98013-6

CASE NO. 78696-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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Indira Rai-Choudhury,
Petitioner,

v.

Stephanie Inslee, in her official capacity as personal representative of the Estate of Margaret Rai-Choudhury,
Respondent.

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# PETITION FOR REVIEW TO THE WASHINGTON STATE SUPREME COURT

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## I. IDENTITY OF PETITIONER

Appellant Indira Rai-Choudhury seeks review by the Washington State Supreme Court.

## II. CITATION TO COURT OF APPEALS DECISION

Indira Rai-Choudhury (hereinafter "Indira")[1] seeks review of the Court of Appeals unpublished opinion filed on October 21, 2019. The Court of Appeals denied a motion for reconsideration on December 6, 2019.

## III. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals applied the incorrect standard to a motion for summary judgment and determined whether "a rational trier of fact could find that the nonmoving party supported [their] claim with clear, cogent and convincing evidence" instead of "whether the non moving party created a genuine issue of material fact by presenting a *prima facie* case with clear, cogent and convincing evidence". *Tiger Oil Corp. v. Yakima County*, 158 Wn. App. 553, 242 P.3d 936 (2010).

2. The Court of Appeals failed to follow precedence by failing to give weight to the testatrix' past known feelings, thoughts and intentions towards her family. *In re Estate of Miller*, 10 Wn.2d 258, 116 P.2d 526 (1941).

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[1] First names are used as a matter of convenience and clarity, no disrespect is intended or should be implied by this informality.

3. The Court of Appeals failed to follow precedence by failing to give weight to the fact that the testatrix's gifting and exclusions were based on false beliefs. *In re Estate of Klein*, 28 Wn.2d 456, 183 P.2d 518 (1947).

4. The Court of Appeals adopted an incorrect standard, contrary to precedence, to deny the CR 56 (f) request for continuance and denied the continuance for untenable reasons. *Coggle v. Snow*, 56 Wn. App. 499, 504, 784 P.2d 554 (1990); *Tellevik v. 31641 W. Rutherford St.*, 120 Wn.2d 68, 838 P.2d 111 (1992).

## IV. STATEMENT OF THE CASE

### A. The Court of Appeals Erroneously Affirmed the Trial Court's Grant of Summary Judgment

The Estate of Margaret Rai-Choudhury filed a motion for summary judgment on Indira's claim that her mother's will was a result of an insane delusion. The trial court granted the motion. The Court of Appeals affirmed.

The Court of Appeals held "Indira does not raise an issue of fact as to whether an insane delusion caused Margaret to disinherit her. And she fails to show that the trial court manifestly abused its discretion in denying her CR 56(f) motion." (Opinion, October 21, 2019, p.1)

The Court of Appeals ignored evidence of Margaret's historic views, feelings and intentions, and also evidence showing that Margaret's gifting and exclusions in her 2015 will were based on false and delusional beliefs.

## B. Margaret Rai-Choudhury Had a Close, Loving and Supportive Relationship With Her Daughter Indira

Margaret was married for 56 years to Prosenjit Rai-Choudhury (hereinafter "Prosenjit"). (CP 731) They had one daughter, Indira. Indira had two sons; one an adult, Khashon, and one still a teenager, Jehan. Indira and her sons had lived in Bellingham, WA where Margaret lived, until 2007 when Indira and her sons moved to Oklahoma.

Margaret died on November 5, 2016 at the age of 83 years old. At the time of her death, she had estranged herself from her family since May 2015. Margaret executed her Last Will and Testament on July 21, 2015. Margaret's estate was worth approximately $2 million. Apart from a gift of $10,000 to a friend, Margaret gifted 50 percent of her estate to the University of British Columbia and 50 percent to a trust for the benefit of Khashon. The trust for Khashon stated it was for the benefit of a minor, particularly his education. In July 2015, Khashon was an adult, graduated from college, and was employed as an airline pilot. (CP 737) Margaret, however, disinherited her daughter and did not even name her youngest grandson in her will.

Indira's disinheritance was inconsistent with Margaret's prior will. Margaret had made a will in 1999 with the firm of Preston, Gates & Ellis (now KL Gates). (CP 169) Margaret had what she called a "Bimbo Trust" in her will. Prosenjit had been unfaithful in the past and Margaret was worried that if she

died before her husband, her husband would give their money away to the next woman he met. (CP 170) The "Bimbo Trust" was intended to prevent this and to ensure that assets remained for Indira, who was the remainder beneficiary of the "Bimbo Trust". (CP 170, 173-188) Margaret had made a specific plan for the protection of Indira's inheritance from her husband.

Since 2007, when Indira and her sons moved to Oklahoma, Margaret and Indira talked on the phone almost daily. (CP 315-3240) Margaret was proud of her daughter and spoke frequently about her to Jim Dodds and his wife Sandra Fletcher, Margaret's neighbors of ten years. (CP 421-423) Margaret also spoke to them about how much she loved her grandsons, Khashon and Jehan, and wished that she could see them more frequently as any loving grandparent would want. (*Id.*) Until the time of her passing, Margaret continued to possess 27 years of cards from her daughter and grandsons. (CP 742-787)

Debbie Noorish, Margaret's great grand niece, met with Margaret frequently after May 2015. (CP 456) Based on her discussions with Margaret, Ms. Noorish was surprised that Margaret had excluded Jehan from her will. (CP 625-626) Ms. Noorish was at a lose that Margaret would not include her youngest grandson in her estate planning because Margaret loved both her grandsons equally. (CP 629)

Margaret's love and appreciation for her daughter cannot be more clearly stated than in her own words in emails to Indira. Margaret wrote in March 2014,

a year prior to disinheriting her daughter, "**I always think about you when I need health advise**, I hate to think that where I would be today without it, and that I am very lucky to have you." (CP 325 (bold added)) She concluded the email, "Love you, my lovely, smart and **kind** daughter! Mom." (*Id.*, bold added) Another email around the same time stated, "Have looked at your birthday card and as usual it brings tears to my eyes. Thanks to the good lord I had a wonderful daughter, and THANKS TO YOU! Love, Mom." (CP 329)

Margaret shared her fond feelings about her daughter with Maryann Hanseth. Ms. Hanseth was a social worker from whom Margaret had received counseling for a year. Margaret relied upon her daughter, who was her primary medical contact. (CP 729) She was proud of and loved Indira. (CP 728) Margaret wished Indira lived closer. (CP 731) Ms. Hanseth's noted,

> "She reports she and her husband have a close relationship with their daughter and **she is thankful for her support**." (Id.) (Bold added.)

On May 9, 2015, Margaret left her daughter a voicemail thanking her for a Mother's Day card, telling Indira she loved her and asking her to call her back. (CP 308, 665, 667) Prior to May 2015, Margaret never mentioned a single issue or complaint about her daughter. After May 11, 2015, Margaret would avoid contact with her daughter contrary to their historical relationship.

### C. Margaret Started to Experience Insane Delusions in April 2015

On April 1, 2015, Margaret fell from a stool and hit her head. (CP 838)

She went to Peacehealth Hospital in Bellingham, Washington. A CAT scan of Margaret's bran revealed "chronic microvascular ischemic changes." (CP 838) Soon after, Margaret experienced delusions on a return trip from Vancouver, B.C. Margaret believed the CIA was following her and her husband, and their daughter Indira. (CP 198-199, 739)

On May 5, 2015, Margaret met with her counselor, Maryann Hanseth. Although Margaret had spoken about her concerns regarding her marriage, she had never stated anything negative against her daughter. However, on May 5, 2015, Margaret described a "weird" call from Indira, who suggested that Margaret's phone was bugged. Margaret said she could hear her youngest grandson Jehan "snickering in the background." (CP 736) She also reported that she had suspicions that her husband was trying to kill her because she has sensed a mild gas leak. (*Id.*)

On May 10, 2015, Margaret suffered a cat bite and was admitted to the hospital. (CP 840-87) Unlike prior hospital admissions, Margaret was distrustful of the nurse and very suspicious of staff. (CP 681, 684) Margaret refused to get her blood drawn for lab work. (CP 842) She demanded that she be disconnected from antibiotics shortly after they were started. (CP 842) Margaret stated that she would like to "talk to Bill Gate's father's law firm" where her will had been prepared (CP 843) A social worker noted that "She also states she has suspicions that her dtr may think she (pt) is crazy and again

relates rambling conversations along these lines." (CP 844) Margaret stated she needed to go to Seattle. (CP 845)

While Margaret was in Seattle, she sought treatment at a medical clinic in Pioneer Square, Seattle, Washington. Due to Margaret's bizarre behavior, a nurse at the clinic phoned Peacehealth Hospital in Bellingham, Washington to inquire about Margaret's mental state stating that Margaret was exhibiting "paranoid and delusional thought process." (CP 740) The nurse also reported that Margaret had called the police because she believed that a bridge had collapsed somewhere and killed her daughter. (*Id.*)

Seattle police called Prosenjit. Although Prosenjit and Indira had no idea where Margaret was, Margaret complained to the police that her husband and daughter were following her. (CP 199) When police later checked on Margaret, she spoke incoherently to the police and drifted from subject to subject. (*Id.*)

When Margaret eventually returned to Bellingham, she saw her regular doctor, Dr. Vanderbilt, on June 25, 2015. After the examination, Dr. Vanderbilt added a diagnosis of "cognitive impairment" to Margaret's "Patient Active Problem List." (CP 742) Margaret refused any further counseling or treatment.

### D. The Reasons Given by Margaret Rai-Choudhury for Her 2015 Estate Planning Were False or Unsupported By Any Evidence

Margaret discussed the reasons for her estate planning in her July 2015 will with: Steve Avery, her estate planning attorney; Gregory Kosanke, her

divorce attorney; and William Tuttle, her broker.

Mr. Kosanke knew Margaret from June 2015 to June 2016, and only met her only a number of times during that year. Margaret told Mr. Kosanke that she wanted to be free of her husband and daughter's emotional and financial abuse. (CP 127) However, Mr. Kosanke testified that Margaret never provided any examples of the emotional and financial abuse caused by Indira.

Mr. Kosanke stated that Margaret felt that her husband would provide for their daughter and did not make any provision in her estate planning for Indira. (CP 128) This is a significant change from Margaret's concern that Prosenjit would give all their money to some woman he met after her passing. (CP 170)

Mr. Kosanke referred Margaret to Steve Avery for estate planning.

Mr. Avery met even less frequently with Margaret than Mr. Kosanke; only four brief times in the month of July 2019. (CP 67) Substantive discussions only occurred at their first two meetings. (CP 796) Mr. Avery testified that the most specific he could be about Margaret's reason for disinheriting her daughter was that "she said something to the effect that her daughter had caused her a lot of stress, grief, pain during her lifetime. I don't recall her elaborating beyond the general statements." (CP 792)

Mr. Avery had no understanding of why Margaret named one grandson, but did not name her second grandson. (CP 793) Mr. Avery had no idea why Margaret named the University of British Columbia in her will. (CP 792)

William Tuttle worked at Wells Fargo Advisors and knew Margaret since 2011. (CP 132) Mr. Tuttle met with Margaret about 20 to 30 times during their relationship. (CP 558) However, the vast number of meeting occurred during the last year of Margaret's life. Mr. Tuttle met with Margaret "at least once a month, if not more" during the last 18 to 24 months of her life. (CP 132) Accordingly, Mr. Tuttle must have met with Margaret about one time a year prior to 2015.

Mr. Tuttle testified that Margaret's overall reason for disinheriting Indira was lack of trust. (CP 584) Margaret believed that Indira's had a drug addiction that created problems throughout a large period of her life. (CP 545-546) Margaret also complained that Indira was manipulative. (CP 545, 570, 581) Yet Mr. Tuttle could not testify that Margaret had informed him of any incidents, facts or details that would support Indira being untrustworthy, addicted to drugs, or being manipulative. Margaret's statements to Mr. Tuttle were delusions; similar to Margaret telling Mr. Tuttle that Indira had followed her in Seattle. (CP 564) In 2014, Margaret's own words confirmed that she trusted her daughter, sought health advice from her daughter, appreciated her support and loved her very much.

According to Mr. Tuttle Margaret believed her grandson Jehan was a "pothead." (CP 639) However, Indira submitted several declarations that Jeshan was not known to have ever used drugs.

Margaret had told Mr. Tuttle that she wanted to leave money to the University of British Columbia because her brothers had attended the university. (CP 569) However, this was again another delusional thought. Margaret's brothers had never attended U.B.C. or any other college. (CP 619-620) Margaret talked to her great-grandniece, Debbie Norrish, about her estate planning after May 2015. Margaret never mentioned U.B.C. to Ms. Noorish as a beneficiary of her estate. (CP 625) Margaret's only connection with U.B.C. was her brief employment as a librarian in the 1950s. (CP 254) Margaret had never provided any financial support to U.B. C. during her life. (CP 342)

Indira retained Dr. Haq, the inpatient geriatric psychiatrist at the Palo Alto Veterans Affairs Hospital. (CP 880) He is certified by the American Board of Psychiatry and Neurology in both general psychiatry and geriatric psychiatry. (CP 879-885.) Dr. Haq prepared a report in which he opined:

> "There is converging evidence, from multiple sources, that Ms. Choudhury displayed multiples bizarre delusions starting in early May of 2015, … Her delusional beliefs were persistent and impacted directly on her testamentary decisions. Therefore, she did not have testamentary capacity on the date in question."

(CP 888)

Dr. Haq concluded:

> "In the case of Margaret, her understanding of her relationship with her husband and daughter was

> deeply skewed by her delusional beliefs. Due to both these reasons, Margaret DID NOT have testamentary capacity when she made her will on July 21, 2015."

(CP 911)

## E. Indira Satisfied The Requirements for A CR 56 Continuance and the Trial Court Denied the Continuance on Untenable Grounds

Indira filed her petition on March 20, 2017. Indira served discovery requests and subpoenas in August 2017. (CP 155.) No party had previously conducted any discovery. (*Id.*) The Estate filed a motion to quash the subpoenas and then a motion for reconsideration when its motion to quash was denied. (*Id.*) The trial court ordered the parties to prepare a protective order with respect to the subpoenaed financial and medical records. (*Id.*) The court did not enter the protective order until January 2018. (*Id.*) Despite the subpoena and order of protection, there continued to be delay in obtaining the subpoenaed records. (*Id.*) Indira was diligent in her pursuit of discovery.

On April 9, 2018, the Estate served and filed a motion for summary judgment. (CP 1-15.) Indira responded to the motion and also requested a CR 56 (f) continuance to complete, *inter alia*, the following discovery:

1. Deposition of Jim Dodds. Margaret's neighbor who would have information regarding her relationship to her family. (CP 194.)
2. Deposition of Sandra Fletcher. Margaret's neighbor and Mr. Dodd's wife who would also have information regarding Margaret's relationship to her family. (CP 194.)

3. Deposition of Prosenjit Rai-Choudhury. Margaret's ex-husband who could testify to Margaret's past estate planning and her relationship with their daughter. (CP 195.)

4. Deposition of Maryann Hanseth, LicSW. Provided counseling to both Jit and Margaret at about the time of Margaret's change in behavior. (CP 195.)

5. Deposition of Linda Borland. A friend of Margaret with whom she spent several months in 2015. Ms. Borland could testify to Margaret's views of her family. (CP 611.)

6. Deposition of John Boren. A friend of Indira, retired law enforcement officer, and ju jitsu instructor for Jehan who could testify to his knowledge regarding the absence of drug use in Jehan's life. (CP 611.)

7. Deposition of Ellen Murphy. A friend of Indira and a licensed drug and alcohol counselor. Ms. Murphy can express her personal and professional opinion that Margaret's claim that Indira was on drugs is not founded on any evidence. (CP 612.)

8. Deposition of Steve Avery. Mr. Avery was the attorney who prepared the estate documents in question. (CP 195.)

9. Obtain further medical records. (CP 194.)

The request for continuance was supported by the declaration of her counsel that set forth a (1) good reason for the delay in obtaining the evidence, (2) identified the evidence that would be established through the discovery, and (3) that the evidence would raise a genuine issue of fact.

The trial court granted Indira's CR 56 (f) motion, but although litigation had been pending for only one year, limited the scope of the discovery to Mr. Avery's deposition and obtaining medical records stating "Anything else other than those two points is going to be of no value to this Court, because it doesn't,

wouldn't – most of this information is not of great value to the Court, because it doesn't shed light on Ms. Rai-Choudhury's condition **at the time she was preparing and signing her will**." (RP 34:3-9 (bold added).)

No trial date was set.

## IV. ARGUMENT

### A. The Court of Appeals Applied the Incorrect Standard to a Motion for Summary Judgment and Determined Whether "a Rational Trier of Fact Could Find that the Nonmoving Party Supported Their Claim with Clear, Cogent and Convincing Evidence" Instead of "Whether the Non Moving Party Created a Genuine Issue of Material Fact by Presenting a *Prima Facie* Case with Clear, Cogent and Convincing Evidence"

The Washington State Supreme Court reviews summary judgment orders *de novo*. *Mut. Of Enumclaw Ins. Co. v. Dan Paulson Constr., Inc.*, 161 Wn.2d 903, 913, 169 P.3d 1 (2007).

Citing to *Woody v. Stapp*, 146 Wn. App. 16, 22, 189 P.3d 807 (2008), the Court of Appeals erroneously determined whether "a rational trier of fact could find that the nonmoving party supported their claim with clear, cogent, and convincing evidence." (Opinion, p.8.) This would require the nonmoving party to satisfy their burden at trial on summary judgment. The Court of Appeals should have asked whether Indira had established "a genuine issue of material fact by presenting **a *prima facie* case with clear, cogent and convincing evidence** that would overcome the presumed validity" of the will. *Tiger Oil Corp. v. Yakima County*, 158 Wn. App. 553, 562-563, 242 P.3d 936 (2010)

(bold added). "A *prima facie* showing means evidence of sufficient circumstances which would support a logical and reasonable inference of the facts sought to be proved." *Thomson v. Jane Doe*, 189 Wn. App. 45, fn. 9, 356 P.3d 727 (2015). The existence of substantial evidence presented against the nonmoving party does not militate against the finding of the establishment of a *prima facie* case. *In re Adoption of S.H.*, 169 Wn. App. 85, 104-106, 279 P.3d 474 (2012).

Viewing the evidence in the light most favorable to Indira, she created a genuine issue of material fact by presenting a *prima facie* case with clear, cogent and convincing evidence.

## B. Indira Presented A Genuine Issue of Material Fact by Presenting a *Prima Facie* Case with Clear, Cogent and Convincing Evidence

### 1. Margaret's historically known views, feelings and intentions are relevant and probative of whether Margaret had an insane delusion affecting the disposition of her will.

> "In the determination of the question what is unjust or unnatural [in a will], **the history of the testator's family is to be considered** and the moral equities and obligations appearing therefrom." **A will is unnatural when it is contrary to what the testator, from his known views, feelings, and intentions would have been expected to make**."

*In re Estate of Miller*, 10 Wn.2d 258, 267, 116 P.2d 526 (1941) (bold added). *See In re Estate of Gwinn*, 36 Wn.2d 583, 219 P.2d 591 (1950). The evidence bearing upon the mental condition of a testator prior and subsequent to the making of his will is also relevant. *Estate of Gwinn*, 36 Wn.2d at 587.

Margaret's own words show that prior to May 2015 Margaret relied upon her daughter for support, loved her daughter and grandsons, and had no complaints other than the lack of frequency of visits. These views are contrary to what Margaret told people about Indira after May 2015 that she had caused her pain, was untrustworthy, and had a "sad" relationship. It is extremely significant that evidence showed Margaret had a trust placed in her 1999 Last Will and Testament specifically for the purpose of protecting her daughter.

Apart from Margaret's views of Indira, third parties such as Ms. Noorish and Mr. Dodd stated that Margaret loved and would have provided for both her grandsons, not just one. Margaret only mentioned one grandson to her estate planning attorney, indicating that she was not aware of the natural objects of her bounty. *Dean v. Jordan*, 194 Wn. 661, 668, 79 P.2d 331 (1938) ("The possession of testamentary capacity involves an understanding by the testator of the transaction in which he is engaged, a comprehension of the nature and extent of the property which his is estate, and *a recollection of the natural objects of his bounty*.") (Italics added.)

Viewing the evidence in the most favorable to Indira, she has presented a genuine issue of fact based on a *prima facie* case established by clear, cogent and convincing evidence that there was a genuine issue of fact as to whether Margaret suffered from an insane delusion that altered her estate planning.

2. Whether Margaret's gifting and exclusions in her will can only be explained by false beliefs is probative of whether Margaret had an insane delusion affecting the disposition of her will.

> "An insane delusion denotes **a false belief**, which would be incredible in the same circumstance to the victim if [they] were of sound mind, and from which [they] **cannot be dissuaded by any evidence or argument**."

*In re Estate of Gwinn*, 36 Wn.2d at 586, *quoting In re Estate of Klein*, 28 Wn.2d 456, 183 P.2d 518 (1947) (bold added). In both *Klein* and *Gwinn*, a parent changed their will to disinherit a child contrary to their historic relationship and based on reasoning that could not be supported by any evidence.

The Washington Supreme Court has noted that in the execution of wills, insane delusions regarding a close loved one of the testatrix are the kind that most frequently occurred. *In re Estate of Klein*, 18 Wn.2d at 472-473. "A prejudice or dislike that a testator might have for a relative is not ground for setting aside a will **unless the prejudiced and dislike cannot be explained on any other ground that that of an insane delusion**." *In re Trust & Estate of Melter*, 167 Wn. App. 285, 312, 273 P.3d 991 (2012) (bold added).

Margaret had many complaints about Indira after May 2015, but not before. Margaret never provided any evidence in support of her complaints about Indira. Margaret's statements after May 2015 contradicted other people's understanding of her relationship with her daughter. Margaret's statements contradict her own statements from a year earlier praising her daughter. No facts

or evidence was ever provided for why after a lifetime of love and affection, Margaret would have such negative views and beliefs of her daughter. The Court of Appeals stated that "Indira does not indicate how Margaret believed that Indira had wronged her." Indira cannot indicate how Margaret believed Indira had wronged her because Indira had never wronged her mother and there were no facts to disclose. Clear, cogent and convincing evidence presents a *prima facie* case that Margaret was under an insane delusion affecting the execution of her will.

### C. The Court of Appeals Denial of Indira's CR 56 Motion was Based on Untenable Grounds

A court's denial of a CR 56 (f) motion is reviewed under an abuse of discretion standard. *Tellevick v. 31641 W. Rutherford St.*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992).

The purpose of CR 56(f) is to "allow[ ] a party to move for a continuance so that it may gather evidence relevant to a summary judgment proceeding." *Old City Hall LLC v. Pierce County AIDS Found.*, 181 Wn. App. 1, 15, 329 P.3d 83 (2014). Accordingly, a trial court's decision to deny a motion for a continuance is not an abuse of discretion where "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence

will not raise a genuine issue of material fact." *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). However, when the moving party has satisfied these three requirements, "the trial court **has a duty** to give the party a reasonable opportunity to complete the record before ruling on the motion." (*Id.*) (Bold added.)

This Court of Appeals held that the trial court's discretion was not an abuse of discretion because "the evidence [sought] would not shed light on Margaret's medical state or her beliefs regarding her will at the time she executed it, the court's determination was reasonable."

The Court of Appeals' affirmation of the trial court's denial of Indira's CR 56 (f) continuance is in error on three counts. First, the Court of Appeals incorrectly applied a "reasonableness" standard in reviewing the trial court's decision denying Indira's CR 56 (f) motion for continuance. The "reasonableness" standard has been rejected because "strict application of such a standard would mean that an appellate court could never reverse without a hearing to determine the general reasonableness of the judge." *Coggle v. Snow*, 56 Wn. App. 499, 506, 784 P.2d 554 (1990). Instead:

> "The proper standard is whether discretion is exercised on **untenable grounds or for untenable reasons**, considering the purposes of the trial court's discretion."

*Id.* at 507 (bold added).

Second, the Court of Appeals limited the relevance of evidence to "Margaret's medical state of her beliefs regarding her will **at the time** she executed." (Bold added.) The trial court believed that evidence regarding Margaret's mental status and family relations before and after her execution of her will would not have sufficient value for establishing an insane delusion or showing a link between the delusion and Margaret's disposition of her property. This reasoning ignores *In re Estate of Gwinn*, *supra*, which held that evidence bearing upon the mental condition or a testator prior and subsequent to the making of his will was relevant, and *In re Estate of Miller*, *supra*, which held that in determining whether a will was unnatural "the history of the testator's family is to be considered", as well as the known views, feelings and intentions of the testator. Remoteness in time does not affect the admissibility of the evidence, only its weight. *Estate of Gwinn*, 36 Wn.2d at 587.

Third, where substantial time has not passed, no trial date was set, and the party opponent has not argued prejudice, it is untenable to deny a motion for continuance under CR 56 (f). *Coggle*, 56 Wn. App. at 506.

## VI. CONCLUSION

Margaret disinherited her daughter Indira based on numerous bad opinions that arose suddenly in May 2015. Margaret also failed to mention her youngest grandson in her will. Margaret's delusional thoughts started after falling from a stool and hitting her head, and solidified following a hospital

admission for a cat bite. Prior to May 2015, those who knew Margaret knew that she loved her daughter and her grandsons. Margaret's own words to her counselor in the year prior to the onset of her insane delusions showed that she relied on the support of her daughter. In 1999, Margaret included a trust in her will for the specific purpose of preserving her daughter's inheritance.

In 2015, Margaret left half of her estate in trust for her grandson Khashon. However, the trust identified Khashon as a minor and education was the main focus of the trust, despite Khashon being an adult and a college graduate. Margaret left the other half to the University of British Columbia because her brothers had attended U.B.C. Margaret had never previously provided any financial support to U.B.C. and her brothers had not attended U.B.C.

Indira presented a *prima facie* case based on clear, cogent and convincing evidence that there was a genuine issue of material fact as to whether her mother suffered from an insane delusion that affected her estate planning.

Finally, the denial of Indira's request for a CR 56 (f) continuance was based on untenable grounds. The ruling ignored the relevance of evidence of Margaret's mental condition before and after the execution of her July 2015 will. The Court cannot make a speculative determination of the weight of evidence that is relevant and admissible; the party must be given an occasion to obtain the evidence as to determine its true weight.

Dated this 6th day of January, 2020

Respectfully submitted,

AIKEN, ST. LOUIS & SILJEG, P.S.

By: _____
Christopher C. Lee, WSBA #26516
Attorneys for Petitioner

# APPENDIX

FILED
10/21/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|---|---|
| INDIRA RAI-CHOUDHURY,<br><br>Appellant,<br><br>v.<br><br>STEPHANIE INSLEE, in her official capacity as personal representative of the Estate of Margaret Rai-Choudhury,<br><br>Respondent. | No. 78696-2-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION<br><br>FILED: October 21, 2019 |

CHUN, J. — In the year before her death, Margaret Rai-Choudhury executed a will excluding her daughter, Indira Rai-Choudhury, as a beneficiary. Indira[1] challenges the will, claiming that an insane delusion materially affected Margaret's disposition of her property. Indira additionally claims the trial court abused its discretion by denying her motion for reconsideration and CR 56(f) motion for a continuance, and she requests fees on appeal. Indira does not raise an issue of fact as to whether an insane delusion caused Margaret to disinherit her. And she fails to show that the trial court manifestly abused its discretion in denying her CR 56(f) motion. Additionally, she does not adequately brief whether the trial court erred by denying her motion for reconsideration. Accordingly, we affirm and decline to award fees on appeal.

[1] For clarity, we use first names when referring to members of the Rai-Choudhury family. We intend no disrespect.

## I. BACKGROUND

In 1999, Margaret executed a Last Will and Testament that included Indira as a beneficiary.

Margaret suffered a mild closed head injury after she fell from a stepstool in April 2015.

In early May 2015, Margaret told a social worker that Indira suggested to her that "she[2] was being followed, her phone was bugged and she needed to receive calls on her cell phone not her land line." Margaret believed that Indira's "odd behavior" suggested she was having a "meltdown." Margaret also harbored suspicions about the intentions of her husband, Prosenjit Rai-Choudhury (Jit); after sensing a mild gas leak, she questioned whether he tried to kill her. She feared that Indira may also have "monetary motives" because she heard Jit telling Indira that he planned to bequeath her his assets.

Then, on May 11, 2015, Margaret went to the hospital for treatment for a cat bite. A nurse reported that Margaret reported abuse and expressed concerns about Jit and Indira. The nurse also stated that Margaret appeared distrustful of the nurse.

A few days later, Jit contacted the hospital with concerns about Margaret. Jit said that he and Indira were worried about Margaret's cognitive status because she had uncharacteristically left town after her hospitalization for the cat bite. Jit further stated that he feared prescribed medications were negatively

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[2] The social worker's note does not make clear whether Margaret was referring to herself or her daughter.

affecting Margaret. Jit said that when Margaret was returning home from a trip to Canada on May 1, Margaret said she thought the CIA was tracking Indira and that a car was following Jit and Margaret. Margaret then stopped speaking to Indira until a few days before she passed away.

Margaret filed a petition for dissolution of her marriage to Jit on July 9, 2015. Because of her plans to divorce, Margaret wanted to update her estate plans. Margaret told her estate attorney, Steve Avery, that she did not want Jit or Indira to have any portion of her estate or any power over her person or property during her lifetime. Margaret executed her new will on July 21, 2015. The new will gave her estate to a friend, Linda Borland; the University of British Columbia (UBC); and her eldest grandson, Khashon:

**ARTICLE 2**
**GIFTS**

**2.1 SPECIFIC BEQUESTS:**

I give to LINDA BORLAND of Bellingham, Washington ten thousand dollars ($10,000.00).

**2.2 ESTATE RESIDUE:** I give, devise and bequeath the rest, remainder and residue of my estate, of whatsoever nature and wheresoever situated to the following:

Fifty percent (50%) shall pass to the University of British Columbia (UBC) to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor.

Fifty percent (50%) shall pass to the then-trustee of the KHASHON HASELRIG Grandchild's Trust for the benefit of my grandson KHASHON HASELRIG to be distributed pursuant to Article 3 below. If KHASHON HASELRIG does not survive me, his share shall pass to the University of British Columbia to be awarded as scholarships to medical students at UBC who are Canadian citizens, have financial need, and have a desire to help the poor.

The will did not provide for Indira or Jehan, Margaret's other grandson. Two witnesses attested to the will and declared that Margaret appeared to be of sound mind and not under any duress or undue influence.

Margaret and Jit finalized their divorce in April 2016. On November 25, 2016, Margaret passed away. Indira filed a complaint on March 20, 2017, to invalidate Margaret's will based on lack of capacity.

Stephanie Inslee, the personal representative of Margaret's estate (Estate), filed a motion for summary judgment on April 9, 2018. The Estate presented declarations from various people in Margaret's life. One from William Tuttle, Margaret's financial adviser since 2011, provided that, in his opinion, "Margaret understood her finances, and knew at all times the nature and extent of her property and investments as well as her relationships, or lack thereof, with family members." Tuttle stated that since 2011, Margaret had expressed that she did not want Indira to inherit any money from her.

Inslee also submitted declarations from Gregory Kosanke, Margaret's divorce lawyer, and Avery, her estate attorney, which provided that they knew Margaret to be of sound mind and not suffering from any delusions. Both attorneys stated that Margaret told them she did not want to leave an inheritance for Indira.

Finally, the Estate supported its motion for summary judgment with declarations from Debbie Norrish and Borland. Norrish, Margaret's niece, said she spoke with Margaret on the phone approximately once a week and was never concerned for Margaret's capacity or cognitive abilities. Norrish provided

that Margaret had said on several occasions that she did not want Indira to have any control over her money after she died. Borland, a good friend, lived with Margaret at the time she executed her will and stated that she also never had concern for Margaret's capacity or cognitive abilities. Borland further stated that Margaret's decision to not leave any inheritance to Indira was consistent with conversations she had had with Margaret in the years prior to Margaret's divorce.

Indira filed a response to the motion for summary judgment on May 2, 2018. To argue a genuine issue of material fact precluded summary judgment, Indira pointed to Margaret designating her as a beneficiary in the 1999 will. Indira claimed that she and her mother had had a good relationship—that they would speak every few days and give loving notes and cards to each other. After Margaret's hospitalization in May 2015, however, Indira said Margaret stopped speaking to her. Indira claimed that Margaret's divorce from Jit, her thoughts that the CIA was tracking her, and her uncharacteristically leaving town demonstrated that she was suffering from delusions that caused her to act impulsively. Indira said Margaret incorrectly believed that she and her younger son, Jehan, had drug addiction problems. Indira said Margaret also falsely believed that Margaret's brothers had attended UBC. Indira, however, did not submit any evidence that directly challenged Tuttle and Borland's declarations that Margaret had stated she wanted to exclude Indira from her will in the years prior to 2015.

On May 3, 2018, Indira filed a Second Amended Complaint alleging that Margaret was under an insane delusion when she executed her July 2015 will and that the will was a product of undue influence.

During a motion hearing on May 11, 2018, Indira asked the court for a continuance to conduct further discovery. The court granted a continuance, but limited discovery to deposing Avery, Margaret's estate attorney, and to obtaining additional medical records.

About a month later, on June 15, 2018, the trial court held a hearing on the summary judgment motion. Indira presented Avery's deposition, additional medical records, and an expert report opining that Margaret's delusions directly contributed to her decision to disinherit Indira. The court noted that the report did not include a proper attestation or comply with ER 703 and refused to consider it. The court determined the evidence failed to establish an issue of fact as to whether an insane delusion caused Margaret to disinherit Indira or whether anyone unduly influenced her.[3] The court granted the Estate's motion for summary judgment.

Ten days later, on June 25, 2018, Indira moved for reconsideration of the court's order granting summary judgment. In addition to asking the court to reconsider its summary judgment ruling, Indira asked it to consider the expert report and to grant a continuance under CR 56(f) to allow additional discovery. The court denied Indira's motion for reconsideration.

Indira appeals.

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[3] On appeal, Indira's briefing addresses only the trial court's decision regarding the alleged insane delusion.

## II. ANALYSIS

### A. Summary Judgment

Indira argues she presented evidence to establish an issue of material fact regarding whether Margaret suffered from an insane delusion when she executed her July 2015 will. The Estate argues Indira did not submit admissible evidence to raise such an issue of fact. We determine the trial court did not err by granting summary judgment for the Estate.

"We review de novo a trial court's decision to grant summary judgment." Modumetal, Inc. v. Xtalic Corp., 4 Wn. App. 2d 810, 822, 425 P.3d 871 (2018). Courts grant summary judgment if no genuine issue exists as to any material fact. Modumetal, Inc., 4 Wn. App. 2d at 822. We draw all facts and reasonable inferences in "the light most favorable to the nonmoving party." Modumetal, Inc., 4 Wn. App. 2d at 822. A court should grant summary judgment if reasonable people could reach only one conclusion. Modumetal, Inc., 4 Wn. App. 2d at 822-23.

"Where a will, rational on its face, is shown to have been executed in legal form, the law presumes that the testator had testamentary capacity and that the will speaks [their] wishes." In re Meagher's Estate, 60 Wn.2d 691, 692, 375 P.2d 148 (1962). The party challenging the will bears the burden of establishing invalidity by clear, cogent, and convincing evidence. Meagher, 60 Wn.2d at 692. When determining whether a party meets this burden in the context of summary judgment, we "must determine whether, viewing the evidence in the light most favorable to the nonmoving party, a rational trier of fact could find that the

nonmoving party supported [their] claim with clear, cogent, and convincing evidence." Woody v. Stapp, 146 Wn. App. 16, 22, 189 P.3d 807 (2008). A party presents clear, cogent, and convincing evidence when they show the ultimate fact in issue to be highly probable. In re Estate of Watlack, 88 Wn. App. 603, 610, 945 P.2d 1154 (1997).

But a court may invalidate a will if a party shows by clear, cogent, and convincing evidence that at the time the testator executed the will, they suffered under an insane delusion that materially affected the disposition of the will. Watlack, 88 Wn. App. at 609-10. Regarding what constitutes an insane delusion, Division Three of this court has stated as follows:

> An "insane delusion" is not well defined by case law. It has been defined as a false belief, which would be incredible in the same circumstances to the victim if [they] were of sound mind, and from which [they] cannot be dissuaded by any evidence or argument. It was later described as a condition of such "aberration as indicates an unsound or deranged condition of the mental faculties . . . ." A belief resulting from a process of reasoning from existing facts will not be an insane delusion, regardless of whether the reasoning is imperfect or the conclusion illogical.

Watlack, 88 Wn. App. at 610 (internal citation omitted). Thus, "[a] prejudice or dislike that a testator might have for a relative is not ground for setting aside a will unless the prejudice and dislike cannot be explained on any other ground than that of an insane delusion." In re Trust & Estate of Melter, 167 Wn. App. 285, 312, 273 P.3d 991 (2012). On appeal, Indira seems to claim that Margaret suffered from an insane delusion because Margaret (1) believed the CIA was tracking her, and (2) stopped talking to Indira in May 2015.

First, as to delusions about the CIA, Indira presents evidence of Margaret having paranoia and beliefs regarding the CIA around May 2015. Margaret, however, did not execute her will until July and Indira did not submit any evidence to suggest that such delusions existed at the time Margaret executed her July 2015 will. Indira also fails to explain how any delusions about the CIA would cause Margaret to disinherit her.

Second, as to Margaret not speaking to Indira, viewing the evidence in the light most favorable to Indira, she and her mother had a good relationship.[4] They expressed love for each other on the phone and through emails and cards. Indeed, Margaret included Indira in the will she executed in 1999. But in May 2015, Margaret stopped speaking to Indira. Jit also said that Margaret stopped talking to Indira in May 2015 without any apparent reason.

Though the evidence shows a deterioration of Indira's relationship with her mother in May 2015, Indira fails to raise an issue of fact as to whether an insane delusion affected the disposition in Margaret's July 2015 will. Indira does not point to any specific false belief that Margaret had that could constitute an insane delusion.[5] For example, while a court may invalidate a will because a testator,

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[4] Citing RCW 5.60.030, the Estate suggests that the panel cannot consider evidence provided on this issue through Indira, an interested party. Though the Estate objected to Indira's declarations below, the court considered them when deciding the summary judgment motion. The Estate did not cross-appeal this issue. Accordingly, we do not address the issue of whether the trial court properly considered the declarations. See State v. Sims, 171 Wn.2d 436, 441-42, 256 P.3d 285 (2011) (holding the State could not challenge the criminal defendant's sentence as a whole when it did not cross-appeal and the defendant appealed only a single sentencing condition).

[5] Based on Tuttle's declaration, Indira asserts that Margaret disinherited her and Jehan because Margaret believed they had addiction issues. But the record indicates Margaret held this belief the entire time the financial advisor represented her, which dated back to 2011. Thus, this evidence also does not raise an issue of fact as to whether Margaret began to suffer from an insane delusion in May 2015 that affected her July 2015 will.

due to an insane delusion, falsely believes a child has wronged them, Indira does not indicate how Margaret believed that Indira had wronged her. See Watlack, 88 Wn. App. at 610-11 (upholding court order invalidating will because father had insane delusion that his child had stolen money from him); In re Klein's Estate, 28 Wn.2d 456, 472, 183 P.2d 518 (1947) (upholding court order invalidating will because mother had insane delusion that daughter tried to kill her). Indira presents evidence that Margaret stopped speaking to her around May 2015; this does not raise an issue as to whether Margaret suffered from an insane delusion.

Accordingly, we determine Indira fails to meet her burden to raise an issue of fact as to whether a rational trier of fact could find that the Margaret suffered from an insane delusion that affected the disposition in her July 2015 will. The trial court did not err by dismissing the claim on summary judgment.[6]

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[6] At the summary judgment hearing, the court refused to consider an expert medical opinion that Indira submitted because it did not include a proper attestation and did not meet ER 703's standards. At the hearing on Indira's motion for reconsideration, the trial court stated that it was "inclined to disallow" the new expert report that Indira submitted with proper attestation and complying with ER 703. The court then went on to note that, even if it did consider the report, Indira still failed to present evidence that raised an issue as to whether Margaret suffered from an insane delusion at the time she executed her July 2015 will. Accordingly, it denied her motion for reconsideration.

In the argument section of her brief, Indira does not discuss the medical opinion and her only discussion of the motion for reconsideration provides the standard of review. Because Indira does not adequately brief whether the trial court erred by not considering the expert medical opinion or by denying her motion for reconsideration, we do not address these issues. See RAP 10.3 (requiring the written argument to contain "citations to legal authority and references to relevant parts of the record"); Greensun Grp., LLC v. City of Bellevue, 7 Wn. App. 2d 754, 780 n.11, 436 P.3d 397 (2019) (noting a party abandons assignments of error that they do not argue in their brief).

B. CR 56(f) Motion for a Continuance

Indira next contends that the trial court manifestly abused its discretion by denying her motion for a continuance under CR 56(f).[7] We conclude the trial court did not manifestly abuse its discretion.

We review a trial court's denial of a motion for continuance for a manifest abuse of discretion. Gross v. Sunding, 139 Wn. App. 54, 67-68, 161 P.3d 380 (2007). "A decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable [judge] would take, and arrives at a decision outside the range of acceptable choices." State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (internal quotation marks and citations omitted).

A trial court may deny a party's motion for a continuance under CR 56(f) if "'(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.'" Gross, 139 Wn. App. at 68 (quoting Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)).

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[7] Although not argued by the Estate, we note that Indira's CR 56(f) motion may have been untimely. It appears Indira untimely filed the motion because she did so after the court had granted summary judgment. Because CR 56(f) enables a court to "refuse the application for judgment or may order a continuance" to permit additional discovery before it rules, the rule likely requires a party to make their CR 56(f) motion prior to the court ruling on summary judgment.

Additionally, Indira originally moved for a continuance under CR 56(f) on May 11, 2018. She then again requested a continuance under CR 56(f) in her motion for reconsideration. As this second request sought a continuance to obtain the same discovery, the second request essentially constituted a motion for reconsideration of the court's May 11, 2018 ruling. Because Indira made this motion for reconsideration more than 10 days after the court ruled on her original request, the motion appears untimely on this ground as well. CR 59(b).

When Indira first requested the continuance in May 2018, the court granted it for her to obtain medical records and depose Margaret's estate attorney. It, however, did not permit her to depose Margaret's neighbors, her counselor, or two people prepared to state that Indira and Jehan were not drug users. The court disallowed this discovery because it believed that this additional evidence would not "shed light on [Margaret's] condition at the time she was preparing and signing her will."

Indira claims the additional discovery would show that the neighbor believed Margaret disinheriting Indira was contrary to Margaret's feelings, that Indira was not a drug user, and would provide information on Margaret's relationship with Indira before, during, and after May 2015. The court believed that the evidence would not have sufficient value for establishing an insane delusion or showing a link between that delusion and Margaret's disposition of her property. Given that the evidence would not shed light on Margaret's medical state or her beliefs regarding her will at the time she executed it, the court's determination was reasonable. Accordingly, the trial court did not manifestly abuse its discretion by denying Indira's motion for a continuance.

C. Fees on Appeal

Indira requests fees on appeal pursuant to RCW 11.96A.150. We deny the request.

Under RCW 11.96A.150(1) and (2), appellate courts have the discretion to award costs and reasonable attorney fees in estate proceedings, including to the nonprevailing party. In re Jolly's Estate, 3 Wn.2d 615, 628, 101 P.2d 995 (1940)

(awarding fees to the nonprevailing party). The court may award fees to any party "in such amount and in such manner as the court determines to be equitable." RCW 11.96A.150(c). "The award may be paid by a party from the estate assets or from a nonprobate asset that is the subject of the proceedings." In re Estate of Burks, 124 Wn. App. 327, 333, 100 P.3d 328 (2004) (citing RCW 11.96A.150(1)(a)-(c)). But awards against the estate are inappropriate where an attorney renders their services solely for the benefit of certain parties and not for the benefit of the estate, even though the litigation may incidentally benefit the estate by deciding adverse claims. In re Estate of Niehenke, 117 Wn.2d 631, 648, 818 P.2d 1324 (1991).

This case did not include all the beneficiaries of Margaret's will and Indira's attorney's services only benefitted her. Thus, to award Indira attorney fees from the estate would inappropriately require the uninvolved beneficiaries to fund her litigating costs. See Niehenke, 117 Wn.2d at 648. We decline to award Indira fees on appeal.

Affirmed.

Chun, J.

WE CONCUR:

Leach, J.

FILED
12/6/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| INDIRA RAI-CHOUDHURY,<br><br>Appellant,<br>v.<br><br>STEPHANIE INSLEE, in her official capacity as personal representative of the Estate of Margaret Rai-Choudhury,<br><br>Respondent. | No. 78696-2-I<br><br>ORDER DENYING MOTION FOR RECONSIDERATION |

Appellant Indira Rai-Choudhury filed a motion for reconsideration of the opinion filed on October 21, 2019. A panel of the court has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Chun, J.

## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on the date noted below, I sent in the manner indicated below, copies of: Petition for Discretionary Review to the Washington State Supreme Court; and this Certificate of Service to:

**Attorneys for Defendant**

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Date: January 6, 2020

## AIKEN, ST. LOUIS & SILJEG, P.S.

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| **Appellate Court Case Number:** | 78696-2 |
| **Appellate Court Case Title:** | Indira Rai-Choudhury, Appellant v. Stephanie Inslee, Respondent |
| **Superior Court Case Number:** | 17-2-00481-9 |

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