

No. 63462-3-I

WASHINGTON STATE COURT OF APPEALS, DIVISION I

In The Estate of William Ross Taylor, Deceased

On Appeal From King County Superior Court
Case No. 06-4-02116-6 SEA
HONORABLE JAMES ROGERS

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STATE OF WASHINGTON
COURT OF APPEALS

RESPONDENT'S BRIEF

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I. ASSIGNMENTS OF ERROR

Respondent defers to Appellant's assignment of error.

II. STATEMENT OF THE CASE.

Respondent defers to Appellant's statement of facts.

III. ARGUMENT

The Appellant has not assigned error to any factual determinations made by the trial court. Accordingly, the trial court's findings of fact are verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 9, 93 P.3d 147 (2004). The sole issue is whether the findings support the trial court's conclusion, acting in equity, that the decedent's will, executed after the establishment of the Schwab IRA, provides evidence of his intent to change the beneficiary of the IRA in favor of the decedent's minor son. CP 227. This is a legal conclusion, which is subject to de novo review by the appellate court. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P..3d 967 (2008).

"Washington permits courts, acting in equity, to enforce attempted changes in beneficiaries." *In re Estate of Freeberg*, 130 Wn.App. 202, 205, 122 P.3d 741 (2005). A court sitting in equity is permitted to fashion such relief as may be required to do justice. *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn.App. 446, 460, 45 P.3d 594 (2002). In this case, the question the Court must answer in the negative is whether the trial court

erred as a matter of law in exercising its equitable powers to hold that the decedent's will, executed after the establishment of the Schwab IRA, provided evidence of his intent to change the beneficiary of the IRA in favor of the decedent's minor son.

William Ross Taylor ("Taylor") started the subject IRA in 1990, at Charles Schwab. CP 73. Taylor was not married at the time, nor did he have any children, and he designated his siblings as the beneficiaries. CP 73.

In 2004, after Taylor had fathered a child, A.C.T., and was in the midst of a divorce, he executed a will (the "Will"), which was admitted to probate. CP 107-110. The Will was explicit with regard to Taylor's intent that aside from two minor bequests to colleges, the entirety of his estate be used to fund a trust for A.C.T. The Will went on to specifically identify the corpus of the trust: "The Sablewood house . . . [and] all my monies and properties of Tailorized Industries, Inc. and Tailorized Properties, LLC, and from my Charles Schwab accounts (Schwab IRA's, Schwab One, etc.). . . ." CP 107. There is no evidence that the Will did not reflect Taylor's intent with regard to the disposition of his estate.

The Appellant argues that Taylor did not do "everything reasonably possible" to change the IRA beneficiary designation, and that he should have tendered some kind of written change of beneficiary form

to Schwab. Appellant's Brief at 9-10, 14. But the Appellant goes on to admit that a change of beneficiary form was never before the trial court, that the procedure for tendering such a form was never before the trial court, and that there was no evidence offered to the trial court regarding what Taylor should have done other than explicitly change the beneficiary designation in his Will. Appellant's Brief at 14-15. In other words, the Appellant failed to show what would have been reasonably possible; he simply complains that what Taylor did might not have been sufficient under the terms of the Schwab IRA. But without evidence to show what was reasonably possible, the Appellant has no basis to claim that what was done was not all that was reasonably possible.

Washington courts give effect to a decedent's statements of intent regarding beneficiary designations in nonprobate assets through the doctrine of "substantial compliance." Two Washington cases comprise what might be argued to be the continuum of "substantial compliance" in this context. At one end is *Freeberg*, 130 Wn.App. 202. Lon Freeberg designated his children as the beneficiaries of an IRA opened with Edward Jones in 1982. In 1995, Freeberg instructed his Edward Jones agent to change the beneficiary to his wife, whom he had married in 1984. Evidence showed that Freeberg signed something at Edward Jones' office when he gave his instructions to change the beneficiary. An Edward Jones

employee recalled Freeberg's instructions, and testified it was Freeberg's intent to change the beneficiary to his wife, but no paperwork indicating thusly was ever found, and the change was never made. Nonetheless, the Court of Appeals affirmed the trial court's equitable conclusion that Freeberg's intent to change the beneficiary designation was clear. *Freeberg*, 130 Wn.App. at 204-207.

At the other end is *Allen v. Abrahamson*, 12 Wn.App. 103, 529 P.2d 469 (1974). In *Allen*, the decedent designated his girlfriend as the beneficiary of a group life insurance policy. After the relationship faded, Allen gave the insurance certificates to his parents and told them that he was going to change the beneficiary designation. He was killed six weeks later, and had never done anything to reduce his intent to change the beneficiary designation to writing. *Allen*, 12 Wn.App. 470.

Two additional relevant Washington cases fill the distance between *Freeberg* and *Allen*: *Sun Life Assurance Co. v. Sutter*, 1 Wn.2d 285, 95 P.2d 1014 (1939); *Rice v. Life Ins. Co.*, 25 Wn.App. 479, 609 P.2d 1387, *review denied*, 93 Wn.2d 1027 (1980). In *Sun Life*, the decedent wrote a letter to his mother indicating his intent to change the beneficiary of his life insurance, though he did not sign the letter and never submitted any change of beneficiary form to the insurance company. *Sun Life*, 1 Wn.2d 289-290. In *Rice*, the decedent filled out a written change of beneficiary

form and was killed three days later. *Rice*, 25 Wn.App. 481. In both cases, the trial courts found that the writings constituted sufficient evidence from which to discern the decedent's intent, even though the decedent may not have done everything reasonably possible to effect the change. In both cases the trial courts were affirmed. The thread that runs through all of the cases where substantial compliance is the existence or evidence of a written statement of intent to change the beneficiary designation. It is not, as Appellant would have this Court believe, compliance with an insurance company's policies and procedures manual.

This case is like *Freeberg*, *Sun Life*, and *Rice*. Here, as in each of these three cases, Taylor went to the effort of memorializing his intent in writing. Significantly, the instrument by which Taylor made his intent clear is his will—the primary source of information in divining a deceased person's intent for the disposition of their estate. The testator's intent is to be found within the four corners of an unambiguous will. *See In re Estate of Burks*, 124 Wn.App. 327, 331, 100 P.3d 328 (2004). Certainly a will is at least as compelling evidence as an unsigned letter, such as that in *Sun Life*, when it comes to discerning a decedent's intent.

The Appellant's reliance on *Allen*, 12 Wn.App. 103, is misplaced. Allen made no written statement at all regarding his intent to change the beneficiary of a nonprobate asset—he simply handed some certificates to

his parents and allegedly told them his plans. Taylor did considerably more than Allen—he explicitly stated his intent in writing, in his will. This constitutes substantial compliance within the line of cases beginning at *Sun Life* and ending at *Freeberg*.

Revised Code of Washington Chapter 11.11 was intended to “enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills. . . .” RCW 11.11.003. The trial court carefully considered the written evidence before it of Taylor’s intent that his nonprobate assets, including his IRA, be distributed to his child via a testamentary trust. The trial court found that Taylor’s intent was clear from his will and exercised its equitable discretion in granting summary judgment effectuating Taylor’s most recent statement of intent.

Instead of relying on actual evidence before the trial court, the Appellant simply theorizes that there must have been some kind of Schwab policy or procedure regarding changes of beneficiaries, and whatever that policy or procedure may have been, Taylor’s will probably did not satisfy it. Appellant’s Brief at 14-15. But since there was no evidence of what the policy was, or what Taylor could or should have done, the Appellant has no basis to claim that what Taylor actually did was not enough.

The Appellant's argument is thin gruel upon which to second-guess the trial court's equitable determination that Taylor's explicit testimonial statement of intent regarding the beneficiary of his IRA was sufficient to establish his intent regarding the beneficiary of his IRA. The Appellant's argument pretty quickly boils down to a naked claim that because Taylor might not have filled out the right insurance company form, the trial court should have ignored Taylor's clear expression of testimonial intent and assisted an uncle in stealing his nephew's inheritance. That is not an argument that this Court should find persuasive.

Equity allows trial courts to avoid the mechanistic application of law that can produce unjust results. The trial court used its equitable jurisdiction to avoid an unjust result; this Court should deny this appeal affirm the trial court's decision.

D. The Personal Representative of the Estate of William Ross Taylor is entitled to costs and fees awarded on appeal.

Pursuant to RCW 11.96A.150 and RAP 18.1, this Court "may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to [the Personal Representative]." Under the same statute, this Court may order that those fees be paid by any party to the proceedings, including the Taylors, or from the estate assets. *See* RCW 11.96A.150(1).

This litigation is intended to benefit the Estate of William Ross Taylor, a factor this Court is entitled to and should consider in exercising its discretion under this statute. *See* RCW 11.96A.150.

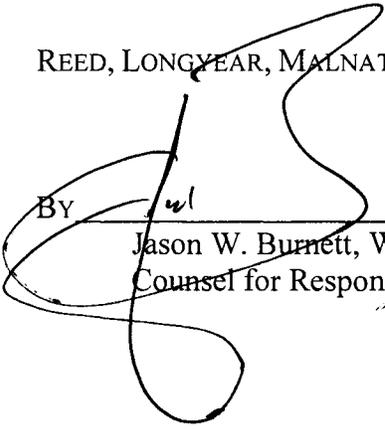
IV. CONCLUSION.

The trial court considered the unequivocal statements of testimonial intent made by the decedent and exercised its equitable jurisdiction to conclude that Taylor changed the beneficiary designation of his Schwab IRA. This Court should not be swayed by Appellant's argument that because Taylor might not have filled out the right insurance company form the trial court should ignore his unequivocal testimonial statements of intent. The Personal Representative respectfully requests this Court affirm the trial court's grant of summary judgment and award fees and costs to the Personal Representative from the Taylors personally, pursuant to RCW 11.96A.150 and RAP 18.1.

Respectfully submitted this 9th day of December, 2009.

REED, LONGYEAR, MALNATI & AHRENS, PLLC

BY



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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In Re The Estate of:

William Ross Taylor,

Deceased.

CERTIFICATE OF SERVICE

I declare under penalty of perjury, under the laws of the State of Washington, that on 12/9/2009 I caused true and correct copies of the RESPONDENT'S BRIEF, and this Certificate of Service, to be served to the parties and counsel of record as follows:

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