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**WASHINGTON STATE COURT OF APPEALS  
DIVISION TWO**

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**BARBARA THOMPSON,** )  
 )  
 **Respondent/Cross** ) **Court of Appeals**  
 **Appellant,** ) **No. 40283 – 1 – II**  
 )  
 **-vs-** )  
 ) **Lewis County Superior**  
 **TERRY WILSON, Lewis** ) **Court No. 06-2-01044-1**  
 **County Coroner,** )  
 )  
 **Appellant/Cross** )  
 **Respondent.** )  
 )

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**BRIEF OF CROSS-APPELLANT THOMPSON  
(RAP 10.3)**

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**6/25/10**

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## I. Respondent/Cross-Appellant Thompson's Assignments of Error

### Assignments of Error

Assignment No. 1. The trial court erred in failing to instruct the jury on the definition of "homicide" and by failing to submit a special verdict to the jury asking the jury to find whether or not the death of Ronda Reynolds was probably homicide.

Assignment No. 2. The trial court erred in refusing to make and enter its own findings of fact and conclusions of law, and by failing to enter a supplemental judgment thereon, as to whether or not the death of Ronda Reynolds was probably homicide, correcting the death certificate accordingly.

Assignment No. 3. The trial court erred in refusing to issue a writ of mandate to the coroner directing that he not only find the death of Ronda Reynolds was not "suicide," but also directing that the coroner find that the death was probably "homicide," correcting the death certificate accordingly.

Assignment No. 4. The trial court erred in refusing to issue a writ of mandate to the county prosecuting attorney to re-determine the manner of death, directing that he not only find the death of Ronda Reynolds was not "suicide," but also directing that the prosecutor find that the death was probably "homicide," correcting the death certificate accordingly.

Assignment No. 5. The trial court erred in "striking" the declaration of the jury foreperson, which stated that during its deliberations the jury voted unanimously that the death of Ronda Reynolds "was in fact homicide as proven by the trial evidence."

Assignment No. 6. The trial court erred in failing to award "reasonable attorney fees" to the prevailing party in addition to statutory costs.

Issues Pertaining to Assignments of Error

Issue No. 1. In an action for RCW 68.50.015 “judicial review,” which is joined with an action for RCW 7.16.160 for a writ of mandamus, should the jury have been given an instruction and verdict regarding “homicide” when evidence of homicide was admitted and the jury was instructed that a death may be (1) the intentional intervention of a third person, (2) accident, (3) suicide or (4) undetermined? (*Assignment of Error No. 1*).

Issue No. 2. After trial where the jury has found the coroner’s determination “not accurate,” should the presiding court have made and entered its own findings of fact and conclusions of law, and supplemental verdict where the prevailing party will also be seeking specific post-verdict supplemental relief, including that the court itself change the death certificate? (*Assignment of Error No. 2*).

Issue No. 3. Where the jury has found that the coroner’s determination of “suicide” is inaccurate and that he acted “arbitrarily and capriciously” in making that determination, does the trial court have authority to direct that the coroner change the death certificate from “suicide” to “homicide?” (*Assignment of Error No. 3*).

Issue No. 4. Where the jury has found that the coroner’s determination of “suicide” is inaccurate and that he has acted “arbitrarily and capriciously” in making that determination, does the trial court have authority to direct that the county prosecuting attorney re-determine the manner of death and change the death certificate from “suicide” to “homicide” under *Murray v. Shanks*, 27 Wn.App. 363, 618 P.2d 102 (1980)? (*Assignment of Error No. 4*).

Issue No. 5. When fashioning post-trial supplemental relief, including that the coroner re-determine the manner of death, did the trial court err in “striking” the jury foreperson’s post-trial declaration that the jury also deliberated and unanimously found that the death was “in fact homicide as proven by the trial evidence?” (*Assignment of Error No. 5*).

Issue No. 6. In an action brought against a coroner for “judicial review” under RCW 68.50.015, joined with an action for mandamus

under RCW 7.16.160, may the trial court award “reasonable” attorney fees to the prevailing party in addition to statutory costs?  
(Assignment of Error No. 6).

## II. Thompson’s Statement of the Case

### A. Procedural Background

*Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149 (2008), affirmed the trial court’s dismissal of Thompson’s joined causes of action for (3) certiorari and (4) declaratory judgment, but reversed the dismissal of the causes of action for (1) judicial review and (2) mandamus. The dismissal of the mandamus action was reversed as Wilson had failed to meet with Thompson pursuant to RCW 69.50.105 to “discuss the findings of the autopsy or post-mortem.” The dismissal of the judicial review cause of action was reversed because the statute of limitations was equitably tolled and is to commence only upon Wilson’s good faith compliance with RCW 68.50.105. *Thompson v. Wilson, supra*, at pages 814 - 816.

Following the mandate of *Thompson v. Wilson, supra*, Coroner Wilson met with Thompson pursuant to RCW 68.50.105 on April 17, 2008, to “discuss the findings of the autopsy” (CP 49; CP 55). Before that meeting, Wilson was provided with a copy of the expert report of Jeffrey M. Reynolds, MD, Forensic Pathologist (CP 19-21; Ex. 2, Tab

60) and another copy of the “Case Review,” which was later admitted at trial as Exhibit 2, which is a voluminous 3-ring binder which contains numerous documents, photographs, tests, police reports, witness statements, and expert opinions citing supporting facts which conclude that Ronda’s death was probably homicide and not suicide, and that her homicide was “staged” to look like a suicide (CP 22-23; RP November 1, 2009, page 35, line 18; Ex. 2; Jury Instruction No. 8, CP 299).

Following the RCW 68.50.105 mandatory meeting, Wilson indicated that nothing presented to him would change his “suicide” determination, so Thompson gave notice she was renewing her petition for joined causes of action for RCW 68.50.015 judicial review and RCW 7.16.160 mandamus, as those actions had not been dismissed, and she renewed her demand for a jury trial (CP 24-25).

The court ruled that the trial would be by jury (RP April 24, 2009, page 16). The court reasoned in large part that—

So although it may not be certain that a jury can be demanded for a review such as this, at the same time this is a case that calls out for at least an advisory jury to review the matter. . .

\* \* \*

The factual material can be submitted to the jury and the court simultaneously and the jury can answer a few simple interrogatories in

handing down a verdict, and there are no complicated legal theorys [sic] to sort out. If necessary to be in compliance with prior case law, this court can treat the jury determination as advisory on the facts and use this to make its ruling on law and equity without necessarily being bound by it. (RP April 24, 2009, beginning at page 16, through page 19).

Additionally, the court ruled that the facts would be determined *de novo* and testimony would be taken (RP April 24, 2009, pages 19-21).

Prior to trial, Wilson's counsel announced that Wilson would not be present during the entire trial, as Wilson also had a private clinic to run (RP October 2, 2009, page 4), and that it was unlikely that he would call any witnesses (RP October 2, 2009, page 14). Wilson did not call any witnesses (RP November 9, 2009 page 50) and he did not testify. (Thompson has filed in this appeal a separate motion to strike Wilson's argument that he testified by deposition, as the deposition was never offered nor considered by the jury).

A 12-person jury trial resulted in special verdicts that Wilson's "suicide" certification was inaccurate and that he had acted "arbitrarily and capriciously" in making that determination. Following the verdicts, a writ of mandamus was issued directing Wilson to re-determine Ronda's death to something other than suicide. Wilson filed this appeal and has obtained a stay of the writ.

Thompson has cross-appealed, claiming the trial court erred in not instructing the jury to determine whether or not the death of Ronda Reynolds was probably “homicide,” and from the denial of requested post-trial relief.

B. Ex. No. 2 Provided to Wilson Before RCW 68.50.105 Meeting

Coroner Wilson did not attend the death scene of Ronda Reynolds, did not attend the autopsy, and never spoke with the lead detective on the case. (RP January 2, 2009, page 116, lines 8-21).

Exhibit 2, which contains numerous reports, statements, photographs and exhibits described as the “Case Review,” and which was provided to Wilson prior to the meeting of April 17, 2008 (CP 22-23) was offered and admitted (RP November 1, 2009, page 35, line 18). The trial court reasoned—

Consistent with what I said yesterday, and the authority for this is really *State v. [Reay]*, 61 Washington Ap. 141 from 1991, and that is the essence of what this jury will be asked is whether or not the coroner’s determination was accurate, and for them to have to be able to make that determination they need to have in front of them everything that the coroner considered, even things that might not be admissible in a court of law, if they were things that the coroner to could take into consideration. (RP November 3, 2009, pages 6-8, at page 7).

The reasoning is reflected in the court's given jury Instruction No. 8 (CP 299-300).

Admitted Exhibit 2 included *all* of the evidence and information considered by and available to Wilson up to the date of his meeting with Thompson on April 17, 2008 (CP 299-300, Instruction No. 8). It included those facts cited in Wilson's Statement of the Case, which are presumed to have been considered by the jury as instructed: "It is your duty to decide the facts in this case based upon the evidence presented to you during this trial." (Instruction No. 1, CP 290). The jury was to weigh the evidence, including the credibility of witnesses. Considering all the evidence, the jury chose to reject "suicide."

Significantly, Exhibit 2 also contained the death certification of Coroner Wilson, which states in part that "The deceased was found lying on her left side on the floor with her head on a pillow, and *another pillow had been used to muffle the sound* of the handgun," and Deputy Coroner Brunton's report, which states that "[Ronda's] head was on a pillow and their [sic] had been a pillow used *over* the weapon to muffle the sound" [emphasis added] (Ex. 2, Tab 10).

Yet, photographs show the bullet actually went *through* the top pillow and then into Ronda's head (Ex. 2, Tab 4, photos G 1-5).

Washington State Patrol Crime Laboratory analysis and reports dated February 7 and April 9, 2002, confirmed that the bullet was shot *through* the pillow and that it was unlikely the pillow had been wrapped around the gun (Ex. 2, Tab 48).

Exhibit 2 also includes the following— the report of Deputy Holt, the first officer on the death scene, which states that he observed Ronda's body covered by a blanket, with her left hand also underneath the blanket, the gun on top of the blanket positioned in her covered left hand, and the pistol laying next to her bare forehead (Ex. 2, Tab 2); the report of Detective Neiser, which states he observed a pillow which had covered Ronda's head, and that *the firearm underneath the pillow* had been resting across her right temple leaving an imprint of the barrel (Ex. 2, Tab 6); Detective Berry's report, which confirms that *the blanket covered Ronda's left hand*, which was clutching the blanket, and that *her right hand was also under the blanket*, while the *gun had been outside of the blanket* (Ex. 2, Tab 9, pages 2-3).

Trial Exhibit 2 also contains the report of firearms expert Marty Hayes, which states that, following analysis of the evidence and

testing, “Ronda Reynolds could not have fired the Rossi .32 S+W Long revolver with her right hand, down through the pillow, and the gun coming to rest on her temple . . .” and the evidence is “. . . consistent with the gun having been placed on her temple by a 3<sup>rd</sup> person. . .” (Ex. 2, Tab 56); expert Hayes’ opinion—

It is after consideration of these facts and analysis, that I believe that considerable doubt exists as to the determination that Ronda Reynolds committed suicide, and that probable cause exists that she was murdered. Further, it is my expert opinion, based upon a reasonable degree of scientific probability, that Ronda Reynolds was killed by another person and did not commit suicide. (Ex. 2, page 42).

Also included in Exhibit 2 is the expert report of forensic homicide consultant Vernon Geberth, retired N.Y.P.D. Lieutenant Commander and author of the recognized textbook “*Practical Homicide Investigation: Tactics, Procedures and Forensic Techniques*” (3d Ed. 1996), in which report he noted— after reviewing the Ronda Reynolds evidence— that the gun had no fingerprints, “which is not surprising if someone had taken the time to wipe it clean; the fixed lividity found in Ronda’s body was not consistent with the time frame reported by the husband Ron Reynolds; and it was his opinion that “this was a staged crime scene. . .” and “. . . Ronda Reynolds was the victim of homicide” (Ex. 2, Tab 28, pages 5,

6, 10 and 12). Also included in Exhibit 2 is a summary of evidence available from forensic evidence expert Dr. Raymond Grimsbo that, following an analysis of the evidence, it was his opinion that the scene “wasn’t just a staged murder, but a poorly staged murder at that” (Ex. 2, Tab 51). Exhibit 2 also contained the report of forensic pathologist Jeffrey M. Reynolds, MD, Forensic Pathologist (CP 19-21; Ex. 2, Tab 60), who also testified at trial stated that it was highly improbable that Ronda Reynolds killed herself.

### C. Trial Testimony

Barbara Thompson testified (RP November 1, 2009, beginning at page 1) among other subjects, that— Ronda Reynolds graduated from the Washington State Patrol Academy in 1988 (page 4); at the time, she was the youngest female cadet, and she was classified as an instructor and an expert in firearms (page 7); on December 15, 1998, the day before Ronda died, Thompson spoke with Ronda three times (page 13); Ronda’s plans and intentions were to fly to Spokane on December 16 to be with Thompson during the Christmas holidays (page 16); Ronda was concerned that her husband Ron Reynolds was having an affair with his ex-wife (pages 11; 42-43); one of Ronda’s

step-sons had previously threatened to kill her (page 13) and two of her step-sons had beaten one of her dogs to death (page 45); Ronda and her husband were going to divorce (page 14); Ronda was expecting to soon receive \$5,000 from the sale of a previously-owned house (but Ron Reynolds received that money as a result of her death) (pages 8-9); Ronda had invested \$15,000 in their present home (page 10) and Ronda was expecting to get that money back in the divorce (pages 14-15); Ronda's husband was controlling with money and she was giving her pay checks to him (page 18).

Thompson also testified that when she was told that Ronda was dead, she traveled to Lewis County on December 17, 1998 (pages 19-20) and talked to Ronda's husband Ron Reynolds (page 20); she said Ron Reynolds was cold, nonchalant and expressed hatred towards Ronda (page 21); Ron's ex-wife came out of his and Ronda's bedroom in a robe (page 21); Ron refused to give Thompson any of Ronda's personal jewelry (page 22) and he was very interested in Ronda's life insurance (page 22), which he believed was \$300,000 (pages 23; 47); later the same day Ronda died, Ron Reynolds made out the life insurance premium check and mailed it (page 23); and Ron Reynolds later obtained an attorney and invoked his right to remain

silent so the Lewis County Sheriff's Office couldn't talk to him (pages 37-38).

(Ron Reynolds did receive \$50,000 life insurance proceeds as a result of Ronda's death (Ex. 2, Tab 39). Also, Ron Reynolds was unavailable to testify at the trial because he had invoked his right against self-incrimination (CP 512)).

Dave Bell testified (RP November 2, 2009, beginning at page 3) among other subjects that— he was presently a master police sergeant with the Des Moines Police Department (page 3) and had twenty-nine years of police experience (page 4); he's had training in crisis intervention and suicide awareness (pages 5-6); he had known Ronda Reynolds ten years (page 7); he was one of the last people to see Ronda alive and did not see anything nor hear anything from her that would suggest that she was suicidal (pages 6; 30); Bell had agreed to give Ronda a ride to the airport for her intended flight to Spokane to visit her mother Thompson (page 26-27); and Bell spoke to Ron Reynolds the morning of Ronda's death and Ron's voice was unemotional, as if "discussing the weather" (page 37).

Robert Bishop testified (RP November 2, 2009, beginning at page 49) among other subjects that— he was a Lewis County Sheriff's Office deputy on December 16, 1998, and a little after 6:00 a.m. was dispatched to the scene of Ronda Reynolds' death and arrived there about 6:45 a.m. (page 54); Ron Reynolds was at the scene, but the three teen-age boys had already been allowed to leave by Deputy Holt, who was already at the scene, as was an aid crew (pages 55-56); Bishop noticed that Ron Reynolds appeared calm and did not display any emotion, was not sobbing and did not have any tears in his eyes (pages 58-59); Bishop overheard Ron state that he was in a "dispute" with Ronda until about 4:00 in the morning and they both went to bed about 4:30 a.m. (page 60), and that they had been arguing for a long time (page 76); he heard Ron state that he and Ronda had slept in the same bed, but Bishop noticed that only one side of the bed had been slept in (pages 60-61); Ron said that he woke at 5:30 and Ronda was not on the bed (page 61); Bishop saw Ronda's body on the floor of a walk-in closet (pages 57-58); Ronda's right hand was definitely under her blanket and unobservable (page 63); Bishop also noticed three travel bags that had been packed with a woman's clothing and make-up (page 67); Bishop heard Ron

Reynolds state that he had not heard the gun shot because the closet door was closed (page 61), but it appeared to Bishop that the closet door could not be closed because of the position of Ronda's body in the closet (page 62); and Bishop noticed that Ron Reynolds' hand showed the outline of a light-colored band consistent with people who wear rings, but that Ron was not wearing his wedding band, which Bishop saw in a soap dish in the bathroom (page 65).

Jerry Berry testified (RP November 2, 2009, beginning at page 78) among other subjects that— he was the lead Lewis County Sheriff's Office detective on Ronda Reynolds' death case (page 84); when he arrived at the scene there were some things that looked suspicious to him (page 94)— a number of oddities he called “red flags” that bothered him so that her death could not be conclusively called a “suicide” (page 86); Berry believed that the lipstick writing found on the bathroom mirror stating *“I love you. Please call me”* was not a suicide note (page 104; photo, Ex. 2, Tab 4, photo P); he concluded the telephone book opened to airlines pages suggested Ronda had some long term or short term plans, getting ready to leave (page 104); her left hand was grasping her blanket and could not have

held the gun (page 105); the blanket also completely covered her right hand (page 114); Ron Reynolds “had absolutely no signs or remorse or concern at all” and no tears, no shakiness of voice or hands (page 109); lividity found on the body suggested Ronda had been dead much longer than Ron Reynolds led them to believe (page 136); Berry requested a more in-depth investigation (page 86) as he “came up with a list of 21 of what [he] considered inconsistencies and oddities or red flags – 21 that at least needed to be answered systematically, in order to close this as a suicide” (pages 125-126; the list of 21, Ex. 2, Tab 23); for example, while Ron Reynolds first stated Ronda had been drinking, the autopsy results indicated she did not have any alcohol in her system (page 108; Ex. 2, Tab 10); as another example, there were no fingerprints on the gun, which had been wiped clean (page 147); it was Berry’s opinion that the Ronda Reynolds’ death was a homicide “staged” to look like a suicide (pages 154; 184); nevertheless, a supervisor closed the case as a “suicide” while Berry was out of the office on his scheduled days off (page 129); Berry learned the case was closed after he returned to work (page 129); he was taken off the case (page 84) and instructed to talk to no one about the case (page 85).

Marty Hayes (RP November 2, 2009, beginning at page 188, and continuing into RP November 3, 2008, beginning at page 3) was found and accepted by the court as a “firearm expert” allowed to give his opinion “regarding firearms, their nature, how they work, what firing them brings about . . . trajectories, wound angles, those kind of things in relationship the firearms” (pages 211-212). Hayes was familiar with all the contents of Exhibit No. 2 (page 213) as he compiled it (RP November 3, page 4); Hayes obtained a similar revolver in size, weight and construction as that found on Ronda Reynolds’ forehead (page 221); Hayes then performed recoil dynamics testing to determine if it was physically possible for the handgun to come to rest on Ronda’s forehead after being shot through a pillow with her hands under the blanket (page 219; Ex. 2, Tab 54); he also conducted some sound tests to determine whether someone 15 feet away would stay asleep when a .32 Rossi handgun was fired in an enclosed area (page 219); he did some tests to compare what happens to a pillow used to muffle the sound of a handgun, as the photos of Ronda’s pillow didn’t look to him as consistent with a handgun having muffled the sound (page 219; Ex. 2, Tab 56)).

Expert Hayes also testified—

I have viewed all the photographs that I have shown the jury, and I had viewed the photographs of the gun on the forehead and the position of the pillow as it appeared to have been peeled back away from the head, and the first thing I saw was, well the pillow was over the top of the gun which was resting on her forehead, and, then, the gunshot was down through the pillow, and just from a logic standpoint I thought this really couldn't occur that the gunshot could go through the pillow then somehow make its way underneath the pillow to rest on her forehead.

Then, with my knowledge of recoil dynamics, I also knew that the gun would not recoil forward to the forehead, but instead recoil backwards . . . (RP November 3, 2009, page 47).

Expert Hayes gave his opinion that “it is inconceivable that she could have shot herself with her right hand and have the gun recoil forward and come to rest on her forehead as described by the different officers” (page 60) and “the physical evidence is inconsistent with the gunshot having been fired by her own hand” (page 64).

Jeffrey Reynolds is a forensic pathologist. His expert report and credentials are part of the record (CP 19-21; Exhibit 2, Tab 60). Doctor Reynolds testified (RP November 9, 2009, beginning at page 3) among other subjects, that— his opinion of Ronda Reynolds' death differs from the determination of “suicide” on her death certificate

(page 8, line 18); “. . . the way the gunshot wound is inflicted that makes it highly unlikely that it’s a self-inflicted gunshot wound, and then you have an altered death scene, because there’s no way to do that – for her to do that” (page 12, line 11); because the brain is required for muscle activity, the instant the bullet enters the brain respiration ceases and all muscles relax, so “. . . there’s no way to have—drop the gun and put your hands under the covers. . .” (page 12, lines 2-16); from the absence of gunshot residue on Ronda’s hand Dr. Reynolds concluded that “it wasn’t holding the firearm” (page 32, line 22 – page 33, line 4); if someone had fired a firearm and there’s no fingerprint of that person on the firearm, there’s a conflict because there should be fingerprints on the firearm (page 32, lines 5-18); his opinion, based upon a reasonable medical scientific probability, was “. . . it would be highly unlikely or improbable that this was a suicide . . .” (page 33, lines 10-17; Exhibit 2, Tab 60); additionally, while husband Ron Reynolds reported that he saw Ronda alive right before he went to sleep, she would have been dead earlier as established by her dual pattern of lividity (page 22, lines 7-17); and the time interval between death and the 911 call would have to be

probably six hours for there to be the fixed lividity as present on Ronda (page 34, line 20, through page 35, line 7).

Wilson did not call any witnesses (RP November 9, 2009 page 50) and he did not testify.

#### D. Instructions and Special Verdicts

Following the completion of presentation of evidence, the trial court gave the following Instruction No. 6 (CP 297):

##### Court's Instruction No. 6

When the cause of death of a person is determined to be through a gunshot wound to the head, the manner of that death may be: (1) the intentional intervention of a third person, (2) accident, (3) suicide or (4) undetermined.

The law presumes that the manner of death is not suicide. However, a legal presumption is not factual evidence; and neither the jury, nor the Coroner, is bound by that presumption, if the factual evidence, after honest and due consideration, proves that more likely than not the manner of death was in fact suicide and not one of the other possibilities. (CP 297).

The trial court did not give the following instruction, Petitioner's Proposed No. 4 (CP 262; exception, RP November 9, 2009, page 13), which would have allowed the jury to consider whether or not the death of Ronda Reynolds was probably "homicide":

##### Petitioner's Proposed Instruction No. 4

“Suicide” is the act or instance of intentionally killing oneself. It is the deliberate termination of one’s existence by one’s own hand. It is the taking of one’s own life.

“Homicide” is the killing of one human being by the act, procurement or omission of another human being. It is the act of a human being in taking away the life of another human being. (CP 262).

Nor did the trial court did give Thompson’s requested “Special Verdict Form,” Petitioner’s Proposed Instruction No. 18 (CP 281-282):

Petitioner’s Proposed Instruction No. 18

QUESTION 1: Was the respondent coroner’s determination that “suicide” was the manner and cause of Ronda Reynolds’ death accurate?

\* \* \*

QUESTION 2: Was the manner and cause of Ronda Reynolds’ death probably “homicide?”

Thompson’s counsel made the following oral argument:

What my fear here, judge, is that if the jury comes back and says it was inaccurate and we pretty much end it there, then, the next question is well what if it’s appealed or something and the Court of Appeals said would they have done and it goes to relief, at someplace at some point ask the Court to mandate do something that says okay certificate has been declared inaccurate now let’s go a step further to see whether or not relief including directing that somebody change it to homicide. I’m thinking the Court of Appeals may not know what the jury is thinking and that’s why I include the question of homicide. I

think those are our exceptions and objections. (RP November 9, 2009, page 17).

The jury was instructed and given two special verdicts to answer (CP 309-312).

Special Verdict Form One (CP 309-310) was crafted to address Coroner Wilson's "suicide" determination based upon what information was available to him up to the date of his meeting with Thompson on April 17, 2008, and answered by the jury:

QUESTION 1: Was the Lewis County Coroner's determination that RONDA REYNOLDS' death was a suicide an accurate determination on April 17, 2008?

ANSWER: NO

QUESTION 2: Do you find that the Lewis County Coroner's determination of suicide, more likely than not, was not an accurate determination?

ANSWER: YES

QUESTION 3: Do you find that the Lewis County Coroner's determination of suicide was arbitrary and capricious?

ANSWER: YES

Special Verdict Form Two (CP 311-312) was crafted to address Coroner Wilson's "suicide" determination based upon what information was available up to the date of the special verdict on November 10, 2009:

QUESTION 1: Was the Lewis County Coroner's determination that RONDA REYNOLDS' death was a suicide an accurate determination?

ANSWER: NO

QUESTION 2: Do you find that the Lewis County Coroner's determination of suicide, more likely than not, was not an accurate determination?

ANSWER: YES

QUESTION 3: Do you find that the Lewis County Coroner's determination of suicide was arbitrary and capricious?

ANSWER: YES

Outside the presence of the jury while it was still deliberating, Thompson again requested that the trial court submit the question of "homicide" to the jury by using "Special Verdict Form 3" (CP 288), which was essentially identical to Petitioner's Proposed Instruction No. 18 (CP 281-282).

Counsel for Thompson argued:

It's the request that a special verdict form number 3 be given, in the event that the jury comes back and says the coroner's determination was inaccurate. I've outlined the reasons in my brief [CP 283-286] . . . and the big concern I have, your Honor, is just that it could be that we need to know what the jury was thinking, was it homicide or suicide, when we get to the relief aspects of what do we do with a determination that it was inaccurate (RP November 10, 2009, page 29).

The proposed Special Verdict Form 3 was rejected and not given to the jury (RP November 10, 2009, pages 29-31).

Judgment on Verdicts One and Two was entered by the trial court on January 8, 2010 (CP 378-379).

#### E. Findings of Fact and Conclusions of Law Rejected

The trial court declined to make any Findings of Fact and Conclusions of Law based upon the trial evidence (proposed Findings and Conclusions, CP 323-327; RP January 8, 2010, page 8), and also rejected Thompson's proposed "Supplemental Judgment on Verdicts One and Two" (proposed Supplemental Judgment, CP 328-330), the entry of which would have been to establish that, following judicial review, the death of Ronda Reynolds was probably caused by the intentional intervention of a third person, i.e., a "homicide." While Thompson cited authority for the trial court to do so (CP 313-320), the trial court reasoned "I don't think I have power or authority to make a judicial decision regarding the cause of death, nor can I mandate somebody to find a specific cause of death" (RP January 8, 2010, page 7). The trial court reasoned—

Now the prevailing party [Thompson] is asking the Court to enter a judgment based on those jury verdicts and/or if the

court considered it only an advisory jury, to enter findings of fact and conclusions of law. Back when a jury was first requested I granted the plaintiff's request for a jury, but I reserved ruling whether the jury would be advisory or simply a fact-finding body. We never addressed it again and, as a consequence, I've just treated the jury as a fact finder in this case. (RP January 8, 2010, pages 3-4).

\* \* \*

I'm not going to make independent findings and conclusions, I'm simply going to say that the jury was the fact-finding body here and not treat them as an advisory jury but as the fact finders. (RP January 8, 2010, page 8).

#### F. Post-Trial Proceedings

After the jury trial, Thompson also requested the trial court to issue a writ of mandamus to coroner Wilson to correct and re-certify the death certificate to remove "suicide" as a "true fact" and to certify "homicide" as the "true fact" (CP 317-318; CP 343-354).

As an alternative, anticipating that Wilson would refuse to reconsider Ronda's death as anything other than suicide (CP 359; CP 377), Thompson asked the trial court to appoint the prosecuting attorney as an alternate to re-determine the cause of death and to certify that "suicide" is not the "true fact" but that "homicide" is the "true fact" upon authority of *State ex rel. Murray v. Shanks*, 27

Wn.App. 363, 618 P.2d 102 (1980) and RCW 70.58.170, cited therein (CP 318-319; CP 354-356).

Lewis County Prosecuting Attorney Michael Golden had appeared in the case on behalf of Wilson shortly after it was filed (CP 7, “Notice of Appearance” dated August 24, 2006; CP 385, “Notice of Appearance” dated October 8, 2008). While the Lewis County Prosecuting Attorney had already appeared in the case, as an alternative, Thompson asked the court to enter a citation to the prosecutor to appear and show cause why he should be ordered to re-determine the death and certify that the “true fact” of Ronda Reynolds’ death was “homicide” and not “suicide” (CP 331). This requested remedy has not been denied by the court, but depends upon the outcome of a writ of mandamus directed to coroner Wilson:

. . . so it seems to me that the first thing to do would be to issue a peremptory writ to the Lewis County coroner to change the death certificate and recertify the cause of death.

Now, should he refuse to do that, then we come to another step where the Court could issue an alternative writ of mandate for the prosecuting attorney to show cause why he shouldn’t appear and perform the Coroner’s duties if the Coroner refused to follow the court order, and we could also address whether contempt would be appropriate. (RP January 8, 2010, page 5).

The trial court stated that the writ of mandamus to coroner Wilson “will mandate that he change the death certificate, that he redetermine the cause of death of something other than suicide” (RP, January 8, 2010, page 6).

Thompson had prayed for costs and “reasonable” attorney fees (CP 5) and asked for such an award following the trial CP 356). The trial court found that Thompson was the prevailing party and would be awarded “all statutory costs that would ordinarily be awarded to the prevailing party,” but requested additional legal authority as to whether or not Thompson qualifies for reasonable attorney fees.” (RP January 8, 2010, pages 8-9).

A hearing was on January 29, 2010, for the presentation of a proposed writ of mandamus to be directed to coroner Wilson. Thompson submitted legal arguments why the writ should specifically mandate that coroner Wilson recertify the death of Ronda Reynolds as “homicide.” (CP380-388). Thompson also submitted for consideration by the trial court the sworn declaration of the jury foreperson dated January 12, 2010, (CP 405-406) which states in relevant part—

I was the jury foreperson in Lewis County Superior Court No. 06-2-01044-1, which deliberated and rendered verdicts on November 10, 2009.

The jury was polled in open court after the verdicts were read. The jury was unanimous that Ronda Reynolds' death was not suicide.

The jury was not specifically instructed or asked to determine whether the jury found the death of Ronda Reynolds was homicide.

However, during deliberations, we voted on how many jurors thought the death of Ronda Reynolds was homicide, and the vote was unanimous that it was in fact homicide as proven by the trial evidence.

The juror declaration (CP 405-406) was offered to support Thompson's requests for relief following the jury verdicts (CP 309-312) and judgment (CP 378-379). The juror declaration was also filed to become additional information for coroner Wilson to consider when re-certifying Ronda Reynolds' manner of death ("Supplemental Memorandum In Support of Writ of Mandate to Coroner," CP 380-402; RP January 29, 2010, page 6, line 16, through page 7, line 21). The juror declaration was *not* offered to support any claim of juror misconduct, nor to support a motion for new trial, as Wilson misunderstood and erroneously argued when he asked the court to

strike the declaration (CP 407-409), nor to impeach the jury verdicts (RP January 29, 2010, page 6).

While the trial court did “strike” the jury foreperson’s declaration (CP 429-430), the order did not seal the declaration, nor declare it meaningless. (RP January 29, 2010, page 10). While it may be that the trial court simply did not consider the declaration when formulating the writ of mandamus directed to coroner Wilson, the court nevertheless stated—

. . . I am going to issue a writ of mandate that the Coroner change the death certificate and remove the designation of suicide. . . it would be clearly improper and reversible error for me to order the Coroner change this, change the death certificate to a particular thing like homicide, even if the jurors were of a mind based upon the evidence that was presented at the hearing to determine the accuracy of the coroner’s determination finding it inaccurate and arbitrary, that homicide was what they would have found based upon the evidence that they saw. (RP January 29, 2010, pages 13-14).

#### G. Writ of Mandate to Coroner Wilson

The trial court entered an order and writ of mandate to coroner Wilson (CP 413-415) commanding him to (1) reconsider all information and evidence available to him, including the trial testimony and exhibits, (2) change the death from “suicide” because a jury found that determination to be inaccurate, (3) re-determine the

manner of Ronda's death, but not as a "suicide," unless new evidence is received not already considered by the jury and that new evidence outweighs the evidence relied upon by the jury. (See CP 413-425 for specific language of the writ).

Wilson did not comply with the writ of mandamus, but filed his notice of appeal on February 2, 2010 (CP 412). Thompson filed her notice of cross-appeal on February 3, 2010 (CP 418).

On February 4, 2010, the Court of Appeals, Division Two, granted a stay of the Lewis County Superior Court order and writ of mandate.

### III. Respondent Thompson's Answer to Wilson's Argument

#### A. Trial Court Did Not Err in Interpreting RCW 68.50.015

Thompson argues that the trial court did not err in interpreting RCW 68.50.015 to the extent it set the joined causes for jury trial *de novo* and entered a narrow writ of mandamus, (although, as argued in her cross-appeal, the trial court was too narrow and restrictive in its interpretation and in granting appropriate post-trial relief).

## B. History and Purpose of RCW 68.50.015 vis-a-vis Mandamus

Prior to the 1987 enactment of RCW 68.50.015, there was no specific statute providing for judicial review of the accuracy of a coroner's determination of manner and cause of death. Before that enactment, aggrieved family members attempting to question the findings of a coroner generally utilized the special proceeding for issuance of a "writ of mandamus."

For example, in *State ex rel. Lopez-Pacheco v. Jones*, 66 Wn.2d 199, 401 P.2d 841 (1965), a father sought a writ of mandamus to compel the Spokane County coroner to call a coroner's jury to inquire into the cause of death of his son. The petition was dismissed because the coroner's *exercise of discretion* to not call an inquest was not "arbitrary and capricious." A writ of mandamus was the only legal mechanism then available for a family trying to question a coroner's determination.

A somewhat similar case is *Vanderpool v. Rabideau*, 16 Wn.App. 496, 557 P.2d 21 (1976), where a petition was filed for a writ of mandamus to compel the Franklin County coroner to change a death certificate from "suicide" to "accidental" or "undetermined."

While the coroner's determinations in that case were subject to judicial review, they were not found to be arbitrary and capricious.

In *State ex rel. Murray v. Shanks*, 27 Wn.App. 363, 618 P.2d 102 (1980), a widow sought a writ of mandamus to compel the Spokane County coroner to change the cause of death on her deceased husband's death certificate from "suicide" to "accidental." The trial court granted summary judgment of dismissal, but the Court of Appeals reversed and remanded because *there was a factual question* whether or not the coroner, in refusing to consider evidence, was acting arbitrarily and capriciously.

Then, in *Gould v. Reay*, 39 Wn.App. 730, 695 P.2d 126 (1984), a widow sued King County Medical Examiner Reay for the *tort* of negligence, claiming that the coroner was careless and incompetent in his performance of the autopsy of her husband, and was negligent in signing the death certificate, which indicated the manner of death was suicide. She claimed she suffered severe pain and suffering as a result of the examiner's negligence. The trial court concluded that the coroner was immune from liability. The Court of Appeals reversed the judgment, holding that determinations of the medical examiner

were not shielded by sovereign immunity. The case was remanded for trial on the theory of negligent determination of the manner of death.

RCW 68.50.015 was enacted after the decision in *Gould v. Reay*, 39 Wn.App. 730, 695 P.2d 126 (1984). (See CP 16-18, EHB 590 Joint House/Senate Conference Report). The enactment of RCW 68.50.015 thenceforth provided immunity from claims of liability for pain and suffering resulting from the coroner's determination of manner and cause of death. But, further, RCW 68.50.015 codified that the accuracy of the determination of the cause and manner of death is subject to "judicial review."

In considering EHB 590, the state senate heard several speakers, one of whom was Mike Redman from Washington Association of Prosecuting Attorney's, who said in part (see transcript hearing, CP 61-71)—

. . . let me make clear that we are not in this amendment seeking to remove the authority of somebody to question the accuracy of the coroner's call—um—the determination of a death as a suicide, accident or homicide. That has important implications for insurance companies and others, but if a loved one feels that's a bad call, and they want to challenge it judicially—Hallelujah—how a public official makes a decision ought to be able to justify that decision, and if it takes a litigation to get a judge to pass on it, fine and dandy . . .

Following the thread of cases beginning with *State ex rel. Lopez-Pacheco v. Jones*, (1965) and ending with *Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149 (2008), and with the 1987 enactment of RCW 68.50.015 based upon *Gould v. Reay* (1984), it is clear that the purpose of RCW 68.50.015 is for an aggrieved family member to have the true and correct cause and manner of death directly and finally determined in court, without the need to challenge a coroner's exercise of discretion or process.

#### C. Harmonization of RCW 68.50.015, Mandamus and Case Law

*Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149 (2008), does not hold that RCW 68.50.015 repealed or precludes RCW 7.16.160 writ of mandamus actions, nor that Thompson must elect between the two causes of action, nor that both causes may not be joined, nor did that opinion reverse or overrule any of the prior cases of mandamus against coroners.

There is a two-part process in this case, which has necessarily joined RCW 68.50.015 "judicial review" and RCW 7.16.160 mandamus: first must be the resolution of whether or not "suicide," among the other means of death by gunshot, was the accurate

determination of manner of death; and second, then what to do about the inaccurate determination of suicide, as certification requires the “true” manner of death, i.e., the “true fact” of manner of death. (See Ex. 1 attachments, for form of death certificate Affidavit for Correction, asking for the “true fact”).

Wilson argues that the jury should have been instructed that a coroner need only “certify the cause of death according to his or her best knowledge and belief.” As a practical matter, it appears as if Wilson deliberately chooses to ignore the evidence in this case for the sole purpose of supporting his “suicide” determination, intentionally blinding himself from the true fact of “homicide,” claiming such results in his “best information and belief.” Recall that *Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149 (2008), affirmed that Wilson *refused to meet* with Thompson *despite* repeated attempts (at page 811), and assertions that Wilson was *deceptive* and *misleading* are verities in this case (at page 814). Further, Wilson announced he would *not* attend the full trial (RP October 2, 2009, page 4, line 24) and thus *did not avail himself* of all the evidence and expert opinions regarding Ronda Reynolds’ death and, as the jury unanimously found, Wilson has acted “arbitrarily and capriciously” in this case.

The jury unanimously found Wilson to have acted “arbitrarily and capriciously” in both special verdicts. A writ of mandamus to Wilson is clearly appropriate. In *State ex rel. Lopez-Pacheco v. Jones*, 66 Wn.2d 199, 401 P.2d 841 (1965), the writ would have been issued had the coroner been found to have been arbitrary and capricious; in *Vanderpool v. Rabideau*, 16 Wn.App. 496, 557 P.2d 21 (1976), a writ would have been issued had the coroner been found to have been arbitrary and capricious. In *State ex rel. Murray v. Shanks*, 27 Wn.App. 363, 618 P.2d 102 (1980), it appears the coroner was going to be found arbitrary and capricious on remand and a writ would have been proper. And, in *Taylor v. Reay*, 61 Wn.App. 141, 810 P.2d 512 (1991), as reflected in the jury verdicts in that case, petitioner there did not prove that the respondent medical examiner acted arbitrarily and capriciously (CP 363-367). Thus, in each of the above cases, a writ of mandate would have been issued against a county coroner had it been found that the coroner or medical examiner was arbitrary and capricious.

What is significant in this case of *Thompson v. Wilson* is that this is the first Washington case where the coroner has actually been

found “arbitrary and capricious.” A writ of mandate to Wilson is proper following judicial review pursuant to RCW 68.50.015.

#### D. Evidence and Determination of Manner of Death

Wilson had not *finally* fulfilled his statutory duties until after he met with Thompson pursuant to RCW 68.50.105, as mandated by *Thompson v. Wilson, supra*. His statutory duty to *determine* and certify the cause and manner of death was not complete until after his meeting on April 17, 2008. While it may have been too much for Thompson to hope and trust that Wilson would consider all the evidence with an open mind and make a determination conforming to the overwhelming evidence of homicide, he might have done so. Instead, his *final* determination after the meeting on April 17, 2008, was “suicide.”

The purpose of RCW 68.50.015 is to determine the “accurate” and “true” manner of Ronda Reynolds’ death, which is a factual determination. Instruction No. 11 (CP 303) defined “accurate” as meaning “to be exact, conforming to fact, errorless, correct, true, actual, right, and definite.”

The trial court submitted the question of “accuracy” to the jury, instructing that “It is your duty to decide the facts in this case based upon the evidence presented to you during this trial.” (Instruction No. 1, CP 290). The jury was then presented with live testimony and other overwhelming evidence that the death of Ronda Reynolds was not suicide, but homicide (Ex. 2; Instruction No. 8).

Wilson argues that the accuracy of his determination must be based upon only the evidence considered as of the last date he signed a piece of paper, i.e., the death certificate. Suppose he chose to only consider *some* of the available evidence, or intentionally *ignored* that which did not support his *predetermined* conclusion, or that he *closed his mind or office* to the receipt of additional information? The RCW 68.50.015 question “Is the coroner’s determination of suicide accurate?”, that is, “Is it correct to state that Ronda killed herself?” would still have to be answered as of the date the question was asked and answered, not as of the date he closed his mind and office and signed off as if “case closed.”

Moreover, the trial witnesses and experts essentially verbally and visually presented their reports and opinions, all contained in Exhibit 2. That same Exhibit 2 contained what Wilson chose to use or

ignore in arriving at his determination of manner of death. The trial court did not abuse its discretion in admitting Exhibit 2.

#### E. Coroner Was Arbitrary and Capricious, and Mandate Proper

There is sufficient evidence that Wilson— who did not attend the death scene, did not attend the autopsy, did not talk to the lead homicide detective on the case, who refused for years to meet with the deceased’s family to discuss the autopsy findings until mandated by litigation, who refused to give any weight to conflicting evidence pointing to homicide, who elected to not attend the trial and avail himself of evidence and witnesses, and whose own report was wrong on essential facts such as *the bullet being shot through the pillow* into Ronda’s head while both her hands were covered— was arbitrary and capricious in both process *and* result.

Thompson requested that coroner Wilson be ordered to correct and re-certify the death to (a) remove from the death certificate “suicide” as a “true fact” and/or (b) certify on the death certificate that “homicide” is the “true fact.” The wording “true fact” is how the death certificate form itself characterizes a corrected. (See Attachments to Ex. 1—“Affidavit for Correction . . . The record is

incorrect or incomplete as follows: The record now shows: 7.\_\_\_\_\_.  
The true fact is: 8.\_\_\_\_\_)”).

Since filing her petition, Thompson has asserted that judicial review and mandamus each provide a cause of action and process by which she can attain the relief sought. Moreover, Thompson maintains that proper application and completion of RCW 68.50.015 judicial review *and* RCW 7.16.160 mandamus, *as joined here*, are clearly adequate and afford the remedies sought and provide sufficient authority for the court to direct the exercise of discretion, including a mandate that the manner of death be certified as homicide.

Thompson seeks to have the “true” and “accurate” fact of homicide certified as the manner of Ronda’s death under to RCW 68.50.015, which *Thompson v. Wilson, supra*, at page 819, holds is “an adequate remedy at law.” However, if RCW 68.50.015 alone does not allow the finder of fact to consider homicide or certify homicide, i.e., the “true fact,” then it may not be “a plain, speedy and adequate remedy in the ordinary course of law” and a writ of mandamus “must” issue. *Thompson v. Wilson, supra*, at page 815.

Consider the trial court’s interpretation of RCW 68.50.015 as being a *process of elimination*: the coroner found “suicide” and a

petition for judicial review was filed and jury trial held, which eliminated “suicide” after more than ten years following Ronda’s death. The coroner may next find and certify “undetermined,” which will prompt yet another petition for judicial, jury trial and the elimination of another inaccurate determination of manner of death after several more years. Wilson, found to be deceptive, misleading, arbitrary and capricious, may even next find “natural cause” or “accident” as manner of death, and, although the investigation has been closed (Testimony of Berry, RP November 2, 2009, page 129), the coroner might delay even more, certifying the death is “pending investigation” (See CP 390-392, Medical Examiners’ and Coroners’ Handbook on Death Registration, “37. Manner of Death.”).

Thompson’s petition prayed that the coroner certify, whether voluntarily or by mandate, the true and accurate manner of Ronda Reynolds’ death. Until the erroneous and inaccurate “suicide” death certification is corrected to contain the “true fact,” it still remains as the legally accepted cause and manner of death under RCW 70.58.180. The jury foreperson’s declaration, which Thompson asserts was erroneously stricken, is relevant to the mandate to certify the “true fact.”

#### IV. Respondent and Cross-Appellant's Argument

##### A. Failure to Instruct and Submit "Homicide" Verdict

By not submitting the question of "homicide" to the jury, the trial court did not finish the "judicial review" proceeding contemplated by RCW 68.50.015, and by not having a jury verdict or court finding of homicide, the trial court has limited and restricted itself from mandating pursuant to RCW 7.16.160 that the coroner (or prosecuting attorney) re-determine and certify the "true fact" of "homicide," or restricted itself from correcting the certificate.

Further, the jury was instructed to consider four separate possible means of death by gunshot—(1) intentional intervention of a third person [i.e., homicide], (2) accident, (3) suicide or (4) undetermined. The jury should have been fully instructed to deliberate and decide which of those is the true and exact manner by which Ronda died, the purpose of RCW 68.50.015. Rather, the trial court essentially instructed the jury to eliminate suicide or not as one of those means. Surely the Legislature did not intend that a RCW 68.50.015 petition be filed after elimination of each erroneous and inaccurate certification until the coroner certifies the one manner supported by the evidence.

The trial court twice denied Thompson's proposed Special Verdict Form 3, which would have submitted the factual question of "homicide" to the jury for resolution. The trial court reasoned that RCW 68.50.015 did not authorize that question to be submitted to the jury. If so, the trial court should have resolved the question by making a finding of fact, particularly knowing that post-trial remedial relief was also being sought through RCW 7.16.160 mandamus.

This RCW 68.50.015 "judicial review" cause was joined for trial with an RCW 7.16.160 mandamus cause. Mandamus is a remedial action, necessarily applied to specific facts and circumstances. Its proper application by the superior court depends upon particular circumstances and facts, as should have been found and completed during RCW 68.50.015 judicial review, whether by special jury verdict or the court's findings and conclusions.

#### B. Failure to Make Findings of Fact and Conclusions of Law

If the trial court would not allow the jury to resolve the factual question of homicide, there is ample legal authority requiring the trial court to have resolved the question of what was the true manner of Ronda Reynolds' death.

CR 39 (a) (1) provides in relevant part that . . . “The trial of all issues so demanded shall be by jury, unless . . . (B) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.”

CR 39 (c) provides in relevant part that . . . “In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury . . .”

RCW 4.40.070 provides in relevant part that “Every other issue of fact *shall* be tried by the court . . .” (*Emphasis added*).

CR 52 (Decisions, Findings and Conclusions) provides in relevant part as follows: “(a) (1) *Generally*. In *all* actions tried upon the facts without a jury or with an advisory jury, the court *shall* find the facts specially and state separately its conclusions of law.” (*Emphasis added*).

The jury found that it is not accurate nor correct to call the death of Ronda Reynolds “suicide.” There was no evidence presented at trial that the death was “accidental” or “natural,” nor were those arguments made. The death was clearly not “undeterminable,” as the overwhelming evidence proved that the death was a “homicide,” and

neither party argued that the manner of Ronda's death could not be determined. In fact, the jury foreperson confirmed the death was found to be a homicide. (CP 389).

CR 52 (a) discusses the requirement of findings of fact and conclusions of law, and states "Judgment *shall* be entered pursuant to rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law." (*Emphasis added*).

While *Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149 (2008), is a case of first impression, and while RCW 68.50.015 does not set forth every detail of procedure, other jurisdictions have addressed procedures in similar circumstances. *Hoelt v. Hennepin County*, 754 N.W.2d 717 (Minn. App. 2008) (affirming that state legislature has authority to enact statute to challenge the accuracy of the death certificate in court); *Perez v. Cleveland*, 78 Ohio St. 376, 678 N.E.2d 536 (1997) (statute allows court to direct coroner to change his decision as to cause and manner and mode of death; "every detail regarding the procedural enforcement" of the statute need not be contained in statute; "Courts are well equipped to determine and appropriate procedures to employ in hearing a cause of action."); *Brook v. Foret*, 314 So.2d 542 (LA App. 1975) (discusses a statute

similar to Ohio statute); and *Sullivan v. Waukesha County*, 218 Wis.2d 458, 578 N.W. 596 (1998) (state supreme court charged the trial court with making a factual determination about the actual manner and cause of death).

### C. Mandate to Prosecuting Attorney

In *State ex rel. Murray v. Shanks*, 27 Wn.App. 363, 618 P.2d 102 (1980), a widow sought a writ of mandamus to compel the Spokane County coroner to change the cause of death on her husband's death certificate from "suicide" to "accidental." Coroner Shanks had expressed opinions that she would never find a death caused by automobile carbon monoxide poisoning to have been an accident, regardless of the evidence. The trial court granted summary judgment of dismissal, but the Court of Appeals reversed and remanded because there was a factual question whether or not the coroner, in refusing to consider evidence, was acting "arbitrarily and capriciously." From reading the appellate opinion, it appears that the coroner would likely have been found arbitrary and capricious because she was predisposed to conclude that all deaths from automobile carbon monoxide were suicides.

*Murray v. Shanks*, at page 368 states—

If Dr. Shanks is found to have a predetermined bias as to the cause of death in carbon monoxide cases, the court in its discretion may appoint the prosecuting attorney as an alternative official to redetermine the cause of Mr. Murray's death. RCW 70.58.170.

In other words, if Dr. Shanks was found to be arbitrary and capricious, the trial court could appoint the prosecuting attorney as an alternative official to re-determine the cause and manner of death.

(See CP 369-373, trial pleadings in *Murray v. Shanks*, Spokane Superior Court No. 79-2-00071-4, following appeal, where Spokane County Prosecuting Attorney, who was not a party to that action, was appointed following appeal to re-determine the death).

Here, Wilson has been found by two special verdicts to have acted “arbitrarily and capriciously.” The trial court could have and should have appointed the Lewis County Prosecuting Attorney as the alternative official to re-determine and re-certify the manner of death of Ronda Reynolds under authority of *Murray v. Shanks, supra*.

#### D. Costs and Reasonable Attorney Fees

In her prayer for relief (CP 5) Thompson asked for an award of costs and reasonable attorney fees as provided by such statutes as RCW Chapters 4.84. and 7.16.

RCW 4.84.010, *et seq*, provide that the prevailing party be awarded costs.

RCW 4.84.350 provides as follows—

Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of any agency action fees and other expenses, including reasonable attorney fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

RCW 68.50.015 is “judicial review.” Wilson is a government entity (Instruction No. 2, CP 293) and a public officer (Instruction No. 13, CP 305). Wilson was found to have acted arbitrarily and capriciously, which he is not allowed to do (Instruction No. 5, CP 296), and which is defined as “willful and unreasoning action, in disregard of facts and circumstances (Instruction No. 12, CP 304).

Thompson is the prevailing party in this action, and a prevailing party is to be awarded expenses, including reasonable attorney fees,

for opposing a frivolous defense. RCW 4.84.030, RCW 4.84.185. Surely Wilson, who is reported in *Thomspon v. Wilson, supra*, as having been deceptive and having made misleading assurances, and how was found by the jury to be inaccurate, arbitrary and capricious, has been frivolous in asserting his defense to this action wherein he didn't even regularly attend, did not testify, did not call any witnesses, and yet still refuses to comply with the writ of mandate.

#### V. Conclusion

Thompson asks the appellate court to (1) direct the trial court to consider whether the manner of Ronda Reynolds' death was "homicide," to make and enter findings of fact and conclusions of law and enter judgment thereon, and correct the death certificate accordingly upon its own authority under RCW 68.50.015, and also, should the coroner or prosecuting attorney refuse to do so; (2) direct the trial court to issue a writ of mandamus to coroner Wilson to specifically correct and remove the determination that Rhonda Reynolds' manner of death by gunshot was "suicide," and to re-determine and certify the manner of death as "homicide;" (3) direct the trial court to issue a writ of mandamus to the Lewis County

Prosecuting Attorney as an alternate official to specifically correct and remove the determination that Rhonda Reynolds' manner of death by gunshot was "suicide," and to re-determine and certify the manner of death as "homicide"; (4) vacate the order "striking" the jury foreperson's declaration so that the trial court, coroner and prosecuting attorney may consider the same before and when making findings and re-determining and re-certifying the manner of Ronda Reynolds' death; (5) remanding the case to the trial court for a new jury trial if there is no other way to consider and resolve the question of whether or not the manner of death was "homicide" and re-certify the same; and (6) for an award of costs and reasonable attorney fees to Thompson as prevailing party.

June 25, 2010.

Respectfully submitted,



Royce Ferguson 5879  
Attorney for Respondent and  
Cross-Appellant Thompson

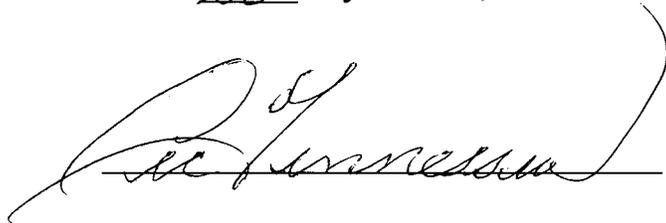
Royce Ferguson  
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2931 Rockefeller Avenue  
Everett, WA 98201-4019



The undersigned swears under penalty of perjury under the laws of the State of Washington that on this day she mailed, U.S. postage prepaid, a true and correct copy of revised "Brief of Cross-Appellant Thompson (RAP 10.30)" addressed to

John E. Justice  
Attorney at Law  
Law, Lyman, Daniel, Kamerrer, et al  
P. O. Box 11880  
Olympia, WA 98508-1880

Dated and signed at Everett this 25 day of June, 2010.

A handwritten signature in black ink, appearing to read "John E. Justice", written over a horizontal line. The signature is cursive and includes a large, sweeping flourish that extends upwards and to the right.