No. 100806-6

SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of

RICHARD J. KIRSCHNER,

Respondent,

v.

LAURA A. DRYBREAD,

Petitioner.

RESPONSE TO PETITIONER'S PETITION FOR REVIEW

By:

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1. IDENTITY OF RESPONDENT

Richard Kirschner ("Richard") is the Respondent regarding this Petition for Review filed by Laura Ann Drybread ("Laura").

2. ANSWER TO RESTATED ISSUES ON REVIEW

2.1. Whether this Court should disregard the plain language of a separation agreement, approved by a trial court judge and incorporated in a dissolution decree—for the purposes of judicially creating an entire new definition of marriage: the "married both spiritually and practically" (CP at 75) or the "essentially married" (RP November 15, 2019, at 17) definition—so that an ex-spouse may unilaterally terminate a non-modifiable maintenance provision because her daughter wants the money paid in maintenance redirected to her in exchange for the ex-spouse being allowed to visit with her grandchildren once again? No.

2.2. Whether this Court should take review of this case for the purpose of contradicting statutes legislatively limiting

courts' authority to modify and terminate nonmodifiable separation agreement provisions because an ex-spouse—making the public policy argument equivalent to "Richard and Karen should not be allowed to live in sin and not be married"— wishes to unilaterally change the terms of a common maintenance provision? No.

2.3. Whether this Court should take review for the purpose of holding that a party can breach the implied duty of good faith and fair dealings by doing nothing more than following the exact terms of a contract? No.

3. RESTATEMENT OF THE CASE

3.1. In 2007, after 27 years of marriage and Richard's long career as a sheriff's deputy, the trial court approved Laura and Richard's separation agreement, incorporating it into their decree of dissolution. (CP at 215-31).

3.2. In pertinent part, the separation agreement provided that the Laura and Richard intended the agreement to be final. (CP at 219). They agreed it was fair and equitable. (CP at 220).

They agreed full disclosure was made, legal counsel was obtained or could have been obtained, and that maintenance provided by Laura to Richard was nonmodifiable unless he died, got remarried, or Laura became disabled. (CP at 219, 222, 227).

3.3. Laura soon thereafter married someone she had known since childhood, "Tommy." (CP at 44-47). Sheri, the parties' child, married a man named "Chad." (CP at 44-47).

3.4. In 2011, Richard reunited with Karen, a childhood friend, at a high school reunion. (CP at 35). He was later hit by car when walking as a pedestrian. (CP at 35). These severe injuries complicated Richard's numerous preexisting medical conditions, including Multiple Sclerosis. (CP at 35).

3.5. In June of 2013, Laura was happy about Richard and Karen being happy together. (CP at 48-51). She sent an email to Richard and wanted to reduce the spousal maintenance she sent to Richard in half, so that half could be used for Sheri's "rent." (CP at 48-51). She offered "Tommy and I will continue to pay the remaining [half,] $1100[,] permanently, even when

you get married. . . .[a]s long as [Richard] marr[ies] Karen!!!. . . ." (CP at 48-51). In the same email from June of 2013, Laura clearly explained that she understood that maintenance terminated "when [Richard] get[s] married. . . .":

> The way our order is written now, *when you get married I would no longer be required to pay what the divorce agreement says*.

(CP at 48-51) (emphasis added).

3.6. Richard used the maintenance payments from Laura to help Sheri, Chad, and Sheri's children (the "grandkids" or "grandchildren" or "Sheri's children") have a place to live; Richard gave them his (larger) home to live in while Richard rented a (smaller) place for himself using the maintenance payments to pay for such rental home. (CP at 48-51).

3.7. In 2014, Laura wrote Sheri and discussed the turbulent and emotional relationships between Sheri and Chad and Laura and Tommy, as well as between Sheri and Chad and Richard and Karen. (CP at 44-47). Laura discussed how Sheri would not let Laura or Tommy see Sheri's children anymore, and

Laura made clear that "there is NOTHING more important to her" than those grandkids. (CP at 44-47) (emphasis added). Laura discussed that Sheri and Chad needed to financially stand on their own two feet, needed to stop "throwing" relationships "away," and needed to stop being dishonest. (CP at 44-47). Laura inferred that financial support could continue if Sheri showed Tommy "respect." (CP at 44-47). Laura discussed that she and Tommy had taken on "unfathomable debt" financially supporting Sheri and Chad. (CP at 44-47). She knew that Richard used his maintenance support to help Sheri and Chad and the grandkids:

> *Tommy and I put ourselves in unfathomable debt helping the two of you* . . . a whole new house set up and rent assistance you claim to have been kicked out . . . . *You find me another kid who has had parents who will move out of their own house for over . . . three years to allow their grandkids to have a place to live that is safe and secure while [Chad] went to school. Your dad[, Richard,] fully realizes it is the money that I pay him [in maintenance] that allows him to do that.*

(CP at 44-47) (emphasis added). Laura discussed how she was

grateful for Richard using the maintenance to help Sheri and Chad and the grandkids and that she "would go back to court" and "sign papers" so that Richard could marry Karen but still "continue" receiving "maintenance payments."

> I even told him to marry Karen and I would go back to court and sign papers to continue maintenance payments under the circumstance with his health; why? Because he was my husband for 27 years and I have special kind of love in my heart for him. You seem to be worried about being left to care for your dad when you found out about the [early onset Alzheimer's]. It took that for you to soften.

(CP at 44-47). Laura reaffirmed how she would always financially support Richard and Karen:

> Well, don't worry about your needs to care for him too much because Tommy and I will always be there to help Karen if she needs it.

(CP at 44-47). Laura stated the "purpose" of the letter was that until things changed, she would "no longer support [Sheri] and Chad":

> So, back to the purpose, we can no longer help support you and chad. . . . What I don't want is continued texts and emails intended to make me feel guilty. . . . my prayers are for my beautiful

grandkids. . . .

(CP at 44-47).

3.8. In the Spring of 2019, Richard was at Providence Urology Clinic. (CP at 37). Senior employees at the hospital humiliated, embarrassed, and abused Richard by using him "as a pawn" when they "initiated" a new employee. (CP at 37). The incident caused "severe flashbacks and nightmares" from decades earlier when Richard was sexually assaulted by a doctor during grade school. (CP at 37). The incident at Providence was heard on the news. (CP at 37).

3.9. In May of 2019, Laura wrote Richard an email closing with "love ya" and expressing grave and sincere concern for what Richard was going through. (CP at 52-54). Laura acknowledged that she and Sheri had read the "news" story on King 5. (*See* CP at 52-54). At this time, Laura expressed no hard feelings towards Richard or Karen, nor did she express a desire to unilaterally terminate the maintenance. (*See* CP at 52-54).

3.10. During this same month, May of 2019, Karen and

Richard identified Karen as his "friend" when seeing his physician. (CP at 204-06) ("Who was seen: Patient and friend" and "As a young adult [Richard] was raped by a doctor during a physical. . . . He has only told one person, the friend with him, about that experience" and "The friend who accompanied him is his primary support and was present during the visit. She accompanies him to his medical appointments and is his confidant.").

3.11. In July of 2019, Laura's views toward Richard and Karen abruptly changed. She moved the trial court to terminate the maintenance provision. (CP at 1-31). The purported basis of the motion was that Laura said she saw the story on King 5 news that (mistakenly) referred to Richard and Karen being "married to each other." (CP at 1-31).

3.12. Richard and Karen filed responsive declarations explaining that "Our friends and family know we're not legally (or spiritually) married, and we do not have intentions of taking that big step in our relationship." (CP at 35-54, 55-57). To avoid

restrictions on Karen's access to medical information of Richard only, they had told medical personal in private, on occasion, that they were married. (CP at 35-54, 55-57).

3.13. Karen explained that she was Richard's "live-in girlfriend", that she was his caregiver[1], that "Richard and I don't have plans to get married anytime soon. . . .", and that Laura was previously supportive of she and Richard's relationship. (CP at 55-57).

3.14. Richard filed medical records detailing his expensive medical history, including Multiple Sclerosis, diabetes, heart disease, and surviving cancer. (CP at 164-206). He also filed a financial declaration stating that he had income of $2,200.00 in maintenance, $1,487.50 is social security disability payments, $650.00 in cash on hand, $33,000.00 in liquid financial accounts such as stocks, and $2,958.28 in expenses

[1] Laura and Sheri repeatedly, and erroneously, claim Karen is employed by, or paid by the State of Washington (or by anyone), to provide caregiving services for Richard. This is not true and has never been true.

each month. (CP at 58-63).

3.15. In August of 2019, Laura filed a declaration in support of the motion to terminate maintenance, as did Sheri. (CP at 68-73, 74-92). Laura stated that "*while it may be true that Richard and Karen are not legally married*, they are married in every other respect, both 'spiritually' and practically." (CP at 75) (emphasis added).

3.16. Sheri, desiring continued financial support from her mom, provided that "[Richard] and Karen are being so very hypocritical while currently committing what I think is a level of fraud." (CP at 68-73). She proffered that Richard's health was in good enough condition to "finish putting together about 75%" of a "play set" for the grandkids. (CP at 68-73). Sheri said "[Richard] *would always make it perfectly clear he was not legally married*." (CP at 68-73) (emphasis added). Sheri stated that "[Richard] and Karen. . . . would comment all the time about they would get married, if they could." (CP at 68-73). She said that Richard "had to work the system." (CP at 68-73). She stated

that “Karen was simply using [Richard] for the free alimony.” (CP at 68-73).

3.17. On August 22, 2019, Laura’s attorney represented to the trial court that this case was an “issue of first impression.” (RP August 22, 2019, at 4). The issue of first impression he said was “it’s against public policy to allow a party to do everything that is associated with marriage except obtain a marriage license and thereby escape having maintenance terminated.” (RP August 22, 2019, at 7).

3.18. The trial court commissioner found that “Because the parties do not have a marriage license, there's no indication that they've actually legally married.” (RP August 22, 2019, at 10). She found that Richard “is simply doing everything but having a legal ceremony” and that “he is married to [Karen] in every other way.” (RP August 22, 2019, at 10-12). The commissioner concluded that “there is a substantial change in circumstances, and [Laura] is no longer required to pay maintenance. . . .” (RP August 22, 2019, at 11). She also

concluded that "it would be against public policy for the court to not terminate the maintenance where . . . [Richard] is simply doing everything but having a legal ceremony." (RP August 22, 2019, at 12).

3.19. Richard moved to revise. He argued that the trial court commissioner erred by basing her ruling on a substantial change in circumstances and erred by modifying non-modifiable spousal maintenance. (CP at 96-118).

3.20. Laura's attorney responded on revision, arguing that the circumstances were extraordinary, and that the general rule that non-modifiable spousal maintenance is not modifiable did not apply. (CP at 119-55). He argued Laura "could not have foreseen [Richard] would marry his new wife in all respects, save for obtaining a marriage license, solely to avoid his maintenance award." (CP at 119-55). He argued the maintenance provision had to be stricken to protect public policy. (CP at 119-55).

3.21. During the hearing on revision, Richard argued the trial court had no authority to modify non-modifiable spousal

maintenance, and that "the law says that the argument [that the separation agreement is unfair] has to be made before the decree is entered." (RP November 15, 2019, at 3-5).

3.22. Laura's attorney agreed with the judge, and conceded that Laura could have foreseen at the time of the divorce decree was executed that "her ex-husband would live with another partner and not marry":

> THE COURT: . . . certainly [Laura] could foresee that her ex-husband would live another partner and not marry. She could foresee that.
>
> Mr. MADISION: Yes. I think so.

(RP November 15, 2019, at 12).

3.23. At the conclusion of the hearing, the trial court judge stated that Richard had "made a really good argument" and that "if it goes up on appeal, I think it will be close call," but denied the revision motion. (RP November 15, 2019, at 16). She then rejected the commissioner's substantial change of circumstance reasoning and basis of that previous ruling. (RP November 15, 2019, at 16). She also rejected the public policy

reasoning by the commissioner because the "parties can make the contract that they have made here." (RP November 15, 2019, at 17). Instead, the judge concluded that "the maintenance obligation ends because [Richard] is essentially married." (RP November 15, 2019, at 17); Unpublished Decision at 5).

3.24. Written findings or conclusions were "reserved." (CP at 161-63).

3.25. On appeal, "Laura d[id] not claim any cohabitation or CIR relationship forms the basis for terminating or modifying maintenance." (Brief of Respondent at 17). She conceded that her paying maintenance was not an extreme financial hardship and that the separation agreement was not unfair when executed. (Brief of Respondent at 30) (stipulating that "neither the *Hulschner* nor the *Glass* exceptions directly apply to this case. . . .").

3.26. Instead, Laura argued that Richard's "unique" relationship deems him "essentially married" and the maintenance provision should terminate. She elaborated by

adding that she "could not possibly have foreseen the depths to which Richard has descended to force [her] to support him and his new spouse. . . ." (Brief of Respondent at 34). Laura cited caselaw that declined to enforce agreed child support contract provisions inconsistent with child support statutes. She believed Richard was acting in bad faith by not marrying Karen and still collecting maintenance pursuant to the separation agreement. (Brief of Respondent at 22-23).

3.27. Division 2 reversed holding that the trial court had no authority to terminate the maintenance provision. (Unpublished Decision). It denied Laura's motion to reconsider and publish as nothing about the ruling created new precedent.

3.28. In her Petition for Review, Laura made the same arguments as she did in response to Richard's appeal. While conceding that Richard had not legally remarried as the separation agreement required for maintenance to end, Laura nonetheless requested this Court terminate Richard's maintenance. She argued public policy dictated Richard was not

allowed to live with Karen in a marital-like relationship and still collect maintenance pursuant to the terms of the separation agreement. She believed Richard was acting in bad faith by cohabitating with Karen but not legally marrying her.

4. ARGUMENT IN RESPONSE TO PETITION FOR REVIEW

4.1. It is Undisputed that Richard and Karen are Not Married.

Chapter 26.04 RCW as a whole governs marriages in Washington. Under RCW 26.04.010(1), a marriage is defined as "a civil contract between two persons who have each attained the age of eighteen years, and who are otherwise capable." In *In re Marriage of Tower*, 55 Wn. App. 697, 703-04, 780 P.2d 863 (1989), *review denied*, 114 Wn.2d 1002 (1990), the court held (1) that the trial court improperly ordered spousal maintenance to terminate upon cohabitation, and (2) "that a provision which terminates long-term maintenance because of 'cohabitation', even when construed as tantamount to marriage, must be based upon a subsequent finding of substantial change of circumstance

in the recipient's finances." *Id*.

"To cohabit is defined as 'to live together as husband and wife usually without a legal marriage having been performed.'" *Marriage of Tower*, 55 Wn. App. at 703-04 (citing Webster's Third New International Dictionary 440 (1971); 21 Kenneth W. Weber, Wash. Practice sec. 57.11-.12, .24 (1997) (stating there is no common law or statutory duty of maintenance between cohabitants)). Unmarried partners are not entitled to all of the rights of married couples. *Olver v. Fowler*, 161 Wn.2d 655, 666-68, 168 P.3d 348 (2007) (Supreme Court holding it "has not extended all of the rights of married spouses to unmarried partners."). Common law marriages, inapplicable to Washington State, require an agreement and intent to be married. *Peffley-Warner v. Bowen*, 113 Wn.2d 243, 250, 778 P.2d 1022, 1025 (1989) (holding "Merely living together, even as husband and wife, does not make a common-law marriage").

Here, as the Court of Appeals ruled, "it is undisputed that

Richard and Karen have not entered into a civil contract for marriage under RCW 26.04.010." (Unpublished Decision at 7). "Therefore, Kirschner and Karen are not married under RCW 26.04.010" nor "under chapter 26.04 RCW generally." *Id.* Additionally, even if the Richard and Karen's "cohabitation" was "tantamount to marriage"[2] caselaw has already held terminating the maintenance provision is prohibited. *Marriage of Tower*, 55 Wn. App. at 703-04. Accordingly, Laura's Petition should be denied.[3]

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[2] Laura erroneously argues that Richard and Karen enjoy all the benefits of a legal marriage. But, as a few examples to the contrary, Karen cannot inherit under the intestate statute, she cannot collect damages in a wrongful death action if Richard died (*Roe v. Ludtke Trucking*, 46 Wn. App. 816, 819, 732 P.2d 1021, 1023 (1987)), and only married spouses are entitled to unemployment benefits. *Davis v. Dep't of Employment Sec.*, 108 Wn.2d 272, 737 P.2d 1262 (1987), etc.

[3] Richard has not argued the constitutional implications of the trial court's ruling, infringing on Richard and Karen's fundamental right to marry or not marry anyone they choose (*e.g.*, *State v. Warren*, 165 Wn.2d 17, 34, 195 P.3d 940, 948 (2008)) because it was not at all necessary for him to prevail in this appeal. That said, he mentions it here only to highlight the far-reaching precedent Laura requests this Court judicially create.

4.2. The Separation Agreement Unambiguously Ends Maintenance Upon "Remarriage".

A contract is construed to give controlling weight to the parties' intent, as expressed in the contract's plain language. *W. Plaza, LLC v. Tison*, 180 Wn. App. 17, 22, 322 P.3d 1 (2014) *review granted*, 336 P.3d 1165 (2014). Courts "give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 712, 334 P.3d 116, 120 (2014) (quoting *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005)).

In the context of dissolution proceedings, "contracts, where they have been examined and approved by a trial court, are very generally upheld." *Kinne v. Kinne*, 82 Wn.2d 360, 364, 510 P.2d 814, 817 (1973). Where the parties' "expression of intent" is that they will not "seek reduction or termination of the payments unless the eventualities mentioned in the agreement

should occur," the parties are "bound under the decree and the contract." *Id.* at 818.

Here, the separation agreement was well-drafted and clear. Nothing was out of the ordinary. It was expressly agreed that maintenance ended upon Richard's remarriage. Laura understood the provision, stating in 2013, "The way the order is written now, when you get married I would no longer be required to pay. . . ." (CP at 48-51). The trial court deemed the (common) provision fair when it entered the dissolution decree. The parties could have agreed to end maintenance based on something lesser than remarriage such as cohabitation but did not.[4] Thus, the law requires that the plain language of the separation agreement be followed, as Laura originally interpreted it, and this Petition should be denied.

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[4] Laura has no equitable basis to terminate maintenance contrary to the terms of the separation agreement. *See Spokane Cooperative Mining Co. v. Pearson*, 28 Wash. 118, 124, 68 P. 165, 167 (1902) (holding even an inequitable judgment will not be set aside when it was the result of negligence by the party complaining).

4.3. Superior Courts Have No Authority to Modify an Agreed, Nonmodifiable, Spousal Maintenance Provision.

Courts have no authority to modify an agreed, nonmodifiable, spousal maintenance provision that is embodied in a decree of dissolution. RCW 26.09.070(7); RCW 26.09.170; *In re Marriage of Hulscher*, 143 Wn. App. 708, 714-17, 180 P.3d 199 (2008) ("A separation contract which precludes or limits the court's power to modify an agreed maintenance award, once approved by the court and embodied into a decree, is to be enforced in accord with its terms."); *In re Marriage of* Glass, 67 Wash.App. 378, 390, 835 P.2d 1054 (1992).

Here, Laura has conceded that she is not subject to extreme unforeseen financial circumstances and that the separation agreement was not unfair when made part of the dissolution degree.[5] Furthermore, her attorney conceded to the trial court that

[5] It is readily apparent that Laura's motion to terminate maintenance was driven by three factors. First, Laura has made clear nothing (including her relationship with Richard and Karen) is more important to her than visiting her grandchildren.

it was foreseeable to Laura that Richard would live with another but not actually remarry. (RP November 15, 2019, at 12). Nothing in law or equity allows Laura to unilaterally modify the separation agreement.

The trial court judge revised the commissioner's ruling that the maintenance provision was subject to modification because the commissioner's ruling was contrary to law. The Court of Appeals ruled that the trial court did not modify the separation agreement, but rather erred by terminating it. Since there is no lawful way to modify the maintenance provision, Laura's Petition to do so should be denied.

4.4. The Separation Agreement was Not Against Public Policy.

Under RCW 26.09.170, "[u]nless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party

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Second, Laura is financially burdened by continuing to financially support Sheri well into her adulthood. Third, Sheri is has essentially threatened to end Laura's visitation with the grandchildren if the financial support from Laura ends.

or the remarriage of the party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance." A separation agreement is enforceable if it was fair "at the time of its execution." RCW 26.09.070(3). It is substantively fair if it considers "economic" and other circumstances. RCW 26.09.070(3). It is procedurally fair if it was freely entered into, and full disclosure was made. *See* RCW 26.09.070(3).

Here, the spousal maintenance provision in the separation agreement is consistent with applicable statutes and does not violate public policy. The provision to end maintenance upon remarriage is very common. Parties are free to agree to end maintenance for lesser reasons such as cohabitation. But that is not what the parties negotiated or agreed. Laura's desire to change the terms of the contract to something other than "remarriage" is not a public policy reason to terminate Richard's maintenance. Moreover, Laura's public policy argument—that Richard and Karen being together living in sin and not getting

married—is not a persuasive reason for this Court to invalidate the separation agreement.

First, the public policy of Washington State is to enforce "amicable settlements of disputes." RCW 26.09.070(1). In this case, there is no question that this was an amicable settlement. Laura happily entered into it. She abided by the maintenance provision—all the while knowing the intimacies of Karen and Richard's relationship—for over a decade. The underlying reason she filed the motion to terminate was because in "2014 . . . Sheri removed her children . . . from Laura's life." (Brief of Respondent at 10-11). By ending Richard's maintenance, Laura hopes to use that money to pay off "unfathomable debt" from supporting Sheri (CP at 44-47), and perhaps to bribe Sheri into letting her see the grandchildren again. But public policy does not support changes to families' ever-changing "emotional" interests. Public policy supports "finality" as to dissolution decrees and settlement agreements. *In re Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664, 667 (2003).

Second, Laura's citation to child support cases has no applicability in this case. Those cases rejected domestic agreement provisions that violated RCWs concerning child support for the benefit of minor children. In this case, the maintenance provision complies with all applicable RCWs. *See e.g.*, RCW 26.09.070(7). A judge approved the separation agreement in 2007. If anything, Richard's disabilities and need for continuing financial support put public policy considerations squarely on his side. Just as the Court would not lessen support for minor children, *e.g.*, persons with an incapacity caused by age, this Court should not lessen support for Richard, *i.e.*, a person with an incapacity caused by medical disabilities. Thus, Laura's Petition should be denied.

4.5. Richard Has Not Acted in Bad Faith by Following the Explicit Terms of the Separation Agreement.

"[T]he duty of good faith does not extend to obligate a party to accept a material change in the terms of its contract." *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356,

360 (1991). "Nor does it inject substantive terms into the parties' contract." *Id*. (internal punctuation omitted). "As a matter of law, there cannot be a breach of the duty of good faith when a party simply stands on its rights to require performance of a contract according to its terms." *Id*.; *Seattle-First Nat'l Bank v. Westwood Lumber*, 65 Wn. App. 811, 822, 829 P.2d 1152, 1158 (1992). Parties are under no obligation to renegotiate their contracts. *Badgett*, 116 Wn.2d at 572.

Here, Laura argued that Richard violated the implicit duty of good faith and fair dealing by cohabitating in a marriage-like relationship but refusing to legally marry in order to continue receiving maintenance. The terms in the separation agreement explicitly require remarriage to terminate spousal maintenance, and Laura agreed to those terms. There can be no bad faith in complying with the explicit terms of a contract.

Laura bewilderingly cited *Rouse* and *Badgett*. *Rouse v. Peoples Leasing Co.*, 96 Wn.2d 722, 638 P.2d 1245 (1982) as the support of her bad faith argument. In *Rouse*, the court ruled that

the title of a contract, *i.e.*, a lease, did not govern its substance, which was a loan. It did not rule on the enforceability of the substance of the contract at all. This holding does not support Laura's Petition. The issue is whether this Court should take review for the purpose of redefining the definition of marriage to something less than marriage. Under the plain terms of the separation agreement, maintenance shall continue as agreed until Richard remarries. Richard relying on this provision is not bad faith, and this Court has no reason to take review.

In *Badgett*, the court found that there was no breach of the duty of good faith because the party sued was "not obligate[d]" to renegotiate the terms of a contract. *Id*. at 574. In the case at hand, the same rationale applies. Richard is not required to renegotiate the contractual maintenance provision. *See id*. This case provides no reason for this Court to take review.

Ironically, Laura brought her motion to terminate maintenance in bad faith. She stated she brought the motion based upon hearsay on the news that Richard was remarried. In

realty, Laura's abrupt change in feelings towards Richard and Karen did not occur for some time after that news story aired and Laura learned of it. Based on the correspondence between Laura and Sheri, it appears Sheri is extorting more financial assistance from Laura in exchange for Laura to be able to spend time with the grandchildren. Regardless of Laura's reason for bringing this suit, when Richard responded to her motion and made it clear that he was not remarried, Laura—in bad faith—changed her arguments so the litigation could continue.[6] Her new arguments directly contradicted her own previous, and original, interpretation of the separation agreement (CP at 48-51) that required Richard to actually get remarried before maintenance would end. This Court should deny Laura's Petition for review.

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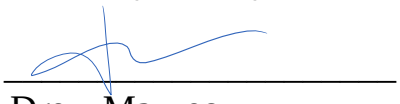
[6] Laura's motion mentions the news story as the sole justification for the court to grant relief. (CP at 1-4). The motion made no mention of "public policy" arguments or the like. (CP at 1-4). Those arguments evolved as the litigation continued when it became clear Richard had not remarried.

5. CONCLUSION

Pursuant to RAP 13.4, Richards respectfully requests this Court deny review, for the reasons stated herein.

Respectfully submitted this 6th day of May, 2022,



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