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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF CLARK

9 In Re the Estate of

No.

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11
12 Deceased.

COURT'S RULING GRANTING
PERSONAL REPRESENTATIVE'S
MOTION TO DISMISS AND FOR
AWARD OF ATTORNEY FEES

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14 I. Facts relevant to this motion

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16 On January 21, 2020 the court appointed the personal representative with non-intervention
17 powers and admitted the decedent's will, dated September 16, 2019, to probate. On April 1,
18 2020 , father of the PR and former husband of the decedent, filed a Cross
19 Petition, seeking to invalidate the 2019 will and to admit a will signed by the decedent on August
20 26, 2016 to probate. On April 2, 2020 then counsel for the PR, , signed an
21 Acceptance of Service. No Trust and Estate Dispute Resolution Act summons has been served
22 on the PR.
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24 II. Analysis

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26 1. Requirement to file a will contest as a new action
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1 RCW 11.96A is the Trust and Estate Dispute Resolution Act. The purpose of the chapter is
2 to "set forth generally applicable statutory provisions for the resolution of disputes and other
3 matters involving trusts and estates in a single chapter under Title 11 RCW". See RCW
4 11.96A.010. The provisions of RCW 11.96A supplement, but do not supersede any otherwise
5 applicable provisions and procedures outlined in it. RCW 11.96A.080.

6 A proceeding under TEDRA must be commenced as a new action. Once commenced the
7 action may be consolidated with an existing proceeding. RCW 11.96A.090(2) and (3). A judicial
8 proceeding under RCW 11.96A.090 is commenced by filing a petition with the court. RCW
9 11.96A.100.

10 *In re Estate of Black*, 116 Wash. App. 492 (2003) is instructive. In *Black* the court noted that
11 "a proceeding may be commenced as a new action or as an action incidental to an existing
12 proceeding relating to the same trust or estate of nonprobate asset." *Black* at 498. However, the
13 legislature deleted the language allowing an action under RCW 11.96A to be filed as an action
14 incidental to an existing proceeding when it amended the statute in 2013. See 2013 Wash.
15 Legis. Serv. Ch. 246 (S.S.B. 5135) (WEST). A legislative amendment generally changes an
16 unambiguous statute. *Roe v. Tele Tech Customer Care Management (Colorado) LLC*, 171
17 Wash.2d 736, 751, 257 P.3d 586 (2011). Here, the intent of the legislature was to require that
18 future will contests to be filed as new actions. Frederick G. Dust failed to do so in this case.

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20 2. Was service adequate in this matter?

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22 As was noted above, did not file a TEDRA petition in this case but rather
23 chose to file a cross petition. RCW 11.24.010 requires that any person interested in any will
24 shall appear within four months immediately following the probate and file a petition containing
25 his or her objections to the will. Failure to do so will result in the probate of the will in question to
26 be final. After the filing of the petition, notice shall be given as provided in RCW 11.96A.100.
27 See RCW 11.24.020. RCW 11.96A.100 requires that a summons must be served in accordance
28 with this chapter and the procedural rules of court. However, if the proceeding is filed as an
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1 action incidental to an existing judicial proceeding relating to the same trust or estate or non-
2 probate asset, notice must be provided by summons only with respect to those parties who
3 were not already parties to the existing judicial proceedings.

4 A TEDRA proceeding must be filed as a new action, but once filed it can be consolidated
5 with an existing proceeding. RCW 11.96A.090(2) and (3). In such a case a summons under
6 TEDRA would not be required with respect to those parties who were already parties to the
7 existing judicial proceedings. RCW 11.96A.100. However, in the present case there was not
8 consolidation of a TEDRA petition with an existing judicial proceeding; simply the filing of a
9 cross petition in the existing judicial proceeding. This does not satisfy the requirement that
10 TEDRA proceeding be filed as a new action, and service of the cross petition on the personal
11 representative does not comply with the service requirements of RCW 11.96A.100.
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