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Supreme Court No. 1042281
Court of Appeals No. 59186-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Estate of:

RONALD DAVID LARSON, Deceased.

JUDY LARSON, individually,

Petitioner.

v.

RONDA LARSON KRAMER and DANA LARSON,

Respondents

.

ANSWER OF RONDA LARSON KRAMER AND DANA LARSON TO PETITION FOR DISCRETIONARY REVIEW

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INTRODUCTION

Judy Larson seeks review of a March 18, 2025, decision of the Washington Court of Appeals, Division Two (Case No. 59186-3-II), which reversed the superior court's grant of summary judgment in her favor and correctly directed entry of summary judgment for Respondents Ronda Larson Kramer and Dana Larson—the TEDRA Petitioners below and Appellants in the Court of Appeals.

The Court of Appeals held that Judy and her late husband, Ron Larson, mutually abandoned paragraph 10 of their 1994 prenuptial agreement when they executed substantially identical wills in 2017. Those wills expressly disclaimed any contractual basis and directly contradicted the Prenup's marital trust provisions. The record is undisputed: Ron and Judy hired the same attorney, signed their new wills at the same meeting, and made reciprocal gifts of their separate property to their respective children outside of trust. Their coordinated conduct objectively breached and abandoned paragraph 10 of the Prenup. The Court

of Appeals' decision is a straightforward application of Washington law, and Judy's petition identifies no legal conflict, constitutional question, or issue of public interest warranting this Court's review.

Judy now attempts to sidestep this outcome by urging the Court to consider her subjective, unexpressed intent when signing the 2017 will. Yet at summary judgment, her counsel conceded that: (1) the Prenup and wills were unambiguous, (2) no parol evidence was needed to interpret them, and (3) no material facts were in dispute. Having invited the court to treat the issue as a question of law, Judy cannot now assert contrary positions. Her claims are barred by waiver and judicial estoppel, and her newly asserted disputes are irrelevant under Washington's objective theory of contracts.

Contrary to Judy's argument, Washington law does not require proof of intent to breach in a breach of contract case. The Court of Appeals properly held that a party breaches a contract by failing to perform a required obligation—here, the obligation

to create a marital trust under the Prenup—regardless of subjective intent. See *Restatement (Second) of Contracts* § 235(2).

Finally, the Court of Appeals correctly applied the burden of proof that governs prenuptial agreements: the spouse seeking to enforce the agreement must show it was strictly observed and performed in good faith. Judy failed to meet that burden. She and Ron jointly signed wills that plainly violated the Prenup. Their subjective understanding is immaterial; their objective conduct was dispositive.

In short, this is a fact-bound, private estate dispute resolved on well-settled principles of Washington law. Judy's petition presents no grounds for discretionary review under RAP 13.4, and this Court should deny the petition and award Respondents their fees and costs under RAP 18.1.

IDENTITY OF RESPONDENTS

Respondents are Ronda Larson Kramer and Dana Larson (Ron's daughters).

DECISION

Ron's daughters request that this Court deny Judy's petition for discretionary review seeking review of the March 18, 2025, Unpublished Opinion entered by the Washington Court of Appeals, Division Two (**Appendix 1**) and April 30, 2025 Order Denying Motion for Reconsideration **(Appendix 2)**.

ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly apply settled precedent in concluding that Ron and Judy mutually abandoned paragraph 10 of their prenuptial agreement when both executed wills inconsistent with its terms?

2. Did the Court of Appeals correctly reject Judy's claim of mutual mistake and reliance on subjective intent, where she offered no clear, cogent, and convincing evidence to support such theory, and where her counsel waived reliance on parol evidence at summary judgment?

3. Is Judy barred by equitable, judicial, and procedural estoppel from departing from the parties' virtually identical 2017

wills and from asserting there are disputed material facts after waiving such argument at summary judgment?

FACTS RELEVANT TO CLAIMS ON APPEAL

Ron's daughters adopt and incorporate by reference the factual and procedural summary in the Court of Appeals' published opinion. A brief overview is included below for context.

In 1994, Ron and Judy Larson executed a prenuptial agreement ("Prenup"), which included in paragraph 10 an "Agreement to Make a Will." Under that provision, each spouse agreed to execute a will creating a marital trust for the benefit of the surviving spouse, to be funded with some of the deceased spouse's separate property. CP 212.

Ron followed this requirement in 1997 by executing a will directing the creation of a marital trust to be funded with his specified separate property. CP 254. Although no copy is in the record, it is undisputed that Judy executed a similar will consistent with the Prenup at that time.

On February 24, 2017, nearly 20 years later, Ron and Judy met together with attorney Brent Dille and executed substantially identical new wills, witnessed at the same appointment. CP 254, 265. In Article V of Ron's will, he left all his separate property directly to his two daughters, Ronda and Dana. Judy's Article V contained identical language, leaving all her separate property to her three daughters. Article VI of both wills directed that the remainder of their estates—their community property—be held in marital trusts for the survivor's lifetime benefit, with the residue to pass to the couple's children in five equal shares. Neither will referenced the Prenup. To the contrary, Article X of both wills explicitly stated they were "neither mutual nor reciprocal," and "not executed pursuant to any contract or agreement."

Following Ron's death in 2022, Judy was appointed personal representative. She announced her intent to fund the marital trust not only with community property, but also with $1.33 million from Ron's separate Vanguard accounts. Ronda

and Dana filed a TEDRA petition seeking Judy's removal, a declaratory judgment that the separate accounts passed to them, and related relief. CP 33, 115. The superior court removed Judy as personal representative and appointed an independent fiduciary.

Both parties moved for summary judgment regarding the disposition of the Vanguard accounts. In support of her motion, Judy submitted her own declaration discussing her intent when signing the Prenup and the 2017 wills, and a declaration from her attorney's paralegal estimating account values. CP 132, 138. Ron's daughters moved to strike the declarations under the Dead Man Statute and rules governing hearsay and speculation. CP 275.

During oral argument in the superior court, Judy's counsel agreed that neither the Prenup nor the 2017 wills were ambiguous and that extrinsic evidence was unnecessary to interpret the documents:

> **THE COURT:** But the general rule is I don't consider extrinsic evidence—
>
> **MR. KESLER:** That's right. That's right.
> ...
> **THE COURT:** —if the document I'm interpreting is not in dispute, and both of you actually don't dispute what the 2017 will says.
>
> **MR. KESLER:** That's correct.

RP 22 (1/19/2024). Judy's attorney went on to argue that extrinsic evidence could not be considered unless the documents were ambiguous and confirmed that the dispositive issue was whether the 2017 wills revoked the Prenup. RP 26.

Although the trial court did not expressly rule on the motion to strike, neither it nor the Court of Appeals considered Judy's declarations. The superior court framed the legal question as whether the 2017 wills "amend[ed] the 1994 prenup," and concluded that they did not. RP 33-34. The Court of Appeals reversed and directed entry of summary judgment for Ron's daughters, holding that Ron and Judy's objective, coordinated conduct—executing non-mutual wills that expressly contravened

the Prenup—amounted to a clear and mutual abandonment of paragraph 10.

REASONS WHY THE COURT SHOULD DENY DISCRETIONARY REVIEW

A. The Criteria for Discretionary Review

RAP 13.4(b) sets forth the requirements that govern acceptance of discretionary review following a Court of Appeals decision terminating review. The Supreme Court will accept review if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, if the Court of Appeals decision conflicts with a published decision of the Court of Appeals, if a significant question of law under the Constitution is involved, or if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

B. The Court of Appeals correctly applied settled law in finding mutual abandonment of paragraph 10 of the prenuptial agreement.

The decision below faithfully applies established Washington precedent governing mutual abandonment and

contract modification. It does not conflict with any decision of this Court or any published Court of Appeals opinion, and it turns entirely on the parties' conduct and the unambiguous language of their 2017 wills.

Judy mischaracterizes cases such as *Higgins v. Stafford*, 123 Wn.2d 160, 866 P.2d 31 (1994); *Estate of Wittman*, 58 Wn.2d 841, 365 P.2d 17 (1961); and *Estate of Catto*, 88 Wn. App. 522, 944 P.2d 1052 (1997), to argue that revocation of a prenuptial or community property agreement must be in writing. That is not the law. Washington courts assess whether the parties' conduct demonstrates mutual intent to rescind or abandon the agreement — not whether they executed a formal modification. *Higgins*, 123 Wn.2d at 165–67.

Here, the evidence showed that Ron and Judy jointly executed new wills in the same meeting with the same attorney, containing virtually identical terms that directly contradicted their obligations under paragraph 10 of the Prenup. Unlike *Wittman*, where the spouses were unaware of each other's wills,

Ron and Judy's coordinated actions clearly indicated mutual abandonment. *See also Estate of Bachmeier*, 147 Wn.2d 60, 52 P.3d 22 (2002) (Community property agreement not abandoned either by initiation of legal separation proceedings or by execution of inconsistent will because such acts were unilateral).

The Court of Appeals applied this body of law correctly. This is a routine, fact-specific application of settled principles — not a legal conflict requiring this Court's intervention.

C. The Court of Appeals properly rejected Judy's claims that were based on mutual mistake, subjective intent, and inadmissible parol evidence.

Judy claims "the parties intended for their prenuptial agreement to remain in effect." Petition at 16. Essentially, she claims they both made a mistake when they signed their 2017 wills. Judy's mutual mistake claim fails as a matter of law. She offered no clear, cogent, and convincing evidence of a shared mistaken belief when signing the 2017 wills. *See Marriage of Schweitzer*, 132 Wn.2d 318, 328, 937 P.2d 1062 (1997) ("[T]he party asserting mutual mistake must prove by clear, cogent, and

convincing evidence that both parties were mistaken") (internal quotations omitted). At most, Judy relies on her own subjective intent — which is legally irrelevant under Washington's objective theory of contract interpretation. *Hearst Communications v. Seattle Times Co.*, 154 Wn.2d 493, 115 P.3d 262, 267 (2005); *In re Estate of Wendl*, 37 Wn. App. 894, 897, 684 P.2d 1320 (1984). "It is the duty of the court to declare the meaning of what is written, and not what was intended to be written." *Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222 (1990) (quoting *J.W. Seavey Hop Corp. v. Pollock*, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944)).

Both courts below properly declined to admit parol evidence of Judy's subjective intent. The wills and Prenup were unambiguous. Under *Hearst* and *Wendl*, subjective declarations of understanding are not admissible to vary clear contractual terms. Instead, the courts properly focused on the parties' objective acts, such as executing matching wills with provisions contradictory to paragraph 10 of the Prenup.

Moreover, Judy waived any claim that the court should consider her subjective intent. Her counsel expressly told the trial court that no parol evidence should be considered. RP 26. She may not now argue the opposite position in this Court.

This is not a case of unresolved ambiguity or unsettled law — it is a textbook application of Washington's settled rules on parol evidence, contract formation, and mistake.

D. Judy is estopped from asserting positions contrary to those taken below and from reviving arguments she waived.

Judy's claim that material factual disputes precluded summary judgment is procedurally barred. Her counsel agreed at the summary judgment hearing that there were no disputed material facts. RP 22, 26. That waiver precludes her from reviving the argument now. (*See* RAP 2.5(a).)

In addition, judicial estoppel bars her from asserting inconsistent legal positions in this Court. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538-39, 160 P.3d 13 (2007). She induced the trial court to treat the case as a question of law and forego

parol evidence; having lost on that basis, she cannot now claim there are unresolved facts or that the Court should consider evidence of her subjective intent.

Judy's shifting arguments would impose an unfair burden on Ron's daughters and undermine the integrity of judicial proceedings. The Court of Appeals' decision appropriately held her to the legal and factual positions she adopted below.

E. This case does not meet any criteria for discretionary review under RAP 13.4.

This case does not present:

- Any conflict among appellate decisions (RAP 13.4(b)(2)),
- Any significant constitutional question (RAP 13.4(b)(3)), or
- Any issue of broad public interest (RAP 13.4(b)(4)).

It is a private dispute, resolved on the basis of well-settled principles, involving no novel legal doctrine and no recurring public implications. The Court of Appeals was the appropriate

court of final review, and it correctly affirmed summary judgment based on undisputed facts and clear law.

F. Respondents should be awarded costs and fees under RAP 18.1.

Judy's petition lacks merit and seeks to raise issues inconsistent with her statements below. Additionally, the Court of Appeals decided the case on well-settled law that leaves no room for dispute. Respondents respectfully request an award of their reasonable attorney fees and costs under RAP 18.1.

CONCLUSION

Judy's petition for discretionary review does not meet the criteria of RAP 13.4(b). Therefore, Respondents respectfully request that this Court deny her petition.

CERTIFICATE OF COMPLIANCE

This document contains 2,287 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 3rd day of July, 2025.

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APPENDIX 1

APPENDIX 1

Filed
Washington State
Court of Appeals
Division Two

March 18, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of: RONALD LARSON, Deceased.	No.59186-3-II
RONDA LARSON KRAMER and DANA LARSON, Appellants, v. JUDY LARSON, individually and as Personal Representative of the Estate of Ronald David Larson, Respondent.	UNPUBLISHED OPINION

MAXA, J. – Ronda Larson Kramer and Dana Larson appeal the trial court's grant of partial summary judgment in favor of their late father Ron Larson's wife, Judy Larson.

When Ron[1] and Judy married in 1994, Ron had two children and Judy had three children from prior marriages. They each had significant separate assets. Before they were married, Ron and Judy signed a prenuptial agreement. Paragraph 10 of the agreement stated that Ron agreed

[1] For clarity we use first names to distinguish between the multiple parties with the name Larson. No disrespect is intended.

to execute a will providing that Judy would be entitled to receive the income from certain of his separate property for the remainder of her life. The agreement also stated that Judy agreed to execute a will providing that Ron would be entitled to receive the income from certain of her separate property for the remainder of his life. The agreement further stated that it could be amended or revoked only by a written agreement signed by both parties. Ron and Judy amended the agreement three times to change the separate property itemized in the agreement.

In 1997, Ron executed a will in which he directed that if Judy survived him, certain items of his separate property would be placed in a marital trust. The will provided that Judy would be entitled to the income from the trust for the remainder of her life. Upon Judy's death, the property in the marital trust would be distributed to his two children.

In 2017, Ron and Judy each signed separate wills that revoked all prior wills. Ron's will did not provide that Judy would be entitled to receive the income from certain of his separate property for the remainder of her life, but instead left all of his separate property to Dana and Ronda. Similarly, Judy's will did not provide that Ron would be entitled to receive the income from certain of her separate property for the remainder of his life, but instead left all of her separate property to her children.

After Ron died, Judy – as executor of Ron's estate – determined that she was entitled to receive the income from Ron's separate property listed in the prenuptial agreement and subsequent amendments rather than distributing that separate property to Ronda and Dana as provided in Ron's 2017 will. Ronda and Dana sued, arguing that the 2017 wills executed by both Ron and Judy either rescinded or mutually abandoned paragraph 10 of the prenuptial agreement. The trial court denied Ronda and Dana's summary judgment motion and granted summary judgment in favor of Judy.

We note that both Ron and Judy breached paragraph 10 of the prenuptial agreement when they executed the 2017 wills without providing that the other would be entitled to the income from the specified separate property. As a result, we conclude that they mutually abandoned paragraph 10 of the prenuptial agreement. This means that Ron's will – which distributed all of his separate property to Ronda and Dana – must be enforced and Judy is not entitled to receive income from the property specified in the prenuptial agreement and amendments.

Accordingly, we reverse the trial court's denial of Ronda and Dana's motion for partial summary judgment and grant of partial summary judgment in favor of Judy, and we remand for the trial court to grant partial summary judgment in favor of Ronda and Dana on this issue.

FACTS

Prenuptial Agreement and 1997 Will

In June 1994 Ron and Judy entered into a prenuptial agreement. In attached schedules, Ron and Judy listed their separate property. Paragraph 10 of the agreement was entitled, "Agreement to Make a Will." Clerk's Papers (CP) at 57. In paragraph 10, Ron and Judy agreed to execute wills in which each would provide income for the other. Specifically, the agreement stated:

> a. Ron's Will. Ron agrees to provide that Judy shall have the income from the following assets for the remainder of her life:
> (1) Profit sharing account in the profit sharing trust of Ronald Larson, DDS, PS;
> (2) Vanguard Group IRA, account no. [ending in] 7515;
> (3) Dean Witter Trust Company account no. [ending in] 4-002.
> Additionally, Ron shall leave Judy his interest in their home.

CP at 57. The agreement contained a similar provision in which Judy agreed to provide income to Ron from certain of her separate property for the remainder of his life.

The prenuptial agreement stated that it was binding on the parties and on their respective heirs. Paragraph 21 of the agreement also stated that it "may only be amended or revoked by a written agreement signed by both parties." CP at 60.

Ron and Judy married in 1994. In 1997, Ron executed a will that expressly incorporated the 1994 prenuptial agreement. The will provided that all community property would be distributed to Judy. The will also created a marital trust for the benefit of Judy, under which she was entitled to receive the income from four of Ron's separate property assets for the remainder of her life. Upon Judy's death, the property in the marital trust would be distributed to his children. The residue of Ron's estate also would be distributed to his children.[2]

On the same day that Ron executed his 1997 will, Ron and Judy signed an agreement amending their prenuptial agreement. The amendment stated that Ron agreed to provide in his will that Judy would receive the income from four specified assets for the remainder of her life. The four assets matched the four assets listed in marital trust provision of the 1997 will.

In 2001, Ron and Judy again amended their prenuptial agreement. The 2001 amendment states:

> With regard to subparagraph a. of paragraph 10. found on page 6, it is deleted in its entirety and the following is substituted in its place:
> a. Ron's Will. Ron agrees to provide that Judy shall have the income from the following assets for the remainder of her life:
> (1) the office building located at 1212 E. 4th, Olympia Washington;
> (2) the duplex at 1200 and 1202 Chestnut, Olympia, Washington;
> (3) Vanguard Account Nos. [ending in] 8686, 7515, 8686 and 8963.

CP at 67.

[2] The assumption is that Judy executed a similar will in 1997, but her will is not in the record.

Ron and Judy once again amended the prenuptial agreement in 2007 in a handwritten document to change Judy's separate property assets from which Ron would be entitled to receive income for the remainder of his life.

2017 Wills

In February 2017, Ron and Judy each executed separate wills. Neither will mentioned the prenuptial agreement.

Ron devised his separate property equally to Dana and Ronda. He left the residue of his estate to Judy in trust. Upon Judy's death or if Judy did not survive him, the remainder of the trust estate would be equally distributed between Dana, Ronda, and Judy's three children.

Judy executed an almost identical will. She devised her separate property equally to her three children. She left the residue of her estate to Ron in trust. Upon Ron's death or if Ron did not survive her, the remainder of the trust estate would be equally distributed between her three children, Dana, and Ronda.

Both wills state that they were neither mutual nor reciprocal. Section 12 of each will stated,

> Although it is my understanding that my spouse is or may be executing a Last Will at or about the time of the execution of this document, it is not my nor our intention that such Wills be construed or deemed to be mutual, reciprocal, or dependent one upon the other, and such Wills are not executed pursuant to any contract or agreement.

CP at 101, 112.

Ron and Judy went together to the same attorney to have their wills redone. Their 2017 wills were signed on the same day and were witnessed by the same two people.

Procedural History

Ron died in August 2022. Judy admitted Ron's will to probate, and Judy was appointed personal representative of his estate. Dana and Ronda submitted a creditor claim stating that

they should receive the office building, duplex, and Vanguard accounts named in the 2001 amendment to the prenuptial agreement. They alleged that Judy improperly transferred the funds to herself, or alternatively that Ron failed to update his beneficiaries on the accounts before his death. Their total claim exceeded $1.5 million. Judy, in her capacity as personal representative of the estate, rejected the creditor claim.

Dana and Ronda subsequently filed suit under the Trust and Estates Dispute Resolution Act (TEDRA), chapter 11.96A RCW. The trial court consolidated the probate of Ron's estate and the TEDRA claims.

Dana and Ronda moved for partial summary judgment on their TEDRA claim. They argued that Ron 's 2017 will specifically devised his separate property to them, and that Ron's and Judy's 2017 wills were an abandonment, modification, or rescission of the inconsistent terms in the 1994 prenuptial agreement (including its 2001 amendment).

Judy cross-moved for partial summary judgment. She argued that Ron's and her wills did not rescind the prenuptial agreement, as there was no meeting of the minds between Ron and Judy to do so with their respective wills. She argued that the wills were non-mutual and not reciprocal, and accordingly could not rescind the prenuptial agreement.

Judy supported her cross-motion for partial summary judgment with two declarations. First, Judy submitted her own declaration. Her declaration described both her and Ron's process of creating the prenuptial agreement and their wills, including how they came to their agreement of separate and community property in their prenuptial agreement. Dana and Ronda objected to Judy's declaration as hearsay and a violation of the Deadman's statute, RCW 5.60.030.

Second, Judy submitted a declaration from Kimberly Stairitis, a paralegal in her attorney's office. Stairitis attested to the value of various Vanguard accounts, including that the

value of real property in the prenuptial agreement that was moved to the Vanguard account at issue in this case. The declaration also identified certain property from which Judy was to live off the income. Dana and Ronda objected to Stairitis's declaration on the basis of a lack of personal knowledge.

The trial court denied Dana and Ronda's summary judgment motion and granted Judy's summary judgment motion. In its oral ruling, the court stated that Ron's and Judy's 2017 wills did not constitute a written contract between the spouses to rescind the prenuptial agreement. The court stated that it did not need to rely on extrinsic evidence for its ruling. The trial court subsequently denied Dana and Ronda's motion for reconsideration.

The court found that disposition of Dana and Ronda's TEDRA claims would not impact other pending issues and that an immediate appeal would not delay trial. The court also found that the amount of money at issue and lack of delay weighed in favor of allowing an immediate appeal.

Dana and Ronda appeal the trial court's denial of their motion for partial summary judgment and grant of partial summary judgment in favor of Judy.

ANALYSIS

A. CONTINUED VALIDITY OF PRENUPTIAL AGREEMENT

Ronda and Dana argue that the trial court erred in granting partial summary judgment to Judy because Ron and Judy's 2017 wills reflected a mutual abandonment of paragraph 10 of the prenuptial agreement. We agree.

1. Standard of Review

We review a trial court's decision on a summary judgment motion de novo. *Mihaila v. Troth*, 21 Wn. App. 2d 227, 231, 505 P.3d 163 (2022). Summary judgment is appropriate only if

there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; CR 56(c). But summary judgment can be determined as a matter of law if the material facts are not in dispute. *Protective Admin. Servs., Inc. v. Dep't of Revenue*, 24 Wn. App. 2d 319, 325, 519 P.3d 953 (2022).

2. Evidentiary Issues

Dana and Ronda argue that the trial court erred in not striking (1) portions of Judy's declaration in violation of the Deadman's statute, RCW 5.60.030; and (2) Stairitis's declaration because it was hearsay and not based on personal knowledge. However, our analysis does not depend on consideration of these declarations. Therefore, we do not address the evidentiary issues.

3. Legal Principles

Prenuptial agreements are contracts subject to the principles of contract law. *Kellar v. Est. of Kellar*, 172 Wn. App. 562, 584, 291 P.3d 906 (2012). Contract interpretation is a question of law when the interpretation does not depend on the use of extrinsic evidence. *Raab v. Nu Skin Enters., Inc.*, 28 Wn. App. 2d 365, 389, 536 P.3d 695 (2023), *review denied*, 2 Wn.3d 1022 (2024). "The primary objective in contract interpretation is to ascertain the mutual intent of the parties at the time they executed the contract." *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 712, 334 P.3d 116 (2014). The focus is on determining the parties' intent based on the reasonable meaning of the contract language. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

A prenuptial agreement will not be enforced if the evidence shows that the parties had a mutual intent to abandon the agreement. *In re Marriage of Fox*, 58 Wn. App. 935, 938, 795 P.2d 1170 (1990). "The burden is upon the spouse seeking to enforce such an agreement to show it

has been strictly observed in good faith." *Id.*; *see also In re Marriage of Sanchez*, 33 Wn. App. 215, 218, 654 P.2d 702 (1982).

This general rule has been recognized more often in cases involving the execution of a will that is inconsistent with a prior community property agreement or separate property agreement. *E.g.*, *In re Estate of Bachmeier*, 147 Wn.2d 60, 65-66, 52 P.3d 22 (2002) (stating that a community property agreement can be abandoned by the execution of an inconsistent will if both spouses have mutual intent to abandon); *Higgins v. Stafford*, 123 Wn.2d 160, 172, 866 P.2d 31 (1994) ("We hold a community property agreement may be rescinded or abandoned by mutual intent clearly demonstrated."); *In re Estate of Lyman*, 7 Wn. App. 945, 948-49, 503 P.2d 1127 (1972), *aff'd*, 82 Wn.2d 693, 512 P.2d 1093 (1973) ("Conduct manifesting an intention to abandon a contract is sufficient if the conduct of one party is inconsistent with the continued existence of the contract and that conduct is known to and acquiesced in by the other.").

In *Higgins*, spouses executed a community property agreement stating that upon the death of either, all community property would pass to the survivor. 123 Wn.2d at 161. Ten years later, the spouses executed a second agreement that prevented the survivor from disposing of the deceased's share of community property by means other than stated in mutual wills that the spouses executed at the same time. *Id.* at 162-63. The issue presented was whether the later agreement and mutual wills rescinded the community property agreement. *Id.* at 164.

The court discussed several cases, including *Lyman*, and stated, "These cases establish that mutual intent to rescind a community property agreement must be demonstrated; unilateral acts inconsistent with the agreement are not enough. However, intent need not be expressly stated. Mutual acts having the effect of rescinding the agreement are sufficient." *Id.* at 168. The

court concluded that the later agreement and the mutual wills were "sufficient as a matter of law to establish an intent to abandon or rescind the community property agreement." *Id.* at 169.

In *Bachmeier*, spouses executed a community property agreement stating that upon the death of either, all community property would pass to the survivor. 147 Wn.2d at 62-63. The husband subsequently filed a petition for legal separation from his wife. *Id.* at 63. The wife later executed a will leaving her residual estate to her daughter and expressly disinheriting her husband. *Id.* After the wife died, the issue was whether the community property agreement or the will controlled. *Id.*

The court noted the holding in *Higgins* that "a [community property agreement] could be rescinded by mutual intent clearly demonstrated through the preparation of mutual wills." *Id.* at 66. However, the court held that the wife's execution of an inconsistent will did not constitute an abandonment of the community property agreement in that case because the wife's act was unilateral, not mutual. *Id.* at 67.

5. Analysis

Here, when Ron and Judy executed their 2017 wills, they both breached their agreements in paragraph 10 of the prenuptial agreement. Ron did not provide in his new will that Judy was entitled to receive the income from certain of his separate property for the remainder of her life as he agreed to do in paragraph 10. And Judy did not provide in her new will that Ron was entitled to receive the income from certain of her separate property for the remainder of his life as she agreed to do in paragraph 10. By this action, Ron and Judy both demonstrated an intent to abandon their obligations under paragraph 10 of the prenuptial agreement.

Judy argues that there was no meeting of the minds to abandon Paragraph 10. But the evidence shows Ron's and Judy's intent was mutual rather than unilateral. Judy is correct that

she and Ron did not execute mutual wills as in *Higgins*. But neither were the execution of their wills unilateral acts as in *Bachmeier*. Ron and Judy went together to have their wills redone, and their wills were drafted by the same attorney. The will provisions are almost identical, particularly in that both Ron and Judy left all of their separate property to their respective children. The wills were signed on the same day and were witnessed by the same two people. These facts establish that Ron and Judy knew that the other was breaching paragraph 10 and acquiesced in that breach.

Judy argues that paragraph 10 of the prenuptial agreement should be enforced because the agreement was never revoked in writing as required in paragraph 21 of the agreement. She appears to imply that paragraph 10 of the prenuptial agreement *automatically* entitled her to receive the income from certain of Ron's separate property asserts for the remainder of her life. That is not accurate. Paragraph 10 states only that Ron *agreed to provide in his will* that Judy would receive certain income. Ron did not provide income for Judy from his separate property in his 2017 will, and now Ron is deceased. Therefore, Ron's agreement in paragraph 10 no longer can be enforced regardless of whether the prenuptial agreement was revoked.

We conclude that Ron and Judy mutually abandoned paragraph 10 of the prenuptial agreement when they both drafted new wills that breached their agreements in paragraph 10. Therefore, we hold that the trial court erred in denying Ronda and Dana's motion for partial summary judgment and granting partial summary judgment in favor of Judy.

B. ATTORNEY FEES ON APPEAL

Both parties request attorney fees under TEDRA's fee provision, RCW 11.96A.150. RCW 11.96A.150(1) states that "[e]ither the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party." RCW

11.96A.150(1) permits the court to order costs from any party to a proceeding, from the assets of an estate, or from any nonprobate asset that is the subject of a TEDRA proceeding. The statute further states,

> The court may order the costs, including reasonable attorneys' fees, *to be paid in such amount and in such manner as the court determines to be equitable*. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

RCW 11.96A.150(1) (emphasis added).

Here, Ronda and Dana are the prevailing parties on appeal. However, this case involved a bona fide question as to the interplay between the prenuptial agreement and Ron's 2017 will. Accordingly, we believe that it is equitable to award attorney fees to Ronda and Dana in the amount of $5,000, to be paid by Judy.

CONCLUSION

We reverse the trial court's denial of Ronda and Dana's motion for partial summary judgment and grant of partial summary judgment in favor of Judy, and we remand for the trial court to grant partial summary judgment in favor of Ronda and Dana on this issue.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

CRUSER, C.J.

CHE, J.

APPENDIX 2

APPENDIX 2

Filed
Washington State
Court of Appeals
Division Two

April 30, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of: RONALD LARSON, Deceased.	No.59186-3-II
RONDA LARSON KRAMER and DANA LARSON, Appellants, v. JUDY LARSON, individually and as Personal Representative of the Estate of Ronald David Larson, Respondent.	ORDER DENYING MOTION FOR RECONSIDERATION

Respondent moves for reconsideration of the court's March 18, 2025 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Cruser, Che

FOR THE COURT:

Maxa, J.

MAXA, J.

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on the date indicated below, I served a true and correct copy of the foregoing document on all parties or their counsel of record as follows:

Court of Appeals, Division II
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Tacoma, WA 98402
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EXECUTED this 3rd day of July, 2025.

/s/ J. Michael Morgan
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July 03, 2025 - 7:50 AM

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Superior Court Case Number:	22-4-00916-5

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