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No. 69937-7-I
King County Superior Court No. 11-2-14154-3 SEA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

Janet Pipes and the Marital Community of Janet and Jerry Pipes
Respondent - Appellant,

v.

Edward Mott, A Vulnerable Adult,
Petitioner - Respondent.

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COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

Commissioner Carlos Velategui

APPELLANT'S OPENING BRIEF

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INTRODUCTION

Janet Pipes and the marital community of Janet and Jerry Pipes (The Pipes) seek review of King County Superior Court Commissioner Carlos Velategui's finding on contempt against the Pipes and the commissioner's imposition of punitive sanctions, damages, and the amount of attorney fees awarded against the Pipes.

I. ASSIGNMENTS OF ERROR

1. Finding the Pipes in contempt of court without identifying which act(s) the Pipes committed to warrant the finding and instead making a contempt finding based on inference and the conduct of third parties;
2. Awarding \$28,800 in attorney fees against the Pipes that are unreasonable and excessive;
3. Sanctioning the Pipes \$20,000 when such sanction is punitive and imposed in violation of RCW 7.21.030(2);
4. Awarding \$30,000.00 in damages without a showing of actual damages incurred since the court issued its order in June 2012 and with no showing that any injury was proximately caused by the Pipes' conduct;

5. Relying on the court's inherent contempt authority to impose punitive sanctions without making specific findings that the remedial remedies available under the statute are inadequate to insure compliance.

6. Imposing restrictions on the Pipes that amount to an unconstitutional prior restraint on speech in violation of the first amendment.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Commissioner erred by finding the Pipes in contempt of court for the conduct of third parties which consisted of the following:

a. A letter which was authored and sent by Cindy Walker to Petitioner's health care provider when the evidence before the court is that Ms. Walker wrote the letter on her own accord and not at the request of Janet Pipes;

b. An email that was sent by someone known as "James Kane" when the factual content of the email is entirely available to the public through the court record, the email does not show any connection between the Pipes and "James Kane", and the inference that Respondent is associated with the email is based on hearsay and speculation;

c. The Commissioner improperly shifted the burden of proof to the Pipes to prove that they had no connection to James Kane when it was Petitioner's burden of proof to show that the Pipes were connected to James Kane.

2. Whether the Commissioner erred by awarding a sanction against the Pipes in the amount of \$20,000.00 payable to Guardianship Services of Seattle when such payment is punitive as defined by RCW 7.21.010(2) since the Pipes cannot undo the past conduct of others.

3. Whether the Commissioner erred in relying on his inherent contempt authority when he:

a. Failed to identify why his statutory powers are inadequate to insure future compliance;

b. Exercised his inherent contempt authority in violation of RCW 7.21.040, due process and *In re M.B.* 101 Wn.2d. 425 (2000);

c. Failed to show that imposition of the remedial sanction which was imposed is insufficient to gain future compliance where the court imposed a \$30,000.00 performance bond which shall be reduced by \$2,500.00 per month of compliance with the court order.

4. Whether the Commissioner erred by awarding \$30,000.00 in damages against the Pipes payable to the protected person and his wife when:

a. There was no showing of actual damages that are attributable to the Pipes;

b. The award for damages was based on allegations of conduct that predates the entry of the June 2012 order and is therefore beyond the authority of the court to order;

c. The Pipes were denied the ability to present mitigating evidence in their defense because the Commissioner converted the contempt hearing into a defamation action and made summary findings depriving the Pipes the ability to conduct discovery and present their case to a trier of fact;

d. The award of damages was speculative, arbitrary and excessive.

5. Whether the Order entered against the Pipes on June 14, 2012 was an unconstitutional prior restraint on their speech when it restricted, among other things, the Pipes ability to make a report to law enforcement or governmental agency about the welfare of Mr. Mott.

6. Whether the Commissioner erred by awarding \$28,800.00 in attorney fees against the Pipes when such fees are not reasonable because:

- a. The award includes fees unrelated to the scope of the motion for contempt;
- b. The fees were incurred for work that is duplicative;
- c. The fees were awarded for bringing a motion that was denied;
- d. The fees are excessive given the petitioner's failure to brief the issues in a timely manner;
- e. The fees violate RPC 1.5 and *Singleton v. Frost*, 108 Wn.2d 723(1987).

III. STATEMENT OF THE CASE

Janet Pipes is 68 years old and lives in Tucson Arizona with her husband Jerry Pipes (CP 547) Janet Pipes was working as an investigator when she met Edward Mott through professional connections. (CP 548). Mott retired from the Bellevue Police Department and was working as an expert witness in police misconduct cases (CP 596-602). Edward Mott is married to Carolyn Knick, (CP 629). In 2008 Janet Pipes and Ed Mott began a romantic relationship. Their relationship included exchanging rings, writing marriage vows, entering into a partnership agreement,

opening a joint bank account and jointly purchasing a certificate of deposit (CP 721-730). In 2010 Mott signed a new Last Will and Testament that was drafted by Janet Pipes. This document left Janet Pipes a residual share of Mott's estate in the event he predeceased her (CP 45-48). In August 2008 Janet Pipes signed a Durable General Power of Attorney naming Ed Mott as her agent (CP 558). On January 21, 2011, Ed Mott filed a petition for a decree of dissolution for a divorce from Carolyn Knick (CP 623).

Janet Pipes had been in contact with Mott's neighbor, Godfrey Holmstrom, who learned the nature of Mott's relationship with Janet Pipes and Mott's plans to travel to Tucson (CP 55-63). On March 24, 2011, Holmstrom and Carolyn Knick had Ed Mott sign a new General Power of Attorney, a Health Care Power of Attorney, and a Revocable Living Trust Agreement. These documents transferred control of Mr. Mott and his assets to Holmstrom and Knick (CP 10-32). On April 9, 2011 Ms. Knick and Holmstrom filed a petition for a Vulnerable Adult Protective Order (VAPA) against Janet Pipes and the marital community of Janet and Jerry Pipes (hereinafter The Pipes) (CP 1-9). A temporary order was entered on April 22, 2011. (CP 95-104).

Guardianship Services of Seattle was appointed as guardian for Ed Mott under separate guardianship proceeding. On June 13, 2011, the

parties entered into an Agreement re Partial Settlement which obligated Ed Mott to return \$33,910.00 of the Pipes' money which Janet Pipes used to open the joint bank account. (CP 717-720)

The Pipes were represented by attorney Kristina Selset, who, on September 9, 2011, filed a motion to terminate the Order (CP 105-133). Parties entered into a second CR2A which was filed on October 11, 2011 (CP 721-230). The original VAPA order was dismissed on the same day (CP 735-738).

On May 31, 2012 Petitioner GSS re filed the motion for a VAPA Order based on alleged violations of the CR2A. On June 14, 2012 the court entered the VAPA order on behalf of GSS as guardian for Ed Mott against Janet Pipes and the marital community of Janet and Jerry Pipes. (CP 823-828) In essence, this Order prohibits the Pipes from initiating contact of any kind with the protected person, his family, and caregivers. It also prohibits the Pipes from initiating contact with any governmental agency with investigative authority regarding the care or guardianship of Edward Mott or having another person act on their behalf. Additionally, the court ordered a judgment for attorney fees in the amount of \$59,129.51. *Id.*

On November 1, 2012 Petitioner brought a motion for contempt against the Pipes alleging violations of the court's June 14, 2012 order of

protection entered on behalf of Edward Mott. (CP 166-176). The motion alleged: 1. A letter sent by Cindy Walker to Mr. Mott's health care provider was done on behalf of Janet Pipes, 2. Respondent was responsible for an email sent by "James Kane", and 3. the Pipes failed to pay the judgment for attorney fees¹.

A motion for show cause was scheduled for November 8, 2012. (CP 302-303). The initial contempt hearing was scheduled December 10, 2012. Ms. Pipes' original counsel withdrew and current counsel filed a notice of substitution on November 15, 2012 (CP 304). The hearing was scheduled to occur on January 4, 2013 (CP 307-308). The original briefing schedule complied with KCLCR 7. However, upon receipt of the Pipes response, GSS filed a reply which included a new motion to strike, a supplemental declaration and declarations in support of fees. Respondent filed an objection to the attorney fees. The parties at the hearing were petitioner GSS and Respondents Janet and Jerry Pipes. (VRP 1:1-5).

At the January 4, 2013 hearing the court found Janet Pipes in contempt and responsible for the August 15, 2012 letter sent by Cindy Walker to Mott's health care provider. (VRP 19:25; 20:1-2) and drew an inference that Janet Pipes was responsible for the email send by James

¹ The Pipes paid the judgment in full prior to the January 4, 2013 hearing and it is no longer an issue before the court.

Kane to law enforcement. (VRP 21:1-2) The court ordered as a remedial sanction that the Pipes post \$25,000.00 bond with the registry of the court. The court also indicated its intent to find Ms. Pipes in contempt and imposed punitive sanctions, but requested additional briefing from petitioner before doing so. (VRP 22:23-25; 23:1-2).

On January 16, 2013 Carolyn Knick, the wife of Ed Mott, through counsel filed a notice of appearance. (CP 417-419)The following day Ms. Knick filed a motion for damages on her own behalf as part of the pending contempt proceedings. (CP 446-451)

On January 24, 2013 the court entered its order finding the Pipes in contempt. As a remedial sanction the court order a performance bond of \$30,000.00 reduced by \$2500.00 per month of compliance of the court order. The Court denied petitioner's motion to strike the response brief of the Pipes. The court awarded \$28,800.00 in attorney fees against the Pipes, \$30,000.00 in damages to the marital community of Ed Mott and Carolyn Knick, and \$20,000 sanction payable to GSS. (CP 538-546)

IV. ARGUMENT

A. COMMISSIONER'S FINDING OF CONTEMPT

Contempt of court means "Intentional disobedience of any lawful judgment, decree, order, or process of the court". RCW 7.21.010 (1). In

determining whether the facts support a finding of contempt, the court must strictly construe the order alleged to have been violated, and the facts must constitute a plain violation of the order. *Johnston v Beneficial Management Corp.* 96 Wn.2d 708, 713-14, 638 P.2d 1201 (1982); *In re the Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995). Washington's general contempt statute provides for either "punitive" or "remedial" sanctions. *In re M.B.*, 101 Wn.App. 425, 3 P.3d 780 (2000). As stated in *M.B.*:

A punitive sanction is imposed to punish a past contempt of court for the purpose of upholding the authority of the court. A remedial sanction is imposed for the purpose of coercing performance when the contempt consists of failure to perform an act that is yet in the person's power to perform. Remedial sanctions are civil rather than criminal and do not require criminal due process protections. . . . In determining whether a particular sanction is civil or criminal, courts look not to " 'the subjective intent of a State's laws and its courts,' " but examine the " 'character of the relief itself.' " *Id.*

The contempt power must be used with great restraint. *In re M.B.*, 101 Wash. App. 425, 438-39, 3 P.3d 780, 788 (2000).

Here, the Commissioner found the Pipes in contempt for the actions of third parties. Prior to the entry of the June 2012 VAPA Order, Cindy Walker reviewed a report regarding Mr. Mott and expressed her

concerns in writing. (CP 166-301). After the entry of the June 2012 Order, Ms. Walker again read a report regarding Mott and expressed her concerns in writing which she shared with his care providers. The evidence before the court was that Ms. Walker wrote the letter on her own initiative, and Jan Webster assisted her in typing it. (CP 475-477). Janet Pipes denied any involvement. (CP 309-334).

Additionally, the court found that Janet Pipes was responsible for an email sent by “James Kane” to law enforcement agencies. However there was no direct evidence of this. The Commissioner invited petitioner to investigate the origin of the James Kane email by sending subpoenas to the internet service providers (VRP 17:15-22). At the later hearing, the Commissioner accepted argument by petitioner that the Pipes had the burden of proof (VRP 50:16-20).

Commissioner Velategui failed to use great restraint as required when finding the Pipes in contempt.

B. THE COURT EXCEEDED ITS AUTHORITY BY IMPOSING \$20,000 IN PUNITIVE SANCTIONS AND RELYING ON ITS INHERENT AUTHORITY

Petitioner sought both punitive and remedial sanctions against the Pipes. The Pipes were found in contempt of court as defined in RCW 7.21.010(1)(b). Specifically: Disobedience of any lawful judgment,

decree, order, or process of the court. Consequently, the *only* sanction available is punitive and *not* authorized in this proceeding. The Commissioner erroneously believed he had the power to impose a punitive sanction (VRP 17:24-25; 18:1-5) and did so when he imposed \$20,000.00 against the Pipes, payable to Mott through GSS. After requesting supplemental briefing, the court expanded its finding to include its inherent authority as a basis for imposing the sanction (VRP 50:8-9) However, the Commissioner failed to make findings as to why the statutory remedies were insufficient.

“[I]nherent contempt powers are appropriately exercised only when the powers conferred by statute are demonstrably inadequate.” *Interests of M.B.*, 101 Wn. App. 425, 452, 3 P.3d 780 (2000), *rev. denied by Interests of Hansen*, 142 Wn.2d 1027, 21 P.3d 1149 (2001). *In re Silva*, 166 Wn.2d 133, 144, 206 P.3d 1240, 1246 (2009), holds that a juvenile court must “try all statutory contempt sanctions and specifically find them ineffective before a court can exercise its inherent contempt powers to sanction a youth” *Id.*

C. THE TRIAL COURT LACKED BOTH THE AUTHORITY AND FACTUAL BASIS TO AWARD \$30,000 IN DAMAGES TO CAROLYN KNICK AND ED MOTT FOR DEFAMATION

RCW 74.34.210 reads:

A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020. *An action for damages under this chapter may be brought by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary.* The death of the vulnerable adult shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable adult, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for recovery of all damages for the benefit of the deceased person's beneficiaries set forth in chapter 4.20 RCW or if there are no beneficiaries, then for recovery of all economic losses sustained by the deceased person's estate.

This section authorizes various entities to sue for damages on behalf of a vulnerable adult, as well as authorizing them to file a petition for an order of protection. There is nothing in the statute that allows for an award of damages under a defamation claim. In this case, GSS could have filed a civil suit for defamation on behalf of Ed Mott. Instead, GSS filed a motion for contempt under RCW 7.21.

While there is no case law interpreting this provision, the reasonable interpretation of section .210 is that it authorizes the guardian to bring actions for damages under whatever civil theories might apply, but it doesn't excuse the guardian from following the usual procedures

that apply in civil cases (i.e., filing a complaint, engaging in discovery, holding a trial, etc.). See RCW 26.50.110.

The Commissioner converted the contempt proceeding into a summary defamation action when it awarded \$30,000.00 to Ed Mott and Carolyn Knick. There was no pending action for defamation. Consequently, the court erred in making a finding of defamation and absolving the Petitioner from establishing all four elements of defamation: falsity, an unprivileged communication, fault, and damages. *LaMon v. Butler*, 112 Wash.2d 193 197, 779 P.2d 1027 (1989) and then arbitrarily sanctioning the Pipes \$30,000.00 for damages that were not proved.

A threshold requirement of defamation is that the alleged defamatory statement be a statement of fact and not just opinion. *Robel v. Roundup Corp.*, 148 Wash.2d 35, 55, 59 P.3d 611 (2002). There is a three-part test to determine whether a statement is actionable. *Dunlap v. Wayne*, 105 Wash.2d 529, 539, 716 P.2d 842 (1986). The court must consider: “(1) the medium and context in which the statement was published, (2) the audience to whom it was published, and (3) whether the statement implies undisclosed facts.” *Id.*

In order for petitioner to recover damages for defamation, he must file a defamation claim and prove damages. The Pipes then have the

opportunity to defend against the claim before a trier of fact with discovery and presentation of evidence. Case law supports this position.

In *Caruso v. Local Union 690*, 100 Wash.2d 343, 670 P.2d 240 (1983) the petitioner alleged several *instructional errors*. These were the jury instructions offered during trial. (Emphasis added). Again, in *Maison de France, Ltd. V. Mais Oui!, Inc.*, 126 Wn.App. 34, 108 P.3d 787 (2005) the court took review following a bench trial. In *Maison*, the court writes: “In all but extreme cases, *the jury* should determine whether the article was libelous per se” 126.Wn.App.34 at 42. (Emphasis added).

As stated above, the defamation plaintiff must prove four elements. *Id.* at 42, not simply bootstrap their summary request for damages on to another cause of action where they are not entitled to recover.

Additionally, petitioner cannot seek damages for an injury they caused. In the spirit of the “invited error doctrine”, it was the petitioner in this case who filed hundreds of pages of documents which contain personal information about Ed Mott, many of which were generated by Ed Mott himself. (See CP 1-94; 166-301). The court need look only to the original Motion for a VAPA order filed April 22, 2011 which are part of the public record. Petitioner’s original motion included personal information regarding Ed Mott, including home address, email correspondence confirming that Ed Mott had sent a copy of a letter written

by Janet Pipes to others he knew. GSS also filed documents Mott signed in 2010 alleging they were invalid due to Mr. Mott's alleged incompetency. Simultaneously Petitioners filed durable powers of attorney Mr. Mott signed two years later. *Id.*

The Commissioner imposed the damage sanction on his belief that Carolyn Knick had "clearly been defamed for the last *two years* by Ms. Pipes" (VRP 40:25, emphasis added). The Commissioner lacked authority to impose sanctions for allegations that occurred prior to June 14, 2012, when the VAPA Order was entered.

Finally, as set forth in RCW 74.34.200 (2):

It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

There is no evidence before the court that petitioner, GSS, made any effort to comply with the least formal means available to try and resolve this dispute. Instead, they have inundated the court and the Pipes with lengthy motions, untimely motions and incomplete briefing which required the Pipes to employ counsel to respond. GSS then seek

substantial attorney fees against the Pipes which have no benefit the protected person.

D. THE JUNE 14, 2012 ORDER IS AN UNCONSTITUTIONAL PRIOR RESTRAINT ON SPEECH

The protection order entered in this case violates two provisions of the First Amendment: the right to free speech and the right to petition the government for redress of grievances. The Pipes may raise a manifest error which affects a constitutional right for the first time on review. RAP 2.5(a)(3).

One provision of the order states that Ms. Pipes cannot have any contact with the vulnerable adult by any means “including without limitation filing of legal or administrative actions regarding the vulnerable adult.” The court wrote in next to this sentence “and law enforcement and government agencies.” (CP 156-160). Another paragraph includes this provision: “In the event additional reports alleging abuse, neglect or exploitation of the Vulnerable Adult are filed by Respondent(s) or their agents without reasonable cause with any governmental, legal or administrative agency in the future, Respondent shall be liable for any costs, including reasonable attorneys’ fees, etc.” (CP 10).

The protection order is a prior restraint on speech. A prior restraint is an administrative or judicial order forbidding in advance certain

communications. *Alexander v. United States*, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L.Ed.2d 441 (1993). “Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.” *Id.* Prior restraints carry a heavy presumption of unconstitutionality. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 S. Ct. 631, 9 L.Ed.2d 584 (1963). They are permissible only in exceptional cases such as war, obscenity, and “incitements to acts of violence and the overthrow by force of orderly government. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716, 51 S. Ct. 625, 75 L.Ed. 1357 (1931). “An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order.” *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 183, 89 S. Ct. 347, 21 L.Ed.2d 325 (1968).

“[T]he right to petition extends to all departments of the [g]overnment.” *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972). Thus, the right to petition includes the rights to (1) “complain to public officials and to seek administrative and judicial relief,” *Jackson v. New York State*, 381 F. Supp. 2d 80, 89 (N.D.N.Y.,2005) (quoting *Gagliardi v. Village of*

Pawling, 18 F.3d 188, 194 (2d Cir. 1994)); (2) petition “any department of the government, including state administrative agencies,” *Ctr. for United Labor Action v. Consol. Edison Co.*, 376 F. Supp. 699, 701 (S.D.N.Y.1974); and (3) file a legitimate criminal complaint with law enforcement officers. *Jackson*, 381 F. Supp. 2d at 89.

In *Marriage of Suggs*, 152 Wn.2d 74, 93 P.3d 161 (2004), the Washington Supreme Court applied these free speech principles to a protection order. The trial court had found that Suggs harassed her ex-husband, Hamilton, by making numerous complaints against him to various law enforcement and government agencies. *Id.* at 77-78. The trial then entered an order which permanently restrained Suggs from “knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties which are designed for the purpose of annoying, harassing, vexing, or otherwise harming Andrew O. Hamilton and for no lawful purpose.” *Id.* at 78-79.

The Supreme Court found this order to be an unconstitutional restriction on speech. *Id.* at 84. The order’s “invalid and unsubstantiated” language is particularly problematic in this context because what may appear valid and substantiated to Suggs may ultimately be found invalid and unsubstantiated by a court. . . . Fearful of what allegations may or may not ultimately be deemed invalid and unsubstantiated, Suggs may be

hesitant to assert any allegations, including those she deems truthful. Thus, Suggs is left with an order chilling all of her speech about Hamilton, including that which would be constitutionally protected, because it is unclear what she can and cannot say. Chilling is intolerable in the first amendment context and is exacerbated by the fact that many of the incidents that Hamilton based his antiharassment order on pertain to the efforts of Suggs and her husband to address what they perceive is Hamilton's harassment.

Id. at 84 (citation to record omitted).

The Court of Appeals applied similar reasoning in *Marriage of Meredith*, 148 Wn. App. 887, 201 P.3d 1056 (2009). Philip Meredith had a history of physical and sexual assault against his ex-wife, Jazmin Meredith. He also made false claims to the police that Jazmin abused their daughter, and contacted immigration authorities in an effort to get Jazmin deported. *Id.* at 892-93.

Ultimately, the family court entered a domestic violence protection order which restrained Philip from contacting *any* agency regarding Ms. Muriel's immigration status, including but not limited to the Department of Homeland Security (Citizenship and Immigration Services, Immigration and Customs Enforcement or Customs and Border Protection), the Executive Office of Immigration Review (the immigration

court system), or the Department of State. Any contact that Mr. Meredith believes to be necessary must first be approved by this court through the undersigned judge/department. *Id.* at 895 (emphasis in original).

The Court of Appeals found this order violated Philip Meredith's right to free speech and to petition the government for redress of grievances. *Id.* at 896. The order did not merely restrain libelous speech, but also chilled Meredith's right to file complaints which might be valid. *Id.* at 898. Further, "a citizen does not lose the right to petition the government merely because his communication to the government contains some harassing or libelous statements." *Id.* at 900. Although Meredith had a long history of libelous speech, including in his pro se briefing to the Court of Appeals, the First Amendment did not permit a court to assume that all further claims would be libelous. *Id.* at 901-02.

In *Hobart v. Ferebee*, 2004 S.D., 138 692 N.W. 2d 509 (2004), the South Dakota Supreme Court addressed a lower court order directed to a respondent who made numerous complaints to various agencies in a "transparent attempt to make life as difficult as possible for [his neighbor]" *Id.* at 512. The trial court ordered that Ferebee could not file any further complaints without first obtaining court approval. *Id.* Citing *Suggs* and other cases, the Supreme Court found this to be an unlawful prior restraint, violating the First Amendment right to petition for redress

of grievances. *Id.* at 514. In response to an argument that the order was intended to prohibit only unfounded claims, the Court noted that “[w]e focus not on what the order constitutionally prevents, but on what it unconstitutionally constrains.” *Id.* at 515.

The order at issue in Ms. Pipes’ case is at least as restrictive as those discussed in *Suggs*, *Meredith* and *Hobart*. The Order entered by Commissioner Velategui prohibited the Pipes from far more than contacting Ed Mott directly and instead the superior court’s order defines “contact” far more broadly. It includes “filing of legal or administrative actions regarding [Mott]” including those addressed to “law enforcement and government agencies.” Clearly this is not merely a restriction on “contact.” An agency could handle a complaint concerning Mr. Mott’s treatment without passing on the content of the complaint to Mott himself. The Court’s order severely chills Pipe’s right to free speech and to redress of grievances by threatening – and as it turns out, imposing – substantial financial sanctions. This is a classic prior restraint of First Amendment rights.

Further, RCW 4.24.510 grants immunity from civil liability to “a person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . for claims based upon the

communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.”

The June 2012 Order is also far more broad than necessary. The thrust of the Pipes’ submissions have always been that Mott is not being properly cared for. Even if a few of her statements concerning his caregivers could be considered libelous, that does not permit a court to restrain *all* of her speech nor to report her concerns for the care of Ed Mott to authorities. Certainly, Ms. the Pipes’ invective does not come even close to that of the restrained party in *Meredith*.

E. THE COMMISSIONER’S ASSESSMENT OF ATTORNEY FEES AGAINST THE PIPES WAS EXCESSIVE AND CONSEQUENTLY UNREASONABLE

The award of costs and fees in the amount of \$28,800.00 imposed against the Pipes is unreasonable and excessive. Initially, GSS filed a motion for contempt seeking primarily punitive damages. Following oral argument, the Commissioner sought additional briefing from GSS. (VRP22:22-25).

GSS’s failure to address the issue in their reply after conducting legal research on the issue was a tactical decision the resulted in an additional hearing and supplemental briefing. The Commissioner awarded

fees against the Pipes for GSS's motion that was denied. Finally, the fees identify violate RPC 1.5 and *Singleton v. Frost*, 108 Wn.2d 723(1987).

V. REQUEST FOR ATTORNEY FEES AND COSTS

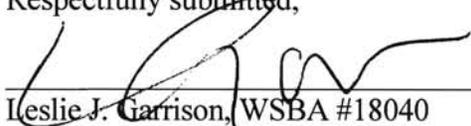
The Pipes ask this Court to award attorney fees and costs for this appeal based on the relative resources of the parties and the merits of the appeal. See RAP 18.1; *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003, 972 P.2d 466 (1999).

VI. CONCLUSION

This Court should reverse the finding that the Pipes were in contempt of court for the communications sent by third parties. Further, the Pipes respectfully request this court overturn the Commissioner's imposition of punitive sanctions in the amount of \$20,000.00, the award of \$30,000.00 damages for defamation, and reduce the award of attorney fees.

DATED this 17th day of July, 2013

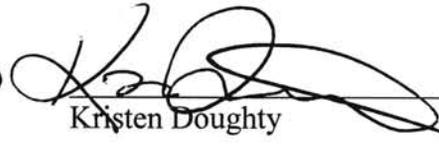
Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail, postage prepaid, and email, one copy of the foregoing brief on the following:

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July 17^m, 2013 
Date Kristen Doughty