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WASHINGTON STATE  
SUPREME COURT

SUPREME COURT NO. 92959-9

THE SUPREME COURT  
FOR THE STATE OF WASHINGTON

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DAVID A. KOHLES, INC., P.S.  
Plaintiffs/Appellant

V.

MICHAEL COOK (now deceased) Individually; DONNA COOK,  
Individually; and the marital Community composed of MICHAEL  
COOK AND DONNA COOK; AND IN REM AGAINST ANY ALL  
PAYMENTS RECEIVED BY MICHAEL COOK AND DONNA COOK  
FROM THE DEPARTMENT OF LABOR AND INDUSTRIES  
ON ACCOUNT OF WORKER'S COMPENSATION BENEFITS  
Defendants/Appellees

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ON REVIEW FROM THE COURT OF APPEALS, DIVISION I

CASE NO. 73614-1-1

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ANSWER TO PETITION FOR REVIEW

BRIEF OF RESPONDANT DONNA J. COOK, PRO SE

 ORIGINAL

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## TABLE OF AUTHORITIES

### RULES

RAP 13.4(d)

RCW 6.15.020

## INTRODUCTION

I, Donna Cook, widow of Michael Cook am the Respondent/ Appellee in this case.

My husband, Michael Cook (Michael) was employed by Snohomish County. Michael hired David Kohles (Kohles) to represent him in dealings with Snohomish County's private insurance company, Eberle Vivian.

Michael had suffered two injuries while working for Snohomish County and was already receiving Workers' Compensation payments for both claims at the time he hired David Kohles.

Kohles has been seeking a motion for summary judgment against my pension based on a fee agreement Michael signed when he hired Kohles. I do not agree that Kohles had anything to do with Michael's "time loss" which eventually converted to a pension.

Snohomish County Superior Court Judge Ellen J. Fair reached an equitable proceeding whereby I make \$100 per month

payments to Kohles. I do not feel I owe Kohles any of Michael's pension, but just wanted the stress of fighting this case to be over, so I accepted her decision as something I could live with.

Kohles, on the other hand continues to try to get a summary judgment against me. He filed an appeal with Washington State Court of Appeals. They affirmed the decision of Snohomish County Superior Court.

### **ASSIGNMENTS OF ERROR**

I was happy to accept the equitable decision handed down by Judge Ellen J. Fair and affirmed by the Court of Appeals if it meant this case was finished, but I now believe Kohles will never let it be over.

RAP 13.4(d) Answer and Reply says in part:

'If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer.'

I would like to raise those issues here.

1. A closer look at the Fee Agreement signed by Michael.
2. Footnote 3 from the Court of Appeals of the State of Washington, Division One Unpublished Opinion dated February 29, 2016.

### **STATEMENT OF THE CASE**

Every brief filed on Kohles behalf in this case has the statement: "Petitioner David A. Kohles was retained by the Respondent/Appellee Donna Cook's now deceased husband, Michael Cook, to pursue workers' compensation benefits for injuries he suffered as an employee of Snohomish County."

I have responded every time that this statement is an **outright lie**. When Michael hired Kohles he had already established both claims and was receiving payments. Michael hired Kohles for the sole purpose of helping him deal with Snohomish County's private insurance company, Eberle Vivian.

Kohles did obtain a settlement for Michael in the amount of \$37,000 dollars. It was a settlement agreed to between Kohles and Snohomish County's attorney to drop an appeal for home health

care for Michael so that I could go back to work.

**The settlement was made against Michael's wishes and explicit instructions.** We had hearings scheduled for April 24, 2012 and May 4, 2012. When we spoke to Kohles on April 13, he assured us that we would be going to court as scheduled. He asked the judge to dismiss the appeal on April 17. We found out it had been dismissed when we received a notice from the court.

Kohles took his 30% fee out of the \$37,000 plus expenses. He paid himself \$11,732.11, leaving us a balance of \$25,267.89.

The second settlement was initiated by Snohomish County. They wanted Michael to agree to 2<sup>nd</sup> injury relief. Because he had two claims, Snohomish County would pay for Michael's pension, but if they could close the shoulder claim, Washington State Labor and Industries would pay the pension. The settlement was based on a rating of how damaged his shoulder was and came to \$35,787.90.

It was paid in monthly installments. They were sent to Kohles office, he took his 30% and wrote us a check for the balance. When we filed bankruptcy on March 20, 2013, \$17,771.41

had been paid against the settlement. Kohles had kept \$5,331.43 and we had received \$12,439.98. At that point Kohles had been paid a total of \$17,063.54. I have since paid an additional \$1,200.

The timing of our bankruptcy had nothing to do with Kohles. Michael had just been diagnosed with esophageal cancer. I was finishing treatment for breast cancer. His cancer was the third cancer in just over four years. We had a couple creditors that we needed protection from.

Our relationship with Kohles had deteriorated since he settled the appeal against our wishes. Eberle Vivian, Labor and Industries, Snohomish County, Modern Medical and other companies wouldn't talk to us because we had representation. We found out there had been correspondence addressed to Michael, but mailed to Kohles office that we were not receiving. Kohles secretary stopped getting approvals needed to go to doctors and get prescriptions, but we couldn't do it ourselves. We had no choice but to fire Kohles and let everyone know we were no longer represented so they would talk to us and send us our mail.

The adversary proceeding Kohles made against our



bankruptcy was at a time when Michael was in the hospital for seven weeks literally fighting for every breath. We thought our bankruptcy attorney was handling it for us. I still have no idea what happened with our attorney, but I do know Kohles used the phrase "Pursuant to RCW 60.40.010(1)(d), an attorney's lien automatically arose by operation of law when Kohles began pursuing Michael Cook's claims against the County."

Again, he had nothing to do with pursuing Michael's claims and someone should have pointed that out to the court.

When Michael's time loss payments went to pension, Michael took the option that gave us a lesser monthly payment, but provided that I would continue to receive his pension when he died.

The balance of Kohles Statement of the Case is a recap of filings of briefs and court hearings from June 2014 to present.

## **ARGUMENT**

### **1. The Fee Agreement signed by Michael on January 10, 2005.**

Michael was 59 years old and in perfect health when he hurt his back. He had injured his shoulder about a year earlier, had surgery on his shoulder and returned to work after missing 24 days.

When he hurt his back, he fully expected to have surgery, rehab, and return to work. He applied for his own workers' compensation payments and arranged to have surgery. Surgery was scheduled twice, and then cancelled by the insurance company. He finally had the surgery, but it was stressful fighting the insurance company. Co-workers recommended he hire an attorney because the insurance company usually doesn't hassle the employees with an attorney.

The Fee Agreement does have a fee of 15% for pension and that is why the trial court decided to enforce the lien by requiring me to pay \$100 per month.

Paragraph 2.a. of the fee agreement also says. "If time loss is paid on the claim then the fee will be thirty percent (30%) of all time loss."

Kohles never collected a dime for Michael's "time loss" because **he had nothing to do with getting Michael's "time loss."**

Michael's pension was a result of his "time loss," not the settlement for dropping his appeal for home care or the 2<sup>nd</sup> injury

relief. Kohles had nothing to do with Michael getting his pension. If the fee agreement can have one section that clearly does not apply to Michael's case, why force another section to conform.

**2. Footnote 3 from the Court of Appeals, Division 1 unpublished opinion, dated February 28, 2016.**

Footnote 3, page 4 of the Court of Appeals opinion states, "Donna has not challenged the use of an in rem proceeding for the foreclosure of an attorney's lien against the proceeds of an action, and we express no opinion on that question."

While researching the meaning of this footnote, I was directed to RCW 6.15.020.

RCW 6.15.020, Subsection 3 says in part:

"The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such plan or arrangement, shall be exempt from execution, attachment garnishment, or seizure by or under any legal process whatever."

I am not sure this is what footnote 3 is referring to, but it seems that my pension is exempt from any form of attachment by Mr. Kohles.

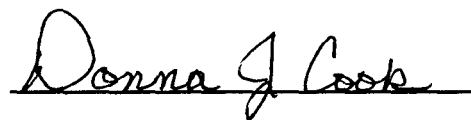
### **CONCLUSION**

I am willing to accept the decision handed down by the Superior Court for Snohomish County and affirmed by the Washington State Court of Appeals if there is an end to all of the appeals to higher courts.

I do not believe Mr. Kohles has any claim to my pension and I hope at least one of my Assignments of Error proves that.

I am trying to get my life to move forward since my husbands passing. It is difficult to adjust to a life alone when you have been part of a couple for 40 years. Every time I feel I am making progress, it is time to write another answer to yet another appeal or petition for review and I have to relive the last painful years of my husband's life.

**DATED APRIL 29, 2016**

A handwritten signature in cursive script that reads "Donna J. Cook". The signature is written in black ink and is positioned above a solid horizontal line.

**Donna J. Cook**

**APPENDIX**

**Copy of RCW 6.15.020**



## RCW 6.15.020

### **Pension money exempt—Exceptions—Transfer of spouse's interest in employee benefit plan.**

(1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source

of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220.

[ 2011 c 162 § 3; 2007 c 492 § 1. Prior: 1999 c 81 § 1; 1999 c 42 § 603; 1997 c 20 § 1; 1990 c 237 § 1; 1989 c 360 § 21; 1988 c 231 § 6; prior: 1987 c 64 § 1; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

#### **NOTES:**

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**Severability—1990 c 237:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1990 c 237 § 2.]

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Supreme Court Case No. 92959-9  
Court of Appeals Case No. 73614-1-1  
Kohles v. Cook

Dear Clerk of Court

Attached is my Answer to Petition for Review for the case referenced above/

There is an Appendix. It is RCW 6.15.020 I am unable to email the RCW so I will mail a copy to the Court and to Council

Please let me know if there are any problems opening my attachment.