

74336-8

74336-8

No. 74336-8-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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ANNA PASCUA,

Appellant,

v.

SCOTT COLLINS and JOHN GREENWAY,

Respondents.

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BRIEF OF APPELLANT

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ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ASSIGNMENTS OF ERROR..... 2

III. STATEMENT OF THE CASE..... 3

A. Ms. Pascua Had Multiple Conversations with Scott Collins Regarding the Facts Supporting Her Claims..... 3

B. Ms. Pascua Made It Clear That There Were Additional Facts ad Offered to Discuss the Abuse by Her Father in Greater Detail..... 5

C. Creditor’s Claim Is Submitted Within Twenty Four Months of First Publication, and Summarily Denied by the PR..... 6

D. Other Factual Witnesses to Ms. Pascua’s Claims ..... 6

VI. ARGUMENT ..... 7

A. Standard of Review ..... 7

B. Ms. Pascua’s Claim Was Reasonably Ascertainable by the Personal Representative..... 8

    1. The Personal Representative’s Argument Incentivizes Ignoring Valid Non-Financial Claims..... 13

    2. The Lower Court’s Reliance on *In re Estate of Austin* Is Misplaced ..... 15

    3. There Is No Requirement Under the Statute That the Personal Representative Conduct Due Diligence on “Cognizable” Claims Only..... 19

    4. The Lower Court Did Not Apply the Correct Standard for a Reasonably Ascertainable Claim..... 21

C. It Is Undisputed That Ms. Pascua’s Claim Is Timely Under RCW 11.40.051(1)(b)(ii)..... 22

VI. CONCLUSION ..... 23

TABLE OF AUTHORITIES

**CASES**

*Addleman v. Board of Prison Terms and Paroles*, 107 Wn.2d 503, 730 P.2d 1327 (1986) ..... 11

*American Home Assurance Co. v. Gaylor*, 894 So.2d 656 (Ala. 2004)..... 16

*Clayton v. Wilson*, 168 Wn.2d 57, 227 P.3d 278 (2010)..... 8

*Condor Enters., Inc. v. Boise Cascade Corp.*, 71 Wn. App. 48, 856 P.2d 713 (1993) ..... 7

*Edmonds Shopping Center v. Edmonds*, 117 Wn. App. 344, 71 P.3d 233 (2003) ..... 10

*In re Estate of Austin*, 389 S.W. 3d (Mo. 2013)..... passim

*Mason v. Kenyon Zero Storage*, 71 Wn. App. 5, 856 P.2d 410 (1993) ..... 7

*Redding v. Virginia Mason Medical Center*, 75 Wn. App. 424, 878 P.2d 483 (1994) ..... 7

*Rettkowski v. Department of Ecology*, 128 Wn.2d 508, 910 P.2d 462 (1996)..... 10

*Roger Crane & Associates, Inc. v. Felice*, 74 Wn. App. 769, 875 P.2d 705 (1994) ..... 7

*State v. Jacobs*, 154 Wn.2d 596, 115 P.3d 281 (2005) ..... 10

*Tapper v. State Employment Sec. Dep't*, 122 Wn.2d 397, 858 P.2d 494 (1993) ..... 8

*Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299, 71 P.3d 214 (2003) ..... 7

*Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 884 P.2d 920 (1994) ..... 11

*Tingey v. Haisch*, 159 Wn.2d 652, 152 P.3d 1020 (2007) ..... 10

*Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 154 P.3d 882 (2007) ..... 11

*Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 909 P.2d 1303 (1996) ..... 11

**STATUTES**

RCW 11.40.020(1)(c)..... 22

RCW 11.40.040 ..... 2, 9, 13, 20

RCW 11.40.051(1)(b)(i).....	9, 23
RCW 11.40.051(b) .....	9, 23

## I. INTRODUCTION

Scott Collins and John Greenway acted as the Personal Representative of the Estate of Donald Sirkin (hereinafter the “Personal Representative”) wants this Court to bless the hiding their head in the sand and ignoring Ms. Pascua’s potential claim. The Personal Representative has not denied the conversations with Ms. Pascua, or the fact that no investigation of her potential claims was undertaken. The Personal Representative has not denied that he had actual knowledge of allegations of childhood “abuse.” However, the Personal Representative wants the Court to approve their non-action as a method for adjudicating Ms. Pascua’s claims.

Adopting the Personal Representative’s non-action as an adjudication of Ms. Pascua’s claims would set a dangerous precedent. There is no evidence before this Court that the Personal Representative did anything in response to Ms. Pascua’s claims. For the Court to approve of this denial of notice by non-action would incentivize avoidance of potential claims by all personal representatives. This precedent would discourage personal representatives from conducting even the most basic investigation of claims that are not revealed in financial documents. This would eviscerate the legislature’s mandate

that all personal representatives must conduct “reasonable diligence” into all potential claims, created a second class of creditors, who are denied actual notice of the proceedings. This reading is not supported by the statute, and Ms. Pascua was entitled to either reasonable diligence regarding her claim or additional time to file her claim. The trial court’s ruling must be reversed, and the case remanded for further proceedings regarding Ms. Pascua’s claim.

## II. ASSIGNMENTS OF ERROR

- A. The Trial Court Erred in Dismissing the Plaintiff’s Complaint Because Plaintiff’s Claims Were Reasonably Ascertainable by the Personal Representative.
- B. The Trial Court Erred in Dismissing the Plaintiff’s Complaint Because the Personal Representative Had Actual Notice of Ms. Pascua’s Claims.
- C. The Trial Court Erred in Dismissing the Plaintiff’s Complaint Because the Personal Representative Did Not Perform Reasonable Diligence Regarding Ms. Pascua’s Potential Claims.
- D. The Trial Court Erred in Dismissing the Plaintiff’s Complaint Because There Is No Evidence That the Personal Representative Determined Ms. Pascua’s Claim Was Conjectural.
- E. The Trial Court Erred in Dismissing the Plaintiff’s Complaint Because RCW 11.40.040 Does Not Require Disclosure of All Elements of a Cause of Action by Claimant to Create a Reasonably Ascertainable Claim.

### III. STATEMENT OF THE CASE

A. Ms. Pascua Had Multiple Conversations with Scott Collins Regarding the Facts Supporting Her Claims.

Ms. Pascua's father Donald Sirkin died in early May 2014. CP 38. After her father's death, Ms. Pascua engaged in months of discussion with a Personal Representative of Mr. Sirkin's estate, Scott Collins. CP 90-91. Throughout May, June and July of 2014, Ms. Pascua spoke with Mr. Collins approximately two times per week, sometimes more and sometimes less. CP 90. These conversations included multiple conversations regarding the estate and her father's abuse and neglect of her and her brother, including the physical and emotional abuse that Ms. Pascua suffered at the hands of her father. CP 90-91.

More than anything, Ms. Pascua's conversations with Mr. Collins were a reaction to the constant effusive praise of her father by Mr. Collins in his role as Personal Representative. CP 92. Ms. Pascua was upset by the constant praise of her father and, understandably, her comments were a reaction to Mr. Collins' constant praise of her father. CP 92. Ms. Pascua sought to convey to the Personal Representative the severe emotional and physical abuse she endured at the hands of her father. CP 90-92.

Ms. Pascua specifically remembers using the word "abuse"

during these conversations to describe her father's actions. CP 90-91.

Ms. Pascua remembers discussing the following specific instances of abuse with Mr. Collins:

- Ms. Pascua's father was cruel and abusive to her mother, her brother and Ms. Pascua, and she remembers discussing Mr. Sirkin hitting all of them mercilessly on a number of occasions;
- Her father told her that she was worthless the day she was born because she was a girl;
- When she was 4 years old and her brother was 6 years old, their father forced them to fly to New York City with him at the last minute. Their father flew first class, but the children were left in coach. While in New York City, they were left in the care of the hotel babysitting service, and put on city tour buses alone;
- Ms. Pascua refused to allow her child to spend time around Mr. Sirkin because of the abuse she had suffered. When her son was three or four years old, her brother went behind her back to take her son to lunch with Mr. Sirkin. At that lunch, her father became upset at her son for playing with his silverware, and, as a punishment, would not let him eat; and
- When Ms. Pascua was between 5 and 6 years old, her father hit her in the nose so hard she thought that he had broken her nose.

CP 91. Ms. Pascua's intention with these conversations was to let Mr.

Collins know just how abusive her father was to her. CP 92.

B. Ms. Pascua Made It Clear That There Were Additional Facts and Offered to Discuss the Abuse by Her Father in Greater Detail.

Ms. Pascua did not lead Mr. Collins to believe that the instances described above were the complete story. CP 91. Ms. Pascua made it clear that there was a larger story to be investigated, and Ms. Pascua independently offered to meet with Mr. Collins for the purpose of the investigation. CP 91. Ms. Pascua made it clear to Mr. Collins that the examples discussed were not the full and complete story of her father, and that the abuse she had suffered went much deeper. CP 91. Ms. Pascua's invitation for further investigation was extended several times, but Mr. Collins never accepted. CP 91. If Mr. Collins had conducted due diligence including talking only to Ms. Pascua, the investigation would have revealed the years of sexual and emotional abuse of Ms. Pascua by her father. CP 91.

There was no evidence presented on summary judgment that the Personal Representative did any investigation into Ms. Pascua's claims of abuse, or interviewed any potential witnesses. *See* CP 39. The only evidence of the reasonable diligence performed by the Personal Representatives was:

As part of our duties, John Greenway and I conducted a review of Donald Sirkin's correspondence, including correspondence received after death, personal financial

statements, loan documents, bank statements and income tax returns.

CP 39. There is no evidence that the Personal Representative considered Ms. Pascua's claims of abuse at all. *See* CP 38-40. There is no evidence that the Personal Representative determined Ms. Pascua did not have a valid claim against the Estate. *See* CP 38-40.

C. Creditor's Claim Is Submitted Within Twenty Four Months of First Publication, and Summarily Denied by the PR.

Having not received actual notice of the Notice to Creditors, Ms. Pascua submitted her Creditor's Claim to the Personal Representative on April 16, 2015. CP 92. The Personal Representative rejected her claim on April 27, 2015, based upon the claim being filed outside the four month claim filing period. CP 92. The Personal Representative's letter rejecting the claim stated "the Court will not allow us to accept any claims after the expiration of this [four month] period." CP 92, 95. On May 26, 2015, Ms. Pascua filed suit against the Personal Representative. CP 1.

D. Other Factual Witnesses to Ms. Pascua's Claims.

Ms. Pascua is not the sole fact witness to her claims. Ms. Pascua believes that her mother, Harriet Sirkin, and her brother, Eric Sirkin, were witnesses to the abuse that she endured and are competent to testify

at trial. CP 92. There is no evidence that the Personal Representative talked to these potential witnesses. CP 38-40.

## VI. ARGUMENT

### A. Standard of Review.

On appeal from summary judgment, the appellate court decides the case on a *de novo* basis, engaging in the same analysis as the trial court. *See, e.g., Roger Crane & Associates, Inc. v. Felice*, 74 Wn. App. 769, 875 P.2d 705 (1994). Both the law and the facts should be reconsidered by the appellate court. This Court should consider all of the facts and reasonable inferences in the light most favorable to Ms. Pascua. *Mason v. Kenyon Zero Storage*, 71 Wn. App. 5, 8-9, 856 P.2d 410 (1993). A finding of a genuine issue of any material fact would warrant reversal of the trial court's determination on summary judgment. *Condor Enters., Inc. v. Boise Cascade Corp.*, 71 Wn. App. 48, 54, 856 P.2d 713 (1993). Any findings of fact entered by the trial court should be considered superfluous and should be disregarded by the appellate court. *Redding v. Virginia Mason Medical Center*, 75 Wn. App. 424, 878 P.2d 483 (1994); *Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299, 71 P.3d 214 (2003) (Where case on appeal was decided on summary judgment, any findings of fact are superfluous and

subject to the de novo standard of review).

The legal conclusion to be drawn from the facts is a mixed question of law and fact that is reviewed de novo. *Clayton v. Wilson*, 168 Wn.2d 57, 62, 227 P.3d 278 (2010). Analytically, resolving a mixed question of law and fact requires establishing the relevant facts, determining the applicable law, and then applying that law to the facts. *Tapper v. State Employment Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). The process of applying the law to the facts is a question of law reviewed de novo. *Id.*

B. Ms. Pascua's Claim Was Reasonably Ascertainable by the Personal Representative.

Ms. Pascua's claim against the estate was rejected by the Personal Representative, because it was submitted more than four months after the Notice to Creditors was published. The Personal Representative's rejection of Ms. Pascua's claim as untimely is valid only if the claim was not reasonably ascertainable.

The Personal Representative asserts that Ms. Pascua's claim was not reasonably ascertainable "upon the exercise of reasonable diligence." However, the only evidence of the Personal Representative's exercise of due diligence is a review of the decedent's "correspondence, including correspondence received after death, personal financial statements, loan

documents, bank statements and income tax returns.” CP 39. There was no evidence that Personal Representative considered, analyzed and/or investigated the claim of “abuse” that Ms. Pascua disclosed, *see* CP 38-40, or that the Personal Representative took Ms. Pascua up on her offer to provide additional evidence. CP 91. At the very least, the Personal Representative’s conversations with Ms. Pascua put him on notice of the possibility that Ms. Pascua could have a claim against the estate, and he was required to provide actual notice of the notice to creditors.

Because Ms. Pascua was not given actual notice of the Notice to Creditors, RCW 11.40.051(b) sets the time limit for her claim against the estate. When the party is not given actual notice, RCW 11.40.051(b) creates two separate time limitations for pursuing a claim. *Id.* A creditor whose claim is not “reasonably ascertainable, as defined in RCW 11.40.040” has only four months from the publication of the notice to creditors to file a claim. RCW 11.40.051(1)(b)(i). However, if that creditor’s claim is reasonably ascertainable the time limit for filing a claim becomes twenty four months. RCW 11.40.051(1)(b)(ii). Pursuant to RCW 11.40.040:

(1) For purposes of RCW 11.40.051, a "reasonably ascertainable" creditor of the decedent is **one that the personal representative would discover upon exercise of reasonable diligence**. The personal representative is

deemed to have exercised reasonable diligence upon conducting a reasonable review of the decedent's correspondence, including correspondence received after the date of death, and financial records, including personal financial statements, loan documents, checkbooks, bank statements, and income tax returns, that are in the possession of or reasonably available to the personal representative.

(2) If the personal representative conducts the review, the personal representative is presumed to have exercised reasonable diligence to ascertain creditors of the decedent and any creditor not ascertained in the review is presumed not reasonably ascertainable within the meaning of RCW 11.40.051. These presumptions may be rebutted only by clear, cogent, and convincing evidence. [Emphasis added.]

The construction of a statute is a question of law. *Edmonds Shopping Center v. Edmonds*, 117 Wn. App. 344, 356, 71 P.3d 233 (2003) (citing *Rettkowski v. Department of Ecology*, 128 Wn.2d 508, 515, 910 P.2d 462 (1996)). “A court's objective in construing a statute is to determine the legislature’s intent.” *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007).

“[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Id.* (internal quotation marks omitted); quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Plain meaning is “discerned from the ordinary meaning of the language at issue, the context of the statute

in which that provision is found, related provisions, and the statutory scheme as a whole.” *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). A statute must be considered as a whole, to ensure all parts of the statutory scheme operate in harmony, and no portion rendered meaningless or superfluous. *Addleman v. Board of Prison Terms and Paroles*, 107 Wn.2d 503, 509, 730 P.2d 1327 (1986); *Timberline Air Serv., Inc. v. Bell Helicopter-Textron, Inc.*, 125 Wn.2d 305, 314-15, 884 P.2d 920 (1994); *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

The Personal Representative and the trial court narrowly construe the statutory definition of a “reasonably ascertainable” claim to unreasonably restrict the requirement for “reasonable diligence.” The evidence on summary judgment was that the Personal Representative conducted limited “reasonable diligence” regarding potential claims, and restricted their diligence to only those claims contained in “correspondence received after death, personal financial statements, loan documents, bank statements and income tax returns.” CP 39. There is no evidence anywhere in the record that even suggests the Personal Representatives considered any evidence outside these financial documents.

However, there is no dispute that Mr. Collins, as Personal Representative, learned about potential claims of “abuse” during the conduct of his duties as the Personal Representative. CP 90-91. There is also no dispute that Mr. Collins knew “other evidence” was available, specifically Ms. Pascua’s offer of additional evidence, but Mr. Collins never conducted an investigation. CR 91. The Personal Representative, having learned of a potential claim not revealed in the books and records of the decedent, ignored that potential claim rather than conduct any reasonable diligence.

The Personal Representative’s argument replaces the broader statutory definition of “reasonable diligence” with a review of only those documents specifically listed in the statute. This argument ignores the statutory requirement that the Personal Representative look to all documents and evidence “reasonably available” to the Personal Representative.

As such, the Personal Representative’s argument relies on finding that Ms. Pascua’s claim was insufficiently disclosed by the documents is not supported by the statute. The statute requires that Mr. Collins examine all evidence “reasonably available” to the Personal Representative, and Ms. Pascua was ready, willing and able to discuss

her potential claims with the Personal Representative.

To properly construe the statute as a whole, the Court should place the emphasis on the exercise of “reasonable diligence” by reviewing all evidence “reasonably available” to the Personal Representative. A review of only specific documents listed in the statute is not “reasonable” when there is evidence known to, and “reasonably available” to the Personal Representative regarding a potential claim against the estate. It is unreasonable to avoid evidence of a potential claim when it is offered repeatedly. Ms. Pascua’s claim was reasonably ascertainable by the exercise of reasonable diligence, and she is entitled to the twenty four month time limit in filing her claim. The dismissal of Ms. Pascua’s claim must be reversed and the claim remanded for trial.

1. The Personal Representative’s Argument Incentivizes Ignoring Valid Non-Financial Claims.

The Personal Representative’s argues that there is no duty to investigate a claim that is revealed by a potential claimant rather than the books, records and correspondence of the defendant. The Personal Representative has not disputed that he had multiple conversations with Ms. Pascua, or the nature of those conversations. The Personal Representative’s argument relies solely on the presumption created under RCW 11.40.040(2).

The Personal Representative argues this limited review creates a presumption of due diligence despite undisputed evidence the Personal Representative had knowledge of a potential claim that was not investigated. The Personal Representative's argument effectively creates two classes of potential claims in the Estate. One was the potential claims that are strictly financial in nature. Because financial claims are revealed in the books and records of the decedent, the Personal Representative exercised reasonable diligence in locating those financial claims and provided actual notice to the creditors of the proceedings. The second is all other potential claims, especially those not strictly financial in nature. These claims were not entitled to actual notice or reasonable diligence, even when the Personal Representative had actual knowledge of the potential claim, because they are not necessarily revealed in the records specifically enumerated in the statute. The Personal Representative's argument incentivizes a narrow review of the descendant's records, and avoidance of reasonable diligence on potential claims not revealed in financial records.

The statute does not support a reading creating two classes of claims. The only reasonable interpretation of the statute is that the Personal Representative must exercise "reasonable diligence" in

determining whether any potential claim requires actual notice. This holds true, whether the existence of a potential claim is revealed to the Personal Representative through a conversation with a beneficiary of the estate, or through the decedent's financial records.

Here, the Personal Representative exercised no diligence in investigating Ms. Pascua's potential claim despite having at least one witness actively seeking to discuss the claim with the Personal Representative. The Personal Representative has not fulfilled his duty of reasonable diligence by avoiding the potential interview that would reveal the basis of the claim. The dismissal of Ms. Pascua's claim must be reversed, and the claim remanded for trial on the merits.

2. The Lower Court's Reliance on *In re Estate of Austin* Is Misplaced.

The trial court relied on the Missouri Supreme Court's ruling in *In re Estate of Austin*, 389 S.W. 3d (Mo. 2013), in dismissing Plaintiff's complaint. In its ruling, the trial court found:

There is no evidence that the Personal Representative had any knowledge of the alleged claim by Plaintiff based on sexual abuse. (*Cf.*, *In re Estate of Austin*, 389 S.W. 3d [sic] (Mo. 2013) where the court found that the PR had knowledge of the claim of child abuse). Plaintiff's alleged statements to the PR do not form the basis for a "reasonably ascertainable" claim.

CP 111. The Court's decision to *Estate of Austin* is factually

distinguishable from the case at bar. In fact, the Missouri Court's holding supports the reversal of the trial court's dismissal of Ms. Pascua's claim.

In *Estate of Austin*, the Court reversed the trial court's dismissal of the Plaintiff's claims, because the Trustee should have provided "actual notice." 389 S.W.3d 168, 173 (2013). The Court based its determination on a number of facts, including: 1) the PR "personally investigated the validity of the 2006 allegations of abuse"; 2) the PR did not investigate the allegations by interviewing "DFS, the children, or their parents"; and 3) the PR "concluded that she did not need to provide actual notice of Decedent's estate to the children's father because, in her opinion, the children did not have a colorable claim to bring against the estate." *Id.* at 170.

The Missouri Court found that the personal representative need not take "extraordinary steps", but must make reasonably diligent efforts to identify creditors. *Id.* at 171-72. The Court found that any claimant whose claim is not "conjectural" is entitled to actual notice. *Id.* at 172. A "conjectural claim" is "based on inferences from uncertain evidence or conclusions rooted in guesswork." *Id.* The Missouri Court relied upon an Alabama Court's opinion in *American Home Assurance Co. v.*

*Gaylor*, 894 So.2d 656 (Ala. 2004), in determining when a claim must be investigated. 389 S.W.3d at 172. The Court summarized the findings of the Alabama Court:

The court found that although the executrix may not have had actual knowledge of the insurance company's claim, she was aware of the underlying accident that caused the deaths of three individuals and \$14,000 in damage to a tractor-trailer. *Id.* at 660. While the executrix “was not aware that [the truck driver] had been injured in any way,” the knowledge of the accident required her “to inquire into the possibility of a claim” based on the information contained in the accident report. *Id.* at 660–61. The accident report gave the truck driver's name, address and telephone number, providing a reasonable means of ascertaining the existence of a claim. *Id.*

*Id.* citing *Gaylor*, 894 So.2d 656.

In finding that the PR had violated the claimant's right to due process, the Missouri Court ruled the PR “was aware of the underlying events that led to the potential claims and had the ability to locate the children's father's address so that she could provide the required notification to the children.” *Id.* at 173. The Court found that the Personal Representative's conclusion that there was not a “colorable” claim” after an investigation was unimportant to the legal analysis:

Whether the children's claims had legal merit was not [personal representative's] responsibility to determine. Instead, [personal representative] simply had a duty to provide notice to all reasonably ascertainable creditors with more than a merely conjectural claim without making

a unilateral determination about the merits of their claim.

*Id.* at 173. The Court found the trial court erred in dismissing the children's claims and reversed the dismissal.

The trial court's application of the Court's opinion in *Estate of Austin* in this case is misplaced. Here, there is no dispute the Personal Representative had knowledge of a potential claim, but did not conduct an investigation into the potential claims. Factually, this is more egregious than the Personal Representative's determining a claim was invalid after investigation as the personal representative did in *Estate of Austin*. On these facts, the *Estate of Austin* Court's recitation of *Gaylor* is instructive, as the Court noted the driver in *Gaylor* was entitled to notice, *because* the Personal Representative had the means of determining whether a claim existed and did not investigate. *See* 389 S.W.3d at 172. That is exactly the case here.

Further, there is no evidentiary basis in the record to find that Ms. Pascua's claim was merely conjectural. The Personal Representative made no attempt to determine the facts surrounding Ms. Pascua's claim, and whether those facts were based upon "inferences from uncertain evidence or conclusions rooted in guesswork." *Id.* at 172. In fact, Ms. Pascua's claims would necessarily be based on her personal knowledge

of abuse, and do not require “guesswork” or supposition. The Personal Representative simply ignored the claim, and did not develop any basis for determining her potential claim against the estate was “conjectural.” Because the Personal Representative performed no investigation, this Court cannot find the Personal Representative declined to give Ms. Pascua actual notice, because her claim was conjectural.

The trial court’s reliance on *Estate of Austin* is inappropriate in the case at bar. The facts in this case are that the Personal Representative did not perform any investigation as would be required under the *Estate of Austin* decision, and failed to determine whether her claim was “conjectural.” If anything the Missouri Court’s opinion in *Austin* is instructive in this case, and demonstrates the error in the trial court’s ruling. The dismissal of Ms. Pascua’s claim must be reversed, and the claim remanded for trial on the merits.

3. There Is No Requirement Under the Statute That the Personal Representative Conduct Due Diligence on “Cognizable” Claims Only.

The Personal Representative claims that Ms. Pascua had to disclose details sufficient to “give rise to a cause of action”, and create a “cognizable” claim. CP 100. Nowhere in the statute does the legislature use the term “cognizable” to describe a reasonably ascertainable claim.

These newly minted requirements are not based upon the statute or citation to legislative history, and appear to be a post hoc rationalization of the Personal Representative's failure to investigate Ms. Pascua's potential claim.

The Personal Representative's reading of "cognizable" into the statute would, in effect, relieve the Personal Representative of his duty of reasonable diligence under RCW 11.40.040(1). The Personal Representative argues that he has no obligation to investigate a claim until the potential claimant independently states each and every fact necessary for a "cause of action" putting the burden on the claimant to present a fully developed cause of action before the Personal Representative must conduct reasonable diligence. There is no such requirement in the statute.

The Personal Representative's argument that a "cognizable" claim is the only claim entitled to "due diligence" shifts the burden to the Claimant. If Ms. Pascua had presented the Personal Representative with a claim that was completely formed, there would be no necessity for the Personal Representative to conduct any reasonable diligence, and conversely no requirement for the legislature to write reasonable

diligence into the statute<sup>1</sup>. By including the requirement for due diligence in the statute, the legislature requires the Personal Representative to conduct “reasonable diligence” into claims that may not be fully developed, and provided actual notice to all potential claims despite the Personal Representative’s legal judgment the claim may ultimately fail.

4. The Lower Court Did Not Apply the Correct Standard for a Reasonably Ascertainable Claim.

In its Order, the trial court found “plaintiff’s alleged statements to the Personal Representative do not form the basis of a ‘reasonably ascertainable’ claim.” CP 110-11. This is an incorrect application of the statute. The statute states that a “reasonably ascertainable” claim is one that can be discovered through reasonable diligence by the Personal Representative. The notice that the Personal Representative has of a potential claim has no bearing on whether the Personal Representative could discover the claim through the exercise of “reasonable diligence.”

The undisputed evidence is that the PR performed no diligence

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<sup>1</sup> Taking the Personal Representative’s argument that any claim that does not amount to a “cause of action” to its conclusion, many financial claims would not meet this requirement. The Personal Representative examining the books and records of a recently deceased individual may find that the descendant’s mortgage is not delinquent and not in “default.” As such, these clear creditors would not be reasonably ascertainable under the Personal Representative’s reading of the statute, because a creditor has not established a “cause of action” for breach of contract without a default under the contract.

with regard to the claims being made by Ms. Pascua, but instead consistently expressed his admiration for the decedent. More importantly, the evidence is the Personal Representative avoided the opportunity to conduct reasonable diligence by interviewing Ms. Pascua who consistently offered evidence of “abuse.” Ms. Pascua repeatedly offered to explain her claim further, and the Personal Representative declined to ask the next question. This is clear, cogent, and convincing evidence that the Personal Representative did not review all evidence that was reasonably ascertainable. The dismissal of Ms. Pascua’s reasonably ascertainable claim must be reversed, and the claim remanded for trial on the merits.

C. It Is Undisputed That Ms. Pascua’s Claim Is Timely Under RCW 11.40.051(1)(b)(ii).

The Personal Representative filed and caused to be published a Notice to Creditors in May 2014. Ms. Pascua did not receive “actual notice” of the Notice to Creditors under RCW 11.40.020(1)(c). However, it is undisputed that Ms. Pascua filed her claim well before the expiration of the twenty four month claim period for reasonably ascertainable creditors who did not receive actual notice of the Notice to Creditors. *See* RCW 11.40.051(1)(b)(ii).

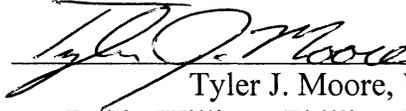
There are no factual disputes regarding the notice in this case. Ms. Pascua was never served or mailed a Notice to Creditors. The only issue is the effect of the Personal Representative’s failure to mail the

Notice to Creditors to Ms. Pascua. If Ms. Pascua's claim was not "reasonably ascertainable" by the Personal Representative, Ms. Pascua was required to file her claim within four months of publication of the Notice to Creditors. RCW 11.40.051(1)(b)(i). If Ms. Pascua's claim was "reasonably ascertainable", Ms. Pascua timely filed her claim within twenty four months of the first publication of the Notice to Creditors. RCW 11.40.051(b)(i), and her claim should not have been dismissed on summary judgment.

## VI. CONCLUSION

The Personal Representative does not dispute that he had conversations with Ms. Pascua regarding her father's childhood "abuse". These undisputed conversations put the Personal Representative on notice that Ms. Pascua may have a claim against the estate. However, the Personal Representative took no action with regard to this potential claim. The fact is that Ms. Pascua's claims were reasonably ascertainable to the Personal Representative had he performed even the most basic reasonable diligence. However, the Personal Representative decided to hide from Ms. Pascua's claims, and ignore Ms. Pascua's offer to present additional evidence. Ms. Pascua's claim was reasonably ascertainable by the Personal Representative, and she was entitled to 24 months to file her claim under RCW 11.40.051(1)(b)(ii). The Court should reverse the trial court's dismissal of Ms. Pascua's claim as untimely, and remand for trial on the merits.

Respectfully submitted this 2<sup>nd</sup> day of May, 2016.



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CERTIFICATE OF SERVICE

I certify that on May 2, 2016, I caused a copy of the foregoing document to be served via legal messenger to the following counsel of record:

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