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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

IN THE MATTER OF THE ESTATE)	No. 29348-3-III
)	
OF ROBERT D. WASHBURN,)	
)	
Deceased.)	UNPUBLISHED OPINION
)	
)	

Kulik, J. — Keith Washburn and Melody Radezky, as siblings and sole heirs of their father, Robert D. Washburn, entered into an agreement to accept the terms of their father’s unsigned, handwritten will and to waive their rights under a valid but outdated will.

Several years later, Ms. Radezky petitioned the Stevens County Superior Court for an order probating the 2004 handwritten will and awarding her a portion of the real property as a remaining asset. In turn, Mr. Washburn filed a petition to declare rights under Washington’s Trust and Estate Resolution Act (TEDRA), chapter 11.96A RCW.

We agree with the trial court that the handwritten will did not meet the statutory requirements of a will and could not be admitted to probate. And we also agree that Ms. Radezky and Mr. Washburn entered into a family settlement agreement to honor the

terms of the handwritten will and agreed to a division of the estate. We, therefore, affirm the trial court's order that the title to all real property be quieted to Mr. Washburn and that certain items of personal property be delivered to Ms. Radezky.

FACTS

Robert D. Washburn (decedent) unexpectedly passed away on April 28, 2004. He was survived by his two children, Keith C. Washburn and Melody A. Radezky. The decedent's estate included real property and personal property. The real property consisted of 133 acres of land with improvements known as the "Char-Mel Ranch." Clerk's Papers (CP) at 297. The real property was worth \$176,380 in 2004. The personal property consisted of a 401(k) account, a Horizon Credit Union account and a Bank of America account, multiple vehicles and vehicle trailers, collectable coins, silver bullion, firearms, and household furniture. The value of the personal property was worth about \$100,100.

On April 29, family members went to the ranch house and found two wills in the decedent's personal papers. The first will was executed by the decedent on April 19, 1972. This first will divided the property equally between Mr. Washburn and Ms. Radezky.

The second will (handwritten will) was a four-page handwritten document drafted

by the decedent in 2004. The handwritten will did not contain the signature of the decedent or witnesses. The handwritten will stated, in pertinent part:

If my son survives me for the space of four calendar months, then in that event, I give, devise and bequeath to my son Keith C. Washburn all real estate property Sec 21 Twp 35 Rge 40 N/W ½ - SW ¼ as his sole and separate property—the Char-Mel Ranch

To my special friend Dorothy M. Sphuler I, bequeath Ten Thousand Dollars

The remaining assets of my estate I, bequeath to my daughter Melody Ann Radezky. I, leave it up to my son and daughter to provide for my grand children.

Ex. 101.

On May 13, Ms. Radezky contacted an attorney about the wills. The attorney explained to Ms. Radezky that the 2004 will was not enforceable. He also explained that the 1972 will would serve to divide the estate equally.

Ms. Radezky and Mr. Washburn dispute whether the two of them discussed the wills between April 29 and May 30. However, both parties agree that on May 30, Mr. Washburn, Ms. Radezky, and Ms. Radezky's husband, Mark Radezky, met at the Char-Mel Ranch. In anticipation of the meeting, Mr. Radezky formulated a list of questions that prompted each party to write what they interpreted the handwritten will to mean. Mr. Radezky mediated the meeting. According to Mr. Radezky's notes, the purpose of the meeting was to discuss the wills of the decedent and proceed with the division of the

assets. Both Ms. Radezky and Mr. Washburn stated that they wanted to have the estate distributed according to the handwritten will.

Mr. Washburn did not communicate well at the May 30 meeting. He did not fill out his meeting questionnaire, but said at the meeting that he did not want to live in the house or want the land. He testified that when he read the handwritten will, he assumed it meant that he was to receive all the real estate and the Char-Mel Ranch. Ms. Radezky indicated on her questionnaire that under the handwritten will, Mr. Washburn was to receive the house with the land, all real estate, and the Char-Mel Ranch. She also indicated that she would receive all remaining assets, vehicles, bank accounts, silver, tools, guns, furniture in the house, and equipment. At the bottom of her questionnaire, Ms. Radezky listed specific items that she wanted; the list contained items of personal property only. Also during the meeting, the parties discussed a possible trade of some of Mr. Washburn's land for one of Ms. Radezky's vehicles. The parties did not discuss the legal description contained in the handwritten will. On June 2, Ms. Radezky filed the handwritten will with the Stevens County Superior Court.

After the May 30 meeting, both parties took possession of estate property. Mr. Washburn sold his residence in Colville and, in July 2004, moved to the Char-Mel Ranch. Mr. Washburn signed his interest in the Horizon Credit Union account over to

Ms. Radezky and did not contest that his sister was to receive the 401(k) account. Mr. Washburn has paid the property taxes on all 133 acres of land since 2004. He also sold timber harvested from the land and has leased out the pasture land. Mr. Washburn did not have the land transferred to his name.

Ms. Radezky took possession of her father's motor home, multiple vehicles, a car trailer, a boat and trailer, a snowmobile trailer, and a Ford tractor. She also attempted to take possession of the coin set collections, the bullion bars, and the firearms. She did not attempt to remove the furnishings and the appliances in the home, except for a few specific items. Ms. Radezky received the money in the decedent's bank accounts. Ms. Radezky also paid Ms. Sphuler \$10,000 from the decedent's bank account.

On October 17, 2004, Ms. Radezky sent Mr. Washburn a letter informing him that she was closing the decedent's estate. She enclosed "an agreement for you to sign which we discussed in our meeting in May regarding our mutual understanding and agreeing to our Dad's last wishes to honor what he wanted." Ex. 22. Ms. Radezky told Mr. Washburn that if he did not respond to her letter, she would assume that he had no objection to her efforts in "finalizing these matters." Ex. 22. On November 11, Ms. Radezky and Mr. Washburn formalized their agreement to accept the handwritten 2004 will by signing the "Waiver to Accept Present Written Will" (waiver). Ex. 7. The waiver

stated, in part, that “to the best of our knowledge [the handwritten will] represented his last wishes in the division of his estate.” Ex. 7.

In 2007, approximately three years after the waiver, Ms. Radezky sent two letters to Mr. Washburn to discuss the provisions of the will that still had not been settled. Ms. Radezky stated that the handwritten will stipulated that she was to receive the assets that included the vehicles, silver, guns, and tools. She reminded Mr. Washburn of their conversation that once the estate was settled, that she would give Mr. Washburn a pickup truck and one-half of the \$60,000 from the decedent’s bank account in exchange for part of the property. She asked Mr. Washburn if he still was not interested in participating in the trade. She also stated that she wished to collect some items of personal property. Mr. Washburn did not respond to Ms. Radezky’s letters.

On February 9, 2009, Mr. Washburn’s son, Troy Washburn and Troy’s mother, Kim Wilson, met with Mr. and Ms. Radezky. Troy explained that, in view of his father’s poor health, he wanted to put the real property and improvements in Mr. Washburn’s name. He told the Radezkys that he needed Ms. Radezky to sign a document. In response, the Radezkys undertook negotiations with Troy. The Radezkys asked that Mr. Washburn reimburse one-half of the funeral expenses, reimburse one-half of the money paid to Ms. Sphuler, repay money the decedent loaned to Mr. Washburn, and for certain

items of personal property including a hutch and some remaining firearms. The parties decided to meet again to discuss the issues.

The day after the meeting, the Radezkys met with their attorney to discuss the handwritten will. The attorney indicated that he did not think the description in the will encompassed all of the land. Mr. Radezky made the effort to educate himself on legal descriptions.

On February 11, Troy, Ms. Wilson, and the Radezkys met again. The Radezkys stated that it was now their understanding, given the legal description in the handwritten will, that the decedent intended that Mr. Washburn receive only the 40 acres north of State Route 20 in section 21. This was the first time Mr. and Ms. Radezky claimed that Ms. Radezky was entitled to any of the real estate. Troy disagreed with the Radezkys and the meeting ended.

On February 27, Ms. Radezky petitioned the trial court to probate the handwritten will. On March 10, Mr. Washburn filed a petition to declare rights under TEDRA.

On January 28, 2010, the trial court denied probating the handwritten will as the last will and testament of the decedent because the handwritten will did not conform to the requirements of RCW 11.12.010. The trial court also ruled that the parties entered into a family settlement agreement to honor the wishes of their father as stated in the

handwritten will, and this agreement was memorialized in the waiver dated November 11, 2004.

On April 14 and 15, the trial court conducted a trial on Mr. Washburn's petition to declare rights. Based on the family settlement doctrine, the trial court concluded that the parties had entered into an agreement to follow the wishes of their father as stated in the handwritten will. The trial court also concluded that the parties intended to make a final distribution of the estate and the parties' actions showed their clear understanding of the agreement that Mr. Washburn was to take all real property and all household furnishings and farm equipment included in the Char-Mel Ranch, and that Ms. Radezky was to receive all remaining assets, including liquid assets, most vehicles, most firearms, and other assets of particular value. The trial court ruled Mr. Washburn was to receive title to the real property and improvements and Ms. Radezky was to receive the items of personal property, including the bullion and coin sets.

Ms. Radezky appeals. Essentially, she contends that the trial court erred in concluding that the family settlement agreement doctrine applied to the division of the estate.

ANALYSIS

Standard of Review. We review a decision following a bench trial to determine whether the findings of fact are supported by substantial evidence and whether those findings support the conclusions of law. *Dorsey v. King County*, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988).

In reviewing findings of fact, “[s]ubstantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Appellate courts defer to the trial court’s determinations on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *Snyder v. Haynes*, 152 Wn. App. 774, 779, 217 P.3d 787 (2009).

“Unchallenged findings are verities on appeal.” *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). Conclusions of law by the trial court are reviewed de novo. *Id.*

Family Settlement Agreement Doctrine. Heirs may enter into an agreement that disposes of the estate in a plan different from that provided by a will. *Collins v. Collins*, 151 Wash. 201, 215, 275 P. 571 (1929). Family settlement agreements are favored and honored in Washington law to resolve a dispute among heirs if the agreement is made without fraud or injustice, and where the creditors do not have the right to intervene. *Id.* The policy behind upholding family settlement agreement is to avert family disputes, adjust doubtful rights, protect the honor of a family, and avoid litigation. *In re Estate of*

Witte, 25 Wn.2d 487, 498, 171 P.2d 183 (1946) (quoting *Warner v. Warner*, 124 Conn. 625, 631, 1 A.2d 911 (1938)). Family settlements “should be accorded finality to the fullest extent possible, and should be encouraged and fostered as a matter of public policy.” *Hadley v. Cowan*, 60 Wn. App. 433, 438-39, 804 P.2d 1271 (1991).

Ms. Radezky contends that the trial court erred in its conclusion of law that the parties’ agreement is governed by the family settlement agreement doctrine. She contends that there was no agreement to divide the estate and, therefore, the doctrine cannot apply.

Both parties were aware that the 2004 will could not legally control the division of the estate. Ms. Radezky’s attorney informed her within weeks after her father’s death that the 2004 will would not be valid under Washington law and the 1972 will would control the distribution of the estate. Mr. Washburn does not contest the fact that the 2004 will was legally invalid. Despite the nonbinding effect of the handwritten will, the parties entered into an agreement by signing a waiver in November 2004, and acknowledging that the agreement was to divide their father’s estate as provided in the handwritten will.

These facts support the trial court’s uncontested finding that the parties chose to accept the 2004 handwritten will and reject the 1972 will. Ms. Radezky and Mr.

Washburn, as the only beneficiaries, agreed to divide the estate in a manner different from the 1972 will. There is no evidence of a creditor's right to intervene. Therefore, the trial court did not err in concluding that the family settlement agreement applied to the distribution of the decedent's estate.

The trial court did not err in concluding that the family settlement doctrine applied.

Agreement to Divide Property. General principles of contract law govern settlement agreements. *Lavigne v. Green*, 106 Wn. App. 12, 20, 23 P.3d 515 (2001). In construing a contract, this court first looks to the language of the agreement. *Hadley*, 60 Wn. App. at 438. The parol evidence rule bars the admission of extrinsic evidence "to add to, subtract from, vary, or contradict written instruments which are contractual in nature, and which are valid, complete, unambiguous, and not affected by accident, fraud, or mistake." *Bond v. Wiegardt*, 36 Wn.2d 41, 47, 216 P.2d 196 (1950).

If the writing was not intended to be complete, evidence of additional terms is admissible. *Univ. Prop., Inc., v. Moss*, 63 Wn.2d 619, 621, 388 P.2d 543 (1964).

"People have the right to make their agreements partly oral and partly in writing, or entirely oral or entirely in writing; and it is the court's duty to ascertain from all relevant, extrinsic evidence, either oral or written, whether the entire agreement has been

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incorporated in the writing or not.’” *Id.* (quoting *Barber v. Rochester*, 52 Wn.2d 691, 698, 328 P.2d 711 (1958)).

The touchstone of contract interpretation is the parties’ intent. *Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.*, 120 Wn.2d 573, 580, 844 P.2d 428 (1993).

“Determination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.” *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 510 P.2d 221 (1973).

In *Collins*, the trial court determined that the heirs entered into a family settlement agreement when the heirs agreed to divide the decedent’s estate in a manner different from the will in exchange for not contesting the will. *Collins*, 151 Wash. at 215-16. The trial court ruled that the parties formed an oral agreement, and the written correspondence between the heirs evidenced the parties’ understanding that the agreement was satisfactory to all the parties. *Id.* at 213-14.

Ms. Radezky challenges the trial court’s ruling that title to the real property and improvement in the estate shall be quieted in Mr. Washburn, and that the items of

personal property, including silver bullion and coin sets, shall be delivered to Ms. Radezky. In support of this challenge, Ms. Radezky assigns error to the trial court's conclusion of law B that Ms. Radezky's and Mr. Washburn's intent can be determined by the criteria set forth in *Stender*. Ms. Radezky contends that the court erred by dividing the property because the only agreement that she entered into with Mr. Washburn was to divide the estate in accordance with the handwritten will and the parties had yet to determine the provisions of the will. She also contends that the trial court violated the parol evidence rule by considering extrinsic evidence to interpret the unambiguous waiver to include a division of the estate. She also assigns error to the trial court's failure to award her real property.

First, the parol evidence rule did not bar the trial court from considering extrinsic evidence related to the scope of the parties' agreement. In the November 11 waiver, Mr. Washburn and Ms. Radezky agreed to unconditionally accept the handwritten will and that the handwritten will represented the decedent's last wishes about the division of his estate. Neither party challenges the express provisions of this agreement. The express terms of the waiver do not need interpretation. However, the parties disagree on whether the waiver also incorporated the parties' agreement to divide the estate according to their discussions at the May 30 meeting. The trial court appropriately considered the evidence

to determine if the agreement was complete or if the parties intended the agreement to include a final division of the estate.

Next, much of Ms. Radezky's argument involves her complaint that the trial court erred by relying on testimony that Mr. Washburn and Ms. Radezky met before the decedent's funeral, around May 3, and came to an oral agreement on the division. Ms. Radezky contends that all testimony establishing an oral agreement on May 3 is unsupported and not credible because the meeting did not occur. However, there is no indication that the trial court based its decision on this testimony since the trial court did not make findings regarding a meeting or oral agreement on May 3. Ms. Radezky's challenges to the evidence regarding an alleged oral agreement made around May 3 will not be addressed.

Challenge to the Conclusions of Law. Heirs can enter into an agreement for disposition of an estate on a plan different from that provided by the will. *Collins*, 151 Wash. at 215-16.

The trial court appropriately used *Stender* to evaluate the parties' intentions. Family settlement agreements are governed by general contract principles and *Stender* involves the application of a general contract principle. Ms. Radezky challenges the trial court's conclusions based on the application of the *Stender* criteria. We address each of

the challenged conclusions in turn.

Conclusion of Law B(1): “Taken as a whole, the Agreement is meant to make a full and final distribution of Robert Washburn’s estate—in the interest of family harmony. To that end, Robert Washburn’s son and daughter reached an understanding that the distribution would not be strictly equal.” CP at 298.

Ms. Radezky also disputes the related finding by the trial court that Ms. Radezky and Mr. Washburn reached a mutual understanding in an earlier meeting in May 2004 and that Mr. Washburn considered the estate settlement to be a done deal when he signed the waiver.

During the meeting on May 30, 2004, between Ms. Radezky and Mr. Washburn, Mr. Radezky recorded that the purpose of the meeting was to discuss the wills of the decedent and proceed with the division of the assets. According to Mr. Radezky’s notes, both parties read the handwritten will. Mr. Washburn testified that he interpreted the will to mean that he was to receive all the land. Likewise, Ms. Radezky’s questionnaire indicated that she interpreted the will to mean that Mr. Washburn was to receive the house with the land.

A letter sent by Ms. Radezky to Mr. Washburn on October 17, 2004, also establishes that the parties had reached a mutual understanding as to the division of the

estate at the May 30 meeting. In the letter, Ms. Radezky stated that she intended to proceed to finalize the closing of the decedent's estate. She "enclosed an agreement for [Mr. Washburn] to sign which we discussed in our meeting in May regarding our mutual understanding and agreeing to our Dad's last wishes to honor what he wanted." Ex. 22. Mr. Washburn and Ms. Radezky both signed the waiver to accept the 2004 handwritten will.

The inventory list and Stevens County assessor's notice show that the value of the real property and personal property was not equal.

Like in *Collins*, Mr. Radezky's notes of the May meeting and Ms. Radezky's letters to Mr. Washburn provide sufficient evidence to support the trial court's finding that Mr. Washburn believed that he and Ms. Radezky had come to a mutual understanding and that Mr. Washburn considered the estate to be finalized when he signed the waiver. The trial court did not err by concluding that the parties reached an agreement to make a full and final distribution of the estate, and the distribution would be unequal.

Conclusion of Law B(2): "The subject matter of the Agreement is the designation of different estate property and their division between the brother and sister—with a payment to Robert Washburn's friend, Dorothy Sphuler." CP at 298.

Related to this conclusion, Ms. Radezky assigns error to the trial court's findings that at the May 30 meeting and when signing the waiver, Ms. Radezky and Mr. Washburn both understood the handwritten will to mean that Mr. Washburn was to receive all real property and Ms. Radezky was to receive all remaining assets other than the real property; namely, the vehicles, bank accounts, silver bullion, coin set collection, guns, furniture in the house and equipment. She also contests the finding that at the meeting, the parties discussed a possible trade of some of Mr. Washburn's land for one of Ms. Radezky's vehicles.

Notes taken by Mr. Radezky at the May 30 meeting establish that the parties met on May 30 to discuss the will and proceed with the division of the estate. As for the parties' interpretation of the handwritten will, the questionnaire filled out by Ms. Radezky shows that she read the handwritten will and understood it to mean that Mr. Washburn would receive all real property and that she would receive all remaining assets, vehicles, bank accounts, silver, tools, guns, furniture in house, and equipment.

Although Mr. Washburn did not talk much at the meeting, Mr. Washburn testified that he read the will and understood it to mean that he would get all the property and Ms. Radezky would get all the remaining assets. Mr. Radezky's notes revealed that Mr. Washburn stated that he would give up some of the land in exchange for a vehicle and

money. The parties determined that the estate should be divided according to the will before any other arrangements were made. The meeting ended with the discussion of the removal of vehicles. The evidence sufficiently establishes that on May 30, the parties discussed the division of property according to the handwritten will and determined that Mr. Washburn would receive all real property and Ms. Radezky would receive all remaining assets.

Additionally, the letter sent by Ms. Radezky to Mr. Washburn on October 17, 2004, also establishes that the parties had reached a mutual understanding as to the final division of the estate at the May 30 meeting. Mr. Washburn and Ms. Radezky both signed the waiver to accept the 2004 handwritten will.

The notes of the May 30 meeting, the letter by Ms. Radezky, and the signed waiver provide substantial evidence to support the trial court's findings that Mr. Washburn and Ms. Radezky came to an agreement dividing the estate and that they discussed a trade of land. This evidence also supports the finding that at the May 30 meeting and when signing the waiver, the parties understood the handwritten will to give all real property to Mr. Washburn and all remaining assets to Ms. Radezky. And the parties do not dispute that the handwritten will devised \$10,000 to Ms. Sphuler. The trial court did not err in concluding that the subject matter of the agreement designated estate

property and its division and payment to Dorothy Sphuler.

Conclusion of Law B(3): “The Agreement was arrived at in the months following Robert Washburn’s death and formalized on November 11, 2004. It had them waive their rights under the April 19, 1972, Last Will and Testament to equal shares of the estate. It was arrived at as they each adjusted to their father’s untimely death—realizing the 1972 Will was likely outdated and the handwritten Will not strictly enforceable.” CP at 298. Ms. Radezky also contests the finding that the parties’ agreement was formalized on November 11 when the waiver to accept the 2004 handwritten will was acknowledged by Ms. Radezky and Mr. Washburn.

The waiver signed by both parties supports the trial court’s finding that the parties formalized their agreement on November 11. Both parties testified that by signing the waiver, they agreed to abide by the terms of the handwritten will. The evidence also supports the trial court’s conclusion that the parties waived their rights to equal distribution under the 1972 will. Mr. Washburn testified that he was not surprised that the 1972 will left equal shares of the estate to Mr. Washburn and Ms. Radezky. Ms. Radezky’s attorney explained to her that she and Mr. Washburn would receive equal shares under the 1972 will. Ms. Radezky also noted on her questionnaire filled out at the May 30 meeting that she and Mr. Washburn would split the land and assets equally under

the earlier will. The trial court did not err by concluding that Mr. Washburn and Ms. Radezky entered into an agreement on November 11 to accept the terms of the handwritten will and that they agreed to waive their rights under the 1972 will.

Conclusion of Law B(4): “The parties’ concurrent and subsequent acts and conduct showed clearly their respective understandings of the Agreement. Keith Washburn was to take all real property and the personal property included in the Char-Mel Ranch, namely household furnishings and farm equipment. Melody Radezky was to receive all remaining assets, or personal property, namely all liquid assets, most vehicles, most firearms, and other assets of particular value.” CP at 298.

Ms. Radezky also challenges the related finding that in the months following the agreement, Ms. Radezky took possession of the motor home, Mr. Washburn signed his interest in the credit union account over to Ms. Radezky and deferred to his sister receiving the 401(k) account, and the timber was harvested from Mr. Washburn’s land.

The trial court’s finding is supported by substantial evidence. Mr. Washburn testified that he sold his home and moved onto the ranch in July 2004. Mr. Radezky testified that he and Ms. Radezky were not surprised that Mr. Washburn moved onto the property. Mr. Washburn paid taxes, insurance, and utilities associated with the land. Mr. Washburn logged the property in 2006 and 2008. Mr. Washburn relinquished his interest

in the credit union account and the 401(k) in favor of Ms. Radezky. Mr. Washburn admits that Ms. Radezky is entitled to the silver and guns.

Substantial evidence also shows that the Radezkys acted in accordance with the 2004 handwritten will before and after November 11. The Radezkys received personal property that would be considered remaining assets according to the parties' agreement under the handwritten will. Mr. Radezky and Ms. Radezky both testified that the Radezkys took possession of the motor home and the vehicles within one year of the decedent's death. Mr. Radezky also testified that Ms. Radezky received most items on the April 29, 2004 inventory list and money in the bank account. Ms. Radezky also took a table and chairs from the Char-Mel Ranch. Ms. Radezky paid Ms. Sphuler \$10,000 based on her interpretation of what the handwritten will required. The payment came from the decedent's bank account. Ms. Radezky did not have a key to the ranch after August 2004. Ms. Radezky acted in accordance with the terms discussed in the May 30 meeting and the handwritten will. Her actions showed her respective understanding of the agreement.

Ms. Radezky's letters to Mr. Washburn in 2007 also provided evidence to show that Ms. Radezky acted with the understanding that the parties entered into a final agreement to divide the property. Ms. Radezky reminded Mr. Washburn that in the

handwritten will, the decedent stipulated that she was to receive the assets that included vehicles and other effects such as guns, tools, and silver. She also asked Mr. Washburn if he was still interested in a previous offer to trade some of the personal property she received for part of the land. She reminded Mr. Washburn that the parties had agreed to discuss the offer after the estate was settled. Ms. Radezky's mention of the prior agreement and offer to trade property provides substantial evidence that the parties entered into a prior, final agreement to divide the property.

The subsequent and concurrent actions of both parties supported a conclusion that they entered into an agreement on November 11 and that agreement included a division of the property. The trial court did not err by concluding that the actions of the parties clearly showed their respective understanding of the agreement.

Conclusion of Law B(5): “The Agreement made for a practical separation of their personal and financial affairs—Keith Washburn with the real property and Melody with the remaining liquid assets and items of personal property. Melody Radezky was in a better position to manage the liquid assets. Melody Radezky's present interpretation of the handwritten Will is not reasonable. It would have the daughter receive nearly all personal property and roughly three-fourths of the land. It would have the son and daughter owning adjacent property. It would have them change their understanding of

Robert Washburn's wishes after five years. And, it would ignore the language 'All Real Estate Property' and the flawed legal description—a description the parties to the Agreement only learned might have a different reading in 2008." CP at 299.

Ms. Radezky also contends that the trial court erred in finding that Troy Washburn saw the necessity of putting the real property in his father's name, that the Radezkys undertook to negotiate with Troy for funeral expenses and reimbursement for payments made to Ms. Sphuler and loans that the decedent made to Mr. Washburn, that Ms. Radezky requested some items of personal property and that, for the first time, the Radezkys broached the subject of real property.

These findings are supported by substantial evidence. Mr. Radezky's notes of the meeting specifically state that Troy told the Radezkys of Mr. Washburn's medical condition and that Troy wished to have the property placed into his father's name. The notes also show that the Radezkys asked Troy about payment of funeral expenses, repayment of money bequeathed to Ms. Sphuler, and delivery of some personal property that Ms. Radezky wanted. Mr. Radezky also testified that the first time the Radezkys made a claim for the real property was at their second meeting with Troy on February 11.

The trial court correctly concluded that the agreement made for a practical separation of the parties' personal and financial affairs. Mr. Washburn and Ms. Radezky

did not have a good relationship. Dividing the property between real property and personal property maintained a separation of the parties.

The trial court did not err by concluding that the parties entered into an agreement to make a full and final distribution of the estate according to the handwritten will.

Attorney Fees. Attorney fees and costs can be awarded on appeal under RCW 11.96A.150 to any party in a TEDRA action. The court may order the costs to be paid in the amount and manner determined to be equitable. RCW 11.96A.150(1). “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.” *Id.* Here, Mr. Washburn bore the cost of having to defend his property five years after the parties agreed to settle their father’s estate.

We affirm the decision of the trial court, and we award Mr. Washburn costs and attorney fees on appeal.

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.

Kulik, J.

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WE CONCUR:

Sweeney, J.

Siddoway, A.C.J.