

FILED
COURT OF APPEALS
DIVISION II

2015 MAR 27 PM 1:14

STATE OF WASHINGTON

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46628-7
NO. 46635-0-11

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

MARGUERITE SAMMANN, Individually,
Appellant,

v.

ANNA J. ARMSTRONG,
as Personal Representative
of the Estate of Robert M. White,
Respondent,

RESPONSIVE BRIEF OF RESPONDENT
and
CERTIFICATE OF MAILING

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I. STATEMENT OF THE CASE

This appeal arises out of an action brought by Marguerite Sammann following a rejection of identical Creditor's Claims filed by Marguerite Sammann and her daughter, Nadene Sammann, in the Estate of Robert White. Robert White was a disabled veteran who passed away on April 21, 2013. On January 27, 2009 he had been declared incompetent when the court entered an order appointing guardian of his person and estate. Commencement Bay Guardianship Services, through attorney Robin Balsam, was appointed as his guardian. (CP 1014) Marguerite Sammann is Robert White's sister and Nadene Sammann is Marguerite Sammann's daughter.

Both Marguerite Sammann and Nadene Sammann were aware of the guardianship proceeding and they filed a joint request for special notice of proceedings in the guardianship before a guardian was appointed for Robert White. (CP 1289). During the guardianship proceedings of Robert White, Marguerite Sammann and Nadene Sammann repeatedly filed frivolous motions in the trial court and appealed trial court rulings in the guardianship to the Washington State Appellate and Supreme Court. Ultimately, attorney's fees were entered against Marguerite Sammann and

Nadene Sammann, jointly and severally, for \$83,276.66 for frivolous motions and appeals they filed in the guardianship. (CP 998-1002).

After Robert White's death Marguerite Sammann filed a Creditor's Claim in his estate for \$118,397.38. (CP 963). Of the \$118,397.38, \$83,276.66 was a request for reimbursement of the judgments entered against Marguerite Sammann for bringing frivolous actions in the guardianship proceeding of Robert White and \$21,000.00 was a request to reimburse the interest on those judgments. The rest of the creditor's claim was based upon costs and expenses for attorney's fees, copying, transcripts, legal research, certified copies, transportation and filing fees expended by Marguerite Sammann in connection with frivolous motions she had brought that resulted in the judgments against her. Ms. Sammann's primary theory as to why she should receive a judgment against the estate for the amount of the judgments entered against her with interest and costs was based upon a document prepared by Nadene Sammann and signed by Robert White in June of 2009 after Mr. White was declared incompetent and under guardianship. (CP 944). That document says:

I am asking that my niece, Nadane Sammann, ask the VA to conduct an investigation into the disappearance of my cash. I make this claim for the return of all my cash. I want my valuables returned to me and I want to get out of here.

Despite the fact that Marguerite Sammann neither signed the document she claims is a contract nor performed any services called for in the document she claims is a contract , her suit claims she is entitled to damages of \$118,397.38 under the "contract". The only evidentiary basis for that claim is a Declaration of Marguerite Sammann in support of Plaintiff's Motion for Summary Judgment where she testified that she used \$10,000.00 in out-of-pocket costs pursuing her frivolous claims in the guardianship proceeding. (CP 934).

Anna Armstrong as Personal Representative of the Estate of Robert White, moved for summary judgment dismissing the claims brought by Marguerite Sammann. (CP 819). The motion argued that the Plaintiff could not provide proof of the elements of a contract and that even if there was proof of a contract, Robert White was under guardianship at the time the contract was entered and therefore he could not have entered into a contract. As the evidentiary basis in response to the motion, Marguerite Sammann

filed her own declaration just over 3 pages in length (CP 934) and a copy of a declaration from her daughter's pending case. (CP 938). The "evidence" in the record did not include any proof of fees paid to the Guardian from Ward's estate during the guardianship of Robert White.

Ms. Sammann did not appear at the argument of the motion for summary judgment. On the day of argument she filed a motion to appoint legal counsel. That motion was not served on counsel for Anna Armstrong and the court refused to hear the motion on the date of the summary judgment hearing. The court granted summary judgment dismissing Marguerite Sammann's claims and, by further order entered a judgment for attorney's fees of \$13,035.00 under CR 11 and RCW 4.84.185.

Marguerite Sammann does not assign error to the dismissal of all of her claims. Instead, she assigns error to the trial court for:

1. Failing to enter Findings of Fact and Conclusions of Law in the Summary Judgment Order.
2. Entering its Findings supporting the award of attorney's fees to the Personal Representative against Marguerite Sammann for defending the claim.
3. Entering the order granting attorney's fees to the Personal Representative and denying her motion for reconsideration of the award of fees.

II. ARGUMENT
STANDARD OF REVIEW

Marguerite Sammann argues first in her brief that the standard for review for an order granting summary judgment is de novo. *Wilson v. Steinbach*, 98 Wn. 2d 434, 656 P.2d.1030 (1982). Anna Armstrong does not contest that the standard of review is de novo.

**THE TRIAL COURT'S REFUSAL TO ENTER FINDINGS OF FACT
IN CONNECTION WITH THE SUMMARY JUDGMENT AND
MOTION FOR RECONSIDERATION WAS NOT ERROR**

Marguerite Sammann argues, without authority, that the Court should have entered Findings of Fact and Conclusions of Law in connection with the order granting summary judgment and in connection with the motion for reconsideration and she also argues that the Court should entertain review under the standard of *Lobdell v. Sugar and Spice*, 33 Wn.App. 881, 658 P.2d 126 (1983). Washington law is clear that findings of fact and conclusions of law are not necessary on a summary judgment and if made are superfluous and will not be considered on appeal. *Concerned Coupeville Citizens v. Town of Coupeville*, 62 Wn.App. 408, 814 P.2d 243 (1991). The trial court's refusal to enter findings of fact and in connection with the summary judgment order was not error.

Lobdell, supra deals with standard of proof necessary to reverse a finding of fact by the trial court after trial. It has no application to the instant case. The standard of review of an order granting summary judgment is de novo. *Smith v. Safeco Ins. Co.*, 150 Wash. 2d 478, 78 P.3d 1274 (2003). The Court should conduct a de novo review.

**MARGUERITE SAMMANN'S CLAIM FOR DAMAGES ALLEGING
THAT THE PERSONAL REPRESENTATIVE FAILED TO
RECOVER FEES PREVIOUSLY APPROVED IN THE
GUARDIANSHIP IS FRIVOLOUS**

Marguerite Sammann dedicates paragraphs 8 through 23 of her appellate brief claiming that, as Personal Representative of the Decedent's estate, Anna Armstrong had a duty to recover fees from Robert White's guardian that were awarded "in defiance of" the Supreme Court's order of March 1, 2011 (CP 1037) and the Court of Appeals of April 4, 2011. (CP 1040). (See Opening Brief, Paragraph 11, page 23, Paragraph 21, page 30). She repeats that argument in Paragraphs 30, 35 and 37 of her brief when she argues that the trial court in this case should not have awarded attorney's fees against her because her claim that she may recover damages from the Personal Representative for the Personal Representative's failure to object to fees previously approved by

the court in annual accountings in the guardianship at the time of the final accounting of the guardianship was not completely without merit. The assertion by Marguerite Sammann that she has a cause of action against the Personal Representative for the Personal Representative's failure to object to attorney fees that had been approved by the court's in the guardianship proceeding prior to the death of Robert White is both legally and factually frivolous.

Marguerite Sammann's claim for damages based upon the Personal Representative's failure to object to fees previously approved by the trial court in the guardianship proceeding is based upon her assertion that the trial court awarded the guardian fees in the guardianship "in defiance of" the Supreme Court order of March 1, 2011 and the Court of Appeals order of April 4, 2011. A review of the record before this court regarding the April 4, 2011 Court of Appeals ruling regarding attorney's fees demonstrates (1) that the judgment entered by the trial court on remand from the Court of Appeals was identical to the ruling of the Court of Appeals and (2) that there is no evidence in the record that the court in the guardianship proceeding approved payment to the Guardian of the \$38,601.25 in fees incurred by the guardian that resulted in a judgment in that amount against Marguerite Sammann and her

daughter.

The award of attorney's fees by the Court of Appeals argued by Marguerite Sammann to have been improperly approved by the trial court in the guardianship proceeding is contained in the Order Denying Motion to Modify issued by the Court of Appeals . (CP 1040). The judgment entered on remand in the guardianship proceeding against Marguerite Sammann and her daughter is identical to the amounts set by the Court of Appeals in that order. (CP 999). Marguerite Sammann's argument that a judgment was entered against herself and her mother that was contrary to the ruling of the Court of Appeals and that Anna Armstrong as Personal Representative should have objected to that judgment at the time of the final accounting in the guardianship is factually frivolous.

Marguerite Sammann's claim for damages against the Personal Representative alleging that the Personal Representative failed in her duty to object to the payment of the \$38,601.25 in attorney's fees out of the guardianship estate during the term of the guardianship also fails because she has no evidence that those fees were actually paid to the guardian from the ward's funds.

The argument that Marguerite Sammann has a claim against the Personal Representative for refusing to object to fees

previously denied by the Supreme Court is also factually frivolous. The order of the Supreme Court denying a request by the guardian for fees against Marguerite Sammann and her daughter is in the record. (CP 1637). That order denies the request of the guardian for an award of attorney's fees against Nadene Sammann and Marguerite Sammann in connection with the Petition for Review to the Supreme Court that Marguerite Sammann and Nadene Sammann had filed. Marguerite Sammann makes two claims related to the attorney's fees incurred by the guardianship estate that the Supreme Court refused to impose against Marguerite Sammann and her daughter. First she claims that it was error for the trial court in the guardianship to approve payment of those fees from the guardianship estate to the guardian and that after death Personal Representative, Anna Armstrong, had a duty to object to previous years' final accountings after Robert White died. Second, Marguerite Sammann claims that the trial court imposed those fees in a later judgment against herself and her daughter and that at the hearing on the final accounting, the Personal Representative had a duty to object to the judgments that had been entered against Marguerite Sammann prior to the death of Robert White. The argument fails for several reasons. First, it fails because there is no

evidence in the record to support a claim that the attorney's fees that were denied by the Supreme Court in its ruling were ever ordered to be paid to the guardian in a guardianship proceeding. The entire factual basis filed by Marguerite Sammann in response to the motion for summary judgment is two declarations, one of Marguerite Sammann, 3 pages in length, and the other of Nadene Sammann, 2 pages in length with approximately 346 pages of documents attached. Neither of those declarations establishes either that the guardian was paid attorney's fees denied by the Supreme Court or that those fees were included in judgments against Marguerite Sammann or her daughter. (See declarations at CP 934 and 938). Those declarations do not claim that the Personal Representative failed to recover fees improperly paid to the Guardian and there is no evidence of such failure in the record. Nothing in the evidentiary response to Defendant's motion supports the defense to summary judgment argued by Ms. Sammann on appeal.

Even if it is true the court in the guardianship proceeding ordered payment to the guardian of the attorney's fees incurred in defending a petition to review by Marguerite Sammann and her daughter, the simple answer to Marguerite Sammann's argument is

that the fact that such attorney's fees were not imposed against herself and her daughter for bringing a frivolous petition for review to the Supreme Court does not mean that the guardian cannot be paid from the guardianship estate for the attorney's fees incurred in defending the petition to the Supreme Court. The attorney's fees incurred in the successful defense of the petition for review to the Supreme Court brought by Marguerite Sammann and her daughter were a legitimate guardianship expense and if those fees were ever awarded to the guardian by the court in the guardianship proceeding that award was not improper.

In addition to the fact that Ms. Sammann's argument that attorney's fees denied by the Supreme Court were improperly awarded against her in the guardianship proceeding and is not supported by evidence in the record, she is not entitled to reversal of the trial court for additional reasons. First, in her brief in Paragraphs 11-20, Marguerite Sammann cites several statutes which, she argues, would allow the Personal Representative to have appeared at the hearing of the Guardianship final accounting and objected to previously approved fees in annual accountings approved by the Court. Ms. Sammann did not cite any of those statutes before the trial court in response to the motion for

summary judgment. The Court will not address issues related to them for the first time on appeal. RAP 2.5. This Court should not review these arguments brought for the first time on appeal.

Even if Ms. Sammann had raised the statutes cited in her brief in the trial court below concerning the attorney's fees incurred by the guardianship in defending the petition to review to the Supreme Court's, none of those statutes allow the Court to, at a final hearing in a guardianship proceeding, allow the Personal Representative of the Decedent's estate or any other interested party to re-litigate the appropriateness of attorney's fees awarded by the Court after notice in prior annual guardianship orders. Ms. Sammann's reliance on those statutes is completely unsupported.

Ms. Sammann also states, at Paragraphs 21 and 22 of her appellate brief that the final report of the Guardian of the Person and Estate of Robert White asked the Court to approve all of her fees for the Second, Third, Fourth Accounting and Final Report. There is no evidence in the record that supports that claim. It is not true. Marguerite Samman's appeal on that ground is meritless.

All of her claims that the Personal Representative of the Estate of Robert White should have taken action for the return of fees granted to the guardian in the guardianship are meritless and

should be rejected. The trial court properly dismissed Ms. Sammann's claims.

TORTIOUS INTERFERENCE IS NOT BEFORE COURT

In Paragraph 24 and 25 of her brief, Marguerite Sammann discusses the tort of tortious interference with a gift or inheritance. Ms. Sammann's brief is the first time that issue has been raised at any time in this case. There is no evidence supporting the claim in the record and the matter was not discussed by the trial court. The Court should not review that issue. RAP 2.5. Further, because the issue was not raised below, no assignments of error relate to the claim for tortious interference. The issue should not be addressed by the Appellate Court.

AWARD OF ATTORNEY'S FEES WAS PROPER

Marguerite Sammann argues that attorney's fees were improperly awarded against her by the trial court under Civil Rule 11 and RCW 4.84.185. In Washington a claim under CR 11 may be successful on either of two grounds. They are filings made for improper purposes or baseless filings that are either not well grounded in fact, or not warranted by existing law or a good faith argument for alteration of existing law. *Stiles v. Kearney*, 168 Wn.App. 250, 277 P.3d 9 (2012). In this case, the trial court found

that CR 11 was violated both because the complaint was a baseless filing, and because the suit was filed for an improper purpose. That the complaint was filed for an improper purpose is clear by the relief requested in Ms. Sammann's complaint. The relief she requested in this case was reimbursement of the judgments entered against her for her frivolous actions in the guardianship proceeding together with the out-of-pocket costs she incurred in bringing the actions in the guardianship proceeding of Robert M. White that resulted in those judgments. The trial court correctly found that Marguerite Sammann brought this suit to "set off" against the judgment entered against her so she would not be required to pay the judgments. That satisfies the "improper purposes" requirement for a CR 11 award of attorney's fees. In her opening brief Marguerite Sammann does not argue that the trial court erred in finding that she brought the action for improper purpose. She also fails to identify any legal theory under which she could recover in a claim against Robert White, as damages, the frivolous action attorney's fees entered against her in a guardianship proceeding. The trial court's award of attorney's fees was appropriate.

The award of attorney's fees below was also appropriate under CR 11 and RCW 4.84.185. It is appropriate under CR 11 because Marguerite Sammann's claims were not warranted by existing law or a good faith argument for extension of existing law. They are appropriate under RCW 4.84.185 because, under that statute, a lawsuit is frivolous when it cannot be supported by any rational argument on the law and facts. *Stiles, supra*. In the instant case, the Court properly found that Ms. Sammann's claims are not supported by any rational argument on the basis of the law or facts.

When arguing the award of attorney fees by the trial court should be reversed, Marguerite Sammann argues both that her claim against the Personal Representative for failing to object to fees and her claim of a right to reimbursement for the judgments entered against her together with the out-of-pocket costs she incurred in that litigation are claims that are justified by "a reasonable investigation and existing law". Neither theory has any merit.

That Marguerite Sammann's claims against the estate of Robert White arising out of the Personal Representatives failure to object to previously court approved fees in the guardianship are not warranted by existing law and are not supported by any rational

argument on the basis of law or facts is set forth in part III of this brief, and will not be repeated here. The claims that the Guardian received fee awards from the trial court in the guardianship in defense of the Supreme and Appellate Court orders or that those amounts were improperly paid by the guardianship are frivolous. An award of fees for a frivolous action was proper.

Marguerite Sammann also argues that her complaint sets forth a basis for a claim under a "contract" she had with Robert White that has sufficient merit to avoid CR 11 attorney's fees. That argument fails for the following reasons.

1. THE DOCUMENT FILED BY MARGUERITE SAMMANN IN SUPPORT OF HER CLAIM ON A CONTRACT THEORY IS NOT A CONTRACT.

The document Marguerite Sammann relies on as a "contract" with Robert White is, in fact, a statement in support of claim that was allegedly signed by Robert White several months after he was placed under guardianship of his person and estate. (CP 943). That document is not a contract contract between Robert White and Marguerite Sammann. It is not signed by anyone else other than Robert White. Marguerite Sammann is not mentioned in the document. The document did not obligate Marguerite Sammann to do anything. It asked that Nadene Sammann ask the

VA to investigate his claim of missing cash. The document is simply not a contract between Marguerite Sammann and Robert White. To the extent Marguerite Sammann alleges it is a contract her duties are so indefinite that it cannot be enforced. *Sandeman v. Sayres*, 50 Wn.2d 539, 314 P.2d 428 (1957). Marguerite Sammann's claims under a contract were properly dismissed because there is no contract.

**2. MR. WHITE WAS UNDER GUARDIANSHIP AND
COULD NOT ENTER CONTRACT**

Ms. Sammann's contract claim also fails because at the time he signed the document she relies on as a valid contract, Mr. White was under a guardianship of his person and estate and was incompetent to contract. Ms. Sammann does not contest that Washington law requires 3 elements to be met before a person under guardianship can be bound under contract he or she entered into. In order to have a valid contract entered into with a person under guardianship Washington law requires (1) that the guardian has substantially abandoned the guardianship; (2) that the ward is competent or has a lucid interval at the time the contract is entered; and (3) that the contract is entered with a person unaware of the existence of the guardianship. *United Pacific Insurance Company v.*

Buchanan, 52 Wn.App. 836, P.2d 23 (1988). While Ms. Sammann alleges that Robert White was competent when he signed the form requesting an investigation by the VA into the disappearance of his cash, it is not disputed that the guardianship was never abandoned and Ms. Sammann had appeared in the guardianship proceeding before the document she claims is a contract was signed. Mr. White could not validly contract with her in those circumstances. Her claim for relief is utterly meritless legally because it is impossible for Robert White to have entered a valid contract with Marguerite Sammann while he was incompetent because he was a under guardianship.

The Court properly found that the claims pleaded by Marguerite Sammann are frivolous both because they are not well grounded in fact, or warranted by existing law or good faith argument for extension of existing law. It is simply not possible for Robert White to have contracted for the services for which Marguerite Sammann requested compensation because he was under guardianship at the time of the alleged contract. Ms. Sammann knew of the guardianship and therefore cannot claim a valid contract. Second, the damages she claims for breach, the judgments entered against her and interest on those judgments, as

a matter of law are not collectible as damages for breach of the "contract".

Finally, the document relied on by Ms. Sammann is not a contract and therefore does not allow recovery by Ms. Sammann as she has requested in her complaint. The Court properly found a basis for attorney's fees under CR 11 and RCW 4.84.

Marguerite Sammann argues in paragraphs 35 and 36 of her opening brief that the trial court should not have awarded attorney's fees because she claims, the Personal Representative breached her fiduciary duties by failing to collect back from the guardian fees paid during the guardianship proceeding. In support of that argument she cites RCW 11.48.210. This argument is raised on appeal for the first time and should not be considered by the appellate court. RAP 2.5. Even if the Court were to consider the argument, it has nothing to do with the issue before the court which is an award of attorney's fees against Marguerite Sammann under CR 11 and RCW 4.84.185. RCW 11.48.210 applies to payment for acting as Personal Representative of an estate. This is not the probate proceeding and no award of attorney's fees to Anna Armstrong has been made. The statute cited by Marguerite

Sammann has nothing to do with the award of attorney's fees against her for bringing a frivolous action.

Marguerite Sammann argues that the trial court abused its discretion in awarding \$13,035 in attorney's fees against her under CR 11 and RCW 4.84.185. The attorney's fees were requested based on a lodestar analysis multiplying the number of hours worked by the hourly rate for the attorney for the Personal Representative. (CP 620). Washington appellate courts have adopted the lodestar analysis as a proper method of awarding fees. *Absher Const. Co. v. Kent Sch. Dist. No. 415*, 79 Wn. App. 841, 846, 917 P.2d 1086, 1089 (1995). The Court's order granting fees expressly states that the court considered the lodestar analysis and that the hours expended were reasonable. (CP 1356). This Court should affirm the attorney's fees awarded below.

**MARGUERITE SAMMANN WAS NOT ENTITLED TO
APPOINTED COUNSEL**

On the day of the hearing of the summary judgment brought by Anna Armstrong, Marguerite Sammann filed with the court a motion requesting that counsel be appointed for her. She did not appear in court to present that motion but instead her daughter, Nadene Sammann was present but was not allowed to address the

court on the motion. The court denied the motion. Marguerite Sammann argues, without authority, that it was error for the court to fail to appoint an attorney for her. Appellate courts typically will not consider arguments not supported by legal authority. Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none. *DeHeer v. Seattle Post-Intelligencer*, 60 Wash. 2d 122, 126, 372 P.2d 193, 195 (1962). This court should affirm the trial court's refusal to appoint counsel on the day of the summary judgment hearing.

III. ATTORNEY'S FEES ON APPEAL

Anna Armstrong also requests an award of attorney's fees on appeal to be entered against both Marguerite Sammann and Nadene Sammann, jointly and severally, for the two pending appeals before this court. The basis for the judgment is that the appeals are frivolous and fees are awardable under Civil Rule 11. Just as happened in the trial court, this appeal is both factually and legally meritless. Baseless filings that are either not well grounded in fact, or not warranted by existing law or a good faith argument for alteration of existing law are subject to sanctions under Civil Rule

11. *Stiles v. Kearney, supra*. An award of fees on appeal is appropriate.

The award of attorney's fees should be entered jointly against Marguerite Sammann and her daughter, Nadene Sammann. They filed virtually identical actions in the trial court the same day making the same claims. Both pleadings claim that the plaintiff is entitled to relief under a "contract" with Robert White. Where two parties agree to accomplish a purpose not itself unlawful but by unlawful means they are both responsible for damages under a theory of civil conspiracy. *Sterling Business Forms v. Thorpe*, 82 Wn.App. 446, 918 P.2d 531 (1996). In such case the parties responsible are jointly and severally liable for the obligation. In that case the court said, at page 454:

The liability of conspirators is joint and several. That is, each is liable for all acts committed by any of the other parties, either before or after their entrance, in furtherance of the common design.

In this case, Marguerite Sammann and her daughter conspired to bring identical actions for the purpose of delaying the closing of the estate and the enforcement of judgments against them and to attempt to force a set off against those judgments. A judgment jointly and severally against both for all of the fees incurred in

defending both cases should be entered against both parties. This Court should enter a judgment against Marguerite Sammann for the full amount of all fees incurred in both cases.

IV. CONCLUSION

This Court should affirm the order granting summary judgment issued by the trial court and award attorney's fees to Anna Armstrong in an amount to be determined following conclusion of the appeal.

RESPECTFULLY SUBMITTED this 26 day of
March, 2015.



BART L. ADAMS, WSBA 11297
Attorney for Anna Armstrong,
Respondent

