IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Estate of:	)	**No. 28000-4-III**
	)	**(consolidated with**
MAMIE SNYDER,	)	**No. 28001-2-III)**
	)	
Deceased.	)	
_____	)	**Division Three**
In re the Estate of:	)	
	)	
MATT H. SNYDER,	)	
	)	
Deceased.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Linda Mattox, one of the heirs to her grandfather's estate, challenges the trial court's decision approving the personal representative's distribution plan. Ms. Mattox had previously refused to agree to the same plan when it had been presented in a Trust and Estate Dispute Resolution Act (TEDRA) proceeding. Finding no error, we affirm.

FACTS

Mamie and Matt Snyder were Ms. Mattox's grandparents. Mamie Snyder died in 1990; Matt Snyder died in 2005.[1] The property at dispute in this litigation is a 720-acre parcel in Ferry County. The wills left the property to the Snyder's four children, with the offspring of any deceased child sharing their parent's share. Donna Comrie, Ms. Mattox's mother, predeceased her father, so her five children shared their mother's one-quarter portion of the property.

All eight heirs wanted to keep the property for sentimental reasons. They met in 2006 and 2007 to decide how to divide the land. One heir proposed dividing the land into four parcels that would be randomly distributed by drawing lots. All but Ms. Mattox were agreeable; she felt the land was not evenly divided and that access would be a problem to some of the segments. The others agreed to have the estate build roads to ensure access to each parcel. Ms. Mattox disagreed and offered her own proposal. The personal representative, her aunt, rejected Ms. Mattox's suggestion.

The original plan was written into a TEDRA agreement. All of the heirs except Ms. Mattox signed the agreement in April and May 2008. On July 28, 2008, the estate filed a petition for an order authorizing distribution of assets. The petition asked the court to distribute the land in accordance with the plan favored by the other heirs. Ms.

[1] The separate appeals from each probate have been consolidated.

Mattox filed an affidavit objecting to the plan. She also filed an appraisal and an affidavit from David Sitler who opined that the parcels were not of comparable value.

The trial court heard the motion on October 13, 2008. The estate's counsel advised the court that the matter could be decided at that hearing or that the court could order discovery and hold a more formal hearing in the future. The court asked if there was an alternative distribution plan proposed. The estate's counsel answered "No," and Ms. Mattox's attorney told the court that his client had made a "proposal as to what property she would take." Report of Proceedings (RP) 14. The court heard argument over the validity of Sitler's appraisal, with counsel for the estate contending that it was invalid because no survey had been conducted.

The court granted the distribution request. It cited the approval of 95 percent of the heirs, the lack of an alternative plan, the fact that the plan was consistent with the intent of the testator, and the broad nonintervention powers granted the personal representative. RP 23-24.

Ms. Mattox moved for reconsideration and supplied the court with her proposed distribution plan. The court entered a written order consistent with its oral ruling. Four months later the motion for reconsideration was denied.

Ms. Mattox then timely appealed to this court.

ANALYSIS

This appeal presents two legal issues as well as argument by both sides that they should be granted attorney fees. We will address the claims as presented.

Authority to Distribute Property

An appellate court reviews a distribution order to ensure that it is in accord with the testator's will and the applicable law. *In re Estate of Wegley*, 65 Wn.2d 689, 695, 399 P.2d 326 (1965). A personal representative with nonintervention powers has broad authority to distribute an estate without court oversight. RCW 11.68.090.

Ms. Mattox argues that the trial court erred by enforcing a TEDRA plan that had not been agreed upon by all of the heirs. We agree with the estate that the failed TEDRA agreement efforts did not frustrate the distribution plan. The procedural challenges to the approval of the distribution plan are without merit.

TEDRA is located in chapter 11.96A RCW. The chapter provides various methods for resolving disputes concerning wills and trusts. One of those methods is an agreement by the heirs. A written agreement by all of the heirs is binding upon the trial court. RCW 11.96A.220. Ms. Mattox argues that because she did not sign the agreement, the trial court erred by approving the distribution since it lacked unanimous consent of the heirs.

However, a court's power to distribute property is not founded solely on the agreement of the heirs. RCW 11.76.050 provides that courts hearing a petition for distribution have authority to "make partition, distribution and settlement of all estates in any manner which to the court seems right and proper." Similar is RCW 11.96A.020(2), which provides a trial court with "full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper" in actions arising under the TEDRA chapter.

The trial court was acting under these two statutory provisions when it considered the request to approve the distribution of the property. It was not hamstrung by the earlier failed effort among the heirs to reach an agreement. The court had full authority to consider and act upon the personal representative's request.

Ms. Mattox also contends that the court should have conducted a more comprehensive hearing and that issues were not resolved by the trial court. No party asked the court for additional time or indicated the need to present more evidence. RCW 11.96A.020(2), quoted previously, left the trial court with discretionary authority to conduct the hearing as it saw fit. In the absence of a demand to present more testimony, the trial court was not required to conduct additional hearings.

Ms. Mattox's ultimate argument is that the trial court did not have a basis for

finding that the distribution was equal in light of the evidence she presented from her appraiser and her timber expert. We disagree. The trier-of-fact was not required to credit the evidence; what is to be believed is left to the trier-of-fact and cannot be overturned by an appellate court. *Quinn v. Cherry Lane Auto Plaza*, *Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009), *review denied*, ___ P.3d ___ (2010). Given the disputes on the timber valuation[2] and past practices, and the absence of a survey to set boundaries for appraisal of the lots, it is understandable that the trial court was not swayed by that testimony. The court did have evidence that the remaining heirs were satisfied with the distribution and the plan guaranteed access to all lots. Given those facts and the belief of the personal representative that the distribution was consistent with the intent of the testator, the trial court had a basis for its determination that the lots were of equal value. The random distribution of the lots, while not itself evidence that the lots were of equal value, was further evidence that the beneficiaries considered the lots of equal value. Who is going to take the risk of obtaining less than what they were entitled to have?

Ms. Mattox also takes issue with the trial court's denial of her motion for reconsideration. An appellate court reviews reconsideration rulings for abuse of discretion. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 685, 41

[2] Issues related to the valuation and practices of the timber management are not raised in this appeal.

P.3d 1175 (2002). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The primary purpose of reconsideration was to call the court's attention to Ms. Mattox's proposed distribution plan. The court denied reconsideration without comment. Nonetheless, there was no abuse of discretion. The personal representative's approved plan was consistent with the testator's intent. The existence of a competing plan did not require the trial court to change its initial decision to approve the personal representative's proposal. All the trial court was required to do was to consider the competing proposal. It did. The court was not required to accept the competing proposal.

The evidence permitted the trial court to conclude that the proposed property distribution was consistent with the testator's intent that his heirs share equally in the property. The hearing was conducted within the broad concourses permitted by statute. The court had authority to approve the distribution plan. There was no error.

De Facto Partition

Ms. Mattox also challenges the distribution on the basis that it amounted to a *de facto* partition without following the procedural requirements of the partition statute,

chapter 7.52 RCW. The trial court was not requested to apply the partition statutes and had the authority to divide real estate without resort to them.

The estate vigorously argues that Ms. Mattox did not present this challenge below and cannot do so now.[3] We agree. "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a) (partial). Compliance with the requisites of RCW 7.52.090 was not argued below and does not present an issue of manifest constitutional error or trial court jurisdiction which this court could consider without having been raised in the trial court. RAP 2.5(a)(1), (3). Accordingly, Ms. Mattox cannot now claim that the trial court should have considered the partition statute before dividing the property.[4]

We additionally note that the argument is without merit. As pointed out previously, both the representative of an estate, acting under RCW 11.68.090, and the trial court, under the authority of RCW 11.76.050 and RCW 11.96A.020(2), have broad authority to distribute property belonging to an estate. None of those statutes restrict the distribution power in cases of realty and none of those statutes require use of the partition

[3] The estate similarly argued that Ms. Mattox's initial challenges to the distribution approval were not presented below and should not be considered on appeal. Those challenges went to the trial court's authority to act and we have exercised our discretion to consider them. RAP 2.5(a)(1).

[4] This argument also is inconsistent with Ms. Mattox's own proposal to divide the property.

statute to divide real estate. Thus, the trial court was not required to follow the procedures set down in chapter 7.52 RCW before dividing the estate.

For both reasons, this challenge is without merit.

Attorney Fees

Ms. Mattox also argues that the trial court erred by not awarding her attorney fees below. Both parties seek attorney fees here.

The decision to award attorney fees is discretionary with the trial court. RCW 11.96A.150(1). The trial court can consider any factors it deems relevant when awarding fees, including whether or not the litigation benefitted the estate. *Id*.

The decision to deny Ms. Mattox attorney fees was clearly tenable. Her efforts did not benefit the estate. Indeed, all they did was cause expense to both parties. While she may have honestly believed her plan was a better alternative than the personal representative's proposal, the estate was not required to pay her expenses for presenting it. There was no abuse of discretion.

This court likewise has discretion to award attorney fees on appeal. *Id*. Ms. Mattox has not prevailed and we decline to award her attorney fees. We also decline to award attorney fees to the estate. This appeal presented a debatable issue and we do not believe Ms. Mattox was acting in bad faith in pursuing this appeal. As prevailing party,

the estate is entitled to its costs and statutory attorney fees. RAP 14.2; RAP 14.3.

The judgment of the trial court is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

_____
Korsmo, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Brown, J.