

**FILED
Court of Appeals
Division II
State of Washington
4/24/2020 4:36 PM**

No. 51836-8-II

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

MARGARET GARRISON,

Respondent,

v.

DELBERT LEE MCGILL,

Appellant.

**SUPPLEMENTAL BRIEF REGARDING
RAP 2.2 AND RAP 2.3**

Joe D. Frawley
Attorney for Respondent

Schefter and Frawley
1415 College Street SE
Lacey, WA 98503
360-491-6666
WSBA # 41814

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I. IDENTITY OF PETITIONER

MARGARET GARRISON, Petitioner in the trial court and Respondent herein, and submits this Supplemental Brief Regarding RAP 2.2 and RAP 2.3.

II. FACTS RELATED TO RAP 2.2 AND 2.3

The majority of the relevant facts are found in the Brief of Respondent filed herein. There are additional facts relevant to this appeal. Respondent will briefly supplement her earlier factual recitation.

The trial court decision appealed by Appellant Delbert Lee McGill is a restraining order and attorney fee sanction issued as a result of Mr. McGill and his counsel violating an existing restraining order prohibiting Mr. McGill from continuing to exploit Mr. Horst, an incapacitated person. The order was based largely on the declaration testimony of counsel, who admitted to unduly influence Mr. Horst, who was both an opposing party against whom Ms. Scott Laukkonen was prosecuting litigation on Mr. McGill's behalf and an individual that had been adjudicated incapacitated. CP 258; *see e.g.*, Verbatim Report, March 22, 2019, p. 18 (indicating that the restraining order was the only way to protect Mr. Horst "quite honestly based upon what Ms. Scott Laukkonen has filed"). Following the order, the case proceeded, and trial was completed on March 12, 2020. Frawley

Decl., Apr. 24, 2020. Importantly, the restraining order did not hinder Mr. McGill's ability to present his case at trial. The order itself contemplates Mr. McGill and his counsel obtaining relief from the restraints to prosecute Mr. McGill case. CP 259 (stating that "Any party may seek relief from these restraints."). After the order was entered, the parties stipulated to, and the Court granted, relief from the restraints to allow Mr. McGill to conduct a discovery deposition of Mr. Horst. Frawley Decl., Exhibit B. The parties await the trial court's decision, which has been delayed by the trial court's limited operation due to the current corona virus crisis. *Id.*, Exhibit A.

III. ARGUMENT

A. The Trial Court's Restraining Order and Attorney Fee Award is not Appealable Under RAP 2.2.

RAP 2.2 provides as follows:

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(2) [Reserved.]

(3) Decision Determining Action. Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

- (4) Order of Public Use and Necessity. An order of public use and necessity in a condemnation case.
- (5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.
- (6) Termination of All Parental Rights. A decision terminating all of a person's parental rights with respect to a child.
- (7) Order of Incompetency. A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.
- (8) Order of Commitment. A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.
- (9) Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment.
- (10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.
- (11) Order on Motion for Arrest of Judgment. An order arresting or denying arrest of a judgment in a criminal case.
- (12) Order Denying Motion to Vacate Order of Arrest of a Person. An order denying a motion to vacate an order of arrest of a person in a civil case.
- (13) Final Order After Judgment. Any final order made after judgment that affects a substantial right.

Wash. R. App. P. 2.2

The order appealed by Respondent is a temporary restraining order and attorney fee sanction. CP 257-259. Indeed, Appellant argues that the

“trial court entered an *interlocutory* ruling, granting a restraining order and joint and several liability for attorney fees against Mr. McGill and his counsel...” Appellant’s Brief, Jul. 15, 2019, p. 6 (emphasis added). The trial court’s interlocutory decision is not a decision listed in RAP 2.2 and therefore is not appealable as a matter of right.

B. The Court Should Not Grant Discretionary Review Under RAP 2.3(b).

Interlocutory review is disfavored. *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wash. App. 457, 462, 232 P.3d 591, 593 (2010). “Piecemeal appeals of interlocutory orders must be avoided in the interests of speedy and economical disposition of judicial business.” *Id.* Pretrial review of rulings confuses the functions of trial and appellate courts. *Id.* A trial court finds facts and applies rules and statutes to the issues that arise in the course of a trial. *Id.* An appellate court reviews those rulings for legal error and considers the harm of the alleged error in the context of its impact on the entire trial. *Id.* **Interlocutory review is available in those rare instances where the alleged error is reasonably certain and its impact on the trial manifest.** *Id.* (emphasis added).

RAP 2.3(b) provides four considerations for granting discretionary review. In this case, only RAP 2.3(b)(1) and RAP 2.3(b)(2) are even arguably relevant. Under these criteria, there is an inverse relationship between the certainty of error and its impact on the trial. *Minehart*, 156

Wash. App. at 462-463. Where there is a weaker argument for error, there must be a stronger showing of harm. *Id.* at 463.

i. There Was No Obvious Error Which Would Render Further Proceedings Useless.

As discussed in the Brief of Respondent, the trial court did not commit any error, let alone an obvious error. The court had the clear authority under a number of statutes to restrain Mr. McGill and his counsel from continuing to exploit the incapacitated Mr. Horst. Their conduct was especially egregious because a restraining order was already in place and had been repeatedly violated, Mr. Horst had already been adjudicated incapacitated, Mr. McGill was an opposing party, and Ms. Scott Laukkonen admits to discussing the case with Mr. Horst. The evidentiary basis for the ruling is sound, as the trial court relied heavily on the declaration testimony submitted by Appellant's counsel, Ms. Scott Laukkonen. CP 137-151.

Assuming, *arguendo*, that the trial court did commit an error, discretionary review is inappropriate because the alleged error did not render further proceedings useless. Even if an error was committed, interlocutory review is available in those rare instances where its impact on the trial is manifest. *Minehart*, 156 Wash. App. at 462-463. Here, the case proceeded to trial, and trial was completed on March 12, 2020. Frawley Decl., Apr. 24, 2020, ¶ 2. Mr. McGill was able to obtain contact with Mr. Horst for purposes of presenting his claim, and the restraining order had no impact on Mr. McGill's ability to present his case at trial. Further

proceedings did occur and trial is now complete. The Court should not grant review pursuant to RAP 2.3(b)(1).

ii. There Was No Probable Error and the Trial Court's Decision Did Not Substantially Alter the Status Quo or Substantially Limit the Freedom of a Party to Act.

As discussed above, there was no error by the trial court. Further, there was no alteration of the status quo. The claims asserted by the parties remained the same.

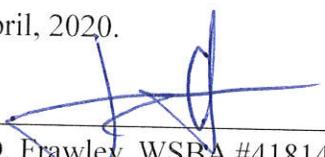
Importantly, the Mr. McGill remained free to prosecute his case as he saw fit. The restraining order explicitly contemplated Mr. McGill and Ms. Scott Laukkonen being granted relief from the restraints as necessary to process and present Mr. McGill's case. CP 259. Importantly, the parties stipulated to, and the trial allowed, Ms. Scott Laukkonen being permitted to take the discovery deposition of Mr. Horst in order to prepare for trial. CITE (put in my declaration). There was no alternation of the status quo, no limit on the parties' freedom to act, and harm to Appellant. The Court should not grant review pursuant to RAP 2.3(b)(2).

IV. CONCLUSION

It is conceded that the trial court decision appealed is an interlocutory order. However, there is no basis for interlocutory review under RAP 2.2, and therefore the notice of appeal lacks merit. The appellate court may treat a notice of appeal as a motion for discretionary review, but the trial court's decision is entirely inappropriate for

interlocutory review. The trial court committed no error. Even if it did, there was no impact on Appellant's ability to present his case at trial. The appeal must be denied and, as requested in Respondent's Opening Brief and as granted by the trial court¹, attorney fees should be awarded to Respondent.

DATED this 24th day of April, 2020.



Joe D. Frawley, WSBA #41814
Attorney for Appellant
Schefter and Frawley
1415 College Street SE
Lacey, WA 98503
Phone: 360-491-6666
Email: joedfrawley@gmail.com

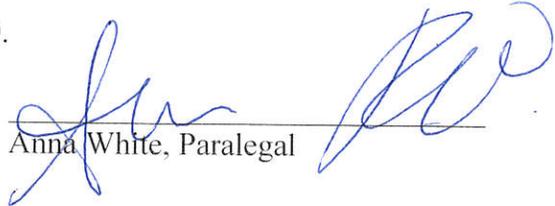
¹ In general, where a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on appeal. *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wash. App. 383, 423, 161 P.3d 406, 427 (2007).

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing *Supplemental Brief Regarding RAP 2.2 and RAP 2.3* on the following parties on the date noted below, by mailing via regular mail and by email to, contained in a sealed envelope, addressed to said parties at their last known addresses as indicated, and deposited in the Post Office at Lacey, Washington, on said day.

Holly Laukkonen
Laukkonen Law, PLLC
1800 Cooper Point Rd. SW #12
Olympia, WA 98502
Email: holly@laukkonenlaw.com

DATED this 24th day of April, 2020.



Anna White, Paralegal

JOE FRAWLEY, P.S.

April 24, 2020 - 4:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
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

The following documents have been uploaded:

- 535017_Affidavit_Declaration_20200424162414D2911820_8650.pdf
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Affidavit/Declaration - Other
The Original File Name was Declaration of Joe D. Frawley.pdf
- 535017_Briefs_20200424162414D2911820_1313.pdf
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Briefs - Respondents - Modifier: Supplemental
The Original File Name was Supplemental Brief.pdf

A copy of the uploaded files will be sent to:

- holly.laukkonen@gmail.com
- holly@laukkonenlaw.com

Comments:

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1415 COLLEGE ST SE
LACEY, WA, 98503-2655
Phone: 360-491-6666

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Division II
State of Washington
OF THE STATE OF WASHINGTON
4/24/2020 4:36 PM

MARGARET GARRISON,) NO. 53501-7-II
)
Respondent,) DECLARATION OF JOE D. FRAWLEY
)
vs.)
)
DELBERT LEE MCGILL,)
)
Appellant.)

JOE D. FRAWLEY declares under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over 18 years of age and competent to testify, and make this declaration based upon my own personal knowledge.

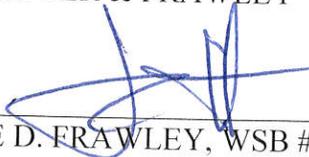
2. I am the attorney for Respondent, MARGARET GARRISON. The parties have been litigating this matter under Thurston County Superior Court Cause No. 17-4-00122-34. A bench trial was conducted beginning on March 9, 2020. The testimony and closing arguments concluded on March 12, 2020. The trial court scheduled a telephonic hearing to deliver the court's decision for March 27, 2020. On March 24, 2020, the Court issued an Order Adjusting Time of Hearing in response to the COVID-19 mandates. Pursuant to the Thurston County Emergency Administrative Order No. 3, Order No. 20-2-00001-34, dated March 20, 2020, the final ruling in this matter was reset to May 21, 2020. Attached hereto as Exhibit "A" is a true and correct copy of said Order.

3. Attached hereto as Exhibit B is a true and correct copy of an order entered under

1 Thurston County Superior Court Cause No. 17-4-00122-34.

2 DATED this 24th day of April, 2020.

3
4 SCHEFTER & FRAWLEY

5
6 
7 _____
8 JOE D. FRAWLEY, WSB #41814

9 I hereby certify that I have served the foregoing *Declaration of Joe D. Frawley* on the
10 following parties on the date noted below, by mailing via regular mail and by email to,
11 contained in a sealed envelope, addressed to said parties at their last known addresses as
12 indicated, and deposited in the Post Office at Lacey, Washington, on said day.

13 Holly Laukkonen
14 Laukkonen Law, PLLC
15 1800 Cooper Point Rd. SW #12
16 Olympia, WA 98502
17 Email: holly@laukkonenlaw.com

18 DATED this 24th day of April, 2020.

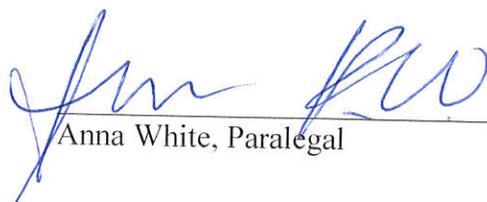
19 
20 _____
21 Anna White, Paralegal

Exhibit 'A'

17-4-00122-34
OR 402
Order
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SUPERIOR COURT
THURSTON COUNTY, WA

2020 JAN -3 AM 11:20

Linda Myhre Enlow
Thurston County Clerk

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SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

MARGARET GARRISON,	
	Petitioner,
v.	
DELBERT LEE MCGILL,	
	Respondent

NO. 17-4-00122-34

[PROPOSED]
ORDER ALLOWING CONTACT FOR
DEPOSITION

THIS MATTER having come before the court on the motion of DELBERT LEE MCGILL, in open court this 3rd day of January, and the court having considered the record and the arguments of counsel,

THE COURT makes the following findings:

1. This Court entered an order on March 29, 2019, which states that Delbert Lee McGill and his counsel of record, Holly Scott Laukkonen, are restrained from “knowingly making any contact, whether in-person, telephone, by written correspondence, or through a third-party with Vernon Jacob Horst;”

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2. Delbert Lee McGill desires the discovery deposition testimony of Mr. Horst, an incapacitated person;
3. Joe Frawley, counsel for Mr. Horst's guardian, Margaret Garrison, indicated he will not oppose an order permitting the contact between Ms. Scott Laukkonen and Mr. Horst for such a deposition;
4. Mr. Frawley proposed, and Mr. McGill accepted, January 3rd for the taking of Mr. Horst's deposition testimony;
5. Mr. McGill has issued, through Mr. Horst's guardian, a subpoena for Mr. Horst to appear for a videotaped deposition on the afternoon of January 3, 2019;

THE COURT HEREBY ORDERS as follows:

1. Contact with Vernon Jacob Horst Horst by Delbert Lee McGill, by and through his counsel of record, Holly Scott Laukkonen, in the usual course of taking testimony through a discovery deposition shall not be deemed a violation of this court's order of March 29, 2019, restraining contact.

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SO ORDERED this 3rd day of January, 2020.



JUDGE
John Skinder

Presented by:
LAUKKONEN LAW, PLLC



HOLLY SCOTT LAUKKONEN, WSBA #46705
Attorney for Respondent

Approved for entry;
notice of presentation waived:

SCHEFTER & FRAWLEY


JOE D. FRAWLEY, WSBA #41814
Attorney for Petitioner

Exhibit 'B'

17-4-00122-34
OR 460
Order
7974909



FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2020 MAR 24 PM 6:18

Linda Myhre Enlow
Thurston County Clerk

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY**

MARGARET GARRISON,

Petitioner,

Vs

DELBERT LEE MCGILL,

Respondent,

NO. 17-4-00122-34

ORDER ADJUSTING TIME OF HEARING

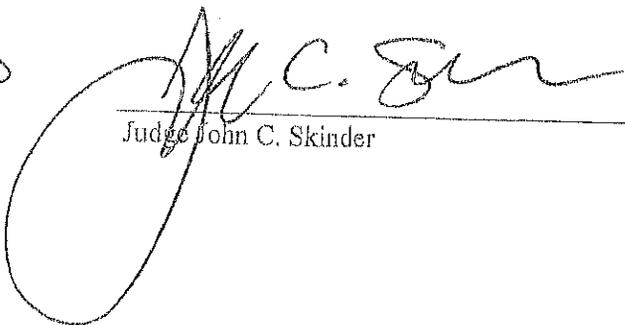
(CLERK'S ACTION REQUIRED)

Assigned Judge: John C. Skinder

The trial in this matter was scheduled to resume on March 27, 2020, at 1:30 p.m. for the Court's ruling. Pursuant to Thurston County Superior Court Emergency Administrative Order No. 3, Order No. 20-2-00001-34, dated March 20, 2020, and due to limited court staff and limited hours of operation, **the court is changing this telephonic hearing time to May 21, 2020, at 1:30.**

The parties are directed to call 360-709-3000, use access code 201503# at 1:25 p.m. and wait until the matter is called in open court.

DATED: 3/24/2020



Judge John C. Skinder

Order Adjusting Time of Hearing

THURSTON COUNTY SUPERIOR COURT
2000 Lakeridge Dr. S.W.
Olympia, WA 98502
(360) 786-5560
Fax: (360) 754-4060

JOE FRAWLEY, P.S.

April 24, 2020 - 4:36 PM

Transmittal Information

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Appellate Court Case Title: Margaret Garrison, Respondent v. Delbert Lee McGill, et al., Appellant
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Briefs - Respondents - Modifier: Supplemental
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- holly@laukkonenlaw.com

Comments:

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