



In Re The Estate Of Zora P. Palermini

2021 | Cited 0 times | Court of Appeals of Washington | August 2, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of) No. 82048-6-I ZORA P. PALERMINI,)) DIVISION ONE Deceased.))
GEORGE BRALY, Personal) Representative of the Estate of Zora P.) Palermini and Co-Trustee of
the Zora P.) Palermini Revocable Living Trust,)) Respondent,) UNPUBLISHED OPINION) v.))
DOMINIQUE JINHONG, individually,) and Co-Trustee of the Zora P.) Palermini Revocable Living
Trust,)) Appellant.)

BOWMAN, J. In the months before and after Zora Polly 1 death, her granddaughter Dominique Jinhong misappropriated nearly all the

assets in the estate of Zora P. Palermini (Estate) by falsifying documents,

misrepresenting her authority, exerting undue influence over Polly as a

vulnerable adult, and exploiting her fiduciary powers. The Estate successfully

petitioned under the Trust and Estate Dispute Resolution Act (TEDRA), chapter

11.96A RCW, to recoup assets and disinherit Jinhong. Jinhong appeals,

1 We refer to Zora for clarity and intend no disrespect. arguing the trial court committed a series of evidentiary errors and reached

conclusions of law that sufficient facts do not support. We affirm.

FACTS

Polly planned for her death thoughtfully and carefully. As a widow with

two disabled adult sons

Palermini, 2 Polly knew she would have to protect her assets for their long-term

care. 3 Despite being - and , Polly valued family and



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personal relationships. Though estranged from her daughter Jonnie, Polly maintained a relationship with one of daughters, Dominique Jinhong, a lawyer and administrative law judge.

to provide for s needs was clear

to everyone she knew. She lived frugally and saved as much as possible. In 1991, Polly used estate planners to create and maintain the Zora P. Palermini Revocable Living Trust (Trust) for the benefit of her sons. Polly intended all of her assets to transfer to the Trust after her death. She also created a pour-over will that transferred any assets in her name into the Trust when she died.

In 2010, Polly began working with attorney and estate planner John

Kenney to manage her Estate. Against Kenney advice, Polly insisted on

2 . 3 Polly also had two daughters. Lou Ann Palermini-Moser died in 2008. Polly explicitly disinheri Shoenholz by her first name for clarity as well. appointing a friend and Jinhong as co-fiduciaries that must agree unanimously to

act her family. 4

In October 2016, Polly met with Kenney to make changes to her Estate plan. Polly replaced one of the co-trustees with her accountant George Braly, who she considered 5 She executed a Certification of Trust naming Jinhong and Braly as joint successor trustees if she died, became incapacitated, or otherwise initiated a transfer of Trust powers. Two Morgan Stanley accounts held the Trust funds with a combined value of \$802,478.

Polly sister from the list of contingent beneficiaries



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and split that portion between her neighbors two sons. Polly kept Matt and Dan as the primary beneficiaries of the Trust and decided that if one of her sons died, his share would go to the other son. None of the contingent beneficiaries would inherit under the Trust unless both sons died. Estate plan also provided that Jinhong could buy house at 90 percent of its fair market value. Polly decided against gifting her house to Jinhong because she wanted the proceeds from the sale of the house to remain in the Trust for the benefit of Dan and Matt. Kenney also prepared and notarized a 20-page Durable Power of Attorney (DPOA) for Polly. The DPOA appointed Jinhong and Braly as co-agents to make decisions on behalf only.

According to Kenney, the DPOA -agents to transfer property to her Trust, make withdrawals from her retirement assets, 4 did not trust Jinhong specifically.

5 Jinhong remained co-trustee. anything else that you want your agents to do for you to take care of you in the

event that you become unable to effectively manage your property or financial affairs. Polly could activate the DPOA by signing a Certification of Authorization by which she kept, unsigned, for future use. When Kenney prepared the 2016 documents, he had a copy machine that could not produce color copies. He made a black and white copy of the documents and gave all the originals, except the will, to Polly in a three-ring binder.



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Polly also maintained a KeyBank checking account that received

[S]ocial [S]ecurity, [V]eterans[] [A]dministration,

November

2017, the account had a balance of \$181,081.

Polly became increasingly ill toward the end of 2017. She was 88 years

old and suffered from congestive heart failure, among other conditions, and

understood her condition was terminal. In December 2017, Polly was admitted to

a long-term skilled nursing facility and Jinhong began taking an active role in

Jinhong took Polly to KeyBank to designate herself as the

Payable on Death beneficiary on the account so that

On December 2, 2017, Polly executed the single-page Certification of

Authorization by Principal form prepared by Kenny in 2016, triggering the 2016

DPOA. But before Polly executed the authorization, Jinhong drafted a new

DPOA, purportedly signed by Polly and notarized by Jinhong. The new

document differed significantly from the original DPOA Kenney created for Polly. It named Braly as a successor agent rather than a co-agent, giving Jinhong sole

authority to manage

On December 13, 2017, Jinhong took control of KeyBank account

by presenting the new DPOA to KeyBank officials. She attached the new DPOA

to an altered version of the Certification of Authorization by Principal. The altered

document did not match the original -ring binder and



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completely omitted heading.

Jinhong then tried to access Trust accounts, telling Morgan Stanley

the money was needed - She made three

attempts to access . First, she scanned and e-mailed Morgan

Stanley the 2016 DPOA that Kenney drafted. But Morgan Stanley rejected the

Later that

same day, Jinhong scanned and e-mailed the 2017 DPOA she drafted,

s sole agent. Again, Morgan Stanley rejected the

.

Three days later, Jinhong forged and e-mailed to Morgan Stanley a

Certification of Trust that removed Polly as trustee and named herself sole

trustee . The certification conflicted with other Trust

documents identifying Braly and Jinhong as co-trustees and differed from the

Certification of Trust that Kenney prepared in 2016 and kept in his files. While

altered signature, he later testified

he would never sign two different versions of the document. The forged

document also showed physical signs that it was not created along with the other Estate documents kept in three-ring binder. It did not have visible three-

hole-punch shading and omitted certain words from version. Forensic

document examiners and handwriting experts hired by the Estate later concluded

that the forged Certification of Trust contradicted the other Trust documents,



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contained altered signatures, and was created using a color-capable copy machine, which Kenney did not have in 2016. But unaware of the forgery, Morgan Stanley accepted the Certification of Trust as sufficient authority for Jinhong to Trust accounts.

Jinhong then prepared and a quit claim deed to house and a zero-interest promissory note, transferring ownership of the house from the Trust to Jinhong for \$1 to be paid end her life under the Washington Death with Dignity Act (DDA), chapter 70.245 RCW. On January 8, 2018, Jinhong recorded the house as a gift.

Sadly, on January 9, Dan died. Then, utilizing the DDA, Polly took her life on January 12, 2018 by self administering fatal medications. At the time of her death, Polly was under hospice care at the skilled nursing facility.

Records showed that between December 27, 2017 and January 31, 2018, Jinhong withdrew \$91,433 from KeyBank account to pay her personal debt Trust

funds into the KeyBank account, creating the appearance to Morgan Stanley that the transfers were made for the benefit of Polly Jinhong s

representations that the funds were for Polly's benefit. The transfer triggered

capital gains taxes of more than \$188,000. On January 31, 2018, Jinhong withdrew \$706,029 from KeyBank account as a c check payable

to herself. She used none of the funds



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Jinhong presented the altered Certification of Trust to Braly and explained

that she was now the sole trustee Trust accounts. Braly contacted

On

May 10, 2018, Braly as personal representative (PR) of the Estate and co-trustee

of the Trust petitioned under TEDRA to , remove Jinhong

as trustee, and remove Jinhong as a beneficiary, alleging that Jinhong breached

her fiduciary obligations. Jinhong responded that she was acting according to

2017 DPOA and authorized to manage 6

Jinhong moved for partial summary judgment, which the trial court denied.

After a three-week bench trial, the court entered

in favor of the Estate, ruling that

Jinhong committed fraud, breached her fiduciary duties by exerting undue

influence to appropriate Trust assets, and financially exploited Polly as a

vulnerable adult. The court voided the quit claim deed and

personally liable to the Estate for the funds she removed, including accrued

interest, dividends earned, prejudgment interest, and the assessed capital gains

6 on September 28, 2018, more than four months after Braly as PR filed the probate notice to creditors. The trial court later denied taxes. Finally, the court disinherited Jinhong as a beneficiary and ordered her to

pay attorney fees and costs.

Jinhong appeals.

ANALYSIS



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Summary Judgment

Jinhong contends the trial court erred in denying her motion for partial summary judgment as a matter of law but provides no argument in support of her assignment of error. In any event,

appealed following a trial if the denial was based upon a determination that Johnson

v. Rothstein, 52 Wn. App. 303, 304, 759 P.2d 471 (1988). Instead, party must appeal from the Adcox

v. Child s Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 35 n.9, 864 P.2d 921 (1993).

Here, the trial court

because the parties disputed the authenticity of several Estate documents, the

those documents, and when Polly health deteriorated so that she became a vulnerable adult unable to care for

herself. The court resolved the dispute over these material facts at trial. As a

result, Jinhong cannot appeal the denial of her summary judgment motion. Evidentiary Rulings

Jinhong contends the trial court abused its discretion in making several

evidentiary rulings. She claims the court statute, excluding testimony under the hearsay rule, and denying her motion to

exclude testimony protected by spousal privilege.

A.

Jinhong argues the trial court misapplied RCW 5.60.030, often called the



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(DMS), unduly restricting her presentation of evidence. She contends the Estate waived its protections under the DMS, the trial court improperly denied Jinhong the ability to testify about certain transactions with Polly, and the trial court erroneously excluded admissions made by Matt during discovery.

-serving testimony

about conversations or transactions with the deceased, because the deceased is

Rabb v. Estate of McDermott, 60 Wn.

App. 334, 339, 803 P.2d 819 (1991). Under RCW 5.60.030, in a lawsuit

,

a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased . . . person.

We review evidentiary rulings under the DMS for abuse of discretion. City

of Spokane v. Neff, 152 Wn.2d 85, 91, 93 P.3d 158 (2004). A court abuses its

discretion if its decision is manifestly unreasonable or exercised on untenable

grounds or reasons. Republic of Kazakhstan v. Does 1-100, 192 Wn. App. 773, 781, 368 P.3d 524 (2016). But whether a

witness is a party in interest or whether an event is under the

DMS is a legal question that we review de novo. See Eugster v. City of

Spokane

An interested party is one who stands to either gain or lose as a direct



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result of the judgment. Rabb, 60 Wn. App. at 340 (citing 5A KARL B. TEGLAND,

WASHINGTON PRACTICE: EVIDENCE § 213 (1989)). We define a by

[the] deceased, if living, could contradict the witness of his own

In re Wind s Estate, 27 Wn. 2d 421, 426, 178 P.2d 731 (1947).

transaction, the testimony must indicate that the decedent was

In re Estate of Lennon,

108 Wn. App. 167, 178, 29 P.3d 1258 (2001). The DMS precludes not only

positive assertions that a transaction or conversation with the decedent took

Botka v. Estate of Hoerr, 105 Wn. App. 974, 980, 21 P.3d 723 (2001)

(quoting Martin v. Shaen, 26 Wn.2d 346, 352-53, 173 P.2d 968 (1946)).

The DMS does not bar the admission of documents. Laue v. Estate of

Elder, 106 Wn. App. 699, 706, 25 P.3d 1032 (2001) (citing Thor v. McDearmid,

63 Wn. App. 193, 202, 817 P.2d 1380 (1991)). Nor does it prevent an interested

party from testifying about his or her own feelings or impressions, unless those

impressions necessarily imply a transaction with the decedent. Lennon, 108 Wn. App. at 175; Thor, 63 Wn. App. at 200-01 (citing Spencer v. Terrel, 17 Wash.

514, 519, 50 P. 468 (1897)).

1. Waiver

Jinhong argues the Estate waived application of the DMS by calling and

questioning witnesses at trial. We disagree.

The protected party here, the Estate can waive the DMS by introducing



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evidence about a protected transaction with the deceased. Lennon, 108 Wn. App. at 175. A party can also waive the statutory protections by failing to object to an adverse party testimony about protected transactions with the deceased or by cross examining an adverse party about protected transactions and conversations with the deceased that the adverse party did not testify to on direct examination. McGugart v. Brumback, 77 Wn.2d 441, 450-51, 463 P.2d 140 (1969). Once the protected party has opened the door, the interested party is entitled to rebuttal. Lennon, 108 Wn. App. at 175. A waiver by introduction of testimony about one transaction does not extend to unrelated transactions and conversations. Bentzen v. Demmons, 68 Wn. App. 339, 345, 842 P.2d 1015 (1993).

Jinhong first alleges the Estate waived application of the DMS because PR, described instructions to him about distribution of her assets in the TEDRA petition and as a witness at trial and asserted .

Citing In re Tate s Estate, 32 Wn.2d 252, 254, 201 P.2d 182 (1948), Jinhong argues that [p]ersonal representatives of an estate are subject to the [DMS], even whe But Jinhong ignores that this is true only when the PR is also an interested party.

The test of the competency of a witness to testify as to conversations and transactions had with the deceased in a will contest case is whether [the PR] would gain or lose by a decree sustaining or revoking a will already admitted to probate.

Tate s Estate, 32 Wn.2d at 254. Where



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evidence is inadmissible, [the witness testified] in court in a

, 32 Wn.2d at 254. 7 Here, Braly was not a

to the litigation because he stood to neither gain nor lose from

Estate. RCW 5.60.030. As a result, the DMS did not

restrain him from testifying about his conversations with Polly about her assets

and Estate plans or that Polly never mentioned the creation of a 2017 DPOA.

Similarly, Jinhong contends the Estate waived protection under the DMS

by calling several witnesses who testified

[Jinhong] and insinuated that [Jinhong] exerted some improper influence over the

Jinhong cites Botka in support of her argument. In Botka, a hospice

Botka, 105 Wn. App. at 976. The estate

claimed the nurse was a trespasser and the DMS barred her testimony. The

suggested that the decedent was unaware the

7 Jinhong also cites In re Estate of Shaughnessy, 97 Wn.2d 652, 656, 648 P.2d 427 (1982), , 104 Wn.2d 89, 702 P.2d 132 (1985), in support of her claim waived application of the DMS. But that case also concludes the DMS prohibits an interested party from testifying about transactions with the deceased, Shaughnessy, 97 Wn.2d at 656. nurse would be at his home that day. Botka, 105 Wn. App. at 977, 980. We

concluded the estate waived protection under the DMS by eliciting testimony

from the daughter between the

decedent and a party interested in the outcome of the trial the nurse. Botka,

105 Wn. App. at 980-81.

neighbors that Polly told them she intended all her assets be used to provide for



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and that she did not trust Jinhong. None of the witnesses were interested parties to Estate, so the DMS did not bar testimony about their conversations with Polly. And unlike Botka, none of the Estate witnesses testified about protected transactions between Polly and Jinhong.

Jinhong next contends that the Estate waived protection under the DMS because when

Johnson v.

Peterson, 43 Wn.2d 816, 818, 264 P.2d 237 (1953); Zvolis v. Condos, 56 Wn.2d 275, 352 P.2d 809 (1960); and Lennon, 108 Wn. App. at 175, in support of her sweeping claim. None of the cases cited by Jinhong support her argument.

Rather, these cases find waiver of the DMS only when the protected party examines an adverse witness about otherwise barred transactions involving the decedent.

Jinhong argues the Estate questioned her extensively about otherwise barred transactions, i specific transactions that were the heart of the

matters at issue. Jinhong points to questions on direct about which section of the DPOA Jinhong believed Trust

funds, whether Jinhong the representations and warranties she

made by signing a fiduciary agreement and Trust account agreement, asking

Jinhong to identify , and asking

Jinhong where she was when making a specific banking transaction. But these



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questions sought information only own actions and state of mind.

See Thor, 63 Wn. App. at 201; Lennon, 108 Wn. App. at 175. As such, the DMS did not bar the questions and the questions did not serve to waive DMS protections.

2. Testimony

Jinhong argues [DMS],

excluding a host of responses, statements, and testimony that are simply not

subject to the rule. Specifically, Jinhong asserts the court precluded her from

testifying that she lived with Polly as a child and that the two always had a close

and loving relationship would not let Jinhong give her relationship with Matt and Dan, and did not let Jinhong identify where Polly

habitually kept notes about her final wishes. 8 But even if we argument that the trial court does not explain how the

omission of her testimony was prejudicial given the overwhelming evidence that

she forged documents and misrepresented her authority to secure assets from

8 Jinhong also argues that the court did not permit her to testify about whether she would get a portion of the Estate in exchange for caring for Matt. But the court allowed Jinhong to testify t was all []ways my impression that if Dan were to die, that Dan s portion of the estate would come to me in exchange for taking care of Matt for the rest of his days. Estate for her personal benefit. Error that does not affect a substantial

right . . . Thor, 63 Wn App. at 202 (citing ER 103(a)).

3. Discovery

Jinhong claims the trial court erred in excluding formal admissions made

by Matt during discovery as protected under the DMS. 9 We disagree.



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request for admissions (RFA), Matt admitted to

hearing several statements from Polly about her intent to pay Jinhong her desire that Jinhong acquire her house, and her plan to pay Jinhong back for

buying Dan a car. 10 Jinhong argues the DMS did not bar because they were against his pecuniary interest as a Trust beneficiary. See In

re Estate of Miller, 134 Wn. App. 885, 894, 143 P.3d 315 (2006) (testimony by

party in interest not barred by DMS if the testimony is not self serving).

While it is true that Matt admitted tioned in a telephone

conversation at the end of December . . . 2017 that she was going to pay off

J , went against

interest only if she intended the payment as a gift from the Estate. But as part of

9 request for admissions about his transactions with Polly. But engaging in pretrial discovery does not waive the DMS unless the court admits the discovery as evidence. See Botka, 105 Wn. App. at 981-82. [N]o useful purpose would be served by requiring a party entitled to the protection of RCW 5.60.030 to preserve that protection by resisting discovery until a court order commanded compliance. Botka, 105 Wn. App. at 982 (quoting Diel v. Beekman, 7 Wn. App. 139, 155, 499 P.2d 37 (1972)). 10 the same admission, Matt specifically denied Polly intended to voluntarily pay off

during a telephone conversation at the end

of December, 2017, [Polly] told me that she wanted [Jinhong] to have the

house. again, only if

Polly intended to gift Jinhong the house, which he denied and stated Polly never

.

Finally, Matt admitted Polly requested that [Jinhong] purchase a vehicle

for Dan and intended to reimburse [Jinhong] for purchasing the vehicle. This



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admission is relevant to only barred as

admissions under the DMS. 11

B. Hearsay

Jinhong next claims the trial court erred in excluding as hearsay inquiry about a funds transfer from her Morgan Stanley account.

We review de novo whether a statement is hearsay but review for abuse

State v.

Edwards, 131 Wn. App. 611, 614, 128 P.3d 631 (2006); State v. Woods, 143

Wn.2d 561, 595, 23 P.3d 1046 (2001). A trial court abuses its discretion when its

decision is manifestly unreasonable or based upon untenable grounds. Saldivar

11 Jinhong claims the court erred in also excluding Ma had a very We are not convinced this testimony Even so, any error does not warrant reversal. See Thor, 63 Wn App. at 202 (citing ER 103(a)). v. Momah, 145 Wn. App. 365, 394, 186 P.3d 1117 (2008) (citing Mayer v. Sto

Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006)). E]videntiary error is

grounds for reversal only if it results in prejudice. Bengtsson v. Sunnyworld

Int l, Inc., 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020) (quoting City of Seattle v.

Pearson, 192 Wn. App. 802, 817, 369 P.3d 194 (2016)).

Hearsay is a statement, other than one made by the declarant while

testifying, offered to prove the truth of the matter asserted. ER 801(c). A

statement is (1) an oral or written assertion or (2) nonverbal conduct of a

person, if it is intended by the person as an assertion. ER 801(a). Whether a

statement is hearsay depends on the purpose for which the statement is offered.



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State v. Crowder, 103 Wn. App. 20, 26, 11 P.3d 828 (2000). Evidence must also be relevant. ER 402. Evidence is relevant if it tends to prove or disprove some fact and is of consequence to the ultimate outcome of the case. Bengtsson, 14 Wn. App. 2d at 105 (citing Davidson v. Mun. of Metro. Seattle, 43 Wn. App. 569, 573, 719 P.2d 569 (1986)).

Jinhong identifies two utterances by Polly that she claims the court

Dr. Maureen Smith,

offered testimony that a day or two before Polly died, she

overheard Jinhong talking to Polly

on speakerphone. Polly asked [Jinhong] if the transfer

went through. She heard firm[] that the funds had been

Polly say, ood. question about whether the transfer went through was not hearsay. See State v. Collins, 76 Wn. App. 496, 498, 886 P.2d 243 (1995) (inquiry is not

hearsay).

Jinhong argues the state of mind exception to hearsay applied response 12 understanding of the transaction was relevant only if Polly was approving the

unidentified money transfer as a gift to Jinhong. And the record is silent on what

Polly believed was the purpose of the transfer. Excluding response was not prejudicial error. 13

C. Spousal Immunity

Jinhong claims the trial court erred when it concluded the spousal privilege

did not preclude -wife, Kelly Montgomery, from testifying about

statements Jinhong made during their marriage. The Estate asserts the court did



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not err because Jinhong and Montgomery .

The confidential communications privilege protects intimate exchanges

among spouses and is intended

State v.

12 The state of mind exception in ER 803(a)(3) allows then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). 13 Jinhong also argues the court should have admitted a diary she created documenting ER 803(a)(6)(i); RCW 5.45.020. But Jinhong makes no argument in her brief about how the diary *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998). *Thorne*, 43 Wn.2d 47, 55, 260 P.2d 331 (1953). RCW 5.60.060(1) states, in

relevant part:

A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership.

The confidential communications privilege survives death or divorce 14 and

applies actually successful

spouses while married. *Barbee*, 126 Wn. App. at 156 (quoting *Swearingen v.*

Vik, 51 Wn.2d 843, 848, 322 P.2d 876 (1958)).

Jinhong and Montgomery were married in the state of Oregon in 2004. In

2005, the Oregon Supreme Court decided *Li v. Oregon*, 338 Or. 376, 110 P.3d

91, voiding marriage licenses issued to same-sex couples in Multnomah County,

Oregon. In 2015, the United States Supreme Court decided *Obergefell v.*

Hodges, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609, abrogating *Li* and

holding that same-sex couples have a fundamental right to marry that states



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must recognize. Jinhong argues the trial court erred in determining that Li invalidated [her] marriage, where Li itself violated [her] fundamental, constitutional rights and was void ab initio

Even assuming the court should have excluded

under the spousal privilege, it did not amount to prejudicial error. Montgomery testified that

14 Unlike the testimonial spousal privilege, which is *Barbee v. Luong Firm, PLLC*, 126 Wn. App. 148, 158-59, 107 P.3d 762 (2005). , and that house was a big

deal The court properly admitted this same information through

several other sources, including Polly . Admitting

testimony was not prejudicial error.

Sufficiency of Evidence

Jinhong argues insufficient evidence supports

conclusions of law following the bench trial. We reject her claims.

After a bench trial, our review is limited to whether substantial evidence

supports 15 and whether those findings support the

conclusions of law. *Endicott v. Saul*, 142 Wn. App. 899, 909, 176 P.3d 560

(2008). In evaluating the sufficiency of the evidence, we view all reasonable

inferences in the light most favorable to the prevailing party. *Jensen v. Lake*

Jane Estates, 165 Wn. App. 100, 104, 267 P.3d 435 (2011). We do not review

the trial court s credibility determinations or weigh conflicting evidence. *Quinn v.*



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Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009). We review a trial court's conclusions of law de novo. *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012).

15 Jinhong assigns error to several findings of fact but makes no attempt to show that substantial evidence does not support the findings. court with argument as to why specific findings of the trial court are not supported by the evidence and to cite to the record to support that argument. In re Estate of Lint, 135 Wn.2d 518, 532, 957 argument, we treat the findings as verities on appeal. *Karlberg v. Otten*, 167 Wn. App. 522, 525 n.1, 280 P.3d 1123 (2012). A. Undue Influence

Jinhong contends sufficient evidence does not support s conclusion that she exerted undue influence over Polly. We disagree.

Undue influence involves unfair persuasion that seriously impairs the free and competent exercise of judgment. *Kitsap Bank v. Denley*, 177 Wn. App. 559, 570, 312 P.3d 711 (2013) (quoting *In re Estate of Jones*, 170 Wn. App. 594, 606, 287 P.3d 610 (2012)). The determination of undue influence is a mixed question of fact and law. *Kitsap Bank*, 177 Wn. App. at 569 (citing *In re Trust & Estate of Melter*, 167 Wn. App. 285, 300, 273 P.3d 991 (2012)).

Generally, the party seeking to set aside an inter vivos gift has the burden to show that the gift is a product of undue influence. *Melter*, 167 Wn. App. at 296.

But where the recipient has a confidential or fiduciary relationship with the donor, the burden of persuasion shifts to the recipient to prove that the gift did not result from undue influence. 16 *Melter*, 167 Wn. App. at 296.

When, as here, a fiduciary relationship exists, the recipient must show that the gift was made freely, voluntarily, and with a full understanding of the



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facts. Melter, 167 Wn. App. at 296 17 (quoting McCutcheon v. Brownfield, 2 Wn.

App. 348, 356, 467 P.2d 868 (1970)). The burden of persuasion is clear, cogent,

and convincing evidence. Melter, 167 Wn. App. at 296-97. The clear, cogent,

and convincing standard requires evidence that the fact in issue is highly

16 Jinh 17 Internal quotation marks omitted. probable. In re Estate of Haviland, 162 Wn. App. 548, 558, 255 P.3d 854

(2011) 18 (quoting Endicott, 142 Wn. App. at 910).

Jinhong argues that she satisfied her burden to show that Polly freely,

voluntarily, and with full knowledge of the facts gifted her nearly all of the assets

in the Estate. She points to testimony of physicians and caregivers who attested

under the DDA evidence of

testamentary capacity is not inconsistent with the conclusion that undue influence

had overmastered free agency. Haviland, 162 Wn. App. at 567 (quoting In re

Estate of Esala, 16 Wn. App. 764, 770, 559 P.2d 592 (1977)). And the record

shows that the trial court weighed the physician and caregiver testimony against

s

vulnerability, evidence that Polly intended to leave the bulk of her Estate to

ensure care for her sons, and the lack of evidence that Polly read and

understood documents she purportedly signed while in hospice care. Sufficient

breached her fiduciary

duty by exerting undue influence over Polly.



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B. Fraud

Jinhong contends sufficient evidence conclusion that she took assets from Polly by fraud. She argues evidence that

she falsified the Certification of Trust and presented the forged document to

Morgan Stanley did not amount to fraud because the Estate did not prove she

18 Internal quotation marks omitted. knew the document was false or that Morgan Stanley would rely on it. We

disagree.

A party must prove fraud by clear and convincing evidence. *Bang D.*

Nguyen v. Wash. Dep t of Health , 144 Wn.2d 516,

527, 29 P.3d 689 (2001), cert. denied, 535 U.S. 904, 122 S. Ct. 1203, 152 L. Ed.

2d 141 (2002). The well established elements of fraud are:

(1) A representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker s knowledge of its falsity or ignorance of its truth; (5) his [or her] intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter s reliance on the truth of the representation; (8) his [or her] right to rely upon it; [and] (9) his [or her] consequent damage.

Kirkham v. Smith, 106 Wn. App. 177, 183, 23 P.3d 10 (2001).

The trial court found that Jinhong forged a fraudulent Certification of Trust

and DPOA to Trust accounts. Jinhong used the forged

documents to hold herself out as . Based on her

misrepresentation, 19 Jinhong Trust accounts and

liquidated them for her personal benefit. These findings conclusion that Jinhong took assets from Polly by fraud.



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C. Slayer Statute

Jinhong claims the Estate did not show she financially exploited a vulnerable adult serious enough to disinherit her under RCW 11.84.020,

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19 Having reviewed three-ring binder of Estate documents prepared by Kenney, Estate plan. The slayer statute provides that [n]o slayer or abuser shall in any way

acquire any property or receive any benefit as the result of the death of the

decedent. An abuser

an accessory before the fact, in the willful and unlawful financial exploitation of a

RCW 11.84.010(1). The party seeking the benefit of the

statute bears the burden of proof by a preponderance of the evidence. Cook v.

Gisler, 20 Wn. App. 677, 683, 582 P.2d 550 (1978); In re Estate of Kissinger, 166

Wn.2d 120, 128, 206 P.3d 665 (2009) (citing Leavy, Taber, Schultz & Bergdahl v.

Metro. Life Ins. Co., 20 Wn. App. 503, 507, 581 P.2d 167 (1978)).

In concluding that Jinhong exploited Polly, the trial court found that Polly

was a vulnerable adult under RCW 74.34.020(22)(a) because she was over the

age of 60 and unable to care for herself. The court also found that Jinhong

illegally and improperly , and Trust

funds and made material misrepresentations to usurp the financial assets of the

Trust for her personal gain. Finally, the trial court found that Jinhong financially

exploited Polly by transferring house to herself as a gift and taking the



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bulk of the Estate for her personal use. findings support its conclusion that Jinhong financially exploited Polly and the court properly disinherited her under the slayer statute.

Creditor Claim

Jinhong argues ts owed to [her] fr The Estate claims Jinhong did not timely assert a creditor claim, waiving her ability to collect. We agree with the Estate.

We review issues of statutory interpretation de novo. In re Estate of Rathbone, 190 Wn.2d 332, 338, 412 P.3d 1283 (2018) (citing Anderson v. Dussault, 181 Wn.2d 360, 368, 333 P.3d 395 (2014)). Under the probate statute, claim or commencing an action against the deced claim within 30 days of receiving proper notice. RCW 11.40.051(1)(a)(i).

Jinhong agrees she did not timely file a claim under the probate statute.

Even so, she asserts the trial court had authority TEDRA to offset her recovery so that the Trust was not unjustly enriched. The contained in chapter 11.40 RCW. RCW 11.96A.080(2).

Attorney Fees

Jinhong asks us to reverse the t of the Estate and to [s]hould this C her request is moot.

The Estate also requests an award of fees on appeal. Under RCW



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11.96A.150(1), we may exercise our discretion to award reasonable attorney

factors that we deem RAP 18.1.

findings support its conclusions of law, we affirm.

WE CONCUR:

