

FILED  
Court of Appeals  
Division II  
State of Washington  
8/30/2019 12:48 PM

No. 53501-7-II

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

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MARGARET GARRISON,

Respondent,

v.

DELBERT LEE MCGILL, ET AL.,

Appellant.

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BRIEF OF RESPONDENT

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## I. INTRODUCTION

This is a clear case of the undue influence of Vernon Jacob Horst. Mr. Horst is a 93 year old man who unknowingly “gifted” his roughly 300 acre farm to Mr. McGill, who had been working as Mr. Horst’s farm hand. CP 27. The transfer occurred shortly after Mr. Horst recovered from a coma. *Id.* Mr. McGill used a power of attorney to complete a portion of the transaction. *Id.* That power of attorney was procured by Mr. McGill while Mr. Horst was in Harborview Medical Center and unable to speak because a tracheostomy tube had been placed into his airway, through a hole cut in his throat, so that Mr. Horst could breath. *Id.* At the time he executed the power of attorney at Harborview, Mr. Horst was unable to speak. *Id.*

The testimony of Doreena Baird, who works at the Thurston County Assessor’s Office, confirms Mr. Horst’s complete lack of capacity at the time of the property transfer. Ms. Baird testified in her deposition that Mr. Horst looked like he may “die,” that he did not know who his family was, and could not identify why he was gifting his farm to his farm hand. CP 93; CP 85-86; CP 96-99. The remainder of the underlying facts, including proof of Mr. McGill’s lack of veracity, are similarly troubling.

Despite knowing all of this, including having participated in discovery and depositions that unearthed these clearly troubling

facts, the conduct of Mr. McGill and his counsel, Ms. Scott Laukkonen, has grown more and more been problematic. The following recounting of the behavior of Mr. McGill and his counsel is not intended to be antagonistic. Rather, this Court necessarily needs to be aware of the conduct of Mr. McGill and his counsel when determining whether the trial court was correct in granting the appealed sanctions and restraining order.

Mr. McGill has been sanctioned on four occasions. First, Mr. McGill disregarded the trial court's injunction by selling Mr. Horst's property. This was done at the direction of his counsel, Ms. Scott Laukkonen. Ms. Scott Laukkonen admitted to advising her client to violate the injunction because it was more expedient than waiting for a hearing to occur. TR Mar. 21, 2019, pp. 22-26. Mr. McGill was later sanctioned by the guardianship court for attempting to terminate the guardianship in bad faith in order to further his litigation against Mr. Horst. CP 415-416. He was sanctioned yet again for discovery violations and for continuing to unduly influence Mr. Horst while this litigation was pending.

Ms. Scott Laukkonen's conduct has been similar. She admits to advising her client to violate the injunction for the sake of expediency. TR Mar. 21, 2019, pp. 22-26. She has been his counsel throughout this case, including the four times Mr. McGill has been sanctioned. She has been admonished by the trial court repeatedly,

and ultimately was personally sanctioned. Following the issuance of the restraining order and sanctions, at a hearing just days later to stay execution on the sanctions while the motion for reconsideration was pending, Ms. Scott Laukkonen refused to sign her own proposed order and nearly had to be removed from the court room by security. TR Apr. 19, 2019. As she exited the court room, Ms. Scott Laukkonen violently kicked the door so loudly that she immediately apologized and was nearly held in contempt. *Id.* pp 5-6. This was one of a number of courtroom outbursts and the second time that Ms. Scott Laukkonen kicked the courtroom door loud enough to require that she apologize on the record. The trial court's restraining order and sanction is just one of many escalating attempts to control Mr. McGill and Ms. Scott Laukkonen in order to protect Mr. Horst and protect the integrity of the judicial process.

Mr. McGill and Ms. Scott Laukkonen's poor behavior continues outside the courtroom as well. Mr. McGill and Ms. Scott Laukkonen continued to attempt to unduly influence Mr. Horst by communicating directly with him. Ms. Scott Laukkonen filed a sworn declaration detailing her spending multiple hours at Mr. Horst's farm and ultimately winning over his confidence. Mr. Horst became convinced that his guardian and her counsel, the undersigned, were attempting to sell Mr. Horst's farm for themselves and sought help from Mr. McGill and Ms. Scott

Laukkonen (the very people attempting to take his farm away). Ultimately, the trial court found that there was no lesser remedy that might curb Mr. McGill and Ms. Scott Laukkonen's behavior. The trial court granted the guardian's request for a restraining order and request for an attorney fee sanction. This appeal follows.

**II. RESPONSE REGARDING APPELLANT'S STATEMENT OF THE CASE**

**A. Sanctions for Failing to Conduct a CR 26(i) Conference.**

The facts concerning the failure to conduct a CR 26(i) discovery conference are clear. On October 18, 2017, Mr. McGill served upon Mrs. Garrison his first set of discovery requests under Thurston County Superior Court Cause No. 17-2-00455-34. CP 152. On December 6, 2017, Mrs. Garrison, guardian of Mr. Horst, served her discovery responses to Plaintiff. *Id.* Mrs. Garrison indicated that Mr. Horst's medical records would be supplemented as they became available. *See* Laukkonen Decl., Mar. 11, 2019, Ex. A<sup>1</sup>; CP 152.

On October 1, 2018, Mr. McGill's counsel, Ms. Scott Laukkonen, conducted a CR 26(i) conference regarding the remaining medical records for disclosure with Mrs. Garrison's counsel. CP 153. On October 15, 2018, the all remaining records

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<sup>1</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

were sent via email to Mr. McGill. *See* Frawley Decl., Mar. 18, 2019, Ex. B<sup>2</sup>; CP 153. The following documents were produced:

- A. Dr. Kemp evaluation, dated April 21, 2017 (10 pages);
- B. Harborview Medical records, dated February 4, 2015 to March 4, 2015 (54 pages);
- C. Providence Health & Services records, dated February 4, 2015 (33 pages); and
- D. Yelm Family Medicine, PLLC records from October 1, 2007 to November 30, 2017 (238 pages).

*Id.*

In total, Mrs. Garrison supplemented her discovery responses with 335 pages of Mr. Horst's medical records. *Id.* Petitioner included medical records that dated back to 2007, though Mr. McGill had only requested medical records dating back to 2012.

*Id.*

On March 11, 2019, Mr. McGill filed the motion to compel against Mrs. Garrison in a different cause number than discovery was served under. CP 123-128. On March 14, 2019, Mrs. Garrison's counsel emailed Ms. Scott Laukkonen to notify her that all medical records had been previously produced and to clarify whether Mr. McGill was alleging that more records existed or whether Mrs. Garrison needed to submit a signed amended response. *See* Frawley Decl., Mar. 19, 2019, Ex. C<sup>2</sup>. No response was made by Mr.

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<sup>2</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

McGill's counsel. On March 19, 2019, Mrs. Garrison submitted her signed amended response to Mr. McGill under Cause No. 17-2-00455-34. *Id.*, Ex. D<sup>3</sup>. Prior to filing the motion to compel, Mr. McGill refused to identify what discovery was outstanding.

**B. Restraining Order and Sanctions for Mr. McGill and Ms. Scott Laukkonen Jointly and Directly Unduly Influencing Mr. Horst.**

This case, and the two related cases, have a long and complex procedural history. Petitioner is the daughter of Vernon Jacob Horst and has been appointed as the full guardian of his estate and person. CP 1-10; CP 39-50. Mrs. Garrison is currently litigating claims relating to Mr. Horst granting his entire estate to his farm hand, Delbert Lee McGill. CP 1-10. Specifically, Mrs. Garrison, as Mr. Horst's guardian, is prosecuting an action pursuant to the Washington Trust and Estates Dispute Resolution Act seeking to invalidate the Mr. Horst's gifting of his property, including the farm that Mr. Horst has been building parcel by parcel since returning from World War II, to Mr. McGill. *Id.* The relief requested is to transfer all of Mr. Horst's property back to Mr. Horst. *Id.*

Mr. McGill is represented by Holly Scott Laukkonen. CP 104-105. Ms. Scott Laukkonen initially had her private practice represent Mr. McGill in the Thurston County Superior Court Cause Numbers 17-4-00121-34, 17-2-00455-34, and 17-4-00122-34.

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<sup>3</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

Since then, Ms. Scott Laukkonen has filed a withdrawal and substitution for cause number 17-4-00122-34. CP 107-108. The effect was to have Thurston County Volunteer Legal Services be the entity representing Mr. McGill. *Id.* In all three matters, Ms. Scott Laukkonen represents Mr. McGill and is resisting the Petitioner's efforts to return the property, currently titled in Mr. McGill's name, to Mr. Horst<sup>4</sup>.

During the guardianship proceeding, Mr. Horst was examined by a Harvard educated doctor, who determined that Mr. Horst was in need of a guardian. *See* Sealed Conf. Document, Feb. 20, 2018, Tab 2<sup>5</sup>; CP 192. Mr. Horst was represented by his own attorney, Mr. Scott Kee. CP 50. Ultimately, the guardianship court found that Mr. Horst needed a full guardianship of his person and estate. CP 39-50. The Court also found that Mr. Horst lacked capacity to execute the power of attorney, discussed below, that Mr. McGill used to aid in the transfer of Mr. Horst's property. CP 42. Ms. Scott Luakkonen agreed with and presented the final Order Appointing Guardian to the court. CP 50. The guardianship was established on July 27, 2017, and the present TEDRA litigation concerning Mr. Horst's property is set for trial beginning on March 9, 2020.

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<sup>4</sup> The civil matter has since been dismissed.

<sup>5</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

To complete the property transfer, Mr. McGill used a power of attorney he obtained while Mr. Horst was in Harborview Medical Center. CP 69-72. The evidence demonstrates that Mr. Horst was unable to speak, Mr. Horst looked like he was going to “die,” could not explain the transaction, could not clearly explain his plan, and could not identify his family. CP 82-102. There has been ample other evidence of Mr. Horst’s lack of capacity submitted to the trial court, including testimony submitted by Mr. McGill that Mr. Horst had been victimized by lottery scams for years and that Mr. Horst had quit claimed his properties unknowingly to his bookkeeper just prior to Mr. McGill’s transferring of Mr. Horst’s property to himself.

On or about February 22, 2019, Mr. McGill and Ms. Scott Laukkonen had a meeting with Mr. Horst at Mr. Horst’s farm. CP 138-141. This was initially discovered by Mrs. Garrison during a visit with Mr. Horst on March 2, 2019. CP 32. During the conversation, Mr. Horst was combative and informed Mrs. Garrison that he had a “very nice” conversation with Mr. McGill and Ms. Scott Laukkonen. *Id.* Mr. Horst indicated that they had opened his eyes to the fact that Mrs. Garrison was only attempting to take the property for herself and intended to put Mr. Horst in a nursing home. CP 33. Mr. Horst indicated that he had been given papers to turn in that would allow him to obtain his own free attorney in order to resist

Mrs. Garrison's efforts. *Id.* Mr. Horst is now combative with Mrs. Garrison, which he had not been previously, and it is becoming more difficult for Mrs. Garrison to manage Mr. Horst's affairs.

Counsel for Mrs. Garrison attempted to clarify if Ms. Scott Laukkonen and Mr. McGill had contacted Mr. Horst. CP 36-37; CP 110. Ms. Scott Laukkonen would not answer, other than to respond that it was a "loaded question." CP 110; CP 141. Clearly, if the answer was "no," Ms. Scott Laukkonen would have simply said that she did not have a conversation with Mr. Horst. An order to show cause was issued on March 8, 2019 requiring that Mr. McGill and Ms. Scott Laukkonen to appear and "show cause why the Court should not approve the requests made by the Petitioner for an order restraining Respondent, Delbert Lee McGill, and his counsel, Holly Scott Laukkonen, from knowingly making any contact, whether in-person, telephone, or by written correspondence, or from coming within fifty feet of Vernon Jacob Horst, an Incapacitated Person, and to show cause why the Court should not award her attorney fees and costs in bringing this action." CP 121-122.

In response, Mr. McGill and Ms. Scott Laukkonen submitted, among other things, the sworn Declaration of Holly Scott Laukkonen in Support of Respondent's Response to Petitioner's Motion and Order to Show Cause. CP 137-151. Neither the responsive briefing, nor Ms. Scott Laukkonen's declaration, deny

that Mr. McGill had been discussing the case with Mr. Horst or denied that an injunction should be entered against Mr. McGill.

In her sworn declaration, Ms. Scott Laukkonen begins her narrative of her encounter with Mr. Horst by informing him that she is “Lee’s attorney” and “[t]hat means I can’t talk to you.” CP 138. Despite providing this disclaimer to the incapacitated Mr. Horst that it would be an ethical violation for her to communicate with him directly, Ms. Scott Laukkonen further details spending three hours at Mr. Horst’s farm in order to deliver cash from her trust account for hay being delivered to Mr. McGill. CP 138-139. Paying cash from an attorney trust account is a clear violation of RPC 1.15A, but that is nevertheless Ms. Scott Laukkonen’s justification for spending hours with Mr. Horst (this also begs the question why the amount Ms. Scott Laukkonen claims to have spent, \$2,750, does not match the sales “receipt” she produced evidencing the purchase of 50 bales of hay at \$50 per bale).

Ms. Scott Laukkonen admits to talking for hours with Mr. Horst and talking about this case. She admits that he was trying “to corner [her] with questions about the case.” CP 140. Mr. Horst indicated he was unclear who his lawyer was in response to her questioning, inquired about the status of the case, and accused Ms. Scott Laukkonen of “tying up” the property. CP 140-141. Instead of ceasing contact, Ms. Scott Laukkonen sought to convince Mr.

Horst that she and her client were in the right by saying “all we want to do is run the farm.” CP 140. Ms. Scott Laukkonen testifies to spending hours having an apparently whimsical conversation with the incapacitated, vulnerable Mr. Horst. CP 138-143. The two apparently wandered Mr. Horst’s farm discussing his canoe, his boat, and his childhood. CP 140. Mr. Horst and Ms. Scott Laukkonen “commiserated about [the] awful invasive species” on his farm. *Id.*

The curiously worded declaration contains obviously intentionally contrasting language. It at times disparages Mr. Horst and attempts to demonstrate that he does not need a guardian (a contention held by Mr. McGill and Ms. Scott Laukkonen). *See, e.g.*, CP 141 (Mr. Horst has a “reputation for dishonesty that is consistent with my experience with him”); CP 140 (Mrs. Garrison is “never around” and does not communicate with him); CP 140 (Mr. Horst “shouldered open a huge, heavy barn door on rusty slides”). At other times, it paints a flattering picture of Mr. McGill and his side of the case. *See, e.g.*, CP 139 (Mr. McGill points out a heifer that “his mom had spoiled since birth”); CP 139 (discussing how the “heifers’ big, brown eyes watched [Ms. Scott Laukkonen] curiously”).

The actions of Ms. Scott Laukkonen are part and parcel of Mr. McGill’s narrative that Petitioner and the undersigned are

attempting to sell the farm and put Mr. Horst in a nursing home. Ms. Scott Laukkonen, intentionally or unintentionally, has become part of that tactic by confirming that Mr. McGill simply wants to run the farm and it is not him (and therefore it must be Petitioner) that is holding up the farm. CP 141.

Finally, after taking part in Mr. McGill's tactic of turning Mr. Horst against his guardian and the undersigned, Ms. Scott Laukkonen continued to communicate with Mr. Horst. Ms. Scott Laukkonen referred Mr. Horst to the bar association, ostensibly for a new lawyer, AFTER talking to him for hours, AFTER he tried to "corner" her with questions about the case, AFTER telling him that it was not Mr. McGill and herself (she uses the word "we" in her declaration) were not "tying up this place," and despite knowing Mr. Horst was vulnerable and lacked capacity. CP 138, 141.

These actions are admitted by Ms. Scott Laukkonen and were the basis for the trial court's ruling. TR Mar. 22, 2018, 18: 12-18. Mr. McGill's Response and Ms. Scott Laukkonen's declaration seem to assume without explanation that this conduct is permissible and will cause no harm. As detailed in the various pleadings before the trial court, substantial harm did occur.

Mr. McGill and Ms. Scott Laukkonen apparently succeeded in further unduly influencing Mr. Horst. He came to believe that nothing was being done by his guardian and the undersigned to

prosecute the TEDRA litigation, despite nearly three years of litigation, two trial settings, and over 300 docket entries, and expressed outrage at how long it is taking to have his property returned to him. CP 27-28; CP 33; CP 196; CP 200. He expressed a great deal of anger towards counsel for Mrs. Garrison. CP 196; CP 200. Mr. Horst specifically indicated that he believed that counsel for Mrs. Garrison was planning to break up his property, sell it, and put him in a nursing home. CP 196; CP 201. After being pressed, Mr. Horst admitted that Mr. McGill had told him this information. CP 197; CP 200.

Mr. Horst also discussed the “free attorney” he thought he was going to get and brought the “paperwork” with him that Mrs. Garrison had seen previously. *Id.* It turns out that it was not a referral for Thurston County Volunteer Legal Services or any other free legal service. Instead, it was an envelope and question and answer sheet from the Washington State Bar Association. *Id.*, CP 207-208.

Mr. McGill (via delivery by Mr. Hyers, who is Mr. McGill’s step-son) had given Mr. Horst the telephone number for the Washington State Bar Association. CP 197; CP 200. Mr. Horst does not recall why the telephone number for the Bar Association came up, if he discussed it with Mr. McGill, or why Mr. McGill gave him the telephone number. *Id.* Mr. Horst had then called the bar

association and had a packet of information mailed to him. *Id.* The paperwork he brought with him only included an envelope that was mailed to him and a question and answer sheet concerning lawyer discipline. *Id.* Mr. Horst indicated that he had mailed in the remainder and made a complaint against Mr. Frawley. *Id.* Mr. Horst is very angry and distrustful of the undersigned and told him “now you’re in front of it” in reference to the Bar Association. *Id.* It is unclear what the bar complaint said exactly and Mr. Horst could not remember. CP 200-201.

Mr. Horst does not remember a lot of things about this case. CP 200. He told Petitioner that he wants “his own lawyer” and does not understand that she is representing him in his claims. *Id.* Mr. Horst does not recall his previous lawyer, Mr. Kee, who represented him during the guardianship. *Id.* Mr. Horst asked Petitioner repeatedly during their meeting who his lawyer was and it was explained that he no longer had his own lawyer because he can only sue or be sued through his guardian. CP 200-201.

Mr. Horst also informed Petitioner that he does not remember ever having the deeds notarized. CP 201. He is adamant that he never went to a bank with Mr. McGill and is adamant that he never went to the county offices to do the property transfer. *Id.* At the meeting, the Petitioner and the undersigned attempted to discuss what Mr. McGill and Ms. Scott Laukkonen talked to him about. CP

199. At first, Mr. Horst would simply answer that they did not talk about anything. *Id.* Again, when pressed, Mr. Horst indicated that Mr. McGill talks to him about the case, as well as about farming. CP 200. It was Mr. McGill that convinced Mr. Horst that the undersigned is going to parcel up his farm, sell it, and put him in a nursing home. *Id.* Depending on the day, Mr. Horst thinks that Mrs. Garrison is going to do the same thing. *Id.* Mr. Horst also said that he talked to Ms. Scott Laukkonen at the farm. *Id.* Mr. Horst does not recall exactly when the conversation occurred but remembers it happened about a few weeks prior to the Order to Show Cause when Mr. McGill was having hay delivered. CP 201. Mr. Horst indicated that they did not talk about this case (he recalls talking about “farm stuff”), but then said he did not really recall if they talked about the case. *Id.* Mr. Horst then indicated that, if they did talk about the case, “it didn’t affect the case.” *Id.*

Mr. Horst has been adjudicated to be incapacitated. CP 39-50. He transferred his estate to Mr. McGill for no consideration and does not remember doing so. CP 201. The testimony demonstrates that, at the time, he could not explain the transaction, why he was transferring his property, or identify his family. CP 85-86. The county employee that processed the transaction testified that she was so concerned about Mr. Horst’s condition that she “struggled” with processing the transaction and stated that she remembered “being so

shook up about it that's why I can recall it so well today is because it was – it made an impression on me that I probably won't forget.” CP 94.

Mr. Horst is a clear victim of elder abuse. Shockingly, that abuse is continuing, counsel is taking part, and the trial court was forced to restrain both Mr. McGill and Ms. Scott Laukkonen after the Rules of Professional Conduct, the injunction, and previous sanctions failed to deter, and ultimately, correct their behavior.

### **III. ARGUMENT**

#### **A. Mr. McGill Cannot Raise New Arguments on Reconsideration and Appeal.**

Respondent presented a number of new legal arguments and moved on reconsideration and requested an order striking testimony that was considered as part of the underlying motions. The motion to strike was not filed prior to the hearing on the Order to Show Cause or the hearing on Respondent's Motion to Compel, and the legal arguments, which are detailed below, were not raised. Many of the same the same issues are again raised on appeal. Motions for reconsideration are not intended to give multiple bites at the apple and trial court was correct to deny the motion. *See, e.g.,* 5A Karl B. Tegland & Douglas J. Ende, *Washington Practice: Handbook on Civil Procedure*, § 65.1 at 520 (2009).

Motions for reconsideration serve a limited function. “[T]he major grounds that justify reconsideration involve an intervening

change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.’’ *Pyramid Lake Paiute Tribe v. Hodel*, 882 F.2d 364, 369 n. 5 (9th Cir.1989) (quoting 18 C. Wright, *A. Miller & E. Cooper*, Federal Practice and Procedure § 4478, at 790); *See Frederick S. Wyle P.C. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir.1985); *See also Keene Corp. v. International Fidelity Ins. Co.*, 561 F.Supp. 656, 665 (N.D.Ill.1982) (reconsideration available “to correct manifest errors of law or fact or to present newly discovered evidence”). Such motions are not the proper vehicle for offering evidence or theories of law that were available to the party at the time of the initial ruling. *Fay Corp. v. Bat Holdings I, Inc.*, 651 F.Supp. 307, 309 (W.D.Wash.1987). If the evidence was available but not offered until after the opportunity passed, the party is not entitled to submit the evidence. *Fishburn v. Pierce Cty. Planning & Land Servs. Dep't*, 161 Wash. App. 452, 472–73, 250 P.3d 146, 157 (2011).

In response to the Order to Show Cause, Respondent raised three defenses: 1) the Court lacked authority to grant restraints because the Washington Supreme Court has exclusive jurisdiction over attorney discipline; 2) Petitioner lacked standing under Chapter 7.40 RCW to request injunctive relief; and 3) the Court lacked authority under Chapter 11.96A RCW to grant injunctive relief because “the Court’s authority extends only the incapacitated

person's estate, not the person." CP 180. Those agreements are largely abandoned. The Appellant presented a myriad of other arguments in reconsideration that were not raised previously, including, but not limited to, the show cause procedure denied Mr. McGill (who was already restrained by agreed order) and Ms. Scott Laukkonen the ability to respond (CP 280-281), the Court is so irrational and emotional that it is unable to evaluate the evidence (CP 281), issuing a restraining order to prevent Mr. Horst from being unduly influenced is against his interest (CP 285-286), Mr. Horst is an unrepresented party (CP 282), the Court lacks impartiality (CP 283, "Irregularity includes instances of a trial court's lack of impartiality that has a prejudicial effect on the fact finder."), and there is not substantial evidence to support the Court's ruling (CP 285). *See* CP 280-283, 285-286. On appeal, those issues were again raised.

To be candid, Respondent has demonstrated a chronic pattern of failing to respond and later raising issues that should have been addressed previously. There are many examples, some of which will be detailed herein. On April 19, 2019, Respondent refused to enter an order granting the sole relief sought despite the undersigned signing Respondent's proposed order without changes. TR, Apr. 19, 2019. Instead, Ms. Scott Laukkonen was intent on arguing points of law that were not raised in Respondent's Motion

to Stay Execution and was so intransigent that the court had to warn Ms. Scott Laukkonen that security was going to be called to remove her from the courtroom. *Id.* Ms. Scott Laukkonen's behavior further escalated when she kicked the swinging door separating the well of the courtroom from the public seating area. *Id.*

Another example is the lack of response to Petitioner's Motion in Limine. *See* Resp't's Resp. to Pet'r's Mot. in Limine, Dec. 22, 2018<sup>6</sup>. At trial, Respondent raised many issues that were not raised in response to Petitioner's Motion in Limine and ultimately forced the continuation of trial for over a year. Yet another example occurred during the presentation hearing on the Order to Show Cause Regarding Restraining Order. At that hearing, Ms. Scott Laukkonen again raised a variety of new arguments, including, among others, the need for a trial, that findings of fact and conclusions of law should be included, and that she wanted her own attorney. She did not, however, provide any notice to the court or Petitioner that she intended to raise those issues. When inquired why she did not file any response to the proposed orders, Ms. Scott Laukkonen retorted that "[t]here's not a court rule that says I needed to." TR, Mar. 29, 2019, p. 6. Ms. Scott Laukkonen has grown more and more intransigent as this case has progressed.

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<sup>6</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

Here, Respondent is clearly required to present his evidence and arguments in response to the underlying motion. Motions for reconsideration are not the proper vehicle for offering evidence or theories of law that were available to the party at the time of the initial ruling. *Fay Corp. v. Bat Holdings I, Inc.*, 651 F.Supp. 307, 309 (W.D.Wash.1987). If the evidence was available but not offered until after the opportunity passed, the party is not entitled to submit the evidence. *Fishburn v. Pierce Cty. Planning & Land Servs. Dep't*, 161 Wash. App. 452, 472–73, 250 P.3d 146, 157 (2011). None of the new arguments should be considered by this Court and the appeal should be denied.

**B. Many Issues Were Not Properly Raised.**

As the Court noted in its oral ruling, the Appellant did not raise a number of issues in writing. When questioned, Ms. Scott Laukkonen replied that there is no court rule that requires requests for relief to be raised in writing. TR Mar. 29, 2019, 6:20-21. That is incorrect.

CR 7(b)(1) provides in part that an “application to the court for an order shall be by motion which ... shall be made in writing...” CR 7(b)(1). Appellant raised many issues orally, including but not limited to objections to the procedure used, the evidence relied upon, the need for findings and conclusions, the request for Appellant’s

counsel to get her own attorney, and the request to conduct a trial. *See, e.g.*, TR Mar. 29, 2019, pp. 4-8.

None of these issues were properly and timely raised. Appellant cannot do so orally and, as discussed below, cannot do so on reconsideration.

**C. The Court Can Affirm on Any Ground Supported By the Record.**

Mrs. Garrison sought a restraining order and attorney fee award on a number of theories. Specifically, the request for restraints was based on Chapter 11.96A RCW and/or Chapter 7.40 RCW. CP 28-30. The requests for attorney fees was based again on Chapter 11.96A RCW or the court's inherent authority to grant sanctions. CP 30-31.

On appeal, the appellate court "may affirm the lower court on any grounds established by the pleadings and supported by the record." *In re Marriage of Rideout*, 150 Wash. 2d 337, 358, 77 P.3d 1174, 1183 (2003), as corrected (Oct. 27, 2003). "Indeed, a reviewing court can sustain a grant of attorney fees under a different statute than the one relied upon by the lower court." *Id.*

**D. Appellant Has Not Provided an Adequate Record, and the Court Should Defer to the Trial Court's Decision to Sanction Mr. McGill and Ms. Scott Laukkonen.**

Appellant has the burden to provide an adequate record on appeal. *Story v. Shelter Bay Co.*, 52 Wash.App. 334, 345, 760 P.2d 368 (1988). A related doctrine provides that a trial judge has broad

discretion to determine appropriate sanctions in a given case, and sanction decisions are reviewed only for abuse of discretion because a trial judge is in a “better position” to decide the issue. *Deutscher v. Gabel*, 149 Wash.App. 119, 122, 202 P.3d 355 (2009).

The record presented on appeal does not come close to conveying the history of this case. For example, the record does not include the Order Granting TRO that was agreed to by the parties and which provides that “Delbert Lee McGill and all other parties on his behalf are hereby restrained from ... committing or participating in any acts of financial exploitation or any other form of physical or mental abuse of Vernon Jacob Horst....” The actions that resulted in the sanctions and restraining order appealed herein fit squarely within the statutory definition of “financial exploitation.” See RCW 74.34.020(7).

Also missing are a myriad of other pleadings and transcripts that very likely influenced the trial court’s decision making. This includes but is not limited to the follow categories:

- 1) Evidence submitted by Mrs. Garrison, and especially by Mr. McGill, concerning Mr. Horst’s historical vulnerability, including being defrauded out of tens of thousands of dollars and quit claiming his property to his bookkeeper around the time of transfer to Mr. McGill.

2) A wide variety of evidence of Mr. McGill's lack of veracity, including misleading statements about his income, assets, work history, current and past employment (for example, Mr. McGill has maintained, for litigation advantage, that he has been unemployed for years and worked "sun up to sun down" on the farm while his wife confirmed in her deposition that he continues to work four days a week at his friend's automotive repair business), and actions concerning the transfer of Mr. Horst's property.

3) Evidence concerning Mr. McGill's continued conversion of Mr. Horst's property.

4) Pleadings and the transcript related to Mr. McGill's unsuccessful attempt to terminate Mr. Horst's guardianship for his own litigation advantage. The sanctions that resulted from these actions are discussed herein and included in the clerk's papers. CP 415-416.

5) Transcripts that reflect the intransigence of Mr. McGill and Ms. Scott Laukkonen on a number of occasions, including in open court.

The trial court docket includes over 340 entries. There have been dozens of hearings and hundreds of pages of evidence submitted as part of three different summary judgment motions, a number of collection actions, many attempts to manage the status quo of the parties pending trial, and in preparation for trial

(including trial briefs and a motion in limine). The record on appeal barely scratches the surface of this and the related cases. This Court should recognize the inadequacy of the record on appeal and defer to the trial court's decision to implement sanctions and a restraining order.

**E. The Sanctions Awarded by the Trial Court are Not a Final Judgment in the Manner Urged by Ms. Scott Laukkonen and Mr. McGill. Rather, the Sanctions are Just That: Interim Sanctions Ordered by the Court.**

All of the judgments contemplated by the cases and court rules cited by Appellant's counsel contemplate a final judgment that decides the merits of competing claims *among the parties* to litigation. CR 54(b) expressly addresses appeals of matters when "more than one claim is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved..." CR 54(b). *Fluor Enterprises*, the primary case relied upon by Ms. Scott Laukkonen, was a lawsuit between a contractor and subcontractor with "both parties' claims consolidated in the same lawsuit..." *Fluor Enterprises, Inc. v. Walter Const., Ltd.*, 141 Wash. App. 761, 763, 172 P.3d 368, 369 (2007). The court reasoned that the judgment in favor of the contractor should not be immediately enforceable in order "to preserve the opportunity to offset judgments favorable to each side before any enforcement took place." *Id.* at 769. That rationale is entirely absent here: the sanctions the trial court is authorized to order are intended to correct

Appellants' behavior and are intended to be paid regardless of the ultimate outcome of the case.

In this case, Ms. Scott Laukkonen has no counterclaim. She will not be awarded anything to offset the award against her. She is not asserting any claim against any other party and is not a party to the case.

As described above, CR 54(b) and the case law cited by Appellant addresses the resolution of less than all of the competing claims among the parties to litigation. None of the authorities address the authority of the Court to enforce fees awarded as sanctions during litigation. None of the judgments issued by the trial court resolve the ultimate claims made by the parties. Instead, all of the judgments result from sanctions imposed as a result of the conduct of Mr. McGill and his counsel.

Trial courts regularly issue sanctions against parties and attorneys for discovery violations, intransigence, ability to pay in family law cases, and in a number of other situations. These sanctions are contemplated by any number of court rules. *See, e.g.*, CR 26(i) (CR 26(i) was the basis for one of this trial court's fee awards); RAP 9.10 (appellate courts, including this court, may require the payment of sanctions, as provided in RAP 18.9, as a condition to supplementing or correcting the record). These fee awards or sanctions are enforced with money judgments. If they

were not, there would be no way for the parties or a court to enforce the awards, rendering them meaningless. Various court rules specifically contemplate an award of fees as a sanction entirely independent of, and without regard to, the ultimate merits of the parties' claims.

The inability to enforce sanctions would obviously render the sanctions meaningless and, perhaps, encourage parties to engage in misbehavior in order to gain an advantage at trial. If not enforceable, parties may simply ignore the Court's fee awards in order to disadvantage the other side and obtain the benefit of the offset after trial. That result is not contemplated by any court rule or case found by the undersigned.

**F. Ms. Scott Laukkonen and Mr. McGill Did Not Object to Either Fee Award, and the Court Conducted a Careful Review of the Itemized Billing Records for Each Award.**

After the trial court's oral ruling, the matter was set over one week for presentation of written orders. CP 256. Proposed orders, along with attorney fee declarations, were filed three days before the presentation hearing. *See* CP 252-255; TR, Mar. 29, 2019, p. 6. Ms. Scott Laukkonen and Mr. McGill did not file any responsive briefing or declarations. TR, Mar. 29, 2019, p.6.

In addition to not filing any response, Ms. Scott Laukkonen confirmed that she did not disagree with the amount of the fee awards. *Id.* p.7. The trial court indicated that it had carefully reviewed the itemized billing records submitted and found them to

be reasonable. *Id.* p. 8. Accordingly, the court on appeal should accept the awards as reasonable. Further, no findings of fact or conclusions of law are required by Appellant stipulated to the reasonableness of the fees.

**G. The Rules of Professional Conduct Prohibit the Communications that Occurred.**

It should be abundantly clear to Ms. Scott Laukkonen that she and her client cannot have discussions with a represented party. Mr. Horst has been adjudicated incapacitated and cannot sue or be sued except through his guardian. *See* CP 39-50; *See also* RCW 11.92.060. The guardian, and the undersigned as counsel for Mrs. Garrison, are representing Mr. Horst in the guardianship and TEDRA matters, and, when the communications at issue occurred, in the civil matter filed by Mr. McGill against Mr. Horst. In the civil matter, Ms. Scott Laukkonen named Mr. Horst personally in the lawsuit and was prosecuting that lawsuit and seeking damages from and restraints against Mr. Horst. CP 52-59. The undersigned filed an answer to the complaint in the civil case while the three cases were consolidated. CP 112-116; CP 118-120 (consolidated under 17-4-00121-34).

RPC 4.2 provides that, “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or

is authorized to do so by law or a court order.” RPC 4.2. The undersigned did not give permission for Ms. Scott Laukkonen to talk to Mr. Horst and no court order exists.

Ms. Scott Laukkonen conceded that she viewed Mr. Horst as a represented party and that she did not believe she could talk to Mr. Horst. Recounting a portion of her conversation with Mr. Horst, Ms. Scott Laukkonen testifies in her declaration that she told him that she is “Lee’s attorney. That means I can’t talk to you.” CP 139. Ms. Scott Laukkonen further indicated that she gave Mr. Horst the telephone number for the Washington State Bar Association, just as she would for “any other represented or interested party.” CP 142. There is simply no denying that Ms. Scott Laukkonen was aware that she should not be talking to Mr. Horst.

Comments to RPC 4.2, which have been adopted by our Supreme Court, provide context:

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounseled disclosure of information relating to the representation.

[2] [Washington revision] This Rule applies to communications with any person who is represented by a lawyer concerning the matter to which the communication relates.

[3] [Washington revision] The Rule applies even though the person represented by a lawyer initiates

or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

RPC 4.2.

The Rules of Professional Conduct are also clear that Mr. McGill cannot contact Mr. Horst either (and, in this case, both Mr. McGill and Ms. Scott Laukkonen were apparently present). Official Comment (4) to RPC 4.2 provides “a lawyer may not make a communication prohibited by this rule through the acts of another.” *See* Rule 8.4(a). The reference to RPC 8.4(a) is important as it spells out a series of acts which amount to professional misconduct, including violating the rules of professional conduct, assisting or inducing another to violate the rules of professional conduct, or to violating the rules of professional conduct through the acts of another. RPC 8.4(a). Other relevant prohibited conduct includes, but is not limited to, engaging in conduct involving dishonesty and conduct prejudicial to the administration of justice (which is precisely what RPC 4.2 is intended to prevent). RPC 8.4 (c)(d).

It should be abundantly clear that Mr. McGill and, especially, Ms. Scott Laukkonen should not be discussing and negotiating the claims with Mr. Horst. They also should not be encouraging Mr. Horst to retain another attorney when Mr. Horst has been adjudicated incapacitated. Both Ms. Scott Laukkonen and

Mr. McGill should be aware that Mr. Horst cannot retain his own attorney. He cannot enter into a contract, and he cannot sue or be sued except through his guardian. To continue to unduly influence Mr. Horst, especially to have counsel do so, is clearly prejudicial to the administration of justice.

**H. The Trial Court has Broad Authority to Enter the Restraining Order and Sanctions Based on RCW 11.96A.060, and it Relied on Ms. Scott Laukkonen's Testimony in Doing So.**

Mr. McGill and Ms. Scott Laukkonen incorrectly argue that the trial court based its decision to issue a restraining order on Ms. Scott Laukkonen's admitted violations of the Rules of Professional Conduct. Instead, the Court was very clear that it had evaluated possible alternatives to protect Mr. Horst. The Court was not punishing Ms. Scott Laukkonen for her violations of the Rules of Professional Conduct, but rather exercising its power under the Trust and Estates Dispute Resolution Act.

The Court specifically stated the following:

[T]he court is very concerned about these allegations and the impact that they have apparently had. So looking at all of those factors, looking at the arguments of the parties, this is in the court's view the only way to prevent this type of contact with Mr. Horst. It's unfortunate that the court is having to get involved in this manner, but these allegations that have been made, and **quite honestly based upon what Ms. Scott Laukkonen has filed**, the court feels it has no other reasonable alternative to protect Mr. Horst in this matter, and so I will issue that restraining order.

TR Mar. 22, 2019, p. 18 (emphasis added). This is exactly the sort of action the legislature empowered trial courts to take.

When enacting Chapter 11.96A RCW, the legislature expressed its intent “that the courts shall have full and ample power and authority under this title to administer and settle” all matters “concerning the estates and assets of incapacitated ... persons.” RCW 11.96A.020. To further that intent, the legislature enacted RCW 11.96A.060, which grants the trial court the authority to “make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title.” RCW 11.96A.060.

Mr. McGill and Ms. Scott Laukkonen misunderstand the relevance of the violations of the Rules of Professional Conduct. The violations did not serve as the basis for the restraining order and sanctions. Rather, the violations are strong evidence of the *necessity for issuing the restraining order*. As counsel for Mrs. Garrison argued in oral argument, there was no available lesser sanction or alternative:

**Mr. Frawley:** Part of what we’re asking, part of what the court has to look at is the available remedy. I don’t know of another remedy. Counsel hasn’t proposed another remedy. I don’t know what else we can do to protect Mr. Horst’s rights other than restrain Mr. McGill and Ms. Scott Laukkonen.

TR Mar. 22, 2019, pp. 15-16.

RPC 4.2 and RPC 8.4 were enacted to preserve the integrity of the judicial system. They are intended to serve as a strong bar to the very type of communications made by Mr. McGill and especially Ms. Scott Laukkonen. As seriously as the legal profession takes the Rules of Professional Conduct, they were not enough to deter the behavior at issue. Accordingly, the trial court was forced to enter a restraining order, as is contemplated by RCW 11.96A.060, to protect Mr. Horst.

**I. The Trial Court Has the Authority to Grant Sanctions Against a Party and Counsel.**

The trial court awarded attorney fees and costs as a sanction for having to obtain a restraining order against Mr. McGill and Ms. Scott Laukkonen. As the trial court pointed out, it should not have been necessary to bring the request for restraints, but it was apparently the only way to protect Mr. Horst from Mr. McGill and Ms. Scott Laukkonen. TR Mar. 22, 2019, p. 18.

In reviewing a sanctions decision, appellate courts apply the abuse of discretion standard. *Deutscher v. Gabel*, 149 Wash. App. 119, 122, 202 P.3d 355, 356 (2009). The abuse of discretion standard recognizes that deference is owed to the judicial actor who is better positioned to decide the issue. *Id.* The trial judge has wide latitude to determine what sanctions are proper in a given case. *Id.*

In this case, both parties acknowledged in their briefing that the trial court had the inherent power to issue the requested sanctions. CP 288. Ms. Scott Laukkonen and Mr. McGill cite *State v. Gassmann* for the proposition that “[b]arring a court rule or statute that allows the imposition of sanctions, the trial court has inherent power to in equity to award fees.” CP 288; *See also State v. Gassmann*, 175 Wn.2d 208, 283 P.3d 1113 (2012). Having presented this authority to the Court, Ms. Scott Laukkonen and Mr. McGill cannot now argue the opposite on appeal.

Further, RCW 11.96A.150 grants broad discretion to award attorney fees “in such manner as the court determines equitable” in “all proceedings governed by this title.” RCW 11.96A.150. This broad granting of authority clearly applies in the present TEDRA litigation. Similarly, RCW 11.96A.060 grants the court broad discretion to grant any order it deems equitable. In the present case, it is certainly equitable for Mr. McGill and Ms. Scott Laukkonen to bear the cost of their continued undue influence of the incapacitated Mr. Horst.

**J. Counsel for Mrs. Garrison Represents Mrs. Garrison Only. However, Based on the Statutory Scheme, Mrs. Garrison, and Therefore Her Counsel, are Representing and Asserting Mr. Horst’s Rights.**

The allegation that the trial court should be reversed for accepting counsel for Mrs. Garrison’s representation that Mr. Horst was represented by Mrs. Garrison’s counsel is factually false. Mr.

Horst had an attorney, Scott Kee, while the original guardianship petition was pending. CP 119. Mr. Kee was discharged when the full guardianship of Mr. Horst's person and estate was established. CP 50. Since that time, Mr. Horst has been represented by his guardian, as is anticipated by Chapter 11.92 RCW, but he has not had his own attorney. The guardian, Mrs. Garrison, has continued to make the required reports, and both the trial court and guardianship court are well aware of how this case has progressed.<sup>7</sup>

Although the issue of who represents Mr. Horst in the attorney-client context is necessarily intertwined with representing the guardian, the two are not the same. Throughout this case, it has been known that Mr. Frawley represents Mrs. Garrison, who is the guardian of Mr. Horst's estate and person. At the hearing at issue, Mr. Frawley made the record clear who he represented: "Mr. Frawley: Good morning, Your Honor. Joe Frawley for Mrs. Garrison." TR Mar. 22, 2019, p. 3.

RCW 11.92.060 makes clear that an incapacitated individual can only sue or be sued through the guardian. RCW 11.92.060; TR Mar. 22, 2019, p. 15; CP 194-195. RCW 11.92.060 provides, in part, as follows:

When there is a guardian of the estate, all actions between the incapacitated person or the guardian and third persons in which it is sought to charge or benefit

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<sup>7</sup> For example, Commissioner Zinn, who is assigned to the guardianship calendar in Thurston County and has been for a number of years, signed both the order establishing the guardianship and the show cause order that resulted in the restraining order and sanctions at issue. CP 49; CP 122.

the estate of the incapacitated person shall be prosecuted by or against the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her.

RCW 11.92.060.

Both in briefing and during oral argument, Mrs. Garrison, through counsel, explained the relationship between Mrs. Garrison, Mr. Horst, and Mr. Frawley. In oral argument, counsel explained as follows:

**Mr. Frawley:** Now, RCW 11.92.060 is clear that he (Mr. Horst) can only sue or be sued through his guardian. The right's taken away. He doesn't have the ability to enter into a contract anymore. He legally can't do these things. The only way for this case to proceed and for him to be represented is through his guardian and therefore through me.

TR Mar. 22, 2019, p. 15.

Mr. Frawley and Mr. Horst do not have an attorney-client relationship. That said, Mrs. Garrison is pursuing the return of Mr. Horst's property to him and is representing his interests in the trial court. Mr. Frawley has an attorney-client relationship with Mrs. Garrison, and by necessity, is also pursuing the return of Mr. Horst's property and thereby representing his interests.

**K. Denial of the Motion to Compel Was Entirely Proper.**

**i. Mrs. Garrison Had no Other Documents to Produce.**

In the Motion to Compel, Mr. McGill argued broadly that Mrs. Garrison has failed to produce relevant documents. Mrs.

Garrison had provided all medical records to Mr. McGill and had even submitted an additional five years of records. There were simply no other medical records to produce, and this fact had been conveyed to Mr. McGill.

“The burden of demonstrating that the party from whom discovery is sought has the practical ability to obtain the documents at issue lies with the party seeking discovery.” *Diaz v. Washington State Migrant Council*, 165 Wash.App 59, 78, 265 P. 3d 956 (2011). In this case, Mrs. Garrison had provided all documents in her possession and records requests were made to each medical provider to ensure comprehensive production of Mr. Horst’s medical records. There were no other documents to produce. Importantly, it is Mr. McGill’s burden to demonstrate that Mrs. McGill had more medical records to produce. There was not even an attempt to show that is the case.

**ii. No CR 26(i) Conference was Conducted.**

CR 26(i) provides:

Motions; Conference of Counsel Required. The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone.... Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.

CR 26(i) (emphasis added.). If counsel for the parties have not conferred with respect to a CR 37(a) motion to compel discovery, or if such motion does not include counsel's certification that the conference requirements were met, the trial court does not have discretion to entertain the motion. *Rudolph v. Empirical Research Systems, Inc.*, 107 Wash.App. 861, 866-867, 28 P.3d 813 (2001). The rule precludes the trial court from hearing such a motion if the conference requirements are not met. *Id.* at 867.

Counsel last conducted a CR 26(i) conference on October 1, 2018. *See* Frawley Decl., Mar. 18, 2019, Ex. A<sup>8</sup>; CP 154. Following that conference, Mrs. Garrison produced all of the medical records that had been gathered through requests to Mr. Horst's primary care physician, St. Peter's Hospital, and Harborview Medical Center. *Id.*, Ex. B. No discovery conference has occurred since, and the parties proceeded to trial in January of 2019 (which was ultimately stricken and rescheduled). *See* Clerk's Minutes, Jan. 7, 2019<sup>9</sup>. Without conducting another discovery conference, or alerting Mrs. Garrison as to what is allegedly missing, the Motion to Compel was filed. Frawley Decl., ¶ 4<sup>10</sup>; CP 155.

Mrs. Garrison justifiably assumed that the discovery issues had been resolved after she provided all medical records she was

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<sup>8</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

<sup>9</sup> This document appears to not have been made part of the Clerks Papers.

<sup>10</sup> This document appears to not have been made part of the Clerks Papers, but was before the trial court.

able to obtain. Indeed, Mr. McGill proceeded to trial on the evidence produced (after the original trial date and after the expiration of the discovery cutoff). The only follow up was an ambiguous email from counsel for Mr. McGill asking for some unspecified supplementation. Frawley Decl., Ex. E<sup>8</sup> (Ms. Scott Laukkonen's February 14, 2019 email); CP 155. That email was in response to Mrs. Garrison's contemplated motion to compel, for which Mrs. Garrison's counsel conducted a CR 26(i) conference, waited weeks for supplementation, and exchanged numerous follow up emails with Mr. McGill's counsel.<sup>11</sup> *Id.*

Counsel for Mrs. Garrison attempted to clarify what Mr. McGill believed was outstanding. *Id.* Counsel for Mr. McGill, however, refused to "litigate this over email" and would not specify what Mr. McGill believes is missing. *See* Frawley Decl., Ex. C<sup>8</sup>; CP 155-156. Counsel further refused to strike the hearing in order to conduct a discovery conference. *Id.*

No CR 26(i) conference was conducted. Counsel refused to specify what is allegedly missing from Mrs. Garrison's previous document production. The trial court could not entertain the motion without compliance with CR 26(i) and, even if the Court did believe

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<sup>11</sup> The Motion to Compel was ultimately filed but was stricken when Mr. McGill submitted supplemental answers. The basis of the motion was Mr. McGill's previous assertions that the casinos at which he has players club memberships did not keep records of his gambling losses. Obviously that is untrue, and Mr. McGill supplemental responses indicated that he gambles tens of thousands of dollars per year. *See* Pet'r's Mot. to Compel, Mar. 4, 2019 (this document appears to not have been made part of the Clerks Papers, but was before the trial court).

the conference that occurred prior to Mrs. Garrison's supplementation is sufficient, it would have been inappropriate to enter an order directing discovery occur when Mr. McGill refuses to specify what is allegedly missing.<sup>12</sup> The trial court was entirely correct to deny the motion and award fees.

**L. The Court Should Award Attorney Fees on Appeal.**

In relation to the restraining order and injunction, Mrs. Garrison requests an award of attorney fees and costs against Ms. Scott Laukkonen and Mr. McGill, jointly and severally, based on RCW 11.96A.150, RCW 11.96A.060, and the Court's inherent authority to issue sanctions. RCW 11.96A.150 "gives an appellate court broad discretion regarding the award of attorney fees in relation to the resolution of trust and estate disputes." *Portmann v. Herard*, 2 Wash app.2d 452,468-469, 409 P. 3d 119 (Div. 2, 2018); RCW 11.96A.150. The court is also empowered to enact whatever orders is deems equitable or necessary. RCW 11.96A.060. Finally, the Court has the equitable power to award sanctions. *State v. Gassmann*, 175 Wn.2d 208, 283 P.3d 1113 (2012). Mrs. Garrison requests an award of attorney fees and costs on appeal, jointly and severally, against Mr. McGill and Ms. Scott Laukkonen based on the above grounds.

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<sup>12</sup> Mr. McGill's actions were directly contrary to the purpose of CR 26(i). See 4 Karl B. Tegland, *Washington Practice: Rules Practice CR 26* at 12-13. (4th ed. Supp. 2001) (CR 26(i) intended "to reduce the number of discovery controversies brought before the courts for adjudication" and "to encourage professional courtesy between attorneys").

In relation to the motion to compel, attorney fees and costs were granted to Mrs. Garrison based on CR 37(a)(4). Mrs. Garrison requests an award of fees an appeal related to the motion to compel on those grounds.

#### **IV. CONCLUSION**

This appeal is relatively simple. The trial court issued a restraining order and sanction against Mr. McGill and his counsel for continuing to unduly influence an incapacitated person. There was already an injunction in place, and the actions taken were clearly prohibited by the Rules of Professional Conduct. That was not enough to deter Mr. McGill and his counsel, and, as result, the trial court exercised its clear authority to enter the restraining order and to grant an award of attorney fees as sanctions. The trial court's decision was based on Ms. Scott Laukkonen's admitted actions.

Mr. McGill's and Ms. Scott Laukkonen's conduct, which should never have occurred in the first place, has now lead to an appeal that is causing all parties to incur tens of thousands of dollars in fees and cost. The trial court clearly had authority to enter the restraining order and sanctions. The trial court was clearly correct in doing so. This Court should affirm the trial court's decision and award fees and costs on appeal, jointly and severally.

DATED this 30th day of August, 2019.

SCHEFTER & FRAWLEY



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JOE D. FRAWLEY, WSB# 41814  
Attorney for Respondent

**JOE FRAWLEY, P.S.**

**August 30, 2019 - 12:48 PM**

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**Appellate Court Case Number:** 53501-7  
**Appellate Court Case Title:** Margaret Garrison, Respondent v. Delbert Lee McGill, et al., Appellant  
**Superior Court Case Number:** 17-4-00122-2

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