

COURT OF APPEALS
DIVISION ONE

MAR 24 2014

Supreme Court No. 90140-6
Court of Appeals No. 69220-8-I

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION ONE

THE FERGUSON FIRM, PLLC,
Respondent,

v.

TELLER AND ASSOCIATES, PLLC,
Defendant,

and

Brian J. Waid, Appellant Attorney Lien Claimant

ON APPEAL FROM THE KING COUNTY SUPERIOR
COURT

The Honorable Marianne Spearman, Judge

RESPONDENT'S PETITION FOR REVIEW

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR 24 PM 3:21

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FILED

APR 17 2014

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STATE OF WASHINGTON CRF

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A. IDENTITY OF PETITIONER

The Ferguson Firm, PLLC, Respondent, asks this Court to accept review of the Court of Appeals opinion designated below.

B. COURT OF APPEALS DECISION

The Ferguson Firm seeks review of the decision by Division One of the Court of Appeals filed December 30, 2013.¹ The decision reversed the Superior Court's order invalidating appellant Waid's "attorney's lien". This Court should reverse the Court of Appeals decision and affirm the Superior Court.

The opinion is published. *Waid v. The Ferguson Firm*, -- Wash.App.--, 316 P.3d 509 (2013).

The Court of Appeals denied our motion for reconsideration on February 20, 2014.²

¹ A copy of the opinion is reproduced in the Appendix, Appendix pages C-1 to C-10.

² A copy of the order is reproduced in the Appendix, page D-2.

C. ISSUES PRESENTED FOR REVIEW

1. Does the attorney lien statute, RCW 60.40.010, prohibit an attorney from using an “attorney’s lien” to take money from a client which the attorney did not earn as proceeds for the client?

2. Should the attorney lien statute be strictly construed in favor of clients and consumers, as in prior Washington decisions, or should it be broadly construed to favor an attorney filing a lien on funds he did not earn for his client, as Division One did here?

3. Does the term “proceeds” in RCW 60.40.010(1)(d) and (5) refer only to a monetary sum received from the same action that the attorney actually represented the client in, rather than to other funds the client earned herself in a prior matter where the attorney did not represent her?

4. Is an order setting aside an “attorney’s lien” (because it does not fit under the lien statute) appealable as of right under RAP 2.2(a)(3), where the order is procedural and

does not “prevent a final judgment” or “discontinue the action”?

5. Is an order denying a motion to stay disbursement of funds due to mootness nonetheless appealable as of right under RAP 2.2(a)(3), even though: (a) the funds had already been disbursed, (b) no “action” was determined, and (c) the motion to stay was untimely filed?

6. Should the Superior Court’s orders be affirmed because the attorney who filed the “lien” does not challenge the disbursement on appeal?

D. STATEMENT OF THE CASE

(1) “Sandra Ferguson, the principal of The Ferguson Firm, PLLC, spent substantial time and effort developing an employment discrimination case without the assistance of co-counsel.” *The Ferguson Firm, PLLC v. Teller & Associates*, 2013 WL 6865540 at *1, No. 68329-2-I (2013) (linked to the instant case in Division One). She eventually added a co-counsel, Teller, based upon his promise to finance the three experts who would be needed to litigate the employment

clients' case to trial or achieve their settlement goals. CP 116-117.

(2) On April 28, 2011, The Ferguson Firm and the Teller firm reached a settlement agreement in the underlying employment matter. *Order Granting the Ferguson Firm's Motion to Set Aside Waid Attorney's Lien, and Ordering Disbursement of Funds ("Order P")*, Appendix page A-2, CP 416; CP 118.

(3) The attorneys' fees portion of the settlement funds (\$530,107.58) was deposited into the Court Registry. *Order I*, Appendix page A-2, CP 416; CP 118.

(4) On May 4, 2011, Ms. Ferguson retained Brian Waid for representation in the fee dispute with Teller. *Order I*, Appendix page A-2, CP 416; CP118. Although Teller agreed that The Ferguson Firm was entitled to half of the attorney's' fees (\$265,053.79), Waid failed to obtain a disbursement of Ms. Ferguson's funds to her, or a judgment in her favor, at any time during his representation of her in the Teller-Ferguson lawsuit. CP 118, 121, 122-124; *Order I*, CP 416-417. This failure harmed Ms. Ferguson. CP123-124.

(5) On May 27, 2011, Ms. Ferguson filed a Complaint seeking a Declaratory Judgment that there was no enforceable contract with Teller, and arguing that the Court should divide

the fees based on a theory of *quantum meruit*, 90% to Ms. Ferguson and 10% to Teller. *Order I*, Appendix page A-2, CP 416. Teller argued the existence of an express contract to divide the fees 50:50. *Ibid.* On January 30, 2012, the Superior Court entered an order which rejected Ferguson's argument and found the existence of a 50:50 contract. *Ibid.*; CP 19-25. This order is the subject of the opinion in *The Ferguson Firm v. Teller, supra*, 2013 WL 6865540, No. 68329-2-I (2013). We have petitioned this Court for review in that linked case.

(8) On February 13, 2012, Waid withdrew as Ms. Ferguson's attorney. *Order I*, Appendix page A-2, CP 416. This was done on one day's notice. CP 123.

(9) The following day Waid filed what he styled as a "lien" for his attorney's fees in the amount of \$78,350.85. *Order I*, Appendix page A-2, CP 416; CP 123.

(10) Ms. Ferguson moved to set aside the "lien" on the grounds that the lien was invalid under RCW 60.40.010(1)(c), (d), and (e). *Order I*, Appendix page A-2, CP 416; CP 106-114.

(11) The Superior Court granted the motion. The Court invalidated the lien and ordered the Clerk of Court to disburse the \$78,350.85 in the Registry to the Ferguson Firm, together with interest accrued on that amount. *Order I*, Appendix pages A-1 to A-3, CP 415-418.

(12) In its order, the Superior Court made the following findings, all of which are based on substantial and/or undisputed evidence:

(a) The funds are currently in the Court's registry, not in the "hands of an adverse party." RCW 60.40.010(1)(c) does not apply. *Order I*, Appendix A-2, CP 416.

(b) "*The \$530,107.58 in attorneys' fees do not represent 'proceeds' received by Ferguson after arbitration or mediation due to services performed by Mr. Waid. RCW 60.40.010(1)(d). The funds were earned by Teller and Ferguson well before Mr. Waid was retained.*" *Order I*, Appendix page A-2, A-3, CP 416-417 (emphasis added); CP 123-124.

(c) "*The funds that are currently in dispute were not obtained by a 'judgment' on behalf of Ferguson against Teller. RCW 60.40.010(1)(e); Wilson v. Henkle, 45 Wn.App 162, 170, 724 P.2d 1069 (1986). Teller, the adverse party, consistently maintained that Ferguson was entitled to half of the attorneys' fees that were generated in the Underlying Matter. Ferguson retained Mr. Waid in her unsuccessful effort to obtain 90% of the fees.*" *Order I*, Appendix page A-3, CP 417(emphasis added).

(13) Pursuant to the trial court's order, the Clerk disbursed the funds to the Ferguson Firm, on or about August 3, 2012. CP 393; *Order Denying Waid Motion to Stay Disbursement of Funds in the Court Registry Pending Appeal* ("Order II"), Appendix pages B-1, B-2, CP 411.

(14) On August 22, 2012, 19 days after the disbursement of the funds, Waid filed a motion to stay disbursement of funds from the Court Registry pending appeal. CP 345.

(15) The Superior Court properly found that Waid's motion was moot. *Order II*, Appendix page B-2, CP 411. The stay motion was denied. *Ibid.* Waid appealed.

(16) Waid did not assign error to the denial of his stay motion. As a result, the order denying the stay as moot (*Order II*) and the disbursement of the funds to the Ferguson Firm stand.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. **Order I is not appealable as of right (Issue Four).** **The order setting aside the "attorney's lien" is not**

appealable as of right under RAP 2.2(a)(3), because it is procedural and does not “prevent a final judgment” or “discontinue the action”.

The decision of the Division One panel is in conflict with the common sense meaning of Rule 2.2(a)(3) of the Rules of Appellate Procedure. No authoritative decision of this Court appears to address or decide the issue presented here. Review should be granted under RAP 13.4(b)(4).

RAP 2.2(a) defines the decisions of the Superior Court which may be appealed as of right by a non-governmental party. The Superior Court’s *Order I*, setting aside the “attorney’s lien” and for disbursement of funds, does not fall within RAP 2.2(a).

RAP 2.2 (a)(3), captioned “*Decision Determining Action*” requires a written decision “that in effect *determines the action and prevents a final judgment or discontinues the action.*” (Emphasis added). “Action” means “lawsuit”. Here, the *action* was between The Ferguson Firm and the Teller Firm. The Superior Court’s decision, *Order I*, did not “determine” the *Ferguson v. Teller* action. It did not “prevent a final judgment” or “discontinue” the *Ferguson v. Teller* lawsuit.

The Ferguson Firm contends that Waid owes it money. Waid claims that The Ferguson Firm owes him money. Neither claim has been tried or adjudicated in any court. All the Superior Court *Order I* did was to correctly conclude that what Waid styled as a “lien” did not fit under the attorney’s lien statute.³ *Order I* does not preclude Waid from litigating whether The Ferguson Firm owes him money, or vice versa, in a future proceeding.⁴ *Order I* is not a final order—instead, it is procedural.

Waid is not a party to the *Ferguson v. Teller* lawsuit. There is no “action” pertaining to him. The Superior Court did not prevent Waid from filing a lawsuit in which he and the Ferguson firm can litigate their claims against each other. The

³ *Order I*, CP 416-417.

⁴ “We note that the legislature has not left an attorney remediless in collecting fees after the attorney-client relationship has been terminated. He has, among other remedies afforded general creditors, the ability to reduce his fees to judgment and thus subject his client's real property to a judgment lien pursuant to RCW 4.56. If additional measures are necessary, the attorney may post a bond and proceed with a writ of attachment pursuant to RCW 7.12.” *Ross v. Scannell*, 97 Wash.2d 598, 605-606, 647 P.2d 1004 (1982)

Court's order invalidating the "lien" did not "determine" any claim by Waid or the Ferguson Firm. The order did not "prevent a final judgment" by anyone, including Waid. It did not "discontinue" any "action" between Waid and The Ferguson Firm. Waid remains able to pursue any valid claim he might have in the appropriate forum. *Ross v. Scannell, supra.*

We paraphrase Division One in another case:

Here, the [order] entered by the trial court in no way affects any of [Waid's] rights. It does not order [Waid] to do anything. It does not order [Waid] to pay anything. It does not order [Waid] to refrain from doing or paying anything. At the time [the order] was entered, [Waid] was not a party to this lawsuit. [Waid's] interests were in no way affected by the judgment from which [he] now seeks to appeal.

Polygon NW Co. v. American Nat'l Fire Ins. Co., 143 Wash.App 753, 768, 770, 189 P.3d 777 (2008)(dismissing appeal)(paraphrase words in brackets).

The same reasoning applies here. The Court's interlocutory order, Order I, is not appealable under RAP 2.2(a)(3).⁵

2. **Order II is not appealable as of right (Issue Five).** The order denying Waid's motion to stay disbursement of funds due to mootness is not appealable as of right under RAP 2.2(a)(3), because: (a) the funds had already been disbursed, (b) no "action" was determined, and (c) no final judgment was prevented.

⁵ The cases cited by Division One (*Waid v. The Ferguson Firm*, 316 P.3d at 512, ¶12) are distinguishable. They involve the appealability of sanctions orders directed *against* the attorney. See, e.g., *In re Guardianship of Lasky*, 54 Wash.App. 841, 848- 850, 776 P.2d 695 (1989) (attorney could appeal sanctions order against him but could not appeal order removing him as guardian and dismissing action he filed); *Breda v. B.P.O. Elks Lake City 1800 SO-620*, 120 Wash.App. 351, 353, 90 P.3d 1079 (2004) (attorney can appeal sanctions order against him); *Splash Design, Inc. v. Lee*, 104 Wash.App. 38, 44, 14 P.3d 879 (2000) (attorney can appeal sanctions imposed directly against him).

Waid could have sought discretionary review of the order. RAP 2.3; *Polygon*, 143 Wash.App at 769.

The decision of the Division One panel—that a mootness order is appealable as of right—is in conflict with the common sense meaning of Rule 2.2(a)(3) of the Rules of Appellate Procedure. No authoritative decision of this Court appears to address or decide the issue presented here. Review should be granted under RAP 13.4(b)(4).

In *Order II*, the Superior Court determined that Waid’s motion to stay disbursement of funds—funds which had already been disbursed by the Clerk pursuant to the Court’s *Order I*—is moot. *Order II*, Appendix page B-2, CP 411, ¶3. The Superior Court is correct. See, e.g., *Clark County v. W. Wash. Growth Mgmt. Hearings Review Bd.*, 177 Wash.2d 136, 148-149, 298 P.3d 704 (2013)(Stephens, J., concurring)

Division One acknowledged that the trial court did not err in holding the motion moot. *Waid v. The Ferguson Firm*, 316 P.3d at 513, fn 4. The motion was untimely. *Ibid.* No “action” was “determined” by the mootness finding. *Order II* did not “prevent a final judgment”. It did not “discontinue” any “action”. The Superior Court’s order denying the stay motion as moot does not fall within RAP 2.2(a)(3). Waid has no appeal as of right from *Order II*.

3. The Orders Should Be Affirmed Because Waid Does Not Challenge The Disbursement On Appeal (Issue Six).

The Superior Court directed the Clerk to disburse the funds to the Ferguson Firm because the Court invalidated Waid's "lien". *Order I*, CP 415-417. Waid failed to seek a stay of the disbursement order until 19 days after the funds had been disbursed. *Order II*, Appendix page B-2, CP 411; CP 345.

RAP 8.1(b) provides in pertinent part: "A trial court decision *may be enforced* pending review *unless stayed* pursuant to the provisions of this rule." (Emphasis added). Here, the trial court's disbursement decision was properly enforced. Waid did not obtain (or even timely seek) a stay as required by RAP 8.1(b).

Waid fails in this appeal to assign error to the denial of his stay motion. See Appellant's Amended Brief, pp. 2-3. As a result, the order and the disbursement of the funds to the Ferguson Firm stand. See *Clark County v. W. Wash. Growth Mgmt. Hearings Review Bd.*, 177 Wash.2d 136, 143-147, 298 P.3d 704 (2013)(prohibiting review of separate and distinct claims not raised on appeal); *State v. Sims*, 171 Wash.2d 436, 441-42, 256 P.3d 285 (2011) ("[A]n appellant is deemed to

have waived any issues that are not raised as assignments of error and argued by brief”); *Tellevik v. Real Property Known as 31641 West Rutherford Street*, 120 Wash.2d 68, 92, 838 P.2d111 (1992) (issue not raised in assignments of error not considered on appeal). The principle of *res judicata* applies. See *Johnson v. Johnson*, 53 Wash.2d 107, 113-14, 330 P.2d 1075 (1958), cited in *Clark County*, 177 Wash.2d at 145. The decision of the Division One panel should be vacated. *Clark County*, 177 Wash.2d at 148.

Division One’s decision is in conflict with decisions of the Supreme Court.⁶ Review should be granted under RAP 13.4(b)(1).

4. The funds in the registry are not “proceeds” under the attorney lien statute (Issues One, Two and Three). The term “proceeds” in RCW 60.40.010(1)(d) and (5) refers only to a monetary sum received from the same action that the attorney

⁶ This issue was briefed by The Ferguson Firm in the Court of Appeals. See Respondent’s Brief, pp. 17-18. The opinion by the panel does not appear to address it.

actually represented the client in, rather than to other funds Ms. Ferguson earned herself in a prior matter, without the attorney's representation.

The decision of the Division One panel is in conflict with the common sense meaning of RCW 60.40.010(1)(d) and (5). It conflicts with prior decisions of the Court of Appeals. It is bad policy. No authoritative decision of this Court appears to address or decide the issue presented here. Review should be granted under RAP 13.4(b)(2) and(4).

The statute provides in pertinent part as follows:

RCW 60.40.010---Lien created---
Enforcement---Definition---Exception. An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

- (a) Upon the papers of the client, which have come into the attorney's possession in the court of his or her professional employment;
- (b) Upon the money in the attorney's hands belonging to the client;
- (c) Upon money in the hands of an adverse party *in an action or proceeding, in which the attorney was employed*, from the time of giving notice of the lien to that party;

(d) *Upon an action...and its proceeds* after the commencement thereof *to the extent of the value of any services performed by the attorney in the action*, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment *to the extent of the value of any services performed by the attorney in the action*, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing the notice of such lien or claim with the clerk of the court in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(2)...(3)...(4)...

(5) For the purposes of this section, “proceeds” means any monetary sum *received in the action*. . . .

[Emphasis added]

The plain language in RCW 60.40.010(1)(d) says an attorney can have a lien “[u]pon an action...and its proceeds... after the commencement thereof *to the extent of the value of any*

*services performed by the attorney in the action.”*⁷ (Emphasis added). There are two key elements. First, the attorney must perform his or her services “*in the action*”. Second, that same action must result in proceeds—“any monetary sum received *in the action*”. RCW 60.40.010(5) (emphasis added).

The Superior Court properly found that Ms. Ferguson did not receive any proceeds due to any services performed by Waid. *Order I*, Appendix page A-2, CP 416. The Court also properly found that “[*t*]he funds were earned by Teller and Ferguson well before Mr. Waid was retained.” *Order I*, Appendix pages A-2, A-3, CP 416-417. (Emphasis added).

The Superior Court’s findings are supported by substantial--indeed undisputed—evidence. The Division One panel acknowledges that the funds were received by Sandra Ferguson “from working on the underlying matter”. *Waid v. The Ferguson Firm*, 316 P.3d at 513. Since *no proceeds were received* by The Ferguson Firm through Waid’s services in *Teller v. Ferguson*, Waid’s “lien” is not authorized by RCW

⁷ The “*to the extent of the value of any services performed by the attorney in the action*” language is repeated in subsection (1)(e).

60.40.010(1)(d) or RCW 60.40.010(5). Compare *In re Trustee's Sale of the Real Property of Jack Whitmire*, 134 Wash.App. 440, 447, 140 P.3d 618 (2006) (RCW 60.40.010(1)(c) does not entitle attorney to funds derived from foreclosure action in which he did not represent client).

The Division One panel in effect says any money that comes into the hands of a client in any action can be the target of an attorney's lien, even where, as here, the attorney did not represent the client in the action. This interpretation is incorrect. It does not give effect to the language in subsections (1)(d) and (1)(e) requiring that the attorney "perform services in the action" which generates the proceeds.⁸

⁸ The panel says our position on appeal was that the attorney must obtain a judgment in Ms. Ferguson's favor. *Waid v. The Ferguson Firm*, 316 P.3d at 513-514. In fact, we argued several statute-based issues. First, we argued that Ms. Ferguson did not receive proceeds through Waid's services, and that no lien could lie under subsection (1)(d) of the statute. Second, we pointed out that a judgment is required by subsection (1)(e), and that Waid did not obtain a judgment. The Superior Court agreed with us on both counts.

This Court and the Court of Appeals have held that “[t]he attorney’s lien statute is in derogation of the common law and must be strictly construed.” *Wilson v. Henkle*, 45 Wash.App. 162, 170, 724 P.2d 1069 (1986), citing *Ross v. Scannell*, 97 Wash.2d 598, 604-05, 647 P.2d 1004 (1982). The Division One panel decision conflicts with this. Its overbroad interpretation conflicts with the statutory language. It is bad policy. The Legislature did not intend for lawyers to file liens against funds in unrelated matters where they did not represent the client.⁹

This Court should hold that the attorney lien statute, RCW 60.40.010, prohibits an attorney from using an “attorney’s lien” to take money from a client where the attorney did not represent the client in the action and did not provide

⁹ RCW 60.40.010 was amended in 2004. The Legislature stated: “The purpose of this act is to end double taxation of attorneys’ fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract.” Laws of 2004, chapter 73, §1. This language reinforces the Superior Court’s conclusion that the Waid attorney lien is not valid because the funds were earned by Ms. Ferguson “well before Mr. Waid was retained.” *Order I*, Appendix pages A-2, A-3, CP 416-417.

services which resulted in proceeds. RCW 60.40.010(1)(d) and (5).

F. CONCLUSION.

For the reasons stated, this Court should grant review, reverse the Court of Appeals, and affirm the trial court.

This appeal is linked to *The Ferguson Firm, PLLC, v Teller and Associates*, Court of Appeals No. 68329-2-I, petition for review filed March 21, 2014. Respondent/petitioner urges the Court to grant review in that matter as well, and to link the two appeals for consideration.

DATED this the 23rd day of March, 2014.

Respectfully submitted,
MUENSTER & KOENIG
By: S/John R. Muenster
JOHN R. MUENSTER
Attorney at Law, WSBA No. 6237
Of Attorneys for Respondent The Ferguson Firm, PLLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the 24th day of March, 2014, a true and correct copy of the foregoing document was served via email and first class mail on opposing counsel.

S/John R. Muenster
John R. Muenster

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*Order Granting the Ferguson Firm’s Motion to Set Aside Waid
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Court Registry Pending Appeal, (“Order II”)..... B-1*

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*Order Granting the Ferguson Firm's
Motion to Set Aside Waid "Attorney's
Lien", and Ordering Disbursement of
Funds, ("Order I"), CP 415-418*

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE FERGUSON FIRM, PLLC.,

NO. 11-2-19221-1 SEA

Plaintiff,

ORDER GRANTING THE
FERGUSON FIRM'S MOTION TO
SET ASIDE WAID ATTORNEY'S
LIEN, AND ORDERING
DISBURSEMENT OF FUNDS

vs.

TELLER & ASSOCIATES, PLLC.,

[CLERK'S ACTION REQUIRED]

Defendant.

This matter came on for hearing without oral argument on The Ferguson Firm,
PLLC's Motion to Set Aside Waid "Attorney's Lien" and For Disbursement of Funds to
The Ferguson Firm, PLLC. Based on the evidence and Pleadings of Record, the Court
finds:

Judge Marlene Spearman
401 Fourth Ave. North, Room 2D
Kent, Washington 98032
(206) 296-9490

A-1

A-1-

1 On behalf of several clients, Plaintiff Ferguson and Defendant Teller reached a
2 settlement agreement in an Underlying Matter on April 28, 2011. Due to a dispute
3 concerning the apportionment of the resulting \$530,107.58 in attorneys' fees between
4 Ferguson and Teller, the entire sum was deposited into the Court's Registry. On May 4,
5 2011, Ms. Ferguson retained Brian Waid to represent her in her fee dispute with Mr.
6 Teller over how to divide the fees. On May 27, 2011, Ms. Ferguson filed a Complaint
7 seeking Declaratory Judgment that there was no enforceable contract with Mr. Teller
8 and arguing that the Court should divide the fees based on a theory of *quantum meruit*.
9 To Ms. Ferguson this meant 90% to her and 10% to Teller. Teller argued the existence
10 of an express contract to divide the fees 50:50. On January 30, 2012, this Court rejected
11 Ferguson's argument, found the existence of a contract and ordered the fees divided
12 50:50. This order is currently on appeal.

15 On February 13, 2012, Mr. Waid withdrew as Ms. Ferguson's attorney. The
16 following day he filed a lien for his attorney's fees in the amount of \$78,350.85.
17 Ms. Ferguson now seeks to set aside Mr. Waid's lien for attorney's fees on the grounds
18 that the lien is invalid under RCW 60.40.010(c), (d), and (e).

20 The funds are currently in the Court's registry, not in the "hands of an adverse
21 party." RCW 60.40.010(c). This subsection does not apply.

22 The \$530,107.58 in attorneys' fees do not represent "proceeds" received by
23 Ferguson after arbitration or mediation due to services performed by Mr. Waid. RCW
24 60.40.010(d). The funds were earned by Teller and Ferguson well before Mr. Waid was
25

Judge Marlene Spearman
401 Fourth Ave. North, Room 2D
Kent, Washington 98032
(206) 296-9490

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retained.

The funds that are currently in dispute were not obtained by a "judgment" on behalf of Ferguson against Teller. RCW 60.40.010(e). *Wilson v Henkle*, 45 WnApp. 162, 170, 724 P.2d 1069 (1986). Teller, the adverse party, consistently maintained that Ferguson was entitled to half of the attorneys' fees that were generated in the Underlying Matter. Ferguson retained Mr. Waid in her unsuccessful effort to obtain 90% of the fees.

THEREFORE, IT IS ORDERED that the Motion to Set Aside Waid "Attorney's Lien" and For Disbursement of Funds to The Ferguson Firm, PLLC. is GRANTED, and;

It is further Ordered that the Clerk of Court is authorized and directed to disburse to the Ferguson Firm, the sum of \$78,350.85, held in the Court Registry in this matter, together with all interest accrued on that amount.

DATED this 30th day of July, 2012.

JUDGE MARIANE C. SPEARMAN

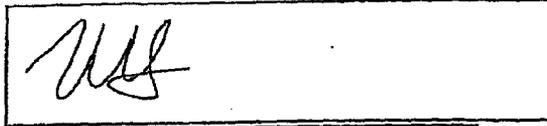
Judge Mariane Spearman
401 Fourth Ave. North, Room 2D
Kent, Washington 98032
(206) 298-9490

King County Superior Court
Judicial Electronic Signature Page

Case Number: 11-2-19221-1
Case Title: FERGUSON FIRM VS TELLER & ASSOCIATES

Document Title: ORDER

Signed by Judge: Mariane Spearman
Date: 7/30/2012 2:32:12 PM



Judge Mariane Spearman

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 43C39890476C001CDC4C9815BD2359E397D46AD1

Certificate effective date: 1/11/2011 8:36:01 AM

Certificate expiry date: 1/10/2013 8:36:01 AM

Certificate Issued by: CN=Washington State CA B1, OU=State of Washington
CA, O=State of Washington PKI, C=US

Page 4 of 4

*Order Denying Motion to Stay
Disbursement of Funds in the Court Registry
Pending Appeal, (“Order II”), CP 410-412*

Appendix B

FILED

12 AUG 30 PM 3:47

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-19221-1 SEA

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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF KING

8 THE FERGUSON FIRM, PLLC,

9 Plaintiff,

10 v.

11 TELLER & ASSOCIATES, PLLC

12 Defendant.

NO 11-2-19221-1 SEA

ORDER DENYING MOTION TO
STAY DISBURSEMENT OF
FUNDS IN THE COURT
REGISTRY PENDING APPEAL

13
14 THIS MATTER came before the Court on Attorney Brian Waid's Motion
15 to Stay Disbursement of Funds in the Court Registry Pending Appeal. Sub.
16 #160. The plaintiff, The Ferguson Firm, PLLC, was represented by its attorney,
17 John R. Muenster. The defendant, Teller & Associates, PLLC, was represented
18 by its attorney, Kelby Fletcher. Attorney Brian Waid was represented by his
19 attorney, Emmelyn Hart.
20
21

22
23 This Court has considered the records and files herein, including all
24 papers filed for and against the motion. Being fully advised, the Court finds as
25 follows:
26
27

28 ORDER DENYING WAID MOTION TO
STAY DISBURSEMENT OF FUNDS IN
THE COURT REGISTRY PENDING
APPEAL [PROPOSED] - 1

MUENSTER & KOENIG
JOHN R. MUENSTER, INC., P.S.
14940 SUNRISE DRIVE NE
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 11-2-19221-1
Case Title: FERGUSON FIRM VS TELLER & ASSOCIATES

Document Title: ORDER

Signed by Judge: Mariane Spearman
Date: 8/30/2012 3:47:36 PM



Judge Mariane Spearman

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 43C39890476C001CDC4C9815BD2359E397D46AD1
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Certificate expiry date: 1/10/2013 8:36:01 AM
Certificate Issued by: CN=Washington State CA B1, OU=State of Washington
CA, O=State of Washington PKI, C=US

Page 3 of 3

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(Cite as: 316 P.3d 509)

H

Reversed and remanded.

Court of Appeals of Washington,
Division 1.

West Headnotes

The FERGUSON FIRM, PLLC, Respondent,

[1] Appeal and Error 30 ⇨151(2)

v.

30 Appeal and Error

TELLER & ASSOCIATES, PLLC, Defendant,

30IV Right of Review

and

30IV(A) Persons Entitled

Brian J. Waid, d/b/a Law Office of Brian J. Waid, Appellant Attorney Lien Claimant.

30k151 Parties or Persons Injured or Aggrieved

30k151(2) k. Who are "aggrieved" in general. Most Cited Cases

Nos. 69220-8-I, 68329-2-I.

Dec. 30, 2013.

An aggrieved party, permitted to seek review, is one whose proprietary, pecuniary, or personal rights are substantially affected. RAP 2.2(a)(3), 3.1.

Background: In fee dispute between law firms, former attorney for plaintiff filed attorney's lien. The King County Superior Court, Mariane Spearman, J., granted plaintiff's motion for summary dismissal of lien, directed clerk to disburse sums in court registry to plaintiff, and denied attorney's motion for stay. Attorney appealed.

[2] Appeal and Error 30 ⇨150(1)

30 Appeal and Error

30IV Right of Review

30IV(A) Persons Entitled

30k150 Interest in Subject-Matter

30k150(1) k. In general. Most Cited Cases

Holdings: The Court of Appeals, Dwyer, J., held that:

- (1) attorney could appeal orders;
- (2) issue of propriety of ruling on validity of lien was not moot; and
- (3) money in court registry constituted "proceeds" to which lien attached.

Although plaintiff's former attorney was not named party to fee dispute between two law firms, attorney had standing to appeal order granting plaintiff's motion to set aside his attorney's lien and directing clerk to dis-

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(Cite as: 316 P.3d 509)

burse sums held in court registry to plaintiff; decision affected attorney's substantial right to monetary relief and determined action with respect to his attorney's lien. West's RCWA 60.40.010; RAP 2.2(a)(3).

[3] Appeal and Error 30 ⇌ 148

30 Appeal and Error

30IV Right of Review

30IV(A) Persons Entitled

30k148 k. Persons other than parties or privies. Most Cited Cases

In rare cases, a person who is not formally a party to a case may have standing to appeal a trial court's order because the order directly impacts that person's legally protected interests. RAP 2.2(a)(3).

[4] Appeal and Error 30 ⇌ 358

30 Appeal and Error

30VII Transfer of Cause

30VII(B) Petition or Prayer, Allowance, and Certificate or Affidavit

30k358 k. Necessity of allowance or leave. Most Cited Cases

Although former attorney for plaintiff was not named party to fee dispute between two law firms, order denying, as moot, his motion to stay order directing clerk to disburse funds in court registry to plaintiff was appealable as of right; decision affected attorney's substantial right to monetary relief

and determined action with respect to his attorney's lien. West's RCWA 60.40.010; RAP 2.2(a)(3).

[5] Deposits in Court 123 ⇌ 12

123 Deposits in Court

123k12 k. Proceedings for payment or delivery out of court. Most Cited Cases

Plaintiff's attorney's motion to stay order directing clerk to disburse funds in court registry to plaintiff, filed 22 days later, after funds had been partially disbursed, was moot. West's RCWA 60.40.010; RAP 2.2(a)(3).

[6] Appeal and Error 30 ⇌ 843(2)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k843 Matters Not Necessary to Decision on Review

30k843(2) k. Review of specific questions in general. Most Cited Cases

Although attorney's motion to stay disbursement of funds in court registry was moot at time that it was considered by trial court, question of whether attorney's lien was valid was not moot, since money remained in court registry to which lien could

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(Cite as: 316 P.3d 509)

attach. West's RCWA 60.40.010.

[7] Attorney and Client 45 ↔184

45 Attorney and Client

45V Lien

45k184 k. Priorities. Most Cited Cases

Attorney and Client 45 ↔189

45 Attorney and Client

45V Lien

45k188 Protection Against Settlement Between Parties
45k189 k. In general. Most Cited Cases

Once an attorney's lien attaches to an action, that lien is superior to all other liens and is not affected by settlement of the parties until the lien is satisfied in full. West's RCWA 60.40.010.

[8] Attorney and Client 45 ↔182(2)

45 Attorney and Client

45V Lien

45k182 Subject-Matter to Which Lien Attaches

45k182(2) k. Judgment or proceeds thereof. Most Cited Cases

Attorney and Client 45 ↔183

45 Attorney and Client

45V Lien

45k183 k. Time when lien attaches. Most Cited Cases

Attorney's lien arose when he filed suit on plaintiff's behalf, and monetary sum received by plaintiff in the action constituted "proceeds" to which lien attached. West's RCWA 60.40.010(1)(d), (5).

*510 John Roling Muenster, Muenster & Koenig, Bainbridge Island, WA, for Respondent.

Kelby Dahmer Fletcher, Stokes Lawrence, Seattle, WA, for Other Parties.

DWYER, J.

¶ 1 The Ferguson Firm, PLLC (Ferguson), sued Teller & Associates, PLLC (Teller), over a fee dispute.^{FNI} Brian J. Waid d/b/a Law Office of Brian J. Waid (Waid) represented Ferguson throughout much of the dispute, but eventually withdrew because of a conflict with the firm's principal, Sandra Ferguson. Soon after withdrawing, Waid filed an attorney's lien in the amount of \$78,350.85 for legal services provided to Ferguson. Thereafter, Ferguson moved for a summary dismissal of Waid's lien, which the trial court granted. The court also directed the clerk to disburse to Ferguson the sum of \$78,350.85 held in the court registry, together with accrued interest. Waid then filed a notice of appeal from that order and—more than three weeks after the order was

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entered—filed a motion to stay the disbursement to Ferguson of the funds in the court registry and for approval of a supersedeas bond. The trial court denied Waid's motion, holding that—because the funds had already been disbursed—the motion was moot. Although Waid's motion was moot when the trial court considered it, money remains in the court registry to which Waid's lien could attach.^{FN2} Thus, the issue of the propriety of the trial court's ruling on the validity of Waid's lien is not moot. Because the trial court erroneously ruled that the money in the court registry was not “proceeds” of Ferguson's action against Teller, we reverse the trial court's order invalidating Waid's lien and remand to the trial court for further proceedings.

FN1. Sandra Ferguson and Stephen Teller are principals of their eponymous law firms. The firms, not the individuals, were parties to the case in which Waid represented Ferguson. Nevertheless, our opinion will use last names and gendered pronouns when referring to the firms, as well as to the individuals.

FN2. This was confirmed by counsel for the parties at oral argument in this court.

I

¶ 2 Sandra Ferguson is the principal of The Ferguson Firm, PLLC. Her firm began

representing a group of clients in an employment discrimination case (hereinafter underlying matter) in August 2009. The clients agreed to a contingency fee arrangement but were unable to advance litigation costs and so, with their consent, Ferguson approached multiple law firms, seeking a co-counsel willing to advance litigation costs and able to represent the clients in the event that she was suspended from practicing law by the Supreme Court. Stephen Teller's firm, Teller & Associates, PLLC, was one of the firms that Ferguson approached. After negotiating with Ferguson, Teller agreed to jointly represent the clients and to advance all litigation costs. While Teller and Ferguson were jointly representing the clients, Ferguson was, in fact, suspended from practicing law for 90 days and subsequently withdrew from the case. *See In re Disciplinary Proceeding Against Ferguson*, 170 Wash.2d 916, 246 P.3d 1236 (2011). During the period of Ferguson's suspension, the clients—represented solely by Teller—accepted a settlement offer.

¶ 3 Subsequently, Ferguson and Teller disputed the manner in which the contingent fee resulting from the settlement should be divided, and Ferguson served a notice of lien for attorney fees on Teller. On May 4, 2011, Ferguson hired Waid to represent her in the fee dispute with Teller. The fee agreement *511 between Ferguson and Waid provides that Waid “shall have a lien against any proceeds recovered by, or on behalf of, [Fergu-

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son] in connection with the claims arising out of [the fee dispute with Teller], including pursuant to RCW 60.40.010, *et seq.*” Waid invoiced Ferguson each month for services provided with no objection from Ferguson.

¶ 4 On May 27, 2011, Ferguson, seeking 90 percent of the contingent fee, sued Teller to resolve the fee dispute. Both parties agreed to deposit the full amount of the contingent fee—\$530,107.58—into the superior court registry. On January 30, 2012, the superior court granted Teller’s motion for summary judgment, dismissing all of Ferguson’s claims and ordering that the disputed funds be divided equally between Ferguson and Teller.

¶ 5 On February 9, Teller filed a motion seeking the disbursement of the funds, which required that Ferguson’s response be filed by noon on February 15. However, Ferguson had retained a new attorney to replace Waid and wanted the new attorney to prepare the opposition papers, so long as an additional three weeks was granted to prepare the response. On February 10, Ferguson threatened to bring a legal malpractice claim against Waid. Waid then informed Ferguson that he was required to withdraw from representation. Waid filed a notice of withdrawal, moved for permission to withdraw immediately, and moved to continue the hearing on Teller’s motion pursuant to Ferguson’s instructions. The court granted Fer-

guson’s request for an additional 30 days and authorized Waid’s immediate withdrawal.

¶ 6 On February 14, Waid filed an attorney’s lien in the amount of \$78,350.85. On February 16, the trial court entered an order of partial disbursement in which it determined that Teller was entitled to receive his 50 percent share, but ordered that \$101,000.74 of Ferguson’s share would remain in the court registry until further notice because issues relating to the calculation of fees, costs, and interest had not yet been resolved. The trial court also ordered that an additional \$78,350.85 would remain in the registry until further court order in order to protect Waid’s lien. Lastly, it ordered that the remaining portion of Ferguson’s 50 percent share—\$85,702.20—be disbursed to her. Ferguson, on the same day, filed an emergency motion in this court to stay the order of partial disbursement. Our commissioner granted a temporary stay and directed the parties to provide additional briefing on the issue.

¶ 7 On February 21, Ferguson appealed from the trial court’s summary judgment order and the related orders granted in favor of Teller. She additionally moved the trial court to set a supersedeas bond amount in order to stay the partial disbursement to Teller. On March 22, our commissioner issued a ruling extending the temporary stay an additional 14 days and informing Ferguson that she was required to post a bond,

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(Cite as: 316 P.3d 509)

cash, or alternate security approved by the trial court in order to stay enforcement of the order. Ferguson and Teller then agreed that \$290,905.53 of the amount on deposit in the court registry would serve as Ferguson's supersedeas bond pending the outcome of the appeal. They also agreed that \$78,350.85, representing the amount of Waid's lien, would remain in the registry pending further order of the trial court.^{FN3}

FN3. Waid was not a party to this agreement.

¶ 8 Thereafter, on July 12, Ferguson moved to have the trial court summarily set aside Waid's attorney's lien. On July 30, the trial court granted the motion and directed the clerk to disburse to Ferguson the sum of \$78,350.85 held in the court registry, together with accrued interest. The order stated, in pertinent part, as follows:

The \$530,107.58 in attorneys' fees do not represent "proceeds" received by Ferguson after arbitration or mediation due to services performed by Mr. Waid. RCW 60.40.010(d). The funds were earned by Teller and Ferguson well before Mr. Waid was retained.

The funds that are currently in dispute were not obtained by a "judgment" on behalf of Ferguson against Teller. RCW 60.40.010(e). *Wilson v. Henkle*, 45 Wash.App. 162, 170, 724 P.2d 1069

(1986). Teller, the adverse party, consistently maintained that Ferguson was entitled to half *512 of the attorneys' fees that were generated in the Underlying Matter. Ferguson retained Mr. Waid in her unsuccessful effort to obtain 90% of the fees.

Waid filed a notice of appeal from that order.

¶ 9 On August 22, Waid filed a motion to stay disbursement to Ferguson of the funds in the court registry representing Waid's attorney's lien and for approval of a supersedeas bond. However, Ferguson had previously withdrawn the funds. The trial court denied Waid's motion in an order issued on August 30, ruling that the motion was moot. The next day, Waid filed an amended notice of appeal to include the August 30 order.

II

¶ 10 Ferguson contends that Waid may not appeal from the July 30 order. This is so, Ferguson reasons, because the order does not constitute a "final judgment" and because here there was no "action" pertaining to Waid. We disagree.

[1] ¶ 11 A party may appeal as of right "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." RAP 2.2(a)(3). Furthermore, pursuant to RAP 3.1,

316 P.3d 509

(Cite as: 316 P.3d 509)

a party must be “aggrieved” to be permitted to seek review. “An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected.” *Cooper v. City of Tacoma*, 47 Wash.App. 315, 316, 734 P.2d 541 (1987).

[2][3] ¶ 12 The July 30 order meets the criteria of RAP 2.2(a)(3). It is a written decision that affects Waid's substantial right to monetary relief and determined the action with respect to Waid's attorney's lien. Moreover, it is immaterial that Waid was not a named party to the fee dispute between Ferguson and Teller.

In rare cases, a person who is not formally a party to a case may have standing to appeal a trial court's order because the order directly impacts that person's legally protected interests. Thus, in the case of *In re Guardianship of Lasky*, 54 Wash.App. 841, 848–50, 776 P.2d 695 (1989), we held that an attorney was an “aggrieved party” for purposes of appealing from an order imposing sanctions against him but was not an “aggrieved party” for purposes of appealing from an order removing him as the legal guardian of an incompetent adult. See also *State v. G.A.H.*, 133 Wash.App. 567, 575–76, 137 P.3d 66 (2006) (Department of Social and Health Services could appeal, even though not a named party, because juvenile court ruling ordered department to assume responsibility for minor's welfare); *Breda v. B.P.O.*

Elks Lake City 1800 SO-620, 120 Wash.App. 351, 353, 90 P.3d 1079 (2004) (sanctioned attorney became “aggrieved party” for purposes of appealing sanctions imposed directly against him); *Splash Design, Inc. v. Lee*, 104 Wash.App. 38, 44, 14 P.3d 879 (2000) (same).

Polygon Nw. Co. v. Am. Nat'l Fire Ins. Co., 143 Wash.App. 753, 768–69, 189 P.3d 777 (2008); *accord Me strovac v. Dep't of Labor & Indus.*, 142 Wash.App. 693, 704, 176 P.3d 536 (2008) (“ ‘Aggrieved’ has been defined to mean “ ‘a denial of some personal or property right, legal or equitable, or the imposition upon a party of a burden or obligation.’ ” ” (quoting *G.A.H.*, 133 Wash.App. at 574, 137 P.3d 66 (quoting *State v. A.M.R.*, 147 Wash.2d 91, 95, 51 P.3d 790 (2002))))), *aff'd on other grounds sub nom. Kustura v. Dep't of Labor & Indus.*, 169 Wash.2d 81, 233 P.3d 853 (2010)). Waid has standing to appeal and the July 30 order is appealable.

[4] ¶ 13 Ferguson also contends that Waid may not appeal from the August 30 order. Again, we disagree. Appeal is authorized by RAP 2.2(a)(3).

[5][6] ¶ 14 A party may appeal as of right “[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.” RAP 2.2(a)(3). Here, the August 30 order was a

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(Cite as: 316 P.3d 509)

written decision that affected Waid's right to assert an attorney's lien. It also, in effect, determined the action by declaring moot Waid's motion to stay disbursement. The trial court's determination that his motion was moot meant that Waid had no alternative recourse in this action by which Waid could *513 seek to obtain the disbursed funds. Accordingly, the August 30 order is appealable as a matter of right pursuant to RAP 2.2(a)(3).^{FN4}

FN4. Although the August 30 order is appealable, the trial court did not err when it held that Waid's motion to stay was moot. CR 62 provides, in pertinent part, "Upon the filing of a notice of appeal, enforcement of judgment is stayed until the expiration of 14 days after entry of judgment." CR 62(a). Judgment on the validity of Waid's attorney's lien was entered on July 30, yet he waited until August 22 to bring a motion to stay enforcement of the order. Pursuant to CR 62, Waid had no reason to expect that the funds would still be in the registry of the court 22 days after entry of the disbursement order. Unsurprisingly, the funds had, in fact, been disbursed in the interim. Thus, the trial court did not err by denying his motion as moot. However, notwithstanding the fact that Waid's motion to stay disbursement was moot at the time that it was con-

sidered by the trial court, the question of whether Waid's lien is valid is not moot because money remains in the court registry to which Waid's lien could attach.

III

¶ 15 Waid contends that the trial court erred in invalidating his lien. This is so, he reasons, because the money that Ferguson received from working on the underlying matter constitutes "proceeds" pursuant to the applicable statute. We agree.

¶ 16 "The interpretation and meaning of a statute is a question of law subject to de novo review." *Bennett v. Seattle Mental Health*, 166 Wash.App. 477, 483, 269 P.3d 1079, review denied, 174 Wash.2d 1009, 281 P.3d 686 (2012). "The goal of statutory interpretation is to discern and carry out legislative intent." *Bennett*, 166 Wash.App. at 483, 269 P.3d 1079. "Absent ambiguity, a statute's meaning is derived from the language of the statute and we must give effect to that plain meaning as an expression of legislative intent." *Bennett*, 166 Wash.App. at 484, 269 P.3d 1079.

[7] ¶ 17 An attorney may sue a client for unpaid fees, but an attorney also has the option of asserting a lien to ensure payment without resorting to a lawsuit to recover those fees. *See* RCW 60.40.010(1). Once an attorney's lien attaches to an action, that lien "is superior to all other liens" and "is not

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(Cite as: 316 P.3d 509)

affected by settlement of the parties until the lien is satisfied in full.” *Smith v. Moran, Windes & Wong, PLLC*, 145 Wash.App. 459, 466–67, 187 P.3d 275 (2008). RCW 60.40.010 provides, in pertinent part, as follows:

(1) An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

...

(d) Upon an action, including one pursued by arbitration or mediation, and its *proceeds* after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

(e) Upon a judgment to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(5) For the purposes of this section, “*proceeds*” means any monetary sum received in the action.

(Emphasis added.)

[8] ¶ 18 The attorney’s lien statute provides that an attorney has a lien “upon an action ... and its proceeds,” which means “any monetary sum received in the action.” RCW 60.40.010(1)(d), (5). Here, Waid’s lien arose when Waid filed suit on behalf of Ferguson. Furthermore, Ferguson received a monetary sum in the action—50 percent of the \$530,107.58 contingent fee generated by the clients’ decision to settle the underlying matter. The plain language of the statute establishes that “any monetary sum received in the action” constitutes “proceeds.” Ferguson received a monetary sum and, therefore, received “proceeds” to which the lien attaches.

¶ 19 Nevertheless, Ferguson contends that Waid’s lien is invalid because he failed to *514 obtain a judgment in her favor in the underlying matter. In support of this contention, Ferguson cites to two cases in which we held that a former version of RCW 60.40.010 ^{FNS} did not authorize a lien when the attorneys failed to obtain a monetary judgment in favor of their clients. *See Wilson v. Henkle*, 45 Wash.App. 162, 170, 724 P.2d 1069 (1986); *see also Suleiman v. Cantino*, 33 Wash.App. 602, 606–07, 656 P.2d 1122 (1983). Neither case guides our analysis. The previous version of the statute,

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(Cite as: 316 P.3d 509)

in effect when *Wilson* and *Suleiman* were decided, required attorneys to obtain a monetary judgment in favor of their clients. Now, however, the amended statute requires only that Ferguson obtained “proceeds” in the action. “Proceeds” are defined as “any monetary sum received in the action.” Ferguson received a monetary sum in the action and, therefore, received “proceeds.” Thus, the trial court erred by invalidating Waid's lien.

FN5. RCW 60.40.010 was amended in 2004. Laws of 2004, ch. 73, § 2 (effective June 10, 2004).

¶ 20 Although the trial court correctly denied Waid's motion to stay the disbursement of the funds as moot, the question of whether Waid's lien is valid is not moot. Here, the trial court erred in determining that Waid's lien was invalid. Accordingly, we reverse the trial court's July 30 order invalidating Waid's lien and remand for a determination of what amount, if any, of the funds remaining in the court registry are rightfully Waid's.

¶ 21 Reversed and remanded.

We concur: VERELLEN and SCHINDLER, JJ.

Wash.App. Div. 1, 2013.
Ferguson Firm, PLLC v. Teller & Associates, PLLC

316 P.3d 509

END OF DOCUMENT

*The Court of Appeals
of the
State of Washington*

Court Administrator/Clerk

RICHARD D.

DIVISION I
One Union Square
600 University
Street
Seattle, WA
98101-4170
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JOHNSON,

February 20, 2014

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CASE #: 69220-8-1

Brian Wald, Appellant v. The Ferguson Firm PLLC, Respondent

Counsel:

Enclosed please find a copy of the Order Denying Respondent's Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

ssd

Enclosure

c: The Reporter of Decisions

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE FERGUSON FIRM, PLLC,
Respondent,
vs.
TELLER & ASSOCIATES, PLLC
Defendant,
and
BRIAN J. WAID, d/b/a LAW OFFICE
OF BRIAN J. WAID
Appellant Attorney Lien
Claimant.

DIVISION ONE
No. 69220-8-1
(Linked with No. 68329-2-1)
ORDER DENYING
RESPONDENT'S MOTION
FOR RECONSIDERATION

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2014 FEB 20 AM 11:11

The respondent, The Ferguson Firm, PLLC, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 20th day of February, 2014.

For the Court:
Denz, J.