

NO. 37794-2-II

FILED  
COURT OF APPEALS  
DIVISION II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

BY *[Signature]*  
DEPUTY

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BRENDA M. BRYANT

Appellant

v.

ALEX LOPEZ

Respondent

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RESPONDENT'S BRIEF

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John Groseclose  
Henderson, Jones, & Short, PS  
1155 Bethel Avenue  
Port Orchard, WA 98366  
(360) 876-9221  
(360) 876-5097 Facsimile

Attorney for Respondent

## TABLE OF CASES

Keller v. Keller, 52 Wn.2d 84, 86, 323 P.2d 231 (1958).

State v. International Typographical Union, 57 Wn. 2d 151, 158, 356 P.2d 6 (1960).

## ASSIGNMENT OF ERRORS

Ms. Bryant spends a great deal of resources in the moving brief on the February 29, 2008 Order of Dismissal which was not timely appealed nor did Ms. Bryant move to set it aside under CR 60 or any other manner. Appellant's assignments of errors 2.1; 2.2; 2.3; 2.4; 2.5; and 2.6 relate to the 2/29/08 order and were not appealed and not preserved.

Appellant's assignment of error 2.7 was not timely appealed, and appears to be based on the erroneous belief that Ms. Bryant was ordered to pay Mr. Lopez's attorneys fees in the amount of \$10,968.08. The allegation is erroneous.

Ms. Bryant's assignments of error 2.8 and 2.9 are related to the Order of Contempt entered on May 9, 2008 and timely appealed. Mr. Lopez argues that the trial court appropriately dealt with the issues through February 29, 2008 and the subject appeal concerns Mr. Lopez attempting to enforce the February 29, 2008 judgment of the court and the court's ability to enforce its own order and the failure of Ms. Bryant to provide substantive response

or defenses to the trial court for consideration on May 9, 2008 by the trial court.

#### FACTS

On December 4, 2006 Ms. Bryant filed a Petition for Meretricious Relationship. CP 1. The trial court entered a temporary order on December 29, 2006 that placed Ms. Bryant in Mr. Lopez's home and made provisions regarding debt. CP 10-13. Mr. Lopez alleged that Ms. Lopez failed to abide by some of the financial provisions of the December 29, 2006 and the court issued a further Order on Show Cause RE: Contempt on April 13, 2007. CP 32-35. The matter went to trial on February 6,7, and 8<sup>th</sup> and Ms. Bryant was unable to establish a Meretricious relationship and Order Granting Motion for Directed Verdict was entered on February 29, 2008. CP 48-56. The order was not appealed. The Order puts Mr. Lopez back into his home and restores him possession of several items of personal property that were taken from his care by virtue of the December 29, 2006 Order because they happened to be in the home.

The only issues before the court relate to the subsequent Motion for Contempt filed by Mr. Lopez against Ms. Bryant alleging that some items of personal property that were in Ms. Bryant's care were not in the home when it was surrendered and some items of personal property were damaged. CP 59-83. Mr. Lopez alleged that \$5,930.00 in personal property was missing using values as established by the trial exhibits and testimony. CP 59-60. Mr. Lopez alleged that the repair or replacement value of other property was \$5,896.00. CP 61. By March 6, 2008 when Mr. Lopez was granted access to the property pictures of the condition of the home were submitted showing that Ms. Bryant has caused extensive damage and removed items of personal property that were not hers to take or destroy. CP 62-83.

Counsel for Ms. Bryant has alleged that the court bifurcated the trial in some manner by entering orders on February 29, 2008 and May 9, 2008. Brief of the Appellant at Page 7, line 9-10. This is erroneous. The trial court dismissed the case on February 29, 2008 by Directed Verdict and gave Mr. Lopez back the real and personal property that had been temporarily restrained by the

December 29, 2006 Temporary Order prior to trial some 14 months earlier. CP 48-56.

In the case at the bar, the final order was not appealed by Ms. Bryant and she failed to turn over personal property left in her care to Mr. Lopez as ordered by the court. CP 59-83. (ie.. the property that went with the home she was allowed to use by the December 29, 2006 Temporary Order). She elected to not respond on the merits to the Motion for Contempt which left the judge in a position to weigh Mr. Lopez's declaration with Ms. Bryant's trial testimony about the value of various items or conditions of various items. CP 99-106. Mr. Lopez's testimony was not rebutted.

Ms. Bryant makes substantive responses for the first time on appeal by arguing at in the Brief of the Appellant that: 1) there was no showing that the damage did not predate the trial; 2) there was no showing when the conditions came into existence. Brief of Appellant Page 9 (and other pages). These arguments were not preserved at the trial court level and in fact Ms. Bryant filed no substantive response at all. CP 99-106.

Failure of Ms. Bryant to respond to the merits of the contempt motion left the trial court with no choice but to find that Mr. Lopez's testimony that items had been damaged or were missing was credible. The court has inherent power to enforce a judgment. Keller v. Keller, 52 Wn.2d 84, 86, 323 P.2d 231 (1958). "In contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought. The facts found must constitute a plain violation of the order". State v. International Typographical Union, 57 Wn. 2d 151, 158, 356 P.2d 6 (1960).

Ms. Bryant argues that if the alleged damages occurred before the dismissal of the action preclusion would be an issue. Significantly, Ms. Bryant made it impossible for the trial court to make this determination by making no substantive response to the motion for contempt. The Motion for Contempt was made timely, was served and a date for hearing the matter was agreed to by counsel. CP 84. Ms. Bryant's only response was a motion to strike. CP 99-106.

Ms. Bryant damaged and took from the home appliances, shelving etc. It may be accurate to state that the 2/29/08 order did not order delivery of personal property, however, the property in question was all at the residence and the residence was returned to Mr. Lopez. Ms. Bryant offered testimony regarding all of the personal property on or about February 6,7, and 8 and then by March 6, 2008 the Motion of Mr. Lopez painted an entirely different picture. Had Ms. Bryant not been responsible for the damage she had opportunity to file a declaration with the court and provide a response on the merits. Her failure to file a response should not be license to let the court speculate about what occurred.

#### RESPONSE TO OTHER ARGUMENTS

The Appellant argued the court could not grant the relief in the February 29, 2008 order related to damages of \$3,113.16 and attorneys fees of \$200.00.

#### ATTORNEYS FEES FROM THE FEBRUARY 29, 2008 ORDER

The February 29, 2008 order granting \$200.00 in attorney fees was appropriate under RCW 4.84.010(6). CP 49 and CP 55. The

basis is not stated in the order, however, is lawfully authorized by statute. The trial court did not award fees under RCW 26.09.140.

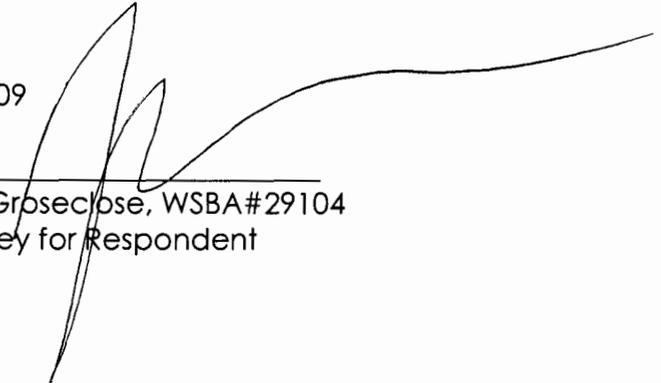
#### SO CALLED DAMAGES FROM THE FEBRUARY 29, 2008 ORDER

The \$3,2213.16 was the sum of money that the court found Ms. Bryant was to have paid under the December 29, 2006 court order and in fact were paid by Mr. Lopez and awarded a judgment to Mr. Lopez to place the parties back in the position they had been prior to Ms. Bryant asking Mr. Lopez be restrained from his home and ordering him to essentially pay Ms. Bryant a form of maintenance. CP 51-52 – see paragraph 3.5 to 3.9). The appeal incorrectly states that the court awarded Mr. Lopez attorney fees in excess of statutory fees and damages. The judgment in the February 29, 2008 order were entirely related to reimbursement of Mr. Lopez for sums he paid on behalf of Ms. Bryant pursuant to the December 29, 2006 Temporary Order and was NOT DAMAGES.

#### CONCLUSION

For the reasons set forth above, Mr. Lopez respectfully requests that the appeal be denied.

Dated this 21<sup>st</sup> day of January, 2009



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John Groseclose, WSBA#29104  
Attorney for Respondent

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DECLARATION OF MAILING

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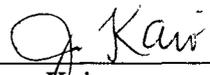
Attorney for Respondent

On January 21, 2009, I deposited in the United States Mail at Port Orchard, Washington, postage prepaid, an envelope containing a copy of Respondent's Brief to counsel of record addressed as follows:

James Caraher  
Attorney at Law  
4301 S Pine St., Ste. 543  
Tacoma, WA 98409

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 21<sup>st</sup> day of January, 2009 at Port Orchard, Washington.

  
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Jean Kaio