

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NO. S209376

Conservatorship of the Estate of IDA McQUEEN:
FESSHA TAYE, as Conservator of the Estate of Ida McQueen,
Plaintiff and Respondent

v.

CAROL VERES REED, Defendant and Appellant.

SUPREME COURT
FILED

SEP - 9 2013

After a Decision by the Court of Appeal
First Appellate District, Division Four
Case No. A134337

Frank A. McGuire Clerk

Deputy

On Appeal from an Order of the Superior Court of California,
County of Alameda
The Honorable Judge Jo-Lynne Lee
Case No. HP05237122

APPELLANT'S ANSWER BRIEF ON THE MERITS

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ISSUES PRESENTED

1. Whether the procedures for collection of post-Judgment costs under Code of Civil Procedure §§ 685.040, *et seq.* govern the claims of a successful plaintiff for statutorily mandated fees under California's Elder Abuse Act for her efforts at protecting her Judgment.

2. Whether satisfaction of the underlying elder financial abuse Judgment acts as a bar to a subsequent motion for attorney's fees by petitioner.

INTRODUCTION

Respondent argues that this case is about Elder Financial Abuse, when in fact this case is simply about following the legal procedures required by law. Appellant paid the existing Judgment in full and sent Respondent's attorneys a Demand for Satisfaction of Judgment. Respondent's attorneys failed to comply with Code of Civil Procedure Sections 724.010-724.050, which required Respondent to immediately file an Acknowledgment of Satisfaction of Judgment; this procedural violation is Respondent's first of many violations.

Code of Civil Procedure Sections 685.010-685.110 define what post-Judgment costs and attorney's fees may be collected by Respondent and what the requirements are to do so. The trial court awarded Respondent costs under Section

685.040, but Section 685.070 and Section 685.080 procedurally limit collection of these costs and attorney's fees to those requested before the Judgment is satisfied in full. Respondent's attorney filed a motion for additional attorney fees ten days after the Judgment was fully satisfied; this procedural violation is Respondent's second violation and the crux of this Appeal. Respondent's attorney argues that because the enabling statute setting forth the time limit to obtain attorney's fees had not yet expired, Respondent was immune from following Sections 785.070-685.080 and other procedural requirements. But this Court has already ruled in Ketchum v. Moses, 24 Cal. 4th 1122, 1141 [footnote 6] (2001) that in the context of statutory attorney's fees, Section 685.040 applies and therefore the requirements of Sections 685.070-685.080 must be followed.

Respondent's attorney seeks fees both for responding to an appeal and for a separate enforcement action that was settled. A Settlement Agreement in the separate action specifically provided that both parties would bear their own fees and costs. Yet, in breach of that Agreement, Respondent's attorney seeks precisely those fees. Thus, Respondent's attorney enlists this Court to assist in the

breach of Respondent's contractual obligation not to seek attorney's fees; this is Respondent's third violation.

Respondent's attorney argues that it is absurd to allow Appellant to cut off a Respondent's right to attorney's fees by paying the Judgment before Respondent files a motion for additional fees. But it was Respondent that had the control, not Appellant, when the Judgment was satisfied by check. Respondent could simply delay presentation of the check for payment to get the attorney's fees motion on file and thereby satisfy the requirements of Sections 685.070-685.080. Instead, Respondent's attorney cashed the check satisfying the Judgment and waited ten more days before filing his motion for fees. He cannot reasonably argue that at the time the check was cashed, it was unknown what further attorney fees might be incurred, because the fees claimed had already accrued.

Finally, Respondent's attorney argues that it is unfair to punish an elderly claimant by applying these procedural rules, and that the Financial Elder Abuse Statute must be applied to protect those who could not otherwise be protected. This argument fails to recognize that Ida McQueen was represented by counsel throughout the proceedings for which fees are now sought. It was her own attorney who failed to follow the procedural rules; it

should not be Ms. McQueen who must absorb the loss of these attorney fees; the loss should be borne by her attorney whose timing error directly caused the loss. The arguments in favor of attorney's fees in this particular situation for elder abuse would not carry out the legislative intent to protect the elderly - it would only protect an attorney who failed to follow correct procedure.

STATEMENT OF THE CASE

After Judgment was entered against Appellant, she and the other two defendants that were part of the Judgment appealed. (*See Appellate Case No. A126825 for reference.*) The Judgment was affirmed. Appellant fully satisfied the underlying Judgment plus interest, and ten days later Respondent filed a Motion for additional fees and costs. The trial court granted Respondent's motion for additional attorney's fees, despite the fact that the underlying Judgment was fully satisfied before Respondent filed its motion and even though Appellant's attorney provided the court with authority demonstrating that the motion was untimely. The Court of Appeal reversed the trial court's order granting attorney's fees on the basis that Respondent's motion was untimely, and granted Appellant costs on Appeal. Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337).

STATEMENT OF THE FACTS

In 2005, Plaintiff/Respondent Fessha Taye, Conservator for 77 year old Ida McQueen (collectively "Respondent"), filed a Complaint against Defendant/Appellant Carol Reed ("Appellant") and several other defendants on multiple counts. [CT 9.] Respondent claimed Defendants violated the terms of a trust set up for Earl Blacksher, Ida's stepfather, for whom Appellant's father Robert Veres was the attorney. Appellant was the attorney for the other Defendants, other members of Earl's family, and prepared the trust. The only payment Appellant received for this entire action was \$3,321.93 for probate fees awarded in 1994, which she did not receive until ten years later in 2004 without interest when the only remaining asset left in the Trust, the house, was sold. Aside from this payment ten years later for Earl's probate fees, Appellant made no financial gain whatsoever from Ida McQueen. (*See Appellate Case No. A126825 for reference.*)

On September 11, 2009, Judgment was entered against Appellant and two other Defendants for compensatory damages in the amount of \$99,900. [CT 9.] It is worth noting that Appellant was found not guilty of several of the counts, and the other Defendants were largely acquitted of the counts against them as well. (*See Appellate Case No.*

A126825 for reference.) The trial court also awarded attorney's fees and costs to Respondent in the amount of \$500,000 against Appellant alone, more than three times as much as the award of damages, and approximately three hundred times the amount Appellant received for the underlying probate. [CT 9.]

After Judgment was entered against Appellant, she and the other unsuccessful Defendants appealed. [CT 9.] (*See Appellate Case No. A126825 for reference.*) The Appellate Court affirmed the Judgment, and Appellant appealed to this Court, which denied the Petition but ordered the Appellate Court's decision to be decertified. [CT 9; 57.]

In December 2009, Respondent filed a new Complaint against Appellant, her husband, and her two children alleging that fraudulent transfers of real property had been made in an effort to avoid satisfaction of the Judgment against Appellant. [CT 24-32.] The suit was meritless, and was ultimately settled and dismissed after Appellant and her family members agreed to transfer the property back to Appellant. [CT 35-38; 59.] In a later Declaration, Appellant's husband and attorney James E. Reed explained that not only had the conveyances been made for legitimate reasons that predated the Judgment, but Appellant had adequate liquid assets that could be used to

cover the Judgment and therefore property held in her name was irrelevant for purposes of paying the Judgment. [CT 59.] In Respondent's Brief filed in the Court of Appeal, Respondent (despite the confidentiality of the Agreement) admitted that under the Settlement Agreement, each party was responsible for their own attorney's fees: ". . . the Agreement signed to obtain the dismissal of the Fraudulent Transfers lawsuit contains a paragraph [paragraph 5] stating that all parties are responsible for their own attorneys fees and costs related to the second lawsuit" [Respondent's Brief, footnote 4, Reed v. Limited Conservatorship of Ida McQueen, A134337.] The exact provision of that Agreement states "[s]olely for the purposes of this Agreement governing the period of time until the appeal is completed, DEFENDANT and PLAINTIFF shall be responsible for paying their own attorney fees and costs relating to Action RG09-491931." In other words, an explicit part of the Settlement Agreement for the second lawsuit, the same lawsuit for which Respondent now attempts to receive attorney's fees, was that the parties would pay their own attorney's fees and costs. It is also worth noting that Respondent's Brief is misleading when it states numerous times that Respondent was "successful" in this second lawsuit, as the parties settled out of court.

By June, 2011, Appellant, through her attorney Mr. Reed, had paid Respondent's attorney Daniel Murphy over half of the Judgment. [CT 57-58.] Mr. Reed requested a demand for the balance of the Judgment from Mr. Murphy, and after receiving no response, Mr. Reed mailed Mr. Murphy a check for what he calculated to be the balance of the Judgment, without interest. [CT 58; 63.] Another attorney from a different firm that had also represented Respondent thereafter sent Mr. Reed a letter demanding the interest from the Judgment on July 8, 2011; Mr. Reed then paid the interest after performing a recalculation of said interest, which was accepted and deposited on July 15, 2011, thereby rendering the Judgment satisfied in full. [CT 58; 65-70.] Because Appellant had fully satisfied her entire obligation, Mr. Reed demanded an Acknowledgement of Satisfaction of Judgment from Respondent's attorneys, but was never provided with one as required by statute. [CT 52; 70; Civ. Proc. Code § 724.050.]

On July 25, 2011, exactly forty days after Remittitur and ten days after Respondent deposited the final check from Mr. Reed that satisfied the Judgment, Respondent filed a Second Motion for Reasonable Attorney Fees and Costs requesting attorney's fees in the amount of \$57,681.90 for the cost of enforcement of the Judgment, including those

costs associated with the Complaint that alleged fraudulent conveyances and for the appeal. [CT 8-11; 13-39.]

Through responsive papers and oral argument, Appellant argued that Respondent was barred from filing a motion for attorney's fees because the Judgment had already been satisfied, citing Code of Civil Procedure sections 685.070 and 685.080 as well as a Federal case interpreting these statutes, Carnes v. Zamani, 488 Fed. 3d 1057 (2007). [RT 4-5.] The trial court granted Respondent's motion, stating that "Respondent's argument that satisfaction of judgment upon remittitur but prior to the time for filing or hearing of a motion for attorney's fees cuts off the prevailing party's right to seek them is unsupported." [CT 100.] The Court of Appeal reversed the trial court's order granting attorney's fees on the basis that Respondent's motion was untimely, and granted Appellant costs on Appeal. Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337).

LEGAL ARGUMENTS

I. THIS COURT IS LIMITED TO THE REVIEW OF ISSUES THAT WERE RAISED IN THE COURT OF APPEAL AND WHICH WERE STATED AS ISSUES PRESENTED IN THE PETITION FOR REVIEW.

The California Rules of Court limit the review by the Supreme Court to issues that were timely raised in the Court of Appeal. Cal. R. Ct. § 8.500(c)(1). Furthermore,

briefs on the merits must be limited to the statement of issues in the Petition for Review and any issues fairly included in them. Cal. R. Ct. § 8.520(b)(3).

In its Opinion, the Court of Appeal noted that in Respondent's Brief, Respondent did not address any of the main issues governing the appeal. Respondent did not dispute that the attorney's fees and expenses expended in seeking to defeat Appellant's appeal and bringing a separate lawsuit to make sure assets are available to satisfy Judgment fall under ambit of what is compensable under 685.040, nor did Respondent attempt to distinguish or refute the reasoning of Carnes v. Zamani, that the judgment creditor must request post-judgment attorney's fees before the underlying judgment is fully satisfied. 488 Fed. 3d at 1061. Neither did Respondent dispute the chronology of events that the Judgment was fully satisfied ten days before Respondent filed a motion for additional fees. The only relevant argument that Respondent made was that he complied with time limit of California Rules of Court Section 3.1702(c) for a motion to claim attorney's fees on appeal. Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337).

In Respondent's Opening Brief on the Merits, Respondent now makes several arguments that were not brought before

the Court of Appeal, nor are they included as the two core issues stated in Respondent's Petition for Review and Opening Brief. Appellant will therefore largely limit her arguments to the Issues Presented in the Petition for Review and Opening Brief and any issues fairly included in them, and those which were before the Court of Appeal. Appellant requests that this Court limit its review to those issues as well. The sole two issues which should be addressed are 1) "[w]hether the procedures for collection of post-judgment costs under Code of Civil Procedure §§ 685.040, *et seq.* govern the claims of a successful plaintiff for statutorily mandated fees under California's Elder Abuse Act for her efforts at protecting her judgment," and 2) "[w]hether satisfaction of the underlying elder financial abuse judgment acts as a bar to a subsequent motion for attorney's fees by petitioner." [Respondent's Opening Brief on the Merits, 1.] Said more plainly, the two issues to be discussed are whether attorney's fees and costs awarded under the Elder Abuse Act are governed by the Enforcement of Judgments Law (Code of Civil Procedure Sections 680.010 *et seq.*) and if so, whether full satisfaction of the underlying Judgment bars a subsequent motion for attorney's fees and costs under Sections 685.070 and 685.080.

ATTORNEY'S FEES AND COSTS AWARDED UNDER THE ELDER ABUSE ACT ARE GOVERNED BY THE ENFORCEMENT OF JUDGMENTS LAW AND THEREFORE SUBJECT TO THE LIMITATIONS OF CODE OF CIVIL PROCEDURE SECTIONS 685.070 and 685.080.

A. This Court Has Stated that Attorney's Fees Provided by Statute Are Permissible as Costs Under Section 685.40.

In its Opinion, the Appellate Court pointed out that this Court, in Ketchum v. Moses, 24 Cal. 4th 1122, 1141 (2001), "construed an underlying attorney's fees statute so as to authorize attorney's fees under the "otherwise provided by law" language of (Section) 685.040." Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337). In Ketchum, this Court reasoned that Section 685.040 provides that attorney's fees are not allowed in enforcement efforts "*unless there is some other legal basis for such an award.*" Id. at 1141. In its Opinion, the Appellate Court likens Ketchum to the case at bar, where the attorney's fee provision under the Elder Abuse Act (Welfare and Institutions Code Section 15657.5) is the "other legal basis" for the award of fees under Section 685.040. Indeed, Respondent relied on Section 685.040 in its post-Judgment attorney's fee motion and the trial court relied on it in its order granting said motion. It is disingenuous for Respondent to now argue that those same requested attorney's fees do not fall under Section 685.040.

Respondent also argues that appellate fees fall under the Enforcement of Judgments Law. Appellants concede that they do. But in Respondent's Opening Brief on the Merits, Respondent relies heavily on two cases, Morcos v. Board of Retirement, 51 Cal. 3d 924 (1990) and Downen's, Inc. v. City of Hawaiian Gardens Redevelopment Agency, 86 Cal. App. 4th 856 (2001), to demonstrate that attorney's fees are recoverable on appeal and for enforcement of Judgment "irrespective" of the Enforcement of Judgments Law. However, as pointed out by the court in Downen's and also by Respondent in Respondent's Brief, "the Enforcement of Judgment Law provides procedures for enforcing judgments against private entities and individuals" and therefore does not apply to actions brought under the California Government Code. Id. at 864; See also Civ. Proc. Code § 683.320. However, Respondent does not point out that the attorney's fees provision in Morcos was also provided under the Government Code, and therefore the Enforcement of Judgments Law would not apply there either. Therefore any reliance by Respondent on either of these cases to demonstrate that fees and costs are allowed under the Elder Abuse Act irrespective of the Enforcement of Judgments law is dubious and misleading. Respondent's Brief fails to provide any authority or cite any cases that involve an

attorney's fees for a private entity that demonstrate an attorney fee statute mandates an award of fees irrespective of the Enforcement of Judgments Law. No such authority exists.

B. The Elder Abuse Act is Subject to the Same Procedural Rules as Any Other Law.

Respondent seems to suggest, without actually developing an argument for it, that the statute mandating attorney's fees under the Elder Abuse Act is outside the Enforcement of Judgment Act because of its aim to promote public policy. Respondent has provided no authority to back up such a proposition. Claims brought under the Elder Abuse Act are subject to the same procedural limits as all other laws. For instance, the statute of limitations to commence an action for Elder Abuse is four years. Cal. Welf. & Inst. Code § 15657.7. Despite the import of the Elder Abuse Act, if a party fails to bring an action under the Act within four years, that party is precluded from later doing so, no matter how egregious the wrongdoing. Similarly, if Respondent had filed the motion for additional attorney's fees even one day later, 41 days after Remittitur, Respondent would have been precluded from filing such a motion under California Rule of Court Section 3.1702, the very same statute Respondent has argued is controlling.

Procedural limits exist no matter what the underlying substantive claim, and the Elder Abuse Act is subject to the Enforcement of Judgments Law just like all other judgments awarded to private entities.

There is nothing in the Enforcement of Judgments law that exempts attorney's fees awarded under the Elder Abuse Act. There is nothing in the Enforcement of Judgments Law that exempts judgments related to public policy or otherwise special claims. The only limitation that appears anywhere in the Enforcement of Judgments Law is that it does not apply to public entities. Civ. Proc. Code § 683.320. What Respondent is asking this Court to do is to make an exception to the Enforcement of Judgments Law or to the time rule found in Section 685.080 for attorney's fees awarded under the Elder Abuse Act where no such authority exists to do so. To grant Respondent that request would frustrate legislative intent and effectively create a new provision of the statute. This cannot and must not be done.

C. The Legislative Purpose for Attorney's Fees Under the Elder Abuse Act Have Already Been Satisfied in this Case and Any Additional Attorney's Fees Awarded Would Frustrate Public Policy.

Appellant concedes and understands the importance of the attorney's fees provision of the Elder Abuse Act. However, Respondent relies on the argument that attorney's fees are

necessary because without them, the elderly claimant's assets may deplete in such cases in order to pay these attorney's fees. Once again, Appellant concedes this point, but at the same time is alarmed by the implication of Respondent's Brief. Failing to timely file a motion for post-Judgment attorney's fees was a procedural error caused by Respondent's attorneys alone. Respondent's attorneys had plenty of advance notice from Appellant's attorney James E. Reed before the Judgment was fully satisfied. Weeks before the Judgment was satisfied, Mr. Reed sent Daniel Murphy a demand for the balance of the Judgment, and after receiving no response, Mr. Reed mailed Mr. Murphy a check for what he calculated to be the balance of the Judgment, without interest. Later, a week before the Judgment was satisfied, a different attorney for Respondent sent Mr. Reed a letter demanding the interest from the Judgment, and only then did Mr. Reed fully satisfy the Judgment by sending Respondent's attorneys a check. Even knowing weeks ahead of time that the Judgment would soon be satisfied, Respondent's attorneys failed to timely file the motion. Furthermore, Code of Civil Procedure Section 724.010 provides "the obligation of the judgment creditor to give or file an acknowledgment of satisfaction of judgment arises only when the check. . . has actually been honored upon presentation

judgment." Respondent's attorneys could have waited to deposit the check until after a motion for additional fees was filed, but instead they deposited the check immediately upon receipt. It would be unconscionable if Mr. Murphy required those additional fees and costs to be borne by Respondent - Mr. Murphy alone should bear the costs for a mistake he himself made. Fortunately, a court order is required for attorney's fees to be paid from the estate of the ward or conservatee. Prob. Code § 2647. Therefore, the arguments in favor of attorney's fees in this particular situation for elder abuse would not carry out the legislative intent to protect the elderly - it would only protect an attorney who failed to follow correct procedure.

Between the underlying Judgment, the associated attorney's fees, and interest, Appellant has already paid over \$400,000 for any wrongdoing she might have done to Ms. McQueen, the overwhelming majority of which has gone to Respondent's attorneys. Appellant has paid this amount, even though she never received any money at the expense of Ms. McQueen in the first place, and even though the State Bar found that Appellant's actions were not deemed serious and involved no dishonesty, no trust violation, and no harm or indifference. Ms. McQueen received an award of less than \$100,000, but it is her attorneys, most especially Mr.

Mistake, who has benefitted the most from this unfortunate situation. Respondent's attorneys have made a lot of money from Appellant from her mistake, and Respondent is now asking this Court to allow these attorneys to make even more from her, even after she satisfied the Judgment in full and despite a procedural error made by the attorneys themselves. It is hard to imagine that this is what the legislature had in mind when they authorized mandatory attorney's fees under the Elder Abuse Act.

III. FULL SATISFACTION OF THE JUDGMENT UNDER THE ELDER ABUSE ACT BARRED RESPONDENT'S SUBSEQUENT MOTION FOR ATTORNEY'S FEES AND COSTS.

A. Code of Civil Procedure Sections 685.070 and 685.080 Clearly State a Motion for Fees and Costs Must Be Made Before the Judgment is Satisfied in Full.

California Code of Civil Procedure Section 685.040 provides that "[t]he judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor." Code of Civil Procedure Sections 685.070 and 685.080 limit this award, and both explicitly state that the Motion and Memorandum for costs under Section 685.040 must be made before the judgment is satisfied in full. Code Civ. Proc. §§ 685.070(b);

685.080(a). Section 685.080(b) goes as far as to require that the Notice of Motion requesting costs include an affidavit by a person with knowledge of the facts stating that the judgment has not been satisfied, which also was not done in this case.

In Carnes v. Zamani, the Ninth Circuit Court of Appeals examined this exact situation: “[b]ecause their right to recover post-judgment attorney fees is dependent on section 685.040, the Carneses were required to comply with the timeliness requirements for post-judgment attorney fee motions set forth in the [California Enforcement of Judgment’s Law]. Sections 685.070 and 685.080 require that a motion for fees incurred in enforcing a judgment be filed before the underlying judgment is fully satisfied. Because the Carneses filed their post-judgment fee motion after the underlying judgment was fully satisfied, the motion was untimely.” 488 Fed. 3d at 1061. The Court of Appeal in its Opinion found Carnes persuasive and precisely on point, even though it was a Federal case interpreting California law. (See Adams v. Pacific Bell Directory, 111 Cal. App. 4th 93, 97 (2003): “although not binding, we give great weight to federal appellate court decisions.”) Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337). Furthermore, the California

Court of Appeal confirmed and reiterated the ruling in Carnes in Lucky United Properties Inv., Inc. v. Lee, 185 Cal. App. 4th 125, 144, (2010).

As is clear from the record and has never been disputed by Respondent, Respondent did not file the Second Motion for Attorney Fees until ten days after the underlying Judgment was satisfied. Under Sections 685.070 and 685.080 and Carnes, this motion was untimely, and therefore should have been denied outright.

Respondent's argument at the appellate level was that the motion was timely because it was filed on the 40th day after Remittitur was filed, thereby complying with the time limit of California Rules of Court Section 3.1702(c). The Appellate Court addressed this issue fully, pointing out that Section 3.1702 applies "except as otherwise provided by statute." No such qualifier exists anywhere in the Enforcement of Judgments Law. The Appellate Court concluded that "facially, rule 3.1702 was not intended to prevail over the statutory language of sections 685.070 and 685.080, both of which plainly preclude a postjudgment request for additional fees and costs after the judgment has been fully satisfied." Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337).

Therefore Respondent's motion was not timely, even though it was filed on the 40th day after Remittitur.

The Appellate Court also explained why the timing limitation found in sections 685.070 and 685.080 is so important, citing Lucky: "the statutory purpose of requiring that the motion for enforcement costs be brought "before the judgment is satisfied in full" (§ 685.080, subd. (a)) is to avoid a situation where a judgment debtor has paid off the entirety of what he believes to be his obligation in the entire case, only to be confronted later with a motion for yet more fees." 185 Cal. App. 4th at 144; Reed v. Limited Conservatorship of Ida McQueen, (unpublished February 2, 2013, A134337). When Appellant paid Respondent the full Judgment for the underlying action, she was under the assumption she had paid all costs and fees necessary in this action. By depositing the final check, Respondent reaffirmed that sentiment. It would therefore be unfair and against settled law to award Respondent's attorneys fees after the Judgment was satisfied.

B. The Statutes Are Clear That a Motion for Fees and Costs Must Be Made Before the Judgment is Satisfied, Not "Within a Reasonable Time" After it Has Been Satisfied.

Respondent spends significant time suggesting that Code of Civil Procedure Sections 685.070 and 685.080 should

is construed so as to allow a Motion for fees and costs "within a reasonable time" after the judgment has been satisfied. Although this proposition is preposterous and was not brought up in the Court of Appeal, Appellant will be addressing this claim so as to fully lay it to rest.

Respondent takes the position that it would be unfair for this law to work the way it is expressly stated because the party eligible for fees may not know at such point the total amount of fees expended and therefore may never be made whole. This argument is flawed for several reasons.

First, Respondent's attorneys had plenty of advance warning, as discussed above, that Respondent intended on fully satisfying her Judgment in July 2011. Second, Respondent's attorneys deposited the check immediately upon receiving it, rather than disputing it or filing their motion first. Third, all fees and costs had accrued at the time Respondent's attorney received the check. And finally, Respondent's attorneys had the option of filing the Motion then augmenting it later if more fees were incurred, but they failed to do so. These errors land squarely on Respondent's attorneys and Respondent's attorneys alone.

The fact remains that the statutes explicitly state that the motion for fees shall be filed before the judgment is satisfied, and do not suggest in any way that a motion

shall be filed "within a reasonable time" after the judgment has been satisfied. To infer any other meaning would effectively re-write the statute, something that cannot be done at the judicial level and can only be done by the Legislature. Section 685.080 plainly states that a motion for fees and costs must be made before the judgment is satisfied in full, and Respondent did not comply with this statute. Respondent therefore cannot recover fees and costs.

CONCLUSION

This case is simple. Respondent's attorneys failed to file their motion for additional attorney's fees and costs before Appellant satisfied the underlying Judgment as required by the Enforcement of Judgments Law. There is no authority that suggests the Elder Abuse Act is not covered by the Enforcement of Judgments Law. Therefore, Respondent is not entitled to additional fees or costs.

RESPECTFULLY SUBMITTED.

Date: 9/9/2013



BROOKE VERES REED
Attorney for Petitioner /Appellant

CERTIFICATE OF WORD USE

I hereby certify that this Opening Brief contains 4,780 words as verified by Microsoft Word's word count function. This certificate is provided pursuant to California Rules of Court section 8.204(c)(1).



BROOKE VERES REED

Attorney for Defendant/Appellant

PROOF OF SERVICE AND DELIVERY

I, BROOKE VERES REED, declare that:

I am at least 18 years of age and not a party to the above-titled action. My business address is 3433 Golden Gate Way Suite C, Lafayette, California 94549. I am employed in Contra Costa County, California

On September 9, 2013, I served a copy of APPELLANT'S ANSWER BRIEF ON THE MERITS on the interested parties to this action by mailing a copy of the original by U.S. mail as follows:


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I also delivered a copy to the Supreme Court of California on September 9, 2013 via electronic transfer only. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California.



BROOKE REED