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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KITSAP**

In re the Estate of:

ROBERT TRACY DENO,

Deceased.

NO.

15 4 00897 7

VERIFIED PETITION ON TEDRA

COMES NOW Petitioner, Theresa Loretta Deno, by and through her attorneys RICHMOND & RICHMOND, Ltd., and petitions the court as follows:

- For the removal of Cathy Deno as personal representative of the estate of Ronald Tracy Deno and substitution of a neutral third party as personal representative.
- For the admission into probate of the will of Ronald Tracy Deno, as established by the attached copy, the original being believed to have been concealed or destroyed by the personal representative.
- For the invalidation of the Ronald Tracy Deno Living Trust for failure to name a successor beneficiary.
- For the injunction of any action to eject Theresa Deno from estate and/or trust property.

FACTUAL HISTORY

On January 19, 2011, decedent, Ronald Deno, executed two documents: a will, and a living



ORIGINAL

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1 trust. The rather opaque language of these documents will be examined in greater detail later, but
2 the following provisions are relevant:

3 The will gave all real property to the living trust, unless Theresa was ineligible to
4 serve as trustee or any dispute arose among his children, in which case all tangible property was
5 given to Theresa.

6 The will gave the residue of the estate to the living trust, unless it was invalid in
7 some way, in which case the residue was to pass to the person would have been trustee if the trust
8 was valid.

9 Another provision reiterated his preference for Theresa to serve as trustee of the
10 living trust, despite her criminal history, and stated that regardless of her status of trustee, if any
11 dispute arose among the heirs, Theresa should have complete power to possess and control all "real
12 property, houses, vehicles, heavy equipment, etc." to have or dispose of as she saw fit.

13 • The trust named Theresa Deno as successor trustee, or if she was unable to serve,
14 Cathy Deno.

15 • The trust did not name any successor beneficiary; the only beneficiary was Ronald
16 Deno, who was also the initial trustee.

17 Bank accounts were transferred into the living trust on January 19, 2011. Title to the
18 decedent's real property parcels (Tax Parcel ID#082401-2-059-2005, 052401-3-054-2001, 052401-3-
19 058-2007, 052401-3-059-2006) was quitclaimed into the living trust February 7, 2011.

20 Ronald Deno died on January 27, 2015. Theresa Deno was in in-patient treatment at the time of
21 death and unable to access the decedent's testamentary documents. She informed Cathy Deno of
22 the location of the trust and will documents on or about that time.

1 Cathy Deno instead opened this probate and swore that decedent was intestate. Several
2 months later, upon realizing that the real property was in the name of the living trust, Cathy
3 admitted the living trust to probate. She has never acknowledged to the court the existence of the
4 will.

5 Theresa Deno has been residing at the property located at 3287 Northlake Way, Bremerton.
6

7 ISSUES PRESENTED

- 8 1. Has Cathy Deno exhibited such malfeasance as trustee and personal representative
9 that she should be removed as personal representative and trustee?
- 10 2. Should the copy of the will of Ronald Deno be admitted to probate?
- 11 3. Is the Ronald Deno Living Trust invalid?
- 12 4. Should Theresa Deno be ejected from the estate property?

13 ARGUMENT AND AUTHORITY

14 Removal of Personal Representative

15
16 The court has power to remove the personal representative for many reasons pursuant to
17 RCW 11.28.250, including, "ha[ving] neglected to perform any acts as such personal representative,
18 or for any other cause or reason which to the court appears necessary." Personal representatives
19 who fail to discharge their trust faithfully may be removed under RCW 11.68.070.

20 Washington law requires the custodian of a will to deliver the will to the executor within 30
21 days of knowledge of death, and for the executor who had custody of the will to deliver the will to
22 the court within 40 days of knowledge of death. RCW 11.20.010. Cathy was informed of the
23 existence of the will, had custody of the decedent's personal papers, and yet has refused to submit
24 the original will to probate by the court as is required of her as executor. The will in question
25

1 appears to reduce her recovery below what she might hope to get in intestacy and she has been
2 unwilling to discharge her duty to probate the estate according to the express wishes of the
3 testator. Even if Cathy believed the will to be invalid, it was not her prerogative to adjudicate such
4 an issue on her own, but rather it should have been provided to the Court on regular hearing to let
5 the Court make this determination.

6 If Cathy is unable to faithfully discharge her trust as personal representative of the estate,
7 she therefore should be removed and replaced with a professional fiduciary, as no heir to the estate
8 is qualified.

9
10 Admission of Copy of Will

11 Although the original of the will is preferred for admission to probate, proof may be made of the
12 terms of a lost or destroyed will under RCW 11.20.070:

13 (1) If a will has been lost or destroyed under circumstances such that the loss or
14 destruction does not have the effect of revoking the will, the court may take
15 proof of the execution and validity of the will and establish it, notice to all
16 persons interested having been first given. The proof must be reduced to
writing and signed by any witnesses who have testified as to the execution
and validity, and must be filed with the clerk of the court.

17 (2) The provisions of a lost or destroyed will must be proved by clear, cogent, and
18 convincing evidence, consisting at least in part of a witness to either its contents
or the authenticity of a copy of the will.

19 It appears from the circumstances in this case that the will of Ronald Deno was not
20 admitted to probate, not because it was destroyed or revoked by the testator, but because Cathy is
21 unwilling to submit to its provisions. It was made concurrently with the trust document, which
22 Cathy only produced when she was unable to probate the estate without it. The original will was
23 among Ronald Deno's papers during his last illness, but it then passed into the custody of Cathy
24 and has not since been seen.
25

1 The will was properly attested and witnesses to the will are still available to testify that the
2 attached copy of the will accurately reflects its provisions and the testamentary intent of Ronald
3 Deno.

4 Validity of Living Trust

5 On the second page of the living trust is the following provision:

6 5. Death of Grantor: Upon the death of Grantor, and after the payment of
7 Grantor's just debts, funeral expenses, and expenses of last illness, the
8 following distributions shall be made:
9

10 There is nothing further on that page, and the following page begins with the next section:

11 6. Trustee Powers . . .

12 Thus, the trust provides no successor beneficiaries. During the life of Ronald Deno, he was
13 the sole beneficiary and the sole trustee. After his death, there are no beneficiaries.

14 Washington trust law, codified under RCW 11.98.011, places the following requirements on a trust:

15 (1) A trust is created only if:

16 (a) The trustor has capacity to create a trust;

17 (b) The trustor indicates an intention to create the trust;

18 (c) *The trust has a definite beneficiary . . .*

19 (d) The trustee has duties to perform; and

20 (e) *The same person is not the sole trustee and sole beneficiary.*
21 (emphasis added)

22 The purported trust fails to satisfy these conditions; during Ronald Deno's lifetime the same
23 person was sole trustee and sole beneficiary, and after his death there was no definite beneficiary.
24 The beneficial interest was never separated from the ownership interest, and therefore no trust
25

1 was created.

2 Terms of the Will

3 The following language of the will of Ronald Deno is relevant to current issues of
4 distribution and occupation of the real property of the estate:

5 Real Property: I give to the Ronald Tracy Deno Living Trust dated January
6 19th, 2011 any interest I own in any real property, together with any
7 insurance on the property. In the event there's any dispute amongst my
8 children or if for any reason Theresa is ineligible to serve as Trustee I Hereby,
9 acting as the current and sole Trustee, bequeath any and all tangible property
10 to Theresa Loretta Deno.
11

12 ...

13 Only if Living Trust

14 Residue. I give the residue of my estate to the then current Trustee of the
15 Ronald Tracy Deno Washington Trust, created by a Declaration of Trust
16 dated January 19, 2011, to be held, administered, and distributed according
17 to the terms and conditions of the Trust in effect at my death.
18

19
20 If the Trust is not then in existence, is revoked after the date of my Will, or
21 fails for any reason, or if the foregoing gift is void, invalid, or ineffective, then
22 I give the residue of my estate to the persons then serving or last serving (or
23 to the persons who would have been their successors under the terms of the
24 Trust if its provision, as they exist at the date of this Will, remained in effect
25

1 at my death, as Trustee, under the Declaration of Trust evidencing the Trust,
2 in trust, without bond, and according to the terms and provisions of the Trust
3 as they last existed prior to the Execution of this Will, which provisions are
4 incorporated into this Will by this reference to the same extent and in the
5 same manner as though they were set forth in this Will in full.

6 ...
7
8 It is my express desire that Theresa Deno serve, if at all possible, as Trustee
9 of THE RONALD TRACY DENO REVOCABLE LIVING TRUST. She is
10 aware of my wishes and, despite her multiple criminal convictions, which I
11 am well aware of, she is the best choice for the disposition of my assets after
12 my demise. It is also my express desire that in the event that there's any
13 dispute amongst my heirs that until a period of two (2) years has elapsed past
14 the date of my death, Theresa have both possession and control of any and all
15 real property, houses, vehicles, heavy equipment, etc., to have and/or to
16 dispose of as she sees fit.

17
18
19 These provisions, especially in light of the invalidity of the trust document, are far from as
20 clear as might be wished. However, the intent of the testator seems fairly clear.

21 First, under the "Real Property" provision, if any dispute arises or if Theresa is unable to
22 serve as trustee, all "tangible property" is to be transferred to Theresa. It appears from the heading
23 of this provision that the "tangible property" referred to is intended to include the real property.
24 Presumably it does not include non-tangible property such as bank accounts.

1 Further, Theresa is given, in the event of any dispute among heirs, two years after the death of
2 Ronald Deno to own all real property, houses, and vehicles and dispose of them as she sees fit. By
3 itself this would be a confusing condition, as it is not clear what happens after the two years end,
4 but considered in conjunction with the earlier paragraph, it is evident that again, Theresa is to
5 inherit both real property and tangible personal property.

6 The residue of the estate is given to the living trust, or, if the trust is invalid, to whoever
7 would be the trustee if the trust were valid. It incorporates the language of the trust. The trust, in
8 turn, provides that Theresa Deno is to serve as successor trustee, and only if she is unable to serve
9 should Cathy serve as the successor trustee. The will itself, meanwhile, makes it clear that the
10 testator was fully aware of Theresa's status as a felon and nonetheless strongly preferred her to be
11 the trustee. Therefore, it appears from this provision that Theresa is also intended to be the
12 recipient of the remainder of the estate.

13 Ejectment Action

14 As Theresa is named as the heir to at least the real property of the estate, ejecting her from
15 the property is inappropriate and an unreasonable use of Cathy's power as personal representative
16 of the estate should the will be admitted to probate. Should the will fail to be admitted, Theresa
17 has no defense to the ejectment action, and should vacate forthwith. Accordingly, the ejectment
18 action should be consolidated with this TEDRA action under CR 42.

19 **CONCLUSION AND PRAYER FOR RELIEF**

20 Wherefore, Petitioner prays for the following relief:

- 21
- 22
- 23 A. An order admitting the copy of the will of Ronald Tracy Deno to probate;
- 24 B. An order invalidating the Trust of Ronald Tracy Deno;
- 25

1 C. An order, should bad faith be found on the part of Cathy Deno, authorizing
2 Petitioner's fees and costs payable from Cathy Deno's share of the estate, and if that be insufficient,
3 from Cathy Deno personally; and

4 D. For such other and further relief as this Court deems just and equitable.

5 Respectfully submitted this 9 day of Nov, 2015.

7 RICHMOND & RICHMOND LTD.

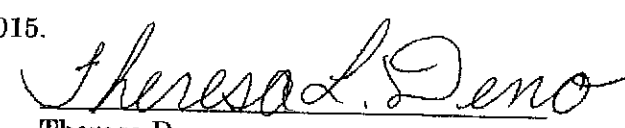
8
9 
10 [] KAREN RICHMOND WSBA 31618
11 [X] RONALD D. RICHMOND WSBA 42438
12 Attorneys for Petitioner

11 VERIFICATION
12 Pursuant to RCW 11.28.110

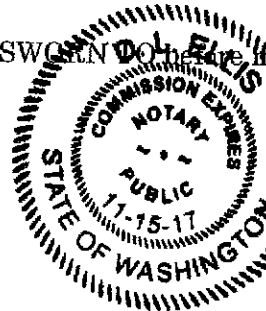
13 STATE OF WASHINGTON)
14) ss.
15 COUNTY OF KITSAP)

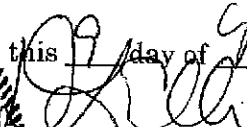
15 THE UNDERSIGNED, being first duly sworn upon oath, deposes and states that she is the
16 Petitioner in this matter, that she has read the foregoing Petition, knows the contents thereof and
17 believes the same to be true.

17 DATED this 9th day of Nov., 2015.

18 
19 Theresa Deno

20 SUBSCRIBED AND SWORN to before me this 9 day of November, 2015.




Notary Public in and for the State of
Washington, residing at Port Orchard
My commission expires: 11.15.17