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No. 71327-2-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

MICHAEL D. PEASE,

Appellant,

and

ELEANOR M. RANDECKER-PEASE

Respondent.

BRIEF OF RESPONDENT

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INTRODUCTION

This case comes before this court on an appeal from a ruling by the Honorable Barbara Linde of the King County Superior Court finding Mr. Pease in contempt for his failure to pay his maintenance. The matter was before Judge Linde on a motion for revision brought by Ms. Randecker-Pease to revise an order entered on April 12, 2013 by Commissioner Pro Tem Deborah Bianco which denied her motion to have Mr. Pease found in contempt.

In addition to the record before her on the issue of contempt, Judge Linde also had before her the record relating to Mr. Pease's motion for revision of the order entered on April 19, 2013 by Commissioner Elizabeth Castilleja, which denied his petition to modify his maintenance.

The hearing before Judge Linde on both motions for revision occurred on August 16, 2013. Judge Linde granted Ms. Randecker-Pease's motion for revision and denied Mr. Pease's motion for revision.

Mr. Pease has appealed Judge Linde's order granting Ms. Randecker-Pease's motion for revision. However, he has not appealed her denial of his motion for revision.

ISSUES PRESENTED

1. What is the correct standard of review in a family law contempt case?
2. Are there sufficient facts in the record to support the trial court's conclusion that Michael Pease intentionally failed to make his maintenance payments?
3. Does *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 113 P.3d 1041 (2005) apply and require reversal of the trial court decision?
4. Should Eleanor M. Randecker-Pease be awarded her attorney fees on appeal?

STATEMENT OF THE CASE

I. **Procedural History:** Michael Pease filed a petition to modify his maintenance on January 2, 2013. Eleanor Randecker-Pease filed her response on January 30, 2013, objecting to a modification. CP 289-292. Among her prayers for relief was the request that Michael Pease be found in contempt for failing to pay his maintenance. CP 291. Ms. Randecker-Pease then filed her own formal motion for an order holding Mr. Pease in contempt for his refusal to pay his maintenance on March 13, 2013.

CP 18-58.

A hearing was held on Ms. Randecker-Pease's motion on April 12, 2013. CP 350-351. Commissioner Pro Tem Deborah Bianco denied the motion, finding that "the petitioner did not act wilfully in failing to pay because he did not have the ability to pay." CP 117. However, she also found that Mr. Pease admitted that he owed "large sums of money to the respondent." CP 117. She ordered that the amount he owed should be decided on the Trial By Affidavit Calendar hearing which had been set for April 19, 2013 to decide Mr. Pease's petition for modification of his maintenance. CP 117.

On April 19, 2013 the parties appeared before the Honorable Elizabeth Castilleja for the hearing on Mr. Pease's petition to modify his maintenance. CP 352-353. Commissioner Castilleja denied the petition, and on May 20, 2013 entered Findings of Fact, Conclusions of Law, and Order Denying Petition for Modification, Termination, or Suspension of Maintenance. CP 354-360 .

Unhappy with the result in their respective cases, both parties filed motions for revision by a superior court judge. CP 118-121; CP 379-380. The two cases were consolidated for hearing before the Honorable Barbara

Linde on August 16, 2013. CP 404. On November 22, 2013 Judge Linde entered orders in both cases, granting Ms. Randecker-Pease's motion (CP 142-147), and denying Mr. Pease's motion. CP 410-412. Mr. Pease has not appealed the denial of his motion, and has not challenged Judge Linde's findings that "The Findings of Fact and Conclusions of Law entered herein by Commissioner Castilleja on May 20, 2013 are well supported by the facts and the law." CP 411.

In her order following the hearing on April 19, 2013 Commissioner Castilleja also ruled that she would reserve the issue of "judgments for reimbursement" for a hearing without oral argument to be noted by either party. CP 360. In response to that ruling, Ms. Randecker-Pease filed a Motion for Judgment for Unpaid Maintenance, Health Insurance, and Lost Equity on May 24, 2013 (CP 361-369), with an accompanying declaration. CP 370-378. Mr. Pease filed a response (CP 381-394), and Ms. Randecker-Pease filed a reply. CP 397-403. That motion was also considered by Judge Linde. CP 146. Although Judge Linde entered a judgment for unpaid maintenance and health insurance as a part of the hearing on contempt, she denied without prejudice Ms. Randecker's request for a judgment for her lost equity. CP 146.

II. Factual Background: Michael Pease and Eleanor M.

Randecker-Pease were legally separated by an agreed decree entered on November 8, 2007. CP 1-4. That decree incorporated by reference two CR 2A agreements. The first was signed on June 25, 2007. Appendix 1.¹ CP 20. The second was signed on November 7, 2007. Appendix 2. CP 20. Under their agreement Mr. Pease was to make payments to Ms. Randecker-Pease consisting of house payments on a \$125,000 loan they agreed to take out to pay off a \$93,000 credit card debt incurred by Mr. Pease. Appendix 1, p. 1; CP 376. Mr. Pease was also to make additional principal payments on the loan of \$1,000 per month, an additional \$650 per month (rising to \$750 per month when Mr. Pease terminated a storage unit contract), utility and monthly expenses, and health insurance premiums. Appendix 1, pp. 1-3; CP 20-22. Except for the health insurance premiums, all of these payments were characterized in their agreement as non-modifiable maintenance. Appendix 1, p. 2; CP 21. It is the violation of the terms of that agreement, as incorporated into their decree, which led to the order of contempt.

¹ Appendices 1 and 2 are submitted by agreed stipulation of the parties, because although they were before the trial court at all stages as working papers, they were never actually filed by either party with the Superior Court Clerk.

The point of the agreement regarding Mr. Pease's maintenance was to pay off in twelve years the mortgage on the house awarded to Ms. Randecker-Pease. Appendix 1, pp. 1-2; CP 337. This was actually the second time that they had borrowed money to pay off Mr. Pease's substantial credit card debt. CP 345, 337. Mr. Pease had a history during the marriage of charging in excess of \$200,000 in credit card debt without Ms. Randecker-Pease's knowledge. CP 334.

Ms. Randecker-Pease had intended to live in the house awarded to her and rent out a house she had inherited from her parents to provide herself with current supplemental income and later retirement income. CP 25, 337.

Mr. Pease paid his maintenance until November, 2008, at which time he stopped paying. CP 22-23. He has not made a maintenance payment or even a portion of a payment since then. CP 22-24. Mr. Pease admits that he owes the mortgage payments up to the sale of the residence. CP 86. He also admits that he owes money toward the monthly maintenance, though he disputes the amount. CP 87. He admits that he owes the amount of the monthly health insurance premiums claimed by Ms. Randecker-Pease. CP 87.

Ms. Randecker-Pease testified that whenever she asked Mr. Pease to pay his maintenance he would always say “You’re going to have to take me to court”, and “You don’t get the house because I didn’t get the house.” CP 26. He also told her: “Best of luck in enforcing your demands.” CP 27. Ms. Randecker-Pease also submitted emails from Mr. Pease containing similar statements. In one email he said: “I promise you all I need is a spare \$2000 and you will be sued, divorced and I will look to reduce my obligations to you by what ever (sic) means are necessary. You do not deserve what you got.” CP 342. In another email he said: “Hint: Or you will need to sue me for divorce in order to be paid anything I owe you, even if I got a new job tomorrow!” CP 341.

As a result of Mr. Pease’s failure to pay his maintenance, Ms. Randecker-Pease was unable to pay the mortgage which the parties had obtained pursuant to their agreement. CP 22. She did her best to keep that debt current by taking out a home equity loan from the Boeing Employees Credit Union, secured by the house she had inherited from her parents. CP 22. However, she eventually ran out of money, and was forced to sell the house she had received in the separation to avoid a foreclosure. CP 22, 44. The sale price of the house was \$565,000, from which she had to pay

off the two BECU mortgages and settlement charges. CP 22, 44. As a result of this forced sale, instead of receiving a house worth at least \$565,000 free of debt at the end of twelve years, she received net sale proceeds of just \$17,809. CP 22. She also was deprived of the retirement income she had intended to have by renting the house she had inherited from her parents. CP 337.

ARGUMENT

I. Standard of Review

Michael Pease's argument that this court should review the trial court's decision de novo is contradicted by well established law. In *In Re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174 (2003), Washington's Supreme Court specifically addressed the standard of review in family law matters involving allegations of contempt. The court reviewed prior law, and observed that other cases in which an appellate court engaged in de novo review of a trial court's decision based on affidavits and other documentary evidence did not involve a determination of credibility. *Id.*, at 350. The court then stated:

We hold here that the Court of Appeals correctly concluded that the substantial evidence standard of review should be applied here where competing documentary evidence had to be weighed and conflicts resolved. The

application of the substantial evidence standard in cases such as this is a narrow exception to the general rule that where a trial court considers only documents, such as parties' declarations, in reaching its decision, the appellate court may review such cases de novo because that court is in the same position as trial courts to review written submissions.

Id., at 351. The rationale for this conclusion was that trial judges and commissioners who routinely hear family law matters are better equipped to make credibility determinations. *Id.*, at 352.

Michael Pease has mischaracterized the term “substantial evidence” as the standard the trial court must meet to support its findings of fact and conclusions of law. Appellant’s Brief, p. 14. The authority submitted by Mr. Pease for the *definition* of substantial evidence, *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 98 P.3d 1264 (2004), actually refers to the term in the context of appellate review, not as a standard to be applied by the trial court. *Perry v. Costco Wholesale, Inc.*, *supra* at 792. The trial court does not make a determination of whether there is “substantial evidence” to support its findings and conclusions. Rather, in the context of a contempt case the correct level of burden of proof is by a preponderance of the evidence. *In Re Marriage of James*, 79 Wn. App. 436, 442, 903 P.2d 470 (1995).

The trial court in this case did not err, because not only did it find that Michael Pease was in contempt by a preponderance of the evidence, but it also found by a much higher standard that there was “clear, convincing and cogent evidence of the petitioner’s intentional failure to make his maintenance payments.” CP 144. By Michael Pease’s own authority, this court’s review is limited to determining if there is substantial evidence to support the trial court’s findings. *Perry v. Costco Wholesale, Inc.*, supra at 792.

So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it. This is because credibility determinations are left to the trier of fact and are not subject to review.

In Re Marriage of Burrill, 113 Wn. App 863, 868, 56 P.3d 993 (2002).

A finding of contempt is, therefore, reviewed for an abuse of discretion. “Punishment for contempt of court is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion.” *In Re Marriage of Matthews*, 70 Wn. App. 116, 126, 853 P.2d 462 (1993) *review denied*, 122 Wn.2d 1021 (1993). *Accord, In Re Marriage of James*, supra, at 439-40. “Whether contempt is warranted in a particular case is within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on

appeal.” *In Re Pers. Restraint of King*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988). “A finding of contempt will be upheld if the appellate court can find any proper basis for the finding.” *Trummel v. Mitchell*, 156 Wn.2d 653, 672, 131 P.3d 305 (2006). This is true even though the contempt hearing is conducted solely on affidavits. *In Re Marriage of James*, *supra*, at 442. The *James* court stated:

A court may conduct a hearing on contempt by affidavit, oral testimony or both. 2 Washington State Bar Ass’n, *Family Law Deskbook* Section 63.5(1)(d), at 63-16 (1991). The court conducts a hearing on affidavits in domestic relations cases in the same manner as other trials by affidavit. *See, e.g.*, King County Local Rule 94.04(g)(7)(c)(5). The trial court may weigh the credibility of each party based on sources other than oral testimony. These might include the plausibility of a party’s position, consistency with information in the court file and testimony at trial, and affidavits of persons other than the parties. If the trial court feels it cannot adequately decide a material contested issue without oral testimony, it may on its own motion schedule an evidentiary hearing which it may limit to resolving an issue upon which the decision depends.

Id. The trial court in this case did not feel the need to schedule an evidentiary hearing. Moreover, there was nothing to prevent Mr. Pease from seeking an evidentiary hearing, but he did not do so.

II. The Court Did Not Err In Finding Mr. Pease In Contempt

RCW 7.21.010 defines contempt of court as the intentional “disobedience of any lawful judgment, decree, order, or process of the court.” RCW 7.21.010(1)(b). RCW 7.21.030(2) states that a person is in contempt “[I]f the court finds that the person has failed or refused to perform an act that is yet within the person’s power to perform.” Mr. Pease’s entire focus is on his contention that he does not have money sufficient to pay his maintenance, and therefore cannot be found in contempt. However, he pointedly ignores the portion of the definition in RCW 7.21.010, which would bring attention to his “intentional disobedience.” “Intentional disobedience of a lawful court order is contempt.” *In Re Pers. Restraint of King*, supra, at 797. He also fails to discuss the additional requirement of RCW 26.18.050, which adds a gloss to the general contempt statute in the context of a failure to pay maintenance. RCW 26.18.050(4) states:

If the obligor contends at the hearing that he or she lacked the means to comply with the support or maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise rendering himself or herself able to comply with the court’s order.

The inability to comply with a court's order is an affirmative defense. *In Re Pers. Restraint of King*, supra, at 804. Mr. Pease had the burden of both production and persuasion as to his inability to comply. *Id.* "The contemnor must offer evidence as to his inability to comply and the evidence must be of a kind that the court finds credible." *Id.* In considering all of the record before it, the trial court properly concluded that Mr. Pease had failed to carry his burden, and was therefore in contempt.

The record is replete with substantial evidence showing that Mr. Pease not only intentionally failed to pay his maintenance, but also failed to exercise due diligence in seeking employment, in conserving assets, or otherwise rendering himself able to comply with the court's order. The following are facts which support the trial court's finding:

- Mr. Pease has degrees in both physics and mathematics from the University of Washington. CP 27.
- Mr. Pease has a law degree from the University of Puget Sound, now Seattle University. CP 27.
- He allowed his license to practice law in Washington to lapse, claiming it was too expensive. CP 90.
- He made statements to Ms. Randecker-Pease such as "You're going to have to take me to court," and "You don't get the house because I didn't get the house." CP 26.

- He sent emails to Ms. Randecker-Pease in which he said “I promise you all I need is a spare \$2000 and you will be sued, divorced and I will look to reduce my obligations to you by what ever (sic) means are necessary. You do not deserve what you got”, and “Hint: Or you will need to sue me for divorce in order to be paid anything I owe you, even if I got a new job tomorrow!” CP 341-342.
- Ms. Randecker-Pease also submitted an email November 7, 2011 from Mr. Pease in which he referred to a “hush-hush” project, which appeared to be a business venture in on line publishing. CP 27-28, CP 56.
- When Ms. Randecker-Pease asked Mr. Pease why he didn’t take other work even though another job might pay him less, he said that he couldn’t afford to take a job that paid him less than what he earned before, and he wasn’t willing to look at jobs that paid him less. CP 27.
- Mr. Pease admitted that in the year after he was laid off he held out for higher paying jobs in the \$120,000 range, before looking for lower paying work in the \$70,000 range and up. CP 88-89.
- Ms. Randecker-Pease submitted an exhibit which was a copy of an email Mr. Pease received from “StormPay Doubler” which appeared to be some sort of pyramid scheme. CP 344-349. Part of this exhibit were pages from a website called “whydowork.com.” CP 345.
- Mr. Pease took a free tax training class in the fall of 2010 and became certified to prepare taxes. CP 89. With this training he could have claimed Enrolled Agent status with the IRS, but could not do so because he had allowed his WSBA membership to become inactive. CP 90.
- Mr. Pease’s Financial Declaration shows that he has monthly income of \$2,439 per month, and expenses of

\$1,232 per month, resulting in a surplus of income over expenses of \$1,207 per month. CP 10-17.

- Mr. Pease's Financial Declaration lists "Recently Paid Off Debts," which shows that he has chosen to pay debts other than his court ordered obligation to Ms. Randecker-Pease. CP 16.
- Among the debts Mr. Pease incurred while not paying his court ordered obligation to Ms. Randecker-Pease are Sallie Mae student loans totaling \$145,090 for the college education of the parties' daughter, Courtney. CP 17.

There were also numerous findings of fact made by Commissioner Castilleja at the hearing on Mr. Pease's petition to modify his maintenance, which Judge Linde upheld, ruling that "The Findings of Fact and Conclusions of Law entered herein by Commissioner Castilleja on May 20, 2013 are well supported by the facts and the law." CP 411. A denial of a motion for revision constitutes an adoption of the commissioner's decision and findings. *In Re Dependency of B.S.S.*, 56 Wn. App. 169, 170-71, 782 P.2d 1100 (1989). Mr. Pease has not contested these findings, so they become verities on appeal. RAP 10.3(g); *Moreman v. Butcher*, 126 Wn.2d 36, 39, 891 P.2d 725 (1995), citing *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Among those findings which are relevant to the issue of Mr. Pease's contempt were the following:

- “Based on all of the records supplied by the parties, the court finds that there were numerous inconsistencies in the petitioner’s bank statements relating to deposits and withdrawals. Payments stated (sic) the petitioner’s Financial Declaration do not show up in his bank statements, and vice versa. Examples are:
 - a. Large payments shown in the petitioner’s bank statements do not match with his Financial Declaration. The bank statements for November 8, 2012 and November 23, 2012 show payments of over \$5,300 which do not correlate with his Financial Declaration.
 - b. The petitioner’s account shows a check draft number 1004 for \$3,000 with no indication of what it was for and no explanation offered.
 - c. The petitioner states in his Financial Declaration that he has a utility expense for phone of \$230 per month, but this does not show up consistently in his bank statements.
 - d. The petitioner states in his Financial Declaration that he has \$450 on deposit in banks, but this does not match up with his submitted financial accounts.
- The court finds that the petitioner has failed to list what he pays monthly on his various financial accounts, but just shows what he owes.
- Even accepting the petitioner’s own Financial Declaration he shows that he has monthly income from disability of \$2,439 per month, but expenses of only \$1,232 per month, resulting in a surplus of income over expenses of \$1,207 per month.
- The court finds that the petitioner chooses to pay things other than his court ordered obligation, and does not even

make partial payments toward his court ordered obligation.

- There is no dispute that the petitioner receives Social Security Disability. However, the petitioner as (sic) failed to provide any independent medical or vocational records which show what his limitations are or that he is unable to work even part-time.
- The petitioner has submitted no evidence suggesting that he is limited in all types of work, and no evidence whatsoever that he is unable to pursue limited employment.
- The petitioner has stated that he was certified as a tax consultant and can do tax returns and that he intends to reapply for his WSBA license and will be pursuing his California bar license. These facts show that he is obviously not restricted from all activities.
- The respondent's response alleges that the petitioner was involved in on-line ventures to earn money, and included evidence of communications from the petitioner to the respondent that he could earn \$30,000 by preparing tax returns. These allegations were not disputed by the petitioner.
- The petitioner's disability notice says nothing about restrictions the petitioner's ability to work.
- It is not clear from the evidence the extent of the petitioner's disability, and whether or not he has the ability to work part-time."

CP 356-358.

From these findings of fact, Commissioner Castilleja entered the conclusion of law that Mr. Pease had failed to carry his burden of proof

that there was a sufficient change of circumstances to justify a modification, termination or suspension of his maintenance obligation. CP 359.

Mr. Pease could have taken steps in the years after he lost his job to maintain his law license and obtain employment in the legal field. Arguably, even without a license he could have found work with a law firm interviewing witnesses and clients, answering interrogatories, or other work as a legal assistant. Instead, he presents his decision to allow his Washington law license to lapse as an example of his effort to conserve assets. Appellant's Brief, p. 7. That is actually an example of how he failed to exercise due diligence in seeking employment and rendering himself able to comply with the court's order, as required by RCW 26.18.050(4), and the trial court so found. CP 144.

Although Mr. Pease claimed that he looked everywhere for work and did not obtain one job offer, he never submitted a copy of one job application or rejection letter.

All of the above facts, evinced in both the contempt and modification cases, together with Mr. Pease's emails showing his intent not to pay, convinced the trial court that Mr. Pease intentionally did not

pay his maintenance. The inconsistencies in his financial records also raise serious questions about his credibility. These questions of credibility were resolved against him by the trial court, and should not be disturbed on appeal. *In Re Marriage of Matthews*, supra, at 126.

III. *Britannia Holdings v. Greer* Does Not Apply.

Mr. Pease's reliance on *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 113 P.3d 1041 (2005) is misplaced. First, the *Britannia Holdings* case involved an order of contempt entered in a civil collection case in which the trial court ordered the defendants to be imprisoned if they did not pay \$635,000 to purge themselves of their contempt of previous court orders. In the present case Ms. Randecker-Pease has never sought imprisonment. Paragraph 1.3 of Ms. Randecker-Pease's Motion and Declaration for Order to Show Cause, entitled "Granting Sanctions", does not include a request for imprisonment. CP 19. Likewise, nowhere in her declaration in support of her motion does she ask for imprisonment. CP 19-28. The order Mr. Pease is appealing contains no language requiring imprisonment if he fails to comply with the court's order regarding how he may purge the contempt. CP 142-147. From the beginning of this case Ms. Randecker-Pease's only desire has been to have

Mr. Pease comply with his maintenance obligation which was set forth in their CR 2A Settlement Agreement. In the purging clause of its order, the trial court imposed two simple conditions, stating: “The contemnor may purge the contempt by resuming payments as required by the order, and by arranging for payment of the maintenance arrearages in a manner agreeable to the respondent.” CP 145. Unlike the situation of the appellants in the *Britannia Holdings* case, Mr. Pease was not subject to any actual or threatened incarceration if he did not comply with these conditions.

Second, even if the trial court had threatened Mr. Pease with imprisonment for his failure to pay his maintenance, the *Britannia Holdings* court explicitly distinguished between civil collection cases, which sound in law, and family law matters, which sound in equity. In discussing the constitutional prohibition against imprisonment for failure to pay a debt, the court stated: “The constitutional prohibition is inapplicable in the family law context because orders from dissolution courts sound in equity rather than law and because public policy requires ensuring support of the family of divorcing spouses.” *Britannia Holdings Ltd. v. Greer*, *supra* at 931, footnote 9, citing *Brantley v. Brantley*, 54

Wn.2d 717, 720-21, 344 P.2d 731 (1959).

The third, and most important, distinction between the *Britannia Holdings* case and this one, is that in that case this court reversed the trial court's finding of contempt because "the trial court failed to make a finding that the Greers had a *present* ability to pay the purge amount." *Britannia Holdings*, supra, at 934 (italics in original). Without such a finding "the contempt was not coercive but impermissibly penal." *Id.* Unlike the trial court's failure in that case, the trial court in this case entered an explicit finding that "Michael D. Pease has the present ability but is unwilling to comply with the order." CP 144. There was no abuse of discretion by the trial court in making this finding, and it should therefore not be disturbed on appeal.

IV. Attorney Fees On Appeal

Ms. Randecker-Pease should be granted her attorney fees in this appeal due to Mr. Pease's violation of RAP 18.9(a) in several particulars. First, he violated RAP 9.2(b) and RAP 9.6(a) by failing to designate clerk's papers sufficient to allow this court to review the issues before the court. In referring to a verbatim report of proceedings, RAP 9.2(b) states: "If the party seeking review intends to urge that a verdict or finding of fact

is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding.” Mr. Pease should not be allowed to avoid this rule by his choice not to submit a verbatim report of proceedings, and only designating clerk’s papers. RAP 9.6(a) sets forth the rule regarding the designation of clerk’s papers. The final sentence of RAP 9.6(a) says: “Each party is encouraged to designate only clerk’s papers and exhibits needed to review the issues presented to the appellate court.” Case law also requires that Mr. Pease provide a complete record for review. “The party seeking review has the burden of perfecting the record so that this court has before it all of the evidence relevant to the issue.” *Allemeier v. University of Washington*, 42 Wn. App. 465, 472, 712 P.2d 306 (1985), *review denied*, 105 Wn.2d 1014 (1986). Mr. Pease’s designation of clerk’s papers included the documents that he had provided to the trial court and, except for her original motion for contempt, none of Ms. Randecker-Pease’s documents. She was, therefore, required to incur unnecessary attorney fees to supplement the record so that this court had a complete record for the review. This “cherry picking” of the record to present only one side’s facts and arguments is an example of intransigence in the appeal process, and a violation of RAP 18.9(a), which should allow

Ms. Randecker-Pease to recover her attorney fees without regard to her financial need. A party may recover his or her attorney fees without regard to financial need when the other party has acted with intransigence. *In Re Marriage of Morrow*, 53 Wn. App, 579, 590, 770 P.2d 197 (1989).

Mr. Pease should also pay Ms. Randecker-Pease's attorney fees on appeal because he advances frivolous legal arguments, the response to which has caused her extreme financial hardship. His entire appeal is based on the premise that this court will review the case under a de novo standard of review, Brief of Appellant, p. 10, when settled law states that the standard of review is whether there is substantial evidence to support the trial court's decision. *In Re Marriage of Rideout*, supra, at 351. Mr. Pease compounds his error by advancing the argument that it was trial court that was required to find substantial evidence to support its findings of fact and conclusions of law, Brief of Appellant, p. 14, when the correct level of proof at the trial level is by a preponderance of the evidence. *In Re Marriage of James*, supra, at 442. In advancing these arguments, Mr. Pease has ignored the law, and is simply rearguing the facts of his case. He has caused Ms. Randecker-Pease to incur unnecessary attorney fees in responding to an appeal that is devoid of any meaningful legal argument

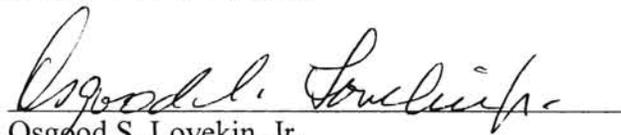
for reversal of the trial court's decision. Those fees should be reimbursed to Ms. Randecker-Pease as a judgment.

V. Conclusion

There is substantial evidence in the record to show that the trial court did not abuse its discretion in finding by a preponderance of the evidence that Mr. Pease intentionally failed to pay his maintenance, failed to show a good faith effort to work and earn money, and failed to make a good faith effort to conserve assets and resources in order to pay his maintenance. Since there is no showing of an abuse of discretion this court should not overturn the trial court's decision.

Ms. Randecker-Pease should be awarded her attorney fees incurred in this appeal because Mr. Pease has based his appeal on arguments lacking any legal basis.

Respectfully submitted,



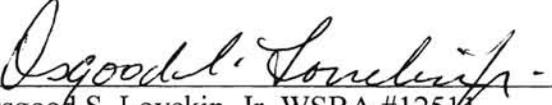
Osgood S. Lovekin, Jr.
Attorney for Respondent
WSBA #12511

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 30th day of May, 2014, I caused a true and correct copy of the foregoing document entitled "Brief of Respondent" to be delivered by messenger to the following counsel of record:

RICHARD B. CASSADY, JR. (WSBA #23655)
The Colman Building, Suite 100
811 First Avenue
Seattle, Washington 98104

Dated this 30th day of May, 2014, at Seattle, Washington.



Osgood S. Lovekin, Jr. WSBA #12511
Attorney for Respondent Eleanor M.
Randecker-Pease

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Marriage of:

MICHAEL D. PEASE,

Petitioner,

and

ELEANOR RANDECKER-PEASE

Respondent.

) NO. 06-3-08023-1SEA

) CIVIL RULE 2 (A)
) SETTLEMENT

ORIGINAL

CIVIL RULE 2(A) SETTLEMENT

THIS DOCUMENT constitutes a full and complete settlement of property, debt, and maintenance issues between Eleanor Randecker-Pease (hereinafter "wife") and Michael Pease (hereinafter "husband"). It is intended that, as part of this settlement, a Property Agreement shall be prepared and executed by the husband and wife.

I RESIDENCE. 4320 S.W. Holgate, Seattle, Washington 98116, with a legal description as follows:

West 65 Feet of Lots 13, 14, and 15 in Block 25 of Second Plat of West Seattle by the West Seattle Land and Improvement Co., as per plat recorded in Volume 3 of Plats, Page 53, records of King County; Situate in the County of King, State of Washington.

(The parties agree to amend this legal description if the above description is inaccurate).

A. Loan. The Parties shall cooperate in obtaining a \$125,000 loan, by line of credit or other secured loan, in order to pay credit card indebtedness incurred by the husband in the approximate amount of \$93,000 which debt shall be paid directly from escrow to the credit card accounts. Any amounts remaining shall be used by husband to pay his attorney fees related to this legal separation proceeding. As part of the line of credit or loan, the parties will borrow an additional \$32,000.00 which sum will be paid directly from closing/escrow to wife.

B. Quit Claim Deed. Contemporaneously with the parties signing documents to finalize the loan referred to in 1(A) above, the husband shall execute a Quit Claim Deed and Real Estate Tax Affidavit ("REETA") on the Holgate property to the wife deeding any and all interest that the Husband has or may have in the Holgate property. Wife shall hold the Quit Claim Deed and REETA and not record the document until such time as provided below. The signing of the Quit Claim Deed by Husband shall constitute delivery of the Deed for purposes of vesting full and complete title in Wife immediately.

C. Refinance. As soon as practicable but no later than 90 days after the line of credit is obtained, unless otherwise agreed by husband and wife, husband and wife shall refinance the mortgage and line of credit as a single indebtedness secured by the Holgate property. Wife shall continue to hold the Quit Claim Deed and REETA. Should husband fail to cooperate in obtaining a refinance of the original mortgage and line of credit, wife shall, at her option, be able to record the Quit Claim Deed and file the REETA. If the refinance is obtained and closes in 90 days, the Quit Claim may be recorded, at the wife's discretion, 90 days after in order to allow time for the lender's possible sale of the note.

It is intended that the refinance, which amount shall be amortized over a thirty-year period, be paid at an accelerated rate so that the entire balance, principal and interest, is paid in full in 12 years. To that end, husband shall make regular payments of principal and interest plus making additional monthly payments towards principal of at least

\$1,000 per month in order to retire the indebtedness. (by way of example: \$2500/month P&I on \$400,000 at 6.5 for 30 years; additional \$1,000 on principal will pay off in 12 years).

D. Payment of loan indebtedness. Husband shall be solely responsible for making payments on the original mortgage and line of credit and, subsequently, on the refinanced indebtedness until the entire balance, principal and interest, is paid in full. In addition, husband shall be responsible for property taxes and insurance whether part of mortgage payment or not. The obligation to pay the mortgage, real estate taxes, and homeowner's insurance is and shall constitute maintenance. Husband shall not take any action at a later time in a court proceeding to attempt to recharacterize these payments as anything other than maintenance. Husband shall pay wife directly on a monthly basis the funds for the payments of the mortgage, real estate taxes, and homeowner's insurance. Wife, in turn, shall pay for these monthly expenses on a timely basis. Wife shall provide husband on a monthly basis written proof that she is making the monthly payments on the mortgage, real estate taxes, and homeowner's insurance.

If for any reason the mortgage is called as a result of Husband's name not being on title to the Holgate property, Husband shall be responsible for all costs, additional interest, and penalties that are incurred related to Wife losing the current mortgage and the parties having to obtain a new mortgage on the property. Husband shall be responsible for any new mortgage replacing the existing mortgage on the Holgate property under the same terms and conditions stated in this Agreement.

II. MAINTENANCE (Non-modifiable)

A. Indebtedness secured by Holgate property. The husband's payment on the loans referred to in I, A and C above shall be payable by the husband as maintenance to the wife whether the payment is made directly to the creditor or paid directly to the wife.

1. If husband pays off the entire balance of the loan prior to the contemplated period (i.e, 12 years) that portion of maintenance shall cease and husband shall continue to pay property taxes and insurance (either directly to wife or to the County and insurance company, at wife's option) for the remainder of the 12 year period.

2. If wife sells the house prior to the expiration of the anticipated period and there is an outstanding balance paid on the mortgage at closing, husband shall continue to pay maintenance to the wife at the same monthly rate until the amount of the indebtedness is paid in full.

B. Monthly payments. Husband shall pay as additional maintenance the following sums for a period of twelve years.

1) \$650 per month directly to wife. This monthly amount will increase by at least \$100 to \$750 as maintenance when husband chooses to terminate the current public storage unit contract at Public Storage on Avalon Way, Seattle, Washington.

2) The following utilities and monthly expenses of wife's:

- a. security alarm system
- b. cellular telephone
- c. gasoline credit card
- d. automobile insurance
- e. cable
- f. telephone
- g. electricity
- h. natural gas
- i. water, sewage, and garbage
- j. internet access
- k. lawn maintenance

These payments shall cap at \$1,200 per month for 2007. For every year after 2007, the maximum amount to be paid shall increase on an annual basis by the Consumer Price Index (CPI) for the Seattle Metropolitan area.

III. INSURANCE

A. Life Insurance. Husband, through his employment, has a life insurance policy currently worth (X) which is based on his income. Husband shall maintain this policy and name wife as the primary beneficiary. Should wife predecease husband, husband shall make the parties' daughter, Courtney, the primary beneficiary.

B. Health Insurance. Husband shall maintain wife as an insured for health insurance (currently Group Health) through his employment until the later of his retirement or wife's ability to apply for Medicare, currently at age 65. Should husband fail to maintain this insurance so that wife is no longer covered or Husband's employer changes its policy regarding coverage of spouse's under its health care plan, husband shall be responsible for wife's monthly premium costs for obtaining insurance with substantially similar benefits. In the event that Husband changes employers or quits working altogether, he remains responsible for wife's monthly premium costs for obtaining insurance with substantially similar benefits as she currently is receiving. If husband converts the legal separation into a dissolution or cancels her from his health insurance policy, husband shall be responsible for paying the monthly premiums for wife's health care insurance with substantially similar benefits as she currently is receiving. If wife converts the legal separation into a dissolution then wife is responsible for the payment of her health care insurance.

IV. ESTATE

Husband's maintenance obligations outlined above shall become an obligation of his estate to the extent his life insurance coverage is insufficient to pay the indebtedness on the Holgate house and all other maintenance obligations provided in this Agreement..

Neither husband nor wife shall change any entitlements in favor of the other arising out of Social Security benefits.

V. INCOME TAXES

Starting in the 2007 tax year, the parties may file as married filing separately unless otherwise agreed by the parties, in writing. If, in 2007, the parties file married filing separately, husband shall have the interest stemming from the "old" mortgage and the second mortgage/home equity loan and wife shall have the interest from the "new" mortgage. It is intended that the husband shall have his maintenance obligation to wife as deductible. Any change in federal tax law related to maintenance deductions shall not allow husband to amend this Agreement. After 2007, Wife shall be the party entitled to claim on her federal tax return the mortgage interest, real estate taxes, and homeowner's insurance on the indebtedness on the Holgate house. Husband shall be entitled to claim Courtney as a deduction on his tax return including any exemptions available for tuition payments.

The parties are free to agree to other tax arrangements and, before determining the most beneficial tax filing, shall consult with a CPA who can advise them on alternatives.

VI. MARITAL STATUS

The parties agree that a Decree of Legal Separation shall enter in this matter. Should the husband notify the wife of his intention of converting the action into a Dissolution, husband shall become responsible for all health insurance premiums for wife until wife becomes eligible for Medicare. All the terms and conditions herein shall remain in full force and effect regardless of whether either parties converts this action into a Dissolution of the marriage.

VII. SEPARATE AND COMMUNITY PROPERTY

The wife shall retain as her sole and separate property any inheritance she received through her father's estate and mother's estate (In Re the Estate of Carl E. Randecker, King County Superior Court, Cause No. 04-4-01885-1 SEA) and the Margaret V. Randecker Special Needs Trust.. Any property wife acquires not already provided for in this document shall be her separate property from July 1, 2007 forward. Any property acquired by husband from July 1, 2007 forward, shall be his separate property.

The parties agree that they will arrange a further meeting and then, formulate a division plan (between husband and wife) of personal property left in the Holgate residence and storage area.

VIII. SEPARATE DEBTS, OBLIGATIONS AND LIABILITIES

Each party further agrees that each shall be and remain solely responsible for his or her separate debts, obligations and liabilities, known and unknown, whether fixed or contingent, and whether incurred prior to, during or after the date of the filing of the Legal Separation.. Each party shall indemnify and hold the other harmless for any separate debts, obligations, and liabilities.

Husband agrees to pay for all significant medical costs associated with Courtney's animals Jasper (dog) and Tigger (cat). Wife agrees to house these two animals at her residence.

IX. VEHICLES

The husband shall have possession and be solely on title to the Ford Escape and shall pay any indebtedness secured by or associated with the purchase of that vehicle. Wife shall have possession and be solely on title to the Mercedes 280C and shall be responsible for all indebtedness secured by or associated with that vehicle. Courtney shall have possession and be solely on title to the 1994 Ford Explorer and shall be responsible for any and all indebtedness. Husband and Wife agree that the 1971 Newport Chrysler, currently titled in husband's name, is to be titled in Courtney's name. Husband shall be responsible for any liability related to the 1971 Newport Chrysler.

X. COURTNEY'S EDUCATION AND COST OF LIVING

The husband shall be responsible for any and all costs associated with Courtney's education and costs of living. Any contribution from the mother shall be deemed voluntary and not constitute an obligation for future payments.

XI. ATTORNEY FEES

In the event it becomes necessary to obtain the services of any attorney with regard to a dispute under this Agreement or as a result of a breach of any portion of this Agreement, including but not limited to litigation or arbitration, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees, litigation costs, and court costs resulting from the following levels: pre-litigation, pre-arbitration, arbitration, trial and appeals.

XII. STIPULATION OF CONFESSION OF JUDGMENT AND FINAL SETTLEMENT PROPERTY AGREEMENT

As part of this Agreement, Husband and wife agree to execute within 60 days of the date of this Agreement a Stipulated Confession of Judgment on unpaid maintenance amounts herein (with the statutory interest rate), which provision will be included as part of the total property settlement agreement. Wife shall retain original Judgment and not file the

judgment with the Court unless and until husband has failed to make payment on any maintenance obligations herein.

The parties further agree that the Property Settlement Agreement will be drafted and executed within 60 days of the execution of the CR2(A) Agreement.

XII. ADVICE OF COUNSEL

Each of the parties acknowledges that he or she has had the benefit, advice and counsel of his or her respective, independent attorney in connection with the formulation, preparation, discussion and execution of this Agreement and all matters incidental to it, and that such counsel has advised him or her that the Agreement alters the rights he or she would otherwise have under the laws of this and other states. Each acknowledges and represents that he or she is nevertheless entering into this Agreement freely and voluntarily and with full knowledge of his or her rights. Counsel for Wife was Carrie Balkema, of the Law Office of Landrum & Balkema. Counsel for Michael was Delaina Dancey of the Law Office of Dancey & Cassidy.

Each party agrees and stipulates that this is a full and complete agreement between the parties and is enforceable in court. Each party understands that even though final documents have yet to be prepared, this stipulation and agreement is binding and effective upon execution and enforceable in court. The parties stipulate and acknowledge that this agreement is fair and equitable.

EFFECTIVE as of June 25th, 2007.

Eleanor M. Randecker-Pease
ELEANOR M. RANDECKER-PEASE

Michael D. Pease
MICHAEL D. PEASE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me ELEANOR M. RANDECKER-PEASE, to me known or proven on the basis of satisfactory evidence to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of June, 2007.

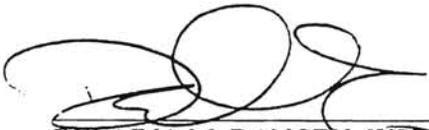


Carol Rowena Beard
Print Name: Carol Rowena Beard
Notary Public in and for the State of
Washington, residing at: Bainbridge Island, WA
My appointment expires: 01-03-2010

Attorney's Certificate for Michael D. Pease

The undersigned hereby certifies that she is an attorney-at-law, duly licensed and admitted to practice in the State of Washington; that the undersigned has been employed by MICHAEL PEASE ("Michael"), one of the parties to the foregoing Agreement; that the undersigned has advised and consulted with Michael in connection with his property and legal rights and has explained to him the legal effect of the foregoing Agreement and the effect that it has upon any property or legal rights he would otherwise obtain as a matter of law; that Michael and the undersigned have received answers to all of their inquiries concerning the property and debts of ELEANOR M. RANDECKER-PEASE; and that Michael, after being advised by the undersigned, acknowledged to the undersigned that he fully understood the legal effect of the foregoing Agreement and would execute the same freely and voluntarily.

DATED: June, 2007.



DELAINA M. DANCEY, WSBA #23817
Attorney for MICHAEL D. PEASE

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CLIENT'S COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

In re the Marriage of:

MICHAEL D. PEASE,

Petitioner,

and

ELEANOR M. RANDECKER-PEASE,

Respondent

No. 06-3-08023-1 SEA

SEPARATION CONTRACT AND CR 2A
AGREEMENT

ORIGINAL

This Separation Contract and attached CR 2A Agreement, entered into by and between Eleanor M. Randecker-Pease, (herein referred to as "wife") and Michael D. Pease (herein referred to as "husband") on the date stated below for the Separation Contract and on the date stated therein for the CR 2A Agreement, 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:

George R. Landrum
Carolyn J. Balkema
Attorneys at Law
9100 Roosevelt Way N.E.
Seattle, Washington 98115
(206) 524-2775

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INCORPORATION OF CR 2A AGREEMENT

Attached hereto and incorporated herein as **Exhibit A** is a CR 2A Agreement entered into by the parties on June 25, 2007. The parties agree that Exhibit A is incorporated in this Separation Agreement in its entirety and that the parties are bound by its terms and conditions as part of this Separation Agreement. The June 25, 2007 date in the CR 2A Agreement is the effective date for the terms and conditions set forth therein. This Separation Agreement and the attached CR 2A represent an integrated agreement and shall be taken as a whole constituting a full, complete, and binding agreement between the parties.

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SEPARATION DATE

Separation Date. Final separation defining when the marriage became legally defunct and the community presumption terminated is deemed to have occurred in May 2005.

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TERMS IN ADDITION TO CR 2A

1. On Page 4, Section VII of the CR 2A Agreement, the parties agreed as follows:

"The parties agree that they will arrange a further meeting and then, formulate a division plan (between husband and wife) of personal property left in the Holgate residence and storage area."

2. The parties have formulated a division plan of the personal property left in the Holgate residence and storage unit and hereby agree as follows:

A. The husband shall receive the following tangible personal property¹:

- i. All of husband's clothes

¹ Husband agrees to remove all of his tangible personal property from the Holgate house within 90 days of the execution of this Agreement. Any items not removed by that date shall become property of wife.

- 1 ii. All computer and networking equipment in the Den with the
- 2 exception of the PC wife is currently using
- 3 iii. All Stereo equipment in the Den
- 4 iv. All of husband's souvenirs in the Den
- 5 v. All husband's books from college, law school and any ones given
- 6 to him or purchased by him including his CLE binders
- 7 vi. The Television in the Den
- 8 vii. All of the furniture given to husband by his parents including the
- 9 up stairs coffee table, the dinning room table in the garage at
- 10 2314 46th Avenue S.W., Seattle, Washington, and any of his
- 11 parents' furniture stored in the storage area
- 12 viii. Roll Top Desk and associated accessories
- 13 ix. Husband's wedding ring
- 14 x. Husband's 2 bicycles
- 15 xi. All of husband's tools and those of his father's
- 16 xii. Any usable pots and pans that are duplicates
- 17 xiii. Tivo box
- 18 xiv. Total Gym
- 19 xv. All of the property husband currently has in his possession at his
- 20 apartment

21 3. The wife shall receive all of the remaining tangible personal property that is

22 currently located in the Holgate property, the storage unit, and all tangible personal property

23 in her property located at 2314 46th Avenue S.W., Seattle, Washington.

24 4. The wife shall retain both crypts located at Forest Lawn, Seattle, Washington.

25 Husband shall cooperate in signing over the title of the crypt(s) to the wife. This second crypt

26 is given to wife in exchange for wife storing the Chrysler at 2314 46th Avenue S.W., Seattle,

27 Washington, or the Holgate Residence until May 2008 when the couple's daughter Courtney

1 returns from NYU. After May 2008, arrangements will be made between husband and wife
2 regarding storage of the vehicle.
3

4 **5.** Husband and wife agree that the above division of tangible personal property is
5 a full and complete division of all household goods, furniture, furnishings, fixtures, appliances,
6 and all other tangible personal property.

7 **6.** In Addition to the agreed upon division of tangible personal property stated
8 above, the parties agree to the following additional terms as part of this Separation Contract:
9

10 **A.** The November 2007 an extra monthly mortgage payment in the amount
11 of \$1,000 shall be paid directly to wife to reimburse her for the hot water tank replacement
12 costs. This will add two months to the repayment period of the mortgage.

13 **B.** The payment of the maintenance obligation as set forth above begins
14 August 1, 2007. Husband has already paid wife maintenance for the months of September
15 and October. In exchange for paying wife the August maintenance, Husband can pay himself
16 an extra mortgage payment of \$1,000 to offset his current costs. The husband can decide
17 which month that he wishes to use the extra monthly mortgage payment. This will add one
18 month to the repayment period of the mortgage and one additional month of maintenance
19 that husband pays to wife.
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21 **C.** In the future, husband shall be entitled to three months of extra monthly
22 mortgage payments (totaling \$3,000) for dental work (three crowns) with the husband
23 selecting the three months he wishes to use the extra monthly mortgage payments for such
24 dental costs. This will add three months to the repayment period of the mortgage and three
25 additional months of maintenance that husband pays to wife. Furthermore, wife will have the
26 option in the future to use three months of the extra monthly mortgage payments for dental
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1 work and/or medical care for her. This will add six months to the repayment period of the
2 mortgage but does not affect maintenance.
3

4 D. Husband's current life insurance through his employment has a death
5 payout of \$650,000. This information is provided to supplement language in the CR 2A. If he
6 is allowed, Husband shall maintain this life insurance at his expense for the benefit of wife
7 even if husband quits, retires, or his employer terminates him.
8

9 7. Employment Benefits. Except as otherwise specifically provided herein, each
10 party shall retain as his or her separate property, free from any interest in the other, all rights
11 and benefits which have been derived as a result of past or present employment, union
12 affiliations, military service, or United States, state or other citizenship (except rights the
13 parties are entitled to receive by virtue of this relationship); including but not limited to sick
14 leave benefits, insurance, death benefits, educational benefits and grants, health or welfare
15 plans and all other contractual, legislated or donated benefits, whether vested or unvested,
16 and whether directly or indirectly derived through the activity of the parties. Except as
17 otherwise specifically provided, each party shall retain all rights and benefits to which he or
18 she is entitled by state or federal law, including Social Security benefits.
19

20 8. Assets and Liabilities. Except as otherwise specifically provided herein, the
21 table of assets and liabilities that follows hereto is approved and agreed to by the parties as
22 the final distribution of assets and liabilities listed therein. Each party is to receive the asset
23 or liability or portion thereof shown in his or her column. Any dollar values listed for assets or
24 liabilities, unless otherwise indicated, are the best estimates available at this time and the
25 actual value may fluctuate on any given day. Assets or liabilities awarded wholly to one party
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1 are awarded 100% to such party, without claim for compensation if the dollar figure is later
2 shown to vary from the estimate.
3

4 **9. Advice of Counsel.** Each of the parties acknowledges that he or she has had
5 the benefit, advice and counsel of his or her respective, independent attorney in connection
6 with the formulation, preparation, discussion and execution of this Agreement and all matters
7 incidental to it, and that such counsel has advised him or her that the Agreement alters the
8 rights he or she would otherwise have under the laws of this and other states. Each
9 acknowledges and represents that he or she is nevertheless entering into this Agreement
10 freely and voluntarily and with full knowledge of his or her rights. Counsel for Wife was Carrie
11 Balkema, of the Law Office of Landrum & Balkema. Counsel for Michael was Delaina
12 Dancey of the Law Office of Dancey & Cassady.
13

14 **10.** Each party agrees and stipulates that this is a full and complete agreement
15 between the parties and is enforceable in court. Each party understands that even though
16 final documents have yet to be prepared, this stipulation and agreement is binding and
17 effective upon execution and enforceable in court. The parties stipulate and acknowledge
18 that this agreement is fair and equitable.
19

20 **ATTORNEY FEES AND COSTS**

21 **11. Attorney Fees Waived.** Neither party shall pay any attorney fees or costs to or for
22 the benefit of the other party related to the negotiations and settlement of the matters herein.
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24 **WARRANTIES, WAIVERS AND ENFORCEMENT**

25 **12. No Known Pregnancy.** Both parties acknowledge that, to the best of their
26 knowledge, the wife is not pregnant.
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13. Full Satisfaction of All Claims. All disclosed property not otherwise awarded or assigned in this agreement, whether acquired before the marriage, during the marriage or during any period of separation, shall be, and remain, the sole property of the party in whose possession or control it presently is, free and clear of any claim on the part of the other. All property that shall hereafter come to either party shall be his or her separate property and neither party shall hereafter have any claim thereto. Except as defined in this agreement, each party is hereby released from any and all claims by the other party for injuries or losses, known or unknown, foreseen and unforeseen, which have accrued up to the date of execution of this agreement, arising out of the marriage or any other relationship between the parties.

14. Hold Harmless. Each party warrants to the other party that he or she has not incurred and will not in the future incur any liabilities or obligations for which the other party may be liable except as expressly set forth in this contract. Each party shall pay and hold the other party harmless, including reasonable attorney fees and costs incurred in defending against any attempts to collect an obligation of the other party, from any expense, loss, claim or liability whatsoever arising from, or in any way connected with any debts and obligations a) specified in this contract to be paid by that party, b) due on or related to property awarded to that party, c) incurred by that party subsequent to separation, or d) undisclosed by that party to date.

15. Warranty of Disclosure. Each party warrants to the other party that he or she has fully and accurately disclosed all assets and debts and that no undisclosed property or debts, community or separate, exist and the other party may detrimentally rely on that warranty.

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16. Undisclosed or Undiscovered Community Property. Any community property with a current value exceeding \$1,000.00 which has remained deliberately or inadvertently undisclosed or undiscovered to this date shall remain the joint property of both parties and shall be divided 35% to the party in possession or control and 65% to the other party upon discovery. If either party has concealed such property, they shall pay the reasonable costs, including attorney fees, of the discovering party. Disputes about the subjects of this paragraph shall be subject to binding arbitration with an arbitrator mutually selected by the parties at that time.

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

18. Attorney Fees. In the event it becomes necessary to obtain the services of any attorney with regard to a dispute under this Agreement or as a result of a breach of any portion of this Agreement, including but not limited to litigation or arbitration, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees, litigation costs, and court costs resulting from the following levels: pre-litigation, pre-arbitration, arbitration, trial and appeals.

19. Inheritance and Life Insurance Waiver. Except as expressly provided in this contract, each party hereby relinquishes and waives any right and/or interest which he or she may have in the estate of the other party (unless under a will or insurance beneficiary designation executed subsequent to the execution of this contract) or to claim any family

1 allowance or probate homestead (except as nominee of another person legally entitled to
2 said right). Each party waives the right to act as personal representative of the estate of the
3 other party in the event of the death of the other party unless under a will executed
4 subsequent to the execution of this contract. All prior wills, powers of attorney, contracts or
5 community property agreements as between the parties are hereby revoked. Each party
6 retains, however, all rights accorded to him or her by virtue of the Social Security Act. Any
7 and all insurance on the life of either party not specifically mentioned herein shall be awarded
8 to the party on whose life the policy may be issued.
9
10

11 **20. Tax consequences.** Both parties acknowledge they have been advised by their
12 respective attorneys that tax consequences may exist or arise pertaining to the provisions of
13 this contract and that neither attorney furnished tax advice but has, instead, advised their
14 respective clients to obtain independent tax advice from a qualified tax attorney or accountant
15 prior to signing this contract and that each party has had an adequate opportunity to do so.
16 The tax consequences of the division of the property and allocation of the debts shall not be
17 considered newly discovered evidence.
18

19 **21. Waiver of Further Discovery.** Both parties acknowledge they have had
20 opportunity to make full and independent inquiry into the complete circumstances of the other
21 and believe that he or she knows the full nature, extent and value of the other party's property
22 and business interests, income and, if applicable, parenting capacities. The parties have
23 been advised by their respective attorneys of their right to discover additional information by,
24 among other means, a) deposing the other party or third parties, b) compelling answers to
25 interrogatories or requests for production of records from the other party or third parties, c)
26 having experts appraise, investigate or evaluate any assets, debts or liabilities of either party,
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1 whether community or separate, or any parenting issues in the case. Each party has waived
2 these rights and has instructed his or her attorney not to take any further steps, by
3 themselves or through others, in connection with discovery. Each party acknowledges that
4 he or she has had ample opportunity to confer with his or her own attorney and with full
5 knowledge of all the legal consequences of the intended binding effect of this contract, he or
6 she agrees that no claim may be properly made hereafter upon the ground of any failure or
7 lack of discovery. Each party agrees to hold their respective attorney harmless for any fault
8 or liability if additional facts are hereafter discovered or if either party becomes unsatisfied
9 with the consequences of this contract. The parties recognize that the values assigned to the
10 property and obligations shown herein may not be accurate; they are, nonetheless, willing to
11 stipulate to them for purposes of achieving this settlement. Neither party has relied upon any
12 certification given by any attorney regarding the truth or falsity of any fact or representation.
13

14
15 22. Bankruptcy. The following provisions shall apply in the event either party files
16 for protection under the United States Bankruptcy Code. The award of assets, debts and
17 attorney's fees in this decree is in the nature of maintenance and support and shall be
18 protected under any proceedings for bankruptcy. The parties acknowledge and affirm that
19 the provisions herein relating to maintenance and support or the lack thereof are dependent
20 upon the actual distributions and payments for the division of marital property as herein
21 provided, that the parties will necessarily depend upon the receipt of said assets and
22 payments in order to maintain a proper standard of living, that the failure to receive said
23 assets and payments will seriously impair said standard and that the provisions for
24 maintenance and support would have been significantly higher but for the reliance of the
25 parties upon the receipt of said assets and payments. Accordingly, both parties acknowledge
26
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28

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2 and affirm that in the event either party should file for protection under the United States
3 Bankruptcy Code, said distribution and payments should be recognized as non-dischargeable
4 obligations and should survive any such proceedings in order to carry out the intentions and
5 agreement of the parties herein and neither party shall take a contrary position.
6 Notwithstanding the foregoing, the parties acknowledge and affirm that all of the payments
7 and distributions under the decree constitute an equitable division and distribution of marital
8 property and are not intended to be treated as taxable income or a tax deduction by the wife
9 or husband and are being made hereunder as a nontaxable event. The provisions of this
10 paragraph shall not change or shift any tax consequences that would occur in its absence. In
11 the event either party should file for protection under the United States Bankruptcy Code for
12 any debts or obligations allocated to such party by the decree and related orders, and in the
13 event such action results in any collection action taken against the other party, the other party
14 shall have a right of indemnification, including attorneys fees and costs, against the obligated
15 party irrespective of the bankruptcy. That right of recovery shall be considered a new and
16 separate obligation, in the nature of maintenance or support, and subject to judgment under
17 this cause number upon motion to the family law department of a court of competent
18 jurisdiction in this matter.
19
20

21 **23. Incorporation into Decree.** The parties are not contracting to legally separate or
22 dissolve their marriage, but both parties stipulate and agree that if a legal separation or
23 decree of dissolution is obtained, this contract shall be incorporated by reference in said
24 decree and given full force and effect thereby and shall not filed with the court, as provided
25 for under RCW 26.09.070(5), except as needed for enforcement purposes and then only as a
26 confidential or sealed financial source document.
27
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2 **24. Enforceability.** It is understood and agreed by the parties that this contract shall
3 be final and binding upon the execution of both parties, whether or not a legal separation or
4 decree of dissolution is obtained. It is the intent of the parties that the court approves this
5 contract as fair and equitable at the time it was entered into and thus enforceable. Either
6 party may apply to the Superior Court of the State of Washington for King County to award all
7 such relief and ratify all rights and obligations set forth in this contract. Each party stipulates
8 to the jurisdiction of the Superior Court of the State of Washington for King County to interpret
9 this contract and adjudicate all disputes related to this contract that are not resolved by the
10 dispute resolution provisions contained herein.
11

12 **25. Entire Contract.** This contract and the attached CR 2A Agreement embody all
13 of the agreements of the parties concerning the disposition of property and property rights
14 and all other issues between them. No other agreements, covenants, representations or
15 warranties, express or implied, oral or written, have been made or relied upon by either party
16 with respect to the subject matter of this contract. All prior and contemporaneous
17 conversations, negotiations, possible and alleged agreements and representations,
18 covenants and warranties with respect to the subject matter hereof are waived, merged
19 herein and superseded hereby. This contract by its terms, nature and purpose, contemplates
20 and intends that each and all of its parts are interdependent and common to one another and
21 to the consideration and the contract is therefore "entire," rather than "severable."
22

23 **26. Effective Date.** This contract shall be effective upon execution. The attached
24 CR 2A Agreement was effective as of June 25, 2007.
25

26 **27. Prior Agreements.** By mutual act and consent, as evidenced by execution of
27 this agreement, both parties hereby rescind any separate or community property agreements,
28

1
2 DATED this 7th day of November 2007.

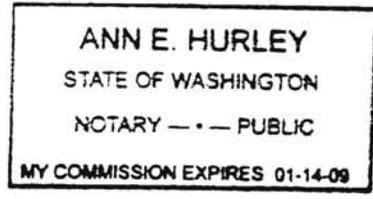
3
4 Eleanor M. Randecker-Pease
ELEANOR M. RANDECKER-PEASE

Michael D. Pease
MICHAEL D. PEASE

5
6 STATE OF WASHINGTON)
7) ss.
8 COUNTY OF KING)

9 On this day personally appeared before me ELEANOR M. RANDECKER-PEASE, to
10 me known or proven on the basis of satisfactory evidence to be the individual described in
11 and who executed the within and foregoing instrument, and acknowledged to me that she
12 signed the same as her free and voluntary act and deed for the uses and purposes therein
13 mentioned.

14 GIVEN under my hand and official seal this 7th day of November, 2007.

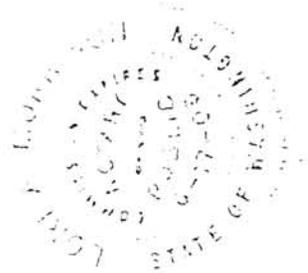


Ann E. Hurley
Print Name: ANN E. HURLEY
Notary Public in and for the State of Washington,
residing at: SEATTLE
My appointment expires: 01-14-09

15
16
17
18 STATE OF WASHINGTON)
19) ss.
20 COUNTY OF KING)

21 On this day personally appeared before me MICHAEL PEASE, to me known or proven
22 on the basis of satisfactory evidence to be the individual described in and who executed the
23 within and foregoing instrument, and acknowledged to me that he signed the same as his
24 free and voluntary act and deed for the uses and purposes therein mentioned.

25 GIVEN under my hand and official seal this 8 day of November, 2007.



Lori A. Morrison
Print Name: Lori A. Morrison
Notary Public in and for the State of Washington,
residing at: Seattle
My appointment expires: 06-17-08

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George R. Landrum
Carolyn J. Balkema
Attorneys at Law
9100 Roosevelt Way N.E.
Seattle, Washington 98115
(206) 524-2775

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2
3 **Attorney's Certificate for Eleanor M. Randecker-Pease**

4 The undersigned hereby certifies that she is an attorney-at-law, duly licensed and admitted to
5 practice in the State of Washington; that the undersigned has been employed by ELEANOR M.
6 RANDECKER-PEASE ("Ele"), one of the parties to the foregoing Agreement; that the undersigned
7 has advised and consulted with Ele in connection with her property and legal rights and has explained
8 to her the legal effect of the foregoing Agreement and the effect that it has upon any property or other
9 legal rights she would otherwise obtain as a matter of law; that Ele and the undersigned have
10 received answers to all of their inquiries concerning the property and debts of MICHAEL PEASE; and
11 that Ele, after being advised by the undersigned, acknowledged to the undersigned that she fully
12 understood the legal effect of the foregoing Agreement and would execute the same freely and
13 voluntarily.

14 DATED: November, 2007.

15
16 
17 _____
18 CAROLYN J. BALKEMA WSBA #21430
19 Attorney for ELEANOR M. RANDECKER-PEASE
20

21 **Attorney's Certificate for Michael D. Pease**

22 The undersigned hereby certifies that she is an attorney-at-law, duly licensed and admitted to
23 practice in the State of Washington; that the undersigned has been employed by MICHAEL PEASE
24 ("Michael"), one of the parties to the foregoing Agreement; that the undersigned has advised and
25 consulted with Michael in connection with his property and legal rights and has explained to him the
26 legal effect of the foregoing Agreement and the effect that it has upon any property or legal rights he
27 would otherwise obtain as a matter of law; that Michael and the undersigned have received answers
28 to all of their inquiries concerning the property and debts of ELEANOR M. RANDECKER-PEASE; and
that Michael, after being advised by the undersigned, acknowledged to the undersigned that he fully
understood the legal effect of the foregoing Agreement and would execute the same freely and
voluntarily.

DATED: November, 2007.



DELAINA M. DANCEY, WSBA #23817
Attorney for MICHAEL D. PEASE

George R. Landrum
Carolyn J. Balkema
Attorneys at Law
9100 Roosevelt Way N.E.
Seattle, Washington 98115
(206) 524-2775

1
2 DATED this 7th day of November, 2007.

3
4 [Signature]
5 ***

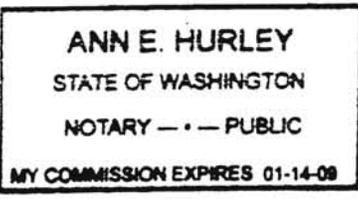
[Signature]

6
7 ***

8 STATE OF WASHINGTON)
9) ss.
10 COUNTY OF KING)

11 On this day personally appeared before me Carol Balkema to me known to be the individual
12 described in and who executed the within and foregoing instrument, and acknowledged that
13 she signed the same as her free and voluntary act and deed, for the uses and purposes
14 therein mentioned.

15 GIVEN under my hand and official seal this 7th day of November, 2007.



16 Ann E. Hurley
17 NOTARY PUBLIC in and for the State of Washington
18 residing at SEATTLE
19 My commission expires 01-14-09

20 STATE OF WASHINGTON)
21) ss.
22 COUNTY OF KING)

23 On this day personally appeared before me Delaina Dancy to me known to be the individual
24 described in and who executed the within and foregoing instrument, and acknowledged that
25 he signed the same as his free and voluntary act and deed, for the uses and purposes
26 therein mentioned.

27 GIVEN under my hand and official seal this 8 day of NOV, 2007.



28 Lori A. Morrison
NOTARY PUBLIC in and for the State of Washington
residing at Seattle
My commission expires 01-17-08