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COURT OF APPEALS, DIVISION 11
OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
HONORABLE JAY B. ROOF

APPEAL FROM THE SUPERIOR COURT
FOR KITSAP COUNTY
HONORABLE CRADDOCK VERSER

COLLEEN MULVIHILL EDWARDS, Appellant

DENNIS MICHAEL EDWARDS, Respondant
JOHN DOUGLAS MORGAN, Respondant

APPELLANTT'S REPLY BRIEF

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TABLE OF CONTENTS

REPLY TO RESPONDATS STATEMENT OF THE CASE UNDISPTUED FACTS	3
REPLY TO RESPONDATN'S ARGUMENT IN CASE 99 3 00758 7	6
REPLY TO RESPONDANT'S ARGUMENT IN CASE 05 2 02226 6	14
CNNCLUSION	22

**REPLY TO RESPONDANT STATEMENT OF THE CASE
UNDISPUTED FACTS**

1. Respondant fails to identify the meritious issues of the lack of use of mandatory forms in the first unpublished opinion 300345-11. CP 265

2. The personal injury case 05 2 02226 6 is not directly related to the enforcement of the dissolution of marriage decree. It is a personal injury case related to the actions of the defendants. CP 702, 708

The appeals taken in orders of July 15, 2005, October 7, 2005, November 18, 2005 and January 20, 2006 relate directly to the orders being appealed. CP 444. 451, 453, 458, 463. 464, 468

The trial court did not enforce the terms of the dissolution decree and in fact refused to do so while the case was at appeal during the period of June 2003 to December 2004. CP 196, 197, 211, 214, 346, 362

The order of June 13, 2003 was never enforced by the trial court. CP 444. 451. 453. 456. 450.

The divorce decree states that any property shall be transferred with Colleen Edwards best interests. The order of June 13, 2003 reflects the trial court determination of Colleen Edwards best interests. CP 19

The trial court in its July 15, 2005 and October 7, 2005 enforced the combination of the dissolution decree, the June 27, 2003 order and its own appeal order of July 15, 2005 while omitting the June 13, 2003 order completely. CP 116, 444-468,

428, 538, 543-545. RP 7/15/05, RP 10/7/2005.

3. The only case that was stated to be "frivolous is the contempt hearing of June 27, 2003. RP 6/26/93.

The names of the defendans in the personal injury complant are as follows: Defednat #1 Dennis Michael Edwards who is the ex spouse of Colleen Edwards. Defendant #2 John Douglas Morgan who is the attorney representing Dennnis Edwards in case no 99 3 00758 7. CP 702, 708

Defendant #3, 4, 5, 6 are Guardianship Services of Seattle, former trustee of the Colleen M. Edwards Special Needs Trust, Defendats Mr. tom O'biren, Mr. Edwards Gardner and Ms. Vedah Halbrg are all officers, agents or employees of Gurdianship Services of Seattle. These defeandats are not included in this consolidated appeal number 337258. CP 702, 708.

Mr. Ken LeMay and the law firm of Liebert, Morgan & Fleshbeim are not defendants in either case 99 3 00758 7 or 05 2 02226 6. The October 7, 2003 order appointing the special master, Mr. Ken LeMay is at appeal, but Mr. LeMay is not a named defendant in this trial court complaint or in this appeal. CP 702, 708.

4. The defeands Dennis Edwards and John Morgan were dismissed and CR 11 sanctions awarded in case no 05 2 02226 6

The liz pendants was dismissed twice in case no 05 2 02226 6 but was never dismissed in case 99 3 00758 7. Terms were awarded to defeandatns Dennis Edwards and John Morgan in case no 05 2 02226 6 only. CP 712, 713, RP 10/7/05

5. The Superior Court of Kitsap County 05 2 02985 6 and

appellate case ~~84363~~ 1 is NOT the subject of this Appellant's
Opening or Reply Brief.

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REPLY TO RESPONDANTS ARGUMENT
CASE NO 99 3 00758 7

The respondent cites an unpublished opinion in the reply brief and his table of authorities. Although the opinion does.

1 Wash. Prac., Methods of Practice 15.24 (4th ed.)
.... 15.24. Post decision procedure and practice--Motion for publication (Court of Appeals)
A panel of the Court of Appeals renders its decision in a written opinion, usually within six months of the oral argument. A statute requires publication of all opinions with precedential value.[FN1] Unpublished opinions have no precedential value,[FN2] and should not be cited as authority in any court.[FN3]

...[FN3] RAP 10.4(h). Citation of unpublished opinions may be sanctionable. See State v. Creekmore, 55 Wn.App. 852, 868 n. 2, 783 P.2d 1068, 1077 n. 2 (1989) ("The reference to unpublished opinions is a clear violation of the court rule and deserves sanctions"). See RAP 1.2(b) ("court will ordinarily impose sanctions" for rule violations). A 1998 amendment to RAP 10.4(h) defines unpublished opinions of the Court of Appeals as those opinions not published in the Washington Appellate Reports. 1 WAPRAC 15.24

The law of the case argument. The law of the case argument focuses on the fact that the case has been appealed and issues determined, which is accurate in the fact that appeals have been taken and the 30043-5-11 is an unpublished opinion. However the respondent fails to observe that the dissolution decree itself and the order of June 13, 2006 fall into the argument of the law of the case doctrine. The respondent fails to understand that the appellate court has the ability to deal with each order being appealed. When the first order of July 15, 2005 was appealed in August 2005 the case was again at appeal.

1 Wash. Prac., Methods of Practice 7.13B (4th ed.)
The doctrine of res judicata estops a party from relitigating an issue in a subsequent action when the party previously litigated or should have litigated the issue to finality.[FN1] For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action

in: (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.[FN2] The policy underlying the doctrine is that a claimant should be entitled to one, but not more than one, fair adjudication of an issue.[FN3]

In deciding whether two causes of action are the same, the courts consider four factors: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.[FN4]

The doctrine of collateral estoppel is invoked as an affirmative defense to preclude re-litigation of specific issues actually litigated and determined by a court.[FN5] To decide whether a party is estopped from relitigating an issue decided in a prior forum, the court must decide that: (1) the issue decided in the prior adjudication identical with the one presented in the action in question; (2) there was a final judgment on the merits; (3) the party against whom the plea was a party or in privity with a party to the prior adjudication; and (4) the application of the doctrine will not work an injustice on the party against whom the doctrine is to be applied.[FN6] The doctrine applies to decisions by foreign courts as well as Washington.[FN7]

The party invoking either defense has the burden of proving the facts needed to sustain it.[FN8]

[FN1] Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898, 900 (1995) (citing Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 WASH.L.REV. 805 (1985)). The doctrine also applies to persons in privity with parties to an action. Privity is established in cases where a person is in actual control of the litigation, or substantially participates in it even though not in actual control. Loveridge v. Fred Meyer, Inc. 125 Wn.2d 759, 764, 887 P.2d 898, 900 (1995). The doctrine applies in a quasi-judicial administrative context as well to judicial proceedings. Davidson v. Kitsap County, 86 Wn.App. 673, 937 P.2d 1309 (1997). Washington courts have used res judicata to mean both claim preclusion and issue preclusion. Kelly-Hansen v. Kelly-Hansen, 87 Wn.App. 320, 328, 941 P.2d 1108, 1112 (1997). A quasi-judicial determination of an administrative agency is final and binding to the same extent as the judgment of a court. Kelso Civil Service Commission v. City of Kelso, 87 Wn.App. 907, 943 P.2d 397 (1997).

Whether a matter "should have been litigated" involves

considering a variety of factors, including: whether the present and prior proceedings arise out of the same facts, whether they involve substantially the same evidence, and whether rights or interests established in the first proceeding would be destroyed or impaired by completing the second proceeding. Kelly-Hansen v. Kelly-Hansen, 87 Wn.App. 320, 330, 941 P.2d 1108, 1113 (1997) (see also the cases cited in Kelly-Hansen for various applications of the factors).

[FN2] Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898, 900 (1995).

[FN3] McDaniels v. Carlson, 108 Wn.2d 299, 303, 738 P.2d 254, 257 (1987).

[FN4] Hayes v. Seattle, 131 Wn.2d 706, 713, 934 P.2d 1179, 1182 (1997). Subject matters are not identical if there is a substantial change in the relevant circumstances or conditions. Davidson v. Kitsap County, 86 Wn.App. 673, 937 P.2d 1309 (1997); Alishio v. Department of Social and Health Services, State of Washington, 122 Wn.App. 1, 91 P.3d 893 (2004).

[FN5] Northwest Sea Farms v. United States Army Corps of Engineers, 931 F.Supp. 1515 (W.D.Wash.1996). The doctrine applies to adjudications by arbitrators and administrative agencies as well as courts. See Stevens v. Centralia, 86 Wn.App. 145, 155, 936 P.2d 1141, 1144 (1997). The court employs three criteria for deciding whether to apply collateral estoppel to administrative findings: (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations. Reninger v. State Department of Corrections, 134 Wn.2d 437, 450, 951 P.2d 782, 789 (1998) (failure to adhere to evidence rules and disparity of relief held insufficient to overcome collateral estoppel of agency determination).

[FN6] Larsen v. Farmers Ins. Co., 80 Wn.App. 259, 262-63, 909 P.2d 935, 937 (1996). With respect to the finality requirement, a judgment of the trial court is presumptively correct and collateral estoppel applies even if an appeal is pending. City of Des Moines v. Personal Property Identified as \$81,231, 87 Wn.App. 689, 943 P.2d 669 (1997).

Injustice has been defined as whether an individual in the prior suit was afforded a full and fair hearing. Lee v. Ferryman, 88 Wn.App. 613, 625, 945 P.2d 1159, 1166 (1997). Application of the doctrine in enforcing a federal court finding does not work an injustice on a party by depriving the party of its state constitutional right to have a jury determine an issue. Nielson By and Through Nielson v. Spanaway General Medical Clinic, 135 Wn.2d 255, 956 P.2d 312 (1998).

A court will not apply the doctrine if, because of ambiguity or indefiniteness, it is unclear whether the issue was previously determined. Ludeman v. State, Department of Health, 89 Wn.App. 751, 761, 951 P.2d 266, 271 (1997).

Collateral estoppel is not a technical defense to prevent a

fair and full hearing on the merits of the issues to be tried, but rather, courts focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue. Hadley v. Maxwell, 144 Wn.2d 306, 27 P.3d 600 (2001). [FN7] See In re Estate of Tolson, 89 Wn.App. 21, 947 P.2d 1242 (1997). See also Section 11.9.

[FN8] McDaniels v. Carlson, 108 Wn.2d 299, 738 P.2d 254 (1987); Nielson By and Through Nielson v. Spanaway General Medical Clinic, 85 Wn.App. 249, 931 P.2d 931 (1997). Nielson By and Through Nielson v. Spanaway General Medical Clinic was affirmed at 135 Wn.2d 255, 956 P.2d 312 (1998).
1 WAPRAC 7.13B

In the respondents argument the rights of Colleen Edwards and the Collleen M. Edwards Special Needs Trust and any primary lien holders suffer the most injustice by the orders of July 15, 2005 and October 7, 2005 as they strip away the liens and apply CR 11 sanctions to an indigent party. The effect is to reverse the original decree the division of property going to Colleen Edwards and strips her of property and assests and places her and her special needs trust without benefit of what the trial court ruled first as her proeprty in the original dissoulutionment decree. The effect is a double dipping into the assetts of both Colleen Edwards and the Colleen M. Edwards Special Needs Trust.

The trial court clearly stated it was not religating this issue but in effect did so when it failed to obey its own orders of June 13, 2005. RP 7/15/05, RP 10/7/05

The order clealy errored in not following its own order of June 13, 2003 which is in the trial court found to be in the best interests of Colleen Edwards. The sale of the property if the money was placed in Colleen Edwards hands would immeidately disqualify her from medical care and support benefit (SSI) and would cause injustice. So it is not Dennis Edwards who suffers

any hardship but Colleen Edwards from the orders of July 15 and October 7, 2005 orders and they are in direct conflict with the decree and the June 13, 2005. .

The principles of the law of the case are as follows:

14A Wash. Prac., Civil Procedure 35.55

The term "law of the case" is used in various circumstances. Second, it is used to indicate the binding effect of determinations made by the appellate court on further proceedings in the trial court on remand.[FN2]

And third, the term is employed to express the principle that an appellate court will generally not make a redetermination of the rules of law which it has announced in a prior determination in the same case or which were necessarily implicit in such prior determination.[FN3]

Other doctrines distinguished. All of these situations can probably be covered by the generalization that, when a court once announces a principle of law to be applied to the case under consideration, it will generally apply that principle to the same issue in later proceedings in the same case, and if it is an inferior court, it will be required to follow the determination made by its reviewing court. The doctrine of stare decisis is applicable as between two or more cases, as is, generally, the doctrine of res judicata. On the other hand, the operation of the "law of the case," properly considered, is typically confined to the successive proceedings had within the framework of a single case.[FN4]

Proceedings following remand. Determinations made by the appellate court are binding on the trial court in further proceedings on remand. If the trial court on remand fails to conform to the prior determination of the appellate court, it commits error that is subject to correction by another appeal.[FN5] However, if particular issue was not raised on appeal, and the case is remanded for further proceedings, the trial court may exercise independent judgment as to that issue upon remand, and an appellate court will review the resulting decision in a later appeal.[FN6]

The courts, however, have declined to stretch the rule further to allow review, in a later appeal, of a trial court decision that was not raised in the first appeal and that was not reconsidered by the trial court upon remand.[FN7]

Second appeal. As applied at the appellate level, the law of the case means that, after a court has enunciated the principles of law applicable to the case, it will not in subsequent proceedings in the same case re-examine matters passed upon, or necessarily implicit in matters passed

upon.[FN8] However, the extent to which the rule will be enforced is discretionary with the appellate court.[FN9] The Rules of Appellate Procedure expressly state that an appellate court may review the propriety of an earlier decision in the same case and decide later appeal on the basis of the court's opinion on the law at time of the later appeal.[FN10] Cases applying the rule can be found in another volume of Washington Practice.[FN11]

Exceptions to the law of the case doctrine have been recognized. If, on a retrial, there is a substantial change in the facts, the doctrine will not apply.[FN12] So, too, if there is an intervening change of law between the two appeals which negatives the decision in the first appeal, the doctrine is not applicable.[FN13]

Proceedings following remand

Bunn v. Bates, 36 Wn.2d 100, 216 P.2d 741 (1950).

State ex rel. McBee v. Superior Court for Walla Walla County, 162 Wash. 695, 299 P. 383 (1931).

Determination on prior appeal that lessee in order to exercise option to purchase real property must reimburse purchasers of property in federal tax lien settlement for money advanced by purchasers in purchasing and maintaining property and directing that purchasers be debited with rental received and all sums paid them by intervenors was law of the case and trial judge properly refused to require purchasers to offset cost of vacant lot in amount roughly one-fourth of value of total developed property. Coy v. Raabe, 77 Wn.2d 322, 462 P.2d 214 (1969).

Since prior opinion of Court of Appeals remanding conversion action, which resulted in judgment requiring one defendant to issue plaintiff a certificate for 12 shares of its common stock, to provide for a recovery of a money judgment and prior opinion did not discuss or decide propriety of holding that another defendant had converted plaintiff's property, doctrine of law of the case did not bar such defendant, on appeal from judgment entered on remand, from questioning trial court's conclusion that such defendant was one of the converters. Riley v. Sturdevant, 12 Wn.App. 808, 532 P.2d 640 (1975).

{FN3}

Redetermination

Columbia Steel Co. v. State, 34 Wn.2d 700, 209 P.2d 482 (1949), certiorari denied 339 U.S. 903, 70 S.Ct. 516, 94 L.Ed. 1332 (1950).

[FN4]

A single case

Fidelity & Deposit Co. of Maryland v. Port of Seattle, 106 F.2d 777 (9th Cir., 1939), certiorari denied 309 U.S. 661, 60 S.Ct. 515, 84 L.Ed. 1009 (1940).

[FN5]

Another appeal

State ex rel. McBee v. Superior Court for Walla Walla County, 162 Wash. 695, 299 P. 383 (1931) (probably overruling State ex rel. Waterman v. Superior Court In and For Spokane County, 127 Wash. 37, 220 P. 5 (1923), which held a deviant judgment void).

Columbia Steel Co. v. State, 34 Wn.2d 700, 209 P.2d 482 (1949), certiorari denied 339 U.S. 903, 70 S.Ct. 516, 94 L.Ed. 1332 (1950).

Hamilton v. Cadwell, 195 Wash. 683, 81 P.2d 815 (1938); Morehouse v. Everett, 141 Wash. 399, 252 P. 157 (1926), 58 A.L.R. 1482.

Moore v. National Accident Society, 49 Wash. 312, 95 P. 268 (1908).

A decision by an appellate court as to every question determined on appeal, and as to every question that might have been determined on appeal, becomes the law of the case, and supersedes the trial court's findings. Bailie Communications, Ltd. v. Trend Business Systems, Inc., 61 Wn.App. 151, 810 P.2d 12 (1991), opinion amended 814 P.2d 699 (1991), (trial court's finding of fact that a party failed to prove any amount of damages was superseded by appellate court decision in prior appeal).

A prior appellate decision will not be reconsidered unless it is clearly erroneous. Folsom v. County of Spokane, 111 Wn.2d 256, 759 P.2d 1196 (1988) (prior appellate decision was not clearly erroneous). To determine whether the prior decision was not clearly erroneous, it may be necessary for the court to reexamine the area of law involved. It should also be noted that the Folsom court did not hesitate to clarify perceived ambiguity in passages in the prior opinion.

In Fluke Capital & Management Services Co. v. Richmond, 106 Wn.2d 614, 724 P.2d 356 (1986), the court said the doctrine applies only to issues actually decided. In the context of the present subject, the statement may be unclear as to whether it means explicitly decided only, or includes implicit decisions. The leading case, Greene v. Rothschild, 68 Wn.2d 1, 402 P.2d 356 (1965), includes implicit decisions.

Thus the judgement becomes the law of the case. Greene v. Rothschild, 68 Wn.2d 1, 414 P.2d 1013 (1966); noted 2 Gonzaga L.Rev. 105 (1967) (landmark case, holding that the law of case doctrine is discretionary, overruling cases to contrary).

Change in facts

Schofield v. Northern P. Ry. Co., 13 Wn.2d 18, 123 P.2d 755 (1942).

Thus the Respondant's Edwards and Morgaan's analysis of the law of the case fails because if correct it actually strengthens the appellant's position. If the law of the case is the dissolutionment of marraige decree in its entirety and the June 13, 2003 trial and appellate unpublished opinion of 300345-11 then the proprty should have gone directly into the Colleem Edwards Special Needs Trust through its trustee. For to place the funds into Colleen Edwards (disburseent to the parites) would have disqualified Ms. Edwards immediatly from medical care and support (SSI). This would be a hardship that the trial court originally placed in its decree and the June 13, 2003 order. should have gone DIRECTLY into the Colleen M. Edwards Special Needs Trust. However this could did not amd dod not happen as I have stated before.

**REPLY TO RESPONANTS ARGUMENT
IN CASE 05 2 0222 6**

The law of the case doctrine does not apply to the 03 2 02226 6 case because this is a separate personal injury case dealing with the harm done to Colleen Edwards, her business and her past losses, present losses and future losses both pain and suffering, as well as general damage.

Respondant's argument states the law of the case follows if the trial court decision is clearly erroneous and not deciding it will result in a manifest of injustice. The trial court in 05 2 02226 6 did not allow the appellant a chance to prove her evidence of injustice, the trial court dismissed the defendant's in the face of the evidence of the need for long term health care provided by Department of Social and Health Service, (evaluation and need for long term care) and in the evidence of the Kitsap County Building Code Enforcement and the defendant's inaction of financial responsibility in the Edwards vs. Le Duc personal injury (motor vehicle) case, of which the Appellant had a jury verdict of \$100,000, but her indigent and without counsel status create great hardship in reaching subrogation of medical creditors and jury verdict. Mr. Dennis Edwards is a party to that action. The facts are here that the property been sold had severe

problems, that the appellant had long term medical needs and that the personal injury case was not finished to judgement and the defendant was a party to that litigation. At the same the actions of both Dennis Edwards and his attorney in the divorce case forced Colleen Edwards into the financial state she is now and continue that state into the future because both trial court did not follow the June 13, 2006 order or the intent of that order.

Respondant's response that the case must be overuled as on page 4 of his response is effectively achieved when the trial court made its opinion of January 2003 and followed with its June 13, 2003 ruling which was not objected to by the respondant as being unfair to the respondant. The only party who objected to the ruling was Colleen Edwards. So the issues were raised in both the trial and appelltae court prior to appeal and during appeal.

The respondant fails in his analysis of home Savings and loan as the terms "receiver" and "special master" are two different concepts and responsibilities.

"special master: n; appointed by the court to carry out an order of the court, such as selling property or mediating child custody cases. A "special" master differs from a "master" in that he/she takes positive action rather than just investigating and reporting to the judge.

"....The role of the special master (who is frequently, but not necessarily, an attorney) is to supervise those falling under the order of the court to make sure that the court order is being followed, and to report on the activities of the entity being supervised in a timely matter to the judge or the judge's designated representatives. Special masters have been controversial in some cases, and are often cited by conservatives in the United States as an example of judicial supremacy over ~~the~~ other branches of government. For

example, at times they have ordered the expenditure of funds over and above the amount appropriated by a legislative body for the remediation of the situation being examined. To this point, their powers have generally be found to be valid and their remedies upheld by United States courts.

"receiver n. 1) a neutral person (often a professional trustee) appointed by a judge to take charge of the property and business of one of the parties to a lawsuit and receive his/her rents and profits while the right to the moneys has not been finally decided. Appointment of a receiver must be requested by petition of the other party to the suit, and will only be authorized if there is a strong showing that the moneys would not be available when a decision is made. The funds are held for the prevailing party. 2) a person appointed to receive rents and profits coming to a debtor either while a bankruptcy is being processed or while an agreement is being worked out to pay creditors, so that funds will be paid for debts and possibly available for distribution to creditors.

Our federal courts have something to say about special masters:

11 F.R.D. 94, 87 U.S.P.Q. 398
United States District Court W. D. Pennsylvania.FRAVER
v.STUDEBAKER CORP.
Civ. A. 7828.
Nov. 20, 1950.

Patent infringement action by Ivan N. Fraver against the Studebaker Corporation. The defendant filed a motion for reference to a master. The District Court, Rabe F. Marsh, Jr., J., held that the motion would be refused where the appointment would cause financial hardship to the plaintiff. Motion denied.

Where the issues are complicated and complex, district court has the power in its discretion to appoint a special master, but such power should only be exercised in exceptional circumstances. Fed.Rules Civ.Proc. rule 53(b), 28 U.S.C.A.

The jury must determine all issues in patent infringement action, including infringement and damages, in a single indivisible action.

Defendant's motion for appointment of master in patent infringement action would be refused where appointment would cause financial hardship to plaintiff. Fed.Rules Civ.Proc. rule

53(b), 28 U.S.C.A.

....[2] Plaintiff in his brief admitted that a Master should be appointed to determine the damages. However, he makes this admission believing that the jury trial for which he asks can be separated into two parts,--in the first, the jury determines validity and infringement; in the second, assuming that the jury finds for the plaintiff, the Master determines the damages. We are of the opinion that the jury must determine all issues including damages by its verdict, 'in a single indivisible action'. Sinclair Refining Co. v. Jenkins Petroleum Process Co., 289 U.S. 689, 53 S.Ct. 736, 77 L.Ed. 1449; Knight-Morley Corporation et al. v. Electroline Mfg. Co. et al., D.C., 10 F.R.D. 400, 402.

[3] Plaintiff also claims that appointment of a Master will cause financial hardship to him. This, of course, would be true and would be especially so if plaintiff loses. This consideration moves us to refuse the appointment. Litigants do not contemplate these extraordinary and unusually heavy expenses. They should not be inflicted except in cases of most compelling necessity. Perhaps this is an example of such a case as defendant contends, and we realize predictions as to expenses in a lawsuit are in the realm of speculation; notwithstanding, it is our determination not to run the risk of erroneously causing extraordinary expense on this plaintiff, and therefore an order will be entered refusing the petition to appoint a Master.

W.D.Pa., 1950

FRAVER v. STUDEBAKER CORP.

11 F.R.D. 94, 87 U.S.P.Q. 398

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The respondent's analysis of the case being non-meritous on page 5 is erroneous. The appellate court found the appellant case to be of merit.

The respondents reply that the Colleen Edwards found no authority for a reversal of the June 13, 2005 may be an error of logic as Colleen Edwards clearly pointed out the need for the special needs trust and at the same time pointed out the difficulty in maintaining her rights as a property owner in her appellate brief and again in both trial courts. The issue is complex as her medical and educational needs are known to exist

and are both of long term standing and life long duration. The legal basis for argument is there, legal authorities are present as well in my appellant brief.

The respondent states that there are not verbatim transcripts for this appeal. This is a factual error, the transcripts are found in both the clerk's papers and the verbatim transcripts and this appeal is perfected. The respondent's argument that a case cannot proceed without transcripts as many cases have done so including the appeal of the June 13, 2003 order and appeal 300345-11. The respondent's argument fails here as well.

The lis pendens is attached to the personal injury case and the dissolution of marriage case. It is there to protect a person or firm purchasing a property to know it is in dispute. The respondent does not discuss the fact that the lis pendens is still in effect on the dissolution case, nor did he or his firm go back to the trial court in case no 99 3 00758 7 on that issue.

247 Ky. 59, 56 S.W.2d 708
Court of Appeals of Kentucky.
RICHARDSON'S GUARDIAN v. FRAZIER et al.

Appeal from Circuit Court, Woodford County.
Exceptions by Phyllis Maurine Richardson's guardian to the report of the Harris-Seller Banking Company, Special Commissioner, and petition by the guardian, opposed by Lillian B. Frazier and others. From an adverse judgment, the guardian appeals.
Affirmed.

In exercise of duties of his office, master commissioner is limited to power conferred on him by court's orders, and becomes personally liable where he acts without the limits.

Though acting in good faith, master commissioner is liable if he pays money to wrong person, but is protected where he

pays out funds in accordance with court's orders.

Money in hands of master commissioner is in custody of court, and is subject to its orders.

Special commissioner held not liable for loss resulting from sale of Liberty bonds in its hands and reinvestment of proceeds in industrial securities, made under court's order procured on its motion, but without knowledge of parties whose interests were affected thereby.

...Phylliss Maurine Richardson's guardian is appealing from so much of the judgment and orders of the court as refused to grant the relief sought by his exceptions to the report of the special commissioner and by his petition made a party.

It is argued by counsel for appellant that the commissioner was without authority to change the investment of the fund in its hand from Liberty bonds to industrial securities, and that it is liable for the loss resulting from such change, notwithstanding the order of the court, procured upon its motion, but without the knowledge or consent of the parties to the action whose interests were affected thereby. As sustaining their contention,*710 counsel cite and rely on the cases of Latta v. Louisville Trust Company, 198 Ky. 45, 247 S. W. 1103, and Barth v. Fidelity & Columbia Trust Co., 188 Ky. 788, 224 S. W. 351, although those cases relate to the administration of a trust by testamentary trustees.

[1] Since the office of master commissioner created by our statute is in all respects similar to that of master in chancery for centuries known to English and American jurisprudence, the duties and responsibilities being the same, cases dealing with one have equal application to the other. There is practical agreement of authority that the master commissioner or the master in chancery, as the case may be, is merely an agent or assistant of the chancellor. Dunlap v. Kennedy, 73 Ky. (10 Bush) 539; Metropolitan Trust & Savings Bank v. Perry, 194 Ill. App. 277; Finn v. Wetmore, 212 Ill. App. 550; 10 R. C. L. 507; 21 C. J. 600.

"In this state master commissioners have always been regarded and treated as officers of the courts of chancery, and as mere assistants to the chancellor." Dunlap v. Kennedy, supra.

He acts as the representative and assistant of the court which appoints him. Bate Refrigerating Co. v. Gillette (C. C.) 28 F. 673. He is a part of the court, and his official acts are subject to its control and supervision. Finn v. Wetmore, supra.

However, we find that in the case of Van Doren v. Van Doren, 45 N. J. Eq. 580, 17 A. 805, where the master who had been directed to deposit a fund deposited it to his individual account, upon which he drew from time to time, it was held

that he was chargeable as trustee for earnings of the fund while in his custody. However, the question as to the particular relation the master commissioner bears to the chancellor or to parties in interest is not of great importance here, since the sole question presented relates to his liability when acting in strict conformity with orders of the court.

[2] The master commissioner, in the exercise of the duties of his office, is limited to the power conferred upon him by orders of the court, and all the authorities indicate that, where he acts without the limits of such authority, he becomes personally liable, but no cases have been pointed out, and an exhaustive research fails to reveal any, where a master commissioner has been held liable when he acts under and in conformity with the court's orders.

[3] Even though acting in the utmost good faith and in an attempt to carry out the orders of the court, the master commissioner is liable if he pays money to the wrong person. *Citizens' Union National Bank v. Terrell*, 244 Ky. 16, 50 S.W.(2d) 60; *Ex parte Murdaugh*, 58 S. C. 276, 36 S. E. 568; *Houseal v. Gibbes, Bailey, Eq.* 482, 23 Am. Dec. 186; 21 C. J. 603.

But, on the other hand, he is protected where he administers and pays out funds in accordance with the orders of the court. *Simmons v. Simmons, Harp. Eq.* (5 S. C. Eq.) 256; *Davis v. Harman*, 21 Grat. (62 Va.) 194; *Pollock v. Dubose*, 7 Rich. Eq. (28 S. C. Eq.) 20; *Saunders v. Gregory*, 50 Tenn. (3 Heisk.) 567; *Pickens v. Dwight*, 4 S. C. (4 Rich.) 360; 21 C. J. 603.

[4][5] Money in the hands of the master commissioner is in the custody of the court, and is subject to its orders. It is not alleged that the special commissioner used any fraud or deception in procuring the order for the change in the investment, and there is nothing in the record from which it may be inferred that it acted corruptly or that it in any way profited by the transaction. It only carried out the specific orders of the court, and, as clearly indicated by the authorities cited, its acts were the acts of the court. We are constrained to hold that in such circumstances no liability attached to the special commissioner. We further conclude that the order of the court directing how the securities should be divided and the residue sold and the proceeds distributed was proper and to the best interests of all concerned.

Judgment affirmed.

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Ky.App. 1933.

Richardson's Guardian v. Frazier
247 Ky. 59, 56 S.W.2d 708

As far as larger activity, is concerned the Appellant is

responding to error on the part of both trial courts and subsequent need for litigation. This is not a pathological condition or disease but a condition of the respondents' actions. It is litigation and the need for litigation in its pure and finest form, justice.

As far as the accusation that these claims are frivolous. This term came only from the contempt hearing of June 27, 2003 at which Colleen Edwards was fined fees. It is a sad day in court when a litigant is fined for attempting to correct errors that could have been handled in the trial court. Nevertheless the respondents shows a clear pattern of defamation, slander and libel in regard to the appellant.

Trial courts make mistakes and with the passage of time and complex circumstances forget certain facts, evidence and ideals that were presented years before.

What went wrong here is that Colleen Edwards has suffered the greatest harm to her support, education, activities and professional abilities twice in her lifetime, once in the motor vehicle accident and in the courts.

I reply to correct once more the errors of the trial courts.

CONCLUSION

As far as attorney fees are concerned the respondent does not have a prevailing instance of attorney fees in the dissolution of marriage case, as both parties have been responsible for their own legal fees. RCW 26.09.140 does not apply.

As far as attorney fees in RAP 18.1 I ask the court to grant relief from attorney's fees if this appeal has merit in any of the orders appealed.

Thank you for your consideration.


Colleen Edwards

October 25, 2006

STATE OF WASHINGTON, COURT OF APPEALS, DIVISION 11

Colleen Edwards)	
)	33425-8-11)
VS.)	
)	APPELLANT'S REPLY BRIEF
Dennis Edwards)	
John Morgan)	
Et al vir	(

I, Colleen Edwards have served by first class mail the following parties
With the Appellant's Reply Brief

The Clerk of the Court of Appeals, Division 11
The Law firm of Liebert, Morgan & Fleshbein
The Law firm of Paulette Peterson (via electronic mail)

October 25, 2006


Colleen Edwards

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