SW¼) the less land it describes, and conversely so, the less amount of describer's written, the more land it describes. For example had Robert Washburn left out the description "W ½ SW ¼" and only wrote "all real

estate property Sec 21 Twp 35 Rng 40" Keith would have inherited all of Section 21 of the estate. If Robert Washburn Will (Ex. 101) defined only "All Real Estate Property" Keith would have inherited all the real property in Section 21 & Section 20. All six of these cites would be interpreted the same way describing the same exact piece of land yielding the exact same results of being able to locate the exact piece of property on an Ariel map. Robert Washburn chose the shortest way to describe a piece of property that he bequeathed to his son Keith Washburn as his sole and separate property (separated from the remaining property that Radezky was to receive). (Ex. 101). (CP 198-208). The slant line "/" and the dash line "-" is not even necessary for this legal description to be accurate and correct, and it's presence does not change the legal description in anyway or alters it's correctness or validity. The Court misconstrued the legal description as "flawed". There is no basis for this conclusion and it certainly was not founded on any reliable fact or evidence to support the Courts conclusion. Attorney Mr. McGrane's declaration is only based on his opinion (RP 501, 505, 507, 508).

SUB-ISSUE D. Did the Court error in interpreting only certain personal property items, instead of all remaining assets that include all personal property and any portion of real property to Melody Radezky that was not given to Keith Washburn.

This issue involves Assignment of Error two(2), seven(7), eight(8), nine(9), eleven(11), thirteen(13), fourteen(14), fifteen(15), sixteen(16). The Conclusions of Law are not supported by the Findings of Fact, and are contradictory with each other.

The Will (Ex. 101) stipulates that anything that may not pertain to land specific to real estate bequeathed to Keith Washburn is certainly to be distributed to

Radezky under the provisions of “the remaining assets of my estate I, bequeath to my Daughter Melody Ann Radezky”. (Ex. 101). This was stipulated in the {Findings of Fact No. F (CP 295)} & {Conclusions of Law No. B4 (Cp298)}. The Court Stipulated that Radezky and Washburn agreed to settle their father’s estate according to the Will. {Conclusion of Law No. A (CP 297)} (RP 394, 440). According to the Will (Ex. 101) that should be the end of it. Radezky testified and believed that she should have inherited all the personal property (RP 39, 393, 449, 454) (CP 37) and real estate not specifically included to her brother.

The Court has entered Findings of Fact and Conclusions of Law contrary to the correct interpretation of the Will (Ex. 101) or erred in the above named Findings of Fact and Conclusions of Law, concluding that Radezky is entitled to all remaining assets that include all personal property {Findings of Fact No. I (CP 298)}, {Conclusions of Law No. B4, B5, C (CP 298)} and Ruling (CP 299), and NOT “certain items of personal property including hutch & remaining firearms”, NOT “personal property, namely all liquid assets, most vehicles, most firearms, and other assets of particular value”, NOT “certain items of personal property, namely silver bullion, and the coin collection sets”, NOT “items of personal property including silver bullion and coin sets”. The beginning part of the Courts interpretation is correct, but the Court took the liberty to declare other additions with contradicting interpretation to Robert Washburn’s all inclusive bequeathment of remaining assets to Radezky. Instead of the Court trying to define or constrict the personal property, the Court should have declared the remaining assets as all personal property, the end. If there is any question as to what a true definition is the Court should have

relied on WAC 458-12-005 and RCW 84.04.080, these codes define and lay out what is personal property. The Trial Court should have kept the personal property to "all" instead of defining and constricting it to "certain, namely". The Court's explanation of resistance to not follow the unsigned handwritten will's interpretation when Radezky and Washburn demanded the Court adhere to the Waiver (Ex. 7) is unconscionable and is not acceptable.

All the personal property has not been given to Radezky at the time of the trial (RP 8, 16, 6-8-2010 hearing), (RP 40, 54, 55), (RP 97, 113, 152, 153, 161, 162, 163, 166), (RP 443, 445, 450), but should be have been given to Radezky without contest, unconditionally and without delay according to the Waiver (Ex. 7) and Will (Ex. 101). In fact that is still true today, most personal property is being withheld even when the Court has ordered Washburn to turn the personal property over to Radezky.

The three thousand (3000) ounces of silver bullion (Ex. 14, 20) issue was dropped by the Trial Court as a matter to be dealt with by another hearing. There is no basis for this except that Washburn does not want to be held accountable for this property, because Keith Washburn believes it is his based on his own unilateral decision ("in his mind") because it is in the ranch house (RP 152, 162). The silver bullion (Ex. 14, 20) along with the box containing the coin proofs & uncirculated coin sets (Ex. 19, 20) that was located on May 30, 2004 in the pantry (Ex. 14), were gone when the inventory was done (when attorney's were present) on October 6, 2009 (RP 204, 205, 207, 208).

During the hearing on 6-8-2010, Washburn argued to eliminate the number of ounces for the bullion silver quantity, and eliminate the wording, "their present and or equivalent value in money" (RP 4, 5, 6-8-2010 hearing) from the Proposed Trial, Findings of Fact, Conclusions of Law and Ruling (CP 258-266) (CP 266 primarily), alleging that it was never argued it court, never tried etc.. Radezky's counsel argued this issue completely (RP 9, 10, of the 6-8-2010 hearing), and now is become the law of the case (RP 11, of the 6-8-2010 hearing). The Court wanted to leave those original terms in because he was concerned that the silver bullion could be missing after so much time had elapsed from the May 30, 2004 finding and the October 6, 2009 inspection (RP 221, 278, 279, 280, 284, 285). The Court was partly right in it's initial impression. The order should have been left as written in the [proposed] TRIAL, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING (CP 261, 299). The Court says, "all personal property" was to go to Melody Radezky (RP 8, of the 6-8-2010 hearing) as all remaining assets (CP 265, Conclusion of Law No. B4). This necessarily and specifically includes the three thousand (3000) ounces of silver bullion located originally in the pantry (Ex. 14, 20) (CP 261 under Findings of Fact No. F). The value stipulated in Conclusions of Law No. C "Melody is due... the silver bullion and the coin sets, or their present value" and "The items (should be ALL) of personal property, including (should be 3000 ounces) silver bullion and coin sets or their equivalent in money, shall be delivered or paid to Melody Radezky" should be enforced in an order.

CONCLUSION

The court erred in ruling that all real estate would be awarded to Keith Washburn. The Family Settlement Doctrine was not invoked and at best the parties only agreed that the handwritten instruments would be honored, there was no other agreement.

The Trial Court's decision should therefore be reversed reconciling the Robert Washburn Estate, awarding Keith Washburn the North portion of the W1/2 of the SW ¼ of Section 21, township 35 North, Range 40 East, W.M., in Stevens County Washington, as described in the Will (Ex. 101), or the North portion of the parcel that the house sits on (if Washburn has changed any legal descriptions in the interim). Radezky should be awarded ALL personal property and quick claimed the remainder of the real estate not awarded to Keith Washburn. If the personal property is converted by Washburn that the Court grant judgment for the present value thereof.



Respectfully Submitted
Melody Radezky Appellant
34518 N. Short Rd.
Deer Park, WA. 99006
(509) 276-7892

APPENDIX

1

LAST will
of
Robert Dale Washburn

Exh 101

I, Robert Dale Washburn, of 691 Hwy 90 East Colville, Stevens County, Washington being over the age of Twenty-one years to-wit Seventy one years of age, AND NOT Acting under duress, Fraud, menace or undue influence of any person or persons. Whomsoever, do make, publish and declare this to be my LAST will AND Testament, hereby ANNULING, CANCELLING AND REVOKING ANY AND ALL wills AND Codicils thereto, heretofore made by me AT ANY time.

Article I - Family

My immediate Family consists of my son Keith C. Washburn (born May 31, 1957) my daughter Melody Ann Radezky (born July 9, 1959) Keith Reside in Colville, WA, Melody Ann in Deer Park, WA,

Article II Executrix - or Executor

I, hereby nominate AND appoint Dorothy M. Spuler of 1060 So. Main Space #5 Colville, WA. Executrix of this my LAST will AND Testament. In the event that she shall fail, refuse or be unable to act AS Executrix hereunder, then in that event I nominate LARRY Vining of 731 Henry Road Colville, WA.

As Executor, I direct THAT NO Bond
be Required of either in Acting
As Executrix or Executor hereunder, And
that my Estate be Settled in the manner
provided for in this Will without the
Intervention of any Court or Courts,
Insofar as may be conformable to the Law
providing that my Executrix or my
Executor MAY in her or his discretion
Submit in the Court proceedings for
the probate of my Estate, a final
Accounting of Administration, without
limiting the generality of the foregoing,
my Executrix or my Executor shall,
in carrying out the provisions of this
Will and in otherwise administering my
Estate, have Full and plenary power,
Authority and discretion, without Court
Authorization, Confirmation or Intervention
to do all that may, to her or to it seem
Necessary or desirable in managing,
Conserving and distributing the Assets
of my Estate during the Administration
Hereof.

- Requests and Devises -

If my son survives me for the
space of four Calendar months, then
in that event, I give, devise and

bequeath to my son Keith C. WASHBURN
All Real Estate property - Sec 21 Top 35
Rq 40. NW 1/2 - SW 1/4 AS his sole AND
Separate Property - the Char-Mel Ranch

To my special friend Dorothy M.
Sphaler I, bequeath Ten thousand
DOLLARS

The Remaining Assets of my Estate
I, bequeath to my Daughter Melody Ann
Radezky - I, leave it up to my son
and daughter to provide for my
Grand children.

The foregoing instrument consisting
of 2 pages, of which this is the last, was
on this day of - 2004, signed by Robert
D. WASHBURN, a man of sound and disposing
mind and memory and declared by him
to be his last will and testament, in
the presence of us, the undersigned, who
at his request and in his presence, and
in the presence of each other, have
subscribed our names as witnesses
to such last will and testament,
together with our addresses respectively

In Witness Whereof I have hereunto
Set my hand to this my last will
and Testament consisting of 2 pages, of
which this is the last, on this day
of 2004 in Colville, Stevens County
Washington

On this day Personally Appeared
before me Robert D. Washburn to me
known to be the Individual Described
in and who Executed signed the same
of his own Free will

Dated this — DAY of —

Notary Public in and for
the State of Washington
Residing in Colville, WA

APPENDIX

2

5/30/2004

Waiver To Accept Present Written Will

I/We Melody Radezky and Keith Washburn rightful heirs to the estate of Robert D. Washburn do hereby agree fully, unconditionally and without any contest to accept the will that was written by our father Robert D. Washburn on or about March 2004. This will was not dated or signed, but to the best of our knowledge represented his last wishes in the division of his estate. This will was filed with the Superior Court of Stevens County. We therefore submit our signatures as to our agreement and fix them before a notary as to their authenticity.

Keith Washburn
Keith Washburn

11-11-04
Date

Melody Radezky
Melody Radezky

11-11-04
Date

STATE OF Washington COUNTY OF Spokane

On this 11th day of November, (year) 2004, before me personally appeared the foregoing statement, and acknowledge the execution of the same as a free act and deed for the purpose therein named.

My commission expires 4-01-08

J. Marie Stauffer
Notary Public
residing in Deer Park