THE SUPREME COURT OF THE STATE OF WASHINGTON

NICOLE GARZA, APPELLANT

v

JUDE BALEY, AUTHOR ASHTON ROBERTS AND TERRI JO MCCOY,

APPELLEES

APPELLANT'S PROPOSED PETITION FOR REVIEW

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`

Case No. 1040288

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Statutes, Rules and Other Authorities

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I. INTRODUCTION

This case involves an inheritance that was distributed without including an heir. Appellant brings forth this Proposed Petition for Review from the Court of Appeal's decision, case No. 86854-3-I Division One Unpublished Opinion, affirming the Superior Court's decision dismissing the matter.

II. RES JUDICATA

The doctrine of Res Judicata should not apply to this case. It is not possible for Res Judicata to apply, as the issues raised in the TEDRA action were completely different from those stated in the April 2019 inquiry (the only other document previously submitted by Appellant in this case).

It was not possible that the issue addressed in the TEDRA action regarding the non-service of the Declaration of Completion was addressed in the April 2019 inquiry because in April 2019 the estate was an entire year away from completion. Therefore there was no redress of the issue in the TEDRA action because in 2019 the estate wasn't closed and the TEDRA action addresses issues regarding the closing of the estate. The TEDRA Petition addressed the fact that Appellant was not served with a notice of Declaration of Completion of the estate in 2020, as required by statute.

A. **ARGUMENT** -

In the case of Ensley v. Pitcher, 152 Wn. App. 891, 903, 222 P.3d 99 (2009) four points are asserted with regards to Res Judicata.

(1) Whether the rights or interests established in the prior judgment would be destroyed or impaired by the prosecution of the second action.

The fact that Appellant was not properly served with a copy of Mr. Call's (the first attorney for the estate) motion notifying her of the November 8th, 2019 hearing and only received an amended Citation just days before the hearing resulted in Appellant not being privy to what she was to defend at the hearing. It is a matter of public interest that procedures must be adhered to in judicial proceedings.

In addition, when Appellant asked the Court clerk for a continuance she told Appellant to "Just email me any motions that you want filed," the motions were not filed. Appellant's Motion to Continue was not filed. Appellant did not receive a phone call from the Court during the November 8th, 2019 hearing resulting in Appellant's inquiry being considered a complaint and Mr. Call writing an Order that included elements that were not initially included in his motion. As a result, the Personal Representative (hereinafter PR), Jude Baley took the opportunity to interpret the Order to her discretion and that resulted in the PR not considering

Appellant an heir and taking it upon herself to cut her off and not include her in the notification of the Declaration of Completion of the estate or the distribution of proceeds.

A lack of connectivity should have resulted in a rescheduled hearing on the part of Judge Valjecic, and an effort to contact Appellant and to respond to her numerous communications. Instead he rendered Appellant's inquiry and request for accounting a complaint and it resulted in the hastey closure of the estate, and a rush to close and distribute the proceeds tacitly and tripartite as opposed to including the youngest heir or providing Appellant with a Notice of Completion as required in RCW 11.68.110.

> *Recognition of the individual's right to **proactively contact the Court** themselves **and be connected** when there is an issue with connectivity to ensure that the individual has access to the hearing. None of these concessions were afforded to the Appellant even though she proactively contacted the Court and emailed several times on November 8th, 2019, she did not receive a response RCW 7.105.205, [VRP 19, 20]. CP 220, 237*

If justice so requires, the fact that Appellant tried to make the telephonic appearance by proactively contacting the Court and emailing the Court clerk several times the day of the hearing and was NOT connected with the Court should

be excused for not being present in the courtroom and Appellant should therefore be entitled to five days for a notice of the decision,[1] that notice was never issued. In addition, a motion could have been made by the Judge Valjecic to reconsider and attend to remedies.

Therefore, no rights or interests were ever addressed or established in the prior judgment and therefore would not be destroyed or impaired by the prosecution of the second action, because the rights and interests were never tried at a hearing.

Page 8 of the Court of Appeal's, case No. 86854-3-I Division One Unpublished Opinion states that, "In the 2022 TEDRA action, Nicole asked the court to redistribute the assets of Karen's estate and to reform the will so that she could receive a lump sum payment. Granting this request would impair the rights of the Respondents, to whom the totality of Karen's estate was distributed." In distributing the totality of the estate to the Respondents, Appellant's rights are extremely impaired, Appellant was never afforded the opportunity to even be heard.

Conversely providing a second action, a chance for the youngest heir to at least have a voice and to receive her share of the inheritance left to her by her mother, rights would be honorably upheld.

[1] Civil Rule 52 Decisions, Findings and Conclusions

(2) Whether substantially the same evidence is presented in the two actions; evidence was only presented one time at Summary Judgment regarding the TEDRA action, there was no prior occasion to present evidence. Appellant did not have the opportunity to present evidence at the November 8th, 2019 hearing because there was no phone call placed that connected Appellant. Therefore there is no Res Judicata.

(3) Whether the suits involved infringement of the same right; Appellant's initial inquiry, the request for accounting, and the TEDRA action do not involve infringement of the same right.

Appellant's initial inquiry, a request for accounting, was an instrument through which to communicate with the Court, a means to ask for help, and it was dismissed.

Appellant’s TEDRA action does not at any point address a request for accounting, unlike Appellant's initial inquiry does. Appellant's TEDRA action addresses the fact that there was no service of Declaration of Completion as required by law.

(4) Whether the two suits arise out of the same transactional nucleus of facts -

The two suits i.e. Appellant's initial inquiry and request for accounting and the subsequent TEDRA action arise out of two distinct nucleus of facts. Appellant's request for accounting arose out of a need for accounting after months of being ignored, ghosted and stonewalled. It was a request for status and to obtain basic information regarding the estate. The TEDRA action asserted the fact that there was never a notice of Declaration of Completion served to the Appellant.

With regards to the case of Meryhew v. Gillingham, 77 Wn. App. 752, 893 P.2d 692 (1995), it is to be noted that in this case a Notice of Completion was served.

> *Appellant did not ask for a statement of accounting 30 days after the closure of the estate because she was not informed of the closing of the estate by the PR. Had she received a notice of closing she would have absolutely asked for a statement of accounting as she had done several times prior in emails to Mr. Call and motions to the Court.*

It was only through Appellant's proactive contact to the Court, in March 2020 that she learned of the closure of the estate. During the same contact with the Court, Appellant inquired to the Court Clerk regarding an appeal to the closure and was told that the Courts were 'backed up' due to COVID 19 backlog and to wait to file an appeal.'

https://clark.wa.gov/superior-court/clark-county-superior-court-covid-19-response.

Appellant did not receive a Declaration of Completion for the probate or the accompanying Notice required by law from the PR, RCW 11.68.110. The trial Court did not recognize the abuse of non-intervention powers by the PR in unilaterally interpreting Mr. Call's Order as though Appellant was deceased and terminating Appellant as an heir.

The trial Court failed to recognize that the granting of Summary Judgment to the Appellees precluded the trial Court yet again from hearing the evidence as to why Appellant was excluded from the November 8th, 2019 hearing. It appeared the remedy for not being heard in Court or having a voice in the probate was to not have a voice in the Court or in the probate, ever.

Therefore Meryhew does not apply because it is an omission on the part of the Appellees by not sending Appellant the Declaration of Completion. Appellees did not send it to Appellant because they declared that she was not an heir by means of an aborted attempt to have a hearing and an inconsistent Order that was filed, had Appellant had a chance to attend the hearing she might have had a different result.

Appellant was to act within 30 days after the completion of the estate was filed. Appellant was not served with a Declaration of Completion, RCW 11.68.110. This failure of service eliminated Appellant's right to appeal the closure or to even have

a voice, it stifled Appellant and gave the Appelees the opportunity to distribute the proceeds amongst themselves.

Gourde v. Gannam, 3 Wn. App. 2d 520, 417 P.3d 650 (2018), states that "However, a Declaration of Completion does not close the estate, discharge the PR, or have the effect of a decree of distribution if 'an heir, devisee or legatee has petitioned the court ... for an accounting.' *In the Estate of Ardell*, 96 Wash. App. 708, 714, 980 P.2d 771 (1999); RCW 11.68.110 (2)."

The Opinion states that, "Nicole's complaint, entitled 'TEDRA Petition to Enforce Inheritance,' that as in Gourde, all of the elements of Res Judicata are met here. Second, the 2022 TEDRA action asserted the same cause of action as the probate of Karen's estate. Whether a claim constitutes the same cause of action is determined not by how the complainant chooses to characterize their claims, but by the four-factor test set forth in Ensley" (see treatment of the four-factor test set forth in Ensley).

"Nicole claimed in her 2022 TEDRA petition that her right to receive her portion of the estate was infringed, which is the same assertion she made in her motion objecting to the declaration of completion of the probate." The motion objecting to the declaration of completion of probate, as stated in page 3, footnote 3 of the Opinion, "The parties did not include the declaration in the record on appeal. No

other documents included in the record reflect a resolution of Nicole's June 2020 motion. As the motion, however, appears to have ***no legal effect***, and Nicole assigns no error to this omission, we discuss it no further."

A comparable assessment cannot therefore be derived from a document that has no legal effect, it is not possible to be held to account as the "same assertion" Appellant made in the TEDRA action, and the June 2020 motion when the June 2020 motion was deemed to have "no legal effect."

III. ASSIGNMENTS OF ERROR - PROCEDURAL ISSUES OF SUBSTANTIAL PUBLIC INTEREST

Appellant's petition involves various issues of substantial public interest that should be determined by the Supreme Court. Amongst those are several procedural errors and issues that occurred at the Superior Court level and throughout the administration of this case.

Additionally important are the vast and literally unchecked powers that are afforded to Personal Representatives with non-intervention powers, indicated in RCW 11.68.090. As the numerous powers afforded in this code are applicable to interactions and provisions often regarding the administration of finances and those items with monetary value it is only reasonable and logical that these elements

would be provided only within a concise context of a check and balance construction implemented through the Court and not left to the discretion of one individual who might or might not have ulterior motives.

A. ADDITIONAL ASSIGNMENTS OF ERROR AND PROCEDURAL ISSUES OF SUBSTANTIAL PUBLIC INTEREST

1. Prior to the November 8th, 2019 hearing Appellant was only in receipt of the amended Citation for that hearing. Appellant was not sent the motion that accompanied the Citation from Greg Call (see appendix 1). The motion was recently located in an archive a few months ago. That motion was not received prior and as evidenced it is not part of the appeal's record. Appellant therefore was not privy to know what to argue at the original November 8, 2019 hearing.

That is an extremely relevant procedural error that speaks to possible intentionality of deceit on part of Mr. Call and the PR to rush the Appellant to a hearing without the possibility of whatsoever of her being able to defend herself. In addition to issuing conflicting directions as to how to appear and then awarding the plaintiffs the motion by default.

2. Appellant received the amended Citation November 4th, 2019 and immediately contacted the Court Clerk and sent a motion to the Superior Court the very same day asking for a Continuance (see appendix 3) to Judicial Assistant Leeann Kunze who instructed Appellant to "email the motion(s) and I will file them." However, the motion was never filed, as confirmed in the Order issued by Greg Call (see appendix 1).

3. Appellant received an email with instructions from Ms. Kunze to wait by the phone the afternoon of November 8th, 2019. This completely contradicts the statement in the Order issued by Mr. Call stating that Appellant was to contact the Court and did not do so.

That lack of communication was the only catalyst for the Appellant being immediately disinherited, the PR then suddenly enacted her interpretation abilities, conveniently interpreted Appellant as being dead and redistributed the proceeds per her personal penchant which has always been for her (and her whole siblings') self-interest and excluded the Appellant, her youngest half-sibling.

4. Appellant contacted the Court via telephone the day and time of the hearing, left voicemails and sent emails and was not able to get through (see appendix 3), and therefore was not there to state her case or request a

Continuance and an Order was subsequently drafted by Mr. Call an Order that was created absent a motion.

5. Appellant did not receive a copy of the Order or any copy of the proposed Order before it was submitted to the Judge pursuant to CR 52, and the Order was then signed. At no point did Appellant waive her right to be notified. To the contrary, Appellant proactively contacted the Court and did not receive a response that day. Mr. Call and Judge Valjecic did not submit the proposed Order for Appellant to review and to approve it within the 5 days required by the Rules. There is no note on the Order indicating that Appellant waived her right to be notified.

6. The Order includes elements that were not initially asked for by Mr. Call in his motion. The Order states, "Prior to this hearing Mr. Call Opposed the Motion for Continuance on the basis that it had not been filed." The Order also states, "Nicole did not call the Judge's office as instructed." Appellant was never instructed to contact the Judge's office (see appendix 3). Appellant did so on her own accord and was never put through, but instead was told by Ms. Kunze that there would be no more communication.

The Order goes on to state, "Plaintiff's complaint alleges that the decedent

signed a previously undisclosed Will and that she was informed by the decedent's son that he had assisted the decedent in creating the Will," this was relayed to Appellant by Author Roberts (another heir) via text. Yet Mr. Call makes no mention of this in his motion.

Additionally the Order states, "(Plaintiff) expresses her disapproval of Jude Baley continuing to serve as Personal Representative of the decedent's estate and requests that Jude Baley be removed as Personal Representative," at no point did Appellant request that Jude Baley be removed as PR. Appellant simply requested that an appraiser be assigned to appraise the estate, (it should be noted that Jude Baley is an appraiser by trade, and that she was conducting all the appraising for the estate herself), no mention of this was ever made in Mr. Call's motion (see appendix 1).

The Order goes on to state that, "Any person wishing to issue a Contest to the Will is to appear within four months immediately following the date the Will is probated," he elaborates by saying that "Anyone bringing claims regarding competency and or undue influence should do so only within the four month time immediately following the date the Will is probated" to be considered a Contest to the Will. He then follows, by saying that the initial inquiry that Appellant filed on April 3, 2019, (well outside of the four month

statute of limitations), constitutes a Contest to the Will. It should be noted that the Will was entered into probate September 20, 2018.

How then is it possible that Appellant's initial inquiry filed two and half months after the statute of limitations expired for that inquiry to be considered a Contest is then treated like a Contest?

7. Judge Valjecic should have continued the hearing to such a time when the defendant could have been reached or at least until he spoke with his Clerk who could have communicated to him that the defendant had been attempting to reach the Court all afternoon. Judge Valjecic had the legal onus and obligation to act in the interest of all parties involved, instead he simply ruled in favor of the plaintiffs.

Appellant's one and only reason for submitting the original inquiry was to access a forum in which to obtain a statement of accounting and an appraisal. Had there been any other avenue, albeit a less formal avenue for the Appellant to access for inquiry, then that approach would have been implemented.

Appellant was vehemently being ***stonewalled by the PR*** *who was not acting in the best interest of all of the heirs, she was*

acting in the best interest of herself and the heirs who are her full siblings (the other two heirs) only and ***she was instructing Mr. Call and her brother Author Roberts to stonewall the Appellant*** *regarding all aspects of the estate including the accounting.*

PR was doing this to intentionally ***PROVOKE*** *Appellant to the point of complete and total distress, force her to access the Courts for any answers whatsoever, then take advantage of that request to say that Appellant was breaching the will by complaining and therefore receives nothing.*

PR then ***RUSHED*** *to close the estate but only* ***in stealth*** *by not providing Appellant with even so much as the notice of Declaration of Completion closing of the estate setting up the whole order of affairs.*

B. ISSUES OF ABSOLUTE PUBLIC INTEREST -

Non-intervention is an enormous amount of power. It is imperative 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.

Our country has a system of checks and balances and it exists to ensure ethics, morality and to prevent fraud especially in issues involving finances. It should be noted that, there is no process for an heir to inquire about the status of an estate without filing with the Court.

It took Appellant two and a half years of full time inquiring each and every day contacting everyone from forensic accountants to attorneys and legal aid groups to find an avenue to get help regarding how to obtain a transparent status of the activities of the probate. Appellant learned that there was no way outside of hiring an attorney just to check on the status of a probate when the PR refuses to talk with an heir and has instructed the attorney to do the same has assigned her brother Author Roberts to block all access of accurate information and limit communication through ghosting and gaslighting at every attempt.

Our Constitution is an amazing instrument and has withstood the test of time in unbelievable ways that apply to all individuals and all cases. It is the instrument that it is because it has an inherent system of checks and balances that demands transparency of each activity of every individual in a myriad of instances. It is truly genius and it is what makes this country great.

We fall short in probate cases when we give an average everyday individual fallible with the underpinnings of greed, and selfishness as most all human beings are at

one point or another, the power to do whatever they so choose with the proceeds of an estate and with no real no real oversight or accessible avenue for heirs to check the activity, status and transparency to what is really happening to the proceeds. An heir could be 16, 18 or even 20 years old, an heir could be a grandchild and without access to an attorney.

Giving non-intervention powers without a viable avenue to inquiry is like leaving a kid in a candy shop with no supervision. Our Constitution has systemic checks and balances throughout, why then do we not follow through with the end of life transactions. Hefty non-intervention powers should only be afforded when and only when accompanied by a direct, user friendly, transparent, accessible method to check that individual's activities regarding the estate. Appellant labored for years, daily to find a way to just inquire and was left with no other alternative but to file with the Court.

PR and Appellant have had a strained relationship, one in which PR often referred to Appellant in derogatory slurs and terms based on her racial composition and would not even acknowledge that she was her sister. Even though it was Appellant's father who raised PR and her sibling, was married to their mother for 25 years and gave them money, trips, cars, houses, businesses, equestrian careers, education and provided for them into adulthood.

PR appointed Author Roberts to communicate with Appellant, keep her at bay and essentially keep her from all knowledge of the estate, and he did just that. Terri Jo McCoy (the other heir) was also instructed to cut all communication with Appellant and immediately hung up the phone when Appellant reached out to her for help.

Appellant then had to ask herself, what remedies are there to peaceably inquire regarding the administration of her mother's estate. What peaceable avenues are there for her to inquire about the administration of her mother's estate. What methods exist to inquire about the accounting and appraisal of her mother's estate. Appellant asked herself this over and over again, for months and when there was no other answer, she very *reluctantly* and with no other choice, submitted her initial inquiry to the Court.

It was therefore, not at any given time Appellant's desire or intention to issue a contest about the Will. A filing with the Court was the only way Appellant had to obtain a statement of accounting about the estate or any information at all.

It must be noted that in public interest and with regards to telephonic appearances -

> *RCW 7.105.205 (g) "with regards to telephonic appearances states - (g) Courts should provide the parties, in orders setting the hearing, with a*

telephone number and an email address for the court, which the parties may use to inform the court if they have been unable to appear remotely for a hearing. Before dismissing or granting a petition due to the petitioner or respondent not appearing for a remote hearing, or the court not being able to reach the party via telephone or video, the court shall check for any notifications to the court regarding issues with remote access or other technological difficulties. If any party has provided such notification to the court, the court shall not dismiss or grant the petition, but shall reset the hearing by continuing it and reissuing any temporary order in place. If a party was unable to provide the notification regarding issues with remote access or other technological difficulties on the day of the hearing prior to the court's ruling, that party may seek relief via a motion for reconsideration."

Appellant was not granted any of these reliefs.

IV. LEGAL PARADOXY

A recurring paradox exists throughout this probate, while Appellant's initial inquiry was dismissed, it is at the very same time being held to the ramifications and criteria as though it was not dismissed.

Appellant's initial inquiry and request for accounting was dismissed for not meeting the timely criteria of a Contest yet Appellant is supposed to forfeit her share of the estate because her initial inquiry was counted as a Contest - this is not sound it is a contradiction in terms.

A dismissed inquiry should be dismissed, not dismissed for the plaintiff and upheld for the defendant. How is it possible to derive actions from a dismissed document?

According to Black's Law Dictionary - Dismissal is the termination of an action, claim, or charge without a further hearing. It can also mean to send away, discharge, or cause to be removed.

Double counting of the same decision is not only unintegral, it is a contradiction in logic.

In logic, the term for stating that something is both "this" and "not this" at the same time is called a contradiction; it represents a statement that is logically impossible because it directly negates itself by asserting both a positive and negative state about the same thing.

Key points about contradiction: Symbolic representation: "P and not-P" is the typical way to represent a contradiction in formal logic, where "P" stands for a proposition and "not-P" is its negation. Truth value: A contradiction is always false regardless of the 'truth value of the proposition'P'"- AI

As the law of contradiction states - For all propositions P, it is impossible for both P and not P to be true. "A and not-A cannot coexist" - Encyclopedia Britannica

Page 8 of the Opinion states, “Nicole claimed in her 2022 TEDRA petition that her right to receive her portion of the estate was infringed, which is the same assertion she made in her motion objecting to the declaration of completion of the probate.”

While page 3 of the Opinion footnote 3 states that “No other documents included in the record reflect a resolution of Nicole’s June 2020 motion. As the motion, however, appears to have ***no legal effect***, and Nicole assigns no error to this omission, we discuss it no further.”

It is then not possible to assign double assertion and or legal criteria based on that same document that was to have no legal effect.

The trial court found that Appellant's initial inquiry ‘constituted grounds for contesting the validity of the probated Will and constitutes a Will Contest under RCW 11.24.010 subject to the limitations required by RCW 11.24.010,’ while in pg. 3 of the Opinion it states that Appellant's initial inquiry was Dismissed.

How is it possible for the inquiry not to be considered a Contest against the Will due to the fact that it was not filed within the statute of limitations which a Contest against a Will must be filed and was therefore Dismissed, then at the same time impose consequences as though the inquiry was a Contest when it was deemed not to have been?

Additionally, it is asserted “Approximately six months later, on June 8, 2020, Nicole filed a motion in the probate action objecting to the declaration of completion and requesting that the court vacate its December 2019 Order dismissing her initial inquiry.” Respondents later asserted that she abandoned this motion. No other documents included in the record reflect a resolution of Appellant’s June 2020 motion. “As the motion, however, appears to have ***no legal effect***, and Nicole assigns no error to this omission, we discuss it no further,” pg 3 of the Opinion.

At the same time Appellant is being held to the ramifications and criteria as though her motion had legal effect.

Appellant's June 2020 attempted filing was disregarded see footnote page 3 of Opinion, how then is it that Appellant is held to the standard of a motion that was rendered as disregarded and never entered into the record, this is paradoxical in nature and a blatant and bold breach of law and procedure.

> *Appellant can not be held to the standard of Res Judicata based on disregarded or dismissed documents that didn’t even make it into the Court record.*

V. CONCLUSION

In conclusion, Appellant did not receive a phone call to attend the November 18, 2019 hearing telephonically, and the judge failed to postpone the hearing and investigate communication efforts that were made by the Appellant that lack of due diligence resulted in an exaggerated Order and overreaching actions by the PR.

Summary judgement should not have been granted. Material facts were not considered. Appellant never received Mr. Call's motion for the November 8, 2019 hearing until just recently and his Order includes much more than what he asked for in his motion. There is no Order that exists that states that, Appellant should forfeit her share of the inheritance and there is no Res Judicata. Appellant missed the deadline for her initial inquiry to be considered a Contest and it was dismissed and therefore was ever entered into record. As it was dismissed there should be no further allegations of fact in the record based on dismissed documents.

I CERTIFY PURSUANT TO RAP 18.17(C)(2) THAT APPELLANT'S REPLY 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 CONTAIN 4922 WORDS PURSUANT TO THE GOOGLE WORD COUNT CALCULATION USED TO PREPARE THIS DOCUMENT.

DATED JUNE 5, 2025

E-signature - NICOLE GARZA
Pro se

Nicole Garza
Po Box 70562
Las Vegas, Nevada 89170
Telephone 1-702-372-9569

CERTIFICATE OF SERVICE

I certify that Appellant served the foregoing petition on the following on June 5,

2025

Donald Grant, P.S.
2005 SE 192nd Avenue, Suite 200
Camas, Washington 98607

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

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

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

APPENDIX

APPENDIX I - MOTION FROM GREG CALL

APPENDIX II - ORDER FROM GREG CALL

APPENDIX III - TEDRA

APPENDIX IV - EMAIL CORRESPONDENCE WITH LEEANN KUNZE

APPENDIX I

MOTION FROM GREG CALL - MOTION THAT WAS NOT SERVED TO APPELLANT AND IS NOT IN COURT RECORD REGARDING NOVEMBER 8, 2019 HEARING -

Garza - Motion to Dismiss 10-21-19.pdf
381 KB

APPENDIX II

ORDER FROM GREG CALL REGARDING THE NOVEMBER 8, 2019 HEARING -

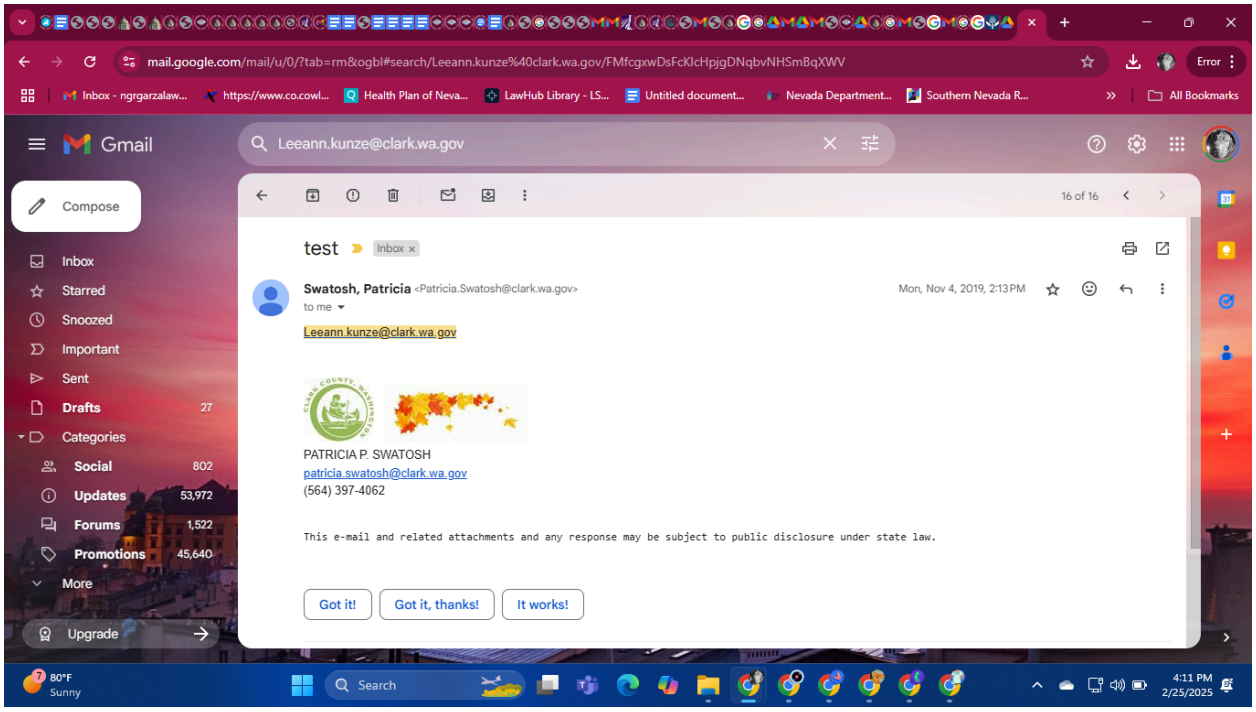
APPENDIX III

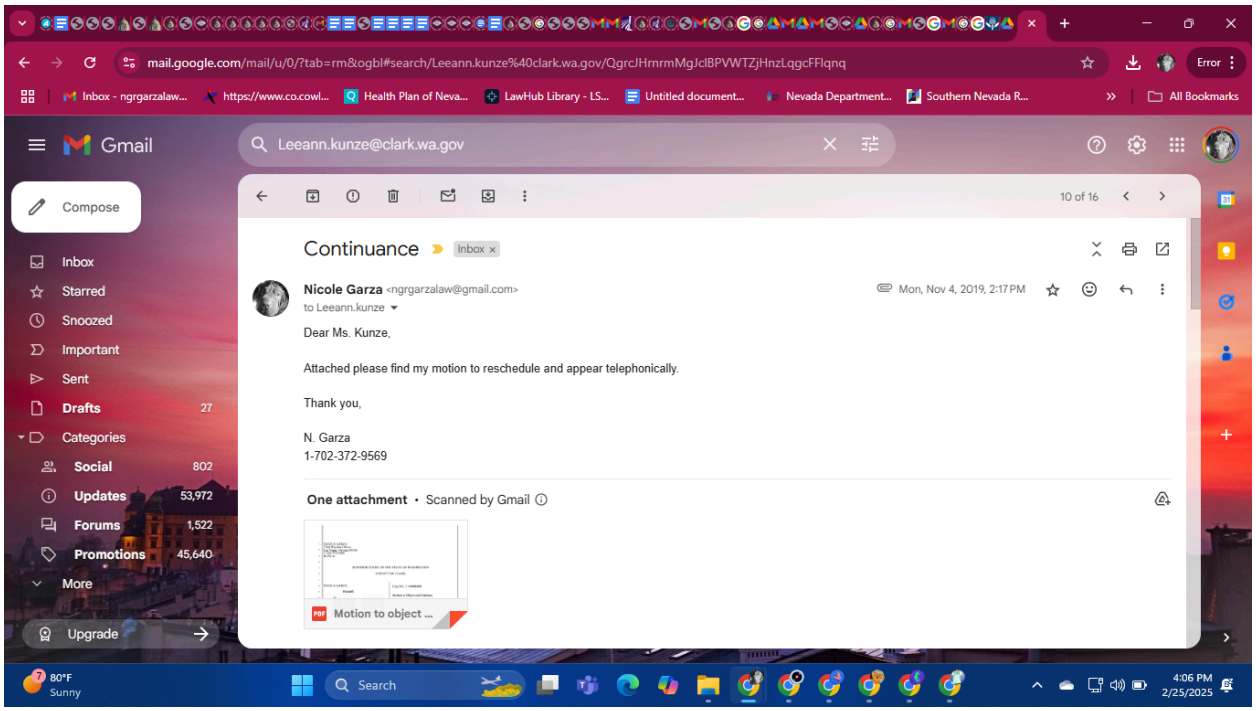
TEDRA PETITION FROM MR. WOLFE -

22-4-00871-06 - 2240087106.000003.00 - 4Pg - PT - JUNE2022 - NICOLE …

APPENDIX IV

EMAILS WITH LEEANN KUNZE - CORRESPONDENCE RELATING TO THE NOVEMBER 8, 2019 HEARING -

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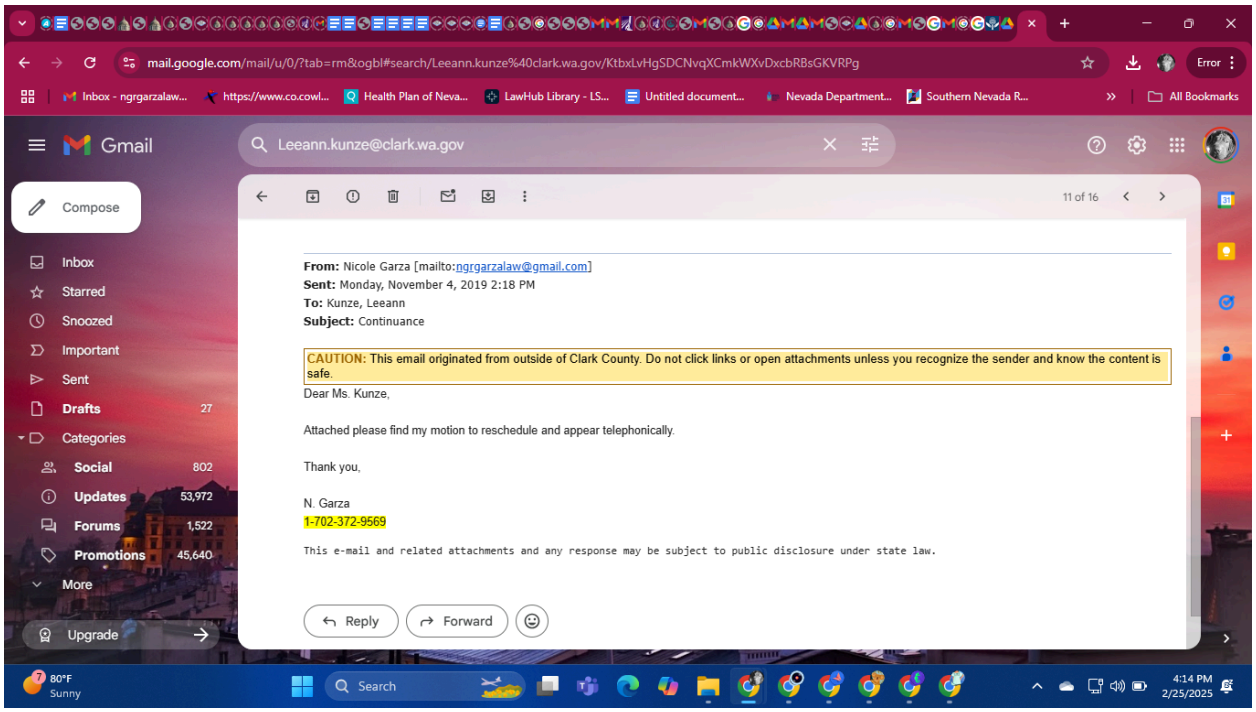
Compose
Inbox
Starred
Snoozed
Important
Sent
Drafts 27
Categories
Social 802
Updates 53,972
Forums 1,522
Promotions 45,640
More
Upgrade
10 of 16
Continuance
Inbox
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann.kunze
Mon, Nov 4, 2019, 2:17 PM
Dear Ms. Kunze,
Attached please find my motion to reschedule and appear telephonically.
Thank you,
N. Garza
1-702-372-9569
One attachment • Scanned by Gmail
Motion to object ...
80°F
Sunny
Search
4:06 PM
2/25/2025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Important
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Drafts 27
Categories
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Updates 53,972
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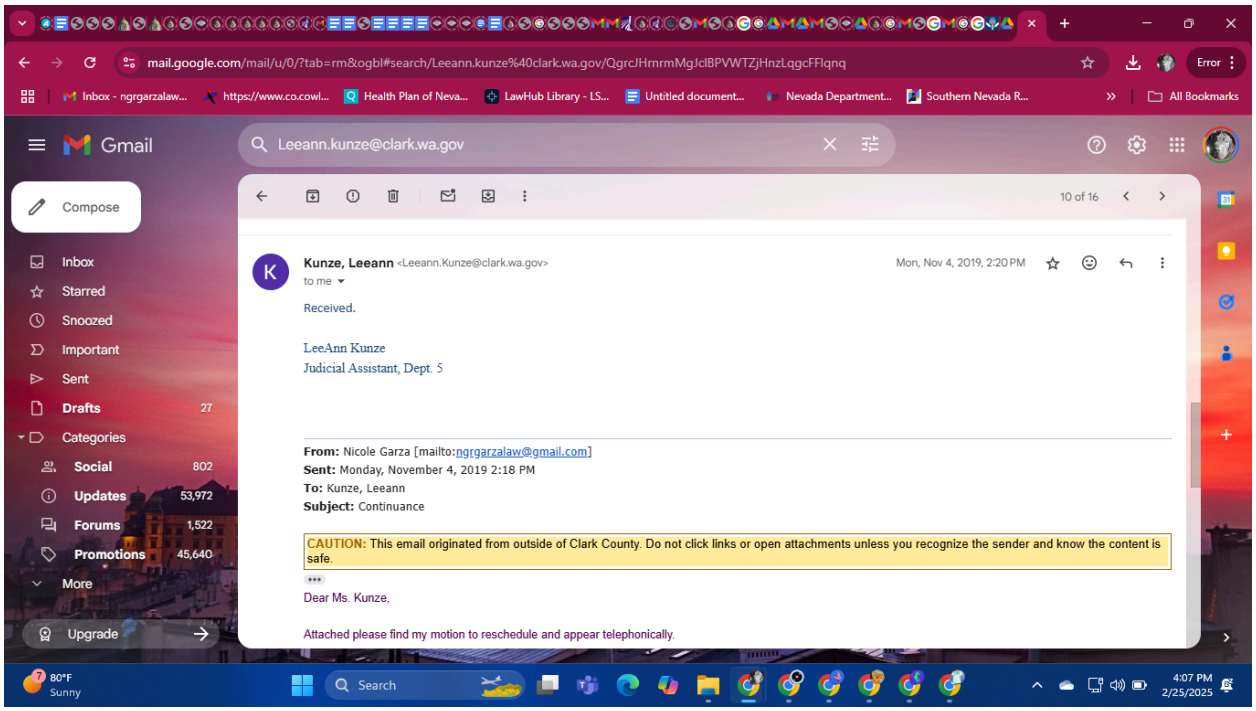
More
Upgrade
11 of 16
From: Nicole Garza [mailto:ngrgarzalaw@gmail.com]
Sent: Monday, November 4, 2019 2:18 PM
To: Kunze, Leeann
Subject: Continuance
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Dear Ms. Kunze,
Attached please find my motion to reschedule and appear telephonically.
Thank you,
N. Garza
1-702-372-9569
This e-mail and related attachments and any response may be subject to public disclosure under state law.
Reply
Forward
80°F
Sunny
Search
4:14 PM
2/25/2025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Compose
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Categories
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Updates 53,972
Forums 1,522
Promotions 45,640
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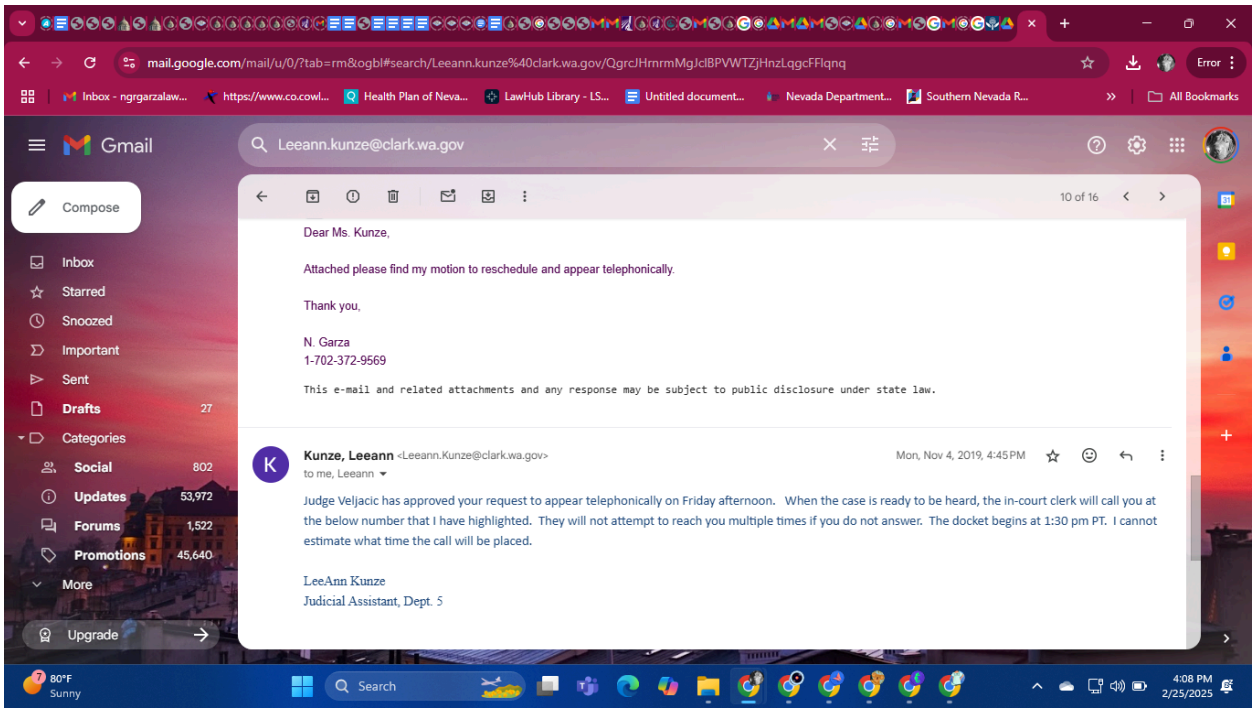
10 of 16
Kunze, Leeann <Leeann.Kunze@clark.wa.gov>
Mon, Nov 4, 2019, 2:20 PM
to me
Received.
LeeAnn Kunze
Judicial Assistant, Dept. 5
From: Nicole Garza [mailto:ngrgarzalaw@gmail.com]
Sent: Monday, November 4, 2019 2:18 PM
To: Kunze, Leeann
Subject: Continuance
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Dear Ms. Kunze,
Attached please find my motion to reschedule and appear telephonically.
80°F Sunny
Search
4:07 PM 2/25/2025


mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/QgrcJHrnrmMgJclBPVWTZjHnzLqgcFFlqnq
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Promotions 45,640
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10 of 16
Dear Ms. Kunze,
Attached please find my motion to reschedule and appear telephonically.
Thank you,
N. Garza
1-702-372-9569
This e-mail and related attachments and any response may be subject to public disclosure under state law.
Kunze, Leeann <Leeann.Kunze@clark.wa.gov>
Mon, Nov 4, 2019, 4:45 PM
to me, Leeann
Judge Veljacic has approved your request to appear telephonically on Friday afternoon. When the case is ready to be heard, the in-court clerk will call you at the below number that I have highlighted. They will not attempt to reach you multiple times if you do not answer. The docket begins at 1:30 pm PT. I cannot estimate what time the call will be placed.
LeeAnn Kunze
Judicial Assistant, Dept. 5
80°F Sunny
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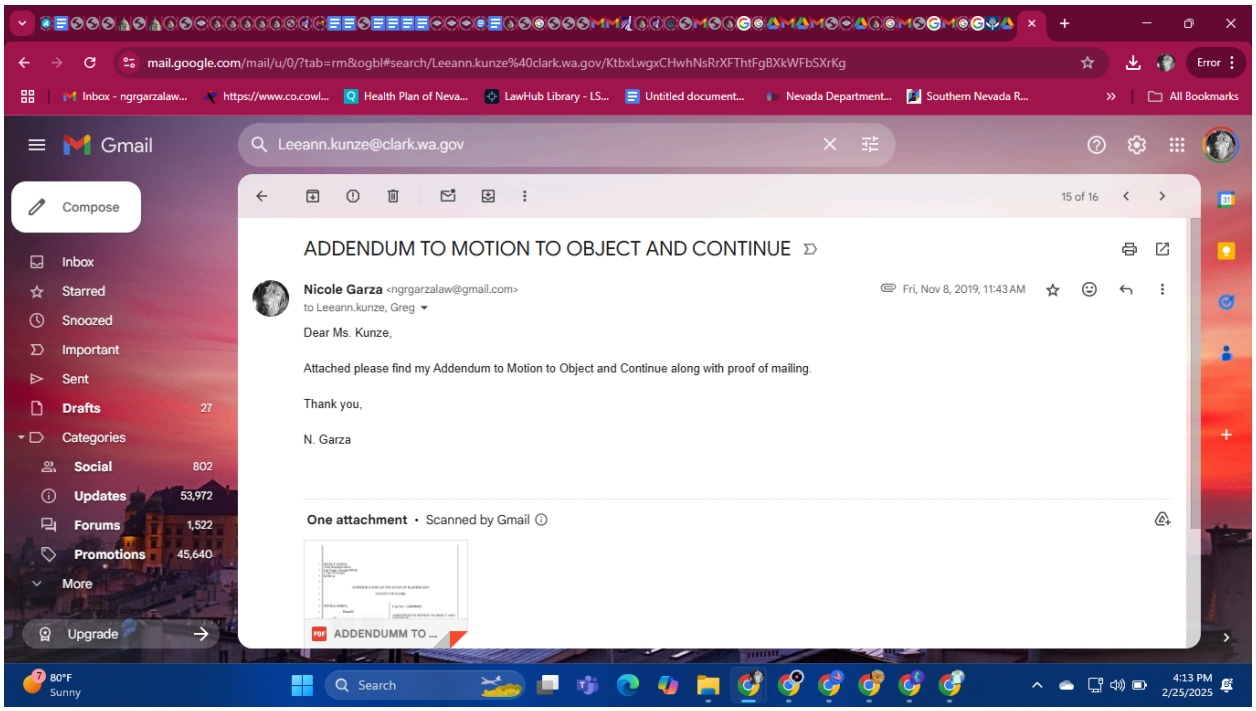
4:08 PM 2/25/2025


mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/KtbxLwgxCHwhNsRxFThtFgBXkWFbSXrKg
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15 of 16
ADDENDUM TO MOTION TO OBJECT AND CONTINUE
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann.kunze, Greg
Fri, Nov 8, 2019, 11:43 AM
Dear Ms. Kunze,
Attached please find my Addendum to Motion to Object and Continue along with proof of mailing.
Thank you,
N. Garza
One attachment • Scanned by Gmail
ADDENDUMM TO ...
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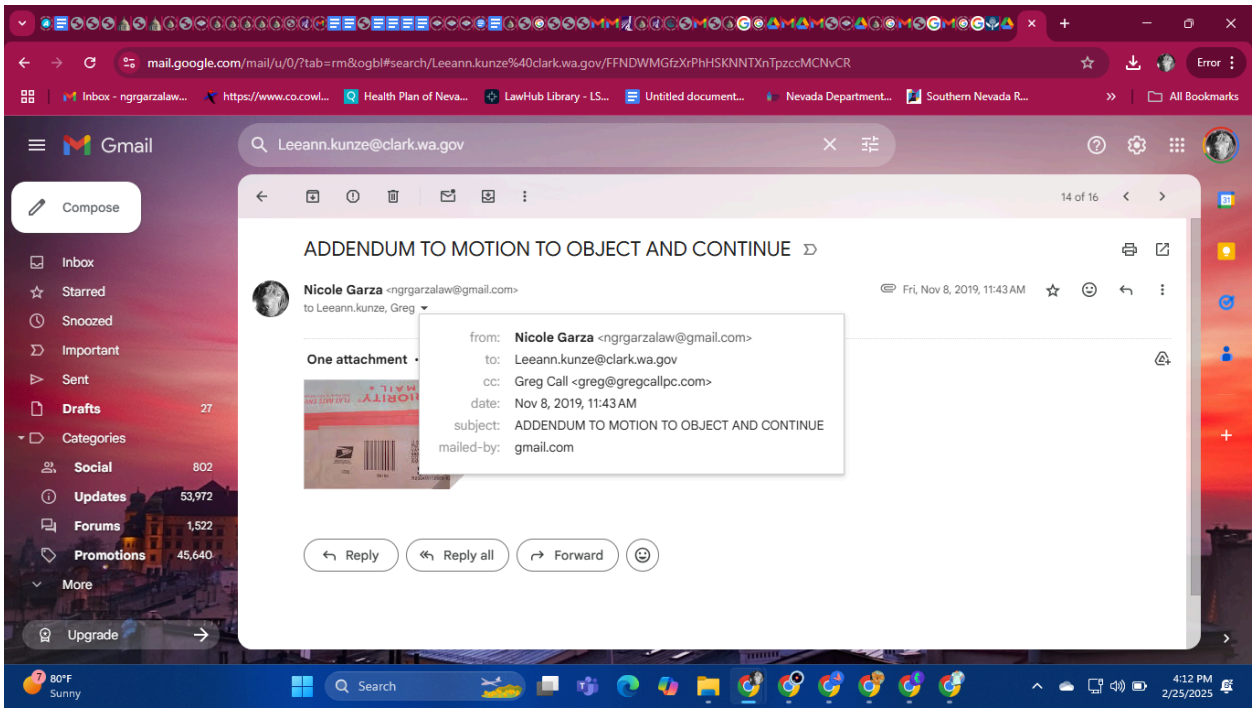
mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/FFNDWMGfzXrPhHSKNNTXnTpzccMCNvCR
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14 of 16
ADDENDUM TO MOTION TO OBJECT AND CONTINUE
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann.kunze, Greg
Fri, Nov 8, 2019, 11:43 AM
One attachment
from: Nicole Garza <ngrgarzalaw@gmail.com>
to: Leeann.kunze@clark.wa.gov
cc: Greg Call <greg@gregcallpc.com>
date: Nov 8, 2019, 11:43 AM
subject: ADDENDUM TO MOTION TO OBJECT AND CONTINUE
mailed-by: gmail.com
Reply
Reply all
Forward
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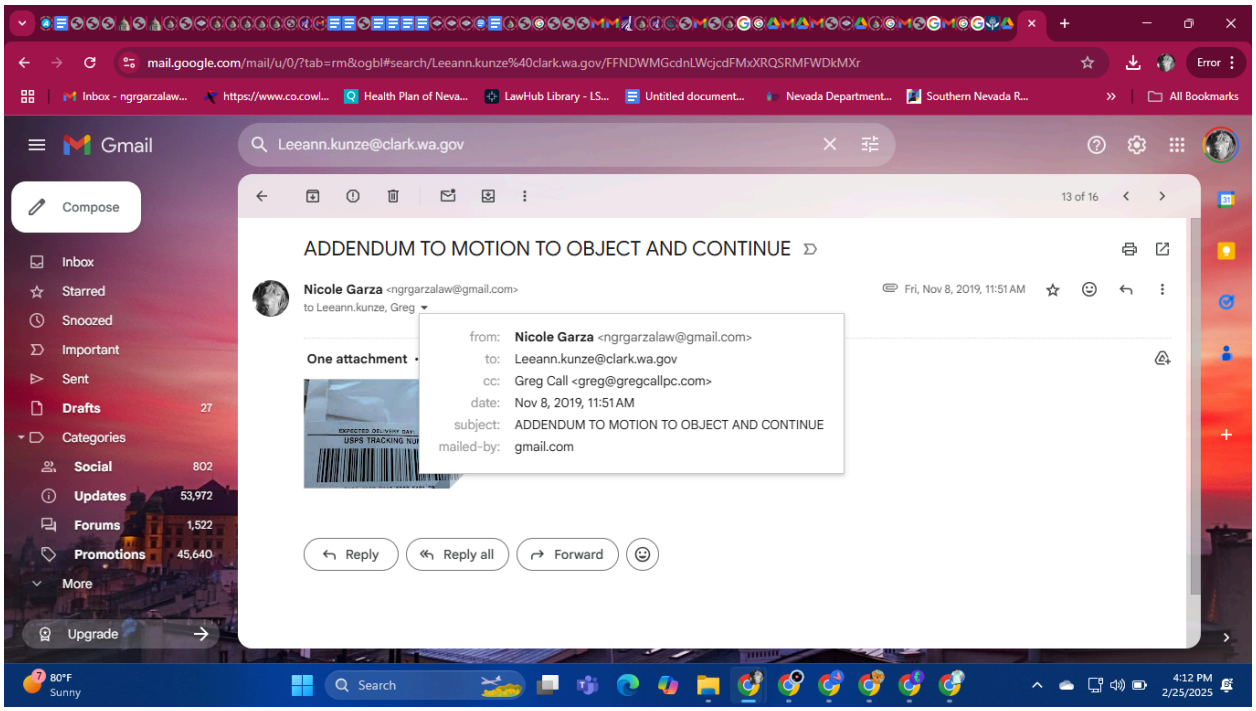
mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/FFNDWMGcdnLWcjcdFMxXRQSRMFWDkMXr
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13 of 16
ADDENDUM TO MOTION TO OBJECT AND CONTINUE
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann.kunze, Greg
Fri, Nov 8, 2019, 11:51 AM
from: Nicole Garza <ngrgarzalaw@gmail.com>
to: Leeann.kunze@clark.wa.gov
cc: Greg Call <greg@gregcallpc.com>
date: Nov 8, 2019, 11:51 AM
subject: ADDENDUM TO MOTION TO OBJECT AND CONTINUE
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One attachment
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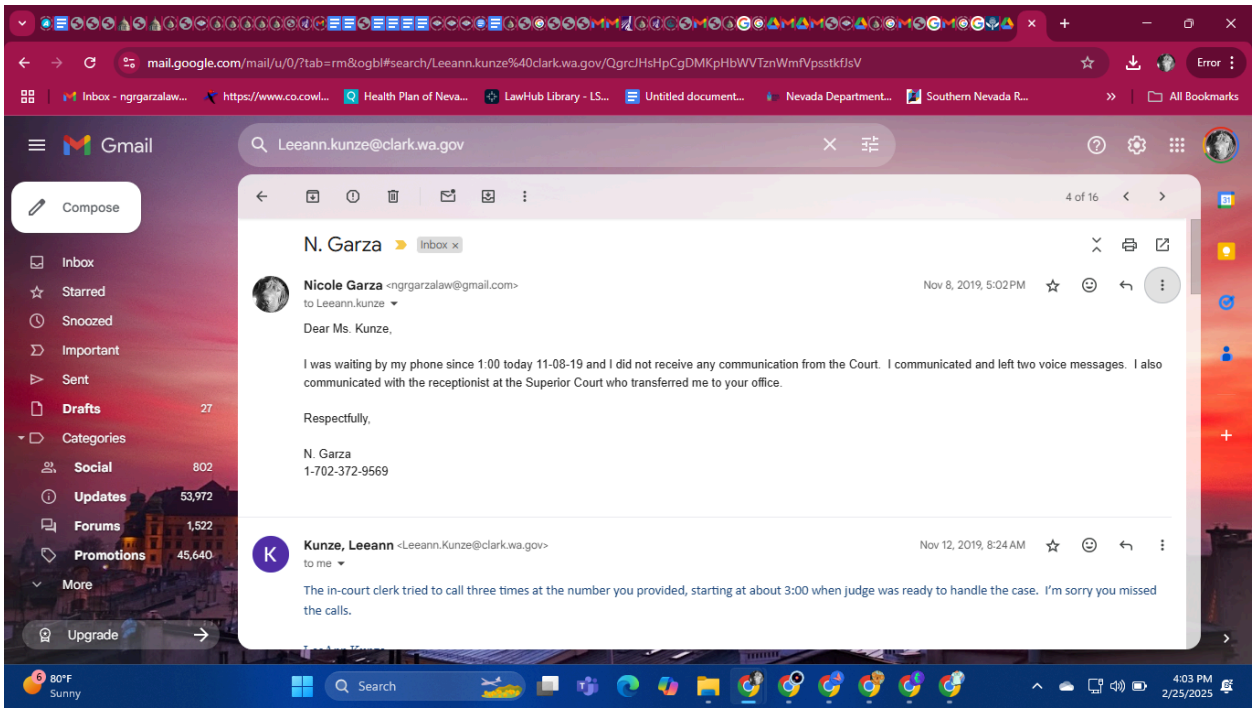
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4 of 16
N. Garza
Inbox
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann.kunze
Nov 8, 2019, 5:02 PM
Dear Ms. Kunze,
I was waiting by my phone since 1:00 today 11-08-19 and I did not receive any communication from the Court. I communicated and left two voice messages. I also communicated with the receptionist at the Superior Court who transferred me to your office.
Respectfully,
N. Garza
1-702-372-9569
Kunze, Leeann <Leeann.Kunze@clark.wa.gov>
to me
Nov 12, 2019, 8:24 AM
The in-court clerk tried to call three times at the number you provided, starting at about 3:00 when judge was ready to handle the case. I'm sorry you missed the calls.
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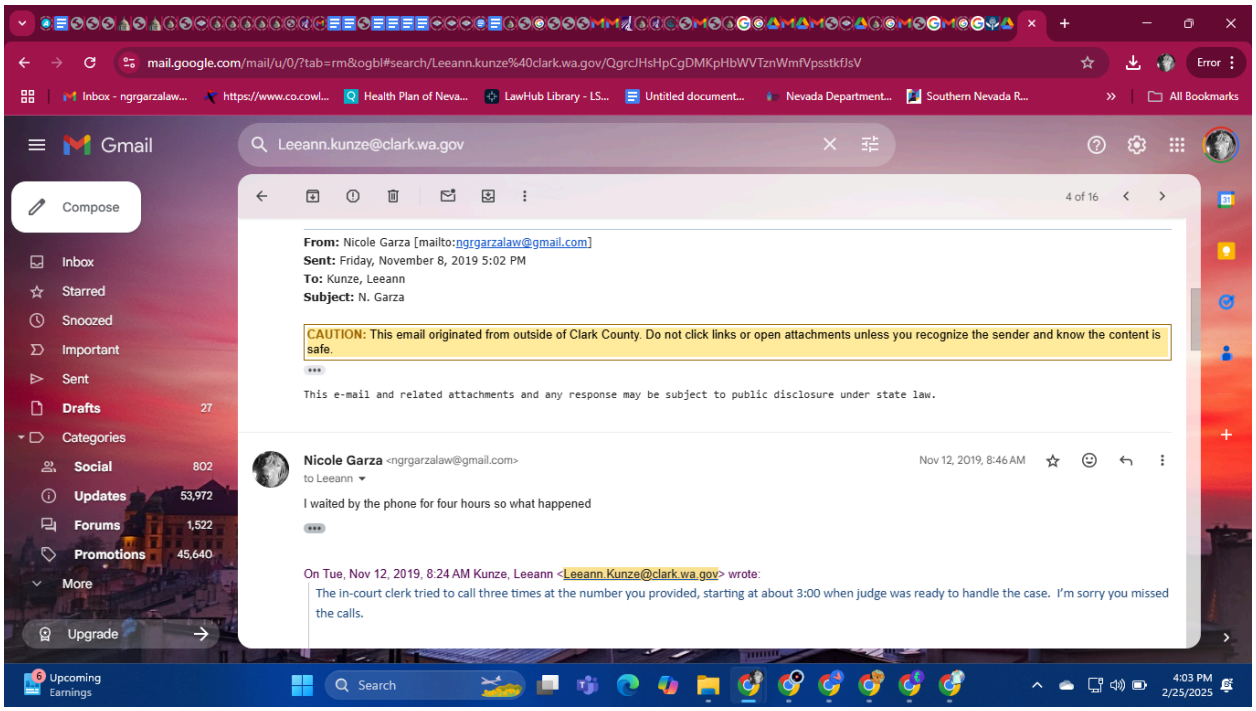
4:03 PM
2/25/2025


mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/QgrcJHsHpCgDMKpHbWVTznWmfVpsstkfJsV
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Forums 1,522
Promotions 45,640
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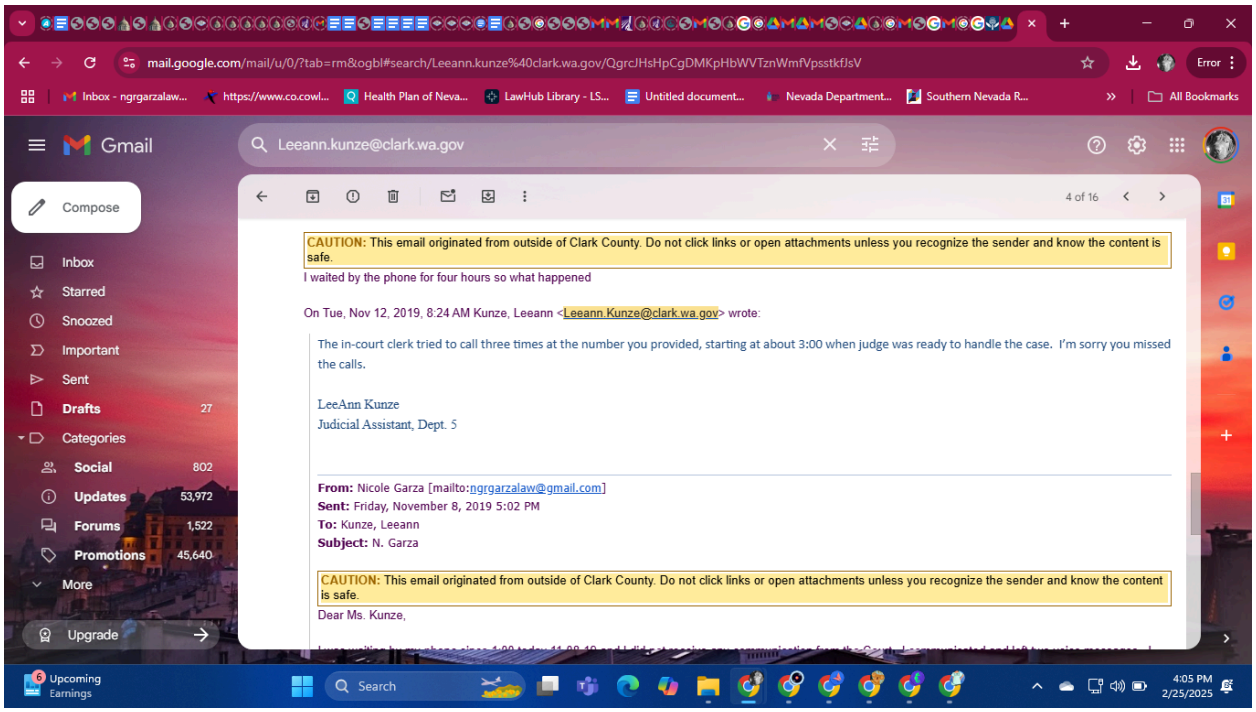
Upgrade
4 of 16
From: Nicole Garza [mailto:ngrgarzalaw@gmail.com]
Sent: Friday, November 8, 2019 5:02 PM
To: Kunze, Leeann
Subject: N. Garza
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.
This e-mail and related attachments and any response may be subject to public disclosure under state law.
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann
Nov 12, 2019, 8:46 AM
I waited by the phone for four hours so what happened
On Tue, Nov 12, 2019, 8:24 AM Kunze, Leeann <Leeann.Kunze@clark.wa.gov> wrote:
The in-court clerk tried to call three times at the number you provided, starting at about 3:00 when judge was ready to handle the case. I'm sorry you missed the calls.
Search
4:03 PM
2/25/2025


mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/QgrcJHsHpCgDMKpHbWVTznWmfVpsstkfJsV
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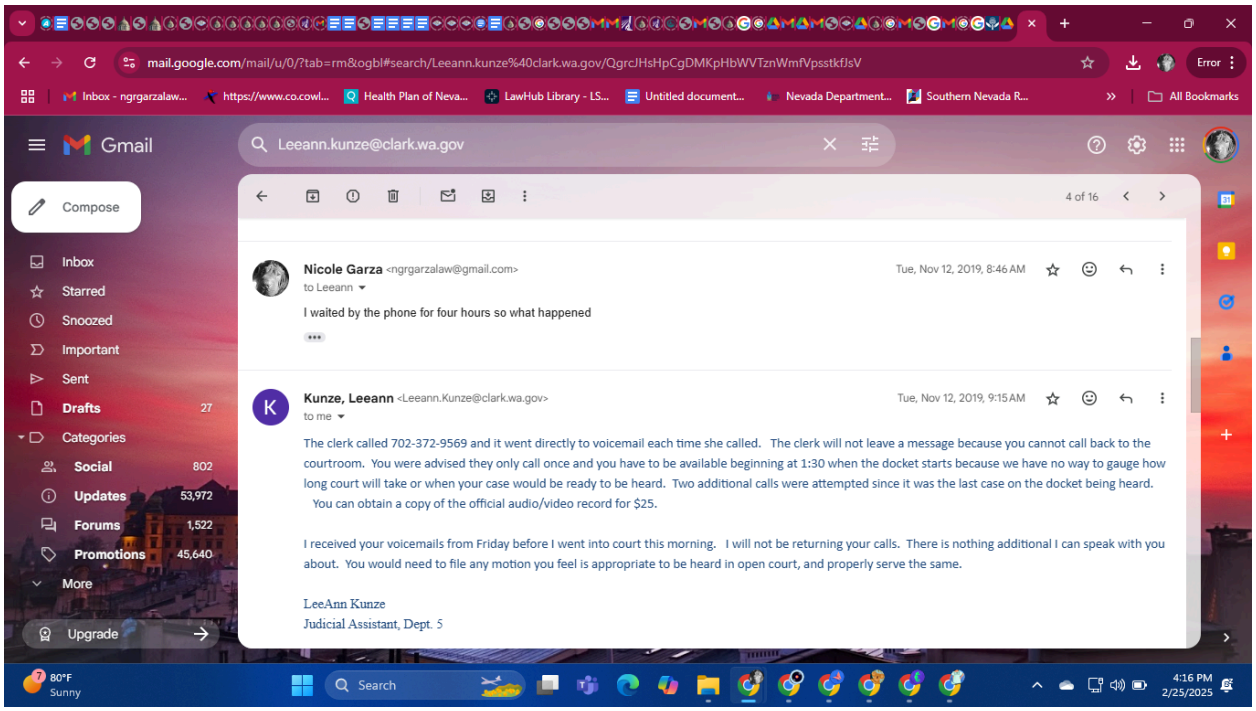
Forums 1,522
Promotions 45,640
More
Upgrade
4 of 16
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.
I waited by the phone for four hours so what happened
On Tue, Nov 12, 2019, 8:24 AM Kunze, Leeann <Leeann.Kunze@clark.wa.gov> wrote:
The in-court clerk tried to call three times at the number you provided, starting at about 3:00 when judge was ready to handle the case. I'm sorry you missed the calls.
LeeAnn Kunze
Judicial Assistant, Dept. 5
From: Nicole Garza [mailto:ngrgarzalaw@gmail.com]
Sent: Friday, November 8, 2019 5:02 PM
To: Kunze, Leeann
Subject: N. Garza
CAUTION: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.
Dear Ms. Kunze,
Search
4:05 PM
2/25/2025


mail.google.com/mail/u/0/?tab=rm&ogbl#search/Leeann.kunze%40clark.wa.gov/QgrcJHsHpCgDMKpHbWVTznWmfVpsstkfJsV
Gmail
Leeann.kunze@clark.wa.gov
Compose
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Updates 53,972
Forums 1,522
Promotions 45,640
More
Upgrade
4 of 16
Nicole Garza <ngrgarzalaw@gmail.com>
to Leeann
Tue, Nov 12, 2019, 8:46 AM
I waited by the phone for four hours so what happened
Kunze, Leeann <Leeann.Kunze@clark.wa.gov>
to me
Tue, Nov 12, 2019, 9:15 AM
The clerk called 702-372-9569 and it went directly to voicemail each time she called. The clerk will not leave a message because you cannot call back to the courtroom. You were advised they only call once and you have to be available beginning at 1:30 when the docket starts because we have no way to gauge how long court will take or when your case would be ready to be heard. Two additional calls were attempted since it was the last case on the docket being heard.
You can obtain a copy of the official audio/video record for $25.
I received your voicemails from Friday before I went into court this morning. I will not be returning your calls. There is nothing additional I can speak with you about. You would need to file any motion you feel is appropriate to be heard in open court, and properly serve the same.
LeeAnn Kunze
Judicial Assistant, Dept. 5
80°F
Sunny
Search
4:16 PM
2/25/2025

NICOLE GARZA

June 05, 2025 - 1:51 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,028-8
Appellate Court Case Title:	Nicole Garza v. Jude Bailey, et al.
Superior Court Case Number:	22-4-00871-8

The following documents have been uploaded:

- 1040288_Petition_for_Review_20250605124522SC339591_9070.pdf
  This File Contains:
  Petition for Review
  The Original File Name was GARZA Proposed Petition for Review.pdf

A copy of the uploaded files will be sent to:

- don@dongrantps.com
- dsgrant5@comcast.net
- ngrgarzalaw@gmail.com
- prestige4nicole@gmail.com

Comments:

Sender Name: Nicole Garza - Email: hoopaiereeonn@gmail.com
Address:
PO Box 70562
Las Vegas, NV, 89170
Phone: (702) 372-9569

Note: The Filing Id is 20250605124522SC339591

FILED
11/19/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

NICOLE GARZA, Appellant, v. JUDE BALEY, ASHTON ROBERTS, and TERRI-JO MCCOY, Respondents.	No. 86854-3-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Nicole Garza brought a Trust and Estate Dispute Resolution Act (TEDRA) petition, asking the court to distribute assets to her from a closed probate. A superior court dismissed the matter. We affirm that decision because the doctrine of res judicata bars the petition.

I. BACKGROUND

Karen Garza died in August 2018. Karen[1] had three children from her first marriage: Jude Baley, Ashton Roberts, and Terri-Jo McCoy (collectively, Respondents). Nicole was Karen's only child from her second marriage.

[1] Because the decedent shares a last name with the appellant, we refer to them using their first names for clarity. We intend no disrespect.

The superior court admitted Karen's last will and testament to probate in September 2018.[2] The will devised Karen's estate to her four children in equal shares, with Nicole's share distributed to her in the form of an annuity. The will nominated Baley as the personal representative. The will also contained a no-contest clause, which read as follows:

> NOTWITHSTANDING THE FOREGOING, the share of any beneficiary who commences legal challenge to the distributive provisions or my nominations 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.

In April 2019, Nicole filed a complaint against the Estate of Karen Garza, asking the court to "compel Defendant(s) to provide comprehensive Inventory and Appraisement to the Estate, a copy of Power of Attorney, a copy of previous Will, a re-appraisal of Estate with an un-biased, non-discriminate, third party Representative and provide Special Notice of Proceedings for Estate." Baley, as personal representative for the estate, moved to dismiss the complaint as untimely filed and requested that the court enter an order declaring Nicole's share of the estate forfeited.

In December 2019, the trial court entered an order dismissing Nicole's complaint with prejudice. The trial court concluded:

> It is this Court's conclusion that allegations in the Complaint that a prior Will existed, that Jude Baley should be removed and replaced by an unbiased third party to administer the estate and that the decedent was unable to exercise sound judgment and that signed the probated Will under undue influence on the basis that she believed her older children would no longer provide for her care if

[2] The court deemed the estate solvent and ordered that it be administered without court intervention.

> she refused to sign the probated Will constitute grounds for contesting the validity of the probated Will and constitutes a Will Contest under RCW 11.24.010 subject to the limitations required by RCW 11.24.010. The fact that Nicole Garza failed to file her Complaint within the four month limitation requires the Court to dismiss the Complaint with prejudice[.]

Baley filed a declaration of completion of the probate on January 16, 2020, and sent notice to herself (in her capacity as an heir), Roberts, and McCoy. The probate was subsequently closed by operation of law. RCW 11.68.110(2).[3]

Over two years later, in June 2022, Nicole filed a TEDRA petition against Baley, Roberts, and McCoy under a new cause number, requesting the court to order distribution of the annuity described in Karen's will and to reform the will to allow her to receive the annuity as a lump sum. Respondents answered the petition, raising various affirmative defenses and subsequently filed a motion for summary judgment, arguing inter alia that the doctrine of res judicata barred her petition. Nicole responded in part by arguing that her TEDRA action was a supplement to the probate proceedings rather than an attempt to relitigate the same claims. At oral argument, Nicole's counsel averred that her action was "a complicated thing. We have to thread a needle. Because I agree that many of . . .

[3] Approximately six months later, on June 8, 2020, Nicole filed a motion in the probate action objecting to the declaration of completion and requesting that the court vacate its December 2019 order dismissing her complaint. Nicole also filed a "supplemental attachment to plaintiff's complaint," asserting that she did not intend to contest the will but only objected to the actions of the personal representative. Respondents later asserted that Nicole abandoned this motion, citing to a declaration apparently submitted by Baley. The parties did not include the declaration in the record on appeal. No other documents included in the record reflect a resolution of Nicole's June 2020 motion. As the motion, however, appears to have no legal effect, and Nicole assigns no error to this omission, we discuss it no further.

the statutes that [the estate's counsel] refers to, she's precluded from chasing those." Nicole also filed a motion for leave to amend her TEDRA petition, seeking to add a complaint for breach of fiduciary duty against Baley.

The trial court granted the motion for summary judgment, dismissed the TEDRA petition with prejudice, denied the motion to amend as moot, and granted attorney's fees to Respondents pursuant to RCW 11.96A.150(1). Nicole appeals.

II. ANALYSIS

A. Whether the Trial Court Erred by Granting Respondents' Motion for Summary Judgment

1. Standard of Review

We review summary judgment orders de novo, engaging in the same inquiry as the trial court. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). We view the facts and all reasonable inferences in the light most favorable to the nonmoving party. Id. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Visser v. Craig, 139 Wn. App. 152, 157, 159 P.3d 453 (2007) (quoting CR 56(c)). "We may affirm a trial court's decision on a motion for summary judgment on any ground supported by the record." Port of Anacortes v. Frontier Indus., Inc., 9 Wn. App. 2d 885, 892, 447 P.3d 215 (2019).

2. Res Judicata

Under the doctrine of res judicata, a party is barred from relitigating "claims and issues that were litigated, or *might have been litigated*, in a prior action."

Pederson v. Potter, 103 Wn. App. 62, 69, 11 P.3d 833 (2000) (emphasis added). Res judicata applies "where a prior final judgment is identical to the challenged action in '(1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.'" Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 836, 125 P.3d 202 (2005) (quoting Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898 (1995)). Whether an action is barred by res judicata is a question of law that we review de novo. Id. at 837.

Our Supreme Court has held that the doctrine applies to a collateral challenge to a judicial order closing an estate. Norris v. Norris, 95 Wn.2d 124, 131, 622 P.2d 816 (1980). That is, an order closing an estate "stands upon the same footing as any other judgment rendered by a court of general jurisdiction" and, thus, precludes those who were parties to the probate proceedings, but "did not raise this claim during probate and did not appeal," from "overthrow[ing] the decree of distribution" through a collateral attack. Id. at 131-32 (quoting Tacoma Sav. & Loan Ass'n v. Nadham, 14 Wn.2d 576, 594, 128 P.2d 982 (1942)) (there, through a quiet title action).

This court's opinion in Gourde v. Gannam, 3 Wn. App. 2d 520, 417 P.3d 650 (2018), provides a helpful illustration of the analysis we must conduct. There, Gourde died in June 2014 and his will was subsequently admitted to probate. Id. at 523. In June 2015, the personal representative filed a declaration of completion of probate. Id. at 524. The sons filed an objection to the declaration, asserting that the deed conveying the real property did not accurately reflect Gourde's intent as expressed in the will. Id. The personal representative then filed a corrected

deed and the sons withdrew their objection. Id. One year later, the sons filed a declaratory judgment action against the personal representative of Gourde's estate, challenging the language of the corrected deed. Id. at 525.

This court held that the declaratory judgment claim was barred by res judicata. Id. at 526. First, we determined that the action concerned the same subject matter as the probate proceedings, as both cases implicated the proper interpretation of Gourde's will. Id. at 529.

Next, we turned to the test set forth in Ensley v. Pitcher, 152 Wn. App. 891, 903, 222 P.3d 99 (2009), to determine whether the two suits involved the same cause of action. This test examines

> (1) whether the rights or interests established in the prior judgment would be destroyed or impaired by the prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the suits involved infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Id. "These factors 'are analytical tools; it is not necessary that all four factors be present to bar the claim.'" Gourde, 3 Wn. App. 2d at 529 (quoting Ensley, 152 Wn. App. at 903). We determined that, under this test, the declaratory judgment claim constituted the same cause of action as the probate. Id. at 530. If the sons' declaratory judgment action were successful, it could have extinguished the personal representative's property rights granted to her in the probate action. Id. at 529. The primary evidence in both actions was Gourde's will and both claims arose out of the language of the will. Id. at 529. Although the sons asserted that the causes of action were different because the declaratory judgment claim

concerned interpretation of the deed rather than the will itself, we rejected this argument as ignoring the test laid out in Ensley. Id. at 530.

Finally, we determined that both actions involved the same parties, even though probate proceedings do not have "parties" as the term is usually understood. Id. at 530-31. We noted that "[a] probate action in rem may nonetheless act as res judicata upon a later in personam proceeding because 'the distinction between in rem and in personam may be somewhat artificial.'" Id. at 530 (quoting Hadley v. Cowan, 60 Wn. App. 433, 440, 804 P.2d 1271 (1991)). We held that the sons were parties to the probate proceeding for res judicata purposes not only because they received notice of the probate as heirs, but also because an order closing a probate is "binding 'upon all the world.'" Id. at 531 (quoting Ryan v. Plath, 18 Wn.2d 839, 857, 140 P.2d 968 (1943)).

As in Gourde, all of the elements of res judicata are met here. First, the 2022 TEDRA action filed by Nicole concerns the same subject matter as the probate proceedings. This fact is evident by Nicole's complaint, entitled "TEDRA Petition to Enforce Inheritance," in which she asked the court to redistribute the assets of Karen's estate, which had already been distributed at the completion of the probate.

Second, the 2022 TEDRA action asserted the same cause of action as the probate of Karen's estate. Whether a claim constitutes the same cause of action is determined not by how the complainant chooses to characterize their claims, but by the four-factor test set forth in Ensley. Gourde, 3 Wn. App. 2d at 530. All four factors are present here. In the 2022 TEDRA action, Nicole asked the court to

redistribute the assets of Karen's estate and to reform the will so that she could receive a lump sum payment. Granting this request would impair the rights of the Respondents, to whom the totality of Karen's estate was distributed. The evidence that would need to be presented in both actions is precisely the same, as both actions depend upon the language of Karen's will and the value of the assets in her estate. Nicole claimed in her 2022 TEDRA petition that her right to receive her portion of the estate was infringed, which is the same assertion she made in her motion objecting to the declaration of completion of the probate. Finally, both suits arise out of the same set of facts; i.e., the interpretation of Karen's will. Nicole's assertion that the two lawsuits do not constitute the same cause of action ignores Ensley and is without merit.

Third, both the 2022 TEDRA action and the probate action involve the same parties, as Nicole concedes in her reply brief.

Fourth, the parties to both proceedings are of the same quality. "For the persons to be 'of the same quality, the parties in the collateral action must be bound by the judgment in the prior proceeding.' " Gourde, 3 Wn. App. 2d at 531 (quoting Martin v. Wilbert, 162 Wn. App. 90, 97, 253 P.3d 108 (2011)). Nicole contends that she is not bound by the closing order in the probate proceedings because she did not receive notice of the declaration of completion. The only authority Nicole cites in support of this proposition is Meryhew v. Gillingham, 77 Wn. App. 752, 893 P.2d 692 (1995). Meryhew does not support her argument.

The plaintiff in Meryhew filed claims against Gillingham, who had acted as both her attorney and as personal representative of her mother's estate. 77 Wn.

App. at 753. The plaintiff argued that Gillingham's discharge as personal representative was "void because he failed to comply with his statutory probate duties." Id. We rejected this argument because closure of the probate and discharge of the personal representative was automatic under RCW 11.68.110(2) when no request for an accounting was made within 30 days of the filing of the declaration of completion.[4] Id. at 753-54.

Here, Nicole did not file a request for an accounting within 30 days of the filing of the declaration of completion. Thus, the probate was automatically closed per RCW 11.68.110(2). Nicole had the opportunity to challenge closure of the probate and, in fact, did so via motion filed in June 2020, making many of the same arguments that she raises in the current action.

Because 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. Pederson, 103 Wn. App. at 69. In turn, the trial court did not err when it entered summary judgment in favor of Respondents.

B. Whether the Trial Court Erred by Denying Nicole's Motion to Amend

Nicole additionally asserts that the trial court erred by denying her motion for leave to amend her TEDRA petition to add a claim of breach of fiduciary duty. We review a trial court's decision denying leave to amend a complaint for abuse of discretion. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 142, 937 P.2d 154 (1997). A court may deny a motion for leave to amend where the proposed

[4] Although we noted that the plaintiff had received notice of the declaration of completion, this was not germane to our holding. Meryhew, 77 Wn. App. at 754.

amendment would be futile. Id. An amendment is futile where there is no possible evidence that would support the new allegations or claims. Nakata v. Blue Bird, Inc., 146 Wn. App. 267, 279, 191 P.3d 900 (2008).

Nicole's proposed amended TEDRA petition did not add any additional factual allegations, but merely added a cause of action for breach of fiduciary duty against Baley.[5] This additional claim is similarly barred by res judicata because it arises out of Baley's actions as personal representative of Karen's estate and should have been asserted in the probate action. See Martin, 162 Wn. App. at 95-97 (claims of wrongdoing by personal representative asserted after closure of probate barred by res judicata). Accordingly, the proposed amendment was futile and the trial court did not err by denying leave to amend.

C. Attorney Fees on Appeal

Respondents request an award of attorney fees on appeal under to RCW 11.96A.150(1). RAP 18.1 allows us to award reasonable attorney fees or expenses "[i]f applicable law grants to a party the right to recover" such attorney fees or expenses. Under RCW 11.96A.150, a court has discretion to award fees and other costs to any party in an estate dispute proceeding governed by Title 11 RCW. "In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but

[5] In addition to the new cause of action, the proposed amended complaint adds a paragraph which alleges that "Under RCW 11.68.070, Personal Representative, Jude Baley, has: (a) Breached a fiduciary duty; (b) Exceeded the Personal Representative's authority; (c) Abused the Personal Representative's discretion in exercising a power; (d) Otherwise failed to execute the trust faithfully; and (e) Violated a statute or common law affecting the estate." These are legal conclusions, not factual allegations.

need not include whether the litigation benefits the estate or trust involved." RCW 11.96A.150(1).

Other than citation to some of the foregoing authorities, Respondents present no argument as to why attorney fees are warranted in this matter and simply state they request such an award. See Blueberry Place Homeowner's Ass'n v. Northward Homes, Inc., 126 Wn. App. 352, 363 n.12, 110 P.3d 1145 (2005) ("The party requesting fees on appeal is required by RAP 18.1(b) to *argue the issue* and provide citation to authority in order to advise the court as to the appropriate grounds for an award of attorneys' fees and costs.") (emphasis added). Accordingly, we decline to award fees to the Respondents.

III. CONCLUSION

Because res judicata bars Nicole's TEDRA petition, we affirm the trial court's order dismissal of the petition and denial of the motion to amend the complaint. We decline the Respondents' request for attorney fees.

Díaz, J.

WE CONCUR: