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A. ISSUES PRESENTED FOR REVIEW

1. Whether Mr. Reed failed to comply with the requirements of RCW 11.40.100 by failing to file a separate civil action, and whether such failure warrants dismissal of his Petition?
2. Whether Mr. Reed's failure to comply with RCW 36.18 and local court rules requiring payment of a fee to bring his action warrants dismissal of his Petition?
3. Whether the Estate's Motion to Dismiss was properly held on a seven-day calendar, instead of a twenty-eight-day calendar under CR 56?
4. Whether the award of attorneys' fees against Mr. Reed was an abuse of discretion by the trial court, and whether an award of additional attorneys' fees against Mr. Reed is appropriate for the additional costs and fees of responding to this appeal?

B. STATEMENT OF FACTS

On October 21, 2010, the Superior Court of Washington for Snohomish County entered an Order appointing Karen Schickling the Administrator of the Estate of Karl O. Molck. Letters of Administration were issued the same day.

On February 25, 2011, Mr. Reed filed a Creditor's Claim against the Estate of Karl O. Molck. On January 9, 2012, the Administrator

rejected in full Mr. Reed's Creditor's Claim and gave proper notice of such with a Notice of Rejection of Creditor's Claim.

On February 6, 2012, Mr. Reed filed a Summons and Petition for Enforcement of Creditor's Claim. The Summons and Petition were filed under the probate matter, no filing fee was paid, and the action was brought under the Estate's cause number and caption, not as a separate civil action against the Administrator.

On July 20, 2012, the Estate filed a Motion to Dismiss Petition for Enforcement of Creditor's Claim and corresponding Calendar Note. CP 24-29; CP 21-22. The same were provided to Mr. Reed through his attorney of record. Mr. Reed did not file any response to the Motion, nor did he or his attorney appear at the hearing.

At the hearing on July 27, 2012, Judge Dingleby of the Snohomish County Superior Court entered an Order to Dismiss the Petition for Enforcement of Creditor's Claim and further awarded attorneys' fees to the Estate to be paid by Mr. Reed. CP 17-19. The Order dismissed the Petition with prejudice, forever barring Mr. Reed from bringing suit against the Personal Representative on the rejection of the Creditor's Claim, and awarded \$2,035.00 in attorneys' fees. CP 18. Neither Mr. Reed nor his attorney appeared at the hearing.

The findings presented upon which the Order to Dismiss was granted were based on the pleadings presented, primarily that Mr. Reed filed a petition for enforcement of Creditor's Claim in the same action, and failed to pay the filing fee as required by statute. CP 17-18.

Mr. Reed's subsequent Motion for Reconsideration was denied. Mr. Reed then filed this appeal.

C. LEGAL AUTHORITY AND ARGUMENT

A. Summary of Argument

The Estate complied with the requirements of RCW 11.40 in responding to and rejecting Mr. Reed's Creditor's Claim. Yet, instead of complying with RCW 11.40.100 in response, Mr. Reed filed a Petition for Enforcement of Creditor's Claim under the already existing Estate probate cause number and caption. He did not commence a separate civil action against the Personal Representative as required. Further, Mr. Reed failed to pay any filing fee to commence his action. The Estate moved to dismiss Mr. Reed's Petition for these reasons and, despite appropriate notice, Mr. Reed failed to respond to or oppose the Motion. The Court entered an order dismissing Mr. Reed's Petition with prejudice and awarded attorneys' fees against him in favor of the Estate.

The trial court properly dismissed Mr. Reed's Petition and did not abuse its discretion in awarding attorneys' fees. Failure to comply with the

established requirements warranted dismissal of his Petition. As a matter of law, there was no error, the Superior Court's July 27, 2012 Order (CP 17-19) should remain in effect and Mr. Reed should be ordered to pay the Estate's additional attorneys' fees for responding to this appeal.

B. Standard of Review.

An appellate court is to review questions of law *de novo*. In re Guardianship of Lamb, 173 Wn.2d 173, 183-184, 265 P.3d 876 (2011); City of Aberdeen v. Regan, 170 Wn.2d 103, 107, 239 P.3d 1102 (2010). Under the facts of this case, a determination of whether dismissal of Mr. Reed's Petition was proper depends on the court's interpretation of RCW 11.40.100 and the proper procedure for complying with its requirements. Therefore, the standard of review for these issues is *de novo*. Separately, an appellate court's review of an award of attorney fees under RCW 11.96A.150 is reviewed for an abuse of discretion. In re Guardianship of Lamb, 173 Wn.2d at 184. The two issues will be addressed separately.

C. Issue 1: Mr. Reed Failed to Comply with the Requirements of RCW 11.40.100 and Such Failure Warrants Dismissal of His Petition.

Mr. Reed failed to comply with the requirements of RCW 11.40.100 by failing to file a separate civil action after rejection of his Creditor's Claim within the thirty day period. As a result, his claim should

be forever barred. The enactment of TEDRA has not changed these statutory requirements. The Superior Court properly dismissed his Petition and barred Mr. Reed from further pursuing his Creditor's Claim.

In relevant part, RCW 11.40.100(1) provides:

[T]he claimant **must bring suit in the proper court against the personal representative** within thirty days after notification of rejection **or the claim will be forever barred.** (emphasis added).

As the courts have enforced this requirement, the proper procedure for purposes of RCW 11.40.100 is a separate civil action, and it is not complied with by an action pursued under the probate case. "When a claim is presented against an estate, **our statutes provide that if it is rejected, then the claimant must proceed by civil action.**" Bailey v. Schramm, 38 Wn.2d 719, 722, 231 P.2d 333 (1951)(emphasis added). "A reading of the statute relating to the presentation and establishing of claims against an estate renders it plain that, upon the rejection of a claim, it is to be established, if at all, by **an ordinary civil action brought and prosecuted by the claimant against the administrator**, the same as against any other defendant. [Citation omitted.] **It is in no sense a special proceeding, nor is it a part of the probate proceeding;** ... It is apparent then that a suit upon a rejected claim against an administrator is nothing more than a civil action, ..." Spokane v. Costello, 57 Wash. 183, 189-90,

106 P. 764 (1910) (emphasis added). The statute and interpreting case law clearly provide the procedure that must be followed to pursue a rejected creditor's claim. Mr. Reed failed to comply with these requirements and his Petition was rightfully dismissed.

As noted in Schluneger v. Seattle-First Natl. Bank, 48 Wn.2d 188, 190, 292 P.2d 203 (1956), courts have recognized there is a "distinction between matters germane to the administration of an estate, which, under the statute, must be presented to the superior court wherein the executor or administrator was appointed, and a civil action to establish a rejected claim as a charge against an estate. Once the rejected claim is established 'in the proper court,' it then becomes subject to the rules of estate administration." As clearly established, a rejected creditor's claim must first be established in a separate civil action before it is considered part of the estate administration in the probate matter. Id. Failure to follow this procedure deemed dismissal of Mr. Reed's Petition appropriate.

The enactment of TEDRA has not changed the procedure for handling creditor claims. TEDRA *supplements* the probate statutes, but does not replace or undo any provisions or procedures already in place. RCW 11.96A.080(2) ("The provisions of this chapter **shall not supersede, but shall supplement**, any otherwise applicable provisions and procedures contained in this title, including without limitation those

contained in chapter...11.40...”) (emphasis added). TEDRA has not changed how a rejected creditor’s claim must be handled. The creditor claim chapter requires strict compliance. In re Estate of Earls, 164 Wn. App. 447, 450-51, 262 P.3d 832 (2011) (“Washington’s nonclaim statute provides, ‘A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter.’ The statute is mandatory and is strictly construed; compliance with its requirements is essential to recovery.”).

“[W]hen the claim of a creditor of an estate is rejected, his only remedy is to bring suit against the executor or administrator, and if any judgment is rendered it shall be only to establish the amount thereof as an allowed claim; ... The statutes provide **an exclusive remedy to the creditor.**” Archer Blower & Pipe Co. v. Archer, 33 Wn.2d 317, 319-20, 205 P.2d 595 (1949)(emphasis added). TEDRA does not change the remedy and procedure already in place for creditors. See RCW 11.96A.080(2). Mr. Reed fails to cite any legal authority in which the Court allowed a rejected creditor’s claim to proceed in the probate estate cause number, in contradiction of RCW 11.40.100, because of the enactment of the TEDRA statutes.

Mr. Reed's reliance on In re Estate of Black, 116 Wn. App. 492, 66 P.3d 678 (2003), is misplaced as it does not address the issue of allowing a creditor claim lawsuit to proceed under a probate matter, post-TEDRA enactment. Instead, it deals with a *will contest lawsuit* and more specifically an affidavit of prejudice. These are completely distinct from the handling of a rejected creditor's claim. In Estate of Black, the Court of Appeals agreed with the trial court that a will contest was not a separate proceeding *for the purposes of RCW 4.12.050* and commented that the "sole question presented is whether the filing of a will contest commences a new 'proceeding' so as to reestablish the right to file an affidavit of prejudice against the judge who admitted the will to probate." Estate of Black, 66 P.3d at 680. A will contest is a probate matter relevant to estate administration while a suit on a rejected creditor's claim is a civil matter required to establish their validity and amount of a claim later to be imposed against an estate. Estate of Black does nothing to support Mr. Reed's argument that the creditor claim statute is no longer applicable because of the enactment of TEDRA.

It cannot be disputed that RCW 11.40.100(1), as well as the *Notice of Rejection of Creditor's Claim* sent to Mr. Reed, requires that "the claimant must bring suit **in the proper court against the personal representative** within thirty days after notification of rejection or the

claim will be forever barred.” RCW 11.40.100(1). Mr. Reed did not bring an action in the proper court, a separate civil action, within the required time period and against the Personal Representative. The enactment of TEDRA did not absolve Mr. Reed of complying with the requirements prescribed by statute and case law. As a result, his Petition was properly dismissed with prejudice since the thirty day time period for bringing proper suit on his claim had run.

D. Issue 2: Mr. Reed Failed to Comply with RCW 36.18 and Snohomish County Clerk Rules and Such Failure Warrants Dismissal of His Petition.

Mr. Reed failed to comply with RCW 36.18.020 and local court rules requiring payment of a fee to bring his action. In addition to the above described procedural errors with his Petition, this also warrants dismissal as strict compliance is required.

In a further failure to comply with statute, Mr. Reed failed to pay the required filing fee in filing his Summons and Petition on his rejected creditor’s claim. As acknowledged in Mr. Reed’s brief, he failed to pay the filing fee, which is required by RCW 36.18.020 and which is also outlined in the Snohomish County Clerk’s Fee Schedule, found on the Clerk’s website.

RCW 36.18.020(2)(a) and (5)(c) expressly indicate the required fee:

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, [...] **shall pay, at the time the document is filed, a fee of two hundred dollars [...]**

(5)(a) Until July 1, 2017, in addition to the fees required being collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, **a surcharge of forty dollars must be collected.**

As such, the statute county fee schedule required Mr. Reed to pay a fee to commence his action to establish his rejected claim. No filing fee was ever paid and his claim was not properly filed within the statutorily prescribed period. As a result, his claim is forever barred pursuant to RCW 11.40.100(1).

Mr. Reed does not present any law to support his suggestion that an alternate remedy besides dismissal could be available. In fact, RCW 36.18.060 provides that court clerks, “**shall not, in any case, except for the state or county, perform any official services unless the fees**

prescribed therefore are paid in advance...” RCW 36.18.060 (emphasis added). No action is to be done unless the required fee is paid in advance, which did not occur, so Mr. Reed’s Petition did not properly invoke the jurisdiction of the court.

Failure to comply with the statute and the court’s requirements, resulting in a failure to properly invoke the jurisdiction of the court, further supports dismissal of Mr. Reed’s Petition.

E. **Issue 3: The Estate Motion to Dismiss Was Properly Noted on the Seven-Day Calendar.**

The Estate’s Motion to Dismiss was properly noted and did not invoke CR 56’s twenty-eight day calendar. The Superior Court’s findings demonstrate that dismissal was based on the pleadings—Mr. Reed’s improper Petition—and matters outside the pleadings were not considered. CP 17-18. Additionally, even if this court finds that the motion was set in front of the Civil Motions Judge as opposed to the Commissioner’s Probate/Guardianship calendar, this was harmless error and Mr. Reed’s rights were not affected.

The Estate’s Motion to Dismiss Petition for Enforcement of Creditor’s Claim (“Motion to Dismiss”) was properly brought under SCLCR 7(b). The court was asked to make a judgment on the sufficiency

of the pleadings and whether proper creditor's claims procedure was complied with in Mr. Reed's Petition.

Further, as established above, an action on a rejected creditor's claim is a civil matter and is separate and distinct from the probate matter. As such, the Estate noted the Motion to Dismiss on the Judge's Civil Motions calendar, per SCLCR 7(b)(2)(I)(1) as a motion not otherwise addressed by the rule.

Even if the court believes the motion should have been noted on the Commissioner's Guardianship/Probate calendar instead of the Judge's Civil Motions calendar, this is harmless error. The court rule on timing requirements for responding to a Motion to Dismiss is the same no matter the calendar the motion to dismiss was brought. SCLCR 7(b)(2)(L). Mr. Reed was given notice of the Motion and the time, date, and location of the hearing. The fact that it was heard by a judge on the civil motions calendar and not a commissioner on the probate calendar is harmless error that does not invalidate the court's order. Anfinson v. Fedex Ground Package System, Inc., 159 Wash. App. 35, 244 P.3d 32, 36 (2010), quoting State v. Golladay, 78 Wn.2d 121, 139, 470 P.2d 191 (1970) ("A harmless error is an error which is trivial, or formal, or merely academic, and was not prejudicial to the substantial right of the parties assigning it, and in no way affected the final outcome of the case.")

Similarly, the local rules, regardless of calendar, require that all responsive materials be served on the parties and the court no later than twelve (12) noon two (2) court days prior to the hearing. SCLCR 7(b)(2)(L). Mr. Reed did not file or serve any responsive pleadings, not even an objection to the calendar note, despite receiving proper notice of the hearing. SCLCR 7(b)(2)(I)(2) therefore allows that in the instance of unopposed matters, like the Estate's Motion to Dismiss, the court may enter the order sought, unless the court deems it inappropriate to do so. The superior court did not commit error in granting the unopposed Motion to Dismiss.

F. **Issue 4: An Award of Attorneys' Fees Against Mr. Reed Was Not an Abuse of Discretion and an Award of Additional Attorneys' Fees on Appeal Would Be Appropriate.**

The Superior Court's July 27, 2012 award of attorneys' fees against Mr. Reed was not an abuse of discretion by the trial court based on the relevant facts and circumstances. Further, an award of additional attorneys' fees against Mr. Reed is appropriate for the additional costs and fees of responding to this appeal.

An appellate court reviews an award of attorney fees under RCW 11.96A.150 for abuse of discretion. In re Guardianship of Lamb, 173 Wn.2d at 184. Here, there was no abuse of discretion in ordering Mr. Reed pay the Estate's costs and reasonable attorneys' fees in having to move to

dismiss Mr. Reed's improper Petition, especially following Mr. Reed's previous unsuccessful attempts regarding his claim, even in the decedent's guardianship proceeding.

RCW 11.96A.150(1) provides:

“Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such a manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.”

It was well within the superior court's discretion to award fees in favor of the Estate given the relevant and uncontradicted facts presented, and especially given Mr. Reed's numerous unsuccessful attempts to bring his claims without sufficient evidence and without complying with the applicable statutes and case law.

The Estate is not only entitled to its fees granted in the Motion to Dismiss, but it is also entitled to attorneys' fees on appeal. A party may recover fees on appeal if the party was entitled to recover fees in the trial court. Landberg v. Carlson, 108 Wn. App. 749, 758, 33 P.3d 406 (2001),

review denied, 146 Wn.2d 1008, 51 P.3d 86 (2002) (“If fees are allowable at trial, the prevailing party may recover fees on appeal as well.”).

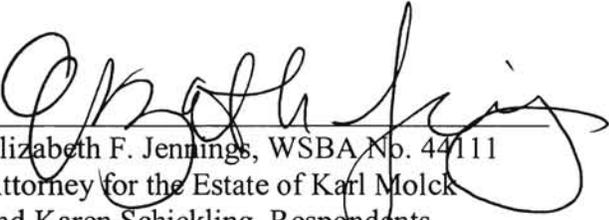
It was well within the Superior Court’s discretion to award the Estate its attorneys’ fees under the circumstances and it naturally follows that an award of additional fees are well within this Court’s discretion given the circumstances. Mr. Reed has again cost the Estate and its Administrator costs and attorneys’ fees in responding to his claims. Because attorneys’ fees and costs were appropriately awarded at the trial court level in this matter given Mr. Reed’s numerous unsuccessful and unsubstantiated claims, an award of additional costs and attorneys’ fees are warranted given the need to respond to this appeal.

D. CONCLUSION

The court should uphold the Superior Court’s order of dismissal with prejudice and its award of costs and attorneys’ fees against Mr. Reed. Mr. Reed improperly filed his Creditor Claim petition under the probate matter, contrary to the procedure required in RCW 11.40.100. Further, he failed to pay the required fee to bring such an action. When presented with a Motion to Dismiss his Petition based on these errors, Mr. Reed failed to appear or respond. The Superior Court’s award of attorneys’ fees pursuant to RCW 11.96A.150 was not an abuse of the Superior Court’s discretion given the relevant facts and Mr. Reed’s procedural failures which required

the Estate to act. This court should therefore uphold the Superior Court's July 27 Order in full, as well as award additional costs and attorneys' fees against Mr. Reed for the expense of responding to this appeal.

Respectfully submitted this 9th day of December, 2013.



Elizabeth F. Jennings, WSBA No. 44111
Attorney for the Estate of Karl Molck
and Karen Schickling, Respondents
145 Third Avenue South, Suite 200
Edmonds, WA 98036
(425) 776-4100