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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Court of Appeals No. 71732-4-I

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THE ESTATE OF VIRGINIA J. JEPSEN, Deceased, JULIE MILES,  
Personal Representative,

Appellants,

v.

MACK JEPSEN, an individual,

Respondent,

---

SUPPLEMENTAL BRIEF OF PETITIONER—ESTATE OF JEPSEN

---

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ORIGINAL

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## I. INTRODUCTION

This case presents an opportunity for this court to clarify the proper analysis of subject matter jurisdiction in will contests and other special statutory proceedings. In an unpublished decision, the Court of Appeals in this cause properly recognized that will contests are governed by statute. But it went on to hold as a matter of first impression that the personal service requirement added to the will contest statute in 2007 is not mandatory, goes to the court's personal jurisdiction over litigants instead of to the court's subject matter jurisdiction, and is subject to waiver. In doing so, the Court of Appeals erred.

Virginia Jepsen passed away in November 2011 and her will was admitted to probate on December 20, 2011. CP at 1. Less than four-months after Ms. Jepsen's will was admitted to probate, counsel for her adult son, Mack Jepsen, e-mailed a copy of Mr. Jepsen's will contest petition to the attorney for Ms. Jepsen's estate (the "Estate"). CP at 68. Counsel for the Estate was not authorized to accept service on the Estate's behalf. CP at 68, 122-28, 173-77; *but see* CP at 107-08. Further, there is no acceptance of service in the record. Mr. Jepsen did not personally serve the personal representative of the Estate at any time. CP at 66. After more than four-months since Ms. Jepsen's will was admitted to probate and a further 90-days after Mr. Jepsen had filed his will contest

petition had passed, the personal representative of the Estate had still not received personal service. Thus, the Estate moved to dismiss Mr. Jepsen's will contest, arguing that the superior court lacked both personal and subject matter jurisdiction. CP at 54-64. While the superior court originally concurred with the Estate, on reconsideration, it denied the Estate's motion to dismiss, concurring with Mr. Jepsen that any jurisdictional objection that the Estate had had been waived because the Estate did not raise it in its answer as required by CR 12. *See* CP at 242-43, 266-67. The Estate sought discretionary review, which was granted. CP at 268. On discretionary review, the Court of Appeals, Division One held in favor of Mr. Jepsen. *See* Appendix A. This court accepted review and should reverse the Court of Appeals' opinion and hold that the superior court lacks the authority to consider Mr. Jepsen's will contest based on his failure to comply with the statutory directives.

## **II. ARGUMENT**

Will contests are special proceedings that are strictly governed by the mandates of RCW 11.24.010, thorough which the Legislature has properly and reasonably limited the superior court's subject matter jurisdiction. Without recognizing the special, statutory nature of will contest proceedings and without analyzing this court's recent line of decisions refining the analysis of subject matter jurisdiction, the Court of Appeals

concluded that the will contest statute's instruction that the petitioner personally serve the personal representative goes only to the court's personal jurisdiction over the parties and is subject to waiver. In doing so, the Court of Appeals erred. This court should reverse the Court of Appeals and should hold that: (1) strict compliance with all directives of RCW 11.24.010 is mandatory and jurisdictional; (2) the statutory directives of RCW 11.24.010 constitute reasonable statutory limitations on the superior court's broad subject matter jurisdiction over probate matters generally; (3) absent strict compliance with RCW 11.24.010, Washington courts lack the power to adjudicate will contests; and (4) the mandates of RCW 11.24.010 cannot be waived.

A. *A review of chapter 11.24 RCW and cases interpreting it shows that will contests are special statutory proceedings and strict compliance with the directives of RCW 11.24.010 is mandatory and jurisdictional.*

Will contests are special statutory proceedings, which "must be governed by the provisions of the applicable statute." *In re Estate of Toth*, 138 Wn.2d 650, 653, 981 P.2d 439 (1999); *In re Estate of Kordon*, 157 Wn.2d 206, 209, 137 P.3d 16 (2006); RCW 11.96A.090. Where statutory language is plain and unambiguous, Washington courts must derive the meaning of a statute from its language alone. *Shoop v. Kittitas Cnty.*, 149 Wn.2d 29, 36, 65 P.3d 1194 (2003). In interpreting the meaning of

Washington's will contest statutes, our courts have long acknowledged that the statutory requirements of RCW 11.24.010 are "jurisdictional." *State ex rel. Wood*, 76 Wash. 27, 30-31, 135 P. 494 (1913); *Kordon*, 157 Wn.2d at 214; *In re Crane's Estate*, 15 Wn. App. 161, 162, 548 P.2d 585 (1976).

For example, in analyzing former RCW 11.24.010 (1971), the court in *Crane* held that failure to strictly comply with the statutory directive that all will contests must be filed within four-months of a will being admitted to probate deprives the court of the authority to consider the will contest and the probate or rejection of the will would be final and binding. *See Crane*, 15 Wn. App. at 164-65. Although the *Crane* Court did not specifically use the term "subject matter jurisdiction," its holding went to subject matter jurisdiction because failure to strictly comply with the statute would "deprive the court of jurisdiction" to decide the case. *Id.*

Similarly, this Court's *Kordon* opinion acknowledged that former RCW 11.24.010 (1994) required strict compliance and was jurisdictional, observing that a court "has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." 157 Wn.2d at 214 (quoting *State ex rel. Wood*, 76 Wash. At 653). The *Kordon* Court, however, went on to address former RCW 11.24.020 (1965)(emphasis

added), which required a person contesting a will to have a citation (*e.g.*, summons) served on all “executors, administrators, and legatees” of the will but provided no specific timeline for issuance of the summons and imposed no explicit consequence for noncompliance. *See* 157 Wn.2d at 209-10. The *Kordon* Court held that failure to comply with former 11.24.020 (1965) “deprives the court of personal jurisdiction over the party denied process.”<sup>1</sup> 157 Wn.2d at 210. The version of RCW 11.24.020 that the *Kordon* Court analyzed is no longer in effect. Indeed, shortly before this court issued its opinion in *Kordon*, the Legislature substantially amended RCW 11.24.020, clarifying that it relates solely to notice to interested parties and *not* to a court’s authority to act. RCW 11.24.020.<sup>2</sup>

Then, after *Kordon*, the Legislature substantially amended RCW 11.24.010; as amended, it states:

If any person interested in any will shall appear within *four months immediately following the probate or rejection thereof*, and by

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<sup>1</sup> But, as recognized in a recent Division Two opinion, *In re Estate of Harder*, -- Wn. App. --, 341, P.3d 342, 345-46 (2015), even the *Kordon* Court acknowledged that RCW 11.24.010 went to the superior court’s subject matter jurisdiction.

<sup>2</sup> RCW 11.24.020 now states:

Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in RCW 11.96A.030(5).

petition to the court . . . contest the validity of said will . . . he or she *shall file a petition*. . . .

*For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed not to have been commenced for purposes of tolling the statute of limitations.*

*If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.*

RCW 11.24.010 (emphasis added).

In this case, the Court of Appeals erred by imposing this court's *Kordon* analysis of former RCW 11.24.020 regarding personal jurisdiction onto RCW 11.24.010, which has long been recognized as limiting the superior court's subject matter jurisdiction. Further, the Court of Appeals erred by overlooking the special statutory nature of will contest proceedings, failing to draw on precedent regarding will contests and other analogous statutory proceedings, summarily determining that some—but not all—directives of the will contest statute are mandatory, and holding that RCW 11.24.010's recent amendment requiring personal service on the personal representative within 90-days after filing the will contest petition went to personal jurisdiction instead of subject matter jurisdiction.

*B. The directives of RCW 11.24.010 constitute reasonable statutory limitations on the superior court's generally broad subject matter over probate matters.*

The term "jurisdiction" refers to a court's power to decide a case.

*Buecking v. Buecking*, 179 Wn.2d 438, 446, 316 P.3d 999 (2013).

Although the case law regarding jurisdiction in Washington and throughout the country has inconsistently defined and applied the concept, "jurisdiction is comprised of only two elements: jurisdiction over the person and subject matter jurisdiction." *Id.* at 447. Personal jurisdiction refers to the court's authority over the litigating parties and is subject to waiver. *See Skagit Surveyors & Eng'gs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). Subject matter jurisdiction, however, refers to a court's ability to decide a type of case and cannot be waived. *Id.*

*i. Recent case law is reinvigorating the analysis of subject matter jurisdiction.*

Both the United States Supreme Court and this court have actively worked to clarify past "drive-by jurisdictional rulings" and to delineate the difference between true issues of subject matter jurisdiction and other, nonjurisdictional limits on a court's authority to act in a particular case. *See e.g., Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160-74, 130 S.Ct. 1237, 176 L.Ed.2d 18 (2010); *Buecking*, 179 Wn.2d at 446-55. This

recent line of cases has largely analyzed the distinction between matters of subject matter jurisdiction versus procedural or time-based prerequisites to litigation<sup>3</sup> that regulate the timing or sequence of litigation without affecting a tribunal's authority to decide a matter. *See Id.*

Here, the appellate court looked to older, less precise authority regarding subject matter jurisdiction and conducted only a cursory analysis. Thus, the opinion below misapplies the law regarding subject matter jurisdiction and will contests. The consequence of the Court of Appeals' misguided analysis would be dire: it would permit a will contest (a disfavored and strictly statutory proceeding) to continue despite the court's lack of subject matter jurisdiction resulting from the petitioner's failure to abide the statutory mandates. This court should reverse and, in doing so, should clarify the proper analysis of subject matter jurisdiction in the context of will contests.

*ii. The Legislature may impose reasonable statutory limitations on a court's subject matter jurisdiction.*

A court's subject matter jurisdiction can derive either from the state constitution or a statute. Wash. Const. art. IV, §6; *see also Residents Opposed to Kittitas Turbines v. State*, 165 Wn.2d 275, 295, 197 P.3d 1153 (2008). The analysis of a court's subject matter jurisdiction begins,

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<sup>3</sup> Referred to by the United States Supreme Court as "claim processing rules."

however, with the state constitution. *Buecking*, 179 Wn.2d at 449. Article IV, section 6 of the Washington State Constitution grants to our superior courts:

[O]riginal jurisdiction in all cases at law [that] involve the title or possession of real property . . . cases in which the . . . [amount] in controversy amounts to three thousand dollars *or as otherwise determined by law* . . . [and] all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for.

(Emphasis added). In its recent *Buecking* decision, this court observed that this constitutional grant of authority endowed superior courts with original jurisdiction in the types of matters specified, like probate matters, but also “provides some flexibility to the [L]egislature to direct which courts may have jurisdiction.” 179 Wn.2d at 449-50. Although the Legislature cannot deprive Washington courts of their constitutionally-granted subject matter jurisdiction, *it can* “prescribe prerequisites to a court’s exercise of its constitutionally derived jurisdiction.” *Buecking*, 179 Wn.2d at 448. Such jurisdictional prerequisites properly include reasonable regulations that do not purport to divest the court of its subject matter jurisdiction because the Legislature may “expand and shape jurisdiction consistent with our constitution.” *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm’n*, 173 Wn.2d 608, 617, 268 P.3d 929 (2012); *see also Buecking*, 179 Wn.2d at 449. Indeed, “the [L]egislature can place some limits on the exercise of a superior court’s

original jurisdiction provided that the limitations do not have the effect of depriving the court of that constitutional jurisdiction. When statutory procedural limits are imposed, they are prerequisites to the court's exercise of its jurisdiction." *Buecking*, 179 Wn.2d at 449.

Courts determine whether a statute is a reasonable regulation of jurisdiction and, thus, an appropriate limit on a court's subject matter jurisdiction by analyzing the statutory language, its context, and its historical treatment. *Reed Elsevier, Inc.*, 130 S.Ct. at 1246; *see also Buecking*, 179 Wn.2d at 449-55. If the statutory language clearly makes the limitation jurisdictional, courts respect that determination. *See Menominee Indian Tribe of Wisconsin v. United States*, 614 F.3d 519, 524 (D.C. Cir. 2010); *See also Buecking*, 179 Wn.2d at 450. But if the statutory language does not impose a clear jurisdictional limitation, then courts evaluate if the structure of the statute or precedent interpreting the statute nonetheless impose a jurisdictional limitation. *Id.*; *see also Arneson v. Arneson*, 38 Wn.2d 99, 100-01, 227 P.2d 1016 (1951).

For example, in *Shoop*, this Court analyzed whether former RCW 36.01.050 (1963) imposed a reasonable statutory regulation of the subject matter jurisdiction of Washington superior courts. *See* 149 Wn.2d at 33-38. The statute directed that: "All actions against any county may be commenced in the superior court of such county, or of the adjoining

county[.]” *Shoop*, 149 Wn.2d at33. The *Shoop* Court approved of precedent holding that this statutory language was “clearly” jurisdictional because “[t]he word commence means ‘[t]o initiate by performing the first act . . . [t]o institute or start.’” 149 Wn.2d at 36 (quoting *Cossel v. Skagit Cnty.*, 119 Wn.2d 434, 436-37, 834 P.2d 609 (1992)); *see also Gonzalez v. Thaler*, -- U.S. --, 132 S.Ct. 641, 647-50, 181 L.Ed.2d 619 (2012)(holding that statutory language that a district court’s final orders in habeas proceedings “shall be subject to review, on appeal, by the court of appeals” was jurisdictional).

Similarly, the plain statutory language of RCW 11.24.010 also goes to a court’s subject matter jurisdiction. The plain meaning of the statutory language means that, if a will contest petition is not filed within four-months *or* is not personally served on the personal representative within 90-days after filing, then the probate or rejection of the will *shall* be final and binding. If the probate or rejection of a will is final and binding, a will contest proceeding cannot be commenced. Thus, like the statutory language evaluated in *Shoop*, the language of RCW 11.24.010 establishes that it clearly implicates subject matter jurisdiction because it governs the court’s authority to act in will contests.

Moreover, even looking beyond the plain jurisdictional meaning of RCW 11.24.010, the context of its 2007 amendment and its historic

interpretation further support its jurisdictional nature. The context of the 2007 amendments to RCW 11.24.010 must be considered in light of the amended statutory language and applicable case law. For example, in *Toth*, this court acknowledged that the requirement in former RCW 11.24.010 (1994) that a will contest petition be filed within four months was a mandatory, absolute requirement. 138 Wn.2d at 654-57. Then, the *Kordon* Court addressed former RCW 11.24.020 (1065) and held that the citation requirement was essentially a notice provision and failure to issue a citation implicated only the court's personal jurisdiction over the parties entitled to—but not provided with—notice. *See* 157 Wn.2d at 209-10. Although the Legislature has substantially amended RCW 11.24.020 since *Kordon*, it remains a notice statute.

But, after *Kordon*, the Legislature specifically added a requirement to RCW 11.24.010 that the petitioner personally serve the personal representative within 90-days after filing the will contest petition or else the probate or rejection of the will “shall be binding and final.” The context behind the 2007 amendment to RCW 11.24.010 shows that the Legislature intended to make the personal service requirement mandatory and jurisdictional because it was aware of this court's holdings that the directives of RCW 11.24.010 are mandatory and went to the court's jurisdiction to consider the matter while the provisions of RCW 11.24.020

are neither mandatory nor implicate the court's authority to consider will contests. In that context, the Legislature's act of specifically adding a personal service requirement to RCW 11.24.010 shows that the personal service requirement—like the filing requirement—is mandatory and restricts the superior court's subject matter jurisdiction.

Similarly, precedent establishes that the directives of RCW 11.24.010 are not only treated as mandatory but also as implicating a court's subject matter jurisdiction. *State ex rel. Woods*, 76 Wash. at 30-31 (holding that “[w]here the statute authorizes the contest of a will, and specifies the time within which such contest may be instituted, the court has *no jurisdiction* to hear and determine a contest begun after the expiration of the time fixed in the statute.”)(Emphasis added); *Toth*, 138 Wn.2d at 656-57; *Crane*, 15 Wn. App. at 162-63 (noting that “*Jurisdiction* over a will contest is governed by RCW 11.24.010 . . . [and] the act of filing [a will contest petition] . . . vest[s] *jurisdiction* over the will contest in the superior court as of the filing date.”)(Emphasis added). These holdings are consistent with precedent interpreting Title 11 RCW generally and must be respected. *See e.g., Estate of Harder*, -- Wn. App. -, 341 P.3d 342, 344 (2015)(observing that “[a] superior court’s *jurisdiction* over nonintervention probate proceedings is limited and depends on the ‘legislative scheme.’”).

The plain language of RCW 11.24.010, the context in which the Legislature's 2007 amendments to RCW 11.24.010, and the historical interpretation of RCW 11.24.010 all require a conclusion that its statutory directives are mandatory and impose a limit on the superior court's subject matter jurisdiction over will contest proceedings. Thus, the Court of Appeals' summary holding that RCW 11.24.010's personal service requirement goes only to personal jurisdiction rather than subject matter jurisdiction is erroneous and must be corrected. This court should hold that all directives, including the personal service directive, are mandatory and limit the superior court's generally broad probate subject matter jurisdiction in the context of will contests.

*iii. Absent strict compliance with RCW 11.24.010, Washington courts lack the authority to exercise any jurisdiction over will contests.*

As will contests are special statutory proceedings, strict compliance with the requirements of RCW 11.24.010 is required. *Toth*, 138 Wn.2d at 653. Indeed, strict compliance with the instructions of RCW 11.24.010 is a jurisdictional prerequisite to initiating a will contest matter in the superior court. *See Crane*, 15 Wn. App. at 163.

Reading the requirements of RCW 11.24.010 as a prerequisite to the superior court's exercise of its subject matter jurisdiction is consistent with Washington courts' analysis of analogous statutory schemes. For

example, like probate matters, the state constitution grants the superior court original subject matter jurisdiction over matters of divorce. Wash. Const. art. IV; §6. Also like will contests, dissolution cases are special statutory proceedings in which the court cannot act beyond the statutory provisions. *See Arneson*, 38 Wn.2d at 100; *In re Marriage of Robinson*, 159 Wn. App. 162, 167-68, 248 P.3d 532 (2010). Within this framework, Washington courts have analyzed RCW 26.09.030, which authorizes the superior court to act in dissolution cases if a party files a petition to dissolve a marriage alleging that she is “(1) a resident of this state, or (2) a member of the armed forces and is stationed in this state, or (3) is married [ ] to a party who is a resident of this state or who is a member of the armed forces stationed in this state.” Our courts have held that the requirement that the petitioner or her spouse actually reside in Washington is a prerequisite to the superior court exercise of its subject matter jurisdiction over divorce cases. *Buecking*, 179 Wn.2d at 451-52.

Likewise, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), codified at chapter 26.27 RCW, provides that Washington courts may exercise their subject matter jurisdiction over child custody issues if Washington is the child’s “home state.” *In re Marriage of McDermott*, 175 Wn. App. 467, 474, 307 P.3d 717 (2013). The *McDermott* Court construed the UCCJEA as a reasonable restriction

on the superior court's *exercise* of its jurisdiction because Division One concluded that the Legislature cannot divest the superior court of its subject matter jurisdiction.<sup>4</sup> 175 Wn. App. at 479-82. Under the UCCJEA, the child's "home state" has "priority with respect to questions of the child's care and custody. . . . [and u]nless the courts of the home state decline to exercise that jurisdiction, no other state's courts may properly exercise jurisdiction." *Id.* at 485.

Similarly, our state constitution grants superior courts original jurisdiction over real estate disputes but, as special statutory proceedings, unlawful detainer actions require strict compliance with the statutory directives. *Hall v. Feigenbaum*, 178 Wn. App. 811, 818-19, 319 P.3d 61 (2014). The unlawful detainer statute requires delivery of proper notice on the tenant before an unlawful detainer action may be commenced. *See Id.* A landlord's failure to strictly comply with the pre-filing notice requirements renders her unable to "avail [herself] of the superior court's jurisdiction." *Id.* Thus, the statute sets forth specific prerequisites to the court's subject matter jurisdiction. *See id.*

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<sup>4</sup> In this case, Division One relied heavily on its 2013 *McDermott* decision in concluding that the Legislature cannot restrict the superior court's original subject matter jurisdiction in probate matters. As discussed above, this conclusion departs from the holdings of Washington and federal courts holding that the Legislature can enact reasonable limitations on the superior court's subject matter jurisdiction. In any event, the *McDermott* opinion supports the Estate's argument that the superior court lacked the authority to act absent strict compliance with the will contest statute.

As with dissolution, child custody, and unlawful detainer cases, the will contest statute sets forth specific statutory directives that must be strictly followed as a prerequisite to a petitioner availing himself of the superior court's subject matter jurisdiction. Thus, because Mr. Jepsen failed to strictly follow the directives of RCW 11.24.010, he cannot avail himself of the superior court's subject matter jurisdiction. The Court of Appeals erred in holding that the will contest statute's specific directives went only to personal jurisdiction rather than to the superior court's subject matter jurisdiction *or* authority to exercise its subject matter jurisdiction. This court should reverse.

*C. The statutory mandates of the will contest statute cannot be waived.*

As discussed above, will contests are special statutory proceedings. As such, will contests are not subject to the civil rules—including CR 12(h)—where the civil rules differ from the specific statutory terms. *See* CR 81(a). Thus, Mr. Jepsen incorrectly argued that the Estate had waived its jurisdictional objection under CR 12. Rather than CR 12, case law regarding waiver of jurisdictional issues must guide this court's analysis.

Washington courts have been reluctant to waive jurisdictional requirements present in court rules. *See e.g., Scannell v. State*, 128 Wn.2d 829, 835-36, 912 P.2d 489 (1996); *Myers v. Harris*, 82 Wn.2d 152, 153-

55, 509 P.2d 656 (1973); *see also Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 113 Wn. App. 142, 154, 53 P.3d 44 (2002). But Washington courts are *extraordinarily reluctant* to waive “jurisdictional requirements embedded in statutes . . . .” *Lewis Cnty.*, 113 Wn. App. at 154. In the will contest context, this court has even held that not even factual inequities can “justify a circumventing a clear rule articulated by the Legislature.” *Toth*, 138 Wn.2d at 656. For example, this court has even refused to permit a will contest to proceed when it was not begun in strict compliance with the statute even when the will was procured through egregious fraud, undue influence, and duress such that the court posthumously nullified the decedent’s unsolumnized, fraudulent marriage under RCW 26.09.040. *In re the Estate of Lint*, 135 Wn.2d 518, 530-39, 957 P.2d 755 (1998).

Similarly, the nonclaim statute codified at chapter 11.40 RCW is analogous to the will contest statute. Like the will contest statute, the nonclaim statute is designed to protect estates from the uncertainties inherent of prolonged exposure to possible adverse claims. *See e.g., Messer v. Shannon’s Estate*, 65 Wn.2d 414, 415, 397 P.2d 846 (1964). Also like the will contest statute, the nonclaim statute is mandatory, strictly construed, and full compliance with its directives are prerequisites to recovery. *Id.* Further, this court has explicitly held that the nonclaim

statute cannot be waived. *Id.*; *Ruth v. Dight*, 75 Wn.2d 660, 669, 453 P.2d 631 (1969). This court should reverse the Court of Appeals' holding that the requirements of RCW 11.24.010 are subject to waiver. Instead, given the similarities between the statutory language, scheme, and purpose, this court should also hold that the mandates of the will contest statute cannot be waived.

### III. CONCLUSION

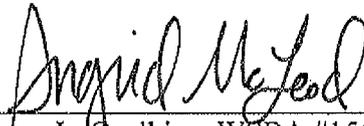
Because Mr. Jepsen failed to follow the will contest statute's mandate that he personally serve the Estate's personal representative within 90-days after filing his petition, he failed to abide by the clear terms of the statute. Because strict compliance with the terms of the will contest statute is mandatory and it represents a reasonable limitation of the superior court's subject matter jurisdiction, the superior court has no subject matter jurisdiction to consider Mr. Jepsen's will contest at this late juncture. Similarly, Mr. Jepsen's failure to follow the dictates of the will contest statute also mean that, even assuming the superior court had subject matter jurisdiction, it could not exercise that jurisdiction. Thus, Mr. Jepsen's will contest must be dismissed.

Alternatively, assuming that Mr. Jepsen's errors went to something other than subject matter jurisdiction, which is never subject to waiver, this court should still hold that all requirements of the will contest statute

are mandatory and cannot be waived. Therefore, whether this court resolves this case on subject matter jurisdiction, prerequisites to subject matter jurisdiction, or waiver, the result should be the same: Mr. Jepsen's will contest must be dismissed.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March 2015.

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**DECLARATION OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I caused to be delivered copies of the foregoing **SUPPLEMENTAL BRIEF OF PETITIONER—ESTATE OF JEPSEN** to the following recipients by the methods specified:

Washington State Supreme Court via Email

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DATED this 6<sup>th</sup> day of March 2015.

  
\_\_\_\_\_  
Jody M. Waterman

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**WA State Supreme Court Case #90874-5**

Attached for filing with the Supreme Court of the State of Washington, please find the Supplemental Brief of Petitioner – Estate of Jepsen.

I am filing this Supplemental Brief on behalf of:

**Susan L. Caulkins, WSBA No. 15692**  
**Ingrid L.D. McLeod, WSBA No. 44375**  
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Sincerely,  
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