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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 338614

**COURT APPEALS OF
THE STATE OF WASHINGTON
DIVISION III**

In re: Receivership Proceeding of

WASHINGTON MOTORSPORTS LIMITED PARTNERSHIP,
a/k/a Washington Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as Acting Managing
General Partner.

Plaintiff/Respondent,

and

DEONNE MOE,

Appellant.

BRIEF OF RESPONDENT WML

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1. **IDENTITY OF RESPONDENT and APPELLANT:**

The Respondent is Washington Motorsports Limited Partnership ("WML"), by and through Barry W. Davidson, in his capacity as WML's Court-appointed Receiver and Acting Managing General Partner.

The Appellant is Deonne Moe. Mrs. Moe is not a party to the above-captioned lawsuit ("WML's Receivership case"). Mrs. Moe is the widow of Orville Moe (collectively the "Moes"). Mr. Moe passed away in April of 2015. Mr. Moe was the former President and former majority shareholder of WML's former general partner, Spokane Raceway Park, Inc. ("SRP"). The trial court removed SRP and Mr. Moe from control of WML approximately ten years ago.¹

WML's Receivership case was commenced in 2003 and is still pending. Most of the case has been resolved. The primary matter remaining for resolution is the "adjunct proceeding" (pursuant to RCW 7.60.160(2) of Washington's Receivership Statute) captioned *WML v. Orville Moe et al.*, Spokane County Superior Court Cause No. 12-2-01033-6 ("UFTA case"). As a part of the UFTA case, WML is attempting

¹ This Court is familiar with WML's Receivership case and Mr. Moe. There have been at least eighteen motions for discretionary review/notices of appeals connected with this case to date. *See* Division III Case Nos. 241025, 243788, 259471 (adjunct case), 263312, 263347, 265927, 270769 (arising out of an attempted appeal in another case by Deonne Moe of an order entered in the WML's Receivership case), 277470, 278166, 278981, 284778, 290280, 297926 (an attempt to quash a bench warrant issued in WML's Receivership case), 298728, 311317, 314162, 314171, and 317676 (this appeal).

to recover alleged fraudulent transfers of assets by the Moes to their daughters (and others) worth approximately \$1,000,000.00 which were made immediately prior to (and after) WML obtained substantial monetary judgments against Orville and/or Deonne Moe.

WML is also undertaking efforts to collect approximately \$3,300,000.00 in judgments it holds against the Moes. Judge Robert D. Austin presided over the case from its inception until approximately December of 2009. Judge Annette S. Plese has presided over the case since then.

2. INTRODUCTION:

Before this Court is Mrs. Moe's appeal of the trial court's denial of her motion to vacate a judgment that was entered against the Moes nearly five (5) years ago (June 21, 2011). The Moes never timely appealed that Judgment after its entry in 2011. Nearly a year and a half after its entry, in 2012, the Moes did file an unsuccessful motion to vacate that 2011 judgment. The denial of their motion to vacate came before this Court in Division III Case No. 314171. That appeal was dismissed by this Court as frivolous and WML was awarded its attorneys fees and costs in defending against that appeal.

At that same time (2012), Ross et al.² moved the trial court to intervene to join the Moes' motion to vacate. Their motion to intervene was denied. Ross et al. appealed the denial of their motion to intervene in Division III Case No. 314162, and they also appealed the denial of the Moes' motion to vacate. Ross et al. were represented in that appeal by Richard Wall, the same counsel who represents Mrs. Moe in the present appeal. Ross et al.'s appeal was also dismissed by this Court as frivolous and WML was awarded its attorneys fees and costs in defending against that appeal as well. The Washington State Supreme denied discretionary review, and awarded WML's its fees and costs under RAP 18.1(j).

As such, before this Court is Mrs. Moe's second appeal seeking to have that 2011 Judgment rendered void. Her appeal is based upon the factually unsupported assertion that she was not provided with proper notice that the Judgment would be entered against the Moes' community property (and not just against Mr. Moe), and that she was thereby allegedly denied her "due process" rights.

As established below, Mrs. Moe was put on notice for over one year that any judgment entered for either her or Mr. Moe's refusal to obey court orders would be entered against both of the Moes "jointly and severally." Further, the proposed judgment (for which proper notice was

² "Ross et al." refers to the Moes' daughters, Susan Ross and Terry Graham, along with Bryan Graham (Mrs. Graham's husband), and The Meadows at Dry Creek, LLC (and Idaho company owned by Mrs. Moe, Ms. Ross, and Mrs. Graham).

provided to the Moes' counsel and directly to the Moes) specifically sought entry against the Moes and their marital community. The Moes' counsel appeared at the presentment hearing, and the trial court entered WML's proposed judgment. Due process was more than satisfied.

But in any event, the relief sought in the present appeal is legally barred by the law of the case doctrine, because the Moes failed to raise the issue of alleged lack of due process in their 2012 motion to vacate and in their Division III 314162 appeal from the denial thereof. They cannot now raise new arguments in a subsequent appeal that they could have raised in the prior appeal.

3. ASSIGNMENTS OF ERROR:

WML does not make any assignments of error.

4. ISSUES PRESENTED FOR REVIEW:

A. Did the trial Court err in denying Mrs. Moe's Motion to Vacate considering the following:

i. judgments entered a married person in Washington are presumed to be against the marital community unless that presumption is overcome;

ii. the trial court put the Moes on notice more than one (1) year prior to the entry of the Judgment that it would impose "joint and several" liability against both of the Moes if either of them failed to comply with the trial court's orders;

iii. WML served the proposed Judgment on the Moes' counsel (and directly upon the Moes) that specifically identified the Moes' marital community as a judgment debtor thereunder, and WML provided them with notice of that proposed Judgment in compliance with CR 54(f);

iv. the Moes' counsel received actual notice of that proposed Judgment, he appeared at the presentment hearing, and he was given an opportunity to make oral argument relating thereto;

v. the Moes did not file an objection to marital community liability, did not request an extension of time to attempt to rebut the presumption of marital community liability, and did not appeal the entry of the Judgment containing marital community liability; and

vi. Mrs. Moes' arguments are otherwise barred by the law of the case doctrine, since the alleged lack of due process issue could have been raised in her 2012 motion to vacate this same judgment, and could have been raised in her appeal therefrom (but she failed to do so).

B. Should WML be awarded its attorneys' fees on appeal jointly and severally against Mrs. Moe and her counsel under RAP 18.9(a) based upon the frivolous nature of her appeal because, among other things, it is clearly barred by the law of the case doctrine.

5. STATEMENT OF THE CASE:

A. Receivership Case Background

As amended in 2004, WML's Receivership case sought the appointment of a receiver over WML and the removal of SRP (through Mr. Moe) as WML's managing general partner, and other relief. CP 108-144. After a lengthy evidentiary hearing, Barry W. Davidson was appointed as WML's receiver and acting managing general partner. CP 144-165.

Mrs. Moe has participated in the Receivership case to varying degrees since its inception in 2003. She has been represented by multiple attorneys (Robert Christie, David Miller, Jerome Shulkin, and now Richard Wall). CP 247-249, CP 276, CP 47, and CP 646-648. She has also at times represented herself *pro se*. E.g., CP 173-177. The trial court has entered numerous orders regarding Mrs. Moe, and has also specifically ruled that "... Deonne Moe [is] subject to the jurisdiction of this Court and [is] bound by all of its Orders and Judgments entered in this main Receivership Case. RCW 7.60.190(7)." E.g., CP 332 at ¶1.

After the appointment of the Receiver in 2005, Mr. Moe refused to cooperate with the Receiver and disobeyed numerous court orders to, among other things, produce documents and other information.

B. First Remedial Sanctions Judgment

In September of 2008, the trial court entered its first sanctions

Judgment against Mr. Moe for over \$373,000.00 for his disobedience of court orders. CP 196-202. That Judgment was affirmed by this Court in 2010 in Division III Case No 277470. CP 649-662.

C. Second Remedial Sanctions Judgment (the Judgment at issue in this appeal)

WML then began efforts to collect that Judgment, including obtaining orders for supplemental proceedings depositions and requiring the Moes to produce documents to WML. E.g., CP 267-275. In contempt of such orders, both of the Moes blatantly refused to comply. CP 277-283, CP 284-290.

In May of 2010, the trial court issued bench warrants for the arrests of both of the Moes for their contempt of court for refusing to sit for supplemental proceedings depositions and to produce documents. *Id.* The 2011 Judgment at issue in this appeal originates out of a June 4, 2010 Order relating to that contempt of court. CP 4-13 (Appendix 1 hereto). Both Orville and Deonne Moe were represented at that time by Mr. Shulkin. CP 276.

Specifically, on June 4, 2010, (a full year prior to entry of the Judgment at issue) the trial court put both of the Moes on notice that it would “impos[e] remedial monetary sanctions of \$2,000 **each**, per day, against Orville Moe and Deonne Moe, **jointly and severally**, payable to the receiver...” for each day that “Orville **and/or** Deonne Moe fail to sit for their deposition on [June 11, 2010] as ordered by this Court.” CP 10

(Appendix 1 hereto) (emphasis added). Stated differently, unless both of the Moes sat for their deposition on that date, the trial court would impose \$2,000 against the Moes “jointly and severally” for every day that either of them failed (or \$4,000/day if both of them failed) to comply with the Order. *Id.* Mrs. Moe complied with the Order and the bench warrant issued for her arrest was quashed. CP 325-326. Mr. Moe did not.

As such, on June 11, 2010, the trial court informed the Moes that the \$2,000/day sanction had commenced. CP 19 at ¶2. Mr. Moe continued for over a year thereafter to refuse to obey the trial court’s order to sit for a supplemental proceedings deposition. CP 386.

A full year later, in June of 2011, Mr. Moe was still in active contempt of the trial court’s June 4, 2010 Order, and the Moes were continuing to accrue a \$2,000/day remedial sanction, jointly and severally, based upon that contempt. CP 10 (Appendix 1 hereto), 19 at ¶2. On June 13, 2011, WML filed a Notice of Presentment with the proposed Judgment at issue attached thereto. CP 351-385 (Appendix 2 hereto). The proposed Judgment fully disclosed that judgment would be sought against both of the Moes and their marital community. CP 355 at ¶2, CP 359-360 at ¶14 (Appendix 2 hereto)

The Notice of Presentment was served not only upon the Moes’ lawyer at the time (Mr. Shulkin) via an agreement to serve pleadings by email, but it was also mailed directly to the Moes at their home address.

CP 354 (Appendix 1 hereto); *see also* CP 93. The Moes did not file any pleadings in opposition to the entry of that Judgment.

Mr. Shulkin appeared on behalf of the Moes at the presentment hearing by telephone and objected to its entry. CP 28 (Appendix 3 hereto). Mr. Shulkin did not request additional time to address the community property liability issue. The trial court entered WML's proposed Judgment after the hearing was complete. CP 22-28 (Appendix 3 hereto). The Judgment was immediately appealable by the Moes pursuant to CR 54(b) and RAP 2.2. CP 360-361 at ¶¶15-19. The Moes did not file a motion for consideration, and they did not file an appeal of the Judgment.

The remedial sanctions imposed by the trial court finally got Mr. Moe's attention. Approximately one month after the entry of the Judgment, Mr. Moe agreed to have his supplemental proceedings deposition taken. As such, the bench warrant for his arrest was recalled. CP 386.

D. WML's Collection Efforts

WML then began collection efforts on the Judgment at issue, including bank garnishments and writs of execution on real property owned by the Moes. E.g., CP 663-666, CP 667-669, CP 670-672, CP 703-705. Ultimately, WML executed on three homes (but not the Moes' homestead) owned by the Moes, and WML purchased those homes at the

Sheriff's sales by credit-bidding the Judgment against the Moes. CP 673-687, CP 688-702, CP 706-710. WML then sold those homes in partial satisfaction of the Judgment at issue. CP 711-721, CP 722-729, CP 730-738.

E. The Moes' Collateral Attacks on Judgment

But the Moes did not just roll over. Instead of filing a direct appeal of the Judgment and bonding the same to stop WML's collection efforts, both prior and subsequent to the Judgment at issue in this appeal, they (directly and through others working in concert with them), undertook several years of collateral attacks on the sanctions orders and various judgments (including, but not limited, to the Judgment at issue in this appeal) entered against the Moes by the trial court.

Such collateral attacks included the following lawsuits:

- *Deonne Moe and Susan Ross, individually and on behalf of all others similarly situated, v. Spokane County*, Lincoln County Cause No. 09-2-00067-1 (seeking to assert rights of WML) (CP 207-214);
- *In re Orville Moe (Terry-Lee v. Goforth)*, Spokane County Superior Court, Cause No. 11-2-01054-1 (seeking to halt WML's attorneys' collection efforts) (CP 338-350);
- *Ross and Graham v. Davidson*, Spokane County Superior Court, Cause No. 11-2-04631-6 (seeking to cloud title to the Moes' real property that WML was executing upon) (CP 398-403);
- *Moe v. Davidson and Judge Plese*, United States District Court, Eastern District of Washington, Case No. 12-189-JLQ (seeking to have WML's judgments

rendered “invalid and unenforceable”) (CP 432-439);
and

- *Moe v. Davidson and Goforth*, United States District Court, Eastern District of Washington, Case No. 14-262-SJM (seeking to have WML’s judgments rendered “invalid and unenforceable”) (CP 553-562).

These lawsuits sought to set aside, among other things, the Judgment at issue in this appeal, and/or to otherwise interfere with WML’s efforts to collect judgments entered against the Moes. These lawsuits resulted in the entry of numerous Cease and Desist and Remedial Sanctions orders against the Moes and those working in active concert with them. E.g., CP 250-266, CP 327-337, CP 338-350, CP 408-417, CP 440-445, and CP 619-625.

F. Third Remedial Sanctions Judgment

In August of 2012, the trial court entered another Judgment against the Moes for additional remedial sanctions. CP 446-450.

G. First Motion to Vacate

In November of 2012, the Moes moved to vacate all of the judgments entered against them, claiming that they should be vacated under numerous subparts of CR 60(b). CP 451-455. Specifically, the Moes claimed that the trial court lacked the statutory authority to award daily, remedial sanctions under RCW 7.21 *et seq.* and make them payable to WML. *Id.* The Moes did not claim that Mrs. Moe had been deprived of

due process in the manner in which the 2011 Judgment was entered against her. *Id.*

In December of 2012, Ross et al. (while being represented by Mrs. Moe's current counsel, Mr. Wall) moved to intervene into WML's Receivership case for the sole and limited purpose of joining the Moes' Motion to Vacate. CP 456-460, CP 461-468.

Ross et al. limited their argument in support of vacation to CR 60(b)(5)("void"). CP 461-468. Ross et al. also limited their argument in support thereof to the assertion that the trial court "lacked statutory authority" to enter a judgment for remedial sanctions under RCW 7.21.030(2)(b) in favor of an opposing party, and as a result, the Judgments were allegedly "void." *Id.* Ross et al. did not raise the issue of alleged lack of due process. *Id.* The trial court denied Ross's Motion to Intervene, and denied Mr. Moe's Motion to Vacate. CP 514-515, CP 516-517.³

H. First Appeal of Denial of Motion to Vacate

Ross et al. and the Moes filed separate appeals of the trial court's orders. CP 518-524, CP 525-528. In their appeals to this Court, neither the Moes nor Ross et al. claimed that Mrs. Moe had been deprived of due

³ The trial court also entered amended orders and final judgments denying the Moes' Motion to Vacate and Ross *et al.*'s Motion to Intervene, for the purpose of adding CR 54(b) certifications. CP 529-531, CP 532-535.

process in the manner in which the 2011 Judgment was entered against Mrs. Moe. *See* Division III Case Nos. 314162 & 314171.

As referenced above, both the Moes' 314171 appeal and Ross et al.'s 314162 appeal were dismissed by this Court as frivolous and WML was awarded its attorneys fees and costs in defending against that appeal. CP 536-542, CP 626-634. The Washington State Supreme also denied Ross et al.'s motion for discretionary review, and awarded WML's its fees and costs under RAP 18.1(j). CP 638-640.

I. Second Motion to Vacate (order at issue in this appeal)

The Mandate in the Moes' 314171 appeal was issued on February 5, 2014. CP 536. Mrs. Moe then waited an additional approximately eighteen (18) months after issuance thereof (and more than four (4) years after entry of the 2011 Judgment) to argue for the first time that the 2011 Judgment had been entered without proper notice to her and therefore denied her due process rights. CP 29-34.

Specifically, on August 19, 2015, Mrs. Moe moved to vacate the 2011 Judgment upon the demonstrably false assertion that she was not provided with any notice or any opportunity to be heard prior to entry of the 2011 Judgment. *Id.* For example, she argued:

- No notice was ever given to Deonne Moe that her share of community property would be subject to being taken to satisfy any sanction for contempt entered against Mr. Moe, and no hearing was ever held at which Deonne Moe was given the opportunity to contest WML's claim that the sanctions against Mr. Moe created a community

debt or obligation.

CP 30 (emphasis added).

- Deonne Moe was never given notice or opportunity to be heard regarding whether the sanction imposed for Mr. Moe's disobedience to court orders should be imposed against her interest in cthe[sic] ommunity [sic] property.

CP 32 (emphasis added).

- The first time any reference is made in any pleading to the marital community of Orville and Deonne Moe is in the Final Judgment entered on June 21, 2011.

Id. (Emphasis added).

- [T]hat finding [of community property liability] was made without the any [sic] notice to Deonne Moe and without the benefit of any hearing or opportunity for either Orville Moe or Deonne Moe to contest WML's characterization of the sanction as a community debt and/or rebut any applicable presumption.

CP 33(emphasis added).

- ... Mrs. Moe had an absolute right under both the Washington State and United States Constitutions to notice and an opportunity to be heard before any judgment was entered against the marital community and/or her interest community [sic] property.

Id. (Emphasis added)

Mrs. Moe had clearly not reviewed the relevant portions of the record prior to filing her Motion to Vacate. She failed to reference either of the June 2010 Orders under which the 2011 Judgment was entered (CP 4-13 (Appendix 1 hereto), CP 14-21), and failed to reference the Notice of Presentment (CP 351-385 (Appendix 2 hereto)) that was served

upon the Moes and their counsel prior to the presentment hearing. In evaluating Mrs. Moe's Motion to Vacate, the trial court found that Mrs. Moe had been given sufficient notice and opportunity to be heard, and denied Mrs. Moe's Motion. CP 100-102, VRP 18-19.

This appeal followed. CP 103-107.

Mrs. Moe is now forced in this Court to change her argument from her demonstrably false assertion that she had not received any notice or any opportunity to be heard prior to the entry of the 2011 Judgment, to her now arguing that she was not given adequate notice or an adequate opportunity to be heard. *See generally* Appellant's Opening Brief.

6. ARGUMENT:

A. The Trial Court Properly Denied Mrs. Moe's Motion to Vacate

i. Standard of Review for Denials of Motions to Vacate

An appeal of an order denying a motion to vacate as allegedly "void" under CR 60(b)(5) is reviewed for "manifest abuse of discretion." *In re Guardianship of Adamec*, 100 Wn.2d 166, 173, 178 (1983)(citing CR 60(b)(5)); *see also Kennedy v. Sundown Speed Marine, Inc.*, 97 Wn.2d 544, 548 (*en banc* 1982); *Morris v. Palouse River and Coulee City R.R., Inc.*, 149 Wn. App. 366, 372 (Div. III 2009). A manifest abuse of discretion only occurs "only when no reasonable person would take the

position adopted by the trial court.” *In re Marriage of Burkey*, 36 Wn. App. 487, 489 (1984)(citation omitted).⁴

An appeal of an order denying a motion to vacate does not bring up on appeal the merits of the underlying judgment. *See* RAP 2.4(c); *see also State v. Gaut*, 111 Wn. App. 875, 881 (2002)(“On review of an order denying a motion to vacate, only ‘the propriety of the denial *not* the impropriety of the underlying judgment’ is before the reviewing court.”) (Emphasis original)(Citation omitted). As such, Mrs. Moe is not (and cannot) appeal the propriety of the underlying sanctions orders, whether a sanctions judgment for contempt against one spouse can become a community property liability, etc.

Lastly, the trial court can be affirmed on any basis supported by the record. *Deveny v. Hadaller*, 139 Wn. App. 605, 616 (2007).

⁴ WML notes that some cases have referenced a *de novo* standard of review for denials of motions to vacate an allegedly void judgment. *E.g., Ahten v. Barnes*, 158 Wn. App. 343, 350 (Div. I 2010). WML has been unable to locate any Washington State Supreme Court case applying a *de novo* standard of review to an order denying a CR 60(b) motion to vacate. “Due process” is a flexible concept which depends on context. *See* Section 6.A.ii, *infra*. The trial court had endured years of contempt by Mr. and/or Mrs. Moe when it entered the Judgment at issue. The trial court was in the best position to evaluate the amount of notice and opportunity to be heard to which the Moes were entitled under the circumstances, and the trial court’s determinations are entitled to deference unless it abused its discretion. But regardless of the standard of review applied, as demonstrated below, the trial court should be affirmed because Mrs. Moe was given proper notice and opportunity to be heard regarding entry of the 2011 Judgment. *See* Sections 6.A.iii.-iv., *infra*. She simply failed to prevail on that issue.

ii. Due Process Standards

For over a century it has been recognized that ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.’ The fundamental requisites of due process are ‘the opportunity to be heard,’ and ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ Thus, ‘at a minimum’ the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by ‘notice and opportunity for hearing appropriate to the nature of the case.’ Moreover, this opportunity ‘must be granted at a meaningful time and in a meaningful manner.’

Olympic Forest Prods., Inc., v. Chaussee Corp., 82 Wn.2d 418, 422 (1973)(citations omitted).

“‘[D]ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Id.* at 423 (citation omitted). “Due process is not a mechanical instrument. It is not a yardstick. It is a process.” *Id.* (Citation Omitted).

iii. Mrs. Moe was provided adequate notice

Mrs. Moe has failed to provide this Court with any case law regarding the requirements for “notice” to comply with due process. Due process does not even require that actual notice be given. *Speelman v. Bellingham/Whatcom Cty. Sousing Auth.*, 167 Wn. App. 624, 631 (2012)(citations omitted). Rather, due process requires “notice reasonably

calculated, under all the circumstances, to apprise interested parties” of the relief sought. *Id.* (citations omitted).

The Notice of Presentment in this case attached the specific proposed judgment that WML sought to have entered. CP 351-358 (Appendix 2 hereto). That Notice of Presentment was served in compliance with the requirements of CR 5 and CR 54(f)(2)). In fact, it was also mailed directly to the Moes, even though they were represented by counsel, and it was also served on their counsel, Mr. Shulkin. CP 354 (Appendix 1 hereto), CP 93. The Notice of Presentment was also actually received by Mr. Shulkin, and he attended the presentment hearing by telephone on behalf of the Moes. CP 28 (Appendix 3 hereto).

All of the cases cited by Mrs. Moe regarding a failure to provide “notice” in compliance with due process requirements involve the failure to provide any notice whatsoever. That is not the case here.

Mrs. Moe has not presented any evidence that she or her counsel even objected to the timing of the hearing or the inclusion of the Moes’ marital community as a judgment debtor.

Lastly, without citation to any authority, Mrs. Moe also makes the unsupportable argument that in order for WML to give proper “notice,” it was required to “file a motion” specifying that it was seeking liability against the Moes’ marital community based upon Mr. Moe’s contempt. Mrs. Moe is wrong. The relief sought against Mr. Moe would become a

marital community liability as a matter of law unless he or Mrs. Moe overcame that presumption. “A debt incurred by either spouse during marriage is presumed to be a community debt.” *Oil Heat Co. of Port Angeles, Inc. v., Sweeney*, 26 Wn. App. 351, 353 (1980); *La Framboise v. Schmidt*, 42 Wn.2d 198, 200 (1953).

It is the “party seeking to avoid the obligation” that bears the burden of overcoming this presumption by clear and convincing evidence. *Warren v. Washington Trust Bank*, 19 Wn. App. 348, 360 (1978). Only one spouse needs to be joined to a lawsuit to obtain a judgment against the marital community. *La Framboise* at 200.

Apparently Mrs. Moe believes that WML should have informed her of the legal implications for her marital community if a judgment was entered against her husband. But her alleged ignorance of that legal principle is not a failure of “notice” by WML. “It is well settled that a person is presumed to know the law such that ignorance of the law is not a defense.” *Dellen Wood Prods., Inc., v. Washington State Dep’t of Labor & Indus.*, 179 Wn. App. 601, 629 (2014).

But in any event, WML did file a motion in 2010 seeking liability against both of the Moes if either of them failed to comply with the trial court’s orders. CP 291-296, CP 297-312. The motion set forth the specific relief sought by WML, and it was properly served upon the Moes’ counsel. CP 291-296. The trial court granted that relief and informed

both of the Moes that it would “impos[e] remedial monetary sanctions of \$2,000 each, per day, against Orville Moe and Deonne Moe, jointly and severally, payable to the receiver...” for each day that “Orville and/or Deonne Moe fail to sit for their deposition on [June 11, 2010] as ordered by this Court.” CP 10 (Appendix 1 hereto) (emphasis added). The 2011 Judgment was based upon that Order. CP 22-28.

Also, without providing any support, Mrs. Moe simply concludes that “in this context,” “jointly and severally means only” that the Moes would be equally responsible if “both” were found in contempt. *See* Appellant’s Opening Brief, p.8. Mrs. Moe is again wrong. The trial court made it clear that joint and several liability would be imposed if one “and/or” (i.e., either or both) the other spouse did not comply. CP 10 (Appendix 1 hereto).

Also, by its plain terms, “joint and several” simply means “together or separately.” It means that “the creditor may demand payment [from] one or more of the parties to such liability separately, or all of them together at his option.” Black’s Law Dictionary 837 (6th ed. 1990).

Also, by denying Mrs. Moe’s motion to vacate the Judgment at issue, the trial court affirmed its intent to impose liability upon both of the Moes if either of them failed to comply with the trial court’s order. CP 100-102. Joint and several liability was imposed to attempt to avoid the Moes’ “shell game” of both of them claiming that the other spouse had

the information/documents that had been ordered to be provided and produced.

In short, WML (and the trial court) provided proper and adequate notice that Mrs. Moe's marital community would be liable if a judgment was entered against Mr. Moe for sanctions.

iv. Mrs. Moe was given an adequate opportunity to be heard

Mrs. Moe has also failed to provide this Court with any case law authority regarding how much of an "opportunity" to be heard is required to comply with due process. Due process only requires that the person be afforded an "opportunity to present their objections." *Speelman v. Bellingham/Whatcom Cty. Sousing Auth.*, 167 Wn. App. 624, 631 (2012)(citations omitted). Furthermore, the opportunity must be at a meaningful time and in a meaningful manner appropriate to the case. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 216 (2006).

Mrs. Moe was provided with an opportunity prior to (and during) the June 21, 2011 hearing to attempt to rebut the presumption of marital community liability, and/or to otherwise challenge martial community liability. Mr. Shulkin presented his objections during the June 21, 2011 presentment hearing. CP 28 (Appendix 3 hereto). Mrs. Moe failed to overcome that presumption. CP 26-27, ¶14 (Appendix 3 hereto). Nothing further is required to satisfy due process.

Further Mrs. Moe failed to exercise many of her other due process

rights, including the right to request a postponement of the presentment hearing, the right to request an evidentiary hearing on the marital community liability issue, the right to file a motion for reconsideration under CR 59, the right to file a direct appeal of the 2011 Judgment under RAP 2.2, etc. Her failure to exercise her due process rights does not mean that she was denied those rights.

Lastly, she already filed one motion to vacate the 2011 Judgment as allegedly void under CR 60(b)(5) which was denied, and her appeal thereof was dismissed as frivolous.

v. Mrs. Moe's argument that the 2011 Judgment is void under CR 60(b)(5) is barred by the law of the case doctrine.

“This court from its early days has been committed to the rule that questions determined on appeal or questions which might have been determined had they been presented, will not again be considered on a subsequent appeal in the same case.” *State v. Bailey*, 35 Wn. App. 592, 594 (1983) (emphasis added) (quoting *Davis v. Davis*, 16 Wn.2d 607, 609, (1943)). “Even [where] an appeal raises issues of constitutional import, at some point the appellate process must stop. Where, as in this case, the issues could have been raised on the first appeal, we hold they may not be raised in a second appeal.” *State v. Sauve*, 100 Wn.2d 84, 87 (*en banc* 1983)(emphasis added). Because Mrs. Moe already unsuccessfully brought an appeal seeking to have the 2011 Judgment rendered “void,”

Mrs. Moe's present "due process" argument is barred by the law of the case doctrine.⁵

vi. CR 60(b) cannot be used to attempt to correct alleged legal error.

To the extent Mrs. Moe is arguing that the trial court lacked the authority to enter the 2011 Judgment against the Moes' marital community (as opposed to simply challenging alleged failure to give sufficient notice and opportunity to be heard), such a claim would be an alleged error of law.

An alleged "judicial error" or "error of law" cannot, however, be corrected under a motion to vacate under CR 60(b). "Errors of law are not grounds for vacation under CR 60(b)." *Haley v. Highland*, 142 Wn.2d 135, 156 (2000)(citation omitted). Judicial errors cannot be corrected under CR 60. *Presidential Estates Apartment Assocs. v. Barrett*, 129

⁵ Mrs. Moe has indicated her belief that she is not barred by the law of the case doctrine, because she allegedly could not have raised her lack of due process argument in her 314171 appeal, because she had not raised that issue in the trial court as a part of her 2012 motion to vacate. First, her failure to raise that issue in her first motion to vacate was her decision, and she cannot revive that issue by simply filing a new motion to vacate. Second, an alleged manifest error affecting a constitutional right (as alleged by Mrs. Moe) can be raised for the first time in the appellate court. *See* RAP 2.5(a)(3). As such, she could have raised her alleged lack of due process argument in her 314171 appeal (even though she did not raise the issue in the trial court in her 2012 motion to vacate), but she failed or elected not to do so. Mrs. Moe apparently believes that she can bring motions to vacate *ad naseum* in the trial court and she will not be barred by the law of the case doctrine from appealing the denials thereof, as long as she raises new alleged error in each such motion. Her position is frivolous.

Wn.2d 320, 326 (*en banc* 1996). A judicial error can only be reviewed through a CR 59 motion or through timely appeal. *Id.*

B. WML Should be Awarded its Reasonable Attorneys' Fees and Costs Jointly and Severally against Mrs. Moe and Her Counsel Pursuant to RAP 18.9(a), because this Appeal is Frivolous and is Clearly Barred by the Law of the Case Doctrine.

WML is entitled to an award of attorneys' fees and costs in defending this appeal pursuant to RAP 18.9(a). Under that Rule, the "appellate court ... on motion of a party may order a party or counsel ... who ... files a frivolous appeal ... to pay terms or compensatory damages to any other party who has been harmed...." "An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised." *See Johnson v. Jones*, 91 Wn. App. 127, 137 (1998).

Not only has Mrs. Moe and her counsel failed to provide this Court with any case law assistance regarding the requirements for "notice" and "opportunity to be heard" to comply with due process (*see* Sections 6.A.iii-iv, *supra*), but her present appeal is also clearly barred by the law of the case doctrine (*see* Section 6.A.v., *supra*). This appeal is meritless, and reasonable minds cannot differ about the issues raised.

This appeal is particularly troubling since the bar presented by the law of the case doctrine has been raised to Mrs. Moe and her counsel

several times before she filed this appeal, including in WML's opposition to Mrs. Moe's Motion to Vacate, and in the trial court's oral ruling denying the Motion to Vacate. CP 42-43, VRP 19.

Although WML is loath to seek imposition of sanctions against opposing counsel, an award solely against Mrs. Moe would be futile, since she already owes WML over \$3,000,000.00 in unpaid judgments, including interest. E.g., CP 22-28, CP 196-202, CP 446-450, CP 543-547. Further, Mrs. Moe has still not paid the sanction award issued against her in 2014 by this Court in case number 314171. CP 536-542, CP 543-547.

This is also not the first time counsel for Mrs. Moe has filed a frivolous appeal against WML. In Division III Case No. 314162, Mrs. Moe's counsel (then acting as counsel for Mrs. Moe's daughters) filed an appeal that was dismissed as frivolous and WML was awarded its attorneys' fees pursuant to RAP 18.9(a). CP 626-634. WML should not be required to continue to incur substantial attorneys' fees in responding to frivolous appeals by Mrs. Moe. She and her counsel should be required to pay the attorneys' fees caused by their continued frivolous filings.

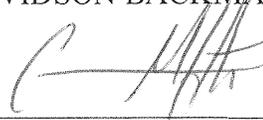
WML requests leave to submit an affidavit detailing the expenses incurred and the services performed by counsel pursuant to RAP 18.1(d), or direct that the amount of fees and expenses to be awarded be determined by the trial court after remand pursuant to RAP 18.1(i).

7. **CONCLUSION:**

For the foregoing reasons, WML respectfully requests that the Court affirm the trial court's denial of Mrs. Moe's Motion to Vacate, and award WML its reasonable attorneys' fees incurred on appeal.

DATED this 31st day of March, 2016.

DAVIDSON BACKMAN MEDEIROS PLLC



Aaron D. Goforth, WSBA #28366
Attorneys for Respondent Washington Motorsports
Ltd., by and through Barry W. Davidson, in his
capacity as Receiver and Acting General Partner

DECLARATION OF SERVICE

I hereby declare and certify under penalty of perjury under the laws of the State of Washington that on the date I signed this Declaration I caused a true and correct copy of the foregoing document, along with the following appendices, to be served upon the following in the manners indicated below.

Signed this 31st day of March, 2016, at Spokane, Washington.

A handwritten signature in black ink, appearing to read 'A. D. Goforth', written over a horizontal line.

Aaron D. Goforth

Richard D. Wall
Attorney at Law
505 W. Riverside Avenue, Suite 400
Spokane, WA 99201
Via hand delivery by Eastern Washington Attorney Services, Inc.

APPENDIX

- Appendix 1: Order Granting WML's Fourth Motion for Supplemental Proceedings against Orville Moe, Third Motion for Supplemental Proceedings against Deonne Moe, Eighth Motion for Remedial Sanctions against Orville Moe, and First Motion for Remedial Sanctions against Deonne Moe, and Motion for an Award of Attorneys Fees, entered on June 4, 2010 (CP 4-13)
- Appendix 2: Notice of Presentment of: Final Judgment Against Orville Moe and Deonne Moe for Sanctions, filed on June 13, 2011 (CP 351-385)
- Appendix 3: Final Judgment Against Orville Moe and Deonne Moe for Sanctions, entered on June 21, 2011 (CP 22-28)

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Honorable Annette S. Plese

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JUN 04 2010
THOMAS R. FALLOQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS
LIMITED PARTNERSHIP, a/k/a
Washington Motorsports, Ltd., by and
through Barry W. Davidson, in his
capacity as Receiver and as Acting
Managing General Partner,
Plaintiff,

v.

SPOKANE RACEWAY PARK, INC.,
a Washington for profit corporation and
General Partner of Washington
Motorsports Limited Partnership,
Defendant.

Case No. 03-2-06856-4

ORDER GRANTING WML'S FOURTH
MOTION FOR SUPPLEMENTAL
PROCEEDINGS AGAINST ORVILLE
MOE, THIRD MOTION FOR
SUPPLEMENTAL PROCEEDINGS
AGAINST DEONNE MOE, EIGHTH
MOTION FOR REMEDIAL
SANCTIONS AGAINST ORVILLE
MOE, AND FIRST MOTION FOR
REMEDIAL SANCTIONS AGAINST
DEONNE MOE, AND MOTION FOR
AN AWARD OF ATTORNEYS FEES

THIS MATTER came before the Court on June 4, 2010 upon Plaintiff,
Washington Motorsports Limited Partnership's ("WML") Fourth Motion for
Supplemental Proceedings Against Orville Moe, Third Motion for Supplemental
Proceedings Against Deonne Moe, Eighth Motion for Remedial Sanctions Against
Orville Moe, and First Motion for Remedial Sanctions Against Deonne Moe, and

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST
ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE,
EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION
FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES-Page 1

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Appendix 1

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Motion for an Award of Attorneys' Fees." Having considered the evidence, relevant pleadings, and arguments of Counsel, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Court hereby incorporates by this reference as if fully set forth herein, its Findings of Fact and Conclusions of Law contained in its 'Order Granting WML's Third Motion for Supplemental Proceedings Against Orville Moe, Second Motion for Supplemental Proceedings Against Deonne Moe, and Motion for an Award of Attorneys' Fees Against Deonne Moé' (Clerk's Side #1812), and in its 'Bench Warrant (Civil) and Order Awarding WML Its Attorneys' Fees and Costs Against Orville Moe Relating to Supplemental Proceedings' (Clerk's Side #1822), and in its 'Order for Issuance of Bench Warrant (Civil) and Order Awarding WML its Attorneys' Fees and Costs Against Deonne Moe Relating to Supplemental Proceedings' (Clerk's Side #1823), and all other relevant findings of fact and conclusions of law made in this proceeding.

2. Orville Moe and Deonne Moe are in ongoing contempt of this Court's Orders for them to sit for Supplemental Proceedings Depositions and to produce the documents as ordered by this Court.

3. Orville Moe has been ordered to answer supplemental proceedings interrogatories and requests for production of documents. He has also been ordered on two prior occasions to appear and to sit for a supplemental proceedings deposition and

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE, EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF ATTORNEYS' FEES-Page 2

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1 to produce documents. He refused to fully answer the Court ordered supplemental
2 proceedings interrogatories and requests for production of documents, and he has
3 refused to attend each such deposition and produce Court ordered documents.
4

5 4. Deonne Moe has been ordered on two prior occasions by this Court and
6 by another judge to appear and sit for a supplemental proceedings deposition and to
7 produce documents as ordered by the Court. She has refused to attend each such
8 deposition and produce Court ordered documents.
9

10 5. Based upon such refusals, on May 6, 2010, this Court issued Civil Bench
11 Warrants for the arrest of Orville and Deonne Moe. Despite those Civil Bench
12 Warrants, Orville and Deonne Moe continue to refuse to sit for their deposition, and
13 they continue to refuse to produce the documents as ordered.
14

15 6. This Court has attempted to obtain Orville and Deonne Moe's compliance
16 with this Court's (and other judges') orders through the threat of the issuance of Civil
17 Bench Warrants. Both Orville and Deonne Moe continue, however, to knowingly,
18 willfully, intentionally, deliberately, and defiantly disobey this Court's Orders, and this
19 Court must now impose remedial sanctions in an attempt to coerce their compliance
20 with Court Orders as set forth below.
21

22 7. Based upon Mr. Moe's refusal to obey Judge Austin's prior orders to
23 produce documents upon a threat of the assessment of a \$1,000/day remedial sanction
24 (Clerk's Side ##437 and 1149), this Court finds that a remedial sanction in that amount
25

1 will be insufficient to coerce Orville and Deonne Moe to comply with this Court's
2 Orders.

3
4 8. Based upon Orville and Deonne Moe's refusal to obey this Court's (and
5 other judges') orders for supplemental proceedings despite the threat of arrest pursuant
6 to Civil Bench Warrants, this Court finds that a remedial sanction limited to
7 incarceration will be insufficient to coerce Orville and Deonne Moe to comply with
8 this Court's Orders.

9
10 9. WML continues to suffer prejudice by Orville and Deonne Moe's
11 disobedience of Court orders to have their depositions taken and to produce documents
12 relating thereto. Such prejudice includes WML being entirely prevented from
13 collecting any of its \$373,626.10 judgment against Orville Moe, although that
14 judgment was entered in September of 2008.

15
16
17 10. The Moe's ongoing contempt is of the nature of those identified in
18 RCW 7.21.010(1)(b) through (d), because they are disobeying lawful orders, decrees,
19 and processes of the court; they are refusing to appear as witnesses, be sworn and
20 answer questions at their court ordered depositions; and they are refusing, without
21 lawful authority, to produce records and documents as ordered by this Court.

22
23 11. This Court has considered lesser remedial sanctions, including imposing
24 a monetary remedial sanction of \$1,000/day (or less), not imposing incarceration as a
25 remedial sanction, and not imposing an award of attorneys' fees. The Court finds,

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST
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however, that based upon Orville and Deonne Moe's history of disobedience of Court orders and their intransigence, and their refusal to obey prior court orders despite the threat of the imposition of a \$1,000/day remedial sanction and despite threats of the issuance of Civil Bench Warrants for their arrests, that lesser sanctions will not be sufficiently coercive for the Moes to obey this Court's orders.

12. The below remedial sanctions are the least severe sanctions that may be adequate to obtain Orville and Deonne Moe's compliance with this Court's orders.

13. RCW 7.21.030(2) permits the simultaneous imposition of more than one type of remedial sanction described therein.

14. The sanctions set forth below are remedial in nature. The assessment of the remedial sanctions is not inevitable. Orville and Deonne Moe can entirely avoid the assessment thereof by purging themselves of contempt by complying with this Court's Orders. Their own conduct will determine what, if any, sanctions will actually be imposed, and they control the total amount of the *per diem* sanctions, if any, ultimately imposed.

ORDER

Now, therefore,

1. WML's Fourth Motion for Supplemental Proceedings Against Orville Moe, Third Motion for Supplemental Proceedings Against Deonne Moe, Eighth Motion for Remedial Sanctions Against Orville Moe, and First Motion for Remedial

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE, EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF ATTORNEYS' FEES-Page 5

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Sanctions Against Deonne Moe, and Motion for an Award of Attorneys' Fees is

HEREBY GRANTED.

2. Specifically, the Court orders as follows:

a. Orville Moe shall sit for a deposition in (or just outside of) Courtroom 303 on the 11th day of June, 2010, at 9:00 a.m., and Deonne Moe shall sit for a deposition in (or just outside of) Courtroom 303 on the 11th day of June, 2010, at 2:00 p.m., then and there to be examined under oath concerning Mr. Moe's assets, liabilities, and income, and other matters relating to the collection of the judgment entered in this matter, and they are ordered to bring with them the following documents or information:

- i. All personal income tax returns for Orville Moe for the years 2007, 2008, and 2009.
- ii. All bank statements for accounts in which Orville Moe has had funds in the previous one (1) year.
- iii. Description and location of all personal property exceeding \$1000 in value in which Orville Moe has an interest.
- iv. Original stock certificates of Spokane Raceway Park, Inc.
- v. Copies of original stock certificates of Spokane Raceway Park, Inc.

1 vi. Legal descriptions and street addresses of all real property
2 and all documents of conveyance for such property in which Orville Moe has an
3 interest.
4

5 vii. All trust instruments in which Orville Moe is a grantor
6 and/or beneficiary.
7

8 b. If any of the foregoing documents are not currently in the
9 possession of Orville Moe and/or Deonne Moe, they hereby ordered to obtain copies
10 thereof from whomever has possession thereof.
11

12 c. This Court also imposes the following remedial sanctions,
13 pursuant to RCW 7.21.030, to attempt to obtain there compliance with the Orders
14 herein:
15

16 i. An Order imposing remedial, monetary sanctions of
17 \$2,000 each, per day, against Orville Moe and Deonne Moe, jointly and severally,
18 payable to the Receiver:
19

20 (A) For each day after June 11, 2010 that Orville and/or
21 Deonne Moe fail to sit for their deposition on that date as ordered by this Court.
22 Orville and/or Deonne Moe will be deemed to have failed to sit for their deposition if
23 they fail to answer any questions as ordered by any Judge or Commissioner of the
24 Spokane County Superior Court.
25

1 (B) For each day after June 11, 2010 that Orville and/or
2 Deonne Moe fail to produce to the Receiver's counsel all responsive documents
3 ordered to be produced by this Order for Supplemental Proceedings, and for each day
4 after June 11, 2010 that Orville and/or Deonne Moe fail to serve and file a sworn
5 Declarations certifying that they have delivered all such documents and information to
6 the Receiver's counsel covered by this Order.
7

8
9 ii. An order of imprisonment of Orville Moe and/or Deonne
10 Moe to continue for each day after June 11, 2010 if Orville and/or Deonne Moe fail to
11 sit for their deposition on that date as ordered by this Court, and/or if they fail to
12 produce to the Receiver's counsel all responsive documents ordered to be produced by
13 this Order for Supplemental Proceedings, pursuant to RCW 7.21.030(2)(a) and
14 RCW 7.21.010(b)-(d). Such imprisonment shall extend so long as it serves a coercive
15 purpose as decided by this Court.
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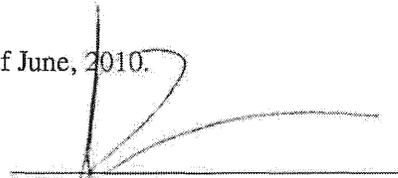
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18 iii. This Court will award WML its attorneys' fees and costs if
19 WML has to bring any motions to enforce any of the above orders.
20

21 d. WML is hereby awarded its attorneys' fees and costs incurred in
22 bringing this Motion pursuant to RCW 7.21.030(3), RCW 6.32.010, the doctrine of
23 intransigence, and this Court's inherent authority.
24
25

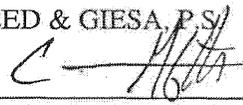
1 e. WML is hereby granted leave to submit by supplemental
2 declaration the amount of the attorneys' fees and costs incurred by WML in bringing
3 this Motion.
4

5 YOUR FAILURE TO APPEAR AS SET FORTH AT THE TIME
6 AND DATE AND PLACE THEREOF MAY CAUSE THE
7 COURT TO ISSUE A BENCH WARRANT FOR YOUR
8 APPREHENSION AND CONFINEMENT IN JAIL UNTIL SUCH
9 TIME AS THE MATTER CAN BE HEARD, UNLESS BAIL IS
10 FURTHER FURNISHED AS PROVIDED IN SUCH BENCH
11 WARRANT.

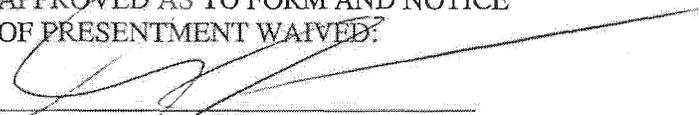
12 DONE IN OPEN COURT this 4th day of June, 2010.

13 
14 Annette S. Plese
Superior Court Judge

15 PRESENTED BY:

16 REED & GIESA, P.S.


17 John P. Giesa, WSBA #6147
18 Aaron D. Goforth, WSBA #28366
19 Robin Lynn Haynes, WSBA #38116
20 Attorneys for Barry W. Davidson,
21 in his capacity as Receiver and as
Acting Managing General Partner of WML

22 APPROVED AS TO FORM AND NOTICE
23 OF PRESENTMENT WAIVED:


24 John D. Munding, WSBA #21734
25 Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST
ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE,
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APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

FTA (4/4/10 called & was notified)

Jerome Shulkin, WSBA #2198 *of the hearing*
Shulkin Hutton, Inc., P.S.
Attorney for Orville Moe and Deonne Moe

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE, EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF ATTORNEYS' FEES-Page 10

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Honorable Annette S. Plese

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THOMAS R. FALLOUJST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,
Plaintiff,

Case No. 03-2-06856-4

NOTICE OF PRESENTMENT OF:
FINAL JUDGMENT AGAINST
ORVILLE MOE AND DEONNE
MOE FOR SANCTIONS

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

TO: Defendant Spokane Raceway Park, Inc., by and through your Chapter 11
Bankruptcy Trustee, John D. Munding; AND
TO: Orville Moe and Deonne Moe, by and through your counsel of record, Jerome
Shulkin of Shulkin Hutton, Inc., P.S.

NOTICE OF PRESENTMENT- Page 1

REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-6341
(509) 838-8341

Appendix 2

1 PLEASE BE ADVISED that the "Final Judgment Against Orville Moe and
2 Deonne Moe for Sanctions" (attached hereto as **Exhibit A**) will be presented for
3 entry before the Honorable Annette S. Plese for entry on June 21, 2011, at 8:30 a.m.,
4 or as soon thereafter as counsel may be heard, at Spokane County Courthouse, 1116
5 West Broadway, Room 305, Spokane, Washington.
6

7
8 The requested Judgment is based upon, among other things, the below-
9 referenced Orders which are attached hereto as exhibits for ease of reference for the
10 Court. A copy of the Order Granting WML's Fourth Motion for Supplemental
11 Proceedings against Orville Moe, Third Motion for Supplemental Proceedings
12 against Deonne Moe, Eighth Motion for Remediation Sanctions Against Orville Moe,
13 and First Motion for Remedial Sanctions Against Deonne Moe, and Motion for an
14 Award of Attorneys Fees (Clerk's Side #1837) is attached hereto as **Exhibit B**. A
15 copy of the Order Finding Orville Moe in Contempt for Disobeying this Court's
16 Orders for Supplemental Proceedings and Order for Award of Attorneys' Fees and
17 Costs Re: Same (Clerk's Side #1843) is attached hereto as **Exhibit C**. A copy of the
18 Order Granting WML's Motion for Order Quantifying the Attorneys' Fees and Costs
19 Already Ordered to be Paid to WML by Orville Moe and Deonne Moe Based Upon
20 Their Disobedience of Supplemental Proceedings Orders (Clerk's Side #1900) is
21 attached hereto as **Exhibit D**.
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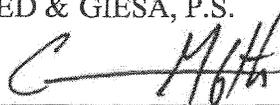
NOTICE OF PRESENTMENT- Page 2

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DATED this 13th day of June, 2011.

REED & GIESA, P.S.



John P. Giesa, WSBA #6147

Aaron D. Goforth, WSBA #28366

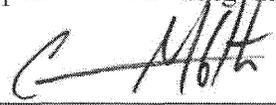
Robin Lynn Haynes, WSBA #38116

Attorneys for Barry W. Davidson, in his
capacity as Receiver and as Acting Managing
General Partner of Washington Motorsports
Limited Partnership

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2011, I caused a true and correct copy of the foregoing document to be served upon the following in the manners indicated below.



Aaron D. Goforth

John D. Munding, Trustee
Email: munding@crumb-munding.com

Barry W. Davidson
Email: bdavidson@Davidson-medeiros.net

Shawn B. Alexander
Email: SAlexan701@aol.com

Jerome Shulkin
Email: jshulkin@shulkin.com

Robert E. Kovacevich
Email: kovacevichrobert@qwestoffice.net

James P. Emacio
Email: JEmacio@spokanecounty.org

Darrell Klein
Email: bluesmocketwo@hotmail.com

Dan L. Catt
Email: DCatt@spokanecounty.org

Orville and Deonne Moe
1616 West Kiernan
Spokane, WA 99205-2643
Via U.S. First Class Mail, postage prepaid

Honorable Annette S. Plese

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington Motorsports,
Ltd., by and through Barry W. Davidson, in his
capacity as Receiver and as Acting Managing
General Partner,

Plaintiff,

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

Case No. 03-2-06856-4

[PROPOSED]

FINAL JUDGMENT AGAINST
ORVILLE MOE AND DEONNE
MOE FOR SANCTIONS

Clerk's Action Required

JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information should be entered in the Clerk's

Execution Docket:

- 1. Judgment Creditor: Washington Motorsports Limited Partnership, by and through its Receiver and Acting Managing General Partner, Barry W. Davidson
- 2. Judgment Debtors: Orville Moe and Deonne Moe

FINAL JUDGMENT AGAINST ORVILLE MOE
AND DEONNE MOE FOR SANCTIONS- Page 1

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EXHIBIT A

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- 3. Principal Judgment Amount: \$751,640.00
- 4. Taxable Costs and Attorneys' Fees: [Included in Principal]
- 5. Pre-judgment interest: \$0
- 6. Post-judgment interest shall accrue interest at 12% per year.
- 7. Attorneys for Judgment Creditors: John P. Giesa and Aaron D. Goforth of Reed & Giesa, P.S.
- 8. Attorneys for Judgment Debtors: Jerome Shulkin of Shulkin Hutton, Inc., P.S.

JUDGMENT

1. On September 19, 2008, Judge Robert Austin entered a judgment against Orville Moe in this case in the amount of \$373,626.10 (plus interest) based upon Mr. Moe's violations of numerous court orders. Clerk's Side #1440. As referenced below, the Division III Court of Appeals affirmed that Judgment.

2. In WML's effort to collect that judgment, it sought to take the supplemental proceedings depositions of Orville and Deonne Moe, and for them to produce documents. WML obtained Orders for supplemental proceedings against Orville and Deonne Moe. *E.g.*, Clerk's Side ##1752, 1774, 1812, 1837. Both Orville and Deonne Moe were found to be in contempt of those Orders for disobedience thereof. This Court issued bench warrants for the arrest of both Orville and Deonne Moe. Clerk Side ##1822-1825.

3. On June 4, 2010, this Court entered an Order Granting WML's Fourth Motion for Supplemental Proceedings against Orville Moe, Third Motion for Supplemental Proceedings against Deonne Moe, Eighth Motion for Remediation Sanctions Against Orville

1 Moe, and First Motion for Remedial Sanctions Against Deonne Moe, and Motion for an
2 Award of Attorneys Fees (“Order Re: Supplemental Proceedings and Remedial
3 Sanctions”)(Clerk’s Side #1837).

4
5 4. As a part of the Order Re: Supplemental Proceedings and Remedial Sanctions,
6 this Court ordered that Orville Moe would incur a \$2,000.00 per day remedial sanction for
7 every day after June 11, 2010 that Orville Moe failed to, among other things, sit for a
8 supplemental proceedings deposition as ordered by this Court. Orville Moe failed to comply
9 with that Order.

10
11 5. On June 11, 2010, this Court entered an Order Finding Orville Moe in
12 Contempt for Disobeying this Court’s Orders for Supplemental Proceedings and Order for
13 Award of Attorneys’ Fees and Costs Re: Same (Clerk’s Side #1843). As a part of that Order,
14 this Court ordered that pursuant to the terms of the Order Re: Supplemental Proceedings and
15 Remedial Sanctions, the remedial sanctions set forth therein had commenced against Orville
16 Moe. *Id.*

17
18 6. To date, Orville Moe has still not complied with Court’s Order Re:
19 Supplemental Proceedings and Remedial Sanctions, and remains in ongoing contempt thereof.

20
21 7. On September 10, 2010, this Court also entered an Order Granting WML’s
22 Motion for Order Quantifying the Attorneys’ Fees and Costs Already Ordered to be Paid to
23 WML by Orville Moe and Deonne Moe Based Upon Their Disobedience of Supplemental
24 Proceedings Orders. Clerk’s Side #1900.

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8. In that Order, the Court awarded WML \$21,640.00 against Orville and Deonne Moe, jointly and severally, in attorneys' fees and costs that were expended in relation to WML's supplemental proceedings efforts. *Id.*, Order, ¶2.

9. As referenced above, in relation to this case, the Division III Court of Appeals has already affirmed prior remedial sanctions of \$341,000.00 against Orville Moe (representing a \$1,000.00/day remedial sanction for 341 days), plus attorneys' fees for his disobedience of prior orders entered in this case. Clerk's Side #1851 at Exhibit 1. In its decision, the Court of Appeals rejected Mr. Moe's argument that the monetary sanction was excessive. *Id.*, pp.10-11. It also ruled, among other things, that "[w]hile the dollar amount of the sanction is large, Mr. Moe's repeated defiance of the court's orders illustrates that it was necessary to ensure compliance with this and other court orders." *Id.*, p.8. Similarly, while the dollar amount of this judgment is large, it is necessary to attempt to obtain compliance by Mr. Moe with this Court's Orders, and such monetary remedial sanction could have been entirely avoided by Mr. Moe had he complied with this Court's Order Re: Supplemental Proceedings and Remedial Sanctions.

10. This portion of this Judgment relating to the remedial sanctions incurred by Mr. Moe is \$730,000.00 (representing \$2,000.00/day for the time period of June 11, 2010 to June 10, 2011 (365 days)).

11. The remedial sanctions contained in this Court's Order Re: Supplemental Proceedings and Remedial Sanctions continue to accrue until Mr. Moe purges himself of

1 contempt of that Order. WML is granted leave to seek to reduce such additional remedial
2 sanctions to judgment at a later date.

3
4 12. The remedial sanctions awarded in this Court's Order Re: Supplemental
5 Proceedings and Remedial Sanctions are remedial in nature. They were imposed, and
6 continue to accrue, not to punish Mr. Moe for prior conduct, but instead to attempt to gain his
7 compliance with this Court's Orders. Mr. Moe could have avoided the monetary remedial
8 sanctions in their entirety by complying with this Court's Order Re: Supplemental
9 Proceedings and Remedial Sanctions (and thereby purging himself of contempt), but he chose
10 not to do so. The incurrence of remedial sanctions, and the amounts thereof, were and
11 continue to be entirely within Mr. Moe's control.

12
13 13. As part of this Judgment, this Court also rules that if the amounts awarded in
14 this judgment are not paid in full at the time of any distributions or payments of creditors'
15 claims by WML, WML may offset any amounts owed to Deonne Moe and/or Orville Moe (if
16 any) by the amount still owed hereunder.

17
18 14. At all relevant times, Orville Moe and Deonne Moe were husband and wife.
19 For the benefit of Orville and Deonne Moe's marital community, Orville Moe has refused to
20 comply with this Court's Orders for supplemental proceedings to avoid WML's efforts to
21 collect its \$373,626.10 (plus interest) judgment. A debt incurred during marriage is presumed
22 to be a community obligation; the burden of proving that a debt is not a community obligation
23 rests on the community. *Pacific Gamble Robinson Co. v. Lapp*, 95 Wn.2d 341, 343 (1980).
24 Neither Orville Moe nor Deonne Moe has rebutted that presumption. As such, the
25

1 \$730,000.00 in remedial sanctions entered herein are against Orville Moe and the community
2 property of Orville Moe and Deonne Moe. Pursuant to this Court's September 10, 2010
3 Order, the award of \$21,640.00 in attorneys' fees and costs are entered against Orville Moe
4 and Deonne Moe, jointly and severally, and against their community property.
5

6 15. There is no just reason for delay in entering a final judgment on the amounts
7 awarded. This main Receivership case involves multiple issues, disputes, claims, and
8 defenses between WML and Spokane Raceway Park, Inc. and multiple issues, disputes,
9 claims, and defenses involving numerous creditors and persons claiming an ownership in
10 WML. These other issues, disputes, claims, and defenses will take additional time to finally
11 resolve. The requested Final Judgment does not depend upon the outcome of these other
12 issues, claims, defenses and disputes.
13

14 16. Moreover, pursuant to RAP 7.2(1), an appeal (if any) from this Final Judgment
15 will not delay the adjudication of the other issues, claims, defenses, and disputes in this Main
16 Receivership case. Further, pursuant to RCW 7.21.070, "[a]ppellate review does not stay ...
17 any judgment, decree, or order in the action, suit, or proceeding to which the contempt
18 relates."
19

20 17. Based upon the foregoing, and in light of the express purposes of the
21 Receivership Statute to provide more comprehensive, streamlined, and cost-effective
22 receivership procedures, there is no just reason why the entry of Final Judgment regarding the
23 award should be delayed until final adjudication of the other issues, claims, defenses, and
24 disputes in this Main Receivership Case.
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18. Accordingly, the Court enters Final Judgment against Orville Moe and Deonne Moe in favor of WML in the amount of **\$751,640.00** (consisting of \$730,000.00 in remedial sanctions and \$21,640.00 in attorneys' fees and costs).

19. This Court expressly directs that this **FINAL JUDGMENT** against Orville Moe and Deonne Moe in favor of WML be immediately entered, and that such **FINAL JUDGMENT** be immediately appealable pursuant to CR 54(b) and RAP 2.2(d).

DONE IN OPEN COURT this 21st day of June, 2011.

Annette S. Plese
Superior Court Judge

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PRESENTED BY:
REED & GIESA, P.S.

John P. Giesa, WSBA #6147
Aaron D. Goforth, WSBA #28366
Robin Lynn Haynes, WSBA #38116
Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
Acting Managing General Partner of WML

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

Jerome Shulkin, WSBA #2198
Shulkin Hutton, Inc., P.S.
Attorney for Orville Moe and Deonne Moe

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

John D. Munding, WSBA #21734
Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.

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Honorable Annette S. Plese

COPY
ORIGINAL FILED

JUN 04 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS
LIMITED PARTNERSHIP, a/k/a
Washington Motorsports, Ltd., by and
through Barry W. Davidson, in his
capacity as Receiver and as Acting
Managing General Partner,
Plaintiff,

v.

SPOKANE RACEWAY PARK, INC.,
a Washington for profit corporation and
General Partner of Washington
Motorsports Limited Partnership,
Defendant.

Case No. 03-2-06856-4

ORDER GRANTING WML'S FOURTH
MOTION FOR SUPPLEMENTAL
PROCEEDINGS AGAINST ORVILLE
MOE, THIRD MOTION FOR
SUPPLEMENTAL PROCEEDINGS
AGAINST DEONNE MOE, EIGHTH
MOTION FOR REMEDIAL
SANCTIONS AGAINST ORVILLE
MOE, AND FIRST MOTION FOR
REMEDIAL SANCTIONS AGAINST
DEONNE MOE, AND MOTION FOR
AN AWARD OF ATTORNEYS FEES

THIS MATTER came before the Court on June 4, 2010 upon Plaintiff,
Washington Motorsports Limited Partnership's ('WML') Fourth Motion for
Supplemental Proceedings Against Orville Moe, Third Motion for Supplemental
Proceedings Against Deonne Moe, Eighth Motion for Remedial Sanctions Against
Orville Moe, and First Motion for Remedial Sanctions Against Deonne Moe, and

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST
ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE,
EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION
FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES-Page 1

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EXHIBIT B

1 Motion for an Award of Attorneys' Fees.' Having considered the evidence, relevant
2 pleadings, and arguments of Counsel, the Court makes the following:
3

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 1. The Court hereby incorporates by this reference as if fully set forth
6 herein, its Findings of Fact and Conclusions of Law contained in its 'Order Granting
7 WML's Third Motion for Supplemental Proceedings Against Orville Moe, Second
8 Motion for Supplemental Proceedings Against Deonne Moe, and Motion for an
9 Award of Attorneys' Fees Against Deonne Moe' (Clerk's Side #1812), and in its 'Bench
10 Warrant (Civil) and Order Awarding WML Its Attorneys' Fees and Costs Against
11 Orville Moe Relating to Supplemental Proceedings' (Clerk's Side #1822), and in its
12 'Order for Issuance of Bench Warrant (Civil) and Order Awarding WML its
13 Attorneys' Fees and Costs Against Deonne Moe Relating to Supplemental
14 Proceedings' (Clerk's Side #1823), and all other relevant findings of fact and
15 conclusions of law made in this proceeding.
16

17
18
19 2. Orville Moe and Deonne Moe are in ongoing contempt of this Court's
20 Orders for them to sit for Supplemental Proceedings Depositions and to produce the
21 documents as ordered by this Court.
22

23 3. Orville Moe has been ordered to answer supplemental proceedings
24 interrogatories and requests for production of documents. He has also been ordered on
25 two prior occasions to appear and to sit for a supplemental proceedings deposition and

1 to produce documents. He refused to fully answer the Court ordered supplemental
2 proceedings interrogatories and requests for production of documents, and he has
3 refused to attend each such deposition and produce Court ordered documents.
4

5 4. Deonne Moe has been ordered on two prior occasions by this Court and
6 by another judge to appear and sit for a supplemental proceedings deposition and to
7 produce documents as ordered by the Court. She has refused to attend each such
8 deposition and produce Court ordered documents.
9

10 5. Based upon such refusals, on May 6, 2010, this Court issued Civil Bench
11 Warrants for the arrest of Orville and Deonne Moe. Despite those Civil Bench
12 Warrants, Orville and Deonne Moe continue to refuse to sit for their deposition, and
13 they continue to refuse to produce the documents as ordered.
14

15 6. This Court has attempted to obtain Orville and Deonne Moe's compliance
16 with this Court's (and other judges') orders through the threat of the issuance of Civil
17 Bench Warrants. Both Orville and Deonne Moe continue, however, to knowingly,
18 willfully, intentionally, deliberately, and defiantly disobey this Court's Orders, and this
19 Court must now impose remedial sanctions in an attempt to coerce their compliance
20 with Court Orders as set forth below.
21

22 7. Based upon Mr. Moe's refusal to obey Judge Austin's prior orders to
23 produce documents upon a threat of the assessment of a \$1,000/day remedial sanction
24 (Clerk's Side ##437 and 1149), this Court finds that a remedial sanction in that amount
25

1 will be insufficient to coerce Orville and Deonne Moe to comply with this Court's
2 Orders.

3
4 8. Based upon Orville and Deonne Moe's refusal to obey this Court's (and
5 other judges') orders for supplemental proceedings despite the threat of arrest pursuant
6 to Civil Bench Warrants, this Court finds that a remedial sanction limited to
7 incarceration will be insufficient to coerce Orville and Deonne Moe to comply with
8 this Court's Orders.

9
10 9. WML continues to suffer prejudice by Orville and Deonne Moe's
11 disobedience of Court orders to have their depositions taken and to produce documents
12 relating thereto. Such prejudice includes WML being entirely prevented from
13 collecting any of its \$373,626.10 judgment against Orville Moe, although that
14 judgment was entered in September of 2008.

15
16 10. The Moe's ongoing contempt is of the nature of those identified in
17 RCW 7.21.010(1)(b) through (d), because they are disobeying lawful orders, decrees,
18 and processes of the court; they are refusing to appear as witnesses, be sworn and
19 answer questions at their court ordered depositions; and they are refusing, without
20 lawful authority, to produce records and documents as ordered by this Court.

21
22 11. This Court has considered lesser remedial sanctions, including imposing
23 a monetary remedial sanction of \$1,000/day (or less), not imposing incarceration as a
24 remedial sanction, and not imposing an award of attorneys' fees. The Court finds,
25

1 however, that based upon Orville and Deonne Moe's history of disobedience of Court
2 orders and their intransigence, and their refusal to obey prior court orders despite the
3 threat of the imposition of a \$1,000/day remedial sanction and despite threats of the
4 issuance of Civil Bench Warrants for their arrests, that lesser sanctions will not be
5 sufficiently coercive for the Moe's to obey this Court's orders.
6

7
8 12. The below remedial sanctions are the least severe sanctions that may be
9 adequate to obtain Orville and Deonne Moe's compliance with this Court's orders.

10 13. RCW 7.21.030(2) permits the simultaneous imposition of more than one
11 type of remedial sanction described therein.
12

13 14. The sanctions set forth below are remedial in nature. The assessment of
14 the remedial sanctions is not inevitable. Orville and Deonne Moe can entirely avoid
15 the assessment thereof by purging themselves of contempt by complying with this
16 Court's Orders. Their own conduct will determine what, if any, sanctions will actually
17 be imposed, and they control the total amount of the *per diem* sanctions, if any,
18 ultimately imposed.
19

20
21 **ORDER**

22 Now, therefore,

23 1. WML's Fourth Motion for Supplemental Proceedings Against Orville
24 Moe, Third Motion for Supplemental Proceedings Against Deonne Moe, Eighth
25 Motion for Remedial Sanctions Against Orville Moe, and First Motion for Remedial

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST
ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE,
EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION
FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES-Page 5

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Sanctions Against Deonne Moe, and Motion for an Award of Attorneys' Fees is

HEREBY GRANTED.

2. Specifically, the Court orders as follows:

a. Orville Moe shall sit for a deposition in (or just outside of)

Courtroom 303 on the 11th day of June, 2010, at 9:00 a.m., and Deonne Moe shall sit for a deposition in (or just outside of) Courtroom 303 on the 11th day of June, 2010, at 2:00 p.m., then and there to be examined under oath concerning Mr. Moe's assets, liabilities, and income, and other matters relating to the collection of the judgment entered in this matter, and they are ordered to bring with them the following

documents or information:

- i. All personal income tax returns for Orville Moe for the years 2007, 2008, and 2009.
- ii. All bank statements for accounts in which Orville Moe has had funds in the previous one (1) year.
- iii. Description and location of all personal property exceeding \$1000 in value in which Orville Moe has an interest.
- iv. Original stock certificates of Spokane Raceway Park, Inc.
- v. Copies of original stock certificates of Spokane Raceway Park, Inc.

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vi. Legal descriptions and street addresses of all real property and all documents of conveyance for such property in which Orville Moe has an interest.

vii. All trust instruments in which Orville Moe is a grantor and/or beneficiary.

b. If any of the foregoing documents are not currently in the possession of Orville Moe and/or Deonne Moe, they hereby ordered to obtain copies thereof from whomever has possession thereof.

c. This Court also imposes the following remedial sanctions, pursuant to RCW 7.21.030, to attempt to obtain there compliance with the Orders herein:

i. An Order imposing remedial, monetary sanctions of \$2,000 each, per day, against Orville Moe and Deonne Moe, jointly and severally, payable to the Receiver:

(A) For each day after June 11, 2010 that Orville and/or Deonne Moe fail to sit for their deposition on that date as ordered by this Court. Orville and/or Deonne Moe will be deemed to have failed to sit for their deposition if they fail to answer any questions as ordered by any Judge or Commissioner of the Spokane County Superior Court.

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(B) For each day after June 11, 2010 that Orville and/or Deonne Moe fail to produce to the Receiver's counsel all responsive documents ordered to be produced by this Order for Supplemental Proceedings, and for each day after June 11, 2010 that Orville and/or Deonne Moe fail to serve and file a sworn Declarations certifying that they have delivered all such documents and information to the Receiver's counsel covered by this Order.

ii. An order of imprisonment of Orville Moe and/or Deonne Moe to continue for each day after June 11, 2010 if Orville and/or Deonne Moe fail to sit for their deposition on that date as ordered by this Court, and/or if they fail to produce to the Receiver's counsel all responsive documents ordered to be produced by this Order for Supplemental Proceedings, pursuant to RCW 7.21.030(2)(a) and RCW 7.21.010(b)-(d). Such imprisonment shall extend so long as it serves a coercive purpose as decided by this Court.

iii. This Court will award WML its attorneys' fees and costs if WML has to bring any motions to enforce any of the above orders.

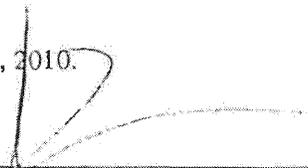
d. WML is hereby awarded its attorneys' fees and costs incurred in bringing this Motion pursuant to RCW 7.21.030(3), RCW 6.32.010, the doctrine of intransigence, and this Court's inherent authority.

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e. WML is hereby granted leave to submit by supplemental declaration the amount of the attorneys' fees and costs incurred by WML in bringing this Motion.

YOUR FAILURE TO APPEAR AS SET FORTH AT THE TIME AND DATE AND PLACE THEREOF MAY CAUSE THE COURT TO ISSUE A BENCH WARRANT FOR YOUR APPREHENSION AND CONFINEMENT IN JAIL UNTIL SUCH TIME AS THE MATTER CAN BE HEARD, UNLESS BAIL IS FURTHER FURNISHED AS PROVIDED IN SUCH BENCH WARRANT.

DONE IN OPEN COURT this 4th day of June, 2010.

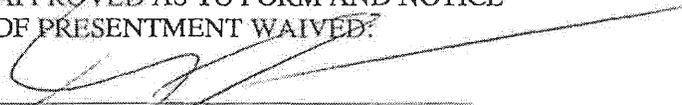

Annette S. Plese
Superior Court Judge

PRESENTED BY:

REED & GIESA, P.S.


John P. Giesa, WSBA #6147
Aaron D. Goforth, WSBA #28366
Robin Lynn Haynes, WSBA #38116
Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
Acting Managing General Partner of WML

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:


John D. Munding, WSBA #21734
Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.

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APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

FTA ^{4/4/06 called 4} _(was with Moe)

Jerome Shulkin, WSBA #2198 *of the hearing*
Shulkin Hutton, Inc., P.S.
Attorney for Orville Moe and Deonne Moe

ORDER GRANTING WML'S FOURTH MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST ORVILLE MOE, THIRD MOTION FOR SUPPLEMENTAL PROCEEDINGS AGAINST DEONNE MOE, EIGHTH MOTION FOR REMEDIAL SANCTIONS AGAINST ORVILLE MOE, AND FIRST MOTION FOR REMEDIAL SANCTIONS AGAINST DEONNE MOE, AND MOTION FOR AN AWARD OF ATTORNEYS' FEES-Page 10

REED & GIESA, P.S.
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Honorable Annette S. Plese

FILED

JUN 11 2010

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,
Plaintiff,

Case No. 03-2-06856-4

ORDER FINDING ORVILLE
MOE IN CONTEMPT FOR
DISOBEYING THIS COURTS
ORDERS FOR SUPPLEMENTAL
PROCEEDINGS AND ORDER
FOR AWARD OF ATTORNEYS'
FEES AND COSTS RE: SAME

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,
Defendant.

THIS MATTER came before the Court on June 11, 2010 upon this Court's
June 4, 2010 Order Granting WML's Fourth Motion for Supplemental Proceedings
Against Orville Moe, Third Motion for Supplemental Proceedings Against Deonne
Moe, Eighth Motion for Remedial Sanctions against Orville Moe, and First Motion for
Remedial Sanctions against Deonne Moe, and Motion for An Award of Attorneys' Fees

ORIGINAL

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 1

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EXHIBIT C

1 (hereafter "Order Re: Supplemental Proceedings and Remedial Sanctions"). Clerk's
2 Side #1837.
3

4 Having considered the evidence, relevant pleadings, and the Court being fully
5 advised in the premises, the Court makes the following:

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
7

8 1. The Court hereby incorporates by this reference as if fully set forth
9 herein, its Findings of Fact and Conclusions of Law contained in its "Order Granting
10 WML's Third Motion for Supplemental Proceedings Against Orville Moe, Second
11 Motion for Supplemental Proceedings Against Deonne Moe, and Motion for an
12 Award of Attorneys' Fees Against Deonne Moe" (Clerk's Side #1812), and in its "Bench
13 Warrant (Civil) and Order Awarding WML Its Attorneys' Fees and Costs Against
14 Orville Moe Relating to Supplemental Proceedings" (Clerk's Side #1822), and in its
15 "Order for Issuance of Bench Warrant (Civil) and Order Awarding WML its
16 Attorneys' Fees and Costs Against Deonne Moe Relating to Supplemental
17 Proceedings" (Clerk's Side #1823), and in its Order Re: Supplemental Proceedings and
18 Remedial Sanctions (Clerk's Side #1837), and all other relevant findings of fact and
19 conclusions of law made in this proceeding.
20
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23 2. Pursuant to this Court's June 4, 2010 Order Re: Supplemental
24 Proceedings and Remedial Sanctions, Orville Moe was ordered to sit for a deposition
25 in (or just outside of) Courtroom 303 on the 11th day of June, 2010, at 9:00 a.m., then

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 2

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1 and there to be examined under oath concerning Mr. Moe's assets, liabilities, and
2 income, and other matters relating to the collection of the judgment entered in this
3 matter. Mr. Moe was also ordered to produce the documents identified therein.
4

5 3. Orville Moe has disobeyed prior Court orders for supplemental
6 proceedings. As such, in an effort to obtain compliance with this Court's June 4, 2010
7 Order Re: Supplemental Proceedings and Remedial Sanctions, that Order contained
8 remedial sanctions that would be imposed if Mr. Moe disobeyed that Order. For
9 example, that Order provides that if Mr. Moe disobeyed this Court's June 4 Order, the
10 Court would impose, among other things, a \$2,000/day monetary sanction against
11 Mr. Moe, an order of imprisonment, and an award of attorneys' fees to WML. The
12 remedial sanctions could have been entirely avoided by Mr. Moe had he complied with
13 that Order.
14
15

16 4. Orville Moe failed to attend his Court ordered June 11, 2010
17 supplemental proceedings deposition and failed to produce the documents as ordered
18 by this Court.
19
20

21 5. Orville Moe failed to seek or obtain a protective order from this Court
22 regarding the Order Re: Supplemental Proceedings and Remedial Sanctions.
23

24 6. On June 10, 2010 at approximately 2:30 p.m. (the afternoon before the
25 scheduled supplemental proceedings deposition of Mr. Moe), Jerome Shulkin (counsel
for Orville and Deonne Moe) faxed to WML's counsel a coversheet and letter from

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 3

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1 James M. Bingham, M.D., dated June 9, 2010. That letter references a "schedule"
 2 angiogram. The Court was advised that Mr. Moe was allegedly undergoing a
 3 'procedure' today. No admissible evidence was provided to the Court to support that
 4 allegation. If the procedure was indeed undertaken, it appears that Mr. Moe scheduled
 5 his elective angiogram on the same date as his scheduled deposition. The letter from
 6 Dr. Bingham states in part that "It is my STRONG recommendation that Mr. Moe be
 7 excused from deposition or court testimony until his medical matter is resolved.
 8 Pursuing legal issues prior to medical resolution could potentially result in SERIOUS
 9 complication." (Emphasis original).

10
 11
 12
 13 7. This Court is aware of Mr. Moe's extensive, ongoing litigation activities
 14 in Superior Court, Municipal Court, Bankruptcy Court, and District Court.

15 Dr. Bingham's letter does not state his familiarity with Mr. Moe's ongoing litigation
 16 activities. This Court is also aware of Mr. Moe's prior disobedience of Court orders
 17 relating to WML's efforts to collect its judgment against Mr. Moe.

18
 19 8. Under the circumstances of this case, Dr. Bingham's letter fails to
 20 establish good cause for Mr. Moe's disobedience of this Court's Order Re:
 21 Supplemental Proceedings and Remedial Sanctions. Dr. Bingham's letter also fails to
 22 justify Mr. Moe's continued refusal to produce documents as ordered by this Court.
 23

24
 25 9. Orville Moe's failure to attend his June 11, 2010 depositions and produce
 documents was without justification and was a knowing, willful, intentional,

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
 THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
 ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 4

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1 deliberate, and defiant disobedience of this Court's Order Re: Supplemental
2 Proceedings and Remedial Sanctions.

3
4 10. Orville Moe is in ongoing contempt of this Court's Order Re:
5 Supplemental Proceedings and Remedial Sanctions.

6
7 11. Proper notice of the Order Re: Supplemental Proceedings and Remedial
8 Sanctions, and the depositions schedule for June 11, 2010, was provided to
9 Mr. Shulkin. Mr. Shulkin did not attend the depositions or appear in Court despite
10 such notice. Dennis Miller was present in Court to observe on behalf of Deonne Moe,
11 but he has not yet formally appeared on her behalf.

12
13 12. The sanctions set forth in this Court's Order Re: Supplemental
14 Proceedings and Remedial Sanctions are remedial in nature. The remedial sanctions
15 therein, including the ongoing incurrence of monetary remedial sanctions, can be
16 avoided by Mr. Moe purging himself of contempt by complying with this Court's
17 Orders. Mr. Moe control the total monetary amount of the *per diem* sanctions
18 ultimately imposed.

19
20
21 13. In addition, Mr. Moe has failed to comply with Judge Robert Austin's
22 November 16, 2009 "Order Requiring Orville L. Moe to Answer Plaintiff's First
23 Supplemental Interrogatories and Requests for Production Propounded to Orville L.
24 Moe." Clerk's Side #1703. Mr. Moe's answers thereto were untimely, incomplete and
25

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 5

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1 evasive, and Mr. Moe failed to produce any of the documents ordered to be produced
2 therein.
3

4 **ORDER**

5 **Now, therefore, it is hereby Ordered as follows:**

- 6 1. The Civil Bench Warrant issued against Orville Moe by this Court on
7 May 6, 2010 remains in full force and effect.
8
- 9 2. Pursuant to the terms of the Order Re: Supplemental Proceedings and
10 Remedial Sanctions, the remedial sanctions set forth therein have commenced against
11 Orville Moe.
12
- 13 3. Pursuant to RCW 7.21.030(3), RCW 6.32.010, the doctrine of
14 intransigence, and this Court's inherent authority, WML is hereby awarded its attorneys'
15 fees and costs incurred in relation to the scheduled June 11, 2010 depositions. Such
16 award includes the attorneys' fees and costs incurred in WML bringing motions to
17 quantify the amounts of such attorneys' fees and costs, and/or to obtain compliance
18 with this Order.
19
- 20 4. WML is hereby granted leave to submit by supplemental declaration the
21 amount of the attorneys' fees and costs incurred by WML in relation hereto.
22
- 23 5. Orville Moe has an ongoing duty to comply with this Court's Order Re:
24 Supplemental Proceedings and Remedial Sanctions.
25

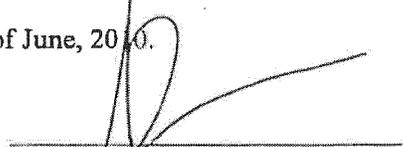
ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 6

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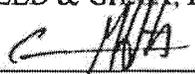
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6. Orville Moe is hereby also ordered to serve upon the Receiver and the Receiver's counsel full, complete, and nonevasive answers and produce all documents requested in the November 16, 2009 "Order Requiring Orville L. Moe to Answer Plaintiffs First Supplemental Interrogatories and Requests for Production Propounded to Orville L. Moe" (Clerk's Side #1703) by no later than June 18, 2010.

DONE IN OPEN COURT this 11th day of June, 2010.


Annette S. Plese
Superior Court Judge

PRESENTED BY:
REED & GIESA, P.S.


John P. Giesa, WSBA #6147
Aaron D. Goforth, WSBA #28366
Robin Lynn Haynes, WSBA #38116
Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
Acting Managing General Partner of WML

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

John D. Munding, WSBA #21734
Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 7

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APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

F-7A / Faxed paper MK to

6/11/2010
(S)

Jerome Shulkin, WSBA #2198
Shulkin Hutton, Inc., P.S.
Attorney for Orville Moe and Deonne Moe

OPPOSING counsel
& it was filed

ORDER FINDING ORVILLE MOE IN CONTEMPT FOR DISOBEYING
THIS COURT'S ORDERS FOR SUPPLEMENTAL PROCEEDINGS AND
ORDER FOR AWARD OF ATTORNEYS' FEES AND COSTS RE: SAME-Page 8

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Honorable Annette S. Plese

FILED

SEP 10 2010

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,

Plaintiff,

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

Case No. 03-2-06856-4

ORDER GRANTING WML'S
MOTION FOR ORDER
QUANTIFYING THE
ATTORNEYS' FEES AND
COSTS ALREADY ORDERED
TO BE PAID TO WML BY
ORVILLE MOE AND DEONNE
MOE BASED UPON THEIR
DISOBEDIENCE OF
SUPPLEMENTAL
PROCEEDINGS ORDERS

THIS MATTER came before the Court on Friday, September 10, 2010, upon
Plaintiff, Washington Motorsports Limited Partnership's ("WML") WML'S
MOTION FOR INTERIM ORDER QUANTIFYING THE ATTORNEYS' FEES
AND COSTS ALREADY ORDERED TO BE PAID TO WML BY ORVILLE MOE
AND DEONNE MOE BASED UPON THEIR DISOBEDIENCE OF

ORDER GRANTING WML'S MOTION FOR INTERIM ORDER QUANTIFYING
THE ATTORNEYS' FEES AND COSTS ALREADY ORDERED TO BE
PAID TO WML BY ORVILLE MOE AND DEONNE MOE BASED UPON
THEIR DISOBEDIENCE OF SUPPLEMENTAL PROCEEDINGS ORDERS-Page 1

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EXHIBIT D

1 SUPPLEMENTAL PROCEEDINGS ORDERS. Having considered the evidence,
2 relevant pleadings, and arguments of Counsel, the Court makes the following:
3

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. The Court hereby incorporates by this reference as if fully set forth
6 herein, its Findings of Fact and Conclusions of Law contained in its "Order Granting
7 WML's Third Motion for Supplemental Proceedings Against Orville Moe, Second
8 Motion for Supplemental Proceedings Against Deonne Moe, and Motion for an Award
9 of Attorneys' Fees Against Deonne Moe" (Clerk's Side #1812), and in its "Bench
10 Warrant (Civil) and Order Awarding WML Its Attorneys' Fees and Costs Against
11 Orville Moe Relating to Supplemental Proceedings" (Clerk's Side #1822), and in its
12 "Order for Issuance of Bench Warrant (Civil) and Order Awarding WML its
13 Attorneys' Fees and Costs Against Deonne Moe Relating to Supplemental
14 Proceedings" (Clerk's Side #1823), "Order Granting WML's Fourth Motion for
15 Supplemental Proceedings Against Orville Moe, Third Motion for Supplemental
16 Proceedings Against Deonne Moe, Eighth Motion for Remedial Sanctions Against
17 Orville Moe, and First Motion for Remedial Sanctions Against Deonne Moe, and
18 Motion for an Award of Attorneys' Fees" (Clerk's Side #1837), Order Finding Orville
19 Moe in Contempt for Disobeying this Court's Orders for Supplemental Proceedings
20 and Order for Award of Attorneys' Fees and Costs Re: Same (Clerk's Side #1843),
21 and all other relevant findings of fact and conclusions of law made in this proceeding.
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ORDER GRANTING WML'S MOTION FOR INTERIM ORDER QUANTIFYING
THE ATTORNEYS' FEES AND COSTS ALREADY ORDERED TO BE
PAID TO WML BY ORVILLE MOE AND DEONNE MOE BASED UPON
THEIR DISOBEDIENCE OF SUPPLEMENTAL PROCEEDINGS ORDERS-Page 2

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jointly and severally, shall personally pay WML \$21,640.00 for its attorneys' fees and costs that have been expended in relation to its supplemental proceedings efforts.

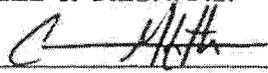
2. This Court also Orders that if such awarded amounts are not paid in full at the time of any distributions or payment of creditors' claims by WML, WML may offset any amounts owed to Deonne Moe and/or Orville Moe (if any) by such amounts owed.

DONE IN OPEN COURT this 10th day of September, 2010.


Annette S. Plese
Superior Court Judge

ANNETTE S. PLESE

PRESENTED BY:
REED & GIESA, P.S.


John P. Giesa, WSBA #6147
Aaron D. Goforth, WSBA #28366
Robin Lynn Haynes, WSBA #38116
Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
Acting Managing General Partner of WML

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

John D. Munding, WSBA #21734
Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.

ORDER GRANTING WML'S MOTION FOR INTERIM ORDER QUANTIFYING THE ATTORNEYS' FEES AND COSTS ALREADY ORDERED TO BE PAID TO WML BY ORVILLE MOE AND DEONNE MOE BASED UPON THEIR DISOBEDIENCE OF SUPPLEMENTAL PROCEEDINGS ORDERS-Page 4

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APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

ON Phone at time hearing

9/10/2010
Jerome Shulkin, WSBA #2198
Shulkin Hutton, Inc., P.S.
Attorney for Orville Moe and Deonne Moe

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:

Present at hearing 9/10/2010

David M. Miller, WSBA #24586
Miller & Prothero
Attorney for Deonne Moe

ORDER GRANTING WML'S MOTION FOR INTERIM ORDER QUANTIFYING
THE ATTORNEYS' FEES AND COSTS ALREADY ORDERED TO BE
PAID TO WML BY ORVILLE MOE AND DEONNE MOE BASED UPON
THEIR DISOBEDIENCE OF SUPPLEMENTAL PROCEEDINGS ORDERS-Page 5

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Honorable Annette S. Plese

FILED

JUN 21 2011

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington Motorsports,
Ltd., by and through Barry W. Davidson, in his
capacity as Receiver and as Acting Managing
General Partner,

Plaintiff,

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

Case No. 03-2-06856-4

FINAL JUDGMENT AGAINST
ORVILLE MOE AND DEONNE
MOE FOR SANCTIONS

Clerk's Action Required

JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information should be entered in the Clerk's

Execution Docket:

1. Judgment Creditor: Washington Motorsports Limited Partnership, by and through its Receiver and Acting Managing General Partner, Barry W. Davidson
2. Judgment Debtors: Orville Moe and Deonne Moe

FINAL JUDGMENT AGAINST ORVILLE MOE
AND DEONNE MOE FOR SANCTIONS- Page 1

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- 3. Principal Judgment Amount: \$751,640.00
- 4. Taxable Costs and Attorneys' Fees: [Included in Principal]
- 5. Pre-judgment interest: \$0
- 6. Post-judgment interest shall accrue interest at 12% per year.
- 7. Attorneys for Judgment Creditors: John P. Giesa and Aaron D. Goforth of Reed & Giesa, P.S.
- 8. Attorneys for Judgment Debtors: Jerome Shulkin

JUDGMENT

1. On September 19, 2008, Judge Robert Austin entered a judgment against Orville Moe in this case in the amount of \$373,626.10 (plus interest) based upon Mr. Moe's violations of numerous court orders. Clerk's Side #1440. As referenced below, the Division III Court of Appeals affirmed that Judgment.

2. In WML's effort to collect that judgment, it sought to take the supplemental proceedings depositions of Orville and Deonne Moe, and for them to produce documents. WML obtained Orders for supplemental proceedings against Orville and Deonne Moe. E.g., Clerk's Side ##1752, 1774, 1812, 1837. Both Orville and Deonne Moe were found to be in contempt of those Orders for disobedience thereof. This Court issued bench warrants for the arrest of both Orville and Deonne Moe. Clerk Side ##1822-1825.

3. On June 4, 2010, this Court entered an Order Granting WML's Fourth Motion for Supplemental Proceedings against Orville Moe, Third Motion for Supplemental Proceedings against Deonne Moe, Eighth Motion for Remediation Sanctions Against Orville

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Moe, and First Motion for Remedial Sanctions Against Deonne Moe, and Motion for an Award of Attorneys Fees ("Order Re: Supplemental Proceedings and Remedial Sanctions")(Clerk's Side #1837).

4. As a part of the Order Re: Supplemental Proceedings and Remedial Sanctions, this Court ordered that Orville Moe would incur a \$2,000.00 per day remedial sanction for every day after June 11, 2010 that Orville Moe failed to, among other things, sit for a supplemental proceedings deposition as ordered by this Court. Orville Moe failed to comply with that Order.

5. On June 11, 2010, this Court entered an Order Finding Orville Moe in Contempt for Disobeying this Court's Orders for Supplemental Proceedings and Order for Award of Attorneys' Fees and Costs Re: Same (Clerk's Side #1843). As a part of that Order, this Court ordered that pursuant to the terms of the Order Re: Supplemental Proceedings and Remedial Sanctions, the remedial sanctions set forth therein had commenced against Orville Moe. *Id.*

6. To date, Orville Moe has still not complied with Court's Order Re: Supplemental Proceedings and Remedial Sanctions, and remains in ongoing contempt thereof.

7. On September 10, 2010, this Court also entered an Order Granting WML's Motion for Order Quantifying the Attorneys' Fees and Costs Already Ordered to be Paid to WML by Orville Moe and Deonne Moe Based Upon Their Disobedience of Supplemental Proceedings Orders. Clerk's Side #1900.

1 8. In that Order, the Court awarded WML \$21,640.00 against Orville and Deonne
2 Moe, jointly and severally, in attorneys' fees and costs that were expended in relation to
3 WML's supplemental proceedings efforts. *Id.*, Order, ¶2.
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5 9. As referenced above, in relation to this case, the Division III Court of Appeals
6 has already affirmed prior remedial sanctions of \$341,000.00 against Orville Moe
7 (representing a \$1,000.00/day remedial sanction for 341 days), plus attorneys' fees for his
8 disobedience of prior orders entered in this case. Clerk's Side #1851 at Exhibit 1. In its
9 decision, the Court of Appeals rejected Mr. Moe's argument that the monetary sanction was
10 excessive. *Id.*, pp.10-11. It also ruled, among other things, that "[w]hile the dollar amount of
11 the sanction is large, Mr. Moe's repeated defiance of the court's orders illustrates that it was
12 necessary to ensure compliance with this and other court orders." *Id.*, p.8. Similarly, while
13 the dollar amount of this judgment is large, it is necessary to attempt to obtain compliance by
14 Mr. Moe with this Court's Orders, and such monetary remedial sanction could have been
15 entirely avoided by Mr. Moe had he complied with this Court's Order Re: Supplemental
16 Proceedings and Remedial Sanctions.
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18 10. This portion of this Judgment relating to the remedial sanctions incurred by
19 Mr. Moe is \$730,000.00 (representing \$2,000.00/day for the time period of June 11, 2010 to
20 June 10, 2011 (365 days)).
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22 11. The remedial sanctions contained in this Court's Order Re: Supplemental
23 Proceedings and Remedial Sanctions continue to accrue until Mr. Moe purges himself of
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1 contempt of that Order. WML is granted leave to seek to reduce such additional remedial
2 sanctions to judgment at a later date.

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4 12. The remedial sanctions awarded in this Court's Order Re: Supplemental
5 Proceedings and Remedial Sanctions are remedial in nature. They were imposed, and
6 continue to accrue, not to punish Mr. Moe for prior conduct, but instead to attempt to gain his
7 compliance with this Court's Orders. Mr. Moe could have avoided the monetary remedial
8 sanctions in their entirety by complying with this Court's Order Re: Supplemental
9 Proceedings and Remedial Sanctions (and thereby purging himself of contempt), but he chose
10 not to do so. The incurrence of remedial sanctions, and the amounts thereof, were and
11 continue to be entirely within Mr. Moe's control.

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13 13. As part of this Judgment, this Court also rules that if the amounts awarded in
14 this judgment are not paid in full at the time of any distributions or payments of creditors'
15 claims by WML, WML may offset any amounts owed to Deonne Moe and/or Orville Moe (if
16 any) by the amount still owed hereunder.

17
18 14. At all relevant times, Orville Moe and Deonne Moe were husband and wife.
19 For the benefit of Orville and Deonne Moe's marital community, Orville Moe has refused to
20 comply with this Court's Orders for supplemental proceedings to avoid WML's efforts to
21 collect its \$373,626.10 (plus interest) judgment. A debt incurred during marriage is presumed
22 to be a community obligation; the burden of proving that a debt is not a community obligation
23 rests on the community. *Pacific Gamble Robinson Co. v. Lapp*, 95 Wn.2d 341, 343 (1980).
24 Neither Orville Moe nor Deonne Moe has rebutted that presumption. As such, the
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\$730,000.00 in remedial sanctions entered herein are against Orville Moe and the community property of Orville Moe and Deonne Moe. Pursuant to this Court's September 10, 2010 Order, the award of \$21,640.00 in attorneys' fees and costs are entered against Orville Moe and Deonne Moe, jointly and severally, and against their community property.

15. There is no just reason for delay in entering a final judgment on the amounts awarded. This main Receivership case involves multiple issues, disputes, claims, and defenses between WML and Spokane Raceway Park, Inc. and multiple issues, disputes, claims, and defenses involving numerous creditors and persons claiming an ownership in WML. These other issues, disputes, claims, and defenses will take additional time to finally resolve. The requested Final Judgment does not depend upon the outcome of these other issues, claims, defenses and disputes.

16. Moreover, pursuant to RAP 7.2(1), an appeal (if any) from this Final Judgment will not delay the adjudication of the other issues, claims, defenses, and disputes in this Main Receivership case. Further, pursuant to RCW 7.21.070, "[a]ppellate review does not stay ... any judgment, decree, or order in the action, suit, or proceeding to which the contempt relates."

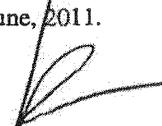
17. Based upon the foregoing, and in light of the express purposes of the Receivership Statute to provide more comprehensive, streamlined, and cost-effective receivership procedures, there is no just reason why the entry of Final Judgment regarding the award should be delayed until final adjudication of the other issues, claims, defenses, and disputes in this Main Receivership Case.

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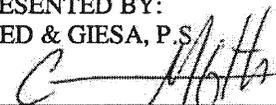
18. Accordingly, the Court enters Final Judgment against Orville Moe and Deonne Moe in favor of WML in the amount of \$751,640.00 (consisting of \$730,000.00 in remedial sanctions and \$21,640.00 in attorneys' fees and costs).

19. This Court expressly directs that this **FINAL JUDGMENT** against Orville Moe and Deonne Moe in favor of WML be immediately entered, and that such **FINAL JUDGMENT** be immediately appealable pursuant to CR 54(b) and RAP 2.2(d).

DONE IN OPEN COURT this 21st day of June, 2011.



Annette S. Plese
Superior Court Judge

PRESENTED BY:
REED & GIESA, P.S.


John P. Giesa, WSBA #6147
Aaron D. Goforth, WSBA #28366
Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
Acting Managing General Partner of WML

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED: *objected*
on record - By phone

Jerome Shulkin, WSBA #2198
Attorney for Orville Moe and Deonne Moe

APPROVED AS TO FORM AND NOTICE
OF PRESENTMENT WAIVED:
[did not appear]

John D. Munding, WSBA #21734
Chapter 11 Bankruptcy Trustee for
Spokane Raceway Park, Inc.