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STATE OF WASHINGTON
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No. 100766-3

WASHINGTON STATE SUPREME COURT

CHARLES FEICK,

Petitioner,

v.

THE BRUTSCHE FAMILY REVOCABLE TRUST, ET AL.,

Respondents.

RESPONDENTS THE BRUTSCHES' ANSWER TO
"APPELLANT'S PETITION FOR REVIEW"

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**I. IDENTITY OF RESPONDENTS AND
INTRODUCTION**

This Court has rejected Petitioner Charles Feick’s requests before and should do so again. Respondent the Brutsche Family Revocable Trust (“Trust”) owns shares in, lent money to and leased property to the Green Harvest Corporation (“Corporation”). The Corporation was a duly licensed—but failing and insolvent—cannabis producer and processor. Respondent Leo Brutsche¹ was the trustee of the Trust and served for a time on the Corporation’s board of directors; Michael Brutsche was briefly an officer of the Corporation (both, collectively with the Trust, referred to below as the “Brutsches”). *Pro se* appellant Charles Feick is the former President of the Corporation, as well as a shareholder and (in the Brutsches’

¹ Since the commencement of this action, Leo Brutsche has died, and his interests now belong to the Estate of Leo Brutsche.

opinion) the reason for the Corporation's dismal and insolvent state.

Feick started this litigation in 2018 as a purported derivative suit against the Brutsches and others. The Brutsches—with the support of other shareholders—responded by seeking to have the superior court appoint a general receiver over the Corporation. Feick himself agreed that “the court should appoint a Receiver with custodial powers under RCW 23B.12.320 which would assist in the management of the business and its affairs.” CP 19. The superior court entered a Receivership Order appointing a general Receiver on June 19, 2019 (CP 117-133); the superior court denied Feick's motion for reconsideration of that order on July 9, 2019. CP 221. Feick did not file his “Notice of Discretionary Review” with the Washington Court of Appeals until about September 1, 2020. CP 555-575. That was over a year too late. RAP 5.2(a), (b).

Since then, Feick has been challenging order after order in the superior court and the Washington Appellate Courts. This response relates to Feick's challenge to the Court of Appeals' January 1, 2022, unpublished opinion (the "Petition"). Specifically, Feick now seeks to have this Court review under RAP 13.4(b)(1), (2), and (4) the Court of Appeals' decision affirming the superior court's approval of a settlement agreement, appointment of a general receiver, denial of Feick's motions to vacate and terminate the general receivership, and denial of his motion for reconsideration.

As explained below, the Court of Appeals correctly affirmed the superior court's decisions. And there is no reason for this Court to review the Court of Appeals' sound and well-reasoned opinion because like most of his filings, Feick's Petition is just another frivolous abuse of process. This Court should deny review and impose sanctions under RAP 18.9.

II. STATEMENT OF THE CASE

The Brutsches provide the following facts and procedural history that are relevant to this Court's review:

A. History of the disputes with Feick.

1. Feick solicited the Brutsches and others to invest in and loan money to the Corporation.

The Corporation held a Cannabis Producer and Processor License, License No 413339 (the "License") issued by the WSLCB. CP 19. Feick was the Corporation's CEO and President. CP 633, 635, 655, 952. Feick solicited, among others, the Trust to invest in the Corporation. CP 983. The Trust holds almost half of the shares of the Corporation. CP 983, 1017. Because the Trust was a major investor in the Corporation, Leo Brutsche served for a time on the Corporation's board of directors, but resigned in 2017. CP 656, 970.

In addition to being a shareholder, the Trust leased the Corporation the property and building that the Corporation used

for its operations. CP 5, 642, 643, 947, 982, 1027-1028, 1029. The Trust, and several other shareholders, also loaned the Corporation money to help fund the Corporation's operations. CP 658, 947, 970, 1104.

2. The relationship between Feick and the Corporation shareholders deteriorated.

Since Feick persuaded the original investors to participate in the Corporation in 2015, several of the Corporation's shareholders have committed *substantial* investments and loans to the Corporation (over \$1 million). *See* CP 982. The Corporation has not repaid those loans, and the shareholders have realized no return on their investments. CP 970, 982, 1104, 1113.

By the summer of 2017, several of the shareholders, including the Trust, had become concerned with the Corporation's operations and Feick's continuing demands for additional funds. CP 947, 970, 1104, 1113. On July 24, 2017, the majority of the Corporation's directors voted to appoint Leo

Brutsche's grandson, Michael Brutsche, as president of the Corporation. CP 653, 656, 947, 952. Feick reacted to this decision by reporting it as a "takeover" to the WSLCB on July 28, 2017. CP 654. *The WSLCB looked into Feick's allegations but took no action.* CP 953.

Shortly thereafter, Michael Brutsche declined the position of president, and both Leo Brutsche and Martha Carr resigned from the board of directors.² CP 953, 970, 972-973. At the time the Trust filed its petition for appointment of receiver, it appeared that the Corporation had not appointed any new directors to the Corporation's board of directors since 2017, and had not held any

² Michael Brutsche served in this role for about 10 days (July 24, 2017, to August 3, 2017). CP 952. During this time, Michael Brutsche discovered that the Corporation's bank account was overdrawn, and that Feick had been looking to the Trust to cover the difference. CP 952.

board of director meetings since 2017. CP 948, 970, 1104, 1113-1114.

After Leo Brutsche and Martha Carr resigned, Feick publicly leveled a series of unfounded accusations, threats, and demands against the Brutsches, broadcasting the Corporation's internal conflict to the WSLCB and to the Washington Attorney General's office. CP 953, 955-966, 970, 974-978, 983, 999-1004. Feick also declared that he would engage in a war of attrition to make the Brutsches pay for their perceived wrongs against him. CP 983, 1009.

3. Feick refused to provide Corporation records and other information.

The situation did not improve in the following months. In August 2018, the Trust requested that the Corporation retain independent counsel to assist and advise the Corporation regarding the Corporation's corporate governance. CP 1046, 1050-1052. Feick rejected that request. CP 1046, 1053-1076. In

addition, the Trust repeatedly requested access to the Corporation's records, offering to arrange for copying on site. CP 1045. Feick also refused those requests, in direct violation of RCW Ch. 23B.16. CP 1045.

4. The conflict between Feick and Corporation's shareholders escalated.

Feick (proceeding *pro se*, and without providing notice or demand as required)³ unilaterally filed a purported derivative action on December 5, 2018. CP 631-671. The majority of shareholders did not support the filing of this derivative lawsuit on behalf of the Corporation; in fact, most expressed their objections to it. CP 704-705, 1105, 1114.

³ *E.g.*, CR 23.1 (“The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders and members, and the reasons for the plaintiff’s failure to obtain the action or for not making the effort.”).

The majority of the Corporation's shareholders considered Feick to be a danger to the Corporation's best interests and their interests. CP 947, 970-971, 1104, 1113. The majority of the shareholders wished to separate themselves from Feick and the Corporation and to dissolve the Corporation. CP 947-948, 971, 1104, 1113. No one (other than Feick) was willing to assume the responsibilities of leadership of the Corporation, and consequently, a receiver was the best option for preserving any value. CP 947-948, 970-971, 1104, 1113.

5. The Corporation was not meeting its obligations when they become due.

In addition to failing to meet its obligations to its shareholders, at the time Feick filed this action, the Corporation had accrued unpaid tax liabilities, with a tax lien pending against it. CP 1114. It had further failed to procure and maintain insurance, and was in default under its real estate lease. CP 1128, 1038-1042.

Most importantly, at the time Feick filed this action, the Corporation had failed to make timely payments necessary to keep its cannabis licenses. On January 31, 2019, the WSLCB informed the Corporation that the license had expired and the past due renewal fees. CP 983, 1012-1014. These payments had been due since October 31, 2018. CP 1109. Although the Corporation later paid the renewal fee for the Corporation's marijuana producer license, Feick attempted to "abandon" the Corporation's marijuana processor license. CP 983, 1015-1016, 1024.

Feick further failed to keep the Corporation in compliance with the WSLCB. As of March 8, 2019 (three months after Feick filed his initial complaint), the WSLCB considered the Corporation's marijuana producer and marijuana processor licenses to be expired as of October 31, 2018. CP 1109. As of March 8, 2019, Feick had failed to submit fingerprints, which

were required to keep the licenses. CP 983, 1012-1014, 1109. At about the time Feick filed his complaint, the Corporation also owed its creditors about \$1 million. CP 1489-1507; CP 1518-1519.

B. Procedural History.

As Feick admits, at a board meeting of the Corporation, Feick served the Brutsches with a complaint he had already filed on December 5, 2018, purporting to bring a derivative action on behalf of the Corporation against those parties. CP 631-673. At that point, he was proceeding *pro se*. CP 669. After defense counsel noted that the Corporation could not proceed (even derivatively) except through an attorney licensed in the state of Washington, Feick hurriedly filed an “Amended Complaint” on December 19, 2018 that was nearly identical to the original complaint, but added his own individual claims against the Brutsches. CP 674-716.

On March 27, 2019, the Trust filed a motion to dismiss the derivative claims; that day it also filed a petition to appoint a general receiver over the Corporation. CP 1-17, 929-945. The Brutsches' petition was also supported by three shareholders. CP 969-971, 1103-1105, 1112-1114. Shareholder Martha Carr filed an explicit joinder to confirm that she was also seeking the same relief. CP 1118-1119. Around the same time, Feick retained counsel (although that counsel withdrew shortly after the Court granted the motion to appoint receiver). CP 18-26.

As required by law,⁴ the Brutsches served WSLCB with that motion and the petition, as well as all the other motions discussed below. If any of Feick's claims had merit, the WSLCB would be expected to have sided with Feick. That the WSLCB never did so is telling.

⁴ See WAC 314-55-137(1).

On April 17, 2019, Leo Brutsche passed away. CP 107. The lease between the Corporation and the Trust expired at the end of April 2019. CP 106-107. The hearing on the Brutsches' motions were continued a number of times, and ultimately the Brutsches agreed to table their motion to dismiss to concentrate the superior court's attention on the petition to appoint receiver.

Feick, having retained counsel, finally responded to the petition on June 6, 2019. CP 18-25. *Feick did not oppose appointment of a receiver*; instead, he argued only that "the court should appoint a Receiver with custodial powers under RCW 23B.12.320 which would assist in the management of the business and its affairs." CP 19. *Feick never argued that the Brutsches (or Martha Carr) lacked standing.*

The superior court heard argument on the Brutsches' petition in mid-June 2019; Feick's lawyer again "agreed that a receiver should be appointed, but argued for a custodial

receiver.” CP 117. On June 19, 2019, the superior court granted the Brutsches’ petition and entered the Order for Appointment of General Receiver. CP 118-133.

On June 28, 2019, Feick, through counsel, moved for reconsideration of that Order. CP 134-142. *Again, Feick did not dispute that a receiver was necessary or that the Brutsches had standing to seek that relief*; instead, he argued only that the court should appoint a custodial receiver. CP 136. That same day, Feick also filed a motion for “declaratory” relief, seeking a declaration as to the assets and liabilities of the Corporation. CP 211.

On July 10, 2019, the superior court denied Feick’s motion for reconsideration. CP 221. Feick did not appeal that denial within 30 days. The superior court also later denied the motion for declaratory relief; Feick does not appear to have appealed denial of that order at all. CP 555-574.

Meanwhile, the Receiver took control of and started managing the Corporation. The Corporation's principal asset was its License; the License was tied to the location approved by the WSLCB, which location was leased from the Trust (and which lease had expired). The Receiver determined that the best course of action would be to sell the License, but to do so and maximize value, the Receiver would have to be able to offer a buyer the location as well, which meant reaching an agreement with the Trust who owned the real property where the Corporation operated.

Ultimately, the Receiver did reach such an agreement. In the late spring of 2020, the Receiver moved for court approval to sell the Corporation's producer and processor License to a third-party (Jimmy O's Grow, LLC), which sale was conditioned on a simultaneous sale of the Trust's real property to a principal of

that third-party (Dennis Ruschmann).⁵ CP 1531-1533. Feick did not oppose that motion or the terms of the sale. On June 29, 2020, the superior granted that motion. CP 1548.

On about July 14, 2020, the Receiver moved to approve the settlement he had reached with the Brutsches (which settlement was a condition of closing the sale) and to dismiss the derivative claims. CP 1549-1555. Among other things, the Brutsches agreed to withdraw and release several pending claims

⁵ Because the property was being sold in connection with cannabis-related operations, title insurance was not available. To facilitate the real property sale, the Trust agreed to transfer the real property and adjoining parcels to a special purpose entity, 95 U.S. 101, LLC, and to place that entity into a separate general receivership. *In Re 95 U.S. 101, LLC*, Grays Harbor Superior Court Case No. 20-2-00183-14. The superior court also approved the Receiver's motion to for authorization to sell that real property. Although not part of this record, Brutsche requests that the Court take judicial notice of those proceedings to the extent necessary. ER 201.

against the Corporation; the Receiver agreed to dismiss the derivative claims. CP 1560-1566. As the Receiver explained:

Maintaining Green Harvest's claims in the Lawsuit is burdensome and untenable to maintain. Upon evaluation of the claims, RTC believes that the Lawsuit is of inconsequential value to the estate, that the probability of success in the litigation against the Brutsches is low, and that the litigation is complex, with multiple parties and claims. Approval of the Settlement will assist the Receiver in bringing closure to the receivership by satisfying a contingency to closing the sale of the rights to apply to the WSLCB to assume the License, shrinking the claims pool through withdrawal of the Brutsches' specified proofs of claim, and generating the proceeds that will be available for distribution to creditors. In short, the costs to maintain the Lawsuit outweigh the benefits of potential recovery.

CP 1558-1559. The hearing on the Receiver's motion was set for August 24, 2020.

In response, Feick filed a flurry of motions and objections, including a motion to terminate the receivership (CP 240-254) and a motion to vacate the Receivership Order. CP 298-316. The Brutsches, the other shareholders, and the Receiver all opposed those motions.

Despite Feick's attempts to get his motions heard before the Receiver's motion, with the other parties' agreement, the superior court agreed to hear Feick's motion on August 24, 2020. RP (8/17/20) at 22:8-12. However, the superior court also found Feick's refusal to re-note his motion was sanctionable conduct. RP (8/17/20) at 26:8-13, 23-24. Rather than impose monetary sanctions then which Feick claimed he could not pay, the superior court ordered Feick to turn over his financial records. RP (8/17/20) at 27:21-25, 28:18-23, 29:5-9.

At the hearing on August 24, 2020, the superior court heard Feick's motions first (including his objections to the

Trust's standing), and denied them. RP (8/24/20) at 64:14-68:11. Feick continued arguing with the judge even after he had entered his ruling, and ultimately the trial judge found him to be in contempt and fined him \$250. RP (8/24/20) at 70:15-16.

Turning to the Receiver's motions, the Receiver explained the terms of the proposed settlement to the court, including that the Brutsches would be releasing about \$1.2 million in claims against the estate. RP (8/24/20) at 71:14-73:23. The Receiver also explained that the WSLCB had approved the assignment of the License to a new owner. RP (8/24/20) at 81:21-82:3. The superior court ultimately granted the Receiver's motion. RP (8/24/20) at 82:16-19.⁶

⁶ Finally, the superior court considered the issue of sanctions against Mr. Feick. Although he found Feick's behavior sanctionable, the trial judge let Feick off with a warning. RP (8/24/20) at 86:7-19. The superior court also allowed Feick to pay off the contempt sanction with community service if he preferred. RP (8/24/20) at 87:2-12.

The superior court entered its written order approving the settlement and dismissing the derivative claims on September 1, 2020. CP 572-574. On about September 2, 2020, Feick filed a “Notice of Discretionary Review,” which sought review of “the order granting the Petition for General Receivership granted on June 16, 2019, and the Receiver’s Motion for Settlement Agreement and Dismissal of Derivative Claims granted on August 24, 2020.” CP 555.

The superior court did not enter the actual written orders denying Feick’s motions to terminate the receivership and vacate the Receivership Order until October 12, 2020. CP 576-587.

Those orders confirm that the Trust had standing to seek appointment of a receiver; even were that not so, trustees Leo Brutsche and Steven Krohn both ratified the Trust’s petition. CP 577. The superior court also noted that the Trust’s petition was independently supported by other shareholders in the

Corporation. CP 577; *see also* CP 970-971, 1104-1105, 1113-1114 (shareholder declarations supporting receivership). The superior court affirmed that when the Trust filed its petition, the Corporation “was in financial trouble with substantial debts.” CP 577. Further, the superior court found that, given the Corporation’s documented problems, the superior court “could have exercised this authority [to appoint a receiver] on its own even absent a petition, and the Receivership Order was thus independently proper under RCW 7.60.025.” CP 577.

Further, the superior court noted that Feick had attended the June 29, 2020, hearing granting the Receiver’s motion for authorization to sell the License, and that he did not object to that relief. CP 578, 584. The superior court also noted that the WSLCB did not object to the appointment of the Receiver or the sale of the License, and had not joined in Feick’s motions to terminate, or to vacate. CP 578, 584. The superior court

specifically found that there “has been no showing of misrepresentation, wrongdoing, bad faith, or other circumstances that would support or justify the termination of the receivership that this Court established in June 2019,” CP 578; *see also* CP 584 (making similar findings).

Eleven days later on October 22, 2020, Feick filed a motion for reconsideration of those orders. CP 588-605. The superior court denied that motion the next day. CP 630. On November 20, 2020 (more than 30 days after the superior court entered written orders on October 12), Feick filed an “Amended Notice of Discretionary Review,” which added the “court orders signed October 12, 2020, and October 23, 2020, to the appeal.” CP 582-587, 630.

Meanwhile, on October 9, 2020, Feick filed a “Motion for Emergency Stay of Enforcement of Trial Court Rulings Pursuant to RAP 8.1(b)(3)” in the Court of Appeals. In that motion, Feick

sought an “emergency stay” of enforcement of the June 19, 2019, Receivership Order, as well as the August 24, 2020, order approving the settlement agreement and dismissing the derivative claims. The Commissioner denied that motion on October 21, 2020. On January 28, 2021, this Court denied Feick’s motion for reconsideration of the Commissioner’s ruling.

This appeal and other appeals followed.

III. ARGUMENT

Generally, Feick argues that the Court of Appeals did not uphold this Court’s case law regarding: (i) the entity status of a trust; (ii) the meaning of RCW 7.60.110(1)-(2), RCW 7.60.160(1)-(2), and RCW 7.60.190(e); (iii) the statutory interpretation; (iv) standing and jurisdiction; and (v) the Court of Appeals’ scope of review and bases for decisions. Feick also argues that review is warranted because the Court of Appeals has sanctioned him for exercising his rights.

None of Feick’s claims survives scrutiny. The Court of Appeals followed and applied governing case law. Its findings are correct. Feick does not come close to meeting his burden of showing any of the criteria in RAP 13.4(b). The Court of Appeals correctly held that the superior court did not err in its various decisions. This Court should deny review.

A. This Court should deny review because none of the review criteria under RAP 13.4 are present—the Court of Appeals’ 15-page unpublished opinion is well-reasoned and sound.

1. The Brutsches did not concede any of Feick’s frivolous arguments.

As he has before, Feick claims that the Brutsches “waived and conceded” standing, jurisdictional, and statutory interpretation arguments and that the Court of Appeals erred by making arguments on the Brutsches’ behalf. Petition, at 2, 25. Those statements are categorically false. Indeed, as explained below, Feick’s arguments are incorrect, and the Brutsches did not

and do not concede to any of his nonsense. *See generally* Respondents Brutsche's Brief and Motion to Dismiss dated March 23, 2021, Court of Appeals, Case No. 54963-8-II.

Regardless, Feick still does not show any of the review criteria under RAP 13.4. That is all that matters.

2. The Court of Appeals correctly affirmed the superior court's decision appointing a general receiver.

Below, Feick argued that the superior court erred in granting the petition for a general receivership and that it should have instead appointed a custodial receiver.⁷ In his view, the Corporation was in a good position and appointment of a general receiver was not necessary.

⁷ Feick also argued that the superior court should not have created a receivership at all. However, because Feick advocated for a custodial receivership below, the Court of Appeals correctly determined that the argument fails under the invited error doctrine. *See Angelo Prop. Co., LP v. Hafiz*, 167 Wn. App. 789, 823, 274 P.3d 1075 (2012).

The Court of Appeals properly concluded that the superior court did not abuse its discretion in appointing a general receiver because there was ample evidence that a comprehensive management approach was necessary. *See Mony Life Ins. Co.*, 135 Wn. App. 948, 952-53, 148 P.3d 1065 (2006) (“A [superior] court abuses its discretion when its decision is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.”) (internal quotation marks and citation omitted); *see also* RCW 7.60.025(1)(u); RCW 7.60.015.

3. The Court of Appeals correctly affirmed the superior court’s decisions denying Feick’s motions to vacate and terminate receivership.

Below, Feick argued that the superior court erred in denying his motions to vacate and terminate the receivership under RCW 7.60.290(5) because the receivership was procured wrongfully or in bad faith. Specifically, Feick claimed that because the Trust and its trustee misrepresented themselves as

“parties of interest” that could request a receivership, the superior court should have terminated and vacated the receivership.

The Court of Appeals correctly concluded that the superior court did not abuse its discretion by denying Feick’s motions to terminate and vacate the receivership. *See Bero v. Name Intelligence, Inc.*, 195 Wn. App. 170, 179, 381 P.3d 71 (2016) (the court reviews a decision of whether to terminate a receivership for an abuse of discretion). Put simply, the Trust had an interest in the Corporation because it was a shareholder, and the Trust’s trustee had authority to act on the Trust’s behalf. This interest in the Corporation allowed the Trust, through its trustee, to initially request the receivership. RCW 7.60.025(u) (A receiver may be appointed by the superior court when dissolution of a private entity is sought if an appointment is requested by “a person having an interest in such an entity.”); CP 577.

4. The Court of Appeals correctly affirmed the superior court's decision denying Feick's motion for reconsideration.

Below, Feick argued that the superior court should have granted his motion for reconsideration of the superior court's approval of the settlement and denial of his motions to vacate and terminate the receivership. Specifically, Feick contended that the superior court was divested of jurisdiction when it failed (1) to stay the case under RCW 7.60.110(1)(a), and (2) to assign an adjunct case number (which Feick asserted is required under RCW 7.60.160(2)).

The Court of Appeals correctly found that the superior court did not err in denying Feick's motion for reconsideration because the statutory provisions for stays and adjunct case numbers in receiverships do not apply here.

First, below, Feick did not provide authority to support his argument that a failure to issue a stay under RCW 7.60.110

divested the superior court of jurisdiction. Even assuming that a violation of the statute could have this result, the superior court actually ordered a stay of proceedings under RCW 7.60.110 as part of its order appointing a receiver. CP 118-133.

Second, Feick's interpretation of the statute is overly broad. Below, Feick appeared to argue that the superior court should have stayed all proceedings indefinitely. But, in addition to only requiring a stay for 60 days, the statute only applies to actions in which the entity in receivership is a defendant (as in a proceeding "against the person over whose property the receiver is appointed"). RCW 7.60.110. Because the superior court case was originally postured as a shareholder derivative suit, the Corporation is more properly aligned as a plaintiff. Nothing on the record indicates that the Corporation has substantively acted as a defendant. Indeed, the Corporation entered into a settlement agreement as a plaintiff with the defendants.

Third, relying on RCW 7.60.160(2), Feick also argued the superior court was divested of jurisdiction because it failed to assign an adjunct case number. The plain language of the statute requires the superior court to assign an adjunct case number to litigation “by or against a receiver.” RCW 7.60.160(2). The statute ensures that litigation involving a receiver remains separate from the case in which a receiver is actually appointed. RCW 7.60.160(2). It applies only to situations where a receiver is an actual party to the litigation, either as a plaintiff or a defendant. RCW 7.60.160(2).

Feick provided no support for his argument that the superior court’s jurisdiction is affected by allegedly violating this statute. But even if there was authority, similar to the stay provision discussed above, RCW 7.60.160 does not apply in this case. Although the Receiver was appointed as part of this action, *there is no litigation by or against the Receiver at issue in this*

case. The Receiver is neither a plaintiff nor a defendant in this action. Because the Receiver is not a party to this action, the superior court was not required to assign an adjunct case number.

Accordingly, the Court of Appeals correctly affirmed the superior court's decision denying Feick's motion for reconsideration.

5. The Court of Appeals did not improperly sanction Feick.

Feick also argues that review is warranted because the public should “know that they could be sanctioned thousands of dollars for exercising their rights as they appear in the receiver statute without” a published appellate decision. Petition at 25. Feick's muddled argument fails because, among other things, the Court of Appeals' January 2022 decision denied the Brutsches' request for sanctions and attorney's fees under RAP 18.9.

B. The Court should award the Brutsches fees and costs under RAP 18.9.

Feick promised to wage a “war of attrition” against the Brutsche. CP 983, 1009. He has used his *pro se* posture to pepper the superior court, the Washington Court of Appeals, and this Court with meritless filings meant more to harass the Brutsches (and others) and waste time than to raise any legitimate arguments. The superior court, the Court of Appeals, and this Court have sanctioned Feick for such behavior and tactics in this litigation;⁸ this Court should sanction Feick again.

This Court can order a party “who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules, to pay terms or compensatory damages” to any other

⁸ See, e.g., Ruling Awarding Attorney Fees dated March 10, 2022, Court of Appeals Case No. 55686-3-II (awarding the Brutsches \$2,546.55 in attorney’s fees against Feick); Order dated June 30, 2021, Washington Supreme Court, Case No. 99542-7 (awarding the Brutsches reasonable attorney’s fees and expenses).

party harmed. RAP 18.9. An appeal is frivolous if it presents no debatable issues on which reasonable minds can differ and is so devoid of merit that there is no possibility of reversal. *In re Recall Charges against Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003). Respondents who have to defend against unwarranted appeals of receivership orders have been awarded fees under RAP 18.9 before. *Seth Burrill Prods., Inc. v. Rebel Creek Tackle, Inc.*, 2017 WL 1334440, at *7 (April 11, 2017). This Court should find that Feick's Petition presents no debatable issues, award the Brutsches their reasonable attorney fees for having to defend against Feick's frivolous Petition, and condition Feick's right to participate further on payment of such sanctions. RAP 18.9(a).

IV. CONCLUSION

For the reasons stated above, this Court should decline to accept review, and award the Brutsches their reasonable fees and expenses incurred in connection with Feick's meritless Petition.

I certify that this response contains 4,927 words in compliance with RAP 18.17.p

Respectfully submitted,

s/ Brian W. Esler

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No. 100766-3

WASHINGTON STATE SUPREME COURT

CHARLES FEICK,

Appellant,

v.

THE BRUTSCHE FAMILY REVOCABLE TRUST, ET AL.,

Respondents.

DECLARATION OF SERVICE

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DECLARATION OF SERVICE

I hereby certify that on May 12, 2022, I served
RESPONDENTS THE BRUTSCHES' ANSWER TO
"APPELLANT'S PETITION FOR REVIEW" on:

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General Receiver of The Green
Harvest Corporation, Nominal
Defendant

Under the laws of the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed at Seattle, Washington, this 12th day of May,
2022.

s/ Brian W. Esler
Brian W. Esler

MILLER NASH LLP

May 12, 2022 - 3:39 PM

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