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No. 70424-9-I

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION I

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PARRIS ANDREA ROSOLINO (f/k/a PARRIS TILTON f/k/a PARRIS  
LORING),

Appellant,

v.

DIANE ARMESTO,

Respondent.

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**BRIEF OF RESPONDENT DIANE ARMESTO**

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## I. INTRODUCTION

This appeal arises from Appellant Parris Tilton's ("Parris's") calculated campaign to misappropriate royalties from the estate of renowned jazz trombonist Frank Rosolino ("Rosolino"). More than thirty-five years ago, Rosolino tragically shot his two sons and then took his own life. Through countless Internet postings and letters to leaders in the music industry, Parris has published a series of malicious lies about these events so as to harass and discredit Respondent Diane Armesto ("Armesto")—a named beneficiary in Rosolino's will and executrix of his estate. Parris's published statements claim, contrary to long-established evidence, that Armesto shot Rosolino and his sons, molested and abused both sons, covered up these crimes with the help of the Los Angeles Police Department ("LAPD") and stole from Rosolino's estate. To lend credence to these baseless accusations and buttress her meritless claims to royalties from the estate, Parris began falsely presenting herself as Rosolino's biological daughter. In 2007, Parris changed her last name to "Rosolino," even though it is beyond dispute that she is not related to him by blood or adoption.

Armesto brought this lawsuit to curb and—to the extent possible—mitigate the damage caused by Parris's ongoing defamation, and to protect the integrity of the Rosolino estate. Parris defended herself on the ground

that her accusations were true: namely, that Armesto was a murderer and Parris, as Rosolino's natural-born daughter, was entitled to a portion of the Frank Rossolino estate. Parris went so far as to assert a counterclaim against Armesto based on her claimed right to royalties. But, when confronted with the incontrovertible documentary evidence contradicting her purported biological relationship to Rosolino and right to any portion of his estate, Parris withdrew her counterclaim and refused to respond to or participate in any outstanding discovery. In so doing, she violated a series of court orders directing her to answer written discovery requests and attend a deposition on these issues.

In the face of Parris's complete disregard for the court's authority, the trial court was left with no choice but to dismiss Parris's defenses and enter a default judgment. The court did so, made findings of fact and conclusions of law based on the admitted allegations in the Complaint and the evidence of record, awarded damages and attorney fees to Armesto and entered a permanent injunction ("Permanent Injunction") designed to mitigate the harm caused by Parris's defamatory statements and prevent further publication of this abusive speech. On the record before it, the trial court acted well within its discretion, and should be affirmed.

## II. COUNTERSTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Whether the trial court acted within its broad discretion in entering a default judgment in favor of Armesto where Parris repeatedly and willfully violated court orders compelling written discovery responses and attendance at deposition, Parris's refusal to comply with these discovery orders substantially prejudiced Armesto's preparation for trial, and Parris ignored lesser sanctions and warnings.

B. Whether the trial court acted within its broad discretion in entering the Permanent Injunction to prohibit further publication of and mitigate damage caused by Parris's abusive speech. In particular:

1. Whether the prohibitions on "implied" defamatory publications are constitutional because defamation by implication is not protected speech.

2. Whether the prohibition on Internet postings about Armesto is a constitutional remedy for Parris's prior abuse of her right to speak.

3. Whether the factual findings and Permanent Injunction provisions relating to Parris's paternity and scheme to misappropriate funds from Rosolino's estate were within the trial court's broad discretion and authority.

C. Whether the trial court acted within its broad discretion in awarding \$500,000 damages caused by Parris's defamation *per se*.

D. Whether the trial court acted within its broad discretion by awarding attorney fees and costs incurred by Armesto under CR 11 due to Parris's countless frivolous and unsupportable filings and bad faith conduct.

E. Whether Armesto should be awarded attorney fees and costs on appeal.

### III. STATEMENT OF THE CASE

#### A. **Armesto and Parris's connection to Rosolino.**

This case centers on Armesto and Parris's connections to Rosolino, a renowned American jazz trombonist. Armesto is, herself, an acclaimed jazz vocalist and song writer. *See* Official Website of Diane Armesto, [www.dianearmesto.com](http://www.dianearmesto.com) (last visited Dec. 16, 2013). Her father is the composer John Armesto and her mother, Isabelle Rinker Armesto, was an admired soprano. *See id.* Armesto released her first album of Jazz standards in 2000, and has since released three additional albums. *See id.*

Armesto met Rosolino in Los Angeles in 1971. *See id.* By that time, Rosolino had established himself as a successful musician, having recorded with the likes of Frank Sinatra and Tony Bennett. *See*

*id.* Armesto became Rosolino's manager and booking agent, helping to enhance his musical career. *See id.* Throughout the 1970s, Armesto also had a romantic relationship with Rosolino and assisted with raising his young sons, Justin and Jason. CP 705.

Parris is the natural born daughter of Leslie Ann Bashore ("Bashore") and Charles Edward Loring a/k/a Ed Loring ("Loring"). CP 1451-54 (birth certificate). Parris's connection to Rosolino arose through her mother's marriage to Rosolino in 1966, by which time Parris was already approaching three years old. CP 113. Bashore and Rosolino had two children (Justin and Jason) before they separated in 1971. CP 705, 110. In 1972, Bashore committed suicide, and Parris was adopted by Darline Tilton, Bashore's mother. *See* CP 539, 1455-58.

**B. Parris launched a scheme to misappropriate funds from Rosolino's estate by falsely posing as his daughter and changing her last name to "Rosolino."**

One night in 1978, Rosolino shot Justin and Jason and then turned the gun on himself. CP 937. Rosolino and Justin died, and Jason was blinded and suffered severe brain damage. CP 660. That evening, Armesto had returned to their home with a friend to find the aftermath of the shootings. CP 1568-72. Rosolino had also left behind a suicide note. CP 705-06.

Rosolino also left a will appointing Armesto as executrix of his estate. CP 706, 746-49. The will contained bequests to Armesto and Rosolino's sons. CP 706, 747. The will expressly disinherited others, as well as those not specifically named, which included Parris. *See* CP 748. Armesto distributed the estate in accordance with the will and, in 1982, she was discharged from her duties as executrix. CP 55-70.

More than twenty years after Rosolino's suicide, Parris launched a scheme to fraudulently obtain money from his estate by posing as his biological daughter. The timing of Parris's concocted claim to royalties from Rosolino's estate was no coincidence. In the early 2000s, Parris faced severe financial problems that resulted in her filing for bankruptcy in 2004. CP 940. During 2005 and 2006, Parris admits she began to research potential royalties associated with the Rosolino estate. *See* CP 942, 960.

To be clear, Parris is not Rosolino's biological or adopted daughter. Her birth certificate shows that she was originally named Parris Andrea Loring and is the biological daughter of Loring, not Rosolino. CP 1452-54. In 1972, *while Rosolino was still alive*, Parris was adopted by her grandmother (and not by Rosolino). CP 1456-58. Rosolino was aware of the adoption proceedings and ultimately did not

object. CP 2068. The court appointed a Guardian ad Litem for Parris, who found that adoption by her grandmother was in her best interest and recommended the court authorize and approve the adoption. CP 2068-70. At that time, the King County Superior Court found that Parris, then known as Parris A. Loring, is the daughter of Ed Loring, not Rosolino, and that Parris had used the last name “Loring” with Ed Loring’s consent. CP 1460. As part of the adoption order, her name was changed and established by the court as Parris A. Tilton. CP 1456.

Parris also commissioned a DNA test in 2004 to determine whether she was biologically related to Rosolino, and the test, comparing her DNA with Rosolino’s brothers’ DNA, conclusively found that she is not biologically related to Rosolino. CP 929-30, 988 (over 96% certain she is not biologically related). Although Parris points to a sibling DNA test from 2008 as “evidence” that Rosolino may have been her biological father, the report from that test concluded that the “statistical result is very low and is inconclusive.” CP 138. When confronted with this conclusion at her deposition, Parris refused to answer any further questions. CP 555.

Despite the overwhelming evidence that she is not Rosolino’s biological or adopted daughter, Parris changed her last name to “Rosolino” in 2007. CP 962-65. Parris filed a Petition for Change of

Name in King County District Court, requesting that her name be changed from Parris Andrea Tilton to Parris Andrea Rosolino. CP 962. In the Petition, Parris declared under penalty of perjury that “[t]his application is not made for any illegal or fraudulent purpose,” and that “[t]he change of name will not be detrimental to the interests of any other person.” *Id.* Parris also testified that she wanted to go back to her name “Rosolino” from before she was “kidnapped” and that the change was not for any illegal reasons. CP 963. Based on these representations, the court issued the Order Changing Name. CP 965.

Parris’s declarations—that the application was not made for any illegal and fraudulent purpose, that the change of name would not be detrimental to the interests of any other person and that she wanted to go back to her name “Rosolino” from before she was allegedly kidnapped—have been revealed to be patently false. Prior to December 2007, Parris never had the legal name “Rosolino.” To the contrary, Parris possessed evidence (set forth above) that proved she was not the biological daughter of Rosolino, including her birth certificate and the conclusive results of the DNA test that she commissioned. *See supra* at pp. 6-7.

Nevertheless, in 2007, Parris began to contact record companies, posing as Rosolino’s daughter, in an attempt to seize control of the assets in his estate. *See, e.g.*, CP 967-992. Parris managed to convince record

company BMI that she was entitled to receive royalties from the estate. CP 979. Parris also began to threaten Armesto in an attempt to compel her to turn over royalties from the Rosolino estate. *See, e.g.*, CP 716-17. Since then, Parris has persisted in her efforts to obtain these royalties. *See, e.g.*, CP 1055-74.

**C. Parris repeatedly published false and malicious statements about Armesto in furtherance of her scheme to misappropriate funds from Rosolino's estate.**

To further her efforts to misappropriate funds from Rosolino's estate, Parris has created and spread a series of lies about Armesto. Parris has repeatedly, both expressly and impliedly, posted on the Internet and in other writings that Armesto did the following: (1) shot and killed Rosolino; (2) shot and killed his son, Justin; (3) shot and blinded his other son, Jason; (4) molested and otherwise abused Justin and Jason; (5) embezzled and stole from the Rosolino's estate using fraudulent means and lived off of the estate's assets; (6) covered up these alleged crimes with the help of the LAPD; and (7) engaged in other criminal activity. Armesto has uncovered at least forty defamatory statements on the Internet and in emails and letters to others in the music industry. *See, e.g.*, CP 718-41, 1055-1112, 1488-1565, 2389-438. In many of these publications, to add credibility to the lies, Parris falsely presented herself as Rosolino's biological

daughter and a rightful heir to his estate. *See, e.g., id.* Parris has published and republished these statements. *See id.*

Parris does not challenge the trial court's factual findings that *all* of the defamatory statements about Armesto are false. CP 1976. Nor could she, as the LAPD long ago determined that Rosolino shot Justin and Jason before taking his own life. *See* CP 936. And, in response to Parris's repeated efforts over the past decade to reopen the investigation, CP 1878-92, in 2010, the LAPD reviewed Parris's allegations, re-examined the case and re-interviewed witnesses, CP 958. Based on the foregoing, the LAPD conclusively reaffirmed its determination of a murder/suicide and cleared Armesto of any wrongdoing. *Id.* (Email from Detective Bub to Parris, dated August 30, 2010 stating, "I have found that there is no evidence that anyone other than Frank Rosolino fired the shots that killed Justin and wounded Jason").

Consistent with the LAPD's determination, the witness who discovered the bodies with Armesto, Pattie Daniels ("Daniels"), testified that she was with Armesto on the night of the deaths. CP 1569. Daniels and Armesto left the house that night and Rosolino and the boys were alive and well; Daniels and Armesto were together the entire evening; and when Daniels and Armesto arrived back home

later that night, they discovered the bodies. CP 1567-73. Daniels recently confirmed in her deposition that she was with Armesto that night and that Armesto did not shoot Rosolino, Justin or Jason. *Id.* Armesto also denies that she shot Rosolino, Justin or Jason. CP 741.

Parris's statements that Armesto embezzled from, stole from, lived off of and defrauded Rosolino's estate are also false. Armesto denies ever embezzling from, stealing from, living off of and defrauding the Frank Rosolino estate. CP 718-41. Instead, Armesto attempted to protect his estate from Parris's fraudulent entreaties. CP 706-18. As to the molestation statements, Parris has never identified any evidence to support these serious accusations, which she concedes are based on "rumors." CP 1490, 1615-16. The LAPD found no evidence of molestation, CP 541, 936; Armesto denies ever molesting Jason and Justin, CP 741; and Daniels, who lived with Armesto, Rosolino and his sons, testified that she never witnessed any abuse. CP 1572-73.

**D. Armesto has suffered substantial damages as a result of Parris's malicious and widespread defamation.**

The damages Armesto has suffered arising from Parris' false and defamatory statements are real and substantial. Armesto is a singer/song writer, who has performed at countless functions and has

made several recordings. CP 742. Armesto is also a successful real estate agent and has been affiliated with the same broker for over twenty-five years. CP 743.

When people consider retaining her as an entertainer or a real estate agent, it is typical for them to research her name on the Internet. *Id.* Armesto has, therefore, developed an Internet presence for her business and person. *Id.* Yet, when “Diane Armesto” is searched on Google.com, Parris’s false statements about Armesto immediately appear. *Id.* As a result, Armesto has not been able to release her music or market her real estate business out of fear that people will search her name and the false statements about her will be read by more people. *Id.*

For example, Armesto has most recently recorded four new CDs at great expense, estimated to be over \$100,000. CP 742. The CDs were scheduled to be released beginning in late summer or early fall of 2011. CP 742-43. But because of Parris’s statements, Armesto has not released the CDs. CP 743.

This Internet “rumor,” that she is a murderer, molester, embezzler and thief, has also caused and continues to cause Armesto great physical and emotional distress. *Id.* Armesto cannot sleep, has severe gastro-intestinal issues and has dental issues caused by

clenching her teeth. *Id.* She cries often and has become deeply depressed because she has been forced to re-live the trauma from the events of 1978, when she stepped into her home with her friend after the murder/suicide. *Id.* Armesto feels completely helpless to protect her good name and reputation from Parris's unfounded attacks, causing severe anxiety. *Id.*

Armesto is on pharmaceuticals for her severe gastrointestinal problems caused by the financial and emotional impact of the defamation and tranquilizers to help calm her nerves and sleep. CP 34-44. She is also seeing a physical therapist on a regular basis because her back and hip are so badly maligned from all the tremendous stress that she has developed a limp. *Id.*

In sum, Parris's false, defamatory and malicious statements about Armesto have tainted Armesto's Internet presence and have had severe effects on her health, her ability to work and market her name as a real estate agent and musician and her overall well-being. CP 744.

**E. The trial court entered a default judgment in Armesto's defamation lawsuit after Parris repeatedly and willfully violated court orders.**

In July 2011, Armesto sued Parris for defamation, defamation *per se*, outrage and intentional infliction of emotional distress. CP 1-16. In her Complaint, she alleged that Parris had published numerous false and

malicious statements that Armesto is a murderer and child molester, covered up her crimes with the assistance of the LAPD and stole from Rosolino's estate. CP 4-13. Armesto further alleged that this defamatory campaign was a component of Parris's scheme to misappropriate funds from Rosolino's estate; that Parris was falsely posing as Rosolino's biological daughter; and that Parris had changed her last name to "Rosolino" in 2007 to further her fraudulent endeavors. *See* CP 2-5, 7-9 (¶¶ 8, 11-13, 17-18, 21, 28, 32-35, 37).

In her Answer, Parris admitted that she had published numerous statements accusing Armesto of murder, child molestation, conspiring with the LAPD and stealing from Rosolino's estate; that she claims an interest in Rosolino's estate; that she presents herself as Rosolino's biological daughter; and that she changed her last name to "Rosolino" in 2007. CP 20-24. She alleged, however, that all of the foregoing is true and asserted a counterclaim suing Armesto for royalties from Rosolino's estate. CP 21-22, 25-26.

The subsequent proceedings before the trial court were marked by Parris's obstructionist tactics and repeated willful violation of court orders. At the onset of the case, Parris violated a Temporary Restraining Order ("TRO"), which prohibited Parris from publishing any statements about Armesto or contacting Armesto. *See* CP 2439-44. As a result, on August

22, 2011, Parris was first found in contempt. *Id.* Showing leniency, however, the court did not impose any monetary or other punitive sanctions. *See id.*

Parris was also sanctioned in August 2011 when, knowing that Armesto planned to fly across the country from New York to Seattle to attend the preliminary injunction hearing, she handed the assigned judge a motion and affidavit of prejudice minutes before the hearing was scheduled to begin. CP 2324 (Court: “[Parris] did it at the last minute obviously for tactical reasons[.] Parris: “That’s not true.” Court: “Well, I don’t think you are going to find any judge that thinks otherwise.”). The newly assigned judge imposed \$500 in terms, CP 28-30, but later gave Parris a second chance and vacated the order, CP 2442-43.

Parris’s refusal to follow court rules continued through discovery. She initially failed to serve any response to Armesto’s written discovery requests, including in particular questions about the basis for her assertions that Armesto stole from Rosolino’s estate and her own claim to royalties from that estate, and then served incomplete responses *after* Armesto moved to compel responses. CP 203-07 (Armesto’s discovery requests); CP 237-38 (Parris’s responses, *e.g.*, “it is none of Armesto’s business”). On July 26, 2012, the court ordered Parris to serve full answers to these requests and awarded Armesto \$500 in attorney fees and

costs pursuant to CR 37. CP 239-40. Parris never served supplemental responses or paid the terms. *See* CP 1126-28.

At her deposition in September 2012, Parris falsely testified that she is Rosolino's biological daughter. CP 941, 947. But when Armesto's counsel confronted her with evidence disproving her claimed relationship, Parris refused to answer any questions. CP 950-52. On November 1, the court ordered Parris to answer deposition questions relating to her identity and scheme to embezzle funds from Rosolino's estate. *See* CP 1830. The court directed that the deposition take place on November 7 and retained oversight in the event an issue arose during the deposition. *See id.* Parris refused to participate at the deposition. *See* CP 1830-31.

On November 16, 2012, the trial court issued an omnibus sanctions order, compelling Parris to comply with its July 26 and November 1 orders and to pay an additional \$2,610 in attorney fees and costs within five days. CP 1126-28. The order warned Parris that failure to comply with the omnibus order would result in a default judgment:

Because [Parris] has violated previous orders of this court, it is ordered that [Parris's] defenses will be stricken, and judgment entered against her, if she fails to comply with any part of this order.

CP 1128. Armesto attempted to depose Parris, but Parris again refused. CP 1417-23.

In January 2013, the trial court struck Parris's defenses as a sanction for her repeated violation of court orders. CP 1829-32. The court found that Parris willfully violated numerous court orders without justification, that her violations prejudiced Armesto's ability to prepare for trial and that the court had considered and imposed lesser sanctions without success. CP 1830-31.

The court made Findings of Fact and Conclusions of Law and Supplemental Findings of Fact and Conclusions of Law, based on the allegations in Armesto's Complaint (which were deemed true upon default) and the evidence in the record. CP 1975-80, 2155-68. In particular, the court found that Parris had expressly and by implication made false statements about Armesto on the Internet and in other writings and orally, stating that Armesto murdered Rosolino and Justin, shot Jason, molested Justin and Jason, embezzled from Rosolino's estate, covered up these alleged crimes and engaged in other criminal activity. CP 1976. The court further found that Parris falsely posed as Rosolino's daughter and changed her last name to "Rosolino" to add sting and credence to her false statements and to further her fraudulent scheme to embezzle from Rosolino's estate. *Id.* Parris does not challenge

any of these factual findings on appeal. *See* Brief of Appellant Parris Rosolino (f/k/a Parris Tilton) (“Appellant’s Br.”) at 1-2 (Assignments of Error); *infra* at p. 25 (citing RAP 10.3(g)).

The trial court entered an Order for Permanent Injunction and Relief, CP 2169-73 (“Permanent Injunction”), designed to prevent further publication of defamatory statements about Armesto and to mitigate the extensive damage caused by Parris’s widespread campaign to defame Armesto, including postings on the Internet and letters and emails with people in the record industry. The Permanent Injunction prohibited Parris from making further express or implied defamatory statements that Armesto shot and killed Rosolino and Justin, shot and blinded Jason, molested and abused Justin and Jason, embezzled or stole from Rosolino’s estate, covered up these alleged crimes with the help of the LAPD or engaged in other criminal or fraudulent activity, and from continuing to pose as Rosolino’s natural, biological or adopted daughter. Permanent Injunction, ¶¶ 1-2. The court ordered Parris to take down all Internet posts on these topics to the extent possible. *Id.*, ¶¶ 5-6. The court also ordered Parris to post the Court’s Findings of Fact and Conclusions of Law and Supplemental Findings of Fact and Conclusions of Law on any

websites where she made these false postings and to send a copy of those court orders to all persons to whom Parris made such false statements, and authorized Armesto and her counsel to do the same. *Id.*, ¶¶ 7-9. Additionally, to accomplish the relief awarded by the court and because the 2007 name change to “Rosolino” was fraudulently obtained, the court restored Parris’s last name to “Tilton” and ordered Parris to update any public records regarding the name change as necessary. *Id.*, ¶ 10-13.

With regard to damages, the court found that Armesto submitted sufficient evidence to support her claim and awarded \$500,000. CP 1977, 2152-54. Finally, as a sanction under CR 11, the court awarded attorney fees in the amount of \$162,117.20 and costs of \$16,754.73 to Armesto, which the court found to be reasonable based on her attorney’s supporting declaration. CP 2174-76.

#### IV. ARGUMENT

**A. This Court reviews the trial court’s determinations for abuse of discretion.**

Trial courts are afforded broad discretion in imposing sanctions, and a determination on sanctions should not be disturbed absent a clear abuse of discretion. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132

P.3d 115 (2006) (citing *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 355-56, 858 P.2d 1054 (1993)) (citations omitted); *see also Ermine v. City of Spokane*, 143 Wn.2d 636, 650, 23 P.3d 492 (2001) (noting that a reasonable difference of opinion does not amount to abuse of discretion). Likewise, a trial court's decision to grant an injunction, its decision regarding the terms of the injunction, its award of damages on default and its award of attorney fees under CR 11 are all reviewed for abuse of discretion. *See State v. Kaiser*, 161 Wn. App. 705, 726, 254 P.3d 850 (2011) (grant of injunction and determination of terms of injunction); *Johnson v. Cash Store*, 116 Wn. App. 833, 849, 68 P.3d 1099 (2003) (damages following default); *Harrington v. Pailthorp*, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992) (CR 11 sanctions).

“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Fisons*, 122 Wn.2d at 339 (citing *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992)) (citation omitted). “A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard’ to the supported facts, adopts a view ‘that no reasonable person would take.’” *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570,

583, 220 P.3d 191 (2009) (quoting *Mayer*, 156 Wn.2d at 684).

Parris concedes that this Court should give deference to the trial court's imposition of sanctions and issuance of a Permanent Injunction but suggests—without citing any on point authority—that the trial court's factual findings and judgment are entitled to no deference because “the evidence was not weighed.” Appellant's Br. at 7. Parris's assumption rests on a faulty premise. When a trial court properly exercises its discretion in entering a default, the allegations in the Complaint are not weighed because they are deemed true. *Kaye v. Lowe's HIW, Inc.*, 158 Wn. App. 320, 326, 242 P.3d 27 (2010). Further, the trial court's factual findings in support of a damages award are based on an evaluation of the evidence in the record and are, therefore, entitled to deference. *See Cash Store*, 116 Wn. App. at 849. Indeed, deference in this case makes sense because the trial court was in the best position to evaluate the credibility of the parties, having reviewed their pleadings, motions and voluminous declarations and exhibits submitted over the course of the case, presided over several in-person hearings and observed first-hand Parris's flagrant disregard for the court's authority. *See Magana*, 167 Wn.2d at 583 (trial court is in best position to evaluate proceedings below) (citing *Fisons*, 122 Wn.2d at 339). Accordingly, all of the trial court's determinations in this case should be reviewed for abuse of discretion.

**B. Default judgment was not an abuse of discretion.**

The trial court did not abuse its discretion by striking Parris’s defenses and entering default judgment in favor of Armesto. Entry of a default judgment as a discovery sanction is justified where (1) the defendant “willfully or deliberately violated the discovery rules and orders”; (2) the plaintiff “was substantially prejudiced in its ability to prepare for trial”; and (3) “the trial court explicitly considered whether a lesser sanction would have sufficed.” *Magana*, 167 Wn.2d at 584 (citation omitted).

Here, a default judgment was the only remaining remedy—perhaps short of incarcerating Parris for repeated contempt—that would address Parris’s ongoing willful and deliberate obstruction of discovery and refusal to comply with court orders. Notably, Parris’s only explanation for her repeated violation of court orders is that she could not pay the very restrained monetary sanctions imposed by the trial court. Appellant’s Br. at 13. Even assuming this were true, it is a straw man argument. Parris continues to offer no justification for her failure to participate in her court-ordered deposition or to supplement her responses to Armesto’s written discovery requests, particularly when that discovery went to the heart of the case, including Parris’s frivolous counterclaim. *See Allied Fin. Servs., Inc. v. Mangum*, 72 Wn. App. 164, 168, 864 P.2d 1 (1993),

*amended*, 72 Wn. App. 164, 871 P.2d 1075 (1994) (“A violation of a court order without reasonable excuse will be deemed willful.”) (citations omitted); *see also* CR 37(b)(1) (failure to answer a question at deposition after being directed to do so by the court is contempt). Parris asserted her counterclaim based on her alleged biological relationship to Rosolino. CP 25-26. But once it became apparent that she would have to defend her allegations with facts, she voluntarily dismissed her counterclaims and stonewalled all further discovery. *See* CP 241-42.

Parris also argues that her willful and deliberate actions did not substantially prejudice Armesto’s ability to prepare for trial. Appellant’s Br. at 13-14. But Parris refused to provide any discovery regarding her claimed kinship with Rosolino and her scheme to misappropriate funds from his estate. Such discovery is highly relevant to Armesto’s claims for defamation, defamation *per se*, outrage and intentional infliction of emotional distress, including intent, motive and damages. For example, Parris’s alleged familial relationship increased the “sting” of her defamatory speech because the victim’s purported daughter would be more likely to have personal information to back up accusations of murder, molestation and estate theft. *See Mohr v. Grant*, 153 Wn.2d 812, 825, 108 P.3d 768 (2005) (“The ‘sting’ of a report is defined as the gist or substance of a report when considered as a whole.”) (quotation omitted).

And evidence of Parris's scheme to steal from Rosolino's estate is relevant to show her motive for spreading these malicious lies. *See Momah v. Bharti*, 144 Wn. App. 731, 750-51, 182 P.3d 455 (2008) (evidence of motive for making false statements relevant to showing malice).<sup>1</sup>

Further, Parris cannot justify her violation of the trial court's orders based on her personally held (and incorrect) belief that discovery about her paternity and scheme to steal from Rosolino's estate was not relevant. *See* Appellant's Br. at 13-14. *Cf. Fisons*, 122 Wn.2d at 354 n.89 (defendant may not unilaterally determine what is relevant to plaintiff's claim). To hold otherwise would hamstring the trial court's ability to control discovery—particularly where, as here, the defiant party claims she is unable to pay any monetary sanctions. *See id.* at 339 (“[T]he sanction rules are designed to confer wide latitude and discretion upon the trial judge to determine what sanctions are proper in a given case and to ‘reduce the reluctance of courts to impose sanctions[.]’”) (quoting Fed. R. Civ. P. 11 advisory committee note (1983)) (internal quotation omitted).

Moreover, Parris was afforded numerous second chances coupled with opportunities to participate meaningfully in discovery; and she was similarly warned she could be subjected to increasingly severe sanctions,

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<sup>1</sup> Actual malice was relevant in this case to liability, if Armesto was found to be a public figure, and to damages, if Armesto failed to show defamation *per se*. *See id.* at 740 n.2, 4.

but to no avail. *See, e.g.*, CP 28-30, 239-40, 1126-28, 2439-41. On this record, Parris cannot show that the trial court's dismissal of her defenses in response to her steadfast defiance was a clear abuse of discretion. *See Delany v. Canning*, 84 Wn. App. 498, 508, 929 P.2d 475 (1997) (affirming default judgment where defendant willfully failed to abide by the court's order to comply with discovery and no lesser alternative was likely to resolve the problem).

**C. The Permanent Injunction was not an abuse of discretion.**

Following entry of default, the trial court entered a Permanent Injunction as requested by Armesto in her Complaint. CP 15. The Permanent Injunction was narrowly tailored to prevent Parris's re-publication of false statements and to mitigate the extensive damage to Armesto.

Notably, on appeal, Parris does not assign error to *any* of the factual findings set forth in Findings of Fact and Conclusions of Law (CP 1975-80) or the Supplemental Findings of Fact and Conclusions of Law (CP 2155-68). *See* Appellant's Br. at 1-2 (Assignments of Error). The trial court's factual findings are, therefore, verities on appeal and are not subject to review by this Court. RAP 10.3(g) ("A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number."); *Harrington*, 67

Wn. App. at 911 (“Unchallenged factual findings are verities on appeal.”) (citing *Levine v. Jefferson Cty.*, 116 Wn.2d 575, 582 n.2, 807 P.2d 363 (1991)). These unchallenged findings include that Parris expressly and by implication published false statements about Armesto on the Internet and elsewhere (by stating that Armesto murdered Rosolino and Justin, shot Jason, molested Justin and Jason, stole from Rosolino’s estate, covered up these alleged crimes and engaged in other criminal activity); and that Parris falsely posed as Rosolino’s daughter and changed her last name to “Rosolino” to add sting and credence to her false statements and to further her fraudulent scheme to misappropriate funds from Rosolino’s estate. CP 1976.

Parris also apparently does not challenge several legal elements of the Permanent Injunction, CP 2169-73, including the provisions:

- Prohibiting Parris from expressly communicating that Armesto shot and killed Rosolino, shot and killed Justin, shot and blinded Jason, molested and abused Justin and Jason, embezzled or stole from Rosolino’s estate, covered up these alleged crimes with the help of the LAPD or engaged in other criminal or fraudulent activity. Permanent Injunction, ¶ 1.
- Ordering Parris to take down, delete, remove or withdraw posts on the Internet relating to Armesto. *Id.*, ¶ 5.
- Ordering Parris to post a copy of the Court’s Findings and Supplemental Findings of Fact and Conclusions of Law on websites where she posted about Armesto and to send a copy to all persons and companies with whom she communicated about Armesto. *Id.*, ¶¶ 7, 8.

- Authorizing Armesto to use the Court's Findings and Supplemental Findings of Fact and Conclusions of Law to mitigate damage caused by Parris's conduct. *Id.*, ¶ 9.

*See* Appellant's Br. at 8-12.

On appeal, she raises three challenges to the Permanent Injunction:

(1) the restrictions on "implied" defamatory communications are unconstitutionally vague; (2) the restriction on Internet postings about Armesto is an unconstitutional prior restraint on speech; and (3) the provisions of the Permanent Injunction (and the associated factual findings) relating to Parris's paternity and scheme to embezzle funds exceed the trial court's authority. *See id.* All of these arguments fail.

**1. Defamation, be it express or implied, is not protected speech.**

Although Parris does not question the trial court's authority to enjoin her from communicating that Armesto committed murder, child molestation, theft and other crimes, she contends that the prohibition on "impliedly" communicating that Armesto committed such crimes is unconstitutionally vague. Appellant's Br. at 10. The Washington Supreme Court, however, has long recognized that speech may be defamatory by implication, specifically, where "the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts." *Mohr*, 153 Wn.2d at

823 (quoting *Prosser & Keeton on The Law of Torts* 116, at 117 (W. Page Keeton ed., 5th ed. 1984, Supp. 1988)); *see also Spangler v. Glover*, 50 Wn.2d 473, 480, 313 P.2d 354 (1957) (“[I]t is not necessary that the person defamed be named in the publication if, by intrinsic reference, the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others may understand that the complainant is the person referred to, or if he is pointed out so that the persons knowing him could and did understand that he was the one referred to in the publication.”) (citing *Olympia Water Works v. Mottman*, 88 Wash. 694, 696, 153 P. 1074 (1915); *Hollenbeck v. Post-Intelligencer Co.*, 162 Wash. 14, 18, 297 P. 793 (1931)).

Parris’s published statements in this case include obvious examples of defamation by implication:

Frank Rosolino also had a daughter Parris Rosolino who now resides in Washington state. ... Parris became aware that Frank did not kill himself and shoot his children in 2001 upon confession of *the woman* that did it. Parris has been and is currently working with the LAPD to correct the facts and prosecute *the woman* who did shoot the gun that night.

CP 2752 (emphases added) (screenshot of Rosolino’s Wikipedia page). A further internet search would reveal to even a casual browser that Armesto

is “the woman” referenced in this post.<sup>2</sup> See CP 2727-63.

Parris also argues that the Permanent Injunction’s prohibitions on posting on the Internet that “implies” she is the natural, biological or adopted daughter of Rosolino are impermissibly vague. Appellant’s Br. at 10. Again, the term “implied” has a discernible legal meaning, and there is no constitutional protection for defamatory speech, whether expressly or impliedly defamatory. *Mohr*, 153 Wn.2d at 823. Likewise, Parris’ misrepresentation of her identity cannot be considered in isolation, but must be analyzed in conjunction with the trial court’s unchallenged factual finding that Parris falsely posed as Rosolino’s biological daughter and changed her last name to “Rosolino” to add sting and credence to her false statements and to further her fraudulent scheme to misappropriate funds from Rosolino’s estate. CP 1976. In that light, Parris should not be permitted to hold herself out as Rosolino’s daughter. Thus, for example, the trial court properly directed Parris to take down a photograph posted on her Facebook page, CP 2106-07, where she also had represented herself as Rosolino’s biological daughter and posted numerous defamatory statements about Armesto. See, e.g., CP 2401 (“Great picture of dad...Frank has few true friends in Hollywood...most of them have

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<sup>2</sup> See also CP 2761 (“Frank Rosolino also had another daughter named Parris Rosolino.... [She] is actively working on prosecuting *the woman* that [sic] confessed to her that she shot Frank and her two brothers Justin and Jason. So may be [sic] it was also a murder?”) (emphasis added), CP 2762 (similar).

profited with the help of Diane Armesto!”). The trial court acted within its broad discretion in prohibiting Parris from continuing to publish these statements.

**2. The restriction on Internet posts about Armesto is not a prior restraint of speech.**

Parris next asserts that the Permanent Injunction constitutes an unconstitutional prior restraint on speech by preventing her from posting content about Armesto on the Internet. Appellant’s Br. at 8-9 (referring to Permanent Injunction, ¶ 3). This provision, however, was necessitated by Parris’s admitted abuse of her right to speak and is, therefore, consistent with both the First Amendment and the free speech clause of the Washington Constitution, art. 1, § 5.

Freedom of speech is *not* an absolute right, and the State may punish its abuse. *Bering v. SHARE*, 106 Wn.2d 212, 226, 721 P.2d 918 (1986). Furthermore, “[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, [and] *the libelous . . .*” *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-72, 62 S. Ct. 766, 769, 86 L. Ed. 1031 (1942) (emphasis added).

A “crucial” factor in the regulation of speech is whether regulation

occurs before or after publication. *Bering*, 106 Wn.2d at. at 243.

Restraints on speech *before* publication (known as “prior restraints”) are disfavored because such restraints burden the exercise of the right to speak before any abuse of the right is shown. *Id.* (defining prior restraints as “official restrictions imposed upon speech or other forms of expression in advance of actual publication”) (quoting *Seattle v. Bittner*, 81 Wn.2d 747, 756, 505 P.2d 126 (1973)).

*Post*-publication restrictions, on the other hand, “simply prohibit further exercise of the right after a showing of abuse.” *Bering*, 106 Wn.2d at 243. Importantly, subsequent punishment of abusive speech is *not* a prior restraint. *See id.* at 235 (emphasizing “important distinction between prior restraint and subsequent punishment”) (citing *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931)); *see also Bradburn v. N. Cent. Reg’l Library Dist.*, 168 Wn.2d 789, 802, 231 P.3d 166 (2010) (“A prior restraint seeks to prohibit future speech rather than to punish speech that has occurred.”).

A post-publication sanction to prevent future libel, harassment and fraud is entirely consistent with the Washington Constitution, which expressly provides that a person is responsible for the abuse of the right to speak. Const. art. I, § 5 (“Every person may freely speak, write and publish on all subjects, *being responsible for the abuse of that right.*”)

(emphasis added). For that reason, Washington trial courts have the authority to enjoin further dissemination of abusive speech, which includes defamation and harassment. *Bering*, 106 Wn.2d at 244; *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984); *In re Marriage of Meredith*, 148 Wn. App. 887, 902, 201 P.3d 1056 (2009) (remanding to family court to craft a protective order to prevent further harassing and libelous communications); *cf. Maheu v. Hughes Tool Co.*, 569 F.2d 459, 480 (9th Cir. 1977) (holding that “the state's interest in deterring malicious defamation, for the purpose of protecting privacy and reputation, even when public figures are involved, is compelling.”)

*In re Marriage of Meredith*, relied on by Parris, illustrates this distinction. See Appellant’s Br. at 9. There, a husband attempted to have his wife deported and made false accusations of child abuse to the police. See *In re Marriage of Meredith*, 148 Wn. App. at 894. In dissolution and custody proceedings, the trial court entered a protective order prohibiting the husband from interfering with his wife’s immigration proceedings because such interference was not in the best interest of their child. *Id.* at 894-95. On appeal, the Court of Appeals held this prohibition was an unconstitutional prior restraint because there was no finding that the husband’s past attempts to have his wife deported were based on false

statements. *Id.* at 897. But, noting that the false police report constituted an abuse of the right to speak, the Court of Appeals remanded for entry of a protective order to enjoin him from repeating his false accusation of child abuse and any other harassing and libelous communications. *Id.* at 902.

Here, Parris pervasively abused her right to speak about Diane Armesto by making countless false and malicious statements about Armesto on the Internet. *See* CP 2389-91 (compiling defamatory statements). Because of the nature of the Internet, there is also no way to completely undo this damage. *See, e.g.*, CP 2729-47 (Google.com searches of “Diane Armesto” continue to return results from old defamatory posts). *See also Too Much Media, LLC v. Hale*, 413 N.J. Super. 135, 167, 993 A.2d 845 (App. Div. 2010) (“unlike spoken words that evaporate, Internet postings have permanence, as the posts can remain on that particular site for an indefinite period and can easily be copied and forwarded.”), *aff’d as modified*, 206 N.J. 209, 20 A.3d 364 (2011).

The trial court had every reason to believe that the scope of its injunction was necessary, because it had already seen Parris’s record of willful defiance of court orders, including the TRO. *See supra*. As a result, the Permanent Injunction prohibited Parris from posting about Armesto on the Internet. Permanent Injunction, ¶ 3. The trial court was

within its discretion to conclude that, under these circumstances, no other restriction would prevent the republication and further dissemination of defamatory content.

Nor does the Permanent Injunction “permanently enjoin[] Parris from even uttering Armesto’s name” as Parris contends. *See* Appellant’s Br. at 8. Instead, the Permanent Injunction prevents republication of prior defamatory statements about Armesto by prohibiting Parris from posting about Armesto on the Internet—where the vast majority of abusive speech has occurred and where additional posts by Parris about Armesto will necessarily lead back to the earlier defamatory posts. CP 2729-47. Parris offers no reason why compliance with this provision is overbroad, nor does she explain why she would need to post any statements about Armesto on the Internet other than for the same improper purposes that have motivated such postings to date.

“It is important to safeguard First Amendment rights; it is also important to give protection to a person who is intentionally and maliciously defamed, and to discourage that kind of defamation in the future.” *Maheu*, 569 F.2d at 479-80. Consistent with the First Amendment and the Washington Constitution, the Permanent Injunction properly balances punishment of prior abusive speech while minimizing restraints on protected speech. *See Bering*, 106 Wn.2d at 243.

**3. The trial court properly enjoined Parris from fraudulently representing herself as Rosolino's biological daughter.**

Parris challenges provisions in the Permanent Injunction prohibiting her from continuing to represent herself as Rosolino's biological daughter and restoring her prior last name. Appellant's Br. at 9-10. But Parris's paternity and her fraudulent scheme to claim royalties from Rosolino's estate lie at the heart of this case. Again, the undisputed purpose of Parris's campaign to impugn Armesto is to further her efforts to gain access to ongoing royalties from Rosolino's estate as his purported daughter. CP 1976-77. For example, on October 3, 2010, she posted on Facebook:

Diane [Armesto] flew me to New York in 2001 and told me that she was taken in as a suspect for the murders and that she did have gunpowder all over her and her fingerprints were on the gun. She told me that she grabbed the gun from Frank when he pointed the gun at her and told her to get out of the house. Apparently she was abusing the children and trying to get rid of them per many people and dad had had it!! Unfortunately, she decided to kill the children after she shot Frank. She told me that Frank had told her that he did not want anybody to have the children if something happened to him. *She also shortly thereafter told me that she wanted to leave me all my fathers [sic] money when she died. Unfortunately, she never owned it, rather me and my brother own the copywritten [sic] songs. That is a seperate [sic] crime.* Unfortunately Diane dated a LA cop, surely involved with case [sic]. I have been with the LAPD to review the case and she did do the shooting.

CP 1799 (emphasis added).

Additionally, Parris has posed as Rosolino's daughter to lend credibility to her unfounded allegations that Armesto engaged in criminal conduct. For example, Parris posted on Trombone Forum:

I am Frank's daughter Parris Rosolino. Frank did not shoot his kids. Diane Armesto killed Frank and Justin and tried to kill Jason. My dad loved his kids more than her and she hated that and that is one of the reasons she killed his boys. Jealousy is a horrible emotion.

CP 593.

Parris erroneously contends that Armesto's Complaint does not contain allegations about these issues. Appellant's Br. at 9. In fact, the Complaint includes numerous allegations on these issues, including:

- "Defendant is the biological daughter of Leslie Bashore and Ed Loring. Ms. Bashore committed suicide in February, 1972, and Defendant, then age 7, was adopted by her maternal grandparents, Clark and Darline Tilton." CP 2, ¶ 8.
- "[Rosolino's] will expressly disinherits others not specifically named. Defendant was never named in the will." CP 3, ¶ 11.
- "Defendant, Parris Andrea Rosolino, fka Paris Andrea Tilton, fka Parris Andrea Loring is not the natural born daughter of Mr. Rosolino, and he never adopted her." *Id.*, ¶ 12.
- "On December 17, 2007, Defendant, then Parris Andrea Tilton, petitioned King County District Court for a name change. Appearing before Judge Mark Chow, Defendant requested to have her name changed to Rosolino, falsely claiming to have once been a Rosolino before the adoption in 1972." *Id.*, ¶ 13.
- "On July 11, 2007, Defendant contacted Plaintiff by telephone and attempted to force Plaintiff to sign contracts transferring Mr. Rosolino's royalty money to Defendant by telling Plaintiff,

‘You are going to be the laughing stock of the music world. Everyone knows you murdered Frank and the boys. If you don’t sign those contracts, you’re going to jail!’ CP 4, ¶ 17.

The Complaint also identifies multiple Internet posts where Parris falsely posed as Rosolino’s daughter while defaming Armesto and claiming a right to royalties from Rosolino’s estate. *See* CP 7-8, ¶¶ 21, 28, 32. These facts were deemed admitted upon default and, on that basis alone, are not subject to further debate. *See Kaye*, 158 Wn. App. at 326.

Moreover, every piece of competent evidence in the record confirms that Parris is not Rosolino’s biological or adopted daughter, including the following:

- Parris’s birth certificate shows that Parris was originally named Parris Andrea Loring and is the biological daughter of Charles Edward Loring. CP 1452.
- In 1972, while Rosolino was still alive, Parris was adopted by her grandmother, Darline Tilton. CP 1456-58. In the adoption proceedings, the King County Superior Court found that Parris, then known as Parris A. Loring, is the daughter of Edward Loring. CP 1460.
- A DNA test commissioned by Parris in 2004, which test compared Parris’s DNA with Rosolino’s brothers’ DNA, conclusively found that she is not biologically related to Rosolino. CP 988 (over 96% certain she is not biologically related); *see also* CP 929-30.

Parris’s claim that the trial court should have made these factual findings after adjudication on the merits is both ironic and hypocritical. *See* Appellant’s Br. at 12. Parris is the one who has refused, despite court

orders, to give evidence on these very points, and has steadfastly refused to answer any discovery about her paternity. *See* CP 1830-31. Further, although Parris points to a draft *sibling* DNA test she allegedly commissioned in 2008, *see* Appellant’s Br. at 18, that test was “inconclusive,” CP 138, and she refused to be subject to cross-examination on that issue, CP 555. Her other unauthenticated documents—one bank account record from 1971, CP 2241, and an elementary school document, CP 2236-40—do not speak to her biological relationship with Rosolino.

The record also confirms the trial court’s factual findings that Parris falsely testified under oath that she is Rosolino’s biological daughter. CP 2160-62. For example, she stated under oath in declarations, under oath at deposition and at a court hearing in this case that she is Rosolino’s biological daughter. *See, e.g.*, CP 941, 2106-07 (Parris: “I do want to say that Frank Rosolino is my biological father[.]” ... Court: “The DNA proves you are not his daughter.”). In short, the trial court properly entered factual findings and a Protective Order in connection with Parris’s paternity and fraudulent scheme to misappropriate funds from Rosolino’s estate.

Parris also argues that her name change is valid regardless of her biological or legal relationship with Rosolino based on her assertion

(without qualification) that “Washington citizens have the right to adopt and use any name they wish.” App. Br. at 11 (citing *Doe v. Dunning*, 87 Wn.2d 50, 53, 549 P.2d 1 (1976); Wash. Op. Att’y Gen. 1927-28, at 508). To the contrary, the Washington Supreme Court and Attorney General opinions relied on by Parris hold that “a person is free to adopt and use, absent a statute to the contrary, any name that he or she sees fit *so long as it is not done for any fraudulent purposes and does not infringe upon the rights of others.*” *Dunning*, 87 Wn.2d at 52 (emphasis added); *see also* Wash. Op. Att’y Gen. 1927-28, at 508 (“[I]t is fundamental law that any person may use any name he sees fit, *provided that the use thereof is not with the intent to defraud.*”) (emphasis added). In her brief, Parris excludes reference to this important caveat. Here, again, it is undisputed that Parris improperly adopted and used the name “Rosolino” to increase the sting of her false accusations against Armesto and in furtherance of her fraudulent scheme to misappropriate funds from Rosolino’s estate. *See, e.g.*, CP 1976-77; CP 2421 (defamatory posting describing herself as Rosolino’s biological daughter); CP 1057-58, 1060 (letter and email to record executives defaming Armesto and demanding royalties as Rosolino’s biological daughter). And in 2007, she used the district court to further this fraud by legally changing her last name to “Rosolino.” CP 2602-2605.

Finally, the trial court had jurisdiction to vacate the fraudulently obtained 2007 name change order and restore Parris's legal surname. Both superior courts and district courts have jurisdiction to change an individual's name. 15A Wash. Prac., Handbook Civil Procedure § 9.4 (2013-14 ed.) (both superior courts and district courts have jurisdiction over name changes); *see also Moore v. Perrot*, 2 Wash. 1, 4, 25 P. 906 (1891) (superior courts have "universal original jurisdiction," *i.e.*, any case for which jurisdiction has not been vested exclusively in another court by law). Additionally, a "trial court is vested with a broad discretionary power to shape and fashion injunctive relief to fit particular facts, circumstances, and equities of the case before it." *Rupert v. Gunter*, 31 Wn. App. 27, 30, 640 P.2d 36 (1982) (citing 43A C.J.S., Injunctions § 235, at 512 (1978)); *see also* 18 Wash. Prac., Real Estate § 16.8 (2d ed.) (2013) ("When acting as a court of equity, a court may be wonderfully flexible and even creative in fashioning remedies, to suit the circumstances of a particular case.").

The trial court determined that Parris's name change was the root of the problem, as it allowed continued defamation of Armesto and perpetuation of Parris's attempt to mislead others. CP 2164-65. Noting Parris's intentional violation of court orders and her continued efforts to defame Armesto, *see* CP 2160-63 (citing, *e.g.*, Jan. 20, 2013 letter from

Parris to author Stephen Cohen discussing her idea to write a book about Rosolino and referencing “that woman who killed her father”), the court also found it likely that Parris would continue to violate the court’s orders, including the Permanent Injunction, CP 2164. Thus, the court was well within its purview to restore Parris’s previous surname and prevent her from continue to perpetrate this fraud.<sup>3</sup>

**D. Damages awarded for defamation *per se* are supported by substantial evidence.**

The trial court’s damages award of \$500,000 was not an abuse of discretion. CP 2153. *See Cash Store*, 116 Wn. App. at 849 (damages award following entry of default reviewed for clear abuse of discretion).

In particular, the court found that Armesto suffered economic and general damages as a result of Parris’s conduct, including the loss of over \$100,000 expended in recording four new CDs that could not be released due to the countless defamatory statements spread by Parris on the Internet, significant damage to Armesto’s reputation and extensive emotional distress and related physical manifestations thereof.

CP 1977-78.

Parris argues that Armesto failed to submit sufficient evidence to support the damages award. Appellant’s Br. at 14-16. But a trial court

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<sup>3</sup> Of course, Parris is free to petition to change her name again, provided she does not adopt a name for fraudulent purposes as she did here. *See* RCW 4.24.130.

has considerable discretion in determining the extent of proof a plaintiff must put forward to support a damages award following a default. *See* CR 55(b)(2) (“If, in order to enable the court to enter [a default] judgment..., it is necessary to take an account or to determine the amount of damages..., the court *may* conduct such hearings *as are deemed necessary*”) (emphases added).<sup>4</sup> The trial court here reasonably found that Armesto “submitted sufficient evidence to support her claim for damages,” including her own declaration, made under penalty of perjury, CP 1626-28, and the corroborating declaration of Armesto’s primary care physician, CP 2042-43. *See Miller v. Patterson*, 45 Wn. App. 450, 460-61, 725 P.2d 1016 (1986) (employee’s affidavit stating his belief about his earnings was sufficient to support damages award where a default judgment was entered after the employer repeatedly failed to comply with discovery orders).

Parris mischaracterizes the law when she argues that a plaintiff in a defamation case can “recover damages only if he or she proves harm factually caused by the defendant’s wrongful conduct.” Appellant’s Br. at 15 (quoting *Schmalenberg v. Tacoma News, Inc.*, 87 Wn. App. 579, 602, 943 P.2d 350 (1997)). As the *Schmalenberg* court acknowledged, the fact-finder may presume that defamatory statements tending to expose the

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<sup>4</sup> In accordance with CR 55(b)(2), and as described *supra*, the court made findings of fact and conclusions of law in support of the damages award. CP 1975-1980.

plaintiff to hatred, contempt or ridicule or imputing a serious crime caused, at a minimum, general damages. *Schmalenberg*, 87 Wn. App. at 601 (“a rational trier could find, based on the content of the statement and the degree of its dissemination, that the defendant’s wrongful conduct—again, the falsity of the defendant’s statement—was a factual cause of at least general damages to the plaintiff.”).

Indeed, even in the absence of proof of actual damages, a court has broad discretion to award “substantial” damages for defamation *per se*, which includes the imputation of a criminal offense involving moral turpitude. *Maison de France, Ltd. v. Mais Oui!, Inc.*, 126 Wn. App. 34, 54, 108 P.3d 787 (2005) (citing *Caruso v. Local Union No. 690 of Int’l Brotherhood of Teamsters*, 100 Wn.2d 343, 353, 670 P.2d 240 (1983)). In this case, Parris’s widespread publication of false criminal accusations of murder, child abuse, conspiracy, interference with a police investigation, embezzlement and theft, are defamation *per se*, which means that the trial court could also presume substantial *per se* damages to Armesto. For all of these reasons, the court’s award of \$500,000 was not a clear abuse of discretion. *See Cash Store*, 116 Wn. App. at 849.

**E. The trial court's award of attorney fees and costs was not an abuse of discretion.**

The trial court appropriately awarded Armesto attorney fees and costs as a result of Parris's willful violations of CR 11. CP 2174-76. A *pro se* plaintiff is equally subject to CR 11. *See Harrington*, 67 Wn. App. at 910. The decision to award attorney fees as a sanction for a frivolous action is left to the discretion of the trial court, and the court's decision should not be disturbed absent a showing of abuse of discretion. *Id.* (citing *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82 (1989)).

Parris advances the technical argument that CR 11 sanctions were improper because her misconduct did not involve "signing a pleading." Appellant's Br. at 18. The rule's reach is not so narrow. 3 Wash. Prac., Rules Practice CR 11 (7th ed.)(2013) ("The rule imposes upon attorneys and *pro se* litigants the responsibility to insure that assertions made and positions taken in litigation are done so in good faith and not for an improper purpose. It is intended to deter baseless filings and to curb abuses of the judicial system.")

As the trial court found, Parris filed countless fraudulent and frivolous motions, briefs and declarations over the course of this case causing Armesto to incur substantial attorney fees and costs in attempting

to clear her name and reputation and in defending herself against Parris's fraudulent counterclaim. CP 2175. Parris's baseless positions forced the parties to engage in extensive motion practice, including motions for summary judgment and discovery motions. See *In re Recall of Lindquist*, 172 Wn.2d 120, 136, 258 P.3d 9 (2011) (noting availability of CR 11 sanctions arising from pleadings, motions and memoranda); see also *Bryant v. Joseph Tree, Inc.*, 119 Wn. 2d 210, 219, 829 P.2d 1099 (1992) (CR 11 is designed to prevent "delaying tactics, procedural harassment, and mounting legal costs.")<sup>5</sup>

Parris also claims that she was not given prompt notice and an opportunity to mitigate her violations as required by CR 11. Appellant's Br. at 17. This contention cannot be squared with the record below. Armesto first moved for CR 11 sanctions in July 2011, which sanctions were granted on August 22, 2011. CP 28-30 (awarding \$500 in attorney fees and \$500 in costs under CR 11 because Parris's last-minute filing "caus[ed] delay and needlessly increase[ed] the cost of litigation for Armesto"). Indeed, Armesto was forced repeatedly to seek sanctions based on Parris's false and misleading motions, papers and declarations, in

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<sup>5</sup> Parris also does not deny that the same sanctions would have been available under CR 37, RCW 4.84.185 (as to Parris's counterclaim), and the court's inherent powers. *In re Recall of Pearsall-Stipek*, 136 Wn. 2d 255, 266-67, 961 P.2d 343, 349 (1998) ("Both CR 11 and our inherent equitable powers authorize the award of attorney fees in cases of bad faith.").

addition to her improper discovery tactics, and the court imposed increasingly severe sanctions on Parris over the course of the case and warned that non-compliance would result in further sanctions.

CR 11 does not have a formal safe harbor provision like the federal rule. *Compare* Fed. R. Civ. P. 11 (c)(2) *with* CR 11. In Washington, “notice in general that sanctions are contemplated is sufficient for the later imposition of CR 11 sanctions.” *Biggs v. Vail*, 124 Wn.2d 193, 199, 876 P.2d 448 (1994). Parris could not have been surprised that her perpetuation of false and unsupportable positions in court ultimately resulted in an award of attorney’s fees. *See Delany*, 84 Wn. App. at 504 (trial court awarded all plaintiff’s attorney fees where defendant stonewalled discovery “from beginning to end”).

Parris also contends that CR 11 sanctions are unwarranted because her conduct in this case has been in good faith. Appellant’s Br. at 18. Yet, Parris filed numerous false and misleading motions and declarations, was held in contempt for violating a TRO and willfully violated several discovery orders. *See supra* at pp. 14 17. Further, her attorney’s conjecture that Parris’s pursuit of royalties from Rosolino’s estate as his biological daughter is a “belief” held by Parris “in good faith” based on the inconclusive results of a draft DNA test, Appellant’s Br. at 18, is untenable in light of the trial court’s uncontested factual findings. This

theory also is unsupported by anything in the record and belied by Parris's absolute refusal to answer any questions about that test or her paternity in general. *See In re Recall of Lindquist*, 172 Wn.2d at 137-38 (trial court properly inferred party's petition was filed in bad faith based on refusal to comply with subpoena in civil case).

Parris also challenges the adequacy of Armesto's submissions demonstrating her attorney fees and costs. Appellant's Br. at 17. Armesto's counsel submitted a declaration identifying the rates and hours for each timekeeper in the case and justifying the bases for those rates, CP 2071-74, which is the standard procedure for a requested lodestar recovery. *See Chuong Van Pham v. City of Seattle, Seattle City Light*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007). At any rate, Parris did not challenge the adequacy of these submissions below, and cannot do so now. *Draper Mach. Works, Inc. v. Hagberg*, 34 Wn. App. 483, 488, 663 P.2d 141 (1983) (amount of attorney fees award cannot be raised for first time on appeal).<sup>6</sup>

**F. In the alternative, a partial remand (if any) should be limited.**

For the reasons detailed above, each of the trial court's decisions in this case were within its broad discretion and justified by the record. Even

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<sup>6</sup> To the extent this Court reaches this issue and determines that Armesto's submissions are inadequate, at most, this Court should remand to permit Armesto to offer additional evidence.

if this Court were inclined to partially reverse, however, the remedy should at most be a limited remand. If, for example, this Court determines, that the default judgment was warranted but part of the relief granted to Armesto was a clear abuse of discretion, any remand should be limited to legal issues and, if necessary, the amount of damages and attorney fees to be awarded. In particular, the Court should not permit any further fact finding by the trial court on the substantive liability issues in this case, including the falsity of Parris's defamatory statements, her paternity and her claimed right to funds from Rosolino's estate. These findings are based on allegations in Armesto's Complaint, which were deemed true upon default and which Parris failed to challenge on appeal. *See infra.*

More to the point, a factual hearing would be impracticable given Parris's steadfast refusal to answer any questions or produce any documents regarding her paternity and fraudulent scheme. Accordingly, remand (if any) should be limited in scope.

**G. The Court should award Armesto attorney fees and expenses on appeal.**

Armesto requests attorney fees incurred in defending this appeal under RAP 18.9(a). "In general, where a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on

appeal.”” *Gray v. Bourgette Const., LLC*, 160 Wn. App. 334, 345, 249 P.3d 644 (2011) (quoting *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, 423, 161 P.3d 406 (2007)); *see also Johnson v. Jones*, 91 Wn. App. 127, 137, 955 P.2d 826 (1998) (“An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised.”) (citation omitted). Here, as below, Parris continues to rely on the same fraudulent and baseless positions. Parris does not even challenge any of the trial court’s key factual findings, including that she made false statements about Armesto on the Internet and in other writings and orally, stating that Armesto is a murderer, child molester and thief and that Parris falsely posed as Rosolino’s daughter and changed her last name to “Rosolino” to add sting and credence to her false statements and to further her fraudulent scheme to embezzle from Rosolino’s estate. CP 1976. Particularly in light of these concessions, reasonable minds could not differ that the trial court properly entered default judgment and awarded relief to Armesto following Parris’s repeated and willful violation of court orders. Accordingly, this Court should award Armesto the additional attorney fees she was forced to incur in defending this appeal.

## V. CONCLUSION

For more than a decade, Parris has engaged in a malicious campaign to paint an entirely innocent victim, Diane Armesto, as a murderer, child abuser and thief. Parris has done so in furtherance of a financial scheme to defraud the public and misappropriate funds from the Rosolino estate, of which Armesto is a named beneficiary, by falsely posing as Rosolino's biological daughter. After Parris stonewalled proper discovery, repeatedly and willfully refused to comply with court orders and ignored a series of court admonitions, the trial court had no choice but to dismiss Parris's defenses and enter a default judgment in favor of Armesto. The court then properly exercised its broad discretion in crafting a Permanent Injunction designed to assure Parris did not continue engaging in the same conduct. On appeal, Parris attempts to paint herself as the victim. But this is merely another fiction fabricated by Parris without any basis in the record. This Court should affirm the trial court in full and award Armesto attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of December, 2013.

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PROOF OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of December, 2013, I emailed and mailed a true and correct copy of the foregoing document to counsel of record at the following addresses, postage thereon being fully prepaid:

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