

No. 94356-7

[Court of Appeals, Div. III No. 340511]

**SUPREME COURT
OF THE STATE OF WASHINGTON**

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.

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUE

Whether the court has jurisdiction in a nonintervention probate to construe the decedent's will when the personal representative has filed a declaration of completion and has indicated how the personal representative intends to distribute the estate's property, and a beneficiary files a petition for an accounting pursuant to RCW 11.68.110 and a petition pursuant to RCW 11.96A ("TEDRA") challenging the personal representative's construction of the will.

II. STATEMENT OF THE CASE

The relevant facts are set forth in detail in Respondent's prior briefing before the Court of Appeals and in Respondent's Answer to Petition for Review, and are summarized herein.

Appellant Todd Rathbone, who is the son of the decedent, Kathryn Joyce Rathbone, and the personal representative of her nonintervention estate, construed the decedent's will in a manner that reduced Respondent Glen Rathbone's portion of the estate by approximately \$233,333, and increased Todd's and their brother Douglas Rathbone's shares by approximately \$116,666 each. Glen

was informed of Todd's decision in a letter from Todd's attorney accompanying Todd's declaration of completion of probate, which indicated that Glen's final distributive share of the estate would be \$194,132.66. CP 20. This amount was far less than the \$350,000 Glen was supposed to receive as a result of Todd's exercise of an option to purchase the estate's "Road K Property." CP 54.

Glen filed a petition for an order approving the reasonableness of fees and requiring an accounting pursuant to RCW 11.68.110, which prevented the estate from closing thirty days after the filing of the declaration of completion. CP 115. Glen also filed a petition 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 testamentary intent. CP 1, 3.

The trial court concluded that Todd's proposed interpretation of the will was inconsistent with Ms. Rathbone's intent. RP 45-47; CP 96-99. On appeal, Todd challenged the trial court's jurisdiction to hear Glen's TEDRA petition. The Court of Appeals 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.

III. ARGUMENT

A. The court's jurisdiction to hear Glen Rathbone's TEDRA petition was properly invoked pursuant to 11.68.110.

Rulings regarding jurisdiction concern statutory interpretation, which is a question of law and subject to de novo review. *In re Estate of Jones*, 152 Wn.2d 1, 8-9, 93 P.3d 147 (2004). A superior court's jurisdiction over nonintervention probate proceedings is limited, and the extent of the court's jurisdiction depends entirely on statute. *In re Estate of Harder*, 185 Wn. App. 378, 382, 341 P.3d 342 (2015).

In this case, the Court of Appeals correctly held that Glen invoked the superior court's jurisdiction by filing a petition for an accounting pursuant to RCW 11.68.110 within thirty days after Todd filed the declaration of completion. Even in a nonintervention probate, the personal representative must, at some point, be held accountable to those interested in the estate and to the court

regarding the personal representative's administration of the estate. *In re Estate of Jones* at 17 (“[a]ll 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”).

Under RCW 11.68.110, with regard to nonintervention probates, the opportunity to review the personal representative's administration of the estate comes at the conclusion of the probate proceedings with the filing of the personal representative's declaration of completion. Interested parties then have the opportunity to file a “petition requesting the court to approve the reasonableness of the fees, or for an accounting, or both.” RCW 11.68.110. Glen filed such a petition, thereby exercising his statutory right to obtain those items and to involve the court in the review of the personal representative's administration of the estate.

Pursuant to RCW 11.68.110, Todd is now required to “request the court to fix a time and place for the hearing of [Glen's] petition.” RCW 11.68.110. As of this date, Todd has not yet provided a full accounting, nor has he arranged for a court hearing of Glen's petition. If (and when) Todd arranges for such a hearing,

the court will clearly have the jurisdiction and authority to scrutinize Todd's administration of the estate, including his administration of the Road K Property. However, Todd had already raised the issue regarding his administration of the Road K Property, so Glen did not have to wait for Todd to arrange for a hearing on Glen's petition for an accounting to bring the issue before the court for resolution.

Prior to Todd's filing the declaration of completion, Glen, through his attorney, expressed concerns about Todd complying with the terms of their mother's will with regard to the disposition of the Road K Property. CP 13-14. Todd's attorney responded in a letter stating that the decision with regard to the interpretation of the will would be made by Todd, and "[o]nce that decision is made your client [Glen] is free to challenge it." CP 16.

When Todd filed the declaration of completion, he informed Glen that Glen's final distributive share of the estate would be \$194,132.66, instead of the \$350,000 that Glen should have received as a result of Todd's exercise of his option to purchase the Road K Property. CP 20. Thus Glen learned that Todd did not pay \$350,000 in cash, nor did Todd give up a portion of his share of the estate having a value of \$350,000 in exchange for the Road K

Property as was required by the terms of the will. CP 54. Instead, Todd added that amount to the estate's residue, which was to be divided equally among Todd, Glen, and Douglas, thereby reducing Glen's share of the estate.

Having received what amounted to an informal accounting from Todd regarding the manner in which Todd intended to administer the Road K Property, the next step was for Glen to raise the issues he had with Todd's proposed administration of the property. To bring those issues directly before the court for resolution, Glen chose to avail himself of the procedure under TEDRA. Since jurisdiction was already in place by virtue of Glen's petition for an accounting pursuant to RCW 11.68.110, Glen could proceed under TEDRA as a supplement to the other probate statutes, and the trial court was enabled to review the manner in which Todd had administered the estate.

B. The court's jurisdiction to hear Glen Rathbone's TEDRA petition was properly invoked pursuant to TEDRA.

TEDRA also provides an independent basis for invoking the court's jurisdiction in a nonintervention probate, provided that the requirements of other applicable statutes are also complied with. Under the current statutory scheme, "any party may have a judicial

proceeding for the declaration of rights or legal relations with respect to any matter, as defined by RCW 11.96A.030.” RCW 11.96A.080(1).

As an heir and beneficiary of the estate, Glen is a “party” entitled to a judicial proceeding under the statute (*see* RCW 11.96A.030(5)), and the subject matter of Glen’s TEDRA petition falls within the scope of a “matter” as defined in RCW 11.96A.030(2), which specifically includes questions arising in the administration of an estate relating to “[t]he construction of wills ...” Nothing in TEDRA suggests that its provisions do not apply to nonintervention probate proceedings.

The provisions of TEDRA do not supersede, but supplement any otherwise applicable provisions and procedures contained elsewhere in Washington’s probate statute. *See* RCW 11.96A.080(2). Thus, a party must also be aware of, and comply with other statutory provisions that control specific issues. For example, RCW 11.24 deals specifically with will contests. Therefore, a party seeking to challenge the validity of a will must also comply with the provisions of that particular statute. *See Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006).

With regard to the present case, there is no statutory provision relating specifically to the procedure to be followed with regard to the construction of wills other than the aforementioned provisions of TEDRA. See RCW 11.96A.030(2). Therefore, there is no other statutory provision, other than those found in TEDRA, with which Glen was required to comply in order to invoke the court's jurisdiction to hear his TEDRA petition.

Since Todd had filed a declaration of completion, if Glen had not filed a petition for an accounting pursuant to RCW 11.68.110, in addition to filing a TEDRA petition, one might have argued that the probate proceedings would have closed thirty days after the filing of the declaration of completion, thereby foreclosing Glen's ability to bring a TEDRA petition. See *In re Estate of Harder*. Since Glen filed such a petition in this case (CP 115), the estate did not close, and Glen was able to proceed with his TEDRA petition.

C. An allegation of the personal representative's misconduct was not required to invoke the court's jurisdiction in this case.

Although Glen, in his TEDRA petition, explicitly alleged Todd's mismanagement and the breach of his fiduciary duties (CP 4-11), such an allegation was not a prerequisite to the court

exercising its jurisdiction in this case. Perhaps such an allegation of mismanagement would have been required to invoke the court's jurisdiction in a nonintervention probate prior to the enactment of TEDRA. (See *State ex rel. Johnson v. Superior Court*, 131 Wash. 264, 268–69, 230 P. 434 (1924); *In re Estate of Passage*, 122 Wash. 249, 210 P. 370 (1922).

However, the probate statutes have been amended, and, under the current statutory scheme, the court retains limited jurisdiction, including the jurisdiction to require the personal representative to produce a report or accounting. RCW 11.68.065, .110(2); *In re Estate of Jones* at 17 n. 11.

D. The resolution of the issue regarding the construction of the decedent's will pursuant to Glen Rathbone's TEDRA petition is consistent with the legislature's intent in enacting TEDRA.

With the enactment of TEDRA, the legislature expressed its intent very clearly with regard to the power and authority granted to the courts:

(1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle ... [a]ll matters concerning the estates and assets of incapacitated, missing, and deceased persons ...

(2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

RCW 11.96A.020. The legislature also stated “that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. ...” RCW 11.96A.260.

The resolution of the issue in this case regarding the proper construction of the decedent’s will pursuant to Glen’s TEDRA petition demonstrates the intended operation of TEDRA. TEDRA allowed Glen to bring the specific issue before the court for resolution within a relatively short period of time. Glen was not restricted to seeking the removal of the personal representative, as has been argued by Todd, which, even if successful, would not necessarily have gotten the parties any closer to ensuring that Kathryn Rathbone’s intent was properly carried out, which is the primary mandate of everyone concerned with the execution of last wills. *See* RCW 11.12.230; *see also In re Estate of Campbell*, 87

Wn. App. 506, 510, 942 P.2d 1008 (1997) (the purpose and duty of the court in construing a will is to give effect to the testator's intent).

E. Glen Rathbone is entitled to an award of attorneys' fees.

Glen is entitled to attorneys' fees incurred on appeal pursuant to RCW 11.96A.150, which provides that the trial court and court of appeals may award costs and fees in its discretion.

This litigation was necessitated by Todd's refusal to carry out the decedent's intent, which constitutes blatant self-dealing and a breach of his fiduciary duties. In response to Glen's attempts to persuade Todd to carry out their mother's wishes without the necessity of litigation, Todd wielded his fiduciary position as a weapon, threatening Glen with complete disinheritance if Glen dared to question Todd's perceived authority. CP 16-17, 21, 112-13.

In addition, Todd has employed the same legal counsel, at the estate's expense, to advise him both in his capacity as the estate's personal representative, and in his individual capacity as a beneficiary to pursue an increase in his share of the estate, at the expense of another beneficiary, to whom he owes a fiduciary duty. Put more simply, Todd is using his fiduciary position and the

estate's money to pursue his own personal interest. Unlike Glen's efforts seeking to carry out his mother's testamentary intent, which will result in substantial benefit to the estate, Todd's efforts are focused solely on enlarging Todd's share of the estate, which will result in no benefit to the estate.

The court's authority to award attorneys' fees and costs in trust and estate matters includes the discretion to award them to any party, from any other party. RCW 11.96A.150(1). In this case, Todd, in his individual capacity, and not the estate, should be required to pay Glen's fees and costs.

It is appropriate for the court to order a fiduciary to personally pay the other party's fees and costs where the litigation is necessitated by the fiduciary's own breaches of his fiduciary duty. *In re Estate of Jones* at 20-21. Even absent a specific finding of bad faith or self-dealing, the court can assess fees against a fiduciary where, but for breach of fiduciary duty, beneficiaries would not have need to incur the fees. *Gillespie v. Seattle-First Nat. Bank*, 70 Wn. App. 150, 178, 855 P.2d 680 (1993). In this case, but for Todd's decision to misconstrue the will for his own benefit, there

would have been no need for Glen, or the estate, to incur attorneys' fees and costs.

It would be inequitable to require Glen to personally bear any of the cost incurred in connection with these proceedings. Thus, the court should exercise its discretion and award fees and costs to Glen incurred in responding to this unnecessary appeal, as against Todd individually.

IV. CONCLUSION

Based on the foregoing, Respondent Glen Rathbone respectfully requests that the decision of the Court of Appeals be affirmed. Further, Glen respectfully asks this Court to grant his request for attorneys' fees.

Dated: August 31, 2017.

Respectfully submitted,

LARSON FOWLES, PLLC

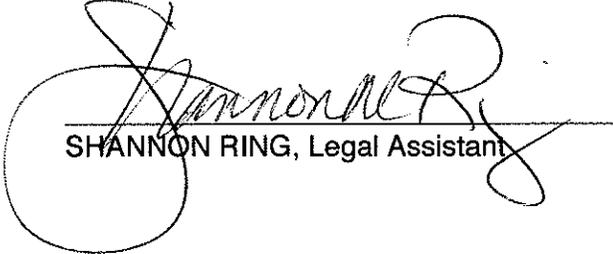
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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the laws of the State of Washington, that on September 1, 2017, I caused a true and correct copy of the foregoing document to be served on the following party via the method described below:

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