

No. 66871-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SEAWEST SERVICES ASSOCIATION,
a Washington non-profit corporation,

Respondent,

vs.

JIM COPENHAVER and SUZANNE COPENHAVER,
husband and wife, and the marital community composed thereof,

Appellants,

and

BANK OF AMERICA, Branch #31073, Oak Harbor/In-Store,

Garnishee Defendant

APPEAL FROM THE SUPERIOR COURT
FOR ISLAND COUNTY
THE HONORABLE VICKIE I. CHURCHILL

BRIEF OF RESPONDENT

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I. INTRODUCTION

RCW 6.27.080 governs the effect of garnishing an entire financial institution or a particular branch of the institution. The Copenhavers pull a single phrase from this statute to argue that it exempts from garnishment all “earnings” in a bank account if a branch, rather than the entire financial institution, is garnished. The trial court correctly rejected the Copenhavers’ interpretation because it ignores elementary principles of statutory construction that require a court to interpret statutes in context and in concert with related statutory provisions.

The trial court also correctly rejected the Copenhavers’ interpretation of RCW 6.27.150 to permanently immunize earnings from garnishment after they are paid. The Copenhavers ignore the plain language of the statute, which provides a limited exemption for earnings only “if the garnishee is an employer.” The exemption in RCW 6.27.150 only applies to earnings as they are paid from employer to employee, and has no application here.

Because the Copenhavers’ interpretations of the garnishment statutes were frivolous, the trial court correctly found that respondent Seawest was entitled to a portion of its attorney’s

fees below. This court should affirm the trial court and award Seawest its fees on appeal.

II. RESTATEMENT OF THE ISSUES

1. Did the Legislature intend RCW 6.27.080, which governs garnishments served on financial institutions, to allow a debtor to permanently exempt his earnings from garnishment by placing them in a bank account?

2. Did the Legislature intend RCW 6.27.150 to permanently exempt earnings that are garnished as they are paid from further garnishment when the earnings exemption applies only "if the garnishee is an employer" and the statutorily required notice of garnishment and exemption form does not mention an exemption for earnings?

3. Did the trial court correctly find that respondent was entitled to attorney's fees where appellants' exemption claim was based on a frivolous interpretation of the garnishment statute?

III. RESTATEMENT OF FACTS

The facts of this case are largely undisputed. Respondent provides a brief recitation of the necessary facts below:

A. Seawest Was Forced To Undertake Garnishment Proceedings To Satisfy Its Judgment Against the Copenhavers.

Respondent Seawest Services Association ("Seawest") successfully sued appellants Jim and Suzanne Copenhaver for past due water assessments. (CP 79-109) This appeal concerns Seawest's efforts to enforce its judgment through garnishment proceedings.

On September 14, 2010, Seawest filed a continuing lien on Dr. Copenhaver's earnings from his employer PhyAmerica. (CP 59, 160-66) On October 25, 2010, the trial court entered an order requiring PhyAmerica to pay Seawest 25% of Dr. Copenhaver's earnings pursuant to RCW 6.27.150(1)(b). (CP 157-159) The trial court entered similar orders on January 10, 2011, and January 24, 2011. (CP 152-156) Although Dr. Copenhaver was employed by a second employer, Professional Performance Development Group, Inc. ("PPDG"), no continuing liens were filed against PPDG. (CP 59; App. Br. 6 n.1)

In addition to garnishing Dr. Copenhaver's earnings, which were insufficient to satisfy the judgment, on January 11, 2011, Seawest filed a writ of garnishment against the Copenhavers' bank account at the Oak Harbor branch of Bank of America. (CP 115-

51) Pursuant to RCW 6.27.080, Seawest identified the Oak Harbor branch as the garnishee, and served the writ on the Branch. (CP 115-120) The following day, the Branch answered that the Copenhavers had \$5,452.41 on deposit. (CP 62-64) The answer did not explain whether the funds were in multiple accounts,¹ and listed only the dollar amount. (CP 54, 64) The Copenhavers filed a claim of exemption (CP 110-14), asserting that all funds in their checking account were exempt under RCW 6.27.080(3) because they were Dr. Copenhaver's earnings. (CP 113: "RCW 6.27.080(3) exempts earnings.").

Seawest objected to this exemption on the grounds that RCW 6.27.080(3) applied only to the earnings of an employee who works for the financial institution being garnished. (CP 53-70) The Copenhavers responded to the objection arguing that RCW 6.27.080(3) exempts all earnings contained in a bank account and that all funds in the account were exempt because a portion of the funds had already been garnished under the continuing lien on Dr. Copenhaver's earnings from PhyAmerica. (CP 44-50)

¹ The Copenhavers responded that there were two separate accounts and that one account was wholly exempt from garnishment because Suzanne Copenhaver held it only as a custodial savings account for their minor child. (CP 69) Seawest stipulated to the release of these funds and they are not at issue on appeal. (CP 7, 45; App. Br. 8)

B. The Trial Court Directed The Release Of The Bank Funds To Seawest.

On February 22, 2011, after hearing argument, the trial court entered an order directing the Branch to release \$3,062.42 to Seawest. (CP 11-14) The trial court also entered an order awarding Seawest \$687.50 in attorney's fees under RCW 6.27.160(2) based on its finding that the Copenhavers' exemption claim under RCW 6.27.080(3) was made in bad faith. (CP 12-13, 15-16) In making this finding, the trial court explicitly rejected the Copenhavers' argument that RCW 6.27.080(3) exempted all earnings from garnishment, regardless whether the garnishee financial institution employed the debtor. (CP 32) The trial court also rejected the Copenhavers' argument that the bank account was exempt under RCW 6.27.150 because it had already been garnished under the continuing liens on Dr. Copenhaver's earnings from PhyAmerica. (CP 32-34)

The Copenhavers appeal. (CP 1-10)

IV. ARGUMENT

The Copenhavers' interpretation of the garnishment statute rips selected portions of it from their context and interprets them in a vacuum. But a court reviewing the garnishment statute, RCW ch.

6.27, must “interpret those statutory provisions in relation to each other.” *Watkins v. Peterson Enterprises, Inc.*, 137 Wn.2d 632, 639, 973 P.2d 1037 (1999). The trial court correctly rejected the Copenhavers’ strained interpretation of the garnishment statute.

A. RCW 6.27.080 Does Not Protect All Earnings Deposited In A Bank Account. Instead, It Establishes The Effect Of Garnishing An Entire Financial Institution Or Garnishing A Particular Branch Of That Institution.

A court interpreting RCW ch. 6.27 “must begin with the plain language of the statute.” *Watkins*, 137 Wn.2d at 640. The plain language of RCW 6.27.080 does not allow a debtor to permanently immunize his earnings from garnishment by placing them in a bank account, contrary to the Copenhavers’ argument. (App. Br. 15-23) By enacting RCW ch. 6.27, “[t]he legislature recognize[d] that . . . the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that garnishment procedures benefit the state and the business community as creditors.” RCW 6.27.005; see also *Watkins*, 137 Wn.2d at 638.

RCW 6.27.080 authorizes a judgment creditor to file a writ of garnishment “directed to a bank, savings and loan association, or credit union that maintains branch offices.” RCW 6.27.080(1). If the creditor does so, he “shall identify either a particular branch of

the financial institution or the financial institution as the garnishee defendant.” RCW 6.27.080(1). The choice whether to name the branch or the financial institution as garnishee defendant has practical consequences. In addition to requiring different service methods under RCW 6.27.080(2), under RCW 6.27.080(3) a writ directed to a financial institution will attach differing types of interests, e.g., deposits, personal property, depending on whether it is directed to the financial institution as a whole or to a particular branch:

A writ naming the financial institution as the garnishee defendant shall be effective only to attach *deposits of the defendant* in the financial institution and *compensation payable for personal services due the defendant from the financial institution*. A writ naming a branch as garnishee defendant shall be effective only to attach the *deposits, accounts, credits, or other personal property of the defendant (excluding compensation payable for personal services)* in the possession or control of the particular branch to which the writ is directed and on which service is made.

A writ of garnishment is effective against property in the possession or control of a financial institution only if the writ of garnishment is directed to and names a branch as garnishee defendant.

RCW 6.27.080(3) (emphasis added).

The garnishment statutes also address how a judgment debtor may claim exemptions from garnishment. RCW 6.27.130-

160. RCW 6.27.130(1) requires a judgment creditor to serve the judgment debtor with specific forms, drafted by the Legislature and contained in RCW 6.27.140, informing the debtor of their rights and allowing them to claim exemptions. The exemptions for funds in a bank account include, among others, social security, veteran's benefits and unemployment compensation. RCW 6.27.140. But the exemptions do *not* include "earnings." RCW 6.27.150 specifically deals with exemptions for earnings and states that "if the garnishee is an employer owing the defendant earnings," then the greater of 30 times the federal minimum hourly wage or 75% of the debtor's disposable earnings is exempted from garnishment. This exemption only applies to earnings as they are paid and does not apply to earnings deposited in a bank account. See § IV.B, *infra*, at 14-19.

The Copenhavers' argument that any earnings placed in a bank account are exempt from garnishment if the writ is directed to a branch misconstrues the garnishment scheme created by RCW ch. 6.27 and rips the second sentence of RCW 6.27.080(3) out of context. The Copenhavers argue that the parenthetical in the second sentence of RCW 6.27.080(3) creates a categorical exemption for earnings placed in a bank account if a branch of the

financial institution is garnished. Their interpretation requires that this parenthetical be read in complete isolation, in conflict with elementary rules of statutory construction. ***Dowler v. Clover Park Sch. Dist. No. 400***, __Wn.2d __, 258 P.3d 676, 682 (Aug. 25, 2011) (“The plain meaning of a statute is discerned from the ordinary meaning of the language at issue, the context in which that provision is found, related provisions, and the statutory scheme as a whole.”); ***King County v. Central Puget Sound Growth Mgmt. Hearings Bd.***, 142 Wn.2d 543, 560, 14 P.3d 133 (2000) (“We are required to read legislation as a whole, and to determine intent from more than a single sentence. Effect should be given to all of the language used, and the provisions must be considered in relation to each other, and harmonized to ensure proper construction.”) (quotation omitted).

The second sentence of RCW 6.27.080(3) is necessarily informed by the first sentence, and cannot be read in isolation. The first sentence explains that a writ naming an entire financial institution as garnishee attaches deposits anywhere in the institution and, furthermore, the earnings of the judgment debtor if he is an employee of the institution. RCW 6.27.080(3) (“A writ naming the financial institution . . . attach[es] deposits of the

defendant in the financial institution and compensation payable for personal services due the defendant from the financial institution.”). The second sentence is the counterpart to the first, and explains the effect of garnishing a particular branch (as here) rather than the financial institution as a whole.

This second sentence informs a creditor that a garnishment naming a *branch*, such as the garnishment at issue here, will attach deposits and personal property (e.g. safety deposit boxes) held by that branch, but not the earnings of a financial institution employee. RCW 6.27.080(3) (“A writ naming a branch as garnishee defendant shall be effective only to attach the deposits, accounts, credits, or other personal property of the defendant (excluding compensation payable for personal services) in the possession or control of the particular branch to which the writ is directed and on which service is made.”). To read “compensation payable for personal services” in the second sentence as having an entirely different meaning from the first sentence ignores the context of the language and violates well-established principles of statutory construction.

The Copenhavers also ignore the specific sections of RCW ch. 6.27 that deal with exemptions – and, that RCW 6.27.080 is not one of them. RCW 6.27.150 provides a limited exemption for

earnings as they are paid, but otherwise does not exempt earnings. See RCW 6.27.150(5) (“No money due or earned as earnings as defined in RCW 6.27.010 shall be exempt from garnishment under the provisions of RCW 6.15.010, as now or hereafter amended.”). The Copenhavers would have this court rely on a parenthetical in a section of the statute dealing with financial institutions to create the largest exemption anywhere in the statute – but only if a branch, rather than the financial institution itself, is garnished. This is an absurd result, and one that a court must avoid. ***General Telephone Co. of the Northwest, Inc. v. Washington Utilities & Transp. Comm’n***, 104 Wn.2d 460, 471, 706 P.2d 625 (1985) (“A statute must be read to avoid absurd results.”).

The legislatively-drafted notice of garnishment required by RCW 6.27.140 underscores this point. The notice informs a judgment debtor that when a bank account is garnished, then if “you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans’ benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account.” RCW 6.27.140(1). Likewise, the statutorily-required exemption claim

form contains no place to claim “earnings” in a bank account as exempt. RCW 6.27.140(2); (CP 66-68).

“Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded.” ***Bour v. Johnson***, 122 Wn.2d 829, 836, 864 P.2d 380 (1993) (applying doctrine to list of exceptions in RCW 6.27.350(1)). It is absurd to think that the Legislature intended to completely exempt all earnings in a bank account (but only if a branch is garnished), but that it failed to include this exemption in the forms it requires a creditor to send a debtor.

The legislative history of RCW 6.27.080(3) also supports the trial court’s interpretation of the statute. The language of RCW 6.27.080 regarding financial institutions was added by Laws of 1988, ch. 231, § 23. The Final Bill Report does not suggest that it exempts all a debtor’s earnings, and confirms that the purpose of RCW 6.27.080 is to require a judgment creditor to “identify either the financial institution or a branch as the garnishee defendant.” Final B. Rep. on Substitute H.B. 1368, 50th Leg., Reg. Sess. (Wash. 1988). Further, the House Bill Report described the purpose of the language at issue when the Senate amended the bill to add it: “It permits a writ of garnishment served on a financial

institution to attach compensation payable to the defendant from the financial institution.” House B. Rep. on Substitute H.B. 1368, 50th Leg., Reg. Sess. (Wash. 1988). This confirms that the Legislature was speaking to the earnings of an employee of the financial institution, and not the earnings of all employees, regardless of their employer.

The Copenhavers also rely heavily on a section of Washington Practice to support their argument. (App. Br. 18, 21, 25 (*citing* 28 Wash. Prac. Creditors’ Remedies – Debtors’ Relief § 8.34)) The section relied on by the Copenhavers, which is titled “Garnishments Directed to Financial Institutions,” actually undermines their position. As with the statute, the sentence immediately preceding the language quoted by the Copenhavers explains that the section concerns the “earnings of the defendant if he or she is employed in the head office or in any branch,” and not the earnings of any judgment debtor regardless whether their employer is the garnished financial institution. 28 Wash. Prac. Creditors’ Remedies – Debtors’ Relief § 8.34.

The Copenhavers’ attempt to read a small section of RCW 6.27.080 completely in isolation flies in the face of the rules of statutory construction. This Court should reject their interpretation

and give effect to the entire statutory scheme embodied in RCW ch. 6.27.

B. RCW 6.27.150 Only Applies To Earnings When They Are Being Paid From The Employer To Employee And Does Not Perpetually Exempt Earnings From Further Garnishment.

The Copenhavers' argument that if earnings are garnished as they are paid they become forever immune from further garnishment is refuted by the plain language of RCW 6.27.150, which only exempts earnings "if the garnishee is an employer," and makes no mention of exempting earnings if the garnishee is a bank. Numerous other jurisdictions have rejected this argument under similar garnishment statutes.

RCW 6.27.150(1) exempts a portion of a debtor's earnings from garnishment as they are paid from the employer to the employee:

Except as provided in subsection (2) of this section, *if the garnishee is an employer owing the defendant earnings*, then for each week of such earnings, an amount shall be exempt from garnishment which is the greatest of the following:

(a) Thirty times the federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 of the United States Code in effect at the time the earnings are payable; or

(b) Seventy-five percent of the disposable earnings of the defendant.

(emphasis added). The Copenhavers argue that the exemption in RCW 6.27.150(1) applies to earnings in a bank account despite its plain language that it only applies “*if the garnishee is an employer owing the defendant earnings.*” Neither the Bank of America nor its Oak Harbor branch employs either of the Copenhavers. Further, the statute’s use of the present tense (“owing”) is significant, and indicates that the Legislature did not intend to exempt earnings that have already been paid by the employer. See ***Duvon v. Rockwell Int’l Corp. (Rockwell Hanford Operations)***, 57 Wn. App. 465, 470, 788 P.2d 607 (1990) (relying on statute’s use of present tense to exclude former employers from definition of “employer” in RCW 51.08.070), *aff’d* 116 Wn.2d 749, 807 P.2d 876 (1991).

RCW 6.27.150(1) says nothing about exempting earnings once they have been paid. To hold that the statute perpetually exempts earnings would require this court to read nonexistent language into the statute – something a court may not do. ***State v. Cooper***, 156 Wn.2d 475, 480, 128 P.3d 1234 (2006) (“Where the Legislature omits language from a statute, intentionally or

inadvertently, this court will not read into the statute the language that it believes was omitted.”) (quotations and citations omitted).

The Copenhavers’ interpretation of RCW 6.27.150 is also belied by the notice of garnishment and exemption claim forms contained in RCW 6.27.140. These forms contain no mention of an exemption for “earnings.” See § IV.A, *supra*. It is absurd to think that the Legislature intended to create an exemption for previously garnished earnings, yet failed to mention this exemption in the forms it requires a creditor to send the debtor.

Contrary to the Copenhavers’ argument, there is nothing unusual about the trial court’s straightforward application of the garnishment statute. In addition to Washington, the federal government² and numerous states have enacted statutes defining the ability of a creditor to garnish a debtor’s earnings. Courts construing these statutes have consistently held that provisions exempting a portion of a debtor’s earnings from garnishment as

² The provisions of RCW ch. 6.27 dealing with garnishment of earnings are substantially similar to the Federal Consumer Credit Protection Act. *Compare* RCW 6.27.010 *and* 15 U.S.C. § 1672 (providing similar definitions of “earnings” and “disposable income”); *compare* 6.27.150(1) *and* 15 U.S.C. § 1673(a) (providing identical exemption from garnishment of earnings per pay period).

they are paid do not perpetually immunize earnings from further garnishment. See, e.g., ***Dunlop v. First Nat. Bank of Arizona***, 399 F. Supp. 855, 858 (D. Ariz. 1975) (provisions of Consumer Credit Protection Act exempting a portion of earnings from garnishment as they are paid did not “extend[] the exemption granted thereunder to funds deposited in a financial institution”)³; ***Frazer, Ryan, Goldberg, Keyt and Lawless v. Smith***, 184 Ariz. 181, 907 P.2d 1384 (1995) (under Arizona garnishment statute earnings do not retain their exempt status once disbursed to the judgment debtor’s bank account); ***In re Lawrence***, 219 B.R. 786, 793 (E.D. Tenn. 1998) (under Tennessee garnishment statute “the earnings do not retain their exempt status in the debtor’s hands and bank accounts”); ***Brown v. Com.***, 40 S.W.3d 873 (Ky. Ct. App. 1999) (under Kentucky garnishment statute earnings do not retain their exempt status once disbursed to the judgment debtor’s bank account); ***In re Walsh***, 96 P.3d 1 (Wyo. 2004) (under Wyoming statute earnings do not retain their exempt status once disbursed to the judgment debtor’s bank account).

³ Other courts that have construed the Consumer Credit Protection Act have reached the same conclusion. ***Edwards v. Henry***, 97 Mich.App. 173, 293 N.W.2d 756 (1980); ***John O. Melby & Co. Bank v. Anderson***, 88 Wis.2d 252, 276 N.W.2d 274 (1979); ***Usery v. First Nat. Bank of Arizona***, 586 F.2d 107 (9th Cir. 1978).

These courts have rejected the argument that the protection from garnishment on earnings is meaningless if it only applies when the employer pays earnings to an employee. See, e.g., **Brown**, 40 S.W.3d at 879. These courts have noted that the purpose of garnishment statutes is to control abusive garnishment practices that have detrimental effects on the employer-employee relationship. See, e.g., **Dunlop**, 399 F. Supp. at 857 (“The statute is concerned with the regulation of the garnishment process itself and not the protection of a given fund.”); **Anderson**, 276 N.W.2d at 276 (findings supporting the Consumer Credit Protection Act “state that garnishment resulted in the loss of employment by the debtor, disrupted production, constituted a burden on interstate commerce, and encouraged predatory extensions of credit.”). These courts have also relied on the fact that legislatures have permanently exempted other types of funds from garnishment, but not earnings. **Lawrence**, 219 B.R. at 794 (“The Tennessee Legislature knows how to exempt money in the hands of debtors when it chooses to do so.”); **Usery**, 586 F.2d at 111 (“If Congress had meant to restrict creditors’ access to wages even after they left the control of the employer, it seems anomalous that it did not provide for protection

from attachment of such monies while in the hands of the employee, as they did in the case of social security benefits.”).

Like these other jurisdictions, Washington has permanently and unequivocally exempted certain assets from garnishment. See, e.g., RCW 6.15.020.⁴ But it has not permanently exempted earnings. Those legislatures that have wished to exempt earnings for extended periods of time have done so explicitly. See, e.g., F.S.A. § 222.11(3) (“Earnings that are exempt . . . and are credited or deposited in any financial institution are exempt from attachment or garnishment for 6 months after the earnings are received by the financial institution if the funds can be traced and properly identified as earnings.”). If the Legislature had intended to permanently immunize earnings from garnishment after they are paid it would have said so. The trial court correctly rejected the Copenhavers attempt to read non-existent language into RCW 6.27.150.

⁴ RCW 6.15.020 provides “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”

C. Even Under Their Interpretation Of RCW 6.27.150 The Copenhavers Are Not Entitled To Relief Because The Garnishment Attached Less Than 25% Of The “Earnings” In Their Account.

Even if this Court accepts the Copenhavers’ argument that a creditor may only garnish the “nonexempt” 25% of a debtor’s earnings, application of their proposed rule would do them little good. Under RCW 6.27.160(2), “[t]he defendant bears the burden of proving any claimed exemption, including the obligation to provide sufficient documentation to identify the source and amount of any claimed exempt funds.” Here, although the Copenhavers state that they submitted “uncontested proof” that the funds in their account had already been garnished (App. Br. 14), the declarations submitted by the Copenhavers state that the funds placed in the account were Dr. Copenhaver’s earnings, but do not state that these funds were previously garnished. (CP 40-43)

The Copenhavers have not provided answers from PhyAmerica establishing the amounts withheld from Dr. Copenhaver’s earnings, and it is uncontested that there were no liens on Dr. Copenhaver’s earnings from PPDG. (CP 59; App. Br. 6 n.1) Thus, even if Seawest could only reach 25% of Dr. Copenhaver’s earnings, the amount of the order (\$3,062.42) is *less*

than 25% of the amount the Copenhavers admit was Dr. Copenhaver's earnings. (See CP 41, 43 (admitting that \$12,887.14 of Dr. Copenhaver's earnings were deposited in the account)) Even assuming the amounts from PhyAmerica had already been garnished, Seawest would still have been entitled to garnish 25% of Dr. Copenhaver's earnings from PPDG. (CP 41, 43)

But this court need not deal with the Copenhavers' failure to prove their purported exemptions. Their argument that RCW 6.27.150(1) permanently exempts earnings from garnishment after they have been paid is without merit and should be rejected by this Court.

D. The Trial Court Correctly Found That The Copenhavers' Arguments Are Without Merit. Seawest Is Entitled To Attorneys Fees Below And On Appeal.

As detailed above, the Copenhavers' arguments are completely without merit. The trial court correctly concluded that the Copenhavers' interpretation of RCW 6.27.080(3) "absolutely makes no sense" and that Seawest was entitled to its attorney's fees. (CP 15-16, 33)

The trial court awarded Seawest its attorney's fees under RCW 6.27.160(2) based on its finding that the Copenhavers' RCW 6.27.080 exemption claim was made in "bad faith." (CP 15-16)

Although styled as a finding of “bad faith,” the trial court’s conclusion is properly viewed as a finding that the Copenhavers’ arguments were frivolous. (CP 33) Because a trial court can be affirmed on any ground supported by the record under RAP 2.5(a), this Court should affirm the trial court’s award of attorney’s fees under RCW 4.84.185 because the Copenhavers’ exemption claim was frivolous.

Under RCW 4.84.185, a court may award attorney’s fees to the prevailing party in a civil action after determining “that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause.” An action is frivolous if it “cannot be supported by any rational argument on the law or facts.” **Clarke v. Equinox Holdings, Ltd.**, 56 Wn. App. 125, 132, 783 P.2d 82, *rev. denied* 113 Wn.2d 1001 (1989). A trial court’s decision to award fees for a frivolous action is reviewed for a clear abuse of discretion. **Clarke**, 56 Wn. App. at 132.

Here, the trial court did not abuse its discretion in awarding attorney’s fees. The trial court clearly stated its belief that the Copenhavers’ argument based on RCW 6.27.080(3) was frivolous and not supported by any rational argument. (CP 15-16, 33) The

trial court's finding is amply supported. The Copenhavers' arguments are based entirely on selected portions of the garnishment statute considered out of context. The Copenhavers have never offered any explanation why the Legislature would have intended to exempt paid earnings from garnishment but failed to mention it anywhere in the forms it requires a debtor to send a creditor. The Copenhavers have failed to address any of the persuasive authority directly rejecting their arguments. In short, their arguments are frivolous.

RAP 18.9(a) authorizes an appellate court to award attorney's fees to a party who is forced to respond to a frivolous appeal. *Clarke*, 56 Wn. App. at 132-33. An appeal is frivolous when "it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *Clarke*, 56 Wn. App. at 132. For the reasons set forth above, the Copenhavers' appeal is frivolous and Seawest is entitled to its attorney's fees on appeal.

V. CONCLUSION

This court should affirm and award respondent Seawest its fees on appeal.

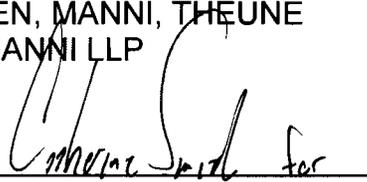
Dated this 28th day of October, 2011.

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DECLARATION OF SERVICE

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

That on October 28, 2011 I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 28th day of October, 2011.



Mia M. Porteous