

No. 90166-0

**SUPREME COURT OF THE STATE OF WASHINGTON**

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**WASHINGTON MOTORSPORTS LIMITED PARTNERSHIP**, a/k/a  
Washington Motorsports, Ltd., by and through Barry W. Davidson, in his  
capacity as Receiver and as Acting Managing General Partner,

Plaintiff/Respondent,

v.

**SPOKANE RACEWAY PARK, INC.**, a Washington for profit corporation and  
General Partner of Washington Motorsports Limited Partnership,

Defendant, and

**SUSAN ROSS, TERRY and BRYAN GRAHAM,**  
**and THE MEADOWS AT DRY CREEK, LLC,**

Appellants.

Court of Appeals Division III Case No. 31416-2  
Superior Court Cause No. 03-2-06856-4

Received  
Washington State Supreme Court

AUG 20 2014  
E Ronald R. Carpenter  
Clerk

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**RESPONDENT WML'S REPLY IN  
SUPPORT OF MOTION FOR SANCTIONS**

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**ORIGINAL**

## **1. Introduction**

In Ross's Reply re: Motion to Disqualify and Response to Motion for Sanctions ("Ross's Reply"), she claims that a receiver's law firm cannot represent the receiver without a disabling conflict, because the receiver "could" direct his firm to perform work that has "little or no value to the estate..." See Ross's Reply, pp.1&3. That notion has been squarely rejected by Washington's legislature in the Receivership Statute, and that professed concern is also accounted for therein. See RCW 7.60.180 (permitting receivers to act as counsel for the receivership estate / requiring notice and an opportunity to object to compensation of professionals).

The remainder of Ross's Reply is primarily comprised of her complaints about the amount of attorneys' fees that have been incurred by WML. Her assertions lack factual and legal support. As demonstrated in WML's Motion for Sanctions (and below), Ross's Motion to Disqualify lacks merit and presents no possibility of success. Sanctions should be issued against her.

## **2. Argument**

Sanctions are appropriate when a motion to disqualify appellate counsel is based upon an alleged conflict of interest that has no factual or legal basis. *Bryan v. Joseph Tree, Inc.*, 57 Wn. App. 107, 122-23 (1990); see also RAP 18.9(a).

### **a. The representation at issue is authorized by RCW 7.60.180.**

WML demonstrated in its Motion for Sanctions that RCW 7.60.180 permits

Davidson Backman Medeiros PLLC (“DBM”) to represent the Receiver. Ross clearly failed to consider that statute prior to filing her Motion to Disqualify. Ross now claims in her Reply that RCW 7.60.180(2) only allows a receiver’s law firm to act as the receiver’s counsel “if it is determined by the court ‘that there is no actual conflict of interest or inappropriate appearance of a conflict.’” Ross’s Reply, p.4.

But as Ross appears to acknowledge, a determination of no conflict of interest only applies if the receiver is “employ[ed] by, represent[s], or [has an] other relationship with a creditor or other party in interest.” RCW 7.60.180(2). Ross does not assert that Mr. Davidson (or DBM) has such a relationship with any creditor or party in interest. In any event, even if he did have such a relationship, RCW 7.60.180(3) would permit DBM to represent him as the Receiver. Ross’s argument is baseless.<sup>1</sup>

**b. Ross’s unfounded allegations of excessive attorneys’ fees do not demonstrate an actual or apparent conflict of interest.**

Ross also contends that DBM cannot represent Mr. Davidson, because he “could” have an incentive to cause WML to incur unnecessary attorneys’ fees. *See* Ross Reply. p.1. Contrary to Ross’s assertion, her argument has been rejected by

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<sup>1</sup> Ross claims that WML “misconstrue[s]” her objection, and that she only takes issue with “Mr. Davidson being represented by his own law firm...” Ross’s Reply, p.5. Her objection should have been asserted nearly a decade ago. *See* Declaration of Aaron D. Goforth filed herein on July 24, 2014, Exhibit 2 (Order Authorizing Employment of Davidson & Medeiros as Attorneys for Receiver, entered on September 30, 2005).

Washington's legislature (RCW 7.60.180(1)-(3)), and in any event, the compensation of all professionals in any receivership case (including DBM in this case) is subject to the notice and objection provisions of Washington's Receivership Statute. RCW 7.60.180(4).

Further, Ross fails to offer any evidence, argument, or analysis to attempt to establish that the attorneys' fees incurred by WML have been (or will be) unnecessary. Ross simply concludes that because the attorneys' fees incurred in this case to date are significant that, *a priori*, they must have been unnecessary. *See* Ross's Reply, pp.3-4.

She ignores the quantity and types of legal proceedings in which WML has been involved for the past nearly decade, including WML's participation (to varying degrees) in nearly sixty (60) legal proceedings, including, but not limited to, the following: (a) fifteen lawsuits in state court (two of which were commenced by Appellants Susan Ross and/or Terry Graham);<sup>2</sup> (b) seven proceedings in the United States District Court;<sup>3</sup> (c) two United States Bankruptcy Court cases, (d) four bankruptcy adversary proceedings; (e) five 9<sup>th</sup> Circuit appeals; (f) four Bankruptcy Appellate Panel appeals; (g) twenty one Division III appeals (two of which were

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<sup>2</sup> Lincoln County Superior Court Cause No. 09-2-00067-1, Spokane County Superior Court Cause No. 11-2-04631-6.

<sup>3</sup> Mr. Moe even went so far as to file a lawsuit against the trial judge (the Honorable Annette S. Plese) in federal court. United States District Court, Eastern District of Washington, Cause No. CV-12-189-JLQ.

filed by Ms. Ross and/or Mrs. Graham);<sup>4</sup> and (h) six Washington State Supreme Court appeals. *See* **Second** Declaration of Aaron D. Goforth in Support of Motion for Sanctions (“Second Goforth Decl.”), Exhibit 1 (illustrative exhibit of the foregoing identified legal proceedings).

The two lawsuits by Ms. Ross and/or Mrs. Graham were found by the trial court to have been improperly filed in violation of prior court orders and in violation of numerous provisions of Washington’s Receivership Statute. As such, the trial court issued “cease and desist” orders prohibiting them from, among other things, the further prosecution of those lawsuits.<sup>5</sup> Second Goforth Decl., Exhibits 2 & 3 (cover pages of Orders). Ross’s assertion of excessive fees is baseless, inaccurate, frivolous, and does not form a basis to seek disqualification of the Receiver’s counsel in this Court.<sup>6</sup>

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4 Division III Case Nos. 28477-8 & 31416-2.

5 Ross’s current Petition for Review also arises out of the dismissal of her appeal as frivolous by Division III which also awarded WML its attorneys’ fees incurred in that appeal. *See* Respondent WML’s Answer in Opposition to Appellants’ Petition for Review, Appendix B at App. 8. Ross continues to cause WML substantial and otherwise unnecessary attorneys’ fees, while then complaining about the attorneys’ fees they have caused.

6 Ross also claims in her Reply that she is not “bound” by the Order authorizing the employment of DBM because she did not receive notice of the motion to employ DBM. *See* Ross’s Reply, pp.4-5. Ross is wrong. She is bound by the acts of the receiver and the trial court. RCW 7.60.190(1)&(4). Further, she was not entitled to notice of the motion to employ DBM. *E.g.*, RCW 7.60.190(8). Ross’s baseless challenges to notice must be raised in the trial court or Division III, and not for the first time in this Court. RAP 4.2(a).

### 3. Conclusion

The Receiver's law firm has represented him in WML's Receivership case pursuant to trial court order for nearly a decade. Ross's Motion is an improper strategic and tactical tool that is devoid of any arguable purpose other than to deprive the Receiver of his chosen counsel, to harass the Receiver and his counsel, to further delay the UFTA case,<sup>7</sup> and to waste WML's time and resources.

Ross's baseless one and a half page Motion to Disqualify (with less than a half page of argument) is not salvaged by her Reply which continues to fail to cite any apposite statute or RPC, fails to cite even one case supporting her allegation of a conflict of interest, and which fails to even address several of the arguments raised by WML Answer to Ross's Motion (*i.e.* that the Receiver's law firm was employed to represent him nearly nine years ago, Ross's lack of standing, her reliance on inapposite authority, her improper attack on trial court orders, her failure to consider RCW 7.60.180 prior to filing her Motion, her failure to review the court docket prior to filing her Motion, etc.).

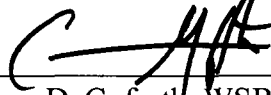
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<sup>7</sup> The UFTA case is a proceeding under Spokane County Cause Superior Court Cause No. 12-2-01033-6 in which WML is seeking to unwind unlawful fraudulent transfers of assets worth approximately \$1,000,000.00 from the Moes to Ross in furtherance of the Moes' attempt to thwart WML's efforts to collect well over \$1,000,000.00 in judgments entered against the Moes for remedial sanctions for their repeated disobedience of trial court orders.

For the foregoing reasons, and those set forth in WML's Motion for Sanctions, WML respectfully requests that this Court determine that Ross's Motion to Disqualify is frivolous, award WML its attorneys' fees incurred in connection herewith, and grant WML leave to submit by subsequent affidavit the fees incurred herein in compliance with RAP 18.1(d).

DATED this 18<sup>th</sup> day of August, 2014.

DAVIDSON BACKMAN MEDEIROS PLLC




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Aaron D. Goforth, WSBA No. 28366  
Attorneys for Plaintiff/Respondent  
WML, and its Receiver

DECLARATION OF SERVICE

I hereby declare and certify under penalty of perjury under the laws of the State of Washington that on the date I signed this Declaration I caused a true and correct copy of the foregoing document to be served upon the following in the manner(s) indicated below.

Signed this 18<sup>th</sup> day of August, 2014, at Spokane, Washington.

  
Tara J. Nichols

Richard D. Wall  
Attorney at Law  
505 W. Riverside Avenue, Suite 400  
Spokane, WA 99201  
Via U.S. Mail, postage prepaid