

No. 69914-8-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

KATHIE J. WILLEY, as Personal Representative of the Estate of
Ronald Willey; and
KATHIE J. WILLEY, a single individual,

Appellants

v.

KENNETH REKOW and JANE DOE REKOW, husband and wife
and their marital community; and
KARR TUTTLE CAMPBELL, a Professional Service Corporation

Respondents

BRIEF OF APPELLANTS

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COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON
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1. ASSIGNMENT OF ERROR

The Trial Court erred in granting defendants' motion for summary judgment by order entered on January 11, 2013.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- A. Did the trial court err by granting Mr. Rekow's summary judgment motion based on the determination that Mr. Rekow did not act "willfully" when Washington State law has definitively determined that such determination is for the trier of fact?
- B. Did the trial court err when it determined that a copy of a will is sufficient to satisfy Washington Statute RCW§11.20.010 requirement of "delivery" of the will to the heir or the court when Washington Statute RCW§11.02.005(8) defines a "will" as the original, "an instrument validly executed by RCW§11.12.020"?
- C. Did the trial court err when it determined Defendants' Exhibit "A" was proof that Mr. Rekow complied with RCW§11.20.010 when in fact Exhibit "A" is proof that Mr. Rekow intentionally violated RCW§11.20.010 by not delivering the original will to either the heir or the court within 30 days?

D. Did the trial court err when it did not limit its decision to grant Mr. Rekow's summary judgment motion to a partial order when Ms. Willey also alleges negligence?

Ms. Willey respectfully argues that the trial court erred on all issues above. Under the applicable standard for summary judgment, when all facts are construed in the light most favorable to the non-moving party, Ms. Willey, the order for summary judgment in favor of Mr. Rekow was improper.

2. STATEMENT OF THE CASE

Procedural History:

1. 10/ 20/2011, complaint for damages was filed by Ms. Willey. CP 1-12. The causes of action are:
 - a. Breach of Fiduciary Duty to the Estate for withholding the will in violation of RCW§11.20.010;
 - b. Breach of Fiduciary Duty to Third Party for withholding the will in violation of RCW§11.20.010 as Mr. Rekow had also represented Ms. Willey and drafted her will at the same time as he drafted Mr. Willey's will;
 - c. Professional Negligence for withholding the will in violation of RCW§11.20.010 as he was the drafter and attorney for the decedent and Ms. Willey; and

d. Negligence for withholding the will in violation of
RCW§11.20.010.

2. 12/5/2012, Mr. Rekow filed a Motion for Summary Judgment. CP 20-35.
3. 1/11/2013, the motion was heard by the Honorable Judge Barbara Linde. CP 369-369.
4. 1/11/2013, Mr. Rekow's motion was granted and order of dismissal entered. CP 370-371.
5. 2/5/2013, Appellant Ms. Willey filed notice of Appeal.

Prior History of the Estate of Ronald Willey

1. Mr. Rekow drafted the Last Will and Testament which Ronald Willey executed on March 1, 1985.
2. The Last Will and Testament named Kathie Willey the heir and executrix.
3. The Last Will and Testament disinherited Jenine Salvati.
4. Mr. Rekow was aware of the property settlement drafted for Ronald and Kathie Willey. The property settlement includes an agreement to maintain Kathie Willey as sole primary heir to avoid dissolving the marital business.
5. Ronald Willey died on February 18, 2008.

6. Jenine Salvati filed the estate as intestate on February 22, 2008, four days after Ronald Willey died; Jenine Salvati stated there was no will. Later sworn statement by Ms. Salvati states she knew there was a will several months prior to Mr. Willey's death.
7. The earliest date certain that Mr. Rekow knew that Ronald Willey was deceased was September, 2008.
8. Mr. Rekow specializes and lectures in the matters of Trusts and Estates.
9. Mr. Rekow was contacted by Ms. Salvati October 6, 2008. Mr. Rekow referred Ms. Salvati to attorney Pamela McClaran.
10. Mr. Rekow was contacted by Ms. Willey on October 21, 2008. Mr. Rekow acknowledged that he had in his possession the Last Will and Testament of Ronald Willey. Ms. Willey requested that Mr. Rekow file the will. Mr. Rekow refused and referred Ms. Willey to attorney Mr. Foster.
11. Mr. Rekow drafted and sent a letter to Ms. McClaran on October 28, 2008. He attached a copy of the will and retained the original over 10 months. Defendants' Exhibit A.
12. Mr. Foster was retained by Ms. Willey. He received delivery of the original will from Mr. Rekow in September 2009 and Mr. Foster filed the will September 29, 2009.

13. At all times relevant herein, Ms. Willey has been and remains a resident of the State of Florida.

3. SUMMARY OF ARGUMENT

Mr. Rekow drafted wills for Ronald and Kathie Willey in 1985 [hereinafter “will”]. He maintained possession and control of Ronald Willey’s will. There is no known will that was executed after the 1985 will. After learning of Mr. Willey’s death from Jenine Salvati, Mr. Rekow continued to maintain sole possession and control of the will in violation of RCW§11.20.010.

Mr. Rekow drafted a letter in November 2008 addressed to Ms. McClaran, Ms. Salvati’s attorney, with a copy of the will enclosed that is referred to as Defendants’ Exhibit A in which he discusses his knowledge of Ronald Willey’s will.

The Honorable Judge Barbara Linde granted Mr. Rekow’s summary judgment motion and entered an order of dismissal on 1/11/2013 based on the issue of whether Mr. Rekow acted willfully. In light of Defendants’ Exhibit ‘A’ the court did not find that there was a willful violation of RCW 11.20.010.” RP 28, 1-7.

Ultimately, Ms. Willey argues that the issue of willfulness is an issue for the trier of fact. The trial court touched on this issue by stating

there was not evidence before the court upon which any rational trier of fact could conclude there was willful [lack of action]. RP 27, 17-19.

Ms. Willey respectfully maintains that the trial court erred. There is sufficient evidence to allow a trier of fact to determine willfulness. Defendants' Exhibit A, the letter drafted by Mr. Rekow, admits he retained sole possession of the original will. Mr. Rekow's expertise in trusts and estates (Title 11) is unchallenged by the defense.

The trial court erred when it determined a copy of the will was sufficient to satisfy RCW§11.20.010. A copy of the will when there is an original empowers nobody. Ms. Willey's hands were tied. The probate court was left uninformed. The second tier heirs were left uninformed. The creditors had no notice that the administrator was not an heir and did not have legitimate authority except by deceit. Jenine Salvati's Admission. CP 305-327, Ex. F.

The statute is clear that the original will must be filed. Ms. Willey provided the court with the historical meanings and purpose of the statute. Ms. Willey provided definitions of the terms of the statute by including the definitions provided by Title 11. Ms. Willey provided Washington State law that clarified any misleading applications of the Uniform Probate Code. The statute mandates the delivery of a known original will to the probate court with jurisdiction by whoever is in possession of the will.

The statute provides an option for a holder of the will to deliver the will to the executor but the will must be delivered to the court within the time frame it provides. Thirty days for a holder and forty days for an executor. The original will was delivered 10 months or more after Mr. Rekow was aware of Ronald Willey's death and the will was filed by Mr. Foster 13 months after it was known. Mr. Rekow, through Exhibit A, admits he did not deliver the original will to Ms. Willey. Mr. Rekow also admitted he knew who the rightful heirs were and that it was not Jenine Salvati. Mr. Rekow's expertise is admitted and well known.

Finally, even if the trial court could not find that the issue of willfulness was an issue for the trier of fact, and even if the trial court could not find statutory violation, Ms. Willey also claims negligence. Negligence is also an issue for the trier of fact and does not require willful inaction. The trial court never addressed the claim of negligence nor did it rule against the claim. It was improper to dismiss Ms. Willey's action in its entirety.

4. ARGUMENT

Ms. Willey respectfully contends that the trial court erred in interpreting RCW§11.20.010. The trial court conceded that although the statute did not include language regarding concealment of a will, nonetheless that was the purpose of the statute. RP 26, 19-21. Ms. Willey

respectfully disagrees with the lack of breadth of this interpretation. Deconstructing the trial court's ruling, Ms. Willey addresses "willful", "concealment", "will copy" beginning with historical background of the statute.

Historical background of the statute:

The basis for RCW §11.20.010 goes back to 1854 when the new Washington Territorial Government was more broadly concerned with a class of citizens including creditors, heirs, survivors and contesters with probate issues. The urgency of the 30 day requirement for delivery of the will to the court or the named executor was to protect all these citizens' interests and to maintain the integrity of the testator's last wishes. Session Laws of the Territory of Washington Eighth Regular Session of the Legislative Assembly, Held at Olympia, 1860.

In the Willey Estate, Ms. Willey was disenfranchised by Mr. Rekow's violation of RCW §11.20.010. When the will wasn't filed, no notice went out to citizen heirs. Mr. Rekow wrote this will. Def. Ex. A. He had full knowledge that the second tier heirs were not given notice of the will or their right to seek counsel to protect their potential interests. Further, creditors were disenfranchised. By allowing the wrongful heir to continue to live off of the depleted estate, creditors were left unaddressed and unpaid.

RCW §11.20.010. Duty of custodian of will—Liability:

Mr. Rekow, knowingly and willfully, retained in his custody and control, the Last Will and Testament of Ronald Willey in violation of Washington Statute Revised Code §11.20.010. The Statute requires:

RCW §11.20.010. Duty of custodian of will—Liability

Any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any will shall within forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction. Any person who shall wilfully violate any of the provisions of this section shall be liable to any party aggrieved for the damages which may be sustained by such violation.

Mr. Rekow admitted to violating this statute in the letter he wrote on October 21, 2008 to Ms. McClaran, counsel for the then wrongful administrator, Ms. Salvati, of the Estate of Ronald Willey. Def. Ex. A. In the letter, Mr. Rekow states he had custody of the original will. Mr. Rekow named the heirs, demonstrated knowledge that Ms. Salvati was not an heir, and that he referred Ms. Salvati to Ms. McClaran for legal counsel. Def. Ex. A.

The trial court states that defense exhibit A to the motion is incredibly important to the court. RP 26, 18. The trial court found that

Defendants' Exhibit A proves that there was no willful inaction by Mr. Rekow because it proves he did not conceal the will from Ms. Willey. RP 26, 19. Ms. Willey respectfully disagrees with the trial court's logic.

Willfulness:

The trial court erred by making a determination of fact as to whether Mr. Rekow acted willfully. RP 27, 17-19. Ms. Willey argued that this determination was reserved for the trier of fact. "Whether or not such conduct is willful or wanton is a question of fact for the jury. No court has questioned the soundness of this proposition, so far as injuries inflicted by willful misconduct are concerned." Adkisson v. City of Seattle, 42 Wash. 2d 676, 258 P.2d 461,465 (1953).

In Adkisson, the City of Seattle had a duty to maintain a safe roadway. Adkisson was killed after colliding with a road hazard. The City failed to take dutiful action to keep the roadway safe. At the close of plaintiff Adkisson's case, the trial court dismissed the counts charging wanton misconduct but continued on the issue of negligence.

On review of Adkisson, the State Supreme Court carefully defined the legal definitions of willful misconduct, wanton misconduct, and negligence. The Court ruled the trial court erred by dismissing the counts of wanton misconduct as it was a question for the jury to decide.

Adkisson, at 468.

Ms. Willey provided the civil jury instruction on willful misconduct. The instruction does not require “malice”; however it does require intent to injure. WPI 14.01 Willful Misconduct and Wanton Misconduct. The argument that must be presented to the trier of fact is: given that Mr. Rekow has a higher level of knowledge of Title 11 requirements, given that he wrote the will, given that he knew that the original will had to be filed and that copies are allowed only for lost and stolen wills after hearing, and given that Mr. Rekow knew a disinherited person was controlling the estate, did Mr. Rekow intentionally injure Ms. Willey and the Estate of Ronald Willey?

Ms. Willey does not argue that Mr. Rekow acted maliciously, however she does argue that Mr. Rekow acted with full knowledge and intent, knowing that injury was occurring and would continue to occur. Mr. Rekow knew that Ms. Salvati had control of the estate of Ronald Willey and had been administering the Estate since February 22, 2008, approximately eight months.

An injury to person or property is a malicious injury within this provision if it was intentional, wrongful, and without just cause or excuse, even in the absence of hatred, spite or ill will. The word 'willful' as here used means nothing more than intentional, while the malice here intended is nothing more than that disregard of duty which is involved in the

intentional doing of a willful act to the injury of another. Ely v. O'Dell, 264 P. 715, 146 Wash. 667, 669 (Wash. 1928). It wasn't inadvertent as Mr. Rekow has admitted he intentionally withheld the original will. Def. Ex. A. The trial court may have confused intent for malice.

“To constitute willful misconduct, there must be actual knowledge, or that which the law deems to be the equivalent of actual knowledge, of the peril to be apprehended, coupled with a conscious failure to avert injury.” Adkisson at 466. The Adkisson Court distinguished “willful misconduct” in order to define wanton misconduct.

The trial court interpreted “willful” in the context of “willful misconduct”. Case law and Black’s Law Dictionary offer several other interpretations of “willful”. “An act or omission is ‘willfully’ done, if done voluntarily and intentionally . . . and with specific intent to fail to do something the law requires to be done . . . to disregard the law.” Screws v. United States, 325 U.S. 91,101, 65 S.Ct. 1031, 1035, 89 L.Ed. 1495, BLACKS’ LAW DICTIONARY 1599 (6th ed. 1990).

The will, drafted by Mr. Rekow, disinherits Jenine Salvati. CP 36-304, Ex. B, Last Will and Testament of Ronald Willey. Mr. Rekow was fully aware that Jenine Salvati was administering the estate intestate for at least eight months. Def. Ex. A. Mr. Rekow was fully aware that this

wrongful non-heir continued to control the estate for another year, 2009, while he maintained possession and control of the original will. Mr. Rekow works primarily in trusts and estates as well as lectures on the subject and thus was fully aware that a copy could not be filed unless the original was lost or destroyed.

Mr. Rekow did not eliminate his duty under statute to deliver the original will to Ms. Willey or to the court by sending a letter with a copy of the will to a non-heir and her attorney. The duty to file the will under statute is with the holder of the will, not third parties. RCW §11.20.010. Even in August of 2009, 11 months after Mr. Rekow knew of Ronald Willey's death, when Ms. Willey's attorney demanded the original will for filing, Mr. Rekow was reluctant and demanded a letter of authorization. CP 36-304, Ex. X. A letter of authorization is not required under RCW§11.20.010. This statute is an absolute mandate to deliver the will.

The duty was solely on Mr. Rekow by his own choice and by his actions, or lack of actions. He had knowledge, he had the will and he knew a non-heir, a wrongful taker was in control of the estate. Mr. Rekow did nothing to advise the court by filing the original nor did he deliver the original to Ms. Willey thus giving her the power to pursue her rightful claim. We believe that Mr. Rekow, by his actions and his inactions,

provides enough evidence for the trier of fact to make the determination on willfulness as is proper under the law.

Concealment:

The statute requires the holder of the original will to deliver the will to the court or the executor. The duty does not end there. If the will is delivered to the executor, the executor then holds the duty to deliver the will to the court. If there is an original will, within 70 days at the most, the will must be filed with the court of jurisdiction. RCW§11.20.010. This did not happen.

Concealment is not referenced in the statute. Historically, the statute is not limited to the act of informing only heirs. It mandates making public the last wishes of the decedent by filing evidence of the testator's last testament. A copy of a last testament is not evidence unless the original is lost or stolen. If the will is lost or stolen, then the copy must be proven valid in a court of law. Mr. Rekow did not deliver the will; he delivered a copy. He did not deliver the original will to the named heir; he delivered a copy to a non-heir, a disinherited party who by her current admission was wrongfully in control of the estate, and cc'd one of three heirs. Mr. Rekow withheld the original will thus withheld the evidence of Ronald Willey's last testament.

Although the existence of the will was not concealed to private persons, it was concealed to the Snohomish County probate court, creditors, and second tier heirs. Most concerning to Ms. Willey, Mr. Rekow made it extremely difficult for her to have standing and successful legal recourse by intentionally violating the statute.

Defendants' Exhibit A only proves that Mr. Rekow knew the 1985 will was the last executed will to his knowledge, that Ms. Willey was the heir, that there were second tier heirs and that Ms. Salvati was not an heir. Defendants' Exhibit A proves that Mr. Rekow knowingly and voluntarily chose to withhold the original will.

Distinguishing original will from will copies:

The trial court found that the copy of the will that Mr. Rekow sent to the parties was sufficient to satisfy the statute. RP 27, 8-9. Ms. Willey respectfully disagrees. A "copy" restricts heirs: Mr. Rekow did not satisfy the requirements of RCW §11.20.010 by sending copies of the will to Ms. McClaran and others. Mr. Rekow, an expert in Trusts and Estates, knew that under Title 11 "Will" means "original will"; and that copies have statutory restrictions on the heirs.

Copies of wills are only allowed when the original will is lost or stolen. When copies are filed, in cases of lost wills, Washington Statutes limit the powers of the executor and opens a Pandora's Box of contests.

In essence, a filed copy of a will leaves the heirs and creditors on shaky legal ground by applicable statutes. If an original will is known, it must be filed as per RCW § 11.20.010.

Mr. Rekow claimed a copy was sufficient. CP 20-35. Mr. Rekow's counsel referred to the Uniform Probate Code. CP 20-35. However, Washington State follows its own State Statutes for probate: Washington State Statute is the law of the Washington State Probate Court. "Courts have no jurisdiction over wills except as given by statute." Pond v. Faust, 90 Wash., 117, 155 P. 776 (1916).

Counsel for Mr. Rekow misrepresented the law by citing RCW §11.20.010, 020(2), .070, and In the Matter of the Estate of Patricia Veguilla Nelson, 85 Wn.2d 602 (1975). CP 20-35.

First, Mr. Rekow's counsel proffered cites that do not stand for the proposition that a copy is sufficient in a matter where there is an original will. RCW §11.20.010 mandates the original will by statutory definition. Title 11 definition of "will" defines the term as "an instrument validly executed as required by RCW §11.12.020". RCW §11.02.005(8), RCW §11.12.020 requires a "will" has "a writing signed by the testator . . . and shall be attested." "Carbon copy of will, together with oral testimony that it is an exact copy of the original, is competent and admissible as secondary evidence to establish the making and contents of a will that has

been lost or destroyed.” Aaritt Estate, 175 Wash. 303, 27 P.2d 713 (1933); Brown v. Jones, 150 Wash. 449, 273 P. 194 (1929); Swingley v. Daniels, 123 Wash. 409, 212 P. 729 (1923). In this case, the will was not lost or stolen; Mr. Rekow had custody and control. RCW §11.20.010 mandates that the “will” shall be delivered to the court of jurisdiction or to the person named in the will as executor.

Mr. Rekow’s counsel proffered RCW §11.20.020. CP 20-35. This is another statute that only pertains to lost and stolen wills. This statute does not permit a copy of the will as sufficient to satisfy RCW §11.20.010.

Mr. Rekow’s counsel proffered RCW §11.20.070 that relates only to lost and stolen wills. CP 20-35. Mr. Rekow’s counsel proffered Estate of Nelson, supra which is a case that involves a lost will. CP 20-35. Nelson provides a four prong prerequisite for the admission of a lost will to probate: the first prerequisite is “the will must have been lost.” Nelson, at 605. Mr. Rekow’s counsel did not submit any State law in the Summary Judgment Motion that supported 1) Mr. Rekow was relieved of his duty to file the original under the Statute and 2) a copy was sufficient to relieve him of his duty and a copy is sufficient for filing with the court when the original is known. Mr. Rekow’s counsel’s cases and law supported Ms. Willey’s contentions.

A copy of the will is not sufficient to satisfy this statute. In fact, when a copy of a will is filed, it has an adverse impact on the executrix as opposed to an original will. Under RCW §11.20.080 the court has authority to restrain the actions of the executrix from her full ability to act to preserve assets when a copy of a will is filed and not the original will. The original will was known; therefore these statutes were not relevant to the summary judgment motion except to prove an original must be filed.

What is relevant is that Mr. Rekow's withholding of the original will severely handicapped Ms. Willey. "Will has no effectiveness for any purpose prior to its admission to probate." In re O'Brien's Estate, 13 Wash. 2d 581, 126 P.2d 47 (1942). Only filing the original will as mandated by RCW §11.20.010 or delivering the original will to the executrix so named by the original will, Ms. Willey, would enable Ms. Willey to protect and reclaim the wrongfully converted assets.

Negligence:

Finally, even if the trial court could not find that the issue of willfulness was an issue for the trier of fact, and even if the trial court could not find statutory violation, Ms. Willey also claims negligence. Adkisson distinguished negligence from willfulness in that, "Negligence conveys the idea of neglect or inadvertence." Adkisson supra at 465.

Actionable negligence has these elements: (1) the existence of a duty owed to the complaining party, (2) a breach thereof, (3) a resulting injury, and (4) a proximate cause relation between the claimed breach and the resulting injury. Pedroza v. Bryant, 101 Wash.2d 226, 228, 677 P.2d 166 (1984). "Foreseeability determines the extent and scope of duty." Knott v. Liberty Jewelry & Loan, supra 50 Wash.App.at 271, 748 P.2d 661. The threshold determination of whether the defendants owed a duty to the complaining party is a question of law. Pedroza, supra. In this case, Mr. Rekow held the original will in his exclusive possession and control; Mr. Rekow breached his duty to Ronald Willey as well as his statutory duty; with the will undelivered, Ms. Salvati maintained control of the assets; and the estate was depleted.

If the trial court could not find that Mr. Rekow acted willfully, and that issue was not an issue for the trier of fact, then a partial summary judgment would have been a possible ruling. The trial court overlooked Ms. Willey's claim of negligence.

As with the issue of willfulness, negligence is also an issue for the trier of fact. Negligence is distinguished from willfulness in that it does not require willful inaction. "In an orderly tort action the defendant is liable if his negligence was a proximate cause of the plaintiffs' injury". Adkisson at 465. The trial court never addressed the claim of negligence

nor did it rule against the claim. It was improper to dismiss Ms. Willey's action in its entirety.

Mr. Rekow's inaction had substantial impact on the Estate and Kathie Willey:

Mr. Rekow's violation of RCW § 11.20.010 is in no way "remote or insubstantial". Mr. Rekow's violation of State Law enabled a disinherited, wrongful heir to convert an estate initially estimated at 1.3 million dollars. Mr. Rekow's action disenfranchised second tier heirs and creditors who will probably never recover their losses as there is nothing left in the estate.

There are very few statutes under Title 11 that carry the liability language. This is because for over 150 years this State finds violations of this statute, withholding the original will that could have been so easily filed or delivered to Ms. Willey, a substantial violation of citizens' rights and legislative intent. The Legislature wanted to make clear how serious such a violation should be construed by the courts of this State.

Summary Judgment Standards:

Summary judgment is proper where the pleadings, depositions, affidavits and admissions on file show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter

of law. Hartley v. State, 103 Wash.2d 768, 774, 698 P.2d 77 (1985); Knott v. Liberty Jewelry & Loan, Inc., 50 Wash. App. 267, 270, 748 P.2d 661, review denied, 110 Wash.2d 1024 (1988). Making the same inquiry as the trial court, the appellate court must view the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party; summary judgment should be granted only if reasonable persons could reach but one conclusion from all of the evidence. Knott, supra at 270-71. The question here is whether a genuine material factual issue exists and, if not, whether Mr. Rekow is entitled to a judgment as a matter of law.

5. CONCLUSION

The violation is not complex. The facts are very simple: Mr. Rekow, by his admission, intentionally withheld the original will. He knew, or should have known this was in direct violation of the statute RCW §11.20.010. Only he had the duty to deliver or file.

The trial court misinterpreted Title 11. The Honorable Judge Linde admitted in rendering her decision that the statute does not address the issue of willful concealment of a will but that she found that Mr. Rekow had not willfully concealed the will and she felt supported by case law. RP 26, 20. The case law was not cited so Ms. Willey cannot address that but the Judge was correct in the statute does not address willful concealment. The statute is a mandate that is 150 years old protecting

heirs and creditors alike. The holder of the will must deliver the will. Mr. Rekow willfully and intentionally chose not to deliver the will. The trial court erred in granting defendants' summary judgment motion and dismissing Ms. Willey's action against the defendants. Defendants' Exhibit A only supports Ms. Willey's contention that Mr. Rekow admittedly withheld the original will with full knowledge of the ramifications and with full knowledge that a disinherited non-heir was controlling the estate against the last wishes and testament of Ronald Willey. Whether or not there was willful inaction on the part of Mr. Rekow is an issue for the trier of fact. Ms. Willey has provided enough evidence to let a jury make the determination.

Further, Ms. Willey claims negligence that was never ruled on by the court. It was an error to dismiss the cause of action without addressing the other causes of action. In light most favorable to the non-moving party, with material facts in dispute, the court should have denied defendants' motion and allowed the facts to be determined by trial. Ms. Willey inherited an empty estate with several creditors left unpaid. The business that she built with Ronald Willey had been liquidated. She had large personal losses and deserves her day in court.

Ms. Willey respectfully urges the court to overturn the decision of January 11, 2013 granting summary judgment in favor of the defendants.

Respectfully submitted this 19th day of June, 2013.

MARTS LAW PLLC

A handwritten signature in black ink, appearing to read "John R. Marts", written over a horizontal line.

John R. Marts, WSBA #8287

Janet Susan Stark, WSBA #31145

Attorneys for Appellant

1 COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

2
3 KATHIE J. WILLEY, as Personal Representative)
of the Estate of Ronald Willey; and KATHIE J.)
4 WILLEY, a single individual,)

NO. 69914-8-1

5 Appellants,)

CERTIFICATE OF
SERVICE RE: APPELLANTS'
BRIEF

6 vs.)

7 KENNETH E. REKOW and JANE DOE REKOW;)
husband and wife and their marital community;)
8 and KARR TUTTLE CAMPBELL, a Professional)
Service Corporation,)

9 Respondents.)
10

11 CERTIFICATE OF SERVICE

12 I certify under penalty of perjury under the laws of the State of Washington that
13 on the 19th day of June, 2013, I caused to be served upon counsel of record, at the
14 address below stated, via personal delivery, a true and correct copy of the Appellants'

15 Brief:

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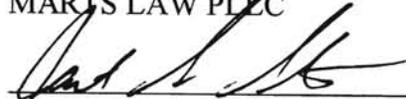
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COURT OF APPEALS
STATE OF WASHINGTON

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Dated this 19th day of June, 2013. Signed at Edmonds, WA.

MARTS LAW PLLC



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