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SUPREME COURT  
STATE OF WASHINGTON  
6/13/2024  
BY ERIN L. LENNON  
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**COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON**

Case #: 1031696

Case No. 855166

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

vs.

EDWARD HOTH, Respondent

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PETITION FOR REVIEW BY SUPREME COURT

Donald Hoth, Appellant (pro se)

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## **A. Introduction**

A quarter of a century has passed since the Washington courts adopted the Trust Estate Dispute Resolution Act (TEDRA) for the purpose of resolution of probate matters through nonjudicial dispute resolution methods, such as mediation, arbitration, and agreement. The spirit of TEDRA affirms family values, and seeks to keep such disputes out of the courts and off public record. Yet, in all this time, no party has ever been successful in invoking even the first level of TEDRA dispute resolution - mediation. This petition intends to illustrate the need for courts to set standards which are reasonable, sufficient and, at the very least, succeed in TEDRA's intention of resolving disputes out of court. As this applies to my current petition, we shall look specifically at the (1) procedural notice requirements under TEDRA RCW 11.96A.300; and (2) the standard of "good cause" in which a respondent can simply waive away a TEDRA petition calling it "vexatious" and/or discrediting the petitioner. Lastly (3) we shall discuss whether a petitioner who simply

requests mediation (i.e. no claim for money) deserves such punitive sanctions as attorney fees in the tens of thousands.

### **B. Identity of Petitioner**

Petitioner / appellant, Donald Hoth, as personal representative of the estate of Ruth Hoth (the parties' late mother) seeks review. Note that I, the selfsame Donald, am representing myself. My experience is that estate litigation attorneys are few and far between, and generally balk at filing a mere petition with no claim. They tend to look for estate dispute claims of at least a million. In this culture, I felt my only real option was to file pro se. Other TEDRA petitioners tend to be pro se.

### **C. Court of Appeals Decision**

The appeals court division 1 filed its unpublished opinion on April 15, 2024, and denied reconsideration on May 14, 2024. See Ex A and Ex B 1-10. Trial court's order is Ex C 11-20.

#### **D. Issues Presented for Review**

Insomuch as TEDRA was intended to facilitate nonjudicial dispute resolution, do the current standards for granting a petition, serve TEDRA's purpose? (1) If mediation / arbitration is intended to circumvent litigation, is it truly helpful for the court to insist on notice procedures that are so specific that only an experienced estate litigator would know what was expected? (2) Can a respondent to a TEDRA petition claim to have "good cause" for denying mediation just because he doesn't want it? (3) When the appeals court has affirmed the trial court's decision, without citing any meritorious arguments proffered by the respondent's counsel, can it be said that the respondent has "substantially prevailed" as per RAP 14.2?

#### **E. Statement of the Case**

As petitioner / appellant in this case I petitioned the trial court to order mediation under TEDRA: RCW 11.96A.300. My petition was ultimately denied with little discussion as to why.

Upon appeal, the trial court's ruling was affirmed citing procedural insufficiency and supposed "good cause". Counsel for the respondent has tried throughout this process to portray my petition as res judicata and "vexatious". He has gotten little traction in court with these arguments, but has succeeded in spite of himself due to the trial court's deference to cases of precedent, and by introducing into the record a 2020 email I sent Edward long before I had standing to file this case.

Also noted for review are general issues of standing and agency of the parties. Note that in 2020 the appeals court reviewed a similar appeal from me against our parent's Trust. Edward was the trustee, and hence, respondent in that case too. At that time, his counsel made much of the fact that, as that petition was filed against the Trust, he could not be held liable for his activities as power of attorney agent. Later, I petitioned him as an individual, and his counsel countered I lacked the requisite standing as personal representative. Now that I have standing as personal representative, Edward's counsel has called

my petition res judicata. It surely is not. Moreover, he has delved into the family history to discredit me with an email from 2020, long before I had standing to file this case, and irrelevant to our current dispute.

#### **F. Arguments why Review should be Accepted**

As per RAP 13.4, petitions for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

In this context, I shall argue that my petition be accepted for review under RAP 13.4 (4), as there are issues of public interest in letting the Supreme Court establish: (1) a reasonable



standard for what constitutes sufficient notice under TEDRA:  
(2), what constitutes "good cause" for denying a TEDRA  
petition; and lastly (3), whether the counsel for the respondent  
truly deserves credit for having "substantially prevailed" when  
the court denies a TEDRA petition.

**1. The court has set the bar unduly high for  
"sufficient procedure" to invoke TEDRA.**

In its unpublished opinion of April 15, 2024, the appeals  
court justifies the trial court denial of the petition for mediation  
thusly, "The notice must substantially comply with statutory  
notice procedures. See *In re Estate of Harder*, 185 Wn. App.  
378, 383-84, 341 P.3d 342 (2015) (denying petition to compel  
mediation where statutory procedural requirements were not  
followed) ... Donald did not assign error to the court's findings  
that he did not comply with notice procedures under RCW  
11.96A.300" (sic).

In underscoring this point about notice procedure, the  
appeals court suggests, but does not explicitly state, that a

petitioner such as I must highlight, copy and paste the statutory template into the pleadings in order for the petition to have effect. The court further suggests, but does not explicitly state, that by neglecting to assign error to the court for the above finding that I waived the argument. I disagree on both counts.

Firstly, whereas it may be understood within the culture of estate litigators that they must highlight, copy, and paste the statutory template into the pleading, it is not necessarily clear to a petitioner. I maintain that it is least tenable that a petitioner might satisfy this procedural requirement by merely citing the relevant statute (RCW 11.96A.300) and letting counsel for the respondent (and/or interested parties) look it up on any search engine. Perhaps if a respondent is not represented by counsel, it might be argued that the petitioner needs to highlight, copy, and paste it in order to be compliant, but that can be left to the discretion of the judge.

In this current case, however, the appeals court assumes that the trial court judge denied my petition largely for reasons of insufficient notice procedure as in Estate of Harder. I maintain that the trial court is not necessarily beholden to this precedent. Judges have a measure of discretion, and in the interests of dispute resolution under TEDRA, courts might occasionally take a more flexible approach to notice procedure. I maintain that in this case, my notice procedure was sufficient.

Secondly, the appeals court suggests that I waived my argument by neglecting to assign error to the trial court for its finding. This was not, in my view, a shortcoming on my side. If a trial court judge deems that the statutory template must be highlighted, copied, and pasted into a pleading, I can accept that sometimes he may be right. It is not necessarily an error. While I feel that doing so was not essential in my case, in other instances, it might be appropriate. Moreover, the trial court has not explicitly asserted that neglecting to highlight, copy and paste was indeed the procedural issue that scuttled my petition.

Rather, it is the appeals court who has assumed that this must have been the reason. The trial court judge himself was studiously vague on the matter. Inasmuch as it was never firmly established what procedural issue the trial court judge was concerned about, it cannot be said that I waived my chance to argue in response. Thus, I argue here that my notice procedure was sufficient, and that a more reasonable precedent is needed as TEDRA petitioners are likely filing pro se.

The April 15 unpublished opinion also substantially misrepresents the case history with this statement, "There is no evidence in the record indicating that Donald attempted to comply in form or substance with RCW 11.96A.300's notice requirements prior to the court's March 3, 2023 ruling." Note that the case was dismissed on May 10, not March 3, and there is ample evidence on the court record that I attempted to comply with notice requirements before the March 3 hearing, and before the May 10 dismissal. The TEDRA petition had been filed and served in late December 2022. CP 1-25. The

counsel for the respondent filed an objection, and March 3, 2023 we had our first hearing in which all interested parties were either present in the courtroom or represented by counsel. CP 28-33. CP 33-34. I cite from the court transcript:

THE COURT: (U)nder the TEDRA statute the Court should hold an initial hearing on the merits of the TEDRA petition. And the way I see it procedurally is that hearing hasn't been requested or noted. My question is if I deny the motion for mediation, should I order that initial hearing to be held at some point? You know, prior to that you could file any motions you want, Mr. Shepherd, I guess. RP 36.

It is anybody's guess how the parties could have been present for an initial hearing had it not been requested or noted. If the authors of the unpublished opinion are commenting that the Note for Motion Docket forms were absent from the designation of clerk's papers, they would be correct on that account. As court rules encourage litigants to designate only essential clerk's papers, I did not bother with designating Note for Motion Dockets. But they were cited in the merits brief

accompanying my motion for reconsideration as Exhibits C and D. Whatever the judge may have been thinking, the noting of that initial hearing was procedurally sufficient.

In trying to make sense of the denial of my petition for mediation, I was left to speculate on the judge's motives. I cite from my motion for reconsideration at 21:

Perhaps the trial court judge simply has no confidence in mediation generally. Perhaps he prefers arbitration. After all, insomuch as mediation does not produce a clear winner and a loser, and as the outcome can be nebulous, this had occurred to me too. But under TEDRA, the court's discretion does not extend to allowing the judge to dismiss a request for mediation without good cause. TEDRA rules state that parties must first try mediation before requesting arbitration. Nevertheless, in deference to the judge, I filed a Notice of Arbitration as per the statutory template. I also provided an interrogatory and waited the statutory 20 days for a response. The other party's answer was merely another objection, and the court still did not compel compliance. Thus, the judge had by that point ignored my bid for mediation, arbitration and my interrogatories. This is all on the court record. Petition for Mediation: CP 1-25, Notice of Mediation: CP 109-111, Proposed Order to Mediation: CP 39, Notice of Arbitration: CP 103-105

In summary, I maintain that my procedure for noting an initial hearing was sufficient. My TEDRA petition, notice of mediation, notice of arbitration, and proposed orders were also sufficient and on court record before the initial hearing, and well before the case was dismissed.

**2. The court lacks a reasonable standard of "good cause" to deny a TEDRA petition.**

Other than the above procedural issue, the only real discussion of "good cause" for denying mediation was this March 1 written declaration by the respondent (Edward):

"I do not believe anything could be accomplished if this court ordered me to go to mediation. I do not understand what legal issues could be addressed at a mediation between Donald Hoth and myself ... Mediation in this matter would be fruitless. CP 47.

At our March 3, 2023 hearing the trial court ruled as follows:

THE COURT: I'm convinced by the declaration there that a referral to mediation would not bear any fruit, would be fruitless between the parties to this particular litigation. That's what I'm convinced of. RP 41

Note that neither Edward nor his counsel had proffered any serious argument to deny mediation, only a declaration that Edward didn't want it. The trial court judge was likely looking to case law for guidance as to how he should rule. Insomuch as the only cases of precedent regarding TEDRA are denials, the judge likely assumed he needed to do the same.

The larger body of case law seems to affirm the primacy of the court. I cite the appeals court (previous) unpublished opinion:

Hoth v. Hoth, No. 80284-4-I, slip op. at 1-3 (Wash. Ct. App. Nov. 9, 2020 (unpublished)). The court in *In re Estate of Fitzgerald* noted that “TEDRA gives the trial court ‘full and ample power and authority’ to administer and settle all estate and trust matters . . . ‘all to the end that the matters be expeditiously administered and settled by the court.’” 172 Wn. App. 437, 447–48, 294 P.3d 720 (2012) (quoting RCW 11.96A.020(1), (2)) (citing *In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 343, 183 P.3d 317 (2008) (recognizing that TEDRA grants plenary powers to the trial court)). Noting this “broad grant of power” under TEDRA, the court in *Fitzgerald* applied an abuse of discretion standard to a trial court’s denial of a continuance for discovery. 172 Wn. App. at 448. The Trustees Accounting Act states: “the court . . . after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the



trustee or trustees . . . and shall render its decree either approving or disapproving the account.” RCW 11.106.070. This indicates that the decision to approve an accounting is a discretionary one and must be reviewed as such.

In reading such opinions a judge's is likely to see that mediators and/or arbitrators have little authority. Thus, whereas TEDRA ostensibly exists to facilitate dispute resolution, case law indicates that the courts do not cede enough authority to the mediators and arbitrators to succeed in doing so. TEDRA seems to offer petitioners the promise of dispute resolution, only to spit them out with a stain upon their name. In its 25-year history in this state, TEDRA has only ever discredited the petitioners.

The authors of the above 2020 unpublished opinion who reviewed my previous appeal further ridicule my request for mediation regarding certain discrepancies between Edward's management of assets under power of attorney (i.e. before our mother died) and his management of the Trust (i.e. the same assets after our mother died). I suppose that within the culture of litigation it is downright hilarious that anyone (me) could be

so stupid as to request mediation with a trustee in the same petition that he requests mediation with a POA agent - even if they are the same assets and the same person. Apparently, for litigators and judges it is obvious that those two forms of agency (power of attorney and trusteeship) are so different that they require two different petitions. Yet, ironically, after filing my current petition, that same community finds it downright hilarious that anyone (me) could be so stupid as to distinguish between the two forms of agency. While my current case is very deliberately filed against Edward as an individual, the current unpublished opinion begins its discussion of my appeal thusly: "This is the second appeal arising from ongoing litigation between Donald and Edward concerning the Living Trust of Carl L. and Ruth L. Hoth (Trust) and related matters." This statement is objectively false. This current case does not concern the Trust. It does, however, concern the very same assets as the first petition. I feel that if the court had not made the legalistic, hair-splitting distinction between the two forms of

agency, this dispute might have been resolved efficiently under the nonjudicial framework of TEDRA. But insomuch as those TEDRA methods cannot be invoked without a court order, Edward and I are stuck in litigation for years. I feel that the courts need to break this stalemate and set a precedent by ordering mediation under TEDRA.

### **3. The court grants (punitive) attorney fees even when they are not appropriate.**

According to the (current) unpublished opinion, the appeals court has two reasons for denying my petition for mediation: (1) an objection on procedural grounds; and (2) a relatively vague claim that there was "good cause" (because the respondent didn't want mediation). Note that neither of the reasons were cited in the respondent's brief to the appeals court to justify the denial. The appeals court has simply deferred to the trial court, giving its own reasons and finding its own case law. Edward's counsel got very little traction in court arguing that the statute of limitations had lapsed, and arguing res

judicata. The counsellor argued unsuccessfully to the court commissioner that this case was not appealable. He then filed an untimely cross appeal which he later withdrew. He then filed a motion for additional evidence upon appeal which the court ultimately denied. His chief success has been by submitting to the court an old email I wrote to my brother, and framing it as an "abuse of judicial process". The appeals court has since granted Edward attorney fees, after which his counsel filed an affidavit of \$21,648 just for the appeal. The total for his fees including trial court is likely well over 50k.

Under RAP 14.2 attorney fees may be awarded to a party that "substantially prevails" on review. I find it unreasonable that Edward's counsel can be credited as prevailing. And I do not think it serves the public interest to impose such punitive sanctions on a party who has merely sought dispute resolution under the TEDRA. The counsellor's assertion that I have done all this just to be "vexatious" is unsupported and frankly absurd. No one would do all this pro se litigation just for the pleasure of

annoying his family members. NORTHWEST TELEVISION CLUB, INC v. GROSS SEATTLE, INC, 96 Wash.2d 973 634 P.2d 837 (1981). (No costs will be awarded on review where there is no “substantially prevailing party”.)

### **G. Conclusion**

Insomuch as the court has recognized the Trust Estate Dispute Resolution Act (TEDRA) as affirming family values and facilitating dispute resolution, this petition for review raises issues of public interest. As my case indicates, the high-minded intentions in adopting TEDRA all come to nothing in light of the court's deference to cases of precedent which render dispute resolution nearly impossible. The history of TEDRA is but a few pro se petitioners failing to invoke the intention of TEDRA. The courts have set the bar for procedural compliance unduly high, and there is no real standard for "good cause" to deny a petition. Not only has the court failed to resolve disputes, but citing RAP 14.2, the courts have imposed punitive attorney fees

and sanctions on the petitioners. This court should reverse the appeals court decision and grant my petition, review the case law on record, and set a precedent for invoking dispute resolution under TEDRA.

**Compliance Certification.** This Microsoft Word document contains 3.293 words, 22 pages and complies with RAP 18.17.

Dated this 12<sup>th</sup> day of June 2024

A handwritten signature in black ink, appearing to read "Donald Hoth", written over a horizontal line.

Donald Hoth, Appellant (pro se)

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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

Appellant,

v.

EDWARD HOTH,

Respondent.

No. 85516-6-I

DIVISION ONE

UNPUBLISHED OPINION

COBURN, J. — Pro se appellant Donald Hoth challenges two interlocutory orders entered prior to the summary judgment dismissal of his fourth Trust and Estate Dispute Resolution Act (TEDRA) action against his brother Edward Hoth.<sup>1</sup> Donald<sup>2</sup> argues that the trial court erred in denying his petition for mediation and denying his motion to disqualify counsel. We affirm and award attorney fees and costs to Edward on appeal.

FACTS

This is the second appeal arising from ongoing litigation between Donald and Edward concerning the Living Trust of Carl L. and Ruth L. Hoth (Trust) and related

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<sup>1</sup> Pursuant to RAP 9.11(a), Edward seeks to supplement the record on appeal with additional evidence regarding Donald's previous TEDRA actions against Edward. Extrinsic materials may be considered under extraordinary circumstances where additional proof "is needed to fairly resolve the issues on review." E. Fork Hills Rural Ass'n v. Clark County, 92 Wn. App. 838, 846, 965 P.2d 650 (1998) (quoting RAP 9.11(a)). Additional facts are unnecessary to resolve this appeal. The RAP 9.11 motion is denied.

<sup>2</sup> Because family members share the same last name, we use their first names for clarity.

matters. The background facts are set forth in detail in the first appeal, Hoth v. Hoth, No. 80284-4-I, slip op. at 1-3 (Wash. Ct. App. Nov. 9, 2020) (unpublished), <https://www.courts.wa.gov/opinions/pdf/802844.pdf>, and will be repeated here only as necessary.

Donald and Edward are beneficiaries of the Trust along with two other siblings. Their parents, Carl and Ruth, created the Trust and acted as its trustees. The Trust provided that its property would be distributed to the children in equal shares. Upon Carl's death, Ruth became the sole trustee. In July 2013, Ruth amended the Trust naming Edward as successor trustee, executed a will in which she gave the remainder of her estate to the Trustee to be administered as part of the Trust, and granted Edward power of attorney (POA) over Ruth's affairs. While acting under the POA, Edward sold some of Ruth's assets. After Ruth died in June 2016, Edward became the trustee of the Trust as well as two other family trusts. Hoth, slip op. at 1-2. Edward filed Ruth's will but, on advice of counsel, elected not to file a probate action.

In November 2017, Edward tried to dispense final distributions of the Trust in the amount of \$33,880 per beneficiary in exchange for signed receipt and release forms. All siblings except Donald signed the form and received their final distribution, so the only funds remaining in the Trust were Donald's share. On advice of counsel, Edward distributed half of Donald's share to him, and retained the other half pending Donald's signature on the receipt and release form. Id. at 2.

In 2019, Donald filed a TEDRA petition regarding Edward's actions during his administration of the Trust and while acting as POA for Ruth during her lifetime. Donald argued that Edward breached his fiduciary duty because he refused to provide financial



documents about the Trust. Donald also sought review of Edward's actions as trustee of the two terminated trusts and when he had POA for Ruth. He also petitioned for mediation under TEDRA. Id. at 2-3.

At the hearing, Donald did not identify what information about the Trust he was missing, but instead focused on issues relating to Edward's actions under the POA. The trial court approved Edward's accounting, denied Donald's petition for mediation, and ordered that Edward's attorney fees be paid from Trust assets. This court affirmed and granted Edward's request for an award of attorney's fees and costs on appeal. Id. at 1, 3. Edward applied Donald's undistributed amounts in the Trust to the amount Donald owed to the Trust pursuant to the attorney fee award.

Donald subsequently filed another TEDRA petition against Edward regarding Ruth's estate. After the petition was dismissed for lack of standing, Donald petitioned to admit Ruth's will to probate and to serve as personal representative of Ruth's estate. Donald's siblings did not oppose the petition, and in December 2022, the superior court appointed Donald as personal representative of Ruth's estate without nonintervention powers.

On December 30, 2022, acting in his capacity as personal representative, Donald filed a "TEDRA Complaint/Petition to Order Mediation re Information Requests from Edward Hoth's Power of Attorney Phase." Donald "ask[ed] the Court to compel Edward into mediation to resolve various outstanding issues regarding information requests." Edward asserted that mediation would "accomplish nothing" and argued that the TEDRA petition should be decided on summary judgment. Donald then moved to disqualify Edward's defense counsel.

At the January 2023 hearing on Donald's motion to order mediation, Edward's counsel filed a notice of appearance on behalf of Edward's other two siblings. The court denied Donald's petition to compel mediation on the ground that he did not comply with statutory procedural requirements. But the court noted that there was no declaration in the file to support Edward's claim that mediation would be fruitless. On March 1, 2023, Edward submitted a declaration and evidence in support of that claim.

On March 3, 2023, the trial court issued an order denying Donald's petition for mediation on the grounds that Donald "has not compl[ied] with mediation procedure in RCW 11.96A.300" and because Edward's declaration supported a finding of "good cause" to deny mediation. In a separate order, the court also denied Donald's request to disqualify Edward's counsel. The court noted the matter for an initial hearing on the TEDRA petition. On May 10, 2023, the court granted Edward's motion for summary judgment and dismissed the TEDRA petition. The court subsequently denied Donald's motion for reconsideration.

Donald appeals the order denying mediation and the order denying disqualification.

## DISCUSSION

Preliminarily, we note that Donald represents himself on appeal. We hold self-represented litigants to the same standards as licensed attorneys and expect them to follow the rules of appellate procedure. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). "The scope of a given appeal is determined by the notice of appeal, the assignments of error, and the substantive argumentation of the parties." Clark County v. W. Wash. Growth Mgmt. Hearings Rev. Bd., 177 Wn.2d 136, 144, 298 P.3d 704 (2013) (citing RAP 5.3(a); RAP 10.3(a), (g); RAP 12.1)). An appellant must provide

“argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.” RAP 10.3(a)(6). We need not consider arguments that are not supported by references to the record, meaningful analysis, or citation to pertinent authority. Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011).

Donald did not assign error to any of the trial court’s findings as required by RAP 10.3(g). His appellate briefing alleges many facts that are not in the record before this court and contains few citations to pertinent authority. Despite these deficiencies, we will exercise our discretion to reach Donald’s claims to the extent the record and the briefing allow. See RAP 1.2(a); State v. Olson, 126 Wn.2d 315, 323, 893 P.2d 629 (1995) (a court should exercise its discretion to reach an appeal’s merits unless there are compelling reasons not to do so).

#### Mediation

Donald does not challenge the trial court’s order granting summary judgment dismissal of his TEDRA petition. Rather, he contends the court erred by refusing to compel Edward to participate in mediation. We disagree.

We accord significant deference to trial court decisions in TEDRA proceedings. See In re Estate of Fitzgerald, 172 Wn. App. 437, 448, 294 P.3d 720 (2012) (recognizing abuse of discretion as the applicable standard of review for TEDRA determinations). A superior court abuses its discretion when its decision is based on untenable grounds or reasons. Union Bank, N.A. v. Vanderhoek Assocs., LLC, 191 Wn. App. 836, 842, 365 P.3d 223 (2015).

TEDRA provides for the resolution of probate matters through nonjudicial dispute resolution methods, such as mediation, arbitration, and agreement. RCW 11.96A.010. A party to a TEDRA proceeding may “cause the matter to be subject to mediation by service of written notice of mediation on all parties.” RCW 11.96A.300. The notice must substantially comply with statutory notice procedures. See In re Estate of Harder, 185 Wn. App. 378, 383-84, 341 P.3d 342 (2015) (denying petition to compel mediation where statutory procedural requirements were not followed). If a hearing is set, the court “shall order that mediation proceed except for good cause shown.” RCW 11.96A.300(2)(d), (3).

Donald did not assign error to the court’s findings that he did not comply with notice procedures under RCW 11.96A.300 and that Edward demonstrated good cause to deny mediation. Unchallenged findings are treated as verities on appeal. Pham v. Corbett, 187 Wn. App. 816, 825, 351 P.3d 214 (2015). Moreover, substantial evidence supports these findings. There is no evidence in the record indicating that Donald attempted to comply in form or substance with RCW 11.96A.300’s notice requirements prior to the court’s March 3, 2023 ruling. And ample evidence supports Edward’s assertion that mediation would accomplish nothing. Donald insists that he “had no choice but to file this petition” because Edward “just stonewalled me” when he “asked pointed questions regarding his administration of estate assets.” But this is Donald’s fourth TEDRA petition regarding Edward’s actions in the same matter. And, notably, Edward’s declaration included a December 10, 2020 email in which Donald told Edward “hopefully you will be dead before this gets settled” and “do you think Mom and Dad set

you up as trustee just so you could keep us at loggerheads for the rest of our lives?

Really? Fine. Wish me luck in supreme court. Hope you die soon.”

Donald contends that the court should have ordered mediation because he believes it is appropriate. He claims that the court's decision finding good cause to deny mediation based on Edward's declaration proves that “the Court is not in charge” and that Edward's counselor is “spoon-feeding the Court.” He asserts that Edward's March 1, 2023 declaration, in which Edward substantiated his belief that mediation would be fruitless, proves that counsel was “horse shedding” Edward by “spoon-feeding” counsel's own testimony to him and that the court was “complicit” in this “perjury.” These claims are speculative and wholly without merit. The court did not err in denying Donald's request for mediation.

#### Disqualification

Donald argues the trial court abused its discretion by denying his motion to disqualify Edward's counsel. Again, we disagree.

“[D]isqualification is a drastic sanction that should be limited to egregious violations.” Hur v. Lloyd & Williams, LLC, 25 Wn. App. 2d 644, 649, 523 P.3d 861 (2023) (citing Matter of Firestorm 1991, 129 Wn.2d 130, 140, 916 P.2d 411 (1996)). We review the superior court's decision on a motion to disqualify counsel for an abuse of discretion. See Pub. Util. Dist. No. 1 of Klickitat County v. Int'l Ins. Co., 124 Wn.2d 789, 811-12, 881 P.2d 1020 (1994).

In his motion for disqualification, Donald acknowledged that he had filed a motion to disqualify counsel the previous year “as the firm likely resented me for a 2018 bar complaint.” He therefore asserted that counsel's “adversity toward me is fueled by

external issues.” He further asserted that counsel should be disqualified for “delaying the process” and “making this fairly simple case a lot more difficult and drawn out than it needs to be.” The court appropriately ruled that no legal authority supported disqualification under these circumstances.

On appeal, Donald argues that Edward’s counsel “suborned perjury,” wrongly “portrayed the current petition as a breach of fiduciary duty,” and aligned himself with an adverse party to the estate by “solicit[ing] the patronage of my other two siblings.” He further contends that disqualification is warranted because Edward’s counsel advanced arguments that Donald felt he had successfully refuted and because counsel misinterpreted Donald’s email to Edward. These unsupported claims do not amount to any violation at all, let alone an egregious violation warranting disqualification. The trial court did not abuse its discretion in denying Donald’s motion.

#### Attorney Fees

Edward seeks attorney fees on appeal. Under RAP 18.1(a), this court may award attorney fees and costs on appeal “[i]f applicable law” allows. RCW 11.96A.150 allows superior courts and appellate courts to order a party to a TEDRA action to pay another party’s reasonable attorney fees “to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate.” RCW 11.96A.150(1).

We agree with Edward that this is an appropriate case for an award of fees. We award reasonable attorney fees and costs on appeal to Edward subject to his timely

No. 85516-6-I/9

compliance with RAP 18.1(d).

Affirmed.

Cohen, J.

WE CONCUR:

Brennan, J.

Smith, C.J.

EXHIBIT B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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

Appellant,

v.

EDWARD HOTH,

Respondent.

No. 85516-6-I

ORDER DENYING  
MOTION FOR  
RECONSIDERATION

The appellant, Donald Hoth, having filed a motion for reconsideration herein, and a majority of the panel having determined the motion should be denied; now, therefore, it is hereby

ORDERED the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:


\_\_\_\_\_



EXHIBIT C  
SCANNED 7

FILED  
COUNTY CLERK

2023 JUL -3 AM 11:29 2023 JUN -8 PM 12:58

WHATCOM COUNTY  
WASHINGTON

22-4-01238-37  
AFSR 62

Affidavit Declaration Certificate Confirmation of  
14778004



AMENDED AUG 18, 2023 AS REQUESTED  
BT COURT CLERK - SEE FINAL DOCUMENT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHATCOM

*Donald Hoth*  
*9/10/23*

ESTATE OF RUTH HOTH C/O

Case No. 22-4-01238-37

DONALD HOTH, PERSONAL REPRESENTATIVE

NOTICE OF APPEAL

Petitioner,

TO: COURT OF APPEALS

VS.

EDWARD HOTH,

Respondent

Petitioner Donald Hoth seeks review by Court of Appeals, Division One, of these interlocutory motions: (1) Order Denying Donald Hoth's Order to Mediation; and (2) Order Denying Donald Hoth's Request to Disqualify Defense Counsel, both dated March 3, 2023, by the Honorable Judge Evan Jones, Whatcom Superior Court.

Copies of the orders are attached. (Other interlocutory motions are not subject to appeal.)

Dated this 8th of June, 2023.

*Donald Hoth*  
Donald Hoth (Pro se)

NOTICE OF APPEAL TO: COURT OF APPEALS - 1

A-11

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Counsel for Petitioner:

Donald Hoth (pro se)  
2311 Woburn St. #4  
Bellingham WA 98229  
Phone: (360) 922-2759  
Email: [dfhbaby@yahoo.com](mailto:dfhbaby@yahoo.com)

Counsel for Respondent:

Douglas Shepherd  
Shepherd and Allen  
2011 Young St. Suite 202  
Bellingham WA 98225  
Phone: (360) 647-9060

SCANNED 2

22-4-01238-37  
ORDYMT 25  
Order Denying Motion Petition  
14074076

FILED  
IN OPEN COURT

MAR 03 2023

WHATCOM COUNTY CLERK

**IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY**

THE ESTATE OF RUTH HOTH C/O

DONALD HOTH, Personal Representative

Petitioner,

vs.

EDWARD HOTH,

Respondent.

**Cause No: 22-4-01238-37**

**ORDER DENYING**

**DONALD HOTH'S RENEWED**

**TEDRA MOTION / PETITION TO**

**ORDER MEDIATION**

ORIGINAL

ORDER DENYING  
DONALD HOTH'S RENEWED TEDRA  
MOTION / PETITION TO ORDER  
MEDIATION  
Page 1 of 2

**SHEPHERD AND ALLEN**  
ATTORNEYS AT LAW  
2011 YOUNG STREET, SUITE 202  
BELLINGHAM, WASHINGTON 98225  
TELEPHONE: (360) 733-3773 ♦ FAX: (360) 647-9060  
www.saalawoffice.com

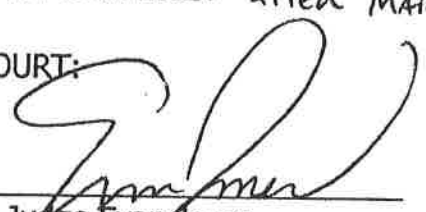
A-13

1 THIS MATTER came before this Court on Donald Hoth's Renewed TEDRA  
2 Motion / Petition to Order Mediation. Donald Hoth appeared Pro Se and Edward  
3 Hoth appeared by and through his attorneys, Shepherd and Allen. The Court  
4 having reviewed the pleadings and records in this matter and having heard the  
5 arguments and being otherwise fully informed makes and enters the following:

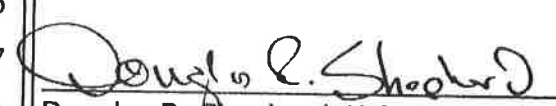
6 It is ORDERED, Donald Hoth's Motion / Petition to Order Mediation is  
7 **DENIED.** The issue of attorney fees is reserved.

8 *Plaintiff has not comply with mediation procedure in RCW 11.96A.31*  
9 *Moreover, Court finds good cause to deny request for mediation*  
10 Entered in open court this 3rd day of March 2023. *based on Dec. of ED Hoth*  
11 *Siled MARCH 1, 2023.*

12 BY THE COURT:

13   
14 Honorable Judge Evan Jones

15 **Presented by:**  
16 SHEPHERD and ALLEN

17   
18 Douglas R. Shepherd, WSBA #9514  
19 Of Attorneys for Edward Hoth

20 **Copy received:**

21 \_\_\_\_\_  
22 Donald Hoth, pro se  
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\* MATTER SHALL  
Be NOTED FOR AN  
Initial Hearing on the  
TEDRA Petition no later  
than 90 days from  
this order.

SCANNED 2

**FILED**  
**IN OPEN COURT**

MAR 03 2023

WHATCOM COUNTY CLERK

**IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY**

THE ESTATE OF RUTH HOTH C/O

DONALD HOTH, Personal Representative

Petitioner,

vs.

EDWARD HOTH,

Respondent.

**Cause No: 22-4-01238-37**

**ORDER DENYING**

**DONALD HOTH'S REQUEST TO  
DISQUALIFY DEFENSE COUNSEL**

ORDER DENYING  
DONALD HOTH'S REQUEST TO  
DISQUALIFY DEFENSE COUNSEL  
Page 1 of 2

***SHEPHERD AND ALLEN***

ATTORNEYS AT LAW  
2011 YOUNG STREET, SUITE 202  
BELLINGHAM, WASHINGTON 98225

TELEPHONE: (360) 733-3773 ♦ FAX: (360) 647-9060  
www.saalawoffice.com


A-15

1 THIS MATTER came before this Court on Donald Hoth's repeated Request  
2 to Disqualify Defense Counsel. Donald Hoth appeared Pro Se and Edward Hoth  
3 appeared by and through his attorneys, Shepherd and Allen. The Court having  
4 reviewed the pleadings and records in this matter and having heard the  
5 arguments and being otherwise fully informed makes and enters the following:

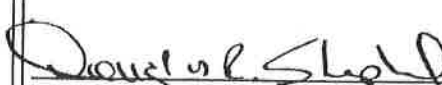
6 It is ORDERED, Donald Hoth's repeated request to disqualify Shepherd  
7 and Allen as defense counsel is **DENIED**. The issue of attorney fees is reserved.  
8

9 Entered in open court this 3<sup>rd</sup> day of March 2023.  
10

11 BY THE COURT:

12   
13 \_\_\_\_\_  
14 Honorable Judge Evan Jones

15 **Presented by:**  
16 SHEPHERD and ALLEN

17   
18 Douglas R. Shepherd, WSBA #9514  
19 Of Attorneys for Edward Hoth

20 **Copy received:**

21 \_\_\_\_\_  
22 Donald Hoth, pro se  
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CLERK  
COUNTY CLERK

2023 JUL -3 AM 11:29

CLERK  
COUNTY CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY**

In Re the Estate Ruth Hoth  
Donald Hoth, Personal Representative,

Plaintiff/Appellant,

vs.

Edward Hoth,

Respondent.

NO. 22-4-01238-37

**DECLARATION OF SERVICE  
NOTICE OF APPEAL TO COURT OF APPEALS,  
DIVISION I**

I, Heather Britain, being first duly sworn on oath, depose and say: That at all times mentioned herein I was a resident of said county and not interested in the above cause, not a party thereto; and that on the 3<sup>rd</sup> day of July, 2023, I mailed, emailed, or delivered a copy of the NOTICE OF APPEAL TO THE COURT OF APPEALS, DIVISION 1, to which this declaration is attached, to the following:

**Attorney for Plaintiff/Appellant:**


Donald Hoth  
2311 Woburn St., # 4  
Bellingham, WA 98229

**Attorney for Respondent:**

Shepherd & Allen  
Attn: Douglas Shepherd  
2011 Young St., Suite 202  
Bellingham, WA 98225

and that further, on the 3<sup>rd</sup> day of June, 2023, I electronically filed a copy of the NOTICE OF APPEAL TO THE COURT OF APPEALS, with the following:

Lea Ennis, Clerk  
Court of Appeals, Division I  
One Union Square, 600 University Street  
Seattle, WA 98101

  
Deputy Clerk

2023 MAY 10 AM 10:13

AMENDED TO NOTICE  
OF APPEAL AUG 18, 2023  
TO SHOW ABOVE DATE  
THIS ORDER IS NOT BEING  
APPEALED

IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

Daryl Q. Allen

THE ESTATE OF RUTH HOTH C/O

DONALD HOTH, Personal  
Representative,

Petitioner,

vs.

EDWARD HOTH,

Respondent.

Cause No: 22-4-01238-37

ORDER GRANTING EDWARD  
HOTH'S MOTION FOR SUMMARY  
JUDGMENT AND ORDER OF  
DISMISSAL

[x] Clerk's Action Required  
(Pg. 2, line 24)

ORDER GRANTING EDWARD  
HOTH'S MOTION FOR SUMMARY  
JUDGMENT  
Page 1 of 3

SHEPHERD AND ALLEN

ATTORNEYS AT LAW  
2011 YOUNG STREET, SUITE 202  
BELLINGHAM, WASHINGTON 98225

TELEPHONE: (360) 733-3773 + FAX: (360) 647-9060  
www.saallawoffice.com

A-18



1 THIS MATTER came before this Court on Edward Hoth's Motion for  
2 Summary Judgment, by and through his counsel, Douglas R. Shepherd, Esq., of  
3 Shepherd and Allen; and petitioner Donald Hoth appearing pro se. The Court  
4 having reviewed the pleadings and records in this matter, including but not  
5 limited to:

- 6  
7 1. TEDRA Complaint/Petition to Order Mediation Re Information Requests  
8 From Edward Hoth's Power of Attorney Phase, Dkt. #2;  
9 2. Answer and Affirmative Defenses, Dkt. #5;  
10 3. Edward Hoth's Motion for Summary Judgment, Dkt. #30;  
11 4. Declaration of Douglas R. Shepherd, Dkt #32;  
12 5. Declaration of Edward Hoth Re: Work as Power of Attorney, Dkt. #31;  
13 6. Petition for TEDRA and Declaration in Support Thereof, Dkt. #2, Cause  
14 No. 19-4-00342-37; and,  
15 7. ORAL ARGUMENT ON April 28, 2023  
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21 And, the Court having heard the arguments of counsel, and being  
22 otherwise fully informed,

23 The Court finds, based upon the above pleadings, there are no disputed  
24 issues of material fact regarding Edward Hoth's Motion for Summary Judgment.  
25 Edward Hoth is entitled to summary judgment as a matter of law.

It is therefore ORDERED, ADJUDGED and DECREED:

Edward Hoth's Motion for Summary Judgment for dismissal is **GRANTED**.  
The TEDRA Complaint / Petition to Order Mediation Re Information Requests  
From Edward Hoth's Power of Attorney Phase of Donald Hoth is **DISMISSED**,

1 with prejudice. ~~Edward Hoth's request for attorney fees against Donald Hoth is~~  
2 **GRANTED.**

3 ~~The amount of attorney fees will be determined when a declaration~~  
4 ~~supporting the amount of attorney fees, a proposed judgment regarding attorney~~  
5 ~~fees, and Findings of Facts related to the award of attorney fees are filed, served~~  
6 ~~and presented to this Court.~~

7 Entered in open court this 9<sup>TH</sup> day of <sup>MAY</sup>~~April~~ 2023.

8  
9 BY THE COURT:

10   
11 Honorable Judge Evan Jones

12 **Presented by:**

13 SHEPHERD and ALLEN

14 

15 Douglas R. Shepherd, WSBA #9514  
16 Of Attorneys for Edward Hoth

17 **Copy received:**

18 \_\_\_\_\_  
19 Donald Hoth, pro se  
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# DONALD HOTH - FILING PRO SE

June 12, 2024 - 2:02 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 85516-6  
**Appellate Court Case Title:** Donald Hoth, Appellant v. Edward Hoth, Respondent  
**Superior Court Case Number:** 22-4-01238-6

### The following documents have been uploaded:

- 855166\_Petition\_for\_Review\_20240612140206D1700172\_7060.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was Petition for Review by Supreme Court signed.pdf*

### A copy of the uploaded files will be sent to:

- dougshepherd@saalawoffice.com
- kyle@saalawoffice.com
- madilyn@saalawoffice.com

### Comments:

---

Sender Name: Donald Hoth - Email: dfhbaby@yahoo.com  
Address:  
2311 Woburn St. Apt. 4  
Bellingham , WA, 98229  
Phone: (360) 922-2759

**Note: The Filing Id is 20240612140206D1700172**