No. 99150-2

Court of Appeals No. 79753-1-I

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

SHANNON CUNNINGHAM,

Respondent,

v.

JON KARWOSKI,

Petitioner.

ANSWER TO PETITION FOR REVIEW

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

IDENTITY OF RESPONDENT, RELIEF REQUESTED & INTRODUCTION

Respondent Shannon Cunningham asks this Court to deny Appellants Karwoskis' misnamed Petition for Review. The Karwoskis are seeking review of an order denying a motion to modify the Commissioner's ruling calculating Cunningham's reasonable attorney fees on appeal, not of a decision terminating review. *See* Petition for Review (PFR) at 2-3 (raising only fee-segregation issue). Thus, their proper avenue is not a Petition for Review, but a motion for discretionary review of the order denying modification. As a result, the Karwoskis have failed to address the proper criteria under RAP 13.5(b). This Court should deny discretionary review.

Moreover, the gravamen of the Karwoskis' complaint appears to be that Cunningham asked for a RAP 18.9 fee award against their counsel because he filed a frivolous appeal. PFR at 3. The Court of Appeals *denied* Cunningham's request, so the Karwoskis and their counsel are not aggrieved. RAP 3.1 ("Only an aggrieved party may seek review by the appellate court"). Their PFR arguments are also frivolous. Again, this Court should deny discretionary review.

This Court also should award Cunningham fees under the CR 2A Agreement for having to answer this frivolous PFR. RAP 18.1(j).

FACTS RELEVANT TO ANSWER

The Karwoskis' statement of facts is both inadequate and misleading. Indeed, almost nothing said there is accurate. This Court should disregard their improper and unsupported allegations.

A. In 2017, Jon Karwoski repeatedly threatened to kill Cunningham and her domestic partner, and damaged her property, so Cunningham obtained a protection order.

Cunningham and the Karwoskis are neighbors. ***Cunningham v. Karwoski***, Wash. Ct. App. No. 79753-1-I, at 1 (June 15, 2020).[1] In 1991, Cunningham's predecessor in interest granted Jon[2] a "Single Family Side Yard Easement" (the "Easement"). *Id.* Cunningham's garage is located within a portion of the easement area, where it has been for over 10 years. *Id*. at 2. She also has a fence and rock wall located within his easement. *Id*.

Since at least 2017, Jon has severely harassed Cunningham:

> Jon threatened to kill Cunningham and her domestic partner;
>
> he otherwise threatened to physically harm them;
>
> he yelled and screamed at them;
>
> he surveilled and monitored them;

[1] Unpublished Slip Op. attached as App. A. The facts are also fully stated, with record citations, at Brief of Respondent (BR) 3-11.

[2] Like the Court of Appeals, we use first names for convenience.

> he made slicing gestures with his finger across his throat, implying he would cut Cunningham's throat;
>
> he trespassed on her property; and
>
> he attempted to ram her car with his truck.

CP 113-15. Jon has thus caused Cunningham and her partner severe emotional distress. *Id*.

Cunningham called the police for help and protection against Jon numerous times. CP 114. She twice petitioned the King County District Court for orders of protection. CP 114, 126-61. She obtained an Order of Protection against Jon. CP 114, 163-65. It restrained Jon from contacting her, surveilling her, entering her property, or interfering with signs related to construction outside her home for one year. App. A at 2.

Despite the Protection Order, Jon dismantled portions of Cunningham's fence and trespassed on her property. CP 114. He nailed materials to the side of her garage. *Id*. He asserted "ownership" over the Easement and threatened further damage to her fence and garage. *Id*. He threatened to build a stairwell from an elevated deck on his West Property into the Easement. *Id*. He trespassed to dig holes for fenceposts and to deposit concrete and construction materials onto her property. CP 114-15.

B. In February 2018, Cunningham sued the Karwoskis, obtaining temporary and preliminary injunctions against them entering and damaging her property, and the City of Seattle filed criminal charges against Jon.

In February 2018, Cunningham sued the Karwoskis, asserting Trespass/Waste, Outrage, Assault, Declaratory Relief, Adverse Possession, Estoppel, and Quiet Title. CP 110-19. She sought and obtained a TRO and an Order to Show Cause. CP 59-79. Two days later, attorney Ryan Yoke appeared for the Karwoskis. CP 82-83. Also in February 2018, the City of Seattle filed criminal charges against Jon due to his continuing harassment and violation of Cunningham's protection orders. CP 107, 167-69.

In early March 2018, the parties stipulated to an agreed Preliminary Injunction. CP 88-92. Under the Injunction, the Karwoskis were restrained from entering Cunningham's property, including the Easement, and from damaging, destroying, moving, or altering her fence or other property. CP 90. They were specifically warned that any violation would subject them to arrest. CP 91.

C. In May 2018, the parties signed a CR 2A Agreement.

In May 2018, the parties mediated with all parties present and represented by counsel. CP 107, 180. Cunningham presented a summary of Jon's harassment. CP 107, 171-72 (attached as App. B). Simply put, she had to call 911 over 20 times in one year; her son

is suffering such severe anxiety and fear for his mother's life that he had to seek help from a child psychologist; and she has spent countless hours and large sums combatting Jon's harassment. App. B (CP 171-72). The parties settled. CP 108, 174-75 (attached as App. C). They agreed to the following (App. C, CP 174-75):

- Permanent injunction/No Contact Order preventing the Karwoskis from direct or indirect contact/harassment/ surveillance of Cunningham and her guests, invitees and tenants.
- Dismissal of all claims and counterclaims.
- Full mutual releases.
- Cunningham and her partner will advise the prosecutor that they are no longer interested in prosecuting Jon; they will not be restricted, however, from responding to any legal subpoena.
- The Karwoskis release/extinguish the Easement.
- The Karwoskis release/extinguish the Accessory Structure Agreement.
- The Karwoskis acknowledge and accept Cunningham's surveyed property boundaries, including her ownership of the rock wall/rockery and fence.
- The parties shall not enter each other's properties without express prior consent.
- The parties waive all adverse possession claims.
- Cunningham's fence will remain and may be repaired or replaced.
- The Karwoskis will pay Cunningham $12,500 in 30 days.
- The parties will execute all necessary documents.
- Sherman Knight will arbitrate any disputes over the final language of the settlement or other documents.

- Cunningham and her partner (Brelinski) will vacate the protection orders against Jon.

The parties all signed this agreement. App. A at 5; App. C (CP 175).

D. For months, the Karwoskis failed to comply with the settlement terms to which they had agreed.

In late May 2018, the Karwoskis promised to deliver the settlement check ($12,500) to counsel (Yoke) during the week of June 4, 2018. CP 181, 185-86. They failed to do so. CP 181. On June 8, 2018, Yoke advised Cunningham's counsel that the Karwoskis were mailing a check that day. CP 181, 188. No check ever arrived. CP 181. On June 19, 2018, Yoke advised Cunningham's counsel that the Karwoskis were working on getting the settlement payment together. CP 181, 191. That never happened either. CP 181.

E. In August 2018, the parties filed a Notice of Settlement of All Claims Against All Parties, signed by their counsel.

In August 2018, the parties filed an LCR 41 Notice of Settlement of All Claims Against All Parties, signed by their attorneys of record. CP 93-94 (attached as App. D); CP 181, 207-08 (attorney Yoke gives permission to file Notice of Settlement). This Notice acknowledges the parties' settlement agreement of May 3, 2018, subject to finalizing settlement documents and carrying out settlement terms. App. D (CP 93). The parties even stipulated that the trial court could dismiss the case under LCR 41(b)(2)(B) if the

parties did not file a written notice of settlement or certificate of settlement without dismissal within 45 days. *Id*.

Despite expressly acknowledging their settlement to the trial court, it was clear by October 2018 that the Karwoskis did not intend to honor their word. CP 181, 196. Cunningham's counsel informed their attorney Yoke that she would enforce the Settlement Agreement. *Id*. Not coincidentally (and long after the 45 days had passed) Yoke filed a Notice of Intent to Withdraw (dated October 1) on October 11, effective October 18, 2018. CP 95-96.[3]

On October 9 (prior to Yoke's withdrawal being filed) Cunningham's counsel again sent Yoke the settlement documents, giving the Karwoskis until October 19 to raise any disputes regarding those documents. CP 181-82, 201-02, 224-53. On October 22, Yoke confirmed that he had communicated with the Karwoskis, but they never complied with the settlement. CP 181, 210. No one ever raised any disputes regarding the settlement documents with Cunningham, her counsel, the arbitrator, or the trial court. CP 182.

[3] The Karwoskis' opening brief falsely asserted that the withdraw was effective the same day it was filed. *Compare* BA 5 & n.2 (effective October 11) *with* CP 95 (effective October 18). Nobody objected. *See* CR 71(c)(3).

F. In November 2018, Cunningham sought to enforce the settlement, with which she had fully complied.

In November 2018, Cunningham filed a motion to enforce the Settlement Agreement. CP 97-105. Cunningham offered the trial court a video of Jon trespassing on her property and dismantling her fence. CP 107. She also offered her above-noted summary and the Settlement Agreement. App. B (CP 107, 171-72); App. C (CP 108, 174-75.

Cunningham also explained that she had satisfied the key term of the Settlement Agreement – seeing that the criminal charges against Karwoski were dismissed (App. C, CP 108):

> Following the mediation, and in accordance with Section 4 of the CR 2A Agreement, Mr. Brelinski and I stopped cooperating with the prosecutor pursuing the criminal charges against Mr. Karwoski. As a result, the criminal charges against Mr. Karwoski were dismissed. Attached hereto as **Exhibit 5** are true and accurate copies of the Order of Dismissal entered in each of the criminal cases.

See also CP 177-79 (Orders dismissing criminal cases). Yet despite Cunningham's performance of this key settlement term, the Karwoskis refused to execute the necessary documents – as they promised to do – or to pay the $12,500. App. C (CP 108). Cunningham thus requested enforcement of the Settlement Agreement. *Id*.

G. The trial court enforced the Settlement Agreement, found the Karwoskis' arguments frivolous and without reasonable cause, and awarded fees to Cunningham.

On December 14, 2018, Jon requested and obtained a continuance to February 8, 2019. CP 254-55. During that hearing, Jon had copies of several October and December 2018 e-mails between the parties' counsel and the trial court regarding the motion and a hearing date. App. A at 7. Jon was not a party to most of those e-mails, but he did receive a December 10 e-mail from Cunningham's counsel attaching a copy of a proposed judgment and order for the December 14 hearing. *Id.* Yet unidentified handwritten notes on the e-mails claimed that the Karwoskis lacked notice of the hearing. *Id.* Jon also presented copies of several e-mails with his counsel from July and August 2018, apparently taking issue with the decision to agree to the entry of the notice of settlement. *Id.* The trial court granted Jon's motion and continued the hearing to February 2019, and later continued it again. *Id*. Yet Jon filed no pleadings and proffered no competent evidence.

On February 28, 2019, the trial court enforced the Settlement Agreement, entering a Judgment and Order Granting Plaintiff's Motion to Enforce CR 2A Settlement Agreement, totaling $13,784.17. CP 293-96. The trial court also entered a Judgment and

Order Awarding Plaintiff Attorney's Fees of $6,138, on March 20, 2019. CP 310-14.

The trial court found the Karwoskis' arguments and defenses frivolous. CP 311. They were unsupported by "any rational argument" and "advanced without reasonable cause." *Id*.

The Karwoskis appealed in March 2019. CP 315-30.

H. The Court of Appeals affirmed and awarded attorney fees and costs to Cunningham, but the Karwoskis continued their abusive litigation tactics by moving to modify the Commissioner's ruling awarding reasonable fees and costs.

After finding the appellants' brief delinquent and granting extensions, the appellate court set a motion to dismiss in August 2019. *See* August 5, 2019 Notation Ruling (attached as App. E). Their current counsel then appeared and requested yet more time to file a brief – albeit without filing another motion for extension of time. The briefing was eventually completed.

The Court of Appeals affirmed. App. A. Noting that both Karwoskis signed the CR 2A Agreement, it held that somebody's handwritten note on an unverified and unsworn email claiming that Jon "never agreed to an agreement" was insufficient to raise a

genuine issue of fact. *Id*. at 12. Nor did they raise their first two appellate arguments in the trial court, so they waived them. *Id*.[4]

The appellate court further held that Cunningham met her burden to show that no genuine dispute exists as to the existence or material terms of the Agreement. *Id*. at 13 (citing ***Brinkerhoff v. Campbell***, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000)). The Karwoskis' "self-serving after-the-fact" information (an unsworn, unverified, unidentified handwritten note on an unauthenticated email) did not raise a genuine dispute as to their CR 2A's existence or terms. *Id*. (citing ***Patterson***, 93 Wn. App. at 584). The trial court thus "did not err in granting Cunningham's motion to enforce the agreement." *Id*.

The appellate court awarded attorney fees to Cunningham under the terms of the CR 2A Agreement. *Id*. at 13-15. Having done so, the court *declined to reach* Cunningham's request for frivolous-appeal fees and costs. *Id*. at 15 n.9. That request – which sought an award against both the Karwoskis and their appellate attorney – was based on RCW 4.84.185 – frivolous litigation fees – which is the same ground on which the trial court ruled their claims frivolous. CP

[4] Even if they had not waived them, they would fail: their lawyer did not have to sign their settlement agreement to bind them, and their CR 2A Agreement was obviously supported by consideration. App. A at 12 (citing ***In re Patterson***, 93 Wn. App. 579, 585, 969 P.2d 1106 (1999) and ***State v. Brown***, 92 Wn. App. 586, 594, 965 P.2d 1102 (1998)).

174, 311-12. Cunningham also cited RAP 18.9 and ***Clarke v. Equinox Holdings, Ltd.***, 56 Wn. App. 125, 783 P.2d 82 (1989) (summary judgment fees affirmed; fee award for frivolous appeal).

The Karwoskis objected to Cunningham's fee request, claiming – without any evidence whatsoever – that Cunningham's appellate counsel spent 50% of his efforts on a request for attorney fees for a frivolous appeal. Rejecting this false claim, the Commissioner cogently noted that "the asserted frivolousness of the Karwoskis' argument is intertwined with the merits of this appeal" and that the "Karwoskis offer no good reason why this Court should *reduce* the amount of attorney fees requested by appellate counsel Masters." Commissioner's Ruling Awarding Attorney Fees and Costs (July 20, 2020) (attached as App. F at 3-4, emphasis added). The Commissioner awarded all the reasonable fees and costs Cunningham's appellate counsel requested, $14,878.17. App. F.[5]

Continuing their frivolous and harassing arguments that segregation is required even though the awarded fees are undisputedly reasonable, the Karwoskis moved to modify the

[5] Cunningham's trial counsel had also sought fees for obtaining supersedeas and work on the appeal, which the Commissioner partially denied. App. F at 2-4. Those fees are not at issue here.

Commissioner's ruling. Cunningham responded, explaining that whatever the Karwoskis' vendetta against her may be, it cannot justify reducing a reasonable fee award. *See* App. G. Specifically, Cunningham was "justifiably concerned – notwithstanding her trial counsel's successful (if difficult) efforts to force Karwoski to file a cash supersedeas bond – that [Jon] would continue to increase the costs of litigation *ad nauseam*, and ultimately would refuse to pay all the fees that could be awarded in lengthy trial and appellate litigation." *Id*. at 3.

The panel denied the motion to modify. *See* Appendix H.

The Karwoskis now continue their frivolous, harassing litigation in this Court, filing a frivolous nine-page PFR accompanied by a patently unnecessary, overblown, and harassing ***247-page Appendix***. Despite their transparent attempts to make nothing look like something, there is no fire beneath all that smoke.

REASONS THIS COURT SHOULD DENY REVIEW

A. The Karwoskis have failed even to address the appropriate criteria for review, much less to satisfy them.

As noted *supra*, the Karwoskis are seeking review of an order denying a motion to modify the Commissioner's ruling calculating reasonable attorney fees, not of a decision terminating review. *See* PFR at 2-3. Thus, their proper avenue was not a PFR, but a motion

for discretionary review of the order denying modification.[6] As a result, the Karwoskis have failed to address the proper criteria under RAP 13.5(b). This Court should deny discretionary review.

Nor did the Court of Appeals commit obvious error rendering further proceedings useless, or probable error substantially altering the status quo or limiting anyone's freedom; nor so far depart from the accepted and usual course as to call for this Court's revisory jurisdiction. RAP 13.5(b). As discussed *infra*, the Commissioner's ruling is correct, and it was made in the usual course. The Karwoskis do not address these criteria, so there is nothing to respond to. Again, this Court should deny discretionary review.

B. There are no conflicts with decisions of this Court or of the Court of Appeals.

The Karwoskis incorrectly claim the Commissioner's analysis conflicts with several appellate decisions, but do not discuss or explain most of them, and those they do address, they misrepresent. PFR 6-9. They also fail to discuss the many cases that support the Commissioner's analysis, such as ***Pannell v. Food Servs. of Am.***,

---

[6] *See* RAP 18.1(f) (commissioner awards fees); RAP 18.1(g) (objection to fee award solely by motion to modify under RAP 17.7); RAP 17.6 (judges decide motion by order); RAP 17.7 (motion to Justices of the Supreme Court decided by five-Justice panel); RAP 13.3(a)(2) (interlocutory decisions are those that do not terminate review, such as orders denying modification); RAP 13.5 (criteria for granting interlocutory review).

61 Wn. App. 418, 447-48, 810 P.2d 952 (1991) (issues interrelated so no reasonable segregation possible). Indeed, while they "acknowledge" that "courts need not segregate fees if no reasonable segregation of successful and unsuccessful claims can be made," they fail to discuss *any* case so holding. PFR 6-7.[7] This Court should deny discretionary review.

Courts have no discretion to deny all attorney fees where, as here, a contract provides them to the prevailing party. *See*, *e.g.*, ***Singleton v. Frost***, 108 Wn.2d 723, 729-30, 742 P.2d 1224 (1987); RCW 4.84.330. But courts do have discretion to limit attorney fees to a reasonable amount. ***Singleton***, 108 Wn.2d at 730 (citing ***Merrick v. Peterson***, 25 Wn. App. 248, 256, 606 P.2d 700 (1980)). No abuse of discretion exists unless no reasonable person would take the position adopted by the court. *Id*. (citing ***Griggs v. Averbeck Realty, Inc.***, 92 Wn.2d 576, 599 P.2d 1289 (1979)).

---

[7] Citing ***Hume v. Am. Disposal Co.***, 124 Wn.2d 656, 672-73, 880 P.2d 988 (1994); ***Kastanis v. Educ. Emp. Credit Union***, 122 Wn.2d 483, 859 P.2d 26 (1993); ***Gaglidari v. Denny's Rest., Inc.***, 117 Wn.2d 426, 450, 815 P.2d 1362 (1991); ***Schmidt v. Cornerstone Invest., Inc.***, 115 Wn.2d 148, 171, 795 P.2d 1143 (1990); ***Travis v. Wash. Horse Breeders Ass'n, Inc.***, 111 Wn.2d 396, 410-11, 759 P.2d 418 (1988); ***Boeing Co. v. Sierracin Corp.***, 108 Wn.2d 38, 66, 738 P.2d 665 (1987); ***Nordstrom, Inc. v. Tampourlos***, 107 Wn.2d 735, 744, 733 P.2d 208 (1987); ***Fisher Prop., Inc. v. Arden-Mayfair, Inc.***, 106 Wn.2d 826, 849-50, 726 P.2d 8 (1986); ***Reninger v. Dept. of Corr.***, 79 Wn. App. 623, 640, 901 P.2d 325 (1995), *as amended*, *affirmed on other grnds.* 134 Wn.2d 437 (1998).

The Commissioner properly set forth the law on the "lodestar" analysis. App. F at 3-4 (citing ***Mahler v. Szucs***, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998); ***Absher Constr. Co. v. Kent Sch. Dist. No. 415***, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995); ***Nordstrom***, 107 Wn.2d at 744; ***Berryman v. Metcalf***, 177 Wn. App. 644, 657, 660, 312 P.3d 745 (2013)). Under these well-known cases, the court calculates a reasonable fee based on the number of hours reasonably spent, multiplied by a reasonable hourly rate, taking an active role in the determination. ***Berryman***, 177 Wn. App. at 660.

But the Karwoskis have ***never*** argued that either the hours appellate counsel spent, nor the hourly rate he charged, were unreasonable, nor do they here. Thus, the Commissioner correctly determined the lodestar to be $14,780.17. App. F at 1. On its face, that is a reasonable fee for responding to the Karwoskis' appeal.

Although the fee award is undisputedly reasonable – so there is no *need* to reduce it – the Karwoskis insist that "the *court* must separate the time spent on those theories essential to [the cause of action for which attorneys' fees are properly awarded] and the time spent on legal theories relating the other causes of action . . . . This must include, on the record, a segregation of the time allowed for the [separate] legal theories . . . ." PFR 6 (truncating ***Hume***, 124 Wn.2d

at 673 (quoting ***Travis***, 111 Wn.2d at 411) (emphasis added in PFR)). This paraphrase omits the key provision relevant here from ***Hume***, and ignores that ***Travis*** and ***Hume*** are distinguishable.

What ***Travis*** and ***Hume*** hold is that when, unlike here, a plaintiff is entitled to attorney fees under only one claim (like the CPA claim that ***Travis*** *reversed*) but the trial court awarded fees for work done on several different successful claims, the case should be remanded to the trial court for segregation of fees. 111 Wn.2d at 409-11; 124 Wn.2d at 673. That is, where only one claim allows for a *statutory* fee award, fees cannot be awarded on non-statutory claims merely because there is a common nucleus of operative facts. *Id*.

Kastanis is the opposite of ***Travis*** and ***Hume***. There – again unlike here – the plaintiff prevailed on only one of four separate causes of action, a marital discrimination claim, which was the only claim permitting a fee award. ***Kastanis***, 122 Wn.2d at 501-02. The trial court made no finding that the claims were inseparable, and this Court did not believe it would be unnecessarily complex for the plaintiff to segregate her fees, so the trial court erred in not requiring segregation. *Id*. at 502. But because ***Kastanis*** reversed the sole successful claim due to instructional error, that was an end of it. *Id*.

Kastanis cites and discusses ***Blair v. WSU***, 108 Wn.2d 588, 740 P.2d 1379 (1987). *Id.* There (again, unlike here) both plaintiff and defendant prevailed on some claims, but the trial court ruled that the plaintiff substantially prevailed on her civil rights claim, which allowed a fee award. And like the Commissioner here, the trial court also ruled the "issues and evidence [are] so interrelated as to make a division based on successful and unsuccessful claims impossible without being arbitrary." ***Blair***, 108 Wn.2d at 571. This Court affirmed the award of all the plaintiffs' fees. *Id*. 572.

Blair has been followed many times. *See, e.g.*, ***Ethridge v. Hwang***, 105 Wn. App. 447, 461, 20 P.3d 958 (2001) ("court is not required to artificially segregate time in a case, such as this one, where the claims all relate to the same fact pattern, but allege different bases for recovery"). And neither ***Travis***, ***Kastanis***, nor any other case the Karwoskis discuss, is apposite here. This case involves a *contractual* fee clause, and a *wholly successful* enforcement of a CR 2A Agreement – not four or five different claims on which only one allows statutory fees.

That Cunningham prevailed in the trial court on her single claim – enforcement of the CR 2A – *both* because the Agreement was enforceable *and* because the Karwoskis' arguments were

frivolous, does not create two claims. *See, e.g.*, ***Fiore v. PPG Indus., Inc.***, 169 Wn. App. 325, 352, 279 P.3d 972 (2012) (where, as here, "'the plaintiff's claims . . . involve a common core of facts or [are] based on related legal theories,'" a lawsuit cannot be "'viewed as a series of discrete claims'" and, thus, the claims should not be segregated in determining an award of fees") (quoting ***Brand v. Dep't of Labor & Indus.***, 139 Wn.2d 659, 672-73, 989 P.2d 1111 (1999) (quoting ***Hensley v. Eckerhart***, 461 U.S. 424, 435, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983))). The Karwoskis are simply wrong.

In any event, this Court reviews a "determination of whether segregation is possible for abuse of discretion." ***King County v. Vinci Constr. Grands Projects/Parsons RCI/Frontier-Kemper, JV***, 188 Wn.2d 618, 632, 398 P.3d 1093 (2017) ("***Vinci***") (citation omitted). If (unlike here) "an attorney fees recovery is authorized for only some of the claims, the attorney fees award must properly reflect a segregation. . . ." ***Vinci***, 188 Wn.2d at 632 (emphasis added; citation omitted). But "segregation of fees is not necessary where [as here] 'the trial court finds the claims to be so related that no reasonable segregation of successful and unsuccessful claims can be made.'" *Id*. (emphasis added; citation omitted). The Commissioner so found. No abuse of discretion occurred.

C. This Court should award Cunningham fees under the CR 2A Agreement for having to answer this frivolous PFR.

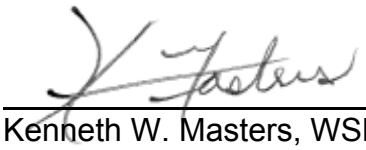
This Court should award Cunningham attorney fees under the CR 2A Agreement for having to answer the Karwoskis' frivolous PFR. RCW 4.84.330 (contractual fees); RAP 18.1(j) (fees for answering PFR); RAP 18.1 (court may award attorney fees and costs when authorized by applicable law); RAP 14.1 (costs to prevailing party); Settlement Agreement ¶ 12 (App. C, CP 174); App. A at 14-15.

CONCLUSION

This Court should deny review and award Cunningham contractual attorney fees under RAP 18.1(j).

RESPECTFULLY SUBMITTED this 25th day of November 2020.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
Attorney for Respondent

APPENDIX
Table of Contents

APPENDIX A

Cunningham v. Karwoski, Wash. Ct. App. No. 79753-1-I, slip op. (June 15, 2020)

FILED
6/15/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHANNON CUNNINGHAM, an unmarried individual, Respondent, v. JON R. KARWOSKI and ELIZABETH ANNE COLLINS a/k/a ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof, Appellants.	No. 79753-1-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — The Karwoskis appeal the enforcement of a settlement agreement between them and Cunningham. They argue that the trial court erred in failing to hold an evidentiary hearing because a genuine dispute existed as to the agreement's terms. They further contend that CR 2A required their attorney to sign the agreement. Last, they assert that the agreement is unenforceable because it lacks consideration. We affirm.

FACTS

This appeal arises out of a dispute over a boundary line between neighbors Shannon Cunningham and Jon and Elizabeth Karwoski. In 1991, Cunningham's predecessor in interest granted Jon[1] a "Single Family Side Yard Easement."

[1] For clarity, we refer to Jon and Elizabeth individually by their first names. We refer to them collectively as "the Karwoskis."

Cunningham's garage is located within a portion of the easement area. It has stood in that location for over 10 years. Cunningham also has a fence and rock wall located within the easement area.

In October 2017, Cunningham filed a petition for an order of protection against Jon. She alleged in part that Jon had threatened to kill her and her domestic partner, Thomas Brelinski, had surveilled her as she was leaving her home, and had parked his vehicles in a way that blocked her vehicle and delayed construction work on her home. The district court granted Cunningham's petition in November 2017. It restrained Jon from contacting her, surveilling her, entering her property, or interfering with signs related to construction outside her home for one year.[2]

A few months later, in February 2018, Cunningham sued the Karwoskis, asserting claims for trespass, outrage, assault, declaratory relief, adverse possession, estoppel, and quiet title. She alleged in part that, despite the order for protection, Jon had continued to harass her, dismantled portions of her fence, entered her property without permission, and nailed material to the side of her garage. She further alleged that Jon had asserted his ownership over the easement on her property and had threatened to cause further damage to her fence and garage. In her prayer for relief, she sought a declaratory judgment that the Karwoskis had abandoned the easement and had no further right, title, or interest with respect to the easement. She also sought an injunction restricting the

[2] Brelinski also sought and was granted an order of protection against Jon.

Karwoskis' actions with respect to the trial court's ruling on the parties' rights under the easement, damages, and attorney fees and costs.

The day after she filed her complaint, Cunningham filed a motion for a temporary restraining order and an order to show cause. She specifically asked the trial court to enjoin the Karwoskis from entering her property, including the easement area, while the matter was being litigated. The trial court granted her motion the same day. Two days later, attorney Ryan Yoke filed a notice of appearance on behalf of the Karwoskis.[3]

In early March 2018, the parties stipulated to an agreed order for a preliminary injunction. The injunction restrained the Karwoskis from entering Cunningham's property, including the easement area, during the pendency of the action. The Karwoskis also agreed not to damage, move, or alter Cunningham's fence or any other personal property located on Cunningham's property or belonging to her.

On May 3, 2018, the parties participated in mediation. Counsel for Cunningham, Samuel Meyler, and counsel for the Karwoskis, Yoke, were both present. After several hours of mediation, the parties reached a settlement and executed a "CR 2A Settlement Agreement." The agreement included the following provisions:

> 1) Permanent Injunction/No Contact Order to be entered preventing Karwoskis from, direct or indirect, contact/ harassment/surveillance of Cunningham and her guests, invitees and tenants.

[3] The City of Seattle filed criminal charges against Jon based on his alleged continuing harassment and violation of the order protecting Brelinski.

2) All claims and counterclaims by all parties asserted in [this case] to be dismissed with prejudice, subject to entry of Order specified above.

3) Full mutual release for all claims and causes of action between all parties to the pending litigation up to the date of this CR 2A Agreement, including claims of adverse possession.

4) Cunningham and Brelinski to advise prosecutor in criminal prosecution of Karowski that they are no longer interested in pursuing the matter. Cunningham and Brelinski shall not be restricted from responding to any lawfully served subpoenas and shall not be liable to Karwoskis in any way for responding to subpoenas.

5) Karwoskis release/extinguish Single Family Side Yard Easement – to be recorded with King County Recorder's Office.

6) Karwoskis release/extinguish Accessory Structure Agreement.

7) Karwoskis acknowledge surveyed lines of Cunningham property as the boundary lines, that Cunningham owns the rock wall bordering properties, laurel hedge bordering properties and fence.

8) Karwoskis shall not enter Cunningham's property at any time in the future for any reason without prior express consent.

9) Cunningham shall not enter Karwoskis' property at any time in the future for any reason without express prior consent.

10) Both parties release and waive any present or future claim of adverse possession.

11) Cunningham's fence to remain in place in perpetuity with the right to repair and replace as necessary.

12) Karwoskis to pay Cunningham $12,500 with[in] thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

. . . .

16) Cunningham and Brelinski shall stipulate to vacating antiharassment protection orders currently in place, noting that it is stipulated as part of the resolution of their civil case.

17) Karwoskis waive[ ] any claims for malicious prosecution against Cunningham and/or Brelinski.

Cunningham, Brelinski, and the Karwoskis all signed their names at the bottom of the agreement.

In late May 2018, Meyler inquired with Yoke as to the status of the Karwoskis' $12,500.00 payment to Cunningham under the CR 2A settlement agreement. Yoke advised Meyler that the Karwoskis would deliver the check to his office the week of June 4, 2018. On June 4, Meyler again inquired as to the status of the payment. On June 8, Yoke advised Meyler that the Karwoskis were mailing a check to his office that same day. The Karwoskis failed to mail the check. On June 15, Meyler inquired a third time as to the payment's status. On June 19, Yoke advised Meyler that Jon was working on getting the payment together, and that he would let him know once that was done. This never occurred.

On July 30, 2018, Yoke sent Jon an e-mail asking him to confirm that he was okay with Yoke agreeing to the entry of a notice of settlement. On August 1, before Yoke received a response from Jon, the parties filed a notice of settlement of all claims against all parties, signed by their attorneys. The notice acknowledged the CR 2A settlement agreement. It stated that "all claims against all parties in this action have been resolved, subject to finalizing the settlement documents and carrying out the terms of the settlement." It also stated that the trial court could dismiss the case under King County Local Civil Rule 41(b)(2)(B) if the parties failed to file an order dismissing all claims within 45 days and failed to

file a certificate of settlement without dismissal. On August 6, Yoke sent Jon another e-mail explaining that when he did not hear back from him, he agreed to the entry of the notice of settlement. In response, Jon told Yoke that he could have called or texted him. He also stated, "This is extortion."

On October 1, 2018, Meyler sent Yoke an e-mail regarding the Karwoskis' failure to adhere to the terms of the CR 2A settlement agreement. He stated that if Yoke did not make progress in contacting the Karwoskis and getting them to cooperate, Cunningham would be forced to file a motion to enforce the agreement. On October 9, Meyler sent Yoke a letter stating that if the Karwoskis did not return the fully executed settlement documents by October 19, Cunningham would file a motion to enforce the agreement and seek attorney fees and costs.[4] Two days later, Yoke filed a notice of intent to withdraw as counsel for the Karwoskis effective October 18, 2018. On October 22, Yoke informed Meyler that he had exchanged several e-mails with Jon, but that Jon never signed the settlement documents.

On November 13, 2018, Cunningham filed a motion to enforce the CR 2A settlement agreement. In doing so, she offered a copy of the agreement signed by all the parties. She explained that, in accordance with the agreement, she had stopped cooperating with the prosecutor pursuing criminal charges against Jon, and that those charges had been dismissed. Despite her satisfaction of that term,

[4] The settlement documents included (1) the "Confession of Judgment, Agreed Permanent Injunction/No Contact Order and Final Order Releasing Bond and Terminating Case," (2) the "Easement Agreement and Notice of Termination and Release," and (3) the "Stipulated Orders Vacating Protection Orders." (Formatting omitted.)

she stated that the Karwoskis had failed to pay her the agreed $12,500.00 and refused to execute the settlement documents required by the agreement.

A hearing on the motion to enforce the agreement initially took place on December 14, 2018. At the hearing, Jon appeared pro se and moved for a continuance. He presented copies of several e-mails from October and December 2018 between Meyler, Yoke, and the trial court regarding the motion and a hearing date. Jon was not a party to any of the e-mails, except for a December 10 e-mail from Meyler sending him a proposed copy of a judgment and order for the December 14 hearing. Handwritten notes on the e-mails indicated that the Karwoskis lacked notice of the hearing. Jon failed to identify who wrote the notes on the e-mails. However, notes such as "Mr. Meyler knows Mr. Yoke is withdrawn and I am not represented" indicate that one of the Karwoskis wrote the notes. Jon also presented copies of several e-mails from July and August 2018 between him and Yoke. In those e-mails, Jon took issue with Yoke's decision to agree to the entry of the notice of settlement. One of the e-mails included a handwritten note that stated, "I never agreed to an agreement."[5] The trial court granted Jon's motion and continued the hearing to February 2019.[6]

At the second hearing, the trial court granted Cunningham's motion and enforced the CR 2A settlement agreement. It awarded Cunningham a total

[5] Last, Jon presented copies of e-mails from March 2018 between him and Yoke, and a copy of a June 2018 e-mail from an attorney named Brooks de Peyster. The e-mails between Jon and Yoke involved scheduling for the May 2018 mediation. The e-mail from de Peyster addressed a June 2018 court date. It is unclear from the e-mail what that court date was for.

[6] The trial court subsequently continued the hearing to a later date in February due to inclement weather.

judgment of $13,784.17. This amount included the $12,500.00 provided for in the agreement, $1,113.70 in prejudgment interest, and $170.47 in costs.

Cunningham then filed a motion seeking $6,138.00 in attorney fees. She specifically sought fees under the CR 2A settlement agreement, the settlement and mutual release agreement, and the easement agreement. She also sought fees under RCW 4.84.185, arguing that Jon raised only frivolous arguments as to why he should not be held to the terms of the settlement agreement. The trial court granted Cunningham's motion and awarded her $6,138.00 in attorney fees. It explained,

> [T]he arguments and defenses presented by [the Karwoskis] were frivolous, not supported by any rational argument and advanced without reasonable cause. Attorney's fees are therefore owing pursuant to RCW 4.84.185. The Court further finds that the CR 2A agreement contains the following attorney's fees provision: "The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection." The confession of judgment was not entered solely because [the Karwoskis] violated the terms of a valid CR 2A agreement. Had they signed the confession, [the Karwoskis] would have been liable for the fees now sought for entry of certain additional orders ancillary to the judgment in this matter (to extinguish a side yard easement and an accessory structure agreement). Instead, those orders were entered by the Court pursuant to contested motion to enforce the CR 2A agreement.

The Karwoskis appeal.

DISCUSSION

The Karwoskis assert that the trial court erred in enforcing the CR 2A settlement agreement. First, they argue that the trial court erred in failing to hold an evidentiary hearing because they "established that serious disputes existed relative to the terms" of the agreement. Second, they argue that CR 2A required

their attorney to sign the agreement. Last, they argue that the agreement is unenforceable because it lacks "any reference to consideration."

CR 2A governs the enforcement of stipulations in court proceedings. It provides,

> No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A.

Under RCW 2.44.010, an attorney and counselor has authority:

> (1) To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings, in an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney.

The Washington Supreme Court has noted that "[t]he purpose of the cited rule and statute is to . . . give certainty and finality to settlements and compromises, if they are made." Eddleman v. McGhan, 45 Wn.2d 430, 432, 275 P.2d 729 (1954) (discussing the predecessor of CR 2A, former Rule of the Superior Courts 10 (1951), which used substantively identical language).

CR 2A applies when (1) a settlement agreement is made by parties or attorneys in respect to the proceedings in a cause and (2) the purport of the agreement is disputed. In re Marriage of Ferree, 71 Wn. App. 35, 39, 856 P.2d 706 (1993). An agreement is disputed within the meaning of CR 2A if there is a

genuine dispute over the existence or material terms of the agreement. In re Patterson, 93 Wn. App. 579, 583-84, 969 P.2d 1106 (1999). The party moving to enforce a settlement agreement carries the burden of proving there is no genuine dispute as to the agreement's existence or material terms. Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). If the moving party meets its burden, "the nonmoving party must respond with affidavits, declarations, or other evidence to show there is a genuine issue of material fact." Patterson, 93 Wn. App. at 584.

We review a decision regarding the enforcement of a settlement agreement de novo. Lavigne v. Green, 106 Wn. App. 12, 16, 23 P.3d 515 (2001). "The trial court follows summary judgment procedures when a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed." Condon v. Condon, 177 Wn.2d 150, 161-62, 298 P.3d 86 (2013). The trial court must view the evidence in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion. Cruz v. Chavez, 186 Wn. App. 913, 920, 347 P.3d 912 (2015).

We apply general principles of contract law to settlement agreements. Id. A valid contract requires a meeting of the minds on the essential terms. Evans & Son, Inc. v. City of Yakima, 136 Wn. App. 471, 477, 149 P.3d 691 (2006). Washington follows the objective manifestation test for contracts. Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177, 94 P.3d 945 (2004). Thus, for a contract to form, the parties must objectively manifest their mutual assent. Id. at 177-78. To determine whether a party has manifested an intent to enter into a

contract, we impute an intention corresponding to the reasonable meaning of a person's words and acts. Multicare Med. Ctr. v. Dep't of Soc. & Health Servs., 114 Wn.2d 572, 587, 790 P.2d 124 (1990), overruled in part on other grounds by Neah Bay Chamber of Commerce v. Dep't of Fisheries, 119 Wn.2d 464, 832 P.2d 1319 (1992). "Acceptance" is an expression, communicated by word, sign, or writing to the offeror, of the intention to be bound by the offer's terms. Veith v. Xterra Wetsuits, LLC, 144 Wn. App. 362, 366, 183 P.3d 334 (2008).

I. Waiver

As an initial matter, Cunningham argues that the Karwoskis waived all of their arguments on appeal "due to their failure to proffer any admissible evidence or any legally supported arguments to the trial court." She relies on RAP 2.5(a).

Under RAP 2.5(a), we may refuse to review any claim of error not raised in the trial court. But, a party may raise the following claimed errors for the first time on appeal: "(1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." RAP 2.5(a).

The only documents that the Karwoskis filed in response to Cunningham's motion to enforce the settlement agreement were the e-mail copies discussed above.[7] One of the printed copies of the e-mails between Jon and Yoke included

[7] Cunningham argues that these e-mails were not admissible because they were not attached to a declaration or otherwise authenticated. But, she failed to raise this argument below. In its order granting Cunningham's motion, the trial court included these e-mails in the list of "papers and pleadings" it reviewed in reaching its decision. Cunningham does not appeal any portion of that order. Therefore, we decline to reach her admissibility argument.

a handwritten note that stated, "I never agreed to an agreement." We liberally construe this handwritten statement as the Karwoskis' evidence disputing the existence of an agreement. This evidence alone is not enough to overcome the fact that he and his wife both signed the mediated settlement agreement.

The Karwoskis did not raise in the trial court the arguments they make here regarding (1) a requirement that their attorney sign the agreement and (2) a lack of consideration in the agreement. The Karwoskis fail to demonstrate that these arguments fall under one of the exceptions in RAP 2.5(a). As a result, they have waived both arguments on appeal.

Even if they had not waived both arguments, the Karwoskis' attorney did not need to sign the agreement in order to bind them under CR 2A. We have previously held that when a party "undertakes a settlement directly with the other party, reduces it to writing, and signs it . . . the requirements of CR 2A are met just as if the attorney had participated." Patterson, 93 Wn. App. at 585. And, the agreement was clearly supported by consideration. Both parties made a number of promises in the agreement, including a promise to waive any present or future claims of adverse possession. "[F]orbearance to prosecute a valid claim or assert a legal right constitutes sufficient consideration for a contract." State v. Brown, 92 Wn. App. 586, 594, 965 P.2d 1102 (1998). Accordingly, both of the Karwoskis' arguments would fail.

II. Failure to Hold an Evidentiary Hearing

The Karwoskis argue that the trial court erred in failing to hold an evidentiary hearing because they "established that serious disputes existed relative to the

terms" of the settlement agreement. They do not detail what those disputes were. Instead, they imply that they generally disputed the existence of an agreement.

In moving to enforce the settlement agreement, Cunningham had the initial burden of proving there was no genuine dispute as to the existence of an agreement or its material terms. See Brinkerhoff, 99 Wn. App. at 696-97. She met that burden when she filed a copy of the agreement signed by all of the parties, including the Karwoskis. At that point, the burden shifted to the Karwoskis to disprove the existence of the agreement or to show there was a genuine dispute of a material term. See Patterson, 93 Wn. App. at 584. All that the Karwoskis provided in response were the e-mail copies discussed above. The only relevant information in those e-mails was a handwritten note that stated, "I never agreed to an agreement." That self-serving after the fact annotation of an e-mail was insufficient to show a genuine dispute as to the agreement's existence. Accordingly, the trial court did not err in granting Cunningham's motion to enforce the agreement.[8]

III. Attorney Fees

Cunningham and the Karwoskis both request attorney fees on appeal under the settlement agreement. Cunningham also requests attorney fees on the basis that the Karwoskis' appeal is frivolous.

[8] The Karwoskis also argue that if this court vacates the order enforcing the agreement, it should vacate the judgment awarding attorney fees to Cunningham. Because we affirm the order, we decline to vacate the attorney fee judgment below.

To support their attorney fee requests under the settlement agreement, Cunningham and the Karwoskis cite RAP 18.1, RCW 4.84.330, and a fee provision in the agreement.

RAP 18.1(a) allows a reviewing court to award a party reasonable attorney fees if applicable law grants a party the right to recover them and the party requests them in compliance with RAP 18.1. Under RCW 4.84.330,

> where [a] contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

The settlement agreement includes the following fee provision:

> Karwoskis pay Cunningham $12,500 with[in] thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. <u>The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.</u>

(Emphasis added.) The confession of judgment was never entered because the Karwoskis violated the terms of the settlement agreement. However, the agreement clearly contemplates an attorney fee award in the event that Cunningham has to enforce collection of the $12,500.00. And, Cunningham and the Karwoskis agree that the provision applies to the prevailing party on appeal. Because Cunningham prevails on appeal, we award her attorney fees under the

fee provision in the settlement agreement, subject to her compliance with RAP 18.1.[9]

We affirm.

Appelwick, J.

WE CONCUR:

Leach, J.

Dwyer, J.

[9] Thus, we decline to consider Cunningham's alternate request for fees based on a frivolous appeal. We also deny each party's motion to impose sanctions for citation to unpublished opinions in violation of GR 14.1(a).

APPENDIX B

CP 107, 171-72
Excerpt of Declaration of Shannon Cunningham in support of Motion to Enforce CR 2A Settlement Agreement and excerpt of Summary Provided by Shannon Cunningham

5. At Paragraph 30 of the Verified Complaint, there is an allegation of Mr. Karwoski dismantling my fence and trespassing on my property. The following link provides a video of the incident: https://1drv.ms/v/s!Aiafjdfk8VWViLR56kubuiHQM-i7-Q (hereinafter the "Video"). The Video was recorded by my camera, at my home and depicts my backyard as it appeared on February 17, 2018. At 2:00 minutes into the video, Mr. Karwoski can be seen entering the left side of the screen in an orange jacket and proceeding to dismantle my fence. At approximately 21:30 minutes into the video, Mr. Karwoski enters my yard though the hole in the fence that he created and began taking measurements. Although not captured on the video, Mr. Karwoski and his contractor entered my property thereafter and began preparing to pour concrete footings for fence posts for the construction of a fence *inside of my backyard*. This particular event was the proverbial "straw that broke the camel's back" and prompted the filing of this lawsuit.
6. After suffering on going harassment from Mr. Karwoski, Thomas Brelinski, my domestic partner, and I obtained no-contact/anti-harassment orders against Mr. Karwoski in King County District Court which are attached as Exhibits C and D to the Verified Complaint.
7. As a result of Mr. Karwoski's continuous harassment and violation of the anti-harassment orders, the City of Seattle filed criminal charges against Mr. Karwoski, Seattle Municipal Court Case Nos. 632656, 632657 and 632658. Attached hereto as **Exhibit 2** are true and accurate copies of the Criminal Complaints filed in each of the criminal cases.
8. On May 3, 2018, I participated in mediation with the Karwoskis. Attached hereto as **Exhibit 3** is a true and accurate copy of a summary that I prepared for the mediator in my own words in anticipation of mediation in this matter.
9. The mediator was Mr. Sherman Knight. Thomas Brelinski was present with me for the mediation, along with my attorney, Samuel Meyler. Both of the Karwoskis were present for the mediation along with their attorney, Ryan Yoke. We all met briefly as a group and

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., SUITE 200
SEATTLE, WASHINGTON 98109
TEL: (206) 876-7770 • FAX: (206) 876-7771

SUMMARY PROVIDED BY SHANNON CUNNINGHAM

Jon Karwoski's actions over the last year of this harassment have made me fearful for my, my partner and my son's life. From verbal death threats to physical acts of damage to my property, my home is no longer a sanctuary to retreat to at the end of each day. I've felt increasing levels of stress every time I've had to call 911 to report another violation of the harassment order or knowing whether the police are going to arrive before he comes after us with a gun. I've left my residence at times and found other places to stay when I've come home and he's out in front of my house walking the perimeter of my property watching for an opportunity to engage me or my partner. I've had to endure months of finding additional money to purchase home security cameras to capture indisputable evidence of his harassment for the police. I've had to hire an attorney at considerable cost and incur lost wages because of the multiple court dates required to complete the order of protection, all the while trying to keep my professional and personal life on track.

My domestic partner and I have spent hours arguing about the best way to combat his increasingly aggressive behavior and neighborhood slander to mutual friends on the block. I've taken days off work to spend time at the City of Seattle permit and inspection office to respond to his fraudulent claims of property damage as a result of my basement remodel and to ensure I clearly understood his and my rights based on the side yard easement from 1991. I've stood in silence as he's told the police one lie after the other about myself and my partner ranging from accusations of breaking into and damaging his cars and trucks to his alleged "ownership" of my backyard. I've had to spend $3000 for a professional surveyor to combat his claims of property possession and then endure the surveyor's stakes being moved and thrown over the fence into my back yard. I've been woken up early on a weekend morning by my son screaming that Jon is going to shoot us after spotting the poster of a handgun pointed at our house in the window with the phrase "We Don't Call 911. This picture greets me every morning now as I head to the kitchen to make us breakfast.

I've spent hours of my weekends talking with Police at my residence, driving down to the Southwest precinct to ensure the police have evidence and working with my lawyer to ensure his ongoing violations are appropriately enforced. I've missed countless days during the weekdays and weekend documenting his actions rather than spending quality time connecting with my son. I've had to endure multiple questions from neighbors and businesses nearby on the ongoing police presence, his wife screaming threats in my face and hear him verbally threaten me every step of my property improvement as retaliation. My Memorial Day weekend was cut short when he trespassed onto my property and tried to drag my contractor out of my house to move his car in front of my house to continue the harassment and surveillance by parking his own vehicle there instead. I've had to stop every interference he's made trying to talk to my general contractor, plumber, electrician and city inspector to get information to file multiple City of Seattle construction complaints despite all permits and codes being followed to date.

I've lost time with my family and friends and turned down their invitations to deal with his actions or anticipating something is going to happen if I'm not at my house to keep an eye on things. I've hired a plumber to video my pipes to stave off his accusations of flooding his property to the north of me in the dead of summer (no rain) to the tune of $500. I am frightened of the

additional property damage he may do while I'm away and how much it's going to cost to put this nightmare to rest.

Every time I leave the house, I make sure all of my cars are locked with the emergency brake on so he can't push my car into the alleyway as he did during the summer when I visited my family for a long weekend. I've had to pay additional money ($500) for a construction parking permit in front of my house to ensure the contractors have reasonable access as he and his wife repeatedly parked both of their cars there for months despite complaints to parking attendants who won't enforce the 72-hour parking rules because they're scared of him. When I obtained the construction parking permit, he repeatedly moved or threw the signs in the street, parked his vehicles in front of my house and I was forced to call the police again and provide proof of his theft and damage. I've tried to avoid any interaction with him by ignoring his tirades and not going in my backyard to mitigate opportunities for harassment and continued surveillance.

I feel trapped in my house most of the time and feel dread every time I have to go outside wondering if this is going to be when he pulls out a gun and kills me or my son. On the day my temporary anti-harassment order expired, he walked right up to me in the front yard and made the statement "Guess I'll be seeing you around." I've made more than 20 calls to 911 over the last year due to his harassment and my son has developed severe anxiety issues and fear for my life to the extent that he is seeing a child psychologist. I'm missing precious time with my son and I fear what is being jeopardized due to this unnecessary aggressive behavior from Jon Karwoski and the long-term effect on both of our mental health. I've suffered months of financial distress, depression, anxiety, crying, hopelessness, anger and complete bewilderment while trying to figure out strategies to avoid selling my house versus standing up to his increasing verbal and physical harassment. I've had to endure harassing notes and dog feces on my car, his interference with my contractors and fraudulent claims to the city. I've had to leave work or take time off work at the last minute to make sure I'm doing everything I can to combat this situation and feeling helpless when I don't feel protected by the legal court order I was granted while his harassment escalates.

I want the harassment to stop. I want someone to protect me and my son. I want to feel safe in my home. I want to enjoy gardening and yard work again. I want privacy. I want to know when I leave my home, I won't come back to a torn down fence and garage. I want to live my life free of Jon Karwoski and his physical threats and bullying. I want to stop dreading coming home. I want to pursue my professional career without the constant interruptions of my personal life due to his actions. I want to be happy again.

APPENDIX C

CP 108, 174-75
Excerpt of Declaration of Shannon Cunningham
in support of Motion to Enforce CR 2A Settlement
Agreement and CR 2A Agreement

then split up between our two homes. The mediation went on for many hours and well into the night. Ultimately, we reached a settlement.

10. Attached hereto as **Exhibit 4** is a true and accurate copy of the CR 2A Agreement that the Karwoskis, Thomas Brelinski and I all executed at the conclusion of the mediation.

11. Following the mediation, and in accordance with Section 4 of the CR 2A Agreement, Mr. Brelinski and I stopped cooperating with the prosecutor pursuing the criminal charges against Mr. Karwoski. As a result, the criminal charges against Mr. Karwoski were dismissed. Attached hereto as **Exhibit 5** are true and accurate copies of the Order of Dismissal entered in each of the criminal cases.

12. Notwithstanding the fact that Mr. Brelinski and I satisfied the terms of the CR 2A Agreement, the Karwoskis have not done so. The Karwoskis have not paid me the $12,500 that was agreed to and they have refused to execute the documents that were required by the CR 2A Agreement.

13. I respectfully ask the Court to enforce the terms of the CR 2A Agreement.

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

DATED this 12 day of November, 2018 at Seattle, Washington.

Shannon Cunningham

MEYLER LEGAL, PLLC
1700 WESTLAKE AVE. N., SUITE 200
SEATTLE, WASHINGTON 98109
TEL: (206) 876-7770 • FAX: (206) 876-7771

CR 2A AGREEMENT

1) Permanent Injunction/No Contact Order to be entered preventing Karwoskis from, direct or indirect, contact/harassment/surveillance of Cunningham and her guests, invitees and tenants.
2) All claims and counterclaims by all parties asserted in Case No. 18-2-04648-3 KNT to be dismissed with prejudice, subject to entry of Order specified above.
3) Full mutual release for all claims and causes of action between all parties to the pending litigation up to the date of this CR 2A Agreement, including claims of adverse possession.
4) Cunningham and Brelinski to advise prosecutor in criminal prosecution of Karwoski that they are no longer interested in pursuing the matter. Cunningham and Brelinski shall not be restricted from responding to any lawfully served subpoenas and shall not be liable to Karwoskis in any way for responding to subpoenas.
5) Karwoskis release/extinguish Single Family Side Yard Easement – to be recorded with King County Recorder's Office.
6) Karwoskis release/extinguish Accessory Structure Agreement.
7) Karwoskis acknowledge surveyed lines of Cunningham property as the boundary lines, that Cunningham owns the rock wall bordering properties, laurel hedge bordering properties and fence.
8) Karwoskis shall not enter Cunningham's property at any time in the future for any reason without prior express consent.
9) Cunningham shall not enter Karwoskis' property at any time in the future for any reason without prior express consent.
10) Both parties release and waive any present or future claim of adverse possession.
11) Cunningham's fence to remain in place in perpetuity with the right to repair and replace as necessary.
12) Karwoskis pay Cunningham $12,500 with thirty 30 days from the date of this CR 2A Agreement secured by a Confession of Judgment executed by Karwoskis to be held by Cunningham's counsel and filed in the event that payment is not made. The Confession of Judgment shall provide for interest at 12% and attorney's fees for enforcement and collection.

13) Other standard terms of settlement agreements.
14) Parties shall execute such other documents as may be necessary to effectuate the terms of this CR 2A Agreement.
15) Sherman Knight vested with authority to arbitrate any disputes over final language of settlement agreement and other documents required by this matter at his regular hourly rate.
16) Cunningham and Brelinski shall stipulate to vacating antiharassment protection orders currently in place, noting that it is stipulated as part of the resolution of their civil case.
17) Karwoskis waives any claims for malicious prosecution against Cunningham and/or Brelinski.
18) Reference to "Karwoskis" herein refers to Jon R. Karwoski and Anne Collins.
19) Cunningham and/or her agents to have access to Karwoski property for purposes of repairing/replacing fence.

DATED May 3, 2018.

Jon R. Karwoski

Anne Collins

Anne Collins

Shannon Cunningham

Thomas Brelinski

APPENDIX D

CP 93-94
Notice of Settlement of All Claims
Against All Parties – LCR 41

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SHANNON CUNNINGHAM, an unmarried individual, Plaintiff, v. JON R. KARWOSKI and ELIZABETH ANNE COLLINS A/K/A ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof, Defendants	Case No. 18-2-04648-3 KNT **NOTICE OF SETTLEMENT OF ALL CLAIMS AGAINST ALL PARTIES – LCR 41** **(Clerk's Action Required)**

TO: THE CLERK OF THE COURT

Notice is hereby given that, pursuant to a CR 2A Agreement dated May 3, 2018, all claims against all parties in this action have been resolved, subject to finalizing the settlement documents and carrying out the terms of the settlement. Any trials or other hearings in this matter may be stricken from the Court calendar. This notice is being filed with the consent of all parties.

If an order dismissing all claims against all parties is not entered within 45 days after the written notice of settlement is filed, or within 45 days after the scheduled trial date, whichever is earlier, and if a certificate of settlement without dismissal is not filed as provided in LCR 41(e)(3), the case may be dismissed on the Clerk's motion pursuant to LCR 41(b)(2)(B).

DATED this ____ day of _____, 2018.

MEYLER LEGAL, PLLC
221 1ST AVE. WEST, SUITE 320
SEATTLE, WASHINGTON 98119
TEL: (206) 876-7770 ● FAX: (206) 876-7771

MEYLER LEGAL, PLLC

/s/Samuel M. Meyler
Samuel M. Meyler, WSBA #39471
221 1st Ave. West, Suite 320
Seattle, WA 98119
Phone: (206) 876-7770
Fax: (206) 876-7771
E-mail: samuel@meylerlegal.com
Attorney for Plaintiff

VANDER WEL, JACOBSON & KIM, PLLC

/s/ Ryan M. Yoke
Ryan M. Yoke, WSBA# 46500
1540 140th Avenue NE, Suite 200
Bellevue, WA 98005
Phone: (425) 462-7070
Fax: (425) 646-3467
E-mail: ryan@vjbk.com
Attorney for Defendants

APPENDIX E

Commissioner's Ruling re Motion to Dismiss for Failure to File Appellant's Brief (Aug. 5, 2019)

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

August 5, 2019

Brian J Waid
Waid Law Office, PLLC
5400 California Ave SW Ste D
Seattle, WA 98136-1501
bjwaid@waidlawoffice.com

Jon Karwaski
3520 SW Roxbury Street
Seattle, WA 98126

Samuel Michael Meyler
Meyler Legal, PLLC
1700 Westlake Ave N Ste 200
Seattle, WA 98109-6212
samuel@meylerlegal.com

Elizabeth Anne Collins
3520 SW Roxbury Street
Seattle, WA 98126

CASE #: 79753-1-I
Shannon Cunningham, Respondent v. Jon Karwoski, Appellant

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on August 2, 2019, regarding 's Court's Motion to Dismiss for Failure to File Appellant's Brief:

> Today (on August 2, 2019), I conducted a hearing on the Court's motion to impose sanctions or dismiss for appellants Jon Karwoski and Elizabeth Collins' continuing failure to file their opening brief after a 30-day extension granted to July 9, 2019. Appellants' counsel appeared and requested a two-week extension until August 16, 2019. The requested extension is granted until August 16, 2019. However, no further extension will be granted without sanctions or a showing of good cause.
>
> The Court's motion is continued to August 23, 2019, at 10:30 a.m. If the brief is filed by August 16, 2019, the Court's motion will be stricken.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

HCL

APPENDIX F

Commissioner's Ruling Awarding Attorney Fees and Costs (July 20, 2020)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SHANNON CUNNINGHAM, an unmarried individual, Respondent, v. JON R. KARWOSKI and ELIZABETH ANNE COLLINS a/k/a ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof, Appellant.	No. 79753-1-I COMMISSIONER'S RULING AWARDING ATTORNEY FEES AND COSTS

On June 15, 2020, this Court issued an unpublished opinion affirming the trial court's enforcement of a settlement agreement between appellants Jon and Elizabeth Karwoski and respondent Shannon Cunningham. This Court awarded attorney fees on appeal to Cunningham under the settlement agreement.

Cunningham's appellate counsel Kenneth Masters filed a declaration and a cost bill. Counsel requests an award of attorney fees on appeal in the amount of $13,776.17 plus fees for preparing the fee declaration in the amount of $1,004, totaling $14,780.17. Counsel requests an award of costs in the amount of $98 for preparing the brief. In total, counsel requests an award of $14,878.17.

Cunningham's trial counsel Samuel Meyler, who remained counsel on appeal, filed a separate declaration, requesting additional attorney fees, expenses, and costs in the total amount of $7,808.24.

The Karwoskis filed objections to the requested attorney fees, expenses, and costs, and Cunningham's appellate counsel filed a reply. As explained below, I grant the Karwoskis' objection in part regarding counsel Meyer's request for supersedeas expenses, costs for clerk's papers, and fees. Otherwise, over the Karwoskis' objection, the requested fees and costs are awarded.

Cunningham requests reimbursement of "supersedeas expenses" in the amount of $5,740 for work performed in the trial court in "defeating" the Karwoskis' motion to post real estate. But such expenses or fees are not "expenses incurred in superseding the decision of the trial court." RAP 14.3(a)(5). This Court generally does not award attorney fees for work on post-trial motions in the trial court. See Hepler v. CBS, Inc., 39 Wn. App. 838, 848 n.3, 696 P.2d 596 (1985). Thus, the supersedeas expenses are disallowed.

Cunningham also requests costs for "clerk's papers" in the amount of $83.75. Although RAP 14.3(a) includes "copies of clerk's papers," this Court has applied this rule to allow only the costs for the clerk's papers paid to the trial court to be transmitted to this Court. Because the Karwoskis designated and paid for the clerk's papers transmitted to this Court, Cunningham may not recoup her costs for obtaining her copy of the clerk's papers under the rule.

Counsel Meyler includes as costs "hearing recordings for consideration of whether to prepare and file verbatim report of proceedings" in the amount of $67.49. Counsel separately charges for his time spent reviewing the recordings, which are proper. The costs for obtaining recordings are not allowed under RAP 14.3(a). Thus, these costs ($67.49) are disallowed.

Thus, only the costs for preparing the brief ($98) are properly requested under RAP 14.3(a) and are awarded. Other costs and expenses are disallowed.

Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). This calculation does not turn solely on what the prevailing party's firm can bill. See Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Berryman, 177 Wn. App. at 657 (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998)). The court may discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time. Asher Constr. Co. v. Kent Sch. Dist. No. 425, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995).

The Karwoskis argue that Cunningham's appellate counsel failed to segregate work in seeking attorney fees for frivolous appeal. The Karwoskis argue that Cunningham devoted 50% of its argument section in her merits brief to the frivolousness issue, which this Court declined to reach. The Karwoskis ask this Court to approve only 50% of the fees incurred before the filing of their reply brief and deny the entire fees incurred afterwards. But Cunningham's argument regarding the asserted frivolousness of the Karwoskis' argument is intertwined with the merits of this appeal. The Karwoskis offer no good reason why this Court should reduce the amount of attorney fees requested by appellate

counsel Masters. The attorney fees requested by appellate counsel are reasonable and supported by counsel's declaration. Thus, attorney fees in the amount of $14,780.17 requested by appellate counsel are awarded.

As to counsel Meyler's fees, the Karwoskis argue that the fees incurred in "collection/enforcement activity" should be disallowed because such activity occurred in the trial court. I agree. But counsel does not include the amount of such activity in the requested fees. The Karwoskis argue that $770 ($350 hourly rate x 2.2 hours) incurred in preparing his fee declaration should be denied. But it is appropriate to include fees for preparing a fee declaration as part of attorney fees on appeal. Because counsel's declaration sets forth disallowed expenses (and fees at a rate not actually charged as discussed below), I reduce the fees by $70 to $700. Counsel Meyler requests an award of attorney fees at counsel's current hourly rate of $350, although all of the work counsel performed for this appeal (3.7 hours as marked green by counsel) was charged at counsel's former rate of $310. The Karwoskis argue that Cunningham should not be awarded attorney fees not actually incurred without a request and justification to deviate from the lodestar. I agree. I allow only $1,147 ($3.7 x $310), together with $700, totaling $1,847 for attorney fees on appeal with respect to counsel Meyler.

Accordingly, attorney fees and costs in the amount of $14,878.17 as to appellate counsel Masters and attorney fees in the amount of $1,847 as to counsel Meyler, totaling $16,725.17 are awarded to Cunningham.

Therefore, it is

ORDERED that attorney fees and costs in the amount of $16,725.17 are awarded to respondent Shannon Cunningham. Appellants Jon and Elizabeth Karwoski are liable for this award and shall pay this amount.

Masako Hanzawa, Commissioner

APPENDIX G

Response to Appellants' Motion to Modify Commissioner's Decision re: Segregation of Attorney Fees (Aug. 14, 2020)

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

SHANNON CUNNINGHAM, Respondent, v. JOHN R. KARWOSKI and ELIZABETH COLLINS a/k/a ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof, Appellants.	No. 79753-1 RESPONSE TO APPELLANTS' MOTION TO MODIFY COMMISSIONER'S DECISION RE: SEGREGATION OF ATTORNEY FEES

I. Identity of Responding Party & Relief Requested

Respondent Shannon Cunningham asks this Court to deny Appellant Karwoski, et al.'s Motion to Modify Commissioner Kanazawa's Ruling Awarding Attorney Fees and Costs (7/20/2020). This Court should also award Cunningham additional contractual attorney fees for having to respond to this baseless motion.

II. Facts Relevant to Motion

Karwoski's so-called "Statement of the Case" is baseless and argumentative. Not only does it lack a single citation to the record, but it falsely argues that the "*only* possible reason for Cunningham to seek frivolous appeal damages [*sic*] pursuant to RAP 18.9 was an

attempt, which failed, to recover those same fees from Karwoski's counsel rather than the Karwoskis." Motion to Modify (MTM) at 2. Karwoski obviously has no factual basis on which to assert Cunningham's motivations. His groundless and open attack on Cunningham's appellant counsel is beneath contempt.

In *fact*, the *trial court* ruled that Karwoski's attempts to evade his settlement agreement *were frivolous* (CP 311):

> The Court concludes that the arguments and defenses presented by Defendants were frivolous, not supported by any rational argument and advanced without reasonable cause. Attorney's fees are therefore owing pursuant to RCW 4.84.185.

As a result of this ruling, one proper – and fully justified – legal basis for responding to Karwoski's appeal – both *on the merits* and as to attorney fees – is that his appeal is *also* frivolous. Karwoski's snide innuendo that some personal motivation exists here is false, immaterial, impertinent, and scandalous. *See generally* CR 12(f).

And again – as was thoroughly briefed to the Commissioner[1] – Cunningham did *not* "lose" this argument. Rather, this Court declined to reach it. Slip Op. at 15 n.9 (copy attached as App. B). Karwoski's claims to the contrary are false.

[1] A copy of our reply re fees and costs is attached as App. A.

III. Argument

Cunningham raised her frivolous-appeal arguments because (1) the trial court ruled that Karwoski's arguments were frivolous; (2) Karwoski should not be permitted to raise new arguments on appeal; and (3) his appeal *was* frivolous. No other motivations existed.

Karwoski's appellate counsel is, however, making it personal because – again, perfectly legitimately – Cunningham also chose to seek fees against him. Karwoski's persistent frivolous arguments evidence his vexatious litigatory efforts to evade justice for his outrageous abuse and threats – including death threats. *See, e.g.*, BR 4-5. Cunningham was (at the time of filing her Brief of Respondent) thus justifiably concerned – notwithstanding her trial counsel's successful (if difficult) efforts to force Karwoski to file a cash supersedeas bond[2] – that he would continue to increase the costs of litigation *ad nauseam*, and ultimately would refuse to pay all the fees that could be awarded in lengthy trial and appellate litigation. It was thus incumbent on her appellate counsel to attempt to ensure a source of payment, if possible. Indeed, while Karwoski appears to be slowing down a bit, his counsel plainly has not stopped.

[2] The Commissioner *denied* Cunningham's request for fees incurred in that effort. Ruling attached as App. C. That ruling is not at issue here.

Thus, as Commissioner Kanazawa properly ruled, Cunningham's claims – *both on the merits and as to attorney fees* – were so interrelated that no reasonable segregation would be possible. *See, e.g.*, ***Ewing v. Glogowski***, 198 Wn. App. 515, 523, 394 P.3d 418 (2017). Indeed – as again briefed to the Commissioner – Cunningham spent *very little* time asking for fees from Karwoski's lawyer. App. B. The *merits* and *fees* arguments as to his frivolous appeal were fully justified by the trial court's ruling: it was simply another valid legal basis to affirm and to grant fees. Karwoski's attempts to cast those arguments as *personal* are disgraceful.

And as noted, Karwoski's appeal *was* frivolous. This Court held (1) that Karwoski *waived* the only two arguments he raised on appeal (Slip Op. at 12); (2) that even if he had not waived them, he was wrong on the merits (*id*.); (3) that Karwoski's "self-serving after the fact annotation of an e-mail was insufficient to show a genuine dispute as to the agreement's existence" (*id*. at 13); and (4) that Cunningham has a right to attorney fees under the *disputed* Settlement Agreement, so the Court need not reach whether Karwoski's frivolous appeal was frivolous (*id*. at 13-15 & n.9). That the agreement was disputed also justified making a frivolous-appeal fee request under RAP 18.9.

Finally, Commissioner Kanazawa did not "shift the burden" to Karwoski. She simply found Cunningham's request for her appellate attorney's fees reasonable – which it *undisputedly* was. App. C at 4. In light of Karwoski's failure to argue to the contrary, the Commissioner was perfectly justified in saying that Karwoski offered "no good reason why this Court should reduce the amount of attorney fees requested." App. C at 3. His objection was as frivolous as his appeal – and as this MTM.

IV. Conclusion

This Court should deny the MTM. It should award appellate counsel fees of $2,229.33 for responding to this motion and Appellants' Answer to Attorney Fee Demands and Objections to Cost Bill – under the contract. *See* Slip Op. at 14-15; CP 174 (Settlement Agreement ¶ 12); RCW 4.84.330 (contractual fees); RAP 18.1.

A fee affidavit is attached as App. D.

Respectfully submitted this 14th day of August 2020.

MASTERS LAW GROUP, P.L.L.C.

Kenneth W. Masters, WSBA 22278
241 Madison Avenue North
Bainbridge Island, WA 98110
(206) 780-5033
ken@appeal-law.com
Attorney for Respondent

APPENDIX H

Order Denying Motion to Modify (Sept. 24, 2020)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SHANNON CUNNINGHAM, an unmarried individual,

Respondent,

v.

JOHN R. KARWOSKI and ELIZABETH ANNE COLLINS a/k/a ELIZABETH ANNE KARWOSKI, husband and wife and the marital community comprised thereof,

Appellants.

No. 79753-1-I

ORDER DENYING MOTION TO MODIFY

Appellants, Jon and Elizabeth Karwoski move to modify the commissioner's July 20, 2020 ruling awarding fees in favor of Respondent, Shannon Cunningham. Respondent has filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is

ORDERED that the motion to modify is denied.

Andrus, A.C.J.

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO PETITION FOR REVIEW** on the 25th day of November 2020 as follows:

Co-counsel for Respondent

Meyler Legal, P.L.L.C. Samuel M. Meyler 1700 Westlake Avenue North, Suite 200 Seattle, WA 98109 samuel@meylerlegal.com meyler.legal@gmail.com	___ _x_ ___	U.S. Mail E-Service Facsimile

Counsel for Appellants

Waid Law Office, P.L.L.C. Brian J. Waid 5400 California Avenue SW, Suite D Seattle, WA 98136 bjwaid@waidlawoffice.com	___ _x_ ___	U.S. Mail E-Service Facsimile

Kenneth W. Masters, WSBA 22278
Attorney for Respondent

MASTERS LAW GROUP PLLC

November 25, 2020 - 3:52 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99150-2
Appellate Court Case Title:	Shannon Cunningham v. Jon Karwoski, et al.

The following documents have been uploaded:

- 991502_Answer_Reply_20201125154445SC822069_4980.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- bjwaid@waidlawoffice.com
- meyler.legal@gmail.com
- samuel@meylerlegal.com

Comments:

Sender Name: Coleen Turner - Email: office@appeal-law.com
Filing on Behalf of: Kenneth Wendell Masters - Email: ken@appeal-law.com (Alternate Email: paralegal@appeal-law.com)

Address:
241 Madison Ave. North
Bainbridge Island, WA, 98110
Phone: (206) 780-5033

Note: The Filing Id is 20201125154445SC822069