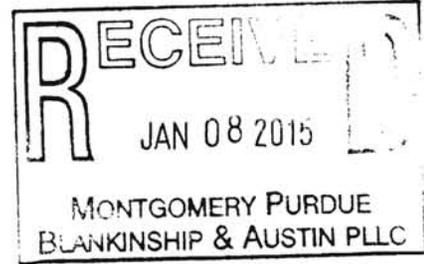


72307-3

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Case No. 72307-3

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

IN RE THE ESTATE OF VERNON D. HANNAH,

T. BERNELL HANNAH, surviving spouse

Appellant,

vs.

**CHRISTINE CHAN, Personal Representative of the
Estate of Vernon D. Hannah**

Respondent.

~~STATE OF WASHINGTON
JAN 08 2015 11:04 AM~~

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

I. CORRECTION OF RESPONDENT’S FACTS	1
II. ARGUMENT	2
A. Goal of Statutory Interpretation.	2
1. Ascertain legislative intent.	2
2. Determine if a statute’s meaning is plain from the words used.	2
3. Consider context and related statutes.	3
4. Statute is ambiguous if language is susceptible to more than one interpretation.	3
5. Courts resolve ambiguity by considering, <i>inter alia</i> , legislative history & relevant case law.	4
B. The words: “The court may not make an award” do not create a jurisdictional bar, and such a reading leads to an absurd result in the application of ch. 11.54 RCW.	4
1. There is no jurisdictional bar in RCW 11.54.010 which is clear from the use of the same language in a directly related statute.	4
2. Where the legislature wants a jurisdictional bar in a statute it has included one.	5
3. Christine’s interpretation produces an absurd result that cannot stand.	5
C. The requirement to file or pay a filing fee is not a jurisdictional prerequisite to either subject matter or <i>in personam</i> jurisdiction. . .	6
1. RCW 11.54.010 is not jurisdictional.	6
2. Jurisdiction is often confused with claims-processing.	6
3. Filing deadlines (statutes of limitations) are claims-	

processing rules..	8
4. Procedural requirements should not be considered jurisdictional.	8
5. Hoisington and Nickum are not instructive.	9
6. The original jurisdiction over Title 11 matters in TEDRA is not the same as limited appellate jurisdiction in LUPA matters.	12
D. Christine’s position that a jurisdictional requirement exists under RCW 11.54.010 conflates jurisdictional requirements with claim-processing deadlines.	11
1. Title 11 contains various claims-processing deadlines that are not the same as jurisdictional requirements.	11
E. The court has <i>in personam</i> jurisdiction over Christine.	12
F. Payment of a filing fee is not a jurisdictional pre-requisite.	12
1. The word “file” in the probate code is not the same as the word “file” in the context of recording documents with the auditor.	12
2. Nothing in RCW 11.54.010 or RCW 11.96A.010 requires payment of a filing fee.	13
G. Both RCW 11.24.010 and RCW 11.54.010 are statutes of limitation.	15
H. RCW 4.16.170 is a stand-alone statute that applies to all statutes of limitations.	16
1. Both service and filing are required for commencement of an action.	16
2. RCW 4.16.170 does not require CR 3. It is a stand-alone statute and substantive law.	16-17
3. RCW 4.16.170 applies to TEDRA proceedings.	18

4. CR 3 applies to TEDRA actions. 18

I. The widow should be awarded her attorneys fees. 19

III. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

<i>Blueshield v. State Office of Insurance Commissioner</i> , 131 Wn. App. 639, 648, 128 P.3d 640 (2006)	5
<i>Buecking v. Buecking</i> , 179 Wn.2d 438, 316 P.3d 999 (2013)	2, 3
<i>Cohens v. Virginia</i> , 6 Wheat. 264, 5 L.Ed. 257 (1821)	7
<i>Department of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, 43 P.3d 4 (2002)	3
<i>Dougherty v. Dep't. of Labor & Indus. for the State of Washington</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003)	10, 11
<i>Durland v. San Juan County</i> , 175 Wn. App. 316, 305 P.3d 246 (2013)	10
<i>Estate of Haselwood v. Bremerton Ice Arena, Inc.</i> , 166 Wn.2d 489, 210 P.3d 308 (2009)	3
<i>Henderson ex rel v. Shinseki</i> , 562 U.S. 428, 131 S.Ct. 1197, 179 L.Ed.2d 159 (2011)	6, 7
<i>In re Estate of Crane</i> , 15 Wn. App. 161, 548 P.2d 585 (1976)	13, 14, 15
<i>In re Estate of Kordon</i> , 157 Wn.2d 206, 137 P.3d 16 (2006)	18, 19
<i>In re Hoisington</i> , 99 Wn. App. 423, 993 P.2d 296 (2000)	9, 10
<i>In re Saltis</i> , 94 Wn.2d 889, 621 P.2d 716 (1980)	11
<i>Jametsky v. Olsen</i> , 179 Wn.2d 756, 317 P.3d 1003 (2014)	3, 4

<i>Lowy v. PeaceHealth</i> , 174 Wn.2d 769, 280 P.3d 1078 (2012)	3
<i>Mader v. Health Care Authority</i> , 149 Wn.2d 458, 70 P.3d 931 (2003)	11
<i>Margetan v. Superior Chair Craft Co.</i> , 92 Wn. App. 240, 963 P.2d 907 (1998)	13
<i>Myers v. Harris</i> , 84 Wn.2d 408, 526 P.2d 893 (1974)	15
<i>Nickum v. City of Bainbridge Island</i> , 153 Wn. App. 366, 223 P.3d 1172 (2009)	10
<i>Ralph, et al. v. Dep't of Nat'l Resources</i> , No. 88115-4 (decided 12-31-14)	8
<i>Reed Elsevier, Inc. v. Muchnick</i> , 559 U.S. 154, 130 S.Ct. 1237 (2010)	7, 8
<i>Sebelius v. Auburn Regional Medical Center</i> , 133 S.Ct. 817, 184 L.Ed.2d 627 (2013)	8
<i>Union Pacific R.R. v. Brotherhood of Locomotive Engineers</i> , 558 U.S. 67, 130 S.Ct. 584 (2009)	7

Statutes

Title 11 RCW	passim
Chapter 11.24 RCW	passim
Chapter 11.40 RCW	12
Chapter 11.54 RCW	passim
Chapter 11.96A RCW	passim
RCW 4.16.170	passim
RCW 4.16.190	18

RCW 6.13.030	15
RCW 10.73.090	9
RCW 11.90.220	5
RCW 11.96A.010, <i>et seq.</i>	passim
RCW 36.18.005	13
RCW 36.18.020	14
RCW 36.18.060	14
RCW 36.70C.040	10
Other Authorities	
<i>Black's Law Dictionary</i> , 9th Ed. (2004)	6
<i>Merriam Webster Online Dictionary</i> ,	6
Court Rules	
CR 3	16, 18

I. CORRECTION OF RESPONDENT'S FACTS

1. Decedent did not leave a son from a prior marriage. That child was adopted by a third party. Therefore, Decedent died without issue.

2. There is nothing in the record as to the reason that Decedent created his revocable trust, but it was not created by "independent legal counsel" but by his then-attorney. CP 6.

3. The widow's consent to the trust was to the trust as originally created. CP 26. There is nothing in the record to reflect that she consented to the later amendments or even knew about the amendments, or support the claim that the trust contains only Decedent's separate property.

4. There is nothing in the record to support the claim that the Chans "regularly assisted [Decedent] with farm and other property maintenance," nor that he was "particularly close to [their] children."

5. There is nothing in the record to support the claim that the trust is illiquid nor that this is "in part due to loans requested by and made to the widow's family members which became uncollectible."

6. There is nothing in the record to support the claim that Christine kept the widow "fully informed about the progress of the estate administration" and the widow does not agree that this was the situation.

7. It is incorrect that the issue of an award in lieu of homestead was not actively pursued until nearly a year later. The record reflects that on April 4, 2013, Christine assured the widow that she was open to negotiating a

TEDRA Agreement to provide for a reasonable family allowance. CP 83; CP 113. After no negotiations occurred, counsel for the widow indicated that a petition for an award in lieu of homestead would be filed and tentatively set the hearing for April 25, 2014. CP 83; CP 115; CP 116.

9. Christine’s counsel did not “notify” counsel to initiate a separate action. What they said was that the matter had to be filed as a TEDRA proceeding. CP 172-173. This was done.

10. The widow’s counsel did not file the petition for award in lieu of homestead and for an increase on May 7, 2014. On that day, the clerk’s office moved them from the probate case (where they had been filed on May 5th) to a separate cause number, and notified the widow’s counsel of the need for a filing fee, and it was paid that same day. CP 81.

II. ARGUMENT

A. Goal of Statutory Interpretation.

1. Ascertain legislative intent.

The goal of statutory interpretation is to “ascertain and effectuate legislative intent.” *Buecking v. Buecking*, 179 Wn.2d 438, 444, 316 P.3d 999 (2013).

2. Determine if statute’s meaning is plain from the words used.

“In determining legislative intent, we begin with the language used to determine if the statute’s meaning is plain from the words used and if so we

give effect to this plain meaning.” *Id.*, at 444. The “plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. ... If, after this inquiry, the statute remains susceptible of more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history.” *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

3. Consider context and related statutes.

The courts consider the meaning of the provision in question, the context of the statute in which the provision is found, and related statutes. *Lowy v. PeaceHealth*, 174 Wn.2d 769, 779, 280 P.3d 1078 (2012). Undefined terms are given their plain and ordinary meaning, which can be derived from a dictionary. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009).

4. Statute is ambiguous if language is susceptible to more than one interpretation.

If the plain language of the statute is susceptible to more than one reasonable interpretation, the statute is ambiguous. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). The “plain language” of RCW 11.54.010(3) is in fact ambiguous, as the word “filed” has more than one meaning (as discussed in the widow’s opening brief).

5. Courts resolve ambiguity by considering, *inter alia*, legislative history & relevant case law.

The courts resolve ambiguity by considering other indications of legislative intent, including principles of statutory construction, legislative history, and relevant case law. *Id.*

B. The words: “The court may not make an award” do not create a jurisdictional bar, and such a reading leads to an absurd result in the application of ch. 11.54 RCW.

1. There is no jurisdictional bar in RCW 11.54.010 which is clear from the use of the same language in a directly related statute.

Christine argues that the language of RCW 11.54.010(1) (“The court may not make this award unless...”) operates as a jurisdictional bar for claims brought under RCW 11.54.010 *et seq.* Her argument is that the language is equivalent to, and should be read the same as: “The court does not have jurisdiction unless...” RCW 11.54.010(1) is subject to findings required to be made by the court with respect to the petition under RCW 11.54.030. Courts will derive the meaning of a statute from “the context of the entire act as well as any related statutes.” *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). RCW 11.54.030 provides that: “The court may not make an award unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for.” (Emphasis added.) RCW 11.54.030 is a directly related statute that clarifies the legislative intent behind the words “The court may not make an award...” If, as Christine argues, the language “The court may

not make this award unless...” was a jurisdictional prerequisite, a court would not have jurisdiction to hold a hearing on the merits to be able to “find” anything under RCW 11.54. If the court were to adopt Christine’s interpretation of the words “The court may not make this award unless...”, then RCW 11.54.030 would also have to read “*The court does not have jurisdiction* to make an award unless the court finds that all the [expenses] have been provided for.”

2. Where the legislature wants a jurisdictional bar in a statute, it has included one.

If the legislature had intended to impose a jurisdictional requirement under RCW 11.54.010, it would have said, “the court does not have jurisdiction unless... .” In fact, where the legislature has sought to affirmatively address a jurisdictional aspect of a claim brought under Title 11 RCW, it has so stated. *See e.g.*, RCW 11.90.220 where the legislature provided: “A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if... .” Of note, this particular statute is also subject to TEDRA since it is part of Title 11 RCW.

3. Christine’s interpretation produces an absurd result that cannot stand.

The consequence of adopting Christine’s interpretation of this language produces an absurd result when applied to RCW 11.54.030, and cannot stand. *See, Blueshield v. State Office of Insurance Commissioner*, 131 Wn. App. 639, 648, 128 P.3d 640 (2006) (noting that courts will avoid

readings of statutes that result in unlikely, absurd, or strained consequences).

C. The requirement to file or pay a filing fee is not a jurisdictional prerequisite to either subject matter or *in personam* jurisdiction.

1. RCW 11.54.010 is not jurisdictional.

Christine refers in her brief to RCW 11.54.010(3) establishing an 18-month “deadline” for a petition to be filed. This is the very definition of a statute of limitations: “A law that bars claims after a specified period: specif, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued,” *Black’s Law Dictionary*, 9th Ed. (2004), and “A statute assigning a certain time after which rights cannot be enforced by legal action or offenses cannot be punished.” *Merriam Webster Online Dictionary*. Despite this, she then argues that the statute is instead a “jurisdictional prerequisite” that strips the court of authority to entertain the widow’s claim for a spousal award. Her position has confused jurisdiction with claims-processing.

2. Jurisdiction is often confused with claims-processing.

The United States Supreme Court has recognized the confusion regarding the use of the term “jurisdiction,” stating that “because the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term.” *Henderson ex rel v. Shinseki*, 562 U.S. 428, 131 S.Ct. 1197, 1202, 179 L.Ed.2d 159 (2011). In *Henderson*, the United States Supreme Court

acknowledged that, as with the instant case, “Jurisdictional rules may...result in the waste of judicial resources and may unfairly prejudice litigants.” *Id.* The Court further stated “that a rule should not be referred to as jurisdictional unless it governs a court’s adjudicatory capacity, that is, its subject-matter or personal jurisdiction.” *Id.* “Other rules, even if important and mandatory, we have said, should not be given the jurisdictional brand.” *Id.* at 1203.

“‘It is most true that this Court will not take jurisdiction if it should not,’ Chief Justice Marshall famously penned, ‘but it is equally true, that it must take jurisdiction if it should . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.’” *Union Pacific R.R. v. Brotherhood of Locomotive Engineers*, 558 U.S. 67, 71, 130 S.Ct. 584 (2009) (citing *Cohens v. Virginia*, 6 Wheat. 264, 404, 5 L.Ed. 257 (1821)). There is “surely a starting presumption that when jurisdiction is conferred, a court may not decline to exercise it. ... The word “jurisdiction” has been used by courts . . . to convey many, too many, meanings” and the Court has “cautioned . . . against profligate use of the term.” *Union Pac. R.R.*, at 71. “The term ‘jurisdictional’ properly applies only to ‘prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction)’ implicating [the court’s adjudicatory] authority.” *Reed Elsevier, Inc., v. Muchnick*, 130 S.Ct. 1237, 1243, 176 L.Ed.2d 18 (2010). And acknowledging that “[w]hile perhaps clear in theory, the distinction between jurisdictional conditions and claim-

processing rules can be confusing in practice . . . [courts] should use the term ‘jurisdictional’ only when it is apposite...and...should curtail...drive-by jurisdictional rulings.” *Id.* at 1243-44.

3. Filing deadlines (statutes of limitations) are claims-processing rules.

Among those types of rules that the Supreme Court directs “should not be described as jurisdictional,” are those that have been identified as “claim-processing rules . . . [which] are rules that seek to promote the orderly progress of the litigation by requiring that parties take certain procedural steps at certain specified times.” *Id.* The Court has readily acknowledged that “filing deadlines...are quintessential claim-processing rules.” *Id.* (emphasis added); *see also, Sebelius v. Auburn Regional Medical Center*, 133 S.Ct. 817, 825, 184 L.Ed.2d 627 (2013) (the Court has “repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, [the Court] has described them as “quintessential claim-processing rules.”).

4. Procedural requirements should not be considered jurisdictional.

The Washington State Supreme Court recently held that filing a real property dispute in the incorrect county was a venue issue, not a jurisdictional issue, in *Ralph, et al. v. Dep’t of Nat’l Resources*, No. 88115-4 (decided 12-31-14), stating at p. 15 of the decision: “ ‘Elevating procedural requirements to the level of jurisdictional imperative has little practical value and

encourages trivial procedural errors to interfere with the court’s ability to do substantive justice” by allow[ing] a party to raise it at any time, even after judgment,” resulting in potential “abuse and ... a huge waste of judicial resources.” [Citations omitted.]

5. Hoisington and Nickum are not instructive.

Christine argues that the language contained in RCW 11.54.010(3) is “similar to the restrictions on the court’s authority in the statutes considered in *Hoisington* and *Nickum*,” Respondent’s Brief at 18, and should therefore be treated as being jurisdictional in nature (as opposed to a claim-processing rule). Christine’s reliance on these cases is misplaced.

In *Hoisington*, the defendant plead guilty to several crimes and then filed a petition to enforce his original plea agreement based on the parties’ incorrect belief as to the classification of one of the felonies. His petition was filed under RCW 10.73.090, which gave him one year to collaterally attack a judgment. He argued that the statute had been equitably tolled because he had raised the issue in prior proceedings. The court discussed that the doctrine of equitable tolling applied to statutes of limitation but not to jurisdictional time limits, found that RCW 10.73.090 was a statute of limitations, and held that the doctrine applied (“No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final...”). The only mention of jurisdiction was in reference to the court’s inability to consider a petition

if a personal restraint petition had previously been filed, which has nothing to do with the case at issue. However, it is instructive that the court considered the use of the word “filed” to be a statute of limitations, which is the same wording that is at issue in RCW 11.54.010 (“The court may not make an award unless the petition for the award is filed... .”)

Nickum involved landowners filing suit under the Land Use Petition Act (LUPA) to challenge a city’s decision to allow construction of a wireless communication facility on a neighbor’s parcel. Their suit was rejected as untimely since it was filed more than 21 days after the challenged decision had been issued, and LUPA specifically requires that a petition be both timely filed and timely served, or the petition is “barred.” RCW 36.70C.040(3). This statute is a creature of legislative creation and does not exist at common law. Thus, the legislature is free to clearly define when the court has authority to consider a petition (ie filing and serving within 21 days). Also, under LUPA, superior courts serve in an appellate capacity (compare with the plenary authority and original jurisdiction granted to superior courts under Chapter 11.96A RCW). “LUPA invokes the appellate jurisdiction of the superior court; accordingly, ‘the superior court has only the jurisdiction as conferred by law.’” *Durland v. San Juan County*, 175 Wn.App. 316, 321, 305 P.3d 246 (2013). When a superior court acts in an appellate capacity, it is of limited statutory jurisdiction, and all statutory requirements must be met before jurisdiction is properly invoked. *Dougherty v. Dep’t. of Labor &*

Indus. for the State of Washington, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003). And although there has been a recent trend towards relaxing the “slavish adherence to the [strict compliance] precedent,” *In re Saltis*, 94 Wn.2d 889, 895, 621 P.2d 716 (1980), Washington courts have long held that compliance with procedural rules is essential for the exercise of a superior court’s appellate jurisdiction. *See, e.g., Mader v. Health Care Authority*, 149 Wn.2d 458, 70 P.3d 931 (2003).

6. The original jurisdiction over Title 11 matters in TEDRA is not the same as limited appellate jurisdiction in LUPA matters.

The original jurisdiction conferred upon superior courts to entertain all claims relating to matters concerning trusts and estates under ch. 11.96A RCW is vastly different than the limited appellate jurisdiction in *Nickum* that Christine attempts to analogize. In fact, RCW 11.96A.020 states that: “If this title [11] should in any case or under any circumstance be . . . doubtful with reference to the administration and settlement of [all trust and estate matters], 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.” There is no similar provision in the Land Use Petition Act so the analogy must fail.

D. Christine’s position that a jurisdictional requirement exists under RCW 11.54.010 conflates jurisdictional requirements with claim-processing deadlines.

1. Title 11 contains various claims-processing deadlines that are not the same as jurisdictional requirements.

There are various references to original and subject matter jurisdiction in TEDRA: RCW 11.96A.020 (subject matter jurisdiction and plenary authority); RCW 11.96A.040 (original subject matter jurisdiction); RCW 11.96A.060 (subject matter jurisdiction). Those are separate and distinct from the various deadlines contained in the various chapters of Title 11 for the filing of various claims. Ch. 11.24 RCW explains the claim-processing requirements for will contests; ch. 11.40 RCW explains the claim-processing requirements for claims against the estate; ch. 11.54 RCW explains the claim-processing requirements for spousal awards and creditor's claims. Therefore, RCW 11.54.010(3) should reasonably be interpreted as the claim-processing rule that it is: just another deadline within which a claim for a spousal award can be brought.

E. The court has *in personam* jurisdiction over Christine.

It should be noted that the court acquired *in personam* jurisdiction over Christine as she was properly served in this matter. The fact that Christine was properly served has not been disputed by Christine and is therefore a verity on appeal.

F. Payment of a filing fee is not a jurisdictional pre-requisite.

1. The word "file" in the probate code is not the same as the word "file" in the context of recording documents with the auditor.

Christine argues that the word "file" as used in RCW 11.54.010

should be given the meaning as contained in RCW 36.18.005 for the recording of documents with a county auditor. However, that definition has not been adopted under the probate code. The *Margetan* case she cites did not hold that the definition of filing a document with the auditor applies to the definition of “file” in RCW 11.54.010. The holding was that a complaint is “filed” for purposes of commencing an action in time to toll the statute of limitations when the required filing fee is paid. However, in *Margetan*, the clerk did not accept the complaint for filing, unlike the instant case, and unlike *Crane, infra*. The *Margetan* court also noted that RCW 4.16.170 “provides that either the filing of the complaint or the service of the summons will toll the statute of limitations so long as the other act is completed within 90 days.” *Margetan*, 92 Wn. App. at 244.

2. Nothing in RCW 11.54.010 or RCW 11.96A.010 requires payment of a filing fee.

As with the former RCW 11.24.010, RCW 11.54.010, and RCW 11.96A.010 only require a party to “file a petition.” They do not require both the filing of the petition and payment of the filing fee. In the instant case, the clerk accepted the filings, stamped them as received, and assigned them the case number. CP 80; CP 58; CP 60; CP 62. The clerk did not refuse the filings for failure to tender payment of the \$240.00 filing fee. CP 80-81. She had the authority to refuse the filings, but she did not.

In the Matter of the Estate of Crane, 15 Wn. App. 161, 163, 548 P.2d

585 (1976) is nearly on point with the instant case. In *Crane*, a petition to revoke a will that had been admitted to probate was accepted by the court clerk without the required filing fee. The estate then moved to dismiss the petition because no filing fee was collected by the clerk and a new file opened. The court held that the court nevertheless had jurisdiction over the will contest: “While it is apparent under RCW 36.18.060 that the clerk’s office should have collected the fee and that a new file should have been opened, we believe that the act of filing nevertheless vested jurisdiction over the will contest in the superior court as of the filing date. (Emphasis added). The court also noted that: “The clerk’s oversight in failing to collect his fee did not deprive the court of jurisdiction. RCW 11.24.010 makes the act of filing the prerequisite to jurisdiction, but neither it nor RCW 36.18.020(12) expressly refers to payment of the fee as a jurisdictional requirement.” The court acknowledged that the clerk had the statutory authority to refuse acceptance of the petition, *id.* at 164; *see also, Holt v. Gambill*, 123 Wn. App. 685, 691, 98 P.3d 1254 (2004), but that the clerk’s oversight in failing to collect the filing fee did not deprive the court of jurisdiction.

In the instant case, the widow filed her petition in the existing probate proceeding twice, once on April 11, 2014, and again on May 5, 2014. CP 125. The clerk advised that her TEDRA pleadings could be filed in the existing probate proceeding and that no filing fee would be necessary. CP 125; CP 80-81. Under *Crane*, payment of the filing fee on May 7, 2014 did

not deprive the court of jurisdiction to entertain the widow's petition for a spousal award. Under *Crane*, payment of the filing fee was not a jurisdictional prerequisite and the clerk's oversight did not deprive the court of jurisdiction to entertain the widow's petitions for her statutory spousal award. *See also, Myers v. Harris*, 84 Wn.2d 408, 526 P.2d 893 (1974) (acknowledging that where justice demands it, jurisdictional requirements may be waived; especially when the predicament is attributable in part to a mistake made by the court).

G. Both RCW 11.24.010 and RCW 11.54.010 are statutes of limitation.

Christine concedes that the four-month deadline for filing a will contest under RCW 11.24.010 is a statute of limitations. Respondent's Brief at 20-21. However, she urges the court to consider this as different from the language establishing the 18-month time limitation contained in RCW 11.54.010. This is a distinction without a difference. Under RCW 11.24.010 a party files a petition containing his or her objections and exceptions to a will, or its rejection. The burden of proof to establish the legality or illegality of a will rests upon the party filing the petition. RCW 11.24.030. How the court ultimately rules is uncertain.

In contrast, RCW 11.54.010 provides that a surviving spouse is entitled as a *matter of right*, to claim the basic statutory award in the amount established by RCW 6.13.030(2) so long as the court makes the required findings under RCW 11.54.030. The outcome is pre-determined for the basic

award. A surviving spouse merely files his or her petition to claim the award, which has priority over all other claims made against the estate under RCW 11.54.060, and the award is issued. Christine's position, when taken literally, is that if the court finds after a hearing on the merits that the 11.54.030 findings have not been made, then the court will rule that it does not have jurisdiction over the matter. This position results in an absurd reading of the statute.

H. RCW 4.16.170 is a stand-alone statute that applies to all statutes of limitations.

1. Both service and filing are required for commencement of an action.

Christine argues that because RCW 11.96A.100(1) requires a proceeding under RCW 11.96A.090 "to be commenced by filing a petition with the court," and because TEDRA actions are special proceedings, that CR3 does not apply and so the widow cannot rely upon RCW 4.16.170 to toll the 18-month statute of limitation. Christine's argument that an action is commenced by *either* service or filing is incorrect. An action cannot be commenced by filing alone; likewise, an action cannot be commenced by service alone. *Both* service and filing are required, with 90 days allowed to complete the second of these requirements. If the court were to accept Christine's argument on its face, then service would never be required to "commence" an action.

2. RCW 4.16.170 does not require CR 3. It is a stand-alone

statute and substantive law.

RCW 4.16.170 applies to the tolling of a statute of limitations. This is separate and distinct from how an action is commenced. An action is “commenced” when both service on the parties has been made and filing has occurred. If either service or filing has been made (but not the other), the action is only “deemed commenced” and then only for purposes of tolling the statute of limitations. RCW 4.16.170. If filing is not completed within 90 days after service is completed, “the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.” *Id.*

The widow personally served Christine on May 5, 2014 with a summons and copies of her petitions. CP at 56. Under RCW 4.16.170, this personal service on May 5, 2014 tolled the 18-month statute of limitation and granted the widow an additional 90 days to file her petitions.

Christine argues that RCW 4.16.170 is supplanted by Ch. 11.96A RCW because it provides three exceptions to how an action is commenced. However, this reasoning is flawed because RCW 4.16.170 does not govern how actions are commenced, but how a statute of limitations is tolled. RCW 4.16.170 applies to all statutes of limitation. RCW 4.16.170 (“For the purpose of tolling any statute of limitations”). As an independent statutory provision, it does not rely upon CR3 for its operation. CR3 simply points to RCW 4.16.170 for how a party can toll a statute of limitation: “An action shall not be deemed commenced for the purpose of tolling any statute of

limitations except as provided in RCW 4.16.170.”

3. RCW 4.16.170 applies to TEDRA proceedings.

The legislature has not restricted the application of RCW 4.16.170 with respect to TEDRA proceedings. RCW 11.96A.070 (titled “Statutes of limitation”) does not address the application of RCW 4.16.170. RCW 11.96A.070(4) specifically addresses the application of RCW 4.16.190 to ch. 11.96A RCW (“tolling provisions of RCW 4.16.190 apply to this chapter except . . .”). The plain language of RCW 11.96A.070 indicates that tolling statutes generally apply to ch. 11.96A RCW, unless otherwise specifically limited by the legislature. *See e.g.*, RCW 11.24.010. The legislature has not provided that RCW 4.16.170 is rendered inoperable by chapter 11.96A RCW, and cases like *Kordon* and the subsequent legislative amendments to RCW 11.24.010 suggest that the opposite is true.

RCW 4.16.170 must apply because: (1) TEDRA does not say that it does not apply, even though TEDRA addresses tolling provisions under 4.16.190; (2) RCW 4.16 does not limit application of 4.16.170 in TEDRA matters as there is no reference to such limitation in that statute; and (3) RCW 11.54 does not limit the application of 4.16.170 as there is no reference to such limitation in that statute.

4. CR 3 applies to TEDRA actions.

Contrary to Christine’s assertion, the *Kordon* court stated in dicta that CR 3 applies to TEDRA actions. 157 Wn.2d at 213. In any event, RCW 4.16.170 is a stand-alone statute, which the *Kordon* court ruled applies in

TEDRA actions. *Id.* The provisions that the *Kordon* court addressed were later superseded by legislative amendment (specifically requiring filing first, and then service, for a will contest under RCW 11.24.010) but the reasoning of the court has not been challenged. Also, by its terms, TEDRA applies to all actions under Title 11 RCW including claims for homestead under RCW 11.54. RCW 4.16.170 therefore applies to action arising under RCW 11.54 and litigated under TEDRA.

I. The widow should be awarded her attorneys fees.

TEDRA allows the award of attorney fees under RCW 11.96A.150 and grants the court authority to consider any relevant factors when determining an attorneys fee award. The widow has not only had to pay for her own attorney's fees, but also Christine's. It is patently inequitable to require the widow to pay for all attorneys' fees generated in this dispute, regardless of how this court rules. Given the broad equitable powers conferred upon this court to award costs and fees, the widow respectfully requests the court to grant her request for attorney's fees.

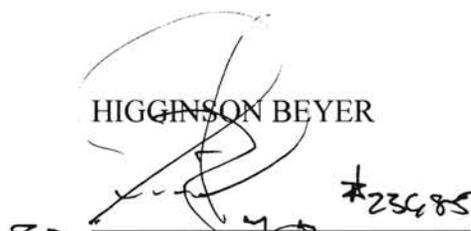
III. CONCLUSION

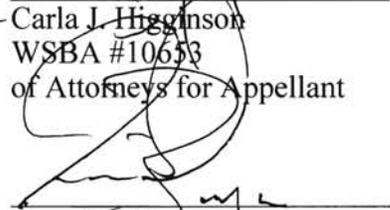
The Court of Appeals can grant the automatic \$125,000 spousal award if it finds that the widow's petition was timely and that the RCW 11.54.030 statutory criteria have been met. Her petition alleged that the RCW 11.54.030 factors have been satisfied, and this was not rebutted by Christine. Therefore, the satisfaction of these factors is a verity on appeal. The widow request the court order the basic award and remand for a hearing

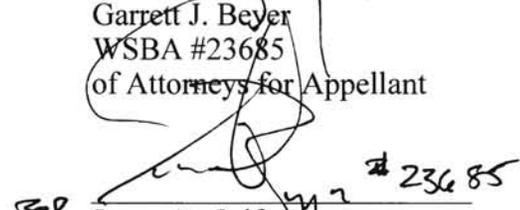
on an increase in the award.

RESPECTFULLY SUBMITTED this 8th day of January, 2015.

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