Court of Appeals No. 59186-3-II

SUPREME COURT
OF THE
STATE OF WASHINGTON

In re the Estate of:

RONALD DAVID LARSON, Deceased.

JUDY LARSON, individually,

Petitioner,

v.

RONDA LARSON KRAMER and DANA LARSON,

Respondents.

PETITION FOR REVIEW

JOHN A KESLER III, WSBA #39380
BEAN, GENTRY, WHEELER &
PETERNELL, PLLC
Attorneys for Petitioner
910 Lakeridge Way SW
Olympia, WA 98502-6068
Tel: (360) 357-2852
Fax: (360) 786-6943
Email: jkesler@bgwp.net

I. INTRODUCTION

Judy Larson can tell us what she intended when she signed her 2017 Will. But it is not the intent of her bequests that matter in this case. Rather, what matters is whether she intended the signing of her 2017 Will to revoke a prenuptial agreement. Judy has told us—no, she did not intend to revoke the agreement.

The Court of Appeals ignored Judy's stated intent (and other evidence) in holding Judy's Will means something different than what Judy says she intended. Moreover, the Court of Appeals ignored prior decisions, including that Court's own decision in *In re Estate of Catto*, 88 Wn. App. 522, 944 P.2d 1052 (Div. 2 1997), and this Court's decisions in *In re Estate of Wittman*, 58 Wn.2d 841, 365 P.2d 17 (1961), and *In re Estate of Bachmeier*, 147 Wn.2d 60, 52 P.3d 22 (2002).

Judy's 2017 Will was not a reciprocal and/or mutual Will. It was not a contract/agreement. It was not based on any consideration. In other words, Judy's Will was not a document

involving two or more parties—the only person who matters about what Judy intended when she signed her Will is Judy.

In a light most favorable to Judy, her stated intent is controlling. This is particularly true when Judy's stated intent is consistent with other evidence. This case derives from a summary judgment motion and cross motion that was decided in Judy's favor at the Trial Court level, but which the Court of Appeals reversed. The Courts should not rule on summary judgment that Judy's intention was something different than what Judy says she intended.

Reaching a conclusion as to the meaning of Judy's 2017 Will, vis-à-vis the bequests that would potentially have been made if she had died, is irrelevant. Again, this is not a case about the construction of the language of Judy's Will. This case is about whether Judy intended to breach her prenuptial agreement when she signed her 2017 Will. Judy's intent matters in the context of this case.

II. IDENTITY OF PETITIONER

The Petitioner is Judy Larson. She is seeking this Court to review the decision of the Court of Appeals. Judy was the Appellee for purposes of the decision made by the Court of Appeals. Judy was the Respondent in the Trial Court matter. The opposing parties are Judy's step-daughters—Dana and Ronda Larson.

III. COURT OF APPEALS DECISION

Judy seeks review of the decision filed by Division II of the Court of Appeals filed on March 18, 2025, reversing the Trial Court's Order. The Trial Court denied the summary judgment motion filed by Ronda and Dana, and the Trial Court granted the cross-motion for summary judgment filed by Judy. The Court of Appeals' decision is attached; Appendix A. The Court of Appeals denied a timely Motion for Reconsideration by Order dated April 30, 2025. The Court of Appeals' Order denying reconsideration is also attached; Appendix B.

IV. ISSUES PRESENTED FOR REVIEW

A. Should the focus be on Judy's intent regarding why she signed her 2017 Will, as opposed to interpreting the language of the Will?

B. Should extrinsic evidence be considered in the context of determining whether Judy intended to breach her prenuptial agreement by signing her Will?

C. In a light most favorable to Judy, are there questions of fact whether she intended to revoke her prenuptial agreement?

D. Should the Trial Court's decision be reinstated given that Judy's stated intent—she did not intend to revoke her prenuptial agreement—is uncontroverted?

E. Regardless of Judy's intent, do the facts fail to establish Ron and Judy's mutual assent to revoke their prenuptial agreement either in writing or by acts?

F. Was Judy justified in enforcing the terms of the prenuptial agreement without having to resort to suing the Estate for breach of that agreement?

V. STATEMENT OF THE CASE

A. Judy married Ron Larson in 1994, and they signed a prenuptial agreement before their marriage.

Ron and Judy Larson were married in 1994. CP 138. They signed a prenuptial agreement before they got married. CP 139. Ron and Judy both signed their prenuptial agreement, which is dated June 29, 1994. CP 139.

B. Ron and Judy amended their prenuptial agreement multiple times, and knew how to do it.

The 1994 prenuptial agreement that Ron and Judy signed, states by its own terms that it could only be amended or revoked "by a written agreement signed by both parties." CP 152. Ron and Judy understood what they needed to do to amend or revoke their agreement, and they amended it multiple

times over the years—each time both signing the same written document. CP 139 and CP 158-164.

C. Ron and Judy executed Wills in 2017, which did not express an intent to revoke their prenuptial agreement.

Ron and Judy signed Wills in 2017 that state by their own terms they are not mutual and/or reciprocal Wills. Their 2017 Wills were not based on any agreement. Their 2017 Wills did not reference the prenuptial agreement. Ron and Judy each signed their own Will—they did not sign each other's Will, and did not otherwise sign any mutual document. There is no express revocation of their prenuptial agreement in any Will. CP 141-142 and CP 166-186.

In other words, the Wills did not expressly state they were based on an agreement to revoke the prenuptial agreement. Nor did Ron and Judy take any steps to revoke their prenuptial agreement pursuant to the requirements of that agreement—*i.e.,* they did not sign a mutual document. *Id*.

D. Judy has testified it was not her intent to revoke the prenuptial agreement. Judy's testimony is supported by other, objective evidence.

Judy believed the purpose for signing a Will in 2017 was tax planning. Judy did not intend for anything about her and Ron's prior planning and agreements to change when she signed her 2017 Will. Judy has expressly testified that she did not believe signing her 2017 Will changed the prenuptial agreement. CP 141-142.

Judy was not advised that signing her Will would change anything about her prenuptial agreement. Moreover, when Ron and Judy went to have new Wills done, they provided their attorney who drafted the Wills with information that indicated Ron and Judy intended to follow through with what they had agreed to in their prenuptial agreement. CP 139-142 and CP 188-203; *see also*, CP 132-137.

E. Judy was named by Ron to serve as personal representative of his estate with non-intervention powers. It

was within Judy's authority to honor the prenuptial agreement without having to sue the estate in her individual capacity for breach of contract. Moreover, Judy did not assess Ron's operative Will as breaching their prenuptial agreement.

Judy was named as personal representative of Ron's estate with non-intervention powers. CP 177-186. Judy believed the prenuptial agreement was still valid, and was not advised otherwise—even by the attorney who drafted Ron's Will. CP 140-142.

F. The Court of Appeals decided that Judy intended to breach her prenuptial agreement based on an interpretation of Judy's Will that contradicts Judy's stated intent. Even if a construction of the language in Judy's Will might lead to a result she did not intend, such construction does not override Judy's intent regarding whether she intended to breach her prenuptial agreement.

Judy's 2017 Will does not reference the 1994 prenuptial agreement. For the Court of Appeals to have determined the 1994 agreement was revoked by the Will, the Court had to look beyond the Will and at the prenuptial agreement. This is not a case about just looking at one document (or two), and interpreting it (them). In between the gap of the 1994 agreement and 2017 Will, is Judy's intent. Here again, the intent that bridges the gap is not what the language in any particular document is intended to mean. Rather, the intent that matters has to do with why each document was signed. Judy has stated her intent for signing the Will was tax planning, and there was no intent to revoke the prenuptial agreement.

However, the Court of appeals concluded the Will contradicted the prenuptial agreement—and, then from that conclusion made another conclusion that Judy implied that she intended to revoke the prenuptial agreement. In reaching the conclusion that Judy impliedly intended to revoke the prenuptial agreement, the Court of Appeals ignored Judy's

testimony about her intent and ignored evidence supporting Judy's testimony.

VI. ARGUMENT FOR WHY REVIEW SHOULD BE ACCEPTED

A. The Court of Appeals' decision ignores precedent, and, if that decision stands, it would muddy the waters related to analyzing whether agreements between spouses are valid. Precedent holds that actions manifesting an intent to revoke a spousal agreement must leave no doubt as to the intention to revoke. Courts should not be permitted to rule on summary judgment that there is an implied revocation where there is doubt about intent to revoke.

There are multiple reported cases where the Courts have analyzed whether an agreement between spouses has been revoked by one or both of the spouses later executing a Will (or Wills) inconsistent with the spousal agreement. The only case briefed by the parties and/or mentioned by the Court of Appeals

where a spousal agreement was deemed revoked by inconsistent Wills is *Higgins v. Stafford*, 123 Wn.2d 160, 866 P.2d 31 (1994). The *Higgins* case is distinguishable. And in every other case, the spousal agreement was deemed to have *not* been revoked by an inconsistent Will (or Wills).

1. *Higgins*

In *Higgins*, *supra.*, spouses signed an agreement in 1967. In 1977, the spouses signed mutual Wills and also signed an additional, new agreement. The purpose of the new agreement was to prohibit the surviving spouse from disinheriting the children of the spouse who might pass away first; the spouses both had children from prior relationships. 123 Wn.2d at 160.

The wife died first, and after she died the husband made a new Will disinheriting his step-children. After the husband died, his children argued the 1967 agreement authorized the husband to disinherit his step-children. In that context, the Court ruled the 1967 agreement had been rescinded by the

mutual Wills and the new agreement signed by the spouses in 1977. *Higgins*, *supra*.

The main reason why *Higgins* is distinguishable from the present matter is—it was not just Wills, which were mutual, the spouses signed in *Higgins* that revoked their prior agreement. Those spouses also executed a new agreement in addition to their Wills. It must be noted the new agreement in 1977 in the *Higgins* matter was signed by both spouses and contradicted their previous spousal agreement. 123 Wn.2d at 169.

In the present matter, Ron and Judy's 2017 Wills were by their own terms not mutual and/or reciprocal Wills. Nor did Ron and Judy's 2017 Wills mention any new agreement. Ron and Judy did not enter any separate, additional agreement that communicated any intent to revoke their prenuptial agreement.

Ron and Judy's prenuptial agreement contained instructions, which they agreed to, regarding how to amend or revoke their prenuptial agreement. Ron and Judy made multiple amendments, and, thereby signaled they knew how to

amend or revoke their prenuptial agreement if they desired. But Ron and Judy never did sign any agreement that expressly revoked their prenuptial agreement.

2. *Lyman*

The Court of Appeals' decision mentions *In re Estate of Bachmeier*, 147 Wn.2d 60, 52 P.3d 22 (2002) and *In re Estate of Lyman*, 7 Wn. App. 945, 503 P.2d 1127 (Div. 1 1972). In *Lyman*, the spouses entered an agreement in 1964 and signed Wills at that time consistent with their agreement. 7 Wn. App. at 946. The spouses later separated and the wife filed for divorce on September 11, 1970. *Id*. A week later, the husband made a new Will that contradicted the 1964 agreement. The husband then passed away shortly thereafter and a dispute arose as to whether the 1964 agreement or 1970 Will would control. *Id.* at 946-47. The Court held the spousal agreement remained valid. *In re Estate of Lyman*, *supra*.

In so holding, the Court determined the wife's conduct of filing for divorce did not indicate an intention to revoke an

existing spousal agreement. Nor could the husband's unilateral intent potentially evidenced by his Will be enough to revoke the spousal agreement. Regarding the wife's conduct, the Court reasoned:

> Uncommunicated subjective mutual intention to abandon is not enough. The intention of each party, to be legally operative, must be a manifested intention. In the absence of words, there must be conduct, or if there be both words and conduct, such words and conduct together must provide sufficient evidence from which a fair inference of their intention may be ascertained. Restatement of Contracts §§ 20, 21, 22 (1934).
>
> Intention manifested in the manner described consists both of foresight of the consequences to follow from an act and a desire to do the thing foreseen. O. Holmes, Common Law 53 (1881), states it this way:
>
> Intent again will be found to resolve itself into two things; foresight that certain consequences will follow from an act, and the wish for those consequences working as a motive which induces the act.
>
> See also J. Salmond, Jurisprudence § 89, at 367-72 (12th ed. P. Fitzgerald 1966); G. Paton, Jurisprudence § 68, at 275 (3d ed. D. Derham 1964); R. Dias, Jurisprudence 287-93 (3d ed. 1970).

In re Estate of Lyman, 7 Wn. App. at 949.

Here, there is no evidence Judy foresaw that signing her new Will in 2017 might revoke the 1994 prenuptial agreement. Nor is there evidence Judy had any motive for revoking the prenuptial agreement. Judy has testified that she believed the new Will was for tax planning purposes, and that nothing was going to change in regards to the prenuptial agreement. Also, there is no evidence Ron and/or Judy behaved differently after they signed their new Wills in 2017 compared with how they behaved from 1994 until 2017 with respect to their treatment of each other's separate property.

3. *Bachmeier*

In re Estate of Bachmeier, 147 Wn.2d 60, is similar to *In re Estate of Lyman*, *supra*. In *Bachmeier*, spouses entered an agreement in 1977. In February 1998, the husband filed for divorce. The wife executed a Will in July 1998 that was inconsistent with the 1977 agreement. The wife died a short time later. Argument ensued over whether the wife's 1998 Will revoked the 1977 agreement. Here again, the Court determined

the conduct of separating nor the act of making an inconsistent Will were grounds to hold a spousal agreement had been revoked. *In re Estate of Bachmeier*, *supra*.

The Court explained its decision was based in part on the absence of evidence that the husband knew the wife had made a new Will. However, the decision was also based on the Court refusing to imply the spousal agreement could be terminated in some way that was not expressly stated in that agreement. 147 Wn.2d at 67–69.

Here, Judy knew Ron was making a new Will at the same time she was making a new Will. But the Wills by their own terms are not dependent on each other. And Judy has explained she did not intend for her Will to revoke the prenuptial agreement. Judy's explanation is supported by evidence (*e.g.,* handwritten notes indicating that certain of Ron and Judy's separate assets were to be handled differently than others) the parties intended for their prenuptial agreement to remain in effect.

Moreover, Ron and Judy's prenuptial agreement expressly stated how it could be revoked. Nothing in the prenuptial agreement states it could be revoked by separate, inconsistent Wills.

4. *Wittman*

The Court of Appeals' decision ignored the cases of *In re Estate of Wittman*, 58 Wn.2d 841, 365 P.2d 17 (1961) and *In re Estate of Catto*, 88 Wn. App. 522, 944 P.2d 1052 (Div. 2 1997). In *In re Estate of Wittman*, *supra*., the spouses entered an agreement in 1949. In May 1957, the wife made a Will inconsistent with the 1949 agreement—and, in so doing indicated that she understood her husband was doing something inconsistent too. In October 1957, the husband made a Will inconsistent with the 1949 agreement. The husband died in 1959. 58 Wn.2d at 842.

The administrator of the husband's estate became aware of the 1949 agreement and decided to follow it, despite the Will. Beneficiaries of the husband's Will contested that

decision. The Court ruled the 1949 agreement was valid and controlled—even though both spouses had made Wills inconsistent with their agreement. *Id.* at 842-43.

The Court reasoned that the conduct of both spouses making Wills inconsistent with their spousal agreement did not rescind the agreement because the conduct did not reflect there was a meeting of the minds to rescind the agreement. The Court placed importance on the fact that while the spouses may have suspected the other of doing something inconsistent with their agreement, the spouses did not specifically know that to be true. *Id.* at 844-45.

In the present matter, Judy and Ron's wills are not mutual and/or reciprocal Wills. They do not state by their terms they rely on the other making a Will. But it is undisputed that Judy knew Ron was making a Will, and that Ron knew Judy was making a Will. However, there is no evidence that Ron and/or Judy knew their Wills were revoking their prenuptial agreement. The evidence of Ron and Judy's notes provided to

the attorney who drafted their Wills indicates the opposite—*i.e.,* that they wanted to follow their prenuptial agreement. The act of Ron and Judy making new Wills in 2017 do not, under the facts in this case, evidence a meeting of the minds to revoke their 1994 prenuptial agreement.

5. *Catto*

In *In re Estate of Catto*, 88 Wn. App. 522, the spouses were married in 1989 and signed an agreement. They physically separated in 1992. In 1993, the wife prepared a new Will that was inconsistent with the 1989 agreement. The wife then filed for divorce. Shortly thereafter, the wife passed away. 88 Wn. App. at 525.

The Court upheld the validity of the agreement despite the spouses' separation, pending divorce case, and one inconsistent Will. The Court did not find there was mutual assent to revoke the agreement, and refused to imply terms to the agreement—*i.e.,* that it could be revoked by conduct that the

agreement did not say would constitute revocation. 88 Wn. App. at 527-29.

Here, Ron and Judy's prenuptial agreement does not say that it can be revoked by one or both of them executing inconsistent Wills. It would be wrong to imply that such conduct constitutes a revocation. The prenuptial agreement is clear about how it must be revoked—there must be a writing that both parties sign. Ron and Judy did not revoke their agreement the way they agreed it had to be revoked. The agreement remains valid.

"Prenuptial agreements are contracts subject to the principles of contract law." *Dewberry v. George*, 115 Wn. App. 351, 364, 62 P.3d 525 (Div. 1 2003) (citing *In re Marriage of Burke*, 96 Wn. App. 474, 477, 980 P.2d 265 (Div. 3 1999)). In contract law, an agreement may be rescinded by express agreement or "by any course of conduct clearly indicating a mutual assent to the termination or abandonment of the contract." *Spinning v. Drake*, 4 Wash. 285, 292, 30 P. 82

(1892). If the revocation is not in writing, but is to be proved by acts alone, "they must be such as leave no doubt as to such intention." *Id*.

Here, there is no express agreement stating that Ron and/or Judy intended to revoke their prenuptial agreement. The prenuptial agreement itself states it can only be revoked in a writing signed by both parties—and there is no dispute that no such writing exists. The 2017 Wills, while they may be interpreted as contradicting the prenuptial agreement, do not expressly revoke the agreement.

Since there is no writing that revokes the prenuptial agreement as required by its terms, the only argument for potentially holding the prenuptial agreement was rescinded is by determining whether Ron and Judy acted in a way that leaves no doubt as to their mutual assent to revoke their prenuptial agreement. For mutual assent to exist, it must be determined Judy intended to revoke the prenuptial agreement through her acts.

The Court need not interpret Judy's Will. What Judy intended with her bequests based on the language of her Will is largely irrelevant to whether she intended to revoke her prenuptial agreement by signing the Will. Judy's intent, vis-à-vis whether she intended to revoke the prenuptial agreement—requires an understanding of the context for Judy signing her 2017 Will. Extrinsic evidence must be reviewed to understand the context. *See, e.g., Higgins*, 123 Wn.2d at 165 (citing *In re Estate of Brown*, 29 Wn.2d 20, 28, 185 P.2d 125 (1947)) ("The court will give great weight of evidence of the parties' intent, 'looking to the wording of written agreements… and consider[ing] all the circumstances souring the transaction, including the subject matter and subsequent acts of the parties.'").

Prenuptial agreements have been held invalid based on the conduct of the spouses, such as in a case where the agreement was never observed. *See, e.g., In re Marriage of Fox*, 58 Wn. App. 935, 795 P.2d 1170 (1990); *and see, In re*

Marriage of Sanchez, 33 Wn. App. 215, 654 P.2d 702 (Div. 3 1982). The facts in the present matter do not show that Ron and Judy failed to observe their prenuptial agreement. This is where the context of the creation of the 2017 Wills is important.

After Ron and Judy entered their prenuptial agreement in 1994, they amended it multiple times—thereby ratifying the continued existence and significance of the agreement. When Ron and Judy had their new Wills prepared in 2017, they provided their attorney with notes consistent with the prenuptial agreement. Ron and Judy did not change the way they did things after signing new Wills in 2017. And after Ron passed, Judy began to administer the estate in a way that was consistent with the prenuptial agreement. The facts in this case do not establish an intent to revoke the prenuptial agreement…definitely not without a doubt in the light most favorable to Judy.

No case (other than the Court of Appeals' decision in this matter) holds that Wills contradicting a spousal agreement by

the Will(s) itself/themselves is enough to revoke the agreement. This is because it is legally incorrect to imply mutual assent to revoke based on just the fact of having a new Will. There must be more. And, here, there is not more.

Judy took appropriate steps to administer Ron's Estate consistent with the prenuptial agreement. It would not have been logical for Judy in her individual capacity to sue Ron's Estate for breach of the prenuptial agreement—even if Judy had believed there was any such breach. And it was appropriate for the Trial Court to grant summary judgment in Judy's favor based on: (1) the absence of any express agreement revoking the prenuptial agreement in the manner required by that agreement for such a revocation; and (2) the lack of evidence creating a material issue of fact that Judy intended to revoke the prenuptial agreement when she signed her 2017 Will.

B. Enforcing agreements between spouses is of vital public interest.

"Public policy favors prenuptial agreements because they are 'generally regarded as conducive to marital tranquility and the avoidance of disputes about property in the future.'" *Dewberry v. George*, 115 Wn. App. at 364 (quoting *Friedlander v. Friedlander*, 80 Wn.2d 293, 301, 494 P.2d 208 (1972)). It follows that it would be against public policy to prohibit the enforcement a valid prenuptial agreement. As explained above, Ron and Judy's 1994 prenuptial agreement remains valid. There is no evidence of mutual assent to revoke the agreement, because there is no evidence Judy intended to revoke the agreement. An inconsistent Will does not on its own establish revocation.

The Court of Appeals' decision has the potential to be abused. It is easy to imagine situations where a spouse could orchestrate the unintended revocation of an agreement by their other spouse, if an agreement could be unknowingly revoked by a document that is not expressly related by its terms. Public policy favor prenuptial agreements. Good public policy is not

allowing agreements to be revoked unless they are revoked in accordance by their express terms or by actions that leave no doubt as to intent.

VII. CONCLUSION

The Court of Appeals' decision holds that a party to a prenuptial agreement can accidentally void the agreement by signing a revocable Will that is never given effect—even when the party denies intending to revoke the agreement—and, even when the act of making a new Will is the only time the spouse(s) arguably ever did anything inconsistent with their agreement. The Court of Appeals' decision contradicts established law that revoking an agreement requires mutual assent.

Mutual assent to revoke can only exist if the parties intended to revoke. Evidence of such intent must be shown with an express writing or acts. There is no express revocation of the prenuptial agreement here; only the potential that the act of executing the 2017 Wills signaled a revocation. However, a

revocation by acts must leave no doubt as to the intention to revoke. Here, there is plenty of doubt based on Judy's stated intention and other evidence. The Court of Appeals should not have overturned the decision of the Trial Court. Judy should be the prevailing party on summary judgment. At a minimum, a trier of fact should decide whether the prenuptial agreement remains valid.

Even the creation of Wills intended to contradict a previous spousal agreement has been held to lack evidence of the mutual assent necessary to revoke an agreement. Never before has there been a case where an agreement between two spouses was held to be revoked where: (1) the agreement required revocation to be expressly in writing in a document signed by both parties, and no such document exists; (2) the parties never said they intended to revoke their agreement (and one party specifically says they did not so intend); (3) the parties never signed a new agreement; and (4) the parties actions were consistent with their agreement, except for one

time (when they signed Wills that Judy says she thought was just for tax planning, and did not change anything).

The Court of Appeals reached the wrong decision. It should be set right. Not only for Judy, but for any other spouse with an agreement who would be damaged if their agreement was not enforced. It would be a bad precedent to set for a spouse to be able to get out of an agreement by signing new Wills—even when the Wills say nothing about revoking the agreement and the unsuspecting spouse believes they are just doing something beneficial for tax purposes that will not change anything about how the spouses intend to take care of each other upon the death of the first spouse to pass.

Pursuant to RAP 18.17(c), I hereby certify that the number of words contained in the foregoing document is 4,535.

RESPECTFULLY SUBMITTED this 28th day of May, 2025.

BEAN, GENTRY, WHEELER & PETERNELL, PLLC
Attorneys for Judy Larson

s/John A Kesler III
JOHN A KESLER III, WSBA #39380

VIII. APPENDIX A

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.

VIII. APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

April 30, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

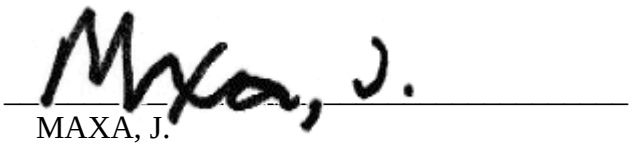
In the Matter of the Estate of: RONALD LARSON, Deceased.	No.59186-3-II
RONDA LARSON KRAMER and DANA LARSON, Appellants, v. JUDY LARSON, individually and as Personal Representative of the Estate of Ronald David Larson, Respondent.	ORDER DENYING MOTION FOR RECONSIDERATION

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.

PROOF OF SERVICE

I certify that I caused to be served a copy of the foregoing document on all other parties or their counsel of record on the date below as follows:

Court of Appeals, Division II
909 A Street, Suite 200
Tacoma, WA 98402
via Washington Court of Appeals portal

J. Michael Morgan
J. Michael Morgan, PLLC
1800 Cooper Point Road SW, Bldg. 12
Olympia, WA 98502
mike@jmmorganlaw.com
via electronic transmission

Todd Rayan
P. O. Box 210
Centralia, WA 98531
todd@centralialaw.com

☐ US Mail Postage Prepaid

☒ Electronic mail

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of May, 2025, at Olympia, Washington.

s/Pamela R. Armagost
PAMELA R. ARMAGOST

BEAN GENTRY WHEELER & PETERNELL

May 28, 2025 - 3:57 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	In re the Estate of: Ronald David Larson (591863)

The following documents have been uploaded:

- PRV_Petition_for_Review_20250528155614SC608687_6669.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review FOR COURT FILING.pdf

A copy of the uploaded files will be sent to:

- mike@jmmorganlaw.com
- todd@centralialaw.com

Comments:

Sender Name: Pamela Armagost - Email: parmagost@bgwp.net
Filing on Behalf of: John A KeslerIII - Email: jkesler@bgwp.net (Alternate Email:)

Address:
910 Lakeridge Way SW
OLYMPIA, WA, 98502
Phone: (360) 357-2852

Note: The Filing Id is 20250528155614SC608687