

No. 73119-0-I

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

In re the Marriage of:

KENNETH KAPLAN

Respondent / Cross-Appellant

And

SHEILA KOHLS-KAPLAN

Appellant / Cross-Respondent

2015 DEC -7 AM 11:14

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I



REPLY BRIEF OF RESPONDENT / CROSS-APPELLANT

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I. SOLE ISSUE ON CROSS APPEAL.

The sole issue Respondent, Ken Kaplan, raises in his cross appeal relates to Appellant, Sheila Kohls, and her attorney, C. Nelson Berry III, unreasonably refusing to enter a full satisfaction of judgment after Ken paid Sheila the judgment for attorney fees entered on January 20, 2015. Sheila's refusal to enter a full satisfaction caused Ken to expend needless and unnecessary attorney fees to obtain an order quashing Sheila's partial satisfaction and forcing her to enter a full satisfaction. The trial abused its discretion by summarily denying Ken's request for attorney fees and/or CR 11 sanctions after he prevailed on his motion.

II. IF THE TRIAL COURT CORRECTLY DECIDED INTEREST BEGAN TO RUN ON THE JUDGMENT FOR SHEILA'S ATTORNEY FEES ON JANUARY 20, 2015, SHEILA'S REFUSAL TO ENTER A FULL SATISFACTION OF JUDGMENT MERITS AN AWARD OF ATTORNEY FEES AND/OR CR 11 SANCTIONS.

In her three sentence response to Ken's cross-appeal, Sheila simply argues the trial court's decision not to grant Ken's request for attorney fees was correct because the trial court's previous decision not to award her prejudgment interest from January 15, 2014 (the date of the Commissioner's original ruling) was incorrect. Appellant's Reply/Response to Cross-Appeal Brief, pp. 30-31. She makes no other argument to support the trial court's decision.

Ken's opening brief outlines the reasons why the trial court correctly concluded interest did not begin to run until the trial court's final order entered on January 20, 2015. See Respondent's Opening Brief, pp. 50-53. By failing to make any other argument specific to the issue of Ken's request for attorney fees, Sheila has essentially conceded fees and/or CR 11 sanctions should have been ordered.

This concession isn't surprising. It is clear from the record that Sheila's refusal to enter the full satisfaction of judgment was not grounded in fact. The record amply demonstrates that the trial court rejected Sheila's argument regarding the date interest commenced. Sheila raised the issue in her pleadings filed in opposition to Ken's proposed final orders. CP 1822, 1834. Sheila's attorney, C. Nelson Berry III, filed proposed orders that contained a judgment that did not include any prejudgment interest. CP 1804-1806. Berry's proposed order also contained the following proposed paragraph:

3.23.1 Other

This Court will not revise the Order on Petitioner's Motion for CR 11 Sanctions entered by Commissioner Jacqueline Jeske on June 16, 2014 in the amount of \$500 against Ms. Kohls and her attorney, jointly and severally.

This Court awarded an additional \$1,410 against Ms. Kohls, pursuant to CR 11, in its Order Granting Attorney Fees, entered on September 3, 2014.

In addition to the \$29,500.00 in reasonable attorney fees and costs in the amount of \$5,360.31 awarded to Ms. Kohls by Commissioner Jacqueline Jeske, pursuant to RCW 26.09.140, this Court awards her an additional \$8,750 in reasonable attorney fees for the fees she has incurred since July of 2013.

These attorney fee awards shall be offset in the judgment summary. ***This judgment supersedes these prior judgments.***

CP 1814 (emphasis added). The trial court agreed with Berry's proposal in this regard, and expressly ruled the judgments contained in the final orders entered on January 20, 2015, superseded the Commissioner's January 15, 2014, order. CP 1840. There is absolutely no basis in the record for Sheila and Berry to take the position they did and refuse to enter a full satisfaction of judgment.

Sheila and Berry took this position for one reason only – to extort an additional \$4,442.82 out of Ken. Sheila makes no argument to the contrary. Sheila executed the first partial satisfaction of judgment on February 17, 2015. Berry, not Sheila, executed the second partial satisfaction of judgment on February 19, 2015. CP 3440, 3443-3445, 3757-3759. Both Sheila and Berry knew entering only a partial satisfaction of judgment would impair Ken's credit and potentially impact his business dealings. Berry, and presumably Sheila, knew that Ken's attorney Janet Comin, was leaving the State on February 19, 2015, and

would not be able to address the matter promptly with the trial court. CP 3433. Sheila and Berry's actions were imposed for an improper purpose.

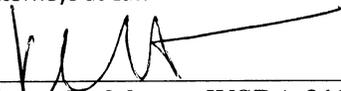
When the matter finally came before the trial court in April, the trial court properly ordered Sheila to execute a full satisfaction. CP 3470-3473. Under the facts and circumstances of this case, attorney fees and/or CR 11 sanctions were appropriate and necessary to deter both Sheila and Berry from "baseless filings and to curb abuses of the judicial system." Biggs v. Vail, 241 Wn.2d 193, 197, 876 P.2d 448 (1994) (quoting Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099(1992)).

III. CONCLUSION.

This Court should reverse the trial court's denial of Ken's request for attorney fees and/or CR 11 sanctions after Sheila and Berry refused to enter a full satisfaction of judgment after Ken paid the full amount of the attorney fees awarded to Sheila. This Court should remand back to the trial court for a hearing to determine the amount of fees/sanctions to impose.

Respectfully submitted this 2 day of December, 2015.

BREWE LAYMAN P.S.
Attorneys at Law

By 
Karen D. Moore, WSBA 21328
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 2nd day of December, 2015, I caused a true and correct original and one copy of the foregoing document to be delivered to the following:

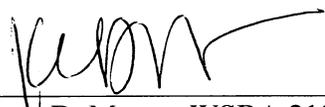
Richard D. Johnson
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Seattle, Washington 98101-4170
BY: US Mail

I also caused a true and correct copy of the foregoing document to be delivered to the following:

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C. Nelson Berry III
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BY: US Mail and email to cnberryiii@seanet.com

Dated this 2nd day of October, 2015 at Everett, Washington.



Karen D. Moore, WSBA 21328