

64837-3

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No. 64837-3-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re:

GORDON LOTZKAR,

Appellant,

and

KRISTIN KELLEY,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE DOUGLASS NORTH

REPLY BRIEF OF APPELLANT

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ORIGINAL

A handwritten signature in black ink is written over a vertical stamp. The stamp contains the text "2011 MAR 17 10:17 AM" and "COURT OF APPEALS, DIVISION I".

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I. Introduction

Respondent Kristi Kelley knows well that Mr. Lotzkar did not do anything that justified the imposition of sanctions or fee awards on him. Her awareness of this fact is shown by what she does in her response, instead of responding to Mr. Lotzkar's arguments in his opening brief.

Kristi depicts Mr. Lotzkar in the most offensive way imaginable. Mr. Lotzkar is Jewish, as opposing counsel knows. Yet she compares him to a German soldier in the NAZI party assisting in genocide, in a thinly veiled reference, as follows:

With his head buried in the sand of ethics, he claims, fundamentally, that he was only 'following orders' of his client, a failed ethical defense if ever there was such a defense. This defense lost whatever sheen it may have had during the dark days of the last century. Resp. Br. at 18.

This is outrageous and unacceptable. This is a case where the worst specific act that Mr. Lotzkar was accused of was testifying by declaration on his client's behalf. This Court should pay particular attention to the hyperbolic and false depictions of Mr. Lotzkar throughout the responsive brief. They are not supported by the record—and are used to unfairly demonize him.

This smear does not hide the fact that the trial court largely rubber stamped proposed orders, drafted by Kristi's attorney, Natalie Beckmann, and tailored to make Mr. Lotzkar liable for his client's financial obligations—without findings of any specific sanctionable conduct by Mr. Lotzkar or any evidence of such conduct in the record.

In addition, Kristi asks this Court to vastly expand the trial court's authority to sanction counsel. To prevail, Kristi needs this expansion of the trial court's authority because, here, the court failed to follow the required standards for sanctioning an attorney in every instance—even imposing fees of over \$10,000 against Mr. Lotzkar after the parties conferred the authority to do so on the arbitrator, under a written arbitration agreement. The court's authority is settled law; this request is clearly out of the question.

Further, Kristi misconstrues the trial court's actual findings and the evidence in the record as to Mr. Lotzkar's conduct. Mr. Lotzkar acted as an advocate for his client. He did nothing that warranted sanctions against him personally—and the trial court did not make any findings—only erroneous conclusions—as to any sanctionable conduct.

Kristi claims that Mr. Lotzkar “enabled” and “acted as a willing participant” in his client’s intransigence. Resp. Br. at 2, 8. But she is unable to point to any sanctionable conduct by Mr. Lotzkar—only to minor squabbles over procedural matters or instances of alleged testimony by counsel (which her attorney did as well). Rather, she misconstrues the record—repeatedly citing to hundreds of pages of clerk’s papers as containing substantial evidence of his improper conduct, leaving this Court to dig through the papers, where it will find nothing.

Why does she go to such great lengths? Kristi desperately wants to cover up the strategy of her attorney, Ms. Beckmann, of litigating for judgments against Mr. Lotzkar personally for attorney fees, sanctions, and even his own client’s obligation for back child support in order to ensure that he pays, if his client does not.

This Court should not condone such improper litigation conduct. It should do justice by vacating the judgments against Mr. Lotzkar and awarding him his attorney fees and costs on appeal.

II. Reply Argument

A. The trial court's authority to sanction counsel should not be expanded.

Kristi asks this Court to vastly expand the trial court's power to sanction counsel. The trial court's authority to sanction counsel is already clearly defined in the civil rules and in case law, as Mr. Lotzkar described in detail in his opening brief.

Kristi does not address the trial court's failure in this case to consider the relevant standards before it imposed fees and sanctions on Mr. Lotzkar. Instead, she asks this Court to make a new rule, namely, that the trial court, assessing fees against a spouse based on his intransigence, may also assess fees against the attorney who advocated on his behalf. Resp. Br. at 18. She relies on three cases as supporting this rule, In re Marriage of Morrow, 53 Wn. App. 579, 770 P.2d 197 (1989), Eide v. Eide, 1 Wn. App. 440, 462 P.2d 562 (1969), and State v. S.H., 102 Wn. App. 468, 8 P.3d 1058 (2000).

Taken together, these cases actually support Mr. Lotzkar's position. The trial court may consider the extent to which one spouse's intransigence caused the spouse seeking the fee award to require additional legal services, as set out in Morrow, 53 Wn.

App. at 590 and in Eide, 1 Wn. App. at 445, and it may impose sanctions on counsel based on an express finding of bad faith litigation conduct, as stated in S.H., 102 Wn. App. at 474-475. There is no case from our state that holds that where a spouse is intransigent, the court may assess fees against both him and his counsel.

Kristi wants the new rule to be even broader. She essentially asserts that the trial court should have the authority to assess fees and sanctions against an attorney, based on his client's intransigence, under court rules, including CR 11 and CR 26(g), and under its inherent authority, without following any of the standards for doing so, without affording the accused attorney his constitutional due process rights, and without making findings of fact to support its decision. Resp. Br. 19. Such an expansion of existing law is the only way to affirm the trial court's decisions in this case.

To agree with Kristi, this Court would effectively overrule many of this state's civil rules, along with all of this it's appellate opinions regarding the standards that a trial court must apply in considering sanctions or fees against counsel, including opinions from our state's supreme court, such as Biggs v. Vail, 124 Wn.2d

193, 876 P.2d 448 (1994) and Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993).

This Court does not have the authority to so conclude, nor should it. It would give the trial court unchecked authority to sanction counsel and create unreasonably high risk for attorneys representing the clients accused of improper conduct, such as in family law and in criminal defense. Accordingly, her invitation to radically alter existing and established law should be declined.

B. The standard of review is de novo.

Kristi urges this Court to review the designated trial court decisions under the substantial evidence standard. This is wrong.

Review is de novo because the trial court decided the motions on the basis of affidavits only. Brouillet v. Cowles Publishing Co., 114 Wn.2d 788, 793, 791 P.2d 526 (1990). It is also de novo because the court failed to make factual findings and the evidence consists of written documents. Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 829 P.2d 1099 (1992). It is further de novo because it involves questions of law and the trial court's conclusions of law. Mitchell v. Washington State Institute of Public Policy, 153 Wn. App. 803, 821, 225 P.3d 280 (2009).

As shown below, the trial court did not make findings about Mr. Lotzkar; only conclusions of law. A conclusion of law must be supported by findings of fact and they in turn must be supported by the evidence. Id. If a term carries legal implications, a determination of whether it has been established in a case is a conclusion of law. Id. A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect. Id.

In independently reviewing the trial court's decisions, this Court must consider the relevant standards that govern the court's discretion, such as imposing sanctions under CR 11 or CR 26(g), as Mr. Lotzkar set out in his opening brief. Kristi, in her response, wholly disregards addressing these standards, wrongly advocating that merely substantial evidence in the record is required to support the court's findings. A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. Mitchell, 153 Wn. App. at 821-822.

C. The trial court erred in its orders against Mr. Lotzkar.

- 1. The court erred in assessing \$1,000 in fees against Mr. Lotzkar for an unsuccessful motion on August 12, 2008.**

Kristi contends that the trial court, in ordering that she release her psychological evaluation under a protective order, properly awarded \$1,000 against both Mr. Lotzkar and his client, consisting of \$500 for “improper motion” and another \$500 for her objection to the reply, on August 12, 2008. CP 81-84. She does not address the fact that the court failed to articulate a proper ground for its fee award. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). The motion’s failure alone is not a proper ground for a fee award against Mr. Lotzkar. The fee award should be reversed for lack of a proper ground.

Kristi instead claims that the court made findings as to Mr. Lotzkar’s “inaccurate factual submissions, misuse of the court rules, and blurring of his attorney-client boundaries.” Resp. Br. at 11-12. She misconstrues the record. The trial court’s findings supporting the award of \$500 for “improper motion” pertain only to Mr. Lotzkar’s client, Jeffery. CP 82-84. The court erred in assessing these fees against Mr. Lotzkar as well without making findings and conclusions to support the award. Mahler, 135 Wn.2d at 435.

The court further assessed \$500 against both Mr. Lotzkar and his client, ruling that Jeffery’s reply contained testimony by his

attorney in violation of RPC 3.7 and “information not in strict reply”, which it concluded constituted “unfair litigation tactics by Respondent”—not Mr. Lotzkar. CP 82-83. These are not grounds for the additional \$500 in fees against Mr. Lotzkar and the reply was correctly attributed to Jeffery, not his counsel, as Mr. Lotzkar explained in his opening brief.

A review of the record shows that Mr. Lotzkar did not act in any way that justified the fee awards against him. Kristi claims that he testified on his client’s behalf, but this does not support an award of fees against him. Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wn. App 409, 417, 157 P.3d 431 (2007). Without proper grounds or evidence of any sanctionable conduct by Mr. Lotzkar, the trial court erred in imposing the fee award jointly on Jeffery and Mr. Lotzkar. This award should be vacated as to Mr. Lotzkar.

2. The court erred in listing Mr. Lotzkar as a judgment debtor for \$1,000 in fees on the judgment summary and in sanctioning him for an additional \$1,500 in the order compelling discovery on October 9, 2008.

Kristi contends that the trial court, in granting her motion to compel discovery responses on October 9, 2008, properly assessed \$1,000 in attorney fees and another \$1,500 in sanctions against both Mr. Lotzkar and his client. In fact, the trial court made

glaring errors, largely because it was rubber stamping orders proposed by Kristi's attorney, Ms. Beckmann.

As for the \$1,000 in fees, the court actually only awarded these fees "To be paid by Respondent"—not Mr. Lotzkar—but Ms. Beckmann, with her reply, submitted a revised proposed order in which she named Mr. Lotzkar as a judgment debtor on the judgment summary along with his client for the \$1,000 in fees, well aware that these fees were not assessed against Mr. Lotzkar in the order that she drafted. CP 690, 1280. This revised order was submitted with Ms. Beckmann's reply, giving Mr. Lotzkar no chance to respond. Mr. Lotzkar was not even ordered to pay this award, yet the clerk entered a judgment against him in the execution docket due to misconduct by Ms. Beckmann—not by Mr. Lotzkar. And Ms. Beckmann's misconduct was intentional, as shown by her repeated use of this bait and switch technique—and her refusal to correct her erroneous judgment summaries—throughout this case. The judgment for the \$1,000 fee award against Mr. Lotzkar on the judgment summary must be vacated.

Kristi claims that the trial court "cited Lotzkar's violation of the explicit terms of numerous civil rules in a nontrivial way." Resp. Br. at 13. The only reference to Mr. Lotzkar was hardly "explicit".

The court's award of \$1,500 in sanctions were due "to the unfair litigation tactics by Respondent," which consisted of a violation of RPC 3.7, Jeffery's "intransigence and willful violation" of every state and county discovery rule, and Mr. Lotzkar's violation of CR 11 for certifying the discovery responses under CR 26(g). CP 691-692.

The trial court's conclusion that Jeffery violated every state and county discovery rule is obviously erroneous and further demonstrates that the court was simply signing Ms. Beckmann's proposed orders without reviewing their contents. CP 691-692.

The trial court's conclusion that Mr. Lotzkar violated CR 11 by certifying his client's discovery responses was not based on a consideration of the required standard for sanctions under CR 11 or CR 26(g), including observing his fundamental due process rights of notice and opportunity to respond—and in any event Mr. Lotzkar did not violate these rules, as he showed in his opening brief. App. Br. at 31-36.

Kristi, in her response, does not even attempt to support the court's failure to follow the applicable standards before imposing the sanctions. Its failure to do so was an abuse of discretion, justifying vacating the additional \$1,500 in sanctions against Mr. Lotzkar.

3. **The court erred in listing Mr. Lotzkar as a judgment debtor on the judgment summary for \$3,200 for his client's back child support, and in ordering him to pay \$3,600 in arbitrator's fees and \$10,198.85 in attorney fees in the order confirming the arbitration decision on June 11, 2009.**

Kristi contends that the trial court properly confirmed the arbitration decision and entered judgments against both Mr. Lotzkar and Jeffery for payment of the arbitrator's fees and assessed \$10,998.85 in fees against both of them on June 11, 2009. CP 881-882.

- a. **The trial court lacked subject matter jurisdiction.**

Kristi fails to address a fatal argument: The trial court lacked the jurisdiction to enter the majority of the orders in this case after the parties signed the arbitration agreement in January 2009. CP 1378, 1392. This act and the applicable statute, chapter 7.04A RCW, limited the trial court's authority to enforcing the arbitration agreement and entering judgment on the arbitration award. CP 1378, 1392; RCW 7.04A.250, .260. Here, the court exceeded its authority by entering judgment against Mr. Lotzkar for \$3,200 for his client's back child support obligation, for \$3,600 in arbitrator's fees, and for \$10,998.85 in attorney fees. Accordingly, these judgments and orders are void and must be vacated.

b. The trial court lacked personal jurisdiction over Mr. Lotzkar.

Kristi also fails to address a second fatal argument: The trial court lacked personal jurisdiction over Mr. Lotzkar, who was not a party to the dissolution action; only counsel for a party. As such, Mr. Lotzkar could not have violated the parties' CR 2A agreement or their arbitration agreement. The trial court lacked the necessary jurisdiction to rule that he did so—and that he must pay a fee award as a consequence. Painter v. Olney, 37 Wn. App. 424, 427, 680 P.2d 1066 (1984). For this reason, the court's rulings that Mr. Lotzkar violated the CR 2A agreement and the arbitration award and that he therefore is jointly liable for \$10,199.85 in attorney fees is void and must be vacated. Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 541, 886 P.2d 189 (1994).

c. The judgments do not rest on proper grounds, findings or evidence in the record.

Even if this Court concludes that the trial court had the authority to rule as it did, it should conclude that the court erred in imposing judgment on Mr. Lotzkar for \$3,600 in arbitrator's fees, \$3,200 as his client's back child support, and \$10,199.85 in attorney fees.

i. The arbitrator ordered only Mr. Lotzkar's client to pay her fees.

Kristi does not address Mr. Lotzkar's objection to the trial court's order against him and his client for "immediate payment of fees as ordered by arbitrator" or face contempt, including jail time. CP 881. There is a reason for this. She was aware that the arbitrator ordered that Jeffery "shall pay the remaining arbitration fee of \$3,600"; not Mr. Lotzkar. CP 964-965, 1701-1703. This was part of her litigation strategy of seeking judgments against Mr. Lotzkar for his client's obligations in order to ensure that the obligations would be paid by someone. As the arbitrator did not order Mr. Lotzkar to pay her fees, the trial court erred in ordering him to do so. This manifest abuse of discretion must be reversed.

ii. The trial court erred in assessing \$10,998.85 in fees against Mr. Lotzkar.

Kristi asserts that the court had proper grounds for the \$10,998.85 fee award against Mr. Lotzkar and his client based on "demonstrated continued intransigence, unreasonable demands, bad faith actions and violations of CR 2A Agreement, arbitration agreement and Rules of Professional Conduct." CP 881-882. She claims that she provided "legal justification for her request of attorney fees and sanctions against him for advocating with

intransigence.” Resp. Br. at 14. She did no such thing, just as she does not cite to any authority to support the award in her responsive brief.

The stated grounds do not support the fee award against Mr. Lotzkar. As explained above, the trial court may not assess fees against an attorney for his client’s intransigence alone. Mr. Lotzkar, who was not a party, could not have violated the parties’ CR 2A agreement or the arbitration agreement. He did not violate the arbitrator’s order that Jeffery pay her fees. RPCs are not grounds for a fee award. And the court failed to make an express finding of bad faith conduct by Mr. Lotzkar, as required to exercise its inherent authority to sanction him. State v. S.H., 102 Wn. App. at 479. Without proper grounds, the fee award must be vacated.

Like the other orders in this case, the trial court did not make findings to support its fee award against Mr. Lotzkar. The record does not support such findings either. Kristi claims that that the trial court made “findings concerning the litigation intransigence” of Mr. Lotzkar and his client, but the ruling that she quotes are not findings of fact; they are conclusions of law. Resp. Br. at 15; CP 881-882.

Kristi further claims that she “provided specific details of attorney Lotzkar’s foot-dragging and intransigence.” Resp. Br. at

14. This is false. What she calls “foot-dragging” and “intransigence” was an excerpt from an email from Mr. Lotzkar to Ms. Beckmann, saying he does not “have the time to make this litigation personal as you have chosen to do.” CP 800-801. In the context of the complete email, Mr. Lotzkar was rightfully upset that Ms. Beckmann was attempting to hold him personally liable for the payment of the arbitrator’s fees, which only his client was ordered to pay. CP 805, 1701-1703. This was neither “foot-dragging” nor “intransigence”.

Her other such “specific detail” is Mr. Lotzkar’s alleged “frivolous” objection to her reply. Resp. Br. at 14. His objection was valid—and based on mandatory language in the local and state court rules that reply papers “shall be filed and served no later than 12:00 noon on the court day before the hearing” and that parties “may electronically serve documents on other parties of record by agreement.” LCR 7(b)(4)(E); GR 30(b)(4). Ms. Beckmann violated these rules by delivering her papers late. Kristi cannot now seriously call Mr. Lotzkar’s objection “frivolous” or supportive of a finding of bad faith conduct. CP 808-810.

The record does not contain evidence of bad faith litigation conduct by Mr. Lotzkar. The record reflects that the award against

Mr. Lotzkar was based on Kristi's bald assertion, in her reply, that he "fuels" Jeffery's intransigence and on Ms. Beckmann's similar assertion of "continued egregious conduct, violations of the court rules and Agreement, and willful actions that violate CR 11." CP 779, 801, 1026. These vague allegations alone do not support a finding of intransigence or bad faith actions by Mr. Lotzkar. The court abused its discretion in sanctioning him on these grounds.

d. Kristi wanted to make Mr. Lotzkar liable for back child support.

For the first time, in her response, Kristi concedes that "naming Mr. Lotzkar as a judgment debtor for his client's financial obligations of \$3,200" in the judgment summary was an error. Resp. Br. at 5, FN 1. But she attempts to minimize her involvement in creating and maintaining this error, calling it a "clerical error", which she claims that she intends to correct by filing a corrected judgment summary. Resp. Br. at 5, FN 1. This is only because she was caught red-handed in Ms. Beckmann's bait and switch scam with her proposed orders. As she had done before, Ms. Beckmann, along with her reply, submitted a revised proposed order on which she added Mr. Lotzkar as a judgment debtor for Jeffery's obligation for \$3,200 in back child support, knowing that he was not ordered

to pay this obligation on the actual order she drafted. **Compare** CP 1251 & 878-879.

The judgment was not a “clerical error”—it was part of Kristi’s strategy to improperly shift fees and other financial obligations onto Mr. Lotzkar. The trial court, not carefully reviewing the proposed orders, signed this one, just like it did the prior orders, resulting in another erroneous judgment entered against Mr. Lotzkar in the execution docket.

Having secured this judgment against Mr. Lotzkar, Kristi refused to correct what she now calls a “clerical error” even when Mr. Lotzkar requested that the court reconsider its decision. CP 1045-1046. She also treated the judgment as valid, asserting in a later declaration that Jeffery had not paid the judgment for back child support and neither “has Mr. Lotzkar, who was named as a debtor in that order.” CP 916. Ms. Beckmann also contended that both Jeffery and Mr. Lotzkar violated this court order. CP 1026.

Persisting, in November 2009, Kristi vehemently opposed Mr. Lotzkar’s efforts to obtain discretionary review of the objectionable orders, including the judgment for Jeffery’s back child support, and ensured that it was maintained in the final orders in her dissolution case, despite Commissioner Ellis’ ruling that there

“appears to be an obvious error in the June 11 order because there is no apparent basis for making Lotzkar jointly responsible with Jeff for paying \$3,200 in back child support.” **See** Ruling on Appealability and Denying Discretionary Review, entered January 11, 2010, at 4; CP 1101, 1108.

The truth is that Kristi had no intention of correcting this error. Sixteen months have passed since Ms. Beckmann made this “clerical error”, yet it persists. This Court now should vacate the judgment against Mr. Lotzkar for \$3,200 for his client’s back child support.

4. The trial court erred in assessing \$3,000 in fees and sanctions against Mr. Lotzkar based solely on findings about his client’s conduct in the order denying the motion to terminate child support on July 27, 2009.

Kristi contends that the trial court’s award of \$2,000 in fees and another \$1,000 in sanctions against both Mr. Lotzkar and his client in its order denying Jeffery’s motion to terminate child support on July 27, 2009, was proper as the court made “detailed findings to support the award of fees” and also “found Lotzkar’s actions showed his own participation in his client’s intransigence, including Lotzkar’s violation of court rules and the CR2A Agreement”. Resp. Br. at 16-17.

However, the trial court's "detailed" findings in support of its fee award pertain entirely to Jeffery's conduct. Resp. Br. at 16; CP 1062. They specifically provide the bases for the fee award as well as the additional sanctions "due to Respondent's ongoing intransigence." CP 1062.

The court did not make any findings regarding Mr. Lotzkar, contrary to Kristi's claim otherwise. Instead, the court signed Ms. Beckmann's proposed order, which contained yet further erroneous conclusions of law. This time the court concluded that both Mr. Lotzkar and his client demonstrated "intransigence, unreasonable demands, bad faith actions and violations of the CR 2A Agreement, arbitration rulings, prior order of this Court, and CR 11." CP 1063. On these grounds, the court assessed \$2,000 in fees—plus an additional \$1,000 for "egregious nature of the misconduct" by them. CP 1063.

The evidence in the record does not support findings that would, in turn, support the court's conclusions here.

CR 11. Kristi asserts that Jeffery's motion was "devoid of substance", presumably to support the sanctions under CR 11. Jeffery only filed his motion because the arbitrator agreed with Kristi that it was necessary to do so. At the arbitration in February

2009, Jeffery asked that his support obligation under the temporary order of support be terminated, as the boys were living with him 100% of the time. CP 913, 960. Kristi, opposing the request, argued that Jeffery “owes the agreed monthly support amount until there is a court order to the contrary or an agreement.” CP 960. The arbitrator agreed. CP 961.

When Jeffery filed his motion, as instructed, Kristi and Ms. Beckman changed their position. They each filed statements, contending that he was intransigent and that both he and Mr. Lotzkar should be sanctioned for violating the order to pay \$3,200 in back child support. CP 916-918, 1026. Kristi also alleged that Mr. Lotzkar “continues to fuel this abusive litigation.” CP 918.

Given these facts, this Court should reject Kristi’s claim that the motion was “devoid of merit” and, accordingly, supports the CR 11 sanctions.

In any event, the CR 11 sanctions were not based on the filing of the motion. They were based on Ms. Beckmann’s vague allegation that Mr. Lotzkar did “willful actions that violate CR 11.” CP 1026. The court erred in imposing sanctions against Mr. Lotzkar under CR 11 without following the standards for doing so

and without affording him his due process rights, as he argued extensively in his opening brief.

Intransigence and Bad Faith. Kristi claims that, in her response, she “detailed attorney Lotzkar’s complicity in his client’s intransigence, including his refusal to enter orders, the pattern of attempts to litigate matters not properly before the court, bad-faith litigation tactics, and violation of local court rules.” Resp. Br. at 15-16. There is nothing “detailed” in the record. She cites to Ms. Beckmann’s statement that Mr. Lotzkar engages in “open hostility and continued abusive litigation” resulting in unnecessary fees and that he “continues to thumb his nose” at court orders and rules. CP 1025. These bald allegations do not support a finding of intransigence or bad faith litigation conduct. In re Marriage of Wright, 78 Wn. App. 230, 239, 896 P.2d 735 (1995).

Violation of CR 2A agreement and arbitration rulings. Mr. Lotzkar was not a party to the dissolution action and could not have violated any agreements or rulings that pertained only to the parties, Jeffery and Kristi, as set out above.

Violation of prior order of the court. Mr. Lotzkar was not ordered to pay his client’s back child support obligation, as described above. After Ms. Beckmann secured a judgment against

him for this amount nonetheless, through misconduct, she exploited the windfall. She and Kristi each asserted that Mr. Lotzkar and his client violated the order to pay \$3,200 in back child support—and demanded sanctions against both of them for this reason. CP 916-918, 1026.

In short, all of the court's conclusions as to Mr. Lotzkar are erroneous, unsupported by evidence in the record. Accordingly, the \$3,000 in fees and sanctions imposed on Mr. Lotzkar must be vacated.

D. Kristi should not be awarded fees on appeal.

Kristi seeks an award of fees on appeal based on Mr. Lotzkar's alleged intransigence in the lower court and his alleged continuing intransigence on appeal. This request should be denied. Mr. Lotzkar undertook this expensive and time consuming appeal mainly to clear his good name. There is no evidence that he did so for any improper reason.

E. Mr. Lotzkar should be awarded fees on appeal.

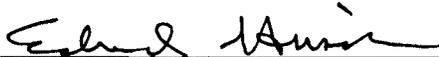
Mr. Lotzkar should be awarded his attorney fees and costs on appeal based on Kristi's intransigence, the merits of the issues on appeal, RAP 18.1 and 18.9. There is no merit to Kristi's response. It is frivolous. She essentially calls Mr. Lotzkar a NAZI.

She entirely dismisses his statement of facts and his arguments, advocating instead for a vast expansion of the trial court's authority to sanction counsel, merely to affirm the trial court's decisions in this particular case. In the end, she attempts to cover up evidence of her own litigation for money judgments against Mr. Lotzkar, as a way of improperly shifting her obligation to pay her own attorney fees and her husband's obligations for back child support onto Mr. Lotzkar. This justifies awarding fees and costs to Mr. Lotzkar on appeal.

III. Conclusion

This Court should vacate the improper judgments imposed on Mr. Lotzkar. He is an attorney in good standing, with no prior sanctions or even as much as a bar complaint. The trial court should be directed to enter amended orders, including final orders, stating that these judgments are void and no longer in effect. In addition, Mr. Lotzkar should be awarded his attorney fees and costs incurred in bringing this appeal.

Respectfully submitted this 16th day of November,
2010.

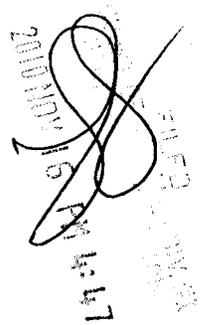

Edward J. Hirsch, WSBA #35807
Attorney for Appellant

DECLARATION OF MAILING

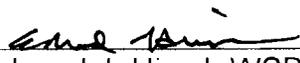
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 16th 2010, I arranged for service of the foregoing Reply Brief of Appellant to the Court and the parties to this action as follows:

Office of Clerk Court of Appeals – Division I 600 University St Seattle, WA 98101-1176	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered
Natalie Beckmann HELSELL FETTERMAN LLP 1001 Fourth Avenue, Suite 4200 Seattle, WA 98154	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivered
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DATED at Seattle, Washington this 16th day of November, 2010.


Edward J. Hirsch WSBA# 35807
Attorney for Appellant