

FILED

MAY - 7 2008

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK**SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE**

In re the Estate of:

DALE ROBERT STARK,

Deceased.

NO. 08-4-00394-1

SURVIVING SPOUSE'S ARGUMENT
IN RESPONSE / OBJECTION TO
ADMINISTRATOR'S PETITION
FOR JUDICIAL DETERMINATION**I. HEREDITY OF WILL ISSUE**

A. There is no pretermitted child. Washington law does not require the specific name of a child or names of children in order for the testator's intent to include them to be valid. The fact that the testator in this instance specifically chose a provision of the "California Statutory Will" which included "... *his children* [emphasis added] ..." to share in his estate in the event that his named spouse predeceased him was sufficient to avoid the challenge of pretermitted child.

B. The Will is valid in the State of California. Filed herewith is a Declaration of California Attorney re: Validity of Will" which confirms the fact that, as a matter of law in the State of California, the Will is valid. Under

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1 full faith and credit of the U.S. Constitution and application of Washington's
2 conflict of laws theory, a Will valid in the State of its origin is considered to
3 be valid in the state of Washington. Clearly, the law of the State of Washing-
4 ton is not applicable with respect to the issue of validity and, notwithstanding,
5 a licensed member of the bar of the State of California has assessed the Will
6 to be valid in the State of California.

7 C. Issue of appointment of personal representative. As indicated be-
8 low, the surviving spouse is withdrawing her Petition to become personal rep-
9 resentative of the Estate and therefore no response to the allegations of the
10 impropriety of her application therefor shall be addressed.

11 II. OBJECTION TO HEARING OF SLAYER ISSUE

12 Objection to the hearing of this issue is based on the following.

- 13 1. This issue is not a summary procedure.
- 14 2. Hearing this issue will violate the surviving spouse's Fifth
15 Amendment rights.
- 16 3. The administrator has no standing to present this issue.
- 17 4. A personal representative, by law, has a conflict of interest in pur-
18 suing this issue.
- 19 5. Noncompliance with TEDRA.

20 A. This issue is not a summary procedure. For reasons which will be
21 made more clear hereinbelow, there is simply not enough time to proffer an
22 appropriate "defense" to the allegations of the surviving spouse being a slayer
23 under RCW 11.36.010. There has been no Case Scheduling Order prepared for

these as well as the five additional matters recently noted for "hearing" by the personal representative which would include, *inter alia*, an opportunity for discovery, review of applicable law, as well as the evidence and preparation for a major trial regarding the significant merits of the issue regarding an alleged slayer.

It is interesting to note that all Washington cases reported regarding the prospective determination of a slayer were done in the auspices of a full trial setting, presumably some before a jury. At stake in this instance, of course, is the surviving spouse's right to receive either the entire estate per the terms of the decedent's Will; a homestead of surviving spouse in the sum of \$125,000 of the deceased's estate; and the potential receipt of life insurance benefits in the sum of \$400,000 or more. The administrator would tend to have these heady matters resolved by way of "hearing" currently set before a pro tem judge with approximately 3 weeks notice, which "hearing" suddenly becomes a "trial" for the convenience of the administrator in invoking CR 43(f)(1). In other words, for purposes of expeditious resolution of whatever issues including the five most recently added on, the administrator chooses to call the matter a "hearing" while for purposes of invoking CR 43(f)(1) the proceeding is deemed to be a "trial". The slayer issue alone is certainly a trial and, there being no case scheduling order, a trial would be inappropriate under LAR 0.4.1.

In addition to the foregoing potential civil ramifications of major significance to the surviving spouse, in truth and in fact, there is a pending criminal

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1 matter involving the surviving spouse as a defendant for the murder of the
2 decedent, which criminal action may be severely prejudiced by a "trial", "hear-
3 ing" or whatever prior to the disposition of said civil case. Simply put, the ad-
4 ministrators request to have this issue resolved in a summary fashion is
5 putting the cart before the horse. Moreover, while the administrator feels that
6 the case of Leavy v Metro Life, 20 W.App. 503 (1978), 581 P.2d 167 essen-
7 tially makes the criminal matter "irrelevant", Leavy simply does not say any
8 such thing. A quick reading of Leavy clearly shows obvious and unmitigated
9 distinctions between the facts before the court in Leavy and the one in this
10 instance. The simplest analysis is that, contrary to Leavy, in this instance there
11 has not been a criminal conviction.

12 B. Hearing the slayer issue now could have a significant adverse im-
13 act on the surviving spouse's rights under the Fifth Amendment. Filed here-
14 with or shortly hereafter is a declaration from criminal defense counsel for the
15 surviving spouse who thereby or under separate motion is objecting to the
16 hearing of this issue at this time. Possibly a declaration from the prosecuting
17 attorney for Spokane County will also be filed prior to the hearing on this ob-
18 jection. In either instance, neither the State nor the criminally accused
19 attorneys are anxious to have a civil disposition of the surviving spouse's
20 slayer status occur *prior to* the criminal disposition, if any, of the matter. It is
21 suggested as well as stated by criminal defense counsel that pursuing a
22 resolution of this issue at this time would be unduly prejudicial to the Fifth
23 Amendment rights of the surviving spouse and very well could be prejudicial

to the interests of the State under these circumstances. Again, the administrator is putting the cart before the horse.

1 C. This hearing is wrongfully proceeding adverse to requirements of
 2 RCW 11.96A (TEDRA). RCW 11.96A requires that certain issues involved
 3 with disputes involving estates or trusts are exclusively governed by said
 4 chapter. RCW 11.96A.020(a) states that "All matters concerning the estate and
 5 assets of . . . deceased persons, including matters involving nonprobate assets
 6 . . . " are given to the courts " . . . under this title [11.96A] to administer and
 7 settle . . . " (emphasis added). RCW 11.96A.030(1) defines matter as being "
 8 . . . any issue, question or dispute involving: . . . (c) The determination of any
 9 question arising in the administration of an estate . . . or with respect to any
 10 other asset or property interest passing at death, that may include, without
 11 limitation, questions relating to: (i) the construction of wills . . . ". RCW
 12 11.96A.100, *et seq.*, describes the "Procedural Rules" invoked for those mat-
 13 ters to be dealt with under this chapter. Clearly the matter currently being
 14 pressed to court by the administrator does not comply with the provisions of
 15 RCW 11.96A. It is suggested that a significant aspect of the purpose of said
 16 chapter was to avoid the pitfalls to interested parties, litigants or persons affect-
 17 ed as indicated hereinabove and hereinbelow. The legislature has pronounced
 18 a methodology to be employed under circumstances such as these for reasons
 19 more than obvious to those accustomed to practice in this area and said pro-
 20 cedures must be followed in order to fully protect the interests of all those
 21 involved in probate as well as trust matters.
 22

1 D. The administrator has no standing to invoke or pursue the alleged
2 slayer status of the surviving spouse. Considering the function of a administra-
3 tor under Chapter 11 of the Revised Code of Washington, the administrator
4 literally "has no dog in this fight". Under Washington Probate Law, any ad-
5 ministrator's function can be primarily assessed as being: to assemble and
6 safeguard the assets of the estate; pay creditors and other bills and expenses
7 including those of administration of the estate; and make distribution to those
8 persons entitled under law to receive such. The cart before the horse analogy
9 once again surfaces in this instance. Only with respect to the lattermost func-
10 tion of a personal representative would the status of a slayer become relevant
11 or significant. First, there is quite frankly much work to do by the administra-
12 tor prior to delving into that analysis. As suggested above and hereinbelow,
13 that analysis is best left to other parties and, in a worst case scenario, the
14 administrator could effect practically all of the functions of a personal repre-
15 sentative or administrator described above and by statute, then set aside the
16 proceeds of the estate awaiting the determination of the surviving spouse's
17 alleged slayer status by qualified heirs or other third party and offer appropri-
18 ate distribution thereafter.

19 More importantly, a simple review of practically all cases of record
20 involving interpretation of the slayer statute reveals that in most instances the
21 petitioner for determination thereof is, for obvious reasons, an insurance com-
22 pany who would need to have the determination made either by way of a
23 declaratory judgment or possibly an interpleader so as not to be sued by an

1 alternate non-slayer beneficiary. Unfortunately for the estate and whoever the
2 beneficiaries may be thereof, the administrator is invoking time and expense
3 which is prospectively an administrative cost to the estate with an unshaded
4 specific objective to preclude the surviving spouse from receiving any benefit
5 thereof.

6 In addition to the foregoing, it is by information and belief precipitous
7 for the administrator to take the foregoing steps under the circumstance that the
8 surviving son of the deceased will soon be appearing through counsel and
9 moving to become the personal representative of the estate in accord with
10 RCW 11.28.120. In other words, one of the two heirs aside from the surviving
11 spouse most vested with resolving the issues of resolving the estate, including
12 that of the alleged slayer status of the surviving spouse will shortly be filing his
13 own petition to become appointed personal representative of the estate. It is
14 likewise anticipated that the deceased's son will employ competent and
15 seasoned probate counsel who will be able to assist him in every way necessary
16 under the laws of the State of Washington to effect his duties. For this reason
17 alone, it would be appropriate for this Court to stay any and all future actions
18 by the interim administrator pending appointment of the lineal descendant of
19 the deceased to effect the most expeditious and efficient resolution of all the
20 affairs of the estate. While this is not to deny the efficacy of the work of the
21 currently-appointed interim administrator, it is to suggest that additional ac-
22 tions by the interim administrator should cease based on just the fact of his title
23 alone, i.e. an *interim* administrator of the estate. The Court should know that

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1 the current administrator suggested that, at the time of his application for that
2 position, no one else statutorily qualified was willing to take on the position.
3 Clearly now, one is.

4 E. It is a conflict of interest for the administrator to pursue the slayer
5 issue. The administrator of the estate is sworn by oath to effect the duties as
6 described above. At this point, until otherwise determined by agreement or
7 judicially, the personal representative of the estate stands to inherit the entire
8 estate by the terms of the proffered will or a significant portion thereof by the
9 way of intestate succession. Moreover, the nonprobate asset of the life insurance
proceeds would also essentially be given to the surviving spouse.

10 The administrator is charged with the responsibility of effecting the
11 services described above and then making distribution in accord with law. In
12 performing the duties of a personal representative or administrator, that individual
13 must not take sides or favor one distributee or beneficiary over another.
14 It is suggested that to actively pursue the issue of the alleged slayer status of
15 the surviving spouse at this point is in conflict with said surviving spouse's
16 prospective interest in the estate and would be antithetical and inappropriate to
17 the fiduciary duties of the administrator / personal representative. For this
18 reason, it is suggested that one may research the various cases associated with
19 interpretation of the Washington State Slayer Statute and find no examples of
20 a personal representative being the petitioner or moving active party in said
21 matters.

22 III. CONCLUSION


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1 For the five reasons detailed above, the pending actions of the personal
2 representative with respect to the determination of the alleged slayer status of
3 the spouse must be stayed and the administrator enjoined from pursuing such.
4 Moreover, with respect to any other most recently filed matters by the ad-
5 ministrator, those which have exclusive jurisdiction under RCW 11.96A
6 including but not limited to the validity of the will must also be stayed in favor
7 of the procedure set forth in RCW 11.96A.

8 DATED this 7th day of May, 2008.

9 Respectfully submitted,

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12 Attorney for Surviving Spouse
13 WSBA #6680
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