

69747-1

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No. 69747-1-I

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

ANH-THU THI VU,

Appellant

v.

VINH QUOC DANG,

Respondent

2013 AUG 19 PM 2:23
COURT OF APPEALS
STATE OF WASHINGTON

ON APPEAL FROM
KING COUNTY SUPERIOR COURT
(The Honorable John Erlick)

ANH-THU THI VU'S OPENING BRIEF

Anh-Thu Thi Vu,
Pro Se

126 SW 148th St. Ste C100 PMB #459
Seattle, WA 98166

ORIGINAL

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I. INTRODUCTION

This is an appeal of a marital dissolution. My name is Anh-Thu Thi Vu. My former husband, Vinh Dang, and I were married in Orange County, California on September 2, 2006. A dissolution decree was entered by the King County Superior Court on November 30, 2012.

Before we were married, on May 15, 2006, in California, Mr. Dang had me sign a pre-nuptial agreement. I was born in Viet Nam and English is my second language. Mr. Dang hired an attorney to prepare this agreement. I never saw a draft before I signed it. Mr. Dang did not provide me with any documents to verify his assets or income, such as a tax return or pay stub. Mr. Dang arranged for an attorney to represent me, but the document was never translated into Vietnamese for me and I was told that I had to sign it or we would not get married. Mr. Vinh Dang also put that in his declaration.

In November of 2006, I moved into Mr. Dang's house in the state of Washington. During the years we were married, I suffered regular physical and emotional abuse at the hands of my husband. This abuse had and continues to have a serious negative effect on my health. He threw hot coffee in my face. He spit into my face. He was also controlling and unfaithful. As an example of the limits he set on me, when I moved in, he forced me to store most of my belongings in the basement where he

would not let me access them. I was allowed to have only a few of my personal possessions. No wedding gifts were to be opened. After three years, he finally allowed me to display only one small wedding photo. I had to ask permission to touch anything in the house. I was not allowed to use his telephone or his computer. He was hiding things from me. Not telling me about his income or assets was dishonorable and disrespectful. Judge Erlick did not read the portions of my trial brief and declaration in which I detailed the physical and emotional abuse.

The frequency and intensity of disagreements increased over time. His abuse of pornography and alcohol became daily. He told me he was working on the computer when in fact he was watching pornography. He told me he was going on a business trip when in fact he was meeting another woman, a hair stylist, in Florida. I flew to Florida to confront him, but he only became more abusive.

During the dissolution trial, I believe Judge Erlick was unfair and biased against me as a result of receiving an October 31, 2012 letter from another judge in the Superior Court. I had to leave court on October 17, 2012, because I was sick. At the time I left the courtroom, I understood that court was to be in recess for the rest of the day. However, two days later, on October 19, 2012, my attorney gave me a copy of an order that Judge Erlick had entered on October 17, 2012, after I left the courtroom.

This order required me to leave my husband's house by December 1, 2012, while a temporary restraining order was still in effect. Apparently my lawyer and my husband's lawyer had agreed December 1, 2012 as the date for me to leave the house without me being present in the courtroom. I complained to the King County Superior Court about an order having been entered on October 17, 2012, when I thought court was in recess, and I believe Judge Erlick was biased against me as a result of my complaining. I do not believe he read my trial brief or declarations, which included details of my husband's dishonorable behavior. Also, I was threatened and controlled by my attorney, Sharon Friedrich.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it found that service of the summons and petition on me was proper. Finding of Fact 2.2.
2. The trial court erred when it found that we separated on April 30, 2011. Finding of Fact 2.5.
3. The trial court erred when it found that 90 days had elapsed since service of the summons. Finding of Fact 2.6.
4. The trial court erred when it found that the prenuptial agreement should be approved. Finding of Fact 2.7.

5. The trial court erred when it found that the husband and wife had separate property as set forth in Exhibit H and Exhibit W.

Finding of Fact 2.9. Decree ¶¶ 3.2 and 3.3.

6. The trial court erred when it found that maintenance should not be ordered for the wife. Finding of Fact 2.10. Decree ¶ 3.7.

7. The trial court erred when it found that the wife was intransigent and awarded fees to the husband. Finding of Fact 2.15.

Decree ¶¶ 3.5, 3.13.

8. The trial court erred when it did not allow the wife to be reimbursed for the hotel bill, the alarm installation, the cost to change locks, and the wife's medical expense. Finding of Fact 2.21.

9. The trial court erred when it allowed the wife only one half the cost of the heating oil. Finding of Fact 2.21.

10. The trial court erred when it awarded the husband \$8,000 in attorney fees. Finding of Fact 2.21.

11. The trial court erred when it did not order Mr. Dang to provide a billing statement to show the precise dollar amount for the utility overpayment reimbursement. Conclusion of Law 3.8.

III. ISSUES

1. Whether service of the summons and petition was proper when Mr. Dang's brother and sister brought them to me at the Seattle home and demanded that I sign the divorce papers. (Assignment of Error 1.)

2. Whether the finding that the parties separated on April 30, 2011, is supported by substantial evidence. (Assignment of Error 2.)

3. Whether 90 days had elapsed since service of the summons when service was improper. (Assignment of Error 3.)

4. Whether the stipulation to approve the prenuptial agreement was valid when the wife was very sick the day of the stipulation, threatened by her attorney, and Judge Erlick was angry with the wife for writing a letter to the Superior Court about his order entered October 17, 2012. (Assignment of Error 4.)

5. Whether the finding that the parties had separate property as set forth in Exhibits H and W is supported by substantial evidence and is valid when the stipulation to approve the prenuptial agreement was itself invalid. (Assignments of Error 4 and 5.)

6. Whether the trial court abused its discretion when it found that the wife did not need to spend \$800 per month for food, \$200 a month for personal expenses including haircuts, \$300 a month for a cell

phone, put \$950 a month into savings, rent an apartment for \$1600 a month, and failed to consider the state of Ms. Vu's health, and did not take into account the significant benefit Mr. Dang received from Ms. Vu's cleaning and maintaining of the house and garden. (Assignment of Error 6.)

7. Whether the trial court's finding of intransigence is supported by substantial evidence when the wife did not hide assets and was not given adequate opportunity to testify. (Assignment of Error 7.)

8. Whether the trial court's failure to award the wife reimbursement for the hotel bill, the alarm installation, the cost to change locks, and her medical expense was an abuse of discretion when Judge Erlick was angry with Ms. Vu for writing a letter to the Superior Court about his improper entry of the order on October 17, 2012, and did not read her declaration. (Assignment of Error 8.)

9. Whether the trial court's award to the wife of only one half the cost of the heating oil is supported by substantial evidence. (Assignment of Error 9.)

10. Whether the trial court abused its discretion in awarding the husband \$8,000 in attorney fees when the wife did not hide assets, was not intransigent, Judge Erlick said that the wife was not qualified to speak and she therefore had insufficient opportunity to testify before the

court, and her attorney did not proactively advocate for her. (Assignment of Error 10.)

11. Whether the trial court abused its discretion when it did not order Mr. Dang to provide a utility billing statement so that a precise dollar amount for the wife's utility reimbursement could be determined. (Assignment of Error 11.)

IV. STATEMENT OF THE CASE

My name is Anh-Thu Thi Vu, the Appellant, and I was born in Viet Nam.¹ English is my second language.² I did not meet Mr. Vinh Dang for the first time until in 2004 in California.³

I work at the Social Security Administration,⁴ where I use standard forms in English and simple English when talking to the public.⁵

On May 15, 2006, in California, before we were married, Mr. Dang had me sign a pre-nuptial agreement.⁶ Mr. Dang hired an attorney to prepare this agreement, Elayne Medlovitz.⁷ I never saw a draft before I

¹ RP 320:19-20 (Anh-Thu Thi Vu, November 14, 2012).

² RP 320:23-24 (Anh-Thu Thi Vu, November 14, 2012).

³ RP 320:25-321:1 (Anh-Thu Thi Vu, November 14, 2012).

⁴ RP 356:20-21 (Anh-Thu Thi Vu, November 15, 2012).

⁵ RP 212:2-17 (Anh-Thu Thi Vu, October 16, 2012).

⁶ RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012); RP 47:20-21 (Vinh Dang, October 15, 2012).

⁷ RP 253:1-9 (Anh-Thu Thi Vu, November 14, 2012); RP 49:22-50:7 (Vinh Dang, October 15, 2012)

signed it and in fact I signed it the same day that I first saw it.⁸ Mr. Dang did not provide me with any documents to verify his assertions about his assets, and the same with his income, such as a tax return or pay stub.⁹ Mr. Dang said that he had an attorney for me, Mr. Matthew Shahon.¹⁰ I met with Mr. Shahon at Vinh Dang's request, and the meeting lasted less than an hour.¹¹ The pre-nuptial agreement was never translated into Vietnamese for me¹² and I was told that I had to sign it or we would not get married.¹³ Mr. Shahon never explained the pre-nuptial agreement to me, and I signed it because at that time I trusted Mr. Vinh Dang.¹⁴ Mr. Dang asserted that he e-mailed a copy to me, but this was from an account that Mr. Dang set up for me, including the password, such that I never had control of it.¹⁵ Also, the copy of the e-mail he attached to his declaration did not even show an attachment.¹⁶

⁸ RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012); RP 259:3-262:5 (Anh-Thu Thi Vu, November 14, 2012).

⁹ RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012); RP 259:3-262:5 (Anh-Thu Thi Vu, November 14, 2012).

¹⁰ RP 253:15-254:9 (Anh-Thu Thi Vu, November 14, 2012); RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012); RP 259:3-262:5 (Anh-Thu Thi Vu, November 14, 2012); RP 50:1-11 (Vinh Dang, October 15, 2012).

¹¹ RP 323:2-8 (Anh-Thu Thi Vu, November 14, 2102); RP 259:3-262:5 (Anh-Thu Thi Vu, November 14, 2012).

¹² RP 325:7-9 (Anh-Thu Thi Vu, November 14, 2012).

¹³ RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012). RP 259:3-262:5 (Anh-Thu Thi Vu, November 14, 2012). CP pending supplemental designation of clerk's papers, Declaration of Mr. Vinh Dang dated Dec. 6, 2011, sub #26.

¹⁴ RP 325:10-326:10 (Anh-Thu Thi Vu, November 14, 2012).

¹⁵ RP 322:6-19 (Anh-Thu Thi Vu, November 14, 2102).

¹⁶ CP pending supplemental designation of clerk's papers, Declaration of Anh-Thu Thi Vu dated September 24, 2012, sub #83.

Mr. Dang, and I were married in Orange County, California on September 2, 2006.¹⁷ In November of 2006, I moved into Mr. Dang's house in the state of Washington.¹⁸ During the years we were married, I suffered regular physical and emotional abuse at the hands of my husband. I finally had to get a restraining order.¹⁹ This abuse had and continues to have a serious negative effect on my health following the marriage.²⁰ He threw hot coffee in my face.²¹ He spit into my face.²² He drove me by a two story vacant building in disrepair and told me that this was where I deserved to live; I was terrified and in fear and I slipped and fell on the stairs bruising my head and back, but my husband did not help me up.²³

He was also controlling, intimidating, and unfaithful. As an example of the limits he set on me, when I moved in, he forced me to put most of my remaining belongings in the basement where he never let me unpack them.²⁴ He had already told me that I could not bring any of my

¹⁷ CP 14.

¹⁸ RP 327:2-5 (Anh-Thu Thi Vu, November 14, 2012).

¹⁹ CP pending supplemental designation of clerk's papers, Temporary Restraining Order entered December 21, 2011, sub #39.

²⁰ RP 326:11-12 (Anh-Thu Thi Vu, November 14, 2012); RP 336:7-19 (Anh-Thu Thi Vu, November 14, 2012).

²¹ CP pending supplemental designation of clerk's papers, Motion/Declaration of Anh-Thu Thi Vu dated November 15, 2011, sub #6.

²² *Id.*

²³ CP pending supplemental designation of clerk's papers, Declaration of Anh-Thu Thi Vu dated September 24, 2012, sub #83.

²⁴ RP 329:22-330:3 (Anh-Thu Thi Vu, November 14, 2012).

furniture from California, and so before I moved I gave away my furniture, my TV, my dishes, and my cookware.²⁵ I was allowed to have only a few of my personal possessions.²⁶ No wedding gifts were to be opened, including cashing of checks received.²⁷ I had to ask permission to pick any fruit from the garden.²⁸ If we brought food home from a restaurant, I had to eat it out of whatever it came in; I could not transfer it to a plate.²⁹ He forbade me from asking about his income and would not show me his paystubs, W-2s, or income tax filings.³⁰ Around his family, he made sure that they knew he “owns me” and he made sure I acted as “housekeeper” in their presence.³¹ He threw hot coffee at me.³²

The frequency and intensity of disagreements increased over time; his abuse of pornography and alcohol became daily.³³ He would watch pornography on the computer.³⁴ When I asked him to stop viewing pornography and get some rest, he would throw furniture.³⁵ He told me

²⁵ RP 329:9-21 (Anh-Thu Thi Vu, November 14, 2012).

²⁶ *Id.*

²⁷ RP 330:8 (Anh-Thu Thi Vu, November 14, 2012).

²⁸ RP 330:11-13 (Anh-Thu Thi Vu, November 14, 2012).

²⁹ RP 330:16-20 (Anh-Thu thi Vu, November 14, 2012).

³⁰ CP pending supplemental designation of clerk’s papers, Motion/Declaration of Anh-Thu Thi Vu dated November 15, 2011, sub #6.

³¹ *Id.*

³² CP pending supplemental designation of clerk’s papers, Declaration of Anh-Thu Thi Vu dated September 24, 2012, sub #83.

³³ *Id.*

³⁴ CP pending supplemental designation of clerk’s papers, Declaration of Anh-Thu Thi Vu dated September 24, 2012, sub #83.

³⁵ CP pending supplemental designation of clerk’s papers, Motion/Declaration of Anh-Thu Thi Vu dated November 15, 2011, sub #6.

he was going on a business trip when in fact he was meeting another woman, a hair stylist, in Florida.³⁶ He bought gifts for her.³⁷ I flew to Florida to confront him and the woman, but he only became more abusive.³⁸

Mr. Dang petitioned for dissolution on November 10, 2011.³⁹ The court entered a series of restraining orders, including one on December 21, 2011; I was to continue living in the house, but Mr. Vinh Dang was restrained.⁴⁰ This restraining order stated, “Wife to pay all utilities on the home and general upkeep/repair in current condition.”⁴¹ It did not however require me to pay any rent.

I was deposed on April 30, 2012. I had serious trouble with my health during April 2012 and had been to the emergency room on April 7, 9, 12, 14, 18, 19, and 26.⁴² When I was asked about my deposition

³⁶ RP 336:21-22 (Anh-Thu Thi Vu, November 14, 2012).

³⁷ CP pending supplemental designation of clerk’s papers, Motion/Declaration of Anh-Thu Thi Vu dated November 15, 2011, sub #6.

³⁸ CP pending supplemental designation of clerk’s papers, Motion/Declaration of Anh-Thu Thi Vu dated November 15, 2011, sub #6.

³⁹ CP 1-4.

⁴⁰ CP pending supplemental designation of clerk’s papers, Restraining Order and Order to Show Cause entered November 15, 2011, sub #13).

⁴¹ CP, pending supplemental designation of clerk’s papers, Temporary Restraining Order entered December 21, 2011, sub #13.

⁴² CP pending supplemental designation of clerk’s papers, sealed medical and health records of Anh-Thu Thi Vu, sub #82.

during trial, I made the point that during the deposition I was very sick and very shaky.⁴³

I had to leave court on October 17, 2012, because I was sick.⁴⁴ At the time I left the courtroom, based on what Judge Erlick said, I understood that court was to be in recess for the rest of the day.⁴⁵ My attorney then took me to the emergency room.⁴⁶

Later, I found out that Judge Erlick had entered, on October 17, 2012, after I left the courtroom, an order.⁴⁷ This order required me to leave my husband's house by December 1, 2012, even though the temporary restraining order was still in effect.⁴⁸ Apparently my lawyer and my husband's lawyer and Judge Erlick agreed that December 1, 2012, would be the date for me to leave the house, and they did this without me being present in the courtroom.⁴⁹ I complained to the King County Superior Court Presiding Judge, Judge McDermott, in e-mail dated October 24, 2012, about Judge Erlick entering an order on October 17, 2012, when I thought court was in recess.

⁴³ RP 262:12-14 (Anh-Thu Thi Vu, November 14, 2012).

⁴⁴ RP 223:18-20; 224:4-21; 225:13-19; 226:10-14 (October 17, 2012).

⁴⁵ RP 224:7-16 (October 17, 2012) ("THE COURT: All right. Let's take a brief recess. Ms. Friedrich, why don't you advise the Court whether we can proceed. Take a recess.")

⁴⁶ RP 224:15-18 (October 17, 2012).

⁴⁷ CP pending supplemental designation of clerk's papers, Order to Vacate Home entered October 17, 2012, sub #82.

⁴⁸ *Id.*

⁴⁹ RP 237:2-238:16 (October 17, 2012).

On November 14, 2012, my former attorney Ms. Friedrich tried to raise the issue of my testifying as to my health before the court.⁵⁰ However, Judge Erlick said that I was not qualified to testify about my own health.⁵¹ Judge Erlick was interested in finishing the trial quickly.⁵²

I was also sick when the parties stipulated to the approval of the asset and liability portion of the pre-nuptial agreement. This stipulation occurred during trial on November 15, 2012.⁵³ Again in November at the time of trial, I was sick and weak,⁵⁴ and my attorney had previously, on October 25, 2011, threatened me saying she was going to ask the judge to bring in a representative for me because of my poor health. Present in the room when my attorney threatened me were her paralegal Sophia Sanchez and another attorney named Lisa DuFour. And so during trial I just said yes to everything.

⁵⁰ RP 331:7-334:4 (November 14, 2012).

⁵¹ RP 333:14-24 (November 14, 2012).

⁵² *See for example* RP 224:25-225:1 (October 17, 2012) (“Well, we need to complete this case, so we’re going to complete this case.”); RP 404:5-6 (November 15, 2012) (“Counsel, we have until noon today, so how do we want to finish this up?”) RP 251:8-9 (November 14, 2012) (“So it sounds to me as though we can probably get this case finished today, is my expectation.”); RP 408:17-19 (November 15, 2012) (“Counsel, we’re running out of time. I’m giving this case until noon today so I think we need to wrap this up.”); RP 420:6-8 (November 15, 2012) (“Counsel, we’re running out of time. Anything that’s urgent that needs to get before the Court?”); RP 422:4-6 (November 15, 2012) (“I have a 4 o’clock hearing, so we’ll have you out of here. I expect my decision will be extremely brief.”); RP 339:1-4 (November 14, 2012) (“I can give you half a day tomorrow and that is it. So if you want any closing arguments, I would suggest you leave yourself some time for that. We will be concluded by noon tomorrow.”)

⁵³ RP 389:20-391:21 (November 15, 2012).

⁵⁴ RP 270:22-24 (Anh-Thu Thi Vu, November 14, 2012) (“Q. Would you agree that your health today is also not perfect? A. Yes.”); RP 336:7-19 (Anh-Thu Thi Vu, November 14, 2012).

The trial court entered Findings of Fact and Conclusions of Law, along with a Dissolution Decree on November 30, 2012.⁵⁵ I timely appealed.⁵⁶

V. ARGUMENT

On review, this Court determines whether the trial court's findings are supported by substantial evidence, and in turn, whether the findings support the conclusions of law and judgment.⁵⁷ Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise.⁵⁸

In making an equitable property division or awarding maintenance, the trial court exercises broad discretionary powers.⁵⁹ Its disposition will be overturned on appeal, however, upon a showing of manifest abuse of discretion.⁶⁰

An award of attorney fees under RCW 26.09.140 is discretionary and is reviewed for abuse of discretion.⁶¹ Generally, the needs of the requesting party must be balanced against the other party's ability to

⁵⁵ CP 8-25.

⁵⁶ CP 26-47.

⁵⁷ *In re Marriage of Monaghan*, 78 Wn. App. 918, 899 P.2d 841 (1995).

⁵⁸ *Id.*

⁵⁹ *Washburn v. Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152, 158 (1984).

⁶⁰ *Id.*

⁶¹ *In re Knight*, 75 Wn. App. 721, 729, 880 P.2d 71 (1994), *review denied*, 126 Wn.2d 1011, 892 P.2d 1089 (1995).

pay.⁶² The court may also consider, however, “the extent to which one spouse’s intransigence caused the spouse seeking a fee award to require additional legal services.”⁶³ Once intransigence is established, the financial resources of the spouse seeking fees are irrelevant.⁶⁴

Sufficiency of service of process is a question of law.⁶⁵ Whether service of process was proper is a question of law that the Court of Appeals reviews de novo.⁶⁶

A. Service was not proper

At the time I was served with the summons, Mr. Dang’s brother and sister had a key to the house. They opened the door, came inside, turned on the lights, and waited for me to come home. When I got home, they stood up and handed me the papers. Mr. Dang’s sister told me that her brother didn’t want me anymore because he had found another woman, and he wanted me out of the house. They should have stayed outside the house and waited for me to return home instead of going inside. At that time, I was still married to Mr. Dang and the house was our marital home. I was frightened when I walked into the house at 11:00pm and found people inside and the lights on. I didn’t know who

⁶² *Kruger v. Kruger*, 37 Wn. App. 329, 333, 679 P.2d 961 (1984).

⁶³ *In re Crosetto*, 82 Wn. App. 545, 563, 918 P.2d 954 (1996); *In re Morrow*, 53 Wn. App. 579, 590, 770 P.2d 197 (1989).

⁶⁴ *Crosetto*, 82 Wn. App. at 564, 918 P.2d 954.

⁶⁵ *Gross v. Sunding*, 139 Wn. App. 54, 67, 161 P.3d 380 (2007).

⁶⁶ *Streeter-Dybdahl v. Nguyet Huynh*, 157 Wn. App. 408, 412, 236 P.3d 986 (2010).

was in the house, what danger there might be, and I was wondering what was going on. It was terrifying. Because service was not proper, 90 days had not elapsed from the date the summons was served.

B. I was so sick and weak during trial, the judge was angry with me, and I did not have enough opportunity to testify.

One day during trial, I was so sick while on the witness stand that I had to leave the courtroom for the emergency room; this was on October 17, 2012.⁶⁷ During the November portion of the trial, I was still in poor health.⁶⁸

Regarding the October 17 incident, it was very improper for Judge Erlick to have my attorney take me to the emergency room. My attorney Sharon Friedrich was supposed to advocate and defend me. I paid almost \$80,000 for her to represent me. I did not pay her to be rude and unprofessional toward me when my health is poor and fragile. Judge Erlick should have called 911. I hired my attorney to represent me for my legal issues. I did not hire her to take care of my health. It was wrong for Judge Erlick to take several minutes to discuss this issue with my attorney Sharon Friedrich and then appoint her to take me to the

⁶⁷ RP 223:18-20; 224:4-21; 225:13-19; 226:10-14 (October 17, 2012).

⁶⁸ RP 270:22-24 (Anh-Thu Thi Vu, November 14, 2012) (“Q. Would you agree that your health today is also not perfect? A. Yes.”) RP 336:7-19 (Anh-Thu Thi Vu, November 14, 2012).

emergency room. Instead, they should have called 911 right away because I was so sick and shaky.

Judge Erlick should not have entered an order on the afternoon of October 17, 2012, when I was not in court, particularly an order requiring me to vacate the house by December 1, 2012, when my health was very fragile. At that time of year, the weather is cold and wet. Judge Erlick abused his discretion. I had to pack my things by myself and find a place to move while trial was still going on. I had to buy an emergency ticket for my friend to come from a different state to help me move. I had to rush to find rental transportation, and search for a storage place. Moving expenses cost me over \$2,000.⁶⁹ Is it the law that if my attorney did not object to Judge Erlick's ruling, the judge can do whatever he wants to do? My attorney Sharon Friedrich had no authority to agree to entry of this order. Judge Erlick said he would recess the court, but he did not, and entered an order after I had to leave court.

I could not eat or sleep because of my health. My attorney did not advocate for me very well. Because I was so sick and weak, I could not focus on what was happening in court. I was traumatized because of the stress related to my marriage and divorce.⁷⁰ Judge Erlick was very cold to

⁶⁹ RP 412:19-21 (Anh-Thu Thi Vu, November 15, 2012).

⁷⁰ CP pending supplemental designation of clerk's papers, Declaration of Anh-Thu Thi Vu dated September 24, 2012, sub #83.

me and had no sympathy for my health. He should have recessed the court and continued the trial dates.

After the October 17, 2012 order was entered, I sent e-mail to the King County Superior Court Presiding Judge, Judge McDermott, complaining that the October 17 order was unfair and unjust and should not have been entered while I was in the hospital and not present in court. I believe that after that, Judge Erlick was angry with me for having complained and this made him biased against me for the rest of the trial. The decisions he made against me were in retaliation for my complaining, including saying that I had 18 months of free rent; that I was not qualified to testify about my own health;⁷¹ that I delayed the case; that I was not to be reimbursed for my out-of-pocket expenses for my medical care, the alarm system, changing the locks, and the hotel bill; refusing to award me spousal maintenance; and awarding Mr. Vinh Dang attorney fees. There was never any requirement for me to pay rent when the restraining order was issued.

Finally, I did not have enough time to testify about the spousal abuse I suffered, about my financial issues, and about my health. Every time the other side had a witness, Judge Erlick allowed them time. But he kept telling my side that the trial had to be over quickly.

⁷¹ RP 333:14-24 (November 14, 2012).

This case is about the restraining order, my health, and asking for compensation. I tried to keep this marriage going, but I could not because I had to deal with all the abuse from Mr. Vinh Dang, his family members, his friend, and his neighbor. At the same time, my attorney did not advocate for me very well during the trial. She also intimidated and threatened me. I just said yes to everything my attorney and the judge asked. I did not have time to rest and recover my health. At my deposition too, I had just a few days earlier come out of the hospital, but I was forced to go to the deposition, and the court made me answer questions.⁷²

I do not believe Judge Erlick read my trial brief or declarations, in which I detailed the physical and emotional abuse from Mr. Vinh Dang. Also, I was threatened and controlled by my attorney, Sharon Friedrich. During the dissolution trial, I believe Judge Erlick was angry because of receiving the October 31, 2012 letter from another judge in the Superior Court following an e-mail message I sent to the Superior Court complaining about his October 17, 2012 order.

I did not have a chance to testify or object. Judge Erlick said that I was not qualified to speak about my own health condition.⁷³ My attorney

⁷² RP 262:12-14 (Anh-Thu Thi Vu, November 14, 2012).

⁷³ RP 333:14-24 (November 14, 2012).

did not advocate for me. Additionally, Judge Erlick repeatedly said that the trial had to be over quickly.⁷⁴

C. The prenuptial agreement should not be enforced.

1. The prenuptial agreement does not meet the California standard for enforceability.

The prenuptial agreement was executed in California.⁷⁵ California law provides:

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

- (1) That party did not execute the agreement voluntarily.
- (2) The agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:
 - (A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.
 - (B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.
 - (C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

⁷⁴ See for example RP 224:25-225:1 (October 17, 2012) (“Well, we need to complete this case, so we’re going to complete this case.”); RP 404:5-6 (November 15, 2012) (“Counsel, we have until noon today, so how do we want to finish this up?”) RP 251:8-9 (November 14, 2012) (“So it sounds to me as though we can probably get this case finished today, is my expectation.”)

⁷⁵ RP 21-25 (October 15, 2012); RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012).

- (b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.
- (c) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:
- (1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.
 - (2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.
 - (3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information.
 - (4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.
 - (5) Any other factors the court deems relevant.⁷⁶

⁷⁶ California Family Code § 1615.

The attorney that I saw in California about the prenuptial agreement, Matthew Shanon, was one that my husband found for me.⁷⁷ He was not therefore my independent counsel. He was arranged for me by my husband. My husband and his attorney in California arranged everything for the prenuptial agreement. Mr. Shanon did not explain the prenuptial agreement to me.⁷⁸ Also, I did not sign the agreement voluntarily; Mr. Dang told me that if I did not sign, there would be no marriage.⁷⁹ I was not given the required seven days to review the agreement; the day that I signed it was the first day that I saw it.⁸⁰

As for the required fair, reasonable, and full disclosure of Mr. Dang's property and financial obligations, the list of his assets attached to the prenuptial agreement does not give any values for his real or personal property.⁸¹ I was given no information about his income.⁸²

Because the prenuptial agreement does not meet the above requirements under California law, it is invalid and should not be enforced.

2. The prenuptial agreement was improperly approved and stipulated to during the dissolution trial.

⁷⁷ RP 253:15-19 (Anh-Thu Thi Vu, November 14, 2012).

⁷⁸ RP 325:10-326:10 (Anh-Thu Thi Vu, November 14, 2012).

⁷⁹ RP 323:2-325:14 (Anh-Thu Thi Vu, November 14, 2012).

⁸⁰ RP 323:18-20 (Anh-Thu Thi Vu, November 14, 2012).

⁸¹ CP pending supplemental designation of clerk's papers, Ex. to Vu Dep., sub #104.

⁸² RP 323:24-324:1 (Anh-Thu Thi Vu, November 14, 2012).

During the dissolution trial, I did agree that the prenuptial agreement was enforceable regarding distribution of property and debts (but not maintenance).⁸³ However, as I explained above, I was still sick in November, and I agreed to enforcement of a portion of the prenuptial agreement only because I was sick and my health had so deteriorated and my attorney did not defend me. Because I was so sick and traumatized, I agreed to whatever my attorney and the judge said.

3. Half of the assets distributed to my husband under the prenuptial agreement should have been distributed to me.

In a dissolution action, all property, community and separate, is before the court for distribution.⁸⁴ The dissolution court is required to make a just and equitable distribution of property.⁸⁵

Mr. Dang makes a lot of money and his property is valued at a million dollars.⁸⁶ His salary is almost \$100,000 a year.⁸⁷ My life has been turned upside down and I live paycheck to paycheck. Therefore, half of all his assets listed on Exhibit H attached to the Findings of Fact and

⁸³ RP 389:20-391:8 (Anh-Thu Thi Vu, November 15, 2012).

⁸⁴ *In re Marriage of Stachofskv*. 90 Wn.App. 135, 142, 951 P.2d 346, *review denied*, 136 Wn.2d 1010 (1998).

⁸⁵ RCW 26.09.080.

⁸⁶ CP 24-25.

⁸⁷ CP pending supplemental designatin of clerk's papers, sealed financial source documents, sub #93, 109.

Conclusions of Law should be distributed to me.⁸⁸ That would be just and equitable.

D. The trial court abused its discretion when it did not award maintenance to me.

The award of spousal maintenance is within the discretion of the trial court.⁸⁹ That award is based not on some rigid formula, but fairness.⁹⁰ In calculating the amount and duration of maintenance, “the paramount concern must be the economic condition in which the dissolution decree leaves the parties.”⁹¹

While this factor is unquestionably significant, it is only one of several factors to be considered in deciding whether a maintenance award is appropriate and necessary. RCW 26.09.090 contains a nonexclusive list of factors for consideration by the trial court, including: the financial resources of the party seeking maintenance; the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skills, interests, style of life, and other circumstances; the standard of living enjoyed during the marriage; the duration of the marriage; the age and physical and

⁸⁸ CP 24-25.

⁸⁹ *In re Marriage of Bulicek*, 59 Wn.App. 630, 633, 800 P.2d 394 (1990).

⁹⁰ “The only limitation on the maintenance award is that the amount and duration, in light of all the relevant factors, be just.” *In re Marriage of Spreen*, 107 Wn.App. 341, 347-48, 28 P.3d 769 (2001); see also *In re Marriage of Terry*, 79 Wn.App. 866, 869, 905 P.2d 935 (1995).

⁹¹ *Terry*, 79 Wn.App. at 871.

emotional condition of the party seeking maintenance; and the ability of the party from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the party seeking maintenance.⁹²

I presented information to the court that my projected expenses exceed my income, and the court entered this fact in its findings.⁹³ The court did not however think it was reasonable for me to contribute money each month toward my pension plan.⁹⁴ I am a single woman and it is necessary for me to save for my future and retirement. It is not prudent to rely solely on my FERS pension plan. Right now, I am living paycheck to paycheck. I don't know what will happen to me tomorrow. The rental market is expensive and to cover apartment and parking space I should budget \$1600 a month.⁹⁵ My cell phone can run up to \$300 a month; I have only a 200 minute limit.⁹⁶ Because of my work schedule, I don't have time to cook at home. I have to eat out frequently, and a single meal can cost up to \$30, therefore \$800 a month for food is therefore realistic and reasonable. I had to pay considerable legal fees for my dissolution. My car is in disrepair and I cannot afford to buy a new one. I continue to

⁹² See *Bulicek*, 59 Wn.App. at 633.

⁹³ CP 16, ¶ 2.12.

⁹⁴ *Id.*

⁹⁵ *Id.* and RP 395:15-396:1 (November 15, 2012).

⁹⁶ RP 414:4-14 (Anh-Thu Thi Vu, November 15, 2012).

have healthcare costs. Going to the emergency room is very expensive. Yes, I have health insurance, but it is for me. I never expected my life would be turned upside down like this. As for my hair, I have it cut and dyed two times a month, and \$200 a month is the actual cost.

Also, the court made much of my having lived “rent free” in the house for 18 months.⁹⁷ But that is irrelevant. I had no obligation to pay rent. No rent is required under the prenuptial agreement or the temporary restraining order. If Mr. Dang wanted to require me to pay rent, then he should have put it in the prenuptial agreement. If he wanted rent, he should have asked me to sign a contract to pay rent to him. Additionally, during the time that I lived in the house, I did labor. Community labor and funds were used to maintain the house.⁹⁸ The restraining order required me to maintain the house.⁹⁹ I should be awarded spousal maintenance of \$833 per month for five years, because that would be fair. During our five-year marriage, he controlled me and cheated on me and treated me like his maid, leaving me in a poor emotional and physical condition with limited money and continuing health problems. Mr. Vinh Dang’s assets are worth more than \$1 million, and the judge protected

⁹⁷ RP 394:10-14 (November 15, 2012).

⁹⁸ CP pending supplemental designation of clerk’s papers, Reply Declaration of Anh-Thu Thi Vu dated December 7, 2011, sub #31.

⁹⁹ CP, pending supplemental designation of clerk’s papers, Temporary Restraining Order entered December 21, 2011, sub #13.

him. My money has all gone to pay legal fees for the divorce, medical expenses, and car repairs.

E. I was not intransigent and the trial court abused its discretion when it awarded \$8,000 in attorney fees to Vinh Dang.

Opposing counsel's claim at trial that I had \$165,000 in cashier's checks in a safety deposit box was incorrect.¹⁰⁰ I do not hide my money. My husband's attorney submitted subpoenas and gathered all the evidence he wanted from the banks.¹⁰¹ From the beginning, I provided bank statements to opposing party.¹⁰² I do not lie about my financial assets.¹⁰³ Please stop saying that I am intransigent. I am not a thief. I am not a cheater. I am a responsible person. I am an independent working woman. I pay my own expenses. I follow the rules of whatever is requested me, from the court or the police or any other legal authority. Judge Erlick had to delay the trial because of my health issues. Judge Erlick just wanted to complete this case quickly and did not have sympathy for me and my health. I was sick. I was in the hospital. My health was so poor that I was in a very fragile condition. That's why the

¹⁰⁰ RP 464:23-465:2 (November 30, 2012).

¹⁰¹ RP 462:3-4 (November 30, 2012).

¹⁰² RP 458:15-461:17 (November 30, 2012); Vu decl. sub 29 or 31.

¹⁰³ See e.g. my Reply Declaration dated December 7, 2011, in which I address Mr. Vinh Dang's allegation that I was not truthful on my Financial Declaration regarding my bank accounts and referencing the bank statements filed in one of my Sealed Financial Source Documents. CP pending supplemental designation of clerk's papers, Declaration of Anh-Thu Thi Vu, December 7, 2011, sub #31.

case had to be delayed. It is not fair that I now have to pay for this extra time at trial through an award of attorney fees to my husband.

Any money I withdrew was my own money. I had to pay for my car repairs, my gas, my food, and my medical expenses. I had to pay for my attorney. It cost thousands and thousands of dollars to get the records from the bank for my husband and also the photographic exhibit evidence of the condition of the house showing what needed to be repaired. There was no cashier's check in the amount of \$165,000.

Oposing counsel complained about a withdrawal of \$45,000 in August of 2012.¹⁰⁴ But I had to pay for my attorney fees, for photographic evidence exhibits, for parking, for long distance calls. It costs lots of money for my divorce case and trial.

F. The court did not reimburse me properly.

The expenses numbered 1 through 4 in paragraph 2.21 of the Findings of Facts¹⁰⁵ were for the community. Regarding #1, the hotel bill of \$278.75, the power was off in the winter time, there was no heat, and it was so cold that I had to stay in a hotel.¹⁰⁶ This was for two nights around November 17, 2011. Even though Mr. Vinh Dang's brother and sister improperly served me with the summons and petition on November 11,

¹⁰⁴ RP 462:23-25 (November 30, 2012).

¹⁰⁵ CP 18.

¹⁰⁶ See RP 410:11-12 (November 15, 2012).

2011, he was still coming back to the house and trying to harass me, until I got the restraining order in December. The night the power was out, Mr. Dang was in the house, and he harassed me. He knew how to turn off the power to the house, but I did not know how to turn it back on. So I had to go to a hotel, and he should reimburse me because he was still living in the house and he was harassing me.

Regarding #2, the \$1,887.66 for the alarm, my husband already had an alarm in the house, but when the alarm went off, I asked my attorney to ask his attorney to get the alarm code, but they didn't give it to me.¹⁰⁷ I needed to continue to have an alarm in the house, and so I had a new one installed.¹⁰⁸ According to the restraining order, I have to fix anything that happens in the house while I am there: "Wife to pay all utilities on the home and general upkeep/repair in current condition."¹⁰⁹

Regarding #3, \$208.05 for changing the locks, a man went into the yard at 3:00am. Several nights I saw a man and a woman walk into the yard. I reported this to the police. The police said they would not do anything until I was actually physically abused. The police asked me if I had changed the locks and whether I had my own key. I explained that Mr. Vinh Dang and his family members all have keys. His family

¹⁰⁷ RP 411:8-22 (November 15, 2012).

¹⁰⁸ *Id.*

¹⁰⁹ CP pending supplemental designation of clerk's papers, Temporary Restraining Order entered December 21, 2011, sub #39.

members would let themselves in and harass me. His family told me it was normal and appropriate for them to walk into the house any time they wanted. I had a restraining order against my husband,¹¹⁰ but not against his family members. Because I was responsible for any damage to the house, to stop people from coming in, to prevent damage or for my own safety, I had to change the locks. This was therefore a benefit to Mr. Dang and the community.

Regarding #4, the medical expenses of \$4,681.09, even though I had a restraining order, Mr. Vinh Dang instructed the neighbors to watch me, every time I went inside or out, day and night. During 2011, I was not able to go home after work. Mr. Vinh Dang wanted a divorce and was trying to force me out of the house, but he never provided any divorce documents until almost the end of the year 2011. I would stay out until midnight to avoid him, and when I finally got home, he was there waiting for me, and would harass me, and make my life terrible. For twelve months, until the restraining order was issued, my health deteriorated from the stress. That's why I went into the emergency room. Before I was married to him, I did not have these health problems. I was emotionally abused and incurred the medical expenses because of his harassment and cheating. I gave up my life in California to marry him and live with him

¹¹⁰ *Id.*

in Washington. He promised me that he would build a family with me. But from the time I arrived here, he controlled me and cheated on me. I tried to save our marriage. He promised in front of his aunt that he would work out our marriage problems with me, but he did not.

Regarding the heating oil, the court allowed me reimbursement for only half the cost.¹¹¹ At the time it was filled, it was empty to the bottom of the tank. After filling, when I turned on the heat, the fumes made me sick. And so I turned it off and did not ever use it again. Therefore the tank was still full when I left the house, and I should be reimbursed the full cost of the heating oil, not half the cost.

Also the court allowed me reimbursement for utility overpayment for any utilities I did not use on the house beyond December 1, 2012, at 5:00pm.¹¹² But I do not know, and the court does not know, the amount of the overpayment without my husband providing a billing statement. The court should have ordered him to provide it with a billing statement to show the precise amount.

G. The date of separation was not April 30, 2011.

We were not living separately from April 30, 2011. Mr. Vinh Dang was constantly in and out of the house after that date, at all hours of

¹¹¹ CP 18; RP 425:5-9 (November 15, 2012).

¹¹² CP 20, ¶ 3.8.

the day and night,¹¹³ frequently harassing me. We did not finally separate until November 10, 2011.¹¹⁴ The judge accepted April 30, 2011 as the date of separation as a favor to Mr. Vinh Dang.¹¹⁵ There is no substantial evidence that Mr. Vinh Dang in his mind believed the marriage to be over as early as April, 2011.

H. Attorney fees.

RAP 18.1 requires a party to request attorney fees if applicable law grants a party the right to recover attorney fees. Chapter 26.09 RCW allows for the appellate court to order a party to pay for the costs to the other party of maintaining an appeal and attorney's fees in addition to statutory costs. Although I am now proceeding *pro se*, I did incur attorney fees in this appeal. Because this is an appeal of a dissolution proceeding, I request that I be awarded my reasonable attorney fees.

VI. CONCLUSION

I should be awarded spousal maintenance. The award of attorney fees to Mr. Vinh Dang should be reversed. The finding of intransigence should be reversed. The approval of the pre-nuptial agreement should be reversed, and I should be awarded half of Mr. Vinh Dang's assets. The

¹¹³ RP 186:19-187:20 (Vinh Dang, October 16, 2012).

¹¹⁴ CP 6.

¹¹⁵ RP 447:6-17 (November 30, 2012).

date of separation should be changed to November 10, 2011. I should be reimbursed properly for my expenses, including home repairs, alarm and locks, medical expenses, and hotel bill. I should be awarded attorney fees for having to bring this appeal.

I am asking for this because I put my whole heart into this five year marriage. Mr. Vinh Dang told me that he would build a life with me, that we would pool our money and buy a house together, but he was nothing but cheating, controlling, and calculating. He made me believe in him, but every time I turned around he was harassing me and controlling me. He never showed me his paystubs or anything about his income. He forbade me from mentioning it, but he controlled my money, telling me how much I could spend. When I moved into his house, he asked me to give up almost all my belongings from California. Most of what I did bring with me, he ordered that it had to stay in the basement. I could not buy a new bed or new sheets. I was supposed to be living with him as a family, but he would not let me display any of my things.

This case is about the restraining order. This case is about emotional and physical abuse from my husband. This case is about the pre-nuptial agreement that I never understood. This case is about protection of my rights. It is about the medical expenses for my years of doctor visits resulting from my abuse from him. I need to continue to

seek medical treatment because I am still not well. Whatever the outcome of the appeal, I would like five years of maintenance.

The figure of \$275,000 (CP 16), I don't have it. Please do not focus on my working salary, my health insurance, or my saving money. My salary is a working wage having nothing to do with the restraining order. I work and am entitled to get pay for my labor. My health insurance payments deducted from my paycheck have nothing to do with the restraining order or divorce case. I pay my own insurance from my pocket, having nothing to do with abuse damage. Also, my savings belongs to me from before I got married. My savings is not community property. If Vinh Dang claims that my savings is community property, then I have to mention his two houses, his vacant lot property, and all his pension has also become community property.

Judge Erlick said that I enjoyed free rent. If I have an apartment, cleaning my apartment will be the same as cleaning house when I was living with my husband? That perception is incorrect. When I live by myself I enjoy cleaning just for me, and I have the respect for myself, and not being beaten up by my husband. In contrast, when I was living with Vinh Dang, I had to clean, cook, grocery shop, launder, garden, keep house, and be a companion. These tasks took every weekend, for five years of sacrifice. In addition, I was being abused and shoved and hit. So

please do not focus on my job, or my insurance, or my savings money. Please focus on the restraining order, and physical and mental abuse.

Mr. Vinh Dang has property worth \$1 million and a higher salary than I have. I was not prepared for such treatment in my marriage.


On first impression and in the public eye, Vinh Dang is a very good man. I married him for the same reasons stated by his family and friends about how great he is. Unfortunately for me, I discovered after marriage that Vinh is not the person I thought he was. Behind closed doors, Vinh is a totally different person. He is cold, selfish, controlling, domineering and scary to be around. He constantly harassed me and exhibited controlling behavior. For example, he often demanded that I be home at 6:00 pm, regardless of where I was or what I was doing. He would call and tell me to be home right away. Our marriage fell apart because he didn't treat me like his wife or equal. He treated me like his servant, that I was just there for his needs. When Vinh does not get his way, he becomes abusive, angry, and violent, examples of which have already been mentioned.

Vinh's brother and sister provided declarations on his behalf. His siblings have been relentless in their personal attacks against me. They told me to go back to California, that I am a freeloader, they came to the house and told me to leave, the family invited me over to harass me and

tell me to go to California. The brother and sister ask other family and friends to treat me poorly. They do not understand the great sacrifice I made to come and live in Seattle. I am locked into my job with the Social Security Administration and cannot easily pick up and find a good job in California.

I take my marriage vows and my Catholic beliefs very seriously. I have tried to work out our marriage with Vinh despite the abuse I've been experiencing.

DATED this 19 day of August, 2013.



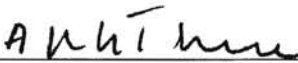
Anh-Thu Thi Vu, Appellant *pro se*
126 SW 148th St. Ste C100 PMB #459
Seattle, WA 98166

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below written date, I caused delivery of a true copy of Anh-Thu Thi Vu's Opening Brief to the following individuals:

Office of the Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	<input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger <input type="checkbox"/> Certified Mail <input type="checkbox"/> Email
Emily Jennifer Tsai Tsai Law Company PLLC 2101 4 th Ave, Suite 1560 Seattle, WA 98121	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Email

Signed this 19 day of August, 2013 Seattle, Washington.



Anh-Thu Thi Vu, *pro se* Appellant