

No. 291561-III

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

DANIAL L. NEWLON
Petitioner/Appellant

v.

NICOLE (fka NEWLON) ALEXANDER
Respondent

APPEAL FROM THE SUPERIOR COURT
FOR SPOKANE COUNTY

HON. GREGORY D. SYPOLT
Trial Court

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES1

I. PARTIES5

II. ORDER APPEALED FROM5

III. ASSIGNMENTS OF ERROR5

IV. ISSUES ON REVIEW6

V. ARGUMENT SUMMARY6

VI. STATEMENT OF THE CASE.....7

VII. ARGUMENT..... 12

 A. The standard of review for subject matter jurisdiction is de novo 12

 B. The standard of review for a motion to vacate is abuse of discretion..... 12

 C. The 2010 trial court erred in finding that jurisdiction existed in the 2008 proceeding 13

 1. Subject matter jurisdiction cannot be acquired by parties’ stipulation 14

 2. Lack of subject matter jurisdiction is not affected by the passage of time 15

 D. No subject matter jurisdiction exists in the 2008 Superior Court to determine the controversy of which parent received the internment right over their son’s remains 16

1.	The 2008 trial court did not proceed under any recognized statutory authority	16
a.	This state’s Human Remains Act, RCW Ch. 68.50, provides no authority allowing the 2008 trial court to proceed over the controversy presented..	18
2.	No other statutory authority vested subject matter jurisdiction in the 2008 Superior Court over an RCW 68.50.160 interment right on a dispute between parents	23
3.	No constitutional authority existed in the 2008 Superior Court to determine matters of interment of remains.	27
4.	No subject matter jurisdiction arose for any proceeding in 2008 in any event because no action ever commenced.	30
E.	The 2008 proceeding was so rife with irregularity that the order was required to be vacated in 2010 under RCW 60(b)(1) & (11)	32
VIII.	CONCLUSION.....	45

APPENDIX:

<i>A(i)-(ii)</i>	<i>Order of June 18, 2010</i>
<i>A(iii)-(iv)</i>	<i>Order of Aug. 11, 2008</i>
<i>A(v)</i>	<i>WA. State Constitution, Art. 4 §1</i>

A(vi) *WA. State Constitution, Art. 4 §6*
A(vii) *RCW 68.50.010*
A(viii) *RCW 68.50.160*
CERTIFICATE OF SERVICE47

TABLE OF AUTHORITIES

Cases

<i>Aguirre-Alvarez v. Regents of the Univ. of California</i> , 67 Cal.App.4th 1058 , 79 Cal.Rptr.2d 580 (1998).....	22
<i>Bellevue Masonic Temple, Inc. v. Lokken</i> , 75 Wn.2d 537 , 452 P.2d 544 (1969).....	22
<i>Boone, In Re Petition of</i> 103 Wn.2d 224 , 691 P.2d 964 (1984).....	38
<i>Buckley v. Snapper Power Equip. Co.</i> , 61 Wn.App. 932 , 813 P.2d 125 (1991).....	40
<i>Burnside v. Simpson Paper Co.</i> , 66 Wn.App. 510, 832 P.2d 537 (1992).....	28
<i>Carrick v. Locke</i> , 125 Wn. 2d. 129 , 882 P.2d 173 (1994).....	28
<i>Chicago, M., St. P. & P. R. Co. v. Washington State Human Rights Commission</i> , 87 Wn.2d 802 , 557 P.2d 307 (1977).....	37, 38
<i>Coughlin v City of Seattle</i> , 18 Wn. App. 285 , 567 P. 2d. 262 (1977).....	18
<i>DeYoung v. Cenex</i> , 100 Wn.App. 885, 1 P.3d 587 (2000).....	13
<i>Doe v. Fife Mun. Court</i> , 74 Wn.App. 444 , 874 P.2d 182 (1994).....	15, 33
<i>Graves v. P. J. Taggares Co.</i> , 94 Wn.2d 298 , 616 P.2d 1223 (1980).....	42
<i>Herzl Congregation v. Robinson</i> , 142 Wash. 469 , 253 P. 654 (1927)	13, 21, 22
<i>Hicks v. Stehl</i> , 149 Ill. App. 3d 1034, 102 Ill. Dec. 943, 500 N.E.2d 1044 (2d Dist. 1986)	44
<i>In Re Baker's Estate</i> , 49 Wn. 2d. 609 , 304 P.2d 1051 (1957).....	18
<i>In Re Boston</i> , 112 Wn.App. 114 , 47 P.3d 956 (2002).....	19, 21, 28, 29

<i>In re Estate of Cordero,</i> 127 Wn.App. 783 , 113 P.3d 16 (2005).....	36
<i>In re Marriage of Furrow,</i> 115 Wn.App. 661 , 63 P.3d 821 (2003).....	12, 14, 18, 19, 23, 24, 25, 27, 28, 33, 41, 43
<i>In re Marriage of Knutson,</i> 114 Wn.App. 866 , 60 P.3d 681(2003).....	12, 13, 16
<i>In re Marriage of Murphy,</i> 90 Wn.App. 488 , 952 P.2d 624 (1998).....	14
<i>In re Parentage of J.H.,</i> 112 Wn.App. 486 , 49 P.3d 154 (2002).....	36
<i>In re Welfare of H.S.,</i> 94 Wn.App. 511 , 973 P.2d 474 (1999).....	28
<i>Jacobsen v. Marin General Hosp.,</i> 192 F.3d 881	22, 23
<i>McMillan v. Gentry,</i> 221 P. 717 (Okla. 1923).....	44
<i>Motley-Motley, Inc. v. State,</i> 127 Wn.App. 62 , 110 P.3d 812 (2005).....	29
<i>Orwick v. City of Seattle,</i> 103 Wn.2d 249 , 692 P.2d 793 (1984).....	28
<i>Rushen v. Spain,</i> 464 U.S. 114 , 104 S.Ct. 453, 78 L.Ed.2d 267 (1983).....	39
<i>Shoop v. Kittitas County,</i> 149 Wn.2d 29 , 65 P.3d 1 (2003).....	12
<i>Skagit Surveyors and Engineers, LLC v. Friends of Skagit County,</i> 135 Wn.2d 542 , 958 P.2d 962 (1998).....	14
<i>State v. Brennan,</i> 76 Wn.App. 347 , 884 P.2d 1343 (1994).....	29
<i>State v. Romano,</i> 34 Wn.App. 567 , 662 P.2d 406 (1983).....	38
<i>State v. Watson,</i> 155 Wn.2d 574 , 122 P.3d 903 (2005).....	38, 39
<i>Sullivan v. Department of the Navy,</i>	

720 F.2d 1266 (C.A. Fed 1983).....	39
<i>Swan v. Landgren</i> , 6 Wn. App. 713 , 495 P.2d 1044 (1972).....	31
<i>Tully v. Pate</i> , 372 F.Supp. 1064 (D.C.S.C.).....	35
<i>United States v. United States Gypsum Co.</i> , 438 U.S. 422 (1978).....	38, 39
<i>Vanderpool v. Rabideau</i> , 16 Wn.App. 496 , 557 P.2d 21(1977).....	21
<i>Viscomi v. McGuire</i> , 169 Misc. 2d 713 , 647 N.Y.S.2d 397 (N.Y. Sup. Ct. 1996).....	44
<i>Wampler v. Wampler</i> , 25 Wn.2d 258 , 170 P.2d 316 (1946).....	14
<i>Wesley v. Schneckloth</i> , 55 Wn.2d 90 , 346 P.2d 658 (1959).....	14
<i>Wood v Butterworth and Sons</i> , 65 Wash. 344, 118 Pac. 212 (1911).....	30, 34
<i>Woods v. Woods</i> , 48 Wn.App. 767, 740 P.2d 379 (1987).....	30
<u>Statutes</u>	
RCW 4.16.170	32
RCW 4.28.020	31, 32, 34
RCW 5.60.030	36
RCW 11.96A.020.....	26
RCW 11.96A.090.....	32
RCW 11.96A.100.....	32
RCW 26.09	23, 25, 26
RCW 26.09.004(3)(e)	17
RCW 26.09.010	25
RCW 26.09.080	26
RCW 26.09.187	36
RCW 26.09.187 (3) (vii).....	37
RCW 26.12.010	24, 25, 26, 34, 35
RCW 26.33	24
RCW 36.24	20
RCW 36.24.160	21

RCW 68.08.010	30
RCW 68.50	19, 20, 21, 22, 23, 25, 26, 28, 37
RCW 68.50.010	19, 20, 28, 29, 30
RCW 68.50.015	21
RCW 68.50.100	20
RCW 68.50.101	20
RCW 68.50.102	20
RCW 68.50.104 (costs).....	20
RCW 68.50.106	20, 26
RCW 68.50.160	7, 13, 14, 17, 18, 20, 22, 23, 25, 26, 29, 35, 36
RCW 68.50.160(3)(c)	17
RCW 68.50.200	21, 30, 44
RCW 68.50.200(3).....	21
Wash. Const. Art. 1, § 3.....	37
Wash. Const. Art. 1, § 10.....	37
Wash. Const. Art. 4, § 1.....	16, 29, 31
Wash. Const. Art. 4, § 6.....	27, 29

Rules

CR 1	34
CR 3	32, 34
CR 7	34
CR 26-37.....	34
CR 43	35
CR 60	15, 16, 33
CR 60(b).....	11, 16, 32, 45
CR 60(b)(1) & (11).....	12, 33, 44
CR 60(b)(5).....	11, 12
CR 7	32, 34
ER 101	36
ER 801(a).....	36
RAP 2.2.....	41
CJC 3(A)(4)	38

Secondary Authorities

21 A.L.R.2d 472.....	21, 22
CJS Dead Bodies § 7.....	44

I. PARTIES.

Danial Newlon is the Appellant. The Respondent is Nicole Alexander.

II. ORDER APPEALED FROM

Appellant **Danial Newlon** seeks review of the June 18, 2010 order of the Hon. Gregory Sypolt. *CP 596-97; attached at Appendix ("App.") A(i) - A(ii)*. The order denied Mr. Newlon's motion to vacate an earlier order of the Spokane Superior Court entered August 11, 2008. *CP 272-73; App. A(iii) - A(iv)*. The latter order granted a noncustodial mother, Nicole Alexander, the right to bury custodial parent Danial Newlon's son Trenton Newlon in Spokane Washington.

III. ASSIGNMENTS OF ERROR.

1. The June 2010 Superior Court erred in refusing to vacate the August 11, 2008 order entered in the same court directing that the remains of Trenton Newlon be buried in Spokane, Washington.

2. The 2008 Superior Court erred in concluding that subject matter jurisdiction existed over the controversy of which surviving estranged parent's wishes would be honored in interring the remains of their child.

3. A proceeding without any semblance of civil rules and statutory process is sufficiently irregular to require that orders therein issued be vacated.

IV. ISSUES ON REVIEW.

1. An order issued by a Superior Court without subject matter jurisdiction is void, and must be vacated.

a. Parties cannot stipulate to subject matter jurisdiction.

b. A Superior Court has no subject matter jurisdiction to determine which estranged parent may receive the right to determine where to bury the remains of their child.

c. Where no proceeding has commenced, no subject matter jurisdiction exists.

2. An order entered from a hearing where no semblance of civil rules and statutory protection and processes exists should be vacated.

V. ARGUMENT SUMMARY.

American courts have generally held that there is a right of custody over and interest in a dead body and the disposal of the body. And by statute in Washington, the right, duty and obligation to control

and dispose of the remains of a deceased minor child is accorded the surviving parents of the decedent under RCW 68.50.160. But what is not answered by the statute is what happens when estranged parents are at odds with how that right and duty should proceed. In fact, the Superior Court has no statutory or constitutional authority to decide that controversy. The 2008 order granting the noncustodial mother's preferences as to interment is void. It was error for a trial court in 2010 to deny the custodial father's motion to vacate that order.

Moreover, the 2008 proceeding was so rife with substantive irregularity that the order was voidable, and should have been vacated regardless of subject matter jurisdiction.

VI. STATEMENT OF THE CASE.

The Aug. 11, 2008 Order.

Appellant Danial Newlon ("Danial") and Respondent Nicole Alexander ("Nicole") are the surviving parents of their deceased child, Trenton Newlon. From the time Trenton was born on January 12, 1995, he was raised and cared for by Danial, his custodial father. Danial was in his early 20's, serving as an enlisted man in the United States Air Force, when he retrieved his two year old son Trenton from Nicole's then agreed care due to her neglect of the child. *CP 181, para.*

2; CP 182, para. 25; CP 183, paras. 32 & 33. Danial received temporary custody of his son in April 1998. CP 181, para. 10. He received permanent custody in December 1999. CP 186, para. 3.3(1); CP 240, para. 3.12. At the end of an extensive trial in 1999, the trial court awarded Danial custody of Trenton, but gave Nicole residential time specifically so she could place Trenton with her mother, Phyllis Markham, during the summer. CP 185, para. 51.¹

Upon receiving custody of his toddler son, Danial singlehandedly raised Trenton as both traveled throughout the country together. Throughout, Danial arranged and paid for all of his son's private schooling, activities, travel, flights, medical insurance and treatment, athletics, and even his son's transportation to Spokane for Nicole to relay Trenton to her mother Phyllis Markham under the parenting plan. CP 232-35; CP 276, para. 3. When Danial was deployed to Iraq, Nicole did not assist her son in any fashion. In Danial's pre-deployment family assessment, Trenton was diagnosed with

¹ The court found the following: "The mother's summer care would satisfy the desire of the Markhams to have the child at their lake cabin during the summertime. Implementation of this plan would, therefore, provide the best possible scenario for the child based upon both parents' assertions as to what is most important in their contact and communication with the child." CP 185-86, para. 51. In fact, Nicole had not intended to contest Danial's custody of Trenton, but did so because her mother, Phyllis Markham, told Nicole that if she did not "fight for custody," she "could not come home." CP 183, para. 29. The trial court found mother-in-law Phyllis Markham to be so highly entwined with Nicole that it was difficult to sort out who was actually interested in the parenting. CP 185, para. 46.

abandonment issue with respect to Nicole. *CP 234, para. 10.* Nicole expressed no interest or desire to have Trenton reside with her while Danial was serving in Iraq. *CP 234, para. 10.*

Danial was ultimately assigned to the Pentagon in Alexandria, Virginia. *CP 277, para. 5.*

On July 15, 2008, while Trenton was with Phyllis Markham at the mother-in-law's lake cabin at Lake Coeur d'Alene, Idaho, Trenton was killed by his maternal grandfather in a boating accident. *CP 232, para. 1.*

Danial immediately flew to Spokane to retrieve his son's remains. Within hours of his arrival in Spokane County, he was faced with not simply the fact that his son had been killed, but killed by a boat propeller evidencing gruesome physical damage. *CP 277, para. 6.* He was then immediately thrust into a dispute from Nicole and Phyllis Markham over his bringing his son's remains home. *CP 278, para. 7.* Nicole asserted that Trenton's remains should be cremated. *CP 266; CP 263-64; CP 278, para. 7.* In the alternative, she asserted that Trenton should be buried in Spokane, Washington, "where he will be near family and friends." *CP 266.* Danial was told by his counsel that he could not obtain his son's remains without a court order, was given "no options," signed

one declaration, and found himself in court. *CP 278, paras. 8-9.*

On July 30, 2008, the Spokane County Superior Court conducted a proceeding upon pleadings filed under the RCW Title 26 dissolution cause number. *CP 195-97 (Dissolution decree under cause number 98-3-01755-2), CP 232-57; CP 263-67; CP 227-62; and CP 390 (under the same).*

Superior Court Judge Linda Tompkins decided against cremation. *CP 402, lines 2-4.* But she then ordered burial of Trenton's remains in Spokane, Washington at Nicole's request. *CP 404, lines 15-22.* The court then modified its decision as to a precise location in Spokane – if the parties could agree to a place within Spokane, fine, but if not, it would “permit” Nicole to make the geographic decision as to burial. *CP 405, line 14-16.*

A week after the hearing, on August 5, 2008, the attorneys involved filed a stipulation to the Superior Court's jurisdiction over the controversy. *CP 270-71.*² Neither party's signature appears on the

² In relevant part, the document reads as follows:

1. Both parties, through their respective attorneys, consent to limited jurisdiction of the Spokane County Superior Court for the purpose of determining the disposition of their son...

CP 270.

document.³

In the written ruling that then followed on August 8, 2011, the court ordered as follows:

“IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remains of Trenton Newlon shall be interred in a public cemetery in Spokane Washington.”
CP 273.

Danial heard nothing further about his son’s burial. His son was buried without his knowledge, notice, or presence. *CP 279, para. 16.* No one spoke to him. *CP 279, para. 16.* In the course of a subsequent wrongful death action, he discovered that Phyllis Markham funded Trenton’s funeral and burial in Idaho, and buried Trenton next to her own deceased son, Jesse. No plot for Nicole exists in the cemetery, and no space exists around Trenton’s remains for anyone else. *CP 280, para. 17.*

AUGUST 2009-2010 VACATE ACTION

On August 10, 2009, Danial Newlon filed a CR 60(b) motion to vacate the Aug. 11, 2008 order. *CP 293-94.* Danial argued that the August 2008 order was void under CR 60(b)(5) because the court had

³ No evidence exists as to the identity of the attorney signing the document for Danial. He states his counsel was Peter Moyé. *CP 278, para. 8 & CP 390.* The signature presumably is an associate in Moyé’s office, but no notice of appearance names that counsel as Danial’s counsel. *CP 271.*

no jurisdiction over the controversy. *CP 293*. He also challenged the irregularity of the proceeding under CR 60(b)(1) & (11). *CP 293*.

On June 18, 2010, the Honorable Gregory Sypolt denied Danial's motion to vacate. *CP 596-597*. The court declined to enter findings of fact, or conclusions of law. *Id.*, and see *Report of Proceedings, ("RP") June 18, 2010, p. 28, lns. 18-23*.

VII. ARGUMENT.

A. The standard of review for subject matter jurisdiction is de novo.

A decision entered by a court without subject matter jurisdiction is void. *In re Marriage of Furrow*, 115 Wn.App. 661, 667, 63 P.3d 821 (2003). A decision as to whether subject matter jurisdiction exists is a question of law reviewed de novo. *Shoop v. Kittitas County*, 149 Wn.2d 29, 33, 65 P.3d 1(2003).

B. The standard of review for a motion to vacate is abuse of discretion.

In 2010, Danial moved pursuant to CR 60(b)(5) to vacate the 2008 order as void for lack of subject matter jurisdiction. A trial court's decision on a motion to vacate is reviewed for an abuse of discretion. *In re Marriage of Knutson*, 114 Wn.App. 866, 871, 60 P.3d 681(2003),

citing *DeYoung v. Cenex*, 100 Wn.App. 885, 894, 1 P.3d 587 (2000), *review denied*, 146 Wn.2d 1016, 51 P.3d 87 (2002). A trial court abuses its discretion by exercising discretion on untenable grounds or for untenable reasons. *In re Knutson*, 114 Wn. App. At 871. Thus, if the 2008 order, reviewed de novo, is void, then the 2010 court's refusing to vacate that void order is abuse of discretion. Refusal to vacate a void order is necessarily based on untenable grounds or reasons.

C. **The 2010 trial court erred in finding that jurisdiction existed in the 2008 proceeding.**

American courts have generally held that a right of custody exists over and in a dead body and the disposal of the body. *Herzl Congregation v. Robinson*, 142 Wash. 469, 471, 253 P. 654 (1927). A quasi-property right exists in a dead human body inherent in the immediate relatives of the deceased. *Id.* And by statute, RCW 68.50.160 assigns and vests the right to control the disposition of the remains of a deceased person, as well as the duty of disposition, and the liability for the reasonable costs of disposition "upon the following" in a certain order, which here involves "[t]he surviving parents of the decedent." *RCW 68.50.160; App. A(viii)*. Both parents in this instance had the right, duty, and obligation to dispose

of their son's remains. But what is not answered by RCW 68.50.160 is what happens when these surviving estranged parents are divorced or estranged, and at odds with how right and duty should proceed.

1. Subject matter jurisdiction cannot be acquired by parties' stipulation.

Subject matter jurisdiction is defined as the court's authority to adjudicate the *type of controversy* involved in the action. *In re Furrow*, 115 Wn.App. at 667-669, *emphasis added, citing Section 11 of the Restatement (Second) of Judgments*. Lack of subject matter jurisdiction renders the Superior Court powerless to pass on the merits of the controversy brought before it. *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). And such subject matter jurisdiction cannot be acquired by agreement or stipulation. *In re Marriage of Murphy*, 90 Wn.App. 488, 496, 952 P.2d 624 (1998), citing *Wampler v. Wampler*, 25 Wn.2d 258, 267, 170 P.2d 316 (1946). Parties cannot confer subject matter jurisdiction on the court by agreement between themselves; a court either has subject matter jurisdiction or it does not; if it does not, any judgment entered is void, and is, in effect, no judgment at all. *In re Furrow*, 115 Wn. App at 667, citing *Wesley v. Schneckloth*, 55 Wn.2d 90, 93-94, 346 P.2d 658

(1959).

In Danial’s motion to vacate based upon lack of subject matter jurisdiction, the 2010 trial court held that subject matter jurisdiction existed because the parties “stipulated” to it. *RP, June 18, 2010 at p. 26, ln. 7, referencing CP 270-71.* This is plain error, and must be reversed.

2. Lack of subject matter jurisdiction is not affected by the passage of time.

The 2010 trial court also seems to have made its decision upholding jurisdiction by considering the amount of time it took Danial to raise the issue of a void order. *RP 25, lns. 17-20(noting that the motion to vacate was filed “just about a year” after the order was signed.)* But there is no time limit on a void order. If the court lacked subject matter jurisdiction, that void judgment must be vacated whenever the lack of jurisdiction comes to light. *Doe v. Fife Mun. Court, 74 Wn.App. 444, 449, 874 P.2d 182 (1994).* Consistently, CR 60 mandates only that certain motions, such as those brought on the basis of irregularity in obtaining an order, be brought within a year—the limitation does not apply to motions to vacate void orders.⁴

⁴ CR 60(b) states in relevant part as follows:

The 2010 trial court further erred in holding that the passage of time was a critical factor in denying a motion to vacate a void order.

In sum, both reasons given by the 2010 trial court in refusing to vacate the 2008 order were errors of law. Abuse of discretion thus exists in the 2010 court's failure to vacate the 2008 order; the ruling was based upon untenable grounds and for untenable reasons. *In re Knutson*, 114 Wn.App. at 871.

D. No subject matter jurisdiction existed in the 2008 Superior Court to determine the controversy of which parent received the interment right over their son's remains.

1. The 2008 trial court did not proceed under any recognized statutory authority.

The Superior Court is vested with judicial power only as the legislature may provide. *Washington State Constitution, Article 4, § 1*;

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;...

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.

CR 60, emphasis added.

App. A(v).

At the time of the 2008 hearing, the parties cited no law to the trial court identifying exactly how the Superior Court was vested with authority to decide which parent's wishes should be honored over the interment of their son's remains. Danial Newlon's counsel discussed how Danial Newlon had performed RCW 26.09.004(3)(e) parenting functions for Trenton. *CP 229 & 230*. Nicole's counsel cited RCW 68.50.160. *CP 258*. But while RCW 68.50.160 does indeed deal with human remains, it indicates only that if a decedent has not made prearrangements regarding the disposition of his remains, the right to control the disposition of such remains vests in the "surviving parents of the decedent." *CP 258-59, and RCW 68.50.160(3)(c)*.⁵ Here, Danial and Nicole both retained an equal statutory right to control

⁵ **RCW 68.50.160. Right to control disposition of remains--Liability of funeral establishment or cemetery authority--Liability for cost**

...

(3) If the decedent has not made a prearrangementor directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:...

- (a) The surviving spouse or state registered domestic partner.
- (b) The surviving adult children of the decedent.
- (c) *The surviving parents of the decedent.*
- (d) The surviving siblings of the decedent.
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.

...remainder omitted.

disposition of Trenton's remains.

But RCW 68.50.160 does not vest jurisdiction in the superior court to decide which of these surviving parent's rights predominates over the other in a dispute between them, or to enforce those rights. And courts cannot read into statutes words that are not there. *Coughlin v City of Seattle*, 18 Wn. App. 285, 289, 567 P. 2d. 262 (1977), citing *In Re Baker's Estate*, 49 Wn. 2d. 609, 610, 304 P.2d 1051 (1957).

It was error of the 2010 trial court to thus move forward to determine that controversy under RCW 68.50.160 (assuming this is what it did, *see infra*). No basis exists for the Superior Court's jurisdiction to decide a controversy among two parents who cannot agree to disposition of their child's remains. The 2010 trial court's proceeding was without statutory jurisdiction under RCW 68.50.160.

- a. This state's Human Remains Act, RCW Ch. 68.50, provides no authority allowing the 2008 trial court to proceed over the controversy presented.

Notwithstanding the lack of decision making jurisdiction under RCW 68.50.160, if subject matter jurisdiction exists under some other basis not cited by the 2010 trial court, then the 2010 court's refusal to vacate a void order on grounds of lack of subject matter jurisdiction may still be affirmed. *In re Marriage of Furrow*, 115 Wn.App. at 668.

But as discussed in *Furrow*, this appellate court necessarily has to find some basis of subject matter jurisdiction beyond RCW 68.50.160. No such authority exists under Washington law which vests subject matter jurisdiction in the Superior Court for the controversy here.

In fact, RCW 68.50, entitled “Human Remains,” removes jurisdiction in this instance from the Superior Court over human remains and gives such jurisdiction to the county coroner. *RCW 68.50.010; App. A(vii)*.⁶ Specifically, as Trenton died within a year following the accident, and because his death was caused by cuts or drowning, RCW § 68.50.010 vests exclusive jurisdiction over those remains *in the county coroner*. See *RCW 68.50.010; CP 277, para. 6*. If a statute does not provide for court oversight of the coroner’s jurisdiction or duties, then jurisdiction doesn’t exist. See *In Re Boston*, 112 Wn.App. 114, 117, 47 P.3d 956 (2002)(holding that no jurisdiction existed for a court to hear a direct appeal from a coroner’s inquest jury,

⁶ The jurisdiction of bodies of all deceased persons who come to their death... where the circumstances of death indicate death was caused by unnatural or unlawful means...or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever...,where death apparently results from drowning.... stabs or cuts....*is hereby vested in the county coroner*, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary.

RCW 68.50.010

because the inquest statutes of RCW 36.24 do not provide any process by which the outcome of a coroner's inquest may be appealed to the court.) Here, no statute vests the Superior Court with the enforcement right, or the decision-making authority, over the surviving parents' RCW 68.50.160 statutory right to control disposition of the human remains of their child; that jurisdiction over human remains is specifically accorded, and thus necessarily subject to, the coroner's jurisdiction. *RCW 68.50.010*.

Throughout RCW 68.50, jurisdiction of the Superior Court over human remains is limited and made specific. Throughout the Act, emphasis is placed on the ultimate jurisdiction of the coroner over human remains. The Act subordinates both the surviving parents' and Prosecuting attorney's rights to the decision of the coroner. As examples, while parents may authorize a dissection in an autopsy, the coroner has the decision-making authority over whether to perform such an act. *See RCW 68.50.100*. While parents may authorize an autopsy, *RCW 68.50.101*, and while the Court has authority to order the coroner to perform such an act, *RCW 68.50.102*, jurisdiction over the remains themselves remains with the coroner throughout. *See, e.g., RCW 68.50.104 (costs), .105, .106*. While the Prosecuting Attorney or

other law enforcement agency may request the coroner to analyze remains, the coroner makes the decision to act. *RCW 68.50.106*. Some judicial involvement in *RCW 68.50* duties is allowed a District Court judge, who, under *RCW 36.24.160*, may operate as a delegate of the coroner; but in so acting, that judge acts, not as a judge, but as a county executive in the executive branch of government. *In re Boston*, 112 Wn. App at 120, 122. Judicial review may also be had of a coroner's determination as to the cause or manner of death. See *RCW 68.50.015*; *Vanderpool v. Rabideau*, 16 Wn.App. 496, 498, 557 P.2d 21(1977).

In fact, *RCW 68.50.200* specifically limits the authority of the Superior Court, not to determining *interment* of remains, but to deciding only the right to *disinter* and remove remains. See *RCW 68.50.200*.⁷ The latter statute codifies what has been historically recognized in the law as the equity inherent in disinterment. As noted in 21 American Law Reports 2d at 472, exhumation and removal of remains “is in the United States a well-recognized province of equity.” See 21 A.L.R.2d 472 citing to *Herzl Congregation v. Robinson*, 142 Wash. 469, 253 P. 654 (1927). “[N]o question exists that the process of

⁷ Under *RCW 68.50.200*, a party may “apply” to the court for permission to remove said remains, if consent cannot be obtained from, e.g., “the surviving parents of the decedent.” *RCW 68.50.200(3)*.

determining and deciding reinterment issues are equitable in nature.” *Bellevue Masonic Temple, Inc. v. Lokken*, 75 Wn.2d 537, 538-539, 452 P.2d 544 (1969), citing *Herzl*, supra. But the same article also notes that “equity's exclusive jurisdiction is confined to disinterments and removals (and restorations) in prospect.” 21 A.L.R.2d 472.

Thus, no authority exists elsewhere within RCW Ch. 68.50 to vest the Superior Court with enforcement or decision-making authority over disputes between the surviving parents referenced in RCW 68.50.160 as to burial rights.

In California, the statutory scheme is similar, and thus somewhat instructive. California Code § 27491 provides that when a death occurs through similar unusual means, the coroner receives custody of the remains as a matter of law, including retaining the right to exhume the body to discharge his responsibilities. *Jacobsen v. Marin General Hosp.*, 192 F.3d 881, 887 (C.A.9 (Cal.), 1999). The coroner is entitled to the custody of the remains as a matter of law. *Id.* at 886, referencing *Aguirre-Alvarez v. Regents of the Univ. of California*, 67 Cal.App.4th 1058, 1064, 79 Cal.Rptr.2d 580 (1998). And the coroner’s custody remains in place regardless of the remains being transported elsewhere. *Id.*

In this 2008 proceeding, no evidence exists confirming the

transfer of jurisdiction over Trenton Newlon's body to the Superior Court from the coroner, nor does jurisdiction exist within RCW 68.50 allowing the court to hear or determine any controversy over these human remains as of the date of hearing on July 30, 2008. The July 2008 proceeding was without jurisdiction and thus void. *CP 273*.

2. No other statutory authority vested subject matter jurisdiction in the 2008 Superior Court over an RCW 68.50.160 interment right on a dispute between parents.

In *In re Marriage of Furrow*, 115 Wn.App. at 668-669, subject matter jurisdiction was found to exist in the superior court over a controversy when, during a parenting plan modification action, the court affirmed a voluntary relinquishment of parental rights by the mother. The issue of subject matter jurisdiction arose because a parenting plan modification action proceeds under Ch. 26.09 RCW, *Id.* at 667, while a trial court's authority to enter an order terminating parental rights proceeds under Title 13.34 RCW, or, construed differently, under RCW 26.33's adoption statute. *Id.* at 668-69. The argument in *Furrow* was that because the modification action commenced under RCW 26.09, it did not commence under a statute

allowing for a Superior Court to terminate parental rights, and thus no subject matter jurisdiction existed. The *Furrow* court acknowledged that the trial court had no statutory authority to terminate parental rights under the marital dissolution statutes, but it found subject matter jurisdiction to exist because other statutory and constitutional authority did exist which vested the Superior Court with the jurisdiction to terminate parental rights, i.e., Ch. 26.33 RCW adoption statutes, or Ch. 13.34 RCW dependency statutes. As the “family court” jurisdiction of RCW 26.12.010 conferred jurisdiction on the Superior Court to act over Title 26 and Title 13 proceedings, it thus conferred jurisdiction in the court over a termination controversy. *Id.*, at 667-668⁸ Thus, the order was not void.

Here, the *Furrow* decision directs the opposite result. No statutory authority vests the controversy of which surviving parent controls the disposition of human remains in the Superior Court under

⁸ RWC 26.12.010 states as follows:

Jurisdiction Conferred on Superior Court—Family Court proceeding defined.

Each superior court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the “family court.” A family court proceeding under this chapter is: (1) Any proceeding under this title or any proceeding in which the family court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or obligations, or (2) concurrent with the juvenile court, any proceeding under Title 13 or chapter 28A.225 RCW.

RCW 68.50.160, and no such authority is vested by any other statute or statutory act.

The 2008 trial court proceeded under an RCW 26.09 dissolution case filing under the heading “In re the Marriage of Danial Newlon and Nicole Newlon aka Nicole Alexander.” RCW 26.09.010 directs that such headings are for dissolution actions. The trial court was improperly proceeding under the continuing family law jurisdiction of RCW 26.09.010. The trial court believed it was operating under family law court authority, as it referenced “the awesome responsibility of Judges from time to time in the overall environment of family considerations,” i.e., RCW 26.09. *CP 363, lines 10-13.*

But unlike in *Furrow*, the family court jurisdiction of RCW 26.12.010 does not confer jurisdiction on a family court to determine disputes over Chapter RCW 68.50 human remains. A family court proceeding under RCW Chapter 26 is limited to adjudicating the rights of parties or their children regarding parenting plans, child custody, visitation, or support, or the distribution of property or obligations, or (2) concurrent with the juvenile court, any proceeding under Title 13 or chapter 28A.225 RCW. *RCW 26.12.010.* The “property” referred to

under RCW Ch. 26.09 is the community and separate property of the spouses, not human remains. *See RCW 26.09.080 vs RCW 68.50.*

The 2008 trial court alternately indicated its belief that RCW 68.50.160 was involved. *CP 373.* But as noted above, it was impermissively proceeding as an RCW 26.09 family law court to enforce RCW 68.50.160. Moreover, as noted above, RCW 68.50.160 does not vest any Superior Court with jurisdiction over RCW Ch. 68.50 decisions, except as identified therein.

Likewise, no other authority is vested in the Superior Court for interment decisions under, e.g., the Probate act—RCW Chapter 11. That Act deals with assets of an estate – not human remains. *RCW 11.96A.020.* And again, RCW 26.09 does not give family courts jurisdiction over Ch. 11 RCW actions in any event.

In sum, no statutory authority exists vesting the 2008 Superior Court with family court jurisdiction to determine any RCW 68.50.160 controversy between two surviving parents as to the disposition of remains. Thus, absent some other form of jurisdiction vested in the Superior Court, the 2008 order was void, and the 2010 court abused its discretion in refusing to vacate that order.

3. No constitutional authority exists in the 2008 Superior Court to determine matters of interment of remains.

In *In re Marriage of Furrow*, the Superior Court also concluded that the Superior Court has “broad original jurisdiction” for termination of parental rights as provided in Art. 4, § 6 of the state constitution, because the latter vests jurisdiction in the Superior Court “in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.”⁹ *App. V(i)*. This language encompasses proceedings to terminate parental rights, because the power to terminate parental rights is specifically vested in the Superior Court through the referenced Ch. 26 and 13 RCW proceedings, and to

⁹ **Wash. Const. Art. 4, § 6. Jurisdiction of Superior Courts**

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law.[remainder deleted].

no other agency or tribunal. *Id.* 115 Wn. App. at 668-69.

And indeed, because of this broad constitutional grant of jurisdiction, exceptions are read narrowly. *In re Welfare of H.S.*, 94 Wn.App. 511, 523-524, 973 P.2d 474 (1999), citing *Orwick v. City of Seattle*, 103 Wn.2d 249, 251, 692 P.2d 793 (1984). Unless the legislature demonstrates an intent to limit jurisdiction, an act should be construed as imposing no limitation. *Id.*, citing *Burnside v. Simpson Paper Co.*, 66 Wn.App. 510, 517, 832 P.2d 537 (1992), *aff'd*, 123 Wn.2d 93, 864 P.2d 937 (1994).

But under RCW 68.50, the legislature has demonstrated an intent to limit Superior Court jurisdiction. *See RCW 68.50.010*, and *see above at D(1)(a)*. The legislature has specifically vested jurisdiction over human remains in the coroner. *RCW 68.50.010*. And only limited enforcement provisions exist in the Superior Court within RCW 68.50.

Similarly, jurisdiction is “vested exclusively in some other court.” As noted in *In re Boston*, the coroner’s role has avoided labeling as either purely executive or purely judicial in nature, but rather it falls in a “gray zone at the periphery of both the executive and judicial branches.” 112 Wn. App. at 118, citing *Carrick v. Locke*, 125 Wn. 2d. 129, 139, 882 P.2d 173 (1994). Given clear intent to limit

Superior Court authority, and quasi-judicial function of the coroner, Article 4, §6's "catchall provision" does not capture jurisdiction for the Superior Court.

Article 4, §6 of the Constitution also expressly grants exclusive jurisdiction over all cases in equity to the superior courts. *Motley-Motley, Inc. v. State*, 127 Wn.App. 62, 73, 110 P.3d 812 (2005), citing *State v. Brennan*, 76 Wn.App. 347, 351-52, 884 P.2d 1343 (1994). But a "catch all" provision of equity may not be read to conflict with Article 4 §1 of the Constitution—i.e., that the only judicial power vested in a Superior Court is that which the legislature must provide. *Article 4 §1; App. (v)*. In other words, "cases in equity" remain cases founded on statutes which provide for equitable relief, such as those "Special Proceedings and Actions" in Chapter 7 RCW, including arbitrations, contempts, replevin, habeus corpus, etc.

Article 4 §6 thus does not grant original jurisdiction to Superior Courts to determine the controversy of which RCW 68.50.160 surviving parent has the priority burial right over human remains when the two parents are in dispute.

Consistent with the above, Appellant can find no decision in the State of Washington rendered after implementation of RCW 68.50.010

where a Superior Court decided the controversy of which surviving parent should received original burial rights. In *Woods v. Woods*, 48 Wn.App. 767, 740 P.2d 379 (1987), the question was one of the right to control already cremated remains located at a depository, i.e., the case invokes the long held equitable function of removal of remains jurisdiction of the Superior Court, now also specifically authorized under RCW 68.50.200 (although the latter deals with removal of remains from a plot). The case cited by Nicole's counsel, *Wood v Butterworth and Sons*, 65 Wash. 344, 118 Pac. 212 (1911), CP 259, was decided in 1911, decades before the 1963 enactment of RCW 68.50.010, and even before its predecessor RCW 68.08.010 in 1917.

In sum, no constitutional authority existed in the trial court in 2008 to determine the controversy of the priority right between the two surviving parents to inter human remains. The 2008 order is void, and it was error to deny Danial's motion to vacate in 2010.

4. No subject matter jurisdiction arose for any proceeding in 2008 in any event because no action ever commenced.

Even if subject matter jurisdiction could be found under some other statutory or constitutional authority, a second fatal flaw in subject

matter jurisdiction in this instance was the failure of either party to formally commence any action. No initiating petition, application, complaint or motion was ever filed to “commence” any interment action prior to the trial court’s July 2008 hearing (or thereafter). By the time of “trial,” the file reflects only a declaration and a memorandum submitted by each party under the same family law cause number as the dissolution proceeding. *CP 227-31 (Danial’s memorandum), CP 232-57 (Danial’s Declaration), and CP 258-62 (Nicole’s memorandum), and 304-308 (Nicole’s declaration)*. Failure to invoke the court’s jurisdiction by commencing an action with a Summons and Complaint also results in a failure of subject matter jurisdiction and an unconstitutional proceeding.

The jurisdiction of the Superior Court is vested as the legislature may provide. Wash. Const. Art. 4, § 1. And jurisdiction of the Superior Court over a controversy is not acquired until the commencement of an action by service of summons or the filing of a complaint. *Swan v. Landgren*, 6 Wn. App. 713, 715-16, 495 P.2d 1044 (1972), citing RCW 4.28.020.

RCW 4.28.020 is unequivocal that no jurisdiction is acquired until the action commences by such formality:

“From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.”

RCW 4.28.020.

For the purpose of tolling, the same applies—an action is not deemed commenced until a complaint is filed or summons served, whichever occurs first. *RCW 4.16.170.*¹⁰ The same applies by court rule. A civil action is “commenced” by service of a copy of a summons together with a copy of a complaint, or by filing a complaint. *CR 3.* *CR 7* also requires initiation of a proceeding in similar fashion. *CR 7* details the rule for pleadings to include a complaint and an answer.

Thus, assuming *arguendo* that subject matter jurisdiction existed for the Superior Court by statute or state constitution to determine the interment right, no jurisdiction ever vested over the controversy regardless, as no action ever commenced. The 2008 order is void, and should have been vacated by the 2010 court.

E. The 2008 proceeding was so rife with irregularity that the order was required to be vacated in 2010 under RCW 60(b)(1) & (11).

¹⁰ Even were this to be a probate action, the action is required to be commenced, *RCW 11.96A.090*, and such is done via a petition and summons. *RCW 11.96A.100.*

A judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in the processes. Irregularities render orders voidable, not void. *In re Marriage of Furrow*, 115 Wn. App. At 669 and see *Doe v. Fife Mun. Court*, 74 Wn.App. at 450. But irregularity may require that the order be vacated regardless. *In re Marriage of Furrow*, 115 Wn.App at 674, 678.

In *Furrow*, after finding subject matter jurisdiction to exist via alternative statutory means sufficient to render the order not void, a resultant “irregularity of egregious proportions” occurred via the trial court’s failure to conform to the alternative (adoption) statute in terminating a parent’s rights. *Id.* at 674, 678. Thus, the order became voidable. *Id.* at 674. And because of certain considerations, the Court directed that the decision upholding that termination order be reversed and remanded to vacate based on the “egregious” irregularities of the proceeding. *In re Furrow*, 115 Wn.App. at 678.¹¹ Here, similar extreme

¹¹ CR 60(b)(1) and (11) both allow an order to be vacated for “irregularity in obtaining a judgment or order”. CR 60 states in relevant part as follows:

RELIEF FROM JUDGMENT OR ORDER

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

vulnerability, irregularity of “egregious” proportion, and finality all existed as well.

Civil rules are required to be applied to the procedures in the Superior Court. *CR 1*. Yet in the 2008 proceeding, all semblance of civil rules process and statutory process were violated.

As noted above, no action ever commenced in violation of CR 3 or (RCW 4.28.020). No pleadings were filed in accord with CR 7, which mandates a complaint and an answer. These protections are critical because such would have allowed Danial the time to process and understand fully what was occurring. Even in the case cited by Nicole’s counsel in 2008, *Wood v Butterworth and Sons*, 65 Wash. 344, 118 Pac. 212(1911), initiated via a preliminary injunction request and actually went to trial.

No discovery took place under CR 26-37.

The court proceeded as a Family Court under RCW 26.12.010, which conveys no jurisdiction on the court to address the disposition of

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

.....

(5) The judgment is void;

.....

(11) Any other reason justifying relief from the operation of the judgment.

human remains. *RCW 26.12.010*. The statute apparently selected by the family law court to guide its actions, *RCW 68.50.160*, provides no process for guiding decisions between estranged parents, and thus no law was offered by either party as to what elements or criteria might control a dispute over human remains between a custodial parent and a non-custodial parent. As an example, in *Tully v. Pate*, 372 F.Supp. 1064, 1073 (D.C.S.C.), a South Carolina court specifically discussed the policy behind its holding that a parent having custody of a child should also have the right to make funeral and burial arrangements as a matter of law; in part, to avoid exactly what happened here.¹²

And no trial took place, because no trial processes were involved, such as the taking of testimony under CR 43 by attorneys. No testimony was elicited on direct or cross examination. *CP 365-370*. The court's asking a party to "please help me understand from your

¹² In *Tully v Pate*, the court held that while permanent custody of a child while living becomes moot when the child dies, it remains crucial, not by itself, but as to its "effect on the issue of burial rights" 372 F.Supp. at 1073. The decision that permanent legal custody entitles a parent to authorize the interment is "practical as well as logical," and the reasoning plain: "Given the usual strained relations between divorced or separated parents, the chances are great for disagreement on burial plans....one or the other has to make the decisions or else a stalemate would result. The logical conclusion is that the parent having custody should also have the right to make the funeral and burial arrangements." 371 F. Supp. At 1073. By implementing the rule, "[T]he courts are saved from extended litigation over dead bodies, and from having the merits or demerits of the causes of the separation and custody re-litigated. The parents are spared having the misfortune of death turned into an instrument for inflicting abuse by one upon the other. The dead are accorded a modicum of respect, rather than being punted from one side to the other." *Id.*

perspective,” while both counsel remain mute, is not trial testimony. *CP 366, lines 10-11.*

The parties’ own “pro se arguments” were unguided by counsel or the court. No reference was given or made to elements of proof, or otherwise to allow the parties to know what they were doing.

Evidence rules also govern proceedings in Washington. *ER 101.* No compliance with those rules existed either. While the lawyers and the court remained mute, the mother offered hearsay regarding her deceased’s son’s wishes without objection. *CP 369, lns. 11-13, CP 370, lns. 12-13.* Such testimony is not only hearsay under ER 801(a), but it violates the deadman's statute. *RCW 5.60.030; In re Estate of Cordero, 127 Wn.App. 783, 789, 113 P.3d 16 (2005).*

Indeed, as noted, the court itself did not know what elements needed to be addressed. While referencing RCW 68.50.160, CP 401, ln. 4, it perceived itself to be determining “the best interests of the child” as it had done in the year 2000 (i.e., in the divorce matter, see CP 195-97). *CP 404, lns. 15-17.* The “best interests of the child” control parenting plan determinations under RCW 26.09.187. *In re Parentage of J.H., 112 Wn.App. 486, 493, 49 P.3d 154 (2002).* The court also indicated its intent to implement “Trenton’s wishes”—again, a

parenting plan element. *CP 403, lns. 11-21, and see RCW 26.09.187 (3) (vii)*. The “best interests of a child” do not control, and are not referenced in RCW 68.50’s Act regarding human remains.

Most egregiously, the judge took each party and their counsel into its chambers individually and heard something or other from each off the record. *CP 371, lines 14-23*. These communications in chambers were offered to “conference with the court to make sure that the issues are properly before the court,” and to “either clarify or augment legal authority.” *CP 371, lns. 14-23*. These *ex parte* conferences were not on the record. This is an unconstitutional process.

The Superior Court is a court of record. *Wash. Const. Art. 1, § 10*. Justice in all cases must be administered openly. *Id.* The Court’s violation of this constitutional principle rendered the proceeding an unconstitutional proceeding, and a violation of the due process of law accorded Danial Newlon under Article I, § 3 of the State Constitution.

Secondly, the appearance of fairness doctrine is violated by such communications. After emerging from chambers after each party’s private consult with the court, the court did not disclose what was discussed by either party in chambers *ex parte*. It is also fundamental to our system of justice that judges be fair and unbiased. *Chicago, M.,*

St. P. & P. R. Co. v. Washington State Human Rights Commission, 87 Wn.2d 802, 807-809, 557 P.2d 307 (1977). Even a mere suspicion of irregularity, or an appearance of bias or prejudice, is to be avoided by the judiciary in the discharge of its duties. *Id.*, cites omitted. To that end, ex parte proceedings are prohibited by the Code of Judicial Conduct. Under CJC 3(A)(4), a judge is precluded from initiating or considering ex parte communications concerning a pending proceeding. *Id.*

Ex parte communications violate the appearance of fairness doctrine to such an extent as to cause reversal of a criminal sentencing. *State v. Watson*, 155 Wn.2d 574, 582-583, 122 P.3d 903 (2005), *State v. Romano*, 34 Wn.App. 567, 569, 662 P.2d 406 (1983). The communications also raise due process concerns in that evidence in the communication may not be verified. *In re Pers. Restraint of Boone*, 103 Wn.2d 224, 233, 691 P.2d 964 (1984). Communications between a trial court and a jury foreman were condemned by the United States Supreme Court even though there was no showing that the communications were prejudicial. *United States v. United States Gypsum Co.*, 438 U.S. 422, 460-61 (1978). The substance of those communications and the absence of a transcript or

full report of the meeting aggravated the problem. *Id.* at 461. Ex parte communications between a party and the decision maker in the employment context were held to void the entire proceeding and render the decision a nullity. *Sullivan v. Department of the Navy*, 720 F.2d 1266, 1274 (C.A. Fed 1983).

An ex parte communication is defined as a communication between counsel and the court regarding the proceeding when opposing counsel is not present, and “[d]one or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other.” *State v. Watson*, 155 Wn.2d at 579 (quoting Black's Law Dictionary 296 (8th ed. 2004)). Notice to the other party means that if such contacts occur, the trial judge “generally should disclose the communication to counsel for all parties.” *Rushen v. Spain*, 464 U.S. 114, 119, 104 S.Ct. 453, 78 L.Ed.2d 267 (1983).

Here, under the definition of an ex parte communication under *State v. Watson*, 155 Wn.2d at 579, two separate, extensive, and substantive ex parte communications occurred. Each individual in-chambers communication by each side was done at the instance of and for the benefit of that one party in chambers only. Each

communication was without “notice” to the other party, as the substance of neither communication was placed on the record or disclosed to the other party. The manner of these communications is necessarily prejudicial, as neither party nor any reviewing court could know what transpired therein. All that is known is that directly upon emerging from chambers, a Spokane Superior Court judge awarded the burial right of a child who lived in Virginia to a noncustodial mother who lived in Spokane.

In *Buckley v. Snapper Power Equip. Co.*, 61 Wn.App. 932, 938, 813 P.2d 125 (1991), the court held that an ex parte communication was reversible error, but was not timely raised and was therefore waived. But that ruling was only in the context of whether the judge should be disqualified. *Id.* at 939. That is not the issue here. Here, the communications occurred as just another link in a chain of egregious irregularities of the rules and statutory processes visited upon Danial Newlon as a grieving out of state father thousands of miles away from his home, and only days after his son’s tragic death.

Finally, Danial was not advised of any right to appeal from the court’s ruling; to the contrary, a document filed after the decision reflects that he believed no such right existed other than “the right to

appeal any decision that permits the cremation of Trenton’s remains...”
CP 270, para. 7, and see CP 564, Ins. 5-11. Danial attests he was told directly that he had no right of appeal. *CP 279, para. 14.* But RAP 2.2 allows for appeal from any final decision of a Superior Court. If a party chooses not to appeal *after* a ruling is entered, and thereby knowingly waives that right to challenge a ruling, such is certainly valid. But no procedure exists which allows parties to limit their Rules of Appellate Procedure rights prior to a decision being rendered. A party going into such a proceeding with any such understanding is obviously misled.

The accumulation of egregious irregularities that occurred here, and their nature, require reversal and remand, per *In Re Marriage of Furrow*, supra. But notably, even in matters which deal with irregularity of “egregious” proportions, an appellate court may not grant relief where a party “nevertheless invited the irregularity by voluntarily consenting to relinquishment and providing the court with documents that did not meet the requirements of the adoption statutes,” and where that same party “benefited from (their) bargain.” *In re Marriage of Furrow*, 115 Wn.App. at 673-74. This exception does not apply here.

Although Nicole may argue that Danial “invited irregularity” by his counsel’s initiating the process and not objecting to procedures on the record, the circumstances do not support such a claim. The proceeding initiated and carried out by the court and by *both* counsel lacked any and *all* civil rules and statutory process. Both lawyers and the court relinquished substantial rights of both parties. An attorney is without authority to surrender substantial rights of a client unless special authority from his client has been granted him to do so. *Graves v. P. J. Taggares Co.*, 94 Wn.2d 298, 303, 616 P.2d 1223 (1980). Nothing in the record supports invitation of the innumerable judicial aberrations involved here. To the contrary, civil rules and judicial processes are specifically designed to prevent what occurred here. This father had just flown thousands of miles across the country to Spokane, Washington from Virginia to view his son’s remains in a morgue after the boy had been killed by a boat propeller. Within hours of that shock and grief, he was thrown into a court battle trying to prevent cremation of his son’s remains, and trying to reclaim his son’s remains. He was walked into a proceeding of the likes he had never seen before, where he attests that he ended up exhorting his attorney to “do something,” and was instead taken into the hallway by his counsel and told to “stay

quiet.” *CP 279, para. 11-12.*

This is not “invitation to irregularity.” It is surrender of substantial rights of a client without authority. Indeed, even before the written ruling was entered, Danial individually and personally protested to the court by e-mail that the court’s decision even regarding a Spokane burial was not being honored, and that Nicole “and her family” planned to bury the boy in Idaho. *CP 269.* Ironically, after the court’s litany of rules violations and ex parte communications, the Court’s *judicial assistant* properly directed Danial that the court could not engage in ex parte communications, and directed him to discuss it with his attorney. *CP 268.*

Moreover, per *In re Marriage of Furrow*, Danial Newlon received no benefit whatsoever from this “bargain,” because no bargain existed beyond the void “stipulation to jurisdiction.” *CP 270-71.* Invited error should not salvage this proceeding.

Policy considerations as well must ensure that such a proceeding with parents in the highest state of grief be worthy of the protections of judicial processes. Decisions made in the onset of grief and shock seem to be the very reason why the Superior Court is given the statutory jurisdiction to act on request to disinter and relocate remains.

See, e.g., *RCW 68.50.200*, and see *CJS DEADBODIES § 7*, citing *Hicks v. Stehl*, 149 Ill. App. 3d 1034, 102 Ill. Dec. 943, 500 N.E.2d 1044 (2d Dist. 1986)(holding that a widow who approved an initial burial site did so only upon representation that she would be permitted to occupy site next to husband, and when such did not come to pass through family dispute, she was entitled to disinterment); *Viscomi v. McGuire*, 169 Misc. 2d 713, 714, 647 N.Y.S.2d 397 (N.Y. Sup. Ct. 1996)(holding that a husband who, “[I]n his sudden grief and shock,” acceded to the suggestion of the wife’s sister that his wife be buried in the last unreserved space of the wife’s family’s six grave family plot, and later realized that this was the wrong decision, was allowed to disinter); *McMillan v. Gentry*, 221 P. 717 (Okla. 1923)(holding that a husband who consented to the burial of his wife on a lot belonging to the wife’s mother was not consenting freely or with proper understanding, and would be allowed to disinter).

In sum, the irregularities of this proceeding under such extremes of grief and shock require that the order be vacated under CR 60(b)(1) & (11). Denying Danial’s CR 60(b) motion to vacate under these circumstances should be held to be abuse of discretion.

VIII. CONCLUSION

Danial's CR 60(b) motion to vacate should have been granted, and the 2008 order directing that the remains of Trenton Newlon be buried in Spokane, Washington, be held void. No subject matter jurisdiction existed in the Spokane County Superior Court in July 2008 to determine the controversy before it. Moreover, even were jurisdiction to exist, egregiously irregular processes were provided to Danial by the 2008 court, and the voidable order thereafter issued should be vacated.

In either event, abuse of discretion occurred in the 2010 trial court's refusal to vacate the 2008 order.

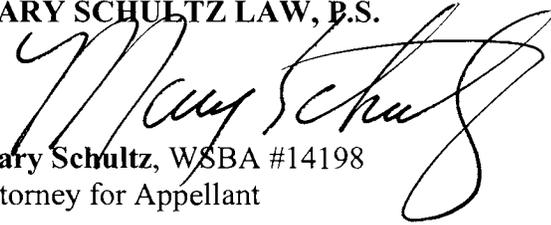
This court should reverse the June 18, 2010 order denying Danial Newlon's motion to vacate the Aug. 11, 2008 order, and vacate said order directing the burial of his son Trenton Newlon in Spokane, Washington.

DATED this 16 day of Nov, 2010.

Respectfully Submitted,

MARY SCHULTZ LAW, P.S.

Mary Schultz, WSBA #14198
Attorney for Appellant

A handwritten signature in black ink, appearing to read "Mary Schultz", written over the typed name and title.

APPENDIX

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FILED
JUN 18 2010
THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, SPOKANE COUNTY, WASHINGTON

In re:	}	Case No.: 98-3-01755-2
DANIAL L. NEWLON, individually, and as personal representative of the Estate of Trenton Newlon,		ORDER DENYING DANIAL NEWLON'S CR 60 MOTION TO VACATE ORDER OF AUGUST 8, 2008
Petitioner,		
and		
NICOLE (fka NEWLON) ALEXANDER,		
Respondent.		

THIS MATTER coming on regularly for hearing Friday, June 18, 2010, and the Court having reviewed the records and files herein and the Court having heard the argument of ATTORNEY MARY SCHULTZ on behalf of DANIAL NEWLON and the argument of ATTORNEY CHARLES T. CONRAD on behalf of NICOLE (f/k/a NEWLON) ALEXANDER, it is hereby:

ORDERED, ADJUDGED AND DECREED that DANIAL NEWLON'S Motion to Vacate the Order of August 8, 2008, is denied.

DONE IN OPEN COURT this 18 day of June, 2010.



JUDGE GREGORY D. SYPOLT

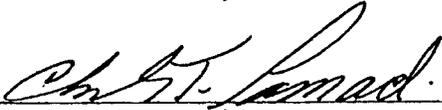
ORDER DENYING DANIAL NEWLON'S CR 60
MOTION TO VACATE ORDER OF AUGUST 8, 2008
Page 1

LAW OFFICES OF CHARLES T. CONRAD, P.S.
9011 East Valleyway
Spokane Valley, Washington 99212
(509) 924-4825

Ai

1 Presented by:

2 CHARLES T. CONRAD, P.S.

3
4 By: 

5 Charles T. Conrad
6 Attorney for Nicole Alexander
7 WSBA #7905

8 MARY SCHULTZ LAW, P.S.

9 By: _____

10 Mary Schultz
11 Attorney for Danial Newlon
12 WSBA #14198
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FILED

AUG 11 2008

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SPOKANE COUNTY**

In re the Marriage of:

NO. 98-3-01755-2

DANIAL L. NEWLON,

ORDER

Petitioner,

vs.

NICOLE L. NEWLON aka NICOLE
ALEXANDER,

Respondent.

July 30, 2008

df

This cause came on regularly for hearing in open court upon the motion by
Petitioner Danial L. Newlon against Respondent Nicole L. Newlon, now known as Nicole
L. Alexander. Petitioner was represented by Peter E. Moyé and K&L Gates LLP.
Respondent was represented by Allen Gauper and Salina, Sanger & Gauper.

The court having reviewed the file and the declaration of Danial L. Newlon with
the attachments of the Parenting Plan, the Findings dated January 2000; the Findings of
Fact and Conclusions of Law dated December 2, 1999; and additional documents attached
thereto along with a Memorandum of Points and Authorities filed by Petitioner; and the
Declaration of Nicole L. Alexander and her Memorandum of Points and Authorities. The
court having taken testimony and having listened to arguments of both Petitioner and
Respondent, it is now, therefore,

ORDER - 1

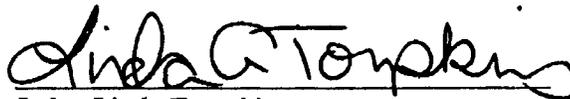
K&L GATES LLP
618 WEST RIVERSIDE AVENUE
SUITE 300
SPOKANE, WA 99201-0602
TELEPHONE: (509) 624-2100
FACSIMILE: (509) 456-0146

Aij

1 ORDERED, ADJUDGED AND DECREED that the remains of Trenton L.
2 Newlon will not be cremated; and

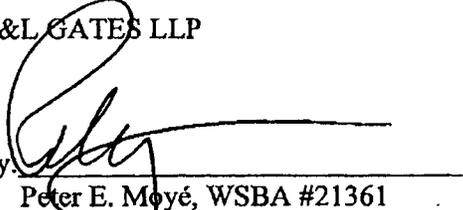
3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remains of
4 Trenton L. Newlon shall be interred in a public cemetery in Spokane, Washington.
5 Subsequent to the Court's ruling, the parties have agreed that Trenton should be buried at
6 the Evergreen Cemetery in Post Falls, Idaho. The parties further agree that to honor the
7 tenets of The Church of Jesus Christ of Latter-day Saints, Danial Newlon is the custodian
8 of Trenton Newlon.

9 Done in open court this 8th day of August, 2008.

10 
11 Judge Linda Tompkins

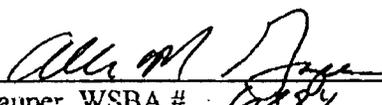
12 Presented by:

13 K&L GATES LLP

14
15 By: 

16 Peter E. Moyé, WSBA #21361
17 Attorney for Petitioner

18 SALINA SANGER AND GAUPER

19
20 By: 

21 Al Gauper, WSBA # 8884
22 Attorney for Respondent

23
24
25 ORDER - 2

K&L GATES LLP
618 WEST RIVERSIDE AVENUE
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TELEPHONE: (509) 624-2100
FACSIMILE: (509) 456-0146

Article 4. The Judiciary

§ 1. Judicial Power, Where Vested

The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

A(v)

App(v)

Article 4. The Judiciary

§ 6. Jurisdiction of Superior Courts

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.



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[RCWs](#) > [Title 68](#) > [Chapter 68.50](#) > [Section 68.50.010](#)

Beginning of Chapter << [68.50.010](#) >> [68.50.015](#)

RCW 68.50.010

Coroner's jurisdiction over remains.

The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary.

[1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW [68.08.010](#).]

App. (vii)



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[RCWs](#) > [Title 68](#) > [Chapter 68.50](#) > [Section 68.50.160](#)

[68.50.140](#) << [68.50.160](#) >> [68.50.170](#)

RCW 68.50.160

Right to control disposition of remains — Liability of funeral establishment or cemetery authority — Liability for cost.

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW [18.39.280](#) through [18.39.345](#) and chapter [68.46](#) RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse or state registered domestic partner.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.

(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW [68.04.190](#) or a funeral establishment licensed under chapter [18.39](#) RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.

App (V & iii)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers.

That on the 16th day of NOV, 2010, she served a copy of the **APPELLANT's BRIEF** to the person hereinafter named at the place of address stated below which is the last known address via regular U.S. mail, postage prepaid.

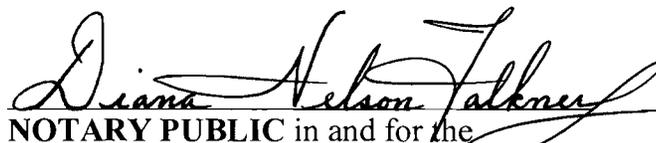
ATTORNEY FOR RESPONDENT:

Mr. Charles Conrad
9011 E. Valleway
Spokane, WA 99212


KIM SIZEMORE

SUBSCRIBED AND SWORN to before me this 16th
day of November, 2010.




NOTARY PUBLIC in and for the
State of Washington, residing in
Spokane. Commission Expires: 04/01/12