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NO. 405318

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOHN H. WRIGHT, a married man,

Appellant,

vs.

DAVE JOHNSON INSURANCE, INC, a
Washington Corporation, DAVID L.
JOHNSON and BEVERLY M. JOHNSON,
husband and wife,

Respondents.

BRIEF OF RESPONDENTS

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INTRODUCTION

The Respondent, Dave Johnson Insurance, Inc. is a Washington Corporation that does business as an insurance agency in Grays Harbor County.

The owners of that business are Respondents David L. Johnson and Beverly M. Johnson, who are husband and wife, residing in Grays Harbor County.

The Respondents will be variously referred to as “Johnson” or “the employer,” or “the Corporation.”

The Appellant, John H. Wright, is a married man, residing in Grays Harbor County.

He is the son-in-law of the individual respondents Johnson, and was an employee of the Respondent Johnson Corporation.

The Appellant Wright will be referred to as “Wright” or “the employee.”

Johnson hired his son-in-law Wright in 1998, with the hope and intention that Wright would become an integral part of the insurance agency business and would ultimately succeed to ownership of the business.

During the early years of this relationship, Wright was compensated generously for his services and his compensation was increased often and generously, to the point where Wright was being paid one-half of the profits of the business.

To further the dream of succession, the parties entered into a "Buy and Sell Agreement" that would allow Wright to purchase the stock of the corporation in the event of the death or incompetency of Johnson. That agreement contemplated the likelihood that life insurance proceeds might well be necessary to fund the buyout, but there was no requirement for insurance.

At about the same time, but in a separate transaction, Johnson transferred his existing life insurance policies to Wright, to be used in funding the “Buy and Sell Agreement” if Johnson died.

As time wore on, Wright became a troublesome and difficult and unproductive employee and the relationship between the two men deteriorated. Ultimately, Wright was reduced in responsibility to an employee. This unhappy situation culminated in the resignation of Wright in 2005.

Since the “Buy and Sell Agreement” was no longer in effect, Johnson sought return of the valuable life insurance policies on his own life. Wright insisted that they were a “gift” and refused to return them.

Johnson also sought the return of other miscellaneous items that Wright had retained after leaving the company. All requests by Johnson were summarily refused by Wright.

Finally, Johnson was forced to file a lawsuit to effect return of the insurance policies and the other items.

In response, Wright filed a massive and detailed counterclaim, alleging that he had been lured away from a lucrative job by the promise of full partnership in the Johnson insurance agency, and claiming substantial amounts of damages for the income that he lost and for salary as business manager and for “the promised fifty percent of all profits” and for “dental and vision and medical coverage” and for “fifty percent” of all commissions, and for “...breach of contract, fraud, promissory estoppels, detrimental reliance, unjust enrichment and quantum meruit.”

At trial, the issues were narrowed to the question of the return of the insurance policies, and to Wright’s multiple claims for damages raised in his counterclaim.

The Court found that the insurance policies were not a gift.

The Court found that the clear and only purpose in transferring the policies from Johnson to Wright was to provide a vehicle for financing the purchase of the stock under the “Buy and Sell Agreement.”

The Court found that the policies should be returned to Johnson, but that Johnson should reimburse Wright for any premiums that had been paid while Wright held the policies.

The Court also found that the multiple counterclaims of Wright were “without merit” and “without basis.”

Now, in a sprawling, convoluted attack, Appellant Wright challenges essentially every aspect of the trial court proceeding, including:

- Attacking virtually every finding of fact and conclusion of law made by the Court, alleging that the findings are not supported by the evidence, or are not supported by “sufficient” evidence and repeating the arguments previously made to, and rejected by the Trial Court.
- Attacking another Judge’s ruling in a discovery dispute prior to trial that is not claimed to have affected the trial or the outcome in any way;
- Attacking yet another Judge’s refusal to grant a Summary Judgment prior to trial, where the other Judge determined that there were factual issues to be determined (again, not claiming that this affected the trial or outcome in any way);
- Attacking the Trial Court’s calculation of the offsetting amount owed to Wright for his payment of premiums while he held the policies, by claiming that the Court should have used the *statutory interest rate* to figure interest, rather than a “real world” rate that the Judge used to reflect the actual cost of money advanced.

**ASSIGNMENTS OF ERROR AND ISSUES
PERTAINING TO ASSIGNMENTS OF ERROR, AS
RAISED BY APPELLANT**

In his Assignments of Error and Issues Relating to
Assignments of Error, Appellant has raised the following
issues and claims:

ISSUE #1: CLAIM: THE TRIAL COURT “RE-WROTE”
THE AGREEMENT BETWEEN THE PARTIES

ISSUE #2: CLAIM: THE TRIAL COURT IGNORED
THE STATUTORY INTEREST RATE

ISSUE #3: CLAIM: THE TRIAL COURT DID NOT
HAVE AUTHORITY TO AWARD COSTS TO THE
PREVAILING PARTY

ISSUE #4: CLAIM: TRIAL COURT DID NOT HAVE
AUTHORITY TO AWARD COSTS AND FEES UNDER
RCW 4.84.185

ISSUE #5: CLAIM: FINDING OF FACT #4 IS NOT
SUPPORTED BY THE EVIDENCE

ISSUE #6: CLAIM: FINDING OF FACT #5 MIS-
STATES THE FACTS

ISSUE #7: CLAIM: FINDING OF FACT #6 IS
“IRRELEVANT AND IMPROPER”

ISSUE #8: CLAIM: FINDING OF FACT #7 IGNORES NATURE OF BUY AND SELL

ISSUE #9: CLAIM: FINDING OF FACT #8 IS "BASED UPON A DISTORTION"

ISSUE #10: CLAIM: FINDING OF FACT #11 IS NOT SUPPORTED BY THE RECORD

ISSUE #11: CLAIM: FINDING OF FACT #12 IS NOT SUPPORTED BY THE RECORD

ISSUE #12: CLAIM: CONCLUSION OF LAW #2 REFLECTS FINDINGS OF FACT 7 & 8

ISSUE #13: CLAIM: CONCLUSION OF LAW #3 REFLECTS FINDINGS OF FACT 7 & 8

ISSUE #14: CLAIM: CONCLUSION OF LAW #4 IS "ERROR"

ISSUE #15: CLAIM: CONCLUSION OF LAW #5 IS "ERROR"

ISSUE #16: APPELLANT OBJECTS TO CONCLUSION OF LAW #6

ISSUE #17: APPELLANT OBJECTS TO CONCLUSION OF LAW #7

ISSUE #18: APPELLANT OBJECTS TO CONCLUSION OF LAW #8

**ISSUE #19: CLAIM: THE COURT ERRED IN
COMPELLING RESPONSES TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION**

RESPONDENTS' STATEMENT OF THE CASE

Factual Background

In April of 1998, the Employee Wright was hired by the Johnson as an employee. (RP [Johnston] 62-68)

From April of 1998 to June of 2005, the Employee Wright worked as an employee of the Corporation and was compensated in a manner that the Court found to be very generous. (RP [Johnston]70-74) (RP [Prante]311-313)

On August 20, 2001, all of the parties entered into an agreement entitled "BUY AND SELL AGREEMENT OF DAVE JOHNSON INSURANCE, INC." This agreement provided for certain rights of succession for the Employee Wright in the event of the death or incompetence of the individual Respondent David L. Johnson. This agreement provided that it could be funded by life insurance. This agreement also provided that the agreement would become null and void if the Employee

Wright ceased employment with the Respondent Corporation. (RP [Johnston] 77-80)

The Employer David L. Johnson transferred certain Life Insurance Policies to the Employee John Wright, for the single purpose of funding the Buy-Sell buyout in the event of the death of the Employer David L. Johnson. The purpose of the parties in transferring the life insurance policies from Mr. Johnson to Mr. Wright was to provide a vehicle to be utilized by the Employee Wright to enable him to buy the insurance agency in the future, in the event of the death of the Employer Mr. Johnson. The purpose of the parties in transferring the life insurance policies from the Employer Mr. Johnson to the Employee Mr. Wright was not simply to make a gift of the policies. (RP [Johnston] 81-87)

By the beginning of 2005, the relationship between the parties had deteriorated badly. (RP [Johnston] 88-89)

On March 29, 2005, the Corporation and the Employee Wright entered into an agreement entitled “EMPLOYMENT AGREEMENT.” This agreement provided for certain duties of the Employee Wright as an employee and agent of the Corporation. This agreement provided that the agreement could be terminated by either party. This agreement required the Employee Wright to return all property owned by the Corporation after termination of employment. (RP [Johnston] 90-94)

On June 20, 2005, the Employee Wright resigned as an employee of Corporation. His resignation was accepted by the Corporation. (RP [Johnston] 92)

Despite repeated demands by the Employer, the Employee failed and refused to return the policies of life insurance on the life of individual Plaintiff David L. Johnson to the Employer and refused to sign the necessary

documents to transfer record ownership of those policies to the Employer. (RP [Johnston] 98-100)

Among other things, Wright eliminated Johnson's access to Johnson's grandchildren as "punishment" for Johnson's perceived violations of Wright's wishes. Accordingly, Johnson has been unable to visit with his grandchildren for over five (5) years. (RP [Johnston] 88-89)

Procedural Background

Finally, Johnson and the Corporation were forced to commence this action against Wright to recover the insurance policies and other items that Wright took from the business. (CP 1-4)

In an extensive counterclaim, the Employee Wright claimed that he had been tricked and defrauded and induced to come to Washington to work for the Employer,

by fraudulent promises of David L. Johnson. Wright claimed that he did not receive what he was promised by David L. Johnson and the Corporation, and sought substantial damages from Johnson. (CP 5-12)

After a bench trial, (RP [Johnston] 35-196 [Prante 164-317]) the Court made extensive oral and written findings, denying the counterclaims of the employee Wright and requiring the return of the insurance policies, but providing for reimbursement to the employee Wright for premiums he had paid while the policies were in his possession. (RP[Prante] 308-317) (CP 274-280).

Judgment was entered accordingly. (CP 281-284)

In a post-judgment proceeding pursuant to RCW 4.84.185, the Court found that the defenses and affirmative claims of Wright were frivolous and advanced without reasonable cause, and required the non-prevailing party to

pay the attorney fees and costs of the prevailing party. (RP
[Prante] 334-337)

SUMMARY OF ARGUMENT

- (1) Each of the Findings of Fact and Conclusions of Law is well-supported by the evidence received at trial and by well established law.
- (2) The Appellant is really not challenging the *sufficiency* of the evidence; but rather is challenging the weight and meaning of the evidence, disagreeing almost 100% with the findings of the Court. That is not a basis for reversal.
- (3) The Court did not “re-write” the agreement of the parties. The Appellant mis-understands the relationship between the “Buy and Sell” agreement and the transfer of the stock...they are

independent of each other and one does not “re-write” the other.

- (4) The argument of Appellant relating to the interest rate is specious. The Court used a “real world” analysis of the cost of money to determine the offset to be paid to Appellant. Using the statutory interest rate was certainly not required by any law or legal authority. To the contrary, it would have been unrealistic and unfair to the parties.
- (5) The Trial Court’s ruling on the applicability of RCW 4.84.185 was totally consistent with the statute and with the *Verharen* case, the Supreme Court’s latest take on the statute. It was also eminently reasonable under the facts of this case.

ARGUMENT

In the review of a Bench trial, the role of the Appellate Court in reviewing questions of fact, is to determine whether substantial evidence exists to support the trial court's findings. *Nichols Hills Bank v. McCool*, 104 Wn.2d 78, 82, 701 P.2d 1114 (1985); *Ridgeview Properties v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231(1982).

“Substantial evidence” in this context is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *Holland v. Boeing Co.*, 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978); *Nichols*, at 82; *Ridgeview*, at 719.

In virtually every single allegation of insufficient evidence advanced by the Appellant, counsel argues the *meaning* of the evidence advanced or argues the *weight* of

the evidence advanced, ignoring the fact that it is the duty of the Trial Court to analyze and weigh the evidence and come to conclusions about the facts.

“RE-WRITING THE AGREEMENT”

The first issue raised by Appellant is that the trial court did not have the authority to write into the parties’ agreement that the defendant transfer ownership of the life insurance policies to the plaintiff upon termination of the defendant’s employment. This issue actually mis-states what the Trial Court ruling was: The Trial Court found that the parties had an understanding that the insurance would be a vehicle to facilitate the operation of the buy and sell agreement. Factually, the Court found:

“There was basically no other way for him to obtain this...insurance company other than through a vehicle, and that vehicle was to be life insurance. And so therefore assuming it was just a gift that was not connected to this is an insult to the intelligence of the Court. So

the objective manifestation of the language, the extrinsic evidence of common sense, logic, and the testimony surrounding the heart condition, the availability of insurance, the financing available to Mr. Wright, et cetera, there is absolutely no other conclusion that a rational, logical person could come up with that that was the purpose of the insurance policy.” (RP 314-315

The Court didn't re-write the agreement, it factually found that the insurance was a way to implement the agreement that was in favor of the Employee Wright. This claim is not only a factual determination, the Appellant has mis-characterized the finding of the Trial Court, and is presenting a totally frivolous issue on appeal.

Appellant supports this portion of his argument with citations to *Hearst Communication, Inc. v. Seattle Times Co.*, 154 Wn.2d. 493, 115 P.2d. 262 (2005) and *Oliver v Flow Int'l Corp.*, 137 Wn.App. 655, 155 P.3d. 140 (2006), holding those cases up for the proposition that the

subsequent gift of the insurance policies could not “re-write” the “Buy and Sell Agreement” to provide that the insurance policies must be used to fund the purchase of the stock in the event of Dave Johnson’s death. Appellant has it backwards...the Court did not decide, and the Respondents did not argue, that the Buy and Sell Agreement required the use of the insurance policies. As the agreement stood, Wright could have borrowed the money, won the money in the lottery or held up a bank to get the money...it didn’t matter, and the agreement did not speak to that issue, except to say that insurance *might* be necessary to fund the agreement.

What the Court in this case found, and what Johnson argued, was...that in a completely different transaction, Dave Johnson transferred the insurance policies to Wright to be used if the Buy and Sell Agreement reached fruition. The Buy and Sell Agreement

stood alone, on its own strength. But the two parties had a separate agreement that the policies would be used – if needed – to fund the Buy and Sell Agreement. This is the exact opposite of the holdings in *Hearst* and *Oliver*, which deal with extrinsic evidence that arguably changes or modifies an existing agreement. Here, we don't say that the transfer of the policies changes any of the terms of the Buy and Sell Agreement. Rather, a new agreement has arisen that *enables* Wright to use the policies for that purpose, and that purpose only. This notion is not foreign to Washington law. In *Barber v. Rochester*, 52 Wn.2d 691, 328 P.2d 711 (1958), our Supreme Court repeated the oft-cited language:

“People have the right to make their agreements partly oral and partly in writing, or entirely oral or entirely in writing’ and it is the court’s duty to ascertain from all relevant, extrinsic evidence, either oral or written, whether the entire agreement has been incorporated

in the writing or not. That is a question of fact.” *Barber*, at page 698.

See, also *Ban-Co Inv. Co. v Loveless*, 22 Wn. App 122, 587 P.2d 567 (1978); *Diel v. Beekman*, 1 Wn.App 465, P.2d 212 (1970); *Black v. Evergreen Land Developers, Inc.* 75 Wn.2d 241, 450 P.2d 470 (1969); *Dix Steel Co. v. Miles Const., Inc.* 74 Wn.2d 114, 443 P.2d 532 (1968).

“IGNORING THE INTEREST RATE STATUTE”

The second issue raised by the Employee Wright is that the trial court did not have the authority to “ignore” the interest rate set forth in RCW 19.52.010 and apply a “blended” rate. Again, this is a frivolous issue. RCW 19.52.010, reads in part:

“Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties...”

The situation that faced the Trial Court was not a formal loan or forbearance of money with no agreement

as to the interest rate, as contemplated by the statute.

Rather, this was a situation where the Court was trying to fashion a remedy, consistent with the facts presented, involving funds that were expended by one party over a period of time. The Court was attempting to put the parties back in the respective places they would have been, were it not for the misconduct of the Appellant Employee. In other words, the Court was trying to restore the parties to the situation that it found was the intent of the parties; namely, if the Appellant Employee had not wrongfully retained the insurance policies and paid the premiums, what would his situation be? Answer: He would receive the money he paid back, plus he would receive reimbursement for the interest he could have earned on that money. In order to accomplish that, counsel for the Respondent Employer provided information to the Court on what kind of interest a person

could have expected to earn on that money during the applicable time frame. NOT WHAT THE STATUTORY INTEREST RATE WAS...rather, what he would have earned on his money at the then current interest rates. Counsel for the Employer Johnson even went to the trouble of presenting a 'blended" interest rate that reflected what the Appellant Employee would have actually earned on his money.

The undersigned counsel presented an affidavit to the Trial Court regarding this matter and argued the issue to the Trial Court at (RP 321-322). Inexplicably, our affidavit [with a critical letter between counsel attached] ON THIS VERY ISSUE, was omitted from the "Clerk's Papers.' The affidavit and attachment were filed with the Trial Court Clerk on February 22, 2010, but not included in the "DESIGNATION OF CLERK'S PAPERS by opposing counsel after this appeal was filed. The Affidavit and the attached letter were attached to our Motion on the Merits and are attached as an appendix to this brief. We apologize to the Court for not noticing that this critical document had been excluded from the

Clerk's Papers...we had no reason to expect that Counsel would not include in his Designation of Clerk's Papers a document relevant to one of the primary claimed errors in this case.

The situation that confronted the judge was entirely different from what the interest statute contemplated. As can be seen from the materials supplied by Counsel to the Court (and now attached to this Brief), the Judge was trying to put together a solution that fairly reflected the interest rate that would have been earned by Appellant Employee, during the time that he had advanced funds to pay the life insurance premiums. It had nothing to do with what the "statutory interest rate" was, and the exercise that the Court adopted had nothing to do with a "...loan or forbearance of money, goods, or thing in action..."

The suggestion that this action by the Trial Court Judge was subject to the interest rate statute is frivolous and has been advanced in this appeal without reasonable

cause. The fact that the critical document was withheld from the appeal underscores the questionable and frivolous nature of this claim on appeal.

FRIVOLOUS CLAIMS AND DEFENSES

A further issue raised by Appellant Employee is that the Trial Court did not have the authority to award costs and fees to the Employer Johnson under RCW 4.84.185.

Appellant Employee argues that his defenses to the claims were not frivolous because he prevailed on some peripheral issues. Appellant Employee also argues that Washington case law does not support the Trial Court's decision, citing *Biggs v. Vail*, 119 Wn.2d 129, 830 P.2d 350 (1992).

Appellant's position on this issue is – in itself – frivolous. As he did in the Trial Court when this issue was argued, counsel for the Appellant Wright cited *Biggs I*, but

failed to cite the successor case, *Biggs II* and the progeny of those two cases, the *Verharen* case. [*Biggs II* is *Biggs v. Vail*, 124 Wn2d 201, 876 P.2d 448 (1994); *Verharen* is *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 969 P.2d 64 (1998)] The *Verharen* case is the Supreme Court's latest take on RCW 4.84.185. The Court discussed the earlier cases and clearly indicated that the standard for determination of when the statute applies is not as narrow as set forth in the earlier cases.

In fact, the Appellant Employee also cites the *Truong v Allstate* case from Division One of the Court of Appeals [the case is actually mis-cited in their brief...it's *Truong v. Allstate*, 151 Wn. App. 195 (not 430), 211 P.3d 430 (2009)]. That case stands for this proposition, which is consistent with *Biggs II* and *Verharen*:

“An award of fees under RCW 4.84.185 may be made against a party when the action, *viewed in its entirety*, cannot be supported by any rational argument on the law or facts.”

(Emphasis supplied)
Truong, at page 207, citing
Skimming v.Boxer, 119 Wn.
App.748, 83 P.3d 707 (2004)

Here, the Trial Court made a thorough review of the issues, facts, and law relating to the RCW 4.84.185 issue, and found that this action was clearly frivolous. (RP 334-337) It was so frivolous, and so full of “deceitfulness” and “dishonesty” and “false testimony” that the Court was moved to say:

“ I believe that our system is based upon the premise that you have parties that come into a Court of * * * law with meritorious positions and they come to the court to ask for an honest, neutral decision from a detached magistrate. And I stress the words honest, meritorious

positions. That's not what I saw happening in this case. This case should never have been in a courtroom. * * * And I am not the greatest crossword puzzle person in the world but when I said things like vindictive and vituperative, I meant it. And I know what those words mean and I observed it in this courtroom."

INSUFFICIENT EVIDENCE

The Appellant Employee Wright claims that the Findings of Fact and Conclusions of Law to which he objected were not supported by sufficient evidence.

Finding of Fact Number 4 states that Defendant Wright's counterclaims are "without factual basis". Wright argues that there is not sufficient evidence to support this finding.

Once again, the Appellant Employee Wright disagrees with the factual findings of the Trial Judge, and presents that as a reason to reverse the decision. It is

almost laughable that his Brief contends that there are insufficient facts to support the Finding, yet the Brief spends nearly two pages reciting the multiple facts and extensive testimony on these issues.

Again, it's not that the facts and evidence don't support the Findings, it's simply that the Appellant did not agree with how the Trial Court interpreted the facts and applied the law.

BUY & SELL AGREEMENT (1)

As his next issue, Appellant Employee Wright identifies Finding of Fact Number 5, which states, in part, that the "Buy and Sell" agreement provided for "rights of succession" to ownership of the insurance agency; Appellant Employee argues instead that the "Buy and Sell" simply provided an "option" for Defendant Wright to purchase the insurance agency under certain conditions.

Demonstrating again the lack of substance to this appeal, this contention is nothing more than a semantic parsing of the language to attempt to create an appealable issue where none exists. No statement is even offered as to how this hair-splitting distinction might affect the outcome of the case. This is a frivolous claim of error.

EMPLOYMENT AGREEMENT

Finding of Fact Number 6 states that the “Employment Agreement” “required the Employee Wright to return all property owned by the Employer Johnson after termination of employment.” Appellant Employee argues, as his next issue, that the “Employment Agreement” did not have this provision, and that any findings regarding the “Employment Agreement” are irrelevant and improper. Appellant Employee further states that the “Employment Agreement” was

unenforceable due to lack of consideration, as argued in their Motion for Summary Judgment.

It can't be stated any more simply how frivolous this contention is. The "Employment Agreement" in its Paragraph 12 does in fact require the return of all materials belonging to the Corporation.

Their claim that it was unenforceable as shown by their Motion for Summary Judgment is interesting...**BUT they lost that Motion for Summary Judgment!** It was denied (by yet another Judge) in a letter memorandum of October 14, 2009 and in an Order entered on October 21, 2009.

BUY AND SELL AGREEMENT (2)

Finding of Fact Number 7 states various assertions regarding the alleged purpose and intent of the transfer of the life insurance policies. Appellant Employee's next issue raised is that the Court ignored the fact that the "Buy

and Sell” agreement was only an option. The extensive argument in their brief demonstrates conclusively how factual this issue is. They claim the finding “distorts testimony,” ...and they blame the Court and opposing Counsel for being involved in this “distortion” of the testimony “...during the course of the trial.” (Appellant Brief, Page 40). The Brief goes on to recount Counsel’s interpretation of various bits of testimony, but ignores the clear findings of the Trial Court in the oral decision he rendered.

This issue is plainly controlled by factual determinations made by the Court.

TRANSFER OF THE LIFE INSURANCE POLICIES

Finding of Fact Number 8 makes assertions regarding Appellant Wright’s position as to the purpose of the transfer of the life insurance policies. Incredibly,

Appellant Employee argues that this Finding is based on a distortion of Employee Wright's position regarding the purpose of the transfer, and that the idea of a gift is not "totally illogical." Of course, the Court found, as a matter of fact, the exact opposite in conjunction with an elaborate discussion of the Court's findings regarding the nature of the transaction.

This is plainly factual and supported by ample evidence.

RETURN OF OTHER PROPERTY

Appellant Employee's next issue raises claims that there was no evidence from the trial to support Finding of Fact Number 11, which states that "claims for the return of certain property owned by the Plaintiff Corporation to the Plaintiff Corporation, including valuable artwork and foreign language programs have been resolved outside this

lawsuit, and those claims are not before this Court.”

Employee Wright further asserts that the Employer Johnson abandoned these claims during the course of the trial and failed to present any information regarding them, further stating that this was most likely because they were “totally baseless and completely unsupported from a factual and legal perspective.”

As pointed out above, it was established AT THE OUTSET OF THE TRIAL *by both counsel* that these issues were resolved. Yet, counsel for the Employee Wright continues to refer to and raise these issues as if they had some significance. They do not. This argument is frivolous.

USE OF CORPORATE “POINTS”

Appellant Employee’s next issue deals with Finding of Fact Number 12, “The use by Defendant Wright, without

permission or authorization from any of the plaintiffs, to use corporate 'points' after his resignation have been resolved outside this lawsuit, and those claims are not before this Court." Wright argues, again, that the Respondent Johnson and his counsel simply abandoned the claims (as if that made any difference).

As pointed out above, it was established AT THE OUTSET OF THE TRIAL by both counsel that these issues were resolved. Yet, counsel for the Appellant Employee continues to refer to and raise these issues as if they had some significance. They do not. This argument is frivolous.

SPECIFIC RESPONSES TO EXCEPTIONS TO CONCLUSIONS OF LAW

CONCLUSION OF LAW #2

Appellant Employee raises an objection to Conclusion of Law Number 2, which states that the purpose of the transfer of the life insurance policies was to provide a way for Employee Wright to buy the insurance agency in the future, in the event of the death of Mr. Johnson. This is a re-hash of the arguments advanced in ISSUES 8 & 9...the issues are plainly factual and are supported by substantial evidence, discussed at length by the Court in its oral decision. This Conclusion of Law flows directly and logically from the facts found by the Court.

CONCLUSION OF LAW #4

Appellant Wright states that Conclusion of Law Number 4, which requires Appellant Wright to deliver to Plaintiff Johnson any documents relating to the life insurance policies and to sign documents to transfer ownership of the policies to Plaintiff Johnson is “error.” No argument is made in support of this allegation, except to refer the reader to earlier portions of their brief, which are mis-identified. This is a re-hash of the arguments advanced in previous issues...the issues here are plainly factual and are supported by substantial evidence, discussed at length by the Court in its oral decision. This Conclusion of Law flows directly and logically from the facts found by the Court.

CONCLUSION OF LAW #5

The fifteenth issue raised by Appellant Employee relates to Conclusion of Law Number 5, which deals with the interest charged to Employer Johnson for reimbursement of interest on payments made by Employee Wright on the life insurance policies. No argument is made in support of this allegation, except to refer the reader to earlier portions of their brief, which are misidentified. This is the same frivolous issue discussed in “ISSUE #5” *supra*. This Conclusion of Law flows directly and logically from the facts found by the Court.

CONCLUSION OF LAW #6

Appellant Employee objects to Conclusion of Law Number 6, which states that the Counterclaim is “without

merit” and “without basis” and that “there is no claim.”
No argument is made in support of this allegation, except
to refer the reader to earlier portions of their brief, which
are mis-identified.

CONCLUSION OF LAW #7

Conclusion of Law Number 7 awards taxable costs to
Employer Johnson. No argument is made in support of
this objection, except to refer the reader to earlier portions
of their brief, which are mis-identified. This is apparently
the specious argument that the Respondent Employer was
not actually the prevailing party, which was answered
fully in “ISSUE #7”

CONCLUSION OF LAW #8

Appellant Employee claims that Conclusion of Law
Number 8, which states that the Court will enter a

judgment consistent with the terms of the Findings of Fact and Conclusions of Law was in error for "... the reasons stated in [his] brief..." Those reasons are not enumerated nor are they supported by citation...another example why this appeal is clearly frivolous.

CONCLUSION OF LAW #9

The final issue raised by Appellant Employee is that the trial court erred in compelling the Employee to answer "contention interrogatories" and other interrogatories and to provide documents pertaining to those interrogatories. Employee claims that the Trial Court was requiring a "dress rehearsal" of the trial. Appellant Employee further claims that error was made by the Trial Court when it required discovery responses regarding "the loan that has been taken out against the insurance policies in question", because the loan was "irrelevant."

This issue is the one that best illustrates the frivolity and lack of good faith in the appeal presented to this Court by the Appellant Employee. One only needs to read the transcript of the hearing at RP 23-34 on October 15, 2009 to see how counsel for the Employee Appellant was evading the duty to make full disclosure as required by the Civil Rules. The Judge (by the way, this was a different Judge than the one that presided at trial) was forced to go through each interrogatory to compel the party to respond.

The present complaints about the validity of what the Judge did are further illustration of the bad faith that has pervaded this lawsuit. Ironically, the very case that the Appellant Employee relied on to shield him from routine discovery is the same case that holds that the Trial Court has broad discretion in reviewing and enforcing a discovery dispute. *Weber v Biddle*, 72 Wn.2d 22, 431 P.2d

705 (1967). See also *Teratron General v. Institutional Investors Trust*, 18 Wn. App 481, 569 P.2d 1198 (1977).

Most significantly, Appellant Employee does not offer or suggest one negative result of the Judge's ruling that impacted the trial. Counsel repeats the mantra that the information compelled by the Judge was "irrelevant" but there is no allegation of harm or negative consequences. There is no statement or proof or allegation that the sound decisions of another Judge regarding discovery in any way influenced the outcome of the trial.

CONCLUSION

Virtually every assignment of error involves an obvious issue of fact or is clearly controlled by existing case law. In at least one of the assignments of error, there is outright mis-statement of the facts and issues.

In this appeal, Appellant Employee did nothing more than catalog his claims, and then repeatedly dispute the findings and conclusions of the Trial Court, without establishing legal or factual bases for the many objections. In effect, the Appellant Employee has asked this Court to reverse the Trial Court simply because he disagrees with the Trial Court's findings and decision.

Appellant's presentation here in the Court of Appeals is as empty as the presentation at trial, which moved the Trial Court to declare that:

“This case should never have been in a courtroom.”
(RP 336)

REQUEST FOR AWARD OF ATTORNEY FEES AND COSTS

Respondents request an award of attorney fees and costs pursuant to RAP 18.1, based on the provisions of RCW 4.84.185.

This appeal consists of Appellant's counsel disagreeing with the findings and conclusions of the Trial Court, and couching those disagreements in language that is at odds with the record taken as a whole.

For example, Appellant declares that Findings of Fact Numbers 4, 5, 6, 7, 8, 11, 12 are "...not supported by sufficient evidence..." yet the brief of Appellant devotes many pages refuting the facts that Appellant disagrees with by arguing about what the evidence was and what the evidence means. Appellant repeatedly confuses the concept of

“sufficiency of the evidence” with the concept of “meaning of the evidence.”

As with every other part of this appeal, and as with every other part of the proceeding below, the Appellant is simply driven by what the Trial Court referred to as “...petty, vituperative, vindictive, spiteful, deceitful behavior.” (RP 313)

In its ruling on the award of attorney fees, the Trial Judge heard the same arguments that are being made in this appeal with reference to the frivolous proceeding statute, and said:

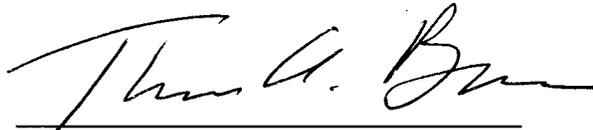
“The statute applies because a trial court judge observed it happening in that case and that courtroom. And that’s what I saw and that’s what I heard.” (RP 336)

That same standard should apply here, and attorney fees and costs should be awarded pursuant to RCW 4.84.185.

Respondents ask that the Court of Appeals affirm the Trial Court in all respects, and impose an award of costs and attorney fees against the Appellants.

Dated: March 14, 2011

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Thomas A. Brown". The signature is written in a cursive style with a horizontal line underneath it.

Thomas A. Brown WSBA #4160
Brown Lewis Janhunen & Spencer
Bank of America Building #501
P.O. Box 1806
Aberdeen, WA 98520
(360) 532-1960
Counsel for Respondents Johnson

APPENDICES

1. AFFIDAVIT OF THOMAS A. BROWN: RE
Interest Rate, dated February 4, 2010 (with attached
letter dated February 4, 2010)
2. Court's Ruling of November 5, 2009
3. Court's Ruling of March 29, 2010

APPENDIX #1

**AFFIDAVIT OF THOMAS A. BROWN RE: INTEREST
RATE (with attachment), dated February 22 2010**

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

DAVE JOHNSON INSURANCE, INC., a
Washington Corporation; DAVID L.
JOHNSON and BEVERLY M.
JOHNSON, husband and wife,

Plaintiffs,

vs.

JOHN W. WRIGHT, a married man,

Defendant.

No.: 06-2-01073-2

AFFIDAVIT OF THOMAS A. BROWN
RE INTEREST RATE

STATE OF WASHINGTON)
) SS
GRAYS HARBOR COUNTY)

THOMAS A. BROWN, being first duly sworn upon oath deposes and says:

My name is Thomas A. Brown. I am one of the attorneys for the Plaintiffs herein.

On February 4, 2010, I caused to be hand delivered the attached correspondence to Mr. Damasiewicz, the attorney for the Defendant in this matter. This correspondence was in response to his letter of November 9, 2009, where he set out his figures for any interest that

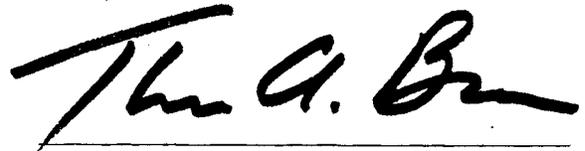
COPY

1 might be payable to Defendant Wright for his payments on the life insurance.. Mr.
2 Damasiewicz proposed that Plaintiff Johnson should pay the "legal/judgment interest rate."

3
4 I ordered a transcript of the Court's Ruling in this matter, and it is my belief that the intent of
5 the Court was that the parties should agree on a "real world" interest rate, such as that which
6 would be paid for a loan from a bank, or interest earned from a savings account. We have
7 proposed that a blend of the "prime rate" and the "federal funds rate" would be a rate that
8 would be fair to both parties. Under this interest rate, the total interest payable would be
9 \$3,641.98. This amount is more consistent with what Defendant Wright would have earned
10 had the money been in a savings account.
11

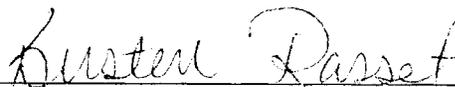
12
13 Our proposal is that Plaintiff Johnson pay \$27,293.63 for principal and \$3,641.98 in interest,
14 for a total of \$30,935.61, with a \$2.50 *per diem* after March 1, 2010.
15

16 Dated: February 22, 2010

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THOMAS A. BROWN, WSBA #4160

22 SUBSCRIBED AND SWORN to before me on February 22, 2010.

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NOTARY PUBLIC in and for the State
of Washington residing at Hogiam
Printed Name: Kristen Rasset
My Commission Expires: 1/20/2014

BROWN LEWIS JANHUNEN & SPENCER

THOMAS A. BROWN
ABERDEEN OFFICE
CURTIS M. JANHUNEN
ABERDEEN OFFICE
DOUGLAS C. LEWIS
MONTESANO OFFICE
MICHAEL G. SPENCER
ABERDEEN OFFICE

A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
BANK OF AMERICA BUILDING
101 EAST MARKET STREET, SUITE 501
POST OFFICE BOX 1806
ABERDEEN, WASHINGTON 98520
(360) 533-1600 OR 532-1960
FAX (360) 532-4116

MONTESANO OFFICE
101 SOUTH MAIN STREET
POST OFFICE BOX 111
MONTESANO, WASHINGTON 98563
(360) 249-4800
FAX (360) 249-6222

February 4, 2010

Jeffrey A. Damasiewicz
Phillips Krause & Brown
Attorneys at Law
104 East Market Street
Suite 525
Aberdeen, WA 98520

[HAND DELIVERY]

Re: Dave Johnson Insurance, Inc. v John H. Wright
Grays Harbor County Cause No. 06-2-01073-2
Our file No. 06-182-B

Dear Mr. Damasiewicz:

This letter is in response to your letter of November 9, 2009, regarding the interest issue.

We have made a careful analysis of your letter and of the Judge's decision.

In our opinion, there is a fundamental flaw with the method you used to calculate the interest that would be owing under the Judge's ruling:

We do not believe that the Judge contemplated that interest would be paid at the "legal/judgment interest rate" as set forth in your letter. Rather, we believe that the Judge contemplated a rate that would be reflective of "real world" interest rates at the time charged. In order to do that, we looked both at the "prime rate" and the "federal funds rate." At the "prime rate" the interest through February 1st would be \$5,338.30; at the "federal funds rate" it would be \$1,945.66. In fairness to both parties, we used a blended rate and came up with \$3,641.98. This is more consistent with what Mr. Wright would have earned on his money if it had been invested or deposited in a bank.

Under this scenario, the amount owing would be \$27,293.63 for principal (the amount paid by Mr. Wright); and \$3,641.98 interest through February 1, 2010.

I will incorporate this into our proposed Findings and Conclusions, which I will provide to you next week.

Cordially,

Thomas A. Brown

TAB:ms

cc: Dave Johnson

COPY

APPENDIX #2

COURT'S RULING

November 5, 2009

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF GRAYS HARBOR

DAVID JOHNSON & BEVERLY JOHNSON,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 06-2-01073-2
)	
JOHN WRIGHT,)	(COURT'S RULING)
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE GORDON GODFREY

- November 5, 2009 -

Grays Harbor County Courthouse
Montesano, Washington

A P P E A R A N C E S

FOR THE PLAINTIFF:	MR. THOMAS BROWN ATTORNEY AT LAW
FOR THE DEFENDANT:	MR. JEFFREY DAMASIEWICZ ATTORNEY AT LAW

REPORTED BY: CARMAN PRANTE, CCR (#2513)
OFFICIAL COURT REPORTER
GRAYS HARBOR SUPERIOR COURT
102 W. BROADWAY, #203
MONTESANO, WA 98563

EXCERPT OF PROCEEDINGS

- November 5, 2009 -

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5 THE COURT: Certainly. Certainly. I am actually
6 very - I guess I should say, I'm never happy when I have to
7 take work home. But in light of the fact that this has gone
8 on for three days, I'm very happy to tell you that I was
9 able to read every document, go through my notes, review the
10 testimony of the witnesses, got here early this morning,
11 read a lot more notes, and sat and listened to the testimony
12 of the witnesses. I can tell you as a trial judge and
13 having done what I've done over a number of years in
14 litigation, that the arguments of counsel are always
15 persuasive, but most of all courts are persuaded by the
16 evidence, the witnesses, and rational, logic and common
17 sense.

18 The issues before this Court with all of this
19 evidence and the myriad of evidence boils down to two
20 matters in my opinion: One is whether or not this insurance
21 policy was part of a buy-sale agreement or was it a gift;
22 and/or number two, whether or not on the counterclaim the
23 defendant is - or the - Mr. Wright - always hate using the
24 term "defendant" when you address someone making a
25 counterclaim - whether or not Mr. Wright is due and owing to

1 sums that he alleges are owed him for promises for enticing
2 him to move to the State of Washington from Louisiana,
3 undertake employment, and that he has been deprived of these
4 matters.

5 In making these rulings you have to take a look at
6 all of the testimony and the evidence in this matter. When
7 we look at this, the fact that - I don't know how to term it
8 any different than I am faced with a lot of oxymorons in
9 this case. Arriving at an office, that I'm led to believe
10 on behalf of Mr. Wright that the office of this insurance
11 company was basically nonfunctional and without him he
12 needed to come and make sure that this became a
13 profit-making business. And yet, this business had been in
14 existence basically from 1984. And then the insurance
15 business, as the testimony indicated that Mr. Fournier, who
16 Mr. Johnson had been in business with, they were out buying
17 other insurance companies and these two split.

18 I would note that there is a lot of question about
19 records and things of this manner regarding claims for
20 profits and things of this mat - situation and I've heard,
21 and I would like to make this up front understood, that
22 while they didn't give us records and they're non-existent
23 or they have been destroyed. Well, you can go in to an
24 insurance office, I assume, or go into anybody's computers
25 here and wipe them out, but that doesn't prevent you from

1 getting a hold of insurance carriers, banks, and other
2 businesses and records and obtaining those records. And I
3 don't have those type of records in front of me, nor has it
4 been demonstrated to me that they were sought. And people
5 refuse to do that, we have a process to enable that to
6 happen, it's called a subpoena.

7 When I listen to this whole matter, I would like to
8 point out - and for the record, that this really comes down
9 to me an issue of credibility and intent of the parties.
10 And it's not very often that I have to be placed in this
11 situation where when I look at what I've got here that - a
12 good for instance is Document 23, that we don't know who
13 prepared it. But I'm reminded of Alberto Gonzalez, I don't
14 recall. I have sat and read all of this and listened to
15 this and it is somewhat akin to a cathartic Greek play. And
16 it is truly unfortunate that this is happening in a family
17 setting. Very, very unfortunate. This situation, when it
18 comes down, there is no question in my mind from the
19 objective manifestation of the language of the buy-sale
20 agreement that the purpose of this life insurance was a
21 vehicle to be utilized by Mr. Wright to enable him to buy
22 this insurance company in the future. It was not a gift.
23 It was an instrument as indicated to purchase the company
24 upon the death or demise of the plaintiff, Mr. Johnson.

25 When I take a look at this, and I'm being told about

1 being enticed to come up here and what we have forgone and
2 everything else, I have to take a look at the testimony
3 again.

4 We are dealing with a defendant who indicates that
5 his work history for the prior 15 years, discharged from the
6 army 1983, went to the evangelical ministry in Lacey,
7 Washington church '87, and staff with the Washington public
8 caucus and chief of staff in '89, helped a gentleman run for
9 congress, then he was chief of staff - excuse me - run for a
10 government office then run for Congress, both of which is
11 1992; MGT America, traveled around the country, then he sold
12 real estate in Olympia, and then in 1996 we are now dealing
13 with - da, da, da.

14 So over that some 13 year history, when I sit down
15 and count, there's upwards of - of seven to ten jobs in
16 here. And lo and behold in 1997 the father-in-law, who is a
17 partner in an insurance company that has been in existence
18 or been a part of since 1984 calls him up and offers him a
19 job in the very same state, down the road from the ministry
20 in Lacey, from the Olympia government job, et cetera. He
21 makes promises of employment, and as indicated by the
22 evidence, I can afford \$3,000 a month, I'm buying him out
23 and we're going to be paying you more. And that happened.
24 It happened. You take a look at the income records there,
25 it was nothing but a continual increase over and over and

1 over of income for Mr. Wright.

2 Was this insurance a gift? Let's go back and listen
3 to the testimony. And I have to begin by stating when I
4 start looking at the issues of this case, this matter - and
5 I am referring basically - I am being asked to believe by
6 the defendant basically, Trust me. I was given a gift by a
7 gentleman, who's a liar, a cheat, a thief, who perpetuated
8 in criminal behavior, and out of nowhere he gave me a life
9 insurance policy, it was a gift. The same person who has
10 cheated him over and over and over out of money? Totally
11 illogical.

12 Then I have to note when I come down to issues of
13 credibility. This record is - is replete with petty,
14 vituperative, vindictive, spiteful, deceitful behavior. If
15 one wishes to go to credibility when we come in here, let's
16 take a look at some of the things that were said.
17 Mr. Wright testified he did not withhold his children, that
18 Mr. Johnson was uninvited to his home. Yet under oath his
19 wife said that John told her that he told Dave there was to
20 be no contact with the kids, he never consulted me. Taking
21 kids away was the only leverage he had. Totally
22 contradictory.

23 Then you take a look at the issue regarding
24 Ms. Debbie Miller, testimony today, that she was basically
25 timid, that she was given - coming to him, that she would

1 never stand up to Dave, she would never confront Dave, she
2 was timid. Take a look at the letter to the insurance
3 commissioner, which I believe if I'm not mistaken may be
4 Document Number 11. Page 6, She confronted Mr. Johnson
5 continuously. She would verbally and emotionally contend
6 with him both publicly, in the office, et cetera, et cetera.
7 This timid creature, whom I'm led to believe in written form
8 to the insurance commissioner, timid to him, in black and
9 white. No, totally different person. Totally contradictory
10 and affects the credibility. And it is basically continuous
11 throughout the testimony I have heard. And as indicated,
12 this lying, cheating, fraudulent thief that has been turned
13 over to the insurance commissioner just generously gave him
14 the insurance policy.

15 And bear in mind when you look at the buy-sale
16 agreement and I'm being told by extrinsic evidence and I've
17 been told by objective manifestation of the documentation.
18 Objectively, manifestatively the language of the contract at
19 least on two occasions has in it the terminology of life
20 insurance, and yet both gentlemen according to the testimony
21 had access to the attorney who drafted the documentation in
22 here. And it is absolutely unequivocal that Mr. Johnson had
23 two heart attacks prior to the execution of this document,
24 that it was not feasible economically to obtain life
25 insurance and yet the buy-out was going to be utilized for

1 life insurance or a vehicle for life insurance from the same
2 gentleman who basically argumentatively and admitted on
3 closing by counsel he didn't have the money to buy him out.

4 There was basically no other way for him to obtain
5 this insurance - this insurance company other than through a
6 vehicle and that vehicle was to be life insurance. And so
7 therefore assuming it was just a gift that was not connected
8 to this is an insult to the intelligence of the Court. So
9 the objective manifestation of the language, the extrinsic
10 evidence of common sense, logic, and the testimony
11 surrounding the heart condition, the availability of
12 insurance, the financing available to Mr. Wright, et cetera,
13 there is absolutely no other conclusion of a rational,
14 logical person could come up with that that was the purpose
15 of the insurance policy.

16 Going through the question of whether or not
17 counterclaim there is money owed? No, there is no money
18 owed. As indicated by the work history I've illustrated in
19 this situation, this gentleman was given the opportunity to
20 come back to the state where he had obviously lived and been
21 employed, where he was - family was close, he was going to
22 be remunerated very well and he was very well remunerated.
23 And so his claims of loss of this and loss of that are not
24 worth any basis. There is no claim.

25 There is, however, in my opinion, when I review this

1 and acknowledge the fact this was a personal insurance
2 policy and the personal insurance policy needs to go back to
3 the person. However, there were pay increases and those pay
4 increases premiums were paid and those premiums were paid by
5 the gentleman who was working in a company and earning
6 wages. So when the insurance policy goes back it would be
7 unjust enrichment to Mr. Johnson to receive that policy and
8 deprive Mr. Wright of his income. And so therefore - and
9 candidly under the circumstances of this case based upon the
10 conduct and the presence and, shall we say, obvious demeanor
11 and testimony and credibility of Mr. Wright, I have a real
12 hard time awarding the fact that Mr. Johnson owes him for
13 all premium payments made up-to-date bearing interest
14 because - otherwise, because it's a personal policy, not a
15 business policy.

16 I am not going to wander down a path of a man's
17 personal income that was used that would personally unjustly
18 enrich someone else. And so therefore, Mr. Johnson, you owe
19 him the premium payments and the interest that I would
20 accrue on the monies as they were paid. Roughly, if my
21 mathematics are correct, we're dealing in the 30 to \$40,000
22 bracket. And I will burden counsel with compiling the
23 amounts and the interest rates from the dates. He owes the
24 man the money and he owes you the policy.

25 Now, I can elaborate until I'm blue in the face, but

1 I want it clearly understood that this opinion that I am
2 rendering in this case, it is not only based upon the
3 written materials submitted to the Court and the testimony
4 submitted to the Court, but the ability of this Court to
5 observe and determine the demeanor and credibility of the
6 witnesses. And it is unfortunate when it comes to a
7 situation like this that I do not have many laudatory things
8 to say about Mr. Wright and his duplicity in this court and
9 his attempt to perpetuate this on this Court and I have to
10 agree with the opening comments of counsel and in his
11 closing statement. And that is my decision and this matter
12 is over with. Thank you.

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14 (End of Proceedings.)
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C E R T I F I C A T E

I, CARMAN PRANTE, a duly authorized Notary Public in and for the State of Washington, residing at Grays Harbor, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I, DO FURTHER CERTIFY that the foregoing transcript constitutes a full, true, and accurate transcript of that portion of my stenograph notes so taken and so ordered.

I, DO FURTHER CERTIFY that I am not related to any of the parties to this lawsuit, nor am I interested in the outcome thereof.

Dated this 6th day of December, 2009.



Carman Prante
CCR #2513

APPENDIX #3

COURT'S RULING

March 29, 2010

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THE COURT: It's hard to argue with Verharen and it's also a situation I remember Mr. Quick-Ruben coming in here contesting a traffic ticket. Quite an interesting gentleman. I believe the statute applies and I believe it applies because I can only give you the best analogy

1 that I can give you and that is Justice Brennan on the
2 old basic discussion of, What is pornography? You know
3 it when you see it.

4 What is a frivolous lawsuit defense other than you
5 know it when you see it. And you know what, I don't care
6 what the Court of Appeals does. And don't forget, I'm
7 the one that gets to tell you what's the reasonable
8 amount of attorney fees, too. We haven't got to that
9 part yet.

10 I cannot do anymore than what I said when I sat
11 through this lawsuit. And I still remember portions of
12 it: The deceitfulness, the dishonesty, basically false
13 testimony. And I can specifically remember the one where
14 his wife contradicted him about withholding the children
15 from the grandfather. And then you sit here and it's the
16 body language that we have the ability as courts and
17 we've got a great seat, we've got the best one in the
18 house, of sitting here and watching Mr. Wright. Not only
19 on the stand but you watch everything that's going on in
20 the courtroom. And then you look at the case, what
21 preceded the case and what happened in the case.

22 I believe that our system is based upon the premise
23 that you have parties that come into a Court of Appeals
24 law with meritorious positions and they come to the court
25 to ask for an honest, neutral decision from a detached

1 magistrate. And I stress the words honest, meritorious
2 positions. That's not what I saw happening in this case.
3 This case should never have been in a courtroom. And the
4 ugly part about it was the portion involving the families
5 and the interworking relationships of the people. And I
6 am not the greatest crossword puzzle person in the world
7 but when I said things like vindictive and vituperative,
8 I meant it. And I know what those words mean and I
9 observed it in this courtroom.

10 Now, you can go talk to a higher court and you can
11 mince words about we had this possible defense and there
12 was this possible claim. You know, there's a distinction
13 between - you can make a thousand claims. If you're
14 going to say that you have to - you had no meritorious
15 position over anything, then we should have 200 page
16 responses and counterclaims. And somewhere in there you
17 might be right about something and so therefore the
18 statute would not apply? No. The statute applies
19 because a trial court judge observed it happening in that
20 case and that courtroom. And that's what I saw and
21 that's what I heard.

22 So - and, you know, the good thing about appeals in
23 cases, and everybody always cites cases, you know what,
24 you've got to start somewhere and then somebody rules
25 whether I'm right or wrong. And I personally don't care

1 whether they rule whether I'm right or wrong, because you
2 know what, I know I'm right. And the only thing that
3 would prove to me at a higher court if they happen to say
4 that I'm wrong, it proves to me that they are not
5 infallible, Because I know I'm right.

6 Now, go back to the issue regarding attorney's fees.
7 I want to see the bill before I order the terms. Just
8 because you say it, Mr. Brown, doesn't mean that I'm
9 going to order it. I'm going to what's fair as terms.
10 So submit your bill, note it up gentlemen, and we'll take
11 a look at it.

12 MR. BROWN: Judge, I have an order that provides
13 exactly that, that I'll - that I will go prepare a -
14 materials - what other attorney fee is and I'll provide
15 that to Mr. Damasiewicz.

16 MR. DAMASIEWICZ: I'll sign it.

17 THE COURT: Certainly.

18 MR. BROWN: And I am also filing the original of - of
19 a response that I e-mailed.

20 THE COURT: Thank you.

21 MR. BROWN: Doesn't make any difference.

22 THE COURT: I read it. Next matter.

23 MR. BROWN: Judge - judge says that we'll be back
24 to --

25 THE COURT: Oh, you --

1 MR. BROWN: Yeah.

2 MR. DAMASIEWICZ: The - I had filed a motion to - to
3 re-tax costs, but I think it's probably moot because, you
4 know, under the prevailing party statute it's kind of
5 limited what costs you get. But I think if you're going
6 to award fees under the statute, then it's whatever you
7 think is fair.

8 So I mean I would like to look at what Mr. Brown
9 files of course as far as the costs and fees he's
10 requesting, but I don't think it makes any sense to talk
11 about that one because I think it's mooted by your other
12 decision.

13 THE COURT: Well, I'm asking you gentlemen - you know,
14 I had hoped this thing would have died. I had hoped that
15 maybe things would have taken a different tactic with
16 these people but obviously it's not and that's
17 unfortunate.

18 You know what, I personally don't care about the
19 adults, I care about the grandkids and kids in this
20 situation, That's what I care about. And it's truly,
21 truly unfortunate, but that's what we do for a living.
22 And submit your bills and I'll take a look, gentlemen.
23 Thank you.

24 MR. DAMASIEWICZ: Okay.

25 MR. BROWN: Thank you, Your Honor.

1 MR. DAMASIEWICZ: Thank you, Judge.

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(End of Proceedings.)

C E R T I F I C A T E

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I, CARMAN PRANTE, a duly authorized Notary Public in and for the State of Washington, residing at Grays Harbor, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I, DO FURTHER CERTIFY that the foregoing transcript constitutes a full, true, and accurate transcript of that portion of my stenograph notes so taken and so ordered.

I, DO FURTHER CERTIFY that I am not related to any of the parties to this lawsuit, nor am I interested in the outcome thereof.

Dated this 28th day of June, 2010.



Carman Prante
CCR #2513

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March 14, 2011

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STATE OF WASHINGTON

Washington State Court of Appeals
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Tacoma, WA 98402-4454

RE: Washington State Court of Appeals, Division II, Case # 405318

Enclosed for filing in the above matter are the original and one copy of the Brief of Respondents.

By copy of this letter, we are providing a copy to counsel for the Appellant, served personally on his office.

Cordially,



THOMAS A. BROWN

TAB:kdr
Enclosure

cc: David L. Johnson (w/enclosure).
Jeffrey A Damasiewicz (w/enclosure)