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No. 70562-8-1

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

ZACHARY B. HARJO,
Petitioner,

v.

GELSEY HANSON,
Respondent.

RESPONSIVE BRIEF OF RESPONDENT

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 ORIGINAL

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I. INTRODUCTION

Two issues principally concern this third appeal in this case: (1) whether the court properly denied a repeat motion (and reconsideration) by Harjo to re-allocate profits and/or “managerial compensation” from Ocho for 2009 and 2010, and (2) whether the court properly awarded attorney’s fees to Hanson based on CR 11. As to the denial of Harjo’s motions, the court properly refused to re-address the issues that had already been resolved at trial, on appeal, and in a previous motion on remand. As to the attorney’s fees, the trial court appropriately awarded fees based on CR 11, since the issues raised by Harjo had been previously litigated and resolved.

The court should furthermore award fees to Hanson on appeal.

II. ASSIGNMENTS OF ERROR

The respondent does not assign error to the decisions of the trial court. Judge Spector’s rulings were legally correct and within her sound discretion.

III. STATEMENT OF THE CASE

Zachary Harjo and Gelsey Hanson engaged in an 8-year, marital-like, equity relationship.¹ CP 2. Trial occurred in November, 2010. CP 1. The court made extensive findings of fact and conclusions of law; divided the parties' assets and liabilities, and entered a judgment against Harjo. CP 1-15. The Decree was updated and amended on January 24, 2011. CP 16-21.

The Amended Decree resolved all property issues between the parties except for one: Judge Spector specifically reserved calculation of Hanson's share of Ocho's "profits" for 2010. CP 19-20.²

Harjo appealed on a number of grounds. On appeal, this court affirmed the decision of the trial court, except for one, narrow issue: the trial court was directed "either to clarify its findings with respect to the

¹ Washington courts have variously described such relationships as "meretricious," "quasi-marital," "marital-like," "committed intimate relationships," and "equity relationships." *In re Long and Fregeau*, 158 Wn. App. 919, 244 P.3d 26 (2010).

² On page 21 of his Brief of Appellant, Harjo correctly points out an error in a statement made by Respondent's counsel. At CP 279, Respondent alleged that Harjo had not sought reconsideration of prior orders of the court. This was incorrect: Harjo has sought reconsideration of nearly every order of the court. However, this error was not prejudicial to Mr. Harjo. The referral to Mr. Harjo as "Mr. Hanson" was inadvertent, and not likely to cause any confusion by Judge Spector or this court.

amount due to Hanson for rental income or to adjust the equalization payment accordingly.” CP 28.

On April 26, 2013, Hanson brought a motion to reduce amounts owed to judgment, including interest, enter supplemental findings on remand, compel an accounting from Harjo of the 2010 Ocho profits, and for attorney’s fees. CP 31-106. In his late response, Harjo finally produced 2009 and 2010 tax returns for Ocho, along with profit and loss statements. CP 120-170. He requested that the interest rate on the judgment be halved to 6%, that profits be calculated at a *negative* figure of \$24,350 based on the “managerial compensation” he felt entitled to, and that the judgment be reduced by amounts owed to the Washington State Department of Revenue for years prior to 2010. CP 114. In other words (in response to Hanson’s motion), Harjo himself put the issue of 2009 and 2010 profits squarely before the court, and also raised questions of managerial compensation.

Hanson submitted a “supplemental” reply. CP 172-7. (Since Harjo’s response was late, she had first submitted a reply indicating that no response had been received.)

On May 16, the court granted the request to reduce the 2010 Ocho

profits to judgment. CP 188-89. And on June 10, 2013, the court granted Hanson's motion to reduce amounts due to judgment (i.e. the \$2,898), with interest, and awarded fees to Hanson. CP 185-87. This, then, resolved the remaining issues before the court.

Harjo brought two motions for reconsideration. First, on June 11, 2013, he timely filed a "Motion for Reconsideration or Vacate Judgment Under CR 59 or CR 60." 1-CP 190-94.³ On June 17, he filed a "Motion for Reconsideration or Vacate Judgment Dated June 10, 2013 Under CR 59 or CR 60/ Petitioner's 'Judgment and Order on Motion to Reduce Amounts Owed and Interest to Judgment, Enter Supplemental Findings, Compel Accounting, and for Attorney's Fees.'" 1-CP 195-98.

An order denying reconsideration of the motions was entered June 24, 2013. 1-CP 199. Again, the issues of Ocho profits was raised and resolved.

On September 9, 2013, Harjo brought a "Motion to Clarify Decree and for Judgment and Order in re Manager's Compensation From 2009 and 2010." CP 208-273. Hanson responded, noting that the issues had

³ Herein, "1-CP" refers to the Clerk's Papers prepared for the second appeal in this matter (pp. 1-214). "CP" refers to the Clerk's Papers for this third appeal (1-346).

already been resolved. CP 278-281. Harjo then filed a motion titled, “Amended Motion for Reconsideration or Vacate Judgment Under CR 59 or CR 60 re Respondent’s Motion to Clarify Decree and for Judgment and Order in re Manager’s Compensation from 2009 and 2010.” CP 301-316. Orders denying these motions were entered on September 17, 2013 (CP331-2) and October 7, 2013 (CP 330). The September 17 order included an award of sanctions under CR 11.

These final two orders are the only orders at issue in this third appeal.

IV. MOTION

Hanson moves to strike pages 3-10 from Harjo’s Brief of Appellant; Hanson also moves generally to strike those factual allegations which occur throughout Harjo’s brief which contain no citations to the record.

RAP 10.4(f) requires that references to the record should designate the page and part of the record referred to.

Harjo’s Brief’s Statement of the Case contains no references to the records whatsoever. Throughout his “Statement of the Case,” as well as in the rest of his brief, Harjo includes numerous allegations of “facts” that

are nowhere supported in the record, that are not accurate, and that should not be considered for purposes of his appeals. Harjo refers to evidence allegedly before the court at trial (such as the timing of withdrawals from business accounts on page 6, Hanson's alleged earnings after separation on page 14, and disputes about keeping the books on page 17), but he has designated no Verbatim Report of Proceedings. Harjo refers to his own alleged financial need (at page 28) without any factual basis. (Hanson would strongly dispute Harjo's alleged "need" or inability to hire an attorney.) Throughout his brief, Harjo makes factual allegations unsupported by the record, or any cite to the record. It is impossible to respond to any of these allegations based on the record. These allegations should be stricken and not considered by the court.

IV. ARGUMENT

1. The Relevant Standard of Review is Abuse of Discretion

In his brief, at page 11-12, Harjo argues the standard of review is abuse of discretion. Hanson agrees.

2. Res Judicata Prohibits the Court From Re-Addressing Previously Resolved Issues.

Marriage of Dicus, 110 Wn. App. 347, 40 P.3d 1185 (2002), involved a question of application of social security benefits paid for the benefit of his children. There, the father sought credit for the benefits paid, years after the court had already resolved the issue against him. The court in *Dicus*, at 355-56, summarized the rule of res judicata:

Res judicata is defined with considerable precision in *Kelly-Hansen v. Kelly-Hansen*, 87 Wash.App. 320, 327-28, 941 P.2d 1108 (1997). Res judicata encompasses the concepts of both claim preclusion and issue preclusion. *Id.* at 327, 941 P.2d 1108. Issue preclusion is grounded in the doctrine of collateral estoppel, when a subsequent action involves a different claim but the same issue. *Id.* Claim preclusion bars litigation of claims that were or should have been decided among the same parties below. *Id.* at 328, 941 P.2d 1108. Here, where it appears the offset issue was never directly litigated below, res judicata in its claim preclusion form applies. *Id.*

When res judicata is used to mean claim preclusion, it encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding. *Id.* at 329, 941 P.2d 1108.

Further,

[R]es judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form

an opinion and pronounce a judgment, but to every point which properly belonged to the subject of the litigation, and which the parties, *exercising reasonable diligence*, might have brought forward at that time. *Id.* (italics in original).

Although many tests have been suggested for determining whether a matter should have been litigated in a prior proceeding, there is no simple or all-inclusive test. Instead, it is necessary to consider a variety of factors, including, ... whether the present and prior proceedings arise out of the same facts, whether they involve substantially the same evidence, and whether rights or interests established in the first proceeding would be destroyed or impaired by completing the second proceeding. In general, one cannot say that a matter should have been litigated earlier if, for some reason, it could not have been litigated earlier; thus, *res judicata* will not operate if a necessary fact was not in existence at the time of the prior proceeding, or if evidence needed to establish a necessary fact would not have been admissible in the prior proceeding. Similarly, one cannot say that a matter should have been litigated earlier if, even though it could have been litigated earlier, there were valid reasons for not asserting it earlier; thus, *res judicata* may not operate if the matter was an independent claim not required to be joined, or if the matter's omission from the prior proceeding actually benefitted, rather than vexed, the party now purporting to rely on *res judicata*. Conversely, however, it has been held that a matter should have been raised and decided earlier if it is merely an alternate theory of recovery or an alternate remedy. *Id.* at 330-31, 941 P.2d 1108.

Here, the claims raised by Harjo in his Motions for Clarification, Reconsideration, or to Vacate were previously addressed – or should have been previously addressed – at trial, on appeal, and/or in prior hearings. The issues of 2009 profits and 2009-2010 managerial compensation arise out of the same facts and involve substantially the same evidence. These

issues were squarely before the court in determining the overall allocation of property and liabilities between the parties. If Harjo is permitted to re-raise issues now – issues that should have been or were resolved in 2010 – then the rights and interests established in the first proceeding would be destroyed or impaired.

a) The Court Resolved the 2009 Profits at Trial.

The parties' respective withdrawals from Ocho in 2009 were discussed in detail in the court's Findings. CP 7-11. Each party was credited with funds removed from the business. Harjo received more from the business, but the court found, "It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year." CP 10. In addition to receiving a lower income, Hanson suffered a higher tax burden on her compensation. CP 10. While the court specifically reserved allocation of 2010 profits (CP 20), the 2009 profits were fully and fairly allocated, and the issue resolved.

b) The Court Resolved the 2010 Profits in a Prior Decision.

Following remand from the first appeal, Hanson sought an accounting of 2010 profits. CP 31-35. In response, Harjo provided documentation that could be used to calculate the profits. (For example,

each party's share of "Ordinary Business Income" was \$5,919 on their K-1 forms. CP 164-67. Also, the total "Ordinary Business Income" was \$11,839 on line 22 of Ocho's Form 1065. CP 146.) In his response, the question of allocation of 2010 profits was placed squarely before the court by Harjo himself: he requested "[t]hat a judgment be entered by superior court to reflect 2009 and 2020 profit and wage distribution offsets to the summary judgment as recorded by trial court..." CP 107 [sic]. He described a method for calculation of profits to Hanson for 2010. CP 110-11. He reviewed the amount of managerial compensation he felt he was owed. *Id.*

The court resolved this issue in its order of May 16, 2013, entering a judgment in Hanson's favor in the amount of \$5,919, plus \$1,716.51 in interest. CP 204-05. Therefore, the issue of 2010 profits was already resolved when Harjo brought his motion on September 9, 2013. CP 208 *et seq.*

c) The Court Previously Resolved all Issues of "Managerial Compensation" at Trial.

Harjo states that "Rights were granted but not awarded regarding management compensation and to resolve a partnership agreement

violation concerning funds Hanson had taken inappropriately.” Brief of Appellant, pp. 4-5. Again, he fails to cite where this occurs in the record. There is no “partnership agreement” before the court. The record contains no reservation of a right regarding distribution of management compensation. The court certainly considered issues of management compensation in crafting a fair and equitable distribution of property and liabilities. CP 7-9. However, any rights to compensation, offset, or equitable resolution were resolved at trial. Where Judge Spector intended to reserve an issue, she specifically did so (as with the 2010 profits); she did not reserve any recalculation of managerial compensation.

Harjo admits that managerial compensation was, in fact, considered by Judge Spector at trial, when he states, “The trial court failed to include Manager’s Compensation in the original flawed summary tabulation from Findings of Fact.” Brief of Appellant, at 8. Certainly, the extent to which managerial compensation *was* considered by the court at trial would be well-known to Judge Spector. If Judge Spector erred in her “calculations” of managerial compensation, then Harjo’s remedy was to address it on appeal. The Court of Appeals decision, however, did not reverse any calculation based on managerial

compensation. Again, the only outstanding issue remanded to the trial court was the calculation of rents. The issues surrounding managerial compensation were therefore finally and conclusively resolved by the Decree. In the words of *Dicus*, “a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.” Managerial compensation should have been raised – and actually was raised – at trial. No right to a re-allocation of managerial compensation was preserved.

d) In the Alternative, the Court Previously Resolved all Issues of “Managerial Compensation” When It Reduced 2010 Profits to Judgment on May 16, 2013.

In his response to Hanson’s motion for an accounting, Harjo went through his accounting of what he felt he was owed, including his argument that he was entitled to be paid \$75,000 for 2009 and 2010 (regardless of actual business income). CP 109-111. The court gave little weight to his arguments, instead relying on the tax returns to calculate the 2010 profits. Therefore, any issue of offset or reimbursement for “managerial compensation” was resolved at that time. Again, the issue

was resolved, not reserved.

3. All Issues Raised in Harjo's September 9, 2013 Motion Were Therefore Previously Resolved, and Subject to Res Judicata.

The issues Harjo raised in his motion, and in this appeal, have been previously litigated, considered by the court, and resolved. Res judicata therefore bars further litigation. Specifically, Harjo's September, 2013 Motions for Clarification, Reconsideration, or Vacation raise no issue that had not been previously decided.

(Caselaw includes one exception to the doctrine of res judicata in dissolution actions: when there is a separate tort action for personal injury. *Plankel v. Plankel*, 68 Wn. App. 89, 841 P.2d 1309 (1992). A tort action, however, involves different considerations (fault, for example, whereas divorce actions are no-fault). Tort actions require a different kind of proof (e.g. proximate cause). Tort actions require proof of damages, and are not grounded in equity. By contrast, Harjo's requests are bound up in the value of the business, the amount each party was entitled to, and rights of offset against other property associated with the business. Since all these rights were actually litigated, any further action regarding the rights is barred by res judicata.)

4. “Clarification” Is Not a Basis for Re-Opening the 2011 Judgment.

In addition to requesting relief under CR 59 and CR 60, Harjo also framed his motions as a request to “clarify” the Decree, granting him additional rights regarding bonuses and managerial compensation. CP 208 *et seq.* However, the relief sought was in the nature of modification, not clarification, and was therefore properly denied.⁴

a) Modification of Unambiguous Decrees Is Not Permitted.

In general, “A trial court does not have the authority to modify even its own decree in the absence of conditions justifying the reopening of the judgment.” RCW 26.09.170(1); *Kern v. Kern*, 28 Wn.2d 617, 619, 183 P.2d 811 (1947). “A clarification merely defines the rights and obligations that the trial court already gave to the parties in their dissolution decree. *In re Marriage of Christel*, 101 Wn. App. 13, 22, 1 P.3d 600 (2000). In contrast, a modification extends or reduces those rights and responsibilities. *Christel*, 101 Wn. App. at 22, 1 P.3d 600 (citing *In re Marriage of Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677

⁴ Decisions regarding clarification are generally reviewed de novo; modifications are reviewed for abuse of discretion. *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001); *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999).

(1969)).” *In re Marriage of Michael*, 145 Wn. App. 854, 859, 188 P.3d 529 (2008).

An ambiguous decree may be clarified, but not modified. A decree is modified when rights given to one party are extended beyond the scope originally intended, or reduced. A clarification, on the other hand, is merely a definition of rights already given, spelling them out more completely if necessary. For example, in *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999), the trial court improperly modified a decree by allowing the husband to pay the value of an account to the wife, instead of following the decree’s requirement that he transfer the account itself. In *In re Marriage of Smith*, 158 Wn. App. 248, 241 P.3d 449 (2010), the court held that the trial court properly denied the husband’s attempt to change the terms of a Domestic Relations Order agreed to by the parties, despite the probable mischaracterization of the retirement account, since changing the terms would constitute a modification.

b) The Amended Decree is Unambiguous.

Here, the Decree is not ambiguous as to “managerial compensation.” The Findings recite what the court considered in

calculating the total amounts owing between the parties, including considering amounts actually received for compensation, and the Decree reserved only the issue of 2010 profits, nothing more. Managerial compensation was not separately reserved for calculation, and any question of managerial compensation was therefore unambiguously resolved.

Harjo argues that the Court of Appeals reincarnated his right to additional, managerial compensation when this Court noted that the profits for 2010 remained unliquidated. CP 29, 211-12. This Court did no such thing. This court is not in a position to calculate managerial compensation, given that there is no trial record except the findings and decree. This court must rely on Judge Spector's knowledge and memory of the facts, and Judge Spector's exercise of discretion, to determine the best means of calculating the 2010 Ocho profits. This court's decision appropriately returned the question of 2010 profits to Judge Spector for resolution, which she did on May 16, 2013. Her calculation of 2010 profits included consideration of Harjo's arguments regarding managerial compensation, and his request for a judgment against Hanson.

**c) In the alternative, the Issue of Managerial Compensation
Was Resolved on the Merits Against Harjo.**

Finally, to the extent clarification was required, the issue was resolved against Harjo. The court granted no additional rights on his motion for additional managerial compensation. Harjo does not adequately explain how his entitlement to “managerial compensation” should upset the judgment previously entered. His motion was denied, with the clear message that he was not entitled to any additional “compensation.” Resolution of this issue is within the discretion of the trial court, and should not be disturbed on appeal. Harjo has not shown an abuse of the court’s discretion.

**d) Public Policy Supports the Finality of Decrees;
“Clarification” Is Not a Sound Basis for Relitigation.**

It is important that parties not seek to avoid the finality of Decrees by creatively manufacturing “new” or “unresolved” rights. Aggressively unhappy litigants could potentially keep the other party engaged in endless hearings by coming up with “new” issues that were not specifically addressed in the prior hearing. Dissolutions of equity relationships (and marriages) potentially involve all the property the

parties own in the world. If Harjo can return to argue about “managerial compensation,” could a party come back and argue about professional goodwill that was not specifically allocated?⁵ Could a party later request allocation of the value of education earned during the marriage?⁶ Could one argue that marital waste had occurred, and since it was not addressed at trial, then seek to “clarify” the decision to include rights based on the waste? Could Hanson argue that the business valuation did not include the furniture, so that it should be separately accounted for, years after judgment?

No. Judicial decisions are final as to “claims and issues that were litigated, or might have been litigated, in a prior action.” *Kelley-Hanson*, at 327. “Clarification” is not a basis under which a party may return to court for additional relief.

5. Reconsideration Does Not Apply as a Basis for Reopening the Judgment.

In his amended motion, Harjo cited CR 59 as a basis for the relief he was requesting. CP 301. However, any motion under CR 59 must be

⁵ *Dixon v. Crawford McGilliard*, 163 Wn. App. 912, 918, 262 P.3d 108 (2011).

⁶ *In re Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984).

brought within 10 days. CR 59(b). Harjo's motion came years after the 2011 Decree, and months after the May and June orders. CR 59's requirements are jurisdictional. *Schaefco v. Columbia River Gorge*, 121 Wash.2d 366, 849 P.2d 1225 (1993). Therefore, no relief was available under CR 59.

6. Vacation Does Not Apply as a Basis for Reopening the Judgment.

In his amended motion, Harjo cited CR 60 as a basis for relief. CP 301. However, he did not cite any basis under CR 60 for re-opening the 2011 Decree or otherwise vacating the court's orders. (Nor does he allege CR 60 as a basis for his appeal.) He did not initiate his request through an Order to Show Cause. CR 60(e); CR 60(e)(e). Therefore, the court properly did not grant relief under this rule.

7. Harjo's Calculations Are Incorrect.

Even if the court were to reconsider the amount due to Harjo for 2010 profits, Harjo's calculations are incorrect (and again, not supported by the record). He fails to account for the \$7,500 that Hanson returned to the business account. CP 9. He mis-states the amounts Hanson actually

received in 2009. Her “income” of over \$100,000 included wages from her employment at Bastille, IRA withdrawals, and capital gains income. CP 13. (Young people typically remove funds from IRA’s only in times of great need; while it is taxable “income,” it is more appropriate to consider such withdrawals as recharacterization of an asset.)

Most significantly, he ignores the fact that Ocho had net ordinary business income of \$63,822 in 2009. CP 120. In other words, Harjo was *overcompensated* for 2009, since he received not only his distributions of \$33,941 (CP 9), but the net ordinary income of \$63,822, for a total of \$97,763. This was not known until Harjo provided the 2009 tax return in his response to Hanson’s motion. If the \$63,822 is properly credited to Harjo, he would have to reimburse Hanson for the *overcompensation* of \$22,763. If the “value” of his work were \$75,000, and he actually received \$97,763, then his overcompensation would be the difference of \$22,763.

For 2010, Harjo also ignores the fact that the business was apparently unable to provide the compensation he felt entitled to. Even if the replacement value of his labor is \$75,000, Harjo might not receive this if the business doesn’t produce sufficient income. Particularly when

the business is entirely in Harjo's control, Hanson should not have to pay Harjo if he chooses not to work very hard, or simply makes poor business decisions. In 2009, Ocho enjoyed an ordinary income of \$63,822, *plus* partner draws of \$81,345, for a total of \$145,167. CP 120. In 2010, Harjo's management of Ocho resulted in ordinary income of only \$11,839⁷ with partner draws of \$66,371. CP 146. In other words, Harjo's management caused a reduction of \$66,957 in net benefit from Ocho. It would be unreasonable for Harjo to maintain his managerial compensation of \$75,000 when he is running the business into the ground, especially during a recovering economy.

Harjo asked Judge Spector (and asks this court) to order Hanson to pay him a predetermined wage to work at a business, regardless of the hours he actually puts in, and regardless of the relative success or failure of the business. This is unreasonable. (If Ocho had not been able to pay him any salary, Harjo would be requesting that Hanson pay the entire amount, by his calculations.) Harjo's formula is not calculated to result in a fair and equitable allocation of "managerial compensation;" it is calculated to require Hanson to cover the costs of his own

⁷ Harjo argues this figure should be only \$114.

mismanagement of Ocho. Judge Spector properly ignored this line of reasoning. No additional payment from Hanson to Harjo was appropriate for his alleged undercompensation in 2010.

8. CR 11 Sanctions Were Appropriate.

CR 11 requires that pleadings be well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that the pleading is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The court can impose CR 11 sanctions sua sponte for a violation. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). The standard of appellate review for such sanctions is the abuse of discretion. *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 338-39, 858 P.2d 1054 (1993).

Here, every issue Harjo raised had been previously resolved. There was no basis under which to file yet another motion, followed by a 47-page appeal. Any benefit Hanson enjoys as a result of the verdict in her favor is being quickly eroded by the attorney's fees she is incurring to address Harjo's endless and relentless litigation. Hanson did not seek

fees at trial, did not seek fees in the first appeal, and did not seek fees for most of Harjo's many motions for reconsideration. She further limited her fees by not seeking further evidence of Ocho's 2010 profits, including bank statements and other evidence that is not purely self-serving. Harjo is obviously dissatisfied with the result, but that does not entitle him to bring meritless motions on issues that have already been resolved against him, *ad nauseum*. There is no arguable merit to the motion, and CR 11 sanctions were properly imposed.

9. Attorney's Fees Should Be Awarded on Appeal.

Attorney's fees for responding to this appeal should be awarded to Hanson under RAP 18.9(a), RCW 4.84.185, and CR 11.

RCW 4.84.185 is not restricted to statutory fees, but allows the court to award all fees incurred by the party responding to the frivolous action. *White Coral Corp. v. Geysler Giant Clam Farms, LLC*, 145 Wn. App. 862, 189 P.3d 205 (2008).

Fees should be imposed for the same reasons they were imposed by Judge Spector. There is no arguable merit to the motion, or to the appeal from Judge Spector's decision denying the motion.

VI. CONCLUSION

At some point, litigation must come to an end. Here, Judge Spector had already resolved all the issues before the court when Harjo brought his motion.

We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality.... The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion.

In re Marriage of Landry, 103 Wash.2d 807, 809-10, 699 P.2d 214 (1985).

Judge Spector's decisions should be affirmed, with fees awarded to Hanson on appeal.

RESPECTFULLY SUBMITTED this 13 day of March, 2014.

WECHSLER BECKER, LLP



MICHAEL W. LOUDEN, WSBA #24452
Attorney for Respondent Gelsey Hanson

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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I, SEATTLE

ZACHARY HARJO,

v.

GELSEY HANSON,

Petitioner,

Respondent.

No. 70562-8-I

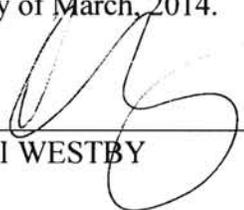
PROOF OF SERVICE OF
RESPONDENT'S BRIEF

On this date, I personally deposited a copy of the Responsive Brief of Respondent, along with this Proof of Service into the mails of the United States, first class postage prepaid, addressed to the following:

Mr. Zachary Harjo
2325 NW Market St
Seattle, WA 98107

I declare under penalty of perjury under the laws of the State of Washington that this is true and correct.

DATED this 13th day of March, 2014.



COTI WESTBY