

FILED

JAN 22 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By.....

No. 314359
COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

In Re RAPID SETTLEMENTS, LTD'S Application for
Transfer of Structured Settlement Payment Rights

BRIEF OF RESPONDENTS

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR BENTON COUNTY
Cause No. 04-2-02767-2

Medora A. Marisseau, WSBA #23114
Jacque E. St. Romain, WSBA #44167
KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, WA 98104
206-223-1313
Attorneys for Symetra Life Insurance Company
and Symetra Assigned Benefits Service Company

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE	1
A. Factual Background	1
i. <i>Symetra’s Judgment Against RSL under Washington’s SSPA.</i>	2
ii. <i>RSL Refuses to Pay the Judgment.</i>	4
iii. <i>Benton County Modifies the May 2005 Order to Allow Offset.</i>	4
III. APPELLANTS’ ASSIGNMENT OF ERROR.....	9
IV. ARGUMENT.....	9
A. Contempt Standard of Review.....	9
B. Appellants’ Brief is Filled with New Arguments and New Evidence Not Presented to the Trial Court.....	10
C. The Trial Court Correctly Held 3B and Gorman in Contempt.....	11
D. The Court Applied the Correct Standard and Found 3B and Gorman in Civil Contempt.....	12
E. The Superior Court Had Authority to Find Gorman in Contempt	16
F. The Attorneys’ Fee Award Complies with the Contempt Statute	17
G. Attorneys’ Fees on Appeal	18
V. CONCLUSION.....	18

TABLE OF AUTHORITIES

	<u>PAGE</u>
Cases	
<i>Holiday v. City of Moses Lake</i> , 157 Wn. App. 347, 236 P.3d 981 (2010).....	11
<i>In re Estates of Smaldino</i> , 151 Wn. App. 356, 212 P.3d 579 (2009)	11
<i>In re King</i> , 110 Wn.2d 793, 756 P.3d 1303 (1988)	13, 14, 15, 16
<i>In re Marriage of James</i> , 79 Wn. App. 436, 903 P.2d 470 (1995).....	9
<i>In re Personal Restraint of King</i> , 110 Wn.2d 793, 756 P.2d 1303 (1988).....	13
<i>In re Rapid Settlements, Ltd.</i> , 166 Wn. App. 683, 271 P.3d 925 (2012).....	1, 2, 3, 5
<i>In the Interest of Rebecca K.</i> , 101 Wn. App. 309, 2 P.3d 501 (2000).....	13
<i>Lindblad v. Boeing Co.</i> , 108 Wn. App. 198, 31 P.3d 1 (2001).....	11
<i>Maggio v. Zeitz</i> , 333 U.S. 56, 68 S. Ct. 401, 92 L. Ed. 476 (1948).....	16
<i>Moreman v. Butcher</i> , 126 Wn.2d 36, 891 P.2d 725 (1995).....	10
<i>R.A. Hanson Co. v. Magnuson</i> , 79 Wn. App. 497, 903 P.2d 496 (1995).....	18
<i>Ramstead v. Hauge</i> , 73 Wn.2d 162, 437 P.2d 402 (1968)	11
<i>Rapid Settlements Ltd. v. Symetra Life Ins. Co.</i> , 134 Wn. App. 329, 139 P.3d 411 (2006)	3
<i>Rapid Settlements, Ltd. v. Symetra Life Ins. Co.</i> , 160 Wn.2d 1015, 161 P.3d 1027 (2007)	3, 4
<i>State ex. rel. Shafer v. Bloomer</i> , 94 Wn. App. 246, 973 P.2d 1062 (1999).....	13, 15
<i>State v. Boatman</i> , 104 Wn.2d 44, 700 P.2d 1152 (1985)	10
<i>State v. Hobble</i> , 126 Wn.2d 283, 892 P.2d 85 (1995)	10
<i>U.S. v. Rylander</i> , 460 U.S. 752, 75 L. Ed. 2d 521, 103 S. Ct. 1548 (1983).....	15

Statutes

RCW 19.205.0102
RCW 7.21.01011
RCW 7.21.010(3).....13
RCW 7.21.02011
RCW 7.21.03017
RCW 7.21.030(1)(b).....14
RCW 7.21.030(3).....14, 18

Rules

CR 60(b)4
CR 65(d)17
RAP 18.1(a).....18
RAP 2.5(a)(3)10

I. INTRODUCTION

Respondents are Symetra Life Insurance Company and Symetra Assigned Benefit Services Company (collectively, “Symetra” or “Respondents”), the plaintiffs in the action pending in the Benton County Superior Court. Appellants RSL-3B-IL, Ltd. and John Gorman (collectively, “Appellants”) appeal the Superior Court’s ruling of January 10, 2013, finding them in contempt for violating a temporary restraining order. CP 524-526. As the Superior Court correctly found, Appellants knowingly took actions prohibited by the temporary restraining order in place and thus violated the court’s order. *Id.* For this reason, Symetra respectfully requests this Court affirm the Superior Court’s ruling on the motion for contempt.

II. STATEMENT OF THE CASE

A. Factual Background

Rapid Settlements, Ltd. (“RSL”), now known as Liquidating Marketing, Ltd., is a Texas Limited Partnership in the business of buying the rights to future payments from injured parties who receive periodic payments under a structured settlement. *See In re Rapid Settlements, Ltd.*, 166 Wn. App. 683, 686-87, 271 P.3d 925 (2012). This Court, in 2012, found that a related company, RSL-3B-IL, Ltd. (“3B”), is the alter ego of RSL. *Id.* at 694 (“Given all, the trial court correctly reasoned substantial

evidence showed RSL and 3B shared common control and ownership, and that assets were transferred between the entities to avoid the creditor claims. Accordingly, the trial court correctly concluded 3B and RSL were one and the same.”). Symetra Life and Symetra Assigned are Washington corporations. *Id.* at 686. Symetra Life issued the annuity contract to fund the structured settlement at issue here and is responsible for making payments thereunder. *Id.* at 686-87. Symetra Assigned is the annuity owner/obligor. *Id.*

On May 12, 2005, the Benton County Superior Court approved an amended transfer petition filed by RSL under Washington’s Structured Settlement Protection Act, RCW 19.205.010 (“SSPA”), whereby the payee, Nicholas Reihls, transferred his entitlement under a Symetra annuity contract of \$60,000 due on September 2, 2012, to RSL. 166 Wn. App. at 689. Although RSL had filed the transfer petition listing itself as the transferee, the order it submitted, and that the Court approved, attempted to require the payment be made to 3B. *Id.*

i. Symetra’s Judgment Against RSL under Washington’s SSPA.

In July 2004, RSL brought an SSPA application in King County Superior Court seeking to transfer payments under a Symetra annuity regarding payee William Thompson. 166 Wn. App. at 687. Because the

transfer violated the Washington SSPA, Symetra filed an objection and the court dismissed the application. *Id.* Thereafter, Symetra filed a Petition for Attorney's Fees and Costs against RSL for fees incurred "as a result of Rapid's non-compliance" with the SSPA. *Rapid Settlements Ltd. v. Symetra Life Ins. Co.*, 134 Wn. App. 329, 332, 139 P.3d 411 (2006). The trial court granted the request and entered judgment for Symetra. *Id.* RSL appealed the judgment. *Id.* Division One of the Court of Appeals affirmed the judgment on July 31, 2006. *See Rapid Settlements Ltd.*, 134 Wn. App. 329 (2006). In a published decision, the Court stated:

Finally, allowing Symetra to collect attorney fees arising from Rapid's failure to comply with the SSPA in its attempt to obtain court approval for their transfer agreement is consistent with the purpose of the SSPA, which is to prevent abuses by companies that seek to purchase structured settlement payments in exchange for deeply discounted lump sum payments. *Allowing for attorney fees under the circumstances of this case encourages compliance with the SSPA and protects people such as William Thompson from being exploited.*

Id. at 335 (emphasis added).

The Court of Appeals subsequently awarded Symetra its attorneys' fees and costs on appeal. CP 316. RSL then petitioned the Supreme Court for review. *Id.* The Supreme Court denied the petition for review. *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 160 Wn.2d 1015, 161 P.3d 1027 (2007). On July 5, 2007, the Supreme Court awarded Symetra additional

attorneys' fees. CP 316. The final awarded judgment amount in favor of Symetra was entered in King County Superior Court in 2008. *Id.*

ii. RSL Refuses to Pay the Judgment.

Symetra made numerous attempts to collect upon the Thompson Judgment. CP 316. The judgment, along with demand letters, was ignored. Symetra sought to identify RSL property, through garnishment and interrogatories, in order to satisfy the judgment; only to learn that RSL, under the direction of its CEO Stuart Feldman, claimed to own no property, even in its home state of Texas. RSL claimed it has “no tangible assets” and has aggressively resisted a writ of execution by another creditor. *Id.* Despite this claim, RSL has taken advantage of the Washington courts and, to date, RSL has filed at least 15 SSPA petitions in Washington, including the petition granted by the Benton County Superior Court. CP 317. Under the Washington court orders approving RSL’s petitions, RSL and/or its assigns will receive over \$2,000,000.00 from structured settlements for Washington payees. *Id.*

iii. Benton County Modifies the May 2005 Order to Allow Offset.

On June 2, 2010, Symetra requested a CR 60(b) modification of the Benton County Superior Court’s May 2005 Order to allow it to set off the amount of the King County judgment against RSL against the amount of the Riehs payment. CP 317.

3B intervened and objected, claiming that the right to the Reih's payment belonged to 3B and Symetra's judgment against RSL could not be offset against 3B's right to payment. CP 317. At the July 9, 2010, hearing on the motion, the Superior Court granted Symetra's motion and found Symetra's payment obligation was to RSL and that RSL and 3B were alter egos. *Id.* An order reflecting the Superior Court's ruling from the bench was entered on August 6, 2010, approving the setoff. *Id.* 3B unsuccessfully moved for the Superior Court to reconsider its order and then appealed to this Court. *Id.*

On February 23, 2012, this Court upheld the trial court's order. *See In re Rapid Settlements, Ltd.*, 166 Wn. App. 683, 271 P.3d 925 (2012). This Court ruled that RSL and 3B share an identity of beneficial ownership and control; that Symetra's payment obligation ran to RSL; that Washington law applies to this dispute; and that Symetra is entitled to set off its judgment against RSL from the September 2, 2012, payment due under the Benton County 2005 order. *Id.* No timely appeal was taken and this Court issued a mandate to the Superior Court on April 12, 2012. CP 317-18.

On July 20, 2012, Symetra received a letter dated July 17, 2012, from an attorney at The Feldman Law Firm LLP, purporting to represent 3B. CP 318. 3B's attorney asserted: "RSL-3B-IL, Ltd ("RSL-3B")

continues to assert its vested and irrevocable right to receive the [Reihs] payment that comes due on September 2, 2012.” *Id.* 3B demanded that Symetra pay the entire amount of the Reihs payment to 3B. *Id.* The letter made no mention of the Benton County Superior Court’s 2010 Order approving Symetra’s setoff or the approval of that Order on appeal. *Id.*

On August 9, 2012, 3B, through its attorney, gave notice that it was filing a motion to vacate the stay of a Texas action it had filed after Symetra moved to modify the Benton County 2005 Order and to require Symetra to deposit the September 2, 2012, payment into the registry of the Harris County, Texas District Court. CP 318. The motion to vacate the stay was set for hearing on August 20, 2012, and the motion to require Symetra to deposit funds into the court registry was set for August 27, 2012. CP 319.

On August 13, 2012, Symetra moved the Benton County Superior Court for a temporary restraining order (“TRO”) restraining 3B, its attorneys and agents from pursuing the action in Texas, with notice to 3B. CP 319. The TRO was granted after a hearing on August 17, 2012. CP 338-40. The Court’s TRO restrained 3B from “taking any further action in Harris County District Court Case No. 2010-41653,” and required 3B to “strike any and all pending motions in that case.” CP 339. The TRO also restrained 3B from “initiating any other lawsuits in any

state that attempt to, or would have the effect of, directly or indirectly, undermining Symetra's right to offset the payment due on September 2, 2012, as set forth in this Court's 2010 Orders and subsequent order of the Washington Court of Appeals." *Id.*

The TRO was personally served on Stewart Feldman, registered agent for 3B, on August 20, 2012. CP 155. An Affidavit of Service of Temporary Restraining Order and Order to Show Cause was filed with the Benton County Superior Court. *Id.* After service of the TRO, 3B continued to vigorously pursue its action against Symetra in Texas. CP 156. On August 20, 2012, the date scheduled for the hearing in Harris County on the motion to vacate the stay, 3B, through its attorney John Gorman ("Gorman"), requested that the hearing be re-noted for August 24, 2012. CP 156, 167, 737 ("It is undisputed that Mr. Gorman was representing . . . RSL-3B"). This request was granted. *Id.* On August 21, 2012, Symetra moved for an extension of the hearing date on 3B's motion to lift the stay. CP 156. On August 22, 2012, two days after being served with the Benton County Court's TRO, 3B filed a brief opposing Symetra's request to reschedule the hearing, in which it specifically addressed the TRO and stated that it was without effect. *Id.*, CP 169-173.

On August 22, 2012, counsel for Symetra wrote to 3B's counsel to advise him that 3B's actions in pursuing the Texas action violated the

TRO and that Symetra would seek all appropriate sanctions. CP 164. No response was received. CP 156. On August 23, 2012, the Texas court heard argument on the motion to reschedule 3B's motion and 3B appeared through the same counsel who appeared before the Washington Court of Appeals in this matter, attorney John Gorman. CP 156, 167. The Texas Court reset the hearing on 3B's motion to lift the stay to August 28, 2012. *Id.* Subsequently, on September 10, 2012, the Texas action was removed to the U.S. District Court for the Southern District of Texas. CP 519.

Before the Texas action was removed, Symetra filed its Motion for Contempt of Temporary Restraining Order on August 24, 2012. CP 152-59. This case was then removed on August 31, 2012, the very same day the Motion was scheduled for hearing, causing the hearing on the Motion to be stricken. CP 1723. The removal was determined to be frivolous and the case was remanded on November 6, 2012. *Id.*; CP 856-7. The Motion was noted for hearing on November 30, 2012. CP 947. Local counsel for 3B, attorney Art Klym, filed a notice of appearance and a motion for a continuance on November 29, 2012. *Id.* On November 30, 2012, Judge Spanner granted the continuance on the motion for contempt, continuing the motion to December 28, 2012. *Id.* At the hearing on the motion for contempt on December 28, 2012, Judge Runge further continued the hearing because 3B's counsel argued that 3B's response to Symetra's

motion for contempt was included in its motion for a continuance, which the Court and Symetra had not understood. CP 948.

On January 2, 2013, Symetra filed a supplemental reply in support of its Motion for Contempt to address the points raised in 3B's motion for continuance. CP 948. On January 10, 2013, the Court issued a letter decision granting Symetra's motion for contempt and filed the order of contempt against 3B and Gorman. *Id.*, CP 524-28.

On February 11, 2013, 3B and Gorman filed a Notice of Appeal of the Benton County Superior Court's January 10, 2013 Order of Contempt Against RSL-3B-IL, Ltd. and Attorney Gorman for Violation of Temporary Restraining Order. CP 951.

III. APPELLANTS' ASSIGNMENT OF ERROR

The sole issue before this Court is:

Whether the trial court correctly found 3B and its agent, Attorney John Gorman, in contempt for intentionally violating the Court's temporary restraining order?

IV. ARGUMENT

A. Contempt Standard of Review

A finding of contempt is reviewed under the abuse of discretion standard. *In re Marriage of James*, 79 Wn. App. 436, 440, 903 P.2d 470 (1995). A finding of contempt will be upheld on review if the appellate

court finds the order is supported by a proper basis. *State v. Hobble*, 126 Wn.2d 283, 292, 892 P.2d 85 (1995) (citing *State v. Boatman*, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985)). “An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995).

B. Appellants’ Brief is Filled with New Arguments and New Evidence Not Presented to the Trial Court

Appellants’ briefing on appeal represents entirely new arguments and evidence which were available to them but which they failed to present to the Superior Court. For the first time on appeal, Appellants are now asserting that the civil contempt was actually criminal contempt, that the purge clause in the contempt order was impossible for Appellants to exercise, and that the amount of the attorneys’ fees awarded to Symetra was unreasonable. Appellants never presented any of the arguments, or their underlying facts, to the Superior Court. The only response to Symetra’s motion for contempt filed by Appellants was included in a motion for continuance and barely addressed the pending motion at all. CP 292-299.

Arguments not raised below need not be considered on appeal. RAP 2.5(a)(3); *Lindblad v. Boeing Co.*, 108 Wn. App. 198, 207, 31 P.3d 1

(2001) (“We will not review an issue, theory, argument, or claim of error not presented at the trial court level.”). This appeal may be dismissed based on Appellants’ failure to make a competent record. However, should this Court choose to consider Appellants’ arguments, those arguments still fail on their merits, as addressed below.

C. The Trial Court Correctly Held 3B and Gorman in Contempt

Pursuant to RCW 7.21.020, any superior court judge may impose contempt sanctions. Among the grounds for imposing contempt sanctions is “intentional . . . disobedience of any lawful judgment, decree, order, or process of the court.” RCW 7.21.010. It is well established that this can include disobedience of a temporary restraining order. *See Ramstead v. Hauge*, 73 Wn.2d 162, 437 P.2d 402 (1968). The statute does not require intentional disobedience, only an intentional act which violates the Court’s order. *See Holiday v. City of Moses Lake*, 157 Wn. App. 347, 355, 236 P.3d 981 (2010).

Courts have found an actor to be in contempt despite the fact that he never read the TRO with which he was served. *See In re Estates of Smaldino*, 151 Wn. App. 356, 364-65, 212 P.3d 579 (2009). “The violation of a court order without reasonable excuse is deemed willful.” *Id.* at 364. As long as the act which violates the TRO is intentional, the violation is intentional. *Smaldino*, 151 Wn. App. at 366 (“Todd’s

acquisition of a security interest in the Kittitas County property was an intentional act. His act of disobedience was therefore intentional, and the court did not err in so concluding. There was no abuse of discretion in the finding of contempt.”).

Here, the Court made multiple findings showing the actions of 3B and Gorman to be intentional. The Benton County Superior Court expressly found that, after having actual notice of the TRO, 3B and Gorman (1) continued pursuing the lawsuit in Harris County, Texas, (2) failed to strike the pending motions in the Harris County, Texas lawsuit, (3) opposed Symetra’s motion for an extension on 3B’s pending motions in the Texas action, and (4) argued at two different hearings in the Harris County, Texas lawsuit. Each of these findings shows an intentional act on the part of 3B and Gorman, in direct violation of the TRO. Thus, the Court’s finding of contempt was not an abuse of discretion and should, therefore, be upheld.

D. The Court Applied the Correct Standard and Found 3B and Gorman in Civil Contempt.

The TRO order specifically states that it is imposing “remedial” sanctions. A remedial sanction is one “imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.”

RCW 7.21.010(3). “In order to determine whether a contempt sanction is civil or criminal, courts look to the substance of the proceeding and the nature of the relief the proceeding will afford. Civil contempt is intended to ‘coerce compliance with a lawful court order’” *State ex. rel. Shafer v. Bloomer*, 94 Wn. App. 246, 251, 973 P.2d 1062 (1999) (quoting *In re Personal Restraint of King*, 110 Wn.2d 793, 799, 756 P.2d 1303 (1988)). “A civil contempt sanction is coercive and remedial and is usually for the benefit of another party. On the other hand, a criminal sanction is punitive and imposed to vindicate the authority of the court.” *Id.*

“An order of remedial civil contempt must contain a purge clause under which a contemnor has the ability to avoid a finding of contempt and/or incarceration for noncompliance.” *In the Interest of Rebecca K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000) (quoting *Shafer*, 94 Wn. App. at 253). “In summary, a contempt sanction is criminal if it is determinate and unconditional; the sanction is civil if it is conditional and indeterminate, *i.e.*, where the contemnor carries the keys of the prison door in his own pocket and can let himself out by simply obeying the court order.” *In re King*, 110 Wn.2d 793, 800, 756 P.3d 1303 (1988).

“In the context of civil contempt, the law presumes that one is capable of performing those actions required by the Court.” *In re King*,

110 Wn.2d at 804. “Thus, inability to comply is an affirmative defense and the contemnor has both the burden of production on ability to comply, as well as the burden of persuasion.” *Id.* (internal citations omitted).

Here, after finding them in contempt, the Court ordered three sanctions against Gorman and 3B. First, 3B was ordered to pay the attorneys’ fees incurred by Symetra in the Harris County, Texas action from the date the TRO was served on 3B to the date of the Order of Contempt, which totaled \$47,024.50. CP 526. Second, Gorman was ordered to pay a one-time forfeiture of \$1,000. *Id.* Third, 3B and Gorman were ordered to strike all pending motions in the Texas action and not to file any motion or take any other action in the case while an injunction from the Benton County court restraining them from doing so was in effect. *Id.*

Each of these sanctions is civil in nature and authorized by the civil contempt statute. First, a court is authorized to order the contemnor to pay to a party for any losses suffered by the party as a result of the contempt, including attorneys’ fees. RCW 7.21.030(3). Second, a one-time forfeiture is a minimal sanction compared to those authorized by the statute. *See* RCW 7.21.030(1)(b) (authorizing a forfeiture of up to \$2,000 per day while the contempt continues). And finally, it is well established

that the Court has the power to attempt to coerce a contemnor to act in compliance with the Court's orders. *Schafer*, 94 Wn. App. at 251.

Appellants' argument regarding their alleged inability to fulfill the purge condition imposed by the Contempt Order is based on the false premise that they could not continue their collateral legal attack because the Texas action was removed to federal court. The Contempt Order, however, provides that 3B and Gorman may purge themselves of contempt by agreeing "not to file any motion or take any other action in said case." CP 526, ¶ 3. It was completely within the Appellants' power to choose not to pursue the action in "said case," whether before or after the "said case" was removed. Moreover, the case was removed on September 10, 2012. If Appellants believed that the removal of the said case somehow rendered the purge clause impossible to satisfy, they should have raised this issue at the hearing on the motion for contempt on December 28, 2012. The Court need not consider this new argument now, which Appellants could have raised below.

Further, even if 3B and Gorman somehow lacked the ability to satisfy the purge clause, the burden was on them to petition the Benton County Superior Court to modify the contempt order. *In re King*, 110 Wn.2d 793, 804, 756 P.3d 1303 (1988); *U.S. v. Rylander*, 460 U.S. 752, 757, 75 L. Ed. 2d 521, 103 S. Ct. 1548 (1983); *Maggio v. Zeitz*, 333 U.S.

56, 75-76, 68 S. Ct. 401, 92 L. Ed. 476 (1948). “The contemnor must offer evidence as to his inability to comply and the evidence must be of a kind the court finds credible.” *King*, 110 Wn.2d at 804. 3B and Gorman failed to offer any evidence to the Superior Court regarding their inability to comply with the Court’s contempt order.

Appellants also assert the argument that Gorman could not have complied with the purge clause because of the conflict between doing what his client wanted and what the court ordered. This argument also fails because Gorman always had the option of withdrawing as counsel for 3B. An attorney is never obligated to continue representing a client in direct violation of a court order. Because Gorman’s other clients, A.M.Y. and FinServ, were not bound by the TRO, he would not need to withdraw from representing them and any actions taken on their behalf would not violate the TRO or the contempt order.

E. The Superior Court Had Authority to Find Gorman in Contempt

Gorman, despite Appellants’ arguments to the contrary, had appeared in Washington State to represent 3B. He was admitted pro hac vice for the purposes of this very case and argued on 3B’s behalf before this Court. CP 229.

It is well established that a TRO is binding not only on the party against whom it is entered, but also on that party’s agents and attorneys.

Pursuant to CR 65(d), “[e]very order granting an injunction and *every restraining order . . . is binding* only upon the parties to the action, their officers, agents, servants, employees, *and attorneys*, and upon those persons in active concert or participation with them *who receive actual notice by personal service of otherwise.*” (emphasis added). Therefore, as 3B’s attorney, Gorman was bound by the TRO to the same extent 3B was bound by it. By choosing to violate the TRO, Gorman put himself at risk for a contempt order. The Benton County Superior Court had every right to enter an order of contempt against Gorman.

F. The Attorneys’ Fee Award Complies with the Contempt Statute

Appellants argue that the attorneys’ fee award granted in the contempt order is outside the scope of the attorneys’ fees recoverable under the contempt statute. Appellants present no evidence in support of this new argument.

In the contempt motion, Symetra sought recovery of attorneys’ fees and costs incurred in bringing the motion for contempt in Benton County as well as those fees and costs incurred in appearing in the Texas court action while the TRO was in place. CP 229; CP 416-17. These fees and costs were incurred because of 3B’s violations of the TRO, and are exactly the fees and costs contemplated by the contempt statute. RCW 7.21.030 specifically allows the Court to order these types of

sanctions: “The court may, in addition to the remedial sanctions set forth subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney’s fees.” RCW 7.21.030(3). Thus, the attorneys’ fee award was justified and entirely reasonable.

G. Attorneys’ Fees on Appeal

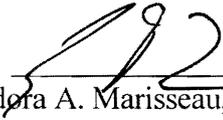
Symetra seeks its fees on appeal pursuant to RAP 18.1(a) and RCW 7.21.030(3). *See R.A. Hanson Co. v. Magnuson*, 79 Wn. App. 497, 503, 903 P.2d 496 (1995) (“RAHCO successfully defended Witherspoon Kelley’s appeal of the contempt order and is entitled to attorney fees on appeal.”).

V. CONCLUSION

This Court should affirm the Superior Court’s order of contempt against 3B and Gorman because the order was not manifestly unreasonable or based on untenable grounds or reasons.

RESPECTFULLY SUBMITTED this 20th day of January, 2015.

KARR TUTTLE CAMPBELL

By: 
Medora A. Marisseau, WSBA #23114
Jacque E. St. Romain, WSBA #44167
J. Derek Little, WSBA #40560
Attorneys for Symetra Life Insurance
Company and Symetra Assigned Benefit
Services Company