

COURT OF APPEALS NO. 70959-3-I

King County Superior Court of Washington No. 99-3-00253-2 KNT

In re the Marriage of:

Tammy J. Triplett, Respondent,

v.

Stephanie L. Case, Appellant/Petitioner

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REPLY OF APPELLANT

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Stephanie L. Case, Pro Se  
Appellant  
2815 Alpine St. SE  
Auburn, WA 98002

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## I. INTRODUCTION

This matter involves a Petition for Modification of Child Support dismissed in error, a petition that included argument of a parties continued concealment by means of silence and the injustice achieved, including undeserved financial enrichment and harm caused; a default motion supported by statute; an untimely premature motion to dismiss the petition; unfair, bias and discriminatory proceedings; orders dismissing the Petition for Modification and denied motion to adjust from which no motion was filed, followed by an order to adjust support and denied deviation that should not have succeeded. This appeal is not frivolous; fees and cost should be awarded to Ms. Case accordingly.

## II. PRESENCE OF ERROR

The trial court decisions all contain numerous errors that occurred October 11, 2013, September 10th, September 9th, August 2, 2013, and beyond.

## III. REPLY ARGUMENT

- A. **Ms. Case's Petition for Modification of Child Support was dismissed in error where no motion was before the court. There are no findings of fact or conclusions of law that the petition was dismissed on the basis that it did not state a claim nor on the basis of whether a change of circumstances existed or not.**

Ms. Triplett wants this court to assume the Petition was dismissed September 9, 2013 because it failed to state a claim. This, despite the comment by the court on August 2, 2013, that the petition did allege the statutory requirements of a change in circumstances. RP Aug 2nd pg 2 ll. 20-23 Nonetheless, the September 9, 2013 order provides no such reference to being denied for the reason stated by Ms. Triplett nor did the order provide whether a change of circumstances did or did not exist. CP 382 The order was generic; refers only to “heard arguments and reviewing the petitioner’s motion and declaration”, where no motion or declaration was filed. Therefore the court abused its discretion in spite of LCR 5(d), CR 5(e) and ruled in error on a notice of hearing without any motion first being filed.

Ms. Case’s petition provided a concise arguable statement, requested relief, in addition to other notable issues and emphasized an extreme debt that did not exist at the time of the February 6, 2013 order. CP 37-40 Furthermore, Ms. Triplett is incorrect, the courts February 6, 2013 economic accommodation was a mere \$31.81 to satisfy the self-support poverty level reserves. The order had nothing to do with preexisting debts or reasonable monthly living expenses. CP 29 In fact, as a result of Ms. Triplett’s silence, withheld knowledge of graduation December 2012. Ms. Triplett once again erroneously gained an unjust

enrichment since the February 6, 2013 support ordered was based on two children were only one should have been used. Ms. Case never knew and by accident discovered on May 26, 2013 when printed. CP 300 In fact, on October 11, 2013 Ms. Triplett was specifically asked by the court if she had seen this printed document. Ms. Triplett responded with another bad faith statement; not only had Ms. Triplett seen the document, Ms. Triplett commented. CP 193 Ms. Case also attempted to speak to this incorrect belied statement but was cut off by the court. RP October 11th, pg12 ll. 5-13 Moreover, Ms. Triplett has never once offered any evidence throughout any hearing; whether August 2, 2013, Sept 9, 2013 Sept 10, 2013 or October 11, 2013, including February 6, 2013 and more. CP 52, 193, 394 Rather than provide truthful statements and evidence, Ms. Triplett instead throws out the 2009 CR 11 sanctions and restrictive order; an order accomplished by means of silence. CP 51-58, 392-400 In fact, it is projected that Ms. Triplett through wrongful misdeeds and silence acquired an estimated \$28,000 in fallaciously acquired overpayment arrears with an additional \$6000 remaining; plus there is an extra \$5000 in CR 11 sanctions with which Ms. Triplett can go to court and demand. This is completely unfair and remains inequitable to continually enforce a REWARD received on the basis of false pretenses, misrepresentation and silence; especially where the truth is supported by substantial evidence.

CP 301-362, 404-463 Further, Ms Triplett comes without clean hands and misquotes the 2007 proceedings entirely. CP 328, 386-388 In 2010, Ms. Triplett again fails to provide truthful statements. CP 338 line 6, see also 309-314, 343, 344, 348-362, 404-463 In fact, when Ms. Case first discovered the huge debt, she attempted to cure Ms. Triplett's delinquency by voluntarily working off this concealed debt to avoid further harm. CP 390-391, see also CP 316-323, 348-362 In spite of this, Ms. Triplett never continued to pay the debt regardless of the amount received that Ms. Case had already paid through mandatory employer wage deductions. Yet, Ms. Triplett claims the occurrences were before May 26, 2009, wherein the material facts clearly show this not to be true. Material facts are those upon which the outcome of litigation depends." Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298. Ms. Case nor the court knew that Ms. Triplett willfully concealed a daycare cost reduction. CP 352 Ms. Case nor the court knew the result of not paying the bill monthly forced that offer to be rescinded with which extraordinary interest and late fees where added. CP 353-362 This despite receiving those allocated funds from Ms. Case and despite a court order to provide monthly receipts, including rejecting a formal demand. CP 328, 330-332, see also 316-324, 343-362 The misleadingly achieved 2009 CR 11 sanctions and restrictive order specifically states BEFORE May 26, 2009

based upon information not previously known to Ms. Case through reasonable diligence. In fact, it was Ms. Triplett's routine silence that kept any possible reasonableness hidden. CP 309-362, 404-427, 435-463 Ms. Triplett's undated \$1000 per month childcare receipt does not match Ms. Triplett's 2x \$420 "May" bank statements or later checks. CP 405, 420, see also 414-419, 421 Ms. Triplett's altered childcare agreement does not match that which she signed confirming no fee charge changes. CP 408, 411 And any "Forged evidence" is an item or information manufactured, or altered, see State v. Sanders, 86 Wn. App. 466, see also RCW 40.16.030<sup>1</sup>. Yet despite protest when discovered, it was allowed in spite of CP 406-408 due to the later CP 409-411, despite RCW 40.16.030<sup>1</sup> and RCW 4.72.080<sup>2</sup>.

Nonetheless, any use of childcare ended July 1, 2009 as a result of Ms. Triplett's concealed nonpayment. CP 361 In fact, Ms. Triplett requested to end childcare August 2008 and March 2009 because of Parenting Plan joint decision making provisions, but withheld the truthful reason from which remained hidden. CP 334-335 And despite the 2007 instruction of the court, the cover up knowledge regarding this debt grew; the extensiveness became fully known when sent to collections January 2010. CP 328, 318, 319, 344, 343, 348-362 In fact, Renton Collections personally served Ms. Triplett May 28, 2011; this status was reaffirmed

March 23, 2012. CP 309-314, 429-434 And is the same unpaid childcare Ms. Triplett misrepresented to the court by declaration October 5, 2010 was the result of Ms Case's failure to pay childcare. CP 338, see 344 Ms. Case also found January 15, 2013 through the District Court, that Ms. Triplett had remained silent and failed to respond July 28, 2011 to another debt from Pacific NW Collections resulting in a \$692.31 default garnishment for the children's unpaid \$151.07 medical bills. CP 435-463 Although, Ms. Triplett remained silent and never said a word about either dispute; Ms. Case never knew the childcare debt lingered at all until January 15, 2013 when a certified copy was requested. CP 309-314 Nonetheless, Ms. Case remained listed as second responsible party for a debt concealed from her knowledge for which she had already paid through employer wage withholding. Ms. Case has been unjustly held a financial prisoner and judicially held accountable by means of Ms. Triplett's silence and undeserved enrichment for a debt that Ms. Case did not create or cause. CP 343-344, 348-362 Thus restorative relief is equitably appropriate.

Ms. Case is by no means interested in relitigation or to rehash anything despite RCW 4.72.080<sup>2</sup>. In fact, Ms. Case wants nothing more than to wash her hands of Ms. Triplett's financially burdensome shenanigans. Ms. Case's argument is about fairness, equity and doing

what is right, not about relitigation. Ms. Case asked this court with good conscience to do what is right under the laws of equity by applying the Principles of Fairness and Equity and consider relief as a result of Ms. Triplett's documented wrongdoings. CP 301-362, 404-463

Therefore, in good conscience and terms of equitable relief, vacate the CR 11 sanctions, end any and all further fallaciously acquired arrears and restore \$15,500 to Ms. Case; of which is a mere fraction of what was acquired erroneously and to which does not even express the damages, loss of income, loss of business, home and property caused by Ms. Triplett's belied bad faith silence. In addition, Ms. Triplett shall be exclusively responsible for the remaining daycare debt through the District Court she created in silence and manipulated blame. CP 309-314, 338

In fact, Ms. Triplett dares to speak about bad faith, ill will and fraud without clean hands. CP 316-324, 328-332, 338, 343-362, 404-463 Under the clean hands doctrine; the maxim "he who seeks equity must do equity". *Gaston Malo et al., Respondents, v. George S. Anderson, Appellant* 62 Wn.2d 813. *Equity - Principles and Maxims. See Am. Jur. Equity* (1st ed. § 463 et seq.). The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. It is applied not by way of punishment but on considerations that make for the advancement of right and justice<sup>3</sup>. *Eldridge v. Eldridge*, 244 Conn.; 523,

536, 710 A.2d 757 (1998), citing Conn. SC 16398 George A. Thompson, Trustee v. David Orcutt et al. (2001) <sup>e-n</sup>

Moreover, if Res Judicata, Collateral estoppel, or issue preclusion, prevents relitigation of the same issue in a later proceeding after an earlier opportunity to fully and fairly litigate the issue results in a final decision on the merits. The party asserting collateral estoppel must prove four elements: (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to . . . the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299 , 307, 96 P.3d 957 (2004). Ms. Case argues in contrast, that as much as the context may be true, many unjust issues stand out and the relevance to preclude Ms. Case does work an injustice. Although, a parties silence created a false preclusion and victimized an innocent party preventing fair litigation, the occurrences perpetuated. Here, the misconduct of Ms. Triplett continued and is substantially shown to have existed from the beginning. CP 301-362, 404-463 Ms. Triplett then repeats two, three or four times the same misconduct, thus being the same parties and the same subject, Ms Case is denied relief. How can Ms. Case

be held accountable for recurring misdeeds, especially were achieved by perpetual silence. Despite RCW 4.72.080<sup>2</sup>, Ms. Case is held precluded merely because of party and subject matter sameness, wherein the wrongdoing, achieved by habitual silence is completely different, separate and subsequent. Yet, despite these differences, Ms. Case is denied based on procedural technicalities not on the merits, substance or evidence simply because Ms. Case did not first ask for permission to file. CP 402, see also CP 375-378, 401-403 In general, statewide rules governing trial court procedure embody a preference for deciding cases on their merits rather than on procedural technicalities. *Buckner, Inc. v. Berkey Irrigation*, 89 Wn. App. 906 (1998) In fact, in considering whether to grant a motion to vacate a judgment, a trial court should exercise its authority liberally and equitably to preserve the parties substantial rights. *Shaw v. City of Des Moines* 109 Wash. App. 896 Even when a final judgment is without prejudice, a court may reopen it only if authorized by statute or court rule, usually under rules governing new trials and relief from judgments. CR 59, 60; *Rose ex rel, Estate of Rose v. Fritz* 104 Wash. App. 728 The superior courts have subject matter jurisdiction to vacate judgments and final orders. *Mitchell v. Washington State Institute of Public Policy* 153 Wash. App. 803. Therefore, the superior court allowed a minor procedural technicality to prevail over the merits despite the array of

substance and evidence. Likewise, our Supreme Court has repeatedly stated, whenever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form. *First Federal Sav. V. Ekanger*, 93 Wn.2d 777, 613 P.2d 129 (1980) citing *CF. Curtis Lumber Co. v. Sortor*, *Supra*; *CF*, also *Moore v. Burdman*, 84 Wn.2d 408, 526 P.2d 893 (1974); *Malott v. Randall*, 83 Wn.2d 259, 517 P.2d 605 (1974). Accordingly, it would seem unconscionable to continue approving Ms. Triplett's misconduct without the imposition of reasonable terms.

Nevertheless, on May 19, 2013 from inception, Ms. Case in good faith reached out to Ms. Triplett. And Ms. Case openly disclosed upfront a huge drop in income of more than ten thousand dollars. CP 90, 253-267 However, despite following the February 6, 2013 instructions in Sec 3.9 of informed reemployment; Ms. Triplett in bad faith refused to cooperate from the beginning. CP 89 For that reason, Ms. Triplett again had something to hide by declining to provide then current income because Ms. Triplett's hourly wage increased to near \$25 per hour. CP 211-223

Here, Ms. Triplett's bad faith refusal to mutually cooperate with discovery information to resolve support, plus the newly discovered unpaid debt through a District Court Cause, that again potentially threatens Ms. Case with even more harm as the second responsible party,

in addition to the systemic result of adding Ms. Case's already extremely detrimental financial situation. CP 137-140, 176-191, 301-362

It was these things that resulted in the measures taken; Modification was the only viable option. A modification proceeding, although a continuation of the original action; is a separate proceeding, in that it rests upon new facts and presents new issues arising since the entry of the ORIGINAL decree. Lambert v. Lambert 66 Wash. 503, 507, 403 P.2d 664.

**B. An appeal is not frivolous if it presents arguable meritorious issues. Fees and Costs ought to be awarded to Ms. Case should the court find Ms. Case the prevailing party given that Ms. Triplett has the ability to pay.**

Ms Triplett wants this court to believe this appeal is frivolous; that Ms. Case requested attorney fees in her brief and that Ms Case failed to comply with RAP 18.1(c) <sup>4</sup>.

In determining whether an appeal is frivolous justifying the imposition of terms and compensatory damages under RAP 18.9, the appellate court is guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is

frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Millers Cas. Ins. Co. v. Briggs*, 100 Wn.2d 9, 15, 665 P.2d 887 (1983) (quoting *Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187, review denied, 94 Wn.2d 1014 (1980)); *Camer v. Seattle Sch. Dist. No. 1*, 52 Wn. App. 531, 762 P.2d 356 (1988); *Ramirez v. Dimond*, 70 Wn. App. 729, 855 P.2d 338 (1993)

Ms. Case complied with RAP 18.1(b)<sup>5</sup>; the appellants brief only needed to provide a section paragraph request. RAP 18.1(c)<sup>4</sup> does not apply; motion consideration on the merits has not yet taken place nor set for any oral argument. Ms. Case was adhering to RAP 18.1(d)<sup>6</sup> where an affidavit of fees and expenses are due within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses. In fact, Ms. Case has lost many hours without pay away from her new job responding, but requested no attorney expenses, only fees and costs. See RAP 14.4(a)<sup>7</sup>

**C. If the court on August 2, 2013 had subject matter jurisdiction, why dismiss and deny the motion before it; stating it belonged in another court.**

Ms. Case acknowledges that after further analysis of *Marriage of Major*, 71 W. App. 531, 859 P.2d 1262; it is conceivable this court will rule the superior court had subject matter jurisdiction.

Both RCW 26.12.010<sup>8</sup> and RCW 26.12.190<sup>9</sup> define

ANY proceeding under title 26 or ANY proceeding in which the family court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or obligations.

In fact, the Petition and Ms Triplett's initial July 16th motion was after all the family court under Title 26 and was also delineated instructionally by the court in the February 6, 2013 order. CP 30

Therefore the question is, if the superior court in fact had subject matter jurisdiction, why dismiss and deny the motion and push it to another court if on August 2, 2013 the court had authority to adjudicate the type of controversy? Subject Matter Jurisdiction refers to the authority of the court to adjudicate a particular type of controversy, not a particular case. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189.

**D. The error Ms. Case was replying to, was based the inquisition and questions with which gave the appearance of violating King County LFLR 14(d)(5).**

Ms. Triplett wants this court to presume no violation of LFLR 14(d)(5)<sup>10</sup> occurred. Ms. Case never said that the court required and/or held a threshold or adequate cause hearing. Ms. Case cited the questions asked by the court on August 2, 2013; the same court that from the beginning assumed no responsibility for adjudicating the motion before it.

What Ms. Case said, was the court's questions appeared on its face an inquisition and had the appearance of a threshold or adequate cause hearing. In fact, within this inquisition inquiry, the court inappropriately quoted from orders that did not exist, that did not involve the parties nor are they a part of the record and was an abused of discretion. RP page 5 August 2, 2013

**E. As depicted by the issues pertaining to assignment of Error 3, to which clearly shows the representation reference was from the August 2, 2013 hearing.**

Ms Triplett wants this court to imagine assignment of error three refers to the issues in this appeal, that no oral testimony was presented. Wherein the issues pertaining to the assignment of error three clearly depict and refer to August 2, 2013, as does Ms. Triplett's continued argument. In fact, Ms. Triplett states the trial court did its best to sort through the issues, law and facts that apply and make correct rulings. But, since the court's ruling September 9, 2013 had no motion before it; how or what issues, law and or facts did the court apply to base its decision. Additionally, there are no required findings of fact or conclusions of law to support the courts position, not even for appellate review. Because there was no filed motion before the September 9th court, the order is void.

**F. The disrespect and public humiliation was not based on a mere one time occurrence. The conduct of the court during both proceedings August 2, 2013 and October 11, 2013 was unfair, bias and discriminatory.**

Ms Triplett is correct; Ms Case's sexual orientation is irrelevant to child support, but not to the nature of those proceedings. Equally true, Ms Case's sexual orientation was not a "consideration." Nonetheless, was without doubt present in appearance and was disrespectfully disgraced and plagiarized by the court. A deliberate imperfection of speech does constitute manifest bias, prejudice and aversion and can only be perceived as such, if repetitive. Ms. Case's complaint was not based on a mere one time occurrence with which the court corrected. What was manifest is the public humiliation and repeat continuation of those demeaning epithets despite notification, although by oath, ethics and respect, notification should not have been required. RP Aug 2nd, pg 4 l. 1, pg 5 l. 11; RP Oct 11th, pg 7 l. 10, pg9 ll. 15, 23, pg 13 l. 8. Further, Ms. Case specifically stated the Report of Proceedings August 2, 2013 and October 11, 2013; does not capture nor illustrate the visual aversion, inappropriate aggravation, and intimidation perceived by the same commissioner during both hearings. Thus, an abuse of discretion and a violation of Canon Rules 1, 2, 2.2 and 2.3 had without doubt occurred.

**G. There was no motion before the court; procedurally or otherwise, it was nothing but a notice of hearing; it was an objected attempt at a second bite of the apple.**

Ms Triplett's July 16, 2013 motion was filed after the deadline designated in the case scheduling order. CP 44 Also available to Ms. Triplett was RCW 26.09.175(5)<sup>11</sup> which states; At any time after responsive pleadings are filed, any party may schedule the matter for hearing. However, Ms. Triplett did not file nor serve any response pleading by the date designated in the case scheduling order. Ms. Triplett instead decided to peruse a completely separate motion to dismiss/adjust. Ms. Case did not receive notice of this motion until July 19, 2013, an additional three days after the deadline designated by the case scheduling order. Ms. Triplett did not provide any response to the petition until 31 days after being personally served and did so only after Ms. Case's response declaration to the motion to dismiss. CP 80 Even before receipt of Ms Triplett's late response, Ms. Case objected to Ms. Triplett's motion to dismiss/adjust as premature. CP 81

Here, Ms. Triplett wants this court to believe a motion was properly filed. On August 6, 2013, Ms. Triplett filed a notice of hearing to be heard August 23, 2013. CP 290 Ms. Triplett merely re-noted a hearing on the TBA calendar for what was dismissed and denied by the court on August 2, 2013. As such, Ms. Triplett's re-noted hearing without

a motion first being filed was nothing more than an impermissible attempt at a second bite of the apple. A second bite of the apple has firm grounds in double jeopardy concerns. *Womac* 160 Wash.2d, 165 Ms. Triplett did not move for reconsideration or appeal the August 2, 2013 dismissal.

In fact, on Aug 2, 2013, the court stated; RP p 7 ll.16-21, RP p 8 ll.1-2

“Your motion is denied orally -- Submit it in writing to the commissioner without oral argument. That's what the rules require. Submit your motion to dismiss in writing without oral argument to the commissioner who presides over that trial.

The court further stated; “It's a without oral argument motion. And the commissioner reviewing it, if you set out the facts, may grant the relief if that commissioner finds that there is no substantial change of circumstance”

However, even despite this oral instruction, Ms. Triplett filed no motion or declaration; did not submit anything in writing nor set out any facts and Ms Case indeed objected to this irregularity. Therefore, Ms. Case maintains the argument; “what motion;” there is nothing but a “notice of hearing,” without original documents pertaining specifically to address the court. LCR 5(d), CR 5(e) As noted in the appellant’s brief page 29, Ms. Triplett’s “notice of hearing,” was without compliance of LCR 7(b)(3)(C), LFLR 5(c)(2), LFLR 14(c)(1) and LCR 7(b)(1) details this process even further in the form required by LCR 7(b)(5)(B)(i-vi). Moreover, as noted above, the procedurally correct manner was instructionally provided by the court on August 2, 2013. RP p 7 ll. 16-21, RP p 8 ll. 1-2

Generally, Court rules are construed so as to avoid absurd results. The statewide rules of courts and here, the mirrored local rules are designed to operate in conjunction with one another; a rule should not be construed so as to render another rule meaningless or superfluous. *Buckner, Inc. v. Berkey Irrigation*, 89 Wn. App. 906 Thus to render the requirements of LCR 5(d) AND CR 5(e) meaningless or superfluous by depriving the requirements of CR 7 and LCR 7 in moving forward without any motion properly before the court. This indeed goes to the heart of due process and is not a mere procedural technicality. Further, Ms. Case is refraining from any Constitutional Due Process references and argument because it seems clear these events should not have occurred.

On Sept 9, 2013 and Sept 10, 2013, the court abused its discretion by following through without a motion before it and without specific findings of fact and conclusions of law, these orders are void. As a result, October 11, 2013 should not have occurred and is also void.

Presently, on March 27, 2014 by letter, this court allowed Ms. Triplett an “extension of time to file the Brief of Respondent granted “TO” May 9, 2014;” however, now by letter May 15, 2014, Ms. Triplett filed the Brief of Respondent late. Ms. Case is neither surprised nor amused and objects. Ms Triplett’s delays include the 31 days late response to the Petition, the late premature motion to dismiss/adjust, including the bad

faith refusal to cooperate from the beginning. In fact, from the August 6, 2013 notice of hearing with which was adjudicated without a motion before the court; the order was signed September 10, 2013 and was denied for; “moving party did not provide LFLR 10 documents with motion.” CP 383 Despite the fact there was no motion filed; Ms. Case had already pointed out this LFLR 10 requirement from the beginning. CP 82, 113 In fact, to further confusion, Ms. Triplett’s response brief contains two arguments enumerated as “C and F” not listed within the table of contents and discoverable only by reading the entire brief, to which Ms. Case has replied.

**H. Findings of fact and conclusions of law are required by numerous statutes and is supported by case law.**

As noted in this reply brief, the court’s Sept 9, 2013 order provides no clarity and states nothing, not even related to failing to state a claim or issues on changed circumstances. CP 382 However, Ms Triplett wants this court to believe that finding of fact and conclusions of law were not required because no hearing was held.

Finding of fact and conclusions of law are required in connection with all final decisions in divorce proceedings and for all orders of support, including orders in support-modification proceedings. CR 52(a)(2)(B) <sup>12</sup>, RCW 26.19.035(2) <sup>13</sup>, Marriage of Wayt, 63 Wn. App. 510,

512-13, 820 P.2d 519 (1991); Marriage of Brockopp, 78 Wn. App. 441, 446, 898 P.2d 849 (1995) As noted in the Appellants brief; trial court orders are reviewed by determining if the findings of fact are supported by substantial evidence or if the trial court made an error of law subject to correction on appeal. Because the appeals court has no finding, they are not only unable to review critical rulings, but it is unclear just what the trial court based those rulings on, both factually and legally. Marriage of Stern, 68 Wn. App. 922, 929, 846 P.2d 1387 (1993); Marriage of Shellenberger, 80 Wn. App. 71, 80-81, 906 P.2d 968 (1995). A trial court must enter findings of fact and conclusions of law on the issue of whether a substantial change of circumstances has occurred. Marriage of Arvey, 77 Wn. App. 817; Marriage of Leslie, 90 Wn. App. 796, 802, 954 P.2d 330; Marriage of Scanlon, 109 Wn. App. 167 (2001); Marriage of Chapman, 34 Wn. App. 216, 220, 660 P.2d 326; Marriage of Belsby, 51 Wn. App. 711, 713, 754 P.2d 1269. In fact, some changes in incomes are such that they will not have been contemplated by the parties at the time the previous order of child support was entered and thus a change in incomes could constitute a substantial change of circumstances. Marriage of Scanlon, 109 Wn. App. 167

An absence of findings and conclusions in the record on appeal requires reversal and remand. Marriage of Lee 57 Wn. App. 268, 788

P.2d 564 However, Ms. Case maintains the argument that this is not simply a matter for remand to enter findings of fact and conclusions of law; both the Sept 9, 2013 and Sept 10, 2013 matters are essentially void; there was no motion to even be before the court.

**I. Ms. Case was prejudice on multiple occasions including the motion for Default and is supported by statute.**

Ms. Case was prejudiced by the incomplete adjudication of her motion for default; it was lost in the multitude of responding and had nothing to do with Ms. Triplett's 31 day late response to the petition.

Ms. Case does not deny that default judgments are disfavored. However, where RCW 26.09.175(4) <sup>14</sup> explicitly states, "shall" result in entry of a default judgment, leaves little doubt this requirement was contemplated by the legislature and written exactly how it was to be interpreted, nor does this statute imply actively participating in litigation. The implied meaning is as written; "A responding party's failure to file an answer within the time required "shall" result in entry of a default judgment." And although it is preferable to harmonize an apparent conflict between a court rule and a statute, when such a conflict is irreconcilable, the nature of Ms. Case's rights at issue determines whether the statute or court rule controls. See *State v. W.W.*, 76 Wn. App. 754, 757, 887 P.2d 914 (1995) citing *State v. Smith* 84 Wn.2d 498, 501, 527

P.2d 674 (1974). This is not a default defined by CR 55 and there was no mention of CR 55 by Ms. Triplett or the court. Here, Ms. Triplett claims that three day before the August 2, 2012 hearing on Ms. Case's motion for default when Ms. Triplett filed her late response to the petition. Ms. Case's noted motion for Default was not filed until August 8, 2013. CP 101-111 Justifiably, there was no hearing August 2, 2013 for a default motion; August 2, 2013 was strictly about Ms. Triplett's motion to dismiss. RP August 2, 2013 Ms. Triplett also noted, response brief page eight; that the order entered on August 2, 2013 stated that the issue of "dismissing for frivolous is reserved," also to be heard on the TBA calendar without oral argument. CP 381 This is not entirely correct, in fact the order portion; if correctly spelled out does not split the sentence structure and states "issue of dismissing for frivolous is reserved to a MOTION without oral argument;" but Ms. Triplett filed no motion.

**J. The Orders entered October 11, 2013 is a reviewable order according to the rules of the appellate court.**

Lastly, Ms. Triplett questions Ms Case's complaint about the starting date of the October 11, 2013 Adjustment Order of support being beyond the scope of this appeal; that orders concerning this appeal are orders before the notice of appeal, not subsequent orders. CP 148

Notwithstanding the fact this order should not have succeeded; a June start date is contrary to the February 6, 2013 order stated in Sec 3.13 that reads;

“this is an interim temporary order and shall remain in effect until a subsequent child support order is entered by this court or support terminates.”

The enforcement of a June start date as noted in Sec 3.9 instead of the provision noted by Sec 3.13; does indeed create five months of impermissible retroactive enrichment. CP 30-31

Ms. Triplett is incorrect; this court can review this order under RAP 2.4(b).<sup>15</sup> Ms. Case reaffirms that the order entered October 11, 2013 is reviewable; not only are there prejudicial affects, the appellate court did not accept review until November 21, 2013 and memorialized this November 22, 2013 by letter.

Further, Ms. Case also reaffirms the deviation argument that the court on August 2, 2013 and October 11, 2013, clearly had an erroneous view of the law. This abuse of discretion was furthered when the court crossed out Ms. Case’s debt from the child support worksheets on October 11, 2013 and denied the deviation request. CP 145; RP Aug 2nd pg 7 ll. 9-11; Oct 11th pg 13 ll. 8-13, 16, pg 14 l. 8 A court necessarily abuses its discretion if its decision is based on an erroneous view of the law. Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339,

858 P.2d 1054, citing Marriage of Scanlon, 109 Wn. App. 167; Marriage of Choate, 143 Wn. App. 235. Support is based on the parent's income, resources, and standard of living in light of the totality of the financial circumstances from both households. Marriage of Lee 57 Wn. App. 268, 788 P.2d 564; Marriage of Leslie, 90 Wn. App. 796, 802, 954 P.2d 330; Marriage of Scanlon, 109 Wn. App. 167; Shellenberger, 80 Wn. App. 71; see also McCausland, 159 Wn. 2d. 607 Whether a court chooses to deviate or not; findings of fact and conclusions of law are required. RCW 26.19.075(3)<sup>16</sup> Ms. Case argues; the October 11, 2013 order does not provide adequate findings of fact and conclusions of law to support denying a request for deviation. CP 151 Moreover, Ms. Case encourages this court to look to the oral opinion to determine the trial court's basis for resolving the issue. Marriage of Griffin 114 Wn.2d 772, 791 P.2d 519; see RP Aug 2, 2013 pg 7 ll. 9-11; Oct 11, 2013 pg 13 ll. 8-13, 16, pg 14 l. 8

#### **IV. CONCLUSION**

There is nothing frivolous about this appeal. The September 9, 2013 dismissal of the Petition for Modification of Child Support was improperly before the court without a motion and entered without findings of fact and conclusions of law. Thus the September 9th and September 10th orders are void and as a result, October 11, 2013 should never have occurred and too is void. Therefore, Ms. Case believes the appellate court

has the authority to end this matter entirely without remand and Ms. Case prays that it does. Both of the parties children are now well over eighteen; Ms. Case wants nothing but closure and to move on, nevertheless without the caveat of future harm and indebtedness with which Ms. Case never did create or cause. Thus, "where there is a right, there must be a remedy." Ms. Case maintains the issue of fairness, equity and doing what is right by correcting the misdeeds of unjust enrichment by completely ending that which remains and require partial restitution. Ms. Case asks this court to do what is ethically just under the laws of equity and apply the Equitable Principles of Fairness and consider the relief herein requested as a result of Ms. Triplett's repeat silence and documented misconduct.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Auburn, WA on

6/4/14

  
Signature of Appellant

Stephanie L. Case  
Pro Se

## APPENDICES

<sup>1</sup> **RCW 40.16.030** Offering false instrument for filing or record.....5  
Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

<sup>2</sup> **RCW 4.72.080**.....5, 6, 9  
Construction of chapter — Time limitations when fraud, misrepresentation concerned. The provisions of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall the time limitations set forth in this chapter within which proceedings to vacate or modify a judgment must be started apply to a judgment heretofore or hereafter entered by consent or stipulation where the grounds to vacate or modify such judgment are based on fraud or misrepresentation, or when after the entry of the judgment either party fails to fulfill the terms and conditions on which the consent judgment or stipulation was entered; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter.

<sup>3</sup> **Applicable “Clean Hands Doctrine”** .....7  
“It is a fundamental principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands. The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. It is applied not by way of punishment but on considerations that make for the advancement of right and justice.”  
Eldridge v. Eldridge, 244 Conn.; 523, 536, 710 A.2d 757 (1998). Because the doctrine of unclean hands exists to safeguard the integrity of the court; Eldridge v. Eldridge, supra, 244 Conn. at 536, 710 A.2d 757; Pappas v. Pappas, 164 Conn. 242, 246, 320 A.2d 809 (1973); citing SC 16398 George A. Thompson, Trustee v. David Orcutt et al. (2001) <sup>e-n</sup>.

The Latin legal maxim is ubi jus ibi remedium' ("where there is a right, there must be a remedy"), sometimes cited as ubi jus ibi remediam. Case law dealing with principle of this maxim at law include Ashby v White

(1703) 92 ER 126 and *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The application of this principle at law was key in the decision of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), citation omitted.

<sup>4</sup>**RAP 18.1(c)**.....11, 12

Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits

<sup>5</sup>**RAP 18.1(b)**.....12

Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

<sup>6</sup>**RAP 18.1(d)**.....12

Affidavit of Fees and Expenses. Within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses, the party must serve and file in the appellate court an affidavit detailing the expenses incurred and the services performed by counsel.

<sup>7</sup>**RAP 14.4(a)** .....12

Generally. Except as provided in sections (b) and (c), a party seeking costs on review must file a cost bill with the appellate court and serve a copy of the cost bill on all parties within 10 days after the filing of an appellate court decision terminating review.

<sup>8</sup>**RCW 26.12.010**.....13

Jurisdiction conferred on superior court — Family court proceeding defined. Each superior court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "family court." A family court proceeding under this chapter is: (1) Any proceeding under this title or any proceeding in which the family court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of

parenting plans, child custody, visitation, or support, or the distribution of property or obligations, or (2) concurrent with the juvenile court, any proceeding under Title 13 or chapter 28A.225 RCW.

<sup>9</sup>**RCW 26.12.190**.....13

Family court jurisdiction as to pending actions — Use of family court services.(1) The family court shall have jurisdiction and full power in all pending cases to make, alter, modify, and enforce all temporary and permanent orders regarding the following: Parenting plans, child support, custody of children, visitation, possession of property, maintenance, contempt, custodial interference, and orders for attorneys' fees, suit money or costs as may appear just and equitable. Court commissioners or judges shall not have authority to require the parties to mediate disputes concerning child support.

<sup>10</sup>**LFLR 14(d)(5)**.....13

**Independent Proceedings.** Except as otherwise stated, Petitions for Modification of Support shall proceed as original determinations, with no threshold or adequate cause hearing required.

<sup>11</sup>**RCW 26.09.175(5)**.....16

At any time after responsive pleadings are filed, any party may schedule the matter for hearing.

<sup>12</sup>**CR 52(a)(2)(B)**.....19

Domestic relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not.

<sup>13</sup>**RCW 26.19.035(2)**.....19

Written findings of fact supported by the evidence. An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

<sup>14</sup>**RCW 26.09.175(4)**.....21

A responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. A responding party's failure to file an answer within the time required "SHALL" result in entry of a default judgment for the petitioner.

<sup>15</sup>**RAP 2.4(b)** Order or Ruling Not Designated in Notice.....23

The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review.

<sup>16</sup>**RCW 26.19.075(3)**.....24

The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court.

GEORGE A. THOMPSON, TRUSTEE v. DAVID ORCUTT ET AL.  
(SC 16398)

Borden, Norcott, Katz, Palmer and Zarella, Js.

Argued April 20—officially released August 7, 2001

Counsel Bruce S. Beck, for the appellants (named defendant  
et al.). Clifton E. Thompson, for the appellee (plaintiff).

Opinion

Decided: August 7, 2001

Before BORDEN, NORCOTT, KATZ, PALMER and ZARELLA, Js. Bruce S. Beck, Manchester, for the appellants (named defendant et al.). Clifton E. Thompson, Hartford, for the appellee (plaintiff).

The sole issue in this certified appeal is whether the Appellate Court properly concluded that the doctrine of clean hands<sup>1</sup> The defendants, David Orcutt and Sandra Orcutt, did not apply in this mortgage foreclosure action.<sup>2</sup> appeal from the judgment of the Appellate Court, reversing the judgment of the trial court, which had applied the clean hands doctrine to preclude the plaintiff, George A. Thompson,<sup>3</sup> The defendants from foreclosing on the mortgage on their property. claim that the Appellate Court improperly determined that the clean We agree with the defendants and reverse hands doctrine did not apply. the judgment of the Appellate Court.

The opinion of the Appellate “The Court summarizes the following facts and procedural history. plaintiff commenced this action against the defendants to foreclose on a mortgage that secured a note, the original balance of which was The note was signed by the defendant David Orcutt as \$25,000. president of Alpha Equipment Sales and Rentals, Inc., and by the defendants individually and severally.<sup>4</sup> The note was secured by a mortgage (Thompson mortgage) on property owned by the defendants known as 95 Greenwood Drive in Manchester, which Although the mortgage was the subject of the foreclosure action. plaintiff claimed that he was the trustee of that mortgage for himself and Jack L. Rosenblit, a business associate, no written trust agreement [See footnote 3 of this opinion.] existed.

“The mortgaged premises were subject to three encumbrances superior to the Thompson mortgage: A first mortgage to the New Haven Savings Bank in the amount of \$60,000, a second mortgage in favor of the Connecticut Bank and Trust Company in the amount of \$35,000 and a lien in favor of Northeast The Financial Services (Northeast) [in the amount of \$32,712]. principals of Northeast were the plaintiff and Rosenblit, and [although] the debt securing the mortgage to Northeast [had been] paid prior to the creation of the Thompson mortgage, [the lien] had not been released.

“In January, 1992, the plaintiff filed a voluntary petition in [chapter 7] bankruptcy in the United States Bankruptcy Court for the District of Connecticut, listing as an asset a one-half interest in the Thompson The bankruptcy court appointed [a bankruptcy trustee to mortgage. Thompson v. Orcutt, 59 Conn.App. administer the bankruptcy] estate.” 201, 202-203, 756 A.2d 332 (2000).<sup>5</sup>

During the pendency of the bankruptcy case, the plaintiff represented to the bankruptcy trustee that the property securing the Thompson mortgage was “encumbered in excess of its value.” On the basis of that representation, the bankruptcy trustee abandoned the Thompson mortgage as an asset of the bankruptcy estate because it “[did] not justify 554(a) (bankruptcy trustee See 11 U.S.C. § further administration.” may abandon property of estate “that is burdensome to the estate or that is of inconsequential value and benefit to the estate”).

“In their answer to the foreclosure complaint, the defendants admitted the existence of the debt and the execution of the loan agreement and mortgage deed, but filed a special defense asserting that the plaintiff was ‘guilty of unclean hands’ insofar as he had induced the bankruptcy trustee to abandon the [Thompson mortgage].” The trial court concluded *supra*, 59 Conn.App. at 204, 756 A.2d 332. that the plaintiff had committed “misrepresentation or fraud” in the bankruptcy case. The trial court determined that because the misrepresentation or fraud concerned the Thompson mortgage, and that mortgage was the subject of the plaintiff’s foreclosure action, the clean hands doctrine could apply. Although the trial court recognized that the clean hands doctrine generally applies only where “the wrong [has been] done to the party against whom [affirmative] relief is sought,” and the plaintiff’s conduct in this case had occurred in the bankruptcy court, the trial court determined that the plaintiff’s misrepresentation or fraud in the bankruptcy case involved an important public interest that justified a broader application of the doctrine. Accordingly, the trial court applied the clean hands doctrine, denied the relief sought by the plaintiff, and rendered judgment for the defendants. In addition, the trial court ordered the plaintiff to release the Northeast lien.

Thereafter, the plaintiff appealed to the Appellate Court, claiming, *inter alia*, that the trial court improperly had applied the doctrine of unclean hands.<sup>6</sup> The Appellate Court concluded that “the wrong committed [by the plaintiff] was with respect to the bankruptcy proceeding and not the mortgage transaction,” and, therefore, the doctrine of unclean hands did not preclude him from recovering in this case. *Id.*, at 205-206, 756 A.2d 332. The Appellate Court determined that the trial court had applied the doctrine improperly because “[t]he wrong alleged and found by the trial court to exist in this case concerned the plaintiff’s misleading [the bankruptcy trustee] into believing that there was no equity in the mortgaged premises to satisfy the debt owed by the defendants” on the Thompson mortgage note, and there had been “no fraud or deception with regard to the mortgage transaction” between the plaintiff and the defendants. *Id.*, at 206-207, 756 A.2d 332. Furthermore, the Appellate Court declined to apply the public policy exception to the doctrine of unclean hands. *Id.*, at 206 n. 7, 756 A.2d 332.

We granted the defendants’ petition for certification to appeal limited to the following issue: “Under the circumstances of this case, did the Appellate Court properly hold that the doctrine of clean hands did not apply?” Following oral argument before this court, we *sua sponte* (2000). ordered the trial court to articulate its judgment with respect to the application of

the doctrine of unclean hands. directed the trial court to respond to the following questions: “(1) Was the basis for the plaintiff’s unclean hands (a) misrepresentation, (2) If the basis was misrepresentation, what was the or (b) fraud? nature of the misrepresentation, e.g., intentional, negligent or innocent? [and] (3) In either event, what was the evidentiary basis of the finding of misrepresentation or fraud?”

66-5, Thereafter, the trial court, after conducting a hearing on the order for articulation in accordance with Practice Book §<sup>7</sup> issued an articulation, in which it found “by clear and convincing evidence that the plaintiff committed fraud.” The trial court determined that the plaintiff had “lied to the [bankruptcy] trustee” with respect to the value of his interest in the Thompson mortgage, because he had represented to the trustee that the property had been “‘encumbered in The trial court found that, at the time the excess of its value.’” plaintiff had filed for bankruptcy, there had been enough equity in the property to satisfy the prior encumbrances and the Thompson mortgage.<sup>8</sup> The trial court further found that the plaintiff, one of the two partners in Northeast, had known that the Northeast lien, which had priority over the Thompson mortgage, had been paid in full but not The trial court concluded that, had the plaintiff informed released. the trustee of that fact, the Thompson mortgage would not have been abandoned as an asset of the bankruptcy estate.

After the trial court submitted its articulation, we sua sponte granted the parties an opportunity to file simultaneous supplemental briefs in response The defendants filed a supplemental brief; the plaintiff did thereto. not.

I

As a threshold matter, the defendants claim that the Appellate Court improperly employed the plenary standard of review, rather than reviewing the trial court’s decision to apply the doctrine of unclean hands for an abuse of discretion. We disagree. This court has recognized that “[a]pplication of the doctrine of unclean A hands rests within the sound discretion of the trial court.” & B Auto Salvage, Inc. v. Zoning Board of Appeals, 189 Conn. 573, 578, 456 A.2d 1187 (1983); accord Cohen v. Cohen, 182 Conn. 193, 196, 438 A.2d 55 (1980) (“[i]t is clear that [the doctrine of unclean hands] is to be applied . by the court in the exercise of its sound discretion”); DeCecco v. Beach, 174 Conn. 29, 35, 381 A.2d 543 (1977) (“[t]he maxim “The exercise of should be applied in the trial court’s discretion”). [such] equitable authority . is subject only to limited review on appeal. The only issue on appeal is whether the trial court has acted unreasonably and in clear abuse of its discretion. In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of [the trial court’s] action.” Mazziotti v. (Citations omitted; internal quotation marks omitted.) Allstate Ins. Co., 240 Conn. 799, 809, 695 A.2d 1010 (1997).

Whether the trial court properly interpreted the doctrine of unclean hands, however, is a legal question distinct from the trial court’s Cf. Babcock v. Bridgeport discretionary decision whether to apply it. Hospital, 251 Conn. 790, 820, 742 A.2d 322 (1999) (“[p]rovided the trial court properly interpreted the [law], a question over which this court

has plenary review . [the trial court's] decision [to grant or deny a discovery request] will be reversed only if such an order constitutes an "abuse of [its] discretion" [citation omitted] ). Appellate Court recognized that " '[t]he trial court enjoys broad discretion in determining whether the promotion of public policy and the preservation of the court's integrity dictate that the clean hands doctrine be invoked' " ; Thompson v. Orcutt, supra, 59 Conn.App. at 205, 756 A.2d 332, quoting Polverari v. Peatt, 29 Conn.App. 191, 202, 614 A.2d 484, cert. denied, 224 Conn. 913, 617 A.2d 166 (1992); it determined, in essence, that the question whether the clean hands doctrine may be interpreted to apply to the facts found by the trial court in this case involved an issue of law. Accordingly, because the Appellate Court at 204, 756 A.2d 332. addressed the trial court's legal conclusions with respect to the scope of the clean hands doctrine, it properly engaged in a plenary review to discern whether the trial court's conclusions were legally and logically correct and supported by the facts appearing in the record. Andersen Consulting, LLP v. Gavin, 255 Conn. 498, 511, 767 A.2d 692 (2001).

## II

The defendants next claim that the Appellate Court improperly determined First, that the doctrine of unclean hands did not apply in this case. the defendants contend that the Appellate Court improperly determined that the plaintiff's bankruptcy fraud regarding the Thompson mortgage was not " 'in regard to the matter in litigation' " for applying the See Lyman v. Lyman, 90 Conn. 399, 406, 97 doctrine of unclean hands. Second, although the defendants acknowledge that the A. 312 (1916). clean hands doctrine generally requires that the alleged prior wrong must have been directed toward their interests, rather than toward those of a third party, they claim that the Appellate Court improperly In contrast, refused to apply the doctrine on broader policy grounds. the plaintiff maintains that the Appellate Court properly determined that the clean hands doctrine did not apply in this case.

## A

Before addressing these claims, we note that an action to foreclose a OCI Mortgage Corp. v. Marchese, mortgage is an equitable proceeding. 255 Conn. 448, 464, 774 A.2d 940 (2001); Danbury v. Dana Investment "It is a fundamental Corp., 249 Conn. 1, 30, 730 A.2d 1128 (1999). principle of equity jurisprudence that for a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands. The clean hands doctrine is applied not for the protection of the parties but for the protection of the court. It is applied not by way of punishment but on considerations that make for (Internal quotation marks the advancement of right and justice." Eldridge v. Eldridge, 244 Conn. 523, 536, 710 A.2d 757 omitted.) "The doctrine of unclean hands expresses the principle that (1998). where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue. Unless the plaintiff's conduct is of such a character as to be condemned and pronounced wrongful by honest and fair-minded people, the Bauer

(Citation omitted.) doctrine of unclean hands does not apply.” v. Waste Management of Connecticut, Inc., 239 Conn. 515, 525, 686 A.2d 481 (1996).

Because the doctrine of unclean hands exists to safeguard the integrity of the court; Eldridge v. Eldridge, supra, 244 Conn. at 536, 710 A.2d 757; Pappas v. Pappas, 164 Conn. 242, 246, 320 A.2d 809 (1973); “[w]here a plaintiff’s claim grows out of or depends upon or is inseparably connected with his own prior fraud, a court of equity will, in general, deny him any relief, and will leave him to (Internal quotation whatever remedies and defenses at law he may have.” Samasko v. Davis, 135 Conn. 377, 383, 64 A.2d 682 marks omitted.) The doctrine generally “applies [only] to the particular (1949). transaction under consideration, for the court will not go outside the case for the purpose of examining the conduct of the complainant in other matters or questioning his general character for fair dealing. The wrong must . be in regard to the matter in litigation. Though an obligation be indirectly connected with an illegal transaction, it will not thereby be barred from enforcement, if the plaintiff does not require the aid of the illegal transaction to make out his case.” Id.; see also (Citation omitted; internal quotation marks omitted.) Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 245, 54 S.Ct. 146, 78 L.Ed. 293 (1933) (courts “do not close their doors because of [a] plaintiff’s misconduct, whatever its character, that has no relation to anything involved in the suit, but only for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court for adjudication”); Orsi v. Orsi, 125 Conn. 66, 70, 3 A.2d 306 (1938) (clean hands doctrine prevents “a party from asserting in court a title where, in order to do so, he must rely upon a transaction tainted with In addition, the conduct alleged to be illegality or inequity”). unclean must have been done directly against the interests of the party seeking to invoke the doctrine, rather than the interests of a third Orsi v. Orsi, supra, at 69-70, 3 A.2d 306 (“[t]he wrong must be party. done to the defendant himself and must be in regard to the matter in litigation” [internal quotation marks omitted] ).

B

The defendants first claim that the Appellate Court improperly determined that, in order for the clean hands doctrine to apply, the fraud had to The relate to the mortgage transaction at issue in the present case. defendants maintain that, as long as the plaintiff requires the fraud to They contend that the make out his case, the doctrine can apply. fraud need not directly relate “to the precise transaction giving rise to the claim,” and argue that if the plaintiff requires the fraudulent conduct or transaction to establish a cause of action, the clean hands The plaintiff maintains that the defense of doctrine may apply. unclean hands should not apply in mortgage foreclosure actions unless the allegedly wrongful conduct relates “to the making, enforcement or The plaintiff contends that, because validity of” the mortgage note. the Thompson mortgage transaction was not premised on fraud, the Appellate Court properly determined that the clean hands doctrine could We agree with the defendants. not apply.

This court has addressed the scope of the doctrine of unclean hands and, as noted previously, if a party’s claim “grows out of or depends upon or is inseparably connected

with his own prior fraud, a court of equity will, in general, deny him any relief.” (Internal quotation marks omitted.) Indeed, this *Samasko v. Davis*, supra, 135 Conn. at 383, 64 A.2d 682. court has applied the doctrine to preclude a litigant from recovering in equity if his or her conduct has been inequitable with respect to the See *Pappas v. Pappas*, supra, 164 Conn. at 246, subject of the action. 320 A.2d 809 (applying clean hands doctrine to preclude plaintiff in action to recover property from son; plaintiff had committed perjury in separate dissolution proceeding with respect to character of transfer of property to son; equity that plaintiff sought was “directly and inseparably connected” with prior perjury); see also *Salzman v. Bachrach*, 996 P.2d 1263, 1269 (Colo.2000) (“[C]ourts apply [doctrine of unclean hands] only when a plaintiff’s improper conduct relates in some Otherwise, only significant way to the claim he [or she] now asserts. those leading pristine and blameless lives would ever be entitled to equitable relief.”). The trial court in this case determined that, for the purposes of applying the clean hands doctrine, the plaintiff’s fraud in the bankruptcy proceeding regarding the Thompson mortgage The Appellate Court directly related to the foreclosure action. concluded, however, that “the wrong found by the [trial] court on which it based its conclusion that the plaintiff did not have clean hands was with regard to the bankruptcy matter, not the Thompson mortgage that is *Thompson v. Orcutt*, the subject matter of the present litigation.” The Appellate Court supra, 59 Conn.App. at 206, 756 A.2d 332. determined that the defendants “should not benefit by any wrong committed by the plaintiff [in] the bankruptcy court because to allow them to do so would have the effect of penalizing the creditors of the plaintiff’s bankruptcy estate.” Id., at 207, 756 A.2d 332. Under the circumstances of the present case, we conclude that the plaintiff’s cause of action to foreclose on the mortgage was “directly and inseparably connected” to his prior fraud on the bankruptcy court. *Pappas v. Pappas*, supra, 164 Conn. at 246, 320 A.2d 809; *Samasko v. [A] foreclosure complaint Davis*, supra, 135 Conn. at 383, 64 A.2d 682. must contain certain allegations regarding the nature of the interest New England (Internal quotation marks omitted.) being foreclosed.” *Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 610, 717 A.2d 713 (1998); see *New Milford Savings Bank v. Jajer*, 244 Conn. 251, 256 n. 11, 708 A.2d 1378 (1998) (noting that “a mortgagee in Connecticut is deemed to have taken legal title under the execution of a mortgage on In this real property” subject to equitable rights of redemption). case, the plaintiff alleged in his complaint that he had title to the Thus, the Thompson mortgage, an allegation that the defendants denied. plaintiff’s title to the Thompson mortgage was a contested issue in the foreclosure action.

The plaintiff’s alleged ownership of the Thompson mortgage herein would not have existed had he not lied to the bankruptcy trustee and withheld information concerning the Northeast The original transaction creating the Thompson mortgage was not lien. tainted with fraud, but the plaintiff’s ability to foreclose on the defendants property in this case depended upon his fraudulent conduct in If the Thompson mortgage had been the bankruptcy proceeding. administered as an asset of the bankruptcy estate, the plaintiff would See *Samasko v. Davis*. have had no means of bringing this foreclosure action.

supra, 135 Conn. at 383, 64 A.2d 682; Orsi v. Orsi, supra, 125 The plaintiff perpetrated the fraud in the Conn. at 69-70, 3 A.2d 306. bankruptcy court in order to retain title to the Thompson mortgage; he would have had no cause to foreclose on the Thompson mortgage without See Samasko v. Davis, supra, at 383, 64 A.2d 682. the fraud. Accordingly, we conclude that the Appellate Court improperly determined that the plaintiff's fraud in the bankruptcy matter was unrelated to the foreclosure action.

C

The defendants next claim that the Appellate Court improperly refused to apply the clean hands doctrine on Emphasizing that the trial court found by clear broad policy grounds. and convincing evidence that the plaintiff had committed fraud in the bankruptcy court, the defendants claim that this case implicates the important public policy of precluding litigants from profiting from The plaintiff contends that the their own fraudulent conduct. Appellate Court properly refused to apply the doctrine on the grounds of public policy because the defendants "failed to show . that [he] We agree with the defendants. violated a public policy."

This court has recognized that the doctrine of unclean hands "is not one of absolutes ." Cohen v. Cohen, supra, 182 Conn. at 204, 438 A.2d 55; It "is not a DeCecco v. Beach, supra, 174 Conn. at 35, 381 A.2d 543. Cohen v. Cohen, supra, at 204, 438 A.2d 55. judicial straightjacket." Because the doctrine is "founded on public policy, [it] may be relaxed on that ground." Id.; see also S & E Contractors, Inc. v. United States, 406 U.S. 1, 15, 92 S.Ct. 1411, 31 L.Ed.2d 658 (1972), quoting Precision Co. v. Automotive Co., 324 U.S. 806, 815, 65 S.Ct. 993, 89 L.Ed. 1381 (1945) ("[w]here a suit in equity concerns the public interest as well as the private interests of the litigants, [the doctrine of unclean hands] assumes even wider and more significant proportions" [internal quotation marks omitted] ); Dunlop-McCullen v. Local 1-S, AFL-CIO-CLC, 149 F.3d 85, 90 (2d Cir.1998) ("doctrine of unclean hands also may be relaxed if [the] defendant has been guilty of misconduct that is more unconscionable than that committed by [the] plaintiff" [internal quotation marks omitted] ).

The trial court concluded that the public interest was implicated in this case because "fraud was perpetrated on the bankruptcy court trustee who was acting on behalf of the United States Bankruptcy Court in fulfilling a congressionally mandated duty of collecting [and administering] property The trial court recognized of the [plaintiff's bankruptcy] estate." that the Thompson mortgage had been listed as an asset on the plaintiff's bankruptcy schedules and that, if the plaintiff had not fraudulently induced the bankruptcy trustee to abandon it, it would have The trial court recognized been property of the bankruptcy estate. that concealing assets and making false statements in bankruptcy matters 152 and 157; and it reasoned are federal crimes; see 18 U.S.C. §§ that permitting the plaintiff to foreclose on the mortgage would "reward the very misconduct [that] Congress has found to be abhorrent and against the public policy of the United States." The Appellate Court determined, however, that "the representations made to the federal court in the bankruptcy proceeding [did] not involve a public interest

so great as to necessitate application of the [public policy] exception” to the general rule governing the doctrine of unclean hands that the wrong Thompson v. must be done to the party against whom relief is sought. Orcutt, supra, 59 Conn.App. at 206 n. 7. 756 A.2d 332.

We conclude that the fraud committed by the plaintiff in the bankruptcy court implicates an important public interest that justifies the application of the doctrine of unclean hands on public policy grounds. “No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, These maxims are dictated by or to acquire property by his own crime. public policy, [and] have their foundation in universal law administered in all civilized countries.” (Internal quotation marks Bird v. Plunkett, 139 Conn. 491, 496-97, 95 A.2d 71 (1953); omitted.) Solomon v. Gilmore, 248 Conn. 769, 785, 731 A.2d 280 (1999) (“[i]n cf. case any action is brought in which it is necessary to prove [an] illegal contract in order to maintain the action, courts will not enforce [the contract], nor will they enforce any alleged right directly springing from such contract” [internal quotation marks omitted] ); Billington v. Billington, 220 Conn. 212, 222-23, 595 A.2d 1377 (1991) (marital dissolution agreements constituting “fraud on the court . [are] contrary to public policy and unenforceable”).

In this case, the plaintiff's fraud in bankruptcy court allowed him to retain an interest in the Thompson mortgage. <sup>9</sup> If the plaintiff had not lied to the bankruptcy trustee and had not withheld the information that the Northeast lien had been paid but not released, the Thompson mortgage would have been liquidated as an asset The plaintiff's of the bankruptcy estate and administered accordingly. entire cause of action to foreclose the mortgage in this case is Although the Appellate Court reasoned that, premised on that fraud. were there any equity in the property, the bankruptcy trustee “could petition the bankruptcy court to exercise its powers to open the bankruptcy case”; Thompson v. Orcutt, supra, 59 Conn.App. at 206 n. 8, 756 A.2d 332; and the plaintiff emphasizes that the trustee has taken no such action,<sup>10</sup> it is doubtful whether the trustee could achieve any practical benefit from petitioning the bankruptcy court to open the case.<sup>11</sup> It is equally clear that fraudulent conduct in bankruptcy cases violates the policy of the federal government, which is vested with plenary authority over bankruptcy matters.<sup>12</sup> Indeed, fraudulent conduct in any proceeding arising under the Bankruptcy Code is punishable by a term of imprisonment of up to five If this court were to allow the relief sought 157. 18 U.S.C. § years. by the plaintiff in this case, we, in effect, would be condoning that See Pappas v. Pappas, supra, 164 Conn. at 247, 320 A.2d very fraud. Accordingly, we conclude that the Appellate Court improperly 809. reversed the trial court's application of the doctrine of unclean hands, on public policy grounds, to bar the plaintiff from maintaining this foreclosure action.

The judgment of the Appellate Court is reversed and the case is remanded to that court for consideration of the plaintiff's remaining claims.

## FOOTNOTES

1. The clean hands doctrine, also referred to as the doctrine of unclean hands; *Bauer v. Waste Management of Connecticut, Inc.*, 239 Conn. 515, 525, 686 A.2d 481 (1996); derives from “the equitable maxim that he who (Internal quotation comes into equity must come with clean hands.” *DeCecco v. Beach*, 174 Conn. 29, 34, 381 A.2d 543 marks omitted.) (1977); accord *Gelinas v. West Hartford*, 225 Conn. 575, 587, 626 A.2d 259 (1993) (“[o]ne who seeks equity must also do equity and expect that equity will be done for all” [internal quotation marks omitted] ).
2. Several parties holding subordinate liens on the property were also They have not joined joined as defendants in the foreclosure action. For purposes of this appeal, references herein to the in this appeal. defendants are to David Orcutt and Sandra Orcutt.
3. Although the plaintiff filed this action in his capacity as trustee for his business partnership with Jack L. Rosenblit, who also held a one-half interest in the mortgage on the defendants' property, the trial court found that the alleged trust relationship was “nothing more than a sham .” That finding is not an issue in this appeal.
4. The plaintiff also named Alpha Equipment Sales and Rentals, Inc., as a defendant, but it was defaulted for failure to appear.
5. Although the trial court granted the defendants' motion to join the bankruptcy trustee, John J. O'Neil, Jr., as a plaintiff in this case, he See subsequently was defaulted and is not a party to this appeal. *Thompson v. Orcutt*, supra, 59 Conn.App. at 203 n. 3, 756 A.2d 332.
6. The plaintiff also claimed that the trial court improperly had: (1) found that there had been no trust agreement between the plaintiff and Rosenblit; (2) ordered the plaintiff to release the Thompson mortgage note; (3) ordered the plaintiff to release the Northeast lien; (4) found that Rosenblit should be subjected to the unclean hands doctrine; (5) ignored the appearance filed by the bankruptcy trustee; and (6) The Appellate ordered the plaintiff to release the Thompson mortgage. Court did not address these claims; *Thompson v. Orcutt*, supra, 59 Conn.App. at 204 n. 5, 756 A.2d 332; and neither do we.
7. 66-5 governs motions for articulation and provides in Practice Book § relevant part that “[i]f any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved.”
8. Based on testimony at trial that the market value of the property subject to the Thompson mortgage in 1990 had been \$147,200, the trial court used an annual depreciation rate of 4 percent, which was derived from the testimony of the plaintiff's expert appraiser, and found that the fair market value of the property during the first year of the plaintiff's bankruptcy case would have been approximately \$135,000. The trial court noted that that figure was consistent with the testimony of the plaintiff's appraiser who estimated the value of the property in Deducting \$95,000, which represented the face 1999 to be \$103,000. amount of the two priority encumbrances, and disregarding the Northeast lien, which had been paid in full but not released, the trial court found that

there had been \$40,000 in equity in the property in 1992, more than enough to satisfy the full amount of the \$25,000 Thompson mortgage. It is noteworthy that with interest on the Thompson mortgage note, which originally had been 24 percent, and the late payment charges, the outstanding debt on the Thompson mortgage note had risen to approximately \$34,000 in January, 1992, the month that the plaintiff filed for bankruptcy protection. At the time of trial in this case, the indebtedness had increased to more than \$60,000.

9. We emphasize that, although the plaintiff had an opportunity to respond to the trial court's articulation regarding its finding of fraud, he did not do so. Therefore, we are bound by the trial court's factual findings. *Herbert S. Newman & Partners, P.C. v. CFC Construction Ltd. Partnership*, 236 Conn. 750, 762, 674 A.2d 1313 (1996) (trial court's factual findings binding on this court unless clearly erroneous in light of all evidence).

10. The plaintiff claims that "[i]t is very important to note that [although] the bankruptcy trustee was made a party to this matter and has had ample opportunity to reopen [the plaintiff's] bankruptcy file based on the allegations of fraud," the trustee has failed to do so.

11. We note that, although the bankruptcy court enjoys broad power to reopen a case that has been closed; see 11 U.S.C. § 554; *Correll v. Equifax Check Services, Inc.*, 234 B.R. 8, 11 (D.Conn.1997) (property of bankruptcy estate not abandoned by trustee remains property of estate). The bankruptcy trustee, therefore, not only would be required to open the case, but also would have to petition the bankruptcy court to revoke the plaintiff's discharge in bankruptcy. See 11 U.S.C. § 727(d); *In re Covino*, 245 B.R. 162, 170 (Bankr.D.Idaho 2000) ("[r]evocation of discharge is an extraordinary remedy [and] is a penalty . . . not lightly invoked by the [c]ourt"). 727(e)(1) and (2) is subject to strict time limits—one year after discharge and one year after discharge or the date that the case is closed, whichever is later, respectively. See *In re Boyd*, 243 B.R. 756, 763, 766 (N.D.Cal.2000) ("bankruptcy code and rules do not contemplate equitable tolling [of time limits for seeking revocation] because of a debtor's fraud"; party seeking revocation "cannot use fraud allegations as a way to obtain authority to administer . . . funds Although after the time limit for revoking discharge has expired"). the record before this court does not disclose the date of the plaintiff's bankruptcy discharge, it is safe to assume that, because the bankruptcy case was commenced in 1992, the opportunity to seek a revocation of the discharge has long since passed, and accordingly, the bankruptcy trustee successfully could not seek relief in that forum.

12. Article I, § 8, of the constitution of the United States provides in relevant part: "The Congress shall have Power To . . . establish . . . uniform Laws on the subject of Bankruptcies."

KATZ, J.

In this opinion the other justices concurred.

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

In re:

Tammy Triplett

Respondent,

and

Stephanie Case

Appellant.

No. 70959-3-1

No. 99-3-00253-2 KNT

**DECLARATION OF MAILING**

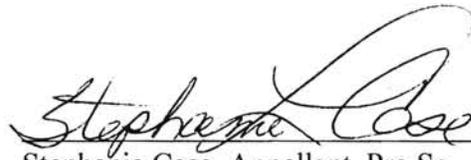
I, Stephanie Case, hereby declare that on 6-4-, 2014, I mailed copies of the following documents by certified signature requested return, postage prepaid to the parties listed below.

**Reply Brief of Appellant**

**CERTIFICATION**

I hereby declare under penalty of perjury of the laws of the State of Washington that the above statements are true and correct.

Dated: 6/4/14

  
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