

No: 489716-II
Jefferson County Superior Court No: 15-2-00139-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

SUN LIFE ASSURANCE COMPANY OF CANADA,

Respondent,

v.

ABRIEL C. LEE, Respondent

AND

HEIDI A. LEE, Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Superior Court Judge

BRIEF OF APPELLANT

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A. INTRODUCTION

Appellant, Heidi Lee, seeks reversal of each and every aspect of the Jefferson County Superior Court's award of judgment as a matter of law to Abriel Lee.

B. ASSIGNMENT OF ERROR

The Superior Court erred by awarding summary judgment to Abriel Lee; and it erred by finding that Heidi Lee's motion for summary judgment was frivolous. The Superior Court's erroneous decision was based, in no small part, upon its consideration of inadmissible evidence in the form of an unauthenticated letter and irrelevant evidence of an offer of compromise. Given the admissible evidence, and Ronald Lee's brazenly inequitable conduct, the superior court should have entered judgment in favor of Heidi Lee, rather than entering judgment as a matter of law in favor of Abriel Lee and sanctioning Heidi Lee for a purportedly frivolous motion.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR AND BRIEF ANSWERS

1. Should the Clean Hands Doctrine Precluded Judgment in Favor of Abriel Lee?

Brief Answer: YES. *Heidi Lee's motion established that Ronald Lee's improper change in the beneficiaries should be considered void, due in large part to the fact that the relief sought by Abriel Lee is based upon equitable principles and her status as a litigant cannot be abstracted from Ronald Lee's egregious equitable violations*

2. Should Ronald Lee's Violation of the Superior Court's Temporary Order Void the Designation of Abriel Lee as Beneficiary to the Life Insurance Policy?

Brief Answer: YES. *Ronald Lee, and other litigants who are similarly situated, are free to violate court orders unless a court fulfills its responsibility to enforce its orders. Because Ronald Lee was beyond the superior court's contempt powers, voiding the designation of Abriel Lee as beneficiary was the only remedy proportional to Ronald Lee's misconduct and the only remedy that would deter future similar misconduct by other litigants.*

3. Did the Superior Court err by Considering an Unsigned, Undated, and Unauthenticated Letter in Abriel Lee's Response to Heidi Lee's Motion for Summary Judgment?

Brief Answer: YES. *The unsigned, undated letter was not properly authenticated and therefore was inadmissible during a court's consideration of a motion for summary judgment.*

4. Did the Superior Court err by Considering Abriel Lee's Evidence of an Offer of Compromise in its Ruling on Heidi Lee's Motion for Summary Judgment?

Brief Answer: YES. *The evidence pertaining to an alleged offer of compromise was irrelevant and prejudicial in the context of the superior court's equitable determination because the offer incompletely remunerated Ms. Lee for the full share of the insurance proceeds to which she would have been entitled in the absence of violation of the court order.*

5. Did the Superior Court err in its Ruling Awarding Attorney's fees to Abriel Lee on the Basis that Heidi Lee's Motion for Summary Judgment was Frivolous?

Brief Answer: YES. *Heidi Lee's Motion was not frivolous within the meaning of Jefferson County Local Civil Rule 7.8 because it raised a genuine issue for the Court's determination regarding the proper equitable remedy for Ronald Lee's violation of the March 18, 2011, Temporary Order; and an issue as to the proper beneficiary of the life insurance proceeds.*

D. SUMMARY OF ARGUMENT

The superior court erred when it awarded judgment as a matter of law to Abriel Lee. The superior court's erroneous judgment awarded Abriel Lee the net proceeds of the full life insurance policy of Ronald Lee, despite the fact that she became a beneficiary solely by virtue of Ronald Lee's violation of a temporary court order, concealment of that violation throughout the dissolution proceedings, and his deceitful signing of a dissolution decree with which he never would comply.

To make matters worse for Heidi Lee, the superior court considered inadmissible and irrelevant evidence in the form of an unsigned and undated letter attributed to Ronald Lee and Abriel Lee's offer of compromise. In its evaluation of Heidi Lee's motion, the superior court's ruling reflected an undue emphasis on its intent in drafting the dissolution decree that Ronald Lee violated, rather than the written terms of the dissolution decree and the terms of the temporary order Ronald Lee defied before his violation of the decree. Heidi Lee seeks reversal of every aspect of the superior court's ruling because it did not adequately apply the law to the equities of the case.

E. STATEMENT OF THE CASE

On March 18, 2011, Ronald and Heidi Lee filed a Temporary Order of Dissolution in Jefferson County Superior Court. (CP 178-180). The couple had been married since 2001. (CP 171). The temporary order

restrained and enjoined both parties from “changing entitlement of any insurance policies of either or both parties...” (CP 179). Ronald Lee had life insurance policies through Sun Life Assurance Company of Canada as a benefit of his employment with North Kitsap School District. (CP 1-2).

Notwithstanding the clear command of the temporary order, Ronald Lee changed the beneficiary of his life insurance policies to his daughter, Abriel Lee on September 1, 2013. (CP 182). In March of 2014, the superior court heard the dissolution proceeding involving Ronald and Heidi Lee. (CP 174). Following that proceeding, the superior court entered a Decree of Dissolution which included a provision requiring that “[t]he husband shall continue to name the wife as the beneficiary of his life insurance policy until both his spousal maintenance obligation terminates and the judgment is paid in full.” (CP 230). Ronald Lee did not advise the superior court at the time it issued the Decree that he had already made his daughter, Abriel Lee, the sole beneficiary of the life insurance policies in violation of the March 18, 2011, temporary order. Ronald Lee signed the dissolution decree, despite the fact that he was in violation of its terms and had no plans for future compliance with its explicit terms. (CP 266).

Ronald Lee died on April 16, 2015. (CP 175, 268). At the time of his death, he owed Heidi Lee \$32,384.00. (CP 172, 298). Ronald Lee’s insurer, Sun Life, filed an interpleader complaint in Jefferson County

Superior Court after it received competing claims to the insurance policies by Heidi Lee and Abriel Lee. (CP 1).

On January 8, 2016, Heidi Lee filed a motion for summary judgment seeking a ruling declaring her sole beneficiary of the insurance proceeds and asking the superior court to disburse to her the full amount of life insurance policies. (CP 160). On January 25, 2016, Abriel Lee filed an opposition to summary judgment and sought for herself an order from the superior court disbursing the full amount of the life insurance policy. (CP 311). After a hearing, the Jefferson County Superior Court entered an order that disbursed the entirety of the life insurance proceeds to Abriel Lee, less the amount remaining to be paid under the April 9, 2014, decree of dissolution. (CP 464-67, 475-78). The superior court's order also awarded Abriel Lee attorney's fees upon its determination that Heidi Lee's motion for summary judgment was frivolous. (CP 466, 477). On April 13, 2016, Heidi Lee filed a notice of appeal to this Court.

F. ARGUMENT

The superior court erred by awarding judgment to Abriel Lee and in its attorney fee award as a sanction for its finding that Heidi Lee's motion was frivolous; and this Court should reverse all aspects of the superior court's judgment in favor of Abriel Lee. Heidi Lee's summary judgment motion was justified by Ronald Lee's blatant violation of the superior

court's temporary order, by his silence as to this transgression during the trial, and his continued silence during and after entry of the divorce decree. Moreover, the superior court arrived at its erroneous decision in reliance upon a letter that should have been inadmissible because it was unsigned and undated; and an irrelevant offer of compromise. Even if Heidi Lee's summary judgment motion was properly denied by the superior court, the legal and factual issues presented by the motion should have precluded the superior court's finding that it was frivolous.

Because a trial court's decisions pertaining to the adjudication of temporary orders and preliminary injunctions are discretionary, appellate courts typically employ an abuse of discretion standard of review. *See City of Bremerton v. Sesko*, 100 Wn.App. 158, 162, 995 P.2d 1257 (2000) (citing *State v. Kelley*, 77 Wn.App. 66, 69, 889 P.2d 940 (1995)). "A trial court abuses its discretion if its decision is manifestly unreasonable or is based on 'untenable grounds, or for untenable reasons.'" *In re Personal Restraint of Duncan*, 167 Wn.2d 398, 403, 219 P.3d 666, 669 (2009) (citing *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006)). "A decision is based upon untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* The superior court abused its discretion by erroneously resolving the equities of the case when it awarded judgment as a matter of law to Abriel

Lee and awarded attorney's fees on the basis of its determination that Heidi Lee's motion for summary judgment was frivolous.

1. The Clean Hands Doctrine Should Have Precluded Judgment in Favor of Abriel Lee

The conduct of litigants is highly relevant when parties appear before a court sitting in equity. “[W]hile equity does not demand that its suitors shall have led blameless lives as to other matters, *it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue.*” *Precision Instrument Mfg. Co., v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 815-15, 65 S.Ct. 993, 89 L.Ed. 1381 (1945) (emphasis added) (citing *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245, 54 S.Ct. 146, 78 L.Ed.2d 293 (1933)).

It is one of the fundamental principles upon which equity jurisprudence is founded, that before a complainant can have a standing in court he must first show that not only has he a good and meritorious cause of action, but he must come to the court with clean hands. He must be frank and fair with the court...whenever a party who, as an actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, good faith, or other equitable principle, in his prior conduct, then the doors of the court will shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him a remedy.

Keystone, 290 U.S. at 244-45. “Equity will not interfere on behalf of a party whose conduct in connection with the subject matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith, and will not afford him any remedy.” *Portion Pack, Inc. v. Bond*, 44 Wn.2d 161, 170, 265 P.2d 1045 (1954) (quoting *Income Investors, Inc. v. Shelton*, 3 Wn.2d 599, 101 P.2d 973 (1940)).

The process of obtaining and adjudicating injunctions and temporary orders is equitable in nature; and courts are vested with considerable discretion in administering such orders. *Tradewell Stores, Inc. v. T.B. & M., Inc.*, 7 Wn.App. 424, 427-28, 500 P.2d 1290 (1972) (citing *Coy v. Raabe*, 77 Wn.2d 322, 462 P.2d 214 (1969)). The superior court abused its broad discretion when it disregarded Ronald Lee’s inequitable conduct because an equitable decision on behalf of Abriel Lee was tantamount to one in favor of Ronald Lee.

Although Ronald Lee was deceased and thus beyond the superior court’s contempt powers when his previous inequitable conduct came to light, Abriel Lee appeared before the superior court asserting an expectation interest which existed only after Ronald Lee violated the temporary order. She should have been seen to stand in his shoes, and the money she received by virtue of his deceitful conduct should be “subject to the equities

impressed upon it”¹ when the equitable violations occurred. Abriel Lee’s expectation interest in the insurance policy was, itself, the fruit of an equitable violation, and the taint of his violation was neither cleansed nor even attenuated by bequeathing the insurance money.

The superior court’s rulings in this case manifested ambivalence to Ronald Lee’s violation of its temporary order and to his deceit during legal proceedings conducted in its courtroom. In fact, the court expressly trivialized the importance of its orders: “I don’t think the issue at all is how much is a violation of a Court order worth? I think that’s a complete mischaracterization of it. *I mean, people violate this Court’s orders all the time.*” (VRP 32) (emphasis added).

The superior court’s decision amounts to a refusal to enforce its order to ensure fairness during the proceedings. The “clean hands doctrine” should have precluded the relief vicariously afforded to Ronald Lee through his daughter because she stood in his shoes and could not fairly assert that her legal position is unaffected by her father’s conduct.

¹ In *Knapp v. Milwaukee Trust Co.*, 216 U.S. 545, 557, 30 S.Ct. 412, 54 L.Ed. 610 (1910), the Court decided that property held by a bankruptcy trustee is “subject to the equities impressed upon it while in the hands of the bankrupt” because the trustee “stands in the shoes of the bankrupt.”

2. Ronald Lee's Violation of the Superior Court's Temporary Orders should have Voided his Designation of Abriel Lee as Beneficiary to the Life Insurance Policies.

The death of a spouse does not deprive the trial court of the equitable power to remedy the deliberate violation of a valid court order. *Standard Ins. Co. v. Schwalbe*, 110 Wn.2d 520, 525-26, 755 P.2d 802 (1988). The superior court should have used this equitable power and awarded Heidi Lee the life insurance proceeds to which she was solely entitled.

In *Schwalbe*, the William and Joanne Schwalbe were involved in a divorce proceeding which awarded temporary custody of the minor children to Joanne Schwalbe, ordered William Schwalbe to pay \$400 per month in child support, and prohibited both parties from changing the entitlement of any insurance policies. *Id.* at 522-22. At the time of the temporary order, Joanne Schwalbe was the sole beneficiary of a life insurance policy on William Schwalbe. *Id.* at 522. In violation of the temporary order, William Schwalbe changed the beneficiary of the life insurance from Joanne Schwalbe to his new wife, Glenda Dent. *Id.* He committed suicide one month later. *Id.* Although Joanne Schwalbe received one half of the proceeds upon William Schwalbe's death, both she and Glenda Dent claimed the remaining one-half; and the insurer filed an interpleader proceeding. *Id.* The trial court voided the change in beneficiary, but the Court of Appeals reversed on its belief that William Schwalbe's death

deprived the trial court of jurisdiction to remedy the violation of the temporary order. *Id.*

Reversing the Court of Appeals in support of the trial court's original ruling, the Washington State Supreme Court held that William Schwalbe did not have the right to name Glenda Dent a beneficiary to his insurance policy—even to *only half the proceeds*. *Id.* at 523. The Court recognized that the typical enforcement mechanism of contempt was unavailable because of Mr. Schwalbe's death, but specifically held that “the death of a party while a dissolution action is pending does not deprive the trial court of its discretion to order a return to the status quo or to treat a transaction as invalid where an injunction has been violated.” *Id.* at 526.

Here, Heidi Lee is in the same position as the litigant in *Schwalbe*. Her interest in the insurance proceeds is that of a spouse who had a temporary court order maintaining her status as the sole beneficiary to the insurance policy; as compared to Abriel Lee, the adult child of her deceased ex-husband who had no interest whatsoever in the insurance proceeds apart from Ronald Lee's violation of the temporary order.

The competing interests are simply a party who was designated as a beneficiary contrary to express court order and a party for whose benefit the court ordered the policy to be maintained. As between these two conflicting interests, the court order should be enforced and the proceeds distributed...

Id. at 524 (quoting *Aetna Life Ins. Co. v. Bunt*, 110 Wn.2d 368, 754 P.2d 993 (1988)). Heidi Lee’s right to the insurance proceeds was muddled in the superior court’s analysis by its reliance on the force of its dissolution decree, rather than the temporary order.

a. The Superior Court’s Ruling Disregarded the Fact that Ronald Lee Violated Two Written Orders

On September 1, 2013, Ronald Lee violated the March 18, 2011, temporary order which read as follows: “Both parties are restrained and enjoined from assigning, transferring, borrowing, lapsing, surrendering, or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance.” (CP 179, 182).

On April 9, 2014, Ronald Lee immediately violated the superior court’s Decree of Dissolution when he signed it because it specifically provided that, “The husband shall continue to name the wife as the beneficiary on his life insurance policy to secure future payment of both his spousal maintenance obligation and the judgment entered herein.” (CP 264). Ronald Lee signed the Dissolution Decree, as did his attorney. (CP 266). Neither before nor after he signed the document did Ronald Lee admit that he was in violation of its terms—terms which he was presumed to be aware of and understand by virtue of his signature. *See Kinsey v. Bradley*, 53 Wn.App. 167, 171, 765 P.2d 1329 (1989).

Despite the fact that Heidi Lee's motion for summary judgment was focused primarily on Ronald Lee's violation of the temporary order; the superior court focused on his violation of the Dissolution Decree and effectively ignored the terms of the temporary order:

It's really, really remarkable to me that Heidi, Heidi Lee's documents do not one bit refer to Section 3.17 of the decree that expresses that this was security for both the maintenance and the judgment. That's a huge issue. And not only here, but, according to a couple of these cases. And to me it's crystal, crystal clear that the reason for the insurance was to secure these obligations because Ron Lee was ill and there was concern about whether she would get all her money.

(VRP 28) (emphasis added)

To me this is obvious. It was for security purposes only. Heidi's asking for a complete unjustified windfall at it just amazes me...And, uh, and Heidi was missing nothing. She, the cash is available for her to get everything she was awarded in the divorce. And so, I mean, my decision is specific to these facts.

(VRP 33). Heidi Lee was not seeking a windfall—she she merely asked the superior court to enforce the orders it issued as-written.

- b. The Superior Court's Dissolution Decree Did not Command that Heidi Lee's Recovery of the Life Insurance be Limited Only to Outstanding Money in the Form of Spousal Maintenance or the Monetary Judgment.

The superior court's dissolution decree does not explicitly limit Heidi Lee's monetary recovery from an insurance policy to the extent that she had yet to be fully compensated under the dissolution decree. Nor did the decree explicitly empowered Ronald Lee to name another beneficiary up to some appropriate percentage of the benefit amount that would leave Heidi Lee with an insurance award sufficient to only cover her maintenance and judgment. Instead, the superior court's written dissolution decree required Ronald Lee to maintain Heidi Lee's status as a beneficiary with only a single explicit temporal, rather than monetary, limitation: until he satisfied his maintenance obligations and the judgment. (CP 230). Within the written framework of the dissolution decree, Heidi Lee could rightfully claim the full value of the life insurance proceeds based on the superior court's written order.

It is well-established that a written order is the order of the Court, and controls over an inconsistency with a court's oral ruling: "A trial court's oral or memorandum opinion is no more than an expression of its informal opinion at the time it is rendered. It has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." *State v. Mallory*, 69 Wn.2d 532, 533, 419 P.2d 324 (1966). The content of the superior court's oral ruling on February 5, 2016, had no bearing upon the effect of its written order, the dissolution decree itself.

The superior court erred to the extent that it relied on its oral ruling to chastise Heidi Lee and rule against her. It should have carefully examined the wording of its dissolution decree to ascertain its true force and effect. In so doing, it would realize that Ronald Lee was to “continue to name” Heidi Lee as a beneficiary. (CP 229). In failing to continue to name her, Ronald Lee violated that order; and under the explicit terms of that order, Heidi Lee should have recovered from the life insurance proceeds without express limitation, regardless of the intent in the superior court’s mind at the time it rendered its decision. This determination is especially true when this Court considers that Ronald Lee violated two orders, one of which was a temporary order which had not even the slightest hint that Heidi Lee’s life insurance recovery would be limited to some as-of-yet-unascertained judgment and spousal maintenance award.

c. The Temporary Order Provides that Heidi Lee Recover Any Insurance Proceeds Without Limitation.

The terms of the temporary order, signed on March 18, 2011, instructed, without any limitation as to duration or monetary amount, that Ronald Lee was not allowed to transfer, remove, encumber, conceal, or change the entitlement of any insurance policy. (CP 179). Ronald Lee violated the explicit and unambiguous terms of that order on September 1, 2013, when he named his daughter, Abriel Lee, as sole beneficiary of the insurance policy. (CP 182).

In *Schwalbe*, the Washington Supreme Court noted that the distinction between violation of a temporary order versus a final decree is irrelevant. 110 Wn.2d at 524. The superior court should have analyzed the remedy which was appropriate for violation of *both* orders, rather than viewing it only through the lens of what it intended, *rather than wrote*, in the final decree of dissolution. If the superior court had looked at the terms of the temporary order, rather than focusing only on his oral ruling during the dissolution proceeding, then it would have seen that voiding the beneficiary designation was the proper outcome, and would not result in an unfair windfall.

- d. Limiting Heidi Lee's Insurance Award to the Value of her Spousal Maintenance and Judgment does not make her Whole.

Heidi Lee was awarded an amount of spousal maintenance and a judgment, without any sort of provision for attorney's fees, past or future. (CP 262-66). Heidi Lee was then forced to hire an attorney and pursue legal action to secure *any* amount of the life insurance. The fact that she hired an attorney was necessitated entirely by Ronald Lee's violation of both the temporary order and dissolution decree. Had Ronald Lee not violated those orders, Heidi Lee's claim for the insurance proceeds would have been paid. (CP 1) ("However, because of the competing claims...Sun Life maintains this [interpleader] action.").

- e. The Superior Court Should Have Voided Abriel Lee's Status as a Beneficiary of the Policy Because Ronald Lee Violated Two Court Orders Prohibiting the Change in Beneficiary and Remained Silent as to his Violation of those Orders.

The superior court should have voided the change in beneficiary which was made by Ronald Lee in direct violation of a temporary order enjoining him from taking that action, because “[i]t is the **duty** of courts to enforce their orders.” *See Schwalbe*, at 526 (emphasis added). Failing to void the change in beneficiaries both excuses Ronald Lee's inequitable conduct and sends the wrong message to future litigants. Other insured spouses in Ronald Lee's position may be emboldened to reach from beyond grave to defy court orders and disregard their duties to their spouses and families during dissolution proceedings.

Failing to adequately sanction Ronald Lee's behavior is especially problematic where he had a chance to come clean about his violation of the temporary order and failed to do so. He signed the superior court's dissolution decree knowing that he never intended to abide by it. That is the height of inequity and disrespect for court proceedings. He should not be pardoned by virtue of the superior court's inability to sanction him directly with its contempt authority. The fact is that the purpose of Ronald Lee's violation was to pass the monetary value of the insurance policy, upon his death, to his daughter in violation of the superior court's **two** orders. The

only remedy to adequately condemn this behavior and deter future similarly-situated litigants, is to void the beneficiary change and distribute the insurance proceeds accordingly.

- f. A Court Reviewing the Equities as a Whole Should Void the Designation of Abriel Lee as a Beneficiary and Award the Full Insurance Value to Heidi Lee.

The current situation is not one where Heidi Lee is a gold digging woman who seeks to profit from a short-term marriage to an older man which was demonstrably motivated by her pecuniary interest. The equities support Heidi Lee's efforts to recover the money to which she was entitled had Ronald Lee followed the superior court's temporary order.

First, relative to Heidi Lee, Ronald Lee engaged in somewhat careless indulgence regarding his financial affairs both before and during the marriage. Ronald Lee came into the marriage with "virtually no assets," aside from his pension, and a pile of debt². (CP 212-13). The superior court went so far as to comment directly upon Ronald Lee's financial indulgence, "It does seem like he was calling—well, I don't know. I mean, in some respects it seems like he was calling the financial shots. You know, he incurred debt, she didn't...he has more of a tendency to incur debt." (CP 217).

² The conflicting testimony of Ronald Lee and Heidi Lee placed the debt somewhere between \$34,000 and \$57,000. (CP 212-13).

Heidi Lee came into the marriage with ownership of a home, and only \$12,000 in student loan debt, and \$6,000 owed on a Toyota. (CP 212). Contrasting her lifestyle to that of her husband Ronald Lee, the superior court observed that Heidi Lee “lived a frugal lifestyle for years and years and years, took care of four kids on modest income” and “had no history of using credit cards to any great degree.” (CP 212). Heidi Lee even sold her house to pay off \$41,000 of Ronald Lee’s debt—a house that the superior court called a “significantly and primarily separate asset” of hers. (CP 216).

Second, Ronald Lee was demonstrably less committed to the marriage. Heidi Lee was dealing with medical complications which developed during the marriage and which resulted in 100% medical disability that the superior court believed would persist for at least eight more months. (CP 221). Regarding the appearance that the spouses had an unequal commitment to the marriage, the superior court questioned whether Ronald Lee was committed to the marriage; but believed that Heidi Lee was devastated by the divorce and had wanted to make things work. (CP 214). The superior court remarked that its assessment of Ronald Lee’s credibility was affected by his choice to go to Arizona to golf while his wife was in Texas having surgery—a time when Ronald Lee claimed that he was “trying to get the relationship back together.” (CP 215). There was nothing in the

superior court's oral ruling related to the divorce decree that suggested Heidi was unsupportive of Ronald Lee and his medical needs.

The superior court should have voided Ronald Lee's September 1, 2013, designation of Abriel Lee as beneficiary to his life insurance policies. This result is appropriate legally, given the superior court's authority to void the designation because it was in violation of the court's temporary order; and given the fact that the terms of both its orders did not explicitly restrict Heidi Lee's recovery to less than the full amount of the life insurance proceeds. Abriel Lee, on the other hand, was a beneficiary *solely* due to Ronald Lee's violation of both orders. When a court combines the order violations with the other inequities from the ten year-long marriage, it becomes clear that Heidi Lee could fairly expect to recover the entirety of the life insurance policy. To facilitate the Court's review of the superior court's erroneous rulings, it should examine the material that the superior court improperly considered when arriving at its decision.

3. The Superior Court Improperly Considered an Inadmissible Unsigned and Undated Letter Purporting to Establish Ronald Lee's State of Mind when he Violated the March 18, 2011, Temporary Order.

On January 25, 2016, Abriel Lee filed a declaration as part of her opposition to Heidi Lee's Motion for Summary Judgment. (CP 324). That declaration included reference to a letter purportedly drafted by her father, Ronald Lee. (CP 324-25). That letter was attached as "Exhibit 1" to Abriel

Lee's declaration. (CP 326). On February 1, 2016, counsel for Heidi Lee filed a motion to strike inadmissible evidence, including the letter. (CP 369). The superior court refused to strike the letter, and considered it in the ruling awarding Abriel Lee judgment as a matter of law and attorney's fees.

As a preliminary matter, the letter is inadmissible as hearsay, because it is offered to prove the truth of the matter asserted therein. ER 801, ER 802. The letter discusses irrelevant testamentary issues related to Ronald Lee's estate, but there is insufficient authentication to conclusively establish when it was typewritten or even by whom, because the letter is unsigned, undated, and typewritten. (CP 326). In *Wagers v. Goodwin*, this Court had occasion to consider the admissibility of a similarly unsigned and undated letter in a declaratory judgment action following a dissolution proceeding. 92 Wn.App. 876, 964 P.2d 1214 (1998). This Court wrote, "As Wagers correctly points out, this letter was not authenticated and is inadmissible in its present form. *See* ER 901. Summary Judgment must rest upon admissible evidence." *Id.* at 882 (citing *Vacova Co. v. Farrell*, 62 Wn.App. 386, 395, 814 P.2d 255 (1991)).

The letter, even if were authenticated properly, is irrelevant. ER 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the

evidence.” The main issues that Heidi Lee placed before the Superior Court were whether Ronald Lee’s violation of the March 18, 2011, Temporary Order, and his concealment of that act throughout the proceedings, voided the designation of Abriel Lee as beneficiary to his life insurance; and to what extent Heidi Lee was entitled to the life insurance proceeds.

What Ronald Lee *may have intended* with respect to the disposition of his life insurance policy is not relevant. The violation of the temporary order, without question, occurred *before* the drafting of the letter. This can be ascertained because the letter mentions an accurate amount (within \$500) of Heidi Lee’s actual judgment from the divorce decree; yet the beneficiary change clearly occurred well before the divorce decree was entered. (CP 326, 262, 260). The letter was not drafted contemporaneously to the temporary order violation, and concealment thereof. Given that it contains inadmissible hearsay, its obvious authentication issues, and evident approximate timing of its drafting, the superior court erred in admitting the letter; and this Court should order the superior court to completely disregard the letter in any future proceedings on remand.

When the Court reverses judgment in favor of Abriel Lee, it should instruct the superior court that, on remand, the unsigned and undated letter is not to be considered as admissible evidence; and it should do the same for Abriel Lee’s evidence of an offer of compromise.

4. The Superior Court Erred when it Considered Evidence of Abriel Lee's Offer of Compromise

Evidence of offers of compromise is generally not admissible under ER 408. However, ER 408 has been determined in Washington State not to apply to settlement offers when such an offer is sought to be introduced by the offeror. *Bulalich v. AT&T Information Systems*, 113 Wn.2d 254, 778 P.2d 1031 (1989). The Washington State Supreme Court made it clear, however, that the admissibility of an offer of compromise still depends on its relevance. *Id.* at 264 (discussing that ER 408 has a second concern – relevancy of the settlement offer).

The settlement offer in this case is irrelevant for two primary reasons. First, the settlement offer did nothing to redress Ronald Lee's improper conduct. Second, offering Heidi Lee an amount of money that was barely over one quarter of what she was entitled to if Ronald Lee had followed the superior court's temporary order essentially ignores the fact that Heidi Lee was seeking a remedy for Ronald Lee's violation of that order, and that she had already incurred legal expenses to respond to Sun Life's interpleader complaint.

At the summary judgment motion, Heidi Lee's argument was that Ronald Lee's violation of the temporary order nullified Abriel Lee's interest in *any* of the insurance proceeds; and that the only remaining allowable expectation interest for the insurance proceeds was that of Heidi Lee,

herself. Moreover, Heidi Lee rightfully expected the superior court to act upon Ronald Lee's violation of the temporary order in the context of the equitable proceedings before it, especially where Ronald Lee perpetuated his deceitful conduct by signing a dissolution decree of which he was already in violation and which he never intended to follow in the future.

The irrelevant settlement offer did not ameliorate Heidi Lee's justified ire regarding Ronald Lee's dishonest conduct, did not compensate her for the attorneys fees she expended to respond to Sun Life's interpleader complaint; so it was not unreasonable or frivolous for her to seek judicial resolution of the inequitable conduct. The Court should order, on remand, that the superior court should not consider the offer of compromise in future proceedings.

5. The Superior Court erred in its Determination that Heidi Lee's Motion was Frivolous within the Meaning of Jefferson County Superior Court Local Rule 7.8.

Considering the record on review, and the argument presented by Heidi Lee's opening brief, the Court should reverse the superior court's determination that Heidi Lee's summary judgment motion was frivolous, as well as the corresponding attorney fee award in favor of Abriel Lee. (CP 466-67)

An appellate court reviews an award of attorney's fees for an abuse of discretion. *See Reid v. Dalton*, 124 Wn.App. 113, 123, 100 P.3d 349

(2004). While Abriel Lee sought relief under CR 11 and LCR 7.8, the superior court specifically noted that it was *not* awarding sanctions under CR 11; and was proceeding under LCR 7.8. (VRP 34).

The superior court ruled, pursuant to LCR 7.8, that Heidi Lee's legal efforts to pursue a remedy as of September 10, 2015, were frivolous because it believed there was evidence that Abriel Lee was trying to settle the matter by paying what the superior court believed Heidi Lee was owed.

And finally, on September 10, 2015, is when, is when I have the documented evidence that Abi was trying to settle this by paying, paying Heidi off, uh, Heidi off. So, from September 11th forward Heidi pays Abi's attorney's fees and costs. And, uh, because to me I don't know why we're here.

(VRP 33).

Jefferson County Local Civil Rule 7.8 reads, "7.8 Sanctions. The court may impose sanctions or terms for any frivolous motion, non-appearance, or in granting a continuance of any matter." There is no definition section in the local rules and "frivolous" is not otherwise defined therein.

When interpreting and applying rules, an appellate court approaches the rule in the same way as a statute drafted by the Legislature. *State v. Hutchinson*, 111 Wn.2d 872, 877, 766 P.2d 447 (1989). Undefined words used in a statute will be given their ordinary, commonly

accepted meaning. *State v. Thierry*, 60 Wn.App. 445, 449, 803 P.2d 844 (1991).

Merriam Webster Online has, in its full definition of “frivolous” the following: “1 a: of little weight or importance, b: having no sound basis (as in fact or law).” Available at <http://www.merriam-webster.com/dictionary/frivolous>. Black’s Law Dictionary defines “frivolous” as “[I]acking a legal basis or legal merit; not serious; not reasonably purposeful. (10th ed. 2014).

Heidi Lee sought relief pursuant to a decision of the Washington State Supreme Court, *Standard Ins. Co. v. Schwalbe*. That decision, by itself, grants a superior court authority to nullify a party’s change of life insurance policy beneficiary when that designation was in violation of a temporary order during dissolution proceedings. 110 Wn.2d at 527. Heidi Lee filed a motion asking the superior court to exercise that discretion; and the superior court’s denial of that motion does not automatically support its determination of frivolity. *See e.g. WRP Lake Union Limited Partnership v. Exterior Services Inc.*, 85 Wn.App. 744, 752, 934 P.2d 722 (1997) (citing *Streater v. White*, 26 Wn.App. 430, 435, 613 P.2d 187 (1980)) (“A case is not necessary frivolous because a party ultimately loses on a factual or legal ground.”).

When the Court considers the record, it will see the obvious: Heidi Lee had to file a response to Sun Life's interpleader complaint because Ronald Lee violated two court orders. She sought a remedy for Ronald Lee's willful and deliberate violation of both the temporary order and the decree of dissolution. She sought a remedy, as well, for his deceitful concealment of his violation of the temporary order during the dissolution proceedings and signing of the decree. She sought this remedy pursuant to valid decisional law which specifically allowed for the remedy she requested. As such, the superior court abused its discretion when it labeled her motion "frivolous" because it had a sound basis in law and fact. This Court should, at the very minimum, reverse the superior court's determination that the action was frivolous under LCR 7.8, and remand for proceedings consistent with that ruling.

G. CONCLUSION

This Court should reverse each and every element of the superior court's March 18, 2016 Order Denying Heidi Lee's Summary Judgment which awarded the entirety of the life insurance to Abriel Lee. Ronald Lee, Abriel Lee's father, acted with fraud and deceit when he signed the decree of dissolution. He should be denied equitable relief because he does not have clean hands, and his death does not absolve him of culpability. He violated the superior court's temporary order, concealed that violation, and

deceitfully signed its dissolution decree without ever intending to abide by its terms. To both guard against a general rule that eviscerates the force of temporary orders; and properly balance the equities of this specific case, the superior court should have voided the change of beneficiary of Ronald Lee's life insurance policy. This Court should correct that error by reversing the judgment in favor of Abriel Lee, and remanding with instructions to void the change in beneficiary, enter an order to distribute the full value of the policy to Heidi Lee, and reverse the award granting attorney's fees to Abriel Lee.

Respectfully Submitted this 21 day of August, 2016.

LAW OFFICE OF BRET ROBERTS, PLLC.

A handwritten signature in black ink, appearing to be 'Bret Roberts', written over a horizontal line.

BRET ROBERTS, WSBA No. 40628
Attorney for Appellant

PROOF OF SERVICE

I, Bret Roberts, certify that, on this date:

I filed Heidi Lee's Brief of Appellant electronically with the Court of Appeals, Division Two, through the Court's online filing system.

I delivered an electronic version of the same through the Court's filing portal to:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on August 21 2016.



Bret Roberts, WSBA 40628
Attorney for Heidi Lee

LAW OFFICE OF BRET ROBERTS, PLLC

August 21, 2016 - 7:31 PM

Transmittal Letter

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