

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES FEICK,
PETITIONER,

v.

BRUTSCHE FAMILY REVOCABLE TRUST ET AL
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE WASHINGTON STATE SUPREME COURT*

APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI

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FILED
SUPREME COURT
STATE OF WASHINGTON
3/5/2024
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

CHARLES FEICK,)	CLERK'S RULING SETTING AMOUNT OF ATTORNEY FEES AND EXPENSES
Petitioner,)	
v.)	
THE BRUTSCHE FAMILY REVOCABLE)	No. 102251-4
TRUST, et al.,)	Court of Appeals No. 57499-3-II
Respondents.)	

By order filed on February 7, 2024, a Department of this Court denied Petitioner Charles Feick's motion to modify the Commissioner's ruling denying the motion for discretionary review. The order also awarded the Respondents, The Brutsche Family Revocable Trust, the Estate of Leo Brutsche, and Michael Brutsche, reasonable attorney fees and expenses as a sanction pursuant to RAP 18.9(a) for answering the motion to modify and directed the Supreme Court Clerk to determine the amount of the award.

On February 16, 2024, the Respondents filed the "RESPONDENTS' AFFIDAVIT OF ATTORNEY FEES", which requests a total award of \$11,745.00 for attorney fees and expenses for preparing and filing the answer to the motion to modify. Per the Order issued by this Court on February 7, 2024, the Petitioner is barred from filing any further pleadings in any appellate court in any case arising from the underlying superior court case or dispute until all outstanding sanctions are paid. The parties were directed to file pleadings by February 26, 2024, indicating whether the Petitioner has paid all outstanding sanctions. On February 26, 2024, the Court received a letter from the Respondents stating that as of February 26, 2024, the Petitioner has not yet paid his outstanding sanctions. The Petitioner did not file a statement about outstanding

sanctions. Accordingly, I conclude that all of the outstanding sanctions have not been paid and therefore, the Petitioner is not permitted to file any further pleadings in this case.

This Court employs the "lodestar" method to determine the amount of attorney fees to award. Under that method, the Court first determines whether the hourly rates claimed by the counsel for the prevailing party were reasonable and then whether the number of hours expended by counsel were reasonable. *Bowers v. Transamerica Title Ins., Co.*, 100 Wn.2d 581, 593-94, 675 P.2d 193 (1983). The party requesting the attorney fees must provide basic documentation of the work performed sufficient to inform the Court of the number of hours worked, the type of work, and the category of the attorneys or other professionals who performed the work. *Id.*, 597.

The declaration indicates an hourly rate of \$450 per hour was charged for the time expended by attorney Brian W. Esler and \$450 per hour for attorney Fabio Dworschak. In light of counsels' degrees of experience, I find that these hourly rates for appellate work are reasonable.

The affidavit filed by Respondents' counsel provided appropriate documentation of the work performed. I find that the time spent answering the motion to modify to be reasonable.

Accordingly, the Respondents, The Brutsche Family Revocable Trust, the Estate of Leo Brutsche, and Michael Brutsche, are awarded reasonable attorney fees and expenses in the total amount of \$11,745.00, which shall be paid by the Petitioner, Charles Feick.

DATED at Olympia, Washington, this 5th day of March, 2024



Sarah R. Pendleton
Supreme Court Deputy Clerk



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

February 26, 2024

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CASE #: 57499-3-II Charles Feick, Appellant v. The Brutsche Family Revocable Trust, et al, Respondents

Charles Feick

The Supreme Court has terminated its review by denying the motion to modify. As a result, the 7/5/2023 order from the Court of Appeals is in force. Per the order, "appellant must provide this court with documentation verifying payment of all such sanctions within 60 days," of the date of this letter. "If verification has not been provided within that time, this court will dismiss this appeal on its own motion." In addition, per the Supreme Court Order, "the Petitioner is barred from filing any further pleadings in any appellate court in any case arising from the underlying superior court case or dispute until all outstanding sanctions are paid."

Sincerely,

Derek M. Byrne
Court Clerk

DMB:h

February 20, 2024

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 102251-4 - Charles Feick v. The Brutsche Family Revocable Trust et al.
Court of Appeals No. 57499-3-II

Counsel:

On February 16, 2024, the Supreme Court received the "RESPONDENTS AFFIDAVIT OF ATTORNEY FEES" in regards to a request for attorney fees.

The determination of the amount of fees that will be awarded is set for consideration on the Supreme Court Clerk's February 29, 2024, Motion Calendar and will be determined without oral argument unless otherwise requested by the Clerk. See RAP 18.1(j). Petitioner may file an objection to the request for attorney fees within 10 days of service of the Respondent's affidavit, provided that he has paid all outstanding sanctions as required in the Court's February 7, 2024 Order. **Both parties are requested to file pleadings by February 26, 2024, indicating whether the Petitioner has paid all outstanding sanctions.**

Sincerely,



Erin L. Lennon
Supreme Court Clerk

ELL:jm

THE SUPREME COURT OF WASHINGTON

CHARLES FEICK,)	No. 102251-4
)	
Petitioner,)	ORDER
)	
v.)	Court of Appeals
)	No. 57499-3-II
THE BRUTSCHE FAMILY REVOCABLE)	
TRUST, et al.,)	
)	
Respondents.)	
)	
)	

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener, considered this matter at its February 6, 2024, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied. The "Petitioner's Motion to Supplement the Record and Take Judicial Notice" is granted in part as follows: the documents attached to the motion are placed in the file. The remainder of the motion is denied. The Respondents' request for attorney fees for filing an answer to the motion to modify is granted. The Respondents are awarded reasonable attorney fees and expenses as a sanction pursuant to RAP 18.9(a). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), the Respondent should file an affidavit with the Clerk of the Washington State Supreme Court. In addition, the Petitioner is

barred from filing any further pleadings in any appellate court in any case arising from the underlying superior court case or dispute until all outstanding sanctions are paid.

DATED at Olympia, Washington, this 7th day of February, 2024.

For the Court


CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CHARLES FEICK,

Petitioner,

v.

**THE BRUTSCHE FAMILY
REVOCABLE TRUST, et al.,**

Respondents.

No. 102251-4

Court of Appeals No. 57499-3-II

RULING DENYING REVIEW

Pro se petitioner Charles Feick seeks discretionary review of a decision by Division Two of the Court of Appeals staying petitioner's appeal in cause number 57499-3-II until petitioner pays all sanctions imposed by "any court in any dispute involving" petitioner and respondents in this matter: The Brutsche Family Revocable Trust, the Estate of Leopold Channing Brutsche, Michael Brutsche, Martha Carr, Charles Carr, and Creative Solutions Equipment, Inc. (collectively the Trust). The motion for discretionary review is denied for reasons explained below.

This matter traces its origins to petitioner's history of litigation against the Trust. In the course of that strife, petitioner's frivolous and abusive litigation conduct has prompted multiple courts to sanction him monetarily four times: twice in the superior court (\$7,500 each time), once in the Court of Appeals (\$2,546.55), and once in this court (\$2,830). This court in particular barred petitioner from filing any further

documents in that case until he paid the \$2,830 in sanctions. No. 99542-7 (Dec. 1, 2021). The superior court has essentially deemed petitioner to be a vexatious litigant.

Meanwhile, petitioner filed a notice of appeal in the Court of Appeals, allegedly his fourth, apparently challenging the most recently imposed superior court sanction (\$7,500). No. 57499-3-II. The Trust moved to require petitioner to pay four outstanding court-imposed sanctions, totaling \$30,931.94, including interest. The unpaid sanctions included the \$7,500 sanction on appeal and the \$2,830 sanction imposed by this court. Petitioner opposed the motion, but his arguments for the most part were directed to the underlying merits of his disputes with the Trust, including a long rejected claim that the Trust lacks standing, and challenges to the legitimacy of the sanctions orders.

Commissioner Karl Triebel granted the Trust's motion in part, barring petitioner from filing any documents in the Court of Appeals in that case until petitioner paid the \$2,546.55 sanction the court had imposed previously. The commissioner questioned whether the Court of Appeals had authority to require petitioner to pay fees owed to other courts as a condition of continuing with his appeal.

A panel of judges granted the Trust's motion to modify and ordered the appeal stayed until petitioner "paid all sanctions that have been imposed by any court in any dispute involving the same parties." Order Granting Mot. to Modify at 1 (Jul. 5, 2023). The court further directed that the appeal would be dismissed unless petitioner verified within 60 days that he had paid all outstanding sanctions.

Petitioner now seeks discretionary review in this court. RAP 13.3(a)(2), (c), (e); RAP 13.5(a). The Trust opposes discretionary review and seeks further sanctions if this court denies review, including a renewed order barring petitioner from filing documents until all sanctions are paid. The parties presented oral argument at a videoconference hearing on October 18, 2023.

Petitioner argues the Court of Appeals committed obvious error that renders further proceedings useless, probable error that substantially alters the status quo or that substantially limits a party's freedom to act, or that the Court of Appeals departed so far from the accepted and usual course of judicial proceedings as to justify this court exercising its revisory jurisdiction over this matter. RAP 13.5(b). None of these criteria applies to this case.¹

An appellate court may condition a party's right to prosecute an appeal "on compliance with terms of an order or ruling including payment of an award which is ordered paid by a party." RAP 18.9(a). This rule permits an appellate court to bar a litigant from filing documents in an appeal until the litigant has satisfied outstanding sanctions. *See Yurtis v. Phipps*, 143 Wn. App. 680, 687, 181 P.3d 849 (2008) (Supreme Court barred petitioner from further litigation until sanction paid). More generally, courts of record have inherent authority to control the conduct of litigants who interfere with the court's orderly proceedings. RCW 2.28.010(3); *In re Marriage of Lilly*, 75 Wn. App. 715, 720, 880 P.2d 40 (1994). An appellate court therefore has discretion to place reasonable restrictions on litigants who abuse the judicial process. *In re Marriage of Giordano*, 57 Wn. App. 74, 78, 787 P.2d 51 (1990).

The Court of Appeals order conditioning petitioner's appeal on his payment of outstanding sanctions is consistent with these principles generally. Accordingly, there is no "obvious" error—a plain and manifest error—within the meaning of RAP 13.5(b)(1). The Court of Appeals order may be debatable to the extent it encompasses this court's previous order imposing sanctions on petitioner, but petitioner

¹ The Trust urges that petitioner may not seek relief in this court at all in light of this court's order entered in No. 99542-7 on Dec. 1, 2021. I am not persuaded the order is that broad. It applied to the case then before the court. I will therefore consider the instant motion for discretionary review.

cites no authority indicating it was obviously or manifestly wrong in light of petitioner's vexatious litigation conduct generally.

If the Court of Appeals decision is viewed as probable error because it applies to this court's sanction order (which need not be decided in any event), the error is reviewable only if it has immediate effects outside the courtroom; in other words, the probable error is not reviewable if it merely alters the status quo or limits a party's freedom to act in relation to the instant litigation. *In re Dependency of N.G.*, 199 Wn.2d 588, 596, 510 P.3d 335 (2022). The Court of Appeals restriction on petitioner's ability to prosecute his appeal is part and parcel of the case and is therefore unreviewable under the probable error standard.

There is no departure from the accepted and usual course of judicial proceedings within the meaning of RAP 13.5(b)(3), also. As indicated, the Court of Appeals has inherent authority to control its proceedings. *Lilly*, 75 Wn. App. at 720. The court's decision in this instance is consistent with that general principle. In sum, petitioner fails to show any compelling basis justifying this court's review.²

The Trust requests costs and attorney fees for answering a frivolous motion for discretionary review, again citing RAP 18.9(a). The Trust further asks this court to restrict petitioner from filing further pleadings until all accumulated sanctions are paid. Petitioner exercised his right to seek discretionary review of the Court of Appeals decision. RAP 13.3(a)(2), (c), (e); RAP 13.5(a). The motion for discretionary review is meritless but not plainly frivolous in light of the commissioner's ruling subsequently modified in the Court of Appeals and the broad sweep of the modification order. The Trust's request for fees is therefore denied. In addition, there is no compelling need at

² Petitioner repeatedly asserts he is indigent. But there is no apparent superior court order of indigency in the record and petitioner states he recently paid part of the outstanding sanctions. Petitioner's financial situation is not the real issue in any event – it is his unrelenting vexatious litigation.

this juncture to condition petitioner's right to seek modification of this ruling on the payment of sanctions accumulated under other cause numbers. It is uncertain I have authority to place such a condition on petitioner in any event. Nonetheless, I take this opportunity to caution petitioner strongly that his history of vexatious litigation may result in the imposition of further and more severe sanctions by this court.

The motion for discretionary review is denied.

Michael E. Whistler
COMMISSIONER

October 23, 2023

Supreme Court No. 1022514 Charles Feick v. The Brutsche Family Revocable Trust et al.

1 message

Woodrow, Becky <Becky.Woodrow@courts.wa.gov>

Mon, Oct 23, 2023 at 10:24 AM

To: "buck_carr@hotmail.com" <buck_carr@hotmail.com>, "Fabio.Dworschak@MillerNash.com" <Fabio.Dworschak@millernash.com>, "brian.esler@millernash.com" <brian.esler@millernash.com>, "justitia.et.lex5@gmail.com" <justitia.et.lex5@gmail.com>, "stewartlaw@live.com" <stewartlaw@live.com>

Clerk, Counsel and Parties:

Attached is a copy of a document in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail.

ATTENTION: Beginning September 1, 2021, per new RAP 18.17, the Washington State Supreme Court will be shifting from page count limits to word count limits. For more information see www.courts.wa.gov/wordcounts

Any documents filed with this Court should be submitted via our web Portal: <https://ac.courts.wa.gov/>

Please do not respond to this email. Any questions or response should be directed to our main email address, which is: supreme@courts.wa.gov.

 - 1022514 - Public - Ruling - Terminating Review - - Comm'r Ruling Denying Review - 10 23 2023.pdf
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Filed
Washington State
Court of Appeals
Division Two

July 5, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CHARLES FEICK, individually, derivatively
on behalf of Nominal Defendant, THE GREEN
HARVEST CORPORATION,

Appellant,

v.

THE BRUTSCHE FAMILY REVOCABLE
TRUST, THE ESTATE OF LEOPOLD
CHANNING BRUTSCHE, MICHAEL
BRUTSCHE, MARTHA CARR, CHARLES
CARR, CREATIVE SOLUTIONS
EQUIPMENT, INC.,

Respondents,

and

THE GREEN HARVEST CORPORATION,

Defendant below.

No. 57499-3-II

**ORDER GRANTING MOTION
TO MODIFY COMMISSIONER'S
RULING**

Respondents have moved to modify the March 30, 2023, Commissioner's ruling requiring appellant to pay only fees imposed by this court before filing further pleadings. After review it is hereby

ORDERED respondent's motion to modify Commissioner's ruling is granted. This appeal is stayed until appellant has paid all sanctions that have been imposed by any court in any dispute involving these same parties. Appellant must provide this court with documentation verifying

payment of all such sanctions within 60 days of the date of this order. If verification has not been provided within that time, this court will dismiss this appeal on its own motion.

FOR THE COURT: Jj. Lee, Glasgow, Price.

Glasgow, C.J.
GLASGOW, C.J.

D2 574993--CHARLES FEICK, APPELLANT V. THE BRUTSCHE FAMILY REVOCABLE TRUST, ET AL, RESPONDENTS--Order Granting Motion to Modify

1 message

Belisle, Hyla <Hyla.Belisle@courts.wa.gov>

Wed, Jul 5, 2023 at 9:05 AM

To: "justitia.et.lex5@gmail.com" <justitia.et.lex5@gmail.com>, "stewartlaw@live.com" <stewartlaw@live.com>, "brian.esler@millernash.com" <brian.esler@millernash.com>, "Fabio.Dworschak@MillerNash.com" <Fabio.Dworschak@millernash.com>, "buck_carr@hotmail.com" <buck_carr@hotmail.com>

Office Hours

9:00 am to 12:00 pm

1:00 pm to 4:00 pm

You may file documents electronically as provided below. Briefs are considered filed as of the postmark date. RAP 18.6(c). Briefs may only be filed electronically through the portal website. Close of business remains 5 pm .

To Counsel and Interested Parties:

Attached is a Order filed today, 7/5/2023.

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent via the Washington State Appellate Courts' Portal. In order to use the portal to file with the courts, you will first need to register and set up a free account at <https://ac.courts.wa.gov>. If you have difficulty accessing the new portal, please contact the Administrative Office for the Courts at 800-442-2169. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 or coa2@courts.wa.gov if you have any questions or comments.

Thank you.

Hyla Belisle
Case Manager

-- 574993 - Public - Order - Motion to Modify - 7-5-2023 - - Order Granting Motion to Modify Commissioner
 s Ruling - Glasgow, Rebecca.PDF
83K



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

March 30, 2023

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CASE #: 57499-3-II Charles Feick, Appellant v. The Brutsche Family Revocable Trust, et al, Respondents

Counsel and Appellant:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER TRIEBEL:

Respondent's request to limit Appellant's ability to file until sanctions are paid is granted in part.

As Respondent notes, Appellant has previously been ordered by this court to pay fee sanctions of \$2,546.55. Resp. Dec. Exh. 11. But it is not clear that this court has the authority to require payment of fees owed to other courts before accepting an appeal in this court. Thus, in the interests of justice and following the guidance of RAP 18.9(a), it is hereby ORDERED that:

Appellant may not file any further documents in this court and in this case until the \$2,546.55 attorney fee sanction previously imposed by this court has been paid in full. See Resp. Dec. Exh. 7 (Supreme Court order imposing similar sanction); Resp. Dec. Exh. 11 (this court's previous sanction).

Correspondingly, this court denies Appellant's related motion to strike.

Very truly yours,

Derek M. Byrne
Court Clerk

**D2 574993-CHARLES FEICK, APPELLANT V. THE BRUTSCHE FAMILY REVOCABLE TRUST, ET AL,
RESPONDENTS--Ruling**

1 message

Belisle, Hyla <Hyla.Belisle@courts.wa.gov>

Thu, Mar 30, 2023 at 9:04 AM

To: "buck_carr@hotmail.com" <buck_carr@hotmail.com>, "brian.esler@millernash.com" <brian.esler@millernash.com>, "stewartlaw@live.com" <stewartlaw@live.com>, "justitia.et.lex5@gmail.com" <justitia.et.lex5@gmail.com>

Washington State Court of Appeals Division Two



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Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4**To Counsel and Interested Parties:**

Attached is a Ruling filed today, 3/30/2023.

This will be the only notice you will receive from the court.

The court requests that motions and other correspondence be sent via the Washington State Appellate Courts' Portal. In order to use the portal to file with the courts, you will first need to register and set up a free account at <https://ac.courts.wa.gov>. If you have difficulty accessing the new portal, please contact the Administrative Office for the Courts at 800-442-2169. When filing electronically, please do NOT follow up with a paper copy.

Please contact the court at (253) 593-2970 or coa2@courts.wa.gov if you have any questions or comments.

Thank you.

Hyla Belisle
Case Manager

 **CHARLES FEICK, APPELLANT V. THE BRUTSCHE FAMILY REVOCABLE TRUST, ET AL, RESPONDENTS.pdf**
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