

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97463-2

SUPREME COURT
OF THE STATE OF WASHINGTON

GLORIA PETELLE,

Respondent,

v.

MICHELLE ERSFELD-PETELLE,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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February 14, 2017 (CP 43-53)

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I. INTRODUCTION

Michelle Ersfeld-Petelle entered into a written separation agreement with her estranged husband, Michael Petelle. The Court of Appeals correctly ruled that Michelle waived all marital rights, including the right to intestate succession following Michael's death. Review of the Court of Appeals' decision by this Court is unwarranted.

Contrary to Michelle's arguments, the Court of Appeals properly analogized to *In re Brown's Estate*¹ and *Matter of Estate of Lindsay*,² both of which like this case involved waiver of marital inheritance rights. The Court of Appeals' decision does not conflict with *Matter of Estate of Baird*,³ which was a case about attempted anticipatory disclaimer of an expectancy interest, not waiver of marital rights. Nor does the decision conflict with this Court's decision in *Pratt v. Pratt*⁴; abatement of a dissolution proceeding upon death does not affect a settlement agreement's enforceability. Nor does Michelle raise an issue of substantial public interest that this Court should decide. The Court of Appeals' decision merely gives effect to a separation agreement.

Finally, the Court of Appeals' decision not to remand for fact finding on possible modification of the settlement agreement does not conflict with decisions on integration clauses. There simply was no evidence of any actual modification. This Court should deny review.

¹ 28 Wn.2d 436, 183 P.2d 768 (1947).

² 91 Wn. App. 944, 957 P.2d 818 (1998).

³ 131 Wn.2d 514, 933 P.2d 1031 (1997).

⁴ 99 Wn.2d 905, 665 P.2d 400 (1983).

II. COUNTERSTATEMENT OF THE CASE

Michael Petelle filed for divorce from Michelle Ersfeld-Petelle after they had been married about six years. *Slip Op.* ¶ 2. A few weeks later, they entered into a written separation agreement. *Slip Op.* ¶ 2; CP 43-53 (copy attached as Appendix A). Two and a half months after that, Michael died intestate. *Slip Op.* ¶ 2. Michelle sought to inherit 75% of Michael's estate by intestate succession as a surviving spouse. *See id.* ¶¶ 3-4; RCW 11.04.015. Michael's mother, Gloria, challenged Michelle's claim in probate court. *Slip Op.* ¶ 4. Michelle prevailed in that court, but the Court of Appeals reversed and held that the separation agreement waived all marital rights, including the right to intestate succession.

The Court of Appeals relied on three key provisions of the agreement. First, the parties stipulated that the agreement was "a complete and final settlement of *all their marital and property rights* and obligations." *Slip Op.* ¶ 13 (quoting CP 43) (emphasis by the court). Second, each party abandoned any future claim to the other's property: "All property which shall hereafter come to either party shall be his or her separate property and neither party shall hereafter have any claim thereto." *Id.* ¶ 21 (quoting CP 46). Third, the agreement provided that it was effective after the death of either party: "Should either party die after execution of this contract, the distribution of property and obligations agreed herein shall be and remain valid and enforceable against the estate of either party insofar as applicable law permits." *Id.* ¶ 17; CP 48.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

- A. The Court of Appeals properly analogized to *In re Brown's Estate* and *Matter of Estate of Lindsay*, both of which involved waiver of marital inheritance rights, and its decision does not conflict with *Matter of Estate of Baird*.**

In concluding that the separation agreement waived the right to intestate succession, the Court of Appeals relied primarily on two prior decisions, one by this Court and one by the Court of Appeals: *In re Brown's Estate*, 28 Wn.2d 436, 183 P.2d 768 (1947), and *Matter of Estate of Lindsay*, 91 Wn. App. 944, 957 P.2d 818 (1998). In each case, the appellate court determined that the surviving spouse had impliedly waived another statutory inheritance right—a surviving spouse's right to a homestead⁵—by entering into a written separation agreement that relinquished any rights to the deceased spouse's property following death.

In *Brown*, the parties entered into a separation agreement while their divorce was pending. Similar to here, the agreement provided that it was a “full and complete settlement of all of the property rights of the parties” and was “final and conclusive” even if one of them died before their divorce became final. 28 Wn.2d at 437-38. With the divorce still pending, the husband died leaving a will that did not mention his wife. *Id.* at 439. The question was whether the wife waived her right to a homestead. The superior court ruled that she did not, but this Court reversed. This Court concluded it was “clear...that the parties to the property agreement had in

⁵ A probate homestead “is created by a probate court from a decedent's estate for the benefit of the decedent's surviving spouse and minor children.” *Homestead*, BLACK'S LAW DICTIONARY (11th ed. 2019).

contemplation the possibility of death and obvious[] that they meant to waive any rights which might accrue upon death, one of which rights would be the homestead right.” *Id.* at 440.

In *Lindsay*, the parties signed a written separation agreement but never divorced. 91 Wn. App. at 951. Again similar to here, the agreement divided their property, provided that neither would have any claim or interest in any after-acquired property, and provided that any changes must be in writing. *Id.* at 947, 951. Affirming the judgment denying the wife a homestead following the husband’s death, the Court of Appeals concluded that “[t]he agreement clearly reflects an intent to give up those rights which would normally follow legal spouses.” *Id.* at 951.

In concluding that Michelle’s waiver of marital rights included the statutory right to intestate succession, the Court of Appeals looked to *Brown* and *Lindsay* as two decisions holding that “a spouse’s right to a homestead, another marital inheritance right, can be impliedly waived in a settlement agreement of marital and property rights[.]” *Slip Op.* ¶ 15. The Court of Appeals noted the similar provisions in the separation agreements in those cases and held that the same analysis applied here. *Id.* ¶¶ 17, 21. The court concluded that although *Brown* and *Lindsay* involved the right to a homestead rather than intestate succession, “[b]oth cases analyzed whether a separation contract that is a final settlement of a married couple’s property and rights, effective even upon death, evidences an intent to waive the statutory marital rights of a surviving spouse.” *Id.* ¶ 22. The court

continued, “Michelle’s right to intestate succession, like the homestead right, is a statutory marital right due to a surviving spouse.” *Id.*

Michelle attempts to distinguish *Brown* and *Lindsay* on two grounds, the first of which involves an asserted conflict with a decision of this Court: citing *Matter of Estate of Baird*, 131 Wn.2d 514, 933 P.2d 1031 (1997), she asserts that unlike the homestead right, the right to intestate succession cannot be waived before the decedent’s death. The second asserted ground to distinguish *Brown* and *Lindsay* is that the courts in those cases considered the parties’ subsequent conduct in determining the effect of the agreements. Both arguments are meritless.

1. Intestate-succession rights may be waived, just like the homestead right at issue in *Brown* and *Lindsay*.

In the Court of Appeals, Michelle expressly and unconditionally conceded that the right of intestate succession may be waived. *Br. of Resp’t* at 15 (“Michelle does not disagree that a party *can* waive their right to inherit under RCW 11.04.015.”). The Court of Appeals even noted in its decision, “While Michelle concedes that a party can waive his or her right to intestate succession, she argues that such a waiver did not occur here.” *Slip Op.* ¶ 14. Nevertheless, Michelle now contends that because an intestate interest is created only upon death, no separation agreement could possibly waive the right to intestate succession.

Michelle’s contention is meritless; the right to intestate succession is not materially different from the homestead right at issue in *Brown* and *Lindsay*, which under those precedents can be waived. Michelle asserts that

intestate succession is different because potential intestate succession to a spouse “can be unilaterally destroyed by the simple act of execution of a will by the other spouse.” *Petition* at 11. But the fact that the right can be eliminated by a will does not mean that it cannot also be eliminated by a spouse’s waiver of marital rights in property. A divorce eliminates any possibility of intestate succession to a surviving spouse; there is no reason why parties may not accomplish the same result through a separation agreement.

2. *Baird*, a case about attempted anticipatory disclaimer of an expectancy interest rather than waiver of marital rights, is inapposite.

Michelle argues that under this Court’s decision in *Matter of Estate of Baird*, 131 Wn.2d 514, a decision she never cited below, intestate-succession rights may not be waived before the decedent’s death. She asserts a conflict warranting review under RAP 13.4(b)(1). There is none; she misstates the holding in *Baird*.

Contrary to Michelle’s characterization of *Baird*, that case did not involve waiver of inheritance rights. *See Petition* at 7. Rather, this Court concluded in *Baird* that the statute allowing a beneficiary to disclaim an interest in an existing estate, RCW 11.86.021, did not permit a purported disclaimer signed before the estate existed. Under chapter 11.86 RCW, a person who is entitled to take an *existing* interest in property, including by intestate succession, may “disclaim” that existing interest by delivering a written disclaimer within a certain period of time “after the creation of the interest.” RCW 11.86.021(1), .031(1)-(2). Under the statutorily adopted

doctrine of relation back, a validly disclaimed interest passes “as if the beneficiary had died immediately prior to the date of the transfer of the interest.” RCW 11.86.041(1).

This Court’s decision in *Baird* was a straightforward application of the requirements of the disclaimer statute. After being convicted of first-degree assault of his wife, James Baird had purported to disclaim any interest in his mother’s estate under chapter 11.86 RCW, while his mother was alive. *Baird*, 131 Wn.2d at 516. After Baird’s mother’s subsequent death, Baird’s share of her estate represented the majority of his bankruptcy estate’s potential assets to satisfy a civil judgment obtained by the wife he had brutally assaulted. *Id.* Rejecting the notion that Baird’s anticipatory disclaimer could be enforced against his fault-free assault victim, this Court unanimously held that “RCW 11.86 does not authorize anticipatory disclaimers of expectancy interests.” *Id.* at 521. This Court reasoned that because an interest in the estate of one who dies intestate does not exist until death, Baird’s purported disclaimer, delivered before his mother’s death, did not meet the statutory requirement that a disclaimer be delivered “after the creation of the interest.” *Id.* at 519-21.

The Court of Appeals’ decision here does not conflict with *Baird* because this case does not involve an attempted disclaimer under chapter 11.86 RCW. The Court of Appeals did not conclude that Michelle executed a disclaimer under chapter 11.86 RCW or otherwise attempted to disclaim an interest in an estate that would be created upon Michael’s death. Instead, the court concluded that, in the separation agreement, Michael and Michelle

contractually agreed to waive all rights in each other's property that they previously had by virtue of being married to each other, including the right to inherit any of that property in the future. *Baird* is inapposite.

3. The courts' consideration of the parties' subsequent conduct in *Brown* and *Lindsay* does not distinguish those cases.

Evidence extrinsic to a contract, including the parties' conduct after executing the contract, is relevant and admissible to interpret the contract and discern the parties' intent. *Berg v. Hudesman*, 115 Wn.2d 657, 668, 801 P.2d 222 (1990). In both *Brown* and *Lindsay*, the appellate courts considered the parties' subsequent conduct. In *Brown*, the parties after entering into their separation agreement sold real property they had owned. 28 Wn.2d at 438, 440-41. In *Lindsay*, the parties revoked their previous reciprocal wills and executed new ones excluding the other spouse. 91 Wn. App. at 947, 952. In each case, the appellate courts considered the subsequent conduct as supporting the conclusion that the parties intended to waive all marital rights, including inheritance rights such as the homestead right. *Brown*, 28 Wn.2d at 440; *Lindsay*, 91 Wn. App. at 951-52.

Michelle contradicts her primary argument for review when she points to the absence of similar, subsequent conduct here as a distinguishing fact. Subsequent conduct can be relevant if waiver is possible. More to the point, the subsequent conduct in *Brown* and *Lindsay* was not critical to the results in those cases; it was merely corroborative. In *Brown*, this Court concluded based on the contractual language alone that waiver of all marital

rights was a “clear” and “inescapable” conclusion. 28 Wn.2d at 440. This Court reasoned that the subsequent conduct gave “additional force” to that conclusion. *Id.* The analysis in *Lindsay* is similar: only after observing that “[t]he agreement clearly reflects an intent to give up those rights which would normally follow legal spouses” did the court mention the parties’ subsequent conduct as supporting the result.⁶ 91 Wn. App. at 951-52.

The Court of Appeals’ decision is consistent with *Brown* and *Lindsay*, and the Court of Appeals properly rejected Michelle’s attempt to distinguish those cases based on the courts’ consideration of the parties’ subsequent conduct. Review is unwarranted.

B. The Court of Appeals’ decision does not conflict with this Court’s decision in *Pratt v. Pratt*; abatement of a dissolution proceeding upon death does not affect a settlement agreement’s enforceability.

Michelle asserts that the Court of Appeals’ decision conflicts with another decision she never previously cited, *Pratt v. Pratt*, 99 Wn.2d 905, 665 P.2d 400 (1983). She points to this Court’s recitation in *Pratt* of the principle that “a dissolution proceeding ordinarily abates upon the death of one of the spouses.” *Id.* at 908; *see Petition* at 6-7. There is no conflict.

The existence of a pending dissolution proceeding is immaterial to the result here. The abatement of a dissolution proceeding upon one spouse’s death does not affect the validity of a separation agreement, especially where the separation agreement expressly contemplates post-

⁶ In addition, as the Court of Appeals pointed out in its opinion in this case, the lack of execution of new wills here is inconsequential; Michael never had a will and there is no evidence that Michelle had one, either. *Slip Op.* ¶ 23.

death enforcement. For instance, in *Brown*, the husband died while a dissolution proceeding was pending, yet this Court held that the parties' agreement contemplated death and "waive[d] any rights which might accrue upon death[.]" 28 Wn.2d at 440. And in *Lindsay*, the separation agreement was given effect even though the parties never filed for divorce. 91 Wn. App. at 947, 951-52. Here, too, the separation agreement expressly contemplated the death of one of the spouses and was not contingent on entry of a dissolution decree. CP 43-44, 48. *Pratt* is inapposite.

C. Michelle does not raise an issue of substantial public interest that this Court should decide. The Court of Appeals' decision merely gives effect to a separation agreement.

Contrary to Michelle's argument, she does not raise an issue of substantial public interest that this Court should decide under RAP 13.4(b)(4). The Court of Appeals' decision is neither "inconsistent with public policy encouraging marriage and discouraging dissolution" nor will it "call into doubt the consequence of many standard separation contracts." *Petition* at 12. Parties are free to enter into separation agreements dividing their assets and liabilities and relinquishing their rights as married persons. The Court of Appeals' decision merely gives effect to a separation agreement, and doing so does nothing to encourage divorces. And far from calling into doubt the effect of separation agreements, the decision ensures that they will be enforced as written. Review is not warranted.

D. The Court of Appeals’ decision not to remand for fact finding on possible modification of the settlement agreement does not conflict with decisions on integration clauses. There simply was no evidence of any actual modification.

In the Court of Appeals, Michelle argued in the alternative that, even if she waived her right to intestate succession in the separation agreement, remand was necessary to determine whether she and Michael subsequently renounced or modified their agreement and decided to reconcile. She pointed mainly to evidence that Michael had emailed his attorney asking whether it was possible to delay the dissolution, cancel a no-contact order, and not list a house in Leavenworth for sale. *Br. of Resp’t* at 27; CP 17. Michael asked in the email, “Are there any technicalities involved that would keep us from doing this and needing to do it another way?” CP 17. The Court of Appeals declined to remand for fact finding mainly because the separation agreement provided that it could be modified only by a writing signed by both parties, and “Michael’s email was not a modification or termination that was signed by both parties.” *Slip Op.* ¶ 24.

Michelle is wrong that the Court of Appeals’ decision conflicts with decisions such as *Pacific Northwest Group A v. Pizza Blends, Inc.*, 90 Wn. App. 273, 277-78, 951 P.2d 826 (1998), holding that contract clauses prohibiting oral modifications are “essentially unenforceable.” *Id.* at 277-78. The problem with Michelle’s argument for remand was not the lack of a writing; an email generally is considered a “writing.” *See Mechling v. City of Monroe*, 152 Wn. App. 830, 853, 222 P.3d 808 (2009). The problem was that the email did not embody or convey a modification; it was merely

an inquiry about whether modification was possible and, if so, how to effect such modification. There is no conflict.

As other supposed evidence of intention to reconcile, Michelle points to the fact that “[n]either spouse executed a will intentionally excluding the other from inheriting, or otherwise took any affirmative action to expressly ensure that the survivor would not receive any property upon the death of the other.” *Petition* at 13. But neither was there any reason for either Michael or Michelle to take such actions. Unlike in *Lindsay*, where the parties had executed reciprocal wills while married, Michael never had a will, and there is no indication that Michelle did, either. *See Slip Op.* ¶ 23. The separation agreement itself was sufficient for Michael and Michelle to relinquish their marital rights.

Finally, a declaration from Michael’s friend and another from an acquaintance recalling how Michael “still loved” Michelle and “hoped for reconciliation” simply failed to create any fact issue about modification of the separation agreement. CP 1-2, 5. The notion that the Court of Appeals based its decision on “doubtful or ambiguous factors” akin to mere “lack of closeness” is wrong; the court based its decision on the separation agreement’s clear expression of intent to relinquish all marital rights. *See Petition* at 13-14 (quoting *Wagner v. Wagner*, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980); *Estate of Lundy v. Lundy*, 187 Wn. App. 948, 960, 352 P.3d 209 (2015)). The Court of Appeals properly declined to remand for fact finding, and review is not warranted.

IV. CONCLUSION

This Court should deny review.

Respectfully submitted this 28th day of August, 2019.

REED LONGYEAR MALNATI &
AHRENS, PLLC

CARNEY BADLEY SPELLMAN, P.S.

By 

By 

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Attorneys for Respondent Gloria Petelle

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 28th day of August, 2019.



Patti Saiden, Legal Assistant

APPENDIX

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

In re the Marriage of:

MICHAEL A. PETELLE,

Petitioner,

and

MICHELLE ERSFELD-PETELLE,

Respondent.

No. 17-3-00493-0 SEA

**SEPARATION CONTRACT AND
CR2A AGREEMENT**

This Civil Rule 2A Agreement, by and between MICHAEL A. PETELLE, (herein referred to as "Petitioner") and MICHELLE ERSFELD-PETELLE, (herein referred to as "Respondent") on the below-stated date, is made in order to promote an amicable settlement of disputes attendant to their separation. In consideration of the mutual promises and agreements and other good and valuable consideration herein expressed, the parties hereby stipulate and agree to make a complete and final settlement of all their marital and property rights and obligations on the following terms and conditions. The parties are not contracting to legally separate or dissolve their marriage, but agree if a decree of legal separation or decree of dissolution is obtained, this contract shall be incorporated in said decree and given full force and effect thereby. It is understood and agreed by the parties that this contract shall be final and binding upon the execution of

1 both parties, whether or not a legal separation or decree of dissolution is obtained. It is
2 the intent of the parties that the court approves this contract as fair and equitable at the
3 time it was entered into and thus enforceable. Either party may apply to the Superior
4 Court of the State of Washington for King County to award all such relief and ratify all
5 rights and obligations set forth in this contract. Each party stipulates to the jurisdiction
6 of the Superior Court of the State of Washington for King County to interpret this
7 contract and adjudicate all disputes related to this contract that are not resolved by the
8 dispute resolution provisions contained herein.
9

10 PROPERTY AND DEBTS

11 Separation Date. Final separation defining when the marriage became legally
12 defunct and the community presumption terminated is deemed to have occurred on or
13 about January 27, 2017.

14 Assets and Liabilities. The property and the debts have been equitably divided
15 between the parties as per **Exhibit A** attached hereto.

16
17 Unless otherwise specified herein, each party is fully responsible for his/her post
18 separation debts and each will keep his/her post separation acquisitions. Each party will
19 be responsible for any credit cards in his/her name only except as set forth in **Exhibit A**.
20 Joint credit cards and/or unsecured lines of credit will be closed or re-titled into the
21 name of the party awarded the account.

22 Bank accounts. Unless otherwise specifically provided herein, each party will
23 keep all bank accounts in his/her name. All joint bank accounts will be closed or re-
24 titled into the name of the party awarded the account.
25

1 Employment Benefits. Except as otherwise specifically provided herein, each
2 party shall retain as his or her separate property, free from any interest in the other, all
3 rights and benefits which have been derived as a result of past or present employment,
4 union affiliations, military service, or United States, state or other citizenship (except
5 rights the parties are entitled to receive by virtue of this relationship); including but not
6 limited to sick leave benefits, insurance, educational benefits and grants, health or
7 welfare plans and all other contractual, legislated or donated benefits, whether vested or
8 unvested, and whether directly or indirectly derived through the activity of the parties.

9 Except as otherwise specifically provided, each party shall retain all rights and benefits
10 to which he or she is entitled by state or federal law, including Social Security benefits.
11

12 Cooperation of Parties. Each party shall, within 30 days of a legitimate request
13 by the other party, execute any and all titles, deeds, bills of sale, endorsements, forms,
14 conveyances or other documents, and perform any act which may be necessary or
15 convenient to carry out and effectuate any and all of the purposes and provisions of this
16 agreement, the decree and related orders.
17

18 Hold Harmless. Except as otherwise specified in this agreement, each party
19 shall pay and hold the other party harmless, including reasonable attorney fees and
20 costs incurred in defending against any attempts to collect an obligation of the other
21 party, from any expense, loss, claim or liability whatsoever arising from, or in any way
22 connected with any debts and obligations, a) specified herein to be paid by that party, b)
23 due on or related to property awarded to that party, c) incurred by that party subsequent
24 to separation or d) undisclosed by that party to date. Filing for bankruptcy or failure to
25

1 pay the debts is not a basis to disrupt the property and debt division or maintenance
2 provisions herein.

3 Full Satisfaction of All Claims. All disclosed property not otherwise awarded or
4 assigned in this agreement, whether acquired before the relationship, during the
5 relationship or during any period of separation, shall be, and remain, the sole property
6 of the party in whose possession or control it presently is, free and clear of any claim on
7 the part of the other. All property which shall hereafter come to either party shall be his
8 or her separate property and neither party shall hereafter have any claim thereto.
9 Except as defined in this agreement, each party is hereby released from any and all
10 claims by the other party for injuries or losses, known or unknown, foreseen and
11 unforeseen, which have accrued through the date of execution of this agreement,
12 arising out of the marriage or any other relationship between the parties.
13

14 SPOUSAL MAINTENANCE

15 Spousal Maintenance shall be paid pursuant to **Exhibit A.**

16 ATTORNEY FEES AND COSTS

17 Attorney's fees shall be paid pursuant to **Exhibit A.**

18 ENFORCEMENT

19 Warranty. Each party hereby warrants to the other party that he or she has not
20 incurred and will not in the future incur any liabilities or obligations for which the other
21 party may be liable except as expressly set forth in this contract and that if any claim or
22 proceeding is brought seeking to hold the other party liable on account of any such
23 undisclosed liability or obligation, he or she will hold the other party harmless against
24 any such claim or proceeding, including reasonable attorney fees. Each party further
25

1 warrants under penalty of perjury, that they have fully disclosed all assets and liabilities
2 to the other party in reaching a final property settlement agreement. Any inadvertently
3 omitted assets or liabilities shall be resolved and allocated via arbitration with John
4 Curry per RCW 7.04A.
5

6 Tax consequences. Both parties acknowledge that they have been advised or
7 had the opportunity to seek the advice of an advisor regarding the tax consequences
8 may exist or arise pertaining to the provisions of this contract and that neither the
9 attorney or representative has furnished tax advice but has, instead, directed and
10 advised the parties to obtain independent tax advice from a qualified tax attorney or
11 accountant prior to signing this contract and that each party has had an adequate
12 opportunity to do so. The tax consequences of the division of the property and
13 allocation of the debts shall not be considered as newly discovered evidence.
14

15 Independent Status as Contract. The provisions of this contract may be included
16 and merged into a decree of dissolution. However, it is also the intention of the parties
17 that this contract retains its status independently as a contract between the parties.
18 Each party may enforce their rights as they arise from this contract by contract law, as
19 well as those remedies available for the enforcement of judgment and marital law,
20 specifically including the use of the contempt power of the court, in the event a decree
21 of dissolution or legal separation is granted. It is understood and agreed by the parties
22 that this contract shall be final and binding upon execution by both parties, whether or
23 not a decree of dissolution or legal separation is obtained. This contract may be
24 terminated and modified only by a written document so reflecting, signed by both
25 parties.

1 Entire Contract. This contract, including the attached asset and liability table,
2 embodies all of the agreements of the parties concerning the disposition of property and
3 property rights and all other issues between them. No other agreements, covenants,
4 representations or warranties, express or implied, oral or written, have been made or
5 relied upon by either party with respect to the subject matter of this contract. All prior
6 and contemporaneous conversations, negotiations, possible and alleged agreements
7 and representations, covenants and warranties with respect to the subject matter hereof
8 are waived, merged herein and superseded hereby.
9

10 Effective Date. This contract shall be effective upon execution, and both parties
11 agree to request that any court hearing matters involving the dissolution of marriage or
12 legal separation between the parties shall ratify and confirm the same.
13

14 Effective After Death. Should either party die after execution of this contract, the
15 distribution of property and obligations agreed herein shall be and remain valid and
16 enforceable against the estate of either party insofar as applicable law permits.
17

18 Fairly Negotiated. Both parties acknowledge that he or she is making this
19 contract of his or her own free will and volition and that no coercion, unwritten promises
20 or undue influence whatsoever has been employed against him or her in any
21 negotiations leading to the execution of this contract.

22 Interpretation. Both parties agree that no provision of this contract shall be
23 interpreted for or against either party because that party or their counsel drafted this
24 contract. In the event any court of competent jurisdiction shall hereafter declare any
25 portion of this contract invalid, those parts not subject to the court's determination shall
remain in full force and effect.

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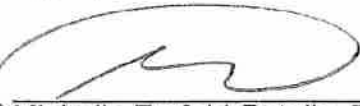
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EACH PARTY STIPULATES AND ACKNOWLEDGES THAT THIS AGREEMENT IS
FAIR AND EQUITABLE.

Dated: 2/14/17


Michael Petelle, Petitioner


Michelle Ersfeld-Petelle, Respondent


Susan Goplen, WSBA No. 24606
Attorney for Petitioner



Laura Sell, WSBA No. 28828
Attorney for Respondent

EXHIBIT A

Spousal Maintenance: \$10,000 per month for 36 months beginning March 1, 2017;

50% of the total retirement assets acquired during the marriage;

100% of the retirement and other assets brought into the marriage plus all growth;

50% of the total investment assets including the cash value of the life insurance policies;

50% of the equity in the Kenmore and Leavenworth homes; the parties shall list both properties no later than April 1. They shall list Leavenworth with the realtor who represented the sellers when they purchased the home. They shall list the Kenmore house with Scott Goodrich with REMAX. The parties shall cooperate with all aspects of the listing and sale of the properties per the Stipulation Regarding Sale of Home attached. Michelle shall have exclusive use of the Leavenworth house until it sells; Mike shall have exclusive use of the Kenmore house until it sells;

50% of the furnishings and tangible property the parties shall exchange lists of items they each want from both houses by March 15, 2017 if they have disputes about any items which they cannot resolve by March 31, the disputes shall be submitted to John Curry to arbitrate per RCW 7.04A;

50% of the furnishings, tangible property, vehicles, snowmobiles etc. The parties shall utilize Kelley Blue Book, NADA or other reputable sources to value all of the vehicles and exchange a list of the vehicles, values and which ones they want to keep and shall exchange lists with values by March 15, 2017. If the parties are not able to reach agreement regarding the value of the vehicles, how they should be divided or whether they need to pay the other cash in order to effectuate a 50-50 division of the value the disputes shall be submitted to John Curry to arbitrate per RCW 7.04A. Pending sale or award of the vehicles, Mike shall pay all loan payments on any vehicles.

with the exception of the two newer snowmobiles and the orange Yamaha motorcycle along with all possible associated with said vehicles which are awarded to Mike without any offset to Michelle

~~Michelle~~ Michelle is awarded the dog, Venus and shall be responsibility for the expenses related to her care.

Mike maintains Michelle on health insurance until the month following the entry of the Decree.

Mike pays to have all photos they both want to be copied otherwise Michelle keeps the photos and memorabilia;

Mike pays an additional \$10,000 to McKinley Irvin for Michelle's attorney's fees. *paid by 3/1/17.*

Mike pays 100% of the 2016 income tax liability for both parties;

Mike pays 100% of all credit card balances accumulated through February 14, 2017 whether they are joint, solely in Mike's name or in Michelle's name with Mike added as a signer or business accounts. After the accounts are paid, the parties shall cooperate to remove the authorized signer for the party who is not the primary on the account; *approximate cumulative balance \$19,112.72.*

Mike shall deposit enough funds to pay the overdrafts on the Joint Chase account (3396) and the account should be closed.

Michelle releases all claims of ownership or interest in Sewer Friendly.

Michelle releases all claims to Mike's two rental homes.

Mike releases all claims to Michelle's Mountlake Terrace Home.

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

Mike releases all claims against Michelle arising out of any cause of action related to the business or otherwise;

Entry of mutual temporary restraining order by February 17, 2017 (attached). A continuing restraining order in the same form shall be entered with the court along with the Decree.

STIPULATION REGARDING SALE OF HOME

The parties have an interest in real property located at 18709 58th Ave NE, Kenmore, WA 98028 and 2620 Wenatchee Pines Road, Leavenworth, WA. The parties shall place the properties on the market for sale by 4/1/2017 with the realtors designated in the CR2A Agreement signed by the parties. The property shall be actively marketed until the property is sold and the parties shall take all steps necessary to effectuate a prompt sale, including but not limited to reasonable adjustments of the listing price. Each party warrants and stipulates that he or she has not and will not assign, encumber, mortgage, alienate, hypothecate or otherwise affect his or her interest in either property prior to closing except as might otherwise be allowed herein or as might be mutually agreed by the parties in writing. Until closing of the sale is completed, both parties shall hold the property as tenants in common without right of survivorship.

Until closing of the sale is completed, the properties shall be maintained by both parties, who shall cooperate in showing the property, maintaining the property in a condition attractive to prospective buyers. Both parties shall have the use of the properties per the terms of their CR2A Settlement Agreement signed February 14, 2017 pending the sale/closing.

The husband shall make the mortgage payments, insurance payment and tax payments on both properties until sold.

No offer to purchase the property shall be accepted unless approved by both parties, such approval not to be unreasonably withheld.

No repairs or improvements shall be made to the property without the approval of both parties, such approval not to be unreasonably withheld. Labor of the parties shall not be compensated.

Net proceeds remaining from such sale after the payment of all mortgage obligations, broker's fees, closing costs, work orders, taxes, reimbursements and assessments upon said property, etc., shall be divided between the parties as follows: The remaining net proceeds shall then be split 50% to the wife and 50% to the husband. The parties shall cooperate in executing escrow instructions or other documentation as needed to accomplish the provisions of this section. The parties shall fully and promptly cooperate in providing each other with documentation of the tax basis in the property. In the event either party fails to timely cooperate in executing his or her responsibilities under this agreement, such party may be held liable for damages caused by lack of cooperation.

Any disputes between the parties herein related to sale of the real property or any consequences thereof (including but not limited to choice of realtor, signs, occupancy or rental of the property pending sale; maintenance, repairs or improvement to the property; listing price, sales price or terms; taxes, obligations, etc.) shall be subject to binding arbitration upon written submission only with John Curry whose power shall include, without limitation, specific performance or payment of reasonable costs or reasonable penalties for failure to comply with this agreement or with arbitration decisions.

CARNEY BADLEY SPELLMAN

August 28, 2019 - 3:53 PM

Transmittal Information

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Appellate Court Case Number: 97463-2
Appellate Court Case Title: In re the Matter of the Estate of Michael Petelle, Deceased.

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