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No. 94356-7

Court of Appeals, Div. III No. 340511

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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In the Matter of the Estate of:

Kathryn Joyce Rathbone

ESTATE OF KATHRYN JOYCE RATHBONE, TODD RATHBONE,  
Personal Representative,

Appellants,

vs.

GLEN L. RATHBONE,

Respondent.

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**ANSWER TO PETITION FOR REVIEW**

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## **I. RELIEF REQUESTED BY RESPONDENT**

Glen Rathbone, the Respondent in this Court and in the Court of Appeals, opposes the petition for review filed by Todd Rathbone, personal representative of the estate of Kathryn Joyce Rathbone. Todd has not shown any basis for this Court to accept review pursuant to RAP 13.4(b).

## **II. RESTATEMENT OF THE CASE**

Kathryn Joyce Rathbone executed a will on December 27, 2010 (CP 51) and died on January 31, 2013. The will named Ms. Rathbone's son, Todd Rathbone, the Appellant herein, as personal representative, and Todd has served as the estate's personal representative with nonintervention powers.

Todd, in his capacity as personal representative, misinterpreted a provision of their mother's will in a manner that reduced Glen's share of the estate by approximately \$233,333, to the benefit of Todd and Ms. Rathbone's other son, Doug. Todd's proposed distribution of the estate contradicted their mother's intent, and it constituted self-dealing and a breach of Todd's fiduciary duty as the estate's personal representative.

On December 23, 2014, Todd filed a declaration of completion of probate (CP 107) and a notice of declaration of completion of probate (CP 111). A letter from Todd's attorney accompanying the notice reflected Todd's misinterpretation of the will and the reduction of Glen's share of the estate. CP 20.

Todd threatened Glen with complete disinheritance if Glen dared to challenge Todd's misinterpretation of the will. The notice of declaration of completion of probate filed by Todd referred to the "no contest" provision in the will and threatened that the "Personal Representative will consider any objection to the Completion of Probate as a 'contest' of the Will ..." CP 112-13. In addition, the letter from Todd's attorney which accompanied the notice added the specific threat that the "Personal Representative will consider any objection to the Completion of Probate as a 'contest' of the Will as provided above and will distribute Glen's portion of the estate to the remaining beneficiaries." CP 20.

On January 20, 2015, Glen filed a petition for order approving the reasonableness of fees and requiring an accounting pursuant to RCW 11.68.110. CP 115. On January 22, 2015, Glen filed a summons and petition for order construing will pursuant to

the Trust and Estate Dispute Resolution Act (TEDRA), RCW 11.96A, seeking the proper construction of the will and the enforcement of Ms. Rathbone's intent as expressed in her will. CP 1, 3.

Glen's TEDRA petition recited the above facts, including Todd's intentional misconstruction of the will to increase Todd's own share of the estate, thereby reducing Glen's share of the estate by \$233,333, and Todd's use of threats and intimidation to prevent Glen from challenging Todd's self-dealing and violation of his fiduciary duties.

After a hearing on Glen's TEDRA petition, the trial court concluded that Todd's proposed interpretation of the will was inconsistent with Ms. Rathbone's intent. RP 45-47. Todd did not challenge these findings of the trial court, and such findings are, therefore, verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

On appeal, Todd challenged the trial court's jurisdiction to hear Glen's TEDRA petition. The Court of Appeals, Division III, in an unpublished opinion, affirmed the trial court, concluding that Glen properly invoked the trial court's jurisdiction by filing a petition for an accounting under RCW 11.68.110. Once jurisdiction was in

place, TEDRA could act as a supplement, and the trial court was enabled to assess the manner in which Todd had administered the estate in light of the testator's intent as expressed in her will.

The Court of Appeals denied Todd's motion for reconsideration and his motion to publish the opinion.

### III. GROUNDS FOR DENIAL OF REVIEW

**A. The opinion is not in conflict with any decision of the Supreme Court or with any published opinion of the Court of Appeals.**

Much of the argument included in Todd's petition for review focuses on the basis relied upon by the trial court to establish its jurisdiction to hear Glen's TEDRA petition. Rulings regarding jurisdiction concern statutory interpretation, which is a question of law and subject to de novo review. *In re Estate of Jones* at 8-9. Therefore, the specific statutory basis relied upon by Glen in bringing his TEDRA petition, and the specific statutory basis relied upon by the trial court in making its decision are irrelevant.

Once the court enters an order of solvency and grants nonintervention powers to the personal representative, the court no longer has jurisdiction in the matter, and jurisdiction can be again

invoked only by a party authorized by statute to do so. *In re Estate of Jones* at 9. As this rule indicates, the court’s jurisdiction over nonintervention probate proceedings is statutory, and it depends wholly on the legislative scheme. *In re Estate of Bobbitt*, 60 Wn. App. 630, 632, 806 P.2d 254 (1991).

One such statute, RCW 11.68.110, allows an heir to petition the court within thirty days of the filing of the declaration of completion for “an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both ...” Filing such a petition prevents the personal representative from being automatically discharged without further order of the court, and it puts the onus on the personal representative to request the court to fix a time and place for the hearing of the heir’s petition. RCW 11.68.110.

Therefore, pursuant to the clear and unambiguous language of this statute, every personal representative — even one with nonintervention powers — is ultimately answerable to the estate’s heirs and to the court. Todd’s assertion that his nonintervention powers shield his actions from scrutiny and allow him to disregard

his mother's testamentary intent with impunity is wholly inconsistent with the clear language and intent of RCW 11.68.110 which requires the personal representative to provide an accounting upon the request of any heir.

Todd also asserts that an heir's entitlement to an accounting under RCW 11.68.110 does not also include the right to scrutinize the personal representative's actions with regard to the administration of the estate. Todd cites no case law interpreting the statute in this way, and, in fact, such an interpretation would render the statute meaningless. An accounting reveals whether the personal representative has properly administered the estate. *In re Estate of Jones* at 17. To suggest that an heir is entitled to an accounting but is powerless to take any action to require the personal representative to properly administer the estate is absurd.

Requiring an accounting from a personal representative is also the means to ensure that the personal representative complies with other duties which apply to every personal representative, whether or not they are acting with nonintervention powers, such as the requirement to follow the testator's intent (RCW 11.12.230), and the requirement to comply with applicable fiduciary duties.

“The ethical standards for personal representatives remain the same, regardless of whether the representative performs his or her duties under court supervision. All personal representatives act in identical fiduciary capacities and must refrain from self-dealing, administer the estate solely in the interest of the beneficiaries, and uphold their duty of loyalty to the beneficiaries.” *In re Estate of Jones* at 21.

In an effort to establish a conflict between the opinion of the Court of Appeals in this case and Washington case law, Todd provides a list of reported Washington appellate cases citing RCW 11.68.110 and states that none of the cases suggest “that RCW 11.68.110 would extend jurisdiction to the court to decide issues such as a will interpretation.” Petition for Review, p. 11. Even if Todd’s assessment of these cases were accurate, this does not establish a conflict between the opinion and Washington case law.

First, all of the cases cited by Todd were decided before the enactment of TEDRA. Since the court’s jurisdiction over nonintervention probate proceedings is statutory and depends wholly on the legislative scheme (*In re Estate of Bobbitt* at 632), a comparison to these pre-TEDRA cases is of limited, if any, value.

Second, the opinion below does not rely upon a finding that RCW 11.68.110 extends jurisdiction to the court to decide issues such as a will interpretation. Under the current statutory scheme which applies to this case, RCW 11.68.110 and TEDRA operate together to support the exercise of the court's jurisdiction.

Once the court's jurisdiction was invoked by Glen pursuant to RCW 11.68.110, TEDRA could act as a supplement to the probate proceedings. *In re Estate of Harder*, 185 Wn. App. 378, 341 P.3d 342 (2015); RCW 11.96A.080. The "construction of wills" is explicitly included within the scope of TEDRA. RCW 11.96A.080(2). Therefore, the trial court had the jurisdiction and the authority to ensure that Todd construes and administers his mother's will in accordance with her intent.

Todd has not shown a basis for review because the decision below is consistent with the statutory framework and with case law governing jurisdiction in probate proceedings. The Court of Appeals did not create a new exception to nonintervention powers.

**B. There is no issue of substantial public interest at stake to warrant review.**

Todd issues this dire warning if the decision of the Court of Appeals is allowed to stand:

If, as the Court of Appeals has ruled, the accounting statute conferred general jurisdiction on the probate court to review the actions of the personal representative it would emasculate the nonintervention powers and make every nonintervention probate subject to court hearing simply by filing a petition for approval of fees.

Petition for Review, p. 12.

Except for the exaggerated language, this is actually a relatively accurate statement of the law: simply by filing a petition under RCW 11.68.110, every nonintervention probate is subject to court hearing, and the probate court has the jurisdiction to review the actions of the personal representative. That is what the clear and unambiguous language of RCW 11.68.110 provides. In addition, TEDRA provides additional procedures for the judicial resolution of estate disputes, of which Glen availed himself in this case.

Todd's arguments and warnings are based on his apparent misunderstanding of nonintervention powers. According to Todd, the personal representative of a nonintervention probate would

never have to answer to anyone. This is the basis for Todd's assertion that his nonintervention powers allow him to misconstrue his mother's will in his own favor. This is simply not the case. As stated above, every personal representative, whether or not acting with nonintervention powers, owes a fiduciary duty to the estate's heirs and beneficiaries and has a duty to follow the testator's intent. Even in a nonintervention probate, the personal representative must ultimately answer to the heirs and to the court.

The opinion below adds no new restrictions or burdens on personal representatives of nonintervention estates. It simply reiterates the existing statutory framework.

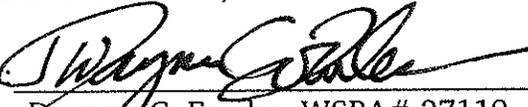
#### IV. CONCLUSION

For the reasons set forth herein, Respondent Glen Rathbone respectfully requests this Court to deny the Petition for Review.

Dated: May 19, 2017.

Respectfully submitted,

LARSON FOWLES, PLLC

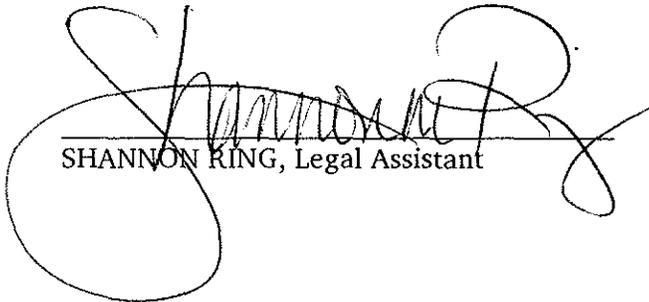
By:   
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**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury under the laws of the State of Washington, that on May 19, 2017, I caused a true and correct copy of the foregoing document to be served on the following party via the method described below:

*Via Hand Delivery*

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SHANNON RING, Legal Assistant