

FILED

JUL 19 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 297926

**THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION III**

Terry-Lee, o/b/o ORVILLE MOE,
Appellant,

v.

AARON D. GOFORTH, through REED & GIESA, P.S.,
Respondent.

BRIEF OF RESPONDENT

REED & GIESA, P.S.
JOHN P. GIESA, WSBA #6147
AARON D. GOFORTH, WSBA #28366
Attorneys for Respondent for the benefit of
Washington Motorsports Limited Partnership
222 North Wall Street, Suite 410
Spokane, WA 99201
Telephone: (509) 838-8341
Facsimile: (509) 838-6341

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1. IDENTITY OF RESPONDENT AND PETITIONER/APPELLANT

Respondent, Aaron D. Goforth, through Reed & Giesa, P.S., is and was at all relevant times, acting in his capacity as counsel for Washington Motorsports Limited Partnership (“WML”) and its Receiver and Acting General Partner, Barry W. Davidson, in, among other cases, the case captioned *Washington Motorsports Limited Partnership v. Spokane Raceway Park, Inc.*, Spokane County Superior Cause No. 03-2-06856-4 (“WML’s Receivership Case”). The Notice of Appeal at issue in this appeal was filed in the case captioned *In re the Matter of: Orville Moe a Vulnerable Adult, Petitioner (Person to be protected) v. Aaron D. Goforth – Attorney thru, Reed & Giesa, P.S., Respondent (Person to be Restrained)*, Spokane County Cause No. 11-2-01054-1 (“Petition Case”).

Petitioner/Appellant, Terry-Lee¹ (the alleged “interested person”), is a longtime friend of Orville Moe (the alleged “vulnerable adult”).²

¹ Terry-Lee is referred to herein throughout as “Terry-Lee” and not as “Mr. Lee,” because Terry-Lee has claimed in prior pleadings that “Mr. Lee” does not refer to him.

² Terry-Lee has mis-stated basic information regarding WML’s receivership case and the parties thereto. He incorrectly refers to WML’s receiver (Barry W. Davidson) numerous times and interchangeably as “D.A. Davidson” (a national investment firm) and “B.A. Davidson.” He also incorrectly refers to “B.A. Davidson” as the “receiver for the bankruptcy court.” To the contrary, Mr. Davidson is the Receiver for WML in the Superior Court. The Chapter 11 bankruptcy trustee for the Defendant in WML’s Receivership Case (Spokane Raceway Park, Inc.) is John D. Munding. Terry-Lee also incorrectly refers to WML as an “L.L.C.” although it is a limited partnership.

2. INTRODUCTION

Terry-Lee filed the underlying Petition for Protection of Vulnerable Adult (“PPVA”) in the Petition Case in a transparent effort to nullify a civil bench warrant and other orders and judgments issued against Mr. Moe in WML’s Receivership Case. Judge Annette S. Plese (the judge in both the Petition Case and WML’s Receivership Case) correctly denied his PPVA (and his Motions for Reconsideration).

The alleged vulnerable adult, Mr. Moe, has a lengthy history of commencing legal proceedings (or assisting others in commencing legal proceedings) to attempt to change or reverse orders and rulings made in WML’s Receivership Case. Numerous Cease and Desist Orders have been entered in WML’s Receivership Case which prohibit such further conduct by Mr. Moe (and/or those working with him). The underlying case in this appeal (the Petition Case) is just one of Mr. Moe’s latest attempts (this time through Terry-Lee) to seek to alter or amend an Order entered in WML’s Receivership Case (in this instance, a bench warrant issued against Mr. Moe).

The bench warrant was issued against Mr. Moe because of his repeated refusals to obey trial court orders in WML’s Receivership Case for Mr. Moe to provide documents and information to WML relating to WML’s efforts to collect a \$373,000 judgment against Mr. Moe (which is based upon an award of remedial sanctions for Mr. Moe’s repeated violations of other Court orders). Mr. Moe’s

attorneys unsuccessfully moved on several occasions to have Judge Plese quash that bench warrant. Terry-Lee then drafted pleadings for Mr. Moe (purportedly “*pro se*” pleadings by Mr. Moe) in an unsuccessful attempt to persuade Judge Plese to quash that bench warrant. Terry-Lee then sought to quash the bench warrant by commencing a separate legal proceeding under the guise of a PPVA (the Petition Case). Judge Plese denied those efforts, and this appeal ensued.

Subsequent to the filing of Terry-Lee’s appeal, the Judge Plese once again gave Mr. Moe an opportunity to have the bench warrant against him quashed if he would appear for an in-court supplemental proceedings deposition on July 25, 2011. Mr. Moe appeared for that deposition, and the bench warrant was quashed, thus mooting this entire appeal.

Terry-Lee is now using this appeal to seek reversal of other orders and Judgments entered in WML’s Receivership Case, including a Judgment entered against Mr. Moe that was affirmed by this Court in June of 2010, and a Judgment entered against Mr. Moe (and his wife, Deonne Moe)(collectively “the Moes”) on June 21, 2011, which the Moes have never opposed or appealed. In addition to disregarding proper procedures, Terry-Lee lacks standing to seek such relief, as he is not an aggrieved party relating to those orders or judgments. By seeking such relief on behalf of Mr. Moe, Terry-Lee is engaging in the unauthorized practice of law. Terry-Lee’s appeal and the relief sought through this appeal are frivolous.

For the reasons demonstrated below, the trial court's Orders denying Terry-Lee's PPVA should be affirmed, and this Court should award attorneys' fees and costs against Terry-Lee.

3. ASSIGNMENTS OF ERROR

WML does not make any assignments of error.

Terry-Lee has not assigned error to any of the trial court's findings of fact made in support of the Order denying his PPVA, nor has Terry-Lee made any attempt to show they were not supported by substantial evidence. *Willener v. Sweeting*, 107 Wn.2d 388, 393 (1986). See Brief of Appellant Terry-Lee, pp. 7-12. RAP 10.3(g).³ As such, the trial court's findings of fact are verities for this appeal, *In re Estate of Jones*, 152 Wn.2d 1, 8 (2004), and are fatal to his appeal. Such finding include that Mr. Moe is not a "vulnerable" adult for purposes of RCW 74.34.020(16), and that Mr. Moe was simply "looking to avoid a bench warrant issued by the court for failing and appear & trying to bypass the civil bench warrant process." Clerk's Papers (CP) 37.

³ RAP 10.3(g) provides in relevant part as follows: "A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." (Emphasis added)

4. ISSUES PRESENTED FOR REVIEW

a. Should this Court affirm the trial court's discretionary decision to deny Terry-Lee's PPVA considering, among other reasons set forth below, that: (1) Mr. Moe is not a "vulnerable adult" pursuant to RCW 74.34.020(16); (2) collection of a judgment by an attorney on behalf of a client pursuant to court orders cannot constitute "financial exploitation" pursuant to RCW 74.34.020(6); (3) Terry-Lee is not an "interested person" pursuant to RCW 74.34.020(10); (4) Terry-Lee's PPVA is an improper collateral attack on the bench warrant issued in WML's Receivership Case; and (5) the quashing of a bench warrant is not relief that can be obtained under RCW 74.34 *et seq.*; (6) Respondent has immunity because all conduct was undertaken pursuant to court order and as counsel for WML's Receiver; and (7) Terry-Lee's appeal is moot following the trial court's subsequent quashing of the bench warrant at issue?

b. Should this Court deny the improper and untimely other relief sought for the first time in this Court and for which Terry-Lee lacks standing to seek (and for which he is not an aggrieved party), including his request: (1) for reversal of Final Judgments entered against Mr. Moe in WML's Receivership Case in September of 2008 and June of 2011; (2) ordering WML to produce documents in WML's Receivership Case that WML allegedly withheld from Mr. Moe; (3) allowing Mr. Moe to "sue for tort damages;" and (4) ordering a

grand jury and allowing Mr. Moe to present evidence? *See* Brief of Appellant, pp.23-24.

c. Should this Court award attorneys' fees and costs incurred in defending this appeal pursuant to RAP 18.9(a) since Terry-Lee's appeal is frivolous in that it fails to offer any reasonable basis as to how the trial court abused its discretion, and since his appeal is otherwise frivolous?⁴

5. STATEMENT OF THE CASE

Some of the background regarding WML's Receivership Case and the orders entered therein regarding Mr. Moe are necessary to provide context to the filing of Terry-Lee's PPVA (and the trial court's denial thereof).

WML's Receivership Case has been pending since 2003. It is still pending. The Superior Court file contains over 2,300 filings. Judge Robert D. Austin presided over WML's Receivership case from its inception in 2003 to the

⁴ Terry-Lee has also requested other improper relief, including relief relating to a doctor's note that Mr. Moe submitted in WML's Receivership Case in an attempt to avoid obeying the trial court's Order for him to sit for a supplemental proceedings deposition (*compare* Terry-Lee's Brief of Petitioner, pp.7-8, 10-11 *with* CP 523-25)(containing the trial court's never-appealed ruling on this issue); asking this Court to review the trial court's denial of a motion to supplement the record (*compare* Terry-Lee's Brief of Petitioner, p.9 *with* CP 225, even though that ruling has never been appealed); and claiming the trial court erred in failing to sanction Mr. Moe's former lawyer (Jerome Shulkin) in WML's Receivership Case, even though no one other than WML has requested such relief (and it was granted)(*compare* Terry-Lee's Brief of Petitioner, pp.8, 11 *with* Division III Case No. 298728 (affirming sanctions against Mr. Shulkin)).

end of 2009. Judge Plese has presided over WML's Receivership case from the beginning of 2010 to the present.⁵

Spokane Raceway Park, Inc. ("SRP") is the Defendant in WML's Receivership Case. CP 226-62. SRP is the former general partner of WML. Mr. Moe is the former president of SRP. Mr. Moe caused SRP to file for protection under Chapter 11 of the Bankruptcy Code, and was removed from the management of SRP through the appointment of John D. Munding as SRP's Chapter 11 Trustee.

Part of the relief sought in the Second Amended Complaint filed in WML's Receivership Case was for the appointment of a receiver. CP 256-57. After a lengthy evidentiary hearing / trial (14 trial days over a seven-month period with fourteen witnesses and over 100 exhibits)(CP 264), Judge Austin appointed Barry W. Davidson as WML's Receiver and Acting Managing General Partner in

⁵ This Court is familiar with WML's Receivership Case and Mr. Moe. There have been at least fourteen motions for discretionary review/notices of appeal connected with that case to date. *See* Division III case nos. 241025, 243788, 259471 (adjunct case), 263312, 263347, 265927, 270769 (arising out of an attempted appeal in another case by Deonne Moe of an order entered in the WML Receivership Case), 277470, 278166, 278981, 284778, 290280, 297926 (this Petition Case), and 298728. Seven of the above attempted appeals were filed either by Mr. Moe himself (263312, 265927, 277470), or by his wife Deonne Moe (and/or daughter Susan Ross) (270769 and 284778), or by both (290280), or by Spokane Raceway Park, Inc. (the Defendant in WML's Receivership Case) while it was still under Mr. Moe's control (243788).

July of 2005, thereby removing SRP and Mr. Moe from any further control of WML. CP 263-83 and CP 284-87.

As part of that appointment, Judge Austin found that SRP (while controlled by Mr. Moe) had violated numerous statutory, contractual and fiduciary duties owed to WML by, among other things, failing to maintain complete and accurate financial books and records; failing to account for all profits and benefits derived from use of partnership property; failing to provide annual audited financial statements by independent accountants as required by the partnership agreement; failing to establish the propriety of all transactions; commingling the assets, liabilities, bank accounts and financial affairs of WML and SRP; allowing WML funds to be used to purchase vehicles for Mr. Moe and pay his credit card bills; and failing to keep, update and maintain an accurate partnership register. CP 267-80, FF 11-14, 17-29, 32, 35-42; CL 3-9.

Judge Austin also tasked the Receiver with, among other things, a duty to reconstruct WML's partnership register (identifying owners, addresses, unit numbers, etc.), since SRP (through Mr. Moe) had failed to properly do so. CP 285-86. The Receiver was also tasked with investigating self-dealing and fraud by Mr. Moe and his family relating to the acquisition and sale of WML units. CP 286.

As a part of that process, the Court ordered Mr. Moe to turn over certain documents to WML's Receiver (including documents regarding his claims of

ownership of WML limited partnership units). *E.g.*, CP 289-90. Mr. Moe disobeyed that Order (and numerous subsequent orders to produce documents). WML successfully moved for summary judgment determinations that Mr. Moe did not own the units he was claiming. *E.g.*, CP 304-11. Ultimately, Mr. Moe failed to raise a question of fact as to any of the WML units he was claiming, and they were awarded to their rightful owners and/or returned as “treasury” units of WML (thereby increasing the value of all other units).

On September 19, 2008, Judge Austin entered a remedial sanctions Final Judgment against Mr. Moe in the amount of \$373,626.10 (plus interest) based upon Mr. Moe’s refusal to obey orders to produce documents. CP 403-09. That Judgment was affirmed by this Court on June 17, 2010. Div. III. Case No. 277470. CP 549-61.⁶

⁶ The background and documentation relating to WML’s numerous summary judgment and sanctions motions is extensive and is not repeated herein. They are unnecessary for the resolution of this appeal. The sanction awards demonstrate, however, that Mr. Moe has consistently failed to respect any Court Order, even under threat of imprisonment. Despite previously being sanctioned over \$350,000, he has continued to refuse to obey Court orders, even when facing arrest, resulting in WML’s Receivership Court sanctioning Mr. and Mrs. Moe an additional \$751,640.00 in June of 2011 for refusing to obey court orders. CP 625-31. Mr. and Mrs. Moe’s contempt of trial court orders continues unabated. As recently as March 7, 2012, Judge Plese again found the Moes in contempt for refusing to obey Court orders. CP 622. Judge Plese again imposed remedial sanctions of \$2,000.00 per day against each of the Moes which commenced on March 14, 2012. CP 622-23. To date, the Moes have not purged themselves of that contempt.

In aid of WML's collection of that Judgment, on November 16, 2009, Judge Austin entered an "Order Requiring Orville L. Moe to Answer Plaintiff's First Supplemental Interrogatories and Requests for Production Propounded to Orville L. Moe" within 30 days of service thereof. CP 427-28. On February 8, 2010, Mr. Moe filed untimely responses to that discovery. CP 429-64. Judge Plese ruled that those answers were "untimely, incomplete and evasive...." CP 541-42.

On February 16, 2010, the trial court (*ex parte* department) entered an Order for Supplemental Proceedings, requiring Mr. Moe to sit for a deposition on February 25, 2010. CP 465-67. That deposition was moved to March 15, 2010 to accommodate Mr. Moe's counsel's schedule. Without justification, Mr. Moe failed to attend that deposition. CP 524, ¶15.

On April 29, 2010, Judge Plese entered another Order for Supplemental Proceedings, requiring Mr. Moe to sit for a deposition on May 6, 2010 and to produce the documents identified therein. CP 468-76. During the April 29, 2010 hearing (which was not attended by Mr. Moe), Judge Plese informed Mr. Moe's then counsel, Jerome Shulkin, that she would issue a civil bench warrant for Mr. Moe's arrest if he failed to appear unless his attendance was excused by prior Order of the Court. CP 522, ¶5. Mr. Shulkin "fully informed Mr. Moe of the Order to appear" and that the Court would issue a bench warrant if he failed to appear. *Id.*

Mr. Moe failed to attend his Court ordered May 6, 2010 supplemental proceedings deposition, failed to produce the court ordered documents, and did not seek or obtain an order of protection regarding the Court's Order and threatened bench warrant. CP 522-23, ¶¶6-8.

Judge Plese found that Mr. Moe's refusal to have his depositions taken and to provide WML with documentation relating to his assets, liabilities, and income was an effort to prevent the Receiver from collecting WML's judgment against Mr. Moe. CP 525, ¶17. As such, on May 6, 2010, Judge Plese issued a bench warrant for Mr. Moe's arrest. CP 520-26. No appeal was ever taken from that bench warrant.

On June 4, 2010, Judge Plese further attempted to obtain Mr. Moe's compliance to have his deposition taken and to produce documents. Specifically, Judge Plese entered a remedial sanctions order which required Mr. Moe to sit for a deposition (and produce certain documents) on June 11, 2010, or the Court would impose a further remedial sanction of, among other things, \$2,000.00 per day for every day after June 11 that Mr. Moe failed to sit for his deposition. CP 527-36. Mr. Moe failed to comply with that Order, and on June 11, 2010, Judge Plese invoked that remedial sanction against Mr. Moe. CP 542, ¶2.

Judge Plese further ordered Mr. Moe to give proper responses to WML's First Supplemental Proceedings Interrogatories (which were previously ordered to

be answered by December 23, 2009), by June 18, 2010. Mr. Moe disobeyed that Order as well.⁷

Mr. Moe then filed multiple motions seeking to have Judge Plese quash the bench warrant issued against him. *E.g.*, CP 567-68, 572-73, and 577-79. Each of those motions was denied. CP 574-76 and 580. As part of the Order denying Mr. Moe's December 2010 motion to quash the bench warrant, Judge Plese ruled that she would quash the bench warrant when "Mr. Moe has made a good faith effort to fully answer WML's discovery." CP 580.

In steps Terry-Lee.

Terry-Lee has been a friend of Mr. Moe for 44 years. CP 2. He allegedly called Mr. Moe in December of 2010 after not having spoken to him for approximately eight months. CP 11. Mr. Moe apparently succeeded in convincing Terry-Lee of his false accusations against the Receiver and his counsel.⁸ After Mr. Moe informed Terry-Lee of the bench warrant, Terry-Lee

⁷ To date, Mr. Moe has failed to provide proper answers to WML's November 2009 discovery. In fact, in April of 2011, Judge Plese sanctioned Mr. Moe's counsel, Jerome Shulkin, \$8,624.00 for a December 2010 set of responses to that discovery which were certified by Mr. Shulkin in violation of CR 26(g). As referenced above, the order granting those sanctions was recently affirmed by this Court. Division III Case No. 298728.

⁸ Mr. Moe has been making wild, untrue, and unsupported allegations against the Receiver and his counsel for many years and in many courts. All such allegations have been rejected by each and every of the numerous courts that has considered them. Terry-Lee's underlying PPVA is admittedly based upon hearsay statements from Mr. Moe. It is respectfully brought to this Court's attention that Mr. Moe's

then allegedly reviewed the docket of WML's Receivership Case and some of the pleadings regarding the bench warrant issued against Mr. Moe. CP 12. Terry-Lee apparently believed that Mr. Moe's lawyers had failed in their obligations to Mr. Moe. *Id.* As described further below, although not licensed to practice law in any state, Terry-Lee began to act as Mr. Moe's "lawyer," going so far as to prepare handwritten pleadings for Mr. Moe to sign, with Mr. Moe then claiming they were his own "pro se" pleadings.

For example, although Mr. Moe was still represented by Jerome Shulkin in WML's Receivership Case on February 17, 2011, Mr. Moe, purporting to act *pro se*, attempted to file, among other things, another motion to quash the bench warrant which had been handwritten by Terry-Lee. *E.g.*, CP 581-85. Judge Plese refused to accept those pleadings for filing because they were filed in violation of her September 10, 2010 Order (which prohibits those represented by counsel in WML's Receivership Case from filing *pro se* pleadings). CP 564-66 and 581-85.

Based upon prior efforts by Mr. Moe, his wife (Deonne Moe), and their daughter (Susan Ross) to collaterally attack orders entered in the WML's Receivership Case (including their prior filing of several separate lawsuits against WML and/or its Receiver and/or its counsel), Judge Austin entered several Cease and Desist Orders prohibiting them (or anyone working with them, such as Terry-

counsel submitted pleadings in June of 2010 in the United States District Court wherein he asserts that Mr. Moe has been diagnosed with, and was then under medical treatment for, paranoia. CP 494.

Lee) from, among other things, taking any action in any other proceeding to seek to collaterally attack or change any order entered in WML's Receivership Case (such as the bench warrant). CP 295-303, CP 361-78, CP 379-96, and CP 410-26.

Terry-Lee, having failed in his efforts to "ghost write" pleadings for Mr. Moe's attempt to quash the bench warrant quashed in WML's Receivership Case, then sought to stay/quash Judge Plese's bench warrant against Mr. Moe under the guise of a PPVA filed on March 11, 2011. *See* CP 1-9 (the PPVA at issue in this appeal). Specifically, Terry-Lee commenced this separate Petition Case lawsuit captioned "*In re the Matter of: Orville Moe a Vulnerable Adult, Petitioner (Person to be protected) v. Aaron D. Goforth – Attorney thru Reed & Giesa, P.S., Respondent (Person to be Restrained)*," Spokane County Cause No. 11-2-01054-1.

The PPVA was improperly styled as against "Aaron D. Goforth" (WML's lawyer), instead of against WML or its Receiver, in an ineffectual attempt to avoid the application of the prior Cease and Desist Orders entered in WML's Receivership Case. The PPVA was filed in violation of the Cease and Desist Orders, however, because the Moes assisted Terry-Lee in his prosecution of his Petition Case. CP 17-18 (letter from Mrs. Moe in which she states she would have filed the PPVA herself, but allegedly did not do so because of her failing health); CP 47-48 (Declaration by Mr. Moe); *see also* CP 592-602 (additional

Cease and Desist Order entered against the Moes based upon their participation in the Petition Case in violation of prior Cease and Desist Orders).⁹

Terry-Lee's PPVA was based upon the frivolous contention that WML's lawyer's efforts to attempt to collect WML's judgment against Mr. Moe ("demanding information," etc.) pursuant to court orders constituted "financial exploitation." CP 2. Terry-Lee also frivolously contended that Mr. Goforth had "taken millions of dollars in stock, equity, equipment, vehicles, cash from bank accounts..." (CP 5) even though all relief obtained by WML (not Mr. Goforth) against Mr. Moe had been pursuant to summary judgment orders, garnishment orders, and other court orders. *E.g.*, CP 304-11 (summary judgment determination that Mr. Moe did not own the WML units he was claiming), CP 427-28 (order requiring Mr. Moe to provide information to WML), CP 569-71 (Judgment and Order for bank to pay Mr. Moe's funds to WML).

Further, the relief Terry-Lee sought was not specifically against Mr. Goforth, but rather was to prohibit "the Police and Deputy's [*sic*]" from arresting Mr. Moe (CP 4) and "for a stay against the existing Bench Warrant...."

⁹ As discussed in more detail below, on April 27, 2011, Judge Plese also entered a Cease and Desist Order against Terry-Lee, prohibiting him from, among other things, continuing to engage in the unauthorized practice of law on behalf of Mr. Moe (or anyone else), and prohibiting him from any further attempts to collaterally attack or change orders entered in WML's Receivership Case, and prohibiting him from filing any other legal proceedings against WML (or its counsel) without prior approval from WML's Receivership Court. CP 603-15. Terry Lee did not appeal that Cease and Desist Order.

(CP 13). Simply stated, Terry-Lee was requesting the trial court in the Petition Case to quash the bench warrant issued against Mr. Moe in WML's Receivership Case.

The PPVA was defective on its face. In Section 3 of the cover page "form" PPVA, a petitioner is required to check a box indicating the reason why the adult over whom protection is sought is allegedly a vulnerable adult (tracking the language of RCW 74.34.020(16)(definition of "vulnerable adult")). Terry-Lee did not check any of the available boxes, but instead handwrote in his own box, checked it, and titled it "under 'Duress' and Harssment [*sic*]." CP 1. Also, in response to the form PPVA question "Does the respondent [Mr. Goforth] use firearms, weapons or objects to threaten or harm the vulnerable adult? Please describe:," Terry-Lee frivolously states that the use of "Legal process (Legal paper work)" constitutes such conduct. CP 6.

Judge Plese happened to be in the *ex parte* department on March 11, 2011, when Terry-Lee presented his PPVA. Judge Plese, having dealt for over one year with the issues relating to Mr. Moe's disobedience of Court Orders and his attempts to have her quash the bench warrant she issued against Mr. Moe, summarily denied Terry-Lee's PPVA, and ruled as follows:

This Matter having come on for hearing upon the request of the moving party ... For a temporary vulnerable adult protection order, reasons for denial of the order are: the adult [Orville Moe] is not vulnerable but looking to avoid a bench warrant issue by the court

for failing to appear & trying to bypass the Civil Bench Warrant Process.

CP 37 (emphasis added).¹⁰

Also, Terry-Lee did not provide prior notice of the March 11, 2011 hearing to the Respondents, Aaron D. Goforth or Reed & Giesa, P.S. CP 606, ¶10. Again without providing prior notice to the Respondents (*id.*, ¶12), on March 17, 2011, Terry-Lee returned to the *ex parte* department of the Superior Court with yet another PPVA (basically a re-dated version of his first PPVA), apparently hoping to have a judge other than Judge Plese review his PPVA. CP 56-65. Apparently because of her denial of Terry-Lee's first PPVA, Judge Plese was summoned to the *ex parte* department, and she once again denied the PPVA, finding that "After review of the paperwork there is no basis to issue the temporary order [and] IT IS ORDERED that: the reconsideration for a petition for vulnerable adult protection order is denied." CP 66-72.

On March 22, 2011, Terry-Lee filed yet a "3rd Motion for a 'Protection Order'" (CP 73-84), again without prior notice to the Respondent. That Motion

¹⁰ As found by Judge Plese, Mr. Moe is not a vulnerable adult. The reason the Petition was filed by Terry-Lee as opposed to Mr. Moe are several fold. First, Mr. Moe would not come to the Courthouse and risk arrest, since he was then under an active bench warrant. Second, such a filing by Mr. Moe would have obviously violated the several Cease and Desist Orders entered in WML's Receivership Case (referenced above). As also referenced above, however, Judge Plese subsequently determined that the Moe's assistance with Terry-Lee in his Petition Case was, nevertheless, a violation of the prior Cease and Desist Orders. CP 592-602.

was also denied. On March 23, 2011, Terry-Lee filed a Notice of Appeal in the Petition Case.

On March 28, 2011, WML moved in WML's Receivership Case for the entry of a Cease and Desist Order seeking to prohibit Terry-Lee from, among other things, continuing his prosecution of the Petition Case. CP 586-91. On April 27, 2011, Judge Plese entered the requested Cease and Desist Order against Terry-Lee. CP 603-15. As part of that Order, Judge Plese made, among others, the following findings of fact:

17. Terry-Lee filed his Petition acting in concert with Orville and Deonne Moe.

18. Terry-Lee is not licensed to practice law in the State of Washington.

19. Aaron D. Goforth (through Reed & Giesa, P.S.) has acted solely in the capacity as counsel for WML and WML's Receiver, Barry W. Davidson, in WML's Receivership Case. All of WML's counsel and its Receiver's conduct has been pursuant to Court orders and garnishments.

CP 608.

As part of that Order, Judge Plese also made, among others, the following conclusions of law:

6. Terry-Lee's Petition interferes with this Court's exclusive possession and right of control over WML's intangible property (WML's Judgment against Orville Moe) [under RCW 7.60.055], and interferes with this Court's exclusive jurisdiction to determine all controversies relating to the collection of WML's Property (WML's Judgment against Orville Moe) [under RCW 7.60.055].

7. The allegations in Terry-Lee's Petition seek to contradict, ignore, disregard, and/or constitute a collateral attack on the Findings of Fact, Conclusions of Law, Orders, rulings, decisions, and determinations of law and fact (both oral and written), express and implied, that have been made by this Court in this Main Receivership Case, including those contained in this Court's bench warrant issued against Orville Moe, and this Court's Orders denying Mr. Moe's Motions to Quash that bench warrant.

8. Terry-Lee's Petition seeks to, among other things, have a different judge in a different case stay, quash or reverse the bench warrant issued by this Court against Orville Moe. Seeking to quash a bench warrant is not relief that can be obtained under Washington's Vulnerable Adult Statute. RCW 74.34 *et seq.*

9. Terry-Lee's Petition was filed and is being maintained in violation of this Court's four Cease and Desist Orders, including their prohibitions on interfering with the administration of WML's receivership, and/or seeking to collaterally attack, ignore, or change (in another case or before another Court) the oral and written rulings and orders entered in WML's Receivership Case.

10. Aaron D. Goforth and Reed & Giesa, P.S., have absolute immunity from liability for acts arising out of their representation of WML.

11. Terry-Lee's conduct in drafting pleadings for Orville Moe in WML's Receivership Case and by seeking to quash a bench warrant in the Petition Case constitutes the unauthorized practice of law.

12. Neither Aaron D. Goforth, Reed & Giesa, P.S., WML, nor Barry W. Davidson have abandoned, abused, financially exploited, neglected, harassed, or caused duress to Mr. Moe, nor threatened to abandon, abuse, financially exploit, neglect, harass, or cause duress to Mr. Moe as defined in RCW 74.34 *et seq.*

13. Terry-Lee's Petition was an intentional, malicious

and bad faith false report of alleged financial exploitation, harassment, and duress of Mr. Moe.

CP 609-11.

Based upon Judge Plese's findings of fact and conclusion of law, she entered the Cease and Desist Order prohibiting Terry-Lee from, among other things, (1) continuing prosecution of the Petition Case without permission from the Receivership Court; (2) filing any other lawsuits against WML's Receiver or counsel without prior permission of the Receivership Court; (3) taking any other action in any other Court to seek to collaterally attack or change any orders entered in WML's Receivership Case without prior permission of the Receivership Court; (4) taking any other action that interferes with the administration of WML's Receivership Case; (5) drafting, preparing or filing pleadings on behalf of the Moe's (or anyone else). CP 611-14.

Terry-Lee did not timely (or otherwise) seek to appeal that Cease and Desist Order.

In June of 2010, Judge Plese again offered Mr. Moe an opportunity to have the bench warrant issued against him recalled. Specifically, by letter dated June 20, 2011, Judge Plese ordered that if Mr. Moe attended a hearing on July 25, 2011 to have his supplemental proceedings deposition taken, she would recall Mr. Moe's bench warrant. CP 616. Mr. Moe attended that deposition, and Judge Plese recalled the bench warrant. CP 617. The warrant has not been reissued.

6. ARGUMENT

This appeal should relate solely to the issue of whether the trial court abused its discretion in denying Terry-Lee's PPVA. Terry-Lee attempts to utilize this appeal, however, to seek other relief which he did not seek in the trial court, and which he has no standing to seek in any court. Below, both sets of issues are addressed in turn.

A. The Trial Court Properly Denied Terry-Lee's PPVA.

Standard of Review

A decision to grant or deny an order of protection is reviewed for abuse of discretion. *Hecker v. Cortinas*, 110 Wn. App. 865, 869 (2002). "[A] trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds." *E.g., Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833 (*en banc* 2007). The reviewing court can affirm the trial court on any basis supported in the record. *E.g., Nast v. Michels*, 107 Wn.2d 300, 308 (1986).

Washington's Vulnerable Adult Statute

Washington's Vulnerable Adult Statute ("WVAS"), RCW 74.34 *et seq.*, allows certain "interested persons" to seek protection of "vulnerable adults" from "financial exploitation." RCW 74.34.020(6), (10), and (16). An "[i]nterested person" is someone "who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is

unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.” RCW 74.34.020(10)(emphasis added).

A “vulnerable adult” is someone who receives certain types of care; has been found incapacitated; or is “[s]ixty years of age or older who has the functional, mental, or physical inability to care for himself or herself.”

RCW 74.34.020(16)(a)(emphasis added).¹¹

“‘Financial exploitation’ means the illegal or improper use ... of the property, income, resources, or trust funds of the vulnerable adult by any person ... for any person’s ... profit or advantage other than for the vulnerable adult’s profit or advantage.” RCW 74.34.020(6)(emphasis added).

The Trial Court Ruling Should be Affirmed

The trial court’s denial of Terry-Lee’s PPVA should be affirmed, because: (1) this appeal is moot; (2) Mr. Moe is not a “vulnerable adult;” (3) Terry-Lee is not an “interested person;” (4) collection of a judgment pursuant to Court order cannot constitute “financial exploitation;” (5) the attempt to seek reversal of a bench warrant issued in a different case is improper and untimely; (6) the PPVA was an improper collateral attack on the bench warrant; (7) the Respondent has “litigation immunity” from the relief sought; (8) quashing a bench warrant is not relief permitted under WVAS; (9) Terry-Lee is engaging in the unauthorized

¹¹ Effective January 1, 2012, this provision has been recodified as RCW 74.34.020(17)(a).

practice of law; (10) the PPVA at issue violates Washington's Receivership Statute (RCW 7.60 *et seq.*); and (11) the PPVA at issue violates several Cease and Desist Orders entered in WML's Receivership Case.¹²

i. Terry-Lee's Appeal is Moot

The primary relief sought in Terry-Lee's PPVA was for the Court to quash the bench warrant issued against Mr. Moe, and to prohibit the police from arresting Mr. Moe. CP 3-4. On July 25, 2011, Judge Plese quashed the bench warrant after Mr. Moe finally agreed to come to Court and testify under oath regarding his assets and liabilities. CP 617. Terry-Lee's entire appeal has been mooted by the quashing of the bench warrant at issue.

ii. Mr. Moe is not a "Vulnerable Adult" under RCW 74.34 *et seq.*

A "vulnerable adult" is a statutorily defined term. RCW 74.34.020(16). Mr. Moe does not even arguably satisfy any of the conditions to be a "vulnerable adult." Even Terry-Lee in his PPVA did not check any of the boxes that track the

¹² Two of Terry-Lee's Briefs of Petitioner were rejected by the Clerk of this Court (letters dated 10-19-2011; 11-8-2011), and a subsequent version thereof was ordered stricken by a ruling from a Commissioner of this Court (Ruling dated 3-2-2012) for failing to, among other things, provide a citation to record for each factual assertion. Despite these rejections, Terry-Lee's March 23, 2012 "New and amended" Brief continues to violate, among other rules, RAPs 10.3 and 10.4. Terry-Lee continues to fail to provide the required record citations, because there is no support for such propositions in the record, and many are untrue, unsupported, wild conspiracy theories.

language of RCW 74.34.020(16), but rather handwrote in his own box and titled it “under ‘Duress’ and Harssment [*sic*]”. CP 1, Section 3.

As part of Judge Plese’s denial of Terry-Lee’s PPVA, she specifically found that “the adult [Orville Moe] is *not vulnerable* but looking to avoid a bench warrant issue by the court for failing to appear....” CP 37 (emphasis added).

Terry-Lee did not assign error to this finding, and it is a verity on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8 (2004).

Terry-Lee simply offered his inadmissible lay opinion that Mr. Moe is “handicapped” and “disabled.” *E.g.*, CP 3, 5, 6.¹³ The PPVA and supporting “Affidavit” are otherwise replete with inadmissible hearsay. CP 1-9 & 11-15; *see also* ER 801-802; *see also* ER 701-702.¹⁴ It was Terry-Lee’s burden to establish that Mr. Moe is a vulnerable adult. There is no admissible evidence in this record from which the Court could have determined that Mr. Moe is a vulnerable adult.¹⁵

¹³ Terry-Lee’s assertion that Mr. Moe is a “vulnerable adult” is also belied by the fact that Mr. Moe continues to represent himself *pro se* in WML’s Receivership Case, including filing and opposing motions, and presenting oral arguments.

¹⁴ Although ER 1101(c)(4) permits a judge not to apply the Rules of Evidence in a proceeding under RCW 74.34, a judge is not prohibited from applying them. *Id.* Even when the Rules of Evidence are not applied in a proceeding under RCW 74.34, a judge is always granted wide discretion in the amount of weight afforded such “evidence.” Judge Plese obviously accorded Terry-Lee’s “evidence” little or no weight.

¹⁵ At the time the trial court made its determination that Mr. Moe was not a vulnerable adult, Mr. Moe was representing himself, *pro se*, in numerous, complex state and federal lawsuits and proceedings. CP 523-24, FF 11-12.

iii. Terry-Lee is not an “Interested Person” under RCW 74.34 et seq.

An “interested person” is a statutorily defined term.

RCW 74.34.020(10)(including requiring a “good faith belief that the court’s intervention is necessary.”) Judge Plese found in WML’s Receivership Case that Terry-Lee’s PPVA was “an intentional, malicious and bad faith false report . . .” CP 611, CL 13. Judge Plese also found that Terry-Lee was actually attempting to act as counsel for Mr. Moe through the unauthorized practice of law. *Id.*, CL 11. Judge Plese implicitly determined in the Petition Case that Terry-Lee was not an “interested person.”

iv. As a Matter of Law, Collection of a Judgment Pursuant to Court Order Cannot Constitute Financial Exploitation.

“‘Financial exploitation’ means the illegal or improper use . . . of the property, income, resources, or trust funds of the vulnerable adult by any person . . . for any person’s . . . profit or advantage other than for the vulnerable adult’s profit or advantage.” RCW 74.34.020(6)(Emphasis added). The alleged wrongful conduct by Mr. Goforth as frivolously asserted by Terry-Lee is the use of “legal process” and “legal paper work” to attempt to collect WML’s judgment against Mr. Moe. *E.g.*, CP 6. As demonstrated above, all such efforts have been accomplished through Court order. As a matter of law, such conduct cannot be “illegal or improper.”

As found by Judge Plese in WML's Receivership Case, "[n]either Aaron D. Goforth, Reed & Giesa, P.S., WML, nor Barry W. Davidson have abandoned, abused, financially exploited, neglected, harassed, or caused duress to Mr. Moe, nor threatened to abandon, abuse, financially exploit, neglect, harass, or cause duress to Mr. Moe as defined in RCW 74.34 *et seq.*" CP 611, CL 12.

Terry-Lee's allegation that the collection of a judgment pursuant to court orders can constitute "financial exploitation" is legally frivolous, and subjects him to paying Respondent's (on behalf of WML) attorneys' fees incurred in this appeal. RAP 18.9(a); *see also* Section 6.C., *infra*.

v. Terry-Lee Failed to Seek Review in WML's Receivership Case of the Bench Warrant He Sought to have Stayed/Quashed in his Petition Case, and Even if He had, His Attempted Appeal is Untimely.

Judge Plese issued the bench warrant at issue against Mr. Moe in WML's Receivership Case on May 6, 2010. CP 520-26. The time to seek review of that Order expired on June 7, 2010 (RAP 5.2), more than nine months before Terry-Lee sought to collaterally attack that bench warrant under the guise of a PPVA (March 11, 2011) in the Petition Case. Terry-Lee never filed a motion for discretionary review (or any other document commencing an appeal) in WML's Receivership Case regarding the Bench Warrant. Even if he had, such an appeal would have been untimely. RAP 5.2. He would also have lacked standing to seek

review, and would not have been an aggrieved party to the bench warrant (RAP 3.1).

vi. Terry-Lee's Petition Case was a Transparent Effort to Seek to Collaterally Attack the Bench Warrant.

As demonstrated by the factual recitation above, Terry-Lee's PPVA was nothing other than an improper attempt to collaterally attack the bench warrant issued by Judge Plese in WML's Receivership Case. Judge Plese made a specific finding that Mr. Moe was "trying to bypass the Civil Bench Warrant Process." CP 37. Terry-Lee failed to challenge this finding of fact, and it is a verity on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8 (2004). Judge Plese properly exercised her discretion in denying the PPVA.

vii. Mr. Goforth and Reed & Giesa, P.S. have Immunity for Conduct in Relation to their Representation of WML.

All of the collection efforts by "Respondent" Aaron D. Goforth (through Reed & Giesa, P.S.) have been undertaken solely in the capacity as counsel for WML and WML's Receiver, Barry W. Davidson, in WML's Receivership Case. CP 608, FF 19. All conduct of WML's counsel and the Receiver has been pursuant to Court orders. *Id.* The allegations of alleged wrongful conduct are the use of "legal process" and "legal paper work." CP 6.

"[A]ttorneys and law firms have absolute immunity from liability for acts arising out of representing their clients." *Jeckle v. Crotty*, 120 Wn. App. 374, 386

(2004). “Attorneys ... enjoy immunity from civil liability during judicial proceedings to ensure that they have freedom to secure justice for clients.” *Kearney v. Kearney*, 95 Wn. App. 405, 415 (1999). “The privilege of attorneys is based upon a public policy of securing to them as officers of the court the utmost freedom in their efforts to secure justice for their clients.” *McNeal v. Allen*, 95 Wn.2d 265, 267 (1980). Allowing suits against an “opponent’s attorney would stand the attorney-client relationship on its head and would compromise an attorney’s duty of undivided loyalty to his or her client and thwart the exercise of the attorney’s independent professional judgment on his or her client’s behalf.” *Jeckle* at 384-385 (citation omitted).

Lawsuits filed against litigation lawyers by their clients’ adversaries primarily seek vengeance. Lawyers, however, are absolutely immune from civil liability for statements or conduct that may have injured, offended, or otherwise damaged an opposing party during the litigation process. This protection, often referred to as the “litigation privilege,” shields a litigator regardless of malice, bad faith, or ill will of any kind. It originated at the very beginning of English jurisprudence for the purpose of protecting the advocacy system and its participants, and it crossed the Atlantic Ocean to reach the shores of America after colonization.

T. Leigh Anenson, *Absolute Immunity from Civil Liability: Lessons for Litigation Lawyers*, 31 Pepp. L. Rev. 915, 916 (2004)(footnotes omitted).

In WML’s Receivership Case, Judge Plese specifically found that “Aaron D. Goforth and Reed & Giesa, P.S., have absolute immunity from liability for acts arising out of their representation of WML.” CP 610-11, CL 10. As

such, WML's counsel is not subject to relief under RCW 74.34 for conduct in relation to representation of its client.¹⁶

viii. Staying/Quashing a Bench Warrant is not Relief that is Available under RCW 74.34 *et seq.*, and Terry-Lee is Engaging in the Unauthorized Practice of Law.

RCW 74.34.110(1) does not provide relief to anyone (even lawyers on behalf of their clients) that would include the quashing of a bench warrant. The only available relief is "from abandonment, abuse, financial exploitation, or neglect, or the threat thereof..." *Id.* Judge Plese found in WML's Receivership Case that "Seeking to quash a bench warrant is not relief that can be obtained under Washington's Vulnerable Adult Statute. RCW 74.34 *et seq.*" CP 610, CL 8.

Terry-Lee is not authorized as a non-lawyer under any statute or rule to seek to stay or quash a bench warrant issued against someone other than himself. Terry-Lee's filing of the PPVA, and his appeal of the denial thereof in this Court, constitutes the unauthorized practice of law. RCW 2.48.180(2)(a).

¹⁶ A recent Division I opinion again reaffirms that attorneys in Washington are absolutely immune from civil liability for alleged misconduct relating to the representation of their clients during litigation. Because that case is unpublished, it is not cited herein. GR 14.1. Alleged attorney misconduct can be a basis for court sanctions and professional discipline, but is not a basis for other remedies by the attorney's client's adversaries.

Judge Plese found as follows in WML's Receivership Case, "Terry-Lee's conduct in drafting pleadings for Orville Moe in WML's Receivership Case and by seeking to quash a bench warrant in the Petition Case constitutes the unauthorized practice of law." CP 611, CL 11; *see also generally* RCW 2.48.180(3)(a) & (6).

ix. Terry-Lee's PPVA Violated Washington's Receivership Statute (RCW 7.60 *et seq.*)

WML is in receivership, and it is governed by RCW 7.60 *et seq.* (Receivership Statute). The stated Legislative purpose of Washington's omnibus Receivership Statute is found in the notes following RCW 7.60.005 which state: "The purpose of this act is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein." Part of this streamlined procedure is that the Receivership Court has exclusive right of control over all of WML's property (including "intangible property" such as a judgment) and controversies relating to collection of property. RCW 7.60.055. Specifically, that statute provides, in relevant part, as follows:

Except as otherwise provided for by this chapter, the court¹⁷ in all cases has exclusive authority over the receiver, and the exclusive

¹⁷ "'Court' means the superior court of this state in which the receivership is pending." RCW 7.60.005(1)(emphasis added).

possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property,¹⁸ and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties....

(Emphasis added)(footnotes added).

Also as part of that streamlined procedure, an “action seeking to dispossess the receiver of any estate property or otherwise to interfere with the receiver's management or control of any estate property may not be maintained or continued unless *permitted by order of the court obtained upon notice and a hearing.*” RCW 7.60.160(1)(emphasis added).

Terry-Lee’s attempt to go outside of WML’s Receivership Case and seek to stay and quash Judge Plese’s bench warrant against Mr. Moe, and to attempt to prohibit WML and its counsel from collecting its judgment against Mr. Moe (through the guise of a PPVA) is an interference with the administration of WML’s Receivership (collection of assets). Terry-Lee’s PPVA (and the Moes’ support thereof through declarations) is a violation of Washington’s Receivership Statute.

¹⁸ “‘Property’ includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired.” RCW 7.60.005(9)(emphasis added).

Judge Plese found in WML's Receivership Case that Terry-Lee's PPVA violated the Receivership Statute on the foregoing bases. *E.g.*, CP 609-10, CL 6-7. She also entered a Cease and Desist Order prohibiting him from engaging in similar conduct in the future. CP 611-14.

x. The PPVA Violated Several Cease and Desist Orders Previously entered in WML's Receivership Case.

The background relating to the entry of the four (4) Cease and Desist Orders against Mr. Moe, Deonne Moe, and/or Susan Ross is complex and is not repeated herein. But in short, such Cease and Desist Orders prohibit Mr. Moe, Mrs. Moe, and Susan Ross and their "agents, servants, employees, attorneys, and those acting directly or indirectly in active concert or participation with [them], who receive actual notice of this order by personal service or otherwise," (CP 361-78, 379-96, 410-26) from, among other things,

C. ... taking any action in any other jurisdiction or court other than this Court that seeks to, or attempts to, collaterally attack, change, challenge, ignore, or disregard any Findings of Fact, Conclusions of Law, or any Orders, Rulings, or Directives (oral or written) made by this Court in this Receivership Case....;

D. ...taking any action in any jurisdiction or court other than this Court that interferes directly or indirectly with the administration of the WML Receivership by this Court or this Court's agent, Barry W. Davidson, or that ignores or interferes with this Court's exclusive authority over the Receiver, and this Court's exclusive possession and right of control of all real property and all tangible and intangible personal property of WML, wherever located, and this Court's exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all WML's property....

CP 295-303; *see also* generally (CP 361-78, 379-96, 410-26) (emphasis added).

Terry-Lee acted in concert with Mr. and Mrs. Moe in connection with his Petition Case. They assisted him in preparing his paperwork, including submitting Declarations in support thereof. CP 16-18 and 47-48; *see also* CP 608, FF 17; CP 596, FF 14. In violation of the Cease and Desist Orders, Terry-Lee's PPVA sought to collaterally attack and change Judge Plese's bench warrant for Mr. Moe in a case other than WML's Receivership Case. CP 610, CL 7-8.

Also in violation of the Cease and Desist Orders, Terry-Lee's PPVA interferes with the administration of WML's receivership and the Receivership Court's exclusive jurisdiction and authority over WML's intangible property (collection of the judgment against Mr. Moe), and interferes with the Receivership Court's exclusive jurisdiction and authority to determine controversies relating to WML's collection of its judgment. CP 609-10, CL 6.

Judge Plese found in WML's Receivership Case that Terry-Lee's PPVA was filed and maintained in violation of the Cease and Desist Orders. CP 610, CL 9. As such, as referenced above, Judge Plese entered a Cease and Desist Order against Terry-Lee (CP 603-15) and a new Cease and Desist Order against The Moes. CP 592-602. Appellate review was not sought regarding any of those Orders.

B. The Relief Sought in Terry-Lee's Appeal which is unrelated to the PPVA is Improper, Untimely, and Sanctionable.

In addition to seeking reversal of the trial court's denial of his PPVA (which sought reversal of the bench warrant), Terry-Lee improperly uses his appeal to seek reversal of numerous orders and final judgments that were entered in WML's Receivership Case (Spokane County Superior Cause No. 03-2-06856-4) which are not before this Court in this Appeal.

For example, Terry-Lee seeks through his Brief of Petitioner reversal of, among other things, the following types of orders and judgments entered in WML's Receivership Case: (1) remedial sanction orders (p.8, ¶9, p.11, ¶9); (2) supplemental proceedings orders (p.7, ¶¶4-5; p. 8, ¶10; p.10,¶¶4-5; p.11, ¶10); and (3) cease and desist orders (p.24, ¶7).

Terry-Lee even continues to seek reversal of a Final Judgment entered against Mr. Moe in September of 2008 in WML's Receivership Case (CP 403-09) that was affirmed by this Court in June of 2010 (Division III Case No. 277470)(CP 549-61), and seeks reversal of a Final Judgment entered against the Moes in WML's Receivership Case in June of 2011 (CP 625-31) which was not opposed or appealed by the Moes. *E.g.*, p.8, ¶9; p.11, ¶9; p.23, ¶3. None of these orders or judgments were even entered in the case out of which this appeal arises (Spokane County Cause No. 11-2-01054-1).

Such requested relief violates the “scope of review” rule of RAP 2.4(a), the “aggrieved party” rule of RAP 3.1, the standing doctrine, the timeliness requirements of RAP 5.2(a)&(b), and constitutes the unauthorized practice of law by Terry-Lee on behalf of the Moes. The relief sought in this appeal was not (and could not have been properly) sought in the Petition Case.

The inclusion of these matters in this appeal is frivolous, fails to comply with the rules, and is sanctionable under RAP 18.9(a).

C. Respondent Should be Awarded Reasonable Attorneys’ Fees and Costs Pursuant to RAP 18.9(a)

Respondent is entitled to an award of attorneys’ fees and costs in defending this appeal pursuant to RAP 18.9(a).¹⁹ Under that Rule, the “appellate court ... on motion of a party may order a party or counsel ... who ... files a frivolous appeal ... to pay terms or compensatory damages to any other party who has been harmed...” “An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised.” *See Johnson v. Mermis*, 91 Wn. App. 127, 137 (1998). An appeal of a discretionary ruling is frivolous, if “there was no reasonable basis to argue that the trial court abused its discretion...” *Id.* at 138. Although Terry-Lee is acting *pro se*, he is held to the same standard as a

¹⁹ If Respondent (on behalf of WML) prevails in defending this appeal, the imposition of costs against Terry-Lee is also proper. RAP 14.2.

licensed lawyer. *West v. Washington State Assoc. of Cty. Officials*, 162 Wn. App. 120, 135-135 (2011).

Terry-Lee's Brief is an unsupported, rambling, mish mash of wild and unsupported conspiracy theories which are contradicted by the record. He provides absolutely no basis in law or fact to succeed in his appeal, and he has simply caused WML to incur substantial and otherwise unnecessary fees (through Reed & Giesa) to protect its ability to continue to attempt to collect its nearly \$1,000,000.00 in judgments against Mr. Moe.

Terry-Lee's effort to seek reversal of numerous orders and judgments entered in WML's Receivership Case through this appeal is patently frivolous. Those orders and judgments were not part of the Petition Case; he did not seek relief relating to those orders and judgments in the trial court (in the Petition Case or WML's Receivership Case); they were not timely appealed; Terry-Lee lacks standing to seek such relief; he is not a party, creditor, or unit holder in WML's receivership case; he is not an aggrieved party to the orders and judgments at issue; and his appeal otherwise entirely lacks merit as demonstrated throughout this brief. Terry-Lee's frivolous addition of these matters to this appeal has caused WML's attorneys' fees incurred to be exponentially higher.

In addition to the frivolous relief he has sought with respect to the orders and judgments entered in WML's Receivership Case, Terry-Lee has frivolously sought other improper relief, including his request for this Court to allow

Mr. Moe to “sue for tort damages,” and to order a “grand jury” and allow Mr. Moe to present evidence. *See* Brief of Appellant, pp.23-24.

Reasonable minds could not differ about the issues raised. Terry-Lee failed to offer any basis in law or in fact to obtain the relief he is seeking in this appeal, and he has failed to offer any non-frivolous argument as to how the trial court allegedly abused its discretion.

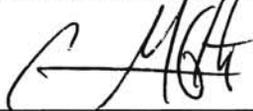
Respondent requests leave to submit an affidavit detailing the expenses incurred and the services performed by counsel pursuant to RAP 18.1(d), or direct that the amount of fees and expenses to be awarded be determined by the trial court after remand pursuant to RAP 18.1(i).

7. CONCLUSION

This Court should affirm the trial court’s denial of Terry-Lee’s PPVA, and order that Respondent be awarded attorneys’ fees and costs incurred in this appeal.

DATED this 19th day of July, 2012.

REED & GIESA, P.S.



John P. Giesa, WSBA #6147

Aaron D. Goforth, WSBA #28366

Attorneys for Respondent for the benefit of
Washington Motorsports Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of July, 2012, I caused a true and correct copy of the foregoing document to be served upon the following in the manners indicated below.


Tara J. Nichols

Terry-Lee
Box [1084]
Loon Lake, Wash.
Via U.S. Mail, postage prepaid