IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

IN RE THE PROBATE ESTATE	)	No. 65217-6-I
	)	
	)	
OF	)	DIVISION ONE
	)	
	)	
EDWARD A. HOWISEY,	)	UNPUBLISHED OPINION
	)	
Deceased.	)	FILED: July 5, 2011

SPEARMAN, J. — Carol Carnahan appeals certain findings of fact and conclusions of law, the judgment, and the attorney fee award entered in favor of Marilyn Jensen and Anne Sinnett. In 2008, Jensen and her daughter Sinnett (Jensen/Sinnett) entered into a settlement agreement with Carnahan, Jensen's sister, under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, to resolve the parties' dispute over the will of Carnahan and Jensen's deceased father, Ernest Howisey. The parties agreed, among other things, that the Final Will would be probated and that Jensen/Sinnett would receive $200,000. Half was paid immediately and they were given a promissory note for the remainder, secured by Howisey's house. The house was sold but the proceeds were not enough to satisfy the note, and Jensen/Sinnett brought a

petition for judgment on the note. The main issues on appeal are whether the trial court erred in ruling that Jensen/Sinnett were estate creditors with priority to receive satisfaction of their note before distribution of the estate's assets and that Carnahan, as successor personal representative (PR), was personally liable. We hold that the court's factual findings, insofar as they are material to these issues, were supported by substantial evidence and that the court's findings of fact supported its conclusions of law and judgment. We also award attorney's fees on appeal to Jensen/Sinnett.

FACTS

Ernest Howisey, who died on July 30, 2007, was survived by daughters Carnahan and Jensen and granddaughter Sinnett. He made one will dated June 30, 2003. Under that will, William Jaback, the executive director of Partners in Care (PIC), was appointed PR of the estate and Carnahan, Jensen, and Sinnett received equal shares. Carnahan offered a different will (Final Will), dated August 12, 2005, to probate. Under the Final Will, Carnahan was appointed PR; she and Jensen were equal heirs to the residuary; and a few individuals, including Sinnett, received specific bequests. Jensen and Sinnett objected to the probate of the Final Will. The matter was set for trial, but the trial court first ordered mediation.

The mediation on February 6, 2008 resulted in a settlement, which was memorialized by an agreement (Agreement) pursuant to Civil Rule (CR) 2A and

TEDRA. Jensen/Sinnett, Carnahan, and Jaback agreed that the Final Will would be admitted to probate, with Carnahan serving as successor PR. As to the beneficial share of Jensen and Sinnett, they agreed:

> Marilyn Jensen and Anne Sinnett shall be paid $200,000 as their beneficial share of the estate and shall have no further interest or involvement in the administration of this estate. Marilyn Jensen and Anne Sinnett specifically waive any ownership interest in any asset of the estate. William Jaback shall issue a check payable to Marilyn Jensen and Anne Sinnett, jointly, in the amount of $100,000 within 7 days of this agreement and the remainder shall be secured by a note on the Corliss residence[1] at 4% interest, due and payable on sale of the Corliss residence or within one year of the date of this agreement, whichever occurs sooner. The Personal Representative shall at all times maintain homeowner's, (fire) insurance on the residence.

They also agreed that Jensen/Sinnett would receive certain specified items of personal property and one-half the value of a 1966 Thunderbird "either appraised or sale value, @ [Carnahan's] option, within 60 days of her appt. as PR." The Agreement included a release clause.[2] PR Jaback issued Jensen/Sinnett a check for $100,000 and executed a promissory note for the

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[1] The "Corliss residence" was Howisey's house.

[2] The release clause provided, in pertinent part:
Carol Carnahan, Marilyn Jensen and Anne Sinnett do hereby affirmatively fully release one another from all liability related to this agreement, and the administration of the Estate of Ernest Howisey under King County Cause Nos. 07-4-04064-9SEA and 03-4-05875-8SEA. In exchange for the consideration set forth in this CR 2A Settlement . . . Carol Carnahan, Marilyn Jensen and Anne Sinnett hereby release and discharge each other, William Jaback and Partners In Care, their agents, employees, partners and lawyers from and against any and all claims, liabilities, actions, suits, debts, expenses, attorneys' fees, causes of action, and/or claims for compensation or damage of any kind or nature, whether known or unknown, whether existing now or arising at any time in the future, which arise from or relate in any way to the administration of the durable power of attorney and the estate of Ernest Howisey.

remaining $100,000 on February 19, 2008.[3] A notice of filing of a memorandum of the Agreement was filed in trial court on March 5, 2008, as was the memorandum. These documents were served on all beneficiaries, none of whom filed any objection to the Agreement. On March 21, 2008, the trial court appointed Carnahan as successor PR and admitted the August 12, 2005 will into probate.

Carnahan received a foreclosure notice for the Corliss residence on August 27, 2008. Sometime after she received this notice, she distributed some of the specific bequests. She expended substantial time and effort in preparing the house for sale and tried to sell it for the original asking price, which would

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[3] The promissory note stated, in full:

> FOR VALUE RECEIVED, WILLIAM C. JABACK, as Personal Representative of the **ESTATE OF ERNEST HOWISEY**, Deceased, King County Superior Court Cause Number 07-4-04064-9SEA, promises to pay to **MARILYN JENSEN and ANNE SINNETT**, or order, the principal sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) with interest from the 6th day of February, 2008 on the daily unpaid principal balance, at the rate of four percent (4.00%) per annum, as follows:
>
> In all events, this Promissory Note is payable in full as to both unpaid principal and accrued but unpaid interest on or before the sooner sale of the real property securing payment of this Promissory Note or the 6th day of February, 2009.
>
> This Promissory Note is secured by a Deed of Trust on real property commonly known as 11535 Corliss Avenue North, Seattle, Washington 98133-8534.
>
> If any payment is not made as required, interest thereafter shall accrue at the rate of twelve percent (12%) per annum on the whole unpaid sum of principal, and the whole sum of both principal and interest shall become due and payable at once without further notice, at the option of the holder hereof.
>
> If this note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the principal or interest of this note, the undersigned promises to pay a reasonable attorney's fee.

It was signed by Jaback in his capacity as PR.

have accommodated the amount owed on the promissory note. After experiencing difficulty selling it at that price, Carnahan requested Jensen/Sinnett to agree to reduce the amount owed to them on the note, explaining that because of the poor housing market and imminent foreclosure she wanted to reduce the asking price of the house by the amount they agreed to forgo. They declined. Carnahan sold the house for fair market value on November 20, 2008. The net proceeds were distributed to Jensen/Sinnett but were insufficient to satisfy the entire note, leaving $28,287.56 to be paid.

On February 6, 2009, one year after the date of the Agreement, the balance became due and owing.[4] According to the terms of the promissory note, the unpaid principal balance bore interest at the rate of 12% annum. The note provided for reasonable attorney's fees if it had to be collected by an attorney. Jensen/Sinnett sent Carnahan a demand for $28,287.56, attorney's fees, and interest of 12%. Carnahan petitioned the trial court for instructions on how to proceed after the sale of the house resulted in insufficient funds to satisfy Jensen/Sinnett's note and the specific bequest to Marianne Hansen. She requested that no further payment be due on the note due to unforeseen conditions in the housing market. Jensen-Sinnett filed a petition for judgment on the promissory note on May 4, 2009. The court commissioner granted judgment

[4] Although the Agreement provided that the note was due and payable upon sale of the Corliss residence or one year from the date of the Agreement, whichever occurred sooner, Jensen/Sinnett contended below, and the trial court found, that the Agreement was breached by the failure to pay by February 6, 2009.

to Jensen/Sinnett in the amount for the remainder of the note plus interest, but Judge Barbara Mack vacated the commissioner's order on revision and remanded the issues to the commissioner.

On November 2, 2009, Jensen/Sinnett again filed a petition for judgment on the promissory note, seeking judgment against Carnahan personally and in her capacity as PR for the unpaid balance of their promissory note plus attorney's fees and costs. They also sought to remove Carnahan as PR. Carnahan filed a "petition for distribution" on November 3, requesting the trial court to rule on the unresolved issues.

The matter was set for trial, which was held March 2 to March 4, 2010 before Judge Kimberly Prochnau. Following trial, the court entered findings of fact, conclusions of law, and a judgment. It concluded that under RCW 11.76.050, the debts of the estate were to be paid before the distribution of any property and that Jensen/Sinnett were creditors of the estate. It concluded that the estate and Carnahan personally were liable for the unpaid portion of the promissory note and for an amount due for the Thunderbird. The trial court entered judgment in favor of Jensen/Sinnett in the amount of $28,287.56 plus a per diem of $8.18 for each day after February 6, 2009 until paid and $2,837.50 (half the value of the Thunderbird). It ordered Carnahan removed as PR while approving $25,000 in administration expenses for her work as PR; ordered that the estate's interest in the Beaver Lake cabin be sold; entered judgment in favor

of Marianne Hansen for the bequest to her and her late mother;[5] and awarded Jensen/Sinnett attorney's fees and costs,[6] later determined to be $38,425.15.

Carnahan appeals.

DISCUSSION

Carnahan argues that the trial court erred in ruling that (1) Jensen/Sinnett were creditors of the estate and could recover against the estate as creditors rather than beneficiaries, (2) Jensen/Sinnett's claims had a higher priority of payment than that of residual beneficiaries, and (3) Carnahan was personally liable. She also assigns error to certain findings of fact and the trial court's award of attorney's fees. We hold that the trial court's challenged findings of fact, to the extent they are material to the challenged conclusions of law, are supported by substantial evidence and that the findings of fact in turn support the trial court's conclusions of law and judgment. We also conclude that the trial court's award of attorney's fees was proper and award attorney's fees on appeal to Jensen/Sinnett.

Findings of Fact and Conclusions of Law

Where, as here, findings of fact and conclusions of law are entered

[5] Hansen was a cousin of Carnahan and Jensen. She and her late mother, Gudrun Hansen, were named beneficiaries of specified amounts under the will.

[6] "Attorneys' fees are awarded to Petitioners against the Estate and against Carol Carnahan, individually under RCW 11.76.070 and by the terms of the promissory note and under RCW 11.96A.150. Fees are awarded under RCW 11.96A.150 because Ms. Carnahan's actions as Personal Representative of the Estate has led to the necessity of Petitioners' claims and the foregoing trial."

following a bench trial, we limit our review "to determining whether the findings are supported by substantial evidence, and if so, whether the findings support the trial court's conclusions of law and judgment." Sunnyside Valley Irr. Dist. v. Dickie, 111 Wn. App. 209, 214, 43 P.3d 1277 (2002) aff'd, 149 Wn.2d 873, 73 P.3d 369 (2003). "Substantial evidence exists if a rational, fair-minded person would be convinced by it." In re Estates of Palmer, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008), (quoting, Rogers Potato Service, L.L.C. v. Countrywide Potato, L.L.C., 152 Wn.2d 387, 391, 97 P.3d 745 (2004)). Unchallenged findings of fact are verities on appeal. In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). We review conclusions of law de novo. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

The main issues on appeal are whether the trial court erred in ruling that Jensen/Sinnett were estate creditors with priority to receive satisfaction of their note before distribution of the estate's assets and that Carnahan was personally liable. We incorporate discussion of the challenged factual findings insofar as they relate to these issues.[7] Initially, Carnahan argues that the Agreement's

[7] In addition to the challenged findings discussed in our opinion, Carnahan also challenges findings of fact 15, 19, 20, and 37, which state:

> 15. On November 14, 2008, the Court issued an order that stated, inter alia*:* 'To the extent that the proceeds [of the sale of the property] do not satisfy the promissory note any unpaid portion of the Promissory Note remains an obligation of the Estate.' The form of the order on Petitioners' petition was an agreed order, presented by both Carol Carnahan and counsel for Petitioners.
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> . . . .
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> 19. Petitioners filed a Request for Notice of Proceedings on August 10, 2007 pursuant to RCW 11.28.240 that required Ms. Carnahan, as Personal Representative, to give Petitioners notice before she paid any attorneys'

broad release language should have barred Jensen/Sinnett altogether from bringing their petition for judgment on the promissory note, citing Bakamus v. Albert, 1 Wn.2d 241, 95 P.2d 767 (1939) in support.[8] She argues that the trial court failed to treat the Agreement as a final, binding court order under RCW 11.96A.230(2).[9] But the trial court specifically concluded that the Agreement, made pursuant to RCW 11.96A.200, was the equivalent of a final court order,

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> fees or claims of the Personal Representative against the Estate.
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> 20. Ms. Carnahan has not filed an annual report since her appointment as Personal Representative.
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> . . .
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> 37. Ms. Carnahan transferred the Wyoming property to herself personally rather than transferring it into the estate.

Carnahan challenges finding of fact 15 on the ground that the order in question was not agreed, but only presented by both parties after the trial court ordered them to prepare an order. She argues that findings of fact 19 and 20 are not supported by substantial evidence because under the Agreement Jensen/Sinnett had no further interest in the estate, so there was no need to provide notice or reports to them. As to finding of fact 37, Carnahan contends that under the terms of the Final Will and the Agreement, she was entitled to all property not otherwise disposed of, and under the Agreement, she had no duty to transfer the Wyoming property into the estate. Her arguments are not well taken because she fails to challenge the substance of these findings. Though we agree that there is no evidence that the order referred to in finding of fact 15 was agreed, her challenge on this basis is irrelevant because she does not challenge the substance of the commissioner's order that the property should be sold, the proceeds applied to the note, and any unpaid portion of the note remained an obligation of the estate. Finding of fact 20 does not state that Carnahan was required to provide reports to them, only that she had not filed an annual report since she was appointed as PR. She does not dispute this. Nor does Carnahan dispute that she did in fact transfer the Wyoming property to herself. Finally, regarding finding of fact 19, Jensen/Sinnett did file, shortly after Howisey died, a "Request for Notice of Proceedings" that requested the PR (Jaback, at the time) to provide written notice of certain proceedings pursuant to RCW 11.28.240. Carnahan is correct in that the Agreement stated that Jensen/Sinnett would have no further interest or involvement in the administration of the estate. But finding of fact 19 is not material to any issue on appeal.

[8] In relation to this issue, Carnahan challenges finding of fact 9, which summarizes the terms of the Agreement, because it lacks the waiver/release clause. The finding accurately summarizes the Agreement and is supported by substantial evidence. It is not incorrect simply because it does not also refer to the release language. The complete Agreement, including the release language, is in the record and we consider it in its entirety.

[9] Under TEDRA, parties interested in an estate may enter into an agreement that, once filed with the court having jurisdiction, is deemed approved by the court and "is equivalent to a final order binding on all persons interested in the estate or trust." RCW 11.96A.230(2).

and Jensen/Sinnett do not dispute that the Agreement was final and binding. Instead, they argue that their suit on the promissory note was not precluded by the Agreement's release clause because they did not waive future claims based on future acts or any rights to enforce the Agreement itself, only claims that arose out of facts that existed up to and at the time they signed the Agreement.

We agree with Jensen/Sinnett. They sued to enforce the Agreement—not to contest the will or be involved in the administration of the estate. Interpreting the release to bar an action to enforce the Agreement makes the Agreement a nullity. Such reasoning would permit either party to refuse to comply with their obligations and walk away with impunity. This cannot be what the parties contemplated under the release language. Bakamus is of no assistance to Carnahan. The release in that case plainly referred to the matter over which the plaintiff sought to sue. Id. at 251–52.

Concluding that Jensen/Sinnett's claims were not barred by the Agreement's release language, we turn to the substance of Carnahan's challenges to the trial court's conclusions that (1) Jensen/Sinnett were creditors of the estate and could therefore recover against the estate as creditors rather than beneficiaries and (2) Jensen/Sinnett's claims had a higher priority of payment over that of residual beneficiaries. These issues are related.

Carnahan argues that Jensen/Sinnett were not creditors. She contends that under the Final Will, she and Jensen were residuary beneficiaries and that

under the Agreement, Sinnett agreed to the same status. She argues that the trial court's ruling allowed Jensen/Sinnett to "leapfrog" over certain specified beneficiaries who had not signed the TEDRA Agreement. Because the Agreement was not signed by those beneficiaries, she contends, they are not bound under RCW 11.96A.220, which requires "all parties" to sign an agreement. Finally, Carnahan argues that even if Jensen/Sinnett were correctly considered creditors, creditors must follow a specific procedure to have their claims considered, starting with filing a creditor's claim, which Jensen/Sinnett did not do.

Jensen/Sinnett argue that Carnahan's procedural assertions, if valid, would belong to third parties, not Carnahan. They respond to her argument that they could not be estate creditors because other beneficiaries did not sign the Agreement by pointing to unchallenged finding of fact 13, which states that all beneficiaries were served with a notice of the filing, a memorandum of the Agreement, and notice of hearing to approve the settlement, and none of the beneficiaries filed any objection. Therefore, the trial court's conclusion that the beneficiaries are barred by such notice is supported by substantial, unrebutted evidence. They argue that under the plain language of RCW 11.40.010, the process specified therein applies to creditors of the decedent, not creditors of the estate.

We hold that the trial court properly concluded that Jensen/Sinnett were

creditors of the estate. They were creditors by virtue of the promissory note. Carnahan contends that Jensen/Sinnett had a beneficiary interest. She is incorrect. Although Jensen/Sinnett were beneficiaries under the will, under the Agreement they agreed to walk away from the will contest and the administration of the estate in exchange for a sum certain, half of which was owed under a promissory note secured by the house. In fact, Carnahan as PR could not abide by the will with respect to its bequests to Jensen/Sinnett because of this arrangement. The promissory note was subsequently issued by Jaback on behalf of the estate, and the amount due became a debt of the estate. The note stated plainly that it was "payable in full," not payable only to the extent that it was satisfied by the sale of the house. Therefore, the fact that the secured portion of the note was sold and distributed to Jensen/Sinnett did not discharge the note remainder. Furthermore, in November 2008, the trial court ordered that any unpaid portion of the promissory note was a debt of the estate, and this order was not appealed nor a motion for revision filed.[10] This order became the law of the case, as the trial court ruled in unchallenged conclusion of law 7. As for Carnahan's argument that Jensen/Sinnett did not comply with the procedures under RCW 11.40.010, we agree with Jensen/Sinnett that the process specified therein applies to creditors of the decedent, not creditors of the estate.[11]

[10] This ruling arose in connection with a petition by Jensen/Sinnett to remove Carnahan as PR.

[11] The statute provides:
A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the

Carnahan next argues that the court erred in concluding that she was personally liable. Her challenge to this conclusion is based on the release language in the Agreement, which stated that the parties agreed to release each other from claims arising from or relating to the administration of Howisey's estate. She argues that she could not be held personally liable under the Agreement.

Jensen/Sinnett respond that the unchallenged findings—verities on appeal—support the trial court's conclusion that Carnahan was personally liable as PR of the estate. They argue that because the estate owed money to them, they were permitted to bring an action against the PR, who was liable for losses caused by the breach of her responsibilities. They cite In re Estate of Wilson, 8 Wn. App. 519, 528, 507 P.2d 902 (1971) in support.

We agree with Jensen/Sinnett that the trial court did not err in concluding that Carnahan was personally liable. The trial court's conclusion was supported by the following findings of fact:

> 23. Ms. Carnahan paid attorneys' fees and distributed specific bequests without providing notice and before she had paid petitioner's note balance. She also preferred some legatees in favor of others paying 100% of the bequests due to Sita Gurung and Frework Alemayehu, while paying nothing to Marianne Hansen or the estate of G. Hansen. Although Ms. Hansen did not object to the TEDRA agreement, she did

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> claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW.

RCW 11.40.010 (emphasis added).

not waive her claims to the bequests due to her and her mother's estate.

24. Ms. Carnahan commingled estate assets with her own personal funds and used estate assets to pay personal expenses.

25. [Carnahan] has not provided an adequate accounting; even at trial, she admitted that she could not fully or clearly explain how she had managed the estate and did not even understand it herself.

26. Rather than retain a probate attorney to guide her through the probate process, Ms. Carnahan chose to consult no fewer than 5 attorneys through this process. She either failed to understand their advice or chose to disregard it. For example, she held up the sale of the Corliss residence by insisting that the promissory note would have to be compromised in order for the sale to go through even though Petitioners' attorney explained how the sale could go through and she had the services of a real estate attorney. She based some of her actions based [sic] on her misunderstanding of the law and her belief that she was capable of educating herself and did not need to seek the advice of an attorney. For example, she thought putting the estate funds into her own personal account and making withdrawals for both estate and personal purposes did not constitute improper "commingling." She thought that the bequest to G. Hansen lapsed because G. Hansen died even though Mr. Howisey preceded G. Hansen in death. She had the services available to her of highly competent counsel but chose not to avail herself of their guidance and counsel except when it suited her own purposes.

27. She caused financial harm to the estate by not wrapping up the estate in a timely and efficient manner.

28. Based on numerous contradictory representations in evidence admitted by the Court, such as whether the Estate had distributed specific bequests, whether the Estate had a Wells Fargo Account; and the value of the sale of the 1966 Thunderbird, the Court finds that Carol Carnahan has a poor memory, is confused about her own accountings and management of the estate, as well as the facts pertinent to this matter, and is not a reliable witness.

. . . .

38. Ms. Carnahan did sell the Corliss property through

> a realtor for an amount less than which fully satisfied the Petitioner's lien but was fair market value. She did not immediately list it with a realtor but attempted to sell it on her own through word of mouth and flyers. She did not advertise it in the newspaper or internet sources. She did put in substantial time and effort in preparing the home for sale.

Out of these, Carnahan challenges only finding 23, and we find her challenge to be without merit.[12] We also agree with Jensen/Sinnett that the release language does not preclude their action to obtain judgment on their promissory note or to hold Carnahan personally liable for that obligation. The Agreement states that Carnahan, Jensen, and Sinnett agreed to release each other from liability "[i]n exchange for the consideration set forth in this CR 2A Settlement . . . ." The consideration for the release from liability is the full, agreed amount of $200,000. Because Jensen/Sinnett did not receive their consideration due under the Agreement, they are not precluded from proceeding against Carnahan.

Moreover, Carnahan does not explain why the trial court erred in concluding that she was personally liable under RCW 11.76.160 and Hesthagen v. Harby, 78 Wn.2d 934, 942–43, 481 P.2d 438 (1971).[13] The PR has a

[12] Carnahan challenges finding of fact 23 because it "implies that Jensen-Sinnett's note balance was something other than the residuary 'beneficial share' that it was." She does not challenge the substance of the finding of fact, only what she contends is its implication. Carnahan does not dispute that (1) she paid attorney's fees and distributed certain bequests before paying the entire balance of Jensen/Sinnett's note, (2) paid 100 percent of the bequests to Sita Gurung and Frework Alemayehu while not paying the bequests to Hansen or her mother, (3) and Hansen did not waive her claims to the bequests to herself and her mother.

[13] The Hesthagen court stated:

> The administrator of a decedent's estate is an officer of the court and stands in a fiduciary relationship to those beneficially interested in the estate. In the performance of his fiduciary duties he is obligated to exercise the utmost good faith and to utilize the skill, judgment, and diligence which would be employed by

statutory duty "to settle the estate, including the administration of any nonprobate assets within control of the personal representative under RCW 11.18.200, in his or her hands as rapidly and as quickly as possible, without sacrifice to the probate or nonprobate estate." RCW 11.48.010. Carnahan stood in the position of a fiduciary to those with a beneficial interest in the estate, including creditors. See Matter of Estate of Larson, 103 Wn.2d 517, 694 P.2d 1051 (1985). Under RCW 11.76.160, whenever a decree is made by a court for the payment of creditors, the PR is personally liable to each creditor unless the PR's inability to make the payment from the property of the Estate is not due to the fault of the PR. The trial court did not err in concluding that under the applicable law and its findings of fact, Carnahan was personally liable as PR.

In sum, the trial court did not err in concluding that Jensen/Sinnett, through the Agreement and promissory note, were creditors of the estate who were entitled to be paid before specific beneficiaries. Unchallenged findings of fact support the amount of the judgment on the note and the Thunderbird. The trial court also did not err in concluding that Carnahan's actions as PR made her personally liable on the note. To the extent that there is any ambivalence in the Agreement or in how TEDRA applies to the parties' actions, TEDRA provides

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> the ordinarily cautious and prudent person in the management of his own trust affairs. For a breach of his responsibilities which causes loss to another, he stands liable.

78 Wn.2d at 942 (internal citations omitted). RCW 11.02.005 provides that the terms "personal representative" and "administrator" are interchangeable.

courts significant authority as follows:

> (1) It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
>
> (a) All matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets and powers of attorney, in accordance with this title; and
>
> (b) All trusts and trust matters.
>
> (2) If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of the matters listed in subsection (1) of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

RCW 11.96A.020.

Attorney's Fees Below

By its language, RCW 11.96A.150 makes a trial court's award of costs and reasonable attorney's fees a matter of the court's discretion. See RCW 11.96A.150(1). Here, the trial court awarded attorney's fees against the estate and Carnahan personally based on RCW 11.76.070,[14] the terms of the

[14] RCW 11.76.070 provides:

> If, in any probate or guardianship proceeding, any personal representative shall fail or neglect to report to the court concerning his or her trust and any beneficiary or other interested party shall be reasonably required to employ legal counsel to institute legal proceedings to compel an accounting, or if an erroneous account or report shall be rendered by any personal representative and any beneficiary of said trust or other interested party shall be reasonably required to employ legal counsel to resist said account or report as rendered, and upon a hearing an accounting shall be ordered, or the account as rendered shall not be approved, and the said personal representative shall be charged with further liability, the court before which said proceeding is pending may, in its discretion, in addition to statutory costs, enter judgment for reasonable attorney's fees in favor of the person or persons instituting said proceedings and against said personal representative, and in the event

promissory note, and RCW 11.96A.150.[15] Carnahan challenges the award on the basis that it was contrary to the Agreement, which stated that the parties released and waived the right to recover attorney's fees and expenses from each other. Jensen/Sinnett respond that the trial court had discretion to award fees under RCW 11.96A.150(2), which provides that attorney's fees may be awarded to any party in "'all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters.'" They also contend that RCW 4.84.330 provides for a mandatory award of attorney's fees and costs based on a claim for breach of contract if the contract provides that such award is mandatory.

We affirm the award of attorney's fees. Although the Agreement states that no attorney's fees or expenses shall be awarded to or from each of the

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> that the surety or sureties upon the bond of said personal representative be made a party to said proceeding, then jointly against said surety and said personal representative, which judgment shall be enforced in the same manner and to the same extent as judgments in ordinary civil actions.

[15] RCW 11.96A.150(1) provides:

> Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

The trial court concluded, "Fees are awarded under RCW 11.96A.150 because Ms. Carnahan's actions as Personal Representative of the Estate has led to the necessity of Petitioners' claims and the foregoing trial."

parties, the trial court properly concluded that such language did not apply where Jensen/Sinnett's action was taken to enforce the Agreement itself and where the promissory note explicitly provided, "If this note shall be placed in the hands of an

attorney for collection, or if suit shall be brought to collect any of the principal or interest of this note, the undersigned promises to pay a reasonable attorney's fee." The "undersigned" was Jaback, as PR of the estate.

Attorney's Fees on Appeal

Jensen/Sinnett, citing RAP 18.1 and RCW 11.96A.150, request fees based on their right to fees before the trial court. RCW 11.96A.150 authorizes this court to award fees in our discretion. We award fees on appeal under that statute, subject to Jensen/Sinnett's compliance with RAP 18.1.

Affirmed.

Spearman, J.

WE CONCUR:

Ellington, J.

Becker, J.