



Trust and Estate Litigation Sub-Committee, RPPT Section

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Palmer v. World Gospel Mission – A case of Mistaken Identity?

Is a challenge to the validity of a Living Trust agreement the equivalent of a Will Contest? In *Palmer v. World Gospel Mission*,¹ the Court of Appeals, Division II, upheld and extended a Superior Court Commissioner's ruling that RCW 11.24.010 (the four-month statute of limitations for Will Contests) acts as a bar to the contest of a Living Trust. Estate litigators are left to question whether this decision is correct, if its application will be limited to any degree, and how its logic may be applied to other situations.

The Court's Decision.

Alfred and Sarah Palmer executed a Living Trust agreement establishing the Alfred S. Palmer and Sarah L. Palmer Trust. On the same day, the Palmers executed "pour-over wills" bequeathing their entire probate estates to the Trust. The Palmers were assisted in this process by Don Fivecoat, an employee of World Gospel Mission, following a presentation by Fivecoat on estate planning and charitable giving. In preparing the documents Fivecoat was assisted by a Mission paralegal who filled in blank forms and a Mission attorney who reviewed them. When completed, Fivecoat witnessed the execution of the documents. Upon Mr. and Mrs. Palmer's deaths, the Living Trust directed that 75% of the Trust estate be given to World Gospel Mission, and that 25% be divided between the Palmers' children, grandchildren and other charitable beneficiaries.

Two years after admission of the Wills to probate, the Palmers' daughter, Dawn Palmer Golden, challenged the Will and Living Trust. She argued that since World Gospel Mission drafted and witnessed her parents' Trust and Wills, it engaged in the unauthorized practice of law and benefitted from a Will which it witnessed. Therefore, the Wills and Living Trust should be set aside under RCW 11.12.160 and/or RPC 1.8(c).² The Superior Court affirmed a commissioner's ruling that Palmer's challenge to the provisions of the Living Trust was time-barred by RCW 11.24.010.

¹ 146 Wn. App. 132, 189 P.3d 230 (Div. II, 2008).

² RCW 11.12.160 creates a presumption of undue influence where a witness to the testator's signature is a beneficiary of the Will. RPC 1.8(c) prohibits an attorney from preparing a gift instrument under which the attorney benefits.

The Court of Appeals affirmed the decision of the Superior Court.³ It reasoned Golden's challenge to the 75 percent distribution of the Palmers' estate to World Gospel Mission could not be separated from her challenge to the validity of that portion of their wills conveying the interest flowing to World Gospel Mission. Therefore, both were time-barred under RCW 11.24.010.

But a Living Trust is not a Will . . . right?

It is evident a Living Trust is not the legal equivalent of a Will. RCW Chapter 11.12 sets out the very specific requisites for a valid Will, including the two witness requirement.⁴ RCW Chapter 11.24, permitting the contest of Wills, applies only to Wills on its face.⁵ It does not limit challenges to non probate transfers such as pay-on-death accounts, joint tenancies, and beneficiary designation transfers.⁶ To this author's knowledge, it has not before been applied to the challenge of a Living Trust. Besides the plain language of the statute, there also are obvious logistical reasons for the specific application of RCW 11.24 to Wills only, including that the four-month limitation period, a) runs from the date a probate is commenced, and b) requires notice to a Personal Representative.⁷ Oftentimes, neither a probate nor a Personal Representative is present in the administration of Living Trusts and other non probate transfers. Therefore, application of RCW 11.24 to the challenge of a Living Trust must be by extension or analogy.

Then why did the Court make the analogy here?

A curious aspect of this decision is that it bears little resemblance to the arguments proffered in the parties' appellate briefs. The primary battleground of the briefing was whether World Gospel Mission, by its agent, had engaged in the unauthorized practice of law, and thereby disqualified itself as a drafting beneficiary under RCW 11.12.160 and/or RPC 1.8(c).⁸ Therefore, there was no analysis of some of the factual issues one would expect to have an impact upon the decision.⁹

In particular, we do not know whether the Palmers' Living Trust was wholly or partially funded with assets during the lifetimes of Mr. and Mrs. Palmer. If the Trust was completely unfunded, it would only control those assets it received by testamentary transfer under the Palmers' pour-over Wills. It is easier to analogize the Living Trust to a Will in a situation where the funding of the former is entirely dependent upon the validity of the latter. Conversely, to the extent the Living Trust was funded before the deaths of the Palmers, the Will's validity has no connection to those asset transfers taking place under the Living Trust. Even if the Wills were held to be invalid, the Trust still controls the disposition of those assets to which the trustee already holds title. Unfortunately, we do not know whether the Trust was funded prior to death, or whether this factual distinction played any role in the Court's decision.

³ The commissioner and superior court judge actually ruled only that the contest was barred "to the extent it was a will contest." However, the Court of Appeals extended that ruling finding that "the matter is time-barred in its entirety under RCW 11.24.010." 146 Wn. App. at 138.

⁴ RCW 11.12.160.

⁵ RCW 11.24.010.

⁶ *Id.*

⁷ *Id.*

⁸ See fn. 2, *supra*.

⁹ One can't help but wonder if the Court's decision would have been different if this issue had been fully briefed by the parties.

By all appearances, the Court found one fact alone persuasive enough—that the contestant herself analogized the Living Trust to a Will. By citing RCW 11.12.160 as grounds for disqualification of World Gospel Mission, and by arguing that the Will and Trust should be seen as one document for extension of that statute, Ms. Golden invited the analogy to the detriment of her claim:

[B]efore the Superior Court, Golden Challenged World Gospel Mission as a trust beneficiary based on RCW 11.12.160 Under these facts Golden’s challenge is, in all important respects, a will contest. She cannot have it both ways. We decline to treat the wills and trust as one document for the purpose of Golden’s claims and as separate documents for purposes of allowing her to defeat a statute of limitations bar.¹⁰

The Court also noted:

In arriving at our decision, we note our authority to analyze equitable claims on a case-by-case basis and to exercise our powers to prevent the enforcement of a legal right to prevent inequity or to do substantial justice.¹¹

While the Court’s decision is a reasonable application of *good for the goose, good for the gander* fairness, those left with its precedent may see it as more of an example of *two wrongs don’t make a right*. If this decision is strictly limited to its facts and reasoning, it should not have application beyond cases where the Living Trust contestant inconsistently argues both for and against the Living Trust/Will analogy. Unfortunately, future litigants are left to wonder whether courts will parse this decision so finely, and conversely, whether it will be extended beyond challenges to Living Trusts.¹²

¹⁰ 146 Wn. App. at 137.

¹¹ 146 Wn. App. at 137.

¹² If a Living Trust contest, by equitable extension, can be barred by RCW 11.24.010, under the right set of facts, can challenges to other non-probate vehicles also be barred if filed beyond the four month Will Contest statute of limitations?