Supreme Court No. 1040228
Court of Appeals, Division II No. 86854-3-I
Clark County Superior Court No. 22-4-00871-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NICOLE GARZA,

Appellant,

v.

JUDE BALEY, ASHTON ROBERTS, and TERRI-JO McCOY,

Respondents.

ANSWER TO PETITION FOR REVIEW OF RESPONDENTS

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I. STATEMENT OF CASE.

A. Procedural History.[1]

Appellant NICOLE GARZA ("Appellant") filed her Summons and TEDRA Petition to Enforce Inheritance ("TEDRA Petition") on June 28, 2022, nearly two and one-half years after the probate proceedings for the Estate of Karen Garza ("Estate") ended on January 16, 2020. (CP 1-6) The Prayer requested only reformation of the will:

> That the distribution made to Petitioner by way of an annuity be modified and reformed such that Petitioner receives her entire distribution in one lump-sum.

(CP 5)

On March 10, 2023, Superior Court Judge Nancy Retsinas entered the Order Granting Respondents' Motion for Summary Judgment and Denying Petitioner's

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[1] The Petition for Review contains a confused procedural history, so the Procedural History section herein will reiterate the important procedural aspects.

Motion to Amend TEDRA Petition. (CP 321-24)

Appellant filed her Notice of Appeal on April 10, 2023. (CP 325-30) The Court of Appeals, Division II, on November 15, 2024, upheld the trial court's ruling on the basis that "Nicole's TEDRA petition asserts claims that either were, should or 'might' have been litigated in the probate of Karen's estate, the action is barred by res judicata." *Unpublished Opinion at 9.*

Appellant filed her untimely Petition for Review ("Petition") on June 6, 2025. Respondents TERRI-JO McCOY, ASHTON ROBERTS, and JUDE BALEY ("Respondents") hereby file their Answer to Petition for Review ("Answer").

B. Statement of Facts.[2]

Karen Garza ("Decedent") signed her Last Will and

[2] The Petition for Review contains substantial efforts to relitigate facts either determined by the trial court and upheld by the Court of Appeals, Division II, or not relevant to the *res judicata* issues. Facts are included in this Answer to Petition for Review in order to clarify the factual background to this dispute.

Testament on January 22, 2015, which included the following provisions:

> FOURTH: Upon my death, I direct my personal representative to divide my estate into four (4) equal shares, share to be distributed as follows:
>
> 4.1 To each of the following beneficiaries, or to their issue by right of representation, I bequeath one full share: ASHTON ROBERTS, JUDE BALEY, and TERRI-JO McCOY. . .
>
> 4.2 If NICOLE GARZA survives me, I grant my Personal Representative a limited power of appointment to invest the fourth share of my estate [to] acquire an irrevocable single premium immediate ten (10) year annuity for Nicole's benefit. . . If my Personal Representative is unable to acquire such an annuity for the value of the fourth share after making diligent effort and consultation with a qualified financial investment advisors, the fourth share shall be distributed directly to Nicole.
>
> FIFTH: I hereby appoint JUDE BALEY to act as Personal Representative of my estate and

> expressly direct my Personal Representative to serve without intervention of any court, except as may be required by the laws of the State of Washington in the case of nonintervention wills, and to serve without bond. My Personal Representative shall have full power to sell, rent, lease, or otherwise manage and dispose of all of my estate and property . . . without notice, confirmation or other formality or hindrance and at such price and upon such terms as my personal representative may seem [sic] just and proper.
>
> **SIXTH: NOTWITHSTANDING THE FOREGOING, the share of any beneficiary who commences a legal challenge to the distributive provisions or my nominations to serve as Personal Representative set forth herein, such beneficiary's share shall be deemed to have been forfeited and then be subject to administration as if said beneficiary had failed to survive me.**

[emphasis added] (CP 75-79)[3]

Karen Garza died on July 25, 2018, in Clark County, Washington. (CP 84) The Petition for Orders in

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[3] The trial court stated: "In fact, when I'm looking at the will, the decedent treated one of her children [Nicole Garza] differently. And I presume there was a good reason for that. . . And then the decedent intentionally included the will contest provisions not only as to the distributive share . . . but also the manner of distribution, but also as to the selected PR." (VRP 50)

Probate were filed on September 20, 2018, by Respondent JUDE BALEY, who obtained an Order Appointing Personal Representative and Letters Testamentary authorizing her to serve as personal representative of the Estate with nonintervention powers. (CP 85-90) A Notice of Pendency of Probate and Appointment of Personal Representative was mailed to all the putative heirs including Appellant NICOLE GARZA on September 13, 2018. (CP 91)

Nearly seven months later, Appellant filed a Complaint with the probate court on April 3, 2019, primarily:

> (1) challenging the Will on the basis that "a separate undisclosed will existed that included Plaintiff as beneficiary and was concealed to [sic] Plaintiff" (**Will Contest**);
>
> (2) requesting "a re-appointment of personal representative to include an un-biased third party to conduct re-appraisal" (**Objecting to Appointment of Personal Representative**);

> (3) The Complaint further alleged that Decedent was "being influenced in some manner regarding the administration of her Estate and that the calls [previously made to Appellant] were actually a cry for help and a cautionary tale" (**Undue Influence**).

(CP 92-109) Moreover, Appellant stated: "Plaintiff is also interested in a Resolution process and in the possibility of resolving the matter(s) through Mediation or through the TEDRA, Trust and Estate Dispute Resolution Act." (**TEDRA Petition**). (CP 108)[4]

On October 21, 2019, the Personal Representative filed a Motion to Dismiss Plaintiff's Complaint and Declare Forfeiture of Plaintiff's Testamentary Share of the Estate ("Motion"). Specifically, the Motion requested:

(1) the dismissal of the Complaint,

(2) confirming probate of Decedent's Last Will

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[4] Appellant's conduct towards her siblings was abusive at best. Respondent Roberts described Appellant's "constant stream of insults and abuse" up until January 15, 2019. (CP 300-302). Respondent Jude Baley testified that Appellant left threatening voice mail messages on her telephone and that of her legal counsel, Greg Call, including: "You're going to f****** burn in hell for what you did! I hope I'm there to light the f****** match!" (CP 307, 310)

and Testament,

(3) declaring the forfeiture of Plaintiff's share of the Estate pursuant to the Sixth Article of the Will, and

(4) order requiring payment of attorney's fees and costs.

(CP 147-148) Appellant requested a telephonic hearing which occurred on November 8, 2019, but she failed to appear at the hearing and failed to respond to three attempts by the clerk to contact her during the hearing. The court orally granted the dismissal with prejudice of the Complaint. (CP 149-52)

On December 4, 2019, Judge Bernard Veljacic entered an Order Dismissing Complaint with Prejudice ("Order"). Specifically, the Order denied:

(1) that a prior will existed,

(2) that Jude Baley be removed and replaced by an unbiased third party, and

(3) that Decedent was unable to exercise sound judgment on the basis of undue influence.

The Order also determined that the Complaint constituted a "will contest under RCW 11.24.010." Moreover, Judge Veljacic determined that "the fact that Nicole Garza failed to file her Complaint within the four-month limitation [of RCW 11.24.010] requires the Court to dismiss the Complaint with prejudice." (CP 153-55)

On January 16, 2020, pursuant to the Order, and based on a good faith interpretation of Article Sixth of the Last Will and Testament that Appellant's share of the Estate was deemed "forfeited" and deemed to predecease the Decedent by her prior "will contest" for purposes of probate administration, the personal representative filed a Declaration of Completion. (CP 156-59) The Declaration of Completion became final on February 15, 2020. (CP 39-43; 156-59)

In reliance on the explicit terms of the Last Will and Testament, Respondent JUDE BALEY (serving as

personal representation) testified:

> On January 16, 2020, and based on my good faith interpretation of Article Sixth of the nonintervention Last Will and Testament, and based upon legal advice from the estate's attorney, that Petitioner's share of the Estate was "forfeited", that she was deemed to predecease the Decedent by her prior "will contest," and, per the will, that the estate was "subject to administration as if said beneficiary had failed to survive me," I filed a Declaration of Completion with the court and mailed it to the three heirs who were deemed to "survive" the Decedent: Terri-Jo McCoy, Ashton Roberts, and me. The Declaration of Completion disclosed the fees and costs of the probate and distributed the remaining assets of the Estate to the three "surviving" heirs. (CP 41-42)

On March 25, 2020, Appellant mailed pleadings to the Clerk of Court who returned the documents because, according to the Clerk, "I am unsure how to put your documents together to file them in this case." (CP 160) On June 8, 2020, despite failing to appear at the prior hearing and apparently now recognizing her *faux pas*, Appellant filed her Motion to Object and Continue to the

Order entered on November 8, 2019, tardily stating:

> I also understand that this hearing is an attempt to have me disinherited from my Mother's Estate. I do not wish to be disinherited and have only wished to address the actions of the Personal Representative[.]

(CP 161-63) Appellant requested "a continuance on this matter, thereby allowing me the time to read the pleadings and respond to the issues in an appropriate manner." (CP 161)

On June 8, 2020, Appellant had previously filed an Addendum to Motion to Object and Continue acknowledging her actual knowledge of the November 8, 2018, hearing and objecting that she did not have sufficient time to respond to the Motion to Dismiss. (CP 163) However, the Addendum did not provide any legitimate excuse for Appellant's failure to respond to telephone calls from the clerk. (CP 163)

Appellant also filed a Motion to Object to

Declaration of Completion and to Vacate Decision as well as Supplemental Attachment to Plaintiff's Complaint on June 8, 2020, acknowledging receipt of the Notice and Declaration of Completion by March 17, 2019. (CP 177-80) Appellant now offered excuses for her non-appearance via telephone for the November 8, 2019, hearing and denied that she intended to contest the will and now wanted to receive her inheritance. She also requested the exploration of "all possible options" through Mediation and or through independent Mediation and or a TEDRA agreement[.]" (CP 182-83)

Appellant filed a Citation (Amended) on August 3, 2020, renoting her motion for October 2, 2020, from August 14, 2020, to accommodate the schedule of her "counsel." (CP 185-86) Appellant abandoned her Motion on October 2, 2020, but had failed to serve Respondents with her motions and to affix a Certificate of Service. (CP

185)

Appellant subsequently filed her TEDRA Petition on June 23, 2022, over two and one-half (2½) years after the November 8, 2019, hearing. (CP 189)

II. LEGAL ARGUMENT.

A. Standard of Review.

Appellant does not cite RAP 13.4(b) which requires at least one of the following criterion for accepting review: (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) if the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; (3) if a significant question of law under the Constitution of the State of Washington or United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Appellant, however, first states: “Appellant’s petition

involves various issues of substantial public interest that should be determined by the Supreme Court." *Petition for Review at 11.* She next argues that "important are the vast literally unchecked powers that are afforded Personal Representatives with non-intervention powers, indicated in RCW 11.68.090." Id. At 11. Respondents assume that RAP 13.4(b)(4) is the sole basis for Appellant's Petition for Review.

B. Legal Discussion.

1. **THE COURT OF APPEALS CORRECTLY DETERMINED THAT APPELLANT'S TEDRA REQUEST TO REFORM THE LAST WILL AND TESTAMENT IS BARRED PURSUANT THE DOCTRINE OF *RES JUDICATA* WHICH DOES NOT INVOLVE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT REQUIRES INTERVENTION FROM THE SUPREME COURT.**

The doctrine of *res judicata* bars Appellant's TEDRA Petition because it asserts claims which were or

should have been decided in her Complaint dated April 3, 2019. The Court of Appeals correctly so determined. *Unpublished Opinion at 9.* Moreover, the doctrine of *res judicata* is not an issue of "substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

Res judicata encompasses the concepts of both claim preclusion and issue preclusion. Issue preclusion is grounded in the doctrine of collateral estoppel, when a subsequent action involves a different claim but the same issue. Claim preclusion bars litigation of claims that were or should have been decided among the same parties below. In re Marriage of Dicus, 110 Wn. App. 347, 355, 40 P.3d 1185 (2002).

Appellant's sole claim in the TEDRA Petition is "reformation" of will; however, the factual basis is not explicitly stated. Petitioner's Complaint dated April 3,

2019, already attempted to challenge the will through RCW 11.24.010 which includes “issues respecting competency of the deceased, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or part of it”[.] All claims of Appellant were or should have been adjudicated in the prior proceedings. *Res judicata* bars the attempt to relitigate those claims or any other which should have been decided among the same parties in the prior probate proceedings. Appellant did not respond to the *res judicata* arguments in her opening brief with the Court of Appeals and now, for the first time, makes this argument.

The Court of Appeals correctly upheld the dismissal of the TEDRA Petition basis of the doctrine of *res judicata*. The Appellant cites Ensley v. Pitcher, 152 Wn.

App. 891, 903, 222 P.3d 99 (2009), Meryhew v. Gillingham, 77 Wn. App. 752, 893 P.2d 692 (1995), and Gourde v. Gannam, 3 Wn. App. 2d 520, 417 P.3d 650 (2018), all referenced by the Court of Appeals. However, her arguments are not compelling, do not demonstrate any conflict with other published appellate court decisions, nor present issues of substantial public interest. She does not argue that the Court of Appeals misconstrued the legal parameters set forth in those cases. What Appellant fails to understand is that her TEDRA Petition was simply barred by *res judicata* because her April 3, 2019 complaint (which was dismissed on December 4 2019) because it "assert[ed] claims that either were, should, or 'might' have been litigated in the probate of Karen's estate[.] *Unpublished Opinion at 9*

2. THE COURT OF APPEALS DID NOT ADJUDICATE APPELLANT'S NONINTERVENTION POWERS ARGUMENT RAISED IN THE PETITION FOR REVIEW, BUT, IN ANY EVENT, PURSUANT TO RCW 11.68.130, THE NONINTERVENTION PERSONAL REPRESENTATIVE AND NOT THE SUPERIOR COURT HAD THE POWER TO CONSTRUE AND THE LANGUAGE OF THE WILL.[5]

RCW 11.68.130 specifically states:

> A personal representative with nonintervention powers has the power to construe and interpret the terms of a probated will, except as the probated will or an order of the court may otherwise direct.

In addition,

> [t]here is a rebuttable presumption that the construction of an ambiguous provision that is made by a personal representative with nonintervention powers is consistent with the intent of the testator.

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[5] Respondents believe that Appellant's "nonintervention powers" argument is not properly before the Supreme Court but they address the issues in any event.

RCW 11.68.130.

The Fifth Article and Sixth Article of the Last Will and Testament unambiguously and explicitly stated:

> FIFTH: I hereby appoint JUDE BALEY to act as Personal Representative of my estate and expressly direct my Personal Representative to serve without intervention of any court, except as may be required by the laws of the State of Washington in the case of nonintervention wills, and to serve without bond. My Personal Representative shall have full power to sell, rent, lease, or otherwise manage and dispose of all of my estate and property . . . without notice, confirmation or other formality or hindrance and at such price and upon such terms as my personal representative may seem [sic] just and proper.
>
> SIXTH: NOTWITHSTANDING THE FOREGOING, the share of any beneficiary who commences a legal challenge [A] to the distributive provisions or [B] my nominations to serve as Personal Representative set forth herein, such beneficiary's share shall be deemed to have been forfeited and then be subject to administration as if said beneficiary had failed to survive me.

[emphasis added] Neither the Fifth Article nor the Sixth

Article of the Will is ambiguous.

Again, Washington law is clear. In In re Estate of Rathbone, 190 Wn.2d 332, 412 P.3d 1283 (2018), the Washington Supreme Court engaged in a lengthy analysis of the interplay between the probate code and the TEDRA statute as well as to "what extent superior courts have authority to intervene in the administration of nonintervention estates." Id. at 335. In that case, an heir filed a petition under RCW 11.68.110, then filed a petition under TEDRA requesting the probate court construe the will in his favor. The Supreme Court, after a lengthy discussion, held that:

> the statutory provisions under TEDRA did not give the trial court authority to construe the will in this case. We also hold that the authority invoked under the nonintervention statutes, such as RCW 11.68.110 and .070 is limited to resolving issues provided under each statute.

Id. at 335.

In the underlying factual scenario of In Estate of Rathbone, the decedent's will contained a provision which stated in part:

> Any person . . . by his contest (i.e., a contest, dispute, or other legal proceedings commenced without the consent of the personal representative) forfeit any interest which he, his issue has or may have. My Estate shall be distributed . . . as if the person . . . were deceased or dissolved.

Id. at 336. The decedent's three sons were listed as residuary beneficiaries (Glen, Todd, and Douglas). The will designated Todd as personal representative with Todd appointed with nonintervention powers by the court per the will's instructions. Glen filed a petition under RCW 11.68.110 to "obtain court approval of fees and order an accounting." Two days later, Glen filed another "petition under TEDRA and [the probate statute] alleging that Todd's distribution of the estate contradicted [the decedent's] intent, constituted self dealing, and was a

breach of Todd's duties as personal representative."

The superior court determined that it had authority under RCW 11.68.110 and TEDRA to construe the will and granted Glen's petition for order construing will. The Court of Appeals affirmed determining that "TEDRA acted as a supplement to allow the superior court to construe the will." Id. at 337-38 (emphasis added).

On appeal, the Supreme Court disagreed. It framed three issues:

> (1) whether RCW 11.68.110 gives trial courts authority to interpret a nonintervention will;
>
> (2) whether RCW 11.68.070 gives trial courts authority to interpret a nonintervention will; and
>
> (3) whether TEDRA (Chapter 11.96A RCW) independently gives trial courts authority to interpret a nonintervention will.

Id. at 338. It answered all questions in the negative. It stated the general rule:

> A superior court's authority when dealing with ***nonintervention*** wills is statutorily limited. Once a court declares a ***nonintervention*** estate solvent, the court has no role in the administration of the estate except under narrow, statutorily created exceptions that give courts limited authority to intervene.

Id. (emphasis added)

First, the Supreme Court answered the first two questions by holding that under RCW 11.68.110 the superior court had authority only over "that particular issue" (e.g., approve fees and order an accounting) and under RCW 11.68.070 (e.g., remove or restrict the superior court's authority and powers of the personal representative). Moreover, the personal representative had "agreed . . . to obtain court approval of attorney fees and costs incurred on behalf of the estate." Id. at 340-41; 342-43.

Second, the Supreme Court stated that "the trial court's authority did not allow Glen to bring a TEDRA

action asking the trial court to "construe the will" because "this limited remedy strikes a balance between judicial supervision of personal representatives and the testator's intent that courts not be involved in the administration of a nonintervention estate." Id. at 342.

Third, the Supreme Court reiterated the rule:

> The last issue is whether TEDRA independently gives a trial court authority to construe a nonintervention will. The trial court concluded that even if RCW 11.68.070 did not apply, TEDRA itself gave the superior court authority to construe the will. We disagree.
>
> TEDRA provides that its provisions "shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained" in Title 11 RCW. RCW 11.96A.080(2). This language suggests limitations, not new, freestanding procedure. We discussed this statutory language in In re Estate of Kordon, 157 Wn.2d 206, 137 P.3d 16 (2006). In that case, the testator's sister filed a petition contesting a nonintervention will under TEDRA, but failed to issue a citation as required under RCW 11.24.020. The superior court dismissed the will contest for lack of authority, and the Court of Appeals

affirmed.

On appeal to this court, the sister argued that TEDRA eliminated the requirement of issuing a citation under RCW 11.24.020. Reviewing the statutory language, we concluded that a statute supersedes another statute by replacing it and supplements another statute by adding to it. TEDRA could not eliminate RCW 11.24.020's citation requirement without superseding it, which TEDRA explicitly does not do. In affirming the Court of Appeals, albeit on different grounds, we held the relevant TEDRA provision did not affect the citation requirement under RCW 11.24.020; before bringing a will contest action under TEDRA, the sister had to first issue the citation as required under RCW 11.24.020.

Kordon supports our conclusion that TEDRA does not independently give trial courts authority when there is another statute through which a beneficiary must invoke authority. Glen counters that because there is no other relevant statutory provision governing will construction, he needed only to comply with TEDRA's requirements to invoke the court's authority to hear his TEDRA petition. But the power to administer an estate and “construe” a will's directions lies with the personal representative in a nonintervention probate—not the courts.

> TEDRA allows "any party" to "have a judicial proceeding for the declaration of rights or legal relations with respect to any matter," "matter" being defined broadly to include construction of wills. RCW 11.96A.080(1); *see* RCW 11.96A.030(2)(a)-(h). Glen relies heavily on the language of RCW 11.96A.020(1) that courts have "full and ample power" under TEDRA to administer and settle all matters concerning estates, but such an expansive construction of TEDRA would supersede, not supplement, nonintervention powers— an argument our cases have rejected. The purpose of nonintervention powers is to prevent courts from managing personal representatives' decisions regarding estate administration. Our cases and the nonintervention statutes recognize a superior court's limited involvement in the administration of nonintervention wills.

Id. at 344-46 (emphasis added).

Appellant's TEDRA Petition stated no basis under the probate code for the "reformation" of the Last Will and Testament after it was admitted to probate with nonintervention powers to the personal representative, but it solely references the TEDRA statute (RCW

11.96A.101, *et seq.*). Appellant's TEDRA Petition should be and was denied by the trial court for several reasons. **First,** the will contest statute, RCW 11.24.010, would be the appropriate statutory basis to contest the language of and/or reform the language of the will, but Appellant had already filed a "will contest" which was previously denied by the superior court by final Order dated December 4, 2019. Appellant admits so in paragraph 11 of her TEDRA Petition. (CP 5) **Second,** in the absence of a specific statute to invoke the superior court's authority for a "particular" issue, the TEDRA statute does not give the superior court independent authority to "construe a nonintervention will" especially two and one-half (2½) years later and after the probate proceedings have terminated. **Third,** the probate proceedings concluded on January 16, 2020. It is now too late to invoke any provision of the probate code to challenge the will. The

Supreme Court's holding in In re Estate of Rathbone and Appellant's tardy actions are and remain the death knell for her TEDRA Petition.

In her Petition, Appellant argues that "the vast and unchecked powers that are afforded Personal Representatives with non-intervention powers, indicated in RCW 11.68.090" consists of a procedural issue of substantial public interest. *Petition at 11* However, the codification of the powers of nonintevention personal representatives in RCW 11.68.090 was and remains the perogative of the legislative branch. Appellant cites no appellate court cases nor any other legal authority except to state, on her own authority, that "people understand that the other heirs could be eradicated with this non-intervention power unless it has a check and balance system imposed by the Court." *Petition at 17-18.* However, Appellant cites no specific legal authority for

this proposition and ignores the plain reading of In Estate of Rathbone and RCW RCW 11.68.130.

The Supreme Court should reject this basis for Appellant's Petition. In any event, Apellant cites no Washington appellate cases which are contrary to the unpublished opinion of the Court of Appeals. Nor is the probate code provision enacted by the Washington legislature a substantial issue of public interest which requires the intervention of the Supreme Court.

III. CONCLUSION.

Based on the foregoing, Respondents request the Supreme Court to deny the Petition for Review.

I CERTIFY PURSUANT TO RAP 18.17(c)(2) THAT RESPONDENTS' OPENING BRIEF, EXCLUSIVE OF WORDS CONTAINED IN THE APPENDICES, THE TITLE SHEET, THE TABLE OF CONTENTS, THE TABLE OF AUTHORITIES, THIS CERTIFICATE OF COMPLIANCE, THE CERTIFICATE OF SERVICE, SIGNATURE BLOCKS, AND PICTORIAL IMAGES CONTAIN 4,440

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DATED: June 27, 2025.

/s/ Donald G. Grant
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IV. CERTIFICATE OF SERVICE

I certify that I served the foregoing pleading on the following on June 27, 2025:

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Appellant

___ by directly e-mailing a true copy thereof to his or her e-mail address listed above.

___ by directly mailing a true copy thereof to her addressed listed above.

_x_ by service through the electronic case management system of the Court of Appeals.

DONALD G. GRANT, P.S.

/s/ Donald G. Grant
DONALD G. GRANT,
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DONALD G GRANT, PS

June 27, 2025 - 10:28 AM

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