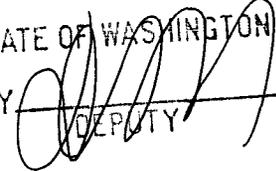


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DIVISION II

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STATE OF WASHINGTON

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No. 42789-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re:

Estate of CORRINE D. WEGNER
Deceased

REPLY BRIEF OF APPELLANT

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A. **MAXINE TESCHE's RESPONSE TO THE WEGNER
ESTATE's COUNTER STATEMENT OF THE CASE**

1. The Estate's Judgment Simply Created a Lien.

The Respondent's brief, asserts several times that judgment contained in the Court's Order of December 22, 2008 was a personal Judgment against Maxine Tesche rather than an equitable 'Judgment Lien' against the Joint Tenancy real estate.

Page 14 line 4 in brief the Estate asserts:

"The estate prevailed in obtaining a judgment against Tesche for \$16,212.58." In the body of 'Issue 2' on page 14, the estate claims: "Tesche refused (and still refuses) to pay a valid judgment issued against her" Then in the last sentence of page 14, Respondent's brief asserts " . . . Tesche refused (and still refuses) to pay the valid judgment against her."

No judgment issued against Tesche as is clear from the 2008 Court Order:

"6. The estate is entitled to a Judgment Lien against the real property in the sum of [see below] 16,212.58 with interest at 12% per annum from the date of the entry of the decree."

[CP 6, Lines 22-23]

" . . . the court hereby imposes a judgment against the below described real property . . ."

[CP 7, Lines 11-12]

"Maxine Tesche takes title to the real property as surviving joint tenant with the right of survivor-ship subject to the above entitled judgment lien."

[CP 7, Lines 24-26]

The Estate's counsel conceded in his remarks to the court on May 13, 2011 that the Estate's Judgment was against the Enumclaw property not against Mrs. Tesche personally, when he stated [Page 9 lines 24-25 through Page 10, lines 1-2]:

" -- there's a place in the original court order on Page -- Page 7 of that court order that -- said Tesche takes title to the property subject to this court's lien that it imposes. It was an equitable lien that the court imposed."

RP [5-13-11] Pages 9-10 Lines 24-25 & 1-2

Respondent repeatedly implied in its Brief that *Maxine Tesche* owed the Estate \$16,212.58 plus interest from December 22, 2008. Maxine Tesche believes the Court Order of 2008 and the remarks of the Estate's counsel make clear that the Estate's Judgment simply created a Lien which burdened the Enumclaw property with \$16,212.58 of the Estate's creditor's claims and costs of Administration. The lien was against the Enumclaw property, not an "In Personam" Judgment against Maxine Tesche.

2. Both the Estate and Tesche Struggled to Comply with Service and Filing Deadlines.

Respondent's brief suggests that Maxine Tesche and her attorney failed to meet various deadlines for filing documents and noting motions.

In fact, both parties struggled to put essential materials before the Court at hearings. On May 13th, the Court questioned Mr. Barnett regarding about service of documents on Mr. Kombol. Page 18 of the Verbatim Transcript of the May 13th hearing reveals:

THE COURT: I don't have any proof of service on Mr. Kombol.
MR. BARNETT: Oh, we served him. I know that.
THE COURT: Well --
MR. BARNETT: Let's see, I'll have to look through my file.
THE COURT: I'm curious about what day Mr. Kombol got those documents, because he's telling me he got them --
MR. BARNETT: It may have been -- I think I had them faxed and mailed, but I'm not sure. Mr. Kombol should be able to respond to that.
THE COURT: The burden would be on you to show.
MR. BARNETT: Except he hasn't raised it.
THE COURT: He has raised the issue.
MR. BARNETT: His client -- no. He said his client hadn't received it.¹
THE COURT: I don't have any evidence of when he received it in the file."

¹ Mr. Kombol had pointed out in his pleadings that the Receivership Statute required that notice of an application for the Appointment of a Receiver to be given to the 'owner of the property' at least seven days prior to the hearing. See RCW 7.60.025(3)

Mr. Kombol also questioned why the Estate's attorney had sent him 69 pages of documents by facsimile on Wednesday, May 11th, two days prior to the Receivership hearing. Pages 24-25 of the Verbatim Transcript of May 13th, follows:

MR. KOMBOL: Well, Your Honor, Mr. Barnett sent me 69 pages on Wednesday² that say: "copy of 'judge's working copies'."
THE COURT: I have not seen it.
MR. KOMBOL: Well, it's not in my handwriting.
THE COURT: I'm not saying it is. I'm telling you I'm not considering it. All I'm considering is what I received. I didn't receive that.

Later at the hearing on May 13th, the following exchange took place between Court and Counsel.

See Verbatim Transcript Page 34, Lines 5-17:

THE COURT: . . . I'm very reluctant to sign an order for appointment of a receiver when the judge ordered referee, Judge McCarthy did in the first place. Unless there's some special way around that I think we need to follow the order of the prior court.³ I'm not --

² The hearing before the Court was on Friday, May 13, 2011. Mr. Kombol's reference to the day he received faxed documents from Mr. Barnett was to Wednesday, May 11th.

³ Mr. Kombol had argued that very point to Judge Johnson. See Pg 20 of the transcript:
"Mr. Kombol: . . . The Order ... called for the appointment of a referee --

THE COURT: Right.

Mr. Kombol: - . . . for an appointment of a referee.

THE COURT: Yes.

Mr. Kombol: We're not here on [a petition for] appointment of a referee, Your Honor. We're here on [a petition for] appointment of a receiver."

MR. BARNETT: Your Honor, I'm not sure, did you get -- what I sent to Mr. Kombol was the working copies I sent to the court, and maybe you didn't get my working copies.

THE COURT: I did not.

MR. BARNETT: You didn't?

THE COURT: I did not.

The Estate's Counter-statement of the Case omits what's beyond doubt the most essential notice and filing requirement the Estate missed entirely; service of not less than seven days notice of the Estate's application to Appoint a Receiver to take possession of and sell Tesche's residence.⁴ Mr. Kombol pointed out at the hearing on May 13th that Maxine Tesche had not received a copy of the Petition for Appointment of a Receiver. At Page 6 of the transcript, Mr. Barnett replied:

MR. BARNETT: . . . he says we didn't -- we didn't serve his client. Well, Mr. Kombol has been of record for four years. He's still the attorney of record. He's here with his client.⁵ There's no requirement to serve him personally⁶ on this motion. He's attorney of record.

⁴ RCW 7.60.025 provides: (3) At least seven days' notice ... *shall* be given ... "

⁵ Mr. Barnett was mistaken. The lady in the courtroom was not his client. Rather it was his wife, Rebecca Rodgers-Kombol [See Page 22 of Transcript, Lines 11-12]

⁶ Mr. Barnett is correct that there is no particular service requirement as to an attorney for the owner of property against which a Petition for Receivership has been started. However, the Receivership Statute requires notice to the property owner. RCW 7.60.025(3)

I object to any personal statements to what he says in the declaration concerning what his client knows or doesn't know because that should come from the client not from Mr. Kombol. His client is apparently here with him. (See Footnote 5)

The record clearly shows that Mrs. Tesche was in Arizona in April and May of 2011 [See Mr. Barnett's statement, Transcript P. 16 Line 16. She was never given notice of the Estate's application.

Pages 5 - 13 of the Verbatim Transcript of the proceedings on May 27, 2012 reveal that Mr. Kombol sought to continue the hearing scheduled that day, because he had not been able to get in contact with Maxine Tesche. Relevant portions of his remarks to the Court appear below:

MR. KOMBOL: "Your Honor, Mrs. Tesche is a 71 year old lady who I was in contact with earlier this month respecting some of the issues she wanted to raise. And some of the issues were whether she was served ... notice ... of this proceeding, what her attitude was towards the appointment of a receiver.

. . . And when I got the pleadings from the ... I started attempting to contact her."

[Transcript of 5-27-2011 Hearing pp 5-6]

" . . . I had her cell phone number . . . [called] . . . twice daily, and then by Wednesday three times. I left her messages. I sent her e-mails to the Office Depot account that I had [used] for previous communication. I was totally out of contact with her.

"When she finally contacted me on Friday [May 20, 2012] - and . . . finally, by Wednesday, I was letting her know I had to file documents to make a motion. The deadline is Thursday. I had to note motions by Thursday. I told her a deadline [was] 4:30. No communication whatsoever."

[Transcript of 5-27-2011 Hearing-pp 6-7]

"On Friday when she called me, it was the end of the day, she said: I'm sorry. I've been to my aunt's funeral. I've been unavailable. I don't go to my e-mail account -- actually, I don't go to my e-mail account & I left my phone at home"

"I was simply out of contact with this lady. She was out of state."

[Transcript of 5-27-2011 Hearing pp 6-7]

B. MAXINE TESCHE'S REPLY ARGUMENT

1. The Trial Court Erred in Awarding Fees for Time Spent on Unsuccessful Theories

When the Estate filed its initial Petition for the appointment of a Receiver, counsel for Ms.

Tesche argued that the Petition was flawed on five different grounds.

The *first* ground was that Mrs. Tesche hadn't received seven day's prior notice of the Estate's application for the appointment of a receiver.

The *second* ground was that the Court Order which the Wegner Estate relied upon called not for the appointment of a 'Receiver' but rather the appointment of a 'Referee'.

The *third* reason argued by Tesche's counsel was that the Estate of Wegner hadn't even proposed posting Bond as security for cost Tesche would incur if the Estate's action be found wanting or improper.

Fourth, Tesche argued that the Receivership statute required that *venue* for a receivership proceeding be in King County pursuant to RCW 7.60.025(2)⁷.

Lastly, Tesche pointed out that the Declaration of Homestead she had filed with the King County Recorder [CP 99-100] furnished her statutory

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"... The venue of such a proceeding may be in any county in which the person resides . . . or in any county in which any property owner which the receiver is to be appointed is located.

protections which, if the Estate wanted to challenge, had to be challenged in the County where the homestead was located pursuant to RCW 6.13.070(2).

At the May 13, 2011 hearing on the Estate's petition, between pages 27 and 29, in pertinent parts, reveals that the Court adopted most of the reasoning Tesche's counsel offered in opposition to the Estate's receivership petition and rejected the Estate's theories, preserving only the Estate's ability to 'Re-note' its request for relief at a later date. Relevant portions of the record follow, commencing at Page 27, Line 3:

MR. KOMBOL: The application for appointment of a receiver requires the venue of the proceeding [to] be in any county where the person resides or maintains an office, or any county in which the property is located when the proceeding is commenced.

THE COURT:
Okay.

MR. KOMBOL: That's seeking this [Pierce] County to perform some action in King County by a receiver appointed in this [Pierce] County. The law of our state with respect to this type of relief, Your Honor, if this were even an unlawful detainer action that was filed in the wrong county, the law is one can't seek or obtain this type of relief . . . strict construction is complied with.

Absolutely no service [of notice] on Ms. Tesche, absolutely no -- review, apparently, of the requirement that the receiver post a bond, no mention of that. . . .

Bond cannot be waived. It's not me who is seeking the appointment of a receiver without bond. These folks are. No mention whatsoever .. that this estate should post a bond if it's possible under the statute that -- the respondent could suffer damages. Costs for damages. No mention of that.

What we have here is someone here trying ... under a receivership statute [that] which is not authorized by court order, which is not complied with. . . . Your Honor, even upon an assertion of a homestead requires adjudication in King county. this is fundamental law.

And so what troubles me is, as I read the pleadings, as I read what is sought here, . . . is something that's contrary to law, absolutely not permitted, not [done] -- in any way the statute requires. And we're dealing with a lady's home."

The Court's dialogue with Mr. Barnett, commencing at Page 32, Line 20, reveals that Judge Johnson did not adopt any of the theories offered by the Estate in support of its request to have a receiver appointed to take possession of and sell Mrs. Tesche's Enumclaw residence.

MR. BARNETT: Question, Your Honor?
THE COURT: I do have a question for you. Why are we doing a receivership as opposed to a referee?
MR. BARNETT: The referee is a special statute for tenants-in-common when there's disputes. And I had kind of initially looked at the referee thing. The referee is a sale on the courthouse steps; could be done. I think it's more equitable for his client to try to get the most out of the property and have a negotiated sale at a price that gives her the maximum. -- I was doing it for their benefit not mine
THE COURT: And why I hesitate on that is what the court actually ordered, if we're going to be technical.
MR. BARNETT: Is a referee.
THE COURT: Is a referee.
MR. BARNETT: And we can do that. 7.52 . . . we can do that and then there's no bond required in that.
THE COURT: But you didn't move for that today.

Contrary to the Respondent's assertion in its Summary of Facts [See Reply Brief Pp 4-5] Judge Johnson didn't "decline" to make a ruling at the May 13, 2012 hearing, because 'he had no opportunity to make a well-reasoned decision'.

Rather, the Court clearly indicated that it found the Estate's request to appoint a 'Receiver' fatally flawed, because [as Ms. Tesche's attorney pointed out] the Court Order of December 22, 2008

gave the Estate only the ability to request the Court appoint a 'Referee'.

Judge Johnson did offer the Estate an opportunity to Re-Note its request for relief, and the Estate did schedule a new Petition for Appointment of a Referee or a Receiver on May 27, 2012.

Despite declining to grant the Wegner Estate any of the relief it had requested at the hearing on May 13, 2012; on October 13, 2011, Judge Johnson granted the Estate of Corrine Wegner legal fees totaling \$2,997.50 for 12 hours of Mr. Barnett's billable time between October, 2010 and the May 13, 2011 hearing for the Estate's May 13th petition, at which the Court denied all of the relief requested.

A trial court's decision to award attorney's fees *requires* that the court exclude from a fee request "any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims. Mahler v. Szues, 135 Wn.2d 398, 434, 957 P.2d 632 (1998).

When Judge Johnson awarded the Respondent all of the fees it requested, he abused his discretion,

because he failed to *exclude* from the fee award fees based upon the Estate's flawed theories.

Ms. Tesche believes (and asserts again in her appeal as she did below) that because the Estate presented a theory so contrary to what the Respondent has termed the 'Law of the Case' [to wit: the Court Order of December 22, 2008] and so utterly without basis in notice, jurisdiction or protection against abuse (by posting a bond) on its statutory application on May 13, 2011; Appellant should be awarded legal fees for having to defend against such a spurious and il-conceived attempt to have a receiver appointed to take possession of and sell Maxine Tesche's home in Enumclaw.

The application heard on May 13th had no basis in law or fact. Counsel for the Estate presented a pleading that was not well grounded in law; was not warranted by existing law [either the "law of the case"] or statutory authority, and could only have been intended [once again] to interpose a pleading for an improper purpose, to wit: for the

Estate and its attorneys to obtain unfair and inappropriate 'leverage' upon Tesche below.

CR 11 permits a court to order an attorney or party to pay the other party's reasonable fees and expenses incurred because of a filing deemed to be in violation of CR 11. Blair v. GIM Corp., 88 Wash App. 475, 481-82, 945 P.2d 1149 (1997); Rhinehart v. Seattle Times Co., 51 Wash. App. 561, 581, 754 P.2d 1243 (citing Wilson v. Henkle, 45 Wash. App 162, 174, 724 P.2d 1069 (1986).)

Such questionable use of proceedings, in which counsel did not review the very statute used as a basis for his client's request for extraordinary relief, and also failed to determine whether Court Order he had presented and had entered in 2008 permitted an application for appointment of a receiver, seems clearly to have represented means of obtaining 'leverage' upon Tesche.

Such use of legal proceedings as a way to gain 'leverage' against the Estate's opponent has been taking place in this case since Maxine Tesche was asked to appear at Mr. Barnett's office on April 6,

2006; was then interrogated by the Estate's attorney about the nature of her Joint Tenancy ownership of the Enumclaw property; faced an argument with that attorney about her assertion that she was a "Joint Tenant who had a Right of Survivorship"; and then was served with a Summons and Complaint in Mr. Barnett's office by one of his office assistants while she waited pursuant to Mr. Barnett's request that she remain there.

Such improper use of litigation tactics; such advancement of spurious and ill-conceived actions against adversaries; such invention and assertion of dubious theories (such as in spurious petition to appoint a 'Custodial Receiver' has been happening in this case since the Estate commenced its litigation against Maxine Tesche by serving her in the Estate's attorney's law offices on April 6, 2006.

The Declarations of Barry C. Kombol [CP 47], [CP 78-81] and Maxine Tesche [CP 88-94] and the Declaration of Service by Mr. Barnett's assistant [CP 95-96] support Ms. Tesche's belief that she has been the victim of repeated CR 11 violations which

have placed her at unfair disadvantage and drained her financial resources in having to defend against the Estate's litigation in order to preserve her interest in her Enumclaw home against efforts by the Estate and its representatives to seize and sell it.

At the hearing on May 27, 2011, the Wegner Estate advanced three new theories supporting its revised request to appoint either a Receiver or a Referee, (a) the Court's purported 'constitutional authority' [see: **RP** of 5-27-11 Pgs 15-16]; (b) the Trust and Estate Dispute Resolution Act [TEDRA]; [see: **RP** Page 16]; and (c) statutory authority to appoint a referee or a receiver.

In reply to those arguments, Mr. Kombol stated to the Court that Ms. Tesche's position was that the December 22, 2008 Court Order either had to be followed, and if it was not followed, it needed to be altered or modified appropriately. [See: **RP** Pg 20 Lns. 15-20]:

MR. KOMBOL:

 I mean, that's clear. If -- if a
 court order is not going to be
 followed, it should be altered
 appropriately.

THE COURT: Well --

MR. KOMBOL: And that could be done. So that's my first argument. Why aren't we obeying the Court Order . . . ?

.....

MR. KOMBOL Unless the Court decides that it can ignore the court order adopted by Comm. Quaintance, which was later approved by the Judge.

THE COURT: Well, lets stay within that then.

MR. KOMBOL: All right.

THE COURT: That's what I'm asking you. What would be the terms and conditions that the trial court should impose or should I impose here on the sale if a referee is appointed?

MR. KOMBOL: Well, we should look at what the referee statute says, and . . . there is none. It's a partition statute. And so I think there's a bind here. I think there's a bind that if you look at that statute, its not permitted.

Next, why shouldn't a referee be appointed under equitable powers? Well, I think under equitable powers, first of all, we should look at what the legislature would suggest is possible. And the legislature, at least in the appointment of a receiver, especially a custodial receiver, which is the request being made, requires notice to the party who is sought to be bound. And the notice isn't three years ago, the notice isn't to me. The notice is service [on Ms. Tesche].

And you know, I know the execution statute. If this were simply an execution of a Judgment, there would be mailings, service,

posting. My client says -- and its uncontroverted -- that she hasn't-she's gotten none of those things.

And so, if the Court is going to fashion, as what's being requested, and equitable remedy that doesn't exist in statute, then what would you look to?

What counsel for petitioners would like, just to have it done? Or would the court say well, I guess I'll think of my own procedure, and I'll adopt a procedure about how this should start from beginning to end? And that's a lot of work.

So I don't think that right now this case comes before the Court in any way equitably that allows the court simply to say well, I'm going to appoint a receiver -- I mean, I'm going to appoint a referee, without notice, without service, without instructions.

And I guess I'll ask counsel; is the request for a referee a custodial referee? Is that the request?

. . . .
[Continuing at Pg 24, Line 21]

. . . .
There are so -- this is so unusual, and the remedy is so -- I've been here for 34 years and I've never heard of anything quite like this, to kind of grasp into the air and find common law powers and equitable powers, and ignore the court order, and ignore the TEDRA law, and ignore the receivership law, and come up with a new remedy and suggest this court should adopt it without notice to my client.

. . . .
Or, we have a judgment. We have an execution statute. The sheriff of King County could -- this Court could issue a statutory procedure [to] collect your judgment. Now that's statutory, and I don't know why that's not something . . .

And so if you have an adequate remedy at law, and you know that's the law of equity, what on earth are we coming here asking this court to fashion and function as some kind of a -- in an unfair capacity for this court, really, to come up with a method to re-write-to supplement statutes 'equitably'.

The record of Proceedings makes clear that Judge Johnson adopted none of the Estate's theories in making his rulings. While he did not specifically state as much, the Trial Court adopted Maxine Tesche's arguments that *because* the Estate had a Judgment Lien against her Enumclaw residence, there existed an adequate remedy at law to enforce the Judgment Lien and to recover from the property what was due by execution. The Judge's reasoning appears at RP [5-27-2011] Page 34, Lines 5-22.

And here is where I come down -- I know you're not going to be happy, but here's where I come down -- this looks to me like a judgment pretty much like any other monetary judgment. The great equities of the situation here, the

fairness and so forth, we see virtually in every judgment how unfair it can be. I'm looking at this one saying, I think this judgment lien -- I don't want to go here because I don't know this part of the law and I haven't [re]searched it, but I think the judgment lien is effective the day it was entered, if it was recorded in King County particularly

The judgment lien is there. Even though it was 180 days delay in foreclosing that lien, the judgment lien was there.

.....

. . . but the ultimate decision here is how do you execute on that remedy. And the court here said you could bring a motion, but didn't say it shall be a referee. And I look at it and I think, I don't see there's any particular reason that this judgment -- and I've been around a long time, too -- would be any different than any other judgment comes [to be] enforced.

At Page 40 of the Verbatim Report of Proceedings on May 27th, Lines 4-10, Judge Johnson made it clear that his decision to deny the relief the Wegner Estate was requesting was essentially based on Maxine Tesche's argument that because the Estate had a Judgment Lien, and had a statutory right to enforce its Judgment Lien. Judge Johnson's decision at Page 40 was:

So those are my decisions in this case. But let me make it clear. The initial, the key case that you're looking at, and that is - is this court going to fashion

an equitable remedy to enforce the remedy in this case, or an equitable way to enforce the remedy in this case beyond the normal enforcement of judgments, and I'm sorry to say, no.

Despite having rejected all theories presented by the Estate of Corrine Wegner in support of its request to appoint a 'constitutional'/'equitable' or 'statutory' receiver or referee, and despite having adopted Ms. Tesche's argument that because the Estate had an adequate remedy in law, Judge Johnson awarded the Wegner Estate all attorney fees it requested relating to all 20.5 hours of billable time Estate counsel expended between May 13 and August 29, 2011; which added an additional \$5,135.00 in fees.

Just as was in the case of the initial 12 hours of time [and \$2,997.50 in fees]; which the Court awarded the Estate in the October 14th Order, the Trial Court abused its discretion in awarding fees to the Estate and its attorney for hours pertaining to the last three unsuccessful theories the Estate presented on May 27, 2011.

2. The Trial Court Erred in Awarding Fees Relating to the Hearing of Oct. 14, 2011

Judge Johnson added an additional \$485.00 in connection with one hour of Mr. Barnett's time preparing for the October 14, 2011 Motion for Legal Fees plus the one and a half hour of Ms. Jones' time in preparing for and attending that hearing.

It should go without saying [or the need to recite additional authority] that if *this* Court determines that the trial court abused its discretion in awarding legal fees for the time expended and fees incurred in the hearings conducted on May 13th and May 27th; the \$485.00 in fees the Court awarded on October 14, 2011 were likewise an abuse of the trial court's discretion.

3. This Court Should Award Fees to Ms. Tesche

Ms. Tesche's request for attorney fees on Appeal (Pursuant to CR 11 and RAP 18.1(b)) is based upon her belief that the litigation tactics employed by the Estate of Corrine Wegner and its attorney throughout the proceedings below warrant such an award. The time, trouble, and legal expense which the Estate's litigation tactics and its unyielding

strategies brought to bear on Maxine Tesche, an elderly lady, who simply desired to return to Enumclaw in the spring of 2006 to assume ownership and possession of the Enumclaw residence she had acquired with as Joint Tenant with Right of Survivorship with her deceased friend.

The claims asserted by the Wegner Estate against Maxine Tesche started in April of 2006 when she was served at the Estate's Attorney's law offices; continued through an odyssey involving the defense of three dubious Causes of Action, asserted then dismissed - save for the Estate's request for over \$32,000.00 in costs and fees against the Joint Tenancy property [reduced by the Court Commissioner to \$16,212.58]; an initial Appeal to this Court, which resulted in the award below being affirmed; and then the efforts and proceedings taken by the Estate of Wegner between late 2010 and October of 2011 to bring unfair pressure to bear on Ms. Tesche, placing this lady risk of [once again] losing possession of her Enumclaw residence without adequate notice; without due process; based upon procedures [and remedies] proposed by counsel for

her adversary - which were the Estate's latest example of the misuse of the legal process to gain unfair advantage against a vulnerable adversary.

This case which is on appeal is easily distinguishable from Wegner v. Tesche, 157 Wash. App. 554, 237 P.3d 387 (2010) because there, unlike with the instant appeal, in findings and conclusions in the proceedings between 2008 and 2009 below (which this court found to have been verities on appeal) the fees incurred in the Estate's investigation of litigation and the subsequent TEDRA action was deemed to have been reasonable.

In the 2010 Wegner v. Tesche appeal the Court of Appeals found that the trial court had not abused its discretion when, in declining to revise the pro tempore commissioner's 2008 Order.

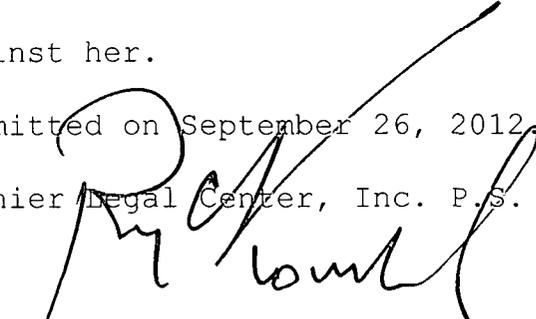
Further, Wegner v. Teshe (I) dealt with the Estate's efforts to "transfer" and "administer" Estate assets, including the Joint Tenancy realty in Enuclaw. In this appeal, Ms. Tesche appeal only Judge Johnson's discretionary award of fees to the Estate which she contends abused his discretion.

C. CONCLUSION

Maxine Tesche believes that the facts and circumstances outlined in her Briefs submitted to this Court and in the record of the proceedings below warrant this Court entering an award for attorney's fees both against the Estate of Corrine Wegner and against the attorney and law firm it employed to assert the various claims against her with the sort of tactics that were deliberately chosen to gain improper and unfair advantage against her for the purpose of increasing the costs of litigation so as to gain advantage against her.

Respectfully Submitted on September 26, 2012,

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