

NO 65813-1-I

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

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ALI GANJAIE, Appellant

Vs.

KATHERINE GANJAIE, Respondent

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**Appellant's Supplemental Brief**

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## **TABLE OF AUTHORITES**

### **Cases:**

*Carstens v. Carstens*

10 Wn. App. 964, 967, 521 P.2d 241(1974)

*In re Marriage of Coyle*

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*Thompson v. Thompson*

82 Wn.2d 352, 356-57, 510 P.2d 827 (1973)

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*Arneson v. Arneson*

38 Wn.2d 99, 101, 227 P.2d 1016 (1951)

*Sunnyside Valley Irrigation Dist. v. Dickie*

149 Wn.2d 873, 880, 73 P.3d 369 (2003)

*State v. Niedergang*  
43 Wn. App. 656, 658, 719 P.2d 576 (1986)

*Winans v. Ross*  
35 Wn. App. 238, 240 n. 1,666 P.2d 908 (1983); *Miles*, 128 Wn. App. at  
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*Woodruff v. McClellan*  
95 Wn.2d 394,396,622 P.2d 1268 (1980)

## **CONSTITUTIONAL PROVISIONS**

### **Statutes, Civil Rule Procedures**

RCW 26.09.170(1)

Civic Rule Procedure 60

RAP 7.2 (e)

## **ASSIGNMENT OF ERRORS**

1. The trial Court erred by entering the second amended order on November, 10, 2010 that modified the Final Decree because the Trial Court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). This jurisdiction comes into question when a Trial Court modifies a judgment or motion after an appellate court has accepted review on the matter. The rule states in part: “If the trial court determination will change a

decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.” RAP 7.2(e)

2. The trial Court erred by entering the second amended order on November- 10-2, 2010 that modified the Property Division of the Final Decree because the Trial Court no longer had jurisdiction to modify the existing Final Decree pursuant to RCW 26.09.170(1), which prohibits the revocation or modification of a provision regarding property disposition.

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the trial Court had jurisdiction to enter the second amended order of July November, 10, 2010, because it affected the existing Decree of Dissolution (Assignment of Error 1).
2. Whether the trial Court was prohibited from modifying the property distribution in the existing Dissolution Decree (Assignment of Error 2)

#### **STATEMENT OF CASE**

**Procedural Facts:** the Respondent seeks to modify the final decree of the marital dissolution. The Final Decree of Dissolution, entered on April 8, 2009, by Hon. Judge Patricia H. Clark, awarded the husband \$50,000 from the sale of the family home located at 2931 223<sup>rd</sup> Ave. NE, Sammamish, WA. Respondent was to net the remaining proceeds after all costs associated with the sale and the husband's share had been deducted.

The Final Decree ordered the Family Home be listed at the agreed (by both parties), appraised price of \$578,000 Trial Court ordered the sale price of the home be modified to \$499,000 , based on the recommendation of the listing agent and without the Appellant's consent

The trial Court ignored that homes comparable in age and square footage to the family home were being sold between \$540,000 and \$585,000

The trial Court ordered a reduction in listing price of the family home, to be deducted from the Appellant's original awards

## **ARGUMENT**

1. The trial Court erroneously ordered a modification of the Final Decree and distribution of the property division on July 2, 2010, along with the eviction of the Appellant and his son from their

family home on November, 10, 2010 (*In re Marriage of Coyle*, 61 Wn. App. 653, 660-61,811 P.2d 244 (1991); *Thompson v. Thompson*, 82 Wn.2d 352, 356-57, 510 P.2d 827 (1973); and *Carstens v. Carstens*, 10 Wn. App. 964,967,521 P.2d (1974)).

A trial Court is prohibited from modifying a property distribution as set in a Final Decree of Dissolution, RCW 26.09.170(1), in which it is stated that “Provisions as to property disposition may not be revoked or modified.”

2. The proceeding of November, 10, 2010 was an evidentiary hearing before the Trial Court. The Trial Court made no findings of fact or conclusions of law in the matter. An Appellate Court reverses a Trial Court's findings if they are not supported by substantial evidence in the record (*Miles v. Miles*, 128 Wn. App. 64, 69-70, 114 P.3d 671 (2005)). Conclusions of law are reviewed de novo (*Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)).
3. The Trial Court no longer had jurisdiction to modify the existing Final Decree pursuant to RAP 7.2(e). The trial Court no longer had jurisdiction to modify a judgment or motion after an Appellate court accepts review. The rule states, in part: “If the trial court

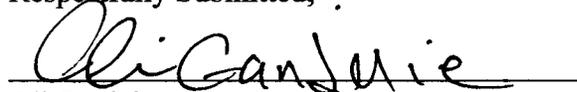
determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.”

RAP 7.2(e)

### CONCLUSION

For the foregoing reasons, this Court should reverse the Trial Court’s November, 10, 2010 order due to its improper eviction of the appellant from his family home ( modification of the Final Decree), and failure to follow Statutory law of State of Washington’s RAP 7.2(e).

Respectfully Submitted, .

A handwritten signature in cursive script, reading "Ali Ganjaie", written over a horizontal line.

Ali Ganjaie

Appellant

Dated: Jauary, 31, 2010



DATED: JAN,31, 2011

Respectfully submitted,

  
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