

**COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON
Case No. 72459-2-1**

In Re the Marriage of:

JOHN PHILLIP HALL,
Appellant/Petitioner,

And

DIANE HALL nka VAN NATTER
Respondent

BRIEF OF RESPONDENT

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COURT OF APPEALS
STATE OF WASHINGTON
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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court did not err in finding that the Respondent had fully complied with her responsibilities under the Decree of Dissolution under the circumstances of this case.

2. The trial court did not err in finding that the Petitioner had not been diligent in his efforts and in finding that the wife has been prejudiced, thus holding the petitioner to the original six month agreement represented in the Decree of Dissolution.

3. The trial court did not make contradictory findings regarding appellant's diligence and prejudice to the Petitioner and was well within its discretionary authority in making its findings on review of the Commissioner's ruling.

II. RESPONSE TO APPELLANT'S ISSUES

1. The trial court properly exercised its discretion in finding under the circumstances of this case that the Respondent had fulfilled her responsibilities with respect to the Decree of Dissolution because the property at issue was transferred.

2. The trial court properly exercised its discretion in making findings that the Petitioner was not diligent in his pursuit of refinancing the obligation on the condominium at issue which prejudiced the Respondent in that she continued to be obligated on a

mortgage on the condominium and foreclosure efforts by the bank. The Appellant/Petitioner had agreed to refinance within six months or that the condominium would be sold; his failure to abide by this provision of the Decree prejudiced the Respondent.

3. The trial court properly exercised its discretion. Findings regarding Petitioner's lack of diligence are not contradictory to Respondent's prejudice, but in fact caused the same.

III. COUNTERSTATEMENT OF THE CASE

A. COUNTERSTATEMENT OF THE FACTS

This Appeal involves a post-dissolution motion by the Petitioner, John Hall, after a marriage characterized by violence against the wife, Respondent Diane Van Natter. CP 162-210; CP 144. The parties' dissolution was finalized on January 3, 2014 with an agreed resolution defined by a CR2A Agreement. CP 174-186. This agreement was incorporated into the parties' decree. The agreement provided that, *inter alia*, John would receive a condominium in Edmonds, and Diane would receive the other real property of the parties, a property in Blaine, Washington. Both of these properties were purchased by Diane prior to the parties' marriage, but during the marriage she quit claimed both properties to John alone while under considerable pressure from her spouse. Because Diane had separately

purchased the properties, the mortgage on the Edmonds property awarded to John was in her name alone.

The Decree provided at Paragraph 5 of Exhibit A thereof that “The parties are responsible for cooperating and executing all documents respecting the transfer of any assets or property herein.” CP 180. The Decree itself at paragraph 3.6 provides that “Each party shall promptly execute any documents or provide any reasonable assistance necessary to effectuate the transfer of property or other terms of this decree. CP 176.

Pursuant to the award of the condominium to John, he, by agreement, was required to refinance the debt on the property out of Diane’s name within six months of entry of the Decree or, if he was unwilling or unable to do so, the property would be sold and the proceeds divided pursuant to a formula set forth at Paragraph 2.d of Exhibit A to the decree. Essentially, John would receive the first \$25,000.00 of any equity in the property realized by refinance or sale, and the parties would divide any equity above that amount evenly. CP 179.

Apparently, John decided to proceed solely by attempting a modification of the existing mortgage in Diane’s name on the Edmonds condominium. There is no evidence in the record that John attempted

any other means of refinance, i.e., approached other lenders or attempted any other arrangements. John's efforts with respect to Diane seemed to revolve around some effort to have him join as an obligor on the mortgage, modify the loan together, and then allow him to refinance her out of the debt, but whatever his actual plan was, it was never communicated in any detail to Diane or to her counsel.

John makes a great issue of Diane's non-participation in a mortgage modification mediation meeting of April 14, 2014, but it is undisputed that Diane was never given notice of any such meeting. CP 145.

Diane's only responsibility under the applicable portions of the Decree were to ensure the transfer of the property awarded to John, to John. Diane fulfilled all of her responsibilities under the Decree with respect to the condominium. She quit claimed her interest in fear during the marriage to John, so there was no requirement for her to execute a transfer document post decree. On April 11, 2014, Diane's counsel sent a letter to John, then *pro se*, inquiring about his progress in complying with paragraph 2.d of Exhibit A to the decree, i.e. refinancing the condominium. CP 47. This letter was followed by a letter dated June 10, 2014 reiterating Diane Van Natter's willingness to be cooperative in Mr. Hall's refinance of the condominium, but

indicating her unwillingness to be a co-borrower with him. CP 210. No response was received to that inquiry until the present set of circumstances surrounding the instant appeal.

B. COUNTERSTATEMENT OF PROCEDURE

Apparently frustrated over his inability to refinance, John filed a motion to require Diane to provide a power of attorney, appoint a special master, and stay various provisions of the Decree, at Diane's expense. The Commissioner denied the motion with respect to the condominium, and John moved for revision. Judge Eric Lucas heard oral argument and denied the motion for revision in its entirety. This appeal followed.

IV. ARGUMENT

A. STANDARDS ON REVISION

On a motion for revision pursuant to RCW 2.24.050, the Superior Court conducts a *de novo* review based on the record before the Commissioner, rather than a substantial evidence standard of review. On appeal from a decision of the Superior Court upholding a Court Commissioner's order, the Court of Appeals will review the Superior Court's ruling. *In re Marriage of R.E.*, 144 Wash.App. 393, 405 183 P.3d 339 (2008); *State v. Hoffman*, 115 Wash.App. 91, 60 P.3d, 1261 rev. 150 Wn.2d 536, 78 P.3d 1289 (2003); *State v. Ramer*,

120 Wash.App. 638 86 P.3d 801 (2004). The court in this case complied with its required standard of review, which was plainly *de novo*:

Petitioner's motion for revision of Commissioner Lee B. Tinney's ruling on July 22, 2014 denying the petitioner's request for more time, for a special master, or power of attorney: denied. The court indicates the husband has not been diligent, nor has he made any effort to bring the bank to task for their lack of effort; and the wife has been prejudiced. The court holds the petitioner to the original six month agreement.

Respondent's motion for attorney fees: granted, in the amount of \$500.00.

Minute entry, Eric Z. Lucas, Judge, August 15, 2014, CP 1. This court's role is to determine whether or not the Superior Court abused its discretionary authority in its *de novo* review. *In re Marriage of Dodd*, 120 Wash.App. 638, 86 P.3d 801 (2004). In this case, there was no abuse of discretion, as the conditions in the Decree agreed upon by the husband are clear and customary, and the wife plainly has fulfilled any obligation that she has.

B. RESPONDENT DIANE VAN NATTER HAS COMPLIED WITH ALL OF HER RESPONSIBILITIES; PETITIONER JOHN HALL HAS NOT.

The language of the Decree of Dissolution in this case is as clear as it is customary. Pursuant to the parties' agreement, John Hall had six months to finance the condominium debt into his own name and

pay a portion of equity (if any) therein to respondent Diane Van Natter, or the condominium was to be listed for sale under the same formula. It is undisputed that Mr. Hall failed to refinance the condominium within the allotted time. In his motion before the trial court, Mr. Hall attempted to blame Ms. Van Natter for his failure to do so. The Decree did not require Ms. Van Natter to become a co-borrower with Mr. Hall, nor did it require her to attend meetings (of which she had no notice, a fact which is undisputed), or to take any other extraordinary action. There is an absence of any assertion by Mr. Hall that he attempted to refinance through any of the many lenders in Washington, other than to attempt a modification of Ms. Van Natter's existing loan. However, Ms. Van Natter's obligation was to ensure that title to the condominium was in Mr. Hall's name, which it already was due to a pressured "gift" to Mr. Hall during the marriage, which was characterized by violence and abuse. Ms. Van Natter's obligation did not extend to a scheme involving modification followed by some other action.

Mr. Hall also complains about provision of certain pleadings relating to a lawsuit Ms. Hall had against Washington Mutual Bank. As noted by Ms. Van Natter, the file of these documents had been located all along in the condominium which Mr. Hall owns and occupies. CP 145. The *agreement* represented by the Decree was that

Ms. Van Natter would not oppose Mr. Hall's intervention in that lawsuit. However, as of the time of the underlying motion relevant to this appeal, Mr. Hall had not moved to intervene in the lawsuit. His complaint is both moot and without foundation.

The trial court found no merit whatsoever to Mr. Hall's underlying motion. As noted by the Respondent wife before the trial court, "If Mr. Hall had a different scheme in mind with respect to financing the condominium, he could have bargained it when the parties settled their differences in a CR2A Agreement. He did not do so. He had six months to refinance, and he did not do so. Ms. Van Natter has not failed to cooperate in any manner required by the decree." It was argued at that time that the motion for revision should be denied, and this baseless appeal should be denied as well.

The remaining issues argued by the appellant are that he quarrels with the trial court's requirement that he demonstrate a likelihood of success in obtaining a loan modification, and whether there are contradictory findings between the Commissioner and the court on revision.

The Appellant's lack of diligence and failure to demonstrate that if he was otherwise able to modify the loan, he would be successful, are simply findings and comments by the court which relate

to Mr. Hall's continuing abuse of his now ex-wife by blaming her for his lack of success in securing financing during the time period to which he agreed. This court should affirm the trial court, deny the appeal, and grant relief to Respondent Ms. Van Natter as set forth below.

C. REQUEST FOR REASONABLE ATTORNEY FEES

Pursuant to RAP 18.1, Respondent Diane Van Natter respectfully requests that the court grant reasonable attorney fees to her for the necessity of responding to this appeal. This request is based upon RCW 26.09.140 which authorizes that "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney fees in addition to statutory costs."

V. CONCLUSION

For the reasons heretofore stated, Respondent Diane Van Natter respectfully requests that this court deny appellant's appeal and affirm the ruling of the trial court.

Respectfully submitted this 26 day of February, 2015.



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