

NO. 63761-4-I

IN THE COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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IN RE THE ESTATE OF WILLIAM ROSS TAYLOR

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BRIEF OF RESPONDENTS CHARLES TAYLOR AND  
REUBEN TAYLOR IN RESPONSE TO OPENING BRIEF  
OF SUCCESSOR PERSONAL REPRESENTATIVE

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## I. STATEMENT OF THE CASE

At the time of his death in September 2005, William Taylor left both probate and nonprobate assets. The probate assets included his house in Kirkland and a boat and boat slip. CP 625-28. His nonprobate assets included a Schwab IRA, a Fidelity IRA, and three AIG insurance policies. CP 37-38, 142-47, 153-55. William would also have had five Northwestern Mutual insurance policies as nonprobate assets, except that in July 2005 he assigned ownership of those policies to his father, Reuben Taylor. CP 91. The summary judgment rulings being appealed dealt with the ownership of the Fidelity IRA, the AIG policies and the Northwestern Mutual policies.

Most of the successor personal representative's ("SPR") Statement of the Case appears to be an attempt to convince the court that William Taylor could not have intended for his brother and father to end up with more assets than William's son. Respondent believes that the SPR has mischaracterized the facts in several places in his Statement of the Case.<sup>1</sup> However, those facts and the mischaracterizations are irrelevant to the issues he raises on appeal, as he makes no argument that there is a genuine

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<sup>1</sup> For example, it is not true, as the SPR suggests, that William disinherited his son. A trust for his son was to receive significant assets from William's estate as it was the beneficiary for all the probate assets. CP 942-44, 625-628

issue of material fact with regard to the ownership of the nonprobate assets. Instead, the SPR objects to certain actions taken by the court in holding the summary judgment hearing when it did. Following are additional facts that are relevant to the issues raised by the SPR.

On March 20, 2006, Caiarelli, as guardian for ACT, filed a TEDRA action seeking an order that ACT was entitled to receive all proceeds of William's nonprobate assets. CP 1006-019. On April 5, 2006, pursuant to stipulations entered in the TEDRA action, Bruce Moen was appointed guardian ad litem ("GAL") for ACT with regard to all issues, including distribution of probate and nonprobate assets. CP 946-49.

Caiarelli was represented by two attorneys in the TEDRA action, both of whom withdrew later in 2006. CP 647-48, 1052-53. On April 19, 2007, precipitated by inactivity on the part of Caiarelli over the preceding six to eight months, the GAL submitted a petition asking the court to approve the GAL's plan for litigation in the TEDRA proceeding. CP 949-56. The court issued an order on May 10, 2007 authorizing the GAL to actively pursue the TEDRA litigation, including but not limited to conducting discovery. CP 598-601. The GAL then pursued the litigation.

On June 26, 2008, the matter was certified for trial. CP 1054-55. The trial date was then continued to December 8, 2008 to allow the GAL to bring a partial summary judgment motion. CP 1069-70. That motion sought to have the proceeds from the Schwab IRA distributed to ACT under the legal theory that a provision in William's will superceded the beneficiary designation on the IRA account, which designation had been made prior to the will provision. CP 1056-69. The court issued an order on November 21, 2008 agreeing with the GAL's position.<sup>2</sup> CP 661. The GAL did not seek to recover any other nonprobate assets for ACT (the beneficiary designations on the remaining nonprobate assets were changed by William after the date of his will) and the matter was to proceed to trial on December 8, 2008.

Days before the trial date, attorney Madeline Gauthier appeared for Caiarelli, requesting that the court continue the trial date. CP 1132. Judge Jim Rogers retained jurisdiction of the matter consolidating the

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<sup>2</sup> That ruling is being appealed under No. 63462-3-I.

probate and the TEDRA action, and continued the trial date to April 20, 2009. CP 634-38.

Caiarelli's attorney issued subpoenas to financial institutions, including Northwestern Mutual Insurance Co., seeking a wide range of documentation related to William Taylor. CP 384. She also served William's father, respondent Reuben Taylor, with Requests for Admission, Interrogatories and Requests for Production related to the Northwestern Mutual policies. CP 1137-48, 1197-1218.

In February 2009, Caiarelli brought a motion to remove Charles Taylor as personal representative of William's estate. CP 602-33. The court granted the motion and Charles Taylor was removed on March 4, 2009. CP 664. The court requested that the parties agree to a successor personal representative. The parties agreed on Michael Longyear. While the order appointing Mr. Longyear was not entered until March 27, 2009, CP 642-43, the parties agreed on him and he had agreed to act as SPR prior to that, as shown in his own billing records. CP 975-76, 998, 1000.

The summary judgment motions at issue were filed by the Taylors on Friday, March 13, 2009, setting a hearing date for April 10, 2009, giving twenty-eight days notice as required by CR 56(c). CP

1256-59. The court moved the date for the oral argument up one week, to April 3, 2009, because of scheduling issues. By agreement of the parties, the briefs of the responding parties were still due on March 30, 2009, the day they would have been due if the original hearing date had not been moved forward. CP 177, 365. Also by agreement of the parties, the reply briefing was due April 2, 2009, three days after the responses. CP 574. Oral argument (which was attended by the SPR, CP 989) was held April 3, 2009. The court granted the summary judgment motions on April 10, 2009. CP 581-84.

## II. ARGUMENT

The SPR has not asserted that there was a genuine issue of material fact with regard to the summary judgment motions. Instead, the SPR has raised several arguments that address aspects of noting and holding the summary judgment motions. Those arguments are addressed below.

### A. **The Court Did Not Commit Error By Holding the Summary Judgment Hearings Even Though the SPR Was Newly Appointed.**

A personal representative is simply a stakeholder with a duty to deliver the estate to those persons designated by the court. A personal representative should not take sides as between claimants on final

distribution, and he has no interest in the subject matter in disputes between such claimants. *In Re Tucker's Estate*, 116 Wash 475, 478, 199 P. 765 (1921). This TEDRA action was initiated and pursued by Caiarelli as guardian for ACT, separately from the probate. The action was a dispute between Caiarelli, as guardian for ACT, on one hand, and Charles and Reuben Taylor on the other. While it arose out of the probate, it was a separate action. Caiarelli sought to convince the court that William had not intended for his nonprobate assets to go to the named beneficiaries, but instead intended for them to go to a trust for ACT. Caiarelli's claims regarding the AIG policies, the Fidelity account and the Northwestern Mutual accounts were basically in the nature of a will contest, except it was William's beneficiary designations that were being questioned, not his will. The SPR should have simply allowed the adverse claimants to resolve the dispute through the TEDRA action by themselves. He should not have been involved. Even if the SPR had the right to be involved in the action, the SPR did not make any attempt to get involved.

The SPR understood the nature and substance of the summary judgment motions. He had reviewed the pleadings and attended oral argument. CP 989, 1001-02. He could have requested a continuance if

he thought the SPR should have a voice in the motions. By not doing so, he has waived any claim that the orders should be reversed.

Even if there was no waiver, the court did not err in holding the summary judgment motions. It is not the case that the SPR's involvement was necessary in order to protect the rights of ACT. ACT's rights were represented first by Caiarelli's original attorneys, then by the GAL, and finally by Caiarelli's present attorney. The trial date was continued two times in order to allow extra time for that representation. It was not reversible error to hold the summary judgment hearings when they were held.

**B. The Court Did Not Err In Holding a Summary Judgment Hearing Less Than 28 Days From the Date the Motion Was Filed.**

The summary judgment motions were filed by the Taylors on Friday, March 13, 2009, setting a hearing date for April 10, 2009, giving twenty-eight days notice as required by CR 56(c). CP 1256-59. The court moved the date for the oral argument up one week, to April 3, 2009, because of scheduling issues. By agreement of the parties, the briefs of the responding parties were still due on March 30, 2009, the day they would have been due if the original hearing date had not been moved forward. CP 177, 365. Also by agreement of the parties, the

reply briefing was due April 2, 2009, three days after the responses. CP 574.

A court has discretion to shorten the 28-day period for a summary judgment motion. Deviation is permitted so long as there is ample notice and time to prepare. *State Ex Rel. Citizens v. Murphy*, 151 Wn. 2d 226, 236, 88 P.3d 375 (2004). In order to overturn a court's discretionary ruling to shorten the time for a summary judgment motion, the objecting party must show prejudice. *Id.* Prejudice is established on a showing of a lack of time to prepare for the motion and no opportunity to submit case authority or provide countervailing oral argument. *Id.* In order to overturn the court's decision to shorten time, an appellate court must find a "manifest abuse of discretion." *Id.*

The SPR claims that the responding parties were prejudiced, because they lost one week in which to respond to the motions. SPR Brief at p. 5. This is simply not true. The responding parties had the full seventeen days of preparation time they would have had if the oral argument had been held as originally scheduled.

In particular, the SPR cannot show any prejudice. He was not a party to the TEDRA action, he did not take part in the summary judgment motion, nor did he request a continuance so that he could

participate. Any objection to the timing of the summary judgment motion by the SPR has been waived.

Even if the SPR could avail himself of any objections of the TEDRA petitioner Caiarelli, Caiarelli cannot show any prejudice. She had the same amount of time to prepare her response to the motion as she would have had if the oral argument had not been moved up. Her briefing was extensive. CP 177-98; 365-84. She had ample time to make her oral argument. The timing of the oral argument for the summary judgment motions did not result in prejudice to any party and the court did not commit error in moving up the hearing date.

**C. The Court Did Not Err In Ruling On the Ownership of the Northwestern Mutual Insurance Policies.**

The SPR claims that Reuben Taylor's motion with regard to the Northwestern Mutual policies was an unfair "ambush," as if the policies were first brought to Caiarelli's attention by the summary judgment motion. The TEDRA petition sought to bring all William's nonprobate assets into his estate. CP 1006-19. William assigned ownership of the Northwestern Mutual policies to his father months before his death. CP 91. He therefore had no ownership interest in the policies, and the policies

were not probate assets.<sup>3</sup> It was clear, however, that soon after her new attorney appeared in December 2008, Caiarelli sought to portray the policies as William's nonprobate assets and intended to address the issue at trial. Caiarelli discussed the Northwestern Mutual policies in pleading as early as February 2, 2009. CP 1243.

Contrary to the SPR's statement that the parties had not done any discovery related to the Northwestern Mutual policies, SPR Brief at p. 7, quite a bit of discovery was done. Caiarelli subpoenaed the records of Northwestern Mutual with regard to the policies. CP 384. She also served interrogatories and requests for admission and production on Reuben Taylor with regard to the policies. CP 1137-48, 1197-1218. Caiarelli made no objection that Reuben Taylor's summary judgment motion created any "ambush" or surprise. She clearly wanted the policies to be an issue at trial.

The Northwestern Mutual policies were known to all parties and were clearly intended to be an issue at trial. The claim that Reuben Taylor's summary judgment motion was an "ambush" should be rejected. There are no grounds for overturning the trial court's ruling on the Northwestern Mutual policies.

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<sup>3</sup> Even if the policies had been William's own probate assets, ACT was not named as beneficiary on any of the policies. CP 36-38,41-42,46-48,55-57,66-68,77-79.

**D. The SPR Is Not Entitled to Fees On Appeal.**

Attorney's fees on appeal in a TEDRA matter are awardable solely at the discretion of the court. RCW 11.96A.150(1)(a). Even if the SPR were to prevail on appeal, he has not articulated a convincing basis for an award of fees. The request for fees should therefore be denied. *See Estate of Wright*, 147 Wn. App. 674, 688, 196 P.3d 1075 (2008), *cert. denied*, 166 Wn.2d 1005, 208 P.3d 1124 (2009).

**E. Respondents are Entitled to Attorney's Fees on Appeal.**

Respondents are entitled to their attorney fees on appeal. RCW 11.96A.150(1)(a). The SPR does not argue that there was a genuine issue of material fact with regard to motions. Instead, he seeks reversal of the trial court on grounds related to aspects of noting the motions and holding oral argument. The SPR waived any objections he might have had by not requesting a continuance of the motions. Fees should therefore be awarded against the SPR for having to respond to this appeal.

### III. CONCLUSION

The SPR has raised no issues that call for a reversal of the trial court's rulings. Those rulings should be affirmed and the SPR's appeal denied.

DATED this 8 day of February, 2010.

LAW OFFICE OF B. JEFFREY CARL



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and Reuben Taylor

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the document to which this certification is attached was served via U.S. Mail, First Class, postage prepaid or by e-mail per agreement with counsel on this date on the following individual(s):

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**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.**

DATED this 8 day of February, 2010 at Seattle, Washington.

  
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