

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:)	
)	DIVISION ONE
VIRGIL VICTOR BECKER, JR.,)	
)	No. 65578-7-I
Deceased.)	
)	
CATHERINE JANE BECKER,)	UNPUBLISHED OPINION
CAROL-LYNNE JANICE BECKER,)	
and ELIZABETH DIANE MARGARET)	
BECKER,)	
)	
Respondents,)	
)	
v.)	
)	
JENNIFER WHITE, in her capacity as)	
Personal Representative of the Estate)	
of Virgil Victor Becker, Jr.,)	
)	
Respondent.)	FILED: March 12, 2012
)	
NANCY BECKER,)	
)	
Petitioner.)	
_____)	

Dwyer, C.J. — Virgil Victor (“Tory”) Becker Jr. died in July 2008. His purported will, which leaves his entire estate to his minor daughter Barbara, was thereafter admitted to probate. Tory’s three adult daughters from a previous marriage challenged the will as fraudulent and asserted numerous creditors’

claims against the estate. Following mediation, Barbara's guardian ad litem (GAL) and the adult daughters entered into an agreement settling the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate.

Nancy Becker, Tory's wife and Barbara's mother, refused to sign the settlement agreement in her role as personal representative of the estate. After her removal from that role due to irreconcilable conflicts, she appeared in the action personally. Upon motion of the GAL, the trial court determined that Nancy—who is not a named beneficiary in the will admitted to probate—does not have standing to participate in proceedings regarding the settlement agreement.

Nancy filed a motion for discretionary review of the trial court's order, which we granted. We conclude that neither general principles of standing nor the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, confer upon Nancy standing to participate in the settlement agreement proceedings. Accordingly, we affirm the trial court's order.

I

Tory Becker died on July 27, 2008 when the private airplane in which he was a passenger crashed. At the time of his death, Tory was married to Nancy Becker, with whom he had a child, Barbara Becker. Barbara was born on November 28, 1997. She is currently 14 years old. Tory is also survived by three daughters from a previous marriage—Catherine Jane Becker, Carol-Lynne

Janice Becker, and Elizabeth Diane Becker.¹

On August 13, 2008, the trial court admitted to probate a will which left Tory's entire estate to Barbara. Pursuant to that will, Nancy was named as personal representative of the estate.

On December 12, 2008, the adult daughters filed a petition challenging the validity of the will and seeking to remove Nancy as personal representative based upon alleged conflicts of interest. Jennifer Rydberg was thereafter appointed to act as Barbara's GAL. The adult daughters and their mother—Linda Bulger, Tory's previous wife—additionally asserted 14 creditors' claims against the estate. Nancy, as personal representative, rejected each of the creditors' claims, and a civil action for the claims was filed against the estate on January 29, 2009.

On December 4, 2009, Rydberg, the adult daughters, and Bulger participated in a mediation to resolve the disputes. Following the mediation, they signed a "CR 2A Settlement Agreement."² The agreement stated that the petitioners—the adult daughters and Bulger—recognized the possibility that one or more of their creditors' claims might be dismissed by the court and that their will contest might be unsuccessful. Similarly, the agreement stated that the respondent—Barbara, as represented by GAL Rydberg—recognized the

¹ Catherine Jane Becker, Carol-Lynne Janice Becker, and Elizabeth Diane Becker are referred to collectively herein as the "adult daughters." The other Becker parties are referred to by their first names in order to avoid confusion.

² Nancy, as personal representative of the estate, was also present for part of the mediation. However, she was not involved in the drafting of the settlement agreement.

possibility that one or more of the creditors' claims might be granted by the court and that the will contest might be successful. Accordingly, pursuant to the agreement, the adult daughters and Bulger agreed to dismiss the will contest and creditors' claims in exchange for granting the adult daughters a percentage interest in the estate. The agreement further recognized that "[t]he assets that are in the Estate as well as the characterization and value of those assets are in dispute." Clerk's Papers (CP) at 259. The agreement did not purport to determine those assets which made up the estate.

Nancy refused to sign the agreement in her role as personal representative of the estate. Rydberg and the adult daughters petitioned the court to appoint a co-personal representative for the limited purpose of approving the settlement agreement. Rydberg additionally filed a petition to remove Nancy as personal representative. On March 12, 2010, following a two-hour hearing, the trial court removed Nancy as personal representative of the decedent's estate. The court determined that Nancy had numerous direct, irreconcilable conflicts of interest that precluded her from acting in that role.

On April 8, 2010, following her removal as personal representative, Nancy appeared personally in this matter. Jennifer White was thereafter appointed as personal representative of the estate.

On May 10, 2010, Rydberg filed a motion with the trial court entitled Motion to Determine Standing of Nancy Becker Regarding CR 2A Agreement of

Heirs to Resolve Will Contest and Creditors' Claims, and Distribute Estate.

Rydberg sought “an order identifying those parties who are entitled to participate in the June 11th court proceedings regarding the review and possible approval of the pending CR 2A Agreement.” CP at 173. Her motion asserted that the effect of the settlement agreement was solely to “apportion[] whatever assets end up in the Estate on a percentage basis between the Adult Children and Barbara”—not to “determine what assets are actually in or owned by the Estate, or whether the Estate has any claim to assets which [Nancy] now claims are hers alone.” CP at 174. The motion further contended that Nancy lacked standing to participate in the proceedings based both on general principles of standing and, specifically, on the provisions of TEDRA that define who constitutes a “party” for purposes of that act. Thus, Rydberg asserted, Nancy has no legally cognizable interest in the subject matter of the agreement.

The adult daughters filed a response in support of the motion to determine Nancy’s standing to participate in the review and approval process of the settlement agreement. They alleged that Nancy had incurred hundreds of thousands of dollars in legal fees in order to impede discovery and prevent the court from considering the settlement agreement and that Nancy’s further involvement would continue to deplete the estate of resources. They also alleged that Nancy, who had purportedly mischaracterized the assets of the estate to her own benefit, was fearful that the adult daughters would assist

Barbara in recovering the true value of the estate.

On May 20, 2010, the trial court granted the motion and entered an order determining that Nancy lacks standing to participate in judicial proceedings concerning the settlement agreement and its proposed resolution of the will contest and creditors' claims. In support of its ruling, the trial court entered the following findings of fact:

1. On December 4, 2009, during a court-ordered mediation, the GAL for Barbara Becker, and the Petitioners entered into a written CR 2A Agreement that purports to resolve the will contest, resolve all of the creditors' claims brought by Petitioners against the Estate of Virgil Victor Becker, Jr., (the "Estate" herein), and distribute the Estate. The CR 2A Agreement does not affect the prosecution or distribution of proceeds from the wrongful death claim that arose from the circumstances of the death of Virgil Victor Becker, Jr. ("decedent" herein). The PR has not signed the CR 2A [Agreement].
2. Nancy Becker is the surviving spouse of the decedent.
3. Nancy Becker has no beneficial interest in any matters addressed by the CR 2A Agreement or in the Estate. Nancy Becker is not an heir or beneficiary of the Estate, and has no legal interest in the decedent's property, in this estate action.
4. Nancy Becker was removed as Personal Representative ("PR" herein) of the Estate on March 16, 2010, and is not presently the PR.
5. Nancy Becker is not a "real party in interest" as to the matters addressed by the CR 2A Agreement.
6. Nancy Becker is not a party under the Trust and Estates Dispute Resolution Act, RCW 11.96A, *et seq.*

CP at 231. The trial court also entered conclusions of law, ruling that:

1. Nancy Becker is not a real party in interest, nor is she a party

under the Trust and Estates Dispute Resolution Act, RCW 11.96A *et seq.*

2. Nancy Becker has no standing to participate as a party in the court's determination of whether a CR 2A Agreement, that resolves the will contest and Petitioners' creditors' claims, and distributes the estate among the heirs, reached by the Petitioners and the GAL, or any variation thereof, should be approved by the Court.

3. Except for any proceeds that may in the future be obtained from a wrongful death action, Nancy Becker has no standing to participate as a party in the Court's determination of how the assets of the Estate shall be distributed among its heirs.

4. Nancy Becker has no standing to participate as a party in the litigation and resolution of creditors' claims made against the Estate, or the validity of the Will admitted to probate.

CP at 232.

On June 2, 2010, Rydberg and the adult children filed a motion for court approval of the CR 2A Agreement. The court thereafter stayed the motion for approval of the settlement agreement pending the resolution of issues to be presented to the minor settlement ex parte department.

On July 6, 2010, Nancy sought discretionary review in this court of the trial court's order determining that she lacks standing to participate in proceedings regarding the settlement agreement. On August 31, 2010, we granted discretionary review of that order. The adult daughters thereafter filed with this court a motion for the admission of additional evidence—specifically, a purported premarital agreement between Nancy and Tory that allegedly precluded the creation of community property interests during their marriage.

Thus, both the trial court's order regarding Nancy's standing and the motion for additional evidence are before us.

II

Nancy contends that the trial court erred by determining that she does not have standing to participate in proceedings regarding the settlement of the will contest and creditors' claims. Because general principles of standing do not entitle Nancy to so participate, and because Nancy is not a "party" to this proceeding pursuant to TEDRA, we disagree.

Standing is a question of law subject to de novo review. In re Irrevocable Trust of McKean, 144 Wn. App. 333, 339, 183 P.3d 317 (2008). "A party has standing to raise an issue if that party has a distinct and personal interest in the issue." Paris Am. Corp. v. McCausland, 52 Wn. App. 434, 438, 759 P.2d 1210 (1988). That interest must be present and substantial, rather than "a mere expectancy, or future, contingent interest." Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992). "Standing requires that the plaintiff demonstrate an injury to a legally protected right." Sprague v. Sysco Corp., 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999). Consistent with principles of standing—although a doctrine distinct from standing—CR 17(a) requires that "[e]very action shall be prosecuted in the name of the real party in interest." See Sprague, 97 Wn. App. at 176 n.2. "The real party in interest is the person who possesses the right sought to be enforced." Sprague, 97 Wn.

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App. at 176 n.2.

TEDRA provides various methods for resolving disputes concerning wills and trusts. One such method is a “binding nonjudicial procedure to resolve matters through written agreements among the parties interested in the estate or trust.” RCW 11.96A.210; see also RCW 11.96A.220-.250. The procedure is applicable to the resolution of any “matter,” as defined by the act. RCW 11.96A.220.³ “If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties. Subject to the provisions of RCW 11.96A.240, the written agreement shall be binding and conclusive on all persons interested in the estate or trust.” RCW 11.96A.220.

Thus, pursuant to TEDRA, those persons whose agreement must be obtained in order to resolve by written agreement a dispute regarding a will are those “persons interested in the estate.” RCW 11.96A.220; see also RCW 11.96A.210. TEDRA further defines who constitutes a “party” for the purposes of that statute. See RCW 11.96A.030(5). A “party” means each person listed within RCW 11.96A.030(5) “who has an interest in the subject of the particular proceeding.” RCW 11.96A.030(5). The statute then lists numerous individuals who may constitute “parties” in a proceeding, including, as relevant here, “[t]he

³ See RCW 11.96A.030(2)(c) (defining “matter” as “any issue, question, or dispute involving . . . [t]he determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death”); see also *In re Estate of Kordon*, 157 Wn.2d 206, 211, 137 P.3d 16 (2006). (holding that “[a] will contest presents a ‘question arising in the administration of an estate,’ and therefore is clearly a ‘matter’ subject to TEDRA”).

surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property." RCW 11.96A.030(5)(f).⁴ TEDRA further provides that "[p]ersons interested in the estate or trust" means . . . "all persons beneficially interested in the estate or trust." RCW 11.96A.030(6).

As the trial court determined, Nancy is not a "party" pursuant to TEDRA. The statute provides that the persons who constitute "parties" are those persons who are both listed within RCW 11.96A.030(5) and have "an interest in the subject of the particular proceeding." RCW 11.96A.030(5). Moreover, a surviving spouse is a party only "*with respect to his or her interest in the decedent's property.*" RCW 11.96A.030(5)(f) (emphasis added). Nancy has an

⁴ RCW 11.96A.030(5) provides in full:

"Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

- (a) The trustor if living;
- (b) The trustee;
- (c) The personal representative;
- (d) An heir;
- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
- (f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;
- (g) A guardian ad litem;
- (h) A creditor;
- (j) Any other person who has an interest in the subject of the particular proceeding;
- (j) The attorney general if required under RCW 11.110.120;
- (k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;
- (l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
- (m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and
- (n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

interest neither in the subject of the settlement agreement proceeding nor in the decedent's property. Nancy is not a named beneficiary in the will. Nor has Nancy challenged the validity of the will, as have the adult daughters, such that she has a beneficial interest in the resolution of the will contest. Indeed, having not challenged the will within the four-month statutory period, Nancy cannot now do so. See RCW 11.24.010 (requiring that will contests be filed within four months following the probate of a will).

Moreover, even if Nancy and Tory owned community property prior to his death,⁵ “[a]t death, the community [was] dissolved and the former community property [became] the separate property of the decedent’s estate and of the surviving spouse.” In re Estate of Mell, 105 Wn.2d 518, 523, 716 P.2d 836 (1986) (quoting deNoskoff v. Scott, 36 Wn. App. 424, 426-27, 674 P.2d 687 (1984)). Nancy obviously has an interest in that portion of any such community property which, upon Tory’s death, became her separate property. She does not, however, have any interest in the separate property of Tory’s estate, regardless of whether any such property once constituted community property.⁶

⁵ Whether Nancy and Tory owned community property during their marriage is disputed. However, the settlement agreement at issue here does not purport to determine the characterization of any property within the estate. Thus, we need not determine whether any such community interest existed. Moreover, we note that any such determination is properly made by the trial court, not by an appellate court in the first instance. For these reasons, we deny the adult daughters’ motion to admit as additional evidence, for purposes of this review, the purported premarital agreement between Nancy and Tory precluding the creation of community property interests during their marriage.

⁶ Nancy asserts that she has standing to participate in the settlement agreement proceedings due to her interest in the community property within the estate. She contends that joint ownership of any property with the adult daughters would diminish the value of that property. Moreover, she asserts that community property in which she has an interest may be required to be sold due to the settlement agreement. However, as explained above, Nancy has

Nevertheless, Nancy asserts that she has an interest in the will contest—and, thus, in the settlement of the will contest—because she would be entitled to inherit a part of the estate through intestacy were the will in probate determined to be invalid. She contends that if the will contest were successful, she, as an heir, would be entitled to an intestate share of the estate. Moreover, she asserts, in the event that the challenged will is invalid and an earlier-executed will is determined to be valid, she would be entitled to inherit as an omitted spouse.

However, Nancy stands to benefit from the will contest—such that she has a beneficial interest in that matter—only if the will is invalidated, such that she could inherit a percentage of the estate through intestacy. But, as already noted, Nancy has not herself challenged the will. Rather, she has maintained throughout the proceedings that the will, which, acting as personal representative, she sought to have admitted to probate, is valid. RCW 11.96A.210, which authorizes parties to enter into settlement agreements such as that contemplated here, is a dispute resolution mechanism. Nancy is not involved in this dispute. The trial court did not err by determining that she is not entitled to participate in its settlement.⁷

no beneficial interest in the estate, even had some of that property been community property prior to Tory's death. Speculation regarding the distribution of property within the estate does not confer upon Nancy standing to participate in the settlement agreement proceedings.

⁷ The settlement agreement does not purport to determine what property is a part of the estate; nor does it purport to determine the character of any such property. The trial court's order does not preclude Nancy's participation in future proceedings in which she has a beneficial interest.

Nancy is not a “party” pursuant to TEDRA such that she is entitled to participate in the settlement of the will contest and creditors’ claims, as she does not “[have] an interest in the subject of [this] particular proceeding.” See RCW 11.96A.030(5). Furthermore, although Nancy is the decedent’s surviving spouse, she has no “interest in the decedent’s property” that would confer upon her standing pursuant to TEDRA. See RCW 11.96A.030(5)(f). Finally, because Nancy has not demonstrated that she has a “distinct and personal interest in the issue,” general principles of standing do not confer upon her the right to participate in the settlement agreement proceedings. See Paris Am. Corp., 52 Wn. App. at 438.

The trial court did not err by determining that Nancy is not entitled to participate in the settlement agreement proceedings.⁸

III

The adult daughters, Nancy, and Rydberg all request an award of attorney fees “on appeal.”⁹ We decline to grant an award of fees to the adult

⁸ Nancy additionally contends that the trial court erred by determining that she is not an “heir” to the estate. See RCW 11.02.005(6) (defining “heirs” as “those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent’s death intestate”). In so doing, she mischaracterizes the trial court’s order, which states that Nancy “is not an heir or beneficiary of the Estate, and has no legal interest in the decedent’s property, *in this estate action.*” CP at 231 (emphasis added). The trial court did not determine, as Nancy implies, that Nancy would not be entitled to inherit a portion of the estate through intestacy.

Nancy also requests that we vacate any trial court order entered in this matter subsequent to the standing order challenged herein. She asserts that any such order is “tainted” by the erroneous determination that she does not have standing to participate in these proceedings. Because the trial court did not err by determining that she does not have standing, we decline to vacate any subsequent orders.

⁹ This matter is not on appeal. Rather, this is a discretionary review proceeding. Nevertheless, the same standards apply with regard to resolving a request for an award of attorney fees for work performed litigating matters in this court.

daughters or to Nancy, but we determine that Rydberg is entitled to be paid for her services as Barbara's GAL.

TEDRA confers upon us broad discretion in granting an award of attorney fees. It provides that

any court on 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.

RCW 11.96A.150(1).

Nancy requests that we order the adult daughters and Rydberg to pay her attorney fees for work done in this court on this matter. She contends that such an award is warranted because, she asserts, by seeking review she benefitted the estate by aiding the prevention of the approval of the settlement agreement. Because we determine that Nancy does not have standing to participate in proceedings regarding the settlement agreement, we decline her request for an award of attorney fees.¹

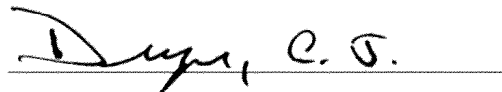
The adult daughters request an award of appellate attorney fees to be paid personally by Nancy. They contend that such an award is warranted due to

¹ Moreover, we note that the interests of the estate are represented by the personal representative of the estate—not by Nancy. Moreover, the approval of the settlement agreement is not at issue in this discretionary review proceeding.

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Nancy's failure to produce the purported premarital agreement in discovery, coupled with Nancy's appellate arguments that, they contend, contradict that agreement. However, the validity of the premarital agreement has not been determined. We decline to grant an award of fees on this basis.

Finally, Rydberg contends that she is entitled to be paid for her services as GAL pursuant to RCW 11.96A.160(4), which provides that "[t]he guardian ad litem is entitled to reasonable compensation for services . . . to be paid from the principal of the estate or trust whose beneficiaries are represented." There is no indication in the record that Rydberg has acted in bad faith or made unmeritorious arguments. Thus, we order that Rydberg be paid her reasonable fees incurred for work in this court, to be paid by the estate pursuant to RCW 11.96A.160(4), in an amount to be established by the superior court on remand. RAP 18.1(i).

A handwritten signature in black ink, appearing to read "Dwyer, C. J.", is written over a horizontal line.

WE CONCUR:

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Leach, a.c.f.

Grosse, J