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NO. 65578-7-I

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

NANCY BECKER,

Petitioner,

vs.

JENNIFER C. RYDBERG, as Guardian ad
Litem for Barbara Becker, a minor child,

Respondent.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Catherine Jane Becker, Carol-Lynne Janice Becker and Elizabeth Diane Becker, Decedent's adult children ("Adult Children"), respectfully request that the Court deny Nancy Becker's ("Nancy") appeal and confirm the trial court's order holding that Nancy Becker Lacks Standing to Argue Any Issue Regarding the CR2A Agreement of Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate ("Order") issued on May 20, 2010 by Judge Cayce of the King County Superior Court.¹ Judge Cayce carefully crafted the Order to limit Nancy's role in the Estate to areas wherein she holds a beneficial interest. Contrary to her assertions, the Order is not overly broad. Nor does the Order deprive her of the opportunity to be heard when she has a beneficial interest. Instead, the Order merely confirms longstanding jurisprudence, namely, that only real parties in interest to a dispute have standing to participate in it.

From the onset, the Adult Children beg the Court's indulgence as they argue in the alternative in this brief. This form of argument arises because a premarital agreement, which limited or prohibited the creation of the very community property interests that Nancy initially claimed

¹ Throughout the brief, Nancy Becker is addressed as Nancy. No disrespect is intended. The use of first names in the briefing in this matter arose because it was difficult to distinguish between Dr. Virgil Becker, Jr. (the Decedent), and Dr. Nancy Becker in a concise way.

before the Commissioner as the primary basis for her standing in this matter, was produced by the successor personal representative (“PR”) *after* the Motion for Discretionary Review was granted (although the PR discovered the agreement and discussed it with Nancy’s counsel well *before* oral argument to the Commissioner). Then, although Nancy therefore knew of the agreement well prior to the submission of her Amended Appellant Brief (“Initial Brief”) to this Court, she failed even to mention it in that brief, continuing to argue throughout, as she had to the Commissioner, that her alleged community property interests grant her standing in this matter. *See, e.g.*, Initial Brief at p. 18-20 (“Nancy’s very real interest in how the community property is administered and distributed in the estate is easily sufficient to give her standing under common law standing principles.”)

Faced with new, possibly determinative evidence, the Adult Children filed a Motion for Admission under RAP 9.11 (“RAP 9.11 Motion”) to admit the premarital agreement and remand to the trial court for additional discovery regarding it. In her response to that Motion, which came after her Initial Brief to this Court, and apparently realizing the jig was up now that the Adult Children had discovered the existence of the premarital agreement, Nancy switched tracks entirely, arguing that

“*[t]he character of the property under administration has no bearing on this issue [her standing under the trial court’s Order]. Nancy’s standing to participate in the will contest, and in any settlement of the will contest, arises because she is an heir of her husband’s estate in the event of intestacy.”²*

Faced with Nancy’s foxhole conversion, the Adult Children offered the Commissioner another means of addressing the belatedly produced premarital agreement. They proposed that Nancy be required to file a new Appellant Brief stripped of arguments that community property interests in the Estate grant her standing and instead relying as she now asserts is proper only on her alleged standing arising from her alleged role as a potential omitted spouse. In any event, given the array of issues arising from the belated production of the premarital agreement, the Adult Children requested that the Commissioner rule on the RAP 9.11 Motion thirty (30) days prior to requiring the Adult Children to respond on the merits of the underlying appeal.

The Commissioner’s first ruling on the RAP 9.11 Motion provided that the matter would be referred to “the panel that considers the appeal on the merits.” Several months of wrangling on other issues resulted in the

² Nancy’s Response to Motion for Admission of Additional Evidence, pp. 11-12.

appeal mistakenly being dismissed by Nancy's counsel and then reinstated in May. At that time, the Commissioner re-entered the order that the matter would be referred to the "panel that considers the appeal on the merits." The Adult Children believed that this was, in fact, a referral "to the judges" contemplated under RAP 17.2. Only upon contacting the Clerk did the Adult Children learn that the Court of Appeals did not plan to empanel the judges on the merits until all of the appellate briefing was filed. The Adult Children asked the Commissioner to clarify that she intended to require them to file a Response Brief that argued in the alternative, without knowing the full court record. A revised Order found that "[t]he motion to supplement is closing intertwined with the merits of the appeal, and the panel considering the appeal on the merits will be in the best position to decide whether to grant the motion to supplement the record and the effect of granting or denying the motion...I am not persuaded that it will be overly difficult to file respondents' brief that addresses the issues *with and without the additional evidence.*"³

Bowing to the Commissioner's instruction, this brief addresses the underlying legal arguments from two fronts: first, assuming for one reason or another that, as Nancy now asserts, community property is

³ Commissioner's Order entered June 3, 2011. (Emphasis added).

irrelevant to her standing under the Order on appeal, and that appeal instead rests on her alleged standing as an omitted spouse and/or her alleged interest in the manner in which the GAL in this case is paid; and second, addressing Nancy's arguments regarding community property as set forth in her Initial Brief, both with and without admission of the premarital agreement to the record on appeal. The Adult Children maintain that under either series of arguments, Nancy's position is unpersuasive and the trial court's order should be upheld.

II. RESPONSE TO ISSUES RELATED TO ASSIGNMENTS OF ERROR

The trial court did not err in entering an Order which confirms that Nancy Becker lacks standing to participate in litigation wherein she has no beneficial interest.

1. The trial court did not err in holding that Nancy lacks standing under TEDRA to be heard on whether the trial court has authority to and should approve a CR2A Agreement that purports to settle a Will Contest and various creditors claims between the Estate and Adult Children. The trial court decision was proper because Nancy necessarily has no standing to participate in a settlement that purports to resolve the Will Contest and creditors claims using only assets belonging to the

Decedent, not Nancy. The trial court's finding merely confirmed longstanding Washington law that only parties with standing may participate in litigation.

2. The trial court did not err in confirming that Nancy is not a party to the Will Contest under TEDRA and, consequently, those beneficially interested in the Estate may settle that litigation without her approval. Nancy is not a real party in interest under TEDRA because: i) she cannot claim any interest in Decedent's property merely because she is a surviving spouse (a position that Nancy apparently now agrees with); ii) she is not a beneficiary of the Will in probate; iii) she is not an omitted spouse because she is named in the Will in probate, and, furthermore, she is estopped by her own admissions and conduct from arguing that the omitted spouse statute could apply to her; iv) there is no scenario under which the Estate will pass intestate because if the Will in probate were thrown out the Court would probate one of Decedent's prior valid Wills. Therefore, the Court did not error in denying each of (i)-(iv) as a basis for standing under TEDRA.

3. The trial court did not err in rejecting Nancy's argument that merely because she fits within the statutory definition of "heir", she is an "heir *in this estate action*" for the purposes of TEDRA.

4. The trial court did not err in denying Nancy standing based upon her alleged “undivided interest in community property” in Decedent’s Estate. Nancy initially alleged that the mere theoretical possibility that the character of a portion of Decedent’s property might be “community” confers upon her standing to participate in the distribution of the Estate. However, she failed to disclose to the Court that she had executed a premarital agreement that limited, if not prohibited, the creation of community property – making this argument truly theoretical.⁴ Consequently, as Nancy herself later admitted, “[t]he *character of the property under administration has no bearing on this issue*. Nancy’s standing to participate in the will contest, and in any settlement of the will contest, arises because she is an heir of her husband’s estate in the event of intestacy.”⁵ Community property claims are merely irrelevant red herrings in light of this admission.

Of course, the Adult Children believed the community property argument was baseless from the onset, as Washington law provides that Nancy no longer holds any undivided community property interests with Decedent. Immediately upon his death, the community entity dissolved and the community character of any property owned by Decedent and

⁴ That agreement is discussed in detail in Sections III & IV.B.3.

⁵ Nancy’s Response to Motion for Admission of Additional Evidence, pp. 11-12.

Nancy ceased to exist. Nor do the underlying facts before the Court support the existence of any community property. And, consistent with these facts, the premarital agreement confirms both Nancy and the Decedent's intent to avoid the creation of community property. This entire community property argument is hypothetical and not based in any facts currently before this Court or likely to be introduced to this Court. As Nancy now admits, her alleged community property interests do not confer standing upon her to insert herself in the settlement of claims only against Decedent's estate, particularly when such settlement does not purport to allocate with specificity any of Decedent's assets, community or separate, to the beneficially interested parties.

III. RESTATEMENT OF THE CASE

A. Decedent's History and Assets.

Decedent died on July 27, 2008. Nancy, his surviving spouse and PR, admitted to probate a Will which named Barbara Becker, his youngest daughter, as his *sole* beneficiary.⁶ Decedent's Adult Children challenged the Will as invalid and fraudulent.⁷ In addition, they asserted fourteen creditors claims. Nancy rejected every claim. She also vigorously defended the Will in probate, repeatedly affirming that she believed that

⁶ CP:1-11.

⁷ CP:15-29.

Decedent intended for Barbara to receive the *entirety* of his probate estate.⁸

At the time of his death, Decedent owned the following assets subject to probate: a rental house in Auburn as his separate property,⁹ minimal publically traded stock interests, his medical practice and associated accounts¹⁰, a separate property interest in the Trident Trust LP, a separate property interest in the Trident Management Group LLC¹¹, tangible personal property, and one-half of Doctors Becker LLC. Doctors Becker LLC, owns residential real property on San Juan Island, a large custom-built residence in Auburn and a medical building with an assessed value of \$2.5 million. The LLC Agreement prohibits assertions of individual interests in the underlying property held within the LLC by any

⁸ CP:44. Nancy included this declaration in the clerk's papers; however, it is and has been the subject of a as yet undecided motion to strike under Washington's Dead Man's Statute filed by Respondents on February 8, 2009. Consequently, Respondents refer only to the specific portions of the declaration which are not barred by the Dead Man's Statute and do not waive any pending objections to the admission and use of the document as competent evidence in this litigation.

⁹ Several years prior to Decedent's death, Nancy quitclaimed the entirety of her interest in the Auburn house, including all after-acquired interests, to Decedent. CP:140.

¹⁰ Nancy failed to mention this asset in her recitation of Decedent's assets. At the time of her removal, Nancy acknowledged that she misappropriated assets from Decedent's medical practice accounts. The premarital agreement clearly states that both Decedent and Nancy intended for their medical practices to remain their separate property.

¹¹ Nancy also failed to mention this asset in her recitation, although she acknowledged that both the Trident Trust LP and Trident Management Group LLC belonged to Decedent as his separate property. CP:154.

member of the LLC.¹² Furthermore, the LLC Agreement requires Nancy, as the surviving member, to pay out Decedent's interest in the LLC to his estate within six months of his death.¹³ Consequently, there is no ongoing joint ownership of the LLC interests.

B. Nancy Asserts Baseless Interests in Decedent's Property.

Through documents produced in discovery, the Adult Children learned that Nancy undervalued their father's estate by several million dollars, claiming for herself both separate and community interests in property wholly without legal basis – instead, discovery showed that the characterization of those interests sprung merely, and literally, from what Nancy and her accountant made up.¹⁴

In addition, the Adult Children learned much later that Nancy's initial responses to discovery obfuscated the truth. From the onset of the probate, she denied the existence of any agreement between herself and Decedent regarding character of property, even in the face of a request for production of documents that asked for precisely all such agreements.

¹² CP:79.

¹³ CP:71-115, 84.

¹⁴ The effect of Nancy's mischaracterization was to claim as her own millions of dollars of assets that otherwise passed to *her daughter* under the Will in probate that she purported to vigorously defend. Her repeated protestations that such defense, and the instant appeal, were and are for her *daughter's* sake therefore ring hollow to this day. CP:121 (p. 50-51); CP:123 (p. 141:21-23); CP:124-125; CP:156; and CP:79.

However, a premarital agreement existed and had been used by Nancy and Decedent, only one year prior to his death, during an IRS audit.¹⁵ That premarital agreement limited, if not prohibited, the creation of community property. Despite this, since the onset of the probate, up to and including her briefing to this Court, Nancy has simply acted as though the agreement did not exist.¹⁶ By denying the existence of the premarital agreement and ignoring the express provisions of the LLC Agreement, Nancy claimed, to the detriment of the Estate and her own daughter, several million dollars in non-existent community and separate property interests.

The Adult Children first became concerned about Nancy's mischaracterization of assets primarily because of the LLC Operating Agreement and publically recorded deeds, as they were at that time still ignorant of the existence of the premarital agreement. However, in the Spring of 2009, prior to obtaining any of this information, the Adult Children had agreed to mediate following discovery. Thus, despite the Adult Children's concerns about the mischaracterized assets, in December

¹⁵ App-1. This document was submitted to the Court of Appeals with the RAP 9.11 Motion. *See* RAP 9.11 Motion, p. 5-6 & 12-14 for a discussion of the history of this agreement.

¹⁶ The Court will search in vain for any mention of the premarital agreement in Nancy's Initial Brief. Thus, the premarital agreement is now the subject of a pending motion for admission pursuant to RAP 9.11 which the Commissioner transferred to this panel for consideration in conjunction with this briefing on the merits.

2009, Barbara (via her court-appointed GAL), Nancy and the Adult Children mediated their disputes. As noted above, at that time the Adult Children were aware of some aspects of Nancy's malfeasance (although not her hiding of the premarital agreement) but hoped that settlement would lead to a global resolution.

C. Nancy Impedes Settlement and Is Removed as Personal Representative.

Although Nancy refused to actively participate in the mediation, the GAL and the Adult Children negotiated a settlement that encompassed the Will Contest and the creditors claims.¹⁷ A CR 2A Agreement memorialized the settlement, and divided the Estate into two equal shares, with one share for Barbara and the other share to be further subdivided among the three Adult Children. The Settlement Agreement did not purport to divide any particular assets of the Decedent between his children or decide the character of any particular asset. In deference to the Court's plenary powers under TEDRA, the Agreement contemplated Court approval, either directly or via a representative.

Nancy refused to execute the Agreement in her role as PR. The GAL and Respondents asked the Court for a court-appointed limited Co-PR to review and approve the agreement. Meanwhile, Nancy attempted to

¹⁷ CP:258-264 & Appendix to Appellant's Brief – 6-11.

remove the GAL. The Judge continued the hearing on the merits, mooted various associated motions, stayed the pending motions for summary judgment and set additional hearings for March 26, 2010.¹⁸

Briefing surrounding approval of the CR 2A Agreement and the GAL's removal crystallized Nancy's conflicts of interest and mismanagement of the estate. Accordingly, the GAL filed a Petition to Remove Nancy as PR. On March 12, 2010, the Court found that Nancy had four direct, irreconcilable conflicts with the Estate and removed her as PR.¹⁹ At the same hearing, the Court held that with Nancy's removal as PR, there was effectively no longer a pending motion to remove the GAL.

On April 9th, the Court appointed Ms. White as successor PR.²⁰ The Court also set a hearing on June 11th, anticipating presentation of "a CR 2A Agreement". Despite Nancy's removal as PR, and the fact that Decedent did not name her as a beneficiary of the Will that she vigorously defended, Nancy insisted that she participate in any settlement agreement involving the Estate. Essentially, this meant that Nancy could assure that

¹⁸ CP:742-743.

¹⁹ See March 12, 2010 Order, attached hereto as App-1-5. Although this order is referenced in Appellant's Amended Brief as CP:292, the order itself is not at CP:292. Because Appellant clearly cited to the order in her brief, Respondents believe this citation is an error and, consequently, supply the order to the Court in the Appendix as a document available to and considered by the trial court. In addition, Respondents included the order in their supplemental designation of clerk's papers filed with this brief in accordance with RAP 9.6.

²⁰ CP:746-749.

any attempt between the Adult Children and the Estate to settle matters would be thoroughly thwarted.

Unbeknownst to the Adult Children, throughout the month of May 2010, Nancy's counsel, who did not profess to withdraw from representing Nancy until May 28, 2010²¹, purported to *simultaneously* represent the successor personal representative. This conflicting representation ensured that the successor personal representative could not possibly receive independent advice about the terms of the proposed CR2A Agreement that would settle all of the Adult Children's claims against the Estate.

D. The Trial Court Determines that Nancy Lacks Standing to Thwart Settlement.

Nancy's repeated attempts to insinuate herself into the settlement process forced the GAL to petition the Court for a determination of Nancy's standing with regard to the approval of a CR2A Agreement that settled the claims of the Adult Children.²²

The trial court received extensive briefing on the roles of each of the parties and parsed thoroughly the basis for standing under the statute.²³

²¹ According to CR 71, Mr. Van Sieten, Nancy's counsel could not, in fact, withdraw from his representation until June 7, 2010, a mere four days before the hearing on approval of the CR2A Agreement. The notice of intent to withdraw was designated in Respondents' Supplemental Designation of Clerk's Papers and is attached for the Court's convenience as App - 7-8.

²² CP:173-183.

²³ CP:189-190, CP:204-214, & CP:215-229.

Nancy was represented by counsel throughout that litigation and had every opportunity to argue the alleged bases for her standing. The trial court found her arguments unpersuasive and determined that Nancy lacked standing to participate in the negotiations of a CR2A Agreement that resolved the Will Contest brought by the Adult Children, resolved the creditors claims of the Adult Children and distributed Decedent's Estate.²⁴

Complying with the Court's instruction from the April 9th hearing, the GAL and Adult Children then presented the CR2A Agreement for approval on June 11, 2010.²⁵ In accordance with the Order on Standing, Nancy was not provided with notice of this hearing. Nonetheless, she and her counsel assisted the successor PR in opposing the petition and attended the hearing.²⁶ The trial court did not rule on the CR2A Agreement at the hearing, but instead dealt primarily with procedural matters, such as the attempted representation of the new PR by Nancy's former counsel and the resignation of that individual.²⁷ Fee awards were expressly reserved.

²⁴ CP:230-232.

²⁵ CP:243-246 & CP:752-765.

²⁶ Initial Brief, p. 12, CP:779 (Nancy's counsel Ladd Leavens supplied a declaration in support of the successor PR's objection which has not been included in the clerk's papers before this Court but is referenced in the successor PR's Response to the Motion to Approve the CR2A Agreement and the Initial Brief) & VRP 33.

²⁷ CP:276-277.

Just prior to the hearing, the GAL provided the Court with sealed pleadings allegedly containing her analysis of the CR2A Agreement. None of the parties, except the GAL herself, were privy to the unredacted contents of the sealed pleadings and the Court acknowledged that it merely glanced through them for the purpose of considering whether the GAL acted beyond the scope of her responsibilities, although the Court reserved ruling on that issue. At the conclusion of the hearing, an agreed order sealed the redacted reports and returned the unredacted reports to the GAL.²⁸ The Court did not rule on anything dependent on or influenced by the contents of those reports. The Court did not rule on the character of assets held in the Estate. Furthermore, nothing in any order entered at that hearing mentioned Nancy in any way at all.

Nancy overstates the scope and effect of the Order on Standing. Contrary to the incomplete excerpts of the Order she quotes, the Order is carefully crafted to confirm only that Nancy is not a party with a beneficial interest in the subject matter of the particular proceeding and, consequently, lacks standing to participate. Under the trial court's order,

²⁸ CP:279-282. Appellant notes that the successor PR was not represented by counsel at the time she signed the stipulated order because her counsel had withdrawn during the hearing. However, Appellant fails to mention that the successor PR is an attorney who at that time signed all her own pleadings, even when she had counsel. CP:795.

her standing has and will continue to determine her participation. That is entirely proper.

Nancy spends eight pages of her Initial Brief to this Court detailing the events which occurred after the entry of the Order that she now appeals.²⁹ In fact, the only orders enforced since entry of the Order now under appeal are ones which Nancy expressly supported, namely payment of the successor personal representative and her counsel's fees. Furthermore, the Adult Children have not participated in any briefing since the June 11th hearing, other than to ask that the Court deny discretionary review of this matter and admit the belatedly produced premarital agreement via the RAP 9.11 Motion. Nancy was given notice and fully participated in the briefing and argument of both of those motions. Thus, there has been, as Nancy acknowledges in her Initial Brief, no motion filed or action taken for the purpose of making a distribution of Estate assets to any heir or beneficiary since the June 11, 2010 hearing.³⁰ In other words, *nothing* has happened since the entry of this Court's order which prejudices Nancy's alleged interests in the distribution of Estate property.

²⁹ Initial Brief, p. 10-17.

³⁰ Initial Brief, fn. 9.

In truth, Nancy consumes eight pages griping that the GAL is seeking her fees and clarification of her authority. However, it is entirely unclear how the Order now under appeal affects those pleadings. Nancy admits that she received notice of each pleading filed by the GAL regarding her fees and clarification of her powers.³¹ Nancy then responded to each pleading. Furthermore, Nancy filed her own motion seeking to nullify the acts of the GAL and terminate her employment in the trial court.³² The ultimate outcome of the Order now under appeal will not stop any of those actions from moving forward once this appeal is decided and the stay imposed under RAP 7.2 lifted. As Nancy has responded to each action after receiving notice, it is clear that the outcome of this Order will have no impact on whether Nancy has received notices and already filed pleadings regarding the perceived issues surrounding the GAL, her authority and her fees. Like so many things presented to this Court of Appeals by Nancy's appeal, this eight page summary is a red herring.

³¹ CP:893-900 & CP:472-493.

³² CP:290-331.

IV. ARGUMENT

A. **Standing is Granted Only to Real Parties in Interest with Legally Protected Rights.**

Underpinning each of Nancy's arguments to the Court of Appeals is a misguided understanding of what confers standing in litigation. By law, standing to sue requires the potential party to possess sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy, i.e., a *legally protected right*. See *Miller v. Campbell*, 164 Wn.2d 529, 192 P.3d 352 (2008), (wherein a debtor has no standing to sue to enforce a claim that belongs to his bankruptcy estate); *Mack v. Armstrong*, 147 Wn. App. 522, 195 P.3d 1027 (2008) (wherein a property owner was given standing to sue to enforce covenants in the plain language of the covenants). "Absent standing, [the court is] without subject matter jurisdiction to entertain the taking claim." *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wash.2d 542, 556-57, 958 P.2d 962 (1998).

Consistent with standing, albeit the product of a distinct legal theory, CR 17(a) requires that "every action shall be prosecuted in the name of the *real party in interest*." The "real party in interest" is the person who possesses the right sought to be enforced. *Sprague v. Sysco Corp.*, 97 Wn. App. 169, 982 P.2d 1202 (1999). TEDRA defines

“[p]ersons interested in the estate or trust” as “*all persons beneficially interested in the estate or trust*, persons holding powers over the trust or estate assets...” (emphasis added). Under Washington law, a “[b]eneficial interest has been defined as the profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control.” *Christiansen v. Dep’t of Soc. Sec.*, 15 Wn.2d 465, 467, 131 P.2d 189 (1942) (finding that a husband had no beneficial interest in his wife’s separate property that would preclude him from qualifying for government assistance). Nancy does not fit within TEDRA’s definition of a real party in interest because she lacks a beneficial interest.

The trial court carefully analyzed the origins of standing and concluded that Nancy lacked standing to participate in very specific aspects of the administration of the Estate. Nancy does not have a legally protected right in the Will Contest or creditors claims at issue. She is neither a beneficiary nor a creditor. Consequently, the distribution of the Estate, the issue addressed by the CR2A Agreement, will have no effect on her legal rights, or lack thereof, in *Estate* property. The parties fully briefed these alleged bases for standing before the trial court. The trial

court, with full access to the facts of the case, considered each of Nancy's arguments and found them unpersuasive.³³

Now Nancy assigns four issues of error to the trial court's decision. Each of those assignments ultimately predicates Nancy's standing on one or more of five theories: i) that Nancy and Decedent's Estate continue to own community property; ii) that Nancy and Decedent's Estate co-own, by community property or some of other form of co-ownership, nonfungible assets; iii) that Nancy's concerns with the actions of the Guardian ad Litem should grant her standing; iv) that Nancy could be an intestate heir of the Estate; and v) closely related to (iv), that Nancy could become an omitted spouse. As discussed below, each of these theoretical bases for standing is illusory, and was rejected by the trial court. Consequently, the "errors" of which Nancy complains are simply not errors at all.

B. Nancy No Longer Has Community Property Interests in Decedent's Property and, as Nancy Has Now Admitted, Such Interests Would Be Irrelevant in any Event.

Nancy's very first argument to the Court of Appeals is that "many" yet underdetermined community property interests grant her standing.³⁴

³³ The only notable exception to this statement is that the trial court did not know of the premarital agreement, a document which only strengthens the Adult Children's position and the trial court's ruling.

³⁴ Initial Brief, p. 18.

From this she concludes that she has a beneficial interest in the Estate, is a party per RCW 11.96A.030(5)(f), and has standing to participate in *any* settlement between the beneficiaries of the Estate and the Estate's creditors which may result in distribution of Decedent's assets.

Initially, it seems that Nancy's concern is that she may co-own real property with her "hostile" stepchildren. To illustrate this charade, she expounds upon a wholly hypothetical scenario in which she and Decedent owned, as community property, a residence. This is, of course, ridiculous given the facts of this case. Decedent's primary residence was, and is, owned by an LLC which, according to the terms of the Operating Agreement, precludes individual ownership of any underlying asset in it.³⁵ The only other residence Decedent owned at his death was a rental house owned as separate property. His separate property interest in that house is confirmed by a quitclaim deed Nancy signed, wherein she granted to Decedent all her current and after-acquired interest in the rental house.³⁶ Thus, while this hypothetical, namely the loss of Nancy's primary residence to her "hostile" stepchildren, may seek to tug at the heart strings and consumes two pages of Nancy's Initial Brief, it is pure fiction.

³⁵ CP:79.

³⁶ CP:140.

More importantly, despite the emotional appeal of this argument and its primary position in her Initial Brief, Nancy subsequently affirmatively stated before this Court that “[t]he character of the property under administration has no bearing on this issue [her standing under the Court’s Order]. Nancy’s standing to participate in the will contest, and in any settlement of the will contest, arises because she is an heir of her husband’s estate in the event of intestacy.”³⁷ Thus, not only is the “community property” theory of standing made up of whole cloth, **Nancy, now admits that alleged community property cannot be her basis for standing in this matter.** Having now admitted this to the Court of Appeals, Nancy is estopped from relying on community property as a basis for her “standing.” See generally *Cunningham v. Reliable Concrete Pumping, Inc.*, 126 Wn. App. 222, 108 P.3d 147 (2005) and *Ashmore v. Estate of Duff*, 165 Wash.2d 948, 205 P.3d 111 (2009).

The Adult Children agree with Nancy that community property has no bearing on the issues before this Court, and have argued such in the trial court and to the Commissioner. Had the Commissioner ordered Nancy to refile her Initial Brief stripped of the “community property” arguments as the Adult Children requested in their reply to the RAP 9.11

³⁷ Nancy’s Response to Motion for Admission of Additional Evidence, pp. 11-12.

Motion, further analysis of this issue would be unnecessary. However, because the Commissioner asked the Adult Children to brief the issues assuming both scenarios and the Order granting the Motion for Discretionary review rested almost entirely on Nancy's alleged community property interests, the following sections address the alleged community property issues on the merits.

1. *Community Property Terminates Upon Death, Thus Nancy Has No Ongoing Community Property with Decedent.*

Nancy's argues throughout her brief that she has "undivided community property interests" which grant her interests in *Decedent's* property. This argument fails. Washington law provides that "[u]pon the death of a spouse the *community entity is dissolved and the community character of property owned by the spouses ceases to exist.* The property, in reality, becomes 'plainly separate.' References to community property existing after the death of a spouse are made merely as an aid to administration." *Edmonds v. Ashe*, 13 Wn. App. 690, 695, 537 P.2d 812, 815 (1975)(emphasis added). "At death, the community is dissolved and the former community property becomes the separate property of the decedent's estate and of the surviving spouse. The decedent's one-half interest is subject to testamentary disposition." *Matter of Estate of Politoff*, 36 Wn. App. 424, 426-427, 674 P.2d 687, 689 (1984)(internal

citations omitted). Under this law, Nancy has no current undivided community property interest in Estate assets, even assuming that she and Decedent held community property at the time of his death, an assertion the court record does not support.

The termination of former community property upon death also means that contrary to her allegations, Nancy is not a party as defined by RCW 11.96A.030(5)(f). That statute specifies that a surviving spouse is only a party under TEDRA “with respect to his or her interest in Decedent’s property.” Because Nancy is not a beneficiary of Decedent’s estate and any undivided community property interests ceased to exist over two years ago upon Decedent’s death, as a legal matter, she maintains no interest in *Decedent’s property*.

2. *Under the Facts in the Record, Nancy Has No Community Property with Decedent.*

Leaving behind the purely legal arguments, the facts also illustrate that Nancy and Decedent did not own any community property at the time of his death. Decedent owned the Auburn rental house as his separate property, according to the deed which Nancy signed.³⁸ Even Nancy admits that he owned interests in the Trident Trust and Trident Management Group as separate property. Doctors Becker LLC was

³⁸ CP:140.

owned 50/50, and the certificates of membership interests identify the interests as belonging to each of Decedent and Nancy individually, not as community property.³⁹ Decedent maintained largely separate bank accounts and any accounts with Nancy were held in joint tenancy with right of survivorship; thus, as nonprobate assets, those accounts have no bearing on a settlement of probate assets. Simply based on the facts before the trial court, it was obvious that Decedent maintained his separate property and Nancy maintained her own.

3. *By the Terms of the Premarital Agreement, Decedent and Nancy Did Not Have Community Property.*

Decedent and Nancy not only maintained separate accounts, separate medical practices, and documented their property interests via deeds, they also executed a premarital agreement, the very agreement that Nancy failed to produce and then failed to mention to this Court in her Initial Brief. That Agreement expressly set forth their intent to avoid creation of community property. It explained that both Decedent and Nancy had been previously divorced and had recently gone through dissolution proceedings.⁴⁰ It confirmed that both Decedent and Nancy were surgeons and had real and personal property interests both in and

³⁹ CP:115.

⁴⁰ Decedent's divorce to Respondents' mother was final on 6/17/1993. Nancy's divorce, in which she was represented by counsel, was final on 6/10/1993.

outside of Washington State. The Agreement noted that Decedent had three children from a prior marriage, and expressly exempted Nancy from any support obligations for those children, for whom she retains the deepest antipathy. Importantly in terms of the characterization of Decedent's and Nancy's property owned both prior to and during marriage, the Agreement stated:

Both undersigned Virgil V. Becker, Jr. and Nancy A. Johnson do hereby agree that their real and personal property, as well as, and including their business interests and professional practices shall, in whatever form that these businesses and professional practices shall evolve into, and the income derived therefrom, shall at all times, remain their individual sole and separate property. This shall be valid despite how much, or how little time is spent in these related activities. These separate property assets shall not be considered in any evaluation of wealth or income for purposes of property division in the eventuality of dissolution or for application of debt of one party to this agreement to the other. Both Virgil V. Becker, Jr. and Nancy A. Johnson agree that all payments for and management of their individual separate property assets will be construed to be derived from their separate property sources *and a community of interest will not be created unless specifically stated in writing, signed by both parties.*⁴¹

By its terms, the premarital agreement prohibited the creation of community property, except by written agreement. No written agreements

⁴¹ App. - 6 (Premarital Agreement) (emphasis added).

to create community property regarding any assets included in Decedent's estate have been produced and none are in the record before this Court.

Moreover, Nancy cannot testify as to the parties' intent with regard to the creation of the Premarital Agreement or any associated discussion between herself and Decedent in which she might otherwise allege that, in violation of the agreement, they created community property by oral agreement.⁴² Washington's Dead Man's Statute bars Nancy from testifying as to the circumstances surrounding the execution of that Agreement or any subsequent discussion with Decedent regarding it. RCW 5.60.030. Absent competent evidence to the contrary, the premarital agreement can be interpreted only by its terms and those terms expressly confirm Decedent's and Nancy's intent to maintain separate property.⁴³

In light of the documents produced in this case to date, which clearly evidence, with or without the premarital agreement, that Decedent and Nancy did not hold community property at the time of Decedent's death, Nancy's entire argument that community property could, if it existed, grant her standing in this matter is akin to arguing the length of a

⁴² The enforceability of the premarital agreement is discussed in detail in the RAP 9.11 Motion pending before this Court.

⁴³ An intent she also clearly expressed by failing to allocate a community property interest in her medical practice or her separate bank accounts to Decedent.

unicorn's horn. While interesting, it matters not if the unicorn horn is one foot or six feet long if the unicorn itself is a fiction.

4. *Absent Community Property, Nancy's Standing Arguments as Set Forth in Three of her Four Assignments of Error Fail.*

Nancy argues that community property alone grants her standing to object to whatever distribution of assets the Estate ultimately determines is proper;⁴⁴ and to the sale of Decedent's assets to pay Estate expenses and creditors.⁴⁵ These arguments are the basis for her assignments of error 1, 2, and 4. However, once again, Nancy has subsequently asserted that “[t]he character of the property under administration has no bearing on this issue [her standing under the trial court's Order]. Nancy's standing to participate in the will contest, and in any settlement of the will contest, arises because she is an heir of her husband's estate in the event of intestacy.” For this reason alone, the Court should deny Nancy's assignments of error 1, 2, and 4.

To the extent that those assignments of error are considered, it should be clear that Nancy and Decedent no longer, if they ever did, share undivided interests in community property. Thus, there is no danger of the Estate selling assets in which Nancy claims a current interest in order to

⁴⁴ Initial Brief, p. 18-20.

⁴⁵ Initial Brief, p. 22.

make distributions to the beneficiaries, to pay creditors or to pay Estate expenses.

C. Nancy's Argument Regarding Co-Ownership of Real Property With the "Hostile" Beneficiaries is Fictitious.

The Initial Brief repeatedly refers to the possibility that Nancy could end up co-owning real property with hostile beneficiaries by virtue of the CR2A Agreement. But, the argument is wholly theoretical for four reasons. First, Nancy and Decedent did not co-own *any* real property at the time of his death; thus, even assuming that any former community property existed, there is no scenario in which Nancy could be forced to co-own nonfungible real property with the Adult Children.

Second, any former community property that Decedent allegedly owned with Nancy, in spite of the explicit terms of the premarital agreement, has been or must be liquidated for reasons independent of the administration of the Estate (namely the LLC Agreement) and are, consequently, entirely fungible. Nancy cannot claim she has a specific interest in a particular one dollar bill versus another. Perhaps what is hard to grasp at first glance is that unlike many probates, the surviving spouse in this probate is not a beneficiary of the Estate. Thus, there is no realistic scenario to which the distribution solution will be "the beneficiaries should receive some other asset as their share of the estate, so that the

surviving spouse can retain 100% ownership of the house.”⁴⁶ No matter how the assets are allocated, unless Nancy buys Decedent’s half of an asset from the Estate, she will not have 100% of whatever unnamed community property she claims to be so concerned about. Nothing in the CR2A Agreement impairs Nancy’s ability to purchase Decedent’s one-half interest in any asset from the Estate. If she is truly concerned about this issue, this solution to purchase is obvious, and independent of her standing in the Will Contest or Creditors Claims matters.

Third, the CR2A Agreement did not purport to grant any particular asset of the Decedent to any particular beneficiary; it merely allocated percentage interests in the Estate. Thus, it does not require the allocation of any particular property to Nancy’s stepchildren.

Finally, as Nancy is not a beneficiary of the Estate, she would *necessarily* ultimately own any property with someone other than herself, regardless of how the personal representative allocates the Estate assets among the beneficiaries. Furthermore, if Decedent and Nancy actually co-owned real property, the distribution that Nancy seems so concerned about would have, by operation of law, already occurred. RCW 11.04.250 provides that “[w]hen a person dies seized of lands, tenements or

⁴⁶ Initial Brief, p. 19.

hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his or her title shall vest *immediately in his or her heirs or devisees.*” Consequently, Nancy had and has no choice: as soon as Decedent died, *if* there were any co-ownership of any real property that Decedent and Nancy owned, Nancy *immediately* owned the property with Decedent’s beneficiaries. The trial court did not err in holding that Nancy’s supposed co-ownership of real property with Decedent does not itself grant her standing to participate in the Estate’s resolution of a Will Contest or creditors claims filed against the Estate. If she does not want to hold real property, assuming that there is any, with the distributee, she may initiate a partition action or exercise her rights as a co-tenant. Nothing in the Order impedes her rights as a co-owner of an asset distributed by the Estate.

D. Nancy’s Position as Surviving Spouse Does not Allow her to Subjugate the Rights of Creditors.

Nancy argues that she must have a say in what assets are sold from the Estate to pay expenses and creditors. The only reason articulated for this is that Nancy’s property may be subject to sale by the Estate. As set forth in Section B, that result is an impossibility because Nancy and the Estate do not continue to share “undivided community property.” Furthermore, even if they did, a surviving spouse cannot argue that the

creditor should be deprived of his recovery because full recovery will necessitate the sale of Estate assets.⁴⁷ Creditors must be paid. Washington courts unequivocally confirm that “the dissolving of the marital community by the death of the husband rendered the husband’s interest in the community property subject to the payment of his separate debts.” *In re McHugh’s Estate*, 165 Wash. 123, 129, 4 P.2d 834, 836 (1931). Furthermore, since 1891 Washington courts have confirmed that “when the community is dissolved by death, or in any other way, the interest in the property thereof of the party owing a separate debt, which interest is not required to pay the community debts, and not otherwise exempt, is held liable for such separate debt when the separate property is exhausted.” *Columbia Nat. Bank of Dayton v. Embree*, 2 Wash. 331, 336, 26 P. 257, 258 (1891). Thus, Nancy’s alleged former community property interests cannot stop the payment of proper creditors of the Estate or distributions to the beneficiaries – particularly since Nancy is neither a creditor nor a beneficiary.

⁴⁷ A surviving spouse could claim a homestead exemption thereby protecting certain assets from creditors, but Nancy failed to make such a claim and, such a claim is now time barred.

E. Frustration with the GAL Does Not Make Nancy an Interested Party.

Nancy argues that she is a “party” as defined by TEDRA, which under her interpretation necessarily makes her beneficially interested in the Estate, a real party in interest *and* confers standing.⁴⁸ Nancy tries to bootstrap herself into the definition of “party” under TEDRA by citing RCW 11.96A.030(5), which defines “parties” as “each of the following persons *who has an interest in the subject of the particular proceeding*” and proceeds to list an exhaustive list of candidates. Nancy cites, and seems to believe that she might be a party by operation of, subparts (f) & (i). However, merely falling within the subparts listed is not enough. The individual must have “an interest in the subject of the particular proceeding.” The very next definition in TEDRA, which Nancy fails to cite in her Initial Brief, further defines “[p]ersons interested in the estate or trust” as “all persons *beneficially* interested in the estate or trust.” RCW 11.96A.030(6) (Emphasis added). Consistent with Washington law and the definition of “a real party in interest,” under TEDRA, the person must be “beneficially interested” in the Estate to have standing. Nancy is not and therefore does not have standing.

⁴⁸ Nancy alleges that her position is “virtually identical” to that of the Adult Children. By no stretch of the imagination is her position in this Estate akin to

Nancy desperately wants to fit within the definition of an “interested party” because she views that as necessary in order to claim standing to object to the actions of the Guardian ad Litem (“GAL”). As is obvious from the fact that the conflict with the GAL dominates the statement of facts in her Initial Brief, Nancy is immensely frustrated with the actions of the GAL. However, she cites *only* to her concern that Estate assets, and later, “*community property*,” will need to be sold, without her input, to pay the GAL’s fees as a basis for standing.⁴⁹ As set forth in Sections B-D above, however, the payment of Estate expenses using estate assets does not grant Nancy standing in this matter.

Nancy makes much of the pleadings that have followed the entry of the Order on appeal. Specifically, she argues that she is unfairly prejudiced by the Order on Standing as to the subsequent orders related to the authority of and the fee award to the GAL. However, with counsel in tow, she attended each hearing subsequent to the entry of the Order. As to the appointment of counsel for the GAL and the associated fees requested by the GAL, Nancy briefed her concerns to the trial court, despite the fact that the GAL’s fees were sought from the Estate, not Nancy personally.

that of the Adult Children. Nancy did not file a Will Contest and the time for her to do so expired long ago. Nor is she a creditor of the Estate.

⁴⁹ Initial Brief, p. 22.

The Estate was perfectly capable of responding to the GAL's motion and did. Then, Nancy's objections to the GAL's motions were noted in the trial court's order. As the trial court clearly received and considered Nancy's arguments, there is no basis to argue that the trial court's subsequent orders were improperly "infected" by the Order Determining that Nancy Becker Lacks Standing to Argue any Issue Regarding the CR 2A Agreement of Heirs to Resolve Will Contest and Creditors Claims and Distribute Estate ("Order on Standing").

Nancy then filed an appeal of the GAL's fees and obtained a stay of the proceedings under RAP 7.2. Thus, as of today's date, there is no identifiable harm to Nancy arising from the Order on Standing as it relates to the issues related to the GAL. To the extent that this Court feels it advisable to clarify Nancy's standing as it might apply to further briefing regarding the authority of the GAL *alone*, the Adult Children believe that could be beneficial.

F. Nancy is Not an Intestate Heir or Omitted Spouse.

Nancy cites two final theoretical scenarios as to why she should be treated as a party to the Will Contest and, consequently, any CR2A Agreement that would settle it: i) as an intestate heir and ii) as an omitted spouse. In fact, based upon her response to the RAP 9.11 Motion which

stated that “Nancy’s standing to participate in the will contest, and in any settlement of the will contest, arises because she is an heir of her husband’s estate in the event of intestacy,” *these are now the only two bases which could actually confer standing upon her*. However, the trial court already analyzed these issues and Nancy knows that under no circumstances will either of the theories change the result here. The trial court’s decision was correct.

1. Nancy Cannot Inherit Intestate in this Estate.

The intestacy claim is another example of arguing over the size of a unicorn horn. The parties already filed with the Court multiple original prior valid Wills of the Decedent. If the Adult Children’s Will Contest is successful, the doctrine of dependent relative revocation would apply and the Estate will pass under the terms one of those prior Wills. *In re Kerckhof’s Estate*, 13 Wash.2d 469, 473, 125 P.2d 284, 286 (1942) and *In re Estate of Bowers*, 132 Wn. App. 334, 345, 131 P.3d 916, 922 (2006). Washington courts explicitly disfavor intestacy, and there are multiple prior valid Wills of the Decedent on file with the Court. Therefore, Nancy cannot inherit intestate. *In re Riemcke’s Estate*, 80 Wash.2d 722, 728, 497 P.2d 1319, 1323 (1972) (“There is a presumption in favor of testacy and against intestacy.”)(Decedent named in her Will her parents as the primary

beneficiaries of her Estate and her sibling as the secondary beneficiary if Decedent's parents predeceased her; when her parents renounced their interest in the estate, the court passed the estate to the secondary beneficiary named in the Will rather than to Decedent's husband via intestacy, holding that the testator's intent was paramount).

2. *Nancy Cannot Claim She is an Omitted Spouse.*

Perhaps recognizing that intestacy is a theoretical fiction for this Estate, Nancy then argues that if the Adult Children's Will Contest was successful and a prior Will admitted to probate, she would be entitled to her "omitted spouse" share. RCW 11.12.095 entitles a spouse, who is not mentioned in a Will executed prior to the date of marriage, to a rebuttable presumption that he or she is entitled to his or her intestate share. That presumption may be overcome by evidence that Decedent intended an alternate result. With the facts currently before the court, there is no possibility of Nancy successfully asserting a claim as an omitted spouse: first, because the claim is not ripe; and second, because Nancy is estopped by her prior pleadings from claiming any interest as an omitted spouse.

a. *An Omitted Spouse Claim is Not Ripe While the 1999 Will Remains in Probate.*

Nancy admitted Decedent's 1999 Will to probate, where it remains. Nancy has not challenged the 1999 Will and the time for her to

contest the Will has now passed. The 1999 Will specifically identifies her as Decedent's spouse but it makes no provision for her. Thus, Nancy is not an omitted spouse. According to this Court "[i]n performing an analysis under RCW 11.12.095, we first ask if the will names or provides for a spouse. See RCW 11.12.095(1). If the spouse is named and provided for, then the spouse is not omitted *and the inquiry ends.*" *In re Estate of Moi*, 136 Wn. App. 823, 829, 151 P.3d 995, 997 (2006)(emphasis added). Thus, under Washington law, this Court need only determine that Nancy is named in the Will in probate. She is. The analysis under the omitted spouse statute stops there.⁵⁰ Nancy cannot claim standing under it.

⁵⁰ Nancy cites to several out-of-state cases to support her position that she is an interested party under RCW 11.04.015 and RCW 11.12.095. However, those cases cannot be applied to overcome existing Washington law that is directly on point. Furthermore, each of those cases is distinguishable. In *Thomas v. Best*, 209 Va. 103, 161 S.E.2d 803 (Va. S. Ct. 1968), which has been cited only by Virginia courts, the appellate court remanded to the trial court to reinstitute a Will Contest and terminate a settlement agreement entered into by some of the parties because not all the parties, in the same statutory class, received notice of the suit and, consequently, due process rights were invoked. Similarly, in *Gravier v. Gluth*, 126 N.E.2d 332, 163 Ohio St. 232 (Ohio S. Ct. 1955), the Court refused to assert jurisdiction in a Will Contest when the petitioner failed to serve all the necessary parties as defined by the statute. The same was true in *McFadden v. McFadden*, 257 P.2d 146, 174 Kan. 533 (Kan. S. Ct. 1953), where the party initiating the suit inexplicably failed to serve two of the seven siblings and the Court found it lacked jurisdiction over those individuals. In each of those cases, individuals who were not served were unaware of the suit, were members of the same class as parties that were served, and the argument before the Court was based upon due process and jurisdiction. First, there is no jurisdictional or due process argument before this Court. Unlike each of the examples above, Nancy was not unaware of the pending litigation. She was personally served with the pleadings. After defending the 1999 Will and the creditors claims for over a year cannot she can hardly claim ignorance of the suits. Second, all of the

Furthermore, the 1999 Will will remain in probate if the CR2A Agreement proposed to the Court, or one substantively similar to it, is approved. Unless and until the 1999 Will is removed from probate, in fact, a claim as an omitted spouse will *never* be ripe.

In this way, the Adult Children's claims are readily distinguishable from Nancy's claims. The Adult Children filed a Will Contest. They have a current dispute with the estate and one which was timely filed. Nancy did not file a Will Contest and is now time-barred from doing so. It is left to the Estate to decide how to address the Adult Children's challenge to the Will in probate, whether it be by further litigation or settlement. Nancy cannot claim she is entitled to participate in that process when she has no current interest in the dispute. Furthermore, the Adult Children have standing in the Estate arising from their role as creditors. Nancy has already admitted that she does not have standing as a creditor and is not seeking to assert standing in that litigation.⁵¹ This admission is wholly confusing in light of Nancy's earlier claims that she is entitled to participate in settlement negotiations with creditors because the

parties in *Thomas* stood on equal footing and their claims were ripe. Nancy and the Adult Children are not on equal footing. Unlike the Adult Children, Nancy is not a petitioner in the Will Contest and has not filed a creditors claim against the Estate. Moreover, she is time-barred from either action now. And again, under Washington law, Nancy's claim that she is an omitted spouse is not ripe. *In re Estate of Moi*, 136 Wn. App. 823.

⁵¹ Initial Brief, fn. 12.

payment of creditors claims may dissipate her assets.⁵² Nancy simply cannot have it both ways; she cannot agree on one hand that she has no standing in the creditors claim litigation, while on the other claiming to be a party to any settlement of those claims.

b. Nancy is Estopped from Challenging the Will and Claiming an Omitted Spouse Share.

Assuming that the 1999 Will were overturned, Nancy would be estopped from claiming any rights as an intestate heir or omitted spouse. For almost three years, Nancy unswervingly stated that her husband intended to leave her nothing. She has vigorously defended a Will which grants her nothing and has stated in her own briefing that he intended for her to inherit nothing from his estate. Her Initial Brief again confirmed that “Nancy believes, based upon the facts of which she is aware, that the will admitted to probate is valid.”⁵³ Thus, Nancy herself has rebutted the presumption that the omitted spouse statute could apply and she is estopped from now claiming standing as an omitted spouse in the pending Will Contest.

⁵² Initial Brief, p. 24.

⁵³ Initial Brief, fn. 11.

G. Nancy Becker was not an Heir “in this Estate Action.”

Finally, Nancy argues that the trial court erred because she is an heir as defined by RCW 11.02.005, and the Order contradicts that statute. A closer look at the Order reveals that Nancy ignores the text of the Order, or simply misreads it. The text of the Order that forms the basis for Nancy’s objection reads “Nancy Becker is not an heir or beneficiary of the Estate, and has no legal interest in the decedent’s property, *in this estate action.*” The trial court interlineated the italicized language. The notation modifies the entirety of the prior sentence and is critical when read in conjunction with the definition of a “party” under TEDRA. By operation of RCW 11.96A.030(5), Nancy may be an “heir” per RCW 11.02.005 but is not a party with standing in this estate action because she lacks “an interest in the subject of the particular proceeding.”⁵⁴ Nancy cannot claim any legally protected interest in the settlement between the Estate and the Adult Children merely because she meets the definition of heir in RCW 11.02.005. She is, in fact, not an heir *in this estate action*. The trial court did not contradict an existing statute or otherwise err. To the contrary, the court carefully interlineated the language necessary to clarify its intent.

⁵⁴ See discussion *infra* Section IV.E of parties with an interest in the subject matter of the proceeding.

H. The Court Should Award the Adult Children Fees from Nancy Personally Arising from Her Failure to Produce the Premarital Agreement and Contradictory Arguments on Appeal.

As Nancy noted in her Initial Brief, the Court may award fees from any party to any party under RCW 11.96A.150. Nancy argues that she is entitled to fees from the Adult Children and GAL. She seems to believe that the GAL should be punished for trying to settle the Estate and preserve the assets for Barbara and meanwhile that the Adult Children should be punished for negotiating a CR2A Agreement which assigns any value to their fourteen creditors claims and Will Contest.

Frankly, Nancy's request for a fee award, in light of the fact that she withheld responsive documents from the parties, the trial court, the Commissioner and this Court, is ridiculous. Nancy wasted this Court's time, and the time and funds of the other parties, including the Estate, by hiding for over a year the existence of a premarital agreement. Even once it was "found," she failed to disclose it to the Court or parties. Despite having the premarital agreement in hand, she failed to reveal it during briefing or oral argument before the Commissioner (during which she relied almost exclusively on the existence of community property as her basis for standing) or when she filed her Initial Brief with this Court. In

fact, to this day, Nancy has not produced the premarital agreement; it was produced by the successor personal representative.

Nancy's actions forced Respondents to file the RAP 9.11 Motion. When faced with the reality of her situation--that she and Decedent could not have held community property at the time of his death--she decided to render moot, in its entirety, six pages of legal argument in her Initial Brief, and the foundation of three of her four issues of error, suddenly claiming that community property had "no bearing" on the issue of her standing. Nonetheless, she did not propose to enter a revised Appellant Brief. Instead, she forced the Adult Children, GAL and PR to go through the expensive and time-consuming exercise of responding on the merits to legal arguments that she expressly abandoned.

Nancy's tactics demonstrate not only bad faith and failure to act with candor toward a tribunal, they wasted the precious time and energy of the Court and the parties. It is appropriate for Nancy to pay the price that waste and for the Court to award the Adult Children's fees incurred in this appeal against Nancy personally.

V. CONCLUSION

Nancy was given a full opportunity to be heard; nonetheless she could not provide any basis for standing in the particular TEDRA

proceeding at issue. TEDRA, while broad, does not grant unlimited standing, nor do Nancy's personal feelings about the issues involved in this matter grant her standing to participate here. Absent a legal basis for standing, the trial court's Order must stand.

DATED this 1st day of July, 2011.

GARVEY SCHUBERT BARER

By 

Bruce A. McDermott, WSBA #18988

Teresa Byers, WSBA #34388

Attorneys for Adult Children

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APPENDIX

	NAME	DATE	PAGE
1.	Order and Findings Removing Nancy Becker as Personal Representative and Appointing Suzanne Paulus as Successor Personal Representative	Mar.12, 2010	A-1
2.	Premarital Agreement	July 5, 1995	A-6
3.	Notice of Intent to Withdraw	May 28, 2010	A-7

FILED

KING COUNTY, WASHINGTON

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SUPERIOR COURT CLERK

BY GINGER BARBER

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Superior Court of Washington
County of King

In re the Estate of:

Virgil Victor Becker, Jr.,
Deceased.

Catherine Jane Becker, Carol-Lynne
Janice Becker, and Elizabeth Diane
Margaret Becker,
Petitioners,

v.

Nancy Ann Becker, in her capacity as
Personal Representative of the Estate of
Virgil Victor Becker, Jr.,
Respondent.

No. 08-4-04979-2 KNT

Order and Findings Removing Nancy
Becker as Personal Representative
and Appointing Suzanne Paulus as
Successor Personal Representative

[Clerk's Action Required]

THIS MATTER, having come this day before the Court upon the Guardian ad
Litem's Petition to Remove Personal Representative Nancy Becker ("Nancy"); and having
considered Petitioners' and Respondent's Response and the Guardian ad Litem's Reply,
the file and records herein; and deeming itself duly advised in the premises, the Court

*Order and Findings Removing PR and
Appointing Successor.*
Page 1 of 5

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1 enters the following Findings of Fact and Conclusions of Law:

2 1. On or about April 4, 2007, Nancy and her husband, Virgil V. Becker, Jr.
3 ("Decedent") executed the Limited Liability Company Agreement for Doctors Becker, LLC
4 (the "LLC Agreement"): Nancy and Decedent were the sole Members and Managers of
5 Doctors Becker LLC (the "LLC").

6 2. Nancy and Decedent transferred three pieces of real property into the LLC:
7 improved real property with the street address of 1577 White Point Road on San Juan
8 Island, Washington, improved real property with the street address of 20833 SE 384th St.,
9 Auburn, Washington, and improved real property with the street address of 1427
10 Jefferson Avenue, Enumclaw, Washington.

11 3. Nancy contends the transfer of those three parcels into the LLC did not
12 remove any separate property interest she allegedly had in them whereas the LLC
13 Agreement provides that the LLC owns the property transferred into it and that its
14 members do not.

15 4. Nancy's claim of a separate property interest in assets owned by the LLC
16 puts her in direct conflict with the interests of the Estate.

17 5. Section 9.4 of the LLC Agreement required Nancy, as sole surviving
18 Member/Manager of the LLC, to engage an appraiser to determine the value of the LLC
19 as of the date of dissociation and to pay Decedent's interest, without discount, by
20 multiplying the agreed value of the LLC by the Percentage Interest being transferred.
21

22 6. Nancy has not obtained an appraisal to determine the value of the LLC as
23 of the date of dissociation, and she has not paid Decedent's Estate any amount for
24 Decedent's interest in the LLC. This creates a direct, irreconcilable conflict with the
25 Estate.

1 7. Nancy claimed a community property interest in improved real property with
2 a street address of 37605 160th Place SE, Auburn, Washington. The Estate's interest
3 stems from deeds that state that the decedent owned that property and any after-
4 acquired interests as his separate property. Nancy's claim of a separate property interest
5 in the property creates a direct, irreconcilable conflict of interest with the Estate.

6 8. Nancy has admitted she commingled Estate assets with her own assets and
7 that some Estate funds she used remain unreimbursed to the Estate. Those facts place
8 Nancy in conflict with the Estate.

9 9. Attorney's fees, GAL fees, and costs were incurred in seeking this relief.

10 The Court concludes that it is hereby

11 ORDERED, ADJUDGED and DECREED that:

12 1. Nancy Becker is hereby removed as personal representative of the Estate
13 in accordance with RCW 11.28.250 due to the direct, irreconcilable conflicts of interests
14 set forth herein.

15 2. Nancy Becker shall remain subject to the jurisdiction of this Court and
16 comply fully with the requirements of RCW 11.28.290;

17 3. The right of the Estate, via the successor personal representative, to bring
18 claims against Nancy Becker under Chapter 11 (including RCW 11.96A et. seq.) shall
19 remain undisturbed;

20 4. Nancy Becker shall not be discharged from any liability associated with her
21 actions as personal representative of the Estate or as a surviving member of any
22 business entity in which the Estate has or had an interest without the express findings of
23 the Court;

1 Copy received, Approved as to Form,
Presentation waived:

2
3 

4 Bruce A. McDermott, WSBA #18988
Kenneth L. Schubert, III, WSBA #27322
5 Teresa Byers, WSBA #34388
Garvey Schubert Barer
6 Attorneys for Petitioners

7
8 

9 Robert C. VanSiclen, WSBA #4417
VinSiclen, Stocks & Firkens
10 Attorneys for Nancy Becker

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27 *Order and Findings Removing PR and*
Appointing Successor
28 *Page 5 of 5*

JENNIFER C. RYDBERG
ATTORNEY AT LAW
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FAX: 253-862-0400
jenny@jclaw.com
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Prenuptial Agreement
Virgil V. Becker, Jr., and Nancy A. Johnson

The undersigned two parties, Virgil V. Becker, Jr., and Nancy A. Johnson, do hereby enter into this prenuptial agreement to establish and define their respective property interests that currently exist at this time prior to their marriage and that shall be established and continue as part of their marital relationship. Both parties to this agreement have previously been married and have proceeded through dissolution proceedings. It is understood and agreed that, having gone through these legal proceedings, a number of factors were applied that are not valid measures of value or wealth, such as "goodwill of business" and other legal theories that have little true practical meaning, and that by this agreement, the undersigned parties, Virgil V. Becker, Jr., and Nancy Ann Johnson do hereby attempt to come to determinations and agreement that are consistent with practical meaning and function.

Virgil V. Becker, Jr. is an Orthopaedic surgeon and an attorney. He has professional and business interests in Washington State and outside this state. He has real and personal property interests in Washington State and outside this state. He has three children by prior marriage.

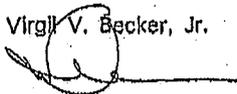
Nancy A. Johnson is an Ear, Nose, and Throat surgeon. She has professional and business interests in Washington State and outside this state. She has real property and personal property interests Washington State and outside this state. She has no children.

Both undersigned Virgil V. Becker, Jr., and Nancy A. Johnson do hereby agree that all their real and personal property, as well as, and including their business interests and professional practices shall, in whatever form that these businesses and professional practices shall evolve into, and the income derived therefrom, shall at all times, remain their individual sole and separate property. This shall be valid, despite how much, or how little time is spent in these relative activities. These separate property assets shall not be considered in any evaluation of wealth or income for purposes of property division in the eventuality of a dissolution, or for application of debt of one party to this agreement to the other. Both Virgil V. Becker, Jr., and Nancy A. Johnson agree that all payments for and management of their individual separate property assets will be construed to be derived from their own separate property sources, and a community of interest will not be created unless specifically stated in writing, signed by both parties.

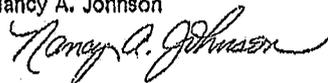
Both undersigned Virgil V. Becker, Jr., and Nancy A. Johnson agree to share household operating expenses, to be funded from their own separate property assets. Nancy A. Johnson, by this agreement, does not agree to accept financial responsibility for the three children of Virgil V. Becker, Jr.

Signed this 5th day of July 1995 in Auburn, Washington.

Virgil V. Becker, Jr.



Nancy A. Johnson



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IN THE SUPERIOR COURT OF KING COUNTY
IN AND FOR THE STATE OF WASHINGTON

In Re the Estate of

VIRGIL VICTOR BECKER, JR.,

Deceased.

CATHERINE JANE BECKER, CAROL-
LYNNE JANICE BECKER and ELIZABETH
DIANE MARGARET BECKER,

Petitioners,

v.

NANCY ANN BECKER, in her capacity as
Personal Representative of the Estate of Virgil
Victor Becker, Jr.,

Respondent.

No. 08-4-04979-2 KNT

NOTICE OF INTENT TO
WITHDRAW

- TO: THE CLERK OF THE COURT; and
- TO: BRUCE MCDERMOTT, attorney for Petitioners
- TO: JENNIFER RYDBERG, Guardian Ad Litem
- TO: JENNIFER WHITE, Personal Representative
- TO: LADD LEAVENS, attorney for Nancy Becker

NOTICE OF INTENT TO WITHDRAW
PAGE - 1

COPY

VAN SICLEN, STOCKS & FIRKINS
A Professional Service Corporation
721 45th Street N.E.
Auburn, WA 98002-1381
(253) 859-8899 • Fax (866) 947-4646

1 PLEASE TAKE NOTICE that the undersigned hereby withdraws as attorney of
2 record for Nancy Ann Becker as Personal Representative of the Estate of Virgil Victor
3 Becker, Jr. This withdrawal is effective immediately without order of the court unless an
4 objection to the withdrawal is served upon said withdrawing attorney within ten (10) days.
5

6 DATED this 28th day of May, 2010.

7
8 VAN SICLEN, STOCKS & FIRKINS.

9
10 
11 ROBERT C. VAN SICLEN, WSBA #4417
12 Withdrawing Attorney for Previous Personal
13 Representative Nancy Becker
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NO. 65578-7-I

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

NANCY BECKER,

Petitioner,

vs.

JENNIFER C. RYDBERG, as Guardian ad
Litem for Barbara Becker, a minor child,
CATHERINE JANE BECKER, CAROL-
LYNNE JANICE BECKER AND
ELIZABETH DIANE BECKER

Respondents.

CERTIFICATE OF SERVICE

Bruce A. McDermott, WSBA #18988
Kenneth L. Schubert, III WSBA #27322
Teresa Byers, WSBA #34388
GARVEY SCHUBERT BARER
Attorneys for Catherine Jane Becker,
Carol-Lynne Becker and Elizabeth Diane Becker

Eighteenth Floor
1191 Second Avenue
Seattle, Washington 98101-2939
206 464 3939

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUL - 1 PM 4:07

ORIGINAL

I, Jill M. Beagle, certify under penalty of perjury under the laws of the State of Washington that on July 1, 2011, I caused to be served on the persons below, in the manner indicated for each, true and correct copies of the following:

- Brief of Respondents; and
- This Certificate of Service.

Ladd B. Leavens
Davis Wright Tremaine LLP
1201 3rd Avenue, #2200
Seattle, WA 98101
Via Hand Delivery

Lance Losey
Ryan Swanson & Cleveland, PLLC
1201 3rd Avenue, Suite 3400
Seattle, WA 98101-3034
Via Hand Delivery

Patricia H. Char
K&L Gates LLP
925-4th Avenue, Suite 2900
Seattle, WA 98104-1158
Via Hand Delivery

Dated this 1st Day of July, 2011.


Jill M. Beagle

SEA_DOCS:967041.1

CERTIFICATE OF SERVICE