



**3. FACTS RELEVANT TO RESPONSE**

A full statement of the facts is included in the appellant's brief, which is incorporated by reference.

**4. GROUNDS FOR RELIEF AND ARGUMENT**

The respondent's motion on the merits seeking to affirm the order vacating the order of default and decree of legal separation should be denied because Respondent has not presented any grounds for relief under the Rules on Appeal. In particular, Respondent has not presented any legal or factual argument proving or even tending to prove that the appeal is clearly without merit. RAP 18.14(e)(1), Considerations Governing Decision on Motion - Motion to Affirm, states in part that

A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

The Respondent's sole argument was that "the trial court reviewed the facts presented before it and ruled that the trial court

must determine whether an equitable division of assets and debts in this particular case has been made by allowing for a full hearing to be held. (RP at 20 and 21.) The Trial court's ruling is not manifestly unreasonable or exercised on untenable grounds or for untenable reasons in allowing this case to proceed to be determined on the merits. The Trial Court's ruling was clearly within the discretion of the trial court." Motion on the Merits 2-3.

This argument is not supported by any citation to either facts or law, and does not indicate why the appeal is clearly without merit. Factor (a) of RAP 18.14(e)(1) relating to settled law has not been addressed; factor (b) of RAP 18.14(e)(1) relating to facts and evidence has not been addressed; and factor (c) of RAP 18.14(e)(1) relating to judicial discretion has not been addressed, other than to state that the court has discretion under CR 60(b); in other words, the Respondent failed to address the Appellant's assignment of error that the trial court abused its discretion. Her argument is self-serving and without legal support and should be dismissed as not meeting the substance of the requirements of RAP 18.14.

Reviewing courts are not required to address issues raised in

passing or unsupported by authority or persuasive argument.

Conway v. Washington State Dep't of Soc. & Health Servs. (2005)

131 Wn. App. 406, 421 n.16.

On the other hand, because the appellant has presented argument in his brief supporting his assignment of error that the trial court abused its discretion in vacating the final decree of dissolution in order to address the equities, this Court should reverse the trial court's decision. Pursuant to RAP 18.14(c) the appellant's argument in support of his notice of appeal contained in the brief of appellant is incorporated by reference. Specifically, the appellant argued that the trial court decision to vacate the decree of legal separation was a manifest abuse of discretion because there had been no finding of the existence of conditions justifying the reopening of a judgment under the laws of the state of Washington as required by RCW 26.09.170 and related case law, and that reconsideration of the equities of the case is a legal determination, subject to appeal, but not vacation under CR 60(b).

Therefore, argument has been presented that (a) the issue under review is clearly controlled by settled law, as numerous cases

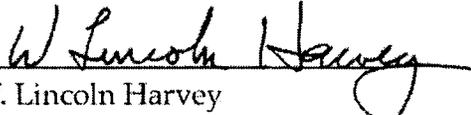
were presented in support of reversal, and no cases were presented in opposition, (b) no evidence supports the trial judge's decision, as the decision was legal in nature, and (c) the trial judge's discretion was clearly abused in that he vacated the decree to correct legal matters only.

Therefore, Phillip Brown respectfully requests that this court deny Janet Brown's motion on the merits and, instead, reverse the trial court's decision by affirming the decree of legal separation.

Phillip Brown requests an award of fees and expenses pursuant to RAP 18.1. In support of his motion pursuant to RAP 18.1(b), Phillip Brown's request for attorney fees presented in his brief is incorporated by reference.

Respectfully Submitted:

Dated: May 13, 2010

  
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FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS OF STATE OF WASHINGTON  
DIVISION II

In re the Marriage of:

PHILIP A. BROWN,  
Appellant,

and

JANET R. BROWN,  
Respondent.

NO. 39808-7-II

DECLARATION OF SERVICE

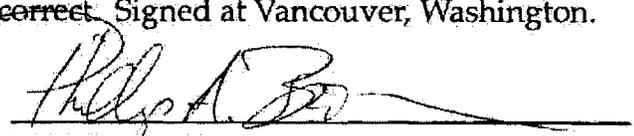
1. Declaration of Service

I declare that I served: JANET BROWN, RESPONDENT with the APPELLANT'S RESPONSE TO RESPONDENT'S MOTION ON THE MERITS and FINANCIAL DECLARATION OF PETITIONER on Friday, May 14, 2010 by delivering a copy to the party's attorney-of-record, SUSAN A. STAUFFER, at her regular business address of 904 Esther Street, Vancouver, Washington.

2. Signature

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed at Vancouver, Washington.

DATED: 5/14/2010

  
PHILIP A. BROWN  
APPELLANT