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STATE OF WASHINGTON

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COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION II

BARBARA THOMPSON,
Respondent/Cross-Appellant,

v.

TERRY L. WILSON,
Appellant/Cross-Respondent.

On Appeal from Lewis County Superior Court
Cause No. 06-2-01044-1

APPELLANT/CROSS-RESPONDENT'S
AMENDED OPENING BRIEF

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I. IDENTITY OF RESPONDENT

Terry L. Wilson, the Lewis County Coroner, is the Appellant/Cross-Respondent.

II. ASSIGNMENTS OF ERROR

- A. The trial court erred by instructing the jury, without explanation, that two different standards of review applied to their deliberations.
- B. The trial court erred in admitting evidence that was not before the Coroner at the time he issued the last death certificate amendment.
- C. The trial court erred in admitting unqualified expert evidence from plaintiff's firearm consultant.
- D. Substantial evidence in the record did not support the jury's verdict that the Coroner acted arbitrarily and capriciously.
- E. The trial court erred in issuing a writ of mandate that controlled and limited the Coroner's exercise of discretion.

III. STATEMENT OF ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- A. The trial court instructed the jury on two different

standards that applied to their review of the Coroner's determination: arbitrary and capricious and "accuracy." This was an error of law. The court also did not explain to the jury the reasons for two separate standards and thus the Coroner was prejudiced by the jury's likely confusion. (Assignment of Error A)

B. The trial court erred in admitting evidence that was not before the Coroner when he issued his last amendment to the determination of the manner of the cause of death. The Coroner's determination being reviewed was therefore not limited to the record before the Coroner. There was no authority for expanding the scope of evidence the jury could consider. (Assignment of Error B)

C. The trial court admitted evidence, over the Coroner's objection, that was unqualified expert testimony. Such evidence prejudiced the Coroner because the jury likely considered it as "expert" opinion. (Assignment of Error C)

- D. The jury issued a verdict finding the Coroner's determination arbitrary and capricious. Substantial evidence in the record does not support this verdict. (Assignment of Error D)
- E. The trial court issued a writ of mandate following the jury trial which controls and limits the Coroner's discretion, rather than simply ordering the Coroner to exercise his discretion. This is beyond the permissible scope of a writ of mandate. (Assignment of Error E)

IV. STATEMENT OF THE CASE

A. Factual Background.

On December 16, 1998 Ronda Reynolds died from a single gunshot wound to the head. CP 9. She was at her home at the time. *Id.* The Lewis County Sheriff's Department investigated her death to determine whether it was a suicide or a homicide. *Id.* On December 16, 1998 the Lewis County Coroner issued a Coroner's Determination and Certificate of Death, ruling that the cause of death was "contact handgun wound of the head." *Id.* The manner of death was listed "undetermined." *Id.* On August 9, 1999 the Death Certificate was amended to list the manner of death as

“suicide.” *Id.* On October 23, 2001, the Death Certificate was again amended to change the manner of death to “undetermined” due to a reopening of the investigation by law enforcement. CP 10.

Following additional investigation by law enforcement, the manner of death was re-confirmed as a “suicide” and the Death Certificate was finally amended to reflect that ruling on May 30, 2002. *Id.*

A representative of the Coroner’s office did a scene investigation. CP 551; Ex. 2, tab 10. There was no evidence or testimony that the Coroner simply accepted law enforcement’s conclusion without also considering the evidence for himself.

Ms. Reynolds’ mother, Barb Thompson, does not agree with the determination of suicide. CP 3. She contends the death was homicide. *Id.* Ms. Thompson submitted a significant amount of material to the Coroner’s office for consideration. Ex. 2. That material included, for example: the 911 call the morning of the incident, the Sheriff’s Department reports, witness statements, lie detector test results, forensic evidence tests, an independent report by the Washington State Attorney Generals Homicide Investigation and Tracking System Unit (HITS), assorted opinions, some from purported experts and some not, and numerous newspaper articles.

Id.

The Lewis County Sheriff's Department completed its investigation and determined that Ronda Reynolds' death was a suicide as well. Ex. 2, tab 50. The Sheriff's Department later re-opened the investigation in response to the numerous questions raised by Ms. Thompson. *Id.* It was again the conclusion of the Sheriff's Department that the death was a suicide. *Id.* The Sheriff's Department also asked the State HITS unit to conduct an independent review of the evidence. *Id.* The HITS unit concluded:

It is our unanimous finding that the unfortunate death of Ronda Reynolds was a result of an intentional self-inflicted gunshot wound to her head and should be classified as a suicide.

Ex. 2, tab 49, pg. 2.

According to Jerry Berry, who was one of the original investigator's assigned by the Sheriff's Office to investigate this death, all known witnesses were interviewed and all forensic tests that could have been performed were performed in the course of the Sheriff's investigation. RP 11/2/2009, pg. 175, lines 2-9. As he further testified, at no time did the investigation "uncover any physical evidence that connected anyone other than Ronda Reynolds with the shooting." *Id.*, pg. 183, lines 8-12.

The investigation did reveal several other indications that the fatal gun shot was self inflicted:

1. A gunshot residue test performed on Ms. Reynolds' hand revealed "significant levels" of lead and barium which are "indicative of gunshot residue." Ex. 2, tab 21.

2. The gun itself was found "loosely in between the two hands" of the deceased, located at "about chin level to forehead level." *Id.*, tab 6, pg. 3.

There were also indications that Ms. Reynolds was in a mental state that could explain her committing suicide. For example:

1. Mr. Reynolds told Ronda he wanted a divorce. Ex. 2, Tab 38, pg. 3.

2. Ronda Reynolds was concealing significant financial difficulties from her husband, including several credit card applications falsely applied for in his name. *Id.*, pg. 3-4.

3. The Sheriff's Department investigation also revealed significant financial distress and apparent improper credit applications by Ronda Reynolds. Ex. 2, tab 41, pg. 7.

4. Unbeknownst to her husband, Ronda Reynolds had been

prescribed Zoloft, a depression medication. *Id.*, pg. 8.

5. One of Ronda Reynolds's closest friends indicated that she was "despondent and really down" the day of her death and told her something to the effect that she wished she "could go to sleep and never wake up." Ex. 2, tab 34, pg. 6.

Finally, Mr. Reynolds was given a polygraph exam and the examiner concluded he was not being deceptive when he denied killing his wife. Ex. 2, Tab 26, pg. 3.

B. Procedural Background.

This lawsuit was commenced by the filing of the complaint seeking "judicial review" of the Coroner's determination on August 18, 2006. *Brief of Appellant*, pg. 16; CP 61-65. Coroner Wilson moved for summary judgment on the grounds that the statute of limitations on Ms. Thompson's cause of action was three years or less and that the lawsuit was therefore barred. *Thompson v. Wilson*, 142 Wn. App. 803, 810, 175 P.3d 1149 (2008). The trial court granted the motion for summary judgment. *Id.*

Barb Thompson appealed the summary judgment order to this Court. *Id.* This Court, in a published decision, affirmed in part and reversed in part. This Court affirmed summary judgment on

the claim for a writ of certiorari and for declaratory judgment. It reversed the summary judgment on the writ of mandate claim “to the extent [Ms. Thompson] seeks to compel [Coroner] Wilson to meet to discuss the autopsy and postmortem findings under RCW 68.50.105.” *Id.* at 816. This Court further held that the judicial review statute was subject to a two year statute of limitations, but that the limitations period had been “equitably tolled” *Id.* at 814-15. The claim for judicial review and the “application for a writ of mandamus to compel a meeting to discuss the autopsy and postmortem findings” were remanded to the trial court. *Id.* at 819.

The trial court proceeded to determine what “judicial review” under RCW 68.50.015 meant. CP 26-27. The trial court directed counsel to brief the following issues:

1. Whether judicial review was conducted under the court’s “general jurisdiction” or “appellate jurisdiction”?
2. Was the review de novo, permitting admission of new evidence or was it limited to the record before the Coroner?
3. Should the review be conducted by a Judge alone or with a jury?
4. What questions can the jury be asked to determine?

Id.

The trial court decided to convene a jury and allowed it to consider evidence that was not limited to the Coroner's record at the time of the last death certificate amendment. RP 11/2/2009, pg. 4, line 6-14; pg. 6, line 12 - pg. 7, line 19. The jury was instructed and asked to complete two verdict forms: one asked the jury to answer questions as of the date Ms. Thompson met with the Coroner pursuant to RCW 68.50.105 and the other was based on evidence presented up through the date of trial. CP 309-312. The court entered a judgment on the two verdicts rendered by the jury that the Coroner's determination of suicide was not "accurate" and was "arbitrary and capricious." CP 321-322. The Court then issued a Writ of Mandate to the Coroner directing him to reconsider all evidence, including "exhibits and testimony produced and admitted during the jury trial" and to "change the manner" of death from suicide." CP 426-427. In redetermining the manner of death, the Coroner could not re-determine it was a suicide "unless either through [the Coroner's office] or through an inquest jury new evidence is received that was not already considered by the Lewis County citizens which heard the facts in this case and that evidence

outweighs the evidence relied upon [by] the jury.” CP 427.

Coroner Wilson appealed the Judgment and Verdicts One and Two and the Writ of Mandate to this Court. CP 412. A Commissioner of this Court issued a Stay of the Writ of Mandate pending the outcome of this appeal. Appendix A.

V. ARGUMENT

A. Standards of Review Applicable in this Appeal.

1. Interpretation of a Statute.

Interpretation of a statute is a question of law, which this court reviews de novo. *City of Spokane v. Rothwell*, 166 Wn.2d 872, 876, 215 P.3d 162 (2009); *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). The objective is to determine legislative intent. *State v. Jacobs*, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005).

Where the language of a statute is clear, legislative intent is derived from the language of the statute alone. *Wentz*, supra. The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, the related provisions, and the statutory scheme as a whole. *Jacobs*, supra.

An ambiguous statute is subject to construction. *Whatcom*

County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Where a statute is amenable to more than one interpretation, legislative history and other aids to construction may provide guidance in construing the statute to give effect to the intent of the Legislature. *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 185, 829 P.2d 1061 (1992).

2. Review of the Jury's Verdict.

When the proponent of a new trial argues that the verdict was not based on the evidence, the appellate court reviews the record to determine whether there was sufficient evidence to support the verdict. *Palmer v. Jensen*, 132 Wn.2d 193, 197-98, 937 P.2d 597 (1997). All evidence must be viewed in the light most favorable to the party against whom the motion is made. *Hojem v. Kelly*, 93 Wn.2d 143, 145, 606 P.2d 275 (1980). There must be "substantial evidence" as distinguished from a "mere scintilla" of evidence, to support the verdict-i.e., evidence of a character " which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." *Id.* A verdict cannot be founded on mere theory or speculation. *Id.* *Campbell v. ITE Imperial Corp.*, 107 Wn.2d 807, 817-18, 733 P.2d 969 (1987).

3. Decisions to Give or Not Give a Jury Instruction.

A “trial court's decision to give a jury instruction is reviewed de novo if based upon a matter of law, or for abuse of discretion if based upon a matter of fact.” *Kappelman v. Lutz*, 167 Wn.2d 1, 6, 217 P.3d 286 (2009).

B. The Trial Court Erred in its Interpretation of RCW 68.50.015.

The jury trial conducted by the trial court was pursuant to RCW 68.50.015 which provides in totality:

A county Coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for determining the cause and manner of death. **The accuracy of the determinations is subject to judicial review.** (emphasis added)

The legislature has provided no additional guidance or instruction, however, to determine what “judicial review” should entail. To Coroner Wilson’s knowledge, the procedure to be employed under this statute has not been previously considered by the Court of Appeals.

- 1. RCW 68.50.015 does not expressly derogate from the common law’s standard of review of a Coroner’s determination of the cause and manner of death.**

The Legislature added RCW 68.50.015 in 1987. The legislature is presumed to have understood the full context of preexisting common law regarding Coroners. *Elford v. City of Battle Ground*, 87 Wash.App. 229, 941 P.2d 678 (1997). The statute is presumed not to derogate from the common law, except where the legislature has done so expressly. *State ex rel. Munroe v. City of Poulsbo*, 109 Wash.App. 672, 37 P.3d 319 (2002); *Price v. Kitsap Transit*, 125 Wn.2d 456, 886 P.2d 556 (1994).

RCW 68.50.015, makes no express change to the nature of the office of Coroner. RCW 68.50.015 continues a Coroner's common law immunity from damages for acts within his office, but it does not expressly change preexisting common and statutory law regarding the method of seeking review of a Coroner's determinations.

RCW 68.50.015 should therefore be read as consistent with the common law. Prior to the enactment of RCW 68.50.015, a person could seek a writ of mandamus in situations where a Coroner refused to act, or acted so "arbitrarily and capriciously" as to fail totally to perform his function. *State v. Jones*, 66 Wn.2d 199, 201, 401 P.2d 841 (1965). Washington courts have used the writ of

mandate as the appropriate means of reviewing Coroners' decisions, including allegedly erroneous determinations of suicide as a cause of death per RCW 70.58.170: *State ex rel. Taylor v. Reay*, 61 Wn. App. 141, 145, 810 P.2d 512 (1981). Thus, the "arbitrary and capricious" standard of review should have been the only standard applied to this "judicial review" under RCW 68.50.015.

2. The trial court erred in instructing the jury on the standard of judicial review of a Coroner's determination.

The trial court declined to rule on the correct standard of review to be applied by the jury and therefore instructed the jury as follows in Instruction No. 9:

The Lewis County Coroner determined that the manner of Ronda Reynolds death was suicide. The Petitioner has the burden to prove that the Lewis County Coroner's determination is not accurate, **or**, that the determination was arbitrary and capricious.

CP 301 (emphasis added).

The trial court instructed the jury regarding the term "accurate" in Instruction No. 11:

"Accurate" means to be exact, conforming to fact, errorless, correct, true, actual, right, and definite."

CP 303.

The court further instructed the jury on the definition of

“arbitrary and capricious” in Instruction No. 12. CP 304. No instruction explained why two different standards applied to the jury’s review.

Coroner Wilson objected to the giving of these two instructions. RP 11/9/2009, pg. 20, 2-11. The objection referred to the legal arguments made to the court in previous briefings. CP 96-106. In previous arguments to the court, Coroner Wilson had argued that the “arbitrary and capricious” standard alone applied. CP 102. Coroner Wilson also excepted to the court’s failure to give his proposed Instruction Nos. 5 and 8, which limited the jury’s review to determining whether the Coroner’s determination was arbitrary and capricious. *Id.*, pg. 20, line 19 to pg. 21, line 10; CP 215 & 218.

The trial court’s inclusion of the standard of “accuracy” was error. The county Coroner shall “certify the cause of death according to his or her best knowledge and belief and shall sign the certificate of death.” RCW 70.58.170. The court in *State ex rel. Murray v. Shanks*, 27 Wash.App. 363, 618 P.2d 102 (1980), stated that “the statute directing the Coroner to certify the cause of death does not provide direction as to how those official duties are to be

exercised. The court further noted that where a statute is silent in this regard, an official has an implied right and duty to employ the means and methods necessary to accomplish the statutes' requirements. *Id.*, citing, *Smith v. Greene*, 86 Wn.2d 363, 372, 545 P.2d 550 (1976). The court must “presume that the performance of those duties meets those requirements.” *Booker v. South Central School Dist.*, 406, 23 Wash.App. 274, 276 (1979).

In *Vanderpool v. Rabideau*, 16 Wash.App. 496, 497-98 (1977), the court held that:

It is clear that a court may issue a writ of mandamus to compel a public officer to perform a duty imposed upon that office by law. RCW 7.16.160. This applies to duties involving discretion; however, Courts will not by mandamus attempt to control the discretion of subordinate bodies acting within the limits of discretion vested in them by law. Where courts do interfere, it is upon the theory that the action is so capricious and arbitrary as to evidence a total failure to exercise discretion and is, therefore, not a valid act. (Citation omitted.)

Vanderpool further explained that “the burden of establishing arbitrary and capricious conduct rests upon the party asserting it.” *Id.* at 498. Arbitrary and capricious conduct is defined as “willful and unreasoning action, without consideration and in disregard of facts or circumstances.” *Id.* “Where there is

room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.” *Id.* Thus, “the scope of a trial court’s review [of a Coroner’s determination] is limited to a determination of whether the discretion was exercised arbitrarily or capriciously.” *Id.*

As noted above, in passing RCW 68.50.015, “the Legislature is presumed to know the existing state of the case law in those areas in which it is legislating and a statute will not be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it.” *Price v. Kitsap Transit, supra*, 125 Wn.2d at 463. Moreover, RCW 68.50.015 should be read *in pari materia* with RCW 70.58.170 because they “relate to the same thing or class,” thus they “must be harmonized if possible.” *Monroe v. Soliz*, 132 Wn.2d 414, 425, 939 P.2d 205 (1997). Thus, the words “accuracy of the determinations” in RCW 68.50.015 must be harmonized with a Coroner’s duty to “certify the cause of death according to his or her **best knowledge and belief**,” found in RCW 70.58.170.

The legislature is presumed to know that before it enacted

RCW 68.50.015, the scope of judicial review of a Coroner's determination was limited to whether it was "arbitrary and capricious." *State ex rel. Taylor v. Reay, supra*, 61 Wash.App. at 145. The legislature did not express its intention to alter that standard. Instead, it appears that the legislature wanted to remove any doubt that its immunization of Coroners "from civil liability for determining the cause and manner of death," did not mean that judicial review was also abolished. If the legislature intended a broader scope of review, then it needed to express that in the statute - otherwise the common law standard of review remains. *Skamania County v. Woodall*, 104 Wash.App. 525, 535, 16 P.3d 701 (2001) ("all Washington statutes are interpreted by Washington courts under Washington common law unless the Legislature expresses otherwise.") See RCW 4.04.010; *Price, supra*, 125 Wn.2d at 462.

Thus, instructing the jury that it could overturn the Coroner's determination if they found it not to be "accurate" is inconsistent with the applicable common law. The trial court committed an error of law.

Coroner Wilson was prejudiced by the giving of Instructions 9 and 11 because the jury was likely confused and misled by the

correct standard of review. The trial court tried to prevent an appealable issue by including two different standards of review. However, the jury was essentially instructed that two different, and conflicting, standards applied to their review and no explanation was given as to why. The “giving of conflicting and inconsistent instructions on a material issue is prejudicial error requiring reversal.” *Coyle v. Municipality of Metropolitan Seattle*, 32 Wash.App. 741, 747, 649 P.2d 652 (1982). Reversal and remand for a new trial is proper based on the giving of instructions 9 and 11.

C. The Trial Court Erred in Permitting the Jury to Hear and Consider Evidence That Was Not Part of the Coroner’s Record When the Death Certificate Was Finally Amended and Which Was Also Not Qualified Expert Opinion.

Judicial review under RCW 68.50.015 is not a *de novo* review: rather it is limited to reviewing whether a Coroner’s determination was arbitrary and capricious. Under this limited scope of review, the only evidence presented is what the Coroner had to consider **at the time he issued his determination.** *City of Tacoma v. Mary Kay, Inc.*, 117 Wash.App. 111, 116, n. 6 (2003.) (“[U]nder either a statutory or constitutional writ, the superior court still would have been limited to a review on the record and not

had original jurisdiction.”); *Bridle Trails Cmty. Club v. City of Bellevue*, 45 Wash.App. 248, 251-52, 724 P.2d 1110 (1986) (constitutional or common law writs are not full appellate review but rather only on the record from the inferior tribunal); *Andrew v. King County*, 21 Wash.App. 566, 574, 586 P.2d 509 (1978) (citing that statutory review proceedings of an inferior tribunal are only on the record below and in no sense a trial de novo), *review denied*, 91 Wn.2d 1023 (1979).

Coroner Wilson objected to the admission of material that was created after the last death certificate amendment in 2002. CP 513. For example, a 40 page report prepared by Ms. Thompson’s firearms expert. Ex. 2. Coroner Wilson also objected to a declaration of Ms. Thompson prepared in 2006. Ex. 2, tab 59. These materials did not include new “evidence” about Ronda Reynolds’ death, but rather were simply opinions and speculative statements by persons unqualified to offer expert opinions.

The decision to admit these exhibits in this case was error for two reasons. First, the trial court determined that the jury review was “de novo” permitting the jury to consider documents and testimony not before the Coroner when he issued his last death

certificate amendment in 2002. This is an erroneous interpretation of the judicial review statute. Review should have been limited to the record before the Coroner when the final death certificate amendment was issued. Coroner Wilson was prejudiced because his original determination was considered in light of material he did not even possess *in 2002*.

Secondly, the admission of unqualified expert opinions was an abuse of discretion. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). (This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion.) A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* "A trial court's decision is manifestly unreasonable if it `adopts a view "that no reasonable person would take." ' " *In re Pers. Restraint of Duncan*, 167 Wn.2d 398, 402-03, 219 P.3d 666 (2009) (*quoting Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (*quoting State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003))). "A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (*citing Mayer, supra.*)

The trial court ruled that Ms. Thompson's firearms consultant, Marty Hayes, had expert qualifications regarding firearms. RP 11/2/2009, pg. 209, lines 2-18; pg. 211, line 20-pg. 213, line 2. Yet, his 42 page report, which is the first document in Ex. 2 provided to the jury, contains numerous opinions from Mr. Hayes that go well beyond firearms. Page 5 of the report contains opinions about forensic blood pattern analysis. Page 11 of that report contains a commentary that the deceased took much longer to die than the Deputy Coroner concluded. The report is replete with Mr. Hayes's views on the veracity of witnesses and his own speculative assertions of various persons' motives. The trial court abused its discretion in admitting this report to the jury.

Coroner Wilson was prejudiced by this decision because the jury was allowed to review unqualified and speculative opinions by Mr. Hayes. To try and refute these numerous improper opinions in front of the jury would only have highlighted them. The court allowed Mr. Hayes to offer "expert" opinion in the form of testimony to the jury. The court limited his testimony to the scope of his expertise. The court did not limit the report and the jury was misled into thinking that Mr. Hayes's report carried the sheen of

expertise. Coroner Wilson objected to the admission of this report. CP 513. The trial court erred by not excluding it from evidence. Reversal and remand for a new trial without this offending evidence is proper.

D. Substantial Evidence in the Record Did Not Support the Jury's Verdict that the Coroner's Determination was Arbitrary and Capricious.

This Court reviews the record to determine whether there was sufficient evidence to support the verdict. *Palmer v. Jensen, supra*, 132 Wn.2d at 197-98. All evidence must be viewed in the light most favorable to the party against whom the motion is made. *Hojem v. Kelly, supra*, 93 Wn.2d at 145. There must be "substantial evidence" as distinguished from a "mere scintilla" of evidence, to support the verdict-i.e., evidence of a character "which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." *Id.* A verdict cannot be founded on mere theory or speculation. *Id. Campbell v. ITE Imperial Corp., supra*, 107 Wn.2d at 817-18.

The jury's verdict was that the Coroner's determination of the manner of death of Ronda Reynolds was arbitrary and capricious "on April 17, 2008" and, as of "the date of [the jury's]

verdict.” CP 309-312. April 17, 2008 was the date the Coroner met with Ms. Thompson pursuant to RCW 68.50.105. CP 309.

"Arbitrary and capricious means `willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.' " *Foster v. King County*, 83 Wash.App. 339, 347, 921 P.2d 552 (quoting *Kerr-Belmark Constr. Co. v. City Council*, 36 Wash.App. 370, 373, 674 P.2d 684, review denied, 101 Wn.2d 1018 (1984) (“Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.”))

In this case, the Coroner’s record contained the following evidence:

1. A gunshot residue test performed on Ms. Reynolds’ hand revealed “significant levels” of lead and barium which are “indicative of gunshot residue.” Ex. 2, tab 21.

2. The gun itself was found “loosely in between the two hands” of the deceased, located at “about chin level to forehead level.” *Id.*, tab 6, pg. 3.

3. Mr. Reynolds told Ronda he wanted a divorce. Ex. 2, Tab

38, pg. 3.

4. Ronda Reynolds was concealing significant financial difficulties from her husband, including several credit card applications falsely applied for in his name. *Id.*, pg. 3-4.

5. The Sheriff's Department investigation also revealed significant financial distress and apparent improper credit applications. Ex. 2, tab 41, pg. 7.

6. Unbeknownst to her husband, Ronda Reynolds had been prescribed Zoloft, a depression medication. *Id.*, pg. 8.

7. One of Ronda Reynolds's closest friends indicated that she was "despondent and really down" the day of her death and told her something to the effect that she wished she "could go to sleep and never wake up." Ex. 2, tab 34, pg. 6.

8. Mr. Reynolds was given a polygraph exam and the examiner concluded he was not being deceptive when he denied killing his wife. Ex. 2, Tab 26, pg. 3.

In addition, the Sheriff's Office investigation determined that Ronda Reynolds' death was a suicide. Ex. 2, tab 50. The Sheriff's Department re-opened the investigation in response to the numerous questions raised by Ms. Thompson. *Id.* It was again the

conclusion of the Sheriff's Department that the death was a suicide.

Id. The Sheriff's Department asked the State HITS unit to conduct an independent review of the evidence. *Id.* The HITS unit concluded:

It is our unanimous finding that the unfortunate death of Ronda Reynolds was a result of an intentional self-inflicted gunshot wound to her head and should be classified as a suicide.

Ex. 2, tab 49, pg. 2.

According to Jerry Berry, who was one of the original investigator's assigned by the Sheriff's Office to investigate this death, all known witnesses were interviewed and all forensic tests that could have been performed were performed in the course of the Sheriff's investigation. RP 11/2/2009, pg. 175, lines 2-9. As he further testified, at no time did the investigation "**uncover any physical evidence that connected anyone other than Rhonda Reynolds [sic] with the shooting.**" *Id.*, pg. 183, lines 8-12.

The jury's verdict that Coroner Wilson's determination was arbitrary and capricious cannot stand. No evidence in the record supports a verdict that the Coroner determination was "willful and unreasoning" or "without consideration and in disregard of facts or

circumstances.” Reversal and remand for entry of judgment in favor of Coroner Wilson is therefore appropriate.

E. The Trial Court erred in Issuing a Writ of Mandate that Limited the Coroner’s Exercise of Discretion.

Mandamus is an extraordinary writ. *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994). A writ of mandate may be issued by the Superior Court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office. RCW 7.16.160.

A writ of mandate cannot “control the exercise of discretion.” *Bullock v. Superior Court*, 84 Wn.2d 101, 103, 524 P.2d 385 (1974). It can only “require that discretion be exercised.” *Id.*

The Writ of Mandate issued by the trial court goes beyond mandating the Coroner exercise his *statutory discretion*. It controls and limits the manner in which he is to exercise his discretion. CP 427. Specifically, it orders the Coroner to “within 10 days” reconsider “all of the information and evidence available to” the Coroner. It orders the Coroner to change the death certificate to something other than suicide. Finally, it limits the outcome of any potential inquest jury to something other than suicide unless the

inquest jury hears “new evidence” that “outweighs” the evidence already considered by the “judicial review” jury.

First, the law does not require the Coroner to follow any particular procedure or to consider any particular evidence in performing his duty. Thus the Court is not compelling the performance of an act which the law requires. Second, if the Coroner empanels an inquest jury, it preempts the possible outcome of the inquest jury without any authority.

“Once officials have exercised their discretion, mandamus does not lie to force them to act in a particular manner.” *Aripa v. Department of Social & Health Servs.*, 91 Wn.2d 135, 140, 588 P.2d 185 (1978). For example, “mandamus will not issue to compel the entry of a particular judgment unless it is the only judgment which can be legally entered.” *Ben-Neth v. Indeterminate Sentence Review Bd.*, 49 Wn. App. 39, 41, 740 P.2d 855 (1987), *citing*, *State ex rel. Vance v. Routt*, 571 S.W.2d 903 (Tex.Cr.App.1978). “The court cannot compel action in any particular manner. The official or agency must implement its authority with discretion and not as a result of arbitrary conduct.” *Ben-Neth*, 49 Wn. App. at 41-42, *citing*, *State ex rel. Knudsen v. Board of Educ.*, 43 Wis.2d 58, 168

N.W.2d 295 (1969).

In sum, the trial court erred in issuing the Writ of Mandate because it goes beyond requiring the Coroner to exercise discretion and it should be vacated and, if this portion of the case is remanded, the trial court should be instructed to limit its mandate to directing the Coroner to exercise his or her discretion to re-determine the manner of death.

VI. CONCLUSION

For the foregoing reasons, Coroner Wilson asks that this court reverse the jury's verdict and remand this case for entry of judgment in favor of Coroner Wilson. Alternatively, the jury's verdict should be vacated and the case remanded for a new trial. Finally, if entry of judgment in favor of Coroner Wilson is not ordered, the writ of mandate should be vacated and reconsidered in light of the correct legal standards.

RESPECTFULLY SUBMITTED this 14th day of July, 2010.

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.



John E. Justice/WSBA N^o 23042
Attorneys for Appellant/Cross-
Respondent Terry Wilson

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BARBARA THOMPSON,

Respondent,

v.

TERRY L. WILSON, Lewis County
Coroner,

Appellant.

No. 40283-1-II

RULING GRANTING STAY

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

DEPUTY

Lewis County Coroner Terry L. Wilson seeks a stay of a Lewis County Superior Court order and writ of mandate requiring him to (1) reconsider all of the available evidence regarding the death of Ronda Elizabeth Reynolds, (2) change the manner of death from "suicide," (3) re-determine the manner of death, provided that he cannot again determine that it was suicide unless he has new evidence to support it, and (4) report his re-determination to the court before submitting it as a vital statistic. Because Wilson is required to accomplish this by Monday, February 8, this court considered the matter on an emergency basis.

In order to obtain a stay of this writ, Wilson must demonstrate that (1) his appeal presents debatable issues, and (2) he will suffer greater harm if the stay is not granted than the respondent will suffer if the stay is granted. RAP 8.1(b)(3).

This matter was initially before this court in 2008, following the trial court's dismissal of Thompson's lawsuit as barred by the statute of limitations.¹ This court reversed the dismissal of (1) Thompson's claim under RCW 68.50.015 and (2) her application for a writ of mandamus to compel a meeting with Wilson. The case proceeded below under RCW 68.50.015, which provides for judicial review of a coroner's decision, but provides no further guidance. And, except for the earlier opinion in this case, there is no case law applying the statute. This appeal will present debatable issues.

Wilson has also satisfied the second prong of RAP 8.1(b)(3). Unless a stay is granted, he will lose the fruits of his appeal. On the other hand, respondent identifies no injury except potential complications resulting from Wilson's anticipated departure from office at the end of the year. That is speculative at best and does not outweigh Wilson's concerns. Accordingly, it is hereby

ORDERED that the trial court's order is stayed pending resolution of this appeal.

DATED this 4th day of February, 2010.



Ernetta G. Skerlec
Court Commissioner

cc: John Edward Justice
Royce A. Ferguson, Jr.
Hon. Richard Hicks

¹ *Thompson v. Wilson*, 142 Wn. App. 803, 175 P.3d 2259 (2008).

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STATE OF WASHINGTON

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**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

BARBARA THOMPSON,

Appellant,

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Coroner,

Respondent.

**COURT OF APPEALS
NO. 40283-1-II**

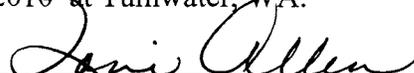
**LEWIS COUNTY
SUPERIOR COURT
NO. 06-2-01044-1**

**DECLARATION OF
SERVICE**

I declare that I served a copy of Appellant/Cross-Respondent's Opening Brief and this Declaration of Service on Respondent/Cross-Appellant, via ABC Legal Messengers, on July 16, 2010 to arrive no later than July 20, 2010: Royce Ferguson, Law Office, 2931 Rockefeller. Everett, WA 98201-4019.

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

DATED this 16th day of July, 2010 at Tumwater, WA.


Toni Allen