

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	<hr/> ▲ COURT USE ONLY ▲ <hr/> trial court case No. 99 DR 3717 Div. 9 / Jack Berryhill, judge
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
FATHER’S MOTION FOR RECONSIDERATION PURSUANT TO C.R.C.P. 59	

Sean L. Harrington, father, submits the within MOTION FOR RECONSIDERATION PURSUANT TO RULE 59, and would show unto the Court the following:

1. Father does not waive his previous objections, though overruled, concerning the non-parties who have failed to file Motions to Intervene. Also, although father challenges this Court’s [February 27, 2009 Order](#) in its entirety, he will not repeat his arguments that this Court has already considered, because it is an improper use of a Rule 59 Motion to do so. Therefore, without waiving those issues, father here addresses the only issue that has not been briefed, which pertains to the improper award of attorney fees under C.R.S. § 13-17-102(2), (5) and (6).

2. The February 27, 2009 Order states, in pertinent part:

[F]ather’s motions for sanctions and punitive contempt against attorney Wilson are DENIED, and that Wilson’s motion to strike is accordingly DENIED AS MOOT. Wilson is awarded reasonable attorney fees and related costs for having to respond to and defend those motions.

Order at 11. Wilson did not respond to father's motions for punitive contempt, therefore, there could be no attorney fees for responding to them. Further, father should not be required to pay attorney fees related to Wilson’s [Motion to Strike](#). Wilson did not prevail on that Motion (it was denied); the Court made no findings of fact or conclusions of law on that Motion; the Motion was baseless (devoid of a basis in fact or law); and Wilson’s decision to file the unnecessary Motion was volitional.

3. The attorney fee award concerns responsive pleadings filed by Brett Huff on Wilson's behalf while she was is in the dual role of complaining witness and **counsel-of-record**. Although she has only recently withdrawn (obviously, on advice from counsel, to avoid her continuing violation of RPC 3.7), the belated withdrawal does not remedy the fact that her pleadings were not properly before the Court.

4. The First Judicial District Court has established a pattern of using baseless attorney fee awards to silence *pro se* litigants and prevent them from participating in the adjudicatory process (except to the extent that they are expected to be subject to and obedient to its orders). This pattern is well-established in this case dating back to the year 2000.¹ Several instances were caught in an appeal from another case in this district (*Marriage of Spofford*, (Colo. App. Nos. [06CA0299](#) & [07CA0077](#), February 7, 2008) (not published pursuant to C.A.R. 35(f)). The pattern reveals a profound disrespect by certain judges of this district for the intent of the General Assembly, and is an example of the exercise of their will rather than judgment. The practice and policy violates the Constitution's First Amendment's Petitioning clause and the Due Process clause.

5. Subsection (6) of 13-17-102 (C.R.S.) provides that attorney fees may not be assessed against a party appearing without an attorney unless the court finds that the party clearly knew or "**reasonably** should have known" that the claims at issue lacked substantial justification. *See Artes-Roy v. Lyman*, 833 P.2d 62, 63 (Colo. App. 1992). When the word "reasonable" is used in a statute, it signifies that the standard that must be applied is an objective one: whether a reasonable person similarly situated would have known that his claims lacked substantial justification. *See North Colorado Medical Center v. Nicholas*, 27 P.3d 828, 838 (Colo.2001) (*en banc*) ("Reasonableness is measured by an objective standard rather than a subjective, 'good faith' standard").

6. Because the First Amendment Petitioning Clause and the Due Process and Equal Protection Clauses of the Fourteenth Amendment are implicated by judicial practices engineered to foreclose access to the court, pronouncements from the United States Supreme Court apply with equal force as state law. In *Christiansburg Garment Company v. EEOC*, the Supreme Court observed:

¹ Just one instance (of dozens) in this case was caught in *Marriage of Harrington*, (Colo. App. No. [07CA0379](#), May 29, 2008) (not published pursuant to C.A.R. 35(f)) (*Harrington IV*)

[I]t is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success. No matter how honest one's belief that he has been the victim of discrimination, no matter how meritorious one's claim may appear at the outset, the course of litigation is rarely predictable. Decisive facts may not emerge until discovery or trial. The law may change or clarify in the midst of litigation. Even when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit.

434 U.S. 412, 421-22 (1978). Similarly, in Colorado, an assertion of a legal theory which is arguably meritorious is sufficient to avoid an award of attorney fees. *See SaBell's, Inc. v. City of Golden*, 832 P.2d 974, 978 (Colo. App. 1991).

Here, the trial Court's Order awarding attorney fees does not contain findings of fact or conclusions of law necessary to overcome the presumption of Section 13-17-102(6), because the conclusory assertion that father's motions were not in good faith and not grounded in fact and not warranted by existing law (or a good faith argument for the extension, modification, or reversal of existing law) is not fairly supported by the record and is based on a subjective standard.

7. Litigation is baseless, if it is lacking in any cognizable basis in law or "reasonable factual support." *People v. Richardson*, 181 P.3d 340, 345 (Colo.App. 2007). The following examples (extrapolated from father's Motions in question) are of the "basis-in-law" requirement and corresponding objective **reasonable person** requirement to draw conclusions from the available evidence:

a. **law:** In *Marriage of Hatton*, the Court of Appeals observed that, "in an extensive, longitudinal study in Colorado, parental alienation has been found to occur in twenty percent of cases involving custody and parenting time." [160 P.3d 326, 334](#) (Colo.App. 2007). And in *Harrington II*, Judge Taubman observed that "one article submitted by father to the special advocate concerned the topic of parental alienation, a subject which other divisions of this court have addressed in a similar context," thereby indicating the Court's sensitivity to this important public issue. It is well settled that "Under Colorado law, an attorney owes a duty

to his adversary not to engage in fraudulent or malicious conduct . . . or to commit intentional torts.” *Allied Financial Services, Inc. v. Easley*, 676 F.2d 422 (10th Cir. 1982). Aiding and abetting in the concealment of a child is a tort in Colorado. *See Hall v. Hall-Stradley*, 13 Fam. L. Rep. (BNA) 1108 (Case No. 84-CV-2865, Feb. 6, 1987).

Rational Argument: A reasonable person would conclude that Wilson committed an actionable tort towards father, such as aiding and abetting in the concealment of the minor child in violation of state law, common law and Orders of this Court, and that the Colorado court (not a Texas court) would have the authority to discipline the Colorado attorney for such conduct.

b. law: It is well settled “Our most sacred duty is to maintain the integrity of the law profession by disciplining lawyers who indulge in practices which are designed to perpetrate a fraud on the courts.” *People v. Radinsky*, 176 Colo. 357, 490 P.2d 951 (1971). A trial court possesses the authority under the inherent powers doctrine to prevent and deter such fraud. *See In re Court Facilities for the Routt County Combined Court*, 107 P.3d 981, 984 (Colo.App. 2004) (“[C]ourts necessarily possess certain inherent powers, which . . . consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective”).

Rational Argument: A reasonable person would conclude that Wilson indulged in practices that were designed to perpetrate a fraud on the courts and that, to the extent it occurred in Colorado, only Colorado courts have authority to address that issue, and that the Court may be unaware of the conduct unless called to its attention by one of the parties.

c. law: Under Colorado law, “Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” C.R.S. § 13-51-106. The purpose of the statute is to afford relief from the uncertainty surrounding legal rights and legal relations and is remedial in nature, to be liberally construed

and administered. *Cmty. Tele-Communications v. Heather Corp.*, 677 P.2d 330, 334 (Colo. 1984).

Rational Argument: Father is a person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise. Wilson's contempt Motion and her call to the clerk gave father just cause to ask the court to enter a declaratory judgment as to the alleged “no contact order.”

d. **law:** RPC Comment 3 to R.P.C. Rule 3.3 provides that, “The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation.” The Denver District Court held in *Hall v. Hall-Stradley*, *supra*:

The Court finds that the issue presented to the jury was a case of first impression in Colorado . . . The Court finds that [counsel]’s reliance upon privilege was misplaced. Counsel may not hide the whereabouts of children from a parent under the claim of privilege.

February 6, 1987 Order at 3, ¶¶ 11 – 13 (citing *Waldman v. Waldman*, 356 N.E.2d 521 (Ohio, 1976)).

Rational Argument: A reasonable person would conclude that Wilson counseled mother to commit or assisted mother in committing a fraud, namely, concealing the child from father and preventing lawful contact between father and his daughter.

e. **law:** Rule 3.3(d) of the Rules of Professional Conduct provides:

In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rational Argument: A reasonable person would conclude that, when Wilson filed her “Emergency” Motion regarding jurisdiction in July, 2007, she failed to inform the tribunal of all material facts known to her that will enable the tribunal to make an informed decision, including the existence of an injunction in Texas that prohibited her client from instituting another action under the UCCJEA.

f. **law:** Rule 6(c) of the Local Rules for First Judicial District requires parties and their attorneys to comply with the UCCJEA and C.R.S. § 14-13-209, to include disclosing the child’s whereabouts, change in residential address and to notify the court of any other matter that may affect its jurisdiction under the UCCJEA.

Rational Argument: A reasonable person would conclude that Wilson failed to disclose to this Court the child’s whereabouts, change in residential address and to notify the court of any other matter that may affect its jurisdiction under the UCCJEA

g. **law:** Disciplinary Rule 251.4 provides that, “A judge has a duty to report unprofessional conduct by an attorney to Regulation Counsel pursuant to Canon 3(B)(3) of the Colorado Code of Judicial Conduct.”² The *ABA Standards for Imposing Lawyer Sanctions* also exhorts judges to report attorney misconduct, which may be called to the court’s attention by the parties or *sua sponte*.

Rational Argument: A reasonable person would conclude that Wilson engaged in certain conduct that would trigger a judge’s duty to report unprofessional conduct by an attorney to Regulation Counsel pursuant to Canon 3(B)(3) of the Colorado Code of Judicial Conduct, but that the judge may be unaware of such conduct unless called to his or her attention by one of the parties.

h. **law:** A party may not be joined or intervene in a domestic relations action, except by authority of statute or court rule (*e.g.*, C.R.S. § 14-13-205). *See generally* C.R.C.P. 24. Rule 24 requires that a Motion to Intervene shall be filed and that it shall be accompanied by a pleading. *Capitol Indus. Bank v. Strain*, 442 P.2d 187, 188 (1968). “Parties litigant have a right to rely upon the rules as written. It is the duty of trial courts, as well as our duty, to enforce them when timely objection is made by a party to litigation.” *Id.*

Rational Argument: A reasonable person would conclude that Wilson attempted to become a party to this action by retaining outside counsel to represent her in this domestic relations action and for seeking affirmative relief relating to her own interests as well as Mr. Fyfe’s, but that Wilson did not file a Motion to Intervene and did not withdraw from the case for many months.

² The rule makes no distinction for whether a violation of the Rules by an attorney does or does not give rise to a private cause of action.

i. **law:** “A number of attorney ethical proscriptions, especially those barring representation of conflicting interests . . . or acting in conflicting roles . . . have developed precisely to ensure fairness and loyalty to the parties and protect the integrity of the process.” *In re Estate of Myers*, 130 P.3d 1023, 1025 (Colo. 2006) (*en banc*). And in *Parsons v. Allstate Ins. Co.*, 165 P.3d 809 (Colo. App. 2006), the appeals court disapproved of attorneys becoming “necessary witnesses” to a case, noting that “there are means to regulate the conduct of attorneys during litigation.” 165 P.3d at 817. Among the remedies suggested by the appeals court were Rule 11 sanctions, disciplinary proceedings by the Attorney Regulation Counsel, and contempt proceedings for “[a]n attorney’s actions obstructing justice or disobeying court orders.” *Id.*

Rational Argument: A reasonable person would conclude that it was appropriate to call Wilson’s conduct, including “obstructing justice or disobeying court orders,” perjury and aiding and abetting criminal or tortious client conduct to the attention of this Court.

All of the legal principles or precedents asserted by father (the “basis-in-law” requirement) —a few examples of which appear above—were in effect at the time that father cited them. This Court not identified any of father’s claims that were “lacking in any cognizable basis in law.”

8. In *Mitchell v. Ryder* (cited by this Court in its Order at 11), the Court of Appeals described as “troublesome” an attorney’s liability for bring actions that are brought with knowledge of the client’s improper motive. 104 P.3d 316, 322 (Colo.App. 2004). The evidence produced by father demonstrates by a **clear and convincing standard** that mother knew of this Court’s orders, that she willfully disobeyed this Court’s orders and that she purposefully sought to destroy the father-daughter relationship. The emails further demonstrate by that same clear and convincing standard that mother’s attorney offered substantial aid and encouragement in her scheme. Although this Court has many powers, it cannot delete Madeline Wilson’s emails or undo her actions or erase her pattern of conduct, which became an indelible part of the record long ago.³

³ The pattern dates to Wilson’s first (of five) denied restraining order applications in March of 2000, and includes findings about Wilson in the September, 2001 CFI Report and comments regarding Wilson’s conduct in the appeals court’s [Dec., 2004 opinion](#) in 03CA1825.

9. “Groundless” has been defined as claims “that are not supported by any credible evidence at trial.” *Brown v. Silvern*, 141 P.3d 871, 875 (Colo.App. 2005). However, there has been no trial as to the facts that father presented and Wilson neither denied nor challenged the sufficiency of **any** of that evidence. Further, the Court did not discuss the weight and probative value of any of this evidence other than to declare, “father presents no credible evidence.”⁴ That conclusory declaration does not overcome the objective standard of what the reasonable person would conclude about those facts, as required by C.R.S. §13-17-102(6).

10. This Court asserted that Wilson’s conduct was too far removed in the past [from the general remand] or that the conduct occurred in Texas. Order at 10. In so asserting, the Court overlooked the fact that Wilson used this Court to pursue a personal vendetta by the filing of a [Contempt Motion](#) on **May 1, 2007** concerning the alleged “no contact” order with the intent to serve father at a court hearing in Texas on May 2, 2007; the Court overlooked that Wilson filed yet [another](#) of her so-called “Emergency” motions in this Court on **July 3, 2007** (also during the pendency of the appeals), which was without any basis in law or fact (constituting sham litigation, relying on repealed law and containing misrepresentations of material fact)⁵ and which perpetuated the unlawful severance of the relationship between father and his daughter and was designed to obstruct the administration of justice through delay. Further, she knowingly withheld information from this court in violation of law, as discussed above. And this Court overlooked that Wilson contacted the division clerk on **October 9, 2008**, claiming that a “no contact provision” required the clerk to coordinate arrangements between father and Wilson, thereby making that contractual matter relevant.⁶

⁴ It is difficult to imagine evidence that is more credible than emails and pleadings written by Wilson, herself —writings that she has not challenged or denied authoring.

⁵ Arguments concerning this are contained in Father's Amended/Supplemented Special Appearance Objecting to Exercise of Jurisdiction, filed on or about July 11, 2007. Father incorporates his Special Appearance by reference as if fully set forth herein.

⁶ Wilson’s bad faith is underscored by the fact that she has previously argued, “*The mother believes the father has failed to confer with the mother's counsel regarding this alleged hearing. The mother's counsel of record was never contacted for the purpose of clearing any dates on her calendar.*” [Dec. 9th 2004 Response at 2.](#)

11. Litigation is frivolous, if unsupported by rational argument based in the evidence or law. *Richardson, supra*. See also *McKown-Katy v. Rego Co.*, 776 P.2d 1130, 1136 (Colo. App. 1989) (A claim or defense is frivolous for purposes of assessing attorney fees if the proponent can present no rational argument based on the evidence or law in support of that claim or defense). A finding that father presented “no rational argument based on the evidence or law in support of that claim,” would be an abuse of discretion, because it would be manifestly arbitrary, unreasonable, and unfair. See *Affordable Country Homes v. Smith*, 194 P.3d 511, 514 (Colo.App. 2008) (defining an abuse of discretion as abuse of discretion is established only where the trial court's ruling is “manifestly arbitrary, unreasonable, or unfair”).

12. Litigation is vexatious, if it is brought or maintained in bad faith to annoy or harass another. *Richardson, supra*. This Court had “found” that father’s complaints and accusations did not arise from the emails and pleadings and conduct of Wilson, but rather were “made in objectively bad faith in order to attempt to disqualify attorney Wilson from her representation of mother or to punish her for that representation.” Order at 11. The Court did not indicate from what direct (or circumstantial) evidence in the record, if any, it has drawn this conclusion. See *Mitchell v. Ryder*, 104 P.3d 316, 320 (Colo.App. 2004) (Subsection 6 notwithstanding, an attorney fee award under § 13-17-102 is a matter ultimately committed to the discretion of the trial court, and its decision will not be disturbed **if** it is supported by the record). This Court’s finding that father’s claims were brought in bad faith is supported by nothing in the record and contravenes the Court of Appeals express findings in *Harrington IV* that father’s motions and appeals were not frivolous.

13. Applying the reasonable person standard, a reasonable person in father’s shoes should have known that his attempts to call to the attention of this Court the parental alienation scheme, Wilson’s perjury, Wilson’s bad faith legal maneuvers, Wilson’s abuse of process both here and in Texas, and Wilson’s personal vendetta was not to seek a legal remedy for injuries sustained by father and his daughter and the disrepute brought to the legal profession,⁷ but rather was for the purpose of punishing Wilson or disqualifying her from the case? Such an assertion is manifestly contradicted by the evidence in the record.

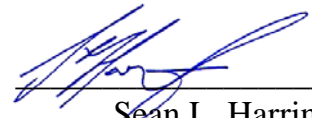
⁷ Father is a both a law student and also runs a legal technology firm providing legal IT and computer forensics services to law firms and the courts. Therefore, father is a constituent of

14. Applying the reasonable person standard, it was not foreseeable that Wilson would hire an attorney and attempt to become a party to the instant case (in violation of C.R.P.C. Rule 24 and R.P.C. Rule 3.7), thereby incurring attorney fees to herself and not to her client, a party to this case. And in retrospect, Wilson's attempt to become a party would appear highly extraordinary to a reasonable person.

15. The Court of Appeals in *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984) has defined "bad faith" as conduct that is, among other things, disrespectful of truth and accuracy. As noted above, the motions were not disrespectful of the truth and the Court has not declared those facts to be untrue or disproved. Because those asserted facts are not in dispute, the only question remaining is what the law requires when applied to them.

WHEREFORE, for the foregoing reasons and based on the foregoing authorities, father requests that the Court's February 27, 2009 Order be vacated in all respects and that the Court set a hearing on the matter of Father's Contempt Motion against Madeline Wilson.

Submitted this 7th day of March, 2009.


Sean L. Harrington

the legal profession and has an interest in promoting its public image and preventing it from coming into disrepute.

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of March, 2009, a true and accurate copy of the foregoing *REPLY* has been mailed, first class postage prepaid, to the following:

First Judicial District Court
Division 9
100 Jefferson County Parkway
Golden, CO 80401

and by electronic mail to: David H. Yun (DYun@jalegal.com) and
Brett N. Huff (bhuff@huffandleslie.com)

