No. 102677-3

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

ROBERT W. COONEY,

Respondent,

and

HILLARY A. BROOKS,

Petitioner.

ANSWER TO PETITION FOR REVIEW

WECHSLER BECKER, LLP

By: Frances Turean
WSBA No. 26066

701 5th Avenue, Suite 4550
Seattle, WA 98104
(206) 624-4900

SMITH GOODFRIEND, P.S.

By: Valerie Villacin
WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

STATE CASES

STATUTES

RULES AND REGULATIONS

OTHER AUTHORITIES

A. Relief Requested.

Robert Cooney, respondent below, asks this Court to deny petitioner Hillary Brooks' petition for review of Division One's unpublished opinion ("Op.") affirming the trial court's discretionary decision denying her motion to vacate the parties' agreed dissolution decree, under CR 60(b)(4).

Division One properly concluded that vacation of the agreed decree was not warranted because Cooney did not breach a fiduciary duty in not affirmatively disclosing his status as beneficiary of a revocable survivor's trust, as it was merely an expectancy because both settlors were still living when the parties divorced. Further, Cooney's status as beneficiary was not material to the parties' settlement when there was no guarantee any property would be left in the trust after both settlors died and Brooks was aware that Cooney was beneficiary and declined the opportunity to review the trust documents prior to settling.

Review of Division One's unpublished opinion is not warranted because it does not conflict with any decisions of this Court or the Court of Appeals, RAP 13.4(b)(1), (2), nor does it raise an issue of substantial public interest under RAP 13.4(b)(4). This Court should deny review and award respondent his fees for answering this petition under RAP 18.1(j).

B. Restatement of the Case.

1. Brooks sought discovery related to Cooney's grandmother's trust, based on her assertion that Cooney was beneficiary.

While the dissolution action was pending, Brooks sought discovery from Cooney of "[a]ll trusts you have established and . . . all trusts in which you are a beneficiary . . . " (CP 65) Cooney did not produce any documents related to this request (CP 46), but disclosed at his deposition that he was trustee of a trust for the benefit of his grandmother. (CP 832) Brooks, asserting that Cooney was a "beneficiary of a trust involving" his grandmother

(CP 295), then asked the court to compel Cooney to produce a copy of the trust on the grounds it may "potentially go to property distribution." (CP 49) The court ordered Cooney to produce the requested documents "no later than thirty days following issuance of his order" (CP 298), or by May 30, 2021.

2. The revocable trust was for the benefit of Cooney's grandmother and her partner, who were both alive when the parties divorced.

The trust at issue had been created in 2004 in California by Cooney's grandmother and her partner, both of whom were the settlors, trustees, and beneficiaries of the trust. (CP 695-96) One of the primary purposes of the trust was to provide for the settlors' "care and maintenance as long as either of us is living." (CP 695) The trust was fully revocable by either settlor during their lifetime (CP 711) and the settlors were entitled to devise their share of the trust property to "any desired appointee" (CP 697-98) "by will, codicil, or a 'qualified lifetime instrument.'" (CP 713)

Upon the death of the first settlor, a survivor's trust would be created to "provide for the care and maintenance of the Surviving Settlor." (CP 697-98) If the deceased settlor had not exercised their power of appointment, then their share of the trust property would be distributed to the survivor's trust. (CP 697) The survivor also had the power to revoke the survivor's trust during their lifetime. (CP 698) Upon the survivor's death, any property remaining in the survivor's trust would be distributed according to the terms of the survivor's power of appointment, if exercised. (CP 698) Any property not appointed and remaining in the survivor's trust would be distributed to a designated beneficiary. (CP 698)

In October 2020, four years after Cooney and Brooks separated, the settlors resigned as trustees and appointed Cooney as their successor trustee. (CP 717) The settlors also designated Cooney as remainder beneficiary of the survivor's trust, after cash bequests to three individuals.

(CP 715)[1] The settlors continued to hold the power to revoke the trust and their power of appointment (CP 697-98, 711-12), and remained the "only Permissible Distributees of the trust." (CP 717) Both settlors were alive during the dissolution proceeding. (CP 423)

3. Before Cooney was required to produce the documents for his grandmother's trust, the parties settled and Brooks waived any outstanding discovery.

Less than a week before Cooney was required to produce the documents related to his grandmother's trust, the parties settled at mediation and executed a property settlement agreement ("the agreement"). (*See* CP 298, 754-72) Cooney signed the agreement on May 25, 2021 and Brooks signed on May 26, 2021. (CP 771-72)

Though Cooney's discovery was outstanding and the discovery cutoff was four weeks away, the parties affirmed

[1] This was the fifth amendment of the trust by the settlors.

that by entering the agreement, they understood they waived their right to further discovery: to "the extent that a Party has not taken steps to determine the nature and extent of the assets, liabilities, income and expenses of the Parties, that Party has willingly chosen not to do so to avoid the expense and acrimony of litigation." (CP 759) Both parties "acknowledge[d] that the property and obligations hereafter listed and divided are all of the property and obligations that either or both have accumulated" (CP 755), and stated "under penalty of perjury that each has made a full and complete disclosure of any and all financial assets they own or control or have placed in the control of others." (CP 764)[2]

[2] The agreement provided that if a party fails to disclose a community asset, they are liable to the other party for 75% of the value of the community asset. (CP 764) The agreement did not address the remedy for omission of an undisclosed separate asset.

Cooney did not list his interest as a beneficiary of the revocable survivor's trust in the agreement because it was "not an asset and at best perhaps an expectation" (CP 425) since the settlors of the trust "were alive [and] doing well" when the parties reached their agreement. (CP 423) In entering the agreement, the parties declared "that no reliance whatsoever is placed upon representation[s] other than those expressly set forth herein." (CP 758)

As part of their settlement, Brooks received 93% of the parties' community property, approximately $1.8 million. (CP 426) As Cooney had been paying Brooks monthly support between $13,000 and $15,000 since they separated five years earlier in 2016, the parties agreed to terminate maintenance. (*See* CP 16, 422, 426)

The dissolution court entered final orders incorporating the parties' agreement by reference and dissolving their marriage on July 12, 2021. (CP 396)

4. Cooney's grandmother died six months after the parties divorced. The trial court denied Brooks' motion to vacate the agreed decree because any interest Cooney had in the trust was not "an asset" when the parties divorced.

Both Cooney's grandmother and her partner died the same day (CP 662), on January 31, 2022, six months after the parties divorced. (CP 721) On September 19, 2022, over a year after final orders had been entered, Brooks moved to vacate the decree (CP 402),[3] asserting that the decree must be vacated because Cooney committed misconduct by

[3] As Cooney's grandmother executed a will, a probate was opened, from which Brooks obtained a copy of the trust documents. (*See* CP 579)

failing to disclose his status as beneficiary of the revocable trust during the dissolution action. (*See* CP 412)[4]

The trial court denied Brooks' motion to vacate, finding it was "clear that before [Brooks] signed the CR2A, she was aware that [Cooney] was a beneficiary of his grandmother's trust. While there are disputes about the nature and extent of his disclosures, it is undisputed that she possessed this knowledge and proceeded to sign the CR2A." (CP 480) The trial court also determined "that a contingent interest in a revocable trust is not an asset and

[4] While Brooks repeatedly asserts that the trust had assets "totaling at least $1 million," she provided no evidence to support this claim. When the trust was initially funded in 2004, the trust held real property in California and the settlors' financial accounts, stocks, and bonds "not otherwise disposed of by the naming of a beneficiary." (CP 714) The California real property was sold in December 2020 for $450,000 (CP 740), but there is no evidence of the actual proceeds received by the trust, or how much was remaining when the settlors died. There was also no evidence of the value of accounts, if any, still held by the trust when the settlors died.

the fact of [Cooney's] status as a possible beneficiary was not material to the outcome of their agreement." (CP 480)

5. Division One affirmed in an unpublished opinion.

In reviewing the trial court's decision, Division One recognized that "spouses have a specific fiduciary duty to disclose all community and separate property before dissolution" to each other and to the court. (Op. 7) Division One, therefore, considered "whether the trust created a property interest, disclosure of which would affect the property distribution." (Op. 8)

Division One concluded that Cooney's interest as beneficiary of the revocable trust was not property.[5] (Op. 8-13) Division One recognized that while either Cooney's grandmother or her partner were alive, his interest in the

[5] Although the trust stated it was to be construed in accordance with California law, Division One considered both California and Washington law, as the parties acknowledged that the nature of Cooney's interest in the trust was the same under either law. (Op. 8, 13)

trust was "merely potential." (Op. 13) "Because Cooney's interest was uncertain to vest and he had no contractual right to enforce it, we conclude that Cooney's contingent interest in the trust was an expectancy and not a property interest." (Op. 13)

Division One also held the trust interest was "immaterial" to the parties' agreement because "Cooney's interest could have been extinguished at any time" and there was "no guarantee" that any property would be remaining in trust by the time the last settlor died since it was being used to support the settlors. (Op. 19) Further, Brooks knew Cooney was beneficiary of the trust, and "just days before Cooney's deadline to produce documents, and while she was represented by counsel, Brooks—who is a lawyer—voluntarily chose to sign the settlement agreement." (Op. 14)

C. Why This Court Should Deny Review.

Division One's unpublished opinion deals solely with the consequences of a failure to disclose an expectancy in a revocable trust on a decree. Thus, the issue before Division One was not whether a beneficiary interest in a revocable trust can ever be considered in a pending marriage dissolution action. (Petition 2, 7, 11) Instead, the issue was whether, after the dissolution action was concluded, the trial court abused its discretion in denying Brooks' motion to vacate the agreed decree under CR 60(b)(4), based on Cooney's supposed failure to affirmatively disclose his status as beneficiary of a revocable survivor's trust, when Brooks was aware of his beneficiary status and waived the opportunity to review the trust documents before settling.

"Where a property settlement agreement is approved by a divorce decree, the rights of the parties rest upon the decree rather than the property settlement." *Mickens v. Mickens*, 62 Wn.2d 876, 881, 385 P.2d 14 (1963). In light

of the "strong policy favoring the finality of judgments on the merits," *Stanley v. Cole*, 157 Wn. App. 873, 887, ¶21, 239 P.3d 611 (2010), particularly in a dissolution action, where the "emotional and financial interests affected by such decisions are best served by finality," *Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985), Division One's unpublished opinion affirming the trial court's order denying Brooks' motion to vacate the agreed dissolution decree does not warrant further review. As this Court has held, "in the conflict between the principles of finality in judgments and the validity of judgments, modern judicial development has been to favor finality rather than validity." *Marriage of Brown*, 98 Wn.2d 46, 49, 653 P.2d 602 (1982).

1. Division One's holding that a mere expectancy is not property is wholly consistent with decisions from this Court and the Court of Appeals.

Spouses have a fiduciary duty to disclose all community and separate property before dissolution. *Seals*

v. Seals, 22 Wn. App. 652, 656, 590 P.2d 1301 (1979). Because Cooney's interest as beneficiary in the revocable trust was not property, Division One properly concluded that vacation of the decree was not warranted, under CR 60(b)(4), as Cooney had not breached his fiduciary duty. (Op. 8)

There is no need for this Court to accept review in order to "articulate[ ] a test for what 'property' means under RCW 26.09.080." (Petition 12) This Court has already recognized that "property" is a "term of broad significance, embracing everything that has exchangeable value, and every interest or estate which the law regards of sufficient value for judicial recognition." *Marriage of Langham & Kolde*, 153 Wn.2d 553, 564, 106 P.3d 212 (2005) (quoting *York v. Stone,* 178 Wash. 280, 285, 34 P.2d 911 (1934)). Property "can be tangible or intangible, but it must be something to which there is a right."

Marriage of Harrington, 85 Wn. App. 613, 624, 935 P.2d 1357 (1997).

Excluded from the definition of property, however, are mere expectancies. "By all traditional and current concepts of property, expectancies are not property interests." *Restatement (Third) of Trusts* §41 (2003), comment a. "In Washington law a mere expectancy does not rise to the level of a property right." *Marriage of Leland*, 69 Wn. App. 57, 63, 847 P.2d 518, *rev. denied*, 121 Wn.2d 1033 (1993). Because a mere expectancy "is not a right," it is "not property." *Harrington,* 85 Wn. App. at 624. As it is "not a contract right," a mere expectancy "is not 'property' in the true sense" and "should not be considered in striking a fair and equitable division of property." *Marriage of Bishop*, 46 Wn. App. 198, 203, 729 P.2d 647 (1986).

Consistent with these decisions, Division One properly held that any interest Cooney had in the revocable

trust as beneficiary was a mere expectancy, and not property. As Division One recognized, "the interest created by the revocable trust is analogous to that held by a legatee under a will… —both are expectancies of a gift. Neither creates an enforceable right to the benefit—both are merely potential and can evaporate in a moment at the whim of the settlor or insured." (Op. 12) *See Restatement (Third) of Trusts* §25 (2003), comment a ("the interests the revocable-trust beneficiaries will receive on the death of the settlor should, generally at least, receive the same treatment and should be subject to the same rules of construction as the 'expectancies' of devisees"); 26 Wash. Prac., *Elder Law and Health Law Part One* § 2:70, Revocable trusts—Family living trusts (2nd ed.) (revocable trusts are "alternatives to wills").

As this Court has long recognized, "no one can have any estate or interest at law or in equity, contingent or otherwise, in the property of a living person to which he

hopes to succeed as heir at law or next of kin of such living person. During the life of such person, no one can have more than a mere expectation or hope of succeeding to his property." *Rawsthorn v. Rawsthorn*, 198 Wash. 471, 481, 88 P.2d 847 (1939). "An heir's interest in his ancestor's estate does not vest until that ancestor's death." *In re Wiltermood's Estate*, 78 Wn.2d 238, 240, 472 P.2d 536 (1970).

Accordingly, "a bequest in a will while the testator is still living is merely an expectancy." *Marriage of Hurd*, 69 Wn. App. 38, 49, 848 P.2d 185 (cited source omitted), *rev. denied*, 122 Wn.2d 1020 (1993) *disapproved of on other grounds* in *Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009). It is only after the testator has died, when the will can no longer be changed, that "the bequest becomes a vested interest to the extent of its actual value." *Hurd,* 69 Wn. App. at 49; *see also In re Ziegner's Estate*, 146 Wash.

537, 541, 264 P. 12 (1928) ("all wills are ambulatory in their nature, taking effect only upon the death of the testator").

Because a revocable trust "is a unique instrument which has no legal significance until the settlor's death," a beneficiary's interest in a revocable trust, like a bequest in a will, is merely an expectancy while the settlor is alive. *See Estate of Bernard*, 182 Wn. App. 692, 724, ¶116, 332 P.3d 480, *rev. denied*, 181 Wn.2d 1027 (2014); RCW 11.98.160 (effective date of an instrument purporting to create a revocable trust is the date of the trustor's death). "While the trustor of a revocable trust is living, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor." RCW 11.103.040.[6] Accordingly, while the settlor is alive, beneficiaries to a revocable trust have no "legally

[6] The terms "settlor" and "trustor" are used interchangeably as they have the same definition. RCW 11.02.005(19), (23).

cognizable interest" in the trust, 182 Wn. App. at 725, ¶118, as their interest is "subject to divestment." *Bernard,* 182 Wn. App. at 724, ¶117; *see also In re Joanne K. Blankenship Survivor's Tr.*, 18 Wn. App. 2d 686, 699, ¶32, 493 P.3d 751 (2021) (beneficiary "does not have a present interest" in a revocable trust).

When the decree incorporating the parties' agreement was entered, both settlors were alive. Therefore, any interest Cooney had in the revocable trust was merely an expectancy. Because a "mere expectancy does not rise to the level of a property right" in Washington,[7] *Leland*, 69 Wn. App. at 63, Cooney accurately stated, under the penalty of perjury, that he had "made a full and complete

---

[7] That a beneficiary's interest in a revocable trust is not "property" for purposes of a marriage dissolution action is consistent with the law in other jurisdictions that have addressed this issue. *See e.g., Marriage of Parker*, 371 Mont. 74, 81, 305 P.3d 816, 821 ¶¶35-36 (2013); *Marriage of Githens*, 227 Or. App. 73, 90, 204 P.3d 835, 844, *rev. denied*, 347 Or. 42 (2009); *Kelly v. Kelly*, 634 S.W.3d 335 (Tex. App. Houston 1st Dist. 2021).

disclosure of any and all financial assets" that he owns (CP 768) and acknowledged that the agreement accurately listed the "property and obligations that either or both have accumulated." (CP 755) Thus, Division One did not "stay[ ] silent about Cooney's lies" (Petition 22) – Cooney had been honest.

In holding that Cooney's "contingent interest" in the revocable trust was not property, Division One did not, in its unpublished opinion, "create[ ] a new category of asset." (Petition 13) As Division One stated, "[c]ontingent interests are property interests when they are derived from an enforceable, contractual right." (Op. 10, citing *Marriage of Brown,* 15 Cal. 3d 838, 846, 544 P.2d 561, 566, n. 8 (1976)) *See, e.g., Marriage of Estes,* 84 Wn. App. 586, 590-91, 929 P.2d 500 (1997) (Petition 13, 15-16) ("proceeds of contingency fee agreements," even if not yet paid, are property); *Leland,* 69 Wn. App. at 71 (disability payments were property; by virtue of community-funded insurance

policies, husband had a "vested right" to the disability payments, "contingent only upon his remaining disabled").

Because "Cooney possessed no contractual right to enforce the benefit created by the trust," Division One properly concluded that Cooney's interest in the revocable trust was an expectancy, not property. (Op. 13; *see also* Op. 11: the "defining characteristic of an expectancy is that its holder has no enforceable right to his beneficence," citing *Brown,* 544 P.2d at 565, n. 6))

Further, as Cooney's interest in the trust was "merely potential" and could evaporate "at any moment on the whim of his grandmother and her partner" (Op. 13), it did not have "sufficient value for judicial recognition" as property. *Compare Langham,* 153 Wn.2d at 564 (Petition 15) (stock options are property because they grant one the "right to buy stock at a particular price for a specified period of time"); *Marriage of Hall*, 103 Wn.2d 236, 241, 692 P.2d 175 (1984) (Petition 11-12) (goodwill is property;

it is a distinct asset of a professional practice, which supplements its earning capacity "in the form of established patients or clients, referrals, trade name, location and associations").

Brooks is wrong when she claims that Division One's unpublished opinion somehow places "a beneficiary interest in a trust . . . beyond the reach of" a dissolution court. (Petition 7) Division One's opinion solely addresses expectancies in revocable trusts, not present interests in irrevocable trusts. "[T]he nature of a beneficiary's interest differs materially depending on whether the trust is revocable or irrevocable." *Bernard,* 182 Wn. App. at 724, ¶117. Upon "the creation of an irrevocable trust, trust beneficiaries acquire a vested and present beneficial interest in the trust property, and their interests are not subject to divestment as with a revocable trust." *Bernard,* 182 Wn. App. at 724, ¶117.

Accordingly, Division One's unpublished opinion has no impact on existing published decisions holding that when a spouse has a present interest in, or receives a present benefit from, a trust, it should be considered by the court. *See, e.g., Marriage of Soriano,* 31 Wn. App. 432, 434, 643 P.2d 450 (1982) (considering wife's interest in two trusts that provided her with lifetime monthly income); *Harrington,* 85 Wn. App. at 617 (considering wife's present interest in a testamentary trust established by her deceased father)*; Landauer v. Landauer,* 95 Wn. App. 579, 589-90, 975 P.2d 577 (considering wife's present interest in real property held in an Indian trust; while the real property could not be sold, it had "income potential"), *rev. denied*, 139 Wn.2d 1002 (1999).

2. Division One's holding that Cooney's expectancy in a revocable trust was not material to the parties' settlement agreement does not conflict with decisions from this Court.

Review of Division One's unpublished opinion is not warranted based on Brooks' assertion that it conflicts with this Court's decisions holding that certain interests, even if not classified as "property," may be considered by the court as "relevant to a determination of the parties' ultimate economic circumstances." (Petition 18) The common element in those decisions, which is missing here, is an "enforceable right to the benefit" that may impact a spouse's economic circumstances. (*See* Op. 12)

In *Marriage of Kraft*, 119 Wn.2d 438, 448, 832 P.2d 871 (1992) (Petition 8, 18), for instance, this Court held that even though military disability retirement pay is not property that can be divided, courts may consider the military spouse's right to these benefits in evaluating the parties' economic circumstances. In *Marriage of Zahm*,

138 Wn.2d 213, 223, 978 P.2d 498 (1999) (Petition 8, 18-19), this Court similarly held that while social security benefits are not property, a court may consider a spouse's right to those benefits in evaluating the parties' economic circumstances.

Here, unlike the interests in *Kraft* and *Zahm,* "Cooney possessed no contractual right to enforce the benefit created by the trust." (Op. 13) As it had no impact on Cooney's economic circumstances at the time the parties entered their agreement, Division One properly concluded that substantial evidence supported the trial court's "finding that the trust interest was immaterial to the parties' settlement agreement." (Op. 19) Because the trust interest was "not material to the outcome of [the parties'] agreement" (CP 480), any failure by Cooney to disclose his beneficiary status did not prevent Brooks from fully and fairly negotiating a settlement, warranting vacation of the decree, under CR 60(b)(4). *See Winter v.*

Dep't of Soc. & Health Servs. on behalf of Winter, 12 Wn. App. 2d 815, 830, ¶30, 460 P.3d 667, *rev. denied*, 196 Wn.2d 1025 (2020).

Since Cooney was not receiving a benefit from the trust at the time the agreement was entered, it had no impact on his economic circumstances "at the time the division of property is to become effective" under RCW 26.09.080(4). Thus, any lack of disclosure of Cooney's beneficiary status did not prevent Brooks from "fully and fairly" negotiating an equitable property division.

Further, any possibility that Cooney might, at some unknown point in the future, receive some indeterminable amount of property from the trust, did not impact Brooks' ability to negotiate maintenance under RCW 26.09.090. An award of maintenance depends on the parties' financial circumstances at the time of dissolution, it "cannot be based upon the conjectural possibility of a future change in circumstances." *Morgan v. Morgan*, 59 Wn.2d 639, 643,

369 P.2d 516 (1962); *Marriage of Rouleau*, 36 Wn. App. 129, 132, 672 P.2d 756 (1983).

Nor did Cooney's failure to affirmatively disclose his beneficiary status impact the dissolution court's ability to determine whether the agreement was fair at the time of its execution under RCW 26.09.070(3). For a court to approve a settlement agreement, it "must adequately identify the assets." *Yeats v. Yeats' Estate*, 90 Wn.2d 201, 206, 580 P.2d 617 (1978). Here, except for Cooney's expectancy in the revocable trust (which was not property), it is undisputed that the agreement adequately identified "all of the property" that the parties had accumulated. (CP 755) Thus, any nondisclosure did not impact the court's ability to determine whether to approve the agreement when the decree was entered —particularly when, as Division One recognized, even if the trust was never revoked, "there was no guarantee that assets or funds would be left in the trust

when Cooney's grandmother and her life partner passed." (Op. 19)

3. Division One's holding that vacation of the decree was not warranted when Brooks knew of Cooney's interest in the trust prior to settling does not raise an issue of substantial public interest.

Review of Division One's unpublished opinion is not warranted based on Brooks' assertion that the Court improperly considered "what it believed Brooks knew and could have discovered" (Petition 24) in reviewing the trial court's order denying her motion to vacate the decree. As Brooks was seeking to vacate the agreed decree under CR 60(b)(4), Brooks had to show that Cooney's purported failure to specifically disclose his beneficiary status "caused the entry of the judgment" (Op. 18), by preventing her from fully and fairly negotiating settlement. *Winter,* 12 Wn. App. 2d at 830, ¶30. Whether Brooks met her burden necessarily required the court to consider what she "knew

and could have discovered" before she entered the agreement.

In *State v. Santos*, 104 Wn.2d 142, 702 P.2d 1179 (1985), for instance, this Court considered what the father knew before he waived blood testing and stipulated to paternity. In seeking to vacate the paternity judgment, father claimed that he stipulated to paternity because mother misled him, and offered photographs of the child showing "racial characteristics" that purportedly proved he could not be the father. Because father had the photographs in his possession before stipulating to paternity, any "racial characteristics" of the child were either known by father or could have been discovered before he stipulated to the paternity judgment, therefore, this Court held vacation of the stipulated judgment was not warranted under CR 60(b)(4). 104 Wn.2d at 145.

Similarly, in *Marriage of Maddix*, 41 Wn. App. 248, 703 P.2d 1062 (1985), the Court of Appeals considered

what wife, who sought to vacate an agreed decree, knew and could have discovered before entering the agreement awarding husband a business that wife claimed was inadequately valued. The Court held, "[b]ased on the rule of full disclosure, if the evidence proves Mrs. Jensen had knowledge of the true value of the business, or at least sufficient notice to protect her interests prior to the entry of the final decree, it was incumbent upon her at that time to examine more closely that value before proceeding with the dissolution. If she voluntarily chose not to do so, she should not be allowed to return to court to do what should have been done prior to entry of the final decree." 41 Wn. App. at 253; *see also Marriage of Curtis,* 106 Wn. App. 191, 197, 23 P.3d 13, *rev. denied*, 145 Wn.2d 1008 (2001); *Marriage of Burkey*, 36 Wn. App. 487, 490, 675 P.2d 619 (1984).

Consistent with these decisions, Division One properly held that vacation of the agreed decree was not

warranted when Brooks knew Cooney was a beneficiary of his grandmother's trust. (Op. 19; CP 480) As Division One recognized, Brooks "had the opportunity to examine the trust documents and chose to sign away her right to do so." (Op. 14) Brooks cannot "willfully disregard information uncovered in discovery." (Op. 15-16)

In holding that Cooney had not breached his fiduciary duty of full disclosure, Division One did not stand the "duty on its head to become a duty of inquiry requiring the spouse who lacks knowledge to perform diligence." (Petition 24) First, Brooks did not "lack knowledge," as Brooks was "aware that [Cooney] was a beneficiary of his grandmother's trust" before the divorce. (CP 480)

Second, full disclosure does not require spouses know the "exact financial status" of each other's property. (Op. 7, citing *Friedlander v. Friedlander*, 80 Wn.2d 293, 302, 494 P.2d 208 (1972)) Instead, it requires spouses have enough information "to ensure the parties 'can intelligently

determine' whether to enter into settlement agreements" and are not "prejudiced by the lack of information." (Op. 7, citing *Marriage of Cohn*, 18 Wn. App. 502, 507, 569 P.2d 79 (1977)) Here, while Brooks may not have known the exact terms of the revocable trust, she knew Cooney was a beneficiary, could presume he had no present interest in the trust as it was not disclosed as an asset, and could "intelligently determine" whether to enter the agreement.

4. This Court should award attorney fees to Cooney for responding to this petition.

Division One awarded attorney fees to Cooney pursuant to the terms of the parties' agreement. (Op. 22-23) This Court should likewise award him fees for having to respond to this petition. RAP 18.1(j).

D. Conclusion.

This Court should deny review and award fees to Cooney.

I certify that this brief is in 14-point Georgia font and contains 4,995 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 16th day of January, 2024.

WECHSLER BECKER, LLP SMITH GOODFRIEND, P.S.

By: */s/ Frances Turean* By: */s/ Valerie A. Villacin*
Frances Turean Valerie A. Villacin
WSBA No. 26066 WSBA No. 34515

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 16, 2024, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-File
Frances Turean Wechsler Becker LLP 701 5th Avenue, Suite 4550 Seattle, WA 98104-7088 ftt@wechslerbecker.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail
Gary Manca Talmadge/Fitzpatrick 2775 Harbor Ave SW Third Floor, Suite C Seattle, WA 98126 gary@tal-fitzlaw.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail

John C. Andrews Bishop, Cunningham & Andrews, Inc., P.S. 3330 Kitsap Way West Hills Station PO Box 5060 Bremerton, WA 98312 jandrews@bcalawyers.com	____ Facsimile ____ Messenger ____ U.S. Mail _X_ E-Mail

DATED at Seattle, Washington this 16th day of January, 2024.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

January 16, 2024 - 3:14 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,677-3
Appellate Court Case Title:	In the Matter of the Marriage of Robert W. Cooney and Hillary A. Brooks

The following documents have been uploaded:

- 1026773_Answer_Reply_20240116151201SC286235_4855.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2024 01 16 Answer Petition for Review.pdf

A copy of the uploaded files will be sent to:

- cate@washingtonappeals.com
- ftt@wechslerbecker.com
- gary@tal-fitzlaw.com
- jandrews@bcalawyers.com
- matt@tal-fitzlaw.com

Comments:

Sender Name: Victoria Vigoren - Email: victoria@washingtonappeals.com
Filing on Behalf of: Valerie A Villacin - Email: valerie@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

Address:
1619 8th Avenue N
Seattle, WA, 98109
Phone: (206) 624-0974

Note: The Filing Id is 20240116151201SC286235