IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

Supreme Court, Case No. 1031696

(Court of Appeals, Division 1, Case No. 855166)

(Whatcom County Court, Case No. 22-401238-37)

THE ESTATE OF RUTH HOTH C/O PERSONAL REPRESENTATIVE, DONALD HOTH, Appellant

vs.

EDWARD HOTH, Respondent

PETITIONER'S REPLY BRIEF RE PETITION FOR REVIEW

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1. Arguments as to TEDRA's Constitutionality

By way of introduction, I cite from RAP 13.4(d):

> A party may reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.

Thus, as petitioner / appellant in this case, and in my role as personal representative of the estate of Ruth Hoth, I note that in his answer to my petition for review, counsel for the respondent ("the counsellor") has indeed raised an issue not hitherto discussed in trial court, appeals court, or in my petition. In order to frame this issue in the context of our case, I file this reply brief. Generally, it seems that the counsellor challenges the constitutionality of a court compelling nonjudicial dispute resolution (i.e. mediation, arbitration, etc.) - all processes that may be conducted off the public record.

The counsellor cites the state constitution: "Justice in all cases shall be administered openly, and without unnecessary

delay." Wash. Const. Art. 1, § 10. Insomuch as mediation and arbitration are not "open", the counsellor effectively contends that, not only is my petition for mediation impracticable, but that the very premise of TEDRA is unconstitutional. His quarrel here is with the court, not me. Answer to petition at 8.

I disagree with the counsellor's contention. As described in the introduction to an article for the WSBA in September 2011, and revised for online publication in 2015, attorney Karolyn Hicks writes as follows:

> The Trust and Estate Dispute Resolution Act (TEDRA) was enacted in 1999. As described by one of its drafters, TEDRA is a set of procedures that applies to judicial and nonjudicial resolution of disputes involving matters within the purview of Title 11. As a procedural statute, it does not create new or independent claims or causes of action, and instead, provides mechanisms by which such claims may be presented, heard and resolved. TEDRA serves as a model and a vehicle for effective resolution of disputes and as a means to address issues as they arise in the course of probate and trust administration. https://www.stokeslaw.com/D4683B/assets/files/News/5a84c0a4d783f.pdf. See also Appellant's Brief at 10.

In my petition for review, I took the liberty of summing this up as "The spirit of TEDRA affirms family values, and seeks to keep such disputes out of the courts and off public record." Petition for Review, at 4. Here the counselor disputes my summation. With characteristic bluster, he argues:

> In his Petition to this Court, Donald repeatedly argues the intended spirit of TEDRA prohibits court supervision of his rantings and TEDRA should allow his rantings (sic) and frivolous accusations to continue in secret, outside the public record. Answer to petition at 2-3.

Firstly, by placing the above statements under the headline "Relevant Facts", the counsellor prevaricates. I never asserted that TEDRA was meant to "prohibit" court supervision, but that in the interests of salvaging family relationships, TEDRA allowed the parties to be sequestered with a mediator in order to resolve their differences constructively, confidentially, and more efficiently than in litigation. I believe that is the intention

of TEDRA. The counsellor all but concedes that he has no use for these family relationships, and hence, sees no point in any form of nonjudicial dispute resolution.

More troubling, when such contempt for TEDRA is affirmed by the courts, it becomes codified into case law. In our trial court hearings, the effect of the judge's deference to the counsellor is that TEDRA, as a whole, falls under the same hammer as my petition. But I feel that by denigrating nonjudicial dispute resolution, the court does all parties a disservice. The drafters of TEDRA would not approve.

In my initial TEDRA petition, I also conceded that, due to Edward's lack of transparency regarding his administration of assets as power of attorney, my concerns of misconduct were not supported by hard evidence. My requests for certain documents were stonewalled. I therefore surmised that, under the umbrella of mediation we could get certain basic documents on the table. I know that the discovery process could also be

done through litigation, but it would take longer, cost more, and be more trouble for everyone. Many of the financial documents would need to be sealed for use in litigation. No one benefits from this longer process. Hence my bid for mediation.

However, in his answer to my petition for review, the counsellor now argues that my idea of using mediation as a discovery device is an abuse of TEDRA. In his words, "Donald apparently incorrectly believes this Court should provide him mediation as a discovery device." Firstly, this is not a defense the counsellor had hitherto proffered. Nor is this a rationale given by the trial court judge or the unpublished opinion. It is odd that the counsellor brings it up now, but I maintain that, under the circumstances, mediation was a tenable means to a provisional discovery process. I cite from RCW 11.96A.300(3):

> If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court

> determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

Had our trial court judge truly objected to this makeshift discovery process in mediation at the hearing, he could have directed (c) discovery as judicial process - but somehow, he chose not to. It is implicit in the above statute that dispute resolution is a good thing, yet nothing in the statute says so. Ultimately, the judge did not decide the matter at the hearing. He simply denied mediation on unspecified procedural grounds leaving the matter open, with a deadline of 90 days to re-file a new motion. RP 36-41. (He did not honor the 90-day limit.)

The counsellor espouses that TEDRA is impracticable as it employs nonjudicial dispute resolution methods not "open" as per Art. 1, § 10 of the state constitution. In fairness, the cases of precedent around TEDRA provide some support for this contention. But I find that the counsellor, and by extension the

courts, overlook the Title 11 purview of TEDRA. Therefore, I request review of this issue.

2. Conclusion

Until now, there has been little meritorious discourse on the orders I noted for review. This recent discussion as to the constitutionality of TEDRA is our first inkling of an argument on the merits of this case. Counsel for the respondent has gotten undue mileage out of the trial court's unsupported assertion that I somehow failed procedurally to note a hearing on the merits. I say my procedure was sufficient. We had our hearing, and my request was inexplicably denied. Later, the appeals court postulated that my request was deemed insufficient as I did not highlight, copy, and paste the statutory template into the pleading. Such procedure is subject to the court's discretion and I maintain that, under the circumstances, it was sufficient simply to cite the relevant statute. I could have re-filed the motion and re-scheduled the hearing, but there is no point.

The counsellor also makes much of his "good cause" defense. Recall that the judge asked no more than a simple declaration from his client opposing mediation - a sad excuse for good cause. The counsellor has since framed this defense as his victory, but officially, my petition was denied on unspecified procedural grounds. For this, the counsellor presumes to claim I owe him tens of thousands in attorney fees.

In his answer to my petition, the counsellor also rehashed his time-worn argument that this case was not appealable in the first place. Note that in my previous case against Edward as trustee of out parent's Trust (Division One Court of Appeals Cause No. 80284-4-I), counsel for the respondent argued that RCW 11.96A.300(3) prohibits an appeal of the order denying mediation. The unpublished opinion for that case countered, "The plain language of the statute includes no such prohibition ... Under the statute, a party may not appeal an order approving mediation. But the statute does not bar appeals of orders denying mediation." Hoth v. Hoth, No. 80284-4-I, slip op. at 4

(Wash. Ct. App. Nov. 9, 2020 (unpublished). Despite this clear statement from the appeals court, the counsellor rolled out the same argument in his July 27, 2023 answer to my notice of appeal of the current case. Again, the court commissioner rejected his argument. Now for the third time, the counsellor brings the very same argument to the supreme court. In his words, "Donald provides no argument or law supporting his argument that the Court of Appeals or this Court can ignore RCW 11.96A.300(3)." I need not present an argument for an issue that has been done to death.

I maintain that the true reason the court has denied my petition for mediation is that there is nothing in the statute, nor in the cases of precedent to affirm the value of nonjudicial dispute resolution. Thus, courts are guided only by a general skepticism of pro se litigants and a vague sense that resolving disputes off the public record is impracticable. A discussion of the constitutionality of TEDRA would be instructive.

Compliance Certification. This Microsoft Word document contains 1,590 words, 11 pages and complies with RAP 18.17.

Dated this 24th day of July 2024.

Donald Hoth, Petitioner / Appellant (Pro se)

DONALD HOTH - FILING PRO SE

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