

NO. 84907-7

WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

ATLAS DEBT HOLDINGS, LLC,

Petitioner,

v.

ALFONSO TAVAGLIONE,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF KING
COUNTY

(Hon. Tanya Thorp)

APPELLEE'S RESPONDING BRIEF

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I. INTRODUCTION

Historically, this was a case about an unlicensed debt collector and unregistered Colorado business, Atlas Debt Holdings, LLC (“Atlas”) and its law firm Wong Fleming, filing lawsuits against individuals across Washington State. Both were happy to take advantage of the court system to extract judgments and settlements from Washington residents, but when one resident, Alfonso Tavaglione fought back and prevailed – he was owed over \$30,000 in fees in costs - both Atlas and its law firm went silent.

This appeal, however, concerns what happened after Mr. Tavaglione prevailed. Each time Mr. Tavaglione attempted to call Atlas to account, so that he would not be left “holding the bag” for his attorney fees and costs, Wong Fleming attempted to hastily withdraw from the case, claiming its relationship with Atlas was problematic. However, Wong Fleming was simultaneously filing more pleadings in other cases on Atlas’ behalf, and attempting to obtain judgments and settlements in other similar cases.

The Superior Court found this behavior concerning, and

ordered that Atlas and its counsel note any King County Superior Court pleadings in front of Judge Thorp. Atlas and Wong Fleming failed to follow this order because they did not think they needed to, and were caught with their hand in the cookie jar. In an attempt to escape consequences for violating a court order, Wong Fleming revealed that it was simply a rogue law firm, filing cases on behalf of another collection law firm based in Texas, and had never even communicated with Atlas directly.

The Superior Court, of course, found Wong Fleming in contempt for failing to follow a court order, and awarded fees and costs to Mr. Tavaglione, payable by Wong Fleming, for all of the unnecessary efforts he had gone through because of Wong Fleming's contempt and the information revealed as a result.

II. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court acted within its discretion by denying Wong Fleming's motion to withdraw where Wong Fleming (a) remained actively in contempt, (b) had not notified its client(s) of

its withdrawal, and (c) because a corporate entity cannot represent itself.

2. The trial court acted within its discretion by awarding attorney's fees and costs after properly issuing a contempt finding under RCW 7.21.030.

III. COUNTER-STATEMENT OF THE CASE

Respondent, Mr. Tavaglione, was sued for a fictitious debt on a preposterous legal theory that an electronic checkbox on an internet form obligated him to a nearly-\$100,000.00 debt. The Superior Court correctly dismissed the collection case with prejudice, and, as the “contract” contained a fee-shifting provision, awarded Mr. Tavaglione his fees and costs. Appellant, Atlas Debt Holdings, LLC (“Atlas”), failed to pay and was later found in contempt of the order requiring payment.

Things took a turn when Mr. Tavaglione brought the failure to pay to the Superior Court’s attention. The law firm of Wong Fleming, who was representing Atlas in mirror-image cases across the state of Washington, desperately attempted to withdraw from

this case, citing undisclosed differences with its client. Contemporaneously – in direct contradiction with its representations to the Superior Court – Wong Fleming remained active in litigating Atlas’ doppelgänger suits throughout Washington.

The trial court, concerned with Wong Fleming and Atlas’ actions, ordered both to note any filings in any of its cases in King County Superior court specifically before Judge Thorp. Wong Fleming failed to do so, and instead surreptitiously moved to withdraw in other King County Superior Court cases. Mr. Tavaglione also began to have reservations about Wong Fleming’s conduct, given its immediate attempt to withdraw whenever questions arose about its collection lawsuits. Moreover, it appeared that Atlas – the supposed client – was not even calling the shots; Wong Fleming admitted that it had never even spoken to its “client.” These revelations came as Mr. Tavaglione worried that he would be left shouldering the attorney’s fees he incurred in

defending an unjustified lawsuit.¹ Given the ever-changing nature of Wong Fleming’s excuses, Mr. Tavaglione brought Wong Fleming and Atlas’ failure to comply with the order to the Superior Court’s attention. After ample notice and opportunity to be heard, both were found in contempt, and Wong Fleming was ordered to pay Mr. Tavaglione’s attorney’s fees incurred in bringing the motion. Wong Fleming did not obey that order and, thus, did not purge its contempt.

Instead, hoping to further evade responsibility, Wong Fleming pushed forward a motion to withdraw. The trial court correctly denied the withdrawal, as Wong Fleming was (and still is) subject to an order of contempt. The court noted that Wong Fleming had inconsistently reported to the court its involvement with litigation involving its client, Atlas. In short, the King County Superior Court was concerned that not only was Wong Fleming

¹ It cost Mr. Tavaglione roughly \$30,000 in fees and costs to successfully defend himself in this case, not including postjudgment motion practice that is the subject of this appeal.

possibly filing meritless lawsuits to extort settlements from vulnerable people, but that Wong Fleming may not have even been representing a real client in doing so. A trial court, of course, is justified in regulating the conduct of parties that appear before it.

[It is easy to see the problem that could arise, as a phantom party could extract settlements from people through a heavy-handed debt-collection law firm, but never be held accountable for its conduct in a Washington courtroom.]

This appeal followed.

IV. FACTS

A. Mr. Tavaglione was Sued for Debt He Did Not Owe

In June 2021, Atlas Debt Holdings, LLC (“Atlas”) sued Alfonso Tavaglione and a defunct business entity for an alleged debt of \$92,248.12. CP 1-27 (collection lawsuit). The basis for suing Mr. Tavaglione was an alleged personal guarantee, evidenced by nothing more than an internet print-out which contained a

checkbox, but no signatures. CP 4-5, 11-14.²

B. The Superior Court Correctly Dismissed the Case Against Mr. Tavaglione With Prejudice

After exchanging discovery, the parties filed cross motions for summary judgment. On July 29, 2022, the Superior Court ruled in favor of Mr. Tavaglione, finding that he never entered into a personal guaranty as alleged by Atlas, and that there was no evidence to the contrary. CP 30-33. The Superior Court dismissed the case against Mr. Tavaglione with prejudice. *Id.* This order is final and is not on appeal.

C. The Superior Court Awarded Attorney's Fees and Costs to Mr. Tavaglione

On August 2, 2022, as the prevailing party under RCW 4.84.330 (making attorney's fees provisions in contracts bilateral) Mr. Tavaglione moved for reimbursement of his attorney's fees for successfully defending the case. CP 34-42. Mr. Tavaglione

² From day one, the collection lawsuit appeared suspicious; the documents attached to the complaint concerned a different person and a different company entirely.

supplied the Superior Court with 21 pages of documents including each of his attorneys' training and experience, orders detailing prior fee awards, and detailed time sheets. CP 43-63. The Superior Court awarded Mr. Tavaglione \$29,338.50 in fees and costs, finding that the hourly rates were reasonable based on the experience, skill, and education of each attorney, and the number of hours were reasonable. CP 81-84. Atlas – the named party who ostensibly filed the lawsuit – was ordered to make payment within thirty days of the order. *Id.* No payment was ever made, and despite numerous inquiries concerning compliance with the order, Wong Fleming never responded. CP 96-101. This order is also not on appeal.

D. Atlas' Counsel, Wong Fleming, Attempts a Hasty and Surprising Withdrawal

Having received no word from Wong Fleming about Atlas' payment per the Court's order, Mr. Tavaglione filed a motion for contempt. CP 90-127. Mr. Tavaglione provided evidence that while Wong Fleming refused to respond to his inquiries about

payment, Wong Fleming continued to prosecute other Atlas collection lawsuits in King County and throughout Washington. CP 96-127. In short, the inaction seemed deliberate.

Two days after the motion for contempt was filed (September 21, 2022), Atlas' counsel, Wong Fleming, moved to withdraw from the case (with no meaningful explanation) on shortened time. CP 128-31, CP 134-39. The Superior Court denied the motion to shorten time, for failure to show good cause as required by LCR(7)(b)(10). CP 184-86. Atlas and/or its counsel were directed to properly re-note the motion to withdraw. *Id.* Wong Fleming never re-noted the motion (though a new motion was filed later). The denial of the motion to shorten time is not on appeal.

E. Atlas is Held in Contempt for Failure to Comply with the Superior Court's Orders

On September 30, 2022, the Superior Court found Atlas in contempt for failure to pay as ordered. CP 248-51. The Superior Court further ordered that all parties appear at a hearing on October

6, 2022. *Id.* After the October 6 hearing issued a new order that required Atlas to submit *all filings* in any King County Superior Court Case before Judge Thorp. CP 253-55.

The Superior Court noted that Atlas – through the Wong Fleming firm – was filing lawsuits and collecting debts as an unlicensed and unregistered business in Washington. CP 253-55; CP 96-127. However, as all actions occurred through Wong Fleming, there was some concern that Wong Fleming may have been enabling conduct contrary to law. *Id.* The judge wanted to monitor all of Atlas’ cases in King County Superior Court because Atlas appeared to be filing lawsuits as an unregistered and unlicensed business. CP 253-55. This order is also not on appeal.

F. Wong Fleming Violates a Simple, Direct Superior Court Order

On November 15, 2022, the Wong Fleming attorney (representing Atlas) filed a notice of unavailability, as he would be “out of the office” from November 15 through November 30, unable to be available for any court appearance and unavailable to

respond due to his absence. CP 281-82. Yet on November 17, 2022, without notifying Judge Thorp or Mr. Tavaglione, the Wong Fleming attorney quietly filed a notice of intent to withdraw in a separate Atlas case (also in King County Superior Court). CP 272-75. Not only was the timing of these filings suspicious, but covert filing was in direct violation of the Superior Court's order. CP 253-55.

Concerned about Wong Fleming's repeated attempts to withdraw from cases hastily and surreptitiously, and the fact that it had violated a court order, on November 22, 2022, Mr. Tavaglione moved for an order to show cause. CP 269-301. Wong Fleming's response was astonishing.

Their December 1, 2022, response brief refused to acknowledge that they had directly violated a court order. CP 302-308. Rather, Wong Fleming had a paralegal attempt to offer an excuse that "court rules" did not require noting such filings before Judge Thorp. CP 320-28. Somewhat dismally, *no attorney from Wong Fleming offered any testimony or explanation for its*

*conduct.*³

The “court rules made me do it” excuse was contrary to what Wong Fleming explained at a later hearing (discussed below). Counsel, though not under oath but still making representations as an officer of the court, explained that he understood the order and had failed to explain the situation to his assistant, but also somehow placed his signature on the notice (all while he was allegedly unavailable and absent from the office). RP 6-7.

Now, in its briefing before *this* Court, a third explanation (unsupported by the record) has emerged: “Wong Fleming admits that...the Notice of Intent to Withdraw was not noted before the trial judge, however this was due to the fact that the King County Superior Court’s electronic portal does not allow for any filing to be directed to any specific judge.” Op. Br. at p. 39. Not only is

³ Even if the Wong Fleming firm felt justified in its conduct, basic decency would suggest that the attorney who signed the offending document (or perhaps the managing partner) would have accepted responsibility for that action instead of putting its paralegal in the crosshairs.

this statement demonstrably false – it is a basic tenet of practice and common sense that King County Superior Court’s system most certainly permits such filings – but it becomes the third alternative explanation for its failure to follow the Court’s simple order.⁴

Over the course of the case, Wong Fleming slowly revealed that despite filing numerous collection lawsuits on behalf of Atlas, it had never communicated with Atlas at all. This new information was *jaw dropping*. Wong Fleming, in total abdication of responsibility (and likely numerous RPCs), instead corresponded with some previously-undisclosed debt collection law firm called Kramer, Fox & Associates, located in Texas. CP 309-19.

Counsel’s testimony detailed all the communication attempts that Wong Fleming had made in this case, but not even one was made directly to Atlas. CP 309-19.

At this point, the Superior Court was concerned about the

⁴ This third explanation is also offensive to the trial court; it stands to reason that the Chief Civil Judge of King County Superior Court would know whether a filing could be made before a specific judge.

contradictory timing of the motion to withdrawal and notice of unavailability, and the fact that the Texas law firm was responsive to Wong Fleming when seeking default judgments, but not to the court's orders. CP428-430. A hearing was set for December 16, 2022 to address these concerns.⁵ *Id.*

G. Wong Fleming is Held in Contempt

At the December 16, 2022, Wong Fleming was held in contempt for failing to properly note its filing (the notice of withdrawal) before Judge Thorp. RP 26. A condition to purge the contempt included Wong Fleming reimbursing attorney's fees to Mr. Tavaglione for his motion for order to show cause. RP 27. This order, too, is not on appeal.

H. Wong Fleming's Attempt to Withdraw is Denied as it Remains in Contempt

As Mr. Tavaglione's Motion for Order to Show Cause was

⁵ Given the timing of this appeal, the Superior Court did not have the opportunity to explore how Wong Fleming could plausibly represent a client which it had never contacted, or even the identity of the true Plaintiff in the lawsuit against Mr. Tavaglione.

pending, Wong Fleming filed a motion to withdraw before the Superior Court.⁶ CP 333-41. On December 20, 2022, the Superior Court denied the motion. CP 451-54. The Superior Court reasoned that Wong Fleming had been held in contempt on December 16, 2022, and the contempt had yet to be purged. *Id.* As a second reason, the Superior Court noted that Wong Fleming had inconsistently reported its involvement with litigation involving Atlas, and that Wong Fleming had failed to include the Texas firm Kramer, Fox & Associates in its notice. *Id.* The Superior Court further stated that withdrawal would cause significant prejudice to Mr. Tavaglione, as a business entity (Atlas) could not represent itself. *Id.* This is one of two orders on appeal.

I. Wong Fleming is Ordered to Pay Attorney's Fees as a Result of Its Contempt

In a January 20, 2023 order, now privy to the admission that

This was the first, and only, properly-filed motion to withdraw; the September 2022 motion to withdraw was untimely and was not ruled upon, as discussed above.

Wong Fleming had been acting without communicating with Atlas, the Court ordered that Wong Fleming reimburse Mr. Tavaglione \$14,650.45 for the efforts expended related to the contempt proceeding. CP 479-82. Part of that amount included a reallocation of a prior award (in other words, amending the court's prior order) totaling \$4,820.49. While this amount was originally assessed against Atlas, as of January 20, 2023, the court now possessed information that culpability for needless motion practice⁷ lay at the feet of Wong Fleming and not its client, Atlas. CP 480. This is the second of two orders on appeal.

V. ARGUMENT

Atlas (and Wong Fleming) appeal only two of the Superior

⁷ In short: In September 2022, Wong Fleming had filed a baseless motion to shorten time in connection with its attempted motion to withdraw. This required Mr. Tavaglione's counsel – and the court – to drop other matters to respond to (and rule on) the motion which lacked merit and contravened local rules. Once the Superior Court possessed Wong Fleming's admission that it had never spoken to its "client," it became clear that Wong Fleming was responsible for Mr. Tavaglione having to author emergency briefing which otherwise would not have been required.

Court’s orders: the December 20, 2022 denial of a motion to withdraw and the January 20, 2023 order awarding fees to Mr. Tavaglione. No other orders are on appeal.

A. The Superior Court Correctly Denied Wong Fleming’s Motion to Withdraw

The Superior Court properly denied Wong Fleming’s motion to withdraw on numerous grounds, each of which would be sufficient on its own: Wong Fleming was in contempt of court, had failed to notify its client(s) of its withdrawal, and its client(s) had insufficient notice to obtain substitute counsel (required since Atlas is an LLC).

1. Standard of review

A trial court’s ruling on a motion to withdraw is reviewed for abuse of discretion. *Kingdom v. Jackson*, 78 Wn. App. 154, 158 (1995) (“withdrawal is a matter addressed to the discretion of the trial court”). The Court of Appeals may affirm a trial court’s ruling on any basis supported by the record. *In re Marriage of Raskob*, 183 Wn. App. 503, 514-15 (2014).

2. Factors pertinent to a motion to withdraw

The leading case on criteria for a motion to withdraw appears to be *Kingdom v. Jackson*, 78 Wn. App. 154, 158 (1995), which instructs a trial court to consider “all pertinent factors” related to the withdrawal. Relevant here are the following factors: (a) whether withdrawal will interfere with the functioning of the court, (b) whether the client has had or will have an opportunity to secure substitute counsel, and (c) whether the client has sufficient prior notice of the lawyer’s intent to withdraw. *Id.*

Kingdom provides a useful framework, even though the case concerned a client opposing their own lawyer’s efforts to withdraw from representation. While the instant case has a slightly different context, the *Kingdom* factors appear equally relevant here.

3. The Superior Court analyzed the *Kingdom* factors and properly exercised its discretion to deny the motion to withdraw

In its December 20, 2022 order, the Superior Court articulated its reasons for denying Wong Fleming’s one and only motion to withdraw. CP 451-54. First, Wong Fleming was

“subject to an oral finding and order of contempt.” *Id.*⁸ Because of the active contempt, Wong Fleming’s withdrawal would cause serious logistical problems, as the court could lose its ability to enforce its orders as to Wong Fleming. Without purging the contempt, Wong Fleming’s withdrawal would allow it to evade consequences. RP 26-27. The Superior Court stated that in order to purge the contempt, Wong Fleming would need to reimburse Mr. Tavaglione for the motion and all work related to Wong Fleming’s contempt. *Id.*

In ruling on a motion to withdraw, the court should also consider whether withdrawal will interfere with the functioning of the court. *Kingdom*, 78 Wn. App. 159. Allowing a law firm to withdraw while in contempt would interfere with such functioning and undermine the court’s ability to regulate conduct.

⁸ Of course, in addition to the civil contempt statute, the Superior Court has inherent power to interpret and enforce its own orders. *Bero v. Name Intelligence, Inc.*, 195 Wn. App. 170, 179 (2016) (citing *Allen v. Am. Land Research*, 95 Wn.2d 841, 852 (1981)).

As another basis for denying the motion, the Superior Court noted Wong Fleming's ever-changing explanations of its communications and relationships with its client. CP 451-54. While the Plaintiff in the case was nominally "Atlas," Wong Fleming reluctantly testified that its "client" was actually Kramer, Fox & Associates. CP 309-19. The Superior Court specifically highlighted that, setting aside the issue of who the true client was, neither Atlas nor the Texas law firm had been given notice of the withdrawal. CP 451-54. Another *Kingdom* factor – notice to the client - cut against Wong Fleming's withdrawal. 78 Wn. App. 159.

As its final cited basis in denying the withdrawal motion, the Superior Court reminded the parties that Atlas is an LLC and cannot appear before the Court without counsel. CP 451-54. See *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 535 (2011). This implicates yet another *Kingdom* factor in favor of denying withdrawal as it was unclear whether Wong Fleming's client(s) had been notified of the withdrawal. 78 Wn. App. 159 ("whether

the client has had or will have an opportunity to secure substitute counsel”).

In sum, the Superior Court carefully analyzed the *Kingdom* factors and methodically explained each of the several bases for denying Wong Fleming’s motion to withdraw. CP 451-54.

In its briefing on appeal, Appellant offers the wishful thinking that none of the *Kingdom* factors justify the denial of the motion to withdraw, but that is where the “analysis” begins and ends. Op. Br. at pp. 24-25. Simply citing a case, without more, is insufficient to constitute a meaningful argument, and thus there is little to which Mr. Tavaglione can respond. Therefore, given that several *Kingdom* factors justify the Superior Court’s Order Denying the Motion to Withdraw, the ruling should be affirmed.

B. The Superior Court Correctly Awarded Attorney’s Fees to be Paid by Wong Fleming

1. The absence of specific arguments hampers Mr. Tavaglione’s effort to respond

Appellant’s argument regarding attorney’s fees is difficult to discern and reads largely as a stream of grievances devoid of

analysis. Rather than offering a rule and applying it to the facts, Appellant simply asserts that the Superior Court abused its discretion and offers a smattering of citations with little to no connection between the two. Appellant's brief offers no reasoning as to how the court abused its discretion.

2. Standard of review

A two-part standard of review applies to a trial court's award or denial of attorney's fees: (1) *de novo* review as to whether there is a legal basis for awarding attorney fees by statute, under contract or equity, and (2) abuse of discretion review as to the amount of attorney's fees and the reasonableness thereof.

Falcon Properties LLC v. Bowfits 1308 LLC, 16 Wn. App. 2d 1, 11, (2020).

The Court of Appeals may affirm a trial court's ruling on any basis supported by the record. *In re Marriage of Raskob*, 183 Wn. App. 503, 514-15 (2014).

3. A legal basis for attorney's fees exists under RCW 7.21.030

Appellant offers a cursory argument that there was no legal basis for the fees. This is a curious argument, given the language of the remedial contempt statute: “If the court finds that the person has failed or refused to perform an act that is yet within the person’s power to perform, the court may find the person in contempt of court and impose a remedial sanction.” RCW 7.21.030(2). A court may also impose any order designed to ensure compliance with a prior order of the court. RCW 7.21.030(2)(c). The court may, in addition to the remedial sanction, order a person found in contempt to pay a party for any costs incurred in connection with the contempt proceeding, including reasonable attorney’s fees. RCW 7.21.030(3).

Here, the Superior Court ruled that Wong Fleming was in contempt for failing to note its withdrawal filing before Judge Thorp, as required by a prior order of the court. CP 455-57.

As a remedial sanction to address the ongoing problematic filings, the Court ordered that the notice of withdrawal should be noted before Judge Thorp as required by the prior order. *Id.* In

addition, the Court ordered Wong Fleming, who was in contempt, to pay attorney's fees to Mr. Tavaglione for the show cause hearing, preceding motion, and all related efforts. CP 455-57.

In sum, the Superior Court found Wong Fleming in Contempt, issued an order as a remedial sanction, and awarded attorney's fees and costs as part a result of the contempt and remedial sanction pursuant to RCW 7.21.030. Therefore, there was a legal basis for the attorney fee award by statute, and the Superior Court's order should be affirmed.

4. The Superior Court did not Abuse its discretion in the award of the amount of fees

An award of attorney fees, and the reasonableness thereof, is reviewed for an abuse of discretion. *Park Place Motors, Ltd. V. Elite Cornerstone Constr., LLC*, 18 Wn. App. 2d 748, 753 (2021). A fee award will not be overturned absent a showing of abuse of discretion by the trial court. *Equip. Leasing Corp. v. Hutton*, 84 Wn.2d 320, 327–28 (1974). “Abuse of discretion” is, of course, discretion that is manifestly unreasonable, or exercised on

untenable grounds, or for untenable reasons. *Ugolini v. Ugolini*, 11 Wn. App. 2d 443, 446 (2019). The appellant bears the burden of proving the court abused its discretion. *State v. Rogers*, 9 Wn. App. 2d 1009 (2019).

Here, the trial court based the amount of its attorney fee award on the number of hours worked multiplied by the hourly rate of counsel. CP 458-70, 479-82. This is generally known as the “lodestar” method. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 593-94 (1983). The Superior Court drew upon its prior orders, which had established counsel’s rate on multiple prior occasions. CP 81-84, 266-68. The Superior Court already had extensive evidence of the hourly rate based on prior briefing, its own prior orders on fees, and knowledge of the legal market in King County. CP 43-63, 81-84. Atlas argues that the fee was unreasonable because “there was no analysis of the fee award.” Op. Br. at pp. 35-36. However, the Court invoked its prior analysis – to which Atlas and WF were privy – and explained that it previously found counsel’s rate “reasonable based on the

experience, skill and education and supported with this Court’s previous fee awards.” CP 479-82.

Here, the Superior Court had extensive information and prior orders to draw from to establish reasonable fees and noted that in its analysis of the fee award. CP 43-63, 81-84, 266-68, 458-70, 479-82. Atlas takes no issue with any specific aspect of the court’s ruling, and makes no argument beyond general grievances and repeating the standard of review, making it difficult to address the argument. Appellant has failed to meet its burden to demonstrate reversible error and the Superior Court’s order should be affirmed.

5. *Atlas may not bootstrap final, non-appealable orders into this appeal*

In an effort to blur lines and blend legal standards, Appellant argues that fees were improper because there was no finding of intentional conduct. As a threshold matter, the order of contempt is not on appeal.⁹ The only orders designated in the notice of appeal

⁹ The December 22, 2022 order (finding Wong Fleming in contempt) is a final order from which an appeal could have

are the order on motion to withdraw (CP451-54) and the order awarding attorney fees (CP479-82). Atlas' attempt to bootstrap a non-appealable, final order into these proceedings should be disregarded.

Even if a party were not required to designate orders for review, Appellants' argument would fail. RAP 5.3(a)(3). As it stands, the record indicates that Wong Fleming's action was, in fact, intentional – the paralegal whom Wong Fleming asked to testify claimed that the conduct was allowable because the court rules did not require Wong Fleming to comply with the order. CP 320-328. In other words, Wong Fleming acted intentionally, as it believed its behavior was acceptable and permitted.

In any event, Appellants' attempts to inject "intent" standards into the civil contempt statute should be ignored; "intent" generally applies to findings of bad faith required under CR 11 and other authority not relevant here.

been had. CP 455-57. Appellant(s) elected not to appeal that order.

6. *Gronquist has no bearing on this case*

Wong Fleming cites *Gronquist v. Dep't of Corr.*, 196 Wn.2d 564 (2020) for the faulty proposition that a party must have “losses” to obtain attorney’s fees, which takes the case greatly out of context. This is not the principle espoused by *Gronquist*, which involved a *pro se* litigant sought attorney’s fees for contempt that had occurred in the past. *Id.* at 574-575.

In the case at bar, the court ordered a remedial sanction under RCW 7.21.030(2) (an order designed to ensure compliance with a prior order) because Wong Fleming was actively in contempt of court. The court may, in addition to the remedial sanctions set forth in subsection (2) of this section order a person found in contempt to pay any costs incurred in connection with the contempt proceeding, including reasonable attorney’s fees. RCW 7.21.030(3).

As the Supreme Court stated in *Gronquist*, a party seeking costs and attorney fees under subsection (3) must first allege some underlying contemptuous conduct and establish a violation of

Washington's civil contempt statute. 196 Wn.2d 564. That is what occurred here. Mr. Tavaglione successfully alleged contemptuous conduct and the Superior Court found Wong Fleming in contempt, for which the court crafted a remedy, and appropriately awarded fees pursuant to that violation. The Plaintiff in *Gronquist*, by contrast, failed to establish any contemptuous conduct.

7. Due process is not implicated

Again, the Superior Court awarded attorney's fees to Mr. Tavaglione under the remedial sanctions statute, RCW 7.21.030. Appellant argues, without evidence or support in the record, that the Superior Court's award was "criminal" and Wong Fleming was denied due process of a trial by jury. Opp. Br. at pp. 36-37.

It is difficult to unpack and respond to this argument, as the trial court's orders recite that Wong Fleming's contempt was based on its failure to comply with a task ordered by the court - noting its withdrawal filing before Judge Thorp. RP 26, CP 455-57.

As a consequence of contempt, fees are authorized by statute. RCW 7.21.030(2) (“if the court finds that the person has failed or refused to perform an act...”). The court’s finding of contempt was not criminal, thus, due process related to a criminal trial is not issue here. Moreover, fees are not penalties, they are a cost of litigation. *Absher Const. Co. v. Kent Sch. Dist.* No. 415, 79 Wn. App. 841, 847 (1995). By its order, the Superior Court wanted to ensure that Mr. Tavaglione was not absorbing costs occasioned by Wong Fleming’s conduct.

Even assuming, *arguendo*, that due process was at issue, this was easily met. Appellant argues that it was given no notice and no ability to be heard or make arguments. Op. Br. at pp. 36-38. This is not accurate; Wong Fleming **responded to the motion for attorney fees** after being served with a notice of hearing and the motion. CP 458-78. Wong Fleming presented numerous arguments against a fee award, which the court rejected. *Id.* As before, Appellant makes no specific arguments here, other than a generalized grievance that its due process rights were violated.

Because it is difficult for the court and parties to meaningfully assess the merits of grievances over only the *result* of litigation, the Court of Appeals need not consider undeveloped arguments and arguments without authority. *Erection Co., Inc. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 211 n.3 (2011) (citing *State v. Dennison*, 115 Wn.2d 609, 629 (1990); see also *Puget Sound Plywood, Inc. v. Mester*, 86 Wn.2d 135, 142 (1975) (unstated or unargued assignments of error, or without authority bearing on the issues may be deemed waived). Here, Appellant's undeveloped argument around due process should be deemed waived.

8. All Attorney Fee Awards are Directly Traceable to the Events Surrounding Wong Fleming's Contempt

In its December 22, 2022 order, the Superior Court ordered that Mr. Tavaglione was to be reimbursed his fees and costs, payable by Wong Fleming, for the December 16, 2022 show cause hearing, the preceding motion, and all related efforts. CP 455-57. Appellant takes issue with the subsequent January 20, 2023

order granting fees because it awarded fees for the December 16, 2022 show cause hearing. This argument is nonsensical; the Superior Court cited that December 16 hearing as an event for which fees were allowed. CP 455-57. Moreover, the contempt statute allows for an award of **any costs incurred in connection with the contempt proceeding.** RCW 7.21.030. It is axiomatic that a show cause hearing to determine whether Wong Fleming was in contempt was “related” to the subsequent finding of contempt.

Appellant also takes issue with the award of fees related to its December 1, 2022 motion to withdraw. CP 333-41. Wong Fleming attempted to withdraw while an issue regarding its noncompliance with a court order was pending. CP 295-301. It takes no imagination to see that Wong Fleming was trying to slink away into the night after violating the Superior Court’s order and being held responsible for its conduct. To stand up for his own rights – after all, he had just incurred a substantial attorney’s fees bill for defending himself – Mr. Tavaglione had little choice but to file a coherent response to the motion to withdraw. Had he not

done so, Wong Fleming and its client may never have been called to account for their actions. CP 431-42. Thus, counsel's work to respond to Wong Fleming's withdrawal efforts was *directly* related to the contempt proceeding.¹⁰

Finally, Appellant takes issue with the Superior Court properly apportioning the fees incurred in the September 21, 2022 Motion (to Withdraw and Motion to Shorten Time) to Wong Fleming. It was through Mr. Tavaglione's motion for order to show cause and subsequent finding of contempt that it was uncovered that Wong Fleming, despite filing numerous collection lawsuits on behalf of Atlas, it had never communicated with Atlas at all. CP 309-19. Thus, the fees awarded to Mr. Tavaglione against Atlas under RCW 4.84.330 were actually caused by Wong Fleming's rogue actions (filing a motion to shorten time and a

¹⁰ Viewed more broadly; the post-judgment orders at issue, and the orders which preceded them, all addressed the conduct of a party who was eager to use the court system to wring money out of alleged debtors, but who took multiple steps to evade responsibility when its debt collection lawsuit did not pan out.

motion to withdraw without ever speaking to Atlas), and thus were properly apportioned to Wong Fleming. CP 266-68.¹¹

Moreover, such fees were “related to” and in connection to the contempt proceeding, as it was through the contempt proceeding that Wong Fleming admitted that it had never spoken to its “client.” It became clear that Wong Fleming was responsible for Mr. Tavaglione having to author emergency briefing which otherwise would not have been required.

9. Appellant has failed to meet its burden on appeal

The appellant bears the burden of proving the court abused its discretion. *State v. Rogers*, 9 Wn. App. 2d 1009 (2019). “Abuse of discretion” is, of course, discretion that is manifestly unreasonable, or exercised on untenable grounds, or for untenable

¹¹ In other words, had Wong Fleming initially been forthcoming with the court, the allocation of attorney’s fees would have been different. Only because Wong Fleming slowly revealed the truth (that it did not really represent Atlas and that its client, if any, was an undisclosed Texas law firm who would not have standing to bring any collection lawsuits) did the court feel the need to re-allocate an award to comport with the facts before it.

reasons. *Ugolini v. Ugolini*, 11 Wn. App. 2d 443, 446 (2019).

Here, Appellant repeatedly states that the Superior Court abused its discretion, yet fails to demonstrate how its orders are manifestly unreasonable. The Superior Court's orders should be affirmed.

C. **Request for Attorney Fees on Appeal**

Mr. Tavaglione requests an award of attorneys' fees if he successfully defends this appeal. RAP 18.1 allows an award of fees if applicable law provides such a right. A party defending the appeal of a contempt order may recover attorney fees under RCW 7.21.030(3). *R.A. Hanson Co. v. Magnuson*, 79 Wn. App. 497, 505 (1995).

VI. **CONCLUSION**

The Superior Court properly denied Wong Fleming's motion to withdraw, as it was actively in contempt at the time of the decision. The Superior Court properly awarded attorney fees be paid by Wong Fleming for amounts that were a direct result of its actions, inactions, and contempt. Mr. Tavaglione

respectfully requests that this Court affirm the Superior Court's orders.

This document contains 6,008 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 16th day of January, 2024.

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DECLARATION OF MAILING

T. Tyler Santiago declares:

1. I am the attorney for Alfonso Tavaglione. I make this declaration from my personal knowledge.
2. On this date, I caused to be served the foregoing document electronically upon:

Noel S. Yumo
9840 Willos Road NE, Suite 200
Redmond, WA 98052
Attorney for Atlas Debt Holdings, LLC

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

SIGNED THIS 16th day of January, 2024, at Seattle,
Washington.

By /s/ T. Tyler Santiago
T. Tyler Santiago

ANDERSON SANTIAGO, PLLC

January 16, 2024 - 1:16 PM

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