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No. 71732-4-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THE ESTATE OF VIRGINIA J. JEPSEN; and JULIE MILES, Personal
Representative,

Appellants,

v.

MACK JEPSEN, an individual,

Respondent.

DISCRETIONARY REVIEW FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE EDMUND MURPHY

PETITION FOR REVIEW BY SUPREME COURT

DAVIES PEARSON, P.C.

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A. IDENTITY OF PETITIONER

Appellant Julie Miles, as Personal Representative of the Estate of Virginia J. Jepsen (the Estate), petitions the Court to accept review of the unpublished decision of the Court of Appeals, Division I that is designated in Part B of this petition for review.

B. COURT OF APPEALS DECISION

In its September 8, 2014 unpublished opinion, the Court of Appeals, Division I denied the Estate's arguments on discretionary review regarding the jurisdictional prerequisites of the will contest statute, RCW 11.24.010, which was substantially amended in 2007.¹ A copy of this opinion is attached hereto as Appendix B. The Estate seeks review of all portions of this opinion.

C. ISSUE PRESENTED FOR REVIEW

1. Petitioner Mack Jepsen filed a will contest petition but never personally served the Estate's personal representative. The will contest statute, as amended in 2007, is not waivable and requires a petitioner to both file a timely will contest and timely serve the personal representative in order to invoke the court's jurisdiction. Because Mr. Jepsen failed to comply with the express requirements of the will contest statute, is the probate of Virginia Jepsen's will final and binding? YES.

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¹ A copy of the text of RCW 11.24.010 is attached hereto as Appendix A.

D. STATEMENT OF THE CASE

Virginia Jepsen executed her Last Will and Testament, in which she made no provision for her sons Mack and Michael Jepsen, on July 1, 2009. CP at 1-12. Instead, Ms. Jepsen provided for her grandchildren and her longtime friend, Julie Miles. CP at 4-12. Ms. Jepsen also nominated Ms. Miles to serve as her personal representative. CP at 8.

On November 16, 2011, Ms. Jepsen passed away. CP at 1. On December 20, 2011, the Pierce County Superior Court entered an order admitting Ms. Jepsen's will to probate, declaring the Estate solvent, and appointing Ms. Miles to serve as personal representative of the Estate without bond and without further intervention of the court. CP at 15-17. On December 29, 2011, counsel for the Estate mailed notice of the probate proceedings and Ms. Miles's appointment as personal representative to Ms. Jepsen's heirs, including petitioner Mack Jepsen. CP at 20-22.

Shortly after the probate began, Mr. Jepsen filed a Request for Special Notice under RCW 11.28.240 and requested a copy of the Estate's inventory from the Estate's counsel. CP at 24-25, 174. Counsel for the Estate and Mr. Jepsen spoke regarding the Request for Special Notice and the inventory, which was provided in June 2011. CP at 174-76.

On March 22, 2012, just over three months after Ms. Jepsen's will was admitted to probate, Mr. Jepsen filed a will contest petition seeking to

invalidate the will. CP at 26-28. Although Mr. Jepsen filed his will contest petition, it was never served on Ms. Miles, the personal representative of the Estate. CP at 26, 173-77. Instead, Mr. Jepsen's attorney e-mailed a copy of the will contest petition and summons to Ms. Miles's attorney. CP at 26, 173-77. But the Estate's counsel never consented to receive service of original process on Ms. Miles's behalf, as The Estate is not authorized to accept service on Ms. Miles's behalf and has never made any written acceptance or admission of service of original process on the Estate's behalf. CP at 173-77.

June 20, 2012 was the ninetieth day following Mr. Jepsen's filing of his will contest petition. *See* CP at 26-28. Mr. Jepsen, however, has failed to personally serve original process relating to his will contest on the personal representative by June 20, 2011 or since. CP at 173-77.

Based on Mr. Jepsen's failure to satisfy the requisites of the will contest statute, the Estate moved for its dismissal. CP at 54. Although the trial court granted the Estate's motion for dismissal, it reconsidered that order and ultimately entered an order vacating its order dismissing the will contest petition, which would allow Mr. Jepsen's will contest to proceed. CP at 231-33, 266-67. The Court of Appeals granted the Estate's request for discretionary review of the trial court's order on reconsideration. *See* CP at 268-70. The Estate asks this Court to accept review of the Court of

Appeals' opinion because it presents an issue of substantial public importance that should be determined by this Court, namely confirming the statutory filing and service jurisdictional prerequisites that must be satisfied under the amended will contest statute.

E. ARGUMENT

The Court of Appeals' opinion in this matter overlooked the plain language of the recently amended will contest statute, which imposes definite filing and service requirements that must be met before a petitioner may invoke a superior court's jurisdiction, and relied on this Court's opinion in *Estate of Kordon*,² which analyzes the former will contest statutes—which the Legislature has substantially amended—in erroneously determining that Mr. Jepsen properly invoked the trial court's jurisdiction to consider his will contest petition.

This Court will accept review of a Court of Appeals decision terminating review if it is in conflict with another decision of the Court of Appeals or involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(2), (4).

This Court should accept review because this case presents an issue of substantial public interest that should be determined by this Court and the

² Reported at 157 Wn.2d 206, 137 P.3d 16 (2006), and attached hereto as Appendix C.

Court of Appeals' opinion conflicts with its analyses of other, similarly structured special proceedings statutes.

1. *This appeal presents an issue of substantial public interest that should be determined by this Court.*

This appeal involves an issue of substantial public interest that should be determined by this Court because it presents a critical issue of statutory construction regarding the jurisdiction of Washington courts to consider will contest petitions under chapter 11.24 RCW, as amended, and chapter 11.96A RCW (TEDRA); the Court of Appeals, however, erroneously resolved this case according largely to this Court's opinion in *Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006), which analyzed the former will contest statutes. In light of the recent amendments to chapter 11.24 RCW, the issue presented in this appeal is an issue of first impression that should be determined by this Court because the Court of Appeals' opinion sets out an incorrect jurisdictional standard for will contests, as discussed below.

2. *Will contests are statutory proceedings governed by the plain language of chapter 11.24 RCW, which requires a petitioner to both (a) file and (b) personally serve the personal representative with original process within the strict, four-month limitations period.*

The meaning of a statute and, if necessary, statutory construction are issues of law that appellate courts review de novo. *Dep't of Ecology v.*

Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); *Anderson v. Dussault*, -- Wn.2d --, ¶18, 333 P.3d 395 (2014) (Case No. 89788-3, Decided September 4, 2014). An appellate court’s primary purpose in conducting this review is to “ascertain and effectuate the intent of the legislature” and, where the plain language of the statute is unambiguous, an appellate court will “assume[] the legislature means what it says and will not engage in statutory construction past the plain meaning of the words.” *Anderson*, -- Wn.2d at ¶¶18, 21. Although Washington courts may harmonize the provisions of two statutes that address the same subject matter and appear inconsistent, it is a canon of statutory construction that the later and the more specific statute controls over the earlier and more general one. *Anderson*, -- Wn.2d at ¶¶18, 24.

Will contests are special proceedings that are governed by chapter 11.24 RCW. *Kordon*, 157 Wn.2d at 209; *Estate of Toth*, 138 Wn.2d 650, 653, 981 P.2d 439 (1999); *Estate of Palucci*, 61 Wn. App. 412, 415, 810 P.2d 970 (1991); RCW 11.96A.090(1). “Jurisdiction over a will contest is governed by RCW 11.24.010” *Matter of Crane's Estate*, 15 Wn. App. 161, 162, 548 P.2d 585 (1976). Will contest proceedings are also “matters” that are supplemented—but not superseded—by chapter 11.96A RCW (TEDRA). *Kordon*, 157 Wn.2d at 210-12; RCW 11.96A.080(2). “The jurisdiction of the trial court [in will contest matters] is derived

exclusively from the statute[s], and may be exercised *only* in the mode and under the limitations therein prescribed.” *Palucci*, 61 Wn. App. at 415 (quoting *Estate of Van Dyke*, 54 Wn. App. 225, 228, 772 P.2d 1049 (1989) (emphasis added)).

Will contests are subject to a strict four-month statute of limitations, which begins to run on the date that a will is admitted to probate. RCW 11.24.010; *Toth*, 138 Wn.2d at 653. “A court has *no jurisdiction* to hear and determine a [will] contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction.” *Kordon*, 157 Wn.2d at 214 (internal citations omitted)(emphasis added). Indeed, “where the statute authorizes the contest of a will, and specifies the time within which such contest may be instituted, *the court has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute.*” *Toth*, 138 Wn.2d at 656 (quoting *State ex. Rel. Wood v. Superior Court for Chelan Cnty.*, 76 Wash. 27, 30-31, 135 P. 494 (1913) (emphasis added)). The Legislature’s historical objective . . . has been to shorten the [statute of limitations period] for will contests.” *Estate of Peterson*, 102 Wn. App. 456, 462, 466-67, 9 P.3d 845 (2000). Even factual inequities that may result from enforcing the will contest statute’s strict four-month

limitations period “do not justify circumventing [the clear limitations period] rule articulated by the Legislature.” *Toth*, 138 Wn.2d at 657.

The legislature significantly amended RCW 11.24.010 in 2007, providing specific criteria for a petitioner to toll the four-month limitations period and properly commence a will contest matter; it states:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. . . .

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served on the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

(Emphasis added). Accordingly, in order to properly invoke the superior court’s jurisdiction in a will contest, a petitioner must: (1) file a petition in the proper court within four months of the will being admitted to probate (timing requirement) and (2) personally serve the personal representative within 90-days of filing the petition (service requirement). RCW 11.24.010. Under the plain language of RCW 11.24.010, a petitioner’s

failure to meet both the timing and service requirements “the [will contest] action is deemed to not have been commenced for purposes of tolling the statute of limitations . . . [and] the probate or rejection of such will shall be binding and final.” In special proceedings, all statutory procedural requirements must be met before a person may properly invoke a court’s jurisdiction. *See Overhulse Neighborhood Ass’n v. Thurston Cnty.*, 94 Wn. App. 593, 597, 972 P.2d 470 (1999).

Before the legislature’s 2007 amendments took effect, however, RCW 11.24.010 did not specifically require a person contesting a will to personally serve the personal representative. *See Former RCW 11.24.010* (1994). It stated:

If any person interested in any will shall *appear* within four months immediately following the probate or rejection thereof, and *by petition to the court* having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. . .

If no person *shall appear* within the time under this section, the probate or rejection of such will shall be binding and final.

Former RCW 11.24.010 (1994) (emphasis added).³ Former “RCW 11.24.010 [(1994)] does not even discuss notice to the interested party.” *Toth*, 138 Wn.2d at 654.

³ Attached hereto as Appendix D is a copy of Chapter 475 to the Washington Legislative Service Report for 2007, which shows the Legislature’s 2007 amendment to RCW 11.24.010 on page 5.

In addition to significantly amending RCW 11.24.010 in 2007, the legislature also made notable amendments to RCW 11.24.020, which addresses notice of will contest petitions, in 2006. It now states:

Upon the filing of the petition referenced in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or to their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in RCW 11.96A.030(5).

RCW 11.24.020.⁴ As amended, RCW 11.24.020 requires that notice be provided as established under RCW 11.96A.100, which requires that a summons “be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court” RCW 11.96A.100(2) (enacted in 2001).⁵ But, before RCW 11.24.020 was amended, it required that, upon filing of a will contest petition, the petitioner issue “a citation . . . to the executors . . . requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted.” Former RCW 11.24.020 (1965).⁶

⁴ A copy of the text of RCW 11.24.020 is attached hereto as Appendix E.

⁵ Under TEDRA generally, original service of a petition must be effected by personal service or by mail. See RCW 11.96A.100(3); RCW 11.96A.110(1).

⁶ Attached hereto as Appendix F is a copy of Chapter 360 to the Washington Legislative Service Report for 2006, which shows the Legislature’s 2006 amendment to RCW 11.24.020 on page 6.

Consequently, under Former RCW 11.24.010 (1994) and Former RCW 11.24.020 (1965), a petitioner could properly commence a will contest matter—and, thus, toll the strict four-month statute of limitations—by only filing a petition to contest the will with the court having jurisdiction. *See* Former RCW 11.24.010 (1994); *see also Palucci*, 61 Wn. App. at 415; *Crane's Estate*, 15 Wn. App. at 163 (holding that the petitioner's act of filing a will contest in accordance with the terms of Former RCW 11.24.010 (1971) vested the superior court with jurisdiction over the matter because the statute “requires simply the [f]iling of the petition.”). This was the statutory scheme under which this Court decided *Kordon*. 157 Wn.2d at 208, n.1. Thus, the *Kordon* Court correctly noted that Former “RCW 11.24.020 [(1965)] imposes no explicit statutory time limit on the issuance of a citation . . . [a] party contesting a will may request and serve citations at any time within the four-month statute of limitations on bringing a will contest or any time within 90 days of timely filing a petition contesting the will.” 157 Wn.2d at 213.

Here, under the current versions of the will contest statutes, which were in effect at all times relevant to this dispute, Mr. Jepsen failed to properly invoke the superior court's jurisdiction. Although Mr. Jepsen filed his will contest petition on March 22, 2012, which was within the four-month statutory period, thus satisfying the timing requirement, he

failed to personally serve Ms. Miles within 90-days after filing the petition, and he cannot now satisfy the service requirement. CP at 173-77. Consequently, Mr. Jepsen failed to satisfy the statutory prerequisites to the superior court's exercise of jurisdiction over his will contest set forth in RCW 11.24.010 and, thereby, divested the court of any authority to proceed. Because all statutory and procedural requirements must be met before a court's jurisdiction is properly invoked, Mr. Jepsen cannot now avail himself of any jurisdiction that the probate court may have had to consider his will contest. *See Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254, n.9, 228 P.3d 1289 (2010); *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379, n.9, 223 P.3d 1172 (2009); *Overhulse*, 94 Wn. App. at 597.

3. *Looking beyond the plain language and construing the will contest statute's language in line with other analogous statutory provisions establishes that Mr. Jepsen failed to properly invoke the probate court's jurisdiction and that the Court of Appeals' analysis in this case conflicts with its analysis of other analogous special proceedings statutes.*

As discussed above, will contests are special proceedings under the civil rules of court and the provisions of Title 11 RCW governing will contests control over any inconsistent provisions in the civil rules. RCW 11.96A.090(1). Because Mr. Jepsen failed to comply with RCW 11.24.010's service requirement, he failed to satisfy the statutory

prerequisites to invoke the superior court's jurisdiction over his will contest petition. Thus, the dismissal of Mr. Jepsen's will contest petition should not have been reconsidered and, instead, should have been dismissed. This result is not only mandated by the plain language of RCW 11.24.010, it is also supported by precedent interpreting other special proceedings statutes with analogous structures.

For example, the estate claim statute, which is also a special proceeding statute under Title 11 RCW, "establishes a bright line rule within which a claimant must bring an action on a claim." *In re Estate of Stover*, 178 Wn. App. 550, 559, 315 P.3d 579 (2013) (internal citations omitted). Indeed, the estate claim statute sets forth a sequence of events and a time period within which a claimant must sue: (1) if a personal representative rejects a claim against the estate, he or she shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification, which is the date that the notification was postmarked; and (2) the claimant "must bring suit in the proper court against the personal representative within [30] days after notification of rejection *or the claim will be forever barred.*" RCW 11.40.100(1) (emphasis added). Accordingly, Division I of the Court of Appeals recently acknowledged that this statutory language "plainly states that [claimants] must bring suit against the personal representative within

thirty days after notification of rejection or the claim is forever barred.” *Stover*, 178 Wn. App. at 557-58. Thus, in *Stover*, because the claimant filed her claim against the estate 35-days after notification of its rejection, the claimant’s claim against the estate was forever barred and neither general provisions of the civil rules nor equity could intervene to revive the claimant’s claim against the estate in derogation of the claim statute’s plain language. 178 Wn. App. at 559-63.

Similarly, like the estate claim statute and the will contest statute, the Land Use Petition Act (LUPA) is a special proceedings statute that sets forth specific procedural requirements. RCW 36.70C.040 states: “A land use petition is *barred*, and the court *may not grant review*, unless the petition is *timely filed* with the court and *timely served* on . . . persons who shall be parties to the review . . .” *Overhulse*, 94 Wn. App. at 597 (quoting RCW 36.70C.040(2) (emphasis added)). Thus, LUPA, like the will contest statute, requires a petitioner to: (1) timely file a petition and (2) timely serve the petition on the appropriate parties and in the manner specified by statute. RCW 36.70C.040(2), (5). Under LUPA, a petitioner who fails to timely serve the appropriate parties in the methods specified by statute *does not* effectively invoke the court’s jurisdiction and their petitioners are forever barred. *Overhulse*, 94 Wn. App. at 557-59. Substantial compliance with either of the prerequisites to invoking a

court's jurisdiction in a LUPA petition is insufficient. *Overhulse*, 94 Wn. App. at 559.

Likewise, the Industrial Insurance Act, RCW 51.52.104 sets forth clear statutory requirements for filing a petition for review of a decision of the Board of Industrial Insurance Appeals. It states: "In the event that no petition for review is filed as provided [in this section] . . . , the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and *no appeal may be taken therefrom to the courts.*" RCW 51.52.104 (emphasis added). Division I of the Court of Appeals has held that this statutory language means that, "when the Board adopts the proposed decision and order because no petition from review is timely filed, no appeal may be taken therefrom to the courts . . . [and, thus, the court] was without subject matter jurisdiction to hear [the] appeal and did not err by dismissing the appeal on that ground." *Corona v. Boeing Co.*, 111 Wn. App. 1, 7, 46 P.3d 253 (2002).

Thus, Washington courts routinely, and properly, treat a party's failure to abide by statutory requirements as jurisdictional in the sense that the petitioner failed to comply with the statute and, thus, failed to invoke the court's jurisdiction over his or her petition. Here, in order to invoke the court's jurisdiction, the will contest statute requires a petitioner to: (1)

timely file a petition in the proper court and (2) timely serve original process on the personal representative. RCW 11.24.010. But Mr. Jepsen only filed his petition; he failed to serve original process on the personal representative. CP at 173-77. Mr. Jepsen failed to invoke the court's jurisdiction over his will contest petition.

This result is supported by a number of decisions analyzing analogous statutory special proceedings. The will contest statute's requirements that a petitioner must both file and serve a petition in order to invoke the court's jurisdiction is similar to the statutory requirements in LUPA.⁷ As in LUPA matters, if a petitioner fails to strictly comply with both the timely filing requirement and the timely service requirement established by the statute, the petitioner in a will contest matter has failed to properly invoke the court's jurisdiction. *See Overhulse*, 94 Wn. App. at 557-59. Similarly, as in the estate claim statute and the Industrial Insurance Act, a claimant's failure to strictly comply with the statutory prerequisites to invoke the court's jurisdiction deprives the court of jurisdiction over the

⁷ Compare RCW 11.24.010: "If, following filing, service is not so made, the action is deemed not to have been commenced for purposes of filing the statute of limitations. *If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.*" (Emphasis added). And "A land use petition is *barred*, and the court *may not grant review*, unless the petition is *timely filed* with the court and *timely served* on . . . persons who shall be parties to the review." RCW 36.70C.040(2) (emphasis added).

matter such that dismissal is appropriate. *See Stover*, 178 Wn. App. at 559-63; *Corona*, 111 Wn. App. at 7. Because the Court of Appeals' opinion in this matter fails to acknowledge the longstanding precedent requiring strict compliance with statutory directives in special proceedings, its opinion in this matter conflicts with its opinions in analogous circumstances, including the opinions discussed in this section. Consequently, this Court should accept review of the Court of Appeals' opinion to resolve the conflict in the analyses of the Court of Appeals in analyzing statutory special proceedings. RAP 13.4(b)(2).

4. *Neither the waiver nor substantial compliance doctrines apply to save Mr. Jepsen's improperly commenced will contest action from dismissal for failing to invoke the court's jurisdiction.*

Although the Court of Appeals suggested in its opinion that RCW 11.24.010's requirement that a petitioner timely file a will contest goes to a court's subject matter jurisdiction while its service requirement goes only to personal jurisdiction, which may be subject to waiver, that is incorrect. This conclusion is based on the Court of Appeals' reliance on provisions of *Kordon* analyzing the former will contest statutes, under which subject matter jurisdiction was established by filing a timely petition under Former RCW 11.24.010 (1994) and personal jurisdiction was established by serving the personal representative under Former RCW 11.24.020 (1965). But, after *Kordon*, the Legislature significantly

amended the will contest statutes, injecting both a timely filing requirement and a timely service requirement into RCW 11.24.010 in order to invoke the court's jurisdiction. The Court of Appeals erroneously overlooked this meaningful Legislative action.

Moreover, in *Kordon*, the Court even suggested that the statutory requirements in Former RCW 11.24.010 (1994) and Former RCW 11.24.020 (1965) were jurisdictional, stating in dicta that "substantial compliance with the [service requirement] . . . may be sufficient" but ultimately held that courts may not exercise jurisdiction over a case where the petitioner completely failed to meet the statutory requirements. 157 Wn.2d at 213-14.

In any event, will contests are special proceedings that are governed by the strict, mandatory terms of chapter 11.24 RCW and are not subject to enlargement by interpretation or waiver. *Ruth v. Dight*, 75 Wn.2d 660, 669-70, 453 P.2d 631 (1969); *Peterson*, 102 Wn. App. at 464. Similarly, substantial compliance with the mandatory statutory terms is insufficient to invoke the court's jurisdiction over a will contest. *See Overhulse*, 94 Wn. App. at 559. The prospect of application of waiver, equitable extensions, or subjective determinations of substantial compliance to the mandatory statutory directives of the will contest statute would run afoul of the Legislature's plain language in the amended statute, which shows an

intent to provide a uniform procedure and date-certain on which survivors can rely for barring will contests after the death of a loved one.⁸ Instead, Washington courts have properly rejected arguments of waiver, estoppel, or substantial compliance with Title 11 RCW and other analogous special proceedings, *see e.g. Peterson*, 102 Wn. App. at 467. This Court should accept review in this matter to assist practitioners and lower courts navigate the will contest statute as a matter of substantial public importance, which is also necessary to correct the conflict between the Court of Appeals' analysis in its opinion in this case and its opinions in other opinions applying analogous statutes.

F. CONCLUSION

The Legislature's 2007 amendment to RCW 11.24.101 makes it clear that a petitioner may only properly invoke the court's jurisdiction over the matter by (1) timely filing the petition with the court and (2) timely serving original process on the personal representative. A petitioner who only files a petition without effecting personal service of original process on the personal representative fails to invoke the court's jurisdiction to


⁸ Indeed, the Legislature has shown a pattern of restricting the statutory period for perfecting a will contest from one year, to six months, to four months from the date of probate. *State ex rel. Wood v. Superior Court*, 76 Wash. 27, 31, 135 P. 4984 (1913); Laws of 1917, ch. 156 §15; Laws of 1967, ch. 168 §6.

hear the matter under the plain language of the statute, which states: “If, following filing, [personal] service [on the personal representative] is not . . . made, the action is deemed not to have been commenced for purposes of tolling the statute of limitations [and] . . . the probate or rejection of such will shall be final and binding.” RCW 11.24.010.

As discussed herein, this Court should accept review because this case presents an issue of substantial public interest that should be determined by this Court and the Court of Appeals’ opinion conflicts with its analyses of other, similarly structured special proceedings statutes.

RESPECTFULLY SUBMITTED this 8th day of October 2014.

DAVIES PEARSON, P.C.


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DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I caused to be delivered copies of the foregoing **PETITION FOR REVIEW**, to the following by the methods specified:

Court of Appeals via JIS and Hand Delivery


Court of Appeals, Division I
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DATED this 8th day of October 2014.


Jody M. Waterman

APPENDIX A

11.24.010. Contest of probate or rejection--Limitation of action--Issues, WA ST 11.24.010

West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Annos)
Chapter 11.24. Will Contests

West's RCWA 11.24.010

11.24.010. Contest of probate or rejection--Limitation of action--Issues

Effective: July 22, 2007
Currentness

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

Credits

[2007 c 475 § 4, eff. July 22, 2007; 1994 c 221 § 21; 1971 c 7 § 1; 1967 c 168 § 6; 1965 c 145 § 11.24.010. Prior: 1917 c 156 § 15; RRS § 1385; prior: 1891 p 382 § 8; Code 1881 § 1360; 1863 p 213 § 96; 1860 p 176 § 63.]

Notes of Decisions (204)

West's RCWA 11.24.010, WA ST 11.24.010

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

End of Document

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APPENDIX B

2014 WL 4412334

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington,
Division 1.

In the Matter of the ESTATE OF
Virginia J. JEPSEN, Deceased.
Julie Miles, Personal Representative, Appellant,
v.
Mack Jepsen, Respondent.

No. 71732-4-I. | Sept. 8, 2014.

Appeal from Pierce County Superior Court; Hon. Edmund
Murphy, J.

Attorneys and Law Firms

Susan L. Caulkins, Davies Pearson PC, Tacoma, WA, for
Appellant(s).

Robert P. Dickson, Dickson Law Group, PS, Tacoma, WA,
for Respondent(s).

UNPUBLISHED OPINION

VERELLEN, A.C.J.

*1 The will contest statute, RCW 11.24.010, requires a petitioner to file any contest within four months of the date the probate is admitted to court. For purposes of tolling that four-month limitation period, the petitioner must serve the personal representative of the estate within 90 days of filing. While the four-month filing deadline is absolute, we conclude the service requirement goes to personal jurisdiction only and may be waived.

Here, the estate of Virginia Jepsen (Estate) waived any defense based upon Mack Jepsen's failure to serve the personal representative because the Estate did not raise that defense in its response to the will contest or in any motion filed prior to its response. Therefore, the trial court did not err by denying the Estate's motion for summary judgment. We affirm.

FACTS

Virginia Jepsen executed her last will and testament in July 2009, naming Julie Miles as her personal representative. Virginia passed away on November 16, 2011, and her will was admitted to probate on December 20, 2011.

On March 22, 2012, Mack Jepsen,¹ Virginia's adult son, filed a petition to contest and invalidate the will. Jepsen never served the personal representative with a summons or with the petition. The Estate's attorney received a copy of the petition by e-mail.²

On April 27, 2012, the Estate filed its answer to the petition. The answer did not identify or refer to Jepsen's failure to serve the personal representative.

On October 31, 2012, the Estate filed a motion to dismiss, or alternatively for summary judgment, arguing for the first time that Jepsen did not timely serve Miles and therefore the superior court lacked personal jurisdiction over her. Jepsen responded that the Estate waived any objection to service of process because it did not raise that defense in its answer, as required by Civil Rule 12(h). In its reply, the Estate alleged that the superior court "either does not have the subject matter jurisdiction to hear the will contest presented, or that Mr. Jepsen is not entitled to invoke the court's subject matter jurisdiction to hear his will contest as a result of his failure to comply with the jurisdictional requirements of RCW 10112.04."

The superior court initially entered an order granting the Estate's motion to dismiss the petition for lack of jurisdiction, but then it granted Jepsen's motion for reconsideration, concluding that the court had jurisdiction.

This court granted discretionary review.

DISCUSSION

The Estate argues that Jepsen's failure to serve the personal representative, as required by RCW 11.24.010, results in a lack of subject matter jurisdiction to hear the will contest or, at the very least, that service is a prerequisite to invoke the superior court's authority to consider a will contest. We disagree.

Whether a court has subject matter jurisdiction is a question of law reviewed de novo.³ The consequences of a court acting without subject matter jurisdiction are “ ‘draconian and absolute.’ ”⁴ A judgment entered by a court lacking subject matter jurisdiction is void, and there is no time limit for attacking a void judgment.⁵ Appellate courts should therefore use caution when asked to characterize an issue as “jurisdictional.”⁶ The Supreme Court has noted that the term “subject matter jurisdiction” is often confused with a court’s authority to rule in a particular manner, leading to inconsistent use of the term.⁷

*2 A court has subject matter jurisdiction where it has authority ‘to adjudicate the type of controversy involved in the action.’ ”⁸ Superior courts are granted broad original subject matter jurisdiction by the Washington Constitution, article IV, section 6.⁹ “Exceptions to this broad jurisdictional grant ‘are to be narrowly construed.’ ”¹⁰ Because subject matter jurisdiction is constitutionally granted, it cannot be diminished by statutes.¹¹ “ ‘If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.’ ”¹²

Under article IV, section 6 of the Washington Constitution, “[t]he superior court shall have original jurisdiction in ... all matters of probate.” The Estate acknowledges that the superior court has subject matter jurisdiction over probate matters in general, but it argues that the superior court’s authority to consider a will contest is limited by RCW 11.24.010’s timing and service prerequisites and that the service requirement cannot be waived.

Will contests are governed by statute.¹³ RCW 11.24.010 states:

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the

last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. *The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.*

If no person files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.¹⁴

Jepsen filed his will contest petition within the required four-month period, but he did not serve the personal representative. The Estate filed its response to the petition without referring to the lack of service. The issue presented is whether, under RCW 11.24.010, personal service may be waived or whether service within the 90-day tolling period is an absolute requirement. It is clear under Washington law that the four-month filing requirement of RCW 11.24.010 is mandatory,¹⁵ but no cases have directly addressed whether service of the summons and petition is also mandatory or whether it may be waived by failing to timely raise lack of service.

*3 Generally, failure to timely serve a party is a defense that may be waived. “Proper service of the summons and complaint is a prerequisite to the court obtaining personal jurisdiction over a party.”¹⁶ Under CR 12(h), a challenge to personal jurisdiction must be asserted either by motion filed before filing the answer or in the answer.¹⁷ And generally, when a party files a lawsuit within the limitations period, then RCW 4.16.170 tolls the limitations period for an additional 90 days to allow the plaintiff to serve the lawsuit:

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint.

These general rules provide context for an analysis of the will contest statute.

In re Estate of Kordon deals with a former version of the will contest statute but provides guidance.¹⁸ There, the Supreme Court considered whether the superior court correctly dismissed a petitioner's will contest because the petitioner failed to request and timely issue a citation on the personal representative, as required by former RCW 11.24.020 (1965). The court held that the "citation" referred to in the former version of the statute was equivalent to a civil summons.¹⁹ The court concluded that service of a citation in a will contest was essential to invoke *personal jurisdiction* over the parties, stating that "failure to issue a citation deprives the court of personal jurisdiction over the party denied process."²⁰ The court held that former RCW 11.24.020 implicitly adopted the requirements of the superior court civil rules, including the 90-day tolling provision of RCW 4.16.170.²¹ The *Kordon* court concluded that "a party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will contest or any time within 90 days of timely filing a petition contesting the will."²² *Kordon's* analysis of the will contest statute would be consistent with any statute of limitations subject to a 90-day tolling period to complete service.

In 2007, the legislature amended RCW 11.24.010, incorporating aspects of the holding in *Kordon*.²³ As amended, RCW 11.24.010 provides a four-month statute of limitations and allows a 90-day tolling of that statute of limitations after filing to accomplish service of a summons, rather than a citation.²⁴ The new language closely tracks both *Kordon* and RCW 4.16.170, and it is entirely consistent with the general rule providing a 90-day tolling for service.²⁵ The Estate provides no compelling argument why the service requirement in the current RCW 11.24.010 should be considered any differently than service provisions generally. We conclude that failure to serve the personal representative implicated personal jurisdiction, not subject matter jurisdiction or authority to invoke subject matter jurisdiction. If a petitioner satisfies the mandatory four-month filing requirement for a will contest, an estate waives its defense of lack of personal service if it does not raise that defense in its answer or in a motion filed prior to its answer.

*4 Here, Jepsen filed his will contest petition three months after the will was admitted to probate, well within the four-month deadline. He also e-mailed the Estate's attorney a

copy of the petition. Although he failed to serve the personal representative of the Estate within the 90-day tolling period, the Estate waived its personal jurisdiction defense by failing to timely raise the lack of service.

The Estate argues that summary judgment is appropriate because the final sentence of RCW 11.24.010 indicates that personal service is necessary to invoke the trial court's subject matter jurisdiction or authority to consider a will contest. The statute states that "if no person *files and serves* a petition within the time under this section, the probate or rejection of such will *shall be binding and final*."²⁶ The Estate suggests that the "binding and final" language reveals the legislature's intent to make personal service a mandatory requirement for a will contest that cannot be waived. But the "binding and final" language was included in the former version of the will contest statute. Whether viewed under the general 90-day tolling provision of RCW 4.16.170, as in *Kordon*, or the specific 90-day tolling provision of the current RCW 11.24.010, failure to complete service goes to personal jurisdiction and can be waived. Additionally, other statutes with similar "final" language regarding procedural requirements have been interpreted to allow waiver of time bar defenses.²⁷

The Estate's other arguments are not persuasive. It relies upon *In re Estate of Peterson*²⁸ for the proposition that the service provisions of the will contest statute cannot be waived. But the holding in *Peterson* is limited to rejection of any discovery rule to extend the time allowed to commence a will contest, with no analysis of the service requirements. The Estate cites a variety of unrelated statutes as support for its non-waiver argument. But those statutes, e.g., the Land Use Petition Act and various non-claim statutes, are not analogous to the will contest statute.

Finally, the policy of expediting will contests is satisfied by the four-month mandatory filing period.²⁹ The position advocated by the Estate would allow an estate to wait for months or years to challenge the outcome of a timely filed will contest as void, even if the estate failed to raise a lack of service defense in its answer. The Estate provides no legislative history or persuasive policy supporting its view.

Both the Estate and Jepsen request attorney fees on appeal. RCW 11.24.050 allows an award in a will contest in the discretion of the court. RCW 11.96A.150 allows an award in estate dispute resolutions in the court's discretion "as the court

determines to be equitable."Having considered the equities,
we decline to award any fees on this appeal.

WE CONCUR: TRICKEY and LAU, JJ.

Affirmed.

Footnotes

- 1 In August 2013, prior to oral argument of this appeal, Mack Jepsen passed away. The estate of Mack Jepsen has been substituted as a party in this action. We use the surname Jepsen to refer either to Mack Jepsen or to his estate, as the context dictates.
- 2 The Estate's attorney denies Jepsen's assertion that the attorney consented to accept service on behalf of the personal representative.
- 3 *Cole v. Harveyland, LLC*, 163 Wn.App. 199, 205, 258 P.3d 70 (2011).
- 4 *In re Marriage of McDermott*, 175 Wn.App. 467, 479, 307 P.3d 717 (2013), (quoting *id.*), *review denied*, 179 Wn.2d 1004 (2013).
- 5 *Cole*, 163 Wn.App. at 205.
- 6 *McDermott*, 175 Wn.App. at 479-80.
- 7 *Marley v. Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994) (quoting *In re Major*, 71 Wn.App. 531, 534-35, 859 P.2d 1262 (1993)).
- 8 *McDermott*, 175 Wn.2d at 480-81 (quoting *Shoop v. Kittitas County*, 108 Wn.App. 388, 393, 30 P.3d 529 (2001)); *see also Cole*, 163 Wn.App. at 209 ("The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy.").
- 9 *McDermott*, 175 Wn.2d at 481.
- 10 *Id.* (quoting *Cole*, 163 Wn.App. at 206).
- 11 *Id.* (quoting *Shoop*, 108 Wn.App. at 396).
- 12 *Id.* at 482 (quoting *Cole*, 163 Wn.App. at 209).
- 13 *In re Estate of Toth*, 138 Wn.2d 650, 653, 981 P.2d 439 (1999).
- 14 (Emphasis added.)
- 15 *Toth*, 138 Wn.2d at 654-57.
- 16 *Scantlan v. Townsend*, 178 Wn.App. 609, 617, 315 P.3d 594 (2013); *see also Adkinson v. Digby, Inc.*, 99 Wn.2d 206, 208-10, 660 P.2d 756 (1983) (analyzing whether or not a defense of insufficient service of process was waived); *Clark v. Falling*, 92 Wn.App. 805, 965 P.2d 644 (1998) (same).
- 17 *See King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002) (holding that defense was not dilatory because it was first raised in the defendant's answer); *Meade v. Thomas*, 152 Wn.App. 490, 493-94, 217 P.3d 785 (2009) (holding that defendant may waive the defense of failure to serve by failing to raise it in his or her answer or in a motion to dismiss).
- 18 157 Wn.2d 206, 137 P.3d 16 (2006).
- 19 *Id.* at 210.
- 20 *Id.*
- 21 *Id.* at 213.
- 22 *Id.*
- 23 Former RCW 11.24.010 (1994) did not include a provision for tolling the filing period. It provided that "[i]f any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will or a part of it, shall be tried and determined by the court. If no person shall appear within the time under this section, the probate or rejection of such will shall be binding and final."
- 24 *See* RCW 11.24.020 (incorporating the TEDRA summons provision of RCW 11.96A.100).
- 25 Although RCW 4.16.170 also tolls the statute of limitations for filing when service was timely completed, this general provision is not applicable for will contests because RCW 11.24.010 specifically mandates filing within four months.
- 26 RCW 11.24.010 (emphasis added).
- 27 *See In re Estate of Palmer*, 145 Wn.App. 249, 258-59, 187 P.3d 758 (2008) (holding that one-year period under RCW 11.11.070(3), in which a testamentary beneficiary may claim a nonprobate asset after the owner's death, does not affect the court's jurisdiction but attaches only to the claim itself and may be waived if a party fails to plead it in his or her answer or in a CR 12 motion); *Alexander*

In re Estate of Jepsen, Not Reported in P.3d (2014)

2014 WL 4412334

v. Food Servs. of Am., Inc., 76 Wn.App. 425, 428–29, 886 P.2d 231 (1994) (holding that requirement that a parent must join a suit for damages arising out of the injury of a minor child within 20 days under RCW 4.24.010 is analogous to a statute of limitations, and defense of failure to timely file is not self-executing but must be timely raised in the defendant's answer or another appropriate pleading or it is waived).

28 102 Wn.App. 456, 464, 9 P.3d 845 (2000).

29 If the personal representative has not been served within the 90-day tolling period, then the estate may promptly move to dismiss any pending will contest for lack of personal jurisdiction, so long as the estate has not waived that defense.

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APPENDIX C

157 Wash.2d 206
Supreme Court of Washington,
En Banc.

In re the Matter of the Estate
of Robert KORDON, Deceased.
Helen D. Cleveland, Petitioner,
v.

Leilani R. Duke, as Personal Representative
of the Estate of Robert Kordon; Leilani
R. Duke, individually, Respondent.

No. 77164-2. | Argued March
21, 2006. | Decided June 22,
2006. | As Amended July 24, 2006.

Synopsis

Background: Contestant filed petition to set will aside, but did not issue citation to personal representative until almost two years after she filed petition. The Superior Court, Walla Walla County, Donald W. Schacht, J., granted personal representative's motion to dismiss petition. Contestant appealed. The Court of Appeals, 126 Wash.App. 482, 108 P.3d 1238, affirmed, and the Supreme Court granted review.

Holdings: The Supreme Court, Sanders, J., held that:

[1] contestant's failure to issue timely citation deprived court of personal jurisdiction over personal representative;

[2] Trust and Estate Dispute Resolution Act (TEDRA) did not eliminate citation requirement; and

[3] contestant's will contest was time-barred.

Affirmed.

West Headnotes (12)

[1] **Appeal and Error**

☞ Cases Triable in Appellate Court

Dismissal for lack of jurisdiction presents a question of law reviewed de novo. CR 12(b)(2).

3 Cases that cite this headnote

[2] **Wills**

☞ Citation or other process in probate court
Will contestant's failure to issue citation on decedent's personal representative deprived court of personal jurisdiction over personal representative. West's RCWA 11.24.020.

1 Cases that cite this headnote

[3] **Wills**

☞ Citation or other process in probate court
For will contests, a citation is equivalent to a civil summons, conferring personal jurisdiction over a party to a will contest. West's RCWA 11.24.020.

Cases that cite this headnote

[4] **Process**

☞ Nature and necessity in general
Proper service of process is essential to invoke personal jurisdiction over a party.

1 Cases that cite this headnote

[5] **Wills**

☞ Citation or other process in probate court
Although Trust and Estate Dispute Resolution Act (TEDRA) applied to will contests, it did not eliminate requirement that will contestant issue citation to parties for court to have jurisdiction over them. West's RCWA 11.24.020, 11.96A.100(2).

1 Cases that cite this headnote

[6] **Wills**

☞ Citation or other process in probate court
A will contest is a matter subject to Trust and Estate Dispute Resolution Act (TEDRA), since it involves the determination of any question arising in the administration of an

estate or trust. West's RCWA 11.96A.030(1)(c), 11.96A.080(2).

3 Cases that cite this headnote

[7] Statutes

Other Statutes

A statute supersedes another statute by replacing it and supplements another statute by adding to it.

Cases that cite this headnote

[8] Statutes

Plain Language; Plain, Ordinary, or Common Meaning

Plain statutory language does not require construction.

Cases that cite this headnote

[9] Wills

Citation or other process in probate court

Although statute requiring will contestant to issue citation imposes no explicit statutory time limit on the issuance of a citation, it implicitly adopts the requirements of the Superior Court Civil Rules, and thus, a party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will contest or any time within 90 days of timely filing a petition contesting the will. West's RCWA 11.24.010, 11.24.020; CR 1, 81(a).

2 Cases that cite this headnote

[10] Wills

Citation or other process in probate court

Will contestant's belated issuance of a citation to personal representative almost two years after she filed petition did not satisfy timeliness requirements, and thus her contest was time-barred. West's RCWA 11.24.010, 11.24.020.

1 Cases that cite this headnote

[11] Wills

Citation or other process in probate court

Substantial compliance with the will contest citation requirement within the statute of limitations for will contests may be sufficient, but a total failure to comply is not. West's RCWA 11.24.010, 11.24.020.

2 Cases that cite this headnote

[12] Wills

Limitations

A court has no jurisdiction to hear and determine a will contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction. West's RCWA 11.24.010.

Cases that cite this headnote

Attorneys and Law Firms

****17** Michael Edward de Grasse, Attorney at Law, Walla Walla, for Petitioner/Appellant.

John W. Lohmann, Attorney at Law, Walla Walla, for Appellee/Respondent.

Opinion

SANDERS, J.

¶ 1 ***208** Helen Cleveland appeals the dismissal of her petition contesting the will of Robert Kordon for failure to timely issue a citation to Kordon's personal representative under RCW 11.24.020.¹ Cleveland argues the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, eliminates the requirement to issue a citation to parties to an existing probate proceeding. The Court of Appeals affirmed, holding TEDRA inapplicable to will contests. We affirm on different grounds, holding TEDRA applies to will contests, but does not affect the RCW 11.24.020 citation requirement.

FACTS AND PROCEDURAL HISTORY

¶ 2 Robert Kordon executed a will on April 2, 2001 and died on April 24, 2001. The will named Leilani Duke as Kordon's personal representative. On April 25, 2001, the

superior court issued an order admitting the will to probate, declaring the estate solvent, and appointing Duke as personal representative to act without intervention of the court.

¶ 3 On August 24, 2001, Kordon's sister Helen Cleveland filed a petition contesting the validity of the will. Cleveland did not issue a citation but did mail a copy of the petition to Duke's counsel. On September 15, 2003, Duke filed a motion *209 to dismiss the will contest, arguing Cleveland's failure to issue a citation under RCW 11.24.020 deprived the court of jurisdiction. Cleveland issued a citation on October 9, 2003, but the superior court dismissed the will contest for lack of jurisdiction on December 9, 2003.

¶ 4 Cleveland appealed. Initially, the Court of Appeals reversed, holding RCW 11.96A.100 exempted her from issuing a citation to Duke. On reconsideration, the Court of Appeals affirmed, holding chapter 11.96A RCW inapplicable to will contests. Cleveland sought discretionary review, which this court granted.

STANDARD OF REVIEW

[1] ¶ 5 Dismissal for lack of jurisdiction under CR 12(b)(2) presents a question of law **18 reviewed de novo. *State v. Squally*, 132 Wash.2d 333, 340, 937 P.2d 1069 (1997).

ANALYSIS

¶ 6 The superior court correctly dismissed the will contest for lack of jurisdiction because Cleveland failed to request and timely serve a citation on Duke. A party contesting a will must request and serve a citation on the executor of the will, RCW 11.24.020. While chapter 11.96A RCW applies to will contests, RCW 11.96A.100 does not affect the RCW 11.24.020 citation requirement.

I. Failure to Issue a Citation Deprives the Court of Personal Jurisdiction Over a Party to a Will Contest

[2] ¶ 7 A will contest is a statutory proceeding governed by chapter 11.24 RCW. A party contesting a will must file a petition in the court with jurisdiction over the will, RCW 11.24.010. The party contesting the will must then request and serve a citation on all executors, administrators, and legatees of the will.² RCW 11.24.020.

[3] [4] *210 ¶ 8 A citation is equivalent to a civil summons, conferring personal jurisdiction over a party to a will contest. *See In re Estate of Wheeler*, 71 Wash.2d 789, 795, 431 P.2d 608 (1967). *See also In re Murphy's Estate*, 98 Wash. 548, 553, 168 P. 175 (1917) ("A citation is the process designated by the statute in probate proceedings for bringing adverse parties into court. It is the counterpart of the summons in ordinary civil proceedings."). Proper service of process "is essential to invoke personal jurisdiction over a party." *In re Marriage of Markowski*, 50 Wash.App. 633, 635-36, 749 P.2d 754 (1988). Accordingly, under RCW 11.24.020, failure to issue a citation deprives the court of personal jurisdiction over the party denied process.

II. TEDRA Does Not Affect the RCW 11.24.020 Citation Requirement

[5] ¶ 9 Cleveland argues TEDRA eliminates the requirement for a party contesting a will to issue citations to parties to the existing probate proceeding. It provides in relevant part:

Unless rules of court require or this title provides otherwise, or unless a court orders otherwise: A summons must be served in accordance with this chapter and, where not inconsistent with these rules, the procedural rules of court, however, if the proceeding is commenced as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset, notice must be provided by summons only with respect to those parties who were not already parties to the existing judicial proceedings.

RCW 11.96A.100(2). Indeed, Cleveland commenced this will contest as an action incidental to the existing probate *211 proceeding, to which Duke was a party. However, the plain language of TEDRA indicates RCW 11.96A.100(2) does not affect the RCW 11.24.020 citation requirement.

[6] ¶ 10 The Court of Appeals incorrectly concluded a will contest is not a "matter" subject to TEDRA. *In re Estate of Kordon*, 126 Wash.App. 482, 486, 108 P.3d 1238 (2005). On the contrary, TEDRA expressly supplements chapter 11.24 RCW governing will contests. *See* RCW 11.96A.080(2). Furthermore, TEDRA defines a "matter" as the "determination of any question arising in the

administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death.” RCW 11.96A.030(1)(c). A will contest presents a “question arising in the administration of an estate,” and therefore is clearly a “matter” subject to TEDRA.

¶ 11 In the abstract, RCW 11.96A.100(2) encompasses notice in certain will contests. Originally, TEDRA required service of process on all parties upon commencement of a ****19** proceeding. Former RCW 11.96A.100(2) (1999). In 2001, the legislature amended TEDRA “to provide that after a proceeding is commenced future notice of matters in an existing judicial proceeding that relate to the same trust, estate or nonprobate asset need not be in the form of a summons.” Cmts. to TEDRA Technical Corrections at 1, on S.B. 5052, 57th Leg., Reg. Sess. (Wash.2001) (on file with the Wash. State Archives). *And see* RCW 11.96A.100(2) (2001). At issue, therefore, is whether amended RCW 11.96A.100(2) affects the RCW 11.24.020 citation requirement.

¶ 12 While it does not explicitly apply to citations, TEDRA uses the term “summons” to refer to all forms of notice in probate proceedings. “While the section refers to a petition, references to ‘citations’ ... have been deleted and those references are now to ‘summons.’ ” Cmts. to TEDRA at 5 (Jan. 28, 1998) (on file with the Wash. State Archives). Accordingly, RCW 11.96A.100(2) applies to actions requiring notice by citation as well as those requiring notice by summons.

***212** ¶ 13 Furthermore, Cleveland commenced this will contest “as an action incidental to an existing judicial proceeding relating to the same ... estate.” RCW 11.96A.100(2). A party contesting a will may commence the will contest as a new action or as an action incidental to an existing probate proceeding. *In re Estate of Black*, 116 Wash.App. 492, 499, 66 P.3d 678 (2003). *See also Gordon v. Seattle-First Nat’l Bank*, 49 Wash.2d 728, 736, 306 P.2d 739 (1957). Cleveland commenced this will contest as an action incidental to the existing probate proceeding, and the court entered its orders under the original probate proceeding’s cause number.

[7] ¶ 14 However, both TEDRA and RCW 11.96A.100(2) explicitly disavow any intention to alter the notice procedures in a will contest. While TEDRA applies to will contests, it “shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title,” including chapter 11.24 RCW. RCW 11.96A.080(2).

A statute supersedes another statute by replacing it and supplements another statute by adding to it. *See* BLACK’S LAW DICTIONARY 1479, 1480 (8th ed.2004) (defining “supersede” as “To annul, make void, or repeal by taking the place of” and “supplemental” as “Supplying something additional; adding what is lacking”). Under RCW 11.24.020, a party contesting a will must issue a citation to parties to any existing probate proceeding. TEDRA cannot eliminate that requirement without superseding RCW 11.24.020. Furthermore, RCW 11.96A.100 explicitly does not apply if “this title provides otherwise.” And as Title 11 includes both chapters 11.24 and 11.96A RCW, it does indeed provide otherwise.

[8] ¶ 15 Accordingly, TEDRA and 11.96A.100(2) unambiguously do not affect the RCW 11.24.020 citation requirement. “Plain language does not require construction.” *State v. Wilson*, 125 Wash.2d 212, 217, 883 P.2d 320 (1994). A party contesting a will must satisfy the RCW 11.24.020 citation requirement.

***213 III. Cleveland’s Will Contest Is Time-Barred**

[9] [10] ¶ 16 A party contesting a will must satisfy the RCW 11.24.020 citation requirement within the four-month statute of limitations imposed by RCW 11.24.010 or within 90 days of timely filing a will contest petition. Cleveland’s suggestion her belated issuance of a citation to Duke satisfies RCW 11.24.020 is unavailing.

¶ 17 While RCW 11.24.020 imposes no explicit statutory time limit on the issuance of a citation, it implicitly adopts the requirements of the Superior Court Civil Rules and Title 4 governing civil procedure. *See* CR 1 (“These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in Rule 81.”) and CR 81(a) (“Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings.”). Under CR 3(a), “An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170.” Thus, “[i]f service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to ****20** be served personally, ... within ninety days from the date of filing the complaint” or “the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.” RCW 4.16.170. In other words, a party contesting a will may request and serve citations any time within the four-month statute of limitations on bringing a will contest or any

time within 90 days of timely filing a petition contesting the will. See *King County Water Dist. No. 90 v. City of Renton*, 88 Wash.App. 214, 228, 944 P.2d 1067 (1997) (applying identical principle to RCW 36.93.160(5)).

[11] [12] ¶ 18 Cleveland requested and served a citation on Duke more than two years after timely filing a petition contesting Kordon's will. Such belated service is obviously inadequate. Substantial compliance with the RCW 11.24.020 citation requirement within the RCW 11.24.010 statute of limitations may be sufficient. See *In re Estate of Palucci*, 61 Wash.App. 412, 417, 810 P.2d 970 (1991). A total failure to comply *214 is not. A court "has no jurisdiction to hear and determine a contest begun after the expiration of the time fixed in the statute; neither does a court of equity have power to entertain such jurisdiction." *State ex rel. Wood v. Superior Court*, 76 Wash. 27, 30-31, 135 P. 494 (1913). See also *In re Estate of Toth*, 138 Wash.2d 650, 653, 981 P.2d 439 (1999). Because Cleveland clearly failed to satisfy the RCW 11.24.010 statute of limitations, we hold the trial

court properly granted Duke's motion to dismiss for lack of jurisdiction.

CONCLUSION

¶ 19 TEDRA does not affect the RCW 11.24.020 citation requirement. We affirm the Court of Appeals's holding affirming the trial court's judgment dismissing Cleveland's will contest.

Concurring: ALEXANDER, C.J., and C. JOHNSON, MADSEN, BRIDGE, CHAMBERS, OWENS, FAIRHURST, and J.M. JOHNSON, JJ.

Parallel Citations

137 P.3d 16

Footnotes

- 1 RCW 11.24.020 was amended by Laws of 2006, ch. 360, § 9. All references to RCW 11.24.020 herein are to the former version.
- 2 Upon the filing of the petition referred to in RCW 11.24.010, a citation shall be issued to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted.
RCW 11.24.020.

APPENDIX D

2007 Wash. Legis. Serv. Ch. 475 (H.B. 2236) (WEST)

WASHINGTON 2007 LEGISLATIVE SERVICE
60th Legislature, 2007 Regular Session

Additions are indicated by Text; deletions by
Text . Changes in tables are made but not highlighted.
Vetoed provisions within tabular material are not displayed.

CHAPTER 475
H.B. No. 2236
PROBATE PROCEEDINGS—ASSETS—DISPOSITION

AN ACT Relating to the disposition of certain assets; amending RCW 11.02.005, 11.07.010, 11.12.260, 11.24.010, and 11.96A.150; adding a new chapter to Title 11 RCW; and repealing RCW 11.05.010, 11.05.020, 11.05.030, 11.05.040, 11.05.050, 11.05.900, and 11.05.910.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 11.02.005 and 2005 c 97 s 1 are each amended to read as follows:

<< WA ST 11.02.005 >>

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the ~~intestate~~ a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the ~~intestate~~ decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the ~~intestate~~ decedent but who left issue surviving the ~~intestate~~ decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the ~~intestate~~ decedent and have no ancestor then living who is in the line of relationship between them and the ~~intestate~~ decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the ~~intestate~~ decedent. ~~Posthumous children are considered as living at the death of their parent.~~

(4) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(18) "Surviving spouse" does not include an individual whose marriage to the decedent has been dissolved or invalidated unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a dissolution or invalidation for purposes of this subsection.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

Sec. 2. RCW 11.07.010 and 2002 c 18 s 1 are each amended to read as follows:

<< WA ST 11.07.010 >>

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate

asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, or joint tenancy or joint tenancy with right of survivorship designations of a security, if such designations are authorized under Washington law;

(e) A transfer on death, pay on death, joint tenancy, or joint tenancy with right of survivorship brokerage account;

(f) Unless otherwise specifically provided therein, a contract wherein payment or performance under that contract is affected by the death of the person; or

(g) Unless otherwise specifically provided therein, any other written instrument of transfer, within the meaning of RCW 11.02.091(3), containing a provision for the nonprobate transfer of an asset at death.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7). For the purposes of this chapter, a "bank account" includes an account into or from which cash deposits and withdrawals can be made, and includes demand deposit accounts, time deposit accounts, money market accounts, or certificates of deposit, maintained at a bank, savings and loan association, credit union, brokerage house, or similar financial institution.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Sec. 3. RCW 11.12.260 and 1985 c 23 s 4 are each amended to read as follows:

<< WA ST 11.12.260 >>

(1) A will or a trust of which the decedent is a grantor and which by its terms becomes irrevocable upon or before the grantor's death may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will or trust other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will or trust refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator or grantor, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will or trust and need not have significance apart from its effect upon the dispositions of property made by the will or trust. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will or trust itself, except that if any person designated to receive property in the writing dies before the testator or grantor, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and, in the case of a will, RCW 11.12.110 shall not apply to such lapse.

(3) The testator or grantor may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities.

Sec. 4. RCW 11.24.010 and 1994 c 221 s 21 are each amended to read as follows:

<< WA ST 11.24.010 >>

If any person interested in any will shall appear within four months immediately following the probate or rejection thereof, and by petition to the court having jurisdiction contest the validity of said will, or appear to have the will proven which has been rejected, he or she shall file a petition containing his or her objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

For the purpose of tolling the four-month limitations period, a contest is deemed commenced when a petition is filed with the court and not when served upon the personal representative. The petitioner shall personally serve the personal representative within ninety days after the date of filing the petition. If, following filing, service is not so made, the action is deemed to not have been commenced for purposes of tolling the statute of limitations.

If no person ~~shall appear~~ files and serves a petition within the time under this section, the probate or rejection of such will shall be binding and final.

Sec. 5. RCW 11.96A.150 and 1999 c 42 s 308 are each amended to read as follows:

<< WA ST 11.96A.150 >>

(1) Either the superior court or ~~the~~ any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. 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.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This ~~statute section~~ section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(9) (10).

<< Repealed: WA ST 11.05.010, 11.05.020, 11.05.030, 11.05.040, 11.05.050, 11.05.900, 11.05.910 >>

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

- (1) RCW 11.05.010 (Devolution of property in case of simultaneous death of owners) and 1965 c 145 s 11.05.010;
- (2) RCW 11.05.020 (Procedure when beneficiaries die simultaneously) and 1965 c 145 s 11.05.020;
- (3) RCW 11.05.030 (Joint tenants—Simultaneous death) and 1965 c 145 s 11.05.030;
- (4) RCW 11.05.040 (Distribution of insurance policy when insured and beneficiary die simultaneously) and 1965 c 145 s 11.05.040;
- (5) RCW 11.05.050 (Scope of chapter limited) and 1965 c 145 s 11.05.050;
- (6) RCW 11.05.900 (Application of chapter to prior deaths) and 1965 c 145 s 11.05.900; and
- (7) RCW 11.05.910 (Construction of chapter) and 1965 c 145 s 11.05.910.

<< WA ST 11 >>

NEW SECTION. Sec. 7. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entirety, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

(4) "POD" means pay on death.

(5) "TOD" means transfer on death.

<< WA ST 11 >>

NEW SECTION. Sec. 8. REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS UNDER PROBATE CODE. Except as provided in section 12 of this act and except for the purposes of the Uniform TOD Security Registration Act, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the state.

<< WA ST 11 >>

NEW SECTION. Sec. 9. REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS UNDER GOVERNING INSTRUMENTS. Except as provided in section 12 of this act and except for a security registered in beneficiary form (TOD) under the Uniform TOD Security Registration Act, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

<< WA ST 11 >>

NEW SECTION. Sec. 10. CO-OWNERS WITH RIGHT OF SURVIVORSHIP—REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS. Except as provided in section 12 of this act, if (1) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours, and (2) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

<< WA ST 11 >>

NEW SECTION. Sec. 11. EVIDENCE OF DEATH OR STATUS. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead by the attending physician, county coroner, or county medical officer.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under subsection (2) or (3) of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) An individual whose death is not established under this section who is absent for a continuous period of seven years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stipulated on a document described in subsection (2) or (3) of this section, a document described in subsection (2) or (3) of this section that stipulates a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

<< WA ST 11 >>

NEW SECTION. Sec. 12. EXCEPTIONS. This chapter does not apply if:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;

(3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under RCW 11.98.130 through 11.98.160; or

(4) The application of this chapter to multiple governing instruments would result in an unintended failure or duplication of a disposition.

<< WA ST 11 >>

NEW SECTION. Sec. 13. PROTECTION OF PAYORS, BONA FIDE PURCHASERS, AND OTHER THIRD PARTIES—PERSONAL LIABILITY OF RECIPIENT. (1) Protection of Payors and Other Third Parties.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

(b) Written notice of a claimed lack of entitlement under (a) of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(2) Protection of Bona Fide Purchasers—Personal Liability of Recipient.

(a) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of the payment or the value of the item of property or benefit.

But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

(b) If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted.

<< WA ST 11 >>

NEW SECTION, Sec. 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

<< WA ST 11 >>

NEW SECTION, Sec. 15. SHORT TITLE. This chapter may be cited as the Uniform Simultaneous Death Act.

<< WA ST 11 >>

NEW SECTION, Sec. 16. CAPTIONS. Captions used in sections 7 through 18 of this act are not any part of the law.

<< WA ST 11 >>

NEW SECTION, Sec. 17. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

<< WA ST 11 >>

NEW SECTION, Sec. 18. APPLICATION. On the effective date of this section:

- (1) An act done before the effective date of this section in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date of this section, the provisions remain in force with respect to that right; and
- (2) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before the effective date of this section unless there is a clear indication of a contrary intent.

<< Note: WA ST 11 >>

NEW SECTION, Sec. 19. Sections 7 through 18 of this act constitute a new chapter in Title 11 RCW.

Approved May 14, 2007.

Effective July 22, 2007.

WA LEGIS 475 (2007)

APPENDIX E

West's Revised Code of Washington Annotated
Title 11. Probate and Trust Law (Refs & Annos)
Chapter 11.24. Will Contests

West's RCWA 11.24.020

11.24.020. Filing of will contest petition--Notice

Effective: June 7, 2006

Currentness

Upon the filing of the petition referred to in RCW 11.24.010, notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, to all legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, and to all persons interested in the matter, as defined in *RCW 11.96A.030(5).

Credits

[2006 c 360 § 9, eff. June 7, 2006; 1965 c 145 § 11.24.020. Prior: 1917 c 156 § 16; RRS § 1386; prior: 1891 p 382 § 9; Code 1881 § 1361; 1863 p 214 § 97; 1860 p 176 § 64.]

Notes of Decisions (17)

West's RCWA 11.24.020, WA ST 11.24.020

Current with 2014 Legislation effective on June 12, 2014, the General Effective Date for the 2014 Regular Session, and other 2014 Legislation effective through October 1, 2014

End of Document

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APPENDIX F

2006 Wash. Legis. Serv. Ch. 360 (S.S.B. 6597) (WEST)

WASHINGTON 2006 LEGISLATIVE SERVICE
59th Legislature, 2006 Regular Session

Additions are indicated by Text; deletions by
Text . Changes in tables are made but not highlighted.
Vetoed provisions within tabular material are not displayed.

CHAPTER 360
S.S.B. No. 6597

PROBATE PROCEEDINGS—ADMINISTRATION OF ESTATES—TRUST ACCOUNTS

AN ACT Relating to trusts and estates; amending RCW 11.104A.040, 11.104A.050, 11.108.010, 11.108.025, 11.108.060, 11.108.900, 11.95.070, 11.24.020, 11.96A.030, 6.32.250, 19.36.020, 11.62.005, and 11.62.010; adding a new section to chapter 11.108 RCW; adding a new section to chapter 11.96A RCW; adding a new section to chapter 11.95 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 11.104A.040 and 2002 c 345 s 106 are each amended to read as follows:

<< WA ST 11.104A.040 >>

(a)(1) In this section, "beneficiary" means a person who has an interest in the trust to be converted and who has the legal capacity to act in his, her, or its own right with respect to all actions that such person may take under this section.

(2) In this section, "unitrust" means both a trust converted into a unitrust under this section and a trust initially established as a unitrust. Unless inconsistent with the terms of the trust or will, subsections (f), (g), (h), (i), and (m) of this section apply to the unitrust initially so established.

(b) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under RCW 11.104A.020 and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee better to carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all beneficiaries each beneficiary who, on the date the notice is given:

(i) ~~Who are currently eligible to receive income from the trust~~ Is a distributee or permissible distributee of trust income or principal; or

(ii) ~~Who would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately before the notice is given~~ Would be a distributee or permissible distributee of trust principal if the interests of the distributees described in (2)(i) of this subsection terminated and the trust then terminated immediately before the notice was given and if no powers of appointment were exercised.

(3) There is at least one beneficiary under (2)(i) of this subsection and at least one other person who is a beneficiary under (2)(ii) of this subsection.

(4) No beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within sixty days after the notice is given under (2) of this subsection.

(c) The parties, as defined by RCW 11.96A.030(4), may agree to convert a trust to or from a unitrust by means of a binding agreement under chapter 11.96A RCW.

(d)(1) The trustee may petition the court under chapter 11.96A RCW to order a conversion to a unitrust if either of the following apply:

(i) A party, as defined by RCW 11.96A.030(4), timely objects to the conversion to a unitrust; or

(ii) There are no beneficiaries under (2)(i) and (ii) of this subsection.

(2) A party, as defined by RCW 11.96A.030(4), may request a trustee to convert to a unitrust. If the trustee does not convert, the party, as defined by RCW 11.96A.030(4), may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(e) In deciding whether to exercise a power to convert to a unitrust under this section, a trustee may consider, among other things, the factors set forth in RCW 11.104A.020(b).

(f) After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(i) From appreciation of principal;

(ii) From earnings and distributions from principal; or

(iii) From both.

(2) The trustee shall make regular distributions in accordance with the terms of the trust, or the terms of the will, as the case may be, construed in accordance with the provisions of this section.

(3) Unless expressly prohibited by the terms of the trust, the term "income" in the terms of a trust or a will means an annual distribution, the "unitrust distribution," equal to the percentage, the "payout percentage," that is no less than three percent and no more than five percent and that the trustee may determine in the trustee's discretion from time to time, or, if the trustee makes no determination, that shall be four percent, ~~the "payout percentage,"~~ of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) The three preceding years; or

(ii) The period during which the trust has been in existence.

(g) The trustee may in the trustee's discretion from time to time determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

(h)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the terms of the trust, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall be paid from net realized short-term capital gains. To the extent net income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent net income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(3) To the extent necessary to cause gains from the sale or exchange of unitrust assets to be treated as income under any federal, state, or local income tax (for example, section 643 of the Internal Revenue Code and its regulations, including Treasury Regulation § 1.643(b)-1, as amended or renumbered), the trustee has the discretionary power to allocate the gains to income, so long as the power is reasonably and impartially exercised.

(i) The trustee or, if the trustee declines to do so, a beneficiary may petition the court:

(1) To select a change the payout percentage ~~different than four percent~~ .

(2) To provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.

(3) To average the valuation of the trust's net assets over a period other than three years.

(4) To reconvert from a unitrust.

(j) Upon a reconversion, the power to adjust under RCW 11.104A.020 is revived.

(k) A conversion to a unitrust does not affect a provision in the terms of a trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(l) A trustee may not possess or exercise any power under this section in any of the following circumstances:

(1) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of a trust and for which a charitable deduction from a federal gift or estate tax has been taken unless both income and principal are so set aside.

(2) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as the owner if the trustee did not possess or exercise the power.

(3) The possession or exercise of the power would cause all or any part of the trust estate to be subject to any federal gift or estate tax with respect to the individual and the trust estate would not be subject to such taxation if the trustee did not possess or exercise the power.

(4) The possession or exercise of the power would result in the disallowance of a federal gift or estate tax marital deduction which would be allowed if the trustee did not have the power.

(5) The trustee is a beneficiary of the trust.

(m) If subsection (1)(2), (3), or (5) of this section applies to a trustee and there is more than one trustee or an additional trustee who is appointed by a court order, a binding agreement, or otherwise under chapter 11.96A RCW, a cotrustee to whom subsection (1)(2), (3), or (5) of this section does not apply may possess and exercise the power unless the possession or exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust. If subsection (1)(2), (3), or (5) of this section restricts all trustees from possessing or exercising a power under this section, the trustee may petition a court under chapter 11.96A RCW for the court to effect the intended conversion or action.

(n) A trustee may release any power conferred by this section if any of the following applies:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (1)(2), (3), or (4) of this section.

(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (1) of this section.

The release may be permanent or for a specified period, including a period measured by the life of an individual.

Sec. 2. RCW 11.104A.050 and 2002 c 345 s 201 are each amended to read as follows:

<< WA ST 11.104A.050 >>

After a decedent dies, and subject to chapter 11.10 RCW, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 through 5 of this chapter which apply to trustees and the rules in subsection (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 of this chapter which apply to trustees, except to the extent that the following apply:

(i) The fiduciary shall include in net income all income from property used to discharge liabilities;

(ii) The fiduciary shall pay from income or principal, in the fiduciary's discretion, family allowances; fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(iii) The fiduciary shall pay from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of a trust, or applicable law from net income determined under subsection (2) of this section or from principal to the extent that net income is insufficient. Otherwise, no outright gift of a pecuniary amount whether under a will, or under a trust after an income interest ends shall receive interest or any other income.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) of this section in the manner described in RCW 11.104A.060 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) of this section because of a payment described in RCW 11.104A.250 or 11.104A.260 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Sec. 3. RCW 11.108.010 and 1997 c 252 s 81 are each amended to read as follows:

<< WA ST 11.108.010 >>

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) As the context might require, the term "marital deduction" means either the federal or state estate tax deduction or the federal gift tax deduction allowed for transfers to spouses under the Internal Revenue Code or applicable state law.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction as indicated by a preponderance of the evidence including the governing instrument and extrinsic evidence whether or not the governing instrument is found to be ambiguous.

(5) The term "governing instrument" includes, but is not limited to: Will and codicils; revocable trusts and amendments or addenda to revocable trusts; irrevocable trusts; beneficiary designations under life insurance policies, annuities, employee benefit plans, and individual retirement accounts; payable-on-death, trust, or joint with right of survivorship bank or brokerage accounts; transfer on death designations or transfer on death or pay on death securities; and documents exercising powers of appointment.

(6) The term "fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) The term "gift" refers to all gifts, legacies, devises, and bequests made in a governing instrument, whether outright or in trust, and whether made during the life of the transferor or as a result of the transferor's death.

(8) The term "transferor" means the testator, donor, grantor, or other person making a gift.

(9) The term "spouse" includes the transferor's surviving spouse in the case of a deceased transferor.

NEW SECTION. Sec. 4. A new section is added to chapter 11.108 RCW to read as follows:

<< WA ST 11.108 >>

(1) The legislature finds that the citizens and residents of the state, and nonresidents of the state having property located in Washington, desire to take full advantage of the exemptions, exclusions, deductions, and credits allowable under the federal estate, gift, income, and generation-skipping transfer taxes, and the Washington counterparts to those taxes, if any, unless the facts and circumstances indicate otherwise, or the transferor has expressed a contrary intent in the governing instrument.

(2) In interpreting, construing, or administering a governing instrument, absent a clear expression of intent by the transferor to the contrary, the following presumptions apply and may only be rebutted by clear, cogent, and convincing evidence to the contrary, but these presumptions of intent do not require the making of any particular voluntary tax election:

(a) The transferor intended to take advantage of the maximum benefit of tax deductions, exemptions, exclusions, or credits;

(b) The transferor intended any gift to a spouse made outright and free of trust is to qualify for the gift or estate tax marital deduction and to be a marital deduction gift; and

(c) If the governing instrument refers to a trust as a marital trust, QTIP trust, or spousal trust, or refers to qualified terminable interest property, QTIP, or QTIP property, sections 2044, 2056, and 2523 of the Internal Revenue Code or similar provisions of applicable state law, the transferor intended the property passing to such a trust and the trust to qualify for the applicable gift or estate tax marital deduction, and for the gift to qualify for a marital deduction gift.

(3) References in this chapter to provisions of the Internal Revenue Code include references to similar provisions, if any, of applicable state law.

Sec. 5. RCW 11.108.025 and 1997 c 252 s 83 are each amended to read as follows:

<< WA ST 11.108.025 >>

Unless a governing instrument directs to the contrary:

(1) The fiduciary shall have the power to make elections, in whole or in part, to qualify property for the marital deduction as qualified terminable interest property under section 2056(b)(7) or 2523(f) of the Internal Revenue Code or, if the surviving spouse is not a citizen of the United States, under section 2056A of the Internal Revenue Code. Further, the fiduciary shall have the power to make generation-skipping transfer tax allocations under section 2632 of the Internal Revenue Code.

(2) The fiduciary making an election under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code or making an allocation under section 2632 of the Internal Revenue Code may benefit personally from the election or allocation, with no duty to reimburse any other person interested in the election or allocation. The fiduciary shall have no duty to make any equitable adjustment and shall have no duty to treat interested persons impartially in respect of the election or allocation.

(3) The fiduciary of a trust, if an election is made under section 2056(b)(7), 2523(f), or 2056A of the Internal Revenue Code, if an allocation is made under section 2632 of the Internal Revenue Code, or if division of a trust is of benefit to the persons interested in the trust, may divide the trust into two or more separate trusts, of equal or unequal value, if:

(a) The terms of the separate trusts which result are substantially identical to the terms of the trust before division;

(b) In the case of a trust otherwise qualifying for the marital deduction under the Internal Revenue Code, the division shall not prevent a separate trust for which the election is made from qualifying for the marital deduction; and

(c) The allocation of assets shall be based upon the fair market value of the assets at the time of the division.

(4) For state and federal estate tax purposes, a fiduciary may make inconsistent elections under section 2056(b)(7) or 2056A of the Internal Revenue Code and under similar provisions of applicable state law.

Sec. 6. RCW 11.108.060 and 1999 c 44 s 1 are each amended to read as follows:

<< WA ST 11.108.060 >>

For an estate that exceeds the amount exempt from state or federal tax by virtue of the credit under section 2010 of the Internal Revenue Code, if taking into account applicable adjusted taxable gifts as defined in section 2001(b) of the Internal Revenue Code, any marital deduction gift that is conditioned upon the transferor's spouse surviving the transferor for a period of more than six months, is governed by the following:

(1) A survivorship requirement expressed in the governing instrument in excess of six months or which may exceed six months, other than survival by a spouse of a common disaster resulting in the death of the transferor, does not apply to property passing under the marital deduction gift, and for the gift, the survivorship requirement is limited to a six-month period beginning with

~~the transferor's death~~ may not exceed the period ending six months following the transferor's date of death, as established under section 2056(b)(3) of the Internal Revenue Code.

(2) If the property that is the subject of the marital deduction gift is passing or is to be held in trust, as opposed to passing outright, it must be held in a trust meeting the requirements of section 2056(b)(7) of the Internal Revenue Code the corpus of which must: (a) Pass as though the spouse failed to survive the transferor if the spouse, in fact, fails to survive the term specified in the governing instrument; and (b) pass to the spouse under the terms of the governing instrument if the spouse, in fact, survives the term specified in the governing instrument.

Sec. 7. RCW 11.108.900 and 1999 c 42 s 631 are each amended to read as follows:

<< WA ST 11.108.900 >>

(1) This chapter applies to all estates, trusts, and governing instruments in existence on or any time after March 7, 1984, and to all proceedings with respect thereto after that date, whether the proceedings commenced before or after that date, and including distributions made after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96A RCW apply to this chapter.

(2) Sections 3 through 6, chapter—(this act), Laws of 2006 are remedial in nature and shall be liberally applied in order to achieve the purposes of this act.

Sec. 8. RCW 11.95.070 and 1985 c 30 s 37 are each amended to read as follows:

<< WA ST 11.95.070 >>

(1) This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

(2) This chapter does not apply to the powers of a personal representative of the estate of a decedent when acting in the capacity of personal representative.

(3) Sections 33 through 36, 38, and 39, chapter 149, Laws of 1984 and the 1984 recodification of RCW 64.24.050 as RCW 11.95.050 apply as of January 1, 1985, to all existing or subsequently created powers of appointment, but not to any power of appointment that expressly or by necessary implication ~~make[s]~~ makes those 1984 changes inapplicable.

Sec. 9. RCW 11.24.020 and 1965 c 145 s 11.24.020 are each amended to read as follows:

<< WA ST 11.24.020 >>

Upon the filing of the petition referred to in RCW 11.24.010, ~~a citation shall be issued~~ notice shall be given as provided in RCW 11.96A.100 to the executors who have taken upon themselves the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will ~~residing in the state~~; or to their guardians if any of them are minors, or their personal representatives if any of them are dead, ~~requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted~~ and to all persons interested in the matter, as defined in RCW 11.96A.030(5).

Sec. 10. RCW 11.96A.030 and 2002 c 66 s 2 are each amended to read as follows:

<< WA ST 11.96A.030 >>

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or

(v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(f) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset.

(2) "Notice agent" has the meanings given in RCW 11.42.010.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney in fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(5) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the

attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(6) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(7) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(8) "Trustee" means any acting and qualified trustee of the trust.

(9) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(10) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

NEW SECTION, Sec. 11. A new section is added to chapter 11.96A RCW to read as follows:

<< WA ST 11.96A >>

In all matters governed by this title, discovery shall be permitted only in the following matters:

(1) A judicial proceeding that places one or more specific issues in controversy that has been commenced under RCW 11.96A.100, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules; or

(2) A matter in which the court orders that discovery be permitted on a showing of good cause, in which case discovery shall be conducted in accordance with the superior court civil rules and applicable local rules unless otherwise limited by the order of the court.

NEW SECTION, Sec. 12. A new section is added to chapter 11.95 RCW to read as follows:

<< WA ST 11.95 >>

A person shall not be treated as having made a disposition in trust for the use of that individual by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power.

Sec. 13. RCW 6.32.250 and 1987 c 442 s 1115 are each amended to read as follows:

<< WA ST 6.32.250 >>

This chapter does not authorize the seizure of, or other interference with, (1) any property which is expressly exempt by law from levy and sale by virtue of an execution, attachment, or garnishment; or (2) any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor; or (3) the earnings of the judgment debtor for personal services to the extent they would be exempt against garnishment of the employer under RCW 6.27.150. For purposes of this section, a person shall not be treated as having made a disposition in trust for the use of that person by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose, notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power.

Sec. 14. RCW 19.36.020 and Code 1881 s 2324 are each amended to read as follows:

<< WA ST 19.36.020 >>

That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. For purposes of this section, a person shall not be treated as having made a disposition in trust for the use of that person by reason of a lapse of a power of withdrawal over the income or corpus of a trust created by another person. For this purpose,

notification to the trustee of the trust of an intent not to exercise the power of withdrawal shall not be treated as a release of the power of withdrawal, but shall be treated as a lapse of the power.

Sec. 15. RCW 11.62.005 and 1994 c 21 s 1 are each amended to read as follows:

<< WA ST 11.62.005 >>

As used in this chapter, the following terms shall have the meanings indicated.

(1) "Personal property" shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.

(2)(a) "Successor" and "successors" shall mean (subject to subsection (2)(b) of this section):

(i) That person or those persons who are entitled to the claimed property pursuant to the terms and provisions of the last will and testament of the decedent or by virtue of the laws of intestate succession contained in this title; and/or

(ii) The surviving spouse of the decedent to the extent that the surviving spouse is entitled to the property claimed as his or her undivided one-half interest in the community property of said spouse and the decedent; and/or

(iii) The department of social and health services, to the extent of funds expended or paid, in the case of claims provided under RCW 43.20B.080; and/or

(iv) This state, in the case of escheat property.

(b) Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate, except for the state as set forth in (a)(iii) and (iv) of this subsection, shall be excluded from the definition of "successor".

(3) "Person" shall mean any individual or organization:

~~(4) "Organization" shall include a~~ , specifically including but not limited to a bank, credit union, brokerage firm or stock transfer agent, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Sec. 16. RCW 11.62.010 and 1995 1st sp.s. c 18 s 60 are each amended to read as follows:

<< WA ST 11.62.010 >>

(1) At any time after forty days from the date of a decedent's death, any person who is indebted to or who has possession of any personal property belonging to the decedent or to the decedent and his or her surviving spouse as a community, which debt or personal property is an asset which is subject to probate, shall pay such indebtedness or deliver such personal property, or so much of either as is claimed, to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by said person which meets the requirements of subsection (2) of this section.

(2) An affidavit which is to be made pursuant to this section shall state:

(a) The claiming successor's name and address, and that the claiming successor is a "successor" as defined in RCW 11.62.005;

(b) That the decedent was a resident of the state of Washington on the date of his or her death;

(c) That the value of the decedent's entire estate subject to probate, not including the surviving spouse's community property interest in any assets which are subject to probate in the decedent's estate, wherever located, less liens and encumbrances, does not exceed ~~sixty~~ one hundred thousand dollars;

(d) That forty days have elapsed since the death of the decedent;

(e) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(f) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(g) A description of the personal property and the portion thereof claimed, together with a statement that such personal property is subject to probate;

(h) That the claiming successor has given written notice, either by personal service or by mail, identifying his or her claim, and describing the property claimed, to all other successors of the decedent, and that at least ten days have elapsed since the service or mailing of such notice; and

(i) That the claiming successor is either personally entitled to full payment or delivery of the property claimed or is entitled to full payment or delivery thereof on the behalf and with the written authority of all other successors who have an interest therein.

(3) A transfer agent of any security shall change the registered ownership of the security claimed from the decedent to the person claiming to be the successor with respect to such security upon the presentation of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section. Any governmental agency required to issue certificates of ownership or of license registration to personal property shall issue a new certificate of ownership or of license registration to a person claiming to be a successor of the decedent upon receipt of proof of death and of an affidavit made by such person which meets the requirements of subsection (2) of this section.

(4) No release from any Washington state or local taxing authority may be required before any assets or debts are paid or delivered to a successor of a decedent as required under this section.

(5) A copy of the affidavit, including the decedent's social security number, shall be mailed to the state of Washington, department of social and health services, office of financial recovery.

<< Note: WA ST 11.104A.040 >>

NEW SECTION. Sec. 17. This act clarifies and declares the existing laws of this state. This act is enforceable as to all persons and all trusts regardless of when the trust was created.

<< Note: WA ST 11.104A.040 >>

NEW SECTION. Sec. 18. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Approved March 30, 2006.

Effective June 7, 2006.

WA LEGIS 360 (2006)

OFFICE RECEPTIONIST, CLERK

To: Jody Waterman
Subject: RE: Petition for Review by Supreme Court (Case No. 71732-4-I)

Rec'd 10/8/14

From: Jody Waterman [mailto:jwaterman@dpearson.com]
Sent: Wednesday, October 08, 2014 3:23 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Petition for Review by Supreme Court (Case No. 71732-4-I)

Case Name: The Estate of Virginia J. Jepsen; and Julie Miles, Personal Representative, Appellants vs. Mack Jepsen, Respondent
Case Number: 71732-4-I

Attached please find a copy of Appellant Miles' *Petition for Review by Supreme Court*. The original, along with the filing fee, has been sent to Division I on this date.

I am filing this Petition on behalf of:

Susan L. Caulkins, WSBA No. 15692
Ingrid L.D. McLeod, WSBA No. 44375
Attorneys for Appellant Miles

Should you have any questions, please do not hesitate to contact me.

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