

FILED
SUPREME COURT
STATE OF WASHINGTON
1/16/2025
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Court of Appeals
Division I
State of Washington
1/16/2025 11:03 AM

Supreme Court No. ____

Case #: 1037988

COA No. 85308-2

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

ANEELA KANWAL; RSISP CORPORATION, a Washington
Corporation; and RSSA Services, LLC, a Washington Limited
Liability Company,

Respondents

v.

HASSAN PASHA,

Petitioner,

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Commissioner Henry Judson

PETITION FOR REVIEW

Nicholas L. Jenkins, WSBA 31982
The Law Office of Nicholas L. Jenkins, PLLC
16306 72nd Ave. W.
Edmonds, WA. 98026
Phone: 206.473.9227
Attorneys for Defendant-Petitioner Hassan Pasha

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I. INTRODUCTION

Khurram and Hassan Pasha were brothers and 50 percent owners of a partnership comprised of two convenience stores. Khurram died unexpectedly, and Hassan operated both stores in the period March-June 2020, until Khurram's wife Aneela Kanwal claimed that she was the sole owner of both stores. Kanwal had no basis for the claim since Khurram's and Hassan's lawyer and accountant for the businesses testified they were each 50 percent owners. Nonetheless, Kanwal directed the business accountant to amend the corporate information for both entities to show her as the sole owner.

Hassan filed a petition under Washington's Trust and Estate Dispute Resolution Act (TEDRA) asserting his 50 percent interest. Kanwal abandoned her sole ownership claim and filed a summary judgment motion demanding a "fair split; that is all" and alleging theft of \$97,882.19 from her partnership account. Hassan

opposed the motion with evidence including declarations, store receipts and the report of a forensic accountant showing he faithfully operated the partnership. The trial court disregarded Hassan's offer of proof and found him liable for theft and all damage claimed as a matter of law, and further awarded Kanwal her attorneys' fees and costs.

The parties continued to litigate aspects of the trial court's summary judgment orders, including entity and asset issues, and the trial court's ruling that Hassan pay to the Department of Revenue (DoR) an alleged tax liability. For example, in her motion for entry of judgment, Kanwal asserted an indemnity claim and requested an order that Pasha pay the DoR liability to her directly. Hassan litigated these and other substantive entity and asset issues that led to the final judgment which, *inter alia*, removed the DoR liability as an indemnified "other recovery amount." Hassan appealed within thirty days of entry of final judgment that resolved those matters.

Kanwal moved to dismiss Pasha's appeal claiming contrary to the record that the sole issues litigated after the trial court's CR 56 orders were fees and costs. Hassan opposed the motion noting the litigation of substantive, merits-related issues in connection with final judgment. A Commissioner of the Court of Appeals denied Kanwal's motion to dismiss, but the Court of Appeals ruled Hassan's appeal of the CR 56 order was untimely, affirmed the trial court's award of fees and costs to Kanwal, and awarded Kanwal her fees and costs on appeal.

II. IDENTITY OF PETITIONER

Hassan Pasha ("Pasha"), counterclaim defendant in the trial court and petitioner here, seeks review of the decision issued below.

III. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals' unpublished decision issued on October 14, 2024. Appx. C [Opinion].

IV. ISSUES PRESENTED FOR REVIEW

1. Whether Pasha's Notice of Appeal was timely when it was filed within 30 days of final judgment that settled the rights of the parties and disposed of all issues in controversy such as indemnity raised by Kanwal in her motion for entry of judgment.

2. Whether Kanwal presented in the trial court an equitable basis for a fee award under Washington's Trust and Estate Dispute Resolution Act sufficient to support an award of attorneys' fees and costs on appeal.

3. Even assuming the final judgment resolved only fees and costs, whether review is required regardless because the trial court's ruling that Pasha is liable for theft as a matter of law contrary to his summary judgment

showing was a severe departure from CR 56 and therefore an extraordinary circumstance causing a gross miscarriage of justice.

V. STATEMENT OF THE CASE

A. Khurram and Hassan Pasha were brothers and 50 percent owners of a partnership,

Hassan Pasha (“Pasha”) and his brother were 50 percent owners and operators of Lake City and Ballard convenience stores. CP 178-79, ¶¶ 3, 6. Pasha’s brother died unexpectedly and intestate on March 8, 2020. *See id.*, ¶ 6. Pasha operated both stores in the period March-June 2020, until his brother’s wife Aneela Kanwal (“Kanwal”) claimed without basis she was “the sole owner... of both the Lake City and Ballard shops.” CP 467, ¶ 19; CP 559, ¶. Khurram’s and Hassan’s lawyer and accountant for the businesses testified they were 50 percent owners. CP 179, ¶ 6. Regardless, in June 2020, Kanwal amended the corporate information for both entities to show her as the sole owner. CP 171-72; 174-75; CP 558-59, ¶¶ 25-26.

B. The trial court disregarded Pasha’s offer of proof on summary judgment.

In September 2021, Kanwal abandoned her sole ownership claim and filed a summary judgment motion complaining she “want[ed] a fair split; that is all” and alleging \$97,882.19 in damage. CP 509, ¶ 16; CP 500-535. The claim was conclusory and had no factual or methodological basis. CP 502-04, 508, ¶¶ 12-13. Pasha opposed the motion with evidence including declarations, store receipts and the report of a forensic accountant showing he faithfully operated the partnership. CP 541-544; CP 547-49, ¶ 1-11; CP 565-598; CP 617-619. The trial court disregarded Hassan’s offer of proof and in May 2022 found him liable for theft and all damage claimed as a matter of law.

C. The trial court’s CR 56 orders did not eliminate the litigation.

The trial court’s CR 56 orders did not eliminate the litigation. CP 963-87; Appx. A, ex. 1. Kanwal continued

to litigate the trial court's May 2022 Order to secure more favorable terms in the final judgment. *Id.* For example, since Pasha was no longer a recorded owner of any partnership entity and thus could not pay the DoR liability as ordered on summary judgment, Kanwal asserted a new indemnity claim as an "other recovery amount" and requested an order that Pasha pay her directly. Appx. A, ex. 1; CP 963, 967, 995. She thus moved to strike the CR 56 order language directing Pasha to pay DoR, and instead sought direct payment. *Id.* She made no offer of proof she had paid the amount herself. *Id.*

Moreover, though Kanwal in her summary judgment motion stipulated to ownership of the Lake City store only, she further sought court orders that she is "sole member and 100% owner of RSISP Corporation," and that Pasha is "sole member and 100% owner of RSSA Services LLC," to be "effective as of January 1, 2022." CP 502, ¶¶18-19; CP 963, 995; Appx. A, ex. 1. She

further requested the trial court extend its rulings to other ownership issues including “business records,” “goodwill,” and “intellectual property.” *Id.*

Also, the trial court approved Kanwal’s proposed final judgment removing the May 2022 Order language “associating” each business entity to a particular store location. *Compare* CP 995 *with* 1000-01.

D. Pasha appealed within thirty days of the final judgment resolving substantive matters.

Pasha litigated these issues which led to the final judgment removing the DoR liability as Kanwal’s “other recovery amount,” and removing her additional order language related to the business ownership and assets. *Compare* Appx. A, ex. 1 *with* CP 1000-01. Pasha appealed within thirty days of the final judgment resolving those matters. CP 963-69, 989-990, 1000-01; Appx. A, ex. 1.

E. The Court of Appeals opined Pasha’s appeal of substantive matters was untimely.

The Court of Appeals opined that Pasha’s appeal filed within 30 days of final judgment was untimely. Appx. C, ex. 1 (“Opinion”) at 5-6. It did not address or acknowledge Pasha’s facts and argument showing that the parties litigated substantive matters including indemnity in connection with final judgment, that it was therefore only the final judgment that settled the rights of the parties and eliminated the litigation on the merits, and thus Pasha’s Notice of Appeal filed within 30 days thereafter was timely. *Id.*

VI. ARGUMENT FOR GRANTING REVIEW

A. Criteria for discretionary review

The Opinion conflicts with this Court’s decision in *Denney*¹ which holds that an appeal is timely filed within 30 days after of a final judgment that resolves more than

¹ *Denney v. City of Richland*, 195 Wn.2d 649, 654, 462 P.3d 842 (2020)

mere fee and cost issues and that settles the rights of the parties and disposes of all issues in controversy. *See* RAP 13.4(b)(1) (“the decision of the Court of Appeals is in conflict with a decision of the Supreme Court”).

B. Pasha’s Notice of Appeal was timely filed.

Pasha’s Notice of Appeal was timely on all issues because it was filed within 30 days of final judgment that settled the rights of the parties and disposed of all issues in controversy such as indemnity raised by Kanwal in her motion for entry of judgment. CP 963-69, 989-990, 1000-01; Appx. A, ex. 1.

As a threshold, the appellant in *Denney* filed his Notice of Appeal more than 30 days after the summary judgment order resolving all substantive, “merits” issues aside from fees and costs, and this Court ruled the appeal timely regardless. *Denney*, 195 Wn.2d at 658-59. The court reasoned, *inter alia*, that “[t]he parties here properly followed CR 54, and Denney relied on the date of this

final judgment when filing his notice of appeal.” *Id.* at 658. Here too, the parties followed CR 54 requirements, but unlike *Denney* they were also litigating substantive issues up through final judgment. CP 963-69, 989-990, 1000-01; Appx. A, exs. 1-3. Accordingly, since this Court held the *Denney* appeal was timely, Pasha’s appeal must logically be timely too since Pasha shows both adherence to CR 54 and litigation on substantive issues in connection with final judgment. *Compare Denney*, 195 Wn.2d at 658-59 with CP 963-69, 989-990, 1000-01; Appx. A, exs. 1-3.

Thus, the Opinion is in error when it declares that “entry of the judgment was a mere formality as the issues in controversy had been resolved by the superior court’s order of June 24, 2022.” *See* Appx. C at 6. This statement formed the central basis for the Opinion and is inaccurate because issues in controversy continued to be litigated in connection with final judgment, and the resolution of that

motion practice was embodied in the final judgment that settled the rights of the parties and disposed of remaining issues such as indemnity. Appx. A, ex. 1; CP 963-69, 985-87. Indeed, nowhere in the Opinion is the litigation over indemnity, entity and asset issues in connection with final judgment even acknowledged. Appx. C.

Thus, the Opinion erroneously concludes the Pasha is among the class of appellants who wrongly relied on CR 54 instead of RAP 2.2(a)(1). Appx. C at 5-6. This is wrong because RAP 2.2(a)(1) provides that the timeline for appeal is triggered by a summary judgment order when only fee and cost issues remain. *See* RAP 2.2(a)(1). Simply stated, Pasha is not a “similarly situated appellant” under *Denney* because those appellants were not continuing to litigate the merits of a summary judgment order after it was entered, with the outcome of such litigation embodied in the final judgment. *See* Appx. C at 5-6 (citing *Denney*, 195 Wn.2d at 659).

Rather, Pasha's appeal fits squarely within that class of appeals commenced within 30 days of the final judgment that was the cessation of litigation on the merits. Appx. A, ex. 1; CP 963-69, 985-87. Kanwal's failure to succeed on her indemnity and entity-related claims does not make Pasha's appeal untimely, since the test is whether the final judgment "settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and ... attorney's fees... and enforcement of the judgment." Opinion at 4 (citations omitted). Here, there is no dispute that the parties were litigating indemnity and other matters in connection with final judgment, the results of which were expressed in the final judgment. Dkt. 12/22/23, ex. 1; CP 963-69, 985-87.

Accordingly, it was only the final judgment that eliminated the litigation and "settle[d] the rights of the parties and dispose[d] of all issues in controversy." See Appx. C at 4. Pasha filed his Notice of Appeal with 30

days of that final judgment. CP 986-999. Therefore, Pasha's appeal was timely. The Court of Appeals erred by failing to recognize that Kanwal continued to litigate the trial court's order to secure favorable terms in the final judgment. Dkt. 12/22/23, ex. 1; CP 963-69, 985-87.

C. Kanwal failed to present an equitable basis for a fee award under TEDRA.

While the Court of Appeals agreed to review the trial court's award of fees and costs under TEDRA, it affirmed the award based only on Kanwal's conclusory claim that Pasha's assertion of his 50 percent partnership interest was "obstreperous and for purpose of delay, harassment and increase in cost of litigation." Appx. C at 7. Neither the trial court nor the Court of Appeals made such a finding. *Id.*, CP 992-97. The Court of Appeals merely repeated Kanwal's assertion. Appx. C at 7. But the assertion itself was merely pejorative finger-pointing by counsel, not a fact-based claim. CP 507, 742. In contrast, Kanwal's assertion of sole ownership without

factual basis for nearly a year was the precipitating cause of the dispute, and that insistence and may just as plausibly be characterized as obstreperous to delay, harass and increase the cost of litigation. *See* CP 467, ¶ 19; CP 502, ¶ 19.

TEDRA and the case law requires more rigor when determining a departure from the general rule that each party pays their own attorneys' fees and costs. "Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." *Mahler v. Szucs*, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998). "When determining an award of attorney fees, the court must enter findings of fact and conclusion of law." *Berryman v. Metcalf*, 177 Wn. App. 644, 657-58, 312 P.3d 745 (2013). These "findings must show how the

court resolved disputed issues of fact and the conclusions must explain the court's analysis.” *Id.* at 658.

Thus, fee awards under TEDRA are accompanied by factual basis and reasoning. *E.g.*, *Villegas v. McBride*, 112 Wn. App. 689, 697, 50 P.3d 678 (2002) (awarding the Personal Representative’s attorneys’ fee incurred disputing a creditor’s claim because the “claim did not comply with [the claims statute at] RCW 11.40.070(1), this litigation deprived [decedent’s] children of part of their inheritance, and [the] estate is not a wealthy one”). In contrast, there is an insufficient basis for a TEDRA award of fees and costs “when ... the litigation was unsuccessful and primarily prosecuted for personal benefit.” *In re Boris v. Korry Testamentary Marital Deduction Tr. for Wife*, 56 Wn. App. 749, 756, 785 P.2d 484 (1990).

Here, the trial court awarded fees and costs based on Kanwal’s cursory few unsworn lines in a motion

written by counsel alleging Pasha's defense of her sole ownership claim and ensuing "fair split" damage claim was "obstreperous," and complaining about Pasha's alleged "delay" and her "limbo." CP 506, 509, ¶ 16, CP 742. The Court of Appeals merely repeated the same unsworn, subjective and conclusory statement. Appx. C at 7. That is not a legal analysis, and premising a fee award on mere repetition of a lawyer's pejorative statement is unsupported in any Washington case. *See Villegas*, 112 Wn. App. at 697; *In re Boris*, 56 Wn. App. at 756; *Mahler*, 135 Wn.2d at 398. Kanwal's claim of "obstreperous" conduct and "delay" is also incredible since no party truly concerned about delay would persist for nearly a year with a baseless sole ownership claim. *See* CP 467, ¶ 19; CP 502, ¶ 19.

In sum, the Court of Appeals erred in affirming the trial court's fee award because the trial court found no equitable basis in evidence that could require Pasha to

fund Kanwal's abandoned sole ownership claim and her follow-up substitute "fair split" damage and DoR claim. CP 506, CP 509, ¶ 16; CP 742. For these reasons too, the Court of Appeals also erred in awarding fees on appeal.

D. The case is a gross miscarriage of justice.

Even assuming contrary to the record that the final judgment resolved only fee and cost issues, review is proper regardless. The trial court's ruling that Pasha is liable for theft as matter of law in the amount of nearly \$100,000 when disproved by his summary judgment showing is a gross departure from CR 56 and therefore an extraordinary circumstance causing a gross miscarriage of justice. *See* RAP 18.8(c). Our civil justice system protects against such due process deprivations by, *inter alia*, the summary judgment system of burden-shifting and rule that a jury decides fact issues. Here, Pasha is liable to pay nearly \$100,000 based only on a few conclusory statements, select checks and isolated annotations on a

bank statement, and contrary to the opinions of forensic accountant who showed Kanwal's claims had no basis and that Pasha faithfully operated the partnership. Without analysis under CR 56 or any other legal methodology, there is no reliable way to distinguish perpetrators from victims. As a consequence—as is the case here—fault-free parties are adjudged to be thieves.

The miscarriage is compounded by a Court of Appeals opinion that shields the trial court from review by declining to acknowledge the litigation of substantive, merits issues in connection with entry of final judgment. *Denney* plainly states that that appeal is timely when filed within 30 days “settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and ... attorney’s fees... and enforcement of the judgment.” *See* Appx. C at 4. Here, the record shows it was only the final judgment that eliminated the

litigation and “settle[d] the rights of the parties and dispose[d] of all issues in controversy.” *See id.*

VII. CONCLUSION

Pasha’s appeal was timely because it was filed within thirty days of litigation settling the substantive rights of the parties such as indemnity and disposing of all other issues in controversy such as entity and asset issues. The Court of Appeals’ Opinion is wrong because it fails to address or even acknowledge that litigation. This Court found the *Denney* appeal timely when only fees and cost issues remained. Here, Pasha shows both compliance with CR 54 and litigation on substantive issues in connection with entry of final judgment. Thus, Pasha’s appeal is timely even without resort to RAP 18.8(c), under the rule in *Denney* that an appeal is timely when filed within thirty days of substantive litigation on the merits in connection with entry of final judgment.

The Court of Appeals further erred by affirming the trial court's fee and cost award when the trial court made such award based only on isolated statements of counsel in a brief and without a finding of inequitable conduct or any review of the equities. Making such an award based on unsworn pejorative statements by counsel is not a legal analysis and is an abuse of discretion under the case law requiring admissible evidence and fact-based analysis. For these reasons, the Court of Appeal also erred by awarding fees on appeal on the same basis.

Because this case meets the criteria for discretionary review set forth in RAP 13.4(b)(1), this Court should grant review and allow Pasha's appeal to be heard on the merits.

This document contains 3171 words, excluding the parts of the document exempted from the word count under RAP 18.17(b).

DATED: January 16, 2025

THE LAW OFFICE OF NICHOLAS L.
JENKINS, PLLC

By 

Nicholas L. Jenkins, WSBA # 31982
Attorneys for Petitioner Hassan
Pasha

CERTIFICATE OF SERVICE

The undersigned certifies that on this this 16th day
of January, 2025, I caused to be served the foregoing on
Respondent's counsel via email as identified below:

Connor Rankin
OSERAN HAHN P.S.
11225 SE 6th Street, Suite 100
Bellevue, WA 98004-6474
crankin@ohswlaw.com

DATED at Edmonds, Washington this 16th day of
January, 2025.



Nick Jenkins

BERESFORD BOOTH PLLC

January 16, 2025 - 11:03 AM

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

In re Estate of
KHURRAM S. PASHA,

Deceased.

HASSAN PASHA,

Petitioner,

v.

ANEELA KANWAL;
RSISP CORPORATION, a
Washington Corporation;
and RSSA SERVICES,
LLC, a Washington
Limited Liability
Company,

Respondents/Interest
ed Parties.

Court of Appeals No.
853082

King County
Superior Court
No. 20-4-05258-0 SEA

DECLARATION OF
NICHOLAS L.
JENKINS RE: MOTION
TO DISMISS

Nicholas L. Jenkins, WSBA 31982
Bullivant Houser Bailey, PC
1700 Seventh Avenue, Suite 1810
Seattle, WA. 98101-1397
Phone: 206-292-8930
Attorneys for Petitioner

1 – DECLARATION OF NICHOLAS L. JENKINS RE:
MOTION TO DISMISS

I, Nicholas Jenkins, declare as follows:

I am an attorney at Bullivant Houser Bailey PC and counsel for Petitioner Hasan Pasha and competent to testify to the matters contained herein. I make this declaration based on personal knowledge in support of Petitioner's Opposition to Motion to Dismiss ("Motion").

1. Attached as Exhibit 1 is a true and correct copy of Kanwal's proposed judgment she submitted with her March 20, 2023 Motion to Enter Judgment.

2. Attached as Exhibit 2 is a true and correct copy of a March 9 communication from Pasha to Kanwal and Kanwal's response related to entry of final judgment.

3. Attached as Exhibit 3 is a true and correct copy of a March 9 communication from Pasha to Kanwal related to the parties' fee stipulation.

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

DATED at Seattle, Washington this 22nd day of December, 2023.

By: /s/ Nicholas L. Jenkins
Nicholas L Jenkins, WSBA #31982

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2023, I caused to be served the foregoing NICHOLAS L. JENKINS RE; MOTION TO DISMISS and attached exhibits 1-3 on the following via email:

Jeffery Connor Rankin
Caleb Stewart
OSERAN HAHN P.S.
11225 Se 6th St Ste 100
Bellevue, WA 98004-6474
crankin@ohswlaw.com
cstewart@ohswlaw.com

DATED at Seattle, Washington this 22nd day of December, 2023.

/s/Chelsea Beisel
Chelsea Beisel, Legal Assistant

4 – DECLARATION OF NICHOLAS L. JENKINS RE:
MOTION TO DISMISS

EXHIBIT 1

1
2
3
4
5
6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
7

8 In re Estate of

9 KHURRAM S. PASHA,
10 Deceased.

NO. 20-4-05258-0 SEA

JUDGMENT AGAINST HASSAN
PASHA

11 HASSAN PASHA,
12 Petitioner,

(Clerk's Action Required)

13 v.

14 ANEELA KANWAL, et al.
15 Respondents/Interested Parties.

16 **I. JUDGMENT SUMMARY**

17 (a) Judgment creditor: ANEELA KANWAL
18 (b) Judgment Debtors: HASSAN PASHA
19 (c) Principal judgment amount: \$55,488.69
20 (d) Interest to date of judgment \$0
21 (e) Attorneys' fees: \$10,000
22 (f) Costs: \$0
23 (g) Other recovery amounts: \$11,783.61
24
25
26

(j) Attorney for judgment creditor: J. Connor Rankin of Oseran Hahn P.S., 11225 SE 6th Street, Suite 100, Bellevue, Washington 98004.

THIS MATTER came on for hearing upon Aneela Kanwal's Motion to Enter Judgment. The Court having considered the records and files herein, ORDERS AND DECREES:

Judgment is entered in favor of Aneela Kanwal, and against Hassan Pasha, in the total amount of \$77,272.30. This judgment amount will bear an interest rate of 9.5% per annum.

Aneela Kanwal is sole member and 100% owner of RSISP Corporation (**Corporation**) which includes all business records, goodwill, inventory, cash, tangible goods, contracts, purchase orders, sales orders, licenses, instruments, notes, commitments, indentures, undertakings, and all other agreements, commitments, and legally binding arrangements, whether written or oral related to the Corporation, intellectual property, and value of the Corporation. Such ownership is effective as of January 1, 2022.

Hassan Pasha is the sole member and 100% owner of RSSA Services LLC (**LLC**) which includes all business records, goodwill, inventory, cash, tangible goods, contracts, purchase orders, sales orders, licenses, instruments, notes, commitments, indentures, undertakings, and all other agreements, commitments, and legally binding arrangements, whether written or oral related to the LLC, intellectual property, and value of the LLC. Such ownership is effective as of January 1, 2022.

Dated this March _____, 2023.

Commissioner
King County Superior Court

Presented by:

OSERAN HAHN P.S.

By: s/ J. Connor Rankin

J. Connor Rankin, WSBA No. 52514
11225 SE 6th Street, Suite 100
Bellevue, WA 98004
Telephone: (425) 455-3900
Fax: (425) 455- 9201
Email: crankin@ohswlaw.com

Approved as to form:

BULLIVANT HOUSER BAILEY PC

By:

Nicholas L. Jenkins, WSBA No. 31982
925 Fourth Avenue, Suite 3800
Seattle, WA 98104
Telephone: (425) 455-3900
Fax: (425) 455- 9201
Email: nicholas.jenkins@bullivant.com

EXHIBIT 2

From: [Connor Rankin](#)
To: [Jenkins, Nicholas](#)
Cc: [Beisel, Chelsea](#); [Brittany Ferguson](#)
Subject: RE: Pasha v. Kanwal- Documents for review and approval
Date: Thursday, March 9, 2023 3:03:14 PM
Attachments: [image001.png](#)
[image002.jpg](#)

Nick,

We filed the stipulation this afternoon, so it should not be a problem tomorrow.

From: Jenkins, Nicholas <nicholas.jenkins@bullivant.com>
Sent: Thursday, March 9, 2023 3:00 PM
To: Connor Rankin <crankin@ohswlaw.com>
Cc: Beisel, Chelsea <chelsea.beisel@bullivant.com>; Brittany Ferguson <bferguson@ohswlaw.com>
Subject: RE: Pasha v. Kanwal- Documents for review and approval

Connor, we should file the stipulation so the commissioner does not waste his time before the hearing. You can argue you are seeking final judgment, but It is important to follow CR 54 requirements because we are entering final judgment and setting the appeal deadline for the commissioner's May 16, 2022 damage, fee and cost award. Given the passage of time between Mr. Lee's note and your motion, I do not see how a few more days is material. In sum, let me know if we can go ahead and at least file the stipulation before the hearing tomorrow given the potential waste. Thanks



NICHOLAS L. JENKINS
Of Counsel
Licensed in Washington

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EXHIBIT 3

From: [Jenkins, Nicholas](#)
To: [Connor Rankin](#)
Subject: RE: Pasha v. Kanwal- Documents for review and approval
Date: Thursday, March 9, 2023 8:13:13 AM
Attachments: [4e24a610-de50-4fb4-97ab-ee0b1c786f20.png](#)

Good morning Connor. Yes, Mr. Pasha agrees to stipulate to fees and costs at \$10,000 for purposes of appeal. We can file a stipulation to that effect, *i.e.*, the parties stipulate to Ms. Kanwal's fees and costs in the amount of \$10,000, and the court orders fees and costs in that amount according to the stipulation of the parties. If you send along the documents in draft I can make any redline changes so the documents are ready. That would take care of the hearing tomorrow. I asked in our call last night that we hold off entering judgment until my clients have an opportunity to see the documents to be filed before judgment is entered, and Ms. Kanwal makes an offer of settlement or states she is not so inclined. That way we know we have done all we can for our clients before we start the appeal phase. Thank you Connor



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LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
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January 16, 2024

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Case #: 853082
In re Estate of: Khurram S. Pasha
King County Superior Court 20-4-05258-0

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on January 16, 2024, regarding Respondent's Motion for Dismissal and Motion for Extension of Time to File Brief:

On April 28, 2023, Hassan Pasha filed a notice of appeal attaching several orders, including a March 31, 2023 judgment with an attorney fee award. Respondent Aneela Kanwal has filed a motion to dismiss, arguing that Pasha's notice was untimely filed as to the other attached orders, which were entered in December 2021 and May and June 2022. Pasha has filed an answer and Kanwal has filed a reply. As it appears that Pasha has filed an opening brief that includes a claim of error related to the March 31, 2023 order, for which Pasha's notice was timely, Kanwal's motion is properly considered as a challenge to the scope of a timely appeal of the March 31 order. Because the appeal is apparently timely as to at least one order, the motion to dismiss the case is denied at this time. Kanwal may raise the same arguments in the Brief of Respondent to be submitted to the panel assigned to consider the merits of this case.

Respondent's motion to extend time to file the opening brief is granted to January 31, 2024.

Sincerely,



Lea Ennis
Court Administrator/Clerk

jh

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:

KHURRAM PASHA,

Deceased,

HASSAN PASHA,

Appellant,

v.

ANEELA KANWAL; MSKHRSP, LLC, a
Washington Limited Liability Company;
RSISP CORPORATION, a Washington
corporation; RSSA SERVICES, LLC, a
Washington Limited Liability Company;
HAMZA PASHA; HAMMAD PASHA;
and FARKHAM PASHA,

Respondents.

DIVISION ONE

No. 85308-2-I

UNPUBLISHED OPINION

DWYER, J. — After his brother died intestate, Hassan Pasha filed a petition pursuant to the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, to request that the King County Superior Court resolve certain questions concerning the ownership of the deceased's businesses. Pasha now appeals entry of the order awarding monetary damages and attorney fees and costs to the widow of the deceased. However, Pasha's appeal is untimely as to all issues except an attorney fee award. Accordingly, we do not reach the merits of his underlying claims.

I

In March 2020, Khurram Pasha, the owner of two smoke shops, died intestate. His widow, Aneela Kanwal, was appointed administrator of his estate. In September 2020, Hassan Pasha, Khurram's brother, filed a TEDRA petition in the King County Superior Court. In the petition, Pasha alleged that he held a 50 percent ownership interest in the smoke shop businesses and requested that he be awarded exclusive ownership of one of the two stores.

In September 2021, Kanwal moved the trial court for summary judgment in which she agreed to Pasha's proposed division of the stores but sought monetary damages. On December 1, 2021, a commissioner granted Kanwal's motion for summary judgment, wherein Pasha received sole ownership of one store, while Kanwal received sole ownership of one store as well as an award of monetary damages from Pasha. The commissioner ordered Pasha to pay Kanwal's reasonable attorney fees "to be determined by agreement or by presentation by motion to the Court." Additionally, the trial court set a hearing for the purpose of permitting Pasha to provide an accounting to justify a reduction in the amount of damages awarded to Kanwal.

On May 16, 2022, the trial court entered an "Order Awarding Damages and Attorney Fees and Costs" to Kanwal. The trial court found that Pasha had not provided the accounting as directed, but agreed with Pasha's claim that he was entitled to a setoff and, accordingly, reduced the damages payable to Kanwal. The trial court ordered Pasha to pay \$55,488.69 in damages to Kanwal.

as well as her reasonable attorney fees and costs “to be determined by agreement or by presentation of motion to the Court.”

Pasha moved the superior court for revision of the commissioner’s order as permitted by RCW 2.24.050. On June 24, 2022, the superior court entered an order that denied Pasha’s motion for revision and reaffirmed the commissioner’s order, thus adopting the commissioner’s rulings. The court also ordered Pasha to pay Kanwal’s reasonable attorney fees and costs pursuant to the commissioner’s prior order.

On March 10, 2023, the trial court entered a “Stipulated Order Awarding Attorneys’ Fees and Costs to Aneela Kanwal,” in which the parties stipulated to an award of \$10,000 in attorney fees payable from Pasha to Kanwal.

On March 31, 2023, the trial court entered “Judgment Against Hassan Pasha” in the total amount of \$65,488.69.

Pasha filed a notice of appeal with this court on April 28, 2023, wherein he seeks review of the order granting summary judgment entered December 1, 2021, the order granting the motion for damages entered May 16, 2022, the order denying his motion for revision entered June 24, 2022, and the judgment against him entered March 31, 2023.

II

Pasha asserts that the trial court erred in granting summary judgment in favor of Kanwal. However, his appeal is untimely such that we will not reach the merits of these claims.

A

Pursuant to RAP 2.2(a)(1), a party may appeal “[t]he final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.” A notice of appeal must be filed within 30 days of the entry of the decision for which review is sought. RAP 5.2(a)(1). When a notice of appeal is not filed within 30 days of the entry of an appealable order, “the appellate court is without jurisdiction to consider it.” In re Marriage of Maxfield, 47 Wn. App. 699, 710, 737 P.2d 671 (1987).

While our Rules of Appellate Procedure do not define the term “final judgment,” our Supreme Court has arrived at a definition, relying, in part, on the definition of “final judgment” found in Black’s Law Dictionary: “A court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney’s fees) and enforcement of the judgment.” Denney v. City of Richland, 195 Wn.2d 649, 653-54, 462 P.3d 842 (2020) (internal quotation marks omitted) (quoting State v. Taylor, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) (quoting BLACK’S LAW DICTIONARY 847 (7th ed. 1999))). The determination that an order is a “final judgment” relates to its effect on the underlying cause of action, that is, “whether it resolved the merits of a party’s legal claims.” Denney, 195 Wn.2d at 654.

In Denney, our Supreme Court considered whether an order on summary judgment met the definition of a final judgment. 195 Wn.2d at 654. There, the trial court granted summary judgment for the defendant, denied summary

judgment for the plaintiff, dismissed with prejudice the plaintiff's claims and causes of action, and entered an order to this effect on February 12, 2019. Denney, 195 Wn.2d at 651-52. On March 14, 2019, pursuant to CR 54, the trial court entered a final judgment that included an award of costs. Denney, 195 Wn.2d at 652. Denney filed a notice of appeal on April 1, 2019, more than 30 days after the summary judgment and dismissal order but only two weeks after entry of the final judgment. Denney, 195 Wn.2d at 652.

The court determined that the summary judgment order, rather than the final judgment entered pursuant to CR 54, was the final judgment for the purpose of appeal, explaining that “the summary judgment order wholly resolved Denney’s suit on the merits and reserved a cost award for later determination, triggering the deadline.” Denney, 195 Wn.2d at 659-60. In reaching this conclusion, the Denney court identified “CR 54’s interaction with our RAPs” as a source of appellant’s confusion as to which order was the final judgment for the purpose of appeal. 195 Wn.2d at 658. CR 54 directs the prevailing party to “prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision” which “promotes uniformity and lessens the potential for confusion stemming from multiple final judgments.” Denney, 195 Wn.2d at 657-58 (quoting CR 54(e)). However, compliance with CR 54, while a best practice, does not establish the correct procedure to secure appellate review. Denney, 195 Wn.2d at 658-59. As the court expressly warned: “we caution future, similarly situated appellants that our appellate rules establish the correct procedure on review.” Denney, 195 Wn.2d at 659. Thus, the order

which resolves the legal merits, regardless of whether it is formally entered as the final judgment pursuant to CR 54, is the final judgment for the purpose of RAP 2.2(a)(1).

Here, Pasha is the aforementioned “similarly situated appellant.” He filed his appeal within 30 days of the “Judgment Against Hassan Pasha” entered March 31, 2023, which was a final judgment pursuant to CR 54. However, entry of the judgment was a mere formality as the issues in controversy had been resolved by the superior court’s order of June 24, 2022. By rejecting Pasha’s motion for revision and affirming the commissioner’s order, the June 24 order constituted the “court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs.” BLACK’S, supra, at 847).

Thus, the June 24, 2022 order was the final judgment for the purpose of appeal. Accordingly, given the timeline established in RAP 5.2(a)(1), Pasha was required to file a notice of appeal within 30 days of entry of that order. As Pasha filed for appeal on April 28, 2023, more than 10 months after entry of the order, his appeal is untimely. We therefore dismiss the appeal as to all issues except the attorney fee award.

III

Pasha contends that the trial court erred by granting Kanwal’s request to recover her attorney fees and costs by way of the equitable grounds provided in TEDRA, RCW 11.96A.150. We disagree.

Trial courts have broad discretion to award attorney fees in estate actions. RCW 11.96A.150(1)(a). “In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.” RCW 11.96A.150(1)(c). We review the trial court’s award of fees for abuse of discretion. In re Estate of Evans, 181 Wn. App. 436, 451, 326 P.3d 755 (2014). A trial court abuses its discretion when its exercise thereof is based on untenable grounds, is made for untenable reasons, or evinces a conclusion that no reasonable judge would have reached. Chuong Van Pham v. City of Seattle, 159 Wn.2d 527, 538, 151 P.3d 976 (2007); State v. Comcast Cable Commc’ns Mgmt., LLC, 16 Wn. App. 2d 664, 676, 482 P.3d 925 (2021) (citing Sofie v. Fibreboard Corp., 112 Wn.2d 636, 667, 771 P.2d 711, 780 P.2d 260 (1989)).

Here, in support of her request for attorney fees and costs, Kanwal asserted to the superior court that Pasha’s arguments were “obstreperous and for purpose of delay, harassment and increase in cost of litigation.” By ordering Pasha to pay Kanwal’s reasonable attorney fees and costs, the trial court agreed.¹ Because we do not reach the merits of this untimely appeal, we leave undisturbed the trial court’s findings of fact. Thus, we cannot say that no reasonable judge would have reached the same conclusion as the trial court.

¹ We also note that the trial court determined that Kanwal was entitled to payment of her reasonable attorney fees and costs as early as the order on summary judgment on December 1, 2021. The order awarding damages and fees also awarded fees to Kanwal, and the superior court affirmed this decision on June 24, 2022. Thus, only the amount of fees owed by Pasha remained unresolved until entry of the stipulated amount.

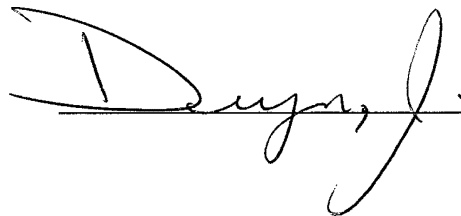
Furthermore, as to the amount of fees awarded, Pasha stipulated to Kanwal's "reasonable fees and costs in the amount of \$10,000." In so doing, Pasha materially contributed to entry of the order of which he now complains. He has, therefore, invited any error as to the amount awarded.

IV

Kanwal requests that we award her recovery of her reasonable attorney fees on appeal.

RAP 18.1 permits attorney fees to be awarded on appeal if applicable law grants the party the right to recover reasonable attorney fees. RCW 11.96A.150 provides us broad discretion to award attorney fees on appeal. Accordingly, we exercise that discretion and award Kanwal her fees and costs for having to defend against this untimely appeal. Upon compliance with RAP 18.1, a commissioner of this court will enter the appropriate order.

The underlying appeal is dismissed; the attorney fee order is affirmed.²

A handwritten signature in black ink, appearing to read "D. J. Dwyer", written over a horizontal line.

² Although it appears that Pasha's appeal from the order awarding attorney fees is also untimely, we acknowledge that Carrara, LLC v. Ron & E Enters., Inc., 137 Wn. App. 822, 155 P.3d 161 (2007), can be read to hold to the contrary. Thus, we have chosen to address this issue on its merits.

No. 85308-2-1/9

WE CONCUR:

Seldman, J. Smith, C.G.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:

KHURRAM PASHA,

Deceased,

HASSAN PASHA,

Appellant,

v.

ANEELA KANWAL; MSKHRSP, LLC, a
Washington Limited Liability Company;
RSISP CORPORATION, a Washington
corporation; RSSA SERVICES, LLC, a
Washington Limited Liability Company;
HAMZA PASHA; HAMMAD PASHA;
and FARKHAM PASHA,

Respondents.

DIVISION ONE

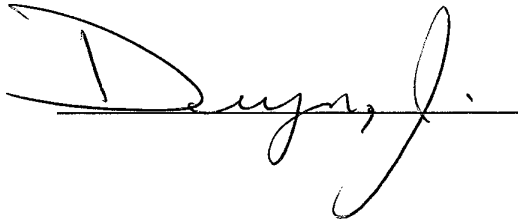
No. 85308-2-I

ORDER CALLING FOR
ANSWER TO MOTION
FOR RECONSIDERATION

The appellant having filed a motion for reconsideration, and a majority of the panel having determined that an answer to the motion should be called for; now, therefore, it is hereby

ORDERED that the clerk request counsel to file an answer to the motion for reconsideration within 15 days of the date of this order, and that a copy thereof be served on opposing counsel.

For the Court:

A handwritten signature in black ink, appearing to read "Dwyer, J.", is written over a horizontal line. The signature is cursive and stylized.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of:

KHURRAM PASHA,

Deceased,

HASSAN PASHA,

Appellant,

v.

ANEELA KANWAL; MSKHRSP, LLC, a
Washington Limited Liability Company;
RSISP CORPORATION, a Washington
corporation; RSSA SERVICES, LLC, a
Washington Limited Liability Company;
HAMZA PASHA; HAMMAD PASHA;
and FARKHAM PASHA,

Respondents.

DIVISION ONE

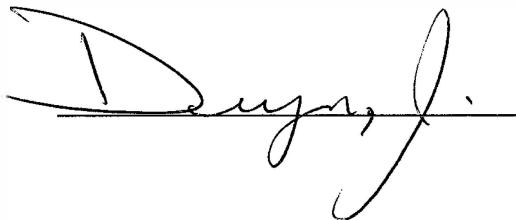
No. 85308-2-I

ORDER DENYING MOTION
FOR RECONSIDERATION

The appellant having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is hereby denied.

For the Court:

A handwritten signature in black ink, appearing to read "D. J. [unclear]", is written over a horizontal line.

BERESFORD BOOTH PLLC

January 16, 2025 - 11:03 AM

Transmittal Information

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Appellate Court Case Title: In re Estate of Khurram S. Pasha

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