

**FILED**

**NOV 20, 2012**

**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 of:

No. 30272-5-III

Shirley E. Wilson, Deceased.

JAMES L. WILSON IV,

Appellant,

v.

LARRY D. WILSON,

Respondent.

UNPUBLISHED OPINION

Korsmo, C.J. — James Wilson challenges the superior court’s order closing the estate of Shirley Wilson, arguing that the court erred by denying his requests to order a final accounting and remove his uncle as personal representative of the estate. We disagree and affirm.

FACTS

Shirley Wilson died intestate on April 30, 2008, in Spokane County. Shirley’s surviving relatives are her son, Larry Wilson, and her grandson, James Wilson IV,<sup>1</sup> who

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<sup>1</sup> James’ father, James Wilson III, predeceased Shirley.

are each entitled to one-half of her estate.

Prior to her death, Shirley gave Larry power of attorney.<sup>2</sup> On September 16, 2005, Shirley was admitted to a nursing home in Liberty Lake. The next day Larry, as attorney-in-fact for Shirley, quitclaimed Shirley's house located in Spokane to himself. Larry sold the residence in the summer of 2006 to a third party.

On January 8, 2010, Larry was appointed the personal representative of Shirley's estate and granted nonintervention powers. James filed a request for notice of special proceedings on January 14, 2010. On June 1, 2010, Larry filed an inventory and appraisal of the estate, which identified real property located in Idaho as the primary asset of the estate and did not include the proceeds from the 2006 sale of Shirley's Spokane residence.

On December 3, 2010, James filed a petition requesting an order directing Larry to show cause why the proceeds from the 2006 sale should not be part of the estate, or to provide an accounting showing what happened to the proceeds. In support of that order, James filed a declaration stating that Shirley was not competent on September 17, 2005, because she was suffering from severe dementia, she was removed from her home, and she was senile. The commissioner denied the petition on January 21, 2011, finding that

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<sup>2</sup> To avoid confusion, we refer to the various members of the Wilson family involved in this litigation by their first names.

the request was really more a discovery request that requires a separate action.

On June 14, 2011, James filed a petition to remove Larry as personal representative and appoint James as successor personal representative of the estate. On July 22, Larry filed a petition to close the estate. James filed a petition for a final accounting on August 4, 2011, requesting that in the event the court denied the motion to remove Larry as personal representative, the court instead order Larry to provide a final accounting for the proceeds of the property sale.

At a hearing on August 12, 2011, the superior court denied both James' petition to remove Larry as personal representative and his petition for a final accounting. The court found that the proceeds were not part of the estate and noted that if James wished to challenge the validity of the 2005 conveyance, he needed to bring the action as a separate cause. The court also noted that James' assertions that Shirley was not of sound mind at the time of the quitclaim conveyance were not supported by any evidence in the record. The court granted Larry's petition to close the estate. James then timely appealed to this court.

#### ANALYSIS

James contends the superior court erred in ordering the estate closed and denying his petitions to remove Larry or provide a final accounting. He argues that the quitclaim

conveyance of Shirley's property to Larry was void, the proceeds of Larry's subsequent sale of the Spokane property are assets of the estate which must be accounted for, and Larry should have been removed as personal representative after refusing to account for the proceeds.<sup>3</sup> We address each of these arguments in turn and then address Larry's request for attorney fees on appeal.

*Quitclaim Conveyance*

James argues that the 2005 quitclaim conveyance of Shirley's Spokane property was void. He claims that the power of attorney did not meet the standards of § 2041 or § 2514 of the Internal Revenue Code, Title 26 U.S.C.A., and that the conveyance was invalid under RCW 11.94.050 because it did not include an unrestricted gift clause. The primary problem with these arguments is that they were not raised below because the trial court declined to consider the validity of the quitclaim as part of the probate proceeding.

The Trust and Estate Dispute Resolution Act gives broad authority to the courts to administer and settle all estate and trust matters. RCW 11.96A.020, .060. Under RCW 11.96A.040(3), "[t]he superior courts may . . . administer and settle matters that relate to powers of attorney." When a court is sitting in a probate proceeding, "it is within the trial

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<sup>3</sup> James also argued that the estate's real property located in Idaho required an ancillary probate in Idaho. However, the estate provided documentation that the Idaho property was probated in Idaho, and James conceded at oral argument that the probate of the Idaho property was no longer an issue.

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court's discretion to decide whether to hear the issues at probate or reserve the issues.”  
*In re Estate of Black*, 153 Wn.2d 152, 171-72, 102 P.3d 796 (2004); *see also Filley v. Murphy*, 30 Wash. 1, 5, 70 P. 107 (1902).

A trial court's decision whether to hear an issue during probate proceedings is reviewed for abuse of discretion. *Black*, 153 Wn.2d at 172. A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). If claims arise from the same “transactional nucleus of facts” and the damages are “intimately related in time, origin, and motivation, because they arise out of the same interactions between the deceased and the respondents,” then the claims make a “convenient trial unit” and should be determined in the probate proceeding. *Hadley v. Cowan*, 60 Wn. App. 433, 442-43, 804 P.2d 1271 (1991).

James filed a petition with the trial court seeking an order directing Larry to provide an accounting for the proceeds from the 2006 sale or to show cause why the proceeds were not part of the estate. In support of that order, James filed a declaration stating that Shirley was not competent on September 17, 2005, the date of the quitclaim deed, because she was suffering from dementia and living in a nursing home. The commissioner denied the petition, finding that James' request was really a discovery

request that needed to be brought as a separate action outside the probate proceedings.

James filed additional petitions seeking to remove Larry as personal representative or to order Larry to provide an accounting, contending that the 2005 quitclaim was fraudulent because Shirley was not mentally competent and therefore the proceeds must be accounted for as an asset of the estate. The superior court denied both of these petitions, holding that the commissioner had already made it clear that any litigation with regard to the 2005 conveyance was not part of the probate action and needed to be brought as a separate cause of action. The superior court also noted that there had been some very bare assertions that Larry “has done something devious, that Shirley Wilson was not of sound mind,” but that there was absolutely no evidence in the record to support that allegation. Report of Proceedings at 13.

The trial court did not abuse its discretion in deciding that any challenge to the 2005 conveyance needed to be brought as a separate action outside the probate proceeding. Although James correctly notes that the trial court has the authority to hear issues relating to powers of attorney, the statute does not require the court to hear such issues; it merely grants it permission to do so. RCW 11.96A.040(3) (“The superior courts may”). Here, James has not established that the trial court abused its discretion in determining that the challenge to the quitclaim deed, executed nearly three years prior to

Shirley's death, should be brought as a separate action.

As the trial court did not consider the issue of the validity of the quitclaim conveyance and this issue is not one that may be considered for the first time on appeal, the validity of the 2005 conveyance is not properly before this court. RAP 2.5(a).<sup>4</sup>

*Petitions to Remove Personal Representative or Order Accounting*

James also contends that the superior court erred in denying his requests to order Larry to provide an accounting for the proceeds of the 2006 sale or remove Larry as personal representative. He argues that the proceeds of Larry's sale of the Spokane property are assets of the estate, Larry was therefore required to account for those proceeds, and Larry should have been removed as personal representative after refusing to account. However, since James' argument is based on his assumption that the quitclaim conveyance was invalid, an issue which the superior court did not consider and James did not prove below, we find no error.

The court's jurisdiction over nonintervention probate proceedings is statutory. *In re Estate of Bobbitt*, 60 Wn. App. 630, 632, 806 P.2d 254 (1991). After an order of solvency is entered, administration of a nonintervention estate is exclusively in the hands

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<sup>4</sup> Even if the validity of the 2005 conveyance was properly before this court, James did not include the power of attorney document in the record and therefore this court would not be able to consider his arguments regarding whether that document complied with the Internal Revenue Code or RCW 11.94.050.

of the executor. *Id.* However, the court may remove the personal representative for cause upon a petition by any person affected by the administration of the estate, or through action initiated by the court. RCW 11.68.070; RCW 11.28.250. Under RCW 11.68.070 and 11.28.250, a personal representative may be removed upon a showing that he has failed to faithfully execute his trust, or if he has wasted, embezzled or mismanaged property of the estate, committed fraud upon the estate, is incompetent, has neglected the estate or neglected to perform necessary acts as personal representative, or for any other action for which the court deems removal is necessary. The court must have valid grounds for removing the personal representative, and those grounds must be supported by the record. *In re Estate of Beard*, 60 Wn.2d 127, 132, 372 P.2d 530 (1962).

The superior court denied both of James' petitions, finding that the proceeds from the 2006 sale were not part of Shirley's estate and therefore no accounting was due and owing and Larry did not breach his duty as personal representative by refusing to account for those proceeds. James contends that the denial of both of his petitions was error in light of *In re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004). *Jones* is distinguishable from the present situation. There the personal representative was removed because the record established that he was living in a house that belonged to the estate before the estate was closed, he failed to use the fair market value of the house in distribution, he



failed to pay rent, utilities or property taxes while living in the house, he commingled estate funds, and he refused to disclose financial information, including estate records, valuation of the estate, and information relating to estate property. *Id.* at 7, 21-22. The *Jones* court also observed that a trial court could require interim account reporting as part of a personal representative's duty if it would be equitable to do so in light of a representative's suspicious activities suggesting self-dealing and unfaithfulness to the estate. *Id.* at 18.

In contrast, James alleged that Larry breached his fiduciary duty by refusing to account for the proceeds from the 2006 sale, but failed to establish that the proceeds are in fact an asset of the estate and that therefore Larry had a duty to account for them. Larry quitclaimed the property to himself in 2005, nearly three years prior to Shirley's death, and then sold to a third party in 2006. The conveyance and sale both occurred well before Shirley's death, and consequently the only way James can establish that the proceeds from the sale are an asset of the estate is to show that the quitclaim conveyance was invalid. However, he did not present any reliable evidence that the quitclaim was invalid and the trial court decided that the issue of the conveyance's validity should be brought separately.

Since James did not establish that there was any property in the estate not

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accounted for, he failed to show that an accounting was due or that Larry breached his duty as personal representative and therefore he did not provide the superior court with any grounds for granting his petitions. The trial court did not err in denying James' petitions and ordering the estate closed.

*Attorney Fees*

Larry, as personal representative, requested attorney fees on appeal pursuant to RAP 18.1.

RCW 11.96A.150(1) authorizes this court, in its discretion, to award attorney fees to any party from the party to the proceedings, from the assets of the estate involved in the proceedings, or any nonprobate asset that is the subject of the proceedings. This 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)(c).

We exercise our discretion and decline Larry's request for attorney fees on appeal. Defense of this litigation did not benefit the estate and may even have been unnecessary if Larry had provided the information James requested instead of leaving the matter to litigation.

Affirmed.

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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.

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Korsmo, C.J.

WE CONCUR:

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Kulik, J.

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Siddoway, J.