

NO 65813-1-I  
NO 66410-6-I  
NO 66710-6-I

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

---

ALI GANJAIE, Appellant

Vs.

KATHERINE GANJAIE, Respondent

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Appellant's Consolidated Brief (R1)  
(RAP 10.3)

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COURT OF APPEALS  
STATE OF WASHINGTON  
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Note:

**This Brief filing is to comply with the Appellate Court's revised schedule calling for a consolidation of three outstanding cases in to one single brief.**

**ASSIGNMENT OF ERRORS (NO 65813-1-I)**

1. The trial court has abused its discretion and erred by not following Washington State law stating that a trial court does not have jurisdiction to order the sale of a parties' assets without their consent (*High v. High*, 41 Wn.2d 811, 822-23, 252 P.2d 272 (1953); *Arneson v. Arneson*, 38 Wn.2d 99, 101, 227 P.2d 1016 (1951)).
2. The trial court erred in ordering a modification of the property division of the Final Divorce Decree entered April 08, 2009, by the Hon. Judge Patricia Clark in King County Superior Court (*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)).
3. The trial court erred in granting the Respondent's motion, despite it being in violation of Federal Civil Rule Procedure 60(c) (1), which states that a motion under 60(b) must be made in a reasonable amount of time, no more than one year from the date of the order/judgment.

### **ASSIGNMENT OF ERRORS (NO 66410-7-I)**

1. The trial court erred by entering the 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 order on November 10, 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.

### **ASSIGNMENT OF ERRORS (NO 66710-6-I)**

1. The trial court's January 5, 2011 was erroneous in ordering a modification of the property division of the Final Divorce Decree entered April 08, 2009. In said Decree, the Appellant was awarded \$50,000 from the sale of the Family Home. This Court affirmed the property division as ordered in the Final Decree on March 8, 2010, and a Mandate was issued on Case 63464-0-1 on April 16, 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)).
2. 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. Case # 65813-1-I is pending Appellate review/ruling. Rap 7.2(e) 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."

## **STATEMENT OF CASE**

### **Procedural Facts:**

This is a post-dissolution matter in which the Respondent seeks to modify the Final Decree of the marital dissolution. The Decree of Dissolution, entered April 8, 2009 by Hon. Judge Patricia Clark, awarded the Appellant \$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 Appellant's share had been deducted.

The Decree ordered the Family Home be listed at the agreed-upon, appraised price of \$578,000.

This court (Appellate Court, Div I), after due consideration affirmed the ruling of the trial court as it pertains to Division of the Property, including the distribution of the proceeds of sale of the Family Home. A mandate was issued on Case # 6436-0-1 on April 16, 2010.

## **ARGUMENT OF ERRORS (NO 65813-1-I)**

1. The trial court in Washington State does not have jurisdiction to order the sale of parties' assets without their consent because there is no statutory grant of such power to a Trial Court (*High v. High*, 41 Wn.2d 811, 822-23, 252 P.2d 272 (1953); *Arneson v. Arneson*, 38 Wn.2d 99, 101, 227 P.2d 1016 (1951)).
2. The trial Court erroneously ordered a modification of the Final Decree in regards to property division on July, 2, 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 award in a Final dissolution decree (*See* RCW 26.09.170(1)). Provisions as to property disposition may not be revoked or modified. Unlike maintenance and child support, there is no Authority for a court to modify a property distribution award in a final dissolution decree. Once made, these distributions are final. Here, the trial court made a final property distribution in the Final Dissolution Decree entered April 8, 2009.

3. The proceeding of July 2, 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)). A conclusion of law is defined as the conclusions that follow, through the process of legal reasoning, when the law as applied to the facts as found by the court (*State v. Niedergang*, 43 Wn. App. 656, 658, 719 P.2d 576 (1986) "If the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law."). Findings of fact that appear in the conclusions of law, and vice-versa, are mislabeled and will be analyzed under the substantial evidence standard (*Winans v. Ross*, 35 Wn. App. 238, 240 n. 1, 666 P.2d 908 (1983); *Miles*, 128 Wn. App. at 70). Findings of fact that have legal ramifications are conclusions of law and are reviewed de novo (*Woodruff v. McClellan*, 95 Wn.2d 394, 396, 622 P.2d 1268 (1980)).

## **ARGUMENT OF ERROR (NO 66410-7-I)**

1. The trial Court erroneously ordered a modification of the Final Decree and Distribution of the Property Division on July 2, 2010, Case # 65813-1-I (Pending Appeal) Trial court entered the second ruling on November 10, 2010 evicting Appellant and his son from their Family home while out of Jurisdiction (*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 pursuant to RCW26.09.170(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)).

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 has jurisdiction to modify a judgment or motion after an Appellate Court accepts review.

#### **ARGUMENT OF ERROR (NO 66710-6-I)**

1. The trial Court erroneously ordered a modification of the Final Decree in regards to property division on January, 5, 2011 (*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 award in a Final dissolution decree (*See* RCW 26.09.170(1)). Provisions as to property disposition may not be revoked or modified. Unlike maintenance and child support, there is no Authority for a Court to modify a property distribution award in a Final Dissolution Decree. Once made, these distributions are final. Here, the trial court made a final property distribution in the Final Dissolution Decree entered April 8, 2009.
2. 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. Case # 65813-1-I and 66410-6-I is both pending Appellate review/ruling. RAP 7.2(e).

January 5<sup>th</sup> 2011 Verbatim Report(B) of Proceeding, pg,6,3rd paragraph is the Trail Courts reasoning ( Facts and Conclusions of Law), which referrers to appealing the Courts previous rulings currently Pending appeal review as Delay by the appellant, and is unacceptable to court.

January 5<sup>th</sup>, Verbatim Report (b) of proceeding pg, 6, 4<sup>th</sup> paragraph states that based on Appellants multiple appeals which he has been told that the Court's order would stand. This is all unacceptable.

The Court continues additional comments regarding Appellant unwillingness to abide by the Court's orders referring to appealing the courts previous orders and delay the sale of the Family Home.

The Court justifies that the above actions by the Appellant as ground for continued Jurisdictions and new rulings in this matter even though is in violation of the state law, RAP 7.2(e), RCW 26.09.170.

Previous rulings of the same court on July 2<sup>nd</sup> 2010 (Argument 1) ordered sales of the Family Home at a drastically reduce price without the Appellant consents is the main causes of delay. Appeals process and a soft real estate market during September thru the end of each year locally, and nationwide slow housing market are other factors of delayed sales of the family home. Trail Court no longer had jurisdiction on Jan 5<sup>th</sup> 2011 to modify Final Decree of Dissolution, and issue a new order to reduce the appellant awarded \$50,000 to Zero which has been appealed and affirmed by this Court: Case No 63464-0-I.

## CONCLUSION

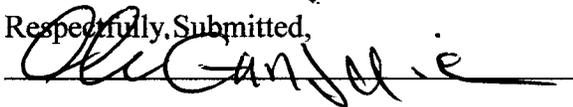
For the foregoing reasons, this court should reverse the trial Court's July 2, 2010 order due to its improper modification of the Final Decree of Dissolution, trial court failure to follow the Washington State Rule of Appellate Procedure 7.2(e), and failure to comply with Federal Civil Rule Procedure 60(c) (1).

Additionally, this court should reverse the trial court's November 10, 2010 order due to its improper eviction of the Appellant from his family home (improper modification of the Final Decree), and failure to follow Washington State RAP 7.2(e).

Finally, this court should reverse the January 5, 2011 order, and re-distribute the net proceeds of the sale of the family home by re-awarding the \$50,000 originally awarded to the Appellant and affirmed by this court on March 8, 2010. Mandate was issued on Case # 63464-0-I April 16, 2010.

This Court should preserve only the portions of the Second and third amended Finding of Facts and Conclusions of Law that enforces the existing Final Decree of Dissolution.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Sanjaie", written over a horizontal line.

Ali Ganjaie  
Appellant  
Dated: June 03, 2011



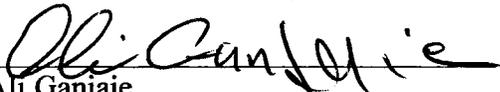
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