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COURT OF APPEALS CAUSE NO. 73537-3-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ESTATE OF SADIE M RIVAS

LEONARD E RIVAS AND JOSEPH RANDY RIVAS

RESPONDENTS

VS

EDWARD NICHOLAS RIVAS

PETITIONER / APPELLANT

PETITION FOR REVIEW



ORIGINAL

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A. IDENTITY OF PETITIONER

Edward Nicholas Rivas, appellant below and heir named in the will at issue in this case, asks this Court to accept review of the Court of Appeals' decision terminating review. See Part B.

B. COURT OF APPEALS DECISION

Petitioner Edward Nicholas Rivas, seeks review of the Court of Appeals' decision entered August 1, 2016 and denial of reconsideration on September 2, 2016, affirming the trial court's order/ decision dismissing animus and malice claims against the co-prs despite the repeated actions of bad faith and malice toward the petitioner along with abuse of process. A copy of the decision is attached.

C. ISSUES PRESENTED FOR REVIEW

1. Bad faith, malicious actions by the co prs towards the petitioner on numerous occasions.
2. Abuse of process in the execution of the will.
3. Comingling and misappropriation of the funds of the will.

D. STATEMENTS OF THE CASE

This is a probate matter involving the Estate of Sadie M Rivas which began in 2007. Since the beginning a great deal of discrepancies have arisen due to bad faith negotiations, malice, abuse of process, and animus on the behalf of the co-representatives (co-prs) of the Estate.

Let me begin by stating I personally have filed only one extension to the court which was due to the fact my attorney withdrew and I was not aware of the brief deadline or aware that he failed to file a complete record of the clerks papers.

Unlike counsel's accusations of me harassing the co-pr's and acting in a dubious manner to maliciously maneuver the legal process it should be reminded that of the nine years this case has been in the legal system that on June 15, 2012 the trial court ordered an accounting of the estate then mediation took place on August 20, 2012. From then on there was no response from the co-pr's until November 2014. Instead of doing what the court

ordered in June of 2012 it took that long for them to file a petition to approve additional accounting.

The co-pr's have consistently acted in bad faith of the execution of the will including but not limited to the spending of estate funds to have me evicted from the house I was residing in awarding them a writ of restitution on April 29, 2009 leaving me homeless, this is one of the properties listed in the will of which I made first request of purchase when the will was initially read to all the heirs, this is not new information as it is part of the record CP21. After which I executed a Lis Pendes #07-05002-4 against the property to prevent a sale on the open market as stated on the record CP21. I make this point to show that it is just one of many instances, along with the opening brief, that the co-pr's have treated me with animus and distain throughout this entire process. It was their duty to act in good faith and represent the will in a fair manner to all the heirs and not to isolate one of the heirs for their own personal discord as set forth in RCW 11.48.010, Estate of Olson, Nickels v Nickels and Estate of Servold.

Pr's counsel tends to purposely convolute the facts about the claim of this being a frivolous case, such as stating in the response

and I quote “having both an ex parte commissioner and superior court judge find that his allegations were not cognizable and frivolous”. As I put in my opening brief CP102 and PI21, I quoted commissioner Velategui’s comments regarding an unemployment claim in this case were respondent’s counsel has erroneously claimed both commissioner Velategui and Honorable Judge Benton agreed this entire case is frivolous and my quote is verbatim from the transcript of the court.

“that is not a cognizable claim under any stretch of anybody’s imagination, counsel. And – and – and I would be concerned that a claim that I was so busy attending to litigation that I became unemployed would – would be viewed as a frivolous claim, which would be subject not only to him but a lawyer purporting to argue that” later in the transcript he also states: “I can see counsel doing her petition for a frivolous claim” along with his final notes of: “I’m sending this case to trial, I’m not touching it. I cannot straighten out this mess”

Presumably common sense would dictate that if commissioner Velategui found this case to be frivolous he would have dismissed it at that time. However, instead he recognized all the disconcerting issues in this matter and ruled it to be held over for trial.

As a layman trying to argue pro se I understand that the words and facts are the tools of this trade. Approved, reserved, and denied each has their own specific meaning. When I motioned for the court to remove the co-pr's commissioner Watness did not deny my motion, instead he reserved it. I understood his ruling that day as what the impact of his judgement would be. If they were replaced with a new pr's they would have no liability for their actions. However, instead the court revoked and denied their non-intervention powers and took over for all remaining actions to be approved by the court. The gravity of the situation was not lost on commissioner Watness to the extent that he wanted to oversee the final outcome of this case, but he was not able due to retirement. In fact that motion is still reserved by the court for the purpose to have them answer for their actions.

In final, it should be noted that I have a vested interest in the outcome of this case. It is not lost upon me the difficulty of understanding the ramparts of this process, and in no way do I mean any disrespect towards the court for my lack of knowledge but keep in mind that I am not only pro se but I was also her son too. Although, I am indigent and represent myself pro se I feel warranted as a citizen to execute my right to have them held

accountable for their wrongful actions that they have taken against me. If not doing so, I would have done myself a personal disservice. Had Honorable Judge Benton taken the time to read the court proceedings and not signed off on a laundry list of counsel's requests she would have never awarded \$5,361.14 to the co-pr's or signed off on the court order.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The trial court erred by concluding that the claims based on animus, hostility, animosity, antagonism, malice, evident deep seated dislike or ill will was not the basis of a cognizable legal claim. The record is replete with evidence of the co-prs dislike towards myself and were determined to undermine and treat me unjustly. Their actions as set forth in the record show this as follows:

1. Robert Baca's comment in his declaration which states the co-prs would never sell me the house, didn't care if I lived

under a bridge, and won't see any money of my
heritance.CP38.

2. Refusing to meaningfully work with me to negotiate a sale of
the house essentially forcing me to file a Lis Pendens
preventing the sale of real property on the open market
violating my right under the will to purchase the house and to
initiate costly litigation to make the sale happen CP3, CP21,
CP37, CP39, CP51, CP56, CP 57, CP 59, and CP134.
3. Suborning perjury by asking Robert Baca to fabricate a claim
against me in the amount of \$10,000 CP38. This they
intended to use to reduce my inheritance CP3. First of all
whatever monies, if any, that may have been owed between
Robert and myself is not the business of the co-prs as
fiduciaries.

The co-pr's breached their fiduciary duty and Honorable
Judge Benton wrongfully ruled the findings of fact and conclusions
of law. RCW 11.48.010, Estate of Jones 152 Wn 2d 1, Trask v
Butler 123 Wn 2d 835, Nickels v Nickels No. 45066-2-I, Estate of
Olson No. 26870, Estate of Servold No. 58502-9-I and Estate of
Wilson v Livingston 8 Wn App 519.

The statute requires the personal representatives to settle the estate rapidly and quickly without undue delay. The Jones, Nickels, Olson, and Servold cases emphasize that the presence of conflict between brothers along with unfair treatment and bad faith can disqualify from serving as the pr and makes animus and unfair treatment a cognizable claim. The Estate of Wilson and Nickels v Nickels cases reiterate the statutory command to settle the estate rapidly and quickly without doing harm to the assets and further states that the pr's must use the utmost good faith, judgment, and diligence in performing those duties.

There is ample evidence in the record of conflict amongst brothers. The pr's statements about not caring if I live under a bridge and that I would never get the house along with the very difficult time that I had in getting the pr's to even consider selling the house to me when I expressed interest early in the process but had to litigate to force them to sell the property to me. All of this supports my claims that were dismissed by Honorable Judge Benton. These acts are also evidence of bad faith and unfair treatment which is also part of my claim that was dismissed by Honorable Judge Benton. There is no question that the law, as stated above, considers "utmost" good faith, diligence, and fair

treatment and lack of personal conflict harmful to the estate as essential duties and qualities of the pr's.

F. CONCLUSION

Petitioner Rivas has continually been treated unfairly and with malice, hostility, and animosity by the co Prs as stated above and as noted on the record. For these reasons, I respectfully request this court to take review and to reverse the Court of Appeals and remand this case to the King County Superior Court for a trial de novo and to dismiss all of Honorable Judge Benton's decisions based on interlocutory appeal.

Respectfully submitted this 3rd day of October 2016.

A handwritten signature in black ink, appearing to read 'E. Rivas', written in a cursive style.

Edward Nicholas Rivas

Pro Se, Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of SADIE M. RIVAS,)	No. 73537-3-1
)	
Deceased.)	DIVISION ONE
)	
EDWARD NICHOLAS RIVAS,)	UNPUBLISHED OPINION
)	
Appellant,)	
)	
v.)	
)	
LEONARD EUGENE RIVAS and JOSEPH RANDY RIVAS as personal representatives of the Estate of Sadie M. Rivas, Deceased,)	
)	
Respondents.)	FILED: August 1, 2016

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

TRICKEY, A.C.J. — Edward Nicholas Rivas, a beneficiary of his mother's estate, appeals from several orders dismissing his claims against the personal representatives of the estate and approving the activities of the personal representatives. Because he fails to demonstrate any error in the orders on review before this court, and because he fails to provide sufficient argument and an adequate record for review, we affirm. We also deny the personal representatives' request for attorney fees on appeal.

FACTS

Sadie M. Rivas died testate on June 23, 2007. Her last will and testament, dated May 31, 2007, named her five sons as beneficiaries. Her five sons are Edward Nicholas Rivas (Nick), Leonard Eugene Rivas, Joseph Randy Rivas, John Ashley Cleere, and Robert Lawrence Baca.

Sadie's will appointed two of her sons—Leonard and Joseph—as co-personal representatives of her estate.¹ On September 24, 2007, the trial court admitted Sadie's will to probate and confirmed Leonard and Joseph (hereinafter the personal representatives) as co-personal representatives.

In June 2008, the personal representatives sold one of the estate's assets—real property located at 3709 South 162nd Street in SeaTac, Washington—to Robert for a purchase price of \$131,258.

On January 10, 2011, Nick petitioned to remove the personal representatives and to appoint Robert as successor personal representative. Among other things, Nick alleged that the personal representatives breached their fiduciary duty to him "by refusing to honor [his] right to purchase" one of the estate's other assets, a house located at 3713 South 162nd Street in SeaTac, Washington, and by "soliciting Robert . . . to commit fraud and perjury to reduce [Nick's] inheritance."²

On February 11, 2011, a court commissioner denied Nick's motion to remove the personal representatives at that time but "reserve[d] ruling on [Nick's] petition."³ The court gave the estate 30 days to make the house at 3713 South 162nd Street, SeaTac, Washington (the 3713 house) ready for sale to Nick.

Over the next few months, the parties negotiated the sale of the 3713 house to Nick. On April 27, 2011, a court commissioner approved a purchase and sale agreement and directed the sale of the house to Nick for a purchase price of

¹ Due to the similarity in names, we refer to members of the Rivas family by their first names. We mean no disrespect.

² Clerk's Papers (CP) at 20, 17.

³ CP at 61.

\$66,080. On May 19, 2011, Nick petitioned to confirm the sale and adjust the purchase price. He sought to adjust the purchase price from \$66,080 to \$38,550 based on significant damage to the property. A court commissioner granted this motion and entered an order reducing the purchase price to \$38,080.

On June 1, 2012, the personal representatives moved to unblock the estate account for an order of partial distribution and granting non-intervention powers. This was noted for a hearing on June 15, 2012.

On June 11, 2012, Nick filed a petition under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, against the personal representatives. He alleged various acts that "constitute[d] a breach of respondents' duties as personal representatives."⁴ Most of the acts were related to the sale of the first house to Robert and the sale of the second house to Nick. Nick requested the following relief: (1) an order requiring the personal representatives to file a final report and a petition for the final distribution of the estate, (2) a judgment against the personal representatives jointly and severally for attorney fees incurred to enforce Nick's rights as a beneficiary, (3) a judgment against the personal representatives jointly and severally for waste and mismanagement of the estate assets, and (4) a judgment against the personal representatives jointly and severally for breach of fiduciary duties. No hearing on the merits of this petition was ever noted.

On June 15, 2012, the court entered an order denying the co-personal representatives' motion and ordering mediation on the TEDRA petition. It also

⁴ CP at 126.

ordered an accounting of the estate. Mediation was held in August 2012, but the parties failed to reach resolution of the matter.

On November 3, 2014, the personal representatives filed a verified petition for an order approving their activities and accounting and dismissing Nick's June 2012 TEDRA petition. Specifically, they requested an order (1) approving the sale of the house to Robert for \$131,258, (2) approving all other expenses and costs paid by the estate to date, (3) approving the accounting they submitted, (4) dismissing Nick's June 2012 TEDRA petition and denying Nick's request for attorney fees, (5) ordering that they are entitled to reimburse themselves from the estate for certain expenses, and (6) reserving the issue of their request for attorney fees and costs until the hearing on the distribution of the estate. In response, Nick argued that all of the requested remedies should be denied and that the matters in his TEDRA petition should be set for trial or arbitration.

On November 20, 2014, the case proceeded to a hearing on the personal representatives' petition. After hearing argument, a court commissioner certified the matter for trial.

On December 19, 2014, the personal representatives filed a verified motion for partial dismissal of the TEDRA petition pursuant to CR 12(b)(6) and for attorney fees. They argued that four of Nick's claims were frivolous and not cognizable under the law. These claims included: (1) a claim for damages arising from the allegation that Nick lost his job because he was "so tied up with litigation in this case," (2) a claim for damages from the allegation that the personal representatives treated Nick with "disdain" and "animus," (3) a claim for damages

arising from the allegation that the personal representatives did not make early distributions to Nick, and (4) a claim for attorney fees related to prior petitions and motions filed in the probate proceeding.⁵ The personal representatives also sought sanctions under CR 11 and attorney fees. Nick opposed this motion.

On January 16, 2015, the court held a hearing on the personal representatives' motion for partial dismissal and for CR 11 sanctions.

On January 22, 2015, the personal representatives responded to Nick's TEDRA petition and counterclaimed for attorney fees.

On February 9, 2015, the court entered written findings of fact, conclusions of law, and an order granting the personal representatives' motion for partial dismissal. The court found that Nick had engaged in litigation that was "designed for an improper purpose" and "unsubstantiated in fact and/or unwarranted in law."⁶ The court concluded that the four claims were frivolous, that the pleadings were filed for an improper purpose, and that the personal representatives were entitled to CR 11 sanctions and attorney fees and costs. The court dismissed the four frivolous claims and awarded attorney fees and costs in the amount of \$5,361.14.

Trial was scheduled for June 8, 2015. Prior to trial, on May 11, 2015, the trial court entered an order approving the personal representatives' activities and accounting, approving the final report, and approving distribution of the estate. It reserved the issue of attorney fees and costs until further hearing.

On June 4, 2015, the trial court entered an order denying Nick's claim for attorney fees, entering final judgment on Nick's TEDRA petition and dismissing all

⁵ CP at 309.

⁶ CP at 429.

claims with prejudice, striking the trial date, authorizing payment of the attorney fee award from Nick's estate distribution, issuing instructions to deposit the remainder of Nick's distributive share into the court registry, unblocking the estate account, discharging the personal representatives, and closing the estate.

Nick appeals.

ANALYSIS

Nick, representing himself, appeals from orders entered on February 9, 2015, May 11, 2015, and June 4, 2015. In his appellate briefing, he lists four assignments of error. These assignments of error do not reference any particular finding of fact or conclusion of law or any particular provision of any order designated in his notice of appeal. Nick includes very little argument to support these assignments of error, and he fails to cite any relevant authority.

We generally do not consider claims unsupported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(5), (6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Self represented litigants are held to the same standard as attorneys and must comply with all procedural rules on appeal. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Nonetheless, to the extent that we can extract arguments from Nick's assignments of errors, we address them below.

Nick first claims that the trial court erred because "[Nick's] issues were ruled frivolous without merit in addition to dismissing the animus and malice by [the personal representatives]."⁷ We disagree.

⁷ Appellant's Opening Br. at 5.

Here, the trial court found that Nick engaged in litigation that was “designed for an improper purpose,” that was “unsubstantiated in fact and/or unwarranted in law,” and that he asserted claims that “were frivolous, not legally cognizable and not based on a plausible view of the law”⁸ Nick does not challenge these findings of fact and thus, they are verities. Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002). These unchallenged findings of fact support the trial court’s dismissal of four claims, including the claim based on “animus.”⁹

Nick next claims that the trial court erred because “he was [d]enied due process and full discovery was not allowed for a trial as [the court commissioner] ordered.”¹⁰ He fails to support this assignment of error with any argument.

“Parties raising constitutional issues must present considered arguments to this court.” State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). It is well established that “naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” Johnson, 119 Wn.2d at 171 (internal quotation marks omitted) (quoting In re Rosier, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)). Because Nick’s due process argument is insufficient to allow review, we do not consider it.

Nick next claims that the trial court erred because “[t]he parties should be allowed to follow the logical progression through the TEDRA process.”¹¹ He also fails to develop this assignment of error.

⁸ CP at 461.

⁹ CP at 462.

¹⁰ Appellant’s Opening Br. at 5.

¹¹ Appellant’s Opening Br. at 5.

Treating this as a challenge to the trial court's dismissal of Nick's claims prior to trial, we note that TEDRA gives the trial court "full and ample power and authority" to administer and settle all estate and trust matters, "all to the end that the matters be expeditiously administered and settled by the court." RCW 11.96A.020(1)(a), (b), (2).

We also note that our record is inadequate to fairly review the order entered on June 4, 2015, which dismissed all claims set forth in Nick's TEDRA petition. The June 4, 2015 order references several pleadings, but none of them appear in the appellate record. A party seeking appellate review has the burden of providing an adequate record for review, and the trial court's decision must stand if this burden is not met. Stevens County v. Loon Lake Prop. Owners Ass'n, 146 Wn. App. 124, 131, 187 P.3d 846 (2008).

Lastly, Nick claims that the trial court erred because the personal representatives "were awarded attorney fees for an issue the appellant brought before the court due to the fact the [personal representatives] were not following the will."¹² We disagree.

Appellate courts apply a two-part standard of review to a trial court's award or denial of attorney fees: "(1) we review de novo whether there is a legal basis for awarding attorney fees by statute, under contract, or in equity and (2) we review a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fee award for an abuse of discretion." Gander v. Yeager, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012).

¹² App. Op. Br. at 5.

Here, the trial court awarded attorney fees and costs under RCW 11.96A.150(1). Under that statute, “[e]ither the superior court or any court on appeal may, in its discretion, order costs, including reasonable attorneys’ fees, to be awarded to any party” The court awarded fees “proportionate in [the] amount to the effort incurred by the improper conduct.”¹³ This amounted to \$5,361.14.

RCW 11.96A.150 provided a proper legal basis for the trial court to award attorney fees. And the trial court did not abuse its discretion when it awarded attorney fees based on Nick’s improper conduct or when it awarded fees in the amount of \$5,361.14. In short, the court did not err.

As a final matter, the personal representatives request attorney fees on appeal. They rely on RCW 11.96A.150 and RAP 18.9(a), which allows this court to impose sanctions for a frivolous appeal or for the failure to comply with the rules of appellate procedure.

Both RCW 11.96A.150 and RAP 18.9(a) are discretionary. We decline to award attorney fees to the personal representatives in this appeal.

Affirmed.

Trickey, AJ

WE CONCUR:

Dryden, J.

Becker, J.

¹³ CP at 462.

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Sheila Condon Ridgway
Ridgway Law Group, PS
701 5th Ave Ste 4110
Seattle, WA 98104-7078

Kristen Leigh Fisher
Ridgway Law Group, PS
701 5th Ave Ste 4110
Seattle, WA 98104-7078

Joan Elizabeth Hemphill
Stokes Lawrence, PS
1420 5th Ave Ste 3000
Seattle, WA 98101-2393

Karolyn Ann Hicks
Stokes Lawrence, PS
1420 5th Ave Ste 3000
Seattle, WA 98101-2393

Dated this 3rd day of October, 2016 at Seattle, Washington.



Edward Nichols Rivas
Appellant, Pro Se
3713 S 162n St
Seatac, WA 98188

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Cc: melariv2@hotmail.com
Subject: PETITION FOR REVIEW

Case name: ESTATE OF SADIE M RIVAS VS EDWARD NICHOLAS RIVAS

Case number: 73537-3-1

Name: EDWARD NICHOLAS RIVAS

Phone: 206-679-6219

Email address: MELARIV2@HOTMAIL.COM