

FILED
SUPREME COURT
STATE OF WASHINGTON
2/27/2025 9:52 AM
BY SARAH R. PENDLETON
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SUPREME COURT OF THE STATE OF WASHINGTON
No. 1037911

(Court of Appeals, Division 1, No. 85676-6-1)

In the Matter of the Tony Vivolo Residuary Trust F/B/O
Nicholas Vivolo and the Estate of Nicholas Vivolo

Steven Vivolo, as Personal Representative and beneficiary of
the Estate of Nicholas Vivolo,

Appellant,

Christopher Vivolo,

Respondent.

REPLY TO ANSWER TO PETITION FOR REVIEW

Attorney for Steven Vivolo:
Holly A. Surface
612 South 227th Street
Des Moines, WA 98198

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I. INTRODUCTION

Steven Vivolo (“Steven”)¹ is the Appellant herein who petitioned for review on January 14, 2025. Respondent filed an Answer to Petition for Review on February 13, 2025. Pursuant to RAP 13.4(d), Steven replies only to a new issue raised in the Answer.

II. NEW ISSUE RAISED IN ANSWER

In the Answer to the Petition for Review, Respondent argued that the Court should award him his reasonable attorneys’ fees and costs incurred in defending against the Petition for Review. The Petition for Review did not raise the issue of an award of attorney fees and costs.

III. ARGUMENT

In his Answer to Petition for Review, Respondent argues that “RAP 14.2 grants the Court discretion to award reasonable attorneys' fees and costs from any party or from

¹ Since many involved individuals share the same last name, first names only are used for simplicity. No disrespect is intended.

estate of trust assets.” *See Respondent’s Answer to Petition for Review, page 20.* This is the incorrect legal standard.

RAP 14.2 awards costs to the “...party who substantially prevails on review...”. The specific costs that may be awarded are identified in RAP 14.3 and include statutory attorney fees and the specific expenses actually incurred identified therein.

RCW 4.84.080(2) states, “[w]hen allowed to either party, costs to be called the attorney fee, shall be as follows: In all actions where judgment is rendered in the supreme court or the court of appeals, after argument, two hundred dollars.” *RCW 4.84.080(2).* The party who prevails as to the petition for review would be entitled to costs, pursuant to Respondent’s argument.

RAP 18.1 addresses awards of reasonable attorney fees. Respondent did not address this standard in his briefing.

IV. CONCLUSION

Based on the foregoing, petitioner Steven Vivolo,
respectfully requests the Court award costs pursuant to RAP
14.2 to the party who prevails.

SIGNED AND DATED this 27th day of February, 2025,
at University Place, Washington.

Presented by:

DES MOINES ELDER LAW

“I certify that this pleading contains a word count of 305
excluding the parts of the document exempted from word
count, consistent with RAP 18.17(b).”

By: **Holly A. Surface**

Holly A. Surface, WSBA No. 59445,
Attorney for Steven Vivolo,
612 S. 227th St., Des Moines, WA 98198
Phone: 206-212-0220
Email: holly.surface@rm-law.com

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the date and place below, I caused a true and correct copy of the document to which this certificate is attached to be served upon all parties and/or their counsel of record in the manner indicated below:

Christopher Vivolo
c/o Ann T. Wilson
Stokes Lawrence P.S.
1420 5th Ave, Ste 3000
Seattle, WA 98101

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☐ U.S. Mail
☐ Certified Mail
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☐ E-Mail:
ann.wilson@stokeslaw.com

Partners in Care
c/o Kameron L.
Kirkevold
Helsell Fetterman LLP
1001 4th Ave, Ste 4200
Seattle, WA 98154

☐ Personal Service
☐ U.S. Mail
☐ Certified Mail
☐ Hand Delivered
☒ Court E-Service if Opted
☐ E-Mail: kkirkevold@helsell.com

SIGNED AND DATED this 27th day of February, 2025,
at Des Moines, Washington.



BY: Elias M. Surface, Paralegal

DES MOINES ELDER LAW

February 27, 2025 - 9:52 AM

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