

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Marriage of:

ROBERT W. COONEY,

Respondent,

and

HILLARY A. BROOKS,

Petitioner.

No. 102677-3

PETITIONER'S  
FIRST STATEMENT  
OF ADDITIONAL  
AUTHORITIES  
UNDER RAP 10.8

Hillary Brooks cites *In re Marriage of Kowalewski*, 163 Wn.2d 542, 182 P.3d 959 (2008), and *In re Marriage of Soriano*, 44 Wn. App. 420, 722 P.2d 132 (1986), which show her petition's first issue (at PFR 2) satisfies RAP 13.4(b)(1)-(2). In conflict with these additional authorities, Division I adopted a test for "property" under RCW 26.09.080 that focuses on whether a spouse has an enforceable legal right in the asset (Op. 11-13 & n.6). In *Kowalewski*, this Court explained that a dissolution court "declares the parties' *personal* rights or *equities* in the property," not their *legal* rights. 163 Wn.2d at 551 (emphasis added). Because dissolutions are equitable

proceedings, “property distribution provisions in a dissolution decree are properly interpreted as referring to beneficial ownership, not legal ownership.” *Id.* With the term “property” thus taking on an equitable character under RCW 26.09.080, Division I should not have adopted a strict test requiring the existence of an enforceable legal right. The California probate issue that Division I invoked—namely, whether a remainder beneficiary in a trust has statutory standing to petition a California probate court for a trust (Op. 13 n.5 (citing *Babbitt v. Superior Court*, 246 Cal. App. 4th 1135 (2016))—was a probate concept that has no bearing on a parties’ equitable interest in an asset. A dissolution court, exercising equitable jurisdiction, stands on a different footing.

*Soriano* confirms that Division I’s “enforceable right” test conflicts with the equitable nature of dissolution proceedings. Under *Soriano*, dissolution courts lack jurisdiction to adjudicate legal rights in property to which a third party has a claim. 44 Wn. App. at 421-22 (citation omitted). But for a dissolution court to

determine whether a trust beneficiary has an “enforceable right” in a trust, as Division I’s opinion would have the court do, the court would have to decide whether the trust is revocable and whether the beneficiary has an enforceable interest in it. Those determinations would implicate the interests of third parties, such as the trustee, any living settlors, and the other beneficiaries—necessarily conflicting with *Soriano*.

Division I’s “enforceable right” test is unsustainable.

This document contains 349 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 29th day of February 2024.

Respectfully submitted,

/s/ Gary W. Manca

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DECLARATION OF SERVICE

On said day below I electronically served via email a true and accurate copy of the *First Statement of Additional Authorities* in Supreme Court Cause No. 102677-3 to the following:

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Original electronically delivered via appellate portal to:  
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 29, 2024, at Seattle, Washington.

/s/ Brad Roberts  
Brad Roberts, Legal Assistant  
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# TALMADGE/FITZPATRICK

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