IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Estate of	)	No. 64401-7-I
	)	
	)	
MARY L. WICKS,	)	UNPUBLISHED OPINION
	)	
Deceased.	)	FILED: June 6, 2011
	)	

Ellington, J. —This appeal arises under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW. Mary Wicks died at the age of 86, survived by four adult children. Three of Wicks' children believed she died intestate. Wicks' fourth child, Edward Howard, produced a will in his handwriting, which Wicks had signed in the hospital eleven days before she died. The will left the bulk of Wicks' estate to Howard and his children. Wicks' estate filed a TEDRA petition challenging the validity of the will. After a trial, the superior court entered an order declaring the will invalid. The court found Wicks was not competent when she signed the will and signed it only because of Howard's undue influence. Howard appeals. We affirm and award the estate costs and fees under TEDRA and for having to defend a frivolous appeal.

BACKGROUND

Wicks died on October 15, 2007 in Skagit County, Washington. During the

last two years of Wicks' life, Howard, his two sons, and their mother Dolores Akins all resided with Wicks in her home. Akins was the only person in the house with a valid driver's license and Wicks depended on her for all of her transportation. Howard and Akins used Wicks' checking account as their own and commingled their funds. The trial court found that Howard effectively controlled every aspect of Wicks' day to day life.

According to medical records, Wicks began exhibiting signs of serious mental confusion in July 2007. By August, Wicks' doctor noted she suffered from depression, senility and dementia. By October, Wicks' physical health also suffered major setbacks and she was hospitalized for congestive heart failure and other serious conditions. On October 2, her doctor noted that she did not understand the nature of her illness, was not eating, and was failing rapidly. On October 4, the day Wicks signed the will in issue, her doctor noted that her prognosis was very grim. A case manager at the hospital also recorded that Wicks could not recall her primary physician's name, was stressed about financial concerns, and refused to provide permission to her bank for her son to access her account.

Wicks' other children visited her in the hospital several times during October 2007. Wicks never mentioned a will to them. Wicks never consulted with any lawyer, accountant, or other independent advisor before signing the will.

After Wicks died, her daughter Cynthia Ossenkop filed a petition for probate in superior court. The petition alleged Wicks died intestate. Ossenkop was appointed administrator of the estate on October 19. Howard responded to the

petition by filing the October 4 will. It awarded the bulk of Wicks' property, consisting of her home and several vehicles, to Howard and his sons. The will was purportedly witnessed by Akins and her best friend, Adina Knoche.[1]

Ossenkop filed a TEDRA petition on behalf of the estate, challenging the validity of the will. The estate and Howard were represented by counsel at trial. At the trial's conclusion, the superior court entered findings of fact and conclusions of law determining the will was invalid because of Wicks' incompetence and Howard's undue influence.

Howard now appeals pro se.

DISCUSSION

Howard's brief contains no assignments of error. As a result, this court must accept the trial court's findings as verities.[2] Moreover, Howard improperly attempts to rely on documentary exhibits, which were not part of the trial record, and which this court has already stricken by separate order.[3] In addition, Howard's legal theory on appeal is that he is entitled to relief because his trial counsel provided ineffective

[1] The trial court found that, in a sworn deposition, Knoche later denied having ever seen the will and did not know how her signature appeared on the attestation on the will.

[2] Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

[3] Howard did not file a motion to modify the commissioner of this court's ruling granting the estate's motion to strike the exhibits attached to his opening brief. As a pro se litigant, Howard is held to the same standard as an attorney and must comply with all procedural rules on appeal. Westberg v. All-Purpose Structures, Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). We accordingly disregard materials Howard has also improperly appended to his reply brief.

assistance. But since this is a civil matter involving only private parties, ineffective assistance of counsel is not legal grounds for reversal.[4]

Even if we interpreted Howard's brief as advancing a permissible challenge to the sufficiency of the evidence to support the trial court's findings and conclusions, it is clear that his appeal lacks debatable merit. While the facts were contested, this court cannot reweigh the trial court's determination of the credibility of the witnesses or the persuasiveness of the evidence on appeal.[5] Our review of the record shows that the evidence, including the medical evidence, amply supported the court's findings. And it is further apparent that the trial court employed the correct standards and presumptions in reaching the legal conclusions that followed from those findings.[6]

The estate asks this court to award attorney fees under the TEDRA statute and for having to defend a frivolous appeal.[7] Fees under TEDRA are addressed to the discretion of the court, based on "any and all facts that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved."[8] An appeal is frivolous if, considering the entire record, the court is convinced the appeal presents no debatable issues upon

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[4] Nicholson v. Rushen, 767 F.2d 1426, 1427 (9th Cir.1985).

[5] Lords v. Northern Automotive Corp., 75 Wn. App. 589, 603, 881 P.2d 256 (1994).

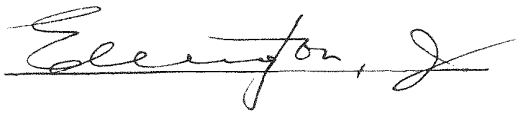
[6] See Report of Proceedings (Oct 15, 2009) at 120-26; In re Estate of Lint, 135 Wn.2d 518, 535-36, 957 P.2d 755 (1998).

[7] See RAP 18.9(c)(2); see also Reid v. Dalton, 124 Wn. App. 113, 128, 100 P.3d 349 (2004).

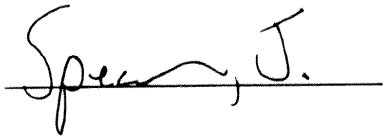
[8] RCW 11.96A.150(1).

which reasonable minds might differ and the appeal is so devoid of merit that there is no possibility of reversal.[9] All doubts as to whether an appeal is frivolous should be resolved in favor of the appellant.[10] Fees are appropriate here under both theories. We award costs and fees to the estate, subject to its compliance with RAP 18.1, in an amount to be determined by a commissioner of this court.

Affirmed.



WE CONCUR:



[9] Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 225, 241, 119 P.3d 325 (2005).

[10] Id.