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SUPREME COURT
STATE OF WASHINGTON

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BY SARAH R. PENDLETON

CLERK SUPREME COURT OF THE STATE OF WASHINGTON

Case #: 1040628

No. _____

COA No. 399419

In the Matter of the Estate of Glenn West

PETITION FOR REVIEW

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Statutes

<i>RCW</i> 11.28.280	3
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A. IDENTITY OF PETITIONER

Glenda Santos, daughter of the decedent, is the petitioner.

B. COURT OF APPEALS DECISION

A copy of the Court of Appeals opinion is in the appendix

C. ISSUES PRESENTED FOR REVIEW BY PETITIONER

1. Should Glenda Santos be appointed to administer her father's estate? Yes.
2. If a third party is appointed, should it be one that both petitioner and respondent agree on? Yes.

D. STATEMENT OF THE CASE

The Court of Appeals found that the affidavit-based acrimony directed at another petitioner supported the Superior Court's decision to skip over Glenda Santos per the priority statute, *RCW 11.28.280* and *11.28.120*. I respectfully assert that this is abuse of discretion by the Superior Court and the Supreme Court should correct this abuse. The priority statutes state that Santos must be appointed unless disqualified. She is very much qualified and no affidavit-based acrimony was directed toward Glenda Santos. Thus, discretion was abused. The Appeals Court rests its ruling on *In re Cohen*, No. 56662-1-II Wash. Ct. App. May 9, 2023, which skipped over potential appointees because they had a conflict of interest. Santos has no such stain on

her eligibility. Therefore, I argue, respectfully, that the Superior Court ruled incorrectly and the Appellate Court incorrectly affirmed the ruling. Glenda Santos asks this Supreme Court to remand the case for her appointment as administrator of the estate.

The Court of Appeals ruled that the appointment of the third party was appropriate which I respectfully believe is the wrong ruling. In the *Cohen* case, the Superior Court directed the Petitioner and Respondent to come back to the court with an agreed-to third party neutral administrator. That is what should have been done here. The Superior Court accepted the third party pitched by the respondent while simultaneously denying Glenda Santos' petition for appointment. The Superior Court should have denied Santos' petition and, like Cohen, instructed the parties to agree to a third-party and come back to the court for appointment of that agreed-to third party. Santos asks this Supreme Court to remand the case for the appointment of an agreed-to third-party-neutral to administer the estate.

E. ARGUMENT WHY THE PETITIONER'S ISSUES SHOULD BE ACCEPTED FOR REVIEW

There are few things that are more important than disposition of a decedent's estate. Since every Washingtonian will face this unfortunate and difficult part of life, it is important for the Supreme Court to find that Glenda Santos can administer her father's estate before more radical solutions are

imposed on the estate. The *Cohen* case is an example of a much better solution.

Here, the radical solution affirmed by the Appellate Court is the appointment of a third-party who is not neutral. It would be easy to make a neutral third-party happen if this court orders the case remanded to Superior Court for this purpose, just like the *Cohen* case.

It is also appropriate, based on the priority of appointment statutes named above, for the Supreme Court to remand the case for Glenda Santos' appointment.

Either ruling would be a just and appropriate outcome.

F. CONCLUSION

Based on the forgoing points and authorities, it is respectfully requested that review be granted of Glenda Santos' issues and the case be remanded to Superior Court for the appointment of Santos, or the selection by Petitioner and Respondent of a neutral third-party estate administrator.

I certify that this brief is in Times New Roman font and contains 767 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b)

April 14, 2024

Respectfully submitted,



Don Bushell
Attorney for Appellant, Glenda Santos
Washington State Bar Association #54098

Certificate of Service

I certify that I caused to be filed, and served a true and correct copy of the foregoing document on the 14th day of April, 2024, to the following address:

By U.S. Mail

Michael Auayan
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Don Bushell

APPENDIX

Tristen L. Worthen
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Division III*



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CASE # 399419
In the Matter of the Estate of Glenn West
CHELAN COUNTY SUPERIOR COURT No. 844001617

Counsel & Mr. Auayan:

Enclosed please find a copy of the opinion filed by the court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:btb

Attachment

c: **E-mail** Honorable Kristin M. Ferrera

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

In the Matter of the Estate of:)	No. 39941-9-III
)	
GLENN WEST,)	
)	
Deceased.)	
<hr style="width: 50%; margin-left: 0;"/>)	
GLENDASANTOS,)	UNPUBLISHED OPINION
)	
Appellant,)	
)	
and)	
)	
MICHAEL AUAYAN,)	
)	
Respondent.)	

MELNICK, J.P.T.¹ — Glenda Santos appeals from an order appointing a neutral third-party administrator, without nonintervention powers, as the personal representative (PR) of her father’s estate. We affirm.²

FACTS

Glenn West died testate in 1984. More than forty years later, his estate assets have not been administered. West’s will specified an equal distribution of the residue of his

¹ Rich Melnick, a retired judge of the Washington State Court of Appeals, is serving as a judge pro tempore of this court pursuant to RCW 2.06.150(1).

² Santos is the only party who filed a brief in this case.

estate to his seven named children, including Glenda Santos, should they survive him.

In 1985, the trial court named one of West's daughters as the PR. When that PR passed away, another daughter became the successor PR.

When the successor PR passed away, her son, Michael Auayan, requested that he or a neutral third party be appointed PR after another daughter petitioned to be the PR. That daughter later withdrew her petition and then Auayan filed a motion. Auayan, presenting himself as an heir of West, initially sought the position himself, but later withdrew his request and instead argued only for a neutral third-party appointment to administer West's estate. Auayan had the support of the other heirs of the deceased beneficiaries under West's will.

Santos, supported by her two remaining living siblings, opposed Auayan's motion and sought to be appointed as PR. Her siblings waived their right to notice on Santos's petition. Auayan agreed that only a beneficiary of gift under the will would be entitled to notice. He argued, however, that as the PR of his mother's estate, he was entitled both to notice and to object to Santos's appointment. He reasoned that because his mother's gift under West's estate passed to her estate, her estate became the beneficiary of gift under West's will.

The trial court denied Santos's petition to become PR because of negative family interactions and because the estate has not been settled for over forty years. The trial court appointed a neutral third-party administrator, without nonintervention powers.

Santos now appeals, claiming first that the trial court was required to appoint her over the third party because she has priority under RCW 11.28.120 as West's next-of-kin and because she is available to serve; and second that Auayan was not entitled to notice or to object to her appointment because he is not a beneficiary of gift under West's will. We affirm.

ANALYSIS

Administration of estate

Santos claims the trial court erred by appointing a third-party administrator because she was qualified to serve as PR and had first priority under RCW 11.28.120. She essentially argues this statute requires the trial court to appoint the first person with the highest priority who is available and willing to serve as PR. We disagree.

This issue requires statutory interpretation, which we review de novo. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). The court's role in statutory interpretation is first to discern its plain meaning. *In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). This analysis involves reviewing both the statute

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In re Est. of West

at issue, and related statutes and provisions within the same act. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002).

Santos argues that RCW 11.28.120 (1), (2), and (7) mandate that the court appoint her as PR; however, this statute concerns the initial appointment of a PR and not the appointment of a successor PR.

Importantly, the successor personal representative statute, RCW 11.28.280, provides that, if a personal representative dies, the position “shall be granted to those to whom the letters would have been granted if the original letters had not been obtained . . . and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, . . . *unless the court orders otherwise.*”

RCW 11.28.280 (emphasis added). Under RCW 11.68.011(2)(c), the trial court may refuse to grant nonintervention powers to a personal representative if administration of the decedent’s estate with nonintervention powers would not be in the best interests of the beneficiaries of the estate. Thus, if we interpreted RCW 11.28.120 as Santos argues, it would conflict with and negate the discretion granted to courts under RCW 11.68.011(2)(c).

Santos relies on one published case and three unpublished cases to support her position. But the appellate issues addressed in two of the cases involved: (1) the authority

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of a PR to bring a wrongful death claim on behalf of the estate, *Huntington v. Samaritan Hospital*, 35 Wn. App. 357, 666 P.2d 405 (1983), *aff'd*, 101 Wn.2d 466, 680 P.2d 58 (1984); and (2) the correct categorization of a creditor's claim, *Bartlett v. Estate of Parman*, No. 56536-6-II (Wash. Ct. App. Nov. 15, 2022) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2056536-6-II%20Unpublished%20Opinion.pdf>.

In the other cases, both appellate courts deferred to the trial court's broad discretion to appoint next-of-kin as PR. *In re Est. of Peterson*, No. 30686-1-III (Wash. Ct. App. Jun. 6, 2013) (unpublished) (affirming appointment of creditor over daughters of decedent despite antagonism, noting court's authority to appoint anyone not statutorily disqualified), <https://www.courts.wa.gov/opinions/pdf/306861.pdf>; *In re Est. of Cohen*, No. 56662-1-II (Wash. Ct. App. May 9, 2023) (unpublished) (upholding order appointing third party over heir of decedent based on finding heir conflicted out of role), <https://www.courts.wa.gov/opinions/pdf/D2%2056662-1-II%20Unpublished%20Opinion.pdf>. Thus, the mere fact that Santos was available to serve as PR did not automatically qualify her for appointment, nor did it mean that the court did not have discretion to appoint others. The plain meaning of the above-cited statutes provides the trial court with discretion to appoint a PR.

In this case, the declarations filed in support of Auayan's motion provide evidence of disagreement within the family as to the administration of the estate. *See* RCW 11.68.011(3) (Courts may base a grant of nonintervention powers on affidavits filed with the court or "other proof submitted to the court."). Because the trial court followed the law and based its decision on the facts before it, the record as a whole demonstrates that the court did not abuse its discretion in appointing a neutral third-party administrator, without nonintervention powers.

Notice of hearing on petition for nonintervention powers

Santos contends Auayan, and any other heir of West not specifically named in his will as a beneficiary, was not entitled to notice of the hearing to appoint a personal representative. Santos argues that because her two sisters, as the only people she claims were entitled to notice under RCW 11.68.041(1), consented to her appointment at PR, she should have been unopposed and the trial court should have ordered her appointment. We disagree.

Auayan's mother was a named beneficiary in West's will. Auayan is the PR of his mother's estate which is entitled to her portion of West's estate under the will. Therefore, Auayan was entitled to notice. Santos's limited interpretation of who is required to notice

is unsupported. As conceded by Santos, if Auayan was entitled to notice, the trial court did not err.

We also note that RCW 11.28.020 provides, “Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court.”

As the PR of his mother’s estate, and as one of his mother’s heirs, Auayan had an interest in the distribution of assets in West’s estate. As a result, he could file objections in writing, and the court had an obligation to hear them.

Santos passingly claims the court erred by appointing a third party for whom Auayan advocated. Santos seems to argue that Auayan allegedly misrepresented his identity as PR of his mother’s estate, acted so he could control both his mother’s and West’s estates, coordinated the declarations submitted by other beneficiaries, and claimed Santos was the source of the dissention within the family. She provides no further argument or citation to authority. “Passing treatment of an issue, lack of reasoned argument, or conclusory arguments without citation to authority are not sufficient to merit judicial consideration.” *In re Vulnerable Adult Pet. for Winter*, 12 Wn. App. 2d 815, 835, 460 P.3d 667 (2020). But even upon consideration, we find nothing in the record to support these assertions.

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ATTORNEY FEES

Santos requests this court grant her attorney fees pursuant to RAP 18.1 and RCW 11.96A.150(1) and (2). RCW 11.96A.150 provides that a reviewing court may award costs and fees in such amount it determines to be equitable to any party, from any party or estate assets that are the subject of these proceedings.

Because Santos is not a prevailing party on appeal, we decline to award costs and fees.


CONCLUSION

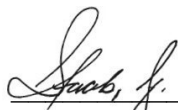
We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Melnick, J.P.T.

WE CONCUR:


Fearing, J.


Staab, A.C.J.

DON BUSHELL ATTORNEY AT LAW, PMB 456

April 14, 2025 - 3:28 PM

Filing Motion for Discretionary Review of Court of Appeals

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